

## Voters for the Protection of Proposition D

Statement for Carlsbad City Council Meeting

11/17/2015

Red indicates text and notes not included in the live statement to conserve time (10 min allotted).

Our concerns about the process through which the Agua Hedionda 85/15 South Shore Specific Plan Initiative (Caruso's Initiative) came before this council, initially revolved largely around the legitimate concern that the initiative process served the developer by circumventing the California Environmental Quality Act.

The City Council subsequently voted to *disallow a vote by the people of Carlsbad* on Caruso's Initiative, but because of the good work of the Citizens for North County and the many volunteers who criss-crossed Carlsbad to chat with our neighbors, we got enough signatures to demand a vote.

As a bonus, we created time for a group of us, to read through the entire Caruso Initiative.

We believe very strongly that a November 2016 vote on this initiative would give **ALL** the Citizens of Carlsbad the time we deserve to make an informed decision on Caruso's dense initiative... a plan that would repeal Proposition D<sup>1</sup>, amend the General Plan and Land Use Plan, that exempts itself from sections of the Carlsbad Municipal Code<sup>2</sup>, that diminishes the powers of the City Council and the people of Carlsbad, all while establishing Caruso as the sole regulatory power on the South Shore of our Lagoon.

It wasn't long into our reading, in fact it was on page 12 of Caruso's Initiative, when a few of us discovered, that one of the objectives of this plan, if not THE main objective, is the intent to "rescind... existing zoning for the property"<sup>3</sup>. In language we can understand, this means repealing or canceling any Propositions that previously zoned this land.

What IS the existing zoning on the South Shore of our Lagoon?

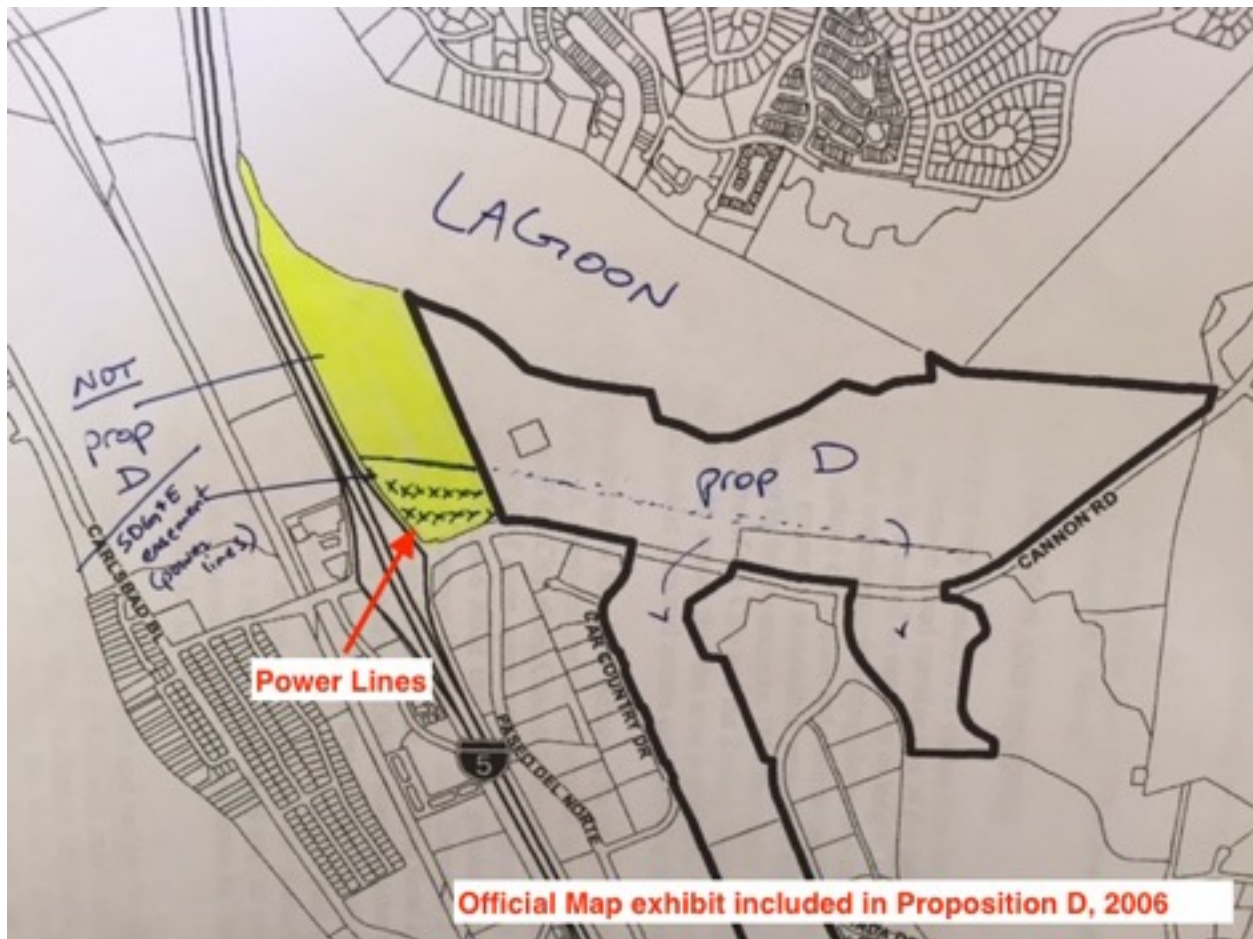
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<sup>1</sup> Proposition D: <http://www.carlsbadca.gov/civicax/filebank/blobdload.aspx?BlobID=28328>

