

## CALIFORNIA COASTAL COMMISSION

## SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

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RECORD PACKAGE



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Hearing Date: August 11-14, 1998

Wed 14b

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-49

Applicant: Investors Leasing Corporation,  
attn: Kim Fletcher

Agent: Edward M. Eginton

Description: Demolition of an existing 2,822 sq.ft. single-family residence and construction of a two-story, 5,903 sq.ft. single-family residence on a 32,959 sq.ft. beachfront site; an existing guest house will remain and an existing garage/bedroom structure will be converted to a carport and open storage structure.

Lot Area	32,959 sq. ft.
Building Coverage	9,414 sq. ft. (29%)
Pavement Coverage	18,175 sq. ft. (55%)
Landscape Coverage	896 sq. ft. (3%)
Easement Area	4,474 sq. ft. (13%)
Parking Spaces	16
Zoning	R1-10-B and FP-OZ
Plan Designation	Low Density Residential-Beach/Floodplain Overlay
Ht abv fin grade	26 feet

Site: 2940 Sandy Lane, Del Mar, San Diego County. APN 299-020-10

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

The primary issue associated with the project regards the unpermitted status of the existing shoreline protection with the City of Del Mar. The City has conditioned the approval of the residence to require either immediate removal of all encroachments on sandy beach, bonding for future removal of same or obtaining a permit to retain the existing shoreline protective devices. The Commission must assure that any new development is not dependent on shoreline protection that is inconsistent with the certified Land Use Plan (LUP) and the Coastal Act. The engineer has stated that a

seawall in an alignment endorsed by the certified LUP and without riprap would be feasible and provide adequate protection for the proposed residence. The applicant has committed to resolve the unpermitted status of the existing seawall and riprap with the City of Del Mar by September 1, 1999.

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Substantive File Documents: Certified City of Del Mar LCP Land Use Plan  
Draft City of Del Mar Implementing Ordinances (Beach  
Overlay Zone)  
Resolution Nos. DRB-98-18 and PC-97-28

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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. Permanent Shoreline Protection. As proposed by the applicant, required permits for permanent shoreline protection shall be obtained from the City of Del Mar prior to September 1, 1999; any required coastal development permit shall be obtained, and all construction authorized in said permits shall be completed prior to Memorial Day, 2000.

2. Assumption of Risk: PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves, flooding and storms and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of

the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicants are proposing a number of modifications on an existing property developed with a single-family residence, a detached guest house, a detached garage and bedroom structure, swimming pool, tennis courts, parking area and existing shoreline protection consisting of a vertical seawall and riprap revetment. The main proposal is demolition of the existing 2,822 sq.ft., two-story single-family residence and construction of a new, two-story, 5,903 sq.ft. single-family residence. In addition, the applicant proposes to demolish portions of the existing detached garage/bedroom building, to convert it to a carport and open storage structure. The existing detached guest house will be reduced in size through removal of a storage room. The modifications to the accessory structures are to bring the overall site development into conformity with the City of Del Mar's floor area ratio regulations. No modifications are proposed to the existing recreational amenities or shoreline protection. Additionally, the proposal includes a commitment to obtain a permit from the City of Del Mar for authorization of permanent shoreline protection by September 1, 1999 and then obtain any required coastal development permit and construct the permitted development by May, 2000.

The site is located near the northern end of the Del Mar beachfront, just a few lots south of the San Dieguito River. It is within a small, gated residential enclave, wherein the beachfront homeowners own to the mean high tide line. At present, that line is located in close alignment with the City's delineated Shoreline Protection Area line, and public sandy beach exists seaward of the private properties. The subject site is the largest lot within the enclave, and includes a large parking area and portions of the easement for Sandy Lane, a private street serving these few properties.

