

CALIFORNIA COASTAL COMMISSION

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**RECORD PACKET COPY**

Filed: July 10, 2000
49th Day: August 28, 2000
180th Day: January 6, 2000
Staff: KFS-LB
Staff Report: August 24, 2000
Hearing Date: September 12-15, 2000
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-00-193

APPLICANT: Lido Diner LLC

AGENT: N/A

PROJECT LOCATION: 3461 Via Lido, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: Convert a 3,334 square foot retail space to a 3,334 square foot restaurant having 1,581 square feet of public service area.

LOCAL APPROVALS RECEIVED: Approval in Concept No. 1318-2000 from the City of Newport Beach; Use Permit 3671 from the City of Newport Beach.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permits 5-88-054 (Fritz Duda Company); 5-88-054-A1 (Fritz Duda Company); Coastal Development Permit Waiver 5-90-479 (Newport Via Lido Assoc.); Coastal Development Permit Exemption #94 for 3423 Via Lido; Coastal Development Permit Exemption for 3475 Via Lido.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission **APPROVE** the proposed development with one special condition imposing a lease restriction related to parking requirements and future changes in intensity of use. The major issue raised by the proposed change in intensity of use of the site is the adequacy of parking. Thirty-eight (38) parking spaces are proposed on-site. The parking provided is consistent with the Commission's regularly imposed parking standards and will not impede public access in the subject area.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

The staff recommends that the Commission **APPROVE** the permit application with one special condition.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-00-193 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

Approval With Conditions

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.

4. 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.
5. 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.

III. SPECIAL CONDITIONS

1. PARKING REQUIREMENT

A. BY ACCEPTANCE OF THIS PERMIT, THE APPLICANT ACKNOWLEDGES AND AGREES:

1. that a minimum of 38 parking spaces shall be provided to serve the development; and
2. that any reduction in parking spaces below 38 spaces must be replaced in order to continue operation of the restaurant; and
3. that any change in intensity of use of the site shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a lease restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The lease restriction shall include a legal description of the leased site. The lease restriction 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. The lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner and master lease holder shall submit a written agreement, subject to the review and approval of the Executive Director, stating that in the event of termination of the lease of the property that is the subject of Coastal Development Permit 5-00-193, and for so long as the subject site is used for a restaurant pursuant to Coastal Development Permit 5-00-193, the landowner and master lease holder will agree (i) to be bound to terms of clause (A) of this condition if it becomes the owners of the possessory interest in such property, and (ii) to include a provision in any subsequent lease of such property requiring the lessee to record a lease restriction, subject to the review and approval of the Executive Director of the Coastal Commission, incorporating all of the terms of clause (A) of this condition; iii) to comply with the requirements of clause (A) of this condition.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Description and Location

The proposed development would occur at 3461 Via Lido, City of Newport Beach, Orange County in the Griffith Building located in the Via Lido Plaza Shopping center. This project site is located in the Lido Village area of the City of Newport Beach, County of Orange (Exhibits 1-2). The Lido Village area is bounded by Newport Boulevard, Via Lido, and Newport Bay (i.e. the West Lido Channel) on the Balboa Peninsula. It is a mixed-use area with commercial and government uses. The City of Newport Beach Certified Land Use Plan has designated the Lido Village area for a mixture of retail and commercial uses. The land use classification under the Certified Land Use Plan is "Retail and Service Commercial". In this district, uses allowed include retail sales, offices which provide goods or services to the general public, hotels and motels, restaurants, commercial recreation, and senior housing facilities.

The applicant proposes to convert an existing vacant 3,334 square foot retail space to a 3,334 square foot restaurant having 1,581 square feet of public service area (Exhibit 2). As noted above, the retail space to be converted is located in the existing Griffith Building, on the ground floor. The remainder of the Griffith Building is utilized as office space. The Griffith Building is part of the Via Lido Plaza Shopping center ("shopping center"). Other uses within the shopping center include a supermarket (Pavilions), movie theater (Edwards Lido Theater), specialty coffee vendor (Starbucks), two restaurants (Regatta Café and Z-Pizza), and several retail stores. These uses share a parking lot which contains 312 parking spaces. The applicant proposes to allocate 38 parking spaces in the 312 space lot for use by the proposed restaurant. The subject site has been leased from Lido Partners to the applicant (Lido Diner LLC) for a period of 15 years.

