

CALIFORNIA COASTAL COMMISSION

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September 22, 2011

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST
DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT CAR-MAJ-1-10A (Muroya) for Commission Meeting of October
5-7, 2011**

SYNOPSIS

The subject LCP amendment was submitted and filed as complete on September 22, 2010. A one-year time extension was granted on December 21, 2010. As such, the last date for Commission action on this item is December 22, 2011. This is the first component of two unrelated items submitted as LCP Amendment Number 1-10 to be heard by the Commission. The second component 1-10B (Village Area Update) is tentatively scheduled for the November, 2011 hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad is requesting to amend the land use and zoning designations on a 20.27 acre site. The subject LCP amendment is project driven, and will result in three different land use and zoning designations. The existing lot is currently designated Residential Low Medium (RLM) and zoned Limited Control (L-C). As amended, the land use will be revised to Residential Medium Density (RM) and the zoning will be changed to Residential Density Multiple (RD-M) on 6.37 acres of the site, 0.9 acres will maintain the RLM land use designation and the zoning will become Single Family Residential (R-1). 11.4 acres will be designated and zoned as Open Space.

The subject site is located north of Aviara Parkway, south of Corte Orchidia, east of Towee Lane, and west of Black Rail Road. The lot is currently developed with one single family residence and agricultural uses on the northern side of the property and natural hillside on the south (ref. Exhibit #2). The developed and naturally vegetated portions of the property are bisected by a natural sloping area with slope gradients up to 40%. The project site is bounded to the north by existing detached single-family homes, to the south by detached single-family homes and open space, to the east and west by single family homes.

The site contains approximately 8.19 acres of Environmentally Sensitive Habitat Areas (ESHA) including coastal sage scrub and southern maritime chaparral. The residentially designated land will be primarily located on the portion of the lot previously used for agriculture. However, if the LCP Amendment were approved as submitted, a small portion of the sensitive habitat onsite could be incorporated into the development envelope and could be impacted as a result of future development. Under the currently proposed project, these impacts would be as a result of some grading and buffering associated with the condominium development (approximately 0.34 acres / 4% in total). All impacts to ESHA must be mitigated consistent with the City's LCP. The vast majority of the habitat area will be protected through designating this area as Open Space and zoning it as open space as well. Any HMP permit requesting development on this site would also be required to dedicate a conservation easement over this area, provide an endowment for its maintenance as habitat, and must include a monitoring and maintenance program, subject to the review and approval by the City of Carlsbad.

The changes to land use and zoning are proposed to facilitate the construction of a 37 unit detached air-space condominium development, a private road, the existing single family residence, required buffer between development and the habitat area, and all remaining ESHA areas described above.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the LCP amendment as submitted. The proposed modifications under review at this time are only the changes to land use and zoning designations on site. However, these changes directly facilitate a specific development; and, as such, the development envelope established by the project, including potential impacts to sensitive resources, shall be reviewed as well.

The proposed line between open space and developable area is consistent with the standards applicable to future development of this site contained in the certified LCP, which includes the City of Carlsbad Habitat Management Plan (HMP) and the Mello II LUP. The certified Mello II LUP and the HMP include site specific standards that limit the amount and types of impacts to ESHA associated with any proposed development. While the proposed line of development separating open space and the development envelope will result in some impacts to ESHA, the acreage of impacts (0.34 acres or approximately 4%) is less than (10%) what was anticipated at the time the Commission certified the City's HMP. Additionally, all required mitigation can be provided on site and mitigation must be consistent with the requirements of the certified HMP. Therefore, the proposed land use plan and zoning designations can be found consistent with the above mentioned standards, and thus consistent with the City's certified LCP and the Coastal Act.

The appropriate resolutions and motions begin on Page 8. The findings for approval of the Land Use Plan Amendment as submitted begin on Page 12. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 18.

BACKGROUND

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This LCP amendment affects both the Mello II segment of the LCP and the HMP. The Mello II Segment Land Use Plan and Implementation Plan were approved in 1981. The Mello II Segment is comprised of 5,500 acres, or approximately 75% of the City.

As stated above, the proposed LUP amendment is also located in an area protected through the City's Habitat Management Plan (HMP). The Carlsbad HMP was prepared to satisfy the requirements of a federal Habitat Conservation Plan (HCP), and as a subarea plan of the regional Multiple Habitat Conservation Plan (MHCP). The MHCP study area involves approximately 186 square miles in northwestern San Diego County. This area includes the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the Carlsbad HMP. Once approved, the MHCP and its subarea plans replace interim restrictions placed by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and allow the incidental take of the gnatcatcher and other covered species as specified in the plan.

In its action on City of Carlsbad LCP Amendment No. 1-03B in July 2003, the Commission certified the HMP as part of the LCP and found it to meet the requirements of Sections 30240 and 30250 of the Coastal Act despite some impacts to environmentally sensitive habitat area (ESHA). The Commission found that, pursuant to Sections 30007.5 and 30200(b), certification of the HMP with suggested modifications was most protective of significant coastal resources, through conflict resolution.

HMP BACKGROUND

In 1993, the coastal California gnatcatcher was listed as threatened under the federal Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* The coastal California gnatcatcher is found primarily in coastal sage scrub habitat in southern California. Based upon scientific estimates, coastal sage scrub habitat in San Diego County has been reduced by more than 70% of its original coverage. Fewer than 900 gnatcatcher pairs likely remain in the county; however, San Diego County currently supports the largest gnatcatcher population in California and presents the most significant opportunity for large-scale preservation of the species. This listing has had a significant effect on future public and private development in areas containing gnatcatcher habitat. In order to

proceed, development in areas with gnatcatchers would have to completely avoid a “take” of this species or else receive federal authorization for such an impact. Several other species have been listed under the federal or state ESA since 1993; currently, approximately 25 species that are listed or proposed for listing occur in or are associated with habitat located in Carlsbad.

The Carlsbad HMP and the Multiple Habitat Conservation Program (MHCP) are intended to meet criteria for the California Department of Fish and Game’s (CDFG) Natural Communities Conservation Planning process (NCCP), which was initiated in southern California in 1991 and of the federal Endangered Species Act (ESA).

In 1992, the City signed an NCCP agreement with the California Resources Agency to develop the Habitat Management Plan (HMP) as part of the City’s General Plan. The 1992 agreement enrolled the City in the NCCP program as an “Ongoing Multi-Species Plan” as defined in the NCCP process guidelines. The agreement was supplemented in 1993 to clarify that the HMP is a subarea plan of the San Diego County MHCP.

The draft Carlsbad HMP was initially approved by the Carlsbad City Council on September 21, 1999. An addendum was then prepared based on comments provided by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG), and the revised document, dated December 1999, was submitted to the wildlife agencies for approval of an incidental take permit (ITP) under section 9(a)(1)(B) [16 USC § 1538(a)(1)(B)] of the Endangered Species Act. Since incidental take permits are not listed in the CCMP as one of the permits for activities likely to affect coastal uses and resources, the Commission requested, and received, permission from the Office of Ocean and Coastal Resource Management (OCRM) in August 2000 for a federal consistency review of the HMP. The purpose of the consistency review was to determine whether issuance of the ITP would be consistent with the California Coastal Act and the CCMP.

In 2003, the City proposed an amendment to their LCP to incorporate the Habitat Management Plan (HMP) into their certified LCP and make the corresponding changes to the applicable land use plan segments (Mello I, Mello II, and Agua Hedionda). The HMP included several components. The most germane are listed below:

Components of Preserve System

The adopted HMP proposes to protect the endangered California Gnatcatcher and other listed species by contributing to an interlinked regional preserve system. The proposed preserve area for the HMP will be created from land in three different categories: hardline properties, standards areas, and existing preserve.

Hardlines

Certain properties have been designated in the HMP with specific development/conservation footprints, and are known as “hardline” properties. If development is proposed on these sites in a manner that is substantially in conformance with the

“hardline” configuration in the HMP, the development will be authorized consistent with all other regulatory standards and procedures. The purpose of this process is to ensure that certain areas of onsite habitat will be set aside for permanent preservation, and that the property owners have committed to abide by the established development limitation upon approval of the HMP.

Standards Areas

The second category of proposed preserve area in the HMP contains the “standards” areas, for which the HMP contains guidance relative to future habitat preservation and the siting of new development. The standards areas involve specific undeveloped properties within the City that are located in the biological core and linkage areas identified in the County MHCP.

Existing Preserve Areas

The third category contains existing preserve lands (preserved prior to certification of the HMP), such as the City’s three coastal lagoons and associated wetlands, the Dawson Los Monos Reserve, the Carlsbad Highlands Mitigation Bank, and other preserves located within previously-approved development. Approximately 4,450 acres of existing preserve land were incorporated into the HMP. These areas, which include both private and public land, have already been conserved for their wildlife value through previous development actions, such as mitigation banks and required open space. However, because these lands were preserved prior to the development of the HMP, many of these lands will not be monitored or managed to the extent of the post-HMP preserve areas. It is the City's intention to seek outside funding for management, monitoring and enforcement of the privately owned lands in the existing preserve areas.

