

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036

Filed: January 11, 1996  
49th Day: March 1, 1996  
180th Day: July 10, 1996  
Staff: EL-SD  
Staff Report: January 23, 1996  
Hearing Date: February 7-9, 1996



AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Th 15c

Application No.: 6-86-651-A11

Applicant: City of San Diego  
Metropolitan Wastewater Department

Agent: Christopher Toth

Original Description: Expansion of sludge-drying operation incorporating the removal of vegetation and excavation for six (6) sludge drying beds and two (2) decant beds on the south central portion of the island and one (1) sludge bed adjacent to and north of the existing sludge beds on the southwest portion of the island, and associated improvements, as detailed in the original permit and subsequent amendments.

Previous Amendments: Nine prior amendments to extend the deadline for relocation of the sludge-drying operation, and one to modify the mitigation fee, have been approved; see the findings beginning on Page 2 for details.

Proposed Amendment: Extend the permit deadline for relocation from April, 1996 to April, 1998, and delete Special Condition #1 of Coastal Development Permit 6-86-651-A10, which requires a \$1,500,000 annual sludge mitigation fee for continued interim use of Fiesta Island.

Site: Fiesta Island, southwestern and south central portion between Hidden Anchorage and Enchanted Cove, in Mission Bay Park, Mission Bay, San Diego, San Diego County.

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the two year deadline extension, based on the City's progress to date, and denial of the City's request to delete the mitigation fee, on the basis that imposition of the mitigation fee remains appropriate until complete removal of the sludge beds from Fiesta Island, when public access to this area of public parkland will become available. These actions are reflected in Special Conditions #1 and #2, attached.

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Substantive File Documents: SDCRC File #F9559  
Certified 1994 Mission Bay Park Master Plan Update  
Mission Bay Park Natural Resources  
Management Plan, 1989  
Annual Progress Report for 1995  
Quarterly Status Reports on Sludge Mitigation  
Fund Projects

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## FINDINGS

### I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development, as amended, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

1. Deadline for Relocation. The deadline for relocation of the sludge drying facility from Fiesta Island is April, 1998. This condition replaces in its entirety Special Condition #1 of CDP #6-86-651-A9.

2. Prior Conditions of Approval. All special conditions adopted by the Coastal Commission as part of the original permit action or any subsequent amendments, not specifically modified herein, and including specifically Special Condition #1 of CDP #6-86-651-A10, remain in full force and effect.

### III. Findings and Declarations.

The Commission finds and declares as follows:

1. Site History. Prior to passage of Proposition 20, which established the Coastal Commission in 1972, the City had constructed and was operating a sludge drying facility on Fiesta Island within Mission Bay Park. Under the terms of the State Tidelands Grant of Mission Bay Park to the City, this is not an allowed use (said uses are limited to navigation, fishing and public recreation) on granted parkland. However, Mission Bay Park was still being formed at this time, and sludge was being used as fill material to construct many of the upland areas of the park, including portions of Fiesta Island. For this reason, the State Lands Commission agreed that the sludge beds could be temporarily sited on Fiesta Island to facilitate park construction, but stipulated that they could not remain there on a permanent basis.

Population growth in the San Diego area soon dictated that additional sludge drying capacity was needed. In its 1981 action on Coastal Development Permit #9559, for expansion of the existing facility, the Coastal Commission approved the project with special conditions requiring that the entire operation be

relocated within six years of Commission action on the permit, which would have been January, 1987. The special conditions also require annual reports documenting the City's progress towards relocation. This action was supported by the State Lands Commission as consistent with their position that the sludge facility was only a temporary, interim measure. Because the initial permit, through a special condition, required complete removal of the sludge-drying operation by 1987, retaining the sludge-drying operation on Fiesta Island requires processing of an amendment request.

In December of 1986, the Commission heard an amendment request from the City to extend the deadline for relocation to January, 1990. However, the Commission granted a one-year extension only, with special conditions requiring submittal of City Council documents regarding the proposed land transfer agreement with the U. S. Navy and requiring the City to reapply at the end of 1987 for any additional extension. In January 1988, the Commission heard a request for a one-year extension. At that time, the Commission only approved a six-month extension and attached three special conditions requiring submittal of detailed information regarding the City's relocation efforts. The same action occurred again in June, 1988, with a second six-month extension granted and in January, 1989, when the Commission only extended the deadline until April 1989. These very short extension periods reflected the belief on the part of some Commissioners that the City was not pursuing relocation of the sludge beds with maximum diligence.

In April, 1989, the City requested a three-year time extension, until April, 1992, to accommodate interim operation of the sludge facility on Fiesta Island while the City continued to pursue relocation efforts. The then-projected dates for relocation appeared to be 1995 or 1996, at least, so the City anticipated coming back before the Commission in three years (1992) for another permit amendment. In 1989, the Commission approved the longer-term amendment (three years), but required the continued submittal of annual progress reports and imposed a new special condition addressing mitigation for the extended period of time before relocation would be achieved. The condition required the City to pay \$1,000,000 for each additional year that the sludge beds remained on Fiesta Island, as mitigation for usurpation of public parkland. The City concurred with this condition, and had in fact, been instrumental in devising the mitigation program, in hopes that it would demonstrate good faith and convince the Commission to grant a longer extension of time.

When the three years had passed, the City again asked for a three-year extension of time, through an amendment to the original permit. The three annual reports submitted to the Commission during the interim period reflected the continued uncertainty at the City level as to where various Clean Water Program facilities were to be sited, and an apparent inability to choose a site for sludge relocation (even one that had been designated as the environmentally-preferred site through the environmental review process) in the face of vocal community opposition. Ultimately, the Commission did grant a sixth extension of time, for one year only, but raised the amount of the mitigation from \$1,000,000 to \$2,000,000 for each year the sludge beds remain on Fiesta Island.

In 1993, 1994 and in March, 1995, the Commission granted amendments to extend the relocation deadline for one year each time, and also approved the City's proposed work programs for the expenditure of the mitigation monies. The prior conditions addressing the mitigation program and annual report were modified and expanded in 1993. Also in 1993, the Commission added a new special condition, requiring the City to prepare a work program through 1996 for the mitigation monies, rather than continuing one year at a time; the program was to include a water quality component. The Commission reviewed and approved the required, three-year work program in 1994, for years 1994, 1995 and 1996. The intent of the mitigation requirement was that the program would continue until the sludge beds are removed from Fiesta Island and a clean site is turned over to the Parks and Recreation Department for public recreational use.

In March, 1995, an amendment request to extend the relocation deadline, the City's annual report and a permit application to retain existing mechanical dewatering equipment at Fiesta Island were all approved by the Commission, again with one-year time limits on the first and third items. Then, in May, 1995, the City requested deletion of the special condition requiring payment of sludge mitigation fees, specifically Special Condition #2 of Coastal Development Permit #6-86-651-A7. After a public hearing, the Commission declined to delete the mitigation program altogether, but did reduce the fee to \$1,500,000 annually, in recognition of the City's relocation progress in 1994.