B. Previous Commission Actions

On March 24, 1988, the Commission granted to the Fritz Duda Company Coastal Development Permit 5-88-054 for the conversion of two vacant shops and a courtyard area into a restaurant and eating area at 3423 Via Lido in the Via Lido Plaza shopping center. The permit was subject to one special condition which required the applicant to provide an additional 55 parking spaces on site. On May 20, 1988, the Executive Director issued an immaterial amendment to Coastal Development Permit 5-88-054 which deleted some of the previously proposed seating area and reduced the demand to 15 additional parking spaces. In a letter to Commission staff dated July 7, 2000, the Fritz Duda Company has stated that the development was never undertaken. Accordingly, the permit has expired and is no longer valid.

At the June 12-15, 1990, Commission hearing the Commission did not object to the issuance of Coastal Development Permit Waiver 5-90-479 for the construction of a 250 square foot retail flower shop and 100 square feet of outdoor display area at 3423 Via Lido

within the Via Lido Plaza shopping center. Documents prepared by the City of Newport Beach indicate that the flower shop was demolished in 1995.

On December 28, 1994, the Executive Director issued an exemption for renovations to an existing supermarket located at 3423 Via Lido in the Via Lido Plaza shopping center. The renovations included removal of a mezzanine floor area and addition of new ground floor area with no change in the gross floor area of the building.

C. New Development and Public Access

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 30252 of the Coastal Act states in relevant part:

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

The project site is on the Balboa Peninsula, which is major tourist area in the City of Newport Beach. Further, the project is located in the Lido Village area, which has been designated for a mixture of retail and commercial uses to promote marine and visitor serving commercial types of development.

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. Section 30211 of the Coastal Act mandates that development shall not interfere with the public's right of access to the sea. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking. When new development does not provide adequate on-site parking, users of that development are forced to occupy public parking that could be used by visitors to the coast. The project site lies just east of Newport Boulevard, which is a major arterial route for public access to the coastal opportunities located on the Balboa Peninsula, and is approximately 2000 feet from the ocean and 600 feet from the West Lido Channel. A lack of public parking discourages visitors from coming to the beach and other visitor-serving activities in the coastal zone. Any lack of parking would therefore have an adverse impact on public access. All private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

Parking Adequacy

The applicant proposes to convert an existing retail use to a restaurant. When determining parking requirements, the Commission uses its regularly-imposed standards and local parking standards as guidance. The Commission also relies on site-specific parking analyses or studies. In this case, a parking analysis prepared by the City of Newport Beach for the City's approval was submitted.

The existing use of the subject site is a retail store. For general retail stores, the City's analysis uses a parking ratio requirement of 1 parking space per 250 square feet of total gross floor area. Based on this ratio, the existing parking demand for the existing retail store is approximately 14 parking spaces (i.e. 3334/250).

The proposed development would convert the 3,334 square foot retail space to a 3,334 square foot restaurant with 1,581 square feet of public service area. For restaurants, the City's analysis uses a parking standard of 1 parking space for every 42 square feet of public service area¹. Accordingly, the proposed use would require approximately 38 parking spaces. The applicant is proposing to allocate 38 parking spaces within the 312 space parking lot for use by the restaurant. Therefore, based on the City's analysis, the proposed development provides adequate parking on-site.

The proposed restaurant will share a 312 space parking lot in the Via Lido Plaza shopping center with the other uses in the shopping center. The parking analysis prepared by the City states that there is enough parking available on site to support the proposed development in combination with existing parking demands. The City's analysis states that the parking requirement for the existing uses within the shopping center is 274 parking spaces. This quantity of spaces includes 14 spaces committed for the retail commercial use that presently occupies the site where the proposed restaurant is to be located. Since the shopping center has 312 parking spaces and only 274 are committed to other uses, there is an existing surplus of 38 parking spaces.

