

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Staff: GDC-SD
 Staff Report: May 25, 2000
 Hearing Date: June 13-16, 2000

REVISED CONDITIONS AND FINDINGS

Application No.: 6-99-79

Applicant: Darlene Klugherz

Description: Conversion of an existing approximately 1,076 sq. ft. retail space to restaurant use and the addition of approximately 306 sq. ft. of new outdoor restaurant area within an existing approximately 9,076 sq. ft. retail center on an approximately 23,522 sq. ft. lot. Also proposed is the use of off-site parking.

Lot Area	23,522 sq. ft.
Building Coverage	9,076 sq. ft.
Parking Spaces	16
Zoning	Commercial
Plan Designation	Commercial
Ht abv fin grade	20 feet

Site: 159 South Highway 101, Solana Beach, San Diego County.
 APN 298-010-61

Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on January 11, 2000, approving the development, as proposed, over staff's recommendation of denial.

Date of Commission Action: January 11, 2000

Commissioners on Prevailing Side: Daniels, Desser, Dettloff, Estolano and Kruer.

Substantive File Documents: City of Solana Beach General Plan; Highway 101 Precise Plan; Draft Fletcher Cove Master Plan; City Request #17-95-15; Solana Beach CUP #17-99-10; Parking Lease between City of Solana Beach and Nadine Fryman signed July 8, 1999; Parking lease between Solana Executive Plaza and Nadine Fryman dated August 26, 1999; CDP No. 6-91-194; Letter from Applicant dated December 12, 1999, with photo attachments.

STAFF RECOMMENDATION:

I. The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on January 11, 2000 concerning approval of Coastal Development Permit #6-99-79.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the *January 11, 2000* hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *its approval of Coastal Development Permit #6-99-79* on the grounds that the findings support the Commission's decision made on *January 11, 2000* and accurately reflect the reasons for it.

II. Standard Conditions.

See attached page.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Commission Action/Detailed Project Description. On January 11, 2000, the Commission approved the conversion of an approximately 1,076 sq. ft. of existing retail use to restaurant use and the addition of an approximately 306 sq. ft. outdoor dining area to an existing approximately 9,076 sq. ft. commercial center located on an approximately 23,522 sq. ft. lot. The site is located on the west side of Highway 101, just south of Lomas Santa Fe Drive and approximately two blocks southeast of Fletcher Cove Beach in the City of Solana Beach. The approximately 1,076 sq. ft. of retail space that would be converted is part of an approximately 1,376 sq. ft. space of which approximately 300 sq. ft. was initially constructed as retail but was converted to restaurant use in 1991 pursuant to a coastal development permit (ref. CDP 6-91-194/Wintress). The applicant proposes to use the previously converted 300 sq. ft. space along with the approximately 1,076 sq. ft. of proposed converted retail space and the approximately 306 sq. ft. of proposed outdoor dining to create approximately 1,682 sq. ft. of total restaurant space.

The current approximately 9,407 sq. ft. retail center has a total of 16 on-site parking spaces available. The applicant is not proposing to add any on-site parking and is instead proposing to lease 8 parking spaces on an adjacent City owned public parking lot or off-site at a nearby office building complex, each of which are located within walking distance of Fletcher Cove Beach.

Because the City of Solana Beach does not have a certified LCP, the standard of review in this area is Chapter 3 policies of the Coastal Act. The previously certified County of San Diego LCP is used as guidance.

2. Parking/Public Access. Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities . . .

The site of the proposed development is located along Highway 101, which is designated as a major coastal access route within the previously certified County of San Diego LCP. The site is located approximately two blocks from the beach at Fletcher Cove Park and within walking distance of the Solana Beach Transit Center, a public bus and train access location. Because Fletcher Cove Park is the main accessible public beach area serving the City of Solana Beach that is close to the downtown area and has available public parking, it is a very popular destination point for residents and tourists alike. As such, the streets and public parking lots surrounding the site are used for beach access. In addition, a number of the existing commercial developments along Highway 101 in this area were constructed prior to the incorporation of the City of Solana Beach and fail to meet the City's current parking standards. Since the existing commercial development in the area does not conform to existing parking standards, it is particularly important that new development not adversely impact beach access by reducing the number of parking spaces available to people going to the beach.

