

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



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Fr 7a

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-80

Applicant: California Department of Parks and Recreation Agent: Paul Webb

Description: Allow non-exclusive use of up to 80 parking spaces within public beach parking lot by adjacent restaurants from 6:00 p.m. to sunset and exclusive use of the entire lot by adjacent restaurants from sunset until 11:00 p.m. nightly for a three (3) year period.

Site: Cardiff State Beach Parking Lot located on the west side of Highway 101, just south of San Elijo Avenue, Cardiff, Encinitas, San Diego County. APN 261-190-10

Substantive File Documents: Certified City of Encinitas Local Coastal Program (LCP); CDP Nos. 6-84-563/California Department of Parks and Recreation, 6-94-68/California Department of Parks and Recreation and 6-83-21/Plastino.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed development subject to several special conditions. The primary concern is that approval of the development as proposed will limit access to the beach after sunset by closing off the parking lot to public users at that time. Therefore, staff has recommended a special condition which requires that the parking lot entrance remain open to the public until at least one hour after sunset and that any public cars that remain in the lot after the entrance is closed, be allowed to stay until 11:00 p.m. when all operations of the parking lot cease. With this condition, the Commission can be assured that the development will not adversely impact continued use by the public of the beach parking lot, nor limit the ability of the public to access the water in this location.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Permitted Development. This permit is for non-exclusive use of up to 80 parking spaces within the Cardiff State Beach public parking lot by adjacent restaurant(s) from 6:00 p.m. until one hour after sunset and for exclusive use of the entire lot by the adjacent restaurants up to 11:00 p.m. nightly. The parking lot shall remain open to the public until at least one hour after sunset each night (for the purposes of this permit "sunset" is defined as the published sunset time in the San Diego Union-Tribune newspaper). Any cars parked by the general public in the lot when the lot is closed to the general public will be permitted to remain until 11:00 p.m. Cars parked in the lot by the restaurant valet service shall first utilize the parking spaces on the eastern side of the parking lot. "Non-exclusive use of 80 spaces" means the restaurants cannot prevent the public from using any particular spaces. Signage, cones or other demarcations denoting exclusive use of any portion of the parking lot are not permitted. Any other development at this parking lot, such as a change in hours of operation of the parking lot or increase in the number of valet parking spaces, shall require a coastal development permit, or an amendment to this permit in accordance with the Coastal Act and its implementing regulations.

2. Duration of Development. This permit authorizes the permitted development for a three-year period commencing from the date the Commission approves this permit. The permitted non-exclusive valet use of 80 parking spaces from 6:00 p.m. to one hour after sunset and then the exclusive valet use of the entire lot until 11:00 p.m. nightly by the adjacent restaurants must cease on January 10, 2000, unless the applicant has obtained an amendment to this permit or a separate coastal development permit to allow the use to continue.

3. Final Monitoring Program. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a final monitoring program outlining the methods by which the proposed valet program will be implemented, enforced, and monitored. Said program shall document the number of empty spaces in the parking lot at 6:00 p.m., prior to any valet parking, and, the number of spaces used by valets and the number of empty spaces in the lot at sunset and one hour after sunset on two Saturdays and two Sundays each month, and on holidays. Said monitoring program shall take place between Memorial Day weekend and through Labor Day and shall be submitted to the Commission no later than December 31 of each year and, prior to any permit request to continue the valet operation or increase the number of parking spaces above the herein approved 80 spaces. The applicant shall conduct monitoring consistent with the approved monitoring program.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The subject development involves a proposal to allow use of a public beach parking lot by adjacent restaurant(s) for a three-year period. The applicant proposes to allow a valet service for the adjacent restaurant(s) to park up to a maximum of 80 cars in the parking lot on a first come first serve basis from 6:00 p.m. to sunset each night. Then, at sunset, the applicant proposes the beach parking lot be closed to the public and only valet parked cars for the adjacent restaurants be permitted to utilize the lot until 11:00 p.m. The applicant has also proposed to monitor the use of the lot during certain weekends and holidays during the summer months and report the results of the monitoring to the Commission each year.

