

**CALIFORNIA COASTAL COMMISSION**

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# W10b

**Date:** June 18, 2020

**To:** COMMISSIONERS AND INTERESTED PERSONS

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**Subject:** STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR LCP  
AMENDMENT NO. LCP-6-NOC-19-0061-1 (Tierra Alta Re-Zone) for  
Commission Meeting of July 8-10, 2020

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## SYNOPSIS

On May 22, 2019, the City of San Diego (City) submitted its first major LCP amendment package for the 2019 calendar year to the San Diego District office. The submittal consisted of two items, the subject amendment: LCP-6-NOC-19-0061-1 (Tierra Alta Rezone), which is now before the Commission, and the City's Transit Priority Area Parking Regulations which has been separately approved. This request was not filed until August 28, 2019 and at the November 2019 hearing, the Commission granted a one-year time extension to the Tierra Alta Rezone amendment. Therefore, the latest that this item can be heard by the Commission is the November 2020 hearing.

Currently, there are four other pending items from the City of San Diego: LCPA Nos. LCP-6-SAN-19-0049-2 (Fiesta Island Update), LCP-6-SAN-19-0161-3 (Mission Valley Rezone), LCP-6-SAN-19-0165-3 (Balboa Avenue Station Specific Plan) and LCP-6-SAN-20-0026-1 (12th Update Land Development Code), all of which are filed and undergoing review to be presented at upcoming hearings.

## SUMMARY OF AMENDMENT REQUEST

The City is requesting to modify the existing zoning on a 4.44-acre parcel from AR-1-1 (Agricultural Residential) to 1.91-acres zoned as RS-1-13 (Residential Single Unit) and 2.53-acres to be zoned as OC-1-1 (Open Space Conservation). The AR-1-1 was placed on the site as a rural holding zone, however, the site has never been utilized for agricultural operations.

The project is located within the Mira Mesa Community Plan area and at the northerly terminus of Caminito Rodar, north of Calle Cristobal, and on the perimeter of the Los Penasquitos Canyon Preserve. Access to the site will be from existing private streets off Calle Cristobal, through the Tierra Vista residential community. Mira Mesa is one of the

communities within the North City LCP segment which encompasses the City's coastal zone north of La Jolla, extending up to the Cities of Del Mar and Solana Beach and unincorporated County of San Diego properties. The Los Penasquitos Canyon Preserve extends inland from the merge of Interstates 5 and 805.

The site contains a number of sensitive resources including 0.27-acres of Southern Maritime Chaparral, a 0.005-acre vernal pool containing both San Diego and Lindahl's fairy shrimp, special-status plants including Summer holly (*Comarostaphylis diversifolia*), San Diego barrel cactus (*Ferocactus viridescens*) and Nuttall's scrub oak (*Quercus dumosa*).

The proposed amendment will ultimately facilitate the construction of an eight single-family residential subdivision. The proposed amendment will also provide protection for the sensitive resources present on the site including steep slopes, Southern maritime chaparral and a single vernal pool and associated watershed through the application of the OC-1-1 (Open Space Conservation) zone.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of the amendment as submitted by the City of San Diego. The City is proposing to modify the existing rural holding zone designation to a mix of residential and open space designations in order to facilitate development on the site. The 4.44-acre site is a highly constrained, flat mesa top containing steep slopes, sensitive native upland habitat and wetlands consisting of a single vernal pool containing fairy shrimp cysts. The site abuts the Los Penasquitos Canyon Preserve to the north and includes an informal trail that connects offsite to a series of foot trails leading to the Los Penasquitos Waterfall ([ref. Exhibit Nos. 3, 4, 6](#)).

The primary concern raised by the proposed rezone is whether the zoning proposed (a mix of open space and low density residential) has been applied in a manner that will both provide adequate protection and buffering for the portions of the site containing sensitive resources, while also permitting residential uses and brush management requirements on the portions of the site best suited for development. Currently, the site is almost entirely vegetated with native habitat, with only a few portions of disturbed area occurring from existing access trails along the southern portion and through the center of the project site ([ref. Exhibit No. 5](#)). Additional constraints on the site include steep naturally vegetated slopes on the north, east, and western portions of the site; an isolated vernal pool and watershed area on the southwestern portion of the site; and Southern maritime chaparral on the western portion of the site.

