

**CALIFORNIA COASTAL COMMISSION**

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June 28, 2001

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**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE  
KERI AKERS, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP AMENDMENT NO. 1-2000E (Manzanita Apartments) (For Public Hearing and Possible Commission Action at the Meeting of July 10-13, 2001)**

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**SYNOPSIS****SUMMARY OF AMENDMENT REQUEST**

The subject amendment request revises the certified Carlsbad Local Coastal Plan (LCP) Implementation Program. The request rezones a 47.6-acre site (Manzanita) from Limited Control (L-C) and Exclusive Agricultural (E-A) to Residential Density-Multiple with a Qualified Development Overlay (RD-M/Q). On May 15, 2000, the City of Carlsbad's proposed Local Coastal Program Amendment (LCPA) #98-06 was received in the San Diego District office. At the July 2000 meeting, a time extension on the LCP amendment package was granted by the Commission to allow time for staff review of the potential buildout of the subject site enabled by the proposed rezone and its conformance with the certified LCP and the pending draft Carlsbad Habitat Management Plan (HMP). The Manzanita amendment is going forward at the July, 2001 hearing at the request of the City of Carlsbad and, absent a withdrawal of the amendment request, the Commission must take action at the July 2001 hearing. Section 30517.5 of the Coastal Act requires Commission action on the subject Implementation Plan amendment no later than July 15, 2001.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the proposed LCP amendment. The proposed rezone, if approved, would only affect one property; however, more comprehensive revisions are needed to the LCP which cannot be achieved through suggested modifications and should be addressed in a subsequent LCP amendment proposed by the City.

The subject Manzanita site is currently zoned L-C (Limited Control) and E-A (Exclusive Agricultural). The purpose of the L-C zoning designation is to provide an interim zone for areas where planning for future land uses has not been completed or plans for

development have not been formalized. The City approved the proposed LCP amendment subject to approval of several discretionary permits including a coastal development permit for a 157 unit residential apartment development known as Manzanita Apartments on the 47.6 acre site. Although the LCP amendment is the only item subject to Commission review at this time, it is necessary for the Commission to analyze the impacts associated with the companion apartment development for several reasons, including that the proposed rezone from the L-C holding zone assigns a residential development potential to the subject site which does not currently exist. The City's approval of the rezone is subject to approval of the apartment project which is expected to occur on the site if the LCP amendment is approved. The City reviewed the proposed apartment development in the context of the draft Habitat Management Plan (HMP) with regard to resource protection rather than for its consistency with the certified LCP. The apartment development, as proposed, would eliminate a vernal pool and seasonal wetland, and encroach on steep slopes vegetated with coastal sage and chaparral vegetation. These impacts are inconsistent with the resource protection policies of the certified LCP. Additionally, there may be feasible alternatives to the proposed design which would lessen impacts on the environmentally sensitive habitat areas on the subject property.

The LCP (LUP and implementation plan) which was certified in 1981 has not been updated to incorporate planning policies for these areas that were not ready for development in 1981. In addition, the LUP policies do not take into account events subsequent to certification, such as the listing of California gnatcatcher as a threatened species under the federal Endangered Species Act. The LCP protects sensitive native vegetation on steep slopes (>25%), but does not protect native vegetation in non-steep areas which can provide nesting and foraging habitat for the gnatcatcher. The dual-criteria slope policy preserves natural landforms and prevents erosion, but does not address the need to preserve rare native plant communities, especially those which have been determined by federal or state listing to be threatened or endangered. The gnatcatcher, which resides in the CSS community, was listed as threatened by the USFWS in 1993, and several species within the southern maritime chaparral community were listed as threatened or endangered in 1996.

When the LCP was certified, it was anticipated that the purpose of the L-C zone was to provide an interim zone for areas where planning for future land uses had not been completed or plans for development had not been formalized. This purpose is stated in Section 21.39.010 of the City's zoning code. The necessary planning has not taken place. The City has submitted several LCP amendments to rezone *individual* L-C properties, based on *individual* site plans, but has not submitted an LCP amendment to revise and update the L-C zone designation and/or provide a comprehensive plan for the L-C zoned properties as a whole. Therefore, the LUP has not been updated as intended to take into account current environmental conditions, the cumulative impacts of build-out of these properties or applicable laws, prior to allowing development.

Because of these unresolved issues, the proposed LCP amendment is inconsistent with and inadequate to implement the LUP and does not contain the necessary standards to

allow review of potential future development consistent with the Coastal Act and applicable laws including the NCCP. Additionally, the City used the draft HMP as a standard for review of the companion apartment project and an LCP amendment has not been processed to reconcile the requirements of the Coastal Act and the NCCP. The LCP amendment as proposed is specific to only a particular site and is not sufficient to address the impacts of new development in properties currently zoned as L-C or E-A within the coastal zone. These deficiencies make it necessary for the City of Carlsbad to update and revise its plan to reflect current knowledge about habitat and species protection, and to provide coordinated and comprehensive planning for the transition of agricultural lands to urban development, instead of addressing these areas solely through site-specific, individual rezones.

At this time, the HMP has not yet been approved, and the Commission has not reviewed the federal consistency certification for the incidental take permit associated with the HMP. The applicant has not demonstrated that there are no other feasible project designs or modifications which could reduce impacts environmentally sensitive areas and still allow reasonable use of the property. It is possible that the potential impacts to ESHA on the Manzanita site may be outweighed by the regional, long-term benefits to ESHA created by this property's inclusion in the HMP habitat preserve and the establishment of a permanent open space preserve and wildlife corridor on the western portion of the site. However, the proposed HMP area includes several other properties which are currently zoned L-C and are required to be developed under certain standards for wildlife protection and corridor creation. Clearly, it will be necessary for the HMP and LCP to have a coordinated planning process for these properties, which will ensure an appropriate transition from agriculture to urban development, while meeting the goals of the HMP and the Coastal Act for resource protection. As previously described, the LUP anticipates additional planning and amendments to its resource protection policies prior to development of areas currently zoned as L-C or E-A, and no comprehensive plan for the L-C properties has been provided. Additionally, the proposed rezone would permit removal of a vernal pool and wetland, and enables development of the site in a manner that is inconsistent with the certified LCP. These conflicts illustrate the need for a broader LCP amendment to update the ESHA protection policies of the LCP, to plan for proposed and anticipated future development, and to include and address the HMP process to ensure its consistency with the LCP.

The appropriate resolutions and motions can be found on Page 8. The findings for denial of the LCP Implementation Plan amendment begin on Page 9.

### **BACKGROUND**

Major issues and background information are summarized below, and are analyzed in greater detail in the Findings section beginning on page 9:

#### **Carlsbad Local Coastal Program (LCP)**

The City'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. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all of its segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. The subject amendment request affects the Mello II segment of the certified LCP.

#### The HCP Process and the Carlsbad HMP

The Carlsbad Habitat Management Plan (HMP) is being prepared to satisfy the requirements of a federal Habitat Conservation Plan (HCP), and will function 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 will replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and will allow the incidental take of the gnatcatcher and other covered species as specified in the plan.

The HCP process is a requirement of the Endangered Species Act, which prohibits the "take" of listed threatened and endangered species. As defined in Section 3(18) of the Federal Endangered Species Act, "the term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Act, however, allows the USFWS to permit take that is incidental to some otherwise lawful activity. As part of the application for an incidental take permit (ITP), the applicant must prepare and submit an HCP to the USFWS.

The Carlsbad HMP and the MHCP are also intended to meet criteria for the California Department of Fish and Game's (CDFG) Natural Communities Conservation Planning process (NCCP). The objectives of the southern California NCCP program include identification and protection of habitat in sufficient amounts and distributions to enable long-term conservation of the coastal sage community and the California gnatcatcher, as well as other sensitive habitat types. Generally, the purpose of the HCP and NCCP processes is to preserve natural habitat by identifying and implementing an interlinked natural communities preserve system. Through these processes, the resource agencies are pursuing a long-range approach to habitat management and preserve creation over the

more traditional mitigation approach to habitat impacts. Within the draft HMP, the City has identified approximately 4,459 acres of existing preserve area, which will be added to 1,437 acres of proposed hardline conservation areas, for a total of 5,896 acres. This hardline preserve is consistent with the area proposed in the MHCP. Other properties located along the habitat corridor will have "standards" applied for a combination of development and preservation, and are expected to eventually contribute approximately 504 acres of preserved habitat. Mitigation measures include acquisition or other protections of replacement habitat, mitigation banks, mitigation credits, and enhancing, restoring or creating habitat. Regional management has generally involved establishing, acquiring and managing habitat preserves.

The "standards" areas involve several key undeveloped areas within the City that are located within the proposed habitat linkage corridors, but which do not yet have proposed development plans for individual properties within those areas. Many of the "standards" areas are also currently zoned LC or EA indicating a holding zone until future planning is complete. The City's standards are focused geographically, using the Local Facilities Management Zones identified in the City's growth management plan. These properties are proposed to have conservation goals and standards which would allow at least 25% development of the site, but which provide for minimum conservation of 67% of coastal sage scrub and 75% of gnatcatchers on each site. Several areas have significantly higher standards for greater protection of individual resource areas. Emphasis is placed upon creation of preservation corridors and linkage to the larger MHCP habitat areas. Projects proposed within the standards areas also will require additional consultation with the City and the wildlife agencies to determine whether the project complies with the relevant standards and is consistent with the HMP. Upon receiving approval of their development plans, the property owners will receive take authorization.

#### Section 7 Consultation

Under Section 7 of the Endangered Species Act (ESA), federal agencies must consult with the USFWS when any agency action may affect a listed species. Because the Manzanita development proposal required a permit from the U.S. Army Corps of Engineers (ACOE) for a .1 acre vernal pool and wetland fill on the site, the ACOE was required to consult with the USFWS for a biological opinion on whether the proposed impacts to gnatcatchers would be considered significant and adverse. The consultation submittal package included a draft conceptual mitigation plan for vernal pool restoration and enhancement. The Section 7 consultation process was initiated in May 1999, and the USFWS issued a biological opinion in October 1999. The biological opinion concluded that the anticipated level of take (one pair of gnatcatchers) would not result in jeopardy to the species or create an adverse modification of their habitat, provided that no clearing of CSS or SMC takes place during the annual breeding and nesting season of February 15-August 30.

On the basis of the biological opinion, the applicant is exempt from further requirements under Sections 9 and 10(a) of the Endangered Species Act (ESA) which address take prohibition and habitat conservation planning. Since the permit is related to a federal action and does not require an incidental take permit, the applicant is not dependent upon

approval of the Carlsbad HMP for the proposed take of one pair of gnatcatchers. The conditions in the biological opinion required the applicant to abide by ACOE permit requirements for work in wetlands; required dedication of a conservation easement in favor of the ACOE or other entity with fee title to a qualified conservation entity; and confirmed the proposed mitigation measure of removing and reusing the vegetation and soil materials in the existing vernal pool and wetland on the western side of El Camino Real to be used in for restoration of the vernal pools to the east.

#### Onsite Wetlands and Section 404 Permit Process

The biological resources study prepared for the applicant by Dudek & Associates in September 1998 identified eight vernal pools on the Dunn property portion of the Manzanita site. Seven of the vernal pools are located on the east side of El Camino Real. No development is proposed for this area, which is outside the coastal zone. One vernal pool of .02 acre and associated seasonal wetland of 0.08 acre were initially identified on the property west of El Camino Real, in the area proposed for the project access road. The vernal pool and seasonal wetland were removed in early 2000 under an ACOE NW14 permit but without a final coastal development permit (CDP) from the City of Carlsbad.

