CALIFORNIA COASTAL COMMISSION SAN DIEGO AREA 7575 METROPOLITAN DRIVE, SUITE 103 SAN DIEGO, CA 92108-4402 767-2370

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Staff: LRO-SD Staff Report: 5/22/02 Hearing Date: 6/10-14/02

AMENDMENT REQUEST STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F8945-A1

Tue 7a

Applicant:	Chart House Enterprises	Agent: Steve Kaufmann		
Original Description:	1 .	on of existing 3,566 sq.ft. restaurant into approximately 1,233 a formerly occupied by retail dress shop. Total restaurant area is nately 4,799 sq.ft.		
Proposed Amendment:	After-the-fact approval of 1,768 sq.ft. additions to existing three-level restaurant and a reduction in height to 30 feet (of a small area of the addition). Total restaurant area will be 6,567 sq.ft. on a .91 acre site. Also proposed is the reservation of 9 off-site parking spaces in an existing parking lot for the use of the restaurant.			
Site:	1270 Prospect Street, La Jolla, San APN 350-050-17	Jolla, San Diego, San Diego County.		

STAFF NOTES:

The proposed project represents an amendment to a former coastal development permit for after-the-fact additions to an existing restaurant. A similar project was the subject of an appeal (A-6-LJS-00-67) which the Commission found substantial issue at its July 11, 2000 hearing. The de novo hearing occurred on August 6, 2001. However, before the Coastal Commission took the final vote on the de novo permit item, the applicant's representative withdrew the permit at the hearing. Commissioners advised the applicant to work with Commission staff to resolve the unpermitted development that has occurred on the site since 1981 before proposing any new additions to the existing restaurant. At Enforcement staff's direction, the applicant submitted this amendment application to address all unpermitted development that has occurred on site. Since that time, the applicant has worked with the Commission's enforcement and planning staff to resolve several issues through the subject permit amendment. The proposed amendment is thus for the unpermitted additions of 1,768 sq.ft. which have occurred on site since 1981 and a reduction in height to 30 ft. of same, and the provision of 9 off-site parking spaces. This



permit amendment is being reviewed in conjunction with another permit amendment (F8945-A2) for the subject restaurant on this same meeting agenda.

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission approve the proposed permit amendment subject to special conditions. The project raises issues pertaining to parking and public access. The existing restaurant does not currently include any parking (and there is no room onsite to provide any parking) and is located within the downtown area of La Jolla, where parking is severely constrained. The applicant is proposing 9 off-site parking spaces (consistent with the requirements of the La Jolla Planned District Ordinance) to accommodate the proposed after-the-fact additions which have occurred to the restaurant. As conditioned, the staff has determined that the proposed project is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

Substantive File Documents: Certified La Jolla Planned District Ordinance; Certified La Jolla-La Jolla Shores LCP Addendum Land Use Plan; Appeal Forms; City of San Diego CDP/SCR/LJPD #98-0755 – approved 5/2/00; City of San Diego Manager's Report dated 3/21/00; City of San Diego Memorandum to City Council dated 4/21/00; Mitigated Negative Declaration LDR No. 98-0755 dated 11/16/99; Historical Assessment of the Chart House Restaurant/Wahnfried Building by Scott Moomjian, M.S., J.D. and Dr. Ray Brandes in consultation with Marie Burke Lia, Attorney at Law – Revised June, 1999; Stall Vacancy Counts for downtown La Jolla by Ace Parking dated July 9, 2001; CCC CDP#s F8945, F99655 and #A-93-81.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

<u>MOTION</u>: I move that the Commission approve the proposed amendment to Coastal Development Permit No. F8945-Al pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity

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with the policies of the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Off-Site Parking. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a La Jolla Planned District Joint Use Parking Agreement that conforms to the La Jolla PDO requirements for joint use parking for the provision of 9 off-site parking spaces approved by the City of San Diego Planning Director. Said parking agreement shall provide that the proposed off-site parking spaces are located within ¼ mile of the Chart House, are provided exclusively for use by the Chart House during hours of operation (applicant must demonstrate the proposed off-site parking spaces are not currently required for any other use or business), and include the recordation of a deed restriction on both sites (Chart House site and off-site parking site) documenting the reservation of the required parking spaces.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and the landowners of the Chart House site and the parking garage site shall execute and record deed restrictions, in form and content acceptable to the Executive Director, documenting the reservation of parking spaces as required by the terms of this condition. The deed restrictions shall include a legal description of the entire parcels. The deed restrictions 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 restrictions. These deed restrictions shall not be removed or changed without a Commission amendment to this coastal development permit.

2. <u>Conditions Imposed by Local Government</u>. This action has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

3. <u>Reduction in Height of Existing Structure</u>. The applicant shall reduce the height of the portion of the structure identified as the "Kellogg Addition" (shown in Exhibit Nos. 6 & 7-to no more than 30 ft. in height within 90 days of the issuance of this amendment. The Executive Director may grant additional time for good cause.

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4. <u>Condition Compliance</u>. Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. <u>Amendment Description/Permit History</u>. Proposed is a request for the after-thefact approval of 1,768 sq.ft. additions to an existing three-level, 4,799 sq.ft. restaurant for a total of 6,567 sq.ft. on a .91 acre site. Also proposed is the reduction in height to 30 feet of the subject addition and the provision of 9 off-site parking spaces. The addition is commonly known as the "Kellogg Addition". Pursuant to CDP #F8945, a 1,233 sq.ft. addition was permitted to the existing 3,566 sq.ft. two-level restaurant for a total floor area of 4,799 sq.ft. No parking was required because the expansion did not result in a significant increase in intensity of use of the site. The Commission found that the existing restaurant (prior to the expansion) contained 31 tables for dining and cocktails. After the proposed expansion, the restaurant would have 33 tables. In addition, because the Chart House was only proposing to be open in the evening hours after 5:30 PM, the Commission found that the parking supply in the area was adequate to accommodate both restaurant patrons and visitors to the coast.

In 1981, the Regional Commission approved CDP application #F9655 for the replacement of a portion of the restaurant (1,233 sq.ft.) that was destroyed by a fire and a 391 sq.ft. addition. Because the proposed expansion exceeded the square footage of the destroyed portion of the restaurant by more than 10%, the replacement and addition did not qualify for an exemption from permitting requirements pursuant to Section 30610(g) of the Coastal Act. That permit was subsequently appealed by the Sierra Club and the project was approved pursuant to CDP application #A-93-81 in May, 1981.

