

## CALIFORNIA COASTAL COMMISSION

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October 26, 1995

TO: Commissioners and Interested Persons

FROM: Charles Damm, South Coast District Director  
Meg Vaughn, Staff Analyst

SUBJECT: CITY OF HUNTINGTON BEACH LOCAL COASTAL PROGRAM AMENDMENT 2-94  
Implementation Plan for the Pacific Coast Highway Area of Deferred Certification (for Commission action at the meeting of November 14-17, 1995 in Los Angeles).

SUMMARY OF AMENDMENT REQUEST:

Request by the City of Huntington Beach for Commission action on proposed Implementation Plan amendment 2-94 to the Huntington Beach certified Local Coastal Program. The amendment proposes to provide zoning for the 232 acre Area of Deferred Certification located inland of Pacific Coast Highway between Beach Boulevard and the Santa Ana River. The amendment also proposes changes to the Coastal Conservation District text.

STANDARD OF REVIEW AND TIME LIMIT TO ACT

For the proposed Implementation Plan amendment, the standard of review pursuant to Section 30514 of the Coastal Act, shall be conformance with and adequacy to carry out the provisions of the certified Huntington Beach Land Use Plan. Proposed LCP amendment submittal 2-94 was deemed complete on October 4, 1994. Pursuant to Section 30517 of the Coastal Act and 13535 (c) of the California Code of Regulations, the Commission at its meeting of November 17, 1994, extended the 60 day time limit for action on the Implementation Plan amendment for up to one year.

ADDITIONAL INFORMATION

Copies of the staff report are available at the South Coast District office of the Coastal Commission. To obtain copies of the staff report by mail, or for additional information, contact Meg Vaughn at the above address and phone.

STAFF RECOMMENDATION

Staff is recommending denial of the Implementation Plan amendment as submitted due to its nonconformity with and inadequacy to carry out the provisions of the certified Land Use Plan regarding protection of wetlands. Staff recommends approval of the Implementation Plan amendment submittal with suggested modifications which will bring the submittal into conformity with and adequately carry out the provisions of the certified Land Use Plan.

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LIST OF EXHIBITS

- A. Vicinity Map
- B. Submittal Resolution
- C. Ordinance No. 3251-B
- D. Ordinance No. 3033
- E. Area by Area Map/Land Use Designation Map
- F. Area by Area Description
- G. Proposed Zoning Map
- H. Assessor's Parcel Map Showing the Seven Listed Parcels
- I. DFG Wetlands Determination
- J. Effectively Certified Article 969.7
- K. Non-Certified Article 9422

EXECUTIVE SUMMARY

The proposed LCP amendment is intended to provide the implementation for the certified Land Use Plan for the Pacific Coast Highway Area of Deferred Certification (ADC) within the City of Huntington Beach (City). The Pacific Coast Highway area was deferred certification at the time the City was certified due to unresolved issues regarding the protection of wetlands. In 1986 the Commission approved a land use plan for this area of deferred certification.

One issue of this LCP amendment is whether the City's proposed implementation is adequate to protect the wetlands and upland environmentally sensitive habitat that exist throughout almost all of the undeveloped portions of the ADC. A 1983 Department of Fish and Game (DFG) study determined that of the 140 undeveloped acres included within the 232 acre ADC, 114.7 acres are viably functioning wetlands and 11.6 acres are environmentally sensitive upland habitat. Much of the remaining area (approximately 13 acres) is degraded but easily restorable wetlands. All areas within the ADC identified in the 1983 DFG Study as wetlands were designated Conservation in the land use plan.

The City's proposed method of implementing the areas designated Conservation in the land use plan is to base zone the areas with existing local zoning (including such zones as Residential Agriculture, Restricted Manufacturing, Light Industrial, and Limited Use) and affix a Coastal Conservation (CC-) suffix. The CC suffix is proposed as an overlay zone. The CC suffix is proposed to take precedence over the underlying base zone and limit uses within wetland areas to those allowable under the certified land use designation of conservation which allows the Coastal Act section 30233 uses and low intensity recreational uses such as nature study and picnicking.

The City's intent in proposing retention of the local base zone is to identify an economic use for areas designated conservation if the CC suffix is removed. However, as proposed by the City, the CC suffix can only be removed if no wetlands exist on site when the goal of providing a landowner with an economic use is no longer an issue.

Staff recommends denial of the City's proposed implementation. The reasons for this denial recommendation are set out below.

The City's amendment submittal proposes revisions to Article 9422 Coastal Conservation. However, Article 9422 has never been effectively certified by the Coastal Commission. The effectively certified Coastal Conservation District is Article 969.7. Nevertheless, staff has reviewed the City's proposed revisions to the Coastal Conservation District as it would affect the effectively certified Article 969.7. The substantial difference between Article 969.7 and the City's Article 942 is that Article 969.7 does not contain a Coastal Conservation suffix. The City is proposing additions and changes to the Coastal Conservation suffix. Staff is recommending denial of

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the additions and changes to the Coastal Conservation suffix because it has never been effectively certified by the Commission. Additionally, even if the Coastal Conservation suffix did exist within the certified Coastal Conservation district the amendment would have to be denied for the following reasons.

Although the CC suffix is proposed to be added to all areas land use designated Conservation, implementing text for the CC suffix is only provided for seven parcels listed by APN within the City's proposed text. This leaves 82 acres land use designated conservation without any supporting zoning text.

The Coastal Act requires that the LCP implementation must conform to and be adequate to carry out the certified land use designations. The base zones proposed by the City are not in conformance with or adequate to carry out the land use designation of conservation.

Moreover, overlay zones are typically used to supplement existing zoning. Overlay zones are consistent with the underlying base zone, but provide more specificity or greater restrictions. As proposed by the City, the CC suffix is not related at all to the underlying base zone and in fact conflicts with it. The City has proposed to apply the overlay CC suffix rather than base zone the areas Coastal Conservation District, a zone which already exists in the certified Implementation Plan.

The retention of the locally approved base zone was proposed by the City to provide an economic use and so avoid the possibility of depriving a property owner of all economic use of his or her property. There are two problems with this approach. First, the City's concern about economic viability appears premature. Generally, plan policies and zoning ordinances do not themselves deprive a property owner of all economic use of their property. Instead, economic viability issues are more appropriately addressed at the permit stage, when the regulatory agency has more site specific information. Second, the City's proposal is illusory. As proposed by the City, the base zone could only become effective if it is demonstrated that no wetlands exist on the property. If no wetlands or other ESHA exist on the parcel the conservation land use designation and zoning could be removed anyway through an LCP amendment. The potential for deprivation of all economic use occurs only when the extent of wetland or other ESHA on a parcel is such that development is restricted to the point of preventing economic use.

As proposed there are no standards provided by which the approving authority could determine whether deprivation of all economic use would result from application of the conservation land use designation and zoning. Because of the extent and value of the on site habitat, it is critical that a clear standard of what constitutes deprivation of all economic use be established before development which creates adverse impacts on the wetlands or other ESHA is allowed. Further, no uses or development standards are proposed in the case such a determination is made. This is also critical to assure that impacts that must be allowed are minimized.

Finally, the base zones proposed by the City do not recognize the high priority placed on Visitor Serving uses by the Coastal Act and as reflected in the City's certified LUP. If some use other than conservation must be allowed

to avoid depriving a property owner of all economic use of his or her property, the base zones proposed by the City are not high priority uses under the certified Land Use Plan. The ADC is located on the inland side of Pacific Coast Highway, directly across from the Huntington State Beach. Both Pacific Coast Highway and Beach Boulevard are major coastal access routes. As such, the area provides a prime location for visitor serving uses. The uses proposed by the City, including Residential Agriculture, Restricted Manufacturing, Light Industrial, and Limited Use, are not dependent on being near the ocean and are more suitable inland.

Staff is recommending suggested modifications to bring the Implementation Plan amendment into conformance with and to carry out the certified Land Use Plan. The suggested modifications include the following:

1. Rezoning all the areas land use designated conservation to Coastal Conservation District;
2. Deleting the proposed CC suffix;
3. Modifying the existing Coastal Conservation District text to adapt the City's proposed language so that it applies to all Coastal Conservation District zoned sites requiring an overall development plan, providing wetland studies and alternatives analysis at the time of coastal development permit application, requiring permanent preservation of wetland areas, and prohibiting further subdivision of parcels containing wetlands;
4. Adding new text to require specific information at the time of the coastal development permit application if the property owner contends that the uses provided for in the Coastal Conservation district are not economically viable;
5. Adding new text which specifies the findings that must be made if deprivation of all economic use is determined;
6. Adding new text to provide allowable uses and development standards if deprivation of all economic use is determined.

Another issue raised by the LCP amendment is the proposed text for extension of Hamilton Avenue through the wetlands. At the time the Land Use Plan was approved by the Commission, the extension of Hamilton Avenue was addressed. The Land Use Plan contained specific requirements that would be necessary at the time of the coastal development permit application for the road extension. As proposed by the City, these requirements are not identified in the Implementation Plan. Staff is recommending a suggested modification that includes the requirements identified in the Land Use Plan. These include: (1) an alternatives analysis, including documentation that the proposed alternative is the least environmentally damaging alternative; (2) preparation and certification of an EIR; and (3) the requirement of full mitigation to assure no net loss of wetlands.

The last major issue raised by the LCP amendment is implementation for the area adjacent to the Southern California Edison power plant which is land use designated Industrial Energy Production/Conservation. This area is subject not only to wetland protection provisions of the LUP (hence the conservation portion of the designation), but also to the coastal dependent industrial facility provisions. The certified LUP recognizes that the Southern California Edison plant may be allowed to expand into the adjacent 17 acre area. Pursuant to the Coastal Act and the City's certified LUP, industrial energy facilities may be expanded, even where inconsistent with other provisions of the certified LCP, if certain of the following provisions are met: alternative locations are demonstrated to be infeasible or more environmentally damaging; to locate the expansion elsewhere would adversely affect the public welfare; and if all adverse impacts are mitigated to the maximum extent feasible. As proposed, the LCP amendment does not incorporate the specific requirements of this unique energy facility expansion situation. Staff is recommending suggested modifications to provide for the allowable expansion of the Southern California Edison plant consistent with the requirements of the LUP.

Staff recommends that if modified as suggested, the LCP amendment will be in conformance with and adequate to carry out the certified Land Use Plan. Moreover, if modified as suggested, the amendment will be consistent with the Coastal Act.

## I. REJECTION OF THE AMENDMENT TO IMPLEMENTING ORDINANCES

### MOTION I

I move that the Commission reject the Implementation Plan Amendment 2-94 of the City of Huntington Beach for the Pacific Coast Highway Area of Deferred Certification.

### STAFF RECOMMENDATION

Staff recommends YES vote which would result in the adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

### RESOLUTION

The Commission hereby rejects Implementation Plan Amendment 2-94 for the Pacific Coast Highway Area of Deferred Certification in the City of Huntington Beach on the grounds that it does not conform with or is inadequate to carry out the provisions of the Land Use Plan as certified. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the Implementation Plan Amendment would have on the environment.

II. APPROVAL OF THE AMENDMENT TO THE IMPLEMENTATION PLAN IF MODIFIED:

MOTION II.

I move that the Commission approve the City of Huntington Beach LCP Implementation Plan Amendment 2-94 for the Pacific Coast Highway Area of Deferred Certification if it is modified in conformity with the modifications suggested below.

STAFF RECOMMENDATION:

Staff recommends a YES vote which would result in the adoption of the following resolution. The motion requires an affirmative vote of the majority of the Commissioners present to pass.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN AMENDMENT IF MODIFIED

The Commission hereby approves certification of the City of Huntington Beach Implementation Plan Amendment 2-94 for the Pacific Coast Highway ADC based on the findings set forth below on grounds that the zoning ordinances, zoning maps, and other implementing materials conform with and are adequate to carry out the provisions of the Land Use Plan as certified. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the amendment to the Zoning and Implementation Program if modified would have on the environment.

III. SUGGESTED MODIFICATIONS:

The Commission hereby suggests the following changes to the proposed Implementation Plan amendment which are necessary to bring it into conformity with and adequate to carry out the applicable provisions of the certified Huntington Beach Land Use Plan. If the local government accepts the suggested modifications, within six months of Commission action, by formal resolution of the City Council, the Implementation Plan Amendment will become effective upon Commission concurrence with the Executive Director finding that this has been properly done.

Suggested additions are underlined and deletions are crossed out.

Certification of the Implementation Plan Amendment is subject to the following modifications:

A. MODIFICATIONS TO PROPOSED IMPLEMENTATION ZONING

All parcels which contain a land use designation of conservation, in whole or in part, shall be base zoned Coastal Conservation district and shall be subject to the requirements of Article 969.7, as modified below.

The area land use designated Industrial Energy Production/Conservation shall be base zoned Conservation and shall be subject to the requirements of Article 969.7., as modified below.

Revised zoning district maps, adopted by the City Council, reflecting the above zone changes to Coastal Conservation District and Industrial Energy Production/Conservation shall be submitted for Executive Director review and approval and Coastal Commission concurrence.

**B. RECODIFICATION OF ARTICLE**

The City may submit the Coastal Conservation District provisions recodified as Article 9422 in response to the Commission's suggested modifications, as long as the Article has been otherwise amended to reflect all the Commission's suggested modifications. The City shall definitively state, as part of its adoption of the suggested modifications, whether this recodified Article is being submitted to the Commission as a response to the suggested modifications. This recodified Article shall not become effective, however, unless and until it has been reviewed and approved by the Executive Director, and this approval has received the concurrence of the Commission.

**C. DELETION OF PROPOSED ADDITIONS BECAUSE THEY ALREADY EXIST IN THE COASTAL CONSERVATION DISTRICT TEXT**

If the City chooses not to submit the recodified Coastal Conservation District Article 9422 to the Commission, and instead chooses to implement Article 969.7, the following proposed additions will be unnecessary.

1. Delete proposed addition described in Section 1 of Ordinance No. 3251-B which proposes to modify the definition of wetland in the Coastal Conservation District.
  2. Delete proposed addition described in Section 4 of Ordinance No. 3251-B which proposes to replace the word "practical" with "feasible".
  3. Delete proposed addition described in Section 6 of Ordinance No. 3251-B which proposes to add a new allowable use.
  4. Delete proposed addition described in Section 8 of Ordinance No. 3251-B which proposes to replace the word "moderate" with "minimize".
- D. Delete Proposed Change to Article 969.9.21 described in Ordinance No. 3251-B which references the Coastal Conservation suffix proposed by the City.

**E. MODIFICATIONS COASTAL CONSERVATION DISTRICT TEXT**

1. Delete Reference to Article 902, which is not certified by the Commission as part of the Implementation Plan; add the following similar text to end of 969.7.0:



969.7.0 Purpose.

The application of the coastal conservation district is not intended to authorize, and shall not be construed as authorizing the City of Huntington Beach to exercise its power in a manner which will take or damage private property for public use. This zoning ordinance is not intended to increase or decrease the rights of any owner of property under the constitution of the State of California or the United States.

2. Delete proposed new Section 9422.2.1 in its entirety as well as reference to Section 9422.2.1 contained in proposed addition to Section 969.9.21.

3. Delete proposed Section 9422.3 in its entirety.

4. Modify Section 969.7.3 by adding the following:

Add subsection (A) after title and before the first sentence.

Add to the end of 969.7.3 (a):

(a) New or expanded energy and coastal-dependent industrial facilities where no feasible, less environmentally damaging alternative exists and where consistent with the study titled Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976 (re-adopted by the California Coastal Commission December 1985).

Add the following language to Section 969.7.3 immediately after subsection (h):

(i) Habitat Restoration Projects.

(j) For the portion of any parcel which is not designated Conservation under the certified land use plan, any use authorized by and in conformance with the Visitor Serving Commercial zoning district.

(B) In addition to the above uses, coastal dependent industrial facilities shall also be allowed even where inconsistent with other provisions of the certified LCP if:

(1) To locate elsewhere is infeasible or causes greater environmental damage and.

(2) To do otherwise would adversely affect the public welfare and.

(3) Adverse environmental effects are mitigated to the maximum extent feasible and

(4) Where findings consistent with in 969.7.7 can be made.

5. Add to 969.7.1

(g) Coastal-dependent development or use means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

6. Add the Following Language to Section 969.7.1.1:

969.7.1.1 Designation of the project area.  
Development or subdivision of any parcel in whole or in part within the coastal conservation district shall be permitted only pursuant to an overall development plan for the entirety of all parcels that are geographically contiguous and in common ownership at the time of application. For purposes of determining common ownership pursuant to this Article, parcels which are owned in fee, as well as parcels subject to existing purchase options, shall be treated as commonly owned. Consistent with Government Code section 66424, property shall be considered as contiguous pursuant to this Article even if separated by roads, streets, utility easements or railroad rights of way.

7. Add the following to Section 969.7.3:

969.7.3.1 Application for economically viable use determination.  
Any applicant that proposes a use other than one permitted in the coastal conservation district based on the contention that the uses permitted in this district will not provide an economically viable use of his or her property shall apply for an economic viability determination in conjunction with their coastal development permit application. The application for an economic viability determination shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any application for a coastal development permit and economic viability determination is accepted for processing, the applicant shall provide the following information:

- (a) The date the applicant purchased or otherwise acquired the property, and from whom.
- (b) The purchase price paid by the applicant for the property.
- (c) The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
- (d) The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
- (e) Any development restrictions or other restrictions on use, other than government regulatory restrictions described in (d) above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.

- (f) Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
- (g) A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
- (h) Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
- (i) Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
- (j) The applicant's costs associated with the ownership of the property, annualized for each of the last five calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
- (k) Apart from any rent received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the last five calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.

969.7.3.2 Economically viable use determination.

The decision-making authority shall hold a public hearing on any application for an economically viable use determination. Prior to approving a coastal development permit for a use other than one provided for in the coastal conservation district the decision-making authority shall make the following findings:

- (a) Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in the coastal conservation district would not provide an economically viable use of the applicant's property.
- (b) Restricting the use of the applicant's property to the uses provided for in the coastal conservation district would interfere with the applicant's reasonable investment-backed expectations.

The findings adopted by the decision-making authority shall identify the evidence supporting the findings.

969.7.3.3 Economically viable use. Where the decision-making authority finds that the uses provided for in the coastal conservation district would not provide an economically viable use, and that restricting the use of the applicant's property to these uses would interfere with their reasonable investment backed expectations, the uses provided for in the visitor serving commercial zoning district may be allowed as a conditional use. A specific development proposal for a visitor serving commercial use may be denied, however, if a feasible less environmentally damaging visitor serving commercial alternative also would provide the applicant with an economically viable use. In addition to the other Performance Standards of 969.7.6 applicable to projects in the coastal conservation district, such a visitor serving commercial use shall be subject to the following development standards:

- (a) The area in which visitor serving commercial uses shall be permitted shall be the minimum amount necessary to provide the applicant with an economically viable use of his or her property.
- (b) The portion of the project involving visitor serving commercial uses shall also be subject to the standards of the visitor serving commercial district.
- (c) Access through wetlands or environmentally sensitive habitat areas to an area proposed for visitor serving commercial uses shall only be allowed if necessary to provide an economically viable use of the overall development plan area.

8. Add the following language:

969.7.5.1 Required Consideration of Alternatives.

Before any application is accepted for processing, the applicant shall provide topographic, vegetative, hydrologic and soils information prepared by a qualified professional and reviewed by the California Department of Fish and Game, which identifies the extent of the wetlands on the property. This submittal shall also include an analysis of alternatives to the proposed project and an assessment of how the proposed project is the least environmentally damaging alternative. The analysis of alternatives shall include an assessment of how the proposed project will impact all adjacent wetlands and environmentally sensitive habitat areas, including those within the overall development plan area.

9. Modify Section 969.7.6 as follows:

969.7.6 PERFORMANCE STANDARDS

(A) Before the application can be considered complete, the project shall comply with the following standards to the satisfaction of the Director:

- (1) Wetlands and environmentally sensitive habitat areas that are not subject to development shall be preserved through a conservation easement, deed restriction or other similar mechanism. Such easements or restrictions need not authorize any public right of access or use. Exclusive use and possession of the area may remain with the applicant.

(a) All feasible mitigation measures shall be incorporated into projects to minimize adverse environmental effects.

(1) If the project involves dredging, mitigation measures must include the following:

1. dredging and spoils disposal must be planned and carried out to avoid significant disruption to wetland habitats and to water circulation;

2. limitations may imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site;

3. dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems;

4. other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures.

(ii) If the project involves diking or filling of a wetland, the following minimum mitigation measures shall apply. ... (renumber existing 969.7.6 text accordingly)

10. Add new Section 969.7.2.1 regarding Hamilton Avenue Extension

969.7.2.1 Extension of Hamilton Avenue. The extension of Hamilton Avenue shall be permitted between Beach Boulevard and Newland Street. The precise alignment of Hamilton Avenue shall not be approved without documentation that the least environmentally damaging feasible alternative is the chosen alternative. Before the precise alignment of Hamilton Avenue can be approved, an EIR shall be certified which addresses the alternative alignments for Hamilton Ave. and the mitigation needs generated from each alternative. The alternatives analysis shall include, at a minimum, the following: (1) placing the roadway in an alignment which is most protective of wetland habitats, including the construction of the road on pilings or bridging the road over the wetlands, and (2) limiting the width of the roadway by narrowing lanes and eliminating shoulders, and (3) requiring full mitigation for any impacted wetlands. No net loss of wetland shall occur. Any wetland which is filled or reduced in productivity by the project will be replaced by restoring otherwise degraded or non-functioning wetland as close as feasible to the project site.

11. Add the following language to Section 969.7.7:

(A) Prior to energy production facilities being approved, the approving authority shall make the following finding with statement of facts:

1) Provision has been made for enhancement of a significant portion of the project area, to ensure preservation of plant and wildlife species.

(B) Prior to coastal dependent industrial facilities being approved, the approving authority shall make the following finding with statement of facts:

1) Alternative locations are infeasible or more environmentally damaging.

2) To locate the construction or expansion elsewhere would adversely affect the public welfare.

3) Adverse environmental effects are mitigated to the maximum extent feasible consistent with 969.7.6.

4) Siting is consistent with the study titled Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976 (re-adopted by the California Coastal Commission December 1985).

5) For expansion of the Southern California Edison Plant within the area designated Industrial Energy Production/Conservation only:

a) Not less than two and one half acres of wetlands south of Magnolia are permanently protected by conservation easements, dedications or other similar mechanisms for each acre of wetlands filled, and a program acceptable to the Department of Fish and Game is implemented to assure long term habitat enhancement or restoration of these protected wetlands. Vehicular access shall be prohibited in the wetland mitigation area protected by conservation easement or similar mechanism, and

b) The infeasibility of expanding inland to the area known as the Rotary Mud Dump site (also known as the Ascon Landfill), or other inland location, unless the Energy Commission has determined such expansion infeasible during or before the Notice of Intention proceedings.

(C) For any other project the applicant shall establish and the approving authority shall find that the functional capacity of the environmentally sensitive habitat area is being maintained.

IV. FINDINGS FOR DENIAL AS SUBMITTED

The Commission hereby finds and declares as follows:

A. LCP BACKGROUND AND FISH AND GAME DETERMINATION:

The City of Huntington Beach is located in northern Orange County between the City of Seal Beach and the Santa Ana River with a coastal zone of about five square miles, including nine miles of public beach. At the northern end of the City is the Huntington Harbor marina residential and commercial centers. The shoreline contains major state and city beaches with support facilities and a municipal pier. The downtown and townlot areas are a mix of recreational and commercial uses and residential development. Significant oil and energy-related operations, including the Edison electrical power plant, also exist in the coastal zone along with environmentally sensitive wetland and dune habitats.

Most of the Huntington Beach coastal zone is fully certified. In 1981 the Commission denied the first Huntington Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications which would bring the Plan into conformance with the policies of the Coastal Act. The City incorporated many of the suggested modifications dealing with the downtown area, shoreline access, recreation and visitor facilities, and new development. However, suggested changes to the land uses for areas identified by the California Department of Fish and Game as containing wetlands were not made. Wetlands are identified in the City's certified Land Use Plan as an environmentally sensitive habitat area.

Accordingly, the Commission on November 17, 1982 certified the Huntington Beach LUP excluding the geographic parts of the LUP for the areas containing wetland resources. The two geographic parts, or areas of deferred certification (ADC), that were excluded from certification are the Metropolitan Water District (MWD) site adjacent to the Bolsa Chica and the subject 232 acre Pacific Coast Highway (PCH) area. The LUP for the City, minus the two ADC's, was effectively certified on March 15, 1984. The Implementation Plan portion of this certified LUP area was approved by the Commission on March 13, 1985. The Commission approved LCP Amendment 90-1 in December, 1991 which updated, recodified and reformatted the Implementing Plan ordinances to incorporate numerous changes that had been made by the City since its original certification in 1985. The Land Use Plan for the Pacific Coast Highway ADC, the subject of the current amendment request, was certified by the Commission on October 8, 1986. A Land Use Plan for the MWD site has not yet been submitted.

The subject Pacific Coast Highway ADC is a 232-acre site adjoining the landward side of Pacific Coast Highway between Beach Boulevard and the Santa Ana River. In 1983 a wetlands determination by the Department of Fish and Game was conducted pursuant to Section 30411 of the Coastal Act. The Department of Fish and Game summarized its findings as follows:

Based upon examination of historical mapping, existing biological data, and upon the definitions and criteria outlined herein, the Department finds that of the 162.6 acres within the study area, 149.9 acres are historic wetland and 12.7 are historic upland (Table 1). We find that of the 149.9 acres of historic wetland within our study area, 114.7 acres (76.5%) continue to function viably as wetlands. The Department finds that all 114.7 acres of wetland identified are degraded pursuant to the definition established herein. However, we also find that 113.9 of these 114.7 wetlands acres (99%) provide either high or moderate habitat values to wetland-associated birds. Further, the Department finds that major restoration efforts would not be required to restore and enhance wetland values on 114.7 acres identified in this report. [Emphasis added]

At least 83 birds species have been observed in the Huntington Beach Wetlands (Appendix 2). Of the 83 species, 53 species are wetland-associated birds. Included among the species known to occur in the study area are the federally and state-listed endangered California least tern and the state-listed endangered Belding's savannah sparrow. Bird censuses . . . indicate that of the 114.7 acres of existing wetland in the study area 113.9 of these acres (99%) provide either high or moderate habitat value for wetland-associated birds.

