

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA  
245 W. BROADWAY, STE. 380  
P.O. BOX 1450  
LONG BEACH, CA 90802-4416  
(310) 590-5071



November 30, 1995

**TO:** Coastal Commissioners and Interested Parties

**FROM:** Chuck Damm, South Coast District Director  
Teresa Henry, Assistant District Director  
Steve Rynas, Supervisor  
John T. Auyong, Staff Analyst

**SUBJECT:** City of Newport Beach Land Use Plan Amendment 1-95

SUMMARY OF STAFF REPORTI. DESCRIPTION OF AMENDMENT

The proposed submittal involves a request by the City of Newport Beach to amend its Certified Land Use Plan ("LUP"). The LUP amendment proposes to change the text for the site identified in the LUP as San Diego Creek North. Under the LUP amendment as submitted, the land use designation would be changed from Administrative, Professional and Financial Commercial to Retail Service Commercial, the land use allocation would be changed from 112,000 square feet to a floor area ratio of 0.5/0.75, and the Fire Station reservation would be deleted (See Exhibit A). The City of Newport Beach currently does not have a fully certified local coastal program ("LCP"). The City has a Certified LUP only, which was certified in 1982. The City currently has no areas of deferred certification.

II. STAFF RECOMMENDATION SUMMARY

Staff is recommending denial of the proposed City of Newport Beach LUP Amendment 1-95 as submitted, for reasons of inadequate wetland protection, and approval with suggested modifications to make the amendment consistent with Section 30233 of the Coastal Act.

III. ADDITIONAL INFORMATION

For additional information regarding the proposed City of Newport Beach LUP Amendment 1-95, to request additional copies of this staff report, or to comment on the contents of this staff report, please contact John T. Auyong at 245 West Broadway, Suite 380, Long Beach, CA, 90802, (310) 590-5071.

IV. MOTIONS AND RESOLUTIONS

A. DENIAL As Submitted

Motion 1:

"I move that the Commission CERTIFY the City of Newport Beach Land Use Plan Amendment 1-95 as submitted."

Staff Recommendation:

Staff recommends a NO vote, and the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution 1:

The Commission hereby DENIES certification of the City of Newport Beach Land Use Plan Amendment 1-95 for San Diego Creek North and adopts the findings stated below on the grounds that the amended Land Use Plan does not meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic State goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan, as amended is not consistent with applicable decisions of the Commission, which guide local government actions pursuant to Section 30625(c); and certification of the Land Use Plan as amended would not meet the requirements of Section 21081 of the California Environmental Quality Act, because there would be significant adverse effects on the environment and there are feasible mitigation measures and/or feasible alternatives that would substantially lessen the significant adverse impacts on the environment.

B. APPROVAL With Suggested Modifications

Motion 2:

"I move that the Commission CERTIFY the City of Newport Beach Land Use Plan Amendment 1-95 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 and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

**Resolution 2:**

The Commission hereby **CERTIFIES** the City of Newport Beach Land Use Plan Amendment 1-95, subject to the following modifications, and adopts the findings stated below on the grounds that, if modified as suggested below, the Land Use Plan Amendment 1-95 will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan Amendment 1-95 will contain a specific access component as required by Section 30500(a) of the coastal Act; the Land Use Plan Amendment 1-95 will be consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the Land Use Plan Amendment 1-95, as modified, will meet the requirements of Section 21080.5(d)(2)(i) and Section 21081 of the California Environmental Quality Act, as there would be no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impact on the environment.

V. **PROCEDURAL PROCESS**

A. **Standard of Review**

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

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

B. **Procedural Requirements**

Pursuant to Section 13551(b) of the California Code of Regulations, a resolution for submittal must indicate whether the local coastal program will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519.

The City of Newport Beach did not indicate in its submittal resolution that LUP Amendment 1-95 would take effect automatically upon Commission approval. Further, this certification is subject to suggested modifications by the Commission. Therefore, this LUP amendment will not become effective until the City of Newport Beach formally adopts the suggested modifications and complies with all the requirements of Section 13544 of the California Code of Regulations, including the requirement that the Executive Director determine that the City's adoption of the Amendment to the Land Use Plan is legally adequate, and the Commission concurs with the Executive Director's determination.