The grounds for the appeal were that parking was severely restricted in the downtown La Jolla area and that piecemeal additions to the restaurant were circumventing the requirements for parking. At that time, appellants argued that the development was increasing the intensity of use and that parking should be provided for the proposed addition as well as the entire restaurant. The Commission approved the project and found that the expansion of the Chart House Restaurant would not result in increased competition for the limited parking available in La Jolla and did not require the provision of any parking. The Commission found that there was excess parking in the evening hours at the Coast Walk underground parking garage immediately adjacent to, and southeast of, the Chart House during the evening hours. The Commission further found that because the expansion would not result in an intensification of use of the existing facility and that it would be open only during the evening hours, the proposed project could be permitted with a deed restriction limiting the hours of operation of the proposed

facility and the number of people that can be seated at any one time to 110 seats and a restriction on hours of operation such that the restaurant only be open to the public after 5:30 P.M. and installation of signs to direct patrons to the parking lot (garage) at the Coastwalk Shopping Mall. However, because the applicant did not comply with the prior to issuance conditions of the permit, the permit was not issued and has now expired.

The entire site is known as the "Green Dragon Colony" site as portions of the site previously contained the historic Green Dragon Colony cottages which were demolished in the early 1990's. The building that houses the restaurant was originally constructed in 1904. On 7/24/96, the City's Historical Site Board (HSB) designated several of the Prospect Street-facing buildings, including that occupied by the Chart House restaurant, as "Heritage Structures" in accordance with the certified La Jolla Planned District Ordinance. The designation is based on the HSB finding that the structures designed by architect, Robert Mosher, at the Green Dragon Colony site are an integral part of a neighborhood development style; an important "part of the scene" of urban development; and are worthy of preservation.

The subject restaurant is located on a sloping site that consists of three lots (Lots 30-32) which are bounded by Prospect Street to the southeast and Coast Boulevard to the northwest. The restaurant is within 300 feet of the coast. The Chart House restaurant is largely situated on Lot 32 with a portion of the restaurant extending towards the south onto Lot 31 of the site. The Green Dragon Colony previously existed at the far northern portions of Lots 30 and 31 of the subject site. This part of the subject site currently remains vacant and undeveloped. Coast Boulevard is the first public road in the area. Due to the configuration of the coastal bluffs and shoreline in this area, the ocean is northwest of the subject site. The site is located in the commercial core area ("village") of downtown La Jolla in the City of San Diego, which is a major visitor destination point. The site contains retail and restaurant leaseholds. The subject restaurant fronts on Prospect Street and overlooks Ellen Scripps Browning Park, La Jolla Cove, La Jolla Caves and Goldfish Point to the west. The restaurant is a split-level structure (three levels) with its upper level fronting on Prospect Street. Additional retail shops are located at a lower level.

Because the applicant is proposing an amendment to a Coastal Commission-issued CDP, the Commission has jurisdiction over the proposed amendment. The standard of review is the certified La Jolla-La Jolla Shores LCP Land Use Plan Addendum, the La Jolla Planned District Ordinance and the other applicable sections of the certified Land Development Code. Section 103.1203 of the certified La Jolla PDO addressing applicable regulations and definitions states: "Where there is a conflict between the Land Development Code and this division, this division shall apply."

2. <u>Unpermitted Development</u>. The proposed project consists of a request for afterthe-fact authorization of 1,768 sq.ft. of additions that occurred to an existing three-level restaurant since 1981. Also proposed is a reduction in height to 30 feet of a small portion of the addition which occurred without a coastal development permit. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #4 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

Although development has taken place prior to the submission of this amendment request, consideration of the request by the Commission has been based solely upon the certified City of San Diego LCP and the public access policies of the Coastal Act. Commission action on the permit amendment 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 an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

As part of the subject permit amendment, the applicant is proposing an after-the-fact approval of a 1,768 sq.ft. addition to an existing three-level restaurant. The restaurant as it exists today is 6,567 sq.ft. However, CDP# F8945, which is the only coastal development permit that was actually issued for development at the site, authorized a 1,233 sq.ft. addition to the then existing 3,566 sq.ft. two-level restaurant (authorizing a two-story structure on the subject site with a total floor area of no more than 4,799 sq.ft.). CDP #F8945 was approved, the conditions were satisfied, and the permit was issued by the Commission in 1980. Subsequently, in 1981, a fire destroyed a portion of the restaurant. The applicant then proposed to reconstruct the destroyed portion and construct a 391 sq.ft. addition (Ref. CDP #F9655). Although the Commission approved this development (subject to special conditions), the applicant failed to satisfy the priorto-issuance conditions required by the Commission and, as a result, the permit was not issued and has since expired. The applicant however, commenced with the development in an apparent violation of the Coastal Act.

The following is a comparison of the size of the existing restaurant to what has been previously permitted.:

Year	Square Footage	CDP	Total
Prior to 1980	3,566 sq. ft.	N/A	3,566 sq. ft.
1980	Add 1,233 sq. ft.	F8945	4,799 sq. ft.
2002	6,567 sq. ft.	None	6,657 sq. ft.

6,567 - sq. ft. of restaurant as it exists today

4,799 - currently permitted sq. ft. of restaurant

1,768 - sq. ft. added to restaurant without permit since 1980 and proposed for after-thefact approval Therefore, 1,768 sq.ft. is the total unpermitted development proposed to be authorized through the subject permit amendment. Commission records indicate that the unpermitted addition of 1,768 sq.ft. to the restaurant has occurred between 1981 and the present. In addition, a portion of the unpermitted addition was constructed higher than the 30 ft. maximum height limit and this is proposed to be lowered with this amendment request to comply with the 30 ft. height limit.