The retail center in which the proposed development is located does not currently conform to the City's parking standards. The existing approximately 9,076 sq. ft. retail center contains 16 parking spaces. Under the City of Solana Beach's Highway 101 Specific Plan requirements, the approximately 9,076 sq. ft. retail center requires a total of 30 parking spaces.

Solana Beach Specific Plan

9,076 sq. ft. of existing retail center

1:300 parking ratio for retail use

* 30 parking spaces required to serve the existing center

In comparison, the previously certified County LCP, which is used for guidance, requires 45 parking spaces:

County LCP	9,076 sq. ft. of existing retail center
	<u>1:200 parking ratio for retail use</u>
	45 parking spaces required to serve the existing center

In addition, in 1991 the Commission approved the conversion of 300 sq. ft. of existing retail use within the center to be used as a cafe (ref. CDP #6-91-194/Wintress). This conversion was located within the retail structure that the applicant proposes to convert to restaurant and would become part of the applicant's restaurant. One of the special conditions of approval of the prior conversion required the addition of two additional on-site parking spaces. These spaces were to be created in an area behind the retail center. Although the conversion was made, these 2 additional spaces do not currently exist. Therefore, the existing 300 sq. ft. of permitted restaurant use is lacking 2 parking spaces. Although the cafe is not currently being used; the parking spaces were required as a condition of approval of the conversion from retail to restaurant. Therefore, the failure to provide these two spaces is an apparent violation of the prior permit. The applicant, as lessee of the space where the cafe is located, is now the permittee for the prior permit and is responsible for satisfying the condition of approval requiring the 2 additional parking spaces.

Under both the City of Solana Beach's General Plan and the previously certified County of San Diego LCP, new development within a lot containing nonconforming parking levels is only required to provide new parking to accommodate the new development, not to bring the entire site into compliance with current standards. As such, the proposed conversion of approximately 1,076 sq. ft. of retail use to restaurant would require the addition of 4 parking spaces utilizing the City's parking requirements (6 spaces would be required utilizing the County's previously used LCP). This requirement is based on the difference between the City's parking requirement for 1,076 sq. ft. of retail space parking which is 4 spaces (1 space per 300 sq. ft. of gross floor area) and 1,076 sq. ft. of restaurant use which is 8 spaces (1 space per 133 sq. ft. of gross floor area).

<u>Solana Beach Specific Plan</u>	1,076 sq. ft. – proposed conversion of retail to restaurant
	1:300 Parking ratio for retail uses
	1:133 Parking ratio for restaurant uses

1,076 sq. ft. at 1:300 = 4 parking spaces

1,076 sq. ft. at 1:133 = 8 parking spaces

Spaces required to accommodate the conversion =
8 parking spaces – 4 parking spaces = 4 parking spaces

County LCP (Used for guidance) 1,076 sq. ft. – proposed conversion of retail to restaurant

1:200 Parking ratio for retail uses

1:100 Parking ratio for restaurant uses

1,076 sq. ft. at 1:200 = 5 parking spaces

1,076 sq. ft. at 1:100 = 11 parking spaces

Spaces required to accommodate the conversion =

11 parking spaces – 5 parking spaces = 6 parking spaces

In addition, the applicant proposes to add approximately 306 sq. ft. of new outdoor dining which will result in the requirement of 2 additional spaces (1 space per 133 sq. ft.). Therefore, under the City's parking ordinance, the proposed development would require 6 new parking spaces to accommodate the new development. Furthermore, as indicated above, the applicant is proposing to use 300 square feet of restaurant space that was created pursuant to a previously approved permit that required the addition of 2 parking spaces. These two parking spaces were not provided or were provided, but subsequently removed. Thus, to accommodate the proposed development, the applicant would need to provide a total of 8 additional parking spaces in order to be found consistent with existing parking standards (6 for the proposed development, and 2 for the development that was previously approved).

