

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 (619) 767-2370

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Filed: 8/26/05
 49th Day: 10/14/05
 180th Day: 2/22/05
 Staff: GC-SD
 Staff Report: 11/2/05
 Hearing Date: 11/17/05

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-90-58-A2

Applicant: Generation Venture Fund IV, LLC

Original Description: Construction of 53,000 sq. ft. two-story commercial center comprised of 4 buildings, consisting of an approximately 38,850 sq. ft., two-story commercial and a 7,500 sq. ft., two-story retail/financial building, a 4,800 to 6,000 sq. ft., one or two-story parking structure. No more than 13,000 sq. ft. of all the leasehold space shall be committed to restaurant use. Approximately 17,000 cu. yds. of balance grading is proposed. Also proposed is a boundary adjustment to create one legal parcel for the entire project.

First Amendment: Phase 2 construction of an approximately 4,800 sq. ft. building containing a 4,400 sq. ft. restaurant and 400 sq. ft. of retail use.

Proposed Amendment: Amend Special Condition #1 to allow for an increase in the amount of permitted restaurant use from 13,000 sq. ft. up to maximum of 17,722 sq. ft.

Site: 437 South Highway 101, Solana Beach, San Diego County. APN 298-053-11

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the applicant's request to amend Special Condition #1 to allow for an increase in the amount of restaurant use on the property. The applicant has demonstrated that as proposed with restrictions on the hours of operation of a new proposed restaurant, the increase in restaurant use can be accommodated with adequate onsite parking and, thus, will not adversely impact surrounding public parking spaces that could be used by beachgoers. The permit has been conditioned to require ongoing monitoring by the applicant to assure adequate onsite parking continues to exist. The project has been

conditioned to require a deed restriction be recorded that identifies all special conditions relating to the subject amendment request.

The City of Solana Beach does not have a certified Local Coastal Program, therefore, the standard of review is the Coastal Act.

Substantive File Documents: Conditional Use Permit #17-05-17; "Shared Parking Results for Beachwalk Restaurant Property" by Linscott Law & Greenspan dated June 7, 2005; Coastal Development Permit #6-90-58 and #6-90-58-A1/Irish.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve proposed Coastal Development Permit Amendment No. 6-90-58-A2 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

This permit amendment is subject to the following conditions, which both add to an existing special condition of the underlying permit and add new special conditions:

1. Supplement Existing Special Condition No. 1 as follows (deleted text crossed-out and new text in bold):

1. Final Plans/Phasing. The project shall consist of two phases as follows: Phase I = the entire development, excluding the restaurant building proposed on the southeast corner of the site and Phase 2 = the restaurant building (4,800 to 6,000 sq. ft.). Prior to issuance of the coastal development permit for Phase 1, the applicant shall submit to the Executive Director for review and written approval, final plans, approved by the City of Solana Beach, which shall include grading and improvement plans for the entire site; a parking plan for 302 parking spaces; and floor plans and elevations for Phase 1, including use and gross floor area for each leasehold.

Prior to commencement of construction of Phase 2, the applicant shall obtain an amendment to this coastal development permit to allow construction of the restaurant building. The proposed amendment shall first be approved by the City of Solana Beach and shall include a site plan, floor plans and elevations, indicating use and gross floor area for each leasehold.

The maximum amount of restaurant area for the entire development shall be ~~13,000~~ 17,722 sq. ft., including any outdoor dining areas. **Of the 17,722 sq. ft. of restaurant area, only 13,308 sq. ft. of restaurant area can be used before 5:00 p.m. on any weekday.** Parking adequate to meet the City's current zoning shall be provided for all approved uses.

2. New Special Conditions of approval:

6. Prior Conditions of Approval. All terms and conditions of the original approval of Coastal Development Permit #6-90-58 not modified in this second amendment (6-90-58-A2) shall remain in full force and effect.

7. Monitoring of Use. The applicant shall submit for Executive Director review and written approval, a yearly report identifying current leased uses at the subject commercial center. The report shall also identify the individual totals for office, retail and restaurant use, identify the total available onsite parking and identify whether the existing uses have adequate onsite parking to support their use. The report shall be submitted to the Executive Director annually at the beginning of each year for the life of the commercial center with the first report due on January 2, 2007. If after Executive Director review it is determined that additional parking spaces are needed to accommodate existing uses, the applicant shall apply for a coastal development amendment or new coastal development permit to have those new uses authorized unless the Executive Director determines a permit or permit amendment is not legally required.

