

## CALIFORNIA COASTAL COMMISSION

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February 16, 2005

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE  
ELLEN LIRLEY, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR  
AMENDMENT NO. LCPA 3-03B (Crescent Heights) for March 2005 Commission Meeting**

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**SYNOPSIS**

This request, LCPA 3-03B, is part of LCP amendment package No. 3-03. The remainder of the package is addressed in a separate staff report as LCPA 3-03C, which addresses an adjacent, 37.5-acre site (Sunset Pointe). A time extension for up to one year for Commission action on LCPA #3-03B and LCPA #3-03C was granted on October 15, 2004. LCPA 3-03A, an IP change that addressed companion units, was acted on by the Commission in November, 2003. In addition to the LCP amendment, corresponding coastal development permit applications are currently undergoing staff analysis, although they are incomplete and not yet filed. The Coastal Commission will review these proposed subdivisions at a later date as portions of the proposed lots are in an area of deferred certification, where the Commission retains permit authority at this time.

**SUMMARY OF AMENDMENT REQUEST**

The City of San Diego is requesting to amend both the certified North City LCP Land Use Plan (LUP) segment (Mira Mesa subarea) and the certified LCP Implementation Plan (IP). The proposed LCP amendment would change the current boundaries between the residential and open space land use designations on a 185 acre site known as Crescent Heights. The site affected by the proposed amendment consists of nine non-contiguous parcels including steep hillsides, canyons and mesa tops along both the north and south sides of Lopez Canyon, and along the south side of Los Penasquitos Canyon. The revised open space line would concentrate the residential use on three contiguous properties and designate the six remaining properties as open space. The properties to be developed generally surround the intersection of Camino Santa Fe and Calle Cristobal, in the Mira Mesa Community of the North City LCP segment.

In addition, the amendment would change the LUP policies that currently prohibit grading beyond the rim of Los Penasquitos Canyon Preserve to allow encroachment beyond the canyon rim if the development meets certain criteria proposed by the City.

Revision to this policy along with the revised open space boundaries would accommodate residential development within the upper reaches of several finger canyons currently designated open space and containing environmentally sensitive habitat area (ESHA).

In addition, the amendment would delete the current LUP language that references the R-1-5000 and R-1-10,000 zones as the appropriate zones to implement the very low residential density land use designation, which allows 0-4 dwelling units per acre (dua), and replace it with general text referring to a zone that "matches the development intensity, with open space zoning applied to open space areas".

Also proposed is an Implementation Plan (IP) amendment to rezone all the lots, which are currently all zoned AR-1-1, formerly called the A-1-10 Zone, a very low density holding zone requiring minimum 10-acre lots. All proposed permanent open space would be rezoned to OC-1-1, the City's most restrictive open space zone. Areas to be developed with single-family residential use on the Crescent Heights property will be rezoned to RX-1-2 (minimum 3,000 sq.ft. lots, or 14.1 dwelling units per acre [dua]), and all areas proposed for multi-family development will be rezoned to RM-2-5 (maximum density one dwelling unit per 1,500 sq.ft., or 29 dua).

The City of San Diego has approved a coastal development permit for a Planned Residential Development (PRD) called Crescent Heights in association with the proposed LUP amendment. The proposed LUP revisions would accommodate a residential development as approved by the City to be clustered on parts of three mesa top parcels which total approximately 101 acres of the 185 acre site. The 272 unit residential development approved by the City is not consistent with current zoning, the land use/open space designations in the certified LUP, the zones suggested in the LUP to be appropriate for the site, and the LUP policy that prohibits grading beyond the canyon rim; thus, an LCP amendment is requested.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the LUP and IP amendments as submitted, and approval with suggested modifications that would change the City's proposal in several significant ways. The potential impacts to environmentally sensitive habitat area (ESHA) associated with the proposed LUP amendment would occur through the significant changes being proposed to the line that currently separates areas designated for residential use and open space, as well as through some textual changes. The revised line would change the land use designation of the upper reaches of several side canyons within the Los Penasquitos Preserve system containing ESHA and steep hillsides from open space to residential. These areas to be removed from open space contain coastal sage scrub and are currently protected by the Environmentally Sensitive Lands regulations in the certified Land Development Code (LDC) and the Multi-Habitat Preserve Area (MHPA) identified in the City's Multiple Species Conservation Program (MSCP), in addition to the open space LUP designation.

Staff is recommending the Commission adopt a revised open space boundary that would protect all the vernal pools and wetland buffer and the majority of the coastal sage scrub habitat on the Crescent Heights properties within the open space designation. The revised open space line was drawn based on the biological resources map in the EIR, and generally follows the rimline or the upper limits of the coastal sage scrub vegetation where non-ESHA vegetation extends beyond the rimline on the site. An exception includes the area within the future road alignment and north of the road necessary to access the Multi-family West development site.

As proposed by the City, grading over the rim of the canyons would be allowed in certain circumstances, and these provisions would be applied to the community as a whole. Staff recommends the Commission not accept the City's proposed blanket exception for the entire community when the details and constraints of remaining undeveloped properties are not known.

Rather than accept the general language proposed by the City that would allow development to include grading below the canyon rim, staff is recommending site-specific development criteria for the Crescent Heights property to guide future development of the site in conformance with the certified LUP and Section 30240 of the Coastal Act. A site-specific approach is warranted due to specific resources on the site (vernal pools and occupied gnatcatcher habitat), the non-contiguous nature of the lots, and the balancing of harms and benefits to this area that ultimately can be accomplished through retirement of six legal lots from development potential.

The criteria impose a cap on the total number of units allowed (250) and require the units to be clustered on three of the existing legal lots. Development rights on the other six legal lots will be retired and those lots maintained as open space conservation areas. It should be noted, the 250 unit cap does not guarantee that this number of units can be accommodated on the properties after the site constraints and applicable policies, development standards and regulations are all taken into consideration. However, the cap does assure the density of any future development will be within the density limits established in the LUP.

The exception to the LUP policy prohibiting grading beyond the rim of the canyon applies only to the Multi-Family West and North development areas, and is necessary to allow access to the developable portions of the sites already delineated for residential development in the certified LUP. No impacts to ESHA will result from construction of road access to the Multi-family North development area. Grading over the rim to construct a road for access to the Multi-family West development will result in approximately one acre of unavoidable impact to ESHA.

Other criteria assure protection of wetland species including the vernal pools located on the Multi-family North site and the Monardella located within Lopez Canyon. The development criteria also address brush management or fuel modification requirements to be applicable to any development proposed on the Crescent Heights properties. Based on recent Commission action on two large residential subdivisions in Orange County, the

criteria assure the development is located in a manner that avoids impacts to ESHA for all brush management measures required to meet the fire department standards, i.e. minimum 100 ft. distance from structures. The policy acknowledges that, when possible, all brush management should be located outside open space areas. However, at a minimum, a 35 foot Zone One must be accommodated within the developable area and outside designated open space, and Zone Two brush management is not permitted within ESHA.

Although the language, as recommend by staff, allows development that would displace ESHA, the allowable impact is only in a specific area and only in conjunction with the preservation of vernal pools and their watersheds, protection of additional areas containing coastal sage scrub habitat, and concentration of the habitat preserve. Much of this would be accomplished by retiring development potential on six otherwise developable parcels. This approach limits the exception to the LUP policy prohibiting grading beyond the rim of the canyon to a site-specific proposal in which the impacts allowed to ESHA would be balanced against multiple benefits, so that the proposal on the whole is most protective of coastal resources, as well as being less open to discretionary interpretation than the critieria proposed by the City.

If modified as suggested, the LUP amendment would allow a future development pattern that, on balance, is most protective of the significant coastal resources within Penasquitos and Lopez Canyons, especially when compared to build-out of the individual parcels. The LUP will promote the basic development pattern proposed by the City which will concentrate allowable development adjacent to existing urban services and other developed areas, as is required by Section 30250, and it will protect many acres of currently vulnerable ESHA, as is required by Section 30240.

**The appropriate resolutions and motions begin on page 7. Suggested Modifications begin on page 9. The findings for denial of the LUP amendments begin on page 13. The findings for approval of the LUP amendments with suggested modifications begin on page 29. The findings for denial of the IP amendments begin on page 40. The findings for approval of the IP amendments with suggested modifications begin on page 46.**

## **BACKGROUND**

For purposes of developing an LCP, the City of San Diego's coastal zone was divided into twelve segments, each with their own land use plan. In the case of the North City LCP segment, the area included several distinct communities that were in various stages of planning and buildout. Mira Mesa, where this site is located, is one of the "subareas," along with Carmel Valley, Sorrento Hills, Torrey Pines, University, Via de la Valle, and the North City Future Urbanizing Area. Portions of the property are also within the Penasquitos Canyon Preserve study area, that is an area of deferred certification within Mira Mesa, where master planning has not yet taken place.

The area of deferred certification (ADC) known as Los Penasquitos Canyon Preserve encompasses both Los Penasquitos and Lopez Canyons. This is identified in the Commission's certification action in 1988 in narrative form only, with no accompanying map. However, the Preserve master planning area encompasses both the streambeds and canyon walls. Therefore, both the City and the Commission have acted for the past 16 years on the understanding that the area of deferred certification includes everything below the rim of the canyons, with only the mesa tops in the City's coastal development permit jurisdiction. Thus, for purposes of coastal development permits, portions of the subject site on the mesa tops are within the City's jurisdiction, and portions beyond the canyon rim are within the deferred certification area, where the Coastal Act remains the legal standard of review, and the Mira Mesa LUP and older North City LUP are used for guidance.

**ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. 3-03B (Crescent Heights) may be obtained from Ellen Lirley, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. The earliest LUP approval occurred in May 1979, with others occurring in 1988, in concert with the implementation plan. The final segment, Mission Bay Park, was certified in November 1996. Since 1988, a number of community plans (LUP segments) have been updated and certified by the Commission.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) and a few PDOs; this replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000.

Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future. Since effective certification of the City's LCP, there have been numerous major and minor LCP amendments processed by the Commission.

### **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 and conforms with 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.

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.

In those cases when a local government approves implementing ordinances in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review of the implementing actions shall be the land use plan most recently certified by the Commission. Thus, if the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan.

### **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**

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. Denial of Proposed LUP Amendment as Submitted**

**MOTION:**     *I move that the Commission certify Land Use Plan Amendment No. 3-03B as submitted by the City of San Diego (Crescent Heights).*

#### **STAFF RECOMMENDATION TO DENY:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

#### **RESOLUTION TO DENY:**

The Commission hereby denies certification of the Land Use Plan Amendment No. 3-03B) as submitted by the City of San Diego (Crescent Heights) and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible

alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

## II. Approval of Proposed LUP Amendment with Suggested Modifications

**MOTION:** *I move that the Commission certify Land Use Plan Amendment No. 3-03B) for the City of San Diego (Crescent Heights) if it is modified as suggested in this staff report.*

### **STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:**

Staff recommends a YES vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

### **RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Land Use Plan Amendment No. 3-03B for the City of San Diego (Crescent Heights) if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

## III. Rejection of Proposed Implementation Plan Amendment as submitted

**MOTION III:** *I move that the Commission reject the Implementation Program Amendment No. 3-03B for City of San Diego (Crescent Heights) 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 No. 3-03B as submitted by the City of San Diego (Crescent Heights) and adopts the findings set forth below on grounds that the Implementation Program as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program 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 as submitted.

#### **IV. Approval of Proposed Implementation Plan Amendment if Modified**

**MOTION IV:** *I move that the Commission certify the Implementation Program Amendment No. 3-03B for the City of San Diego (Crescent Heights) if it is modified as suggested in this staff report.*

#### **STAFF RECOMMENDATION:**

Staff recommends a YES vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications 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 CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program for City of San Diego LCPA No. 3-03B (Crescent Heights) if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

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

**Note:** These revisions show changes the Commission is suggesting to the LCP as it is proposed to be amended. Text with a single underlining is text proposed by the City as part of this proposed LCP amendment; text with no underlining but that is struck out is text the City is proposing for deletion. Double underlined text is Commission suggested new language or change to City-proposed language. Strike-out with single underline is Commission

**suggested deletion of City-proposed language. For a complete listing of the City's proposed changes, see pages 15-16, below.**

1. Revise the proposed Figure 1 (Land Use Map), Figure 6 (Designated Open Space System), Figure 7 (Recommended Trail System), Figure 8 (Recommended Wildlife Corridors) and Figure 18 (Recommended Residential Densities) to conform to the revised boundaries between open space and residential developable area as shown on Exhibit 4 (a,b and c). The revised open space line generally follows the rimline or the upper limits of the coastal sage scrub vegetation where non-ESHA vegetation extends beyond the rim line, as shown on the biological resources map (Figur 4C-1) in the certified EIR.
2. Revise Zoning Map C-917 Attachment to Ordinance Number 0-19199 (new series) to conform to the revised boundaries between open space and residential developable area as shown on Exhibit 4 (a,b and c), and attach to replacement Ordinance to be approved by the City.
3. On Page 77 of the certified Mira Mesa Community Plan, revise Residential Densities description as follows:

**Very low density: 0-4 dwelling units per gross acres.** This density range is proposed for Lopez Ridge and the northeastern corner of the community near Canyon Hills Park. This range is generally characterized by clustered detached single-family or attached multifamily units (such as duplexes and townhomes) built on large hillside parcels that contain relatively small areas suitable for buildings. Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. Especially when clustering is used on ridgetop and hillside parcels, appropriate zoning should be applied to the developable area which matches the development intensity, with open space zoning applied to the associated open space areas. The R1 10,000 Zone or the R1 5000 Zone if units are clustered to preserve natural open space areas, are proposed to implement this designation. The maximum four units per acre is not likely to be achieved except on lots that have large areas in slopes of less than 25 percent.

4. On Page 80 of the certified Mira Mesa Community Plan, add the following section under Site-specific Proposals:

d. Crescent Heights. Approximately 185 acres in nine lots (Pardee Homes) located to the west and east of Camino Santa Fe, south and north of Calle Cristobal are proposed for a mix of residential housing types including both single- and multi-family units, and open space. The following development criteria shall apply to this area:

1. A maximum of 250 residential units clustered on the portions of the three lots located north and south of the intersection of Calle Cristobal and Camino Santa Fe that are designated for residential development, with the development potential on the remaining six lots retired as open space and undevelopable area. The extinguishment of development rights shall occur at the time of recordation of the final map for any subdivision proposed on this site.

2. All of the other land on the three legal lots to be developed (i.e., all of the land not designated for residential development) shall be preserved through open space deed restrictions or conveyances, and all such areas shall be zoned as OC (open space conservation). Recordation of the deed restrictions or completion of the conveyances shall occur at the time of recordation of the final map for any subdivision proposed on this site.

3. Downstream sensitive resources, particularly the remaining populations of the endangered Monardella, shall be protected from the effects of runoff through appropriate on-site detention facilities.

4. All impacts to on-site vernal pools shall be avoided; and, the buffer area shall include the entire watershed and/or a minimum 100 ft. distance from each individual vernal pool to any structure or grading, whichever is greater. The vernal pool and buffer area shall be included in the MHPA and zoned OC (Open Space Conservation).

5. Grading over the rim of the Los Penasquitos Canyon Preserve shall be prohibited except to access flatter, less sensitive areas in the Multi-Family North and Multi-Family West Development and only under all of the following specific circumstances:

a. Such grading is the only means to access flatter, less sensitive portions of the site which shall be determined through review of a comprehensive alternatives analysis.

b. Required grading avoids impacts to steep hillsides and sensitive biological resources to the maximum extent possible and such impacts are mitigated in accordance with the Biology Guidelines contained in the Land Development Manual.

c. Flexibility in road design is achieved through use of retaining walls, minimum road width, or other appropriate methods to reduce impacts to steep hillsides and sensitive biological resources to the maximum extent possible.

6. Brush management/fuel modification requirements shall be consistent with the following specific standards:

a. Structures shall be located such that Zone One brush management (minimum width of 35 feet) shall be entirely within the area designated for development and outside open space and environmentally sensitive lands. The width of Zone One should be increased when possible to reduce the width of Zone Two and impacts to native vegetation.

b. Zone Two brush management (selective clearing to maximum width of 65 feet) may be allowed in open space when subject to an approved site-specific brush management plan acceptable to the fire department that avoids significant disruption of habitat values to the maximum extent possible. However, Zone Two brush management within open space areas containing coastal sage scrub habitat, vernal pools and/or wetland buffers shall not be permitted. Measures such as replacing cleared or thinned native vegetation with fire-resistant native vegetation that does not require fuel modification and is compatible with the existing habitat, and maintenance of at least 50% of the existing ground cover of native vegetation shall be implemented, when possible, to avoid significant disruption.

7. Impacts to vernal pools, wetland buffers and coastal sage scrub habitat within open space areas shall be limited to habitat restoration, enhancement and maintenance of restored areas.

5. Revise the existing and proposed Development Criteria commencing on Page 107 of the certified Mira Mesa Community Plan, as follows.

1. Grading over the rim of Los Penasquitos Canyon Preserve shall not be permitted except as may be allowed through application of site-specific policies commencing on Page 80 of this plan. in #12 below...

8. Landscaping adjacent to Los Penasquitos, Lopez, Carroll, or Rattlesnake canyons shall be predominantly native species and non-invasive ...

6. Paragraph 12, as proposed by the City, referenced on Page 107 and to be located on Page 108 of the certified Mira Mesa Community Plan, shall be deleted in its entirety, as follows:

~~-12. Development beyond the rim of Los Penasquitos Canyon and/or Lopez Canyon may only be permitted when the proposed development results in an environmentally superior project. An environmentally superior project shall meet the following criteria:~~

~~a) The disturbed area for the proposed development is the minimum necessary to allow appropriate development consistent with this plan while implementing an environmentally sensitive alternative. The~~

proposed disturbed area should be sited to cluster development within/adjacent to existing disturbed areas and/or adjacent to existing development.

b) The impervious areas for the proposed development (e.g. building footprint, driveways, roads and sidewalks) are the minimum necessary to allow appropriate development consistent with this plan.

c) The proposed development must result in a new increase in the preservation of Tier I habitat and avoid all impacts to wetlands, including vernal pools and their watersheds, and provide adequate buffers to resources consistent with the Environmentally Sensitive Lands regulations contained in the City of San Diego Land Development Code and the Biology Guidelines.

d) The proposed development must maintain or improve overall habitat value and wildlife movement/corridors.

e) Slopes encroaching into the canyon must be blended into the natural topography with contour grading and be revegetated with native plants, including the planting of native species from areas proposed for disturbance.

f) The proposed development must be consistent with the City of San Diego MSCP Subarea Plan.

g) The site design must not exacerbate erosion/siltation in the watershed and Lopez Canyon by using sensitive grading techniques and best management practices (BMPs). No detention basins shall be located within the MHPA and all facilities must be designed/sited to minimize impacts to open space.

h) The project must be sited and designed not to significantly impact views from designated open space areas, including trails.

Any development consistent with this section that results in structures being visible from the floor of Lopez Canyon, or encroaches into Plan designated open space shall require an amendment to the Community Plan.

#### **PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE LCP LAND USE PLAN AMENDMENT, AS SUBMITTED**

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

The City of San Diego is requesting to amend the certified North City LCP Land Use Plan (Mira Mesa subarea) policy text in two ways. First, the amendment would change the policies that currently prohibit grading beyond the rim of Los Penasquitos Canyon Preserve to allow encroachment beyond the canyon rim if the development meets certain criteria. In addition, the amendment would delete the current language that references the R-1-5000 and R-1-10,000 zones as the appropriate zones to implement the very low residential density land use designation, which allows 0-4 dwelling units per acre (dua), and replace it with general text referring to a zone that "matches the development intensity, open space zoning applied to open space areas".

Second, the amendment would change several land use plan maps which establish the current boundaries between the residential and open space land use designations on a 185 acre site known as Crescent Heights. The site affected by the proposed amendment consists of nine non-contiguous legal lots including steep hillsides, canyons and mesa tops along both the north and south sides of Lopez Canyon, and along the south side of Los Penasquitos Canyon. Six of the nine parcels are proposed to be retained as open space, and the remaining three are proposed to accommodate single- and multi-family development and open space.

The City of San Diego has approved a coastal development permit for a Planned Residential Development (PRD) called Crescent Heights in association with the proposed LUP amendment. The proposed LUP revisions would accommodate a residential development as approved by the City to be clustered on parts of three mesa top parcels which total approximately 101 acres of the 185 acre site. The 272 unit residential development approved by the City is not consistent with current zoning, the land use/open space designations in the certified LUP, the zones suggested in the LUP to be appropriate for the site, and the LUP policy that prohibits grading beyond the canyon rim; thus, an LCP amendment is requested. The residential sites are located to the west and east of Camino Santa Fe, south and north of Calle Cristobal in the Mira Mesa community of North City. The other six parcels, all but one of which have portions currently designated for residential development, are located to the east of the residential development site, along the north and south rims of the canyon.

Also proposed is an Implementation Plan amendment to rezone all the parcels, which are currently all zoned AR-1-1 (formerly A-1-10), a very low density holding zone requiring minimum 10-acre lots. The Implementation Plan amendment will be discussed in detail later in this report. However, in summary, all proposed permanent open space would be rezoned to OC-1-1, the City's most restrictive open space zone. Areas to be developed with single-family residential use would be rezoned to RX-1-2 and areas proposed for multi-family development will be rezoned to RM-2-5. Such zones would accommodate the development approved by the City, which includes 128 single family units and 144 multi-family units within the areas of the three lots that would be residentially designated under the current proposal. Although the zones would allow development up to 14.1 dua for the RX-1-2 Zone and up to 29 dua for the RM-2-5 Zone, the City-approved project for this site attains a density of only 2.69 dua on average.

In addition to the LCP amendment request, an associated coastal development permit application is undergoing staff analysis at this time for specific development of this site that has already been approved at the local level. The Coastal Commission will review the proposed subdivision, and portions of the proposed residential development, which are located in areas of deferred certification, at a later date.

**B. NONCONFORMITY OF THE LAND USE PLAN AMENDMENT WITH  
CHAPTER 3 POLICIES OF THE COASTAL ACT**

The City of San Diego is requesting to amend the certified Mira Mesa LUP policies addressing development adjacent to canyons. The amendment will also modify several maps to refine the line between designated residential use and open space on an approximately 185-acre total property, located on nine non-contiguous parcels. Specific lot by lot information describing each lot is given in the subsequent finding addressing land use. This area of Mira Mesa consists primarily of flat mesas several hundred feet in elevation that abruptly drop off into deep canyons. The canyons were formed by streams that were once intermittent but that now, because of upstream development, run most of the year. The canyon walls are vegetated with a number of different native plant communities, with small areas of disturbance and/or exotic plants also present.

The specific policies the amendment proposes to modify are those addressing appropriate densities for new development, and an existing prohibition on grading over the rim of Los Penasquitos Canyon Preserve. These changes would result in significant modification to the current development pattern in this area of Mira Mesa, a part of the North City LCP segment. With very minor exceptions, typically for drainage facilities, existing development occurs only on the flat mesa tops, with the slopes and canyon walls remaining undisturbed, consistent with the existing LUP language specifically prohibiting grading beyond the canyon rim of Los Penasquitos Canyon Preserve, which includes both Penasquitos and Lopez Canyons. The proposed changes would occur on Pages 39, 77, 107 and 108 of the certified Mira Mesa Community Plan, and are shown below:

Page 39: ~~Retain A-1-10 zoning on areas designated~~ Rezone open space areas to a zone appropriate for open space preservation.