Highly-Constrained Properties

There are a number of properties in the coastal zone that are entirely or almost entirely constrained by ESHA. The second HMP addendum provides that for those coastal zone properties which have more than 80% of their area in ESHA, at least 75% of the property shall be conserved. Alternatively, if the City, with the concurrence of the wildlife agencies and the Commission, agree upon a hardline preserve boundary for any of these properties, then a new hardline map may be created in the HMP through an LCP amendment and the amount of onsite preservation as identified in the hardline boundary shall apply.

Additional Requirement within the Coastal Zone

The following mitigation ratios will be required for authorized habitat impacts on properties within the coastal zone:

- 2:1 for coastal sage scrub
- 3:1 for all other rare native vegetation except wetlands
- 3:1 for riparian areas
- 4:1 for vernal pools, other seasonal wetlands, and salt marsh

Buffers for coastal habitat would be established as follows:

- A minimum 100 foot buffer shall be required from all freshwater and saltwater wetlands areas.
- A minimum 50 foot buffer shall be required from riparian areas and coast oak woodlands. No development or brush management shall take place within the buffer area for these habitat types except as otherwise specified herein.
- If a riparian area is associated with steep slopes (>25%), the 50 foot buffer shall be measured from the top of the slope.
- For steep slopes not associated with a riparian area, and for nonsteep areas (<25% slope) with native vegetation, a minimum 20 foot buffer shall be required. For steep slopes, the buffer shall be measured from the top of the slope. No development may be located within the buffer except as otherwise specified herein. However, if brush management is required for fire protection, Zone 3 (to a maximum of 20 feet) may be located within the buffer area if allowed by the fire management authority.
- Zones 1 and 2 for brush management and fire protection, where required, shall be located on the portion of the property proposed for development and outside of required buffers. Any plantings in Zone 2 must consist of native vegetation appropriate to the habitat.
- Recreation trails and public access pathways may be permitted in the required buffer area within the 15 feet closest to the adjacent developable area, provided that the construction of the trails and/or pathways and their proposed uses are consistent with the preservation goals for adjacent habitat, and that appropriate measures are taken for their physical separation from sensitive areas.

As approved by the Commission, the HMP further provides that, in the coastal zone, there will be no net loss of coastal sage scrub, maritime succulent scrub, southern maritime chaparral, southern mixed chaparral, native grassland or oak woodland. For impacts that are allowed to coastal zone sites with these habitat types, mitigation shall include a creation component, which requires establishment of new habitat area at a ratio of at least 1:1 (one acre of creation for every one acre of habitat impact) in order to achieve the no net loss standard. In certain appropriate cases, substantial restoration may also be substituted for creation. Restoration and enhancement will also be acceptable for mitigation beyond the 1:1 creation requirement. Onsite or offsite open space preserve areas may be utilized to satisfy required mitigation for habitat impacts, if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of habitat. Habitat mitigation requirements other than the creation or substantial restoration component may be partially or wholly fulfilled by acquisition of existing like habitat and/or retirement of development credits on existing like habitat with permanent preservation as part of the HMP preserve management plan.

The subject site, while located within the City's established HMP boundaries, is designated as a "development area" within the HMP. Specifically, the site located within "Zone 20" is identified as a standards area, and is located adjacent to and north of an

existing Hardline Preserve Area. The HMP conservation goals for Zone 20 require conservation of the majority of habitats in or contiguous with biological core and linkage areas, including no net loss of wetlands habitats, southern maritime chaparral, maritime succulent scrub, and coastal sage scrub. Because the site is located within the Coastal Zone, the HMP also requires a 20 foot buffer between the preserved habitat and the development, preservation of a minimum of 67% of Coastal Sage Scrub (CSS) onsite, and “no net loss” of coastal sage or maritime chaparral.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad LCP Amendment No. 1-10A (Muroya) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW**A. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:** *I move that the Commission certify the Land Use Plan Amendment for the City of Carlsbad LCPA No. 1-10A as submitted.*

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and

findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Land Use Plan Amendment for the City of Carlsbad as submitted and adopts the findings set forth below on grounds that the land use plan will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan.

II. MOTION: *I move that the Commission reject the Implementation Program Amendment for the City of Carlsbad LCPA 1-10A as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan, and certification of the Implementation Program as modified will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD LAND
USE PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The City of Carlsbad is requesting to amend the land use and zoning designations on a 20.27 acre site. The subject LCP amendment is project driven, and will result in three different land use and zoning designations. The existing lot is currently designated Residential Low Medium (RLM) and zoned Limited Control (L-C). As amended, the land use will be revised to Residential Medium Density (RM) and the zoning will be changed to Residential Density Multiple (RD-M) on 6.37 acres of the site, 0.9 acres will maintain the RLM land use designation and the zoning will become Single Family Residential (R-1). 11.4 acres will be designated and zoned as Open Space.

The subject site is located north of Aviara Parkway, south of Corte Orchidia, east of Towee Lane, and west of Black Rail Road. The lot is currently developed with one single family residence and agricultural uses on the northern side of the property and natural hillside on the south (ref. Exhibit #2). The developed and naturally vegetated portions of the property are bisected by a natural sloping area with slope gradients up to 40%. The project site is bounded to the north by existing detached single-family homes, to the south by detached single-family homes and open space, to the east and west by single family homes.

The site contains approximately 8.19 acres of Environmentally Sensitive Habitat Areas (ESHA) including coastal sage scrub and southern maritime chaparral. The residentially designated land will be primarily located on the portion of the lot previously used for agriculture. However, if the LCP Amendment were approved as submitted, a small portion of the sensitive habitat onsite could be incorporated into the development envelope and could be impacted as a result of future development. Under the currently proposed project, these impacts would be as a result of some grading and buffering associated with the condominium development (approximately 0.34 acres / 4% in total). All impacts to ESHA must be mitigated consistent with the City's LCP. The vast majority of the habitat area will be protected through designating this area as Open Space and zoning it as open space as well. Any HMP permit requesting development on this site would also be required to dedicate a conservation easement over this area, provide an endowment for its maintenance as habitat, and must include a monitoring and maintenance program, subject to the review and approval by the City of Carlsbad.

The changes to land use and zoning are proposed to facilitate the construction of a 37 unit detached air-space condominium development, a private road, the existing single family residence, required buffer between development and the habitat area, and all remaining ESHA areas described above.

**B. CONFORMITY OF THE CITY OF CARLSBAD LAND USE PLAN
AMENDMENT WITH CHAPTER 3**

1. Relevant Chapter 3 Policies.

a. Environmentally Sensitive Habitat Areas. The Coastal Act provides:

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

b. Preservation of Prime Agricultural Lands. The Coastal Act provides:

Section 30241

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete

a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

2. Findings for Approval. The Commission finds, for the specific reasons detailed below, that the land use plan amendment conforms with Chapter 3 of the Coastal Act.

The amendment before the Commission includes only the modifications to the land use and zoning designations for the site and not the specific proposed subdivision and residential development. As previously discussed, the subject amendment will modify the land use designation from a residential designation, to a mix of residential and open space designations. The area proposed for the open space designation includes the majority of the sensitive habitat areas (ESHA) surveyed on site as well as the habitat buffer.

The property is comprised of nine plant communities including: Agricultural Lands (7.90 acres), Coastal Sage Scrub (2.03 acres), developed lands (1.11 acres), disturbed lands (1.83 acres), Native Grassland (0.19 acres), ornamental plantings (1.05 acres), Southern Maritime Chaparral (5.39 acres), Southern Mixed Chaparral (0.77 acres), and Waters of the U.S. (0.02 acres). However, the biological report for this site indicates that no wetlands are located within the property. Additionally, two pairs of California Gnatcatchers were observed onsite, one pair in the southern portion and one pair in the central portion of the lot; both within the portion of the site proposed as Open Space. The modifications to the land use designation could result in impacts to 0.29 acres of southern maritime chaparral and 0.05 acres of southern mixed chaparral.

During the Commission's original review of the Carlsbad HMP/LCP amendment, the Commission reconciled the conflict between the policies of the Coastal Act that protect environmentally sensitive habitat area (ESHA) and those that require concentration of development where it will not have significant adverse effects on coastal resources. The Commission found, through conflict resolution, that approval was most protective of significant coastal resources because the HMP would allow for concentration of development in the areas of the City most suitable for development and creation of a habitat preserve that addresses the long-term viability and conservation of sensitive species while allowing some impacts to ESHA to occur. Although implementation of the HMP/LCP will result in some loss of native habitat and listed species throughout the region, in association with loss due to incidental take outside the preserve area, it was determined the potential losses to the habitat caused by piecemeal, uncoordinated development would be considerably higher without the HMP. Through application of the HMP mitigation requirements, there should be no net loss of ESHA within the coastal zone. Thus, the Commission certified the HMP/LCP amendment as consistent with Sections 30240 and 30250 of the Coastal Act through conflict resolution. The findings addressing resolution of the policy conflicts between these Coastal Act sections in the Commission's action on LCP Amendment No. 1-03B are herein incorporated by reference and attached to this report as Appendix A.

