

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

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 Hearing Date: 2/4-7/97

STAFF REPORT AND RECOMMENDATION ON APPEAL

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LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-96-144

APPLICANT: Downtown Encinitas MainStreet Association

PROJECT LOCATION: In the southeast corner of the Moonlight Beach public parking lot, 3rd and C Streets, Encinitas, San Diego County.
 APN 258-054-01

PROJECT DESCRIPTION: Use of 60 parking spaces and permanent establishment of a Farmer's Market in the Moonlight Beach public parking lot from 2 p.m. to 7 p.m. every Friday.

APPELLANTS: Commissioners Giacomini and Wan

STAFF NOTES:

On November 12, 1996, the Commission found that a substantial issue exists with regard to the grounds on which the subject appeal was filed. In finding substantial issue, the Commission was concerned with use of the public beach parking lot for the Farmer's Market without any seasonal limitations or restrictions on the term of the permit. While the applicant's parking study indicated that the Moonlight Beach public parking lot is under utilized, the study is not adequate i.e., it only consists of parking counts for a 2 day period in 1994. Also, use of the public parking lot may have greater adverse impacts on beach access in the future if use of the parking lot by beach visitors increases. The subject report is the staff recommendation on the de novo hearing.

Summary of Staff's Preliminary Recommendation:

Staff is recommending the Commission approve the proposed project subject to special conditions which limit the permit to two years and require the applicant to conduct and report monitoring of the parking lot and the adjacent streets during the proposed event in the summer months. With these conditions, the development can be found consistent with the certified LCP and potential impacts to public access are minimized.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Resolution No. PC-96-30; Environmental Assessment for Farmer's Market Festival by San Dieguito Engineering Inc. dated July 8, 1996; City of Encinitas Parking Study by SANDAG dated September 1994.

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, as conditioned, will be in conformity with the adopted Local Coastal Program, 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 the use of 60 parking spaces and a 24 ft. isle (approximately 16,800 sq. ft.) in the southeastern portion of the Moonlight Beach Parking Lot for use as a Farmer's Market on Friday afternoons from 2:00 p.m. to 7:00 p.m. Any other development at this parking lot, including, but not limited to, the expansion of the Farmer's Market, shall require a coastal development permit, or an amendment to this permit.

2. Duration of Development. This permit authorizes the permitted development for a two-year period commencing from the date the Commission approves this permit. The permitted Farmer's Market use in the Moonlight Beach parking lot must cease on February 7, 1999, unless the applicant has obtained an amendment to this permit or a separate coastal development permit to allow the use to continue.

3. 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 program for monitoring parking availability and occupancy levels in the Moonlight Beach Parking Lot and along C Street adjacent to the parking lot and on 3rd and 4th Streets between C and D Streets. The Monitoring Program shall:

- a. Provide that the number of spaces available in this area will be counted and shall identify the times the counts will be conducted which shall occur, at a minimum, every hour between 2:00 p.m. and 7:00 p.m. each Friday the market is operating during the peak summer season (Memorial Day to Labor Day) each year.
- b. The data collected pursuant to the monitoring program shall be reported to the Commission no later than October 1 each year and prior to any request to continue the use of the market in this location.
- c. The applicant shall conduct monitoring consistent with the approved monitoring program.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The proposed development involves the permanent establishment of a Farmer's Market on Friday afternoons in the Moonlight Beach public parking lot. The Farmer's Market, which will consist of approximately 45 produce and other specialty type vendors, is proposed to occur from 3:00 p.m. to 6:00 p.m. each Friday, with set-up to begin at 2:00 p.m. and clean-up ending by 7:00 p.m.

The parking lot, which contains 190 parking spaces, is located on the northwest corner of Third and C Streets, adjacent to Moonlight Beach in the City of Encinitas. The development will occur along the southeastern portion of the parking lot covering an area of approximately 16,800 sq. ft. To accommodate the development, approximately 60 parking spaces and a 24 ft. aisle in the parking lot will be blocked off with barricades.

The City issued a temporary operations permit for the Farmer's Market in June of 1996 and according to the City Community Development Director, the Farmer's Market has been operating in the beach parking lot every Friday afternoon since that time, without benefit of a coastal development permit, in an apparent violation of the Coastal Act.

