

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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**Wed 16a**

Filed: 3/3/04
49th Day: 4/21/04
Staff: LRO-SD
Staff Report: 3/24/04
Hearing Date: 4/14-16/04

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-PCB-04-016

APPLICANT: Michael Turk/M.B. Ocean Front Properties

PROJECT DESCRIPTION: Demolition of existing 24-unit motel and two single-family residences and construction of a mixed-use development consisting of 17 residential dwelling units (condominiums) totaling 39,137 sq.ft. and four retail/commercial leaseholds totaling 2,891 sq.ft. on an approximately .5 acre site.

PROJECT LOCATION: 4666 Mission Boulevard, Pacific Beach, San Diego, San Diego County. APN 415-581-01, -02, -03

APPELLANTS: Coastal Commissioners Patrick Kruer and Toni Iseman

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.

SUBSTANTIVE FILE DOCUMENTS: Certified Pacific Beach Community Plan and Local Coastal Land Use Plan; Certified City of San Diego Implementation Plan (Land Development Code); and Appeal Forms.

Appellants Contend That: The subject proposal results in the construction of a mixed-use project including a mixed-use structure (retail/commercial on the ground floor and residential use on the second and third levels) along Mission Boulevard and a second residential structure to the west of this structure on the portion of the site that is currently zoned C-V-1-2 (CV = Commercial Visitor-Serving). The proposed second structure, (Building No. 3) located entirely within the portion of the site that is zoned C-V-1-2, is

proposed to contain residential use only (four units). Given that the certified LCP does not permit residential uses on the ground floor within the C-V-1-2 zone, the development is inconsistent with the certified LCP.

In addition, the proposed development results in the removal of a 24-unit motel which could impact the supply of existing lower-cost visitor-serving accommodations in the nearshore area. Hotels and motels represent high-priority tourist facilities. The City did not conduct any studies with regard to the existing reservoir of visitor-serving hotel/motel accommodations in the nearshore community including supply vs. demand, etc. or make any findings on this issue.

Local Government Action. The coastal development permit was approved by the Planning Commission on January 15, 2004. The conditions of approval address, in part, the following: landscaping, off-street parking, building height, restriction of the four mixed-use units fronting on Mission Boulevard to commercial/retail use only; and water quality.

Appeal Procedures.

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1). Where the project is located between the sea and the first public road paralleling 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)(1) of the Coastal Act.

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission 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 a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. 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 Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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.

Staff Note: Legal counsel for the applicant submitted a letter on March 22, 2004 ("Letter"), attached hereto as Exhibit #7, arguing that this appeal should be withdrawn for the following reasons: (1) "the appeal was not filed in a timely fashion," (2) the Notification of Appeal issued by Commission staff was "defective on its face," and (3) the development "is not located between the sea and the first public road, and it does not appear that the portion of the property that is subject to the appeal is within 300 feet of the inland extend of any beach nor is it within 300 feet of the seaward face of any coastal bluff." None of these claims is true.

Regarding the first claim, the Letter states that the Commission received the NOFA on February 18, 2004 and that the appeal was filed on March 3, 2004. Although the Letter states that the filing of the appeal was 11 days after receipt of the NOFA, March 3, 2004 was the tenth working day after February 18, 2004. As in all cases of computation of time under California law, the "time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." Cal. Gov't Code § 6800. Moreover, the Commission's regulations specify that the deadline is the tenth working day "after receipt of the NOFA." 14 C.C.R. § 13111(b).

Regarding the second claim, the Letter states that the Notification of Appeal was defective because it stated that the matter was appealed pursuant to Public Resources Code sections 30602 or 30625, neither of which applies where there is a certified Local Coastal Program (LCP). This statement is inaccurate. Section 30625 does apply, and

this appeal was filed pursuant to that section, among others. See Cal. Pub. Res. Code § 30625(a) (“any appealable action on a coastal development permit ... by a local government ... may be appealed to the commission by ... any two members of the commission”). Moreover, even if the citations in the Notification of Appeal were wrong, that would not render the notice defective. As indicated above, the Commission’s regulations only require the Commission to notify the local government “that the effective date of the local government action has been suspended.” 14 C.C.R. § 13572. Finally, even if some technical flaw in the notice somehow made it defective, which it was not, the Letter does not explain how that would render the appeal invalid.

Draft Post-Certification Maps

Finally, regarding the third claim, the applicant also contends that the Commission made an error of law because it failed to follow the appeal jurisdiction boundary in the “[Draft] Post-Certification Appellate Jurisdiction Map” prepared by the Commission for the City of San Diego. In particular, the applicant states that the Commission “abandoned the jurisdictional limits set forth in the Post-Cert Map” when it determined Mission Boulevard to be the first public road. The applicant further contends that before the Commission could use Mission Boulevard as the first public road paralleling the sea, it would have to consult with the City of San Diego, provide notice to the public, and adopt a formal resolution and findings of fact. The Commission finds that no error of fact or law has occurred in this regard.

Section 30603 of the Coastal Act provides that development proposed to be located in the geographic areas identified in Section 30601 is appealable to the Commission. One of the geographic areas identified in Section 30603 is the area between the sea and the first public road paralleling the sea. Section 13577(i) of the California Code of Regulations defines the first public road paralleling the sea. It states:

(i) **First Public Road Paralleling the Sea.**

(1) The “first public road paralleling the sea” means that road nearest to the sea, as defined in Public Resources Code Section 30115, which:

(A) is lawfully open to uninterrupted public use and is suitable for such use;

(B) is publicly maintained;

(C) is an improved, all-weather road open to motor vehicle traffic in at least one direction;

(D) is not subject to any restrictions on use by the public except when closed due to an emergency or when closed temporarily for military purposes; and

(E) does in fact connect with other public roads providing a continuous access system, a and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

When based on a road designated pursuant to this section, the precise boundary of the permit and appeal jurisdiction shall be located along the inland right-of-way of such road.

In this case, Mission Boulevard meets the criteria for the first public road as set forth in the above regulation, including the criteria of subsection (E) above because it "generally parallels and follows the shoreline of the sea", including the physical features of the sea which "cause the waters of the sea to extend landward of the generally continuous coastline" and it "connects to other public roads providing a continuous access system". The staff in the Commission's technical services division have confirmed that Mission Boulevard constitutes the first public road paralleling the sea under the above criteria.

The Commission's regulations at Section 13576(a), also require that the Commission adopt maps to illustrate the geographic areas identified in section 30601. These maps are referred to as "post-certification" maps. The Commission has not adopted a post-certification map for the City of San Diego. The Commission's technical services staff have previously prepared a draft of a post-certification map, but the draft map has not been adopted by the Commission. The draft map does not identify Mission Boulevard as the first public road paralleling the sea in this area. Instead, it shows an un-named alley, one-half block west of Mission Boulevard on page 23 of 44 of said map.

The applicant in effect asserts that the Commission is bound by the appeal jurisdiction delineated on the draft post certification map. However, the map is not final and has not been adopted by the Commission. Draft maps do not establish the Commission's jurisdictional boundaries. Therefore, the Commission's delineation of a first public road that is different from the one shown on the draft post-certification map is not an "abandonment of the jurisdictional limits" set forth in the map. Further, nothing in the Commission's regulations requires that it hold a hearing or notify the public of changes to a draft post-certification map. Finally, even if the draft map were a final, adopted map, the Commission's appeal jurisdiction is based upon the statutory criteria set forth in Coastal Act section 30601. The maps are intended to reflect these criteria but they are not determinative of the Commission's jurisdiction. In fact, the Commission's regulations require that each post-certification map contain the following statement: "This plat may be updated as appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission." Thus, even adopted post-certification maps do not limit the Commission's appeal jurisdiction if they do not accurately reflect the appealable areas identified in section 30603 of the Coastal Act.

Therefore, based on the above information, the Commission reaffirms its earlier determination that Mission Boulevard as defined by Section 13577(i)(E) of the Commission's Code of Regulations. In addition, the Commission finds that although the "Draft Post-Certified Appellate Jurisdiction Map" for the City of San Diego does not identify Mission Boulevard as the first public road paralleling the sea, the map is in draft form and does not limit the Commission's appeal jurisdiction, and therefore, no error of law or fact has occurred.

In the review of coastal development permit application for another project on this same street (Diamond Street) in 2001, Boundary Determination (BD 23-2001) was performed by the Commission's Technical Services Unit which made a written determination for the file record of this mapping error for this vicinity of Pacific Beach. Since that time,

whenever the Commission's San Diego District Office staff has received inquiries regarding the jurisdiction in this area of Pacific Beach, these project sites are reviewed on a case-by-case basis and a letter is written to confirm that the site is located within the Commission's area of appeal jurisdiction. Currently, the technical services unit will attempt to prioritize the corrections to this page of the post-certification maps in the near future to resolve jurisdiction questions in this area until the entire post-certification maps are updated/finalized.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission reject the following motion and thereby adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-PCB-04-16 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-04-16* 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 the public access policies of the Coastal Act.

Findings and Declarations.

1. Project Description/Permit History. The proposed project involves the demolition of an existing 24-unit motel and two single-family residences and the construction of a mixed-use development consisting of 17 residential dwelling units (condominiums) totaling 39,137 sq.ft. and four retail/commercial leaseholds totaling 2,891 sq.ft. on an approximately .5 acre site. The proposed development consists of four three-story structures (Building Nos. 1-4). Building No. 4 fronts on Mission Boulevard and contains four retail/commercial leaseholds at the ground level with four residential units (2, two-bedroom units and two 3-bedroom units) on the upper two levels. Building No. 3 is

situated immediately west of Building No. 4 and includes five, 2-bedroom residential units on the second and third floors over parking on the ground floor (which also includes a small entry area for the residential units located above). Building Nos. 1 and 2 are located at the west side of the property and each include four, 4-bedroom residential units. A total of 43 parking spaces are proposed to serve the proposed development. The site is located at the southwest corner of Mission Boulevard and Diamond Street in Pacific Beach, two blocks from the ocean. In this area, Mission Boulevard is the first public road. Thus, the proposed development is located within the first public road and the sea.

2. Visitor-Serving Use Priority. The front or eastern half of the site along Mission Boulevard is zoned C-V-1-2 (Commercial-Visitor) and the western portion is zoned residential. According to the certified Pacific Beach Land Use Plan, the entire site is designated Visitor Commercial. Specifically, all the properties west of Mission Boulevard to the ocean are designated for visitor commercial uses. As noted above, the proposed project would remove a 24-unit motel and two single-family residences and replace them with 17 dwelling units. In addition, 2,891 sq.ft. of retail/commercial space is also proposed along Mission Boulevard at the ground level, with residential development (four units) on the upper levels (Building No. 4). A second building (Building No. 3) that is located entirely within the portion of the site that is zoned C-V-1-2 is proposed to contain residential use only (five units). The remainder of the site that is zoned residential will contain 8 additional residential units.

The certified LUP contains a policy that states:

Specific commercial areas in Pacific Beach shall be designated for office, regional, community, neighborhood and visitor-serving commercial uses (see Figure 11).

Figure 11 (ref. Exhibit No. 6) shows the entire area west of Mission Boulevard between Pacific Beach Drive and Chalcedony Street as designated for Visitor Commercial use. This area includes the project site.