2. Amendment Request. The current amendment request includes two components: first, the City is requesting a two-year extension of time, until April, 1998, to effect relocation of the sludge facility from Fiesta Island. Second, the City is once again requesting deletion of the special condition requiring the sludge mitigation fee. The City is now paying \$1,500,000 per year into a special fund, the intent of which is to finance both future park improvements on Fiesta Island and immediate improvement projects throughout Mission Bay Park. The projects funded by the fee mitigate the impacts of the continued presence of the sludge operation on Fiesta Island. The sludge beds deny access to and use of an island centrally located in a park of national significance - an island that was deeded to the City by the State for public recreational purposes. The certified Mission Bay Park Master Plan Update designates this area of Fiesta Island for an assortment of active and passive public recreational uses. At present, the public does not enjoy so much as the right of pass and repass in the vicinity of the sludge dewatering operation, due to the nature of the existing development.

The \$1,500,000 annual fee (i.e., \$3,000,000 for Fiscal Years 1997 and 1998) mitigates the impacts of allowing the sludge drying beds to remain on Fiesta Island for an additional two-year period by funding public access and recreation improvements throughout the other areas of Mission Bay Park. In addition, a portion of the fee (\$500,000 per year or an approximate total of \$3.5 million to date) is held in trust for the future improvement of Fiesta Island for public enjoyment. It may be expended on legitimate studies and planning efforts, such as the update of the Mission Bay Park Master Plan certified by the Commission in 1995, since that effort had to be undertaken

before any improvements could occur. The master plan utilized \$500,000 of the Fiesta Island Improvement Reserve. The trust presently contains \$2,998,000. It is not the Commission's intent that any part of this money be used for studies, plans, permits, or the actual costs of creating a clean site once the sludge beds are removed. It is the responsibility of the Water Utilities Department (Metro Wastewater Division) to return the site to pre-existing conditions, and transfer a clean site over to the Parks and Recreation Department for future park development. Future planned improvements (as delineated in the Mission Bay Park Master Plan) within just the area of Fiesta Island occupied by the sludge facility, are estimated at \$26,090,000, not counting design and administrative costs, and based on 1992 dollars.

The remainder of each year's mitigation fund (\$1,000,000 per year of the mitigation fee or a total of \$7.0 million to date), is used to fund a program of "immediate" public access and recreation improvements within Mission Bay Park. The mitigation program, as described in the most recent version approved May 11, 1995, requires that the \$1,000,000 may be used to fund short or long term public improvement projects. In the past, the Commission has approved six work programs (the seventh is on the current agenda), which have authorized funding for a wide range of large and small projects. Twenty-four projects have actually been completed, with nine more under construction or local review. The prior conditions regarding expenditures and monitoring remain in effect, and quarterly reports are required consistent with the Commission's previous action.

As in 1995, the City supports its current amendment request to delete the fee by referring to the significant progress made during 1995, by the continuing construction of the Metro Biosolids Center (formerly referred to as the Fiesta Island Replacement Project) at NAS Miramar. Construction is also underway, or to begin shortly, on three other related projects - the Point Loma Sludge Pump Station, the North City Raw Sludge and Water Pipeline and the Fiesta Island Replacement Project Phase II Sludge Pipeline. Full restoration of the Fiesta Island site is not expected to occur until December, 1998, when all these components are fully operational. In addition, through continued use of the mechanical dewatering equipment on Fiesta Island, the City anticipates abandoning eighteen acres of existing sludge beds this year, and beginning restoration of that area of the facility. The City also maintains that the high cost of constructing the various components of the overall replacement project is sufficient hardship on the ratepayers, without also continuing the penalty fees, which are attached to water bills as a small surcharge.

In the past, the Commission has approved the City's work program of \$11,000,000 in mitigation monies, which represents seven years of the program; \$10,500,000 was actually allocated, reflecting the Commission's action last May in reducing the fee. The proposed work program for Fiscal Year 1997 (\$1,500,000) is on the current agenda. That program included the \$500,000 in projects that became unfunded last year when the fee was reduced, \$500,000 for the Fiesta Island Improvement Reserve, and \$500,000 in new projects.

Although the Commission has so far granted nine extensions of time to allow for sludge bed retention, these amendment requests were often met with

outspoken public opposition as well as suggestions by some Commissioners that the requests be denied and the matter handled through the enforcement process. Had time extensions not been granted, the Commission could have pursued enforcement against the City under Section 30820 of the Coastal Act. Beginning January 1, 1987, the Commission could have sought fines at the rate of \$5,000 per day for 2,190 days through 1992, then at \$15,000 per day for 1,095 days through 1995. In addition, a maximum, one-time penalty of \$30,000 for a violation of the Coastal Act could have been sought. All told, the Commission could have sought \$27,405,000 in violation penalties through the end of last year. Violation penalties would have gone into the statewide Violation Remediation Fund, and might not be used for projects in the San Diego area.

Rather than pursue enforcement, the Commission granted the extensions of time, finding the continued retention of the sludge facility on Fiesta Island consistent with the Coastal Act as a temporary, though inappropriate, use of public parkland. However, approval included a mitigation program to compensate for the continued loss of public access and recreational use of this part of Mission Bay Park. The approved mitigation program has allowed the City to pay itself to complete otherwise unfunded public access and recreation improvements in Mission Bay Park. The program has been popular with the public at large, even though the public ultimately funds the projects through payment of water bills. In addition, the mitigation fund has been included as an identified source of funding in the 1994 Mission Bay Park Master Plan's implementation component.

3. Public Access and Recreation. The following Coastal Act policies on public access and recreation are pertinent to the proposed amendment, and state, in part:

#### Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

#### Section 30212.5

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 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30224

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The 1994 Mission Bay Park Master Plan, approved by the Commission on May 11, 1995, designates this portion of Fiesta Island for general public recreational uses (similar to the old "Park and Shoreline" designation in the 1978 master plan). In light of its location in the center of Mission Bay, Fiesta Island is ideally suited for water and beach oriented recreation. Recreational use of Fiesta Island is a high priority under the mandates of the Coastal Act policies cited above. Use of 150 acres of Fiesta Island for sludge drying operations is inconsistent with these policies of the Coastal Act. Furthermore, the State Lands Commission (SLC) has also found that its tidelands grant supported various recreational and other public trust uses of Fiesta Island. In a March 1981 letter to Jim Mueller, then Metro II Project Manager, the SLC staff stated that "we do not believe this [sludge drying operation] qualifies as one of the public water-dependent or water-oriented recreational uses contemplated in the granting statute and the Common Law Public Trust Doctrine." The SLC staff concurred with the Coastal Commission's action and found "the expansion [Coastal Development Permit #F9559] may proceed as a temporary solution to the sludge management problem provided the City diligently seeks an alternative and is able to phase out the ponds."

Since the first amendment to extend the period of time for the interim Fiesta Island operations in 1986, the City has been working towards relocating the sludge beds as part of its overall sewer system upgrade. The Commission currently has reason to be optimistic that relocation is in sight, since the projects necessary to effect relocation are permitted and, except for one, already under construction. Construction of the last component is expected to commence this spring.