Page 77: ... Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. Especially when clustering is used on ridgetop and hillside parcels, appropriate zoning should be applied to the developable area which matches the development intensity, with open space zoning applied to the associated open space areas. The R1-10,000 Zone or the R1-5000 Zone if units are clustered to preserve natural open space areas, are proposed to implement this designation. The maximum ...

Page 107: 1. Grading over the rim of Los Penasquitos Canyon shall not be permitted except as may be allowed in #12 below.

Page 108: 12. Development beyond the rim of Los Penasquitos Canyon and/or Lopez Canyon may only be permitted when the proposed development results in an environmentally superior project. An environmentally superior project shall meet the following criteria:

- a) The disturbed area for the proposed development is the minimum necessary to allow appropriate development consistent with this plan while implementing an environmentally sensitive alternative. The proposed disturbed area should be sited to cluster development within/adjacent to existing disturbed areas and/or adjacent to existing development.
- b) The impervious areas for the proposed development (e.g. building footprint, driveways, roads and sidewalks) are the minimum necessary to allow appropriate development consistent with this plan.
- c) The proposed development must result in a new increase in the preservation of Tier I habitat and avoid all impacts to wetlands, including vernal pools and their watersheds, and provide adequate buffers to resources consistent with the Environmentally Sensitive Lands regulations contained in the City of San Diego Land Development Code and the Biology Guidelines.
- d) The proposed development must maintain or improve overall habitat value and wildlife movement/corridors.
- e) Slopes encroaching into the canyon must be blended into the natural topography with contour grading and be revegetated with native plants, including the planting of native species from areas proposed for disturbance.
- f) The proposed development must be consistent with the City of San Diego MSCP Subarea Plan.
- g) The site design must not exacerbate erosion/siltation in the watershed and Lopez Canyon by using sensitive grading techniques and best management practices (BMPs). No detention basins shall be located within the MHPA and all facilities must be designed/sited to minimize impacts to open space.
- h) The project must be sited and designed not to significantly impact views from designated open space areas, including trails.

Any development consistent with this section that results in structures being visible from the floor of Lopez Canyon, or encroaches into Plan-designated open space shall require an amendment to the Community Plan.



As submitted, modifications of this, and other, existing LUP language cannot be found consistent with Chapter 3 of the Coastal Act, as detailed below.

1. **Land Use/Concentration of Development.** The following Coastal Act policy addresses the appropriate location of new development, and states, in part:

**Section 30250.**

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. ...

The existing legal lots are located both north and south of Calle Cristobal, north and south of Lopez Canyon and east and west of Camino Santa Fe and are shown on Exhibit 5. Currently, all but one of the lots include at least some small area designated for residential use. These areas typically are located at the tops of side canyons, and consist of both flat and sloping areas. The lots to be entirely open space, consist of the three lots south of Lopez Canyon, two lots north of Lopez Canyon and one of the two legal lots north of Calle Cristobal. The lots on the mesa top along the southern rim of Lopez Canyon abut existing built residential subdivisions, and access to those undeveloped sites would only be available via easements through the existing development or roads constructed around the perimeter of the existing development. Also, site topography and biological resources would limit these areas to very few homes, as would existing zoning. The one lot north of Calle Cristobal to be retained as open space appears completely landlocked, and is designated only as open space in the certified Mira Mesa LUP. It is only on this parcel that riparian wetlands exist.

Exhibit #5 is an approximation of the nine existing legal lots, which are identified by the last two digits of the assessor's parcel number. Lot 8 is 9.97 acres in size, Lot 10 contains 8.19 acres, Lot 15 equals 8.54 acres, Lot 23 contains 26.32 acres. Lot 24 equals 10.21 acres, Lot 25 contains 5.44 acres, and Lot 43 is comprised of 55.18 acres, Lot 44 is 29.49 acres in size and Lot 45 contains 36.06 acres.

Section 30250 of the Coastal Act mandates consolidation of development on areas able to accommodate it without significant adverse effects on coastal resources. The currently certified LUP demands the same by concentrating development on the mesa tops and prohibiting grading below the canyon rim. However, the proposed changes to the open space boundary would expand the area where development is to be "clustered", and the additional area that would be designated for residential development is environmentally

sensitive habitat area (ESHA). While all development approved by the City is concentrated on Portions of Lots 8, 43 and 45, which total 101 acres, the proposal would allow this development to encroach beyond the canyon rim into ESHA.

The proposal to modify the LUP policy currently prohibiting grading beyond the rim of Los Penasquitos Canyon would allow the grading, filling or alteration of the upper portions of many side canyons, which generally trend north-south, or perpendicular to the main east-west trending Los Penasquitos and Lopez Canyons. The canyon walls are vegetated with a variety of coastal sage and chaparral communities, and the more sensitive plant communities (the various coastal sage communities), and nearly all the identified individual sensitive plant and animal species, are located on the south-facing slopes of Lopez Canyon. The various coastal sage scrub habitats are identified as Tier II habitat in the Biology Guidelines and meet the definition of ESHA. Portions of these communities would remain in their current open space LUP designation, but others are proposed to be redesignated for residential development.

To accommodate the development approved by the City, the proposed LUP changes identify development beyond the rim as "appropriate" in some instances. City-proposed criteria, which would indicate an "environmentally superior project," must include the minimum amount of disturbance necessary to allow appropriate development. Given the effect on coastal resources of such development, application of Section 30250 would dictate that a development footprint allowing any encroachment beyond the canyon rim and within ESHA is not acceptable and that new development should be appropriately sited on the mesa tops only.

Proposed language changes also refer to the City's Land Development Code regulations for specific criteria. The LUP should contain enough specificity that it can stand alone, since, pursuant to the Coastal Act, the LUP is the controlling document for decision making purposes, and is the standard of review by which implementation plans are measured.

The proposed text changes would delete reference in the LUP to the R1-10,000 zone and the R1-5,000 zone, if units are clustered, as the suggested zones to implement the very low residential density 0-4 dwelling units per acre (dua) land use designation. As proposed, this language would be replaced with language that states appropriate zoning should be applied to the developable area which matches the development intensity. The Commission finds the proposed language to be misleading and to suggest the development intensity should be determined before the appropriate zoning of the site is determined and should dictate how the site is to be zoned. This is inconsistent with the system of land use planning required by the Coastal Act, as well as other aspects of State law.

Although the City does not propose to change the definitions of the low and very low density LUP map designations, in this particular case, the zones proposed for implementation of the 0-4 dua land use designation would accommodate up to 29 (RM-2-5) and 14.5 (RX-1-2) dua respectively. These are not zones that are typically used to

denote very low density, but are generally considered more in the medium density range. However, they were chosen by the City because they correspond best to the specific development proposal it has already approved with respect to housing type, minimum lot size, setback requirements, etc. To allow more potential flexibility in future zone selection, the proposed LUP amendments delete the reference to any specific zone. The Commission finds that change to be acceptable, as the specific zones are normally designated in the IP rather than the LUP. However, the Commission finds the City's proposed replacement language is not necessary to allow consideration of the range of residential zones offered in the LDC as potential zoning, taking into consideration the land use designation and other applicable policies of the LUP. Moreover, as indicated above, it appears to reverse the appropriate order in which land use decisions are made. Therefore, it should be deleted.

In summary, the Commission finds that the LUP changes proposed by the City would accommodate development in areas resulting in significant adverse effects on coastal resources, which is inconsistent with Section 30250 of the Act. Thus, the proposed LUP amendment must be denied. Nevertheless, the Commission believes that, with modifications to the proposed amendments, residential development consistent with all plan policies and still allowing a higher concentration of development in limited areas can occur. Suggested modifications to accommodate this will be discussed in Part V of this report.

**2. Environmentally Sensitive Habitats/MHPA.** The potential impacts to environmentally sensitive habitat area (ESHA) associated with the proposed LUP amendment would occur through the significant changes being proposed to the line that separates areas designated for residential use and open space, as well as through some textual changes. The revised line would change the land use designation of the upper reaches of several side canyons within the Los Penasquitos Preserve system containing ESHA and steep hillsides from open space to residential. These areas to be removed from open space contain coastal sage scrub and are currently protected by the Environmentally Sensitive Lands regulations in the certified Land Development Code (LDC) and the Multi-Habitat Preserve Area (MHPA) identified in the City's Multiple Species Conservation Program (MSCP). Prior to the LDC, the steep hillsides containing coastal sage scrub were protected by the Hillside Review Overlay Zone. The LDC defines environmentally sensitive lands (ESL) to include sensitive biological resources, steep hillsides, floodplains, coastal bluffs and beaches. The term environmentally sensitive lands is not the same as environmentally sensitive habitat area or ESHA addressed in Section 30240 of the Coastal Act. For instance, Tier I through Tier IV vegetation is considered sensitive biological resources and regulated through the ESL regulations; however, for this particular site, only Tier I (vernal pools) and Tier II (coastal sage scrub) vegetation is considered ESHA.

These canyons are also below the canyon rim and in the area where the Commission deferred certification of the LCP pending completion of a master plan for the Los Penasquitos Preserve. Since the Commission deferred certification of this area in 1988, the City and Commission staff have used the rim of both Lopez and Los Penasquitos

Canyons as the line denoting Commission permit jurisdiction and the area where grading is prohibited pursuant to the certified Mira Mesa LUP. The standard of review for development in this area is Chapter 3 of the Coastal Act.

Regarding the relationship of the certified LCP to the MSCP, several years ago, in response to significant fragmentation of habitat and accelerated loss of species, the state legislature adopted a law to address conservation in a regional manner, instead of property by property. The objectives of the southern California Natural Communities Conservation Program (NCCP) 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 many other sensitive habitat types and animal species. Generally, the purpose of the HCP and 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. Although plans have been prepared for areas as small as a single lot, the Multiple Species Conservation Program (MSCP) and its subarea plans are intended to function at the citywide or regional level, instead of focusing on impacts to individual properties. For the City of San Diego, the actual preserve lands are referred to as the Multiple Habitat Preserve Area (MHPA). Sensitive lands within the MHPA are identified as Tier I through Tier IV lands, with Tier I being the rarest and/or most sensitive.

Implementation of the MSCP or large-scale approach to habitat conservation in this area without any other restrictions would allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it has been deemed to be most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species. Although the goals of the NCCP processes include maintenance of species viability and potential long-term recovery, impacts to habitat occupied by listed species are still allowed. This approach differs from the more restrictive Coastal Act policies regarding Environmentally Sensitive Habitat Areas (ESHA), which apply within the Coastal Zone. Those policies provide that, when a habitat must be considered environmentally sensitive (e.g., because it has become especially rare and/or provides crucial habitat for listed species), uses of the habitat should not be allowed except for uses that are dependent on that resource.

As proposed by the City, the amendment request would allow significant impacts on ESHA, which are not consistent with Section 30240 of the Coastal Act. The City's certified LCP does not use the term ESHA, but, as stated previously, regulates sensitive biological resources through the ESL regulations and the Biology Guidelines of the certified Land Development Code (LDC). Pursuant to the Coastal Act, the Commission determines what is ESHA both by habitat type and function. Because of the criteria the City use for identifying Tier I and Tier II habitat, most areas that are identified by the City as Tier I or Tier II habitat constitute ESHA under the Coastal Act, particularly if they are undisturbed, high quality habitat used by listed species and/or contiguous with

other ESHA or located within wildlife corridors. In some instances, habitat not identified as Tier I or Tier II can be identified as ESHA if it otherwise meets the above-stated criteria. On this particular site, the Commission's staff ecologist has determined the Tier I (vernal pools) and Tier II (coastal sage scrub) habitats on the Crescent Heights properties are ESHA.

A number of different Coastal Act policies address potential impacts on sensitive biological resources. These will be cited in the appropriate subheadings:

### UPLAND HABITATS

#### 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.

The various legal lots involved in these proposed LUP and IP changes all contain areas of sensitive upland vegetation, including areas of up to ten different sensitive upland communities of coastal sage (six communities), chaparral (three communities) and non-native grasslands. There are also seven vernal pools, a rare, seasonal form of wetland, on one of the parcels, and riparian wetlands (southern willow scrub and coyote bush scrub) on another. In addition to the presence of several sensitive habitat types, the coastal sage and associated upland communities are home to a number of sensitive and and/or listed plant and animal species, including the San Diego Coast Barrel Cactus, Coastal California Gnatcatcher, San Diego Horned Lizard and Southern California Rufous-Crowned Sparrow. Not all vegetative communities and sensitive plants and animals exist on all lots, and some are currently in areas designated as open space in the certified LUP. Based on site surveys conducted during preparation of the EIR, there are four gnatcatcher pairs and one unpaired male on the Crescent Heights properties. Although none of the actual gnatcatcher sightings was within 500 feet of the area delineated for residential development in the proposed LUP amendment, the habitat types where the gnatcatchers were seen extend into the proposed development area. It would be difficult, and probably inaccurate, to say the project site is not occupied by gnatcatchers, at least for foraging and resting purposes.

Native grasslands are very rare, and are identified as a Tier I habitat in the City of San Diego's MSCP. Tier I habitats are considered those rarest and most valuable for the overall preservation of sensitive plants and animals. Grasslands provide foraging area for many species, and are particularly valuable for raptors as hunting fields. Non-native grasslands, a Tier IIIB habitat, are considered less valuable than the native grasslands, but

still perform many of the same biological functions. Nearly all the identified non-native grasslands on the Crescent Heights site occur within the proposed residentially-designated areas. There are no native grasslands on the Crescent Heights property.

The original Crescent Heights subdivision proposal, which is dependent upon this proposed LUP amendment and rezone, would result in the direct loss of 4.61 acres of coastal sage scrub, 29.23 acres of chaparral, and 2.58 acres of non-native grasslands. Although this specific property owner has since redesigned this subdivision, significantly reducing overall impacts, the cited impacts given above are typical of what would be allowable for any potential development built consistent with the proposed LUP revisions and rezones. The potential loss of these habitats is all the more significant as they are part of a natural canyon system that supports sensitive species, are part of the approved MHPA lands, and represent one of the few remaining natural urban greenbelts in San Diego.

With respect to the proposed LUP map changes, these are intended to redraw the boundaries between currently designated residential areas and areas of designated open space. Although in the past the Commission has reviewed similar changes proposed as a means to more accurately depict the actual topography and vegetation of the sites, in this particular case, the proposed changes would actually accommodate a significant amount of future development within existing canyons and ESHA.

The proposed project as approved by the City would also adjust the existing boundary of the Multiple Habitat Planning Area (MHPA), resulting in a net gain of approximately 10 acres of lands covered by the MHPA. The revised MHPA boundary would be co-terminus with the boundary between residential and open space as proposed by the City on the revised LUP map.

The Commission must review the LUP and IP amendments independent of any specific development plan and analyze the maximum impacts a proposed project could have if built consistent with the development criteria in the proposed LUP policies and implementing zones. The particular project approved by the City may never be built, but the parameters accommodating it will remain part of the City's LCP to dictate other development proposals in the future.

The proposed amendment would be the first time the Commission will act on a request to modify the residential/open space boundary in a manner that, although increasing the total acreage of preserved land, decreases the existing habitat values of the property being protected. Most of the new land area in the additional open space lands approved by the City include mixed chaparral, chamise chaparral, eucalyptus groves and disturbed area, with a very small amount of added coastal sage scrub, the most valuable coastal upland community from a habitat standpoint. On the other hand, coastal sage scrub habitat would be removed from the existing open space and MHPA boundaries and incorporated into the future development footprint. The areas being added to the preserve do not include areas where sensitive species have been sighted, whereas the areas lost contain rufous crowned sparrows and San Diego coast barrel cactus. Finally, some of the areas

being added to the preserve are immediately adjacent to existing residential development, and already subject to edge effects and potential disturbance for brush management associated with those existing homes.

In summary, areas of sensitive vegetation that are currently protected as open space, will no longer be protected if the amendment is approved, including ESHA containing coastal sage scrub adjacent to, and contiguous with, occupied gnatcatcher habitat. The proposed project footprint would also displace or destroy a significant number of the other identified sensitive plant and animal species that are located, again, in areas that are now designated open space, but which would be within the developable area if the LUP amendment is approved. The Commission has, in the past, approved a few modifications of the open space/MHPA line, but, in those instances, the modification resulted in more habitat of equal or better quality being protected, and was based not on proposed project design but on the locations of on-the-ground resources. As submitted, the Commission cannot support the revised line between developable area and open space, as it would not be consistent with Section 30240 of the Coastal Act.

#### WETLAND HABITATS/VERNAL POOLS

##### 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 30240.

Cited previously.

There are seven vernal pools, a rare and unique form of seasonal wetland, on the Crescent Heights site, all located north of Calle Cristobal. These are all on a legal lot proposed for multi-family residential development, but no direct impacts to the pools will occur. The proposed LUP map changes result in the designation of the vernal pools, including their watersheds, as open space, and the concurrent IP rezoning will put them all in the OC-1-1 zone (Open Space Conservation), the City's most restrictive open space zone. Thus, no direct impacts to vernal pools will occur.

There is, however, serious concern addressing the adequacy of wetland buffers between the vernal pools and the future development. Although the buffer "averages" 100 feet in width, this is primarily due to the furthest vernal pool being over 200 feet from the proposed development footprint; from most pools the proposed buffer is well under 100

feet, and there is as little as forty feet between the nearest pool and proposed grading for future multi-family complexes. Moreover, measuring the distance of each pool from the nearest development and averaging the results is not the way such calculations are generally made; the buffer width is simply the distance between the closest point of any pool to the closest proposed development area.

Even if the specific proposal associated with this proposed LUP amendment were never built, the certified LCP (LUP and IP together) will dictate future patterns of development. Nothing in the certified LUP addresses minimum width of buffers for vernal pools. This requirement, and the criteria for exceptions, is located only in the certified Land Development Code, the City's IP portion of the LCP. The importance of the minimum 100 foot wetland buffer is supported by Section 30231 and through conversations with other resource agencies.

A significant issue identified by resource agencies is the increasing isolation of vernal pools from other habitat areas and from each other. Habitats are becoming more and more fragmented within the City of San Diego (and elsewhere), and past practices with vernal pools have often been to fence them with solid materials, provide some sort of minimal buffer, then build, often resulting in the pools being surrounded on all sides by urban development. This isolation reduces the likelihood that the pools will survive at all, let alone function normally. The seven vernal pools on the subject legal lot, include five vernal pools in the western part of the site and the two in the eastern part, are adjacent to areas designated to remain open space and which connect with the canyon preserve as a whole. Both areas of vernal pools are, however, immediately adjacent to, and just north of, Calle Cristobal, a significant east-west trending transportation corridor. When the site is developed, the group of five pools would be surrounded on every side but to the northwest with urban development. The group of two pools, although adjacent to the four-lane road on the south, is otherwise surrounded by areas to remain in open space. The only pool containing San Diego fairy shrimp is one of these two, which have been determined to be of higher value biologically than the others. Based on the companion project approved by the City, these two pools are also more than 100 feet from the nearest area of potential residential structures; however, daylight grading to support these future units comes as close as 40 feet from one of these pools on the plans submitted with the permit application.

#### WETLAND HABITATS/WILLOWY MONARDELLA

Another wetland concern is protection of the willowy Monardella (*Monardella linoides* ssp. *Vimineae*), which is a riparian subshrub species that grows on sandy terraces in seasonally dry washes. It is found only in San Diego County and Baja California, Mexico, and is declining rapidly in San Diego due to urbanization. Urbanization increases runoff, primarily through decreasing permeable surfaces and planting/irrigation practices, and many canyon streams that were once ephemeral now flow all, or nearly all, year long. Areas that were only subject to occasional erosion during major storms or floods now see some level of erosion during nearly every rain event. The San Diego County population of Monardella has dwindled to a few scattered locations within the



northern part of the city, including two small areas in Lopez Canyon downstream from the subject properties; as comparison, a biological survey conducted in 1982 in conjunction with a different project located 14 distinct populations of this species in Lopez Canyon.

In Lopez Canyon, increased flows have caused all sediments to wash downstream, and the entire streambed, with the exception of some small remaining islands, is now cobble. Although Lopez Creek is still usually dry part of the year, the banks of these islands are being eroded away bit by bit. The Monardella requires the very specific micro-habitat that these islands/terraces provide. There have been a few attempts to transplant the species, but none have been successful. Thus, the species is identified as endangered on both the federal and state lists, and the California Department of Fish and Game (CDFG) has determined that all remaining individuals and colonies must be protected in place.

The various existing legal lots of the subject property are located both north and south of the Lopez Canyon floodplain, and future stormwater flows from those properties will be directed into Lopez Creek. As previously discussed, a number of sensitive habitat types are present within the canyon bottom, including the monardella, and on the canyon slopes. The type and location of future drainage facilities may be critical to the survival of the monardella. The Commission recently approved a coastal development permit (6-03-039) to install protective devices to prevent further erosion of the "islands" where the remaining monardella exists. The erosion rate is directly linked to the amount and velocity of stream flow, which, outside of major storm events, is dictated by the amount of upstream impervious surfaces and the upstream residents' practices with respect to irrigation, car-washing, and the recreational use of water (pools, spas, etc.).

In 1983, the Commission approved a permit for construction of a stormwater detention and conveyance system for Lopez Canyon. The detention facility is the Montongo Basin, which is located near the head of Lopez Canyon, approximately a mile upstream of the Crescent Heights property. The piping system runs through the canyon bottom, with lateral pipes extending into many of the side canyons to serve mesa top development. The basin was sized to assure no overall increase in peak runoff from the build-out of Mira Mesa. Because much of the buildout occurs west (downstream) of the basin, the basin itself is designed to overcompensate for development to the east to achieve the overall goal of no net increase.

Although this system assures that the actual amount of water reaching downstream resources does not increase, it does little to address the issue of water velocity and erosion potential due to runoff from the Crescent Heights site. These are the factors of concern when considering preservation of the downstream Monardella populations. There is nothing in the currently-certified LUP that addresses this particular issue, nor is anything proposed in this amendment request. Thus, the Commission finds the proposed amendment accommodating significant development on the Crescent Heights site does not adequately protect downstream sensitive and endangered resources.

In summary, the proposed amendments are inconsistent with the cited resource protection policies of the Coastal Act as they would allow destruction of ESHA in several locations, would remove areas of ESHA currently designated open space and mapped in the MHPA from the protections of that program, would not establish adequate buffers to protect wetland vegetation, and would endanger downstream resources. Therefore, the Commission finds the proposed LUP amendment must be denied as submitted.

**3. Hazards/Brush Management.** The following Coastal Act policy is most applicable to the proposed development, and states in part:

Section 30253

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. ...

The potential effects of brush management on biologically valuable habitat must not be underestimated and the potential for wildfire at the subject site warrants brief discussion as well. The areas to be designated for single- and multi-family development are immediately adjacent to naturally vegetated steep slopes that are part of a large canyon system. It is very likely that future development on this site will be threatened by fire sometime during the economic life (approximately 75 years) of such development. This is true, however, for most new development throughout the City of San Diego and indeed Southern California. Population increases have forced new development ever further into undisturbed and topographically constrained areas. Specific fire safety design criteria are not currently discussed in the certified LUP for the Mira Mesa community. However, design criteria in the Land Development Code addresses this concern and requires specific building elements and setbacks in fire-prone areas.