Of the 12.7 acres of historic upland, 8.7 acres adjacent to PCH and downcoast (generally southeast) from the power plant are composed of coastal dune habitat, willow thickets and transition vegetation, and are environmentally sensitive pursuant to Coastal Act Sections 30107.5 and 30240. These 8.7 acres provide desirable habitat diversity to the overall study area, and constitute approximately 35% of all remaining coastal dune habitat in northern Orange County (the remaining roughly 65% being located primarily in the Bolsa Chica Ecological Reserve) (See DFG 1982) . . .

Of the 232 acre ADC, 92 acres were not included by the Department of Fish and Game in the Wetlands Determination. The 92 acres were not included due either to existing development and/or, if vacant, evident lack of the presence of wetlands on-site. The 92 acres include the area developed with: the Southern California Edison Power Plant (area 8, 55 acres), fuel storage tanks (area 9, 28 acres), a vacant two acre parcel owned by the City (Area 10), an area adjacent to Pacific Coast Highway at Beach Boulevard (area 1, 7 acres). (All the numbered areas are identified on the map provided as Exhibit E.) Of these areas, only the City-owned, 2 acre parcel is land use designated conservation.

Of the 140 acres left (232 acres - 92 acres = 140 acres), 114.7 acres are viably functioning wetlands. An additional 11.6 acres are environmentally sensitive upland habitat including 8.7 acres of coastal dune habitat. The remainder of the ADC, 13.7 acres, is comprised of historic, restorable wetlands. The historic, restorable wetlands are land use designated conservation. With the exception of the now restored Talbert Marsh (area 7), none of the historic, non-restorable wetland areas are land use designated conservation.



The DFG study characterizes all the wetlands on-site as historic. However, included within the term "historic" are wetlands that currently function viably as wetlands. In addition to the wetland determination, the DFG study also rated the study area according to the habitat value provided for wetland associated birds. The DFG study rated areas 2, 4, 5, and 6 as providing High value habitat for wetland associated birds and areas 3 and 7 were found to provide moderate value habitat (it should be noted that with the wetland restoration that has occurred on area 7 since the DFG study was done, it is likely that area 7 now provides high value habitat).

As a result of the DFG study, four specific land use designations were certified in the LUP. Of the total 232 acre area, 125 acres are designated Conservation, 83 acres Industrial Energy Production, 17 acres Industrial Energy Production/Conservation, and 7 acres are designated Visitor-Serving Commercial. The Conservation designation was applied to assure that only the uses allowed by Section 30233 and 30264 of the Coastal Act or low intensity recreational uses (public access trails, observation points, picnicking, etc.) are permitted within wetlands and ESHAs. Except for a portion within the now restored Talbert Marsh area (area 7), none of the areas identified as historic non-restorable wetland were designated conservation under the land use plan. The "Industrial Energy Production/Conservation" designation is intended to allow the existing wetland area to be protected and restored while not precluding the option of power plant expansion onto this site consistent with Section 30260 if no feasible less environmentally damaging alternative is available and if appropriate mitigation is provided.

#### B. General Amendment Description

A previous amendment to certify implementation for the Pacific Coast Highway ADC was submitted by the City in December 1990 (Huntington Beach LCP Amendment 2-90). A few months earlier (April 1990) the City had submitted a "clean up" amendment (Huntington Beach LCP amendment 90-1) for Commission action. The "clean up" amendment proposed to recodify the Implementation Plan and bring it up to date with changes the City had made since the 1985 certification. The clean up amendment (90-1) originally included the revised Coastal Conservation District ordinance and renumbered it to Article 9422. However, because the proposed changes to the Coastal Conservation District were so intricately related to the proposed implementation for the ADC under LCP amendment 2-90, the staff recommended deleting Article 9422 from the LCP "clean up" amendment (1-90) as a suggested modification.

The intent of the suggested modification to delete Article 9422 was that the revisions to the Coastal Conservation District could then be heard, more appropriately, with the action on the proposed Implementation for the PCH ADC. LCP amendment 90-1 was approved by the Coastal Commission consistent with the staff recommendation on December 13, 1991. The suggested modification to LCP amendment 90-1 stated:

The Commission suggests a modification to the amendment request 90-1 which is to delete all portions of the amendment request pertaining to the Coastal Conservation District ordinance changes, including the CC- suffix and removal thereof, revisions to the wetlands definitions, and provisions for flood control facilities within wetland areas. These proposed provisions will be addressed during the certification action on the Pacific Coast Highway ADC. (emphasis added)

The City accepted the Commission's action and agreed to the modification in Huntington Beach City Council Resolution No. 6376 on May 4, 1992.

The Commission then acted on the LCP amendment dealing with the Pacific Coast Highway ADC, 2-90. The Commission approved with suggested modifications LCP amendment 2-90 on October 13, 1992. This amendment included replacing existing Coastal Conservation District 969.7 with Coastal Conservation District Article 9422, subject to suggested modifications. However, the City did not accept the suggested modifications within six months as required by Section 13542 (b) of the California Code of Regulations. Consequently, the Commission's approval with suggested modifications of Huntington Beach LCP amendment 2-90 expired and never became effective. Therefore, the revisions to the Coastal Conservation District (from Article 969.7 to Article 9422) have never been effectively certified by the Commission. The Coastal Conservation District which remains effective in the City's LCP is Article 969.7. (See exhibit J for effectively certified Article 969.7 and exhibit K for non-certified Article 9422).

Unfortunately, the City's new amendment submittal overlooks this history and neglects to note that the Commission has not approved Article 9422. Instead, the amendment proposes limited changes to Article 9422 that reflect the suggested modifications approved by the Commission in 1992 when it approved amendment 2-90. The Commission staff has nevertheless rereviewed Article 9422 and its predecessor, Article 969.7, and with one exception discussed in greater detail below, found that the differences between the two articles are generally minor.

The significant difference between Articles 969.7 and 9422 concerns the zoning of the wetlands and environmentally sensitive habitats in the ADC. The certified Land Use Plan (LUP) designates all these areas as Conservation consistent with the 1983 study done by the Department of Fish and Game. The City proposes to implement this conservation designation in Article 9422 by adding a Coastal Conservation suffix ("CC suffix") to the local base zones for these areas. These base zones provide for a variety of uses, including residential and manufacturing uses. In contrast to the uses specified in these base zones, Article 9422 would limit the areas subject to the CC suffix to the types of uses generally permitted in wetlands and environmentally sensitive habitat areas by Coastal Act sections 30233 and 30240. The limitation provided by this suffix would remain in effect unless findings are made justifying its removal. In essence, the City would permit removal of the conservation suffix if it determines that there are, in fact, no wetlands on the property. If the conservation suffix is removed, the uses specified by the base zones would be permitted. In addition, the proposed Implementation Plan Amendment to Article 9422 would require an overall development plan for some, but not all, parcels that are geographically contiguous, under common ownership, and carry the CC suffix.

The Implementation Plan Amendment also includes the addition of a Coastal Zone suffix to all areas of deferred certification. The Coastal Zone suffix attaches coastal development permit requirements to the entire area. The proposed amendment also would provide "clean-up" language with regard to wetlands, mitigation and adverse environmental effects. These would include expanding the definition of wetland to make it consistent with the Coastal Act and Land Use Plan definitions; replacing the word "practical" with

"feasible," and replacing the word "moderate" with "minimize." The amendment also proposes to clarify that flood control facilities are allowed in wetlands only in conjunction with restoration projects. These changes are proposed to bring Article 9422 into conformance with the Coastal Act. Interestingly, the existing Article 969.7 is already consistent with the Act, and these "clean-up" modifications would not be necessary if the City gave effect to this Article.

### C. Area by Area Description

To facilitate reviewing the entire 232 acre area, it was divided into 10 separate areas during the City's review. The same 10 area division is employed for the purposes of this staff report as well (see exhibits E and F for map and text). Following is an area by area description.

Area 1: A 7.0 acre area adjacent to Pacific Coast Highway at Beach Boulevard with a certified Land Use designation of Visitor Serving Commercial. The proposed zoning for this area is Visitor Serving Commercial combined with the Coastal Zone suffix and Flood Plain suffix (VSC-CZ-FP2). The property is owned by Caltrans. The site is occupied by Action Boat Brokers at the corner adjacent to Pacific Coast Highway at Beach Boulevard. The remainder of the site is a narrow strip of land which runs along Pacific Coast Highway in front of the Cabrillo Mobilehome Park. The Department of Fish and Game identified this site as non-restorable wetlands. Area 1 includes all of assessor's parcel numbers (APNs) 114-150-26 and 114-150-55, and portions of 114-150-51 and 114-150-53.

Area 2: A 28 acre parcel adjacent to Beach Boulevard with a certified Land Use designation of Conservation. The proposed zoning for the subject site is Residential Agricultural District combined with Oil Production, Coastal Conservation suffix, Coastal Zone suffix and Floodplain overlay (RA-O-CC-CZ-FP2). The area has been identified by the Department of Fish and Game as degraded wetlands with high usage by wetlands associated birds. The area is owned by Caltrans (21 acres) and by Mills Land and Water (7.15 acres). It is currently vacant. Area 2 includes all of APNs 114-150-58, 148-011-01, and 114-011-02; and portions of 114-150-51, and 114-150-53.

Area 3: A 13 acre area at the northwest corner of Newland Street and the Orange County Flood Control channel which has a certified land use designation of Conservation. It was identified by CDFG as Degraded Wetlands on a portion of the site, and former but restorable wetlands on the remainder, with moderate usage by wetlands associated birds. It is owned by the Mills Land and Water Company and is presently vacant. The proposed zoning for this area is Restricted Manufacturing District combined with Oil Production, Coastal Conservation suffix, Coastal Zone suffix and Floodplain suffix (M1-A-CC-CZ-FP2). Area 3 includes all of APN 114-150-59.

**Area 4:** A 17 acre area located between Pacific Coast Highway and the Orange County Flood Control channel immediately downcoast from the Edison Power Plant. It has a certified land use designation of Industrial Energy Production/Conservation. It has been identified by DFG as degraded wetland with high usage by wetland associated birds. Energy production is allowed under this designation if it is demonstrated that no feasible alternative site is available. The property is owned by the Edison Company and is adjacent to their generating plant. The proposed zoning for the area is Industrial District with a Coastal Conservation suffix and a portion of the area as Residential Agricultural with a Coastal Conservation suffix. Area 4 includes portions of APN 114-150-63 and 114-160-56.

**Area 5:** A 10 acre area located at the northeast corner of Magnolia Street and Pacific Coast Highway. The land use designation is Conservation. The site is presently vacant. It is owned partially by Pacific Enviro and partially by Coastal Magnolia Group. The Department of Fish and Game identified this area as degraded wetland with high usage by wetland associated birds. The proposed zoning for the site is Limited Use District combined with Coastal Conservation suffix, Coastal Zone suffix and Floodplain suffix (LUD-CC-CZ-FP2). Area 5 includes all of APNs 114-160-68 (owned by Coastal Magnolia Group) and 114-160-70 (owned by Pacific Enviro); and a portion of APN 114-150-64 (owned by the Orange County Flood Control District).

**Area 6:** A 56 acre parcel located between Pacific Coast Highway and the Orange County Flood Control channel and between Magnolia Street and Brookhurst Street and land use designated Conservation. The site is presently vacant. It is owned partially by Pacific Enviro and partially by Coastal Magnolia Group. The DFG identified this property as degraded wetlands with high usage by wetland associated birds. The proposed zoning is Limited Use District with a Coastal Conservation suffix. Area 6 includes all of APNs 114-160-69 (owned by Coastal Magnolia Group) and 114-160-71 (owned by Pacific Enviro).

**Area 7:** A 16 acre area located between Pacific Coast Highway and the Orange County Flood Control channel and between Brookhurst Street and the Santa Ana River. The land use designation is conservation. This area is owned by the Huntington Beach Wetlands Conservancy and has been restored to a functioning wetlands managed by the Conservancy. The proposed zoning at the site is Limited Use District combined with Coastal Conservation suffix, Coastal Zone suffix, and Flood Plain suffix (LUD-CC-CZ-FP2). Area 7 includes all of APNs 114-160-72 and 114-160-73.

**Area 8:** A 55 acre area located at the southeast corner of Pacific Coast Highway and Newland Street (site of the Southern California Edison power plant) has a land use designation of Industrial Energy Production. The site is currently developed with the Edison Company power generation plant. No wetlands were identified on this site. The proposed zoning for this site is Industrial District combined with Oil Production overlay, Coastal Zone suffix and Floodplain suffix (M2-O-CZ-FP2). Area 8 includes all of APNs 114-150-16, 114-150-17, 114-150-44, and 148-121-17, 18, 19, 20, 21, 22, and 23. Area 8 also includes portions of APNs 114-150-63 and 114-160-56.

Area 9: A 28 acre area located at the northeast corner of Magnolia Street and the Orange County Flood Control channel which has a land use designation of Industrial Energy Production. The site is developed with oil storage tanks for the Edison Company power generation plant and is owned by Southern California Edison. No wetlands were identified on this site by DFG. The proposed zoning for the site is Light Industrial on a portion of the site and Restricted Manufacturing on the rest of the site, both combined with Oil Production overlay, Coastal Zone suffix, and Floodplain suffix (M2-O-CZ-FP2/M1-A-CZ-FP2). Area 9 includes all of APNs 114-150-36 and 114-481-32.

Area 10: A 2 acre area located at the southeast corner of Magnolia Street and the Orange County Flood Control channel which has a land use designation of Conservation. It is owned by the City of Huntington Beach and is presently vacant. The DFG did not identify any wetlands on this site. The proposed zoning for this site is Qualified Recreational Open Space District combined with Coastal Conservation suffix, Coastal Zone suffix and Floodplain suffix (Q(ROS)-CC-CZ-FP2). Area 10 includes a portion of APN 114-481-33.

At the time the land use plan for the ADC was certified, certain assessor's parcels were split designated. The split designation means a portion of a single parcel has one land use designation and another portion of the same parcel has another designation. This occurs on APN 114-150-51 and 114-150-53; the portions in area 1 are designated Visitor Serving Commercial (VSC), the portions in area 2 are designated Conservation. Both parcels are owned by Caltrans.

APNs 114-150-63 and 114-160-56 are located in both areas 4 and 8. The portions of the parcels in area 4 are designated Industrial Energy Production/Conservation. The portions in area 8 are designated Industrial Energy Production. Area 8 is the site of the existing Southern California Edison power plant. Area 4 is adjacent to area 8. Area 4 was identified by the Commission as an area where future expansion of the power plant may occur if other requirements are met. Both parcels are owned by Southern California Edison.

A portion of APN 114-481-33 is located in area 10. It is land use designated Conservation. The rest of APN 114-481-33 is within Magnolia Street. This parcel is owned by the City of Huntington Beach.

The City has indicated that a portion of APN 114-150-64 is located within area 5. This parcel is adjacent to the Orange County Flood Control channel and is owned by the Orange County Flood Control District.

A Caltrans dune restoration project was approved and established along the Pacific Coast Highway frontage of areas 5 and 6 and portions of area 7. The dune restoration provided mitigation for impacts to dune habitat resulting from the Caltrans Pacific Coast Highway widening project. The dune restoration was done in conformance with the approved consistency determination CC-23-86. The Pacific Coast Highway widening project was approved under coastal development permit A-5-HNB-91-805. The dune

restoration project was approved under coastal development permit 5-91-777. Caltrans obtained the legal right to develop the area through condemnation proceedings.

Ownership of Area 7 was transferred from Caltrans to the State Coastal Conservancy as part of the mitigation for the Pacific Coast Highway widening. In addition to the land transfer, Caltrans reimbursed the Conservancy for the cost of creating 0.8 acres of open water foraging and 1.6 acres of dune habitat. The dune habitat was created on the portion of area 7 identified by DFG as "non-restorable." The Talbert Marsh restoration also provided mitigation for the widening of Brookhurst Street. The Orange County Flood Control District also funded portions of the restoration project.

D. Article 9422 Has Not Been Certified by the Commission

The City's intent with the current submittal was to submit a new amendment request that reflected the Commission's approval on the previous amendment (2-90) including the suggested modifications. However, the City only submitted the suggested modifications approved by the Commission in 1992 (see exhibit B). The body of the text of Article 9422 has not been submitted for Commission action at this time. The difference between Article 969.7 and Article 9422, with the exception of the CC- suffix, is minor. The City is proposing to amend Article 9422, which was never certified by the Commission. The Commission cannot certify changes to a document that, in effect, does not exist. Consequently, the amendment as proposed must be denied. In addition, the staff has prepared suggested modifications in response to the City's amendment which would amend the existing Article 969.7. If, however, the City decides to accept these suggested modifications, but would rather incorporate them into Article 9422, and submit this revised Article for approval by the Executive Director and concurrence by the Commission, this also should be acceptable.

E. The Conservation Designation in the Land Use Plan

The proposed Implementation Plan amendment for the Pacific Coast Highway Area of Deferred Certification (ADC) is intended to carry out the provisions of the certified Land Use Plan. The subject area is 232 acres with more than half or 125 acres designated "Conservation" in the Land Use Plan. Another 17 acres are designated Industrial Energy Production/Conservation.

The City is proposing to implement the Pacific Coast Highway ADC conservation land use designation, by utilizing a non-conservation base zone, instead adding a Coastal Conservation (CC) suffix zone.

As discussed above, the Conservation land use designation was the result of the 1983 Department of Fish and Game (DFG) wetlands study pursuant to Section 30411 of the Coastal Act (Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands, February 4, 1983). Section 30411 of the Coastal Act provides for the study of degraded wetlands by the Department in consultation with the Coastal Commission and the Department of Boating and Waterways. The 1983 study found that within the study area, 149.9 acres are historic wetland and 11.6 acres are historic sensitive upland (with 8.7 acre

of the uplands constituting coastal dune habitat). Further, 114.7 acres (76.5%) continued to function viably as wetlands. DFG found that all 114.7 acres were degraded but it was also determined that the wetlands could be restored without major restoration efforts.

Development in the wetlands in the ADC is generally governed by section 30233(a) and the thermal electric generating industrial siting provisions of section 30264 as incorporated into the Land Use Plan. The subject Pacific Coast Highway wetlands are not one of the 19 enumerated wetlands where development is strictly controlled, as specified in section 30233(c). The activities and types of development permitted in wetlands, pursuant to Sections 30233(a) of the Coastal Act are as follows:

1. Port facilities
2. Energy facilities
3. Coastal-dependent industrial facilities, such as commercial fishing facilities
4. Maintenance of existing or restoration of previously dredged depths in navigation channels, turning basins, vessel berthing and mooring areas, and boat launching ramps,
5. Incidental public service purposes which include, but are not limited to, burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines,
6. Restoration projects
7. Nature study, aquaculture, or similar resource-dependent activities
8. In wetland areas only, entrance channels for new or expanded boating facilities may be permitted according to the requirements of Section 30411, and
9. New or expanded boating facilities in estuaries.

The allowable uses of wetland resources contained in the certified Land Use Plan mirror the above Coastal Act wetland policies. The certified LUP contains land use designations and policies which protect wetlands resources as required by the above policies of the Coastal Act. The Conservation land use designation of the certified LUP states:

Conservation- Conservation is a new designation intended to protect valuable resource areas in the coastal zone for most types of development. The designation allows only certain low intensity activities which provide public access, so long as the resources being protected are not impaired. Such support activities could include picnic and observation areas, nature trails and peripheral bike paths, informational signs or displays, and peripheral parking areas. This designation also allows the additional uses outlined in Sections 30233 and 30264 of the Coastal Act under the conditions stated therein. Conservation areas may be publicly or privately owned; however, public access to these areas is encouraged and should be provided where possible. The designation is applied to those areas where only very limited use is best due to the unstable soil conditions and slopes or the existence of significant wildlife habitats or endangered species, and is an important tool for protecting environmentally sensitive habitats and visual resources.

The certified Land Use Plan contains policies to protect existing and former but restorable wetlands currently identified to exist on more than half the subject ADC. Wetlands are among the most stringently protected environmentally sensitive habitat types under the Coastal Act and Land Use Plan. In 1986 with the certification of the Land Use Plan, the Commission recognized the special role of wetlands in the ecosystem and approved the Conservation land use designation on all land where wetlands were identified pursuant to the 1983 Department of Fish and Game determination. Further, as required by Sections 30233(a) and 30624 of the Coastal Act the certified LUP set forth permissible uses allowed in wetland areas.

Pursuant to the LUP, in order to approve a project involving the diking, filling or dredging of a wetland or estuary, there must first be a finding that the project is one of the specific enumerated uses set forth in Sections 30233(a) and 30264 of the Coastal Act or a low intensity recreational use. In addition, allowable development is permitted in these areas only if there is no other less environmentally damaging alternative and where feasible mitigation measures are provided to minimize adverse environmental impacts. The development must also meet the requirements of all other applicable provisions of the certified LUP.

F. The Proposed Base Zones Are Inconsistent with the Conservation Designation in the Land Use Plan

The proposed Implementation Plan Amendment for the Pacific Coast Highway ADC proposes to retain the existing local base zones for the 149.9 acres containing wetlands and designated Conservation in the Land Use Plan. The major problem with the substance of this proposal is that these base zones are inconsistent with the conservation designation in the land use plan. For instance, the City is proposing base zoning of the conservation designated sites of Residential Agriculture, Restricted Manufacturing, and Limited Use District. All of these proposed zones allow uses inconsistent with the wetland and other ESHA protection provisions of the certified land use plan and specifically the Conservation land use designation.

The only area where the local base zone would be changed from what is currently adopted at the local level is a 7 acre portion of Caltrans property along Pacific Coast Highway (area 1). The existing local base zoning on this property is Residential Agriculture combined with Oil Production (RA-O). The subject amendment request proposes to base zone the 7 acres Visitor-Serving Commercial (VSC). No wetlands were found to exist on this portion of parcels 114-150-51 and 114-150-53 or on parcels 114-150-26 and 114-150-55 in the 1983 DFG wetlands study.

In order to justify the retention of the base zones for the properties in the ADC, the City is proposing the addition of the CC suffix. The proposed zoning map would attach the CC suffix to all areas designated conservation in the certified Land Use Plan. However, the proposed zoning text only attaches the CC suffix requirements to a specific list of Assessor Parcel Numbers (APNs). The list of APNs only includes area 2 and 3. This means that areas 4, 5, 6, and 7, though land use designated Conservation, would have no implementing text. For these areas no implementation protection of wetlands and other ESHAs is provided.



The proposed CC suffix language would restrict the uses within some of the wetland areas to the uses identified in Section 969.7.2 and 969.7.3 of the Coastal Conservation District. These uses are limited to the uses allowed under Section 30233 of the Coastal Act and low intensity recreational uses. In addition, for some of the areas identified as wetlands, the CC-suffix would allow development on non-wetlands portions of property "only pursuant to an application for a single overall development plan for the entire overlay area, or such portion thereof as may be at the time of said application geographically contiguous and under common ownership." The CC suffix would also require that such an application include topographic, vegetative, hydrologic, and soils information, prepared by a qualified professional and reviewed and concurred in by the DFG, which identifies the extent of any existing wetlands on the property. The proposed CC-suffix would also require conservation easements, dedications or other similar mechanisms over all wetland areas as a condition of development, to assure permanent protection against development inconsistent with Sections 969.7.2 and 969.7.3.

The amendment does not propose that a property owner of contiguous wetland and upland parcels be required to have a wetlands determination prepared on the parcels designated conservation if no development of those parcels is proposed. Although a coastal development permit application would still include all contiguous parcels under common ownership which carry the CC suffix for comprehensive planning purposes, the owner may simply record a temporary conservation easement over the parcels previously identified in the 1983 DFG wetlands determination as containing wetlands in order to protect the environmentally sensitive habitat area. The conservation easement may be removed from those parcels or portions thereof which are found not to contain wetlands through a subsequent overall development plan at the time development is proposed for these parcels. This alternative allows the property owner of contiguous wetland and upland parcels to avoid a costly and time consuming wetlands determination if development is not proposed on parcels containing wetlands.

There are several reasons why the CC suffix is not consistent with the requirements of the Coastal Act and the Land Use Plan. First, as noted above, the CC suffix language would only apply to the parcels listed by Assessors Parcel Numbers contained in the City's proposed language. As the amendment is currently proposed no text or provisions for allowable development are included for those areas proposed to carry the CC-suffix other than those 7 parcels specifically listed. This would leave approximately 82 acres of land designated as conservation without any zoning text to support it and without assurance of protection of on-site wetlands (see areas identified as 5, 6 and 7 on exhibit E). Consequently, as proposed the CC-suffix language is not adequate to carry out the wetlands protection provisions of the City's certified Land Use Plan. Therefore, the proposed amendment must be denied.

Second, in coastal jurisdictions, the certified land use plan is a portion of the general plan. See Public Resources Code Sections 30108.5 and 30108.55. The land use plan is, in turn, implemented by certified coastal zoning ordinances. Under the Coastal Act, Section 30513, these zoning ordinances must conform with and be adequate to carry out the requirements of the land use plan.

The strategy of using a zoning suffix to protect wetlands rather than changing the base zone to reflect the on-site conditions does not conform with this requirement that zoning be consistent with the land use designation in the land use plan. Adding a suffix which is to take precedence over base zoning that is inconsistent with the land use designation is an unusual method of conforming the zoning to the conservation land use designation of the certified Land Use Plan. This alternative does not exist elsewhere in the City but was chosen by the City of Huntington Beach after much debate.

The coastal conservation suffix and non-conservation base zoning proposed by the City to implement the existing land use designations within the ADC are not consistent with nor adequate to carry out the provisions of the certified Land Use Plan. The City's certified Land Use Plan for the ADC designates all areas identified as containing wetlands by the 1983 DFG determination as conservation. However, the City's proposed base zones for areas designated conservation are Residential Agricultural, Restricted Manufacturing, Limited Use District, and Qualified Recreation Open Space. Under these zones the following uses would be allowed (not a complete list): agricultural and horticultural uses, single family dwellings, compounding, processing, packaging or treatment of cosmetics, pharmaceuticals, and food, machine shops, manufacture of ceramic products, automobile repair, battery rebuilding, garment manufacture, farming, and orchards. None of these uses are consistent with the uses allowed by the Land Use Plan within the Conservation designation. The Land Use Plan states that the Conservation designation "allows only certain low intensity activities which provide public access, so long as the resources being protected are not impaired." The LUP further states:

The designation [Conservation] is applied to those areas where only very limited use is best due to ... the existence of significant wildlife habitats or endangered species, and is an important tool for protecting environmentally sensitive habitats and visual resources.