2. Site History. The residential improvements on the subject site predate the Coastal Act. However, in 1993, the Coastal Commission approved Coastal Development Permit #6-93-445, authorizing the construction of a vertical concrete seawall and riprap revetment along the shoreline frontage of this site and three neighboring properties, two to the north and one to the south. The Commission's approval included typical special conditions for seawall development, including an applicant's assumption of risk, a lateral access easement and review by the State Lands Commission. These conditions were

satisfied by the subject applicant and the two property owners to the north. The property owner to the south dropped out of the project, but his name was not formally removed from the permit. The seawall was constructed on the approved alignment, and the riprap installed per the permit, which authorized a 210-linear-foot protective structure. The length of seawall which was constructed did not include the fourth property which had dropped out of the process, and a return wall was built along the subject property owner's southern property boundary.

3. Hazards/Shoreline Protection. Sections 30235 and 30253 of the Coastal Act are most pertinent to the subject development proposal and state, in part:

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

The subject site, along with the rest of the Del Mar shoreline properties north of 15th Street, is located in an area subject to ocean forces (i.e., waves and storm surges). At some high tides, ocean waters reach the existing riprap revetment. Section 30235 cited above allows for shoreline protective devices only when required to protect existing structures in danger from erosion and when designed to mitigate impacts on shoreline sand supply. The primary issue which has been identified and addressed in the review of proposals for shoreline protective works in this area of Del Mar has been their location and alignment more than the question of their necessity. It has been recognized for some time that all of the low-lying lots between Seagrove Park and the mouth of the San Dieguito River are and most likely will continue to be subject to impacts from storm waves. The vast majority of the residences in the community are protected by some form of device, and seawalls typically represent infill development. The subject site already has a protective device and the subject application proposes no modifications to it.

The City of Del Mar has developed policies and regulations establishing a Shoreline Protection Area (SPA) line and addressing the design and alignment to be maintained in future decisions involving shoreline protective works. In most cases, the SPA line is contiguous with the western boundary of private land, except in those instances where properties are owned to the mean high tide line, and thus have an ambulatory western property boundary. According to the submitted plans, the SPA line and current mean high tide line at the subject site are contiguous at this time, with the mean high tide line being an ambulatory line. The applicant's property ownership extends to the mean high tide line; therefore, all sandy beach seaward of the SPA line is currently identified as public land. The existing residence is currently protected by a vertical concrete seawall and riprap revetment, which encroaches significantly onto the sandy beach, usurping area otherwise available to the public for recreational use.

The City of Del Mar has adopted a comprehensive solution for its beachfront properties and is promoting a vertical seawall design which has minimum, or no, encroachment onto public beach (i.e., seaward of the SPA line). The accepted vertical seawall design is only 2 ft., 9 in. wide, and represents the maximum encroachment allowed by the City in recent years. Furthermore, the City has enforced its regulations requiring removal of pre-existing encroachments such that most encroachments have now been removed. Many areas of the City have already constructed the vertical seawall and removed pre-existing encroachments on public beach either prior to, or in conjunction with, construction of the new wall. The northernmost stretch of beachfront properties, which includes the subject site, remains an area where riprap revetments usurp sandy beach, but it is anticipated the revetments will be replaced with vertical seawalls in the near future since the abatement period identified in the City's municipal code and certified land use plan (LUP) is over. Thus, it is the City's position that any encroaching development which has not gone through the permit process subsequent to the establishment of the SPA line is unpermitted at this time. In fact, the City's approval of the proposed demolition and reconstruction of a single-family home includes a condition requiring either immediate removal of all encroaching development (both the vertical seawall and riprap in this case), posting of a bond or similar device to assure future removal, or obtaining a City permit to retain the riprap.