8. **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (6-90-58-A2)**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a

form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. In 1990, the Commission approved the construction of an approximately 53,000 sq. ft. two-story commercial center comprised of office, retail and restaurant uses on an approximately 133,293 sq. ft. lot located on the west side of Highway 101 one lot south of Dahlia Drive in Solana Beach. The permit was conditioned for final plans, a landscape plan, a sign program and future development restriction which required an amendment or a new coastal development to be approved before any additions could be constructed or before an increase in restaurant use above 13,000 sq. ft. could occur. The applicant is requesting to convert up to 4,722 sq. ft. of existing retail/office use to restaurant use. As a result, the applicant is requesting that Special Condition #1 of the original permit be amended to allow up to 17,722 sq. ft. of restaurant use. The request is for change in use and does not include any new construction or increase in square footage to the commercial center over what currently exists. The proposed change in use will occur in a existing building located on the northeast corner of the subject lot adjacent to Highway 101.

The Commission has previously approved Coastal Development Permit #6-90-58-A1 as part of the Phase 2 portion of the commercial center development involving the construction of a restaurant on the southeast corner of the project site.

The City of Solana Beach does not have a certified Local Coastal Program, therefore, the standard of review is the Coastal Act.

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

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

facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development. (Emphasis added)

The primary coastal issue raised at the time of the original permit approval for the commercial center ("Beachwalk Complex") involved the potential impacts of the development on public access to the shoreline as it relates to adequate on-site parking to accommodate the project proposed at that time. Since the project site was in close proximity to a public access stairway leading from the top of an approximately 80 ft. high bluff to the beach (Seascape Surf access stairway) and approximately ½ mile south of the City's primary beach access (Fletcher Cove Beach Park), the Commission wanted to assure that adequate parking occurred onsite such that customers of the businesses would not need to use public spaces on the street that otherwise could be used by beachgoers.

Although approved for up to 53,000 sq. ft. of gross floor area, the applicant subsequently constructed approximately 52,875 sq. ft. of gross floor area. The city parking standards require 1 space per 225 sq. ft. of office use, 1 space per 200 sq. ft. of retail use and 1 space per 100 sq. ft. of restaurant use. The commercial center currently has approximately 29,393 sq. ft. of office use, approximately 10,194 sq. ft. of retail use and approximately 13,308 sq. ft. of restaurant use. Using the City parking standards, the existing commercial center requires 302 onsite parking spaces (118 spaces for office use, 51 spaces for retail use and 133 spaces for restaurant use). These are the same parking standards used by the Commission in its original approval for the commercial center. The applicant currently provides 302 onsite parking spaces. Although the commercial center currently exceeds the 13,000 sq. ft. limit on restaurant use required by the Commission in its original approval, adequate parking currently exists onsite to accommodate the center as it exists today.

As previously described, the primary coastal related concern with the subject development is its potential effect on public access to the shoreline as it relates to adequate on-site parking. Although the existing mixed-use commercial center has adequate onsite parking spaces available such that customers do not need to park on Sierra Avenue in public spaces that could otherwise be used by beachgoers, various changes in use from office to retail, retail to restaurant, etc., could result in the need for additional onsite parking spaces in order to be consistent with local parking standards as well as the Commission original coastal development permit. Special Condition #1 of the original report required, among other things:

The maximum amount of restaurant are for the entire development shall be 13,000 sq. ft., including any outdoor dining areas. Parking adequate to meet the City's current zoning shall be provided for all approved uses. [emphasis added]

While the condition emphasizes a maximum limit of restaurant use, the condition also identifies that the development must provide adequate parking for all uses. Therefore, whenever the mix of uses results in the need for more than the existing 302 parking spaces, the applicant must provide additional parking or provide alternative parking such as by way of a valet service or a City approved shared parking program. In this case, the applicant is requesting a change in use of approximately 4,414 sq. ft. of retail use to restaurant use. With this change in use the commercial center would have approximately 29,393 sq. ft. of office use, 5,780 sq. ft. of retail use and 17,722 sq. ft. of restaurant use requiring a total of 324 parking spaces onsite (118 spaces for office use, 29 for retail use and 177 for restaurant use). Since the City's parking standards would require 324 parking spaces to accommodate this change in use and only 302 spaces currently are provided, an additional 22 spaces would be necessary to be provided onsite to accommodate the proposed change in use. To address this concern however, the applicant is proposing to limit the hours of operation of the new restaurant space to weekday evenings after 5:00 p.m. when most of the office uses within the commercial center are closed. The hours are not proposed to be limited on weekends because most of the office uses are closed on weekends.