The subject site is located at the Cardiff State Beach public parking lot located on the west side of Highway 101, just south of the San Elijo State Park Campground in the City of Encinitas. Surrounding uses include three restaurants to the south of the subject site, several restaurants and commercial and office use to the east across Highway 101, the mouth of San Elijo Lagoon and San Elijo State Campground to the north and Cardiff State Beach and the Pacific Ocean to the west.

In January of 1985, the Commission approved a permit for the reconstruction/rehabilitation of the existing beach parking lot that included repaving and restriping the parking lot to accommodate 105 parking spaces, construction of a new comfort station, showers and a contact station (kiosk) for fee collection (ref. CDP #6-84-563/California Department of Parks and Recreation). This application was approved by the Commission with special conditions relating to timing of work and the standard waiver of liability.

Subsequently, in June of 1994, the Commission approved a request by State Parks to allow up to 40 parking spaces in the Cardiff State Beach Parking Lot to be used non-exclusively by a valet service to park cars for the adjacent restaurants from 6:00 p.m. to 11:00 p.m. nightly (ref. CDP #6-94-68). The

proposal by State Parks approved under that permit also included a provision which would allow any non-valet parked cars in the lot at the sunset closing of the lot entrance to remain in the lot until 11:00 p.m., at which time all use of the parking lot would cease. The permit was approved by the Commission with a condition which limited the duration of the development to two years. This limitation was placed on the permit to ensure that the Commission would have the opportunity to review the project in the future, taking into consideration any significant change in circumstances and/or documented use patterns, to determine if the use of the public parking lot by the restaurants is still appropriate and consistent with the Coastal Act. In addition, the condition stated that if the applicant wished to continue to use the beach parking lot for restaurant parking beyond the approved two years, or at any time additional parking spaces were proposed, a new coastal development permit or amendment to CDP #6-94-68 was required.

A coastal development permit is required because use of the public beach parking lot for valet parking for adjacent restaurants represents a change in the intensity of access to the ocean. Because the previous two year permit expired in June of 1996 the applicant now wishes to obtain a new permit to allow use of the beach parking lot by the adjacent restaurants and increase the number of parking spaces which could be used by the valet service from 40 to 80 from 6:00 p.m. to sunset and to 105 (the entire parking lot) after sunset.

The subject site is located on State Parks property and is not subject to local review by the City of Encinitas. In addition, even though the City of Encinitas has a certified LCP, the subject site is within the Commission's area of original jurisdiction. Therefore, the standard of review is Chapter 3 policies of the Coastal Act with the City's LCP used as guidance.

2. Parking/Public Access. Section 30604 (c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

In addition, Section 30210 of the Coastal Act is applicable and states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Additionally, Section 30212 of the Coastal Act is applicable and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,...

The project site is the public beach parking lot for Cardiff State Beach located between the first public road and the sea, along Highway 101 in the Cardiff community of Encinitas. Highway 101 in this area is designated in the City of Encinitas certified Local Coastal Program (LCP) as a major coastal access route and scenic corridor. This portion of the coast highway is generally referred to as "Restaurant Row" and is characterized by restaurants, offices, and visitor-serving shops. Construction of and additions to the majority of the commercial uses in the area were approved by the Commission with on-site parking which, at the time, was considered to be adequate. However, as the popularity of this area has grown, the competing demand for beach and restaurant parking during peak beach use hours has become a critical issue. As such, the subject development is proposed as one potential means to help alleviate this problem. In addition, with the exception of a relatively small vacant dirt area located several lots south of the subject site, which is currently used as informal parking for beach and restaurant visitors, no remaining (non-public) sites are available in this area to provide additional parking to serve the existing restaurant uses.