The Coastal Commission has endorsed the City's comprehensive vertical wall solution through certification of the City's LUP, which contains policies that establish this comprehensive solution. The Commission finds that new development that would preclude removal of encroachments onto public beach is inconsistent with Chapter 3 policies of the Coastal Act. In addition, new development that requires greater shoreline protection than that provided by the planned vertical wall would be inconsistent with Coastal Act Section 30253. The applicant has submitted a report from its engineer which addresses this concern. The footprint of the new home will extend slightly less seaward than the existing house footprint, is in alignment with the existing home to the south, and closely aligned with the house to the north. The engineer states that the existing shoreline protective devices provide adequate protection for both the existing and proposed residences, as well as all other site improvements. In fact, the engineer maintains that the

existing vertical element alone will provide adequate protection, without the riprap revetment. Additionally, the vertical seawall at the subject site is located just seaward of the SPA line, with portions of the landward face of the wall aligned on the SPA line and other portions located approximately two feet beyond the SPA line. All of the riprap extends seaward of the SPA line.

Thus, the applicant's consulting engineer has indicated that a vertical seawall, aligned in accordance with the certified LUP and without a riprap element, can provide the necessary protection for the proposed residential redevelopment. In recognition that the existing shoreline protection, although authorized by the Commission in 1993, is not in conformity with City of Del Mar permitting requirements (i.e., is currently considered unpermitted by the City), the applicant has modified the current application to include the following proposal: the applicant commits to processing all required City permits for a permanent shoreline protective device by September 1, 1999. Should the City's approval require modification of the existing facilities, the applicant commits to complete the coastal development permit process and construct the permitted device prior to May 15, 2000. The applicant's geologist has stated that the existing vertical seawall is very similar in design and function to others constructed recently along much of the Del Mar shoreline, and the City has given some informal indication that it may be able to approve the vertical element in its current location. It is not known at this time how the riprap revetment will be addressed by the City, but the certified LUP does sometimes allow riprap elements, dependent on specific site needs.

In addition to the identified hazards associated with beachfront development, the subject site is also mapped, at least partially, within the floodplain. The northwest portion of Del Mar is very low-lying, and most properties in this area of the City are within the mapped floodplain. However, this is an already developed area, where normal floodplain prohibitions are not employed, and infill development, and redevelopment of already developed sites such as that proposed, is permitted to occur. The City has issued Floodplain Development Permit FDP-97-02, which requires that the lowest finished floor elevation of the proposed new residence cannot be lower than 12.73 MSL (mean sea level). Moreover, the finished floor levels of the existing structures being retained cannot be lowered in elevation from their current heights. These provisions are typical of the way the City treats development within its urbanized floodplain area, and the Commission has historically supported this approach.

In summary, the proposed site modifications, particularly the new home, have been designed consistent with floodplain requirements and such that adequate protection is provided by the existing seawall; no alterations or augmentations of the existing shoreline protective devices are required to accommodate the proposed development. However, because the City requires that either encroachments beyond the SPA line be removed or formally permitted, the applicant is proposing to submit the existing design for permit review with the City. The applicant further proposes that, should the City's decision require removal or modification of the existing devices, a coastal development permit will be processed and the permitted construction occur prior to the summer season of the

year 2000. This proposal is memorialized in Special Condition #1. Since this is still an area of identified hazards, the potential exists for damages to occur from storms, wave action and flooding. The Commission finds that although the applicant's engineer maintains the existing shoreline protective works are adequate to protect the proposed development, the risk of damage cannot be eliminated entirely. Since the applicant proposed the development despite the risks, the Commission finds that in order to be consistent with Coastal Act Section 30253, the applicant must assume the risk of damage from storm, wave and flooding hazards. Further, the applicant must indemnify the Commission in the event third parties bring an action against the Commission as a result of damage associated with the proposed development. Therefore, Special Condition #2 requires the applicant to record a waiver of liability, assuming all such risks from the proposed development. As conditioned, the Commission finds the proposed development consistent with Sections 30235 and 30253 of the Coastal Act.

4. Public Access. Many policies of the Coastal Act address public access to and along the shoreline. The following are most pertinent to the subject proposal:

Section 30210.

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.

Section 30211.

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.

(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 ...