The City of Solana Beach has provisions in its zoning code that allows for shared parking of spaces by businesses that operate during varied hours. Municipal Code Section 17.52.050 provides that "parking facilities may be shared by multiple users whose activities are not normally conducted during the same hours, or when hours of peak use vary." The applicant has submitted a shared parking plan and parking analysis which identifies that:

The parking demand with the proposed 4,500 square foot restaurant indicate that the off-street parking lot/garage for the Beachwalk Complex is projected to operate from 58 to 85 percent capacity between the hours of 4:00 P.M. and midnight. (Ref. "Shared Parking Results for Beachwalk Restaurant Property" by Linscott Law & Greenspan dated June 7, 2005)

In other words, because many of the office/retail uses close by 5:00 p.m. during the week, onsite parking spaces will become available to accommodate the restaurant use after 5:00 p.m. Since many of the offices are not open on the weekends the time restriction on restaurant use is not a concern in terms of parking. However, if the proposed new restaurant use were to occur during the weekday before 5:00 p.m., the commercial center would not have adequate parking to support its use. To address this concern, Special Condition #1 of the original permit is revised to limit overall restaurant use at the commercial center to no more than 17,722 sq. ft. with a provision that 4,414 sq. ft. of restaurant use (such as proposed) be prohibited from operating before 5:00 p.m. weekdays.

The Commission is not particularly concerned with change in use from retail to office or office to restaurant per se, but is concerned at this location if those changes result in the need for additional parking and its potential impact to surrounding public street parking. Monitoring the various change in uses at the commercial center to assure they do not exceed the existing parking requirements continues to be a concern. There are currently

about 30 different businesses within the commercial center which can be changed at any time. To assure that any change in use does not trigger the need for additional parking at the commercial center, Special Condition #1 of the original permit requires that “[p]arking adequate to meet the City’s current zoning shall be provided for all approved uses. Before any change in use that results in the need for additional parking can occur, Special Condition #2 of the original permit (which remains in full force and effect) requires the applicant receive an amendment to the original permit or a new coastal development permit. To assure that the applicant continually monitors this issue, Special Condition #7 has also been attached which requires the applicant to submit a yearly breakdown of all uses and a breakdown of the required parking for these varied uses to the Executive Director for review. If it is determined that insufficient parking exists, the applicant will need to either change the use, provide additional onsite parking and/or process a new coastal permit or amendment. In this way, the Commission and the applicant can be assured that on-site parking is available at all times to accommodate all existing uses so as not to impact public street parking that could be used by beachgoers. Finally, Special Condition #8 has been attached to require the property to record a deed restriction against the property so as to notify all future property owners of the terms and conditions of approval to which they will also be responsible to adhere to. With these conditions, the Commission can be assured that the commercial development will not adversely affect public access to the shoreline in terms of its impacts to public beach parking.

In summary, Section 30252 of the Act requires that new development “maintain and enhance” public access to the coast and provide adequate parking. In this case, the applicant has demonstrated that the existing development has adequate onsite parking to meet current mix of uses and has documented that the proposed change in use of approximately 4,414 sq. ft. of retail use to restaurant use, with a restriction on operational hours, can be accommodated onsite so as to not adversely affect public access to the coast. Therefore, the Commission finds the proposed development, as conditioned, is consistent with the public access requirements of Section 30252.

