

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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Long Beach, CA 90802-4302  
(562) 590-5071

Filed: October 7, 1997  
49th Day: November 25, 1997  
180th Day: April 5, 1998  
Staff: John T. Auyong *John*  
Staff Report: October 16, 1997  
Hearing Date: November 4-7, 1997  
Commission Action:



RECORD PACKET COPY

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 5-94-036-A1

APPLICANT: Tim, Liza, and Lydia Goodell

AGENT: Michael Patrick Porter

PROJECT LOCATION: 508 29th Street, City of Newport Beach, Orange County

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:**

Conversion, and expansion by 336 square feet, of an existing 1185 square foot vacant commercial structure to a restaurant with 442 square feet of public service area.

**DESCRIPTION OF AMENDMENT:**

Expansion of the existing restaurant by 368 square feet of public service area (new total of 810 square feet of public service area), paving and striping the vacant portion of the off-site parking location to provide an additional 11 off-site parking spaces, merger of the two lots comprising the off-site parking location, and limiting the hours of operation of the restaurant to 5:00 p.m. to 11:00 p.m., Mondays through Fridays (no change to Saturday and Sunday hours of operation).

**LOCAL APPROVALS RECEIVED:**

1. City of Newport Beach Use Permit 3611
2. City of Newport Beach Approval-in-Concept 1519-97

**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Newport Beach certified land use plan
2. Coastal Development Permit 5-94-036 (Goodell/Beattie)

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,

2) Objection is made to the Executive Director's determination of immateriality, or

3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

In the case of the subject application, the Executive Director determines that the proposed amendment would affect conditions regarding parking which are required for the purpose of protecting coastal access. Therefore, the Executive Director has determined that the proposed amendment is material.

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SUMMARY OF STAFF RECOMMENDATION - ISSUES TO BE RESOLVED:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act. The applicant has not expressed disagreement or agreement with the recommended special conditions of approval nor raised any issues to be resolved at this point. However, the recommended special conditions are modifications of the previously imposed special conditions which reflect the proposed project changes. The applicant is proposing the expansion of an existing off-site parking area required by the Commission's approval of the original permit. The subject restaurant site and the off-site parking location both currently have a deed restriction or a lease restriction imposed by the Commission. This permit amendment would require amendments to the previously recorded restrictions, or new recorded restrictions, to reflect the changes to the proposed project.

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I. Staff Recommendation

Staff recommends that the Commission adopt the following resolution:

Approval with Conditions

The Commission hereby grants an amendment to permit 5-94-036 for the proposed development, subject to the conditions below, on the grounds that, as conditioned, 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

All previously imposed standard conditions of approval remain in effect and are not changed by this permit amendment.

### III. Special Conditions

[Note: - The previously imposed special conditions of approval shall be modified to reflect; (1) the additional off-site parking spaces required by the proposed restaurant expansion, (2) the change in hours of operation, and (3) the merger of the two lots constituting the proposed off-site parking location. Additions of text are shown in underline, and deletions of text are shown in ~~deletions~~.]

Prior to issuance of the amendment to the Coastal Development Permit, the applicant shall comply with the following conditions of approval:

#### 1. Off-Site Parking Inventory

The applicant shall submit a plan which identifies the location of the ~~thirteen~~ thirteen (13) off-site parking spaces and an inventory of all other parking spaces which are leased or rented to other persons or parties in the subject parking lot where the off-site parking spaces will be located, and shall demonstrate that the ~~thirteen~~ 13 required off-site parking spaces which serve the approved restaurant at 508 29th Street in the City of Newport Beach are not leased, used or otherwise reserved for use by any other person or party. If the subject 13 off-site parking spaces are leased, used, or otherwise reserved for use by any other person or party other than the permittee during times when the subject restaurant is open for business, the permittee shall secure 13 off-site parking spaces at another location for exclusive use by the permittee prior to the permittee's loss of exclusive use of the subject 13 off-site parking spaces. Any development at the alternative off-site parking location necessary to provide 13 parking spaces shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

#### 2. Deed Restriction on the Restaurant Site

The applicant as landowner shall record a deed restriction, free of prior liens and encumbrances except for tax liens, for the property on which the proposed development will located at 508 29th Street in the City of Newport Beach. The deed restriction shall be subject to the review and approval of the Executive Director, and shall run with the land, binding all successors and assigns of the applicant. The deed restriction shall provide that three (3) on-site parking spaces and a minimum of thirteen (13) off-site parking spaces shall be provided within a maximum of five hundred feet of 508 29th Street in the City of Newport Beach to serve the parking demand of the approved restaurant at 508 29th Street in the City of Newport Beach.