3. Parking. The certified La Jolla-La Jolla Shores LCP states, "a key component of adequate access is maintenance of existing facilities, including stairways, pathways, and parking areas." The La Jolla PDO contains detailed requirements concerning the provision of parking. In addition, Section 30252 of the Coastal Act also states, in part: "the location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities...." The Commission acknowledges that based on past Commission action on coastal development permits that were reviewed and approved by the Commission before the City's LCP was certified, that parking shortages and traffic circulation congestion were well documented in the downtown La Jolla area. The area continues to be a highly popular tourist and visitordestination area and parking is at a peak demand. Currently, there is no off-street parking spaces neither provided for the restaurant nor is they're any room on the subject site to do so. The structure that houses the restaurant was constructed in 1904 and the restaurant has not had any off-street parking since it opened in this structure. As noted earlier, the site consists of several retail/office/restaurant structures and when the Commission approved F8945 for the 1,233 sq.ft. addition, no additional parking was required.

The applicant proposes 9 off-site parking spaces to accommodate the proposed 1,768 sq.ft. after-the-fact addition, consistent with the requirements of the certified La Jolla PDO. The PDO provides that one space per each 200 sq.ft of gross floor area must be provided for restaurant uses. At this ratio, the 1,768 sq.ft. additions would require 8.84 spaces (rounded up to 9). The applicants are proposing 9 off-site parking spaces consistent with these requirements. It should also be noted that in the past, project opponents have stated that they believe that a parking standard of 1 space for each 100 sq.ft. of restaurant use should be provided because that was the standard that the Commission generally applied in 1980-81 before the La Jolla PDO was subsequently certified in 1985. The standard of review for "after-the-act" coastal development permits, however, is determined by reference to the time at which the Commission reviews the application, not to the time at which the development actually occurred.

The La Jolla PDO permits off-site joint use parking subject to a Special Use Permit provided that the multiple uses of the parking spaces do not conflict with individual parking needs, that the parking facilities are located within a quarter mile (approximately 1,300 feet) radius of the project site and that a La Jolla Planned District Joint Use Parking Agreement application is submitted to the Planning Director.

The proposed off-site parking is located on a vacant site on Cave Street about 1 ½ blocks south of the subject restaurant—which is 405 feet away from the subject site and well within the required 1,300 feet from the subject site pursuant to the PDO (ref. Exhibit No.

2). The site is owned by Allison-Zongker (the property owner of the subject site where the Chart House is situated) and presently contains a total of 45 spaces of which 23 spaces are proposed to be leased to the Chart House during the hours proposed for the restaurant operation. (Nine spaces are proposed for F8945-A1 and 14 spaces are proposed under F8945-A2). The proposed off-site parking will be exclusively reserved for the Chart House Restaurant during its hours of operation.

The supply of parking in the downtown area of La Jolla is very limited and there may never be sufficient parking to meet the demands of those who would like to park there, including coastal visitors and patrons of the retail establishments in this nearshore area. Off-site parking is limited and often only available during the evening hours and on weekends when it does not conflict with the needs for daytime businesses and offices in the area. However, in this particular case, with the proposed 9 off-site parking spaces, pursuant to the La Jolla PDO no impacts on public access and traffic circulation in the downtown area of La Jolla should occur as a result of the proposed development.

The applicant has proposed to be open for business during the lunch time hours on weekends and holidays in order to offer more service to the public as many other nearby restaurants do. While this again would seem to further intensify the use of the site (as the restaurant has not previously been open for lunch), the parking standards applied by the PDO do not take into consideration the hours of operation of the restaurant, but calculate parking demand based on the square footage of the restaurant. Again as noted above, with the provision of 9 parking spaces, the development will provide the necessary parking required under the PDO. Since the applicant is already proposing 9 parking spaces, no further parking is required for the proposed weekend and holiday lunchtime operation. In addition, as a condition of the City's permit, it was required that "at no time shall there be an increase in seating capacity above the existing maximum 294 seats". Special Condition #2 makes it clear all conditions imposed by the City pursuant to an authority other than the Coastal Act remain in effect and are enforceable by the City.

The Commission acknowledges that in this particular case, with the provision of 9 offsite parking spaces, the parking requirements for the after-the-fact development that has occurred on the site will be remedied. To assure this occurs, the Commission is requiring through Special Condition #1, that the applicant comply with the requirements of the La Jolla Planned District Ordinance for the provision of 9 off-site parking spaces and that such parking be secured through a Planned District Joint Use Parking Agreement. In addition, this condition requires that the approved parking agreement provide that the proposed off-site parking spaces are located within ¼ mile of the Chart House, are provided exclusively for use by the Chart House and not currently required for any other use or business and include the recordation of a deed restriction on both sites documenting the reservation of the required parking spaces.

It is also important to note that much of the business for the existing restaurants and retail shops in the area is pedestrian-oriented. It is likely that the parking demand for the restaurant will be lower than it would be if the restaurant were located in a less pedestrian-oriented neighborhood. The Commission does not dismiss the fact that there

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are severe parking shortages in La Jolla, but until the local community devises improvements in traffic circulation and parking in the community (i.e., shuttle programs, inventories of underutilized parking garages, etc.), the most that can be done at this time is to simply assure that new development occurring in this area provide adequate parking pursuant to the requirements of the La Jolla PDO. Only as conditioned, can the proposed development be found consistent with the certified LCP.

4. <u>Building Height/Views</u>. A portion (Kellogg Addition) of the after-the-fact addition proposed herein exceeds the 30-foot height limit as currently measured pursuant to the La Jolla PDO. As such, the applicant is proposing to lower the height to conform to current standards (Ref. Exhibit Nos. 5-7). Although the portion of the roofline of the Kellogg Addition does not currently block any views toward the ocean, the reduction in height will minimize the bulk and scale of the structure as seen by members of the public from the popular nearshore areas to the north as well as from Coast Walk, a popular vertical accessway just east of the site. In order to ensure that the applicant's proposal is implemented, Special Condition #3 requires that the height of the of "Kellog Addition" (shown on Exhibit Nos. 6 & 7) is reduced to no more than 30 ft. in height within 90 days of the issuance of this amendment. The Executive Director may grant additional time for good cause. As such, the proposed reduction in height can be found consistent with the visual resource policies of the certified LCP.