The Open Space designation is proposed for all portions of the site that contain steep slopes, Southern maritime chaparral, identified rare plants species, along with the vernal pool and watershed area. The portions of the site proposed for the residential designation include the already-disturbed area and a portion of the site currently vegetated with Southern mixed chaparral. As proposed, the rezone will result in the loss of 1.53 acres of Southern mixed chaparral, a reduction in the buffer provided for the vernal pool, and removal of the existing informal trail link. The impacts to Southern mixed chaparral habitat can be supported given the constraints of the site, the Commission Ecologist's determination that the Southern mixed chaparral onsite does not constitute

environmentally sensitive habitat area (ESHA), and the impacts and associated mitigation have been developed consistent with the regulations contained in the City's LCP. The reduced buffer for the vernal pool can also be supported, given the constraints of the site, location of existing development and construction of a private street that is necessary in order to provide vehicular access to the site. In addition, a wall/glass screen barrier separating the vernal pool from adjacent development, along with interpretive signage and long-term management have been established; the state and federal resource agencies and the Commission's Ecologist concur that the proposed vernal pool buffering, and protective measures are sufficient to protect the resource. The removal of the existing informal trail link can be supported as it is not a trail protected by the Mira Mesa Community Plan and there are numerous other trail linkages in close proximity to the site ([ref. Exhibit Nos. 6, 7, 8](#)). Additionally, the City is currently considering construction of a new trailhead immediately adjacent to the site on a portion of land owned and maintained by the City and already improved with a public parking lot and overlook.

Therefore, the 1.9-acre portion of the site comprised of disturbed habitat and Southern mixed chaparral can be found as the most appropriate portion of the site for a residential zoning designation, with the remaining 2.53-acres of the site, including the most sensitive habitat areas, to be protected through the application of the Open Space (OC-1-1) zone.

The proposed rezone conforms with the City of San Diego certified Land Use Plan (LUP) and staff therefore proposes to approve the subject LCP Amendment request as submitted.

The appropriate resolutions and motions begin on Page 7. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 8.

## **BACKGROUND**

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's LDC that primarily includes Chapters 11 through 15 of the municipal code. It replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

The project site has been the subject of two previously submitted LCP amendment requests from the City of San Diego (ref. LCP Amendment Nos. 4-01 and 1-03). Both of these previous amendment requests were intended to facilitate residential development of the property but were withdrawn in order to address the concerns raised by the Commission. The primary concerns raised by both amendments included adequate protection of the natural resources found on the site including native habitat, steep slopes and a single vernal pool. Over the last twenty years, the project has been revised a number of times including reducing the number of homes from 11 to 8, realigning and reducing the width of the access road and reductions in brush management areas through the incorporation of alternative compliance measures, all with the intent to reduce the project footprint and minimize the resulting impacts to the maximum extent practicable. Most recently, the concern was raised regarding how the proposed zoning would adequately protect the resources present. As proposed at that time, the amendment

requested the zoning be revised from AR-1-1 (Agriculture Residential) to RS-1-13 (Single Family Residential) over the entire site. The staff report generated for LCPA Amendment No. 1-03 included a suggested modification that revised the rezone to include split zoning with the residential zone on the portions of the property most suited for development and an open space zone applied to the areas which would contain a biological buffer and conservation lands. The current rezone incorporated the Commission's revision and the subject amendment proposes both Residential and Open Space zoning on the appropriate portions of the site. The local approvals also included a companion coastal development permit which was appealed by the Commission and is being held in abeyance pending Commission action on the subject rezone/LCP Amendment.

