CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

T11a

Filed:	2/7/2006
49th Day:	3/28/2006
180th Day:	N/A
Staff:	CP-LB
Staff Report:	3/23/2006
Hearing Date:	April 11, 2006
Commission Action:	

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NUMBER: 5-05-343-R

APPLICANT: Dos Coronas, LLC

AGENTS: Devin Donner and David Meyers, Attorney

PROJECT LOCATION: 1656 Abbot Kinney Boulevard, Venice, City of Los Angeles.

PROJECT DESCRIPTION: Improve 4,500 square foot portion of North Venice Boulevard and Abbot Kinney Boulevard rights-of-way with landscaping and a private paved parking area (and pave the existing private parking area that adjoins the rights-of-way).

COMMISSION ACTION: On January 11, 2006, the Commission denied Coastal Development Permit Application 5-05-343.

SUMMARY OF STAFF RECOMMENDATION

On January 11, 2006, following the public hearing on the matter, the Commission denied Coastal Development Permit Application 5-05-343 for the applicant's private parking lot project proposed partially on the public rights-of-way of North Venice Boulevard and Abbot Kinney Boulevard in Venice (Exhibit #2). Moments earlier, the Commission voted to deny a City of Los Angeles coastal development permit application (A-5-VEN-05-259) for the proposed City vacation of the portions of the rights-of-way over which part of the applicant's private parking lot had been proposed.

On February 7, 2006, the applicant submitted to the Commission's South Coast District office a letter requesting that the Commission reconsider its January 11, 2006 decision to deny Coastal Development Permit Application 5-05-343 (Exhibit #5). The applicant asserts that there is relevant new evidence which, in the exercise of due diligence, could not have been presented at the January 11, 2006 public hearing, and that there were errors in fact and law that have the potential of altering the Commission's initial decision.

Section 30627(b)(4) of the Coastal Act states that the Commission has the discretion to grant or deny a request for reconsideration of a coastal development permit application. Commission staff concludes that there is no new relevant evidence that could not have been presented at the January 11, 2006 public hearing, and that there were no errors in fact or law that have the potential of altering the Commission's initial decision. Therefore, staff is recommending that the Commission **DENY** the applicant's request for reconsideration. **See bottom of Page Two for the motion to adopt the staff recommendation.**

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/14/2001.
2. Coastal Development Permit Application 5-05-343 (Dos Coronas, 1656 Abbot Kinney).
3. Coastal Development Permit Appeal File A-5-VEN-05-259 (City of Los Angeles).
4. Coastal Development Permit P-74-3323 (Sarlo).
5. Coastal Development Permit 5-90-664 & amendments (Caltrans & City of Los Angeles).
6. Venice Boulevard Planting Plan, City of Los Angeles Dept. of Public Works, Index No. D-30879, 5/8/1995 (Exhibit #4).

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of the application, or of any term or condition of a coastal development permit which has been granted. [Title 14 Cal. Code of Regulations Section 13109.2.] The regulations also state (id. at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, *inter alia*:

> *The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.*
> [Cal. Pub. Res. Code § 30627(b)(3)]

Section 30627(b)(4) of the Coastal Act states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant submitted a request for reconsideration of the Commission's January 11, 2006 decision on February 7, 2006, stating the alleged grounds within the thirty-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for a future public hearing, at which the Commission will consider it as a new application. [Title 14, Cal. Code of Regs., Section 13109.5(c).]

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **DENY** the reconsideration request for Coastal Development Permit Application 5-05-343:

> **MOTION:** "*I move that the Commission grant reconsideration of Coastal Development Permit Application 5-05-343."*

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

I. Resolution to Deny Reconsideration

The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit Application 5-05-343 on the grounds that there is no new relevant evidence that could not have been presented at the January 11, 2006 public hearing, and that there were no errors in fact or law that have the potential of altering the Commission's initial decision.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposed to improve an existing gravel parking area that serves a two-story, 4,696 square foot office building situated at the intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibits #2&3). As proposed, the existing parking area would be paved and expanded from nine to fourteen parking stalls, and would utilize approximately 4,500 square feet of the North Venice Boulevard and Abbot Kinney Boulevard rights-of-way that the applicant had petitioned the City Department of Public Works to vacate [See Appeal A-5-VEN-05-259 (City of Los Angeles)]. The applicant points out that, notwithstanding the Commission's January 11, 2006 denial of the City's proposed right-of-way vacation, the parking lot improvements proposed on the public rights-of-way could proceed pursuant to a revocable encroachment permit issued by the City (and also only if the necessary coastal development permit is obtained). Two existing curb cuts and driveways provide vehicular access into and out of the gravel parking lot from North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #2). The applicant also proposed to provide new landscaping along the sides of the site that abut the public sidewalks along North Venice Boulevard and Abbot Kinney Boulevard, and to retain the fifteen existing trees on the project site in their present location (Exhibit #3).

The proposed project is located at a prominent Venice intersection on a major coastal access route (Venice Boulevard) that provides direct access between the San Diego Freeway (I-405) and Venice Beach. In the Coastal Conservancy's 1990 Venice Urban Waterfront Restoration Plan, the intersection of North Venice Boulevard and Abbot Kinney Boulevard is referred to as the "Gateway to Venice."

On July 1, 1974, the Commission approved Coastal Development Permit P-74-3323 (Sarlo) for the construction of the existing two-story office building that occupies the site. The Commission's 1974 approval of the permit for the office building included the permittee's (Sarlo) proposed provision of nine on-site parking spaces to serve the parking needs of the office building. The Commission has not approved any changes to the office building since its construction. At the January 11, 2006 hearing, the applicant for the instant parking lot project contended that the existing office building is nonconforming with respect to parking requirements and that the proposed parking lot improvements were needed in order to provide the on-site parking spaces necessary to bring it into compliance with the City's zoning requirements.

The Commission, by denial of Coastal Development Permit Application on 5-05-343 (and A5-VEN-05-259), made a choice between two competing alternatives for the improvement of the 4,500 square foot portion of the project site that is public right-of-way. The Commission concluded in favor of landscaping the right-of-way pursuant to a ten-year old City-approved Venice Planting Plan[1] presented at the January 11, 2006 public hearing by Mr. Murez (Exhibit #4: Venice Boulevard Planting Plan, Sheet L-4, Dept. of Public Works, Index No. D-30879). The Commission rejected the applicant's paved parking lot with landscaping plan proposed by Coastal Development Permit Application 5-05-343, determining it to be inconsistent with the preferred City planting plan. The Commission found that the City landscape plan conformed more closely with the Coastal Act policies that address visual resources and public access in that the additional landscaping of the right-of-way area (instead of pavement) would substantially improve aesthetics and coastal access along North Venice Boulevard, a major coastal access route. The applicant would like the Commission to reconsider its decision.

B. Applicant's Grounds for the Reconsideration Request (Exhibit #5)

The applicant asserts the following:

> "The grounds for the request are that there is relevant new evidence that, in the exercise of reasonable diligence, could not have been presented at the January 11, 2006 hearing, and that there were errors of fact and law which have the potential of altering the initial decision, and specifically as follows:
>
> 1. "As discussed, the parking lot application did not receive fair consideration, and the applicant did not receive sufficient time to address the parking lot application (5-05-343), in the short time allotted in the combined proceeding with the heavily contested vacation application (A-5-VEN-05-259) late in the day when the Commissioners were trying to push through the remaining calendar, which resulted in confusion and numerous inaccuracies;
>
> 2. "There was no claim or showing that the parking lot or proposed landscaping is in any way inconsistent with the landscaping plans outlined by Mr. Murez;
>
> 3. "The Commission failed to consider that the application stipulated that landscaping would be completed in conformity with the Venice Planting Plan and in cooperation with the community *(See,* Proposed Conditions 5 & 6, which state: "All landscaping will be completed in accordance with the existing Venice planting plan;" and "The property owner will consult with the interested Venice community organizations in the landscaping of the property");
>
> 4. "There was no evidence of any impairment of coastal access by reason of the requested improvements, which if constructed would in no way affect future potential permissible roadway uses since 18 feet would remain between the parking lot and the street, more than enough for any potential street widening according to the Staff Reports; and any improvements could be easily removed if later needed for street purposes, and would not be gone once allowed as suggested with respect to the vacation;

[1] The Department of Public Works (City Engineer) signed and approved the Venice Boulevard Planting Plan on May 8, 1995.