## VI. AMENDMENT DESCRIPTION - BACKGROUND

On October 18, 1995, the City's proposed LUP amendment submittal was received and deemed to be properly submitted as of that date. The City is proposing to amend its certified LUP to change the LUP text which refers to the site known as San Diego Creek North. The proposed text change would change the land use designation from Administrative, Professional and Financial Commercial use to Retail and Service Commercial uses. The proposed text change would also delete the current land use allocation of 112,000 square feet and instead substitute a floor area ratio of 0.5/0.75. In addition, the proposed text change would delete the 2.5 acre reservation for a fire station.

At the November 16, 1995 Commission meeting, the Commission approved development agreement amendment D5-93-01A for changes to the Circulation Improvement and Open Space Agreement between the City of Newport Beach and the Irvine Company, and coastal development permit 5-95-219 for a proposed automobile dealership which affect San Diego Creek North and are related to this LUP Amendment 1-95.

## VII. PUBLIC PARTICIPATION

Pursuant to Section 30503 of the Coastal Act and Sections 13515 and 13552 of Title 14 of the California Code of Regulations, the local government must ensure adequate public participation in the preparation of an amendment to an LCP.

The City of Newport Beach Planning Commission held a duly noticed public hearing on August 24, 1995, and the City of Newport Beach City Council held a duly noticed public hearing on September 11, 1995 to consider the proposed LUP amendment. No one from the public testified before the City Council, and Resolution 95-104 (see Exhibit A) was passed to approve the proposed LUP amendment.

## VIII. SUGGESTED MODIFICATIONS

### A. Changes to Text

The recommended suggested modification is depicted by showing added text in underline and ~~deleted text in strike through~~.

SAN DIEGO CREEK NORTH This site is located on Jamboree Road easterly of the Bayview Plan Community. The site is designated for Retail and Service Commercial (RSC) land use and is allocated a floor area ratio of 0.5/0.75. Both the saltwater marsh and the freshwater marsh shall be designated for Recreation and Environmental Open Space uses. Uses within these marshes shall be consistent with Section 30233 of the Coastal Act.

### B. Changes to the Map

The Certified Land Use Plan Map shall be modified to designate the on-site saltwater and freshwater marshes for "Recreational and Environmental Open Space." The map shall be modified to designate the remainder of the site for "Retail and Service Commercial" uses (See Exhibit B).

IX. FINDINGS AND DECLARATIONS

A. Analysis of the Proposed Amendment

1. Marine Resources

Section 30233 of the Coastal Act states, in relevant part:

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

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

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

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

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

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

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

(7) Restoration purposes.

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

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

San Diego Creek North contains two wetland areas, a saltwater marsh and a freshwater marsh. The saltwater marsh is being constructed by the Transportation Corridor Agencies as mitigation for impacts resulting from the agency's San Joaquin Hills Transportation Corridor project under construction nearby. This saltwater marsh is bordered by Jamboree Road to the West, San Diego Creek to the south, the proposed extension of Bayview Way to the north, and the existing freshwater marsh to the east.

a. Denial of Land Use Plan Amendment as Submitted

The LUP as currently certified makes no mention of the two on-site wetlands in either the text or on the map. As submitted, the proposed LUP amendment would designate the entire San Diego Creek North site for Retail and Service Commercial ("RSC") uses. Thus, as submitted, the proposed LUP amendment would allow RSC uses in the wetlands, inconsistent with Section 30233 of the Coastal Act which specifically limits development in wetlands to eight specific uses. Under the proposed LUP amendment as submitted, the two wetlands would not be designated for "Recreation and Environmental Open Space," which is the LUP designation for open spaces including wildlife refuges. Thus, this designation would be the appropriate designation for the two wetlands. The LUP amendment as submitted also does not propose any text which mentions either wetlands or provides for their protection.

The City has adopted Planned Community District Regulations as part of its zoning code to designate the wetlands for natural open space. However, these regulations are implementing actions which have not been submitted to the Commission for certification. Therefore, in the context of the LUP, these regulations could not be used to protect the wetlands until the City submits the Implementation Plan portion of the LCP for Commission action.

Therefore, because the wetlands would not be protected by the proposed LUP amendment as submitted, and would be subject to development inconsistent with Section 30233 of the Coastal, the Commission finds that the proposed LUP amendment would not be in conformance with, nor adequate to carry out, Section 30233 of the Coastal Act and must be denied.

b. Approval of the Land Use Plan Amendment with Suggested Modifications

To ensure that both on-site wetlands are protected from development inconsistent with Section 30233 of the Coastal Act, the wetlands areas must be designated for "Recreation and Environmental Open Space" uses. This is the same designation the City uses for the Upper Newport Bay Ecological Reserve, one of the 19 coastal wetlands afforded special protection under Section 30233(c) of the Coastal Act and the City's LUP.

