

CALIFORNIA COASTAL COMMISSION

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February 22, 2006

Tue 19.5a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MELLO II
LCP SEGMENT MAJOR AMENDMENT NO. #2-05 (North County
Habitat Bank), for Public Hearing and Possible Commission Action at
the Meeting of March 7-10, 2006)**

Synopsis

On December 23, 2005, the City of Carlsbad Local Coastal Program (LCP) Amendment #2-05 was filed in the San Diego District office. The amendment will affect both the land use and implementation plan portions of the certified Carlsbad LCP. A time extension has not been granted and the last day for Commission action is March 23, 2006.

Summary of Amendment Request

The proposed LCP amendment would change both the land use designation and zoning of a 18.73 ac. site located on south side of Palomar Airport Road between Armada Drive and Hidden Valley Road in the City of Carlsbad. The Mello II Land Use Plan designation for the northern half of the site would be changed from Planned Industrial to Open Space. The land use designation of Open Space on the southern half of the property would remain unchanged. The entire site would be rezoned from Limited Control (LC) to Open Space.

Summary of Staff Recommendation

Staff is recommending approval of the proposed LCP amendment as submitted. The proposed LCP amendment will result in the entire site being designated and zoned Open Space. No adverse impacts to coastal resources will result and the proposal is consistent with the resource protection policies of Chapter 3 of the Coastal Act and the certified Mello II LCP Land Use Plan. The site is currently vacant and the City has approved use of the site as a habitat mitigation bank providing approximately 15.7 acres of primarily wetland and riparian habitat to be used as mitigation credit for future development. The mitigation bank proposal is not before the Commission for approval; only the land use change and rezone to Open Space are subject to Commission review as an LCP amendment.

The appropriate resolutions and motions begin on Page 3. The findings for approval of the Land Use Plan Amendment as submitted begin on Page 4; the findings for approval of the Implementation Plan Amendment as submitted begin on Page 7.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from Sherilyn Sarb 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

The City of Carlsbad 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. However, the City did not seek permit authority at that time. 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 segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. The subject amendment request affects the Mello II LCP Land Use Plan segment.

B. STANDARD OF REVIEW

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

Section 30512

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

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds

that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

In those cases when a local government approves implementing ordinances in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review of the implementing actions shall be the land use plan most recently certified by the Commission. Thus, if the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan.

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 resolutions and findings. The appropriate motion to introduce each resolution and a staff recommendation are provided just prior to each resolution.

I. MOTION

I move that the Commission certify the Land Use Plan Amendment #2-05 for the City of Carlsbad LCP Mello II Segment as submitted.

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a YES vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:

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

mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan.

II. MOTION

I move that the Commission reject the City of Carlsbad Implementation Plan Amendment #2-05 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 certified 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, as amended, 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 LAND USE PLAN AMENDMENT, AS SUBMITTED

A. Amendment Description.

The proposed Carlsbad LCP amendment would change both the Mello II Land Use Plan (LUP) designation and zoning of a 18.73 ac. site located on south side of Palomar Airport Road between Armada Drive and Hidden Valley Road in the City of Carlsbad. The site is within the Encinas Creek watershed and is surrounded by the Costco building to the west, Kelly Corporate Center to the east, Palomar Airport Road and Legoland to the north and open space to the south. The Mello II Land Use Plan designation for the northern half of the site would be changed from Planned Industrial to Open Space. The land use designation of Open Space on the southern half of the property would remain unchanged.

The project site is within the Mello II LUP segment. The standard of review for Land Use Plan amendments is the Chapter 3 policies of the Coastal Act.

B. Conformity with Chapter 3 of the Coastal Act.

1. Environmentally Sensitive Resources. The following sections of the Coastal Act are applicable to the proposed LCP amendment and state:

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:.....

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.....

Section 30240.

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

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

The subject Carlsbad LCP amendment, as submitted, would change the existing land use designation of Planned Industrial for the northern portion of an 18.73 acre site to Open Space. The southern portion of the site is already designated Open Space and is part of the “hardline” open space preserve identified in the City’s Habitat Management Plan (HMP). The certified City of Carlsbad LCP land use plan (LUP) has been amended to incorporate the City’s HMP. The proposed LUP amendment would result in the entire site being designated Open Space in the certified Mello II LUP segment.

The City has approved use of the site as a riparian/wetland habitat mitigation bank contingent on Coastal Commission approval of this LCP amendment. The site is within the watershed of Encinas Creek and the Biological Technical Report dated July 2, 2004 by Helix Environmental Planning indicates the site is bisected by Encinas Creek and contains existing riparian forest, mule fat scrub, Diegan coastal sage scrub, non-native grassland and disturbed habitat. The site is currently vacant and the City indicates the property owner has relinquished all remaining development rights on the property. Eradication of approximately 9 acres of pampas grass has already taken place on the site through a grant for invasive species removal to the Carlsbad Watershed Network from the Aqua Hedionda Lagoon Foundation. The City indicates future creation and/or restoration of riparian habitat on the site will occur through planting only. Use of mechanized equipment and/or grading has not been approved by the City for preparation of the habitat mitigation bank. Creation of the mitigation bank is not subject to the Commission’s review and approval as part of the proposed LCP amendment. Future use of any mitigation credits for development in the coastal zone must be done in accordance with the mitigation requirements contained in the certified LCP/HMP.