At the time of approval of the HMP, the City and the Coastal Commission recognized that this specific site was included as one of the many sites highly constrained for development due to the presence of ESHA on a significant portion of the parcel. At the time, there was no development plan proposed, so the site was approved as a "standards" area rather than a "hardline" property. Again, a "standards" area includes specific guidelines for the separation of development and habitat areas, while a "hardline" was an approved specific area available for development on a site. Any property within the HMP that had a specific project associated with the site at the time of HMP approval was thoroughly reviewed. A hardline was developed to separate the sensitive habitat from the developable areas to the maximum extent possible. Because this site had no specific project associated with it at the time of HMP approval, the HMP provided guidelines, or standards, by which development should proceed on this site. It was acknowledged that these guidelines may need to be slightly revised depending on the specifics of the project or the value of the habitat after thorough biological review. The standard for development specific to this location, certified as a component of the City's LUP during approval of the City's Habitat Management Plan (HMP) states:

Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.

The potentially developable land (lands that do not contain sensitive habitat) on the subject site are split into three separate areas within the subject parcel (ref. Exhibit #5). These three areas were identified at the time the Commission undertook the original HMP review. It was accepted at that time that some impacts to ESHA might occur

through the development of streets and other infrastructure to connect and gain access to all three developable areas.

The City indicated that originally the property owner proposed all three portions of disturbed land onsite maintain a residential designation to facilitate development. The original proposal also included the necessary access roadways between the three developable areas. The construction of these access routes would have been located within the habitat areas of the parcel and would have resulted in impacts to the existing ESHA. Through a series of meetings and redesigns, the City and the property owner finalized a line of development using only the largest developable area (ref. Exhibit #5), thereby eliminating more extensive impacts to ESHA associated with designating these areas for residential development. These two remaining portions (ref. Exhibit #5), have instead been included as open space and could be revegetated with native coastal sage scrub and southern maritime chaparral plant palette. However, the delineation between development and open space, as proposed by the City, does not eliminate the potential for impacts to sensitive resources.

As previously discussed, the land use and zoning modifications will result in a designation that could allow impacts to 0.29 acres of identified existing ESHA. If the currently proposed project were to be approved, of the identified 0.29 acres of impact, 0.18 acres are impacts associated with an identified habitat buffer, or fire management zone. The City of Carlsbad requires that all development be sited to accommodate a 60' fire suppression zone, divided into three 20 foot sections. The last 20 foot section for fire suppression does not require specific vegetation removal; and, as such, the Commission has, through the certification of the HMP, permitted that the last 20 foot section (Zone 3) can be accommodated within the required habitat buffer. Typically, the City includes this buffer/fire suppression zone into the residentially designated development area. While the buffer area is considered a part of the development, in this case, the 20' wide buffer (including some portion of the fire suppression zone) is being modified to an open space land use and zoning designation. By designating the buffer open space, no future development could be approved in this area without an additional LCP amendment. Additionally, the HMP does not allow the removal of vegetation within the buffer. Therefore, while the 0.19 acres must be considered to potentially be impacted if this LCP Amendment were approved,, if such impacts were to occur in association with future development, mitigation would be required and the existing vegetation might not be removed, and thus, the value of the habitat could be maintained.

If the proposed project is approved, the remainder of the impacts to SMC (0.11 acres) would be caused by grading intended to stabilize an unstable slope located adjacent to the area proposed for residential land use, but within the existing habitat area. The geotechnical report (prepared by GEOCON and dated July 14, 2009) associated with the specific development proposal states:

The western portion (of the site) consists of moderately to steeply sloping natural and manufactured fill slopes extending toward the SDG&E easement into the large canyon...

The report goes on to state:

We encountered fill material containing abundant agricultural and construction debris predominantly along the western slopes in exploratory trenches...This material appears to have been end-dumped over the edge of native slopes. The debris fill has a thickness of up to nine feet in the areas explored; however, it is likely that this material is thicker beyond the areas of exploration. Debris fill is comprised of silty to clayey sand with plastic bags and pots, planter soil, and chunks of asphalt and concrete. The debris fill is considered unsuitable for support of additional fill and/or structural loads in its present condition and will require remedial grading...

The City has indicated that the grading of the fill slope is necessary to facilitate development of the condominium structures, and without the proposed grading, the unstable fill slopes on the site may fail during or after construction. The City has further indicated that failure of the bluffs could result in impacts to the adjacent sensitive habitat through erosion and possible collapse. As such, not only is the grading of the existing unconsolidated fill slopes necessary to construct the development safely but also to prevent the fill from slipping into the sensitive habitat areas, thereby protecting sensitive habitat, consistent with the Coastal Act. While the Commission does not accept this interpretation, this issue is not before the Commission with this LCP Amendment, and, in any case, the Commission does concur that some grading of the fill slope is necessary to safely construct the proposed development. Additionally, the impacts to ESHA associated with both grading and habitat buffers are still significantly less than what was previously acknowledged for this site through the certification of the HMP. As previously discussed, the Commission approved a standard for this site limiting impacts to either coastal sage scrub or southern maritime chaparral to a maximum of 10%. The total potential impacts associated with the land use modifications is approximately 4%. Furthermore, by restricting development to one of the three identified developable areas, two remaining "developable" areas of the site will be incorporated into open space; resulting in a larger open space preserve than was originally contemplated.

Because the proposed amendment could result in impacts to ESHA, any future development on the site that actually caused impacts to ESHA would be required to provide mitigation. Traditionally, the Commission has accepted a mitigation ratio of 3:1 for impacts to maritime chaparral. The LCP gives priority for mitigation to be accommodated onsite but if the required mitigation cannot be provided onsite, mitigation shall be provided within the City's coastal zone. In this case, all mitigation requirements could be provided onsite, so any CDP for development here must require onsite mitigation. Specifically, all mitigation requirements can be satisfied within the two disturbed areas previously identified as developable but not part of the proposed development (ref. Exhibit #5). The result of this line of development being that the open space lot will, with the inclusion of the mitigation, be one large contiguous habitat area, whereas previously two islands of development were proposed adjacent to the existing habitat. Generally speaking, the larger contiguous open space area will facilitate greater species diversity, and limits adjacency impacts to native fauna associated with noise,

lighting, and domesticated pets. Therefore, the development envelope established through the subject LCP amendment can be found consistent with the Coastal Act.

An additional concern regarding the subject amendment is the potential impacts to historical agricultural uses. The project site was previously used for agricultural practices, and although it is not currently designated for agricultural use, when it is developed, the site will no longer accommodate any agricultural uses. However, given that the certified LCP has already designated this area for a residential, not agricultural, use, the proposed amendment does no more than to change the allowed use of the property from one kind of residential use to another; as such, it does not raise consistency concerns with Sections 30241 and 30242 of the Coastal Act.

Finally, given that the project is surrounded by development and the site is not located in close proximity to the shore, the land use redesignation does not raise any concerns regarding public access, water quality, or public views.

In conclusion, while the subject LCP amendment could result in some impacts to ESHA (0.29 acres of southern maritime chaparral, 0.05 acres of southern mixed chaparral), these impacts are less than what was previously identified, reviewed, and accepted during the certification of the City's Habitat Management Plan as a component of its LUP. Additionally, the LCP requires that appropriate mitigation be included onsite. All other concerns regarding potential inconsistencies with the Coastal Act have been identified and eliminated. As such, the proposed amendment can be found consistent with the Coastal Act, and can therefore be approved as submitted.

PART IV. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

In association with the land use redesignation described above, the subject LCP amendment proposes to change the zoning designation from Limited Control (L-C) to One-Family Residential (R-1), Residential Density – Multiple (RD-M), and Open Space (OS).

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. As such, the site is subject to the requirements of the City's Mello II land use policies and the policies contained within the Habitat Management Plan.

The project site is being modified from Limited Control (L-C) to One-Family Residential (R-1), Residential Density – Multiple (RD-M), and Open Space (OS).

1. Applicable Land Use Plan Policies

Applicable certified City of Carlsbad LUP Policies include:

Policy 2-1 Conservation of Agricultural Lands

- (1) Coastal Agriculture: Consistent with the provisions of Sections 30241 and 30242 of the Coastal Act, it is the policy of the City to contribute to the preservation of the maximum amount of prime agricultural land throughout the coastal zone by providing for the balanced, orderly conversion of designated non-prime coastal agricultural lands. Non-prime agricultural lands identified on Map X, including the 301.38 acres Carltas Property, are designated Coastal Agriculture and shall be permitted to convert to urban uses subject to the agricultural mitigation or feasibility provisions set forth in the LCP.

Policy 3-1.10(f) Upland Habitat Mitigation Requirements

[...]

- (d) Impacts to Southern Maritime Chaparral or Maritime Succulent Scrub shall be mitigated at an overall ratio of 3:1, with the creation component satisfying one-third of the total obligation. The remainder of the mitigation obligation shall be satisfied pursuant to the provisions of the HMP.
- (e) Impacts to Southern Mixed Chaparral, Native Grassland, and Oak Woodland shall be mitigated respectively at ratios of 1:1, 3:1, and 3:1, with the creation component satisfying the obligation or one-third of the total obligation. The remainder of the mitigation obligation shall be satisfied pursuant to the HMP.
- (f) Mitigation for impacts within the coastal zone should be provided within the coastal zone if possible, particularly the 1:1 creation component, in order to have no net loss of habitat within the coastal zone.

