

## ALIFORNIA COASTAL COMMISSION

AN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
AN DIEGO, CA 92108-4421  
619) 767-2370



## RECORD PACKET COPY

10/28/2004

**Wed 10b**

**TO:** COMMISSIONERS AND INTERESTED PERSONS

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

**SUBJECT:** STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR  
AMENDMENT NO. 2-04B (Black Rail rezone) for Commission Meeting of  
November 17-19, 2004)

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

The proposed LCP amendment was filed complete on August 12, 2004 and includes two separate components involving changes to both the certified LCP land use plan and the implementation plan. The subject component (#2-04B) would change the zoning designation of a 4.4-acre site located on the southwest corner of Black Rail Rd and Poinsettia Lane in Carlsbad from LC (Limited Control) to R-1 (One-family Residential). LCPA #2-04A proposes modifications to the Agricultural Mitigation Fee program and staff needs additional time to review that component. A time extension for up to one year for LCPA #2-04A is before the Commission at this meeting.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of the proposed LCP amendment as submitted. The proposed rezone to R-1 is consistent with the certified Mello II LUP designation of RLM (Medium Density Residential) allowing 0-4 du and would not result in adverse impacts to public access or sensitive resources.

The appropriate resolutions and motions begin on page 2. The findings for approval of the Implementation Plan Amendment as submitted begin on page 3.

**ADDITIONAL INFORMATION**

Further information on the submittal may be obtained from **Bill Ponder** 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. LCP HISTORY****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 remaining 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.

**B. STANDARD OF REVIEW**

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.

**C. 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 resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- I. MOTION:**     *I move that the Commission reject the Implementation Program Amendment for the City of Carlsbad Mello II Implementation Plan Amendment #2-04B [Black Rail rezone], as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

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

**RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

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

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD MELLO II IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED****A. AMENDMENT DESCRIPTION**

The subject component would change the zoning designation of a 4.4-acre site located on the southwest corner of Black Rail Rd. and Poinsettia Lane in Carlsbad from Limited Control (L-C) to One-family Residential (R-1). The existing LC zoning does not allow any development unless a zone change is proposed consistent with the underlying General Plan and LUP designation. The LCP Land Use designation for the project site is Residential Low to Medium Density (RLM) allowing 0-4 du. The L-C zone will be replaced with R-1 zoning, which allows for residential development of the site. The amendment accommodates the City's approval of a 12-lot subdivision on the site which becomes effective upon the Commission's approval of this LCP amendment. Because a zone change is required to remove the L-C zoning, a corresponding Local Coastal Program Amendment (LCPA) is needed due to the project site's location in the coastal zone.

**B. FINDINGS FOR APPROVAL**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's zoning ordinance serves as the certified

### Implementation Program.

a) Purpose and Intent of the Ordinance. Chapter 21.10 of the City's zoning code provides the intent and purpose of the R-1 zone which is to provide development standards and design guidelines to permit development of single and medium density residential uses.

Chapter 21.39 of the City's zoning code provides 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 for development have not been formalized. After proper planning or plan approval has been completed, property zoned L-C may be rezoned in accord with this title.

b) Major Provisions of the Ordinance. The amendment provides for the change of zoning of the identified parcel from L-C to R-1. The existing Limited Control (L-C) zoning does not permit development unless a zone change is proposed consistent with the underlying LUP designation.

The proposed R-1 zone allows single-family residential housing and associated amenities, sets a 35-foot height limit, establishes development standards for setbacks and placement of buildings, and provides other standards for construction design and exterior appearance. If the rezone is approved, the certified LCP requires the proposed development of single-family homes to obtain a site development plan and a coastal development permit by the City Planning Commission prior to building permit issuance.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The 3.71-acre site has been used for agricultural purposes and presently has an operating nursery containing container-grown plants. Topographically, the site falls to the west from Black Rail Road. The elevation difference from high to low is 57 feet. The site does not contain any sensitive vegetation or steep slopes. The alignment of Poinsettia Lane through the northern portion of the parcel left a small remainder parcel (3,300 sq.ft.) on the north side of Poinsettia Lane.