The Commission finds the proposed LCP amendment to designate the entire site as Open Space is consistent with Section 30231 of the Coastal Act. The site is a natural drainage course for Encinas Creek and biological productivity will be improved by allowing this

area to function as a natural buffer, to control runoff, and to improve the quality of discharge to downstream resources, including the Pacific Ocean. Use of existing wetlands for open space and habitat restoration is consistent with Section 30233. The proposed open space use will also protect existing environmentally sensitive habitat areas consistent with Section 30240 of the Act. Based on the above, the Commission finds that the proposed designation of open space on this site is consistent with the provisions of the certified HMP/LCP and, thus, with Sections 30231, 30233 and 30240 of the Coastal Act.

**PART IV. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD
MELLO II IMPLEMENTATION PLAN AMENDMENT #2-05 AS
SUBMITTED**

A. Amendment Description

The subject LCP amendment would change the zoning designation of the entire 18.73 acre site located on the south side of Palomar Airport Road from Limited Control (L-C) to Open Space. 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, as proposed and certified with the subject LCP amendment, is Open Space

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.

1. Purpose and Intent of the Ordinance.

Limited Control Zone. 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.

Open Space Zone. To provide for open space and recreational uses which have been deemed necessary for the aesthetically attractive and orderly growth of the community. It is used in conjunction with publicly owned property such as parks, open space, recreation areas, civic centers and other public facilities of a similar nature. The zone also designates high priority resource areas at time of development that, when combined would create a logical open space system for the community.

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

The open space zone allows the following uses and structures: beaches and shoreline recreation, bicycle paths, horse trails, open space easements, public parks, City picnic areas and playgrounds, public access easements, scenic and slope easements, transportation rights-of-way, vista points, agricultural uses (field and seed crops, truck crops, horticultural crops, orchards and vineyards, pasture and rangeland, tree farms and fallow lands). Permitted accessory uses and structures include public restrooms, clubhouses, parking areas, barbecue and fire pits, playground equipment, stairways, patios, changing rooms, pool filtering equipment, fencing and other accessory uses required for the conduct of the permitted uses. Uses allowed by conditional use permit include group or organized camps, marinas, playfields and athletic fields, public facilities, recreational campgrounds, public stables and riding academies, golf courses, swimming pools, tennis courts, private playgrounds and picnic areas, other related cultural, entertainment and recreational activities and facilities and stands for the display and sale of aquaculture products grown on the premises. There is no minimum lot area established for the open space zone. No building or structure in the zone shall exceed thirty-five feet in height unless a higher elevation is approved as a conditional use permit by the Planning Commission.

3. Adequacy of the Ordinance to Implement the Certified LUP Segment.

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP). In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the Mello II segment of the LCP.

As stated in the previous findings, the Carlsbad LCP has been amended to incorporate the City's Habitat Management Plan (HMP) which was developed to meet the requirements of the Coastal Act, the Endangered Species Act and the Natural Communities Conservation Planning (NCCP) process. The site is within the watershed of Encinas Creek and contains wetland/riparian vegetation and upland coastal sage scrub habitat which is protected in the certified LCP. The southern portion of the subject site is already encumbered by an open space easement and designated as habitat "hardline" preserve in the certified HMP/LCP. All existing dedicated open space was designated "hardline" preserve in the HMP and therefore, is protected from future development potential.

One of the major goals of HMP implementation will be to establish an open space conservation mechanism that will ensure protection of coastal resources in perpetuity. It is anticipated this mechanism will include the creation and application of a conservation oriented open space zone or overlay to the habitat preserve areas that will restrict uses of those areas to resource dependent uses which are more restrictive and protective of coastal resources than the current open space zone certified in the LCP. The Commission finds, in the absence of a resource-oriented conservation zone, the habitat preserve will nevertheless be protected as open space through the Open Space land use plan designation, which is controlling, and the open space conservation easements which have been recorded against the site through conditions of approval of the CUP for the

mitigation bank and previous subdivision of the property. The conservation easements prohibit private encroachment or development in dedicated open space; however, habitat restoration and enhancement is permitted. Use of the site as a habitat mitigation bank would be an allowable use in the open space zone, subject to a conditional use permit. The Commission finds the proposed open space zoning is consistent with the Open Space land use designation for the entire site, as proposed and certified with this LCP amendment, and is, therefore, adequate to carry out the certified LUP.

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

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, those 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 approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). The proposed land use and zoning amendments will not result in adverse impacts on coastal resources. The Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.