In the meantime, however, the sludge processing facility continues to occupy prime public coastal parkland, denying access and recreational opportunities to the public at large. The City estimates that over 100,000 people visit Mission Bay Park on peak summer days, such as weekends and holidays, with a total annual attendance of approximately 12,000,000. These 12,000,000 annual visitors are currently accommodated in approximately 770 acres of developed parkland. Approximately 300 acres of new public recreational parkland area will be available on Fiesta Island once the sludge beds are removed and the current master plan implemented. Thus, the sludge beds prevent a significant increase of park capacity (close to a 40% increase). The City estimates that an average of 1,500 people currently use Fiesta Island on a daily basis, although the actual number fluctuates significantly from day to day. These current users include bicyclists, joggers, jet-skiers, people with dogs (dogs are allowed off the leash on Fiesta Island), youth group campers, and users of the youth aquatic facility. This number (1500 daily users) converts to approximately 550,000 annually. Although this appears a significant number, once improved, Fiesta Island will comfortably accommodate approximately 5,000,000 people annually, nearly ten times the number now accommodated.

Moreover, since the mechanical system of sludge dewatering has been in operation (nearly two years), there is a noticeable decrease in users of Fiesta Island. It is suspected that the additional truck traffic has discouraged bicyclists in particular, since the perimeter road is in poorer condition with the constant passage of heavy trucks; in addition, the trucks pose a particular hazard for bicyclists, as they are large and fast-moving on a narrow one-lane road. Aside from this, odors emanating from the sludge operation discourage use of the island, and use of other nearby areas of the park as well, depending on the prevailing winds - South Shores will be particularly vulnerable to this adverse impact, since the winds are often blowing in that direction.

It is only through implementation of the mitigation program, which has funded improvements in other areas of the park, that the Commission has found it acceptable for the sludge facility to remain thus far. Although the alternative projects funded by the mitigation program cannot replace the aerial extent of land usurped by the sludge beds, they have accommodated additional park users and enhanced the park experience in other areas of Mission Bay through provision of new restrooms, picnic shelters, playgrounds, etc. In a perfect world, these recreational improvements would have occurred in any case; however, considering the current economic situation, they have been possible only through the sludge mitigation program. Without the program, it would be years in the future before these improvements were made, and the denial of access at Fiesta Island would continue unmitigated. A full list of the completed and "in process" sludge projects is attached; these projects will be completed with monies already appropriated to date. However, the items in the 1997 work program, scheduled for action on this agenda, are dependent on the Commission maintaining the sludge mitigation program through the 1997 fiscal year.

The Commission finds that it would be inconsistent with the cited public access and recreation policies of the Coastal Act to permit the sludge beds to



remain on Fiesta Island without mitigating the impacts by continuing to fund additional public access and recreational improvements in other areas of the Park, and by continuing to add to the fund to improve Fiesta Island once the sludge beds have been removed. The mitigation fee will offset this loss of park capacity by improving capacity in other areas of the park. Approximately 150 acres of new parkland will also be improved at South Shores. Some of the South Shores improvements are currently under construction, including all proposed boating facilities (new embayment, day use boat slips, restrooms and parking lot) and a new strip of sandy beach. This is one of many projects funded by the sludge mitigation money, and this area of the park is expected to be complete and open for public use by Memorial Day, 1996.

The Fiscal Year 1997 work program projects proposed by the City to be funded with the mitigation fee collected for the 1997 extension of the relocation deadline include: two picnic shelters, one playground upgraded to ADA standards, and two safety lighting projects which were non-funded by last year's reduction of the mitigation fee from \$2,000,000 to \$1,500,000. In addition, the 1997 projects include \$500,000 for the Fiesta Island Improvement Reserve and the following new components: three new picnic shelters, one parking lot safety lighting project, one additional playground improved to ADA standards and bicycle/walkway additions and expansions. If the sludge mitigation program is discontinued or further reduced, these currently-proposed projects will not receive the necessary funding. In addition, the continuance of the sludge beds on Fiesta Island since 1987 (when they were originally required to be removed) has significantly increased the cost of making the park improvements. The Consumer Price Index has shown an increase that has averaged 4.9% a year between 1987 and 1992; this means that the improvements described in the master plan as costing \$26,090,000 in 1992 dollars would have cost less than \$20,000,000 in 1987. Thus, the Fiesta Island Reserve Fund (currently at \$2,998,000) does not cover even half of the inflation rate for the period of permit extensions granted to date, let alone likely additional extensions until at least 1998. The Center for Continuing Study of the California Economy predicts a slightly lower, but ongoing rise in the Consumer Price Index for the six years from 1992 to 1998, estimating an annual rate of 4%.

Despite these economic facts which could easily justify the current mitigation amount, the Commission also recognizes the significant steps taken by the City in the past few years, and particularly during 1994 and 1995, to assure that the sludge beds will indeed be removed from Fiesta Island in the not-too-distant future. For this reason, the Commission is approving the requested two-year extension of the relocation deadline, instead of the one year limit placed on such requests in the past. The new deadline (April, 1998) is specified in Special Condition #1, attached. This will still precipitate at least one more extension request in 1998, since even the accelerated construction schedule now being pursued by the City will not return the sludge bed area to the Parks and Recreation Department before the end of 1998; the requested extension is only to April, 1998.

Although the City will not need to request a new amendment in 1997, it will still be obligated to present its annual report to the Commission at the

beginning of the year, under the terms of the original permit. Moreover, the Commission finds it inappropriate, for all the reasons stated previously, to either eliminate, or further reduce, the mitigation program requirements approved in CDP #6-86-651-A10. Special Condition #2 thus stipulates that all prior conditions of approval, except the relocation deadline addressed in Special Condition #1, remain in full force and effect.

In summary, the Commission has granted numerous extensions of time for continued use of the sludge dewatering facility on Fiesta Island. It has done so for the past seven years only with the inclusion of the mitigation program, which attempts to compensate Mission Bay visitors for the City Water Utilities Department not allowing public recreational use of a significant portion of Fiesta Island. The Commission further recognizes that the presence of the sludge facility itself diminishes the recreational experience of visitors to both Fiesta Island and other areas of the park through unpleasant odor emissions and frequent truck traffic. Discontinuing the mitigation program, as proposed by the City, would fail to address the adverse impacts of the sludge beds existing on Fiesta Island for another two and a half years at a minimum. However, in acknowledgement of the City's progress to date and commitment to maintain the current removal schedules, the Commission finds it appropriate to approve a two-year amendment instead of only granting one additional year.

4. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit, or permit amendment, shall be issued only if the Commission finds that the permitted development, as amended, will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. Such a finding can be made for the subject amendment, as conditioned.