The areas land use designated Conservation were so designated due to the extensive presence of wetlands on-site. The Land Use Plan identifies wetlands as environmentally sensitive habitat. The uses allowed by the proposed base zone are in direct conflict with the standards of the City's certified Land Use Plan. The proposed base zones do not limit development to low intensity uses and do not require protection of environmentally sensitive habitat areas. Therefore the Commission finds the proposed base zoning is inconsistent with and inadequate to carry out the policies and provisions of the certified Land Use Plan.

In addition, the CC suffix even if text to support all areas designated Conservation in the Land Use Plan were provided, would still not adequately implement the Conservation designation. The CC suffix is essentially an overlay zone. The City currently uses overlay zones in the existing certified Implementation Plan (i.e. Coastal Zone suffix, Floodplain suffix and Oil Production suffix). However, none of the existing suffixes conflict with their underlying base zone. The suffixes may require greater restrictions under certain conditions. For example, under the Coastal Zone suffix, in addition to the underlying base zone requirements, proposed development must

also meet additional requirements such as the provision of public access or retention of public views. But these restrictions do not preclude the underlying base zone. The existing suffixes supplement base zones. In the case of the proposed Coastal Conservation suffix, the base zones are in direct conflict with the suffix. The CC suffix precludes the base zone uses. The base zones would allow uses specifically prohibited by the suffix and are not protective of the wetlands.

#### G. Economic Use of Property

The City is also proposing standards for removal of the CC-suffix. The proposed language would require that before the CC-suffix can be removed, findings must be made that no wetlands exist on site, that the removal is in accordance with the policies, standards and provisions of the Coastal Act, and that there is no feasible, less environmentally damaging alternative for any proposed land use or development which may be allowed under California Public Resources Code section 30233(a)(1). In such cases where removal of the CC-suffix can be approved, the local base zone uses, as modified by the CZ ordinance, are proposed to be allowed.

It appears this removal provision was added by the City because of concerns raised by the City Attorney. In 1989 the City Attorney indicated that zoning property in the ADC consistent with the "Conservation" designation in the land use plan might effect a "taking" of property in violation of the California and U.S. Constitutions because it might deny the property owners all economically viable use of their property. There is apparently an apprehension that the uses permitted in the conservation district, including energy and coastal-dependent industrial facilities, would not provide a sufficient economic return. Retention of the local base zones and their attendant uses, with the prospect that the CC suffix might be removed, was intended to hold open the possibility that a broader range of uses might be permitted in the conservation areas.

The City's concern may be laudable, however, its proposal to permit the removal of the CC suffix in certain instances to provide an economically viable use of property provides an unwarranted and ultimately ineffective remedy. The proposal is not clearly necessary because merely stating in a planning document what uses of property shall be allowed in the future is not typically considered to be the same as definitively stating an intention not to allow an economically viable use of property. As the Commission was reminded by the Court of Appeal in Sierra Club v. California Coastal Commission (1993) 12 Cal.App.4th 602, questions of economic viability are usually not ripe for consideration until the regulating government agency is presented with a specific plan for development of a parcel. In general, this level of specificity does not arise until there is an actual permit application. Consistent with this court decision, Coastal Act section 30010 prevents the Commission and local governments from using their coastal "permit" authority to take or damage private property for public use. Therefore, it is not required to address economic viability issues in LCPs. In fact, the Sierra Club court said the Commission and local governments cannot use vague concerns about the potential for a taking as the basis for refusing to designate areas as environmentally sensitive habitats in LCPs where these areas are environmentally sensitive within the meaning of the Coastal Act.

In addition, it is important to note that the land use plan at issue, on its face, permits a number of potentially reasonable uses of property such as energy production, mineral extraction and coastal-dependent industrial facilities. A taking by regulation does not occur until there is a deprivation of all economically viable use of property. The fact that there are permissible uses in the conservation district that seem to provide economically viable uses precludes the claim that zoning the property for conservation use will effect a taking of property.

Moreover, allowing removal of the CC suffix does not address the issue of the potential loss of all economic use property. Although, if the CC suffix is removed, the base zone uses would be allowed, in order to remove the suffix, a finding must be made that no wetlands exist on the parcel. No evidence has been submitted to indicate that the extent of wetlands within the ADC is less than what was determined by DFG in 1983. Consequently it is reasonable to assume that the Conservation designated areas will not qualify for removal of the CC suffix. Therefore, retention of the base zones is a false solution. It does not achieve the goal of providing an allowable use to eliminate the possibility of the loss of all economic use of property that may result from application of the Conservation land use designation and Conservation District zone.

Finally, even if it is agreed that a process should be included in the LCP to directly address the question of economically viable use in the ADC, the amendment proposed by the City does not include specific information that must be submitted before the City can determine that application of the certified LCP would deprive an applicant of all economic use of the property. For instance, there is no requirement that the applicant provide any information to the City regarding what would constitute an economically viable use of the property. On appeal, this same information would also be necessary for the Commission to analyze whether its action in denying a permit would constitute a taking. In addition, because maximum protection of wetlands must be assured, very specific standards for determining deprivation of economic use must be applied before any development within wetlands is allowed. The proposed amendment language does not include such standards. Consequently, the possibility exists that development inconsistent with the certified LUP and Coastal Act Section 30233 and 30240 may be allowed without definitively ascertaining that not allowing it deprives an applicant of all economically viable use. Finally, the proposed zoning does not contain development standards which are applicable when an applicant for a coastal development permit can demonstrate that he or she has a sufficient real property interest in the property to allow the proposed project, and denial of the proposed project based on application of the certified LCP would deprive his or her property of all economically viable use. These standards would serve to govern development even where the certified LCP would otherwise prohibit it.

As proposed, the implementation plan does not include specific information that must be submitted before the City can determine that application of the certified LCP, does not include the steps and standards necessary to conclusively determine when application of the conservation designation and zoning would result in loss of any viable economic use of property. Without such language the amendment is inadequate to carry out the wetland and ESHA

policies of the certified LUP in a manner consistent with Section 30010 of the Coastal Act and the United States and California Constitutions. Therefore, as proposed the amendment must be denied.

The City's intent in proposing inconsistent base zones with a Coastal Conservation suffix was to allow some use on the sites that would be economically viable. However, as discussed above, the proposed solution will not work. No zoning text is proposed to address the issue of loss of economic use. Moreover, the City's concern that application of conservation zoning to land uses designated conservation would result in the denial of all economic use has been resolved below in a manner consistent with the requirement of consistent implementation zoning.

H. Preferred Use If Other than Conservation Must Be Allowed

Finally, the proposed base zones are not the preferred alternative if a determination is made that some use other than Conservation must be allowed. The ADC runs approximately 3 miles along Pacific Coast Highway and adjoins major feeder streets. Beach Boulevard is a State Highway (No. 39) and is often used by beach-goers from inland locations. Pacific Coast Highway, also a State Highway (No. 1), is heavily traveled by beach-goers and general coastal zone visitors. Pacific Coast Highway separates the subject site from the public beaches, the site is located just across the street from Huntington State Beach.

The nearest-existing visitor serving development in Huntington Beach on the inland side of Pacific Coast Highway is approximately 2 1/2 miles upcoast of the ADC. The subject site's location across the street from the beach along major visitor routes, especially Pacific Coast Highway, make it an excellent location for visitor serving use.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30213 of the Coastal Act states, in part:

Lower cost visitor ... facilities ... shall be protected, encouraged, and, where feasible, provided.

These sections of the Coastal Act have been specifically incorporated into the City's certified Land Use Plan. The certified Land Use Plan places the same high priority on visitor serving uses as does the Coastal Act. The proposed zoning does not recognize this. Except for the 7 acre parcel (area 1) on the corner of Pacific Coast Highway and Beach Boulevard, none of the proposed base zones are Visitor Serving Commercial.

Because of the ADC's proximity to the beach and to major beach access routes and the high priority placed on visitor serving uses over residential, general industrial, or general commercial uses, the appropriate use for the areas within the ADC designated Conservation, if another use is deemed necessary, is Visitor Serving Commercial.

#### I. Extension of Hamilton Avenue

The proposed amendment would allow the extension of Hamilton Avenue through the wetlands between Beach Blvd. and Newland Street. Any road through the wetlands must be consistent with the certified Land Use Plan provisions. The Commission in April, 1987 adopted findings for the 1986 approval of the certified LUP. Those findings state that:

The Commission finds that the precise alignment of Hamilton Avenue cannot be approved without the necessary documentation showing the least environmentally damaging feasible alternative is the chosen alternative. However, the Commission finds that there is a need to provide an alternative route paralleling Hwy. 1 for public safety needs.

The Commission further finds that such minimization of impacts shall include, at a minimum: (1) placing of the roadway in an alignment which is most protective of wetland habitats, which may require the entire road to be constructed on pilings or other road designs such as bridging over the wetlands, (2) limiting the width of the roadway by narrowing lanes and eliminating shoulders, and (3) requiring full mitigation for any impacted wetlands. The Commission also finds that the EIR, which will need to be done before this project could occur, will need to adequately address the alternative alignments for Hamilton Ave. and will need to address the mitigation needs generated from each alternative.

Section 9.4.5, Area 1 of the Coastal Element or LUP refers to the subarea between Beach Blvd. and Newland Street. The Plan allows for the extension of the road through the wetlands and states:

The Hamilton Avenue extension will be constructed in such a way as to minimize impacts on the wetland. This includes raising the entire structure on piling if necessary. Appropriate mitigation shall be provided. It is the City's intent that no net loss of wetland occur. Any wetland which is filled or reduced in productivity by the project will be replaced by restoring otherwise degraded or non-functioning wetland as close as feasible to the project site.

Any extension of Hamilton Avenue must be done in accordance with the above LUP provisions. The zoning text must describe the information necessary to be included with a coastal development permit application for the Hamilton Avenue extension so that a determination can be made as to whether a specifically proposed project meets the LUP standards. As proposed, such an information requirement is not included. In addition, no development standards are included on how any approvable road would minimize and mitigate all impacts. Therefore, the proposed amendment must be denied because it is not adequate to carry out the certified land use plan policy above.

#### J. Power Plant Siting

The 17 acre area (Area 4) located adjacent to and downcoast of the Southern California Edison plant (area 8) is land use designated Industrial Energy Production/Conservation. The City is proposing to zone a portion of the site Industrial District and the remainder of the site Residential Agriculture. Both portions would also carry the following zone suffixes: Oil Production, Coastal Conservation, Coastal Zone and Floodplain District. The City's intent in proposing this zoning is that the coastal conservation suffix would take precedence over the base zones of Industrial and Residential Agriculture for those portions of the site which contain wetlands. For the reasons discussed previously, the City's proposed use of the coastal conservation suffix will not adequately implement the provisions of the certified Land Use Plan.

In addition, Sections 30260 and 30264 of the Coastal Act are specifically incorporated into the City's certified LUP. Section 30260 allows new or expanded coastal dependent industrial facilities even when inconsistent with other provisions of the Coastal Act, including the environmentally sensitive habitat and wetlands provisions, if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible. Section 30264 allows expansion of thermal electric generating plants in the coastal zone if the proposed coastal site has been determined by the State Energy Resources Conservation and Development Commission to have greater relative merit pursuant to the provisions of Section 25516.1 than available alternative sites.

The Coastal Act Section 30413(b) requires the Commission to "designate" areas where the construction of an electric power plant would prevent achievement of the objectives of the Coastal Act. This section also states, however, that the Commission shall not designate specific locations which are presently used for power plants or surrounding areas that could be used for "reasonable expansion" of the facilities.

As part of the Commission's adopted Power Plant Siting Study, "Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976", Nov. 1979) the Commission has designated some of the property south of the Huntington Beach Power Plant as unsuitable for siting because of valuable wetland habitat. The designated wetland system extends south of the existing Huntington Beach Power Plant as discussed in this report. However, the northwest portion of the wetland (area 4) was not designated as unsuitable so that reasonable expansion of the facility would not be precluded by the designations. (This non-designation of the wetland area in Huntington Beach was not based on resource value or suitability for siting, but rather on the requirements of the Act that reasonable expansion not be precluded.) The power plant possibly has room to expand inland into the area north of the Talbert Channel, possibly at the Rotary Mud Dump site, rather than into the wetland. As stated previously, the Commission must assure that the a reasonable expansion of the power plant is not precluded by the resource protection designation.

As proposed by the City the coastal conservation suffix would be applied to all of area 4. Even if the coastal conservation suffix were modified such that it could adequately carry out the wetland/ESHA protection provisions of the LUP, area 4 still has unique requirements. In certifying the land use designation at the site as a combination Industrial/Conservation, the Commission recognized the unique requirements of the site that potentially would be subject to expansion of an existing energy facility.

In approving the land use designation of Industrial Energy Production/Conservation the Commission found the following:

1. The land use designations must specify permitted uses and such uses should not preclude reasonable expansion of the existing Huntington Beach Power Plant as indicated in Section 30413(b) of the Coastal Act.
2. The land use designations must reflect the previous Commission findings that power plant expansion priority should be given to the area inland of the Talbert Channel, and, conditions of and mitigation measures for an energy expansion into wetlands must be provided consistent with the mandatory provisions of Section 30233 and the energy policies of the Coastal Act.
3. The land use designations must protect wetland areas which are not required for reasonable expansion of the existing Huntington Beach Power Plant, consistent with Section 30233 of the Act and Commission findings of the power plant siting study.

The requirements of the land use designation must be fully carried out in the implementation plan. However, the City has not proposed any provision to allow expansion of the existing adjacent Southern California Edison plant onto Area 4 if requirements of previous Coastal Commission action on the certified LUP are met. In addition, the proposed provisions do not prohibit electric power plants in areas designated as unsuitable for siting pursuant to 30413(b). Finally, because in certain situations siting and expansion of coastal dependent industrial facilities is allowable under the Coastal Act and the City's certified LUP even when inconsistent with other Coastal Act and LCP provisions, it is necessary to clarify that siting and expansion of coastal dependent industrial facilities into wetlands can also be allowed if it is demonstrated that: (1) alternative locations are infeasible or more environmentally damaging; (2) to locate the expansion elsewhere would adversely affect the public welfare; (3) adverse environmental effects are mitigated to the maximum extent feasible; and (4) siting is consistent with the study titled Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976.

Consequently, the proposed zoning is not consistent with the City's LUP and therefore must be denied.



K. Miscellaneous Changes Which are Not in Conformance with the LUP

Article 902: As proposed the City's amendment request includes a modification to Article 902 (General Information) of the City's Ordinance Code. Although Article 902 is apparently a part of the City's Ordinance Code it was never included as part of the City's certified Local Coastal Program. The City is proposing to modify the "Purpose" section of the Article. Because no part of the Article is included within the City's certified LCP, the Commission cannot approve a change to it. In addition, with the suggested modification to delete Section 9422.2.1, the proposed cross reference in 969.9.21 is not necessary.

Article 9422: Because the City submitted changes for article 9422 rather than Article 969.7, a number of the proposed changes are not necessary. This is because the changes proposed are already reflected in Article 969.7.

In addition, some of the proposed changes would cross reference the CC-suffix in other Implementation Plan sections. In order to maintain internal consistency these are recommended for deletion along with the CC suffix.

L. Miscellaneous Changes Which are in Conformance with the LUP

The City is proposing to add additional uses within the Coastal Conservation district, subject to a conditional use permit: New or expanded ports, commercial fishing facilities, and habitat restoration projects. These additional uses accurately reflect all of the uses allowed within the conservation district land use designation. These additions also increase the number of possible economically viable conservation uses. This decreases the possibility that property owners will be deprived of all economically viable use and so maximizes protection of the wetland.

V. FINDINGS FOR APPROVAL IF MODIFIED:

The Commission hereby finds and declares as follows:

The Commission hereby incorporates by reference its findings for denial of the proposed implementation plan amendment as submitted. Below are additional specific findings to support each of the modifications contained in section III. of this report:

A. Zone All Parcels Land Use Designated Conservation With the Coastal Conservation Base Zone

For the reasons discussed previously, the CC suffix and local base zone combination is not consistent with nor adequate to carry out the land use designation of Conservation and the other wetland and ESHA policies of the Land Use Plan. Consequently, the proposed CC suffix language (Section 9422.2.1 and proposed cross reference in 969.9.21) must be deleted. As modified to change the zoning on all sites land use designated Conservation by deleting the local base zone and CC suffix and replacing it with the Coastal Conservation District, the proposed Implementation Plan amendment is consistent with and adequate to carry out the standards and policies of the certified Land Use Plan.

The City's certified Implementation Plan already contains a zone which will implement the Conservation land use designation. The zone is Coastal Conservation District. Rather than develop a suffix and attach it to inconsistent zoning, the appropriate planning mechanism to implement the Conservation designation is to base zone the areas Conservation District. For these reasons the Commission finds the proposed Coastal Conservation suffix inconsistent with and inadequate to carry out the policies and provisions of the certified Land Use Plan and instead finds that all parcels which contain a land use designation of conservation, in whole or in part, shall be zoned Conservation district.

In addition, one of the ways to minimize impacts on wetlands and indeed maximize their protection is to recognize that the wetlands areas are indeed one resource system. Zoning all wetland parcels as conservation district consistent with their Conservation land use designation maximizes the possibility that these wetland areas can be protected in their entirety. In order to protect the wetlands existing on the subject parcels, all parcels which contain a land use designation of conservation, in whole or in part, shall be zoned Conservation district. In addition, because a portion of parcel 114-150-51 and 114-150-53 is land use designated visitor serving commercial, language has been added at Section 969.7.3(j) of the Coastal Conservation zoning district expressly allowing any use authorized by and in conformance with the visitor serving commercial zoning district.

The suggested modifications also modify the Coastal Conservation District text to incorporate information requirements to be submitted with all coastal development permit applications. These information requirements were proposed by the City to be included within the CC suffix text. Although the CC suffix method of implementation is not adequate to carry out the certified LUP, the information requirements are necessary to determine the extent of on site wetlands, to consolidate development, and assure maximum protection of the wetlands. The information required by this suggested modification is submittal of an overall development plan for parcels containing wetlands, wetland studies, and alternatives analyses, placement of a conservation easement, deed restriction or similar mechanism over wetland portions of a development plan area when development is allowed on other portions of the area, and a prohibition on further subdivision which would separate out the wetlands area. By incorporating these requirements into the Coastal Conservation District text, protection of the wetlands is maximized.

**B. Modifications to Coastal Conservation District To Ensure Economically Viable Use**

As discussed above, case law on "takings" generally holds that plans and ordinances themselves do not take property. These plans merely provide the theoretical ideas and standards by which future development proposals should be measured, but stop short of providing a definitive statement of what uses will be permitted on property. Such a definitive statement usually is not rendered until the regulating agency has an opportunity to consider a permit application for a specific project on a specific parcel. For these reasons, the City's concern that its adoption of the implementing measures for the

conservation district in the ADC might constitute a taking if the uses provided in the district did not provide property owners with an economically viable use of their property appears premature.

Nevertheless, it also is clear that the Pacific Coast Highway ADC does present a unique situation. According to the study done by the Department of Fish and Game, many parcels in this area are almost completely covered by wetlands. The owners of these wetlands have directly questioned whether the uses permitted in the conservation district will provide them with an economic use of their property. They have therefore requested that some procedure be provided that would allow them to challenge the economic viability of the permitted uses.

Given the unique facts in this situation, the Commission finds that it would be appropriate to provide a mechanism for determining whether uses other than those specified in the conservation district should be permitted in the ADC in order to ensure that property owners have an economically viable use of their property. The Commission's suggested modifications therefore establish a process for determining economic viability issues. Under this process, property owners may apply for an economic viability determination in conjunction with their applications for a coastal permit. Requiring consideration of economic viability issues at the permit stage is consistent both with case law and with Section 30010 of the Coastal Act. As discussed previously, this section prohibits both the Commission and local governments from using their coastal permit authority to take property.

Recent court cases have identified several factors that should be weighed when considering whether a government regulatory action constitutes a taking of property. For instance, in Lucas v. South Carolina Coastal Council (1992) 505 U.S. \_\_: 112 S. CT. 2886, the U.S. Supreme Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by the regulatory agency would result in a taking of the property unless the proposed project would constitute a nuisance under state law. These court decisions also suggest that the nature of the permit applicant's property interest and the reasonable investment-backed expectations of the property owner are relevant factors in determining whether a regulatory action would constitute a taking.

Based on these cases, the Commission's suggested process for ensuring that property owners will receive an economically viable use of their property requires property owners to provide the City with specific information about the economic factors affecting their property. For instance, the applicant for an economic viability determination would be asked to provide information relating to the costs of holding the property, as well as the facts surrounding their decision to invest in the property. Without such information, it would not be possible to determine either what level of economic return on the property is necessary to provide an economic use, or what were the property owner's reasonable investment-backed expectations.

It also is important in considering economic viability issues to properly define the relevant parcel for analysis. In particular, the cases in this

area of the law indicate that discrete portions of property should not be set aside for analysis if they are part of a larger parcel. Prematurely severing the developable portions of the property from the areas that are subject to stricter regulation skews the economic viability analysis. It also limits the ability of regulating agencies to use planning mechanisms, such as transfers of development densities, to ensure that an economically viable use is provided for the entire parcel. For these reasons, factors such as ownership patterns, the degree of continuity, the dates of acquisition, and the extent to which the parcel or parcels have been treated as a single unit must be considered when making an economic viability determination. Therefore, the suggested modifications also would require applicants to provide the City with a total development plan for all their property, as well as information about the nature of their property interest, when they apply for an economic viability determination.

The suggested modification identifies specific information to be submitted at the time of coastal development permit application. The required information submittal will allow the coastal development permit issuing agency to determine whether application of the LCP policies, provisions, and zoning would deprive a property owner of all economically viable use of his or her property. Without the information required in the suggested modification, a definitive determination could not be made. Without a definitive determination wetland protection is jeopardized, because some development may be allowed to adversely impact wetlands that is not necessary to avoid a takings.

If an applicant demonstrates that denial of the project would deprive his or her property of all reasonable economic use, the City may be required to allow some development even where a Land Use Plan Policy or zoning standard would otherwise prohibit it. In complying with this requirement, however, a regulatory agency may deny a specific development proposal while indicating that a more modest alternative proposal could be approvable, and thus assure the property owner of some economically viable use. While applicants are entitled under Section 30010 to an economically viable use of their property, this section does not authorize the Commission or a certified local government to avoid application of the certified local coastal program altogether. Instead, the Commission or a certified local government is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission or a certified local government is still otherwise directed to enforce the requirements of the certified LCP. Therefore, in this situation, the Commission and certified local government must comply with Section 30233 land use policies and zoning standards by protecting wetlands on the remainder of the applicant's property, and avoiding impacts which would degrade the wetland, to the extent this can be done without taking the property. Therefore, the Commission finds that the Coastal Conservation zoning must include development standards which are applicable when an applicant for a coastal development permit can demonstrate that he or she has a sufficient real property interest and denial of the proposed project based on application of the certified LCP would deprive an applicant of all economically viable use.

As discussed above, the appropriate use for the areas within the ADC designated Conservation, if another use is deemed necessary, is Visitor Serving Commercial. The City's certified LUP recognized this by stating:

The City's principal strategy for protecting environmentally sensitive habitats is to designate them as "visitor-serving commercial", "conservation", and "industrial/energy production" with the intent that development proposals will be accompanied by strategies to enhance significant wetland areas adjacent to the proposed project.

Although, in this case the wetland parcels were appropriately designated Conservation not Visitor Serving Commercial (VSC), the above language indicates that the intent of the LUP is to allow Visitor Serving Commercial uses within wetlands when some use other than those provided for in the Conservation district must be allowed. This reflects the high priority placed on VSC uses within the Land Use Plan. There are a number of reasons why VSC is the preferred use if some use other than conservation uses must be allowed.

First, an express purpose of the Coastal Act is to assure priority for coastal dependent and coastal related development on the coast. Yost v. Thomas (1984) 36 Cal. 3d 561, 566; Pub. Resources Code Section 3001.5. Reflecting this purpose, many policies in the Act establish priorities among uses in the coastal zone with the goal of promoting uses that have a special relationship to the coast, such as coastal recreation, agriculture or coastal-dependent industrial uses. For example, Coastal Act Section 30222 provided that:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal dependent industry.

Section 30213 of the Coastal Act states, in part:

Lower cost visitor ... facilities ... shall be protected, encouraged, and, where feasible, provided.

These sections of the Coastal Act have been specifically incorporated into the City's certified Land Use Plan. Both the Coastal Act and the City's certified Land Use Plan place a very high priority on visitor serving uses over residential, general industrial, or general commercial uses. Visitor uses provide a benefit to a larger segment of the population than residential uses. Residential uses serve only those able to live within the residence. VSC uses can act as support uses for the existing beach use directly across the street or can be destination uses in themselves.

In addition, Industrial uses (non-coastal dependent) and general commercial uses do not take advantage of the area's location within major visitor corridors and adjacent to the beach. Such uses could be located inland without affecting the quality of the use.

Second, the ADC is located in close proximity to the beach and major beach access routes. The ADC runs approximately 3 miles along Pacific Coast Highway and adjoins major feeder streets. Beach Boulevard is a State Highway (No. 39) and is often used by beach-goers from inland locations. Pacific Coast Highway, also a State Highway (No. 1), is heavily traveled by beach-goers and

general coastal zone visitors. Pacific Coast Highway separates the subject site from the public beaches, the site is located just across the street from Huntington State Beach. The nearest existing visitor serving development in Huntington Beach on the inland side of Pacific Coast Highway is approximately two and a half miles upcoast of the ADC. The subject site's location across the street from the beach along major visitor routes, especially Pacific Coast Highway, make it an excellent location for visitor serving use.

Finally, the areas of the ADC that are land use designated Conservation can be accessed by streets from other than Pacific Coast Highway, if access from Pacific Coast Highway is determined to be undesirable. Area 2 can be accessed from Beach Boulevard; area 3 can be accessed from Newland Street; area 5 can be accessed from Magnolia Street; area 6 can be accessed from both Magnolia Street and Brookhurst Street. Area 7 is a restored wetland area but access can be taken from Brookhurst if necessary. Area 2 includes a land locked parcel, but it is in common contiguous ownership with a parcel adjacent to Beach Boulevard, so that access is not precluded.

