

**CALIFORNIA COASTAL COMMISSION**

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February 17, 1999

**RECORD PACKET COPY****TO: COMMISSIONERS AND INTERESTED PERSONS****Wed 19a****FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE  
LEE MCEACHERN, SUPERVISOR, SAN DIEGO AREA OFFICE  
DIANA LILLY, COASTAL PLANNER, SAN DIEGO AREA OFFICE****SUBJECT: REVISED FINDINGS ON MAJOR AMENDMENT 1-98A (Technical Revisions) TO THE CITY OF NATIONAL CITY LOCAL COASTAL PROGRAM (For Public Hearing at the Coastal Commission Hearing of March 9-12, 1999)**

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**SYNOPSIS****SUMMARY OF COMMISSION ACTION**

At the Commission meeting of October 15, 1998, the Commission reviewed the City of National City LCP Amendment #1-98A pertaining to several technical revisions to the City's certified Land Use Plan (LUP). In its action, the Commission denied as submitted, then approved the land use plan with a suggested modification relative to a statement included on the revised LUP maps addressing the relationship of the City's LCP to federally-owned lands. The suggested modification originally recommended by staff would have deleted the statement entirely; however, at the hearing, Commission staff modified its recommendation from deleting the statement to replacing it with a less ambiguous one. The City of National City has accepted the suggested modification approved by the Commission and received Executive Director determination and Commission concurrence on January 13, 1999, that it has taken the necessary steps to have the local coastal program effectively certified.

**COMMISSION VOTES**

National City LCPA 1-98A, approve if modified:

Commissioners Voting "Yes": Allen, Brothers, Flemming, Kehoe, Nava, Potter, Reilly, Tuttle, Wan, and Chairman Areias

Commissioners Voting "No": None

**SUMMARY OF AMENDMENT REQUEST**

This amendment submittal consists of several technical revisions to the City's certified Land Use Plan (LUP). Specifically, the proposal involves revisions to several LUP

policies and maps to reflect the change in ownership of Paradise Marsh and the designation of the marsh area as a National Wildlife Refuge. In addition, the submittal includes LUP policy revisions to reflect the elimination of the Tidelands Avenue crossing over the Sweetwater Channel and revision to the LUP jurisdictional map to reflect a boundary change from National City to Port jurisdiction for a portion of the National City Marina project site.

**ADDITIONAL INFORMATION**

Further information on the City of National City LCP Amendment 1-98A Revised Findings may be obtained from Diana Lilly at the San Diego Area Office of the Coastal Commission, 3111 Camino Del Rio North, Suite 200, San Diego, CA, 92108-1725, (619) 521-8036.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

On September 29, 1981, the City of National City formally submitted its total local coastal program. After staff review of the total LCP submittal, the submittal was determined adequate and formally accepted by the Executive Director. The LCP submittal was subsequently set for public hearing, and a preliminary staff recommendation was drafted. The LCP did not, however, reach the Commission. The staff of the City raised a number of concerns about suggested modifications contained in the staff recommendation. In response to the preliminary staff recommendation, the LCP hearing was first delayed at the City's request, and then the LCP submittal was ultimately withdrawn.

On January 22, 1988, the City again formally submitted its local coastal program; however, this submittal, unlike the one previously withdrawn, was for the land use plan review only, rather than a total LCP submittal. The Land Use Plan was certified with suggested modifications by the Commission on April 14, 1988.

On December 11, 1990, the Commission approved the City's Implementation Plan, with suggested modifications. The Commission's action also certified three areas where specific plans are to be prepared by the City, but stipulated that permit issuing authority would not be transferred to the City on these areas until specific plans are adopted by the City and certified by the Commission.

Subsequently, the City submitted a categorical exclusion request to exempt certain developments in specified areas of the City's coastal zone from the permit requirements of the Coastal Act. This request was approved by the Commission on May 7, 1991, subject to special conditions. In July of 1991, the Commission approved, as submitted, the City's first LCP amendment and in June 1993, the City's second LCP amendment was approved, as submitted, by the Commission. In April of 1997, the Commission approved the City's third LCP amendment, as submitted. This submittal represents the City's fourth amendment to its certified LCP.

### **B. STANDARD OF REVIEW**

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

#### Section 30512

(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.

**C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

The Commission adopted the following resolutions and findings following the public hearing.