In addition, the certified Pacific Beach Land Use Plan also contains the following policy:

Designate the Mission Boulevard commercial area for visitor-serving commercial areas. Apply a commercial zone to Mission Boulevard that will meet a variety of needs for existing and future resident and visitor populations. An emphasis shall be placed on meeting the unique needs of destination visitors (tourists) who often initially access the beach area with automobiles. Promote destination parking at hotels and motels, with pedestrian-friendly visitor uses and activities nearby north of Diamond Street, limit uses to multi-family residential and hotels and motels, some with ancillary on-site commercial uses such as recreational and health facilities, beauty shops, snack bars and dry cleaners. [p. 44]

The certified Land Development Code states the following regarding the C-V-1-2 Zone:

Section 131.0505 - Purpose of the CV (Commercial-Visitor) Zones

- (a) The purpose of the CV zones is to provide area for establishments catering to the lodging, dining, and recreational needs of both tourists and the local population. The CV zones are intended for areas located near employment centers and areas with recreational rezones or other visitor attractions.
- (b) The CV zones are differentiated based on development size and orientation as follows:
- CV-1-1 allows a mix of large-scale, visitor-serving uses and residential uses
 - CV-1-2 allows a mix of visitor-serving uses and residential uses with a pedestrian orientation

With regard to residential uses in this zone, the LDC contains the following footnote:

² Residential use and residential parking are permitted only as part of a mixed-use (commercial/residential) project. Non-owner occupants must reside on the premises for a minimum of 7 consecutive calendar days. Within the Coastal Overlay Zone, residential uses and instructional studios are not permitted on the ground floor.
[Emphasis added]

As noted above, the purpose of these provisions is to promote commercial uses that cater to visitors to the community, which often include coastal tourists. Given the proximity of the site to the ocean (one block away) it is important to retain visitor-commercial uses to accommodate coastal visitors in this nearshore area. The certified LUP encourages the retention of these types of uses, consistent with the C-V-1-2 zone. Furthermore, residential uses are not permitted on the ground floor in the CV zone. Although Building #4 which fronts on Mission Boulevard contains retail/commercial on the ground floor with residential above, Building #3 located directly west of Building #4 (within the C-V-1-2 zone portion of the site) consists entirely of residential use, inconsistent with the LCP provisions cited above. Although Building #3 is proposed to have residential uses on the upper two floors over ground-level parking, the ground floor, at a minimum—should have been reserved for commercial/retail use consistent with the certified Land Use Plan.

It should also be noted that the reservation of adequate land for visitor-serving uses in the nearshore areas has been an issue in the Pacific Beach community for some time and was specifically addressed by the Commission in 1995. The staff report for the certification of the Pacific Beach Community Plan (LCPA #2-95C) in 1995, stated:

In the resubmitted plan, all the designated area south of Diamond Street, and the properties north of Diamond Street fronting directly on Mission boulevard or located between the ocean and first alleyway will be implemented with the CV Zone, with visitor-serving uses the highest priority. ...In it's 1984 certification of the Pacific Beach Land Use plan (dated 1983) the Commission found that the first priority in both these areas (Mission Boulevard corridor and East Mission Bay Drive) should be assigned to tourist-oriented uses, since these corridors are the main accessways to the ocean and Mission Bay Park. ...South of Diamond Street, all properties fronting on, or

west of, Mission Boulevard are designated Visitor-Serving and will be implemented through the CV zone....

...The CV Zone allows for all usual visitor facilities, while prohibiting non-visitor-related uses on the ground floor of all new development. This serves to maintain a streetscape friendly and accessible to persons otherwise unfamiliar with an area. The Mission Boulevard corridor is used by both residents and visitors, but, other than during commuter hours, largely for recreational purposes. Thus, the goods and services needed by visitors from out of town/state/country are also the goods and service desired by many locals availing themselves of the beaches and other recreational amenities nearby.

Prior to adoption of the LCP for this area, several areas along Mission Boulevard remained areas of deferred certification due to the issues addressing adequacy of visitor-serving commercial uses. In adopting the Pacific Beach LUP and the subsequent Land Development Code (Implementing Ordinances), the Commission required that visitor commercial areas should be a priority use along the Mission Boulevard corridor south of Diamond Street. Areas north of Diamond Street, as addressed above, were allowed to have interior properties (not fronting on Mission Blvd.) zoned RV (Recreation Visitor) to address the mid-block portions of Mission Boulevard north of Diamond Street. Several of those properties were already developed with multi-family residential units. The City and Commission specifically identified the importance of Mission Boulevard as being a major coastal access corridor for visitor-serving uses and thus designated the entire Mission Boulevard area as Visitor Commercial. However, this area was approved to be implemented under two different zones—the CV and RV zones. The CV zone was applied exclusively to all commercial properties between the ocean and Mission Boulevard south of Diamond. In addition, for those properties north of Diamond Street that did not front directly on Mission Boulevard and which were identified as being less likely to attract the tourist trade, were zoned RV. The RV zone allows visitor types of uses and could be redeveloped in the future with another form of visitor accommodation such as short- and longer-term rental opportunities as well as additional visitor-serving lodging. Through the rezoning of this corridor to CV and portions north of Diamond Street to RV, the Commission was able to approve the proposed rezones and found them adequate to implement the certified LUP which resulted in effective certification of this deferred area.

In this particular case, one-half of the subject site is zoned C-V-1-2, which restricts residential development to upper floors only, reserving the ground floor for priority visitor-serving uses. However, the development, as approved by the City, allows residential uses on the upper floors over covered parking within the C-V-1-2 Zone instead of fostering additional retail/commercial use on the ground floor--which is in direct contradiction to the above cited LCP provisions.

Therefore, the appellants have raised a substantial issue regarding the conformity of the development with the policies of the certified LCP. Furthermore, approval of the

proposed project would set an adverse precedent for other similar development in the area and therefore raises a substantial issue.

3. Lower Cost Visitor and Recreational Facilities. As noted previously, the subject site is located between the first public road (Mission Boulevard) and the Pacific Ocean. Thus, the grounds for appeal are consistency with the certified LCP and the public access policies of the Coastal Act. A second way in which these and related issues are relevant to the appeal and are raised by the proposed development is with regard to the Coastal Act policies regarding protection of lower cost visitor and recreational facilities. Specifically, Section 30213 of the Coastal Act state the following:

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The public access and recreation policies of the Coastal Act call for protection of public access and recreation opportunities as well as lower cost visitor and recreational facilities. In reliance on these policies, the certified LUP has a policy that states:

Recreation and Visitor Serving Facilities.

The Commercial element recommends retaining existing commercial areas in proximity to the beach and bay with a commercial and visitor serving focus, while still providing community good and services. [p. 22]

Given that the proposed development results in the removal of a 24-unit motel in an area specifically designated for commercial-visitor uses, this could impact the supply of existing lower-cost visitor-serving accommodations in the nearshore area. Hotels and motels represent high-priority tourist facilities. The City did not conduct any studies with regard to the existing reservoir of visitor-serving hotel/motel accommodations in the nearshore community including supply vs. demand, etc. or make any findings on this issue. Whether or not the motel provides low-cost accommodations would depend on its current rates and the number of similar establishments in the immediate area. Absent any studies conducted by the City that assesses this information, this determination cannot be made.

This is an issue that the Coastal Commission has addressed in the past--most recently, in the San Diego area, LCPA#1-01 for construction of a resort (i.e., hotel and timeshare development) near the Oceanside Pier. In that LCP amendment, the City of Oceanside provided detailed information to address whether or not sufficient lower cost overnight accommodations were already provided for in the project area through submittal of an inventory of low to moderate cost accommodations in Oceanside's downtown area. The inventory provided a list of the largest summer rental units that are available within the coastal zone and included 489 hotel/motel units, their average daily rate and average

maximum rate. The analysis included the availability of the units from season to season, etc.

As noted earlier, this type of information has not been provided for the subject project. Thus, in this particular case, the removal of existing 24-unit motel without documentation that its removal will not result in an impact to the supply of low cost visitor and recreational facilities may not meet the requirements of the public access policies of the Coastal Act, as well as the related LCP policies, and therefore, raises a substantial issue.

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SITE

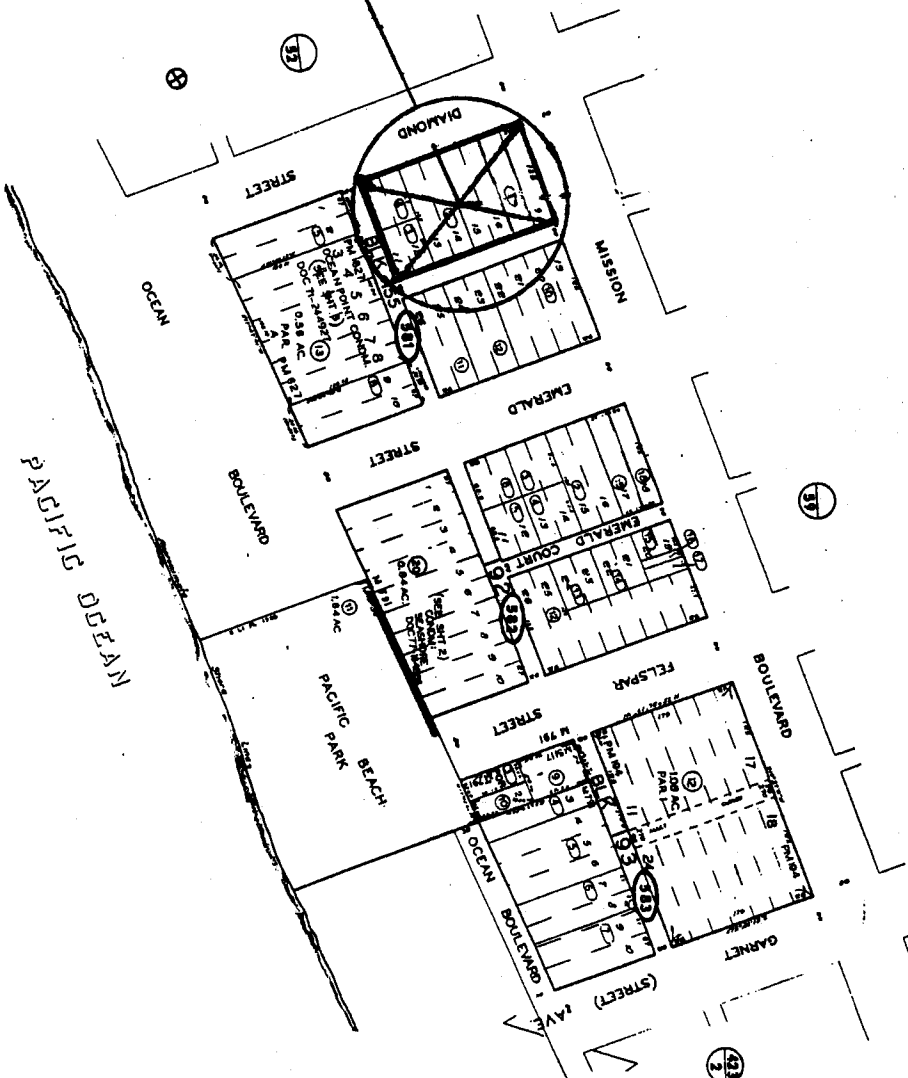
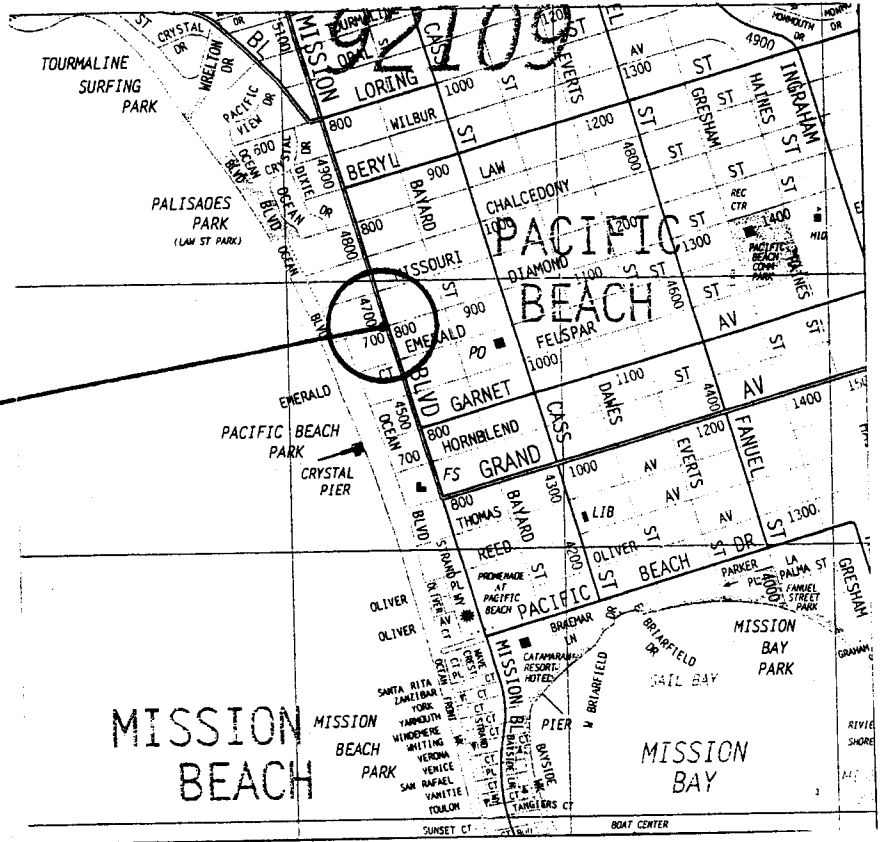