#### 3. Off-Site Parking Lease or Deed Restriction

If the applicant is not the owner of the property on which the required ~~thirteen~~ thirteen (13) off-site parking spaces will be located, the applicant shall record a lease restriction, subject to the review and approval of the Executive Director, for the property on which the ~~thirteen~~ 13 required off-site parking spaces are located. Should the applicant be

the owner on which the required off-site parking spaces will be located, the applicant shall record a deed restriction for the property on which the thirteen (13) required off-site parking spaces are located. The lease restriction or deed restriction shall be recorded free of prior liens and encumbrances except for tax liens, and shall bind all successors and assigns of the applicant and landowner. The lease restriction or deed restriction shall provide that a minimum of thirteen (13) parking spaces shall be provided on said property to serve the parking demand of the approved restaurant at 508 29th Street in the City of Newport Beach. Prior to recordation of said lease or deed restriction, the applicant shall submit, for review and approval by the Executive Director, written evidence of recordation of the final approved City of Newport Beach Lot-Line Adjustment for the merger of the two lots comprising the selected off-site parking location at 2810 Villa Way in the City of Newport Beach. The lease or deed restriction shall be recorded against the entire off-site parking lot after the lot merger is recorded.

#### 4. Off-Site Signage Plans

The applicant shall submit revised plans, subject to the review and approval of the Executive Director, for signage located at the site of the thirteen (13) off-site parking spaces required for the approved restaurant at 508 29th Street in the City of Newport Beach. The revised plans shall indicate the proposed locations of the signs at the off-site parking lot. The revised plans shall also indicate the dimensions and wording of the proposed signs. The wording of the signs shall indicate that the off-site parking spaces are reserved for the exclusive use of patrons and/or employees of the approved restaurant located at 508 29th Street in the City of Newport Beach. The permittee shall implement and comply with the signage plans approved by the Executive Director.

#### 5. Revised On-Site Plans

The applicant shall submit revised plans, subject to the review and approval of the Executive Director, for signage located at the site of the approved restaurant at 508 29th Street in the City of Newport Beach. The revised plans shall indicate the proposed locations of the signs on the site. The revised plans shall also indicate the dimensions and wording of the proposed signs. The wording of the signs shall direct patrons of the approved restaurant to the location of the required thirteen (13) off-site parking spaces. As required by the City of Newport Beach, the revised plans shall show that: 1.) parking spaces #1 and #2 shown on the plans submitted have been reversed, 2.) designate revised parking space #1 (non-handicap) as employee-only parking, and 3.) a sign shall be posted at new parking space #1 which indicates that it is for employees only. The permittee shall implement and comply with the signage plans approved by the Executive Director.

### III. Findings and Declarations

#### A. Amendment Description

The applicant is proposing to expand the public service area of an existing restaurant. The proposed expansion would consist of 368 square feet of public service area. The total proposed public service area would be 810 square feet. The proposed expansion would result in the loss of three (3) of the six (6) existing on-site parking spaces, leaving three (3) on-site spaces (one of which would be a handicap space and one of which would be an employee space, as required by the City of Newport Beach).

The applicant is also proposing to expand the number of existing off-site parking spaces by eleven (11) spaces for a total of fourteen (14) off-site spaces, including three (3) existing off-site spaces. Therefore, the applicant is providing one (1) additional off-site space above the required thirteen (13) off-site spaces (see Section C.). The restaurant site, which is owned by the applicants, is separated from the off-site parking location (which is not owned by the applicants) by a pre-Coastal commercial building located directly across the alley from the restaurant (see Exhibits B and C). Other than the 3 existing parking spaces, the off-site parking lot is vacant and unimproved.

