

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
767-2370



January 17, 2002

Thur 8c

RECORD PACKET COPY

TO: COMMISSIONERS AND INTERESTED PERSONS**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO AREA
OFFICE****SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR LCP
AMENDMENT NO. 2-2001 (Museum Overlay) TO THE CITY OF ENCINITAS
LOCAL COASTAL PROGRAM (For Public Hearing and Possible Commission
Action at the Meeting of February 5-8, 2002)****SYNOPSIS****SUMMARY OF AMENDMENT REQUEST**

The subject amendment request revises the certified Encinitas Local Coastal Plan (LCP) Implementation Program to allow for the development of museums in the RR-1 and R-3 Zones in four subareas subject to approval of a Major Use Permit. On August 10, 2001 the City of Encinitas Local Coastal Program Amendment (LCPA) No. 2-2001 was filed in the San Diego District office. At the October Commission hearing, a time extension (not to exceed one year) on the LCP amendment package was granted by the Commission to allow time for staff review of the potential issues raised by the proposed LCP amendment.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed LCP amendment. The proposed amendment would result in the potential for greater development intensity on four residentially zoned sites (subareas) that are highly constrained. Three of the four proposed subareas contain environmentally-sensitive vegetation and steep slopes. Staff has determined that developing these sites with a museum use will result in greater impacts than if developed residentially. Because of the on-site constraints (steep slopes, sensitive vegetation, drainages), staff has determined that there is more flexibility in locating one or more single-family residences on these sites than a museum use. Thus, allowing museums, even as a conditional use, on the proposed subareas could result in significant adverse impacts to environmentally sensitive habitat areas, inconsistent with the resource protection policies of the certified LUP.

In addition, from a traffic standpoint, the increased use resulting from developing the proposed subareas with a museum use instead of residential, will result in a significantly

higher number of Average Daily Trips (ADTs) on the Manchester Avenue/El Camino Real corridor. The concern raised here is with the intensification of use of this corridor by the City through the conditional use permit process, whereby traffic on Manchester Avenue and at the I-5/Manchester Avenue interchange will soon reach a point that improvements are necessary to accommodate the increased traffic. These needed road and interchange improvements may result in proposals to fill to San Elijo Lagoon, which is inconsistent with LCP policies. Therefore, no further intensification of this corridor should be allowed to occur without first addressing the cumulative impacts of such on the existing roadway system.

The City approved the proposed LCP amendment subject to approval of several discretionary permits for the Lux Art Institute, consisting of a 12,300 sq. ft. museum/gallery (plus a future 6,530 sq. ft. underground gallery), a 3,730 sq. ft. single-family residence/studio and gift shop, outdoor viewing areas and associated infrastructure (driveways, parking, etc.) on proposed Subarea A. The City's action included a condition which states that the major use permit, design review permit and coastal development permit shall not take effect until the subject LCP amendment has been approved by the Commission. The museum development, as approved by the City, includes substantial grading of the site and would encroach onto steep naturally vegetated slopes of 25% grade or greater, impacting both southern maritime chaparral and coastal sage scrub habitats. The City's approval of the Lux Art Institute is not appealable to the Commission and is not the subject of this staff report. The project nonetheless provides an example of the kinds of impacts that can be anticipated if museums are allowed to be developed on these constrained sites.

The appropriate resolutions and motions can be found on Page 4. The findings for denial of the LCP Implementation Plan amendment begin on Page 5.

BACKGROUND

Encinitas LCP

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone. The subject LCPA will be the eighth amendment to the City's certified LCP.

The NCCP Process and the Draft Encinitas Subarea Plan

The Encinitas Subarea Plan is being prepared to satisfy the requirements of a federal Habitat Conservation Plan (HCP), and will function as a subarea plan of the regional Multiple Habitat Conservation Plan (MHCP). The City of Encinitas is participating in the development of a subregional plan along with six other jurisdictions. The subregional plan, the Multiple Habitats Conservation Plan (MHCP) study area involves approximately 186 square miles in northwestern San Diego County. This area includes

the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the draft Encinitas Subarea Plan. Once approved, the MHCP and its subarea plans will replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and will allow the incidental take of the gnatcatcher and other covered species as specified in the plan.

The Encinitas Subarea Plan and the MHCP are also intended to meet criteria for the California Department of Fish and Game's (CDFG) Natural Communities Conservation Planning process (NCCP). The objectives of the southern California NCCP program include identification and protection of habitat in sufficient amounts and distributions to enable long-term conservation of the coastal sage community and the California gnatcatcher, as well as other sensitive habitat types. Generally, the purpose of the NCCP processes is to preserve natural habitat by identifying and implementing an interlinked natural communities preserve system. Through these processes, the resource agencies are pursuing a long-range approach to habitat management and preserve creation over the more traditional mitigation approach to habitat impacts.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Gary Cannon** at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

PART I. OVERVIEW

A. STANDARD OF REVIEW

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. 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.

B. 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

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment #2-2001 for the City of Encinitas certified LCP as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment #2-2001 submitted for the City of Encinitas certified LCP, and adopts the findings set forth below on grounds that the Implementation Program does not conform with and is inadequate to carry out the provisions of the certified land use plan and would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program.

**PART III. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS
IMPLEMENTATION PLAN AMENDMENT #2-2001 (MUSEUM
OVERLAY ZONE)**

A. Amendment Description

The amendment changes the LCP implementation plan (IP) by establishing a new special purpose overlay zone titled the "Museum Overlay Zone". This overlay zone applies to four (4) subareas that total 19.6 acres located along the southern portion of El Camino Real, near the intersection with Manchester Avenue. The subareas are currently zoned RR-1 (rural residential) and R-3 (single-family residential). Currently, the LCP does not allow museum uses within residentially zoned areas of the City. The purpose of the new overlay zone is to allow museum uses within the identified subareas subject to approval of a major use permit. The overlay zone establishes a number of development standards and special regulations that would be applied to any museum proposal to address land use compatibility with surrounding uses. The development standards include: maximum lot coverage (35% for buildings and 15% for other impervious surfaces) and building height (30 ft); limitation on any residential use associated with a museum; requirements for on- and off-site parking; setback requirements; and, limitations on accessory commercial uses (must be museum related and not exceed 10% of museum floor area or 1,500 sq. ft.). The special regulations include: review of architectural style, building materials, signs and landscape design; the need to provide a traffic study; and, noise and lighting standards (ref. Pages 8-11 of Exhibit #2 for detailed provisions).

As noted, the four subareas where the museum overlay is proposed to apply are located in the Lux Canyon area along El Camino Real in the southern portion of Encinitas (ref. Exhibit #1 attached). The hillsides on either side of the canyon are characterized by steep slopes, natural vegetation and sandstone bluffs. Natural vegetation on the hillsides generally consists of southern maritime chaparral and coastal sage scrub. Each of the subareas has unique characteristics that are described below:

Subarea A – this subarea consists of two undeveloped lots totaling 4.19 acres. Approximately 2.75 acres (66%) of the site contain sensitive native upland habitat (coastal sage scrub, southern maritime chaparral) with approximately 1.80 acres (43%) of the site comprised of steep slopes of 25% grade or greater. The site also contains two sensitive plant species: California Adolphia and Nuttall's Scrub Oak. Also, a single California Gnatcatcher was identified on the site. Three distinct areas of the site have been previously disturbed. Surrounding land uses include a childcare facility and vacant land to the east (the vacant site is currently being graded for an approved private school), greenhouses and native slopes to the south, natural slopes to the west, a private tennis club and single family residences to the north. The two lots that comprise this subarea are zoned R-3 (single-family residential).

Subarea B - this subarea, which is directly adjacent to Subarea A to the south and east, consists of two lots that total 3.3 acres. The eastern portion of the site directly adjacent to

El Camino Real contains an existing childcare facility. Directly south of the childcare facility are greenhouses. The remainder (western portion) of the site contains steep, naturally vegetated slopes. Surrounding land uses include Subarea A and the under construction private school to the north, an apartment complex and natural slopes to the south and natural slopes to the west. The lots are zoned R-3 (single-family residential).