In the certified LDC, regulations currently require different brush management zone widths depending on the site's location east or west of Highway 805 and El Camino Real. West of 805, Zone One is required to be 20-30 feet and Zone Two is 20-30 feet. East of 805, Zone One is 30-35 feet and Zone Two is 40-50 feet. These regulations were in place prior to last October's devastating wildfires in San Diego County. Based on these events, and in anticipation of a challenging upcoming fire season, the Fire Chief is recommending a minimum 100-foot brush management zone be applied citywide, including a minimum 35 feet of clear-cut (Zone One) and 65 or more feet of selective clearance and thinning (Zone Two).

The City is currently reviewing its brush management regulations, and will be bringing forth an LCP amendment to incorporate modifications in the near future. These will address all habitable structures within a *High Fire Hazard Area*, as well as accessory structures measuring more than 120 sq.ft. in size and located less than 50 feet from any habitable area. The City's proposed code changes define *High Fire Hazard Area* as "any open space, park area, undeveloped public or private lands containing native or naturalized vegetation, and areas containing environmentally sensitive lands." The potential changes would also require new habitable structures to incorporate fire prevention construction materials, including sprinkler systems, non-combustible roofs and garage doors, and special exterior treatments for eaves, skylights, gutters, etc.

The current Mira Mesa LUP was certified in 1993. Due to its age, it includes no specific references to brush management, only general policies protecting the steep hillsides and sensitive resources to the maximum extent possible, and requiring new development on the mesa top to be very low density and clustered in a manner to preserve those hillsides. More recent LUP certifications, such as Del Mar Mesa and Pacific Highlands Ranch, two subareas of the North City Future Urbanizing Area, have addressed brush management issues on a limited basis and have established clear boundaries between developable area and open space.

In current form, the certified LDC regulations identify Zone One clear-cut, which removes all portions of vegetation above the ground, as an adverse impact (i.e., an encroachment) if it occurs within sensitive areas; however, Zone Two which allows removal of up to 50% of the overall cover has, in the past, been considered "impact neutral" (i.e., neither detrimental nor beneficial to habitat function). More recently, in its action on Dana Point LCP Amendment #1-03 (Dana Point Headlands) and the Marblehead development (CDP #5-03-013), the Commission has found fuel modification that includes selective thinning, clearing and/or replacement of cleared vegetation with fire-resistant vegetation to be an unacceptable impact within ESHA. Such activities are not resource dependent and are not compatible with the continuance of these habitat areas. Fuel modification also places long-term management constraints on the conserved habitat, and replacement vegetation may not include species important to the sensitive habitat value.

In addition, selective thinning or deadwood removal is difficult to implement without changing the understory character of the habitat or having impacts on the health of individual plants that remain. Deadwood removal also requires periodic disturbance to the habitat. Finally, since coastal sage scrub vegetation is woody and seasonally dry, it is difficult, at best, even for trained experts to confine deadwood removal to truly "dead" wood on these inherently dry, woody plants. Rather, the deadwood removal would amount to trimming and thinning of the habitat and not merely removal of dead stems of individual plants. These impacts are not compatible with the continuance of the habitat areas and must be prohibited within ESHA.

The current LUP amendment request does not propose any language to address brush management, and, since the accompanying project was approved at the City level prior to

the October, 2003 fires, the local approvals only require a 30-foot setback for principal structures from the boundary with open space. If the proposed regulation changes occur, the new standards, applied to the locally-approved companion subdivision, would allow up to 70 feet of a combination of Zones One and Two brush management within dedicated open space and the MHPA. Although this may not be preventable when addressing existing development's fire safety requirements, the LUP can be modified to require new development to incorporate adequate building setbacks to avoid significant brush management impacts within open space and ESHA. In this particular case, all of the habitat within open space and adjacent to potential development sites is not ESHA and, as such, some areas could accommodate Zone Two brush management measures without conflicts with Section 30240 of the Coastal Act. However, such specific measures should be included in the LUP amendment to address setbacks, assure fire safety for new development and limit significant and disruptive impacts to sensitive resources within the adjacent open space areas. Thus, as submitted, the proposed LUP amendment is not consistent with Section 30240 and 30253 of the Coastal Act and must be denied.

**4. Water Quality.** The following Coastal Act policy addresses this issue:

**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.

The subject site is located within the Los Penasquitos Lagoon watershed, and the area to be developed in the future is located north and upland of the streambed of Lopez Creek, and south and upland of the streambed of Penasquitos Creek, on top of the adjacent mesas. The proposed LUP amendment will not result in any direct changes in water quality because no physical improvements are approved at this time. However, the proposed LUP amendments set the stage for intense residential development in this location, which will significantly increase the amount of impervious surfaces. Due to the age of the subject certified LUP, water quality was not discussed as a major concern at the time of Commission review. This issue has gained prominence in recent years, and newer LUPs include specific water quality standards. Since this LUP amendment addresses only a few specific policies, and does not represent a more general update, it would not be appropriate to add a significant number of new policies through this Commission action. Moreover, the City's Land Development Code includes detailed water quality regulations, which are ultimately reviewed by the State Water Resources Board.

**5. Visual Resources.** The following Coastal Act policy addresses this issue:

**Section 30251.**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Existing LUP policies addressing visual resources are not proposed for modification. Existing policies address the visibility of new development from the streambeds of Lopez and Penasquitos Creeks, appropriate setbacks, appropriate building materials and colors and landscaping. These policies will continue to direct development, and will be applied to any proposed projects on the subject site.

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

As proposed by the City, the amendment request would allow significant impacts on ESHA, which are not consistent with Section 30240 of the Coastal Act. As stated previously, the City's LCP does not use the term ESHA, but the Biology Guidelines of the certified LDC identifies that all Tier I and Tier IV habitats, along with all lands mapped within the MHPA, warrant special protection as environmentally sensitive lands. In its review of LCP amendments and specific development proposals within its permit jurisdiction, the Commission determines what is ESHA both by habitat type and function. On this particular site, the Commission accepts that the only ESHAs are the vernal pools and coastal sage scrub habitats within the canyon, identified as Tier I or Tier II habitats by the Biology Guidelines contained in the certified LCP.

Although the Commission could not find the proposed amendment consistent with Chapter 3 of the Coastal Act as submitted, with the adoption of suggested modifications such a finding can be made. The suggested modifications begin on Page 9 of this report and address the Commission's stated concerns over adequate preservation and protection of sensitive biological resources on the subject site, and the accuracy of LUP and zoning maps to reflect the actual location of these resources.

**A. BREAKDOWN OF INDIVIDUAL SUGGESTED MODIFICATIONS**

Suggested Modification #1 addresses corrections to several of the LUP maps. It requires revision of the identified maps to be fully consistent with the resources on-the-ground on the Crescent Heights property. As proposed by the City, areas of sensitive habitats,

including ESHA, would be included in the developable areas of the site. This cannot be found consistent with Section 30240 of the Coastal Act.

As modified and addressed in the revised map required by Suggested Modification #1, the Commission would allow changes to the open space boundary that would protect all the vernal pools and wetland buffer and the majority of the coastal sage scrub habitat on the Crescent Heights properties within the open space designation. The line was drawn based on the biological resources map shown as Figure 4C-1 in the certified EIR for the development, and generally follows the rimline or the upper limits of the coastal sage scrub vegetation where non-ESHA vegetation extends beyond the rimline. An exception includes the area within the road alignment and north of the road necessary to access the Multi-family West development site which will be discussed in detail in the following findings. Minor adjustments to more accurately reflect the topography and allow the line to correspond with the upland boundary of ESHA have been accommodated. In addition, there are areas where the flatter mesa top containing less sensitive habitat chamise and mixed chaparral (Tier III) habitat has been removed from the open space designation to allow a development pattern consistent with the certified LUP policies.

One purpose of this amendment request is to make the land use and zoning boundaries consistent, such that land designated and zoned open space is either currently ESHA, ESHA buffer or restorable to ESHA, and all developable area is not. Although the City's MSCP subarea plan is not part of the certified LCP, the MHPA is referenced in several certified land use plans, including being depicted on LUP maps, and forms the basis for the City's environmentally sensitive lands regulations in the certified LDC. The City's proposal would make the MHPA and open space boundaries co-terminous; however, the only changes to the open space/MHPA boundary that would be consistent with the Coastal Act are those that would be more protective of significant habitat, i.e. ESHA, than the current boundary. Thus, the Commission finds that the only acceptable modifications of the open space/MHPA line that would remove area from open space/MHPA are in instances where the line was incorrectly drawn in the first place. For instance, the open space need not include mesa top and canyon rim areas that do not contain vernal pools, coastal sage scrub habitat or steep hillsides.

In addition, any development of steep hillsides are still regulated by the ESL regulations of the LDC and the LUP policy prohibiting grading beyond the canyon rim. Brush management allowable within open space areas is addressed in Suggested Modification #4 and discussed below. As modified, the LUP maps would be consistent with Coastal Act section 30240, and thus approvable, with the one exception mentioned above, which will be discussed in the next section.

Suggested Modification #2 addresses the City's proposed rezoning of the property. The line between developable area and open space must be consistent with the line established in the LUP as certified herein. Thus, certain revisions are necessary and are required in the suggested modification. As modified, the zoning map will be consistent with the revised LUP map and Section 30240.

Suggested Modification #3 addresses the description of very low density residential development found on Page 77 of the certified LUP. The proposed amendment would remove references to the R1-10,000 and R1-5,000 Zones, which are no longer part of the City's municipal code. When the old code was replaced with the Land Development Code in 2000, all zone names were changed and a significant number of completely new zones were added. The City added new zones to provide greater flexibility/creativity in site design, because much of future development will occur in biologically and topographically constrained areas of the City, both inside and outside the coastal zone. The wider range of zones was intended to encourage the concentration of development and maximization of open space by allowing zones to be chosen for reasons other than density alone.

In place of the references to the now-obsolete R1-10,000 and R1-5,000 Zones, the City's LCP amendment proposes a requirement that the zoning chosen should match the development intensity of the site, with open space zoning applied to open space areas. The Commission finds the proposed statement is confusing and not necessary to adequately direct future zoning and development pattern of the remaining sites zoned A-1-10 in the Mira Mesa community. Moreover, the certified requirement that areas designated for very low density development can only be developed with 0-4 dwelling units per acre is not changed through this amendment, and will continue to provide a cap on the actual density allowed on any given site, yet allow the City to use higher density zones if other criteria of those zones are more suitable to the site. Since the LUP is the controlling document, the land use designation in the LUP will take precedence over specific zone criteria should there be a conflict between the two. In addition, Suggested Modification # 4 sets site-specific criteria for development of the three parcels designated for residential development. The maximum number of units allowed on the site will be 250 which assures build-out in a density range consistent with the LUP density range.

As stated above, Suggested Modification #4 adds specific development criteria for the Crescent Heights property on Page 80 of the certified LUP. This is warranted due to specific resources on the site (including vernal pools and occupied habitat), the non-contiguous nature of the lots, and the balancing of harms and benefits to this area that is discussed below, and which is ultimately accomplished through retirement of six legal lots from development potential. The criteria in subsection 1 impose a cap on the total number of units allowed (250) and require the units to be clustered on three of the existing legal lots. Developments rights on the other six legal lots will be retired and those lots maintained as open space conservation areas. Subsection 2 assures the open space lands will be preserved in perpetuity as open space.

Subsection 3 and 4 include criteria to assure protection of wetland species including the vernal pools located on the Multi-family North site and the Monardella located within Lopez Canyon. Development measures such as an on-site detention basin and 100 ft. wetland buffers will assure protection of these sensitive resources consistent with Section 30240.

The next set of site-specific development criteria (subsection 5 a-c) in Suggested Modification #4 allow an exception to the LUP policy prohibiting grading beyond the rim of the canyon. This exception applies only to the Multi-Family West and North development areas, and is necessary to allow access to the developable portions of the sites already delineated for residential development in the certified LUP. No impacts to ESHA will result from construction of road access to the Multi-family North development area. Grading over the rim to construct a road for access to the Multi-family West development will result in approximately one acre of unavoidable impact to ESHA. For that reason, it remains inconsistent with Section 30240 and could not be approved but for the application of the Coastal Act's balancing provisions. This factor will be discussed in more detail below, in the findings regarding the balancing provisions of the Coastal Act.

The development criteria in subsection 6 address brush management or fuel modification requirements to be applicable to any development proposed on the Crescent Heights properties. Based on recent Commission action on two large residential subdivisions in Orange County, the criteria assure the development is located in a manner that avoids impacts to ESHA for all brush management measures required to meet the fire department standards, i.e. minimum 100 ft. distance from structures. The policy acknowledges that, when possible, all brush management should be located outside open space areas. However, at a minimum, a 35 foot Zone One must be accommodated within the developable area and outside designated open space. The width of Zone One should be increased when possible to reduce the width of Zone Two and impacts to native vegetation.

In this particular case, there are areas of open space immediately adjacent to residential development area that do not contain ESHA. These areas could accommodate Zone Two brush management measures without conflicts with Section 30240 of the Coastal Act. The criteria require that any fuel modification or brush management measures within designated open space should be implemented in accordance with an approved brush management plan acceptable to the fire department that minimizes disruption of existing habitat values to the maximum extent possible. Measures such as replacing cleared or thinned vegetation with fire-resistant native vegetation that does not require fuel modification and is compatible with existing habitat, and maintenance of at least 50% of the existing ground cover are encouraged.

However, those impacts would not be acceptable within ESHAs which, on this particular site, are vernal pools and coastal sage scrub habitats, because such impacts are not resource dependent. Accordingly, new development must be sited with sufficient setbacks (e.g. combustible-free defensible space, irrigated zones and thinning zones), buffering elements (e.g. walls), appropriate construction methods and materials, and other fire safety measures contained entirely within the development footprint and entirely outside ESHA.

The last site-specific criterion addresses impacts that are permitted within ESHA or the vernal pools and coastal sage scrub habitat on this site, all of which will be preserved in



open space. The Commission acknowledges there may be some areas of the vernal pools, wetland buffers and/or coastal sage scrub vegetation that are suitable for restoration or enhancement. The prohibition on fuel modification/brush management measures within ESHA does not limit the implementation of habitat restoration and maintenance measures that are wholly and exclusively for habitat management purposes. In addition, maintenance of those restoration areas must be allowed to occur entirely independent from fire safety requirements to serve adjacent new development. The habitat must be allowed to fully develop, and the suggested language acknowledges that habitat restoration and enhancement and maintenance of the restored areas are the only allowable impacts within ESHA.

Due to ongoing redesigns of the companion project for Crescent Heights, the latest plans now indicate a 35-foot Zone I area totally within the graded footprint and above the canyon rim. Zone II, which would be 65-feet in width, would, in places, extend over the canyon rim and into proposed or existing open space and, in some cases, ESHA. Although any brush management within open space/MHPA should be avoided if possible, the Commission finds it acceptable that some Zone II brush management can occur within Tier III or IV habitats, in the MHPA and/or on steep hillsides; however, the Commission cannot find Zone Two impacts to vernal pools or coastal sage scrub habitats, or ESHA, consistent with Section 30240.

The Suggested Modification #5 augments and updates existing development criteria on Page 107 of the certified Mira Mesa Community Plan that apply to development adjacent to Los Penasquitos Preserve. It acknowledges the exceptions to the prohibition on grading over the canyon rim for the Crescent Heights property, and clarifies the prohibition applies to the rim of Los Penasquitos Canyon Preserve, which includes both Lopez and Los Penasquitos Canyons in the coastal zone. It also updates an existing policy that requires predominantly native species to acknowledge the problems associated with introduction of invasive species into the environment. The revision would allow only non-invasive species in association with development adjacent to the preserve to meet the requirements of Section 30240. The revisions accommodate the site-specific grading exception for Crescent Heights and add "non-invasive" as a requirement for landscaping adjacent to canyons.

Suggested Modification #6 deletes in its entirety one of the requested amendments to the LUP. As proposed by the City, grading over the rim of the canyons would be allowed in certain circumstances, and these provisions would be applied to the community as a whole. The Commission finds it is not appropriate to allow a blanket exception for the entire community when the details and constraints of undeveloped properties are not known. The proposed language would allow application of the exception to any project determined to be "environmentally superior." Many projects could be "environmentally superior" without being the least environmentally damaging alternative. This raises a significant potential for misinterpretation or application of the proposed exception in a manner inconsistent with Chapter 3 of the Coastal Act.

On the other hand, the Commission finds that the site-specific language found in Suggested Modification #4 – although similar to that which was rejected in Suggested Modification #6 – can be harmonized with Chapter 3 through a balancing approach. That language allows development that would displace ESHA as well, but only in a specific area and only in conjunction with the preservation of vernal pools and their watersheds, protection of additional areas containing coastal sage scrub habitat, and concentration of the habitat preserve. Much of this would be accomplished by retiring development potential on six otherwise developable parcels. This approach limits the exception to the LUP policy prohibiting grading beyond the rim of the canyon to a site-specific proposal in which the impacts allowed to ESHA would be balanced against multiple benefits, so that the proposal on the whole is most protective of coastal resources, as well as being less open to discretionary interpretation than the language proposed by the City. The Commission can support a site-specific exemption to the policy allowing grading over the canyon rim only under these circumstances. The following section explains that approach in greater detail.

**B. CONFLICT RESOLUTION: ESHA AND CONCENTRATION OF DEVELOPMENT**

**1. The Balancing Approach to Conflict Resolution**

As is indicated above, the standard of review for the Commission's decision whether to certify a land use plan amendment is whether the plan, as amended, continues to meet the requirements of, and be in conformity with, "the policies of Chapter 3" (meaning California Public Resources Code ("PRC") sections 30200-30265.5). PRC § 30512(c). In general, a proposal must be consistent with all relevant policies in order to be approved. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies).

However, the Legislature also recognized that conflicts can occur among those policies. PRC § 30007.5. It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved "in a manner which on balance is the most protective of significant coastal resources." PRC §§ 30007.5 and 30200(b). That approach is generally referred to as the "balancing approach to conflict resolution." Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

**2. Conflicts Between Coastal Act Policies in this Matter**

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that the proposal presents a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a proposal is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily indicate a conflict. Rather, the Commission must find

that to deny the proposal based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

The policy conflicts that arise in this particular LCP amendment request flow from the fact that the proposed LCP amendment is inconsistent with Coastal Act policies that protect environmentally sensitive habitat areas (ESHA), as well as others, as identified above. However, denial could also result in coastal zone effects that are inconsistent with Sections 30240 and 30250 because it would leave the existing LCP in place, and under that LCP and the existing lot configuration, the developer could (1) undertake a diffuse pattern of development that would not cluster development near existing developed areas, (2) develop in areas that constitute ESHA, and (3) develop in areas that are not ESHA themselves but that are sufficiently close to ESHA that the development would disrupt the connectivity between existing ESHA areas, thus significantly degrading those ESHAs.

As described above, the proposed LCP amendment is inconsistent with the ESHA protection policies in Section 30240 because it would allow for the construction of residential development in areas that qualify as ESHA. Furthermore, such development would necessitate fuel modification within ESHA in order to address fire hazards and access roads that would have to run below the edge of the canyons in some instances. This development would significantly disrupt the habitat values of the ESHA and would not constitute uses dependent on the resource. Thus, the proposed changes to the open space lines on the LUP maps and to the textual policies designed for resource protection are inconsistent with Section 30240 of the Coastal Act. As is described above, it is also inconsistent with Section 30250, in that it would allow development beyond the rim of the canyon rather than limiting it to the areas with the least sensitive resources.

However, to deny the LCP amendment based on its inconsistencies with these Chapter 3 policies would result in adverse impacts that, in some areas, would be even more inconsistent with these policies, as it would allow development under the existing LCP. Currently, the certified LUP designates nine separate areas along the mesa tops above Los Penasquitos and Lopez Canyons for residential development; however, the open space boundaries established in the certified LUP maps were not based on a site-specific analysis of the topography and sensitive biological resources on each site. For six of those mesa top areas, it appears there is no access to the developable portion at this time. In order to accommodate such development, access roads would have to be built which, in some cases, due to the pattern of existing development, would displace substantial amounts of ESHA on both the hillsides and within the canyon bottoms.

Although current zoning would not allow more than one house for every 10 acres, the certified LUP indicates that the R1-10,000 Zone allowing up to 4 du/a, or R1-5000 Zones allowing up to 8 du/a if the units are clustered to preserve natural open space areas, would be appropriate to implement the existing LUP designation of very low density (0-4 dwelling unit per gross acre) and low density residential (4-8 du/a). Thus, the LUP anticipates a change in the IP to adopt revised zoning that would allow a residential density exceeding the maximum allowable density under the current zoning. Although

the LUP acknowledges that the maximum density of 4 du/a is not likely to be achieved except on lots having large areas in slopes of less than 25 percent, the mesa tops are designated for residential development and all impacts to ESHA could not be avoided in order to accommodate such development.<sup>1</sup>

Thus, the existing certified LCP could be interpreted to allow approval of development that would have impacts that are more damaging than those associated with the current proposal, when considering the areas currently designated for residential development and the impacts to ESHA necessary to access and develop those areas. In its current form, because of these non-contiguous fragments designated for residential development, the current LUP does not ensure that development will occur in a manner that will protect the significant resources on the hillsides and in the canyon bottoms. Thus, although the proposed LCP amendment would allow more damage than the current LCP in some ways by allowing encroachment by residential development beyond the canyon rim into ESHA, it is also true that denial of the amendment would forfeit the opportunity afforded by the proposal to improve the open space boundary in some areas and to retire the development potential in several areas to ensure at least some degree of increased ESHA protection, as Section 30240 demands.

In addition, as stated, the existing LUP designations provide for residential development in nine separate areas of the subject site. This dispersed development pattern is inconsistent with Section 30250 in several respects. First, and most directly, it fails to concentrate development. In addition, development would not be limited to the areas with the least sensitive resources. Finally, piecemeal development of this nature has the effect of degrading even more ESHA than it directly displaces, as it fragments the remaining habitat, which significantly degrades its functionality. In sum, the LCP could be interpreted to permit development in non-contiguous areas that would have more severe negative impacts than the current proposal. Thus, a simple denial would forfeit the ability to implement the mandates of Section 30250 by reducing the City's ability to consolidate development contiguous with existing development and away from the most sensitive resources.

Furthermore, even if development could be constrained under the existing LCP beyond that which is described above, the existing lot configuration includes nine separate legal lots. Although it is not clear that the landowner has perfected its right to develop each lot (*see, e.g., District Intown Properties v. District of Columbia*, 198 F.3d 874 (D.C. Cir. 1999)), there is also an argument that the number of legal lots is even greater than nine. In addition, contrary to most situations involving old subdivisions, not all of the nine existing lots are contiguous, and the one lot that is currently designated as wholly open space is one of the lots that is isolated from all the rest, raising the possibility of a takings claim if development on that lot were denied. Finally, each of the nine legal lots contains significant areas within designated open space or the MHPA, even though some areas of

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<sup>1</sup> In part, this is because, under certain circumstances, the existing LCP allows significant encroachment into sensitive biological resources if they are on slopes less than 25% grade and outside the MHPA. *See* San Diego Municipal Code §§ 143.0110, 143.0141, and 131.0250.

each lot are vegetated with habitat not considered ESHA. In sum, although there is ambiguity as to the correct application of takings law to this scenario, it is clear that the existing subdivision would allow development that could have substantial impacts on sensitive resources, whereas the current proposal, as modified, would ensure that all development would be limited to three of the nine existing lots, and only to specific sub-areas of those three lots.