The 11 additional off-site parking spaces would be provided by paving and striping the unused vacant area of the existing off-site location. Further, the applicant is proposing a merger of the two lots which constitute the proposed off-site parking area, as required by the City of Newport Beach. Currently, the 3 existing off-site parking spaces are located only on one of the lots. The 14 off-site spaces and the 3 on-site spaces would result in a total of 17 spaces for the proposed development.

The applicant is also proposing to limit the weekday hours of operation of the proposed restaurant to 5:00 p.m. to 11:00 p.m. Monday through Friday, as required by the City of Newport Beach. The previous proposal was from 6:00 a.m. to 11:00 p.m. during the week. The restaurant will continue to be open from 6:00 a.m. to 11:00 p.m. on Saturdays and Sundays.

#### B. Previous Coastal Commission Approvals

The Commission approved coastal development permit 5-94-036 with special conditions. The approved development consisted of the conversion, and expansion by 336 square feet, of an existing 1185 square foot vacant commercial structure to a restaurant with 442 square feet of public service area. The special conditions required signage and the recordation of deed restrictions for the off-site parking.

Prior to its conversion for restaurant use, the existing structure was previously modified in the 1970's. The modification was approved without conditions by coastal development permit A-76-7286. That previous permit approved the demolition of an existing shed and the expansion and conversion of an existing single-family residence to commercial space.

### C. Public Access - Parking

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities . . .

The subject site is located in the Cannery Village area of the Central Balboa Peninsula. This is an area that is historically popular with the beach-going public. Several restaurants, visitor-serving retail areas, and the Newport municipal pier are located in close proximity to the subject site. The proposed development would expand the public service area of an existing restaurant, thus increasing the parking demand of the existing restaurant.

When a development does not provide adequate on-site parking, users of that development who cannot find an on-site parking space are forced to occupy public parking that could be used by visitors to the coastal zone. A lack of public parking discourages visitors from coming to the beach and other visitor-serving areas, resulting in adverse public access impacts. Thus, all development must provide adequate on-site parking, or off-site parking reserved specifically for the development, to minimize adverse impacts on public access.

In past Commission actions, the Commission has routinely used specific parking standards, particularly in the area of the proposed development. In approving the original permit 5-94-036, the Commission used its regularly employed restaurant parking standard of one parking space per every fifty (50) square feet of public service area. Public service area is area where the public can eat or wait to eat. This would include the dining area as well as lobby/reception area, and cocktail lounge/bar area. Public service area does not include kitchen or storage area, or bathrooms.

The proposed development would result in the expansion of the previously approved restaurant by 368 square feet of public service area. The new total of public service area would be 810 square feet. Based on the Commission's regularly used standard of one parking space per fifty (50) square feet of public service area, the proposed expanded restaurant would require a total of sixteen (16) parking spaces.

The proposed development would result in the loss of 3 on-site parking spaces which were part of the original development (6 original spaces minus 3 spaces being deleted for the expansion). Therefore, the proposed development would be deficient by 13 on-site parking spaces (16 spaces required minus 3 on-site spaces provided). However, the proposed development also includes an additional eleven (11) off-site parking spaces at the location of the 3 existing off-site parking spaces, for a new total of 14 off-site parking spaces.

Therefore, with the 3 on-site spaces and the proposed total of 14 off-site parking spaces, the proposed development would have 17 parking spaces. The Commission previously approved the proposed off-site parking location as part

of its approval of the original permit which is the subject of this amendment application. Thus, the proposed development would provide adequate parking to meet its parking demand of 16 spaces.

To ensure that the off-site parking is readily available, the previously imposed special conditions of approval must remain in effect. These special conditions included requirements for signage to inform patrons of the restaurant of the location of the off-site parking. The conditions also required signage at the off-site parking location indicating that the off-site parking spaces are for the use of the subject restaurant. The special conditions of approval also required lease and deed restrictions at the restaurant location and the off-site parking location to put the permittee, the current owner of the off-site parking location, and future owners of both properties, of the off-site parking arrangement.

However, the special conditions of approval must be modified to reflect the proposed amendment. The applicant is proposing as part of this amendment to merge the two lots constituting the proposed off-site parking location, as required by the City. The condition requiring a lease or deed restriction for the off-site parking location is being modified to reflect the proposed lot merger. The proposed lot merger would also serve to tie together the off-site parking spaces.