Subarea C - this subarea, which consists of one 5.3 acre lot, is located directly adjacent to and east of El Camino Real. The site is currently vacant and much of the site has been previously disturbed due to prior agricultural use. Steep natural slopes border the site to the northeast, east and south, with a small portion situated on the site in the southeastern portion of the site. In addition, a small drainage (Lux Creek) runs north/south through the site along the western portion of the site. Directly north of the site is a residential subdivision and a church facility is located to the south. The lot is zoned R-3 (single-family residential).

Subarea D - this subarea involves two lots which total 6.9 acres and is located on the west side of El Camino Real, just south of the intersection with Manchester Avenue. One of the lots currently contains a single-family residence and the other is used for agriculture (an orchard). The site does not contain any steep slopes or native upland habitat. Steep, natural slopes border the site to the west, with a vacant lot to the north and a church to the south. The site is zoned RR-1 (rural residential).

The City approved the proposed LCP amendment subject to approval of several discretionary permits for the Lux Art Institute, consisting of a 12,300 sq. ft. museum/gallery (plus a future 6,530 sq. ft. underground gallery), a 3,730 sq. ft. single-family residence/studio and gift shop, outdoor viewing areas and associated infrastructure (driveways, parking, etc.) on proposed Subarea A. The discretionary permits include a major use permit, design review permit and coastal development permit. The City's action included a condition which states that the major use permit, design review permit and coastal development permit shall not take effect until the subject LCP amendment has been approved by the Commission. The museum development, as approved by the City, includes grading of 2.6 acres of the 4.2 acre site (62%) and would encroach onto steep slopes (25% grade or better) naturally vegetated with coastal sage scrub and southern maritime chaparral vegetation, impacting .56 acres of southern maritime chaparral and .55 acres of coastal sage scrub. The City's approval of the museum development is not appealable to the Commission. The proposed museum nonetheless demonstrates the kinds of impacts that would result from allowing additional institutional uses, such as museums in this area.

B. Findings for Rejection

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

1. Special Purpose Overlay Zone.

a) Purpose and Intent of the Ordinance. The purpose of the Special Purpose Overlay Zone Ordinance is to provide a detailed listing and specific development standards for each of the special overlay zones applied throughout the City.

b) Major Provisions of the Ordinance. There are several special purpose overlays zones applied throughout the City. These include:

- Special Study Overlay
- Specific Plan Overlay
- Coastal Bluff Overlay
- Hillside/Inland Bluff Overlay
- Floodplain Overlay
- Cultural/Natural Resources Overlay
- Agricultural Overlay
- Public Facilities

The special purpose overlay zones are indicators of the presence of special physical or other types of planning-related characteristics. Where one or more overlay zone(s) apply, development must conform with the underlying zone requirements as well as the requirements of any overlay.

c) Adequacy of Ordinance to Implement the Certified LUP. Currently, the City's Zoning Ordinance specifically prohibits museums within all residentially zoned areas of the City. Museums are permitted uses in commercial and public/semi public zones and as a conditional use in office and business park zoned areas. The proposed amendment establishes a new special overlay, the Museum Overlay Zone. As noted, the proposed amendment would allow museums as a conditional use, with approval of a conditional use permit, within four residentially zoned subareas (described in detail above). The Museum Overlay Zone details a number of development standards and special regulations that must be met in order for a museum to be developed within any of the four subareas. The development standards and special regulations address maximum lot coverage, building height, setbacks, parking, density, signage, architectural style, traffic, noise lighting and landscaping. The intent of these provisions is to minimize conflicts/incompatibility concerns with adjacent/surrounding uses.

As noted above, the City's Zoning Code provides for museum uses in non residential areas of the City. In addition, Policy 7.4 of the Resource Management Element of the certified LUP addresses museums and states:

The City will encourage the development of cultural facilities to be made available to the public, such as performing arts theatres, museums, and libraries.

Thus, it is clear that the LCP not only contemplates museums within the City, but also encourages development of such. However, as noted above, the LCP specifically prohibits museums in the City's residential areas. While, in some instances it may be appropriate for a museum to be located within residentially zoned areas, in the case of the proposed amendment, allowing museums within the four proposed subareas is inconsistent with several provisions of the certified LCP. Specifically, the issues relate to the proposed intensity of development and protection of environmentally sensitive habitat areas.

Currently, the four subareas proposed for the Museum Overlay are zoned for residential uses. Subareas A, B and C are zoned R-3 and Subarea D is zoned RR-1. The LUP designates the sites as Residential 3 (Subareas A, B and C) and Rural Residential 1 (Subarea D). The LUP describes these land use designations as follows:

Rural Residential 1: The purpose of this land use designation is also to ensure that the rural character of certain areas of the City are maintained even with new residential development. This category is also useful in reducing the potential impacts of future development of sensitive areas in the City that would otherwise be affected by development at greater densities. Under this designation, up to 1 dwelling unit per acre possible. Single family units may be attached to other single family units provided each unit is located on a separate legal lot with approval of a PRD. The estimated population density for this category would be approximately 3 persons per acre assuming an average household size of 2.6 persons. The actual density of development will depend on the presence of any development constraints present.

Residential 3: Residential land uses in this category will also be single-family detached units constructed at lower densities. This land use designation permits the construction of between 1 and 3 units per acre with the minimum lot size for each unit being 14,500 square feet. Single family units may be attached to other single family units provided each unit is located on a separate legal lot with approval of a PRD. The potential development density for this category of residential land use ranges from 1 to 3 units per acre with a maximum potential population density of approximately 8 persons per acre. Actual development densities will ultimately depend upon the presence of any environmental constraints.

Based on the above descriptions, the purpose of these land use designations is to provide for residential development, but at the lower density range. The Rural Residential land use designation is specifically applied to sites in and around environmentally-sensitive lands to reduce the potential for impacts to these surrounding sensitive areas that may result from development at higher densities. As noted above, three of the four proposed subareas (Subareas A, B and C) contain sensitive resources and are adjacent to larger contiguous environmentally-sensitive habitat areas. In addition, the Subarea D, while not containing any sensitive resources, directly abuts a sensitive habitat area to the west and is directly across Manchester Avenue from the upland reach of San Elijo Lagoon. Thus, it is clear why these areas are designated for low density residential development. In fact, the majority of the southern El Camino

Real/Manchester Avenue corridor is zoned for rural and low density residential development. The proposed museum overlay would allow for these sites to be developed at far greater intensity than permitted with the underlying zones.

The sensitivity of the area is also addressed in the Draft Encinitas MHCP Subarea Plan. The draft plan is being put together to address how the City will "conserve natural biotic communities and sensitive plant and wildlife species pursuant to the California and federal Endangered Species Acts." The four subareas subject to the proposed Museum Overlay are located within the "Encinitas South" core and linkage area of the draft plan, with three of the four subareas (A, B and C), designated as within a "Softline Focused Planning Area" (areas which do not yet have development approvals where development and conservation standards and criteria will be applied to achieve a projected conservation target). The draft plan describes the Encinitas South core and linkage area as follows:

This area is notable for wetland habitats associated with San Elijo Lagoon and Escondido Creek, as well as coastal sage scrub and southern maritime chaparral in upland areas....Major stands and critical locations of coastal sage scrub occur north of San Elijo Lagoon and east of Lux Canyon. For southern maritime chaparral, major stands and critical locations occur in the Lux Canyon area and east and west of El Camino Real between Cerro Street and Manchester Avenue....Habitat in Encinitas South is an extremely valuable component of the Encinitas Subarea Plan and MHCP....Upland habitat in the vicinity of Lux Canyon functions as a Core area for MHCP plant species associated with southern maritime chaparral and sandstone soils. A high number of MHCP plant species (12) occur in upland habitats, and half of these are narrow endemics.

In addition, at least one of the proposed subareas (Subarea A) contains sensitive plant (California adolphia and Nuttall's scrub oak) and animal species (a single California gnatcatcher was identified on the site).

A further indicator of the sensitivity of the proposed subareas is that they are all located within the Special Study Overlay Zone contained in the certified LCP. The Special Study Overlay Zone is applied to any number of land use categories including residential and commercial. While not all Special Study Overlay Zones will be expressly used for preserving environmentally significant areas, they will be effective in indicating those areas where development standards may be more stringent to minimize any potential adverse impacts from development. Specifically, Policy 8.5 of the Land Use Element of the certified LUP describes this overlay:

The Special Study Overlay designation shall be applied to lands which, due to their sensitive nature, should only be developed with consideration of specific constraints and features related to drainage courses, bluffs slopes geology and soils, biotic habitat, viewsheds and vista, and cultural resources. Development within the overlay area shall be reviewed and approved in accordance with criteria and standards which protect coastal and inland resources.