<sup>2</sup> Agua Hedionda Specific Plan, p. 6.0-7

<sup>3</sup> Agua Hedionda Specific Plan, p. 12. "By adopting the AH-SP zoning for the property, the voters intend to rescind, and do hereby rescind, the existing zoning for the property, and to replace that zoning with the Agua Hedionda South Shore Specific Plan for 85% Open Space and 15% Retail (AH-SP) zoning..."

Currently, there are two main parcels of land that we are looking at.

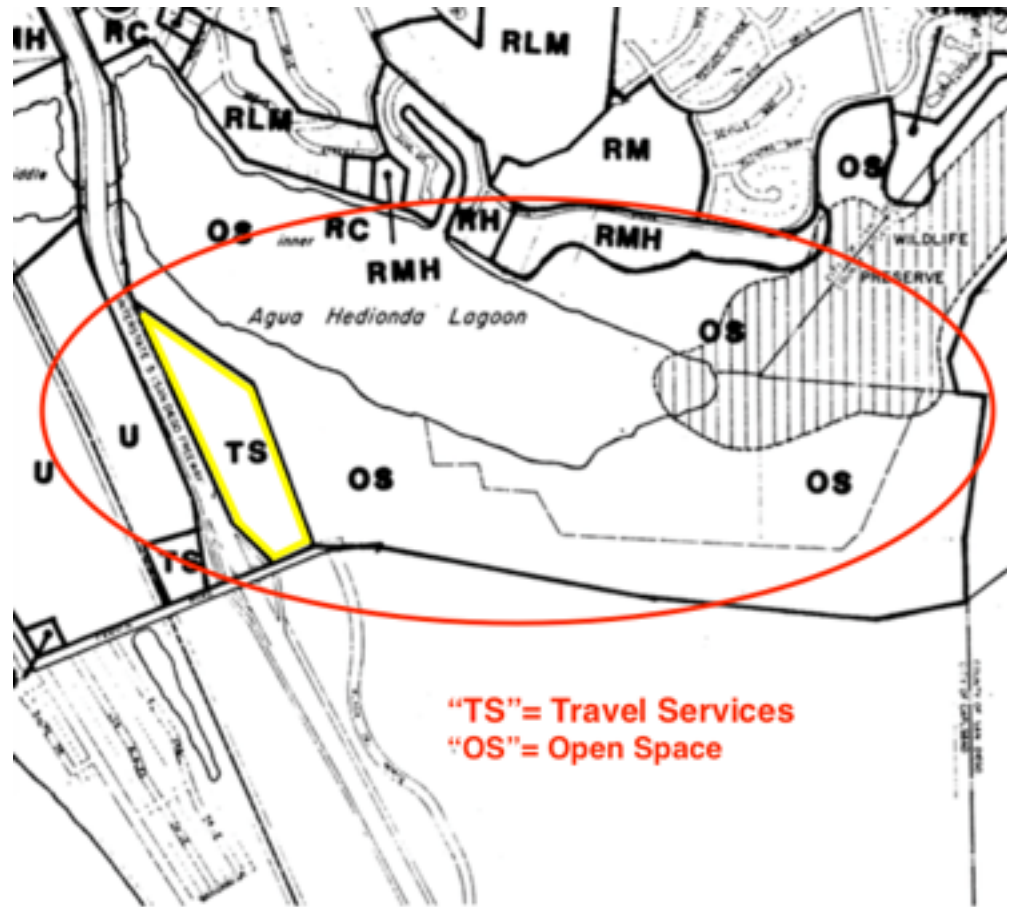


**Parcel 1 (yellow)**, sits directly next to the freeway. The existing zoning for this parcel (where Caruso plans to develop his mall/not mall) is zoned for Visitor-Serving Commercial (an overlay zone<sup>4</sup>, with