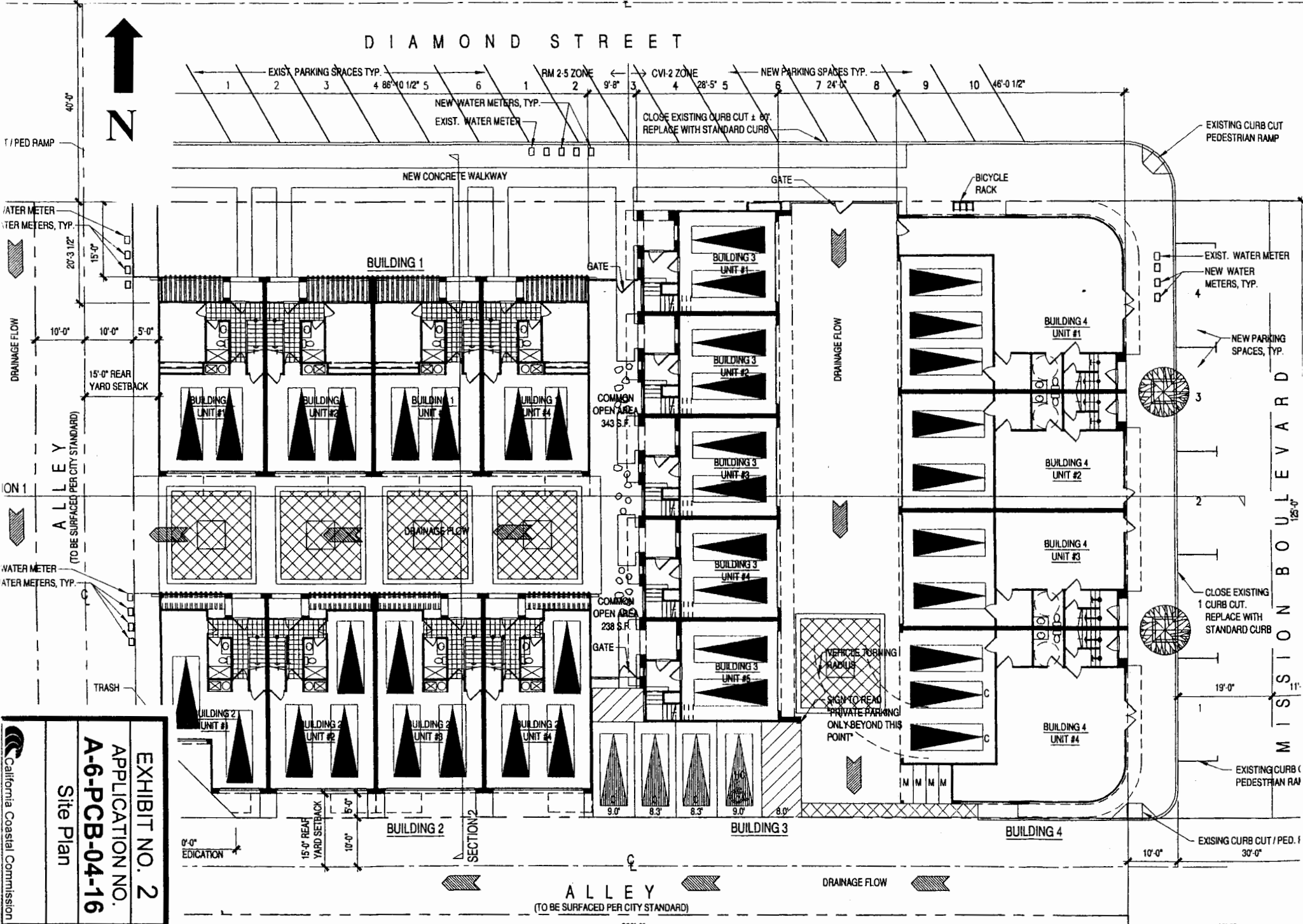


EXHIBIT NO. 1
APPLICATION NO.
A-6-PCB-04-16
Location Map



California Coastal Commission

DIAMOND STREET



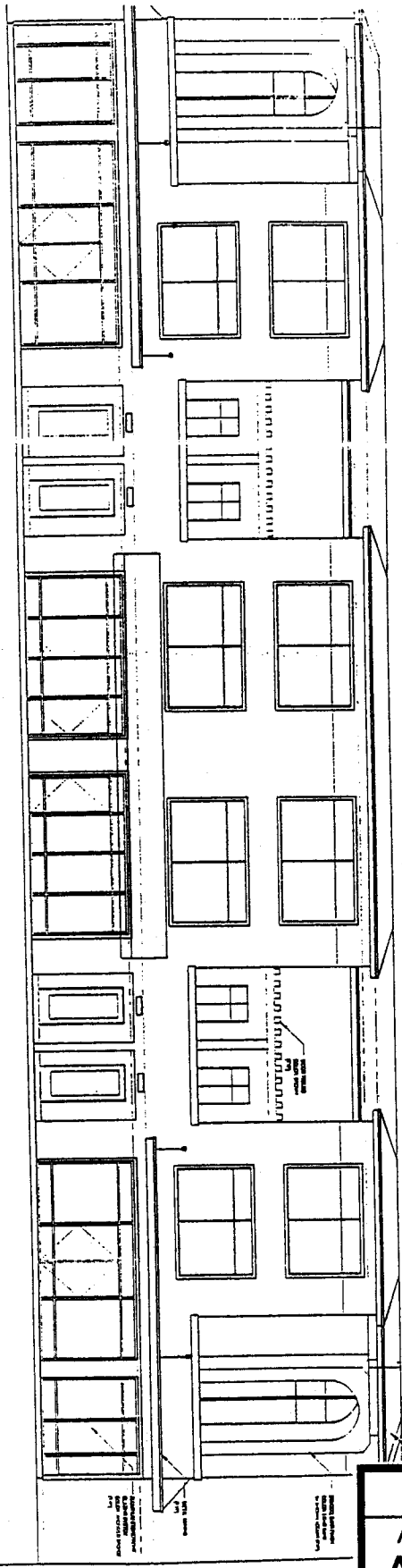
California Coastal Commission

EXHIBIT NO. 2

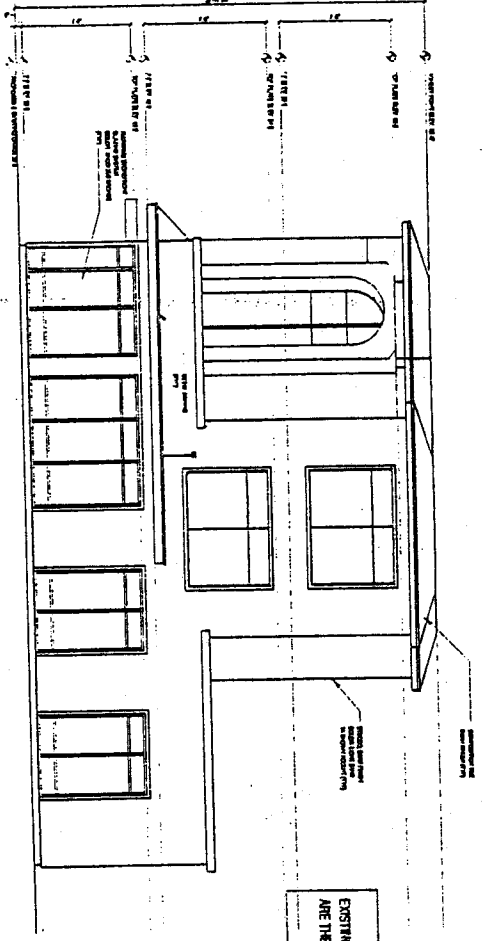
APPLICATION NO. A-6-PCB-04-16

Site Plan

BLDG. 4 WEST ELEVATION
SCALE: 1/8" = 1'-0"



BLDG. 4 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



EXISTING GRADE AND PROPOSED GRADE
ARE THE SAME

BLDG. 4 WEST & SOUTH ELEVATION

PROJECT	MISSION AT DIAMOND	OWNER	MISSION AT DIAMOND
ARCHITECT	STANLEY THOMAS ARCHITECTS	DATE	11/10/10
DATE	11/10/10	SCALE	1/8" = 1'-0"
PROJECT	MISSION AT DIAMOND	DATE	11/10/10
ARCHITECT	STANLEY THOMAS ARCHITECTS	SCALE	1/8" = 1'-0"
DATE	11/10/10	PROJECT	MISSION AT DIAMOND
ARCHITECT	STANLEY THOMAS ARCHITECTS	DATE	11/10/10
PROJECT	MISSION AT DIAMOND	ARCHITECT	STANLEY THOMAS ARCHITECTS
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DATE	11/10/10	PROJECT	MISSION AT DIAMOND
ARCHITECT	STANLEY THOMAS ARCHITECTS	DATE	11/10/10

MISSION AT DIAMOND
4866 Mission Boulevard
Pacific Beach, California 92109

EXHIBIT NO. 3
APPLICATION NO.
A-6-PCB-04-
West & South
Elevations

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92106-4421
(619) 787-2370
www.coastal.ca.gov



NOTIFICATION OF APPEAL PERIOD

DATE: February 23, 2004
TO: Glenn Gargas, Associate Planner, MS 501
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-04-016

Please be advised that on February 18, 2004 our office received notice of local action on the coastal development permit described below:

Local Permit #: 5410
Applicant(s): M.B. Ocean Front Properties, Attn: Mr. Michael Turk
Description: Four, three-story structures to include 17 condominium dwelling units, including 4 units to be used as mixed residential and commercial/retail use (2,891 sq.ft.) on an approximate .5 acre property.
Location: 4666 Mission 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 March 3, 2004.