Based on the above discussion, it is clear the areas of and surrounding the four subareas subject to the proposed Museum Overlay are very sensitive. The following goals and policies from the Encinitas Land Use Plan (LUP) address environmentally-sensitive areas of the City and are applicable to the proposed amendment:

Goal 8 (LU-18): Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas.

Policy 8.6 (LU-21): Significant natural features shall be preserved and incorporated into all development. Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, steep topography, trees and views.

Policy 1.2 (PS-4): Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgement that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structures have been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any activity which involves grading, construction or placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operation which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of the property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made.

Goal 10 (RM-16): The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal waters, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

Policy 10.1 (RM-16): The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally-sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of

25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City's circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance.

Policy 10.5 (RM-17): The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentration of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval:

- Conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;
- Minimize fragmentation or separation of existing contiguous natural areas;
- Connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors;
- Maintain the broadest possible configuration of natural habitat area to aide dispersal of organisms within the habitat;
- Where appropriate, based on community character and design, clustering of residential or other uses near the edge of the natural areas rather than dispersing such uses within the natural areas;
- Where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them;
- Conservation of the widest variety of physical and vegetational conditions on site to maintain the highest habitat diversity;
- Design of development, with adjacent uses given consideration, to maximum conformance to these guidelines; and
- Preservation of rare and endangered species on site rather than transportation off site.

Establishment of the proposed Museum Overlay Zone will allow for the development of museums on each of the proposed four residentially zoned subareas. Given the above described sensitivity of the sites and surrounding areas, new development on the proposed subarea sites, residential or otherwise, could result in inconsistencies with the above cited provisions of the LUP. As noted above, the LCP contains a number of provisions that address the protection of sensitive habitat areas including steep slopes and naturally vegetated areas. In addition to above LCP provisions, the proposed Museum Overlay Zone establishes a number of development standards and special regulations that would be applied to any museum proposal to address land use compatibility with surrounding uses. The proposed development standards include: maximum lot coverage (35% for buildings and 15% for other impervious surfaces) and building height (30 ft);

limitation on any residential use associated with a museum; requirements for on- and off-site parking; setback requirements; and, limitations on accessory commercial uses (must be museum related and not exceed 10% of museum floor area or 1,500 sq. ft.). The special regulations include: review of architectural style, building materials, signs and landscape design; the need to provide a traffic study; and, noise and lighting standards.

The proposed development standards and special regulations do not address concerns relative to protection of environmentally-sensitive resources. These provisions are designed to mainly address neighborhood compatibility as any potential museum proposed on the four subareas would be located in a residentially zoned area and could result in adverse impacts on any surrounding residential development. The Commission is concerned that development of the proposed subareas with a museum use, even with the proposed development standards, will result in significant environmental impacts far greater than if developed with single-family residences. Issues related to protection of environmentally-sensitive habitat areas are addressed by existing LCP provisions and are described below.

Looking at the proposed four subareas, Subarea A is the most constrained from an environmental resource standpoint. As noted above, this subarea consists of two undeveloped lots totaling 4.19 acres. Approximately 2.75 acres (66%) of the site contain sensitive native upland habitat (coastal sage scrub, southern maritime chaparral) with approximately 1.80 acres (43%) of the site comprised of steep slopes of 25% grade or greater. The site also contains two sensitive plant species: California Adolphia and Nuttall's Scrub Oak. Also, a single California Gnatcatcher was identified on the site (ref. Exhibit #4 attached for location of on-site biological resources). In addition, the site borders (and is part of) a large mostly undisturbed north/south trending inland bluff system containing sensitive native upland vegetation that is described in the City's draft subarea plan as "an extremely valuable component of the Encinitas Subarea Plan and MHCP....". While the site is highly constrained, there are three distinct areas of disturbance on the site. The northern most portion of the site, adjacent to Tennis Club Drive, a small pad area at the site's highest elevation and an area that was previously used for agriculture in the southern portion of the site. Again, the remainder of the site is constrained with steep slopes and native habitat.

As noted above, the City has approved, subject to approval of this LCP amendment, development of Subarea A with the Lux Art Institute. This museum project consists of a 12,300 sq. ft. museum/gallery (plus a future 6,530 sq. ft. underground gallery), a 3,730 sq. ft. single-family residence/studio and gift shop, outdoor viewing areas, driveways and parking lots on proposed Subarea A. The proposed museum would be situated in the area of the small pad and stepped down the hillside, significantly impacting both steep slopes and native habitat with both the proposed buildings and the driveway/parking areas. The project as approved by the City includes grading of 2.6 acres of the 4.2 acre site (62%) and would encroach onto steep slopes (.43 acres) naturally vegetated with coastal sage scrub and southern maritime chaparral vegetation, impacting .56 acres of southern maritime chaparral and .55 acres of coastal sage scrub. These are the kinds of impacts that can be anticipated for any museum developed in Subarea A

Public Safety Policy 1.2 and Resource Management Policy 10.1 of the City's certified LUP address the protection of naturally-vegetated steep slopes within the City's inland hillside areas. These policies call for preservation of "all native vegetation on natural slopes of 25% grade or over" with deviations permitted "only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot)". This policy establishes that if a site is so constrained that impacts to steep and natural slopes cannot be avoided; impacts can occur only to accommodate reasonable use of the property which is defined as one home on a lot. In the case of Subarea A, it is comprised of two lots. Thus, in applying these policies to Subarea A, reasonable use would be one home on each lot.

In looking at the site topography and other environmental constraints, it appears that there is far more flexibility in developing Subarea A with two homes than developing the site with a museum use. By its nature, a museum use will typically involve much more "development" than a single-family residence. In the case of the Lux Art Institute, it is over 21,000 sq. ft. of floor area in two buildings as well as gardens, driveways and parking lots. Because this use is much larger, it will involve far greater impacts to on-site resources than a residential development and does not have the "flexibility", in terms of siting, of a residential home development. In comparison, the disturbed area in the southern portion of the site could easily accommodate two homes, a driveway and necessary fire clearance with minimal or no impacts on steep natural slopes. Developing two homes in this location would leave the remainder of the site natural, leaving a substantial area available to connect the significant natural areas located west and east of the site as called for in the City's draft MHCP subarea plan. The City's draft subarea plan includes requirements for connectivity and wildlife corridors within focused planning areas. While the draft subarea plan calls for 1,000 ft. wide corridors as optimal corridor widths for large mammals and birds, the plan acknowledges that such a width is difficult to achieve due to constraints such as existing development. As such, the draft plan strives for a minimum 200 ft. wide corridor. The Lux Art Institute as approved by the City, will be placed in the middle of the site and only provides a 70 ft. wide wildlife corridor, inconsistent with the requirements of the draft subarea plan. Again, while the proposed museum is not the subject of this review, it can be used to demonstrate the significant environmental impacts such a use on this site would have versus single-family residential development.

While the other proposed subareas are less constrained than Subarea A, they too have environmentally-sensitive areas (steep natural slopes and a creek) that, if developed with a museum use, would likely involve greater impacts than if developed residentially. Based on the above, the Commission finds that approval of the proposed amendment to allow museums in the proposed four subareas would result in significant impacts to environmentally-sensitive habitat areas, inconsistent with the above cited LUP provisions. In addition, permitting museums on these subareas would appear to be inconsistent with the City's draft MHCP subarea plan and could prejudice its adoption.

Another concern raised by the proposed amendment relates to development intensity and impacts of such on sensitive environment resources, in particular, San Elijo Lagoon. From a development intensity standpoint, developing each of the subareas with a museum use would result in a far greater intensity (traffic) than if developed residentially.