According to the evidence provided by the applicant, it appears that the primary water source of the western vernal pool and wetland may have been the irrigation runoff, stormwater runoff, and septic tank leachate of commercial greenhouse and nursery operations on the Bons property which took place over nearly thirty years, from 1971-2000. It should be noted that the Bons and Dunn properties have never had the same ownership, or any shared uses. The nursery operations on the Bons property included a commercial rose farm greenhouse, asphalt parking lot and 1,000 gallon septic tank, all of which drained southeast toward the Dunn property. The low area in which the vernal pool and seasonal wetland were located might have been created by the 1971 widening of El Camino Real from two to four lanes. During the road construction period, a "borrow pit" to obtain soil for the road's western bank was apparently dug out on the Dunn property on the west side of El Camino Real. This action may have created the depression just south of the Bons property line, which was located in the path of stormwater and septic tank runoff flows from the greenhouse operation. Over the years, the artificial depression apparently evolved into a vernal pool and seasonal wetland due to these artificial water sources from the north and west.

In the spring of 1998, the owner of the Bons property ceased the rose farm operations and removed the greenhouse, although other nursery activities continued on the site until the end of 1999. In March 2000, after the vernal pool and wetland had been removed on the Dunn property, the parking lot and septic tank were removed from the Bons property.

The applicant presented biological findings to the City of Carlsbad and the ACOE which indicated that, in the absence of the artificial water sources on the Bons property, the vernal pool and seasonal wetland were likely not viable and would eventually disappear on their own. The applicant proposed to use vegetation and soils from the western vernal pool for restoration efforts on the eastern vernal pools, which required these materials to

be collected and transferred while they were still usable. Dudek and Associates prepared a letter in May 2001 which stated, in part, that "since the removal of the nursery operations and greenhouse facilities, which were immediately north of the westerly vernal pool/seasonal wetland area, there no longer appears to be adequate drainage flow or the hydrology regime necessary to support wetland or vernal pool species in this westerly location."

In May 1999, the City of Carlsbad issued a Mitigated Negative Declaration (MND) for the Manzanita Apartments development proposal which concurred with the Dudek study's recommendation that the applicant mitigate for the eastern vernal pool and wetland impacts by restoring and enhancing the seven eastern vernal pools, which were badly degraded and had significant loss of function. In August 1999, the US Army Corps of Engineers (ACOE) issued a Nationwide Permit 14 (NW 14) Authorization, pursuant to Section 404 of the Clean Water Act of 1972 (33 USC 1344), which allowed the Manzanita Apartments applicant to fill in the western vernal pool and surrounding seasonal wetland in order to construct the project access road. The ACOE determined that the proposed fill complied with the terms and conditions of NW 14 for fills for roads crossing waters of the United States, including wetlands and other special aquatic sites. The permit authorization agreed with the Dudek study and the MND's recommendation that the applicant mitigate impacts by restoring and enhancing the eastern vernal pools.

In November 1999, the Carlsbad City Council approved the Manzanita Apartments application package, including the MND, zone change and coastal development permit. Consistent with the draft plan for vernal pool restoration and enhancement, the as-builts for the development proposal, prepared in October 1999, show the vernal pool enhancement and restoration plan which includes removing the vegetation and soil materials from the western vernal pool to be used in the restoration of the eastern vernal pools. However, the Council's approval was conditioned upon the Commission certification of the LCPA. Without the City's knowledge, the western vernal pool and wetland area were removed during the week of January 10-17, 2000. The City issued a stop-work order after being informed of these activities, and no further activity has occurred on the western portion of the site. The restoration of the eastern vernal pools was completed during May 2001.

#### **ADDITIONAL INFORMATION**

Further information on the submittal may be obtained from **Keri Akers** at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

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

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. 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:** *I move that the Commission reject the Implementation Program Amendment #1-2000E for the City of Carlsbad certified LCP as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program 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 DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment #1-2000E submitted for the City of Carlsbad certified LCP, and adopts the findings set forth below on grounds that the Implementation Program does not conform with and is inadequate to carry out the provisions of the certified land use plan and would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program.



**PART III. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD  
IMPLEMENTATION PLAN AMENDMENT #1-2000E (MANZANITA  
APARTMENTS)**

**A. Amendment Description**

The amendment changes the LCP implementation plan (IP) by rezoning a 47.6-acre parcel (Manzanita) from Limited Control (L-C) and Exclusive Agricultural (E-A) to Residential Density-Multiple with a Qualified Development Overlay (RD-M/Q). The northern parcel (the Bons property) is currently zoned E-A. The southern parcel (the Dunn property) is zoned L-C. The Dunn property, which is bisected by El Camino Real (the coastal zone boundary), has LUP designations of Residential Low Medium (RLM) on the east side, and Residential Medium Density (RM) on the west side. The Bons property is entirely within the coastal zone. The portion of the Dunn property on the west side of El Camino Real is within the coastal zone; the portion on the east side of El Camino Real is outside of the coastal zone.

The City approved the subject LCP amendment subject to approval of a tentative parcel map and several discretionary permits for a 157 unit residential apartment development known as Manzanita Apartments. The discretionary permits include the coastal development permit, a site development permit, and special use permit and a hillside development permit. It is the City's practice to "bundle" all associated approvals with any necessary rezones or LUP amendments, such that City action occurs on the coastal development permit, prior to the Coastal Commission's review and approval of the LCP amendment. Those City actions occurred in September 1999 (ref. Ex. 1 and 2).

Although the LCP amendment is the only item subject to Commission review at this time, it is necessary for the Commission to analyze the impacts associated with the companion apartment development for several reasons. First, the proposed rezone from the LC holding zone assigns a residential development potential to the subject site which does not currently exist. Second, the City's approval of the rezone is subject to approval of the apartment project which is expected to occur on the site if the LCP amendment is approved. Third, the City reviewed the proposed apartment development in the context of the draft HMP with regard to resource protection rather than for its consistency with the certified LCP. The apartment development, as proposed, would eliminate a (previously-existing) vernal pool and seasonal wetland totalling 0.1 acres, and would encroach into 25 % grade steep slopes vegetated with coastal sage and chaparral vegetation. These impacts are inconsistent with the resource protection policies of the certified LCP discussed below. Additionally, there may be feasible alternatives to the proposed design which would lessen impacts on the environmentally sensitive habitat areas on the subject property.

The development site is located on the west side of El Camino Real, south of the intersection with Cassia Road. The site totals approximately 47.6 acres, and includes 9.18 acres of coastal sage scrub (CSS) and 19.84 acres of southern maritime chaparral (SMC).

The associated development proposal for 157 apartments, which is enabled by the proposed LCP amendment, would impact a total of 5.17 acres of sensitive native vegetation, including 3.39 acres of CSS and 1.78 acres of SMC (37% and 9% of the total CSS and SMC, respectively), and would result in the take of one pair of California gnatcatchers. Exhibit 5 shows the site's vegetation types with the grading limits of the proposed development also indicated.

The site is bordered by the Villa Loma apartment complex to the north, the residential subdivision of Poinsettia Hills and undeveloped and L-C zoned property to the west, the Villages of La Costa to the east, and the Lohf and Steiner residential subdivisions to the south. A transmission line easement runs northwest to southeast through the site in the area proposed for open space. All of the proposed development will be concentrated along the west side of El Camino Real and the south side of Cassia Road. Vehicular access to the property is from Cassia Road, with emergency access from El Camino Real.

Topographically, the site slopes downward from east to west, from approximately 330' on the eastern portion of the property near the existing nursery, to 220' at the western boundary. Portions of the property have previously been used for agricultural purposes; the proposed apartment buildings would be largely sited within previously-disturbed and developed areas in the northeast corner of the western portion of the property.

## **B. Purpose and Intent of the Ordinance**

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. The City is proposing to rezone the property from a holding zone (L-C) established in the LCP at the time it was certified. The proposed residential zone with a qualified development overlay is also contained in the certified LCP implementation plan and described in detail below.

1. Purpose and Intent of the Ordinance. The purpose and intent of the RD-M/Q zone (Residential Density-Multiple with a Qualified Development Overlay) is to allow for single and multi-family residential development and associated amenities in the low to medium density range. The Mello II LUP designates the site as Residential Low Medium (RLM) and Residential Medium (RM). The RLM designation allows residential development at a range of 0-4 dwelling units per acre (du/ac), and the RM designation allows residential development at 4-8 du/ac. The proposed RD-MQ zone is consistent with the land use density contemplated for future development of this site in the certified The Mello II land use plan.

Section 21.06.010 of the municipal code states : "The purpose and intent of the Q Qualified Development Overlay Zone is to supplement the underlying zoning by providing additional regulations for development within designated areas to:

- (1) Require that property development criteria are used to insure compliance with the general plan and any applicable specific plans;

- (2) Provide that development will be compatible with surrounding developments, both existing and proposed;
- (3) Insure that development occurs with due regard to environmental factors;
- (4) Allow a property to be granted a particular zone where some or all of the permitted uses would be appropriate to the area only in certain cases with the addition of specific conditions;
- (5) Provide for public improvements necessitated by the development;
- (6) Promote orderly, attractive and harmonious development, and promote the general welfare by preventing the establishment of uses or erection of structures which are not properly related to or which would adversely impact their sites, surroundings, traffic circulation or environmental setting”.

Therefore, the purpose of the Q overlay is to apply supplemental regulations or standards to development in areas with unique circumstances or environmental sensitivity.

Section 21.39.0101 of the municipal code pertains to the Limited Control L-C Zone and states: “The intent and purpose of the L-C zone is to provide an interim zone for areas where planning for future land uses has not been completed or plans of development have not been formalized. After proper planning or plan approval has been completed, property zoned L-C may be rezoned in accord wit this title”.

Section 21.07.010 states: “The intent and purpose of the E-A zone district is to:

- (1) Provide for those uses, such as agriculture, which are customarily conducted in areas which are not yet appropriate or suited for urban development;
- (2) Protect and encourage agricultural uses wherever feasible;
- (3) Implement the goals and objectives of the general plan;
- (4) Recognize that agricultural activities are a necessary part of the ongoing character of Carlsbad;
- (5) Help assure the continuation of a healthy, agricultural economy in appropriate areas of Carlsbad.

2. Major Provisions of the Ordinance. The proposed LCP amendment provides simply for the change of zoning of the identified property from L-C and E-A to RD-M/Q. This results in the rezoning of 47.6 acres of land previously used for agriculture and containing environmentally sensitive habitat, from zone designations which do not allow for development, to residential zoning with an overlay to address environmental sensitivity.

The RD-M/Q zone allows multi-family residential housing and associated amenities, sets height limits, and establishes development standards for setbacks, placement of buildings and minimum lot area. Additional development standards for this zone include provisions for minimum distance between buildings and minimum parking requirements for residents and guests. There are no specific standards in the Q overlay to apply to development. The overlay establishes the process, i.e. site development plan review by which specific standards or regulations contained elsewhere in the municipal code can be

applied.

3) Adequacy of Ordinance to Implement the Certified LUP. The standard of review for LCP implementation submittals or amendments is their conformity with and adequacy to carry out the provisions of the certified Land Use Plan (LUP). In the case of the subject LCP amendment, the City's Municipal Code serves as the Implementation Program for the Mello II segment of the LCP.

