

CALIFORNIA COASTAL COMMISSION

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



August 20, 1996

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: CHUCK DAMM, SOUTH COAST DISTRICT DIRECTOR
DEBORAH N. LEE, ASSISTANT DISTRICT DIRECTOR
LAURINDA R. OWENS, COASTAL PLANNER

SUBJECT: STAFF RECOMMENDATION ON MAJOR AMENDMENT 1-96 TO THE CITY OF
IMPERIAL BEACH'S LOCAL COASTAL PROGRAM (For Public Hearing and
Possible Action at the Meeting of September 10-13, 1996)

SYNOPSISSUMMARY OF AMENDMENT REQUEST

The City is requesting an amendment to its municipal code by adding a new definition for "legal non-conforming" uses and adopting related revisions to the chapter addressing non-conforming lots, structures and uses. Specifically, revisions are proposed to the section addressing structures which are damaged or destroyed by fire or other natural disasters. As currently written, this section of the municipal code states, in part, that such structures may be reconstructed to the original density, size, height, design, configuration, etc., as long there is no increase in density or intensity or a reduction in the amount of off-street parking and landscaping. The section also states that compliance with the current development standards of the underlying zone is required wherever possible. The proposed amendment will eliminate the latter reference which promotes compliance with the current development standards of the underlying zone as a goal.

It was the City's intention that the proposed amendment request be processed as a deminimis LCP amendment. However, due to potential impacts of reconstruction of structures adjacent to wetlands without appropriate buffers and deficient off-street parking, as a result of the amendment request, the LCPA is being processed as a major amendment.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission deny the proposed amendment. The motions and resolutions for this action begins on Page 4. The findings for rejection of the implementation plan begin on Page 4. The result of the recommendation would be to retain the existing certified LCP provisions.

BACKGROUND

On September 15, 1981, the Commission denied the initial submittal of the City of Imperial Beach's Land Use Plan and then approved it with suggested modifications. A land use plan resubmittal was made in early 1982; and, on March 16, 1982, the Commission certified the City of Imperial Beach Land Use Plan (LUP) portion of the local coastal program. One amendment to the certified LUP (Major 1-83) was approved in 1983 prior to certification of the Implementation Plan.

The City began issuing coastal development permits pursuant to Section 30600.5 (Hannigan provisions) of the California Coastal Act on August 15, 1983. On September 26, 1984, the Commission approved the LCP Zoning/Implementation Plan as submitted. As of February 13, 1985, the City has been issuing coastal development permits under a certified local coastal program.

There have been 11 amendments to the Implementation Plan and four proposed amendments to the Land Use Plan since certification. The most recent major amendment is reviewed under the LCP History in the report.

ADDITIONAL INFORMATION

Further information on the City of Imperial Beach LCP amendment may be obtained from Laurinda R. Owens at the San Diego Area Office of the Coastal Commission located at 3111 Camino del Rio North, Suite 200, San Diego, CA 92108-1725 or by calling (619) 521-8036.

PART I. OVERVIEW

A. LCP HISTORY

On June 30, 1981, the City of Imperial Beach formally submitted its Land Use Plan (LUP) for Commission approval. The plan, as originally submitted, comprised the City's entire General Plan (10 elements and a policy plan). Since the plan contained a large volume of material that was not coastal-related and policies addressing coastal issues were found throughout many of the elements, staff summarized the coastal policies into one document. This policy summary along with the Land Use Element was submitted to the Commission as the LCP Land Use Plan.

On September 15, 1981, the Commission found substantial issue with the LUP, as submitted, denied and then conditionally approved the LUP with recommended policy changes for all policy groups. The City resubmitted the LCP Land Use Plan in early 1982, incorporating most of the Commission's suggested policy modifications. This included modification language related to the preservation and protection of the Oneonta Slough/Tijuana River Estuary and South San Diego Bay, preservation and enhancement of coastal access and the provision for visitor-serving commercial uses in the Seacoast District. On March 16, 1982, the Commission certified the City of Imperial Beach LCP Land Use Plan as submitted. The land use plan was effectively certified by the

Commission on November 18, 1982. In 1983, prior to certification of the Implementation Plan, the Commission approved an amendment to the LUP to correct a mapping error.