5. "The proposed improvements would place the property in substantially the same condition as all of the adjacent properties situated along the unused right-of-way, such that the applicant is receiving unfair disparate treatment;

6. "Denial of the application without enforcement actions against similarly situated properties that use unused portions of the right-of-way for parking lots unfairly discriminates against the applicant;

7. "The Commission does not have the authority to second guess the City's land use planning decisions *(See,* e.g., Citizens for Improved Sorrento Access, Inc. v. City of San Diego (2004) 118 Cal.App.4th 808), except to the extent based on evidence of impairment of a Coastal Act concern, which was not shown;

8. "There is no evidence to support a decision to overturn the extensive City proceedings and determinations that the property is best used for parking, cannot be so used except as proposed since landlocked, that the proposed parking is needed to legalize the property, and that the proposed use benefits the public by increasing parking and providing for long and admittedly still unfunded landscaping, while at the same time relieving the City of maintenance and liability obligations without preventing landscaping consistent with a coordinated overall plan acceptable to the community;

9. "Neither the City nor the State may use the dedicated land for recreational purposes as a matter of law (Bello v. ABA Energy Corp. (2004) 121 Cal.App.4th 301; Wattson v. Eldridge (1929) 207 Cal. 314; Faus v. City of Los Angeles (1967) 67 Cal.2d 350, 357; Abbott Kinney Company v. City of Los Angeles (1964) 223 Cal.App.2d 668; Norris v. State of California (1968) 261 Cal.App.2d 41, 47-49 [prohibiting use of street dedications for recreational purposes]); and,

10. "There is no authority or evidence to support the conclusions, in contradiction of the City determinations, that the parking lot is not needed in the proposed size to bring the property to Code (See, CDP Application, Attachment 3, p.6), that parking exists or is available to the applicant off-site to satisfy the applicable requirements, or that the applicant should not have increased the building size during 1998 remodeling, which is not the case."

C. Analysis of the Reconsideration Request

As stated on Page Two of this report, the Commission's decision whether to accept or deny the applicant's reconsideration request hinges on whether it determines that: a) there is relevant new evidence which, in the exercise of reasonable due diligence, could not have been presented at the hearing on the matter, or b) an error of fact or law has occurred that has the potential of altering the Commission's initial decision. [Cal. Pub. Res. Code § 30627(b)(3)].

The following analysis addresses separately each of the ten grounds asserted as a basis for reconsideration, as set forth in the previous section and the applicant's letter dated February 7, 2006 (Exhibit #5).

Ground One

"As discussed, the parking lot application did not receive fair consideration, and the applicant did not receive sufficient time to address the parking lot application (5-05-343), in the short time allotted in the combined proceeding with the heavily contested vacation application (A-5-VEN-05-259) late in the day when the Commissioners were trying to push through the remaining calendar, which resulted in confusion and numerous inaccuracies;"

The Commission interprets this allegation as an assertion of an error in law, in that it does not assert any new evidence and alleges a procedural flaw. The applicant cites no authority – in statute or case law – to support its claim that the Commission's process denied the applicant a fair hearing. The Commission nevertheless briefly analyzes both its own regulatory guidelines and general procedural due process standards to assess the applicant's claim.

Sections 13064-13067 of Title 14 of the Calif. Code of Regs. (the Commission's "Oral Hearing Procedures" regulations), and specifically Section 13066(b), provide that applicants shall have the opportunity, at a public hearing before the Commission, to state their views on their applications, and that the Chair may allow rebuttal testimony by the applicant. Section 13067(a) states that speakers' presentations shall be to the point and as brief as possible. The applicant asserts that Coastal Development Permit Application 5-05-343 did not receive fair consideration because the applicant did not receive sufficient time from the Commission to address the coastal development permit application.

On January 11, 2006, the Commission held a combined public hearing, as is the accepted custom for related agenda items, for Coastal Development Permit Applications A-5-VEN-05-259 (City of Los Angeles) and 5-05-343 (Dos Coronas, LLC).[2] Prior to the opening of the combined public hearing for the related items, the Chair clearly and succinctly explained the hearing process to those in attendance, including the speakers' time limits for presentations and the fact that the Commission would hold a combined hearing on the two items. The applicant did not object to this procedure. Subsequent to the staff's presentation of the items to the Commission, the applicants were given their opportunity to address the Commission. The applicant's (Dos Coronas, LLC) representative David Meyers gave a short and succinct presentation, and then several opponents of the applications addressed the Commission in the order called by the Chair.

Commission staff listened to an audio recording of the January 11, 2006 public hearing for Coastal Development Permit Application 5-05-343 and determined that the applicant's representative David Meyers was given ample opportunity to state the applicant's view on the application. The Commission concurs. In fact, after the other members of the public had finished speaking, the Chair granted Mr. Meyers additional time to rebut or respond to the previous speakers, which the Chair is not required to do, pursuant to Section 13066(b)(2). However, Mr. Myers essentially declined that opportunity. It was at this point in the hearing that the applicant was given the opportunity to address any alleged confusion or inaccuracies. However, when asked how much time he would need for rebuttal, Mr. Myers stated: "I don't need much time. I could go on a long time, but I think we've all heard it and seen it enough." Mr. Myers then spoke for less than two minutes before ceding the microphone.

[2] The two applications involved the same project site: portions of the public rights-of-way at the northeast corner of the intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #2).

In terms of constitutional requirements, the courts established long ago that the Commission's hearing procedures are consistent with the demands of procedural due process. See, e.g., Reed v. California Coastal Zone Conservation Commission (1975), 55 Cal. App. 3d 889. As that court noted, it is particularly significant that the applicant never objected to the time limit or claim that the time allotted did not provide a sufficient opportunity for the applicant to present its case. Id. at 895-96.

In sum, the process was consistent with the Commission's regulations, with the Commission's traditional practice, and with the demands of procedural due process. Therefore, the Commission concludes that Ground One does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Two

> "There was no claim or showing that the parking lot or proposed landscaping is in any way inconsistent with the landscaping plans outlined by Mr. Murez;"

This allegation is factually false. At the January 11, 2006 public hearing, Mr. Murez showed the Commission a visual presentation of a City-approved Venice Boulevard Planting Plan for the four corners of the intersection of Venice Boulevard and Abbot Kinney Boulevard (Exhibit #4: Venice Boulevard Planting Plan, Sheet L-4, Dept. of Public Works, Index No. D-30879). Mr. Murez stated that the City Department of Public Works approved the Venice Boulevard Planting Plan in 1996.[3] The City-approved Venice Boulevard Planting Plan, which includes to the 4,500 square foot right-of-way area proposed to be vacated at the northwest corner of the intersection, includes trees and shrubs that would beautify and improve the visual quality of this "Gateway to Venice" intersection. Mr. Murez's presentation demonstrated how the proposed right-of-way vacation and private parking lot proposal (Application 5-05-343) conflict with the City's Venice Boulevard Planting Plan that was previously designed for the intersection in this way: the vacation and subsequent paving of a portion of the right-of-way area proposed to be vacated, as proposed by the underlying landowner (Application 5-05-343), would conflict with the City landscape plan by paving about 3000 square feet of the 4,500 square feet right-of-way area where the City-approved Venice Boulevard Planting Plan shows plants and no paving. Therefore, the inconsistency between the two plans is the proposed parking lot pavement covering about 3000 square feet of area that was previously planned to be landscaped with shrubs and trees (See Exhibits #3&4).