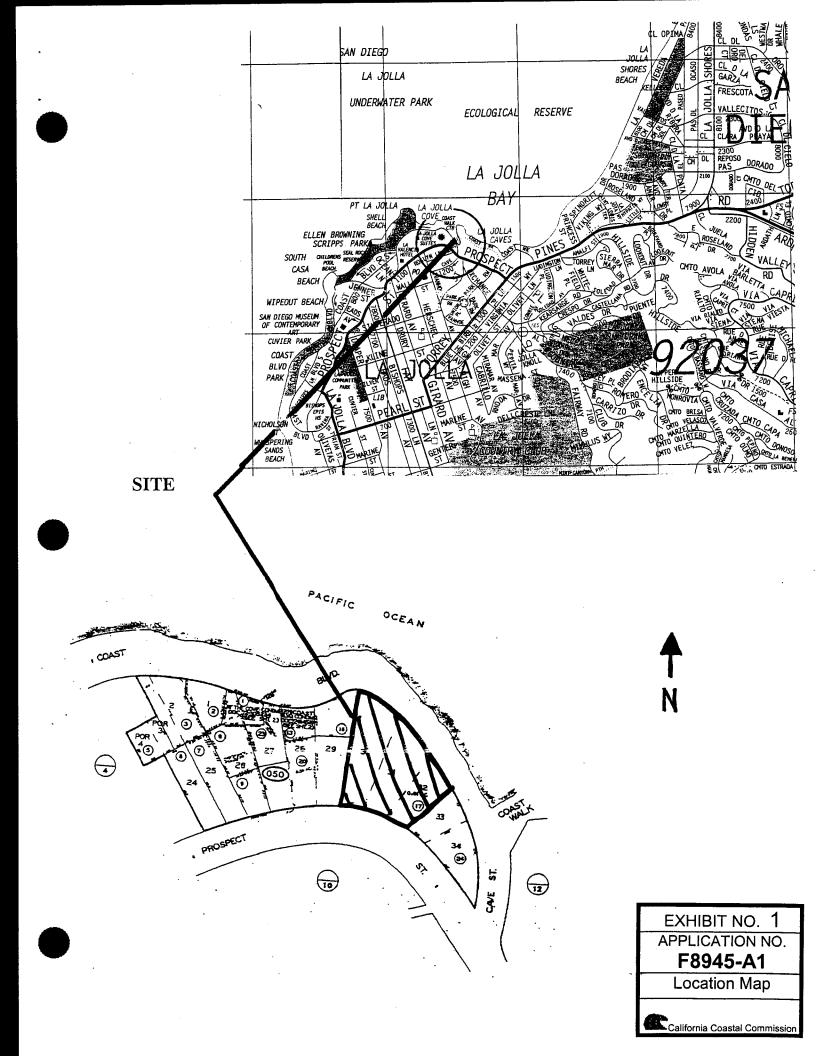
5. <u>Local Coastal Planning</u>. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as conditioned, such a finding can be made.

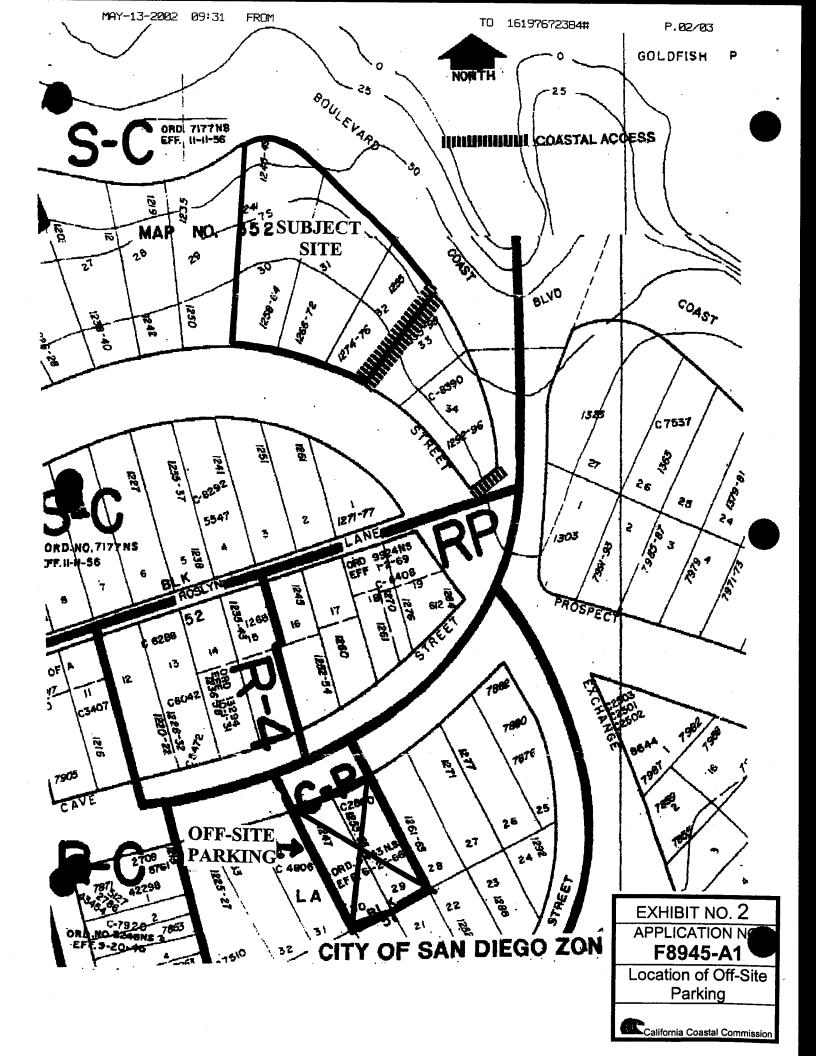
The subject site is located within the community of La Jolla within a segment of the City of San Diego's certified LCP. The subject site is located within the City of San Diego's permit jurisdiction which is within the Commission's area of appeal jurisdiction. However, the applicant is amending a previously-approved permit issued by the Commission prior to certification of the City's LCP. Therefore, the standard of review is the certified LCP.