On August 15, 1983, the City began issuing coastal development permits pursuant to Section 30600.5 (Hannigan provisions) of the Coastal Act based on project compliance with their certified LUP. The City then submitted its entire Zoning Ordinance in order to implement the provisions of the certified Land Use Plan. The zoning ordinance was completely rewritten in order to implement the LUP. On September 26, 1984, the Commission approved the LCP Zoning/Implementation Plan as submitted. As of February 13, 1985, the City has been issuing coastal development permits under a certified local coastal program. Subsequent to the Commission's actions on the land use plan and implementation plan, there have been four amendments to the certified land use plan and 11 amendments to the approved implementation plan.

The most recent major amendment to the City's LCP (Major 2-94) involved an amendment to both the LUP and Implementation Plan which essentially consisted of a new General Plan/Coastal Plan and Zoning Ordinance which superseded the Seacoast District Specific Plan. In part, that LCP amendment incorporated many of the changes that were part of "Proposition P", which was passed by the local electorate in Imperial Beach on November 3, 1992. In general, the proposed changes to the Land Use Plan and Zoning Ordinance created new residential, commercial, and mixed-use zone classifications with new residential densities that established overall lower density and height limitations throughout the City. Building heights were reduced to 30 feet where previously, they varied from 26 to 40 feet, inclusive of the Seacoast District.

B. STANDARD OF REVIEW

The standard of review for implementation plans is Section 30513 of the Coastal Act. Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

As noted previously, the City had intended that the proposed LCP amendment would be a de minimis LCP amendment and as such, completed the notice requirements by publishing notice in the local newspaper, The Imperial Beach Times. The City has held two hearings on the matter -- a Planning Commission public hearing on November 9, 1995 and a City Council public hearing on February 7, 1996. The City Council public hearing of February 7, 1996 was continued to February 21, 1996 and to March 6, 1996 and then to April 3, 1996. Final adoption of the ordinance occurred on April 17, 1996. Adequate public review and opportunities for local input was therefore provided.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS.

The staff recommends adoption of the following resolutions and findings after the close of the public hearing. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- A. RESOLUTION I. (Resolution to deny certification of the City of Imperial Beach Implementation Plan Amendment 1-96, as submitted)

MOTION I

I move that the Commission reject the City of Imperial Beach Implementation Plan Amendment #1-96, as submitted.

Staff Recommendation

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

Resolution I

The Commission hereby denies certification of the amendment request to the City of Imperial Beach's Land Use Plan on the grounds that the amendment does not conform with, and is not adequate to carry out, the provisions of the certified land use plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

PART III. FINDINGS FOR REJECTION OF THE CITY OF IMPERIAL BEACH'S IMPLEMENTATION PLAN AMENDMENT 1-96, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City proposes to amend its implementation plan by revising the municipal code with the addition of a new section which defines "legal non-conforming" uses and adopting revisions to the chapter of the code which addresses legal non-conforming lots, structures and uses with respect to reconstruction of such uses which are damaged or destroyed by natural disaster. Specifically, as the code is currently certified, it is stated:

"Upon the granting of a Reconstruction Permit, a legal, non-conforming building that has been or may be in the future destroyed by fire, explosion or other casualty or Act of God, or the public, may be reconstructed to its original density, size, height, design, configuration or condition and the use or occupancy of such building or part thereof which existed at the time of such destruction may be continued provided such legal non-conformities are not increased in

density or intensity, and there is no reduction in the amount of off-street parking and landscaping that existed on site prior to such destruction. Compliance with the current development standards of the underlying zone is required wherever possible.

The Community Development Department shall grant a Reconstruction Permit if it can be found, from the facts contained in the application, from information obtained by the Community Development Director, and from the evidence presented that:

- a. The building is a legal, non-conforming building and such legal nonconformity did not result from any action by any owner after the effective date of any zoning regulation in which the building is not in conformity; and,
- b. The reconstruction will comply with the current development standards of the underlying zone wherever possible.

At the time the application is filed, the applicant shall pay a Reconstruction Permit fee in such an amount as the City Council shall from time to time establish by Resolution."

The City believes that, as currently written, the existing code language is contradictory in that it provides that non-conforming structures damaged or destroyed by natural disaster may be constructed to their pre-existing condition (i.e., with regard to density, size, height, design, configuration, etc.), but also states that such structures shall meet current development standards wherever possible. [Emphasis added] The City's opinion is that although it may be possible to conform to current zoning requirements, it is not practical or economically feasible in all cases.