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: M.B. Ocean Front Properties, Attn: Mr. Michael Turk

Handwritten initials and markings, possibly "LW" and "A-16", with a circled "6" above.

COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION

42-0934

DATE: February 13, 2004

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: MISSION AT DIAMOND -- PROJECT NO. 5410

PROJECT DESCRIPTION: Demolition of existing buildings and construction of a seventeen (17) dwelling unit mixed-use (residential with commercial/retail) condominium project.

LOCATION: 4666 Mission Boulevard

APPLICANT'S NAME: Michael Turk
M. B. Ocean Front Properties
1949 Grand Avenue, Suite B
San Diego, CA 92109
(858) 274-5995

FINAL ACTION: APPROVED WITH CONDITIONS

ACTION BY: Planning Commission

ACTION DATE: January 15, 2004 (Appeal period ended on January 30, 2004)

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:

California Coastal Commission
San Diego Area Office
7575 Metropolitan Drive, Suite 103

EXHIBIT NO. 4
APPLICATION NO.
A-6-PCB-04-16
City of San Diego
CDP/PDP No. 5410
California Coastal Commission

San Diego, CA 92108-4402
Phone (619) 767-2370

cc: California Coastal Commission

Glenn Gargas, Development Project Manager
Development Services Department
1222 First Avenue, MS 501, San Diego, CA 92101-4153
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updated 10/8/03 dcj

• Job Order No. 42-0934
Project No. 5410
Date

2/15/04

PLANNING COMMISSION RESOLUTION NO. D-3451-3-PC
TENTATIVE MAP NO. 42-0934
TENTATIVE MAP - PROJECT NO. 5410

WHEREAS, ICD DEVELOPMENT , Applicant, and DGB SURVEY AND MAPPING, Surveyor, filed an application for a one lot Tentative Map, located westerly of Mission Boulevard and southerly of Diamond Street, and described as Lots 11, 12, 13, 14, 15, 16, 17, and 18 in Block 155 of Pacific Beach, Map No. 854, in the existing RM2-5 and proposed CV1-2 Zone; and

WHEREAS, on December 11, 2003, continued to January 15, 2004, the Planning Commission of the City of San Diego considered 4666 Mission Boulevard Tentative Map No. 5410, pursuant to the Municipal Code Sections 125.0430 of the City of San Diego, and received for its consideration written and oral presentations, and heard from all interested parties present at the public hearing;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of San Diego makes the following Findings:

1. The map proposes the subdivision of a 0.574-acre site into one lot for residential and commercial development. This type of development is consistent with the General Plan and the Pacific Beach Community Plan, which designate the area for residential and commercial use. The proposed map will retain the community's character by encouraging orderly, sequential development compatible in its intensity with surrounding existing and future land development.
2. The design and proposed improvements for the map are consistent with the zoning/development regulations of the CV1-2 Zone in that:
 - a. The lot has minimum frontage on a dedicated street which is open to and usable by vehicular traffic, as allowed under a Coastal Development and Planned Development Permit (CDP/PDP).
 - b. The lot meets the minimum dimension requirements of the CV1-2, as allowed under a CDP/PDP .
 - c. The lot is designed so that required improvements do not result in nonconforming lots in respect to building area, setbacks, side yard and rear yard regulations, as allowed under a CDP/PDP .
 - d. Development of the site is controlled by CDP/PDP Permit No. 5410 .

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3. The design and proposed improvements for the subdivision are consistent with State Map Act Section 66473.1 and San Diego Municipal Code Section 125.0440(g) regarding the design of the subdivision for future passive or natural heating or cooling opportunities.
4. The site is physically suitable for residential and commercial development. The harmony in scale, height, bulk, density, and coverage of development creates a compatible physical relationship to surrounding properties for which this area has been planned.
5. The site is physically suitable for the proposed density of development. This is consistent with the community plan, which provides for residential and commercial uses.
6. The design of the subdivision or the proposed improvements could cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat. However, the project as revised now avoids or mitigates the potentially significant environmental effects based upon the findings of Mitigated Negative Declaration No. 5410 which is included herein by this reference.
7. The design of the subdivision and the type of improvements will not likely cause serious public health problems, in as much as needed public services and facilities are available/or required by condition of this map to provide for water and sewage facilities, as well as other related public services.
8. The design of the subdivision and the type of improvements are such that they will not conflict with any easements, acquired by the public at large, for access through or use of property within the proposed subdivision, as demonstrated by the City Engineer's request for public dedications and adequate improvement on the proposed subdivision map.
9. The decision-maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources in conformance with the Subdivision Map Act Section 66412.3 and the San Diego Municipal Code Section 125.0440(h).
10. The subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The number of residential/commercial condominium is 4. The total number of residential condominium is 13. The total number of condominium units is 17.
11. That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that, based on the Findings hereinbefore adopted by the

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Planning Commission, 4666 Mission Boulevard Tentative Map No. 5410, is hereby APPROVED, subject to the following conditions:

1. This tentative map will expire January 15, 2007.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the final map, unless otherwise noted.
3. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this tentative map, may protest the imposition within 90 days of the approval of this tentative map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
4. The final map shall conform to the provisions of CDP/PDP Permit No. 5410.
5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, shall be made a condition of map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.
6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
7. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
8. Every final map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These

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tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

9. The approval of this tentative map by the City of San Diego does not authorize the subdivider 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 USC Section 1531 et seq.).
10. The developer will continue to be required to underground any new service run to any new or proposed structures within the subdivision.
11. The design of the proposed, privately-owned underground utilities that will be constructed within the subdivision are consistent with accepted engineering practices and meet the requirements of Municipal Code Section 144.0204 and Council Policy No. 600-25-Underground Conversion of Utility Lines at Developers Expense.
12. The requested Underground Waiver qualifies under the guidelines of Council Policy No. 600-25- Underground Utility Lines at Developers Expense in that:
 - a. The conversion would involve either a substantial investment in temporary facilities (cable poles, temporary recircuiting, etc.) or a significant amount of work considered off-site to the development which is financing the conversion.
13. Prior to the foundation inspection, the applicant shall submit a building pad certification signed by a Registered Civil Engineer or a Licensed Land Surveyor, certifying that the pad elevation based on USGS datum is consistent with Exhibit A, satisfactory to the City Engineer.
14. The drainage system proposed for this development is subject to approval by the City Engineer.
15. Prior to the issuance of a building permit, applicant shall assure by permit and bong the resurfacing of the existing alley satisfactory to the city engineer.
16. Prior to the issuance of a building permit, the applicant shall dedicate and improve a 20 foot triangular area at the intersection of the 2 alley satisfactory to the city engineer.
17. The Subdivider shall provide CC&Rs for the operation and maintenance of any on-site private water facilities that serve or traverse more than a single dwelling or commercial unit or common area.

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18. The Subdivider 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 the approved tentative map, shall be modified at final engineering to comply with standards.

FOR INFORMATION:

- This development may be subject to the payment of a park fee in accordance with the San Diego Municipal Code, which specifies park fees applicable in the Pacific Beach Community Plan area.
- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with San Diego Municipal Code, which specifies park fees applicable in the Pacific Beach Community Plan area.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by Education Code section 17620, in accordance with procedures established by the Director of Building Inspection.
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.

PASSED AND RECOMMENDED FOR APPROVAL BY THE PLANNING
COMMISSION OF THE CITY OF SAN DIEGO,
CALIFORNIA, ON JANUARY 15, 2004.

BY A VOTE OF 6 TO 0.

By _____
Glenn Gargas , Development Project Manager

In the event that you are dissatisfied with any action of the Planning Commission with respect to the tentative map, you may appeal directly to the City Council within ten days. Notice of appeal shall be in writing and filed with the City Clerk.

C:\Documents\PC 420934 Mission at Diamond.wpd

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-0934

COASTAL DEVELOPMENT PERMIT NO. 8938 AND PLANNED DEVELOPMENT
PERMIT NO. 57286
MISSION AT DIAMOND - PROJECT NO. 5410 [MMRP]
PLANNING COMMISSION

This Coastal Development Permit No. 8938 and Planned Development Permit No. 57286, is granted by the Planning Commission, of the City of San Diego to KD Development, a California Corporation, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] 105.0202 and 126.0601. The 0.574-acre site is located at 4666 Mission Boulevard, in the RM-2-5 and CV-1-2 Zones, Coastal Overlay Zone, Coastal Height Limitation Overlay Zone, and the Beach Parking Impact Overlay Zone, of the Pacific Beach Community Plan Area. The project site is legally described as Lots 11 through 18, Block 155, Pacific Beach Amended Map, Map No. 854.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner /Permittee to demolish an existing motel and two residences and construction of a 17 dwelling unit mixed-use (residential with commercial/retail) condominium project, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated January 15, 2004, on file in the Development Services Department. The exhibits are identified as follows:

A-1.1, Sheet 1 of 29:	Site Plan
Sheet 2 of 29:	Topographic Survey
Sheet 3 of 29:	Tentative Map
A-2.1, Sheet 4 of 29:	Building 1 First Floor Plan
A-2.2, Sheet 5 of 29:	Building 1 Second Floor Plan
A-2.3, Sheet 6 of 29:	Building 1 Third Floor Plan
A-2.4, sheet 7 of 29:	Building 1 Roof Plan
A-2.5, Sheet 8 of 29:	Building 1 North & East Elevations
A-2.6, Sheet 9 of 29:	Building 1 South & West Elevations
A-3.1, Sheet 10 of 29:	Building 2 First Floor Plan
A-3.2, Sheet 11 of 29:	Building 2 Second Floor Plan
A-3.3, Sheet 12 of 29:	Building 2 Third Floor Plan
A-3.4, Sheet 13 of 29:	Building 2 Roof Plan
A-3.5, Sheet 14 of 29:	Building 2 South & West Elevations
A-3.6, Sheet 15 of 29:	Building 2 North & East Elevations
A-4.1, Sheet 16 of 29:	Building 3 First Floor Plan

A-4.2, Sheet 17 of 29:	Building 3 Second Floor Plan
A-4.3, Sheet 18 of 29:	Building 3 Third Floor Plan
A-4.4, Sheet 19 of 29:	Building 3 Roof Plan
A-4.5, Sheet 20 of 29:	Building 3 West & South Elevations
A-4.6, Sheet 21 of 29:	Building 3 East & North Elevations
A-5.1, Sheet 22 of 29:	Building 4 First Floor Plan
A-5.2, Sheet 23 of 29:	Building 4 Second Floor Plan
A-5.3, Sheet 24 of 29:	Building 4 Third Floor Plan
A-5.4, Sheet 25 of 29:	Building 4 Roof Plan
A-5.5, Sheet 26 of 29:	Building 4 West & South Elevations
A-5.6, Sheet 27 of 29:	Building 4 East & North Elevations
A-6.1, Sheet 28 of 29:	Site Sections
L-1, Sheet 29 of 29:	Landscape Development Plan

The project or facility shall include:

- a. Four, three-story structures to include 17 condominium dwelling units (four 4-bedroom units, six 3-bedroom units, and seven 2-bedroom units), of which 4 of the units are to be mixed residential and commercial/retail use, with a total gross square floor area of 38,137 square feet, of which 2,891 square feet is for retail/commercial use, on a 0.574-acre property;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- 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(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 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 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 permits, complete working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit A – All Plans, dated January 15, 2004. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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 proposed 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. Prior to issuance of any building permits for this project, a final subdivision map shall be recorded on the subject property.
11. This Permit shall become effective with recordation of the corresponding final subdivision map for and approval of the project site.