Based on the City's parking analysis, the proposed development will require 38 parking spaces. Crediting the 14 spaces that will no longer be used when the retail use at the subject site is abandoned, the net parking demand increase will be 24 parking spaces. Since the site has an existing surplus of 38 parking spaces, the proposed 24 space increase can be accommodated on site. In summary, the overall effect of the proposed development will be to increase parking demand at the site from 274 parking spaces to 298 parking spaces. Based on the City's parking analysis, since the site has 312 parking spaces and overall demand would be 298 spaces, there is adequate parking on site to support the proposed development.

The City's parking analysis was based upon an analysis of parking demand by the City's Traffic Engineer. The parking ratios used in the City's analysis are slightly different than those commonly used by the Commission. For instance, while the City uses a parking demand of 1:250 square feet for retail stores, the Commission commonly uses a more restrictive 1:225 square feet for retail stores. Meanwhile, for the proposed restaurant use the City used a parking demand of 1:42 square feet of public service area, while the Commission commonly uses a less restrictive ratio of 1:50 square feet of public service area. Overall, the parking requirements used by the City in their analysis and imposed under the City's Use Permit are more restrictive than the Commission's commonly used parking ratios.

¹ "Public Service Area" is the area where persons can dine or wait to dine.

In addition, the City's parking analysis is supported by surveys of the Via Lido Plaza parking lot which occurred over a two month period between March 2000 and April 2000. These surveys show that the types of uses in the shopping center are varied and have peak demands which do not coincide to cause a parking shortage in the parking lot. For instance, during the day the primary demand is from the restaurants, retail space, and office uses. The surveys indicate that during lunch hours the parking lot was 70% to 80% occupied (i.e. 218 to 250 of 312 space were occupied). Meanwhile, during the evening when the peak demand for the theatre is highest, the office and small retail uses are closed. The parking lot was 50% to 60% occupied during the evening (i.e. 156 to 187 of 312 space were occupied).

The proposed development provides parking consistent with the Commission's commonly used parking standards and the parking requirements of the City of Newport Beach. In addition, a site specific parking analysis indicates that there is adequate parking on site to support the proposed development. Therefore, the Commission finds that the allocation of 38 parking spaces within the 312 space parking lot is sufficient to serve the proposed development.

Special Conditions

To guarantee that adequate and useable parking as proposed by the applicant is consistent with Section 30252 of the Coastal Act the Commission finds it necessary to impose Special Condition 1. Special Condition 1 requires that the applicant acknowledge and agree that a minimum of 38 parking spaces shall be provided to serve the development and that any reduction in parking spaces below 38 spaces must be replaced in order to continue operation of the restaurant. In addition, Special Condition 1 requires the applicant to acknowledge and agree that any change in intensity of use of the site shall require an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required. Examples of changes in intensity of use include any increase in the quantity of public service area provided in the restaurant including both indoor and outdoor seating areas and any changes to the use of the site, such as from a restaurant to a retail use.

As noted above, the subject site is leased from Lido Partners to the applicant, Lido Diner LLC. In order to assure that the terms of Special Condition 1.A. are complied with and to assure that all lessors and lessees are aware of the requirements of Special Condition 1.A., section B of Special Condition 1 requires the recordation of a lease restriction incorporating all the terms of condition 1.A. Furthermore, in the event of termination of the lease of the subject site, section C of Special Condition 1 requires the landowner and master lease holder to agree to carry out the terms of section 1.A. for so long as the subject site is used for a restaurant pursuant to Coastal Development Permit 5-00-193. Section C also requires the landowner and master lease holder to include a provision in any subsequent lease of such property requiring the lessee to record a lease restriction, subject to the review and approval of the Executive Director of the Coastal Commission, incorporating all of the terms of clause (A) of this condition; and to comply with the requirements of clause (A) of this condition.

