CALIFORNIA COASTAL COMMISSION

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Filed: N/A 180th Day: N/A Staff: J. Van Coops-SF Staff Report: 12/19/2014 Hearing Date: 01/7-9/2015

STAFF REPORT: REGULAR CALENDAR

Map Adoption No.: MA-2015-001

Local Government: City of Chula Vista

Local Government Staff: Miguel Tapia, Community Development Director

Location: Coastal Zone area within the City of Chula Vista, San

Diego County.

Map Description:

Revision to current adopted Post-LCP Certification Permit and Appeal Jurisdiction Map for Chula Vista; prepared by staff to show specific geographic areas where the Commission transfers permit authority to the City of Chula Vista and retains appeal jurisdiction over local government

coastal development permits approved by the City.

Staff Recommendation: Approval

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission **approve** the revisions to the Post LCP Certification Permit and Appeal Jurisdiction for the City of Chula Vista depicted in Map Exhibit 3, prepared by staff to show the geographic areas where the Commission transfers permit authority pursuant to California Coastal Act Sections 30613 because the affected parcels consist of lands that are filled and developed and located within an area that is committed to urban uses. The Commission retains appeal jurisdiction over coastal development permits approved by the City of Chula Vista within the area subject to this map revision. ¹

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¹ The California Coastal Act is found in the Public Resources Code, sections 30000 et seq.

I. RECOMMENDED MOTION AND RESOLUTION

Motion:

I move that the Commission approve the proposed revisions to the Post-LCP Certification Map for the City of Chula Vista as depicted in Exhibit 3 pursuant to the staff recommendation, and I recommend a yes vote.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the Chula Vista Post-LCP Certification Map revisions and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Map Adoption MA-2015-001 and adopts the findings set forth below on grounds that the Post-LCP Certification Map revisions depict the areas where the Commission through this action: (a) transfers permit authority to the City of Chula Vista pursuant to Coastal Act Section 30613, and (b) retains appeal jurisdiction over coastal development permits approved by the City of Chula Vista pursuant to Coastal Act Section 30603.

II. STAFF NOTE

This map revision is being made as a result of a land transfer between the City of Chula Vista and the San Diego Unified Port District (SDUPD), and a subsequent Local Coastal Program (LCP) amendment covering a portion of the affected property. Between 1979 and the present the Commission has adopted approximately 75% and 80% of the Post-LCP Certification Permit and Appeal Jurisdiction maps for California's 61 coastal cities and 15 coastal counties, respectively. The map for Chula Vista was originally adopted April 25, 1985. Most, if not all, of the jurisdictions with adopted maps require revisions and map re-adoption from time to time, to incorporate updates reflecting changing conditions in the Coastal Zone environment upon which the boundaries are based, to make corrections, and to make refinements made possible by the use of more accurate data and modern mapping technology.

III. BACKGROUND

After the Commission certifies a local government's LCP, permit authority within that jurisdiction is delegated to that local government. However, pursuant to Section 30519(b) and 30613 of the Coastal Act, the Commission retains permit authority (with certain exceptions) after LCP certification over developments occurring on tidelands, submerged lands, and public trust lands. Legislation that became effective in 1982 provided the Commission with the ability to delegate its original permit authority over potential public trust lands to local governments under certain circumstances. Section 30613 of the Coastal Act allows the Commission, after

consultation with the State Lands Commission, to make these delegations for areas that are determined to be filled, developed, and committed to urban uses. The City of Chula Vista has made such a request for specific filled, former tidelands located within the City, discussed further in the following section entitled Permit Jurisdiction. It is important to note that any areas for which the Commission transfers permit jurisdiction to the local government remain within the Commission's geographic appeal jurisdiction.

The Commission's administrative regulations (14 CCR Section 13576) provide that an adopted map portraying the areas of continuing Commission permit and appeal jurisdiction may be updated and revised by the Commission from time to time. Within these regulations the idea is implicit that while any adopted map should portray the various jurisdiction boundaries as accurately as possible, it remains only a depiction, a cartographic representation and not a definition of the Commission's jurisdiction. The boundaries of the particular permit jurisdiction transfer areas that are the subject of this action are based on property boundaries, and may require field determination procedures to establish a precise boundary location. A cadastral survey performed by a licensed land surveyor reflecting property boundaries on the ground would control permit and appeal jurisdiction boundaries at the affected locations regardless of how accurate the mapped boundary may be at this time. Additionally, this Commission action does <u>not</u> affect any other areas or boundaries depicted on the existing Chula Vista Post LCP Certification Map, adopted in 1985 (see Exhibit 2). Map revisions in the rest of the City's Coastal Zone will be recommended for adoption at a future time as part of a comprehensive update for all of San Diego County.