Therefore, through the proposed amendment request, the City proposes to strike the language which states "Compliance with the current development standards of the underlying zone is required wherever possible." Alternatively, replacement structures would only be required to conform to the requirements of the Uniform Building Code. The proposed ordinance change is shown in the attached resolution.

B. CONFORMITY WITH THE CERTIFIED LAND USE PLAN

1. Chapter 19.76 Nonconforming Lots, Structures, Uses

a) Purpose and Intent of the Ordinance. The purpose and intent of this chapter is to establish the conditions under which existing structures and land uses may be permitted to continue despite their apparent non-compliance with the code. It is the intent of this chapter that nonconforming uses shall, except as provided in the code, be eliminated as soon as is economically and practically feasible to do so.

b) Major Provisions of the Ordinance. The major provisions of the ordinance establish the regulations pertaining to non-conforming structures

which are damaged or destroyed, as well as other development regulations related to repairs, additions, changes of use and discontinuance of such non-conforming structures, etc.

c) Adequacy to Implement the Certified Land Use Plan. The land use plan contains various policies for protection of wetlands, environmentally-sensitive habitat areas, public access, visual resources, etc. The zoning ordinances implement these policies. To allow rebuilding of non-conforming structures without complying with the ordinances, to the extent possible, permits development which is inconsistent with the policies of the certified land use plan. For example, significant impacts to environmentally-sensitive resource areas, (i.e., wetlands) could occur as a result of inadequate provision of buffers. As discussed above, the City proposes to delete current language in the zoning ordinance which requires that non-conforming structures damaged or destroyed by natural disaster, shall conform to current zoning standards when reconstructed. In so doing, this results in the potential for existing non-conforming structures which presently are sited in close proximity to wetlands without sufficient wetland buffers, to be rebuilt to their former siting on the property without conforming to present code requirements and improving existing buffers.

Specifically, Policy CO-5 (Estuary) of the certified LCP states, in part:

...A buffer area will be established for each development adjacent to wetlands. The width of a buffer area will vary depending upon an analysis. The buffer area should be a minimum of 100 feet unless the applicant can demonstrate to the satisfaction of the State Department of Fish and Game and U.S. Fish and Wildlife that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a wider buffer area may be required. For a wetland, the buffer area should be measured from the landward edge of the wetland."

There are two areas where reconstruction of an existing non-conforming structure could adversely affect adjacent wetlands of the Tijuana Estuary due to inadequate buffers. These parcels are on the east side of Seacoast Drive, south of Imperial Beach Boulevard. While the west side of Seacoast Drive consists of oceanfront parcels which are largely built out, the east side of the street is largely devoid of development due to the sensitive nature of the area. The wetland vegetation of the estuary comes all the way up to the roadbed along most of the street frontage with the exception of three parcels. Of these three, only two presently contain development. The third parcel, known as "Parcel A"/Napolitano, is a highly constrained lot which is presently being proposed for a subdivision and has raised significant concerns with regard to wetland impacts through environmental review.

The two developed sites raise concerns relative to the subject amendment request. The first site is located at the southeast intersection of Seacoast Drive and Imperial Beach Boulevard. The development on this property consists of a large apartment/condominium complex in three separate buildings. Along

the southern frontage, the building that fronts on Seacoast Drive is closest to the wetlands at its southern elevation. The other two structures are further removed from the wetlands due to the existence of a parking lot to the south and east of the buildings. At the easternmost portion of the site, there is a large paved parking lot which immediately abuts a bank covered in iceplant which slopes down to the estuary. There is an approx. 10 ft. elevational difference between the building pad and wetlands floor which provides the only "buffer" as the pad is fully developed with buildings or impervious surfacing. In addition, there are no fences or other barriers for purposes of a barrier between the development and the adjacent environmentally-sensitive habitat areas to the south and east.

The second site in question is also along the east side of Seacoast Drive, adjacent to the Tijuana Estuary, approximately 1/4 of a mile south of the site mentioned above. The property is developed with two multi-family residential buildings. The approximate distance between the structures and the wetlands is about ten feet. Similar to the first site discussed above, there are no fences or other barriers of any kind and there is even less in the way of an elevational difference to create any buffer. Again, should these structures be damaged or destroyed, they would be permitted to be rebuilt to their previous location on the site absent required buffers, pursuant to the certified LCP, thus raising serious concerns with regard to wetland impacts. Absent any kind of provisions within the subject amendment request that would require that such structures improve wetland buffers through reconstruction, the amendment cannot be found consistent with and adequate to carry out the provisions of the certified land use plan.