The City's proposed zoning does not recognize the LUP's higher priority of Visitor Serving uses over residential, general industrial and general commercial. Except for the 7 acre parcel (area 1) on the corner of Pacific Coast Highway and Beach Boulevard, none of the proposed zoning is Visitor Serving Commercial. Consequently, the Commission finds that where application of the certified LCP could deprive a property owner of all economic use and so determines that some development, otherwise prohibited by the LCP must be approved, development priority must be given to visitor serving commercial facilities.

In conclusion, a modification to the City's proposal is suggested that details the type of information that must be submitted by the development proponent (applicant) in order for the City, or the Commission on appeal, to make a conclusive determination as to whether Section 30010 of the Coastal Act applies. The suggested modification contains criteria for determining deprivation of all viable economic use. Finally, a modification is suggested to provide development standards to assure that any development allowed is still the least environmentally damaging feasible alternative and that adequate mitigation will be provided to off-set unavoidable wetland impacts.

As a result of the suggested modifications the development proponent (applicant) is assured of some economically viable use of his or her property. The wetland/ESHA area not used for development will be protected via a conservation easement or similar mechanism. The suggested modifications do not require that contiguous lots under common ownership be merged. The property owner retains ownership of the protected areas. Consequently, the property owner retains the ability to sell protected parcels for use as mitigation sites by entities such as the ports. Therefore, the Commission finds, for all the reasons articulated herein, that only as modified is the proposed amendment in conformance with and adequate to carry out the certified Land Use Plan.

#### C. Modifications for Implementation of Hamilton Avenue Extension

The recommended modification affecting the implementation language for

potential future extension of Hamilton Avenue is necessary to ensure consistency with the certified Land Use Plan. The recommended modification specifies what information must be provided with an application for a Hamilton Avenue extension project, including certification of an EIR which includes analysis of alternative designs and appropriate mitigation, consistent with the LUP policies and requirements for extension of Hamilton Avenue.

In approving the existing Land Use Plan language regarding potential extension of Hamilton Avenue, the Commission found the extension to be necessary for public safety. However, the Commission found that the extension could only be allowed if there was assurance that any wetland impacts would be minimized and that adequate mitigation was provided. In order to assure minimization of wetland impacts the Commission identified specific project requirements to be met, including preparation of an EIR that includes an alternatives analysis. The Commission identified potential alternatives to be considered and required that full mitigation for any wetland impacts be provided. The City's Land Use Plan incorporated the requirement that adverse wetland impacts be minimized and that adequate mitigation be provided. This suggested modification is necessary so that the implementation plan accurately reflects and carries out the specific requirements of the certified Land Use Plan.

As modified, the implementation language will incorporate the requirements specifically identified in the certified Land Use Plan and so will assure that any wetlands impacts caused by the extension of Hamilton Avenue will be minimized and that adequate mitigation will be provided. Therefore, the Commission finds that, only as modified, the implementation language for the extension of Hamilton Avenue is in conformity with and adequate to carry out the provisions of the certified Land Use Plan.

#### D. Modifications for Implementation of Power Plant Facility

As modified to define when siting and expansion of coastal dependent industrial facilities and expansion of power plant facilities is allowed, the amendment will assure protection of ESHA and wetlands consistent with the City's certified LUP and Sections 30413(b) and 30260 of the Coastal Act. The modified amendment will allow all conservation uses, including coastal dependent industrial facilities, within wetlands except that electric power plants may not be sited in areas designated unsuitable for siting pursuant to PRC 30413(b). In addition, the modified amendment will allow the expansion of the electric power plant in Area 4 if consistent with previous Commission action on the certified LUP. Finally, even where inconsistent with other LCP provisions the expansion or siting of coastal dependent industrial facilities will be allowable if specific requirements are met. The necessary requirements that the applicant must demonstrate are that: (1) alternative locations are infeasible or more environmentally damaging; (2) to locate the expansion elsewhere would adversely affect the public welfare; (3) adverse environmental effects are mitigated to the maximum extent feasible; and (4) siting is consistent with the study titled Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976 (re-adopted by the California Coastal Commission December 1985). As modified, the proposed zoning can be

found to be consistent with Land Use Plan provisions for protection of ESHA/wetlands and with the provisions regarding the siting of coastal dependent industrial facilities.

**F. Miscellaneous Changes**

Some of the suggested modifications are necessary for clarity and internal consistency with the Implementation Plan.

The amendment proposes to amend Article 902. Because Article 902 has not been certified by the Commission, the Commission cannot certify a change to it. Instead a modification is suggested to add the language to existing Article 969.7 rather than the non-certified Article 902. Additionally, the amendment proposed to modify Article 969.9.21 to cross reference to the coastal conservation suffix. For the reasons described previously, the coastal conservation suffix has been deleted. Consequently, the proposed cross reference must also be deleted.

As discussed previously, Article 9422 has not been certified by the Commission. Consequently, changes to it cannot be certified. However, if the City prefers to renumber the existing Coastal Conservation District Article 969.7, as modified herein, to Article 9422, that is acceptable provided the text remains in substantial conformance with 969.7 as modified.

Finally, a number of suggested modifications are recommended because they will create unnecessary duplications. A number of corrections that were proposed for Article 9422 already exist in the correct form in Article 969.7. Consequently, the changes proposed by the City are not necessary and are suggested to be deleted.

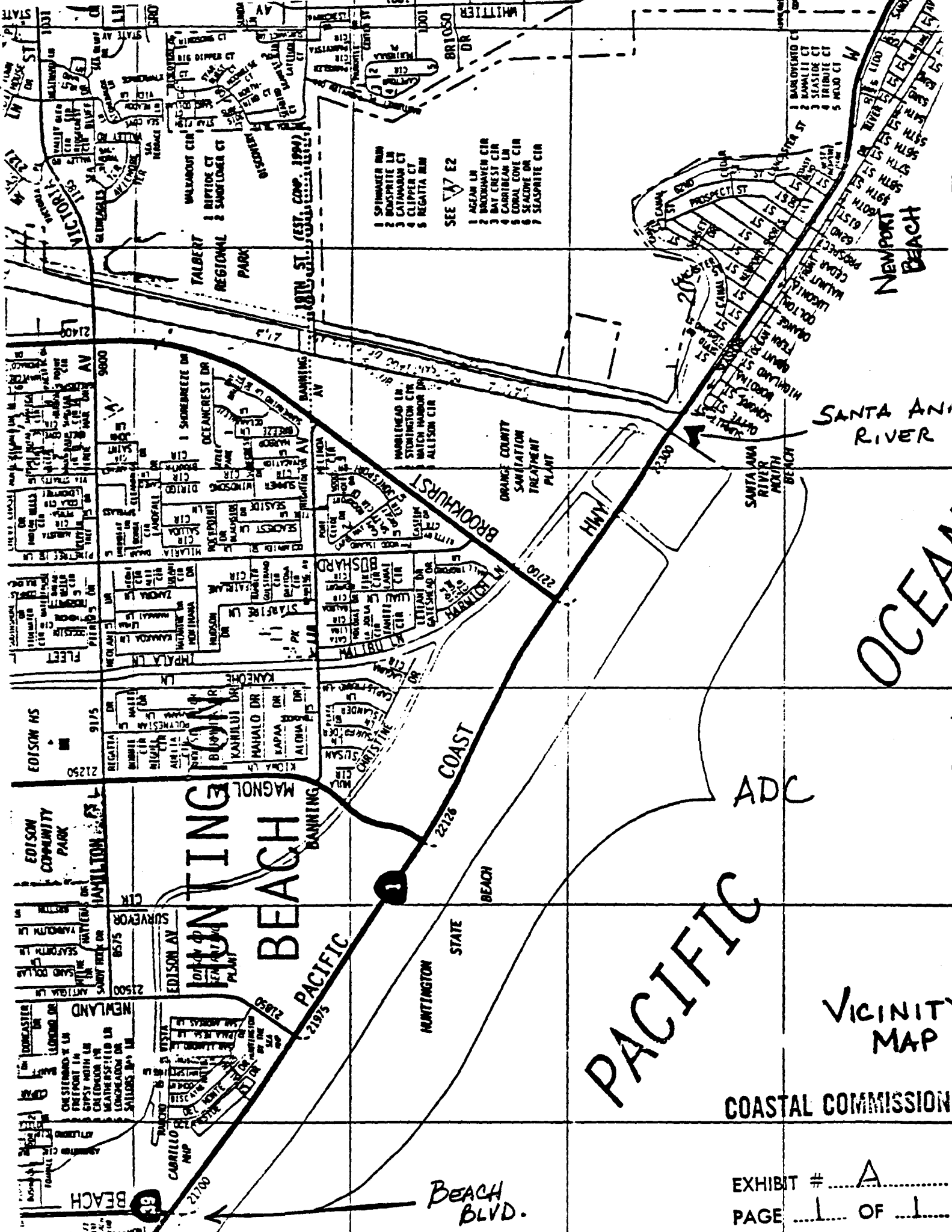
**VI. CEQA FINDINGS**

Pursuant to SB 1873, which amended the California Environmental Quality Act the Coastal Commission is the lead agency in terms of meeting California Environmental Quality Act (CEQA) requirements for local coastal programs. In addition to making a finding that the implementation plan amendment is in full compliance with CEQA, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(i) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Commission finds that there are no feasible mitigation measures available that could substantially reduce adverse environmental impacts. For the reasons discussed in this report, there are no feasible alternatives or mitigation measures available that could substantially reduce adverse environmental impacts. The Commission further finds, therefore, that the Implementation Plan Amendment, as modified, is consistent with Section 21080.5(d)(2)(i) of the Public Resources Code.





- SEE E2
- 1 SPINNAKER INN
  - 2 BONSAPRITE LN
  - 3 CATARACT CT
  - 4 CLIPPER CT
  - 5 REGATTA INN
- 1 AGLAN LN
  - 2 BROOKWAYEN CIR
  - 3 BAY CREST CIR
  - 4 CARRIBREAN LN
  - 5 CORAL COVE CIR
  - 6 SEACLOVE DR
  - 7 SEASPRITE CIR

EXHIBIT # A  
 PAGE 1 OF 1

VICINITY MAP

COASTAL COMMISSION

PACIFIC

OCEAN

SANTA ANI RIVER

NEWPORT BEACH

HUNTINGTON BEACH

BEACH BLVD.

HUNTINGTON STATE BEACH

ADC

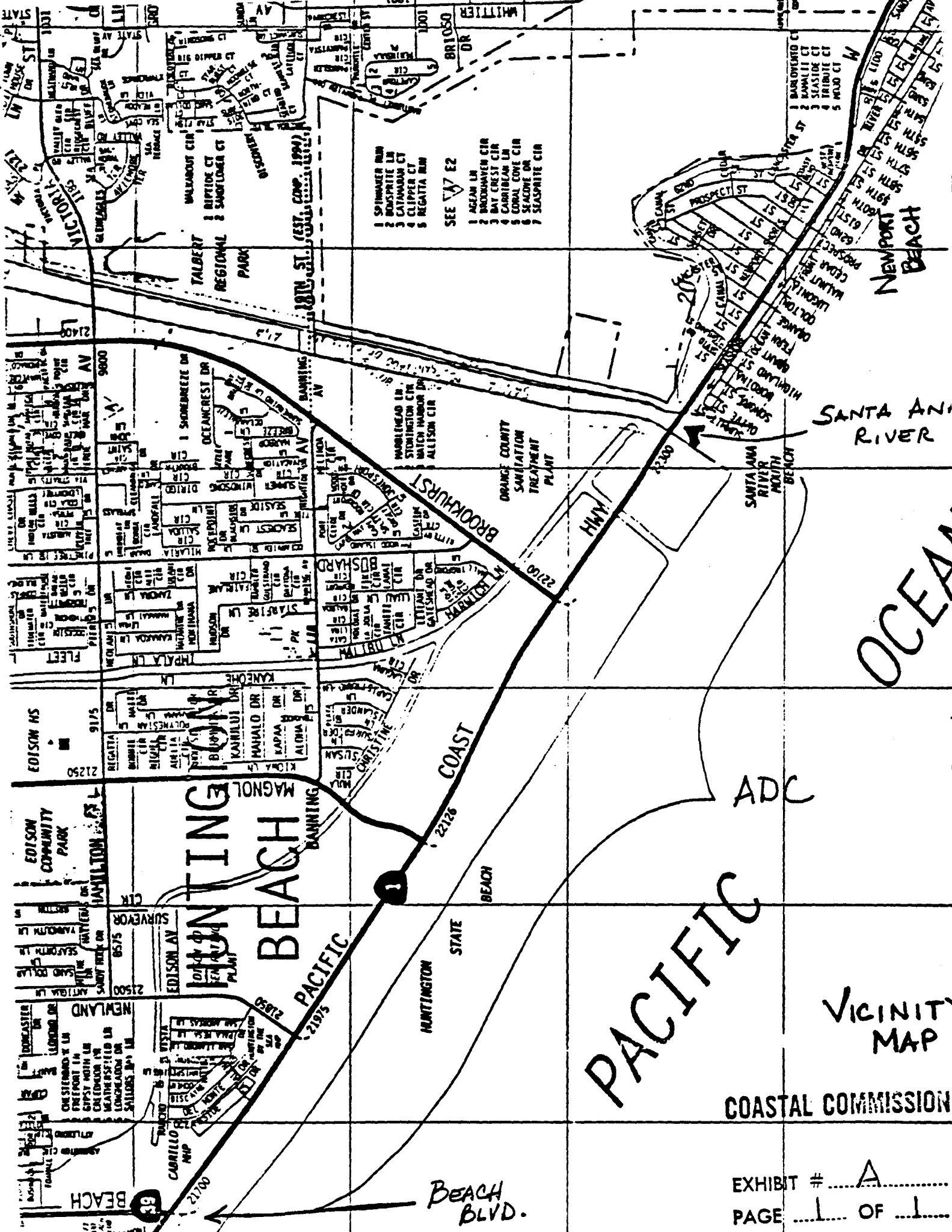
ORANGE COUNTY SANITATION TREATMENT PLANT

TALBERT REGIONAL PARK

18TH ST. (EST. COMP. 1994)

EDISON COMMUNITY PARK

EDISON HS



RESOLUTION NO. 6628

RECEIVED

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF HUNTINGTON BEACH ADOPTING LOCAL COASTAL  
PROGRAM AMENDMENT NO. 94-2 (CODE AMENDMENT 93-8;  
ZONE CHANGE 88-18) AND REQUESTING ITS CERTIFICATION  
BY THE CALIFORNIA COASTAL COMMISSION

OCT 4 1994

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT

WHEREAS, after notice duly given pursuant to *Government Code* Section 65090  
and *Public Resources Code* Sections 30503 and 30510, the Planning Commission of the  
City of Huntington Beach held public hearings to consider the adoption of the Huntington  
Beach Local Coastal Program Amendment No. 94-2, and such amendment was  
recommended to the City Council for adoption; and

The City Council, after giving notice as prescribed by law, held at least one public  
hearing on the proposed Huntington Beach Local Coastal Program Amendment No. 94-2,  
and the City Council finds that the proposed amendment is consistent with the Certified  
Huntington Beach Coastal Land Use Plan and Chapter 6 of the California Coastal Act; and

The City Council of the City of Huntington Beach intends to implement the Local  
Coastal Program in a manner fully consistent with the California Coastal Act,

NOW, THEREFORE, the City Council of the City of Huntington Beach does  
hereby resolve as follows:

SECTION 1. That the Huntington Beach Local Coastal Program Amendment  
No. 94-2, consisting of Code Amendment No. 93-8 and Zone Change No. 88-18, attached  
hereto as Exhibits A and B, respectively, is hereby approved.

SECTION 2. That the California Coastal Commission is hereby requested to  
consider, approve and certify Huntington Beach Local Coastal Program Amendment No.  
94-2.

COASTAL COMMISSION  
*Huntington Beach*  
*LCP Am. 2-94*  
EXHIBIT # B  
PAGE 1 OF 3

*Submittal Resolution*

**SECTION 3.** That pursuant to Section 13551(b) of the Coastal Commission Regulations, Huntington Beach Local Coastal Program Amendment No. 94-2 will take effect automatically upon Coastal Commission approval, as provided in *Public Resources Code* Sections 30512, 30513, and 30519.

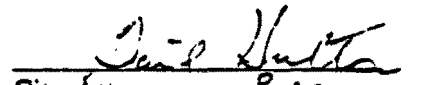
**PASSED AND ADOPTED** by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 6th day of September, 1994.

  
Mayor

**ATTEST:**

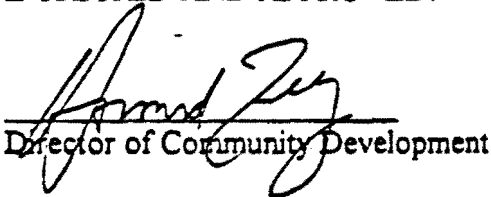
**APPROVED AS TO FORM:**

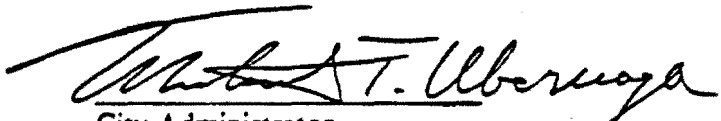
  
City Clerk

  
City Attorney  
Per 5-9-94

**INITIATED AND APPROVED:**

**REVIEWED AND APPROVED:**

  
Director of Community Development

  
City Administrator

**COASTAL COMMISSION**  
Hnt Bch  
LCPA 94-2-94  
EXHIBIT # B  
PAGE 2 OF 3

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss:  
CITY OF HUNTINGTON BEACH )

I, CONNIE BROCKWAY, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a regular meeting thereof held on the 6th day of September, 1994, by the following vote:

AYES: Councilmembers:  
Bauer, Moulton-Patterson, Winchell, Leipzig

NOES; Councilmembers:  
Robitaille

ABSENT: Councilmembers:  
Silva, Sullivan

*Connie Brockway*

City Clerk and ex-officio Clerk  
of the City Council of the City  
of Huntington Beach, California

COASTAL COMMISSION

*Hnt Bch LCP Am 2-94*

EXHIBIT # B

PAGE 3 OF 3

REC 15"

1<sup>st</sup> read 9/6  
2<sup>nd</sup> 9/20/94  
and direct to  
incorporate into  
new Planning Co

OCT 4 1994

COASTAL COMMISSION ALTERNATIVE

CALIFORNIA  
SOUTH COAST DISTRICT

ORDINANCE NO. 3251-B

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING THE HUNTINGTON BEACH ORDINANCE CODE  
BY AMENDING ARTICLES 902, 942 AND 969.9 THEREOF

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Article 942 of the Huntington Beach Ordinance Code is hereby amended

by amending Section 9422.1(f) thereof to read as follows:

(f) Wetland shall mean lands within the coastal zone which may be covered periodically or permanently with shallow water and include salt water marshes, freshwater marshes, open or closed brackish water marshes, swamps, mud flats and fens.

SECTION 2. Article 942 of the Huntington Beach Ordinance Code is hereby amended

by adding new Section 9422.2.1 thereof to read as follows:

9422.2.1 Coastal conservation suffix - Requirements. As it applies to parcels described as Assessors Parcel Numbers: 148-011-01, 148-011-02, 114-150-26, 114-150-51, 114-150-53, 114-150-58 and 114-150-55, the Coastal Conservation "CC" suffix shall be a conservation overlay zone classification. Within areas identified as wetlands on the subject property, the uses of the Coastal Conservation District, as identified in section 9422.5 and 9422.6, shall supersede the uses of the VSC, RA and M1-A districts. Development prohibited by sections 9422.5 - 9422.7 on wetland portions of the subject property may be permitted in non-wetland areas only pursuant to an application for a single overall development plan for the entire overlay area, or such portion thereof as may be at the time of said application geographically contiguous and under common ownership. As part of any such application the applicant shall include topographic, vegetative, hydrologic and soils information, prepared by a qualified professional and reviewed and concurred in by the Department of Fish and Game, which identifies the extent of any existing wetlands on the property. Conservation easements, dedications or other identified similar mechanisms shall be required over all wetland areas as a condition of development, to assure permanent protection against development inconsistent with Sections 9422.5 - 9422.7. Specific drainage and erosion control requirements shall be incorporated into the project design to ensure that wetland areas are not adversely affected. No further subdivision of any

COASTAL COMMISSION  
Huntington Beach  
LCP Am. 2-94

such parcel shall be permitted which would have the effect of dividing off environmentally sensitive habitat from other portions of such parcels for which urban uses are permitted in the City's Coastal Element until such time as the permanent protection on any wetland is assured.

Alternatively, if the owner of an above parcel(s) wishes to develop only the parcel(s) which has coastal element land use designations other than conservation, the required overall development plan and coastal development permit application is not required to include the wetlands determination as stated above. However, a conservation easement, dedication or other identified similar mechanism shall be required over the parcel(s) area which have a conservation land use designation and are within the parcel(s) proposed for development. The conservation easement may be removed from those parcels or portions thereof which are found not to contain wetlands through a subsequent overall development plan and coastal development permit application which shall include a wetlands determination as specified above. The above drainage and erosion control and no further subdivision provisions also apply under this alternative.

Public vehicular traffic (the extension of Hamilton Avenue) shall be permitted in wetland areas governed by a conservation easement provided the road is constructed in a manner consistent with Section 9.4.5, Area 1 (Beach Blvd. to Newland Street) and Section 6, Environmentally Sensitive Habitat of the certified Land Use Plan.

**SECTION 3.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by amending Section 9422.3 thereof to read as follows:

**9422.3 Coastal conservation suffix -- Removal of.** Prior to removal of the Coastal conservation suffix (-CC), the following findings shall be made:

- (a) No wetlands exist on the subject parcel as determined by a site-specific topographic, vegetative, hydrologic and soils analysis of the subject parcel, prepared by a qualified wetland biologist or other qualified professional and reviewed and concurred in by the Department of Fish and Game; and
- (b) That the proposed removal of the suffix is in accordance with the policies, standards and provisions of the California Coastal Act; and
- (c) That there is no feasible, less environmentally damaging alternative site for any proposed land use or development which may be allowed under California Public Resources Code sections 30233(a) (1) and 30264.

**COASTAL COMMISSION**

*Hunt. Bch LCP Am*

EXHIBIT # *C 2-94*

PAGE *2* OF *6*

Any such removal of the Coastal Conservation suffix (-CC) shall constitute an amendment to the Implementation Plan and, if applicable, the Land Use Plan portion of the Local Coastal Program. Pursuant to Section 30514 of the Coastal Act, an I.C.P. amendment shall not take effect unless and until it has been effectively certified by the California Coastal Commission.

**SECTION 4.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by amending Section 9422.4 thereof to read as follows:

**9422.4 Uses generally.** The uses set out in this Article shall only be allowed where there is no feasible, less environmentally damaging alternative and where feasible mitigation measures have been provided.

**SECTION 5.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by amending Section 9422.6(a) thereof to read as follows:

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

**SECTION 6.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by amending Section 9422.6(d) thereof to read as follows:

(d) Only in conjunction with restoration plans, new flood control facilities where necessary for public safety and to protect existing development in the flood plain.

**SECTION 7.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by adding new Section 9422.6(j) thereof to read as follows:

(j) Habitat Restoration projects.

**SECTION 8.** Article 942 of the Huntington Beach Ordinance Code is hereby amended by amending Section 9422.9 thereof to read as follows:

**9422.9 Development standards--Mitigation measures.** Before any application is accepted for processing, the applicant shall meet the following standards of this article, and shall incorporate into the project design any feasible mitigation measures which will minimize adverse environmental effects.

**SECTION 9.** Article 969.9 of the Huntington Beach Ordinance Code is hereby amended

by amending Section 969.9.21 thereof to read as follows:

**969.9.21 General Commercial District. Permitted Uses.** Uses permitted in a general commercial district are: convenience, neighborhood and community oriented retail and business uses.

(a) Development for any parcel or portion thereof designated with the Coastal conservation suffix (-CC) shall be permitted only pursuant to an overall development plan for all such parcels, if at said time of application the parcels are geographically contiguous, under common ownership, and carry the Coastal conservation suffix (-CC). All provisions of Section 9422.2.1 shall be applicable.

**SECTION 10.** Article 902 of the Huntington Beach Ordinance Code is hereby amended

by amending Section 9020 thereof to read as follows:

**9020 Purpose.** The Zoning Ordinance for the City of Huntington Beach is established to implement the objectives of the General Plan. It is further adopted for the purpose of promoting and protecting the public health, safety, and general welfare of Huntington Beach residents and to provide the physical, economic and social advantages which result from a comprehensive and orderly planned use of land resources. This zoning ordinance is not intended to authorize, and shall not be construed as authorizing the City of Huntington Beach to exercise its power in a manner which will take or damage private property for public use. This zoning ordinance is not intended to increase or decrease the rights of any owner of property under the constitution of the State of California or the United States.

**SECTION 11.** The Community Development Director is hereby directed to amend Articles 902, 942 and 969.9 of the Huntington Beach Ordinance Code to reflect Code Amendment No. 93-8 described in Sections 1 through 10 hereof. Copies of said Articles as amended hereby, are available for inspection in the Office of the City Clerk.



SECTION 12. This ordinance shall take effect following California Coastal Commission certification.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting held on the 20th day of September, 1994.

*Linda Moulton Patterson*

Mayor

ATTEST:

*Lonnie Brockway*

City Clerk

APPROVED AS TO FORM:

*PAT [Signature]*

City Attorney

8-24-94

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

*[Signature]*

City Administrator

*[Signature]*

Director of Community Development

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss:  
CITY OF HUNTINGTON BEACH )

I, CONNIE BROCKWAY, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing ordinance was read to said City Council at a regular meeting thereof held on the 6th day of September, 1994, and was again read to said City Council at an adjourned regular meeting thereof held on the 20th of September, 1994, and was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council.