The concern here is not the effect traffic generated by the development of museums on the proposed subareas would have on public access to the shoreline, but rather the potential adverse effect intensification of traffic would have on the need to expand the I-5/Manchester Avenue Interchange or Manchester Avenue into San Elijo Lagoon. Manchester Avenue and the I-5/Manchester Avenue Interchange are located directly adjacent to San Elijo Lagoon and the main channel serving the lagoon runs at the base of the slope of Manchester Avenue. Thus, if roadway or interchange improvements are necessary that cannot be accommodated to the north, direct and significant impacts to San Elijo Lagoon would result. To address this concern, the City's LCP does provide the following policy:

Policy 2.2 (C-7): To avoid impacts of the expansion and improvement of Manchester Avenue on the San Elijo Lagoon and its environmental resources, right-of-way dedication and widening shall occur to the north, away from the lagoon, rather than toward the lagoon: and the use of fill shall be prohibited. The design of the Manchester/I-5 interchange shall also avoid the use of fill and locate structures as far north as possible to avoid impacts on the lagoon....

With the exception of Mira Costa College, which is zoned Public/Semi-Public, properties along the Manchester Avenue/El Camino Real corridor leading to I-5 are zoned and planned for low to very low density residential development. However, in the last several years, the City has approved, with conditional use permits, numerous developments along the Manchester Avenue/El Camino Real corridor that are far more intense than low density residential. These developments include several churches, schools and child and elderly care facilities.

The City has recently widened Manchester Avenue from I-5 to El Camino Real to four lanes. According to the traffic study performed for the proposed amendment, Manchester Avenue between I-5 and El Camino Real currently experiences 25,700 ADT's (ref. "Traffic Impact Analysis for the Museum Overlay Zone and the Lux Art Institute" by Linscott Law & Greenspan Engineers, dated November 17, 2000). The City's Certified Circulation Plan, Page C-24, identifies that a four-lane "collector roadway", such as the existing Manchester Avenue in front of the school, would operate at LOS C up to a maximum of 26,000 ADT's. If Manchester Avenue is currently experiencing 25,700 ADT's, the addition of only a small number of ADT's would change the LOS from C to D.

While Manchester Avenue between I-5 and El Camino Real has been widened to four lanes, only two lanes, plus a freeway entrance lane exist at the Manchester/I-5 interchange. Currently, even with the recently widened road, westbound traffic on

Manchester Avenue backs up in the morning up to and beyond the Mira Costa College campus entrance, resulting in significant long lines and delays for morning commuters.

The City's LCP requires any expansion of Manchester Avenue to occur to the north, away from lagoon resources and suggests that any future design of the I-5/Manchester Avenue interchange avoid impacts to the lagoon. However, northward expansion is limited by the amount of available space north of the interchange. The Commission is concerned that with the intensification of this corridor by the City through the conditional use permit process, traffic on Manchester Avenue and at the I-5/Manchester Avenue Interchange will soon reach a point where improvements become necessary to accommodate the increased traffic and these needed improvements will result in fill/impacts to San Elijo Lagoon, which is inconsistent with LCP policies. This concern stems from the fact that ultimate sizing of Manchester Avenue was based on traffic assumptions that the corridor would be built out with low to very low density residential development. However, since that analysis and adoption of the LCP, the City has been approving conditional use permits for development along this corridor that are far more intensive, from a traffic generation standpoint, than was originally planned for. Because of the proximity of San Elijo Lagoon to this roadway, there is finite area for further road/interchange improvements. Approval of the proposed amendment to allow museums to be constructed on the four subareas will, at best, further serve to exacerbate the existing traffic problem along this stretch of Manchester Avenue during peak periods and, at worst, result in the need to widen the road/interchange into San Elijo Lagoon.

While Circulation Policy 2.22 of the Certified LCP prohibits Manchester Avenue from being expanded toward the lagoon, the same Policy only requires that future I-5/Manchester interchange improvements "avoid the use of fill and locate structures as far north as possible to avoid impacts on the lagoon." With increasing traffic demands due to increased development intensities, the concern continues to be that a point will be reached such that future I-5/Manchester Avenue interchange improvements and roadway widening may be proposed which involve fill of the lagoon. Therefore, no further intensification of this corridor should be allowed to occur without first addressing the cumulative impacts of such on the existing roadway system, potential interchange improvements and feasible alternatives that will avoid fill of wetlands.

The City's certified LCP designates the properties on and surrounding the Manchester Avenue/Southern El Camino Real corridor for low to very low density residential development. This designation has been found to be appropriate because of the large areas of environmentally sensitive resources found along this corridor. San Elijo Lagoon, which is located adjacent to and south of Manchester Avenue, is an environmentally sensitive habitat area and Regional Park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. In addition, San Elijo Lagoon is one of the 19 priority wetlands listed by the State Department of Fish and Game for acquisition. The lagoon provides habitat for at least five State or Federal-listed threatened or endangered birds that include the California least tern, the light-footed clapper rail, Belding's savannah sparrow, the brown pelican and the western snowy plover. In addition, Lux Canyon, which is located east

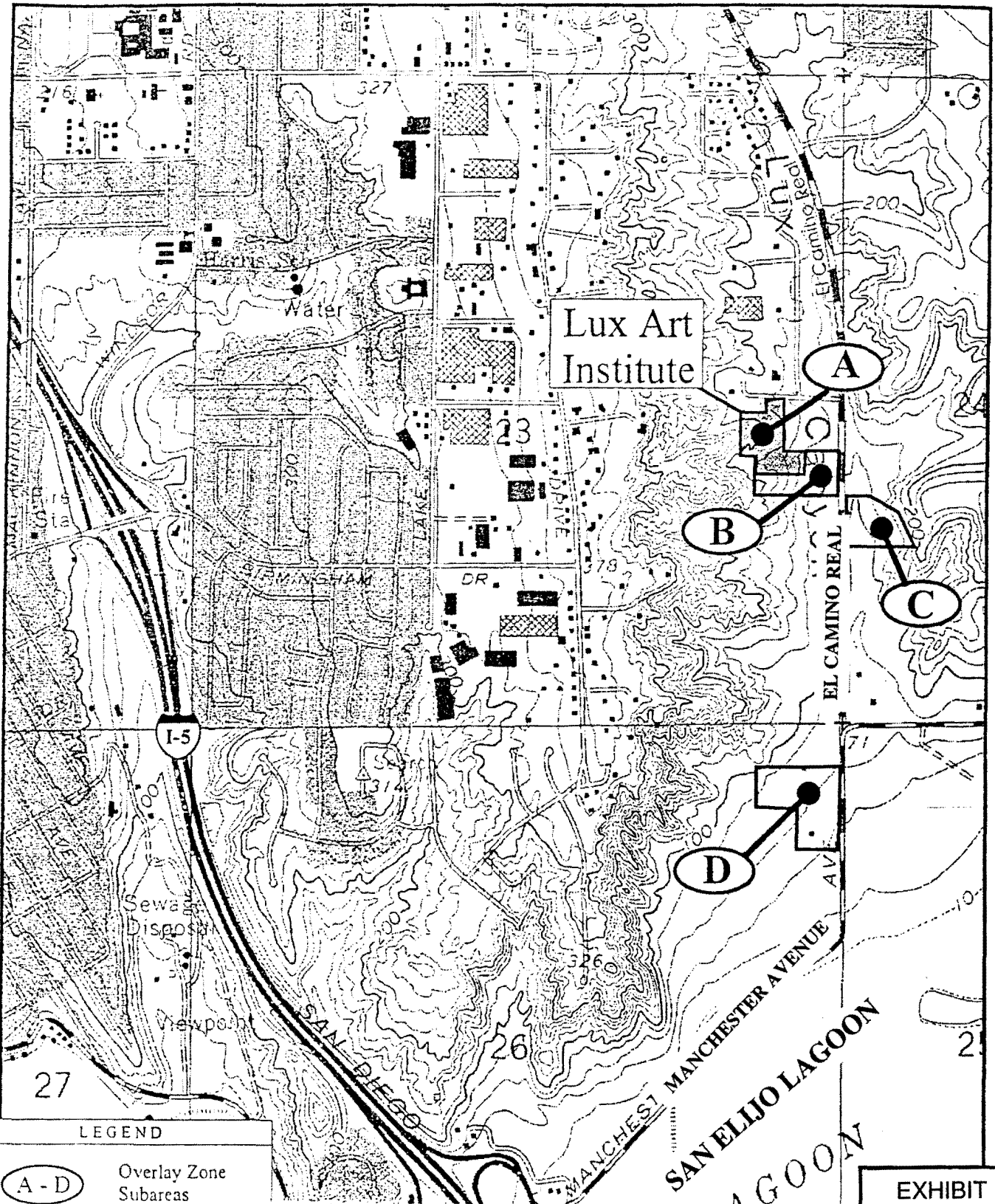
and west of El Camino Real, contains large areas of high quality native habitat, steep slopes and important drainage courses. While the City's LCP currently allows for some conditional uses on these sites (schools, churches and child care facilities), these uses are compatible with and serve the underlying residential uses. Museums, on the other hand, are a more intense institutional use that are not typically associated with residential neighborhoods.