- A. **RESOLUTION I** (Resolution to deny certification of City of National City Land Use Plan Amendment #1-98A, as submitted)

**Resolution I**

The Commission hereby denies certification of the amendment request to the City of National City Land Use Plan, as submitted, and adopts the findings stated below on the grounds that the amendment will 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, will not 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 does not meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act as there would be feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

- B. **RESOLUTION II** (Resolution to approve certification of the City of National City Land Use Plan Amendment #1-98A, if modified)

**Resolution II**

The Commission hereby certifies the amendment request to the National City Land Use Plan, if modified, and adopts the findings stated below on the grounds that the amendment 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, as amended, will contain a specific access component as required by Section 30500 of the Coastal Act; the land use plan, as amended, 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 does meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act as there would be no feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

### **PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested revisions to the City of National City LCP Amendment #1-98A be adopted.

1. Figures 1, 2 and 3 shall be revised to delete the statement "Consistent with the U.S. Attorney General opinion lands owned by the United States are not subject to the controls of the Local Coastal Program" that appears as a note on each figure and replace it with the following:

"The National City LCP policies relating to land owned by the federal government are advisory only and have no binding legal effect on federal activities."

### **PART IV. FINDINGS FOR REJECTION OF THE NATIONAL CITY LAND USE PLAN AMENDMENT #1-98A, AS SUBMITTED**

#### **A. AMENDMENT DESCRIPTION**

The amendment request consists of several technical revisions to the City's certified Land Use Plan. Specifically, the proposal involves revisions to several LUP policies and maps to reflect the change in ownership of Paradise Marsh and the designation of the marsh area as a National Wildlife Refuge. In addition, the submittal includes LUP policy revisions to reflect the elimination of the Tidelands Avenue crossing over the Sweetwater Channel and a revision to the LUP Jurisdictional Map to reflect a boundary change from National City to Port jurisdiction for a portion of the National City Marina project site.

#### **B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that the subject amendment, as set forth in the preceding resolutions, is not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan amendment does not conform with Chapter 3 of the Coastal Act and the goals of the state for the coastal zone.

### **C. CONFORMITY WITH CHAPTER 3**

The following Chapter 3 policies of the Coastal Act are applicable 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 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

**Section 30231**

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

**Section 30233**

(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.

**Section 30240**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

When the Commission certified the City of National City Land Use Plan in 1988, a number of policies were included which addressed the future planning for and implementation of the restoration of Paradise Marsh (an identified sensitive and valuable biological resource area). At that time, Paradise Marsh was privately owned and within the City's LCP jurisdiction. Subsequent to approval of the LUP by the Commission, the ownership of Paradise Marsh was transferred to the United States of America and the marsh is now administered by the U.S. Fish and Wildlife Service as part of the Sweetwater Marsh National Wildlife Refuge. Because the marsh is now in federal ownership, it is no longer subject to the City's LCP jurisdiction.

With one exception, the proposed revisions to the City's certified LUP are essentially technical corrections and will not lessen or degrade the LUP's protection of environmentally sensitive habitat areas and will have no effect on the provision of public access to the City's bayfront. However, although the majority of revisions to the land use plan provisions are acceptable as submitted, there is one issue raised by the proposed land use plan amendment. The proposed LUP amendment includes revisions to three land use plan maps (Figures 1, 2 & 3). Essentially, the proposed revisions to these maps are to reflect a change in the National City LCP jurisdiction resulting from the Port's ownership (and approval by the Commission of Port Master Plan Amendment #19) of the National City Marina site. The proposed map revision also reflects the change in ownership of the Paradise Marsh from private to public (federal). As part of the City's proposed revisions to these maps, a note was added which reads:

"Consistent with the U.S. Attorney General opinion lands owned by the United States are not subject to the controls of the Local Coastal Program."

While this statement is not incorrect, it is ambiguous and can be misleading relative to LCP jurisdiction. Although federal lands are usually not addressed in local coastal



programs prepared by local governments, where federal lands are leased to non-federal entities, different standards for land use regulation may be involved. In addition, certified local coastal programs are incorporated into the California Coastal Management Program (CCMP) which has been federally endorsed, thus allowing local involvement in certain federal decisions and the CCMP is reviewed when the Commission assesses federal consistency matters. The proposed map legend would only serve to confuse the Coastal Commission's jurisdiction. Therefore, the Commission finds the proposed amendment, as submitted, is not consistent with all applicable Chapter 3 policies of the Coastal Act and must be denied.

