

CALIFORNIA COASTAL COMMISSION

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W16.5a

Addendum

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September 2, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W16.5a**, Coastal Commission Permit Application
#6-11-67-EDD (Protea Flower Hill Mall, LLC), for the Commission
Meeting of September 7, 2011

A. Correspondence

A letter in opposition to the staff recommendation dated September 1, 2011 from Steve Kaufman, representing Protea Flower Hill Mall, LLC was sent to individual Commissioners and received by Commission staff via email on August 31, 2011. The letter references and also includes 11 exhibits as attachments (60 pages total).

A letter supporting the applicant's and the City's claim regarding jurisdiction dated August 29, 2011 from Assembly Member Ben Hueso was received via email on September 1, 2011.

B. Revisions to the Staff Report

The following additions and clarifications to the staff report are in response to the Steve Kaufman letter dated September 1, 2011 which alleges the Commission staff misreads the 1981 Commission staff report which identifies the "non-certifiable" areas of the North City LUP as shown on attached Exhibit 6; omits reference to specific provisions of the Commission's 1985 and 1988 actions on the certified North City LUP related to areas of deferred certification being the "hillside area"; omits reference to certain provisions of the Commission's actions certifying the City's Municipal Code and subsequently the Land Development Code as the LCP Implementation Plan which refer to Commission permit jurisdiction and deferred certification area as shown on Map No. C-730.1 on file at the City; omits that the Flower Hill site is shown on certified Map Nos. 42 and 44 of Map C-730.1 as within the certified LCP, but is specifically designated on the map as "non-appealable Area #2", and that the area of deferred certification shown on those maps is the "hillside area"; and, omits that the San Diego Superior Court ruled that the subject property is located within the North City LCP and that the City, not the Commission, has jurisdiction to issue CDPs.

The following revisions to the staff report and findings are Commission staff's response to the City and applicant's position regarding this jurisdictional dispute, as articulated in the September 1, 2001 letter, which Commission staff did not have at the time the staff report was written.

Staff recommends the following revisions be made to the staff report dated August 25, 2011:

1. On Page 8, add the following at the end of subsection 2. LCP History, a. North City Land Use Plan:

The applicant's representative in a letter dated September 1, 2011 indicates the Commission staff report fails to identify and include the 1985, 1987 and 1988 decisions by the Commission pertaining to certification of the North City LUP. However, in addition to the Commission's action in 1981 first certifying the North City LUP, the staff report includes the Commission's 1985 and 1988 decisions on the resubmitted LUP in the LCP History section of the staff report (ref. pages 7 - 9 of the August 25, 2011 staff report). Also, the staff reports for the 1985 and 1988 decisions are included as exhibits to the staff report (ref. Exhibit Nos. 14, 19 & 20 of the August 25, 2011 staff report). There was no 1987 decision by the Commission on the North City LUP.

The applicant's representative specifically refers to the Commission's 1985 decision on the resubmitted North City LUP and alleges the findings made clear the area of deferred certification only applied to the "hillside areas". The Commission finds the applicant's representative has taken the findings in the Commission's staff report out of context. The staff report makes clear that Commission certification of the resubmitted LUP only addressed the previously unresolved issues related to policies protecting hillsides and floodplain areas, wetland buffers and grading/erosion control provisions. It did not redefine the areas that were not included in the LCP and therefore, deferred certification. There was nothing in those actions that changed the base document or the areas included in the previously approved North City LUP (the LUP was not actually certified until the City's 1985 submittal).

Also the Commission actions on the resubmitted LUPs in 1985 and 1988 were not the actions that transferred permit authority to the City and which further defined all areas of deferred certification in the City's LCP (ref. Commission action for effective certification dated October 14, 1988 – Exhibit #16 of the August 25, 2011 staff report). Thus, regardless of what was included when the Commission certified the LUP, if that area was not included in the City's jurisdiction when the IP was certified, the area is still within the Commission's permitting jurisdiction. As explained elsewhere in this report, when the Commission certified the IP it explicitly excluded the portions of the San Dieguito River Valley located outside of the North City West community plan. This includes the site where the Flower Hill Mall is located. Permitting authority was therefore not delegated to the City for this area when the Commission certified its IP.

2. On Page 9, add the following at the end of subsection 2. LCP History, b. Implementation Plan:

The applicant's representative in a letter dated September 1, 2011 indicates the Commission staff report omits the 1988 decisions by the Commission certifying the Municipal Code, subsequent 1992 Municipal Code Amendments to create the Land Development Code, and the 1999 Commission decision comprehensively updating the Land Development Code. However, the staff report includes the Commission's 1988 (Municipal Code) and 1999 (Land Development Code) actions on the LCP Implementation Plan in the LCP History section of the staff report (ref. pages 7 - 9 of the August 25, 2011 staff report. There is no record of a Commission action on "1992 Municipal Code Amendments to create the Land Development Code".

3. On Page 9, revise subsection 2. LCP History, c. Post-Certification Maps as follows:

c. Post-Certification Maps

There are no post-certification maps that have been approved by the Coastal Commission for the City of San Diego LCP. The City and applicant's representative allege the Commission no longer has jurisdiction over the subject property because the Commission certified the post-certification maps when it approved the Land Development Code which makes reference to the maps as follows:

126.0702 When a Coastal Development Permit Is Required

[...]

(b) Permits issued by the Coastal Commission. A Coastal Development Permit or exemption for all *coastal development* on a project site located completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission. The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Planning and Development Review Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1

The applicants allege this provision of the Land Development Code unmistakably adopted Map No. C-730.1, consisting of 44 quad map sheets, as the official map reflecting Commission permit jurisdiction and deferred certification areas, and since 1988 the City has properly relied upon the certified maps in making its jurisdiction determinations.

The Commission could not have adopted the City's maps as the official post-cert maps in this 1999 action. When the Commission adopts post-cert maps it schedules a separate agenda item for adoption of the map, prepares a staff report for the map, and

it passes a motion adopting the map.¹ None of these actions was taken in this case. The only item on the agenda was adoption of the City's LDC. There was no public hearing related to adoption of the post-cert maps, no discussion of the maps in the findings for adoption of the LDC, the maps were not attached as exhibits to the staff report, and the Commission did not pass a motion adopting the City's maps as the official post-certification maps.

The draft Map Drawings C730 series quad maps have been developed and utilized by both the City and Commission staffs to identify the first public roadway, Commission original jurisdiction and appeals jurisdiction and some areas of deferred certification (ADCs). Since the 1988 LCP certification and subsequent certification of the Land Development Code, it has been recognized by both staffs that, although the majority of the maps are correct (44 sheets total), there are some sheets that contain errors regarding areas of deferred certification, original and appeals jurisdiction. The City of San Diego adopted the maps for their use and reference in the Land Development Code knowing they had not been certified by the Commission. At the time of review of the Implementation Plans, City staff indicated a preference to not hold up the process until the maps were certified, with the expectation that such review and certification would eventually occur. The staff report for Executive Director certification of the 1988 LCP submittal indicates the following:

The post-certification maps, which graphically depict the Commission's and City's jurisdictional areas, have been drafted and reviewed by Commission staff. Final corrections and updating to reflect all proposed areas of deferred certification are in process and should be completed shortly. [pg. 2 Ex.16]

The record shows that final Commission review and completion of certifiable maps has never occurred. As noted above, there is a separate process for review and certification of post-certification maps that is independent of action taken on an LUP or Implementation Plan. That action was not taken in 1999. The submittal record for LCPA 1-98B (Land Development Code – March 1999) does not indicate any updated post-certification maps were part of the City's submittal or reviewed by the Commission. Since 1988, the City has proceeded to gain LCP certification in many of the areas of deferred certification (not including the subject San Dieguito River Valley ADC) and, recognizing those ongoing changes, staff limitations and changing technology, a set of corrected maps has not yet been developed by the Commission or the City.

Both the City and the Commission use these maps as guidance, but both entities agree that they contain inaccuracies. For example, there are several areas shown on the C-730 series maps as areas of deferred certification which would indicate Coastal Commission permit jurisdiction. Some of those areas have since become certified; permit authority was delegated, and the City began issuing permits for development in those areas. However, if one only refers to the maps referenced in the Land

¹ In addition, the Commission has never adopted a post-certification map that was prepared by a local jurisdiction, rather than its in-house mapping unit.

Development Code in those examples, permit jurisdiction would remain with the Commission, not the City in those areas because the maps have not been revised to reflect even those actions. Thus, these maps clearly do not definitely establish permitting jurisdiction. In the July 31, 2006 letter to the City (Exhibit #6), Commission staff acknowledged the City's determination of City permit jurisdiction at the subject sites was based on the draft post-cert maps and clarified the maps were not certified and in error because they do not show the subject area as an ADC. Appeals jurisdiction could not apply to this area because the LUP for this area has not been certified. Staff reiterated the draft status of the maps and that they should not be used for purposes of determining permit jurisdiction, and this was reaffirmed in the February 18, 2009 letter (Exhibit #8). Referring to the maps the applicant's representative alleges must be used because they are referenced in the Land Development Code and, therefore, adopted, there are other areas on Sheet 42 of the C-730 maps shown as non-appealable, just as the subject site, where the City has sent applicants to the Commission for coastal development permits. This is because it has long been recognized by both Commission and City staff that the maps do contain errors, one being they do not show the entire San Dieguito River Valley east of I-5 and outside the North City West community plan boundaries as an area of deferred certification. As an example, Via de la Valle is shown as "non-appealable", yet the City submitted the coastal development permit application for its own project for the bikeway along Via del la Valle to the Commission for approval as if it is within the area of deferred certification.

The Commission's Mapping Unit is now able to produce digitized map products (Exhibit #3) that show parcel lines and are much improved in terms of accuracy and usability. Commission staff has indicated to City staff a commitment to commence joint review of all remaining ADCs, changes to the first public roadway, and Commission retained jurisdiction areas with the City with a goal of having a complete set of post-certification maps for Commission review at the February 2012 meeting. Commission staff is not dismissing the maps as "draft" and therefore not utilized in making jurisdictional determinations as referenced in the Land Development Code. However, Commission staff is also acknowledging the Commission has never held a hearing related to adoption of the maps, nor has it ever passed a motion adopting them. These maps contain errors, acknowledged both by City and Commission staff, and the maps themselves have never been the sole determination of permit jurisdiction within the City's certified LCP.

4. On Page 14, the first part of subsection 3. Commission Action on CDPs (and continuing onto Page 15), shall be revised as follows:

3. Commission Actions on CDPs

Since the time of certification of the LCP, the Coastal Commission has reviewed numerous applications for development in and around the San Dieguito River Valley and more specifically, the areas of the San Dieguito River Valley located outside the North City West Community Plan. Many of those applications were first reviewed and approved by the City for local permits and then referred to the Coastal

Commission for the coastal development permit. In fact, CDP #6-03-095 (listed below) is for bikeway and road improvements on Via de la Valle and the City of San Diego is the applicant. In every coastal development permit application reviewed by the Commission, a local government representative (typically a planning staff person), completes and signs the “Appendix B” of the application. This form documents that the project has been reviewed by the local government and identifies the status of the necessary local discretionary permits. If the below listed applications were in the City’s Coastal Development Permit jurisdiction, then it would have been identified at that time by the local planning staff. However, that was not the case. Regardless of the delineation on the C-730 series map as “non-appealable”, such as the subject site, the City determined the coastal development permit authority was with the Coastal Commission. Below is a sample listing of the permits:

- 6-96-128 – permit for subdivision of 8 acres into 19 lots on the north side of Via de la Valle. Approved by the Commission on December 11, 1996.
- 6-98-154 – permit for subdivision of 26.9 acres into 60 lots (47 homes) on the east side of new El Camino Real, south of San Dieguito Road. Approved by the Commission on August 19, 1999.
- 6-01-37 – permit for construction of homes on the lots approved pursuant to CDP #6-98-154. Approved by the Coastal Commission on May 8, 2001.
- 6-02-169 – permit for construction of a telecommunications facility (ATF) on an existing commercial site located on the southwest corner of Via de la Valle and El Camino Real (3675 Via de la Valle). Approved by the Commission on January 9, 2003.
- 6-03-095 – permit for bikeway/road improvements along Via de la Valle from San Andreas Drive, east to El Camino Real. Applicant was the City of San Diego. Approved by the Commission on December 12, 2003.
- 6-04-29 – permit for improvements at an existing equestrian facility located along the south side of Via de la Valle. Approved by the Commission on March 17, 2005.
- 6-04-71 – permit for construction of a church on the east side of new El Camino Real, south of San Dieguito Road (14900 El Camino Real). Approved by the Commission on November 17, 2004.
- 6-08-56 – permit for subdivision of 41.83 acres into 15 lots (10 homes) on the west side of Old El Camino Real. Approved by the Commission on December 11, 2008.

In each of the above-cited permit decisions, the Commission made findings that the development was within an area of deferred certification where the Commission retained permit jurisdiction.

In the letter dated September 1, 2011, the applicant’s representative alleges the “Commission previously concluded that the certified LCP Maps are not “drafts” and that it lacks jurisdiction over non-appealable areas designated on the maps”. The letter argues that the Coastal Commission previously concluded that the LCP maps are not draft maps when it reviewed a project on appeal in 2008 and refers to Appeal No. A-6-NOC-07-130 (Key, McCullough & Ames) for two homes on the inland side of

Racetrack View Drive on the west side of I-5 and south of San Dieguito Lagoon. In June 2008, the Commission found that it did not have appellate jurisdiction over the project approved by the City as it was outside of the Commission's appellate jurisdiction. Contrary to the applicant's attorney's statement in his September 1, 2011 letter, the Commission made no determinations regarding the status of the maps.

The entire transcript for the June 2008 Commission decision on the above referenced appeal is attached to the September 1, 2011 letter. The Commission finds the applicant's representative is misconstruing the Commission's decision on that appeal, and its potential effect on other properties included on post-certification map. The motion made by Commissioner Clark at that hearing was:

I move that the Commission find that it lacks jurisdiction over this appeal, under Public Records Code Section 30603...

Thus, the Commission's action on the appeal was to find that the Commission did not have appeals jurisdiction on that specific project, as opposed to any action to adopt the City's post-certification maps. And, as described above, the Commission could not have adopted the maps at the hearing because the item was not noticed for a public hearing to adopt post-cert maps for the City of San Diego.

The letter alleges "the Commission decided the issue that the Map No. 42 of Map C-730.1, expressly incorporated into the Land Development Code, is not "draft" and that where property is located within the designated "non-appealable" area on the map, as is the case with the Flower Hill Promenade here, the Commission no longer has permit jurisdiction over development proposed in this area."

In its action, the Commission did acknowledge that the applicants and the City had relied on the maps as if they were accurate. In that particular case, with regard to the question of whether Racetrack View Drive is the first coastal roadway for purposes of determining appeal jurisdiction, the Commission found the map to be accurate. The Commission action did not refer to any other property or issue except appeal jurisdiction on that site. It did not address areas of deferred certification on the east side of I-5, and outside the Torrey Pines Community Plan area. The Commission was specific to say this decision should not be used as a precedent for defining the first coastal roadway in any other areas, but in this particular case, the map was accurate. The Commission's 2008 action on the appeal did not result in the certification of the 1988 maps, nor transfer of permit jurisdiction to the City for areas of deferred certification.

5. On Page 16, revise the first paragraph to the end of the section C. COMMISSION DETERMINATION OF DEFERRED CERTIFICATION as follows:

The State Commission staff report from August 1981, finding no substantial issue with the Regional Commission's decision related to certification of the North City LUP, clearly acknowledges "the North City LCP Land Use Plan did not contain a description of the types, location and intensity of developments that would proceed

under the plan's land use designations for the following identified areas: 1. Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley Area (See Exhibit 6)....Approval of these identified areas will be delayed until such time that specific land use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification." The referenced Exhibit 6 identifies the "non-certifiable areas" including the subject site (Exhibit Nos. 14 & 15).

In the September 1, 2011, letter the applicant's representative alleges the Commission staff is "misreading" Exhibit 6; however, the Commission finds the applicant has taken the reference to Exhibit 6 out of context, and the Commission's staff review has considered all the elements of the 1981 North City LUP submittal and the areas that were specifically acknowledged to not be included in the LUP, to interpret the "non-certifiable" areas referred to on Exhibit 6. The Table of Contents for the North City LUP is attached as Exhibit #22 to the staff report which shows the policy groups required by the Coastal Act were only addressed for the four areas that were within established Community Plan areas in North City, i.e., Torrey Pines, North City West, Mira Mesa and University/La Jolla.

As stated, ~~T~~the 1981 version of the certified North City LUP and all subsequent versions state the North City LUP Land Use Plan consists of the land use plans or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Planning Areas. The subject site is not within any of these areas. The LUP contains, in addition to land use designations, land use planning policies specific to these four communities, but no such land use planning policies are contained in the North City LUP that specifically refer to the resources and infrastructure of the San Dieguito River Valley.

The Commission's staff report clearly indicates "[a]pproval of these identified areas will be delayed until such time that specific land use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification...." This includes the portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley (see Exhibit 6). Development of land use plan policies for the San Dieguito River Valley has never occurred and, contrary to the allegations in the applicant's letter, subsequent LUP resubmittals in 1985 and 1988 did not include the San Dieguito River Valley as a planning area. The applicant also argues that the "Exhibit 6" of the Commission 1981 staff report (ref. Exhibit #15 attached) is misread by Commission staff in that it is not referring to the Flower Hill Promenade site, but only the "undeveloped hillside areas" adjacent to it. When looked at in the context of the staff report and planning document under review at the time, the arrows on Exhibit 6 were clearly meant to include all areas of the river valley outside the North City West community plan boundaries.

The City acknowledges that there are no such specific planning policies for the subject area, as it is not within any community plan area. Such policies do not exist for the San Dieguito River Valley in the North City LUP, and those areas without specific

planning policies were excluded when the Commission certified the City's LUP. Planning documents addressing Commission staff recommendations and City responses which took place between the 1981 and 1985 LUP submittals acknowledge City staff concurrence with the intent to exclude those areas from the LUP, including the portion of the San Dieguito River Valley outside of the North City West community plan. The City and Commission staff agreed that these areas would be excluded from the LUP until such time that specific land use designations, in the form of community plans or master plans, would be developed by the City and submitted to the Commission for certification.

Commission staff reports addressing effective certification of the LCP and transfer of permit authority in October 1988 indicate the areas of deferred certification include the areas of the San Dieguito River Valley outside the NCW community plan boundaries (Exhibit #16). There has been no subsequent Commission action on an LUP amendment to include this area within the North City LUP or the certified City of San Diego LCP.

Protea concludes that that the City has issued "scores" of CDPs in reliance on the maps and that if the maps are not "valid", it calls into question the legality of many CDPs issued over the years. This conclusion is without merit. The extent of the City's and the Commission's jurisdictions are based on the relevant provisions of the Coastal Act, its implementing regulations and the certified LCP. The maps, even adopted post-certification maps, are not dispositive for establishing jurisdiction. Commission staff is not aware of any other case within the City of San Diego where there is a pending jurisdictional dispute.² If the Commission were to follow the staff's recommendation, the only affected permits would be those issued by the City for the Flower Hill Mall site. The Commission's action would definitively establish jurisdiction in this area, and it would not affect any other portion of the draft maps or affect any other pending or former permits issued by the City or the Commission. Having a post-certification map adopted by the Commission has no bearing on the legality of a CDP. It is a tool used by the Commission and local governments in implementing an LCP. In addition, pursuant to Section 13576(a) of the Commission's Code of Regulations, every adopted post-certification map contains a statement that the map "...may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission."

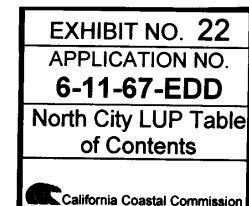
² In a letter to Commissioners dated August 29, 2011, former Commissioner Hueso suggests that if the Commission finds that it has never certified the City's maps as the official post-certification maps, it would call into question thousands of permits throughout the state. This fear is unfounded. Staff is asking the Commission to determine the narrow issue of whether it delegated permitting authority to the City of San Diego for the Flower Hill Mall site. By following staff's recommendation, the Commission will simply find that it retains permitting jurisdiction in this area, and no more. As explained above, the Commission clearly has not yet held a hearing or passed a motion adopting post-certification maps for the City of San Diego, yet the City has successfully been issuing permits for the past 23 years, with jurisdictional questions only needing to be resolved by the Commission two times in those 23 years, including this dispute resolution. Thus, the lack of an official post-cert map has not created chaos in the City. With that said, it is a high priority for Commission staff to bring official post-cert maps to the Commission for their approval, and as stated elsewhere in this report it hopes to bring this to the Commission for review as expeditiously as possible.

6. Add the attached Table of Contents for the North City LUP as Exhibit #22 to the staff report.

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September 1, 2011

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Mary K. Shallenberger, Chair
and Honorable Commissioners
California Coastal Commission
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Re: Dispute Resolution No. 6-11-67-EDD (Protea Flower Hill Promenade, City of San Diego)
Agenda Item: Wednesday, 16.5a
Hearing Date: September 7, 2011

Dear Chair Shallenberger and Members of the Commission:

This firm, along with McCabe & Company and Suzanne R. Varco, Esq., represents Protea Flower Hill Mall, LLC, ("Protea") in the above matter.

The sole issue raised is: Under the City of San Diego North City LCP segment, which has permit jurisdiction over the Flower Hill Promenade and the Whole Foods Project approved by the City – the City of San Diego or the Commission?

Staff contends the subject property – an existing commercial center developed in 1976 – lies in an area of "deferred certification," i.e., an area that Staff claims has not yet been certified as part of the City's LCP so that jurisdiction over CDP applications rests with the Commission.

There are indeed areas of deferred certification in the North City LCP segment – but they do not include this existing shopping center. The areas of deferred certification, as delineated on the LCP maps the Commission certified in 1988 for the San Dieguito River Valley, encompass two areas: (1) an area within the floodplain/floodway, and (2) as the Commission found in 1985 and 1987, "Hillside areas located north (Via de la Valle Specific Plan) and south of the San Dieguito River Valley, which have not had Community or Specific Plans submitted to and approved by the Coastal Commission." The Flower Hill Promenade is not located in either area.

APPLICANT'S RESPONSE TO
STAFF RECOMMENDATION

A copy of this letter has been provided to San Diego District staff.

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Mary K. Shallenberger, Chair
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In support of Staff's position, the Staff Report starts at the beginning of the review process for the City of San Diego LCP in 1981, but then misreads the 1981 Staff Report "Exhibit 6" on which Staff relies and omits everything that has occurred since 1981 which demonstrates why the City has permit jurisdiction over this area. Notably, as discussed below, the Staff Report:

- Misreads the Staff Report 1981 "Exhibit 6," which points as the "non-certifiable area" to the undeveloped hillside area further inland, not the two existing developed commercial shopping centers on Via de la Valle astride the I-5 Freeway.
- Omits the 1985 Commission decision that certified the resubmitted North City LUP, which, as noted in the quote above, made clear that the area of deferred certification pertinent here is the "hillside area," which contains steep slopes and sensitive habitat.
- Omits the 1987 Commission decision that again certified the North City LUP, repeating that the area of deferred certification is the "hillside area."
- Omits the 1988 Commission decision certifying the City of San Diego's Municipal Code Amendments (the implementation portion of the LCP), the subsequent 1992 Municipal Code Amendments to create the Land Development Code, and the 1999 Commission decision comprehensively updating the Land Development Code, which expressly define both Commission permit jurisdiction and the areas of deferred certification: "The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Development Services Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067.1."
- Omits that the Flower Hill Promenade is shown on certified Map Nos. 42 and 44 of Map No. C-730.1 as within the certified LCP, but is specifically designated on the map as "Non-appealable Area #2," and that the area of deferred certification shown on those maps is the "hillside area."

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- Omits that the San Diego Superior Court ruled last month on August 5, 2011 that the subject property is located within the North City LCP and that the City, not the Commission, has the jurisdiction to issue CDPs.

But, perhaps most significant of all omissions is the fact that the Commission addressed and resolved this precise issue in 2008 in Appeal No. A-6-NOC-07-130 (Key, McCullough & Ames). There, the Commission found, directly contrary to Staff's position here, that Map No. 42 is not a "draft" but is the certified LCP map, and that because the development in that appeal – a lot split and 2 homes inland of Racetrack View Drive on the opposite side of San Dieguito Lagoon – is shown in the "non-appealable" area, the Commission lacked jurisdiction over that development. This Commission decision and the transcript of the hearing in that matter (Exh. 6 hereto) are discussed in greater detail below.

Attachment 1 to this letter (the yellow sheet) includes a motion that we ask the Commission to consider. It would determine that the Commission lacks permit jurisdiction over the Flower Hill Promenade property because it is located within a non-appealable area of the City of San Diego's certified Local Coastal Program.

BRIEF BACKGROUND

At the heart of the jurisdictional dispute is a Whole Foods Project, proposed at the west end of the Flower Hill shopping center, on Via de la Valle adjacent to and inland of the I-5 Freeway. The site is surrounded on all sides by existing development, including single and multi-family residential development and another existing shopping center, the Del Mar Center, across the street.

After seven years of careful scrutiny which included two EIRs, the San Diego City Council unanimously approved a CDP, subject to 63 conditions, permitting demolition of a theater building and construction of a two-story commercial retail and office building (including the Whole Foods) and a parking structure. The City Council made the findings required under the LCP, including the finding that "[t]he proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program."

Commission Staff contends the City lacked jurisdiction to approve the CDP, and additionally reaches back to 2006 and 2008 to argue that CDPs issued by the City

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for a lot split (necessary for financing this Project) and a restaurant expansion on the property also were not properly approved. It is important to note that the Flower Hill Promenade has been commercially developed since 1976, prior to the enactment of the Coastal Act, and the current project is a very limited expansion of the existing commercial uses.

**THE COMMISSION NO LONGER HAS PERMIT JURISDICTION OVER
THE SUBJECT PROPERTY**

While the Staff Report confines its discussion to the Regional and State Coastal Commission decisions on the City's initial LUP submittal in 1981, it ignores the City's LCP as it was finally certified by the Commission in 1988, 1992 and 1999.

In 1997, the City adopted a comprehensive Land Development Code and the maps which implement the certified North City LUP. The City then submitted an LCP amendment to the Commission, No. 1-98B, which included the updated Land Development Code with specific reference to the current maps which define Commission permit jurisdiction and areas of deferred certification. In February 1999, the Commission certified the LCP amendment and the maps.

The LCP certification maps are expressly referenced in several sections of the certified Land Development Code. As pertinent to the jurisdiction issue here, Section 126.0702(b) of the City's certified Land Development Code addresses when a CDP is required from the Commission, either because it is located within the Commission's original jurisdiction (tidelands, submerged lands, or public trust lands), an appealable area, a non-appealable area, or an area of "deferred certification":

"Permits issued by the Coastal Commission. A Coastal Development Permit or exemption for proposed *coastal development* located completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission. The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Development Services Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1." (Exh. 1 hereto; emphasis added.)

This provision of the certified Land Development Code unmistakably adopted Map No. C-730.1, consisting of 44 quad map sheets, as the official map reflecting

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Commission permit jurisdiction and deferred certification areas. Since 1988, the City has properly relied upon the certified maps in making its jurisdiction determinations.

The project site here is located within "Non-Appealable Area 2" (Low Coastal Resource Sensitivity) on Map C-730.1, sheets 42 and 44. (Exh. 2 hereto.) Simply put, as delegated by the Commission in the certified LCP, the City properly has jurisdiction over the project site by virtue of the clear delineation of jurisdiction on the certified maps.

**THE MAPS EXPRESSLY REFERENCED IN THE CITY'S CERTIFIED
LAND DEVELOPMENT CODE ARE NOT "DRAFTS"**

Despite the plain language of Section 126.0702(b) of the certified Land Development Code, Staff dismisses the maps as never having been certified and as just "drafts," even though these same maps were also referenced in the original LCP adoption in 1988 and the City's Municipal Code revisions in 1992. (See Exhs. 3 and 4 hereto.) It is, however, readily apparent that the maps are not merely "drafts." They are not stamped "draft," and Section 126.0702(b) does not refer to them as "drafts." Instead, as shown above, the maps were specifically and unqualifiedly included in Section 126.0702(b) of the Land Development Code, and they were approved when the Commission certified the Land Development Code as follows:

"The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Development Services Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1." (Exh. 1 hereto.)

Moreover, Staff itself made Suggested Modifications to Section 126.0702(b) through strikeouts and additions. (See Exh. 5 hereto.) Most notably, however, Commission Staff never suggested modifications related to Map C-730.1 or otherwise raised any issues with the graphical depiction of the jurisdictional boundaries shown on the Maps. If Staff believed the maps to simply be drafts, it would have been a simple matter to simply strike out the reference to them. But it did not do so, and, stated simply, "the maps are the maps." Moreover, at no time has the Commission ever provided new, updated, or modified maps to the City for use in determining jurisdictional boundaries.

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The certified LCP maps make clear that the Commission lacks jurisdiction here since the property is located in the designated "Non-Appealable Area No. 2 (Low Coastal Resource Sensitivity)." (Exh.2 hereto [Map Legend and certified Map Nos. 42 and 44].)

THE COMMISSION PREVIOUSLY CONCLUDED THAT THE CERTIFIED LCP MAPS ARE NOT "DRAFTS" AND THAT IT LACKS JURISDICTION OVER NON-APPEALABLE AREAS DESIGNATED ON THE MAPS

Although not evident from the Staff Report, the issue of who has permit jurisdiction in this area is not new. In Appeal No. A-6-NOC-07-130 (Key, McCullough & Ames), the City approved two homes on the inland side of Racetrack View Drive, on the opposite side of San Dieguito Lagoon, shown as "non-appealable" on the very same map, Map No. 42. As here, Staff contended that the maps are just "drafts," but the Commission decided otherwise. On June 12, 2008, after a hearing, the Commission concluded that Map No. 42 is accurate and that the Racetrack View Drive lots are outside the appeal area designated on the certified map. Thus, the Commission found that the City's CDP decision to be "non-appealable."

Unfortunately, this dispositive Commission decision is not referenced in the Staff Report. In Key, McCullough & Ames, then Commissioner Clark moved that the Commission find that it lacks jurisdiction over the appeal and to "direct the staff to come back with revised findings." (Exh. 6 hereto, Transcript p. 37.) Because revised findings were not subsequently prepared for the Commission, we have attached the entire transcript of the hearing. In an effort to confine the Commission's decision simply to the map, Executive Director Douglas pointed the way:

"There is a solution to this, if you look at the map issue, and just based on that, say you don't think this is in the appeals area, you don't get into the precedential concern. You don't get into the takings issue, you don't get into any of those other issues.

"And, you, that is your judgment to make, I mean, we made this call, and if you decide, based on the maps it is not in the appeals area, that is the end of it." (Exh. 6 hereto, Transcript p. 40.)

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Commissioner Clark then added: “Mr. Chair, that was the intention of my motion,” and the seconder, Commissioner Hueso stated: “And, those are my comments on the accuracy of the map, I believe it is accurate.” (Exh. 6 hereto, Transcript p. 40.)

In short, the Commission decided this issue three years ago. It confirmed that Map No. 42 of Map C-730.1, expressly incorporated in the certified Land Development Code, is not a “draft” and that where a property is located within the designated “non-appealable” area on the map – as is the case with the Flower Hill Promenade here, the Commission no longer has permit jurisdiction over development proposed in that area. The same result should follow here and the City’s unanimous approved CDP should stand.

**STAFF HAS MISREAD “EXHIBIT 6” TO THE 1981 STAFF REPORT AND
IGNORED THE COMMISSION’S FINDINGS THEREAFTER WHICH
DEMONSTRATE THIS PROPERTY IS NOT WITHIN THE AREA OF
“DEFERRED CERTIFICATION”**

The Staff Report indulges in revisionist history. Although it purports to review the LCP history surrounding the North City LCP segment, it begins in the right place – 1981, but it misreads the 1981 exhibit on which it relies and fails to point out the Commission’s findings thereafter which zero in on the specific area which is subject to deferred certification.

Unfortunately, the hard copy of the Staff Report does not include certain findings that are germane to this discussion (Staff Rpt., Exhs. 18-21) but which have been relegated to the Staff Report placed on the website.

The North City LCP was the product of several submittals by the City of San Diego between 1981 and 1988. In 1981, the San Diego Coast Regional Commission certified, with suggested modifications, the City’s first submittal of the North City LUP to the Commission. That staff report noted certain areas of deferred certification, including “Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley area.” (Staff Rpt., Exh. 18, p. 2.) The Figure reflecting this area was later referred to as “Exhibit 6” in the State Coastal Commission’s decision, which found the Regional Commission’s decision to raise no substantial issue. (See Staff Rpt., Exh. 14, p. 4 and Exhibit 6 thereto.)

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"Exhibit 6" is the Land Use Plan map from the 1981 North City LUP submittal. (Exh. 7 hereto.) The map is crude and vague, but it may be helpful to point out that the upper area of the map includes the San Dieguito River Valley. Handwritten arrows point to "Non-Certifiable Areas." The existing developed Flower Hill Promenade and the Del Mar Center are located in the blank trapezoid next to the I-5 Freeway. The head of the arrow does not point to either of those areas, but rather points to a hatched area that is comprised of undeveloped hillside adjacent to Via de la Valle and residential in a hillside area. (The arrow below that points to the floodplain/floodway.)

The Staff Report contends this 1981 exhibit clearly shows the subject property to be located in a "Non-Certifiable Area." In fact, it shows exactly the opposite. One would have to take great liberty to argue that the arrow points to and includes the existing development within the blank trapezoid. Thus, Staff's position is wrong even with reference to this exhibit. But, the Commission's subsequent findings make that crystal clear.

The North City LCP segment evolved as the City and Commission staff narrowed their differences. In 1985, the Commission certified the City's resubmitted North City LUP. (Again, the Commission's findings are only available on the Commission's website.) The Commission again identified areas of deferred certification, but this time its findings were more specific: "Hillside areas located north and south of the San Dieguito River Valley which have not had Community Plans or Specific Plans submitted to and approved by the Coastal Commission." (Staff Rpt., Exh. 19, p. 14; emphasis added.)

And, in January 1988, the Commission's findings again certifying the North City LUP segment (again available only on the Commission's website) identified the area of deferred certification as: "Hillside areas located north (Via de la Valle Specific Plan) and south of the San Dieguito River Valley which had not had Community or Specific Plans submitted to and approved by the Coastal Commission." (Staff Rpt., Exh. 20, p. 5; emphasis added.)

It is no accident that these 1985 and 1987 findings, which expressly identify the area of deferred certification as the hillside area, correspond directly to the hillside area located north of the San Dieguito River Valley in what is referred to as the Via de la Valle Specific Plan, the area to which the arrow points on the 1981 Staff Report "Exhibit 6." (Exh. 8 hereto [a composite of Map Nos. 42 and 44, showing the hillside

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area as an area of deferred certification, and the Flower Hill Promenade as “non-appealable”].)

As the Commission knows, areas where certification is deferred typically have coastal resource issues that have not been fully resolved, and in this case, the Commission’s 1985 and 1987 findings make clear that the unresolved issues in North City LUP segment involved development on steep slopes and habitat issues – issues which have no relevance to the two existing commercial shopping centers.¹ That is why Map Nos. 42 and 44 show the “hillside area” as an area of deferred certification.

In other words, the Staff Report errs not only in its characterization of 1981 Staff Report “Exhibit 6,” but in not relating the Commission’s findings thereafter which more specifically identified the precise areas of deferred certification.

THE PROJECT SITE IS LOCATED WITHIN THE CERTIFIED LCP AREA

An LCP, of course, consists of both a land use plan and implementing ordinances – here, the certified North City LUP segment which is implemented by the certified Land Development Code.

Staff incorrectly suggests that only areas included within community plans are certified under the City’s LCP. Properties within the City’s LCP boundaries are not necessarily within a community plan area, but in some instances are governed instead by the City’s General Plan. LCP segments in the City of San Diego are separate and distinct land use plans that do not necessarily follow community plan boundaries, and they may include more than one community plan area, as well as areas outside community plan boundaries which are governed by the City’s General Plan. That is the case with the Flower Hill Promenade site. This is evident from the text of the

¹ The Commission’s 1987 findings note the “5 major unresolved issues” as of 1984: “type and amount of development to be permitted within the 100 year floodplain areas”; “whether the Los Penasquitos Lagoon Enhancement Program should be implemented”; “whether grading of steep slope areas over 25% grade should be permitted”; “whether provisions for drainage and erosion control on parcels which drain to Los Penasquitos and San Dieguito Lagoons are adequate to protect the lagoons from siltation”; and “should development be permitted within 100 feet of a define wetland area.” (Staff Rpt., Exh. 20, p. 6.) At no time did the Commission raise a coastal resource issue with respect to the existing developed shopping center.

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North City LCP, which in the Introduction, specifically identifies the areas covered by the North City LUP, both within and outside community plan areas. (North City LCP LUP, p. 2 [the North City LCP "serves as an addendum to four community plans, and an amendment to one community plan, and the general plan").

The Flower Hill Promenade does not lie within the boundaries of a community plan, but rather is governed by the City's General Plan. It is nonetheless identified on the map on page 103 of the North City LCP and within the LCP boundaries, and is shown as designated for a commercial land use, consistent with the existing and proposed land use approved by the City through its General Plan. (Exh. 9 hereto.) And, as required by the Coastal Act, the Land Development Code (the implementation portion of the LCP) incorporates the maps, including Map Nos. 42 and 44, which show the areas of Commission permit jurisdiction, the appealable areas, the non-appealable areas, and the areas of deferred certification.

In short, the Flower Hill Promenade is plainly within the certified LCP and shown as "Non-Appealable Area #2," which necessarily follows from the fact that this shopping center is located outside the first public road paralleling the sea (the Lagoon). Under the certified LCP, permit jurisdiction for this property lies with the City, not the Commission.

This is confirmed in a very recent Superior Court ruling. In Citizens Against Flower Hill's Excessive Expansion v. City of San Diego, filed after the City's CDP approval, the petitioner asserted, among other things, that the Commission, not the City, has jurisdiction over the Project site, and thus the City's CDP is invalid. On August 5, 2011, the court (Judge Ronald Prager) disagreed and refused to issue a preliminary injunction, ruling that the Commission "certified the North City LCP in order to give the City authority to issue CDPs to areas in the North City found 'outside of formal community plans.' Because the subject property is located within the North City LCP the City has jurisdiction to issue CDPs." (Exh. 10 hereto.)

**THE MAPPING UNIT'S "PRELIMINARY DRAFT" POST-CERTIFICATION
MAP FOR THE SAN DIEGUITO RIVER VALLEY IS COMPLETELY OFF
THE MARK**

Twenty three after certification of the City's LCP, the Staff's mapping unit has rushed off a "preliminary draft" post-certification map (Staff Rpt., Exh. 3), stamped received in the San Diego Office on August 22, 2011. (Exh. 11 hereto.)

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This draft map does not remotely reflect the areas of Commission permit jurisdiction and deferred certification set forth on the certified LCP Maps or referred to in the Commission's 1985 and 1987 findings. Neither does the draft map delineate as areas of deferred certification "portions of the San Dieguito River Valley." Instead, it indiscriminately shows everything inland of the I-5 Freeway as an area of deferred certification.

Suffice it to state, had the Commission intended in 1981, 1985, 1987, 1988 or 1999 to defer certification of the entire area inland of the I-5, it could and would simply have said so - i.e., "Everything inland of I-5 in the San Dieguito River Valley." As demonstrated above, however, it plainly did not, and this draft map is no way representative of areas of "deferred certification."

CONCLUSION

Since at least Commission certification of the City's North City LCP and implementing ordinances in 1988, the City of San Diego has issued scores of CDPs in reliance on the certified maps. This was reinforced, moreover, when this Commission in 2008 reaffirmed that the maps are the maps, and that it no longer has permit jurisdiction over development, as here, located in a designated non-appealable area.

The Staff Report, unfortunately, ignores the certified LCP and this Commission's prior decision regarding the certified maps. The sweeping assertion of jurisdiction it now recommends is not only unsupported by the record, but would have serious consequences that, as a matter of prudence, also ought to be considered. To suggest that the 44 maps which comprise Map C-730.1 are not valid would call into question the legality of an untold number of CDPs that the City has, for years now, issued for homes, subdivisions, commercial, and other developments in the City's coastal zone in reliance on the maps. And for Protea, it threatens the loss of its anchor tenant, Whole Foods, the loss of its funding amounting to \$25 million for the Project, the loss of jobs, and other significant costs.

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For all the above reasons, Protea respectfully asks the Commission to adopt the motion in Attachment 1 and find that the Commission lacks jurisdiction over the Flower Hill Promenade property because it is located within a non-appealable area of the City of San Diego's certified Local Coastal Program.

Very truly yours,

Signature on file

Steven H. Kaufmann

Ccs (w/attachment and exhibits):

Sherilyn Sarb - CCC/SD
Deborah Lee - CCC/SD
Lee McEachern - CCC/SD
Hope Schmeltzer, Esq. - CCC/SF
Jamee Jordan Patterson, Esq. - AG/SD
Sheri Lightner - Councilmember, City of San Diego, District 1
Kelly Broughton - Director, City of San Diego, Development Services
Jeffrey Essakow - Protea Flower Hill Mall, LLC
Howard Schachat - Protea Flower Hill Mall, LLC
Susan McCabe - McCabe & Company
Anne Blemker - McCabe & Company
Suzanne Varco, Esq. - Oppen & Varco
Robin Madhaffer, Esq. --Schwartz Heidel Sullivan

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PROTEA'S SUGGESTED MOTION
ON DISPUTE RESOLUTION NO. 6-11-67-EDD

Protea Flower Hill Mall, LLC, recommends that the Commission adopt the following motion:

MOTION: I move that the Commission find that it lacks jurisdiction over the Flower Hill Promenade because the site is located within a non-appealable area of the City of San Diego's certified Local Coastal Program.

The Applicant recommends a YES vote on the motion and that the Commission instruct staff to prepare revised findings to support the determination that it does not have jurisdiction. If the Commission finds that it does lack jurisdiction over this matter, the local action will be deemed final and effective. The motion passes by an affirmative vote by a majority of the Commissioners present.

ATTACHMENT 1

Article 6: Development Permits**Division 7: Coastal Development Permit Procedures***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§ 126.0701 Purpose of the Coastal Development Permit Procedures**

The purpose of these procedures is to establish a City review process for *coastal development* that is consistent with the *Local Coastal Program*, the California Coastal Act of 1976 (Public Resources Code section 30000, et seq.) and the California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 17.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§ 126.0702 When a Coastal Development Permit Is Required**

- (a) Permits Issued by the City. A Coastal Development Permit issued by the City is required for all *coastal development* of a *premises* within the Coastal Overlay Zone described in Chapter 13, Article 2, Division 4, unless exempted by Section 126.0704, or if the proposed project site lies completely within the Coastal Commission Permit Jurisdiction or the Deferred Certification Area as described in Section 126.0702(b).
- (b) Permits Issued by the Coastal Commission. A Coastal Development Permit or exemption for all *coastal development* on a project site located completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission. The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Planning and Development Review Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1.
- (c) Permits Issued by the City and the Coastal Commission. A Coastal Development Permit or exemption issued by the City and the Coastal Commission are required for all *coastal development* on a *premises* located partially within the Coastal Commission permit jurisdiction. A Coastal Development Permit from each agency is required for the portion of the project within the agency's jurisdiction.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

Ch.	Art.	Div.
12	6	7

EXHIBIT 1**Sec. 126.0702(b) of the Certified City of San Diego Land Development Code**

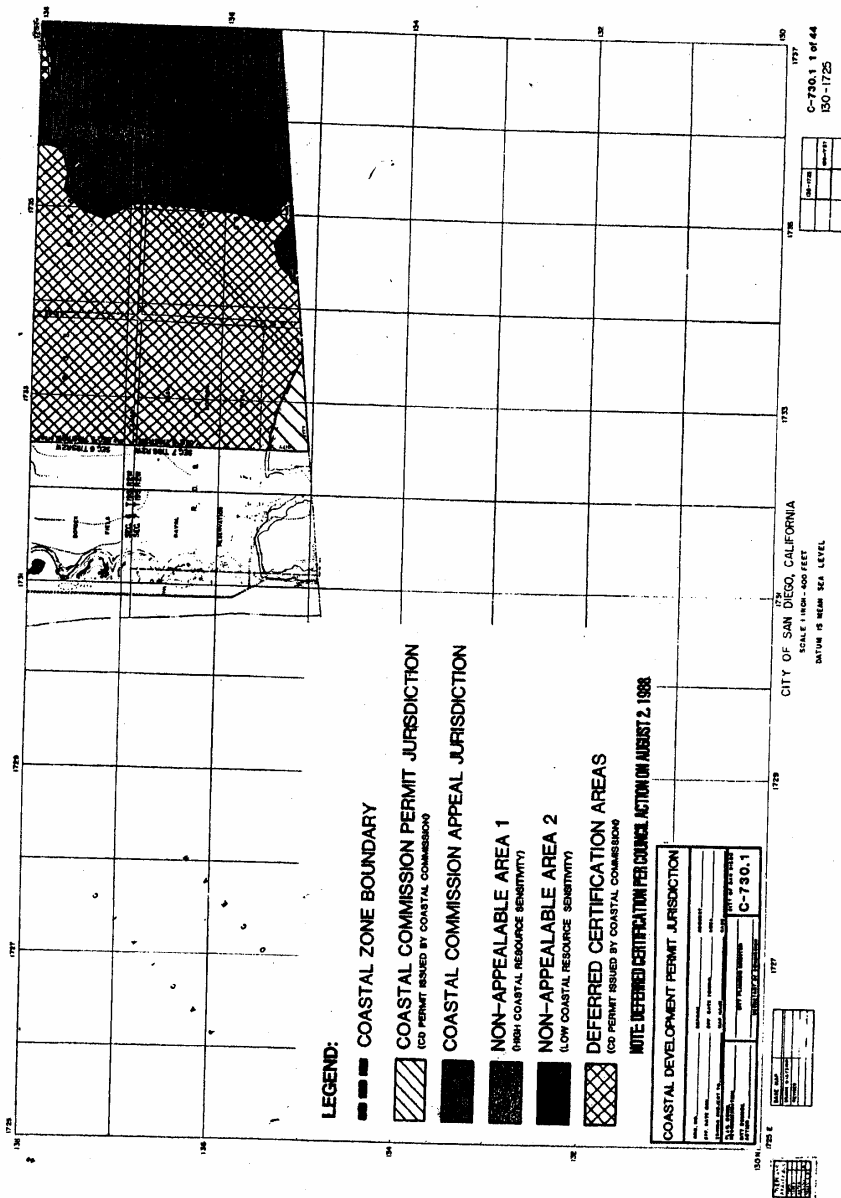
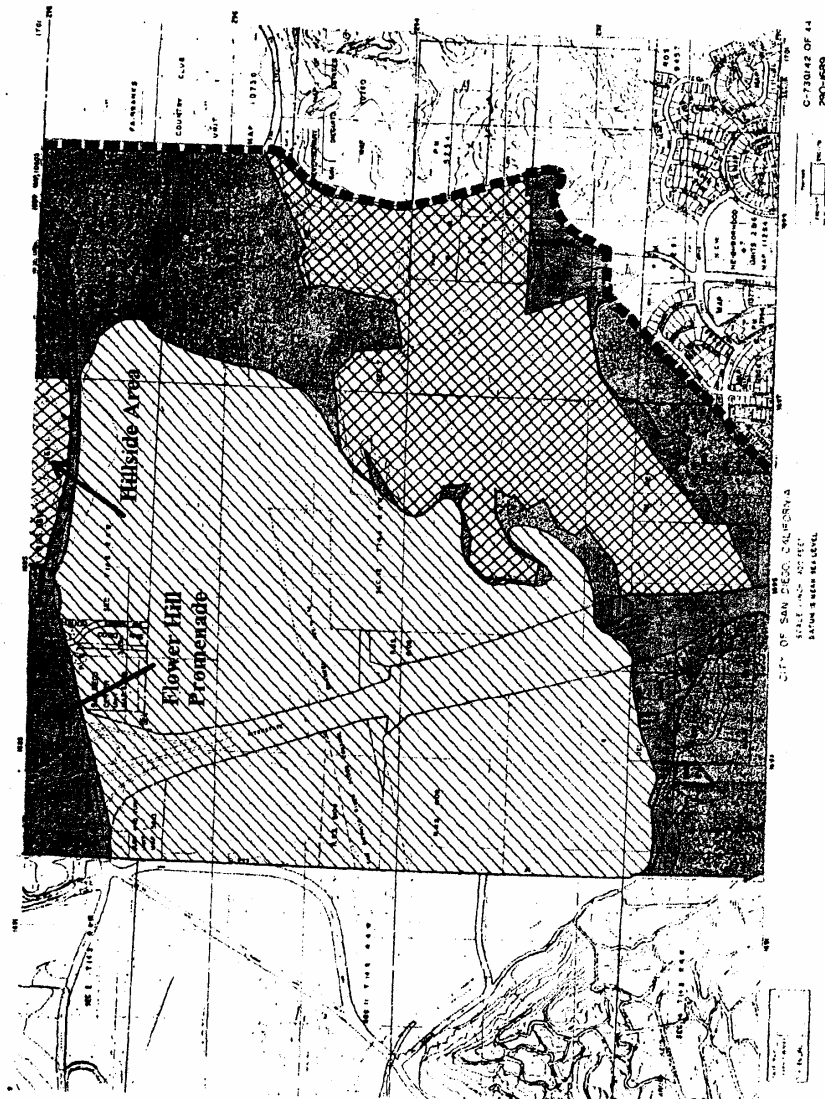
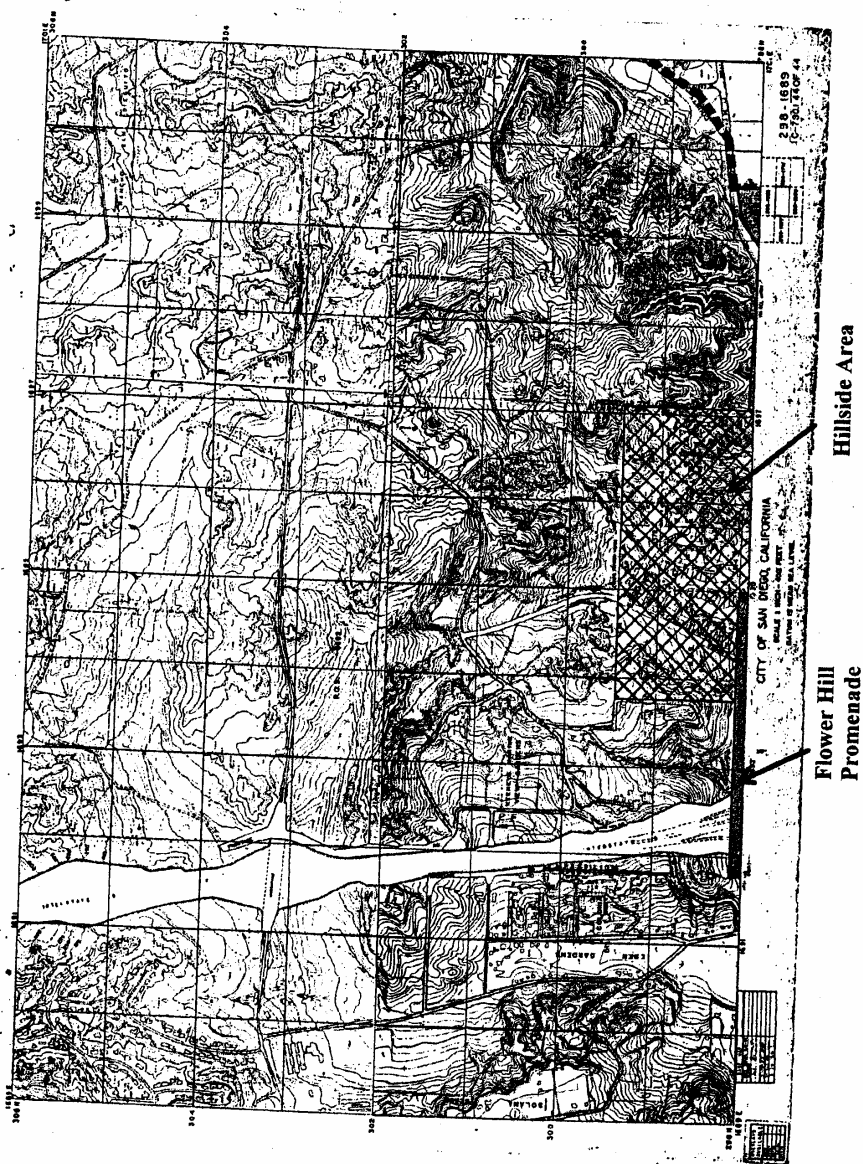


EXHIBIT 2
Legend for Map C-730.1, Map Sheets 42 and 44





ORIGINAL CITY
LCP ORDINANCE
FIRST REFERENCE
to C 730

(O-88-166)
ORDINANCE NUMBER O-17067 (NEW SERIES)
ADOPTED ON APRIL 18, 1988

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 5, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 2, SECTIONS 105.0201, 105.0202,
105.0203, 105.0204, 105.0205, 105.0206,
105.0206.1, 105.0207, 105.0208, 105.0209,
105.0210, 105.0211, 105.0211.1, 105.0212,
105.0213, 105.0214, 105.0215, 105.0216,
105.0217 and 105.0218 RELATING TO COASTAL
DEVELOPMENT PERMITS.

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

Section 1. That Chapter X, Article 5, of the San Diego Municipal Code be and the same is hereby amended by adding Division 2, Sections 105.0201, 105.0202, 105.0203, 105.0204, 105.0205, 105.0206, 105.0206.1, 105.0207, 105.0208, 105.0209, 105.0210, 105.0211, 105.0211.1, 105.0212, 105.0213, 105.0214, 105.0215, 105.0216, 105.0217 and 105.0218, to read as follows:

DIVISION 2

COASTAL DEVELOPMENT PERMITS

SEC. 105.0201 PURPOSE AND INTENT

It is the purpose and intent of this ordinance to establish a procedure for the processing of coastal development permits within the City's Coastal Zone, consistent with the City's certified Local Coastal Program and pursuant to Public Resources Code Section 30600(d) and Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 17 of the California Administrative Code.

The Coastal Zone is a distinct and valuable natural resource of vital and enduring interest to all people of the City and exists as a delicately balanced ecosystem.

The permanent protection of coastal resources, both natural and scenic, is a paramount concern to the present and future residents of the city, state, and nation.

To promote the public safety, health, and welfare, and to protect public and private property, wildlife,

EXHIBIT 3
1988 Certified Section 105.0202.b

marine resources, and the natural environment, it is necessary to protect the ecological balance of the Coastal Zone and prevent its deterioration and destruction.

Existing developed uses, and future developments that are carefully planned and developed consistent with the City's adopted Local Coastal Program, are essential to the economic and social well-being of the people of the City.

In recognition of the unique qualities of the Coastal Zone, its special communities and fragile natural resources, it is further the intent of this ordinance to provide for maximum public participation in the review of all development which may have a potential to adversely affect such resources.

SEC. 105.0202 COASTAL DEVELOPMENT PERMIT REQUIRED

A. A coastal development permit shall be required for all proposed development within the Coastal Zone except for development specifically exempted under SEC. 105.0204.

B. The Coastal Commission shall be exclusively responsible for the issuance of coastal development permits in the area of "Coastal Commission Permit Jurisdiction" as delineated on Map Drawing No. C-730, filed with the City Clerk as Document No. OO-17067-1. Where a proposed development lies partially within the area of "Coastal Commission Permit Jurisdiction" the Coastal Commission shall be exclusively responsible for the issuance of the coastal development permit.

SEC. 105.0203 DEFINITIONS

NOTE: THE FOLLOWING DEFINITIONS SHALL APPLY ONLY FOR THE PURPOSES OF THIS DIVISION

A. **Appealable Area.** That area which constitutes the appeal jurisdiction of the Coastal Commission as delineated on Map Drawing No. C-730, filed with the City Clerk as Document No. OO-17067-1, and as defined pursuant to Public Resources Code Section 30603.

B. **Development.** On land, in or under water, the placement or erection of any solid material or structure; the discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; the grading, removing, dredging, mining, or extraction of any materials; the change in the density, or intensity of use of land, including, but not limited to the subdivision of land pursuant to the Subdivision

ORDINANCE APPROVED
BY CITY COUNCIL AND
SUBMITTED TO CCC

(O-92-120 Rev. 2)

ORDINANCE NUMBER O-17775 (NEW SERIES)

ADOPTED ON MAY 26, 1992

C 730 &

730.1

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW CHAPTER XI, ENTITLED "LAND DEVELOPMENT," ARTICLE 1, ENTITLED "ADMINISTRATION AND PROCEDURES"; BY ADDING DIVISION 1, ENTITLED "GENERAL PROVISIONS AND DEFINITIONS," SECTIONS 111.0101, 111.0103, 111.0104, 111.0105, 111.0106 AND 111.0107; BY ADDING DIVISION 2, ENTITLED "APPLICATIONS," SECTIONS 111.0201, 111.0202 AND 111.0203; BY ADDING DIVISION 3, ENTITLED "NOTICE," SECTIONS 111.0301, 111.0302, 111.0303, 111.0304, 111.0305, 111.0306, 111.0307, 111.0308 AND 111.0309; BY ADDING DIVISION 4, ENTITLED "PUBLIC HEARINGS," SECTION 111.0401; BY ADDING DIVISION 5, ENTITLED "DECISION PROCESS," SECTIONS 111.0501, 111.0502, 111.0503, 111.0504, 111.0505, 111.0506, 111.0507, 111.0508, 111.0509, 111.0510, 111.0511 AND 111.0512; BY ADDING DIVISION 6, ENTITLED "REVOCATIONS," SECTIONS 111.0601, 111.0602 AND 111.0603; BY ADDING DIVISION 7, ENTITLED "LAND USE PLANS AND LOCAL COASTAL PROGRAMS," SECTIONS 111.0701, 111.0702, 111.0703, 111.0704 AND 111.0705; BY ADDING DIVISION 8, ENTITLED "ZONING," SECTIONS 111.0801, 111.0802, 111.0803, 111.0804, 111.0805, 111.0806, 111.0807 AND 111.0808; BY ADDING DIVISION 9, ENTITLED "DEVELOPMENT AGREEMENTS," SECTIONS 111.0901, 111.0902, 111.0903, 111.0904, 111.0905, 111.0906, 111.0907, 111.0908, 111.0909 AND 111.0910; BY ADDING DIVISION 10, ENTITLED "SUBDIVISIONS," SECTIONS 111.1001,

EXHIBIT 4

1992 Section 111.1202 Subsequently Certified by Commission

extension(s) do not exceed a total of six (6) months. An application for an extension of time shall be filed with the Responsible Department prior to, but no earlier than sixty (60) calendar days prior to the expiration date.

(c) Construction Changes. Any proposed construction change to a public improvement permit may be approved or denied by the Responsible Department in accordance with Process One prior to the commencement of the construction change.

A proposed construction change to a public improvement permit that was approved in conjunction with another permit or map may be approved if the proposed change is consistent with the objectives and substance of the other approved permit or map. If the proposed changes are in conflict with the objectives and substance of the other approved permit or map, then the other permit or map must be amended prior to the consideration of the construction change.

Section 13. That Chapter XI, Article 1 of the San Diego Municipal Code be amended by adding Division 12, entitled "Coastal Development Permits," Sections 111.1201, 111.1202, 111.1203, 111.1204, 111.1205, 111.1206, 111.1207, 111.1208, 111.1209, 111.1210, 111.1211, 111.1212, 111.1213, 111.1214 and 111.1215 to read as follows:

DIVISION 12

COASTAL DEVELOPMENT PERMITS

SEC. 111.1201 PURPOSE AND INTENT

It is the purpose and intent of this Division to provide additional provisions for Site Development that requires a Coastal Development Permit. A Coastal Development Permit shall be processed in a manner consistent with the City's certified Local Coastal Program, the California Coastal Act of 1976 (Public Resources Code section 30000 et seq.), and California Administrative Code, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 17.

SEC. 111.1202 COASTAL DEVELOPMENT PERMITS REQUIRED

(a) Permits Issued by the City. A Coastal Development Permit must be obtained from the City for all proposed Coastal Development, except as specifically exempted by Municipal Code section 105.0204 or except if the proposed development lies totally within or partially within the "Coastal Commission Permit Jurisdiction" or in the "Deferred Certification Area," as set forth below.

(b) Permits Issued by the Coastal Commission. A Coastal Development Permit for all proposed Coastal Development which lies totally within or partially within the "Coastal Commission Permit Jurisdiction" or in the "Deferred Certification Area" shall be required to be obtained from the Coastal Commission in accordance with the procedures specified

by the Coastal Commission. The "Coastal Commission Permit Jurisdiction" and the "Deferred Certification Area" are shown on Map No. 730.1, on file in the Planning Department, the office of the San Diego Coastal Commission and in the office of the City Clerk as Document No. OO-17067-1.

SEC. 111.1203 APPLICATION

An Applicant shall file an application for a City-issued Coastal Development Permit with the Planning Department in accordance with Municipal Code section 111.0202.

SEC. 111.1204 DETERMINATION OF APPELLATE JURISDICTION

The Planning Director shall determine whether the proposed Coastal Development lies within the Appealable Area at the time the application for a Coastal Development Permit is submitted to the Planning Department. The Planning Director's determination may be reviewed by the Executive Director of the Coastal Commission in accordance with Coastal Commission regulations.

SEC. 111.1205 DECISION PROCESS

An application for a City-issued Coastal Development Permit may be approved, conditionally approved or denied in accordance with Process Three.

(a) Findings. An application for a Coastal Development Permit may be approved or conditionally approved only if the findings of fact described in Municipal Code section 105.0208 are made.

(b) Conditions. Conditions may be imposed by the decision-maker when approving a Coastal Development Permit to carry out the purpose and the requirements of this Division. The conditions may include, but need not be limited to, a provision for public access, open space or conservation easements, or the relocation or redesign of proposed site improvements. When conditions pertaining to public access, open space or conservation easements are imposed, the City shall notify the Executive Director of the Coastal Commission as set forth in Municipal Code section 111.1215.

SEC. 111.1206 NOTICE OF FINAL CITY ACTION

(a) Notice of Final City Action by Mail. Within five (5) Days after the Date of Final Action of a Coastal Development Permit, the Planning Director shall mail a Notice of Final City Action to the Coastal Commission and to any other person requesting the notice.

(b) Contents of Notice of Final City Action. The Notice of Final City Action shall include the following:

- (1) the conditions of approval for the Coastal Development Permit; and
- (2) the written findings required to approve the

CITY OF SAN DIEGO LCRA #1-98B
LAND DEVELOPMENT CODE
January 14, 1999

A project that includes an affordable housing density bonus and requires a Site Development Permit in accordance with Section 144.0760 because the development involves a deviation from the density bonus and affordable housing provisions may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a): [..]

(3) Approving the Site Development Permit will not adversely affect the applicable land use plan, cause significant adverse effects upon the environment, adversely affect solar access to neighboring property, or violate the relevant regulations of the Municipal Code and

(4) Within the Coastal Overlay Zone, in accordance with Government Code 65015(f), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and certified land use plan. The otherwise maximum allowable residential density shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the certified local coastal program. Any housing development approved pursuant to Government Code Section 65015 shall be consistent to the maximum extent feasible and in a manner most protective of coastal resources, with all otherwise applicable certified local coastal program policies and development standards. Approval of development proposed under this section shall require a finding that the development, if it had been proposed without the 25 percent density increase, would have been fully consistent with the policies and development standards of the certified local coastal program. Before approving a 25 percent density increase, the City shall identify all potential means of accommodating the 25 percent density increase and the effects of such means on coastal resources shall be considered. If means are identified to accommodate the density increase that do not have an adverse effect on coastal resources, the density increase shall be accommodated by those means. If, however, all potential means for accommodating the density increase will have adverse effects on coastal resources, the City shall require implementation of the means that are most protective of significant coastal resources.

Chapter 12/Article 6/Division 6: Planned Development Permit Procedures

21. Section 126.0604(a)(1), Findings for Planned Development Approval, shall be revised to read:

A Planned Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0604(a) and the supplemental findings in Section 126.0604(b) that are applicable to the proposed development as specified in this section.

- (a) Findings for all Planned Development Permits
- (1) The proposed development will not adversely affect the applicable land use plan. Within the Coastal Overlay Zone, the granting of a Site Development Permit shall include a finding that the request development conforms with, and is adequate to carry out, the certified Land Use Plan;

Chapter 12/Article 6/Division 7: Coastal Development Permit Procedures

22. Section 126.0702(b), When a Coastal Development Permit is Required, shall be revised to read:

- (b) Permits Issued by the Coastal Commission. A Coastal Development Permit or exemption requirements for all proposed coastal development on a project site located

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EXHIBIT 5

Commission Staff's Suggested Modifications to Section 126.0702(b)
of the Certified Land Development Code

CITY OF SAN DIEGO LCPA #1-98B
LAND DEVELOPMENT CODE
January 14, 1999

~~partially or completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission. If the proposed coastal development is located partially within the City permit jurisdiction and partially within the Coastal Commission jurisdiction, a Coastal Development Permit from each agency is required for the portion of the project within the agency's jurisdiction. The Coastal Commission Permit Jurisdiction and the Deferred Certification Area are shown on Map No. C-730.1 on file in the Development Services Department, the San Diego office of the Coastal Commission, and in the office of the City Clerk as Document No. 00-17067-1.~~

23. Section 126.0704(a), Exemptions from a Coastal Development Permit, shall be revised to read:

The following *coastal development* is exempt from the requirement to obtain a Coastal Development Permit.

- (a) Improvements to existing *structures* are exempt, except if the improvements involve any of the following:
 - (1) Improvements to any *structure* located on a beach, *wetland*, stream, or seaward of the mean high tide line, where the *structure* or proposed improvements would encroach within 50 feet of a coastal bluff edge.
 - (2) Improvements to any *structure* that would result in an increase of 10 percent or more of interior floor area or an additional improvement of 10 percent or less where an improvement to the structure had previously been exempted; an increase in building height by more than 10 percent where the *structure* is located between the sea and first public roadway paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line where there is no beach, whichever is the greater distance. The first public roadway is shown on Map No. C-730.1 filed in the office of the County Recorder as Document No. 00-17069.
 - (3) Improvements that result in an intensification of use. For purposes of this section, intensification of use means a change in the use of a lot or premises which, based upon the provisions of the applicable zone, requires more off-street parking than the most recent legal use on the property. ~~the existing use, did any legal use of the lot within the 12 months immediately preceding the date of application for a construction permit.~~
 - (4) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 100 feet of the edge of a coastal bluff.
 - (5) ~~Improvements to existing structures which involve:~~ The demolition or removal of 50% or more of the exterior walls of the existing structure are not exempt but rather constitute demolition and the replacement structure needs a new coastal development permit.
 - (6) The expansion or construction of water wells or septic systems.
 - (7) ~~Improvements to existing single-family residences.~~ Any significant non-attached structures such as garages, fences, shoreline protective works or docks on property located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, which

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STATE OF CALIFORNIA
COASTAL COMMISSION

CERTIFIED COPY

RICK VALLES KEY,
MONTY MC CULLOUGH & BRETT AMES
TORREY PINES COMMUNITY
COUNTY OF SAN DIEGO

Application
No. A-6-NOC-07-130

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
June 12, 2008
Agenda Item No. 13.c

County of Sonoma
Board of Supervisors Chambers
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EXHIBIT 6

Transcript of June 2008 Commission Decision in Appeal No. A-6-NOC-07-130

A P P E A R A N C E S

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Patrick Krueer, Chair
Bonnie Neely, Vice Chair
Khatchik Achadjian
Steve Blank
Larry Clark
Ben Hueso
Dave Potter
Mike Reilly
Mary Shallenberger
Sara Wan

STAFF

Peter Douglas, Executive Director
Sherilyn Sarb, District Director
Hope Schmeltzer, Senior Staff Counsel
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Jamee Jordan Patterson, Deputy Attorney General

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1 California Coastal Commission

2 June 12, 2008

3 Rick Valles Key, Monty McCullough, Brett Ames

4 Application No. A-6-NOC-07-130

5 * * * * *

6 10:15 a.m.

7 CHAIR KRUER: With that, okay, we will go to
8 staff, starting with 13.c.

9 DISTRICT DIRECTOR SARB: Thank you, Chairman
10 Kruer.

11 Can I have the Power Point on this item, please.

12 This is the de novo review of the City of San
13 Diego Coastal Development Permit that involves the sub-
14 division of vacant 1.84-acre site, into two .92-acre lots,
15 and the construction of two single family residences and
16 guest quarters.

17 The project site is located south of the San
18 Dieguito Lagoon and the wetlands restoration project, on the
19 south side of Racetrack View Drive in the Torrey Pines
20 Community of the North City LCP segment.

21 The proposed residence on Parcel 1 is 5,430-square
22 feet, with a 1,120-square foot garage, and a 570-square foot
23 guest house. The Parcel 2 home would be 5,000-square with a
24 960-square foot garage.

25 The site is nearly half -- nearly half the site

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1 contains coastal sage scrub and southern maritime chaparral,
2 which has been designated as ESHA by the staff ecologist.
3 That is shown in this area of the site, here. This is the
4 subject site, and the coastal sage scrub and southern
5 maritime chaparral is on this half of the site.

6 As you can see, the on-site habitat continues off
7 site into the canyon upland of the subdivision, and to the
8 east, as well. And, all of the off-site habitat is part of
9 the MHPA, along with the San Dieguito Lagoon and the uplands
10 located directly across Racetrack View Drive to the north.

11 the MHPA stands for the multi-habitat planning
12 area, and it is the area identified in the city's LCP that is
13 to be preserved as contiguous habitat area as part of the
14 multi-species conservation program, sub-area plan.

15 As approved by the city, the project would impact
16 .35 acres of coastal sage scrub, and .19 acres of southern
17 maritime chaparral. The proposed mitigation for the habitat
18 impacts, including the loss of Del Mar mesa sand asters, and
19 through the condemnation of the remaining on-site habitat
20 through a conservation easement, and payment into the city's
21 habitat acquisition fund.

22 The subject site has been addressed by the
23 Commission previously, and the most recent action which
24 occurred in 1988, created the 4-lot subdivision, shown on
25 Slide 2.

1 The subject site is Parcel 4 of the subdivision,
2 and the 1988 action required recordation of an open space
3 deed restriction on the steep slopes, with native vegetation
4 along the southern portions of the four lots.

5 The proposed homes, grading, landscaping, et
6 cetera, would not encroach into the deed restricted open
7 space area. The Zone 2 brush management associated with the
8 home on Parcel 2 would encroach into the deed restricted
9 area.

10 The subject site contains three vegetation
11 communities, shown on this Slide 3. They are non-native
12 grassland, coastal sage scrub, and southern maritime
13 chaparral. Although this site is not identified as part of
14 the MHPA mari-catchers have been observed on the site, as
15 well as sensitive plant species the Del Mar Mesa Sand Aster,
16 and again this has caused the staff ecologist to determine
17 that the coastal sage scrub, and the southern maritime
18 chaparral constitutes ESHA.

19 Slide 4 shows the proposed encroachment into these
20 two vegetation communities. In addition, the subdivision is
21 proposed that would double the number of homes on the site.
22 There is Section 1430149(c) of the Environmentally Sensitive
23 Lands Regulation in the city's certified LCP, that prohibits
24 the subdivision of land when the creation of new lots would
25 result in greater impacts to sensitive habitats. In this

1 case, the subject site is an existing legal lot that would be
2 developed with a single family home -- could be developed
3 with a single family home and avoid all impacts to coastal
4 sage scrub and southern maritime chaparral, from the
5 development, and from necessary brush management.

6 But, we also believe that the applicant could
7 design a project with two smaller homes and avoid such
8 impacts. This is because approximately half of the site, .92
9 acres, contain disturbed non-native grasslands that the
10 Commission would consider less sensitive vegetation, and
11 where development could occur.

12 Therefore, the staff recommendation is for
13 approval of a subdivision with two homes with revised plans
14 that would eliminate the proposed encroachments into the
15 coastal sage scrub and southern maritime chaparral
16 vegetation.

17 The applicant and the city allowed these
18 development impacts, because of the environmentally sensitive
19 lands ESL regulations in the LCP says that in areas outside
20 of the MHPA development of such sensitive biological
21 resources is not limited.

22 Staff's position is that this is not the only
23 regulation that should be considered in review of development
24 proposals. There are many policies in the Land Use Plan, as
25 shown on pages 13, 14, and 15 in the staff report, that

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1 protects environmentally sensitive areas, uses language
2 similar to 30240 and specifically calls for minimizing and
3 eliminating impacts to threatened and endangered species.

4 There is no dispute here that these areas are
5 sensitive biological resources, and protected by the
6 regulations in the LCP. This dispute, or difference of
7 interpretation, is the extent of the impacts to the coastal
8 sage scrub and southern maritime chaparral that should occur.

9 Staff feels that, if possible, to avoid impacts
10 they should be avoided, and that would be consistent with the
11 Land Use Plan and the LCP, and that you should first review
12 the development on the existing legal lot, minimizing and
13 avoiding impacts to identify the allowable development area,
14 and then, if allowing a subdivision, and only if it can occur
15 without any greater impacts than would occur through the
16 development of the existing legal lots. If it is not
17 possible to do this, then the subdivision should not be
18 allowed.

19 I would like to just go through the points that
20 are made in the applicant's letter that is in the addendum.
21 It is a revised letter from what was attached to the staff
22 report, and there are a number of attachments to that letter.

23 One point is that the applicant contends that the
24 site is not in the appeals jurisdiction because it is not
25 identified on the post-certification map, identified in the

1 Land Development Code, and that is true. This map has not
2 been adopted by the Commission as a final post-certification
3 map. We knew this at the time that the Commission acted on
4 the Land Development Code, and that is why staff and the
5 Commission added language to the map that says that the map
6 may be updated, as appropriate, and may not include all lands
7 involving post-certification appeals jurisdiction.

8 Also, there is a standard note on all post-
9 certification maps that states the map may not include all
10 lands where permit and appeals jurisdiction is retained by
11 the Commission.

12 In this case, we have had a specific experience
13 with the city regarding this particular area, and the error
14 on the map, and the city has acknowledged that error, which
15 is why the project was processed through the city as an
16 appealable development. We received the notice of final
17 action as an appealable development and the Commission found
18 substantial issue in February. The question of appealability
19 did not come up until recently, and after that action had
20 occurred.

21 We believe Racetrack View Drive is not the first
22 public road because it doesn't meet the definition in Section
23 3011 of the Regulations. It terminates in a cul-de-sac to
24 the east, and does not provide a continuous public access
25 system around the lagoon. Mango Drive is on the bluff top, or

1 hill top area, south of this site, and it does meet the
2 definition of the first public road in the regs. The nature
3 of the area between Mango Drive and the lagoon are the
4 hillsides and canyons that are within the watershed of the
5 San Dieguito Lagoon, and these are the types of resource
6 areas that are typically and are often found in areas that
7 are defined as appealable in Section 30603 of the Coastal
8 Act, so, we believe it was correct to process as appealable
9 through the city.