However, the "Recreation and Environmental Open Space" designation allows uses such as golf course and tennis courts which are not consistent with Section 30233. Therefore, to ensure that the wetlands on-site are protected from development inconsistent with Section 30233, text must be added in the LUP section regarding San Diego Creek North which specifically limits development within the wetlands to those uses specified in Section 30233.

Therefore, as modified, the Commission finds the proposed LUP amendment to be in conformance with, and adequate to carry out, Section 30233 of the Coastal Act regarding protection of wetlands.

2. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

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

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

Recent environmental impact reports (EIR) prepared after the original 1982 certification of the LUP have identified fragmented, isolated patches of coastal sage scrub totalling 2.1 acres on San Diego Creek North. The coastal sage scrub would be located entirely within the area designated by the LUP amendment as submitted for development of Retail and Service Commercial uses (see Exhibit C). Therefore, the coastal sage scrub on-site would be adversely impacted by development of Retail and Service Commercial uses as allowed by the LUP amendment as submitted. However, the State's Natural Communities Conservation Planning ("NCCP") process, as described below, addresses this issue.

The Commission has generally recognized coastal sage scrub as being valuable because it is used for habitat by the California gnatcatcher, a species listed as threatened by the federal government and considered a target species in the NCCP process. The NCCP program was established by the State's Natural Community Conservation Planning Act of 1991. The California Department of Fish and Game ("DFG") is the principal state agency implementing the NCCP program.

Because the NCCP program includes goals for protection of significant environmentally sensitive habitat areas (ESHA), the goals of both the NCCP and Coastal Act Section 30240 are mutually compatible. Although directed to preserving habitat for the gnatcatcher, the more important function of the NCCP process is to preserve habitat used by many species, i.e. multi-species habitat planning. To plan for the permanent protection of coastal sage scrub on a comprehensive, regional basis, some areas may be disturbed or developed provided that other, more significant habitat areas or corridors can be preserved through avoidance or created by mitigation through the NCCP process.

Throughout Orange County, the DFG has identified areas of critical biological importance to be preserved through their inclusion within proposed reserve, special linkage, or non-reserve open space areas because they contain especially valuable habitat, including coastal sage scrub vegetation highly suited for gnatcatcher habitat.

San Diego Creek North is adjacent to one of these areas identified for protection under the NCCP program. However, no part of San Diego Creek North is identified for protection under the NCCP program. Thus, the isolated, fragmented on-site coastal sage scrub, which is entirely located within the area designated for Retail and Service Commercial uses under the proposed LUP amendment as submitted, has not been identified by the NCCP program for protection. Therefore, under the NCCP program, the on-site coastal sage scrub would be allowed to be impacted provided mitigation was undertaken and other provisions of the NCCP program were met.

Section 30240 of the Coastal Act requires that ESHAs be protected and that only those uses dependent on the ESHA resources shall be allowed within those areas. Based on this Coastal Act policy, Retail and Service Commercial uses normally would not be permitted in the area of the on-site coastal sage scrub, as allowed by the proposed LUP amendment as submitted. However, within the context of the NCCP program as described above, impacts to the on-site coastal sage scrub can be accepted if the provisions of the NCCP program are met.

In addition, the LUP as currently certified contains ESHA policies which provide that no structures will be allowed in sensitive areas. The LUP defines "sensitive areas" to include "[A]reas supporting species which are rare, endangered, of limited distribution, or otherwise sensitive" or "[U]nique or unusually diverse vegetative communities." This would include coastal sage scrub communities. The LUP as currently certified also provides that the City shall use information from a proposed project environmental impact report in determining whether or not a development site falls into a sensitive area which has not been expressly identified in the LUP.

Thus, the coastal development permit review process provides for the additional review of any impacts to the on-site coastal sage scrub resulting from retail and service commercial development allowed under the proposed LUP amendment as submitted. Similarly, any required mitigation, and the consistency of future development with Section 30240 of the Coastal Act would be addressed further during the coastal development permit review process. Therefore, in the context of the NCCP program, the Commission finds that the proposed LUP amendment as submitted would be consistent with Section 30240 of the Coastal Act regarding ESHAs.