It should also be mentioned that Commission staff initially had concerns regarding wetland buffers in another area of the City of Imperial Beach located on the west side of Seventh Street which is adjacent to the San Diego Bay which also contains wetlands. However, a site inspection of the area revealed that there appeared to be sufficient buffer area between the rear lots of the homes along this street and the adjacent wetlands. Also, most of the residences have fences along their rear property line which also serves as a barrier between the environmentally sensitive resource areas and the existing development in this area. Therefore, this area does not pose serious concerns with regard to wetland buffers.

Another issue of concern is with regard to the adequate provision of off-street parking. The City contains numerous older non-conforming structures, many of which consist of 100% lot coverage, absent on-site parking or landscaping. If such structures were to be damaged or destroyed, the proposed revisions to the zoning ordinance would permit the structures to be constructed to their former condition, absent the provision of off-street parking which is required pursuant to the zoning ordinance. As the community is a nearshore area, this raises the potential for cumulative parking problems and public access concerns in terms of adequacy of parking for beach visitors. Absent the provisions for necessary on-site parking in redevelopment of buildings destroyed by fire or other disasters, a usurption of parking for beach visitors in the areas closest to the shoreline could occur on a cumulative basis. Although parking impacts are not as long-term or

as significant as those which could potentially occur to wetlands and related environmentally sensitive resources as a result of inadequate buffers, nevertheless, the certified LUP specifies certain parking standards to protect access opportunities and approval of an ordinance that allows rebuilding without upgrading deficient parking is inconsistent with the land use plan. As has been acknowledged by the City, there has not been any formal kind of survey or inventory which would indicate how many such non-conforming structures and/or uses presently exist which may be affected by the proposed LCP amendment.

Aside from the issues of wetland buffers and parking, the only other potential problem assessed was the need to abate non-conforming structures that extended too far seaward along the shoreline. However, upon further review, it has been determined that the proposed changes to the zoning ordinance would not raise any siting issues related to the development of structures along the shoreline. South of Palm Avenue, there is an established stringline of development which includes both rip rap and vertical seawalls seaward of existing homes/condominium buildings. Any reconstruction of structures in this area would not create any siting concerns. North of Palm Avenue, any proposed reconstruction of structures in this area would remain within the stringline and would not adversely affect redevelopment in terms of siting of structures on these lots.

In conclusion, the Commission finds that the language that is presently contained in the certified municipal code is important to retain because it encourages the abatement of non-conforming structures. While the existing language allows for some flexibility and discretion on the part of the City, it also promotes abatement of non-conforming structures and compliance with the standards of the LUP which is intended to improve the quality of development in the community over time. This direction is appropriate and consistent with the certified land use plan, as well as Section 30610(g) of the Coastal Act. Section 30610(g) of the Act provides an exemption for certain replacement structures but also specifies that such reconstruction be consistent with applicable existing zoning. The City's present LCP reflects this provision in its coastal development permit ordinance and municipal code by having the same requirement. The City's proposed language eliminates this requirement altogether and only requires compliance with current building codes.

In this particular case, retention of the existing code language as it relates to reconstruction of non-conforming structures that are damaged or destroyed by natural disaster, will result in protection of environmental resources through provision of adequate wetland buffers and protection of public access opportunities and parking for beach visitors by requiring off-site parking where it can be provided. For this reason, as noted earlier, the proposed amendment to delete language which would require compliance with current zoning standards cannot be supported.

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

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the subject LCP amendment, would result in significant environmental impacts under the meaning of the California Environmental Quality Act. Impacts to wetlands as a result of inadequate buffers for reconstruction of structures located in close proximity to environmentally sensitive areas could result from implementation of the proposed amendment. Additional adverse environmental impacts, such as disturbances to the wildlife (i.e., nesting seasons of bird species, etc.), pollution of the water quality and biological resources of the estuary as a result of contaminants from runoff into the wetlands, could also result from not requiring sufficient wetland buffers between reconstructed structures and environmentally-sensitive habitat areas. Absent any provisions to require improved buffers to protect such resources in these areas through redevelopment of the properties, the Commission finds that there are feasible alternatives and mitigation measures which would substantially lessen significant adverse impacts the amendment would have on the environment. Therefore, the amendment is being rejected.