10 Another allegation is that staff is rewriting the
11 LCP because it is -- and that would be inconsistent with
12 recent court decisions such as the *Security National*
13 *Guarantee v. the Coastal Commission* and that this action
14 precludes the Commission from finding the subject property
15 includes ESHA.

16 Staff has addressed these points in detail in the
17 addendum, and we see little resemblance to the SNG case.
18 Staff is not saying there is ESHA where the city's LCP says
19 there is not. There is no question in the LCP that the
20 coastal sage scrub and the southern maritime chaparral are
21 two habitats protected by the ESL regulations as sensitive
22 biological resources. The dispute is the extent of impacts
23 that should occur to this vegetation, and that is a matter of
24 interpretation for the Commission.

25 And, finally, the applicant indicates that the

1 staff recommendation would not allow reasonable development
2 of 2 homes on the site. The next slide shows the applicant's
3 representation of the allowable development area resulting
4 from this staff recommendation, and this is incorrect. The
5 area in the northwestern part of the site does not constitute
6 ESHA and could be included within the allowable development
7 area.

8 Also, the area where fuel modification is allowed
9 -- in green here on the next slide -- is the area where
10 grading, non-flammable structures, such as decks and patios
11 and swimming pools could occur. Therefore, there is a much
12 expanded development area compared to what has been shown by
13 the applicant.

14 If the Commission is inclined to agree that the
15 building sites are too limited with the subdivision of the
16 site, then the subdivision should be denied, because that
17 would still allow development of a substantial single family
18 residence on the lot without encroachment into the ESHA.

19 The result of the no takings issue here, and no
20 entitlement to a subdivision, the applicant refers to
21 language in the Commission's staff report for a four-lot
22 subdivision that identifies if a lot split is proposed that
23 the applicant should address the site's stability and limit
24 the steep slope encroachment. Those were the prevailing
25 issues at the time, and they were mentioned in the staff

1 report because a lot split was currently being processed
2 through the city at that time. Apparently, that didn't get
3 finalized, the final map must not have been recorded, and it
4 is 20 years later, and it is not unreasonable to assume that
5 the applicable policies and regulations may changed over a
6 20-year period.

7 We have no record of any contact by the city, or
8 the applicant when this part was being processed through the
9 city, soliciting comments or asking for any of our concerns.

10 The last slide shows the site, and the residence
11 on parcel 3 next door, and contrary to the applicant's
12 contentions the proposed homes are larger than the homes in
13 the area. The subdivision to the east, the homes range from
14 2700 to 3500-square feet, and the home on Parcel 3 next door
15 is approximately 3300-square feet.

16 This is the power line that is the significant
17 constraint, according to the applicant, and it is not a large
18 power line, and it doesn't seem to have constrained the
19 development of the site next door.

20 So, in conclusion, we feel that our recommendation
21 is still allowing more than a reasonable use of the site,
22 allowing a subdivision and two homes.

23 Again, if the Commission is inclined to think that
24 those sites are too limited, a denial of the subdivision and
25 approval of one home on the site would be substantial

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1 reasonable use. There is that matter of interpretation for
2 you, as to the extent of encroachment that may, or may not,
3 occur into the coastal sage scrub, and southern maritime
4 chaparral on this site.

5 And, I believe Ms. Schmeltzer would like to make a
6 few comments.

7 **CHIEF COUNSEL SCHMELTZER:** Thank you.

8 I think staff covered the takings issue fairly
9 completely, I would just like to add that the decision that
10 the Deputy Attorney General reported on, in her report
11 earlier today, *Charles Pratt Construction v. California*
12 *Coastal Commission*, which was decided last month, is a
13 published Court of Appeals decision that had some relevance
14 to the issues being raised in this case.

15 On the takings issue, the Pratt Court found that
16 in the Pratt case, the takings issue was not yet ripe, and it
17 talks about when it would be ripe to determine whether there
18 is a takings, and when a takings occurs. And, it stated that
19 we look at whether a state agency's determination deprives
20 the landowner of all economic beneficial use of his property.
21 The Pratt owner claimed that because 80 percent of his
22 property was found to be ESHA, that no development was
23 possible, and the court pointed out that 20 percent was not
24 ESHA, and that the Commission had suggested some alternate
25 configurations, and because of that, even though the

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1 application was denied, there was no final determination that
2 no development was possible. We think that that speaks to
3 the case here, in looking at whether there is takings.
4 Without a subdivision, there would be room for quite a large
5 home, which would be an economically beneficial use, and with
6 the subdivision, the Commission's staff has made some
7 proposals, and believes that there are ways to create two
8 different, two homes on the parcel as it is now.

9 And, that under either scenario, which the
10 Commission can decide, of course, in its discretion how it
11 wants to proceed, but there are several options for deriving
12 an economically beneficial use of this property.

13 The final point is that the applicant, in his
14 letter says also raised the SNG decision, and is urging the
15 Commission to accept the city's interpretation of the LCP,
16 and that to do otherwise would be a rewriting of the LCP,
17 that he claims SNG prohibits. This argument was rejected by
18 the court in Pratt, and even though both of his letters were
19 written after the Pratt decision, they don't mention them.

20 The Commission, under Pratt, is not bound to
21 accept the city's interpretation of the LCP, and in fact,
22 stated that state law has declared that it is the Commission
23 who is in charge of interpreting the LCP, and that is why the
24 Commission hears appeals.

25 So, with those thoughts, I would just like to turn

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1 it over back to staff.

2 CHAIR KRUEER: Okay.

3 DISTRICT DIRECTOR SARB: That concludes our
4 comments.

5 CHAIR KRUEER: Okay, thank you.

6 Expertes, starting on my left.

7 Commissioner Achadjian.

8 COMMISSIONER ACHADJIAN: Yes, thank you, Mr.
9 Chair.

10 On Wednesday, June 4, in the afternoon hours I had
11 a conference call with Steve Kaufmann, Susan McCabe -- and
12 also I don't have my glasses on, so have difficulty in
13 reading -- and an Ann Blackburn? And, the applicant shared
14 with me their disagreement with the staff's recommendation on
15 two primary points.

16 They believe the project is not within the appeals
17 zone, based on the Commission's approval of the city's appeal
18 zone map, and second they disagreed with the staff's
19 contention that most of this site constitutes ESHA, which
20 they say is contrary to the LCP policies that allow impacts
21 to habitats, as long as the impacts are mitigated.

22 They also discussed the project history, and the
23 explicit explanation of the lot split on this property.

24 We also, part of the discussion, was with the
25 power lines as presented by staff.

1 Thank you.

2 CHAIR KRUEER: Commissioner Clark.

3 COMMISSIONER CLARK: Thank you, Mr. Chair.

4 On Friday, the 6th of June, at late afternoon in
5 Rancho Palos Verdes I met with Susan McCabe and Steve
6 Kaufmann, and they provided me the same information that
7 Commissioner Achadjian has already reported on.

8 CHAIR KRUEER: Mr. Hueso.

9 COMMISSIONER HUESO: The applicants met with my
10 staff member, Alonzo Gonzales, on Thursday, June 5, and they
11 stated that this project complies with the environmentally
12 sensitive lands' requirement of the certified LCP, and that
13 the staff recommendation, in contrast, would leave them with
14 undevelopable parcels.

15 And, also, yesterday I met with Susan McCabe, and
16 we had an ex parte similar to that disclosed by Commissioner
17 Achadjian.

18 CHAIR KRUEER: Commissioner Reilly.

19 COMMISSIONER REILLY: Thank you, Mr. Chair, my
20 expartes are on file.

21 CHAIR KRUEER: Vice Chair Neely.

22 VICE CHAIR NEELY: Thank you, Mr. Chair, my
23 expartes are on file.

24 CHAIR KRUEER: And, my expartes are on file.
25 Commissioner Blank.

1 **COMMISSIONER BLANK:** Last night, Wednesday, June
2 11, here in Santa Rosa, I had the beginning of a meeting with
3 Susan McCabe on this issue, and we both decided that it was
4 too late in the evening to continue the meeting, given our
5 state, and we did not discuss anything substantive, other
6 than to talk about this being on the agenda for tomorrow.

7 **CHAIR KRUE:** Okay.

8 Anyone else.

9 [No Response]

10 Okay, with that, then I will open the public
11 hearing, and Mr. Kaufmann, how much time, sir, are you
12 requesting?

13 **MR. KAUFMANN:** Fifteen minutes, please.

14 **CHAIR KRUE:** Okay.

15 **MR. KAUFMANN:** Thank you, Mr. Chairman.

16 **CHAIR KRUE:** Are you going to reserve some time
17 for rebuttal?

18 **MR. KAUFMANN:** Do we have any opponents?

19 **CHAIR KRUE:** Pardon -- are you going to reserve
20 some of that 15 minutes for rebuttal, in case there are
21 opponents?

22 **MR. KAUFMANN:** Mr. Chairman, do we have any
23 opponents?

24 **CHAIR KRUE:** No, you don't.

25 **MR. KAUFMANN:** So, the answer is, "No".

1 CHAIR KRUE: We will give you the 15 minutes.
2 MR. KAUFMANN: Thank you.
3 CHAIR KRUE: Well, you could rebut yourself.
4 MR. KAUFMANN: I probably will, given half a
5 chance.
6 Good afternoon, Mr. Chairman, Commissioners.
7 I have a presentation.
8 CHAIR KRUE: We will wait until they get it up.
9 [Pause in proceedings.]
10 MR. KAUFMANN: I am waiting for the Chair.
11 CHAIR KRUE: Okay, no, we are ready, and we are
12 waiting for your presentation to begin.
13 MR. KAUFMANN: Thank you, all right, Mr. Chairman,
14 Steven Kaufmann for the applicants.
15 CHAIR KRUE: He was waiting for me to wake up.
16 MR. KAUFMANN: Today, we asking you to take one of
17 two actions, either to find that this project lies outside of
18 your appeals jurisdiction, or alternatively approve the
19 project but delete Special Conditions 1 and 7.
20 This is a fairly simply project, located inland of
21 Racetrack View Drive, which is just south of the San Dieguito
22 Lagoon, next to another parcel that has already been split,
23 developed with a house, and graded for a second house, and
24 that parcel does not have a power line through it.
25 Here, the applicants, likewise, propose a simple

1 lot split, construction of two houses, and this would be the
2 last possible lot split on this street.

3 This is the site plan. The two lots created would
4 be separated by an existing high tension power line through
5 the middle of the property. Both houses would be,
6 essentially, single story, low profile, stepped to fit the
7 natural contour, and landscaped.

8 Now, please compare the approved site plan with
9 the following constraints map which we have prepared, based
10 on the staff recommendation, a little bit different than the
11 one that the staff showed you, and I'll address that in a
12 moment.

13 This shows you what the staff recommendation would
14 leave us, and you can see why we have asked you to delete
15 Special Conditions 1 and 7, which would dramatically limit
16 the buildable area of each parcel.

17 A little history, beyond what staff provided, the
18 subject lot was originally created as part of a 4-parcel
19 subdivision with CDPs issued in 1978 and '88. This shows you
20 Parcel 4, the subject property, and Parcel 3, both were
21 created as large 80,000-square foot parcels, and the CDPs
22 acknowledged the future lot split opportunity to accommodate
23 two 40,000 lots on each parcel.

24 The 1978 CDP stated the future subdivision of
25 Parcels 3 and 4 shall be limited to no more than one 2-way

1 split of each lot, and that is exactly what the applicants
2 are proposing.

3 The 1988 CDP discussed the future lot split
4 stating the detailed grading plans would be required to show
5 stable building areas on each lot, and it also required an
6 open space dedication on Parcel 4, which has been recorded,
7 so you have already required a dedication of 20 percent of
8 this property to open space.

9 The three issues we would like to discuss, first
10 is the lack of appeals jurisdiction, the second is the
11 project's conformity with the LCP, and finally the
12 infeasibility of the staff recommendation, which, in our
13 view, is a de facto denial because it would render the site
14 unbuildable.

15 The first two issues, the staff recommendation
16 would, effectively, rewrite the LCP, but the recent decision
17 in the *Security National Guaranty v. Coastal Commission* --
18 what we refer to as the SNG case -- holds that the Commission
19 can't rewrite an LCP through the appeal process, and in that
20 case the court claimed that by declaring the site to be ESHA,
21 based on standards not found in the LCP, the Commission
22 improperly attempted to amend the LCP, and that is the
23 fundamental problem here.

24 Now, staff has cited to you another recent case,
25 *Pratt v. Coastal Commission*. We didn't site that case

1 because it doesn't apply. In contrast to SNG, the court in
2 Pratt explains that the LCP there, in fact, designated much
3 of the applicant's property to be ESHA. That wasn't the case
4 in SNG, and it is not the case here.

5 But, regardless, both cases teach the same
6 unremarkable proposition, they tell us follow the LCP. So,
7 first, as to appeals jurisdiction, the post-cert map shows
8 Racetrack View Drive is the first public road paralleling the
9 sea, and the subject property is within the first public
10 road. The city's original notice of final action stated that
11 this project was appealable, but in April the city recognized
12 it had made a mistake, and so it sent a corrected notice
13 explaining that it is not appealable, and that is not
14 attached to the staff report, but it is attached to my letter
15 to you as Exhibit 3.

16 In February of '99, the Commission certified the
17 city's Land Development Code, or LDC, and that was a
18 comprehensive rewrite of the implementation part of the LCP,
19 and the certified LDC defines appealable area as shown on map
20 drawing No. C-730 on file in the office of the City Clerk,
21 with the document number.

22 So, when based on this map that for six years
23 after certification of the LDC that the city approved houses
24 inland of Racetrack View Drive, and issued notices of final
25 action stating that they weren't appealable. It wasn't until

2004, 2005, that the Commission staff objected, and then the city noted its approvals as appealable until this project.

Staff's argument is that the post-cert maps are just drafts, but that is wrong. They are not stamped "draft" the section doesn't refer to them as drafts, and in fact language in the section the Commission certified is unqualified, and there would be no reason to update maps if they were only in a draft form.

Now, staff also points to the language at the end of this section, this was added as a suggested modification, and it does nothing more than conform this appeal provision to your regulations, which, as you can see, explicitly provides a process for updating the boundaries of an adopted map. Your reg anticipates that new roads may be built, and appealable features, such as wetlands may be present, that haven't been previously mapped, and that it may make sense to update the maps, but not here.

The approved post-cert maps here haven't been updated or changed, as provided in this section of your regs, or the LCP, and under the SNG case, the LCP cannot be changed by appeal. It would be hard to believe that post-cert maps, which your regulations require, have sat on files in the office of the San Diego City Clerk for all these years as just drafts.

Well, let's suppose that there were no maps. Then

1 the question is what is the first public road? Your regs
2 define this as Racetrack View Drive satisfies all of the
3 requirements. The one at issue here is that the road must
4 connect with other public road providing a continuous access
5 system generally parallel and following the shoreline of the
6 sea, which here is the San Dieguito Lagoon.

7 Your decisions explain I-5 is the first public
8 road to the east, Via de la Valle the first public road to
9 the north, and Racetrack View Drive is the first public road
10 south of, and parallel to the lagoon -- I misspoke there --
11 your decisions don't say that, that is our argument today.

12 But, Racetrack View Drive connects to San Dieguito
13 Rd. then it connects to Jimmy Durante, then it connects to
14 Via de la Valle, and then it connects to the I-5. Now, it
15 frames the lagoon, it provides direct view of the lagoon, it
16 provides ample street parking next to the lagoon, it is
17 directly inland of a publicly accessible trail on the south
18 side of the lagoon, and it doesn't matter that it ends just
19 before the I-5, it provides the obvious continuous access
20 system around the lagoon contemplated by your regulation.

21 Now by contrast, staff's route shown on Exhibit 11
22 to the staff report, a flat one dimensional page with Thomas
23 Guide, but that is not useful. It looks like the route is
24 right up against the lagoon -- I don't know if you can go
25 back to that just for a second, but that is how I looked at

1 it.

2 Now, let's look at the aerial which shows what is
3 really there. It is about a half mile to a mile from the
4 lagoon, and courses through two residential subdivisions, It
5 has access far from the lagoon. It has no visual or physical
6 connection to the lagoon, and is a major canyon away from the
7 lagoon. And, Mango Drive, is this, parallel to the freeway,
8 but that is about it.

9 No reasonable person would take this circuitous
10 and certainly non-parallel route to the residential
11 subdivisions for any purpose connected with the lagoon, or as
12 the reg requires, to provide a continuous access system.

13 So, based on the certified map -- or just based on
14 the facts, the appeal jurisdiction in this instance is
15 lacking, and we ask that you make that finding.

16 To the second issue, assuming there was appeals
17 jurisdiction, staff argument is a clear rewrite of the
18 certified LCP, and it contradict the LCP, and again the SNG
19 says you can't do that.

20 The issue here is whether the project conforms
21 with the ESL requirements of the certified LCP, and it does.
22 This LCP expressly permits encroachment at the ESL outside of
23 the city's multi-habitat planning area, the MHPA, so long as
24 it complies with the LCP's mitigation requirements, and as
25 staff points out, mitigation required here was a combination

1 of on-site preservation and contribution to the city's
2 habitat acquisition fund, that is what the LCP requires.

3 Now, as the staff report notes this LCP was
4 certified at a time when the Commission and the city didn't
5 consider CSS or MSC to be ESHA, and the ESL requirements did
6 not, and they do not foreclose development in ESL, but
7 instead they require mitigation.

8 These are the North City LUP provisions which the
9 staff cites in their staff report, regarding ESHA that are
10 similar to the Coastal Act, but they are fundamentally
11 different. Staff says they require ESHA to be protected.
12 That is not correct.

13 While the Coastal Act uses "shall" this LCP is a
14 "should" and it is implemented by the certified implemental
15 plan in the LDC, and the applicable provision here is the
16 Section 1430141, which states that development encroaching
17 into sensitive biological resources is subject to the
18 following regulations -- and the critical one is in
19 Subdivision H, and you can see that it says outside of the
20 MHPA encroachment into sensitive biological resources is not
21 limited, is not limited, with two exceptions not applicable
22 here dealing with wetlands and their buffers, and designated
23 open space. And it is undisputed that this project doesn't
24 encroach into the MHPA.

25 And, the next sub-section, Subdivision I tells you

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1 what is required when you do encroach, but this provision
2 isn't quoted in the staff report, and it wasn't addressed
3 today. It is a critical provision, states that all develop-
4 ment occurring in sensitive biological resources is subject
5 to a site-specific analysis, but must determine the
6 corresponding mitigation, and then that same section
7 specifies three types of mitigation, and three subsections
8 that are too long to put on a slide. But, in summary, they
9 involve acquisition or dedication of another site,
10 preservation or dedication of on-site biological resources,
11 which the city required here, and payment of an in-lieu fee
12 where the impact area is small, which the city also required.

13 Staff report says the Commission hasn't
14 interpreted the resource policies of the Coastal Act or
15 certified LCPs to allow impacts at any cost to sensitive
16 resources, well, neither does this LCP. This LCP tells you
17 that outside of the MHPA encroachment into sensitive
18 biological resources isn't limited, but with encroachment
19 comes the requirement of mitigation. Essentially, staff's
20 argument would nullify Sub-Section 8 and change the language
21 "is not limited" to just the opposite, "is prohibited."

22 Not only would it nullify Sub-Section 8, it would
23 nullify Sub-Section I, which requires mitigation for
24 development occurring in sensitive biological resources, and
25 again, SNG holds you can't do that, as it is basically

1 amending the LCP.

2 There was a section that staff cited in its staff
3 report, 143.0140(c) and they argue that application of Sub-
4 Sections H and I would nullify that provision, but staff
5 misreads that provision.

6 It says:

7 "No building lot may be created that provides
8 such a small area that future reasonable
9 development of the lot will require additional
10 encroachment into ESL, beyond the maximum
11 allowable development area of the original
12 un-subdivided premises."

13 "Maximum allowable developable area of the
14 original un-subdivided premises --"

15 is where the applicants now propose their development. No
16 future development is proposed or needed beyond that, and the
17 section just doesn't apply.

18 So, to sum up on this point, the city required the
19 biological impact analysis, which proposed mitigation
20 consistent with the certified LCP, that is how the city
21 approved the project.

22 So, to conclude, you do have appeals jurisdiction,
23 we ask you approve this project and delete Special Conditions
24 1 and 7.

25 And, that brings me to the final point, it is

1 against the city's approved site plan, and Special Conditions
2 1 and 7 would, effectively, deny the project by radically
3 reducing the area available for development, resulting,
4 unfortunately, in a taking.

5 This is the property. Here is the already
6 dedicated open space, the staff recommended ESHA, the first
7 fuel mod zone, the second fuel mod zone, and the high tension
8 line that runs through the property.

9 We provided staff with an exhibit which they
10 showed you, which we initially thought would be the result of
11 the staff's rec, but now we have matched up with the grading
12 plan, and we didn't include the vegetation from the northwest
13 corner, so here is what we end up with.

14 On Parcel 1, a 750-square foot box, plus the
15 garage, to which you could add a 750-square foot second
16 story. On Parcel 2, you get a 750-square foot room over a
17 garage. If you eliminated the second driveway on Parcel 1,
18 and then the structure on Parcel 1 would actually be smaller
19 because you would have to make room for the fire department
20 turn around.

21 So, staff's statements that its recommendation
22 leaves this property buildable, and the further statement
23 that there are many more possibilities, it just defies
24 reality.

25 The applicant is \$2 million into this property,

1 and no reasonable builder could afford to construct the tiny
2 structures that result after applying the staff's
3 recommendation.

4 And, recall, they bought the property, the
5 Commission previously noted it would be limited to a one
6 two-way lot split, where an open space dedication had already
7 been required by the Commission, and where the certified LCP
8 explicitly states that outside of the MHPA encroachment into
9 sensitive biological resources is not limited if mitigated.

10 Staff's recommendation departs from the LCP, it
11 significantly impacts the economic use of the property, it
12 interferes with the applicant's reasonable investment backed
13 expectations, and it would effect the taking of the property.
14 That is what you are being asked to do.

15 We passed out on a yellow sheet, attachment 1 from
16 my letter to you, setting forth the motions we would like you
17 to consider. We are asking you to find that the project is
18 outside of your appeals jurisdiction, or alternatively, that
19 you approve the project with your staff's conditions, but
20 delete Special Conditions 1 and 7.

21 Thank you, Mr. Chairman.

22 CHAIR KRUE: Thank you, sir.

23 And, with that, we will close the public hearing,
24 and go back to staff for their response.

25 DISTRICT DIRECTOR SARB: Thank you, Chairman

1 Kruer.

2 I don't think the applicant raised any new issues,
3 specifically, that I haven't already addressed in my initial
4 comments, except that he indicated that Racetrack View Drive
5 connects with Interstate 5, and that is not correct, there is
6 not a physical connection between Racetrack View Drive and
7 Interstate 5.

8 Regarding the post-certification maps, even when
9 adopted, they is a continual need to update these maps,
10 again, that is why the notes are on the maps that we have.
11 For example, these maps that were adopted at the time of the
12 LDC by the city had areas of deferred certification mapped,
13 and those areas have since become certified, so that is one
14 of the things we have identified between Commission staff and
15 the city.

16 We have this hard copy set of maps that have a lot
17 of notes on them, that over time we have looked through these
18 issues. The Commission has seen development at Pacific
19 Beach, for instance, where the maps had showed that Mission
20 Blvd. was not the first public road. And, again, to the
21 definition in the regs, it clearly is, and so, you know,
22 there have been decisions that have made those changes, and
23 we have notations on our maps. There are several reasons why
24 they haven't been updated, and one of them is the technology
25 has changed significantly, and you have -- the desire is to

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1 have digitized maps. If you are going to do that effort you
2 want to put the right information into the data of those maps
3 -- garbage in and garbage out -- so, we don't want to redo
4 the maps with the errors that they have.

5 So, our mapping unit has been working on this, and
6 once we have a revised set of maps, it is going to take a
7 significant effort on the part of both the city staff and the
8 Commission staff to ground proof what is on there, and try to
9 get these maps updated and adopted by the Commission.

10 In the meantime, like I said, we felt that we had
11 a process that was identifying errors when they occurred, and
12 acknowledged between staffs. I think, and there has been a
13 lot of turnover at the city, and the fact that there is a
14 change in the technology that maybe a reason why some of
15 these things are not being passed on.

16 I did mention that the site specific mapping
17 policy, as Mr. Kaufmann indicated, that is very true, the
18 view created in this case, clearly does not reflect the
19 vegetation on the ground. It clearly follows the property
20 lines here. Both the LCP requires that in project review
21 there should be site-specific mapping to identify those
22 resources. We think that those resources identified on the
23 site are clearly sensitive biological resources protected by
24 the LCP.

25 We are not saying there isn't discretion to allow

1 impacts in those resources, but if those impacts are
2 avoidable we think they should be avoided, and we think that
3 is what is before you today.

4 And, I think that Hope would like to say
5 something.

6 CHAIR KRUE: Ms. Schmeltzer?

7 DISTRICT DIRECTOR SARB: Ms. Schmeltzer, yes.

8 CHIEF COUNSEL SCHMELTZER: I just wanted to give a
9 little bit of response on the Pratt and SNG issues.

10 SNG, as has been reported to you before was very
11 specific to the LCP in that case. In that case, there was a
12 map where the LCP -- the map in the LCP stated on the map the
13 piece of property was not ESHA. The court found that when
14 you had an LCP that specifically stated something was not
15 ESHA, the Commission could not find contrary on appeal, and
16 then designate it as ESHA.

17 In the Pratt decision, as in here, you have an LCP
18 that describes what ESHA is. It gives definition, it gives
19 types of habitat. In this case, it is defining what
20 sensitive biological resources are, and there is no question
21 that the sensitive biological resources, as they are
22 discussed in the LCP, are present on this parcel.

23 The Pratt case, in discussing SNG says that
24 Pratt's reliance on SNG is misplaced, and that there the
25 court determined that the Commission had no jurisdiction on

1 appeal to designate new ESHA that contradicted the terms of
2 the certified LCP. But, that in the Pratt case, the
3 Commission did not seek to create a new ESHA designation, it
4 simply determined correctly that the LCP had designated what
5 was on Pratt's land, and that the Commission used the
6 substantial evidence in the record to treat a large portion
7 of Pratt's parcel as an ESHA. And, we see that that is a
8 comparable situation as to what is here.

9 The applicant also discussed the amount of money
10 that the applicant has spent, either in purchasing, or in
11 subsequent work, we don't know what their choices were in
12 deciding to buy this property, and what they have sunk into
13 it since then, but what the Commission is obligated to look
14 at is whether there is an economically beneficial use of the
15 property.

16 The Commission is not required to insure them
17 against all business decisions that they make along the way,
18 and that if an applicant decides to run up very, very large
19 bills it is not the Commission's obligation to insure that
20 they make good business decisions, or even if they don't,
21 that they can recover that.

22 CHAIR KRUEER: Commissioner Reilly, you had a
23 question at this point, or do you want to wait until I close.
24 I am going to go to you, Commissioner just as --

25 COMMISSIONER REILLY: Okay.

1 CHAIR KRUEER: Okay.
2 Is that it from staff, then?
3 DISTRICT DIRECTOR SARB: Yes.
4 CHAIR KRUEER: The end of your response?
5 DISTRICT DIRECTOR SARB: Yes.
6 CHAIR KRUEER: Thank you.
7 Commissioner Hueso.
8 CHAIR HUESO: The explanation of whether the map
9 applies or not, was very, very lengthy and very complex, and
10 it just seems it should be a little bit simpler in terms of
11 having the local jurisdiction have access to a map that is
12 either current, or that at least reasonably describes what
13 the appealable jurisdictions are.
14 If we can't have that available to the public, it
15 kind of gets to the economic issues that were just described,
16 you know, that the Coastal Commission not insure a profit,
17 but if there is some reasonable understanding of what can be
18 developed on these parcels based on the information
19 available, then that kind of determines the price of land
20 acquisition and what can be developed, which kind of drives
21 that conversation.
22 If that map, as you stated, is not current because
23 of whatever reason that I don't really understand, then I
24 have questions regarding the map. Is that map -- I mean, the
25 map that is on file with the city, that had to do with the

1 last action, what did you state caused it to change and not
2 to be -- not to no longer be current?

3 DISTRICT DIRECTOR SARB: It is the best map
4 available. It has not been brought to the Commission to be
5 adopted as the final post-certification map, because we know
6 that there are some inaccuracies in it.

7 COMMISSIONER HUESO: Was the map that was provided
8 in the report the actual map that is available to the public?
9 the one that was used in the Power Point presentation? Can
10 that one be put up, if that is the best one, the map.

11 DISTRICT DIRECTOR SARB: No, that is not my
12 presentation, I'm sorry.

13 (Pause in proceedings.)

14 All right, here it is.

15 These are from the city's GIS system, yes.

16 This is not the map, the C720 that was referred
17 to, and it is the digitized version of map C720, and that is
18 what I was trying to explain. There is a map C730 -- I am
19 sorry -- that was available at the time that the Land
20 Development Code was certified. The actual map that the
21 applicant has been saying the city has been using, is now map
22 730.1, so I don't know what the difference is between map
23 C730 and 730.1.

24 In answer to your question, though, there was a
25 hard set of map drawings, there is a number of pages that for

1 better or worse has been what the Commission, and we thought
2 the city, had been using since the LDC was certified to
3 identify those areas of appealable jurisdiction, and the
4 Commission's original jurisdiction, and there have been
5 certain areas where they found errors. But, in terms of
6 whether it is a reasonable representation of those post-cert
7 jurisdictions, I believe they are.

8 COMMISSIONER HUESO: But, you are saying that this
9 map is not a reasonable representation or duplication of the
10 existing maps? or are you saying you just have nothing to
11 compare it to.

12 DISTRICT DIRECTOR SARB: No, that map is,
13 apparently, a digitized version of the map C730 that were the
14 quad sheet, you know, drawings --

15 COMMISSIONER HUESO: Is it accurate, is the
16 question?

17 DISTRICT DIRECTOR SARB: Well, we don't know, you
18 know, what was used to develop these digitized maps.

19 COMMISSIONER HUESO: What was used to develop
20 these maps, if you know.

21 MR. KAUFMANN: Thank you. Steven Kaufmann, for the
22 applicant.

23 The city prepared these maps, they were submitted
24 to the Commission. They were referred to in the provision
25 that I showed you, which the Commission adopted.

1 Now, this was Exhibit 1 to my letter to you.
2 This is the actual part of the collection of maps. This is
3 the city's colorized version of it, which is segmented for
4 this particular project, but it is the same as this map.

5 And, 730.1 is a sub-set of 730.

6 COMMISSIONER HUESO: So, from everything that you
7 are able to gather and compare, this map is accurate, the one
8 that --

9 MR. KAUFMANN: This map is accurate, and obviously
10 staff does not agree with it, but this map is the map --

11 COMMISSIONER HUESO: Well, they didn't say they
12 didn't agree with it, they just said that they had nothing to
13 compare it to, and you have the actual printed copy of the
14 city's map that was the actual copy approved with the LCP.

15 MR. KAUFMANN: Exactly, and they have it, and they
16 have it along with my letter, as well.

17 Okay, thank you.

18 CHAIR KRUE: Okay.

19 COMMISSIONER HUESO: I want to make a motion.

20 CHAIR KRUE: Well, just a second, then we will do
21 it.

22 I have a question that has to do with, I guess the
23 general counsel just talked about in the issue of takings, my
24 concern, in looking at all of this is that in the issue of
25 the -- what your economic expectations are, if I saw

1 something and I was an applicant, and this particular
2 property had an LCP, and said it could split the lot one
3 time, and you went and paid \$1 million \$1.5 million,
4 whatever, certainly I would agree with you that maybe, we the
5 Commission, are not in the business to make sure that
6 everybody makes good business decisions, but my economic
7 expectations would be to show the restraints of the
8 development envelope, including when you put grading, the
9 grading issues, and building the road in, and how you have
10 access to the house, both houses from different roads, and
11 you put the high tension wires, which are too expensive to
12 underground at this point -- the ones that I saw -- you would
13 be so far in the hole, by millions.

14 I am very concerned that when we say that there is
15 no issue here, there is an issue here, you know, because this
16 thing is upside down like you can't even believe, if you can
17 only build 750-square feet -- and I am just telling you, I
18 think we have not looked at this correctly when we have put
19 this in a box down here, that two separate houses, with the
20 constraint analysis, with the grading analysis, and every-
21 thing else, the high tension wires, and where the houses are
22 facing.

23 I went over there, and drove around, it is a real
24 issue, and I think we should be concerned about it.

25 CHIEF COUNSEL SCHMELTZER: Mr. Chair, I would like

1 to point out there isn't the right to subdivide here, to
2 start with.

3 CHAIR KRUEER: Well, there might not be the right
4 to subdivide, but if I read an LCP, and it says that, you
5 know -- well, I am just telling you, there is some reliance,
6 you know --

7 Sara can you not talk now.
8 -- there is an issue of when you are going to buy a piece of
9 property and you look at something, and there is an LCP --
10 that I heard today that shows you these lots and allows you
11 to split them one time, where there are two lots, and I think
12 that that is something that you can make some economic
13 expectations on.

14 Now, you guys can play legal with me all you want,
15 but I mean, I am just telling you, you know, that is -- I
16 have been doing this for 40 years, and I am telling you there
17 is some type of reliance when you see that, and you are doing
18 your due diligence, et cetera, that means something, and if
19 it doesn't then why do we even have LCPs?

20 COMMISSIONER CLARK: Mr. Chair.

21 CHAIR KRUEER: Well, yes, Commissioner Clark.

22 [MOTION]

23 COMMISSIONER CLARK: Thank you.

24 I would like to make a motion, and if there is a
25 "second" for it, briefly describe why, and then see if it is

1 supported by the Commission as a whole.

2 I move that the Commission find that it lacks
3 jurisdiction over this appeal, under Public Records Code
4 Section 30603 -- I said? oh, Resources Code -- and recommend
5 a "Yes" vote.

6 COMMISSIONER HUESO: Second.

7 CHAIR KRUEER: I has been moved by Commissioner
8 Clark, seconded by Commissioner Hueso, and both the maker and
9 seconder are asking for a "Yes" vote.

10 Would you like to speak to your motion?

11 COMMISSIONER CLARK: Yes, just briefly, I think
12 the applicant's presentation, Power Point presentation on the
13 jurisdictional issue was convincing to me, as one
14 Commissioner, and I think that it was reinforced by the
15 questions, and followed up by Commissioner Hueso.

16 I recommend that the way ahead here is to
17 determine that we lack jurisdiction on this, and require --
18 direct the staff to come back with revised findings.

19 CHAIR KRUEER: Commissioner Hueso.

20 COMMISSIONER HUESO: Yes, and also I would like to
21 add to that, in terms of being familiar with the area, and
22 how the applicant described the connections of the roads that
23 was accurate. And, I didn't hear the applicant describe
24 Racetrack Drive as being connected to the freeway. In terms
25 of how he connected Racetrack Drive was to Jimmy Durante, and

1 just that the description that he provided, I think, is
2 accurate, and it is speaks to the accuracy of the map. And,
3 I believe, based on the testimony that the map is accurate.

4 CHAIR KRUEER: Commissioner Reilly, I am sorry.

5 COMMISSIONER REILLY: Yes, just to address on page
6 10 of the staff report, we have actually got the California
7 Code of Regulations' definition for first public road
8 paralleling the sea, and it has five criteria for that.

9 And, I think it is the interpretation of three
10 words in the fifth criteria, that probably has caused staff
11 to describe the more circuitous route that they did, but you
12 know, when you go through it, is it a lawfully an open and
13 uninterpreted public use and suitable for such use? and the
14 answer is "Yes". Is it publicly maintained? "Yes." An
15 approved all weather road, open to motor vehicle traffic in
16 at least one direction? "Yes." Not subject to restrictions
17 for use by the public, "Yes."

18 Then you get to the point where it says does it,
19 in fact, connect with other public roads, providing a
20 continuous access system -- a continuous access system, and I
21 am not sure that that necessarily means that it has got to
22 connect on both ends, because, clearly, this road does meet
23 the rest of that definition, which is parallels and follows
24 the shoreline of the sea, including all portions of the
25 seaward visible beaches, bays, lagoons, and estuaries, and

1 wetlands causing the waters to the sea to extend landward.

2 It is clearly the road that parallels the estuary
3 much more so than the road the staff suggests, which is about
4 a mile away. And, you know, in terms of continuous access
5 system, I am just not sure what that means. It certainly is,
6 throughout the entirety of that road, there is public access
7 and parking for the lagoon, and if staff has some other legal
8 definition of what the continuous access system means, it
9 means you have to have a public road on both ends? I don't
10 necessarily read it that way.

11 Maybe counsel has a comment on that.

12 CHAIR KRUER: Ms. Schmeltzer.

13 CHIEF COUNSEL SCHMELTZER: That is how staff has
14 been reading it, that this ends in a cul-de-sac unless there
15 is a continuous access all the way through.

16 CHAIR KRUER: Commissioner Wan.

17 COMMISSIONER WAN: Well, I have two concerns --

18 CHIEF COUNSEL SCHMELTZER: Just to clarify,
19 however, the Commissioner's interpretation, and this is a
20 matter of interpretation, but the Commissioner has explained
21 his interpretation of the statute which I think, also, is a
22 reasonable explanation.

23 COMMISSIONER WAN: And, my concern here is that
24 that interpretation then will set a precedent for all other
25 interpretations of what constitutes the first public road,

1 and what you are impacting here is not just this area, but,
2 in essence, every other area where you are going to take this
3 out of the Commission's appeals jurisdiction.

4 So, I hope you understand the overall and broad
5 consequences of making this decision. It is a huge decision.
6 It is not a minor decision, to reinterpret that part of the
7 statute in this way. If you do it here, it applies
8 elsewhere, as well, and that is a major concern here.

9 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman.

10 **CHAIR KRUE:** Yes.

11 **EXECUTIVE DIRECTOR DOUGLAS:** There is a solution
12 to this, if you look at the map issue, and just based on
13 that, say you don't think this is in the appeals area, you
14 don't get into the precedential concern. You don't get into
15 the takings issue, you don't get into any of those other
16 issues.

17 And, you know, that is your judgment to make, I
18 mean, we made this call, and if you decide, based on the maps
19 it is not in the appeals area, that is the end of it.

20 **COMMISSIONER CLARK:** Mr. Chair, that was the
21 intention of my motion.

22 **COMMISSIONER HUESO:** And, those are my comments on
23 the accuracy of the map, I believe it is accurate.

24 **COMMISSIONER WAN:** And, just a quick comment,
25 because I know we are not going to get there, but on the

1 issue of takings, and the issues of adequate use, there is no
2 entitlement to a subdivision, and anyone who does due
3 diligence would look also at the policies in the LCP that say
4 that you can't have a subdivision -- and I am sure that this
5 applicant is knowledgeable enough to know that you can't have
6 a subdivision if it adversely affects coastal resources, and
7 that they would know that, in this case, they are not
8 automatically entitled to a subdivision.

9 And, the simplest thing, really here -- and they
10 get plenty of use of their property, is that if they don't
11 have a subdivision they can put a huge house up, and that is
12 not a takings.

13 EXECUTIVE DIRECTOR DOUGLAS: Right, unfortunately,
14 that would be moot, if this motion passes.

15 COMMISSIONER WAN: That is what I am saying.

16 CHAIR KRUEER: Well, we won't argue that one today,
17 but I would disagree with you on that last comment, under
18 reasonable expectations, I mean, this is what is left here,
19 and it is a very important issue, and to me, like you said,
20 but, I respectfully disagree.

21 COMMISSIONER CLARK: Call the question.

22 CHAIR KRUEER: Okay.

23 Mr. Blank.

24 COMMISSIONER BLANK: Through the chair, can we ask
25 the applicant if they would prefer alternative A or B?

[General Discussion]

CHAIR KRUER: He can say, can answer the question.

MR. KAUFMANN: We are fine with the motion.

COMMISSIONER BLANK: Well, I am about to make another one, so which one -- you offered us two motions.

MR. KAUFMANN: We prefer the motion that is on the floor.

COMMISSIONER BLANK: Okay, thank you, very much.

CHAIR KRUER: Yes, I think Director Douglas gave us some good input now, thank you.

Okay, I am going to call for the question, so again, Clerk, call the roll, and the maker and seconder are asking for a "Yes" vote with the change, the change in the motion by Commissioner Clark and Commissioner Hueso.

SECRETARY: Commissioner Clark?

COMMISSIONER CLARK: Yes.

SECRETARY: Commissioner Hueso?

COMMISSIONER HUESO: Yes.

SECRETARY: Commissioner Neely?

COMMISSIONER NEELY: Yes.

SECRETARY: Commissioner Potter?

COMMISSIONER POTTER: Aye.

SECRETARY: Commissioner Reilly?

COMMISSIONER REILLY: Yes.

SECRETARY: Commissioner Shallenberger?

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1 COMMISSIONER SHALLENBERGER: No.
2 SECRETARY: Commissioner Wan?
3 COMMISSIONER WAN: No.
4 SECRETARY: Commissioner Achadjian?
5 COMMISSIONER ACHADJIAN: Aye.
6 SECRETARY: Commissioner Blank?
7 COMMISSIONER BLANK: Yes.
8 SECRETARY: Chairman Kruer?
9 CHAIR KRUER: Yes.
10 SECRETARY: Eight, two.
11 CHAIR KRUER: The Coastal Development Permit has
12 been approved --
13 COMMISSIONER HUESO: No, we didn't approve it.
14 CHAIR KRUER: -- right, oh, I am sorry, in this
15 case they lacked jurisdiction, appeals jurisdiction.
16 Thank you.
17 *
18 *
19 [Whereupon the hearing concluded at 4:15 p.m.]
20
21
22
23
24
25

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Dated: August 1, 2011

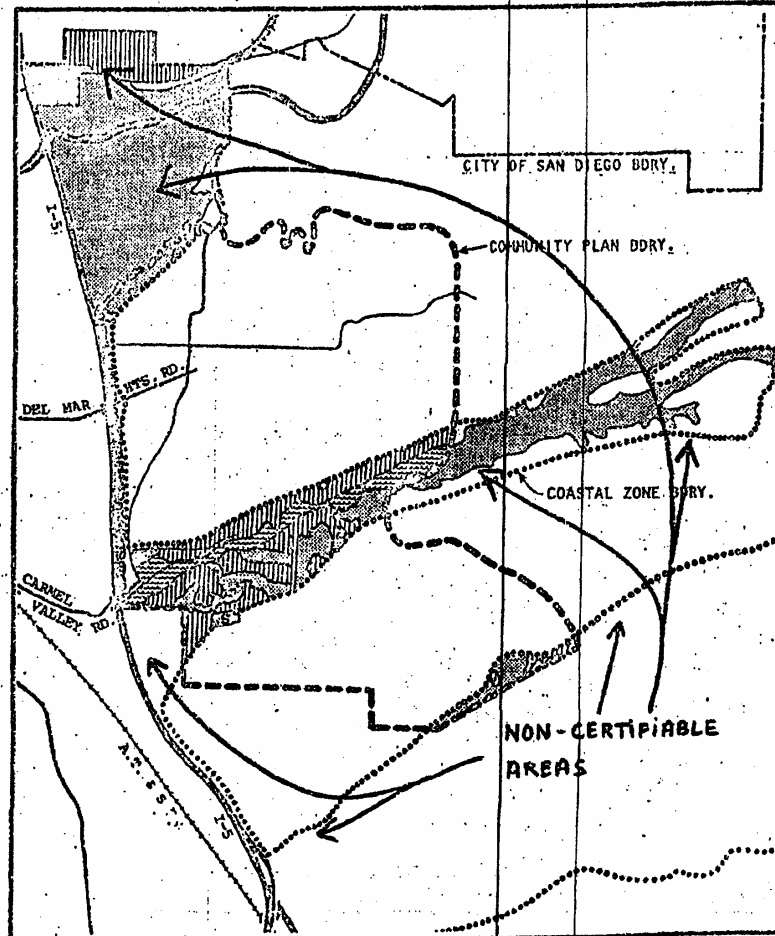
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NORTH CITY LOCAL COASTAL PROGRAM

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE

	RESIDENTIAL
	COMMERCIAL
	FLOOD PLAIN
	OPEN SPACE/PARKS
	SCHOOL SITES

EXHIBIT "6"

EXHIBIT 7

1981 Staff Report "Exhibit 6" (from current 2011 Staff Report)

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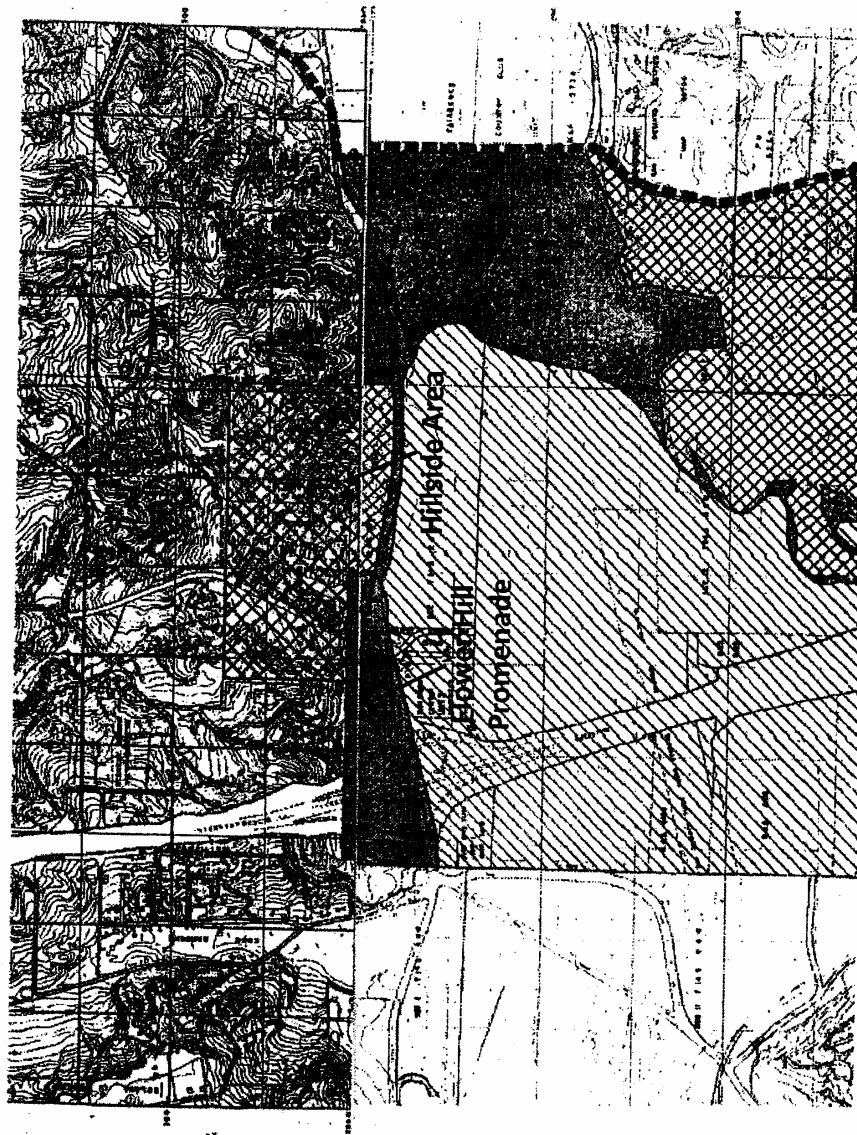
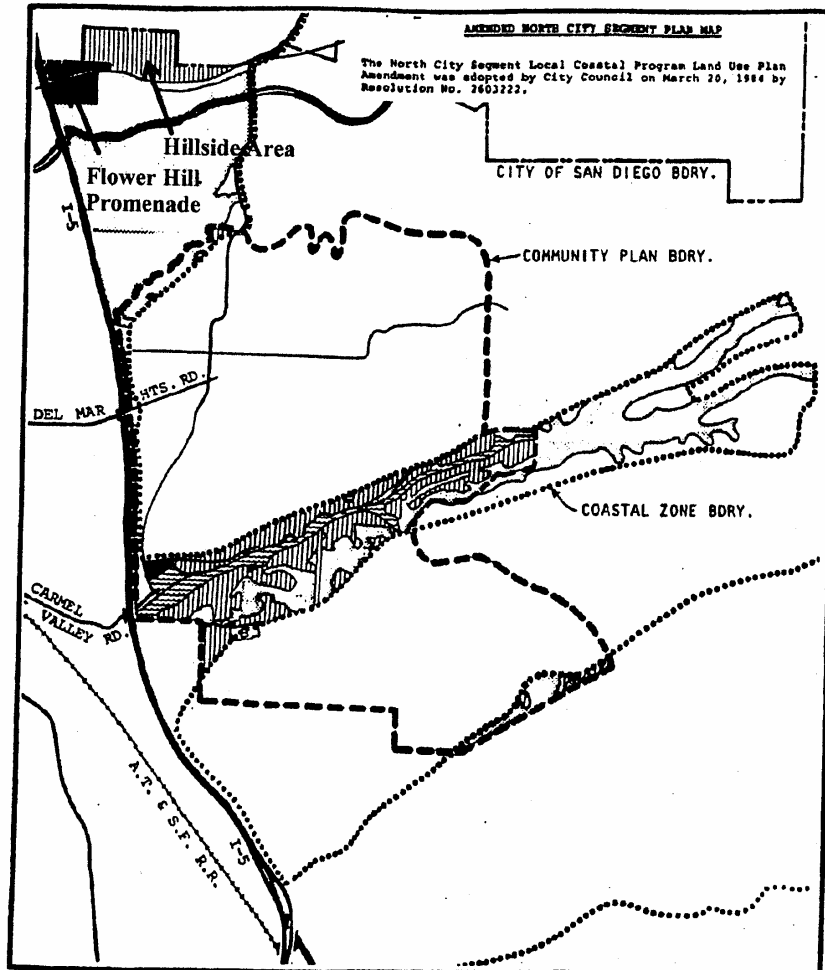


EXHIBIT 8
Composite of Certified Map Nos. 42 and 44 Showing Hillside Area as
Area of Deferred Certification and Subject Property as "Non-Appealable" 85



NORTH CITY LOCAL COASTAL PROGRAM



CITY OF SAN DIEGO
PLANNING DEPARTMENT

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE

	RESIDENTIAL
	COMMERCIAL
	FLOOD PLAIN
	OPEN SPACE/PARKS
	SCHOOL SITES

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EXHIBIT 9
Certified North City LCP LUP Map

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/09/2011

TIME: 11:02:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2011-00091044-CU-TT-CTL CASE INIT.DATE: 05/10/2011

CASE TITLE: Citizens Against Flower Hill's Excessive Expansion vs. City of San Diego

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 08/05/11 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on petitioner Citizens Against Flower Hill's Excessive Expansion's ("Petitioner") motion for preliminary injunction as follows:

Petitioner's Evidentiary Objections. The Court sustains Petitioner's five objections as being outside of the administrative record.

Respondent's Evidentiary Objections. The Court overrules Respondent's sixteen objections because Petitioner's authenticated the exhibits when it submitted a declaration on July 22, 2011.

A preliminary injunction may issue when, "[i]t appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action." (Code of Civ. Proc. §527(c)(2).) Irreparable harm must be imminent and "supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.) Petitioner's allegation that failure to grant a preliminary injunction will cause irreparable damage to the environment is not supported by the evidence. Petitioner has not explained, in any detail, the damage to the environment that will be caused by noise from the construction project or construction traffic impacts. In fact, the Environmental Impact Report ("EIR") indicates that the noise and construction traffic impacts will not be significant.

Even assuming *arguendo* that Petitioner has met its burden of proving imminent and irreparable injury,

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MINUTE ORDER

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Calendar No.

EXHIBIT 10

August 5, 2011 Superior Court Ruling in Citizens Against Flower Hill's
Excessive Expansion v. City of San Diego

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Expansion vs. City of San Diego

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the interrelated factors a court must consider when ruling on a request for preliminary injunction do not weigh in favor of issuing an injunction. While courts have broad discretion in ruling on a motion for preliminary injunction, the decision must be guided by a two-prong test: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the interim harm that the plaintiff would likely sustain if the injunction were denied as compared to the harm the defendant would likely suffer if the preliminary injunction were issued. (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.)

The first prong does not weigh in favor of issuing an injunction because Petitioner has failed to present evidence tending to show that it is reasonably likely that it will prevail at trial. To prevail at trial Petitioner must show that a public agency abused its discretion under the California Environmental Quality Act ("CEQA"). (Pub. Resources Code §21168.5.) Abuse of discretion will be found in two circumstances: (1) if the agency has not proceeded in a manner required by law; or (2) if the determination of decision is not supported by substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) A court must defer to an agency's factual determination when applying the substantial evidence test if there is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 Cal. Code Regs. §15384(a); *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393.) In other words, a court "must deny the writ if there is any substantial evidence to support the findings." (*Nat. Identification System, Inc. v. State Bd. of Control* (1992) 11 Cal.App.4th 1446, 1461.) Additionally, if any reasonable doubt exists, it must be resolved in favor of the agency's decision even if the opposite conclusion is more reasonable. (*Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 572.)

It is not likely that Petitioner will prevail on the merits at trial for five primary reasons. *First*, Respondent has presented substantial evidence in the EIR that construction noise impacts created by the project will not exceed the City's 75 decibel threshold of significance throughout all phases of the project. The ordinance at issues states, "it shall be unlawful for any person, including the City of San Diego, to conduct any construction activity so as to cause, at or beyond the property lines of any property zoned residential, an average sound level greater than 75 decibels during the 12-hour period from 7:00 a.m. to 7:00 p.m." (City of San Diego Mun. Code §59.5.0404(b).) As part of the EIR, the City concluded that the worst-case impact during the construction phase would occur while the breaker is being used during demolition. (Suzanne R. Varco Declaration, Final EIR, Exh. 3, Section 5, p. 5.4-8.) Although the City did not examine other pieces of machinery that will be used during the construction phase individually, it concluded that the total noise impact from the project is insignificant because the noise from the breaker, the loudest piece of machinery, will not exceed the City of San Diego's threshold of significance. (*Ibid.*) Even when the simultaneous noise from other machines is combined with the breaker, the maximum one-hour average noise level is 67.5 decibels, which is under the 75 decibel maximum promulgated under the ordinance. (Declaration of Suzanne R. Varco, Final EIR, Exh. 3, Responses to Comments, Response K8.) Thus, Respondent's findings are supported by substantial evidence.

Second, Respondents have presented substantial evidence that construction traffic will not cause a significant impact to overall traffic volumes. Construction traffic from the project would generate 240 ADT (average daily trips) during the period of construction, with an additional 67 ADT during the 10 to 12 week grading phase. (*Id.* at Section 5, pp. 5.2-17, 5.2-18.) Although the EIR concedes that construction traffic will contribute to congestion of Via de la Valle and the surrounding roadways, it concluded that the additional traffic will not be a significant impact for two reasons: (1) the construction is temporary; and (2) the construction traffic only constitutes a small portion of the traffic volumes. (*Ibid.*) Additionally, in a response to comment the City stated that the anticipated distribution of construction trips will allow: (1) roadway segments currently operating at LOS D or better to continue to operate as such; (2) the

CASE TITLE: Citizens Against Flower Hill's Excessive
Expansion vs. City of San Diego

CASE NO: 37-2011-00091044-CU-TT-CTL

volume-to-capacity ratios (V/C) for segments currently operating at LOS E or F will not increase by more than 0.01 with the addition of the construction traffic; and (3) peak hour intersection delay would not increase by more than 1.0 second. (*Id.* at Responses to Comments, Response K5.) The City obtained these figures from a traffic study they conducted for the EIR. Therefore, the construction traffic impacts are insignificant and the Court must defer to the agency's discretion because its findings are based on substantial evidence.

Third, Respondents have presented substantial evidence to support the City's determination that it has jurisdiction to issue a coastal development permit ("CDP") over the project. The authority to issue permits for development in areas designated as a Coastal Zone rests with the Coastal Commission. (Pub. Resources Code §30600(a).) If a party wants to develop within a Coastal Zone it must obtain a CDP in order to do so. (*Ibid.*) However, a local jurisdiction may issue CDPs if it adopts a Local Coastal Program (LCP) certified by the Coastal Commission. (Pub. Resources Code §§30500(a), 30519(a), and 30600(d).) A certified LCP can only issue if a site is located within a certified land use plan area, which usually takes the form of a community plan. (Pub. Resources Code §30600.5.) Although the subject property is not located within a community plan, it is included in the North City LCP. (Suzanne R. Varco Declaration, Final EIR, Exh. 3, Section 5, pp. 5.1-4, 5.1-5.) In 1981 the Coastal Commission certified the North City LCP in order to give the City authority to issue CDPs to areas in the North City found "outside of formal community plans." (*Ibid.*) Because the subject property is located within the North City LCP the City has jurisdiction to issue CDPs. Further, the project does not conflict with the North City LCP, designating the area as commercial property. (*Ibid.*) Therefore, Respondents have presented substantial evidence that the City has jurisdiction to issue CDPs over the subject property despite it not being located in a formal community plan.

The Court notes that the jurisdictional issue is not a question of law, as suggested by Petitioner, because: (1) the facts are in dispute; and (2) the jurisdictional question is not an interpretation of a statute, regulation, or ordinance. (*Anserv Insurance Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 205.)

Fourth, Respondents have presented substantial evidence showing that before it adopted a statement of overriding considerations it made findings that the proposed mitigation measures were infeasible, as required under CEQA. (Pub. Resources Code §§21081 (a), (b), 218081.5.) An agency's determination that the specific benefits offered by a project outweigh the environmental effects that cannot feasibly be mitigated is "not lightly overturned" because it "lies at the core of the lead agency's discretionary responsibility under CEQA." (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 603, citing *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 368.) With respect to proposed mitigation measure 5.2-2, the EIR suggests that it would cause "prolonged delay," "economic hardship," and could cause the space to be "un-leasable." (Suzanne R. Varco Declaration, Exh. 8, Resolution No. 306772, SOC, pp. 13-14.) The other proposed mitigation measure would affect the right-of-way, impact underground gas tanks and the viability of a gas station, and cause the taper lengths to be too short. (Suzanne R. Varco Declaration, Exh. 3, Final EIR, Response to Comments, Response F3-R.) Based on these findings the City concluded that the overriding benefits of the project outweighed the environmental impacts. Since Respondents have presented substantial evidence that the proposed mitigation measures will cause economic hardship and significantly change the character of one road and gas station, the Court must defer to the agency's determination.

Fifth, Respondents have presented substantial evidence showing that the "fair-share" mitigation measure to pay for improvements to Via de la Valle is not uncertain. When a "fair-share" mitigation measure is at issue under CEQA it must: (1) specify the amount to be paid; (2) specify the percentage of

CASE TITLE: Citizens Against Flower Hill's Excessive
Expansion vs. City of San Diego

CASE NO: 37-2011-00091044-CU-TT-CTL

payment for planned improvements; and (3) the fees paid must be tied to the actual mitigation of the traffic impacts at issue. (Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173, 1188.) Although the mitigation fees must be part of a reasonable plan of actual mitigation, the EIR does not have to set forth a time-specific schedule for improvements. (Save Our Peninsula Committee v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 140-141.) The EIR in this case indicates that "[p]rior to issuance of a Certificate of Occupancy, Owner/Permitee shall provide a Letter of Credit, cash payment, or bond equal to 7.7 percent of the Black Mountain Ranch Facilities Financing Plan fiscal Year 2006 cost estimate to complete the planned improvements identified in the Black Mountain Ranch Public Facilities Financing Plan as Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real." (Suzanne R. Varco, Exh. 8, p.2.) The "fair-share" mitigation fees are not uncertain because: (1) the fees will be paid to a project that will widen Via de la Valle to cut down on significant traffic impacts created by the Flower Hill Mall expansion; (Ibid.) (2) the EIR specifies the amount to be paid; (Ibid.; Suzanne R. Varco Declaration, FEIR, Exh. 3, 5.2-19.) and (3) the EIR specifies the percentage of payment. (Suzanne R. Varco Declaration, Exh. 8, p. 2.) Also, the fact that the EIR does not specify a time-frame of improvement does not render the mitigation measure uncertain.

With respect to the second factor, the harm caused to Petitioner from denying the motion does not outweigh the harm caused to Respondents of granting the motion. If the injunction is granted Respondents will likely lose an anchor tenant, financing for the project and incur significant construction delay costs and other costs. If the project continues to be delayed, the lease with Whole Foods may be terminated. This would cause significant monetary damages to Respondents because the lease is for \$120,000 per month for twenty years. The delay would also interfere with Respondents' ability to secure other tenants.

IT IS SO ORDERED.

Signature on file

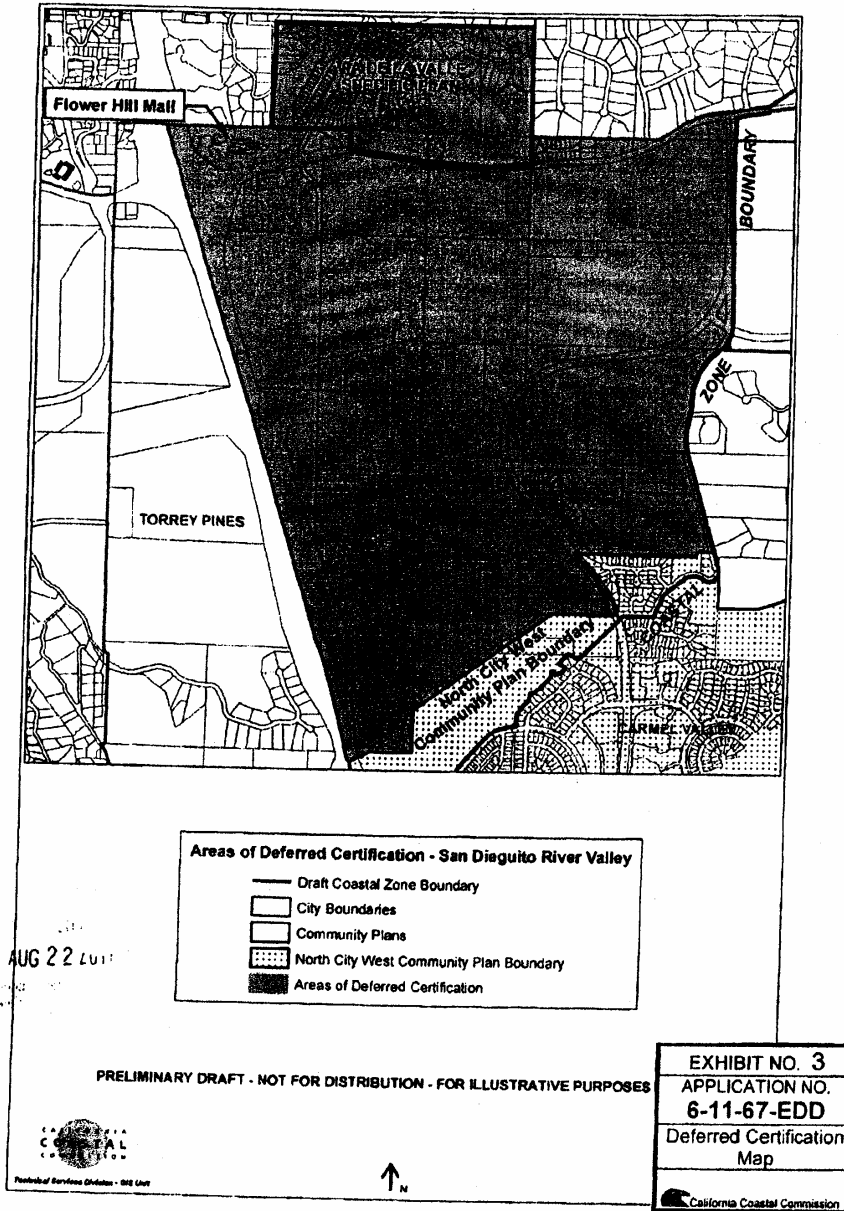
Judge Ronald S. Prager

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Assembly
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BEN HUESO
ASSEMBLYMEMBER, SEVENTY-NINTH DISTRICT

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JOB CREATION

August 29, 2011

California Coastal Commissioners
45 Fremont Street, Suite 2000
San Francisco CA 94105

Dear Commissioners:

I am writing with respect to a jurisdictional issue slated to come before the Commission at your September 7, 2011 hearing. This issue arises with regard to a project known as the Flower Hill Promenade, but directly relates to a virtually identical jurisdictional issue the Commission faced in 2008. I also write to voice my concern that revisiting or overturning that decision may have unintended but far-reaching implications for previously issued permits throughout the Coastal Zone.

On June 12, 2008, while I served as a member of the Commission, a project called the Key/McCullough/Ames project came up for consideration. In that case, the City of San Diego had issued a Coastal Development Permit. The project came before the Commission as an appeal based on staff's assertion that the CDP issued by the City of San Diego was in an appealable area.

In that case, as in the case of the Flower Hill Promenade project, the project in question was located in Map C-730.1 of the City's Land Development Code, which had been certified by the Commission as part of the applicable Local Coastal Program. At the hearing, Commission staff expressed the opinion that Map C-730.1, and, in fact, countless other maps on which cities rely to exercise their delegated authority under the Coastal Act, were merely "draft" maps. On this basis, staff recommended that the Commission exercise authority over the site. After a hearing on the merits of the arguments, the Commission voted by an overwhelming margin to determine that the project at issue was not in an appealable area and that the Commission did not have jurisdiction over that area.

My vote was based on my conclusion that the map in question was a valid map. I was heavily persuaded by the fact that staff testified that Map C-730 (of which Map C-730.1 is a subpart) "was available at the time the Land Development Code was certified." I also based my decision on staff's statements that the map was "the best map available," and that it showed a "reasonable representation" of the City's jurisdictional area. I had serious reservations about the legality and propriety of calling a map a "draft" when it had been in effect for years and the Commission had made no apparent attempts to update it. I also had concerns that calling such a map a "draft" and raising a jurisdictional argument about one property in the map area (but failing to do so with regard to all the other permits the City had issued in that area), was a questionable exercise of our authority – inconsistent at best, and illegal at worst.

The Commission voted 8-2, declaring that it "lacks jurisdiction over this appeal." At that time, I considered the issue resolved. Also, since at least that time, staff was on notice that it needed to work with the City if there were, in fact, any issues with the map that needed to be addressed. I am not aware that such an effort has been undertaken. Still, this issue is before you once again.

LETTER IN SUPPORT OF
APPLICANT

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Of course, each of you must make a decision on the matter now before you based on the evidence and testimony presented to you at the hearing. I write only because the similarities of the jurisdictional arguments at issue for the two projects are practically identical. I understand that the Flower Hill Promenade project proponents have additional arguments based on the City having granted several other permits for that site over the years with no objection from the Commission or staff. Still, the jurisdictional issue is the same.

Perhaps even more important, however, I am concerned about the potential impact of this decision. To call into question this one particular map would call into question each and every permit ever granted for projects located in this or other such "draft" map areas. This would jeopardize the legitimacy of thousands of permits issued throughout the state over the past several decades, including those in National City, Imperial Beach, Coronado, and other areas I currently represent. I am concerned about the practical impact of such a decision.

The Commission has the difficult task of protecting our state's valuable coastal resources while balancing the rights of property owners. In order to fulfill its goals with limited resources of its own, the Commission relies heavily on local authorities, which carry out its mission by issuing permits on the Commission's behalf. This arrangement only works when the local authorities have a clear mandate from the Commission regarding their delegated authority. Failing to establish definitive parameters of this authority is a recipe for disaster.

To question the validity of one permit on the basis that the map is a "draft," but failing to raise this issue with respect to every similarly situated permit seems inconsistent and seems likely to invite unnecessary litigation. Also, calling a map a "draft" but failing to identify and address its issues, if any (so as to create a reliable "final" version), seems similarly unacceptable. When it comes to an issue as important as protecting our coast, all parties should know the rules at the outset of the process. An inconsistently-applied staff objection based on the issue of "draft" maps erodes the transparency and fairness of the process - for cities and owners alike.

For those reasons, thank you for bearing in mind how the previous Commission decision relates to the matter before you today. Thank you, too, for considering my perspective on this important issue.

Sincerely,

Signature on file

~~BEN~~ HUESO
Assemblymember, 79th District

BH/amr

ITEM W16.5a

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Dispute Resolution No. 6-11-67-EDD (Protea Flower Hill Mall LLC, San Diego) Public hearing and Commission determination on dispute over CDP jurisdiction for 3 separate permit actions by the City of San Diego at commercial development (Flower Hill Promenade) for the demolition of a 14,000 sq.ft. theater and construction of approximately 74,995 sq.ft. building for commercial, office, and storage and a 82,739 sq.ft. parking structure; the expansion of a 2,500 sq.ft. restaurant from single level to multi-level, including outside dining area; and a tentative map waiver to create two parcels from one existing 15.14 ac. site, at 2610, 2690 & 2720 Via de la Valle, San Diego, San Diego County.

Date and time of receipt of communication:

August 30, 2011 at 10:00 am

Location of communication:

Phone

Type of communication:

Teleconference

Person(s) in attendance at time of communication:

Steven Kaufmann, Jeffrey Essakow, Susan McCabe

Person(s) receiving communication:

Jim Wickett

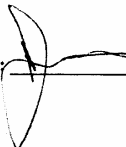

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

I received a briefing from the project representatives in which they described the current dispute regarding permit jurisdiction and project appealability for the Flower Hill Promenade property. According to the representatives, the City of San Diego has authority under the City's North City LCP to issue CDPs and has been doing so since the LCP was certified in 1988. The site is shown on the City's adopted post-cert map as "Non-Appealable Area #2". It is not located in the areas of deferred certification designated on the map, and this site is an existing commercial shopping center with none of the coastal resource issues identified by the Commission in its decisions on the LCP. Commission staff has asserted jurisdiction stating that the City's maps are "drafts" and concluding that this site is an area of deferred certification. However, the project representatives explained that the Commission in 2008 previously determined that the City's maps are not "drafts" and rejected staff's argument. In addition, the 1981 exhibit on which staff relies points to a hillside area as the area of deferred certification, but not this property, and that is consistent with the Commission's 1985 and 1987 findings in certifying the Land Use Plan and the certified Land Development Code which adopted the LCP maps. The project approved by the City for the Flower Hill Promenade property includes demolition of an existing 14,000 s.f. theatre building; construction of a two-story, approximately 72,695 s.f. commercial retail and office building structure; and construction of an approximately 144,792 s.f. parking structure with 397 spaces. The project is currently under construction. The project representatives believe that assertion of Commission jurisdiction in this case will have adverse consequences for the City, the applicant, and other property owners in the subject area. The representatives indicated that they would provide a letter responding to the staff report prior to the hearing.

Date:

Signature of Commissioner:

 *Signature on file* 

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W15.52

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication:

9/1/11 11:30-1pm

Location of communication:

(If communication was sent by mail or
facsimile, indicate the means of transmission.)my office
(client - Jeffrey Essakow) - on phone
(att - Steve Kaufmann)

Identity of person(s) initiating communication:

Susan McCabe

Identity of person(s) receiving communication:

D Bockco

Name or description of project:

Dispute Resolution # 6-11-67-EDD

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Applicants reps presented a power point booklet (attached) that explained their allegations that the City of SD had valid jurisdiction over the land in question & that the CDP ^{issued by city} was valid. They pointed out that the CCC had decided the City maps were valid in 1999 & again in 2008 (Race Track View Drive) We we went over the maps & booklet -

9/1/11

Date

Signature on file

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

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extensively. The applicant (via phone) explained that he had carefully & meticulously applied for permits & relied on the city planner & council in approving this project, in addition to 2 other projects he had completed in prior years. He didn't understand why Coastal staff had not taken action on the prior projects (just sent letters to the City saying City didn't have jurisdiction), why they waited until he tore down his theatre, got a \$25 million loan & is halfway thru construction before sending him violation notice.



Signature on file

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Protea Flower Hill Mall – 6-11-67-EDD

Date and time of receipt of communication: September 2, 2011 9:00 a.m – 10:15

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Susan McCabe, Steve Kaufman for property owner

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steve Kaufman and Susan McCabe reviewed his letter and briefing packet. I advised that I had read his letter, the packet and the staff report, and that I am familiar with the area and frequently visited Del Mar and the Carmel Valley Road area prior to 1967.

The main point of the presentation is that the undeveloped hillside area east of the property is and was the only area of deferred certification. Staff now apparently claims jurisdiction over everything east of the I-5. They stated that their client knew of the Commission's decision in the Racetrack View Drive matter, (2008) which is referenced in the Kaufman letter but not in the staff report, and since staff did not challenge the City's issuance of the CDP for the restaurant expansion, which occurred 6 months after the decision in the Racetrack matter, the applicant believed that the issue had been resolved. They agree that the Racetrack case involved a slightly different issue in that the question was whether the property was in the appeals jurisdiction, not the deferred certification area, but stated that the underlying decision the Commission made was that the maps were valid. Kaufman also distinguished the permits cited by the staff, and agreed that the bike lane along County Highway 6 was partially in the hillside area of deferred certification.

They stated that there is a letter in the file from former Commissioner Ben Hueso who was the seconder of the motion in the Racetrack matter. The reason that the matter was not fully put to rest is that the motion included direction to staff to return with revised findings, because the Commission took an action contrary to the staff's proposed recommendation, and that was not done.

They referenced the first Citizens case, challenging the restaurant permit, where jurisdiction was and issue. The court denied the writ and there was no formal ruling. However Kaufman indicated that the brief contained a footnote stating that the Commission had been invited to intervene in that case, and declined.

Kaufman stated that the staff relies on an exhibit from 1988 in which arrows point vaguely to the hillside areas east of the shopping center as the uncertified areas. While staff recites the history prior to 1988, including a letter from Director Douglas which does not have a figure attached, he relies on subsequent history and actions of the Commission, including Map 42 of Map C-730.1, and Exhibit 2 in his letter which consists of 3 map sheets, and the third one is Map 44, which includes the hillside area.

Kaufman stated that these maps have been certified by this Commission as part of the City's Land Development Code. In 1999, staff suggested modifications to the code also indicate Commission concurrence that the maps are the certified maps. So their position is that the deferred certification areas were intended to be the hillside areas, which contain resources relevant to the issues Commission staff had been concerned with, and not the shopping center parcels.

Kaufman believes that this is a legal rather than a factual question. That we start with the plain language of the LCP which states that the certified areas are as shown on the maps.

Kaufman agrees that the property is outside of a community plan area, and that the policies are the policies of the General Plan.

Apart from the consequence to the project which is under construction, the \$25,000,000 invested and potential loss of Whole Foods as a tenant, the delay from a decision by this Commission that the maps which are part of the certified land use code are not the applicable maps would throw into question forty four maps which have been the basis of hundreds of city issued CDPs that property owners and lenders have relied on. They queried whether staff would now issue Notices of Violation on all of those permits.