The Manzanita site is currently zoned L-C (Limited Control) and E-A (Exclusive Agricultural). The purpose of the L-C zoning designation is to provide an interim zone for areas where planning for future land uses has not been completed or plans for development have not been formalized. A number of L-C properties which were formerly used for agriculture are now anticipated to be developed and exist within the coastal zone. The LUP does not contain specific language addressing the L-C or E-A zoning designations; instead the areas were given a low to medium density land use designation and zoning which anticipated future planning would occur prior to development. At the time the LCP was certified, it was not known what the appropriate standards would be to apply to future build out of these properties. However, it was clear that due to their topography, environmental sensitivity and current agricultural use, a residential zone was not appropriate at that time. The certified LCP implementation plan specifies that future land use planning for these areas should be done prior to rezoning for urban development.

The proposed rezone would change the zoning on the project site from L-C and E-A to RD-M/Q (Residential Density-Multiple with a Qualified Development Overlay). The RD-M zone is one of several potential zoning designations which could be applied to the property in order to implement that Residential Low to Medium Density (RLM) and Residential Medium Density (RM) General Plan designations on the project site. The City felt that since the proposed development (Manzanita apartments) would be concentrated in the RM-designated area, with the RLM portion left in open space, the RD-M designation was appropriate and reflected a reasonable intensity of use for the concentrated development. An open space zone is available in the municipal code but is not being applied to the portion of the site to be retained in open space. The City's explanation is that, because the companion development is an apartment project, there is not a separate open space lot being created to which an open space zone could apply.

Under the current LCP as certified, the resource protection policies of the certified LUP and the municipal code would apply to review of the site development plan required by the Q Overlay. The following Mello II LUP policies are applicable to the subject LCP amendment and are applicable to the companion development enabled by the proposed rezone.

The following policies of the certified Mello II LUP are applicable and state:

Policy 3-7 Wetlands and Riparian Resources

Wetlands and riparian resources outside the lagoon ecosystems shall be protected and preserved. No direct impacts may be allowed except for the expansion of existing circulation element roads identified in the certified LCP and those direct impacts associated with installation of utilities (i.e. water, sewer, and electrical lines). There must be no feasible less environmentally damaging alternative to the proposed disturbance; any allowable disturbance must be performed in the least environmentally damaging manner. Open space dedication of sensitive resource areas is required. Mitigation ratios for any temporary disturbance or permanent displacement of identified resources shall be determined in consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service. Appropriate mitigation ratios shall be determined based on site specific information. Such information shall include, but is not limited to, the type and size of the development and or proposed mitigations (such as planting of vegetation or the construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the delineated resource. The California Department of Fish and Game and the United States Fish and Wildlife Service shall be consulted in such buffer determinations. Buffer zones shall be protected through the execution of open space easements and passive recreational uses are restricted to the upper half of the buffer zone.

Policy 3-8 Buffer Zones

Buffer zones of 100 feet in width shall be maintained around all identified wetland areas and 50 feet in width shall be maintained around all identified riparian areas, unless the applicant demonstrates that a buffer of lesser width will protect the identified resources, based on site-specific information. Such information shall include but is not limited to, the type and size of the development and/or proposed mitigation (such as planting of vegetation or the construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the delineated resource. The California Department of Fish and Game and the United States Fish and Wildlife Service shall be consulted in such buffer determinations. Buffer zones shall be protected through the execution of open space easements and passive recreational uses are restricted to the upper half of the buffer zone.

Policy 4-3 of the certified Mello II LCP states, in part:

(b) All Other Areas

Any development proposal that affects steep slopes (25% inclination or greater) shall be required to prepare a slope map and analysis for the affected slopes. Steep slopes are identified on the PRC Troups maps. The slope mapping and analysis shall be prepared during CEQA environmental review

on a project-by-project basis and shall be required as a condition of a coastal development permit.

- (1) Slopes Possessing Endangered Species and/or Coastal Sage Scrub and Chaparral Plant communities: For those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, the following policy language applies:

(a) Slopes of 25% grade and over shall be preserved in their natural state unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed 10% of the steep slope area over 25% grade may be permitted. For existing legal parcels, with all or nearly all of their area in slope area over 25% grade, encroachment may be permitted; however, any such encroachment shall be limited so that at no time is more than 20% of the entire parcel (including areas under 25% slope) permitted to be disturbed from its natural state. This policy shall not apply to the construction of roads of the City's Circulation Element or the development of utility systems. Use of slopes over 25% may be made in order to provide access to flatter areas if there is no less environmentally damaging alternative available.

The City approved the proposed LCP amendment subject to approval of several discretionary permits including a coastal development permit for a 157 unit residential apartment development known as Manzanita Apartments on the 47.6 acre site. Although the LCP amendment is the only item subject to Commission review at this time, it is necessary for the Commission to analyze the impacts associated with the companion apartment development for several reasons, including the proposed rezone from the L-C holding zone assigns a residential development potential to the subject site which does not currently exist. The City's approval of the rezone is subject to approval of the apartment project which is expected to occur on the site if the LCP amendment is approved. The City reviewed the proposed apartment development in the context of the draft Habitat Management Plan (HMP) with regard to resource protection rather than for its consistency with the certified LCP. The apartment development, as proposed, would eliminate a vernal pool and seasonal wetland, and encroach on steep slopes vegetated with coastal sage and chaparral vegetation. These impacts are inconsistent with the above cited resource protection policies of the certified LCP.

Although the impacts to slopes greater than 25% grade which contain coastal sage scrub or chaparral vegetation are minimal (0.2 acre), a total of 3.39 ac. of coastal sage scrub and 1.78 ac. of southern maritime chaparral habitat would be impacted by the proposed apartment development. It hasn't been demonstrated that such encroachment on the steep slopes, though minimal, is necessary to allow reasonable use of the property. Additionally, there may be feasible alternatives to the proposed design which would lessen impacts on the environmentally sensitive habitat areas on the subject property.

The LCP (LUP and implementation plan) which was certified in 1981 has not been updated to incorporate planning policies for these areas that were not ready for development in 1981. In addition, the LUP policies do not take into account events subsequent to certification, such as the listing of California gnatcatcher as a threatened species under the federal Endangered Species Act. The LCP protects sensitive native vegetation on steep slopes (>25%), but does not protect native vegetation in non-steep areas which can provide nesting and foraging habitat for the gnatcatcher. The dual-criteria slope policy preserves natural landforms and prevents erosion, but does not address the need to preserve rare native plant communities, especially those which have been determined by federal or state listing to be threatened or endangered. The gnatcatcher, which resides in the CSS community, was listed as threatened by the USFWS in 1993, and several species within the southern maritime chaparral community were listed as threatened or endangered in 1996.

When the LCP was certified, it was anticipated that the purpose of the L-C zone was to provide an interim zone for areas where planning for future land uses had not been completed or plans for development had not been formalized. This purpose is stated in Section 21.39.010 of the City's zoning code. The necessary planning has not taken place. The City has submitted several LCP amendments to rezone *individual* L-C properties, based on *individual* site plans, but has not submitted an LCP amendment to revise and update the L-C zone designation and/or provide a comprehensive plan for the L-C zoned properties as a whole. Therefore, the LUP has not been updated as intended to take into account current environmental conditions, the cumulative impacts of build-out of these properties or applicable laws, prior to allowing development.

Because of these unresolved issues, the proposed LCP amendment is inconsistent with and inadequate to implement the LUP and does not contain the necessary standards to allow review of potential future development consistent with the Coastal Act and applicable laws including the NCCP. Additionally, the City used the draft HMP as a standard for review of the companion apartment project and an LCP amendment has not been processed to reconcile the requirements of the Coastal Act and the NCCP. The LCP amendment as proposed is specific to only a particular site and is not sufficient to address the impacts of new development in properties currently zoned as L-C or E-A within the coastal zone. These deficiencies make it necessary for the City of Carlsbad to update and revise its plan to reflect current knowledge about habitat and species protection, and to provide coordinated and comprehensive planning for the transition of agricultural lands to urban development, instead of addressing these areas solely through site-specific, individual rezones.

At this time, the HMP has not yet been approved, and the Commission has not reviewed the federal consistency certification for the incidental take permit associated with the HMP. The applicant has not demonstrated that there are no other feasible project designs or modifications which could reduce impacts environmentally sensitive areas and still allow reasonable use of the property. It is possible that the potential impacts to ESHA on the Manzanita site may be outweighed by the regional, long-term benefits to ESHA

created by this property's inclusion in the HMP habitat preserve and the establishment of a permanent open space preserve and wildlife corridor on the western portion of the site.

However, the proposed HMP area includes several other properties which are currently zoned L-C and are required to be developed under certain standards for wildlife protection and corridor creation. Clearly, it will be necessary for the HMP and LCP to have a coordinated planning process for these properties, which will ensure an appropriate transition from agriculture to urban development, while meeting the goals of the HMP and the Coastal Act for resource protection. As previously described, the LUP anticipates additional planning and amendments to its resource protection policies prior to development of areas currently zoned as L-C or E-A, and no comprehensive plan for the L-C properties has been provided. Additionally, the proposed rezone would permit removal of a vernal pool and wetland, and enables development of the site in a manner that is inconsistent with the certified LCP. These conflicts illustrate the need for a broader LCP amendment to update the ESHA protection policies of the LCP, to plan for proposed and anticipated future development, and to include and address the HMP process to ensure its consistency with the LCP.

Having taken into account a comprehensive review of the proposed LCP amendment, including onsite resources, potential impacts, relationship to the HMP, the provisions of the LCP, and associated documents such as the Dudek study, ACOE NW14 Permit Authorization, and the USFWS Section 7 Biological Opinion, the Commission finds that approval of the Manzanita rezone is premature due to the lack of comprehensive planning for the conversion of these L-C properties to urban development. Rather than proposing rezones for individual properties on a site-by-site basis, the City should process an LCP amendment which plans for the build-out of these areas that were not ready for development twenty years ago. The LCP amendment should address the cumulative impacts of build-out of the remaining undeveloped portions of the City's coastal zone which contain primarily environmentally sensitive habitat areas and agricultural land. An open space and habitat preserve should be created consistent with the goals of both the Coastal Act and the Endangered Species Act. The LCP amendment should contain provisions which assure no net loss of habitat value in the coastal zone which may mean new creation of any unavoidable loss of habitat in the coastal zone. The Commission recommends that the City amend the LCP and HMP as described in this report prior to submitting any future LCP amendments for the Manzanita property or any other L-C zoned property which is included in the draft HMP.

#### **PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENT QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and 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 LCP as amended, conforms to CEQA provisions. As found above and incorporated herein by reference, the proposed Manzanita rezone would allow the destruction of coastal sage scrub which provides habitat for California gnatcatcher and would allow the destruction of southern maritime chaparral. The Commission finds that the applicant has not shown that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen the significant adverse effects which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment may result in a significant adverse environmental impact.



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PLANNING COMMISSION RESOLUTION NO. 4619

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF AN AMENDMENT TO THE CARLSBAD LOCAL COASTAL PROGRAM TO BRING THE LOCAL COASTAL PROGRAM AND ZONING MAP INTO CONFORMANCE ON PROPERTY LOCATED ADJACENT TO EL CAMINO REAL JUST SOUTH OF CASSIA ROAD.

CASE NAME: MANZANITA APARTMENTS

CASE NO: LCPA 98-06

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, **Manzanita Partners, LLC**, "Developer", has filed a verified application for an amendment to the Local Coastal Program zoning designations regarding property owned by **Bons Revocable Living Trust and Manzanita Partners, LLC**, "Owners", described as

A portion of the NE and SE ¼ of the SW ¼ of Section 23, T12S, R4W, SBM, County of San Diego.