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

13. At all bus stops within the project area, if any, the applicant shall be responsible for installing sidewalk improvements where needed to comply with Americans with Disability Act (ADA) requirements and in accordance with standards contained in the City of San Diego Street Design Manual.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

14. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

15. As conditions of Coastal Development Permit No. 8938, Planned Development Permit No. 57286, and Tentative Map No. 8939, the mitigation measures specified in the MMRP, and outlined in the MITIGATED NEGATIVE DECLARATION, PTS NO. 5410, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

16. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the MITIGATED NEGATIVE DECLARATION, PTS NO. 5410 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Air Quality and Water Quality

17. The Mitigation, Monitoring, and Reporting Program (MMRP) shall require a deposit of \$ 1,000 to be collected prior to the issuance of discretionary approvals to cover the City's costs associated with implementation of the MMRP.

ENGINEERING REQUIREMENTS:

18. The drainage system proposed for this development is subject to approval by the City Engineer.

19. Prior to the issuance of a building permit, Owner/Permittee shall assure by permit and bong the resurfacing of the existing alley satisfactory to the city engineer.

20. Prior to the issuance of a building permit, the Owner/Permittee shall dedicate and improve a 20 foot triangular area at the intersection of the 2 alley satisfactory to the city engineer.

21. Prior to the issuance of any construction permit the Subdivider/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.

22. Prior to the issuance of any construction permit the Subdivider/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.

23. Prior to the issuance of any construction permit, the Subdivider/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.)

24. Prior to the issuance of any construction permit, the Subdivider/Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

25. Prior to the foundation inspection, the Owner/Permittee shall submit an building pad certification signed by a Registered Civil Engineer or a Licensed Land Surveyor, certifying that the pad elevation based on USGS datum is consistent with Exhibit 'A,' satisfactory to the City Engineer.

26. Prior to the foundation inspection, the Owner/Permittee shall submit a building pad certification signed by a Registered Civil Engineer or a Licensed Land Surveyor, certifying that the pad elevation based on USGS datum is consistent with Exhibit 'A,' satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

27. Prior to issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit A, L-1, Sheet 29 of 29. No change, modification, or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted

28. Prior to issuance of building permits, interim landscape and erosion control measures, including hydro seeding of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the City's Environmental Analysis Section) and City Engineer. All plans shall be in substantial conformance to Exhibit A, L-1, Sheet 29 of 29, and all other applicable conditions of related permits.

29. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Owner/Permittee shall initiate such measures within forty-five days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Land Development Manual.

30. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment, and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

31. All required landscape shall be maintained in a disease, weed, and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Owner/Permittee shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Land Development Manual.

32. If any required landscape (including, but not limited to, existing or new plantings, hardscape, landscape features) indicated on the approved plans is damaged or removed during demolition, it shall be repaired or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available or an increased number) to the satisfaction of the City Manager.

33. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

34. Prior to issuance of any building permits, complete landscape construction documents, including an automatic permanent irrigation system, shall be submitted to the Development Services Department, Development and Environmental Planning Division for approval. The plans shall be in substantial conformance to Exhibit "A", on file in the office of the Development Services.

35. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during demolition or construction, it shall be the responsibility of the Permittee/Owner, to assure that it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 15 days.

36. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit A, Landscape Development Plan, on file in the Office of Development Services.

37. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way and median (if applicable) improvements shall be submitted to the City Manager for approval. Improvement plans shall take into account a 40 square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

38. Prior to final inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.

PLANNING/DESIGN REQUIREMENTS:

39. No fewer than forty-three (43) off-street parking spaces (37 spaces for residential use and 6 parking spaces for retail/commercial use) shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit A-1.1, Sheet 1 of 29, site Plan. Parking spaces

shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

40. 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 a 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.

41. The height(s) of the building(s) or structure(s) 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.

42. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

43. 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.

44. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

45. All signs associated with this development shall be consistent with Citywide sign regulations.

46. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division, for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of 50 feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than three footcandles. Light levels throughout the development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest

extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this Permit during the night inspection. Night inspections may be required additional fees as determined by the City Manager.

47. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
48. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
49. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences, or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.
50. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, 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 structure whose top and sides may include grillwork, louvers, and latticework.
51. No merchandise, material, or equipment shall be stored on the roof of any building.
52. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) 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-1.1, sheet 1 of 29, Site Plan.
53. The commercial/retail portion of each unit of the four mixed-use units within Building Number 4, as illustrated on Exhibit A – Site Plan, Sheet 1 of 29 and Floor Plan, Sheet 22 of 29, dated January 15, 2004, shall only be used for commercial/retail uses as permitted by the CV-1-2 Zone, SDMC, Land Development Code Section 131.0522, to the satisfaction of the City Manager. Use of the commercial/retail portion of any of the four mixed-use units for residential use shall be prohibited.

WASTEWATER REQUIREMENTS:

54. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer mains that serve more than one ownership.
55. The developer shall design and construct any 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 re-designed.

56. 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.

WATER REQUIREMENTS:

57. 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), as needed, outside of any driveway or roadway with alley type cross section, and the removal of all existing unused services within the rights-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.
58. 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.
59. 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.
60. 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.
61. 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.

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 ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the Planning Commission of the City of San Diego on January 15, 2004, by Resolution No. D-3451.

AUTHENTICATED BY THE CITY MANAGER

By _____

PLANNING COMMISSION
RESOLUTION NO. D- 3451-2-PC
COASTAL DEVELOPMENT PERMIT NO. 8938 AND PLANNED DEVELOPMENT
PERMIT NO. 57286
MISSION AT DIAMOND – PROJECT NO. 5410

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

[NAME OF COMPANY]
Owner/Permittee

By _____

By _____

NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.

12/8/03 dej

WHEREAS, KD DEVELOPMENT, a California Corporation, Owner/Permittee, filed an application with the City of San Diego for a permit to demolish an existing motel and two residences and the construction of a 17 dwelling unit mixed-use (residential with retail/commercial) condominium project, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 8938 and 57286), on portions of a 0.574 acre property;

WHEREAS, the project site is located at 4666 Mission Boulevard in the RM-2-5 and CV-1-2 Zones, Coastal Overlay Zone, Coastal Height Limitation Overlay Zone, and the Beach Parking Impact Overlay Zone, of the Pacific Beach Community Plan Area;

WHEREAS, the project site is legally described as Lots 11 through 18, Block 155, Pacific Beach Amended Map, Map No. 854;

WHEREAS, on December 11, 2003, and continued to January 15, 2004, the PLANNING COMMISSION of the City of San Diego considered Coastal Development Permit No. 8938 and Planned Development Permit No. 57286, pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the PLANNING COMMISSION of the City of San Diego as follows:

That the PLANNING COMMISSION adopts the following written Findings, dated January 15, 2004.

FINDINGS:

Coastal Development Permit - Section 126.0708

A.

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; and

The 25,010 square foot project site, currently developed with an existing motel and two single dwelling residences all to be demolished, is being developed with a four, three-

story, 17 dwelling unit mixed use condominium project and is located approximately one block from the coastline. The project features and overall development of the site will not encroach upon any existing or proposed physical access to the coast, nor will it obstruct ocean or other scenic views from public vantage points. The project site is located on the corner of a major collector and a local residential street with a fairly high volume of vehicular and pedestrian traffic toward the adjacent beach areas. This project will be developed fully within the private property of the project site and will maintain and improve the existing sidewalk system adjacent to the property.

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

The 25,010 square foot project site is currently developed with an existing motel and two residences to be demolished, with a proposal for four, three-story, 17 dwelling unit mixed use condominium project to be constructed on it. The environmental review, Mitigated Negative Declaration No. 5410, determined that the project site was previously disturbed as part of the previous development. The site does not contain any sensitive coastal resources such as beaches, sensitive biology, or coastal bluffs. However, the project was revised to include mitigation measures for Air Quality and Water Quality. Surrounding properties have been fully developed.

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; and

The proposed three-story, mixed-use, 17 dwelling unit condominium project is in compliance with the City of San Diego adopted Pacific Beach Community Plan and the Progress Guide and General Plan. In addition, demolition of the existing motel and two residences and the development of this site for 17 dwelling unit condominium project was determined to be in conformity with the land use, goals and objectives of the Certified Local Coastal Program and the Implementation Program as the policies designate this site for Visitor Commercial use.

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 25,010 square foot site, to be developed with a 17 dwelling unit mixed-use condominium project, is not located between the first public road and the sea or coastline. The proposed development will be fully within private property of the project site. Public access to the sea and public recreation areas would not be impaired by the development of this site. The proposed project is designed to take access off the existing adjacent streets and alleys to the site and the pedestrian and vehicular traffic pattern would remain unaltered.

Planned Development Permit - Section 126.0604

A. Findings for all Planned Development Permits

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

The proposed mixed-use condominium project is located on a site which is designated Visitor Commercial by the Pacific Beach Community Plan. Due to the project's proposed mixed-use of residential and commercial/retail use and that it utilizes the transit-oriented development standards the project was found to be consistent with the Community Plan.

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

The proposed mixed-use condominium project was reviewed by the City's Environmental Analysis Section. A Mitigated Negative Declaration, Project No. 5410 was prepared which identified Air Quality and Water Quality as potential impacts. Mitigation measures were incorporated into the project which reduces the potential impact to a level below significant. No further adverse impacts to public health, safety, and welfare were identified.

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

The proposed 17 unit mixed-use development was found to comply with all of the development regulations except for the proposed deviations to the Ground Floor Restrictions. The proposed deviations have been supported based on the understanding of the intent of the code section. Code Section 131.0540 was intended to avoid placement of a building back on a lot with a large parking area up front and to encourage a more urban and pedestrian/transit-oriented design which will aid in the screening of parking areas as viewed from the commercial street. The proposed design includes structured parking garage spaces which are internal to the project, urban in design, with first floor commercial space along the street frontage which fully screens the parking spaces, meets the design intent of the code and the desired aesthetic quality.