No modification of the existing sludge processing facilities is proposed herein, and the existing site is within the Coastal Commission areas of original jurisdiction and deferred certification. The 1994 Mission Bay Park Master Plan was certified by the Coastal Commission in May, 1995, and includes detailed plans for future improvements on Fiesta Island, once the sludge bed operation is removed; the subject site is designated for public recreational use. The current sludge facility is inconsistent with this designation, and has been allowed to remain only as a temporary use. As conditioned herein to maintain the mitigation program to provide off-setting benefits to the public during the interim before sludge bed removal, the proposed amendment has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed amendment, as conditioned, will not prejudice the ability of the City of San Diego to continue development of a fully-certifiable LCP for the Mission Bay Park community.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i)

of CEQA prohibits a proposed development from being approved 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 proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of a program funding current and future public recreational and access improvements, will minimize the continuing adverse environmental impacts of this temporary use. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed amendment is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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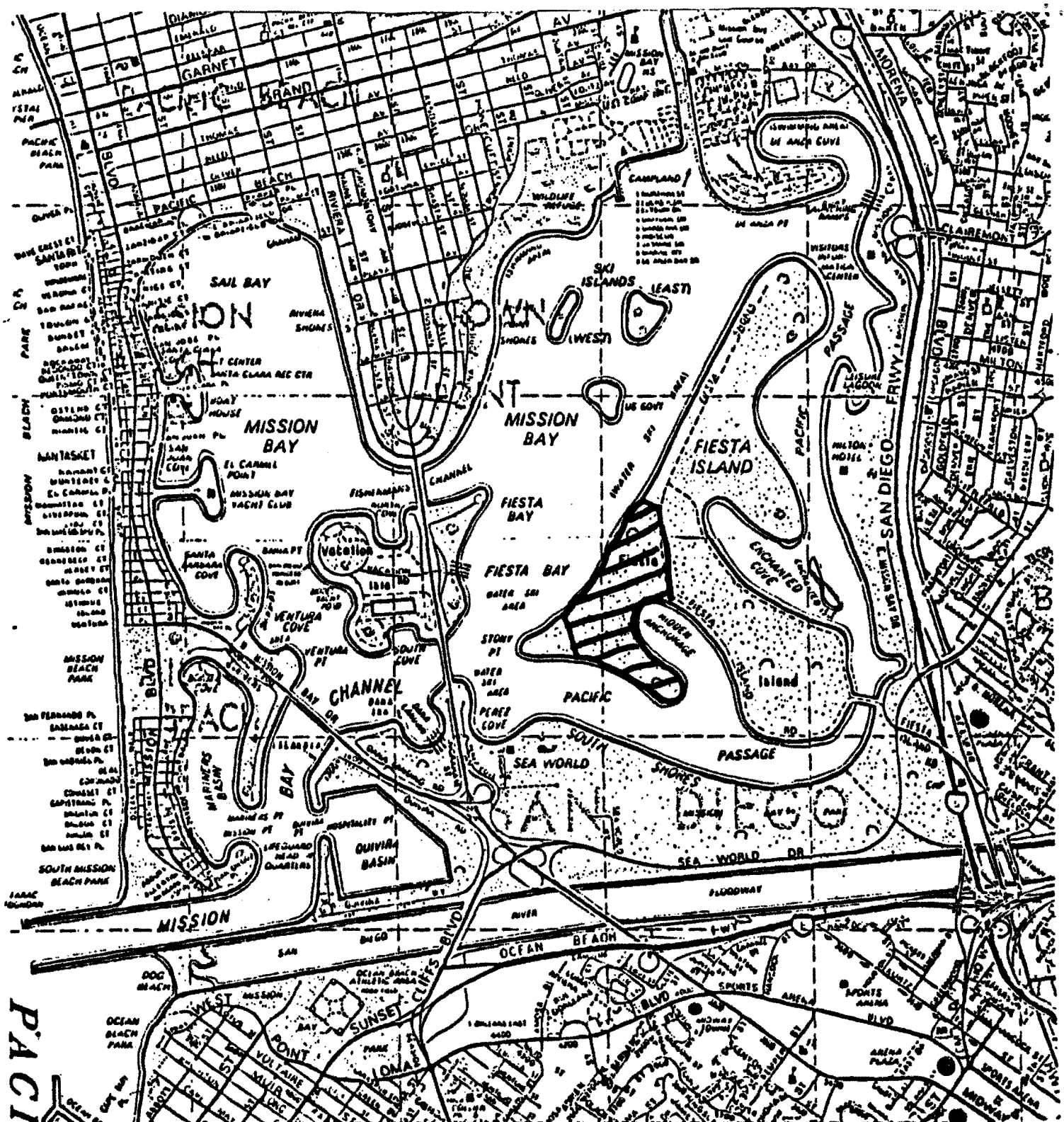


EXHIBIT NO. 1  
APPLICATION NO.  
6-86-651-A 11  
*Location Map*  
California Coastal Commission

**RECEIVED**

DEC 22 1995

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

## CITY OF SAN DIEGO

## MEMORANDUM

FILE NO.: SLDGMIT.STA

DATE : December 21, 1995

TO : Ellen Lirley, California Coastal Commission

FROM : John C. Leppert, Assistant to the City Manager

SUBJECT : Status Report - Sludge Mitigation Fund Projects

COMPLETED PROJECTS:

Natural Resource Signage	\$ 2,500	(Nov. '90)
Bonita Cove Playground Equipment	40,000	(Sep. '91)
Santa Clara Point Parking Lot Study	10,000	(Jan. '91)
Tecolote Shores Parking Lot Const.	250,000	(July '92)
Sea World Drive Tree Planting Ph I & II	45,000	(Apr. '92)
Fiesta Island Waterline	12,000	(Aug. '92)
Bonita Cove Parking Lots Safety Lighting	100,000	(Dec. '93)
Wildlife Preserve Sidewalk & Platform	90,000	(Apr. '94)
Acquisition of Frost Property	1,610,000	(Mar. '93)
S.W. Vacation Isle Parking Lot Safety Lights	22,000	(Apr. '93)
W. Mission Bay Dr. Walkway Ph I	80,000	(June '93)
Sail Bay Briarfield Cove Bridge	200,000	(Apr. '94)
Hospitality Point Picnic Shelter	70,000	(June '94)
Tecolote Shores ADA Playground & Park	582,500	(June '94)
Sea World Dr. Tree Planting Ph III	30,000	(July '94)
Mission Bay Park Master Plan Update	500,000	(Aug. '94)
South Crown Point Walkway	150,000	(Feb. '95)
N. Crown Point Access Improvements	10,000	(Nov. '95)
W. Mission Bay Dr. Sidewalk Ph II	105,000	(Nov. '95)
N. Ski Beach Picnic Shelter	100,000	(Nov. '95)
E. Shore Parking Lots Safety Lights	180,000	(June '95)
Vacation Isle Playground	100,000	(Dec. '95)
Mariner's Point Picnic Shelter	100,000	(Dec. '95)
Mission Pt. Playground to ADA Standards	80,000	(Dec. '95)

PROJECTS IN PROCESS OF DEVELOPMENT OR UNDER CONSTRUCTION:

Ski Beach Restroom - \$300,000. Construction underway. Completion in mid-'96.

Water Quality Testing Program - \$150,000. First and second phases completed. Final testing and analysis phase completed with report due by December 31, 1995.

686651-A11

Status Report - Sludge Mitigation Fund Projects

December 21, 1995

Page 2

Bonita Cove Playgrounds Upgrade to ADA Standards - \$160,000.  
Project substantially complete with final completion expected in January '96.

Fiesta Island Group Camping Sites Improvements - \$35,000. Project substantially completed. Final improvements will be installed by Spring of '96.

Sunset Point Picnic Shelter - \$100,000. Project in design stages. Start of construction scheduled for September '96 with completion in early '97.

Information Center Playground ADA Upgrade - \$100,000. New equipment being analyzed for purchase. Start date not set at this time.