the underlying, dominant designation being "Traveler Serving"<sup>5</sup> commercial)<sup>6</sup>. This zoning allows for hotels, restaurants, museums, visitor centers... It is not, as we've heard, currently zoned for the likes of a Walmart.

<sup>4</sup> Agua Hedionda Specific Plan, Exhibit P

<sup>5</sup> Agua Hedionda Land Use Plan, p. 14 <http://www.carlsbadca.gov/civicax/filebank/blobdload.aspx?BlobID=24059>

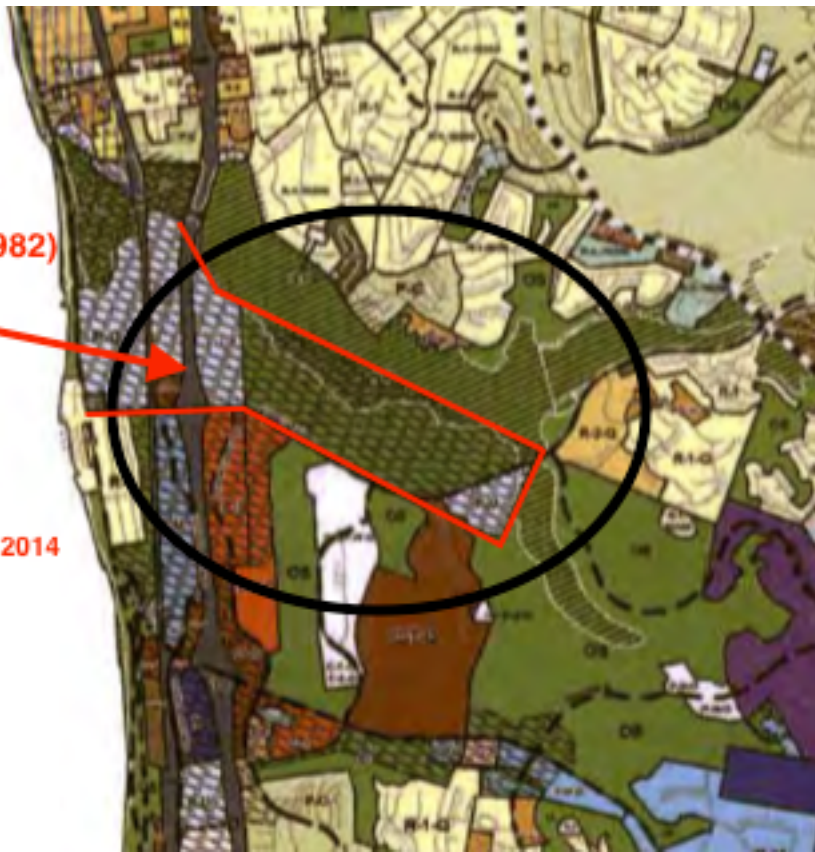
<sup>6</sup> Agua Hedionda Land Use Plan, 6.3. "The SDG&E **agriculture conversion** property adjacent to the I-5, shall be designated Travel Services. This will allow for 45 acres of additional visitor-serving commercial uses." See note