**AYES:** Councilmembers:  
Bauer, Winchell, Leipzig, Sullivan

**NOES:** Councilmembers:  
Silva, Robitaille

**ABSENT:** Councilmembers:  
Moulton-Patterson

*Connie Brockway*

City Clerk and ex-officio Clerk  
of the City Council of the City  
of Huntington Beach, California

CLERK'S OFFICE  
Hunt Bch LC Plann  
2-94  
C  
PAGE 4 OF 4

RECEIVED

ORDINANCE NO. 3033

OCT 4 1994

ZONE CHANGE NO. 88-18, AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH AMENDING THE HUNTINGTON BEACH ORDINANCE OF CALIFORNIA BY AMENDING THE SECTION 9061 THEREOF TO PROVIDE FOR A CHANGE OF ZONING WITHIN VARIOUS DISTRICTS WITHIN THE "WHITEHOLE SOUTH COAST DISTRICT" OF THE COASTAL ZONE

WHEREAS, Pursuant to the State Planning and Zoning Law, the Huntington Beach Planning Commission and Huntington Beach City Council have had separate public hearings relative to Zone Change No. 88-18 wherein both bodies have carefully considered all information presented at said hearings, and after due consideration of the findings and recommendations of the Planning Commission and all evidence presented to the City Council, the City Council finds that such zone change is proper, and consistent with the Huntington Beach General Plan.

NOW, THEREFORE, the City Council of the City of Huntington Beach does ordain to amend §9061 of the Ordinance Code as follows:

SECTION 1. The following described real property consisting of approximately 7 acres, generally located on the inland side of Pacific Coast Highway at the northeast corner of the intersection of Beach Boulevard and Pacific Coast Highway and extending east along Pacific Coast Highway to Newland Street, in the City of Huntington Beach, County of Orange, State of California, being that portion of fractional Section 13 and that portion of fractional Section 24 all in Township 6 South, Range 11 West, S.B.B. & M. in the Rancho Las Bolsas, per map recorded in Book 51, Page 14 of Miscellaneous Maps in the office of the Recorder of said county, and designated as "A" on Exhibit "1" (overlay to District Map 14 of the Huntington Beach Ordinance Code), is hereby changed from RA-O-FP2 (Residential

*Huntington Beach*

*LCP Am. 2-94 EXHIBIT D,*

*ORDINANCE No. 3033*

Agricultural within an Oil District within a Flood Plain) to VSA-CZ-FP2 (Visitor Serving Commercial within the Coastal Zone within the Flood Plain).

SECTION 2. The following described real property consisting of approximately 17.5 acres, generally located on the east side of Beach Boulevard beginning approximately 200 feet north of the northeast corner of the intersection of Pacific Coast Highway and Beach Boulevard and extending north approximately 500 feet, in the City of Huntington Beach, County of Orange, State of California, being that portion of fractional Section 13 and that portion of fractional Section 24 all in Township 6 South, Range 11 West, S.B.B. & M. in the Rancho Las Bolsas, per map recorded in Book 51, Page 14 of Miscellaneous Maps in the office of the Recorder of said county, and designated "B" on Exhibit "1" (overlay to District Map 14 of the Huntington Beach Ordinance Code), is hereby changed from RA-O-FP2 (Residential Agricultural within an Oil District within a Flood Plain) to RA-O-CC-CZ-FP2 (Residential Agricultural within an Oil District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 3. The following described real property consisting of approximately 23.5 acres, generally located to the north and to the west of the Orange County Flood Control channel D1-2, that portion of the southwest 1/4 of Section 13, Township 6 south, Range 11 west, in the Rancho Las Bolsas, City of Huntington Beach, County of Orange, State of California, as shown on a map recorded in book 51, page 14 of Miscellaneous Maps, in the Office of the County Recorder of said County, designated as "C" on Exhibit "1" (overlay to District Map 14 of the Huntington Beach Ordinance Code), is

EXHIBIT  
D2

46

~~CONFIDENTIAL~~

hereby changed from M1-A-O-FP2 (Restricted Manufacturing within an Oil District within the Flood Plain) to M1-A-O-CC-CZ-FP2 (Restricted Manufacturing within an Oil District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 4. The following described real property consisting of approximately 17 acres, generally located on the inland side of Pacific Coast Highway to the east of the Edison Company Power Plant and extending east along Pacific Coast Highway approximately 1,000 feet and north to the Orange County Flood Control Channel D1-1, in the City of Huntington Beach, County of Orange, State of California, being that portion of fractional Section 13 and that portion of fractional Section 24 all in Township 6 South, Range 11 West, S.B.B. & M. in the Rancho Las Bolsas, per map recorded in Book 51, Page 14 of Miscellaneous Maps in the office of the Recorder of said county, designated "D" on Exhibit "1" (overlay to District Maps 14 and 29 of the Huntington Beach Ordinance Code), is hereby changed from M2-O-FP2 (Industrial District within an Oil District within a Flood Plain) and RA-FP2 (Residential Agricultural within a Flood Plain) to M2-O-CC-CZ-FP2 (Industrial District within an Oil District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain) and RA-CC-CZ-FP2 (Residential Agricultural with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 5. The following described real property consisting of approximately 10 acres, generally located on the inland side of Pacific Coast Highway at the northwest corner of Pacific Coast Highway and Magnolia Street and extending approximately 700 feet west along Pacific Coast Highway and north to the Orange County Flood Control District Channel D1-1, that portion of the northeast

1/4 of Section 24, Township 6 south, Range 11 west, in the Rancho Las Bolsas, City of Huntington Beach, County of Orange, State of California, designated as "E", on Exhibit "1" (overlay to District Maps 14 and 29 of the Huntington Beach Ordinance Code), is hereby changed from LUD-FP2 (Limited Use District within a Flood Plain) to LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 6. The following described real property consisting of approximately 56 acres, generally located on the inland side of Pacific Coast Highway between Magnolia Street and Brookhurst Street and north to the Orange County Flood Control District Channels D1-1 and D2-2, that portion of the west 1/2 of Section 19, Township 6 south, Range 10 west, in the Rancho Las Bolsas, City of Huntington Beach, County of Orange, State of California designated as "F" on Exhibit "1" (overlay to District Maps 22 and 29 of the Huntington Beach Ordinance Code), is hereby changed from LUD-FP2 (Limited Use District within a Flood Plain) to LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 7. The following described real property consisting of approximately 16 acres, generally located on the inland side of Pacific Coast Highway between Brookhurst Street and the Santa Ana River extending north to the Orange County Flood Control District Channel D2-1, that portion of Section 19, Township 6 South, Range 10 West, in the Rancho Las Bolsas, in the City of Huntington Beach, County of Orange, as shown on map recorded in Book 51, page 14 of Miscellaneous Maps, in the office of the County Recorder of said County, acquired by the State of California by Parcel 3 of Final

Order of Condemnation (State Parcel A1788), filed in Superior Court Case No. 123366, a certified copy of said final order being recorded April 29, 1965 in Book 7502, page 533 of Official Records, in said office, designated as "G" on Exhibit "1" (overlay to District Map 22 of the Huntington Beach Ordinance Code), is hereby changed from LUD-FP2 (Limited Use District within a Flood Plain) and LUD-FP1 (Limited Use District within a Flood Plain) to LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain) and LUD-CC-CZ-FP1 (Limited Use District with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).

SECTION 8. The following described real property consisting of approximately 55 acres and commonly known as the Edison Company, generally located on the inland side of Pacific Coast Highway at the northeast corner of the intersection of Newland Street and Pacific Coast Highway and extending north to the Orange County Flood Control District D1-1 channel, in the City of Huntington Beach, County of Orange, State of California, being that portion of fractional Section 13 and that portion of fractional Section 24 all in Township 6 South, Range 11 West, S.B.B. & M. in the Rancho Las Bolsas, per map recorded in Book 51, Page 14 of Miscellaneous Maps in the Office of the Recorder of said County, designated as "H" on Exhibit "1" (overlay to District Maps 14 and 29 of the Huntington Beach Ordinance Code), is hereby changed from M2-O-FP2 (Industrial District within an Oil District within a Flood Plain) to M2-O-CZ-FP2 (Industrial District within an Oil District within the Coastal Zone within a Flood Plain).

EXHIBIT D5

~~ATTACHMENT~~

SECTION 9. The following described real property consisting of approximately 28 acres, generally located northwest of the intersection of Magnolia Street and the Orange County Flood Control District D1-1 and commonly known as the Edison Oil Tank Farm, that portion of the southeast 1/4 of Section 13, Township 6 south, Range 11 west, in the Rancho Las Bolsas, City of Huntington Beach, County of Orange, State of California, as shown on a map recorded in Book 51, Page 14 of Miscellaneous Maps, in the Office of the County Recorder of said County, designated as "I" on Exhibit "1" (overlay to District Maps 14 and 29 of the Huntington Beach Ordinance Code), is hereby changed from M2-O-FP2 (Industrial District within an Oil District within a Flood Plain) to M2-O-CZ-FP2 (Industrial District within an Oil District within the Coastal Zone within a Flood Plain) and from M1-A-FP2 (Restricted Manufacturing within a Flood Plain) to M1-A-CZ-FP2 (Restricted Manufacturing within the Coastal Zone within a Flood Plain).

SECTION 10. The following described real property consisting of approximately 2 acres, generally located at the northeast intersection of Magnolia Street and the Orange County Flood Control District D1-1 Channel, that portion of northeast 1/4 of Section 24, Township 6 south Range 11 west, in the Rancho Las Bolsas, City of Huntington Beach, County of Orange, State of California, designated as "J" on Exhibit "1" (overlay to District Map 29 of the Huntington Beach Ordinance Code), is hereby changed from (Q)ROS-FP2 (Recreational Open Space with Qualified Classifications within a Flood Plain) to ROS-Q-CC-CZ-FP2 (Recreational Open Space with Qualified Classifications with a Coastal Conservation overlay within the Coastal Zone within a Flood Plain).


EXHIBIT D4



SECTION 11. The Community Development Director is hereby directed to amend Section 9061, District Maps 14, 22, and 29 (Section District Maps 13-6-11, 19-6-10, 24-6-11) to reflect Zone Change No. 88-18 described in Sections 1 through 10 hereof. Copies of said district maps, as amended hereby, are available for inspection in the office of the City Clerk.

SECTION 12. This ordinance shall take effect thirty days after its adoption.

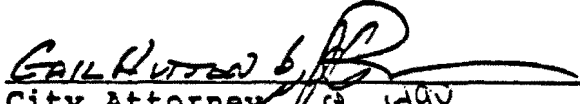
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 2nd day of April, 1990.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
GC43 PB 3/19/90 & 3/18/90

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

  
\_\_\_\_\_  
Director of Community  
Development

~~ATTACHMENT FROM [Signature]~~



REGULATORY DISTRICT MAP • 24-6-11

CITY OF

HUNTINGTON BEACH  
ORANGE COUNTY, CALIFORNIA

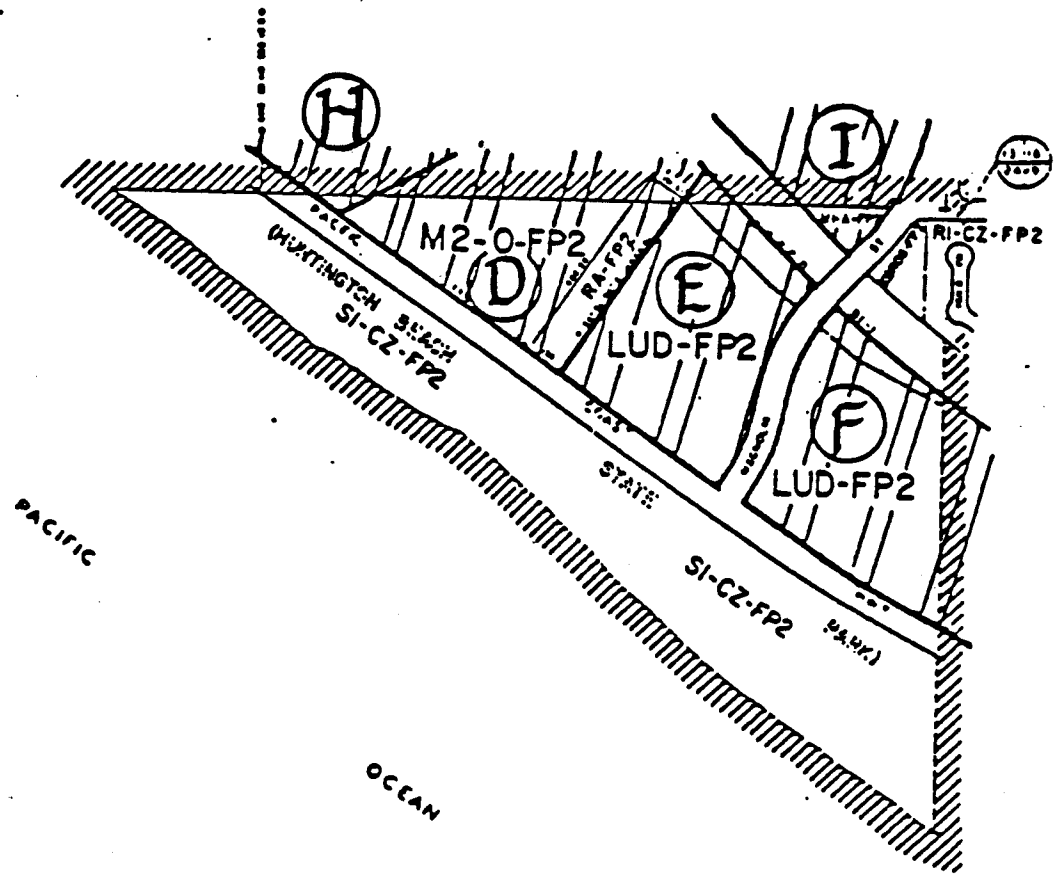


ADOPTED MARCH 2, 1960

CITY COUNCIL ORDINANCE NO. 764

APPLICABLE	REF. NO.	APPLICABLE	REF. NO.
1-10-60	84,246	030	
6-8-60	763	006	
6-8-60	80-17	017	
7-1-60	81-17	017	
7-1-60	81-17	017	
7-1-60	81-17	017	
7-1-60	81-17	017	
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NOTE:  
 1. THIS MAP IS A COPY  
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~~ATTACHMENT NO. 4~~

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EXHIBIT Dg

# SECTIONAL DISTRICT MAP • 19-6-10

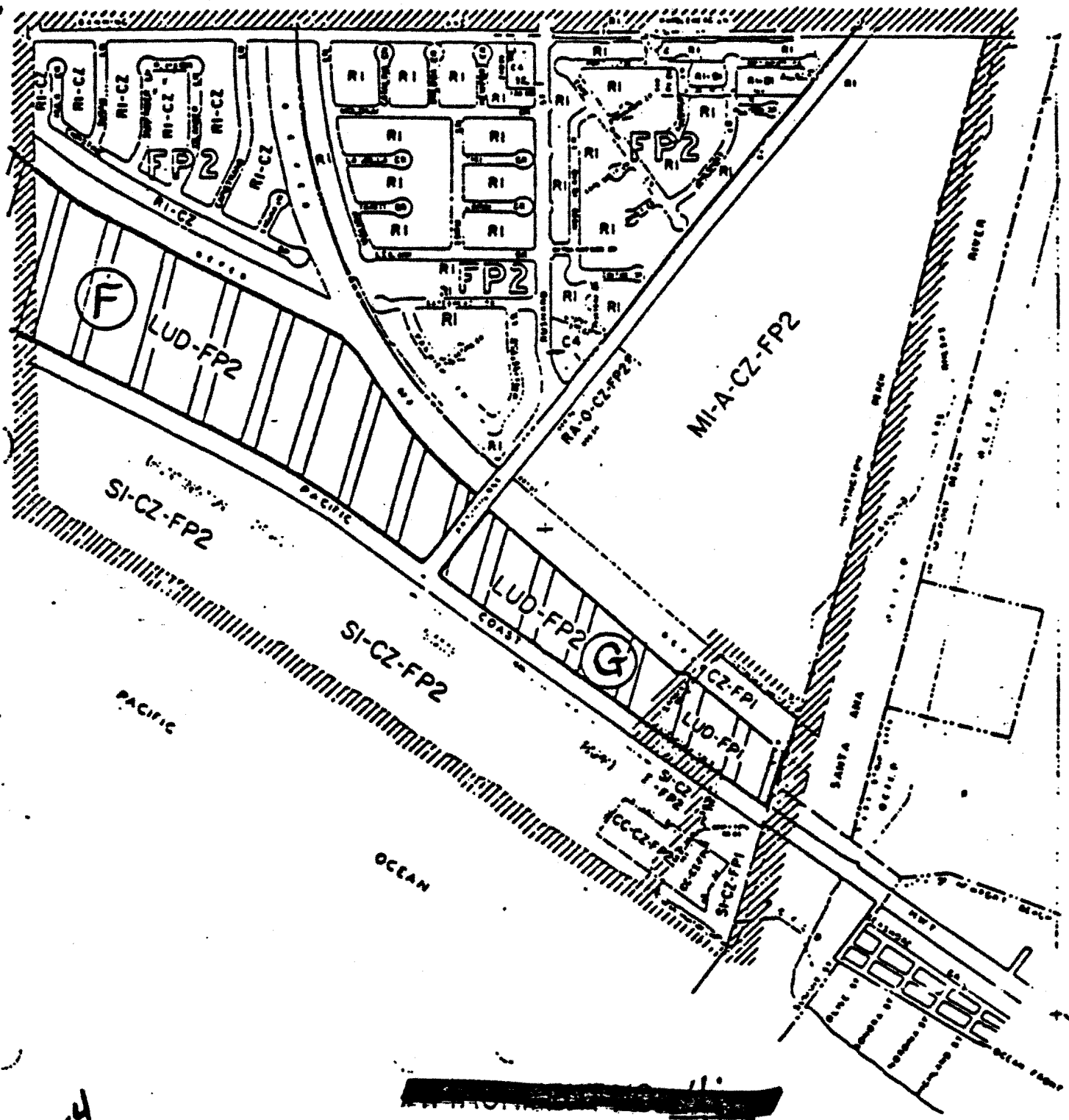
## CITY OF HUNTINGTON BEACH ORANGE COUNTY, CALIFORNIA



ADOPTED MARCH 7, 1960  
CITY COUNCIL ORDINANCE NO. 748

Planning Commission  
 Planning Department  
 Planning Commission  
 Planning Department  
 Planning Commission  
 Planning Department

NOTE:  
 This map is a sectional district map of the City of Huntington Beach, Orange County, California, and is subject to the provisions of the City of Huntington Beach Ordinance No. 748, adopted March 7, 1960, and the provisions of the California Planning and Zoning Act, Chapter 372, Section 65000, et seq., of the California Government Code, as amended.



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EXHIBIT D



ZONING HISTORY BY AREA  
(ZONE CHANGE NO. 88-18)

**AREA 1**

**ACREAGE:** 7 acres

**OWNERSHIP:** CalTrans

**GENERAL PLAN HISTORY:**

- 1975 - Destination Resort
- 1977 - Planning Reserve
- 1982 - "Whitehole"
- 1986 - Visitor-Serving Commercial

**ZONING HISTORY:**

- Pre-1964 - R1 (Single Family Residential)
- 1964 - RA-O (Residential Agricultural w/Oil Production)
- 1983 - RA-O-FP2 (Residential Agricultural w/Oil Production within a Floodplain)
- 1990 - VSC -CZ-FP2 (Visitor Serving Commercial within the Coastal Zone and a Floodplain)

**EXISTING USE:** Action Boat Brokers

This is an approximately 7 acre site which was designated by the Coastal Land Use Plan for Visitor Serving Commercial. It is occupied by Action Boat Brokers on the corner of Beach Boulevard and Pacific Coast Highway. The remainder of the site is a narrow strip of land which runs along Pacific Coast Highway in front of Cabrillo Mobilehome Park. The Department of Fish and Game identified this site as non-restorable wetlands. The Coastal Conservancy staff further recommended this site for Visitor-Serving Commercial uses such as a hotel. The existing zoning is VSC-CZ-FP2 (Visitor Serving Commercial within the Coastal Zone and a Floodplain).

COASTAL COMMISSION  
*Huntington Beach*  
*LCP Am. 2-94*  
EXHIBIT # F  
PAGE 1 OF 10

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~~ATTACHMENT NO.~~

*Area by Area Description*

**AREA 2**

**ACREAGE:** 28 acres

**OWNERSHIP:** Mills Land and Water - 7.15 acres  
CalTrans - 21 acres

**GENERAL PLAN**

**HISTORY:** 1975 - Destination Resort  
1977 - Planning Reserve  
1982 - "Whitehole"  
1986 - Conservation

**ZONING HISTORY:** Pre-1964 - R1 (Single Family Residential)  
1964 - RA-O (Residential Agricultural w/Oil Production)  
1983 - RA-O-FP2 (Residential Agricultural w/Oil Production within a Floodplain)  
1990 - RA-O-CC-CZ-FP2 (Residential Agricultural District combined w/Oil Production, Coastal Conservation, Coastal Zone and Floodplain Overlay Zones).

**EXISTING USE:** Vacant

This is an approximately 28 acre area designated Conservation on the Land Use Plan. It has been identified by the Department of Fish and Game as Degraded Wetlands with high usage by wetlands associated birds. The site is owned in part by Caltrans and in part by Mills Land and Water Company. It is presently vacant. The existing zoning is RA-O-CC-CZ-FP2 (Residential Agricultural District combined with Oil Production, Coastal Conservation, Coastal Zone and Floodplain Overlay Zones). Under the Coastal Conservation designation, allowable uses are limited to those such as mineral extraction, pedestrian trails and observation platforms, wetland restoration projects and limited public works projects.

**COASTAL COMMISSION**  
*Ant Beh LCP am*  
*2-94*  
EXHIBIT # *F*  
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**AREA 3**

**ACREAGE:** 13 acres

**OWNERSHIP:** Mills Land and Water

**GENERAL PLAN**

**HISTORY:** 1975 - Light Industrial  
1977 - Light Industrial  
1982 - "Whitehole"  
1986 - Conservation

**ZONING HISTORY:** Pre-1961- R1 (Single Family Residential)  
1961 - M1 (Light Industrial)  
1964 - M1-A-O (Restricted Manufacturing w/Oil Production)  
1983 - M1-A-O-FP2 (Restricted Manufacturing w/Oil Production within a Floodplain)  
1990 - M1-A-O-CC -CZ-FP2 (Restricted Manufacturing District within an Oil District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain)

**EXISTING USE:** Vacant

This is an approximately 13 acre area designated Conservation on the Land Use Plan. It was identified by Fish and Game as Degraded Wetlands on a portion of the site, and former but restorable wetlands on the remainder. It is owned by Mills Land and Water Company and is presently vacant. The existing zoning is M1-A-O-CC-CZ-FP2 (Restricted Manufacturing District within an Oil District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain).

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**DATE** [Stamp]



**AREA 4**

**ACREAGE:** 17 acres

**OWNERSHIP:** Southern California Edison Company

**GENERAL PLAN**

**HISTORY:** 1975 - Industrial Public Utility  
1977 - Industrial Public Utility  
1983 - "Whitehole"  
1986 - Industrial Energy Production/Conservation

**ZONING HISTORY:** Pre-1961 - R1 (Single Family Residential)  
1961 - M1 - A (Restricted Manufacturing)  
1962 - M2-O (General Industrial w/Oil Production)/M1-A (Restricted Manufacturing)  
1967 - M2-O (General Industrial w/Oil Production)/RA (Residential Agricultural)  
1983 - M2-O-FP2 (General Industrial w/Oil Production in a Floodplain)/RA-FP2 (Residential Agricultural in a Floodplain)  
1990 - M2-O-CC -CZ-FP2 (Industrial District combined with Oil Production, Coastal Conservation, Coastal Zone and Floodplain Districts)/RA-CC-CZ-FP2 (Residential Agricultural with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain)

**EXISTING USE:** Vacant

This is an approximately 17 acre area designated Industrial Energy Production/Conservation on the Land Use Plan. It has been identified by Fish and Game as Degraded Wetland. Although the Coastal Act would not normally allow development of so-identified property, the Act would permit development for energy production purposes if it could be demonstrated that no other alternative site is available. Since the property is owned by the Edison Company and is adjacent to their generating plant, the special combined designation of Industrial Energy Production/Conservation was placed on it. This Land Use Designation recognizes the property's identification as wetlands, but would permit expansion of the power plant if necessary. The existing zoning on the property is M2-O-CC-CZ-FP2 (Industrial District combined with Oil Production, Coastal Conservation, Coastal Zone and Floodplain Districts) and RA-CC-CZ-FP2 (Residential Agricultural with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain). This zoning designation allows expansion of the power plant if proven necessary in the future.

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**AREA 5**

**ACREAGE:** 10 acres

**OWNERSHIP:** Coastal Magnolia Group  
(Previously owned by Daisy Piccirelli)

**GENERAL PLAN**

**HISTORY:** 1975 - Planing Reserve  
1977 - Planning Reserve  
1983 - "Whitehole"  
1986 - Conservation

**ZONING HISTORY:** Pre-1961 - R1  
1961 - R5 (Office Professional)/M1-A (Restricted Manufacturing)  
1967 - R5 (Office Professional)  
1977 - LUD (Limited Use District)  
1983 - LUD-FP2 (Limited Use District within a Floodplain)  
1990 - LUD-CC -CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain)

**EXISTING USE:** Vacant

This is an approximately 10 acre area designated Conservation on the Land Use Plan and is presently vacant. It is owned in part by Coastal Magnolia Group and the Orange County Flood Control District. The Department of Fish and Game has identified this area as Degraded Wetland with high usage by wetland associated birds. The existing zoning is LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain).

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**AREA 6**

**ACREAGE:** 56 acres

**OWNERSHIP:** Coastal Magnolia Group - 56 acres  
(Formerly owned by Daisy Piccirelli)

**GENERAL PLAN**

**HISTORY:** 1975 - Planning Reserve  
1977 - Planning Reserve  
1983 - "Whitehole"  
1986 - Conservation

**ZONING HISTORY:** Pre-1960 - R1 (Single Family Residential)  
1960 - R5 (Office Professional)  
1977 - LUD (Limited Use District)  
1983 - LUD-FP2 (Limited Use District within a Floodplain)  
1990 - LUD-CC -CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain)

**EXISTING USE:** Vacant

This is an approximately 56 acre area designated Conservation on the Land Use Plan and is presently vacant. It is owned in part by Coastal Magnolia Group and the Orange County Flood Control District. The Department of Fish and Game has identified this property as Degraded Wetlands with high usage by wetland associated birds. The existing zoning is LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain).