(1301A)

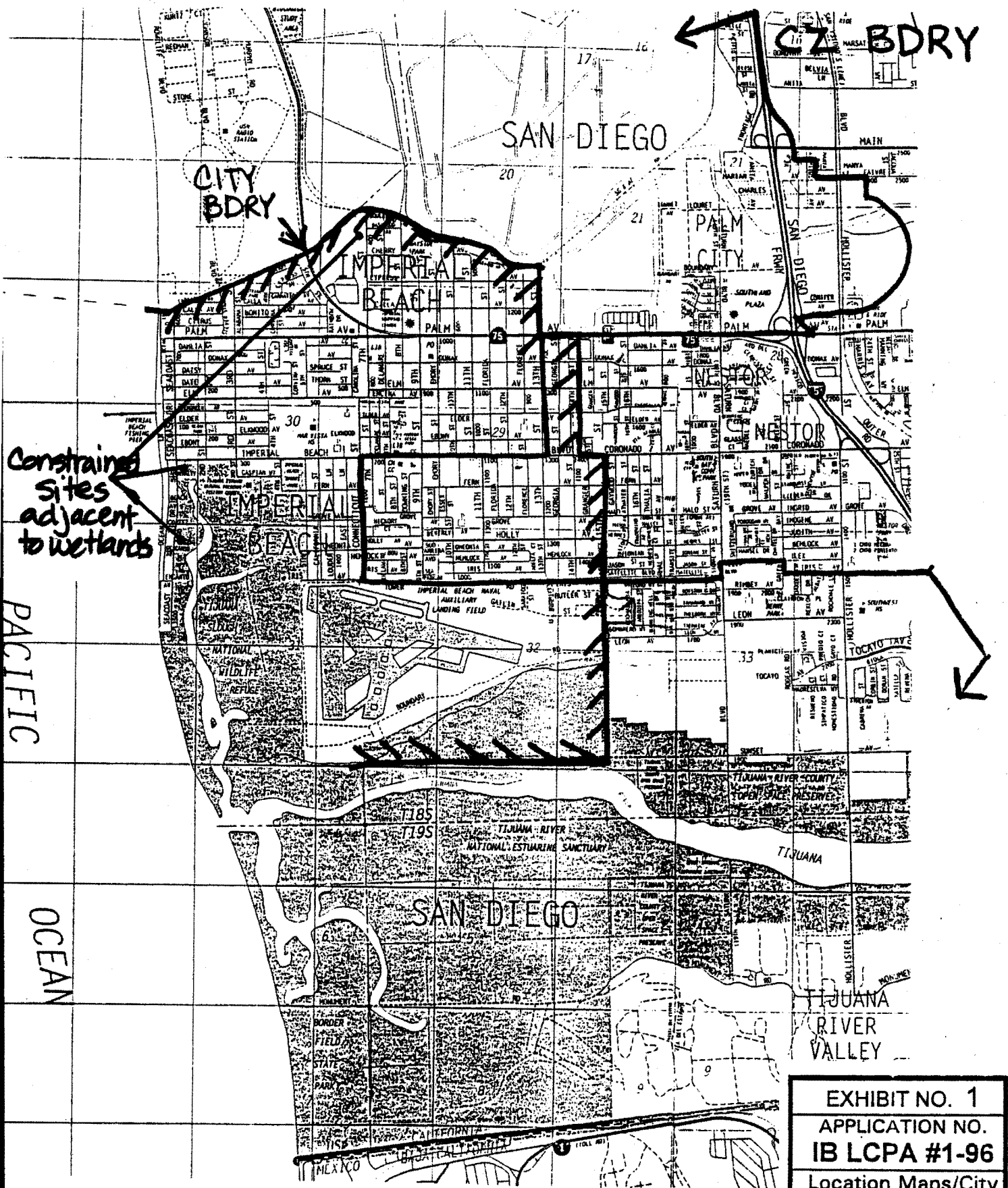


EXHIBIT NO. 1
 APPLICATION NO.
 IB LCPA #1-96
 Location Maps/City
 of IB/CZ Boundary

California Coastal Commission

RESOLUTION NO. 95-1153

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IMPERIAL BEACH RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH APPROVAL OF A ZONING CODE/GENERAL PLAN/LOCAL COASTAL PLAN AMENDMENT (ZCA/GPA/LCPA/95-01) TO REVISE CHAPTER 19.76., OF THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, SPECIFICALLY SECTION 19.76.050., ENTITLED "STRUCTURES -- DAMAGED OR DESTROYED".