I asked about the staff comment to the City's DEIR which stated issues of concern under the Coastal Act- including allocation to visitor serving uses, traffic of the project potentially impairing access to the ocean, and evaluation of visual impacts. They pointed out that the project is a replacement project of existing development, which includes the theater which was torn down, that the owner had paid \$1,000,000 for traffic mitigation measures. There are no issues associated with beach access, ESH, or wetlands or other critical coastal resources.

They have submitted an application under protest after July, when staff again challenged the City permit and issued a Notice of Violation. Staff has also discussed the issue of raptors. There were requirements in the City permit for pre construction surveys and there were no raptors present. Trees which could or might support raptors at some future date have now been removed.

Date 090211

Signature of Commissioner Jana Zimmer

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

**W16.5a**

Staff: L.McEachern-SD
Staff Report: August 25, 2011
Hearing Date: September 7, 2011

**STAFF REPORT: DISPUTE RESOLUTION
PERMIT JURISDICTION****DISPUTE RESOLUTION
NUMBER:**

6-11-67-EDD

LOCAL CDP NO.:

CDP No. 619980, 149335 and 45882

LOCAL JURISDICTION:

City of San Diego

APPLICANTS FOR LOCAL PERMIT: Protea Flower Hill Mall, LLC

DESCRIPTION: Public hearing on coastal development permit jurisdiction over 3 separate permit actions by the City of San Diego at an existing commercial development known as the Flower Hill Promenade: 1) the demolition of an existing 14,000 sq. ft. theater and construction of an approximately 74,995 sq. ft. new building area for commercial, office, and storage space area, and a new 82,739 sq. ft. parking structure; 2) to expand an existing 2,500 sq. ft. restaurant from single level to multi-level, including outside dining area; and 3) tentative map waiver to create two parcels from one existing 15.14 ac. site.

SITE: 2720, 2690 and 2610 Via De La Valle, San Diego, San Diego County. APN 298-490-43 & 44

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission concur with the Executive Director's determination that the proposed development site is within the Coastal Commission's coastal development permit (CDP) jurisdiction for the following reasons:

The site is within the portion of the San Dieguito River Valley where certification was deferred and permit authority did not transfer to the City in October 1988 when the City of San Diego LCP was initially certified. Documents referred to in the following analysis clearly show the subject site, which is within the portion of the San Dieguito River Valley outside the North City West (NCW) Community Plan boundaries, was not part of the North City LCP Land Use Plan, as submitted by the City in 1981, 1985 and resubmitted in 1988, because it is not within the boundaries of any community planning area (Exhibit Nos. 14, 15, 18, 19 & 20). The fact that the site is not within the boundaries of any community planning areas is not disputed by the City.

The City's claim that the proposed project is within its coastal permit jurisdiction is largely based on the fact that there is a land use designation for this site shown on a map included in the North City Land Use Plan that was submitted to the Commission in 1981. (See Exhibit #13). As the City acknowledges, however, a land use designation on the subject map is not sufficient in and of itself to establish the City's jurisdiction. For example, this map shows a land use designation (residential) for an area now known as the Via de la Valle Specific Plan area, but the City states on its website that it does not have coastal permitting jurisdiction in that area. Similarly, this map designates portions of the San Dieguito River Valley as "open space/parks," but the City acknowledges that this area is also not within the City's CDP jurisdiction. Thus, an illustration showing a land use designation for the subject parcel does not establish that the City has CDP jurisdiction in this area. The City can point to no Commission action in which the Commission certified a Land Use Plan for this area. Instead, as explained below, the record shows that the Commission specifically excluded this area when it certified the City's LCP.

The City submitted its proposed North City LUP to the Commission in 1981. Commission staff noted at that time that the site of the proposed development did not include the necessary standards that would allow for it to be certified by the Commission. The State Commission staff report finding no substantial issue with the Regional Commission's decision in August 1981 clearly acknowledges "the North City LCP Land Use Plan did not contain a description of the types, location and intensity of developments that would proceed under the plan's land use designations for the following identified areas: 1. Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley Area (See Exhibit #6)....Approval of these identified areas will be delayed until such time that specific land use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification." The referenced Exhibit 6 identifies the "non-certifiable areas" including the subject site (Exhibit Nos. 14 & 15).

The 1981 version of the certified North City LUP and all subsequent versions state the North City LCP Land Use Plan consists of the land use plans or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Planning Areas. As depicted on the 1981 map relied on by the City (see Exhibit #13), this subject area is not within the North City West planning area (or any of these other areas). The LUP contains, in addition to land use designations, land use planning policies specific to these communities. The City acknowledges, however, that there are no such specific planning policies for the subject area, as it is not within any community plan area. Those areas without specific planning policies were excluded when the Commission certified the City's LUP. Planning documents addressing Commission staff recommendations and City responses which took place between the 1981 and 1985 LUP submittals indicate City staff concurrence with the intent to exclude those areas from the LUP, including the portion of the San Dieguito River Valley outside of the North City West community plan. The City and Commission staff agreed that these areas would be excluded from the LUP

until such time that specific land use designations, in the form of community plans or master plans, had been developed by the City and submitted to the Commission for certification.

Commission staff reports addressing effective certification of the LCP in October 1988 indicate the areas of deferred certification include the areas of the San Dieguito River Valley outside the NCW community plan boundaries (Exhibit #16). There has been no subsequent Commission action on an LUP amendment to include this area within the North City LUP or the certified City of San Diego LCP.

Permit records in the San Diego District office include a number of CDPs processed by the Commission in this area, as an area of deferred certification. One of those CDPs includes an application by the City of San Diego for a bike path along Via de la Valle which would suggest that the City believed the area to be in the Commission's, not the City's, permit jurisdiction.

During review of the project by the City, dating back to 2006, Commission staff has repeatedly advised City staff and the applicant that the CDPs being processed by the City would not be valid, as the Coastal Commission has CDP jurisdiction over this area. (Exhibit Nos 4 - 10) After exchange of information and a meeting with City staff in 2008, Commission staff sent what was thought to be a conclusive letter dated February 18, 2009 wherein Commission staff asserted CDP jurisdiction over all 3 developments described in the City-issued permits. (Exhibit #11) Because work commenced on the development pursuant to the City-issued CDP, including demolition of the theatres and grading of the site, Commission staff posted a Notice of Violation on July 22, 2011 and the applicant has subsequently submitted a CDP application to the Commission, under protest, pending the outcome of this dispute resolution, but has not stopped work on the project.

The summary of the City's position regarding permit jurisdiction is taken from the findings of the City staff report dated March 3, 2011 and the project EIR dated February 2011. These findings 1) acknowledge the subject site is not within any community plan boundaries; and 2) indicate as a result of not being associated with a community plan, the North City LCP does not contain any goals, objectives or policies that apply directly to the property other than the land use designation which is consistent with the General Plan. The City staff reports therefore acknowledge the reasons why certification was deferred for this area, but still reach the wrong conclusions regarding CDP jurisdiction, due to their misplaced reliance on the 1981 LUP map, discussed above. The record shows that the property was excluded from the North City LUP and thus, permit authority was not transferred to the City.

The City also claims that a series of maps prepared by and adopted solely by the City in 1988 shows that the subject area is within its permitting jurisdiction. Although these maps are now referenced in the Land Development Code, they have not been reviewed and certified by the Coastal Commission. Commission staff's letters to the City regarding this project recognize the non-certified status of these maps, and that errors on

these maps have been acknowledged many times in the past by both Commission and City staff. This draft map status was acknowledged at the time the LCP was first certified in 1988 and in subsequent certification of the Land Development Code. There are no Commission staff reports indicating there has been a set of post-certification maps approved by the Commission for the City of San Diego. These draft maps were adopted by the City without review by the Coastal Commission, and they cannot create jurisdiction by the City when such jurisdiction has not been delegated to it by the Commission. Where, as here, permit authority has not been transferred to the City by the Commission, a City map purporting to create this jurisdiction has no effect.

As explained above, the subject area was not certified as part of the City's North City LUP. Even if it had been, however, in order for permitting jurisdiction to be delegated to a local government, typically the Commission must certify both an LUP and an Implementation Plan. When the Commission effectively certified the City's Local Coastal Program in 1988, it deferred certification for the subject site. The list of areas of deferred certification was later memorialized in a document referenced as "Exhibit A" attached to the staff report (Exhibit #17). The City erroneously concludes that Exhibit A does not refer to the site as a "deferred certification area". Commission staff's response in the letter dated February 18, 2009 includes a detailed history of certification of the North City LUP segment and explains that the second item on Exhibit A, which includes "portions of the San Dieguito River Valley located outside the North City West Community Plan," refers to this site. This is supported by the findings for this certification, which note that one reason for deferring certification in certain areas is because those areas are not included in any formal community planning boundaries. Thus, this area is identified as an area of deferred certification both in documents relating to certification of the North City LUP and in the Commission's action effectively certifying the City's Local Coastal Program.

The February 18, 2009 response letter specifically concludes the Coastal Commission has permit jurisdiction over the site and that it is CCC staff's position that the question regarding permit jurisdiction at Flower Hill Mall has been resolved. In April 2010, Commission staff also commented on the draft EIR for the project (Exhibit #9), once again asserting CDP authority. A short letter was also sent April 18, 2011 in reference to the project being on the April 19, 2011 City Council Docket acknowledging no reply since the February 18, 2009 letter and that a CDP is required from the Coastal Commission. No further letters of comment or any form of communication were received from either the City or the applicant until receipt of the Notice of Final Action on the CDP for the demolition and new construction on July 22, 2011.

Staff is recommending the Commission concur with the Executive Director's conclusion that the proposed project is within the area of deferred certification. As explained above, the City's analysis of this issue is faulty, lacks justification, and is in direct conflict with the provisions of the Coastal Act that require specificity in certified Land Use Plans regarding location, intensity and density of use. This lack of specificity was the very reason that certification was deferred in this area. Land use planning to develop the goals, objectives and policies applicable to development in this area has not yet occurred;

and thus, the Commission has continued to issue permits for development in the San Dieguito River Valley north of the North City West Community Plan area since certification of the City's LCP in 1988. The list of substantive file documents include a number of CDPs issued by the Coastal Commission for the San Dieguito River Valley area of deferred certification of which the subject site is a part.

Substantive File Documents: Certified City of San Diego North City Local Coastal Program Land Use Plan; Final Environmental Impact Report (EIR) for the Flower Hill Promenade Project dated February 11, 2011; CDP Nos. 6-96-128, 6-98-154, 6-02-169, 6-01-37, 6-03-95, 6-04-29, 6-04-71, 6-08-56.

I. STAFF RECOMMENDATION ON DISPUTE RESOLUTION

Staff recommends that the Commission adopt the following findings and resolution to determine that the properties located at 2720, 2690 and 2610 Via de la Valle in the City of San Diego are an area of deferred certification where the Coastal Commission retains authority to issue coastal development permits for development.

MOTION: *I move that the Commission reject the Executive Director's determination that the properties located at 2720, 2690 and 2610 Via de la Valle are an area of deferred certification where the Coastal Commission retains permit authority*

Staff Recommendation that the properties located at 2720, 2690 and 2610 Via de la Valle are an area of deferred certification

Staff recommends a **NO** vote on the motion. Failure of this motion will result in the Commission upholding the Executive Director's determination that the properties located at 2720, 2690 and 2610 Via de la Valle in the City of San Diego are an area of deferred certification where the Coastal Commission retains authority to issue coastal development permits for development.

RESOLUTION:

The Commission hereby finds that the properties located at 2720, 2690 and 2610 Via de la Valle in the City of San Diego are an area of deferred certification where the Coastal Commission retains authority to issue coastal development permits for development and adopts the findings recommended by staff below, or as modified at the hearing, to support the conclusions set forth in the staff report.

II. Exhibits

1. City of San Diego Notice of Final Action (CDP #619980) for demolition of a theatre, construction of a new commercial building and parking structure dated July 15, 2011

2. City of San Diego Notice of Final Action (CDP #526176) for restaurant expansion dated December 11, 2008
3. Map showing Area of Deferred Certification – San Dieguito River Valley
4. Letter to the City of San Diego dated May 19, 2006
5. Letter to the Protea Properties dated July 28, 2006
6. Letter to the City of San Diego Hearing Officer dated July 31, 2006
7. Letter to the City of San Diego dated May 30, 2007
8. Letter to the City of San Diego dated February 18, 2009
9. Email to the City of San Diego dated April 26, 2010
10. Letter to the City of San Diego dated April 18, 2011
11. Letter to Coastal Commission staff from City of San Diego dated July 30, 2007
12. Aerial Photograph of San Dieguito River Valley
13. Page 103 of the North City Land Use Plan
14. State Commission Staff Report on Substantial Issue– Staff Recommendation On The North City Segment Of The City Of San Diego Land Use Plan – August 19-21, 1981
15. Exhibit 6 from staff report on Substantial Issue showing non-certifiable areas of the North City Land Use Plan
16. Coastal Commission Staff Report – Executive Director’s Determination that the City of San Diego’s Actions Implementing Portions of its Local Coastal Program are Legally Adequate – September 29, 1988
17. Exhibit “A” of September 29, 1988 Coastal Commission Staff Report
18. Coastal Commission Staff Report - Findings City Of San Diego Land Use Plan – July 20, 1981 (**Available on Web Only**)
19. Coastal Commission Staff Report – Staff Recommendation On The City Of San Diego Local Coastal Program North City, Pacific Beach, Ocean Beach And Peninsula Land Use Plan Segment Resubmittals – August 19, 1985 (**Available on Web Only**)
20. Coastal Commission Staff Report – Staff Recommendation On The City Of San Diego North City Segment Local Coastal Program Land Use Plan Resubmittal – December 29, 1987. (**Available on Web only**)
21. City of San Diego staff report to the San Diego Planning Commission on Flower Hill Mall - March 3, 2011 (**Available on Web Only**)

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. COASTAL COMMISSION AND CITY ACTIONS

1. Site Description/Project Descriptions. The site subject to this dispute is comprised of 15.1 acres and is located at the northwest corner of Via de la Valle and San Andres Drive (just east of Interstate 5) in the northernmost portion of the San Dieguito River Valley and the City of San Diego. The site is developed with an approximately 112,000 sq. ft. commercial shopping center that includes retail, restaurants, movie theaters, a gas station and 782 surface parking spaces.

The most recent CDP issued by the City of San Diego for development on the property proposes to modify the existing shopping center by adding 43,754 square feet of retail stores including a 35,000 square-foot major food market and 8,754 square feet of new retail space. A total of 28,941 square feet of office space is also proposed along with 2,300 square feet of storage space within a new parking structure. The new retail and office space would be located in a two-story building with two wings connected by a covered breezeway. The new building would be located at the west end of the existing center. A new three-story, four-level parking structure, comprised of 82,739 square feet of gross floor area and containing 397 parking spaces, would be constructed behind (north of) the proposed new retail and office building. To accommodate the new development, the existing 14,000 square-foot movie theater would be demolished and the existing City utility easement providing water services would be vacated as new services would be provided elsewhere on the property for the development. Also, the new development would require the adjustment of the existing parcel lot line to achieve required building setbacks for the proposed structures.

Two other developments have also been approved by the City on the subject site without requiring the applicants to obtain a CDP from the Coastal Commission. They include expansion of an existing 2,500 sq. ft. restaurant (Paradise Grille) from a single level restaurant to a multi-level restaurant, including an outside dinning area (2690 Via de la Valle) and a tentative map waiver for a two-lot financial subdivision (2610 Via de la Valle).

2. LCP History. The City of San Diego has a long history as it pertains to its Local Coastal Program. In 1977, the City of San Diego proposed and the Commission endorsed, segmenting the City's Land Use Plan portion of its local coastal program into 12 geographic segments that correspond to community plan boundaries. One of those segments originally approved is the North City Land Use Plan.

a. North City Land Use Plan

This LUP segment was submitted on April 20, 1981, and the Regional Commission certified it with suggested modifications on June 26, 1981. The State Commission found that the Regional Commission's decision raised no substantial issue on August 21, 1981, thereby endorsing the Regional Commission's action. The City did not accept the Commission's suggested modifications of its LUP, so it was not effectively certified at this time. A resubmitted LUP was certified with suggested modifications on May 23, 1984. As a result, the City substantially revised the LUP to address the Commission's concerns and resubmitted the LUP a second time. On August 27, 1985, the Commission certified the land use plan as submitted. However, at that time, the Commission deferred certification for certain areas within the North City LUP, finding that they did not contain a description of the types, location, and intensity of development.

In a December 29, 1987 staff report to the Coastal Commission (Exhibit #20) regarding a third resubmittal of this LUP segment, to clarify steep slope development policies and

incorporate permissible, but discretionary, encroachment allowances into constrained slopes, areas of deferred certification were again identified:

The Commission finds that certain areas of the North City Land Use Plan do not contain sufficient description of the types, location, and intensity of development. [...] Furthermore, there are areas which have received local land use or precise plan approval, but have not been submitted to, reviewed by or approved by the Coastal Commission. For these areas, certification is deferred.

The subject area was one such area lacking a sufficient description of the types, location and intensity of development allowed, and it was included as an area for which certification was deferred. This LUP (excluding the deferred certification areas) was certified by the Commission on July 13, 1988.

b. Implementation Plan.

The zoning (Implementation Plan) for nine of the City's 12 segments was submitted in October of 1983, and the Commission certified it with suggested modifications on May 23, 1984. The modifications concerned limiting floodplain development, restricting grading of steep slopes, and providing adequate parking standards for new development in the nearshore areas.

Following the 1984 action, the City revised the Implementation Plan to respond to the issues raised by the Commission. The City resubmitted the implementing ordinances, and this package was reviewed by the Commission in January 1988. Although there had been substantial progress made to resolve many of the Commission's concerns, the resubmitted Implementation Plan was denied and then approved, with suggested modifications, on January 13, 1988.

The City Council accepted the Commission's suggested modifications for the Implementation Plan, and the Commission concurred with this action, effectively certifying the total LCP on October 14, 1988 (except for several areas of deferred certification). Through that action, CDP authority was transferred to the City for all portions of the City's coastal zone except the identified areas of deferred certification shown on Exhibit A attached to the September 29, 1988 report to the Commission for Executive Director certification of the City's Local Coastal Program. The areas of deferred certification were specifically addressed as follows:

At the time of the Commission's approval of the City's Implementation Plan, there were several areas of deferred certification established, where the Coastal Commission will retain permit authority. These areas are identified on the attached Exhibit "A". [...]

Exhibit "A"

City of San Diego Areas of Deferred Certification

The geographic areas, districts or sites which were deferred certification on January 13, 1988 in the Coastal Commission's review of the Implementation Plan are as follows:

- 1) Via de la Valle Specific Plan area:
- 2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985; [...] [Exhibit #17]

The City assumed permit-issuing authority for its entire coastal zone (except for Mission Bay and the identified areas of deferred certification) on October 17, 1988.

In 1999, the City of San Diego's certified LCP Implementation Plan was comprehensively updated in review of LCP amendment 1-98B. The Land Development Code (LDC) was submitted along with the Land Development Manual and Planned District Ordinances to replace the Municipal Code as the certified Implementation Plan for the City of San Diego LCP. The LDC was certified with suggested modifications on February 4, 1999, with the exception of the Steep Hillside Guidelines. Those guidelines were certified as submitted on August 12, 1999, as LCP amendment 1-98D. LCP amendment 1-98B was effectively certified on November 4, 1999.

c. Post-Certification Maps

There are no post-certification maps that have been approved by the Coastal Commission for the City of San Diego LCP. The draft Map Drawings C730 series quad maps have been developed and utilized by both the City and Commission staffs to identify the first public roadway, Commission original jurisdiction and appeals jurisdiction and some areas of deferred certification (ADCs). Since the 1988 LCP certification and subsequent certification of the Land Development Code, it has been recognized by both staffs that, although the majority of the maps are correct (44 sheets total), there are some sheets that contain errors regarding areas of deferred certification, original and appeals jurisdiction. The City of San Diego adopted the maps for their use knowing they had not been certified by the Commission. At the time of review of the Implementation Plans, City staff indicated a preference to not hold up the process until the maps were certified, with the expectation that such review and certification would eventually occur. The staff report for Executive Director certification of the 1988 LCP submittal indicates the following:

The post-certification maps, which graphically depict the Commission's and City's jurisdictional areas, have been drafted and reviewed by Commission staff. Final corrections and updating to reflect all proposed areas of deferred certification are in process and should be completed shortly. [pg. 2 Ex.16]

The record shows that final Commission review and completion of certifiable maps has never occurred. The submittal record for LCPA 1-98B (Land Development Code – March 1999) does not indicate any updated post-certification maps were part of the City's submittal. Since 1988, the City has proceeded to gain LCP certification in many of the areas of deferred certification (not including the subject San Dieguito River Valley ADC) and, recognizing those ongoing changes, staff limitations and changing technology, a set of corrected maps has not yet been developed by the Commission or the City. In the July 31, 2006 letter to the City (Exhibit #6), Commission staff acknowledged the City's determination of City permit jurisdiction at the subject sites was based on the draft post-cert maps and clarified the maps were not certified and in error because they do not show the subject area as an ADC. Appeals jurisdiction could not apply to this area because the LUP for this area has not been certified. Staff reiterated the draft status of the maps and that they should not be used for purposes of determining permit jurisdiction, and this was reaffirmed in the February 18, 2009 letter (Exhibit #8).

The Commission's Mapping Unit is now able to produce digitized map products (Exhibit #3) that show parcel lines and are much improved in terms of accuracy and usability. Commission staff has indicated to City staff a commitment to commence joint review of all remaining ADCs, changes to the first public roadway, and Commission retained jurisdiction areas with the City with a goal of having a complete set of post-certification maps for Commission review at the February 2012 meeting.

B. COASTAL COMMISSION AND CITY ACTIONS

1. City Actions.

In August 2006, the City approved a Tentative Map Waiver and coastal development permit for a two-lot financial subdivision on the site (City of San Diego CDP #45882).

On August 29, 2008, the City Hearing Officer approved a coastal development permit for expansion of the Paradise Grill Restaurant located at 2690 Via de la Valle. On September 26, 2008, that decision was appealed to the City Planning Commission. On December 11, 2008, the City Planning Commission approved, with conditions, a coastal development permit for expansion of the 2,500 sq. ft. restaurant.

The City of San Diego Planning Commission approved the Flower Hill Promenade project on March 10, 2011 and forwarded their recommendation onto the City Council. A March 3, 2011 staff report to the City of San Diego Planning Commission on this matter addresses permit jurisdiction and states:

“[...]

To accommodate the new development, the existing 14,000 square-foot movie theater would be demolished and the existing City utility easement providing water services will be vacated as new services will be provided elsewhere on the property for the

development. Also, the new development would require the adjustment of the existing parcel lot line to achieve required building setbacks for the proposed structures. Therefore, the development in the City's Coastal Overlay (non-appealable) Zone requires a Coastal Development Permit from the City of San Diego, the Easement Vacation of the utility service rights, and a Lot Line Adjustment.” [pg. 2 Exhibit #21]

“Community Plan Analysis:

The project site is located within the City of San Diego's General Plan and the North City Local Coastal Program (North City LCP) Land Use Plan area and is subject to the goals and policies of these plans. The site is not located within a specific community plan. The General Plan identifies the project site for Commercial Employment, Retail and Services land use. The project site is designated for Commercial Use in the North City LCP Land Use Plan. The proposed project is consistent with the land use designations and all applicable goals and policies of the City of San Diego General Plan and North City LCP Land Use Plan.” [pg. 3 Exhibit #21]

“North City LCP

The primary purpose of the North City LCP is to help implement the goals of the California Coastal Act. The Coastal Act assigns authority for local agencies to issue coastal development permits through adoption of Local Coastal Plans. The City adopted and the Coastal Commission subsequently approved the North City LCP in 1981. In general, the North City LCP applies to the various community plans that comprise the northern portion of the City of San Diego. As indicated earlier, the subject property does not lie within the boundaries of a community plan. However, the property was included in the North City LCP in order to allow the City to issue coastal development permits to areas in the North City that lay outside of formal community plans.

As a result of not being associated with a community plan, the North City LCP does not contain any goals, objectives or policies that apply directly to the property other than the land use designation, identified on page 103 of the North City LCP, which is consistent with the commercial land use designation applied by the City's General Plan. As the proposed project would not change the land use on the site, the project would be consistent with the North City LCP.” [pg. 3 Exhibit #21]

On April 19, 2011, the San Diego City Council reviewed and approved the project and certified the EIR for the project. The EIR for the project addressed permit jurisdiction in several areas as follows:

In response to a comment letter on the project from Commission staff, the City responded as follows:

Page RTC-110 of the EIR

A1. The project site is located in the City of San Diego's General Plan area and within the City of San Diego's North City Local Coastal Program (LCP). The property is located in non-appealable area 2, according to the City of San Diego Coastal Maps, C-730.1, sheet 42 of. The City of San Diego would assure project conformance with the Coastal Act through the City's North City LCP. As indicated in the Recirculated Draft EIR and the North City LCP, the site is located within the City of San Diego Coastal Zone and would require a City of San Diego Coastal Development Permit. Coastal Act Section 30519(a) states, "after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the Coastal Commission over any new development proposed within the area to which the certified Local Coastal Program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof." Thus, the Coastal Commission does not have direct permit jurisdiction over the project.

The EIR further addresses permit jurisdiction as follows:

Page 2-2 of the EIR**2.4 Planning Context**

The site is subject to the planning guidelines and policies of the City's General Plan (General Plan), the North City Local Coastal Program (LCP) Land Use Plan....
[...]

Coastal Overlay Zone

The site is located within the Coastal Overlay Zone, which was adopted by the City (SDMC Section 132.0401 et seq.) to protect and enhance the quality of public access and coastal resources. Projects within the Coastal Overlay Zone must obtain a CDP, which the project is seeking.

The property lies within the boundaries of the North City LCP. The land use plan of the North City LCP applies a commercial land use designation to the subject property which reflects the land use designation applied to the property by the City of San Diego General Plan.

Page 5.1-4 of the EIR**North City Local Coastal Program Land Use Plan**

The primary purpose of the North City LCP is to help implement the goals of the California Coastal Act. The Coastal Act assigns authority for local agencies to issue coastal development permits through adoption of Local Coastal Plans. The City adopted and the Coastal Commission subsequently approved the North City LCP in 1981. In general, the North City LCP applies to the various community plans that comprise the northern portion of the City of San Diego. As indicated earlier, the subject property does not lie within the boundaries of a community plan. However, the property was included in the North City LCP in order to allow the City to issue coastal development permits to areas in the North City that lay outside of formal community plans. As a result of not being associated with a community plan, the North City LCP does not contain any goals, objectives or policies that apply directly to the property other than the land use designation, identified on page 103 of the North City LCP, which is consistent with the commercial land use designation applied by the City's General Plan. As the proposed project would not change the land use on the site, the project would be consistent with the North City LCP.

[...]

Page 5.1-10 of EIR**North City Local Coastal Plan**

As the proposed project is currently developed with a shopping center and does not support any important environmental resources (e.g. biology or landforms), the proposed project would not conflict with the environmental goals, objectives or guidelines of the North City LCP. Since the North City LCP does not identify any specific goals, policies or guidelines related to the project, a detailed evaluation of consistency is not provided on Table 5.1-1.

On July 21, 2011, the San Diego Office of the Coastal Commission received from the City of San Diego, its Notice of Final Action (NOFA) for approval, with conditions, of the project.

2. Coastal Commission Staff Actions

During the planning process of this project through the City, Commission staff has made it clear to the City and the developer that the project site is not within the City of San Diego's Coastal Development Permit jurisdiction, as permit authority for the site has never been transferred to the City. Thus, the site remains, at this time, within the Commission's CDP jurisdiction as an area where certification has been deferred.

- On May 19, 2006, Commission staff wrote a letter to the City of San Diego Planning and Development Services Departments regarding permit jurisdiction at the Flower Hill Mall site indicating that the site was not within a certified LUP area and thus, CDP jurisdiction remains with the Commission. In the letter, Commission staff asked for contact information for the property owners to notify them as well. [Exhibit #4]
- On July 28, 2006, Commission staff wrote a letter to the property owners (Protea Properties) informing them in writing that the site was not in the City's certified LCP and thus it was subject to CDP jurisdiction from the Coastal Commission. In the letter, the property owner was warned that if the City takes action on a CDP for development on the site, the permit would be invalid as the City does not have authority to act on a CDP application at this site. [Exhibit #5]
- On July 31, 2006, Commission staff wrote a letter to the Hearing Officer for the City of San Diego regarding a proposed Map Waiver that was to be heard by the City. Staff informed the hearing officer that the City does have not CDP authority and should not take an action on the CDP. [Exhibit #6]
- On May 30, 2007, Commission staff again wrote a letter to the City regarding CDP jurisdiction at the Flower Hill Mall site. As the City had not responded to Commission staff's three previous letters and was unwilling to discuss the issue in person, this letter asked for final confirmation that the City agreed CDP jurisdiction in this areas rests with the Commission. [Exhibit #7]
- In March of 2008, Commission and City planning staff met to discuss this issue. At that meeting, the City asserted that due to the exhibit showing a commercial land use designation on the site in the North City Land Use Plan, the North City Land Use plan had been certified by the Commission and the site was within the City's CDP jurisdiction. Commission staff agreed to research the history of North City LUP certification further and to get back to the City.
- On February 18, 2009, Commission staff again wrote a letter to the City regarding this matter and informed them that after extensive research, staff again concluded that the CDP jurisdiction for the Flower Hill Mall site rests with the Commission and not the City. In this letter, staff states that it "... is our position that this particular jurisdictional question (Flower Hill Mall) has now been resolved." No further communication was received from the City. [Exhibit #8]
- On April 26, 2010, Commission staff provided comments on the draft EIR and addressed, among other things, the issue of permit jurisdiction and attached our previous, 2/18/2009 letter to the City. [Exhibit #9]
- On April 18, 2011, Commission staff provided a comment letter to the City to be presented to the City Council at the hearing proposed for major redevelopment of the Flower Hill Mall property stating that the project was in the Coastal Commission's CDP jurisdiction. [Exhibit #10]

3. Commission Actions on CDPs.

Since the time of certification of the LCP, the Coastal Commission has reviewed numerous applications for development in and around the San Dieguito River Valley and

more specifically, the areas of the San Dieguito River Valley located outside the North City West Community Plan. Below is a sample listing of the permits:

- 6-96-128 – permit for subdivision of 8 acres into 19 lots on the north side of Via de la Valle. Approved by the Commission on December 11, 1996.
- 6-98-154 – permit for subdivision of 26.9 acres into 60 lots (47 homes) on the east side of new El Camino Real, south of San Dieguito Road. Approved by the Commission on August 19, 1999.
- 6-01-37 – permit for construction of homes on the lots approved pursuant to CDP #6-98-154. Approved by the Coastal Commission on May 8, 2001.
- 6-02-169 – permit for construction of a telecommunications facility (ATF) on an existing commercial site located on the southwest corner of Via de la Valle and El Camino Real (3675 Via de la Valle). Approved by the Commission on January 9, 2003.
- 6-03-095 – permit for bikeway/road improvements along Via de la Valle from San Andreas Drive, east to El Camino Real. Applicant was the City of San Diego. Approved by the Commission on December 12, 2003.
- 6-04-29 – permit for improvements at an existing equestrian facility located along the south side of Via de la Valle. Approved by the Commission on March 17, 2005.
- 6-04-71 – permit for construction of a church on the east side of new El Camino Real, south of San Dieguito Road (14900 El Camino Real). Approved by the Commission on November 17, 2004.
- 6-08-56 – permit for subdivision of 41.83 acres into 15 lots (10 homes) on the west side of Old El Camino Real. Approved by the Commission on December 11, 2008.

In each of the above-cited permit decisions, the Commission made findings that the development was within an area of deferred certification where the Commission retained permit jurisdiction.

C. COMMISSION DETERMINATION OF DEFERRED CERTIFICATION

The site is within the portion of the San Dieguito River Valley where certification was deferred and permit authority did not transfer to the City in October 1988 when the City of San Diego LCP was initially certified. Documents referred to in this staff report clearly show the subject site, which is within the portion of the San Dieguito River Valley outside the North City West (NCW) Community Plan boundaries, was not part of the North City LCP Land Use Plan, as submitted by the City in 1981, 1985 and resubmitted in 1988, because it is not within the boundaries of any community planning area (Exhibit Nos. 14, 15, 18, 19 & 20). The fact that the site is not within the boundaries of any community planning areas is not disputed by the City.

In 1981, there was both a Regional and State Commission. Decisions acted on by the Regional Commissions could then be appealed to the State Commission (today there is

only one State Commission). If the State Commission found no substantial issue with respect to the Regional Commission's decision, it effectively endorsed the Regional Commission's action.

The State Commission staff report from August 1981, finding no substantial issue with the Regional Commission's decision related to certification of the North City LUP, clearly acknowledges "the North City LCP Land Use Plan did not contain a description of the types, location and intensity of developments that would proceed under the plan's land use designations for the following identified areas: 1. Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley Area (See Exhibit 6). . . . Approval of these identified areas will be delayed until such time that specific land use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification." The referenced Exhibit 6 identifies the "non-certifiable areas" including the subject site (Exhibit Nos. 14 & 15).

The 1981 version of the certified North City LUP and all subsequent versions state the North City LCP Land Use Plan consists of the land use plans or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Planning Areas. The subject site is not within any of these areas. The LUP contains, in addition to land use designations, land use planning policies specific to these communities. The City acknowledges that there are no such specific planning policies for the subject area, as it is not within any community plan area. Such policies do not exist for the San Dieguito River Valley in the North City LUP, and those areas without specific planning policies were excluded when the Commission certified the City's LUP. Planning documents addressing Commission staff recommendations and City responses which took place between the 1981 and 1985 LUP submittals acknowledge City staff concurrence with the intent to exclude those areas from the LUP, including the portion of the San Dieguito River Valley outside of the North City West community plan. The City and Commission staff agreed that these areas would be excluded from the LUP until such time that specific land use designations, in the form of community plans or master plans, would be developed by the City and submitted to the Commission for certification.

Commission staff reports addressing effective certification of the LCP and transfer of permit authority in October 1988 indicate the areas of deferred certification include the areas of the San Dieguito River Valley outside the NCW community plan boundaries (Exhibit #16). There has been no subsequent Commission action on an LUP amendment to include this area within the North City LUP or the certified City of San Diego LCP.

D. CONCLUSION

The San Dieguito River Valley is located in the northernmost portion of the City of San Diego. The Valley includes commercial, residential and equestrian developments along its northern border along with steep naturally vegetated slopes. The San Dieguito River Valley provides visual relief from the surrounding commercial and residential areas.

Public views to, and throughout, the valley are significant resources requiring protection under the Coastal Act. The Valley includes several major transportation corridors including Interstate 5 (I-5), El Camino Real and Via de la Valle. Via de la Valle serves as a major east/west coastal access routes providing access to the coast from areas east and I-5. The majority of the valley is comprised of the San Dieguito Lagoon and River, its floodplain and sensitive wetland and upland resources.

The San Dieguito River Valley is also the location of a major habitat restoration project. The San Dieguito Wetland Restoration Plan encompasses almost the entire San Dieguito River Valley west of El Camino Real. The San Dieguito Wetland Restoration Plan was proposed primarily to meet the requirements of Coastal Development Permit #6-81-330 to mitigate adverse impacts to the marine environment occurring through operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Southern California Edison (SCE), the principal owner of SONGS, was required to provide approximately 150 acres of new, or significantly restored, wetland habitat. Coastal Development Permit #6-04-88 for the construction of the wetland restoration project included these requirements. Additional components of the restoration project include the construction of three berms adjacent to the San Dieguito River to confine existing flows and maintain sediment transport to the ocean, the creation of four new nesting sites and rehabilitation of an existing site for the California Least Tern and Western Snowy Plover, the creation of treatment ponds to filter freshwater runoff and reduce freshwater flows into the restored tidal wetlands, the construction of a public access trail, including interpretive signage, and improvements to beach access, the upland and beach disposal of excavated material, and maintenance and monitoring programs. Given the above-described location and sensitive resources in the Valley, development in and around this area can have significant impacts on coastal resources including public access, visual resources, sensitive habitats and marine resources.

Permit records in the San Diego District office include a number of CDPs approved by the Commission in the subject area since certification of the City's LCP, because it is an area of deferred certification. As described in the section above, a review of the Commission's actions regarding the certification of the North City LUP segment shows that this area was deferred from certification in the LUP because comprehensive land use planning to address all the coastal resources within the valley has not occurred. In addition, the City concurred with the Commission's conclusion that the "Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley area" was to be an area of deferred certification. Thus, the City agreed that the subject site was not to be certified as part of the North City LUP. This area was also deferred from certification at the time the LCP was effectively certified, as evidenced by its inclusion in the geographic area described in Item #2 of the list of areas of deferred certification.

The City acknowledges in its staff report for this CDP and in the EIR for the project that the subject site is not within any community plan boundaries, and it indicates that as a result of not being associated with a community plan, the North City LCP does not contain any goals, objectives or policies that apply directly to the property other than the

land use designation which is consistent with the General Plan. The City staff reports therefore acknowledge the reasons why certification was deferred for this area, but still reach the wrong conclusions regarding CDP jurisdiction, due to the City's misplaced reliance on the generalized land use map shown on page 103 of the North City LUP.

In particular, a large part of the City's rationale is based on an exhibit in the 1981 North City Land Use Plan, page 103, that does show the Flower Hill Mall site as "Commercial". However, in reviewing the document and considering the City's interpretation, for a number of reasons, Commission staff cannot concur that this land use designation establishes City jurisdiction. First, there are numerous other statements in multiple documents that indicate properties outside of the North City West planning area or the other formally identified community plan boundaries were specifically excluded. Then, secondly, based on a review of the identified exhibit, it appears rather to be an exhibit of generalized land uses or existing development patterns in the surrounding area, rather than a specific land use designation for the Flower Hill Mall property.

In any case, as the City acknowledges, a land use designation on the subject map is not sufficient in and of itself to establish the City's jurisdiction. For example, this map shows a land use designation (residential) for an area now known as the Via de la Valle Specific Plan area, but the City states on its website that it does not have coastal permitting jurisdiction in that area. Similarly, this map designates portions of the San Dieguito River Valley as "open space/parks," but the City acknowledges that this area is also not within the City's CDP jurisdiction. Thus, that this map shows a land use designation for the subject parcel does not establish that the City has CDP jurisdiction in this area. The record shows, instead, that the property where the proposed development is to take place was excluded from the North City LUP and thus, permit authority was not transferred to the City.

The City's reliance on its own 1988 maps is also misplaced. The City cannot create CDP jurisdiction simply by adopting a map depicting the area as fully certified, when the record shows that the area was excluded from both LUP and IP certification. Not only does the Commission's history of certification show that this proposed development is in an area of deferred certification, but the City's past actions demonstrate its understanding that it does not have coastal permitting jurisdiction in this area. For example, one of the CDPs reviewed by the Commission in this same general vicinity includes an application by the City of San Diego for a bike path along Via de la Valle. This shows that the City acknowledges that the area is within the Commission's, not the City's, permit jurisdiction.

Commission staff has repeatedly informed the City and the applicant that it retains jurisdiction in this area. During review of the project by the City, dating back to 2006, Commission staff advised City staff and the applicants that the CDPs being processed by the City would not be valid, as the Coastal Commission has CDP jurisdiction over this area. (Exhibit Nos. 4-10) Because work commenced on the development pursuant to the City-issued CDP, including demolition of the theatres and grading of the site, Commission staff posted a Notice of Violation on July 22, 2011 and the applicant has

subsequently submitted a CDP application to the Commission, under protest, pending the outcome of this dispute resolution. However, work on the project has continued.

This office's February 18, 2009 response letter specifically concludes the Coastal Commission has permit jurisdiction over the site and that it is CCC staff's position that the question regarding permit jurisdiction at Flower Hill Mall has been resolved. Commission staff also commented on the draft EIR for the project (Exhibit #9) once again asserting CDP authority. A short letter was also sent April 18, 2011 in reference to the project being on the April 19, 2011 City Council Docket acknowledging no reply since the February 18, 2009 letter and that a CDP is required from the Coastal Commission. No further letters of comment or any form of communication were received from either the City or the applicant until receipt of the Notice of Final Action on the CDP for the demolition and new construction on July 22, 2011.

Staff is recommending the Commission concur with the Executive Director's conclusion that the proposed project is within the area of deferred certification. As explained in these findings, the City's analysis of this issue is faulty, and in direct conflict with the provisions of the Coastal Act that require specificity in certified Land Use Plans regarding location, intensity and density of use. This lack of specificity was the very reason that certification was deferred in this area. Land use planning to develop the goals, objectives and policies applicable to development in this area has not yet occurred and thus, the Commission has continued to issue permits for development in the San Dieguito River Valley north of the North City West Community Plan area since certification of the City's LCP in 1988. The list of substantive file documents include a number of CDPs issued by the Coastal Commission for the San Dieguito River Valley area of deferred certification of which the subject site is a part.

COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION

California Coastal Commission, San Diego Area Office
7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402
Phone (619) 767-2370



DATE: July 15, 2011

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

PROJECT NAME - NUMBER: Flower Hill Promenade – Project No. 172026,
Environmental Impact Report No. 172026, State
Clearinghouse No. 2009021078

PROJECT DESCRIPTION: Demolish the existing 14,000 square foot theatre; construct a two-story, approximately 72,695 square-foot commercial and office building structure; construct an approximate 82,739 square-foot, three-story parking structure with a single level below ground, and includes a 2,300 square-foot storage area in the structure; parcel lot line adjustment; and vacation of portions of an existing water utility easement.

LOCATION: 2720 Via de la Valle (APN's 298-490-43 and -44) at the northwest corner of Via de la Valle and San Andres Drive.

APPLICANT'S NAME Protea Flower Hill Mall, L.L.C.

FINAL ACTION: APPROVED WITH CONDITIONS

ACTION BY: City Council

ACTION DATE: April 19, 2011


CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

☒ Not appealable to the Coastal Commission

CITY CONTACT: Tim Daly
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101-4153
Phone/e-mail : (619) 446-5356 / tdaly@sandiego.gov

Revised 4/08/10 HMD

EXHIBIT NO. 1
APPLICATION NO.
6-11-67-EDD
Notice of Final Action
 California Coastal Commission



MAY 27, 2011 11:12 AM

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 192.00

9286

PAGES: 60

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A



JUL 21 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23432020

COASTAL DEVELOPMENT PERMIT NO. 619980
FLOWER HILL PROMENADE PROJECT NO. 172026; MMRP
CITY COUNCIL

This Coastal Development Permit No. 619980 is granted by the City Council of the City of San Diego to Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners and Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0701. The 15.14-acre site is located at 2720 Via de la Valle in the CC-1-3 and Coastal Overlay (non-appealable) Zones of the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas. The project site is legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners and Permittees to demolish the existing 14,000 square-foot theater, and to construct approximately 74,995 square feet of new building area for commercial, office, and storage space, and a new 82,739 square-foot, gross floor area parking structure at an existing commercial development, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 19, 2011, on file in the Development Services Department.

The project shall include:

- Demolition of the existing 14,000 square-foot theatre building;
- Construction of a two-story, approximately 72,695 square-foot commercial and office building structure;
- Construction of an approximate 144,792 square-foot parking structure with 397 spaces and consisting of approximately 82,739 square-foot, three-story portion above ground and approximately 62,053 square-foot below ground, which includes a 2,300 square-foot storage area in the structure;

REV. 04/25/11

ORIGINAL

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. A stepped retaining wall structure of approximately 220 linear feet and 47 feet in height at the highest point; and
- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owners/Permittees signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owners/Permittees and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owners/Permittees for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies

including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owners/Permittees shall secure all necessary building permits. The Owners/Permittees is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owners/Permittees of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owners/Permittees shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owners/Permittees shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owners/Permittees of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owners/Permittees shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owners/Permittees shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owners/Permittees regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owners/Permittees shall not be required to pay or perform any settlement unless such settlement is approved by Owners/Permittees.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.
12. The mitigation measures specified in the MMRP and outlined in Environmental Impact Report No. 172026, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.
13. The Owners/Permittees shall comply with the MMRP as specified in Environmental Impact Report No. 172026, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Transportation and Circulation;
Biological Resources;
Paleontological Resources; and
Public Utilities (Solid Waste)

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall execute and obtain City approval of an Encroachment Maintenance and Removal Agreement for the private storm drains, landscape, irrigation and their appurtenances located within the City's right-of-way.
15. Prior to the issuance of any construction permit for buildings, the Owners/Permittees shall enter into a Maintenance Agreement for the ongoing permanent Storm Water Best Management Practices [BMP] maintenance, to the satisfaction of the City Engineer.
16. Prior to the issuance of any construction permit, the Owners/Permittees shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.
17. Prior to the issuance of any construction permit, the Owners/Permittees shall incorporate and show the type and location of all post construction BMP's on the final construction drawings, consistent with the approved Water Quality Technical Report.
18. The drainage system for this project shall be private and will be subject to approval by the City Engineer.
19. Prior to the issuance of any construction permits, the Owners/Permittees shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to

requirements in accordance with the City of San Diego Municipal Code to the satisfaction of the City Engineer.

20. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99 08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CA S0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this Permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 99 08 DWQ.

21. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the replacement of the existing driveway on San Andres Drive to provide adequate sidewalk transitions, per Standard Drawing G-14B, G-16 and SDG-100, to the satisfaction of the City Engineer.

22. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the installation of City standard curb ramps with truncated domes, on both sides of the project entrances on Via De La Valle and San Andres Drive, to the satisfaction of the City Engineer.

GEOLOGY REQUIREMENTS:

23. Prior to issuance of any construction permits, the Owners/Permittees shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter will be reviewed for adequacy to the satisfaction of the Geology Section of the Development Services Department and the City Engineer.

24. The Owners/Permittees shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report will be reviewed for adequacy to the satisfaction of the Geology Section of the Development Services Department and the City Engineer prior to exoneration of the bond and grading permit close-out.

LANDSCAPE REQUIREMENTS:

25. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A," Landscape Development Plan.
26. Prior to issuance of any construction permits for buildings (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department.
27. New landscape planting materials, including trees, shrubs and specimen plants shall exceed the City's minimum standards and provide the height, width and coverage needed that will provide significant screening of buildings and structures at the time of installation.
28. Construction plans within the public right of way shall take into account a 40 square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)(5).
29. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owners/Permittees to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.
30. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days after the date of damage, issuance of Certificate of Occupancy, or Final Landscape Inspection.
31. Any required planting that dies within three years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die three years or more after installation shall be replaced with 15-gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15-gallon shrub or 60-inch box tree.

PLANNING/DESIGN REQUIREMENTS:

32. Upon completion of the development, the Owners/Permittees shall maintain a minimum of 866 off-street parking spaces (including 9 carpool spaces, 15 standard accessible spaces and 3 van accessible spaces), 10 motorcycle spaces, and 8 bicycle spaces with rack(s) shall be provided on the property at all times in the approximate locations shown on the approved Exhibit "A" and

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as required by the Land Development Code. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

33. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owners/Permittees.

34. Prior to the issuance of construction permits for buildings, pedestrian paths shall be shown on the construction documents consistent with Exhibit "A." The paths shall be continuous, clear of obstructions, easily identifiable as pedestrian paths, and visually distinguishable from other hardscaping. Pedestrian paths shall be separated from vehicular access areas by wheelstops, curbs, landscaping, or other physical barriers, except when crossing driveways or aisles.

35. Prior to the issuance of construction permits for buildings, construction documents shall fully illustrate the incorporation of the following sustainable design features on the new structures and on the site and landscape plans:

- The installation of energy-efficient lighting and lighting control systems;
- The installation of energy-efficient heating and cooling systems, appliances and equipment, and control systems;
- Limiting the hours of operation of outdoor lighting;
- The use of thermal-efficient glazing/fenestration systems;
- The use of "cool" roof material;
- The creation of water-efficient landscapes; and
- The installation of water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.

36. All signs associated with this development shall be consistent with sign criteria established by either the approved development's Comprehensive Sign Plan No. 1, dated February 6, 1976 or the City-wide sign regulations.

37. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS:

38. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the construction of a minimum 5-foot wide non-contiguous sidewalk along the project's frontage along Via de la Valle as shown on the project's Exhibit "A," to the satisfaction of the City Engineer.

39. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the construction of a minimum 5-foot wide non-contiguous sidewalk along the project's frontage along San Andres Drive as shown on the project's Exhibit "A," to the satisfaction of the City Engineer.

40. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the installation of a "Keep Clear" marking on the pavement on-site, where the project driveway on Via de la Valle meets the east/west circulation aisle, approximately 100 feet north of Via de la Valle. Additionally, stop signs shall not be placed facing northbound traffic at the location where the main project driveway meets the east/west circulation aisle.

41. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall dedicate 5 feet along the project frontage on San Andres Drive to provide a minimum 10-foot curb to property line distance, to the satisfaction of the City Engineer.

42. Prior to issuance of the construction permit for buildings, the Owners/Permittees shall provide evidence of a recorded Shared Parking Agreement that allows Assessor Parcel No. 298-490-44 the right to use 528 automobile parking spaces on Assessor Parcel No. 298-490-43, to the satisfaction of the City Engineer.

43. Prior to issuance of a Certificate of Occupancy, Owner/Permittee shall provide a Letter of Credit, cash payment, or bond equal to 7.7 percent of the Black Mountain Ranch Facilities Financing Plan Fiscal Year 2006 cost estimate to complete the planned improvements identified in the Black Mountain ranch Public Facilities Financing Plan as Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West), from a two lane to a four lane roadway. Prior to the issuance of the first building permit for a structure, Owner/Permittee shall pay the estimated cost, approved by the City Engineer, to form a cost reimbursement district to collect any funds necessary to complete Black Mountain Ranch Facilities Financing Plan Project T-32.1.

Prior to issuance of any construction permit, the Owner/Permittee shall pay 25% of the estimated cost, approved by the City Engineer, to establish a funding bank for processing any possible future Cost Reimbursement District application by others, to assist in collection of any funds necessary to complete Black Mountain Ranch Public Facilities Financing Plan Project T-32.1. The balance shall be paid prior to issuance of any construction permit for a building.

44. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the widening of the project driveway on Via de la Valle to provide one southbound left, one southbound through/right, and one southbound right lane, to the satisfaction of the City Engineer.

WASTEWATER REQUIREMENTS:

45. All onsite sewer facilities that serve only this lot shall be private.
46. Prior to the issuance of any Certificate of Occupancy, the Owners/Permittees shall install all sewer facilities required by the accepted sewer study necessary to serve this development. Sewer facilities as shown on the approved plans may require modification based on the accepted sewer study, to the satisfaction of the Director of Public Utilities and the City Engineer.
47. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall grant adequate sewer, and/or access easements for all public sewer facilities that are not located within public rights of way, to the satisfaction of the Director of Public Utilities. Easements shall be surfaced with suitable approved material, to the satisfaction of the Director of Public Utilities and the City Engineer.
48. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall execute and obtain City approval of an Encroachment, Maintenance, and Removal Agreement for all proposed improvements, including grading, utilities, landscaping, and enhanced paving located in or over any public sewer access easement, to the satisfaction of the Director of Public Utilities and the City Engineer.
49. Structures or landscaping shall not be installed in or over any sewer easement that would inhibit access to replace a section of main or provide access to any manhole or isolated section of main.
50. Trees shall not be installed within ten feet of any sewer facilities or in any sewer access easement. Shrubs exceeding three feet in height at maturity shall not be installed within ten feet of any public sewer main or within access easements.
51. Other utilities, including gas, electric, telephone and fiber optic cable, shall not be located within ten feet of any public sewer main when these utilities are installed parallel to the sewer main. General Utility Easements (GUE) in private roads and driveways shall be sized with sufficient width to provide for other agencies facilities. In side yards or other non-street areas, a GUE must be dedicated for the exclusive use of the City of San Diego Public Utilities Department, to the satisfaction of the Director of Public Utilities and the City Engineer. Any other agencies will require separate easements.
52. The Owners/Permittees shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide, to the satisfaction of the Director of Public Utilities and the City Engineer.
53. The proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Plumbing Code and shall be reviewed as part of the construction permit building plan check, to the satisfaction of the Director of Public Utilities and the City Engineer.

54. Prior to the issuance of any construction permits, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide written verification to the City of San Diego from the City of Solana Beach indicating this site is authorized to discharge sewer flows into the City of Solana Beach wastewater system, to the satisfaction of the Director of Public Utilities and the City Engineer.

55. The Owners/Permittees shall design, obtain permits, and construct all proposed (private and public) sewer facilities to the most current laws, ordinances, and regulations of the City of Solana Beach, to the satisfaction of the City Engineer of the City of Solana Beach. The type of sewage discharged into the sewer system shall meet the requirements and restrictions of the San Elijo Joint Powers Authority.

56. Prior to the issuance of any construction permit, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide a copy of a final report, prepared for the City of Solana Beach, conducting an existing conditions flow measurement on the existing 12-inch diameter vitrified clay pipe (VCP) in Via de la Valle, west of the project site. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend, to the satisfaction of the Director of Public Utilities and the City Engineer.

57. Prior to the issuance of any construction permit, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide evidence that an agreement has been fully executed between the City of Solana Beach and the Owners/Permittees. The agreement shall require the Owners/Permittees to perform a flow measurement survey of the existing 12-inch diameter vitrified clay pipe (VCP) in Via De La Valle within one month after full occupancy of the new shopping center. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend. If it is determined, by the City Engineer of the City of Solana Beach, that the existing system is inadequate to convey the additional flow due to this project expansion, the agreement shall require the Owners/Permittees to improve the existing wastewater distribution system to the satisfaction of the City Engineer of the City of Solana Beach.

WATER REQUIREMENTS:

58. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall assure by permit and bond the design and construction of two 12-inch diameter water mains within a 24-foot wide minimum water easement. The water mains must be connected with 20-inch x 20-inch x 20-inch tee and three valves to the existing 20-inch diameter water main in Via De La Valle right-of-way adjacent to the project site, to the satisfaction of the Director of Public Utilities and the City Engineer.

59. The Owners/Permittees shall execute and obtain City approval of an Encroachment, Maintenance, and Removal Agreement(s), for all acceptable encroachments into the water easement, including but not limited to structures, enhanced paving, or landscaping. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

60. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall assure by permit and bond the design and construction of any new water service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, to the satisfaction of the Director of Public Utilities and the City Engineer.

61. Prior to the issuance of any construction permits for buildings, the Owners/Permittees shall apply for a plumbing permit for the installation of appropriate private back flow prevention device, on irrigation water service, to the satisfaction of the Director of Public Utilities and the City Engineer.

62. Prior to the issuance of any Certificates of Occupancy for buildings, all public water facilities shall be complete and operational to the satisfaction of the Director of Public Utilities and the City Engineer.

63. The Owners/Permittees shall design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- The top level of the parking structure shall include landscaped trellis structures and additional landscape features as exhibited and agreed upon by the Owner/Permittee during the City's public hearing.

APPROVED by the City Council of the City of San Diego on April 19, 2011 and Approved Resolution Number R- 306773.

Permit Type/PTS Approval No.: CDP No. 619980
Date of Approval: April 19, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Signature on file

Tim Daly
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owners/Permittees, by execution hereof, agrees to each and every condition
of this Permit and promises to perform each and every obligation of Owners/Permittees
hereunder.**

Protea Flower Hill Mall, L.L.C.,
A California Limited Liability Company
Owners/Permittees

Signature on file

By _____
NAME JEFFREY ESTILLO
TITLE MANAGING MEMBER

Protea Flower Hill Mall West, L.L.C.,
A California Limited Liability Company
Owners/Permittees

Signature on file

By _____
NAME JEFFREY ESTILLO
TITLE MANAGING MEMBER

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

ORIGINAL

REV. 04/25/11

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

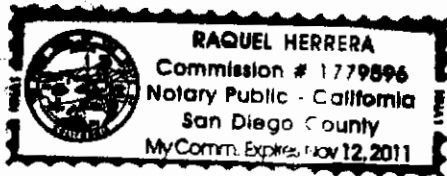
County of San DiegoOn May 25, 2011 before me, Raquel Herrera, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Tim Daly

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Signature on file**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: FLOWER HILL PROMENADE - PROJECT NO. 172026Document Date: April 19, 2011 Number of Pages: 12

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

9299

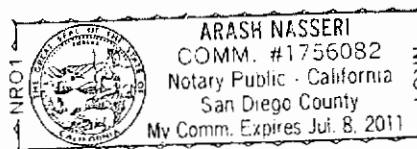
State of California

County of San DiegoOn 5/10/11 before me, ARASH NASSERI, a Notary Public
(Here insert name and title of the officer)personally appeared Jeffrey S. ESSAKOW

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Signature on file (Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

DESCRIPTION OF THE ATTACHED DOCUMENT

A Resolution Approving Capital Acquisition

(Title or description of attached document)

Permit no. 61998 for the

(Title or description of attached document continued)

Flame Hill premises

Number of Pages _____ Document Date _____

(Additional information)

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)

☒ Other Managing Member

Passed by the Council of The City of San Diego on APR 19 2011, by the following vote:

9300

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 19 2011

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By Signature on file Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-

300773

ORIGINAL

Passed by the Council of The City of San Diego April 19, 2011, by the following vote:

YEAS: **LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAYO, ZAPF,
EMERALD; ALVAREZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)



By: Debbie Levenson-Cruz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-306773 approved by the Mayor of the City of San Diego, California on
April 19, 2011.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  *Signature on file*  *Signature on file*, Deputy

ORIGINAL

RESOLUTION NUMBER R- 300773DATE OF FINAL PASSAGE APR 19 2011

A RESOLUTION APPROVING COASTAL DEVELOPMENT
PERMIT NO. 619980 FOR THE FLOWER HILL PROMENADE
PROJECT NO. 172026

WHEREAS, Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners/Permittees, filed an application with the City of San Diego for Coastal Development Permit [CDP] No. 619980 to demolish the existing 14,000 square-foot theater, construct approximately 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot parking structure at an existing commercial development known as the Flower Hill Promenade Project [Project], at 2720 Via de la Valle, and legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008, in the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas, in the CC-1-3 and Coastal Overlay (non-appealable) zones; and

WHEREAS, on March 10, 2011, the Planning Commission of the City of San Diego considered CDP No. 619980, and pursuant to Resolution No. 4682-PC voted to recommend City Council approval of the permit with certain conditions; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the

decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on April 19, 2011, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 619980:

A. COASTAL DEVELOPMENT PERMIT - SECTION 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. The proposed development is located approximately one mile from the ocean. Therefore, it does not encroach upon any existing or proposed physical accessway used by the public to reach the shore. The project site is currently developed with an existing shopping center. The proposed project would expand and reconfigure the shopping center to include 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot multi-level parking structure. The ocean is currently not visible from the project site. The project site is visible from the northbound lanes of Interstate 5, the Del Mar Shopping Center, and San Dieguito Lagoon to the south. The site is minimally visible from Interstate 5 southbound lanes due to the raised portion of the freeway and the proximity of the development to the vegetated slope. The visual stature and bulk of the proposed buildings will be partly offset by their proximity and placement below the slope on the north and west sides of the project. The project will not be substantially more visible from public spaces than the existing development. The market building will be closer to Via del la Valle and farther from the slope than the current cinema building, making it more prominent from roadways. However, the structures proposed on site would not obstruct any public viewing areas since the site sits lower than topographical features immediately to the north. The project is near the San Dieguito Lagoon; however, the Del Mar Shopping Center is situated between the Lagoon and the proposed project and currently obstructs views nearest to the site. For these reasons, the proposed project would not result in any impacts to public views to and along the ocean.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. The project site is currently developed and there are no environmentally sensitive habitats on the site, nor is the site adjacent to the City of San Diego's Multi Habitat Planning Area. The existing slopes on the site are manufactured and do not meet the definition of environmentally sensitive lands. The nearest environmentally sensitive lands are associated with the San Dieguito Lagoon which lies approximately 1,000 feet south of the project. The project site is separated from the lagoon by Via de la Valle and the Del Mar Shopping Center. The separation of the project from the lagoon will avoid direct impacts and reduce indirect impacts on this environmentally sensitive resource. In addition to the spatial separation, impacts to environmentally sensitive lands will be minimized by implementation of water quality control measures mandated by City's Municipal Storm Water Permit and water quality regulations. Additionally, the project proposes to implement several green building standards including a water filtration system for storm drains. Therefore, the proposed development will not adversely affect environmentally sensitive lands.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. The certified Local Coastal Program land use plan is consistent with the City of San Diego General Plan (General Plan) and North City Local Coastal Program (LCP) Land Use Plan land use designations. The project proposes uses consistent with the General Plan land use designation (commercial employment, retail, and services) and implementing zone (CC-1-3). It is covered by the City's Local Coastal Program, which is included in the Coastal Resources section of the Conservation Element of the General Plan. The Conservation Element of the General Plan includes several policies to implement the Local Coastal Program. The proposed project complies with the relevant policies of the program. The Conservation Element includes policies to reduce runoff and improve the quality of runoff discharged into coastal waters, encourage conservation measures and water recycling programs that eliminate or discourage wasteful uses of water, develop and expand water-efficient landscaping, and improve urban runoff water quality through implementation of storm water protection measures. The Flower Hill project proposes several sustainable techniques which will implement these policies such as using landscaping with low water requirements, using water-efficient irrigation control systems and devices, such as soil-moisture based irrigation controls, retaining storm water runoff within landscaped areas where possible, and installing a water filtration system for storm drains. Therefore, the project is in conformance with the regulations of the certified Local Coastal Program and Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The proposed coastal development does not lie between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone. The development will have no affect upon public access and the recreation policies

of Chapter 3 of the California Coastal Act and therefore be in conformance with such Act.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that Coastal Development Permit No. 619980 is granted to Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN GOLDSMITH, City Attorney

Signature on file

By

Nina Fain
Deputy City Attorney

NF:js
03/07/11
04/25/11 Revised
Or.Dept: DSD
R-2011-760
PL#2010-00941

ORIGINAL

R- 300773



RECEIVED

DEC 24 2008

THE CITY OF SAN DIEGO
COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION

California Coastal Commission, San Diego Area Office
7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402
Phone (619) 767-2370

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

DATE: December 11, 2008

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

PROJECT NAME - NUMBER: Paradise Grille- Project No. 149335

PROJECT DESCRIPTION: Process Two Coastal Development Permit to expand an existing, approximately 2,500 square foot restaurant from a single level restaurant to a multi-level restaurant, including an outside dining area.

LOCATION: 2690 Via De La Valle, Suites D-110 and D-210.

APPLICANT'S NAME Conor Adair, President, Paradise Grille

FINAL ACTION: APPROVED WITH CONDITIONS

ACTION BY: Planning Commission on Appeal

ACTION DATE: December 11, 2008

CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

☒ Not appealable to the Coastal Commission

CITY CONTACT: Helene Deisher
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101-4153
Phone: (619) 446-5223

Revised 12/14/07 rh

EXHIBIT NO. 2
APPLICATION NO.
6-11-67-EDD
Notice of Final Action
California Coastal Commission

Development Services Department
Project Management Section

Aerial Photo



RECEIVED

PLANNING COMMISSION RESOLUTION NO.4484-PC
COASTAL DEVELOPMENT PERMIT NO. 526176
PARADISE GRILLE PROJECT NO. 149335

DEC 24 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

WHEREAS, PROTEA FLOWER HILL MALL, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY, Owner, and PARADISE GRILLE INC., Permittee, filed an application with the City of San Diego for a permit to expand an existing, approximately 2,500 square foot restaurant, from a single level restaurant to a multi-level restaurant including an outside dining area (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 526176), on portions of a 15.14 acre site;

WHEREAS, the project site is located at 2690 Via De La Valle, Suites D-110 and D-210 in the CC-1-3 zone, within the City's General Plan;

WHEREAS, the project site is legally described as Parcel 1 of Parcel Map No. 7413;

WHEREAS, on August 29, 2008, the Development Services Department of the City of San Diego considered Coastal Development Permit No. 526176 pursuant to the Land Development Code of the City of San Diego and approved the permit;

WHEREAS Evan V. Kleber, on September 26, 2008, appealed staff's decision to the Planning Commission;

WHEREAS, the matter was for public hearing on December 11, 2008, testimony having been heard, evidence having been submitted, and the Planning Commission of the City of San Diego having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission that it adopts the following written Findings, with respect to Coastal Development Permit No. 526176.

FINDINGS: Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

The proposed development is for a Coastal Development Permit to expand an existing, approximately 2,500 square foot restaurant, from a single level restaurant to a multi-level restaurant including an outside dining area is located at 2690 Via De La Valle, Suites D-110 and D-210 in the CC-1-3 zone, within the City's General Plan. The existing restaurant is in an existing shopping center which has been in operation for over 20 years. The development proposes to expand an existing 2,500 square foot restaurant by adding to the restaurant 1,600 square feet of adjacent vacant retail space. The expansion will be done completely within the existing building. The proposed development will also convert 2,700 square feet of existing interior court yard area to outdoor patio dining. The proposed development is located approximately 1-1/4 miles east of the Pacific Ocean coastline 1/2 mile north of the San Dieguito

River and will not encroach upon any existing or proposed physical access to the coast and will not have any affect on any public views to or along the ocean or the river.

2. The proposed coastal development will not adversely affect environmentally sensitive lands.

The proposed development is for a Coastal Development Permit to expand an existing, approximately 2,500 square foot restaurant, from a single level restaurant to a multi-level restaurant including an outside dining area is located at 2690 Via De La Valle, Suites D-110 and D-210 in the CC-1-3 zone, within the City's General Plan. In as much as the proposed development is the conversion of existing retail and interior court yard space, it does not have the potential to cause a significant impact on the environment or adversely affect environmentally sensitive lands. As there are no environmentally sensitive lands present on the site. Furthermore, the proposed development is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA State Guidelines, Section 15301(e)(2) [Existing Facilities] and 15303(c) and (e) [New Construction or Conversion of Small Structures]. Therefore, the proposed coastal development will not adversely affect environmentally sensitive lands.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

The proposed development is for a Coastal Development Permit to expand an existing, approximately 2,500 square foot restaurant, from a single level restaurant to a multi-level restaurant including an outside dining area is located at 2690 Via De La Valle, Suites D-110 and D-210 in the CC-1-3 zone, within the City's General Plan. The proposed development does not impact the surrounding natural landforms or native vegetation since the development does not propose the construction of any new buildings. There are no adverse impacts on coastal access as evidenced by the proposed development's parking study which found adequate on-site parking for the existing uses at the shopping center, including the proposed development. The project site is also designated for commercial development within the North City Local Coastal Program. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone, the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

The proposed development is for a Coastal Development Permit to expand an existing, approximately 2,500 square foot restaurant, from a single level restaurant to a multi-level restaurant including an outside dining area is located at 2690 Via De La Valle, Suites D-110 and D-210 in the CC-1-3 zone, within the City's General Plan. The proposed development is within an existing shopping center that has been in operation for over 20 years and is located within a well established urbanized area. The proposed development is located approximately 1-1/4 miles east of the Pacific Ocean coastline 1/2 mile north of the San Dieguito River area and does not involve any development between the first public road and the sea shoreline or river frontage. There are no identified public access and public recreation areas on the project site nor will these resources be impaired by the proposed restaurant expansion. The proposed project will have no affect upon the access or recreational policies of the Coastal Act. Therefore, the proposed project is in conformance with the policies of the California Coastal Act.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Development Services Department, Coastal Development Permit No. 526176 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 526176 a copy of which is attached hereto and made a part hereof.

Helene Deisher
Development Project Manager
Development Services

Adopted on: December 11, 2008

Job Order No. 43-0270

cc: Legislative Recorder, Development Services Department

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 43-0270

COASTAL DEVELOPMENT PERMIT NO. 526176
PARADISE GRILLE PROJECT NO. 149335
PLANNING COMMISSION

This Coastal Development Permit No.526176 is granted by the Development Services Department of the City of San Diego to PROTEA FLOWER HILL MALL, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY, Owner, and PARADISE GRILLE INC., Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0701. The 15.14 acre site is located at 2690 Via De La Valle, Suites D-110 and D-210, CC-1-3 zone(s) in the City's General Plan. The project site is legally described as Parcel 1 of Parcel Map No. 7413.

Subject to the terms and conditions set forth in this Permit, permission is granted to PROTEA FLOWER HILL MALL, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY, Owner, and PARADISE GRILLE INC., Permittee to expand an existing, approximately 2,500 square foot restaurant from a single level restaurant to a multi-level restaurant, including an outside dining area described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated August 29, 2008, on file in the Development Services Department.

The project shall include:

- a. Expansion of an approximately 2,500 square foot restaurant from a single level restaurant with an outside patio dining area. Conversion of an existing vacant retail space (approximately 1,600 square feet) from retail use to restaurant use and the addition of a patio dining area (approximately 2,700 square feet) to be located on the lower level adjacent to the converted retail space. The total area of Paradise Grille Suites D-110 and D-210 shall be 6,800 square feet.
- b. Off-street parking within the existing shopping center area; and

- c. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No certificate of final occupancy described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

PLANNING/DESIGN REQUIREMENTS:

11. No fewer than 787 off-street parking spaces shall be permanently maintained on the property by the Owner including disabled/accessible spaces, motorcycle and loading space in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the Development Services Department.

12. Including the Paradise Grille, the existing shopping center shall not exceed 42,379 square feet of restaurant uses unless an amendment to this permit allowing the additional restaurant use is obtained by the Owner.

13. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

14. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

15. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- This project was approved by Development Services on September 11, 2008 with Resolution No. 4484-PC and appealed to the Planning Commission
-

APPROVED by the Planning Commission of the City of San Diego on December 11, 2008, Resolution No. 4484-PC.

Coastal Development Permit No. 526176
Date of Approval: December 11, 2008

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Helene Deisher
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

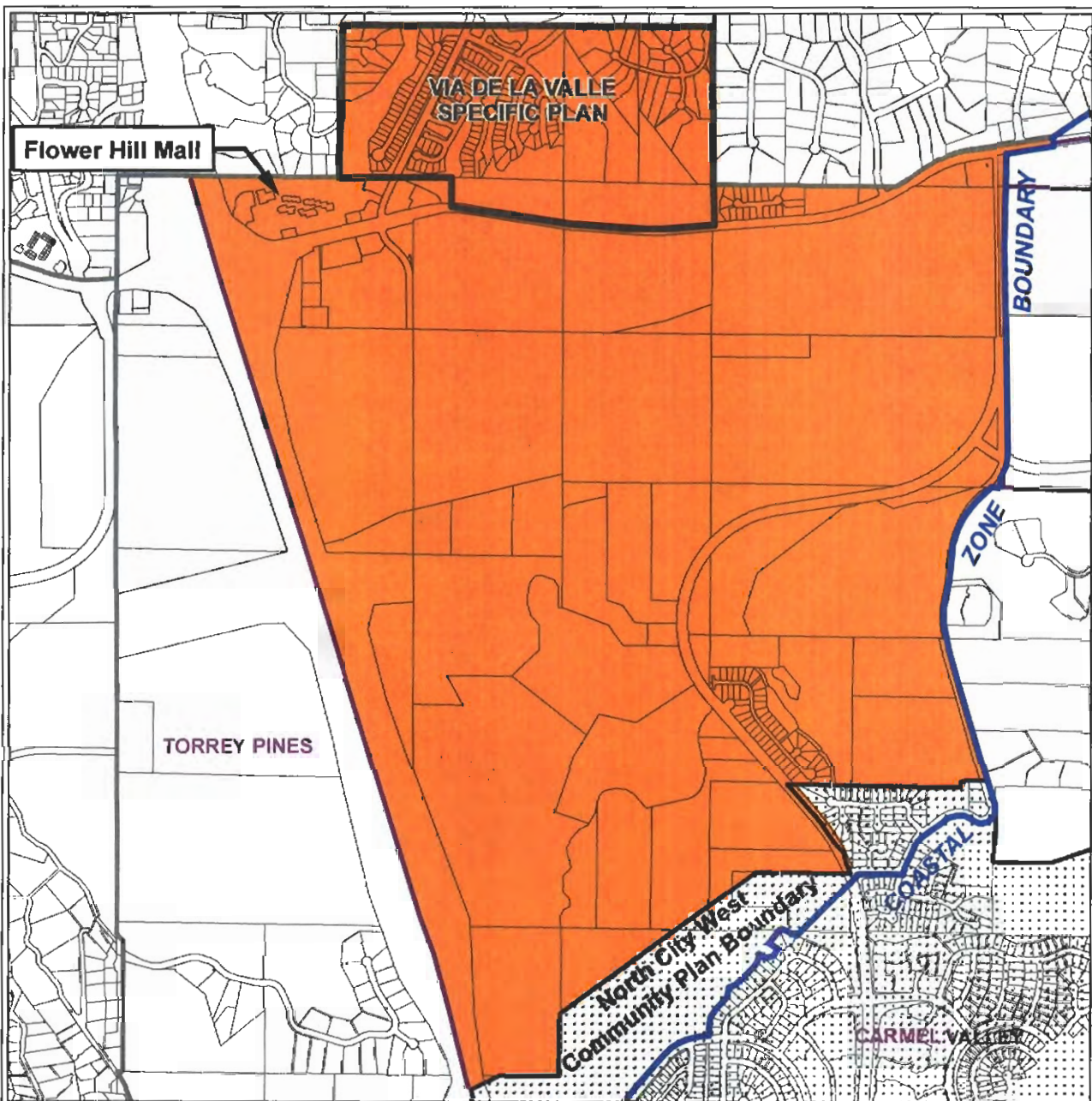
[PROTEA FLOWER HILL MALL, LLC]
OWNER

By _____
NAME
TITLE






[PARADISE GRILLE INC.]
Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**



Areas of Deferred Certification - San Dieguito River Valley

-  Draft Coastal Zone Boundary
-  City Boundaries
-  Community Plans
-  North City West Community Plan Boundary
-  Areas of Deferred Certification

RECEIVED
AUG 22 2011
San Diego Coastal Commission

PRELIMINARY DRAFT - NOT FOR DISTRIBUTION - FOR ILLUSTRATIVE PURPOSES

CALIFORNIA
COASTAL
COMMISSION

Technical Services Division - GIS Unit



EXHIBIT NO. 3
APPLICATION NO.
6-11-67-EDD
Deferred Certification
Map

 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 787-2370



May 19, 2006

City of San Diego
Planning Department
Attn: Jennifer Cordeau
202 "C" Street MS 5A
San Diego, CA 92101

City of San Diego
Development Services Department
Attn: Derrick Johnson
1222 First Avenue MS 301
San Diego, CA 92101

Re: Flower Hill Mall Coastal Development Permit Jurisdiction

Dear Ms. Cordeau and Mr. Johnson:

It has come to the attention of the Coastal Commission's San Diego staff that the City of San Diego has determined that the above-referenced site, which is located north of Via de la Valle, just east of I-5 is located within the City of San Diego coastal development permit jurisdiction. After speaking with both of you by telephone a couple weeks ago, further research in this office has confirmed what Ms. Cordeau advised at that time. That is that this specific site is not part of any certified community plan; it is thus not part of the City's certified Local Coastal Program. Therefore, coastal development permit jurisdiction remains with the California Coastal Commission.