### **ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. LCP-6-NOC-19-0061-1 may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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### **EXHIBITS**

[Exhibit 1 – Ordinance No.](#)

[Exhibit 2 – Map of Revised Zone](#)

[Exhibit 3 – Project Location](#)

[Exhibit 4 – Aerial](#)

[Exhibit 5 – Vegetation Map](#)

[Exhibit 6 – Trail Alignment](#)

[Exhibit 7 – Mira Mesa Community Plan Designated Open Space System Map](#)

[Exhibit 8 – San Diego Parks Trail Map](#)

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## **I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

### **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**

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City held Planning Commission and City Council meetings with regard to the subject amendment request on September 17, 2018, September 27, 2018, January 14, 2019 and January 29, 2019. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **II. MOTION AND RESOLUTION**

### **MOTION:**

I move that the Commission reject the City of San Diego Implementation Program Amendment No. LCP-6-NOC-19-0161-1 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 San Diego 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.

## **III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DEIGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The City is requesting to modify the existing zoning on a 4.44-acre parcel from AR-1-1 (Agricultural Residential) to 1.91- acres zoned as RS-1-13 (Residential Single Unit) and 2.53-acres to be zoned as OC-1-1 (Open Space Conservation). The RS-1-13 designation generally permits single-family residential uses on lots 6,000 sq. ft. or larger. The OC-1-1 allows passive recreation, such as hiking, and natural resource preservation and does not allow residential and residentially-related uses.

The project is located within the Mira Mesa Community Plan area and at the northerly terminus of Caminito Rodar, north of Calle Cristobal, and on the perimeter of the Los

Penasquitos Canyon Preserve. Access to the site will be from existing private streets off Calle Cristobal, through the Tierra Vista residential community.

The site is almost entirely vegetated with native habitat, with only a few portions of disturbed area occurring from existing access trails along the southern portion and through the center of the project site ([ref. Exhibit No. 5](#)). Constraints on the site include steep naturally vegetated slopes are on the north, east and western portions of the site; an isolated 0.005-acre vernal pool and watershed area containing both San Diego and Lindahl's fairy shrimp on the southwestern portion of the site; and 0.27-acres of Southern maritime chaparral on western portion of the site. Special-status plants including Summer holly (*Comarostaphylis diversifolia*), San Diego barrel cactus (*Ferocactus viridescens*) and Nuttall's scrub oak (*Quercus dumosa*).

The proposed amendment will ultimately facilitate the construction of an eight-unit single-family residential subdivision. The proposed amendment will also provide protection for the sensitive resources present on the site including steep slopes, Southern maritime chaparral and a single vernal pool and associated watershed through the application of the OC-1-1 (Open Space Conservation) 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.

a) **Purpose and Intent of the Ordinance.** The purpose of the RS zone is to provide appropriate regulations for the development of single dwelling units that accommodate a variety of lot sizes and residential dwelling types and which promote neighborhood quality, character, and livability. It is intended that these zones provide for flexibility in development regulations that allow reasonable use of property while minimizing adverse impacts to adjacent properties. The RS zones are differentiated based on the minimum lot size and whether the premises are located in an urbanized community or a planned or future urbanizing community. The specific RS-1-13 zone allows densities ranging between 0 and 4 dwelling units per acre, requires 6,000 sq. ft. minimum lots, and is intended for use in both the city's planned and future urbanizing areas.

The purpose of the OC Zone is to protect natural and cultural resources and environmentally sensitive lands. It is intended that the uses permitted in this zone be limited to the preservation of the natural character of the land, thereby implementing the resource protection measures in certified land use plans.

### **b) Major Provisions of the Ordinance.**

The major provisions of the RS Zone include:

- Primarily allows single family residences, but small group homes, day care facilities, etc. are also allowed by right, and other uses with discretionary permits.
- Contains development regulations addressing density, lot size, setbacks, floor area ratios, etc.



- Contains regulations addressing lot coverage, garage requirements and accessory structures
- Contains architectural/design requirements

The major provisions of the OC Zone include:

- Primarily allows passive recreation and natural resource preservation
- Limited uses include Electric Vehicle Charging Stations, Placemaking, Satellite antennas, and Solar Energy Systems

c) **Adequacy of the Ordinance to Implement the Certified LUP Segments.** The subject site is located within the Mira Mesa Community and is considered to be severely constrained due to the presence of sensitive habitat including Southern maritime chaparral, a single vernal pool, and steep slopes. The City's Mira Mesa Community Plan is a component of the City's certified Land Use Plans and contains a number of applicable provisions including the following.