South Shores Phase III - \$2,350,000. Contract awarded. Construction to begin in January '96, with completion by Memorial Day weekend, for public access to parking lot, boat launching ramp and restrooms.

Bicycle/Walkway Improvements - \$30,000. San Diego River and middle jetty completed. Improvements made in area of Boat and Ski Club. Additional missing segments around park being surveyed. Additional funds will be requested for approval in Fiscal '97.

Stormdrain Education Program - \$150,000. Drainage flyers produced and distributed to over 96,000 households. Posters produced and distributed to schools, libraries, businesses and public buildings. Informational signage has been designed and locations selected. Production and installation to take place in the Spring of '96.

PROJECT ON HOLD:

Fiesta Island Improvement Reserve - \$2,998,000. Funds will be spent when the sludge treatment operations are removed from Fiesta Island. Area has been master planned as part of the recently approved Mission Bay Master Plan Update.

John C. Leppert

JCL:cht

cc: Jack McGrory, City Manager  
Marcia C. McLatchy, Park & Recreation Director  
Dave Schlesinger, Metropolitan Wastewater Director

6-86-651-A 11

*Elita Davis, Clerk  
MS 4f*

(O-96-18 REV.)

ORDINANCE NUMBER O- 18229 (NEW SERIES)

ADOPTED ON NOV 20 1995

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,  
DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE  
BY REPEALING AND REENACTING SECTION 101.0515  
RELATING TO ALCOHOLIC BEVERAGE  
ESTABLISHMENTS.

BE IT ORDAINED, by the Council of The City of San Diego, as  
follows:

Section 1. That Chapter X, Article 1, Division 5, of the  
San Diego Municipal Code be and the same is hereby amended by  
repealing Section 101.0515.

Section 2. That Chapter X, Article 1, Division 5, of the  
San Diego Municipal Code be and the same is hereby amended by  
adding a new Section 101.0515, to read as follows:

**SEC. 101.0515 ALCOHOLIC BEVERAGE OUTLETS**

**A. PURPOSE AND INTENT**

The purposes of Section 101.0515 are:

1. To help mitigate the problems sometimes  
associated with commercial buildings offering  
alcohol for sale for off-site consumption,  
including problems related to unacceptable public  
behavior, noise, littering, loitering, crime and  
violence, interference with pedestrians using the  
sidewalks, excessive signage, defacement and  
damaging of structures and the public right of  
way, discouragement of more desirable and needed

commercial uses, deterioration of a neighborhood's  
quality of life and image, and other similar  
problems and nuisances connected primarily with  
the operation of such establishments;

2. To protect the health, safety and  
general welfare of minors, residents, businesses,  
property owners, visitors and workers of the City  
of San Diego;

3. To provide the basis for making a  
finding of "public convenience and necessity"  
consistent with State law; and

4. To ameliorate undesirable community  
impacts of Alcoholic Beverage Outlets by  
restricting their location and by imposing  
reasonable conditions upon the development and  
operation of such uses citywide.

Section 101.0515 is not intended to effect any  
provisions in the Code regarding the regulation of  
businesses that sell Alcoholic Beverages for  
consumption on the premises.

The standards included in Section 101.0515 address  
the location, development, and operation of Alcoholic  
Beverage Outlets in the City of San Diego, and shall  
serve as the minimum performance guidelines for the  
City's review of proposals.

**B. CONFLICTS**

If there is a conflict between the provisions of  
Section 101.0515 and any other municipal laws or

*Exhibit No. 1  
Alcohol Outlets  
Ordinance  
SD LCFA # 3-95  
(p. 1 of 8)*

regulations, the provisions of Section 101.0515 shall control.

#### C. DEFINITIONS

For purposes of Section 101.0515:

"Alcoholic Beverage Outlet" means any establishment for which either a Type 20 (Beer and Wine) or a Type 21 (General liquor) license has been obtained or for which an application has been submitted to the California Department of Alcoholic Beverage Control ("ABC"). "Alcoholic Beverage Outlets" include liquor stores, grocery stores and other retail establishments that sell alcoholic beverages for off-site consumption.

"Alcoholic Beverage" has the same meaning as provided in Section 33.0202 of this Code.

#### D. CONDITIONAL USE PERMIT REQUIRED

Except as provided in Sections 101.0515(F), 101.0515(N), 101.0515(O), and 101.0515(P), it is unlawful for any Alcoholic Beverage Outlet to sell or offer to sell Alcoholic Beverages for any consideration, without first obtaining a Conditional Use Permit ("CUP") from The City of San Diego.

#### E. APPLICATION

An application to operate a proposed Alcoholic Beverage Outlet shall be filed with the Development Services Department in accordance with Municipal Code section 111.0202. The applicant shall submit the requested documentation, and the appropriate processing

fee, as specified in The City of San Diego's schedule of fees/deposits.

#### F. PROCESS ONE APPROVAL

An application to operate a proposed Alcoholic Beverage Outlet shall be approved in accordance with Process One if the project complies with all the standards included in Section 101.0515(N).

#### G. WHEN A CUP IS REQUIRED

If the project does not comply with all the standards included in Section 101.0515(N), then a CUP is required.

#### H. PROCEDURE FOR OBTAINING A CUP

An application for a CUP may be approved, conditionally approved, or denied by a Hearing Officer in accordance with Process Three. The decision of the Hearing Officer may be appealed to the Board of Zoning Appeals in accordance with Municipal Code section 111.0506.

#### I. CONDITIONAL USE PERMIT

##### 1. Findings.

The Hearing Officer may approve or conditionally approve an application for a CUP for an Alcoholic Beverage Outlet if all of the following findings are made:

a. The proposed use is consistent with the policies, goals and objectives of the applicable Land Use Plan or Local Coastal Program; and

Exhibit No. 1  
SD LCRA #3-95  
(p. 2 of 8)



b. The proposed use will not be detrimental to the health, safety and general welfare of persons living or working in the area; and

c. The proposed use is consistent with the purpose and intent of the zone; and

d. The proposed use, as may be conditioned, is appropriate at this location; and

e. The proposed use will serve a public convenience or necessity.

2. Permit Conditions.

The Hearing Officer may impose conditions on the granting of the permit. A copy of the CUP's conditions of approval shall be kept on the premises of the Alcohol Beverage Outlet and posted in a place where it may be readily viewed by any employee, member of the general public or member of a governmental agency. The Hearing Officer may impose conditions relating to one or more of the following:

a. Entertainment uses, activities, or amusement devices on the premises; or

b. Separation, monitoring, or design of area devoted to alcohol sales; or

c. Hours of operation of the business; or

d. Security measures; or

e. Lighting, litter, graffiti or nuisance abatement, or any other similar requirements necessitated by the business premises; or

f. Maintenance and security provisions if the business is abandoned or discontinued.

3. Police Department Recommendation.

The San Diego Police Department shall provide the Hearing Officer with a recommendation on a particular CUP application with respect to the proposed use and location. The Hearing Officer shall provide the applicant with a copy of the Police Department's recommendation at least seven (7) calendar days before the date of the public hearing. The Hearing Officer shall review and consider the Police Department's recommendation or report, if any, before rendering a decision on the application.