3. Public Access - Recreation

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

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 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The subject site is located between the nearest public roadway and the waters of San Diego Creek. The proposed LUP amendment as submitted would delete the reservation for a fire station. While a fire station serves the public safety, it is not a type of public facility used primarily to support visitors to the coastal zone. Further, on August 4, 1994, the Commission approved coastal development permit no. 5-93-382 for the County of Orange's plan to develop a regional park, including a 100 space parking lot, around Upper Newport Bay across Jamboree from the subject site. Therefore, the deletion of the fire station designation would be consistent with Section 30212.5 of the Coastal Act, since adequate public facilities would exist nearby.

The proposed "Retail and Service Commercial" designation is the primary land use designation used by the City to accommodate visitor serving uses. While hotels and motels and commercial recreation uses are also allowed under the current Administrative, Professional and Financial Commercial designation, this designation is primarily for areas dominated by office use and does not promote visitor-serving uses. The RSC designation proposed by the LUP amendment as submitted would promote visitor-serving uses more than the current designation. Thus, the RSC designation would be consistent with Section 30222 of the Coastal Act regarding the priority of visitor-serving uses over general commercial and residential uses.

The LUP as currently certified contains a readily identifiable public access component which would not be amended under the proposed LUP amendment. The LUP map as currently certified indicates several walkways/bikeways along Jamboree Road, San Diego Creek, and elsewhere in the nearby vicinity of the San Diego Creek North site. Thus, adequate public access and recreation opportunities exist near San Diego Creek North site via these walkways/bikeways. Therefore, the Commission finds that the proposed LUP amendment as submitted would be consistent with Sections 30212.5, 30222 and 30223 of the Coastal Act regarding public access and recreation.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to Section 21080.5 of the California Environmental Quality Act ("CEQA"), the Resources Agency has certified the Commission's regulatory program as being functionally equivalent to the standard CEQA review process. Pursuant to SB 1873, which amended the California Environmental Quality Act, the Coastal commission is the lead agency in terms of meeting CEQA requirements for local coastal programs. In addition to making a finding that the 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.

Relative to the City of Newport Beach Certified Land Use Plan ("LUP") Amendment 1-95, the Commission finds that approval of the proposed LUP amendment with the incorporation of the suggested modifications, as listed in Section VIII of this report, would not result in significant adverse environmental impacts under the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made. Specifically, the LUP amendment, as modified, would protect the on-site wetlands at San Diego Creek North by ensuring that development in the wetlands is consistent with Section 30233 of the Coastal Act.

Therefore, consistent with Public Resources Code Section 21080.5(d)(2)(i), Commission finds, for the reasons discussed in this report, there are no feasible alternatives or mitigation measures available that could substantially reduce adverse environmental impacts which the activity may have on the environment.

5733F:jta

LUP file

RESOLUTION NO. 95 - 104

RECEIVED  
5-25-99  
OCT 18 1995

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING LOCAL COASTAL PROGRAM AMENDMENT NO. 39 FOR THE SAN DIEGO CREEK NORTH SITE

CALIFORNIA COASTAL COMMISSION SOUTH COAST DISTRICT

WHEREAS, the Coastal Act of 1976 requires the City of Newport Beach to prepare a local coastal program, and

WHEREAS, as part of the development and implementation of the Coastal Act, a Local Coastal Program, Land Use Plan has been prepared; and

WHEREAS, said Land Use Plan sets forth objectives and supporting policies which serve as a guide for future development in coastal areas of the City of Newport Beach; and

WHEREAS, the Planning Commission has held a duly noticed public hearing to consider a certain amendment to the Land Use Plan of the Newport Beach Local Coastal Program, and

WHEREAS, the City Council has held a duly noticed public hearing to consider a certain amendment to the Land Use Plan of the Local Coastal Program; and

WHEREAS, pursuant to the California Quality Act an Environmental Impact has been prepared for the proposed project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newport Beach that an amendment to the Land Use Plan of the Newport Beach Local Coastal Program is approved, as follows:

Newport Beach  
LUP Amend. 1-95  
COASTAL COMMISSION  
City Resolution

Page 68:

- 3. *San Diego Creek North* This site is located on Jamboree Road easterly of the Bayview Planned Community. The site is designated for ~~Administrative, Professional and Financial-Commercial~~ Retail and Service Commercial (RSC) land use and is allocated a floor area ratio of 0.5/0.75. ~~112,000 square feet. A Fire Station reservation of 2.5 acres is also designated in this area.~~

EXHIBIT # A  
PAGE 1 OF 1

BE IT FURTHER RESOLVED that the City Council has read and considered the information contained in the draft Environmental Impact Report, and determines that it is adequate to serve as the environmental documentation for the project.