Additionally, pursuant to Section 30604(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 such development is in conformity with the public access and public recreation policies of

Chapter 3 (commencing with Section 30200). The subject site is between the sea and first coastal roadway, being located along the Del Mar shoreline.

Currently, vertical beach access is available a short distance (approximately 500 feet) north of the site along the river mouth. There is a dirt pathway which leads from Camino del Mar (east of the site) directly north to the river or westward along the top of the riprap revetment towards the ocean. The nearest public access point to the south is slightly closer, being approximately 400 feet away at 29th Street. Although vertical access is available at all public streetends from 15th Street to 29th Street, the northernmost Ocean Front and Sandy Lane properties are part of a gated residential complex, such that access through the site is not available. However, the beach is generally quite wide, and, with the possible exception of during the highest tides, there is adequate room for lateral movement between the site and the ocean.

The earlier permit issued for the site, authorizing the existing shoreline protection, included a condition requiring recordation of a lateral access easement. The easement was recorded on January 31, 1984, and applies to all land seaward of the toe of the riprap revetment. The easement has not been accepted by any public agency as yet. However, the ambulatory mean high tide line has moved landward over time, and is now identified as contiguous with the SPA line. The subject site redevelopment does not encroach seaward of the existing line of development, nor does it propose any modification of existing shoreline protection. The proposed house is consistent with the line of development that the Coastal Commission has found to be consistent with the Coastal Act in the past. In addition, it will not prejudice the City's ability to require conformance of the shoreline protection with the comprehensive plan that the Coastal Commission has found to be consistent with the Coastal Act. The Commission, therefore, finds the proposal, as conditioned to address other concerns, consistent with the cited public access policies of the Coastal Act and, as specifically required in Section 30604(c), with all other public access and recreation policies as well.

- 5. Visual Resources. Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and for the compatibility of new and existing development. The proposed new residence will not extend further seaward than the existing home and will be two-stories in height (maximum 26 feet) as is the existing home. The new residence will maintain the existing stringline of development in this area and will not be visually obtrusive to members of the public recreating on the adjacent beach. Shoreline protective works already exist seaward of the proposed redevelopment, and no modification of those structures is proposed. Therefore, the Commission finds that the proposed site redevelopment is consistent with Section 30251 of the Act.

6. Local Coastal Planning. Section 30604 (a) 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 for the proposed development, as conditioned.



The subject site is designated for single-family residential development in the certified City of Del Mar LCP Land Use Plan and zoned R1-10B and FOZ (floodplain overlay). The demolition and reconstruction of an existing single-family home, and the proposed modifications to existing accessory structures proposed herein are consistent with these designations. The City's Design Review Board and Floodplain approvals included conditions regarding the removal or authorization of existing encroachments seaward of the SPA line, which the applicant is currently addressing with the City. Depending upon the City's ultimate decision, further action by the Commission may be required in the future. As conditioned to address this potential and to recognize existing hazards, the project is consistent with all applicable Chapter 3 policies of the Coastal Act, and no adverse impacts to coastal resources will result. Therefore, the Commission finds the proposed development will not prejudice the ability of the City of Del Mar to complete its implementation program and obtain a fully-certified Local Coastal Program.

7. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the hazards policies of the Coastal Act, requiring the applicant to assume all liability from the proposed development. 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