The applicant is proposing to address the parking requirements of the proposed development by providing 8 parking spaces at 140 S. Sierra Avenue (to be leased from the City of Solana Beach), a City owned public parking lot adjacent to and west of the proposed development site and/or by leasing 8 parking spaces from an existing off-site office building complex approximately 100 feet from the subject location. Relative to the parking lot at 140 S. Sierra Avenue, the City of Solana Beach acquired the property in 1994, which contained a dilapidated commercial structure and issued an abatement order to remove the structure as a fire danger and public nuisance. Commission staff reviewed the request to remove the structure and determined that based on the abatement order, no coastal development permit was required for the demolition. Subsequent to that time the City removed the structure and associated improvements and replaced them with a 75 spaced asphalt public parking lot, which is currently available for use by the public. However, the City failed to file an application for a coastal development permit for the construction of the public parking lot in apparent violation of the Coastal Act. Since the parking lot is available to the public for both commercial and beach access use, the proposal to lease eight of those spaces for use by the proposed development raises concerns relative to beach access.

Relative to the proposal for use of 8 parking spaces in the public parking lot, the City's Highway 101 Specific Plan has designated the proposed off-site parking property as the future location of a public parking structure to replace parking that is proposed to be removed in the Plaza District after the Plaza District is redesigned as a pedestrian-oriented business area. In addition, the City's draft Fletcher Cove Master Plan identifies this property as the site of replacement parking if Fletcher Cove should be converted to pedestrian use only. The site is currently used by the general public, both to patronize nearby businesses

and to visit the beach at Fletcher Cove. The site is also within walking distance of the Solana Beach Transit Center. Thus, the proposed leasing of public parking spaces could reduce the available spaces that are currently in demand by the general public for both commercial and recreational opportunities and could adversely affect the development of a future public parking structure at the site. However, in this case, the applicant has provided photographic evidence which demonstrates the existing parking lots at both the proposed leased site and at Fletcher Cove appear to have an excess of available parking during the Summer months when beach use is at its highest. (Photographs taken on Sunday, August 29, 1999 and Labor Day, September 6, 1999, demonstrated that these parking areas were less than ¼ occupied during the daytime.) In addition, as previously described, the City proposes to redevelop the nearby Plaza District as a pedestrian-oriented business district with pedestrian bridges to be placed over Highway 101 to link this area with the Amtrak/Coastal Rail/Bus Transit Center. The applicant asserts that a significant amount of the proposed restaurant use will come from nearby commercial employees or Transit Center users who are not dependent on automobile use. Therefore, based on this information, the proposed development may encourage pedestrian and mass transit use and the applicant's use of an under utilized public parking lot at 140 S. Sierra will not adversely affect public access to the beach.

The alternative proposal to lease 8 parking spaces at the site of a nearby office building site raises similar concerns related to beach access. The proposed alternative site is located at 215 S. Highway 101 approximately 100 feet south of the subject site at an existing approximately 20,800 sq. ft. office building complex. The City of Solana Beach's parking requirement for office buildings is 1 parking space per each 250 sq. ft. In this case, in order to be in conformance with City standards, the office building site would require 83 parking spaces. However, the office building site has only 70 parking spaces and, therefore, currently has an inadequate level of parking. However, in this case, the applicant only proposes to use parking at this alternative site on evenings, weekends and holidays when the office building is not occupied. Therefore, with the lease of eight parking spaces from the City's under utilized parking lot at 140 S. Sierra and the evening, weekend and holiday use of spaces at a nearby office building site, the proposed development will not adversely affect public access to the beach.