In sum, it is unknown what level of development would ultimately occur in these areas, but it is reasonable to assume that some development, under the auspices of the existing, certified LCP, and the existing subdivision of land, may move forward and negatively affect these sensitive habitat areas. This type of development would be inconsistent with Section 30240 and 30250 of the Coastal Act as it would have a negative impact on sensitive habitat and lead to a configuration that does not concentrate development adjacent to existing developed areas. Thus, although the proposal is worse than the current LCP in some areas, it is also true that denial of the LCP amendment would prevent the resource protection policies of the LUP from being upgraded to clearly protect ESHA and concentrate development.

However, this is not the end of the conflict analysis. An application does not present a conflict among Chapter 3 policies if there are feasible alternatives that would achieve the proposal's essential goals without violating any Chapter 3 policy. Thus, an alternatives analysis is a critical condition precedent to conflict identification, and thus, to invocation of the balancing approach. Here, however, there is no viable alternative that would satisfy all Chapter 3 policies. As a result, there is a true conflict, and the Commission must proceed to resolve the conflict in a manner that is, on balance "the most protective of significant coastal resources." PRC § 30007.5.

**3. How the LCP Provisions at Issue in this Amendment Must be Drafted so as to be the Most Protective of Significant Coastal Resources at this Site**

Although there is no viable alternative that would satisfy all Chapter 3 policies, there are alternatives to the City's proposal that would come very close and that would significantly reduce the negative impacts associated with either the current LCP or the LCP amendment as proposed. With some modification to the open space lines on the LUP maps as proposed by the City, those lines would accurately reflect the existing biological resources on the site. Moreover, such a modification to the lines would mean that, in addition to there being no area designated for residential development beyond the rim of the canyon, all existing ESHA on the subject site would be incorporated into open space, with one specific exception. This revision to the open space lines is shown in Exhibit 4.

Although the revised lines shown in Exhibit 4 would not allow residential development beyond the rim of the canyon, two of the areas designated for residential development in both the current LUP and the proposed revision would only be accessible by building a road that would encroach beyond the rim of a canyon. For the Multi-family North development, this encroachment would not impact ESHA. However, for the Multi-

family West development site, construction of the access road could be accomplished without displacing more than one acre of ESHA. Thus, the acre of ESHA displaced for the road would allow for approximately 7 acres of appropriately sited residential development. In addition, although the road would impact ESHA and encroach into designated open space, the disturbed area south of the finished road, although impacted, can be revegetated with native species and provide some habitat value. Furthermore, the road would not fragment or isolate any significant patches of ESHA, as it would be very close to an existing developed area.

Moreover, the Commission emphasizes that there is no other way to permit development to the west of Camino Santa Fe. Again, under the existing LCP, this area may well be developable, and if it were treated as a separate legal lot due to the road, the developer would have a right to some development in this area, pursuant to takings law, even if the LCP would not normally allow it. Furthermore, even if only a single home were to be allowed in the area west of Camino Santa Fe, this same one acre of ESHA displacement would be the minimum necessary to site such a home and create access to it. Thus, there is a significant risk that this same ESHA impact would occur under any scenario within the Commission's control. Finally, the Commission notes that the Legislature specifically declared, in Section 30007.5, that the principle of concentration of development in close proximity to developed urban area may be more protective, overall, than preserving each specific wildlife habitat.

It is important to note that the area where the road would run is actually outside of the geographic area covered by the LCP. It is an area of deferred certification referenced on page 5, thus, the LCP policies do not apply to it. Nevertheless, in approving an LCP amendment such as this one, where the LCP, as amended, is designed to accommodate a specific amount and location of development, the approval, in effect, presumes the approval of the necessary infrastructure to support that development, including any roads necessary for access to the development. Thus, this approval effectively anticipates approval of the road through a subsequent coastal development permit. For that reason, although the LUP text change proposed by the City to allow encroachments beyond the rim of the canyon must be deleted (see Suggested Modification #6), a much less far reaching version of that exception must be included to take into account the inevitable construction of the road. For that reason, the Commission proposes section 5 of Suggested Modification #4.

The Commission notes that the certified LUP and IP both require mitigation for unavoidable impacts to sensitive habitats, which would be applied to any future development proposal that allowed an ESHA impact. Although the City's submittal would have allowed ESHA impacts in several locations of the property totaling approximately 4.6 acres of disturbance, the modifications suggested herein have addressed and reduced potential ESHA impacts through redefining the boundary between open space and developable areas. Any impacts found to be unavoidable will be analyzed and mitigated through review of future permit applications.

Through the suggested modifications redefining the boundary between residential uses and open space, with the exception of the one acre addressed above, no ESHA or Tier I and II habitat currently protected within the City's MHPA will be removed from open space/MHPA. The revised open space/MHPA boundary will contain the rest of the existing Tier I and II habitat on the subject site as well as include expanded acreage forming a continuous habitat corridor afforded by retiring the development potential on six sites. The lots proposed for retirement of development rights are all adjacent to the canyon preserve and contiguous with much larger areas of ESHA. This will better maintain the continuity of open space and is the unique aspect of this LCP amendment, as modified.

In addition to the significant biological impacts of such scattered development, the sites on the southern rim of Lopez Canyon are very prominent and could also result in significant view issues from the floor of the canyon. Views in this scenic area are also a public resource to be protected. Therefore, the Commission finds that approval of the proposed LUP, if modified as suggested, is on balance the most protective option for all relevant coastal resources.

Given all of the above factors, the Commission finds it is, on balance, most protective of the significant coastal resources within Penasquitos and Lopez Canyons, especially when compared to build-out of the individual parcels, to approve the LUP amendment with suggested modifications that modify the open space/MHPA lines on the LUP maps as shown on Exhibit 4 and provide a much more limited exception to the prohibition against grading over the edge of the rim. This will promote the basic development pattern proposed by the City to concentrate allowable development adjacent to existing urban services and other developed areas, as is required by Section 30250, and it will protect many acres of currently vulnerable ESHA, as is required by Section 30240.

The LUP amendment, as modified herein, provides for the preservation of large, contiguous blocks of habitat with high natural resource value relative to covered species, and to generally locate development away from these areas. This will ensure that the critical wildlife movement corridors and on-site populations of gnatcatchers have sufficient areas of high-quality habitat for species survival. The clustering and concentration of development away from sensitive areas that will result from the proposed standards will provide a larger, more contiguous preserve area than if development on the same properties were to be approved on a lot-by-lot basis. Moreover, edge effects will be minimized by the retirement of development rights altogether on six of the nine legal lots.

The three lots available for development are adjacent to existing residential development and will be accessible with less adverse environmental impacts than would be necessary to create access to development on the other six lots. Moreover, areas of sensitive habitat not currently within open space/MHPA, such as the vernal pool areas north of Calle Cristobal, will now be included within the revised boundary of open space. The Commission therefore finds that approval of the LUP amendment, if modified as suggested, would result in increased clustering of development, expansion of protected

areas, and reduction of urban sprawl into sensitive habitat areas and open space/MHPA lands.

Although not entirely consistent with every Coastal Act policy, the LUP amendment, if modified as suggested, would produce cumulative benefits that would be more consistent with the policies in Chapter 3 of the Coastal Act than either development under the LUP as currently written or development under the LUP amendment as proposed by the City. In fact, the benefits would, on balance, be the most protective of significant coastal resources as could reasonably be expected, given the circumstances. This finding that approval of the LUP, with the suggested modifications, is the most protective option for coastal resources is based on the understanding that the retirement of development rights on six legal lots will be implemented prior to any development occurring on any of the nine legal lots. It is also based on strict application of the Open Space Conservation zone requirements on open space areas of the three buildable lots.

The City has proposed, and the Commission has further modified, revisions to the LUP policies, and LUP maps, which establish a hardline boundary between developable and open space areas. Therefore, the Commission finds that, with the understandings listed above, and the suggested modifications included herein, the LUP amendment is consistent with applicable Coastal Act policies, and that, on balance, it represents the option most protective of significant coastal resources.

## **PART VI. FINDINGS FOR REJECTION OF LCP IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The proposed Implementation Plan amendment would rezone all the parcels, which are currently zoned Agricultural-Residential (AR-1-1), a very low density holding zone (minimum 10-acre lots). The A-1-10 zone of the old Municipal Code converted to the AR-1-1 Zone in the Land Development Code, which went into effect in the coastal zone on January 1, 2000. All proposed permanent open space would be rezoned to Open Space-Conservation (OC-1-1), the City's most restrictive open space zone.

Areas to be developed with single-family residential use will be rezoned to Residential – Small Lot (RX-1-2), and areas proposed for multi-family development will be rezoned to Residential Multiple Unit (RM-2-5). The properties generally surround the intersection of Camino Santa Fe and Calle Cristobal, in the Mira Mesa Community of the North City LCP segment.

In addition, the IP amendment includes changes to the zoning map to correspond to the proposed LUP map changes to the open space/residential boundaries.

### **B. SUMMARY 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. Whereas here, an amendment to the certified LUP was conditionally certified, the standard of review for the proposed change to the zoning is the conditionally certified LUP. 14 C.C.R. § 13542(c). The following LUP policies apply to the proposed rezone of the nine parcels comprising the Crescent Heights development site.

The open space portion of the certified Mira Mesa LUP includes the following policies:

Policy 1.a. states:

Sensitive resource areas of community-wide and regional significance shall be preserved as open space.

Policy 4.c. states:

No encroachment shall be permitted into wetlands, including vernal pools. Encroachment into native grasslands, Coastal Sage Scrub, and Maritime Chaparral shall be consistent with the Resource Protection Ordinance. Purchase, creation, or enhancement of replacement habitat area shall be required at ratios determined by the Resource Protection Ordinance or State and Federal agencies, as appropriate. In areas of native vegetation that are connected to an open space system, the City shall require that as much native vegetation as possible is preserved as open space. *(The Resource Protection Ordinance [RPO] was part of the City's old municipal code; these resources are now protected under the Environmentally Sensitive Lands [ESL] regulations.)*

Policy 4.e. states, in part:

Sensitive habitat area that is degraded or disturbed by development activity or other human impacts (such as non-permitted grading, clearing or grubbing activity or four-wheel drive activity) shall be restored or enhanced with the appropriate native plant community. This is critically important when the disturbed area is adjacent to other biologically sensitive habitats. Manufactured slopes and graded areas adjacent to sensitive habitat shall be re-vegetated with the appropriate native plant community, as much as is feasible considering the City's brush management regulations.

Policy 4.i. states:

Vernal Pools: The remaining vernal pool habitat in the community shall be preserved and shall be protected from vehicular or other human-caused damage, encroachment in their watershed areas, and urban runoff.

Proposal 1. states in part:

Preserve the flood plain and adjacent slopes of the five major canyon systems that traverse the community – Los Penasquitos Canyon ... and the remaining vernal pool sites ... in a natural state as open space.

In addition, the Residential Land Use portion of the certified LUP (Mira Mesa Community Plan) includes the following goal and subsequent policies and proposals:

Goal (cover page of element) states:

Residential subdivisions that are designed to preserve Mira Mesa's unique system of canyons, ridge tops and mesas.

Policy 1. Determination of Permitted Density states:

a. In determining the permitted density and lot size for specific projects, within the density ranges provided under the Proposals below, the City shall take into account the following factors:

1. Compatibility with the policies established in this plan;
2. Compatibility with the density and pattern of adjacent land uses;
3. Consideration of the topography of the project site and assurance that the site design minimizes impacts on areas with slopes in excess of 25 percent and sensitive biology.

Policy b. states:

The City shall permit very low density development in canyon and slope areas that are not to be preserved for open space and shall permit flexibility in street improvements in residential subdivisions in topographically constrained sites.

Proposal 1. states in part:

The following density ranges and building types are proposed to meet the goals of this plan: ...

... Very low density: 0-4 dwelling units per gross acre. This density range is proposed for Lopez Ridge and the northeastern corner of the community near Canyon Hills Park. This range is generally characterized by clustered detached single-family or attached multifamily units (such as duplexes and town homes) built on large hillside parcels that contain relatively small areas suitable for buildings. Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. The R1-10,000 Zone or the R1-5,000 Zone if units are to be clustered to preserve natural open space areas,

are proposed to implement this designation. The maximum four units per acre is not likely to be achieved except on lots that have large areas in slopes of less than 25 percent.

The revisions to the residential and open space land use designation boundaries in the LUP, and the subsequent rezoning of the property to reflect the revised boundaries is being done to accommodate a specific residential subdivision that has already been approved by the City. The portions of the properties that are within the study area of Los Penasquitos Preserve, and essentially include those steep sloping hillsides, canyon and creek areas beyond the rim of the canyon, are in an area of deferred certification (ADC). Because the proposed subdivision includes lots within the ADC, the coastal development permit for the subdivision of the property is within the Commission's permit jurisdiction. Chapter 3 policies are the legal standard of review for the portion within the ADC, and the certified LCP is the standard for the remainder of the development.

The proposed changes to the LCP Implementation Plan would revise the line between land zoned for residential use and open space to conform to the revised LUP map. Six existing legal lots, five of which currently have residentially designated areas on the mesa top, would be rezoned to open space, with future development potential on those parcels permanently retired. The three remaining legal lots would have a revised boundary between residential and open space zones, and the proposed residential and OC zones would reflect the revised boundaries.

Regarding the proposed residential zones, the above-referenced LUP policies suggest the R-1-5,000 and R-1-10,000 zones would be the appropriate zones to implement the very low density (0-4 du/a) residential land use designation for the mesa top parcels. If the "units are clustered to preserve natural open space areas," the R1-5,000 Zone is allowable. The policies acknowledge the need for design flexibility and clustering to protect the areas of unique topography and vegetation. Specifically, in determining permitted density for development, the policies require consideration of the topography to assure the site design minimizes impacts on slopes in excess of 25 percent and on areas of sensitive biology. The very low density residential designation was chosen acknowledging these are "large hillside parcels that contain relatively small areas suitable for buildings". The plan states "the maximum four units per acre is not likely to be achieved except on lots that have large areas in slopes of less than 25 percent".

The City has indicated the proposed zones were chosen, however, not to increase density, but because the design criteria of these zones would allow the small-lot and multi-family development preferred by the City in order to increase housing stock, concentrate the development on the mesa tops and maintain the majority of the property in open space. The Commission finds these arguments reasonable, and accepts the proposed zones, but only when accompanied by the LUP policy changes that establish site-specific development criteria that impose a cap on the maximum number of units allowable on the three remaining development sites. Given the level of review the City has given to the companion Planned Residential Development, the Commission believes 250 units is the

maximum number that could be accommodated on these three sites consistent with all the resource protection policies and the density limits imposed by the certified LUP.

The Commission finds that the primary concern with regard to the proposed zones, and the reason this IP amendment must first be denied, relates to the location of the line between residential and open space zoning. The LUP map, as conditionally approved, no longer matches the exhibit submitted by the City for the zoning changes. Thus, the proposed amendment to the implementation plan does not conform with, and is inadequate to carry out, the provisions of the conditionally certified use plan. A new rezoning map correctly identifying those boundaries on each site must be prepared and incorporated into this LCP amendment.

### **C. SPECIFIC 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.

#### **OC-1-1 (Open Space Conservation)**

a) Purpose and Intent of the Ordinance. The purpose of the OC-1-1 Zone is to protect natural and cultural resources and environmentally sensitive lands. It is intended that the uses permitted in this zone be limited to aid in the preservation of the natural character of the land, thereby implementing land use plans.

b) Major Provisions of the Ordinance. Among others, the primary provisions of the OC-1-1 Zone are:

- Only passive recreation and natural resources preservation are allowed by right.
- Satellite antennas may be permitted in limited locations or circumstances.
- Interpretive centers are allowed only with a conditional use permit.

c) Adequacy of the Ordinance to Implement the Certified LUP Segment. This is the City's most restrictive open space zone with respect to the types and level of uses allowed. Basically, the only allowed uses are those that protect, preserve or enhance the natural or cultural resources present on a specific site. The Commission finds this is the most appropriate zone to apply to those portions of properties designated as open space in certified land use plans. Furthermore, the Commission supports the use of this zone, and has no issue with any of its provisions. However, through approval of the proposed LUP amendment with suggested modifications, the Commission has approved a revised line between developable area and open space (MHPA lands). This revised line should be reflected in the proposed rezone with the OC zone corresponding to the revised open space boundary and the residential zones applied to the developable areas. Thus, application of this zone boundary as proposed on the submitted rezoning map will not adequately protect all identified resources, as required in the conditionally certified LUP.

The Commission therefore finds that the amendment, as currently proposed, is not consistent with, and fails to carry out, the conditionally certified LUP.

**RX-1-2 (Small Lot Single Family Residential)**

a) Purpose and Intent of the Ordinance. The purpose of the ordinance is to provide for both attached or detached single dwelling units on smaller lots than are required in the RS zones. It is intended that these zones provide an alternative to multiple dwelling-unit development where single dwelling unit developments could be developed at similar densities. The RX zone provides for a wide variety of residential development patterns.

b) Major Provisions of the Ordinance. This ordinance includes several significant provisions and regulations, including:

- minimum 3,000 sq.ft. lots
- single-family residential development only
- minimal setbacks and 0.80 FAR
- additional discretionary review for non-residential uses

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

As currently proposed, the RX-1-2 zone will implement the certified LUP, as certified by the Commission with suggested modifications. The City, in trying to maximize housing availability, chose this particular zone to minimize the size of lots and thus increase the number of units while still retaining most of the site in open space. By itself, this zone could potentially allow more units than the maximum 4 dua allowed by the LUP, but the LUP retains its very low density residential designation which effectively caps development at appropriate levels consistent with resource constraints and the allowable density ranges from 0-4 dua.

In addition, the LUP has also been modified to establish a specific cap on the number of units allowed at this site. That cap results in a maximum density of 2.47 dua on the site, taking into consideration the acreage of the three developable parcels and clustering the units on the least sensitive portions, which is development pattern the LUP policy envisions. It should be emphasized, this 250 unit cap does not guarantee that this number of units can be accommodated on the properties after the site constraints and applicable policies, development standards and regulations are all taken into consideration. However, the cap does assure the density of any future development will be within the density limits established in the LUP.

**RM-2-5 (Multi-Family Residential)**

a) Purpose and Intent of the Ordinance. The purpose of the RM zones is to provide for multiple dwelling unit development at varying densities. The RM zones individually accommodate developments with similar densities and characteristics. Each

of the RM zones is intended to establish development criteria that consolidate common development regulations, accommodates specific dwelling types, and responds to locational issues regarding adjacent land uses.

b) Major Provisions of the Ordinance. Of the many provisions of the residential zones as a whole, the following are most significant:

- RM-2-5 permits one dwelling unit for every 1,500 sq. ft. of lot area, or 29 dwelling units per gross acre
- design/development criteria must be consistent with nearby existing multi-family residential uses
- FAR of 1.35 is allowed to concentrate development

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The certified LUP provides for a variety of housing types, including both single- and multi-family residences. This area of Mira Mesa includes both housing types as well as duplexes, condominiums and townhomes. Lopez Ridge is a narrow promontory between Lopez and Los Penasquitos Canyons, which together comprise the Los Penasquitos Canyon Preserve. Many of the properties on Lopez Ridge include both mesa top and canyon/steep slope areas, with the development contained compactly on the mesa top and the canyon slopes preserved as open space. The pattern of mesa top development is thus rather dense, as density is calculated over the property as a whole, but then concentrated on the mesa only. The City chose this zone because it is most consistent with the patterns of surrounding development, yet maximizes the potential for additional housing stock, which is badly needed in the city as a whole. The Commission finds the use of the RM-2-5 zone in this location is consistent with the certified LUP policies as modified. The previous discussion regarding the cap on the maximum number of units that can be developed on the three remaining parcels applies to all proposed single and multi-family development of the site.

However, because the Commission did not support the LUP amendment as submitted by the City, the proposed rezoning map incorrectly identifies where the open space and residential zone would apply. The Commission certified the LUP with suggested modifications which have amended the open space/residential boundaries in several locations. Therefore, the RX-1-2 and the RM-2-5 zones are consistent with, and will adequately implement, the conditionally certified LUP; however, the Commission must first deny the IP amendment in order to facilitate the preparation of new, accurate maps, including the subject rezoning map C-917.

#### **PART VII. FINDINGS FOR APPROVAL OF LCP IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As seen in the previous findings, the Commission finds the proposed implementing zones, OC-1-1, RX-1-2 and RM-2-5, are appropriate to implement the LUP, as just certified by the Commission with suggested modifications. The only issue is with the

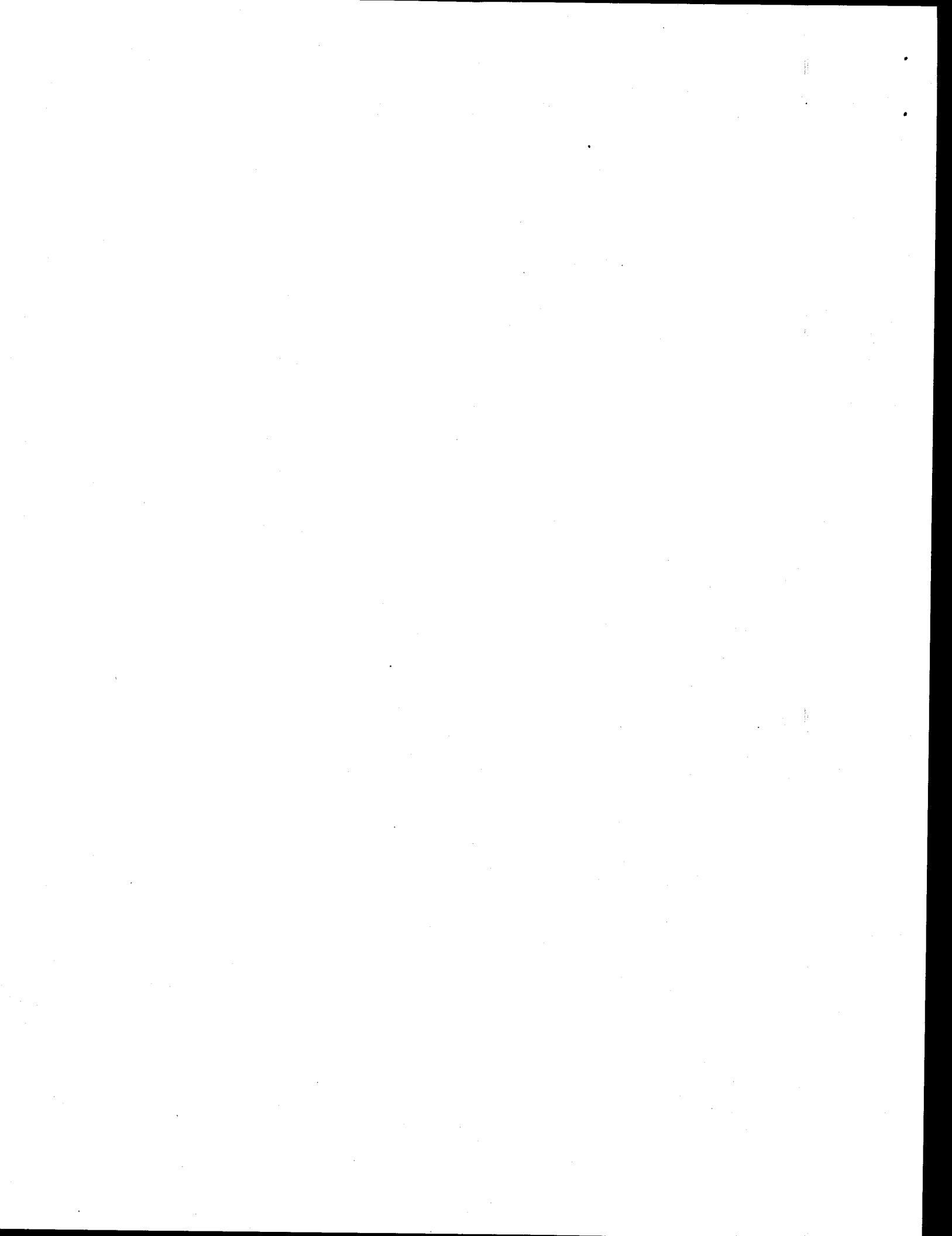
rezoning map itself (map C-917) which is not consistent with the Commission's action on the LUP. The boundaries between developable area and permanent open space are incorrectly drawn on the map, as submitted. Suggested Modification #2 requires that the map be updated consistent with the certified LUP. This will result in an accurate depiction of the subject area of the Mira Mesa community, and will implement the LUP open space preservation policies. Therefore, with the suggested modification, the Commission finds the revised rezoning map, as well as the zones it depicts, consistent with, and adequate to carry out, the provisions of the certified LUP.