Policy 3-1.12 Buffers and Fuel Modification Zones

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer widths shall be provided as follows:

- a. 100 ft. for wetlands
- b. 50 ft. for riparian areas
- c. 20 ft. for all other native habitats (coastal sage scrub, southern maritime chaparral, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland)

Any proposed reductions in buffer widths for a specific site shall require sufficient information to determine that a buffer of lesser width will protect the

identified resources. Such information shall include, but is not limited to, the size and type of the development and/or proposed mitigation (such as planting of vegetation or the construction of fencing) that will also achieve the purposes of the buffer. The California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Coastal Commission staff shall be consulted in such buffer determinations.

No development, grading, or alteration, including clearing of vegetation, shall occur in the buffer area, except for:

- a. Modification Zone 3 to a maximum of 20 ft. for upland and non-riparian habitat. No fuel modification shall take place within 50 ft. of riparian areas, wetlands, or oak woodland.
- b. For buffer areas 50 ft. or greater in width, recreational trails and public pathways within the first 15 feet of the buffer closest to the development, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas.

Buffer areas that do not contain native habitat shall be landscaped using native plants. Signage and physical barriers such as walls or fences shall be required to minimize edge effects of development.

The standard for development specific to this location, certified as a component of the City's LUP during approval of the City's Habitat Management Plan (HMP), states:

Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.

2. Adequacy of the Ordinance to Implement the Certified LUP Segments

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP), the most applicable in this case are contained within the Habitat Management Plan (HMP).

In this case, the subject amendment will modify the site from the L-C, or Limited Control, zoning designation, that is used as an interim zone for areas where plans for development have not yet been formalized. As part of this amendment, the site will undergo zone changes from L-C to Residential Density Multiple (RD-M), One-Family Residential (R-1), and Open Space (OS). This will result in zoning for the site consistent with the corresponding land use designations of Residential Density Medium (RM), Residential Low Medium (RLM), and Open Space (OS). The proposed zoning is also consistent with the existing surrounding residentially zoned properties.

Currently, the 20.27 acres site is comprised of an existing single-family home, agricultural lands, and native habitat. The subject site contains 8.19 acres of identified sensitive vegetation types, including coastal sage scrub, maritime chaparral, and southern mixed chaparral. As previously discussed, the modifications to zoning will facilitate the development of 6.3 acres of the site for a 37-unit condominium development. A total of 0.29 acres of southern maritime chaparral and 0.05 acres of southern mixed chaparral would be impacted if that development were approved. The project is located within the City's Habitat Preserve area, and while the property has been identified for development, specific standards are applicable associated with any proposed development that would finalize a development footprint and open space. The most applicable policies are listed in subsection IV.B.1 above.

The primary regulation governing development within HMP lands requires that all proposed development be clustered on the disturbed areas to the maximum extent feasible. As proposed, the residentially designated lands will be primarily accommodated in the disturbed portions of the site. The HMP also contains site specific standards, and the standard for this site limited impacts to sensitive habitat to a maximum of 10%. As previously discussed, the proposed redesignation could result in the loss of 0.29 acres of southern maritime chaparral and 0.05 acres of southern mixed chaparral, for a total of just over 4 %, thereby consistent with that standard. It is important to specify that originally the standard limited the 10% impacts to access improvements. The impacts associated with the proposed development are not directly related to access; however, the findings for how the proposed impacts were found consistent are discussed in detail on Pages 13-15 of this staff report. All remaining habitat onsite will remain and be protected through the inclusion of this land into the Open Space zoning designation.

Because the line of development will result in some impacts to sensitive habitat, mitigation is necessary. The HMP requires mitigation for impacts to maritime chaparral to be provided at a 3:1 ratio, and impacts to southern mixed chaparral at a 1:1 ratio. Because the property is also located in the coastal zone, at least 1:1 of the mitigation requirement must be provided as a creation component, in order to have no net loss of habitat within the coastal zone. Therefore the total acreage to be created/restored to meet these mitigation ratios include 0.87 acres for impacts to southern maritime chaparral and 0.27 acres of southern mixed chaparral in order to be found consistent with the land use plan policies. Additionally, because the site is located adjacent to currently existing "hardline" preserve areas, the LCP requires additional mitigation measures be included to address the interface between development and existing habitat. These include fire management, erosion control, landscaping restrictions, fencing, signage, lighting requirements, and predator and exotic species control. Additionally, in accordance with the HMP, the "open space" area must be conditioned by the City to be further protected by a conservation easement. A site-specific management plan must be prepared, and an endowment must be established to facilitate the long-term management and monitoring of the habitat area in perpetuity.

At the time the HMP was originally approved as part of the City's LUP (June, 2003), it was understood that the City would move forward with the implementation component of

the HMP program. To date, no such implementation plan has been certified by the Commission. The City's implementation plan for the HMP was submitted as LCPA 3-08 and was filed by the Commission in November of 2010. The Commission and City staffs are currently working cooperatively to finalize the proposed amendment. In the years between the LUP plan certification and the present, there have been a number of similarly project-driven LCP amendments within the City's HMP lands. Through the review and approval of these previous amendments, a number of concerns have been identified by both the City and the Commission associated with the implementation of the City's HMP. The two primary concerns involve the extent of unrestricted uses within the Open Space zone classification and that the City has not included language requiring an update to the HMP map to reflect the changes to the development or open space *preserve* lands associated with these project driven land use and zoning changes. Without map updates, the general public, resource agencies, etc. may not be aware of approved changes to the land use designation and zoning on this property. The City does have a process to document the changes in the City's Annual Habitat Management Plan Report; however, these changes are not included on the HMP maps available at the City, or on the City's website. As such, future development inquiries or habitat mitigation opportunities might look to previously certified maps that do not show the updated line of development associated with this proposed LCP amendment. To make the information more easily available, interested parties should not have to research all previous annual reports to determine if the hardline for a specific project site has been modified. Furthermore, on occasion, the Commission's action on the LCP amendment further modifies the boundaries for conservation certified by the HMP/LCP maps (as was the case for LCPA 1-06B/HMP GPA) and without updates to the map, interested parties may become misinformed.

However, in March of 2009, the Commission reviewed and approved amendment request (2-07B/Kelly JRMC). With this approval, the Commission required the City to annually submit updated HMP maps reflecting any changes to land use or zoning within the City's HMP lands. Since that time, the Commission has received an updated map in 2009 and 2010.

Regarding the lack of restrictions and non-resource dependent uses allowed by the Open Space zoning designation, one of the major goals of the HMP Implementation Plan is the establishment of an open space zone and conservation mechanism that will ensure protection of coastal resources in perpetuity. It was anticipated that this mechanism would include a conservation oriented open space zone or overlay that would restrict uses within the habitat preserve to resource dependent uses which are more restrictive and protective of coastal resources than the current open space zone certified in the LCP. Currently, the Open Space designation allows for numerous uses that could lead to impacts to sensitive resources including orchards, vineyards, bicycle paths, baseball fields, etc.

No such open space zone or overlay currently exists in the IP, however, and the Commission finds that even in the absence of such a zone, in this case, the habitat preserve will be protected as open space through use of the Open Space land use plan

designation, which is controlling, and the recordation of a conservation easement, which is a condition of approval imposed by the City. The Commission made similar determinations when approving previous land use and zoning modifications associated with development located within the City's Habitat Management Plan Area (HMP); these include, but are not necessarily limited to, Carlsbad LCP Amendment Nos. 1-04B (Kirgis); 1-05A (Yamamoto); 1-05C (North Coast Calvary Chapel); 2-01A (Lynn); 2-04B (Black Rail); 2-06B (La Costa Village); 1-07C (La Costa Glen); 2-07A (Aura Circle); 2-07B (Kelly JRMC); 4-09D (Tabata Ranch); and 4-09E (Tabata 10).

Additionally, the City has proposed an open space designation that is more suitable to protect the preserved lands associated with the proposed HMP implementation plan, which is currently being reviewed by staff. Therefore, the Commission finds the proposed open space zoning would adequately implement the HMP/LCP in the interim, given LCP requirements to further protect such areas with restrictions such as conservation easements, and is consistent with and adequate to carry out the certified LUP.

As noted above, this site was historically used for agricultural purposes, and while the change from L-C to R-1 does not directly involve conversion of agricultural lands, as the L-C zoning designation is not an agricultural zone, it will allow a change from an "interim" zone, which could have been modified to agricultural, rather than residential. The City's LCP includes policies in its Land Use Plan and its Habitat Management Plan that allow for the conversion of agricultural lands. Policy 2-1 of the City's LUP allows non-prime agricultural lands to be converted to urban uses, as long as such conversions are consistent with the mitigation and feasibility provisions of the LCP. In this case, the subject site was identified as a *non-prime* agricultural site, and, as such, the conversion of the land is permitted. Mitigation for the conversion will be required through implementation of the agricultural conversion policies of the City's HMP, as discussed below.

The City's HMP also contains policies that address the protection of agricultural lands, and indicates that there is, while limited, some habitat value in agricultural lands. Specifically, while agricultural lands are not as valuable as naturally vegetated lands, they do provide wildlife corridors, food/foraging opportunities, predator protection, etc., simply through their *undeveloped* state, and the conversion of these undeveloped lands requires some mitigation. In this case, any proposed development will also be required to include the appropriate mitigation for the conversion of undeveloped, historic agricultural lands to other uses.