This type of special condition is consistent with those imposed in previous permits issued in the area. The Commission imposed Special Condition 1 for similar developments, such as 5-00-056 (Weeda), 5-99-379 (Blurock), 5-98-177 (Finnemore), 5-98-048 (La Quinta Homes), 5-97-249 (Weeda), 5-95-125 (Club H2O), and 5-95-118 (Saint James Episcopal Church).

Thus, only as conditioned to obtain Commission approval for future development and to conform with parking requirements, does the Commission find that the proposed development would be consistent with the development and public access policies of the Coastal Act.

D. Local Coastal Program

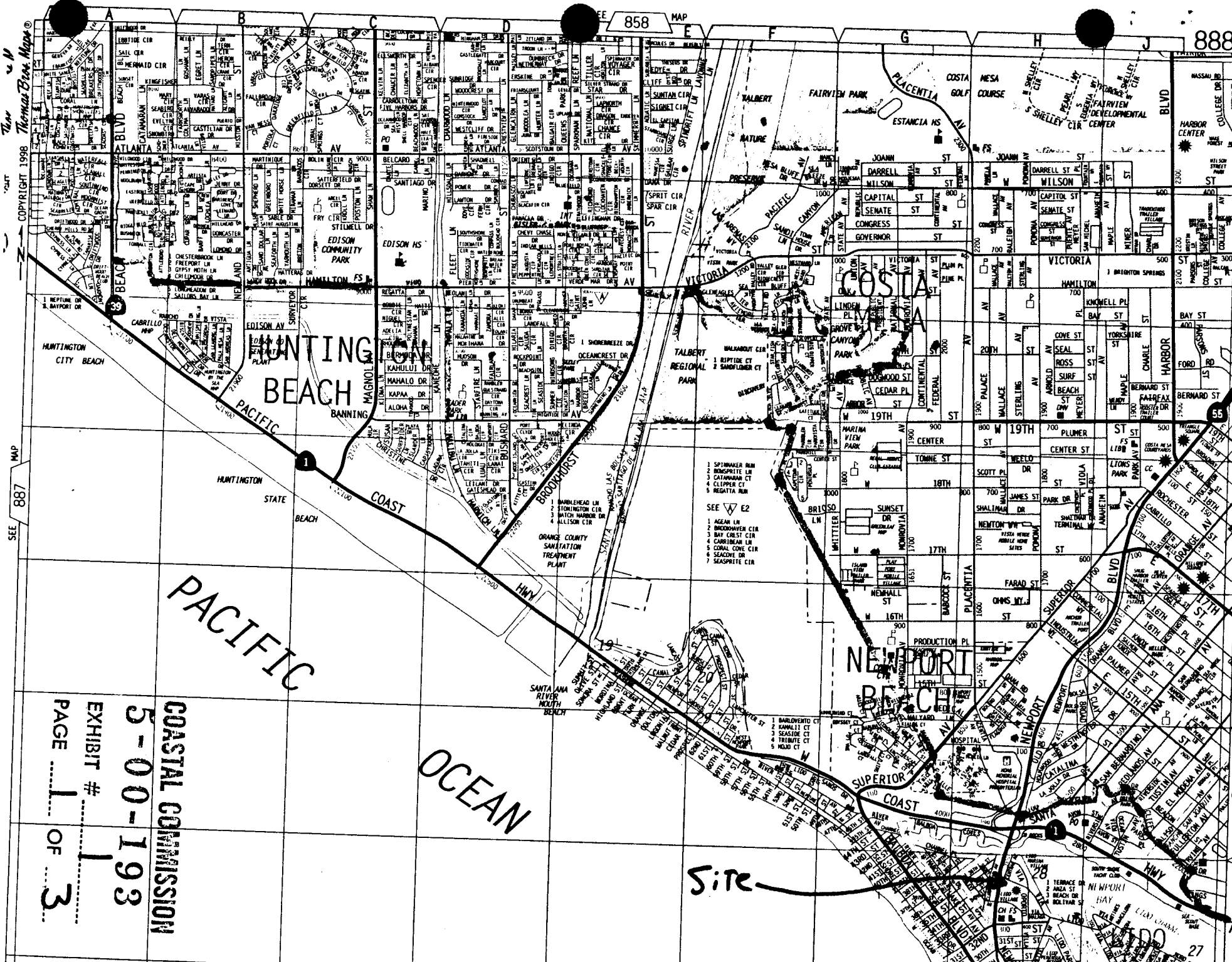
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. The project as conditioned is consistent with the Chapter 3 policies of the Coastal Act. The proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 project is located in an existing urbanized area. The proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal access by providing adequate parking on site and requiring that any future development which changes the intensity of use of the site or which changes the use of the site requires an amendment to this permit or a new coastal development permit. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the policies of the Coastal Act.