4. The proposed development, when considered as a whole, will be beneficial to the community; and

The proposed mixed-use condominium project will provide a some what unique design with "Live and Work" units which are both residential and commercial and an over all project design which is urban, pedestrian/transit-oriented, screened parking areas as viewed from the commercial street. The proposed design includes structured parking

garage spaces which are internal to the project, with first floor commercial space along the street frontage which will be a beneficial to the community.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The project as designed, includes two deviations as part of the Planned Development Permit. The project does not conform to the Ground Floor Restriction for the location of required residential parking within the project's front 30 feet, and the percentage of required parking on the on the ground floor, pursuant to the CV-1-2 Zone, Land Development Code Section 131.0540(c). This project does have parking spaces located within the project's front 30 feet, however, the parking spaces are located within a structure and not within an open lot area. Based on the understanding of the intent of the code section, it is believed that the intent was to avoid placement of a building back on a lot with a large parking area up front and to encourage a more urban and pedestrian/transit-oriented design which will aid in the screening of parking areas as viewed from the commercial street. The proposed design includes structured parking garage spaces which are internal to the project, urban in design, with first floor commercial space along the street frontage which fully screens the parking spaces, meets the design intent of the code and the desired aesthetic quality.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, Coastal Development Permit No. 8938 and Planned Development Permit No. 57286, is hereby GRANTED by the PLANNING COMMISSION to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 8938 & 57286, a copy of which is attached hereto and made a part hereof.

Glenn R. Gargas
Development Project Manager
Development Services

Adopted on: January 15, 2004

Job Order No. 42-0934

cc: Legislative Recorder, Planning Departme

garage spaces which are internal to the project, with first floor commercial space along the street frontage which will be a beneficial to the community.

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The project as designed, includes two deviations as part of the Planned Development Permit. The project does not conform to the Ground Floor Restriction for the location of required residential parking within the project's front 30 feet, and the percentage of required parking on the on the ground floor, pursuant to the CV-1-2 Zone, Land Development Code Section 131.0540(c). This project does have parking spaces located within the project's front 30 feet, however, the parking spaces are located within a structure and not within an open lot area. Based on the understanding of the intent of the code section, it is believed that the intent was to avoid placement of a building back on a lot with a large parking area up front and to encourage a more urban and pedestrian/transit-oriented design which will aid in the screening of parking areas as viewed from the commercial street. The proposed design includes structured parking garage spaces which are internal to the project, urban in design, with first floor commercial space along the street frontage which fully screens the parking spaces, meets the design intent of the code and the desired aesthetic quality.

Page 15 of 15 was not included in the NOFA

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, Coastal Development Permit No. 8938 and Planned Development Permit No. 57286, is hereby GRANTED by the PLANNING COMMISSION to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 8938 & 57286, a copy of which is attached hereto and made a part hereof.

Glenn R. Gargas
Development Project Manager
Development Services

Adopted on: January 15, 2004

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cc: Legislative Recorder, Planning Departme

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: Patrick Kruer
Mailing Address: 7727 Herschel Avenue
La Jolla, CA 92037
Phone Number: 858/551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Demolition of existing motel and two single family residences and construction of a 17-dwelling unit mixed-use (residential with commercial/retail) condominium project on an approximately .5 acre site.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 4666 Mission Bouelvard, Pacific Beach, 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-04-16

DATE FILED: 3/3/04

DISTRICT: San Diego

RECEIVED

MAR 03 2004

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTR

EXHIBIT NO. 5
APPLICATION NO.
A-6-PCB-04-16
Appeal Forms
California Coastal Commission

[This appeal form is identical to an appeal form also signed and dated 3/3/04 by Commissioner Toni Iseman contained in the permit file. Only this copy is reproduced here as an exhibit to the staff report.]

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

Date of local government's decision: January 15, 2004

Local government's file number (if any): CDP/PDP Permit No. 5410

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:

Michael Turk
M.B. Ocean Front Properties
1949 Grand Avenue, Suite B
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.

N/A

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.

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 March 3, 2004

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: 3/3/04

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

Signed: _____

Date: _____

March 3, 2004

Attachment "A" – M.B. Ocean Front Properties

The proposed project involves the demolition of an existing 24-unit motel and two single-family residences and the construction of a 17 dwelling unit mixed-use (residential with commercial/retail) project totaling 39,137 sq.ft. with 43 on-site parking spaces on a .5 acre site. The proposed development consists of four three-story structures including four 4-bedroom units, six 3-bedroom units, and seven 2-bedroom units. Four of the units are proposed to be mixed residential and commercial/retail use with commercial/retail use on the ground floor and residential development on the upper two floors. The site is located at the southeast corner of Mission Boulevard and Diamond Street in Pacific Beach, one block from the ocean.

The front or eastern half of the site (Mission Boulevard) is zoned C-V-1-2 (Commercial-Visitor) and the western portion is zoned residential. According to the certified Pacific Beach Land Use Plan, the entire site is designated visitor commercial. Specifically, everything west of Mission Boulevard to the ocean is designated visitor commercial. As noted above, the proposed project would remove a 24-unit motel and two single-family residences and replace it with 2,891 sq.ft. of retail/commercial uses along Mission Boulevard at the ground level and residential development on the upper levels (Building No. 4). A second building (Building No. 3) that is located entirely within the portion of the site that is zoned CV is proposed to contain residential use only (four units). The remainder of the site that is zoned residential will contain 13 additional residential units.

The certified LUP contains a policy that states:

“Specific commercial areas in Pacific Beach shall be designated for office, regional, community, neighborhood and visitor-serving commercial uses (see Figure 11).

Figure 11 then shows the entire area west of Mission Boulevard between Pacific Beach Drive and Chalcedony Street as designated for Visitor Commercial use. This area includes the project site.

In addition, the certified Pacific Beach Land Use Plan also contains the following policy:

“Designate the Mission Boulevard commercial area for visitor-serving commercial areas. Apply a commercial zone to Mission Boulevard that will meet a variety of needs for existing and future resident and visitor populations. An emphasis shall be placed on meeting the unique needs of destination visitors (tourists) who often initially access the beach area with automobiles. Promote destination parking at hotels and motels, with pedestrian-friendly visitor uses and activities nearby north of Diamond Street, limit uses to multi-family residential and hotels and motels, some with ancillary on-site commercial uses such as recreational and health facilities, beauty shops, snack bars and dry cleaners.” [p. 44]

The certified Land Development Code states the following regarding the C-V-1-2 Zone:

Section 131.0505 Purpose of the CV (Commercial-Visitor) Zones

- (a) The purpose of the CV zones is to provide area for establishments catering to the lodging, dining, and recreational needs of both tourists and the local population. The CV zones are intended for areas located near employment centers and areas with recreational rezones or other visitor attractions.
- (b) The CV zones are differentiated based on development size and orientation as follows:
 - CV-1-1 allows a mix or large-scale, visitor-serving uses and residential uses
 - CV-1-2 allows a mix of visitor-serving uses and residential uses with a pedestrian orientation

With regard to residential uses in the this zone, the LDC contains the following footnote:

² Residential use and residential parking are permitted only as part of a mixed-use (commercial/residential) project. Non-owner occupants must reside on the premises for a minimum of 7 consecutive calendar days. Within the Coastal Overlay Zone, residential uses and instructional studios are not permitted on the ground floor. [Emphasis added]

As noted above, the purpose of these policies is to promote commercial uses that cater to visitors to the community which often include coastal tourists. Given the proximity of the site to the ocean (one block away) it is important to retain visitor-commercial uses for to accommodate coastal visitors in this nearshore area. The certified LUP encourages the retention of these types of uses, consistent with the C-V-1-2 zone. Furthermore, residential uses are not permitted on the ground floor in the CV zone. Therefore, the City's approval of residential development on two-thirds of the important commercial visitor-node located just one block from the beach is inconsistent with the certified LCP and would set an adverse precedent for other similar development in the area.

A second issue raised by the proposed development is with regard to protection of lower cost visitor and recreational facilities. The public access and recreation policies of the Coastal Act call for protection of public access and recreation opportunities as well as lower cost visitor and recreational facilities. Upon reliance of these policies, the certified LUP has a policy that recommends retaining existing commercial areas in proximity to the beach and bay with a commercial and visitor-serving focus. Given that the proposed development results in the removal of a 24-unit motel, this could impact the supply of existing lower-cost visitor-serving accommodations in the nearshore area. Hotels and motels represent high-priority tourist facilities. The City did not conduct any studies with regard to the existing reservoir of visitor-serving hotel/motel accommodations in the nearshore community including supply vs. demand, etc. or make any findings on this issue. Whether or not the motel provides low-cost accommodations would depends on its

current rates. Absent any studies conducted by the City, this determination cannot be made. In any case, the removal of existing motel without any kind of studies addressing this issue may not meet 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

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

SECTION I. Appellant(s)

Name: Toni Iseman
Mailing Address: 2338 Glenneyre
Laguna Beach, CA 92651
Phone Number: 949/494-7648

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Demolition of existing motel and two single family residences and construction of a 17-dwelling unit mixed-use (residential with commercial/retail) condominium project on an approximately .5 acre site.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
4666 Mission Bouelvard, Pacific Beach, 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-04-16

DATE FILED: 3/3/04

DISTRICT: San Diego

RECEIVED

MAR 03 2004

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

Date of local government's decision: January 15, 2004

Local government's file number (if any): CDP/PDP Permit No. 5410

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:

Michael Turk
M.B. Ocean Front Properties
1949 Grand Avenue, Suite B
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.

N/A

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.

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 March 3, 2004

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: Toni Isen
Appellant or Agent

Date: 3/3/04

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

Signed: _____

Date: _____

March 3, 2004

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The front or eastern half of the site (Mission Boulevard) is zoned C-V-1-2 (Commercial-Visitor) and the western portion is zoned residential. According to the certified Pacific Beach Land Use Plan, the entire site is designated visitor commercial. Specifically, everything west of Mission Boulevard to the ocean is designated visitor commercial. As noted above, the proposed project would remove a 24-unit motel and two single-family residences and replace it with 2,891 sq.ft. of retail/commercial uses along Mission Boulevard at the ground level and residential development on the upper levels (Building No. 4). A second building (Building No. 3) that is located entirely within the portion of the site that is zoned CV is proposed to contain residential use only (four units). The remainder of the site that is zoned residential will contain 13 additional residential units.

The certified LUP contains a policy that states:

“Specific commercial areas in Pacific Beach shall be designated for office, regional, community, neighborhood and visitor-serving commercial uses (see Figure 11).

Figure 11 then shows the entire area west of Mission Boulevard between Pacific Beach Drive and Chalcedony Street as designated for Visitor Commercial use. This area includes the project site.

