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**PLANNING COMMISSION RESOLUTION NO. 7265**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A RETROACTIVE FIVE YEAR EXTENSION AND AMENDMENT OF A FLOODPLAIN SPECIAL USE PERMIT TO ALLOW FOR PERIODIC MAINTENANCE DREDGING OF THE AGUA HEDIONDA OUTER LAGOON AND THE PLACEMENT OF DREDGED SAND ON CARLSBAD BEACHES IN LOCAL FACILITIES MANAGEMENT ZONE 1.

CASE NAME: AGUA HEDIONDA OUTER LAGOON MAINTENANCE

CASE NO: SUP 06-10X2(A) (DEV06068)

WHEREAS, **Cabrillo Power I, LLC**, "Developer/Owner," has filed a verified application with the City of Carlsbad regarding property described as

**Portions of Lot "H" of Rancho Agua Hedionda, according to partition Map No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896 (APN: 210-010-4500),**

("the Property"); and

WHEREAS, said verified application constitutes a request for a Floodplain Special Use Permit Extension and Amendment as shown on Exhibits "A" – "D" dated **September 6, 2017**, on file in the Planning Division, **SUP 06-10X2(A) – AGUA HEDIONDA OUTER LAGOON MAINTENANCE**, as provided by Chapter 21.110 of the Carlsbad Municipal Code; and

WHEREAS, the Planning Commission did on **September 20, 2017**, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the Floodplain Special Use Permit Extension and Amendment.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Carlsbad as follows:

- A) That the foregoing recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Commission **APPROVES SUP 06-10X2(A) – AGUA HEDIONDA OUTER LAGOON MAINTENANCE effective retroactively from October 18, 2016, through October 18, 2021**, based on the following findings and subject to the following conditions:

1 **Findings:**

2 The adopted project findings for SUP 06-10, which are contained in Planning Commission Resolution No.  
3 6181, and SUP 06-10X1, which are contained in Planning Commission Resolution No. 6904, are superseded  
4 by the following findings:

- 5 1. The project is consistent with the Open Space, Conservation, and Recreation Element Goals 4-G.5  
6 and 4-G.9 of the General Plan in that **the placement of dredged sand on the beach will enhance  
7 public recreation opportunities by maintaining or increasing the size (i.e., square footage area)  
8 of useable public beach.**
- 9 2. The project is consistent with the Open Space, Conservation, and Recreation Element Policy 4-  
10 P.33 of the General Plan in that **dredging the outer lagoon and the intake channel, in particular,  
11 will allow for the continued flow of fresh, nutrient-rich ocean waters into the lagoon, thereby  
12 maintaining/improving the overall health of the lagoon.**
- 13 3. The project is consistent with the Public Safety Element Goal 6-G.1 and Policy 6-P.2 of the General  
14 Plan in that **the placement of dredged sand on the beach will enhance and protect important  
15 city open space resources by assisting the buildup of a deteriorating beach profile and by  
16 creating a wider beach which will assist in the protection of coastal bluffs from erosion caused  
17 by ocean wave action, thereby protecting private and public property in the vicinity of the  
18 beach.**
- 19 4. The project is an allowable activity/use in the Open Space Zone and complies with all its standards  
20 in that **the dredge activity and placement of sand on the beach will maintain/improve the  
21 overall health of the lagoon by a) dredging the intake channel and ensuring the continued flow  
22 of fresh, nutrient-rich ocean waters into the lagoon; and b) enhancing the quality of the beach  
23 by placing dredged sand on the beach, thereby assisting in the buildup of a deteriorating beach  
24 profile.**
- 25 5. The proposed lagoon dredge will not create a hazard or adversely impact development, or  
26 adjacent and upstream properties and structures; and the cumulative effect of this project and  
27 the adjacent approved projects will not significantly raise the level of the 100-year floodplain  
28 (base flood elevation) in that **the dredge activity will increase the physical capacity of the lagoon  
and, therefore, the ability of the lagoon to accommodate flood waters.**
6. The project is in conformance with the Certified Local Coastal Program and all applicable policies  
in that:
- a. **Dredging the outer lagoon and the intake channel, in particular, will allow for the  
continued flow of fresh, nutrient-rich ocean waters into the lagoon, thereby  
maintaining/improving the overall health of the lagoon; and the placement of dredged  
sand on the beach will enhance and protect coastal resources by assisting the buildup  
of a deteriorating beach profile and by creating a wider beach, which will assist in the  
protection of coastal bluffs from erosion caused by ocean wave action.**
  - b. **The project has been conditioned to require pre-construction survey for presence of  
Caulerpa taxifolia in the project area and, if found, shall be required to isolate, treat,  
and eliminate the risk of spreading.**
  - c. **The project has been conditioned to require pre-construction survey for presence of  
eelgrass in the area, and if found, shall be required to monitor and mitigate for impacts  
that may occur as a result of the project.**

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7. The project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act in that **the placement of dredged sand on the beach will enhance public recreation opportunities by maintaining or increasing the size (square footage area) of useable beach.**

