

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

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WED 18a



Staff: LJM-SD  
Staff Report: 8/21/97  
Hearing Date: 9/9-12/97

REVISED FINDINGS

APPLICATION NO.: 6-96-80

APPLICANT: California Department of  
Parks and Recreation

PROJECT 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 use of the entire lot by adjacent restaurants from sunset until 11:00 p.m. nightly for a three (3) year period.

PROJECT LOCATION: 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

DATE OF COMMISSION ACTION: July 10, 1997

COMMISSIONERS ON PREVAILING SIDE: Allen, Armanasco, Flemming, Kehoe, Nava, Pavley, Potter, Reilly, Staffel, Hickox, Wan and Chairman Areias

SUMMARY OF COMMISSION ACTION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action to approve the proposed development for use of the public beach parking lot (up to 80 spaces) after 6:00 p.m. by the adjacent restaurants for a three-year period. The Commission's decision allows adjacent restaurants to valet park cars in the public beach parking lot from 6:00 p.m. to 11:00 p.m. nightly. After sunset each night, State Parks may conduct a "soft closure", announcing that the parking lot is closed, but not actually close the entrance gate or enforce the closure unless it is necessary to assure public safety.

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 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 allows 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 sunset and allows use of all available spaces in the lot by the adjacent restaurants up to 11:00 p.m. nightly subject to the following provisions:

- a) The parking lot shall remain open to the public until sunset each night (for the purposes of this permit "sunset" is defined as the published sunset time in the San Diego Union-Tribune newspaper). After sunset each night, State Parks may continue its current practice of announcing that the parking lot is closed, but not close the entrance gate, cite or enforce the removal of any existing vehicles unless it is determined necessary to assure public safety.
- b) "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.
- c) Cars parked in the lot by the restaurant valet service shall first utilize the parking spaces on the eastern side of the parking lot.

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 sunset and then valet use of the available spaces until 11:00 p.m. nightly by the adjacent restaurants must cease on July 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, on two Saturdays and two Sundays each month, and on the July 4th holiday. 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, or the applicant's designee shall conduct monitoring consistent with the approved monitoring program.

4. Hours of Operation. Within 30 days of release of the permit, the applicant shall submit to the Executive Director evidence the signage in the parking lot reflects the hours the parking lot shall be open to the public as approved in Special Condition #1 of this permit. The hours of operation approved herein are only for the term of this permit and will be reassessed after three years.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed 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 if 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 project as proposed also represents a change in the hours of operation of the parking lot. Although the posted sign indicates the parking lot closes at sunset, the change from an 11:00 p.m. closure time to sunset, which the applicant indicates occurred in late 1993, did not receive approval by the Commission though a coastal development permit. A coastal development permit is required for such a change in hours of operation because it represents a change in the intensity of use of land and water and access to the water and therefore, constitutes development. Through its action on the previous permit for valet parking at this lot, the Commission did not authorize a change in the hours of operation of the parking lot, and the public was allowed to use the lot (on a limited basis) until 11:00 p.m. nightly.

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), is served by two

parking lots and provides 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 typical day-use facilities (i.e., 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, has recently opened to the public typical day-use facilities. 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 offers the most direct access to the beach. In addition, a majority of the beach population is 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 to the public 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 be required to leave or be cited.

This change to the applicant's proposal raises a significant concern to the Commission and a potential conflict with the public access and recreation

policies of the Coastal Act for several reasons. First, it results in a defacto change to the hours of operation of the parking lot from an 11:00 p.m. closing to a sunset closing. When the Commission approved the previous permit for use of the lot by the valet service, 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.). It was only with that provision that 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.

Additionally, 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. 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 beach-going 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.

However, State Parks representatives have indicated that they do not intend to require people or vehicles in the parking lot to leave at sunset, but only that they must have the ability to do so when public safety is at risk. In fact, State Parks representatives have indicated that this is in effect how the parking lot has been managed since 1994 when the Commission first approved valet parking in this lot. Some time after sunset each night, a State Parks ranger drives through the parking lot and announces over a loudspeaker that the parking lot is now closed. The ranger does not close the entrance gate, cite or remove any existing vehicles at that time, but would do so if public safety was at issue. As such, any public cars parked in the parking lot at sunset can remain until the gate is closed at 11:00 p.m.

The Commission finds that because this public beach parking lot is currently under utilized, especially in the late evening hours, this so called "soft closure" of the parking lot is acceptable as it has worked effectively for several years benefiting both public and private interests. 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 sunset and then allows use of all the available spaces in the parking lot by the restaurants 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 after sunset, State Parks may continue its current practice of conducting a "soft closure" of the parking lot. As stated above, this involves a park ranger driving through the parking lot sometime after sunset each night and announcing that the parking lot is closed. However, the entrance gate is not closed and no existing vehicles are cited or removed unless it is determined to be necessary to protect public safety. In this way, both private and public interests are addressed and accommodated in that the ability of the public to use this parking lot will not be reduced and the adjacent restaurants will have additional convenient parking.

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. In fact, the beach fronting this parking lot is currently expected to receive a large amount of sand as part of the dredging of San Diego Bay for the Navy Homeporting Project (approved by the Commission through the Federal Consistency Certification process). 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 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 each month during the summer and on the July 4th holiday 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. 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.