SEE 887 MAP

SEE 888 MAP

SEE 889 MAP

SEE 890 MAP

SEE 891 MAP

SEE 892 MAP

SEE 893 MAP

SEE 894 MAP

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SEE 898 MAP

SEE 899 MAP

SEE 900 MAP

SEE 901 MAP

SEE 902 MAP

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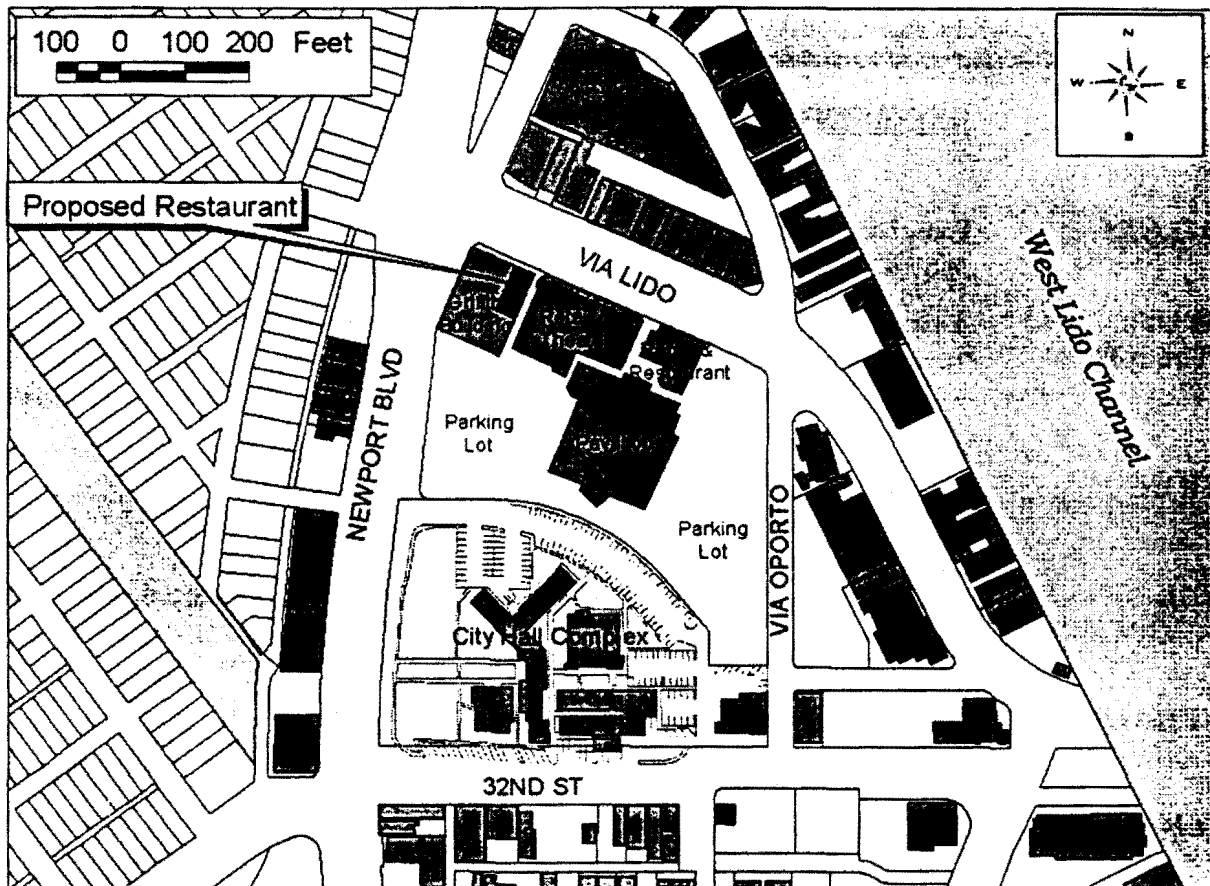
5-00-193