Cardiff State Beach, which provides the only formal day-use facilities for beach visitors between Sea Cliff County Park (approximately 1.5 miles to the north), and Fletcher Cove (about 1.5 miles to the south), serves as an important recreational resource of region-wide importance. In the certified City of Encinitas LCP, Cardiff State Beach in this location is designated as a "high intensity beach recreational use area". In addition, the LCP states that the City will work with State Parks to improve public access to this beach. Thus, as the popularity of San Diego's north coast as both a population center and as a visitor destination continues to increase, and, as more beach visitors choose north county beaches as destinations for recreational use, the conflicts between commercial and beach visitor use for parking will grow apace. As such, use of a public beach parking lot for "private" use will adversely affect the public's ability to access this public recreational beach.

Currently two State parking lots serve Cardiff State Beach; the north parking lot, which is the subject of this permit application, contains 105 parking spaces, and provides restrooms, showers, etc. The south parking lot, which is located approximately three-fourths of a mile south of the north lot and provides parking for 520 cars, currently does not have available any bathroom or other typical day-use facilities. Currently, only the north lot charges a day use fee due to the lack of completed facilities at the South Cardiff State Beach Lot. In addition, across Highway 101 to the east of the North Cardiff

State Beach Parking Lot there is an office building that was approved for construction by the Commission in 1983 (ref. CDP #6-83-21/Plastino). As part of the approval of the building by the Commission, the 54 parking spaces that serve the office building were required to be made available to the public after business hours (5:00 p.m. to 3:00 a.m. Monday through Friday and 8:00 a.m. to 3:00 a.m. on Saturday, Sunday and holidays). This requirement was memorialized in a recorded deed restriction which also states that none of the spaces could be leased to any other private use. Of these three lots which offer public parking, the north Cardiff State Beach Parking Lot is the only lot which offers day-use facilities and also offers the most direct access to the beach. A majority of the beach population is also currently directed to the North Cardiff Beach due to the good surf break and the lack of sand at South Cardiff.

The subject permit request is identical to that approved by the Commission in the previous permit, with two exceptions: the applicant now has requested use of an additional 40 parking spaces for a total of 80 spaces in the public beach parking lot and, has changed the proposal to provide that any public cars that are parked in the lot at sunset, will no longer be allowed to remain to 11:00 p.m., but will be required to leave the lot at sunset. Specifically, the subject proposal is to allow a valet service for the adjacent restaurants to utilize up to 80 parking spaces within the North Cardiff State Beach parking lot beginning at 6:00 p.m. nightly. As proposed, the valet service for the adjacent restaurants would begin parking cars in the lot at 6:00 p.m., utilizing up to a maximum of 80 spaces, as spaces become available on a first come first serve basis. No particular spaces or area of the parking lot would be assigned for exclusive use and the public would continue to use the parking lot as it has already until its sunset closing. After sunset, the valet service would close the lot entrance and then only patrons of the restaurants (utilizing the valet service) would be permitted entrance to the lot and any non-valet parked cars that are in the parking lot when the entrance is closed, would have to leave.

During review of the previous permit by the Commission, several local residents who frequently used this parking lot raised concerns with the project, specifically pertaining to State Parks sunset closing of the parking lot. Letters submitted to the Commission indicated that although a sign posted at the entrance to the parking lot stated that it closed at sunset, this very seldom occurred. Instead, the parking lot was sometimes not closed until as late as 11:00 p.m. and, with approval of the permit, the valet service would be closing the lot exactly at sunset, thereby eliminating any "informal" use of the lot by the public after sunset. The applicant's response to this concern was that because of minimal use of the lot by the public after sunset, especially during the winter months, the closing hours of the parking lot were changed from an 11:00 p.m. to sunset in late 1993. In addition, since that time, due to other duties and unforeseen circumstances, park rangers are not always able to be at and close the lot right at sunset. However, it was because of these concerns, that State Parks proposed in their previous permit request to allow any public cars in the lot at sunset to remain until 11:00 p.m. At the time, the Commission thought that this parking lot had always had a sunset closing time, but that State Parks did not

regularly enforce this closure time. As such, the Commission found in the previous permit that the proposed valet parking would have minimal impacts on public access.