## AGUA HEDIONDA LCP (1982)

Commercial  
 Visitor Serving  
 Overlay Zone (1982)

Source: Zoning Map 2014



**Parcel 2**, which represents the remainder of the land we're discussing, has existing zoning that was determined by Proposition D, which Carlsbad voted on in 2006. The Council should be aware of this proposition, but for those who may not be familiar with what Prop D made law, I'll quickly go over the applicable key points:

**Proposition D<sup>7</sup> (direct quotes, p.2, 1st paragraph):**

1. "prohibit residential uses in the area;" (also "Prohibits commercial and industrial-type uses in the area other than those normally associated with farming operations and open space uses."<sup>8</sup>)
2. "ensure that this area is **permanently protected and preserved** for open space uses;"
3. "allow farming operations in the area, such as the Strawberry Fields and the flower growing areas, to continue;" "The City shall also ensure that other farming uses such as the existing Strawberry Fields are allowed to continue as long as is economically viable for the landowner to do so." p.2, paragraph 3
5. "provides for the protection of environmental resources in the area **including compliance with the City's Habitat Management Plan**;"
6. "incorporates public trails, pedestrian accessibility, park uses, and other **complementary and compatible** public uses into the area" ("Enhance public access and public use in the area by allowing compatible park and recreation uses."<sup>9</sup>)

In 2006, Mayor Hall, along with Mr. Packard, were both council members. They were also both advocates of Prop D, and they both signed their names to the ballot measure arguments<sup>10</sup> submitted to voters, in which was said,

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<sup>7</sup> Proposition D, complete document: <http://www.carlsbadca.gov/civicax/filebank/blobdload.aspx?BlobID=28328>

<sup>8</sup> Prop D, C.3 "Prohibit commercial and industrial-type uses in the area other than those normally associated with farming operations and open space uses."

<sup>9</sup> Prop D, C.4 "Enhance public access and public use in the area by allowing compatible trails, community gathering spaces and public and private, active and passive park and recreation uses."

<sup>10</sup> Ballot Measure Guide and arguments: <http://www.smartvoter.org/2006/11/07/ca/sd/prop/D/>

And I quote:

"The main purpose of Proposition D is the preservation of the Flower and Strawberry fields"

"Prop D does not have anything to do with massive development"

"[Prop D] permanently locks into place an Open Space designation for the Flower and Strawberry Fields area.

"In the future, should farming cease in the Area, this proposition would **only** allow other Open Space uses."

"A YES vote on Proposition D will put control for the future of the Flower and Strawberry Fields Area in the hands of the Citizens of Carlsbad **where it belongs.**" (emphasis added)

And now Proposition D, which gave the people of Carlsbad the power to determine and control the use of this Open Space, is in danger of being held hostage by a 585,000 sq. foot visitor-serving commercial development plan... for the next 15 years.

We had to fight for our right to vote on this...

despite the fact that in the same official ballot measure guide from 2006, where Hall and Packard's arguments were presented publicly to the voters, the City Attorney's impartial analysis of Prop D, clearly stated that Prop D "cannot be [changed or] amended except by a...vote of the people of Carlsbad."<sup>11</sup>

Why did we have to fight for this? And why are parts of Prop D being ignored and/or eroded?

