

CALIFORNIA COASTAL COMMISSION

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



Th 8a

Addendum

August 2, 2007

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Th 8a**, Coastal Commission Permit Application
#6-06-130 (Holcomb), for the Commission Meeting of August 9, 2007

Staff recommends the following changes be made to the above-referenced staff report:

On Page 2 of the staff report, the first sentence of the project description shall be revised as follows:

1. **Detailed Project Description/History**. The proposed project involves the construction of an approximately ~~400~~ 167 sq. ft. trash dumpster enclosure and the re-asphalting and re-striping of the existing parking lot containing 35 parking spaces at Ki's Restaurant in Encinitas.

CALIFORNIA COASTAL COMMISSION

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



Th 8a

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 Length of Extension: 90 Days
 Final Date for
 Commission Action: August 31, 2007
 Staff: Gary Cannon-SD
 Staff Report: July 19, 2007
 Hearing Date: August 8-10, 2007

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-130

Applicant: Barry Holcomb Agent: Joe Wilkins

Description: Construct dumpster enclosure, re-asphalt and re-stripe an existing restaurant parking lot area and authorize after-the fact an unpermitted approximately 2,000 sq. ft. asphalt parking lot on an adjacent property.

Site: 2591 South Coast Highway 101, Encinitas, San Diego County.
 APN 261-190-19 and 54.

Substantive File Documents: City of Encinitas Local Coastal Program; CDP Nos. F4191/Liberty, F5232/Liberty, F6324/Liberty, 6-82-268, 6-93-064/Borelli.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed development with special conditions. The primary issue raised by this proposal is the protection of water quality since the dumpster and asphalt work will occur on property that is located adjacent to San Elijo lagoon. The project has been conditioned to require the submission of final plans, the implementation of a program for Best Management Practices (BMP) and a deed restriction on the property to assure the BMP's will be implemented over the life of the structures.

The project site is in the Coastal Commission's area of original jurisdiction and, thus, Chapter 3 of the Coastal Act is the legal standard of review.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-06-130 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final site and development plans for the asphalt repairs and trash enclosure for the permitted development that have been approved by the City of Encinitas. Said plans shall be in substantial conformance with the plans submitted by Joe Lewis Wilkins, Architect, dated March 9, 2007.

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

2. Water Quality Management Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Water Quality Management Plan (WQMP), prepared by a qualified licensed professional and approved by the City of Encinitas, for review and written approval of the Executive Director. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) designed and implemented to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site and to minimize water quality impacts to surrounding coastal waters. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.
2. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
3. All parking lots shall be swept and litter shall be removed on a weekly basis, at a minimum. The parking lots shall not be sprayed down or washed down unless the water used is directed through the sanitary sewer system or a biofiltration area.
4. All dry weather runoff (non-stormwater flows) shall be retained onsite and not discharged to the lagoon.
5. A BMP treatment drain shall be designed and implemented to collect and treat runoff and remove pollutants of concern (including heavy metals, oil and grease, hydrocarbons, trash and debris, sediment, nutrients and pesticides) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner.
6. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
7. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) during each month between October 15th and April 15th of each year and, (3) at least twice during the dry season. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over its lifetime and shall include written acceptance by the responsible entity(ies) and property owner.
8. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.

9. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.

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

3. **Deed Restriction.** **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant for this permit shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

4. **Condition Compliance.** **Within 60 days of Commission action on this coastal development permit application**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Detailed Project Description/History.** The proposed project involves the construction of an approximately 400 sq. ft. trash dumpster enclosure and the re-asphalting and re-striping of the existing parking lot containing 35 parking spaces at Ki's Restaurant in Encinitas. The City of Encinitas is requiring the applicant to enclose the existing dumpster to address health, safety and water quality concerns. In addition, the applicant is requesting after-the-fact approval of installation of asphalt over an approximately 2,000 sq. ft. area of dirt on an adjacent lot next to San Elijo Lagoon. The asphalting of the dirt lot occurred sometime prior to 1993 and was performed by a previous lessee of the restaurant. The San Elijo Lagoon Conservancy owns the parcel of land on which the after-the-fact asphalt will be placed and concurs with the applicant's

request to retain the asphalt. This adjacent site is used for informal parking by the restaurant and its customers.

The proposed development will occur on two lots that are located between the west side of San Elijo Lagoon and the east side of South Coast Highway 101 in the Cardiff community of Encinitas. The restaurant and parking lot areas are located on an upland area bordering the lagoon. This section of South Coast Highway 101 is commonly referred to as "Restaurant Row" because of the number of restaurants that front the ocean or lagoon along Highway 101.