Therefore, Ground Two does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Three

> "The Commission failed to consider that the application stipulated that landscaping would be completed in conformity with the Venice Planting Plan and in cooperation with the community *(See,* Proposed Conditions 5 & 6, which state: 'All landscaping will be completed in accordance with the existing Venice planting plan;' and 'The

[3] In fact, the Department of Public Works (City Engineer) signed and approved the Venice Boulevard Planting Plan on May 8, 1995.

property owner will consult with the interested Venice community organizations in the landscaping of the property');"

The Commission interprets this allegation as an assertion of an error in law, in that it does not assert any new evidence and alleges a procedural flaw. The applicant, in making the argument that the Commission failed to consider evidence that was already before it, is referring to the conditions proposed by the applicant in a letter to Commission staff dated September 9, 2005 (attached as Exhibit #7 to the staff report dated December 22, 2005 for Coastal Development Permit Application 5-05-343). Therefore, Ground Three presents no new evidence, as the applicant's stipulations were presented to the Commission prior to the January 11, 2006 public hearing.

The applicant asserts an error of law in that the existence of the stipulations listed above render the evidentiary support for the Commission's decision inadequate, so that it would violate Code of Civil Procedure Section 1094.5. This allegation is false, as the Commission did consider the applicant's stipulations, but determined that the stipulations could not mitigate the proposed private parking lot's adverse effects to coastal resources and public access. The Commission determined that the applicant could not implement the proposed private parking lot project in conformity with the City-approved Venice Planting Plan because the parking lot plan would pave about 3000 square feet of area that was previously planned by the City to be landscaped with shrubs and trees (See Ground Two analysis). Therefore, the applicant's proposed parking lot plan is inherently inconsistent with the existing City-approved Venice Boulevard Planting Plan that the Commission supported in its denial of Coastal Development Permit Application 5-05-343. The applicant's proposed conditions cannot change the essential nature of the project proposal.

The Commission did consider the stipulations of the permit application, and the testimony given by all parties at the January 11, 2006 public hearing, and concluded, based on substantial evidence, that despite the proposed conditions, the project would be fundamentally inconsistent with the preferred City-approved Venice Boulevard Planting Plan. Thus, the Commission ruled in favor of more landscaping over pavement in the rights-of-way. Therefore, Ground Three does not provide any relevant new evidence that could not have been presented previously or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Four

"There was no evidence of any impairment of coastal access by reason of the requested improvements, which if constructed would in no way affect future potential permissible roadway uses since 18 feet would remain between the parking lot and the street, more than enough for any potential street widening according to the Staff Reports; and any improvements could be easily removed if later needed for street purposes, and would not be gone once allowed as suggested with respect to the vacation;"

The Commission interprets this allegation as an assertion of an error in law, as it asserts a lack of evidentiary support for the Commission's conclusion that the project was inconsistent with coastal resource protection policies, and thus a Commission decision that was illegal for lack

of substantial evidence to support it. This allegation is false, as the Commission's decision is supported by the evidence presented.

The width of the area proposed to remain between the applicant's proposed parking lot and the curb of North Venice Boulevard is not relevant since the Commission denied the proposed project because it proposed to pave over about 3,000 square feet of right-of-way that would be landscaped under the City-approved Venice Boulevard Planting Plan (Exhibit #4). The Commission decision reserved the entirety of the public right-of way for public use. The Commission, by its action, made a choice between two competing alternatives for the improvement of the 4,500 square foot portion of the project site that is public right-of-way. The Commission concluded in favor of more landscaping over pavement in the right-of-way, thus supporting the City-approved Venice Boulevard Planting Plan presented at the January 11, 2006 public hearing by Mr. Murez, and denying the proposed parking lot with landscaping plan proposed by Coastal Development Permit Application 5-05-343. The Commission found that the City-approved Venice Boulevard Planting Plan conformed more closely with the Coastal Act policies that address visual resources and public access in that the additional landscaping of the right-of-way area (instead of pavement) would substantially improve aesthetics and coastal access along North Venice Boulevard, a major coastal access route.

Therefore, Ground Four does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Five

> "The proposed improvements would place the property in substantially the same condition as all of the adjacent properties situated along the unused right-of-way, such that the applicant is receiving unfair disparate treatment;"

Once again, the applicant cites no authority for its claim: that denial of the permit for the proposed development, the implementation of which would place the property in substantially the same condition as adjacent properties, constitutes unfair disparate treatment. The suggestion appears to be that a denial, even if consistent with the policies of the Coastal Act that form the Commission's standard of review, may violate principles of equal protection if it denies a property owner a permit to bring a property into the same condition as adjacent properties. The Commission interprets this allegation as an assertion of an error in law in that it implies that the Commission's action violates principles of equal protection.

There is no requirement that all properties be allowed to develop in the same manner. The adjacent properties may have been developed prior to the adoption of the Coastal Act or local land use regulations that would prevent this property from being developed in the same manner. The applicant's suggestion is inconsistent with the long-standing principles of grandfathering and non-conforming uses. In addition, the applicant does not provide any specific evidence of the alleged state of those adjacent properties or of disparate treatment. If such evidence pertaining to the state of those adjacent exists, it could have been presented to the Commission at the January 11, 2006 public hearing. To the extent the applicant intends to rely on federal constitutional principles of equal protection, the Commission also notes that, because the applicant asserts no fundamental right and does not assert a basis for heightened scrutiny based on any suspect classification, the Commission's actions would only need to satisfy the rational basis test.

Commission staff is not aware of any adjacent properties having privatized a portion of the public right-of-way for use as a private parking lot, as was proposed by the applicant. The North Venice Boulevard is being used as a public street, with landscaping and public parking. The right-of-way area outside of the main roadway and sidewalk is typically used for public parking, as required and approved pursuant to amended Coastal Development Permit 5-90-664 (City of Los Angeles, Venice Blvd. improvements), or landscaping. Although a few paved driveways leading to private properties do extend across the sidewalk and right-of-way area in order to provide vehicular access from the boulevard to the private properties (as do the applicant's existing driveways), the Commission has not approved the privatization of any portion of the North Venice Boulevard right-of-way. Therefore, the applicant did not receive unfair disparate treatment from the Commission.

As is explained in the Commission's findings for denial, which findings are incorporated herein by reference, the Commission's actions are also consistent with the standard of review in Chapter 3 of the Coastal Act. Thus, the Commission concludes that Ground Five does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Six

> "Denial of the application without enforcement actions against similarly situated properties that use unused portions of the right-of-way for parking lots unfairly discriminates against the applicant;"

Again, the Commission is not aware of any adjacent properties having privatized a portion of the public right-of-way for use as a private parking lot, as was proposed by the applicant. Staff will investigate any specific allegations put forth regarding unpermitted use of public rights-of-way. The Commission did reject the applicant's proposed project in favor of the City-approved Venice Boulevard Planting Plan, but the Commission did not unfairly discriminate against the applicant.