Mira Mesa Community Plan – Sensitive Resources and Open Space System, Policies

Policy 1 – Open Space and Preservation

- a. Sensitive resource areas of community-wide and regional significance shall be protected as open space.

Policy 2 – Trails

- a. Public access in areas of environmentally sensitive habitats shall be limited to low intensity recreational, scientific or educational use. Access shall be controlled or confined to designated trails or paths.
- b. Trails or other recreational activities planned for resource areas shall be designed to avoid damaging impacts to the resources. No access shall be approved that would result in significant disruption of habitat.

Policy 4 – Resource Management

- c. No encroachment shall be permitted into wetlands, including vernal pools. Encroachment into native grasslands, Coastal sage scrub and Maritime Chaparral shall be consistent with the RPO (Resource Protection Ordinance). Purchase, creation, or enhancement of replacement habitat area shall be required at ratios determined by the RPO (Resource Protection Ordinance) or State and Federal agencies as appropriate. In areas of native vegetation that are connected to an open space system, the City shall require that as much native vegetation as possible is preserved as open space.

(Note: The Resource Protection Ordinance [RPO] was part of the City's municipal code, that has since been replaced by the Environmentally Sensitive Lands Regulations.)

[...]

- i. Vernal Pools: The remaining vernal pool habitat in the community shall be preserved and shall be protected from vehicular or other human-caused damage, encroachment in their watershed areas and urban runoff.

[...]

- l. Maritime Chaparral: Maritime Chaparral shall be protected from impacts due to adjacent development, including grading and brush management, that may cause damage or degradation to the habitat qualities of this resource.

Mira Mesa Community Plan – Sensitive Resources and Open Space System, Proposals

1. Open Space Preservation: Preserve the floodplain and adjacent slopes of the five major canyon systems that traverse the community—Los Peñasquitos Canyon, Lopez Canyon, Carroll Canyon, Rattlesnake Canyon and Soledad Canyon, and the remaining vernal pool sites (as shown generally on Figure 6)—in a natural state as open space.

[...]

3. Trails: Provide a system of pathways or trails throughout Mira Mesa's open space canyons to increase access to open space and provide alternate means of reaching recreational facilities. General locations of proposed trails in Los Peñasquitos, Lopez, Carroll and Rattlesnake Canyons are shown on Figure 7. Specific locations will be reviewed by the Resource Management Section of the Planning Department during the project review process. The Plan will defer specific trail locations in Peñasquitos Canyon Preserve to the joint City and County Master Plan for the Preserve.

5. Resource Management: Los Peñasquitos and Lopez Canyons a. Protect the Lopez Ridge Vernal Pool area from human impacts while maintaining ecological functioning. This area should be fenced, with no trespassing permitted except to allow for organized ecological tours. Signs should be installed that describe the resource and explain why the area is being protected.

Mira Mesa Community Plan – Residential Land Use, Goals

Residential subdivisions that are designed to preserve Mira Mesa's unique system of canyons, ridge tops and mesas.

Mira Mesa Community Plan – Residential Land Use, Policies

1. Determination of Permitted Density

a. In determining the permitted density and lot size for specific projects, within the density ranges provided under the Proposals below, the City shall take into account the following factors:

- 1) Compatibility with the policies established in this Plan;
- 2) Compatibility with the density and pattern of adjacent land uses;

3) Consideration of the topography of the project site and assurance that the site design minimizes impacts on areas with slopes in excess of 25 percent and sensitive biology.

b. The City shall permit very low-density development in canyon and slope areas that are not to be preserved for open space and shall permit flexibility in street improvements in residential subdivisions in topographically constrained sites.

#### Mira Mesa Community Plan – Residential Land Use, Proposals

##### Proposal 1.

The following density ranges and building types are proposed to meet the goals of this plan...

...Very low density: 0-4 dwelling units per gross acre. This density range is proposed for Lopez Ridge and the northeastern corner of the community near Canyon Hills Park. This range is generally characterized by clustered detached single-family or attached multifamily units (such as duplexes and townhomes) built on large hillside parcels that contain relatively small areas suitable for buildings. Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation.