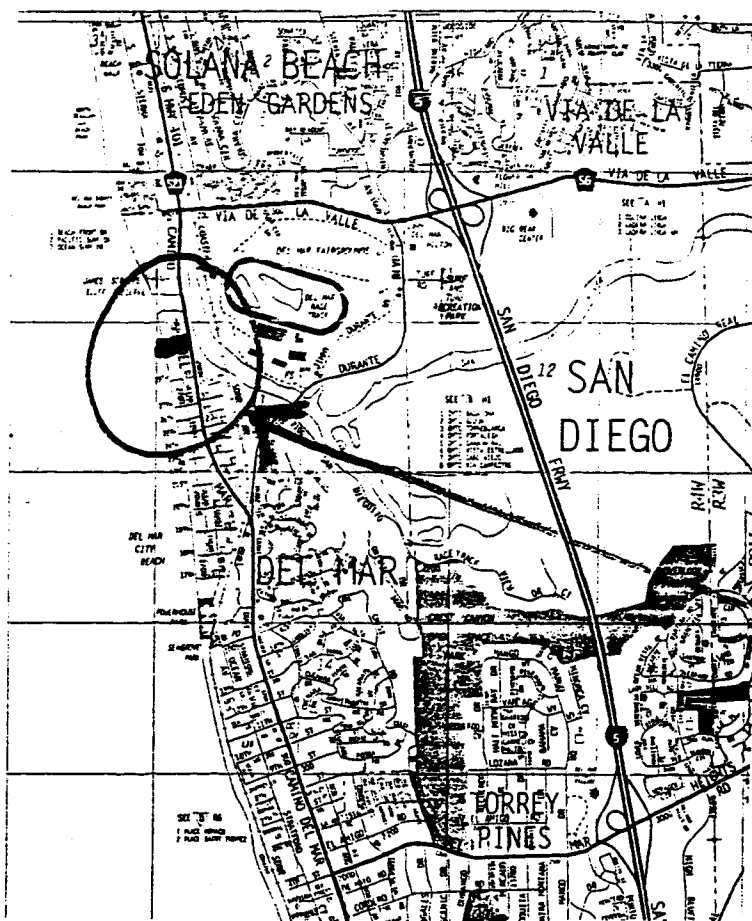
#### STANDARD CONDITIONS:

1. Notice of Receipt and 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

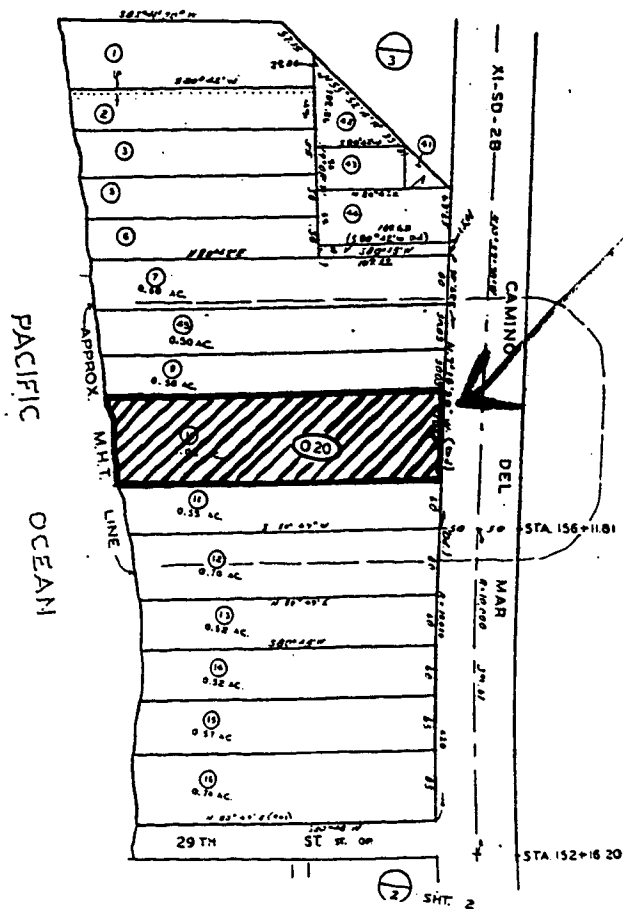
shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth 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.