IV. FINDINGS AND DECLARATIONS

A. Previous Chula Vista Post –LCP Certification Maps

During the late 1970's and early 1980's the Commission's Technical Services Division began a project to complete Draft Post-LCP Certification Permit and Appeal Jurisdiction maps for all local governments within or partly within the Coastal Zone. The first effort consisted of producing a set of 161 draft maps using the USGS 7.5 minute quadrangle base (scale 1:24,000 or 1 inch equals 2000 feet), which was completed in 1981. The primary purpose of this project was to provide a consistent, *statewide* view of the *draft* permit and appeal boundaries for review by the local government staff, Commission staff, and other interested parties. The area of the Coastal Zone within the City of Chula Vista was covered by map sheets 160 and 161, the National City and Imperial Beach quadrangles. Copies of these regional 7.5-minute quadrangle-scale draft maps were distributed for review to the regional commission offices and local governments in April 1981.

A more detailed map of the draft Post-LCP Certification Permit and Appeal Jurisdiction areas within Chula Vista was prepared in early 1985 using a 1:6,000 scale (1 inch equals 500 feet) city planning base map obtained from the City. After review by the City and other interested stakeholders, the 1:6,000 scale draft "post cert." map was adopted April 25, 1985. Although nearly 30 years old, this map is the current adopted map for the City of Chula Vista and reflects several other areas where the Commission transferred permit authority for waterfront areas south of J Street which were determined to meet the criteria for transfer pursuant to Coastal Act Section 30613.

B. STAFF ANALYSIS

The depiction of the proposed revisions to the Commission's permit and appeal jurisdiction map for Chula Vista presents no significant areas of controversy affecting the map adoption at this time. Coastal Commission staff has reviewed the draft revisions to the permit and appeal jurisdiction with staff of the City of Chula Vista and consulted with the staff of the State Lands Commission, both of which concur with the staff recommendation.

Permit Jurisdiction

The property which is the subject of this request was part of a group of properties involved in a land transfer between the City of Chula Vista and the San Diego Unified Port District. The former Port boundary followed a historic Mean High Tide Line in this locale, so portions of the relevant properties were subject to the public trust because they were filled tidelands. The Commission may delegate permit issuing authority over public trust lands to ports identified in Chapter 8 of the Coastal Act, like the San Diego Unified Port District, but not to local governments, except through the process identified in Section 30613. Thus, the areas transferred from the Port to the City that were below the historic MHTL became subject to the Commission's Permit jurisdiction even though they had formerly been subject to the Port's authority.

The Commission has, however, approved an LCP amendment to add these areas to the City's LCP, and the City seeks to assume permit issuing authority. As a result, the City has requested, and the staff is recommending, that the Commission exercise its authority under Section 30613 to find that the identified areas within Parcels 2f and 2h shown in Exhibit 3 are filled, developed, and committed to urban uses and that the Commission transfer its original permit authority for these areas to the City.

The staff has used aerial photography, resource maps, and the City's LCP to determine where the permit boundary changes are appropriate. The areas recommended for transfer were previously filled to an elevation of approximately 14 feet (NAVD 88), and are served by roads, sewer, electrical, water, and other infrastructure. The site has been previously subdivided and developed as industrial properties of the Goodrich Company. The State Lands Commission staff has reviewed the city request and concurs with the staff recommendation. Zoning for the areas provides for mixed use residential/commercial development for Parcel 2f and professional office/visitor commercial for Parcel 2h. In its approval of the LCP amendment, the Commission has reviewed and approved specific land use and zoning designations for these parcels, and placed density and site coverage requirements, height limitations, provisions for public parking and access, visitor-serving uses and view protection on developments occurring in these areas. Given that the lands subject to this request are the subject of a local coastal program and are developed in an area committed to urban uses, the staff believes these areas meet the requirements of Section 30613 of the Coastal Act and recommends transfer of permit authority.