("the Property"); and

WHEREAS, said verified application constitutes a request for a Local Coastal Program Amendment as shown on Exhibit "AA" dated September 15, 1999 attached to Planning Commission Resolution No. 4819, **MANZANITA APARTMENTS - LCPA 98-06**, as provided in Public Resources Code Section 30574 and Article 15 of Subchapter 8, Chapter 2, Division 5.5 of Title 14 of the California Code of Regulations (the California Coastal Commission Administrative Regulations); and


WHEREAS, the Planning Commission did on the 15th day of September, 1999, hold a duly noticed public hearing as prescribed by law to consider said request; and

EXHIBIT NO. 1

CARLSBAD  
LCPA #1-2000E

CITY COUNCIL  
RESOLUTION

LCPA 98-06

 California Coastal Commission

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

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

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

- 9           A) That the foregoing recitations are true and correct.
- 10           B) At the end of the State mandated six week review period, starting on May 15,  
11 1999 and ending on July 3, 1999, staff had received no public comments on the  
12 proposed Local Coastal Program Amendment.
- 13           C) That based on the evidence presented at the public hearing, the Commission  
14 **RECOMMENDS APPROVAL** of MANZANITA APARTMENTS LCPA 98-  
15 06 based on the following findings, and subject to the following conditions:

16 **Findings:**

- 17 1. That the proposed Local Coastal Program Amendment meets the requirements of, and is  
18 in conformity with, the policies of Chapter 3 of the Coastal Act and all applicable policies  
19 of the Mello I and Mello II segments of the Carlsbad Local Coastal Program, not being  
20 amended by this amendment, in that **steep slopes containing sensitive habitat will be**  
21 **designated as open space and will be preserved, thus complying with policies**  
22 **regarding the preservation of steep slope areas.**
- 23 2. That the proposed amendment to the Mello I and Mello II segments of the Carlsbad  
24 Local Coastal Program is required to bring **the designations of the City's Zoning Map**  
25 **and the Mello I and Mello II Local Coastal Program segments** into conformance.

26 **Conditions:**

- 27 1. Approval of LCPA 98-06 is granted subject to the approval of the Mitigated  
28 **Negative Declaration and Mitigation Monitoring and Reporting Program and ZC**  
**98-09, SDP 98-19, SUP 98-06, HDP 98-18, and CDP 98-73, and the parcel map or lot**  
**line adjustment which consolidates the two western parcels, and is subject to all**  
**conditions contained in the Mitigated Negative Declaration and the Mitigation**  
**Monitoring and Reporting Program and Planning Commission Resolutions No.**  
**4617, 4618, 4620, 4621, 4622, and 4623, and the City Engineer's approval of the**  
**parcel map or lot line adjustment.**

- 1 2. CDP 98-73 is not valid until LCPA 98-06 is effectively certified by the California  
2 Coastal Commission.

3  
4 **NOTICE**

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

7 You have 90 days from **date of final approval** to protest imposition of these fees/exactions. If  
8 you protest them, you must follow the protest procedure set forth in Government Code Section  
9 66020(a), and file the protest and any other required information with the City Manager for  
10 processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely  
follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or  
annul their imposition.

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

15 PASSED, APPROVED AND ADOPTED at a regular meeting to the Planning  
16 Commission of the City of Carlsbad, held on the 15th day of September, 1999, by the following  
17 vote, to wit:

18  
19 AYES: Chairperson Compas, Commissioners Heineman, L'Heureux,  
Nielsen, Segall, Trigas, and Welshons

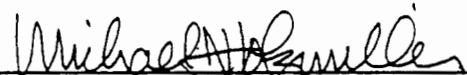
20 NOES:

21 ABSENT:

22 ABSTAIN:

23  
24   
25 \_\_\_\_\_  
COURTNEY E. HEINEMAN, Chairperson  
26 CARLSBAD PLANNING COMMISSION

27 ATTEST:

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\_\_\_\_\_  
MICHAEL J. HOLZMILLER  
Planning Director

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PLANNING COMMISSION RESOLUTION NO. 4623

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NUMBER CDP 98-73 ON PROPERTY GENERALLY LOCATED ADJACENT TO EL CAMINO REAL JUST SOUTH OF CASSIA ROAD IN LOCAL FACILITIES MANAGEMENT ZONES 21 AND 10.

CASE NAME: MANZANITA APARTMENTS  
CASE NO.: CDP 98-73

WHEREAS, **Manzanita Partners, LLC**, "Developer", has filed a verified application with the City of Carlsbad regarding property owned by **Bons Revocable Living Trust and Manzanita Partners, LLC**, "Owners", described as

a portion of the NE and SE ¼ of the SW ¼ of Section 23, T12S, R4W, SBM, County of San Diego

("the Property"); and

WHEREAS, said verified application constitutes a request for a Coastal Development Permit as shown on Exhibits "A" - "X" dated **September 15, 1999**, on file in the Planning Department, **MANZANITA APARTMENTS, CDP 98-73** as provided by Chapter 21.201.040 of the Carlsbad Municipal Code; and

WHEREAS, the Planning Commission did, on the **15th day of September, 1999**, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the CDP.

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

- A) That the foregoing recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Commission APPROVES **MANZANITA APARTMENTS, CDP 98-73** based on the following findings and subject to the following conditions:

EXHIBIT NO. 2
CARLSBAD LCPA #1-2000E.
CITY COUNCIL RESOLUTION
CDP 98-73
California Coastal Commission

1 Findings:

- 2 1. That the proposed development is in conformance with the Certified Local Coastal  
3 Program and all applicable policies in that **the project complies with all applicable**  
4 **requirements of the Mello I and Mello II segments of the Local Coastal Program**  
5 **and with all applicable policies regarding preservation of environmentally sensitive**  
6 **habitat areas.**
- 7 2. The proposal is in conformity with the public access and recreation policies of Chapter 3  
8 of the Coastal Act in that **no public access points or recreations areas are required of**  
9 **the project.**
- 10 3. **That a soils investigation was conducted and determined that the site slope areas are**  
11 **stable and that grading/development impacts are mitigable for at least 75 years or**  
12 **the life of the structure.**
- 13 4. **That slope disturbance will not result in substantial damage or alteration to major**  
14 **wildlife habitat or native vegetation in that the project is designed to cluster the**  
15 **development so that the sensitive habitat is preserved in an open space easement**  
16 **and the small amount of encroachment into steep slopes is limited to the amount**  
17 **allowed by the applicable Coastal Zone regulations.**
- 18 5. **That all environmental impacts will be mitigated pursuant to the Mitigation Plan**  
19 **and Monitoring Report approved as part of the project.**
- 20 6. **That the maximum density of development of the project shall be 7 units per gross**  
21 **acre, and the density of the proposed project is 3.9 units per gross acre.**
- 22 7. **That the underlying zoning shall be either P-C or RD-M and the underlying zone**  
23 **proposed is RD-M.**

24 Conditions:

- 25 1. The applicant shall apply for and be issued building permits for this project within  
26 two (2) years of approval or this coastal development permit will expire unless  
27 extended per Section 21.201.210 of the Zoning Ordinance.
- 28 2. Prior to the issuance of building permits, the applicant shall apply for and obtain a  
grading permit issued by the City Engineer.
3. Approval of CDP 98-73 is granted subject to the approval of the **Mitigated Negative**  
**Declaration and Mitigation Monitoring and Reporting Program and ZC 98-09,**  
**LCPA 98-06, SDP 98-19, SUP 98-06, and HDP 98-18, and the parcel map or lot**  
**line adjustment which consolidates the two western parcels, and is subject to all**  
**conditions contained in the Mitigated Negative Declaration and the Mitigation**  
**Monitoring and Reporting Program and Planning Commission Resolutions No.**  
**4617, 4618, 4619, 4620, 4621, and 4622, and the City Engineer's approval of the**  
**parcel map or lot line adjustment.**
4. **CDP 98-73 is not valid until LCPA 98-06 is effectively certified by the California**  
**Coastal Commission.**

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## NOTICE

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

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

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

PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on the 15th day of September, 1999, by the following vote, to wit:

AYES: Chairperson Compas, Commissioners Heineman, L'Heureux, Nielsen, Segall, Trigas, and Welshons

NOES:

ABSENT:

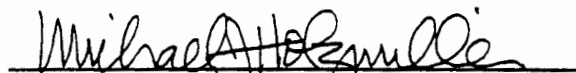
ABSTAIN:



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COURTNEY E. HEINEMAN, Chairperson  
CARLSBAD PLANNING COMMISSION

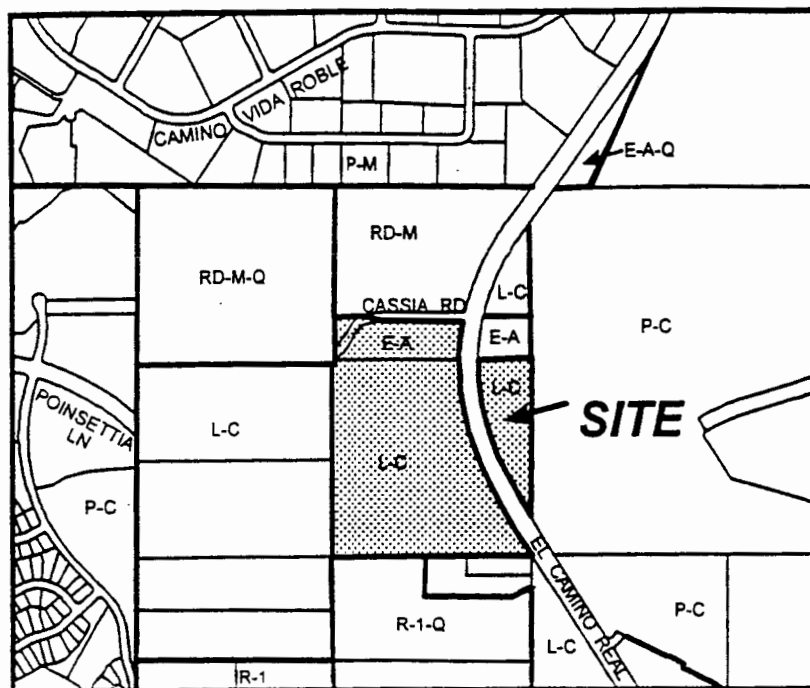
ATTEST:



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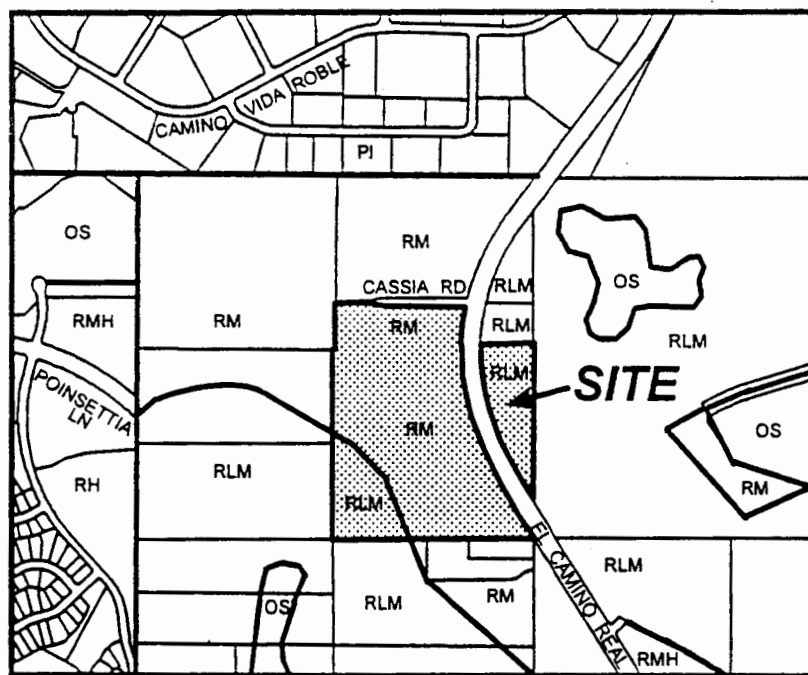
MICHAEL J. HÖLZMILLER  
Planning Director