The subject LCP amendment is a project-driven amendment that will revise the zoning on a 4.44-acre site from an agricultural/rural holding zone designation to a split zone including 1.91- acres zoned as RS-1-13 (Residential Single Unit) and 2.53-acres to be zoned as OC-1-1 (Open Space Conservation). The site consists largely of sensitive biological resources, including Southern maritime chaparral and a vernal pool and its watershed. The site consists of a flat mesa top and slopes (most greater than 25% gradient) which continue north, east and west of the site down into the Los Penasquitos Canyon Preserve. The Preserve is a large urban open space system that provides habitat for many sensitive and endangered species, and also provides passive recreational opportunities for the public. It is connected on the west to Los Penasquitos Lagoon, and on the east to other open space canyon systems, making it a regionally significant resource.

Only a relatively small portion of the site has been informally disturbed by foot traffic, mountain bikers and off-road vehicles. The largest disturbed area is on the mesa top, immediately adjacent to the existing terminus of Caminito Rodar, but disturbed pathways lead north/northeast from this area, surrounding an isolated patch of Southern mixed chaparral. The disturbed area is adjacent to the vernal pool site on the south, east and north, but the lands west of the vernal pool are natively vegetated and lead down into a deep finger canyon ([ref. Exhibit No. 5](#)). The site is a promontory jutting out into Los Penasquitos Canyon Preserve and is connected to the community open space system on three sides, with existing residential development located south of the existing fence along the southern property line.

The cited LUP policies clearly intend that sensitive biological resources be protected as possible, both on slopes and flatter areas. The Environmentally Sensitive Lands Regulations (ESL) contained in the certified LCP Implementation Plan (Land Development

Code) would also apply to development of the site. Pursuant to the ESL regulations, the majority of the environmentally sensitive habitat area (ESHA) on steep slopes would be protected from grading, development and brush management measures. The vernal pool, being a delineated wetland, would be protected, and the ESL regulations could require up to a 100-foot buffer to protect the vernal pool watershed.

In review of the proposed rezone, the Commission must consider the range of zoning options available in the Land Development Code (LDC) which serves as the certified Implementation Plan. The Commission must also recognize that, ultimately the zoning will determine the location of development on the site which must also be consistent with the policies of both the Mira Mesa Community Plan and the Environmentally Sensitive Land regulations. To this end, the zoning on the site must provide adequate protection for the sensitive lands documented.

### **Steep Hillides**

The City's Land Development Code (LDC) defines steep hillsides as all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet. Based on this definition, steep hillsides are found on three sides of the flat mesa top, the east, west, and north sides, with existing development to the south. These steep hillsides extend from elevation 413 ft. to elevation 342 ft. on-site, then continue off-site down to the canyon bottom. The proposed zone change includes all steep hillsides present within the proposed OC-1-1 Open Space zone. The OC-1-1 zone does not permit residential or residentially associated uses and instead requires the protection of natural and cultural resources. The Commission thus finds the OC-1-1 Zone an acceptable zone for the portions of the site containing steep hillsides.

### **Environmentally Sensitive Lands**

The City's Land Development Code (certified IP) contains in part, the Municipal Code which contains Environmentally Sensitive Land Regulations. The purpose of these regulations is to protect, preserve and, where damaged, restore the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development, including, but not limited to coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities. These regulations apply when any portion of the premises contain environmentally sensitive lands, including sensitive biological resources and steep hillsides, such as the subject site. The regulation for development within these areas are regulated by the LDC as follows:

Section 143.0141 - Development Regulations for Sensitive Biological Resources

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) State and federal law precludes adverse impacts to wetlands or listed noncovered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. Grading or construction permits shall not be issued for any project that impacts wetlands or Listed non-covered species habitat until all necessary federal and state permits have been obtained.