2. Parking/Public Access. The proposed development is to occur within a public beach parking lot adjacent to Moonlight Beach in the City of Encinitas. The certified City of Encinitas LCP contains a number of policies and ordinances which pertain to this proposal.

Policy 1.12 on Page C-4 of the LUP states, in part:

[...] The City will require that all commercial, industrial and residential uses be designed and constructed with sufficient off-street parking and loading facilities to assure adequate parking is provided with new development such that no adverse impacts on coastal access are documented. Parking ratios shall be utilized as specified and detailed in

the City's Zoning Code and in implementing Specific Plans which provide sufficient parking spaces so as not to require patrons/employees/residents to utilize parking which is necessary/required for other approved uses or street and public parking that should otherwise be available for public use.

Policy 5.1 on Page RE-8 of the LUP states:

The City recognized Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beaches in the Encinitas area. The City will work with the State to upgrade and promote access to these State beaches, and will act to upgrade and promote access to Moonlight Beach, in order that they may receive an increased proportion of visitor uses.

Policy 5.3 on Page RE-8 of the LUP states:

The areas of South Carlsbad Beach State Park, Moonlight Beach State (Future City) Park, Cardiff Beach State Park and San Elijo Beach State Park shall be designated as high intensity beach recreational use areas.

Policy 5.5 on Page RE-9 of the LUP states, in part:

[...] In addition, the City shall assure that existing public parking lots for public beach access points are maintained and that no reduction in the number of existing public parking spaces shall be permitted.

Section 3.3.3 (B)(2) of the Downtown Encinitas Specific Plan states:

All required parking shall be off-street, on the same site as the land use it serves, unless otherwise provided by these regulations.

In addition, several of the public access and recreation policies of the Coastal Act are also applicable and state, in part:

Section 30210 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 people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 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,

Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30604 (c) 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).

As stated, the proposed Farmer's Market will operate every Friday afternoon throughout the year within the Moonlight Beach public parking lot. As noted above, Moonlight Beach is designated as a high intensity beach, indicating greater intensity for both utilization and improvements. This beach is very popular both because of its location within the heart of the old downtown area and because of its accessibility and the availability of free public parking. In addition, while other beaches along the City's shoreline have experienced increasing sand loss over the past several years, Moonlight Beach is nourished with sand each year by the City.

The Moonlight Beach parking lot, which contains 190 parking spaces, is the only public parking lot serving Moonlight Beach and no fee is charged for parking in this lot. To accommodate the market, 60 parking spaces and a 24 ft. wide aisle in the parking lot will be blocked-off from 2:00 p.m. to 7:00 p.m. each Friday. As stated above, Policy 5-5 on Page RE-9 of the LUP requires that existing public parking lots for public beach access points be maintained and that no reduction in the number of existing public parking spaces be permitted. While the Farmer's Market is proposed as a permanent development, to operate each Friday throughout the year, even during the summer months, the "reduction" of public parking spaces to accommodate the development is only temporary in that it will only occur once a week.

However, the proposed development does still temporarily displace 60 public parking spaces in the Moonlight Beach parking lot for the market itself each Friday afternoon as well as requires patrons of the market to park in the public parking lot and on the street because no other parking is proposed to accommodate the development. As such, the potential exists for the entire public parking lot to be utilized by patrons of the market, thereby forcing beach visitors to park on the street or go elsewhere. During the non-summer months, this may not be a problem in that beach use is generally less during this period. However, during the peak beach-use season, use of the public beach parking lot by the market and its patrons raises serious public access concerns.

The applicant has submitted a parking study, which was conducted in August of 1994 to document that the Moonlight Beach parking lot has the capacity to

accommodate the proposed Farmer's Market and continue to provide adequate public beach parking and access. However, the Commission has some concerns with the parking study. To begin with, the parking study was conducted at the City's request by the San Diego Association of Governments (SANDAG) in 1994. The study was conducted to address concerns raised by Commission staff in review of the City's LCP submittal that the parking standards/provisions proposed in the Downtown Encinitas Specific Plan may adversely impact public coastal access. The specific concern raised by Commission staff that was targeted by the study was a provision in the specific plan which would allow on-street parking immediately adjacent to development along First and Second Streets to count towards the parking requirements for a use on that particular site. Commission staff was concerned that because of the proximity of the downtown area to the beach, that public street parking in the downtown area should remain available for public beach users. As such, the study was conducted not to address public beach parking availability but to document that beach visitors were not parking along First and Second Streets. The results of the study indicated that "under current conditions" there was adequate parking available to accommodate both business patrons and beach visitors.