**PART V. FINDINGS FOR APPROVAL OF THE NATIONAL CITY LAND USE PLAN AMENDMENT, IF MODIFIED**

The above cited Coastal Act policies call for the protection of environmentally sensitive habitat areas. The City of National City's certified LUP contains a number of policies which call for the protection of sensitive habitat areas, including the restoration and enhancement of Paradise Marsh. The proposed LUP revisions do not lessen the protection afforded Paradise Marsh or other environmentally sensitive habitat areas within the City's Coastal Zone, but merely update several policies (and LUP maps) to reflect the change in ownership of the marsh. In addition, the proposed revisions address that future restoration and enhancement of Paradise Marsh is not within the City's purview, but within the province of the U.S. Fish and Wildlife Service. The City has indicated its desire to be a participant in any restoration planning for the marsh, but because it is outside the City's purview, cannot take the "lead" on such a future endeavor.

The proposed amendment also includes a "clean-up" measure which deletes reference to the extension of Tidelands Avenue across the Sweetwater Channel to the City of Chula Vista. This proposed change is to reflect the Commission's action in certifying the City of Chula Vista Bayfront LCP in which the extension of Tidelands Avenue was deleted because of significant potential impacts to environmentally sensitive habitat areas. As such, the proposed revision will bring the City of National City LUP into conformance with the Commission's decision on the City of Chula Vista LUP. Deletion of the reference to the extension of Tidelands Avenue will have no effect on the provision of public access to Paradise Marsh and the City's Bayfront.

The final component of this LUP amendment involves a revision to the LCP Land Use Plan and Jurisdiction Maps to reflect the Port's ownership and approval by the Commission, of Port Master Plan Amendment #19 (PMPA 19) in 1994. This port master plan amendment approved the National City Marina located in the area east of Paradise Marsh and south of 32<sup>nd</sup> Street. At that time, the Commission approved, in concept, the land use designation for this area.

The Port District has submitted a formal geographic boundary amendment to amend its geographic boundary to include the National City Marina site. Upon approval of the boundary amendment, permit jurisdiction can then be transferred to the Port. Until such a time, the Commission retains permit jurisdiction over that area. In any case, the National

City Marina site is no longer within the City of National City LCP jurisdiction and the proposed amendment will reflect this change.

The proposed revisions to the City's certified LUP are essentially technical corrections and will not lessen or degrade the LUP's protection of environmentally sensitive habitat areas and will have no effect on the provision of public access to the City's bayfront. As noted in the findings for denial, the proposed revisions to three land use plan maps include a notation pertaining to federal lands and LCP jurisdiction. As part of the City's proposed revisions to these maps, a note was added which reads:

"Consistent with the U.S. Attorney General opinion lands owned by the United States are not subject to the controls of the Local Coastal Program."

While this statement is not incorrect, it is ambiguous and can be misleading relative to LCP jurisdiction. Although federal lands are usually not addressed in local coastal programs prepared by local governments, where federal lands are leased to non-federal entities, different standards for land use regulation may be involved. In addition, certified local coastal programs are incorporated into the California Coastal Management Program (CCMP) which has been federally endorsed, thus allowing local involvement in certain federal decisions and the CCMP is reviewed when the Commission assesses federal consistency matters. The proposed map legend would only serve to confuse the Coastal Commission's jurisdiction. In addition, the notation is not necessary for Chapter 3 consistency. Therefore, Suggested Modification #1 requires this notation be deleted and replaced with the following:

"The National City LCP policies relating to land owned by the federal government are advisory only and have no binding legal effect on federal activities."

As revised, the proposed policy amendments may be found consistent with Chapter 3 and the amended maps have been clarified to avoid ambiguity. Therefore, the Commission finds the proposed amendment, as modified, is consistent with all applicable Chapter 3 policies of the Coastal Act.

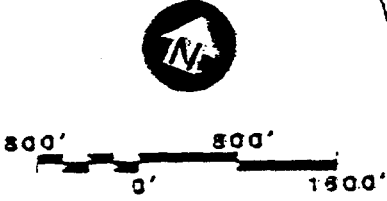
#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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 to CEQA

provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the amendment, as submitted, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act. Specifically, the proposed LUP modifications are technical corrections to reflect the change in ownership of Paradise Marsh from private to public (federal) and to reflect a jurisdictional change relative to the San Diego Port District.

