

CALIFORNIA COASTAL COMMISSION  
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W13a

## RECORD PACKET COPY

DATE: September 19, 1996

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: PETER DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: EXECUTIVE DIRECTOR'S DETERMINATION that the City of Carlsbad's Actions Accepting Certification of Portions of its Local Coastal Program are Legally Adequate (for Commission review at its meeting of October 8-11, 1996)

### INTRODUCTION/PURPOSE OF COMMISSION ACTION

The Carlsbad Local Coastal Program consists of six geographic segments. Pursuant to Sections 30170(f) and 30171 of the Coastal Act, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and Mello II segments in 1980 and 1981 respectively. This special legislation was unique in that the Commission was directed to prepare and certify the City's LCP. Pursuant to the legislation, the LCP was adopted under prescribed time limits. However, the final steps of approval ("Effective Certification") were not taken due to work constraints and subsequent disagreements over certain policies relating to preservation of environmentally sensitive areas and agricultural lands. That is, the City declined to adopt the Commission adopted land use plans and implementing ordinances for the LCP. However, again as a result of the special legislation, the LCP was deemed "effectively certified" but not in any real terms since the City was not administering it. In the intervening years, the four remaining LCP segments were created but, again, absent any effective certification. The Coastal Commission has therefore continued to issue coastal development permits based on the certified LCP.

In the last two years, the City has expressed its interest in assuming coastal development permit authority. Therefore, City and Commission staff have been working together to identify the necessary actions to finalize both City adoption of its LCP and complete the administrative steps necessary to assume permit authority. At this time, the City already has obtained coastal development permit authority for its Village Redevelopment Area LCP segment. In addition, the City has decided not to seek permit authority for one other LCP segment, the Agua Hedionda Lagoon Specific Plan area, as it is presently being considered for a land use plan update. As a result of this effective certification review, if the Commission concurs with the Executive Director's determination, the City would be assuming coastal development permit authority for the Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties and East Batiquitos Lagoon/Hunt Properties LCP segments, with the exception of any other identified areas of deferred certification.

#### ACKNOWLEDGEMENT OF THE CITY'S EFFORTS

While the LCP process by nature concentrates on unresolved issues and this particular LCP has a unique legislative history, the Commission and its staff do wish to acknowledge the City's renewed interest in assuming coastal development permit authority. Considering the complexity of the issues dealt with in the LCP, the geographic diversity and size of the City, the competing land use concerns and priorities for the City outside the coastal zone and the various economic and political forces affecting the planning process, the current commitment and progress is noteworthy. The time and efforts expended by the City to fulfill the mandates of the Coastal Act are greatly appreciated.

#### LCP HISTORY/BACKGROUND

As mentioned above, the Carlsbad Local Coastal Program consists of six geographic segments. The Agua Hedionda Lagoon LCP segment is comprised of approximately 1,100 acres; the Carlsbad Mello I LCP segment contains about 2,000 acres; the Carlsbad Mello II LCP segment includes approximately 5,300 acres; the East Batiquitos Lagoon/Hunt Properties LCP segment has about 1,000 acres; the West Batiquitos Lagoon/Sammis Properties segment contains 200 acres and the Village Redevelopment Area has approximately 100 acres. The Agua Hedionda Lagoon LCP segment will remain as a deferred certification area. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time.

As referenced above in the Introduction, disagreements over certain policies relating to the preservation of environmentally sensitive areas and agricultural lands in the originally certified LCP resulted in the City refusing to accept its provisions. In 1985, the principal issues related to sensitive habitats, steep slope protection and agricultural preservation raised in the Mello LCP segments were resolved through amendments. However, because of workload constraints at the City and other competing priorities there, the City again did not pursue effective certification and the Commission continued to issue coastal development permits.

After resolution of the principal differences on the Mello I and II LCP segments with the 1985 amendments, there were two additional LCP segments created. Similar to the larger LCP effort, the approval of the West Batiquitos Lagoon/Sammis Properties LCP in 1985 and the East Batiquitos/Hunt Properties LCP in 1988 occurred with suggested modifications. Those revisions were not formally accepted at the time and incorporated into the LCP. Therefore, procedural actions were also necessary for effective certification of those two more recent LCP elements. In 1988, the Village Redevelopment Area LCP segment was also created; however, the City did pursue effective certification of its redevelopment area and they have been issuing permits for that segment alone.