Moreover, the applicant again cites no legal authority for its claim that, even if the facts alleged by the applicant were true, the Commission's action in this case would constitute a violation of the applicant's right to equal protection. The suggestion here is that a Commission action on a permit application could be invalid based on the Commission's failure to take enforcement action on other properties. The Commission is not aware of such authority, and any such rule would extend the reach of the equal protection clause far beyond constructions that have consistently been *rejected* in selective enforcement cases as too sweeping. Therefore, Ground Six does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Seven

> "The Commission does not have the authority to second guess the City's land use planning decisions *(See,* e.g., Citizens for Improved Sorrento Access, Inc. v. City of San Diego (2004) 118 Cal.App.4th 808), except to the extent based on evidence of impairment of a Coastal Act concern, which was not shown;"

The Commission interprets this allegation as an assertion of an error in law, in that it seems to suggest that the Commission exceeded its authority. It is unclear, however, for multiple reasons. First of all, the case cited does not stand for the proposition asserted. The case merely upheld municipal actions vacating a road, holding that the municipalities associated conclusions were supported by the record, that the existence of conflicting evidence did not change the fact that the determinations were reasonable on the record as a whole, and that the fact that drivers would use the roads if they were retained, or would like to have them reopened, also did not affect the validity of the decisions. The case says nothing about this Commission's authority *vis-à-vis* a City's land use planning decision.

Second, this claim states that the Commission lacked authority "except to the extent based on evidence of impairment of a Coastal Act concern." However, as in all of its actions on coastal development permit applications in uncertified areas, the Commission's decision was based on exactly that. Thus, even if it were true that the Commission lacked authority except as indicated in this allegation, that fact would be irrelevant here. Moreover, in this case, the City had not issued anything more than an "approval in concept" for the proposed private parking lot development. The case was not an appeal, nor did the Commission second-guess a City action when it denied Coastal Development Permit Application 5-05-343. The Commission merely had to rule on whether the proposed development conformed the Chapter 3 policies of the Coastal Act. The Commission's action to deny Coastal Development Permit Application 5-05-343 did not contradict any decision of the City of Los Angeles (although the Commission's denial of Coastal Development Permit A-5-VEN-05-259 overturned a City action to vacate portions of the public right-of-way). In fact, the Commission's denial of Coastal Development Permit Application 5-05-343 supports the ultimate completion of the Venice Boulevard Planting Plan that the City Department of Public Works approved on May 8, 1995.

Finally, this allegation ends by stating that evidence of impairment of a Coastal Act concern was not shown. To the extent this is intended to serve as a claim that the Commission's decision was not supported by substantial evidence in the record, it is a repetition of the allegations made in Grounds Three and Four, and the responses thereto, as listed above, apply equally here. Therefore, Ground Seven does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Eight

> "There is no evidence to support a decision to overturn the extensive City proceedings and determinations that the property is best used for parking, cannot be so used except as proposed since landlocked, that the proposed parking is needed to legalize the property, and that the proposed use benefits the public by increasing parking and providing for long and admittedly still unfunded landscaping, while at the same time relieving the City of maintenance and liability obligations without preventing landscaping consistent with a coordinated overall plan acceptable to the community;"

The applicant made the arguments set forth in Ground Eight at the January 11, 2006 public hearing. The applicant is asserting no new evidence in Ground Eight that was not put forth at the hearing. Therefore, the Commission interprets this allegation as an assertion of an error in law. This allegation appears to be another assertion, as in Grounds Three and Four, that the

Commission's action lacked evidentiary support and was therefore in violation of Code of Civil Procedure Section 1094.5. This claim includes four separate sub-claims, all under the rubric that the record lacked substantial evidence to support a decision to overturn the City's determinations. The specific City determinations that the applicant claims could not be overturned on the present record are:

(1) The conclusion that the property is best used for parking;

(2) The conclusion that the property cannot be so used except as proposed since landlocked;

(3) The conclusion that the proposed parking is needed to legalize the property; and,

(4) The conclusion that the proposed use benefits the public by:
   a. increasing parking.
   b. providing for landscaping.
   c. relieving the City of maintenance and liability obligations.
   d. permitting landscaping consistent with a coordinated overall plan acceptable to the community.

Regarding the applicant's general claim of lack of evidence to overturn the City's decision, the Commission in denying Coastal Development Permit Application 5-05-343 did not actually overturn a City determination (although the Commission's denial of Coastal Development Permit A-5-VEN-05-259 overturned a City action to vacate portions of the public right-of-way). In fact, the Commission's denial of Coastal Development Permit Application 5-05-343 supports the ultimate completion of the Venice Boulevard Planting Plan that the City Department of Public Works approved on May 8, 1995 (See Ground Seven analysis).

Regarding the alleged conclusion (1) by the City that the property is best used for parking, assuming that the City did so conclude, the Commission did not overturn that decision because it didn't make any determination about the "best use" for the property (assuming that the applicant, in referring to "the property", is referring to the portion of the project site that is public right-of-way).[4] The Commission applied the policies of Chapter 3 and determined that there is a viable alternative project that would be more consistent with those policies than the proposed private parking lot project would be.

The applicant's allegation (2) that the City concluded that the property cannot be "so used except as proposed because it's landlocked" is not clear. First, in its action on Coastal Development Permit Application on 5-05-343 (and A5-VEN-05-259), the Commission made a choice between two competing alternatives for the improvement of the 4,500 square foot portion of the project site that is public right-of-way. There are clearly two alternatives for the use of this portion of the project site, so in fact there is an alternative land use (plants) for the right-of-way area proposed to be paved by the applicant. The Commission concluded in favor of landscaping the right-of-way pursuant to the City-approved Venice Planting Plan. Secondly, the applicant does not explain how the property is allegedly landlocked. The existing gravel parking area that serves the applicant's office building at 1656 Abbot Kinney Boulevard

[4] On July 1, 1974, the Commission approved Coastal Development Permit P-74-3323 (Sarlo) for the construction of the existing two-story office building that occupies the site, with nine on-site parking spaces provided between the office building and the North Venice Boulevard right-of-way.

currently has vehicular access from both Abbot Kinney Boulevard and North Venice Boulevard. The City-approved Venice Planting Plan would not interfere with these two existing driveways that provide access from the public streets to the applicant's existing gravel parking area (Exhibit #4). Therefore, the allegation that the project site cannot be used except as proposed by the applicant is factually incorrect.

The applicant also alleges (3) that the City concluded that the proposed private parking lot project is needed to legalize the applicant's use of the property at 1656 Abbot Kinney Boulevard. The Commission interprets this allegation as an assertion that the proposed private parking lot must be allowed on the public right-of-way in order to bring the applicant's office building into conformity with the City's zoning regulations. Even assuming that is correct, and that the City did so conclude, the Commission did not overturn the City's determination because it did not make any determination in regards to the development's conformity with the City's zoning regulations, or whether the applicant is allowed to continue the use of the office building on the larger property without the completion of the proposed parking lot project. To the extent the applicant may be arguing that denial of the proposed private parking lot would constitute a taking, because it would render the existing development unusable, the applicant has presented no evidence in support of such a claim.

The Commission did, however, deny the applicant's request to use part of a public right-of-way for a private parking lot. The applicant does not have any automatic right to use public rights-of-way in order to provide the vehicular parking that may be required for the structures on the applicant's property. In any case, the City's zoning code provides for continuance of properly permitted and maintained non-conforming uses (City of Los Angeles Municipal Code, Chapter One, Section 12.23). Commission records indicate that the existing two-story office building that occupies the site was properly permitted in 1974 [See Coastal Development Permit P-74-3323 (Sarlo)]. Moreover, the question of consistency with the City's zoning regulations is irrelevant to the Commission's standard of review for the coastal development permit. The Commission is bound by Chapter 3 of the Coastal Act, not by what is needed to bring an existing allegedly non-conforming use into compliance with the City's zoning regulations.