EXISTING ZONING

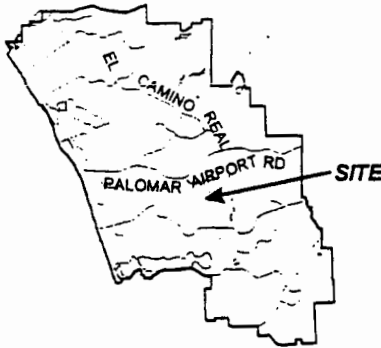
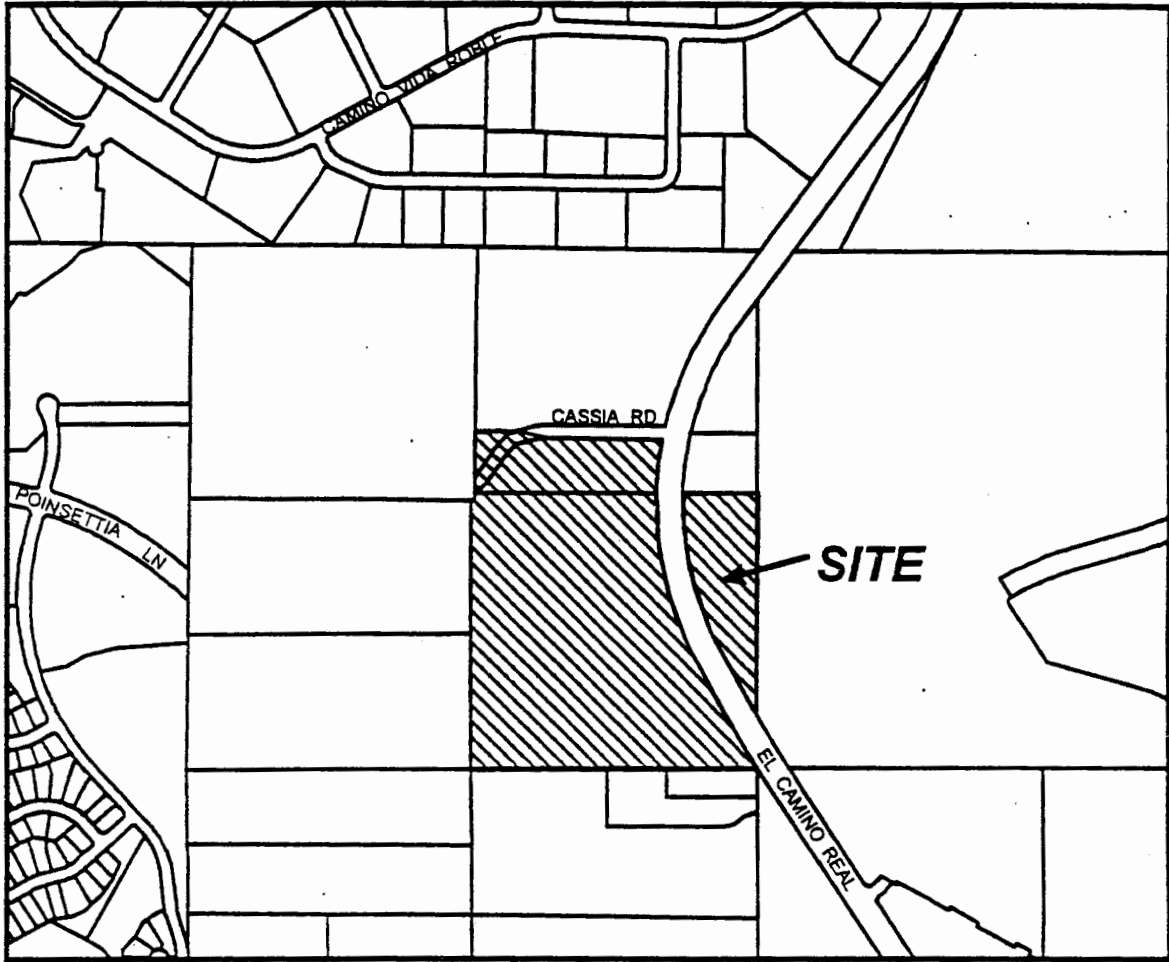
EXISTING GENERAL PLAN



# MANZANITA APARTMENTS

ZC 98-09/LCPA 98-06/SDP 98-19/  
SUP 98-06/HDP 98-18/CDP 98-73

Ex. 3  
CARLSBAD LCPA  
#1-2000E

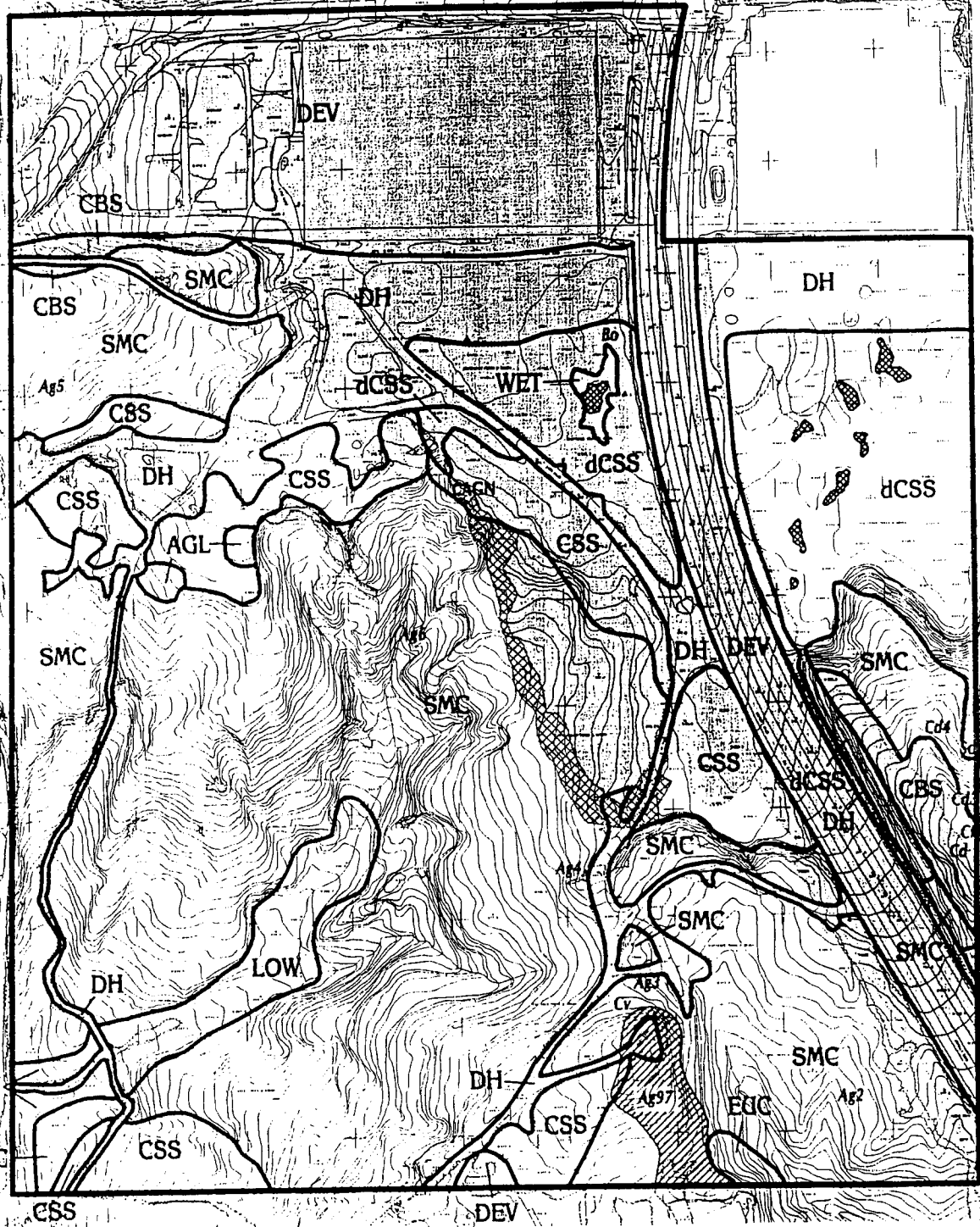


# MANZANITA APARTMENTS

ZC 98-09/LCPA 98-06/SDP 98-19/  
SUP 98-06/HDP 98-18/CDP 98-73

Ex. 4

CARLSBAD LCPA  
# 1-2006E



**VEGETATION TYPES:**

- CSS Coastal Sage Scrub
- SMC Southern Maritime Chaparral
- CBS Coyote Brush Scrub
- LOW Coast Live Oak Woodland
- WET Seasonal Wetland
- Vernal Pool
- AGL Annual Grassland
- EUC Eucalyptus Woodland
- DH Disturbed Habitat
- DEV Developed Land

NOTE: A lower case 'd' in front of a vegetation type designator indicates that it is disturbed.

**SENSITIVE PLANT SPECIES:**

- Ag or  *Arctostaphylos glandulosa*
- Bo *Brodiaea orcuttii*
- Cd *Comarostaphylis diversifolia*
- Cf *Corethrogyne filaginifolia* var. *linifolia*
- Cv *Ceanothus verrucosus*
- Sc *Selaginella cinerascens*

NOTE: Numbers indicate individual plant counts at that location.

**SENSITIVE ANIMAL SPECIES:**

- CAGN California gnatcatcher

- Proposed Limits of Grading
- Proposed Brush Management Area

EXHIBIT NO. 5
CARLSBAD LCPA #1-2000E.
BIOLOGICAL RESOURCE MAP WITH GRADING LIMITS
California Coastal Commission

057-265



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
SAN DIEGO FIELD OFFICE  
15886 WEST BERNARDO DRIVE, SUITE 300A  
SAN DIEGO, CALIFORNIA 92127

REPLY TO  
ATTENTION OF:

August 4, 1999

Office of the Chief  
Regulatory Branch

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION

Manzanita Partners, L.L.C.  
1135 Cuchara Drive  
Del Mar, CA 92014

Dear Gentlemen:

This is in reply to your letter (No. 982025500-DZ) dated January 20, 1999, concerning our permit authority under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) over your proposal to discharge fill in a vernal pool (0.02 acre) and surrounding seasonal wetland (0.08 acre), for the widening of El Camino Real from four to six lanes, as required by the City of Carlsbad, in association with your construction of a 157-unit apartment complex, in the City of Carlsbad, San Diego County, California (as shown on the attached drawings).

The Corps of Engineers has determined that your proposed activity complies with the terms and conditions of nationwide permit NW14 (Federal Register, December 13, 1996, pp. 65874-65922) for fills for roads crossing waters of the United States (including wetlands and other special aquatic sites).