(b) Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone, the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

The subject site is a highly constrained flat mesa top lot that, in addition to steep slopes, contains sensitive native habitat including Southern maritime chaparral, Southern mixed chaparral and a vernal pool containing both San Diego and Lindahl's fairy shrimp, special-status plants including Summer holly (*Comarostaphylis diversifolia*), San Diego barrel cactus (*Ferocactus viridescens*) and Nuttall's scrub oak (*Quercus dumosa*). In order for the proposed zoning to be consistent with the above policy language, proposed zoning changes would have to provide adequate protection for all sensitive habitat and wildlife species, provide adequate buffers from sensitive habitat, and provide appropriate mitigation for any impacts to native habitat that are unavoidable.

The location of the line separating the Residential zoning from the Open Space zoning must be located in a manner that is most protective of all resources. As proposed, the portions of the site containing Southern maritime chaparral habitat, the vernal pool and its associated watershed, as well as all identified rare plants species will be protected as Open Space.

## Vernal Pool Habitat

While not a part of the City's LCP, the City of San Diego Vernal Pool Habitat Conservation Plan contains the following definitions:

Vernal Pool: Seasonal, depression-type wetlands that result from a unique set of physical parameters and support a specific biological assemblage of plant and animal species. Functional vernal pool ecosystems form under specific physical conditions when small, shallow depressions collect precipitation to create a seasonally perched water table.

Watershed: A topographically defined catchment area from which surface water flows to a vernal pool.

As previously stated, the portion of the site proposed as Open Space includes the vernal pool, its entire watershed and a buffer around the watershed. The entire open space area will be fenced along the edge of proposed development providing additional protection from the proposed residential uses. The vernal pool will be preserved, maintained and monitored in perpetuity through a non-wasting endowment to be secured prior to issuance of any associated grading permit. Management of the vernal pool preserve will include controlled access, periodic weeding, removal of litter and maintenance of fencing and interpretive signage.

The buffer width between the vernal pool and its watershed, and the line of development established by the proposed zone change, will be less than the typically required 100 feet for a significant portion of the vernal pool. However, the City's ESL Regulations do allow reductions in buffers based on the following:

### (b) Wetland Regulations

(1) State and federal law regulate adverse impacts to wetlands and listed species habitat. The applicant shall confer, when applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife before any public hearing for the development proposal.

**(2) The applicant shall solicit input from U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. [emphasis added]**

(3) The applicant shall, to the maximum extent feasible, incorporate U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Wildlife recommendations into the development proposal prior to the first public hearing.

(4) Construction permits shall not be issued for any project that impacts wetlands or listed species habitat until all necessary federal and state permits have been obtained.

(5) Impacts to wetlands shall be avoided, except where permitted in accordance with Section 143.0141(b)(6). A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetlands. In the Coastal Overlay Zone the applicant **shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in this section.** [emphasis added]

The site is currently constrained by the location of existing development to the south located between 35 and 60 feet from the vernal pool and its watershed. The buffer is also reduced in order to provide access to the site through the construction of the subdivision's entrance road which must extend from the abutting development. Coastal staff and the City have been working for a number of years to increase the buffer at this location, and through this process, the width and location of the street has been revised to provide the largest buffer from the vernal pool and watershed as feasible. Additionally, through cooperative work with the City, the amendment has been revised to provide both larger buffer widths and additional connectivity between the vernal pool and the canyon preserve area. These revisions resulted in a larger area proposed as Open Space and a reduction in the number of homes from eleven to eight. Additionally, the project has been conditioned by the City to include construction of a 5-foot masonry wall to be erected between the subdivision's roadway and the vernal pool area. The buffer will therefore be 50-feet wide in the north and will vary from 60 to 78 feet wide in the east. The distance from the watershed varies from 12 to 20 feet wide in the east, however, the full extent of the watershed would be protected. The Commission's Ecologist has reviewed the location of the proposed Open Space zone, acknowledges the constraints of the site, the quality of the vernal pool and watershed, and supports the line of open space established by the proposed amendment, including the resulting reduced buffer. Additionally, The US Fish and Wildlife Service and the California Department of Fish and Wildlife support the buffer as currently provided. Therefore, the proposed rezone and resulting Open Space delineation can be determined to provide adequate protection for the vernal pool area consistent with the City's certified LUP and ESL regulations.