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

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a 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 approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

In this particular case, the requested LCP amendment, as submitted by the City, is not consistent with CEQA, particularly with regard to land use and biological resources. Therefore, the Commission denies the LCP amendment and then approves it with suggested modifications addressing these issues. As modified, the Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.





TH 12C  
(R-2004-2)

RESOLUTION NUMBER R-298151

ADOPTED ON JUL 01 2003


WHEREAS, on July 16, 1999, Pardee Homes submitted an application to the City of San Diego for amendments to the City of San Diego Progress Guide and General Plan, Mira Mesa Community Plan, and Local Coastal Plan; a Rezone; Planned Residential Development Permit, Coastal Development Permit, and Multiple Habitat Planning Area Boundary Adjustment; and Vesting Tentative Map, for the land use actions for the Crescent Heights project; and

WHEREAS, City Council Policy 600-7 provides that public hearings to consider revisions to the Progress Guide and General Plan for the City of San Diego may be scheduled concurrently with public hearings on proposed specific and community plans in order to retain consistency between said plans; and

WHEREAS, on May 29, 2003, the Planning Commission held a public hearing for the purpose of considering the amendments to the plans for the Project and recommended to the City Council approval of the proposed amendments; and

WHEREAS, the City Council has considered all maps, exhibits and written documents contained in the file for the Project on record in the City of San Diego, and has considered the oral presentations given at the public hearing; NOW, THEREFORE,

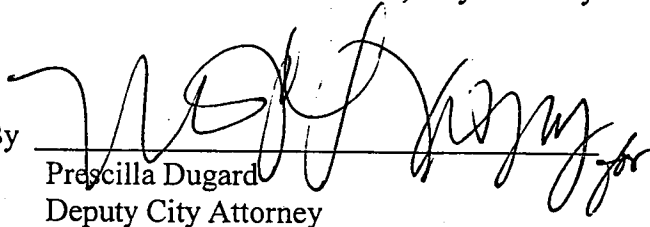
BE IT RESOLVED, by the Council of the City of San Diego, as follows:

<b>EXHIBIT NO. 1</b>
<b>SAN DIEGO LCPA #3-03B</b> CRESCENT HEIGHTS
<b>LAND USE PLAN</b> <b>RESOLUTION</b>
 California Coastal Commission

1. That the amendments to the Mira Mesa Community Plan and Local Coastal Plan No. 10747, and the Progress Guide and General Plan are adopted and a copy of the amendments is on file in the office of the City Clerk as Document No. RR- 298151.

2. That this resolution shall not become effective until such time as the California Coastal Commission effectively certifies these actions as Local Coastal Program amendments as to the areas of the City within the Coastal Overlay Zone.

APPROVED: CASEY GWINN, City Attorney

By   
Prescilla Dugard  
Deputy City Attorney

PD:dm  
6/04/03  
Or.Dept:Dev.Svcs.  
R-2004-2  
Form=r-t.frm

SDLCPA  
#3-03.B

RECEIVED

SEP 19 2003

COMMUNITY  
SOCIAL COMMISSION  
SAN DIEGO COAST DISTRICT

**MIRA MESA COMMUNITY PLAN  
PROPOSED AMENDMENT  
MAY 2003**

<b>EXHIBIT NO. 2</b>
<b>SAN DIEGO LCPA #3-03B</b>
<b>CRESCENT HEIGHTS</b>
<b>PROPOSED LUP</b>
<b>CHANGES</b>

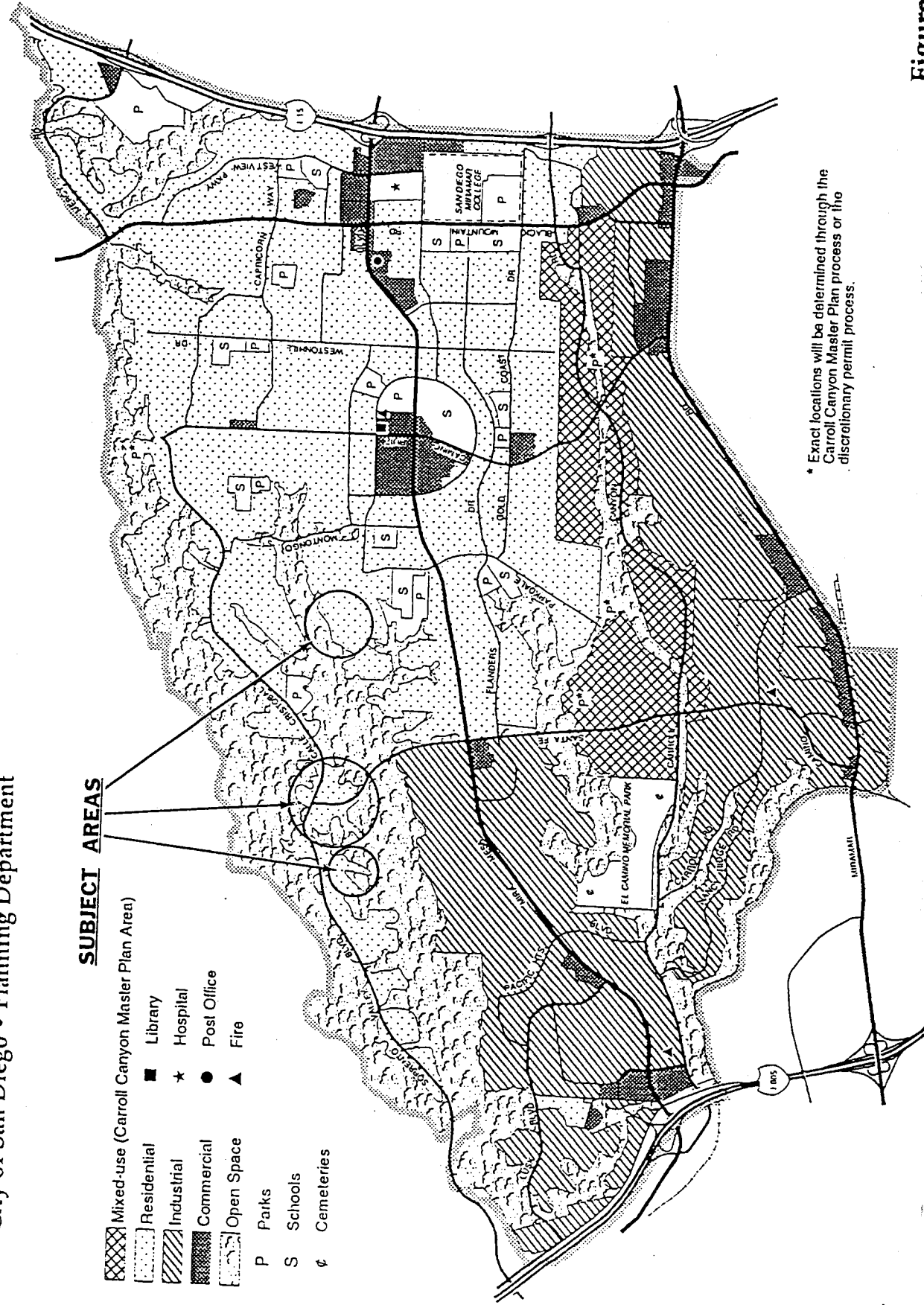
# Land Use Map

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department



## SUBJECT AREAS

- Mixed-use (Carroll Canyon Master Plan Area)
- Residential
- Industrial
- Commercial
- Open Space
- Parks
- Schools
- Cemeteries
- Library
- Hospital
- Post Office
- Fire



\* Exact locations will be determined through the Carroll Canyon Master Plan process or the discretionary permit process.

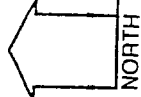


Figure **1**  
Existing  
Oct. 92

SDIC PA # 7 2 11

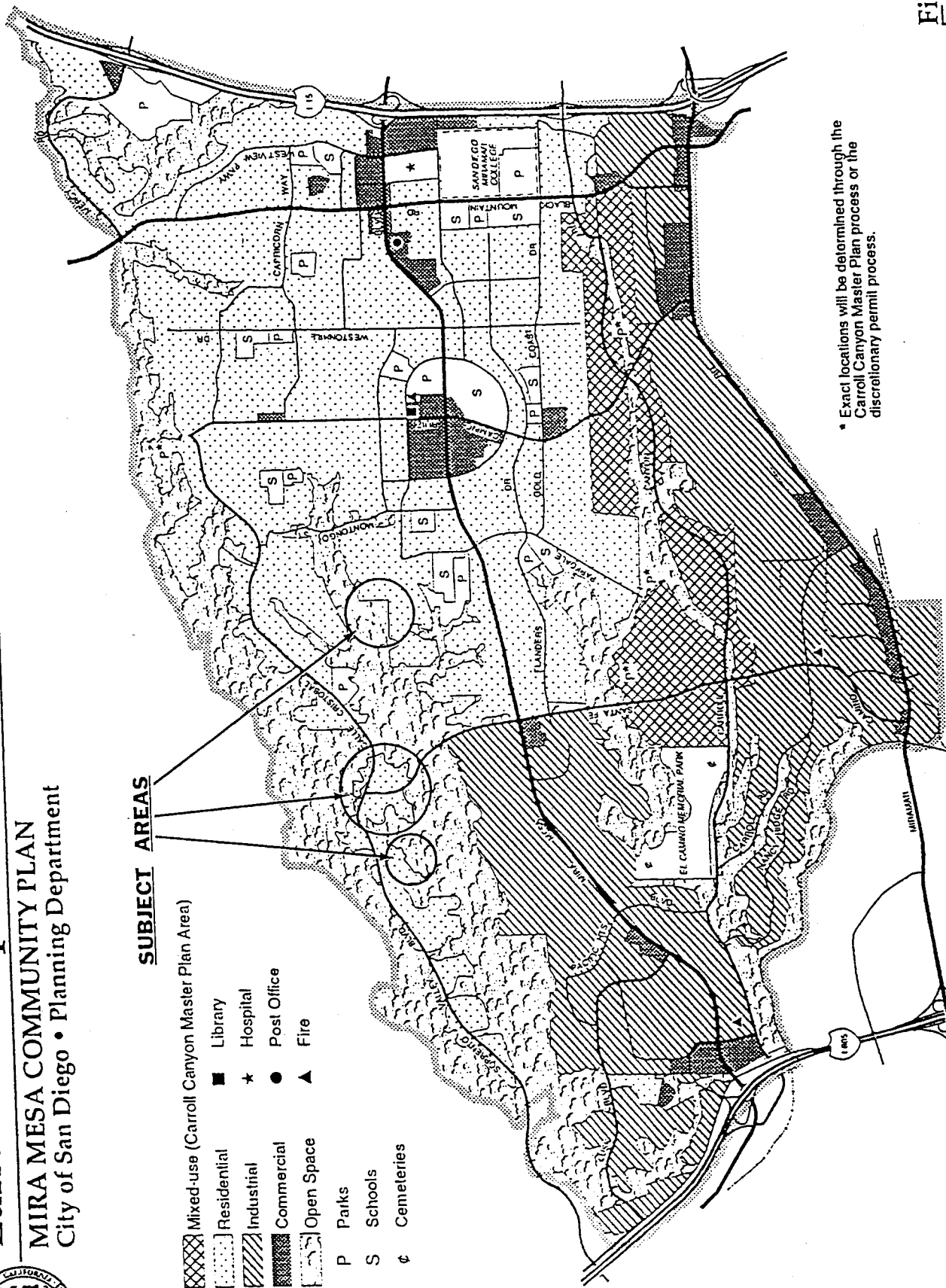
# Land Use Map



MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

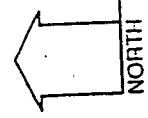
- |  |   |
|--|---|
|  | Mixed-use (Carroll Canyon Master Plan Area) |
|  | Residential                                 |
|  | Industrial                                  |
|  | Commercial                                  |
|  | Open Space                                  |
|  | P Parks                                     |
|  | S Schools                                   |
|  | C Cemeteries                                |
|  | Library                                     |
|  | Hospital                                    |
|  | Post Office                                 |
|  | Fire  |



\* Exact locations will be determined through the Carroll Canyon Master Plan process or the discretionary permit process.

Figure **1**

Proposed  
April 03




SDLC PA # 3-03 B

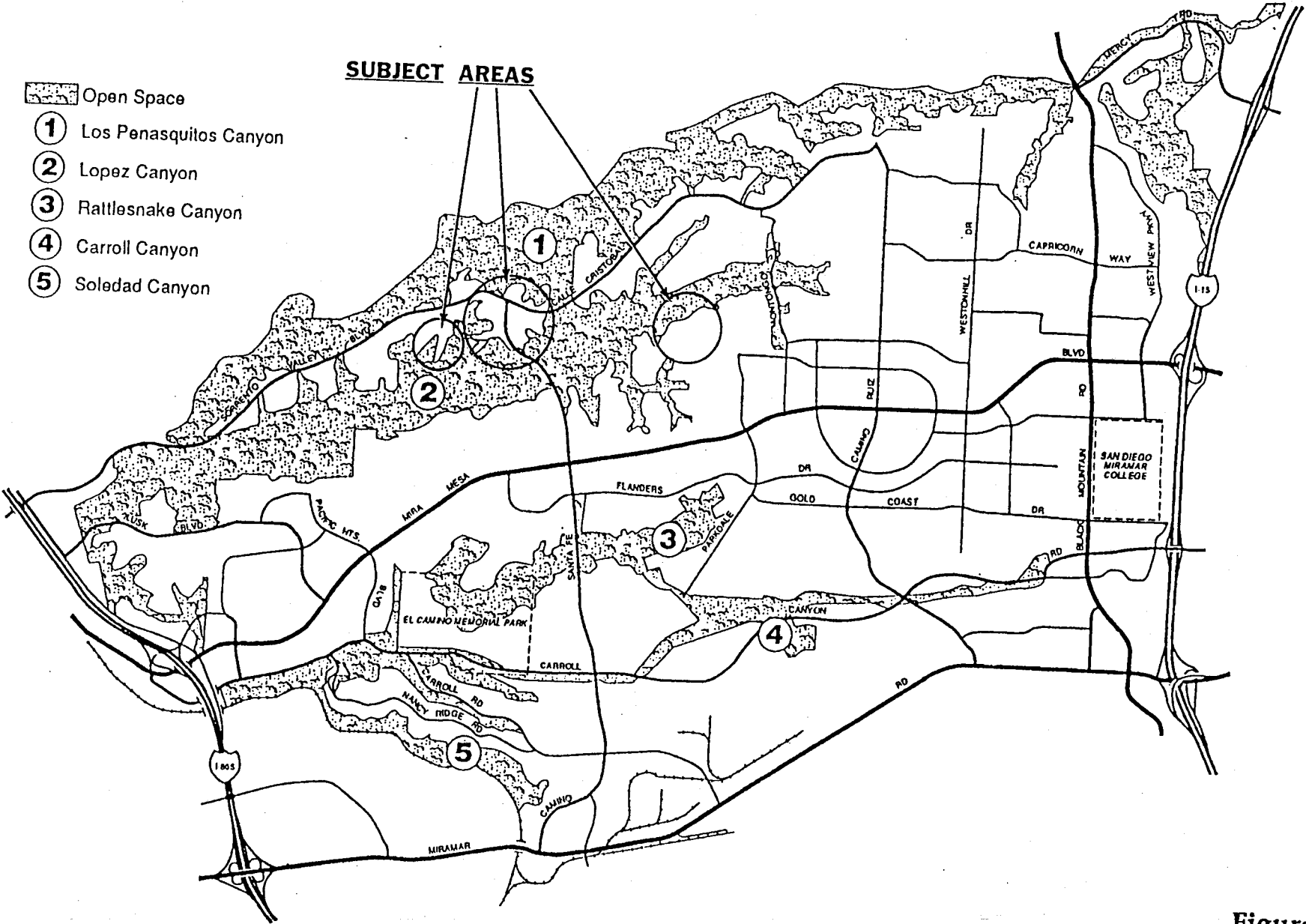


# Designated Open Space System

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

-  Open Space
- ① Los Penasquitos Canyon
- ② Lopez Canyon
- ③ Rattlesnake Canyon
- ④ Carroll Canyon
- ⑤ Soledad Canyon



EN 110 PA # 2-72 R



Figure

6

Existing  
Oct. 92

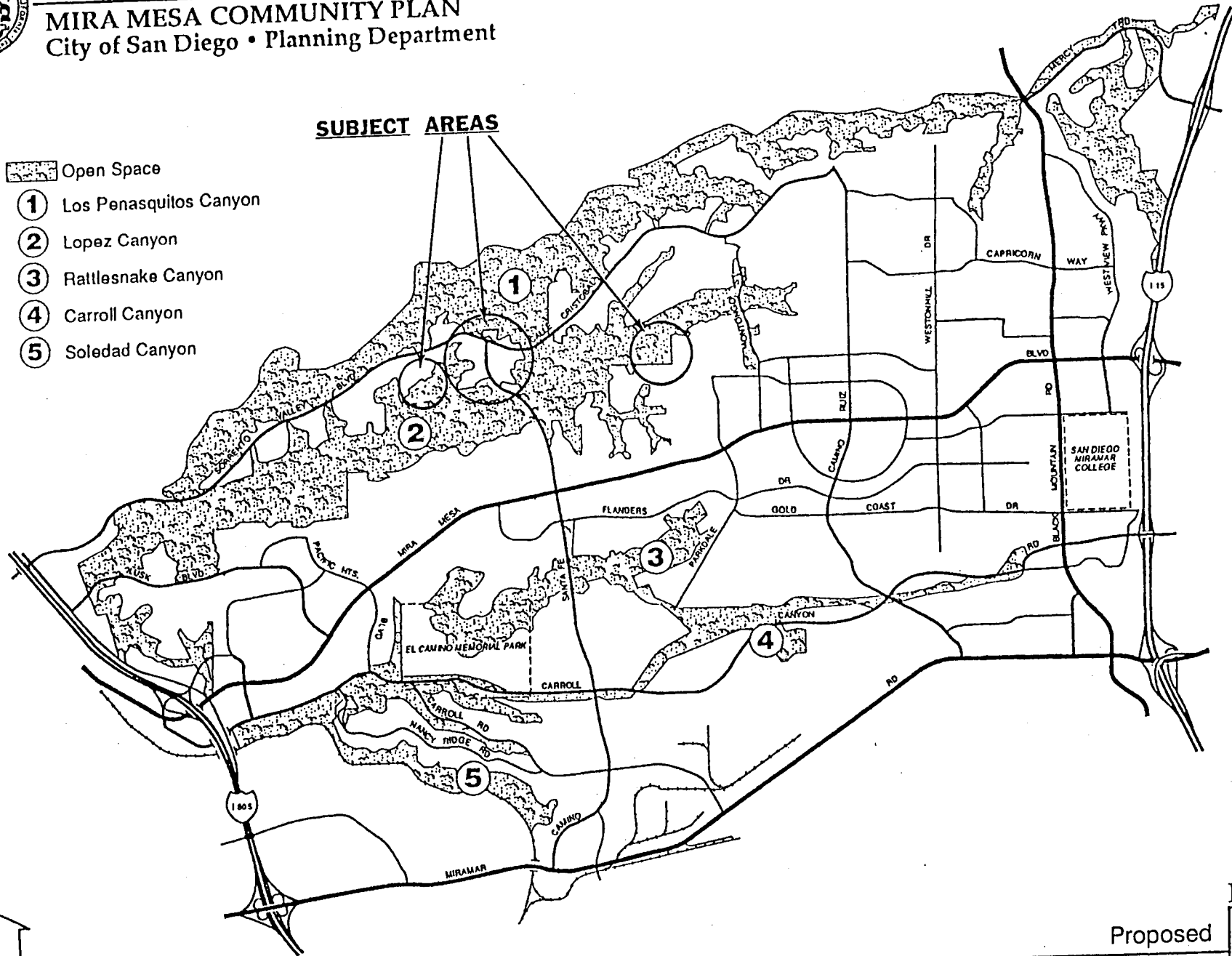


# Designated Open Space System

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

- Open Space
- ① Los Penasquitos Canyon
- ② Lopez Canyon
- ③ Rattlesnake Canyon
- ④ Carroll Canyon
- ⑤ Soledad Canyon



