

## CALIFORNIA COASTAL COMMISSION

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Hearing Date: 10/7-10/03

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approval with Conditions

APPEAL NO.: A-6-PCB-03-61

APPLICANT: Miller Enterprises, Inc.; Attn: Brett Miller

PROJECT DESCRIPTION: Demolition of four commercial structures, removal of private paid parking lot and construction of a 44-room, three-story, 44,399 sq. ft. hotel with basement and ground level parking, 7,092 sq. ft. restaurant and 2,316 sq. ft. outdoor dining terrace on .51 acre oceanfront site.

PROJECT LOCATION: 4551 Ocean Boulevard, Pacific Beach, San Diego, San Diego County.

APPELLANTS: Coastal Commissioners Kruer and Wan; Stephen Morison

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SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission approve the de novo permit application with several special conditions. The primary issues raised by the proposed development relate to protection of public views and the provision of adequate on-site parking. The proposal involves the construction of a three story hotel development on a corner lot and will be visually prominent at the streetend of a public view corridor. As such, the proposal raises concerns relative to bulk and scale and impacts of views towards the ocean from the public view corridor. Protection of visual resources and public views associated with the proposed development will be addressed through the revised plans and landscaping requirements in Special Condition Nos. 1 and 3. Condition #1 requires revised plans for the second and third floors of the north elevation of the proposed hotel so that they do not appear to project into the view corridor as a continuous structure. It further requires that all structural elements at the second and third levels that support

anything other than the proposed balconies be removed so that that only the individual balconies extend a maximum of 4 ft. beyond the proposed building towards the street. In addition, balcony walls shall not be any higher than 3 ft. and shall not directly connect to adjoining room balconies. As an alternative design, the applicant may redesign the second and third level balconies to be set back 4 ft. further south to observe a full 5-ft. setback from the north property line. Special Condition #1 also requires that the proposed retaining wall along the western elevation and northwestern portion of the property near the proposed restaurant/dining patio be a maximum of 5 ft. high with 75% of the wall constructed of open materials to maximize public views while looking south and southwest across the site to the ocean.

Relative to public access and parking, the applicant has proposed to incorporate a number of provisions into the project to address concerns raised by the appellants. These include the provision of bus passes for hotel employees, provision of a free shuttle service for hotel guests to major visitor-destination areas in San Diego, free valet services for hotel guests, and validation of all on-site parking for hotel guests and restaurant patrons. Special Condition #2 incorporates these provisions as terms of the permit.

Other conditions include submittal of a construction Best Management Practices Plan. With the attached conditions, the project is consistent with the certified LCP and the public access policies of the Coastal Act.

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SUBSTANTIVE FILE DOCUMENTS: Certified Pacific Beach Community Plan and Local Coastal Land Use Plan; Certified City of San Diego Implementation Plan (Land Development Code); Appeal Forms; and, City of San Diego Report to the Hearing Officer dated 5/21/03.

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I. Appellants Contend. The Coastal Commissioners (Wan and Kruer), as appellants, contend that the development, as approved by the City, is inconsistent with the provisions of the certified LCP. Specifically, the appellants contend that the development is inconsistent with the visual resource and parking provisions of the certified LCP. The appellants contend the development is inconsistent with the visual resource policies of the certified LCP as the site is a corner lot at the end of a public view corridor where two view corridors intersect and the bulk and scale of the proposed development appears to be inconsistent with the community character of the area and public view protection policies of the certified LCP. In addition, all proposed landscaping will be situated in the public right-of-way but the City did not require that the landscaping be maintained such that it does not impede views to the ocean.

Another issue raised by the Commission appellants is that the proposed development does not provide adequate on-site parking and thus results in adverse impacts on public access to the coast. The City allowed a reduction in the required parking requirements per the certified implementation which allows a lesser parking ration for developments within an identified transit overlay area. However, the parking standard for the Beach

Impact Overlay Area where the project site is located does not identify a reduced parking standard. As such, it appears inadequate parking is being proposed. In addition, valet parking for 20 tandem parking spaces associated with the proposed restaurant is also proposed and the appellants contend that the functionality of valet service and tandem parking raises a concern with regard to impacts on public access in this nearshore area. In addition, the site presently contains a 37-space paid parking lot which will be removed through the proposed development which results in the removal of a parking reservoir that is generally made available to the public for beach parking.

The Commission appellants also raise issues pertaining to proposed development and its impacts on traffic and parking on both Mission Boulevard and Felspar Street. The appellants contend that the proposed project will have an adverse effect on beach access and parking as hotel and restaurant guests and employees will be parking on the street. The appellants raise several concerns and suggests that to alleviate this parking and traffic concerns that the hotel provide parking for its employees, that no fee be charged for its hotel guests (as several other hotels in the area provide free parking for their guests) and the provision of free valet parking for guests. The appellants also raise concerns with regard to potential impacts the construction access and staging will have on beach access and traffic impacts, particularly at the intersection of Mission Boulevard and Felspar Street.

The second appellant (Stephen Morison) raises issues pertaining to proposed development and its impacts on traffic and parking on both Mission Boulevard and Felspar Street. The appellant contends that the proposed project will have an adverse effect on beach access and parking as hotel and restaurant guests and employees will be parking on the street. The appellant raises several concerns and suggests that to alleviate this parking and traffic concerns that the hotel provide parking for its employees, that no fee be charged for its hotel guests (as several other hotels in the area provide free parking for their guests) and the provision of free valet parking for guests. The appellant also raises concerns with regard to potential impacts the construction access and staging will have on beach access and traffic impacts, particularly a the intersection of Mission Boulevard and Felspar Street.

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II. Local Government Action. The coastal development permit was approved by the Hearing Officer on May 21, 2003. The conditions of approval address, in part, the following: parking and valet service operation; building height; outdoor lighting; signage; landscaping; encroachments in the public right-of-way; and, water quality.

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III. Appeal Procedures. After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the

sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

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#### IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:**

*I move that the Commission determine that Appeal No. A-6-PCB-03-61 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this

motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. *A-6-PCB-03-61* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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**V. Findings and Declarations.**

1. Project Description. The proposed project involves the demolition of four existing commercial structures, removal of a private paid parking lot, and construction of a new 44-room, three-story, 44,399 sq. ft. hotel with basement, 85 parking spaces and a restaurant and outdoor dining terrace on a .51 acre oceanfront site. The site is located at the southeast corner of Felspar Street and Ocean Boulevard in Pacific Beach. The subject site is immediately adjacent to, and east of, the public boardwalk (Ocean Blvd.). The site is located approximately one block north of Crystal Pier.

The subject site is located between the first coastal road and the sea (Mission Boulevard), as such, it is within the Coastal Commission's area of appeals jurisdiction. As such, the standard of review is the certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act.

2. Visual Resources. The City's certified LCP identifies Felspar Street and Ocean Boulevard (boardwalk) as designated public view corridors. The City approved the proposed development with a five (5) foot setback at ground level, and one (1) ft. setback for the second and third stories along the north property line adjacent to Felspar Street, the designated public view corridor toward the ocean. In addition, along the Ocean Blvd. right-of-way, the approved project provides a varying setback of approximately 10 to 15 ft. on the ground floor to approximately 5 to 14 ft. on the second and third floors. The ground level setback contains an outdoor patio. No landscaping is proposed on the project site. An encroachment removal agreement is approved for underground parking, landscaping, irrigation and appurtenances in City right-of-way (Felspar and Ocean Blvd.).

The City's certified LCP Implementation Plan (Land Development Code) requires building setbacks of 0 to 10 feet for development in the Commercial-Visitor (CV) zone, where the project site is located. However, the certified Pacific Beach Community Plan and Local Coastal Program Land Use Plan contain several policies that address siting and design of development within the viewshed of public vantage points as follows:

(pg. 46) **Development Along View Corridors**

11. The following standards are recommended to maintain public views of the ocean and bay:

- Incorporate design features in plans for new development in the Mission Boulevard commercial area between Diamond Street and Grand Avenue that maintains or enhances public views of the ocean. This can be accomplished through the use of additional setbacks from the east-west streets, stepping back.

**Coastal Bluff and Ocean/Bayfront Development Standards**

12. The following standards are recommended to preserve and promote Pacific Beach's coastal bluff and waterfront resources:

- Set back new development along coastal bluffs in accordance with the Sensitive Coastal Resource Zone and Appendix H of plan to reduce the potential for erosion and slippage.
- Terrace second and third stories of new oceanfront and bayfront development or articulate oceanfront facades to minimize a walled effect along the water and adjacent walkways.

Given that the subject site is a corner lot and is visually prominent at the streetend of a public view corridor (where two view corridors intersect), the bulk and scale of the proposed development appears to be inconsistent with the community character of the area and public view protection policies in the LCP. Ocean Boulevard is designated as public right-of-way with a view of the ocean. Absent scaling or terracing back the proposed structure or designing it to incorporate larger setbacks, the result is a structure that is larger in bulk and scale than surrounding development, that will encroach into the viewshed of the designated public view corridor, and that will impact public views toward the ocean. In addition, the landscaping proposed for the development is street trees and landscaping within the public right-of-way of Felspar Street and Ocean Blvd. On page 112, Appendix H of the certified LUP states:

Landscaping materials shall be installed and maintained so as to assure that neither during the growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

While it is possible the proposed right-of-way landscaping may be acceptable, there is no requirement in the approved permit to maintain the approved landscaping to preserve public views. The appellants have therefore raised a substantial issue regarding the consistency of the proposed development with the visual resource protection policies of the certified LCP.

3. Parking/Access. As part of the proposed development, a 7,092 sq.ft. restaurant and 2,316 sq. ft. outdoor dining area, totaling 9,408 sq.ft. is proposed. The City required 85 on-site parking spaces (45 regular spaces and 20 tandem parking spaces) for the restaurant and 44-unit hotel. The tandem spaces are required to be assigned to the restaurant use only, pursuant to the Land Development Code. In addition, valet parking is required to be provided at all times that the restaurant is open. The tandem parking spaces are required to be used by the valet services for the restaurant use only.

The certified Pacific Beach Land Use Plan (pg. 46) indicates commercial development should:

Provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process.

Appendix I indicates:

#### **Coastal Parking Standards**

Off-street parking standards for uses within the Coastal Zone are the same for all uses as those specified Citywide zones of the San Diego Municipal Code, except for restaurants. Within the Coastal Zone, restaurants are required to provide one (1) parking space for each two hundred (200) square feet of gross floor area. It is expected that this standard shall continue in the community's Beach Impact Area.....

Parking requirement reductions will be considered for those mixed-use projects which are developed under discretionary review and employ transit-oriented development features.

#### **Beach Impact Areas**

Parking standards for the Beach Impact Area apply where the demand for near-shore parking is most critical among beach visitors, residents and patrons of commercial establishments.....

Restaurants - one (1) parking space for each two hundred (200) square feet of gross floor area.

Hotel/motel units - one (1) parking space for each guest room or suite.....

In addition, the certified Pacific Beach Land Use Plan contains the following provisions regarding Transit-Oriented Development Standards:

9. A transit-oriented development is a compact, pedestrian-oriented pattern of land uses with housing, jobs, services, plazas and public uses located on the transit

system. Transit-oriented development is desired because it can handle growth with fewer auto-related environmental costs such as traffic congestion, urban sprawl and air pollution. This is because TODS are designed to use land efficiently and to make walking, bicycling, and using public transit feasible and attractive means of transportation. [...]

The following standards are recommended in the community's commercial areas to emphasize a pedestrian-oriented environment and reinforce the use of public transportation:

- Minimize building setbacks, bringing buildings close to sidewalks; locate parking to the rear of lots, off of the alleys.
- Articulate building facades to provide variety and interest through arcades, porches, bays and particularly balconies, which minimize a walled effect and promote activity on the street. Promote activity on balconies through such means as outdoor seating for restaurants.
- Orient primary commercial building entrances to the pedestrian-oriented street, as opposed to parking lots.
- Provide bicycle racks in areas that are visible and easily accessible from identified bicycle routes.
- Provide, if space permits, public plazas or courtyards along pedestrian-oriented streets to serve residents and workers. Encourage public art in these areas where appropriate.
- Utilize parking structures instead of surface parking for larger commercial developments; locate retail uses on the street level of parking garages to preserve the life and activity at the street.

On page 62 of the certified LUP, it states:

Improve access to beach, bay and park areas along the shoreline to benefit residents and visitors.

The City, in its approval found that "the Tower 23 Project has incorporated design recommendations of the Pacific Beach Community Plan including Transit Oriented Development standards. These features include minimizing building setbacks, bringing buildings as close as possible to sidewalks, locating parking to the rear of the lots off the alley, articulating building facades particularly with balconies which minimize the walled off effect and promotes activity on the street (i.e. outdoor seating areas). "

It is difficult to determine from the submitted plans how the building has been articulated to encourage pedestrian orientation and transit usage, and to minimize the walled off



effect of the structure. Based on the city staff report, the setback at ground level for both Felspar Street and Ocean Blvd. appeared to be minimal and at the second and third levels the setback appeared to be less than at-ground level. In addition, in allowing a reduction in parking standards for transit-oriented development there should be implementation measures such as transit passes for employees, free shuttle service, and/or other incentives to encourage use of transit with less reliance on parking, incorporated into the development approval. However, none of these were identified in the City's permit or the findings for approval. In addition to minimizing building setbacks, the certified Land Use Plan also requires new transit oriented development to "articulate building facades, provide interest through arcades, porches, bays and balconies to promote activity on the street." The LUP also states:

Provide, if space permits, public plazas or courtyards along pedestrian-oriented streets to serve residents and workers. Encourage public art in these areas.

In order to meet the intent of these LUP policies, the City approved the proposed development with only one such design feature which included a 10-15 ft. wide patio within the setback along the Ocean Blvd. frontage. In this particular case, the amount of approved on-site parking meets the transit overlay standard but not the beach impact area standard. Aside from design features intended to make the development pedestrian oriented, the development as approved by the City does not include measures to encourage transit use by patrons or employees. In addition, existing recreational parking will be removed from this critical access location as a result of the project. Specifically, an existing 37-space paid parking lot on the subject site will be removed. The subject site is a beachfront lot adjacent to the public boardwalk, where parking is in critical demand in this nearshore area. In addition, there is always a concern with regard to the functionality of tandem parking spaces for the proposed restaurant use.

In this particular case, the development as approved by the City does not appear to incorporate adequate measures to ensure that the development actually functions as a transit-oriented development. Absent adequate measures to reduce automobile use by patrons and employees, the proposed development may result in adverse impacts to public access to the coast. The appellants have therefore raised a substantial issue regarding the conformity of the proposed development with the public access policies of the certified LCP and the Coastal Act.

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#### STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

##### I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6PCB-03-61 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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 TO APPROVE THE PERMIT:**

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 certified LCP and the public access policies of the Coastal Act. 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.**

See attached page.

**III. Special Conditions.**

The permit is subject to the following conditions:

1. **Final Revised Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final building plans (site, floor, elevation and foundation plans) for the proposed development that has been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans submitted with this application by Graham Downes Architecture Inc. dated 4/14/03, except that they shall be revised to include the following:

- a. The exterior balconies on the second and third floors of the north elevation of the proposed hotel shall be redesigned such that they are not a continuous structure. All structural elements at the second and third levels that support anything other than the proposed balconies shall be removed such that only the individual balconies extend a maximum of 4 ft. beyond the proposed building towards the street. In addition, balcony walls shall not be any higher than 3 ft. and shall not directly connect to adjoining room balconies

OR

The building is redesigned such that the second and third level balconies are set back 4 ft. further south to observe a full 5-ft. setback from the north property line.