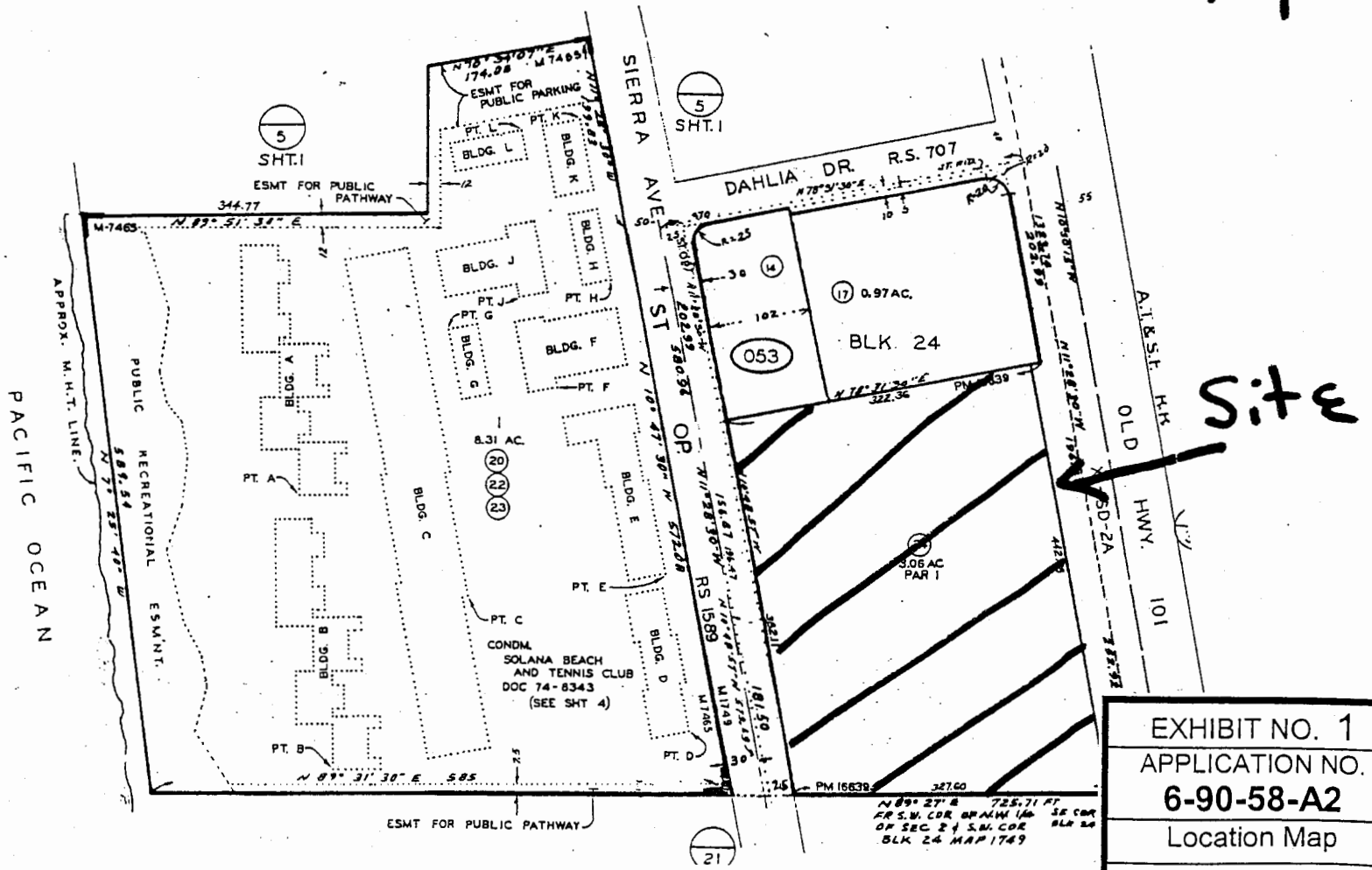
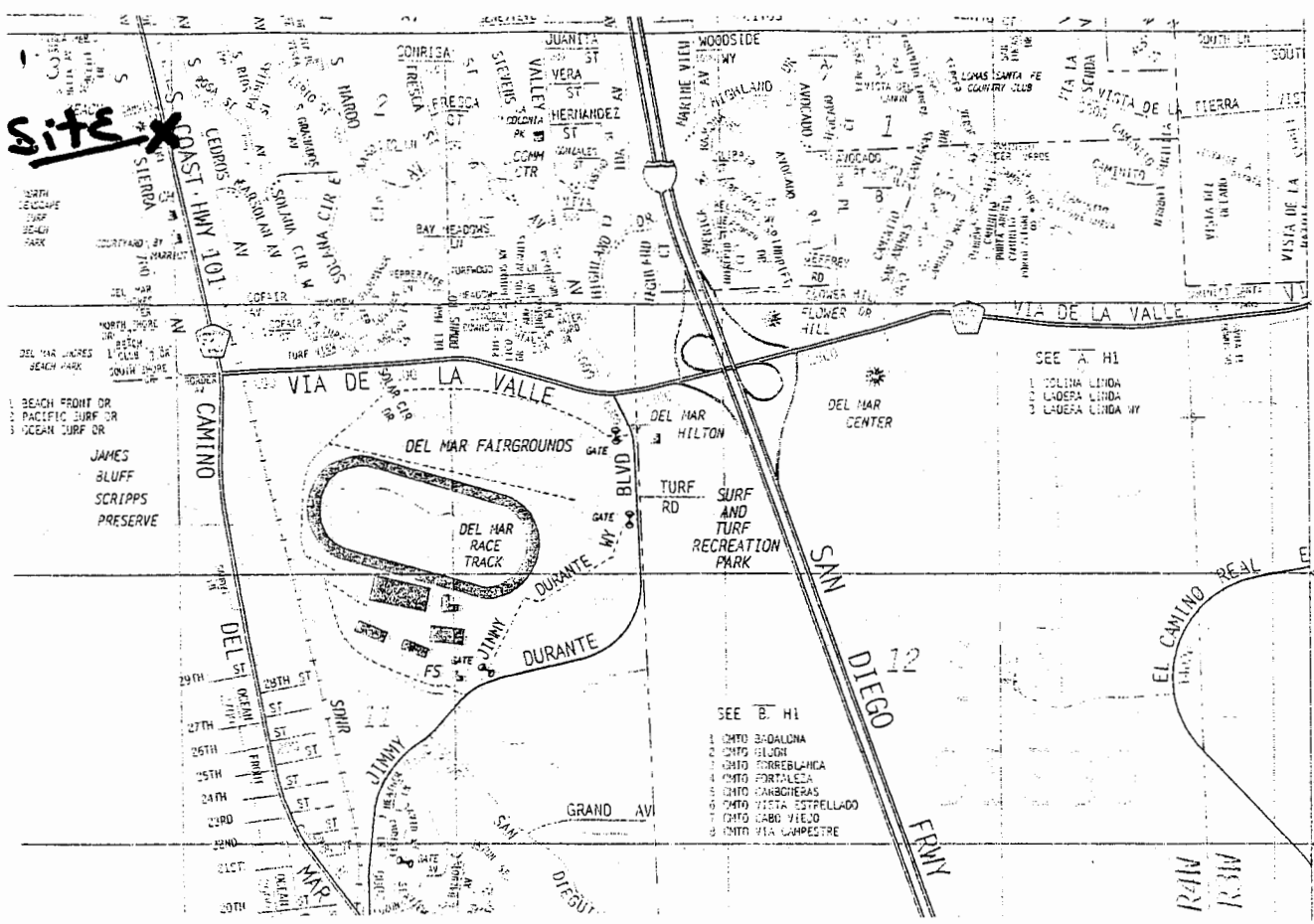
3. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of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