Furthermore, future individual projects would require coastal development permits from the City of National City. Throughout the City's Coastal Zone, the specific impacts associated with individual development projects would be assessed through the environmental review process; and, the individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for such impacts which have not been explored and the LCP amendment, as submitted, can be supported.

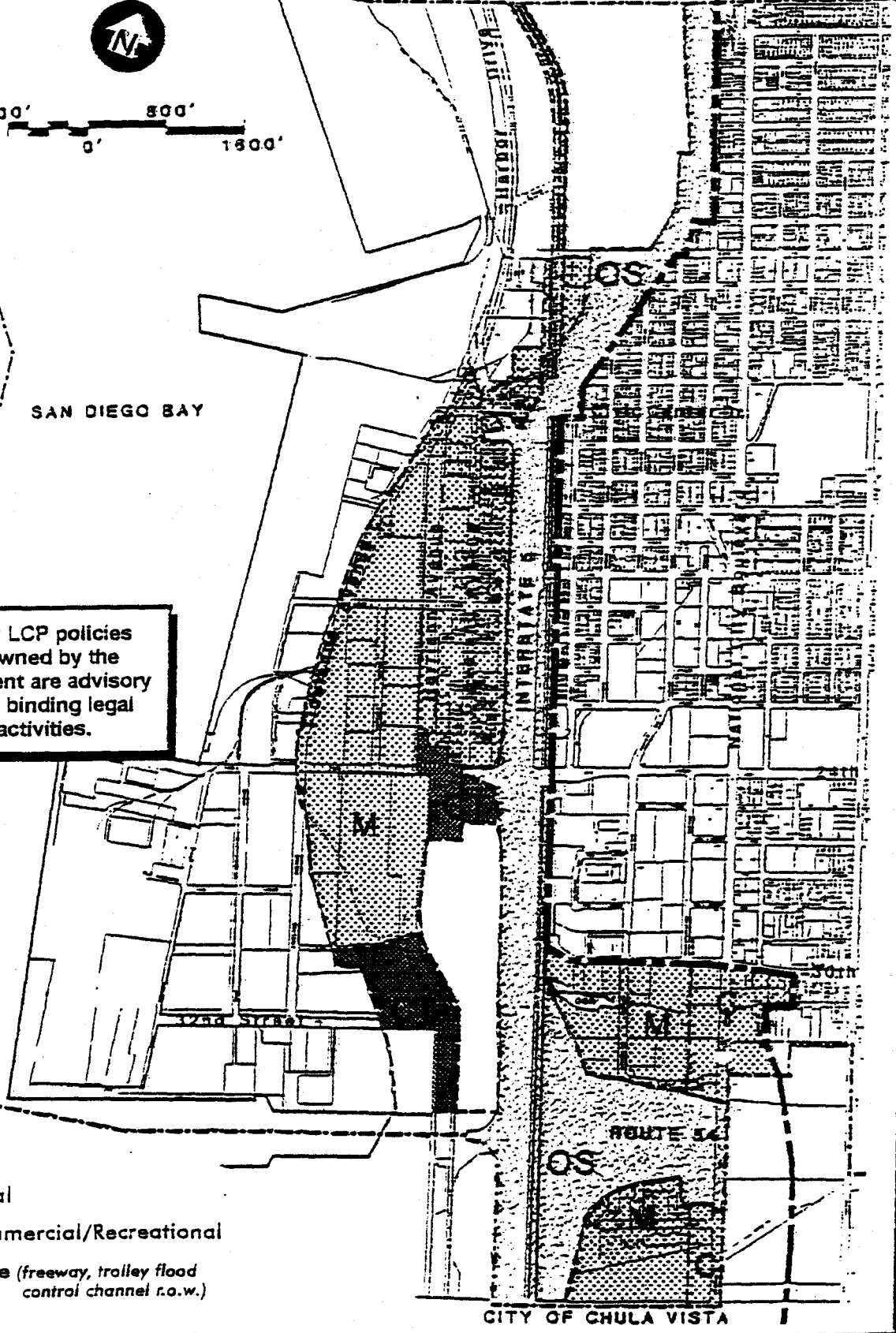


SAN DIEGO BAY

The National City LCP policies relating to land owned by the federal government are advisory only and have no binding legal effect on federal activities.

**LEGEND**

- Industrial
- Commercial
- Tourist commercial/Recreational
- Open Space (freeway, trolley flood control channel r.o.w.)