In addition, other amendments to the LCP over the years were submitted by the City to be reviewed and approved by the Coastal Commission. Again, not all of the amendments were approved as submitted. The Commission could only certify some amendments with suggested modifications that would bring the amendment request into conformance with Chapter 3 policies of the Coastal Act. Suggested modifications must be accepted by the City Council within six months of the Commission's action on a LCP amendment. Through the years, though, the City did not formally accept a number of suggested modifications because it was still not administering the LCP. Thus, the amendments and the adopted modifications technically became null and void for the City. Again, because of the unique circumstances of the Carlsbad LCP drafting and implementation, the Commission has been and continues at present to be the LCP administering entity. Once the Commission acted on an LCP amendment, even if there were suggested modifications, the Commission's action was effective and final given the constructs of the Carlsbad LCP. However, the City is now desirous of assuming LCP administration and is working to seek permit delegation.

For the City's Implementation Plan, the then existing municipal code, along with some overlay zones developed especially for resource protection purposes, was utilized in the original certification. The LCP Overlay Zones are identified as follows: Coastal Agriculture Overlay Zone, Mello I and II (Chap. 21.201); Coastal Resource Protection Overlay Zone, Mello II (Chap. 21.203); Coastal Shoreline Development Overlay Zone, Mello II (Chapter 21.204); and Coastal Resource Overlay Zone, Mello I (Chapter 21.205). The ordinances apply to four of the six segments of the City's LCP (Mello I, Mello II, East Batiquitos Lagoon/Hunt Properties and West Batiquitos Lagoon/Sammis Properties). As mentioned above, the Village Redevelopment Area was effectively certified with its own land use plan and implementing ordinances. Similar to the land use plan(s), the City has never adopted and enacted the LCP Implementation Plan consistent with the original LCP action or subsequent amendments.

#### CITY ACTIONS/PREPARATION FOR PERMIT AUTHORITY

As indicated above, the City's LCP, while being technically certified, was never formally accepted and enacted by the City of Carlsbad for both its land use plan(s) and implementation components. Actions are therefore necessary on the part of the City to effectively certify the LCP and allow it to assume coastal development permit authority. Relative to the land use plans, as originally certified and subsequently amended by the Coastal Commission, the City has, in adopting Resolution No. 96-250 and Planning Commission Resolution Nos. 3922 and 3923, accepted and enacted the certified land use plan provisions. In addition, as reflected in the City's adoption of Ordinance Nos. NS-366 and NS-367, which accept and incorporate the Commission's suggested modifications on the Aviara and Poinsettia Master Plans, the City has also completed the necessary steps to effectively certify those two later land use plan components. The City has also submitted an updated and complete

copy of its certified land use plan(s) and it accurately represents the original LCP land use provisions, as amended by the Coastal Commission in the intervening years.

Relative to the LCP Implementation Plan, most recently, on September 12, 1996, the Commission approved the City of Carlsbad De Minimis LCP Amendment #3-96. It amended the certified LCP ordinances and added introductions to the certified land use and implementation plans of the certified LCP. To briefly summarize, since the City had never codified the original LCP ordinances into its zoning code, the amendment was necessary to adjust some of the numbering and wording to fit the current municipal code and reflect the latest coastal legislation relative to coastal development permit processing. Additionally, in that action, the City also accepted and adopted the certified implementation plan.

#### CONTENTS OF THE CITY'S LCP

As noted above, the City's local coastal program is principally comprised of the certified land use plan(s) and the municipal zoning code. For land use plans, there are the Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties and East Batiquitos Lagoon/Hunt Properties land use policies. In addition, there are four major master or specific plans which serve as land use plan and implementation elements; these include the Aviara Master Plan, the Poinsettia Shores Master Plan; the Carlsbad Ranch Specific Plan and the Green Valley Master Plan. Relative to the City's Implementation Plan, it is comprised principally of the City's municipal code, as originally certified and later amended by the Coastal Commission. The City's zoning code has been supplemented by both the previously identified LCP overlay zones and the noted master or specific plans.