EXHIBIT # 1

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Site

Vicinity Map



Use Permit 3671

Lido Diner

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Subject Property and Surrounding Land Uses

Current Development:	Shopping Center including an office building, movie theater, retail uses, restaurants and a grocery store.
To the north:	Retail, office and restaurant uses.
To the south:	City Hall complex
To the west:	Retail uses
To the east:	Retail, office and residential uses

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EXHIBIT # 1

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Use Permit No. 3671
April 20, 2000
Page 2



A.L.I.A. SURVEY

RUTZ DUTCH COMPANY
 ONE GALLERIA TOWER
 19499 NORTH ROAD, L.O.
 DALLAS, TEXAS 75240

PREPARED BY:
MOTHERLAND & ASSOCIATES
18575 VISTA DE MONTANA
NEWBURGH, CA. 92552
(714) 904-4777-B114

J. H. 47. 749
QUEST. 2. DIF.

VIA LIDO PLAZA

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EXHIBIT # 1
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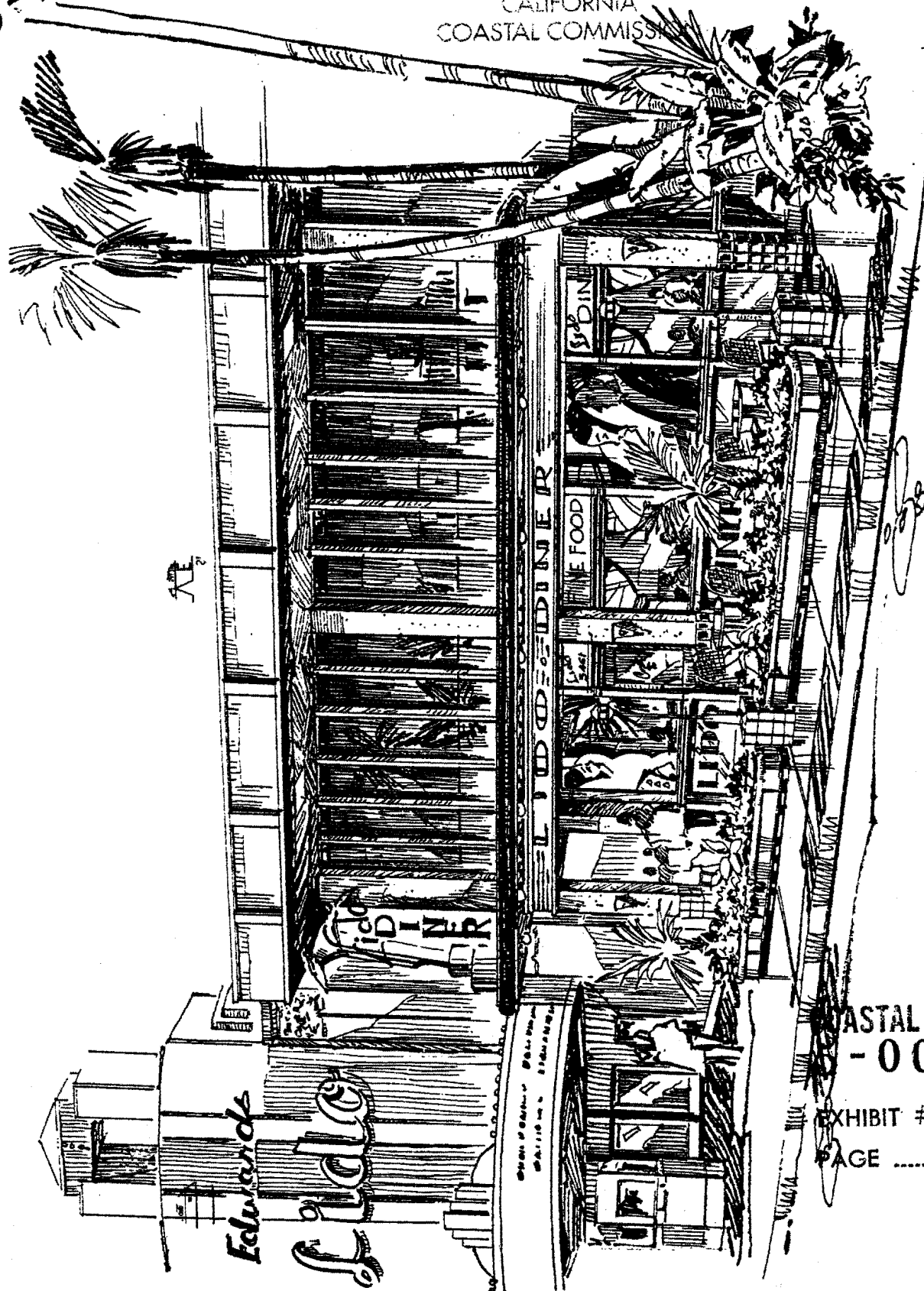
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NUTTALL-UCHIZONO ASSOCIATES
architecture • planning
ROBERT J. NUTTALL, architect