Appeal Jurisdiction

As indicated in Exhibit 3, any areas for which the Commission transfers permit jurisdiction to the local government pursuant to Coastal Act Section 30613 remain within the Commission's geographic appeal jurisdiction. Developments approved by a local government that are on public

trust lands are appealable to the Commission based on Section 30603(a)(2). The Commission's regulations, section 13577(f), define public trust lands as those which were subject to the Public Trust at any time. So even though the areas subject to this application are filled tidelands, they were subject to the public trust at one time, so any City approval of development in this area would still be subject to the Commission's appellate jurisdiction.

C. DRAFT MAP REPRODUCTION

The staff report and draft maps are available digitally via the Commission's public website. Printed copies of the draft map revisions are available for review at the City of Chula Vista, and at the Coastal Commission's offices in San Francisco and San Diego. Copies of the full-size map will also be available for review at the January 7-9, 2015 Commission meeting in Santa Monica.

Appendix A – List of Substantive File Documents

- Potential Public Trust Land Maps, (National City and Imperial Beach Quadrangles), California State Lands Commission, 1979.
- U.S. Coast Survey Historical Topographic Maps, T-364 (1852) and T-365(1852), NOAA, 2000.
- U.S. Coast and Geodetic Survey Shoreline Manuscript Map, T-11892 (1965), NOAA, 2000.
- Coastal Commission 1: 12,000-scale vertical aerial photography 1970-2001.
- California Coastal Records Project, 2010-2014.
- U.S. Geological Survey (USGS) 7.5 Minute Series Topographic Maps, (National City and Imperial Beach Quadrangles), USGS, 1967 (revised 1975).

Appendix B – Relevant California Public Resources Code Sections

- 30603 (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:
- (1) Developments approved by the local government 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 tideline of the sea where there is no beach, whichever is the greater distance.
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.
- (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).
- (5) Any development which constitutes a major public works project or a major energy facility.
- (b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.
- (2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.
- (c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.
- (d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

(Amended by: Ch. 43, Stats. 1982; Ch. 1030, Stats. 1991; Ch. 525, Stats. 1994; Ch. 669, Stats. 1995.)

30613 (a) The provisions of subdivision (b) of Section 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any lands which may be subject to the public trust but which the commission, after consultation with the State Lands Commission, determines are (1) filled and developed and are (2) located in an area which is committed to urban uses.

- (b) No later than 120 days after receiving a request from a local government, the commission shall determine the lands within the jurisdiction of that local government to which the provisions of subdivision (a) apply.
- (c) The provisions of this Section shall apply to lands which have been the subject of coastal development permits, local coastal programs, categorical exclusions or urban exclusions, which have previously been approved, authorized, or certified by the commission.

(Note that the Commission will retain appeal authority after transfer of original permit jurisdiction to the local government.)

Appendix C – Relevant California Code of Regulations Sections

§ 13576. Map(s) of Areas of Commission Permit and Appeal Jurisdiction.

(a) In conjunction with final Local Coastal Program certification or the delegation of coastal development permit authority pursuant to Public Resources Code Section 30600.5, whichever occurs first, the Commission shall, after public hearing, adopt a map or maps of the coastal zone of the affected jurisdiction that portrays the areas where the Commission retains permit authority pursuant to Public Resources Code Sections 30603 (a) (1) and (a)(2), or 30600.5 (d). These maps shall be drawn based on the criteria for permit and appeal boundary determinations, set forth in Section 13577 below, and will serve as the official maps of the Commission's permit and appeal jurisdiction. The Commission, in consultation with the local government, shall update these maps from time to time, where changes occur in the conditions on which the adopted maps were based, or where it can be shown that the location of the mapped boundary does not adequately reflect the intended boundary criteria. Revisions of the adopted maps shall be based on precise boundary determinations made using the criteria set forth in Section 13577. The revised maps shall be filed with the affected jurisdiction within 30 days of adoption by the Commission. In addition, each adopted map depicting the permit and appeal jurisdiction shall include the following statement:

"This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Sections 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission"

(b) In the case of local governments which have received Commission approval of their Phase III (implementation) Work Program and Budget prior to January 1, 1980, the permit and appeal area maps shall be adopted by the Commission prior to the certification becoming effective pursuant to Section 13547 of the Commission's regulations.

§ 13577. Criteria for Permit and Appeal Jurisdiction Boundary Determinations.

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from

the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams not having significant habitat value should not be considered.

(b) Wetlands.