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**Conditions:**

5 The adopted project conditions for SUP 06-10, which are contained in Planning Commission Resolution  
6 No. 6181, and SUP 06-10X1, which are contained in Planning Commission Resolution No. 6904 are  
superseded in their entirety by the following conditions:

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1. If any of the following conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the city shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the city's approval of this Special Use Permit Extension.
  2. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of project commencement.
  3. If any condition for construction of any public improvements or facilities, or the payment of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid, this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.
  4. Staff is authorized and directed to make, or require Developer to make, all corrections and modifications to the **Special Use Permit document(s)** necessary to make them internally consistent and in conformity with final action on the project. Development shall occur substantially as shown in the approved Exhibits. Any proposed development, different from this approval, shall require an amendment to this approval.
  5. This project shall comply with all conditions and mitigation measures which are required as part of the Zone 1 Local Facilities Management Plan and any amendments made to that Plan prior to any dredging activities. Developer shall also pay any applicable Local Facilities Management Plan fee for Zone 1, pursuant to Chapter 21.90. All such taxes/fees shall be paid prior to any dredging activities. If the taxes/fees are not paid, this approval will not be consistent with the General Plan and shall become void.
  6. This Special Use Permit is granted retroactively for a period of **5 years** from **October 18, 2016**, through **October 18, 2021**. This permit may be revoked at any time after a public hearing, if it is found that the use has a substantial detrimental effect on surrounding land uses and the public's health and welfare, or the conditions imposed herein have not been met. This permit may be extended for a reasonable period of time not to exceed **5 years** upon written application of the permittee made no less than 90 days prior to the expiration date. The Planning Commission may not grant such extension, unless it finds that there are no substantial negative effects on surrounding land uses or the public's health and welfare. If a substantial negative effect on surrounding land uses or the public's health and welfare is found, the extension shall be denied or granted with conditions which will eliminate or substantially reduce such effects. There is no limit to the number of extensions the Planning Commission may grant.

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7. At least three months (3) prior to any dredging activity, the Developer shall provide written notice to the City Engineer of such activity. The request shall include the following:
- i. The Developer shall provide a brief project description of the proposed dredging activity. The description shall include a schedule identifying the beginning and ending dates of the dredging operation, the hours and days of the week for the dredging activity, the anticipated total dredge quantity, the location and quantity for the deposition of sand, the anticipated beginning dates for the deposition on north, middle, and south beaches, and contact information including phone numbers of personnel responsible for the dredging activity.
  - ii. A sand deposition plan describing the methods and equipment needed to deposit and move the sand on the beach reaches. The plan should include best management practices for the maximum retention of sand material on the beach. This could include such practices as creating a dike parallel to the shoreline to allow the material to fall out of the slurry mix, the methods the construction equipment would be utilized to move the material, and other methods to ensure the maximum amount of sand is placed for beach building.
  - iii. The Developer shall provide the City Engineer a plan for interim pedestrian circulation control, to include public information signage describing the project.
8. To determine the proper amount of sand to be placed on the beach during any maintenance dredging cycle, north, middle and south beach segments shall be surveyed no earlier than 45 days prior to commencement of a dredging cycle. No later than 30 days prior to any dredging activity, Developer shall incorporate the survey results into the sand deposition plan and submit for review to the satisfaction of the city's Parks and Recreation Director, or designee. The current sand volume shall be calculated from the pre-dredge survey and used to guide distribution of dredged sand among the north, middle and south beaches. The amount of sand to be placed on the north beach segment between the north jetty and Maple Avenue shall be limited to the optimal carrying capacity of 79,471 cubic yards, as calculated in the report entitled "Beach Equilibrium Analysis of North Beach Disposal Options for Dredged Sands from Agua Hedionda Lagoon, Carlsbad, CA, dated June 15, 2017". If the calculation indicates that the in-place sand volume equals or exceeds the optimal carrying capacity, then no additional dredged sand shall be placed on north beach between the north jetty to Maple Avenue during the cycle, unless mutually agreed upon by the city and the Developer. The carrying capacity of the beach segment between Maple Avenue and Pine Avenue will be calculated and submitted with the sand deposition plan. The amount of sand to be placed in the Maple Avenue to Pine Avenue segment will be determined by calculating the difference between the in-place sand volume and this segment's optimal sand carrying capacity consistent with the methodology described in the Beach Equilibrium Analysis (2017). The remaining dredged sand shall be placed on middle and south beach segments based upon the sand deposition plan and in consideration of the actual condition of the respective beach segments, public benefits, and public safety.
9. Contractor shall place beach nourishment sand in such a manner that there is a minimum 5'-0" Path of Travel between both public and residential sea walls, to allow for both lifeguard and pedestrian access in between the sea walls and the back sand berm. Back berm shall be no taller than 6'-0" on the eastern aspect of the berm, and shall be groomed and flattened on the top to provide towel space on the north, middle and south beaches, at the end of each dredge event, to the satisfaction of the Parks and Recreation Director, or designee. The constructed beach fill shall be graded on the western side of the beach nourishment in such a manner that does not provide a shelf, but rather a gradual slope into the surf zone. In the event that storm

1 events begin to relocate the front aspect of the graded sand slope during the equilibration  
2 process, the berm and slope shall be regraded for public safety purposes. All sand shall be  
3 placed in such a manner so as not to block or clog existing drainage unnecessarily.