In conclusion, the City's LUP contains a number of policies guiding development of lands that contain sensitive habitat. In this case, while the land use and zoning modifications will result in impacts to 0.34 acres of sensitive habitat, the line of development has been designed to cluster development primarily on the disturbed areas, mitigated for those impacts found to be unavoidable, and provided the adequate protection of the existing preserved lands. The proposed implementation plan amendment, can, therefore, be found consistent with the City's certified LUP and shall be approved as submitted.

PART V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). The proposed land use and zoning amendments will not result in adverse impacts on coastal resources or public access. The Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

Appendix A

Excerpt from Staff Recommendation on City of Carlsbad Major Amendment No. 1-03B (Habitat Management Plan) dated May 22, 2003 Pages 35-39 – Findings for Approval

A. Conflict Resolution/ESHA and Concentration of Development

The Commission can approve an LUP amendment that is inconsistent with Chapter 3 policies only if it finds that the approval of the development raises conflicts between Coastal Act policies and that, on balance, the project as approved is most protective of significant coastal resources. The policy conflicts which arise in this LCP amendment request result from the fact that all areas determined to be ESHA would not be preserved, and concentration of development would not be achieved. In other words, to appropriately concentrate development and create a habitat preserve that addresses the long-term viability and conservation of identified sensitive species, some impacts to ESHA in the coastal zone must be accepted.

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. The Commission finds that Sections 30240 and 30250 of the Coastal Act must be considered when reviewing the proposed habitat impacts, and the development patterns that would result from implementation of the draft HMP.

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act requires that new development be concentrated in areas able to support it without adversely affecting coastal resources and states, in part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services

and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The Commission finds that the draft HMP would allow impacts to individual areas of ESHA for uses that are not dependent on the ESHA, which is inconsistent with Sections 30240 of the Coastal Act. However, the Commission finds that the coastal resources of the LCP area will be, on balance, best protected by concentrating allowable development adjacent to existing urban services and other developed areas. Additionally, greater benefit will be obtained from preserving large contiguous areas of the most environmentally sensitive vegetation and wildlife areas rather than preserving all fragmented pieces of habitat in place.

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that a substantial conflict exists between two statutory directives contained in the Coastal Act. In this case, as described above, the draft HMP is inconsistent with Coastal Act policies that protect environmentally sensitive habitat area. Although the City has proposed changes to the HMP and associated policies of the certified land use plan that would delete potential impacts to wetlands in the coastal zone, impacts to environmentally sensitive habitat would still result. However, to deny the LCP amendment based on this inconsistency with the referenced Coastal Act requirements would reduce the City's ability to concentrate proposed development contiguous with existing urban development, and away from the most sensitive habitat areas, as required by Section 30250. If the LCP amendment is not approved, dispersed patterns of development will occur that are inconsistent with Section 30250. Denial of the LCP amendment would also prevent the resource protection policies of the LCP from being upgraded to clearly protect ESHA that is not located on steep slopes.

The Commission notes that the HMP proposes mitigation for habitat impacts at ratios ranging from 1:1 to 4:1, depending on the habitat type. At minimum, 1:1 mitigation in the form of new creation is required for any impacts; additional mitigation may be in the form of substantial restoration, revegetation and/or acquisition. Since some of the existing habitat that potentially could be impacted is currently of low quality (e.g., fragmented, disturbed and/or invaded by non-native species), it should be noted that the replacement of such habitat in areas that are suitable and will be permanently monitored and managed may provide an environmental benefit that is superior to retaining all existing areas of native habitat in place.

After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is most protective of coastal resources. In this case, the draft HMP would allow certain impacts to ESHA, including dual-criteria slopes. If modified as suggested, overall impacts to native habitat in the coastal zone would be reduced, because categories of habitat that are not currently protected would be protected, but impacts to ESHA would still occur. However, if mitigated as proposed, the replaced and protected ESHA will be located in areas that provide larger contiguous contributions to the proposed HMP preserve area, and will ensure that the critical wildlife movement corridors and largest populations of

gnatcatchers within the coastal zone have sufficient areas of high-quality habitat for species survival.

In resolving the identified Coastal Act conflicts, the Commission finds that the concentration of development adjacent to existing urban development and infrastructure, and away from sensitive natural resources is, on balance, more protective of the land resources than to require that isolated areas of habitat be retained in an area adjacent to residential development. Therefore, the Commission finds that approval of the draft HMP, if modified as suggested, is on balance the most protective option for the relevant coastal resources, for the following reasons.

The HMP proposes to preserve large, contiguous blocks of habitat with the highest natural resource value relative to covered species, and to generally locate development away from these areas. In exchange for the benefits derived from a share of the incidental take authorized under the HCP, which will result in some impacts to gnatcatchers and associated adverse impacts to CSS, landowners must agree to place a majority of sensitive habitats on their properties into open space that will then become part of the permanent MHCP preserve.

Within the City of Carlsbad, approximately 8,800 acres of naturally-vegetated areas remain, or 36% of the City's total area, including approximately 3,315 acres of coastal sage scrub. In Planning Zones 19, 20 and 21, where the majority of undeveloped land in the coastal zone is located, approximately 60 acres of CSS remain. The populations of gnatcatchers within the City are important to the overall viability of the regional gnatcatcher population that will be addressed in the MHCP. As the municipality with the largest amount of gnatcatcher habitat within the MHCP, the populations represent a critical link in the distribution of the species throughout north San Diego County, particularly in the Carlsbad-Oceanside corridor, which connects gnatcatcher populations in Orange and Riverside counties with populations to the north and east of Carlsbad. The HMP would preserve approximately 6,400 acres of native habitat, as existing preserve, proposed hardline preserve areas, and through implementation of "standards areas" in certain areas without existing development proposals.

Within the coastal zone, the second HMP addendum and LCP amendment proposes no net loss of most native vegetation types, with mitigation ratios ranging from 1:1 to 4:1 to ensure that, on balance, there will be no negative impacts to the total quantity and/or quality of ESHA within the coastal zone. Interim preserve management requirements, as included in the HMP, will cover the first three years following approval of the HMP, during which time a plan for permanent management will be developed by the City in cooperation with existing reserve managers, private owners, and the wildlife agencies.

The Commission must consider impacts of residential buildout as a means to analyze the effect of the proposed LCP amendment and make revisions, as necessary, to establish the standard of review consistent with the Coastal Act. In order to protect corridors of viable, connected habitat area which take into account the mobility and foraging requirements of listed and covered species, the Commission finds that it is appropriate to take a regional approach to the preservation of ESHAs. Instead of preserving all ESHAs

in place where they are found, which could result in excessive fragmentation, reduced habitat values and difficulties in monitoring and management, it may be more protective of ESHA resources to focus on regional conservation approaches that concentrate development away from the habitat of greatest overall value. Such an approach could ensure the health and viability of larger, connected sensitive vegetative communities that support listed and covered species within the City's jurisdiction.

The regional nature of the habitat preservation effort sets the MHCP and HMP apart from other local jurisdiction plans affecting ESHA, where the noncomprehensive nature of the plans and lack of regional resource protection standards require more stringent limitations to coastal ESHA impacts for individual sites. The clustering and concentration of development away from sensitive areas that will result from the proposed standards will provide a larger, more contiguous preserve area than if development on the same properties were to be approved on a lot-by-lot basis. The HMP also proposes to provide a higher standard of protection for coastal ESHA than currently provided by the certified LCP, which addresses only native habitat on steep slopes greater than 25% (dual-criteria slopes).

Most of the properties in the standards areas and hardlines are zoned for low-density single-family development. Although it is anticipated that clustering and density transfer within areas outside of the proposed preserve locations could allow for the same number and intensity of residential units to be developed on most properties as currently designated in the General Plan, the ultimate effect would be to locate development on smaller lots and/or a smaller overall development footprint, located further from sensitive resources and proposed wildlife movement corridors. Although current zoning and land use designations limit development in most of the standards areas and hardline properties to low-density single-family development, higher density development than is currently allowed could appropriately occur in most of the areas identified for development in the LCP amendment. Potential impacts to these areas located in the HMP preserve would therefore be reduced, and additional benefits to the City resulting from compact urban growth, prevention of sprawl and efficient use of underlying infrastructure, public services and facilities would likely result. The Commission therefore finds that approval of the HMP and the LCP amendment, if modified as suggested, would result in increased clustering of development and reduction of urban sprawl into sensitive habitat areas.

Although implementation of the HMP and MHCP will result in some loss of native habitat and listed species throughout the region, in association with loss due to incidental take outside the preserve area, the potential losses to the habitat would be considerably higher without the HMP and MHCP, particularly outside the coastal zone where fewer development restrictions on native habitat would apply. Within the coastal zone, the existing LCP does not protect native habitat on slopes less than 25% grade and therefore the proposed LCP revisions represent a significant improvement over current requirements. Through application of proposed mitigation requirements, there will be no net loss of ESHA within the coastal zone and the regional function of the MHCP preserve will continue to be protected.