### **Sensitive Upland Habitat**

The site contains 0.27-acres of Southern maritime chaparral, 3.58-acres of Southern mixed chaparral, and 0.58-acres of disturbed habitat. Portions of the habitat area also contain a number of special-status plants including Summer holly (*Comarostaphylis diversifolia*), San Diego barrel cactus (*Ferocactus viridescens*) and Nuttall's scrub oak (*Quercus dumosa*). The Commission's Ecologist has reviewed the biological report for the project and has determined that the rare plant species and the Southern maritime chaparral can be determined to constitute Environmentally Sensitive Habitat Area as defined by the Coastal Act. Additionally, all native habitat present, including the Southern mixed chaparral (which was determined by the Commission's Ecologist to not constitute ESHA) can be characterized as Sensitive Biological Resources, defined by the City's LDC as the following:

- (a) Lands that have been included in the City of San Diego Multiple Species Conservation Program Preserve;
- (b) Wetlands;

(c) Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tier IIIA Habitats, or Tier IIIB Habitats;

(d) Lands supporting species or subspecies listed as rare, endangered, or threatened under Section 670.2 or 670.5, Title 14, California Code of Regulations, or the Federal Endangered Species Act, Title 50, Code of Federal Regulations, Section 17.11 or 17.12, or candidate species under the California Code of Regulations; or

(e) Lands containing habitats with Narrow Endemic Species as listed in the Biology Guidelines in the Land Development manual; and.

(f) Lands containing habitats of covered species as listed in the Biology Guidelines in the Land Development Manual.

In addition, the LCP outlines the mitigation requirements for any impacts to Sensitive Biological Resources as follows: [...]

(2) Outside MHPA: The on-site preservation of lands outside the MHPA may be considered acceptable as mitigation provided they have long-term biological value. Long-term biological value should be assessed in terms of connectivity to larger areas of planned open space, and any potential current or future indirect impacts associated with the urban interface. As indicated above, areas containing brush management Zone 2 will be considered impact neutral (not considered an impact and not considered acceptable as a mitigation area).

The proposed rezone will preserve all identified rare plant species as well as all of the Southern maritime chaparral that has been determined to constitute ESHA by the Commission's Ecologist. With regard to the Southern mixed chaparral, of the 3.58-acres occurring onsite, 1.56-acres are located within the Residential Zone and will be lost through construction of the residential development. The remaining 2.02-acres of Southern mixed Chaparral will be included within the portion of the site protected by the Open Space designation. The mitigation for the proposed loss is provided through the protection of the remaining Southern mixed chaparral, Southern maritime chaparral, rare plant species, the vernal pool and its watershed. As stated above, the City's LCP permits mitigation through on-site preservation. Specifically, the LCP allows onsite preservation provided the land has long-term biological value. Based on its connectivity to the Los Penasquitos Canyon Preserve, preservation of the remaining habitat is consistent with the requirements of the LUP. Additionally, the Commission's Ecologist reviewed the impacts and can support the loss given the constraints of the site, that the particular habitat does not meet the definition of ESHA, and the impacts are consistent with all applicable requirements for Sensitive Biological Resources as required by the City's LUP and IP.

Finally, because there is a specific development proposal associated with the proposed rezone, the limits of brush management must also be determined and included within the portion of the site proposed for the Residential zone designation. The City's LDC typically requires 100-foot fire buffer comprised of a 35-foot wide "Zone 1" and the 65-foot wide "Zone 2." In this case, the proposed rezone includes Zone 1 brush management requirements within the residentially designated portion of the site. However, given the constraints of the site, Zone 2 requirements are not proposed as a part of the development



and further would not be supported by the LUP if located within the portion of the site designated for Open Space. Therefore, the City has conditioned the project to include a number of measures in lieu of Zone 2, including sprinkler systems in all homes, enclosed/boxed eaves, the use of fire-retardant materials and the installation of a masonry retaining wall and fire-rated glass fencing in backyards to create a fire barrier. These improvements are permitted by the LCP and have been approved by the City's Fire Chief.