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**AREA 7**

**ACREAGE:** 16 acres

**OWNERSHIP:** H.B. Wetlands Conservancy

**GENERAL PLAN**

**HISTORY:**  
1975 - Planning Reserve  
1977 - Planning Reserve  
1983 - "Whitehole"  
1986 - Conservation

**ZONING HISTORY:** Pre-1960 - R1 (Single Family Residential)  
1960 - R5 (Office Professional)  
1977 - LUD (Limited Use District)  
1983 - LUD-FP2 (Limited Use District within a Floodplain)  
1990 - LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain)

**EXISTING USE:** Restored Wetlands

This is an approximately 16 acre area designated Conservation on the Land Use Plan. It was recently acquired by the Coastal Conservancy and is being restored to functioning wetlands in a model restoration project. The Huntington Beach Wetlands Conservancy will manage the project. The existing zoning is LUD-CC-CZ-FP2 (Limited Use District with a Coastal Conservation Overlay within the Coastal Zone and a Floodplain).

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**AREA 8**

**ACREAGE:** 55 acres

**OWNERSHIP:** Southern California Edison Company

**GENERAL PLAN**

**HISTORY:**  
1975 - Industrial Public Utility  
1977 - Public/Quasi-Public  
1983 - Public/Quasi-Public  
1986 - Industrial Energy Production

**ZONING HISTORY:** Pre-1961 - R1 (Single Family Residential)  
1961 - M1-A (Restricted Manufacturing)  
1962 - M2-O (Industrial w/Oil Production)  
1983 - M2-O-FP2 (Industrial w/Oil Production within a Floodplain)  
1990 - M2-O-CZ-FP2 (Industrial District combined with Oil Production within the Coastal zone and a Floodplain)

**EXISTING USE:** Power Plant

This is an approximately 55 acre area designated Industrial Energy Production on the Land Use Plan and is developed with the Edison Company power generation plant. The existing zoning is M2-O-CZ-FP2 (Industrial District combined with Oil Production within the Coastal zone and a Floodplain).

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**AREA 9**

**ACREAGE:** 28 acres

**OWNERSHIP:** Southern California Edison Company

**GENERAL PLAN**

**HISTORY:** 1975 - Industrial Public Utility  
1977 - Public/Quasi-Public  
1983 - Public/Quasi-Public  
1986 - Industrial Energy Production

**ZONING HISTORY:** Pre-1961 - R1 (Single Family Residential)  
1961 - M1 (Light Industrial)/M1-A (Restricted Manufacturing)  
1962 - M2-O (Industrial w/Oil Production)/M1-A (Restricted Manufacturing)  
1983 - M2-O-FP2/M1-A-FP2  
1990 - M2-O-CZ-FP2/M1-A-CZ-FP2

**EXISTING USE:** Oil Storage Tanks

This is an approximately 28 acre area designated Industrial Energy Production on the Land Use Plan and is developed with oil storage tanks for the Edison Company power generation plant. The existing zoning is M2-O-FP2 (Industrial District combined with Oil Production, within the Coastal Zone and a Floodplain) and M1-A-FP2 (Restricted Manufacturing District within the Coastal zone and a Floodplain).

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**AREA 10**

**ACREAGE:** 2 acres

**OWNERSHIP:** City of Huntington Beach

**GENERAL PLAN**

**HISTORY:**  
1975 - Industrial Public Utility  
1977 - Public/Quasi-Public  
1984 - Public/Quasi-Public  
1986 - Conservation

**ZONING HISTORY:** Pre-1961 - R1 (Single Family Residential)  
1961 - M1-A (Restricted Manufacturing)  
1983 - M1-A-FP2 (Restricted Manufacturing within a Floodplain)  
1984 - Q(ROS)-FP2 (Qualified Recreation Open Space within a Floodplain)  
1990 - Q(ROS) CC-CZ-FP2 (Qualified Recreational Open Space District with a Coastal Conservation Overlay Zone within the Coastal Zone and a Floodplain)

**EXISTING USE:** Vacant

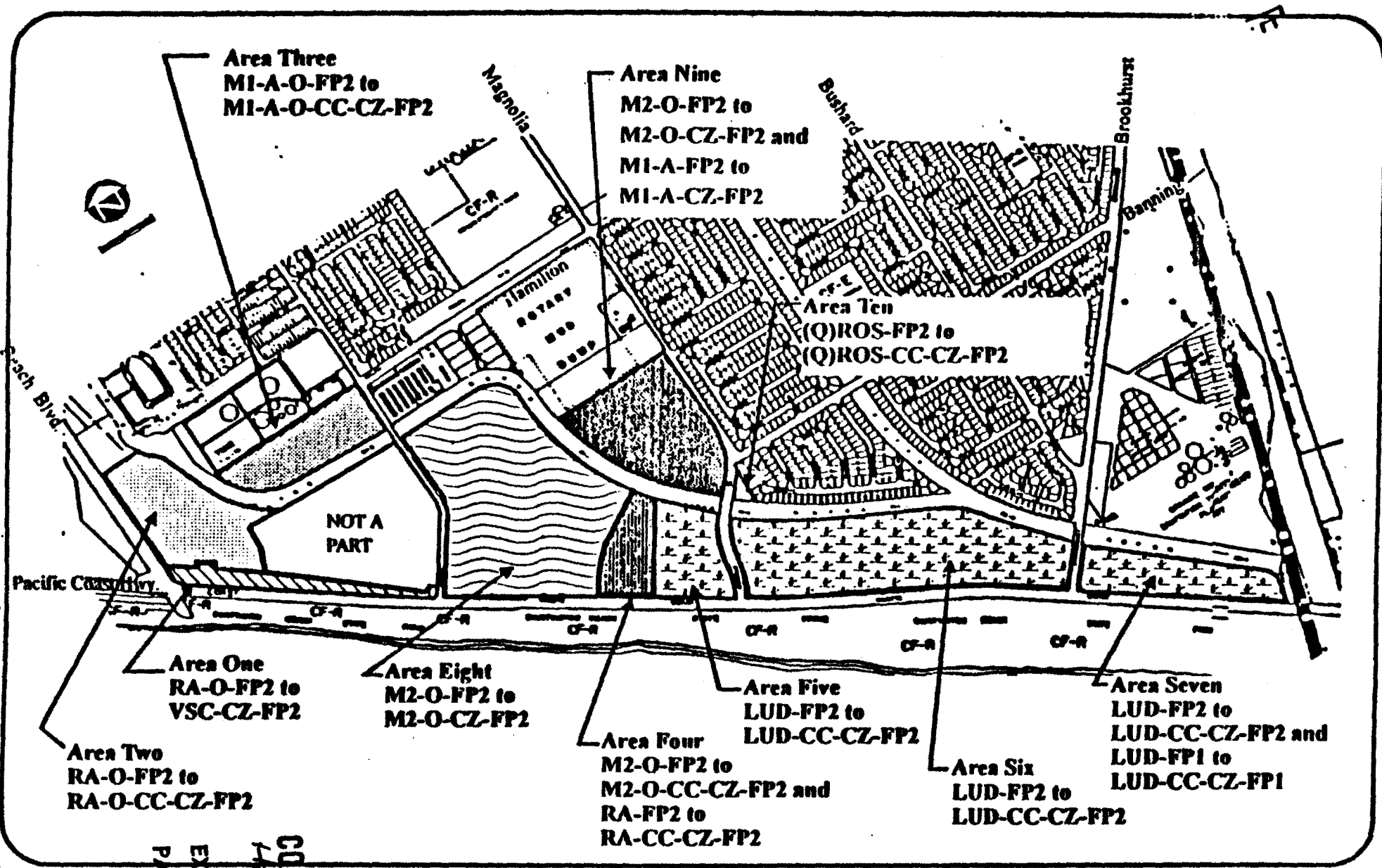
This is an approximately 2 acre area designated Conservation on the Land Use Plan. It is owned by the City and is presently vacant. The existing zoning is (Q)ROS-FP2 (Qualified Recreational Open Space District within the Coastal Zone and a Floodplain). This property was not identified by Fish and Game as wetlands.

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Proposed Zoning Map



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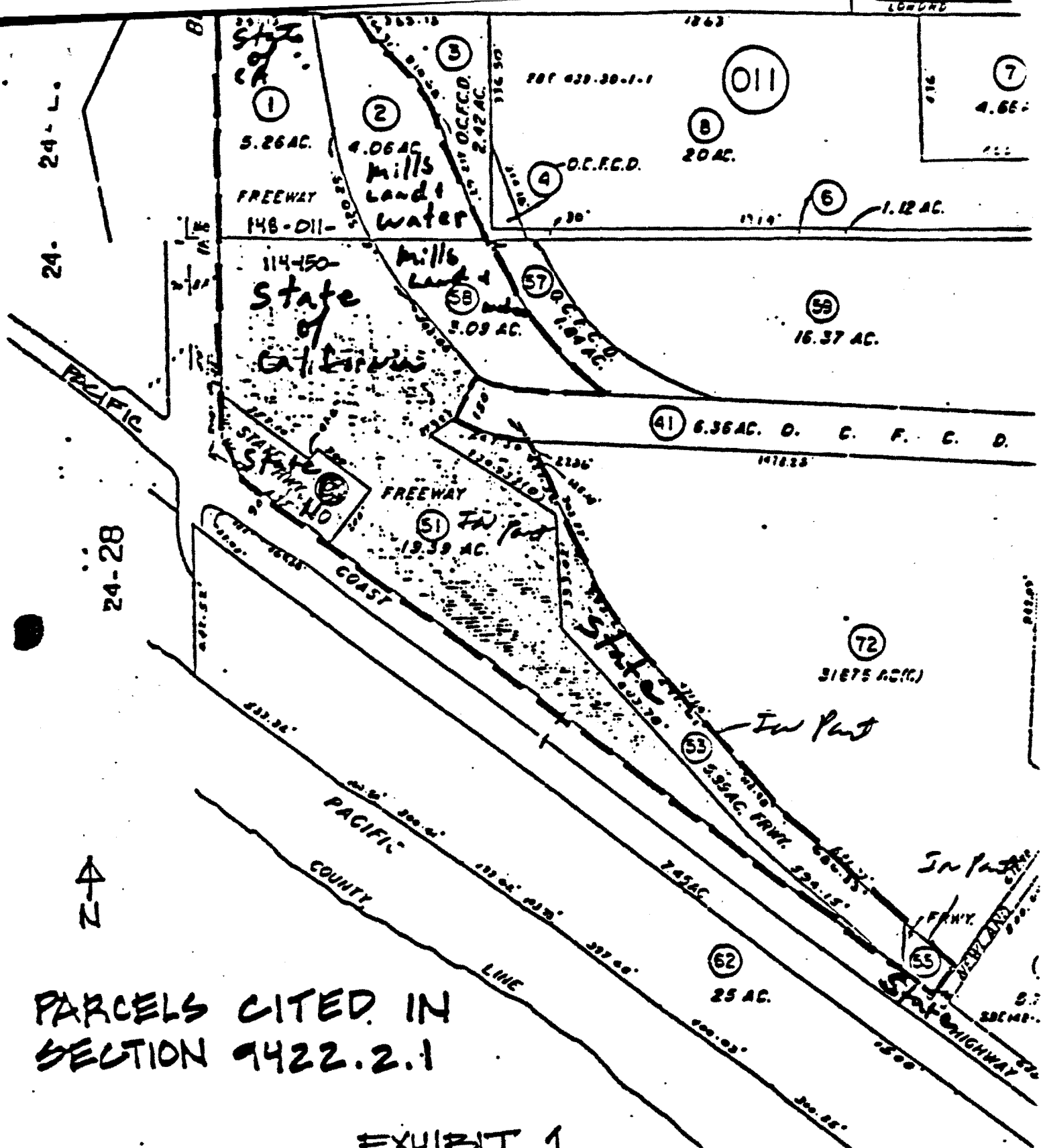
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# ZC 93-03 / CODE AMENDMENT 93-08

HUNTINGTON BEACH PLANNING DIVISION





PARCELS CITED IN SECTION 9422.2.1

EXHIBIT 1

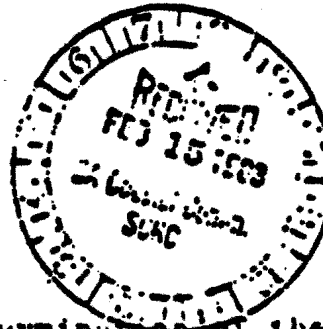
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| 148-011-02 | 114-150-53 |
| 114-150-26 | 114-150-58 |
|            | 114-150-55 |

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**Memorandum**

Michael Fischer, Executive Director  
California Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, CA 94105

Date: February 4, 1983



From: Department of Fish and Game

Subject: Department of Fish and Game Determination of the Status of the Huntington Beach Wetlands

In response to your request, the Department has completed the attached report concerning the status of the Huntington Beach Wetlands. Our report addresses those specific considerations required of the Department pursuant to Coastal Act Section 30411.

Please contact Don Kollock, Chief, Environmental Services Branch, or Bob Radovich, Fishery Biologist, Environmental Services Branch, at (ATSS) 465-1363, should you, your staff or members of the Commission have questions regarding our determination.

Director

cc: Huntington Beach Planning Department  
U. S. Fish & Wildlife Service - Laguna Niguel  
Amigos De Bolsa Chica - Lorraine Faber, President  
Fred Worthley, Earl Lauppe, Kit Novick - DFG-Region 5  
California Coastal Commission - South Coast Regional Office

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DFG Wetlands Determination

DEPARTMENT OF FISH AND GAME DETERMINATION  
OF THE STATUS OF THE HUNTINGTON BEACH WETLANDS

Introduction

In making the subject determination, the Department of Fish and Game has responded to those specific considerations mandated by Section 30411 of the California Coastal Act of 1976. This act acknowledges the Department of Fish and Game and the Fish and Game Commission as the principal state agencies responsible for the establishment and control of wildlife and fishery management programs. Coastal Act Section 30411(b) stipulates that the Department, in consultation with the Coastal Commission and Department of Boating and Waterways, may study degraded wetlands and identify those which can be most feasibly restored in conjunction with a boating facility, or whether there are "other feasible ways" to achieve restoration.

This report represents the Departments' determinations regarding the Huntington Beach Wetlands pursuant to Coastal Act Section 30411(b). This report includes the following sections: Summary of Major Findings; General History; Extent of Historical Wetlands; Present Status, Designation of Wetlands and Criteria and Definition Applied; Determination of Degraded Wetlands; Restoration of Wetlands within the study area; and Feasibility of Restoring and Enhancing Wetlands within the study area.

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Summary of Major Findings

Based upon examination of historical mapping, existing biological data, and upon the definitions and criteria outlined herein, the Department finds that of the 162.6 acres within the study area, 149.9 acres are historic wetland and 12.7 are historic upland (Table 1). We find that of the 149.9 acres of historic wetland within our study area, 114.7 acres (76.5%) continue to function viably as wetlands. The Department finds that all 114.7 acres of wetland identified are degraded pursuant to the definition established herein. However, we also find that 113.9 of these 114.7 wetland acres (99%) provide either high or moderate habitat values to wetland-associated birds. Further, the Department finds that major restoration efforts would not be required to restore and enhance wetland values on 114.7 acres identified in this report.

Some historic wetlands (31.2 ac) located southeast of Beach Boulevard have been so severely degraded that they no longer function viably as wetlands. These former wetlands however, provide an excellent potential opportunity for restoration. Most of the former wetlands (17.6 ac.) in this area may be feasibly restored with less than major effort while only 10.7 acres are not feasibly restorable. Historic wetlands (4.8 ac.) located west of Beach Boulevard have also undergone severe degradation. Of these historic wetlands only 0.8 acres continue to function as wetlands. However, some former wetlands (1.4 ac.) adjacent to this site could be restored to create a 2.2-acre freshwater marsh.

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In addition, the Department finds that 8.7 acres of coastal dune habitat and 2.9 acres of important upland habitat (formerly wetlands) are environmentally sensitive pursuant to Sections 30107.5 and 30240 of the Coastal Act.

Additionally, for the purposes of Coastal Act Section 30411(b)(2) the Department finds that a boating facility can be of sufficiently small size that a restored wetland area meeting the minimum 75% requirement of Section 30411(b)(2) can be maintained as a highly productive wetland in conjunction with such a project. Notwithstanding this finding, the Department specifically finds that wetland restoration is not most feasibly accomplished through establishment of a boating facility in the study area. The Department finds that the most feasible means of enhancing wetland values in the study area is through consolidation of development, management of existing wetlands by public and private landowners or the transfer of privately-owned wetlands to a public agency or private organization for wetland management purposes.

The Department finds that, minimally a 126.3-acre wetland/upland system, comprised of 114.7 acres of existing wetlands and 11.6 acres of existing environmentally sensitive upland, can be feasibly maintained and enhanced in the study area. Lastly, and as is more fully discussed in our response to Coastal Act Section 30411(b)(3), the Department finds that a wetland/upland system as large as 145.3 acres in size consisting of 133.7 acres of wetland and 11.6 acres of environmentally sensitive uplands may be feasibly maintained, enhanced, and restored within the study area if development of the remaining 17.3 acres of the study area proceeds consistent with the five recommendations made on pages 26 and 27 of this report.

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## General History

The study area is a remnant of a once extensive wetland area which existed at the mouth of the Santa Ana River (Figure 1). This wetland was historically connected to Newport Bay by the meandering Santa Ana River. The present wetland (114.7 ac.) is all that remains of approximately 2,000 acres of historic wetlands which existed upcoast (northwest) from what is now the Santa Ana River Flood Control Channel. This reduction in area of nearly 95% has occurred primarily due to the channelization of the Santa Ana River and other drainage courses and subsequently from encroachment of residential, commercial and industrial developments in the City of Huntington Beach. The study area has been formally classified as wetland by the State of California since at least 1971 (Radovich 1980; Appendix 3).

## Extent of Historical Wetlands in the Study Area

Our study area consists of those essentially non-developed parcels within the Coastal Zone boundary of the City of Huntington Beach bordered by Beach Boulevard, Pacific Coast Highway (PCH), the Santa Ana River, and the Orange County Flood Control Channel. Additionally, the study area includes that area bordered by the flood control channel, Newland Street, and the Fuel Storage Facility and another small area (5.0 acres) generally west of Beach Boulevard (Figure 2). Based upon careful consideration of historic mapping in the study area, we have concluded that 12.7 acres immediately adjacent to PCH were historically upland in the form of coastal dunes and that the remaining 149.9 acres of the 162.6 acre study area were historic wetlands (Figure 1, Table 1). Of these historic wetlands, 35.2 acres have been so severely degraded that they no longer function as wetlands, but 21.9 of

**TABLE 1. Historic wetlands and uplands within the Huntington Beach wetlands.**

Class	State of California	Thorpe	Mills Land & Water Co.	City of Huntington Beach	Southern California Edison	Total
<b>I. Historic Wetlands (acres)</b>						
<b>A. Non-degraded wetlands</b>	-	-	-	-	-	0
<b>B. Degraded but viably functioning wetlands.</b>						
<b>1. Providing documented high and moderate habitat value to wetland-associated avifauna.</b>	38.8	44.6	15.3	-	15.2	113.9
<b>2. Providing low value for wetland-associated avifauna and areas not yet thoroughly evaluated.</b>	-	-	-	0.8	-	0.8
<b>Subtotal</b>	38.8	44.6	15.3	0.8	15.2	114.7
<b>C. Historic wetlands no longer viably functioning as wetlands.</b>						
<b>1. Restorable</b>	9.6	0.6	8.3	1.4	2.0	21.9
<b>2. Not Restorable</b>	5.9	-	2.9	2.6	1.9	13.3
<b>Subtotal</b>	15.5	0.6	11.2	4.0	3.9	35.2
<b>Historic Wetland Total (acres)</b>	54.3	45.2	26.5	4.8	19.1	149.9
<b>I. Historic Uplands (acres)</b>	12.5	-	-	0.2	-	12.7
<b>GRAND TOTAL (acres)</b>	66.8	45.2	26.5	5.0	19.1	162.6

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these acres are restorable from a biological and technical standpoint while 13.3 acres are not. Of these 21.9 acres, 2.9 acres immediately upcoast (northwest) from the intersection of Brookhurst Street and PCH are now important as uplands and should be considered environmentally sensitive pursuant to Coastal Act Section 30260. This upland is dominated by goldenweed, Haploappus venetus.

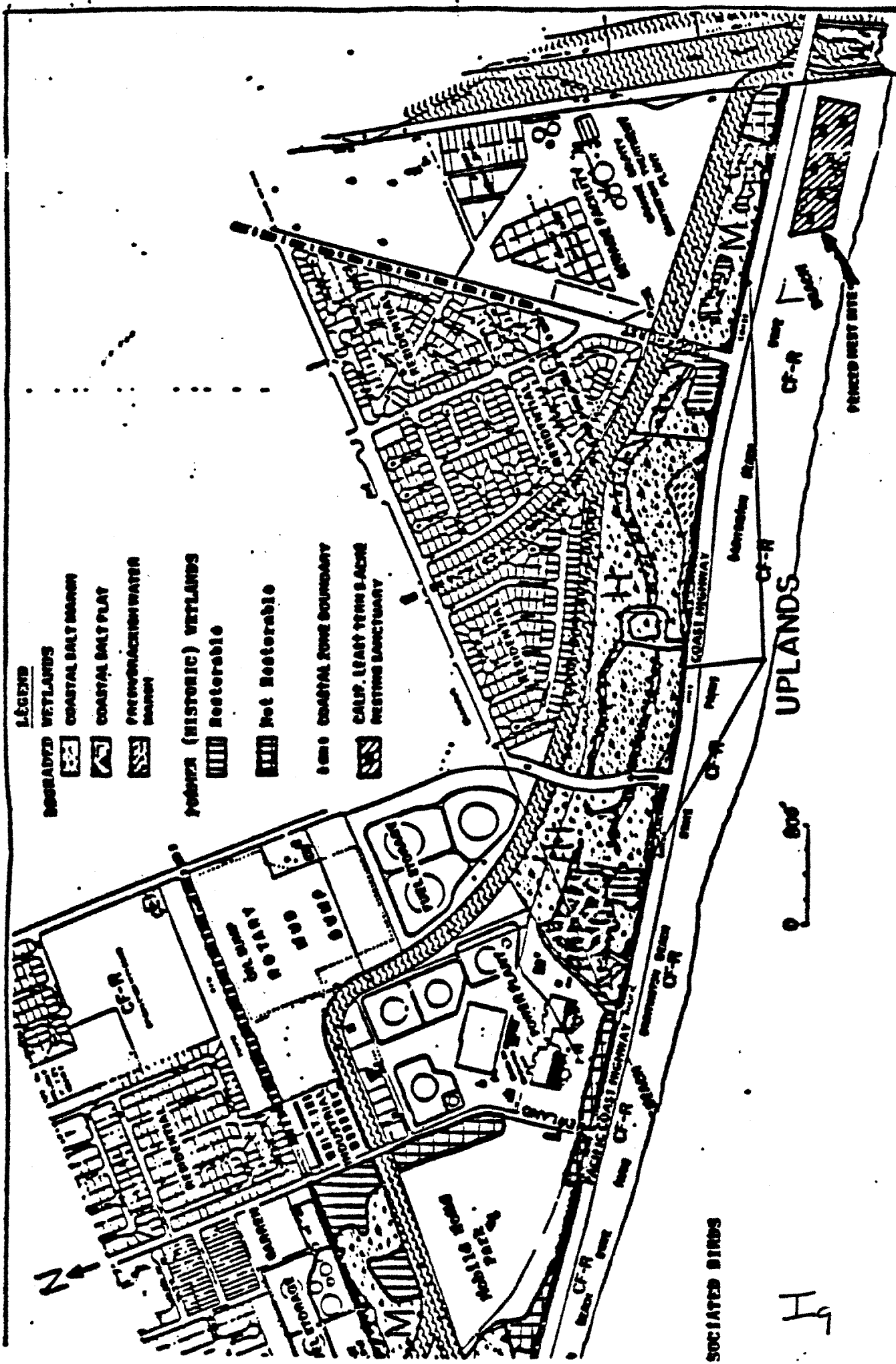
Although these 2.9 acres are readily restorable as wetlands, their contribution to the overall ecosystem in terms of habitat diversity, their high quality, and their location leads us to believe that they would be most advantageously maintained and managed for their upland values. The remaining 19.0 acres of restorable former wetlands are essentially devoid of habitat value for wildlife, and consist primarily of filled, scraped or highly disturbed areas. Lastly, 13.3 acres of historic wetland are not feasibly restorable by virtue of their adjacency to active development, the magnitude of fill deposition, and/or their size and shape. These areas are not vegetated by wetland species nor do they provide significant habitat value for wildlife (Table 1 and Figure 2).

#### Present Status

There presently exist 114.7 acres of viably functioning wetlands in the study area. These wetlands are non-tidal in nature. They are primarily a combination of vegetated and non-vegetated wetland flats, and manifest various salinity regimes. Dominant plant species include pickleweed (Salicornia virginia), alkali heath (Frankenia grandifolia) and salt grass (Distichlis spicata) in salt marsh areas; spiny rush (Juncus acutus) and bulrush (Scirpus spp.) in brackish water marsh







# WETLANDS

As Depicted By The Dept. Of Fish And Game

The Dept. of Fish and Game.

SOUTH CALIFORNIA REGION

areas and cattail (Typha spp.) in freshwater marsh areas. Salicornia virginia an obligate hydrophyte, is clearly the predominant plant species in the study area. Common wetland plant species present are listed in Appendix 1 and in Soule (1980). Non-vegetated flats (salt flats) are wetland areas which, because of their lower elevation, are subject to more drastic water level fluctuation than are vegetated marshes. This factor, in combination with high concentrations of salt in the substrate of these areas, serves to severely restrict the growth of rooted hydrophytes. Brine shrimp, amphipods, and ostracods are present in many salt flat areas. Additionally, aquatic insects are found seasonally in these salt flat areas. Insects collected and/or observed in these salt flat areas include backswimmers (Notonectidae), water scavenger beetles (Corixidae), mosquito larvae (Culicidae), and salt flies and larvae (Ephydriidae).