4. City Recommendation to ABC.

The Hearing Officer may request that the ABC impose restrictions on any alcohol sales license that they issue. The City's request shall be based on an evaluation of conditions in an area, including the concentration of Alcoholic Beverage Outlets, high crime rates, or any other conditions in the area that would be aggravated by the sale of Alcoholic Beverages in the immediate neighborhood.

Exhibit No. 1  
SD LCPA #3-95  
(p. 3 of 8)

**J. EXPIRATION OF CUP**

The Hearing Officer shall specify the date when the CUP will expire, a date not less than ten (10) years from the approval date.

**K. EXTENSION OF CUP**

**1. Application.**

Any request for an extension shall be filed with the Development Services Department prior to the expiration date of the approved CUP.

**2. Decision.**

a. An application for extension of a CUP may be granted or conditionally granted only if the findings in Section 101.0515(I) are made, or the CUP may be denied.

b. An extension may be granted in accordance with Process Two, if there is no record in the City's Police Department, or in any other City department or governmental agency, of any violations of ABC rules, regulations and orders, or of any violation of City, County, State or Federal law, code, regulation or policy related to prostitution, drug activity or other criminal activity on the premises.

c. An application for an extension of a CUP may be conditionally extended or denied by the Hearing Officer in accordance with Process Three if there is a change of

circumstance or a record of violations as set forth in Section 101.0515(K) (2) (b).

d. Prior violations of any conditions contained in a CUP, or any evidence which results in a determination that any Section 101.0515(I) finding is not met, shall constitute grounds for denying an extension.

**L. ENFORCEMENT OF CUP**

The property owner and the applicant shall maintain and operate the business in compliance with the permit and conditions at all times or enforcement shall be initiated per San Diego Municipal Code Chapter 1, Article 1.

**M. REVOCATION OF CUP**

A CUP granted pursuant to Section 101.0515 shall be subject to revocation in the manner provided by Sections 111.0601, 111.0602, and 111.0603.

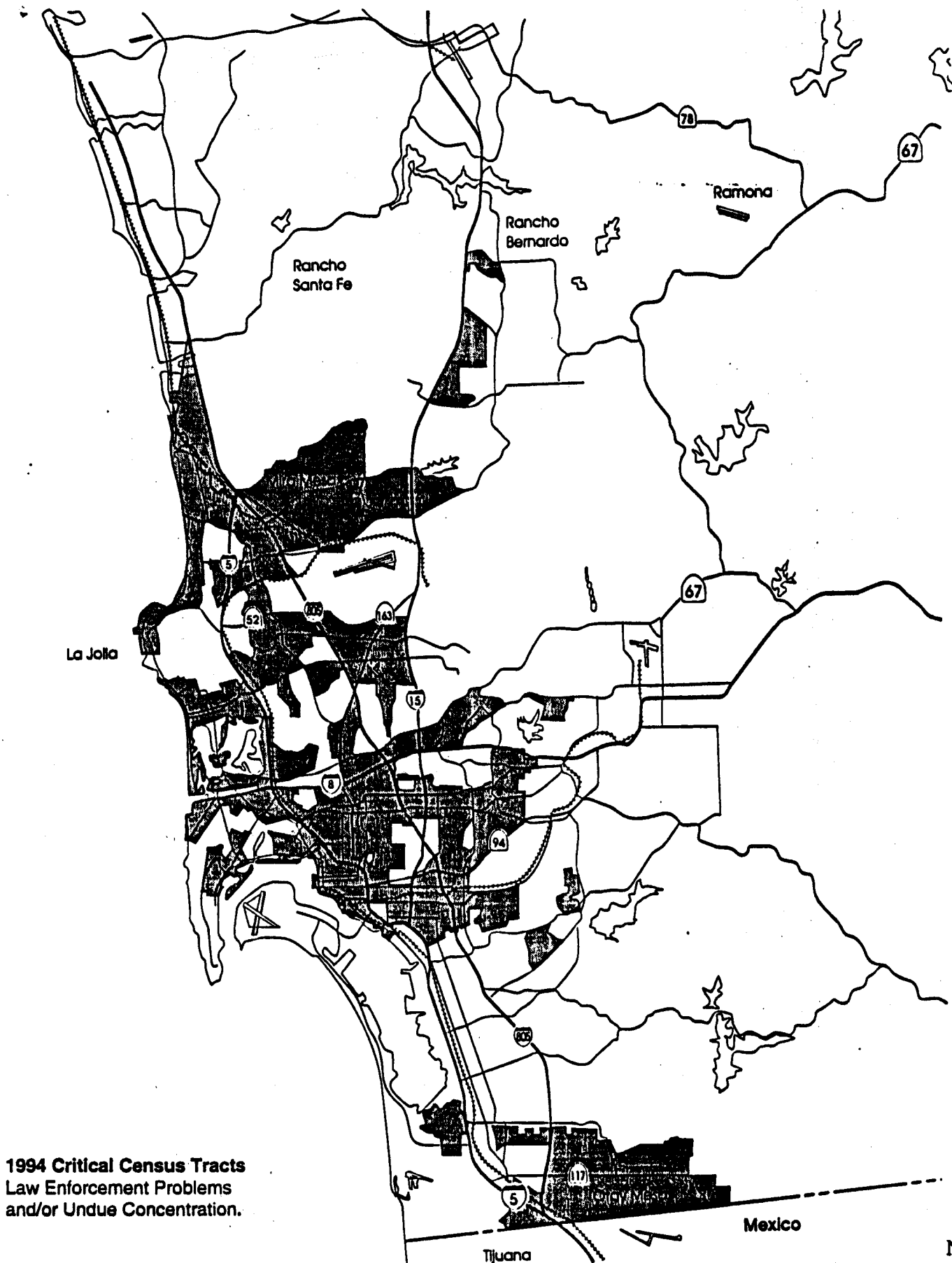
**N. STANDARDS FOR PROCESS ONE APPROVAL**

Notwithstanding the provisions of Section 101.0515(D), an Alcoholic Beverage Outlet shall be approved by Process One, if:

1. The granting of an Alcohol Beverage Outlet permit is consistent with the permitted uses and property development regulations of the zone and the owner or operator complies with all other applicable City regulations; and

2. The Alcohol Beverage Outlet meets, or the owner or operator of the Alcohol Beverage

Exhibit No. 1  
SD LCRA #395  
(p. 4 of 8)