- b. The proposed wall surrounding the proposed outdoor dining patio at ground level along the west and north elevations shall not exceed 5 ft. ft. in height with 75% of its surface area consisting of open materials such that a clear and unobstructed view is maintained across the western elevation from Felspar Street.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Parking and Alternative Transportation Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval a parking and alternative transportation program that includes, at a minimum, the following:

- a. All on-site parking shall incorporate a free valet service for hotel guests and restaurant patrons. Specifically, valet parking shall be provided at no charge at all times that the restaurant is open. Tandem parking spaces shall be utilized by the valet service for the restaurant use and may be used for the hotel, as well;
- b. In the event the 45 on-site spaces reserved for hotel guests are not used to capacity, these parking spaces shall be made available for parking for employees and the restaurant, to the maximum extent feasible;
- c. Purchase of bus passes for any employee who agrees to use public transportation to and from work;
- d. Provision of a shuttle service for guests to surrounding shopping areas and visitor destinations such as Mission Valley, La Jolla, downtown San Diego, Balboa Park, the San Diego Zoo and Sea World;
- e. Provision of bicycle racks;
- f. Provision of validated parking (i.e., free) for guests of the hotel and restaurant;
- g. Implementation of a Free Meal Program during work hours for employees based on accrued points for employees who carpool with two other employees in same vehicle to and from work;
- h. Provision of a complimentary shuttle service between the San Diego International Airport and the hotel for all hotel patrons.

The requirements of the approved parking and alternative transportation program shall be incorporated into the terms of any lease or operating agreement of the hotel or the restaurant. The permittee shall undertake the development in accordance with the approved parking and alternative transportation program. Any proposed changes to the

approved program shall be reported to the Executive Director. No changes to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. Changes to Parking Hours on Felspar Street. No changes to parking along Felspar Street are authorized under the subject permit. An amendment to this permit or a separate coastal development permit shall be required for any future changes to the hours of parking along Felspar Street.

4. Final Revised Landscape Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, revised landscaping plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Nowell & Associates Landscape Architecture dated 2/19/03 (last revision), except for the revisions cited below:

- a. All landscaping shall be either drought-tolerant and native or non-invasive plant species.
- b. A written commitment by the applicant that all required plants on this site will be maintained in good growing condition and whenever necessary, will be replaced with new plant materials to ensure compliance with the approved landscape requirements.
- c. The landscaping in the areas immediately north and west of the project site (with the exception of the palm trees proposed adjacent to the public right-of-way) shall be maintained at a height of three feet or lower to preserve views from Felspar and Ocean Boulevard to and along the ocean.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

5. Drainage and Polluted Runoff Control Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a Water Quality Technical Report (WQTR) that is consistent with Appendix D of the San Diego Stormwater Manual (A Manual for Construction & Permanent Storm Water Best Management Practices Requirements, Revised May 30, 2003) approved by the City of San Diego, including supporting calculations. The WQTR shall be prepared by a licensed engineer and shall incorporate structural and/or non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains.
- (c) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over its lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

The permittee shall undertake development in accordance with the approved drainage and runoff control plans. Any proposed changes to the approved drainage and runoff control plans shall be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Timing of Construction/Storage and Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

- a) No overnight storage of equipment or materials shall occur on the public boardwalk, sandy beach or public parking spaces;

- b) Access corridors shall be located in a manner that has the last impact on public access to and along the shoreline via Felspar Street, the alley immediately east of the site and Ocean Boulevard (public boardwalk).
- c) No work that impacts parking, public access, traffic and off-site parking along Ocean Boulevard, Felspar Street or the public alley immediately east of the site shall be permitted between Memorial Day weekend and Labor Day of any year.
- d) The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required..

**7. Sign Program.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a comprehensive sign program, which incorporates the following:

- a) Only façade signs shall be permitted. No tall, free-standing pole or roof signs shall be allowed.

Said plans shall be subject to the review and written approval of the Executive Director. The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**8. Other Special Conditions of the CDP/NUP No. 11263.** Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

**9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as

covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

#### IV. Findings and Declarations:

The Commission hereby finds and declares:

1. Project Description. The proposed project involves the demolition of four existing commercial structures, removal of a private paid parking lot, and construction of a new 44-room, three-story, 44,399 sq. ft. hotel with basement and ground level parking, restaurant and outdoor dining terrace on a .51 acre oceanfront site. The site is located at the southeast corner of Felspar Street and Ocean Boulevard in Pacific Beach. The subject site is immediately adjacent to, and east of, the public boardwalk (Ocean Blvd.). The project site is one block north of Crystal Pier. The proposed development will result in the removal of two one-story structures and parking, and replacement with a two-story hotel over ground-level restaurant, hotel lobby and parking, with basement garage, and the consolidation of five lots into one parcel.

The subject site is located between the first coastal road and the sea (Mission Boulevard), as such, it is within the Coastal Commission's area of appeals jurisdiction. As such, the standard of review is the certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act.

2. Public Views/Bulk & Scale. The certified Pacific Beach Community Plan and Local Coastal Program Land Use Plan contain several policies that address siting and design of development within the viewshed of public vantage points as follows:

#### (pg. 46) Development Along View Corridors

11. The following standards are recommended to maintain public views of the ocean and bay:

- Incorporate design features in plans for new development in the Mission Boulevard commercial area between Diamond Street and Grand Avenue that maintains or enhances public views of the ocean. This can be accomplished through the use of additional setbacks from the east-west streets, stepping back.



**Coastal Bluff and Ocean/Bayfront Development Standards**

12. The following standards are recommended to preserve and promote Pacific Beach's coastal bluff and waterfront resources:

- Set back new development along coastal bluffs in accordance with the Sensitive Coastal Resource Zone and Appendix H of plan to reduce the potential for erosion and slippage.
- Terrace second and third stories of new oceanfront and bayfront development or articulate oceanfront facades to minimize a walled effect along the water and adjacent walkways.

In addition, the landscaping proposed for the development is street trees and landscaping within the public right-of-way of Felspar Street and Ocean Blvd. On page 112, Appendix H of the certified LUP states:

Landscaping materials shall be installed and maintained so as to assure that neither during the growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

As noted in the findings for substantial issue, the subject site is located at the southwest corner of Felspar Street and Ocean Boulevard. Felspar Street is a public street that runs in an east-west direction and is perpendicular to the subject site. As noted in the certified Pacific Beach Land Use Plan, Felspar Street is a designated public view corridor which provides visual access to the ocean. While traveling in a westerly direction along Felspar, there are existing horizon ocean views looking west and there is a viewshed associated with the view corridor at the end of the street. All existing development is proposed to be removed from the subject property in order to construct the new proposed development. The project site is an oceanfront/blufftop site adjacent to Ocean Boulevard, the public boardwalk. Immediately west of the site is the public boardwalk which meanders along the Pacific Beach shoreline and is a heavily-used recreational amenity for pedestrians, bicyclists, skate-boarders, and the like. Beyond the boardwalk to the west is a grassy knoll used by picnickers, etc., public benches, drinking fountain and at the edge of the bluff is a wooden public viewing platform and public access stairway which leads down in elevation to the beach below. Immediately to the south (approximately half a block) is the popular Crystal Pier, a motel/hotel which consists of several cottages that extend out onto the private pier over the ocean. To the north is a condominium building. There is an assortment of retail shops/restaurants in the immediate area. Immediately across the alley to the east are two retail stores, a parking lot for their customers and a private paid parking lot.

The proposed development will observe the required building setback of 5 ft. along Felspar Street for the first floor. However, the balconies on the second and third levels of the proposed structure will only observe a 1-foot setback. Thus, the development does



not "step-back" from the view corridor, but actually appears to project into the view corridor for the upper floors. The concern is that the decks at the second and third levels of the proposed structure along the north elevation, and adjacent to the public view corridor, appear to be a solid structure (ref. Exhibit No. 8a). Although the applicant has tried to address the concerns identified by Commission staff with the encroachment into the public view corridor and has re-designed the decks such that the sides of the balconies are composed of glass, there will still be solid walls that exist between the balconies. When viewed looking west along Felspar, these balconies will still give the appearance of a solid wall. The applicant has redesigned the walls between the balconies such that they are shorter in depth (i.e., called "fins"), however, they are still not consistent with the certified LCP (ref. Exhibit No. 6). Specifically, the LCP states that new development should incorporate design features that maintains or enhances public views of the ocean. The LCP language is specific and further states, "This can be accomplished through the use of additional setbacks from the east-west streets, stepping back." [Emphasis added] In this case, the required setback is 5 ft. from the street and the applicant is providing a 6-foot setback for the proposed structure. However, as described above, the balconies will protrude beyond this setback area and will observe only a 1-foot setback.

While the LCP does provide for decks/balconies on upper levels to extend towards the street to help make the development more "pedestrian friendly", in this particular case, the pedestrian orientation is not along Felspar Street (where the view concern is raised), but along the boardwalk along the western frontage of the development. Therefore, in order to be consistent with the certified Land Use Plan, the proposed second and third level balconies should be redesigned to be more open in nature such as a free-standing balcony (with minimum railing or perimeter enclosure necessary for public safety) which will more than adequately provide an offset along this view corridor. If a free-standing balcony cannot be provided, then the second and third levels of the proposed structure should observe a greater setback along its north yard setback area. Special Condition #1 requires submittal of revised plans that will require a redesign of the second and third level balconies such that they are not a continuous structure and that all structural elements at the second and third levels that support anything other than the proposed balconies shall be removed such that only the individual balconies extend a maximum of 4 ft. beyond the proposed building towards the street. In addition, balcony walls shall not be any higher than 3 ft. and shall not directly connect to adjoining room balconies. Alternatively, this special condition offers the applicant the option to redesign the building such that the second and third level balconies are set back 4 ft. further south to observe a full 5-ft. setback from the north property line.

In addition, the proposed ground level of the project observes a 0 ft. setback from the west property line, adjacent to the public boardwalk. As viewed from the west elevation of the project site (looking east back towards the proposed structure), the outdoor dining restaurant located at the ground level will extend all the way up to the western property line and will be "open in nature" so as to encourage pedestrian use consistent with the policies of the certified LUP addressing Transit Oriented Overlay development. An approximately 3-foot high retaining wall is proposed along the western property line which will run up to the northern property line and extend in an easterly direction for a

few feet to "enclose" the dining area (ref. Exhibit 8a). On top of this retaining wall glass or plexiglass is proposed to be installed (i.e. as a windscreen). Again, the proposed structure was permitted to be sited on the western property line to promote pedestrian orientation. Given that the building has a 0-foot setback, and that Ocean Boulevard is designated as public right-of-way with a public view of the ocean, the use of glass at this elevation is very important to create the illusion of being more open in nature and to minimize the seaward encroachment of the structure, which is permitted to be sited closer to the property line consistent with the Transit-Oriented Development standards. As cited earlier, these design requirements include "bringing the buildings as close as possible to the sidewalks..." to promote activity on the street (i.e. such as outdoor seating areas). Thus, the outdoor dining terrace was designed such that it will be situated adjacent to the western property line without any setbacks.

Looking west from the public boardwalk at the western elevation of the proposed structure, the building will be designed such that it appears as a U-shaped building with a very large open courtyard for hotel guests at the second and third levels in the middle of the structure (ref. Exhibit No. 5). The portions of the second and third levels at each corner of the building at the western frontage will overhang onto the west yard setback area where an open restaurant dining patio will be provided. As described in the City's staff report/permit findings, the western elevation of the proposed structure will have a varying setback of 10'-0" to 14'-9" on the ground floor to 5'-0" to 13'-9" on the second and third floors whereas the maximum setback required along Ocean Boulevard is 10'-0" for 70% of the property. In addition, a fountain feature is proposed adjacent to the public boardwalk. The proposed dining patio area, fountain feature, and minimized setback along the western elevation, including the offset in the building design (i.e., U-shape along west elevation second and third levels) are all consistent with the certified Pacific Beach Community Plan which call for, in part, minimizing building setbacks, bringing buildings as close as possible to sidewalks, articulation of building facades and promotion of activity on the street such as through outdoor dining patios, etc.

The applicant has also provided the proposed sight lines on the site plan (ref. Exhibit No. 2) to show how views looking southwest and south across the northwest corner of the project site toward the ocean and along the public boardwalk will be maintained. Therefore, in order to assure that the ground level dining patio area remains "open" in nature as viewed from north of the site looking south along the boardwalk as well as from Felspar Street looking southwest, Special Condition #1 requires that the proposed wall surrounding the dining patio be a maximum of 5 ft. high and that 75% of its surface area consist of open materials, consistent with the City's Land Development Code. This will assure that the project continues to meet the design requirements of the certified LUP.

In addition, the proposed three-level hotel (over basement) will be visually compatible with the surrounding development. There is four-story residential structure immediately across the street to the north of Felspar which is taller in appearance (pre-dating the Coastal Act). There are also other commercial structures to the south and east which are similar in size and scale to the proposed hotel facility. The newly proposed hotel with

restaurant will be visually compatible in scale and size with the character of the surrounding community.

In addition, with regard to the proposed landscaping on the site, as noted previously in the findings for Substantial Issue, the landscaping proposed for the proposed development consists of street trees and landscaping within the public right-of-way of Felspar Street and Ocean Boulevard. As noted in the certified Pacific Beach LUP:

Landscaping materials shall be installed and maintained so as to assure that neither during the growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

The Commission has routinely required landscaping in the yard areas of project sites such that they be restricted in height and also that they be maintained to assure they do not grow tall and obstruct views to the ocean. In this particular case, there is no landscaping proposed on-site, however, the proposed landscaping will be installed immediately to the north and west of the site in the public right-of-way. The City required that the applicant obtain an encroachment removal agreement to install these improvements but did not require maintenance of the landscaping to assure that it does not obstruct views. The proposed trees in the public right-of-way along Felspar Street consist of Palm trees. Given that the trees are tall in nature and have a narrow trunk width, it is not anticipated that such landscaping will impede views to the ocean. However, other landscape elements are also proposed along both the western and northern frontages which require maintenance to assure that public views are protected. In this particular case, requiring that the applicant maintain such landscaping in the public rights-of-way to the north and west of the project site, ocean views will be protected. As such, Special Condition #3 also requires that all proposed landscaping other than the palm trees to the north and west sides of the project be maintained at a height of three feet to preserve views from Felspar Street and Ocean Boulevard to and along the ocean. The condition also specifies that such landscaping be either drought-tolerant and native or non-invasive plant species and that the applicant agree to maintain the landscaping in good growing condition.

Lastly, with regard to protection of visual resources in the area, Special Condition #7 requires submittal of a sign program to assure that any proposed signage associated with the hotel is consistent with the signage requirements for the coastal zone, specifically, that only wall signage is proposed with no tall, free-standing or pole signs.

Therefore, in summary, through conditions of approval as enumerated above, the proposed project is being required to be redesigned such that the second and third level balconies will be designed so that they do not project into the Felspar Street view corridor as a continuous structure; and, that all structural elements at the second and third levels that support anything other than the proposed balconies be removed such that only the individual balconies extend a maximum of 4 ft. beyond the proposed building towards the street. In addition, balcony walls shall not be any higher than 3 ft. and shall not directly connect to adjoining room balconies. As an alternative, the building shall be re-

designed so that the second and third level balconies are set back 4 ft. further south to observe a full 5-ft. setback from the north property line. Conditions also require that the retaining wall surrounding the proposed ground-level dining patio be a maximum of 5 ft. high consisting of 75% open materials; that a final landscape plan is submitted documenting that new landscaping does not impede views and will be maintained in a manner to assure that such views will be protected over time; and that signage consists of only wall signs. As such, it can be assured that the proposed development will protect public views to the ocean and that the visual resources of this nearshore and highly scenic coastal area will be maintained, consistent with the policies of the certified LCP. Special Condition #9 requires that the permit and findings be recorded to let future property owners know of the restrictions placed on this permit.