- (1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deepwater habitats. For purposes of this section, the upland limit of a wetland shall be defined as:
 - (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
 - (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or
 - (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.
- (2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:
 - (A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and
 - (B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.
- (c) Estuaries. Measure 300 feet landward from the mean high tide line of the estuary. For purposes of this section, an estuary shall be defined as a coastal water body, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with the open

ocean, and in which ocean water is at least occasionally diluted by freshwater from the land. The salinity level may be periodically increased to above that of the open ocean due to evaporation. The mean high tide line shall be defined as the statistical mean of all the high tides over the cyclical period of 18.6 years, and shall be determined by reference to the records and elevations of tidal benchmarks established by the National Ocean Survey. In areas where observations covering a period of 18.6 years are not available, a determination may be made based on observations covering a shorter period, provided they are corrected to a mean value by comparison with observations made at some suitably located control tide station.

- (d) Tidelands. Tidelands shall be defined as lands which are located between the lines of mean high tide and mean low tide.
- (e) Submerged Lands. Submerged lands shall be defined as lands which lie below the line of mean low tide.
- (f) Public Trust Lands. Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.
- (g) Beaches. Measure 300 feet landward from the inland extent of the beach. The back beach, or dry beach, if it exists, shall be included. The inland extent of the beach shall be determined as follows:
 - (1) from a distinct linear feature (e.g., a seawall, road, or bluff, etc.);
 - (2) from the inland edge of the further inland beach berm as determined from historical surveys, aerial photographs, and other records or geological evidence; or
 - (3) where a beach berm does not exist, from the further point separating the dynamic portion of the beach from the inland area as distinguished by vegetation, debris or other geological or historical evidence.
- (h) Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean:
 - (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and
 - (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

- (i) First Public Road Paralleling the Sea.
 - (1) The "first public road paralleling the sea" means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:
 - (A) is lawfully open to uninterrupted public use and is suitable for such use;
 - (B) is publicly maintained;
 - (C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;
 - (D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and
 - (E) does in fact connect with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

(2) Whenever no public road can be designated which conforms to all provisions of (i)(1) above, and a public road does exist, which conforms to all provisions of (i)(1) except (i)(1)(v), the effect of designating the first public road paralleling the sea shall be limited to

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the following:

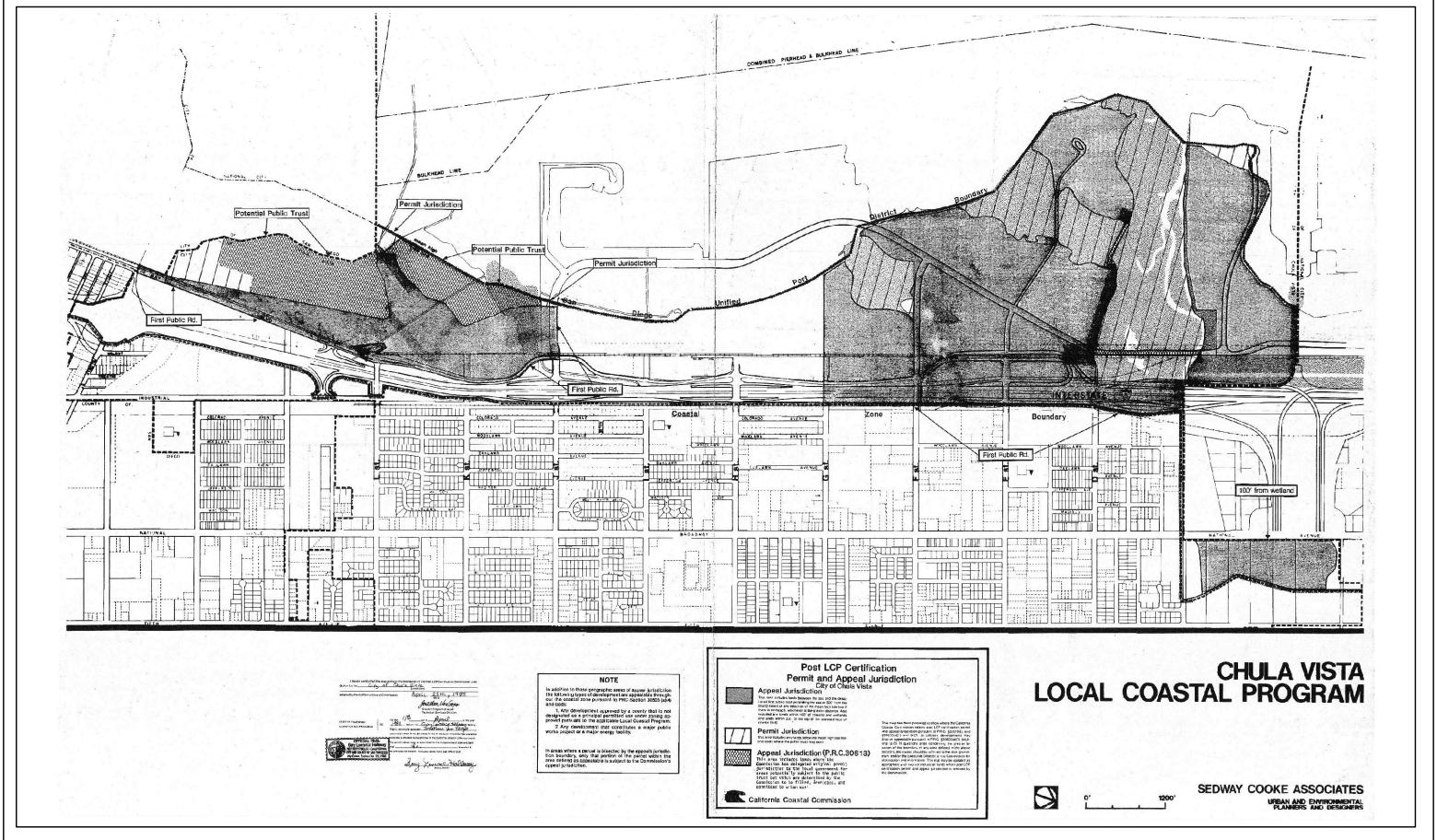
- (A) all parcels between the Pacific Ocean and such other public road; and
- (B) those parcels immediately adjacent of the sea inland of such other public road.
- (3) Where the Commission determines that the designation of the "first public road paralleling the sea" results in the inclusion of areas within the permit and appeal jurisdiction where the grounds for an appeal set forth in Public Resources Code Section 30603(b) are not an issue, the Commission may take action to limit the geographic area where developments approved by a local government may be appealed to the Commission, to that area where any such grounds are, in fact, an issue.