In addition, the certified Pacific Beach Land Use Plan also contains the following policy:

“Designate the Mission Boulevard commercial area for visitor-serving commercial areas. Apply a commercial zone to Mission Boulevard that will meet a variety of needs for existing and future resident and visitor populations. An emphasis shall be placed on meeting the unique needs of destination visitors (tourists) who often initially access the beach area with automobiles. Promote destination parking at hotels and motels, with pedestrian-friendly visitor uses and activities nearby north of Diamond Street, limit uses to multi-family residential and hotels and motels, some with ancillary on-site commercial uses such as recreational and health facilities, beauty shops, snack bars and dry cleaners.” [p. 44]

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 - CV-1-2 allows a mix of visitor-serving uses and residential uses with a pedestrian orientation

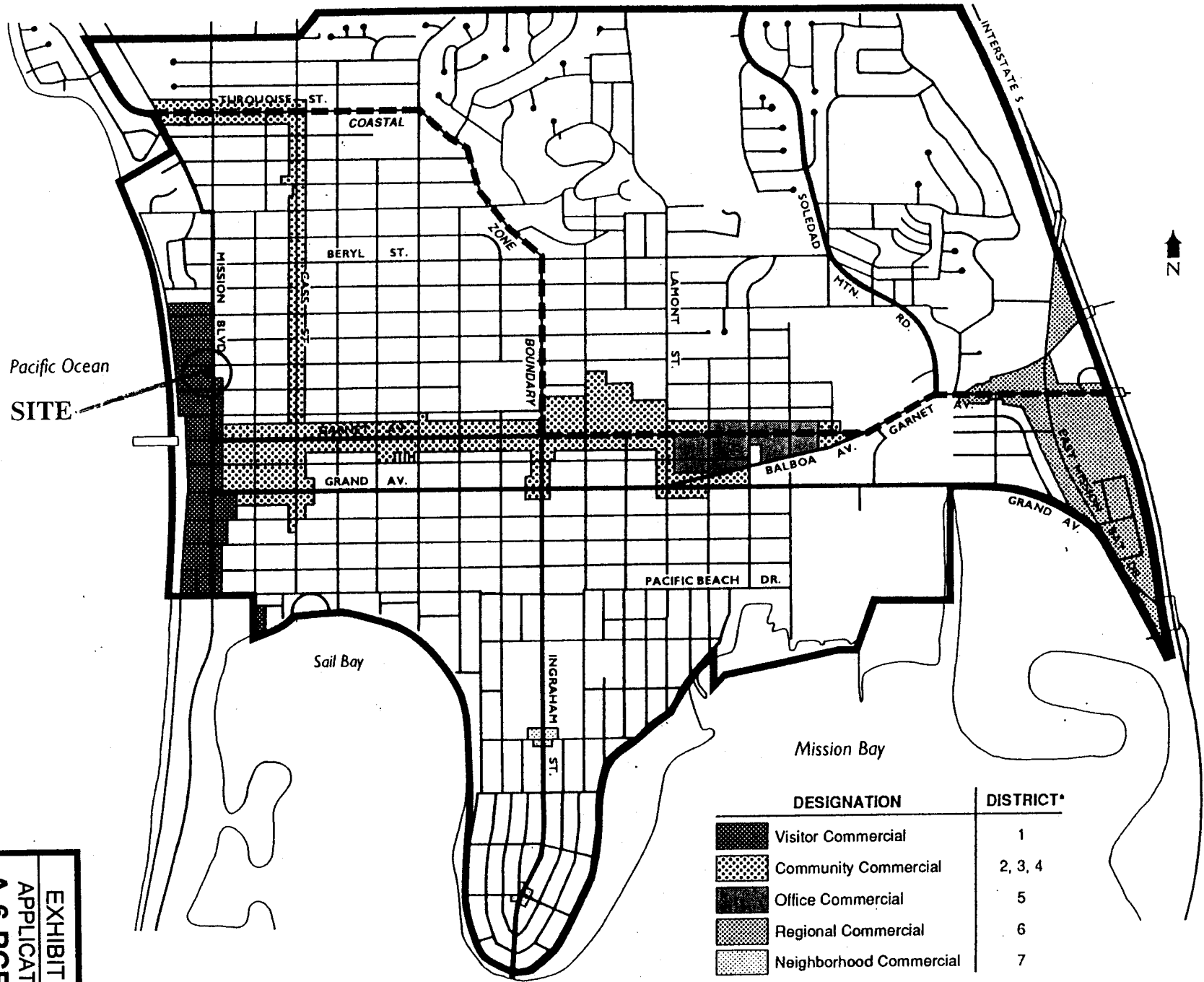
With regard to residential uses in the this zone, the LDC contains the following footnote:

² Residential use and residential parking are permitted only as part of a mixed-use (commercial/residential) project. Non-owner occupants must reside on the premises for a minimum of 7 consecutive calendar days. Within the Coastal Overlay Zone, residential uses and instructional studios are not permitted on the ground floor. [Emphasis added]

As noted above, the purpose of these policies is to promote commercial uses that cater to visitors to the community which often include coastal tourists. Given the proximity of the site to the ocean (one block away) it is important to retain visitor-commercial uses for to accommodate coastal visitors in this nearshore area. The certified LUP encourages the retention of these types of uses, consistent with the C-V-1-2 zone. Furthermore, residential uses are not permitted on the ground floor in the CV zone. Therefore, the City's approval of residential development on two-thirds of the important commercial visitor-node located just one block from the beach is inconsistent with the certified LCP and would set an adverse precedent for other similar development in the area.

A second issue raised by the proposed development is with regard to protection of lower cost visitor and recreational facilities. The public access and recreation policies of the Coastal Act call for protection of public access and recreation opportunities as well as lower cost visitor and recreational facilities. Upon reliance of these policies, the certified LUP has a policy that recommends retaining existing commercial areas in proximity to the beach and bay with a commercial and visitor-serving focus. Given that the proposed development results in the removal of a 24-unit motel, this could impact the supply of existing lower-cost visitor-serving accommodations in the nearshore area. Hotels and motels represent high-priority tourist facilities. The City did not conduct any studies with regard to the existing reservoir of visitor-serving hotel/motel accommodations in the nearshore community including supply vs. demand, etc. or make any findings on this issue. Whether or not the motel provides low-cost accommodations would depends on its

current rates. Absent any studies conducted by the City, this determination cannot be made. In any case, the removal of existing motel without any kind of studies addressing this issue may not meet the requirements of the certified LCP.



*As identified under specific proposals

Commercial Designations and Districts

PACIFIC BEACH COMMUNITY PLAN

EXHIBIT NO. 6
APPLICATION NO.
A-6-PCB-04-16

Pacific Beach
LUP/Land Use
Designations

California Coastal Commission

City of San Diego • Planning Department

LAW OFFICES
TURNER & MAASCH, INC.

JOHN M. TURNER

550 WEST C STREET, SUITE 1150
SAN DIEGO, CALIFORNIA 92101-8582

TELEPHONE: (619) 237-1212
FAX: (619) 237-0325
EMAIL: jmt@tmsdlaw.com

March 22, 2004

RECEIVED

MAR 22 2004

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

VIA FACSIMILE – (619) 767-2384

Chuck Damm, Sr. Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
California Coastal Commissions
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

Re: Commission Appeal Number A-6-PCB-04-016


Dear Mr. Damm, Ms. Lee and Ms. Sarb:

Our firm represents MB Oceanfront Properties and one of its principals, Michael Turk, in connection with the above-captioned appeal.

I have had an opportunity to review the City records, Coastal Commission records, and other information in connection with this matter. Based on this review, it appears that this appeal should be withdrawn by the Coastal Commission pursuant to Regulation 13116. The basis for the withdrawal is that the appeal was not filed in a timely fashion.

In reviewing the records, we have determined the following:

1. This project was approved by the Planning Commission of San Diego (unanimously) on January 15, 2004. The 10-day public appeal period of the Planning Commission approval expired on January 30, 2004. Mr. Gargas, of the City Planning Department, faxed a Notice of Final Action to the California Coastal Commission on February 2, 2004.
2. This Notice of Final Action was rejected by the Coastal Commission on the grounds that it stated on its face that it was non-appealable.

EXHIBIT NO. 7
APPLICATION NO. A-6-PCB-04-16
Letter from Applicant's Representative
 California Coastal Commission

LAW OFFICES

TURNER & MAASCH, INC.

Chuck Damm, Sr. Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
March 22, 2004
Page 2

3. In response, on February 13, 2004, Mr. Gargas mailed a Notice of Final Action to the California Coastal Commission. By virtue of its own date stamp, the California Coastal Commission received the Notice of Final Action on February 18, 2004.

4. Thereafter, on March 3, 2004, Coastal Commissioners Kruer and Iseman signed an appeal letter and on March 4, 2004, the California Coastal Commission sent a Notification of Appeal.

5. The Commission's Notification of Appeal is defective on its face. First of all, it states that the matter is being appealed to the California Coastal Commission pursuant to Public Resources Code §30602 or §30625. Neither of these provisions apply as there is in fact a certified local coastal program in place for the City of San Diego. Secondly, the Notification states that the appeal was filed on March 3, 2004. The filing of the appeal was 11 days after the Coastal Commission acknowledged receipt of the Notice of Final Action.

6. In a recent meeting, Coastal Commission staff acknowledged that the only jurisdiction for an appeal of this matter is pursuant to §30603. However, it should be noted (as was noted in the Planning Commission Staff Reports) that this development is not located between the sea and the first public road, and it does not appear that the portion of the property that is subject to the appeal is within 300 feet of the inland extent of any beach nor is it within 300 feet of the seaward face of any coastal bluff. However, and more importantly, under Public Resources Code §30603(5)(c), the action of a local government shall become final at the close of business on the 10th working day from the date of receipt by the Commission of the notice of the local government's final action, unless an appeal is submitted within that time.

7. Clearly, at the latest, the Coastal Commission received the Notice of Final Action from the City of San Diego on February 18, 2004. If one counts working days, the 10th working day after notification to the Coastal Commission was March 2, 2004. Based on the foregoing, it does not appear that the Coastal Commission has any jurisdiction to appeal this matter or to continue to prosecute the appeal that has been noticed.

This letter is for the purpose of requesting that the Coastal Commission immediately cause the withdrawal of the appeal.

In addition to the foregoing, I also need to advise you that the applicant in reliance on the finality of the local government decision, has already arranged

LAW OFFICES

TURNER & MAASCH, INC.

Chuck Damm, Sr. Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
March 22, 2004
Page 3

financing for the property, which includes construction financing based on the approved development, is in the process of obtaining demolition and building permits, and will suffer significant financial harm if this appeal is allowed to proceed in violation of the Public Resources Code.

I would respectfully request that the staff immediately look into this matter, and once it has confirmed that the above facts are true, will agree to withdraw the appeal forthwith.

Sincerely yours,

TURNER & MAASCH, INC.

John M. Turner



JMT:mb
cc: Mike Turk
1096.89\va02

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Sherilyn Sarb, Manager, San Diego CACC District
7575 Metropolitan Way#103
San Diego, CA 92108

March 24, 2004

RE: Response to Appeal A-6-PCB-04-16

RECEIVED

MAR 24 2004

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Ms Laurinda Owens:

The owner of the mixed-use project at 4666 Mission Bl @ Diamond St, Mike Turk received your Notification of Appeal regarding the City of San Diego's approval of CDP #5410.

I would like to provide a summary response to the appeal. Should the appeal go to hearing, we would like this information distributed to the Commissioners for their early review.

The project is located along Mission Boulevard, north of Crystal Pier near where there is a 30' bluff to a +/-150' sandy beach along ocean. The site has split-zoning with multi-family on the west 100' and CV on the east 100'. The proposal includes 17 condominiums with the ground-floor on Mission Boulevard devoted to commercial usage. The project would remove the Surf & Sand Motel, a duplex and 2 houses.

The Pacific Beach Community Plan and LCP was Certified in May of 1995. The zoning implementation has also been in place for many years in the area.

The issues raised by the appeal include **residential use in the CV zone** and the lack of analysis of **the quantity of motel units** in the area.

INVENTORY OF ACCOMMODATIONS

Attached is an inventory of the near-shore visitor accommodations comparable to the market of the Surf & Sand Motel in Mission Beach, Pacific Beach and Bird Rock.

The 24 motel rooms at the site represent 3% of the same type of rooms in the immediate area. There are 787 similar rooms in 18 motels. There are also 704 hotel or youth-hostel rooms in the same area plus more than 2200 vacation rentals available weekly.

The inventory concludes that the loss of the 24 rooms at the Surf & Sand Motel would not have a significant effect on the availability of accommodations in the area to out-weigh the benefits of the project.