Regarding the alleged conclusion by the City (4) that the proposed private parking lot project would benefit the public in the four ways indicated above, the Commission did not determine that the proposed project's provision of parking and landscaping would not benefit the public, but only that the project would have other negative impacts on the coastal resources that the Commission is obligated to protect pursuant to the Chapter 3 policies of the Coastal Act. The Commission determined that the proposed private parking lot project would prevent the public right-of-way improvements that would result from the implementation of the City-approved Venice Planting Plan. The City's maintenance and liability obligations are irrelevant to the Commission's standard of review, and the Commission determined that the applicant's proposed private parking lot was not consistent with the City-approved Venice Planting Plan (See Ground Two analysis).

Therefore, the Commission concludes that sufficient evidence was presented at the January 11, 2006 public hearing to support the Commission's action on Coastal Development Permit Application 5-05-343 and that action did not involve overturning City proceedings and determinations as presupposed by this claim. Thus, Ground Eight does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Nine

"Neither the City nor the State may use the dedicated land for recreational purposes as a matter of law (Bello v. ABA Energy Corp. (2004) 121 Cal.App.4th 301; Wattson v. Eldridge (1929) 207 Cal. 314; Faus v. City of Los Angeles (1967) 67 Cal.2d 350, 357; Abbott (sic) Kinney Company v. City of Los Angeles (1964) 223 Cal.App.2d 668; Norris v. State of California (1968) 261 Cal.App.2d 41, 47-49 [prohibiting use of street dedications for recreational purposes]);"

The Commission interprets this allegation as an assertion of an error in law, in that it references several precedential court actions and implies that the Commission's action violated the holdings of those cases.

The applicant characterizes the cited cases as standing for the proposition that neither the City nor the State can use the dedicated land for recreational purposes. At best, only one of the cases cited, Norris v. State of California, could be read to stand for that proposition. More significantly, all of the cases, including Norris, support the expansive interpretation of the scope of such grants. The Norris case, for example, notes that "[a] grant of an easement is to be interpreted liberally in favor of the grantee." Norris, 261 Cal.App.2d at 46-47, citing Cal. Civ. Code § 1069 and Laux v. Freed (1960) 53 Cal.2d 512, 522, 2 Cal.Rptr. 265. Norris held that a vista point and roadside rest were legitimate "highway purposes" and thus contemplated by a grant of an easement that was only for "highway purposes." Norris, 261 Cal.App.3d at 48. The case notes that many California cases have held that, by dedicating land for highway purposes, "'(c)hanging conditions, in customs, usages and improvements … since the original dedication are to be assumed as being contemplated" by that original dedication." Id. at 47.

Similarly, the Bello case, also cited by the applicant, allowed utility lines to be installed pursuant to a grant of a public right-of-way easement. In so doing, it cited the seminal case of Montgomery v. Railway Co. (1894) 104 Cal. 186, which it quoted as saying that, "as a result of the demands of urbanization, public rights-of-way located in developed areas are subject to a wide range of 'other and further uses' besides surface transportation…." Bello, 121 Cal.App.4th at 307. Bello also quoted Montgomery as saying that the trend was towards a "broader and more comprehensive view of the rights of the public in and to the streets and highways of city and country." Bello at 309, quoting Montgomery at 191-192. Finally, it said that since 1911, the California Supreme Court has only twice addressed the scope of roadway rights-of-way, both times adopting a broad construction. Bello at 310.

All three of the other cases cited by the applicant also allowed the challenged use of the area in question. Wattson allowed some of the Venice canals, which are public rights-of-way, to be filled and used as surface streets. Faus allowed the conversion of land granted for passenger electric railway service to motor coach service, and Abbot Kinney allowed land granted for use as a pleasure park or beach to be used as a parking lot.

Even assuming that these cases established the proposition that the City and State cannot use the subject land for recreational purposes, that proposition is irrelevant to the issue at hand. This Commission is not using the land for recreational purposes. It is not using it at all. Nor is this Commission demanding or approving its use for recreational purposes. The extent of the Commission's action in this case was to deny the current application as inconsistent with the

policies of Chapter 3 of the Coastal Act. While it is true that this may lead to the anticipated City use, even that is not a recreation use. It is a landscaping use that is a common incident to a highway purpose.

The Commission recognizes the public value in landscaped boulevards, especially along a major coastal access route like North Venice Boulevard. The lack of attractive landscaping degrades the aesthetic experience of the public using the accessway, and thus negatively affects coastal access. The right-of-way in question is not a park, but it is part of a public transportation route for vehicles, cyclists and pedestrians. Of course, driving, biking and walking are recreational activities, but those activities are explicitly allowed as a matter of law, along with landscaping, in public rights-of-way.

The Commission's endorsement of the City-approved landscape plan over the applicant's proposed private parking lot is based on the public access and visual resource policies of the Coastal Act (Sections 30210 through 30213, 30223, 30251 and 30253 of the California Public Resources Code). Increasing the apparent width of the road with the relatively inexpensive investment in landscaping of the right-of-way would enhance the visual resources of the area and visually distinguish this critical intersection where Venice Boulevard joins the commercial center of Venice (Abbot Kinney Boulevard). The additional landscaping contemplated by the City's Venice Boulevard Planting Plan would make the streets and the intersection a more inviting and attractive area for area residents and visitors alike. The visual quality of this major coastal access route should not be sacrificed for an enlarged private parking lot.

Therefore, the Commission concludes that Ground Nine does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

Ground Ten

"There is no authority or evidence to support the conclusions, in contradiction of the City determinations, that the parking lot is not needed in the proposed size to bring the property to Code (See, CDP Application, Attachment 3, p.6), that parking exists or is available to the applicant off-site to satisfy the applicable requirements, or that the applicant should not have increased the building size during 1998 remodeling, which is not the case."

The Commission interprets this allegation as an assertion of an error in law, in that it does not assert any new evidence, and it once again asserts that the Commission's action lacked evidentiary support and was therefore presumably in violation of Code of Civil Procedure section 1094.5. (See Analysis for Grounds Three, Four and Eight).

This claim includes three separate sub-claims, all under the rubric that the record lacked substantial evidence to support a Commission decision that contradicts City determinations. The Commission's alleged conclusions that the applicant claims contradict the City's determinations are:

(1) The conclusion that the parking lot is not needed in the proposed size to bring the property to Code;

(2) The conclusion that parking exists or is available to the applicant off-site to satisfy the applicable requirements;

(3) The conclusion that the applicant should not have increased the building size during 1998 remodeling.

Again, the applicant alleges (1) that the City determined that the private parking lot project, as proposed by the applicant, is needed to bring the property at 1656 Abbot Kinney Boulevard into compliance with the City's zoning code. Even assuming that the City did so conclude (which is not apparent from the record), the Commission's decision would not contradict that City's determination because the Commission did not make any conclusion or determination in regards to how the existing development conforms or does not conform with the City's zoning regulations. The Commission's decision to deny the permit application also does not address whether the applicant is allowed to continue the use of the office building on the larger property without the completion of the proposed parking lot project (See Ground Eight Analysis). Finally, even if the Commission were to conclude that the proposed project were necessary to bring the project up to code, that could not change the Commission's decision, as it is not relevant to the Commission's standard of review, particularly in light of the fact that it would not result in a deprivation of the applicant's economically viable use of the property, since the City's municipal code, as cited above, provides for the continued use of non-conforming properties.