The site is surrounded by residential development to the north/northeast and south. A proposed church will be located to the east and undeveloped land exists to the west. Due to the past agricultural use and consistent with the certified LUP, the applicant is required to pay an agricultural conversion mitigation fee which will mitigate the loss of agricultural resources by preserving or enhancing other important coastal resources.

The property is designated in the certified Mello II Land Use Plan as Residential Low Medium (0-4 dua); thus, the proposed zoning is consistent with the LUP designation. The LCP land use designations for surrounding properties are primarily RLM.

The certified City of Carlsbad LCP land use plan (LUP) has been amended to incorporate the City's draft Habitat Management Plan (HMP) that was developed to meet the requirements of the Coastal Act, the Endangered Species Act and the Natural Communities Conservation Planning (NCCP) process. According to the City, the subject

site is identified as an "Agricultural" area in the draft Habitat Management Plan. The resource agencies have not yet approved the City's HMP, and the City considers the HMP to still be a "draft" document. However, it was certified as part of the LCP by the Commission in 2003 through LCPA #1-03B and contains policies addressing resource protection which are applicable to the proposal.

Since implementation plan amendments must be found consistent with the policies of the certified land use plan(s), the Commission must review the proposed zone change for its consistency with the certified HMP/LCP. The subject site is identified as a "standards" area in the certified HMP/LCP. The certified LUP includes Coastal Act Sections 30233 and 30240 as applicable standards of review for development within and adjacent to wetlands and other environmentally sensitive habitat areas. In addition, the HMP and certified LUP contain habitat protection requirements and conservation standards for the remaining properties within the Carlsbad coastal zone (most of which are undeveloped), to concentrate future development adjacent to already-developed areas and protect slopes greater than 25% grade and scenic natural landforms.

The "standards" areas involve specific properties within the City that are located in the biological core and linkage areas identified in the County Multiple Habitat Conservation Plan (MHCP). The City's standards are focused geographically, using the Local Facilities Management Zones identified in the City's Growth Management Plan. Standards properties have conservation goals and standards which 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 require additional consultation with the City and the wildlife agencies to determine whether the project complies with the HMP.

In this case, the site is within the standards area; however, it has been previously graded and developed and there is no resource value remaining. In such cases, the City should evaluate whether any portion of the site would be valuable as restored habitat area to provide a viable linkage between biological core areas identified in the HMP/LCP. As noted, existing development is located on three sides of the site; only the adjacent property to the west side is vacant. Currently, linkage areas exist in the SDG&E easement which runs north/south through the coastal zone about 1,500 feet west of the site. Several other "standards" properties west of the site that contain the utility easement could also provide feasible habitat linkage opportunities. Future planning of this area in accordance with the HMP/LCP should enhance connectivity between "core" preservation areas identified in the plan. Therefore, in this particular case, no linkage opportunities exist on the subject site and rezoning any portion of the subject site to open space would not be necessary to conform to the resource protection and habitat linkage requirements of the certified HMP/LUP.

In any event, the proposed rezoning will not affect or conflict with LCP policies regarding resource protection, access, recreational opportunities or views. Thus, the Commission finds that because the proposed rezoning would implement the LUP

designation, the amendment is consistent with and adequate to carry out the policies of the certified LUP.

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

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. 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.