In addition, the study was conducted for only one weekday and one weekend day during the summer between 10:00 a.m. and 5:00 p.m. with occupancy counts taken at approximately one hour intervals. While the study was adequate to address Commission staff's concerns at the time related to downtown parking in review of the LCP submittal and does provide an indication that this parking lot was underutilized, even during the summer months, in 1994, it is not sufficient to address the availability of public parking should circumstances change in the future which result in increased demand for use of this parking lot by the public to access the beach.

As stated, Moonlight Beach is a popular beach destination point due to, among other things, its proximity to the downtown area, availability of free public parking and because it is routinely replenished with sand each year. Recognizing this fact, Moonlight Beach is one of four beaches in Encinitas designated in the City's LCP as a "high intensity beach recreational use area". In addition, as the popularity of San Diego's north coast continues to increase as both a population center and as a visitor destination, and, as more beach visitors choose north county beaches as destinations for recreational use, demand for public beach parking will increase commensurately. As such, because conditions can change in the future which could increase the demand for public beach parking at this lot, Special Condition #2 has been attached to limit the duration of the permit to a two year period from the date the Commission approves this permit.

Special Condition #3 requires the applicant to implement a monitoring program addressing parking availability in the Moonlight Beach parking lot and on the adjacent City Streets. The monitoring program is to be conducted every Friday afternoon (from 2:00 p.m. to 7:00 p.m.) during the summer months that the Farmer's Market is operating, consisting of an hourly inventory of available spaces. The monitoring data will then be submitted to the Commission each year. The data can then be used in review of any subsequent permit or

amendment requests to determine if the parking lot continues to be underutilized in the future such that the Farmer's Market may continue to operate without adversely affecting the ability of beach users to park and visit the beach in this location. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the City's certified Local Coastal Program and the public access and recreation policies of Chapter 3 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.

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. The City of Encinitas LCP consists of a number of components, including the Downtown Encinitas Specific Plan, which serves as the implementation plan for the downtown area. The Downtown Encinitas Specific Plan includes, among other things, detailed design standards, parking requirements and allowable uses for the approximately 200 acre area of old downtown Encinitas that it covers. The majority of the specific plan is zoned for residential and commercial development (including some areas of visitor-serving commercial). The subject site is located within the Moonlight Beach Park (D-MBP) Zone. The Specific Plan describes this Zone as follows:

This zone applies to all Moonlight Beach park property and related lands set aside for the public's use as a passive and active community recreational area. Development is intended to be generally consistent with the concept Moonlight Beach Master Plan. The concept plan features picnic and viewing areas; volleyball courts; a tennis court; a basketball court; tot lot; fire rings; restroom, concession and maintenance building; Cottonwood Creek riparian zone and native planting; walkways; and substantial public parking. No private development may occur within this zone. [...]

The proposed Farmer's Market is operated by the Downtown Encinitas Main Street Association (DEMA), which is a non-profit organization authorized under the State of California MainStreet program. Although DEMA is a non-profit organization, the Farmer's Market does involve "private" development, in that stalls are rented/leased to private vendors to sell their products. Because private development is not a permitted use within the Moonlight Beach Park Zone, it would appear that the proposed Farmer's Market is inconsistent with the certified LCP. However, in this particular case, even though the permit request is for the permanent establishment of the Farmer's Market in the public parking lot, the use is only a "temporary use" in that it only occurs on Friday afternoons. In addition, establishment of the Farmer's Market does not include development of any permanent structures. Additionally, the Downtown Encinitas Specific Plan does contain goals that encourage outdoor

markets featuring agricultural and floral products. Therefore, approval of the proposed Farmer's Market, as conditioned, is consistent with the certified City of Encinitas Local Coastal Program as well as the public access policies of Chapter 3 of the Coastal Act.