As long as you comply with the attached nationwide permit terms and conditions, an individual permit is not required. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time. Presently, all nationwide permits are scheduled to expire on February 11, 2002 except nationwide permit 26 which is currently scheduled to expire on September 15, 1999. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice announcing the changes when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of the nationwide permit.

Furthermore, you must comply with the following Special Conditions:

1. The permittee shall mitigate impacts to 0.1 acre(s) of wetlands (0.02 acre(s) of vernal pool and 0.08 acre of surrounding seasonal wetland) by: a) restoring 0.1 acre(s) of vernal pool basin area; and b) preserving and enhancing 0.09 acres(s) of extant vernal pools and their surrounding watershed. Mitigation restoration, preservation and enhancement shall begin prior to the planned date of initiating waters/wetlands impact authorized by this permit.

EXHIBIT NO. <b>16</b>
CARLSBAD
LCPA #1-2000E.
ARMY CORPS OF ENG 404 PERMIT
4 pages California Coastal Commission

-2-

2. The permittee shall submit final mitigation plans for approval at least 30 days prior to the planned date of initiating waters/wetlands impact authorized by this permit. The biologist responsible for the preparation and implementation of this plan must have demonstrable experience in the restoration and management of vernal pool ecosystems in southern California. These final plans shall be prepared in detail according to the Corps "Habitat Mitigation and Monitoring Proposal Guidelines (1 June 1993) and shall include: a) all final specifications and topographic-based layout restoration grading (for each restored basin and surrounding watershed) and enhancement planting plans (with 0.1-foot contours). All restored basins shall be graded in a way that mimics natural vernal pool distribution with associated mima mounds (based on historic photographs if possible), and shall not impact the watersheds of extant vernal pools. Enhancement of the extant vernal pools and their surrounding upland watersheds shall include removal of non-native plant species and replacement with native plant species; b) submittal of as-built drawings of the mitigation grading to the Corps (cc: USFWS); c) a final implementation schedule that indicates when all wetland impacts, as well as mitigation restoration and enhancement will begin and end; d) five years of success criteria for vernal pool restoration and enhancement areas; e) minimum five years of maintenance and monitoring of vernal pool restoration and enhancement areas, unless success criteria are met earlier; f) planting pallets (plant species, size and number/acre) and seed mix (plant species and pounds/acre), and details on inoculum source for vernal pools (if used); and g) annual mitigation maintenance and monitoring reports shall be submitted to the Corps (cc: USFWS).

3. The permittee shall impact no more than 0.1 acre(s) of wetlands (0.02 acre(s) of vernal pool and 0.08 acre of surrounding seasonal wetland). The permittee shall fence (with silt barriers) the limits of the construction corridor to prevent additional waters/wetlands impact and spread of silt from the construction zone into adjacent waters/wetlands. The permittee shall submit to the Corps (cc: USFWS) for approval final construction and excavation plans and photographs showing fenced and marked limits of impact, and all Corps jurisdictional areas to be impacted and preserved at least 10 days prior to the planned date of initiating waters/wetlands impact authorized by this permit. If waters/wetlands impacts occur outside of these limits, all work shall cease and the Corps shall be notified immediately. Any unauthorized wetland impacts that occur outside of the fenced and marked limits shall be mitigated at a minimum 5:1 ratio.

4. The permittee shall staff a qualified biologist on site during project construction to ensure compliance with all requirements of this permit, and produce reports that document compliance with these requirements. The permittee shall submit the biologist's name, address, telephone number, and work schedule on the project to the Corps at least 10 days prior to the planned date of initiating waters/wetlands impact authorized by this permit. The permittee shall also report any violation to the Corps within one day of its occurrence, and submit compliance reports (including photographs of all areas of authorized impact) on a monthly basis to the Corps and USFWS.

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5. The permittee shall submit to the Corps (cc: USFWS) within 60 days of completion of waters/wetlands impact authorized by this permit a report that will include as-built construction drawings with an overlay of waters/wetlands that were impacted and preserved, photographs of waters/wetlands areas to be preserved, and a summary of all project activities which documents that authorized waters/wetlands impact were not exceeded, and compliance with the conditions above.

6. The permittee shall preserve and place a biological conservation easement (in favor of the Corps or an agent approved by the Corps) in perpetuity on the vernal pool mitigation/preserve area, and submit a draft easement to the Corps at least 30 days prior to the planned date of initiating waters/wetlands impact authorized by this permit. The form and content of the easement shall follow the enclosed example, and be approved by the Corps prior to its execution. The easement shall state clearly that no other easements or activities which would result in soil disturbance and/or vegetation removal, except as approved by the Corps, shall be allowed within the biological conservation easement area. The permittee shall submit the final easement to the Corps within 30 days of receiving Corps approval of the draft easement.

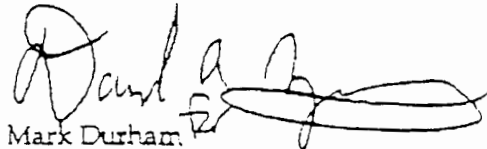
7. The permittee shall post a performance bond (see attached form), or Letter of Credit (LOC), with the Corps for mitigation restoration and enhancement, and 5 years of maintenance and monitoring of for mitigation (including a 20% contingency to be added to the total costs). This bond, or LOC, is to guarantee the successful implementation of the wetland mitigation construction, maintenance and monitoring. The surety company used must be listed on the U.S. Department of the Treasury Circular 570 as a company holding a Certificate of Authority as an Acceptable Surety on Federal Bonds. For a current list of Treasury-authorized companies, write or call the Surety Bond Branch, Financial Management Services, Department of the Treasury, Washington DC 20227; (202) 874-6850. The permittee shall submit a draft bond, or LOC, with an itemized cost list to the Corps for approval at least 30 days prior to the planned date of initiating waters/wetlands impact authorized by this permit. The permittee shall submit the final bond, or LOC, for the amount approved by the Corps within 30 days of receiving Corps approval of the draft bond or LOC.

8. The permittee shall follow all Reasonable and Prudent Measures, and Terms and Conditions, of the "Biological Opinion for the U.S. Army Corps of Engineers Permit No. 98-202550G-DZ; Manzanita Partners; City of Carlsbad, San Diego County, California (1-6-99-F-063)" (USFWS, August 1999).

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain

other Federal, state, or local authorizations required by law. Thank you for participating in our regulatory program. If you have any questions, please contact David A. Zoutendyk of my staff at (619) 674-5384.

Sincerely,



Mark Durham  
Chief, South Coast Section  
Regulatory Branch

Enclosure



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
Carlsbad Field Office  
2730 Loker Avenue West  
Carlsbad, California 92008



OCT 21 1999

Colonel John P. Carroll  
District Engineer  
Los Angeles District, Corps of Engineers  
P.O. Box 2711  
Los Angeles, California 90055-2325

Attn: Regulatory Branch, San Diego Field Office; Russell Kaiser

Re: Biological Opinion for the U.S. Army Corps of Engineers Permit  
No. 99-2025500-DZ; Manzanita Partners; City of Carlsbad, San Diego County,  
California (1-6-99-F-063)

Dear Colonel Carroll:

This document represents the U.S. Fish and Wildlife Service's biological opinion, which has been prepared in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) in response to your May 28, 1999 request for formal consultation with the Fish and Wildlife Service (Service). At issue is the take of one pair of coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher), a federally listed bird, and an unspecified amount of Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*; manzanita), a federally listed plant, that would result from the implementation of the Manzanita Partners development project and construction associated with the required widening of El Camino Real.

This biological opinion is based on information included in, but not limited to: 1) Mitigated Negative Declaration for Manzanita Partners (ZC 98-09/LCPA 98-06/SDP 98-19/SUP 98-06/HDP 98-18/CDP 98-73) prepared by the City of Carlsbad (May 3, 1999); 2) Pre-Construction Notification for Manzanita Partners, No. 982025500-DZ; 3) *Habitat Management Plan for Natural Communities in the City of Carlsbad* (City of Carlsbad, 1999); 4) *Biological Resources Report and Impact Assessment, Manzanita Partners Property, Carlsbad, California* (Dudek & Associates; December 21, 1998); 5) *Reinitiation of Formal Consultation on the Implementation of the Special Rule for the Coastal California Gnatcatcher* 1-6-93-FW-37R2 (U.S. Fish and Wildlife Service 1999); 6) a report titled *4(d) Habitat Loss Permits for Coastal California Gnatcatcher and Coastal Sage Scrub in San Diego and Orange Counties* (U.S. Fish and Wildlife Service; January 1999), 7) *Recovery Plan for Vernal Pools of Southern California* (U.S. Fish and Wildlife Service 1998); 8) a letter report from Harold Wier (Dudek & Associates) to David

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Zoutendyk (U.S. Army Corps of Engineers) dated April 12, 1999; 9) a letter report on the results of dry season vernal pool sampling for the Manzanita Partners project (Dudek & Associates; July 20, 1999); 10) *Draft Conceptual Mitigation Plan for Vernal Pool Restoration and Enhancement at the Manzanita Partners Property, Carlsbad, California* (Dudek & Associates, August 1999); and 11) U.S. Army Corps of Engineers Nationwide Permit Authorization No. 982025500-DZ (August 4, 1999). The above references and those provided in the Literature Cited section are contained in the administrative record housed at the Service's Carlsbad Field Office.

## DESCRIPTION OF THE PROPOSED ACTION

The proposed Manzanita Partners apartment project is located in the southern portion of the City of Carlsbad, northwestern San Diego County, California (Figure 1). The 46.7-acre site situated on both sides of El Camino Real, approximately 1.5 miles south of its intersection with Palomar Airport Road, with the majority of the property (40.8) acres located to the west of El Camino Real (Figure 2)

The Manzanita Partners apartments project proposes the clustering of 157 two- and three-bedroom apartment units on 9.75 acres in the northeastern corner of the 40.8-acre western portion. In addition, pursuant to City of Carlsbad requirements, frontage portions of El Camino Real will be widened. Approximately 31.5 acres of the site will be preserved, 27 acres of which is natural habitat that supports significant biological resources. Upon approval by federal, state and local authorities, the project will be graded and built in accordance with the approved development footprint which is depicted as Figure 3.

The proposed project description contains the following measures which will be implemented in order to avoid, minimize, or compensate for adverse effects on listed species and vernal pools:

1. The 31.5 acres which occur outside of the development area will be conserved as biological open space for the sole purpose of preserving and enhancing resource values. The conservation easement will be in favor of the U.S. Army Corps of Engineers (Corps) or other entity approved by the Corps. Fee title will be held by a qualified conservation entity acceptable to the Corps, Service, and Department. Ultimately, it is anticipated that these conserved lands will be subsumed into, and managed as part of, the preserve formed through the City of Carlsbad's Habitat Management Plan (April 1999; HMP) or the subregional NCCP plan for northern San Diego County, the Multiple Habitat Conservation Plan (MHCP).
2. Impacts to the vernal pool basin and seasonal wetlands west of El Camino Real shall be compensated for through the conservation, restoration, and enhancement of vernal pool basins and watershed within 6.8 acres of lands conserved on the eastern side of El Camino Real. A vernal pool restoration/enhancement plan has been submitted to the Corps and Service for review and approval prior to implementation. This plan is intended to expand upon that information provided in the section entitled "Manzanita Partners Property, Carlsbad, California, Vernal Pool Mitigation/Enhancement Program and Coastal Sage Scrub Revegetation Project" found as an

attachment to the April 12, 1999 letter prepared by Dudek & Associates and accordance with the Corps "Habitat Mitigation and Monitoring Proposal Guidelines" (June 1 1993). Agency approval of this plan will be received prior to the issuance of a grading permit. As part of the plan, restored/enhanced vernal pools and watershed shall be monitored and maintained for five years following treatment, or for a shorter period if agreed to by the resource agencies. Manzanita Apartments shall ensure that the contractors responsible for the preparation and implementation of the restoration/enhancement plan have demonstrable experience in the successful restoration, monitoring, and maintenance of vernal pool ecosystems in southern California.