The amendment proposal also involves a change in hours of operation of the subject restaurant. The hours of operation during the week (Mondays through Fridays) would be limited to 5:00 p.m. to 11:00 p.m. Therefore, the off-site parking spaces would not be used by the restaurant during daytime hours during the week. The City is requiring the applicant to make its proposed off-site parking spaces available for use by the pre-Coastal commercial building adjacent to the off-site parking lot before 5:00 p.m. during the week. The applicant indicates that the pre-Coastal building does not have any parking. No adverse public access impacts would result if the applicant's parking spaces are used by other parties, such as the pre-Coastal building, during times when the subject restaurant is closed.

However, when the restaurant is open, the off-site parking spaces will be needed to satisfy its parking demand. Adverse public access impacts would result if other businesses were to use the restaurant's parking while the restaurant is open. Therefore, the special conditions of approval are being modified to require that, prior to the applicant losing exclusive use of the proposed off-site parking spaces, the applicant shall secure replacement parking at another location. Further, if any development (such as paving of unimproved area) is needed at the alternative location to provide the required off-site parking, an amendment to this permit or a new coastal development permit would be required. This would allow the Commission to review the any adverse impacts which may result from the development.

The City is also requiring the applicant to switch the location of the on-site handicap parking space and the nearest adjacent standard space. This is to ensure handicap accessibility to the handicap space. However, such a switch would result in the standard space being in a tandem situation. Therefore, the City is requiring that this tandem space be designated for employee

parking only. Thus, the Commission finds that conditions must be imposed requiring the submission of revised plans reflecting the City-required switch of the location of these two spaces and the designation of the standard parking space for employee parking.

The special conditions of approval are also being modified to reflect the addition in the number of off-site parking spaces. While the applicant is providing a total of 14 off-site parking spaces, the proposed development only requires 13 off-site parking spaces to satisfy the development's parking demand. Therefore, the special conditions indicate that only 13 off-site parking spaces are required. As conditioned, the Commission finds that the proposed development with the proposed amendment is consistent with Section 30252 of the Coastal Act.

#### D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a local coastal program ("LCP") which conforms with the Chapter Three policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was originally certified on May 19, 1982. The proposed restaurant is consistent with the "Retail and Service Commercial/Industrial" land use designation in the LUP. As conditioned, the proposed development with the proposed amendment is consistent with the public access policies regarding parking of Chapter Three of the Coastal Act. Therefore, the Commission finds that approval of the proposed amendment, as conditioned, would not prejudice the City's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act.

#### E. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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.

The proposed development is located in an urban area. Development already exists on the subject site. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the parking policies of Chapter Three of the Coastal Act. Mitigation measures requiring signage and deed restrictions to ensure provision of adequate parking and use of said parking, will minimize all significant adverse impacts.