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.

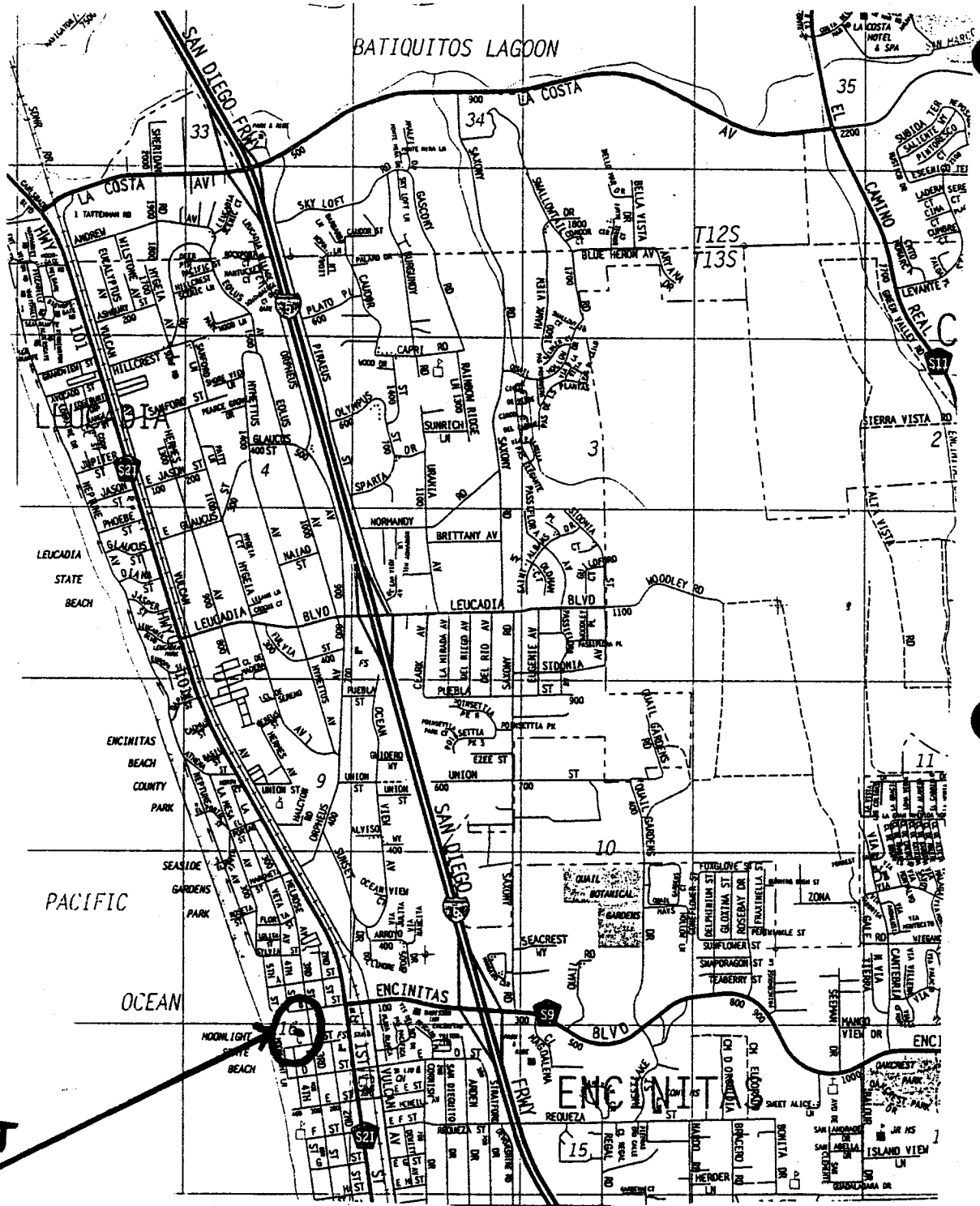
As discussed herein, the proposed project, as conditioned, will not cause significant adverse impacts to the environment. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the proposed activity may have on the environment. 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.