APPLICANT: CITY OF IMPERIAL BEACH

WHEREAS, on December 14, 1995, the Planning Commission of the City of Imperial Beach, at a regularly scheduled meeting, considered the merits of recommending to the City Council an amendment to the Zoning Code/General Plan/Local Coastal Plan to revise Chapter 19.76., of the City of Imperial Beach Municipal Code, specifically Section 19.76.050., entitled "Structures -- Damaged or Destroyed"; and,


WHEREAS, the purpose of Section 19.76.050., is to provide for the replacement of buildings completely destroyed by fire, explosion or other casualty, subject to the issuance of a Reconstruction Permit, without penalty to density, size, height, design, configuration or condition, and the use or occupancy of such building which existed prior to its destruction; and,

WHEREAS, the last sentence of the first paragraph of Section 19.76.050., provides that "Compliance with the current development standards of the underlying zone is required wherever possible", and the phrase "is required wherever possible" is subject to various interpretations of the Code; and,

WHEREAS, Subsection 19.76.050.b., repeats this requirement as stated: "The reconstruction will comply with the current development standards of the underlying zone wherever possible", and is also subject to various interpretations of the Code; and,

WHEREAS, the Planning Commission, during duly advertised public hearings held on July 27, 1995, August 10, 1995, and August 24, 1995, reviewed and approved a Reconstruction Permit Application Form and \$50.00 administrative processing fee; and,

WHEREAS, on October 5, 1995, the City Council adopted Resolution No. 95-4547, establishing a \$50.00 administrative fee in the implementation of Section 19.76.050.; and,

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| EXHIBIT NO. 2 |
| APPLICATION NO. IB LCPA #1-96 |
| Resolution of Approval |
| Page 1 of 3 |
|  California Coastal Commission |

WHEREAS, now that a formal procedure has been established for the issuance of Reconstruction Permits, the Planning Commission desires to eliminate any ambiguity which could arise in the interpretation of Section 19.76.050., by deleting the last sentence of the first paragraph of Section 19.76.050., and Subsection b., of the City of Imperial Beach Municipal Code, thereby eliminating the requirement to comply with current development standards in the event of damage or destruction of a non-conforming use or structure; and,

WHEREAS, the City has determined that the Zone Code Amendment, General Plan Amendment and Local Coastal Plan Amendment is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Class 5) entitled "Minor Alterations in Land Use Limitations", as the amendment will not result in changes in land use density or land uses; and,

WHEREAS, the Planning Commission considered the Staff Report dated December 14, 1995, and public testimony; and,

WHEREAS, at the close of said meeting, a motion was duly made and seconded to adopt the Resolution recommending to the City Council the deletion of the last sentence of the first paragraph of Section 19.76.050., and the deletion of Subsection b., based on the following findings:

ZONING CODE, GENERAL PLAN AND LOCAL COASTAL PLAN AMENDMENT:


1. The proposed Zoning Code/General Plan/Local Coastal Plan Amendment is necessary to implement and carry out the intent of Section 19.76.050., of the Zoning Code, which is to facilitate the reconstruction of legally constructed buildings throughout the City, rendered nonconforming relative to current Zoning, General Plan/Local Coastal Plan standards, goals and policies.
2. The proposed Zoning Code/General Plan/Local Coastal Plan Amendment will serve as an effective guide for decision-makers and citizens by providing clear, concise directives concerning the physical replacement of buildings throughout the City.
3. The proposed Zoning Code/General Plan/Local Coastal Plan Amendment is conforms to the certified Local Coastal Plan, including Coastal Land Use policies in that the status quo will be maintained with respect to site conditions. The modifications will not impact existing the density or intensity of development, on-site parking or landscaping coverage. There is no environmental effect on the character of any given site, since reconstruction is essentially the same as existing conditions.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Imperial Beach hereby recommends to the City Council of the City of Imperial Beach approval of a Zoning Code/General Plan/Local Coastal Plan Amendment (ZCA/GP/LCPA 95-01), to revise Chapter 19.76., of the City of Imperial Beach Municipal Code, specifically Section 19.76.050., entitled "Structures -- Damaged or Destroyed".