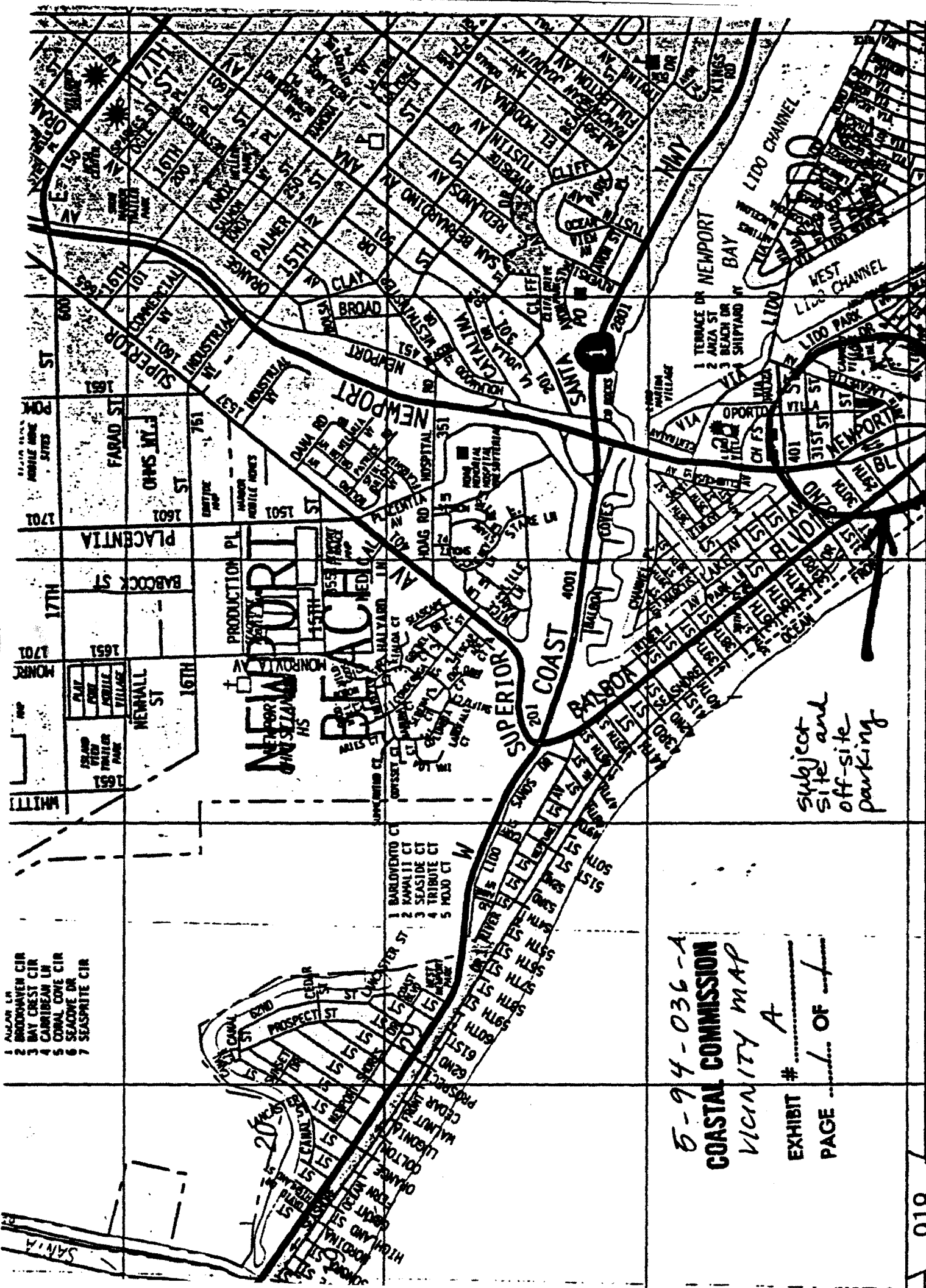
As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the



Commission finds that the proposed project with the proposed amendment, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