The City has completed work on a variety of administrative tasks to institutionalize the coastal development permit process into its operation. The Commission has received several documents including updated development regulations, land use and zoning maps, coastal development permit processing procedures, notification procedures for appealable developments, other public notice measures and draft post-certification maps. The post-certification maps, which graphically depict the Commission's and City's jurisdictional areas, have been reviewed by Commission staff. Final corrections and updating to reflect all proposed areas of deferred certification are in process and should be completed shortly.

A key element of the City's proposed administrative work is its Coastal Development Permits Ordinance. The purpose and intent of this ordinance is to establish the procedures for the processing of coastal development permits, consistent with the certified LCP, by the City. It is designed to ensure that specific consistency findings can be made for all coastal zone development. The ordinance's major provisions include the following: coastal development

permit requirements, as well as the definition of specific development exemptions; application and hearing procedures; public hearing notice requirements; including Planning Director public hearings for all appealable developments; findings of fact for all approved or conditionally approved coastal development permits; appeal procedures, both at local and Commission levels; amendment and extension procedures, as well as emergency permit provisions.

The Commission has found that the Coastal Development Permits Ordinance is adequate to implement the certified land use plans, consistent with Sections 30600 and 30620.6. Briefly, the City's issuance of coastal development permits would operate as follows. For "Minor" coastal development permits, no formal public hearing is required where all of the following criteria is met (1) the proposed development costs \$60,000 or less; (2) no other discretionary approvals are involved or required, and; (3) there will no adverse impacts to coastal resources or public access to the shoreline or coast. For appealable developments that are processed as "minor" coastal development permits, a public hearing will only be held upon the receipt by the City of a written request for a public hearing within 15 working days of the date of the hearing notice. The Planning Director will formally implement the pending permit decision 15 working days after the date of the notice if no public hearing is requested in writing. In addition, should a public hearing be requested, the Planning Director may conduct that hearing consistent with the Planning Commission's procedures or he/she may choose to refer the matter directly to the Planning Commission for the hearing.

If the Planning Director determines that a project does not qualify for an exemption, a minor coastal development permit or an emergency permit, then the Director shall set the application for a public hearing before the Planning Commission. Any coastal development permit, other than a minor permit, would likely be set for hearing concurrently with other City permits for the project. Again, for appealable developments, at least one public hearing is required.

Related to public hearing and noticing requirements, the Municipal Code's provisions provide for a broad public notice as mandated in the Coastal Act. The code provides that notice is given to the applicant, interested persons and the Commission. Public noticing must be provided not less than ten days before the date of the public hearing. In addition, in all instances, a decision will be made in writing and the decision shall be based upon the requirements of, and shall include specific factual findings supporting whether the project is or is not in conformity with, the certified LCP.

With regard to the determination of when a local decision is considered final and a coastal development permit may be issued, where a permit decision is appealable to the City Council, appeals must be filed in writing with the City Clerk within ten calendar days after a decision by the Planning Commission. Where the City Council decision is appealable to the Coastal Commission, the

ordinance appropriately specifies that appeals must be filed with the Coastal Commission within 10 working days after the Commission has received the Notice of Final Action from the City.

#### DEFERRED CERTIFICATION AREAS

Again, given the unique LCP history of the City of Carlsbad's LCP, there was never any formal adoption of a certified zoning map for the jurisdiction. Therefore, at this time, it is necessary to evaluate whether or not the City's existing zoning conforms with the certified land use plan(s) and implementing ordinances. Given the complexity of the City's program and the elapsed time since the Commission's original action, it is not at all unexpected that some existing parcel zoning would come into question. Therefore, it is necessary that certification be deferred on these sites and that the Commission retain permit authority for them in the interim.

The deferred certification areas are identified on the attached Exhibit "A". These properties are all designated as "Travel Services" on the certified Land Use Plan Map. The properties are located next to major transportation routes near Interstate 5, including Tamarack Avenue, Palomar Airport Road and Poinsettia Lane. Permitted uses under the "Travel Services" land use designation are intended to provide for high priority, visitor commercial uses and include travel services such as hotels, highway-oriented service stations and restaurants. As originally certified, these land use designations were intended to be implemented by the "C-T or Commercial-Tourist" zone which allows for hotels, motels, restaurants and commercial recreation facilities principally. However, in reviewing the City's proposed zoning map, there were a number of such "Travel Services" designated sites that are presently zoned either Neighborhood Commercial (C-1) or General Commercial (C-2).