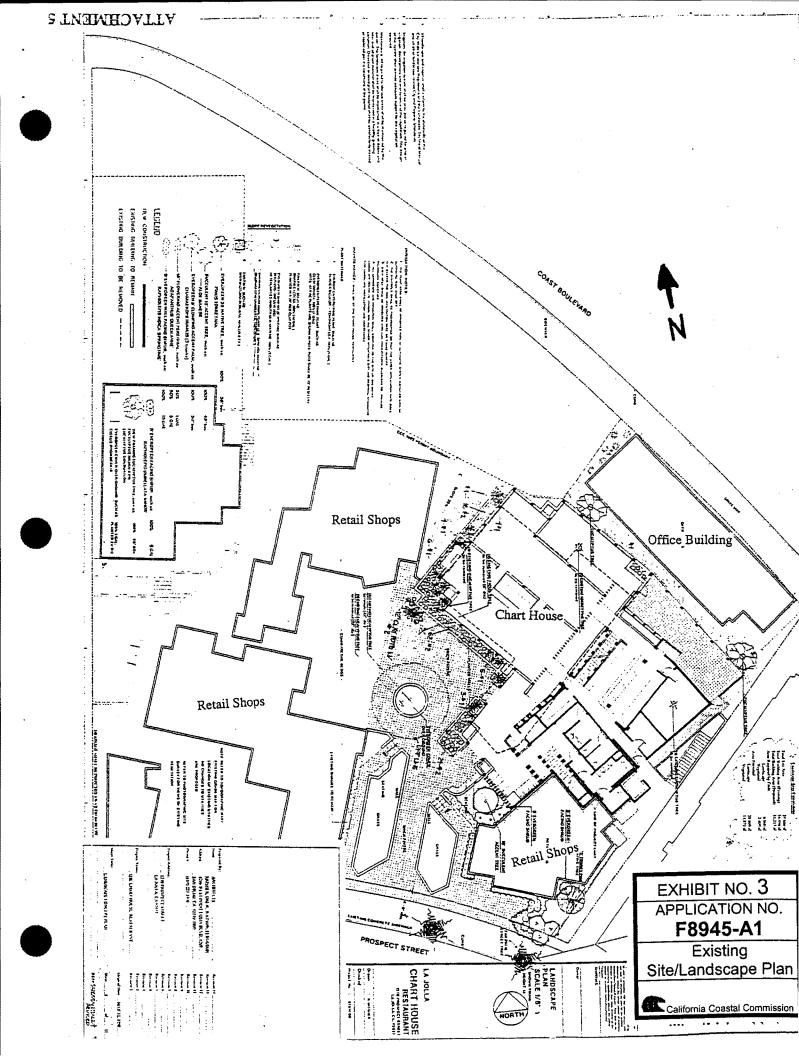
The site is currently zoned "1A", a subarea of Zone 1, which includes the primary retail and visitor-oriented commercial area in the core of La Jolla. The area is characterized by high levels of pedestrian activity, as identified in the La Jolla PDO. Subarea 1A is comprised of the area on the seaward and north side of Prospect Street. This subarea has been created due to its unique orientation to the ocean. As such, the La Jolla PDO addresses development standards for the protection an enhancement of public ocean views in this area. The proposed project is consistent with the certified La Jolla PDO. Therefore, the Commission finds that approval of the amendment, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its fullycertified LCP for the La Jolla area. 6. <u>Consistency with the California Environmental Quality Act (CEQA).</u> 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, 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.

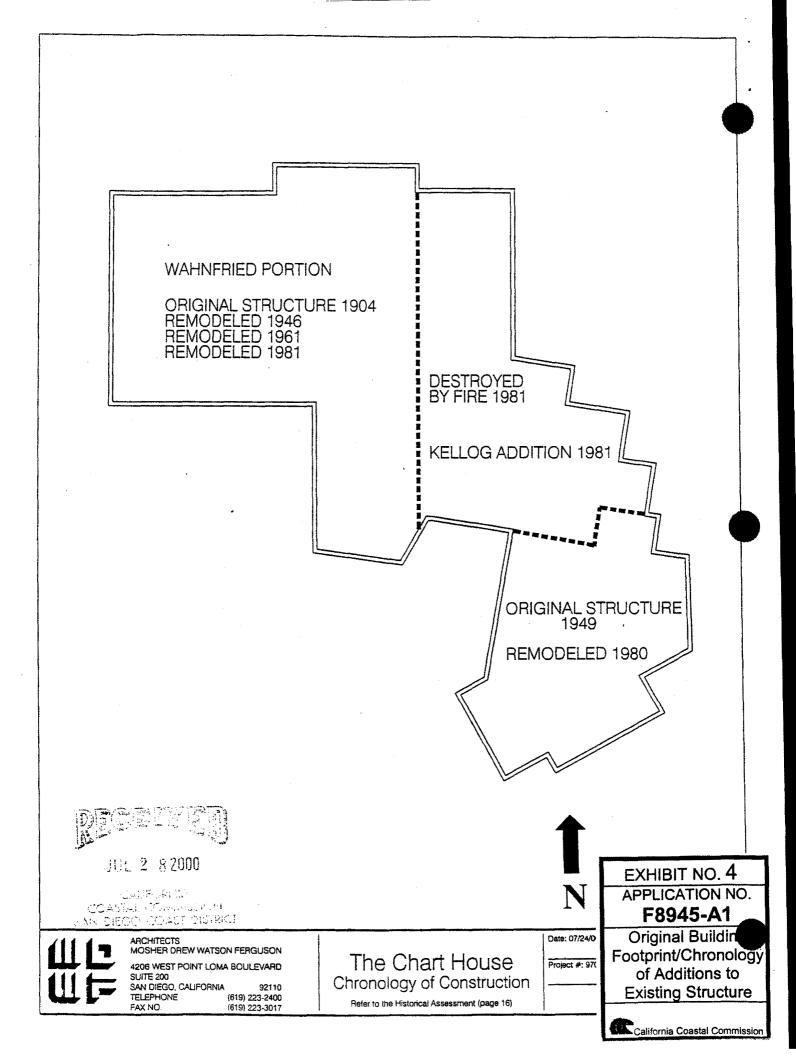
As discussed above and incorporated herein by reference, the proposed project has been conditioned in order to be found consistent with the public access policies of the certified LCP and the Coastal Act. The provision of 9 off-site parking spaces will minimize all adverse impacts to coastal access. 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 is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