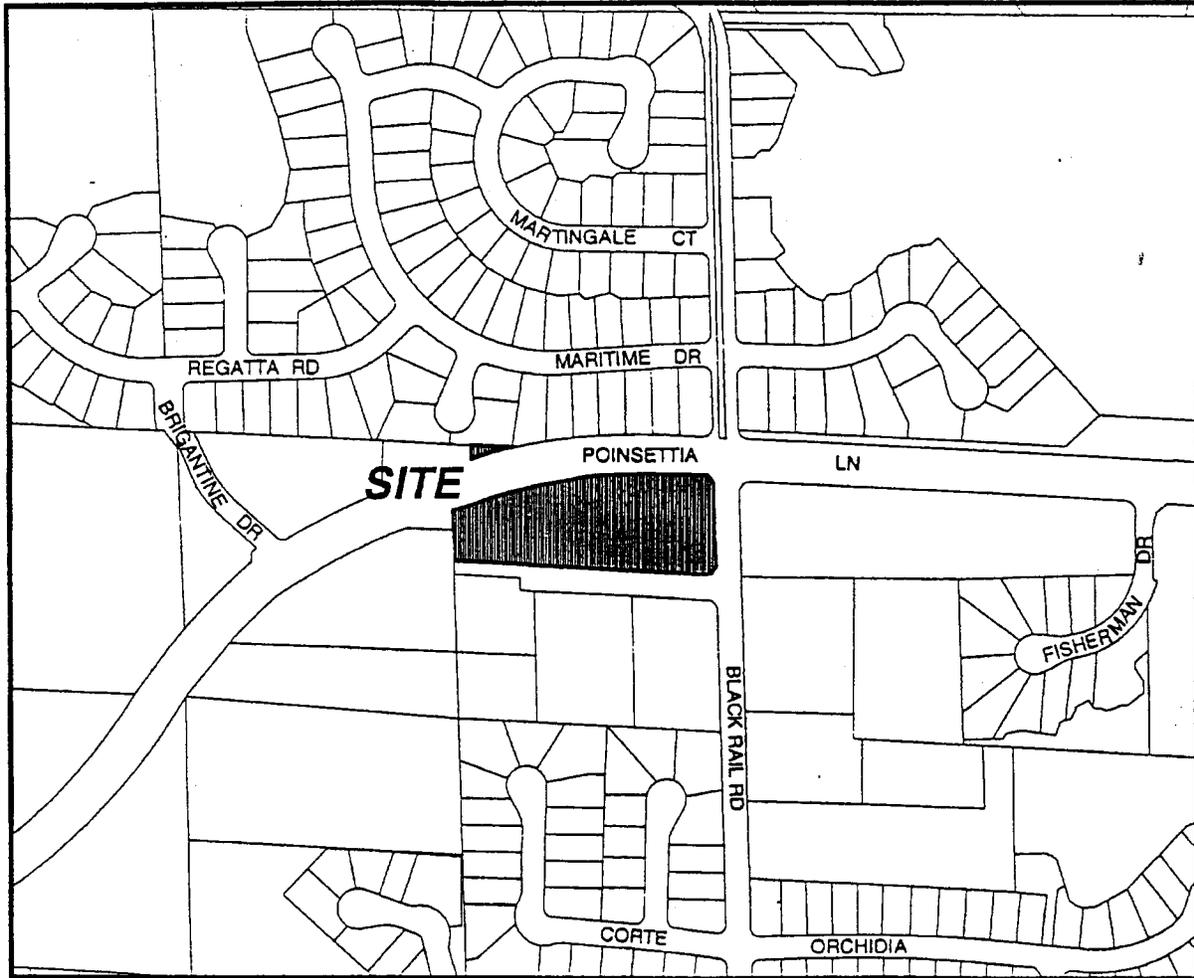
Nevertheless, the Commission is required, in approving an LCP submittal, or, as in this case, an IP amendment submittal, to find that the approval of the proposed IP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (14 C.C.R. §§ 13542(a), 13540(f), and 13555(b)). In this particular case, all of the proposed amendments are being approved as submitted. Thus, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms with CEQA provisions.

# PROPERTY ZONE CHANGE

ZC: 03-08

draft

final



Project Name: Black Rail Ridge			Related Case File No(s):LCPA 03-09/CT 03-13/ CDP 03-37	
Legal Description(s): The north half of the northeast quarter of the southeast quarter of the southwest quarter of section 22, Township 12 south, Range four west, san Bernardino Base and Meridian, in the City of Carlsbad, County of San Diego, State of California, according to the official plat thereof				
Zone Change			Approvals	
Property:	From:	To:	Council Approval Date:	
A. 215-070-33-00	Limited Control	R-1-7,500	Ordinance No:	
B.			Effective Date:	
C.			Signature:	
D.				
Attach additional pages if necessary				

**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**Carlsbad LCPA**  
**No. 2-04B**  
**Location Map**

1 RESOLUTION NO. 2004-170

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
3 CARLSBAD, CALIFORNIA, ADOPTING A MITIGATED  
4 NEGATIVE DECLARATION AND MITIGATION MONITORING  
5 AND REPORTING PROGRAM AND APPROVING A LOCAL  
6 COASTAL PROGRAM AMENDMENT, TENTATIVE TRACT MAP,  
7 AND COASTAL DEVELOPMENT PERMIT TO REZONE,  
8 GRADE, SUBDIVIDE 3.71 ACRES INTO 12 LOTS AND  
9 CONSTRUCT 11 SINGLE FAMILY HOMES ON PROPERTY  
10 LOCATED ON THE SOUTHWEST CORNER OF POINSETTIA  
11 LANE AND BLACK RAIL ROAD IN LOCAL FACILITIES  
12 MANAGEMENT ZONE 20.