CD11 PA #2-22R



Proposed **6**  
April 03

Figure



# Recommended Trail System

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

Open Space

Trail

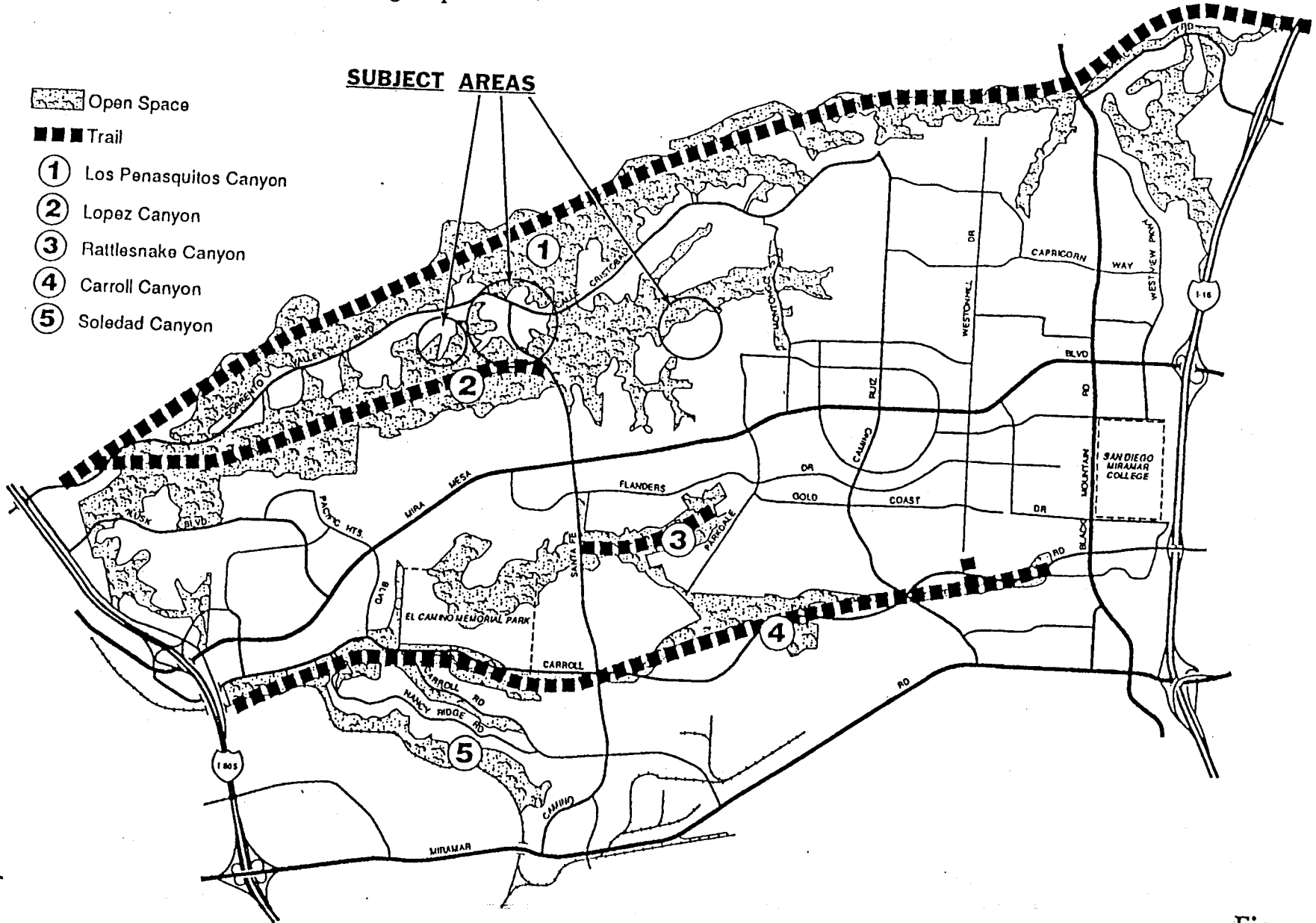
① Los Penasquitos Canyon

② Lopez Canyon

③ Rattlesnake Canyon

④ Carroll Canyon

⑤ Soledad Canyon



CHINA # 2002



Figure

Existing  
Oct. 92

7





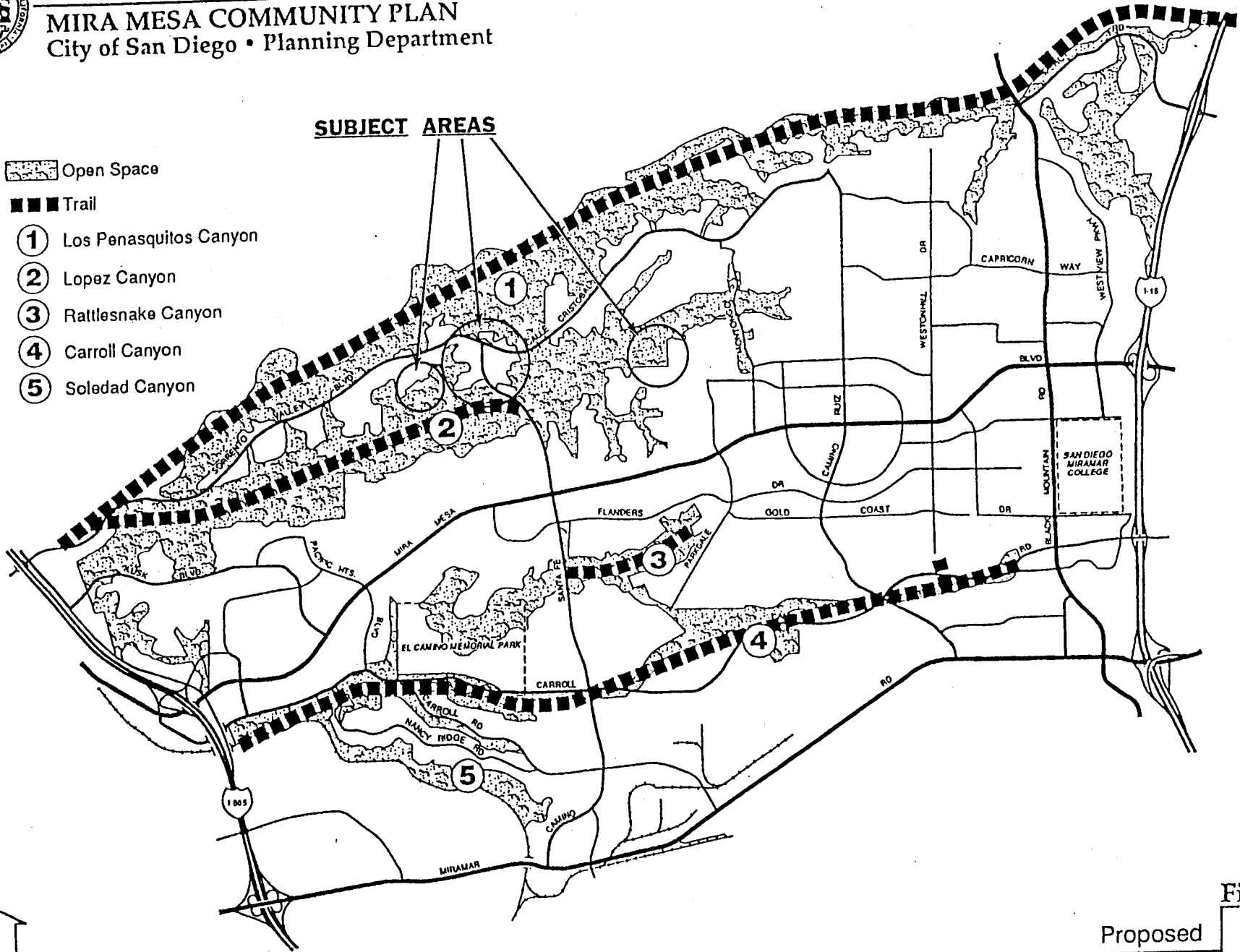


# Recommended Trail System

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

-  Open Space
-  Trail
- ① Los Penasquitos Canyon
- ② Lopez Canyon
- ③ Rattlesnake Canyon
- ④ Carroll Canyon
- ⑤ Soledad Canyon



SD LCPA # 3-03





Proposed  
April 03

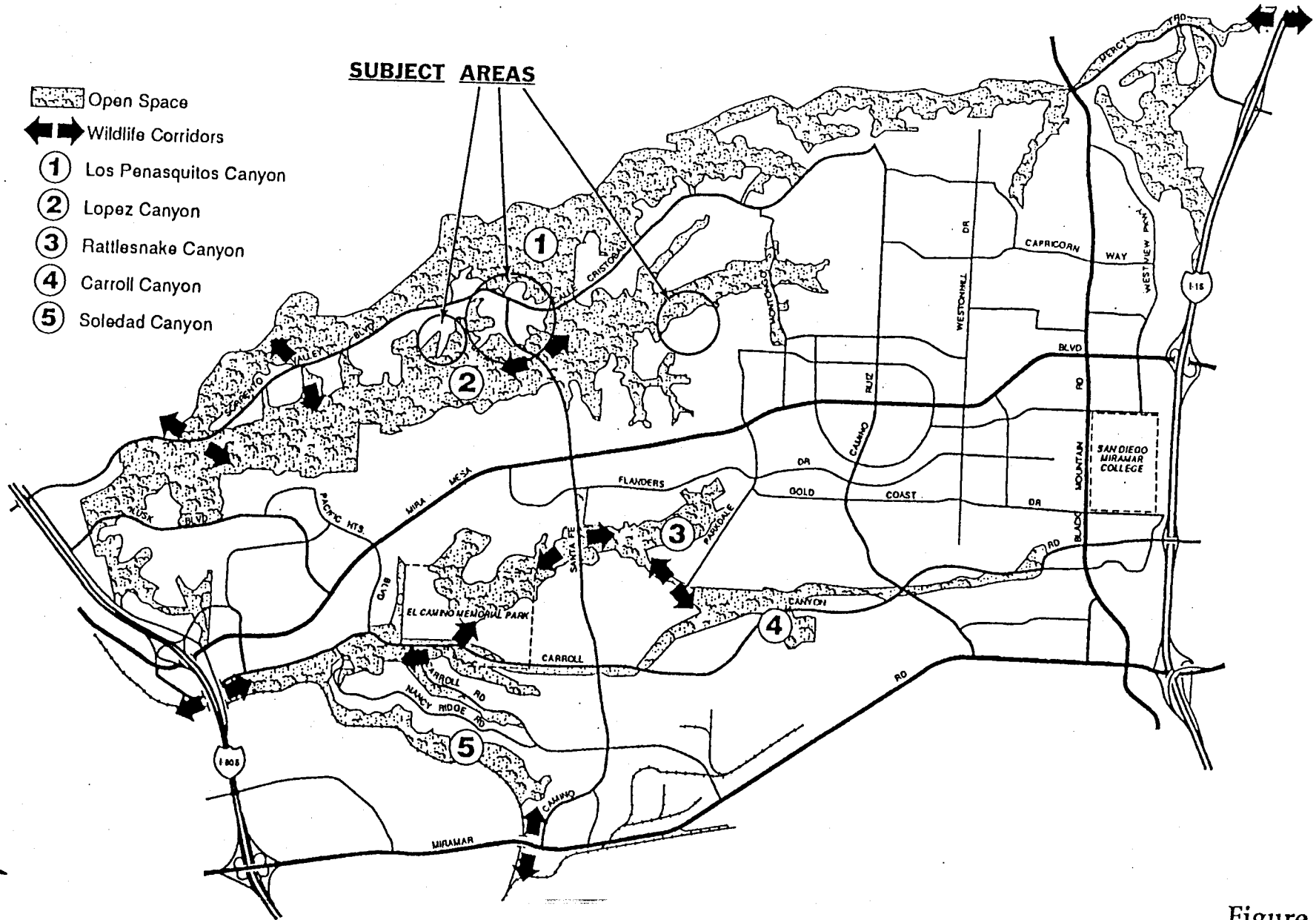
Figure  
**7**



# Recommended Wildlife Corridors

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

- SUBJECT AREAS**
-  Open Space
  -  Wildlife Corridors
  - ① Los Penasquitos Canyon
  - ② Lopez Canyon
  - ③ Rattlesnake Canyon
  - ④ Carroll Canyon
  - ⑤ Soledad Canyon



SD LCRA #3-73



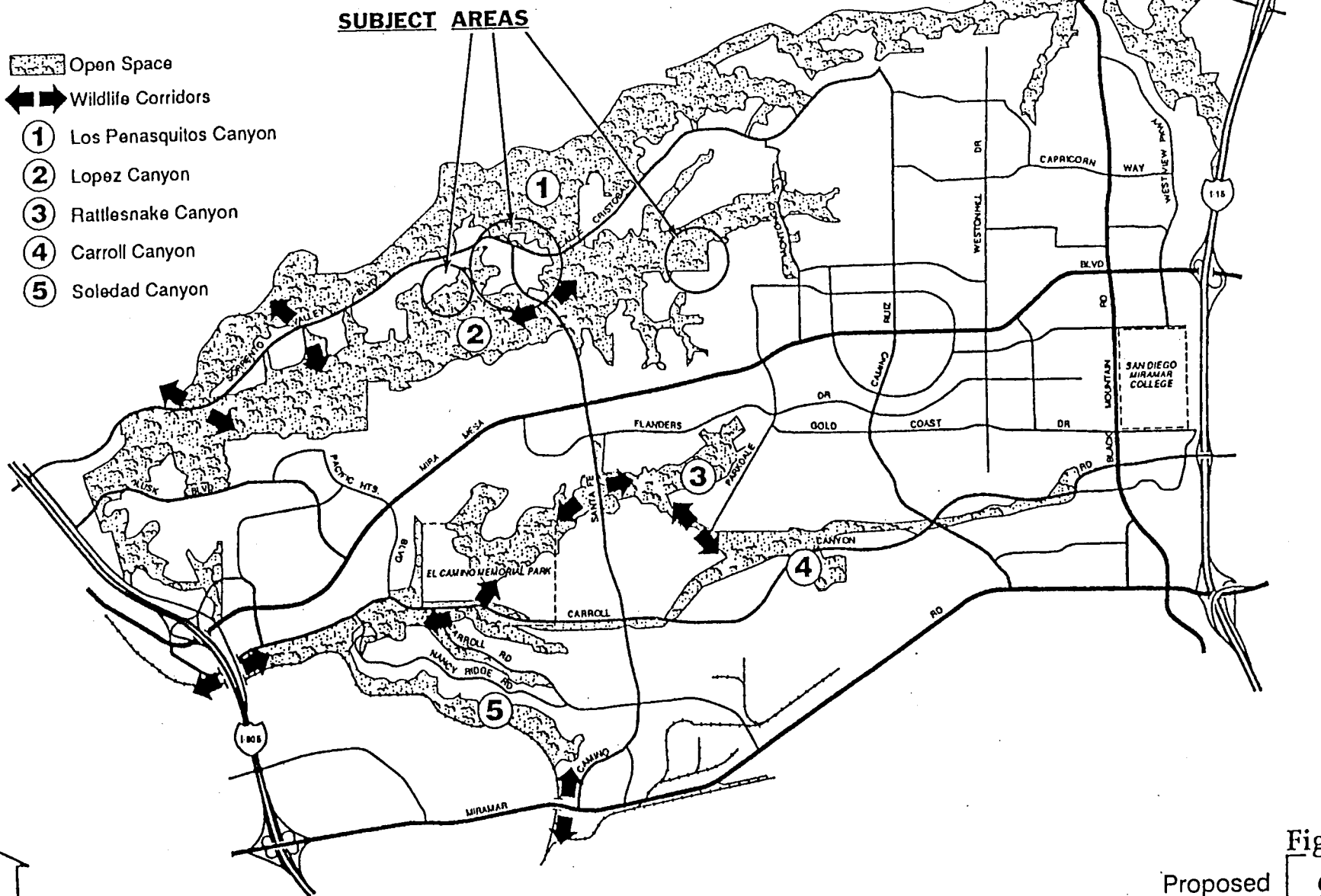
Existing  
Oct. 92

Figure  
**8**



# Recommended Wildlife Corridors

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department



SD LOPA#3-03



Proposed **8**  
April 03

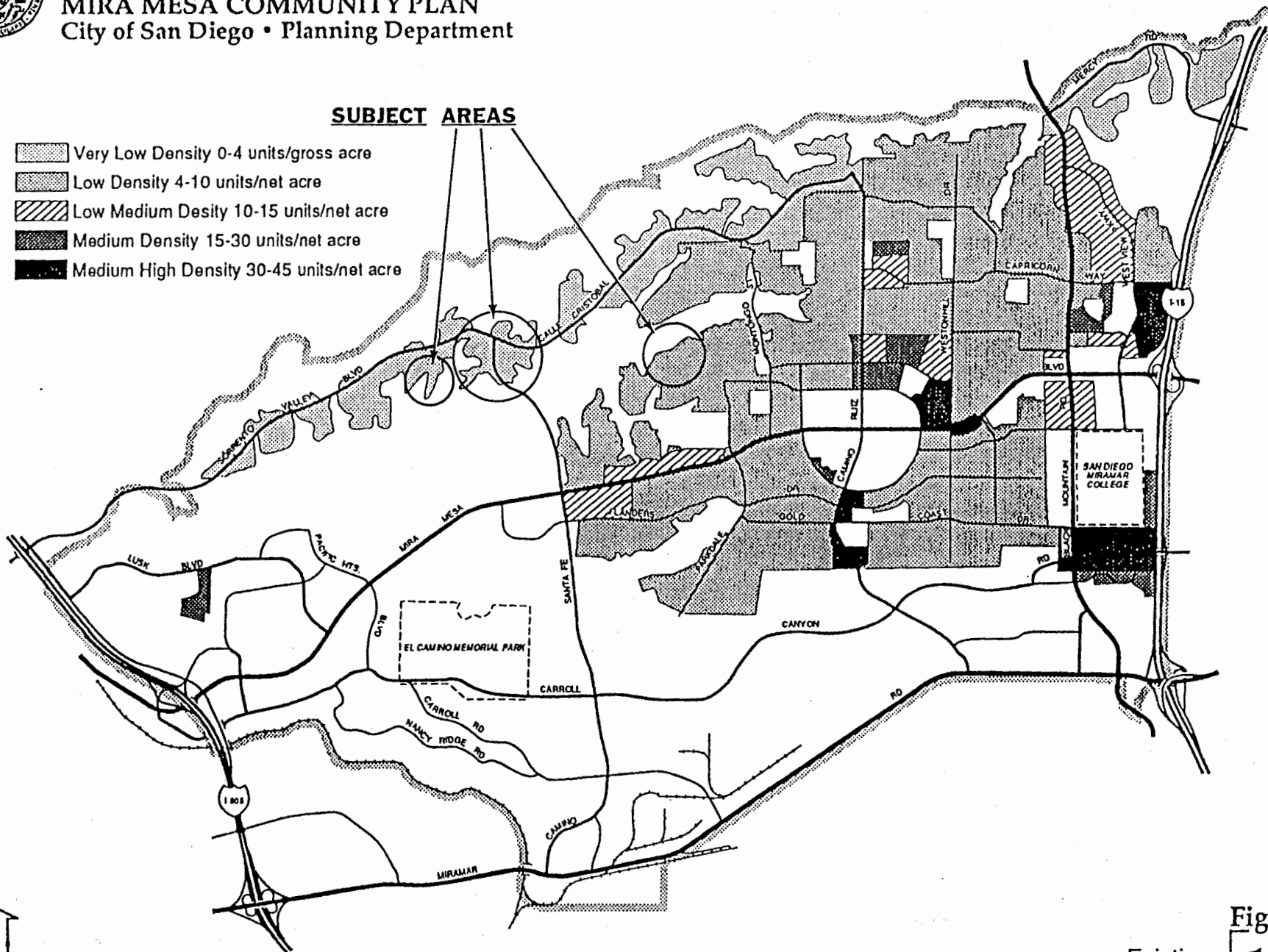


# Recommended Residential Densities

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

- Very Low Density 0-4 units/gross acre
- Low Density 4-10 units/net acre
- Low Medium Density 10-15 units/net acre
- Medium Density 15-30 units/net acre
- Medium High Density 30-45 units/net acre



SD LCPA #3-03



Existing  
Oct. 92






Figure  
**18**

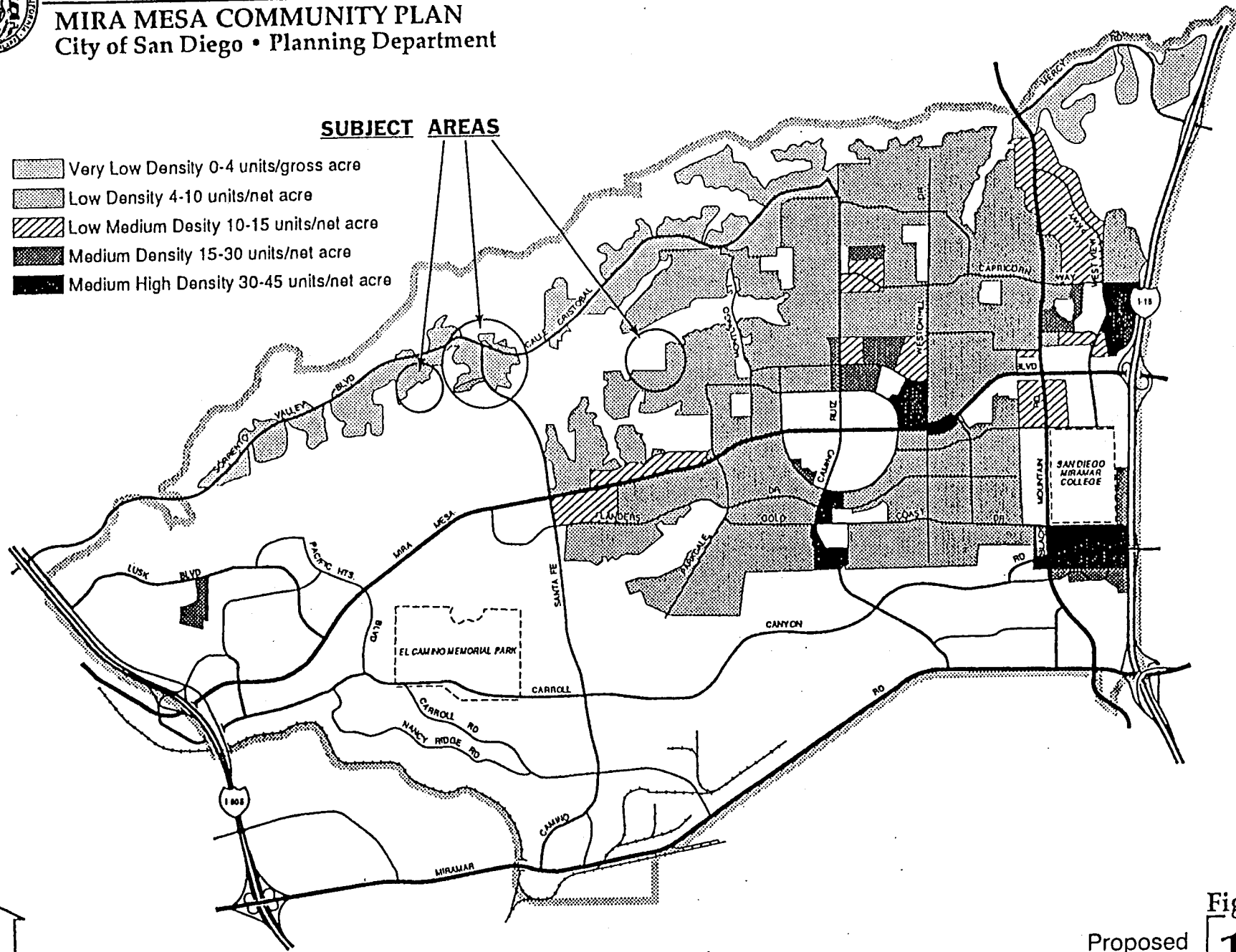


# Recommended Residential Densities

MIRA MESA COMMUNITY PLAN  
City of San Diego • Planning Department

## SUBJECT AREAS

-  Very Low Density 0-4 units/gross acre
-  Low Density 4-10 units/net acre
-  Low Medium Density 10-15 units/net acre
-  Medium Density 15-30 units/net acre
-  Medium High Density 30-45 units/net acre



STN 1004 #5703



Proposed  
April 03

Figure  
**18**

PROPOSED CHANGES TO THE MIRA MESA COMMUNITY PLAN

Page 39:

~~Retain A-1-10 zoning on areas designated~~ Rezone open space areas to a zone appropriate for open space preservation.

Page 77:

.....Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. Especially when clustering is used on ridgetop and hillside parcels, appropriate zoning should be applied to the developed area which matches the development intensity, with open space zoning applied to the associated open space areas. The R1-10,000 Zone or the R1-5000 Zone if units are clustered to preserve natural open space areas, are proposed to implement this designation. The maximum ....

Page 107:

1. Grading over the rim of Los Peñasquitos Canyon shall not be permitted except as may be allowed in #12 below.

Page 108:

12. Development beyond the rim of Los Peñasquitos Canyon and/or Lopez Canyon may only be permitted when the proposed development results in an environmentally superior project. An environmentally superior project shall meet the following criteria:

- a) The disturbed area for the proposed development is the minimum necessary to allow appropriate development consistent with this plan while implementing an environmentally sensitive alternative. The proposed disturbed area should be sited to cluster development within/adjacent to existing disturbed areas and/or adjacent to existing development.
- b) The impervious areas for the proposed development (e.g. building footprint, driveways, roads and sidewalks) are the minimum necessary to allow appropriate development consistent with this plan.
- c) The proposed development must result in a net increase in the preservation of Tier 1 habitat and avoid all impacts to wetlands, including vernal pools and their watersheds, and provide adequate buffers to resources consistent with the Environmentally Sensitive

Lands regulations contained in the City of San Diego Land Development Code and the Biology Guidelines.