Exhibit 1- San Diego County Location Map



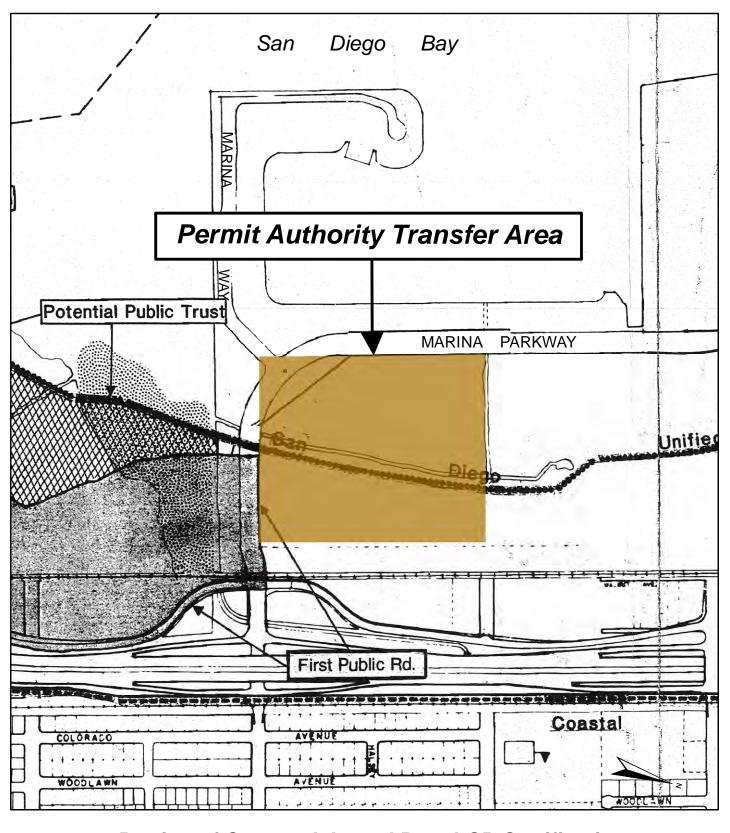


Exhibit 1 - MA-2015-001



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Portion of Current Adopted Post-LCP Certification Permit and Appeal Jurisdiction Map City of Chula Vista



DRAFT MA-2015-001 Exhibit 3