In summary, Section 30252 of the Act requires that new development "maintain and enhance" public access to the coast and provide adequate parking. In this case, while the level of parking spaces provided onsite for the proposed development does not conform to the City's standards, the applicant has demonstrated that the proposed restaurant use will not conflict with any available public beach parking and because of its location within walking distance the public transit center, may encourage the use of alternative transportation and mass transit. While new or additional development in this area will require an updated review of parking demand for the area, in this particular case, approval of the proposed development in this near shoreline area will not have a significant adverse impact on public access since a reservoir of excess parking currently exists within the City's beach parking lots. Therefore, the Commission finds the proposed development is consistent with the public access requirements of Section 30252.

3. No Waiver of Violation. As part of the subject project, the applicant is proposing to add onto a previously approved 300 sq. ft. conversion of retail space to restaurant use. (ref. 6-91-194/Wintress). The use of this 300 sq. ft. converted retail space to restaurant required the installation of two on-site parking spaces. Since these spaces were not installed, or were installed but subsequently removed, there is an apparent violation of the permit. The Commission notes that although development has taken place in apparent violation of the earlier coastal development permit, consideration of the subject request by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Commission action upon the permit does not constitute a waiver of any legal action with regard to the alleged violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without or in violation of a coastal development permit.

4. 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 not be made.

The site is zoned and designated in the Solana Beach General Plan and Highway 101 Specific Plan as Commercial. The proposed project is consistent with that designation, and because the applicant has documented the existence of an excess of available beach parking, the proposed development meets the requirements of Chapter 3 policies of the Coastal Act relating to the provision of adequate parking to serve the proposed development. It should be noted that the adequacy of parking to serve both commercial uses and the beach going public in the downtown area should be addressed by the City in its LCP, when submitted to the Commission. Therefore, the Commission finds that project approval will not prejudice the ability of the City of Solana Beach to obtain a certified LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits 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)(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.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project has been found consistent with the public access policies of the Coastal Act. There are no feasible alternatives or additional mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