9550F:jta

- 1 ALVAR LN
- 2 BROADWAY CIR
- 3 BAY CREST CIR
- 4 CARRIBEAN LN
- 5 CORAL COVE CIR
- 6 SEAOVE DR
- 7 SEASPRITE CIR

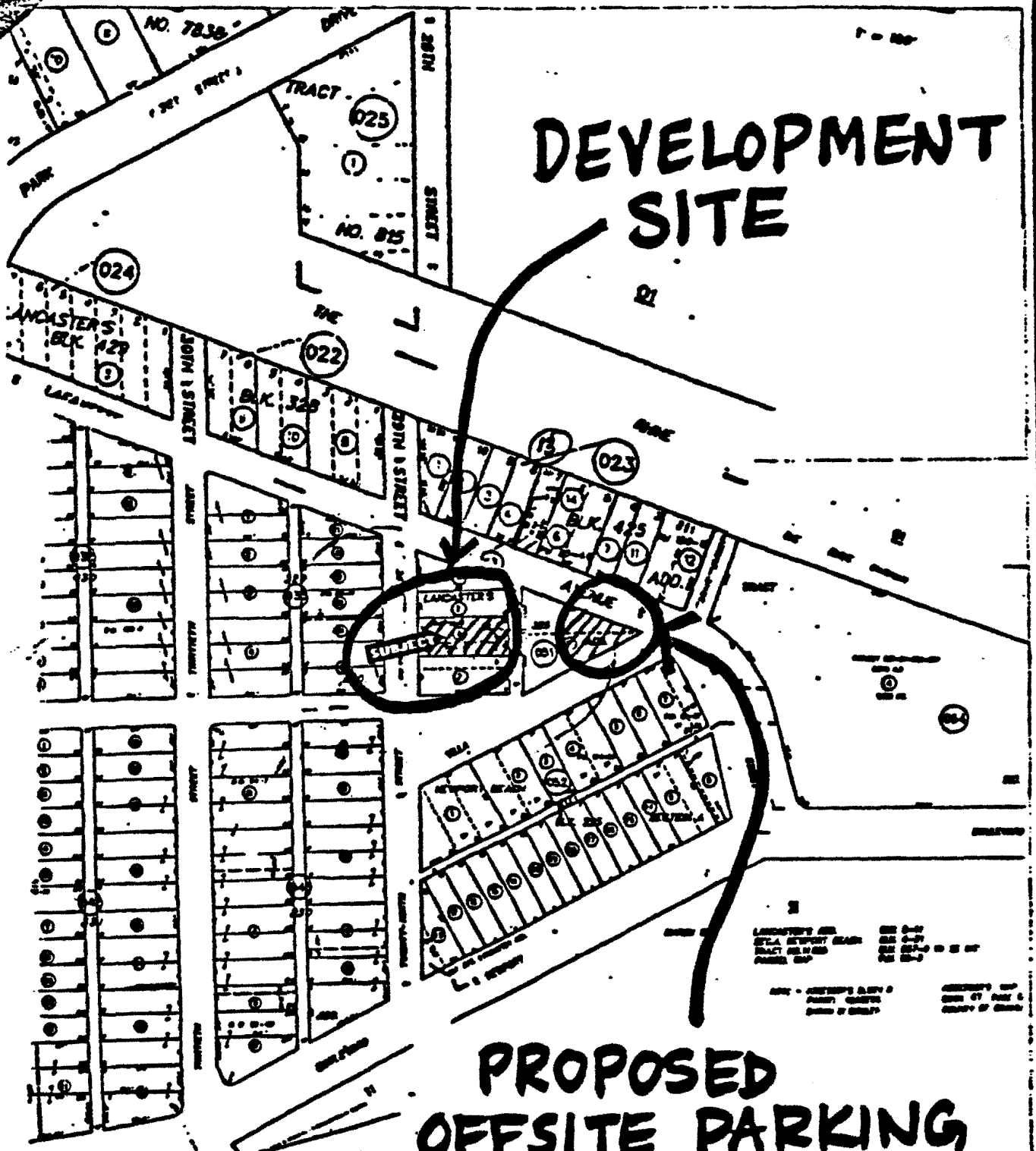


5-94-036-A  
**COASTAL COMMISSION**  
 VICINITY MAP

EXHIBIT # \_\_\_\_\_  
 PAGE 1 OF 1

subject and  
 off-site  
 parking

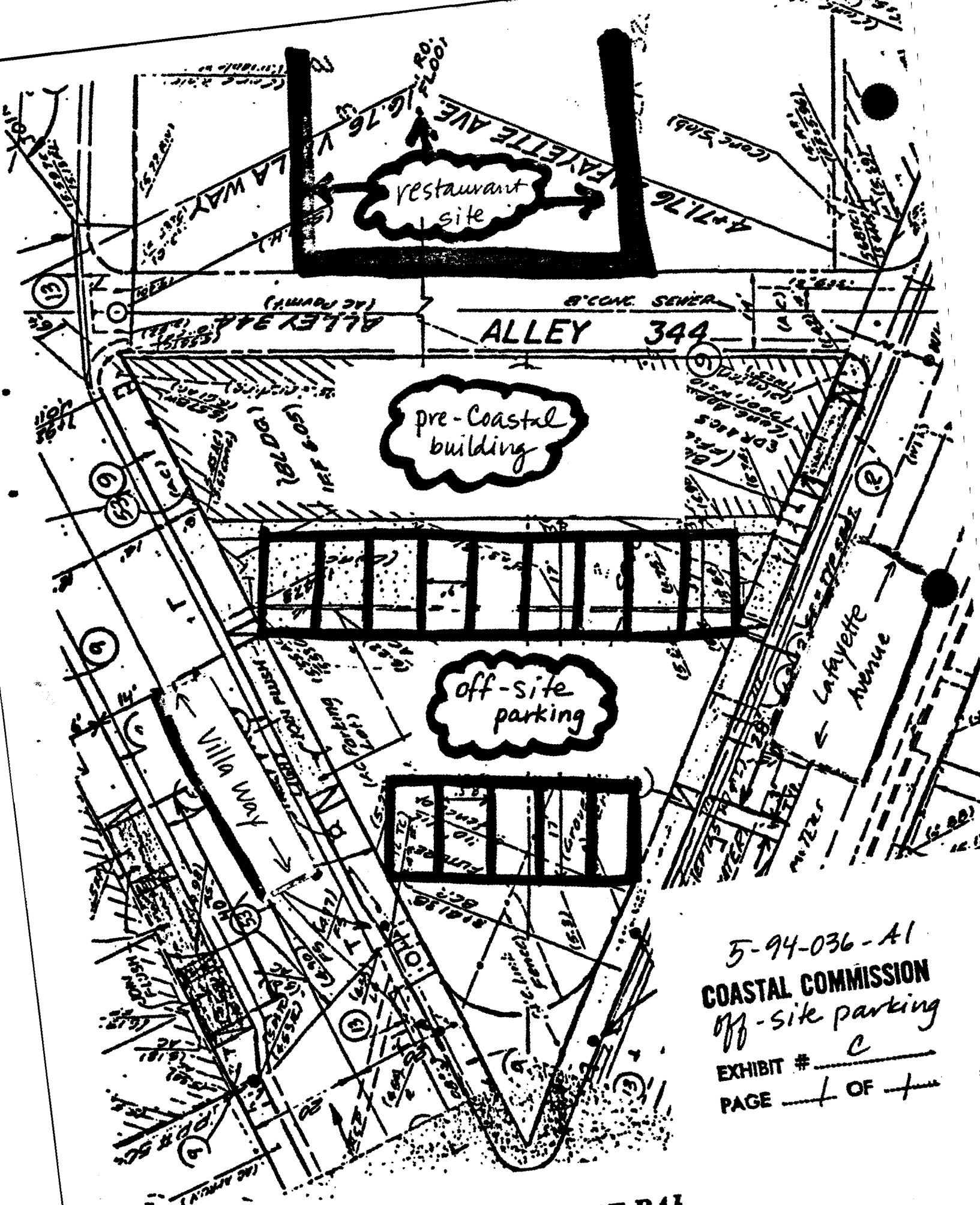
# DEVELOPMENT SITE



**PROPOSED  
OFFSITE PARKING  
LOCATION**

COASTAL COMMISSION  
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EXHIBIT # B  