- d) The proposed development must maintain or improve overall habitat value and wildlife movement/corridors.
- e) Slopes encroaching into the canyon must be blended into the natural topography with contour grading and be revegetated with native plants, including the planting of native species from areas proposed for disturbance.
- f) The proposed development must be consistent with the City of San Diego MSCP Subarea Plan.
- g) The site design must not exacerbate erosion/siltation in the watershed and Lopez Canyon by using sensitive grading techniques and best management practices (BMPs). No detention basins shall be located within the MHPA and all facilities must be designed/sited to minimize impacts to open space.
- h) The project must be sited and designed not to significantly impact views from designated open space areas, including trails.

Any development consistent with this section that results in structures being visible from the floor of Lopez Canyon, or encroaches into Plan-designated open space shall require an amendment to the Community Plan.

ORDINANCE NUMBER O-19199 (NEW SERIES)

ADOPTED ON JULY 14, 2003

RECEIVED

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 188.63 ACRES, LOCATED NORTH AND SOUTH OF CALLE CRISTOBAL, EAST AND WEST OF CAMINO SANTA FE, IN THE MIRA MESA COMMUNITY PLAN AREA, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE AR-1-1 (PREVIOUSLY REFERRED TO AS THE A-1-10) INTO THE RX-1-2, RM-2-5, AND OC-1-1 ZONES, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTIONS 131.0404, 131.0406 AND 131.0203; AND REPEALING ORDINANCE NO. O-18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HEREWITH.

SEP 19 2003

CALIFORNIA  
LOCAL COMMISSION  
SAN DIEGO COAST DISTRICT

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

Section 1. In the event that within three years of the effective date of this ordinance rezoning 188.63 acres, located north and south of Calle Cristobal, east and west of Camino Santa Fe, and legally described as Portion of Section 34, Township 14 South, Range 3 West, Section 35, Township 14 South, Range 3 West, West Half and Portion of Northeast Quarter, Portion of Section 34, Township 14 South, Range 3 West Northeast Quarter of Northeast Quarter, Section 27, Township 14 South, Range 3 West, San Bernardino Base and Meridian, in the Mira Mesa Community Plan area, in the City of San Diego, County of San Diego, California, according to U.S. Government Survey, from the AR-1-1 zone (previously referred to as A-1-10)

EXHIBIT NO. 3
SAN DIEGO LCPA #3-03B CRESCENT HEIGHTS
<b>ZONING RESOLUTION</b>



to the RX-1-2, RM-2-5 and OC-1-1 zones, as shown on Zone Map Drawing No. C-197, the property is subdivided and a map or maps thereof duly submitted to the City, approved by the City, and thereafter recorded, and within such subdivision or subdivisions provision is made for the installation of public utility services and the dedication of streets, alleys and easements for public use, the provisions of San Diego Municipal Code [SDMC] sections 131.0404, 131.0406 and 131.0203, shall attach and become applicable to the subdivided land, and the subdivided land shall be incorporated into the RX-1-2, RM-2-5 and OC-1-1 zones, as described and defined by Sections 131.0404, 131.0406 and 131.0203, the boundary of such zones to be as indicated on Zone Map Drawing No. C-917, filed in the office of the City Clerk as Document No. OO-\_\_\_\_\_. The zoning shall attach only to those areas included in the map as provided in this section.

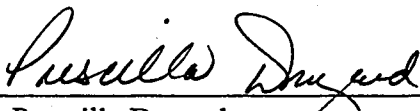
Section 2. That in the event the zoning restrictions shall attach to the said land described in Section 1 of this ordinance, Ordinance No. O-18451 (New Series), adopted December 9, 1997, is repealed insofar as it conflicts with the rezoned uses of the land.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

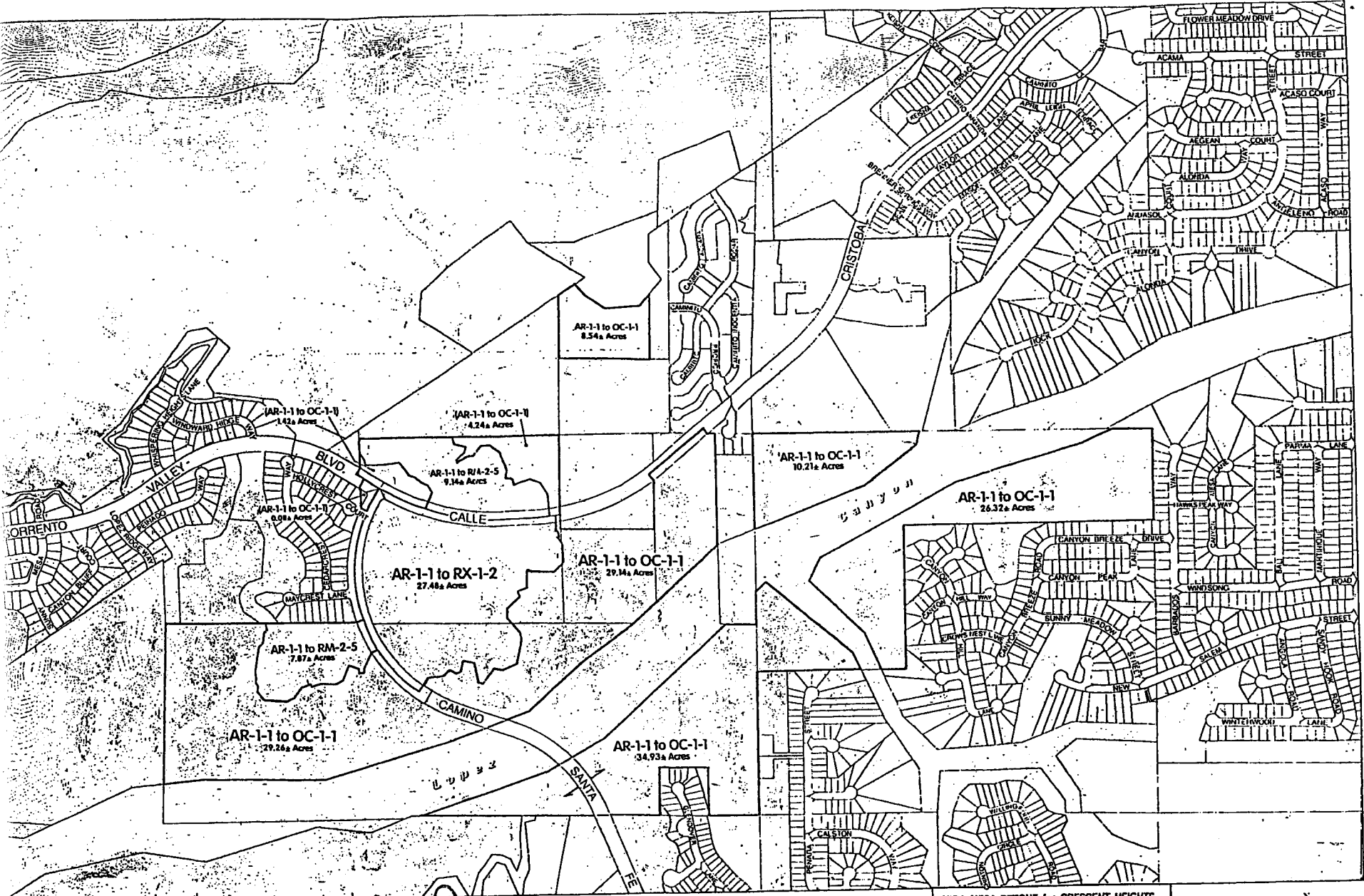
Section 4. No building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

Section 5. This ordinance shall not be effective until the date the California Coastal Commission effectively certifies this ordinance as a Local Coastal Program amendment for application in the Coastal Overlay Zone and no earlier than thirty days after its date of adoption. If this ordinance is not certified or is certified with suggested modifications by the California Coastal Commission, the provisions of this ordinance shall be null and void.

APPROVED: CASEY GWINN, City Attorney

By   
\_\_\_\_\_  
Prescilla Dugard  
Deputy City Attorney

PD:dm  
06/04/03  
07/24/03 COR.COPY  
Or.Dept:Dev.Svs.  
Case No. 99-0639  
O-2004-1  
Form=insubo.frm



SD 2011  
MIRA MESA

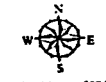


PLANNING DEPARTMENT

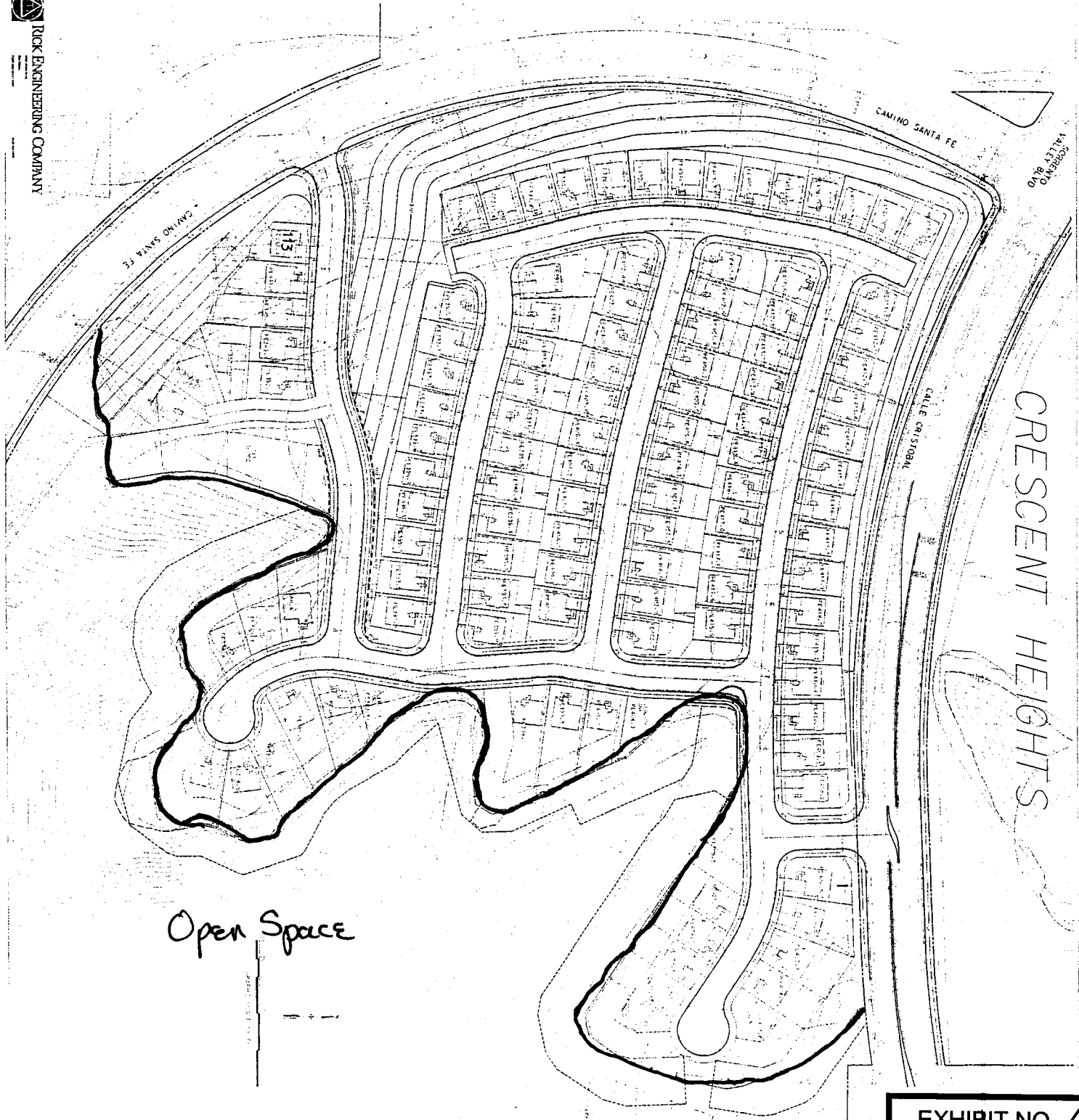
**MIRA MESA REZONE for CRESCENT HEIGHTS**

PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY
PROJECT NO.	DATE	STATUS	BY

**C-917**



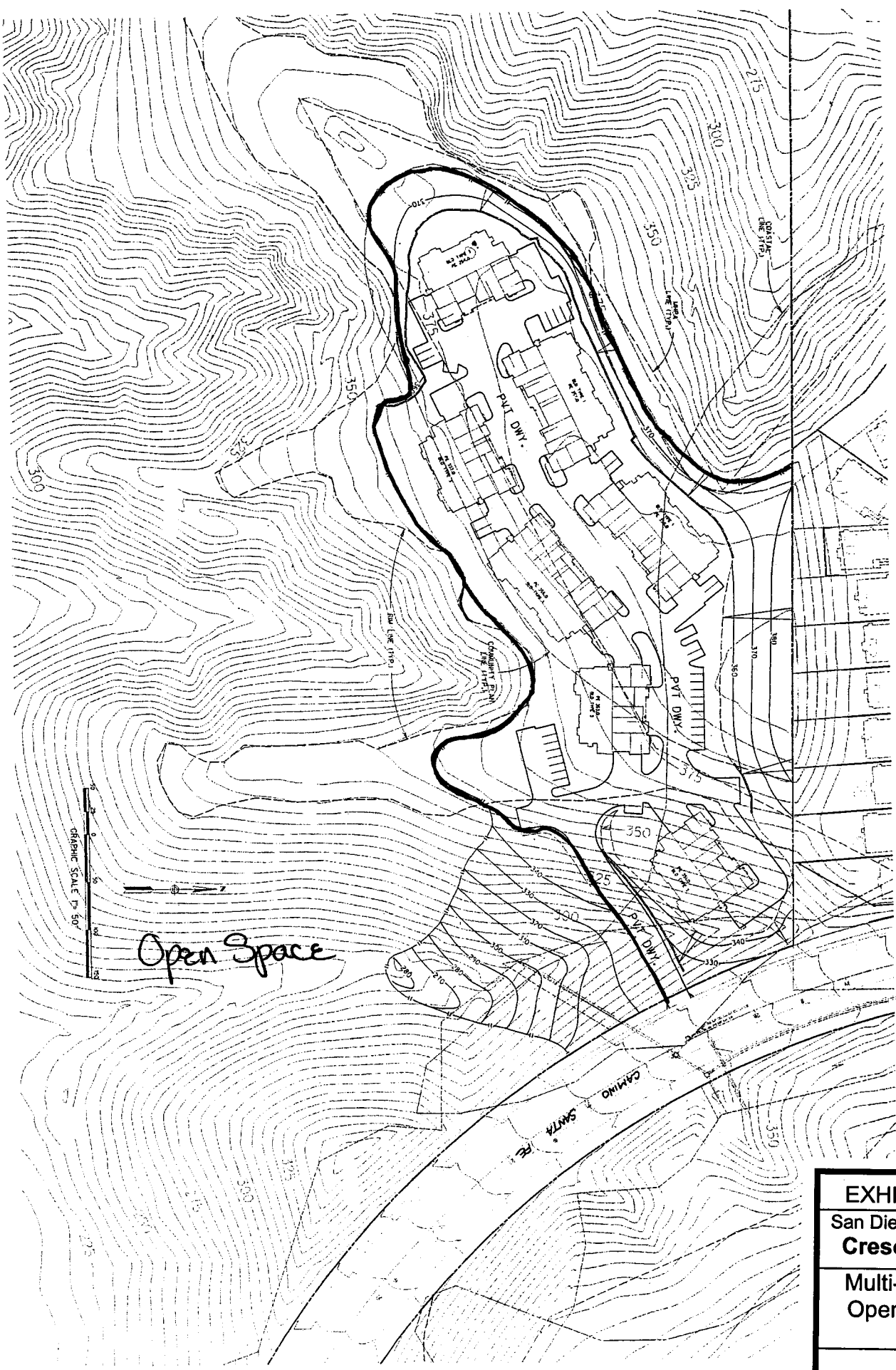
Scale: 1 inch = 200 feet.



Open Space

**EXHIBIT NO. 4a**  
**San Diego LCPA #3-03B**  
**Crescent Heights**  
**Single Family**  
**Residential Open**  
**Space Line**

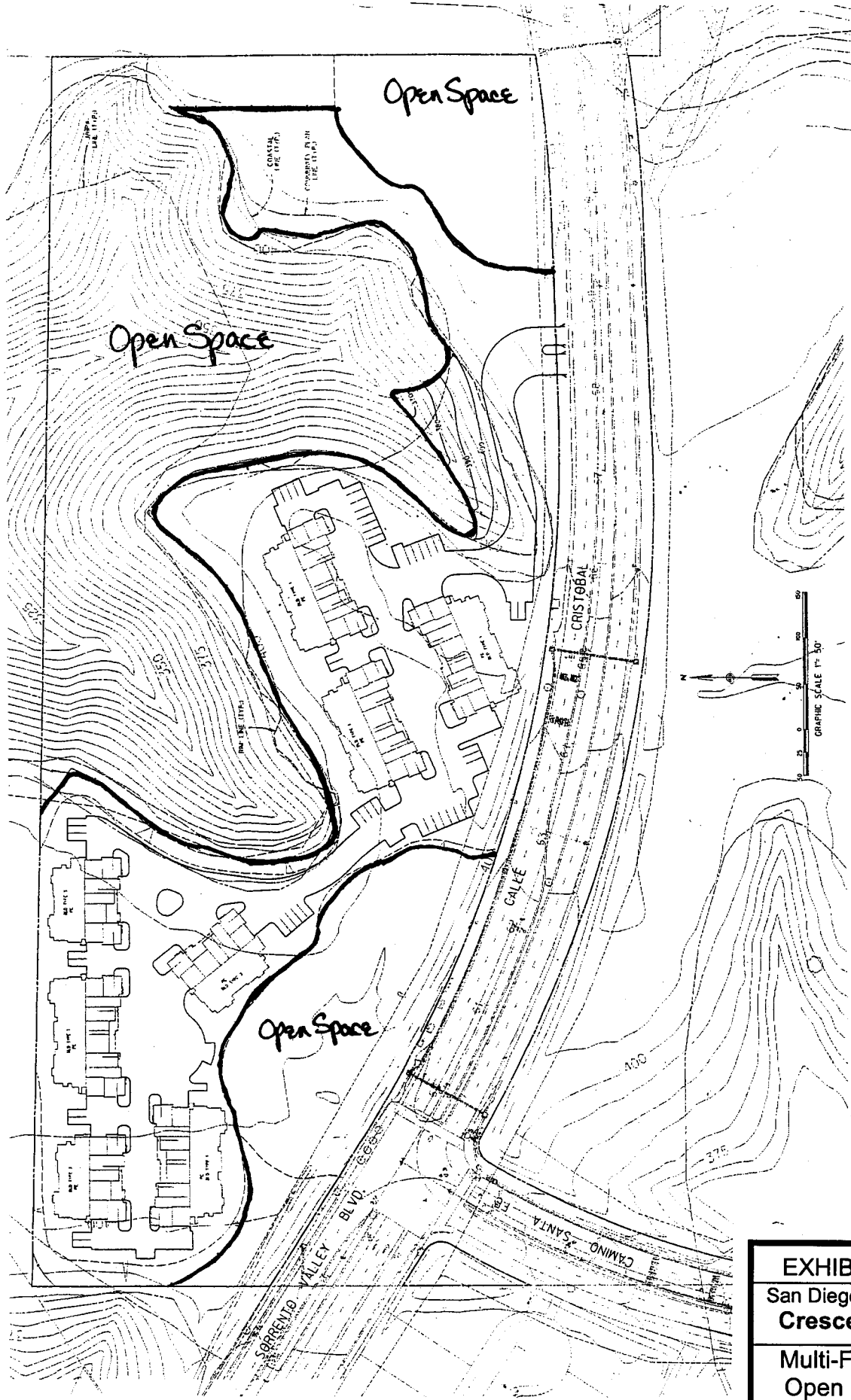
CRESCENT HEIGHTS



<b>EXHIBIT NO. 4b</b>
San Diego LCPA #3-03B
<b>Crescent Heights</b>
Multi-Family West
Open Space Line

California Coastal Commission

CRESCENT HEIGHTS



**EXHIBIT NO. 4C**  
San Diego LCPA #3-03B  
**Crescent Heights**  
Multi-Family North  
Open Space Line






















Crescent Heights

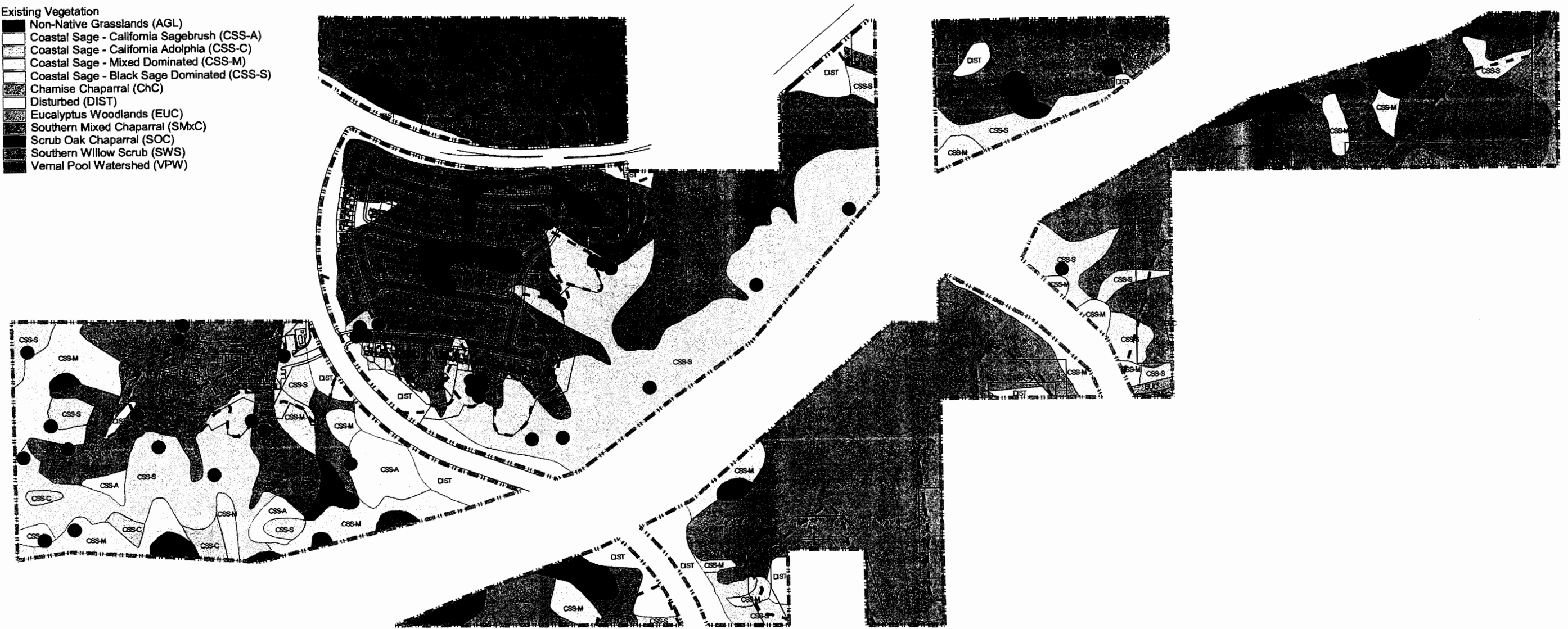
Multi-family West

Sunset Pointe



**Legend:**

-  Pipefitter Boundry
-  MHPA
-  Post MHPA
- MSCP Covered Species**
-  Coast Barrel Cactus Location
-  San Diego Coast Horned Lizard Location
-  Coastal California Gnatcatcher Location
-  Southern California Rufous-Crowned Sparrow Location
- Existing Vegetation**
-  Non-Native Grasslands (AGL)
-  Coastal Sage - California Sagebrush (CSS-A)
-  Coastal Sage - California Adolphia (CSS-C)
-  Coastal Sage - Mixed Dominated (CSS-M)
-  Coastal Sage - Black Sage Dominated (CSS-S)
-  Chamise Chaparral (ChC)
-  Disturbed (DIST)
-  Eucalyptus Woodlands (EUC)
-  Southern Mixed Chaparral (SMxC)
-  Scrub Oak Chaparral (SOC)
-  Southern Willow Scrub (SWS)
-  Vernal Pool Watershed (VPW)