This permit does not address the issue of the permanent change of hours of operation of the parking lot, which may be pursued as a separate action. Special Condition #4 has been proposed to address hours of operation of the parking lot during the term of this permit only. This condition requires the applicant to document that signage in the parking lot reflects the hours the lot is open to the public pursuant to this permit. In addition, this condition notifies the applicant that the hours of operation of the parking lot approved by this permit are only for the term of the permit and will be reassessed upon expiration of this permit. Approval of this permit will not prejudice any subsequent Commission action addressing the change in hours of operation of the parking 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. 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.

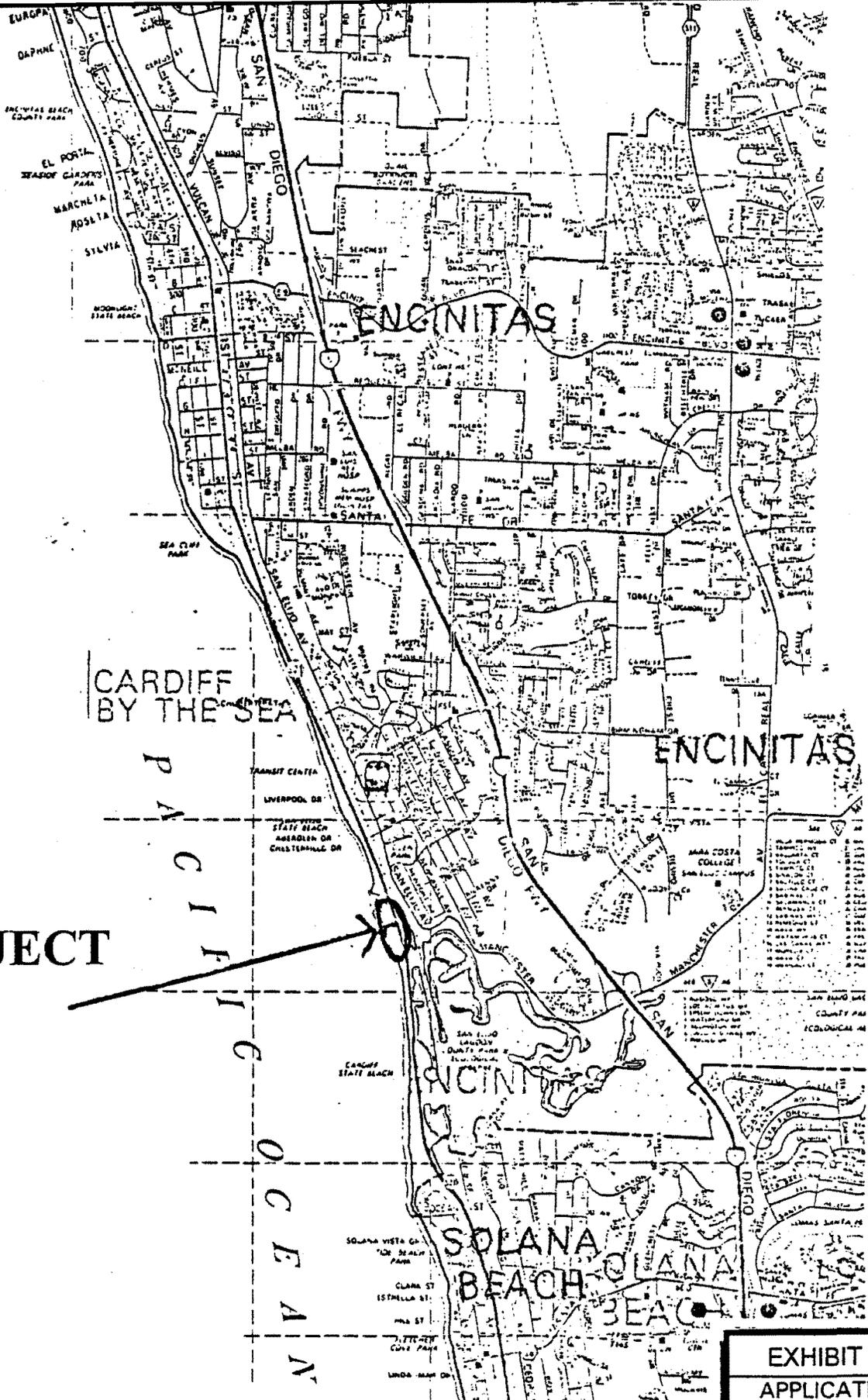
As discussed herein, the proposed project, as conditioned to allow continued use of the parking by the public and adjacent restaurants as it has operated in the past, the proposed development will not cause significant adverse impacts to the environment. There are no feasible alternatives or mitigation 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.

(2051r)

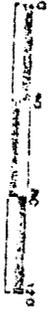


**SUBJECT  
SITE**

**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-96-80RF**  
**Location Map**

California Coastal Commission

MOUTH OF SAN ELIJO  
LAGOON



TURAN  
A REARND

NORTH CARLIFF STATE PARK

105 PARKING SPACES

HIGHWAY 101 COMFORT STATION

SPACES

CONTACT STATION  
(KIOSK)

RESTAURANTS

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

PACIFIC OCEAN