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COASTAL COMMISSION  
off-site parking  
EXHIBIT # C  
PAGE 1 OF 1

TENTATIVE OFF-SITE PAI

# COASTAL COMMISSION Plans

EXHIBIT # D  
PAGE 1 OF 1  
5-94-036-A

28'-6 3/4"

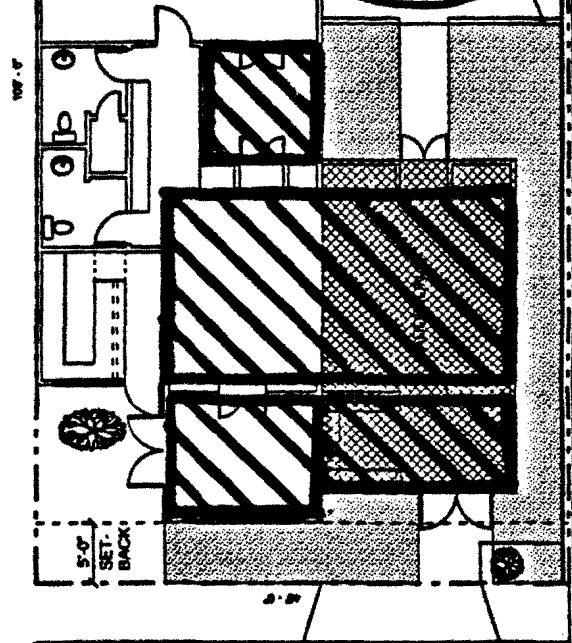
PROPOSED FLOOR PLAN SCALE: 1/4" = 1'-0"



public service area



addition of enclosed area



ALLEY

29TH STREET

EXISTING 6'-0" HIGH BLOCK WALL

these two spaces to be switched per City

SITE PLAN SCALE: 1/8" = 1'-0"