It is our understanding that several significant modifications to this existing shopping mall have either already occurred or are in process at the City. Specifically, (1) an existing restaurant within the mall has expanded its operations into area previously used for retail sales and open patio area; (2) a two-lot "financial" subdivision of the site is undergoing City review, and (3) major expansion of the shopping center is being planned and/or processed locally. All three of these matters constitute development and thus require a coastal development permit. Once all local discretionary actions for these matters have been completed, the property owner can submit applications to this office for coastal development permits.

To appropriately address these matters, particularly since one has already occurred without a coastal development permit, please provide the name and address of the current

EXHIBIT NO. 4
APPLICATION NO.
6-11-67-EDD

Letter to City Dated
May 19, 2006

City of San Diego/Cordeau/Johnson
December 2, 2009
Page 2

property owner so that we may contact the owner directly, or, if you have contact with the owner, please refer that party to this office immediately. We would like to send a copy of this letter to the owner, and further correspondence may be forthcoming from our Enforcement Division regarding the restaurant expansion.

Thank you for helping us correct this situation as expeditiously as possible. If you have any questions, please do not hesitate to call me at 619-767-2370.

Sincerely,



Ellen Lirley
Coastal Planner

cc: Lee McEachern
Marsha Venegas

(G:\San Diego\ELLEN\Flower Hill Mall Jurisdictional Letter.doc)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



July 28, 2006

Protea Properties
Attn: Rose Jabin
2720 Via de la Valle, Suite E-210
San Diego, CA 92130

Re: Flower Hill Mall Coastal Development Permit Jurisdiction

Dear Ms. Jabin:

This letter addresses the coastal development permit jurisdiction at the Flower Hill Mall property, which is located north of Via de la Valle, and just east of I-5. On May 19, 2006, in response to telephone inquiries from both the City and the public, Commission staff wrote a letter to the City of San Diego confirming that the Flower Hill Mall property is not part of any certified community plan. Thus, it is not part of the City's certified Local Coastal Program, and, as such, coastal development permit jurisdiction remains with the California Coastal Commission. Staff was unaware of who owned the property at that time, so was unable to copy the property owner with that letter. I did, however, speak with you shortly thereafter, and you were made aware of Commission staff's determination.

It was our intention to meet with City staff and the property owner on June 26, 2006 to discuss the jurisdictional questions, which were complicated by past errors in identifying permit jurisdiction. Unfortunately, that meeting was cancelled by the City, and the City is now maintaining that it has coastal development permit jurisdiction over this site. The Coastal Commission staff disagrees, and is attempting to resolve the matter as expeditiously as possible.

Staff has now been made aware that a hearing is proposed at the City next Wednesday to take action on a Tentative Map Waiver and Coastal Development Permit. It is the Coastal Commission staff's opinion that any coastal development permit issued by the City for this site would be invalid, as the City does not have legal jurisdiction to issue a coastal development permit in this area. It is advisable, should the City issue a coastal development permit, that you not act on it until a coastal development permit is obtained from the Commission.

The City of San Diego LCP is comprised of a several Land Use Plans, representing different planning segments of the City, and Implementing Ordinances, which consist of portions of the Land Development Code. This site is not within any community that is part of the LCP, and is thus not within an area governed by a certified Land Use Plan. A City-issued coastal development permit must include legal findings that the development

EXHIBIT NO. 5**APPLICATION NO.****6-11-67-EDD**

Letter to City Dated
July 28, 2006



California Coastal Commission

Protea Properties/Jabin
July 28, 2006
Page 2

is consistent with the certified Land Use Plan for the area. The public hearing notice acknowledges that the project site is not within a particular community planning area (i.e., not within a certified Land Use Plan) and seeks to use the City's Progress Guide and General Plan to make this required finding. Neither the Progress Guide nor the General Plan constitute the certified LCP, and, therefore, cannot fulfill this legal requirement.

In addition to the upcoming tentative map, staff understands you propose a major expansion of the shopping center. Also, some changes from retail to restaurant use have apparently occurred without a coastal development permit. All three of these matters constitute development and thus require a coastal development permit. It is appropriate to continue processing these matters with the City with respect to any required approvals other than a coastal development permit. Once all local discretionary actions for these matters have been completed, you may then submit applications to this office for coastal development permits. A coastal development permit application is enclosed for your convenience.

Thank you in advance for your attention to this letter, and for helping us correct this situation as expeditiously as possible. If you have any questions, please do not hesitate to call me at 619-767-2370.

Sincerely, *U*

Signature on file

Ellen Lirley
Coastal Planner *U*

Enc. One application

cc: Gary Halbert, City of San Diego
Kelly Broughton, City of San Diego
Derrick Johnson, City of San Diego
Sherilyn Sarb, Coastal Commission
Lee McEachern, Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



July 31, 2006

Hearing Officer
City of San Diego
Council Chambers, 12th Floor
202 "C" Street
San Diego, CA 92101

Re: Project No. 45882 (Flower Hill Mall Map Waiver)

Dear Sir or Madam:

It has come to our attention that a public hearing is set for the above-referenced matter at 8:30 a.m. on Wednesday, August 2, 2006. Commission staff objects to the City taking action on a coastal development permit at this time, as staff maintains the City does not have coastal development permit jurisdiction on the Flower Hill Mall site.

It is staff's understanding that the City's determination that it has jurisdiction is based on the draft post-certification maps, which depict the areas of City jurisdiction, Coastal Commission original jurisdiction, areas of deferred certification where the Commission retains permit authority temporarily, and areas subject to appeal to the Commission. The draft maps do indicate that the City has coastal development permit authority over this site. However, these are draft maps only; they have not been certified by the Commission and are still being refined and corrected. Over the years, both City and Commission staff have identified many errors on the maps, which is the primary reason why the maps have not been certified.

Please see the attached letters which explain why the Commission retains coastal development permit jurisdiction on this site. Until a land use plan is certified for this area (presumably the Via de la Valle Specific Plan), the area is not part of the City's LCP; thus, coastal development permit jurisdiction cannot transfer to the City and remains with the Commission. Please do not take an action on Coastal Development Permit No. 45882 until this matter can be resolved.

Sincerely,

Signature on file

Ellen Lirley
Coastal Planner

(G:\San Diego\ELLEN\Flower Hill Mall H.O. Letter 7.31.06.doc)

EXHIBIT NO. 6
APPLICATION NO.
6-11-67-EDD
Letter to City Dated July 31, 2006
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

May 30, 2007

City of San Diego
Planning Department
Attn: Betsy McCullough, AICP
202 "C" Street MS 5A
San Diego, CA 92101

Re: Flower Hill Mall Coastal Development Permit Jurisdiction

Dear Ms. McCullough:

This letter is regarding coastal development permit authority at Flower Hill Mall, which is an existing neighborhood shopping center located in the northeast quadrant of the Interstate 5/Via de la Valle interchange just south of Solana Beach. A question has arisen as to whether coastal development permit (CDP) jurisdiction rests with the City of San Diego or the California Coastal Commission in this area. The Coastal Commission's San Diego District staff wrote three letters to the City last year (see attached) in an attempt to resolve this issue; however, there has been no response to these letters, and we have been unable to discuss this matter directly with any City staff member. At this time, we would like confirmation from City staff that you agree the CDP jurisdiction in this area rests with the Coastal Commission, and there is no further dispute regarding CDP jurisdiction.

As you will see in these past letters, City staff had advised Commission staff that this specific site is not part of any certified community plan. This information was then independently researched and verified by Commission staff. To be part of the City's certified LCP, a site must be located within a certified land use plan area, which in the case of the City of San Diego usually takes the form of a community plan or precise plan, in order for the City to have the authority to issue coastal development permits. The uncertified 1984 Via de la Valle Specific Plan includes conflicting information as to whether or not the center/property lies within its boundary. The center/property is clearly shown to be outside the North City Future Urbanizing Area (Subarea II) planning area to the south. The City's LCP requires certain findings be made for any coastal development permit it issues. One of those findings is that the proposed development is consistent with the certified land use plan. Since there is no certified land use plan for the subject site, the required finding cannot be made. Thus, the subject property is not part of the City's certified Local Coastal Program, and coastal development permit jurisdiction remains with the California Coastal Commission.

EXHIBIT NO. 7**APPLICATION NO.****6-11-67-EDD**

Letter to City Dated
May 30, 2007

At one point in the past, we know City staff maintained that the above-referenced site is located within the City of San Diego coastal development permit jurisdiction. The City's determination was based on the 1988 draft post-certification maps, which incorrectly identify this site as being in the City's coastal development permit jurisdiction. These maps have not been certified, and are known by both Commission and City staff to contain numerous errors.

It is Commission staff's understanding that the City has already approved a coastal development permit authorizing a two-lot financial subdivision for this property. Because the site is not located within a certified land use plan area, and is, thus, not part of the certified LCP, Commission staff believes this permit is invalid. It is Commission staff's understanding that several significant modifications to this existing shopping mall have either already occurred, are currently in the review process at the City, or are being planned for future submittal to the City. Specifically, and at a minimum, (1) an existing restaurant within the mall has expanded its operations into area previously used for retail sales and open patio area; (2) a two-lot "financial" subdivision of the site has undergone City review and been issued an invalid coastal development permit, and (3) major expansion of the shopping center is being planned and/or processed locally. All three of these matters constitute development and, thus, require a coastal development permit from the Coastal Commission. Once all local discretionary actions for these matters have been completed, the property owner can submit applications to this office for coastal development permits.

This is not an isolated incident, as other instances have come up that demonstrate the City's awareness that a site has to be within a certified land use plan for the City to grant the coastal development permit. In the past, but subsequent to effective certification of the City's LCP and the delegation of coastal development permit authority for most areas, the Commission has processed coastal development permits for projects within the Linda Vista and Mission Valley communities, since neither community is part of the City's LCP. One of these was a City project. However, Commission staff has recently received preliminary plans for a Linda Vista project, wherein the City is processing both a site development permit and a coastal development permit. A message left for the assigned project manager explaining the Commission's position was not returned.

Commission staff would like to resolve this matter, and has attempted to do so through both letters and phone calls. There has been no response from the City to these efforts. Before the first letter was sent, a meeting with City staff was set approximately a year ago to discuss this matter, but was then cancelled by City staff without notification to the Commission. Commission staff still wants to meet with City staff to discuss these concerns. Thank you in advance for investigating this matter and helping us address this

City of San Diego/McCullough
May 30, 2007
Page 3

situation as expeditiously as possible. If you have any questions, please do not hesitate to call me at the above office.

Sincerely,

original signed by

Ellen Lirley
Coastal Planner

cc: Michael Aguirre
Protea Properties
Derrick Johnson
Sherilyn Sarb
Deborah Lee
Lee McEachern
Marsha Venegas

(O:\San Diego\ELLEN\Flower Hill Mall Letter 5.30.07.doc)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

February 18, 2009

City of San Diego
Attn: Kelly Broughton
1222 First Avenue, MS301
San Diego, CA 92101

Re: Coastal Development Permit Jurisdiction for Flower Hill Mall

Dear Mr. Broughton:

This letter is regarding coastal development permit authority at Flower Hill Mall, which is an existing neighborhood shopping center located in the northeast quadrant of the Interstate 5/Via de la Valle interchange within the City of San Diego. We met early in 2008 with you, Betsy McCullough and Cecilia Gallardo to discuss coastal development permit (CDP) jurisdiction for this site. The City presented its position that the original North City Land Use Plan (LUP), a document certified by the Coastal Commission in 1984, with amendments to the document certified in 1985 and 1987, covered this area of the City, and as such, coastal development permit (CDP) jurisdiction rested with the City of San Diego. California Coastal Commission staff, in that meeting, tentatively agreed that the City's position had merit, but wanted to review a number of documents for the North City communities before reaching full concurrence.

Our review of those documents and our records is now complete, and we have determined that CDP jurisdiction for the Flower Hill Mall property rests entirely with the Coastal Commission. All of the arguments in our previous letters to the City regarding this matter are still pertinent. The Flower Hill Mall property is not part of any certified land use plan other than possibly the old North City LUP, although maps within that document are conflicting. To be part of the City's certified LCP, a site must be located within a certified land use plan area, which in the case of the City of San Diego usually takes the form of a community plan or precise plan, in order for the City to assume the authority to issue coastal development permits. The uncertified 1984 Via de la Valle Specific Plan includes conflicting information as to whether or not the center/property lies within its boundary. The center/property is clearly shown to be outside the North City Future Urbanizing Area (Subarea II) planning area to the south. Even if it were within one of those plans, neither are certified areas, and the Coastal Commission continues to issue CDPs for development in those areas, along with development in the shopping center on the south side of Via de la Valle.

Most significantly, however, the City's assertion that the property is part of the certified LCP simply because it is included in the original North City Land Use Plan, which was

EXHIBIT NO. 8**APPLICATION NO.****6-11-67-EDD**

**Letter to City Dated
February 18, 2009**

the key point of discussion in our meeting, is incorrect. At the time of effective certification of the City's LCP, and the transfer of CDP authority to the City, a list of areas where certification was deferred was included in the Commission's action. The first eight "areas of deferred certification" on this list are located within the original North City Land Use Plan boundaries, but were clearly not certified when permit authority was transferred to the City on October 17, 1988 (see attached list). Commission staff maintains that the Flower Hill Mall site is included in #2 on that list, which states:

"2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985;"

Some items on the list (#4, Neighborhood 8, is an example) have become certified since 1988 and permit jurisdiction has since been transferred to the City in those instances. No such action has occurred in conjunction with the lands described in #2.

It is Commission staff's understanding that the City has already approved a coastal development permit authorizing a two-lot financial subdivision for this property, and, very recently, an after-the-fact permit for improvements to the Paradise Grille leasehold, which were constructed without a CDP. Because the site is not located within a certified land use plan area, and is identified as an area of deferred certification, it is not part of the certified LCP; thus, it is our position that these permits are invalid with respect to the CDP. If other discretionary permits were approved concurrently, those permits, of course, are valid. The property owners should be directed to our office to apply for coastal development permits directly from this agency for those past items, as well as for all future plans.

It is our understanding that significant modifications to this existing shopping mall have recently been proposed to the City. Whenever review of any applicable City discretionary permits other than a CDP (such as a SDP, PCD, etc.), have been completed, the applicant may apply to this office for the CDP itself. Since this is an uncertified area, Chapter 3 policies of the Coastal Act are the legal standard of review for the Commission.

We realize that the uncertified status of the City's jurisdictional maps is a serious concern for both of our agencies. As we indicated to you in our last meeting, we had taken steps to get updated drafts from our technical services unit in San Francisco and were working on them. Unfortunately, with our ongoing staffing restrictions and workload, progress on correcting/editing the maps has been slow. The current state budgetary constraints will not improve the situation. However, we will endeavor to prioritize this work and coordinate with you and your colleagues as soon as possible.

City of San Diego/Broughton
February 18, 2009
Page 3

It is our position that this particular jurisdictional question (Flower Hill Mall) has now been resolved. There are several areas where jurisdictional issues have been raised relative to the draft maps; the City should annotate those areas with direction to seek further consultation with our office. This procedure is not ideal but it is the most prudent course of action until the maps can be updated and formally adopted by both agencies. Please contact us if you disagree with this conclusion, or have any other questions.

Sincerely,

original signed by
Ellen Lirley
Coastal Planner

cc: Betsy McCullough
Mary Wright
Cecilia Gallardo
Jan Goldsmith
Andrea Dixon
Protea Properties
Helene Deisher
Sherilyn Sarb
Deborah Lee
Lee McEachern
Marsha Venegas

Deborah Lee

From: Deborah Lee *DL*
Sent: Monday, April 26, 2010 4:36 PM
To: 'DSDEAS@sandiego.gov'
Cc: Deborah Lee; Lee.McEachern
Subject: Flower Hill Promenade/Project No. 172026/SCH No. 2009021078
Attachments: FlowerHillMall jurisdictionltr.pdf

Dear Ms. Shearer-Nguyen, thank you for the opportunity to provide these brief comments on the draft environmental impact report (DEIR) for the above-referenced project. The DEIR addresses issues related to the redevelopment of the site by demolishing the existing theater and then constructing, in part, a larger specialty food store, new office facilities and an on-site, four level parking structure. Coastal Commission staff has provided comments to the City about the subject site previously relative to the coastal development permit jurisdiction. As the DEIR notes "the project site is not within the boundaries of a community plan"; however, the document still concludes that the regulatory review would be conducted by the City of San Diego. Attached please find a letter from our agency, dated February 18, 2009, which provided the findings we reached after consultation and meetings with several City staff members (Kelly Broughton, Cecilia Gallardo and Betsy McCullough). To date, we have received nothing further in response and this office continues to maintain that the Flower Hill property falls within Coastal Commission direct permit jurisdiction.

Aside from this jurisdictional determination and based on a review of the DEIR, our office would provide the following comments. The identified traffic impacts, while limited to the segment of Via de la Valle between El Camino Real and San Andres Drive and the Via de la Valle/El Camino Real intersection, still materially affect a major coastal access route and are therefore problematic. The identified mitigation is also questionable since it would fail to guarantee that the needed road improvements to Via de la Valle would either be permitted or completed. While the proposed specialty food store would likely serve the needs of visitors to the area, the demand for additional visitor-serving uses at this important Interstate 5 interchange and important visitor destination area, rather than so much office space, should be considered and addressed. Although the DEIR makes findings that the proposed store and parking structure will not significantly affect any public views, the analysis should specifically consider vantage points along the Interstate 5 corridor and how the bulk/scale of the new development modifies the existing backdrop of the natural slopes behind the existing center. Relative to both the potential for raptor habitat impacts and the discovery of possible paleontological resources at the site, Commission staff concurs that these resources need to be protected and bonafide mitigation measures are warranted. Thank you for the opportunity to provide these comments and please feel free to contact me if you have any questions--
 Deborah Lee

~~~~~  
 Deborah N. Lee  
 District Manager  
 California Coastal Commission  
 San Diego Coast District  
 Office: (619)767-2370  
 Fax: (619) 767-2384  
 dlee@coastal.ca.gov  
 ~~~~~

4/30/2010

EXHIBIT NO. 9
APPLICATION NO.
6-11-67-EDD
Email to City Dated
April 26, 2010
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



April 18, 2011

Tim Daly
City of San Diego
Development Services
1222 First Avenue, MS 501
San Diego, CA 92101

Re: City Council Docket for April 19, 2011; Item 332 - Flower Hill Promenade, Project.
No. 172026

Dear Mr. Daly,

Coastal Commission staff has provided comments to the City on multiple occasions regarding the determination of coastal development permit jurisdiction for this property and the related Promenade proposal. To date, we have received no formal reply to our most recent letter, dated February 18, 2009, or e-mail, dated April 26, 2010; please see all the correspondence attached. We continue to believe the Flower Hill Promenade site remains in Coastal Commission permitting jurisdiction and any coastal development permit for the site should be obtained from this agency. Please contact me at the above office if you have any questions; thank you.

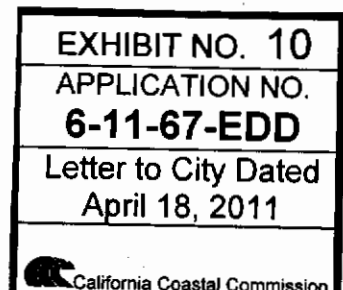
Sincerely,

Signature on file

Deborah N. Lee
District Manager

Cc: Mike Westlake
Michelle Sokolowski
Dan Joyce
Sherilyn Sarb
Lee McEachern

(G:\San Diego\Deborah\Flower Hill edp jurisdiction4.18.11.doc)





THE CITY OF SAN DIEGO

July 30, 2007

Ms. Ellen Lirley, Coastal Planner
California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Dear Ms. Lirley:

Subject: Flower Hill Mall

This is in response to your letter dated May 20, 2007, regarding Coastal Development Permit jurisdictions for the Flower Hill Mall. Like the California Coastal Commission (Coastal Commission) staff, City of San Diego (City) staff is interested in clarifying the regulations applicable to this site.

As we have demonstrated in planning processes and discussions with Coastal Commission staff over the years, we are aware of the Coastal Act's hierarchy of compliance: certified land use plans implement the policies of Chapter 3 of the Coastal Act and certified zoning regulations implement certified land use plans. We agree that the situation with the Flower Hill Mall is unique and requires further clarification.

Coastal Commission staff states that the Flower Hill Mall is incorrectly identified on the 1988 post-certification maps as being within the City's coastal permit jurisdiction and that permit authority should be retained by the Commission. The lack of a governing certified land use plan is cited by Commission staff in support. City staff, on the other hand, has applied the Coastal Commission-certified zoning to the site and the City Council approved 1988 post-certification maps showing City jurisdiction. The City has operated with this approach because Exhibit "A," attached to the city's original resolution of Local Coastal Program (LCP) approval, does not identify this site as a "deferred certification area."

It has been City staff's experience that Coastal Commission staff direct applicants in areas without certified land use plans to proceed through the City's process to obtain land use plan and zoning implementation concurrently, along with any other associated discretionary permits. After the City's approval process, applicants then follow-up with the Coastal Commission review and certification of the amendment to the LCP. The most recent example is the approximately 19-acre site located east of Interstate 5 on the

Received

AUG 01 2007

California Coastal Commission
San Diego Coast District

City Planning and Community Investment

202 C Street, MS 4A • San Diego, CA 92101-3864
Tel (619) 235-5200 Fax (619) 533-5951

EXHIBIT NO. 11

APPLICATION NO.

6-11-67-EDD

Letter to CC Staff

Dated July 30, 2007

 California Coastal Commission




Page 2
Ms. Ellen Lirley
July 30, 2007

north side of Via de la Valle. This property is within the Via de la Valle Specific Plan, which has not received certification from the Coastal Commission. In August of 2006, in a meeting with Planning Department staff to discuss processing issues related to a development application for the site that would include a land use plan amendment and rezone for the property, Coastal Commission staff advised that the applicant submit their project to the City to obtain the necessary approvals, and then proceed to the Coastal Commission for review and certification of the amendment to the LCP.

We agree it would be beneficial to meet to discuss process concerns for this property and others properties in this situation. Please contact me directly to set up a meeting with staff from the City Planning & Community Investment and Development Services departments, including Bob Manis, Deputy Director of Development Services, who is the City's Coastal Commission liaison. I can be reached at (619) 236-6139 or at bmccullough@sanidiego.gov.

Sincerely,

Signature on file 

Betsy McCullough, AICP
Assistant to the Director
City Planning & Community Investment Department

BAM/CG/ah

cc: Jim Waring, Deputy Chief, Land Use and Economic Development
William Anderson, Director, City Planning & Community Investment
Marcela Escobar-Eck, Director, Development Services
Kelly Broughton, Assistant Director, Development Services
Mike Aguirre, City Attorney
Derrick Johnson, Development Project Manager, Development Services
Jennifer Cordeau, Associate Planner, City Planning & Community Investment

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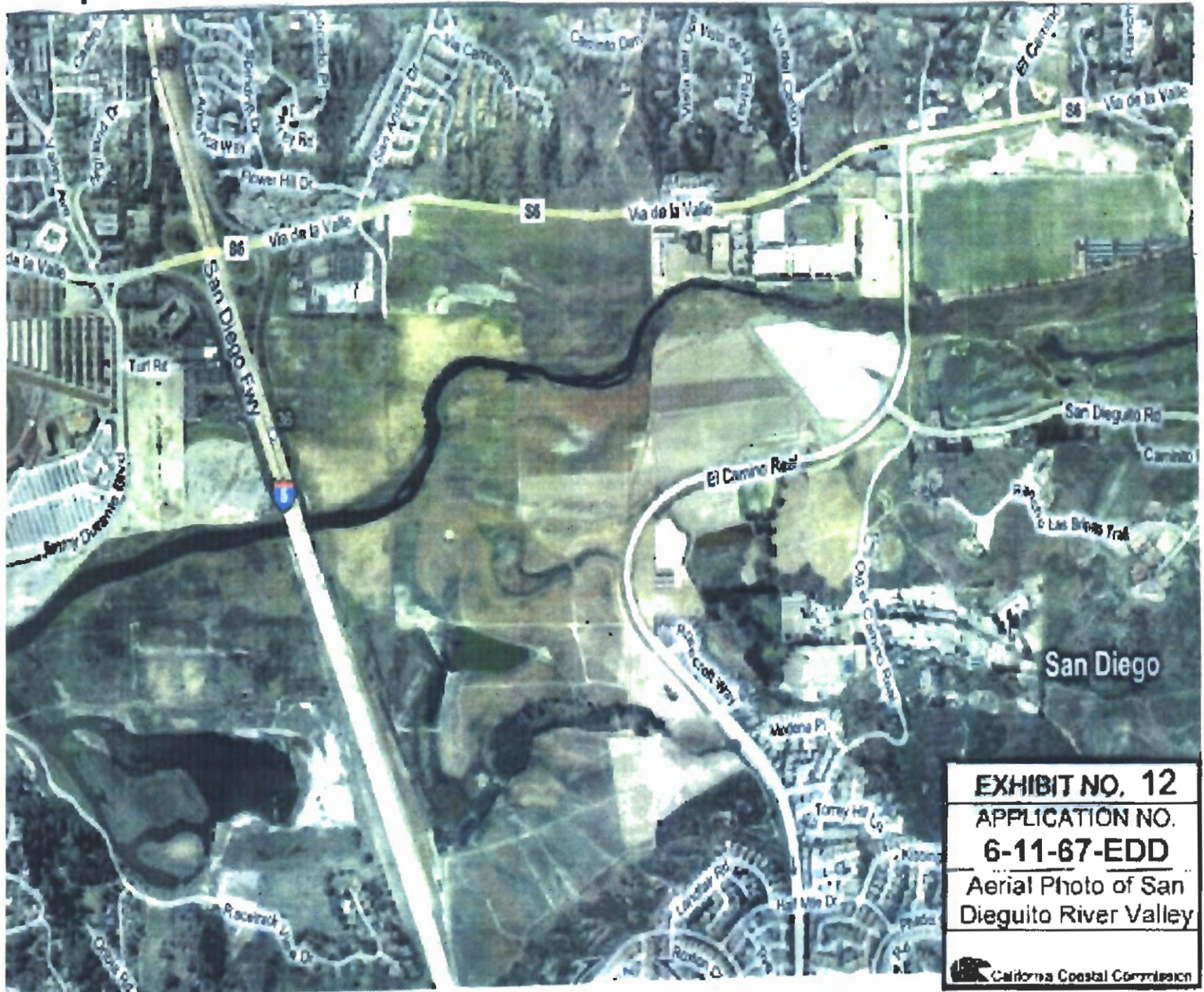


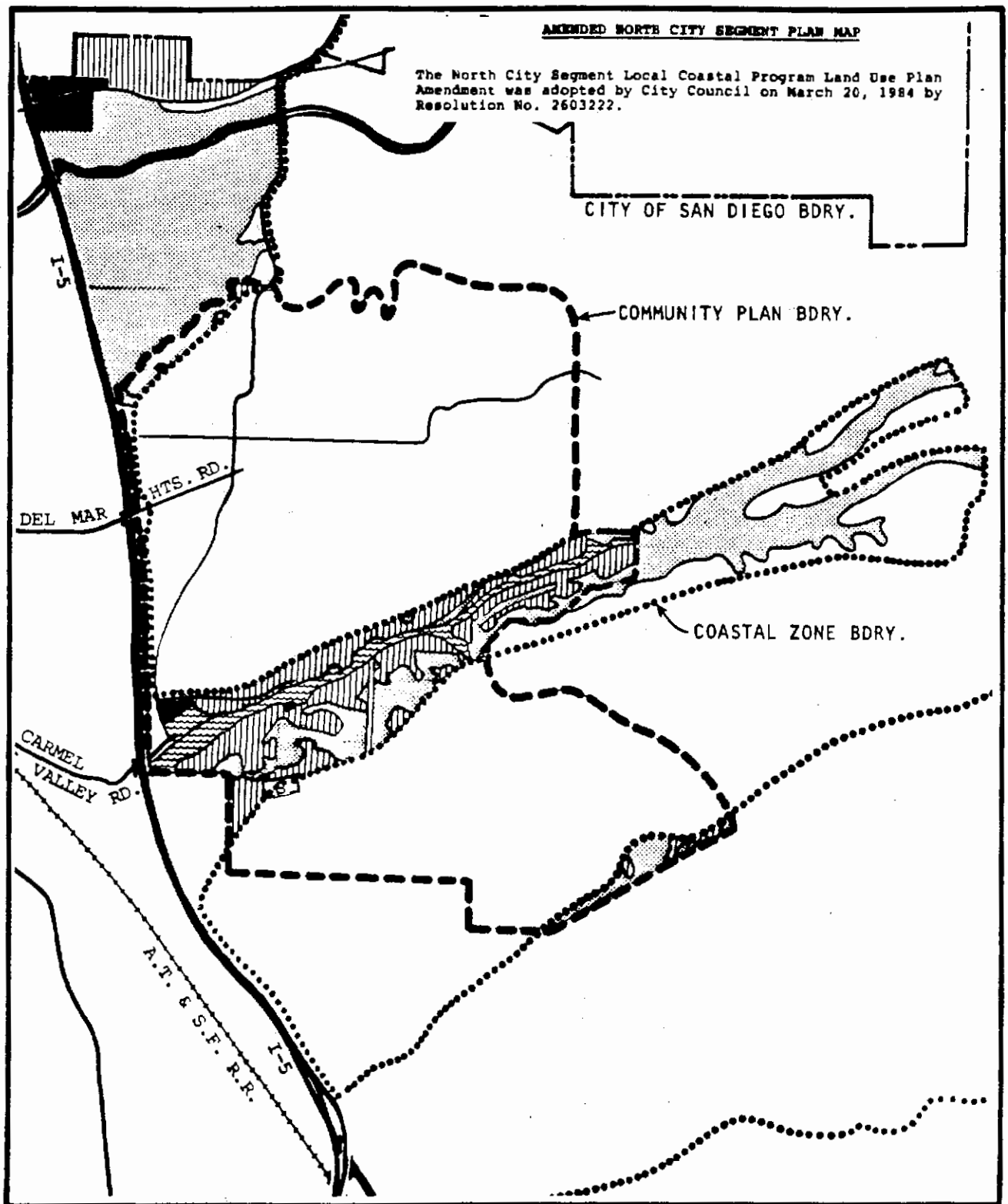
EXHIBIT NO. 12

APPLICATION NO.

6-11-67-EDD

**Aerial Photo of San
Dieguito River Valley**

 California Coastal Commission



NORTH CITY LOCAL COASTAL PROGRAM



**CITY OF SAN DIEGO
PLANNING DEPARTMENT**

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE

	RESIDENTIAL
	COMMERCIAL
	FLOOD PLAIN
	OPEN SPACE/PARKS
	SCHOOL SITES

EXHIBIT NO. 13
APPLICATION NO.
6-11-67-EDD
 Page 103 of North
 City LUP

State of California, Edmund G. Brown Jr., Governor

California Coastal Commission
San Diego District
6154 Mission Gorge Road, Suite 220
San Diego, California 92120
(714) 280-6992
ATSS 636 6868

TO:

FROM: MICHAEL L. FISCHER, EXECUTIVE DIRECTOR; ROBERT BROWN, DEPUTY DIRECTOR
FOR LAND USE; and THOMAS A. CRANDALL, SAN DIEGO COAST DISTRICT DIRECTOR

SUBJECT: STAFF RECOMMENDATION ON THE NORTH CITY SEGMENT OF THE CITY OF SAN DIEGO
LOCAL COASTAL PROGRAM LAND USE PLAN (Public Hearing and Commission
determination on Substantial Issue for the meeting of August 19-21, as
described in the enclosed meeting notice).

This recommendation was developed by John Pedroarena, San Diego Coast District
Principal Planner.

SYNOPSIS

Background

The North City LCP land use plan consists of the land use plans or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Planning Areas. At the suggestion of the Coastal Commission, the planning areas are being considered as a group because of concerns regarding drainage into the Los Penasquitos and San Dieguito Lagoons from adjacent and upstream watersheds, the impacts of traffic volume and circulation in and through the various segments, and the cumulative impacts of development in the entire area.

On March 28, 1981, the San Diego City Council adopted the plan and authorized the City's submittal of the North City LCP land use plan to the Commission. The San Diego Coast Regional Commission denied the plan as submitted on June 26, 1981. The Regional Commission then approved suggested policy language revisions which, if incorporated into the land use plan by the City of San Diego, would result in a certifiable plan.

Key Staff Recommendation

Staff recommends that the Commission find that no substantial issue is raised by the City of San Diego's land use plan for the North City Communities on the basis of the actions taken and the findings made by the San Diego Coast Regional Commission.

EXHIBIT NO. 14

APPLICATION NO.

6-11-67-EDD

Staff Report Dated
August 19-21, 1981

 California Coastal Commission

STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission determine that no substantial issue is raised by the North City LCP Land Use Plan on the basis that it meets the requirements of, and is in conformity with the policies of Chapter 3 of the Coastal Act of 1976 (PRC Section 30512(e)) and on the basis of the Findings and Policy Revisions adopted by the San Diego Coast Regional Commission.

BACKGROUND

LCP Documents

Exhibits 1 through 5 of this report show the location of the North City LCP land use plan area and the individual community plan areas. Enclosure A is the Regional Commission Findings. Enclosure B is the Regional Commission Staff Summary and Preliminary Recommendations. Enclosure C is the North City LCP Land Use Plan as submitted by the City of San Diego. Enclosure D is public correspondence received.

Planning History

The City of San Diego, on April 20, 1981, formally submitted the North City Land Use Plan (LUP). After staff review for compliance with the Local Coastal Program (LCP) Regulations on filing, the Executive Director of the San Diego Coast Regional Commission determined the submittal was adequate and formally accepted the land use plan on April 22nd. The San Diego Coast Regional Commission held the first of two public hearings on June 12, 1981, to consider this land use plan. At the second public hearing on June 26, 1981, the Regional Commission voted to deny the land use plan, as submitted, based on the adopted findings that policy groups within the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Land Use plans were inconsistent with the Coastal Act of 1976. The Regional Commission then adopted suggested policy revisions which, if incorporated into the land use plan by the City of San Diego, are intended to make the plan consistent with the Coastal Act.

The suggested revised policy language and findings have been transmitted to the City of San Diego's Planning Director with an explanation that the intent of the revised policy language is to provide the City guidance in re-submitting the land use plan to the Coastal Commission and is not binding on the City of San Diego.

With regard to related precedential permit decisions, refer to Appendix D of Enclosure B.

Plan Area Description

The North City LCP land use plan consists of the land use plans or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Planning Areas.

The Torrey Pines Community Planning area consists of the existing industrial/commercial development in Sorrento Valley, and the residential development in the Del Mar Terrace and Heights areas. The Los Penasquitos Lagoon and upland floodplain area as well as a portion of the San Dieguito Lagoon west of I-5,

is located within the Torrey Pines community. Open space areas south of the San Dieguito river floodplain and the commercial visitor-serving uses located south of Via de la Valle also are contained in the planning area.

The North City West planning area is located adjacent to the Interstate 5 freeway, immediately east of the Del Mar Heights residential area and northwest of Penasquitos Canyon. Of the 4,286 acres in the Planning area, 1,028 (24%) are located in the Coastal Zone. The Coastal Zone in the Planning area is separated into three parts:

- 1) A portion immediately north of the bluffs which overlook the San Dieguito River Valley,
- 2) A portion of the Penasquitos Canyon hillsides in the southern portion of the North City West Planning Area, and
- 3) The lower Carmel Valley area, including the adjoining slopes north and south of the valley.

These are the only areas considered within the North City West (NCW) portion of the North City Local Coastal Program Land Use Plan. For discussion purposes, the planning area is separated into two parts: 1) the portion of bluffs overlooking both the San Dieguito River Valley and Los Penasquitos Canyon and 2) the lower Carmel Valley and adjoining slopes to the north and south.

Land use considerations, in the form of land use policies and maps, for 1) portions of the Coastal Zone north of the NCW Planning Area located within the San Dieguito River Valley area, for 2) portions of the zone within Carmel Valley that is located to the east and to the west of the NCW community, and for 3) areas north of Los Penasquitos Canyon not located within the NCW planning area are not considered within this North City West portion of the North City Local Coastal Program land use plan.

Land use issues of transportation and drainage only, will be considered for Carmel Valley pursuant to AB2216 (Frazee). For current NC LCP land use plan review purposes, only the Carmel Valley portion located within both the Coastal Zone and the NCW Community Planning Area are considered.

The Mira Mesa Community Planning Area extends roughly from I-805 on the west to I-15 on the east. The northern boundary includes the southern slopes of Los Penasquitos Canyon, extending to the southern boundary along Miramar Rd. The Coastal Zone within the planning area includes the mesa tops east of I-805 and the ridge between Los Penasquitos and Lopez Canyon. Lopez Canyon and portions of the mesa to the south also are located within the zone. Although a number of coastal permits have been issued for developments in the area, the planning area presently is undeveloped.

Portions of the University/La Jolla Community Planning areas, located within the Coastal Zone, consists of Science and Research Park developments and open space/golf course uses on the Torrey Pines Mesa area. This area also forms a part of the watershed of the Los Penasquitos Lagoon. University of California lands of the Main campus also are located within the University community planning area. The Scripps campus of the University of California and the farms area north of the campus form the area of the La Jolla Community Plan area considered within the North City Local Coastal Program land use plan.

STAFF ANALYSIS OF "NO SUBSTANTIAL ISSUE" RECOMMENDATION

This analysis will consider appropriate policy group considerations within the four identified community plan areas.

In addition, the North City LCP Land Use Plan did not contain a description of the types, location and intensity of developments that would proceed under the plan's land use designations for the following identified areas:

1. Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley area (See Exhibit 6).
2. Portions of the Coastal Zone within Carmel Valley located to the east and to the west of the NCW Community (See Exhibit 6).
3. Areas north of Los Penasquitos Canyon not located within the NCW Community (See Exhibit 7).
4. Los Penasquitos Regional Park (See Exhibit 8).
5. City of San Diego Torrey Pines City Park (See Exhibit 9).
6. The Highway 56 Freeway east of I-5.

University of California lands are not being considered within the LUP (See attached memorandum ---- Exhibit 10).

Approval of these identified areas will be delayed until such time that specific land use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification. The North City Land Use Plan does not contain a description of the types, location, and intensity of developments that would proceed under the plan's land use designation for the identified areas. Section 30108.5 of the Coastal Act defines a land use plan as "that relevant portion of a local government's general plan, or local coastal element, which is sufficiently detailed to indicate the kind, location, and intensity of land use, the applicable resource protection and development policies, and where necessary, a listing of implementing actions." However, for the identified areas, type, location and intensity of uses and plan policy analysis have not been presented in the land use plan. Such plan designations must be developed before Commission approval is obtained.

TORREY PINES COMMUNITY PLAN AREA

1. SHORELINE ACCESS

The City's land use policies in the Torrey Pines Community portion of the NC LCP land use plan provide appropriate direction for the maintenance and improvement of access to and along the shoreline. In addition, access provisions in the form of non-vehicular modes such as bikeways, have been designated with improvements to Carmel Valley Road. Also, the NC LCP land use plan has included policies providing for lateral and vertical access along the shoreline and have incorporated prescriptive rights procedures in association with new development where necessary to preserve potential public use rights. Criteria also have been established in the LUP to provide public access to and through the Penasquitos Lagoon that is compatible with the preservation of the unique environmental quality of the wetland.

2. RECREATION AND VISITOR-SERVING FACILITIES

An open space designation has been included in the Torrey Pines Community Plan for the southwest corner of I-5 and Carmel Valley Road. This area is adjacent to the wetlands of the Los Penasquitos Lagoon. A plan statement discusses a proposal to construct a park and ride lot at this location. With inclusion of the suggested policy revision regarding the protection of the lagoon habitat from adjacent development, the construction of a park and ride facility within a plan designated open space area is found to be consistent with the resource protection policies of the Coastal Act.

The Community Plan designates the northwestern intersection of I-5 and Carmel Valley Road for commercial use. However, subject to Regional Commission action on Permit P8341, most of the site will be developed as residential, with a relatively small area (Lot 83) to be designated for commercial use. The suggested recommendation that visitor-serving commercial uses be allocated to Lot 83 of the Sierra Del Mar subdivision is consistent with Sections 30222 and 30223 which assign a higher priority to visitor-serving uses than general commercial use in upland areas along the coastline. Also, providing for visitor-serving uses in this area preserves any available street capacity of Carmel Valley Road for recreational uses instead of for residential or commercial uses.

3. HOUSING

The Torrey Pines Community land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a housing component. An analysis of housing needs on a regional basis within a housing component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Regional Commission found that prior to certification of the LCP implementation phase for the North City Plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language the Regional Commission found the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES ENVIRONMENTALLY SENSITIVE HABITAT AREAS, DIKING, DREDGING AND FILLING AND SHORELINE STRUCTURES, AND HAZARD AREAS

The Regional Commission-suggested recommendation providing for no fill or permanent structures within the floodplains of the plan area watercourses 1) eliminates restrictions of flood flows which can provide for greater sediment transport through higher velocity flows, 2) continues to provide a desilting basin for stream transported sediment which prevents silt deposition in the lagoon, and 3) preserves valuable upland vegetative habitat areas for the continued biological functioning of the downstream lagoons. Therefore, the suggested recommendation to prevent fill or permanent structures within an updated 100-year floodplain boundary line for plan area watercourses is consistent with the resource protection policies of the Coastal Act.

The suggested recommendation to prevent any filling of the Los Penasquitos Lagoon wetlands associated with improvements to Carmel Valley Road is consistent with the resource protection policies of the Coastal Act.

A four lane widening of Carmel Valley Road, as suggested by the City, would encroach into the wetlands of Los Penasquitos Lagoon. Design considerations include a widening of the road surface from 24 feet to a minimum of 50 feet. Also included would be a realignment of the reverse curve to reduce the curve radius and thereby eliminate existing safety concerns. In addition to the concern of encroaching into the wetland area adjacent to the roadway, the Commission also is concerned that widening the roadway to four lanes westerly to Portofino Drive would set a precedent for further widening westerly between Portofino Drive and Camino Del Mar. Private property confines the Carmel Valley Road right-of-way on the north. Therefore, the only means of accommodating any increased width, aside from condemning adjacent property, would be to encroach into the lagoon. As stated previously, any encroachment into the adjacent wetlands would be inconsistent with the wetland preservation policies of the Coastal Act.

The Commission has dealt with the issue of realigning and widening Carmel Valley Road through the permit process. State Commission action on Permit Appeal #156-79 addressed the City of San Diego's request to widen Carmel Valley Road to four lanes between Sorrento Valley Road and Portofino Drive and straighten the tight reverse curve conditions through roadway realignment. The Commission denied the request for road widening and realignment with the Commission finding that such resulting road improvements would require encroachment into the adjacent wetland area. Also, the Commission found that based upon available data, current traffic on Carmel Valley Road was within its capacity and therefore, did not require widening. The Commission was of the opinion that a moderate, two land curve-straightening project could be approved without requiring fill in the Los Penasquitos Lagoon wetlands.

Of concern to the Commission is the fact that the Torrey Pines Community Plan has designated Carmel Valley Road as a major street through the community. However, the plan does state that Carmel Valley Road should be reduced to collector street

classification. The thrust of the Commission action within the Issue Identification process for the Torrey Pines and North City West communities was to make Del Mar Heights Road the major regional east-west multi-purpose link in order to de-emphasize automobile traffic on Carmel Valley Road west of I-5 and reduce the need to widen this roadway. This concept has been incorporated within the North City West land use plan portion of the City's LCP land use plan. LCP specific language has been included which calls for Carmel Valley Road to "be developed as a special access corridor designed around its natural landscaped corridor both east and west of I-5".

A recreational emphasis, of auto service primarily for residents, mini-transit, trails and bikeways, should be designed for this corridor". Similar language calls for inland areas of Carmel Valley Road (east of I-5) to be evaluated in relation to providing for coastal access to the west of I-5. Specifically, the plan states that "shuttle transportation programs... should be instituted to minimize automobile oriented impacts in relation to consideration of widening Carmel Valley Road west of I-5". In this regard, Carmel Valley Road east of I-5 has been recommended as a four-lane primary arterial with turn pockets at crossing areas. Also, no interchanges are proposed for this roadway in the land use plan. The NCW community plan does state that a long-range recommendation would be to develop the 56 freeway when the need develops. However, the Highway 56 freeway is not considered at this time for LCP purposes. These policies would appear to reduce the perceived need to develop Carmel Valley Road to a four lane road, which in turn, would eliminate the need to encroach within the adjacent wetland area. The suggested recommendation to extend the existing two lane Carmel Valley Road easterly from Portofino Drive to the existing four-lane section of the roadway is consistent with the Commission's desire to maintain Carmel Valley Road mainly as a recreational accessway while minimizing through traffic, and avoiding the enlargement of the roadway west of I-5 that would adversely impact the wetlands of Los Penasquitos Lagoon. The Commission believes that the removal of the safety concerns through a curve-straightening project, incorporating a two lane road of moderate width, could be constructed along Carmel Valley Road without requiring fill in the Los Penasquitos Lagoon wetlands. Altering the adjacent bluffs to the north of the reverse curve to reduce any adverse safety hazards is an acceptable alternative to any filling or disruption of the adjacent wetlands to the south. Strict grading, runoff and landscaping controls are required with any hillside alteration. Widening to include a bikeway/pedestrian lane east of Portofino Drive is appropriate if it can be found consistent with accepted engineering practices and provided that no filling, development, or alteration of the adjacent Los Penasquitos Lagoon wetland/area occurs. Therefore, the Commission found that with the suggested recommendation regarding any improvement to Carmel Valley Road, the NC LCP land use plan is found consistent with the resource protection policies of the Coastal Act.

Preservation of a biological link between the Los Penasquitos Lagoon and the Los Penasquitos Canyon is critical to the preservation of the Torrey Pines State Preserve and Reserve. The link area consists of salt water wetlands that are part of the essential habitat for endangered species and the fresh water wetlands and riparian habitat upstream from the lagoon. The fresh water wetlands and riparian areas serve as a major feeding and drinking area for the larger mammals of the Reserve as well as providing a transportation corridor to serve as the link. The suggested recommendation requiring the restriction on stream channel alteration provides for the protection of these habitats and corridor in their natural state. Any stream channel alteration that ultimately involves dredging or removal of riparian vegetation shall be accomplished in a manner to minimize disruption to the vegetation, requires phasing to monitor the status of environmental impacts

and to be able to adjust mitigation measures if necessary, and require substantiation that the disruption of riparian vegetation will result in a significant improvement of floodflows within the channel. The intent is to consider feasible, less environmentally damaging alternatives prior to any disruption or alteration of a streamcourse.

The report titled "Stream and Lagoon Channels of the Los Penasquitos Watershed, California with an Evaluation of Possible Effects of Proposed Urbanization" by Karen Prestegaard (1979) has identified a number of natural sediment basins in the watershed of Los Penasquitos Lagoon. For example, one basin is located in Los Penasquitos Canyon just downstream from the confluence of Los Penasquitos and Lopez Canyons. Another significant desilting basin is located in the area of the confluence of Los Penasquitos and Carroll Canyon Creeks downstream from the existing concrete channel. This latter basin also contains a significant amount of instream riparian vegetation which further adds to the site's depositional potential. If alteration of the streambeds in these and other depositional areas occurs, the potential for sediment to be transported downstream to adversely impact the biological productivity of the Los Penasquitos Lagoon is increased. Therefore, because of the need to maintain these upstream existing sedimentation basins as a means to prevent sedimentation deposition in the lagoon, the Regional Commission has included a recommendation to restrict instream alterations, and has suggested that any alteration be performed to minimize the disruption of the depositional potential of the identified basins.

In summary, the City's land use policies address the protection of coastal marine and wetland resources. However, the Regional Commission found that additional specificity and direction is needed within the land use plan to require the identification and maintenance of wetland and riparian habitats, provide steep slope protection to avoid erosion and sedimentation hazards, visual impacts, and disruption of important wildlife corridors, require the development of adequate buffer areas adjacent to environmentally sensitive habitat areas and provide runoff control and grading restrictions to prevent downstream sedimentation of important wetland areas. In addition, the Commission recommended the placement of shoreline erosion control devices in such a manner to preserve public beach areas. Therefore, with the inclusion of the suggested recommendations within the land use plan, the Commission found the Water and Marine Resources, Environmentally Sensitive Habitat Areas, Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas Policy consistent with resource protection policies of the Coastal Act (see page 5 through page 10 of Findings report - Enclosure A - for the listing of suggested policy language).

5. AGRICULTURE

The NC LCP land use plan, which incorporates the San Dieguito Lagoon Enhancement Plan language into the plan, provides for the preservation of those existing A-1-10 floodplain lands south of the San Dieguito River.

6. LOCATING AND PLANNING NEW DEVELOPMENT

The plan, as submitted, provides adequate information regarding the type, location, and intensity of development, subject to, however, the suggested recommendations contained in the Regional Commission findings which would, in some cases, substantially restrict or qualify development within the community to ensure consistency with Coastal Act policies (See discussions under Public Works regarding proposed change in intensity of residential use due to future impacts on capacity of Carmel Valley Road). Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development. Also, adequate provisions have been included within the Public Access Policy Group to provide improved and additional parking facilities along Highway 101 and within the State Park Reserve area.

7. VISUAL RESOURCES

The plan, as prepared, contains special provisions which would help to maintain and improve this quality in the community. However, these recommendations need to be strengthened to provide proper direction for future implementing ordinances. In this regard, suggested recommendations have been added which require development standards for landscaping and sign controls consistent with San Diego Coast Regional Commission adopted interpretive guidelines.

8. PUBLIC WORKS

The Torrey Pines Community Plan, as submitted, provides appropriate policies regarding industrial development or improvements to public works facilities such as Carmel Valley Road subject to, however, the suggested recommendations contained herein which would provide development constraints to ensure consistency with the policies of the Coastal Act. In this regard, the Regional Commission recommended constraints to industrial development in designated areas that includes no development within the defined 100-year flood plain area, or on slopes greater than 25%. Similarly, the Regional Commission recommended that no encroachment into the wetland areas of Los Penasquitos Lagoon occur as a result of roadway improvements to Carmel Valley or Sorrento Valley Roads.

The plan, as submitted, also provides adequate information regarding the location, type and intensity of uses proposed, subject to the suggested recommendations contained herein, with the exception of the proposed intensity of residential use designated for the property west of Carmel Valley Road east of the Del Mar City limits. The Torrey Pines Community Plan designates this site for low-medium (10-15 dwelling units per acre) residential use. Residential development at these densities could significantly impact remaining street capacity on Carmel Valley Road. Presently, Carmel Valley Road is being utilized close to its capacity. Even with the proposed roadway improvements to include left turn lanes to facilitate traffic flow, the Regional Commission is concerned that continued traffic volumes with high peak hour levels resulting from area wide and future North City West developments, will interfere with access to the coast. The Regional Commission found that the road could be totally given to residential traffic to the exclusion of recreational traffic should full build-out along Carmel Valley Road and North City West take place. Section 30254 of the Coastal Act provides that where limited street capacity exists, priority shall be given to those traffic-generating uses that are coastal related and that non-coastal related development shall not provide for the reduction in available street capacity. Because provisions must be made for future recreational demands, it was not concluded that the traffic capacity remaining after construction of the site to densities of up to 15 du/ac would be sufficient to provide adequate access to the coastal areas. In addition, the Regional Commission recognized that any improvements to accommodate existing and future traffic flows along this roadway shall not provide for the encroachment into the adjacent Los Penasquitos Lagoon. Assuming that the ultimate development of the roadway will be a low-speed, two lane road with no encroachment into the lagoon, it was the

Regional Commission's intent to retain a portion of remaining roadway capacity for recreational use through a suggested recommendation that development on an area west of Carmel Valley Road be limited to four (4) dwelling units per acre or less. With the suggested recommendation, the Regional Commission found that the Public Works policy group is consistent with the Public Works policies of the Coastal Act.

NORTH CITY WEST PLANNING AREA

SAN DIEGUITO RIVER VALLEY/LOS PENASQUITOS CANYON HILLSIDES

1. SHORELINE ACCESS

Given the absence of any shoreline frontage within this land use plan, this policy group is not applicable.

2. RECREATION AND VISITOR SERVING FACILITIES

Since this area is well removed from the shoreline, and visitor serving facilities are neither proposed nor necessary in this plan area, this policy group is not considered applicable.

3. HOUSING

The North City West land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Regional Commission found that prior to certification of the LCP implementation phase for the North City plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language, the Regional Commission found the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES

Since there is no shoreline area, coastal waters, estuaries, or wetland habitat contained within this plan area, this policy group is not applicable.

5. DIKING, DREDGING, FILLING AND SHORELINE STRUCTURES

Again, since there is no waterfront, coastal waters, or wetland habitat contained within this portion of the plan area, there are no such diking, dredging or filling activities contemplated. Additionally, the necessity for construction of any shoreline structures is also thus eliminated. Therefore, this policy group is not applicable.

6. ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

The land use plan as submitted does not provide specific policy direction to be consistent with the Coastal Act and does not provide the necessary direction for the implementation stage of the LCP. However, with the Regional Commission suggested

recommendations providing for the protection of steep slopes, limitations on residential density on slopes between 15 and 25 percent, and performance standards for new residential developments on steep slopes, the Commission found the Environmentally Sensitive Habitat Areas and Hazard Areas Policy Groups consistent with Sections 30240(a) and (b) and 30253 of the Coastal Act. The City's LUP policies incorporating recommendations from the Leeds, Hill and Jewett, Inc. report regarding the timing and control of grading and the control of surface runoff, are considered appropriate mechanisms to protect against potential erosion and sedimentation hazard within the adjacent watercourses and the downstream Los Penasquitos Lagoon (See pages 18 and 19 of the Findings Report - Enclosure A - for listing of suggested policy language).

7. AGRICULTURE

Since agriculture neither occurs nor is proposed for this area, this policy group is not considered applicable.

8. LOCATING AND PLANNING NEW DEVELOPMENT

The plan, as submitted, provides adequate information regarding the type, location, and intensity of development, subject to, however, any suggested recommendations contained herein which could restrict or qualify development within the community to ensure consistency with Coastal Act policies. Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development.

9. VISUAL RESOURCES AND SPECIAL COMMUNITIES

With the suggested recommendations, the Visual Resources and Special Communities Policy Group provides for the appropriate siting and designing of new residential developments to maintain the visual quality associated with the community. Therefore, the Commission found this Policy Group to be consistent with Section 30251 of the Coastal Act.

10. PUBLIC WORKS

Given the absence of any existing or proposed public works, this policy group is not applicable.

CARMEL VALLEY AREA

Pursuant to AB2216 (Prazee), the coastal issues to be addressed within the NCW Community Plan portion of the Coastal Zone are limited to a) transportation and b) drainage (runoff/siltation). Also, the Regional Commission was of the understanding that the transportation and drainage plan is to be prepared contingent upon the land use designations and policies within the adopted NCW Community Plan.

TRANSPORTATION

The Carmel Valley portion of the NCW land use plan calls for Carmel Valley Road east of I-5 to be designed as a four lane primary arterial. This road design, although providing for a limited encroachment in portions of the floodplain area of Carmel Valley wash, would still encroach into the narrowest portion of the natural channel located approximately one-half mile east of I-5. The Commission was concerned that encroachment into the channel at this point would create a potential for significant flow constriction providing for increased stream velocity and resulting scouring activity that could create substantial sedimentation downstream in the Los Penasquitos Lagoon. Development of Carmel Valley Road near the narrow floodplain area should encroach into the adjacent hillside to accommodate the necessary road width. Also, the roadway design for north and south traversing corridors within the North City West Community could substantially impact the floodplain area of Carmel Valley wash through filling for roadway embankment construction. Such developments similarly could impact Carmel Valley stream flows to create greater flow velocity and resulting in-stream erosion hazards.

The thrust of the Commission action within the Issue Identification process for the Torrey Pines and North City West Communities was to make Del Mar Heights Road the major regional east-west multi-purpose link in order to de-emphasize automobile traffic on Carmel Valley Road west of I-5 and reduce the need to widen this roadway. This concept has been incorporated within the North City West land use plan portion of the City's LCP land use plan. LCP specific language has been included which calls for Carmel Valley Road to "be developed as a special access corridor designed around its natural landscaped corridor both east and west of I-5. A recreational emphasis, of auto service primarily for residents, mini transit, trails and bikeways, should be designed for this corridor". Similar language calls for inland areas of Carmel Valley Road (east of I-5. Specifically, the plan states that "shuttle transportation programs....should be instituted to minimize automobile oriented impacts in relation to consideration of widening Carmel Valley Road west of I-5". In this regard, Carmel Valley Road east of I-5 has been recommended as a four-lane primary arterial with turn pockets at crossing areas. No interchanges are proposed for this roadway within the land use plan. The NCW Community plan does state that a long-range recommendation would be to develop the Highway 56 freeway when the need develops. However, the Highway 56 freeway is not considered at this time for LCP purposes.

The transportation issues for the Carmel Valley portion of the NC LCP relate to the area of construction of planned roadways to avoid encroachment and disturbance to floodplain areas, which could result in adverse erosion and downstream sedimentation hazards. With the suggested recommendations, the Commission found that planned transportation routes within the Carmel Valley area of the NCW Community are consistent with the resource protection policies of the Coastal Act.

DRAINAGE

The restriction on filling within the floodplain of Carmel Valley Wash will avoid the potential for stream course alteration which, in turn, could create adverse streamflow and resulting erosion and sedimentation impacts to the downstream Los Penasquitos Lagoon.

Restrictions on the alteration of the Carmel Valley stream course, unless necessary to protect existing structures, and the suggested recommendations providing for restrictions on land uses within the open space designated areas will help to protect the downstream Los Penasquitos Lagoon from sediment and water quality impacts.

Therefore, with the suggested recommendations, as well as land use plan policies calling for the control of runoff from adjacent upstream development (Leeds, Hill & Jewett report), the Regional Commission found the issues relating to drainage within the Carmel Valley portion of the NCW Community Plan consistent with the resource protection policies of the Coastal Act.

North City West is drained by Carmel Creek, one of the three major streams feeding Los Penasquitos Lagoon. Urbanization within North City West depends upon major public utilities installed within the coastal zone and will have serious adverse effects on the quantity and quality of runoff in Carmel Creek. The analyses of runoff volumes within the LUP show volume increases of up to 15-fold in the smaller, more frequent storms that are the channel forming forces (Prestegard, 1979). The drainage plans incorporated within the LUP will manage runoff so that these increases in peak flow are prevented, but net flow and net movement of sediment down Carmel Valley into Los Penasquitos Lagoon will still increase. The other adverse effect of urbanization is on the quality of runoff.

The LUP does not contain any program to mitigate the adverse effects of increased pollutant loadings from urban runoff, but the LUP does identify in its policy supporting the Penasquitos Lagoon Enhancement Project a potential mechanism for mitigating these effects. However, without policy language that links this project to specifically mitigate the adverse effects of runoff, and without policy language that requires that the Enhancement Project be implemented either prior to major development or as a condition of development, the plan fails to assure any mitigation for the adverse effects of runoff. Thus the plan fails to meet the policy requirements of Section 30231 that the quality of coastal estuaries be maintained and where feasible restored.

Under Section 30604(d), the Commission can generally require appropriate mitigation in projects where development inside the coastal zone allows development outside the coastal zone that will definitely have adverse effects within the coastal zone. Section 30200 gives local government specific direction to consider those effects. The legislative changes in the North City West area give even clearer direction that the Commission has a continuing interest in the areas outside the coastal zone, although that continuing interest is limited to transportation and drainage. A.B. 2216 provides that "Any...changes to the underlying land use plan for the area that affects drainage...shall be reviewed and processed in the same manner as an amendment of a certified local coastal program (emphasis added)...". The area that affects drainage is largely outside the coastal zone; thus the legislative direction to mitigate the adverse effects is clear. Therefore, with the suggested recommendation, a lagoon restoration program will provide the necessary mitigation for increased flows and any resulting sediment and/or water quality impacts.

MIRA MESA

1. SHORELINE ACCESS

Given the absence of any shoreline frontage within this land use area, this policy group is not applicable.

2. RECREATION AND VISITOR-SERVING FACILITIES

The City's land use plan provides appropriate direction for the Aero World planned visitor-serving facility to be developed consistent with the protection of adjacent significant environmentally sensitive resource areas. Also, although a master plan for the Los Penasquitos Regional Park has yet to be developed, the land use plan does include general policies providing for the appropriate low-intensity use of the canyon area consistent with the resource protection policies of the Coastal Act.

3. HOUSING

The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Regional Commission found that prior to certification of the LCP implementation phase for the North City plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language the Regional Commission found the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

The land use plan as submitted does not provide specific policy direction to be consistent with the Coastal Act and does not provide the necessary direction for the implementation stage of the LCP. However, with the suggested recommendations, providing for the protection of steep slopes, limitations on residential density on slopes greater than 15 percent, performance standards for new residential developments on steep slopes, and restrictions on the timing and control of grading, the plan is found to be consistent with the Water and Marine Resources, Environmentally Sensitive Habitat Areas and Hazard Areas Policies of the Coastal Act (see pages 27-29 of attached Findings for a listing of the Regional Commission approved suggested policy language).

5. DIKING, DREDGING, FILLING, AND SHORELINE STRUCTURES

Since this plan area has no shoreline frontage or coastal waters, this policy group is not applicable.

6. AGRICULTURE

Since no agriculture exists or is proposed, this policy group is not applicable.

7. LOCATING AND PLANNING NEW DEVELOPMENT

Inclusion of the suggested recommendations provides a mechanism within the Mira Mesa Community land use plan to mitigate potential archaeological and paleontological impacts associated with development in the community.

Another area of usual coastal concern under this policy group is the availability of off-street parking for proposed new developments. Typically, with inadequate parking spaces within coastal communities, there is a direct impact on the availability of parking for beach access and visitor-serving commercial uses. However, because the Mira Mesa Community plan portion of the NC LCP is removed from the shoreline and no direct or indirect impact on coastal access would result from inadequate numbers of on-site parking, the availability of parking under the Locating and Planning New Development Policy Group is not an issue within this land use plan.

8. VISUAL RESOURCES AND SPECIAL COMMUNITIES

The plan, as submitted, provides for the appropriate siting and designing of new developments to maintain the visual quality associated with the community. Therefore, this Policy Group is consistent with Section 30251 of the Coastal Act.

9. PUBLIC WORKS

The plan, as submitted, did not sufficiently describe the development of Calle Cristobal in relation to the adjacent marsh areas. However, with the above suggested recommendations, Calle Cristobal will be constructed to avoid filling of an environmentally sensitive habitat area (marsh) and to minimize the cutting of the adjacent hillside. Also, mitigation measures will be required to avoid potential erosion, water quality, and visual impacts associated with road constructions.

UNIVERSITY/LA JOLLA COMMUNITY PLANNING AREA

1. SHORELINE ACCESS

The City's land use policies provide appropriate direction for the maintenance and improvement of access to and along the shoreline. In addition, access provisions in the form of non-vehicular modes such as bikeways, have been designated in the community. Also, the NC LCP land use plan has included policies providing for lateral and vertical access along the shoreline and have incorporated prescriptive rights procedures in association with new development where necessary to preserve potential public use rights. A shoreline accessways map has been included in the land use plan to indicate precise shoreline accessways in the University/La Jolla Farms area.

2. RECREATION AND VISITOR-SERVING FACILITIES

The University/La Jolla Community land use plan of the NC LCP land use plan provides for the protection and enhancement of significant recreational and visitor-serving facilities within the community area. These areas are the Torrey Pines State Park Reserve area, the Torrey Pines City Golf Course, and the proposed Torrey Pines City Park.

3. HOUSING

The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Regional Commission found that prior to certification of the LCP implementation phase for the North city plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language the Regional Commission found the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES

Since there are no coastal streams, wetlands, or estuaries contained within this plan area, this policy group is not applicable.

5. DIKING, DREDGING, FILLING, AND SHORELINE STRUCTURES

Language is required in the plan to provide for the placement of protective devices in a manner that avoids encroachment onto a publicly used beach, while being consistent with the desire to allow appropriate development to minimize shoreline erosion. Some encroachment may be necessary to provide a properly aligned seawall. If such is the case, special consideration shall be given to minimize the encroachment while utilizing materials and a design which would interfere as little as possible with continuing public use of the adjacent beach area. Therefore, with the suggested recommendations, the Regional Commission found the Diking, Dredging, Filling and Shoreline Structures Policy Group to be consistent with Coastal Act policies.

6. ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

The land use plan provides for steep slope protection to avoid erosion and sedimentation hazards, visual impacts, and disruption of important vegetative and wildlife resources. In addition, the plan provided for runoff control and grading restrictions to prevent downstream sedimentation of important coastal or wetland areas. Because the plan proposes the development of bluff top guidelines to protect important coastal resources, it is expected that the development of such guidelines will be consistent with the Regional Commission's Statewide Interpretive Guidelines for blufftop development.

7. AGRICULTURE

Since this is an urbanized area with no existing agriculture and none is proposed in the plan, this policy group is not applicable.

8. LOCATING AND PLANNING NEW DEVELOPMENT

The University/La Jolla Community plan, as submitted, provides appropriate policies regarding the type, location, and intensity of development, subject to, however, any suggested recommendations contained herein which could restrict or qualify development within the community to ensure consistency with Coastal Act policies. Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development.

9. VISUAL RESOURCES AND SPECIAL COMMUNITIES

Future developments in the City should strive to provide for the maintenance and enhancement of the visual and scenic resources of the Torrey Pines community. The plan, as prepared, contains special provisions which would require development to be appropriately sited to minimize visual impacts to the community, provide for landscaping to screen buildings and paved areas, and require sign standards to restrict roof and freestanding signs and limit the size of monument signs.

10. PUBLIC WORKS

Because no major public works are proposed in the plan area, this policy group is not applicable.