While the applicant has indicated that the parking lot hours have now been changed from an 11:00 p.m. to a sunset closing, such a change has not been reviewed or approved by the Coastal Commission. The change in hours of operation of a public beach parking lot represent a change in the intensity of access to the ocean and as such, requires review and approval by the Coastal Commission. Approval of this permit does not authorize the change in closing hours of the parking lot, except to the extent that it allows exclusive use of the lot by the restaurants one hour after sunset each night for a three year period.

When the Commission approved the previous permit for use of the lot by the valet service, it was for non-exclusive use of a maximum of 40 parking spaces from 6:00 p.m. to 11:00 p.m. for a specified two-year term. Given that the proposal by State Parks was to allow members of the public to remain in the lot after the lot entrance was closed (up to 11:00 p.m.), the Commission was able to find the proposal consistent with Coastal Act policies because the proposal mitigated the potential adverse effect of competition between the public and private use. Also, only a small number of the total spaces in the lot (less than 40%) were going to be utilized by the valet service (on an available basis only) and as such, use of the parking lot by beach users would not be adversely affected.

However, as noted above, the current proposal is to increase the number of parking spaces for use by the valet service from 40 parking spaces to 80. In addition, the applicant proposes to close the lot to the general public at sunset. Thus, as proposed, between 6:00 p.m. and sunset, 80 of the 105 parking spaces in the lot can be used by the adjacent restaurants and after sunset, no spaces would be available to the public. During the late fall, winter and early spring months, such a proposal does not raise a serious conflict because sunset occurs prior to or just after 6:00 p.m. and beach use, especially in the evening hours, is generally less during these months. However, during the summer months, beach use is at its peak and sunset occurs much later (8:00 p.m. or later). Thus, by closing the parking lot at sunset, public beach users would be forced to leave the parking lot and park elsewhere to further enjoy an evening at the beach. This reduction in the time that parking is available to the public, is inconsistent with Coastal Act Section 30210.

As such, Special Condition #1 has been attached. This condition limits use of the parking lot by the valet service for the restaurants to non-exclusive use of up to a maximum of 80 parking spaces from 6:00 p.m. to at least one hour after sunset and then allows exclusive use of the parking lot from that time until 11:00 p.m. (for the purposes of this permit "sunset" is defined as the published sunset time in the San Diego Union-Tribune newspaper). The condition further states that any cars parked by the general public in the lot when the lot is closed will be permitted to remain until 11:00 p.m. when all operation of the parking lot ceases. This recommendation is consistent with the typical operation of other public beach parking lots in San Diego County.

While this condition will allow exclusive use by the restaurants of the parking lot from one hour after sunset until 11:00 p.m. each night, it is only for a three year period and, the Commission has found that such exclusive use during these hours will have minimal, if any, adverse impacts on public beach access. Again, use of the beach in the late evening hours by the public is minimal, especially in the late fall, winter and early spring months. In addition, anyone wishing to spend an evening at the beach at this location only needs to enter the lot prior to one hour before sunset; they can then remain in the lot, even after it is closed, until 11:00 p.m.

Because public use of this parking lot in the evening hours is presumably to visit the beach and watch the sunset, stroll, etc..., such public visitors should be given the most beach accessible spaces within the lot. To address this concern, Special Condition #1 also requires that cars parked in the lot by the restaurant valet service first utilize the parking spaces on the eastern side of the parking lot. With this condition, continued use of this beach parking lot by the public will not be adversely affected.