3. Parking/Traffic Circulation/Public Access. Sections 30212(a), 30211 and 30252 of the Coastal Act are applicable to the proposed development and state the following:

Section 30212(a)

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or, [...]

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

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 or providing substitute means of serving the development with public transportation. (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings. [Emphasis added]

Upon reliance of these policies of the Coastal Act, the certified Pacific Beach Land Use Plan contains policies to protect public access as well which include the following:

Provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process. (pg. 46)

Appendix I indicates:

#### **Coastal Parking Standards**

Off-street parking standards for uses within the Coastal Zone are the same for all uses as those specified Citywide zones of the San Diego Municipal Code, except for restaurants. Within the Coastal Zone, restaurants are required to provide one (1) parking space for each two hundred (200) square feet of gross floor area. It is expected that this standard shall continue in the community's Beach Impact Area.....

Parking requirement reductions will be considered for those mixed-use projects which are developed under discretionary review and employ transit-oriented development features.

#### **Beach Impact Areas**

Parking standards for the Beach Impact Area apply where the demand for near-shore parking is most critical among beach visitors, residents and patrons of commercial establishments.....

Restaurants - one (1) parking space for each two hundred (200) square feet of gross floor area.

Hotel/motel units - one (1) parking space for each guest room or suite.....

The proposed development is located in a one of the most popular beach communities in San Diego County. Because this beach community is adjacent to a public boardwalk and is immediately north of Mission Beach, there is a contiguous public access route from the South Mission Beach jetty all the way north to Pacific Beach Drive. There are also numerous restaurants and visitor-serving uses along the public boardwalk and in the surrounding area including several hotels, retail shops, etc. As such, the area is a major visitor-destination point. Because the intensity of development is high in this location, parking is in demand and there is frequently competition between patrons of restaurants and retail shops with beach visitors. As a result, this competition for parking and attraction to the beach community has resulted in not only parking shortages but traffic circulation problems, as well.

In addition, the certified Pacific Beach Land Use Plan contains the following provisions regarding Transit-Oriented Development Standards:

9. A transit-oriented development is a compact, pedestrian-oriented pattern of land uses with housing, jobs, services, plazas and public uses located on the transit

system. Transit-oriented development is desired because it can handle growth with fewer auto-related environmental costs such as traffic congestion, urban sprawl and air pollution. This is because TODS are designed to use land efficiently and to make walking, bicycling, and using public transit feasible and attractive means of transportation. [...]

The following standards are recommended in the community's commercial areas to emphasize a pedestrian-oriented environment and reinforce the use of public transportation:

- Minimize building setbacks, bringing buildings close to sidewalks; locate parking to the rear of lots, off of the alleys.
- Articulate building facades to provide variety and interest through arcades, porches, bays and particularly balconies, which minimize a walled effect and promote activity on the street. Promote activity on balconies through such means as outdoor seating for restaurants.
- Orient primary commercial building entrances to the pedestrian-oriented street, as opposed to parking lots.
- Provide bicycle racks in areas that are visible and easily accessible from identified bicycle routes.
- Provide, if space permits, public plazas or courtyards along pedestrian-oriented streets to serve residents and workers. Encourage public art in these areas where appropriate.
- Utilize parking structures instead of surface parking for larger commercial developments; locate retail uses on the street level of parking garages to preserve the life and activity at the street.

Due to limited amount of parking and concerns with traffic, the City has developed a Transit Overlay Area in its LCP. This overlay identifies routes along major transit corridors where given certain provisions, the parking ratios for developments may be reduced. The idea is that because of the provision of transit, there is less need for the automobile. The City's certified implementing ordinance allows for a parking ratio of 4.3 spaces per 1,000 sq.ft., per the Transit Overlay Area (TOA) (which is referenced in the cited LUP section above). Pursuant to the LUP, transit-oriented development is subject to discretionary review. The parking standard for the Beach Impact Overlay Area requires 5 spaces per 1000 sq.ft. As proposed, the hotel facility will include a 7,092 sq.ft. restaurant with a 2,316 sq.ft. outdoor dining patio for a total of 9,408 sq.ft. of restaurant use. Under the TOA, a total of 40 parking spaces would be required. Under the BIA requirements, a total of 47 spaces would be required. Thus, through application of the TOA, seven less parking spaces were required to be provided on-site for the restaurant element of the project only. As approved by the City, the lesser parking standard was

applied to the proposed project because it incorporated design recommendations in the Pacific Beach Community Plan including the Transit Oriented Development standards. Specifically, the City required 85 parking spaces (45 spaces and 20 tandem spaces) for restaurant and 44-unit hotel. The tandem spaces were required to be assigned to the restaurant use only, pursuant to the Land Development Code. In addition, valet parking was required to be provided at all times that the restaurant is open. The tandem parking spaces are required to be used by the valet services for the restaurant use only.

As noted earlier, the design features incorporated by the applicant include minimizing building setbacks, bringing the buildings close to the sidewalks and locating parking to the rear of lots off the alley, articulating building facades particularly with balconies which minimize the walled off effect and promotes activity on the street (i.e., outdoor seating areas). However these design features encourage larger structures with reduced building setbacks for purposes of promoting pedestrian activity and facilitating public transit use. These design features, however, can result in adverse impacts to public views of the coast in near-shore areas. Although the application of the lower parking standard allowed under the TOA was approved by the City, the Commission finds that discretion must be used in its application, and that adequate measures must be provided to encourage transit usage by patrons or employees, particularly in the Beach Impact Area where parking is at a critical demand. In the case of the proposed development, the Commission finds that application of building design features only, does not result in a "transit friendly" development such that parking reductions should be granted. The design features by themselves does not promote or encourage guests, customers or employees to utilize non-automobile means to get to the site. However, recognizing this concern, the applicant has proposed several incentives to promote the use of transit and help to offset any potential impacts as a result of providing the lesser parking standard encouraged under the Transit Development Overlay. Specifically, the applicant has proposed the following:

1. Purchase bus passes for any employee who forgoes the use of an automobile and uses public transportation to get to and from work;
2. Provide a small shuttle for guest to surrounding shopping areas such as Mission Valley, La Jolla, downtown San Diego;
3. Provision of bicycle racks;
4. Provision of validated parking for guests of the hotel and restaurant;
5. Employees who carpool with two other employees in same vehicle will earn points for free meals during working hours;
6. Guests that rent suites will be provided a complimentary shuttle from the airport to the project site; and
7. Conversion of existing street parking to two-hour parking to encourage use of off-street overnight parking

The applicant has also stated that although they are providing 44 spaces for hotel rooms typically not more than 50% of the guests of the occupied rooms arrive in their own vehicles. In other words, the destination is the hotel (such as a resort) and the surrounding area (i.e., the beach) without the need to depend on a vehicle for



transportation. The applicant has also stated that many of their employees are college students who either ride their bikes or walk to work and that they encourage their employees to find alternative ways to get to work. Coupled with the provision of valet parking for their parking lot (with in and out privileges) guests are encouraged to park in the hotel facilities rather than the street. This will leave street parking available for beach users and the general public.

The applicant has also indicated that if the hotel is not full, the vacant spaces typically reserved for use by hotel patrons will be made available for hotel/restaurant employees and restaurant patrons. In addition, as noted in the findings for substantial issue, there was a question as to how well tandem spaces would function. As is typical, because cars are parked behind one another, the use of tandem spaces through a valet service is necessary otherwise the parking spaces will not function. The applicant will employ the use of a free valet service at all times that the restaurant is open. As such, it can be assured that the tandem spaces will function appropriately. It is also important to note the importance of valet service since there will be times when the hotel is not full to capacity or when the restaurant is closed. In those cases, there may be an underutilization of the parking typically reserved for the hotel guests and/or for the restaurant patrons. During such times, with the use of valet service, more vehicles could be parked in these areas to assure that there are no spillover effects to the adjacent public streets which may adversely affect parking for beach visitors. It is also important that the valet service be provided free of charge to discourage hotel guests and restaurant patrons from parking elsewhere (i.e., the public streets) which may also usurp parking for beach visitors and other patrons of adjacent businesses and retail establishments. It is also important that the applicant provide a complimentary shuttle, as is proposed, from the San Diego International Airport to the hotel for its guests to encourage less reliance on rental vehicles which would increase the demand for on-site parking. Presumably, guests who arrive by shuttle will be more inclined to use public transportation as a means of getting around town and/or the shuttle service, which results in less dependence on automobiles, consistent with the concept of the Transit-Oriented Overlay.

In addition, all access to parking for the subject site will be from the alley to the rear (east) of the site, and no new curbs are proposed along Felspar Street as a result of the proposed development, consistent with the requirements of the Beach Impact Area overlay of the City's certified Land Development Code. Special Condition #2 is required to assure that the applicant (or future owner) implements all of the above-cited Transit-Oriented Overlay development standards to encourage the use of transit use and alternative means of transportation.

With regard to adequacy of public access in the surrounding area, the subject site is located on an oceanfront property at the southeast corner of Felspar Street and Ocean Boulevard in Pacific Beach. There is an improved accessway at the streetend of Felspar Street consisting of a wooden beach access stairway that descends in elevation from the public boardwalk down to the beach below. Adequate vertical access exists in the area and additional access at this location is not necessary.



With regard to the potential impacts on public access as a result of construction of the proposed project, the boardwalk is a heavily-used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The beach is also a heavily utilized recreational amenity. Given that the site is immediately adjacent to the public boardwalk (Ocean Boulevard) construction activities that adversely affect pedestrian access along Ocean Boulevard or parking on Felspar Street and traffic along Felspar and the surrounding area during the busy summer months when beach attendance is at its greatest demands would significantly impact public access at this location. Therefore, Special Condition #6 requires the applicant to submit a construction access and staging schedule identifying the specific location of staging and storage areas. Staging and storage of equipment shall not be permitted on Ocean Boulevard or Felspar Street or any public parking lots. Special Condition #6 also restricts the construction such that no work that during the summer months (Memorial Day weekend and Labor Day of any year) that impacts parking, public access, off-site parking and traffic along Ocean Boulevard, Felspar Street or the public alley immediately east of the subject site shall be permitted. However, it should be clarified that on-site construction activities that can be done without disruption to parking and traffic such as interior work to the building, etc., shall be permitted to occur at any time of year.

In addition, the applicant has suggested as a mitigation measure, to change the parking on Felspar Street between Mission Boulevard to Ocean Boulevard from unlimited parking to a two-hour limit in an effort to discourage the use of overnight parking on the street. However, the Commission has typically found that a minimum of two hours is not adequate to meet the needs of beach visitors as it would impede the public's ability to access the beach by limiting their ability to use the beach areas to only two hours per day. Typically, a minimum of four hours duration is considered adequate to meet the needs of beach visitors. In any case, since any change to the duration of parking in the public right-of-way must first be reviewed and approved by the City of San Diego, Special Condition #3 requires that this aspect of the proposal not be authorized through the subject coastal development permit and that any future changes to the hours of parking along Felspar Street must first receive a coastal development permit from the City of San Diego or an amendment to the subject coastal development permit.

Pertaining to the project's potential impacts on traffic and circulation in the area, a traffic study was conducted which indicated that although the proposed hotel would add additional vehicle trips to the circulation of the area, no adverse impacts to traffic circulation and access in the area were expected to result from the proposed project. It was identified that all intersections in the study area would operate at LOS C or better while Mission Boulevard would continue to operate at LOS D. The horizon year study also stated that an analysis of peak hour intersection operations with or without the proposed project would result in all intersections operating at LOS C or better. The study concluded that no additional street improvements or other mitigation measures were necessary.

In summary, with incorporation of all of the transit-oriented development measures discussed above, as well as the provision of parking consistent with the TDO, the

proposed project will not adversely affect public access opportunities in this area and is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

5. Water Quality. The certified La Jolla-La Jolla Shores LCP Addendum contains the following policy:

“The ocean and submerged lands within the jurisdictional limits of San Diego should be preserved in their natural state. Plant and marine life in tidepools and offshore waters should be protected from environmental degradation.”

The subject property is located on a coastal blufftop site next to the beach. Pollutants such as sediments, toxic substances (e.g., grease, motor oil, heavy metals, and pesticides), bacteria, and trash and particulate debris are often contained within urban runoff entering via the storm water system or directly into the ocean. The discharge of polluted runoff into the ocean would have significant adverse impacts on the water quality at the point of discharge.

Associated with the proposed development is grading consisting of approximately 600 cy. of soil excavation and 100 cy. of fill. The proposed project will not result in any additional impervious surfaces, as the entire site is already built-out. The proposed project includes the demolition of several retail/commercial structures and construction of a hotel and restaurant with basement level parking. Nonetheless, potential impacts to water quality may occur as a result of sedimentation caused by erosion during construction, runoff carrying contaminants after construction and direct discharge of other pollutants. Drainage directed towards the bluff could also result in impacts to water quality. Although surface runoff will be directed to the street and then into the City's storm drain system; ultimately, the runoff from the storm drain is discharged into the ocean.

As noted above, the project site is located on an oceanfront/blufftop property. The development project will disturb about 0.51 acres and the final project will cover most of that area with impervious surface. In addition, the project will include a restaurant exceeding 5,000 square feet in surface area. As such, the discharge of pollutants from the project site to coastal waters can cause cumulative impacts which reduce the biological productivity and the quality of coastal waters, reduce optimum populations of marine organisms and have adverse impacts on human health. Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require Special Condition #5 which requires the submittal of a Water Quality Technical Report (WQTR) that is consistent with Appendix D of the San Diego Stormwater Manual (A Manual for Construction & Permanent Storm Water Best Management Practices Requirements, Revised May 30, 2003). The WQTR should show how the project is designed to treat, infiltrate, or filter the runoff from all surfaces and activities on the development site. The WQTR should also describe the implementation of appropriate Best Management Practices for the project including conveying runoff off site in a non-erosive manner; using energy

dissipating devices, directing all runoff from roofs and driveway areas and other impervious surfaces through vegetative or other media filter devices to effectively remove contaminants, etc. Critical to the successful function of any post-construction structural BMPs in removing pollutants in storm water is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small in scale. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost. Therefore, BMPs should be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

The condition further requires that BMPs be inspected, cleaned-out, and when necessary, repaired at the following minimum frequencies: (1) prior to September 30<sup>th</sup> each year and that should any repairs or restoration become necessary, that the applicant submit such a plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. As conditioned, a drainage and polluted runoff control plan will serve to reduce the potential for impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project is consistent with policies addressing water quality of the certified LCP.