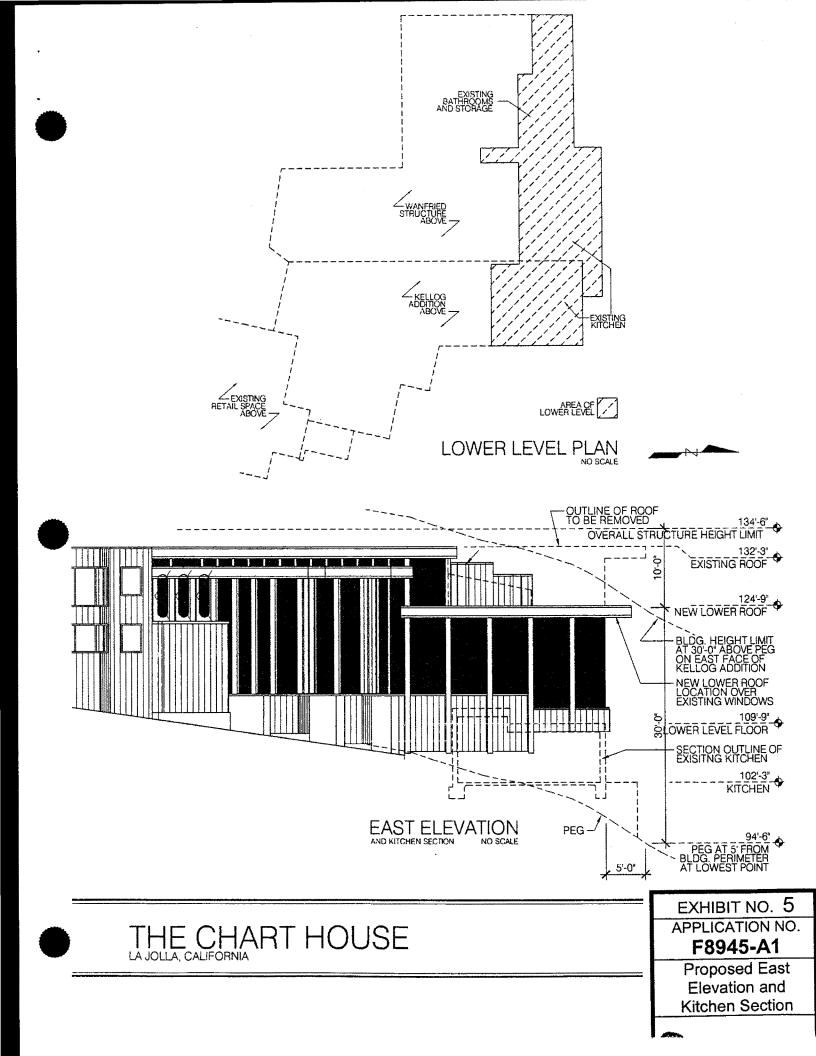
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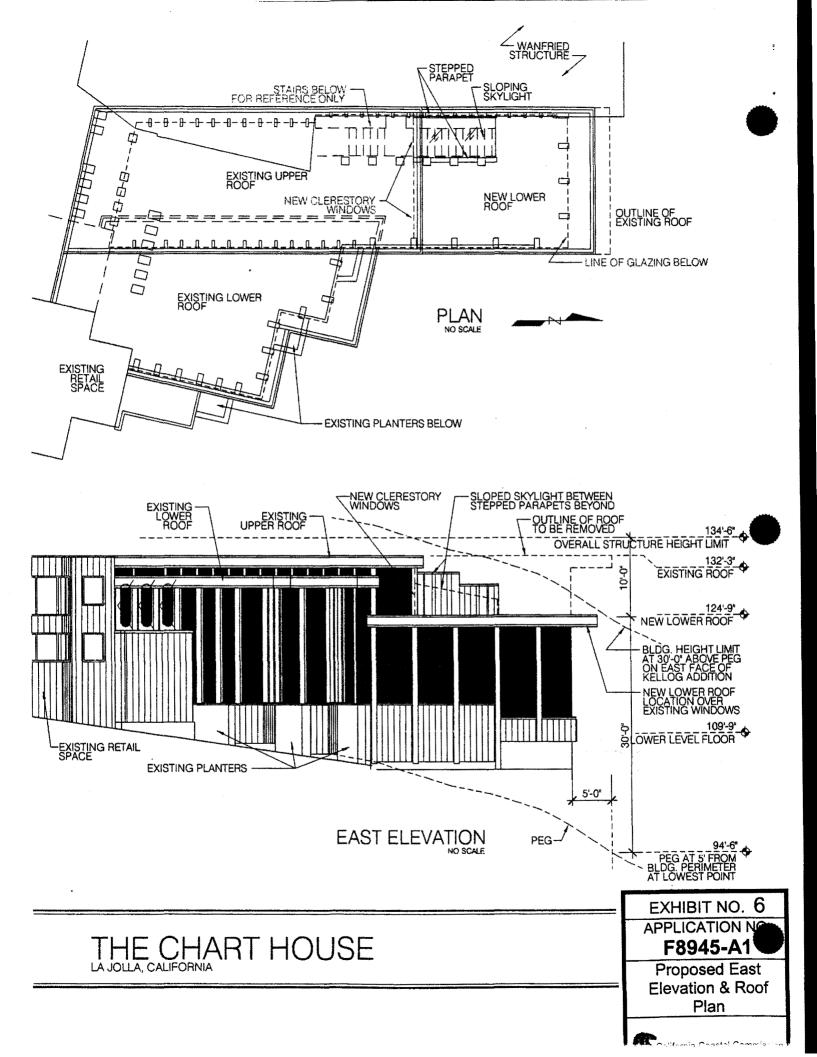