The sites are being deferred primarily because they are not zoned consistent with the certified implementation plan. Secondly, some of the uses allowed in the C-1 and C-2 zones are also not appropriate as visitor-serving uses. Specifically, the C-1 zone allows the full range of professional and medical offices while the C-2 zone also allows all offices, commercial printshops, as well as both residential care and professional care facilities. The C-T zone is the appropriate zone for the Travel Services designation and is used at a number of other such sites within the City.

There are five proposed areas of deferred certification in addition to the entire Agua Hedionda Lagoon segment where the City is not presently seeking permit authority. The first area is two sites located at the northwest corner of the intersection of Interstate 5 and Tamarack Streets presently containing a vacant gas station and a restaurant. The second site is located at the southwest corner of the same intersection and contains an existing gas station. The third area is comprised of two sites located at the northeast corner of the Interstate 5/Tamarack interchange containing a restaurant and an

existing gas station. The fourth site is located at the southeast corner of Avenida Encinas and Palomar Airport Road and contains an existing gas station. The fifth area is located at the northwest corner of Interstate 5/ Poinsettia Lane and includes Lots 2-7 of Specific Plan SP-186, where there are three existing motels, restaurants and accessory uses. The Commission is concerned that redevelopment of the existing uses on the sites or new uses permitted under the present zoning of C-1 or C-2 could result in inappropriate uses being constructed. City and Commission staff will need to work together to either rezone the sites, amend the C-1 and C-2 zones to reflect high priority, visitor uses within the coastal zone or possibly expand the range of permitted uses in the C-T zone so that it could accommodate a wider range of development.

#### ACCEPTANCE OF CITY ACTIONS

By their action on July 9, 1996 adopting Resolution No. 96-250, and their other administrative efforts, the City now seeks to obtain coastal development permit authority on October 21, 1996 for most of its coastal zone, with the exception of the identified areas of deferred certification. Additionally, the City has also asked that the Commission accept and complete permit processing for all coastal development permit applications received on or before October 18, 1996. However, should any applicant wish to withdraw their application with the Commission and proceed to the City of Carlsbad, that option would remain available to them as well.

In compliance with the Coastal Act's statutes, the City has agreed to issue coastal development permits for all its coastal zone, except those areas of deferred certification, in accordance with the certified local coastal program. The City's actions and notification procedures for appealable development have been determined to be legally adequate, consistent with Section 13544 of the Commission's administrative regulations. These provisions are acceptable and effective certification for pertinent portions of the City's local coastal program is recommended. The certification order and accompanying letter will be forwarded to the City and appropriate parties if a majority of the Commissioners present do not object to the Executive Director's determination.

#### RECOMMENDATION

Staff recommends that the Commission CONCUR with the Executive Director's determination and that coastal development permit authority for the specified areas be delegated to the City of Carlsbad. The Commission's action will be set forth as shown in the attached letter (to be sent after Commission concurrence).

(1348A)

EXHIBIT "A"