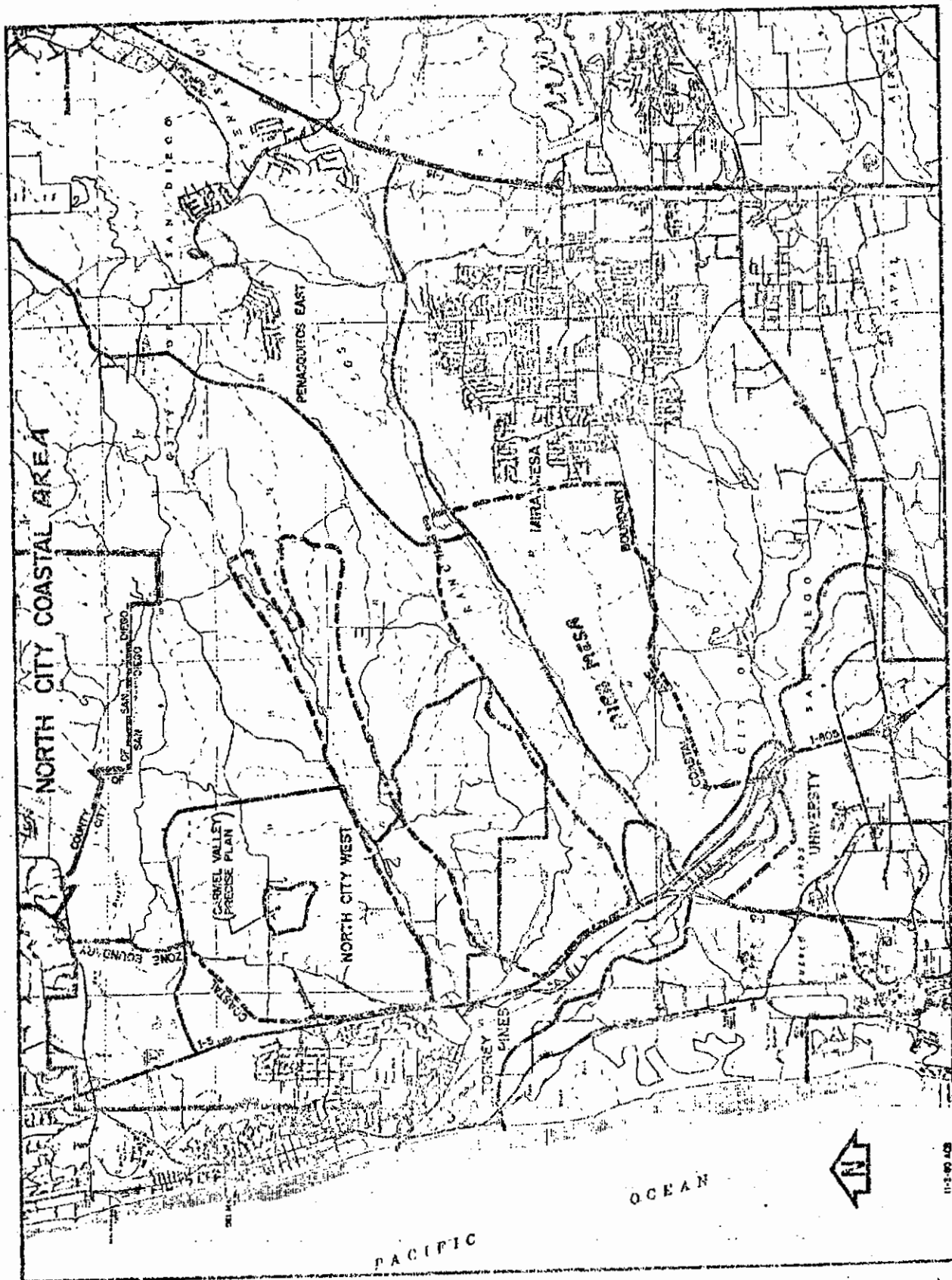
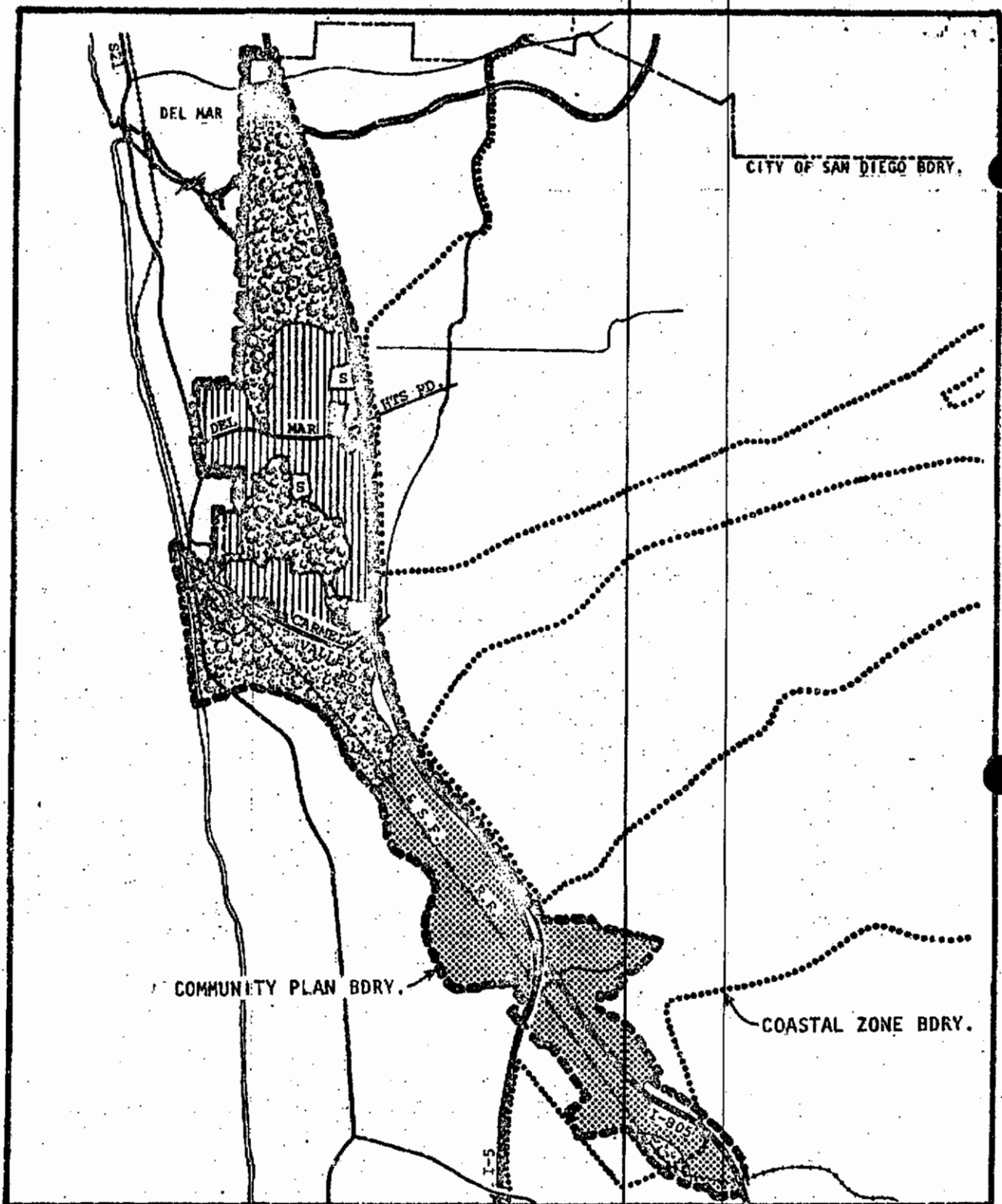


EXHIBIT "1"



NORTH CITY LOCAL COASTAL PROGRAM

TORREY PINES COMMUNITY-GENERALIZED LAND USE







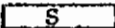
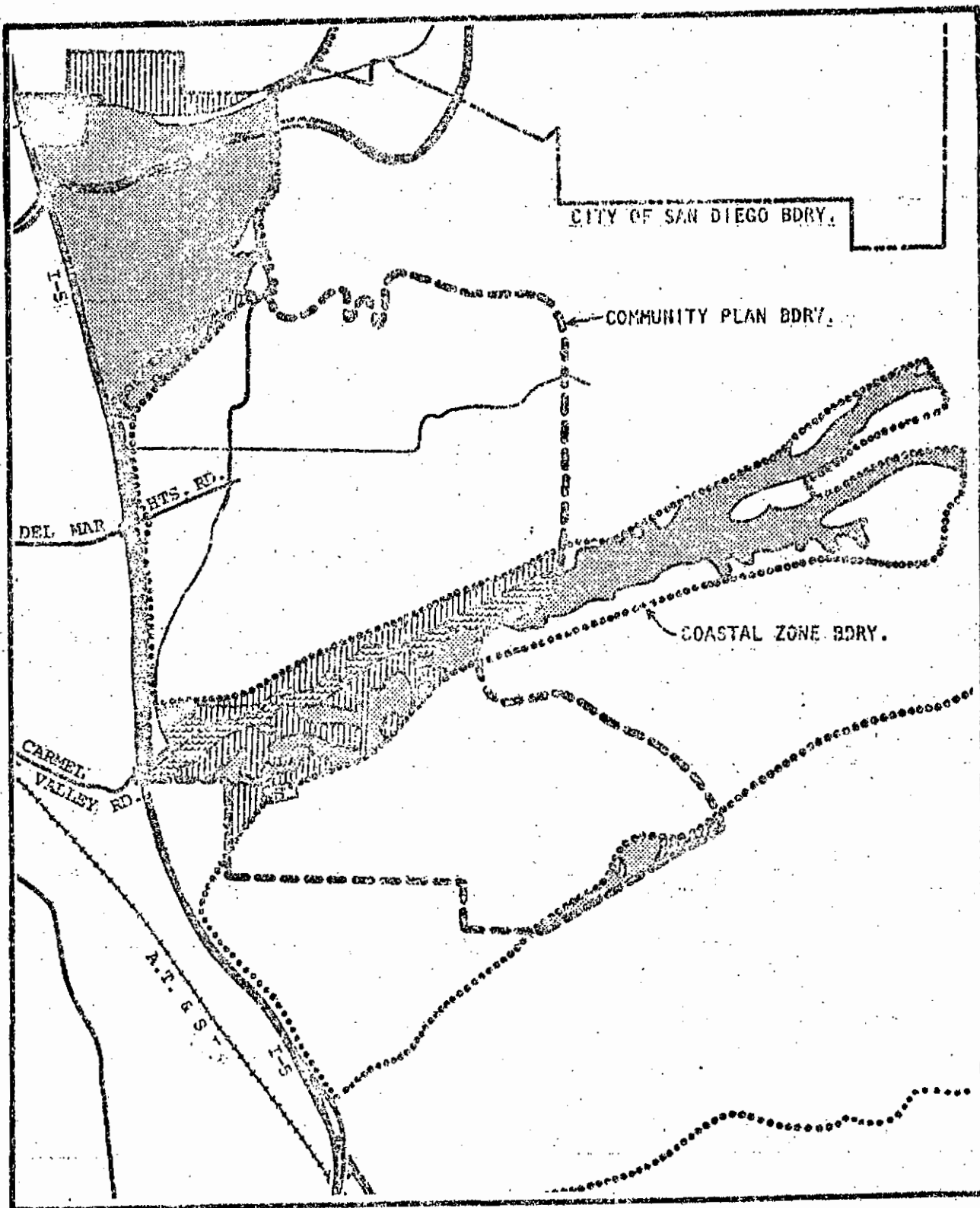
-  RESIDENTIAL
-  COMMERCIAL
-  INDUSTRIAL
-  OPEN SPACE/PARKS
-  SCHOOL SITES

EXHIBIT "2"



NORTH CITY LOCAL COASTAL PROGRAM

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE

N
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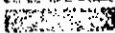
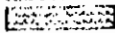
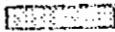
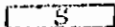
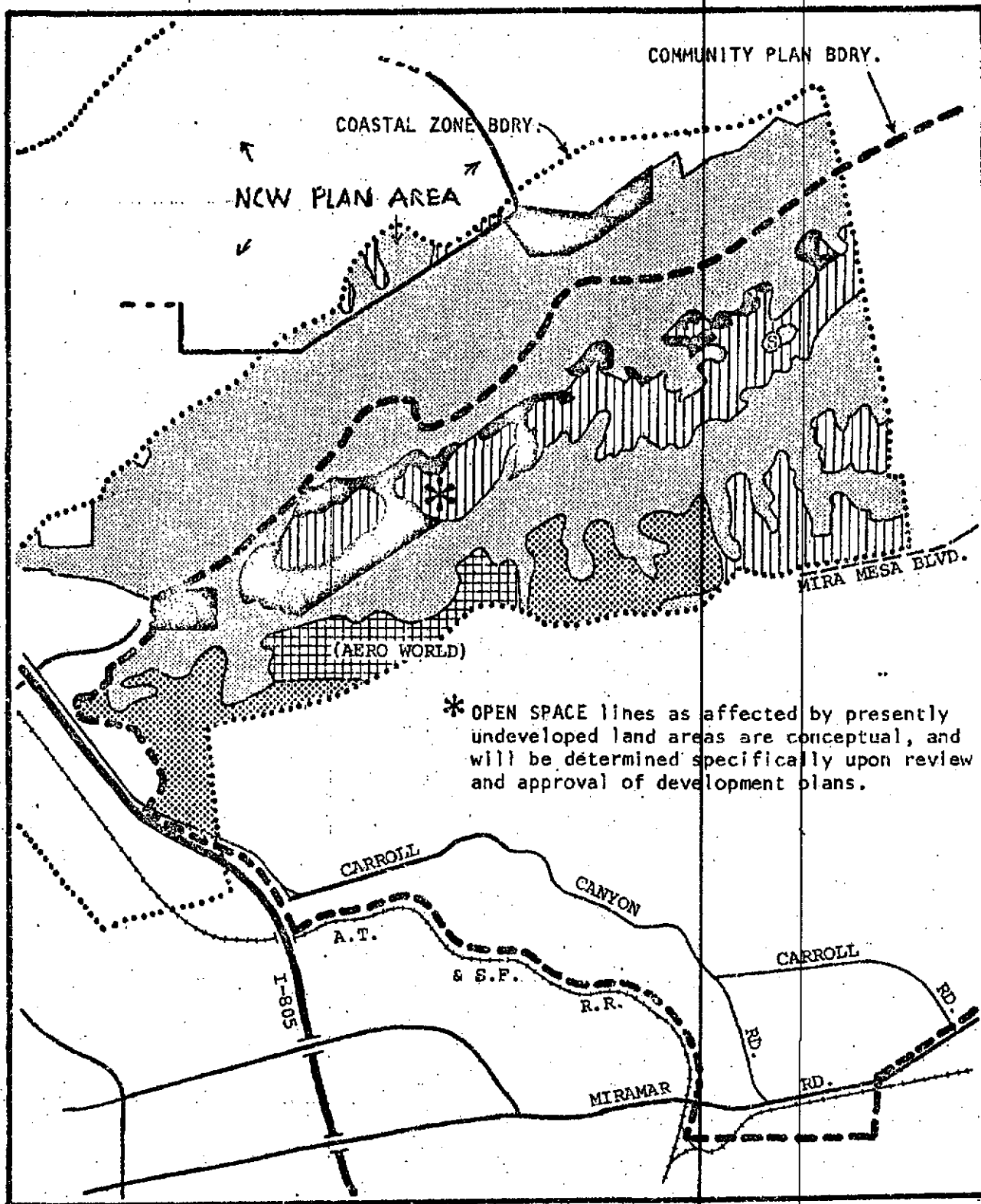
-  RESIDENTIAL
-  COMMERCIAL
-  FLOOD PLAIN
-  OPEN SPACE/PARKS
-  SCHOOL SITES

EXHIBIT "3"



NORTH CITY LOCAL COASTAL PROGRAM

WESTERN MIRA MESA COMMUNITY-GENERALIZED LAND USE



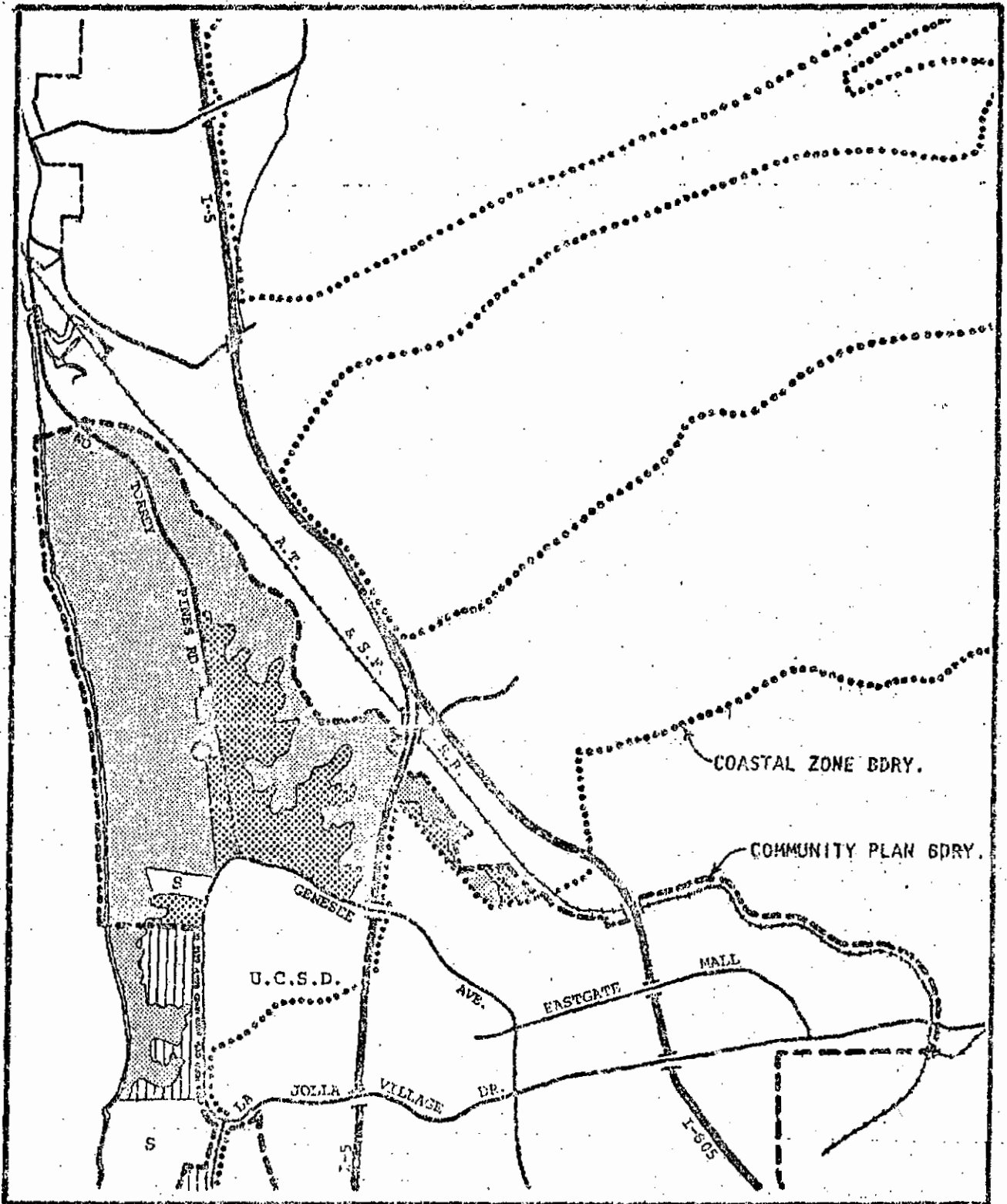
	RESIDENTIAL
	COMMERCIAL
	INDUSTRIAL
	OPEN SPACE
	SCHOOL SITES



PARK SENSITIVE
DEVELOPMENT AREAS

EXHIBIT

4



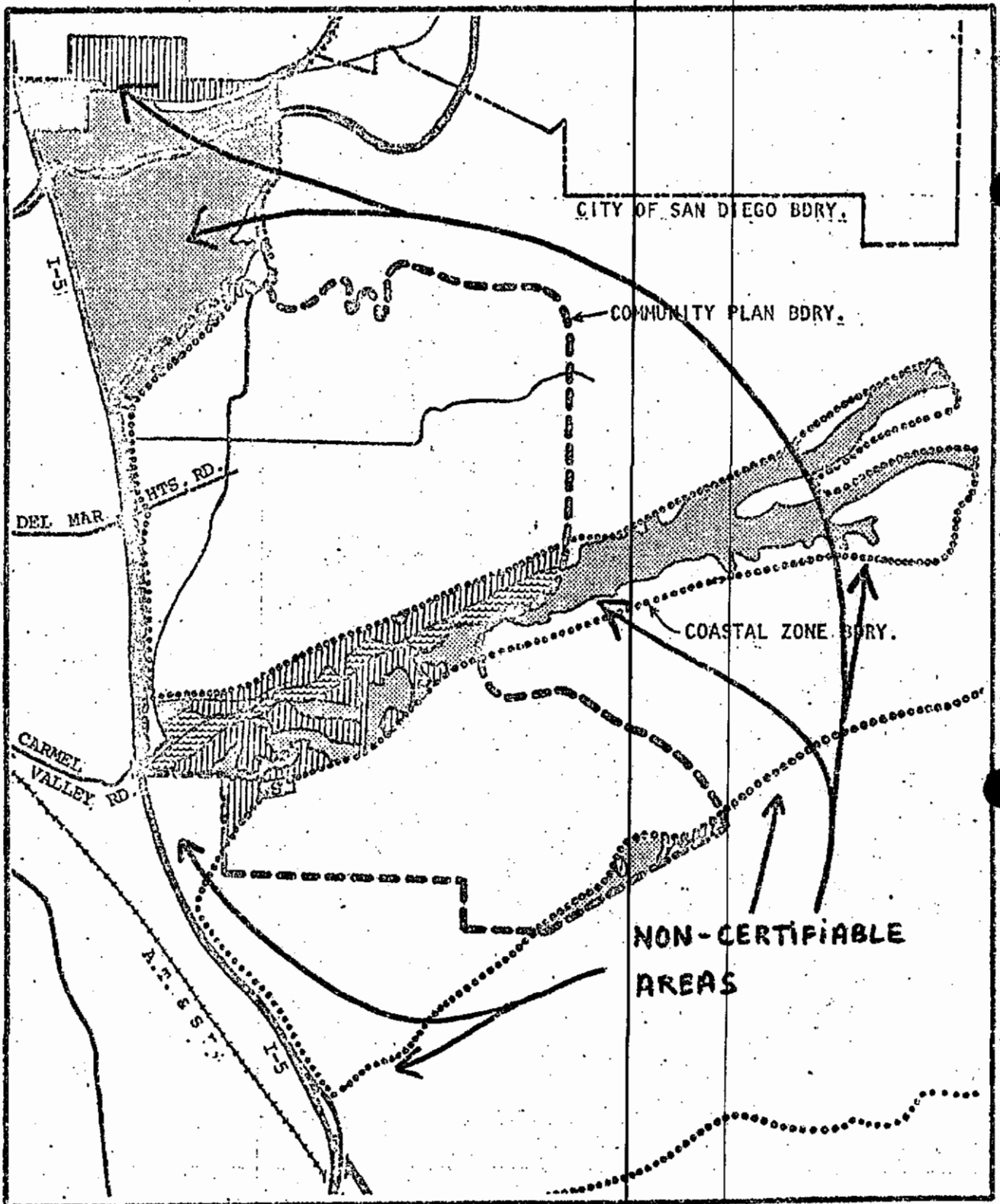
NORTH CITY LOCAL COASTAL PROGRAM

UNIVERSITY CITY/LA JOLLA COMMUNITIES-GENERALIZED LAND USE

N

	RESIDENTIAL
	COMMERCIAL
	INDUSTRIAL
	OPEN SPACE/PARKS
	SCHOOL/UNIVERSITY

EXHIBIT "5"



NORTH CITY LOCAL COASTAL PROGRAM

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE



	RESIDENTIAL
	COMMERCIAL
	FLOOD PLAIN
	OPEN SPACE/PARKS
	SCHOOL SITES

EXHIBIT "6"

LOS PEÑASQUITOS CANYON PRESERVE - LOPEZ CANYON OPEN SPACE SYSTEM

PRIORITIES 1-8
CONVEYANCE LINE
PRESERVE BOUNDARY

SCALE 1"=1000'

NON-CERTIFIABLE
AREAS

NEW PLAN AREA

County
Owned

Mesa

CANYON

CITY OF

LOS PENASQUITOS CANYON PRESERVE

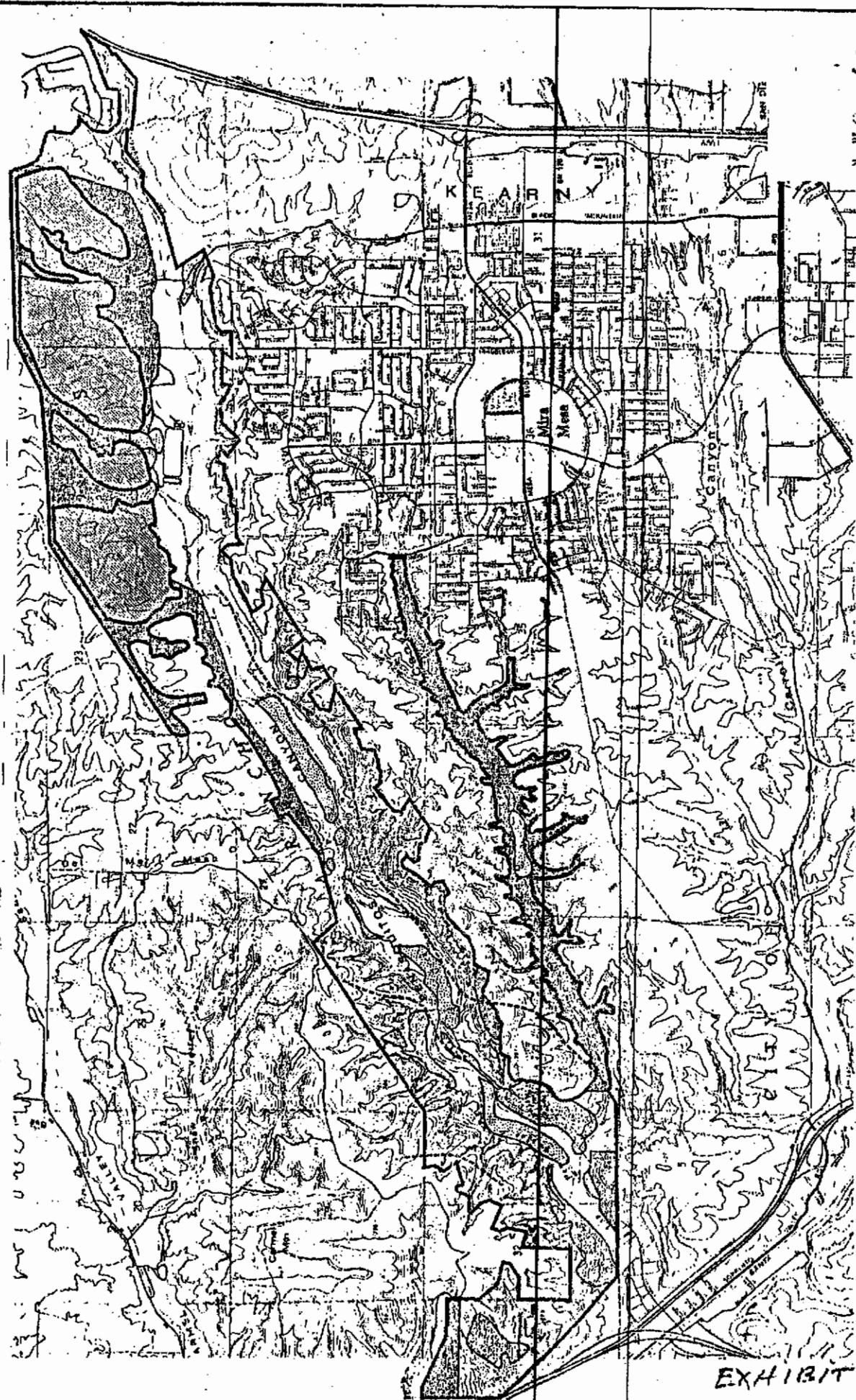
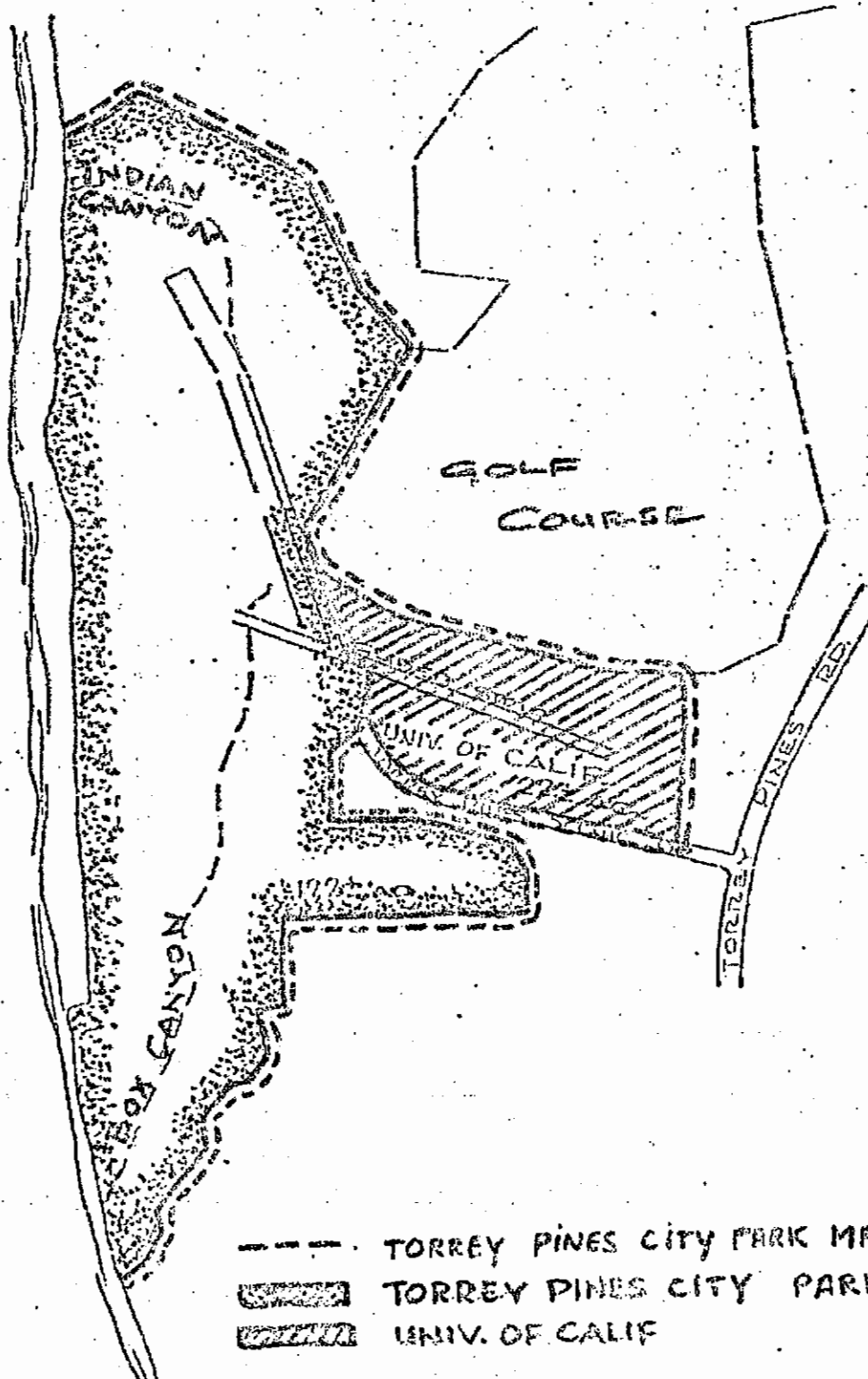


EXHIBIT " 8 "

TORREY PINES CITY PARK



- TORREY PINES CITY PARK MASTER PLAN BOUNDARY
- ▨ TORREY PINES CITY PARK
- ▨ UNIV. OF CALIF

EXHIBIT "A"

State of California

San Diego Coast Regional Commission

MEMORANDUM

To : Commissioners

Date : June 23, 1981

File No.:

From : Staff

Subject: University of California Lands (Main Campus and Scripps Campus)
in Relation to City of San Diego's Land Use Plan

The Staff Summary and Preliminary Recommendations report states that "...land use policies indicating the location, type, and intensity of development on that portion of the University of California property located within the coastal zone must be contained within the City's University/La Jolla Community land use plan in order to provide the direction necessary for future Commission review of UCSD public works projects." This statement was included because the University of California has decided not to propose a Long Range Development Plan (LRDP) pursuant to Section 30605 of the Coastal Act.

However, based upon the June 12, 1981 letter to the Commission from the University of California, State Commission legal staff has changed its advice to regional staff such that any future permit activity by the University will be considered by the State Commission without the need for any guidance within the City's Local Coastal Program land use plan. The City may include policies within the LUP for guidance for review purposes, but this is not required under the Coastal Act of 1976. Also, it is the opinion of State Commission legal staff that University projects are not considered Public Works Projects, although the University is still required to obtain a coastal development permit for each development to be conducted in the coastal zone. Therefore, Regional Commission staff is of the opinion that University of California lands do not need to be considered within the LUP.

See attached letter from the University of California to the San Diego Coast Regional Commission dated June 12, 1981.

EXHIBIT "10"

UNIVERSITY OF CALIFORNIA, SAN DIEGO

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ASSOCIATE VICE CHANCELLOR-
FACILITIES MANAGEMENT

LA JOLLA, CALIFORNIA 92093

June 12, 1981

San Diego Regional Commission
Mr. Timothy Cohelan, Chairman
6154 Mission Gorge Road, Suite 220
San Diego, California 92120

Re: North City Local Coastal Program

Dear Chairman Cohelan & Members of the Commission:

The purpose of this letter is to call your attention to page 54 of the staff summary of the North City LCP. The recommendation related to UCSD property should be corrected to accurately reflect the relationship between the alternative selected by UCSD to submit projects directly to the State Commission for review, and the ability of the Commission to certify the North City LCP.

It is true that UCSD has decided not to propose a Long Range Development Plan for certification pursuant to Section 30605 of the Coastal Act. That decision is vested in the University by Section 30605. If a LRDP is not certified, the University is required to obtain a coastal development permit for each development to be conducted in the coastal zone. The procedure set forth in Section 30605 is an "alternative to project-by-project review."

The staff is apparently under the misimpression that if the University does not voluntarily submit a Long Range Development Plan for certification, the local government is required to include in its local coastal program detailed land use policies governing developments by the University on its property. There is no such requirement in the Coastal Act, and in fact the Act clearly provides otherwise. Section 30500(a) provides in relevant part:

"Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction."

The Coastal Act provides that the City of San Diego has no jurisdiction over developments on University property. Section 30600(b) provides in relevant part:

"A coastal development permit from a local government shall not be required by this subdivision . . . for any development by a public agency for which a local government permit is not otherwise required."

San Diego Regional Commission
June 12, 1981
Page 2

Section 30519(a) provides that after a local coastal program is certified, the Commission no longer exercises development review authority. However, Section 30519(b) further provides that:

"Subdivision (a) shall not apply to any development proposed or undertaken . . . within any state university or college within the coastal zone; . . ."

Section 30600(d) provides that:

"After certification of its local coastal program, a coastal development permit shall be obtained from a local government as provided for in Section 30519."

While Section 30519 provides that a development within a state college or university does not require a permit from a local government, Section 30600(b) is applicable to developments by the University. The University will be obligated by Section 30600(c) of the Coastal Act to obtain a coastal development permit from a regional commission, the commission on appeal, or the commission where there is no regional commission.

Accordingly, the proposed North City Local Coastal Program cannot be held to be legally deficient for its failure to describe the types, location and intensity of land uses on University property.

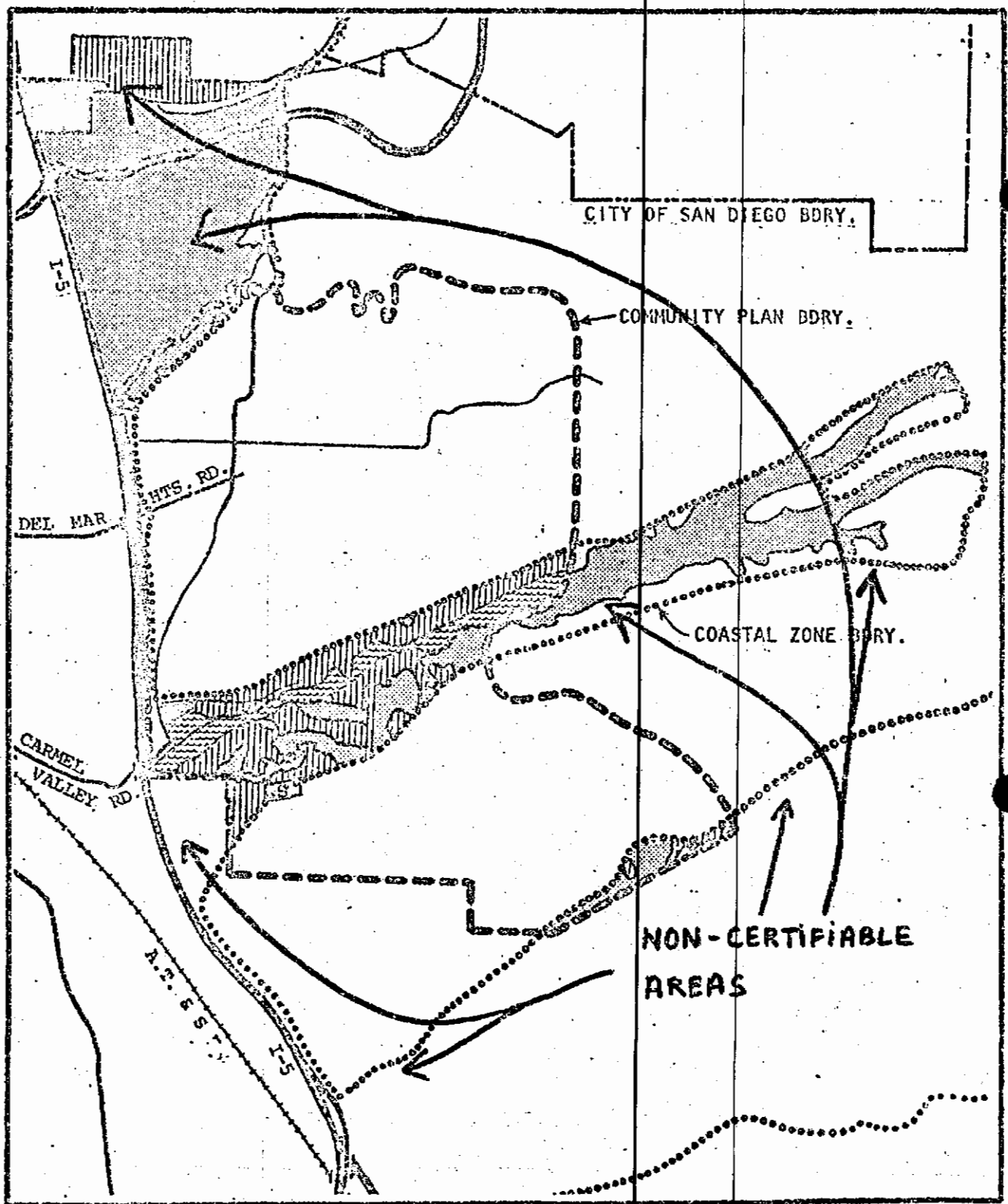
If desired, the LCP could identify the property owned by the University of California, and recognize that any development proposed within the coastal zone boundary will be subject to separate review by the State Commission on a project-by-project basis. Under existing law, the City of San Diego is unable to designate any detailed land use for University owned property. Any such designation would be meaningless without concurrence from the University. For the purposes of the North City LCP, either no formal land use designation, or simply the designation of the property for University related uses, would be sufficient for the purposes of certifying the North City LCP.

The regional commission should therefore disregard the proposed staff recommendation.

Yours truly, 107/15


Signature on file

Donald H. Sites
Associate Vice Chancellor -
Facilities Management



NORTH CITY LOCAL COASTAL PROGRAM

NORTH CITY WEST COMMUNITY-GENERALIZED LAND USE

EXHIBIT NO. 15
APPLICATION NO.
6-11-67-EDD
Exhibit 6 of Staff Report
 California Coastal Commission


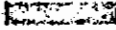
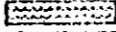

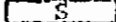
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	COMMERCIAL
	FLOOD PLAIN
	OPEN SPACE/PARKS
	SCHOOL SITES

EXHIBIT "6"
6

September 29, 1988

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: PETER DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: EXECUTIVE DIRECTOR'S DETERMINATION that the City of San Diego's Actions Implementing Portions of its Local Coastal Program are Legally Adequate (for Commission review at its meeting on October 14, 1988)

BACKGROUND

In 1977, the City of San Diego proposed, and the Coastal Commission endorsed, the segmentation of the City's Land Use Plan into twelve geographic segments corresponding to local community plan boundaries. With the exception of the Mission Bay segment, the Commission has certified or certified with suggested modifications, all of the City's land use plan segments. On January 13, 1988, the Commission certified the North City Land Use Plan as resubmitted and certified, with one suggested modification, the Centre City/Pacific Highway Corridor Land Use Plan. At that time, the Commission also certified, with suggested modifications, the City's proposed Implementation Plan.

On April 5, 1988, the City acknowledged the Commission's action on these two land use plan segments and the overall implementation program. On July 13, 1988, the Executive Director reported to the Commission that the City's actions were legally adequate to certify those elements and the Commission did not object. At the same hearing in July, the Commission certified, as resubmitted, nine of the remaining ten land use plan segments. The re-certified land use plans were La Jolla/La Jolla Shores; Pacific Beach; Mission Beach; Ocean Beach; Peninsula; Barrio Logan/Harbor 101; Otay Mesa/Nestor; Tijuana River Valley and Border Highlands.

All of the cited land use plans had been previously certified, some with suggested modifications, by the Commission and the City had agreed to accept the Coastal Commission's action on the various segments. However, the City had not made any formal acceptance of the Commission's actions within the prescribed six month period following each Commission review, consistent with the Administrative Regulations. Therefore, it was necessary to formally resubmit the applicable land use plans to acknowledge the Commission's previous approval and gain effective certification for those segments.

The City has completed work on a variety of administrative tasks to institutionalize the coastal development permit process into its operation. The Commission has received several documents including, but not limited to, copies of the amended coastal zone and general development regulations, updated zoning maps, a coastal development permit processing manual,

EXHIBIT NO. 16

APPLICATION NO.

6-11-67-EDD

Staff Report Dated
September 29, 1988

notification procedures for appealable developments, other public notice measures and draft post-certification maps. The post-certification maps, which graphically depict the Commission's and City's jurisdictional areas, have been drafted and reviewed by Commission staff. Final corrections and updating to reflect all proposed areas of deferred certification are in process and should be completed shortly.

At the time of the Commission's approval of the City's Implementation Plan, there were several areas of deferred certification established, where the Coastal Commission will retain permit authority. These areas are identified on the attached Exhibit "A". In the process of performing rezonings to implement the certified land use plans, there have been additional areas created where the City is now requesting deferred certification status as well. These additional areas are also identified on Exhibit "A".

Although staff has encouraged the City to fully implement the certified land use plans and perform all the necessary rezonings, suggesting the City should pursue subsequent amendments rather than defer areas now, staff does recommend the Commission endorse the City's request. Given the complexity of the City's program, the size of its coastal zone jurisdiction and the elapsed time since some land use plans were originally adopted, it is not at all unexpected that some rezonings or proposed land use designations might come into question.

There are five newly-requested areas of deferred certification. The first and second areas are both in Pacific Beach; they consist of the community's two visitor commercial nodes and the Garnet Avenue commercial strip. Within the proposed visitor commercial areas, there are apparently concerns about the ground floor use restrictions and the potential non-conforming status of certain uses within the two nodes. Along the Garnet Avenue commercial strip, there have been property owner concerns expressed about the leasehold limits established within the proposed Community Commercial (CC) zoning. It is unknown how long it will take to resolve these proposed areas of deferred certification.

The third area is a small block located on the south side of Niagara Street in Ocean Beach, situated west of the alley and east of the Ocean Beach Pier. The certified Precise Plan designates the area for residential development but the property is presently zoned commercial (C-1). Rather than implement a rezoning, the City has submitted a land use plan amendment to re-designate the block for Community Commercial. This would appear to be a more logical pattern of development, consistent with the existing commercial uses around the pier. This deferred certification area should be resolved within the next few months.

The fourth area where the City is now requesting deferred certification status is the Otay River Valley floodplain and abutting South Bay properties within its jurisdiction. This proposal is intended to allow time for the preparation

of a comprehensive and specific land use plan for the area. The work will also reflect multi-jurisdictional efforts underway in this area and the potential creation of a regional park extending up the river valley. This planning effort is expected to be completed within one year.

The final area requested for deferred certification is the floodplain areas of the Tijuana River Valley. In this case, the City was actively pursuing implementation and had initiated the necessary rezonings when it became aware that the Federal Emergency Management Agency (FEMA) was working on updating its hydrologic maps of the river valley. The City did not want to implement the rezonings, only to discover the floodway/floodplain fringe delineations were outdated; Commission staff concurred with this approach. Consultation on the revised mapping has already begun and this work should be completed within the next year. The City has also included this work as part of its current LCP Grant request.

As previously mentioned, Commission staff did not encourage the establishment of any new areas of deferred certification. However, at this juncture, it does not seem beneficial to any party to forestall effective certification for as much of the City's coastal zone as possible. In addition, the City has indicated the removal of the La Jolla Planned District and Via de la Valle Specific Plan as areas of deferred certification in its proposed work program and current LCP Grant request.

Therefore, by their action adopting Resolution No. R-270680 on April 5, 1988 and their subsequent administrative efforts, the City now seeks to obtain coastal development permit authority on October 17, 1988 for much of its coastal zone. The City has agreed to issue coastal development permits for all its coastal zone, excepting those areas of deferred certification as identified on Exhibit "A", in accordance with the certified local coastal program. The City's actions and notification procedures for appealable development, in particular, have been reviewed and determined to be legally adequate, consistent with Section 13544 of the Commission's Administrative Regulations.

Recently, due to local budgetary concerns, City staff had indicated they might delay requesting the delegation of permit authority because of present staffing constraints within the Coastal Section of the Planning Department. A categorical exclusion request is presently undergoing public review and hearings at the City; it is not part of this action. However, rather than await its disposition, the City has requested Commission authorization to assume permit authority. Additionally, the City has also asked that the Commission accept and complete permit processing for all coastal development permit applications received on or before October 14, 1988; the City would then assume permit authority for most areas on October 17, 1988.

These provisions are acceptable and effective certification for pertinent

Commissioners
September 29, 1988
Page 4

portions of the City's local coastal program is recommended. The certification order and accompanying letter will be forwarded to the City and appropriate parties if a majority of the Commissioners present do not object to the Executive Director's determination.

RECOMMENDATION

Staff recommends that the Commission CONCUR with the Executive Director's determination as set forth in the attached letter (to be sent after Commission concurrence).

(3807A)

EXHIBIT "A"

City of San Diego Areas of Deferred Certification

The geographic areas, districts or sites which were deferred certification on January 13, 1988 in the Coastal Commission's review of the Implementation Plan are as follows:

- 1) Via de la Valle Specific Plan area;
- 2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985;
- 3) The area and properties designated "Future Use Study" and the San Diego Gas & Electric property located within the Los Penasquitos Lagoon and watershed west of Interstate 5;
- 4) Neighborhood #8 Precise Plan area;
- 5) Portions of Carmel Valley located within the City's Urban Reserve and outside the North City West Community Plan;
- 6) Los Penasquitos City Park and Reserve;
- 7) Cal-Sorrento property located at the west end of Los Penasquitos Canyon, just north of the creekbed and east of Interstate 805;
- 8) Torrey Pines City Park;
- 9) The La Jolla Planned District area;
- 10) Mission Bay Park and Land Use Plan segment;
- 11) Famosa Slough; and
- 12) The County Administration Center site.

The geographic areas, districts or sites which were deferred certification on October 14, 1988 in the Coastal Commission's review of the Executive Director's determination for effective certification are as follows:

- 13) Visitor commercial nodes in Pacific Beach located generally west of and fronting on Mission Blvd. between Law and Pacific Beach Drive and generally fronting on Mission Bay Drive (existing R-400, C, C-1, CA and CO-zoned properties recommended to be rezoned CV);

City of San Diego
Exhibit "A" continued

- 14) Garnet Avenue commercial strip in Pacific Beach extending from Mission Blvd. to roughly Morrell (existing C-zoned properties recommended to be rezoned CC);
- 15) A block located on the south side of Niagara, west of Bacon and bounded by two alleys and situated east of the pier, in Ocean Beach;
- 16) Otay River Valley and South Bay Deferred Certification Study Area, as shown on Attachment 4 of Planning Report No. 88-294; and
- 17) Tijuana River Valley floodplain areas, as shown on City Zoning Map #C-704.

(3808A)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740



October 14, 1988

Honorable Maureen O'Connor, Mayor
City of San Diego
202 "C" Street
San Diego, CA 92101

Re: Certification of City of San Diego's Local Coastal Program
and Delegation of Permit Authority for Certain Areas

Dear Mayor O'Connor,

The California Coastal Commission has reviewed the City's Resolution No R-270680 and other administrative efforts, together with the Commission's actions on January 13, 1988 and July 13, 1988, certifying eleven of the City's twelve land use plan segments and implementation program. In accordance with Section 13544 of the Commission's Administrative Regulations, I have made the determination that the City's actions are legally adequate; and, the Commission has concurred at its meeting of October 11-14, 1988.

By its action of April 5, 1988, the City agrees to issue coastal development permits for all its area, excepting the areas of deferred certification identified on the attached Exhibit "A", based on the certified provisions of the City's local coastal program. The attached Exhibit "A" was formally adopted by the Commission as part of its certification order.

Consistent with Section 13544 of the Commission's Regulations, the City has adopted all provisions of the various segments and completed the necessary rezonings. The City's notification procedures for appealable developments are legally adequate and the City is therefore ready to assume permit authority for the identified portions of its coastal zone. It is our understanding that you intend to assume this authority on October 17, 1988. By an agreement reached with the City Planning Department, the Coastal Commission will accept and complete processing on all coastal development permit applications received on or before October 14, 1988.

In conclusion, I would like to extend our staff's and Commissioners' sincere congratulations for completing this

Maureen O'Connor
October 14, 1988
Page 2

important coastal planning effort. The City's dedication and on-going work to enhance and protect the coastal zone and all its unique resources for current and future generations are noteworthy. We remain available to assist you and your staff in any way possible as you continue to develop and implement the City's local coastal program.

Sincerely,

Peter Douglas
Executive Director

PD/DNL:dl(2698L)

cc: City Councilmembers
Robert P. Spaulding
Greg Konar

RESOLUTION NUMBER R- 270680

ADOPTED ON APR 5 1988

WHEREAS, on March 10, 1987, by Resolution No. R-267849 the Council of The City of San Diego at a public hearing reviewed, approved, and authorized the Planning Director to transmit to the California Coastal Commission, The City of San Diego's zoning ordinances, certain zoning district maps and other implementing actions related to its Local Coastal Program ("LCP"); and

WHEREAS, on May 19, 1987, by Resolution No. R-268368 the Council of The City of San Diego at a public hearing adopted three (3) amendments to its LCP; and

WHEREAS, on January 13, 1988, the California Coastal Commission at a public hearing considered The City of San Diego's zoning ordinances, the zoning district maps and other implementing actions (hereinafter referred to as "LCP Ordinances") which were adopted by the Council of The City of San Diego by Resolution Nos. R-267849 and R-268368; and

WHEREAS, the California Coastal Commission on January 13, 1988, rejected The City of San Diego LCP Ordinances as submitted; and

WHEREAS, the California Coastal Commission on January 13, 1988, certified The City of San Diego LCP Ordinances with suggested modifications which if adopted by The City of San Diego would conform with the certified Land Use Plan ("LUP") and be adequate to carry out the provisions of the certified LUP; and

WHEREAS, the Council of The City of San Diego has reconsidered the LCP Ordinances as well as the suggested modifications recommended by the California Coastal Commission; and

WHEREAS, it is the intention of this Council that The City of San Diego assume permit issuing responsibility for coastal development permits on October 17, 1988 for all of that area in the City of San Diego within the Coastal Zone; NOW, THEREFORE

BE IT RESOLVED, by the Council of The City of San Diego, that it hereby accepts the certification of The City of San Diego's Local Coastal Program and accepts all of the suggested modifications as recommended by the California Coastal Commission.

BE IT FURTHER RESOLVED, that the following listed LCP Ordinances, have been amended to incorporate the suggested modifications recommended by the California Coastal Commission and are hereby approved:

Sensitive Coastal Resource Overlay Zone (SCR)
(SEC. 101.0480)

Floodway Zone (FW)
(SEC. 101.0403)

Floodplain Fringe Zone (FPF)
(SEC. 101.0403.1)

Hillside Review Overlay Zone (HR)
(SEC. 101.0454)

Coastal Development Permits Ordinance
(SEC. 105.0201 et seq.)

Community Commercial Zone (CC)
(SEC. 101.0427)

Commercial Visitor - Service Zone (CV)
(SEC. 101.0426.1)

C-1 Zone
(SEC. 101.0430)

Commercial Office Zone (CO)
(SEC. 101.0423)

Neighborhood Commercial Zone (CN)
(SEC. 101.0426)

Multiple Family Residential Zone (R)
(SEC. 101.0410)

RV Zone
(SEC. 101.0414)

Subdivision Regulations
(SEC. 102.0301.1 and SEC. 102.0402.1)

BE IT FURTHER RESOLVED, that the following listed LCP Ordinances which were approved by the Council by Resolution Nos. R-267849 and R-268368 and which were acceptable to the California Coastal Commission as submitted are hereby approved.

Land Development Ordinances
(SEC. 62.0107, SEC. 62.0401, SEC. 62.0405 and SEC. 62.0417.1)

Mission Beach Planned District
(SEC. 103.0528.10 and SEC. 103.0533)

La Jolla Shores Planned District
(SEC. 103.0302.3, SEC. 103.0303.1 and SEC. 103.0303.4)

A-1 Zones (Agricultural)
(SEC. 101.0404)

Conditional Use Ordinance
(SEC. 101.0510)

Coastal Zone Regulations - Division 8
(SEC. 101.0823)

Recordation of Variances, Permits or Entitlements
(SEC. 101.0245)


Definitions and Interpretations
(SEC. 101.0101.95)

BE IT FURTHER RESOLVED, that the Planning Director is hereby authorized to transmit these City of San Diego LCP Ordinances to

the California Coastal Commission for approval, pursuant to Section 30513 of the Public Resources Code, upon confirmation by its executive director.

BE IT FURTHER RESOLVED, that the Planning Director is authorized to assume coastal development permit issuing responsibility on October 17, 1988 for all of that area in the City of San Diego within the Coastal Zone, provided all of the listed ordinances have become effective on such date.

APPROVED: JOHN W. WITT, City Attorney

By  *Signature on file*
Thomas F. Steinke
Deputy City Attorney

TFS:wk
03/30/88
Or.Dept:Plan.
R-88-1925
Form=r.none

Passed and adopted by the Council of The City of San Diego on
April 5, 1988 by the following vote:

YEAS: Wolfsheimer, Roberts, Pratt, Struiksma, McCarty, Filner,
O'Connor.

NAYS: None.

NOT PRESENT: McColl, Henderson.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 270680, passed
and adopted by the Council of The City of San Diego, California
on APR 5 1988.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: *Signature on file*, Deputy

EXHIBIT "A"

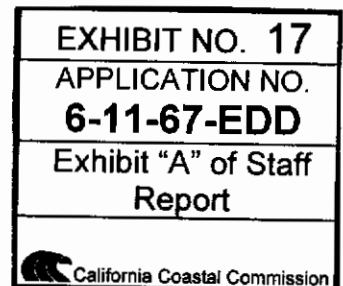
City of San Diego Areas of Deferred Certification

The geographic areas, districts or sites which were deferred certification on January 13, 1988 in the Coastal Commission's review of the Implementation Plan are as follows:

- 1) Via de la Valle Specific Plan area;
- 2) Portions of the San Dieguito River Valley located outside the North City West Community Plan and the redefined floodway/floodplain fringe zones addressed under the resubmitted North City LUP, dated August 1985;
- 3) The area and properties designated "Future Use Study" and the San Diego Gas & Electric property located within the Los Penasquitos Lagoon and watershed west of Interstate 5;
- 4) Neighborhood #8 Precise Plan area;
- 5) Portions of Carmel Valley located within the City's Urban Reserve and outside the North City West Community Plan;
- 6) Los Penasquitos City Park and Reserve;
- 7) Cal-Sorrento property located at the west end of Los Penasquitos Canyon, just north of the creekbed and east of Interstate 805;
- 8) Torrey Pines City Park;
- 9) The La Jolla Planned District area;
- 10) Mission Bay Park and Land Use Plan segment;
- 11) Famosa Slough; and
- 12) The County Administration Center site.

The geographic areas, districts or sites which were deferred certification on October 14, 1988 in the Coastal Commission's review of the Executive Director's determination for effective certification are as follows:

- 13) Visitor commercial nodes in Pacific Beach located generally west of and fronting on Mission Blvd. between Law and Pacific Beach Drive and generally fronting on Mission Bay Drive (existing R-400, C, C-1, CA and CO-zoned properties recommended to be rezoned CV);



City of San Diego
Exhibit "A" continued

- 14) Garnet Avenue commercial strip in Pacific Beach extending from Mission Blvd. to roughly Morrell (existing C-zoned properties recommended to be rezoned CC);
- 15) A block located on the south side of Niagara, west of Bacon and bounded by two alleys and situated east of the pier, in Ocean Beach;
- 16) Otay River Valley and South Bay Deferred Certification Study Area, as shown on Attachment 4 of Planning Report No. 88-294; and
- 17) Tijuana River Valley floodplain areas, as shown on City Zoning Map #C-704.

(3808A)

Exhibit Nos 18-21 are available on the web only

California Coastal Commission
San Diego District
6154 Mission Gorge Road, Suite 220
San Diego, California 92120
(714) 280-6992
ATSS 636-5868

FINDINGS

CITY OF SAN DIEGO

NORTH CITY

LAND USE PLAN

Background

The City of San Diego, on April 20, 1981, formally submitted the North City Land Use Plan (LUP). After staff review for compliance with the Local Coastal Program (LCP) Regulations on filing, the Executive Director of the San Diego Coast Regional Commission determined the submittal was adequate and formally accepted the land use plan on April 22nd. The San Diego Coast Regional Commission held the first of two public hearings on June 12, 1981, to consider this land use plan. At the second public hearing on June 26, 1981, the Regional Commission voted to deny the land use plan, as submitted, based on the adopted findings that policy groups within the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Land Use plans were inconsistent with the Coastal Act of 1976. The Regional Commission then adopted suggested policy revisions which, if incorporated into the land use plan by the City of San Diego, are intended to make the plan consistent with the Coastal Act.

The suggested revised policy language and findings shall be transmitted to the City of San Diego's Planning Director with an explanation that the intent of the revised policy language is to provide the City guidance in re-submitting the land use plan to the Coastal Commission and is not binding on the City of San Diego.

EXHIBIT NO. 18

APPLICATION NO.

6-11-67-EDD

Staff Report Dated

July 20, 1981

 **California Coastal Commission**

7-20-81



ENCLOSURE

A

A. FORMAT

This document is organized to correspond to the individual land use plans within the North City Local Coastal Program Land Use Plan and the policy groups within these plans.

B. AREAS FOR DELAYED CERTIFICATION

The San Diego Coast Regional Commission found the North City Land Use Plan, consisting of the land use plan or portions of plans for the Torrey Pines, North City West, Mira Mesa, and University/La Jolla Community Plan areas, as submitted by the City of San Diego, inconsistent with the Coastal Act of 1976.

The San Diego Coast Regional Commission found that approval be delayed for the following identified areas until such time that specific Land Use designations, in the form of Community Plans or Master Plans, have been developed by the City of San Diego and submitted to the Commission for certification. The identified areas are as follows:

1. Portion of the Coastal Zone north of the North City West (NCW) planning area located within the San Dieguito River Valley area (See Fig. 5 of Staff Summary and Preliminary Recommendations).
2. Portions of the Coastal Zone within Carmel Valley located to the east and to the west of the NCW Community (See Fig. 5)
3. Areas north of Los Penasquitos Canyon not located within the NCW Community (See Figs. 5 and 6)
4. Los Penasquitos Regional Park (See Fig. 9)
5. City of San Diego Torrey Pines City Park (See Fig. 11)
6. The Highway 56 Freeway east of I-5

University of California lands are not being considered within the LUP (See attached memorandum).

FINDINGS

The North City Land Use Plan does not contain a description of the types, location, and intensity of developments that would proceed under the plan's land use designation for the identified areas. Section 30108.5 of the Coastal Act defines a land use plan as "that relevant portion of a local government's general plan, or local coastal element, which is sufficiently detailed to indicate the kind, location, and intensity of land use, the applicable resource protection and development policies, and where necessary, a listing of implementing actions." However, for the identified areas, type, location and intensity of uses and plan policy analysis have not been presented in the land use plan. Therefore, the Commission finds that the heretofore identified areas of the NC LCP land use plan cannot be found in conformance with Section 30108.5 and the consideration of the type, location, and intensity of development for the areas identified is necessary before Commission approval.

TORREY PINES COMMUNITY PLAN AREA

SUMMARY FINDING

The San Diego Coast Regional Commission found that the Torrey Pines Community Land Use Plan, as submitted by the City of San Diego, is inconsistent with the California Coastal Act of 1976. The Regional Commission further found that, with the addition of the recommended policy language revisions, the Torrey Pines Community Land Use Plan portion of the North City Land Use Plan would be consistent with the Coastal Act of 1976.

POLICY GROUP FINDINGS

1. SHORELINE ACCESS

- a. Suggested Revised Policy Language - This policy group was approved as submitted.
- b. Findings

The maintenance and improvement of public access to the beaches is of prime importance under the provisions of the Coastal Act. The City's land use policies in the Torrey Pines Community portion of the NC LCP land use plan provide appropriate direction for the maintenance and improvement of access to and along the shoreline. In addition, access provisions in the form of non-vehicular modes such as bikeways, have been designated with improvements to Carmel Valley Road. Also, the NC LCP land use plan has included policies providing for lateral and vertical access along the shoreline and have incorporated prescriptive rights to procedures in association with new development where necessary to preserve potential public use rights. Criteria also have been established in the LUP to provide public access to and through the Penasquitos Lagoon that is compatible with the preservation of the unique environmental quality of the wetland. Therefore, the Commission finds that the Shoreline Access Policy Group for the Torrey Pines Community portion of the NC LCP Land Use Plan is consistent with Sections 30210-30212 and 30214 of the Coastal Act.

2. RECREATION AND VISITOR SERVING FACILITIES

- a. Suggested Revised Policy Language

Development of a park and ride facility in the southwest corner of I-5 and Carmel Valley Road east of Sorrento Valley Road will be constructed provided that: 1) it will allow the existing desilting basin to be used and maintained for as long as the basin is needed, or 2) after the existing desilting basin is no longer needed the parking facility may be constructed in consultation with the California Department of Fish and Game, where developmental criteria for the minimal disturbance of landforms and control of surface water runoff, as suggested by the Department, shall be incorporated in the project development. The construction of a park and ride facility will be subject to the approval of the Coastal Commission.

Visitor-oriented commercial uses shall be designated for the remaining lot (83) of the Sierra Del Mar subdivision at the northwest corner of the intersection of I-5 and Carmel Valley Road. These uses shall include, but not be limited to, open space, beach shuttle parking, restaurant and/or motels.

b. Findings

An open space designation has been included in the Torrey Pines Community Plan for the southwest corner of I-5 and Carmel Valley Road. This area is adjacent to the wetlands of the Los Peñasquitos Lagoon. A plan statement discusses a proposal to construct a park and ride lot at this location. Such a facility would have to include appropriate buffering and/or runoff control considerations to protect the adjacent environmentally sensitive habitat area. With inclusion of the suggested policy revision regarding the protection of the lagoon habitat from adjacent development, the construction of a park and ride facility within a plan designated open space area is found to be consistent with the resource protection policies of the Coastal Act.

The Community Plan designates the northwestern intersection of I-5 and Carmel Valley Road for commercial use. However, subject to Regional Commission action on permit F8341, most of the site will be developed as residential, with a relatively small area (Lot 83) to be designated for commercial use. Subject to approval of F8341, a deed restriction was recorded which provides for visitor oriented commercial uses on the subject lot. Section 30222 of the Act states that "the use of private lands suitable for visitor-serving commercial recreational facilities...shall have priority over...general commercial development." Similarly, Section 30223 provides that "upland areas necessary to support coastal recreational uses shall" be reserved for such uses, where feasible. The suggested recommendation that visitor-serving commercial uses be allocated to Lot 83 of the Sierra Del Mar subdivision is consistent with Sections 30222 and 30223 which assign a higher priority to visitor-serving use than general commercial use in upland areas along the coastline. Also, providing for visitor-serving uses in this area preserves any available street capacity of Carmel Valley Road for recreational uses instead of for residential or commercial uses.

3. HOUSING

a. Suggested Revised Policy Language

Prior to or concurrent with acceptance for certification of the implementation phase of the North City LCP by the Commission, the City shall submit for LCP approval a Housing Component of the LCP covering all portions of the City within the coastal zone. This Housing Component shall be incorporated as a portion of the LCP land use plan for each community segment of the LCP, and its standards, policies, and goals shall take precedence over any conflicting language in any individual segment plan. This Housing Component may be a document prepared for the Coastal Zone only, or may be a segment of a citywide Housing Element which contains data and analysis sufficiently disaggregated to enable reasonable consideration of recommendations and policies applicable to the coastal zone. Prior to submittal of the Housing Component for Commission review (in accordance with land use plan cert-

ification procedures), the City shall submit the document to the State Department of Housing and Community Development for a review of the adequacy of the document pursuant to Govt. Code Section 65302(d).

b. Findings

As required under Section 30213 of the Act, new housing shall be developed in conformity with the standards, policies and goals of local housing elements. The California State Department of Housing and Community Development (HCD) has determined that the City's housing element is not in full compliance with the State Law. Therefore, an adequate finding of compliance with the requirements of Section 30213 of the Act cannot be made. The City is currently revising its City-wide housing element for resubmission to HCD. However, a more appropriate way to expeditiously address those housing concerns pertinent to the Coastal Zone would be to prepare a "Housing Component". This housing component, prepared in association with the City's Housing Element, would provide more specific policy direction for development of the City's total local coastal program. The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Commission finds that prior to certification of the LCP implementation phase for the North City Plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language and these findings with the previous policy language and these findings with the previous policy group findings, the Commission finds the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES ENVIRONMENTALLY SENSITIVE HABITAT AREAS, DIKING, DREDGING AND FILLING AND SHORELINE STRUCTURES, AND HAZARD AREAS

a. Suggested Revised Policy Language

1. No fill, or permanent structures shall occur within presently undeveloped portions of the defined 100-year floodplain of Los Penasquitos Creek (including the area of Los Penasquitos Lagoon), the floodplain area of Carroll Creek upstream of Los Penasquitos Lagoon, as well as within the floodplain of the San Dieguito River. Only uses compatible with periodic flooding and which will not adversely impact any environmentally sensitive habitat areas would be allowed within the above identified

areas. Minor incidental structures necessary to support uses compatible with the floodplain designation may be considered in the implementation phase of the LCP. The 100 year flood plain boundary lines for the above named water courses shall be updated for LCP purposes utilizing runoff amounts within the watershed that are expected to result from future upstream developed conditions. Updated flow amounts and 100 year floodplain boundary lines shall be developed by the City of San Diego in consultation and subsequent concurrence with the California State Department of Water Resources.

Based upon the establishment of a redefined floodway (FW) boundary stemming from the update of the 100 year floodplain boundary, property located south of Estuary Way and east of Roselle St. can be filled up to the floodway line, subject to the provision that any previous fill located within the redefined FW area be removed.

2. Additional Language shall be added to LCP Specific Language on pg. 65 of the LUP to read as follows:

Until such plans for the enhancement of Los Penasquitos Lagoon are approved by the Coastal Commission, new development associated with wetland areas shall be subject to the provisions of Section 30233 of the Coastal Act of 1976.

3. The extent of all wetland areas within the Los Penasquitos and San Dieguito River basins portions of the Torrey Pines Community planning area should be identified and mapped within the land use plan. Identification and extent of wetlands shall be consistent with the identification procedures contained within the adopted Statewide Interpretive Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas or with the San Dieguito Lagoon and Los Penasquitos Lagoon Resource and Enhancement Studies as reviewed and approved by the Coastal Commission.

Both the Community Open Space map (Pg. 53 of LUP) and the Los Penasquitos Environs-ownership map (Pg. 60) should be updated to reflect the expansion of open space areas pursuant to recent coastal permit action and recent changes in land ownership.

4. No further subdivision of properties shall occur in that area south of the termination of the presently improved Nogales Dr. right-of-way and west of the Torrey Pines State Reserve Extension as described in permit F5355. Subject to conditions of this permit, the applicant recorded a deed restriction to prevent the further subdivision of lands for future development in the above referenced area to protect against any disruption to the existing on-site Torrey Pine trees and adjacent Torrey Pines Reserve Extension area.

5. Channelization or other substantial alteration of stream channels, including the removal of vegetation for stream flow facilitating purposes, shall not occur except where limited to 1) flood control projects where no other method of protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, and 2) developments where the primary function is the improvement of fish and wildlife habitat. In addition, a main consideration associated with any potential stream alteration is to give priority to any necessary developments that minimize the transport of stream sediment to the downstream environmentally sensitive wetland areas.

Any channelization or other substantial alteration of stream channels that involve the construction of in-stream sedimentation basins shall not involve either on site or along the stream course 1) the removal of biologically significant riparian vegetation or 2) the filling of floodplain areas that function also as sediment basins.

6. Buffer zones sufficient to protect identified environmentally sensitive habitat areas (as defined by Section 30107.5 of the Coastal Act) shall be established for developments adjacent to these areas. The standard for evaluating development adjacent to such areas is the extent to which the proposed development adjacent to such areas is the extent to which the proposed development maintains the functional capacity of such areas. Therefore, development permitted in a buffer zone shall be limited to access paths, fences necessary to protect the habitat area, and similar developments which have beneficial effects or no significant adverse effects on the adjacent environmentally sensitive habitat areas. The criteria for establishing buffer zones includes a determination of: 1) the biological significance of adjacent buffer lands; 2) the sensitivity of species to disturbance; 3) the susceptibility of the buffer parcel to erosion; and 4) the type and scale of adjacent development proposed.

7. Future development adjacent to the Torrey Pines Extension area shall provide for adequate buffer areas. Specific areas of concern shall involve adequate setbacks to avoid significant erosion, visual, or sediment impacts from construction. Setbacks also shall be provided to prevent any necessary fire breaks to be constructed on reserve property. Also, public access (and public parking to the extent feasible) shall be provided from the street end at Mira Montana Dr. through any future development to the reserve with the use of dedicated permanent public access easements.

8. For that area designated as a lagoon buffer area within the San Dieguito Lagoon Enhancement Plan and, therefore, to protect important vegetative and visual resources of the area and minimize any potential for erosion, residential development on the hillside south of the San Dieguito River floodplain boundary shall be limited to residential densities of 1 dwelling unit per every 1.6 acres along with the provision that no development, grading or alteration of landforms shall occur on slopes greater than 25%. However, for those slopes between 25 and 35 percent, a density credit of one (1) dwelling unit per every 40,000 sq. ft. (1 du/ac) could be transferred to the developable areas. (ref. coastal development permit F7453 A(1)).

9. In order to protect important vegetative and visual resources of the community, as well as minimize any potential for erosion, no development grading or alteration of land forms shall occur on slopes greater than 25% or in canyon bottoms. An exception to these criteria would be for the development of access roads and utilities and for the development planned for the control of runoff and sediment production in Crest Canyon. Development on already subdivided, vacant lots that have more than 90% of their total area in excess of 25% slope shall be constructed in a manner subordinate to their natural landforms. No grading out of flat pads shall occur; instead, grading or site alteration shall be limited to minimal footings site preparation. Driveway/parking areas shall be limited in size and shall be restricted to an area adjacent to the local street. On site vegetation shall not be disturbed beyond the limits of the area needed to be developed by the construction process. Development shall utilize flexible siting techniques, including the varying of lot sizes and shapes, modified setbacks, and the varying of positions of structures and their sizes.

No further subdivisions of land or utilization of Planned Unit Developments (PUDs) shall occur on lots that have their total area in excess of 25% slopes.

Undeveloped slopes over 25 percent shall be preserved as open space through offers of dedications of permanent open space easements as a condition of future subdivision or by any other enforceable means available. These offers shall be recorded as restrictions against the subject property.

The restrictions shall prohibit any alterations of landforms, removal of existing vegetation or the erection of structures of any type. Open space easements would protect the steeper slopes from erosion, preserve the area's scenic and visual amenities, and protect valuable native vegetation.

10. A grading plan shall be prepared concurrently with development plans to incorporate erosion control procedures to be utilized during project development. Sediment basins (debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development process to remove sediment from runoff waters draining from the land undergoing development. Land shall be developed in increments of workable size which can be completed during a single construction season in order to minimize soil exposure. No grading or land alteration shall occur during the rainy season between the time period of November 1st through March 30th. Construction may continue during this period on completed and stabilized sites, provided that such construction does not include grading activities or landform alterations.

All areas disturbed but not completed during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

11. In completed developments, all graded slopes shall be stabilized prior to the rainy season by means of established vegetation or other suitable means. The use of plantings as a means to control site erosion shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation within an appropriate lead time prior to November 1, to provide adequate landscape coverage. This requirement shall apply to all disturbed soils including stockpiles.

12. Where development would occur on or adjacent to sloping lands, a runoff and sediment control plan designed by a licensed engineer qualified in hydrology and hydraulics shall be prepared which would assure no increase in peak runoff rate from the fully developed site over the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six-hour period once every ten (10) years (10 year, six hour rainstorm). Runoff control shall be accomplished by such means as on-site catchment basins, detention basins, and siltation traps along with energy dissipating measures at the terminus of storm drains or any other on-site means found to be more effective than these. A number of drainage facilities shall be utilized with development to minimize the potential for adverse erosion. Use of cluster type development shall be utilized where it would limit the amount of impervious surfaces and associated increases in peak runoff. Runoff control plans shall be developed prior to tentative subdivision map approval. These requirements would not apply to construction of single-family residences on already subdivided lots.

All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

13. Special districts or other mechanisms shall be established with new developments to provide the means for maintenance and repair of required runoff and erosion control facilities as well as for the maintenance of any irrigation systems. If, in the future, after completion of development, it is determined by the City that on-site runoff and erosion control facilities are no longer needed or should be modified for resource protection purposes, the City could apply to amend the LCP to make appropriate changes.

14. Any necessary shoreline protective works shall be placed in such a manner to avoid encroachment on areas utilized by the public, unless engineering studies indicate that minimal encroachment may be necessary to avoid any adverse erosion conditions. The placement of shoreline protective works shall be permitted when required to serve coastal dependent uses or protect existing structures or public beaches in danger of erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

15. Any improvements to Carmel Valley Road shall not encroach within the wetland area of the Los Penasquitos Lagoon as determined by the State Department of Fish and Game. The two-lane improved roadway with bikeway/pedestrian way on the lagoon side proposed from Camino Del Mar to Protofino Drive should be extended eastward to the existing four-lane section of Carmel Valley Road at the intersection of Sorrento Valley Road with no encroachment into the Los Penasquitos Lagoon. The appropriate

realignment (increase in road radius) of the reverse curve section of the existing Carmel Valley Roadway shall occur within the existing bluff area on the north side of the roadway if it is determined by Fish and Game that the road improvements would result in encroachment into the wetland. Appropriate setbacks of development are in effect for the Sierra Del Mar subdivision immediately north of the subject reverse curve in order to accommodate a road realignment in the area of the bluffs. Control of surface water runoff into the lagoon from roadway development shall be consistent with appropriate Commission suggested recommendations contained herein. Also, stringent grading and landscape controls, consistent with appropriate Commission suggested recommendations contained herein, shall be utilized to control potential sedimentation and visual impacts resulting from bluff grading.

b. Findings

No fill within the floodplains of the plan area watercourses 1) eliminates restrictions of flood flows which can provide for greater sediment transport through higher velocity flows, 2) continues to provide a desilting basin for stream transported sediment which prevents silt deposition in the lagoon, and 3) preserves valuable upland vegetative habitat areas for the continued biological functioning of the downstream lagoons. Therefore, the suggested recommendation to prevent fill or permanent structures within an updated 100-year floodplain boundary line for plan area watercourses is consistent with the resource protection policies of the Coastal Act.

The suggested recommendation to prevent any filling of the Los Penasquitos Lagoon Wetlands associated with improvements to Carmel Valley Road is consistent with the resource protection policies of the Coastal Act.

There are numerous provisions in the Coastal Act that require protection of coastal wetlands. These sections provide in part:

30231: The biological productivity and the quality of coastal wetlands...shall be maintained...through, among other means...controlling runoff,...

30233: (a) The diking, filling, or dredging of...wetlands...shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines...

(c) ...Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California," shall be limited to very minor incidental public facilities, restorative measures, nature study...

30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

30604.1: Where any...fill development is permitted in wetlands in conformity with this division, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action...

A four lane widening of Carmel Valley Road, as suggested by the City, would encroach into the wetlands of Los Penasquitos Lagoon. Design considerations include a widening of the road surface from 24 feet to a minimum of 50 feet. Also included would be a realignment of the reverse curve to reduce the curve radius and thereby eliminate existing safety concerns. In addition to the concern of encroaching into the wetland area adjacent to the roadway, the Commission also is concerned that widening the roadway to four lanes westerly to Portofino Drive would set a precedent for further widening westerly between Portofino Drive and Camino Del Mar. Private property confines the Carmel Valley Road right-of-way on the north. Therefore, the only means of accommodating any increased width, aside from condemning adjacent property, would be to encroach into the lagoon. As stated previously, any encroachment into the adjacent wetlands would be inconsistent with the wetland preservation policies of the Coastal Act.

The Commission has dealt with the issue of realigning and widening Carmel Valley Road through the permit process. State Commission action on Permit Appeal #156-79 addressed the City of San Diego's request to widen Carmel Valley Road to four lanes between Sorrento Valley Road and Portofino Drive and straighten the tight reverse curve conditions through roadway realignment. The Commission denied the request for road widening and realignment with the Commission finding that such resulting road improvements would require encroachment into the adjacent wetland area. Also, the Commission found that based upon available data, current traffic on Carmel Valley Road was within its capacity and therefore, did not require widening. The Commission was of the opinion that a moderate, two lane curve-straightening project could be approved without requiring fill in the Los Penasquitos Lagoon wetlands.

Of concern to the Commission is the fact that the Torrey Pines Community Plan has designated Carmel Valley Road as a major street through the community. However, the plan does state that Carmel Valley Road should be reduced to collector street classification. The thrust of the Commission action within the Issue Identification process for the Torrey Pines and North City West Communities was to make Del Mar Heights Road the major regional east-west multi-purpose link in order to de-emphasize automobile traffic on Carmel Valley Road west of I-5 and reduce the need to widen this roadway. This concept has been incorporated within the North City West land use plan portion of the City's LCP land use plan. LCP specific language has been included which calls for Carmel Valley Road to "be developed as a special access corridor designed around its natural landscaped corridor both east and west of I-5.

A recreational emphasis, of auto service primarily for residents, mini-transit, trails and bikeways, should be designed for this corridor". Similar language calls for inland areas of Carmel Valley Road (east of I-5) to be evaluated in relation to providing for coastal access to the west of I-5. Specifically, the plan states that "shuttle transportation programs... should be instituted to minimize automobile oriented impacts in relation to consideration of widening Carmel Valley Road west of I-5". In this regard, Carmel Valley Road east of I-5 has been recommended as a four-lane primary arterial with turn pockets at crossing areas. Also, no interchanges are proposed for this roadway in the land use plan. The NCW community plan does state that a long-range recommendation would be to develop the Highway 56 freeway when the need develops. However, the Highway 56 freeway is not considered at this time for LCP purposes. These policies would appear to reduce the perceived need to develop Carmel Valley Road to a four lane road, which in turn, would eliminate the need to encroach within the adjacent wetland area. The suggested recommendation to extend the existing two lane Carmel Valley Road easterly from Portofino Drive to the existing four-lane section of the roadway is consistent with the Commission's desire to maintain Carmel Valley Road mainly as a recreational accessway while minimizing through traffic, and avoiding the enlargement of the roadway west of I-5 that would adversely impact the wetlands of Los Penasquitos Lagoon. The Commission believes that the removal of the safety concerns through a curve-straightening project, incorporating a two lane road of moderate width, could be constructed along Carmel Valley Road without requiring fill in the Los Penasquitos Lagoon wetlands. Altering the adjacent bluffs to the north of the reverse curve to reduce any adverse safety hazards is an acceptable alternative to any filling or disruption of the adjacent wetlands to the south. Strict grading, runoff and landscaping controls are required with any hillside alteration. Widening to include a bikeway/pedestrian lane east of Portofino Drive is appropriate if it can be found consistent with accepted engineering practices and provided that no filling, development, or alteration of the adjacent Los Penasquitos Lagoon wetland/area occurs. Therefore, the Commission finds that with the suggested recommendation regarding any improvement to Carmel Valley Road, the NC LCP land use plan is found consistent with the resource protection policies of the Coastal Act.

Preservation of a biological link between the Los Penasquitos Lagoon and the Los Penasquitos Canyon is critical to the preservation of the Torrey Pines State Preserve and Reserve. The link area consists of salt water wetlands that are part of the essential habitat for endangered species and the fresh water wetlands and riparian habitat upstream from the lagoon. The fresh water wetlands and riparian areas serve as a major feeding and drinking area for the larger mammals of the Reserve as well as providing a transportation corridor to serve as the link. The suggested recommendation requiring the restriction on stream channel alteration provides for the protection of these habitats and corridor in their natural state. Any stream channel alteration that ultimately involves dredging or removal of riparian vegetation shall be accomplished in a manner to minimize disruption to the vegetation, require phasing to monitor the status of environmental impacts and to be able to adjust mitigation measures if necessary, and require substantiation that the disruption of riparian vegetation will result in a significant improvement of floodflows within the channel. The intent is to consider feasible, less environmentally damaging alternatives prior to any disruption or alteration of a streamcourse.

The report titled "Stream and Lagoon Channels of the Los Penasquitos Watershed, California with an Evaluation of Possible Effects of Proposed Urbanization" by Karen Prestegard (1979) has identified a number of natural sediment basins in the watershed of Los Penasquitos Lagoon. For example, one basin is located in Los Penasquitos Canyon just downstream from the confluence of Los Penasquitos and Lopez Canyons. Another significant desilting basin is located in the area of the confluence of Los Penasquitos and Carroll Canyon Creeks downstream from the existing concrete channel. This latter basin also contains a significant amount of instream riparian vegetation which further adds to the site's depositional potential. If alteration of the streambeds in these and other depositional areas occurs, the potential for sediment to be transported downstream to adversely impact the biological productivity of the Los Penasquitos Lagoon is increased. Therefore, because of the need to maintain these upstream existing sedimentation basins as a means to prevent sedimentation deposition in the lagoon, the Commission has included a recommendation to restrict instream alterations, and has suggested that any alteration be performed to minimize the disruption of the depositional potential of the identified basins.

The Torrey Pines land use plan map should be changed to replace the very low (0-4) du NRA) residential designation along Portofino Drive north of Carmel Valley Road to one of an open space designation as a result of Regional Commission action on permit F8341 (Fargo) where an offer to dedicate for open space purposes was recorded in favor of the State of California.