In summary, while the City's LCP encourages museum uses within the City (and provides for such in commercial and public/semi public zones and as a conditional use in office and business park zoned areas), it specifically prohibits museums in the City's residential areas. While, in some instances it may be appropriate for a museum to be located within residentially zoned areas, in the case of the proposed amendment, allowing museums within the four proposed subareas is inconsistent with several provisions of the certified LCP and could result in significant adverse impacts to environmentally-sensitive habitat areas. The four subareas which are the subject of this amendment are zoned and planned for low density and rural residential development in the City's LCP. These designation have been applied to these sites, in part, to reduce the potential for impacts of future development on sensitive areas of the City that could be affected by development at greater intensities. Development of these four subareas with museum uses will involve far greater development intensity than that of a residential development. In addition, the increased intensity, from a traffic standpoint resulting from development of the subareas with a museum use (versus residential) would result in further traffic impacts on Manchester Avenue and could result in the need to construct road improvements that impact San Elijo Lagoon. Based on the above, the Commission finds that the proposed LCP amendment does not conform with and is inadequate to carry out the provisions of the certified land use plan and therefore must be denied.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENT 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 a LCP submittal or, as in this case, a LCP amendment submittal, to find that the LCP as amended, conforms to CEQA provisions. As found above and incorporated herein by reference, the proposed Museum Overlay Zone would allow for destruction (greater than residential development) of coastal sage scrub and southern maritime chaparral on steep slopes within the City's sensitive inland hillsides. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment may result in a significant adverse environmental impact.



LEGEND

- (A - D) Overlay Zone Subareas
- [Hatched Box] Lux Art Institute



EXHIBIT NO. 1
 APPLICATION NO.
ENCINITAS
LCPA 2-2001
 Location Map

Source: USGS 7.5 Minute Series Topographical Map, Encinitas Quadrangle

Project Location Map

ORDINANCE 2001-08

AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA
AMENDING CHAPTERS 30.04, 30.08, 30.09 AND 30.34
OF THE MUNICIPAL CODE AND AMENDING THE OFFICIAL ZONING MAP
OF THE CITY OF ENCINITAS FOR THE PURPOSES OF ESTABLISHING
THE SOUTHERN EL CAMINO REAL MUSEUM SPECIAL PURPOSE OVERLAY
ZONE

The City Council of the City of Encinitas, California, does ordain as follows:

SECTION ONE:

The Planning Commission conducted a noticed public hearing on the proposed amendment on May 3, 2001, and June 7, 2001, at which time all those desiring to be heard were heard. The Planning Commission recommended to the City Council on June 7, 2001 to adopt the proposed amendment, which establishes the Southern El Camino Real Museum Special Purpose Overlay Zone.

SECTION TWO:

The City Council conducted a noticed public hearing on June 13, 2001, at which time all those desiring to be heard were heard.

SECTION THREE:

A final Environmental Impact Report (EIR) (State Clearinghouse # 199909111) has been prepared in compliance with the California Environmental Quality Act (CEQA) and was certified by the City Council on June 13, 2001, with the adoption of Resolution No. 2001-29. The City Council hereby determines the final EIR has been completed in compliance with CEQA; the final EIR was presented to the City Council; the City Council considered the information contained in the final EIR prior to adopting this Ordinance; and the final EIR reflects the City Council's independent judgement and analysis.

SECTION FOUR:

The City Council made the following findings pursuant to Chapter 30.72 (Zoning Amendment) of the Encinitas Municipal Code:

SEE ATTACHMENT A

SECTION FIVE:

That the Municipal Code Chapter 30.04, "Definitions" is amended to add the following definition:

EXHIBIT NO. 2
APPLICATION
ENCINITAS
LCPA 2-2001
City Ordinance

MUSEUM shall mean a non-profit institution displaying or preserving objects of artistic, scientific, cultural or historic value, and optionally creating objects with these values for the purpose of display on site.

That the Municipal Code Chapter 30.08, "Zones" is amended to add the following Special Purpose Overlay Zone:

SECRM: Southern El Camino Real Museum Overlay is intended to allow museums, subject to a Major Use Permit, in a very limited portion of the RR-1 and R-3 zones characterized by a growing presence of institutional uses. A museum in this overlay zone may include one dwelling unit to house 1) a caretaker, and his or her family, or 2) a professional of the arts or sciences, and his or her family, whose primary responsibility is to create or participate in the museum's exhibits and programs, and facilitate achievement of the museum's goals.

That the Municipal Code Chapter 30.09, "Zoning Use Matrix" is amended as follows:

SEE ATTACHMENT B

That the Municipal Code Chapter 30.34, "Special Purpose Overlay Zones" is amended as follows:

SEE ATTACHMENT C

SECTION SIX:

That the City of Encinitas Official Zoning Map is amended as follows:

SEE ATTACHMENT D

SECTION SEVEN:

That the Ordinance is intended to be carried out in a manner fully in conformance with the California Coastal Act of 1976, and the Community Development Director is hereby authorized to submit this Ordinance as a Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

SECTION EIGHT:

This Ordinance shall take effect on the date of the adoption by the California Coastal Commission, but not sooner than thirty (30) days after its adoption by the City Council.

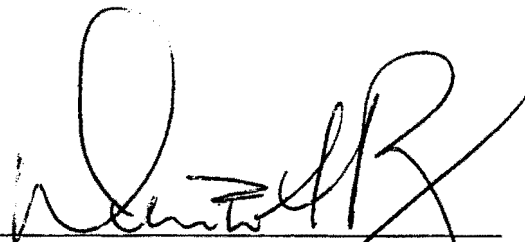
PASSED AND ADOPTED this 11th day of July, 2001, by the following vote to wit:

AYES: Bond, Holz, Houlihan, Stocks.

NAYS: None.

ABSTAIN: None.


ABSENT: Guerin.



Dennis Holz,
Mayor, City of Encinitas

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance 2001-08, which has been published pursuant to law.



Deborah Cervone, City Clerk

ATTACHMENT A

ORDINANCE NO. 2001-08

FINDINGS FOR A ZONING AMENDMENT

STANDARD: In accordance with Section 30.72.090 of the Municipal Code, the City Council shall make the following findings relative to any proposed zoning amendment:

a. That the proposed zoning amendment is consistent with the purposes of the Zoning Regulations, General Plan and Local Coastal Program.

Facts: The Southern El Camino Real Museum Special Purpose Overlay Zone applies to 4 subareas along the southern portion of El Camino Real and Manchester Avenue. These subareas total 19.6 acres and are currently zoned single-family residential, RR-1 and R-3. The purpose is to allow museum uses within the residential zones that are located in the Museum Overlay Zone subject to a major use permit. In addition, development standards would be established that would help to insure land use compatibility with the surrounding land uses. These include: lot coverage, building setbacks, building heights, limitation to retail sales, minimum parking standards, architectural design standards, signage, prohibition to amplification of music and human voices, limitation to exterior lighting, and landscaping standards.

The Museum Overlay Zone is located in the Lux Canyon area having some steep slopes. Topographic elevations range from 235' above mean sea level to 35' msl. The hillside on either side of the Lux Canyon area is generally characterized by steep slopes, natural vegetation and sandstone bluffs. Natural vegetation on the hillside generally consists of southern maritime chaparral and coastal sage scrub. Land use in the nearby area is characterized by a growing number of institutional (non-residential) uses, interspersed with single-family and multi-family residential uses, and agricultural activities. Existing institutional/non-residential uses include: childcare facility, residential care facility, college, several houses of worship and a tennis club. San Elijo Lagoon is located to the south of the Museum Overlay Zone area. Hills with open space slopes and single-family residences on top extend to the east and west of El Camino Real. More intensive single-family neighborhoods are located to the north.