The applicant's allegation (2) that the Commission concluded that off-site parking exists that could satisfy the applicable zoning requirements for the property at 1656 Abbot Kinney Boulevard is false. During the January 11, 2006 public hearing, the Commission suggested that, in the event that the property is actually non-compliant with the City's parking requirements, the applicant could investigate alternatives other than paving part of the public right-of-way for a private parking lot. The lease of off-site parking and/or reducing the existing development's parking demands are two options that may help the applicant to meet the City's alleged parking requirements. The Commission, however, did not conclude that off-site parking is available for lease, or that off-site parking would satisfy the requirements of the City's zoning code in regards to the applicant's existing development. The Commission simply denied the applicant's request to use part of the public right-of-way for the proposed private parking lot. In addition, for the reasons stated at the end of the preceding paragraph, even if the Commission were to conclude that there was insufficient evidence that alternative parking was available, and additionally affirmatively concluded that such parking were not available, it could not change the Commission's action on this application.

Finally, the applicant alleges (3) that the Commission concluded that the applicant should not have increased the office building's size during a 1998 remodeling. In Ground Ten, the applicant seems to assert that it "is not the case" that the building's size was increased during a 1998 remodeling. It is not clear how the Commission's decision in this instance contradicts a City determination since, to the Commission's knowledge, the City has not determined that the building's size had been changed, much less that the applicant should not have made such a change. The Commission did not conclude that the office building's size had changed since it was permitted and built in the mid-1970s. In any event, the size of the office building is not relevant to the Commission's decision on the permit application. The Commission certainly did not deny the applicant's permit application for the proposed private parking lot as a reaction to any perceived change to the building's size. The Commission denied the permit for the

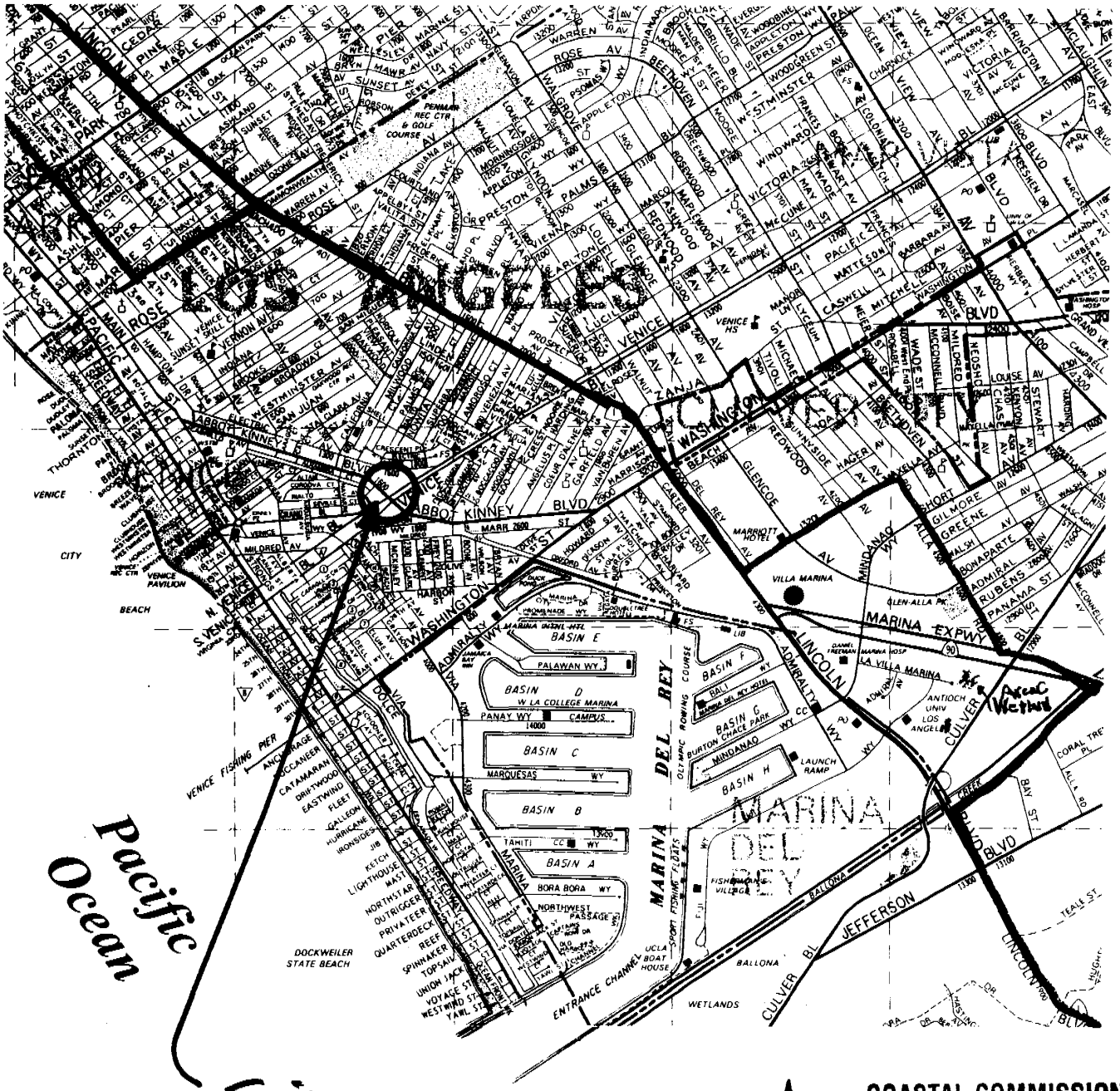
proposed private parking lot because the pavement for the proposed parking lot on part of the public right-of-way would have altered the City's ability to improve the public right-of-way (Venice Planting Plan) in a manner that would have been practically difficult to reverse, and because the proposed parking lot does not conform with the Chapter 3 policies of the Coastal Act.

Therefore, Ground Ten does not provide any relevant new evidence or establish that an error of fact or law has occurred that has the potential of altering the Commission's initial decision.

D. Conclusion

The applicant has not pointed to any error of fact or law that could have altered the Commission's initial decision, nor has it presented any relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. Consequently, there is no basis for reconsideration, and the applicant's request for reconsideration must be denied. Moreover, pursuant to Section 30627(b)(4) of the Coastal Act, even if the applicant meets the criteria for reconsideration, the Commission has the discretion to grant or deny the request. In this case the applicant has not met the criteria for reconsideration and the Commission denies the request.