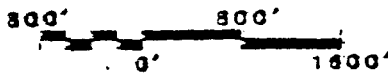


CITY OF CHULA VISTA I

**NATIONAL CITY PLANNING**

**FIGURE 1  
LAND USE PLAN**




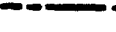
Revised Figures (1 of 3)  
NAT. CITY LCPA 1-98A REVISED FINDINGS

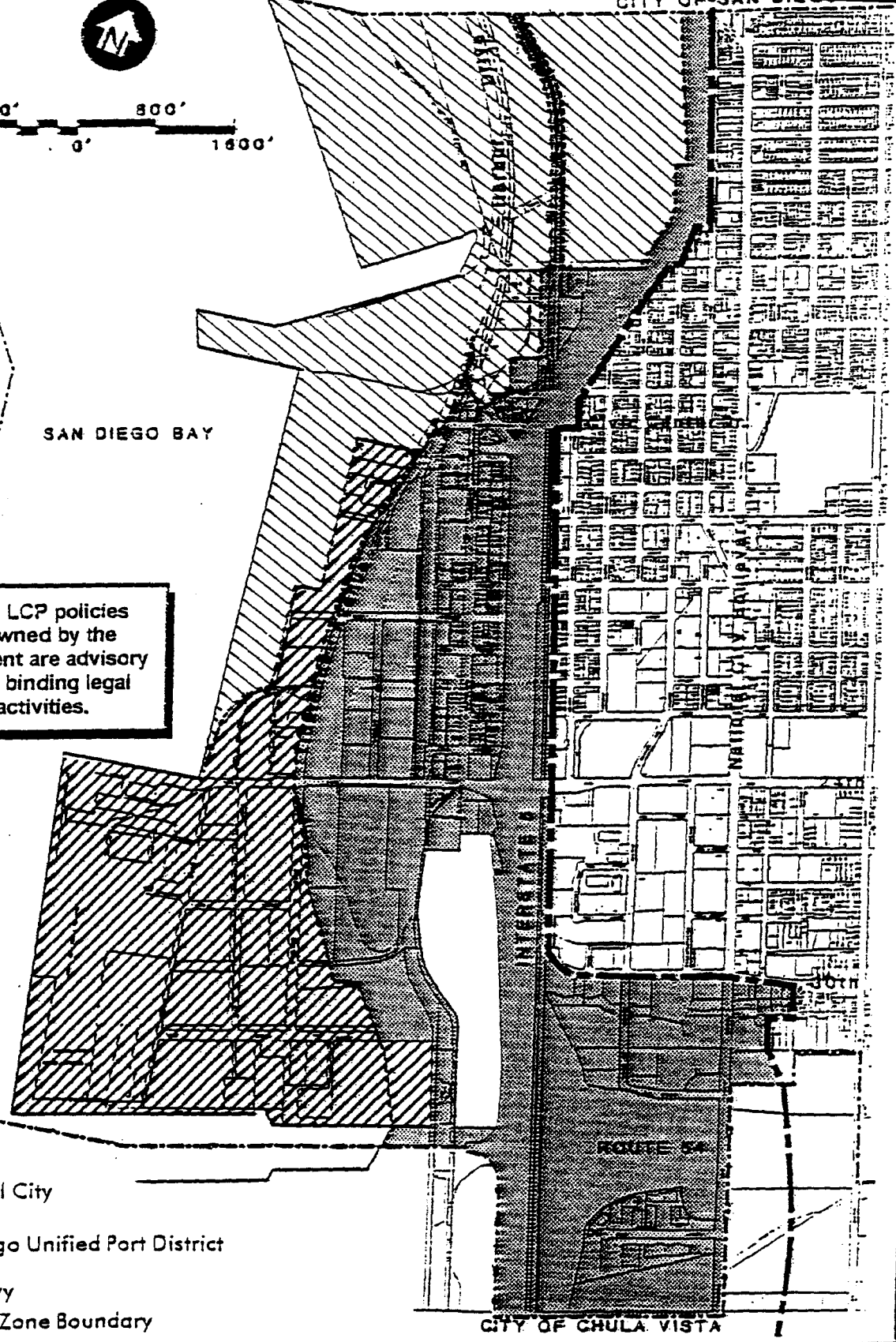


SAN DIEGO BAY

The National City LCP policies relating to land owned by the federal government are advisory only and have no binding legal effect on federal activities.