Interestingly, recent changes to the General Plan reflect this pattern of weakening Prop D, changes that we would not have had time to digest if the Citizen-led referendum had not been launched!

Two examples of these changes is are big ones:

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<sup>11</sup> Ballot Measure Guide and arguments: <http://www.smartvoter.org/2006/11/07/ca/sd/prop/D/>

Stricken from the General Plan is Prop D's assurance that "should farming cease in the Area, **"only** open space uses and limited commercial development associated with permitted agricultural or open space uses are allowed."<sup>12</sup> (emphasis added)

Gone is the assurance that should the landowner cease farming on this land, it must remain open space, and it should be noted that there is a section of the Carlsbad Municipal Code that provides a clear path to converting agricultural land use zones to urban uses.<sup>13</sup>

In addition, the General Plan has also recently been updated to allow limited mixed-use residential dwellings on Visitor-Serving Commercial designated properties,<sup>14</sup> an allowance that takes on far greater significance should Caruso's Initiative be allowed to repeal Proposition D, which you'll remember prohibits residential uses, **as well as commercial, and industrial-type uses other than those normally associated with farming operations on the Prop D parcel.**<sup>15</sup>

Proposition D ensured us that the public and the City were going to work hand-in-hand to fully implement<sup>16</sup> our vision of public access and public trails on the area through "a public planning process with broad public participation,"<sup>17</sup> a vision which Prop D made a category 1 priority<sup>18</sup> for Carlsbad.

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<sup>12</sup> Chapter 4: Revision to the General Plan, p. 4-21. ~~"Once effective, the new zone will specify that if the landowners choose to discontinue agricultural use of the land, only open space uses or limited commercial development associated with permitted agricultural or open space uses are allowed."~~

<sup>13</sup> City Municipal Code 21.202.060

<sup>14</sup> Chapter 4: Revision to the General Plan, p. 2-19, Table 2-4: Characteristics of Commercial Land Uses

<sup>15</sup> Carlsbad Land Use Element, p. 28.

<sup>16</sup> Prop D, 5.3

**"Public Process To Comprehensively Implement Measure.** Upon the passage of this measure, the City shall initiate a comprehensive planning process with broad public participation and input to accomplish full implementation of the measure. The process shall include determining the most appropriate open space, recreational and public uses for the area, should farming become no longer economically-viable in the area. The process shall result in achieving complete General Plan, Zoning and Local Coastal Program consistency so that the full intent of this measure can be implemented by the City."

<sup>17</sup> Prop D, C.8 "The City shall initiate a public planning process with broad public participation to fully accomplish implementation of the goals, objectives and action programs listed above."

<sup>18</sup> Prop D, 3.4. Further amended the Open Space and Conservation Element to upgrade this project from a category 5 priority to a category 1 priority.

So public access to this space,<sup>19</sup> community trails... all of the things we decided would be good for this space... somehow ground to a full stop. After Prop D was passed, it was, quite simply, never fully implemented.

Enter Caruso.

In Caruso's Initiative, a visitor-serving commercial development is shoved into the mix. To execute his vision Caruso combines the area directly next to the freeway with the area that is controlled and protected by Prop D, and attempts to dissolve the zoning of Prop D, in order to create a new, "Functionally integrated district"<sup>20</sup>... a district that would be "independent of... zoning requirements... including... [sections of] the Carlsbad Municipal Code."<sup>21</sup>

Remember that Prop D put into law that Open Space would be held in perpetuity on the the parcel, **and** that residential use is prohibited, but if, within the 15 year period, Caruso, who, would now have sole regulatory control over the new district, wished to apply for "the re-designation of land to commercial [or urban<sup>22</sup>] land uses"<sup>23</sup> he would be "exempt from certain plan and permit requirements..."<sup>24</sup> according to the Carlsbad General Plan Consistency Analysis.