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

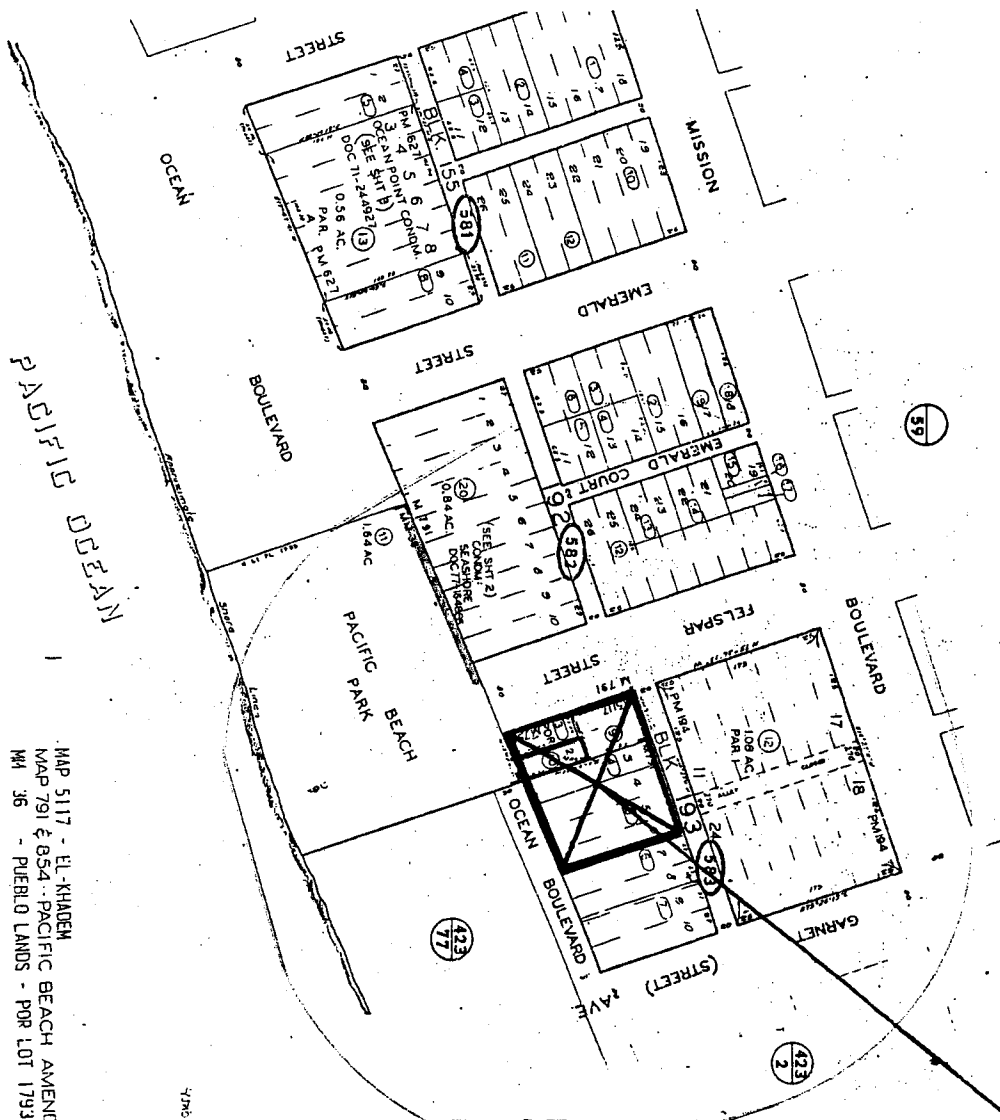
The subject site is zoned CV and is designated for commercial/visitor-serving uses in the certified Pacific Beach Land Use Plan. The proposed hotel and restaurant are consistent with that zone and designation. Special Condition #7 advises the applicant that the subject coastal development permit does not have an effect on conditions imposed by the City of San Diego for the subject development.

The certified Pacific Beach Land Use Plan contains policies which address protection and improvement of existing visual access to the shoreline and that ocean views should be maintained in future development and redevelopment. The LUP also contains policies which require the provision of off-street parking. With regard to the proposed siting of the proposed hotel/restaurant, the project is required through conditions of approval to be redesigned such that the balconies along the northern frontage of the site are "open" in nature (without a wall or glass at either end) to minimize its bulk and intrusion in to the public view corridor. In addition, through conditions of approval, the applicant is required to participate in a parking and alternative transportation program which incorporates several measures consistent with the Transit Development Overlay standards to encourage the use of public transit and less reliance upon automobiles in the congested

areas of the City, such as where the project site is located. Also, the project has been conditioned such that the applicant install landscaping that does not impede public views to the ocean and that such landscaping is maintained on an on-going basis. Therefore, the proposed development, as conditioned, is consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act.

7. 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, 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 visual resource and public access and recreation policies of the Coastal Act. Mitigation measures, include conditions addressing revisions to the balconies along the north elevation to preserve views to the ocean and incorporation of an open fence/wall adjacent to the restaurant on the west and north elevations at the ground level to preserve views to the ocean, implementation of a parking and alternative transportation program, submittal of final landscape plans and submittal of a drainage and polluted runoff control plan, will minimize all adverse environmental impacts. 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.



SITE

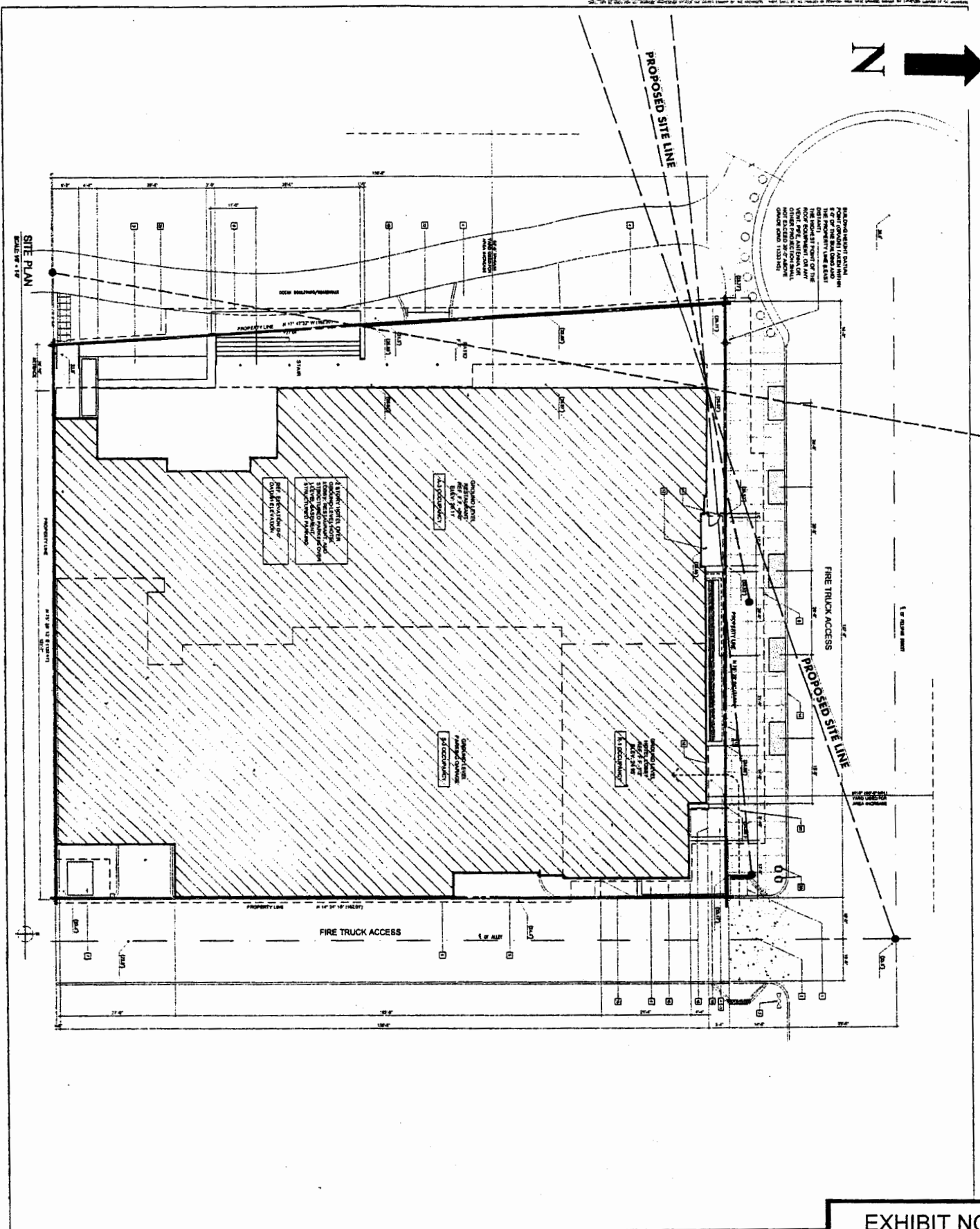


EXHIBIT NO. 1

APPLICATION NO.

A-6-PCB-03-61

Location Map



2	SITE PLAN		<p>OCEAN BLVD. AT FELSPAR STREET, SAN DIEGO, CALIFORNIA</p> <p><b>TOWER 23</b></p> <p>HOTEL RESTAURANT</p>		<p>DESIGNED BY: [Signature]</p> <p>DATE: 11/10/03</p> <p>PROJECT NO. 03-61</p>
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EXHIBIT NO. 2

APPLICATION NO.

**A-6-PCB-03-61**

Site Plan

California Coastal Commission

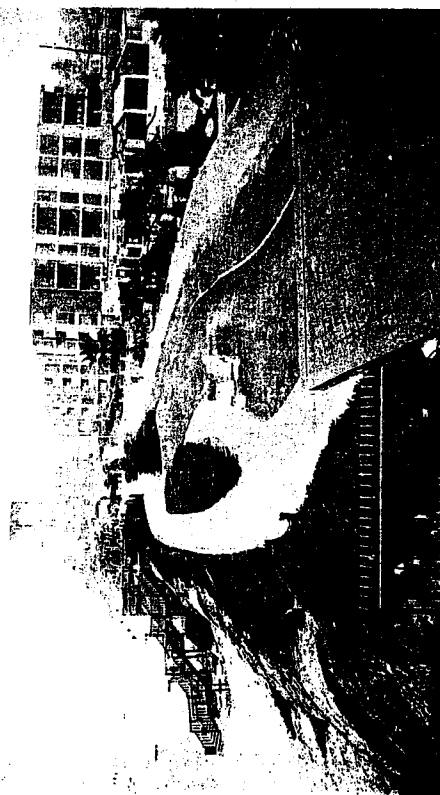
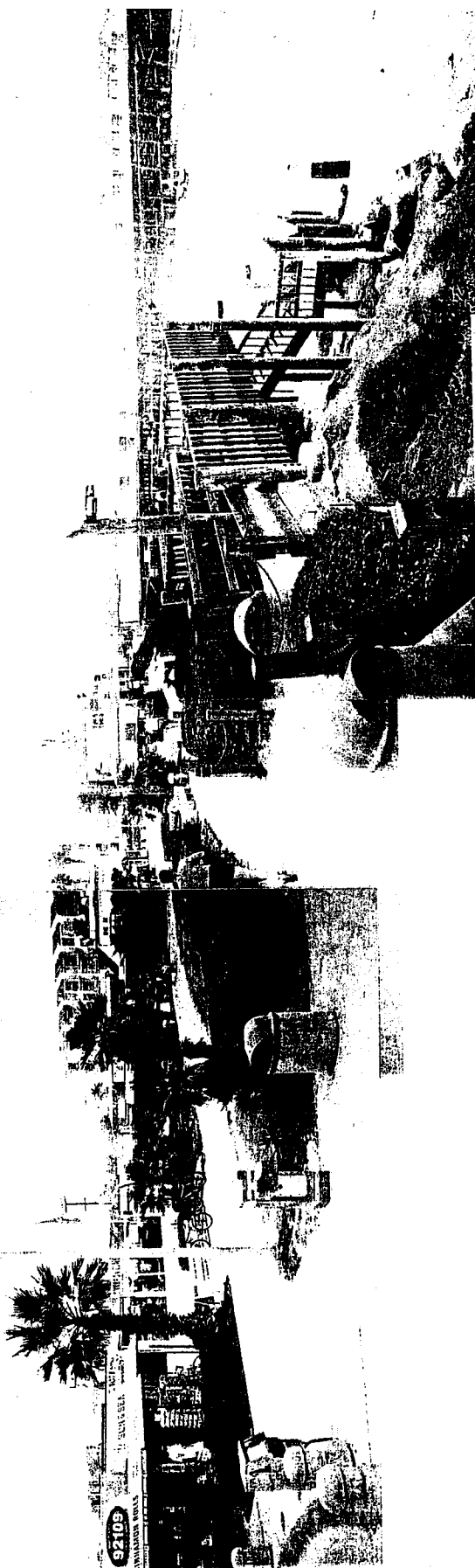


WESTERLY VIEW OF SITE, STREET LEVEL AT  
MISSION BOULEVARD AND FELSPAR

EXHIBIT NO. 3  
APPLICATION NO  
**A-6-PCB-03-6**

Photo—Westerly  
view of site from  
Mission Blvd. and  
Felspar

PANORAMIC VIEW OF COASTAL BLUFF  
AND BOARDWALK



BEACH, BLUFF AND BOARDWALK, LOOKING  
NORTH

EXHIBIT NO. 4  
APPLICATION NO.  
**A-6-PCB-03-61**

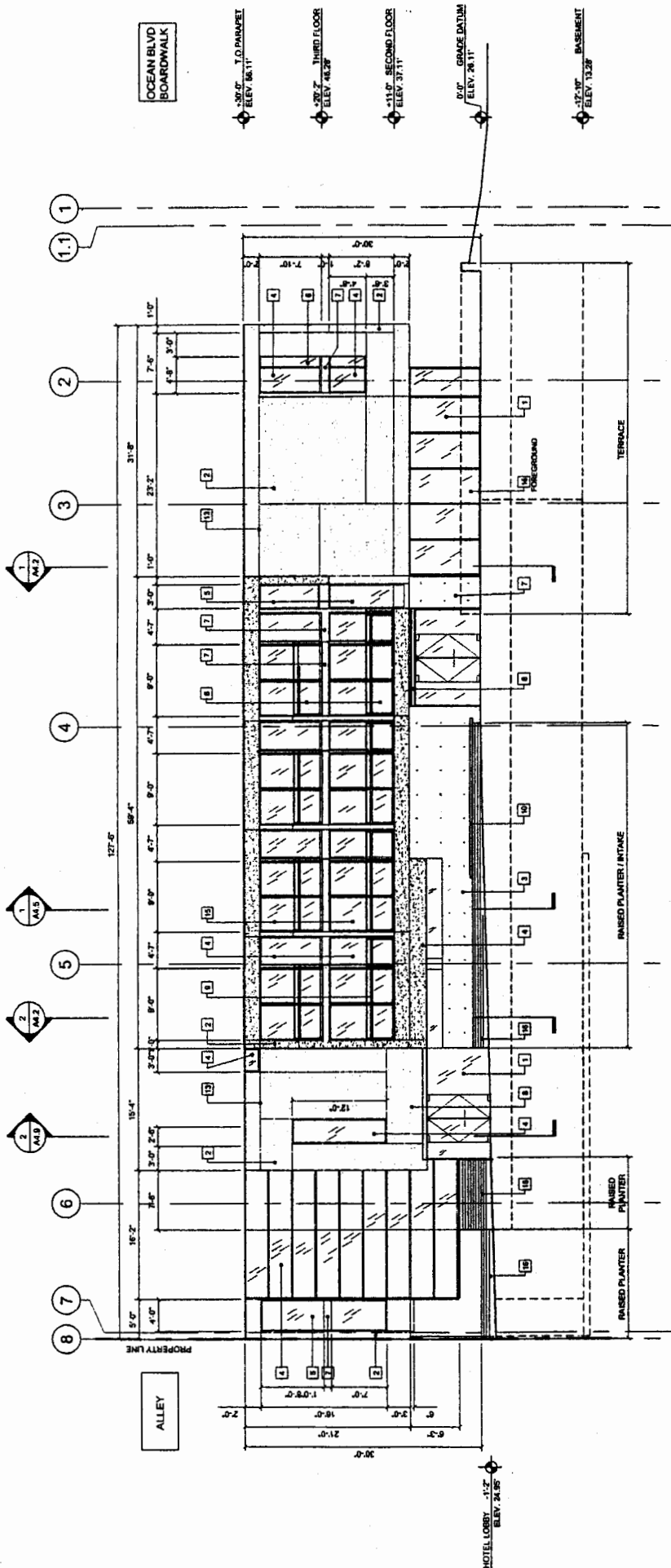
Photo—Views of site  
and vicinity looking  
south and looking  
north