PASSED AND ADOPTED by the Planning Commission of the City of Imperial Beach at a regular meeting of the Planning Commission held this 14th day of December, 1995, by the following vote to wit:

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| AYES: | POWERS, PALMER, KUHLEMEIER |
| NOES: | NONE |
| ABSENT: | SLAYTON |
| DISQUALIFIED: | ENGELMAN |

APPROVED



TED POWERS, CHAIRMAN

ATTEST:



SHERRIE D. WORRELL, CLERK

ORDINANCE NO. 96-902

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING THE IMPERIAL BEACH MUNICIPAL CODE BY ADDING SECTION 19.04.448 DEFINING "LEGAL NON-CONFORMING" AND ADOPTING REVISIONS TO CHAPTER 19.76., SPECIFICALLY 19.76.050., ENTITLED "BUILDINGS - DAMAGED OR DESTROYED"

WHEREAS, the City Council desires to amend Section 19.76.050 of the Imperial Beach Municipal Code relating to Buildings - Damaged or Destroyed.

NOW, THEREFORE, the City Council of the City of Imperial Beach does hereby ordain as follows:

SECTION 1. A new section 19.04.448 is hereby adopted as follows:

Legal Non-Conforming: A legal non-conforming structure is one which was in compliance with zoning and building codes in force at the time of initiation of the construction of the structure as evidenced by such governmental permits and/or approvals as were required at the time of the construction, and due to subsequent changes in zoning no longer complies with the current zoning requirements.

SECTION 2. Section 19.76.050 of the Imperial Beach Municipal Code is hereby repealed.

SECTION 3. A new section 19.76.050 is hereby adopted as follows:

A legal non-conforming building that has been or may in the future be damaged or destroyed by fire, explosion, or other casualty or act of nature, or public calamity or riot, may be reconstructed to its original density, size, height, design, configuration or condition and the use or occupancy of such building or part thereof which existed at the time of such destruction may be continued provided such legal nonconformities are not increased in density or intensity, and there is no reduction in the amount of off-street parking and landscaping that existed on-site prior to such destruction.

The Community Development Department shall grant a Reconstruction Permit if it can be found, from the facts contained in the application, from information obtained by the Community Development Director, and from the evidence presented, that:

A. The building is a legal, non-conforming building and such legal nonconformity did not result from any action by any owner after the effective date of any zoning regulation with which the building is not in conformity; and,

B. The legal, non-conforming building can be rebuilt on the previous footprint but must meet current building codes.

C. At the time the application is filed, the applicant shall pay a Reconstruction Permit fee in such an amount as the City Council shall from time to time establish by resolution.

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| EXHIBIT NO. 3 |
| APPLICATION NO. |
| IB LCPA #1-96 |
| Adopted Ordinance |
| Page 1 of 2 |

SECTION 4. This Ordinance shall be codified.

SECTION 5. The City Clerk of the City of Imperial Beach shall certify to the adoption of this Ordinance and cause the same to be published in the manner required by laws.

SECTION 6. This modification constitutes an amendment to the Zoning Code of the City of Imperial Beach, a component of the Local Coastal Program and requires certification by the California Coastal Commission. Therefore, the City Clerk is hereby directed to transmit this Ordinance to the California Coastal Commission for approval.

SECTION 7. This Ordinance shall take effect thirty (30) days after its passage, or until certification by the California Coastal Commission whichever comes later.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California held this 3rd day of April, 1996; and thereafter **PASSED AND ADOPTED** at a regular meeting of said City Council held this 17th day of April, 1996, by the following roll call vote:

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| AYES: | COUNCILMEMBERS: | BENDA, HASKINS, ROSE, HALL, BIXLER |
| NOES: | COUNCILMEMBERS: | NONE |
| ABSENT: | COUNCILMEMBERS: | NONE |



MICHAEL B. BIXLER, MAYOR

ATTEST:



LORI ANNE PEOPLES, CITY CLERK