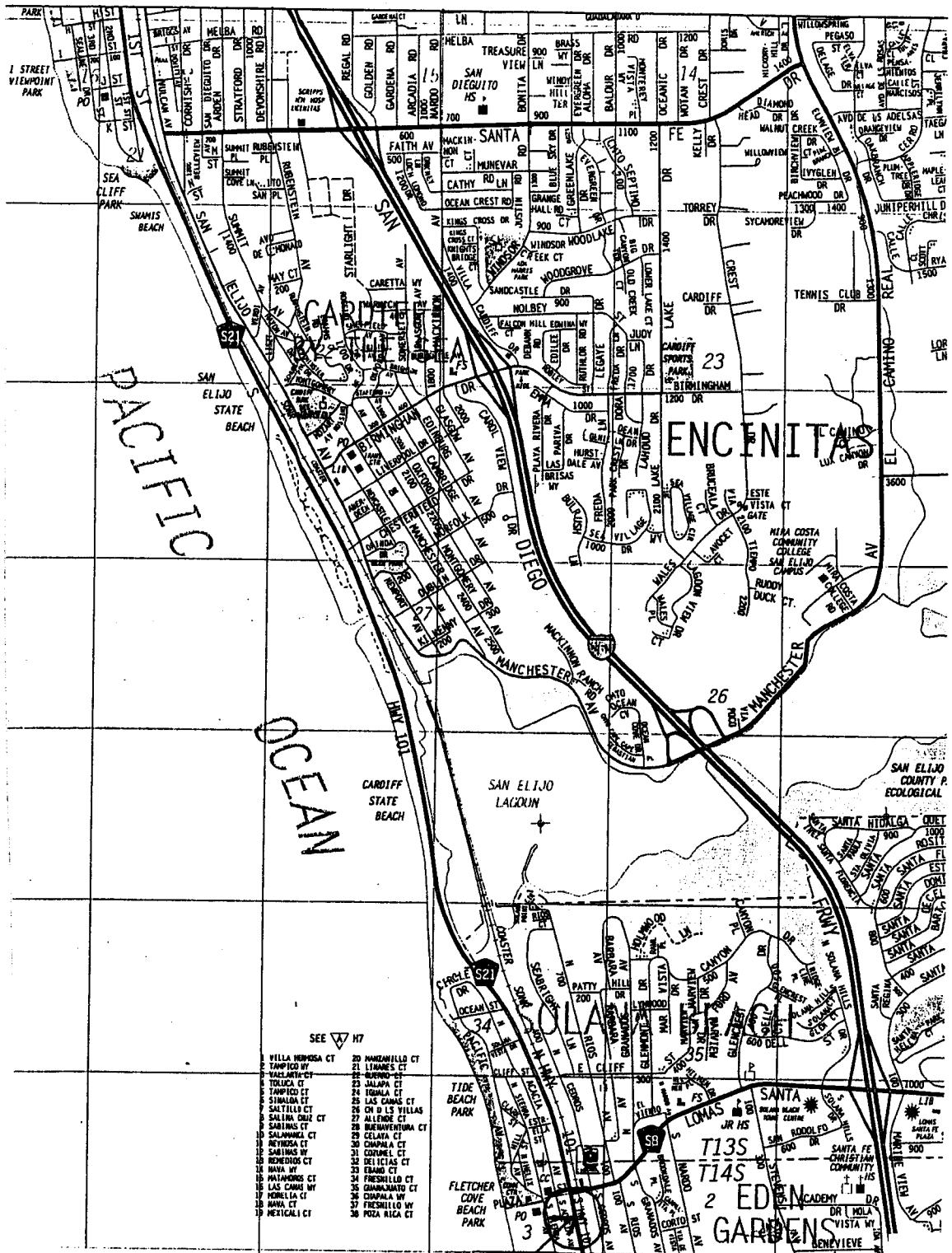


EXHIBIT NO. 1
 APPLICATION NO.
 6-99-79
 Location Map

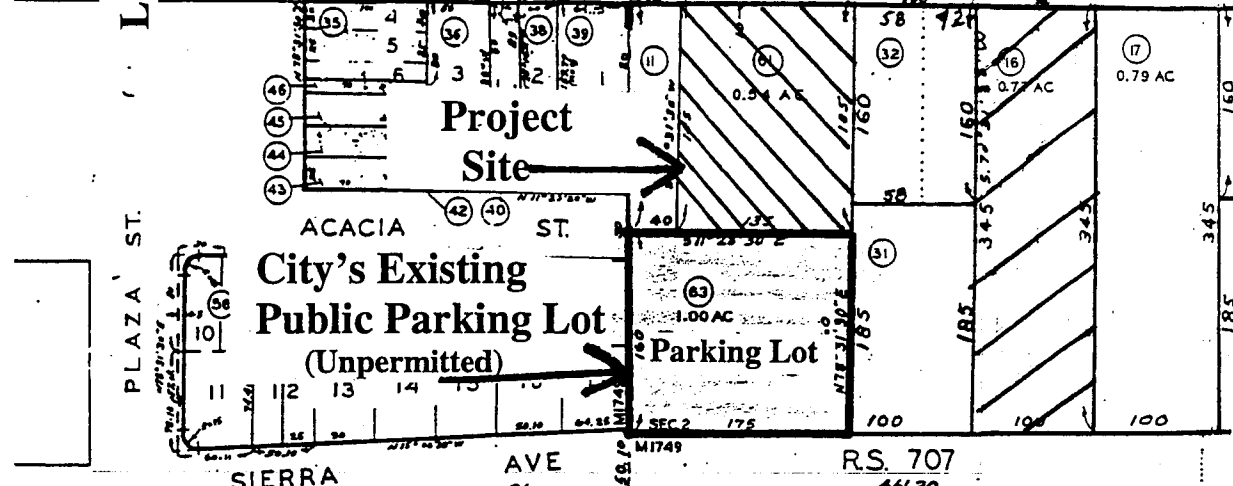
California Coastal Commission

Solana Beach
Transit Center

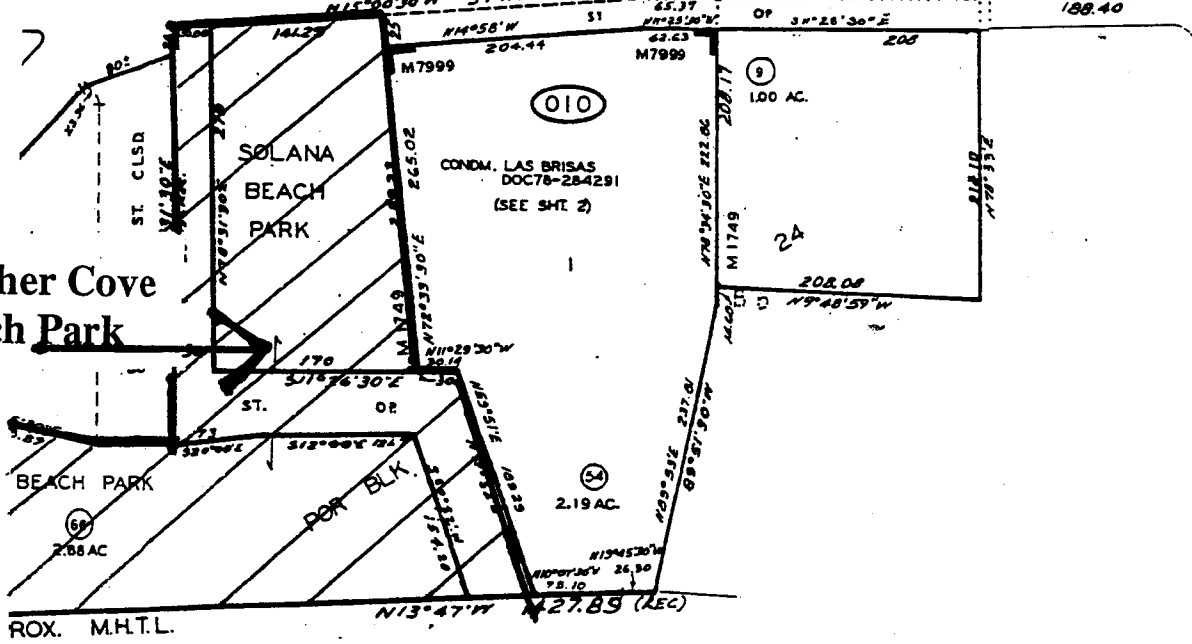
Lomas Santa Fe Dr.

Alternative Parking
at Office Building

Highway 101



Fletcher Cove
Beach Park



Pacific Ocean

EXHIBIT NO. 2
APPLICATION NO.
6-99-79
Parcel Map
Identifying
Surrounding Uses

California Coastal Commission

Existing Bldg. "A"
Approx. 5000 sq. ft.