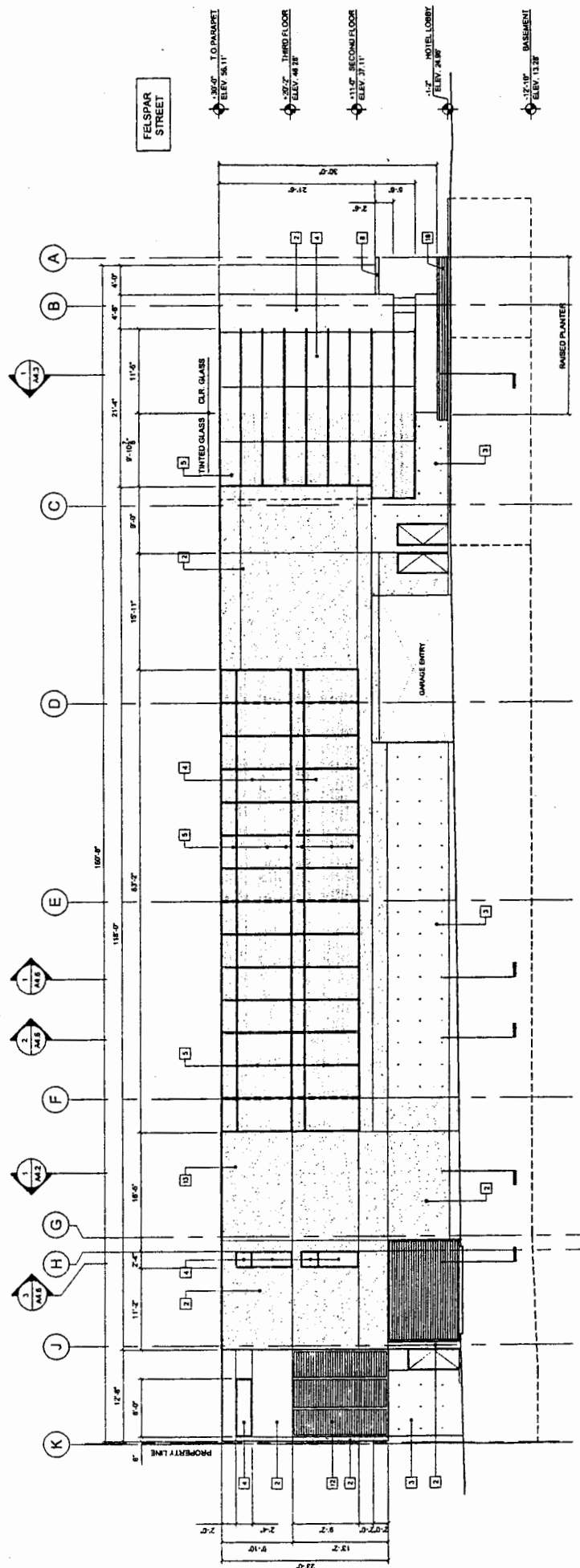
EXHIBIT A  
**TOWER 23 HOTEL & RESTAURANT**  
SIGHT LINE STUDY  
LOOKING NORTHEAST DOWN OCEAN BLVD.  
7.14.03

EXHIBIT NO. 5  
APPLICATION NO.  
**A-6-PCB-03-61**  
Visual Simulation—  
west elevation



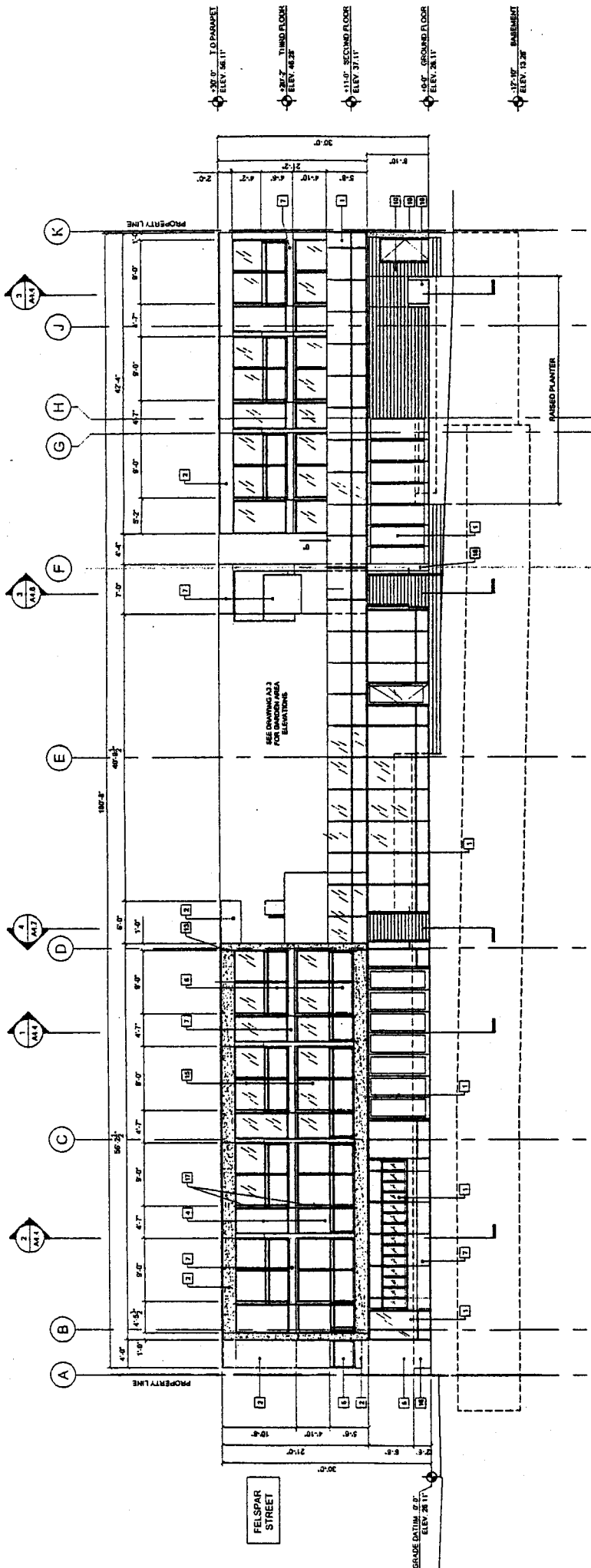
1 NORTH ELEVATION  
SCALE 1/8"

EXHIBIT NO. 6
APPLICATION NO.
<b>A-6-LJS-03-61</b>
North Elevation
 California Coastal Commission



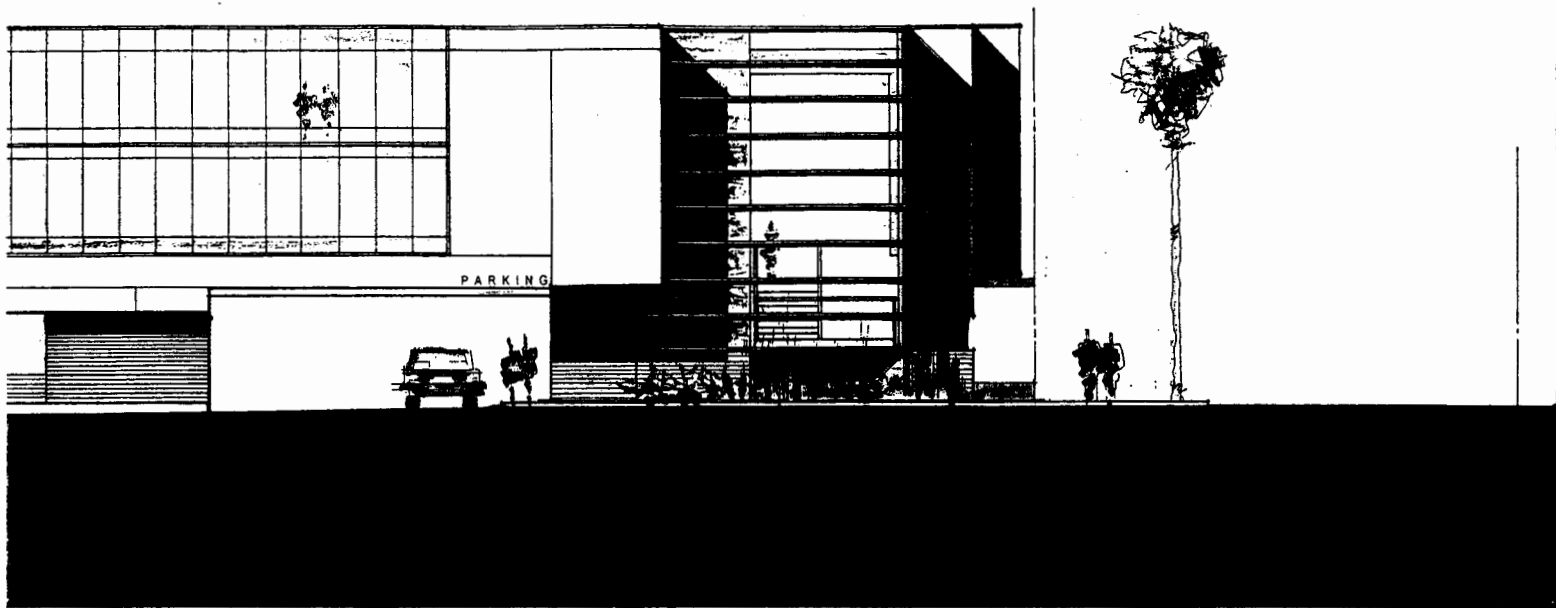
EAST ELEVATION

EXHIBIT NO. 7  
APPLICATION NO.  
**A-6-PCB-03-061**  
East Elevation



2 WEST ELEVATION  
SHEET 1 OF 1

EXHIBIT NO. 8  
APPLICATION NO.  
**A-6-PCB-03-61**  
West Elevation



East elevation looking west down Felspar Street

EAST

North elevation looking south from Felspar Street

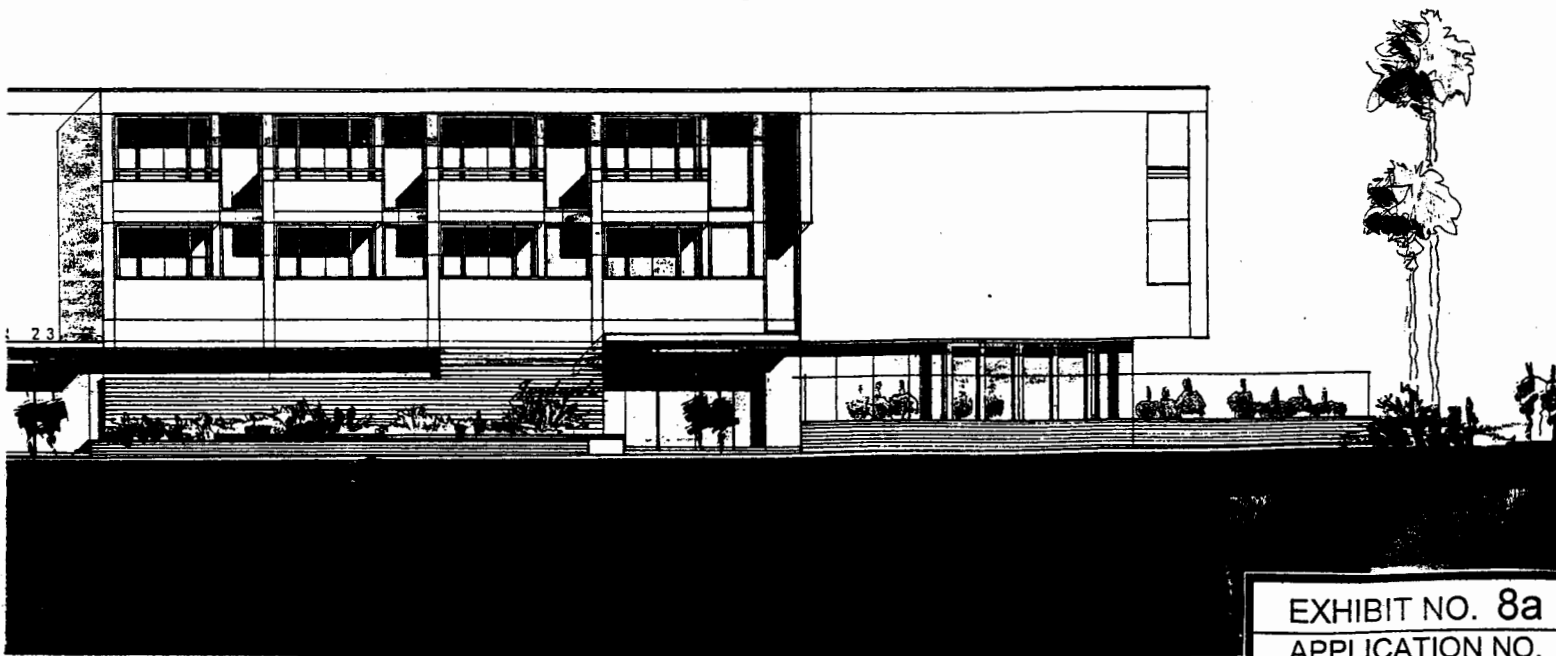


EXHIBIT NO. 8a

APPLICATION NO.