ADOPTED this 11th day of September 1995.

Illey  
MAYOR

ATTEST:

Wanda E. Raggio  
CITY CLERK



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FILED AS ORIGINAL AND CORRECT COPY  
W. E. Raggio  
CITY CLERK OF THE CITY OF NEWPORT BEACH

DATE: 10-17-95

Newport Beach LUP Amendment 1-95

COASTAL COMMISSION

City Resolution

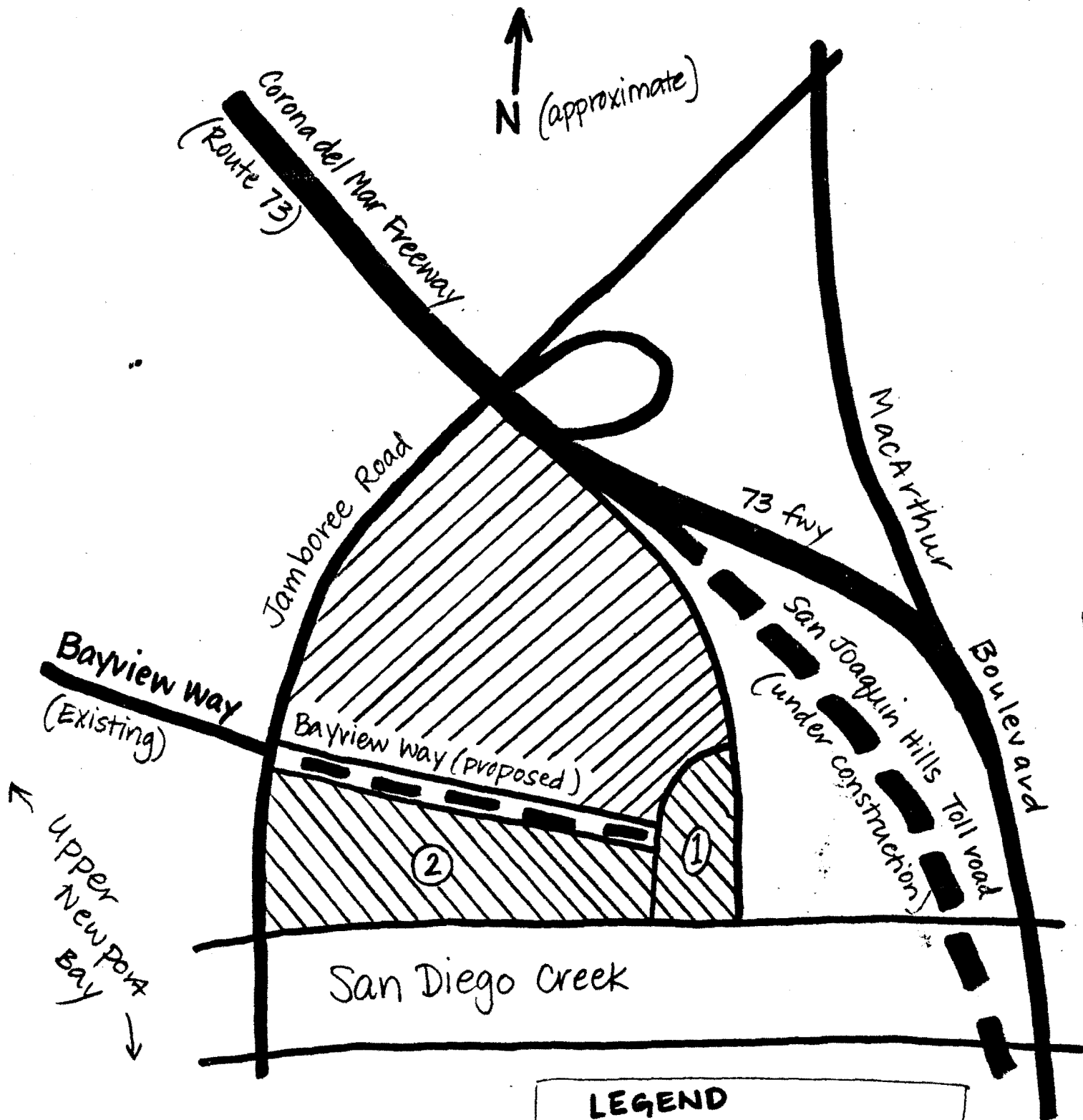
EXHIBIT # A

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OCT 18 1995

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT



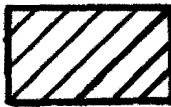

**COASTAL COMMISSION**  
Suggested Land Use Designations

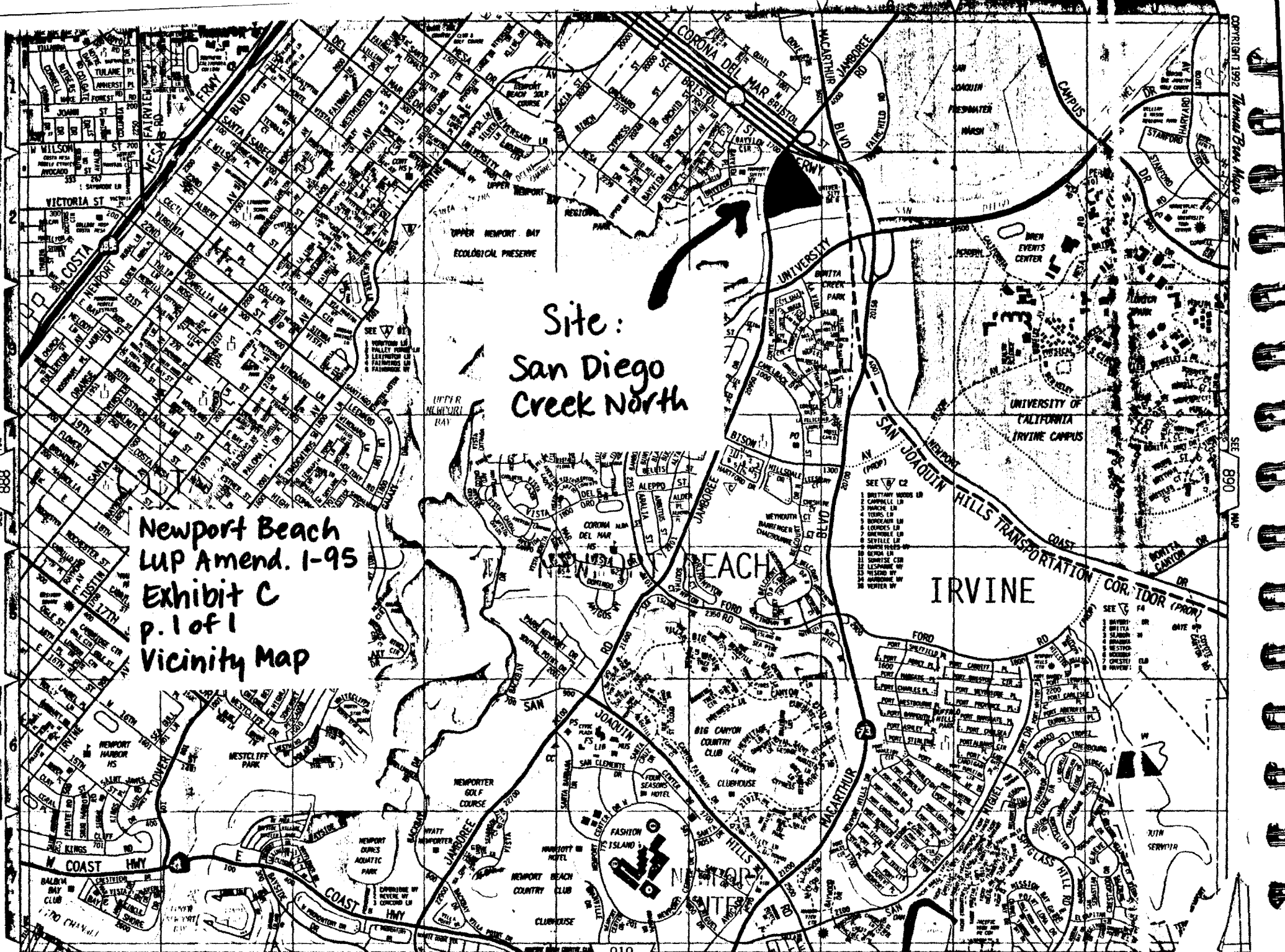
EXHIBIT # B

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Newport Beach Land Use Plan  
Amendment 1-95

**LEGEND**

-  Retail & Service Commercial
-  Recreational + Environmental open space
- ① Freshwater Marsh
- ② Saltwater Marsh



Site:  
San Diego  
Creek North

Newport Beach  
LUP Amend. 1-95  
Exhibit C  
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Vicinity Map