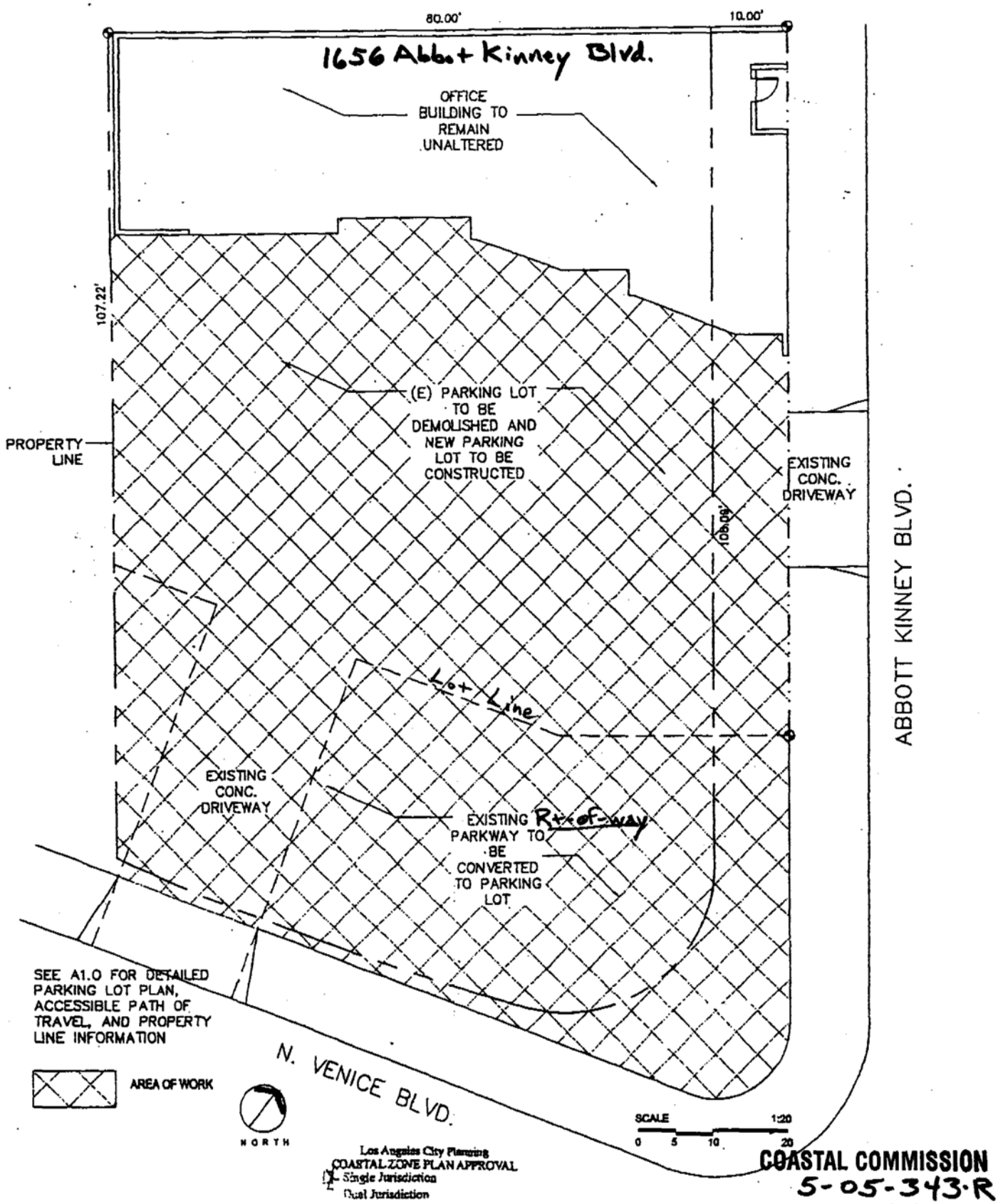
VENICE, CA



COASTAL COMMISSION
5-05-343-R

EXHIBIT # 1

PAGE 1 OF 1

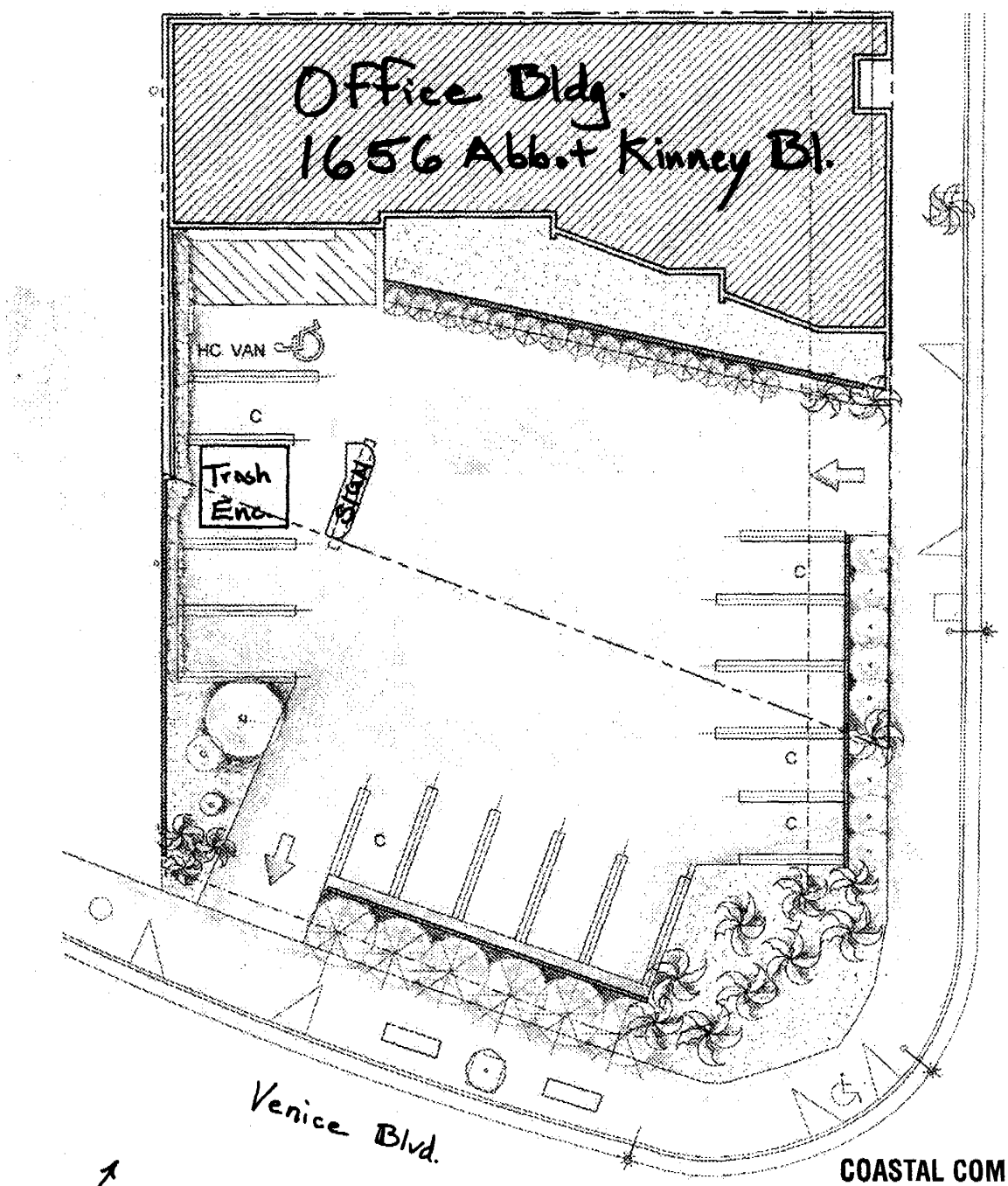


COASTAL COMMISSION
5-05-343-R

EXHIBIT # 2

PAGE 1 OF 1

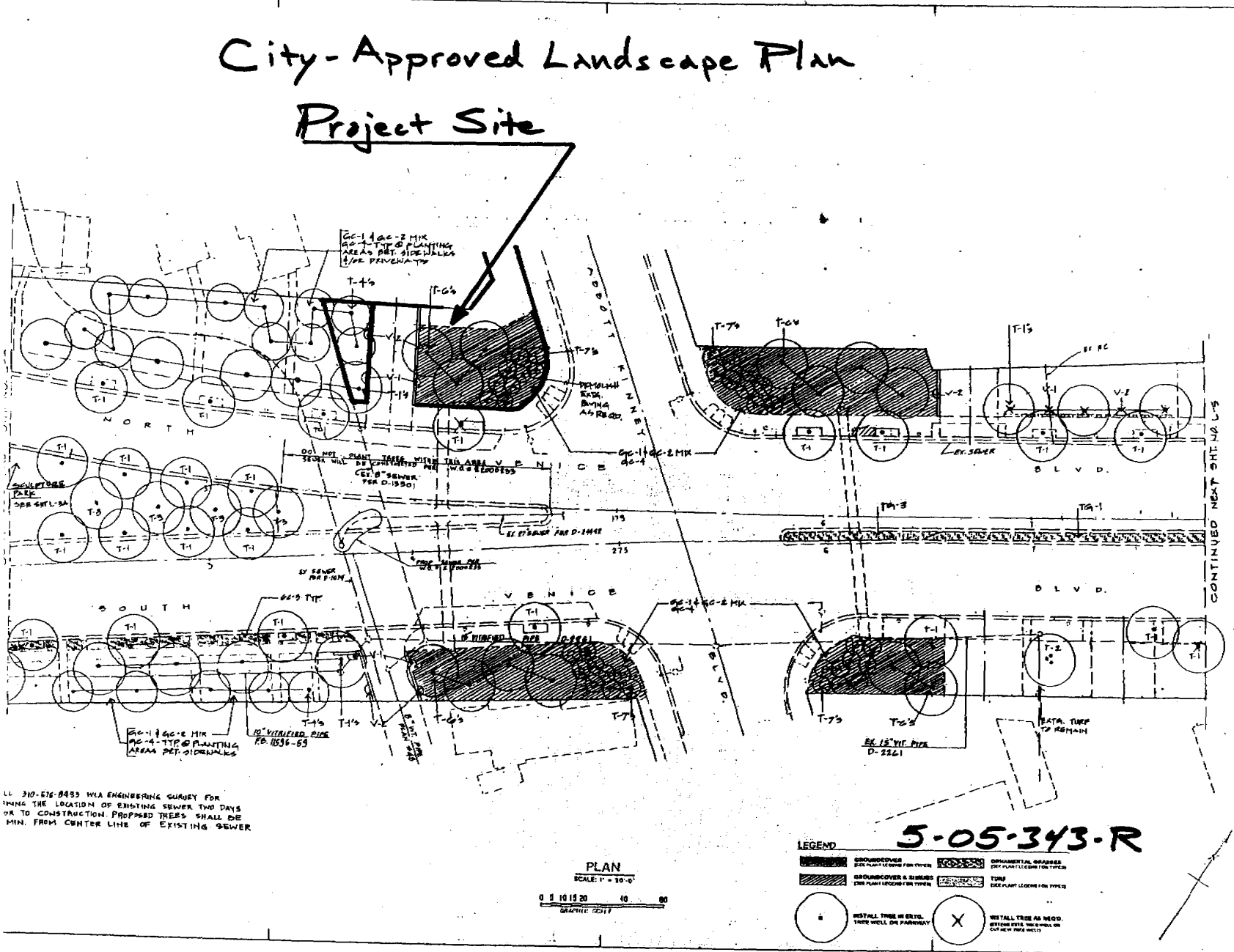
Proposed Parking Lot Plan



COASTAL COMMISSION
5-05-343-R
EXHIBIT # 3
PAGE 1 OF 1

City-Approved Landscape Plan

Project Site



5-05-343-R

CITY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING
ROBERT S. HORII CITY ENGINEER
ARCHITECTURAL DIVISION
CITY HALL EAST ROOM 890

City of Los Angeles
VENICE BOULEVARD PLANTING PLAN
From approx. 230 ft. East of Grand Ave. to N. Venice Blvd. to approx. 250 ft. East of Abbott Kinney Blvd.

L - 4

EXHIBIT # 4

LAW OFFICES OF DAVID J. MYERS
10940 Wilshire Boulevard, Suite 1400
Los Angeles, California 90024
Tel: (310) 824-1500
Fax: (310) 824-1535

February 7, 2006

BY E-MAIL, FAX AND MESSENGER
(562) 590-5084

Chuck Posner
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: 1656 Abbot Kinney Blvd.
Permit No. 5-05-343

Dear Mr. Posner:

Per our discussion, this letter is submitted pursuant to Public Resources Code, section 30627, and Coastal Commission Regulations, section 13109.2, to request reconsideration of the January 11, 2006 denial of the above permit.

The grounds for the request are that there is relevant new evidence that, in the exercise of reasonable diligence, could not have been presented at the January 11 hearing, and that there were errors of fact and law which have the potential of altering the initial decision, and specifically as follows:

1. As discussed, the parking lot application did not receive fair consideration, and the applicant did not receive sufficient time to address the parking lot application, in the short time allotted in the combined proceeding with the heavily contested vacation application late in the day when the commissioners were trying to push through the remaining calendar, which resulted in confusion and numerous inaccuracies;

2. There was no claim or showing that the parking lot or proposed landscaping is in any way inconsistent with the landscaping plans outlined by Mr. Murez;

3. The Commission failed to consider that the application stipulated that landscaping would be completed in conformity with the Venice Planting Plan and in cooperation with the community (See, Proposed Conditions 5 & 6, which state: "All landscaping

will be completed in accordance with the existing Venice planting plan;" and "The property owner will consult with the interested Venice community organizations in the landscaping of the property");

4. There was no evidence of any impairment of coastal access by reason of the requested improvements, which if constructed would in no way affect future potential permissible roadway uses since 18 feet would remain between the parking lot and the street, more than enough for any potential street widening according to the Staff Reports; and any improvements could be easily removed if later needed for street purposes, and would not be gone once allowed as suggested with respect to the vacation;