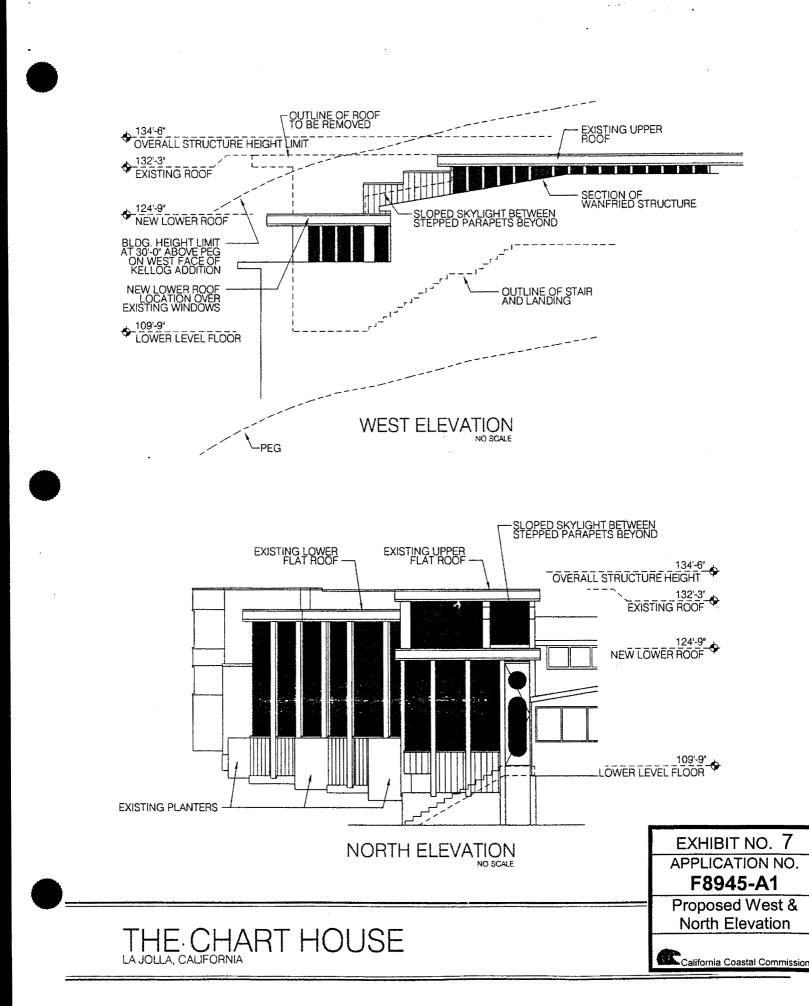


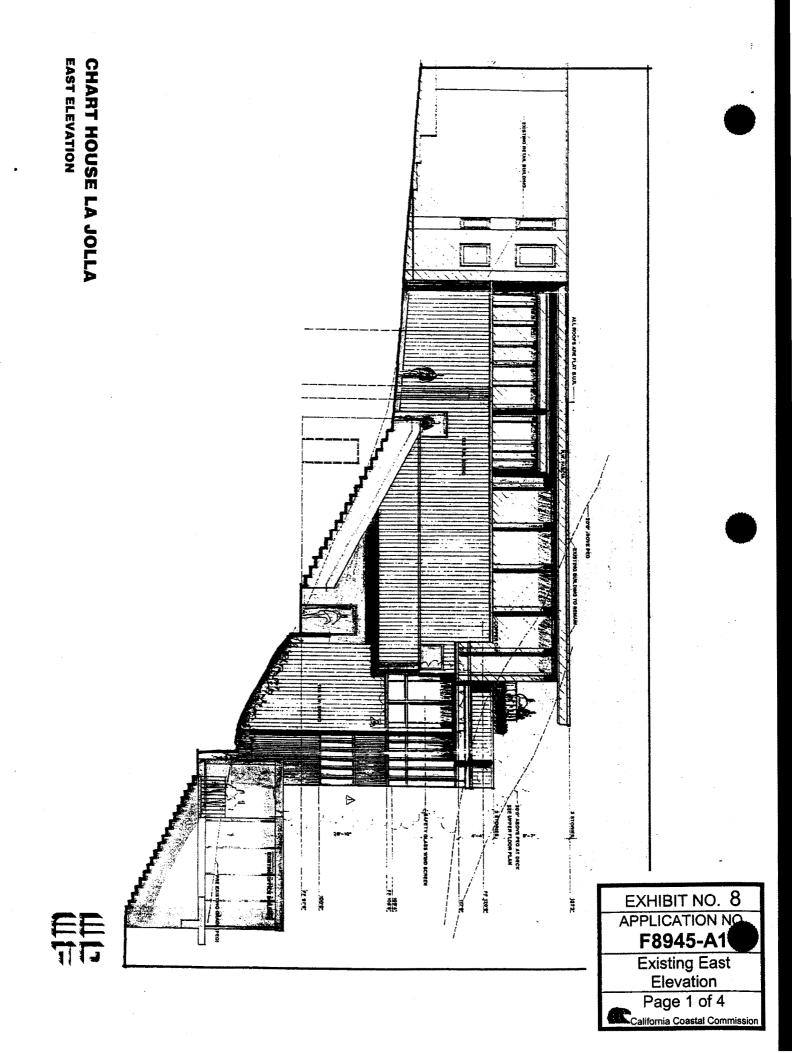












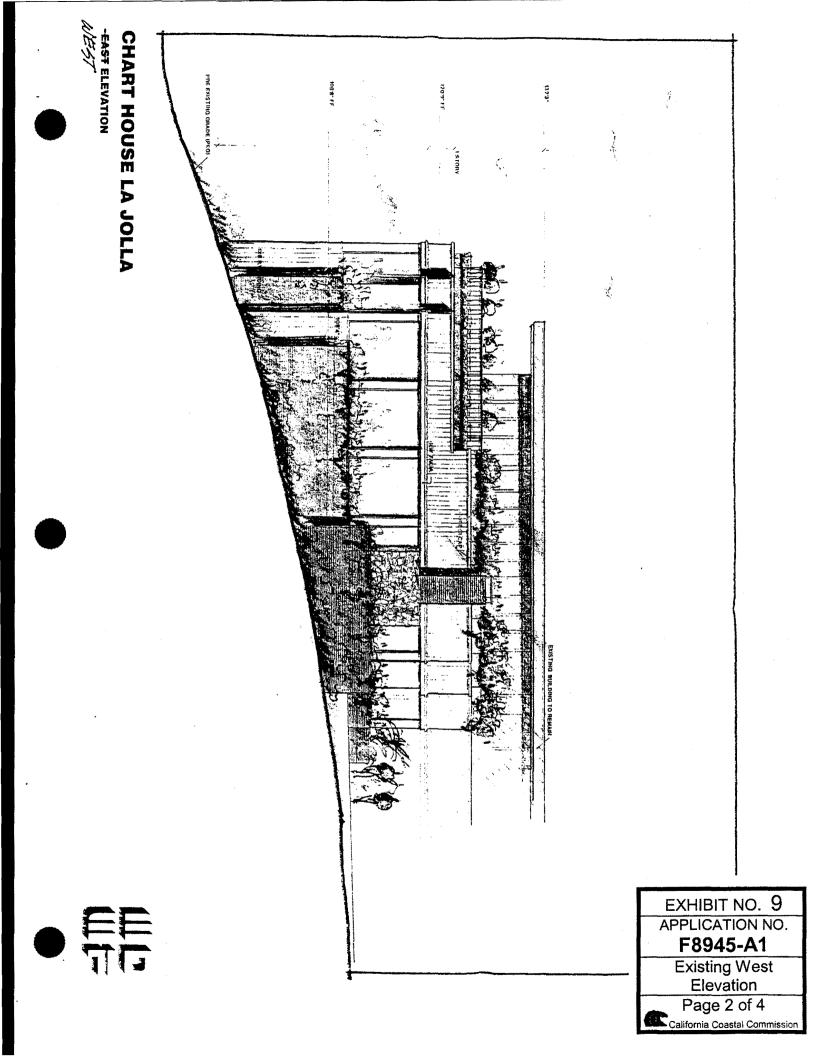