The General Plan, Zoning Ordinance and Local Coastal Program govern land use on the properties subject to the proposed Museum Overlay Zone. The General Plan establishes policies addressing the distribution, type and density/intensity of development in addition to public facility, public safety and environmental issues. The General Plan allows for residential uses in this area, with densities ranging from one to five units per acre. The Zoning designations include R-3 in the Lux Canyon area, with RR-1 and RR south of the El Camino Real/Manchester Avenue intersection. In addition, the Zoning Ordinance establishes several Special Purpose Overlay designations that regulate development within the proposed Museum Overlay Zone. These are the Hillside/Inland Bluff Overlay Zone; Cultural/Natural Resources Overlay Zone; and Scenic/Visual Corridor Overlay Zone.

The Museum Overlay Zone is also located in the Coastal Zone, which is regulate by the California Coastal Commission under the 1976 California Coastal Act. The purpose of the Coastal Act is to protect the natural and scenic resources of the California coast as well as to assure public access to coastal resources.

Discussion: RR-1 and R-3 single-family residential zones allow low density residential development as well as non-residential uses (churches, group care facilities, recreational facilities, private and public schools, and agricultural uses). The purpose of the two zones is to promote detached single-family residential uses. Non-residential uses within the R-3 and RR-1 zones support residential uses and/or support State, Coastal or local goals/policies (agricultural, group care facilities, schools, and recreational facilities), while maintaining compatibility with the residential neighborhood.

The Museum Overlay Zone implements Policy 7.4 of the Resource Management Element, which encourages the development of cultural facilities, such as, museums within the City. The Museum Overlay Zone establishes land use controls through development standards and a discretionary review process (major use permit and design review process) to insure land use compatibility. Policy 1.12 of the Land Use Element notes that "the residential character of the City shall be substantially single-family detached housing." From a City-wide perspective, implementation of the Museum Overlay Zone would not be in conflict with this policy since the residential character of the City would remain substantially single-family. The properties subject to the Overall Zone are clustered in the southern El Camino Real corridor, which is characterized by a growing number of non-residential uses. However, single-family residential occurs outside of the Museum Overlay Zone. The proposed Museum Overlay Zone contains regulations and standards to avoid diminishing residential qualities and interfering with residential activities. Conformance with these standards will insure consistency with existing residential neighborhoods.

Policy 6.1 of the Land Use Element allows for non-residential development to occur in areas "where such development presently is concentrated ... as long as such development does not result in land use conflicts with surrounding development." Within the southern El Camino Real area, there is a presence of non-residential uses. Land use conflicts would be avoided by conformance with the development standards within the Museum Overlay Zone. Policy 6.5 of the Land Use Element requires that future development consider the constraints and opportunities of adjacent existing development. The Museum Overlay Zones are clustered in the southern El Camino Real corridor area, which is consistent with other existing non-residential uses located within the area. The development standards and regulations (architectural style, setbacks, noise, etc) in the Museum Overlay Zone respond to the potential constraints imposed by nearby residential development, which reduce the potential for interference with residential activities.

The General Plan and Zoning Code have Special Study Overlay designations for steep slopes, natural resources, cultural resources and visual quality. Specific development proposal within the Museum Overlay Zone will need to comply with these special standards, many of which require studies to be conducted to determine the extent of the resource. Preliminary studies/analysis have been done for the Museum Overlay Zone. The City will review individual

museum development proposals subject to these standards. (Policies 8.1, 8.5 and 8.6 of the Land Use Element requires consistency with steep slope requirements, Special Study Overlay designations, and preservation of significant natural features. Also Policy 1.2 of the Public Safety Element relates to steep slopes.)

The traffic study indicates that the Museum Overlay Zone would not result in Level of Service (LOS) E or F, which is consistent with Policy 1.3 of the Circulation Element. Policy 1.3 prohibits development that results in LOS E or F.

The Resource Management Element of the General Plan requires water conservation (Policies 1.1 and 1.10), maintain significant mature trees (Policy 3.6), maintain and enhance scenic views (Policies 4.6 and 4.9), preserve cultural resources (Policy 7.1), encourage the development of cultural facilities (Policy 7.4), minimize development in environmentally sensitive habitat areas (Policies 10.1 and 10.5), establish/preserve wildlife corridors (Policy 13.6), reduce sedimentation of the lagoons (Policy 14.3), and erosion control (Policies 14.1, 14.4, 14.5, and 14.6). Future development would not only be required to comply with the requirements of the Museum Overlay Zone but would also need to be consistent with the various General Plan/LCP policies and Zoning requirements. Although the Museum Overlay Zone does not present any inconsistency with these policies, consistency with the various General Plan/LCP and Zoning Code policies/standards would need to be determined at the project level.

Policies 1.1 and 2.1 of the Noise Element limit noise impacts to adjacent uses. Future museum projects would be required to meet these policies. The Museum Overlay Zone ordinance includes noise analysis and implementation of any mitigation measures as part of the major use process. The Museum Overlay Zone prohibits outdoor-amplified sound.

Conclusion: The City Council has determined that the Museum Overlay Zone is consistent with the purposes of the Zoning Regulations, General Plan and Local Coastal Program.

ATTACHMENT B

ORDINANCE NO. 2001-08

AMENDMENT TO CHAPTER 30.09, "ZONING USE MATRIX"

In the Zoning Use Matrix, modify the "Museum" use as follows:

In the column identified as "RR, RR-1 and RR-2," change the "X" (which indicates prohibited) to:

"X; RR-1:C****"

In the column identified as "RS-11, R-3, R-5 and R-8," change the "X" to:

"X; R-3:C****"

Modify the bottom of the page where "Museum" is listed as follows:

*****Museums allowed in RR-1 and R-3 only in Southern El Camino Real Museum Special Purpose Overlay Zone with a major use permit subject to limitations. See Municipal Code Sections 30.08.010F and 30.34.090."

ATTACHMENT C

ORDINANCE NO. 2001-08

AMENDMENT TO CHAPTER 30.34, "SPECIAL PURPOSE OVERLAY ZONES"

Modify Chapter 30.34 by adding a new section as follows:

30.34.090 Southern El Camino Real Museum Overlay Zone.

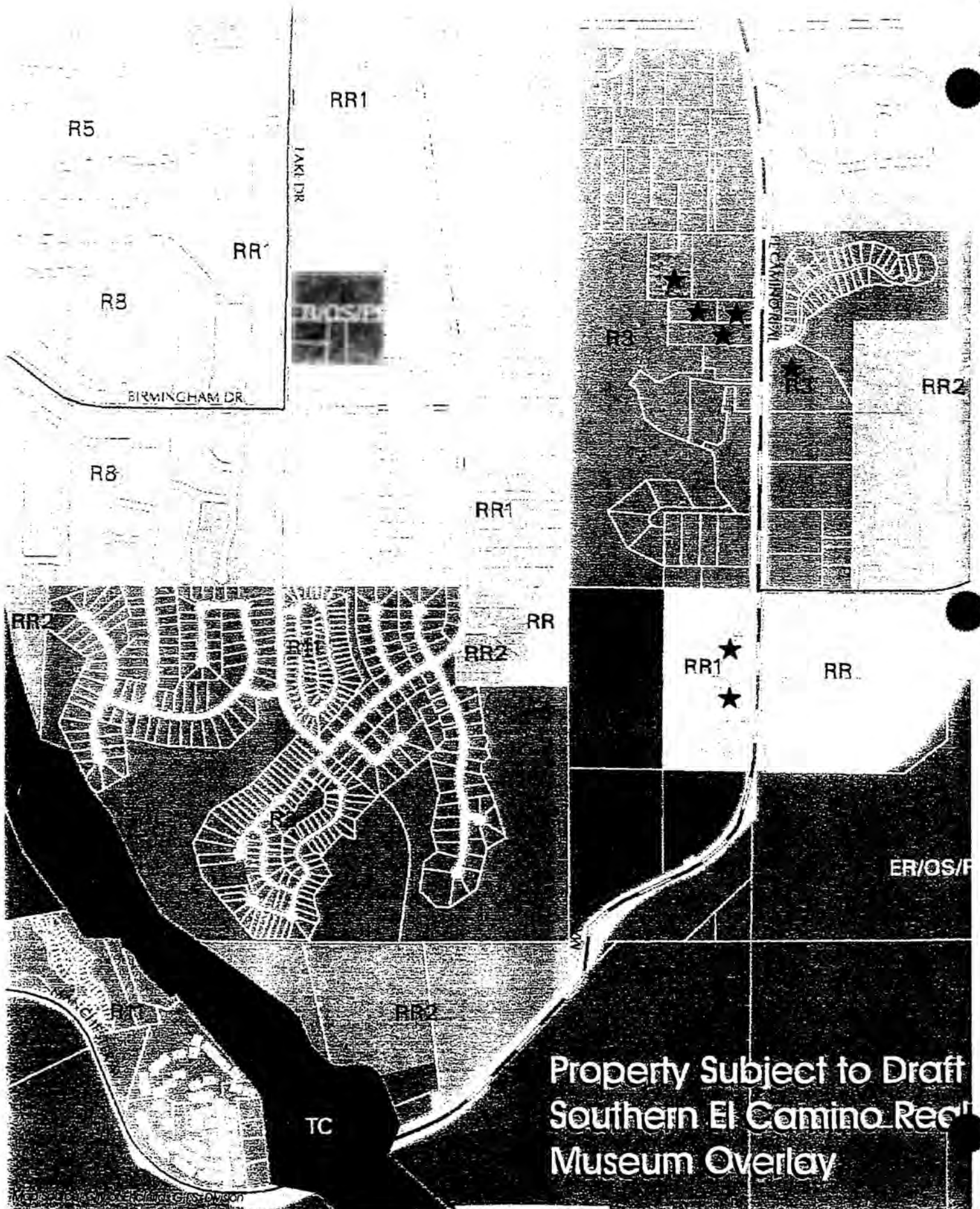
- A. Intent. The intent of the Southern El Camino Real Museum Overlay Zone is:
1. To allow museums, subject to a Major Use Permit, in a very limited portion of the RR-1 and R-3 zones that is characterized by a growing presence of institutional uses on a Circulation Element road.
 2. To supplement the zone regulations applied to museums with additional standards and procedures that will both promote a satisfactory living environment on surrounding residential properties and facilitate museum activities.
 3. To permit expanded artistic, scientific, cultural and historical activities for residents and visitors of both the city and region.
 4. To provide limited opportunities for on site ancillary housing for a caretaker or guest professional, and his or her family, in order to facilitate the goals of the museum.
- B. Applicability. The Southern El Camino Real Museum Overlay Zone regulations shall apply to all properties identified accordingly on the City's Zoning Map.
- C. Major Use Permit Required. A museum may be authorized in the Southern El Camino Real Museum Overlay Zone upon issuance of a Major Use Permit as provided by the Use Permit Procedures contained in Chapter 30.74.
- D. Development Standards (Applicable on issuance of a Major Use Permit). In addition to development and design standards which otherwise apply, the following development standards shall apply to all properties within the Southern El Camino Real Museum Special Purpose Overlay. In case of conflict between the following standards and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.
1. Maximum Lot Coverage: 35 percent for buildings. Parking and other impervious surfaces exclusive of buildings shall not exceed 15 percent.

2. **Maximum Building Height.** Building heights up to 30 feet may be considered if it can be found that the portion of the building outside of the standard 22-foot envelope maintains some of the significant views enjoyed by residents of nearby properties, and that the building is compatible in bulk and mass with buildings on neighboring properties.
3. **Residential Uses and Density.** If the museum possesses a residential component, not more than one dwelling unit shall be constructed on the project site. Occupancy of the dwelling unit shall be limited to a 1) caretaker, and his or her family, or 2) a professional of the arts or sciences, and his or her family, whose primary responsibility is to create or participate in the institution's exhibits and programs, and facilitate achievement of the museum's goals.
4. **Accessory Commercial Uses.** Accessory commercial retail sales shall only be permitted when such sales are related to the museum's exhibits and programs. The area devoted to commercial uses shall not exceed 10 percent of the museum's total floor area or 1,500 square feet, whichever is more restrictive. The authorized agency may reduce the percentage of floor area dedicated to commercial uses, limit the type of commercial use or entirely prohibit any commercial, depending on the characteristics of the project site and surrounding area.
5. **Setbacks.** Where the museum property is adjacent to a non-residential use, museum structures shall generally conform to the applicable setbacks for the RR-1 and R-3 zones. Where the museum property is adjacent to a residential use, the setback shall be 50 feet from the property line. However, the authorized agency may decrease the setback standards adjacent to residential uses if it finds that a lesser setback is appropriate, based on the site-specific design.
6. **On Site Parking.** 1 parking space per 500 square feet of gross floor area unless it is determined during the review of the project proposal that greater or fewer spaces are warranted. Modifications to the parking standard must be based on a parking study completed by a qualified traffic engineer. In addition to the parking spaces required for automobiles, suitable space shall be designated for bus loading and parking.
7. **Offsite Parking Management Plan.** Where the parking demand would exceed the onsite parking supply, an offsite parking program shall be provided that accommodates guests/visitors during special events. The major use permit may limit the number of special events per year. The offsite parking management plan shall include both parking management and transportation program.

8. Other Standards. All other standards not established in this section will be determined through the Major Use Permit.
- E. Special Regulations. In addition to development and design regulations which otherwise apply, the following development regulations shall apply to all properties within the Southern El Camino Real Museum Special Purpose Overlay. In case of conflict between the following regulations and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.
1. Architectural Style, Building Materials, Signs and Landscape Design. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location and design of parking areas, landscaping and other features shall be compatible with the character of the surrounding area. Architectural styles, building materials, signs and landscape designs that detract from the prevailing development character shall be avoided. Signs shall be constructed of natural materials such as wood and stone. Approval of any and all signs for the museum site must be a part of the major use permit.
 2. Off Site Directional Signage: One off site directional sign shall be permitted subject to the following:
 - The placement of the directional sign shall be on private property and located at the nearest intersection of the local road that the museum fronts and the Circulation Element Road.
 - The maximum height of the sign shall not exceed eight feet.
 3. Traffic Study. A traffic study shall be submitted with the application. A professional transportation engineer must prepare the study according to City guidelines and standards. The following subjects must be evaluated in the study to the satisfaction of the City:
 - Impacts to intersection operations, including changes in levels of service.
 - Project-related and cumulative impacts to traffic load and capacity on affected streets, including changes in levels of service.
 - Potential for increasing street or intersection hazards.
 - Mitigation to reduce any identified traffic impacts to less than significant.
 - Any additional traffic issues identified by the City.

4. Noise. Amplification of music, human voices and other sources of sound are not permitted outside of the museum buildings. Sound from inside the building must otherwise be in compliance with the performance standards contained in Municipal Code Section 30.40.010.
5. Lighting. Exterior lighting shall be limited to security lighting, parking lot lighting, and lighting required for use of outside courtyards, decks, walkways and stairs. Outside courtyards, decks, walkways and stairs shall only be illuminated during evening events except for minimal lighting required for the safety and security. All lighting sources shall be shielded in such a manner that the light is directed away from streets and adjoining properties. Illuminators should be integrated within the architecture of the building to the extent possible. Freestanding lampposts in the parking lot shall be no taller than 18 feet. A lighting plan with performance standards, prepared to the satisfaction of the City, shall be submitted with the use permit application. Use of motion detection lighting is preferred to lights activated manually or by a timer. The performance standards and other relevant criteria identified in the lighting plan shall be incorporated into the Major Use Permit.
6. Landscaping. Buildings, parking areas and outdoor areas shall be integrated with landscaping consistent with residential development. Landscaping, including plants, patios and decorative walls with plants, may be natural or designed for the site.
7. Grounds Rentals. Rental of the museum grounds for special private and public events is permitted in accordance with the Municipal Code standards for special events and the conditions of the Major Use Permit.

SEE ATTACHMENT D
ORDINANCE NO. 2001-08
AMENDMENT TO ZONING MAP



July 18, 2001

Reference: Encinitas Ordinance 2001-08, Museum Special Purpose Overlay Zone

On July 11, at the Encinitas City Council meeting, the Council passed a zoning ordinance amendment that is inconsistent with the Encinitas General Plan. The Museum Overlay Zone with a conditional use permit allows nonresidential uses (museum, retail sales, etc.) in four areas of residential zoned R-3 and RR-1 land in the Lux Canyon and San Elijo Lagoon area.