13 CASE NAME: BLACK RAIL RIDGE

14 CASE NO.: ZC 03-08/LCPA 03-09/CT 03-13/CDP 03-37

15 The City Council of the City of Carlsbad, California, does hereby resolve as  
16 follows:

17 WHEREAS, the Planning Commission did on April 21, 2004, hold a duly noticed  
18 public hearing as prescribed by law to consider the Mitigated Negative Declaration and  
19 Mitigation Monitoring and Reporting Program, Local Coastal Program Amendment 03-09,  
20 according to Exhibit "LCPA 03-09" attached to Planning Commission Resolution No. 5604 and  
21 incorporated by this reference, Tentative Tract Map 03-13, and Coastal Development Permit  
22 03-37 to rezone and allow the development of 3.71 acres of land with 11 single-family houses,  
23 and adopted Planning Commission Resolutions No. 5602, 5603, 5604, 5605, and 5606  
24 recommending to the City Council that they be approved; and

25 WHEREAS, the City Council did on the 18th day of May, 2004  
26 hold a duly noticed public hearing as prescribed by law to consider the Mitigated Negative  
27 Declaration and Mitigation Monitoring and Reporting Program, Local Coastal Program  
28 Amendment, Tentative Tract Map, and Coastal Development Permit and;

WHEREAS, at said public hearing, upon hearing and considering all testimony  
and arguments, if any, of all persons desiring to be heard, the City Council considered all  
factors relating to the Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
Program, Local Coastal Program Amendment, Tentative Tract Map, and Coastal Development  
Permit.

...

EXHIBIT NO. 2
APPLICATION NO.
<b>Carlsbad LCPA</b>
<b>No. 2-04B</b>
Council Resolution

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The City Council of the City of Carlsbad, California does hereby resolve as follows:

- 1. That the above recitations are true and correct.
- 2. That the findings and conditions of the Planning Commission in Planning Commission Resolutions No. 5602, 5603, 5604, 5605, and 5606 constitute the findings and conditions of the City Council in this matter as amended by City Council adding these conditions:

"The developer shall submit to the Planning Department a uniform fencing plan subject to the review and approval of the Planning Director."

"The developer shall post an Aircraft Noise Notification Sign pursuant to the City of Carlsbad Noise Guidelines Manual with a minimum dimension of 36".

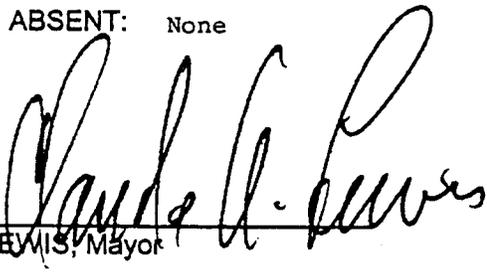
- 3. That the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program is adopted for the Zone Change 03-08, Local Coastal Program Amendment 03-09, Tentative Tract Map 03-13, and Coastal Development Permit 03-37 as shown in Planning Commission Resolution No. 5602, on file with the City Clerk and incorporated herein by reference.

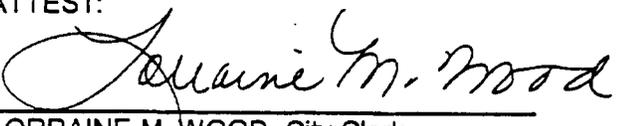
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 18th day of May 2004, by the following vote, to wit:

AYES: Council Members Lewis, Finnilla, Kulchin, Hall and Packard

NOES: None

ABSENT: None

  
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 CLAUDE A. LEWIS, Mayor

ATTEST:  
  
 \_\_\_\_\_  
 LORRAINE M. WOOD, City Clerk

(SEAL)