- 4 10. A pre-construction survey of the project area for *Caulerpa taxifolia* (*Caulerpa*) shall be  
5 conducted in accordance with the *Caulerpa Control Protocol* (see  
6 <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) not earlier than 90 calendar days prior to  
7 planned dredging and not later than 30 calendar days prior to dredging. The results of that  
8 survey shall be provided to the Corps Regulatory Division, NOAA Fisheries, the California  
9 Department of Fish and Wildlife and the City Planner at least 5 calendar days prior to initiation  
10 of dredging activities. In the event that *Caulerpa* is detected within the project area, the  
11 Developer shall not commence work until such time as the infestation has been isolated,  
12 treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory  
13 Division, in consultation with NOAA Fisheries, CDFG and the city.
- 14 11. Prior to construction, a pre-project eelgrass survey shall be conducted in accordance with the  
15 Southern California Eelgrass Mitigation Policy (SCEMP)  
16 (<http://swr.nmfs.noaa.gov/hcd/eelpol.htm>). The results of that survey shall be provided to the  
17 City Planner at least 15 calendar days prior to initiation of dredging activities. If the pre-project  
18 survey demonstrates eelgrass presence within the project vicinity, a post-project survey should  
19 be conducted and impacts mitigated in accordance with the SCEMP.
- 20 12. The Developer shall provide copies of current and pending resource agency permits prior to the  
21 request to conduct maintenance dredging.
- 22 13. The City Planner shall reserve the authority to review and approve the timing of the dredging  
23 operation consistent with the time limits outlined in other agency permits. The City Planner's  
24 review and approval shall not be unreasonably withheld.
- 25 14. Developer shall submit to the city a Notice of Restriction executed by the owner of the real  
26 property to be developed. Said notice is to be filed in the office of the County Recorder, subject  
27 to the satisfaction of the City Planner, notifying all interested parties and successors in interest  
28 that the City of Carlsbad has issued a Special Use Permit Extension and Amendment by Resolution  
No. 7265 on the property. Said Notice of Restriction shall note the property description, location  
of the file containing complete project details and all conditions of approval as well as any  
conditions or restrictions specified for inclusion in the Notice of Restriction. The City Planner has  
the authority to execute and record an amendment to the notice which modifies or terminates  
said notice upon a showing of good cause by the Developer or successor in interest.
15. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold  
harmless the City of Carlsbad, its Council members, officers, employees, agents, and  
representatives, from and against any and all liabilities, losses, damages, demands, claims and  
costs, including court costs and attorney's fees incurred by the city arising, directly or indirectly,  
from (a) city's approval and issuance of this Special Use Permit, (b) city's approval or issuance of  
any permit or action, whether discretionary or nondiscretionary, in connection with the use  
contemplated herein, and (c) Developer/Operator's installation and operation of the facility  
permitted hereby, including without limitation, any and all liabilities arising from the emission by  
the facility of electromagnetic fields or other energy waves or emissions. This obligation survives  
until all legal proceedings have been concluded and continues even if the city's approval is not  
validated.

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16. Developer shall comply with the city's Stormwater Regulations, latest version, and shall implement best management practices at all times. Best management practices include but are not limited to pollution control practices or devices, erosion control to prevent silt runoff during construction, general housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants to stormwater, receiving water or stormwater conveyance system to the maximum extent practicable.

**Code Reminder:**

17. Approval of this request shall not excuse compliance with all applicable sections of the Zoning Ordinance and all other applicable city ordinances in effect at time of maintenance dredging, except as otherwise specifically provided herein.

**NOTICE TO APPLICANT**

An appeal of this decision to the City Council must be filed with the City Clerk at 1200 Carlsbad Village Drive, Carlsbad, California, 92008, by 5:00 p.m. on September 18, 2017. Pursuant to Carlsbad Municipal Code Chapter 21.54, section 21.54.150, the appeal must be in writing and state the reason(s) for the appeal. The City Council must make a determination on the appeal prior to any judicial review.

**NOTICE**

Please take **NOTICE** that approval of your project includes the "imposition" of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as "fees/exactions."

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby FURTHER NOTIFIED that your right to protest the specified fees/exactions DOES NOT APPLY to water and sewer connection fees and capacity charges, nor planning, zoning, grading, or other similar application processing or service fees in connection with this project; NOR DOES IT APPLY to any fees/exactions of which you have previously been given a NOTICE similar to this, or as to which the statute of limitations has previously otherwise expired.

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the planning Commission of  
the City of Carlsbad, California, held on **September 20, 2017** by the following vote, to wit:

AYES: Chairperson Segall, Commissioners Anderson, Black and Goyarts

NOES:

ABSENT: Commissioner Montgomery

ABSTAIN: Commissioners Rodman and Siekmann



\_\_\_\_\_  
JEFF SEGALL, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:



\_\_\_\_\_  
DON NEU  
City Planner