When the Commission approved the original permit for use of 40 spaces in 1994, it was limited to a two year period. The reason for such a limitation by the Commission was that, although use of the 40 spaces was not a problem at that time, circumstances may change in the future that could result in the use of the 40 spaces by the restaurants becoming a problem. In the case of the proposed development, the parking lot only holds 105 parking spaces. As such, the subject proposal to increase the number of spaces utilized by the valet service for the restaurants from 40 to 80, restaurant patrons could occupy almost two-thirds of the public beach parking lot during a time when the parking lot is still open and available to the general public. However, use of the spaces by both the public and the restaurant patrons is on a first come, first serve basis. In addition, many of the patrons of the restaurants may also visit the beach either before or after their meal. Additionally, at this time, usage figures for the parking lot are not available.

However, it is recognized that circumstances could change in the future which result in increased demand for use of this parking lot by the public to access the beach. Therefore, the applicant has proposed to limit the permit to 3 years and to monitor the parking lot during this period, with the results of that monitoring reported to the Commission. Special Condition Nos. 2 and 3 have been attached to reiterate and further define the applicants proposal. Specifically, Special Condition #2 limits the duration of the permit to a three year period from the date of on Commission action.

Special Condition #3 requires submittal of a final monitoring program which would outline the methods by which the proposed valet program will be implemented, enforced, and monitored. The monitoring program will be conducted on two weekends and holidays each month during the summer and be used to determine the use of the parking lot by the general public at 6:00 p.m. and, the number of spaces used by valets and the number of empty spaces in the lot at sunset and one hour after sunset. The monitoring data will be submitted to the Commission annually and can be used in review of any subsequent permit or amendment requests to determine any impacts the valet parking may have on the public's ability to park in this beach lot.

The Coastal Act requires that existing public access opportunities be protected and enhanced when possible. Given the proposed conditions, the subject proposal does not represent a decrease in the public's ability to use and gain access to the shoreline in this location. In addition, this permit does not address the issue of the permanent change of hours of operation of the parking lot, which will be pursued as a separate action. Approval of this permit will not prejudice any subsequent Commission action addressing the change in hours of operation of the parking lot. Therefore, the Commission finds the proposed development, as conditioned, consistent with the public access policies of the Coastal Act.

3. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

As stated, the subject site is located just south of the mouth of San Elijo Lagoon, west of Highway 101 in the Cardiff community of Encinitas. The proposed development, although within the boundaries of the City of Encinitas, is within the jurisdiction of the California Department of Parks and Recreation and does not require review or approval from the City. In addition, in November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit issuing authority was transferred to the City. Although the subject site is on State Parks property, it does fall within the Commission's area of original jurisdiction. As such, the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

As noted earlier in this report, there is a documented deficiency in off-street parking to accommodate the existing businesses in the area surrounding the subject site, commonly referred to as "restaurant row". In addition, except for a one vacant parcel south of the subject site, there are no remaining sites in the area to provide additional restaurant parking. As such, conflicts between beach users and business patrons is a continuing problem. The proposed development may help to alleviate such conflicts. However, use of the valet service, as approved in this permit, should not be considered as on-site parking for surrounding restaurants or be utilized to accommodate expansions of such uses.

As conditioned, the Commission finds the proposed development consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development, as conditioned, will not adversely affect the City's continued implementation of its certified LCP.