**A-6-LJS-03-61**

Architectural  
Renderings of East  
and North Elevations

California Coastal Commission

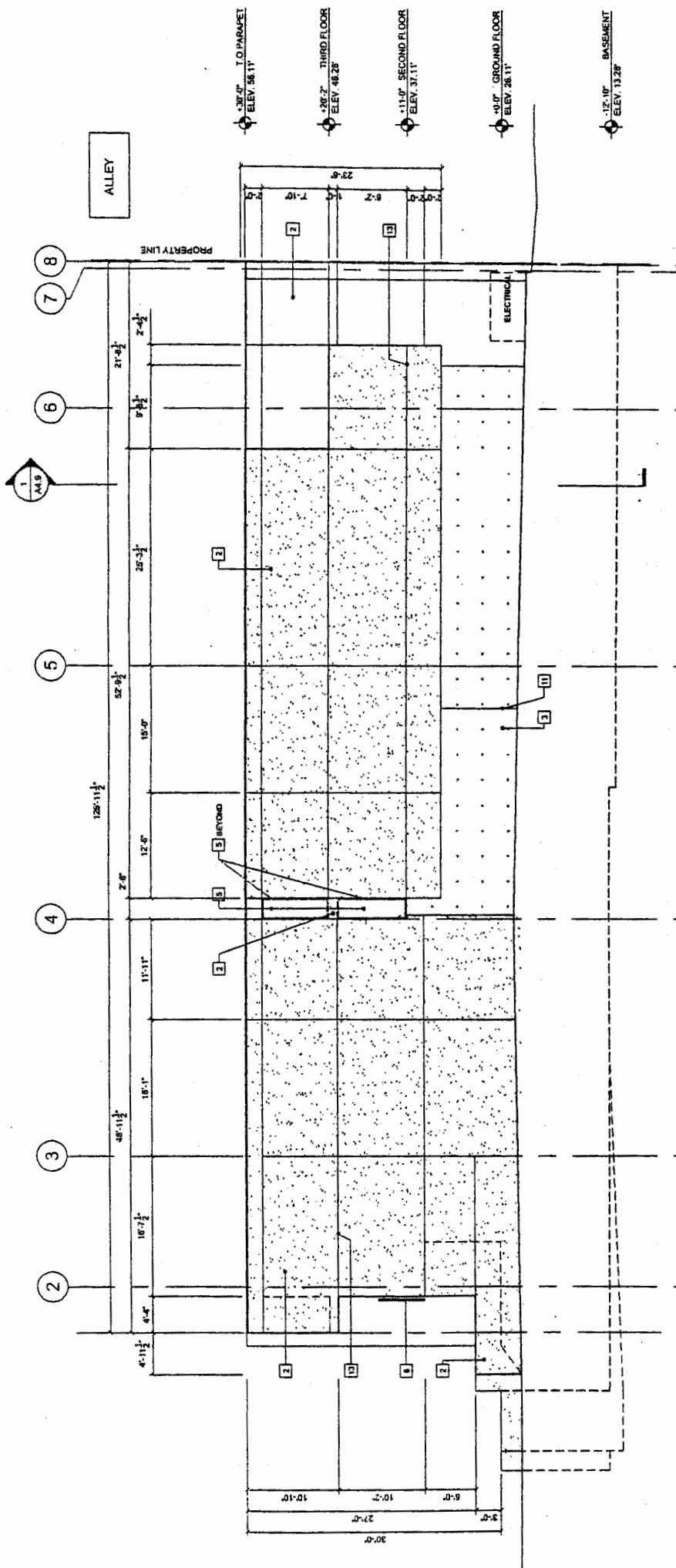



EXHIBIT NO. 9
APPLICATION NO.
<b>A-6-PCB-03-61</b>
South Elevation
 California Coastal Commission

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402  
(619) 767-2370 FAX (619) 767-2384

Project Number: 1287  
CDP Number: 11263  
NDP No. 12542

**RECEIVED**

SEP 05 2003

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Laurinda,

In regards to Tower 23 hotel being located in a "Transit Overlay Zone" please refer to Diagram 123-10A also referred to as C-900. It clearly depicts our project in this zone which allows a reduction in parking requirements for hotels and restaurants. This is a discretionary approval in a transit overlay zone that allows for a reduction in the number of cars parked per 1000 square feet. As per city code, our project is parked to the minimum required.

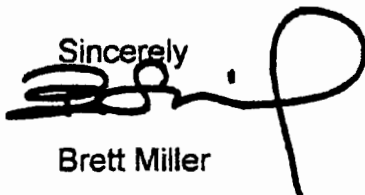
In addition to the Transit Overlay Zone, we are committed to providing as much parking for our guests as possible and have implemented some business practices to allow more spaces for our guests.

1. Purchase bus passes for any employee that forgoes the use of an automobile and use public transportation.
2. Provide a small shuttle for guests to surrounding shopping areas such as Mission valley, La Jolla and Downtown.
3. We will be providing bike racks that can accommodate 25 bicycles.
4. Provide validated parking for guests of the hotels restaurant.
5. Employees that arrive with 2 other employees in the same vehicle can earn points for free meals on their off hours.
6. For guests that rent suites, a complimentary shuttle from the airport to Tower 23 as requested.
7. Convert existing street parking to 2 hour parking, to encourage off street overnight parking.
8. We are providing 44 spaces for the hotel rooms, but from our experience in the Hotel business, not more than 50% of occupied rooms arrive in their own vehicles.
9. Our parking lot is valet only, with in and out privileges, which encourages guests to park in our facilities rather than the street.

Many of our employees are college students that live in the surrounding area and ride bikes, skateboards or walk to work. We encourage all employees to find alternative ways of getting to work resulting in the parking spaces being available to the guests of our resort. This is one way we will make the money that allows us to keep everyone employed.

If you have any suggestions or questions I look forward to hearing them. We believe that this project is a great one for the community and cannot wait to get started. Thank you for your help and diligence.

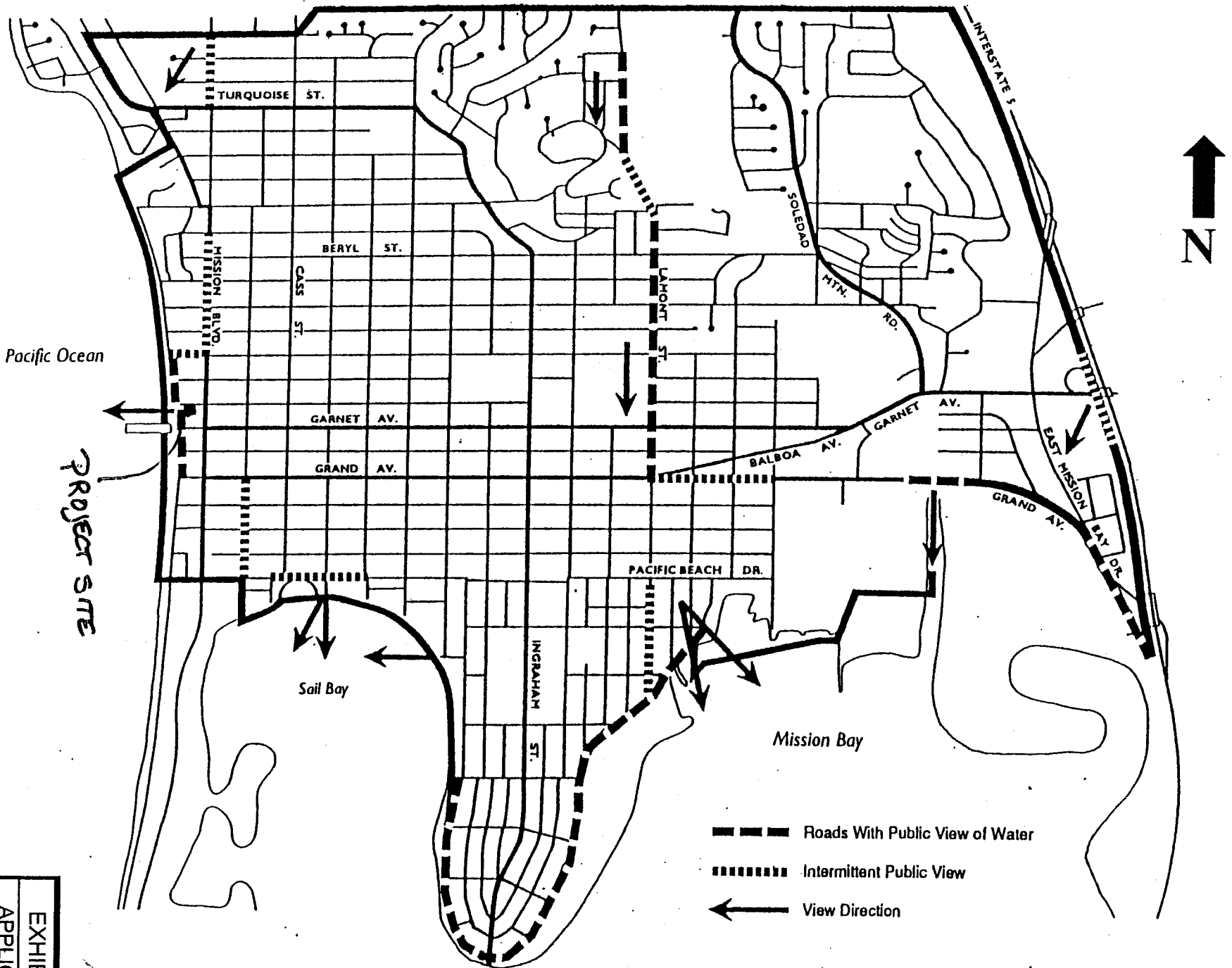
Sincerely



Brett Miller

EXHIBIT NO. 10  
APPLICATION NO.  
**A-6-PCB-03-61**

Letter from  
applicant's  
representative re:  
proposed Transit  
Overlay Zone  
measures



## Coastal Views

PACIFIC BEACH COMMUNITY PLAN  
of San Diego • Planning Department



## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 787-2370



## NOTIFICATION OF APPEAL PERIOD

DATE: June 11, 2003  
TO: Jeannette Temple, Project Planner  
City of San Diego Development Services, City Operation Building  
1222 First Avenue  
San Diego, CA 92101  
FROM: Laurinda Owens, Coastal Program Analyst  
RE: Application No. 6-PCB-03-252

Please be advised that on June 9, 2003 our office received notice of local action on the coastal development permit described below:

Local Permit #: 11263  
Applicant(s): Miller Enterprises Inc., Attn: Brett Miller  
Description: Demolition of four existing commercial structures, removal of a parking lot and construction of a new 44-room, three-story, 44,399 sq. ft. hotel with basement and ground level parking, a restaurant and outdoor terrace on a .51 acre oceanfront site.  
Location: 4551 Ocean Boulevard, Pacific Beach, San Diego (San Diego County)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on June 23, 2003.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: Miller Enterprises Inc., Attn: Brett Miller

6-PCB-03-252



THE CITY OF SAN DIEGO

COASTAL DEVELOPMENT PERMIT  
NOTICE OF FINAL ACTION

410637

DATE: June 6, 2003

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

PROJECT NAME - NUMBER: Tower 23 - Project No. 1287

PROJECT DESCRIPTION: Coastal Development Permit and Neighborhood Development Permit for the demolition of four existing commercial structures, removal of a parking lot and construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace.

LOCATION: 4551 Ocean Boulevard

APPLICANT'S NAME: Brett Miller, Miller Enterprises Inc., 1001 Garnet Av, San Diego, CA 92109

FINAL ACTION: ☒ APPROVED WITH CONDITIONS

ACTION BY: ☒ Hearing Officer

ACTION DATE: May 21, 2003

CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

☒ Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission only after a decision by the City Council (or Planning Commission for Process 3 Coastal Development Permits) and within ten (10) working days following Coastal Commission receipt of this Notice, as to the date the Commission's appeal period will conclude.

Appeals must be in writing to -

EXHIBIT NO. 12  
APPLICATION NO.  
A-6-PCB-03-61  
City of San Diego  
CDP No. 11263/ND  
12542

California Coastal Commission  
San Diego Area Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402  
Phone (619) 767-2370

cc: California Coastal Commission

Project Manager: Jeannette Temple, 557-7908, MS-501

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT

WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501

JOB ORDER NO. 410637

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COASTAL DEVELOPMENT PERMIT NO. 11263  
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 12542  
TOWER 23 - PROJECT NO. 1287 (MMRP)  
HEARING OFFICER

This Coastal Development Permit is granted by the Hearing Officer of the City of San Diego to VERNON TAYLOR, INDIVIDUAL, Owner and MILLER ENTERPRISES, INC, A CALIFORNIA CORPORATION, Permittee pursuant to Sections 126.0708 and 126.0404 of the Land Development Code of the City of San Diego. The 0.51 acre site is located at 4551 Ocean Boulevard in the CV-1-2 Zone, the Coastal Overlay (Appealable Area), Coastal Height Limitation Overlay, Parking Impact Overlay and Transit Area Overlay Zones of the Pacific Beach Community Plan area. The project site is legally described as the Southwesterly one-half of Lot 1 and Lots 3, 4, 5 and 6 of Block 193 of Pacific Beach, Map Nos. 791 and 854 and Lots 1 and 2 of El Khadem Tract, Map No. 5117.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner and Permittee to demolish existing commercial structures, remove a parking lot and construct a forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace, described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated May 21, 2003, on file in the Office of the Development Services Department. The facility shall include:

- a. The demolition of four existing commercial structures and removal of a parking lot;
- b. Construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace;
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking facilities; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone, conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals.

Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Land Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

6. Issuance of this permit by the City of San Diego does not authorize the owner/permittee for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)

7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated May 21, 2003, on file in the Office of the Development Services Department. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable

or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

10. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action, following all appeals.

#### **ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

11. The owner/permittee shall comply with the Mitigation, Monitoring and Reporting Program (MMRP) as specified in Mitigated Negative Declaration, Project No. 1287, satisfactory to the City Manager and the City Engineer. Prior to issuance of any grading permits and/or building permits, mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Paleontological Resources  
Hydrology/Water Quality

#### **PLANNING/DESIGN REQUIREMENTS:**

12. No fewer than 85 parking spaces (45 standard parking spaces and 20 tandem parking spaces (20x2 = 40)) shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A" dated May 14, 2003, on file in the Office of the Development Services Department. All tandem parking spaces shall be assigned to the restaurant use only. Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

13. Valet parking shall be provided at all times that the restaurant is open. The tandem parking spaces shall be utilized by the valet services for the restaurant use only.

14. Any roofed balconies not included in the calculation of gross floor area shall illustrate that all elevations shall be 40% open in accordance with San Diego Municipal Code Section 113.0234

15. The Gross Floor Area for this project excludes the interior court. This area shall remain open and unobstructed to the sky (SDMC section 113.0234).

16. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

17. The height of the building or structure shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the

maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

18. A topographical survey conforming to the provisions of the Land Development Code may be required if it is determined, during construction, that there may be a conflict between the building under construction and a condition of this permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the permittee.

19. This project is subject to the Proposition D Coastal Height Limit (SDMC section 132.0505). Construction documents shall show all proposed structures, and appurtenances on the roof plan. All structures must be colored, and properly screened. A replacement drawing for Exhibit "A" shall be provided to the City's project file.

20. Building plans must provide locations of bicycle racks. The bicycle racks shall be located in areas that are visible and easily accessible from the identified bicycle routes (Ocean Boulevard).

21. The on-site construction fence shall be properly adjusted, and relocated in a manner that minimizes intrusion into the public-right-of-way. A traffic control plan shall be updated regularly, and inspected on a regular basis, to address various stages of development.

22. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

23. All signage associated with this development shall be consistent with sign criteria established by Citywide sign regulations.

24. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

25. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

26. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

27. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed architecturally integrated structure whose top and sides may include grillwork, louvers and latticework.

28. No merchandise, material or equipment shall be stored on the roof of any building.

29. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Refuse and Recyclable Materials Storage Regulations (Land Development Code Section 142.0801) to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A."

#### **LANDSCAPE REQUIREMENTS:**

30. Prior to issuance of any construction permit, complete landscape plans consistent with the Land Development Code, and street tree and other public improvements required by the Pacific Beach Community Plan, shall be submitted to the City Manager for approval. All plans shall be in substantial conformance to this Permit and Exhibit 'A' dated May 21, 2003, on file in the Development Services Department.

31. All required landscape plant materials shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

32. If any required landscape improvements (including existing or new planning, hardscape, landscape features, etc.) are damaged or removed during demolition or construction, they shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within 30 days of damage and prior to occupancy.

#### **ENGINEERING REQUIREMENTS:**

33. Prior to the issuance of any building permits, the owner/permittee shall assure by permit and bond the replacement of the existing curb with City standard curb and gutter, along the project frontage on Felspar Street, per Standard Drawings G-2 and SDG-100, satisfactory to the City Engineer.

34. Prior to the issuance of any building permits, the owner/permittee shall assure by permit and bond the replacement of existing sidewalk with new City standard sidewalk, along the project frontage on Felspar Street, per Standard Drawings G-7 and G-9, satisfactory to the City Engineer.