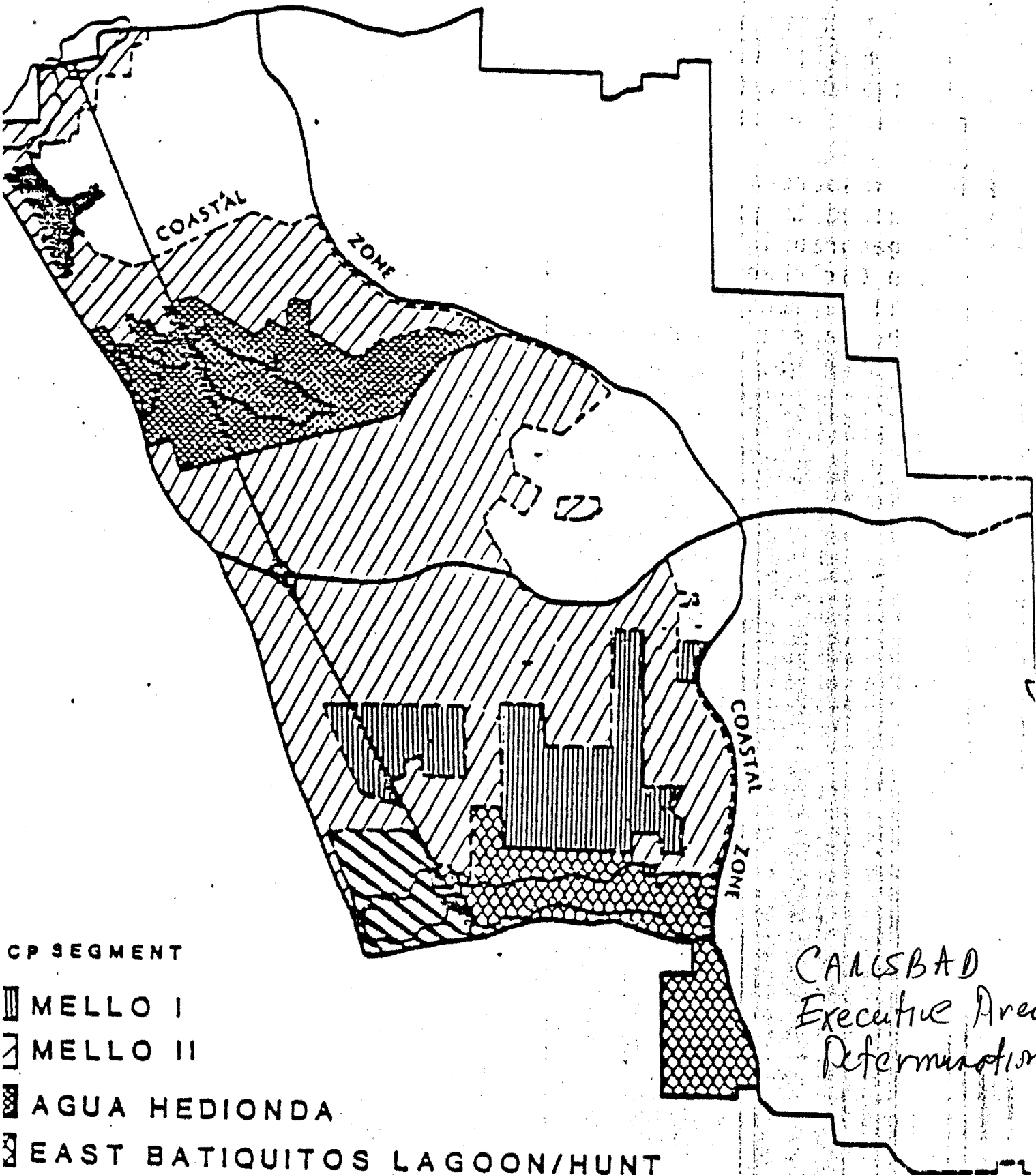
City of Carlsbad Areas of Deferred Certification

The geographic area and sites to be identified as deferred certification areas on October 21, 1996 as part of the certification review are as follows:

- 1) The Agua Hedionda Lagoon Specific Plan area;
- 2) Two sites located at the northwest corner of the intersection of Interstate 5 and Tamarack Street (both sites zoned C-2);
- 3) One site located at the southwest corner of Interstate 5 and Tamarack Street (zoned C-2);
- 4) Two sites located at the northeast corner of Interstate 5 and Tamarack Street (both sites zoned C-1);
- 5) One site located at the southeast corner of Avenida Encinas and Palomar Airport Road (zoned C-1); and
- 6) Lots 2-7 of Specific Plan SP-186 located at the northwest corner of Interstate 5/Poinsettia Lane (zoned C-2)