6-98-49



Site



**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-98-49**  
**Location Maps**

6-98-49

WED 146

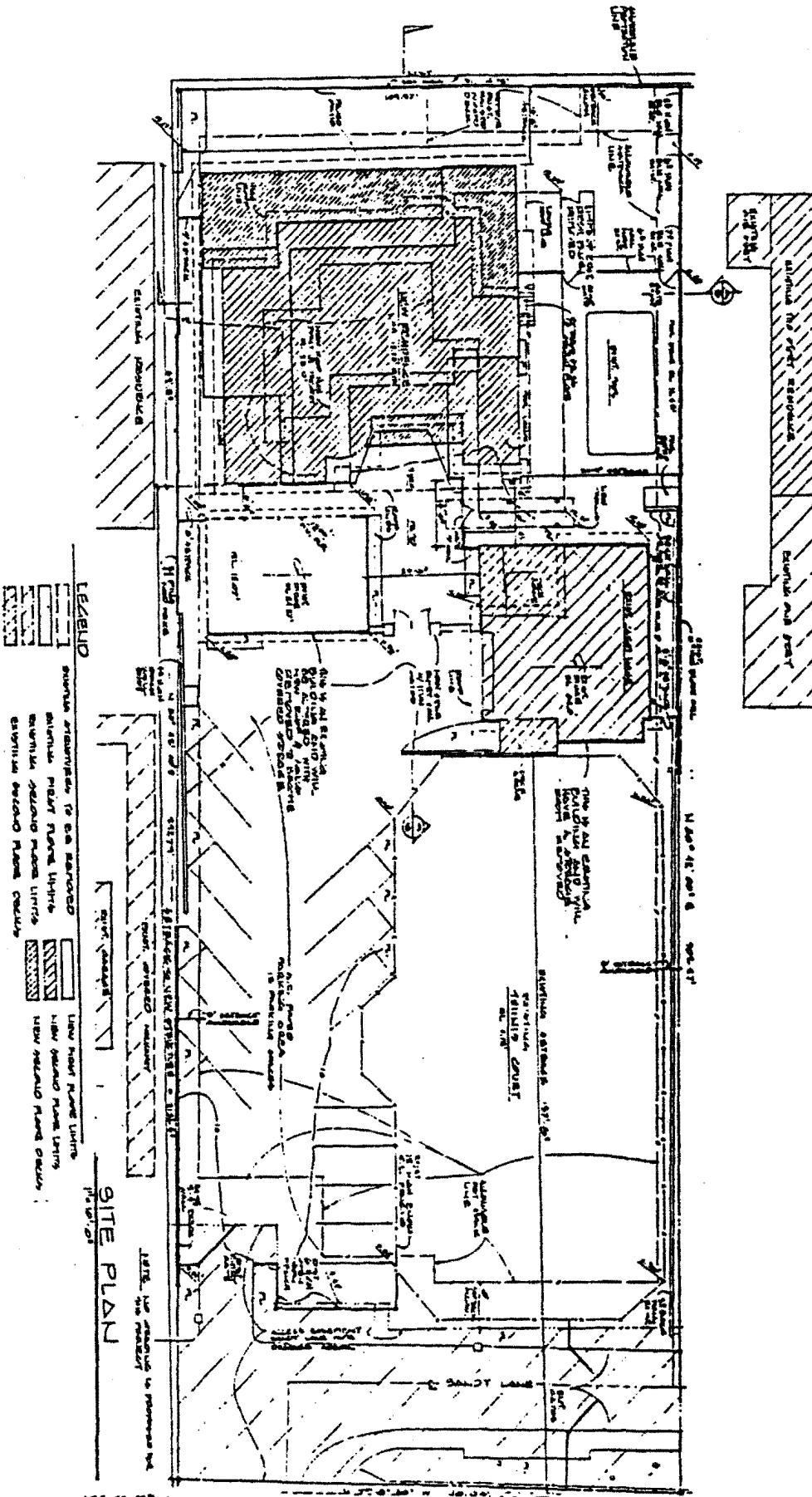


EXHIBIT NO. 2
APPLICATION NO.
6-98-49
Site Plan
California Coastal Commission