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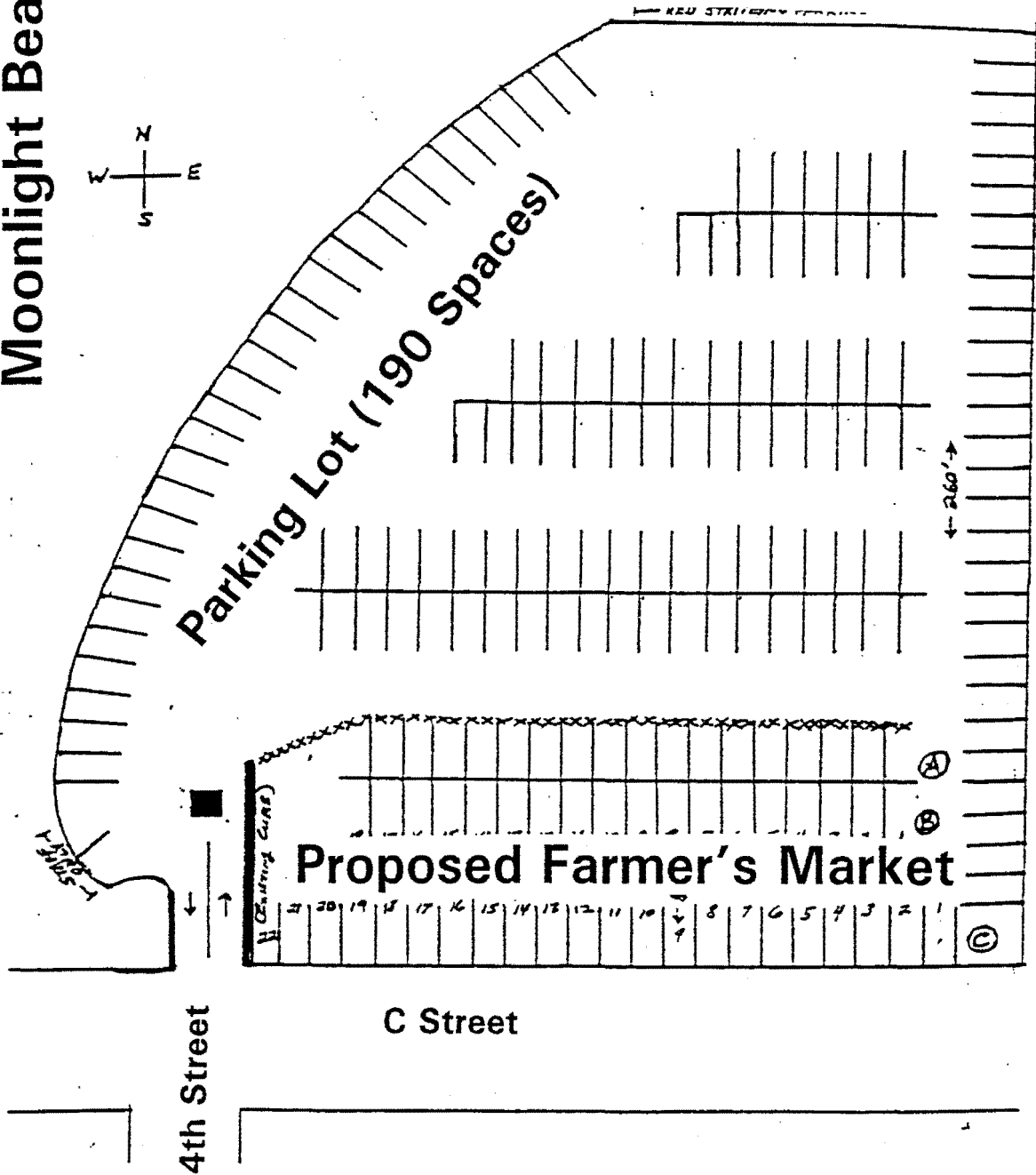
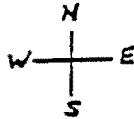


**SUBJECT
SITE**

EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-96-144
Location Map
California Coastal Commission

Pacific Ocean

Moonlight Beach



Moonlight Beach Public Parking Lot

EXHIBIT NO. 2
 APPLICATION NO.
A-6-ENC-96-144
 Site Plan