This finding that approval of the HMP is the most protective option for coastal resources is based on the assumption that the habitat mitigation will be implemented as proposed, and properly maintained in perpetuity. Should the mitigation not be managed and maintained as designed, or if the required mitigation sites are not provided as proposed, the long-term benefits of the HMP for coastal resources would not be realized. To address these concerns, the City has included revisions to the HMP and associated LUP policies which address establishment of the preserve area, funding, monitoring and management. Interim preserve management requirements, as provided in the draft HMP, will cover the first three years following approval of the HMP, during which time a plan for permanent management will be developed by the City in cooperation with existing reserve managers, private owners, and the wildlife agencies. The preserve management plan must be approved by the City, the wildlife agencies and the Commission, and shall ensure adequate funding to protect the preserve as open space and maintain the biological values of the mitigation areas in perpetuity. Additionally, the preserve management plan is required to be incorporated into the Implementation Plan of the LCP through an LCP amendment within one year of Commission certification of the HMP as part of the certified LCP.

Proposed Amendment Location

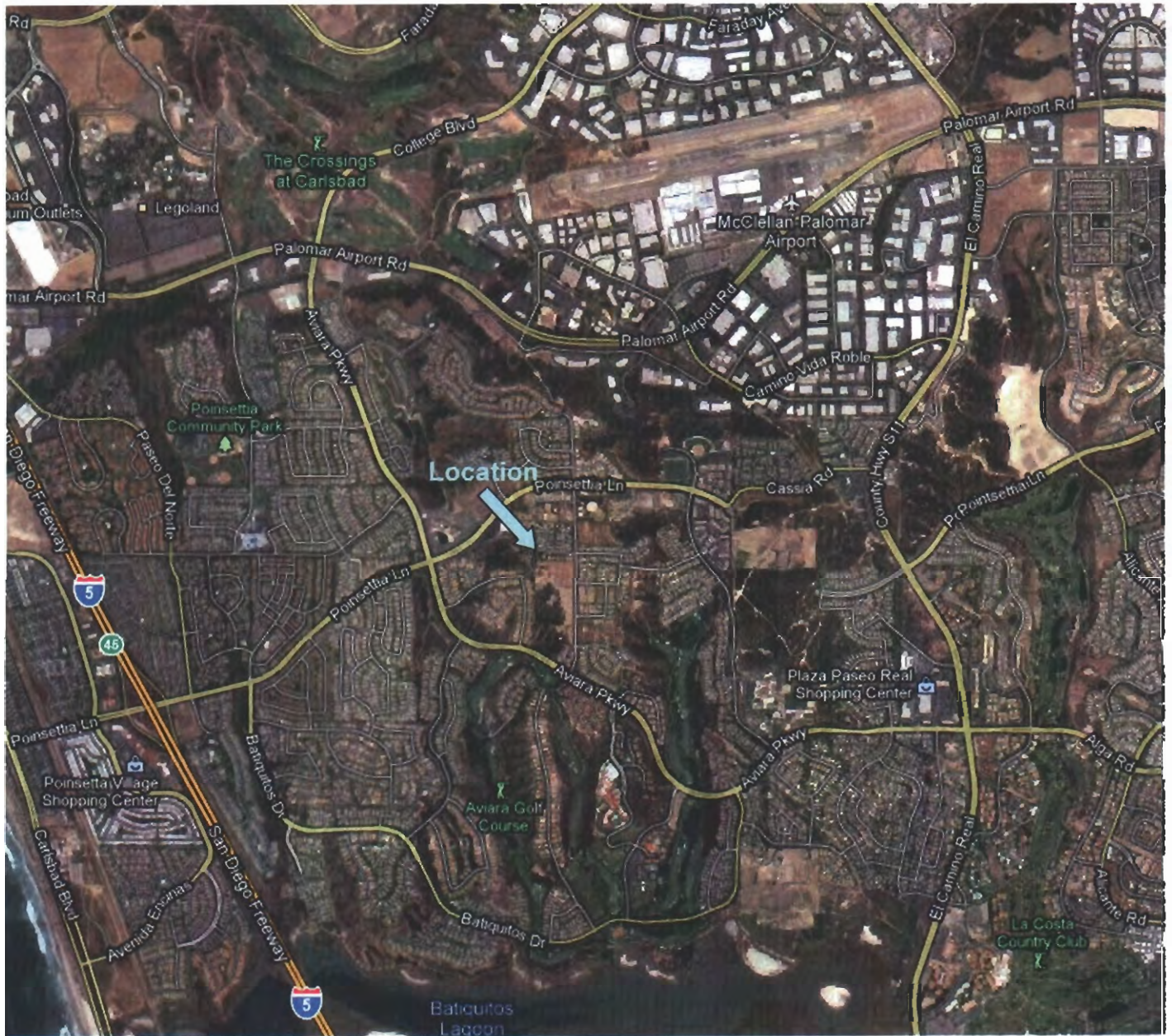



EXHIBIT #1
Location
LCPA #1-10A Muroya
 California Coastal Commission


Subject Site



EXHIBIT #2

Subject Site

LCPA #1-10A Muroya

 California Coastal Commission

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PLANNING COMMISSION RESOLUTION NO. 6685

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF A LOCAL COASTAL PROGRAM AMENDMENT TO CHANGE THE LOCAL COASTAL PROGRAM LAND USE DESIGNATION FROM RESIDENTIAL LOW-MEDIUM DENSITY (RLM, 0-4 DU/AC) TO RESIDENTIAL MEDIUM (RM, 4-8 DU/AC), RESIDENTIAL LOW-MEDIUM DENSITY (RLM, 0-4 DU/AC), AND OPEN SPACE (OS) AND THE LOCAL COASTAL PROGRAM ZONING DESIGNATION FROM LIMITED CONTROL (L-C) TO RESIDENTIAL DENSITY-MULTIPLE (RD-M), ONE-FAMILY RESIDENTIAL (R-1), AND OPEN SPACE (OS) ON PROPERTY GENERALLY LOCATED NORTH OF AVIARA PARKWAY, SOUTH OF CORTE ORCHIDIA, EAST OF TOWHEE LANE, AND WEST OF BLACK RAIL ROAD IN LOCAL FACILITIES MANAGEMENT ZONE 20.

CASE NAME: MUROYA SUBDIVISION
CASE NO: LCPA 06-09

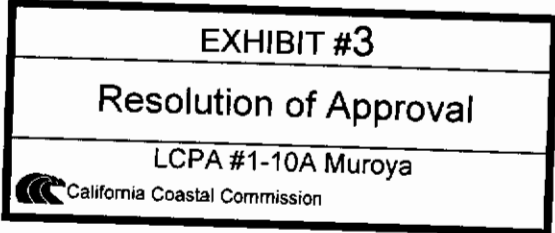
WHEREAS, California State law requires that the Local Coastal Program, General Plan, and Zoning designations for properties in the Coastal Zone be in conformance; and

WHEREAS, **Taylor Morrison of CA, LLC**, "Developer," has filed a verified application with the City of Carlsbad regarding property owned by **Muroya Family Trust**, "Owner," described as

The East One-Half of the Northeast Quarter of the Northwest Quarter, Section 27, Township 12 South, Range 4 West, San Bernardino Base and Meridian, in the City of Carlsbad, County of San Diego, State of California, According to United States Government Survey

("the Property"); and

WHEREAS, said verified application constitutes a request for a Local Coastal Program Amendment as shown on Exhibit "LCPA 06-09" dated **April 7, 2010**, attached hereto, as provided in Public Resources Code Section 30514 and Section 13551 of California Code of Regulations Title 14, Division 5.5; and



1 WHEREAS, the Planning Commission did on **April 7, 2010**, hold a duly noticed
2 public hearing as prescribed by law to consider said request; and

3 WHEREAS, at said public hearing, upon hearing and considering all testimony
4 and arguments, if any, of all persons desiring to be heard, said Commission considered all factors
5 relating to the Local Coastal Program Amendment; and

6 WHEREAS, State Coastal Guidelines requires a six-week public review period
7 for any amendment to the Local Coastal Program.

8 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning
9 Commission of the City of Carlsbad, as follows:
10

- 11 A) That the foregoing recitations are true and correct.
12
13 B) At the end of the State-mandated six-week review period, starting on **December**
14 **25, 2009**, and ending on **February 5, 2010**, staff shall present to the City Council
15 a summary of the comments received.
16 C) That based on the evidence presented at the public hearing, the Commission
17 **RECOMMENDS APPROVAL** of **MUROYA SUBDIVISION – LCPA 06-09**,
18 based on the following findings, and subject to the following conditions:

19 **Findings:**

- 20 1. That the proposed Local Coastal Program Amendment meets the requirements of, and is
21 in conformity with, the policies of Chapter 3 of the Coastal Act and all applicable policies
22 of the **Mello II** segment of the Carlsbad Local Coastal Program not being amended by
23 this amendment, in that **the proposed Local Coastal Program RM, RLM, and OS land**
24 **use designation and RD-M, R-1, and OS zoning designations are consistent with the**
25 **Residential Medium (RM, 4-8 du/ac), Residential Low-Medium Density (RLM, 0-4**
26 **du/ac), and Open Space (OS) Land Use designations, the Residential Density-**
27 **Multiple (RD-M), One-Family Residential (R-1), and Open Space (OS) Zoning**
28 **designations, and the Zone 20 Specific Plan (203); the development does not**
obstruct public views of the coastline as seen from public lands or rights-of-way; the
project has been conditioned to comply with erosion and storm water control
measures; the dual criteria slopes and sensitive coastal habitat resources are
preserved in an open space lot; and no public access areas or water oriented
recreational activities exist on or near the site; the site is located over 1 mile from
Batiquitos Lagoon and approximately 1.5 miles from the Pacific Ocean and no
coastal access areas or water-oriented recreational activities exist on or near the
site; and the project is required to provide drainage and erosion control measures.