The site is zoned and designated Commercial in the City of Solana Beach General Plan and Zoning Ordinance and in the previously certified County of San Diego Local Coastal Program, which the Commission uses for guidance in review of development in the City of Solana Beach. The proposed project is consistent with these designations. The site is not located within any of the special overlays contained in the County LCP. As conditioned, the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act. Thus, the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable local coastal program.

4. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, including a requirement to monitor use over the lifetime of the development and a restriction on the amount of restaurant use and hours of operation will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

Site X



Site

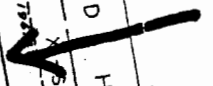


EXHIBIT NO. 1
 APPLICATION NO.
6-90-58-A2
 Location Map



RETAIL CENTER

437 South Highway 101
Solvang, Santa Barbara, CA

NO. 200 (1978)



NOTE: GENERAL CONTRACTOR FOR RESTAURANT TO BE PROVIDED BY TRUSTEE. IT IS NOT THE RESPONSIBILITY OF THIS ARCHITECTURAL FIRM TO VERIFY THE ACCURACY OF ANY INFORMATION PROVIDED BY THE TRUSTEE. THE TRUSTEE SHALL BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY THE TRUSTEE.

Precision Planning Inc.
ARCHITECTS
437 SOUTH HIGHWAY 101
SOLVANG, CALIF. 93456

1978

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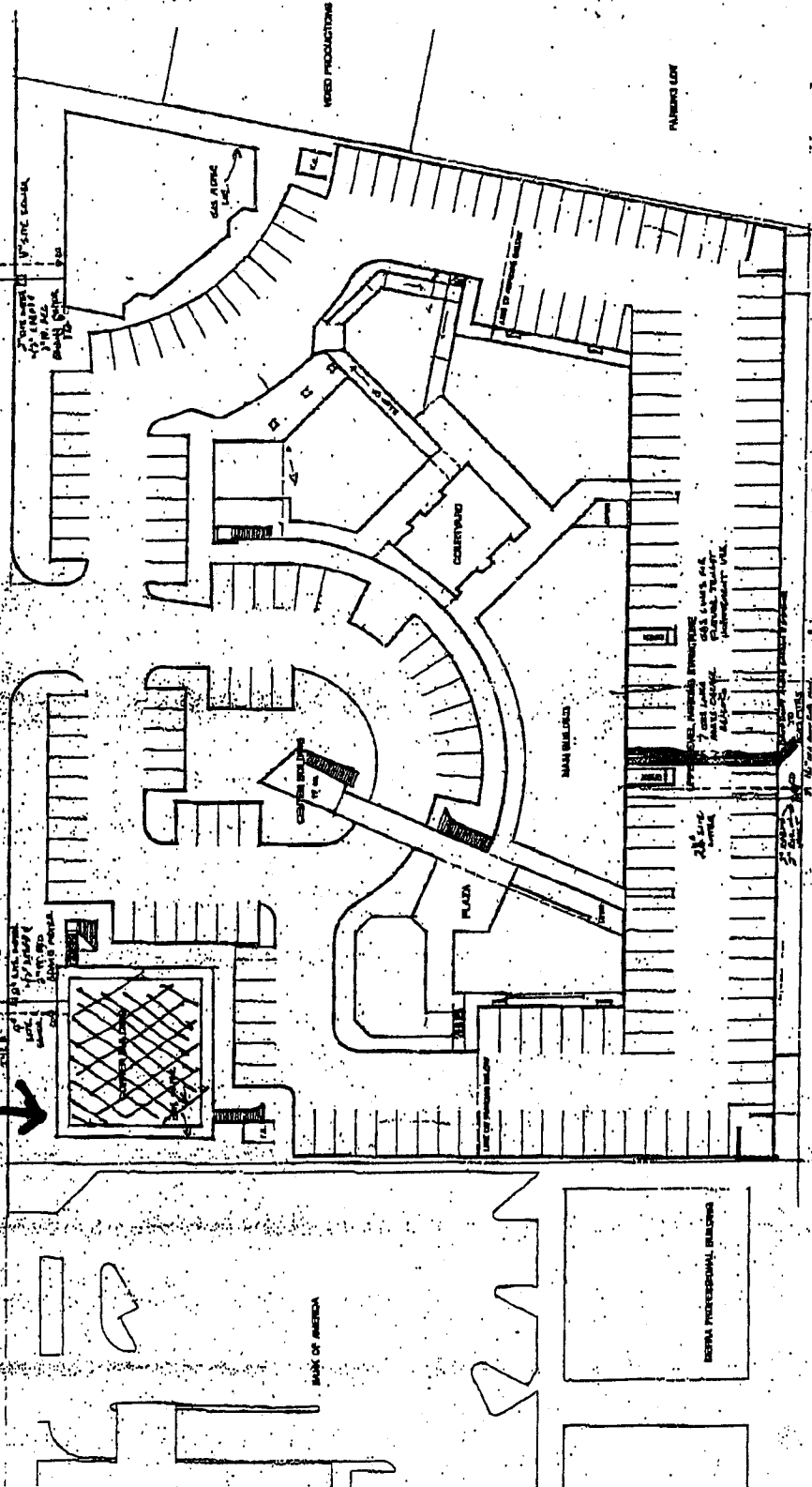
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SIGNED: [Signature]
DATE: 4-26-78