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 W. BROADWAY, STE. 200  
P.O. BOX 1490  
LONG BEACH, CA 90802-4416  
(310) 590-5071

RECEIVED

PETE WILSON, Governor

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Date: 11-7-94

NOV 14 1994

No. 5-94-036

CALIFORNIA  
COASTAL COMMISSION  
COASTAL DEVELOPMENT PERMIT  
SOUTH COAST DISTRICT

On April 14, 1994, the California Coastal Commission granted to

Tim Goodell & Liza Beattie

this permit subject to the attached Standard and Special conditions, for development consisting of:

Conversion, and expansion by 336 square feet, of an existing 1185 square feet vacant commercial structure to a restaurant with 442 square feet of public service area

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at  
508 29th Street, Newport Beach

Issued on behalf of the California Coastal Commission by

COASTAL COMMISSION  
previous permit

EXHIBIT # E  
PAGE 1 OF 3

PETER DOUGLAS  
Executive Director

*John T. Auyong*

By: John T. Auyong  
Title: Staff Analyst

5-94-036-A1  
file copy

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

11-8-94  
Date

*Tim Goodell Liza Beattie*  
Signature of Permittee

COASTAL DEVELOPMENT PERMIT

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Permit No: 5-94-036

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. 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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

Prior to issuance of the Coastal Development Permit, the applicant shall comply with the following conditions of approval:

1. The applicant shall submit a plan which identifies the location of the three required off-site parking spaces and an inventory of all other parking spaces which are leased or rented to other persons or parties in the subject parking lot where the off-site parking spaces will be located, and shall demonstrate that the three required parking spaces which serve the approved restaurant at 508 29th Street in the City of Newport Beach are not leased, used or otherwise reserved for use by any other person or party.

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*previous permit*

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2. The applicant as landowner shall record a deed restriction, free of prior liens and encumbrances except for tax liens, for the property on which the proposed development will be located at 508 29th Street in the City of Newport Beach. The deed restriction shall be subject to the review and approval of the Executive Director, and shall run with the land, binding all successors and assigns of the applicant. The deed restriction shall provide that a minimum of three off-site parking spaces shall be provided within a maximum of five hundred feet of 508 29th Street in the City of Newport Beach to serve the parking demand of the approved restaurant at 508 29th Street in the City of Newport Beach.
3. If the applicant is not the owner of the property on which the required three off-site parking spaces will be located, the applicant shall record a lease restriction, subject to the review and approval of the Executive Director, for the property on which the three required off-site parking spaces are located. Should the applicant be an owner of the property on which the required off-site parking spaces will be located, the applicant shall record a deed restriction for the property on which the three required off-site parking spaces are located. The lease restriction or deed restriction shall be recorded free of prior liens and encumbrances except for tax liens, and shall bind all successors and assigns of the applicant and landowner. The lease restriction or deed restriction shall provide that a minimum of three parking spaces shall be provided on said property to serve the parking demand of the approved restaurant at 508 29th Street in the City of Newport Beach.
4. The applicant shall submit revised plans, subject to the review and approval of the Executive Director, for signage located at the site of the off-site parking spaces required for the approved restaurant at 508 29th Street in the City of Newport Beach. The revised plans shall indicate the proposed locations of the signs at the off-site parking lot. The revised plans shall also indicate the dimensions and wording of the proposed signs. The wording of the signs shall indicate that the off-site parking spaces are reserved for the exclusive use of patrons and/or employees of the approved restaurant located at 508 29th Street in the City of Newport Beach.
5. The applicant shall submit revised plans, subject to the review and approval of the Executive Director, for signage located at the site of the approved restaurant at 508 29th Street in the City of Newport Beach. The revised plans shall indicate the proposed locations of the signs on the site. The revised plans shall also indicate the dimensions and wording of the proposed signs. The wording of the signs shall direct patrons of the approved restaurant to the location of the required off-site parking spaces.

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previous permit

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