In summary, the City's land use policies address the protection of coastal marine and wetland resources. However, the Commission finds that additional specificity and direction is needed within the land use plan to require the identification and maintenance of wetland and riparian habitats, provide steep slope protection to avoid erosion and sedimentation hazards, visual impacts, and disruption of important wildlife corridors, require the development of adequate buffer areas adjacent to environmentally sensitive habitat areas and provide runoff control and grading restrictions to prevent downstream sedimentation of important wetland areas. In addition, the Commission recommends the placement of shoreline erosion control devices in such a manner to preserve public beach areas. Therefore, with the inclusion of the suggested recommendations within the land use plan, the Commission finds the Water and Marine Resources, Environmentally Sensitive Habitat Areas, Diking, Dredging, Filling and Shoreline Structures, and Hazard Areas Policy Groups consistent with Sections 30230, 30231, 30233, 30235, 30236, and 30240(a)(b), and 30253 of the Coastal Act.

In regards to the many studies referred to in the land use plan that will ultimately provide management schemes for the Los Penasquitos Lagoon and associated environs, such as the SANDAG Study currently underway which is considering means to control in-stream sediment transport to the lagoon, the Commission would like to emphasize that any future implementation proposals forthcoming from such studies will have to be compared for consistency with the policies of an approved North City Local Coastal Program. Amendments to the LCP to incorporate any implementation proposals can be requested by the City following prescribed methods outlined in the LCP Regulations. However, until such time that any amendments are requested and approved, any implementation measures recommended within management studies will be subordinate to approved land use plan policies of the North City LCP.

5. AGRICULTURE

- a. Suggested Revised Policy Language - This policy group was approved as submitted.
- b. Findings

The NC LCP land use plan, which incorporates the San Dieguito Lagoon Enhancement Plan language into the plan, provides for the preservation of those existing A-1-10 floodplain lands south of the San Dieguito River. Therefore, the Commission finds that the Agriculture Policy Group is consistent with Sections 30241 and 30242 of the Coastal Act.

6. LOCATING AND PLANNING NEW DEVELOPMENT

- a. Suggested Revised Policy Language - This policy group was approved as submitted.
- b. Findings

The Commission takes no issue with the present community plan regarding the type, location, and intensity of development, subject to, however, the suggested recommendations contained herein which would, in some cases, substantially restrict or qualify development within the community to ensure consistency with Coastal Act policies (See discussions under Public Works regarding proposed change in intensity of residential use due to future impacts on capacity of Carmel Valley Road). Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development. Also, adequate provisions have been included within the Public Access Policy Group to provide improved and additional parking facilities along Highway 101 and within the State Park Reserve area. Therefore, the Commission finds that the Planning and Locating New Development Policy Group, per Commission suggested recommendations, would be consistent with Sections 30250, 30252 and 30244 of the Coastal Act.

7. VISUAL RESOURCES

- a. Suggested Revised Policy Language

Specific landscape and sign standards for new development shall be included within the LCP. Sign standards should be established that regulate the height, bulk and design of such signs. Rooftop signs, free-standing pole signs, off-premise signs and billboards should not be permitted. All existing or new signs that do not conform to such standards should be abated within a reasonable period.

Minimum landscape requirements and landscape design guidelines should be established for all new developments.

b. Findings - Future developments in the City should strive to provide for maintenance and enhancement of the visual and scenic resources of the Torrey Pines community. The plan, as prepared, contains special provisions which would help to maintain and improve this quality in the community. However, these recommendations need to be strengthened to provide proper direction for future implementing ordinances. In this regard, suggested recommendations have been added which require development standards for landscaping and sign controls consistent with San Diego Coast Regional Commission adopted interpretive guidelines. Therefore, this policy group is found to be consistent with Section 30251 of the Act.

8. PUBLIC WORKS

a. Suggested Revised Policy Language

Residential densities for the area west of Carmel Valley Road and east of the Del Mar city limits shall not exceed four (4) dwelling units per acre. Portions of the area located within the defined 100 year flood plain of Los Penasquitos Creek shall not be considered developable in figuring overall density.

b. Findings

The Commission takes no issue with the policies in the community plan regarding industrial development or improvements to public works facilities such as Carmel Valley Road subject to, however, the suggested recommendations contained herein which would provide development constraints to ensure consistent with the policies of the Coastal Act. In this regard, the Commission is recommending constraints to industrial development in designated areas that includes no development within the defined 100-year flood plain area, or on slopes greater than 25%. Similarly, the Commission is recommending that no encroachment into the wetland areas of Los Penasquitos Lagoon occur as a result of roadway improvements to Carmel Valley or Sorrento Valley Roads.

For the remaining residential and commercial designated areas of the community the Commission takes no issue with the location, type and intensity of uses proposed, subject to the suggested recommendations contained herein, with the exception of the proposed intensity of residential use designated for the property west of Carmel Valley Road east of the Del Mar City limits. The Torrey Pines Community Plan designates this site for low-medium (10-15 dwelling units per acre) residential use. Residential development at these densities could significantly impact remaining street capacity on Carmel Valley Road. Presently, Carmel Valley Road is being utilized close to its capacity. Even with proposed roadway improvements to include left turn lanes to facilitate traffic flow, the Commission is concerned that continued traffic volumes with high peak hour levels resulting from area wide and future North City West developments, will interfere with access to the coast. The Commission finds that the road could be totally given to residential traffic to the exclusion of recreational traffic should full buildout along Carmel Valley Road and North City West take place. Section 30254 of the Coastal Act provides that where limited street capacity exists, priority shall be given to those traffic generating uses that are coastal related and that non-coastal related development shall not provide for the reduction in available

street capacity. Because provisions must be made for future recreational demands, the Commission cannot conclude that the traffic capacity remaining after construction of the site to densities of up to 15 du/ac would be sufficient to provide adequate access to the coastal areas. In addition, the Commission recognizes that any improvements to accommodate existing and future traffic flows along this roadway shall not provide for the encroachment into the adjacent Los Penasquitos Lagoon. Assuming that the ultimate development of the roadway will be a low-speed, two lane road with no encroachment into the lagoon, it is the Commission's intent to retain a portion of remaining roadway capacity for recreational use through a suggested recommendation that development on an area west of Carmel Valley Road be limited to four (4) dwelling units per acre or less. With the suggested recommendation, the Commission finds that the Public Works policy group is consistent with Section 30254 of the Coastal Act.

NORTH CITY WEST PLANNING AREA

SAN DIEGUITO RIVER VALLEY/LOS PENASQUITOS CANYON HILLSIDES

SUMMARY FINDING

The San Diego Coast Regional Commission found that the North City West Community Land Use Plan for the San Dieguito River Valley/Los Penasquitos Canyon Hillside Area, as submitted by the City of San Diego, is inconsistent with the California Coastal Act of 1976. The Regional Commission further found that with the addition of the recommended policy language revisions, the North City West Land Use Plan portion of the North City Land Use Plan would be consistent with the Coastal Act of 1976.

POLICY GROUP FINDINGS

1. SHORELINE ACCESS

Given the absence of any shoreline frontage within this land use plan, this policy group is not applicable.

2. RECREATION AND VISITOR SERVING FACILITIES

Since this area is well removed from the shoreline, and visitor serving facilities are neither proposed nor necessary in this plan area, this policy group is not considered applicable.

3. HOUSING

a. Suggested Revised Policy Language

Prior to or concurrent with acceptance for certification of the implementation phase of the North City LCP by the Commission, the City shall submit for LCP approval a Housing Component of the LCP covering all portions of the City within the Coastal Zone. This Housing Component shall be incorporated as a portion of the LCP land use plan for each community segment of the LCP, and its standards, policies, and goals shall take precedence over any conflicting language in any individual segment plan. This Housing Component may be a document prepared for the Coastal Zone only, or may be a segment of a citywide Housing Element which contains data and analysis sufficiently disaggregated to enable reasonable consideration of recommendations and policies applicable to the Coastal Zone. Prior to submittal of the Housing Component for Commission review (in accordance with land use plan certification procedures), the City shall submit the document to the State Department of Housing and Community Development for a review of the adequacy of the document pursuant to Govt. Code Section 65302(c).

b. Findings

As required under Section 30213 of the Act, new housing shall be developed in conformity with the standards, policies and goals of local housing elements. The California State Department of Housing and Community Development (HCD) has determined that the City's housing element is not in full compliance with the State Law. Therefore, an adequate finding of compliance with the requirements of Section 30213 of the Act cannot be made. The City is currently revising its City-wide housing element for resubmission to HCD. However, a more appropriate way to expeditiously address those housing concerns pertinent to the Coastal Zone would be to prepare a "Housing Component". This housing component, prepared in association with the City's Housing Element, would provide more specific policy direction for development of the City's total local coastal program. The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Commission finds that prior to certification of the LCP implementation phase for the North City plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language and these findings with the previous policy group findings, the Commission finds the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES

Since there is no shoreline area, coastal waters, estuaries, or wetland habitat contained within this plan area, this policy group is not applicable.

5. DIKING, DREDGING, FILLING AND SHORELINE STRUCTURES

Again, since there is no waterfront, coastal waters, or wetland habitat contained within this portion of the plan area, there are no such diking, dredging or filling activities contemplated. Additionally, the necessity for construction of any shoreline structures is also thus eliminated. Therefore, this policy group is not applicable.

6. ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

a. Suggested Revised Policy Language

1. In order to protect the important vegetative and visual resources of Los Penasquitos Canyon, as well as minimize any potential for erosion,

no development, grading, or alteration of landforms on the north slopes of Los Penasquitos Canyon and the south slopes of the San Dieguito River Valley shall occur on slopes greater than 25% or in canyon bottoms.

2. For the north slopes of Los Penasquitos Canyon, residential densities on slopes between 15 percent and 25 percent that are visible from a point above the streambed nearest the proposed development shall be limited to no more than five (5) dwelling units per acre (very low density). Development on these slopes will be restricted in a manner subordinate to the natural landforms. No grading out of flat pads shall occur; instead, grading or site alteration is to be limited to minimal footing site preparation. On-site vegetation shall not be disturbed beyond the limits of the area to be constructed. Development shall utilize flexible siting techniques, including varying lot sizes and shapes, modified front, rear and side yard setbacks, and the varying of positions of structures and their sizes. The five (5) DUA represents existing North City West Community Plan land use intensity recommendations.

3. In completed developments, all graded slopes shall be stabilized prior to the rainy season by means of established vegetation or other suitable means. The use of plantings as a means to control site erosion shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation within an appropriate lead time prior to November 1 to provide adequate landscape coverage. This requirement shall apply to all disturbed soils including stockpiles.

4. Special assessment districts or other mechanisms shall be established with new developments to provide the means for maintenance and repair of required runoff and erosion control facilities as well as for the maintenance of any irrigation systems. If, in the future, after completion of development, it is determined by the City that on-site runoff and erosion control facilities are no longer needed or should be modified for resource protection purposes, the City could apply to amend the LCP to make appropriate changes.

5. Undeveloped slopes over 25 percent shall be preserved as open space through offers of dedications of permanent open space easements as a condition of future subdivision or by any other enforceable means available. These offers shall be recorded as restrictions against the subject property. The restrictions shall prohibit any alterations of landforms, removal of existing vegetation or the erection of structures of any type. Open space easements would protect the steeper slopes from erosion, preserve the area's scenic and visual amenities, and protect valuable native vegetation.

b. Findings

The land use plan does not provide specific policy direction to be consistent with the Coastal Act and does not provide the necessary direction for the implementation stage of the LCP. However, with the Commission suggested recommendations providing for the protection of steep slopes, limitations on residential density on slopes between 15 and 25 percent, and performance standards for new residential developments on steep slopes, the Commission finds the Environmentally Sensitive Habitat Areas and Hazard Areas Policy Groups consistent with Sections

30240(a) and (b) and 30253 of the Coastal Act. The City's LUP policies incorporating recommendations from the Leeds, Hill and Jewett, Inc. report regarding the timing and control of grading and the control of surface runoff, are considered appropriate mechanisms to protect against potential erosion and sedimentation hazard within the adjacent watercourses and the downstream Los Penasquitos Lagoon.

7. AGRICULTURE

Since agriculture neither occurs nor is proposed for this area, this policy group is not considered applicable.

8. LOCATING AND PLANNING NEW DEVELOPMENT

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The Commission takes no issue with the present community plan regarding the type, location, and intensity of development, subject to, however, any suggested recommendations contained herein which could restrict or qualify development within the community to ensure consistency with Coastal Act policies. Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development. Therefore, the Commission finds that the Planning and Locating New Development Policy Group, per Commission suggested recommendations would be consistent with Sections 30250, 30252 and 30241 and 30253 (2) of the Coastal Act.

9. VISUAL RESOURCES AND SPECIAL COMMUNITIES

a. Suggested Revised Policy Language

1. Development near the north slopes of Los Penasquitos Canyon and near the south slopes of the San Dieguito River Valley should maintain a low profile and be set back an adequate distance to allow landscaping to mitigate any visual impact from the surrounding public viewshed. Streets serving development on the mesa shall be located near the canyon edges with development located on the interior in order to maintain public views to the adjacent open space areas.

2. Where grading occurs, a sculptured technique should be used to blend fill and cut slopes with natural land contours. Any fill slopes should be stabilized with appropriate native plant materials to help re-establish the natural biotic systems of flora and fauna.

3. Design of dwelling units shall stress a blending of architecture with the natural terrain. Architectural shapes, bulk, color, materials, and landscaping must be carefully chosen to respond to the physical land constraints. Variety in structure design will increase the visual interest of a development.

4. Utilities shall be placed underground in all new developments.

b. Findings

With the suggested recommendations, the Visual Resources and Special Communities Policy Group provides for the appropriate siting and designing of new residential developments to maintain the visual quality associated with the community. Therefore, the Commission finds this Policy Group to be consistent with Section 30251 of the Coastal Act.

10. PUBLIC WORKS

Given the absence of any existing or proposed public works, this policy group is not applicable.

CARMEL VALLEY AREA

Pursuant to AB2216 (Frazee), the coastal issues to be addressed within the NCW Community Plan portion of the Coastal Zone are limited to a) transportation and b) drainage (runoff/siltation). Also, the Commission is of the understanding that the transportation and drainage plan is to be prepared contingent upon the land use designations and policies within the adopted NCW Community Plan.

SUMMARY FINDINGS

The San Diego Coast Regional Commission found that the North City West Community Land Use Plan for the Carmel Valley Area, as submitted by the City of San Diego, is inconsistent with the California Coastal Act of 1976. The Regional Commission further found that with the addition of the recommended policy language revisions, the North City West Land Use Plan portion of the North City Land Use Plan would be consistent with the Coastal Act of 1976.

A. TRANSPORTATION

a. Suggested Revised Policy Language

1. The proposed alignment of Carmel Valley Road east of I-5 shall avoid, to the maximum extent possible, encroachment into the floodplain of Carmel Valley Wash. In the area of the narrows, approximately one-half mile east of I-5, no encroachment into the floodplain shall occur. Cutting of the adjacent hillsides to the north shall occur to accommodate the minimum roadway necessary for adequate and safe roadway design. Stringent water runoff, grading and landscape controls, consistent with City proposed policy recommendations, should be utilized to control potential sedimentation and visual impacts resulting from road construction and hillside grading.

2. Development of the north-south transportation routes through the NCW Community shall avoid filling of the floodplain area. Construction of these roads across Carmel Valley shall include the utilization of pilings to avoid constriction of flood flows and provide adequate passage for pedestrians/wildlife within the designated open space floodplain area.

b. Findings

The Carmel Valley portion of the NCW land use plan calls for Carmel Valley Road east of I-5 to be designed as a four lane primary arterial. This road design, although providing for a limited encroachment in portions of the floodplain area of Carmel Valley wash, would still encroach into the narrowest portion of the natural channel located approximately one-half mile east of I-5. The Commission is concerned that encroachment into the channel at this point would create a potential for significant flow constriction providing for increased stream velocity and resulting scouring activity that could create substantial sedimentation downstream in the Los Penasquitos Lagoon. Development of Carmel Valley Road near the narrow floodplain area should encroach into the adjacent hillside to accommodate the necessary road width. Also, the roadway design for north and south traversing corridors within the North City West Community could substantially impact the floodplain area of Carmel Valley wash through filling for roadway embankment construction. Such developments similarly could impact Carmel Valley stream flows to create greater flow velocity and resulting in-stream erosion hazards.

The thrust of the Commission action within the Issue Identification process for the Torrey Pines and North City West Communities was to make Del Mar Heights Road the major regional east-west multi-purpose link in order to de-emphasize automobile traffic on Carmel Valley Road west of I-5 and reduce the need to widen this roadway. This concept has been incorporated within the North City West land use plan portion of the City's LCP land use plan. LCP specific language has been included which calls for Carmel Valley Road to "be developed as a special access corridor designed around its natural landscaped corridor both east and west of I-5. A recreational emphasis, of auto service primarily for residents, mini transit, trails and bikeways, should be designed for this corridor". Similar language calls for inland areas of Carmel Valley Road (east of I-5) to be evaluated in relation to providing for coastal access to the west of I-5. Specifically, the plan states that "shuttle transportation programs....should be instituted to minimize automobile oriented impacts in relation to consideration of widening Carmel Valley Road west of I-5". In this regard, Carmel Valley Road east of I-5 has been recommended as a four-lane primary arterial with turn pockets at crossing areas. No interchanges are proposed for this roadway within the land use plan. The NCW Community plan does state that a long-range recommendation would be to develop the Highway 56 freeway when the need develops. However, the Highway 56 freeway is not considered at this time for LCP purposes.

The transportation issues for the Carmel Valley portion of the NC LCP relate to the area of construction of planned roadways to avoid encroachment and disturbance to floodplain areas, which could result in adverse erosion and downstream sedimentation hazards. With the suggested recommendations, the Commission finds that planned transportation routes within the Carmel Valley area of the NCW Community are consistent with the resource protection policies of the Coastal Act.

B. DRAINAGE

a. Suggested Revised Policy Language

1. No fill, or other permanent new development shall occur within the defined 100 year floodplain boundary of Carmel Valley Wash as designated within the NCW Community Plan. The 100 year floodplain boundary lines for the above named watercourse shall be updated utilizing runoff amounts within the watershed that are expected to result from ultimate developed conditions. Updated flow amounts and 100 year floodplain boundary lines shall be developed by the City of San Diego in consultation and subsequent concurrence with the California State Department of Water Resources. An exception to filling within the floodplain of Carmel Valley Wash would be from minimal encroachment by the construction of Carmel Valley Road east of I-5. (See Condition No. 1 under Transportation Section)

2. Channelization or other substantial alteration of stream channels including the removal of vegetation for stream flow facilitating purposes, shall not occur except where limited to 1) flood control projects where no other method of protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, and 2) developments where the primary function is the improvement of fish and wildlife habitat. A main consideration associated with any potential stream alteration is the potential for adverse impacts on the stream and its associated floodplain. Any alteration shall be designed to maintain or improve the stream's ability to convey flood flows and to provide for the natural processes of sediment transport and deposition.

3. Any fill within the defined floodplain area of Carmel Valley Wash shall be limited to uses that are compatible with periodic flooding, that do not require the alteration of the natural floodplain, and that do not adversely impact any environmentally sensitive habitat areas or create the potential for the erosion or transport of sediment or adverse water quality impacts to the downstream environmentally sensitive wetland area.

4. Public services expansions within the coastal zone which will permit additional urbanization (inside and outside the coastal zone), will thereby contribute to pollutant loadings in Los Penasquitos Lagoon from increased urban runoff in the Carmel Valley watershed. To mitigate the cumulative adverse impacts of increased urban runoff on the natural resources of Los Penasquitos Lagoon, such public services expansions shall not be permitted unless the fulfillment of a lagoon restoration program is first assured. Through a lagoon restoration program, the effect of the added pollutant loadings could be mitigated through, for instance, enhancement of tidal flushing.

5. Within the area to be excluded from the coastal zone pursuant to AB2216 (Frazee), any change in the LUP affecting drainage or transportation, including the installation of such industrial type facilities as a batch plant, shall be viewed as an amendment or change and shall be reviewed and processed in the same manner as an amendment of a certified local coastal program.

b. Findings

Although the land use plan for the NCW Community designates the Carmel Valley Wash area as floodplain, there is no further discussion of development restrictions, including potential filling within this designated area, to protect against potential streamflow alterations which in turn, would create adverse erosion and sedimentation hazards. An updated floodplain map also should be developed to indicate the extent of 100 year flood flows given proposed adjacent development within the NCW Community.

The restriction on filling within the floodplain of Carmel Valley Wash will avoid the potential for stream course alteration which, in turn, could create adverse streamflow and resulting erosion and sedimentation imports to the downstream Los Penasquitos Lagoon.

Restrictions on the alteration of the Carmel Valley stream course, unless necessary to protect existing structures, and the suggested recommendations providing for restrictions on land uses within the open space designated areas will help to protect the downstream Los Penasquitos Lagoon from sediment and water quality impacts.

Therefore, with the suggested recommendations, as well as land use plan policies calling for the control of runoff from adjacent upstream development (Leeds, Hill & Jewett report), the Commission finds the issues relating to Drainage within the Carmel Valley portion of the NCW Community Plan consistent with the resource protection policies of the Coastal Act.

North City West is drained by Carmel Creek, one of the three major streams feeding Los Penasquitos Lagoon. Carmel Creek is an ephemeral stream, as are most of the smaller streams in San Diego County. Urbanization within North City West depends upon major public utilities installed within the coastal zone and will have serious adverse effects on the quantity and quality of runoff in Carmel Creek. The analyses of runoff volumes within the LUP show volume increases of up to 15-fold in the smaller, more frequent storms that are the channel forming forces (Prestegard, 1979). The drainage plans incorporated within the LUP will manage runoff so that these increases in peak flow are prevented, but net flow and net movement of sediment down Carmel Valley into Los Penasquitos Lagoon will still increase. The other adverse effect of urbanization is on the quality of runoff. Projections of the effects of urbanization on the generation of pollutants were made in "The Comprehensive Water Quality Control Plan, San Diego Basin". These projections were updated in the amendments to that plan prepared under Section 208 of the Federal Water Pollution Control Act of 1972. Detailed analyses of runoff quality including field work, was also done by the Association of Bay Area Governments (ABAG) in their 208 study. These analyses show that urban runoff contains far greater concentrations of pollutants such as nitrogen, phosphorus, metals, and biological-oxygen-demanding substances (BOD) than runoff from natural areas. Indeed, the quality of urban runoff in the initial storms during the fall approaches that of raw sewage. Information prepared by James Montgomery Engineers, indicates that nitrogen is the limiting nutrient in semi-arid streams; thus the contribution of urbanization to increased nitrogen in runoff is of particular concern.

The LUP does not contain any program to mitigate the adverse effects of increased pollutant loadings from urban runoff, but the LUP does identify in its policy supporting the Penasquitos Lagoon Enhancement Project a potential mechanism for mitigating these effects. However, without policy language that links this project to specifically mitigate the adverse effects of runoff, and without policy language that requires that the Enhancement Project be implemented either prior to major development or as a condition of development, the plan fails to assure any mitigation for the adverse effects of runoff. Thus the plan fails to meet the policy requirements of Section 30231 that the quality of coastal estuaries be maintained and where feasible restored.

Under Section 30604(d), the Commission can generally require appropriate mitigation in projects where development inside the coastal zone allows development outside the coastal zone that will definitely have adverse effects within the coastal zone. Section 30200 gives local government specific direction to consider those effects. The legislative changes in the North City West area give even clearer direction that the Commission has a continuing interest in the areas outside the coastal zone, although that continuing interest is limited to transportation and drainage. A.B. 2216 provides that "Any...changes to the underlying land use plan for the area that affects drainage...shall be reviewed and processed in the same manner as an amendment of a certified local coastal program (emphasis added)...". The area that affects drainage is largely outside the coastal zone; thus the legislative direction to mitigate the adverse effects is clear.

The proposed Penasquitos Lagoon Enhancement Project is one method that could mitigate the adverse effects of such runoff. Lagoon enhancement has been long recommended as a method of improving the quality of Los Penasquitos Lagoon. A permanent opening to the lagoon, or an expanded intertidal area that would increase the period of an open lagoon was recommended in "The Natural Resources of Los Penasquitos Lagoon", the Department of Fish and Games Coastal Wetland Series 775, by P.J. Mudie, B. Borwning and J. Speth, in 1974. Such an enhancement effort would provide a greater volume within the lagoon, thus concentrations of pollutants would be reduced. The larger volume would also keep the lagoon open during greater periods of the year, improving the overall quality of the lagoon and reducing the buildup of pollutants. Preliminary estimates of the costs of lagoon restoration were made by the engineers who prepared the North City West Drainage Study, indicating that the lagoon volume could be approximately doubled in size at a cost of between \$400,000 and \$600,000. Thus, a lagoon enhancement is clearly a feasible method of restoring the historic character of the lagoon and mitigating the adverse effects of urban runoff.

MIRA MESA COMMUNITY PLANNING AREA

SUMMARY FINDING

The San Diego Coast Regional Commission found that the Mira Mesa Community Land Use Plan, as submitted by the City of San Diego is inconsistent with the California Coastal Act of 1976. The Regional Commission further found that, with the addition of the recommended policy language revisions, the Mira Mesa Community Land Use Plan portion of the North City Land Use Plan would be consistent with the Coastal Act of 1976.

POLICY GROUP FINDINGS

1. SHORELINE ACCESS

Given the absence of any shoreline frontage within this land use area, this policy group is not applicable.

2. RECREATION AND VISITOR-SERVING FACILITIES

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The City's land use plan provides appropriate direction for the Aero World planned visitor-serving facility to be developed consistent with the protection of adjacent significant environmentally sensitive resource areas. Also, although a master plan for the Los Penasquitos Regional Park has yet to be developed, the land use plan does include general policies providing for the appropriate low-intensity use of the canyon area consistent with the resource protection policies of the coastal Act. Therefore, the Commission finds that the Recreational and Visitor-Serving Policy Group is consistent with the recreational policies of the Coastal Act.

3. HOUSING

a. Suggested Revised Policy Language

Prior to or concurrent with acceptance for certification of the implementation phase of the North City LCP by the Commission, the City shall submit for LCP approval a Housing Component of the LCP covering all portions of the City within the coastal zone. This Housing Component shall be incorporated as a portion of the LCP land use plan for each community segment of the LCP, and its standards, policies, and goals shall take precedence over any conflicting language in any individual segment plan. This Housing Component may be a document prepared for the Coastal Zone only, or may be a segment of a citywide Housing Element which contains data and analysis sufficiently disaggregated to enable reasonable consideration of recommendations and policies applicable to the coastal zone. Prior to submittal of the Housing Component for Commission

review (in accordance with land use plan certification procedures), the City shall submit the document to the State Department of Housing and Community Development for a review of the adequacy of the document pursuant to Govt. Code Section 65302(c).

b. Findings

As required under Section 30213 of the Act, new housing shall be developed in conformity with the standards, policies and goals of local housing elements. The California State Department of Housing and Community Development (HCD) has determined that the City's housing element is not in full compliance with the State Law. Therefore, an adequate finding of compliance with the requirements of Section 30213 of the Act cannot be made. The City is currently revising its City-wide housing element for resubmission to HCD. However, a more appropriate way to expeditiously address those housing concerns pertinent to the Coastal Zone would be to prepare a "Housing Component". This housing component, prepared in association with the City's Housing Element, would provide more specific policy direction for development of the City's total local coastal program. The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Commission finds that prior to certification of the LCP implementation phase for the North City plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore, through incorporation of the revised policy language and these findings with the previous policy group findings, the Commission finds the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

a. Suggested Revised Policy Language

The following suggested recommendations are intended to be applied to all development including planned residential, commercial or industrial developments within the Mira Mesa Community Plan portion of the NC LCP land use plan.

1. In order to protect the important vegetative and visual resources of Penasquitos Canyon, as well as minimize any potential for erosion, no development, grading, or alteration of landforms on the south slopes of Los Penasquitos Canyon shall occur on slopes greater than 25% or in the canyon bottoms. Exceptions to this condition may take place in association with the development of Calle Cristobal when some alteration of steeper slopes is necessary for proper road development.

2. Filling, development, or grading on slopes greater than 15% slope on the north and south sides of Lopez Canyon shall be allowed provided that such activity not be visible from a point located along the streambed of Lopez Canyon that is nearest to the proposed development.

3. For residential development north and south of Lopez Canyon, densities on natural slopes greater than 15 percent in slope and that are visible from the canyon bottoms shall be limited to no more than four (4) dwelling units per acre (very low density). Development on these slopes will be restricted in a manner subordinate to the natural landforms. No grading out of flat pads shall occur; instead, grading or site alteration is to be limited for minimal footing site preparation. On-site vegetation shall not be disturbed beyond the minimal limits of the area to be constructed. Development shall utilize flexible siting techniques, including varying lot sizes and shapes, modified front, rear, and side yard setbacks, and varying of positions of structures and their sizes.

4. For industrial developments, special development controls should include special review, or include varying of lot sizes and shapes, the location of structures within the lots, building sizes designed to maintain proper scale and compatibility with the constraints of landform, topography, geological and geotechnical conditions, and other site requirements as identified from EIR review. Because of the more extensive areas needed for industrial developments, resulting in less opportunity to develop facilities that can conform to the existing landforms, any development, grading or alteration of landforms shall be limited to those areas with slopes less than 25 percent, for those slopes that are visible from a point located along the streambed of Lopez Canyon that is nearest to the proposed development. By limiting any development to slopes less than 25 percent, the potential for erosion, excessive runoff, visual impacts and habitat disruption are minimized.

5. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

6. A grading plan shall be prepared concurrently with development plans to incorporate erosion control procedures to be utilized during project development. Sediment basins (debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development process to remove sediment from runoff waters draining from the land undergoing development. Land shall be developed in increments of workable size which can be completed during a single construction season in order to minimize soil exposure. No grading or land alteration shall occur during the rainy season between the time period of November 1st through March 30th. Construction may continue during this period on completed and stabilized sites, provided that such construction does not include grading activities or landform alterations.

7. Any cut and fill slope, including terraces, shall be protected from street runoff through lined brow ditches or other suitable means of intercepting runoff. Runoff from brow ditches and terraces shall be intercepted and transferred with non-erosive devices.

8. All areas disturbed but not completed during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

9. In completed developments, all graded slopes shall be stabilized prior to the rainy season by means of established vegetation or other suitable means. The use of plantings as a means of controlling site erosion shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation within an appropriate lead time prior to November 1 to provide adequate landscape coverage. This requirement shall apply to all disturbed soils including stockpiles.

10. Significant wildlife corridors traversing the ridge between Los Penasquitos and Lopez Canyons shall be identified in cooperation with the Department of Fish and Game. An adequate number of wildlife corridors sufficient to preserve the biological integrity of the adjacent canyons shall be provided.

b. Findings

The land use plan does not provide specific policy direction to be consistent with the Coastal Act and does not provide the necessary direction for the implementation stage of the LCP. However, with the suggested recommendations, providing for the protection of steep slopes, limitations on residential density on slopes greater than 15 percent, performance standards for new residential developments on steep slopes, and restrictions on the timing and control of grading, the Commission finds the Water and Marine Resources, Environmentally Sensitive Habitat Areas and Hazard Areas Policy Groups, consistent with Sections 30230, 30231, 30233, 30240(a) and (b) and 30253 of the Coastal Act.

A policy statement within the Water and Marine Resources policy group references the current San Diego Association of Governments (SANDAG) study regarding control of sedimentation into the Los Penasquitos Lagoon. The commission emphasizes that any implementation plan forthcoming from this study considering structural or nonstructural methods to control sediment transport into the lagoon will have to be compared for consistency with the policies of an approved NC Local Coastal Program. Amendments to the LCP incorporating any implementation plan recommendations can be requested by the city following prescribed methods outlined in the LCP regulations; however, until such time that any amendments are requested and approved, any recommendations contained within the SANDAG Study will be subordinate to the approved land use plan policies of the NC LCP.

5. DIKING, DREDGING, FILLING, AND SHORELINE STRUCTURES

Since this plan area has no shoreline frontage or coastal waters, this policy group is not applicable.

6. AGRICULTURE

Since no agriculture exists or is proposed, this policy group is not applicable.

7. LOCATING AND PLANNING NEW DEVELOPMENT

a. Suggested Revised Policy Language

1. Prior to development approval, a professional field survey shall be conducted by a qualified archaeologist, for archaeological and paleontological resources on the project site.
2. Sites considered by a project archaeologist to be of sufficient significance shall be submitted to the City of San Diego for possible designation as City Historical Landmarks. Sites which are, in the opinion of the project archaeologist, eligible for nomination to the National Register of Historic Places shall be considered for nomination. These actions shall be made as a condition of project approval.
3. Mitigation of significant archaeological resources located on site shall be preserved either intact underground by incorporating them into local dedicated open space areas or by providing for professional salvage operations. Preservation is usually preferable to salvage for the mitigation of impacts to archaeological resources by a project. Preservation permits future study of the resources with methods and techniques not yet developed, and may provide answers to questions which are yet to be raised. Salvage operations should include coordination between professional archaeologists, college or university classes, archaeological and historical societies, museums, and interested laymen capable of assisting in salvage work under the supervision of qualified professionals.
4. All field work, reports, recordation and curation of archaeological and historical resources shall be, as a minimum, in accordance with current standards in the City and County for such work, and under the supervision of qualified professionals.

b. Findings

Inclusion of the above suggested recommendations provides a mechanism within the Mira Mesa Community land use plan to mitigate potential archaeological and paleontological impacts associated with development in the community.

Another area of usual coastal concern under this policy group is the availability of off-street parking for proposed new developments. Typically, with inadequate parking spaces within coastal communities, there is a direct impact on the availability of parking for beach access and visitor-serving commercial uses. However, because the Mira Mesa Community plan portion of the NC LCP is removed from the shoreline and no direct or indirect impact on coastal access would result from inadequate numbers of on-site parking, the availability of parking under the Locating and Planning New Development Policy Group is not an issue within this land use plan.

Therefore, with inclusion of the suggested recommendation, the Commission finds the Locating and Planning New Development Policy Group is consistent with Section 30250 and 30252 of the Coastal Act.

8. VISUAL RESOURCES AND SPECIAL COMMUNITIES

- a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The Visual Resources and Special Communities Policy Group provides for the appropriate siting and designing of new developments to maintain the visual quality associated with the community. Therefore, the Commission finds this Policy Group to be consistent with Section 30251 of the Coastal Act.

9. PUBLIC WORKS

a. Suggested Revised Policy Language

Calle Cristobal shall be constructed so as not to encroach into the wetland area at the confluence of Los Penasquitos and Lopez Creeks and into the floodplain area of Los Penasquitos Creek. The extent of the wetland area shall be determined through procedures contained within the Statewide Interpretive Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas. Any cutting of the adjacent hillside to accommodate the roadway shall be at a minimum to reduce potential visual, erosion, and sedimentation impacts. Runoff control devices developed consistent with City proposed policy language, shall include appropriate filtering or other such devices to mitigate any adverse surface water quality impacts associated with road construction. Also, stringent grading and landscape controls, consistent with City proposed and Commission suggested policy recommendations, shall be utilized to control potential sedimentation and visual impacts resulting from bluff grading.

b. Findings

With the above suggested recommendations, Calle Cristobal should be constructed to avoid filling of an environmentally sensitive habitat area (marsh) and to minimize the cutting of the adjacent hillside. Also, mitigation measures will be required to avoid potential erosion, water quality, and visual impacts associated with road constructions. Therefore, with the suggested recommendations, the Commission finds the Public Works Policy Group consistent with Section 30254 and the resource protection policies of the Coastal Act

UNIVERSITY/LA JOLLA COMMUNITY PLANNING AREA

SUMMARY FINDING

The San Diego Coast Regional Commission found that the University/La Jolla Community Land Use Plan, as submitted by the City of San Diego, is inconsistent with the California Coastal Act of 1976. The Regional Commission further found that, with the addition of the recommended policy language revisions, the University/La Jolla Community Land Use Plan portion of the North City Land Use Plan would be consistent with the Coastal Act of 1976.

POLICY GROUP FINDINGS

1. SHORELINE ACCESS

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The maintenance and improvement of public access to the beaches is of prime importance under the provisions of the Coastal Act. The City's land use policies provide appropriate direction for the maintenance and improvement of access to and along the shoreline. In addition, access provisions in the form of non-vehicular modes such as bikeways, have been designated in the community. Also, the NC LCP land use plan has included policies providing for lateral and vertical access along the shoreline and have incorporated prescriptive rights procedures in association with new development where necessary to preserve potential public use rights. A shoreline accessways map has been included in the land use plan to indicate precise shoreline accessways in the University/La Jolla Farms area. Therefore, the Commission finds that the Shoreline Access Policy Group is consistent with Sections 30210-30214 of the Coastal Act.

2. RECREATION AND VISITOR-SERVING FACILITIES

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The University/La Jolla Community land use plan of the NC LCP land use plan provides for the protection and enhancement of significant recreational and visitor-serving facilities within the community area. These areas are the Torrey Pines State Park Reserve area, the Torrey Pines City Golf Course, and the proposed Torrey Pines City Park. Therefore, the Commission finds that the Recreation and Visitor-Serving Policy Group is consistent with the recreation policies of the Coastal Act.

3. HOUSING

a. Suggested Revised Policy Language

Prior to or concurrent with acceptance for certification of the implementation phase of the North City LCP by the Commission, the City shall submit for LCP approval a Housing Component of the LCP covering all portions of the City within the coastal zone. This Housing Component shall be incorporated as a portion of the LCP land use plan for each community segment of the LCP, and its standards, policies, and goals shall take precedence over any conflicting language in any individual segment plan. This Housing Component may be a document prepared for the Coastal Zone only, or may be a segment of a citywide Housing Element which contains data and analysis sufficiently disaggregated to enable reasonable consideration of recommendation, and policies applicable to the coastal zone. Prior to submittal of the Housing Component for Commission review (in accordance with land use plan certification procedures), the City shall submit the document to the State Department of Housing and Community Development for a review of the adequacy of the document pursuant to Govt. Code Section 65302(c).

b. Findings

As required under Section 30213 of the Act, new housing shall be developed in conformity with the standards, policies and goals of local housing elements. The California State Department of Housing and Community Development (HCD) has determined that the City's housing element is not in full compliance with the State Law. Therefore, an adequate finding of compliance with the requirements of Section 30213 of the Act cannot be made. The City is currently revising its City-wide housing element for resubmission to HCD. However, a more appropriate way to expeditiously address those housing concerns pertinent to the Coastal Zone would be to prepare a "Housing Component". This housing component, prepared in association with the City's Housing Element, would provide more specific policy direction for development of the City's total local coastal program. The NC LCP land use plan does provide a number of recommendations for the provision of low and moderate income housing; however, more specific direction in meeting overall low and moderate income housing demands in the City's total local coastal program area would be provided by a Housing Component. An analysis of housing needs on a regional basis within a Housing Component is likely to indicate the need for additional policies or recommendations that have not already been addressed in the residential element of the land use plan.

The housing component would address specifically demolition, condominium conversion, inclusionary zoning policies and other housing policies as necessary to ensure that housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided (Section 30213).

The Commission finds that prior to certification of the LCP implementation phase for the North city plan area, the land use plan must include an adequate description of what need for low/moderate income housing opportunities exists in the area on the basis of citywide need, and how much need will be fulfilled, in order to achieve compliance with Section 30213 of the Act. Therefore,

through incorporation of the revised policy language and these findings with the previous policy group findings, the Commission finds the submitted plan language consistent with the Housing policies of the Coastal Act of 1976.

4. WATER AND MARINE RESOURCES

Since there are no coastal streams, wetlands, or estuaries contained within this plan area, this policy group is not applicable.

5. DIKING, DREDGING, FILLING, AND SHORELINE STRUCTURES

a. Suggested Revised Policy Language

Any necessary shoreline protective works shall be placed in such a manner to avoid encroachment on areas utilized by the public, unless engineering studies indicate that minimal encroachment may be necessary to avoid adverse erosion conditions. The placement of shoreline protective works shall be permitted when required to serve coastal dependent uses or protect existing structures or public beaches in danger of erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

b. Findings

Language is required in the plan to provide for the placement of protective devices in a manner that avoids encroachment onto a publicly used beach, while being consistent with the desire to allow appropriate development to minimize shoreline erosion. Some encroachment may be necessary to provide a properly aligned seawall. If such is the case, special consideration shall be given minimizing the encroachment while utilizing materials and a design which would interfere as little as possible with continuing public use of the adjacent beach area. Therefore, with the suggested recommendations, the Commission finds the Diking, Dredging, Filling and Shoreline Structures Policy Group to be consistent with Section 30235 of the Coastal Act.

6. ENVIRONMENTALLY SENSITIVE HABITAT AREAS, HAZARD AREAS

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The land use plan provides for steep slope protection to avoid erosion and sedimentation hazards, visual impacts, and disruption of important vegetative and wildlife resources. In addition, the plan provided for runoff control and grading restrictions to prevent downstream sedimentation of important coastal or wetland areas. Because the plan proposes the development of bluff top guidelines to protect important coastal resources, it is expected that the development of such guidelines will be consistent with the Commission's Statewide Interpretive Guidelines for bluff-top development. Therefore, the Commission finds that the Environmentally Sensitive Habitat Areas and Hazard Areas Policy Groups are consistent with the applicable resource protection policies of the Coastal Act.

7. AGRICULTURE

Since this is an urbanized area with no existing agriculture and none is proposed in the plan, this policy group is not applicable.

8. LOCATING AND PLANNING NEW DEVELOPMENT

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

The Commission takes no issue with the present Community Plans regarding the type, location, and intensity of development, subject to, however, any suggested recommendations contained herein which could restrict or qualify development within the community to ensure consistency with Coastal Act policies. Also, the community plan provides adequate direction for the preservation of identified archaeological or paleontological resources.

The amount of on-site parking spaces available to new development in the community is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. Existing City of San Diego zoning ordinances would be sufficient to provide adequate on-site parking with new development. Therefore, the Commission finds that the Planning and Locating New Development Policy Group, per Commission suggested recommendations, would be consistent with Sections 30250, 30252 and 30244 of the Coastal Act.

9. VISUAL RESOURCES AND SPECIAL COMMUNITIES

a. Suggested Revised Policy Language - This policy group was approved as submitted.

b. Findings

Future developments in the City should strive to provide for the maintenance and enhancement of the visual and scenic resources of the Torrey Pines community. The plan, as prepared, contains special provisions which would require development to be appropriately sited to minimize visual impacts to the community, provide for landscaping to screen buildings and paved areas, and require sign standards to restrict roof and freestanding signs and limit the size of monument signs. Therefore, the Commission finds this policy group is consistent with Section 30251 of the Act.

10. PUBLIC WORKS

Because no major public works are proposed in the plan area, this policy group is not applicable.

California Coastal Commission
SAN DIEGO COAST DISTRICT
6154 Mission Gorge Road, Suite 220
San Diego, CA 92120
(619) 280-6992

August 19, 1985

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: THOMAS A. CRANDALL, SOUTH COAST DISTRICT DIRECTOR;
CHUCK DAMM, ASSISTANT DISTRICT DIRECTOR, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON THE CITY OF SAN DIEGO LOCAL COASTAL
PROGRAM NORTH CITY, PACIFIC BEACH, OCEAN BEACH AND PENINSULA
LAND USE PLAN SEGMENT RESUBMITTALS (For Public Hearing and
Commission Action at the Commission Meeting of August 27-30,
1985).

SYNOPSIS

Background

In 1977 the City of San Diego proposed, and the Coastal Commission agreed, to segment the City's Local Coastal Program's Land Use Plan into twelve segments. With the exception of the Mission Bay segment the Commission has certified, or certified with suggested modifications, all of the Land Use Plan segments.

The City of San Diego has now resubmitted for the second time four of its twelve Local Coastal Program Land Use Plan (LUP) segments. The four resubmitted LUP segments are: North City, Pacific Beach, Ocean Beach and Peninsula. The four segments listed have twice previously been denied certification by the Commission as submitted by the City, and subsequently certified with suggested modifications. The City has found parts of these suggested modifications unacceptable, particularly as relates to the North City LUP segment, thus resulting in the current resubmittal.

Major Changes in the Current Resubmittal

Previously the City and Coastal Commission have resolved many of the LCP coastal resource protection and beach access related issues. However, there continued to be several major unresolved issues including: LCP provisions which would allow filling and major development within the 100 year floodplains of the San Dieguito River and Carmel Valley Creek which could contribute substantial sediment discharge into Los Penasquitos and San



EXHIBIT NO. 19
APPLICATION NO.
6-11-67-EDD
Staff Report Dated
August 19, 1985

Dieguito Lagoons; proposals which could allow substantial grading of environmentally sensitive and visually scenic natural slopes over 25% grade; LCP policy language which would permit grading of parcels which drain to Los Penasquitos and San Dieguito Lagoons during the rainy season; lack of clear mandatory implementation provisions in the LCP for the Los Penasquitos Lagoon Enhancement Program; LCP policy language which would permit development within the 100 foot buffer areas adjacent to wetlands; and, adequacy of LCP provisions for off-street parking requirements in near shore areas referred to as the Beach Impact Area.

The current resubmittal includes major changes to the policy language intended to resolve the above stated issues. These changes adequately address and resolve most of the Commission's concerns by: limiting development in the San Dieguito River 100 year floodplain to uses permitted under the A-1-10 Zone and by inclusion of strict performance requirements as relate to development in Carmel Valley; restricting grading on slopes over 25% grade which have been identified as possessing endangered habitat values, significant scenic amenities or hazards to development including major undeveloped sites with high erodibility characteristics; including mandatory provisions as relates to the Los Penasquitos Lagoon Enhancement Program; and, by the inclusion of detailed provisions with regards to off-street parking requirements and curb cut restrictions within the Beach Impact Area.

Unresolved Issues

The only remaining unresolved issues involve provisions for allowing grading to occur in the North City area during the rainy season and specifying that uses within wetlands are limited to those defined in Section 30233 of the Coastal Act. The City desires to have controlled grading permitted during the rainy season; Commission staff believes the controls are inadequate and that grading should not be permitted during the rainy season or that more stringent control/mitigation measures be required. The City also proposes to exempt a 5-6 acre wetland from the provisions of Section 30233 of the Act.

Preliminary Staff Recommendation

Pursuant to the resolutions and findings contained in this report, staff recommends that the Commission:

1. Deny certification of the North City Land Use Plan resubmittal as specified in the resolution found on page #6 of this report
2. Certify with suggested modifications the North City Land Use Plan resubmittal as specified in the resolution found on page #7 of this report
3. Certify the Pacific Beach, Ocean Beach, and Peninsula Land Use Plan segment resubmittals as specified in the resolution found on pages 37 and 38 of this report.

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(0866A)

Further Information

For further information regarding the Land Use Plan resubmittals or the staff report, please contact the San Diego District office at the above address and telephone number. Correspondence should be addressed to this office.

OVERVIEW

Organization of the Staff Report

While the current resubmittal involves four Land Use Plan (LUP) segments, the staff report is divided into only two main sections. The first section addresses the North City Land Use Plan segment; the second section addresses the Pacific Beach, Ocean Beach and Peninsula segments. The latter three segments have individual resolutions for approval as resubmitted by the City; however, there is only one combined set of findings since the only remaining issue for the Pacific Beach, Ocean Beach and Peninsula LUP segments is parking in the nearshore areas. The City has included identical provisions for parking in nearshore areas for each of these segments; therefore, the staff report findings are identical. The North City LUP, on the other hand, includes many natural resource protection policies not applicable to the other segments and, therefore, has a separate set of findings.

Also, included in the staff report is a short introductory section summarizing: how the City of San Diego Land Use Plan is segmented; briefly describing the City's LCP geographic area; the documents which comprise the current City LCP Land Use Plan resubmittals; and, a summary of public participation in the LCP process.

INTRODUCTION

Geographic Segmentation of the City of San Diego LCP Land Use Plan.

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 into twelve (12) 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 submitted all of its LUP segments; the status of those submittals is as follows:

- | | |
|-----------------------------|--|
| 1. North City | - Certified with suggested modifications on August 21, 1982. Recertified with suggested modifications on May 23, 1984. |
| 2. La Jolla/La Jolla Shores | - Certified as submitted on April 26, 1983. |

3. Pacific Beach - Certified with suggested modifications on July 23, 1981. Recertified with suggested modifications on May 23, 1984.
4. Mission Beach - Certified with suggested modifications on September 22, 1982. Recertified with suggested modifications on November 15, 1984.
5. Mission Bay - Submitted by the City but subsequently delayed indefinitely by the City.
6. Ocean Beach - Certified with suggested modifications on May 22, 1980. Recertified with suggested modifications on May 23, 1984.
7. Peninsula - Certified with suggested modifications on August 21, 1981. Recertified with suggested modifications on May 23, 1984.
8. Centre City/
Pacific Highway
Corridor - Certified with suggested modifications on May 24, 1983.
9. Barrio Logan/
Harbor 101 - Certified as submitted on February 23, 1983.
10. Otay Mesa/Nestor - Certified as submitted on May 15, 1979.
11. Tia Juana River
Valley - Certified as submitted on September 18, 1979. Recertified as submitted on May 23, 1984.
12. Border Highlands - Certified as submitted on August 27, 1982.

When the Commission approved segmentation of the LUP, it found that the Zoning/Implementation Plan of the City's LCP would involve a single unifying submittal. The City has submitted the LCP Implementation Plan; however, it was denied as submitted on May 23, 1984. The City has since decided to hold-off on resubmitting the LCP Implementation Plan until all the Land Use Plan segments (except Mission Bay) have been effectively certified. The current LUP segment resubmittals are intended to accomplish that goal.

Brief Description of LCP Geographic Area.

The City of San Diego represents one of the largest metropolitan centers in the State of California and includes one of the larger coastal zone areas in the State in terms of geography and population. The City's coastal zone

Geographic Relationship of City of San Diego LCP Land Use Plan Segments

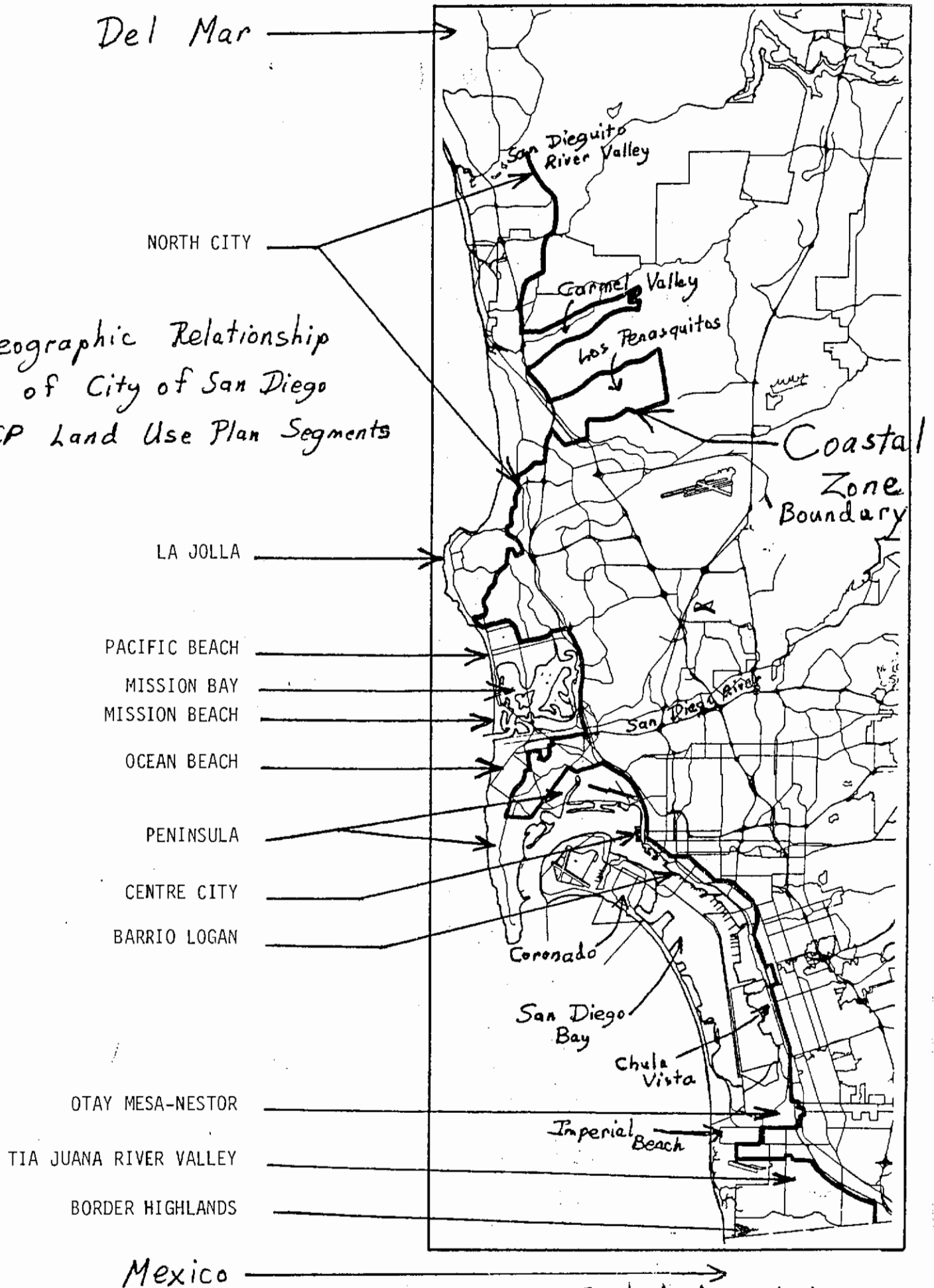


Exhibit #1

stretches from the City of Del Mar and the unincorporated County areas in the north to the international border with Mexico on the south. The demographics are such that the northernmost and southernmost communities within the City's coastal zone are relatively undeveloped while the portions of the City near San Diego Bay are highly urbanized.

In terms of coastal zone resources, the City is fortunate to be well endowed. The most significant resources are:

- the intensely used sandy beach areas in Ocean Beach, Mission Beach, Pacific Beach and La Jolla;
- the wetland areas of statewide and national importance including: portions of San Dieguito Lagoon, Los Penasquitos Lagoon, Mission Bay and the Tia Juana Estuarine Sanctuary;
- the major inland bluff systems in the North City communities, with their environmentally sensitive habitats and scenic qualities; and,
- the major visitor-serving destination areas of San Diego Bay, Mission Bay and La Jolla.

However, it is these very resources which make the balancing of the demands to develop in the coastal zone versus demands to preserve the resources so difficult. The competing demands are most evident in the Mission Bay, La Jolla and North City areas. It is in these areas where the Commission has reviewed major residential subdivisions, industrial parks and commercial developments which pose the greatest impact to the above identified resources. Subsequent findings for each of the LUP segments provides greater detail with regards to geography and significant resources.

Contents of the Current City LCP Land Use Plan Resubmittals.

The City, as noted, has resubmitted four of its LCP Land Use Plan segments. It should be noted that the Commission does not have all the LUP documents for its review in the current resubmittal as these would be quite voluminous. The City has submitted and Commission staff has attached only those portions of the documents where changes are proposed; nevertheless, the complete LUP resubmittals consist of the following materials:

1. The North City Local Coastal Program Land Use Plan as adopted by the City Council and dated March 31, 1981.
2. The Pacific Beach Local Coastal Program Land Use Plan as adopted by the City Council and dated April, 1981.
3. The Peninsula Local Coastal Program Land Use Plan as adopted by the City Council and dated March 24, 1981.

4. The Ocean Beach Precise Plan as adopted by the City Council with a reprint date of June, 1978.
5. The proposed amendments to the Land Use Plans as adopted by the City Council and contained in Planning Department Reports Nos. 83-292 and 83-386.
6. The revisions to Planning Department Report No. 83-292 as referenced in a report entitled "Revisions to the North City, Ocean Beach, Pacific Beach and Peninsula Local Coastal Program Segments" on file with the City Clerk as Document No. RR-263183.

Public Participation

The City has held numerous community planning group meetings, Planning Commission and City Council meetings with regards to the current LCP submittal. Consistently, the most widely discussed issues have involved floodplain development, grading of steep slopes and beach access. Commission staff has commented a number of times both verbally and in writing on earlier drafts of the current submittal.

NORTH CITY LAND USE PLAN RESUBMITTAL

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings:

A. RESOLUTION I - DENIAL OF CERTIFICATION

1. MOTION I

I move that the Commission certify the City of San Diego/North City Land Use Plan Segment as resubmitted.

2. STAFF RECOMMENDATION

Staff recommends a NO vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

3. RESOLUTION TO DENY CERTIFICATION

The Commission hereby denies certification of the City of San Diego/North City Land Use Plan for the reasons discussed below and finds that the resubmittal:

- fails to meet the requirements of and does not conform to the policies of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act.
- is not consistent with applicable decisions of the Commission which shall guide the local government in their future actions under Sections 30625(c) of the Coastal Act.

B. RESOLUTION II - CERTIFICATION OF THE LAND USE PLAN, IF MODIFIED

1. Motion II.

I move that the Commission certify the resubmitted North City Land Use Plan Segment and its policies, if they are modified in conformity with the suggestions set out in the staff report.

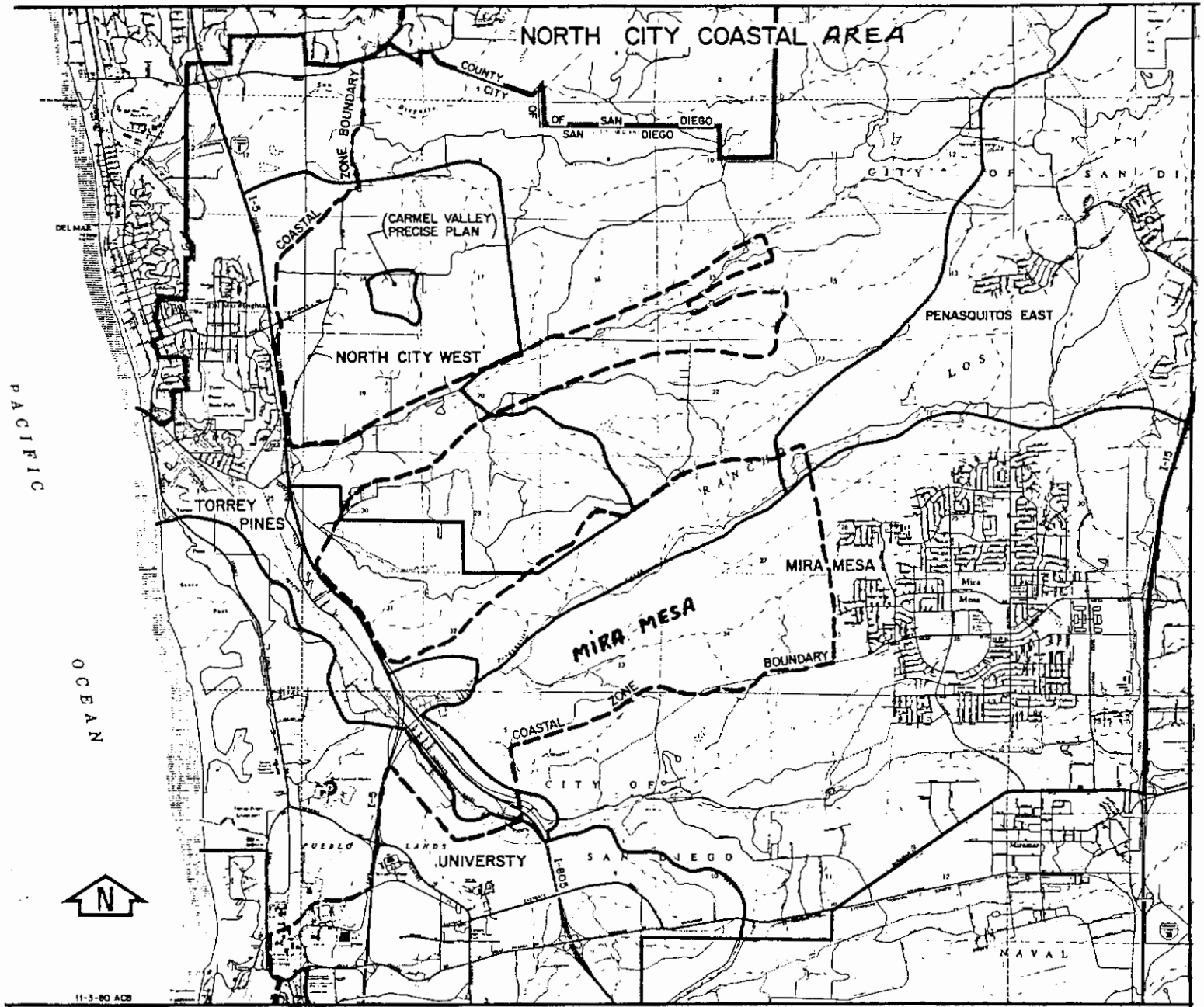
2. STAFF RECOMMENDATION:

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

3. RESOLUTION TO CERTIFY PORTIONS OF THE LAND USE PLAN, IF MODIFIED:

The Commission hereby certifies the Land Use Plan subject to the following modifications and adopts the findings stated below on the grounds that, if modified as suggested below, the Land Use Plan will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan will contain a specific access component as required by Section 30500(a) of the Coastal Act; the Land Use Plan will be consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and, certification of the Land Use Plan will meet the requirements of Section 21080.5(d)(2)(i) of the Environmental Quality Act, as there would be no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impact on the environment. The suggested modifications to the submittal are necessary to achieve the basic state goals set forth in Section 30001.5 of the Coastal Act.

Those geographic areas identified in the adopted findings for denial where certification would be deferred are not certified by adoption of this resolution.



North City
LUP Segment

Exhibit #2

C. SUGGESTED MODIFICATIONS

When LUP policies are cited, underlining denotes language to be added, and deletions are ~~lined out~~

Grading During the Rainy Season

1. Modify Policy 3(c) on page 8, as relates to the Torrey Pines, Mira Mesa and North City West (including San Dieguito River Valley/Los Penasquitos Canyon hillsides) Policy Groups and Policy 5(c) on page 7 of the Sorrento Hills LCP Segment Land Use Plan Policies as follows:

From November 15 to March 31, no rough grading (including grading for roads and trenching for utilities other than minor utility trenches to individual lots) shall be permitted. As an option, grading may only occur where all the following criteria are met:

- a. In increments as determined by the City Engineer based on site-specific soil erodibility and slopes in order to minimize soil exposure and, in no event an area greater than five (5) acres with cut and fill slopes not exceeding a maximum of 15 feet.
- b. The applicant has installed temporary erosion control measures that the City Engineer finds are designed to assure that there will be no increase in peak runoff rate from the fully developed site over the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six-hour period once every ten years (the "six-hour, ten-year" design storm).
- c. The applicant posts a bond sufficient to cover the costs of any remedial grading and replanting of vegetation, including any restoration of lagoon, wetland, or other environmentally sensitive habitat areas adversely affected by the failure of the erosion control measure required pursuant to Subsection (C)(2), as determined by the City Engineer, which bond will inure to the benefit of the City in case of non-compliance, as determined by the City Engineer.
- d. The applicant agrees to provide daily documentation to the City Engineer of the condition of the erosion control procedures for any 24-hour period in which precipitation exceeds 0.25 inches. Such documentation shall be provided five working days of said 24-hour period. Failure to provide such documentation or occurrence of any significant discharge of sediments or silts in violation of this policy shall constitute automatic grounds for suspension of the applicant's grading permit(s) during the period of November 15 to March 31.

- e. The applicant agrees to pay a Los Penasquitos watershed restoration and enhancement fee as stipulated in the North City Local Coastal Program Land Use Plan; however, the fee shall be double that required in order to adequately mitigate the increased adverse impacts associated with grading during the rainy season. Properties which drain to the San Dieguito Lagoon shall contribute the fee to the Coastal Conservancy to be utilized in implementing the provisions of the Coastal Commission approved San Dieguito Lagoon Enhancement Plan.

2. Wetland Protection

- a) Delete policy 5(B)(7) on page 11, as relates to the property north of the channelized area of Sorrento Valley and immediately east of Interstate-5. Policy 5 (B)(7) reads as follows:

The/loss/of/any/wetland/values/occurring/in/the/man-made/wetland/on/the/property/north/of/the/channelized/area/of/Sorrento/Valley/and/immediately/east/of/Interstate Highway/5/shall/be/fully/mitigated/through/participation in/the/Los/Penasquitos/Lagoon/restoration/and/enhancement program/in/consultation/with/the/State/Coastal Conservancy/Lagoon/Foundation/Department/of/Fish/and Game/and/US/Fish/and/Wildlife/Service/

- b) Modify policy 6 on page 11 as follows:

All wetland areas within the City's North City LUP shall be mapped as part of the LCP Implementation Plan. Use of such wetlands (i.e., Los Penasquitos and San Dieguito Lagoons) shall be limited to those permitted under the Public Resource Code Section 30233.

Buffer zones sufficient to protect wetlands shall generally be 100 feet in width, unless the applicant demonstrates that a smaller buffer will protect the resources of the wetland based on site-specific information, including but not limited to the type and size of the development and/or proposed mitigation (such as planting of vegetation or construction of fencing) which will also achieve the purposes of the buffer. The buffer should be measured landward from the wetland. Maps and supplemental information submitted as part of the application should be used to specifically determine these boundaries. The California Department of Fish and Game and the U.S. Fish and Wildlife Service shall be consulted in such buffer determinations and their comments shall be accorded great

weight by the City of San Diego and by the California Coastal Commission if a decision by the City concerning wetland buffers is appealed to the Commission pursuant to the California Coastal Act of 1976, as amended.

D. FINDINGS FOR DENIAL OF CERTIFICATION OF THE RESUBMITTAL

The Commission finds and declares as follows:

1. Summary Finding

The City of San Diego has made appropriate revisions to the North City Land Use Plan Segment resubmittal addressing most of the Coastal Commission's concerns which were expressed in the previously recommended suggested modifications and findings adopted by the Commission on May 23, 1984. At that time the Commission found the LUP policy language to be inadequate with regards to conformity with those policies of the California Coastal Act dealing with preservation/protection of environmentally sensitive habitats and visually scenic areas. Specifically, there were five major unresolved issues which can be briefly defined as follows:

- type and amount of development to be permitted within the 100 year floodplain areas;
- whether the Los Penasquitos Lagoon Enhancement Program should be implemented;
- whether grading of steep slope areas over 25% grade should be permitted;
- whether grading on parcels which drain to Los Penasquitos and San Dieguito Lagoons should be permitted during the rainy season;
- should development be permitted within 100 feet of a defined wetland area;
- The Commission found in its previous actions on the North City LUP that the City had included policy language which would have permitted subject to certain controls: filling and development of the floodplain areas; grading of steep slopes over 25%; grading during the rainy season; and development within 100 feet of a wetland. Additionally, the Los Penasquitos Lagoon Enhancement Program was not mandated for implementation.

Previous Commission action on LUP submittals and permit decisions have consistently prohibited: filling of the undeveloped portions of the floodplains; grading of steep slopes (with minor exceptions); grading during the rainy season on parcels which drain to Los

Penasquitos of San Dieguito Lagoons; and, encroachment of development within 100 feet of a wetland unless found acceptable by the State Dept. of Fish and Game. The Commission has also consistently implemented, through special conditions on permits, the Los Penasquitos Lagoon Enhancement Program Fund.

The Commission finds that, for the reasons discussed below, the City has in the current resubmittal, revised the North City LUP Policy Language to address the above issues in a manner which for the most part can be found to comply with the resource protection policies of the Coastal Act. Specifically, the revised policy language results in:

- limiting development in the San Dieguito River 100 year floodplain to uses permitted under the A-1-10 Zone and by inclusion of strict performance requirements as relate to Carmel Valley/Route 56 development;
- prohibiting grading on slopes over 25% (with minor exceptions) which have been identified as possessing endangered habitat values, significant scenic amenities or hazards to development including major undeveloped sites with high erodibility characteristics; and,
- mandatory provisions as relates to participation in the Los Penasquitos Lagoon Enhancement Program.

However, the Commission also finds that the current resubmittal includes policy language which would allow grading to occur in the North City area during the rainy season. The City desires to have controlled grading permitted during the rainy season - the Commission finds that the controls are inadequate to ensure protection of environmentally sensitive habitats and comply with Sections 30231, 30233 and 30240 of the Coastal Act, as explained subsequently in greater detail. The Commission further finds that grading should not be permitted during the rainy season or that more stringent control/mitigation measures should be required, such as recommended in the suggested modifications contained in this report. The Commission also finds that the resubmitted LUP policy language is inadequate to guarantee preservation and protection of wetlands.

As a summary conclusion, the Commission finds that the current North City LUP resubmittal adequately resolves most of the Commission's previous concerns and contains many excellent provisions; but, that it must be denied on the grounds that policy language regarding grading during the rainy season and preservation of wetlands is insufficient.

Documents which comprise the current North City LUP Segment resubmittal include: North City Local Coastal Program Land Use Plan as adopted by the City Council and dated March 31, 1981; proposed amendments to the North City Land Use Plan as adopted by the City Council and contained in Planning Department Report No. 83-292; and, the Council adopted revisions to Report No. 83-292 as contained in the report entitled "Revisions to the North City, Ocean Beach, Pacific Beach and Peninsula Local Coastal Program Segments" on file with the City Clerk as Document No. RR-263183.

2. Policy Group Findings Format. The Commission finds that the Water/Marine Resources and Environmentally Sensitive Habitats; Diking, Dredging and Filling; and, Shoreline Structures and Hazard Areas policy groups and plan policies of the land use plan, as resubmitted, conflict with Chapter 3 policies and do not conform with Section 30001.5 of the California Coastal Act of 1976. Due to the precedential nature and all encompassing impact of these policies on this land use plan segment, the resubmitted land use plan, as a whole, must be denied certification. However, while portions of the land use plan may not be geographically segmented for approval, the Commission does find that certain policy groups are certifiable on their own merit. The City and Commission are in agreement with all the policies contained in the following identified policy groups and the City has incorporated all the suggested revised policy language adopted in the previous conditional certification for these groups into the resubmittal. These certifiable policy groups are identified as follows:

1. Shoreline Access
2. Recreation and Visitor-Serving Facilities
3. Agriculture
4. Locating and Planning New Development
5. Visual Resources and Special Communities
6. Public Works

Additionally, since there are no such resources or properties, the Commission finds the following policy groups are not applicable: Forestry and Soil Resources and Industrial Development/Energy Facilities. Further, the policy group on Housing no longer raises any coastal issues, pursuant to the Mello legislation (SB 626), and has not been considered in reviewing the resubmitted land use plan.

Section D-6, as follows, contains the findings for denial and conformity on the above-referenced policy groups. The findings and declarations correspond to the 14 policy groups identified in the LCP Manual. The contents of the specific findings for denial and conformity are expounded upon by the previously adopted Findings on the North City LUP, dated June 20, 1981, and the adopted findings for the first North City LUP resubmittal, dated March 8, 1984. The Findings, unless modified herein, are adopted and incorporated by reference as the Commission's findings for the current North City LUP resubmittal. For references and further details on the specific plan policies originally contained in the North City LUP, rather than currently proposed amendments, and background material on the planning effort, the plan summaries and informational reports contained in the Regional Commission Summary/Recommendation are also adopted and incorporated herein.

All of the North City LUP Segment policies not discussed in City Planning Department Report 83-292 are acceptable as found by the Commission in the initial submittal of the North City LUP Segment; and those policies in report 83-292 where the City concurs with the Commission's previously adopted suggested modification language from the initial North City LUP review as well as those policies where the Commission is not objecting to the City's amended language in report 83-292 (including the Council adopted revisions to report 83-292 as contained in Document No. RR-263183) are also found acceptable. It is only those policies discussed herein which are found by the Commission to be inadequate to conform with Chapter 3 policies of the Coastal Act; all other North City LUP policies not discussed however, and as contained in the North City LUP documents and City Planning Department report 83-292 (and the revisions thereto), are hereby incorporated and approved by the Commission as part of North City LUP segment.

3 Geographic Areas Where Certification Would be Deferred.

The Commission finds that certain areas of the North City Land Use Plan do not contain a description of the types, location, and intensity of development. For these areas certification is deferred. The areas where certification is deferred include:

- The San Diego Gas & Electric property within the Los Penasquitos Lagoon/floodplain west of Interstate-5 pending further study by the City
- Portions of the Coastal Zone within Carmel Valley located to the east and to the west of NCW community/Sorrento Hills Community Plan

- Los Penasquitos Regional Park
- City of San Diego Torrey Pines City Park
- Hillside areas located north and south of the San Diego River Valley which have not had Community Plans or Specific Plan submitted to and approved by the Coastal Commission.

Also, the areas within the North City segment which are owned by the University of California are not included in this segment of the City's Land Use Plan; this is because the City does not have the legal ability to plan for areas which are University property. This planning function is reserved by the University as part of their Long Range Development Plan (LRDP) process.

4. Conformance with Section 30001.5 of the Coastal Act.

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that portions of the land use plan, as set forth in Resolution I, are not consistent with the policies and requirements of Chapter 3 of the Coastal Act and do not meet the basic state goals specified in Section 30001.5 of the Coastal Act which states:

Section 30001.5

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

- (a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural manmade resources.
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economical needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.
- (d) Assure priority for coastal-dependent and coastal-related development over other developments on the coast.
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission finds that the North City LUP does not contain adequate policy language with regards to preservation and protection of environmentally sensitive habitats (specifically preservation of wetlands and grading of slopes during the rainy season) to insure compliance with subparagraphs (a) and (b) of the basic state goals specified in Section 30001.5 of the Coastal Act. The specific reasons for this finding are detailed in subsequent findings.

5. North City Land Use Plan Summary

The North City LCP area encompasses the Torrey Pines Community Plan area in total, Carmel Valley in the North City West Community Plan area, La Jolla Community Plan area north of the Scripps Institute of Oceanography - UCSD boundary, the Los Penasquitos Watershed in the western portion of the Mira Mesa Community Plan area, and open space and urban reserve areas identified in the General Plan.

The City's North City Local Coastal Program (LCP) land use plan consists of a combination of the individual community plans. At the suggestion of the Coastal Commission, the planning areas have been considered as a group because of concerns regarding drainage into the Los Penasquitos and San Dieguito Lagoons from adjacent and upstream watersheds, the impacts of traffic volume and circulation in and through the various segments, and the cumulative impacts of development in the entire area.

Since the existing community plans for the North City area were adopted prior to the enactment of any comprehensive coastal legislation, many of the coastal issues addressed in the Coastal Act of 1976 are not discussed in specific detail in the plans. However, at the present time, the Mira Mesa and University Community Plans are being updated and will address coastal issues. Once certified, the North City LCP land use plan will serve as an Addendum to the Torrey Pines, North City West, University and La Jolla Community Plans, and an amendment to the Mira Mesa Community Plan and "Progress Guide and General Plan." Policies contained within the Mira Mesa and University Community Plan portions of the North City LCP land use plan have been adopted by the City of San Diego in lieu of having fully adopted community plans which encompass the coastal zone area. Therefore, because these plans will remain as individual documents to be supplemented by North City LCP land use plan policies, the policy language in the North City LCP land use plan is structured to correspond to each community plan as applicable.