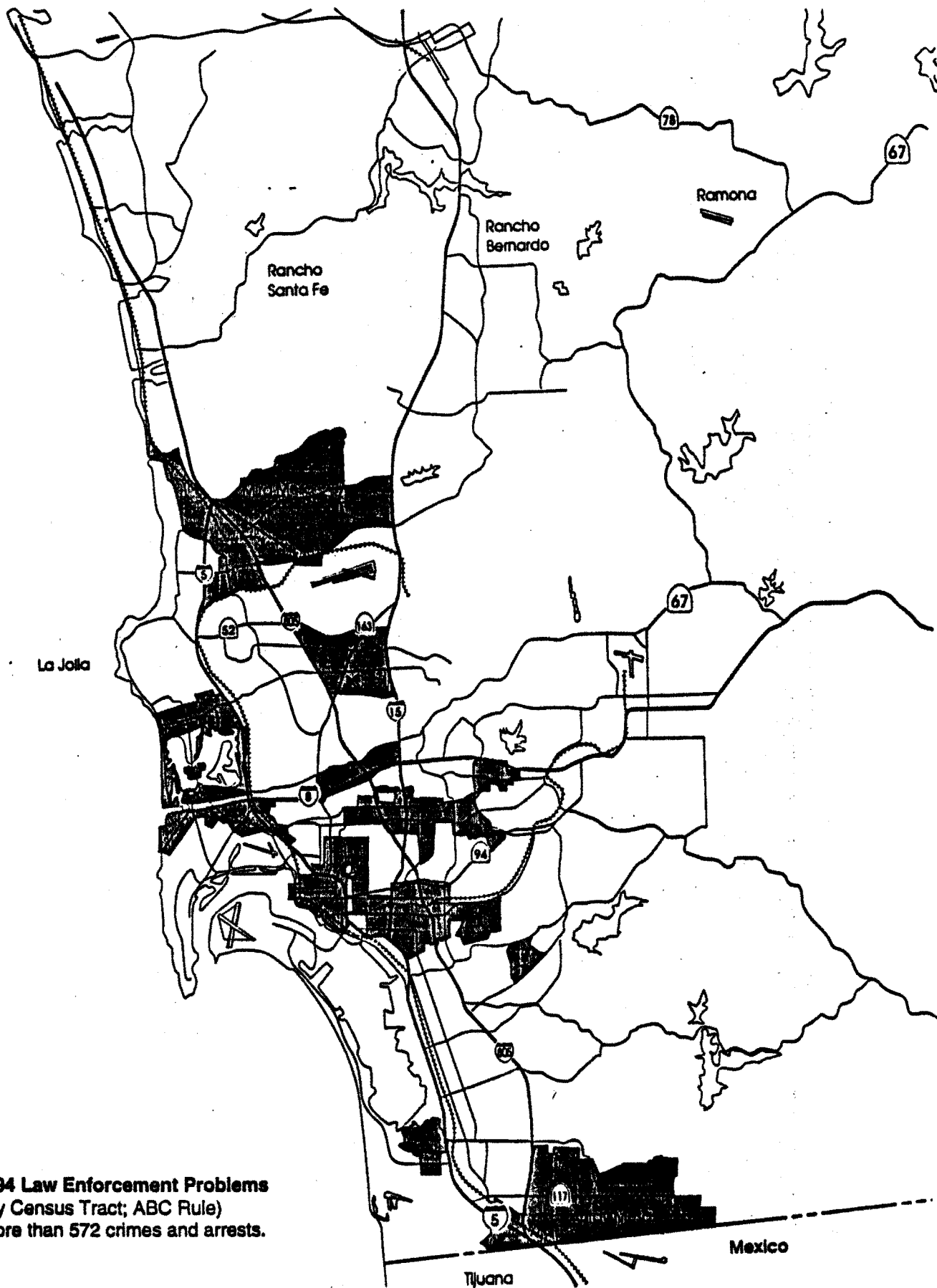
1994 Critical Census Tracts  
Law Enforcement Problems  
and/or Undue Concentration.



This map was prepared by  
the City of San Diego,  
Planning Department

Exhibit No.5  
SD LCRA #395

N  
10-25-95 JA



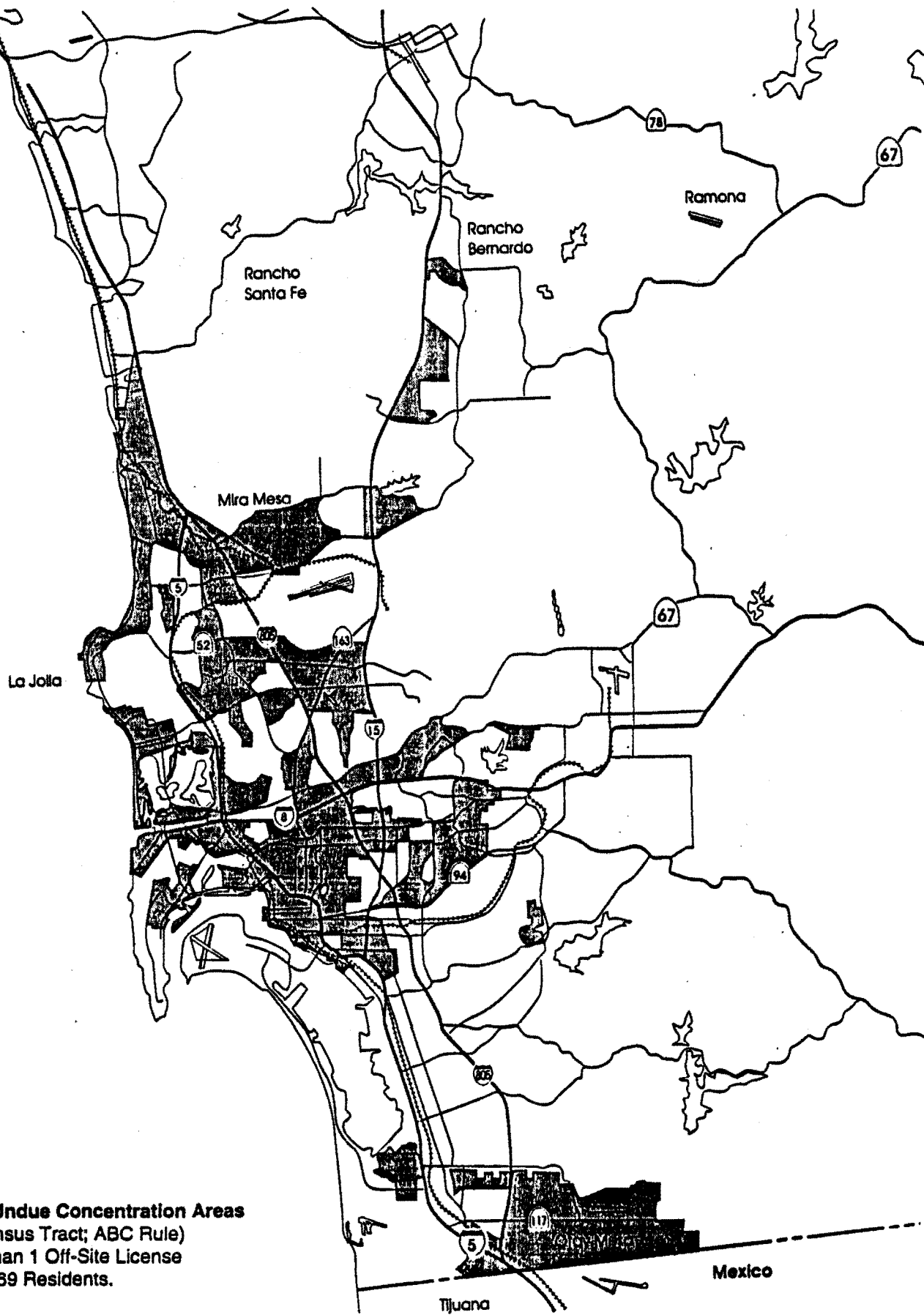
**1994 Law Enforcement Problems**  
 (by Census Tract; ABC Rule)  
 More than 572 crimes and arrests.