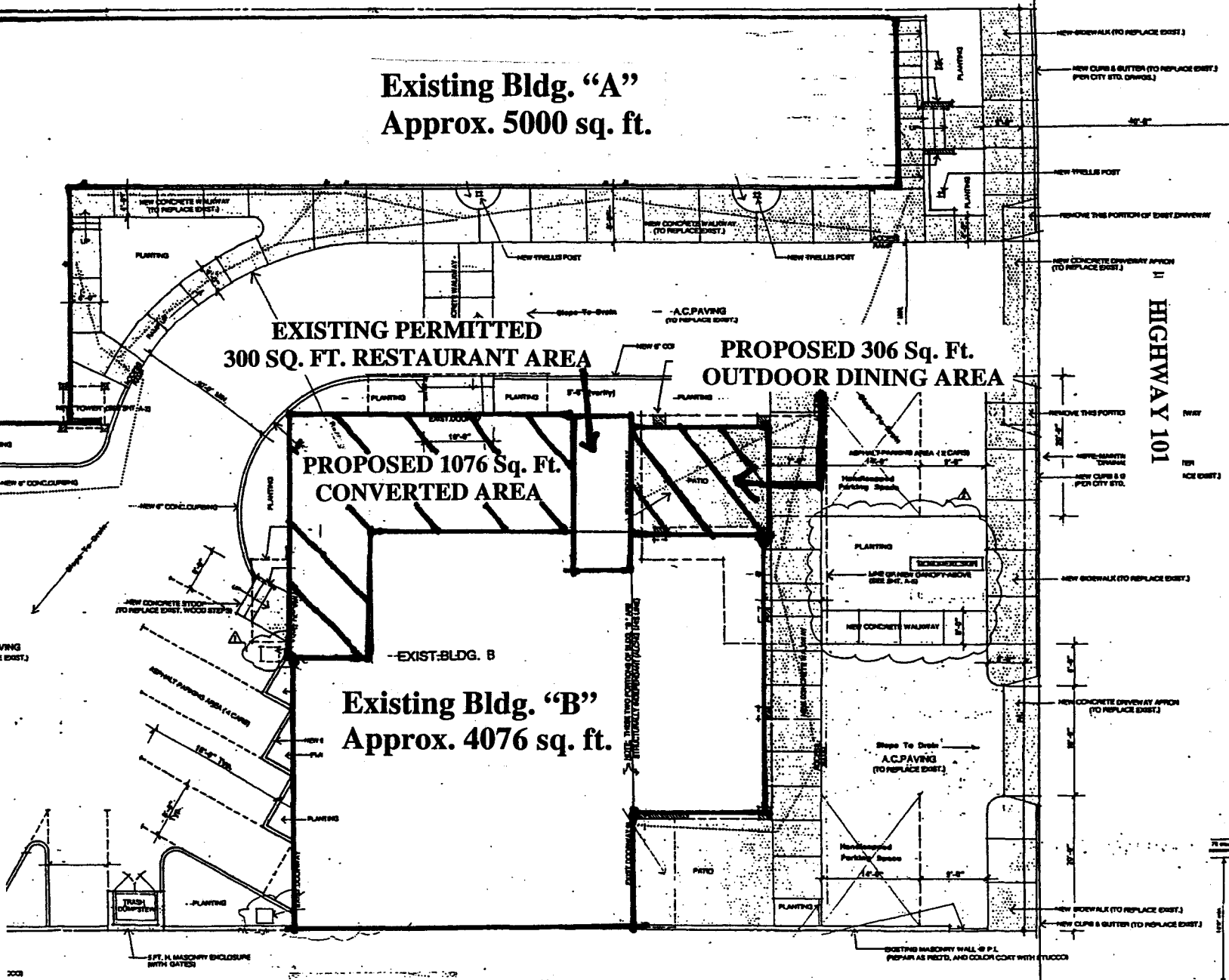
EXISTING PERMITTED
300 SQ. FT. RESTAURANT AREA

PROPOSED 306 Sq. Ft.
OUTDOOR DINING AREA

PROPOSED 1076 Sq. Ft.
CONVERTED AREA

Existing Bldg. "B"
Approx. 4076 sq. ft.

HIGHWAY 101



California Coastal Commission
EXHIBIT NO. 3
APPLICATION NO.
6-99-79
Site Plan

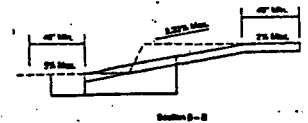


SITE PLAN
SCALE: 1/8" = 1'-0"

TITLE -24 (Handicapped Accessibility) LEGEND

- Indicates handicapped accessible primary entry doors
- Indicates route from handicapped parking to entries

Note:
All new concrete flatwork (unless noted otherwise) shall be integral color (Davis # 5447) with washed exposed aggregate finish.
All new concrete curbs to be integral color (Davis # 5447) with light broom finish.



NEW PROPOSED