3. The limits of construction shall be delineated in the field by the project biologist and these areas fenced prior to the commencement of brushing, grading, or any construction activities. Silt fencing shall be installed around the perimeter of existing vernal pools prior to construction activities and during weed eradication procedures to protect from weed invasion and siltation. A qualified biological monitor shall be on-site during project construction to ensure compliance with all requirements of the ND, Corps permit, and this biological opinion.

4. Native plant materials which are suitable for use in the restoration/enhancement plan shall be identified, marked and salvaged. In addition, remaining upland vegetation and topsoil in areas to be developed shall be stockpiled for use in vernal pool watershed restoration efforts.

5. No brushing of habitat or grading activities shall occur during the breeding season of the gnatcatcher, which is considered to be that period between February 15-August 30, annually. If it can be demonstrated to the satisfaction of the resource agencies that gnatcatchers are not present on the site or individual gnatcatchers would not be adversely affected by grading or habitat removal, then these activities may be allowed to occur during the breeding season.

## STATUS OF THE SPECIES/ENVIRONMENTAL BASELINE

### Existing Conditions

→ Biological resources identified on-site include southern maritime chaparral (21.6 acres), coastal sage scrub (9.1 acres), coast live oak woodland (1.2 acres), vernal pool/seasonal wetland (0.2 acre), annual grassland (0.1 acre), and eucalyptus woodland (0.1 acre). The remaining acreage is comprised of disturbed habitat (5.9 acres) and developed lands (9.4 acres). Federally listed species which occur on-site include the gnatcatcher and Del Mar manzanita. Current legal land uses on-site include a San Diego Gas & Electric transmission line corridor and a nursery operation. Surrounding land uses include residential development, nursery operations, and undeveloped land. Site elevations range from approximately 220 feet above mean sea level (AMSL) to 330 feet AMSL.

Coastal California Gnatcatcher

The coastal California gnatcatcher is a recognized subspecies of the California gnatcatcher (*Poliophtila californica* [Brewster]) and is endemic to coastal southern California and northwestern Baja California, Mexico (American Ornithologists' Union 1983, 1989; Atwood 1980, 1988, 1990, 1991). It is a non-migratory, resident species found on the coastal slopes of southern California. It ranges from southern Ventura southward through Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties into Baja California, Mexico to approximately 30 degrees North latitude near El Rosario (American Ornithologists' Union 1957, 1989; Atwood 1980, 1990; Jones and Ramirez 1995).

The gnatcatcher typically occurs in or near sage scrub habitat, which is a broad category of vegetation that includes the following plant communities as classified by Holland (1986): Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan sage scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub. Based upon dominant species, Sawyer and Keeler-Wolf (1995) further divide these communities into series such as black sage, brittlebush, California buckwheat, California buckwheat/white sage, California encelia, California sagebrush, California sagebrush/black sage, California sagebrush/Calfornia buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage. Sage scrub often occurs in a patchy, or mosaic, distribution pattern throughout the range for the gnatcatcher. Gnatcatchers also use chaparral, grassland, and riparian habitats where these plant communities occur adjacent to sage scrub. These non-sage scrub habitats are used for dispersal, however, data on dispersal use are largely anecdotal (Bowler 1995; Campbell *et al.* 1995). Although existing quantitative data about gnatcatcher use of these other habitats is limited, these areas may be critical during certain times of year for dispersal or as foraging areas during drought conditions. Breeding territories and nests have also been documented in non-sage scrub habitat.

The gnatcatcher is primarily insectivorous, gleaning insects and larvae from the leaves and stems of plants. Home range requirements for breeding gnatcatchers range from 3 to 18 hectares (approximately 7 to 43 acres) and territory sizes at inland sites tend to be much larger than those at coastal sites (Anderson 1991). Although gnatcatchers use a diverse range of plant species within sage scrub (Braden and Love 1995), quantitative data on population densities relative to vegetation sub-association types within sage scrub habitats are lacking. Information suggests, however, that small-scale differences in plant composition and/or structure may help explain discontinuities in gnatcatcher occurrence (Raabe 1995; Weaver 1995). Areal use requirements by gnatcatchers vary throughout the year with territorial behavior relaxing somewhat in the non-breeding season, allowing for an expansion in the size of the use area. These non-breeding areas are about 70 percent larger than breeding territories (Deeley 1995; Preston *et al.* 1996).

Comprehensive studies by Atwood (1988, 1990, 1991) indicated that the gnatcatcher's breeding season extends from February through August, peaking in April. Juvenile birds associate with their parents for several weeks after fledgling, then disperse from less than one mile to almost

nine miles (Bontrager and Gorospe 1995). Gnatcatchers are persistent nest builders, often attempting to fledge multiple broods. Life span is typically two to three years, although ages of up to five years have been recorded for some banded birds (Braden, McKernan, and Powell 1995a).

Although current declines in numbers and distribution of the gnatcatcher result from numerous factors, habitat destruction, fragmentation and adverse modification are the principal reasons for the gnatcatcher's threatened status (U.S. Fish and Wildlife Service 1996). Up to 90 percent of coastal sage scrub vegetation has been lost as a result of development and land conversion (Westman 1981; Barbour and Major 1977), and coastal sage scrub is considered to be one of the most depleted habitat types in the United States (Kirkpatrick and Hutchinson 1977; Axelrod 1979; Klopatek *et al.* 1979, Westman 1987; O'Leary 1990). In addition to agricultural use and urbanization, increases in fire frequency and the introduction of exotics have had an adverse impact on extant sage scrub communities. Additionally, nest parasitism by the brown-headed cowbird (*Molothus ater*) and nest predation further reduces chances of species survival (Unitt 1984; Arwood 1980). As a result, the Service listed the gnatcatcher as threatened on March 30, 1993 (U.S. Fish and Wildlife Service 1993a); no critical habitat has been designated.

As part of the federal listing, the Service prepared an Environmental Assessment (U.S. Fish and Wildlife Service 1993b) for a special rule pursuant to Section 4(d) of the Act, which defines the conditions under which take of gnatcatchers would not result in a violation of Section 9. Under the special rule, incidental take of the gnatcatcher which results from legal land-use activities in a jurisdiction which is actively in the process of preparing a conservation plan pursuant to the NCCP guidelines would not be considered a violation of Section 9 of the Act, provided that the Service determined that the NCCP Plan meets the issuance criteria for a section 10(a)(2)(B) "incidental take" permit. To date, seven NCCP Subregional and Subarea plans have been completed: City of Poway (San Diego County MSCP), the County of San Diego (MSCP), the City of San Diego (MSCP); San Diego Gas & Electric; Orange County Central/Coastal; and two Metropolitan Water District/RCHCA plans (Lake Mathews and Southwest Riverside County). A subregional NCCP plan for northwestern San Diego County, the MHCP, is currently being developed by the cities of Escondido, Vista, San Marcos, Oceanside, Carlsbad, Encinitas, and Solana Beach. At the time of the preparation of this biological opinion, the City of Carlsbad has decided to precede the other six MHCP cities with its HMP, which is a separate, stand-alone NCCP plan.

Additional aspects of gnatcatcher biology have been the subject of on-going research since the Service's listing of the gnatcatcher as threatened in 1993. The majority of data has been the result of additional field surveys, monitoring, and ecological investigations performed by both academic researchers and biological consultants. The availability of these data prompted a symposium on the gnatcatcher at University of California, Riverside, in the fall of 1995.

Data continued to be collected and, as a result, the Service re-examined its previous estimate of gnatcatchers pairs in the United States, adjusting it upward to 2,899 pairs (not including those

gnatcatcher pairs that had been authorized for take under approved NCCP plans, 4(d) special rule habitat loss permits (HLP), habitat conservation plans (HCP) prepared pursuant to section 10(a)(1)(B) of the Act, or through consultations pursuant to section 7 of the Act. This estimate was still only an approximation, and not subject to any confidence intervals. As the Service does not have statistically sufficient amounts of quantitative data, we cannot state with confidence that the overall gnatcatcher population has increased or decreased since this time. Recognizing this, and the fact that population estimates merely represent a snapshot in time and do not account for natural fluctuations in a population, we maintain that the estimate of 2,899 pairs is still valid. While the environmental baseline information includes site-specific data where focused surveys have been conducted, we have not summarized these data to determine an overall population count due to the absence of surveys in many areas.

A population analysis conducted for the gnatcatcher in San Diego County identified a number of core population zones within the MHCP area (SANDAG 1997). Maintenance of core populations and landscape linkages is critical to the continued existence of gnatcatcher populations within MHCP, particularly in the area from Palomar Airport Road southeast to Lake Hodges. Natural habitat areas within the boundary of the MHCP have been fragmented by past agricultural and development patterns, leaving only a few areas where opportunities to maintain such linkages are possible. The Manzanita Partners project site is located within core population zone 170 where over 200 gnatcatcher occurrences have been recorded. Two pairs of gnatcatchers have been documented on-site, occurring in a matrix of coastal sage scrub and southern maritime chaparral habitats.

#### Del Mar Manzanita

Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*), a member of the heath family (*Ericaceae*), is one of six recognized subspecies of Eastwood manzanita (*A. glandulosa*) occurring in California and northwest Baja California, Mexico (Wells 1993). Del Mar manzanita is an erect, white-flowered shrub, generally 1-1.2 m (3.3 to 4 ft) tall. Del Mar manzanita is restricted to sandstone terraces and bluffs below 400 meters elevation from Carlsbad south to Torrey Pines State Park and Reserve, extending inland to the Carmel Mountain/Del Mar Mesa and Rancho Santa Fe areas of western San Diego County. Due to the limited range of Del Mar manzanita and continuing development pressure in coastal San Diego County, the species was federally listed as endangered on October 7, 1996 (*Federal Register* 61 FR 52384).

Del Mar manzanita occurs in southern maritime chaparral, a low, fairly open subtype of chamise or southern mixed chaparral found on marine sandstone substrates in the fog-influenced coastal zone of southern California and northwestern Baja California, Mexico. Southern maritime chaparral is a unique plant community and has suffered significant declines in recent years. Estimates indicate that between 82 and 93 percent of southern maritime chaparral vegetation in San Diego County has been lost as a result of urban and agricultural development (Oberbauer and Vanderwier 1991). Much of the remaining southern maritime chaparral in San Diego County is distributed in Torrey Pines State Park and Reserve, on Carmel Mountain/Del Mar

Mesa, and in the cities of Carlsbad, Del Mar, and Encinitas. Del Mar manzanita is a locally common to rare component within the plant community where it is found these areas.