This map was prepared by  
 the City of San Diego,  
 Planning Department

Exhibit No. 4  
 SD LCPA #345





**1994 Undue Concentration Areas**  
(by Census Tract; ABC Rule)  
More than 1 Off-Site License  
per 1,369 Residents.

Exhibit No. 2  
SD LCPA #3-95  
1986 Demonstration  
Area



**ALCOHOL SALES ORDINANCE**  
CITY OF SAN DIEGO - PLANNING DEPARTMENT



NO SCALE

d. The owner or operator, or the ABC licensee, is convicted of violations of California Health and Safety Code sections 11350, 11351, 11352, 11550 or 11364.7; or California Penal Code section 647(b), and the conviction relates to the business premises or the operation of the business.

Section 3. The City Clerk is hereby instructed to insert the effective date of this ordinance, once known, into the blank space provided in Section 101.0515(P).

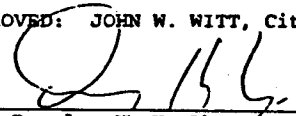
Section 4. The City Manager is hereby directed to return to the Council in one year with a status report on how the ordinance is working and if there are any problems with it.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage, however, the provisions of this ordinance shall not be applicable within the Coastal Zone until the thirtieth day following the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If this ordinance is not certified, or is certified with suggested modifications by the California Coastal Commission, the provisions of this ordinance shall be null and void within the Coastal Zone.

Section 6. In areas of the City of San Diego other than the Coastal Zone no permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

Section 7. Within the Coastal Zone no permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date the California Coastal Commission unconditionally certified this ordinance as a local coastal program amendment.

APPROVED: JOHN W. WITT, City Attorney

By   
Douglas K. Humphreys  
Deputy City Attorney

HOV:CCM:DKH:lc  
07/27/95  
10/09/95 COR.COPY  
11/01/95 REV.  
Or.Dept:Plan.  
O-96-18  
Form-o+t

Exhibit No. 1  
SD LCRA #395  
CP. 8 of 8)

O. EXEMPTIONS

The following Alcohol Beverage Outlets and areas are exempt from the provisions of Section 101.0515.

1. Hotels, motels, or any other lodging establishment where the sale of alcoholic beverages for off-site consumption is an accessory or incidental use to the primary operation of the business.

2. Establishments of greater than 15,000 square feet of floor area, provided that alcohol sales are accessory or incidental to the primary operation of the business.

"Accessory" or "incidental" means that the area devoted to alcohol products or sales does not exceed ten percent (10%) of the gross floor area of the entire premises.

3. The Gaslamp Quarter Planned District.

P. EXISTING OUTLETS

Alcohol Beverage Outlets that were in existence on November 20, 1995, may continue to operate under the following conditions:

1. The Alcohol Beverage Outlet retains the same type of retail liquor license within a license classification.

2. The Alcohol Beverage Outlet is operated continuously without substantial change in the mode or character of operation.

For the purpose of Section 101.0515(P)(2), a break in continuous operation does not include the suspension of business due to an Act of God, or other similar extraordinary circumstances beyond the control of the licensee; or a closure for more than one hundred eighty (180) days, during the diligent pursuance of building repairs or remodeling of the premises undertaken under the authority of a valid building permit.

For purposes of Section 101.0515(P)(2), "substantial change in mode or character of operation" includes, but is not limited to any of the following:

a. The Alcohol Beverage Outlet is closed, abandoned, discontinued or suspended for a continuous period of more than one hundred eighty (180) days; or

b. The premises are altered for the purpose of increasing the gross floor area and such additions will result in an aggregate increase of more than ten percent (10%) of the total existing gross floor area of the entire premises; or

c. The license issued by the California Department of Alcoholic Beverage Control ("ABC") is revoked, or suspended for a period of more than thirty (30) days for any reason; or

Exhibit No. 1  
SD LCPA #345  
(p. 7 of 8)



shall be located inside the premises, and a minimum of one 32-gallon trash receptacle shall be located outside the premises, and at least one additional 32-gallon trash receptacle shall be conveniently and legally located in the parking areas under the control of the applicant; and

k. Illumination is provided on the exterior of the premises including adjacent public sidewalks and areas under the control of the applicant, and is in operation during all hours of darkness while the outlet is open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. The minimum level of illumination of the premises shall be 0.4 foot candles per square foot. The required illumination shall be shielded and directed so as to not shine on adjacent properties; and

l. The exterior of the premises, including adjacent public sidewalks and areas under the control of the owner or operator are maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. The owner or operator agrees to

eliminate graffiti within forty-eight (48) hours of application; and

m. No more than thirty-three percent (33%) of the square footage of the windows and transparent doors of the premises bear advertising or signs of any sort, and all advertising and signage are placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the outlet; and

n. The total surface of signage pertaining to or referencing alcoholic sales or beverages which is visible from the public right-of-way do not exceed six hundred thirty square inches (630 sq. in.).

3. Distance measurements.

a. Standard. The distances contained in Section 101.0515(N)(2) shall be measured along a straight line from property line to property line.

b. Exceptions. A separation distance less than required by Section 101.0515(N)(2) may be approved by the City Manager or designee due to the existence of natural or man-made barriers such as topography, freeways, flood control channels, rivers and similar divisive features.

Exhibit No. 1  
SD LCRA #3-95  
(p. 6 of 8)

Outlet agrees in writing to be bound by, the following standards:

a. The Alcohol Beverage Outlet is not located within a census tract or within six hundred (600) feet of a census tract where the general crime rate exceeds the citywide average general crime rate by more than twenty percent (20%); and

b. The Alcohol Beverage Outlet is not located within a census tract or within six hundred (600) feet of a census tract where the ratio of Alcohol Beverage Outlets exceeds the standards established by California Business and Professional Code section 23958.4; and

c. The Alcohol Beverage Outlet is not located in an adopted Redevelopment Project Area; and

d. The Alcohol Beverage Outlet is at least six hundred (600) linear feet from any public or private accredited school, public park, playground or recreational area, church, hospital, or County welfare district offices; and

e. The Alcohol Beverage Outlet is at least one hundred (100) linear feet from any residential zone boundary; and

f. The Alcohol Beverage Outlet does not provide pool or billiard tables, foosball or pinball games, arcade style video or electronic games, or coin operated amusement devices on the premises; and

g. The Alcohol Beverage Outlet posts a prominent, permanent sign or signs stating "No loitering, consumption, or open alcoholic beverage containers are allowed inside the premises, in the parking area, or in the public sidewalks adjacent to the premises"; and

h. The Alcohol Beverage Outlet does not permit the placing of exterior public pay phones that permit incoming calls on the premises including adjacent public sidewalks and areas under the control of the applicant; and

i. The Alcohol Beverage Outlet lists a business address and telephone number in the Pacific Bell/San Diego telephone directory or other similarly distributed directory; and

j. The Alcohol Beverage Outlet has trash receptacles inside and outside the premises including adjacent public sidewalks and areas under the control of the applicant, conveniently located for use by patrons. A minimum of one 13-gallon trash receptacle

Exhibit No. 1  
SD LCPA #345  
(p. 5 of 8)