Caruso is attempting to create a sovereign district on the South Shore of our Lagoon. And we won't be able to do anything about it for 15 years, unless we go back out on the streets to gather more signatures.

And though a City Planner will be involved in the review processes of development in this independent district, his or her role is explicitly restricted within Caruso's Initiative to a ministerial role.<sup>25</sup> What this means is that the City Planner's role, as with our City

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<sup>19</sup> Prop D, B.5 "**increase public access** and use to the area primarily through the incorporation of compatible public trails and active and passive recreation." (emphasis added)

<sup>20</sup> Agua Hedionda 85/15 Specific Plan, p.17

<sup>21</sup> Ibid., p.12

<sup>22</sup> Carlsbad Municipal Code 21.202.060

<sup>23</sup> Carlsbad General Plan (1994) Consistency Analysis, p. A-9

<sup>24</sup> Ibid.

<sup>25</sup> Agua Hedionda 85/15 Specific Plan, 6.4.3

Council, is to ensure that any development plans in Caruso's sovereign district simply demonstrate compliance with Caruso's own Initiative.... they carry out Caruso's will.

*So, where Prop D says “If there is no more farming, the land is permanently protected for open space uses (agriculture related commercial included, like farm stands)”*

*Caruso’s Initiative authorizes itself to amend, regulate, zone, and further develop the district within 15 years, **and opens the door for others after this time**, including commercial and urban uses.... and the General Plan itself is already shifting in this same direction...*

### **Caruso’s Initiative, p. 3.0-14, Table 3.0-7 Permitted Land Uses.**

**Note: Only “visitor serving commercial” zone has a “prohibited land use” list. There are no prohibited land uses for Open Space.**

<u>Other</u> accessory or related uses that support or promote the continuation of agriculture use.	
<u>Other</u> accessory or related uses that support high-quality visitor-serving commercial uses	
<u>Other</u> uses that are similar to those shown in Table 3.0-5 and that support the continuation of agricultural uses	
<u>Other</u> accessory or related uses that support the permitted passive open space uses	
<u>Other</u> uses that are similar or support the permitted passive open space uses shown in Table 3.0-3	
<u>Other</u> uses that are similar to or that support the high-quality visitor-serving commercial uses shown in Table 3.0-6	

This is directly pulled from Caruso's Initiative.

And I quote: "...the intent of [Caruso's Initiative] is to replace and supersede the need for any... permit, approval, or entitlement required by the City, except as otherwise provided in [Caruso's Initiative]." <sup>26</sup>

It has been argued that Caruso has spent time here. A few years, holding private meetings that you must register to attend, where luxury food, gifts, and transportation are offered... this is a **privatized** planning process initiated, not by the City, but by the developer himself. Being able to give input about the façade of a building, or watercolor drawings, or to say "yes" to wanting already permanently protected open space, is in no way equivalent to the broad public planning process required to amend the uses of the land currently controlled by Prop D.

Furthermore, The City, through **Proposition C**, has \$5 million dollars currently set aside for Open Space and Trails. *Why not use those earmarked funds to finally, fully implement Prop D: our community vision?* <sup>27</sup>

In summary, with the small amount of extra time we have won, some of us have been able to uncover extremely unsettling elements of Caruso's Initiative. What I have described only scratches the surface. Should the City Council persist in choosing to endorse Caruso's Initiative and send it to a vote via Special Election, spending 100s of thousands of our tax dollars for Caruso's benefit, it would add great insult to injury.

We would hope that the City Council would feel compelled to repeal ordinance CS-283 (**Caruso's Initiative**), but barring this, we want to urge the Council to place Caruso's Initiative on the November 2016 ballot so that ALL voters in Carlsbad have the opportunity they deserve to examine Caruso's Initiative for themselves.