The North City LCP land use plan is the northernmost coastal community in the City of San Diego. This geographically large area is relatively undeveloped and is experiencing development pressure as the City continues to grow and demand more land for expansion. The

North City area also contains many of the remaining coastal zone natural resources within the City including: portions of San Dieguito Lagoon and floodplain; Los Penasquitos Lagoon and Creek; Carmel Valley; Los Penasquitos and Lopez Canyons; Torrey Pines Park; and the coastal bluffs. It is a primary goal of the North City LCP land use plan to preserve these resources to the maximum extent feasible while at the same time providing for industrial, commercial and residential growth.

6. CONFORMITY OF THE RESUBMITTED NORTH CITY LUP WITH CHAPTER 3 POLICIES. Section 30512 of the California Coastal Act of 1976 requires that the Coastal Commission certify a Land Use Plan if it meets the requirements of, and is in conformity with, the Policies of Chapter 3 of the Act (commencing with Public Resources Code Section 30200). The North City LUP resubmittal does meet the requirements of, and is in conformity with, most of the policy groups contained in Chapter 3; however, it is not consistent with those policies involving preservation and protection of environmentally sensitive habitats. Following are the specific findings for each policy group.

A. SHORELINE ACCESS. The City's land use policies within the North City LUP, particularly as articulated in the Torrey Pines and University/La Jolla community sub-segments, provide appropriate direction for the maintenance and improvement of access to and along the shoreline. In addition, access provisions in the form of non-vehicular modes such as bikeways, have been designated in the plan area. Also, the North City LUP has included policies providing for lateral and vertical access along the shoreline and have incorporated prescriptive rights procedures in association with new development where necessary to preserve potential public use rights. A shoreline accessways map has been included in the land use plan to indicate precise shoreline accessways in the University /La Jolla Farms area.

The Commission finds the Shoreline Access policy groups of the North City LUP to conform with the access provisions of Chapter 3 of the Coastal Act.

B. RECREATION AND VISITOR-SERVING FACILITIES. The Commission's initial action on the North City LUP found the Recreation and Visitor-Serving Facilities policy groups inadequate for certification as to conformance with the recreational policies of the Coastal Act. Subsequently the City has found the Commission's suggested policy revisions acceptable and has incorporated those suggestions into the North City LUP as resubmitted. The revisions are the result of previous Commission permit actions where a "Park and Ride" facility was developed at the southwest corner of I-5 and Carmel Valley Road (ref. permit file 6-82-329) and the designation of Lot 83 of the Sierra Del Mar subdivision at the northwest corner of I-5 and Carmel

Valley Road for exclusive visitor-serving uses (ref. permit file F8341). With the inclusion of these provisions in the North City LUP the Commission now finds the Recreation and Visitor-Serving Facilities policy groups in conformance with the recreation policies of the Coastal Act.

C. WATER/MARINE RESOURCES AND ENVIRONMENTALLY SENSITIVE HABITATS; DIKING, DREDGING AND FILLING; and, SHORELINE STRUCTURES AND HAZARD AREAS. Because all these policy groups interface to a great extent within the North City LUP, the policies have been clustered together under one heading. As previously mentioned, the North City area is characterized by a series of environmentally sensitive wetland and floodplain area subject to flood hazards, highly erodible and scenic steep slope areas, and steep coastal shoreline bluffs. It is in these areas where the greatest concern over resource protection is raised.

The Commission in its initial action on the North City LUP in 1981, as well as the action on the resubmittal in 1984, found the City's policy language inadequate to insure protection of the resource values of the wetlands and floodplains as well as the scenic and environmentally sensitive hillsides. In those earlier actions, the Commission found that additional specificity and direction was needed within the land use plan to: require the identification and maintenance of wetland and riparian habitats; provide steep slope protection to avoid erosion and sedimentation hazards, adverse visual impacts, and disruption of important wildlife corridors; require adequate buffer areas adjacent to environmentally sensitive habitat areas; provide runoff control and grading restrictions to prevent downstream sedimentation of wetlands; limit and establish standards for the placement of shoreline erosion control devices in order to minimize impacts on beach access and shoreline processes; and finally, preserve the undeveloped 100 year floodplains of the San Dieguito River and Los Penasquitos Creek in order to assure maximum protection of the downstream wetlands by preserving natural desilting basins and to minimize flood hazard potentials. The Commission provided the City the necessary specificity and direction to achieve a certifiable North City Land Use Plan in the form of detailed suggested policy language.

In response to the Commission's previous actions on the North City LUP, the City has incorporated many new policies into the current resubmittal of the LUP. These policies, such as limiting development in the 100 year floodplain area of San Dieguito River to A-1-10 uses and prohibiting grading on environmentally sensitive natural slopes over 25%, address the Commission's concerns in a positive manner and findings for approval are provided. However, those policies dealing with wetland preservation and grading during the rainy season remain unresolved; therefore, the findings regarding these issues are for denial of certification.

1) FLOODPLAIN DEVELOPMENT. In past submittals of the North City LUP, the Commission found the LUP policy language to be inconsistent with the Coastal Act policy. Quoting from the previous findings adopted by the Commission and as found in the March 8, 1984 staff report:

The filling and other alteration of floodplain areas presents several concerns related to consistency with Coastal Act policies. The most applicable policies would require that the biological productivity and quality of streams be maintained by control of runoff, maintenance of natural buffer areas, and the minimizing of alteration of natural streams (Section 30231); any channelization or other substantial alteration of rivers and streams shall be limited to, among other projects, flood control projects where no other method of protection is feasible and where protection is necessary for public safety or the protection of existing development (Section 30236); development in environmentally sensitive habitat areas shall be limited to uses dependent on such resources and development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent degrading impacts and shall be compatible with the habitat areas (Section 30240); scenic and visual qualities be maintained by the minimization of the alteration of natural landforms (Section 30251); and, the minimization of risks to life and property in areas of high flood and geologic hazard (Section 30253).

The policies proposed by the City of San Diego generally would be consistent with the applicable Coastal Act policies in that fill or permanent structures are not allowed within the 100-year floodplain until a specific plan is developed. Also, in certain cases activity would be allowed now. The North City City LUP states certain criteria which any future Specific Plan must address; however, the City policies do not specifically require review of the specific plans by the Commission as an amendment to the Local Coastal Program.

The City's plan would, however, allow modification of the limitations on floodplain fill without review by the Commission, essentially allowing a change in the kinds, locations, and intensities of use. The City's plan would vest broad authority in the City planning department for reviewing a specific plan and then modifying floodplain limits. The Commission provided

initial planning guidance for the issue of floodplain and wetland protection by commissioning a special study through the California Sea Grant Program. That study, "Stream and Lagoon Channels of the Los Penasquitos Watershed with an Evaluation of Possible Effects of Proposed Urbanization" (1979) prepared by Karen Prestegard, recommended as the highest priority planning goal preservation of "the major areas of sediment storage identified in field mapping". The study's analysis showed that development of those areas would move sediment deposition areas downstream, ultimately into the lagoon. The special study also recommended careful controls to prevent increases in the rate of runoff, implementing Section 30231.

Both the floodplain policies of the LCP and the proposal to construct Route 56 as a freeway in Carmel Valley could result in major modifications to the stream systems and increased sedimentation of Los Penasquitos and San Dieguito Lagoons. Complete preservation of every bit of the floodplain is not essential to protect the lagoon, rather the portions of the floodplain important for natural sedimentation and for natural runoff velocities need to be preserved. The City's proposal to use the specific planning process to analyze streams in greater detail is a reasonable approach to try to better define what portions of the floodplain must be preserved to protect resources. The problem with the current proposal is that it lacks clear standards for preserving the essential hydrologic functions of the floodplain which are natural sedimentation and transport of runoff and sediment at natural rates. Currently, the City's language only specifies "relevant hydrological studies". Because the results of the specific plan are vital both to protection of the lagoon and to an ultimate determination of the "kinds, location and intensity of land uses", the appropriate forum for consideration of a specific plan is an LCP amendment.

The Commission's concern about modification of the floodplain is not an academic consideration; the Commission's experience convinces it that protection of wetlands requires consideration of the roll of the floodplain. Upper Newport Bay is threatened by rapid sedimentation, and remedial work is being undertaken at great public expense. Studies, including efforts by the Southern California Association of Governments make it clear that the channelization of San Diego Creek

eliminated most natural floodplain sedimentation, and moved the area of sedimentation down in the bay. Similar effects of channelization have been before the Commission in restoration efforts at Carpinteria slough (Conservancy Project CP-1-83) and Mugu Lagoon (CC 22-83).

The proposed construction of Route 56 (while being deferred certification in this submittal) poses a similar threat to the hydrologic functioning of streams tributary to Los Penasquitos Lagoon. A six lane freeway with a 15 foot median would be at least 87 feet wide, exclusive of curbs fill berms. Such a structure, in addition to the approved 4 to 6 lanes configuration of Carmel Valley Road would virtually fill the valley at its narrowest point, confining and accelerating flows and sedimentation. Construction through the valley, such a facility would eliminate many of the key sediment storage areas, further exacerbating sedimentation. As noted above, complete preservation of the floodplain is not absolutely necessary for protection of the Lagoon, and Carmel Valley Road has been approved as a 4 and 6 lane facility, with some encroachment into the floodplain, adequate to meet local transportation needs.

The Commission finds that absent policy language which would require Commission approval of the specific or precise plans, it cannot find the City's policy to be consistent with applicable Coastal Act policies. Section 30108.5 requires that a "Land Use Plan" indicate... "the kinds, location and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." The contents of any future specific plan are unknown at this time; the Commission does not know what kinds, location and land uses would be proposed or the amount of fill and associated impacts that might be permitted under the provisions at any such specific plan. Therefore, the Commission finds the City proposed language, which does not require Commission approval of the contents of these specific plans, inconsistent with Section 30108.5 of the Coastal Act.

In the current resubmittal, the City has included detailed policy language with regards to the conditions under which Route 56 and development within Carmel Valley may be permitted, and limits development within the 100 year floodplain area of the San Dieguito River to uses permitted in the A-1-10 Zone.

The Commission finds for the following specific reasons that the current North City LUP resubmittal conforms with Sections 30231, 30236, 30240, 30251 and 30253 of the Coastal Act as relates to alteration of floodplain areas.

First, in the City's current resubmittal, channelizations or other alterations of rivers or streams are essentially limited to those defined in Section 30236 of the Coastal Act which state:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

It should be noted that the City's proposed LUP policy language modifies Section 30236 (ref. to page 2 of the City's revisions to the North City LUP, Attachment-A to this report) by changing subsection (3) from stating "developments where the primary function (emphasis added) is the improvement of fish and wildlife habitat" to that which reads:

... (3) other development, a primary element (emphasis added) of which is the improvement of fish and wildlife habitat. Such development may include new or expanded roads or highways that are essential to the economic health of the region, state or nation, provided they comply with all the provisions of part (B) of this policy and all other applicable policies of this local coastal program. Long-term maintenance of health wetlands in Los Penasquitos Lagoon shall be a primary goal of any sedimentation or erosion control measures instituted pursuant to this section.

The Commission finds that the LUP language regarding channelization would be unacceptable if it weren't for two other factors:

1. The only other development permitted within the 100 year floodplain of the San Dieguito River is limited to uses permitted in the A-1-10 Zone. Specifically, LUP policy 5(A) on page 10 of the revisions to the North City LUP states: "Within the 100 year floodplain fringe of the San Dieguito River, fill for roads and other public improvements and/or permanent structures will only be allowed

if such development is consistent with uses allowed pursuant to the A-1-10 Zone and other existing zoning (CR zoning for Surf and Turf), is capable of withstanding periodic flooding, and does not require the construction of flood protective works, ..."

2. With regards to Carmel Valley, Sorrento Valley and Route 56, there are detailed provisions which require preparation of and implementation of a Carmel Valley/Los Penasquitos Lagoon Restoration and Enhancement Plan, to be approved by the Coastal Commission through an LCP amendment, before the Route 56/Interstate 5 interchange and associated road improvements may occur.

Because of the above factors the Commission finds that while the LUP policy language regarding channelization of rivers or streams is not considered the most desirable, nevertheless, when taken in conjunction with the above factors it can be found acceptable and in conformity with Section 30236. However, the Commission emphasizes that no new or expanded roads (or other development not specifically permitted by other LUP policies) are included in the North City LUP submittal other than the following: the realignment of El Camino Real, the realignment of Carmel Valley Road east of Interstate-5, the realignment of Via de la Valle east of Interstate-5, the realignment of Sorrento Valley Road and construction of Route 56. Even for the roads just listed, any channelization associated with realignment (or new construction in the case of Route 56) would only be permitted if there is no feasible less environmentally damaging alternative. The channelization policy specifically does not include construction of San Dieguito Drive east of I-5 or the widening of Carmel Valley Road west of I-5. These road improvements are not proposed in the North City LUP; said roads could have major adverse environmental impacts on Los Penasquitos and San Dieguito Lagoons and, if proposed, would have to be part of a subsequent LCP/LUP amendment.

Second, with regards to Carmel Valley and Route 56, there is detailed LUP policy language included on page 12 of the LUP Revisions report, and within the Route 56 and Sorrento Hills sections of the LUP revisions report. The detailed provisions require that development only be permitted when it is found that:

- there will be no increase in peak runoff rates
- it does not adversely impact environmentally sensitive habitats
- the proposal does not adversely impact water quality discharge to wetlands and other environmentally sensitive resources
- Significant new riparian corridors will be planted and maintained

- it is part of an overall Carmel Creek and Los Penasquitos Lagoon Restoration and Enhancement Program shall be developed and implemented
- the capacity of existing natural sedimentation basins shall not be reduced

Many other provisions included within the LUP are specifically designed to insure that any development within the Carmel Valley/Sorrento Valley area will not adversely impact the resource values of Los Penasquitos Lagoon. Thus, the Commission finds the policy language regarding Carmel Valley/Route 56/Sorrento Hills dealing with floodplain development in conformance with Coastal Act policies 30231, 30233, 30236 and 30240 regarding preservation and protection of environmentally sensitive habitats.

Third, as previously mentioned, within the 100 year floodplain fringe of the San Dieguito River development is limited to those uses allowed pursuant to the A-1-10 Zone. Additionally, any such development would be subject to environmental safeguards and design requirements as specified on page 10 of the City's LUP Revisions document. As such, the City's LUP policy language regarding the San Dieguito River Valley is found in conformance with the same Coastal Act policies noted in the previous paragraph.

2) WETLAND PRESERVATION. Sections 30233 and 30240 require preservation and protection of wetland areas. In previous submittals the Commission had found the North City LUP policy language to be inadequate to preserve and protect the wetlands existing within the North City LCP Segment. The current resubmittal resolves most of the previous concerns; however, there are two LUP policies which the Commission must take issue with. First, there is no LUP policy language which specifically states that wetlands shall be preserved. It appears that this may be an oversight in that the previous LUP submittal did include in the draft LCP implementing ordinances language which specifically called for preservation of wetlands and only permitted uses within the wetlands consistent with Section 30233 of the Coastal Act. However, the current LUP resubmittal does not include the draft implementing ordinances; therefore, the LUP must include policy language which clarifies that all wetlands will be preserved.

The second policy issue is more substantive in nature. Revised LUP policy 5(B)(7) states the following:

(7) Any wetland values occurring in the man-made wetland on the property north of the channelized area of Sorrento Valley and immediately east of Interstate

Highway 5 shall be fully mitigated through participation in the Los Penasquitos Lagoon restoration and enhancement program in consultation with the State Coastal Conservancy, Lagoon Foundation, Department of Fish and Game, and U.S. Fish and Wildlife Service. Such mitigation shall be completed prior to or concurrently with any development permitted on said property.

The Commission finds the above policy language to be inconsistent with Sections 30231 and 30233 of the Act. In particular, the subject property referenced in the above LUP policy involves the following factors:

1. Rather than being a man-made wetland, the subject property which is approximately 26 acres in total includes an approximately 5-6 acre wetland area (salt flat) and about 14 acres of steep slopes. The wetland appears, based on old aerials, to be a remnant wetland now separated from Los Penasquitos Lagoon by the freeway and flood control channel.
2. While the biologic value may be reduced because of its isolation, the wetland area does nevertheless provide seasonal nesting and feeding area for birds.
3. The property has had a previous biologic report prepared which verifies that the site includes the wetland area.

Remnant marshes/wetlands (ref. attached letter from the State Department of Fish and Game) can be extremely valuable. The Commission finds in this particular instance that alternatives exist which could allow for development on portions of the property while preserving the wetlands and steep slopes. These alternatives could be more thoroughly reviewed in a future LCP amendment. In any event, however, the Commission finds that simply participating in the Los Penasquitos Lagoon Restoration and Enhancement Program as mitigation for filling the wetland is grossly insufficient and inconsistent with Coastal Act policies regarding preservation of wetlands. Payment of the relatively minor mitigation fee stipulated in the Los Penasquitos Lagoon Restoration and Enhancement Program is not adequate compensation for loss of wetlands, and as the only mitigation for loss of wetland areas it would be inconsistent with Section 30233 of the Coastal Act. The Lagoon Restoration and Enhancement Fee was established to mitigate the erosion impacts associated with grading within the watershed, not the filling of wetlands.

3) STATE ROUTE 56. While the proposed Route 56 has already been discussed in some detail under the findings for floodplain alterations, because of its significance it warrants further

Commission findings. As proposed, State Route 56 would be aligned through Carmel Valley with its western terminus being the proposed interchange with Interstate-5. As previously mentioned, there are potentially grave environmental impacts which could result from construction of Route 56. In previous North City LUP submittals the Commission had deferred certification of Route 56 because the submittals did not include adequate policy language to insure that the design of Route 56 would not have a significant adverse impact on Los Penasquitos Lagoon.

The current LUP submittal recognizes the potential for Route 56 to adversely impact the Los Penasquitos Lagoon and includes three pages of LUP policy language intended to reduce and mitigate impacts resulting from Route 56. The focal point of the LUP language is that Route 56 shall be development to be consistent with a City of San Diego and State Coastal Conservancy Program for the overall restoration and enhancement of Carmel Creek and Los Penasquitos Lagoon.

As part of the overall restoration and enhancement plan, which would have to be submitted for review and approval by the Coastal Commission as an LCP amendment, the City is committing to: restoration of riparian areas; minimizing any fill of wetlands associated with the Route 56/I-5 interchange and realignment of Sorrento Valley Road; full mitigation for impacts on any wetland areas; preservation of the capacity and functioning of the sedimentation area east of I-5; and, the analysis of differing alignments for the freeway interchange to determine the least environmentally damaging alternative.

The Commission finds that the City's North City LUP submittal provides sufficient policy language to insure that Los Penasquitos Lagoon will not suffer any significant adverse environmental impacts as a result of the Route 56 proposal. However, the Commission does wish to emphasize two points: first, that the realignment of Sorrento Valley Road should minimize encroachment into the wetland and that a detailed traffic circulation study should be included if Sorrento Valley Road is proposed as a four lane road; and second, that Carmel Valley Road west of I-5 not have proposed improvements which would result in encroachment into Los Penasquitos Lagoon. Both these roads are critical in that widening could result in substantial encroachment into the Los Penasquitos Lagoon wetlands. With this understanding, the Commission finds the Route 56 LUP policy language in conformance with Sections 30231, 30233 and 30240 of the Coastal Act.

4. GRADING OF SLOPES AND EROSION CONTROL. The most applicable Coastal Act policies which are pertinent to the issues of grading and erosion control are Sections 30231, 30240, 30251 and 30253 which

require that the quality of downstream resources be protected by the proper control of grading and runoff and possible sedimentation of the lagoons. Also, the impacts of grading could have adverse impacts on visual resources and upland environmentally sensitive habitats.

In the previous North City LUP submittals, the City included policies which would have prohibited the removal of coastal mixed chaparral and/or coastal sage scrub located on slopes of 25% grade or more. However, the policy language did not control grading or other alteration of steep slopes where coastal mixed chaparral or coastal sage scrub was not present. The City policies would have also allowed grading to proceed during the rainy season when exposed soils are most subject to erosion and the protection of downstream resources is dependent upon temporary erosion control devices. The period of time when the most potential environmental damage can occur is the months of November to April when the largest rainfall occurs. It is only through a prohibition on grading during the rainy season (or implementation of stringent performance standards controlling grading during the rainy season) in the environmentally sensitive North City area that the Commission can assure that the potential for environmental damage will be minimized so as to provide maximum protection for coastal resources.

Grading on steeper slopes presents several major concerns; one is the visual impact of such activity, especially in areas adjacent to park, recreation, and open space areas; the second concern is the increased likelihood of onsite and offsite erosion, increased runoff, and downstream sedimentation when steep slopes are graded. These concerns can be reduced by eliminating or significantly reducing grading on steeper slopes. The City's past LUP proposals would not have prohibited grading on steeper slopes, but would only prohibit removal of chaparral or coastal sage scrub vegetation on steep slopes. Thus, if there was no chaparral or coastal sage scrub vegetation or the vegetation was only in isolated areas, massive land alteration and any attendant erosion and sedimentation could occur.

In the City of Carlsbad and San Dieguito area of the County of San Diego, similar situations to North City are found. In the LCPs for those areas the Commission found that there are two major problems associated with grading of steep slopes and the controlling of runoff as relates to sedimentation of the lagoons. First, is the increased sedimentation from the urban development process, and increased streambed erosion resulting from paving and storm drains in urbanized areas. Several publications note the dramatic increase in sediment production caused by urbanization, "Effects of Urbanization of Sedimentation and Floodflows in Colma Basin, California" by J. M. Knott USGS notes an increase in sedimentation to 130 times pre-development rates. Increases of 100-fold are also noted in Evaluation and Control of Soil Erosion in Urbanizing Watersheds by

Chang-Ning Chen while even more dramatic increases are related in "Control of Sediments Resulting from Highway Construction and Land Development" by the U.S. Environmental Protection Agency, 1971. The Commission has observed these effects throughout San Diego County, and finds that stringent controls over the timing of grading and policies to assure revegetation are necessary to minimize these increases.

The second major problem with sedimentation, and the major long term concern, is increased flood flows due to urbanization. The Commission's own consultant, Karen Prestegaard, in "Stream and Lagoon Channels of the Los Penasquitos Watershed, California, with an Evaluation of Possible Effects of Proposed Urbanization", reported that increased urban runoff can cause streambed erosion for periods of twenty to thirty years, and is the major cause of increased sediment deposition in San Diego County. The problems of streambed erosion have been dramatic in San Diego, notably at Crest and Lux Canyons, and also within the watershed of Batiquitos Lagoon and Buena Vista Lagoon which have shown dramatic increases in deltas at the western and eastern end of the lagoons. The Commission finds that phased construction of storm drains is not sufficient to mitigate the effects of urbanization because unlined portions of drainageways continue to erode at an even more rapid rate after construction upstream.

In the current resubmittal from the City for its North City LUP segment, the policy language has been substantially modified so as to effectively address the Commission's concerns over the potential adverse environmental impacts that can result from grading steep slopes which contain environmentally sensitive upland habitats and/or which are visually prominent. Specifically, the City's LUP policy language (as contained on pages 3-9 of the LUP Revision Document) includes the following:

In the case of those landforms which consist of slopes of 25 percent and over and which have been identified as possessing endangered habitat values or significant scenic amenities or hazards to development (including major undeveloped sites with high erodibility characteristics), the following policy shall apply:

Slopes of 25 percent grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed ten percent of the steep slope area over 25 percent grade may be permitted. For existing legal parcels, with all or

nearly all of this area in slopes over 25 percent grade, an encroachment onto the steep slope area may be permitted; however, any such encroachment shall be limited so that at no time is more than 20 percent of the entire parcel (including areas under 25 percent slope) permitted to be disturbed from its natural state. This policy shall not apply to the construction of roads of the City's circulation element or the development of utility systems. Uses of slopes over 25 percent may be made in order to provide access to flatter areas if there is no less environmentally damaging alternative available.

The steep slope areas to be covered by this policy will be mapped as part of the LCP Implementation Program and will include generally: steep slope areas on north and south side of the San Dieguito River Valley; the slopes on the south side of Carmel Valley; hillsides on both the north and south sides of Los Penasquitos and Lopez Canyon, including finger canyons or portions thereof which are visible from the canyon floors, slopes above the Sorrento Valley and Los Penasquitos Lagoon and other steep hillsides visible from Interstate 5 or other major coastal access roadways which possess scenic and habitat values.

Additionally, the LUP policy language requires submittal of a detailed runoff and erosion control plan to be prepared by a registered civil engineer to insure that there will be no increase in peak runoff rate from the fully developed site over the greatest discharge that would occur from the existing undeveloped site as a result of a "six-hour, ten-year" design storm). There are also requirements for installation of desilting basins and stabilizing of manufactured slopes.

The Commission finds that all the above requirements are consistent with previous Commission actions on the County of San Diego San Dieguito LCP Land Use Plan, the City of Carlsbad Mello I and Mello II LCP Segments and numerous coastal development permit decisions, as

well as Sections 30231, 30240, 30251 and 30253 of the Coastal Act.

5. GRADING DURING THE RAINY SEASON. While the City's current resubmittal adequately addresses preservation of steep slopes, it nevertheless allows (ref. page 8 of the LUP Revisions Document and page 7 of the Sorrento Hills Section of the LUP Revisions Document) for grading during the rainy season. Specifically, the LUP policy language states:

From November 15 to March 31, grading may only occur (1) in increments as determined by the City Engineer based on site-specific soil erodibility and slopes in order to minimize soil exposure, and if (2) the applicant has installed temporary erosion control measures that the City Engineer finds are designed to assure that there will be no increase in the peak runoff rate from the fully developed site over the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six-hour period once every ten years (the "six-hour, ten-year" design storm); (3) the applicant posts a bond which shall remain in force and effect for one year after acceptance by the city of the subdivision sufficient to cover the costs of any remedial grading and replanting of vegetation, including any restoration of lagoon, wetland, or other environmentally sensitive habitat areas adversely affected by the failure of the erosion control measures required pursuant to subsection (C)(2), as determined by the City Engineer, which bond will insure to the benefit of the City in case of noncompliance, as determined by the City Engineer, and (4) the applicant agrees to provide daily documentation to the City Engineer of the condition of the erosion control procedures for any 24-hour period in which precipitation exceeds 0.25 inches. Such documentation shall be provided within working days of said 24-hour period. Failure to provide such documentation or occurrence of any any significant discharge of sediments or silts in violation of this policy shall constitute automatic grounds for suspension of the applicant's grading permit(s) during the period of November 15 to March 31.

The Commission finds that because of the biological significance of Los Penasquitos and San Dieguito Lagoons, and the grave concern over sedimentation impacts from development within their watershed, that strict grading requirements which prohibit grading operations during the rainy season, or adequately mitigate such operations, are necessary in order to adequately protect the lagoons consistent with

Sections 30231, 30233 and 30240 of the Coastal Act. Massive grading operations during the rainy season would be inconsistent with the intent of the previously stated Coastal Act Section. The above finding is supported by a number of factors, including:

- a) Most of the soils in the North City LUP area are moderate to high or highly erodible according to the U.S. Department of Agriculture Soils Conservation Service Land Capability Classification.
- b) As previously noted, urbanization within watersheds can increase sedimentation over 100-fold; therefore, maximum erosion control should be afforded where downstream wetlands could be adversely impacted.

Further, the North City West Drainage Study prepared for Pardee Construction by Leeds, Hill and Jewett, Inc. and dated February, 1980, includes the following conclusions and recommendations:

During interim construction conditions, increased rates of sediment runoff can be controlled by not grading slopes between October 15 and March 15 of each year, by seeding exposed slopes before November 1 of each year and by construction of detention basins and desilting basins.

It is further recommended that sediment runoff during construction be controlled by limiting grading activities and by vegetation of construction slopes. In addition, detention or desilting basins should be located downstream of construction activities to serve as back-up control.

The same Leeds, Hill and Jewett study included data from sediment monitoring studies from the California Department of Water Resources, Los Angeles Flood Control District and U.S. Geological Survey. All of these monitoring studies support the fact that erosion and sediment load is greatest during intense rainfalls and where soils are not stabilized (such as winters following fire burns). As an example, the Turnbull Basin in Los Angeles, after a 1967 fire, had an increase in sediment load from 974 tons per square mile to 9,822 tons per square mile or a ten-fold increase. While the Turnbull Basin is unurbanized, the point is that once the native vegetation is removed (whether by fire or grading), the Commission finds that unless it is stabilized by the following winter, the likelihood for increased erosion and downstream degradation is greatly increased.

While the City has proposed a number of standards for permitting grading during the rainy season, the Commission finds that these standards are inadequate. The standards do not provide specific

limitations, but rather they simply state that grading should be done "in increments". They also call for monitoring of the erosion control devices after any rains in excess of .25 inches within a 24 hour period and suspension of the grading permit if applicants violate the grading standards. The problem with this approach is an over reliance on engineering solutions, enforcement and a lack of definition for the term grading "increments".

The Commission concludes that an alternative which would be more protective of environmentally sensitive habitats would be to prohibit grading within the watershed of the lagoons (within the coastal zone) during the rainy season, or possibly permitting grading during the rainy season provided it is limited to five (5) acre (maximum) increments with manufactured slopes limited to 10-15 feet in height and increased Lagoon Restoration Mitigation Fees. Such specific limitations would insure minimal potential for increased erosion, would be consistent with past Commission actions and with the recommendations of the Leeds, Hill and Jewett North City West Drainage Study. Such alternative LUP provisions would conform with Sections 30231 and 30240 of the Coastal Act.

The Commission further finds and notes that the imposition of strict grading controls, including the limitation on the time of year when grading activities may occur and prohibition on grading of steep slopes, has proven reasonable in a number of permit and LCP actions. On two large residential subdivisions in the North City area (Genstar, 6-82-100, for 1400 units on 228 acres and Fieldstone, 6-82-106, for 495 units on 160 acres) and on several industrial projects (6-83-656, Seaview Business Park, for a 319,500 sq.ft. office park on 18.2 acres and 6-83-637, 888 Associates for a 42,300 sq.ft. commercial/industrial building on approximately 3 acres) the grading limitations suggested herein have been successfully applied. Additionally, the fully certified County of San Diego San Dieguito Land Use Plan, which adjoins the North City LUP area on the north, and the certified Carlsbad LCP contain nearly identical grading restrictions to those grading restrictions proposed herein. Therefore, the Commission finds those grading restriction to be reasonable, workable, and necessary to protect the environmentally sensitive wetlands in the North City area.

6. LOS PENASQUITOS LAGOON FUND. Even with strict grading and runoff control requirements, the Commission has found that development will increase the amount and rate of runoff; and it will increase the amount of urban pollutants in runoff. In addition, even with controls over the rate of runoff, a greater net volume of runoff will result because less water will percolate into the ground due to increased impervious surfacing. The combined result will establish the potential for a substantial increase in sedimentation and adverse impacts on the lagoon ecosystem. The Karen Prestegaard study

previously mentioned also recommended that the tidal prism of the lagoon be increased by restoring channels cut off by construction of the railroad across the lagoon. It was recommended that this would enhance the capability of the lagoon to maintain an open mouth. It was also reasoned that a lagoon that was open more of the year would be better flushed and more capable of absorbing the increased load of pollutants. The Commission has used the permit process to work with North City developers to analyze the costs of a minimal improvement project along the lines recommended in the Prestegaard study. The expected cost of \$400,000 to \$600,000 was then allocated to the overall expected buildout in North City West to establish a proportionate share of about \$50/residential unit.

However, the Commission also recognizes the contribution of commercial construction activities within the lagoon watershed. Because the initial solution was a minimal one, the Commission acknowledges that additional funding will allow a more comprehensive and effective solution. Some degree of the major causative factor in increased runoff and pollutants is the establishment of impervious surfaces. Such areas cause runoff to enter streams more rapidly, and the runoff contains increased pollutant loads particularly from such areas as parking lots. However, impacts are caused by initial grading as well as the ultimate impervious surfaces. Even with maximum possible controls on sedimentation, sedimentation increases downstream from graded areas until landscaping achieves effective coverage. Both the areal extent of graded areas and the areas of impervious surfaces to create large building pads and parking lots are often more extensive and necessary in commercial developments. Therefore, it is clear that commercial projects, perhaps even more than residential construction and especially when located within Sorrento Valley, must be assessed to provide monies for overall lagoon management and restoration.

Due to these direct and indirect off-site impacts of degradation and sedimentation resulting from commercial construction, the Commission believes it is appropriate to assess a fee to mitigate both the short- and long-term effects of grading and impervious surfacing within the watershed. The fee would be based upon the site surface area disturbed by grading and the ultimate impervious surface area. The smaller fee of one-half cent per square foot of surface area graded is for the short-term impacts before the site is revegetated, stabilized or built upon; and, the larger fee of three cents per square foot of impervious surface is for the long-term impacts of increased runoff loads and rates resulting from annual rainfalls on permanently hardened surfaces. The Commission finds that the fee is a reasonable mitigation measure for the actual effects of grading, creating disturbed and exposed surfaces and altering the natural hydrology of the watershed. This fee has been imposed on a number of Commission permit decisions including 6-83-656 (Seaview Business

Park), 6-83-637 (888 Associates), 6-83-625 (RAMPAC/Latigo West), 6-83-562 (McMillan), 6-83-321 (Equidon Sorrento), 6-83-320 (EFH Torrey Pines Company), 6-83-244 (Sun City Land Partners), 6-84-243 (Roselle Office Park), and 6-83-187 (Purser). The Coastal Conservancy is administering the program.

The current North City LUP submittal, unlike the previous submittals, does contain policy language to implement the restoration and enhancement objectives of the Los Penasquitos Lagoon Fund. The City did slightly modify the provisions so that all development would have the same rate structure for establishing the amount of the mitigation fee. The Commission concurs with the City's submittal regarding the Penasquitos Lagoon Fund and finds that such a fund is an integral part to guaranteeing the long term biological productivity of Los Penasquitos Lagoon as required by Section 30231 of the Coastal Act.

D. AGRICULTURE. The North City Land Use Plan, which incorporates the San Dieguito Lagoon Enhancement Plan language into the LUP, provides for the protection of those existing A-1-l0 floodplain lands within the 100 year floodplain. Therefore, the Commission finds the LUP to conform with agricultural policies (Sections 30241 and 30242) of the Coastal Act.

E. LOCATING AND PLANNING NEW DEVELOPMENT. The Commission finds that the North City LUP provides adequate information regarding the type, location and intensity of development. However, a number of small unplanned areas as outlined in the summary finding of this report for the North City LUP are currently found by the Commission not to provide specificity with regards to type, location and intensity of development and certification is currently being deferred for those areas. However, in general, the uses and intensity of development are well defined and adequate direction is given to ensure preservation of identified archaeological or paleontological resources. The amount of on-site parking spaces available to new development in the North City LUP is not critical from a coastal access perspective given the distance the more intensely developed portions of the community are from the shoreline. No special "Beach Impact Area" parking ratios are proposed for the North City LUP. The off-street parking ratios proposed by the City in the draft implementing ordinances are adequate and will not result in adverse impacts to beach access.

In conclusion, the Commission finds this policy group in conformance with Sections 30244, 30250 and 30252 of the Coastal Act.

F. VISUAL IMPACTS. The North City LUP as resubmitted contains many special provisions designed to maintain and improve the visual qualities of the area. In previous LUP submittals the Commission found that the LUP provisions related to grading could have a

significant adverse impact on the visual qualities of the area by permitting unnecessarily expansive alteration of landforms. Permitting disturbance of steep slopes not only has the potential to contribute to erosion and silting of the lagoon; but also, it results in greater visual impacts. Therefore, in the environmentally sensitive and scenic North City area, the Commission found that in order to conform with Sections 30240 and 30251 of the Coastal Act, the North City LUP needed to be modified to prohibit or strictly limit alteration of slope areas over 25% gradient.

As noted in the findings on grading and erosion control, the City has modified the current North City LUP submittal to prohibit grading on visually prominent slope areas of 25% grade or more; thus, the Commission finds the LUP submittal to be in conformance with Sections 30240 and 30251 of the Coastal Act.

G. PUBLIC ACCESS. The major concerns as relates to public works revolve around transportation issues.

In past North City LUP submittals the Commission expressed grave concern about Route 56 and Carmel Valley Road because of the potentially severe adverse environmental impacts that could result from their construction on Los Penasquitos Lagoon. However, as noted in the earlier findings of this report, the Commission is now satisfied with the LUP policy language related to development in Carmel Valley and construction of Route 56. With the policy language revisions in the current resubmittal, the Commission finds the North City LUP policies dealing with public works to be in conformity with Sections 30240 and 30254 of the Coastal Act.

E. FINDINGS FOR CERTIFICATION WITH SUGGESTED MODIFICATIONS

The suggested policy language revisions cited above and the following finds shall be transmitted to the City of San Diego's Planning Director with an explanation that the intent of the proposed modifications is to provide guidance to the City in resubmitting the land use plan to the Coastal Commission and is not binding upon the City of San Diego.

The Commission finds and declares as follows:

1. SHORELINE ACCESS. The Commission hereby adopts the findings previously cited in the report on page #16.
2. RECREATION AND VISITOR-SERVING FACILITIES. The Commission hereby adopts the findings previously cited in the report on page #16.
3. WATER/MARINE RESOURCES AND ENVIRONMENTALLY SENSITIVE HABITATS; DIKING, DREDGING AND FILLING; and, SHORELINE STRUCTURES and HAZARD AREAS. The Commission hereby adopts the findings previously cited in the report

on pp 17 - 33. Additionally, based on the findings below, the Commission finds that the suggested modifications would result in a certifiable land use plan.

The two suggested modifications are found by the Commission to be necessary in order for the North City LUP to conform with Sections 30231, 30233 and 30240 of the Coastal Act. Specifically, the Commission finds the following.

Based on scientific data available, including data in the Leeds Hill and Jewett North City West Drainage Study, the potential for significant increases in erosion and sediment load is greatest during periods of intense rain and when soils are disturbed by grading and not stabilized through revegetation. The City has proposed a number of performance standards to minimize and control erosion within the LUP; however, the Commission finds that the performance criteria are not adequate to be found in conformance with Sections 30231, 30233 and 30240 of the Coastal Act.

The Commission further finds that the suggested modification regarding no grading during the rainy season is consistent with the fully certified County of San Diego San Dieguito LCP Land Use Plan and Carlsbad Mello I and Mello II LCP. These areas located to the north of the North City LUP have similar slope, soils and erosion characteristics. The cumulative impacts of allowing grading during the rainy season could substantially add to the sedimentation of the wetlands in San Diego County. The Commission does find, and has included within the suggested modifications, that if grading is done in small increments of five acres or less with manufactured slopes limited to 15 feet or less, that grading could occur in the rainy season because such grading operations would have relatively little impact on increased erosion. Even so, such grading would have to be properly controlled and mitigated. One such mitigation would be increased mitigation fees to be used to off-set the increased sediment load which could be expected. The suggested modification accomplishes these goals consistent with Coastal Act Sections 30231 and 30240.

The Commission also notes that an over-reliance on engineered solutions to controlling erosion can create enforcement difficulties. While not arguing with the City's proposals for monitoring compliance with provisions for documenting the effectiveness of erosion control measures whenever it rains more than .25 inches within 24 hours, the Commission does express some doubts as to the effective implementation of this policy language. Massive grading during rainy season poses severe threats to environmentally sensitive areas, and once damage occurs in the form of increased sediment discharge into the lagoons, it is extremely difficult to document the responsibility of an individual developer in order to seek remedial action.

With regards to the second suggested modification, the Commission strongly

feels that positive LUP language must be included which specifies that permitted uses within wetlands are limited to those stipulated in Section 30233 of the Coastal Act. The Commission further finds that the LUP language regarding the wetland area located just east of I-5 and north of the Los Penasquitos Creek channel is inappropriate and inconsistent with Section 30233 of the Coastal Act. This wetland, while separated from the creek channel by the channel dike, is 5-6 acres in size and does provide seasonal resting and feeding area for birds. There are alternatives which could allow some development on the 26 acre site while preserving the wetland. In any event, the Commission finds the policy language for allowing filling of the wetland in exchange for paying the Los Penasquitos Lagoon Restoration and Enhancement Fee totally inadequate as compensation. The Lagoon fee is intended to mitigate the erosion impacts associated with grading within the watershed, not the filling of wetlands. The suggested modifications would eliminate the LUP policy language allowing filling of this wetland and so would result in LUP conformity with Section 30233 of the Act.

4. AGRICULTURE. The Commission adopts the findings previously cited in the report on p. #33.

5. LOCATING AND PLANNING NEW DEVELOPMENT. The Commission adopts the findings previously cited in the report on p. #33.

6. VISUAL RESOURCES. The Commission adopts the findings previously cited in the report on p. #33.

7. PUBLIC WORKS. The Commission adopts the findings previously cited in the report on p. #34.

(0171L)

PACIFIC BEACH, OCEAN BEACH AND PENINSULA
LAND USE PLAN RESUBMITTALS

F. RESOLUTIONS FOR CERTIFICATION

Subsequent to closing the public hearing, staff recommends the Commission adopt the following resolution and findings.

MOTION

I move that the Commission certify the Pacific Beach, Ocean Beach and Peninsula Land Use Plan Segments as resubmitted by the City of San Diego.

STAFF RECOMMENDATION

Staff recommends a YES vote, and the adoption of the following resolutions and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion. A separate vote for each Land Use Plan Segment is required.

RESOLUTION TO CERTIFY THE PACIFIC BEACH LAND USE PLAN SEGMENT

The Commission hereby certifies the resubmitted Pacific Beach Land Use Plan Segment and finds for the reasons discussed below that the resubmitted Land Use Plan meets the requirements of and is in conformity with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; that the resubmitted Land Use Plan contains a specific access component as required by Section 30500(a) of the Coastal Act; that the resubmitted Land Use Plan is consistent with applicable decisions of the Commission the shall guide local government actions pursuant to Section 30625(c) of the Coastal Act; and that the certification of the resubmitted Land Use Plan meets the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there are no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impacts on the environment.

RESOLUTION TO CERTIFY THE OCEAN BEACH LAND USE PLAN SEGMENT

The Commission hereby certifies the resubmitted Ocean Beach Land Use Plan Segment and finds for the reasons discussed below that the

resubmitted Land Use Plan meets the requirements of and is in conformity with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; that the resubmitted Land Use Plan contains a specific access component as required by Section 30500(a) of the Coastal Act; that the resubmitted Land Use Plan is consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c) of the Coastal Act; and that the certification of the resubmitted Land Use Plan meets the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there are no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impacts on the environment.

RESOLUTION TO CERTIFY THE PENINSULA LAND USE PLAN SEGMENT

The Commission hereby certifies the resubmitted Peninsula Land Use Plan Segment and finds for the reasons discussed below that the resubmitted Land Use Plan meets the requirements of and is in conformity with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the access component as required by Section 30500(a) of the Coastal Act; that the resubmitted Land Use Plan is consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c) of the Coastal Act; and that the certification of the resubmitted Land Use Plan meets the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there are no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impacts on the environment. Certification of the Famosa Slough property is deferred.

G. FINDINGS FOR CERTIFICATION OF THE PACIFIC BEACH, OCEAN BEACH AND PENINSULA LAND USE PLAN SEGMENTS

The Commission finds and declares as follows:

1. SUMMARY FINDING

The Commission found in the previous submittals of the Pacific Beach, Ocean Beach and Peninsula Land Use Plan Segments that there were a number of LUP policies which were in conflict with Chapter 3 policies. In the 1984 action on the resubmittals the issues were basically narrowed down in all three communities to that of adequacy of off-street parking in nearshore areas. The City had submitted a proposal known as the Beach

Impact Area (BIA) which provided for more stringent parking requirements in nearshore areas. At the time the Commission acted on the 1984 resubmittals they found the BIA concept acceptable; but, the detailed provisions of the BIA were found to be unacceptable and inconsistent with the Shoreline Access, Public Works and Locating and Planning New Development policy groups of the Coastal Act.

In the current LUP resubmittal the City has revised the BIA language to bring it into accordance with the Commission's previous suggested modifications. Therefore, the Commission concludes and finds, as expounded in the specific reasons below, that the Pacific Beach, Ocean Beach and Peninsula LUP Segments are in conformity with Chapter 3 policies of the Coastal Act.

Documents which comprise the current Pacific Beach, Ocean Beach and Peninsula LUP Segments resubmittal include: the Pacific Beach Local Coastal Program Land Use Plan as adopted by the City Council and dated April, 1981; the Peninsula Local Coastal Program Land Use Plan as adopted by the City Council and dated March 24, 1981; the Ocean Beach Precise Plan as adopted by the City Council with a reprint date of June, 1978; the proposed amendment to the Land Use Plan documents as adopted by the City Council and contained in Planning Department Report No. 83-292; and, the Council adopted revisions to Report No. 83-292 as contained in the report entitled "Revisions to the North City, Ocean Beach, Pacific Beach and Peninsula Local Coastal Program Segments" on file with the City Clerk as Document No. RR-263183.

The City has requested that certification of the Famosa Slough property be deferred and the Commission hereby concurs.

2. LAND USE PLAN SUMMARIES

A. Pacific Beach LUP

The Pacific Beach LCP Land Use Plan envisions the control and management of growth in its beach community by allowing urban residential infill along with the enhancement and protection of coastal resources. The plan also contains several policies directed towards the expansion and preservation of public access opportunities to and along this coastal strip. Specific plan policies include on-site parking requirements for all new development; support for public and para-transit systems; the certification of the Comprehensive Access Component; the delineation of two visitor commercial nodes; the establishment of resource management programs and development controls for sensitive habitats; the institution of a beach maintenance and replenishment program; minimum blufftop development standards; the preparation and submittal of geologic

investigations in identified hazard areas; density buildout in most residential zones; redevelopment and restoration of Crystal Pier as a visitor-serving commercial recreational facility; maintenance and provision of view corridors; formulation of development standards to maintain community character; minimum landscaping requirements and design specifications and the establishment of sign control standards.

B. Ocean Beach LUP

The major recommendations contained in the land use plan are summarized as follows: Residential downzoning to protect the existing residential character; incorporation of density and floor area ratio bonus criteria to encourage the provision of affordable housing and other public benefits in new development; development of the Sunset-Nimitz triangle into a park and parking reservoir; the protection of public access; the retention of Pueblo Lot 212 in public ownership; increased parking standards for residential and commercial development; policies to protect the visual qualities of the bluffs and shoreline, as well as the overall scale and character of development, and bluff top development controls to maintain the area's tidepools, bluffs, and street end beaches in a natural state.

In summary, the land use plan outlines a strategy to consolidate and upgrade commercial areas, to protect and encourage affordable housing opportunities, to control the scale and type of new developments, to protect beach and recreation areas, and to provide additional parking and improve circulation through the promotion of public transit. A critical element in the implementation of these recommendations was the creation of a planned district with specific development controls to replace the existing zoning under the original Precise Plan submittal. However, the City of San Diego has now decided to not establish a planned district but simply implement the Ocean Beach land use plan policies as part of its overall zoning ordinance.

C. Peninsula LUP

The major recommendations contained in the land use plan are summarized as follows: Coastal access and circulation policies are designed to improve traffic circulation, establish parking standards, reduce automobile dependence and maximize public access opportunities to the bayfront. The plan concentrates commercial recreation and visitor-serving uses along Shelter Island Drive, near the entrance to the Port District jurisdiction. Relative to resource conservation, the Environmental Element of the original plan includes policies for Famosa Slough, adjacent upland areas and Sunset Cliffs Shoreline Park. However, the resubmittal does propose to defer certification of the Slough until further studies on legal and jurisdictional

matters can be accomplished. This element also incorporates policies aimed at protecting Sunset Cliffs and regulating hillside development, as well as the placement of dredging spoils and locating protective works. The plan calls for the retention of commercial fishing and marine-related industrial uses because of their coastal dependency and prioritizes the development of marine support facilities, since the bulk of such coastal dependent uses are concentrated in the adjacent Port District tidelands. The Visual Resources Policy provides for the protection of public views and visual corridors, as well as establishing landscape design standards. Lastly, the plan continues the existing land use pattern of delineating some small, high-density, multi-family uses within an otherwise, low density residential development scheme.

3. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that the land use plan segments as set forth in the Resolution, are in conformity with the policies and requirements of Chapter 3 of the Coastal Act, and do meet the basic state goals specified in Section 30001.5 of the Coastal Act which states:

Section 30001.5

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

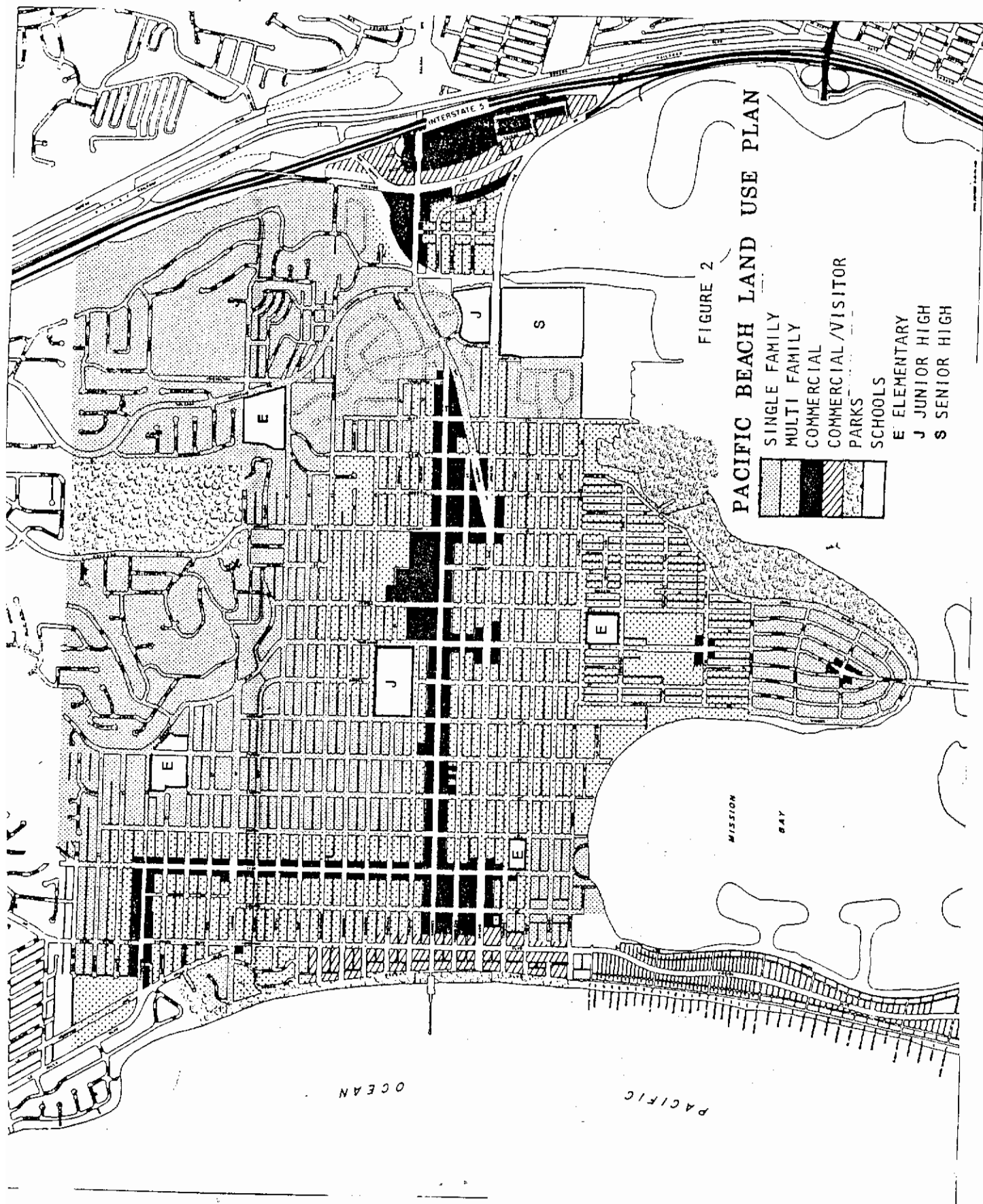
(a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural manmade resources.

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

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

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

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



Pacific Beach
LUP Segment

Exhibit #3

RESIDENTIAL



EAST OCEAN BEACH
8 - 14 DU/NRA



NORTH AND SOUTH OCEAN BEACH
25 DU/NRA Highest Areawide Density

COMMERCIAL



COMMUNITY COMMERCIAL



NEIGHBORHOOD COMMERCIAL

PUBLIC FACILITIES



ELEMENTARY SCHOOL



LIBRARY



FIRE STATION



RECREATION CENTER



PARK AND
PUBLIC OWNERSHIP

ocean beach precise plan

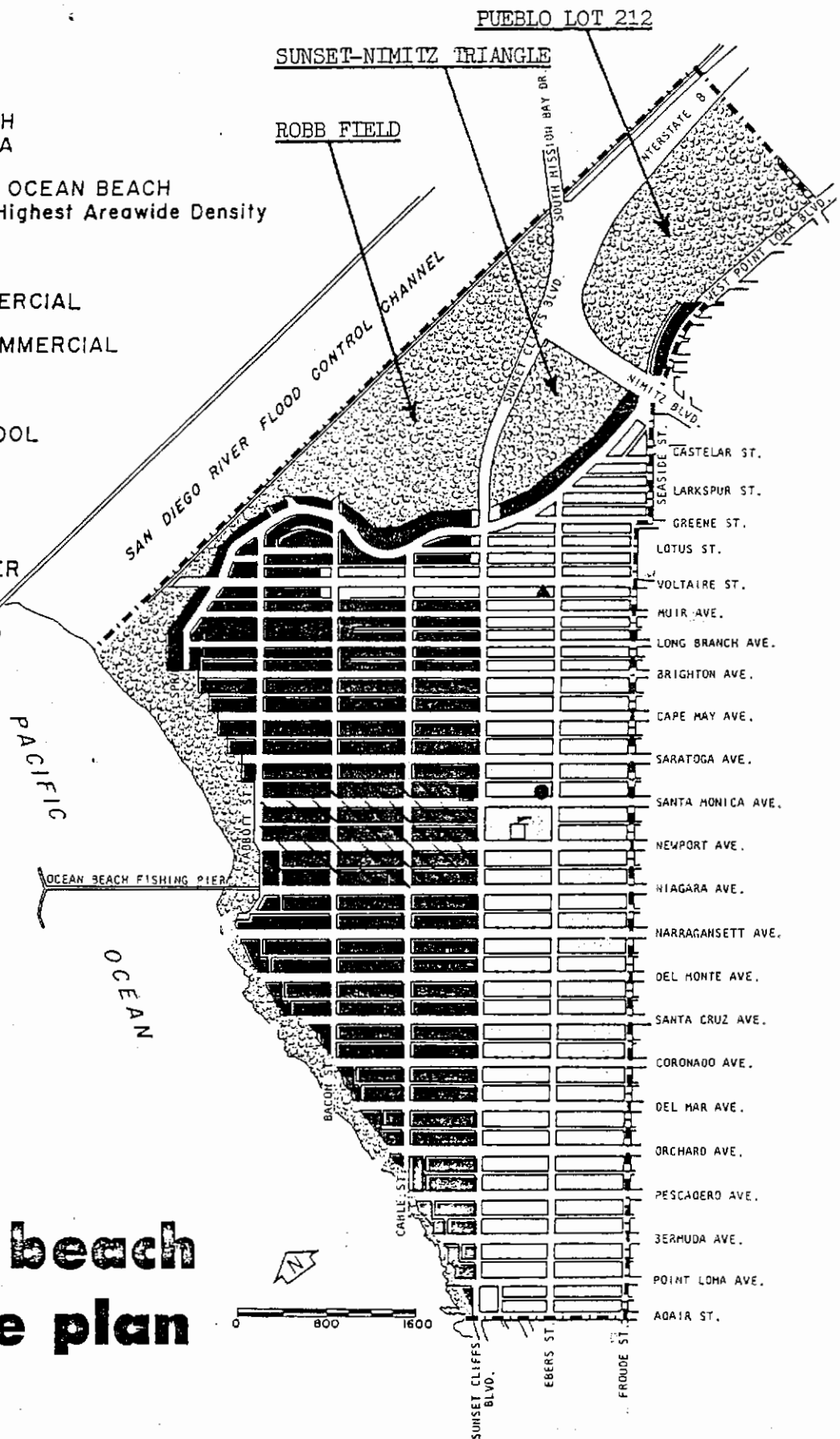
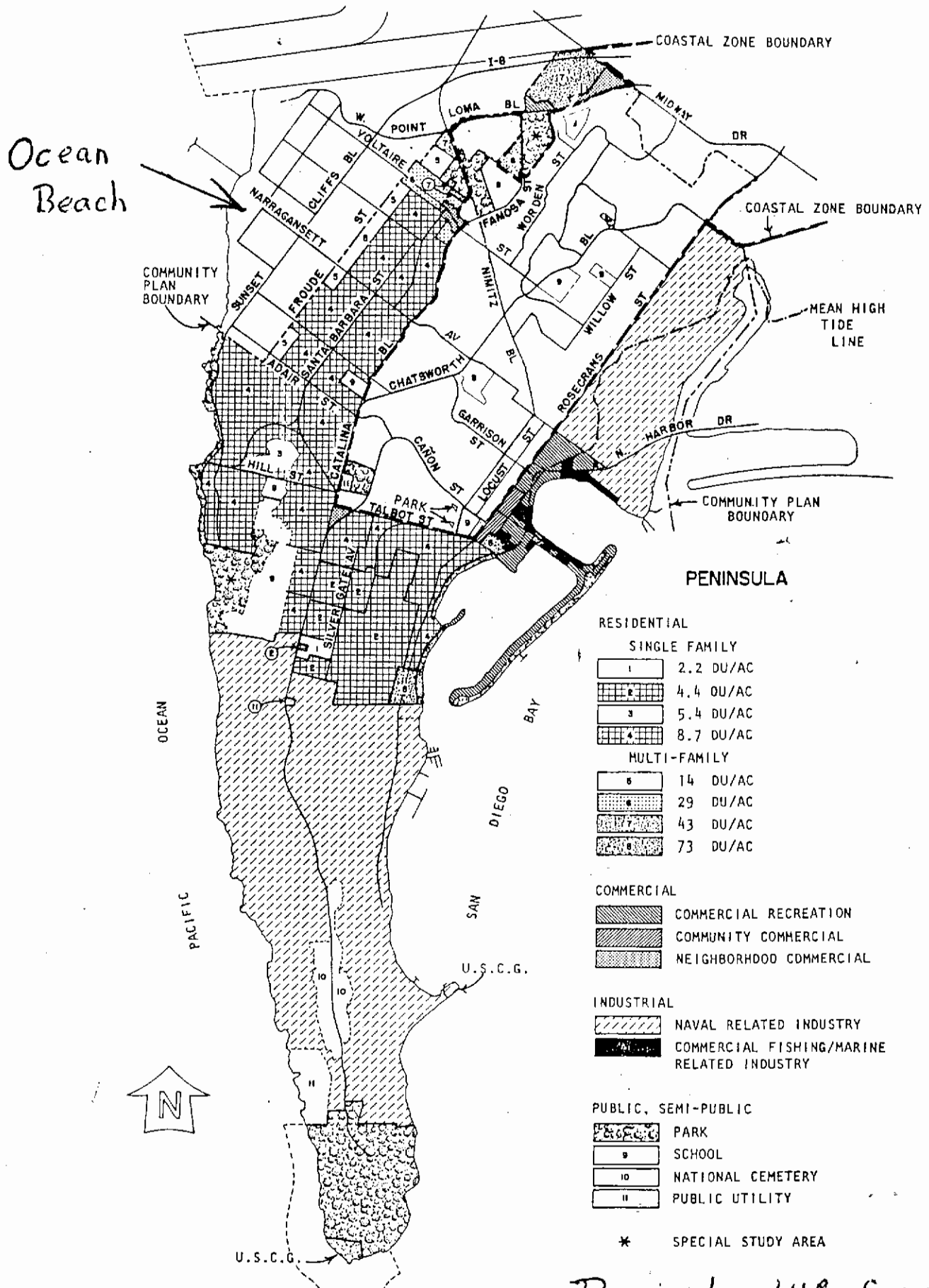


Exhibit #4



Penninsula LUP Segment
Exhibit #5

Further, the Commission finds for the specific reasons stated below that the resubmitted Land Use Plan Segments conform with all relevant Chapter 3 policies of the Coastal Act. All Land Use Plan policy groups found to be in conformance in the previous LUP submittals are once again found to be in conformity with Coastal Act provisions including the basic state goals identified above. The Commission hereby adopts by reference those findings contained in the March 8, 1984 staff report which the Commission adopted on May 23, 1984 as relates to policy groups not discussed herein. The policy group findings adopted by reference from the March 8, 1984 staff report include:

- Water/Marine Resources and Environmentally Sensitive Habitats
- Diking, Dredging, Filling and Shoreline Structures
- Commercial Fishing and Recreation Boating
- Agriculture
- Hazard Areas
- Forestry and Soil Resources
- Visual Resources and Special Communities
- Industrial Development and Energy Facilities

4. CONFORMITY OF REMAINING POLICY GROUPS WITH CHAPTER 3 POLICIES

Because the remaining policy groups interface to a great extent within the Pacific Beach, Ocean Beach and Peninsula LUP Segments, they are herein clustered together. The remaining policy groups include: Shoreline Access, Circulation and Public Works; Recreation and Visitor-Serving Commercial; and, Locating and Planning New Development. The single remaining major issue in the three land use plan segments dealt with in these policy groups relates to off-street parking requirements within the nearshore or Beach Impact Area (BIA) of the coastal zone. While the Commission finds the current resubmittal of the Pacific Beach, Ocean Beach and Peninsula LUPs to include revised policy language which adequately address the concerns of the Commission and is now found to conform with Coastal Act Policy, it is important to understand why the Commission considers this to be such a critical issue. However, the Commission would first like to clarify several points:

- 1) The purpose and intent of the BIA is to preserve and recapture on-street parking in order to provide additional beach parking. Thus, the LCP implementing ordinances must make it clear that when redevelopment occurs within the BIA, that existing curb cuts should be eliminated if alternate access is available. An exemption may be considered to retain an existing curb cut, where the preservation of existing dwelling units or additions to existing commercial uses are being proposed.
- 2) That in the LCP implementing ordinances it should be clarified

that hotel/motel units with kitchens/kitchenettes shall have the same parking requirements as residential units.

- 3) That in the LCP implementing ordinances detail shall be provided to insure that "common parking" and "tandem parking" provisions are functional with enforceable requirements for insuring long term functionality even when there is change of ownership/tenants.
- 4) That should the City wish to apply the curb-cut exception allowed for larger commercial projects as provided in subparagraph (f) on page 14 of the LUP Revisions Document, that such exception is acceptable.

Sections 30252 and 30254 of the Act requires the enhancement and maintenance of public access to and along the coast through the provision of alternative transit modes, the preservation of public access opportunities by committing priority allocation of remaining or future road service capacities to coastal access and the provision of adequate parking facilities. In this regard, the plan makes several recommendations for the completion of a bikeway/pedestrian pathway network, expansion of public transit services, institution of a paratransit shuttle system, short- and long-range capital improvements to facilitate traffic circulation, the establishment of parking standards and alternate mechanisms to accommodate parking demand. It is here that the underlying philosophical approach and implementation strategies of the submitted plan become problematic. The Commission and Chapter 3 policies acknowledge that vehicle storage is not the only means of accommodating public access and there is a definite need to encourage a pedestrian orientation, preserve a community's character and maintain recreational open space. However, with that acknowledgement, the existing lack of recreational transit opportunities, and the recognized deficiency of currently available parking facilities to meet daily demand, the Commission finds that provision in these intensely used beach areas for adequate off-street parking and parking design in order to maximize the availability of street parking to meet beach use demands is critical as is borne out in the subsequent paragraphs.

On-street parking within three or four blocks from the beach is under competitive use by residents, commercial patrons and beach visitors alike. Because inadequate parking and congestion interfere with public access opportunities, the provision of adequate offstreet parking facilities and the protection of public parking spaces therefore is critical for all commercial, recreational and residential development in near shore districts. These mandates are especially crucial when analyzed in the context of coastal access needs and recreational demand in the future. As detailed in the 1980 Coastal Commission/Conservancy Report on

Standards and Recommendations for Coastal Access, the demand for recreational space and facilities in California annually increases because of increased per capita participation and overall population growth. Based on the report's findings, the state's population growth equals an annual rate of approximately one and one-half percent. Since 80 percent of the state's population lies within 30 miles of the coast and the major population centers of the Bay Area, Los Angeles and San Diego are situated along the coast, the demand for coastal access is especially expected to impact urban areas.

The 1978 SANDAG Regional Coastal Access Study also substantiates this proposition and found there is considerable apparent demand for recreation facilities and the projected future population increases within the City of San Diego indicate a substantially greater demand for such facilities in the near future. The Study estimates that participation at coastal recreation areas will increase at least 55 percent within the next 20 years. Other SANDAG surveys demonstrate that the Pacific Beach Park area, including the recreational resources at Mission Bay Park and Mission Beach, is an important part of the total coastal resources in San Diego County. They have also determined that 69.2 percent of all recreational trips to coastal areas were to the Metropolitan Coast Zone, from Torrey Pines to the tip of Point Loma, and including the Pacific Beach, Ocean Beach and Peninsula land use plan areas.

There is additional support for the application of more restrictive parking standards and the need to maintain and increase available public parking reservoirs found in the City-adopted Coastal Access Component. During the Commission's consideration of allowing separate geographic segmentations for Pacific Beach, Mission Bay Park and Mission Beach, it was determined that access issues in these areas were inextricably interrelated. The Commission found that for adequate consideration to be given to public access in these segments, access issues in these three communities must be evaluated as one and thus required and funded the preparation of a comprehensive Coastal Access Component. Although the component has not been certified by the Commission, it has been adopted by the City Council.

According to the component, formally titled the Mission Bay Coastal Access Study, there is demonstrated parking congestion at most recreational sites throughout these urban beach communities. It acknowledges and documents a main recreational access conflict in these communities is the traffic congestion and lack of available public parking facilities near the beaches with the concurrent underutilization of areas unserved by public transit. The Study suggests an appropriate ratio of parking space supply/demand equals one space per every three cars, given turnover factors, and projects the 1995 parking demand for the entire area will require 4,500 additional parking spaces. Absent the development and

utilization of some alternative transportation systems, in the Pacific Beach shoreline areas, the Study projects 2,537 additional parking spaces are necessary to meet the 1995 demand. The study further specifies:

"Pacific Beach experiences the greatest parking congestion. While there are a few pockets of deficits of parking supply within the residential areas of the community, most parking problems can be attributed to the insufficiency of the beach area to satisfy the parking needs of visitors. This situation is compounded by vehicles generated by the businesses in the area. The result is that drivers stay on the road searching for an available parking space near thier destination, thus compounding traffic problems."

The Study also documents the regional and statewide significance of the area's recreational resources and it estimates a 17% increase for trip demand at recreational sites by 1985. Further, given that supporting studies indicate over 70% of those persons coming to the study area still utilize private cars while less than 3% utilitize public transit, it becomes apparent that the automobile will continue to be the primary means of coastal access for some time.

The regional significance of the Ocean Beach and Peninsula recreation area is also well documented in the relevant Land Use Plans. In the case of Ocean Beach, the LUP states the following:

While the community of Ocean Beach is basically a private residential area, the public beach, Ocean Beach Park, is a regional resource which must be kept available to the use of the general public. Ocean Beach's beach is becoming one of the most popular public beaches in the San Diego area. From 1968 to 1973 the annual attendance rose from 905,000 to 1,922,000. This influx has boosted the customer market of stores along Newport and Voltaire, but also has created a greater traffic and parking problem in the community. Within a few blocks of the beach, street parking used formerly by residents is now under competitive use by both residents and beach-goers.

As for the Peninsula Community, the LUP states:

The attraction of the Roseville/Shelter Island area as both a community commercial and regional recreational resource area has resulted in parking and traffic congestion problems. The Port District's master plan indicates that their leaseholds will be renovated, further ensuring that this area will continue to be an attractive resource. Many existing businesses in this area lack adequate on-site parking. A lack of adequate on- and off-street parking in the Roseville/Shelter Island area exacerbates traffic congestion and creates problems for commercial patrons.

In the previous Land Use Plan submittals, the Commission had taken issue with the City over the following points:

- applicability of the Beach Impact Area (BIA) parking standards to the Peninsula Community,
- Adequacy of the off-street parking requirements for commercial uses,
- Adequacy of the curb-cut provisions contained in BIA to insure that the maximum amount of street parking will be retained, and where redevelopment occurs, street parking to be recaptured through closure of existing curb-cuts.

In the current resubmittal of the Pacific Beach, Ocean Beach and Peninsula Land Use Plans, the City has clarified the off-street parking requirements and curb-cut provisions consistent with the Commission's previously adopted suggested modifications contained in the March 8, 1984 staff report. The Commission does wish to clarify that in the City's draft Implementation Plan, which was denied last year, guidance was provided the City as to where the boundaries of the BIA should be located when the LCP Implementation Plan is resubmitted. The Commission will also review the BIA ordinance provisions to insure that there is included language for recapturing street parking by the closure of curb-cuts when redevelopment occurs and alternative access (alleys) for off-street parking exists.

With these clarifications, the Commission finds the LUP resubmittals in conformity with Sections 30252 and 30254 of the Coastal Act.

Two relative minor issues should also be discussed. With regards to Pacific Beach, the Commission had previously included a suggested modification to prohibit conversion of hotel/motel facilities to timeshare projects. As there has been little pressure to convert such facilities, and this suggested modification has not been uniformly applied within the coastal zone, the Commission no longer finds that such a suggested modification is required. With regards to Famosa Slough, the City has requested that the Slough property have LCP certification deferred. In light of recent legislative efforts regarding this property, the Commission concurs.

(0864A)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740



December 29, 1987

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: CHUCK DAMM, SOUTH COAST DISTRICT DIRECTOR
ELLEN LIRLEY, PRINCIPAL PLANNER, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON THE CITY OF SAN DIEGO NORTH CITY SEGMENT
LOCAL COASTAL PROGRAM LAND USE PLAN RESUBMITTAL. (For Public
Hearing and Commission Action at the Commission Meeting of
January 12-15, 1988)

SYNOPSIS**Background**

In 1977, the City of San Diego proposed, and the Coastal Commission agreed, to segment the City's Local Coastal Program's Land Use Plan into twelve segments. With the exception of the Mission Bay segment, the Commission has certified, or certified with suggested modifications, all of the Land Use Plan segments.

The City of San Diego has now submitted for the fourth time its North City Land Use Plan segment. The segment has twice previously been denied certification by the Commission as submitted by the City, and subsequently certified with suggested modifications. The third time, the segment was certified as resubmitted and clarified by the City. The City's current resubmittal further refines and clarifies the previously adopted language, and does not present any significant new policies or issues.

Changes in the Current Resubmittal

The current resubmittal deals exclusively with the language regarding development of steep slope areas, both those designated as sensitive and those not so designated. For the most part, the previously adopted language is simplified, but not changed. A sliding scale of allowable encroachments onto steep slopes is proposed, based on the percentage of acreage on each site in excess of 25% gradient. Finally, provisions are included requiring all undeveloped sensitive steep slopes to be placed in permanent open space through recorded agreements.

Preliminary Staff Recommendation

Pursuant to the resolutions and findings contained in this report, staff recommends that the Commission certify the North City Land Use Plan segment resubmittal as specified in the resolution found on Page 3 of this report.

EXHIBIT NO. 20
APPLICATION NO.
6-11-67-EDD
Staff Report Dated
December 29, 1987

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Staff Report for the City of San Diego Resubmittal of the North City Land Use Plan Segment

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NORTH CITY LAND USE PLAN RESUBMITTAL

OVERVIEW

Organization of Staff Report

This report is divided into two main parts. The first part includes the resolution for certification of the Land Use Plan as resubmitted by the City of San Diego. The second part includes the findings to support the recommended Commission action.

The findings are divided into four headings: the introduction, a summary of the current resubmittal, conformance with Section 30001.5 of the Coastal Act, and, finally, consistency with all applicable Chapter 3 policies of the Act. The introduction contains historic background of the North City LCP planning efforts and a geographic description of the planning area. The plan summary includes the more recent planning history, a listing of the contents of the current resubmittal and a description of the City's modified language. The last two findings address the consistency of the current resubmittal with various policies of the Coastal Act.

Standard for Commission Review

The standard for Commission review of the LCP Land Use Plans is found in Section 30512 of the California Coastal Act. Of particular interest is the following provision:

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.

Public Participation

The City has held numerous community planning group, Planning Commission and City Council meetings with regards to past Land Use Plan (LUP) submittals and the current City of San Diego submittal. The North City Land Use Plan segment addressed herein is part of a larger City submittal, which includes the Centre City Land Use Plan and the City's entire Implementation Plan.

I. RESOLUTION FOR CERTIFICATION

Subsequent to closing the public hearing, staff recommends the Commission

adopt the following resolution and findings.

MOTION

I move that the Commission certify the North City Land Use Plan Segment as resubmitted by the City of San Diego.

STAFF RECOMMENDATION

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

RESOLUTION TO CERTIFY THE NORTH CITY LAND USE PLAN SEGMENT

The Commission hereby certifies the resubmitted North City Land Use Plan Segment and finds for the reasons discussed below that the resubmitted Land Use Plan meets the requirements of and is in conformity with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; that the resubmitted Land Use Plan contains a specific access component as required by Section 30500(a) of the Coastal Act; that the resubmitted Land Use Plan is consistent with applicable decisions of the Commission and shall guide local government actions pursuant to Section 30625(c) of the Coastal Act; and that the certification of the resubmitted Land Use Plan meets the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there are no further feasible mitigation measures or feasible alternatives which could substantially lessen significant adverse impacts on the environment.

II. FINDINGS FOR CERTIFICATION OF THE NORTH CITY LAND USE PLAN SEGMENT

The Commission finds and declares as follows:

A. INTRODUCTION

The North City LCP area encompasses the Torrey Pines Community Plan area in total, Carmel Valley in the North City West Community Plan area, University Community Plan area north of the Scripps Institute of Oceanography - UCSD boundary, the Los Penasquitos Watershed in the western portion of the Mira Mesa Community Plan area, the Sorrento Hills area, the unplanned San Dieguito River Valley, Los Penasquitos Lagoon and inland canyons, and open space and urban reserve areas identified in the General Plan.

The City's North City Local Coastal Program (LCP) land use plan consists of a combination of the individual community plans. At the suggestion of the Coastal Commission, the planning areas have been considered as a group because of concerns regarding drainage into the Los Penasquitos and San Dieguito

Lagoons from adjacent and upstream watersheds, the impacts of traffic volume and circulation in and through the various segments, and the cumulative impacts of development in the entire area.