**LEGEND**

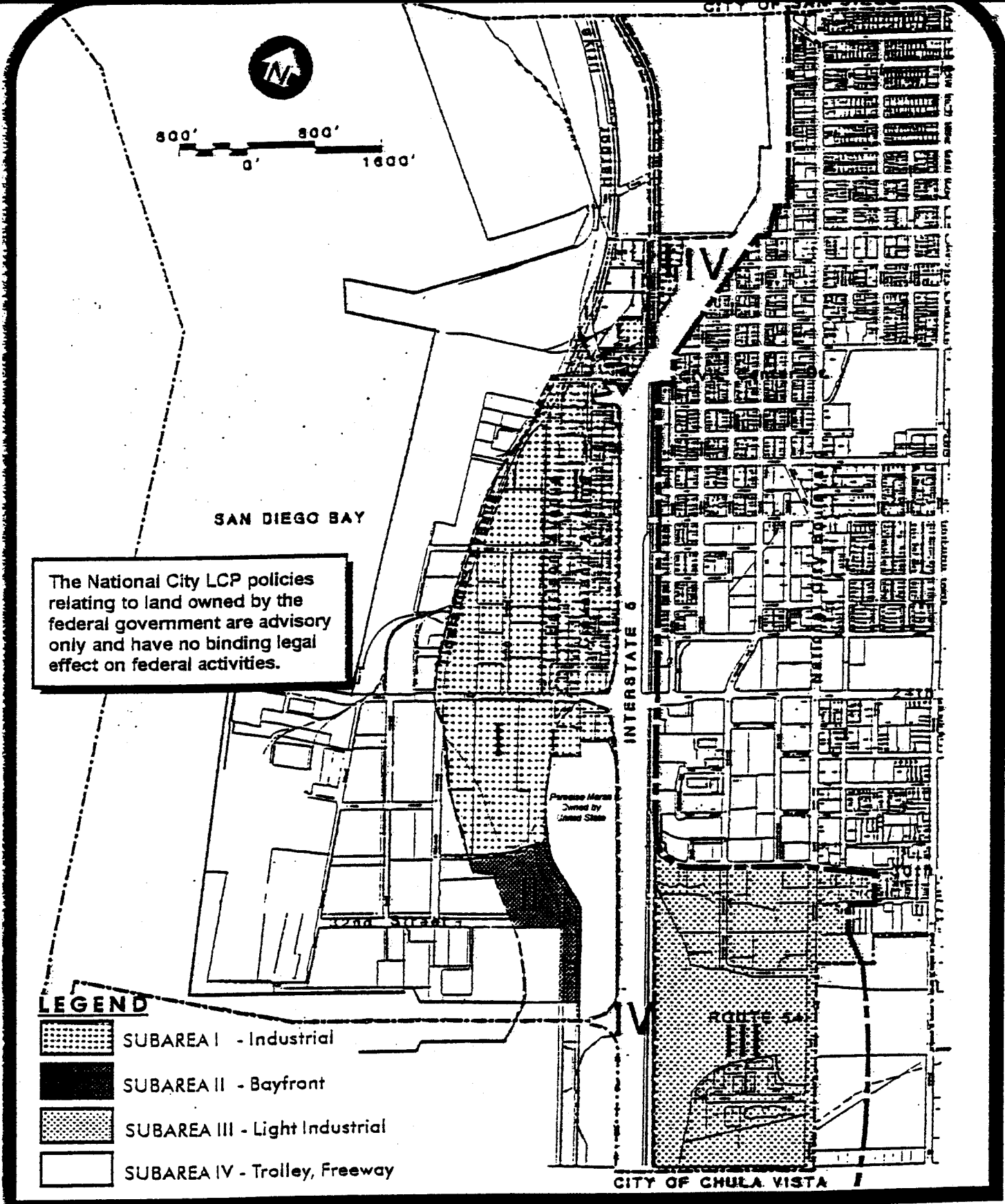
-  National City
-  San Diego Unified Port District
-  U.S. Navy
-  Coastal Zone Boundary



# NATIONAL CITY PLANNING

FIGURE 2  
POLITICAL JURISDICTIONS

*Revised Figure (2 of 3)  
Nat'l City LCPA 1-98A  
Revised Findings*



# NATIONAL CITY PLANNING

**FIGURE 3**  
**SUBAREA MAP - NATIONAL CITY COASTAL ZONE**

*Revised Figure (3 of 3)  
 Nat'l City LCPA 1-98A  
 Revised Findings*