The invertebrate population in the subject wetland area is either directly or indirectly dependent upon seasonal algal blooms in the salt flat areas. These algal blooms are, in turn, dependent upon the seasonal water regime as well as nutrients which are produced in vegetated saltmarsh areas. The invertebrate population provides a forage base for an abundant and diverse complement of wetland-oriented bird species. At least 83 bird species have been observed in the Huntington Beach Wetlands (Appendix 2). Of the 83 species, 53 species are wetland-associated birds. Included among the species known to occur in the study area are the federally and state-listed endangered California least tern and the state-listed endangered Belding's savannah sparrow. Bird censuses conducted by Department personnel and others indicate that of the 114.7 acres of existing wetland in the study area 113.9 of these acres (99%) provide either high or moderate habitat values for wetland-associated birds.

Of the 12.7 acres of historic upland, 8.7 acres adjacent to PCH and downcoast (generally southeast) from the power plant are composed of coastal dune habitat, willow thickets and transition vegetation, and are environmentally sensitive pursuant to Coastal Act Sections 30107.5 and 30240. These 8.7 acres provide desirable habitat diversity to the overall study area, and constitute approximately 35% of all remaining coastal dune habitat in northern Orange County (the remaining roughly 65% being located primarily in the Bolsa Chica Ecological Reserve) (See DFC 1982). The 4 acres of historic upland located upcoast (generally northwest) from the power plant are not environmentally sensitive nor do they operate as effective buffers to the wetland system because they exist primarily between PCH and active development such as the power plant and mobile home parks.

#### Definition of Wetlands and Criteria for Identification

Wetlands are defined in Section 30121 of the Coastal Act as follows:

"lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens."

We consider the Coastal Act definition of "wetlands" to be compatible with the U.S. Fish and Wildlife Service Wetland Classification System and wetland definition. The latter definition and classification system have the advantage of being more readily usable in field analysis because the system is both hierarchical and dichotomous in nature, and because the same set of biological and physical criteria

is consistently applied. We concur with the interface between the Coastal Act "wetland" definition and the USFWS definition as discussed in Appendix B of the "Statewide Interpretative Guidelines for Wetlands and Other Environmentally Sensitive Habitat Areas" (adopted by the California Coastal Commission, February 4, 1981).

The U. S. Fish and Wildlife Service definition is as follows:

"Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

Wetlands as defined here include lands that are identified under other categories in some land-use classifications. For example, wetlands and farmlands are not necessarily exclusive. Many areas that we define as wetlands are farmed during dry periods, but if they are not tilled or planted to crops, a practice that destroys the natural vegetation, they will support hydrophytes.

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Drained hydric soils that are now incapable of supporting hydrophytes because of a change in water regime are not considered wetlands by our definition. These drained hydric soils furnish a valuable record of historic wetlands, as well as an indication of areas that may be suitable for restoration.

The upland limit of wetland is designated as (1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without vegetation or soil, the boundary between land that is flooded or saturated at some time each year and land that is not." (Cowardin et al., 1979).

For reasons involving its scientific soundness and field tested nature, we have used the Fish and Wildlife Service definition and classification system in the preparation of our map. The map (Figure 2) is essentially the same as the map prepared for our initial report "An Assessment of Wetland Resources Within the City of Huntington Beach Between Beach Boulevard, and the Santa Ana River" (Radovich, 1980; Appendix 3). This map was prepared by careful analysis of aerial photographs, and extensive on-site investigation. In our initial report, we utilized the appropriate USFWS wetland classification code as an element of each definition for the various wetland types defined. The terminology and definitions of wetlands applied in our initial report -Coastal Saltmarsh, Coastal Saltflat, Fresh/Brackish Water Marsh- remain the same in this report for ease of interpretation, clarity and consistency. It should be noted that representatives

of the Los Angeles District Corps Office, the USFWS field office in Laguna Niguel, the USFWS Regional Headquarters in Portland; California Coastal Commission staffs and the Department of Fish and Game unanimously agreed that the definitions applied in our initial report were compatible with the various wetland definitions and classification systems utilized by these agencies. This unanimity was represented at several meetings between the agencies and Huntington Beach Planning Department staff and City Council members.

These wetland types as defined by the Coastal Act and the U.S. Fish and Wildlife Service, are distinguished as follows:

Coastal Salt Marsh - A wetland, as previously defined, exhibiting a water and salinity regime which maintains vegetation characteristic of an estuarine system. For the purposes of this report, the "coastal salt marsh" designation includes areas which are at least 30% vegetated and where salt marsh indicator plants predominate. Salt marsh indicator plant species include pickleweed (Salicornia virginica and S. subterminalis), alkali heath (Frankenia grandifolia), saltgrass (Distichlis spicata) and others (E2EMIK3 dhg).\*

Coastal Salt Flat - A wetland, as previously defined, where vegetation is lacking (<30% coverage) and soils are poorly developed as a result of frequent or relatively drastic surface water fluctuation and/or high concentrations of salts in the water or substrate (E2FLJK1/3 dhg)\*.

\*USFWS classification system

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Fresh/Brackish Water Marsh- A wetland, as previously defined, exhibiting a water regime which maintains vegetation which is typically adapted to fresh or brackish water conditions. For the purposes of this report, the fresh/brackish water marsh designation includes areas which are at least 30% vegetated and where fresh/brackish water plants predominate. Fresh/brackish water marsh indicator plant species include spiny rush (Juncus acutus), sedge (Cyperus spp.), bulrushes (Scirpus spp.), cattails (Typha spp.) and others. (E1/E2EM1VB(MVD(K2/3-dh))\*

We again refer to the Coastal Act wetland definition: "Lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open and closed brackish water marshes, swamps, mudflats and fens." Clearly, wetlands classified in this report and on the accompanying map as "coastal salt marsh" and "fresh/brackish water marsh" are wetlands by explicit inclusion in the Coastal Act definition.

"Coastal Salt Flat" areas designated in this report and on the accompanying map are periodically inundated and saturated on a seasonal basis and are, therefore, also wetlands by Coastal Act definition. Additionally, it is reasonable to conclude that periodicity, as it is referred to in Coastal Act Section 30121 means often enough to support a dominance of plant species adapted to, or tolerant of inundation, and often enough to largely preclude the growth of plants which are not so adapted. All areas designated as wetlands in this report and on the accompanying map exhibit ecologically dominant plant species which are both tolerant of and dependent upon periodic inundation or substrate saturation.

\*USFWS classification system



Areas shown in solid black on Figure 2 were referred to as riparian in nature in our initial report (Radovich 1980) due to outcroppings of willows which occur in this area (generally immediately adjacent to PCH). As has been previously discussed, these areas are more properly referred to as coastal dune habitat. Another alteration to our initial map involves the loss of 4.3 acres of coastal salt marsh adjacent to and upcoast (generally west) from Newland Street and inland from the flood control channel (Mills Land and Water Company property). This area was illegally filled and scraped in 1981 by unknown persons leaving only 8.3 acres of wetland vegetation remaining and is depicted in Figure 2 and Table 1. In July, 1982, the remaining 8.3 acres were bulldozed and disced by the landowner, entirely eliminating wetland vegetation on this 16-acre parcel. This latter activity resulted in the Coastal Commission initiating an enforcement action, and the matter is presently involved in litigation. For this reason, and because recolonization of at least 8.3 acres by wetland vegetation and/or periodic inundation is likely, the Department determines that these 8.3 acres should be mapped and treated as wetlands in this report. The last significant alteration of our initial map involves roughly 3.75 acres of restorable former wetlands and 0.25 acres of coastal salt marsh which were located between the rotary mud dump and the light industrial use inland from the flood control channel. These approximately 4.0 acres were converted to light industrial use.

Based on the definition and discussion above, the Department finds that there are 114.7 acres of wetland, 35.2 acres of former wetland which have been so severely degraded that they no longer function as wetland, and 12.7 acres of historic upland in our 162.6 acre study area (Figure 2 and Table 1).

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Determination of Degraded Wetlands

Neither Section 30121 of the Coastal Act nor the U.S. Fish and Wildlife Service Wetland Classification System define or discuss "degraded wetlands." However, PRC Section 30233(a)(3) recognizes the existence of such areas, and states that these areas shall be identified by the Department of Fish and Game. Implicit in this mandate is that the Department must define "degraded wetlands" since undefined areas cannot be identified.

The word "degrade" has several definitions. Some of these definitions are extremely negative and, therefore, inadequate to enable this Department to emphasize the significant wildlife values which exist in many "degraded wetlands." Therefore, from the various definitions available, we have concluded that the following definition of the term "degraded wetland" is as ecologically accurate a definition as is possible:

Degraded Wetland - A wetland which has been altered by man through impairment of some physical property and in which the alteration has resulted in a reduction of biological complexity in terms of species diversity of wetland-associated species which previously existed in the wetland area.

We emphasize that this definition is to be applied only when the alteration is induced by man, and is not meant to apply to natural succession from a complex to a more simplified wetland community.

As has been previously discussed, 149.9 acres in our study area (92X) were historically wetland. This historic wetland area was tidal in nature. These wetlands were once populated by a highly diverse complement of organisms which inhabited a diverse assemblage of ecological communities similar to those present today in the wetlands of Anaheim Bay, Bolsa Chica and Upper Newport Bay. Today, existing wetlands in the study area are essentially non-tidal in nature. Fish, molluscs, and other marine and estuarine organisms have been largely eliminated. The 114.7 acres of existing wetland is populated by a less complex group of organisms than that which previously existed due to the impairment of tidal and freshwater flow by construction of dikes and PCH (in the study area). We find that these 114.7 acres of wetlands are degraded.

This degraded wetlands determination is not meant to imply that these non-tidal wetlands do not provide significant wildlife values nor that they are not highly productive. In fact, pickleweed-dominated salt marshes are among the most productive natural plant communities on earth. Although we have not conducted extensive measurements of productivity in the study area, preliminary measurements conducted by Department personnel in 1979 indicated a net annual productivity on the order of 1500 g. dry wt/m<sup>2</sup>/yr in the pickleweed-dominated salt marsh of the study area. We emphasize that this figure is not definitive due to the cursory nature of the study. However, this figure is compatible with the findings of other wetland ecologists on the west coast. In general, Salicornia-dominated high salt marsh in restricted or non-tidal wetlands exhibits a mean annual productivity of between 1000 and 2500 g. dry wt/m<sup>2</sup>/yr (Eilers 1980) depending upon the method of calculation used.

In addition to the fact that the subject wetlands appear to exhibit high productivity, the Department has documented high and moderate habitat values for wetland-associated birds on 113.9 (99%) of the 114.7 acres of degraded wetlands. The methodology involved in this finding consisted of utilizing data accumulated through field survey by Department personnel and other sources (Soule, 1980; Cal Trans, undated; City of Huntington Beach Final EIR 77-9; Massey, 1982; Massey, 1977) to evaluate degraded wetland habitat in terms of species richness/ diversity for wetland-associated birds. Since these degraded wetlands presently provide significant value to wetland-associated birds, and in terms of annual net productivity appear to be highly productive, the Department finds that these degraded wetlands are not so severely degraded that major restoration efforts are required.

#### Restoration of Wetlands within the Study Area

Restoration and enhancement measures in the study area would involve reestablishing tidal influence to the area. The methodology would be to place culverts with selective water control structures (flap gates, slide gates or flashboard risers, etc.) between the wetland areas and the tidally-influenced flood control channel which runs the full length of the study area. Minor improvements to perimeter levees and minor channel excavations, to improve water circulation in the restored area, would be highly desirable and necessary in some areas. A new levee of minor height may be needed to protect the NW corner of the Mobile Home Park if controlled tidal waters are allowed into the adjacent area.

Conclusive evidence of the feasibility of establishing tidal influence to the study area was demonstrated on the 16-acre parcel between Brookhurst Street and the Santa Ana River. Within six months after this area was exposed to tidal action, a large and surprisingly diverse complement of fish and invertebrates recolonized this area. The California least tern fed extensively on forage fish such as mosquitofish (Gambusia affinis) and topsmelt (Atherinops affinis). Other fish collected from the site included: California killifish (Fundulus parvipinnus), staghorn sculpin (Leptocottus armatus), longjaw mudsucker (Gillichthys mirabilis), yellowfin goby (Acanthogobius flavimanus), arrow goby (Clevelandia ion); kelp bass (Paralabrax clathratus), barred sandbass (Paralabrax nebulifer); California halibut (Paralichthys californicus); Opaleye (Cirella nigricans) and shiner surfperch (Cymatogaster aggregata). Invertebrates included ghost shrimp (Callinassa californiensis), jackknife clams (Taxelus californianus), little egg cockles (Laevicardium substriatum), bay mussels (Mytilus edulis), bent-nosed clam (Macoma nasuta), common littleneck clam (Protothaca staminea), striped shore crab (Pachygrapsus crassipes) and a crab of the genus Cancer. Additionally, this area was a valuable feeding and resting site for shorebirds and waterfowl.

Reestablishment of tidal flushing to other areas through installation of culverts between the flood control channel and wetland areas to be restored, would result in rapid colonization by the above mentioned species and others as well. Care must be exercised during the evolution of such a restoration plan to minimize any negative impacts upon the endangered Belding's savannah sparrow. This could be accomplished by maintaining a sufficient complement of Salicornia-dominated high salt marsh. Additionally, the existing role of salt flat areas in the production of food for

water-associated birds should be maintained. That is to say that some seasonally flooded wetlands should be maintained or created.

The portion of the study area (5.0 ac.) west of Beach Boulevard, consists of 0.8 acres of fresh/brackish water marsh and 4.2 acres of former wetland and upland, of which 1.4 acres are restorable as wetland. The 0.8-acre pocket of freshwater wetland has been degraded because of its reduced size, configuration, location and overgrown condition. In order to effect restoration of this wetland such that wildlife values are improved, it would be necessary to both expand its size and decrease the ratio of vegetated to non-vegetated wetland. In this regard, it would be highly advantageous to create non-vegetated open-water area of roughly a 4-foot depth. This 4-foot depth would be adequate to largely preclude invasion by cattails. Lastly, the wetland in this area should be fenced.

This freshwater wetland could feasibly be restored to 2.2 ac (0.8ac of existing wetland and 1.4 ac of restorable historic wetland). However, if offsite mitigation is deemed necessary for this freshwater pocket, the following conditions must be met:

- (1) Continue to allow freshwater urban runoff from the trailer park to flow to the wetlands southeast of Beach Boulevard.
- (2) The new mitigation site should result in creation of at least 2.2 acres of wetlands which is presently the potential restoration acreage onsite.

- (3) The site chosen must be non-wetland in its present condition.
- (4) The wetland design, location and type (i.e. freshwater) must be approved by the Department.

Feasibility of Restoring and Enhancing Wetlands within the  
Huntington Beach Study Area

Pursuant to Coastal Act Section 30411(b) this Department is authorized to study degraded wetlands. Once this study is initiated, we are required to address essentially three considerations. These considerations are discussed below.

A. Section 30411(b)(1)

This Coastal Act Section requires the Department to determine whether major restoration efforts would be required to restore the identified degraded wetlands. We find that major restoration efforts are not required for the 113.9 acres of existing wetland located south of Beach Boulevard. These wetlands could easily be enhanced by reestablishing controlled tidal flushing due to their existing low elevation (less than 2 ft. MSL), their immediate adjacency to the tidal waters of the flood control channel, and the demonstrated ease and efficiency with which this water may be used for restorative purposes.

With respect to the 0.8 acres of existing wetland located west of Beach Boulevard, the Department has found low use by wetland-associated birds on this parcel. However, we find that it still functions as a freshwater marsh.

It appears that its relatively low wildlife use is associated primarily with its small size and its overgrown condition. This wetland area could be enhanced by increasing both its size and the ratio of open-water to vegetated wetland areas. We find that these restorative measures are all minor, and therefore, can be feasibly accomplished.

We note that the study area affords a tremendous opportunity for restoration of historic wetlands. Of the 31.2 acres of former wetlands located southeast of Beach Boulevard, the Department finds that most of these (17.6 acres) could be restored in conjunction with enhancement of the existing wetlands and would not entail a major restorative effort.

For the above reasons, the Department finds that 114.7-acres of wetland can be restored without major restoration activities. In addition, a potential opportunity exists to restore approximately 19 acres (17.6 ac. southeast and 1.4 ac. west of Beach Blvd.) of former wetlands.

**B. Section 30411(b)(2)**

The consideration mandated of this Department pursuant to Coastal Act Section 30411(b)(2) speaks in terms of minimum and maximum. It is obvious to us that a boating facility can be of sufficiently small size that a restored wetland area meeting the minimum 75% area requirement of Section 30411(b)(2) can be maintained as a highly productive wetland in conjunction with such a project. Notwithstanding this finding, the Department believes that a boating facility is not a feasible use within the study area, and that a boating facility is

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not the least environmentally damaging means of enhancing or restoring the wetlands due to their proximity to the flood control channel and the apparent ease with which they may be restored.

C. Section 30411(b)(3)

Pursuant to Coastal Act Section 30411(b)(3), the Department is required to determine how restoration and enhancement of degraded wetlands can most feasibly be achieved. The term "feasible" is defined in Coastal Act Section 30108 as follows:

Feasible - Capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social and technological factors.

As indicated previously, it is our conclusion that from a technological as well as environmental perspective it is possible to swiftly restore and enhance the existing wetlands as described. In addition, Coastal Act Section 30108 requires the consideration of social and economic factors. Since the analysis of the feasibility of restoration activities in degraded wetland areas is required of this Department pursuant to Section 30411(b)(3), it follows that the Department must make feasibility determinations based on social and economic factors as well as environmental and technical factors.

What is meant by "social factors" is not precisely clear to this Department, however, after careful consideration we conclude that the only potentially negative

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and arguably social effects of wetland restoration in the study area appear to relate to flood problems and mosquito production problems.

Considering the existing potential problem of flooding, the Department believes that if culverts with selective water control structures as well as dikes were constructed to protect the trailer park, PCH, where necessary, and perhaps Beach Boulevard, the existing threat of flooding could actually be decreased. These dikes would be constructed in association with a restoration project and would effectively and safely increase the potential storage capacity of water in the subject area. This increased storage capacity could involve several hundred acre-feet of water which under existing conditions might cause damage not only to the areas identified above, but also to residential and commercial uses located inland from the flood control channel.

If appropriate diking and selective water control structures and culverts are used, the Department finds these restoration activities feasible taking into account the social factors associated with flood threat.

The Department finds that the restoration project outlined above (which incorporates increased tidal flushing and the establishment of a considerably more complex group of marine and estuarine-oriented organisms) would effectively decrease mosquito production. The combined effect of increased salinities and a more constant water regime would allow the presence of year-round active mosquito predators (California killifish, topsmelt, Gambusia, etc.) and would tend to eliminate those environments wherein most mosquitoes thrive (Reynolds, 1983). Therefore, the Department finds that the restoration activities outlined above are

feasible taking into account the social factors associated with mosquito production.

Regarding the economic feasibility of wetland restoration, the Department concludes that activities specifically related to restoration would be relatively inexpensive to accomplish. Such activities could, as previously indicated, include such minor restorative measures as the placement of culverts, limited channelization, and erection of necessary peripheral dikes.

In summary, based upon the stated reasons, the Department concludes that the restoration plan outlined above is feasible as the term feasibility is defined in Section 30108 of the Coastal Act.

In addition to determining the feasibility of wetland restoration, Section 30411(b)(3) requires this Department to determine if the most feasible means of restoration involves a boating facilities project or whether there are other feasible means of restoring wetland values. In responding to Coastal Act Section 30411(b)(2), the Department has already determined that a boating facilities project is not the most feasible means of effecting restoration. This is based upon the demonstrated ease of restoring wetlands by utilizing the adjacent tidally-influenced flood control channel in conjunction with selective water control structures. Therefore, the following discussion shall consider other means of restoring and enhancing wetland values in the study area.

Focusing upon that portion of our study area between Beach Boulevard and the Santa Ana River, there are (as previously indicated) 17.6 acres of restorable former

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wetlands (taking into account the environmentally sensitive nature of the 2.9 acres adjacent to Brookhurst Street and our desire to retain these 2.9 acres as upland). Of these 17.6 acres, 6.7 acres are owned by the State and 10.9 acres are in private ownership. Of the 14.5 acres of non-sensitive, non-restorable property located between Beach Boulevard and the Santa Ana River, 4.8 acres are in private ownership and 9.7 acres are owned by the State. Of the 10.9 acres of restorable former wetland in private ownership, 5.1 acres do not appear to be developable since they are scattered throughout the study area, consist of small parcels, and are generally contained within existing wetland areas. Additionally, there is a 5.8 acre area adjacent to Newland Street of which 4.3 acres were filled and scraped in 1981. Although these 5.8 acres are not presently wetlands, they are nonetheless easily restorable as wetlands. On the other hand, all 9.7 acres of non-sensitive, non-restorable property owned by the State appears to be developable and desirably located for development because these 9.7 acres front directly on Pacific Coast Highway. For these reasons, the Department recommends the following means of feasibly restoring and enhancing wetlands values in the area between Beach Boulevard and the Santa Ana River:

1. Restore and enhance 113.9 acres of existing wetland. Specifics of this restoration concept were previously discussed.
2. Restore the 6.7 acres of restorable former wetland owned by the State. This acreage could be easily restored as a function of the restoration plan outlined previously.

3. Retain and enhance the existing 11.6 acres of environmentally sensitive upland habitat all of which is presently in State ownership.
4. Arrange to exchange the 9.7 acres of state-owned, non-sensitive, non-restorable, and apparently developable property for all or portions of the 10.9 acres of restorable former wetland in private ownership. These 10.9 acres would, by virtue of their elevation and location, be almost effortlessly restored in conjunction with restoration and enhancement of other restorable and existing wetland areas.
5. Permit development of the 4.8 acres of non-sensitive, non-restorable property in private ownership.

Shifting focus to the portion of our study area west of Beach Boulevard, there are 0.8 acres of existing wetland and an additional 1.4 acres which may be easily restored as wetland. As previously indicated, the Department considers on-site restoration of these 2.2 acres to be feasible.

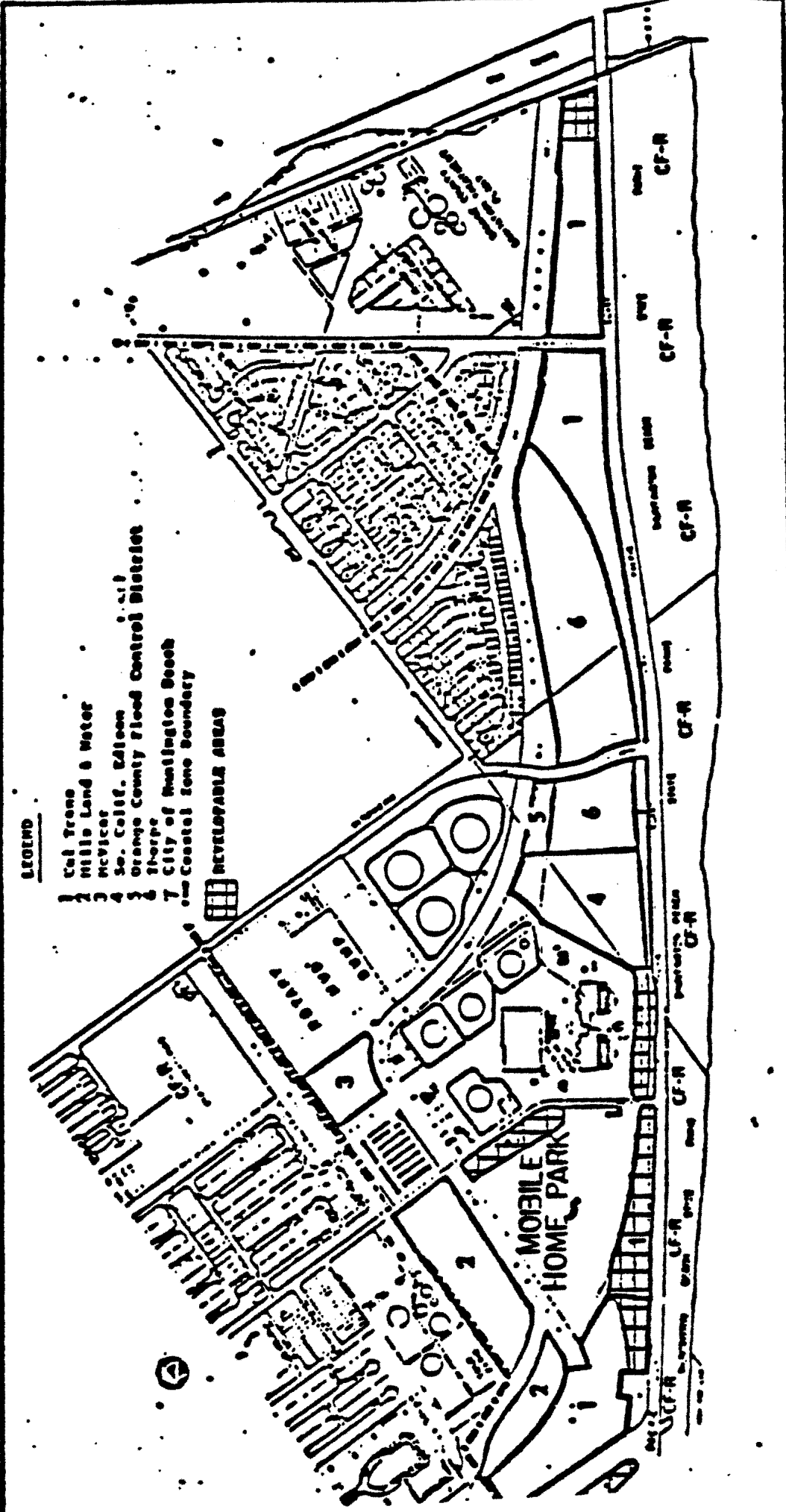
In summary, establishment of an upland/wetland ecosystem of 126.3 acres consisting of 114.7 acres of wetland and 11.6 acres of environmentally sensitive upland is feasible since this system is presently functioning within the study area. It appears that it is feasible to establish an upland/wetland ecosystem of as much as 145.3 acres in size consisting of 133.7 acres of wetland and 11.6 acres of environmentally sensitive upland if the five steps listed above are followed. This course of action would additionally result in private development of 14.5 acres

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between Beach Boulevard and the Santa Ana River and 2.8 acres of City development within the 162.6 acre study area (Figure 3).