The imminent threat to Del Mar manzanita is the loss of southern maritime chaparral which continues to occur as a result of one or more of the following: urban development (including fuel modification activities), agricultural conversion, and recreational activities (e.g. trail placement, mountain-biking). Rapid urbanization of San Diego County has already eliminated a significant acreages of southern maritime chaparral which supported populations of Del Mar manzanita. The suppression of natural fire cycles also plays a role in the long-term persistence of chaparral communities in southern California plant, affecting community distribution and composition. Urbanization and the disruption of natural fire cycles may have significant effects on even preserved southern maritime chaparral.

In 1982, approximately 16,600 to 17,600 individuals of Del Mar manzanita were distributed throughout approximately 26 populations in San Diego County (Roberts 1992; OGDEN 1995). A significant number of these populations have been adversely affected or eliminated since the time of this estimate. By way of example, in 1987 southern maritime chaparral near San Dieguito Creek was cleared and converted to agriculture, however, agriculture activities were conducted for one season and then discontinued (Oberbauer, pers. comm. 1992). Approximately 500 Del Mar manzanita were lost as part of this habitat conversion. Most of the once extant populations occurred on private land, with only four found on public lands.

Currently, the number of extant individuals in San Diego County is estimated to be between 9,400 and 10,300 (Roberts 1993; OGDEN 1995), with over 75 percent of the United States' Del Mar manzanita found in six population concentrations in Torrey Pines State Park and Reserve, Carlsbad, Del Mar, and Encinitas. Four of these six populations are located in Carlsbad and Encinitas and threatened by approved or proposed development projects. The implementation of these projects will result in the elimination of over 1,900 individuals (~18-20 percent) of the remaining Del Mar manzanita. Furthermore, the additional loss of 1,000 individuals will likely result from indirect impacts such as habitat fragmentation, fuel modification and edge effects (Sweetwater Environmental Biologists 1993a, Roberts 1993). This would result in an approximately reduction in the number of individuals by 28-30 percent. Several of the smaller populations of Del Mar manzanita occur in Carlsbad, Carmel Valley, and Encinitas and on Carmel Mountain/Del Mar Mesa.

Del Mar manzanita occurs in Baja California, Mexico, having been reported from five localities in northwestern Baja California, Mexico, from just east of Tijuana along the United States border, to Cerro el Coronel and Mesa Descanseco 40 km (25 mi) south of the United States border (Roberts 1992). This region represents one of the most rapidly developing in Baja California, with major acreages being converted to agricultural and tourist uses and the status of these populations is unknown.

On-site, southern maritime chaparral provides habitat for 114 individuals of Del Mar Manzanita distributed in small groupings, with the exception of one large group of 97 individuals, throughout the western portion of the project site.

### EFFECTS OF THE ACTION

→ The proposed development will permanently affect 16.2 acres, including the following natural habitats: coastal sage scrub (3.4 acres); southern maritime chaparral (1.8 acres); vernal pool basin (0.02 acre); and seasonal wetland (0.08 acre). The remaining acreage is either disturbed or currently being used for horticultural nursery operations. Although habitat clearing will not be conducted during the breeding season, it is estimated that a pair of gnatcatchers will be lost as a result of harm due to permanent habitat loss. This take represents only one pair out of an estimated 200 pairs in core population zone 170 and, therefore, would not jeopardize the continued existence of the species in the wild. No Del Mar manzanita will be affected as part of the permanent loss of 1.8 acres of southern maritime chaparral.

To offset these losses, the project conserves approximately 31.5 acres on-site, including 19.8 acres of southern maritime chaparral, 5.8 acres of coastal sage scrub, 1.2 acres of coast live oak woodland, 0.09 acre of vernal pool basin, 0.1 acre of annual grassland, 3.2 acres of disturbed habitat, 1.1 acres of developed land, one pair of gnatcatchers, and at least 114 individuals of Del Mar manzanita. These lands are in a configuration which adds to, and complements, the preserve being proposed in the HMP and the MHCP.

The coastal sage scrub which will be directly affected provided habitat for one pair of gnatcatchers. While habitat clearing will be restricted to that time outside of the breeding season, habitat loss will result in harm through the abandonment of a territory. Over 200 gnatcatcher occurrences have been documented within core (gnatcatcher) population zone 170 (SANDAG 1996). The take associated with the Manzanita Partners project will result in the loss of one pair through the permanent removal of habitat, however, this will not jeopardize the continued existence of the species.

### CUMULATIVE EFFECTS

Cumulative effects are those impacts of future non-Federal (State, local government, or private) activities on endangered or threatened species or critical habitat that are reasonably certain to occur during the course of the Federal activity subject to consultation. Future Federal actions are subject to the consultation requirements established in section 7 of the Act and, therefore, are not considered cumulative in the proposed project.

The majority of activities anticipated to affect this species within the foreseeable future in this region of San Diego are local projects within participating NCCP jurisdictions subject to the section 4(d) special rule, section 7, or section 10 of the Act. Those portions of San Diego County within the distribution range of the gnatcatcher are within NCCP subregion boundaries; future

NCCPs (specifically the MHCP and the County of San Diego's Northern Segment to the MSCP) and HCPs will incorporate substantive impact avoidance and compensation measures to address habitat destruction, cowbird parasitism, and indirect impacts that would otherwise preclude gnatcatcher survival and recovery. Therefore, all projects which have the potential to adversely affect gnatcatchers will include analyses to address such impacts consistent with the Conservation Guidelines or section 10(a) of the Act.

## CONCLUSION

After reviewing the current status and baselines for the gnatcatcher and Del Mar manzanita and the effects (including cumulative) of the proposed action, it is the Service's biological opinion that the proposed project is not likely to jeopardize the continued existence of the gnatcatcher or Del Mar manzanita. Critical habitat has not been designated for the gnatcatcher or Del Mar manzanita, therefore, none will be adversely modified or destroyed.

The Service reached this conclusion by considering the following:

1. The anticipated level of take will not preclude the design and implementation of a habitat preserve system in the region that ultimately provides for the survival of a viable gnatcatcher population in the region. The conserved lands add to the preservation of a landscape corridor in an important portion of the MHCP planning area and, therefore, assist in the establishment of a future preserve intended to provide for the long-term conservation of gnatcatchers in and between northwestern San Diego County and the Lake Hodges area.
2. Adverse effects of the project on the gnatcatcher and its habitat are minor. Of the approximately 200 occurrences of gnatcatchers which have been documented in population core area 170 (SANDAG 1997), the loss of one pair will not compromise the likelihood of species survival. The Service anticipates that adverse impacts to the gnatcatcher which will result from project implementation will be adequately offset by the project design and compensation measures.
3. No clearing of Diegan coastal sage scrub or southern maritime chaparral shall occur between February 15 and August 30, annually, unless protocol-level surveys have been conducted to confirm that no gnatcatchers are using the habitat for breeding or nesting activities. If breeding or nesting behavior is observed, a biological monitor will coordinate with clearing/construction supervisor and the Service to implement measures to avoid direct impacts to gnatcatchers. These measures are intended to reduce the potential for disruption of reproductive behavior.



## INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(e) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary and must be undertaken by the Corps so that they become binding conditions of the permit issued to Manzanita Partners, as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require Manzanita Partners to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Corps or Manzanita Partners must report the progress of the actions and its impact on the species to the Service as specified in the incidental take statement.

### Amount or Extent of Take

→ The Service anticipates that the proposed project may result in the incidental take of one pair of gnatcatchers, in the form of harm, due to the loss of 3.4 acres of coastal sage scrub.

No Del Mar manzanita occur in the 1.8 acres of southern maritime chaparral to be directly affected by project implementation. It should be noted that sections 7(b)(4) and 7(o)(2) of the Act generally do not apply to listed plant species. Limited protection of listed plants from take is, however, provided to the extent that the Act prohibits the removal and reductions to possession of Federally listed endangered plants or the malicious damage of such plants on areas under Federal jurisdiction, or the destruction of endangered plants on non-Federal areas in violation of State law or regulation or in the course of any violation of a state criminal trespass law.

The Fish and Wildlife Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended, or the Bald and

Golden Eagle Protection Act of 1940, as amended, if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

### Reasonable And Prudent Measures

The Service believes the following reasonable and prudent measure is necessary and appropriate to minimize take of the California gnatcatcher and Del Mar manzanita:

1. The applicant shall ensure that the take of gnatcatchers and impacts associated with project implementation are avoided and/or minimized during vegetation clearing, grading, and all phases of construction.
2. The applicant shall minimize direct and indirect project impacts through the onsite habitat conservation and restoration/enhancement activities.

### Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Corps, Manzanita Partners, and their agencies are responsible for compliance with the following terms and conditions which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. To implement reasonable and prudent measure number 1, the applicant shall ensure that the following terms and conditions are met:
  - a. All habitat to be directly affected shall be cleared during the period between August 31 and February 14 to avoid impacts to gnatcatchers.
  - b. The applicant shall abide by Special Conditions 3, 4, and 5 of the U.S. Army Corps of Engineers Nationwide Permit Authorization No. 982025500-DZ.
2. To implement reasonable and prudent measure number 2, the applicant shall ensure that the following terms and conditions are met:
  - a. The applicant shall dedicate a conservation easement over the 31.5 acres which occur outside of the development area in favor of the U.S. Army Corps of Engineers (Corps) or other entity approved by the Corps. In addition, the applicant shall give fee title to a qualified conservation entity acceptable to the Corps, Service, and Department. This dedication and transfer of fee title shall occur prior to the issuance of a grading permit or any other associated permit which would allow for removal of habitat.

- b. The applicant shall ensure that native plant materials found within the development area which are suitable for use in upland restoration efforts are identified, marked, and salvage prior to any habitat removal activities. In addition, in development areas, native topsoil shall be salvaged and stockpiled for use in vernal pool watershed restoration efforts.
- c. The applicant shall install abide by Special Conditions 1, 2, 6, and 7 of the U.S. Army Corps of Engineers Nationwide Permit Authorization No. 982025500-DZ.

#### Disposition of Sick, Injured, or Dead Specimens

The Service's Carlsbad Office is to be notified within three working days should any federally listed species be found dead or injured during this project. Notification must include the date, time, and location of the carcass, and any other pertinent information. Dead animals may be photographed and left on-site or collected, labeled with the above information, and stored in a freezer. Injured animals should be transported to a qualified veterinarian. Should any treated animals survive, the Service should be re-contacted regarding the final disposition of the animals. The Service contact person is Julie Vanderwier; she may be contacted at the letterhead address or at (760) 431-9440.

#### CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. The term "Conservation Recommendation" has been defined as Service suggestions regarding discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The recommendation provided below relates only to the proposed actions and do not necessarily represent complete fulfillment of the agency's 7(a)(1) responsibilities.

1. Given the uniqueness of vernal pool habitat and their regional scarcity in southern California, the Service recommends that the Corps carefully examine the cumulative effects to vernal pools, the availability of compensation sites, and whether vernal pools should be withdrawn as a disposal site under section 404(c) of the Clean Water Act.

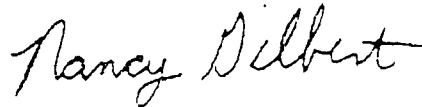
#### REINITIATION NOTICE

This concludes formal consultation on the proposed Manzanita Partners apartment development project. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a matter or to an extent not considered in this biological and conference opinion; (3) the agency

action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this biological/conference opinion; or (4) a new species not covered by this opinion is listed or critical habitat designated that may be affected by this action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take should cease pending reinitiation.

If you have any questions concerning this Biological Opinion, please contact Julie Vanderwier of the Service's Carlsbad Field Office at (760) 431-9440.

Sincerely,



Nancy Gilbert

Acting Assistant Field Supervisor