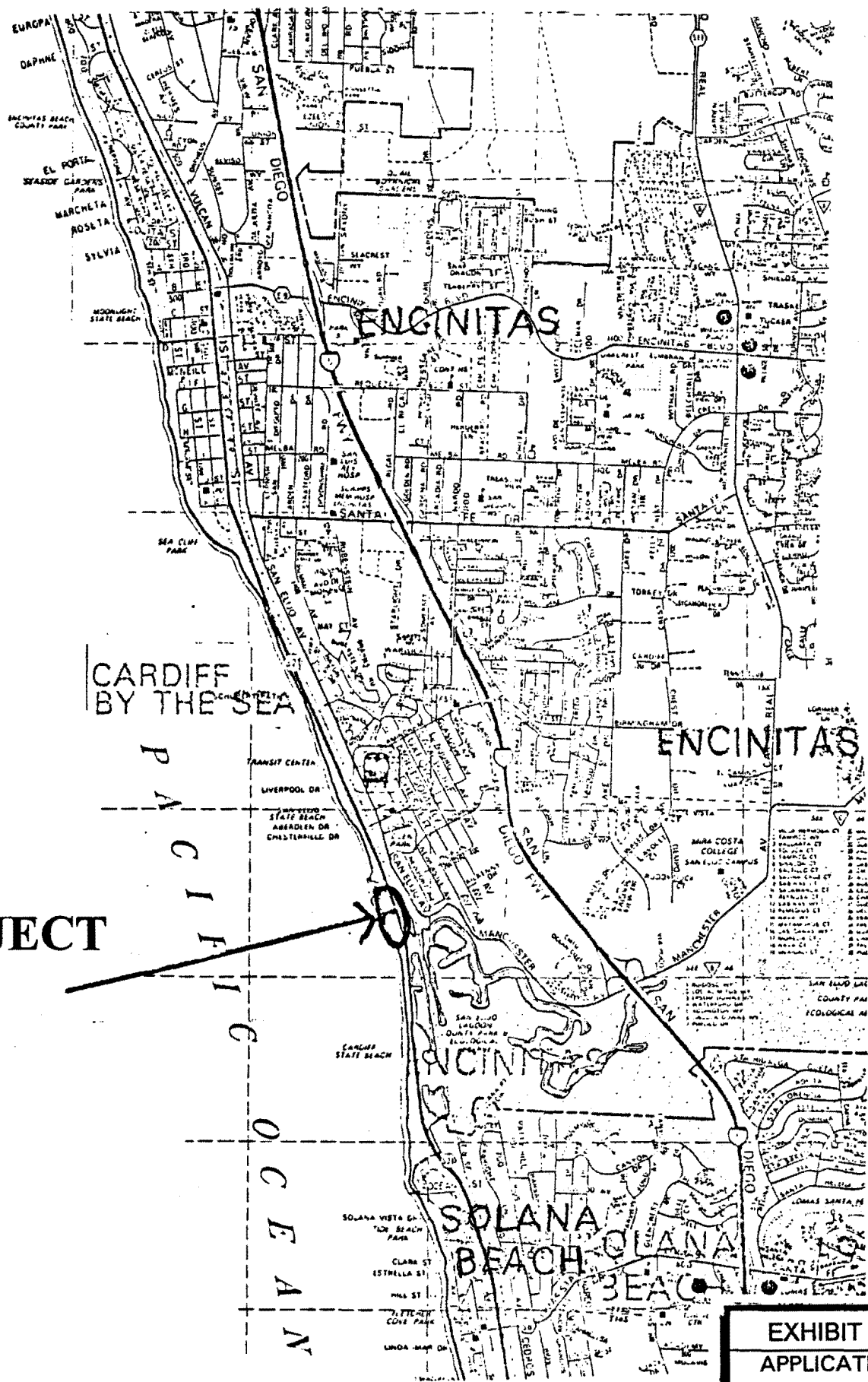
4. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be

consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.


As discussed herein, the proposed project, as conditioned to require the lot to remain open to the public, the proposed development will not cause significant adverse impacts to the environment. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the proposed activity may have on the environment. Therefore, the Commission finds the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



**SUBJECT
SITE**

EXHIBIT NO. 1
APPLICATION NO.
6-96-80
Location Map
 California Coastal Commission

**MOUTH OF SAN ELIJO
LAGOON**

PACIFIC OCEAN

NORTH CARDIFF STATE PARK

**CONTACT STATION
(KIOSK)**

**105 PARKING
SPACES**

RESTAURANTS

HIGHWAY 101 COMFORT STATION

*turn
Around*

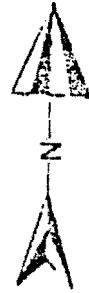
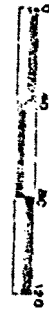


EXHIBIT NO. 2
APPLICATION NO.
6-96-80
Site Plan

 **California Coastal Commission**