If the City Council continues to endorse this plan, I hope that what I have said tonight helps to convince and compel voters to Save Carlsbad by voting against Caruso's Initiative.

Thank you.

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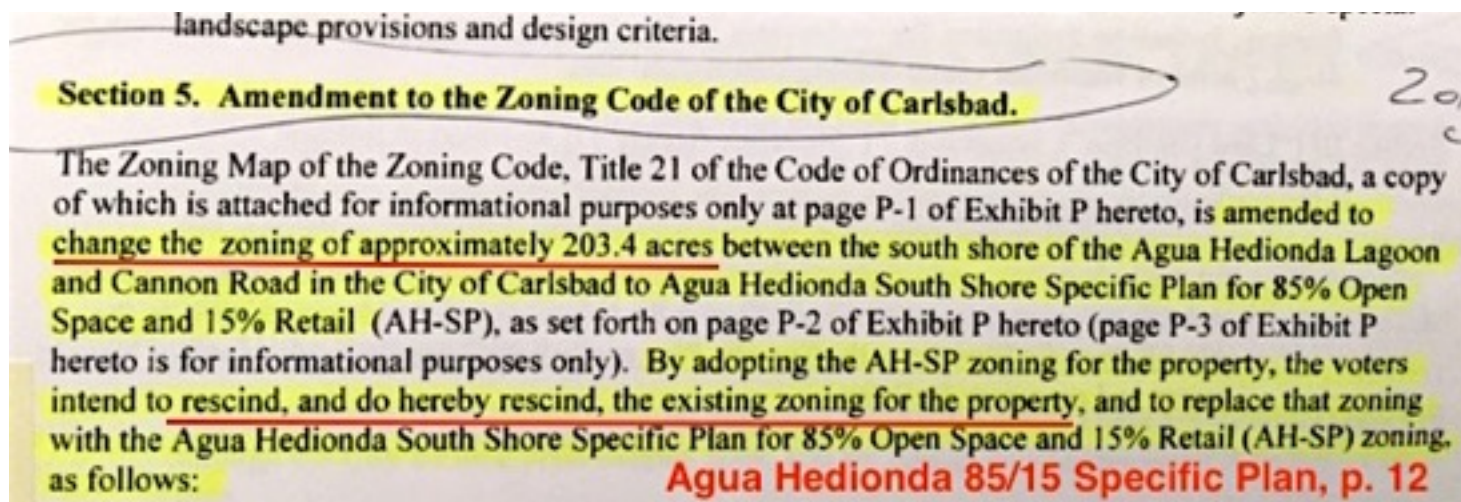
<sup>26</sup> Agua Hedionda 85/15 Specific Plan, p. 6.0-29

<sup>27</sup> Better yet, let's use the San Elijo Lagoon Foundation's model and buy the land ourselves!

## Summary of Findings:

1. Caruso's Initiative would repeal Proposition D and all it protects.
2. The only means to amend or repeal Proposition D is through a broad public planning process and/or a public vote. The voters of Carlsbad were forced to initiate a referendum campaign in order to vote on the repeal of Prop D. Public<sup>28</sup> planning for the repeal of Prop D in Caruso's Initiative has not occurred.
3. Caruso is attempting to establish a new, autonomous, and sovereign district in the middle of Carlsbad, on an iconic piece of land deeply embedded in Carlsbad's community identity.<sup>29</sup>
4. Caruso's Initiative would hold full regulatory control over that land for 15 years. Caruso's Initiative vastly diminishes the power of our municipal government in this district and ours.
5. There are more options to be explored for the South Shore Agua Hedionda Lagoon. Let's re-start a **broad** and **comprehensive public** (not *privatized*) planning process and see what our community can do!

### Here's what we're all really voting for:



<sup>28</sup> The process was privatized. Initiated and controlled by Caruso Affiliated with no oversight by the City of Carlsbad.

<sup>29</sup> See SANDAG's definition of a Region-Serving Open Space