CARLSBAD CERTIFICATION  
REVIEW





CP SEGMENT

- MELLO I
- MELLO II
- AGUA HEDIONDA
- EAST BATIQUITOS LAGOON/HUNT
- WEST BATIQUITOS LAGOON/SAMMIS
- REDEVELOPMENT AREA

CALISBAD  
Executive Area  
Reformation

RESOLUTION NO. 96-250

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, REAFFIRMING THE COASTAL COMMISSION'S SUGGESTED MODIFICATIONS; AGREEING TO ISSUE COASTAL DEVELOPMENT PERMITS; ACKNOWLEDGING THE RECEIPT OF THE COASTAL COMMISSION'S RESOLUTION OF CERTIFICATION AND AGREEING TO ITS TERMS; AND ADOPTING THE AMENDMENTS TO THE LOCAL COASTAL PROGRAM ORDINANCES, AND ADDING INTRODUCTIONS TO THE LAND USE PLAN AND IMPLEMENTATION SECTIONS  
CASE NAME: LOCAL COASTAL PROGRAM EFFECTIVE CERTIFICATION  
CASE NO: LCPA 95-15

WHEREAS, on May 1, 1996 and on June 5, 1996, the Planning Commission held duly noticed public hearings to consider a Local Coastal Program Amendment (LCPA 95-15); Master Plan Amendments (MP177(Q) and (MP 175(G); Municipal Code Amendment (MCA 96-01; and Zone Code Amendment (ZCA 95-03), for Local Coastal Program Effective Certification on properties located within the City's coastal zone, with the exception of areas covered by the Agua Hedionda and Village Redevelopment Segments, and adopted Planning Commission Resolutions No. 3922, 3923, 3926, 3927, 3934 and 3924 respectively, recommending approval to the City Council; and

WHEREAS, the City Council of the City of Carlsbad, on the 9th day of JULY 1996, held a public hearing to consider the recommendations and heard all persons interested in or opposed to the LCPA 95-15, MP 177(Q), MP 175(G), MCA 9601, and ZCA 95-03; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad as follows:

1. That the above recitations are true and correct.
2. That the recommendation of the Planning Commission for the approval of the Local Coastal Program Amendment (LCPA 95-15) is approved and that the

CARLSBAD LCPA 95-15  
Executive Director's  
Determination

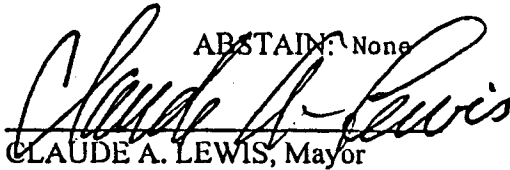
1 PASSED, APPROVED AND ADOPTED at a regular meeting of the  
2 City Council of the City of Carlsbad, California, on the 9th day of JULY  
3 1996, by the following vote, to wit:

4 AYES: Council Members Lewis, Nygaard, Kulchin, Finnila, Ha. I


5 NOES: None

6 ABSENT: None

7 ABSTAIN: None

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10 CLAUDE A. LEWIS, Mayor

11 ATTEST:

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13 ALETHA L. RAUTENKRANZ, City Clerk  
14 (SEAL)

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findings and conditions of the Planning Commission contained in Planning Commission Resolutions No. 3922 and 3923 on file with the City Clerk and incorporated herein by reference, are the findings and conditions of the City Council.

3. That the recommendation of the Planning Commission to 1) reaffirm the Coastal Commission's Suggested Modifications; 2) agree to issue Coastal Development Permits; 3) acknowledge receipt of the Coastal Commission's Resolution of Certification and agreeing to its terms; 4) adopt the amendments to the Local Coastal Program Ordinances; and 5) add introductions to the Land Use Plan and Implementation Sections, as contained in Planning Commission Resolutions No. 3922 and 3923 are approved, and that the findings and conditions of the Planning Commission in said resolutions are the findings and conditions of the City Council.
4. This action is final the date this resolution is adopted by the City Council. The provisions of Chapter 1.16 of the Carlsbad Municipal Code, "Time Limits for Judicial Review" shall apply:

"NOTICE TO APPLICANT"

"The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure, Section 1094.6, which has been made applicable in the City of Carlsbad by Carlsbad Municipal Code Chapter 1.16. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the nineteenth day following the date on which this decision becomes final; however, if within ten days after the decision becomes final a request for the record of the deposit in an amount sufficient by the required deposit in an amount sufficient to cover the estimated cost of preparation of such record, the time within which such petition may be filed in court is extended to not later than the thirtieth day following the date on which the record is either personally delivered or mailed to the party, or his attorney of record, if he has one. A written request for the preparation of the record of the proceedings shall be filed with the City Clerk, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008."

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