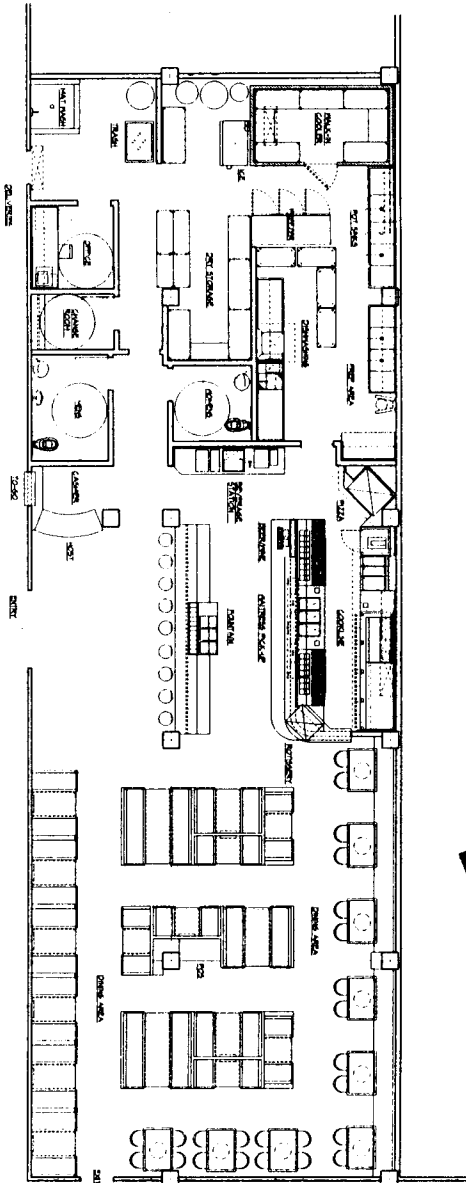
3199-c airport loop olive costa mesa, ca 92626-3199

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EXHIBIT # 2
PAGE 1 OF 2

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FIXTURE, FURNISHINGS, & EQUIPMENT PLAN

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 EXHIBIT # 2
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SEATING COUNT	
DINING AREA	50
KITCHEN AREA	1
TOTAL SEATING	51
TOTAL	51

BUILDING INFORMATION	
PUBLIC AREA	500 SF
RESTROOM	50 SF
KITCHEN AREA	50 SF
TOTAL BUILDING AREA	1050 SF