Since the existing community plans for the North City area were adopted prior to the enactment of any comprehensive coastal legislation, many of the coastal issues addressed in the Coastal Act of 1976 are not discussed in specific detail in the plans. However, the Mira Mesa and University Community Plans have been updated to address coastal issues. The certified North City LCP land use plan serves as an Addendum to the Torrey Pines, North City West, and University Community Plans, and an amendment to the Mira Mesa Community Plan and "Progress Guide and General Plan." Policies contained within the Mira Mesa and University Community Plan portions of the North City LCP land use plan have been adopted by the City of San Diego in lieu of having fully adopted community plans which encompass the coastal zone area. Therefore, because these plans will remain as individual documents to be supplemented by North City LCP land use plan policies, the policy language in the North City LCP land use plan is structured to correspond to each community plan as applicable.

The North City LCP land use plan is the northernmost coastal community in the City of San Diego. This geographically large area is relatively undeveloped and is experiencing development pressure as the City continues to grow and demand more land for expansion. The North City area also contains many of the remaining coastal zone natural resources within the City including: portions of San Dieguito Lagoon and floodplain; Los Penasquitos Lagoon and Creek; Carmel Valley; Los Penasquitos and Lopez Canyons; Torrey Pines State Reserve; and the coastal bluffs. It is a primary goal of the North City LCP land use plan to preserve these resources to the maximum extent feasible while at the same time providing for industrial, commercial and residential growth.

The Commission finds that certain areas of the North City Land Use Plan do not contain sufficient description of the types, location, and intensity of development. In addition, some proposed land use designations are inappropriate due to inconsistencies with the previously-certified North City LUP. Furthermore, there are areas which have received local land use or precise plan approval, but have not been submitted to, reviewed by or approved by the Coastal Commission. For these areas, certification is deferred. The areas where certification is deferred include:

- Hillside areas located north (Via de la Valle Specific Plan) and south of the San Dieguito River Valley which have not had Community or Specific Plans submitted to and approved by the Coastal Commission;
- The San Diego Gas & Electric property within the Los Penasquitos Lagoon/floodplain west of Interstate-5 pending further study by the City;
- North City West, Neighborhood 8 Precise Plan Area;

- Portions of the coastal zone within Carmel Valley located to the east and to the west of North City West Community/Sorrento Hills Community Plan;
- Los Penasquitos Regional Park (City Park and Reserve);
- The parcel(s) referred to in Policy 5(B)(7) of the report entitled "Revisions to the North City, Ocean Beach, Pacific Beach and Peninsula Local Coastal Program Segments on file with the City Clerk as Document No. RR-263183 (the Cal Sorrento property) and
- City of San Diego Torrey Pines City Park.

Also, the areas within the North City segment which are owned by the University of California are not included in this segment of the City's Land Use Plan; this is because the City does not have the legal ability to plan for areas which are University property. This planning function is reserved by the University as part of their Long Range Development Plan (LRDP) process.

B. NORTH CITY LAND USE PLAN SUMMARY

In August, 1985, the Commission approved the North City Land Use Plan, as resubmitted by the City of San Diego. Prior to that action, the City of San Diego had made appropriate revisions to the North City Land Use Plan Segment resubmittal addressing the Coastal Commission's concerns which were expressed in the previously recommended suggested modifications and findings adopted by the Commission on May 23, 1984. At that time (May, 1984), the Commission found the LUP policy language to be inadequate with regards to conformity with those policies of the California Coastal Act dealing with preservation/ protection of environmentally sensitive habitats and visually scenic areas. Specifically, there were five major unresolved issues which can be briefly defined as follows:

- type and amount of development to be permitted within the 100 year floodplain areas;
- whether the Los Penasquitos Lagoon Enhancement Program should be implemented;
- whether grading of steep slope areas over 25% grade should be permitted;
- whether provisions for drainage and erosion control on parcels which drain to Los Penasquitos and San Dieguito Lagoons are adequate to protect the lagoons from siltation; and,
- should development be permitted within 100 feet of a defined wetland area.

Prior to the 1985 decision, the Commission found that the City had included

policy language which would have permitted, subject to certain controls: filling and development of the floodplain areas; grading of steep slopes over 25%; grading during the rainy season with inadequate drainage and erosion controls and development within 100 feet of a wetland. Additionally, the Los Penasquitos Lagoon Enhancement Program was not mandated for implementation.

Commission action on LUP submittals prior to August 1985, and historic permit decisions, had consistently prohibited: filling of the undeveloped portions of the floodplains; grading of steep slopes (with minor exceptions); grading during the rainy season on parcels which drain to Los Penasquitos or San Dieguito Lagoons; or, encroachment of development within 100 feet of a wetland unless found acceptable by the State Dept. of Fish and Game. The Commission has also consistently implemented, through special conditions on permits, the Los Penasquitos Lagoon Enhancement Program Fund.

The Commission found that, for the reasons discussed below, the City had in the 1985 resubmittal, revised the North City LUP policy language to address the above issues in a manner which could be found to comply with the resource protection policies of the Coastal Act. Specifically, the revised policy language resulted in:

- limiting development in the San Dieguito River 100 year floodplain to uses permitted under the A-1-10 Zone and the inclusion of strict performance requirements related to Carmel Valley/Route 56 development;
- prohibiting grading on slopes over 25% (with minor exceptions) which have been identified as possessing endangered habitat values, significant scenic amenities or hazards to development including major undeveloped sites with high erodibility characteristics;
- mandatory provisions as relates to participation in the Los Penasquitos Lagoon Enhancement Program;
- preservation of the Los Penasquitos and San Dieguito wetlands and protection of those wetlands with adequate buffer zone requirements; and
- detailed provisions to control drainage and minimize erosion potential.

The resubmittal now before the Commission contains, for the most part, identical language to that certified in August, 1985. Several sentences and paragraphs have been reworded for the sake of clarity, and a sliding scale has been introduced to address the allowable encroachments onto steep slope areas. All major policies are unchanged, and no new policies, except the sliding scale, are proposed.

Documents which comprise the current North City LUP Segment resubmittal include: North City Local Coastal Program Land Use Plan as adopted by the

City Council and dated March 31, 1981; proposed amendments to the North City Land Use Plan as adopted by the City Council and contained in Planning Department Report No. 83-292; Chapter X (Coastal Element) of the Sorrento Hills Community Plan, as adopted by the City Council under Resolution No. 258076, the Council adopted revisions to Report No. 83-292 as contained in the report entitled "Revisions to the North City, Ocean Beach, Pacific Beach and Peninsula Local Coastal Program Segments on file with the City Clerk as Document No. RR-263183, and the Council adopted Resolution No. RB62343, entitled "Revisions to the North City Local Coastal Program Land Use Plan Segment.".

In addition, the substantive file documents include the August 19, 1985 Commission Staff Recommendation Report for North City; the August 23, 1985 Commission staff memorandum to Commissioners and Interested Parties regarding "Alternatives to the Staff Recommendation on the City of San Diego North City Land Use Plan, and Minor Corrections on Staff Report", and, the August 27, 1985 letter from the City Planning Director to Thomas A. Crandall regarding the "North City LUP".

As a summary finding, the Commission finds that the current North City LUP resubmittal adequately resolves the Commission's previous concerns, remains consistent with the 1985 certification, and contains many excellent provisions. The LUP provisions are found to be in conformity with all applicable Chapter 3 policies of the California Coastal Act of 1976 as more explicitly described in the subsequent findings.

C. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that the land use plan, as set forth in the Resolution For Certification, is consistent with the policies and requirements of Chapter 3 of the Coastal Act and does meet the basic state goals specified in Section 30001.5 of the Coastal Act which states:

Section 30001.5

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

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

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

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected

rights of private property owners.

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

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

The Commission finds that the North City LUP contains adequate policy language with regards to preservation and protection of environmentally sensitive habitats, maximizes public access and recreational opportunities consistent with resource conservation principles and private property rights, and strongly encourages state and local cooperation in maintaining/enhancing access opportunities and preservation/protection of wetlands in compliance with the basic state goals specified in Section 30001.5 of the Coastal Act. The specific reasons for this finding are detailed in subsequent findings.

D. CONFORMITY OF POLICY GROUPS WITH CHAPTER 3 POLICIES

The Commission's findings, as discussed herein, are organized in accordance with the policy groups identified in the LCP Manual. The LCP Manual was devised to insure that a common methodology was utilized in preparing and reviewing LCP documents. The policy groups for which the Commission adopts findings for certification include:

1. Shoreline Access
2. Recreation and Visitor-Serving Facilities
3. Water and Marine Resources
4. Environmentally Sensitive Habitats
5. Diking, Dredging and Filling
6. Shoreline Structures
7. Hazard Areas
8. Agriculture
9. Locating and Planning New Development
10. Visual Resources and Special Communities
11. Public Works

Additionally, since there are no such resources or properties within the North City Land Use Plan segment, the Commission finds the following policy groups are not applicable: Forestry and Soil Resources and Industrial Development/Energy Facilities. Further, the policy group on Housing no longer raises any coastal issues, pursuant to Mello legislation (SB 626), and has not been considered in reviewing the resubmitted land use plan.

The contents of the specific findings for certification are expounded upon by the previously adopted findings on the North City LUP, dated June 20, 1981, the adopted findings for the first North City LUP resubmittal, dated March 8, 1984, and the adopted findings for the second North City LUP resubmittal,

dated September 30, 1985. The previously adopted findings, unless modified herein, are readopted and incorporated by reference as the Commission's findings for the current North City LUP resubmittal. For references and further details on the specific plan policies originally contained in the North City LUP, rather than currently proposed amendments, and background material on the planning effort, the plan summaries and informational reports contained in the Regional Commission Summary/Recommendation are also adopted and incorporated herein.

All of the North City LUP Segment policies not discussed in City Planning Department Report #86-638 are acceptable as found by the Commission in the 1985 resubmittal of the North City LUP Segment; and those policies in Report #86-638 where the City concurs with the Commission's previously adopted suggested modification language from the previous North City LUP reviews, as well as those policies included in the Council adopted revisions to Report #86-638 as contained in Document No. R862343 are also found acceptable.

Further, the Commission finds for the reasons stated below that the resubmitted Land Use Plan Segment conforms with all relevant Chapter 3 policies of the Coastal Act. All land Use Plan policy groups found to be in conformance in the previous LUP submittals are once again found to be in conformity with Coastal Act provisions including the basic state goals identified above. The Commission hereby adopts by reference those findings contained in the September 30, 1985 staff report which the Commission adopted on October 25, 1985 as relates to policy groups not discussed herein. The policy group findings adopted by reference from the September 30, 1985 staff report include:

- Shoreline Access
- Recreation and Visitor-Serving Facilities
- Agriculture
- Locating and Planning New Development
- Public Works

In addition, the September 30, 1985 staff report discussed five policy groups under a single heading, as all five were interrelated at that time. However, due to the very limited scope of the current resubmittal, those findings which specifically pertain to Water and Marine Resources, Diking, Dredging and Filling and Shoreline Structures can also be incorporated by reference from the September 30, 1985 staff report. The three remaining policy groups, Environmentally Sensitive Habitats, Hazard Areas and Visual Resources and Special Communities, shall be discussed together, since all three concern potential development of, and thereby impacts to, the resources of North City's steep slope areas.

The Commission, in its first two actions on the North City LUP (in 1981 and 1984) found the City's policy language inadequate to insure protection of the resource values of the scenic and environmentally sensitive hillsides and found the policy groups did not conform with the pertinent policies of the Coastal Act, namely Sections 30240, 30251 and 30253. Specifically, those

policies state:

Section 30240

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

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 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.

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 or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

(4) Minimize energy consumption and vehicle miles traveled.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

In those earlier actions, the Commission found that additional specificity and

direction was needed within the land use plan to provide steep slope protection to avoid erosion and sedimentation hazards, adverse visual impacts, disruption of important wildlife corridors, geologic hazards and further degradation of environmentally sensitive habitats. Those issues were resolved to the Commission's satisfaction in its August, 1985 action where the revised and resubmitted North City Land Use Plan was approved, as submitted by the City of San Diego.

In its earliest reviews of the North City Land Use Plan, the Commission's suggested modifications prohibited all encroachments onto 25% slopes. Since that time, the City of San Diego has devised a classification system to identify slopes as sensitive or non-sensitive, based on comparative habitat value, and proposes that limited encroachments onto steep slopes be allowed. The Commission herein accepts the classification system developed by the City, but finds the slopes to be sensitive or less-sensitive, as even those slopes classified by the City as non-sensitive can be found to support habitat areas, though to a lesser degree.

The current revision simplifies and clarifies small portions of the previously-approved language addressing steep slope areas. In addition, it proposes certification of a sliding scale to determine allowable encroachments by new development onto those identified steep slopes. Previously, parcels with less than 80% of the site in slopes of 25% gradient or over were allowed a maximum discretionary encroachment of 10% of the steep slope area. Properties with more than 80% of their area in steep slopes had been allowed to disturb a total of 20% of the entire site, including steep slope areas.

The currently proposed sliding scale, endorsed by the City of San Diego Planning Department and City Council, allows a maximum of between 10% and 20% encroachment, increasing in 2% increments between those two figures. This correlates with a similar increase in the amount of each site in slopes at or exceeding 25% gradient. The parcel percentages run from up to 75% to 100% and increase by 5% increments. Thus a property with 75% or less of the site in steep slopes could have a maximum encroachment of 10%, whereas a parcel with 90% of the site in steep slopes could have a maximum encroachment of 16%.

It must be stressed here, that these potential encroachments, on designated sensitive slopes, are the maximum allowed, and that said allowance is discretionary. The finding that an encroachment into designated sensitive steep slopes is allowable can only be made in cases where to deny any encroachment would deny reasonable use of the site. More latitude in the City's interpretation of this sliding scale can be made for development of non-sensitive slopes, where additional encroachments may be permitted subject to mitigation measures detailed in the Land Use Plan.

With regard to visual impacts, the application of the sliding encroachment scale may have a minor effect on public views from public roads, walkways, and canyon bottoms, since the amount of slope disturbance may vary slightly, lot by lot, from the amounts previously allowed. Such minor adjustments should not have any overall negative effect on the visual resources of North City.

Therefore, in the environmentally sensitive and scenic North City area, the Commission finds the resubmitted Land Use Plan in conformance with Sections 30240 and 30251 of the Coastal Act.

In addition to the already identified impacts associated with steep slope development, it is important to note that all, or nearly all, the designated sensitive steep slopes in the North City area are considered Priority I fire hazard areas by the City of San Diego Fire Department. All new hillside and mesatop structures that border areas of native vegetation require some vegetative clearance for fire protection purposes. The existing City ordinances require that the 30 feet closest to the structure be cleared to a height of two inches, with existing trees pruned of all dry undergrowth. Fire retardant plantings are allowed within this area. Beyond the first 30 feet, the City's ordinance requires that approximately an additional 70 feet be cleared uniformly to eighteen inches or selectively cleared to two inches. It appears the total amount of area required for the full firebreak can be adjusted somewhat depending on the characteristics of each specific site.

The area required for said fire protection should be calculated into any permitted steep slope encroachments at the time of subdivision or hillside review, so as not to require further encroachments once structures are in place. Since this issue is addressed in suggested modifications for the Hillside Review (HR) Ordinance, being reviewed by the Commission concurrent with this Land Use Plan resubmittal, the Commission found it unnecessary to incorporate identical language into the North City Land Use Plan itself. In the case of conflict, the HR regulations will provide the specific provisions, assuring that fire protection concerns will be considered in all permit reviews for sensitive steep slope areas, prior to the permitting of any discretionary encroachments. The Commission therefore finds the Land Use Plan resubmittal in conformance with Section 30253 of the Coastal Act, which addresses hazard areas.

(3078A)

North City LUP

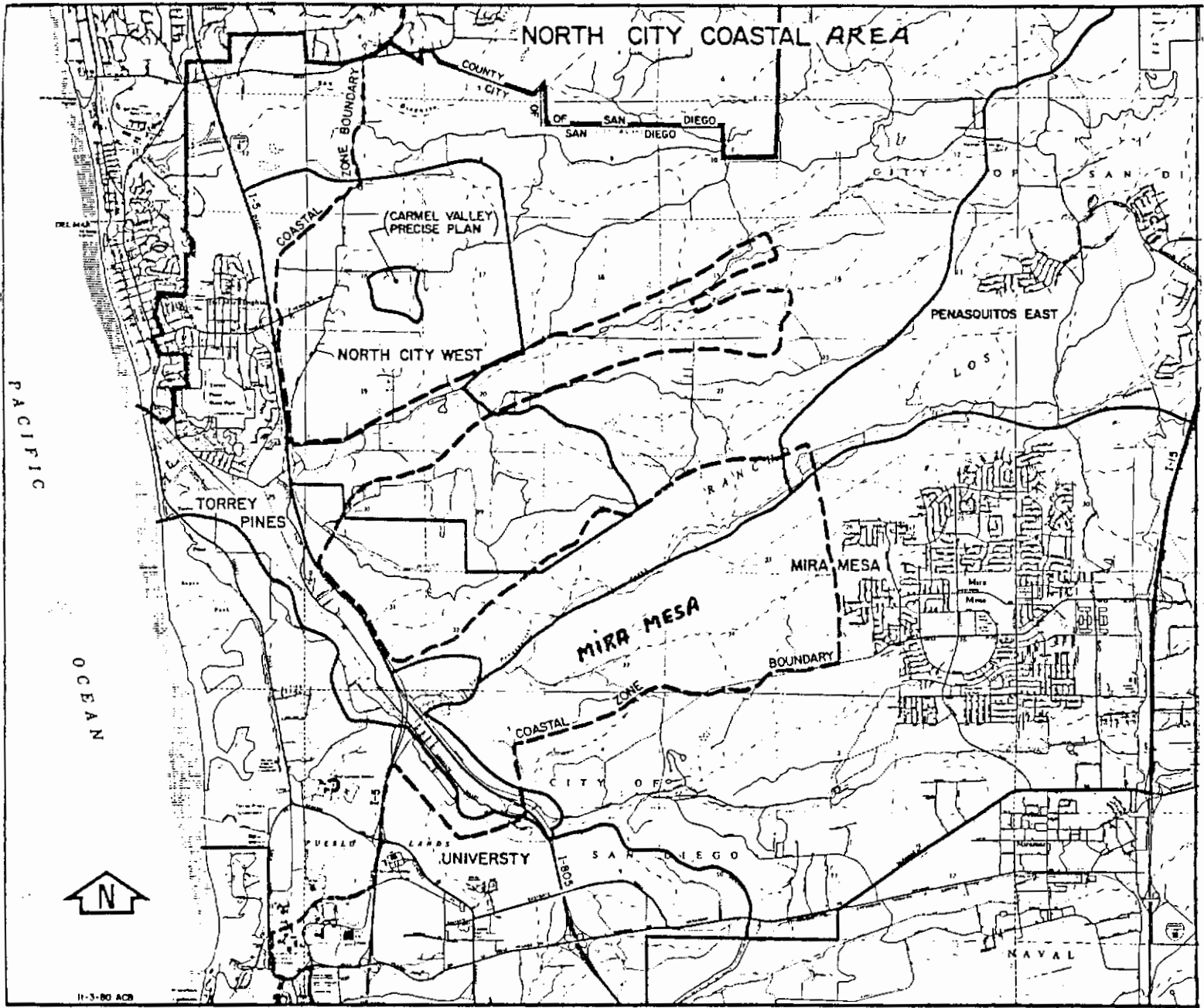



EXHIBIT NO. 1
APPLICATION NO.
North City LUP
Location Map
 California Coastal Commission



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: March 3, 2011 REPORT NO. PC-11-028

ATTENTION: Planning Commission, Agenda of March 10, 2011

SUBJECT: FLOWER HILL PROMENADE - Project No. 172026
PROCESS 5

OWNER/
APPLICANT: Protea Flower Hill Mall, L.L.C.

SUMMARY

Issue(s): Should Planning Commission recommend approval of an application for approximately 74,995 square feet of additional commercial, office and storage space development, and a new parking structure within the existing 15.14-acre Flower Hill Mall at 2720 Via de la Valle?

Staff Recommendations:

1. Recommend to City Council the **certification** of Environmental Impact Report No. 172026, and **adoption** of the Mitigation Monitoring and Reporting Program and the applicant's Findings and Statement of Overriding Considerations; and
2. Recommend to City Council the **approval** of Coastal Development Permit No. 619980, Lot Line Adjustment No. 826904, and Easement Abandonment No. 826905.

Community Planning Group Recommendation: On July 22, 2010, the Carmel Valley Community Planning Board voted 11-3-0 to recommend approval of the project (Attachment 12) with conditions. See the Discussion section for conditions and analysis.

Environmental Review: An Environmental Impact Report No. 172026, has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program has been prepared and will be implemented to reduce, to a level below insignificance, most potential impacts identified in the environmental review process. The applicant has also provided their project's Findings and Statement of Overriding Consideration for significant and



EXHIBIT NO. 21
APPLICATION NO.
6-11-67-EDD
City Staff Report
Dated March 3, 2011



unmitigable impacts.

Fiscal Impact Statement: All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact: None.

Housing Impact Statement: No residential units are proposed.

BACKGROUND

The approximately 15.14-acre project site is located at 2720 Via de la Valle at the northwest corner of Via de la Valle and San Andres Drive. Flower Hill Drive is to the north and the northbound ramp to Interstate 5 (I-5) is located to the west of the project site, in the CC-1-3 and Coastal Overlay (Non-appealable Area 2) Zones of the San Diego General Plan and North City Local Coastal Program Land Use Plan areas (Attachment No. 1). The site is irregular in shape and presently consists of 11.2 acres of developed land containing 112,116 square feet of attached and detached commercial space, restaurants, a movie theater, gas station, and surface parking spaces within the site and along Flower Hill Drive, along with 3.9 acres of ornamental landscape vegetation. Flower Hill Drive is a private roadway, within the boundaries of the proposed project. The site ranges from approximately 20 feet above mean sea level at the southern boundary to approximately 100 feet above mean sea level at the northern boundary. The southern half of the site is relatively flat and the northern half of the site contains a steep, south-facing manufactured slope (Attachment No. 2).

DISCUSSION

Project Description:

The project proposes to modify the existing shopping center by adding 43,754 square feet of retail stores including a 35,000 square-foot major food market and 8,754 square feet of new retail space. A total of 28,941 square feet of office space is also proposed along with 2,300 square feet of storage space within a new parking structure. The new retail and office space would be located in a two-story building with two wings connected by a covered breezeway. The new building would be located at the west end of the existing center. A new three-story, four-level parking structure, comprised of 82,739 square feet of gross floor area and containing 397 parking spaces, would be constructed behind (north of) the proposed new retail and office building.

To accommodate the new development, the existing 14,000 square-foot movie theater would be demolished and the existing City utility easement providing water services will be vacated as new services will be provided elsewhere on the property for the development. Also, the new development would require the adjustment of the existing parcel lot line to achieve required building setbacks for the proposed structures. Therefore, the development in the City's Coastal Overlay (non-appealable) Zone requires a Coastal Development Permit from the City of San Diego, the Easement Vacation of the utility service rights, and a Lot Line Adjustment.

Community Plan Analysis:

The project site is located within the City of San Diego's General Plan and the North City Local Coastal Program (North City LCP) Land Use Plan area and is subject to the goals and policies of these plans. The site is not located within a specific community plan.

The General Plan identifies the project site for Commercial Employment, Retail and Services land use. The project site is designated for Commercial Use in the North City LCP Land Use Plan. The proposed project is consistent with the land use designations and all applicable goals and policies of the City of San Diego General Plan and North City LCP Land Use Plan.

North City LCP

The primary purpose of the North City LCP is to help implement the goals of the California Coastal Act. The Coastal Act assigns authority for local agencies to issue coastal development permits through adoption of Local Coastal Plans. The City adopted and the Coastal Commission subsequently approved the North City LCP in 1981.

In general, the North City LCP applies to the various community plans that comprise the northern portion of the City of San Diego. As indicated earlier, the subject property does not lie within the boundaries of a community plan. However, the property was included in the North City LCP in order to allow the City to issue coastal development permits to areas in the North City that lay outside of formal community plans.

As a result of not being associated with a community plan, the North City LCP does not contain any goals, objectives or policies that apply directly to the property other than the land use designation, identified on page 103 of the North City LCP, which is consistent with the commercial land use designation applied by the City's General Plan. As the proposed project would not change the land use on the site, the project would be consistent with the North City LCP.

General Plan

- **Land Use Element:**
Policies of the Land Use Element of the General Plan include promoting the development of balanced communities, and striving for balanced commercial development. The proposed retail and office additions to an existing shopping center will provide greater shopping, commercial services and employment opportunities within the community.
- **Mobility Element:**
Policies of the Mobility Element of the General Plan include making sidewalk and street crossings accessible to pedestrians of all abilities, providing clear paths of pedestrian travel, incorporating pedestrian-oriented design, and requiring new development to have site designs and onsite amenities that support alternative modes of transportation.

The proposed commercial expansion will strengthen the pedestrian connection between the shopping center and Via de la Valle by constructing an accessible, pedestrian

walkway from the street to the shopping center. Alternative modes of transportation are encouraged by providing bicycle parking and a transit info kiosk with ride share information within the shopping center.

- **Urban Design Element:**

Policies of the Urban Design Element of the General Plan include designing buildings that contribute to a positive neighborhood character and relate to community context, encouraging the use of underground or above-ground parking structures, rather than surface parking lots, to reduce land area devoted to parking, and encouraging the placement of active uses, such as retailers and restaurants, on the ground floor of buildings.

The proposed project will be consistent with and compliment the scale, form, materials, and proportion of the existing commercial center on the premises and surrounding commercial areas. The proposed structures will comply with all underlying zone development standards, including height, setbacks, and maximum floor area, and no deviations are proposed. The project will also provide a partially below-grade parking structure, which will reduce land area devoted to parking and the visual impact of surface parking lots.

- **Economic Prosperity Element:**

Policies of the Economic Prosperity Element of the General Plan include increasing the vitality of commercial areas, providing goods and services easily accessible to residents, and promoting community identity. The redevelopment of community commercial centers should focus on expanding community functions through additional visual, recreational, and social amenities. In addition, mixed-use developments are encouraged in community commercial shopping centers.

The proposed project will introduce a specialty food market and other commercial services to the area, supporting the economic vitality of the existing commercial center. The project will provide easily accessible goods and services to residents since the project site is located in close proximity to nearby residences. The project is fostering community interaction and providing a social amenity in the form of a new plaza area adjacent to the retail spaces. In addition, the proposed commercial retail and offices uses contained within the same structure are consistent with the General Plan's policy of encouraging mixed-use development in community commercial shopping centers.

- **Public Facilities, Services, and Safety Element:**

Policies of the Public Facilities, Services, and Safety Element of the General Plan include requiring development proposals to fully address impacts to public facilities and services, the protection of beneficial water resources through pollution prevention and interception efforts, and maximum diversion of materials from disposal through the reduction, reuse, and recycling of waste.

The proposed project will result in less than significant impacts to water, wastewater, solid waste, storm drains and energy, and impacts to solid waste would be significant but

mitigable. The project will include measures to minimize the potential for sedimentation, erosion, and polluted runoff both during and after construction, and will implement a waste management plan to address solid waste management techniques including the reduction, reuse, and recycling of waste.

- **Conservation Element:**

One of the primary goals of the Climate Change and Sustainable Development section of the Conservation Element of the General Plan is to reduce the City's overall carbon dioxide footprint by improving energy efficiency, employing sustainable planning and design techniques, and providing environmentally sound waste management. The Conservation Element of the General Plan recommends the development and implementation of sustainable building standards for new and significant remodels of commercial buildings to maximize energy efficiency, including employing the self generation of energy using renewable technologies.

The proposed project will incorporate sustainable design features on the proposed structures, including efficient lighting and control systems, energy-efficient heating and cooling systems, thermal-efficient glazing/fenestration systems, the use of "cool roof" material, and the installation of water-efficient irrigation systems and devices. The self generation of energy using renewable technologies will be implemented by the incorporation of solar panels on the upper level of the parking structure. The project will also implement a waste management plan to address solid waste management.

Environmental Analysis:

The Environmental Impact Report (EIR) analyzed the environmental impacts of the proposed project. The evaluation of environmental issue areas in the EIR concludes that the project would result in significant and unmitigable direct and cumulative impacts related to transportation/circulation; significant, but mitigable direct impacts to biological resources and paleontological resources; and significant, but mitigable cumulative impacts related to transportation/circulation and public utilities (solid waste). No significant direct or cumulative impacts would occur to land use, visual effects and neighborhood character, noise, air quality, hydrology, water quality, or public utilities (water supply, water infrastructure, wastewater infrastructure, storm water infrastructure, and energy).

Implementation of the proposed Mitigation, Monitoring and Reporting Program (MMRP) would reduce the environmental effects of the project to below a level of significance with the exception of the significant, unmitigated impacts related to traffic and circulation.

- Traffic and Circulation direct increase in traffic volume on Via de la Valle between San Andres Drive and El Camino Real [West]:

The proposed project would have a significant direct traffic impact along the segment of Via de la Valle, between San Andres Drive and El Camino Real (West). A near-term segment level of service analysis was completed as a part of the traffic analysis and indicated the traffic volume would exceed the capacity on this segment. Since the project would contribute over 0.1 to the volume to capacity ratio at this segment operating at an unacceptable level of service, the project was considered to have a significant direct impact.

To avoid the direct impact on Via de la Valle, implementation of the project would need to be delayed until the planned improvements on Via de la Valle have been initiated. The applicant's project is conditioned to provide a contribution of up to \$3.8 million for the unfunded portion of Public Facilities Financing Plan (PFFP) Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West); however, construction of this segment is not controlled by the applicant. As a result, the project applicant could be forced to delay the start of construction for an unknown period of time. The applicant has determined a prolonged delay in construction of Project No. T-32.1 could represent an economic hardship for their development. Should the applicant be allowed to complete construction and assume operations of the proposed development prior to the start of construction for Project No. T-32.1, there is the potential for the project's direct impact to remain significant and unmitigated.

- Transportation/Circulation direct and cumulative increase in traffic on the segment of San Andres Drive between Via de la Valle and Highland Drive:

Increased traffic would lead to a significant direct and cumulative capacity impact to the San Andres Drive segment between Via de la Valle and Highland Drive. A near-term and horizon-year segment level of service analysis was completed as a part of the traffic analysis and indicated the traffic volumes would exceed the capacity at the San Andres Drive segment, and the level of service would be unacceptable in both the near-term and horizon-year conditions. Since the project would contribute over 0.1 to the volume to capacity ratio at this segment, operating at an unacceptable level of service in both the near-term and horizon-year condition, the project contribution was considered a significant direct and cumulative impact.

The applicant's project is conditioned to alleviate the congestion by creating a new left turn lane from the northbound side of San Andres Drive into the shopping center at Flower Hill Drive. The addition of a northbound, left-turn lane on San Andres Drive would allow northbound motorists wishing to enter the shopping center to move out of the main travel lane before turning onto Flower Hill Drive to access the center. The installation of the northbound, left-turn lane will allow San Andres Drive to carry the anticipated project traffic increase and would reduce the project's segment capacity impact to below a level of significance. However, construction of the left-turn lane will require additional right-of-way from the adjacent property owner on the east side of San Andres Drive. The adjacent property owner has not agreed to provide additional right of

way for the widening improvements. Considering the current impasse between the applicant and the adjacent property owner, the City of San Diego has the authority to acquire the additional right of way from the adjacent property through eminent domain; however, there is no guarantee that the City would exercise its powers of eminent domain. Therefore, the potential direct and cumulative impact of the project on San Andres Drive between Via de la Valle and Highland Drive is considered unmitigated.

Considering the project's potential for unmitigated direct and cumulative impacts as noted above, the applicant has prepared a draft Statement of Overriding Considerations (SOC), included with the Flower Hill Promenade EIR in accordance with State CEQA Guidelines Section 15093. The SOC allows the City's decision maker to balance the specific economic, legal, social, technological, and other benefits the proposed project may have related to the unmitigated adverse transportation/circulation impacts identified. After consideration, the City's decision maker may determine the impacts are "acceptable" due to specific considerations which outweigh the unmitigated adverse environmental impacts of the proposed project.

Project-Related Issues:

- Wastewater treatment service within the City of San Diego is typically provided by the City's Public Utilities Department, Wastewater Division, which operates the Metropolitan Sewage System. However, the project site is serviced by the City of Solana Beach. The project proposes to connect to an existing 12-inch, City of Solana Beach sewer main that runs east-west within Via de la Valle. This connection would be located near the southern site boundary, approximately 140 feet west of the existing southern property entrance from Via de la Valle.

The project applicant has prepared a sewer report that concludes that adequate conveyance and treatment capacity is available to accommodate the proposed project without the need for any related improvements or facility expansions to the City of Solana Beach wastewater system. The City of Solana Beach has provided the project applicant a "will serve" letter indicating that "[t]he City is capable of accepting additional flows as a result of this development." As requested by the Public Works Director/City Engineer for the City of Solana Beach, the City of San Diego has included draft permit conditions related to the applicant's wastewater connections, flow monitoring, and any additional improvements to the utility service as determined by the City of Solana Beach.

- The project would meet its parking requirements by constructing a parking structure containing 397 spaces combined with 522 surface parking spaces within the parking areas in front and behind the center along Flower Hill Drive. The total parking spaces to be provided would be 919 including 25 handicap accessible spaces. Parking would include 10 spaces for motorcycles and eight spaces for bicycles.

The parking structure would be a three-story, four-level, above-ground structure located in the northwest corner of the site in an area that currently includes surface parking and vegetated slopes. The top level of the parking structure would be uncovered, and floors one through three would be a combination of enclosed and partially open walls. The top

level of the parking structure would be primarily for tenants and visitors of the proposed offices. The parking structure would have access from Via de la Valle through the surface parking lot into the western side of the structure. There would be a second entrance from Flower Hill Drive. A covered paseo would connect the parking structure to the retail and market components. In addition, the third level of the parking structure would have direct access to the offices. Lighting on the upper level of the proposed parking structure would be designed to minimize light spill into the residential development that lies to the north.

- The project would include several retaining walls. A series of four, parallel, stepped retaining walls ranging from 119 to 223 feet in length and up to 12 feet in height would be located west of the parking structure, east of Interstate 5's northbound on-ramp. One, approximately 40-foot tall retaining wall would be built into the north wall of the parking structure, with only 12 feet of the retaining wall exposed. All retaining walls would include plantings to help screen the walls.

Community Planning Group :

The project site is located in an area within the City of San Diego that does not have a recognized community planning group; however, pursuant to Council Policy 600-24, the adjacent recognized planning group, such as the Carmel Valley Community Planning Board (CVCPB), is empowered to provide recommendations to the City's decision makers. The CVCPB recommended approval of the project with conditions. The CVCPB recommended conditions are provided below followed by City staff's response:

1. **This recommendation of approval is conditional on consistency with the Draft EIR that was available to the Board at the time of action. The Board reserves the right to reconsider this action upon receipt and review of the Final EIR.** Comment noted.
2. **The Board does not support a realignment of Flower Hill Drive's intersection with San Andres based on a review of the facts presented and public testimony. The project does not propose the realignment of Flower Hill Drive.**
3. **All improvements on San Andres south of Flower Hill Drive shall be within existing right-of-way or be on the applicant's property. Improvements on San Andres are not supported north of Flower Hill Drive.** The proposed project would have direct and cumulative impacts on the public roadway segments of San Andres Drive between Via de la Valle and Highland Drive. To mitigate for the impacts, the applicant will be required to provide a 10-foot wide, northbound, exclusive left-turn lane at San Andres Drive and Flower Hill Drive. This left-turn lane will require the widening of 5 feet on each side of San Andres Drive between Flower Hill Drive and Via de la Valle to continue safe traffic operation along the roadway segment.

4. **The Board notes that updated comprehensive land use planning is needed for the Via De La Valle corridor due to concerns about community character resulting from both the cumulative changes occurring and potentially proposed to occur in this corridor, which is adjacent to the San Dieguito River Park, an environmental asset of immense value to the region. The Board requests that the City Planning & Community Investment Department prioritize preparing updated community plans for Via de la Valle, NCFUA Subarea II, and Fairbanks Ranch Country Club. Support for this proposed project does not imply that the Board will support further densification or improvements. Comment noted.**
5. **The City of San Diego should verify parking requirements.** The City evaluated and accepted the parking analysis provided by the applicant (LLG 2010a) which assessed the proposed project's parking requirements in addition to the existing Flower Hill Promenade parking requirements. A rate of 5 spaces per 1,000 square feet is applied to the entire center. This rate is identified as a minimum rate required in the City's Parking Regulations for lots zones CC-1-3 for mixed-use development in Table 142-05D. This translates to a minimum parking requirement of 866 spaces. The maximum permitted rate in the City's Parking Regulations for lots zones CC-1-3 for mixed-use development in Table 142-05D is 6.5 spaces per 1,000 square feet which would equal 1,125 parking spaces. The project proposes 919 parking spaces for Flower Hill Promenade.

The restriping of Via de la Valle would eliminate 12 street parking spaces on the north side along the project's frontage. As the project proposes more than the minimum 866 spaces required and would be less than the maximum 1,125 spaces allowed, the Flower Hill Promenade development would comply with the Municipal Code parking requirements.

6. **The applicant agrees to not oppose the community's desire for roundabouts at Via De La Valle and El Camino Real and immediately adjacent intersections currently under study by the City of San Diego.** During the Board meeting on July 22, 2010, the applicant state that they verbally agreed not to take any position on these improvements.
7. **The applicant will return to a Board subcommittee meeting before the Planning Commission hearing upon availability of the Final EIR with proposed building materials, colors and visual simulations of the entire west elevation of the project including buildings and the parking structure and terracing of the second story office above the building proposed for Whole Foods. The Board wants to ensure that the architecture, massing, scale, articulation, colors and materials present an appropriate visual appearance and contribute positively to community character, as this project is the gateway to the Via de la Valle corridor, which includes the San Dieguito River Park, and is visible from Interstate 5. The applicant attended a Carmel Valley Community Planning Board subcommittee meeting on September 1, 2010. At the meeting, the applicant presented new renderings of the proposed architecture, massing and other design elements. The subcommittee expressed satisfaction with these new renderings on behalf of the full Board.**

8. **Hours of delivery shall be restricted to the City of San Diego noise ordinance. The applicant will consider further restricting hours to lessen the impact of delivery noise to the neighboring residences.** During the Carmel Valley Community Planning Board meeting on July 22, 2010, the applicant verbally agreed to comply with the City of San Diego's Noise Ordinance. Fixed source and/or operational noise are governed by the San Diego Municipal Code (SDMC) section 59.5.0401. The applicable sound level is a function of the time of day and land use zone. Sound levels are measured at the property line of the noise source. The limits are given in Table 5.4-2, City of San Diego Noise Ordinance Limits. The City of San Diego ordinances provide that the property line noise impact where two zoning districts meet shall be the arithmetic mean of the respective limits for the two zoning districts; thus, the noise limits for property lines separating multi-family residential and commercial zones are 60 dBA from 7:00 a.m. to 7:00 p.m., 55 dBA from 7:00 p.m. to 10:00 p.m., and 52.5 dBA from 10:00 p.m. to 7:00 a.m. The noise limits for property line separating single-family residential and commercial zones are 57.5 dBA from 7:00 a.m. to 7:00 p.m., 52.5 dBA from 7:00 p.m. to 10:00 p.m., and 50 dBA from 10:00 p.m. to 7:00 a.m. The development will continue to be subject the SDMC regulations and any enforcement actions.
9. **Landscape installation shall provide maturity at time of installation. New landscape planting materials, including trees, shrubs and specimen plants, should provide at least 3/4 of the height, width and coverage expected at full maturity.** The proposed project's permit is conditioned to comply with City of San Diego's Landscape Regulations which include the City's Landscape Standards. The Landscape Standards establish the minimum plant material, irrigation, brush management, and other general landscape related standards. The proposed project currently exceeds the City's minimum planting area and points requirements with the materials and quantity provided. The majority of the applicant's proposed sized plant material at the time of installation does not meet the Board's requested landscape requirements, and the applicant has not committed to larger sizing on the landscaping plans.
10. **Old and new signage shall conform to the current San Diego Sign Ordinance. A comprehensive signage program shall be presented to the Board for review and comments.** The project's permit is conditioned for the applicant's signage to comply with the sign criteria established by either the approved development's Comprehensive Sign Plan No. 1, dated February 6, 1976 or the City-wide sign regulations.

Conclusion:

City staff have reviewed the proposed project and all issues identified through the review process have been resolved in conformance with adopted City Council policies and regulations of the Land Development Code. Staff has provided the draft findings to support approval of the proposed development, draft conditions of approval, and easement vacation exhibits (Attachments No. 5 - 8). City staff is recommending the Planning Commissioners recommend approval of the project as proposed.

ALTERNATIVES

1.
 - A. Recommend to the City Council **Certification** of the Environmental Impact Report No. 172026, **Adoption** of the Mitigation Monitoring and Reporting Program, and **Adoption** of Protea Flower Hill Mall's Findings and Statement of Overriding Consideration; and
 - B. Recommend to the City Council **Approval** of the Coastal Development Permit, Lot Line Adjustment, and Easement Vacation, with modifications; or,
2.
 - A. Recommend to the City Council they **Do Not Certify** the Environmental Impact Report No. 172026, **Do Not Adopt** the Mitigation Monitoring and Reporting Program, or **Do Not Adopt** Protea Flower Hill Mall's Findings and Statement of Overriding Consideration; and
 - B. Recommend to the City Council **Denial** of the Coastal Development Permit, Lot Line Adjustment, and Easement Vacation, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department

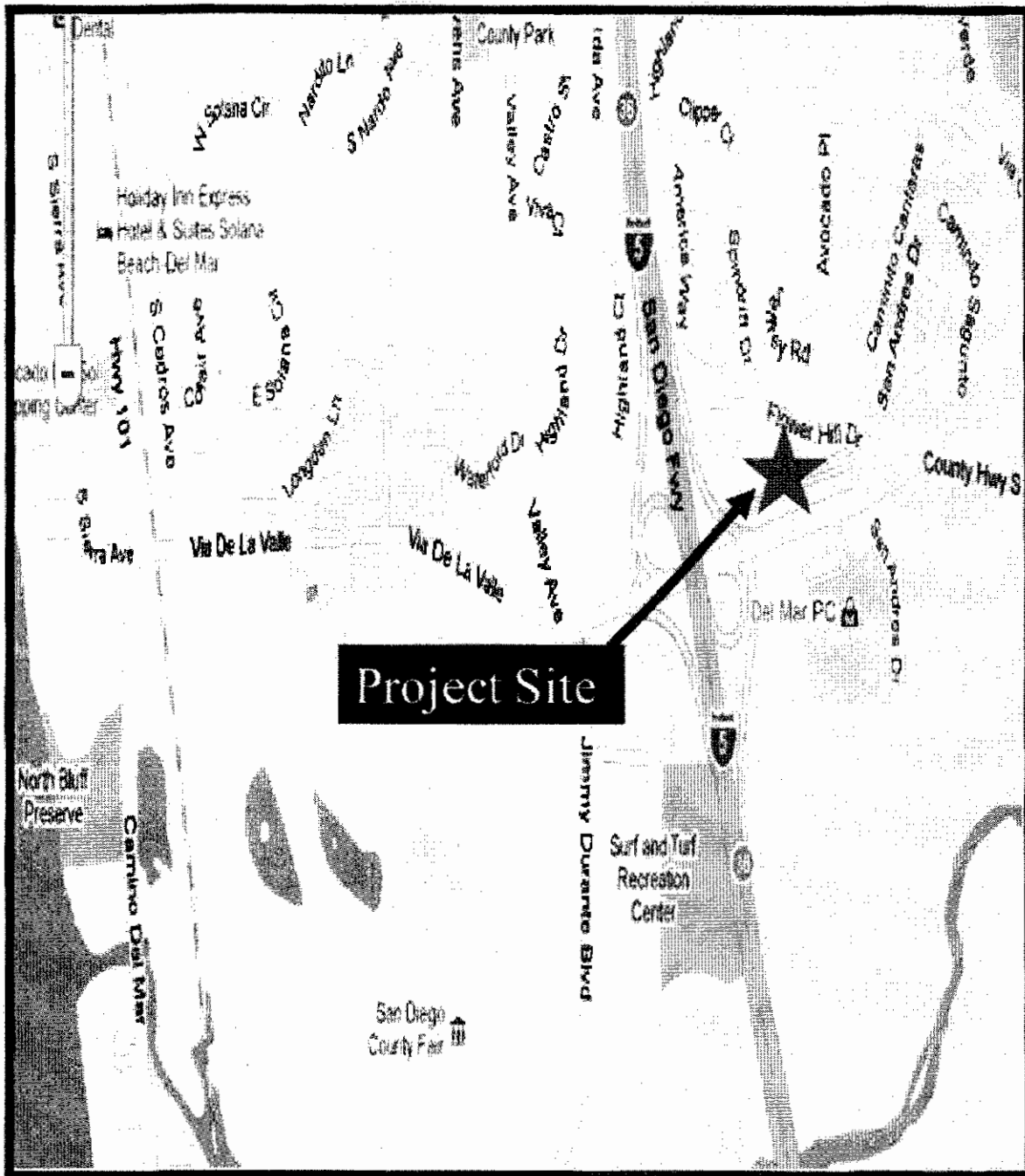


Tim Daly
Development Project Manager
Development Services Department

WESTLAKE/TPD

Attachments:

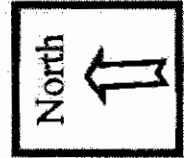
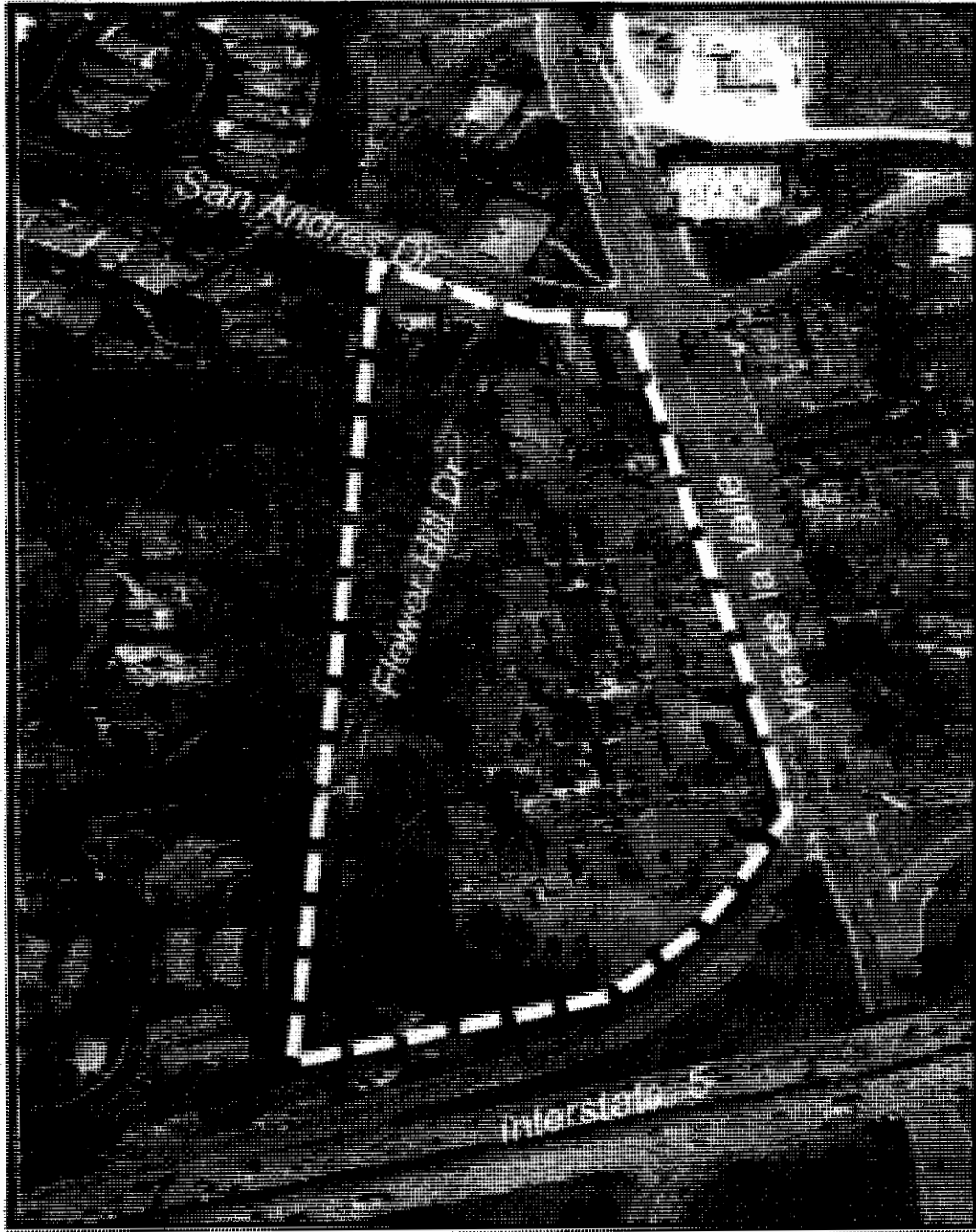
1. Project Location Map
2. Aerial Photograph
3. Community Plan Land Use Map
4. Project Data Sheet
5. Draft Permit Resolution with Findings
6. Draft Permit with Conditions
7. Draft Easement Vacation Resolution with Findings
8. Draft Easement Vacation B-Sheet
9. Project Site Plan
10. Project Plans
11. Community Planning Group Recommendation
12. Ownership Disclosure Statement
13. Project Chronology



Project Location

FLOWER HILL PROMENADE, Project No. 172026
2720 Via de la Valle

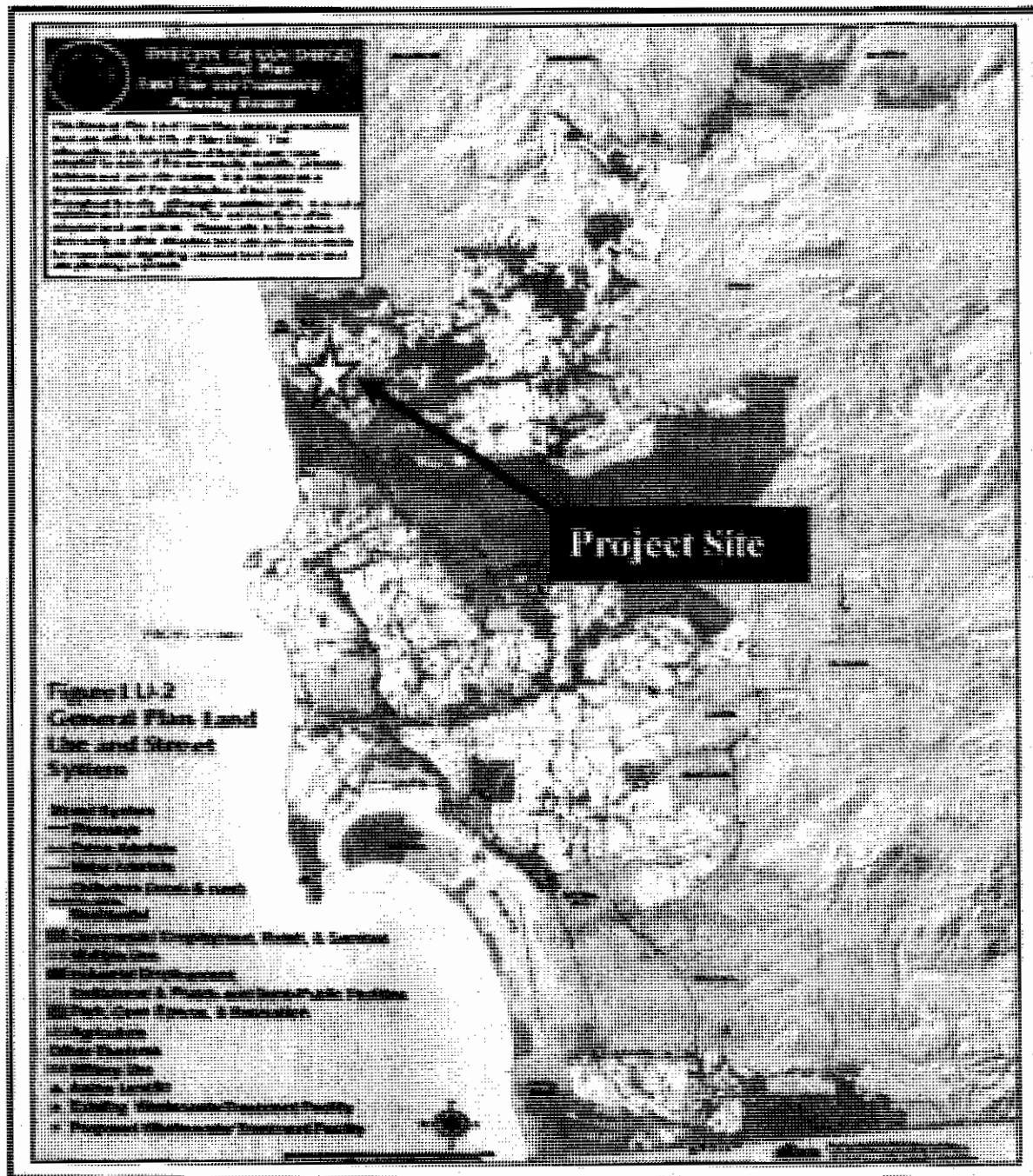




Aerial Photo

FLOWER HILL PROMENADE, Project No. 172026
2720 Via de la Valle





General Plan Land Use Map

Flower Hill Promenade, Project No. 172026
2720 Via de la Valle



PROJECT DATA SHEET

PROJECT NAME:	Flower Hill Promenade	
PROJECT DESCRIPTION:	Demolish an existing theatre and construct additional 74,995 square feet of commercial, office and storage space area, and a new parking structure within the existing Flower Hill Mall	
COMMUNITY PLAN AREA:	City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas	
DISCRETIONARY ACTIONS:	Coastal Development Permit, Lot Line Adjustment, and Easement Vacation	
COMMUNITY PLAN LAND USE DESIGNATION:	Commercial Employment, Retail	
<p style="text-align: center;"><u>ZONING INFORMATION:</u></p> <p style="text-align: center;">ZONE: CC-1-3; Commercial-Community</p> <p style="text-align: center;">HEIGHT LIMIT: Max. 45 feet; Proposed 44 feet</p> <p style="text-align: center;">LOT SIZE: Min. 5,000 square feet; Exist. 659,526 square feet</p> <p style="text-align: center;">FLOOR AREA RATIO: Max. 0.75; Proposed 0.39</p> <p style="text-align: center;">SIDE SETBACKS: Min. 10 feet; 4.5 feet provided</p> <p style="text-align: center;">PARKING: Req. min. 866 parking spaces; 919 provided</p>		
<u>ADJACENT PROPERTIES:</u>	LAND USE DESIGNATION & ZONE	EXISTING LAND USE
NORTH:	City of Solana Beach – Medium Residential (MR) 5- 7 du/ac and Estate Residential (ER-2) 1-2 du/ac	Condominiums and Single Family Residential
SOUTH:	Commercial-Community; CC-1-3	Commercial
EAST:	Commercial-Community; CC-1-3	Commercial
WEST:	Freeway	Interstate 5
DEVIATIONS OR VARIANCES REQUESTED:	None	
COMMUNITY PLANNING GROUP RECOMMENDATION:	On July 22, 2010, the Carmel Valley Community Planning Board voted 11-3-0 to recommend approval of the project with conditions.	

(R-INSERT)

RESOLUTION NUMBER R- XXXXXX

ADOPTED ON APRIL XX, 2011

WHEREAS, Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owner/Permittee, filed an application with the City of San Diego for Coastal Development Permit No. 619980 to construct to demolish the existing 14,000 square-foot theater, construct approximately 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot, gross floor area parking structure at an existing commercial development known as the Flower Hill Promenade project, located at 2720 Via de la Valle, and legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008, in the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas, in the CC-1-3 and Coastal Overlay (non-appealable) Zone(s); and

WHEREAS, on March 10, 2011, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 619980, and pursuant to Resolution No. XXXXXX-PC voted to recommend City Council approval of the permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on April XX, 2011, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Coastal Development Permit No. 619980:

Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. The proposed development is located approximately one mile from the ocean. Therefore, it does not encroach upon any existing or proposed physical accessway used by the public to reach the shore. The project site is currently developed with an existing shopping center. The proposed project would expand and reconfigure the shopping center to include 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot multi-level parking structure. The ocean is currently not visible from the project site. The project site is visible from the northbound lanes of Interstate 5, the Del Mar Shopping Center, and San Dieguito Lagoon to the south. The site is minimally visible from Interstate 5 southbound lanes due to the raised portion of the freeway and the proximity of the development to the vegetated slope. The visual stature and bulk of the proposed buildings will be partly offset by their proximity and placement below the slope on the north and west sides of the project. The project will not be substantially more visible from public spaces than the existing development. The market building will be closer to Via del la Valle and farther from the slope than the current cinema building, making it more prominent from roadways. However, the structures proposed on site would not obstruct any public viewing areas since the site sits lower than topographical features immediately to the north. The project is near the San Dieguito Lagoon; however, the Del Mar Shopping Center is situated between the Lagoon and the proposed project and currently obstructs views nearest to the site. For these reasons, the proposed project would not result in any impacts to public views to and along the ocean.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. The project site is currently developed and there are no environmentally sensitive habitats on the site, nor is the site adjacent to the City of San Diego's Multi Habitat Planning Area. The existing slopes on the site are manufactured and do not meet the definition of environmentally sensitive lands. The nearest environmentally sensitive lands are associated with the San Dieguito Lagoon which lies approximately 1,000 feet south of the project. The project site is separated from the lagoon by Via de la Valle and the Del Mar Shopping Center.

The separation of the project from the lagoon will avoid direct impacts and reduce indirect impacts on this environmentally sensitive resource. In addition to the spatial separation, impacts to environmentally sensitive lands will be minimized by implementation of water quality control measures mandated by City's Municipal Storm Water Permit and water quality regulations. Additionally, the project proposes to implement several green building standards including a water filtration system for storm drains. Therefore, the proposed development will not adversely affect environmentally sensitive lands.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. The certified Local Coastal Program land use plan is consistent with the City of San Diego General Plan (General Plan) and North City Local Coastal Program (LCP) Land Use Plan land use designations. The project proposes uses consistent with the General Plan land use designation (commercial employment, retail, and services) and implementing zone (CC-1-3). It is covered by the City's Local Coastal Program, which is included in the Coastal Resources section of the Conservation Element of the General Plan. The Conservation Element of the General Plan includes several policies to implement the Local Coastal Program. The proposed project complies with the relevant policies of the program. The Conservation Element includes policies to reduce runoff and improve the quality of runoff discharged into coastal waters, encourage conservation measures and water recycling programs that eliminate or discourage wasteful uses of water, develop and expand water-efficient landscaping, and improve urban runoff water quality through implementation of storm water protection measures. The Flower Hill project proposes several sustainable techniques which will implement these policies such as using landscaping with low water requirements, using water-efficient irrigation control systems and devices, such as soil-moisture based irrigation controls, retaining storm water runoff within landscaped areas where possible, and installing a water filtration system for storm drains. Therefore, the project is in conformance with the regulations of the certified Local Coastal Program and Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The proposed coastal development does not lie between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone. The development will have no affect upon public access and the recreation policies of Chapter 3 of the California Coastal Act and therefore be in conformance with such Act.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Coastal Development Permit No. 619980 is granted to Protea Flower Hill Mall,

L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN GOLDSMITH, City Attorney

By

Nina Fain
Deputy City Attorney

ATTY/SEC. INITIALS

DATE

Or.Dept:Clerk

R-INSERT

Form=permitr.frm(61203wct)

Reviewed by Tim Daly

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 601**

**WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23432020

**COASTAL DEVELOPMENT PERMIT NO. 619980
FLOWER HILL PROMENADE PROJECT NO. 172026; MMRP
City Council**

This Coastal Development Permit No. 619980 is granted by the City Council of the City of San Diego to Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners and Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0701. The 15.14 -acre site is located at 2720 Via de la Valle in the CC-1-3 and Coastal Overlay (non-appealable) Zone(s) of the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas. The project site is legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to demolish the existing 14,000 square-foot theater, construct approximately 74,995 square feet of new building area for commercial, office, and storage space area, and a new approximately 82,739 square-foot gross floor area parking structure at an existing commercial development, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April XX, 2011, on file in the Development Services Department.

The project shall include:

- a. Demolition of the existing 14,000 square-foot theatre building; construct a new two-story, approximately 72,695 square-foot commercial and office building structure; and construct an approximately 82,739 square-foot gross floor area parking structure with 397 spaces consisting of approximately, three-story portion above ground and approximately 62,053 square-foot below ground, which includes a 2,300 square-foot storage area in the structure;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. A series of stepped retaining wall structures of approximately 220 linear feet and 47 feet in height at the highest point; and
- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies

including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.
12. The mitigation measures specified in the MMRP and outlined in Environmental Impact Report No. 172026, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.
13. The Owner/Permittee shall comply with the MMRP as specified in Environmental Impact Report No. 172026, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Transportation and Circulation;
Biological Resources;
Paleontological Resources; and
Public Utilities (Solid Waste)

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for the private storm drains, landscape, irrigation and their appurtenances located within the City's right-of-way.
15. Prior to the issuance of any construction permit for buildings, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
16. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.
17. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate and show the type and location of all post construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Water Quality Technical Report.
18. The drainage system for this project shall be private and will be subject to approval by the City Engineer.
19. Prior to the issuance of any construction permits, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to

requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

20. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99 08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CA S0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 99 08 DWQ.

21. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall assure by permit and bond the replacement of the existing driveway on San Andres Drive to provide adequate sidewalk transitions, per Standard Drawing G-14B, G-16 and SDG-100, satisfactory to the City Engineer.

22. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall assure by permit and bond the installation of City standard curb ramps with truncated domes, on both sides of the project entrances on Via De La Valle and San Andres Drive, satisfactory to the City Engineer.

GEOLOGY REQUIREMENTS:

23. Prior to issuance of any construction permits, the Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of the Development Services Department, and satisfactory to the City Engineer.

24. The Owner/Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of the Development Services Department prior to exoneration of the bond and grading permit close-out, and satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

25. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A," Landscape Development Plan.

26. Prior to issuance of any construction permits for buildings (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department.

27. Construction plans within the public right of way shall take into account a 40 square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

28. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

29. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy or a Final Landscape Inspection.

30. Any required planting that dies within three years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die three years or more after installation shall be replaced with 15-gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15-gallon shrub or 60-inch box tree.

PLANNING/DESIGN REQUIREMENTS:

31. Upon completion of the development, the Owner/Permittee shall maintain a minimum of 866 off-street parking spaces (including 9 carpool spaces, 15 standard accessible spaces and 3 van accessible spaces), 10 motorcycle spaces, and 8 bicycle spaces with rack(s) provided on the property at all times in the approximate locations shown on the approved Exhibit "A" and as required by the Land Development Code. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

32. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

33. Prior to the issuance of construction permits for buildings, pedestrian paths shall be shown on the construction documents consistent with Exhibit "A." The paths shall be continuous, clear of obstructions, easily identifiable as pedestrian paths, and visually distinguishable from other hardscaping. Pedestrian paths shall be separated from vehicular access areas by wheelstops, curbs, landscaping, or other physical barriers, except when crossing driveways or aisles.

34. Prior to the issuance of construction permits for buildings, construction documents shall fully illustrate the incorporation of the following sustainable design features on the new structures and on the site and landscape plans:

- The installation of efficient lighting and lighting control systems.
- The installation of energy-efficient heating and cooling systems, appliances and equipment, and control systems.
- Limiting the hours of operation of outdoor lighting.
- The use of thermal-efficient glazing/fenestration systems.
- The use of "cool" roof material.
- The creation of water-efficient landscapes.
- The installation of water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.

35. Prior to the issuance of certificate of occupancy, solar panels shall be incorporated on the shade structures proposed on the upper level of the parking structure. Employing the self generation of energy using renewable technologies is a central policy of the Conservation Element in the City's General Plan.

36. All signs associated with this development shall be consistent with sign criteria established by either the approved development's Comprehensive Sign Plan No. 1, dated February 6, 1976 or the City-wide sign regulations.

37. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS:

38. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall assure by permit and bond the construction of a minimum 5-foot wide non-contiguous sidewalk along the project's frontage along Via de la Valle as shown on the project's Exhibit "A", satisfactory to the City Engineer.

39. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall assure by permit and bond the construction of a

minimum 5-foot wide non-contiguous sidewalk along the project's frontage along San Andres Drive as shown on the project's Exhibit "A", satisfactory to the City Engineer.

40. Prior to issuance of any construction permit for a building, excluding a permit for the retaining walls, the Owner/Permittee shall assure by permit and bond the installation of a "Keep Clear" marking on the pavement on-site, where the project driveway on Via de la Valle meets the east/west circulation aisle, approximately 100 feet north of Via de la Valle. Additionally, no stop signs shall be placed facing northbound traffic at the location where the main project driveway meets the east/west circulation aisle.

41. Prior to issuance of the any construction permit for a building, excluding a permit for the retaining walls, the Owner/Permittee shall dedicate 5 feet along the project frontage on San Andres Drive to provide a minimum 10-foot curb to property line distance, satisfactory to the City Engineer.

42. Prior to issuance of the construction permit for a building, excluding a permit for the retaining walls, the Owner/Permittee shall provide evidence of a recorded Shared Parking Agreement that allows Assessor Parcel No. 298-490-44 the right to use 528 automobile parking spaces on Assessor Parcel No. 298-490-43, satisfactory to the City Engineer.

43. Prior to issuance of any construction permit, the Owner/Permittee shall provide a Letter of Credit or a cash payment contribution for up to \$3.8 million toward the planned improvements for the Black Mountain Ranch Public Facilities Financing Plan Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West), from a two lane to a four lane roadway, and improve the Via de la Valle/El Camino Real (west) intersection.

44. Prior to issuance of any construction permit for a building, excluding a permit for the retaining walls, the Owner/Permittee shall assure by permit and bond the widening of the project driveway on Via de la Valle to provide one southbound left, one southbound through/right, and one southbound right lane, satisfactory to the City Engineer.

45. Prior to issuance of any Certificate of Occupancy for a building, the widening of Via del la Valle between San Andres Drive and El Camino Real (west) from a two-lane to a four-lane roadway and the improvement of the Via de la Valle/El Camino Real (west) intersection shall have commenced construction.

46. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owner/Permittee shall assure by permit and bond the widening San Andres Drive by 5 feet on each side between Via de la Valle and Flower Hill Drive and the installation of a northbound left turn lane on San Andres Drive at Flower Hill Drive, satisfactory to the City Engineer.

WASTEWATER REQUIREMENTS:

47. All onsite sewer facilities that serve only this lot shall be private.
48. Prior to the issuance of any Certificate of Occupancy, the Owner/Permittee shall install all sewer facilities required by the accepted sewer study necessary to serve this development. Sewer facilities as shown on the approved plans may require modification based on the accepted sewer study, satisfactory to the Director of Public Utilities and the City Engineer.
49. Prior to the issuance of any construction permits for public improvements, the Owner/Permittee shall grant adequate sewer, and/or access easements for all public sewer facilities that are not located within public rights of way, satisfactory to the Director of Public Utilities. Easements shall be surfaced with suitable approved material, satisfactory to the Director of Public Utilities and the City Engineer.
50. Prior to the issuance of any construction permits for public improvements, the Owner/Permittee shall obtain an Encroachment, Maintenance, and Removal Agreement for all proposed improvements, including grading, utilities, landscaping, and enhanced paving located in or over any public sewer access easement, satisfactory to the Director of Public Utilities and the City Engineer.
51. No structures or landscaping shall be installed in or over any sewer easement that would inhibit access to replace a section of main or provide access to any manhole or isolated section of main.
52. No trees shall be installed within ten feet of any sewer facilities or in any sewer access easement. No shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer main or within access easements.
53. No other utilities, including gas, electric, telephone and fiber optic cable, shall be located within ten feet of any public sewer main when these utilities are installed parallel to the sewer main. General Utility Easements (GUE) in private roads and driveways shall be sized with sufficient width to provide for other agencies facilities. In side yards or other non-street areas, a GUE must be dedicated for the exclusive use of the City of San Diego Public Utilities Department, satisfactory to the Director of Public Utilities and the City Engineer. Any other agencies will require separate easements.
54. The Owner/Permittee shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide, satisfactory to the Director of Public Utilities and the City Engineer.
55. The proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Plumbing Code and shall be reviewed as part of the construction permit building plan check, satisfactory to the Director of Public Utilities and the City Engineer.

56. Prior to the issuance of any construction permits, excluding demolition and/or retaining wall activities, the Owner/Permittee shall provide written verification to the City of San Diego from the City of Solana Beach indicating this site is authorized to discharge sewer flows into the City of Solana Beach wastewater system, satisfactory to the Director of Public Utilities and the City Engineer.

57. The Owner/Permittee shall design, obtain permits, and construct all proposed (private and public) sewer facilities to the most current laws, ordinances, and regulations of the City of Solana Beach, satisfactory to the City Engineer of the City of Solana Beach. The type of sewage discharged into the sewer system shall meet the requirements and restrictions of the San Elijo Joint Powers Authority.

58. Prior to the issuance of any construction permit, excluding demolition and/or retaining wall activities, the Owner/Permittee shall provide a copy of a final report, prepared for the City of Solana Beach, conducting an existing conditions flow measurement on the existing 12-inch diameter vitrified clay pipe (VCP) in Via de la Valle, west of the project site. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend, satisfactory to the Director of Public Utilities and the City Engineer.

59. Prior to the issuance of any construction permit, excluding demolition and/or retaining wall activities, the Owner/Permittee shall provide evidence that an agreement has been fully executed between the City of Solana Beach and the Owner/Permittee. The agreement shall require the Owner/Permittee to perform a flow measurement survey of the existing 12-inch diameter vitrified clay pipe (VCP) in Via De La Valle within one month after full occupancy of the new shopping center. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend. If it is determined, by the City Engineer of the City of Solana Beach, that the existing system is inadequate to convey the additional flow due to this project expansion, the agreement shall require the Owner/Permittee to improve the existing wastewater distribution system to the satisfaction of the City Engineer of the City of Solana Beach.

WATER REQUIREMENTS:

60. Prior to the issuance of any construction permits for public improvements, the Owner/Permittee shall assure by permit and bond the design and construction of two 12-inch diameter water mains within a 24-foot wide minimum water easement. The water mains must be connected with 20-inch X 20-inch X 20-inch tee and three valves to the existing 20-inch diameter water main in Via De La Valle right-of-way adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

61. The Owner/Permittee shall process an Encroachment, Maintenance, and Removal Agreement(s), for all acceptable encroachments into the water easement, including but not limited to structures, enhanced paving, or landscaping. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

62. Prior to the issuance of any construction permits for public improvements, the Owner/Permittee shall assure by permit and bond the design and construction of any new water

service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

63. Prior to the issuance of any construction permits for buildings, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device, on irrigation water service, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

64. Prior to the issuance of any Certificates of Occupancy for buildings, all public water facilities shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.

65. The Owner/Permittee shall design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on April XX, 2011 and [Approved Resolution Number].

Permit Type/PTS Approval No.: CDP No. 619980
Date of Approval: April XX, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Tim Daly
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

Protea Flower Hill Mall, L.L.C.,
A California Limited Liability Company
Owner/Permittee

By _____
NAME
TITLE

Protea Flower Hill Mall West, L.L.C.,
A California Limited Liability Company
Owner/Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

VACATION OF WATER EASEMENTS ON PARCELS 1 AND 2
OF PARCEL MAP NO. 20470, NORTH OF VIA DE LA VALLE,
EAST OF INTERSTATE 5, AND WEST OF SAN ANDRES
DRIVE.

WHEREAS, California Streets and Highways Code section 8320 *et seq.* San Diego
Municipal Code section 125.1001 *et seq.* provide a procedure for the vacation of public
easements by City Council resolution; and

WHEREAS, it is proposed that 15-foot wide water easements, Approval No. 826905 be
vacated; and

WHEREAS, under Charter Section 280(a)(2), this resolution is not subject to veto by the
Mayor because this matter requires the City Council to act as a quasi-judicial body, a public
hearing was required by law implicating due process rights of individuals affected by the
decision, and the Council was required by law to consider evidence at the hearing and to make
legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on April XX, 2011, testimony having
been heard, evidence having been submitted, and the City Council having fully considered the
matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to a 15-
foot wide water easement located within Parcel 1 and 2 of Parcel Map No. 20470, north of Via
De La Valle, east of Interstate 5, and west of San Andres Drive as dedicated to the City of San
Diego, recorded October 23, 1975 as Document No. 75-293687, as shown on Parcel Map No.

20470, recorded in The Office of County Recorder, San Diego County, on April 17, 2008, together with a 15-foot wide water easement acquired per the easement exchange pursuant to City Council Resolution No. 219240, adopted September 7, 1977, and as shown on City Drawing No. 16259-D, the Council finds that:

(a) There is no present or prospective use for the easements, either for the facility or purpose for which they were originally acquired, or for any other public use of a like nature that can be anticipated.

The public water line within the existing easements currently services a building that will be removed as part of the Flower Hill Promenade Project in connection with Coastal Development Permit No. 619980. Once the existing building is demolished there will no longer be any use for the water line and the corresponding easement.

(b) The public will benefit from the abandonment through improved utilization of the land made available by the abandonment.

There will no longer be any use for the easements; therefore, the abandonment of the easements and removal of the water services removes any physical and legal restraints for future improvements.

(c) The abandonments are consistent with any applicable land use plan.

The project site, zoned CC-1-3, is located within the City of San Diego General Plan area and is designated for commercial use. The site is currently developed with an existing shopping center. The proposed project would expand and reconfigure the commercial shopping center to include the demolition of an existing theatre, the construction of a new commercial and office building, and a new parking structure. Once the existing theatre building is demolished, there

will no longer be use for the corresponding easements. The proposed reconfiguration of the commercial development will remain consistent with the applicable land use plan.

(d) The public facility or purpose for which the easements were originally acquired will not be detrimentally affected by this abandonment or the purpose for which the easements were acquired no longer exists.

The purpose for which the water easements were acquired no longer exists. The building that the public water line serves is being removed as part of the Flower Hill Promenade Project in connection with Coastal Development Permit No. 619980 .

BE IT FURTHER RESOLVED, that the water easements located within Parcel 1 and 2 of Parcel Map No. 20470, north of Via De La Valle, east of Interstate 5, and west of San Andres Drive in connection with Coastal Development Permit No. 619980, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 36393-B, marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, are ordered vacated.

BE IT FURTHER RESOLVED, that said easement abandonments are conditioned upon the completed installation and operation of the new water utility services serving the project site and the removal of all the existing abandoned water utility services. In the event this condition is not completed within three years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect.

BE IT FURTHER RESOLVED, that the Development Services Department shall record a certified copy of this resolution with attached exhibits, attested by the City Clerk under seal, in

the office of the County Recorder after being notified by the property owner that the
aforementioned water facilities have been moved and relocated.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

Nina Fain
Deputy City Attorney

[Initials]:[Initials]
[Month]/[Day]/[Year]
Or.Dept:DSD
JO: 23432020
Drawing No. 36393-B
R-R-[Reso Code]