35. Prior to the issuance of any building permits, the owner/permittee shall assure by permit and bond the removal of the grate inlet, located at the alley entrance on Felspar Street, and the construction of a new City standard curb inlet per Standard Drawings D-2, SDD-100 and SDG-110, satisfactory to the City Engineer.

36. Prior to the issuance of any building permits, the owner/permittee shall assure by permit and bond the construction of a City standard alley apron, at the alley entrance on Felspar Street, per Standard Drawings G-17 and SDG-100, satisfactory to the City Engineer.

37. Prior to the issuance of any building permits, the owner/permittee shall obtain an encroachment removal agreement from the City Engineer for the underground parking, landscaping, irrigation and appurtenances in the City right-of-way.

38. Prior to the issuance of any construction permit, the owner/permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

39. Prior to the issuance of any construction permit, the owner/permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.

40. Prior to the issuance of any construction permit the owner/permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

41. Prior to the issuance of any construction permit the owner/permittee shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Water Quality Technical Report.

42. The drainage system for this project shall be private and will be subject to approval by the City Engineer.

43. Prior to the issuance of any building permits, the owner/permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

44. Prior to building occupancy, the owner/permittee shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

45. Prior to the issuance of the first building permit, owner/permittee shall assure by permit and bond, installation of "Exit Only" sign at the project southerly driveway in the alley, satisfactory to the City Engineer.

#### WATER REQUIREMENTS:

46. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) within the Felspar Street right-of-way, and the removal of all existing water services within the rights-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

47. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention devices on each water service, including domestic, fire and irrigation, in a manner satisfactory to the Water Department Director and the City Engineer.

48. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director and the City Engineer.

49. Prior to the issuance of any certificates of occupancy, all public water facilities, including services and meters, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.

50. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Water facilities, as shown on approved Exhibit "A," shall be modified at final engineering to comply with standards.

#### WASTEWATER REQUIREMENTS:

51. The developer shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be private or re-designed.

52. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

#### INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

APPROVED by the Hearing Officer of the City of San Diego on May 21, 2003.

ALL-PURPOSE CERTIFICATE

Type/PTS Approval Number of Document CDP/NDP PTS #1287  
Date of Approval May 21, 2003

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Jeannette Temple, Development Project Manager

On \_\_\_\_\_ before me, Stacie L. Maxwell, (Notary Public), personally appeared Jeannette Temple, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature \_\_\_\_\_  
Stacie L. Maxwell

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed \_\_\_\_\_ Signed \_\_\_\_\_  
Typed Name Typed Name

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (Name of Notary Public) personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

HEARING OFFICER - RESOLUTION NO. D-4345  
COASTAL DEVELOPMENT PERMIT NO. 11263  
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 12542  
TOWER 23 - PROJECT NO. 1287 (MMRP)

WHEREAS, VERNON TAYLOR, INDIVIDUAL, Owner and MILLER ENTERPRISES, INC., A CALIFORNIA CORPORATION, Permittee, filed an application with the City of San Diego for a permit to demolish existing commercial structures, remove a parking lot and construct a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 11263), on portions of a 0.51 acre site;

WHEREAS, the project site is located at 4551 Ocean Boulevard in the CV-1-2 Zone, the Coastal Overlay (Appealable Area), Coastal Height Limitation Overlay, Parking Impact Overlay and Transit Area Overlay Zones of the Pacific Beach Community Plan area;

WHEREAS, the project site is legally described as the Southwesterly one-half of Lot 1 and Lots 3, 4, 5 and 6 of Block 193 of Pacific Beach, Map Nos. 791 and 854 and Lots 1 and 2 of El Khadem Tract, Map No. 5117;

WHEREAS, on May 21, 2003, the Hearing Officer of the City of San Diego considered Coastal Development Permit No. 11263 and Neighborhood Development Permit No. 12542, pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated May 21, 2003.

Coastal Development Permit Findings - Municipal Code Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

The proposed project is located adjacent to the Pacific Ocean on the east side of the beach boardwalk at Ocean Boulevard and Felspar Street. The Pacific Beach Community Plan and Local Coastal Program Land Use Plan designates Felspar Street as a public view. The proposed project does not encroach into that public view and observes a 5'-0" foot setback on the ground floor and zero setback on the second and third floors, where the required setback is zero feet and the maximum setback is 10'-0". In addition, Ocean Boulevard is designated as a road

with a public view of the water. The proposed project is located on the east side of Ocean Boulevard and has a varying setback of 10'-0" to 14'-9" on the ground floor to 5'-0" to 13'-9" on the second and third floors. The maximum allowed setback at Ocean Boulevard is 10'-0" for 70-percent of the property. Since the ocean is located on the west side of Ocean Boulevard the proposed project does not encroach into the designated public view. The proposed project conforms with the setback regulations and the Commercial Design Standards recommended in the Pacific Beach Community Plan and Local Coastal Program Land Use Plan.

Ocean Boulevard is a paper street located adjacent to the site, is developed with pedestrian paths and landscaping, and provides lateral public access to the Pacific Ocean. A stairway providing vertical access to the Pacific Ocean exists at the end of Felspar Street. The proposed project does not encroach into any of these public access areas.

The proposed demolition of four existing commercial structures, removal of a parking lot and construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace would occur on private property and will conform with all setback, height, floor area ratio requirements and all Land Development Code requirements, and will not affect the designated public access and views.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.**

The proposed project would occur on a developed site within an urbanized area of the Pacific Beach and does not contain any Environmentally Sensitive Lands. The existing site is developed with one-story commercial structures and an on grade parking lot. A Mitigated Negative Declaration has been prepared for this project and a Mitigation, Monitoring and Reporting Program (MMRP) would be implemented to reduce any potential impacts to paleontological resources and hydrology/water quality to a level below significance.

Mitigation through the MMRP is required for the project to ensure that specific construction and post construction Best Management Practices are incorporated into the project to the satisfaction of the City Engineer. The project would also have an approved Water Pollution Control Plan to protect water quality. Implementation of the required water quality measures would reduce downstream water quality impacts to a level below significance.

The proposed development would also have paleontological monitoring at the time of cutting and grading of the soil. The project site is underlain by the Quarternary Bay Point Formation which has a high potential to yield significant paleontological resources. Mitigation through the MMRP is required for a qualified paleontological monitor to be present during all ground disturbance in

previously undisturbed soils.

Parking and traffic mitigation is not required as the proposed project complies with the San Diego Municipal Code Parking Regulations and the level of service for adjacent and surrounding roadways would not decrease as a result of this project. The project site is located adjacent to a high utilized transit system and corridor. In addition, the property fronts on Ocean Boulevard, a verticle accessway along the beach, that provides a bikepath walkway for pedestrians along the Pacific Beach coastline. The commercial use, restaurant, will be oriented along this frontage with outdoor seating provided. Bicycle racks will also be provided on site. It is anticipated that the Hotel users will use restaurant facilities, as well as the local residents. Parking on-site will be used solely for the building's employees, and existing uses (hotel and commercial/restaurant).

**3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.**

The proposed demolition of four existing commercial structures, removal of a parking lot and construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace, conforms to the development regulations of the CV-1-2 zone. Further, it has been designed to conform with the adopted Pacific Beach Community Plan and Local Coastal Program Land Use Plan and is consistent with the recommended commercial land use, design guidelines, and development standards in effect for this site per the adopted Pacific Beach Community Plan and the City of San Diego Progress Guide and General Plan.

The project is redeveloping a visually degraded area. This infill project will enhance and improve the site and surrounding area.

The Pacific Beach Community Plan encourages the commercial areas to emphasize a pedestrian oriented environment and reinforce the use of the public transportation system. The Tower 23 Project has incorporated design recommendations of the Pacific Beach Community Plan including Transit Oriented Development standards. These features include minimizing building setbacks, bringing buildings as close as possible to sidewalks, locating parking to the rear of the lots off the alley, articulating building facades particularly with balconies which minimize the walled off affect and promotes activity on the street (i.e outdoor seating areas).

**4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3**

of the California Coastal Act.

The proposed project is located on the east side of the beach boardwalk at Ocean Boulevard and Felspar Street immediately adjacent to existing public access areas and public recreation. Ocean Boulevard is a paper street located adjacent to the site, is developed with pedestrian paths and landscaping, and provides lateral public access to the Pacific Ocean. A stairway providing vertical access to the Pacific Ocean exists at the end of Felspar Street. The proposed project does not encroach into nor limit any of these public access and recreation areas. The proposed site improvements will not encroach beyond the existing development line of the subject site, nor that of adjacent residential development.

Based on the above information, the proposed addition and remodel of the existing single-dwelling unit and related site improvements conform with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

#### Neighborhood Development Permit Findings - Municipal Code Section 126.0404

1. **The proposed development will not adversely affect the applicable land use plan.**

The proposed demolition of four existing commercial structures and construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace, conforms to the development regulations of the CV-1-2 Zone. The required vehicle parking spaces for the restaurant use are tandem spaces and would be available through valet service for the use. The project has been designed to conform with the adopted Pacific Beach Community Plan and Local Coastal Program Land Use Plan and is consistent with the recommended commercial land use, design guidelines, and development standards in effect for this site per the adopted Pacific Beach Community Plan and the City of San Diego Progress Guide and General Plan.

The project is redeveloping a visually degraded area. This infill project will enhance and improve the site and surrounding area.

The Pacific Beach Community Plan encourages the commercial areas to emphasize a pedestrian oriented environment and reinforce the use of the public transportation system. The Tower 23 Project has incorporated design recommendations of the Pacific Beach Community Plan including Transit Oriented Development standards. These features include minimizing building setbacks, bringing buildings as close as possible to sidewalks, locating parking to the rear of the lots off the alley, articulating building facades particularly with balconies which minimize the walled off affect and promotes activity on the street

(i.e outdoor seating areas).

2. **The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed project would not be detrimental to the public health, safety and welfare. The project has been designed to conform with the City of San Diego's Municipal Code relating to health, safety, and welfare. The project is located in an existing developed commercial and residential area, and is consistent with the type and intensity of Land Use planned for the area. Therefore, no risks to police and fire protection service levels are anticipated.

A Mitigated Negative Declaration has been prepared for this project and a Mitigation, Monitoring and Reporting Program (MMRP) would be implemented to reduce any potential impacts to paleontological resources and hydrology/water quality to a level below significance.

The proposed project is located adjacent to the Pacific Ocean on the east side of the beach boardwalk at Ocean Boulevard and Felspar Street. The Pacific Beach Community Plan and Local Coastal Program Land Use Plan designates Felspar Street as a public view. The proposed project does not encroach into that public view and observes a 5'-0" foot setback on the ground floor and zero setback on the second and third floors, where the required setback is zero feet and the maximum setback is 10'-0". In addition, Ocean Boulevard is designated as a road with a public view of the water. The proposed project is located on the east side of Ocean Boulevard and has a varying setback of 10'-0" to 14'-9" on the ground floor to 5'-0" to 13'-9" on the second and third floors. The maximum allowed setback at Ocean Boulevard is 10'-0" for 70-percent of the property. Since the ocean is located on the west side of Ocean Boulevard the proposed project does not encroach into the designated public view. The proposed project conforms with the setback regulations and the Commercial Design Standards recommended in the Pacific Beach Community Plan and Local Coastal Program Land Use Plan.

Ocean Boulevard is a paper street located adjacent to the site, is developed with pedestrian paths and landscaping, and provides lateral public access to the Pacific Ocean. A stairway providing vertical access to the Pacific Ocean exists at the end of Felspar Street. The proposed project does not encroach into any of these public access areas.

The project site is located adjacent to a high utilized transit system and corridor. In addition, the property fronts on Ocean Boulevard, a verticle accessway along the beach, that provides a bikepath walkway for pedestrians along the Pacific Beach coastline. The commercial use, restaurant, will be oriented along this frontage with outdoor seating provided. Bicycle ranks will also be provided on site. It is anticipated that the Hotel users will use restaurant facilities, as well as

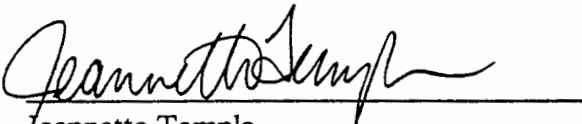


the local residents. Parking on-site will be used solely for the building's employees, and existing uses (hotel and commercial/restaurant).

**3. The proposed development will comply with the applicable regulations of the Land Development Code.**

The proposed project has been designed to comply with all development regulations of the San Diego Municipal Code and the City's Land Development Code. The proposed demolition of four existing commercial structures, removal of a parking lot and construction of a new forty-four (44) room, three-story, 44,399 square foot hotel with basement and ground level parking, a restaurant and outdoor terrace would occur on private property and will conform with setback, height, floor area ratio requirements as well as all Land Development Code requirements, and will not affect the designated public views or access. The required vehicle parking spaces for the restaurant use are tandem spaces and would be available through valet service for the use.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Coastal Development Permit No. 11263 and Neighborhood Development Permit No. 12542 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 11263 and 12542, a copy of which is attached hereto and made a part hereof.



Jeannette Temple  
Development Project Manager  
Development Services

Adopted on: May 21, 2003

Job Order No. 410637

cc: Legislative Recorder, Planning Department



## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Sara J. Wan  
Mailing Address: 22350 Carbon Mesa Road  
Malibu, CA 90265  
Phone Number: 310/456-6605

RECEIVED

JUN 23 2003

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTSECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Demolition of existing commercial structures, removal of a parking lot and construction of a new 44-room, three-story, 44,399 sq.ft. hotel with basement and ground level parking, a restaurant and outdoor dining terrace on a .51 acre oceanfront site.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
4551 Ocean Boulevard, Pacific Beach, San Diego, San Diego County.
4. Description of decision being appealed:
  - a. Approval; no special conditions: ☐
  - b. Approval with special conditions: ☒
  - c. Denial: ☐

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-PCB-03-061DATE FILED: June 23, 2003DISTRICT: San Diego

[This appeal form is identical to an appeal form also signed and dated 6/23/02 by Commissioner Patrick Kruer contained in the permit file. Only this copy is reproduced here as an exhibit to the staff report.]

EXHIBIT NO. 13  
APPLICATION NO.  
**A-6-PCB-03-61**  
Appeal Forms



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning  
Administrator

c. ☐ Planning Commission

b. ☐ City Council/Board of  
Supervisors

d. ☒ Other: Hearing Officer

Date of local government's decision: 5/21/03

Local government's file number (if any): Coastal Development Permit No. 11263

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Brett Miller, Miller Enterprises Inc.  
1001 Garnet Avenue  
San Diego, CA 92109

-

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Stephen Morison  
4627 Ocean Boulevard #220  
San Diego, CA 92109-2412

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 6/23/03

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed:   
Appellant or Agent

Date: 6/23/03

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

June 23, 2003

### Attachment "A" - Tower 23 Appeal

The proposed project involves the demolition of four existing commercial structures, removal of a private paid parking lot, and construction of a new 44-room, three-story, 44,399 sq.ft. hotel with basement and ground level parking, restaurant and outdoor dining terrace on a .51 acre oceanfront site. The site is located at the southeast corner of Felspar Street and Ocean Boulevard in Pacific Beach. The subject site is immediately adjacent to, and east of, the public boardwalk (Ocean Blvd.). The proposed development will result in the removal of two one-story structures and parking, and replacement with a two-story hotel over ground-level restaurant, hotel lobby and parking, with basement garage, and the consolidation of five lots into one parcel.