Lastly, regarding the 16.4 acre area bounded by Newland Street, the flood control channel, and the fuel storage facility, this area involves special considerations. As previously mentioned, 8.3 of these acres were recently tilled and are involved in litigation. A further 4.3 acres of wetland were filled and scraped in 1981 without benefit of a Coastal Development Permit. Assuming that this 4.3 acre area is not recolonized by wetland vegetation, or does not otherwise reestablish itself as a wetland in the future, and further assuming development of all or portions of the 5.8 acre area near Newland Street (of which the 4.3 acre area is part), then restoration of the balance of the 16.4 acre parcel should be required as a condition of any Coastal Development Permit approved for development of all or portions of the 5.8 acre area.

This concludes our formal determinations for this area pursuant to Coastal Act Section 30411(b). Please know the Department remain available to answer any question concerning this report.



# Ownership Patterns

Map modified by Dept. of Fish and Game.



HUNTINGTON BEACH, CALIFORNIA  
PLANNING DIVISION

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Appendix 1. List of Wetland Plant Species Present within the Huntington Beach Wetlands<sup>1</sup>

<u>Landowner</u>	<u>Location</u>	<u>Wetland Species Present (See Legend)</u>	<u>Legend</u>
State of California	1. Santa Ana River to Brookhurst St.	1 8 10	1 <i>Salicornia virginica</i>
	2. Brookhurst St. to Magnolia St.	1 3 4 6 8 11	2 <i>Salicornia subterminalis</i>
	3. East of Beach Blvd.	1 3 8 9 12 13	3 <i>Frankenia grandifolia</i>
City of Huntington Beach	1. West of Beach Blvd.	1 3 5 6 7 8 9	4 <i>Juncus acutus</i>
Southern California Edison	1. West of Magnolia St.	1 8	5 <i>Scripus olneyi</i>
Thorpe	1. East of Magnolia St.	1 3 8	6 <i>Scripus californicus</i>
	2. West of Magnolia St.	1 3 4 12	7 <i>Cyperus sp.</i>
Mills Land & Water Co.	1. North and east of the flood control channel	1 3 *	8 <i>Distichlis spicata</i>
	2. West of the flood control channel	1 3	9 <i>Typha sp.</i>
			10 <i>Ruppia maritima</i>
			11 <i>Jamesa carnosa</i>
			12 <i>Scripus robustus</i>
			13 <i>Cotula coronopifolia</i>

<sup>1</sup> This list is not intended to be exhaustive but rather represents the most common wetland indicator species present on August 23, 1982.

\*Mostly dead vegetation as a result of discing.

APPENDIX 2

BIRDS OF THE HUNTINGTON BEACH WETLANDS

These bird species are known to occur in the subject wetland area. The following list is not intended to be exhaustive. The list is based on actual field observation by the Department and other reliable sources.

Wading birds:

Great blue heron	<u>Ardea herodias</u>
Great egret	<u>Casmerodius albus</u>
Snowy egret	<u>Egretta thula</u>
Cattle egret	<u>Bubulcus ibis</u>
Black-crowned night heron	<u>Nycticorax nycticorax</u>

Surface ducks

Mallard	<u>Anas platyrhynchos</u>
Northern Pintail	<u>Anas acuta</u>
Green-winged teal	<u>Anas crecca</u>
Blue-winged teal	<u>Anas discors</u>
Cinnamon teal	<u>Anas cyanoptera</u>
American wigeon	<u>Anas americana</u>
Northern Shoveler	<u>Anas clypeata</u>

Diving ducks

Lesser scaup	<u>Avthya affinis</u>
Surf scoter	<u>Melanitta perspicillata</u>
Bufflehead	<u>Bucephala albeola</u>

Stiff-tailed ducks

Ruddy duck	<u>Oxyura jamaicensis</u>
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Kites, hawks, falcons (observed foraging in wetland areas)

Black-shouldered kite	<u>Elanus caeruleus</u>
Red-tailed hawk	<u>Buteo jamaicensis</u>
Northern harrier	<u>Circus cyaneus</u>
American kestrel	<u>Falco sparverius</u>

Shorebirds

Semipalmated plover	<u>Charadrius semipalmatus</u>
Killdeer	<u>Charadrius vociferus</u>
Black-bellied plover	<u>Pluvialis squatarola</u>
Long billed curlew	<u>Numenius americanus</u>
Whimbrel	<u>Numenius phaeopus</u>
Willet	<u>Catoptrophorus semipalmatus</u>
Greater yellowlegs	<u>Tringa melanoleucus</u>

Shorebirds

Least sandpiper  
 Dunlin  
 Western sandpiper  
 Marbled godwit  
 American avocet  
 Black-necked stilt  
 Red-necked phalarope  
 Dowitcher spp.  
 Wilson's phalarope  
 Sanderling  
 Lesser yellowlegs  
 Lesser golden plover  
 Spotted sandpiper

Calidris minutilla  
Calidris alpina  
Calidris mauri  
Limosa fedoa  
Recurvirostra americana  
Himantopus mexicanus  
Phalaropus lobatus  
Limnodromus spp.  
Phalaropus tricolor  
Calidris alba  
Tringa flavipes  
Pluvialis dominica  
Actitis macularia

Gulls and terns

Western gull  
 Herring gull  
 California gull  
 Ring-billed gull  
 Bonaparte's gull  
 Heerman's gull  
 Forster's tern  
 California least tern  
 Caspian tern

Larus occidentalis  
Larus argentatus  
Larus californicus  
Larus delawarensis  
Larus philadelphia  
Larus heermanni  
Sterna forsteri  
Sterna antillarum browni  
Sterna caspia

Miscellaneous wetland-related species

American coot  
 Belding's savannah sparrow  
 Red-winged blackbird  
 Eared Grebe  
 Double-crested cormorant  
 Belted kingfisher  
 Marsh wren

Fulica americana  
Passerculus sandwichensis beldingi  
Agelaius phoeniceus  
Podiceps nigricollis  
Phalacrocorax auritus  
Ceryle alcyon  
Cistothorus palustris

Miscellaneous species not directly related to wetland habitat

Mourning dove  
 American crow  
 Northern mockingbird  
 European starling  
 English sparrow  
 Western meadowlark  
 House finch  
 American goldfinch  
 Lesser goldfinch  
 Song sparrow  
 Cliff swallow  
 Barn swallow  
 Violet-green swallow

Zenaidura macroura  
Corvus brachyrhynchos  
Mimus polyglottus  
Sturnus vulgaris  
Passer domesticus  
Sturnella neglecta  
Carpodacus mexicanus  
Carduelis tristis  
Carduelis psaltria  
Melospiza melodia  
Hirundo pyrrhonota  
Hirundo rustica  
Tachycineta thalassina

Northern Rough-winged swallow  
Bank swallow  
Loggerhead shrike  
Northern flicker  
Anna's hummingbird  
Black phoebe  
Rock dove  
Raven  
White-crowned sparrow  
Water pipit  
Yellow rumped warbler  
Brewer's blackbird  
Brown towhee

Stelgidopteryx serripennis  
Riparia riparia  
Lanius ludovicianus  
Colaptes auratus  
Calypte anna  
Sayornis nigricans  
Columba livia  
Corvus corax  
Zonotrichia leucophrys  
Anthus spinoletta  
Dendroica coronata  
Euphagus cyanocephalus  
Pipilo fuscus

ARTICLE 969.7

"CC" COASTAL CONSERVATION DISTRICT  
(Ord-2657, 2701-7/84, 2753-4/85)

- S. 969.7.0 Purpose
- S. 969.7.1 Definitions
- S. 969.7.2 Permitted Principal Uses and Structures
- S. 969.7.3 Uses and Structures Subject to a Conditional Use Permit
- S. 969.7.4 Prohibited Principal Uses and Structures
- S. 969.7.5 Required Permits/Agreements
- S. 969.7.6 Performance Standards
- S. 969.7.7 Required Findings

S. 969.7.0      PURPOSE. The purpose of the Coastal Conservation (CC) District is to implement the General Plan land use designation of Open Space: Conservation; and provide for the protection, maintenance, restoration and enhancement of wetlands and environmentally sensitive habitat areas located within the Coastal Zone while allowing for appropriate utilization to occur.

S. 969.7.1      DEFINITIONS.

- (a) Energy Facility: means any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.
- (b) Environmentally Sensitive (Habitat) Area: means a wetland or any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.
- (c) Feasible: means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, social, and technological factors.
- (d) Functional Capacity: means the ability of an environmentally sensitive area to be self-sustaining and to maintain natural species diversity.
- (e) Significant Disruption: means having a substantial adverse effect upon the functional capacity.
- (f) Wetland: means lands within the Coastal Zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. (2701-7/84)

S. 969.7.2      PERMITTED PRINCIPAL USES AND STRUCTURES. The following principal uses and structures shall be permitted in the CC District where no feasible, less environmentally damaging alternative exists and where feasible mitigation measures have been provided and are subject to issuance of a use permit by the Board of Zoning Adjustments. Said permit shall insure that the uses are developed in a manner compatible with the purpose of this District. Such permitted uses are:

- (a) Incidental public service projects such as, but not limited to, burying cables and pipes.

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**EXHIBIT**

(b) Maintenance of existing streets and utility structures (2701-7/84)

S. 969.7.3

USES AND STRUCTURES SUBJECT TO A CONDITIONAL USE PERMIT. The

following uses and structures may be permitted in the CC District subject to approval of a Conditional Use Permit where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided.

- (a) New or expanded energy and coastal-dependent industrial facilities where no feasible, less environmentally damaging alternative exists
- (b) Diking, dredging and filling which are necessary for the protection, maintenance, restoration or enhancement of the environmentally sensitive habitat area's functional capacity
- (c) (1) Maintenance of existing modified flood control facilities where the primary purpose is to maintain existing flood control capacity and where such maintenance is necessary for public safety or to protect existing development where there is no other feasible method for protecting structures in the flood plain. No maintenance activities shall be permitted which have the effect of draining wetlands.

Maintenance activities may include: Maintenance dredging of less than 100,000 cubic yards within a 12 month period; lining of existing in-place artificial channels; increasing the height of existing levees; or changes in the cross section of the interior channel to accommodate the design capacity of existing channels when no widening of the top dimensions or widening of the outer levees is required.

- (2) Only in conjunction with restoration plans, new flood control facilities where necessary for public safety and to protect existing development where there is no other feasible method for protecting structures in the flood plain.
- (d) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas
- (e) Pedestrian trails and observation platforms for passive nature study; i.e., bird watching and the study of flora and fauna native to the site. Such uses may be located within an environmentally sensitive habitat area provided that said use(s) are immediately adjacent to the area's peripheral edge.
- (f) Maintaining existing, or restoring previously dredged depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (g) 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.

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- (h) Nature study, aquaculture, or similar resource dependent activities.  
(2701-7/84)

S. 969.7.4      PROHIBITED PRINCIPAL USES AND STRUCTURES. Any principal use or structure not expressly permitted is prohibited herein.

S. 969.7.5      REQUIRED PERMITS/AGREEMENTS. Before the application can be considered complete, the project shall receive the following state and federal regulatory permits/agreements or a statement from the regulatory body that said permit/agreement is inapplicable. The required regulatory permits/agreements shall be forwarded to the Director prior to the submittal of said project to a decision making body.

- (A) United States Army Corps of Engineers Section 404 and Section 10 permits;
- (B) California Department of Fish and Game 1601-1603 agreement;
- (C) State Water Resource Control Board (permit depends on the operation);
- (D) Regional Water Quality Control Board (permit depends on the operation);
- (E) A permit from the California State Lands Commission may also be required.

S. 969.7.6      PERFORMANCE STANDARDS:

(A) Before the application can be considered complete, the project shall comply with the following standards to the satisfaction of the Director: (2753/4/85)

(1) All feasible mitigation measures shall be incorporated into projects to minimize adverse environmental effects. (2753/4/85)

(a) If the project involves dredging, mitigation measures must include the following: (2753/4/85)

(i) dredging and spoils disposal must be planned and carried out to avoid significant disruption to wetland habitats and to water circulation; (2753/4/85)

(ii) limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site; (2753/4/85)

(iii) dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems; (2753/4/85)

(iv) other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures. (2753/4/85)

(b) If the project involves diking or filling of a wetland, the following minimum mitigation measures shall apply. These mitigation measures shall not be required for temporary or short-term fill or diking if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. (2753/4/85)



- (i) If an appropriate restoration site is available, the applicant shall submit a detailed restoration plan to the Director which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity and dedication of the land to a public agency or otherwise permanently restricting its use for open space purposes. The site shall be purchased before the dike or fill development may proceed. (2753/4/85)
- (ii) The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water. This method of mitigation is appropriate if the applicant already owns filled, diked areas which themselves are not environmentally-sensitive habitat areas but may become so, if such areas were opened to tidal action or provided with other sources of surface water. (2753/4/85)
- (iii) If no appropriate restoration sites under options (a) and (b) are available, the applicant shall pay an in-lieu fee, determined by the City Council, which shall be of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area. (2753/4/85)
- (c) The third option above shall be allowed only if the applicant is unable to find a willing seller of a potential restoration site. Since the public agency may also face difficulties in acquiring appropriate sites, the in-lieu fee shall reflect the additional costs of acquisition, including litigation and attorney's fees, as well as the cost of restoration, relocation and other costs. If the public agency's restoration project is not already approved by the Coastal Commission, the public agency may need to be a co-applicant for a coastal development permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to the issuance of the permit. In addition, such restoration shall occur in the same general region (e.g., within the same stream, lake, or estuary where the fill occurred). (2753/4/85)
- (2) Any areas where vegetation is temporarily removed shall be replanted with a native or an adaptable species in a quantity and quality equal to the vegetation removed. (2753/4/85)
- (3) Pedestrian trails, observation platforms and other incidental structures shall be designed to reduce disturbance of wildlife and vegetation; examples of improvements so designed would be elevated walkways and viewing platforms, and vegetative and structural barriers to decrease disturbances from permitted uses and inhibit internal access. (2753/4/85)
- (4) Passive nature study uses shall include a program to control litter; examples include litter containers and "no littering" signs posted in the project area. (2753/4/85)

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- (5) Environmentally-sensitive habitat areas shall be restored and enhanced to lessen the risk of flood damage to adjacent properties. (2753/4/85)
- (6) Any construction, alteration or other improvement shall generally be carried out between September 15 and April 15 to avoid disturbing rare, threatened, or endangered species which utilize the area for nesting. This requirement shall not apply if it can be demonstrated to the satisfaction of the Director that no such disturbance would occur, in which case construction shall be timed to cause the least disturbance to wetland dependent species; e.g., migratory waterfowl and shorebirds. (2753/4/85)
- (7) Construction/maintenance activities shall be carried out in areas of minimal size. Preconstruction topography shall be restored subsequent to the conclusion of the project unless such topography is to be altered to conform with an approved restoration project. (2753/4/85)
- (B) The applicant shall demonstrate that the functional capacity is maintained or augmented through the criteria set out below unless relieved of any one or more of these requirements by the California Department of Fish and Game, and that the project does not significantly: (2753/4/85)
- (1) Alter existing plant and animal populations in a manner that would impair the long-term stability of the ecosystem; i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project; (2753/4/85)
- (2) harm or destroy a species or habitat that is rare or endangered; (2753/4/85)
- (3) harm a species or habitat that is essential to the natural biological function of a wetland or estuary; (2753/4/85)
- (4) reduce consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of a wetland or estuarian ecosystem. (2753/4/85)
- (C) If the proposed project involves restoration of a degraded wetland, the applicant shall comply with California Public Resources Code Sections 30411 and 30233 to the satisfaction of the Director. (2753/4/85)

S. 969.7.7      REQUIRED FINDINGS. It is the intent of this section to ensure an environment which is suitable for the self-perpetuation of environmentally sensitive habitat areas.

- (A) Prior to energy production facilities being approved, the approving authority shall make the following finding with statement of facts:
- Provision has been made for enhancement of a significant portion of the project area, to ensure preservation of plant and wildlife species.
- (B) For any other project the applicant shall establish and the approving authority shall find that the functional capacity of the environmentally sensitive habitat area is being maintained.

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Exhibit J5

9421.1 Permitted uses. (a) The following uses shall be permitted:

B. Beaches

P. Private boat ramps, slips, docks, cantilevered decks, windscreens and boat hoists in conjunction with adjacent single family dwellings  
Public boat ramps and piers

(b) Conditional use permit. The following public and semipublic uses shall be permitted subject to the approval of a conditional use permit by the planning commission:

B. Boat related activity  
Boat slips

D. Docks

M. Marine fueling docks

S. Sight-seeing vessels  
Sport fishing

W. Water taxi service (Ord. 2862, 2 Oct 86; Ord. 2752, 4/85; Ord. 2704, 7/84; Ord. 2659, 12/83)

9421.2 Development standards. (a) No use shall be sited or designed so as to obstruct public access to any sandy beach or public use area.

(b) No deck or structure shall extend more than five (5) feet over or in front of any bulkhead in any channel except for a landing or brow for access to a gangway for a dock. No structure shall extend beyond the bulkhead in an area identified as environmentally sensitive such as, but not limited to, eelgrass beds and mudflats. (Ord. 2862, 2 Oct 86; Ord. 2752, 4/85; Ord. 2704, 7/84)

9422 General provisions--Coastal conservation district.  
The purpose of the coastal conservation district is to implement the general plan land use designation of open space conservation, and provide for protection, maintenance, restoration and enhancement of wetlands and environmentally sensitive habitat areas located within the coastal zone while permitting appropriate land uses. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

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Non-Certified Article 9422

9422.1 Definitions. The following words and phrases shall be construed as defined herein unless the context clearly indicates otherwise:

(a) Energy facility shall mean any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.

(b) Environmentally sensitive (habitat) area shall mean a wetland or any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

(c) Feasible shall mean capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, social, and technological factors.

(d) Functional capacity shall mean the ability of an environmentally sensitive area to be self-sustaining and to maintain natural species diversity.

(e) Significant disruption shall mean having a substantial adverse effect upon the functional capacity.

(f) Wetland shall mean lands within the coastal zone which may be covered periodically or permanently with shallow water and include salt water marshes, swamps, mudflats and fens. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.2 Coastal conservation suffix (-CC). There is hereby established the suffix (-CC) to be appended to any base district to denote and protect environmentally sensitive areas. Such suffix shall take precedence over any other district designation. (Ord. 2888, 31 Dec 86)

9422.3 Coastal conservation suffix--Removal of. Prior to removal of the coastal conservation suffix (-CC), the following findings shall be made:

(a) That the underlying district designation is consistent with the coastal element of the general plan of the city of Huntington Beach;

(b) That the proposed removal of the suffix is in ac-

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Exhibit K2

cordance with the policies, standards and provisions of the California Coastal Act; and

(c) That there is no feasible, less environmentally damaging alternative site for any proposed land use or development which may be allowed under California Public Resources Code sections 30233(a)(1) and 30264. (Ord. 2888, 31 Dec 86)

9422.4 Uses generally. The uses set out in this article shall only be allowed where there is no feasible, less environmentally damaging alternative and where practical mitigation measures have been provided. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.5 Use permit required. The following uses shall be permitted in the coastal conservation district upon approval of a use permit by the board of zoning adjustments:

(a) Incidental public service projects such as, but not limited to, burying cables and pipes.

(b) Maintenance of existing streets and utility structures. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.6 Conditional use permit required. The following uses may be permitted upon approval of a conditional use permit by the planning commission:

(a) New or expanded energy and coastal dependent industrial facilities.

(b) Diking, dredging and filling necessary for the protection, maintenance, restoration or enhancement of the area's functional capacity as a habitat.

(c) Provision for existing flood control facilities where the primary purpose is to maintain existing capacity, necessary for public safety or to protect existing development in the flood plain. No maintenance activities shall be permitted which have the effect of draining wetlands. Such maintenance activities may include maintenance dredging of less than 100,000 cubic yards in a twelve-month period; lining of in-place artificial channels; increasing the height of existing levees; changes in the cross section of the interior channel to accommodate the design capacity of channels when no widening of the top dimensions or widening of the outer levee is required.

(d) New flood control facilities in conjunction with plans where necessary for public safety and to protect existing development in the flood plain.

(e) Mineral extraction, including sand for beach restoration except in environmentally sensitive areas.

(f) Pedestrian trails and observation platforms for passive nature study, including bird watching and the study of flora and fauna. Such uses may be located within an environmentally sensitive habitat area provided that they are immediately adjacent to the area's peripheral edge.

(g) Maintenance of existing or restoration of previously dredged depths of navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(h) Entrance channels for new or expanded boating facilities in a wetland area may be permitted. In a degraded wetland, identified by the state department of fish and game pursuant to California Public Resources Code section 30411(b), such facilities may be permitted if a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The maximum area of the wetland used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall be twenty-five (25%) percent of the total degraded wetland area.

(i) Nature study, aquaculture, or similar resource dependent activities. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.7 Prohibited uses. Any use or structure not expressly permitted shall be prohibited. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.8 Required permits and agreements. Before any application is accepted for processing, proof shall be provided that the necessary state and federal regulatory permits or agreements have been obtained, or a statement from the regulatory body that such permits are not required shall be submitted:

(a) United States Army Corps of Engineers: S. 404 and S. 10 permits;

(b) California Department of Fish and Game: 1601-1603 agreement;

(c) State Water Resource Control Board (permit depends on the operation);

(d) Regional water quality control board (permit depends on operation);

(e) California state lands commission permit. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.9 Development standards--Mitigation measures. Before any application is accepted for processing, the applicant shall meet the following standards of this article, and shall incorporate into the project design any feasible mitigation measures which will moderate adverse environmental effects. (Ord. 2888, 31 Dec 87; Ord. 2862, 10/86)

9422.10 Mitigation measures--Dredging. If the project involves any dredging, mitigation measures shall include the following:

(a) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to wetland habitats and to water circulation.

(b) Limitations may be imposed on the timing of the operation, the type of operation, the quantity of dredged material removed, and the location of the spoil site.

(c) Dredge spoils suitable for beach replenishment shall, where feasible, be transported to appropriate beaches or into suitable longshore current systems.

(d) Other mitigation measures may include opening up areas to tidal action, removing dikes, improving tidal flushing, or other restoration measures. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.11 Mitigation measures--Diking or filling. If the project involves diking or filling of a wetland, the following minimum mitigation measures shall apply. These mitigation measures shall not be required for temporary or short-term fill or diking if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time.

(a) If an appropriate restoration site is available, the

applicant shall submit a detailed restoration plan to the director which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity and dedication of the land to a public agency or otherwise permanently restricting its use for open space purposes. The site shall be purchased before the dike or fill development proceeds.

(b) The applicant may in some cases be permitted to open equivalent areas to tidal action or provide other sources of surface water. This method of mitigation is appropriate if the applicant already owns filled, diked areas which themselves are not environmentally sensitive habitat areas, but may become so if opened to tidal action or provided with other sources of surface water.

(c) If no appropriate restoration sites under options contained in this article are available, the applicant shall pay an in-lieu fee, determined by the city council, which shall be of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area. This option shall be allowed only if the applicant is unable to find a willing seller of a potential restoration site. Since the public agency may also face difficulties in acquiring appropriate sites, the in-lieu fee shall reflect the additional costs of acquisition, including litigation and attorney's fees, as well as the cost of restoration, relocation and other costs. If the public agency's restoration project is not already approved by the coastal commission, the public agency may need to be a coapplicant for a coastal development permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to the issuance of the permit. In addition, such restoration shall occur in the same general region, e.g., within the same stream, lake, or estuary where the fill occurred.  
(Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.12 Mitigation measures--Vegetation. Any areas where vegetation is temporarily removed shall be replanted with a native or an adaptable species in a quantity and quality equal to the vegetation removed. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.13 Mitigation measures--Reduction of disturbances. Pedestrian trails, observation platforms and other incidental structures shall be designed to reduce disturbance of wildlife and vegetation. Examples of improvements to effect such reduc-



tion are elevated walkways and viewing platforms, and vegetative and structural barriers to lessen disturbances from permitted uses and inhibit internal access. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.14 Mitigation measures--Litter control. Passive nature study uses shall include a program to control litter such as placement of an adequate number of containers and posted signs. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.15 Mitigation measures--Flood control. Environmentally sensitive habitat areas shall be restored and augmented to lessen the risk of flood damage to adjacent properties. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.16 Mitigation measures--Construction and improvements. Any construction, alteration or other improvement shall generally be carried out between September 15 and April 15 to avoid disturbing rare, threatened, or endangered species which utilize the area for nesting. This requirement shall not apply if it can be demonstrated to the satisfaction of the director that no such disturbance would occur, in which case construction shall be timed to cause the least disturbance to wetland dependent species, such as migratory waterfowl and shorebirds.

Construction or maintenance activities shall be carried out in areas of minimal size. The site shall be restored to its original state prior to completion of the project unless such site is to be altered to conform with an approved restoration project. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.17 Mitigation measures--Duty of applicant. The applicant shall demonstrate that the functional capacity is maintained or augmented unless relieved of any one or more of these requirements by the California department of fish and game, and it is also shown that the project will not significantly:

(a) Alter existing plant and animal populations in a manner that would impair the long-term stability of the ecosystem, i.e., natural species diversity, abundance and composition are essentially unchanged as a result of the project.

(b) Harm or destroy a species or habitat that is rare or endangered.

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(c) Harm a species or habitat that is essential to the natural biological function of a wetland or estuary.

(d) Reduce consumptive (fishing, aquaculture and hunting) or nonconsumptive (water quality and research opportunity) values of a wetland or estuarian ecosystem. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.18 Degraded wetland restoration. If the proposed project involves restoration of a degraded wetland, the applicant shall comply with California Public Resources Code sections 30411 and 30233 to the satisfaction of the director. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

9422.19 Findings--Environmentally sensitive habitats. The purpose of this section is to ensure an environment which is suitable for the self-perpetuation of environmentally sensitive habitat areas. Prior to approval of energy production facilities, the decision-making authority shall make a finding with a statement of fact that:

(a) Provision has been made for the enhancement of a significant portion of the project area to ensure preservation of plant and wildlife species.

(b) For all other projects, a finding shall be made that the functional capacity of the environmentally sensitive habitat area is maintained. (Ord. 2888, 31 Dec 86; Ord. 2862, 10/86)

(Prior law: Ord. 2655, 12/83; Ord. 2657, 10/83; Ord. 2700, 7/84; Ord. 2701, 7/84; Ord. 2702, 7/84; Ord. 2716, 9/84; Ord. 2751, 4/85; Ord. 2753, 4/85; Ord. 2862, 10/86)