Land use planning references state that an ordinance that is not consistent with the general plan is invalid when passed. The EIR lists policy after policy of the General Plan that the Museum Overlay Zone has in "potential inconsistency." The Museum Overlay Zone ordinance amendment is not consistent and incompatible with the objectives, policies, general land uses, and programs of the General Plan.

Currently, the residential zones are being changed to nonresidential uses by issuing conditional use permits already allowed in the zoning code. The Museum Overlay zone will add a new conditional use permit (CUP) that allows for more nonresidential uses in the residential zones. The City is increasing the number of approved nonresidential CUPs in the Lux Canyon and San Elijo Lagoon area. High density nonresidential uses are crowding out the low density residential in the area. The results can be summed up in Mayor Holz's comments:

"In other words, the exception is the rule and the rule is gone. There will be no more residential there and what I'm hearing is that 'yeah, this shouldn't be a residential area. It should be an exception to residential in the area,' and I don't know that I feel that way."

The Encinitas General Plan objectives and general land uses maintain that this area is to be low density rural and low density residential. The RR, RR-1, and R-3 zones provide a rural transition from the San Elijo Lagoon to the more urban residential areas.

Page LU-31 states: All land that is presently undeveloped has been designated for a specific land use.

In this way, property owners, neighbors, and officials can anticipate the nature and intensity of development that is likely to occur in these areas.

The Museum Overlay Zone with its high density nonresidential uses changes the objectives and general land uses in the General Plan.

Voters Must Decide

Policy 3.9 of the Land Use Element states: With the exceptions described in Policy 3.12, once acknowledged as being consistent with the General Plan and Local Coastal Program, property designated/zoned for residential use shall not be redesignated/rezoned to any non-residential use except by the affirmative vote of a majority of those voting in the election approving the proposed change.

According to Policy 3.9, the voters of Encinitas must approve an amendment to the General Plan that redesignates and or rezones residential property to nonresidential use. This Museum Overlay Zone Ordinance, which is not a General Plan amendment, redesignates the residential use to nonresidential use.

EXHIBIT NO. 3
APPLICATION NO.
ENCINITAS
LCPA 2-2001
Letter of Opposition

Reference: Encinitas Ordinance 2001-8

Justice Eagleson wrote in the opinion on *Leshar Communications, Inc. v. City of Walnut Creek*, that "The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform."

During the City Council discussion period, there was acknowledgment that the Museum Overlay Zone zoning ordinance amendment and the conditional use permits change the General Plan.

Mayor Holz commented, "You know the General Plan says residential and basically you're saying we're going to box all the residential out. So, for people that are already living there in residential, that means that they are being imposed upon more heavily than other parts of the city."

Increased Population Density

The zoning ordinance amendment is inconsistent with the General Plan in population density. The General Plan states that the population density of an R-3 zone is 8 persons per acre, and the RR-1 zone is approximately 3 persons per acre. The Lux Art Institute, a concurrent approved project under this museum overlay zone ordinance, is allowed over 250 persons per acre.

Voter Approval Needed to Increase Residential Population Density

In the General Plan, under Policy 3.7 it states:

With the exceptions described in Policy 3.12, once acknowledged as being consistent with the general Plan and Local Coastal Program, the allowable maximum density of any property designated for residential use shall not be increased except by the affirmative vote of a majority of those voting in the election approving the proposed increase.

The Museum Overlay Zone Ordinance, which is not a General Plan amendment, upzones and changes the General Plan designated residential zone population density. Voter approved is required to change the General Plan allowable maximum density of designated residential property.

In summary, the Museum Overlay Zone ordinance takes away the rights of the voters to decide. The City is making the General Plan conform to the ordinance. The Museum Overlay Zone ordinance is inconsistent with the General Plan. The ordinance was invalid when it was passed by the City Council.

Thank you.

Yours truly,

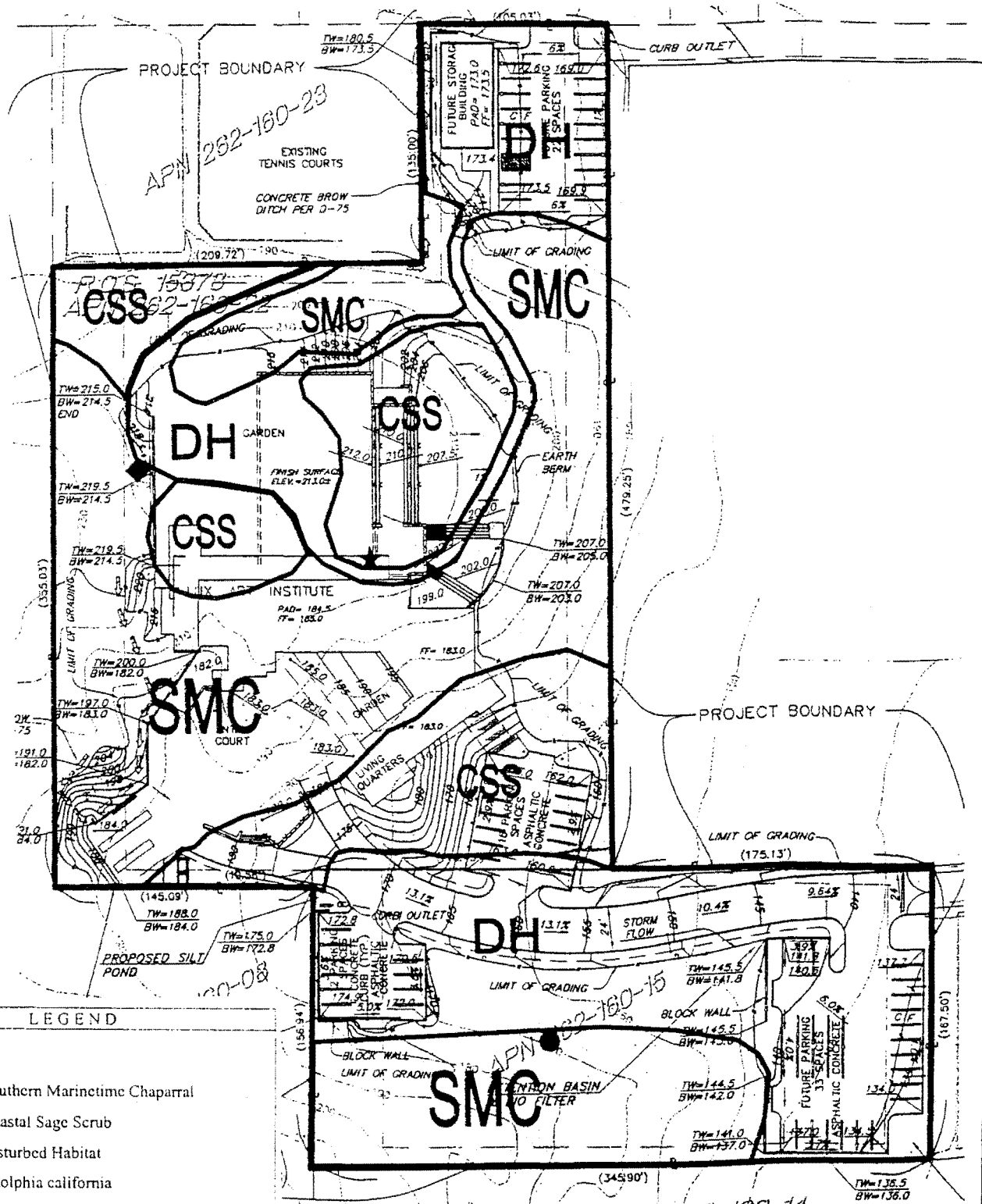
Donna Westbrook
Donna Westbrook

RECEIVED

JUL 19 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

JUL 19 2001



LEGEND

- SMC = Southern Marintime Chaparral
- CSS = Coastal Sage Scrub
- DH = Disturbed Habitat
- ◆ = *Adolphia californica*
- = *Quercus dumosa*
- ★ = California Gnatcatcher

EXHIBIT NO. 4
APPLICATION NO.
ENCINITAS
LCPA 2-2001
 Subarea A –
 Biological Resources

Source: REC Consultants, 2000