MIXED-USE IN THE VISITOR COMMERCIAL ZONE

The Pacific Beach Community Plan and LCP contains goals, policies and design standards which encourage and even provide density bonuses for mixed-use commercial & residential projects.

EXHIBIT NO. 8

APPLICATION NO.

6-02-10

Letter from
Applicant's
Representative/
Lodging Inventory

The sixth goal states, "Actively encourage mixed-use residential, office and commercial development in conjunction with transit corridors along Garnet Avenue and Mission Boulevard and ..."

The project is located on Mission Boulevard and the ground floor space facing Mission Boulevard is designed for commercial use. This has changed somewhat from the original plans submitted in 2002 which were in the CACC files.

In the final version of the plans the commercial areas were expanded along Mission Blvd. No other portions of the ground floor of the CV-1-2 zone at the site has residential space. The ground floor is all commercial. The other uses on the ground floor are commercial and residential parking and stairs to the units above. Providing mixed-use would be infeasible without required parking and access stairs.

The west half of the property is in the multi-family residential RM-2-5 zone. This zone is included in a uniform strip of multi-family between the first alley and the development facing Mission Boulevard and extending 6 blocks from Law St to south of Emerald St. This zoning is acknowledged in the PB LCP on p44 #6.

The project is consistent with the requirements of the multi-family zoning and with the need to provide commercial uses fronting on Mission Boulevard in the CV-1-2 zone.

The project review for this application was very thorough by the City staff, PB Community Planning Committee and SD City Planning Commission. Concerns about the scale and viability of the commercial elements of the project were debated and resolved with the unanimous support of the City, community and Planning Commission.

No one during all the processing ever raised the issue or perceived that the loss of this substandard 1948 motel and the adjacent older residential units would have an adverse effect on the availability of accommodations in the area.

The CACC staff were notified of the project and received plans in November of 2002. Concerns about this project of the magnitude revealed in the Appeal are customarily brought up early in the process. A Mitigated Neg Dec was also circulated for this project with no response from the CACC regarding the zoning and planning issues raised in the Appeal.

Now that the additional information is available, we hope the CACC staff and Commissioners can release their appeal.

The benefits of the project should be noted: In addition to the commercial uses to be improved on the site, this project is a **solar sustainable development**, generating electrical power from sun light for more than half of the electrical needs in each of the new units. The project will also take 27 on-site parking spaces and replace them with 43. The closure of the all the driveways will also provide **14 new on-street parking spaces** on Mission Blvd and Diamond street.

Thank you for your attention.

Respectfully,



An Inventory of the Near-shore Visitor Accommodations Comparable to the market of
the Surf & Sand Motel in Mission Beach, Pacific Beach & Bird Rock. 3-23-04

MOTELS

ADDRESS	PHONE	ROOMS	RATES
The Beach Cottages 4255 Ocean Bl	8/483-7440	78	\$70-195
Beach Haven Inn 4740 Mission Bl	8/272-3812	23	\$85-130
Best Western Sea Lodge 707 Pacific Beach Dr	8/488-4700	128	\$139-429
Crystal Pier Hotel 4500 Ocean Bl	8/483-6983	29	\$225-355
Diamond Head Inn 605 Diamond St	8/273-1900	21	\$69-140
The La Jolla Biltmore 5385 La Jolla Bl	8/459-6446	17	\$52-78
La Jolla Inn 5445 La Jolla Bl	8/459-6446	22	\$70-98
Mission Bay Motel 4221 Mission Bl	8/483-6440	52	\$65-85
Ocean Park Inn 710 Grand Ave	8/483-5858	73	\$109-184
Pacific Shores Inn 4808 Mission Bl	8/483-6300	56	\$69-170
Pacific Sands 4449 Ocean Bl	8/483-7555	10	\$75-100
Pacific Terraces 610 Diamond St	8/581-3500	73	\$140-405
Pacific View 610 Emerald St	8/483-6117	25	\$61-80

The Sands of La Jolla 5417 La Jolla Bl	8/459-33336	39	\$69-129
Santa Clara Motel 839 Santa Clara Pl	8/488-1193	17	\$65-85
Seacoast Palms Inn 4760 Mission Bl	8/483-6780	48	\$65-100
Surfer Beach Hotel 711 Pacific Beach Dr	8/483-7070	52	\$80-150
Surf & Sand Motel 4666 Mission Bl	8/483-8143	24	\$65-109
18 TOTAL MOTELS		787	ROOMS

RESORT HOTEL

Bahia 998 W Mission Bay Dr	8/488-0551	321	\$119-450
Catamaran 3999 Mission Bl	8488-1081	313	\$129-229

YOUTH HOSTEL

Banana Bungalow (Dormitory) 707 Reed Ave	8/273-3060	70	\$16-20
---------------------------------------------	------------	----	---------

TOTAL DAILY RENTALS 1491 ROOMS

VACATION RENTALS (Rates \$1000-5500/wk)

Affordable Beach Rentals	40
Alika Beach Rentals	6
American Marketing Systems	21
Beach & Bayside Vacations	200
Beach Bay Getaway	2
Beach House Vacation Getaway	1
Bill Howe Investments	9
Capri Beachfront San Diego	45 (of 140)
Discount Motels.com	115
Dana Home Realty	31
David Wondenberg	316
El Carmel Beach Townhouses	2
Jean Cheng	26
Kelley Realty	2
Mission Beach Management Corp	28
Mission Sands Vacation Rentals	26
Penny Realty	150
Radelow/Gittins	70
Sea Cliff Apts	24
Seashore B&B	9
Sea the Sea	7

San Diego Vacation Rentals	100
Stephen Miller	14
Tierra Palms	31
Twin Palms	20
Individual room TOT payers	950
TOTAL VACATION RENTALS	2245
GRAND TOTAL	3736

EXPLANATIONS

The sources of data were 3 types of phone directory, the Hotel Motel Association, San Diego CONVIS and several websites such as sandiego.org, reservations.discount-motels.com, san-diego-motels.com. The SD City Treasurer also provided (for a fee) printouts of properties who pay TOT taxes in the area.

None of the data were comprehensive or aggregated in a way to allow the simple tabulation of the data for this specific area. Therefore it was necessary to compile the data from multiple sources. The rate information was from one of the web-pages and mostly from calls and visits to the motels for field-verification.

This inventory includes the Resort Hotels information in order to put the smaller Motels in context and to account for all available accommodations within a short walk of the beach. The Vacation Rentals are included to complete the picture of visitor opportunities commonly reserved from outside the city. "Time Share" accommodations were not included because they are not quite comparable due to the ownership limitations on their availability to the average visitor.

Other accommodations are available in Ocean Beach and La Jolla however they also are not as comparable to the setting within a mile of the Surf & Sand Motel.

There are around 50,000 total hotel/motel rooms available in San Diego, not including vacation rentals.

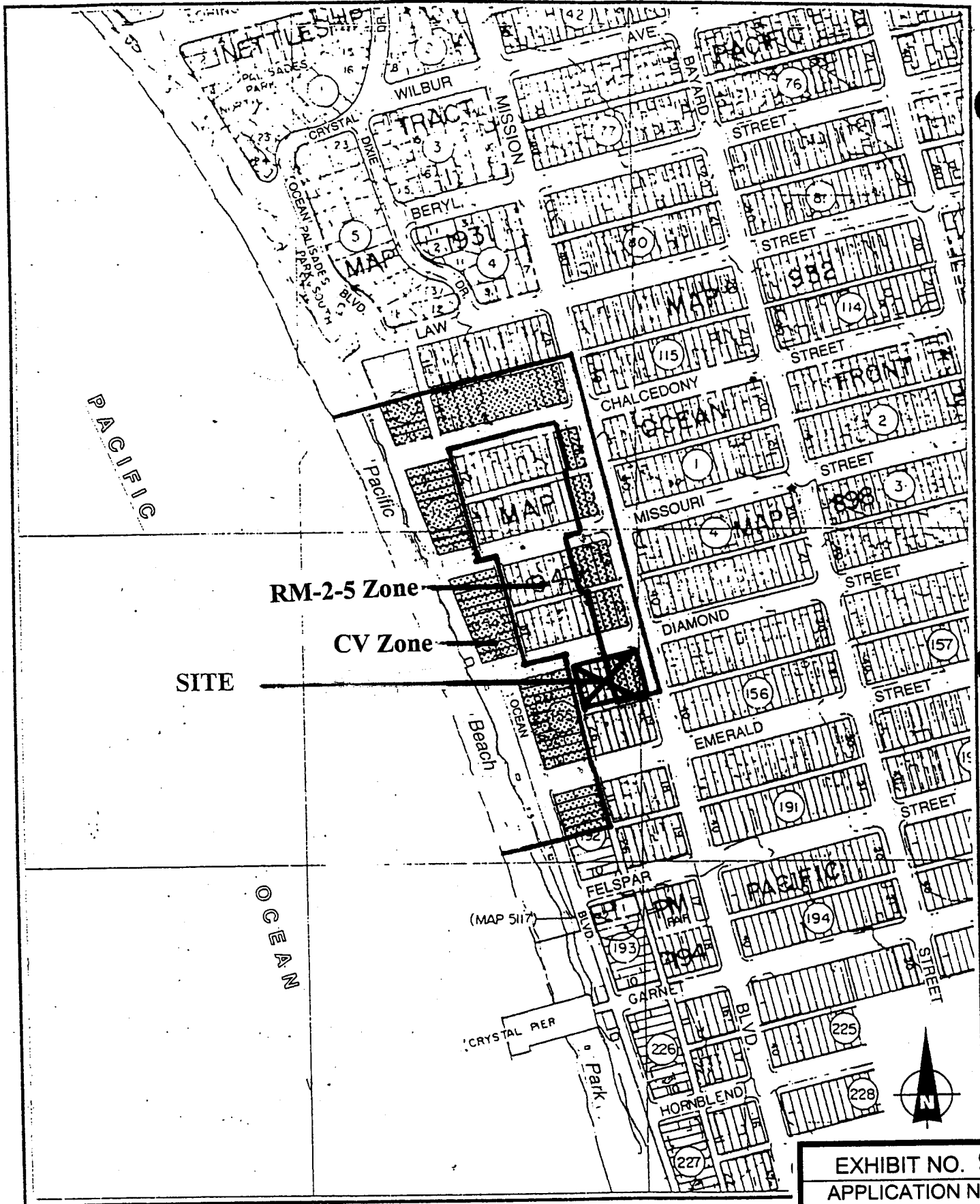
CONCLUSIONS

The Surf & Sand Motel has 24 authorized rooms. It is one of 18 comparable small motels in the area with a total of 787 rooms. The 24 units of the Surf & Sand Motel represent 3% of the supply of similar visitor rooms.

The rate structures for the 18 motels generally fall into two groups; 14 motels observe a "floor" or minimum rate for the spring market around \$70 and 4 motels start over \$100/night.

In the near-shore area there are nearly 1500 rooms available daily, plus more than 2200 vacation rental living units on a weekly basis.

There appears to be an adequate supply of rooms to absorb the loss of the 24 rooms at the Surf & Sand Motel.



RM-2-5 Zone

CV Zone

SITE

EXHIBIT NO. 9
 APPLICATION NO.
A-6-PCB-04
 Partial map from
 1995 Rezones
 illustrating split-zone
 of subject property