5. The proposed improvements would place the property in substantially the same condition as all of the adjacent properties situated along the unused right-of-way, such that the applicant is receiving unfair disparate treatment;

6. Denial of the application without enforcement actions against similarly situated properties that use unused portions of the right-of-way for parking lots unfairly discriminates against the applicant;

7. The Commission does not have the authority to second guess the City's land use planning decisions (See, e.g., Citizens for Improved Sorrento Access, Inc. v. City of San Diego (2004) 118 Cal.App.4th 808), except to the extent based on evidence of impairment of a Coastal Act concern, which was not shown;

8. There is no evidence to support a decision to overturn the extensive City proceedings and determinations that the property is best used for parking, cannot be so used except as proposed since landlocked, that the proposed parking is needed to legalize the property, and that the proposed use benefits the public by increasing parking and providing for long and admittedly still unfunded landscaping, while at the same time relieving the City of maintenance and liability obligations without preventing landscaping consistent with a coordinated overall plan acceptable to the community;

9. Neither the City nor the State may use the dedicated land for recreational purposes as a matter of law (Bello v. ABA Energy Corp. (2004) 121 Cal.App.4th 301; Wattson v. Eldridge (1929) 207 Cal. 314; Faus v. City of Los Angeles (1967) 67 Cal.2d 350, 357; Abbott Kinney Company v. City of Los Angeles (1964) 223 Cal.App.2d 668; Norris v. State of California (1968) 261 Cal.App.2d 41, 47-49 [prohibiting use of street dedications for recreational purposes]); and

10. There is no authority or evidence to support the conclusions, in contradiction of the City determinations, that the parking lot is not needed in the proposed size to bring the property to Code (See, CDP Application, Attachment 3, p.6), that parking exists or is available to the applicant off-site to satisfy the applicable requirements, or that the applicant should not have increased the building size during 1998 remodeling, which is not the case.

Please note that, in addition to the above citations, all of the legal authorities and facts asserted in our letter brief and record are incorporated herein in support of this reconsideration request in lieu of repeating them here in detail.

Thank you for your continuing assistance. As always, please let us know if any questions or if you need anything further from us at this time.

Very truly yours,

David J. Myers

cc: Dos Coronas, LLC (by e-mail)
A. Helperin, Esq. (by e-mail)
City of Los Angeles (by e-mail)

POSNER.003