**FIGURE 4C-1**  
**Existing Vegetation and Sensitive Species on the Crescent Heights Project**

# CRESCENT HEIGHTS

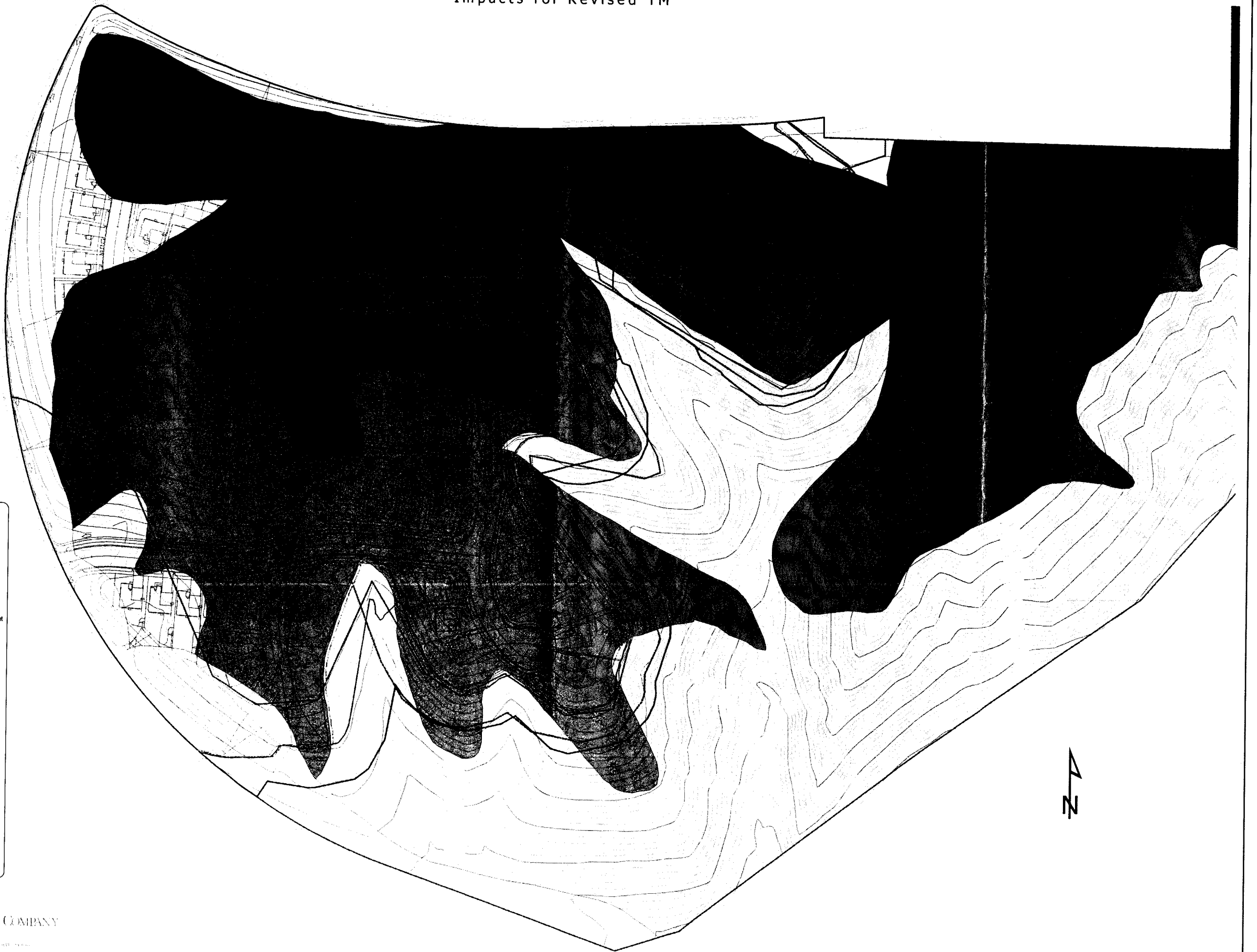
Vegetation, MHPA and Brush Management  
Impacts for Revised TM

**Legend**

- ..... Rimline
- MHPA Limits
- Grading Limits
- Brush Management
- ..... Revised Brush Management

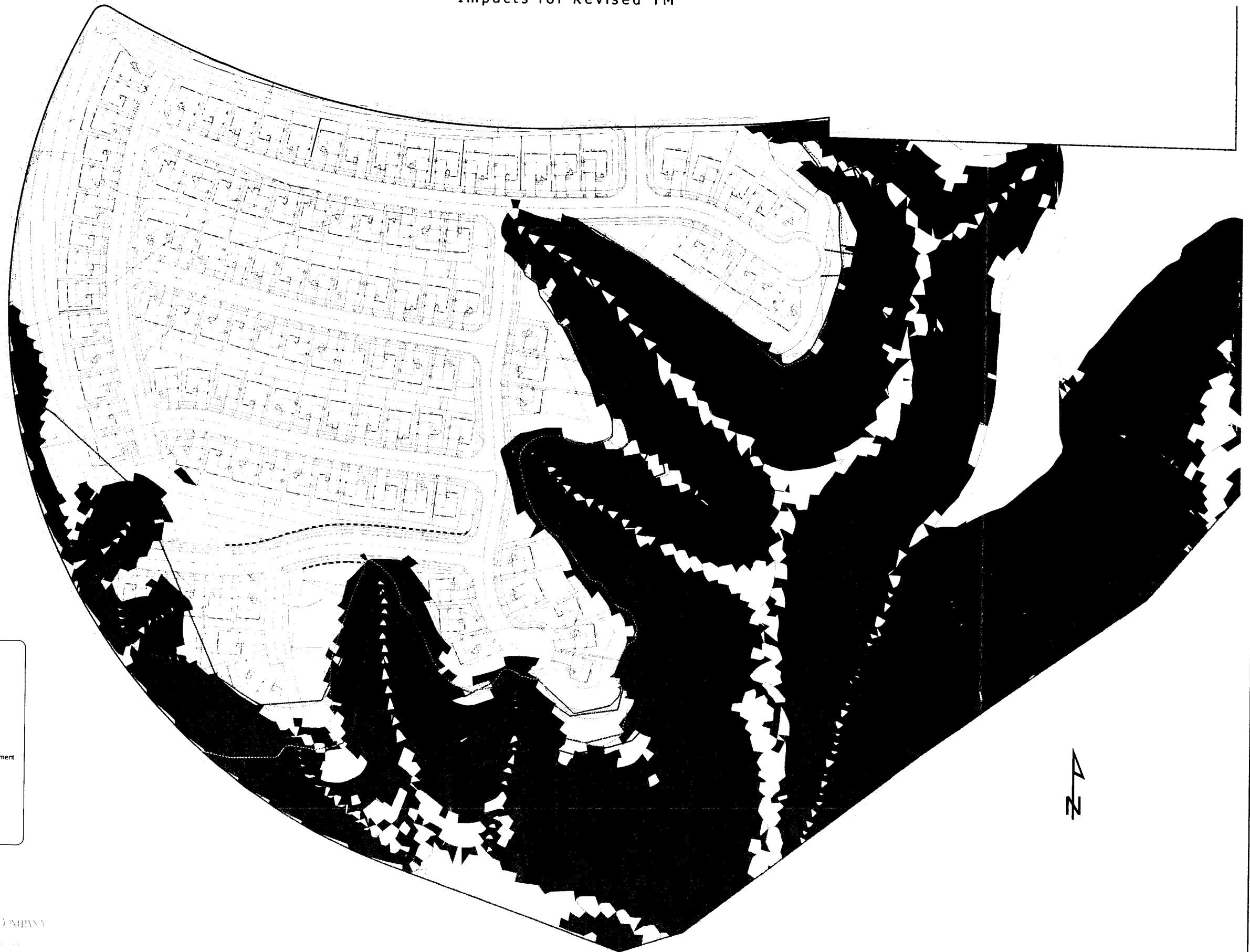
**Vegetation Communities**

- AGL
- CSS-A
- CSS-C
- CSS-M
- CSS-S
- ChC
- DIST
- EUC
- SMxC
- SOC
- SWS
- VPW



# CRESCENT HEIGHTS

Existing Slope, MHPA and Brush Management  
Impacts for Revised TM



**Legend**

- ..... Rimline
- MHPA Limits
- Grading Limits
- Brush Management
- ..... Revised Brush Management
- Existing Slope**
- 0%-25%
- 25%-35%
- >35%



# CRESCENT HEIGHTS

Vegetation, MHPA and Brush Management  
Impacts for Revised TM

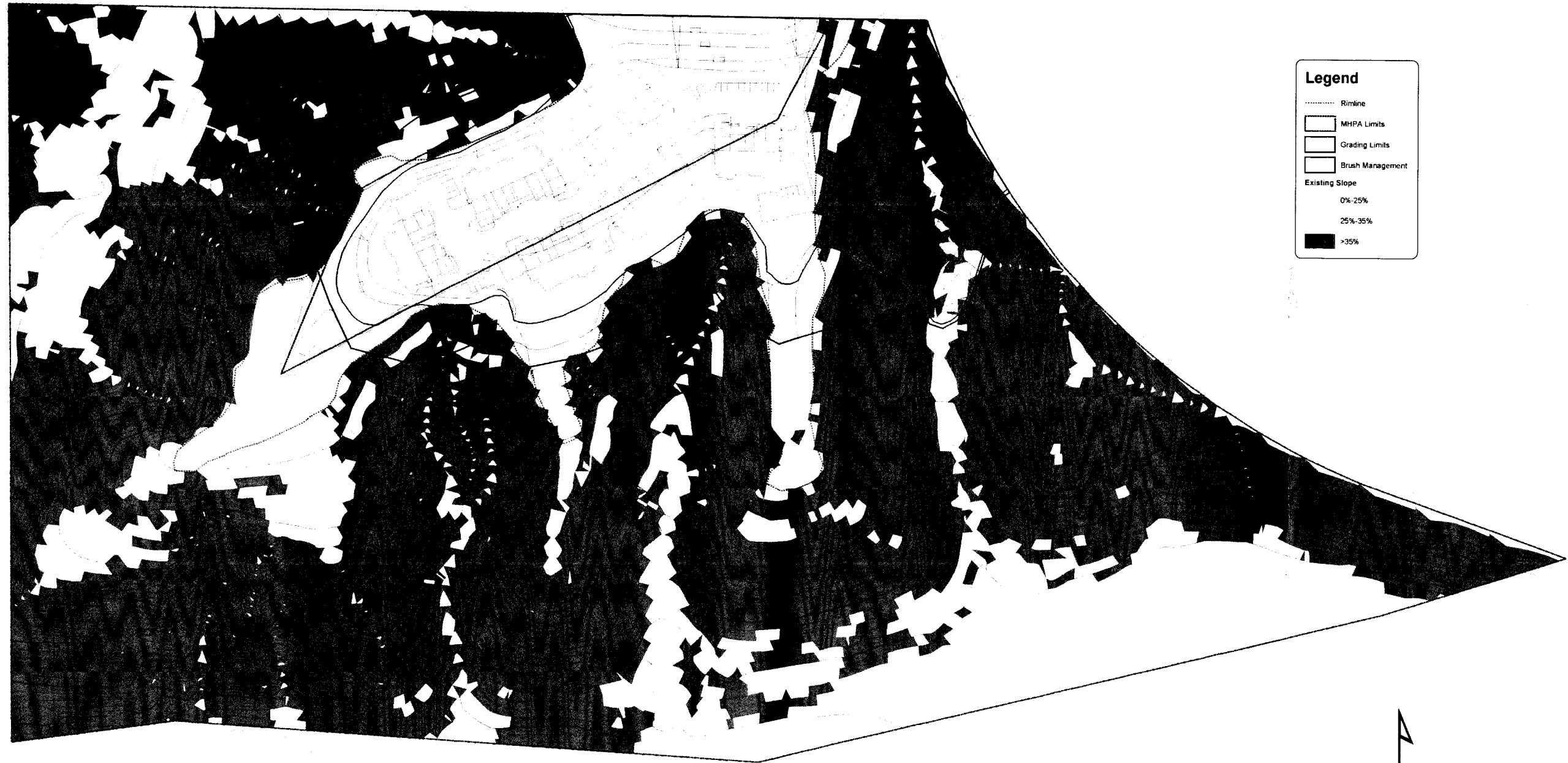
**Legend**

- Approved TM Footprint
- ..... Rimline
- MHPA Limits
- Grading Limits
- Brush Management
- Vegetation Communities**
- AGL
- CSS-A
- CSS-C
- CSS-M
- CSS-S
- CHC
- DIST
- EUC
- SM&C
- SOC
- SWS
- VPW



# CRESCENT HEIGHTS

Existing Slope, MHPA and Brush Management  
Impacts for Revised TM



**Legend**

- ..... Rimline
- MHPA Limits
- Grading Limits
- Brush Management

Existing Slope

- 0%-25%
- 25%-35%
- >35%

5

# CRESCENT HEIGHTS

Existing Slope, MHPA and Brush Management  
Impacts for Revised TM



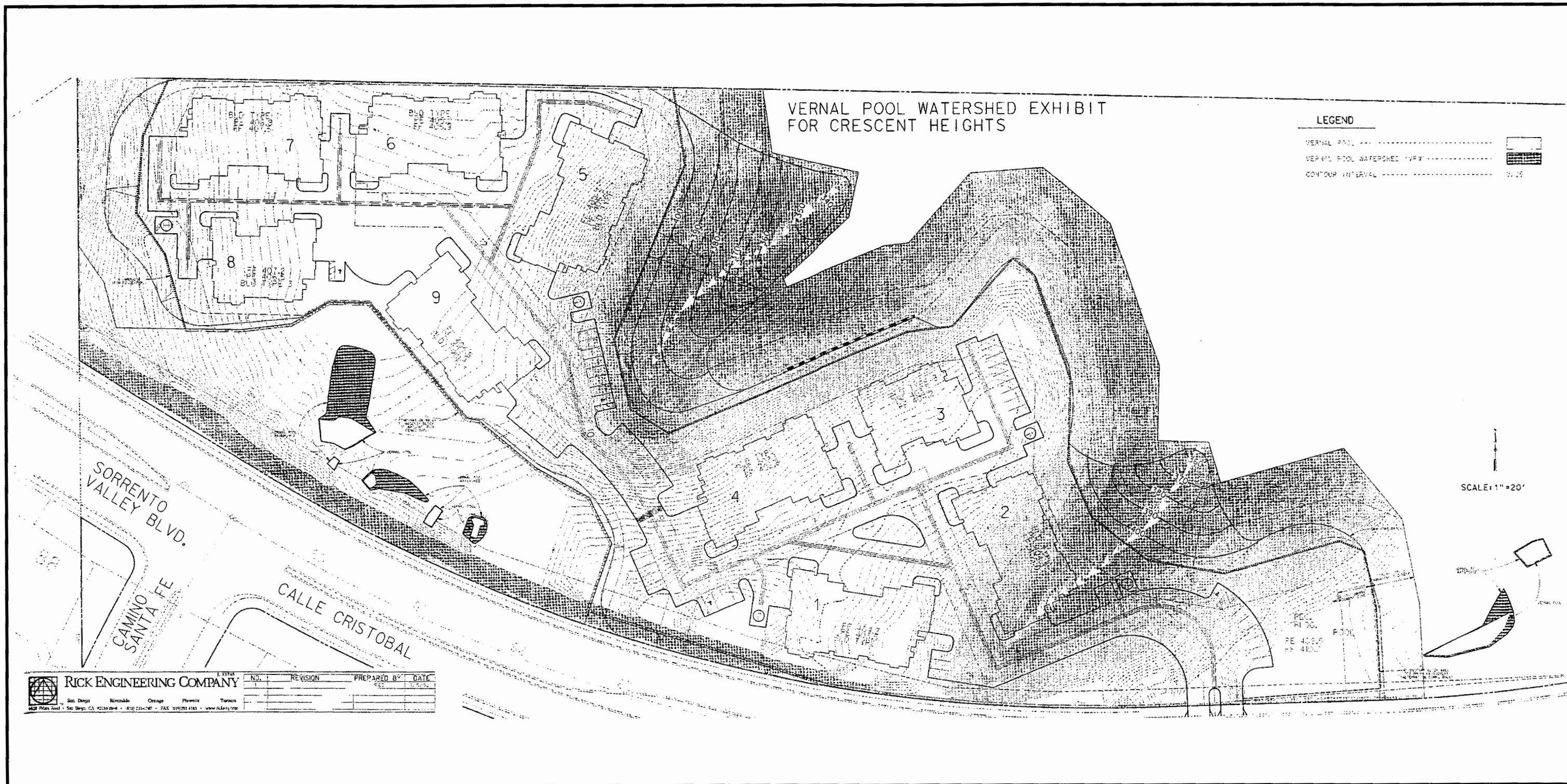
**Legend**

- ..... Rimline
- ▭ MHPA Limits
- ▭ Grading Limits
- ▭ Brush Management

**Existing Slope**

- 0%-25%
- 25%-35%
- >35%





Map Source: Rick Engineering Company, 2002



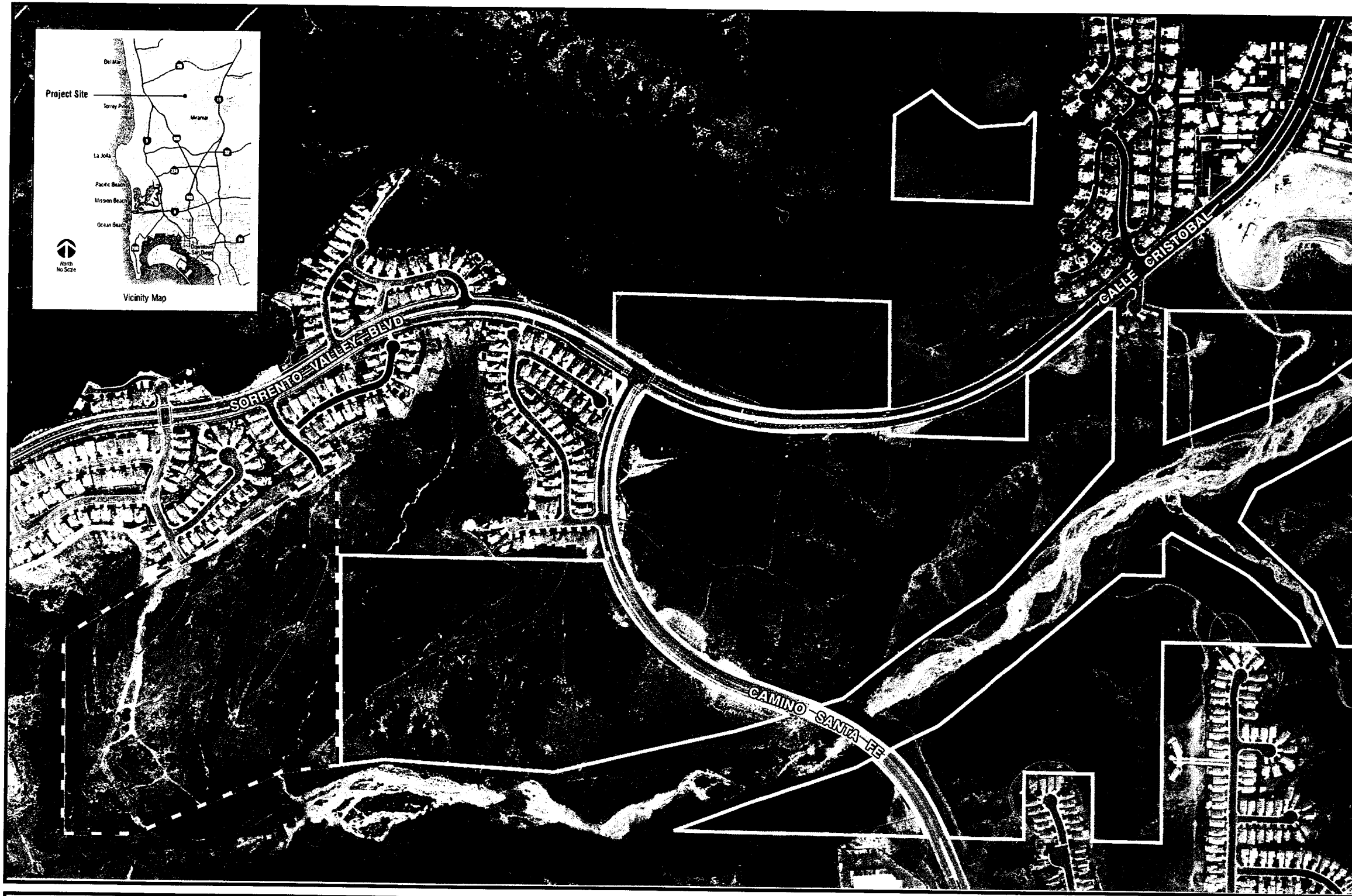
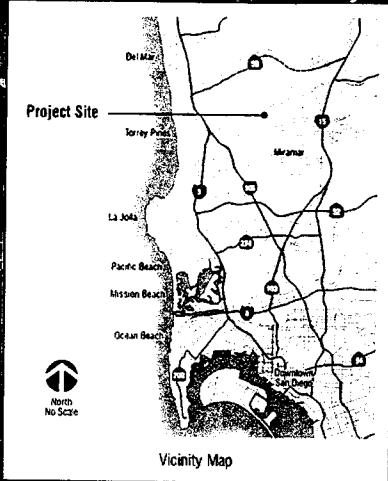
**FIGURE 4C-3**  
**Vernal Pool Watershed on the Crescent Heights Project Site**

# **Th 12c & d**

## **Crescent Heights & Sunset Pointe City of San Diego LCPA # 3-03 B & C**

1. EIR Figure 4A-2 - Certified LUP designated residential development areas.
2. EIR Figure 4A-4 – Proposed LUP designated residential development areas.








Map Source: Rick Engineering Company, 2002



**Legend:**




-  Crescent Heights Project Boundary
-  Sunset Pointe Project Boundary
-  Mira Mesa Community Plan Development Area

**Crescent Heights and Sunset Pointe Community Plan**



Map Source: Rick Engineering Company, 2002

**Legend:**

-  Crescent Heights Project Boundary
-  Sunset Pointe Project Boundary
-  Proposed Development Area



**FIGURE 4A-4**  
**Crescent Heights and Sunset Pointe Proposed Development Areas**