- 1 2. That the proposed amendment to the **Mello II** segment of the Carlsbad Local Coastal
2 Program is required to bring **the property's Local Coastal Program Land Use and**
3 **Zoning designations into consistency with the City's General Plan Land Use**
4 **designation, Zoning designation, and the Zone 20 Specific Plan.**
- 5 3. **That the project is conditioned to provide the payment of an agricultural conversion**
6 **mitigation fee in the amount of \$10,000/acre (for 7.9 acres), which will mitigate the**
7 **loss of agricultural resources by preserving or enhancing other important coastal**
8 **resources.**
- 9 4. The **Planning Commission** of the City of Carlsbad does hereby find:
 - 10 a. it has reviewed, analyzed, and considered Mitigated Negative Declaration **and**
11 **Mitigation Monitoring and Reporting Program for MUROYA SUBDIVISION -**
12 **GPA 06-09, ZC 06-08, SP 203(D), LCPA 06-09, CT 06-27, CP 06-19, CDP 06-32,**
13 **HDP 06-10, and HMP 07-02,** the environmental impacts therein identified for this
14 project and said comments thereon, and the Program, on file in the Planning
15 Department, prior to **RECOMMENDING ADOPTION** of the project; and
 - 16 b. the Mitigated Negative Declaration **and Mitigation Monitoring and Reporting**
17 **Program** have been prepared in accordance with requirements of the California
18 Environmental Quality Act, the State Guidelines and the Environmental Protection
19 Procedures of the City of Carlsbad; and
 - 20 c. they reflect the independent judgment of the **Planning Commission** of the City of
21 Carlsbad; and
 - 22 d. based on the EIA Part II and comments thereon, the **Planning Commission**, finds
23 that there is no substantial evidence the project will have a significant effect on the
24 environment.
- 25 5. The **Planning Commission** has reviewed each of the exactions imposed on the Developer
26 contained in this resolution, and hereby **finds**, in this case, that the exactions are imposed
27 to mitigate impacts caused by or reasonably related to the project, and the extent and the
28 degree of the exaction is in rough proportionality to the impact caused by the project.

Conditions:

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 **Local Coastal Program Amendment.**

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2. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the **Local Coastal Program Amendment** documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development, different from this approval, shall require an amendment to this approval.
3. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.
4. 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.
5. 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 **Local Coastal Program Amendment**, (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.
6. This approval is granted subject to the approval of the **Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, GPA 06-09, ZC 06-08, and SP 203(D)** and is subject to all conditions contained in Planning Commission Resolutions No. 6681, 6682, 6683, and 6684 for those other approvals incorporated herein by reference.
7. Developer shall implement, or cause the implementation of, the **MUROYA SUBDIVISION - GPA 06-09, ZC 06-08, SP 203(D), LCPA 06-09, CT 06-27, CP 06-19, CDP 06-32, HDP 06-10, and HMP 07-02 Project Mitigation Monitoring and Reporting Program**.

1 PASSED, APPROVED, AND ADOPTED at a regular meeting to the Planning
2 Commission of the City of Carlsbad, held on **April 7, 2010**, by the following vote, to wit:

3 AYES: Chairperson Douglas, Commissioners Baker, Dominguez,
4 L'Heureux, and Nygaard

5 NOES:

6 ABSENT: Commissioners Montgomery and Schumacher

7 ABSTAIN:
8
9

10 *Signature on file* 

11
12 FARRAH G. DOUGLAS, Chairperson
13 CARLSBAD PLANNING COMMISSION

14 ATTEST:

15
16 *Signature on file*

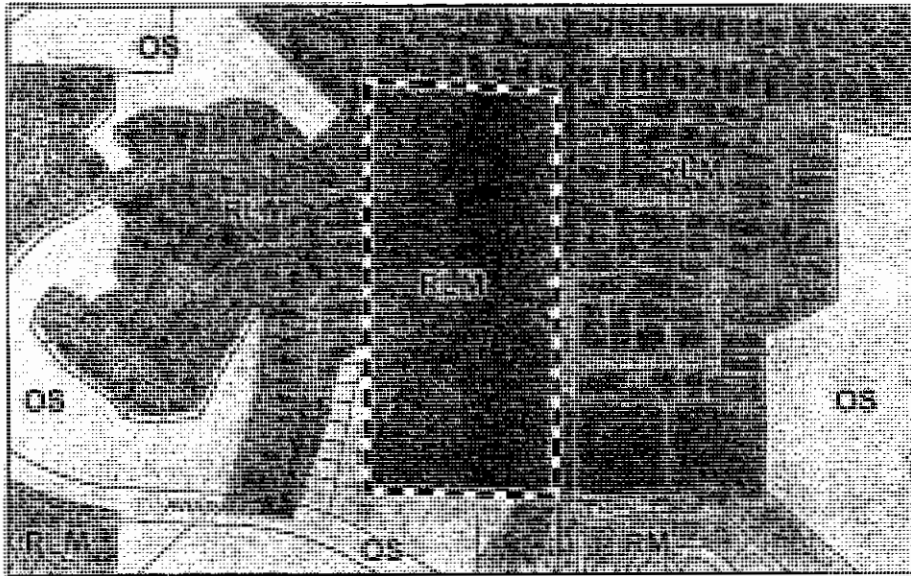
17 DON NEU
18 Planning Director
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Exhibit "LCPA 06-09"

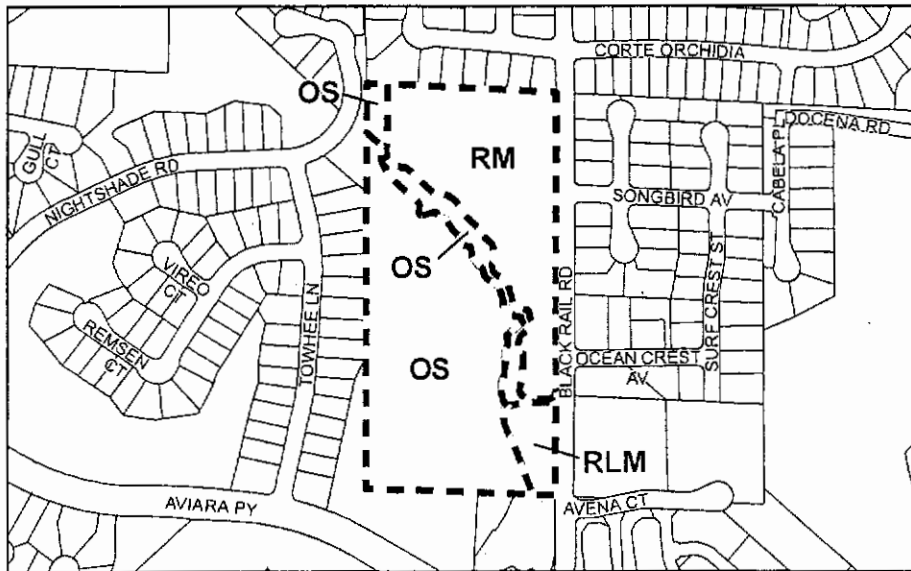
April 7, 2010

LCPA 06-09 (Land Use)

Muroya Subdivision



EXISTING



PROPOSED

Related Case File No(s): GPA 06-09 / ZC 06-08 / SP 203D /
CT 06-27 / CP 06-19 / CDP 06-32 / HDP 06-10 / HMPP 07-02

LCPA Land Use Designation Changes

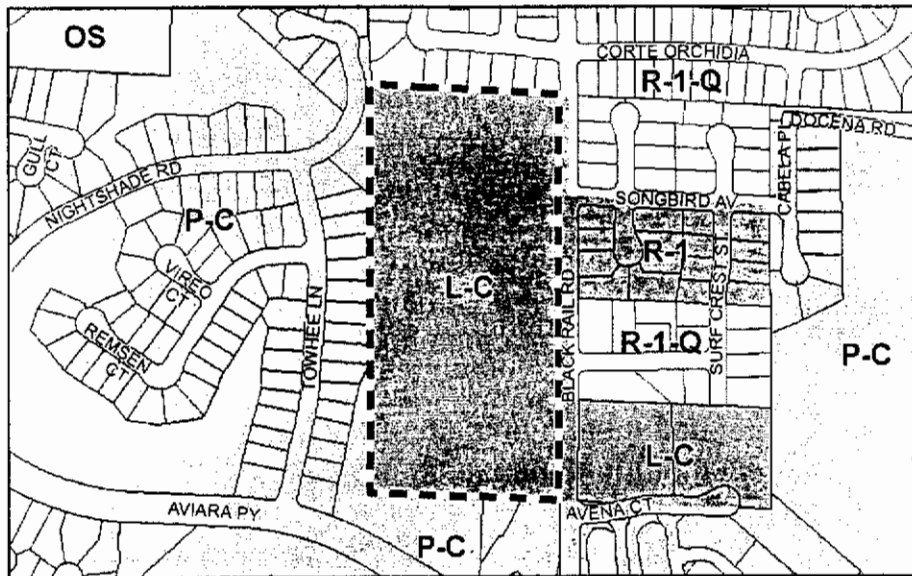
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A.	215-040-30	RLM	RLM / RM / OS
B.			
C.			