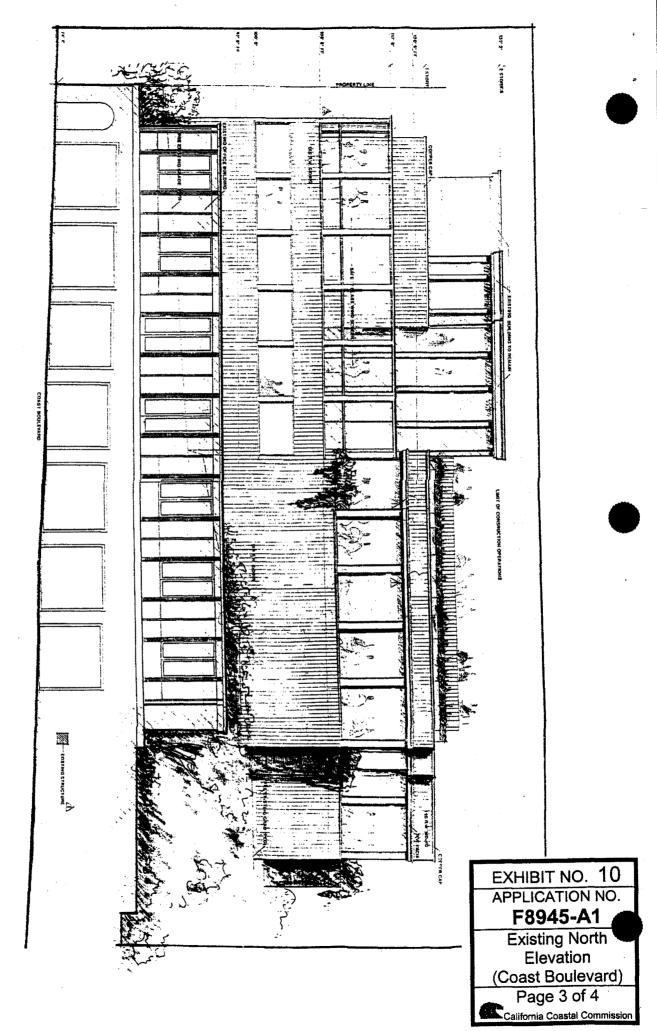
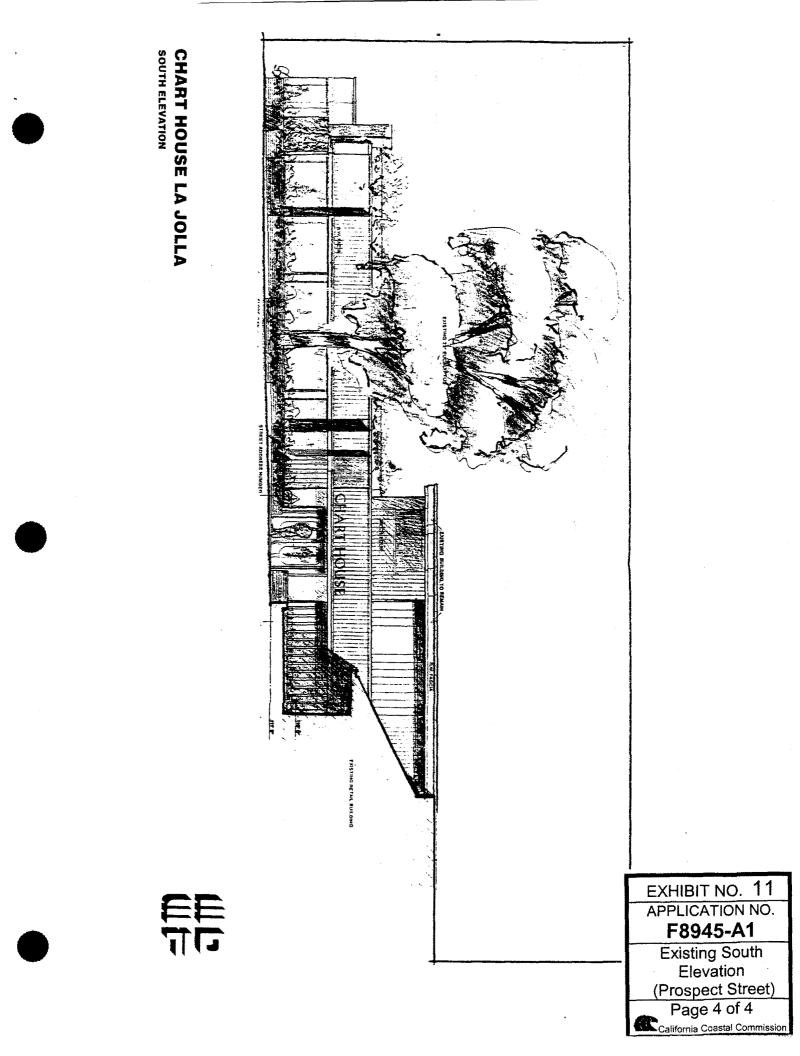


CHART HOUSE LA JOLLA





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