## Trails

The site currently contains an access point to an informal trail beginning at the subject site down Los Peñasquitos Canyon and terminates at the Peñasquitos Creek Waterfall. The City of San Diego's website describes the Los Peñasquitos Park and Trail system as:

“Los Peñasquitos (meaning little cliffs) Canyon Preserve lies between Rancho Peñasquitos and Sorrento Hills to the north and Mira Mesa to the south. It stretches approximately 7 miles from the Interstates 5 and 805 merge to just east of Interstate 15. It encompasses some 4,000 acres of both Peñasquitos and Lopez Canyons. The Preserve is jointly owned and administered by the City and County of San Diego.

Los Peñasquitos Canyon Preserve attracts people with its natural beauty and abundant natural resources -- both today and in the past. Native American history within the Preserve dates back as far as 7,000 years ago...

Los Peñasquitos Canyon and its tributary, Lopez Canyon, are characterized by varied natural resources. Evidence of the rich biodiversity of the canyon include over 500 plant species, more than 175 types of birds, and a great variety of reptiles, amphibians and mammals. Many of these species are rare or endangered and are protected within the Preserve...

Many different geologic formations and soil types make up the steep slopes, riparian stream corridors, flat mesa tops and grassy hillsides of the Preserve. The varying terrains and soil types, in conjunction with continually flowing water, form more than 14 habitat types and support a diverse collection of flora and fauna.

The scenery of the canyon includes:

- a waterfall cascading through volcanic rock;
- a streamside forest of giant California live oaks;
- groves of majestic sycamore trees;
- a year-round stream populated by Pacific tree frogs, crayfish and largemouth bass;
- a freshwater marsh hosting a variety of aquatic birds including great blue herons, egrets, mallard ducks and more;
- mule deer, bobcat, coyote and raccoon are just a few of the mammals that can be observed throughout the Preserve.”

Additionally, and as stated above, the Mira Mesa Community Plan promotes construction of new as well as maintenance of existing hiking trails provided the trails protect resources and access is directed to designated paths/trails.

The proposed amendment would facilitate residential development that would eliminate an informal link currently located on the subject site. However, the removal of this trailhead can be supported by the City's LCP for a number of reasons. Primarily, it is not identified as a designated trailhead on the City's Preserve Master Plan ([ref. Exhibit No. 7](#)) and due to safety concerns by the property owner, it has been fenced off for a number of years. Additionally, the trailhead is located over seven miles from the ocean and does not constitute a significant public coastal access point. Further, there remain at least three other trailheads located within two miles of the subject site and on the south side of the Canyon, as well as three additional access points located on the north side of the Canyon ([ref. Exhibit No. 8](#)). Finally, as a part of the City's review of the development, the property owners will provide an endowment to the City to assist in the construction of a new access point, along Calle Cristobal and adjacent to an public parking lot and overlook located just southeast of the subject site ([ref. Exhibit No 6](#)). The City's approval also included a public access easement to be located along the northeastern edge of the proposed residential development to provide an essential portion of the trail that will connect the newly constructed trailhead on Calle Cristobal to the Los Penasquitos Waterfall ([ref. Exhibit No. 6](#)).

To conclude, the zoning proposed by the subject amendment request appropriately classifies the portions of the site most suitable for development as Residential and also adequately protects the existing habitat through the proposed Open Space zone. As proposed, 1.91- acres including 1.58-acres of existing Southern mixed chaparral will be zoned as RS-1-13 (Residential Single Unit) and the remaining 2.53-acres to be zoned as OC-1-1 (Open Space Conservation). Impacts to the Southern mixed Chaparral are acceptable given the overall constraints of the site, the quality of its habitat and the value of the other habitat types occurring on the site including Southern maritime chaparral and vernal pool. Therefore, the proposed rezone can be determined to be consistent with the City's LUP as proposed by the City and can be approved as submitted.

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

Section 21080.9 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 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 submission.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. At the local level, the City found that the environmental review completed at the time of the project's original approval ([ref. Mitigated Negative Declaration No. 99-0792](#)) remained valid and sufficient. The City concluded that no additional impacts would result from the proposed rezone and no new environmental document was required. In the case of the subject LCP amendment request, the Commission also finds that approval of the LCP amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act. Therefore, the Commission finds

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that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for any impacts which have not been explored and the LCP amendment, as submitted, can be supported.