Exhibit "LCPA 06-09"

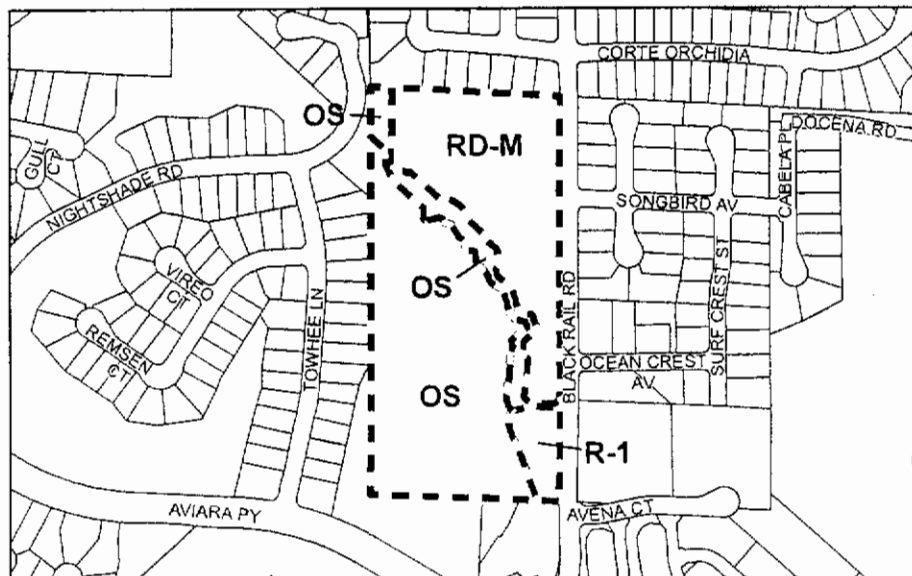
April 7, 2010

LCPA 06-09 (Zoning)

Muroya Subdivision



EXISTING



PROPOSED

Related Case File No(s): GPA 06-09 / ZC 06-08 / SP 203D / CT 06-27 / CP 06-19 / CDP 06-32 / HDP 06-10 / HMPP 07-02		
LCPA Zoning Designation Changes		
	Property	From: To:
A.	215-040-03	L-C R-1 / RD-M / OS
B.		
C.		

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ORDINANCE NO. 2010-091

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING SECTION 21.05.030 OF THE CARLSBAD MUNICIPAL CODE BY AN AMENDMENT TO THE ZONING MAP TO GRANT A ZONE CHANGE (ZC 06-08) ON FIVE LOTS FROM LIMITED CONTROL (L-C) TO RESIDENTIAL DENSITY-MULTIPLE (RD-M), ONE-FAMILY RESIDENTIAL (R-1), AND OPEN SPACE (OS) ON A 20.27 ACRE PROPERTY GENERALLY LOCATED NORTH OF AVIARA PARKWAY, SOUTH OF CORTE ORCHIDIA, EAST OF TOWHEE LANE, AND WEST OF BLACK RAIL ROAD IN LOCAL FACILITIES MANAGEMENT ZONE 20.

CASE NAME: MUROYA SUBDIVISION
CASE NO.: ZC 06-08

WHEREAS, the City Council did on the 22nd day of June, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, said application constitutes a request for a Zone Change as shown on Exhibit "ZC 06-08 – MUROYA SUBDIVISION," dated April 7, 2010, attached hereto and made a part hereof; and


WHEREAS at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said City Council considered all factors relating to the ZC 06-08 – Muroya Subdivision.

NOW, THEREFORE, the City Council of the City of Carlsbad does ordain as follows:

SECTION I: That section 21.50.030 of the Carlsbad Municipal Code, being the zoning map, is amended as shown on the map marked "ZC 06-08 – Muroya Subdivision," dated April 7, 2010, attached hereto and made a part hereof.

SECTION II: That the findings and conditions of the Planning Commission in Planning Commission Resolution No. 6683 shall also constitute the findings and conditions of the City Council.

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EXHIBIT #4
Ordinance of Approval
LCPA #1-10A Muroya
 California Coastal Commission

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption but not until LCPA 06-09 is approved by the California Coastal Commission, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at the regular meeting of the Carlsbad City Council on the 22nd day of June, 2010, and thereafter.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad, California, held on the 29th day of JUNE, 2010, by the following vote, to wit:

- AYES: COUNCIL MEMBERS LEWIS, KULCHIN, HALL, PACKARD AND BLACKBURN.
- NOES: NONE.
- ABSENT: NONE.
- ABSTAIN: NONE.

APPROVED AS TO FORM AND LEGALITY

Signature on file
RONALD R. BALL, City Attorney

Signature on file
CLAUDE A. LEWIS, Mayor

ATTEST:

Signature on file
LORRAINE M. WOOD, City Clerk

(SEAL)

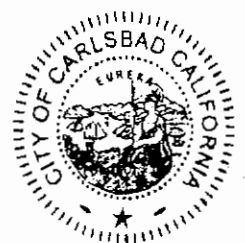
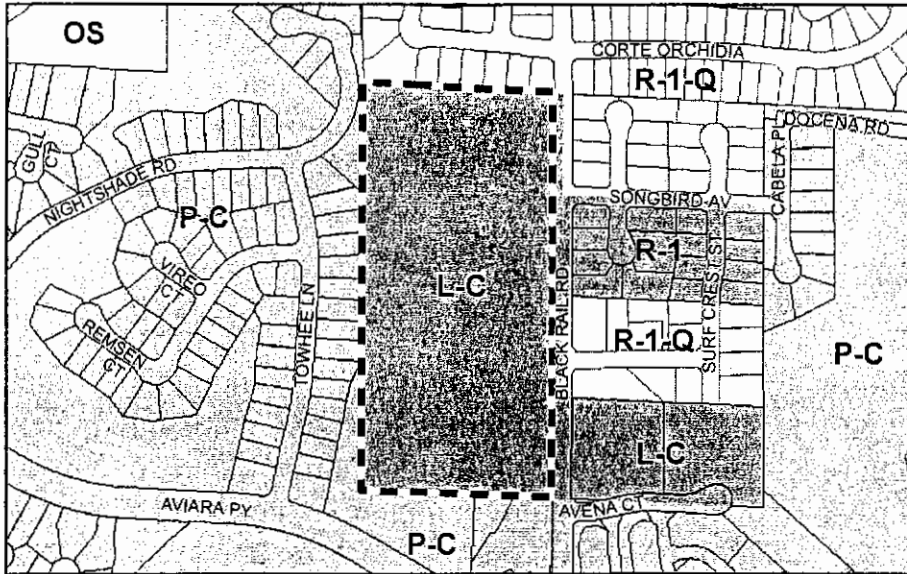


Exhibit "ZC 06-08"

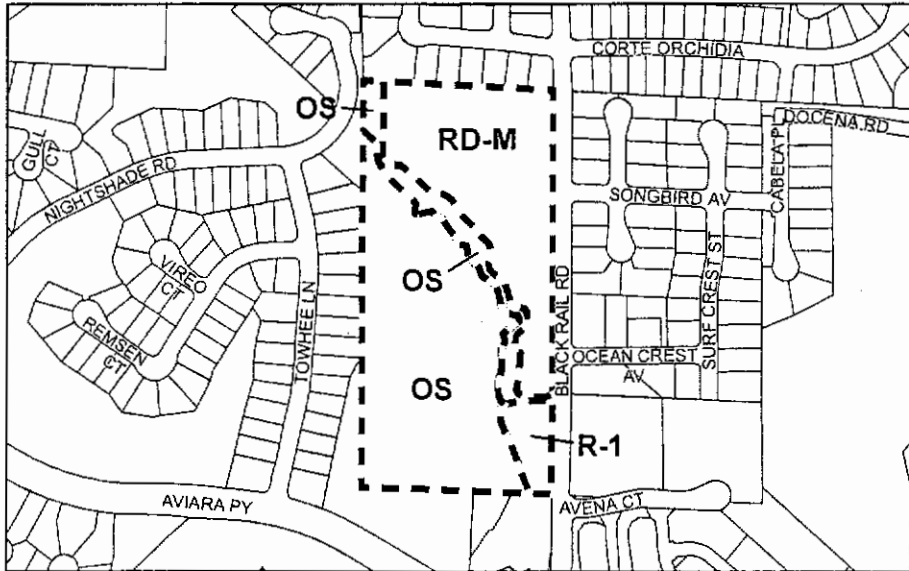
April 7, 2010

ZC 06-08

Muroya Subdivision



EXISTING



PROPOSED

Related Case File No(s): GPA 06-09 / SP 203D / LCPA 06-09
 CT 06-27 / CP 06-19 / CDP 06-32 / HDP 06-10 / HMPP 07-02

Zoning Designation Changes

	Property	From:	To:
A.	215-040-03	L-C	R-1 / RD-M / OS
B.			
C.			

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Potential Development



EXHIBIT #5
Areas of Potential
Development
LCPA #1-10A Muroya
California Coastal Commission