The City's certified LCP identifies Felspar Street and Ocean Boulevard (boardwalk) as designated public view corridors. The City approved the proposed development with a 5 foot wide setback at ground level, and 0 ft. setback for the second and third stories along the north property line adjacent to Felspar Street, the designated public view corridor toward the ocean. In addition, along the Ocean Blvd. right-of-way, the approved project provides a varying setback of 10'0" to 14'9" on the ground floor to 5'0" to 13'9" on the second and third floors. The ground level setback contains outdoor patio. No landscaping is shown on the project site. An encroachment removal agreement is approved for underground parking, landscaping, irrigation and appurtenances in City right-of-way (Felspar and Ocean Blvd.).

The City's certified LCP Implementation Plan (Land Development Code) requires building setbacks of 0 to 10 feet for development in the CV zone. However, the certified Pacific Beach Community Plan and Local Coastal Program Land Use Plan contains several policies that address siting and design of development within the viewshed of public vantage points as follows:

#### (pg. 46) Development Along View Corridors

11. The following standards are recommended to maintain public views of the ocean and bay:

- Incorporate design features in plans for new development in the Mission Boulevard commercial area between Diamond Street and Grand Avenue that maintains or enhances public views of the ocean. This can be accomplished through the use of additional setbacks from the east-west streets, stepping back.

#### Coastal Bluff and Ocean/Bayfront Development Standards

12. The following standards are recommended to preserve and promote Pacific Beach's coastal bluff and waterfront resources:

- Set back new development along coastal bluffs in accordance with the Sensitive Coastal Resource Zone and Appendix H of plan to reduce the potential for erosion and slippage.
- Terrace second and third stories of new oceanfront and bayfront development or articulate oceanfront facades to minimize a walled effect along the water and adjacent walkways.

Given that the subject site is a corner lot and is visually prominent at the streetend of a public view corridor (where two view corridors intersect), the bulk and scale of the proposed development appears to be inconsistent with the community character of the area and public view protection policies in the LCP. Absent scaling or terracing back the proposed structure or designing it to incorporate larger setbacks, the result is a structure that is larger in bulk and scale than surrounding development, which will encroach into the viewshed of the designated public view corridor and will impact public views toward the ocean. In addition, the landscaping proposed for the development is street trees and landscaping within the public right-of-way of Felspar Street and Ocean Blvd. On page 112, Appendix H of the certified LUP states:

Landscaping materials shall be installed and maintained so as to assure that neither during the growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

While it is possible the proposed right-of-way landscaping may be acceptable, there is no requirement in the approved permit to maintain the approved landscaping to preserve public views. As such, it appears the development as approved by the City does not meet all the requirements of the certified LCP.

Another issued raised by the proposed development is regarding the adequacy of on-site parking and potential impacts on public access. As part of the proposed development, a 7,092 sq.ft. restaurant is proposed with an outdoor dining area totaling 2,316 sq.ft. in size for a total of a 9,408 sq.ft. of restaurant use. The City required 85 on-site parking spaces (45 spaces and 20 tandem parking spaces) for the restaurant and 44 unit hotel. The tandem spaces are required to be assigned to the restaurant use only, pursuant to the Land Development Code. In addition, valet parking is required to be provided at all times that the restaurant is open. The tandem parking spaces are required to be used by the valet services for the restaurant use only.

City staff has indicated that the City's certified implementing ordinance allows for a parking ratio of 4.3 spaces per 1,000 sq.ft., per the Transit Overlay Area. The parking standard for the Beach Impact Overlay Area is also applicable at 5 spaces per 1000 sq.ft. The certified Pacific Beach Land Use Plan (pg. 46) indicates commercial development should:

Provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process.

Appendix I indicates:

### **Coastal Parking Standards**

Off-street parking standards for uses within the Coastal Zone are the same for all uses as those specified Citywide zones of the San Diego Municipal Code, except for restaurants. Within the Coastal Zone, restaurants are required to provide one (1) parking space for each two hundred (200) square feet of gross floor area. It is expected that this standard shall continue in the community's Beach Impact Area.....

Parking requirement reductions will be considered for those mixed-use projects which are developed under discretionary review and employ transit-oriented development features.

### **Beach Impact Areas**

Parking standards for the Beach Impact Area apply where the demand for near-shore parking is most critical among beach visitors, residents and patrons of commercial establishments.....

Restaurants - one (1) parking space for each two hundred (200) square feet of gross floor area.

Hotel/motel units - one (1) parking space for each guest room or suite.....

The City made findings that "the Tower 23 Project has incorporated design recommendations of the Pacific Beach Community Plan including Transit Oriented Development standards. These features include minimizing building setbacks, bringing buildings as close as possible to sidewalks, locating parking to the rear of the lots off the alley, articulating building facades particularly with balconies which minimize the walled off effect and promotes activity on the street (i.e. outdoor seating areas). "

It is difficult to determine from the submitted plans how the City concluded the building has been articulated to encourage pedestrian orientation and transit usage, and to minimize the walled off effect of the structure. The setback at ground level for both Felspar Street and Ocean Blvd. is minimal and at the second and third levels the setback is less than at ground level or zero. Further, it follows that the intent of the policy allowing a reduction in parking standards for transit-oriented development would apply if there are actual features or implementation measures such as transit passes for employees, free shuttle service, and/or other incentives to encourage use of transit with less reliance on parking, incorporated into the development approval. In addition to minimizing building setbacks, as cited by the City, the certified Land Use Plan also states



June 23, 2003

4

"articulate building facades, provide interest through arcades, porches, bays and balconies to promote activity on the street." These standards should be applied to the Felspar Street frontage as well as the Ocean Blvd. frontage, and the LUP also states:

Provide, if space permits, public plazas or courtyards along pedestrian-oriented streets to serve residents and workers. Encourage public art in these areas.

As approved by the City, it appears the only pedestrian-oriented feature is a 10-15 ft. wide patio within the setback along the Ocean Blvd. frontage. The plan policies could be interpreted to require more openness in design, to preserve public views and to provide a lower-scale pedestrian orientation than that achieved with the bulk, design and scale of the hotel/restaurant, as proposed.

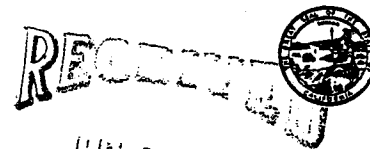
In this particular case, the amount of approved on-site parking meets the transit overlay standard but not the beach impact area standard and specific transit-oriented requirements have not been incorporated into the development. In addition, existing recreational parking will be removed from this critical access location as a result of the project. Therefore, the appropriateness of allowing a reduced parking standard for new development, which relies partly on tandem parking, must be questioned. Given that the subject site is a beachfront lot adjacent to the public boardwalk, parking is in critical demand in this nearshore area. In addition, there is always a concern with regard to the functionality of tandem parking spaces for the proposed restaurant use. On page 62 of the certified LUP, it states:

Improve access to beach, bay and park areas along the shoreline to benefit residents and visitors.

In this particular case, the amount and function of the proposed parking may not meet all the requirements of the certified LCP.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Please Review Attached Appeal Information Sheet Prior To Completing  
This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

STEPHEN MORISON  
4627 OCEAN BLVD. #220  
SAN DIEGO, CA 92109-2412 (858) 483-1758  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port  
government: CITY OF SAN DIEGO

2. Brief description of development being  
appealed: TOWER 23 RESTAURANT & HOTEL

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 4551 OCEAN BLVD  
SAN DIEGO, CA 92109

4. Description of decision being appealed:

- a. Approval; no special conditions: FINAL CITY APPROVAL  
b. Approval with special conditions: \_\_\_\_\_  
c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-PCB-03-61

DATE FILED: 6/10/03

DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one): NOT SURE

a.    Planning Director/Zoning Administrator      c. ☒ Planning Commission

b.    City Council/Board of Supervisors      d.    Other                     

6. Date of local government's decision: MAY 21, 2003

7. Local government's file number (if any): Project #1287

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

MILLER ENTERPRISES, INC.  
\_\_\_\_\_  
\_\_\_\_\_

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) LINDA CASSELL  
4627 OCEAN BLVD, #321  
SAN DIEGO, CA 92109

(2) CAROL TULLER  
4627 OCEAN BLVD, #208  
SAN DIEGO, CA 92109

(3) DEANNE HOWARD  
4627 OCEAN BLVD, #318  
SAN DIEGO, CA 92109

(4) JIM LUCAS  
4627 OCEAN BLVD, #307  
SAN DIEGO, CA 92109

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

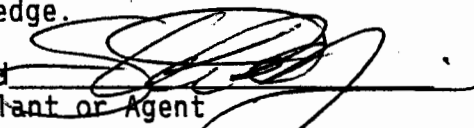
PLEASE SEE ATTACHED

IN A NUTSHELL, THE CITY'S TRAFFIC & PARKING  
IMPACT DECISIONS ARE SERIOUSLY FEARED, AND  
WILL IMPACT USE OF PUBLIC BEACHES.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed   
Appellant or Agent

Date JUNE 20, 2003

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

## Appeal re Tower 23 Development

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421

Location of Project:  
4551 Ocean Boulevard  
San Diego, CA 92109

Project Numbers:  
Project No. 1287 (MMRP)  
Coastal Development Permit No. 11263  
Neighborhood Development Permit No. 12542

RECEIVED

JUN 05 2003

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

As allowed by City Ordinance, this appeal is filed within ten (10) working days of the Hearing Officer's decision to approve the above referenced project:

Date of Hearing:	May 21, 2003
Date of Filing, Postmarked:	June 4, 2003
Date Filing, Received:	June 5, 2003
Legal Holiday, Memorial Day:	May 26, 2003

I was both an attendee and speaker at the hearing on May 21, 2003, and have restricted my appeal to issues that were raised at the hearing.

I take issue with the Traffic Impact Analysis dated January 2003 (known to me only as referenced as "Traffic Impact Analysis" as reported in "Report to the Hearing Officer, Report Number P-03-116"). In the Report to the Hearing Officer, it is stated that

"Opposition to the project has been expressed by community member Rich Pearson. Mr. Pearson is concerned with traffic issues and the perceived lack of parking for the project. A Traffic Impact Analysis dated January 2003, has been reviewed and accepted by Development Services Department Transportation Engineering staff, which concluded no decrease in the level of service for Mission Boulevard or other surrounding streets resulting from the project and no traffic mitigation is required as a part of the Mitigated Negative Declaration to approve the project. The eighty-five (85) vehicle parking spaces proposed conforms with the Municipal Code parking regulations."

There is no question that the additional traffic caused by and parking required for this project will cause an impact on traffic and parking, on both Mission Boulevard and Felspar Street. Please see below for the supporting arguments.

I ask that the following be required as conditions of approval:

1. Parking provided for employees. As eighty-five (85) parking stalls will be constructed, forty-one (41) are required to be held for use by valet parking, leaving forty-four (44) for the hotel. There are forty-four rooms to be built, leaving no spaces for employees, of which there will be a substantial number: Restaurant employees (cooks, prep cooks, dishwashers, bartenders, wait staff, bus help, etc.), hotel employees (front desk, maid service, accounting staff, etc.) and others (valet, building and landscape maintenance, etc.)

Proposed condition of approval: Require owner/developer/operator of hotel to provide on-site or non-street off-site parking for all employees. There is a public parking lot (privately owned and operated) adjacent to the development (immediately across the alley) and another across the street and several others within two blocks.

2. No-fee parking provided for hotel guests. It is the owner/developer/operator's intention to charge for the use by hotel guests of their underground parking, as stated verbally by Mr. Miller at the hearing. This will cause a severe impact on the local parking as hotel guests will look for parking on the street.

Proposed condition of approval: Require owner/developer/operator to provide no-charge parking to hotel guests. All hotels and motels similarly situated in the area and fronting on the boardwalk provide parking free of charge:

a. Pacific View Motel	Free parking provided outside
b. Pacific Sands Motel	Free parking provided outside
d. Ocean Park Inn Hotel	Free parking provided underground
c. The Beach Cottages	Free parking provided outside
d. Best Western Blue Sea Lodge	Free parking provided underground
e. Surfer Motor Lodge	Free parking provided outside

Even the Beachfront Hotel Hostel provides parking free of charge.

3. Parking provided for restaurant patrons: Forty-one spaces are to be held for valet parking use. Not all restaurant customers will make use of this service as there may be a charge, people may not be aware of the service or general distrust of valet parking (damage, theft, etc.).

Proposed condition of approval: Require owner/developer/operator to validate parking at adjacent public use parking lot and otherwise encourage use of the lot with signage. All other restaurants similarly situated with parking either validate or there is no charge. The one exception is Gringo's,

which only recently began charging \$3 for valet parking. It is owned by the same partnership as the proposed development. Two other restaurants have attached underground parking and they both validate (Tony Roma's and Hooters. World Famous also validates for the same garage). Joe's Crab Shack has free parking as does TD Hays, in fact, all restaurants with attached or adjacent parking on the boardwalk (Ocean Boulevard) provide free or validated (read free) parking. Restaurants between Mission and Ocean not fronting Ocean also all provide free parking, with the exception of Gringo's as noted above, some of which are PB Thai Café and High Tide Café. Even across Mission on the east side of the boulevard restaurants provide free or validated parking, such as Denny's, Nick's Seafood, Karinya Thai, etc.

4. Construction parking and other construction issues: Construction parking and traffic will severely disrupt access to the beach, existing business and residents. Developer had proposed shutting down the entire south side of Felspar Street at the 700 block (and had in fact already, improperly, installed construction fencing fifteen feet (15') into the public right-of-way) months before actual construction was to begin. Developer has stated he will load and remove earth-removal trucks on Felspar, causing more beach access problems and emergency vehicle access problems for the residents across the street.

Proposed conditions of approval: All construction staging should take place on private property across the alleyway. Owner/developer/operator has stated it was their intention to do some staging there but it should be made a requirement that all construction staging be there or next door on other private property. All construction deliveries and removals should take place in the alleyway and not on Felspar. Access should be north on alleyway from Grand and egress east through the private parking lot as an eastward (right hand) turn from the alleyway onto Felspar is not practicable, or even possible, for large vehicles. Construction sidewalk should be built on north property line along Felspar. Sidewalk and parking spaces at this location should only be temporarily blocked as needed, and for the least amount of time possible, when owner/developer/operator installs off-site works. This sidewalk and parking is critical to beach visitors (surfers, joggers, day visitors, etc.), patrons of two large businesses (South Coast Surf Windansea and Bicycle Discovery), and residents.

5. Traffic impact: Additional traffic at an already busy intersection will cause gridlock with traffic regularly backing up into the intersection of Mission and Garnet, and beyond. Currently, there is no turning lane at Mission and Felspar.

Proposed condition of approval: Require owner/developer/operator to provide left turn turning lane with signalization (or a double-double broken yellow turning lane) at the intersection of Mission (northbound) and Felspar. This will NOT require any improvements in the roadway outside of striping and, possibly, signalization. North- and southbound Mission has these lanes at the three controlled intersections immediately to the south (Mission and Garnet, Grand and Pacific Beach) where the roadway is the same width.

### Summary

Proposed Conditions of Approval 1 through 4 directly refute the Traffic Impact Analysis Report, which assumes all guests and employees of the hotel and restaurant will be parking on-site. Numbers 4 and 5 are health and safety issues and will ultimately have to be decided by the City.

Not one of the above-proposed Conditions of Approvals places an unnecessary or undue burden on the owner/developer/operator, either during construction or operation of business post-construction. Financial and time impact is minimal.

Why should the residents, visitors (beach and otherwise) and patrons of other businesses be forced to use the pay parking as it is the development which is causing the impact? This additional impact on the parking situation should be borne by the one who is causing the problem.

Sincerely,

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