NO.	DATE	BY	REVISION
1			ISSUE FOR PERMITS
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SITE PLAN
DI

Hwy 101

Proposed Restaurant Site

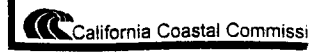


Benchwalk Center

BRANCH ADDRESS: 437 SOUTH HIGHWAY 101, SOLVANG, CALIF. 93456



EXHIBIT NO. 2
APPLICATION NO.
6-90-58-A2
Site Plan



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

COASTAL DEVELOPMENT PERMIT NO. 6-90-58Page 1 of 3

On May 11, 1990, the California Coastal Commission granted to
Robert M. Irish, Co
this permit for the development described below, subject to the attached
Standard and Special Conditions.

Description: Construction of an approximately 53,000 sq. ft., two-story commercial center comprised of four buildings consisting of an approximately 38,850 sq. ft., two-story commercial and a 7,500 sq. ft., two story retail/financial building, a 4,800 sq. ft. to 6,000 sq. ft., one or two-story restaurant, and a 2,800 sq. ft., two-story parking structure. No more than 13,000 sq. ft. of all the leasehold space shall be committed to restaurant use. Approximately 17,000 cu. yds. of balance grading is proposed. Also proposed is a boundary adjustment to create one legal parcel for the entire project.

Lot Area	133,293 sq. ft.
Building Coverage	53,000 sq. ft. (40%)
Pavement Coverage	55,293 sq. ft. (42%)
Landscape Coverage	25,000 sq. ft. (18%)
Parking Spaces	302
Zoning	C36
Plan Designation	General Commercial
Project Density	40 dua
Ht abv fin grade	32 feet

Site: 437 South Highway 101, Solana Beach, San Diego County. APN
298-053-11

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director
and

EXHIBIT NO. 3
APPLICATION NO.
6-90-58-A2
Original Permit

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Date

Signature of Permittee

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Final Plans/Phasing. The project shall consist of two phases as follows: Phase I = the entire development, excluding the restaurant building proposed on the southeast corner of the site and Phase 2 = the restaurant building (4,800 - 6,000 sq.ft.). Prior to issuance of the coastal of the coastal development permit for Phase 1, the applicant shall submit to the Executive Director for review and written approval, final plans, approved by the City of Solana Beach, which shall include grading and improvement plans for the entire site; a parking plan for 302 parking spaces; and floor plans and elevations for Phase 1, including use and gross floor area for each leasehold.

Prior to commencement of construction of Phase 2, the applicant shall obtain an amendment to this coastal development permit to allow construction of the restaurant building. The proposed amendment shall first be approved by the City of Solana Beach and shall include a site plan, floor plans and elevations, indicating use and gross floor area for each leasehold.

The maximum amount of restaurant area for the entire development shall be 13,000 sq.ft., including any outdoor dining areas. Parking adequate to meet the City's current zoning shall be provided for all approved uses.

2. Landscaping Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought tolerant plant materials shall be utilized to the maximum extent feasible. Special emphasis shall be placed on the incorporation of the existing palm trees into the treatment of the Highway 101 frontage where a minimum 10 foot wide landscape strip shall be provided on-site along the eastern property line, excepting the curb cut. Said plan shall be acceptable to the City of Solana Beach and shall be submitted to, reviewed and approved in writing by the Executive Director.

3. Sign Program. Prior to the issuance of the coastal development permit, the applicant shall submit a comprehensive sign program, documenting that only monument signs, not to exceed eight (8) feet in height, or facade signs are proposed. No tall, free-standing pole signs, roof flags or roof signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director.

SPECIAL CONDITIONS, continued:

4. Future Development. Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is for the uses approved in the coastal development permit No. 6-90-58 pursuant to Special Condition #1 of that permit; and that any future additions or conversions to uses other than those approved, or other development as defined in Public Resources Code Section 30106, will require an amendment to permit 6-90-58 or a new coastal development permit from the California Coastal Commission or from its successor agency. The document shall be recorded as a covenant running with the land, prior to all liens and encumbrances, binding all successors and assigns in interest to the subject property.

5. Boundary Adjustment. Prior to issuance of the coastal development permit the applicant shall submit to the Executive Director for review and written approval, a boundary adjustment approved by the City of Solana Beach to create one legal parcel for the entire project.

(0058P)