The subject restaurant has received a number of coastal development permits over the years including for its original construction. In March of 1977, the Commission approved the construction of an approximately 2,200 sq. ft. restaurant (Ref. F5232/Liberty). In December of 1977 the Commission approved an additional approximately 1,008 sq. ft. second story addition to the restaurant (Ref. F6324/Liberty). In 1982 the Commission approved the enclosure of an approximately 1,325 sq. ft. of deck area (Ref. CDP #6-82-268). These permits resulted in the authorization of approximately 4,533 sq. ft. of restaurant space. In 1994 the Commission approved a coastal development permit for the conversion of 945 sq. ft. into retail space, the addition of 1,590 sq. ft. of second story decks and removal of 160 sq. ft. outdoor deck "at the site of an existing approximately 5,242 sq. ft. restaurant" (Ref. CDP #6-93-64/Borelli). However, no information is contained within the subject files to explain the discrepancy between the approved 4,533 sq. ft. of restaurant in 1982 and the approximately 5,242 sq. ft. of restaurant space identified as existing in 1994. The special conditions of approval for CDP #6-93-64 were never satisfied and the coastal development permit subsequently expired. The current applicant has identified that the existing restaurant is approximately 6,428 sq. ft. The subject applicant has leased the restaurant since 1994 but cannot explain the discrepancy in the existing square feet over what has been permitted (a difference of about 1,900 sq. ft.). However, in this case, the subject application request does not involve a change to the restaurant structure and, therefore, these discrepancies will need to be resolved through a separate enforcement action.

The proposed development is located within the City of Encinitas which has a certified LCP; however, it is located within the Commission's area of original jurisdiction and therefore the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

2. Public Access/Parking. Several policies of the Coastal Act require that new development protect or enhance public access to and along the shoreline. These policies include:

Section 30210

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public

safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

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

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

Section 30213

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

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, 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.

The proposed development is located between the first public road (Manchester Avenue) and the sea (San Elijo Lagoon) along South Coast Highway 101 in the Cardiff Community of Encinitas. Coast Highway 101 in this location is designated a major coastal access route and scenic highway in the Certified Encinitas LCP. In addition, the site is located directly across the street from Cardiff State Beach, a beach that is highly used by the public for a variety of beach and ocean activities and consists of an approximately 2-3 mile long beach park adjacent to several restaurants and includes "Cardiff Reef" one of Southern California's most popular surfing locations. As such, the

beach attracts local, regional, and international visitors. The closest public parking for beachgoers near the subject site is a 105 space lot at North Cardiff State Beach Day Use area and some street parking to the south along the west side of Coast Highway 101. At some points during summer or on holidays, these public spaces are likely to be fully occupied. Therefore, in reviewing requests for new development in this area it is critical that any new development provide adequate onsite parking to support its own operation so as to not usurp or rely on public parking spaces that otherwise could be used by beachgoers.

The existing restaurant has 35 onsite parking spaces and makes use of an approximately 2,000 sq. ft. adjacent area on an informal basis with the permission of the property owner (San Elijo Lagoon Conservancy.) In approving the existing permitted 4,533 sq. ft. of restaurant space via an addition in 1982 (Ref. CDP #6-82-268), the Commission required 32 onsite spaces and 21 offsite spaces through a lease agreement at the adjacent San Elijo Lagoon Conservancy property (at the time it was owned by the County of San Diego). Subsequent to the County ownership and the lease, San Elijo Lagoon Conservancy purchased the property and has allowed the restaurant to continue its use of the property for restaurant parking. Therefore, adequate parking to support the authorized 4,533 sq. ft. of restaurant appears to continue to exist. However, if additional square footage has been added to the restaurant without necessary permits, additional parking may be needed so that these additional restaurant patrons do not usurp public parking spaces in the area. In this case, however, the proposed development request is not modifying the existing restaurant or resolving any outstanding violation as it relates to additional unauthorized restaurant space. Subsequent resolution of this outstanding violation and whether there is a need for additional parking at the site will be resolved through a future enforcement action.

In this case, the proposed development to re-asphalt and restripe the existing restaurant parking lot, after-the-fact asphaltting of the adjacent property and the installation of the trash enclosure do not trigger the need for additional restaurant parking. No change in the number of spaces will occur as a result of the development. The existing trash dumpster already exists and its enclosure will not reduce any available amount of parking. In addition, the proposed work will not interfere with public access to, along the shoreline or into the lagoon. Therefore, since the proposed development will not impact public access, the proposed development is consistent with the public access and recreation policies of the Coastal Act.

5. Runoff/Water Quality. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained by, among other means, controlling runoff and states, in part, that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrapment, controlling runoff,

The primary coastal resource issue involved with the subject development request involves the potential adverse impact associated with polluted runoff from the trash enclosure and asphalt parking lot areas entering into the nearby San Elijo Lagoon Ecological Reserve. San Elijo Lagoon Ecological Reserve is an environmentally sensitive habitat area and Regional Park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. In addition, San Elijo Lagoon is one of the 19 priority wetlands listed by the Department of Fish and Game for acquisition and protection. The Ecological Reserve contains diverse habitat including six plant communities: coastal strand, salt marsh, brackish/freshwater marsh, riparian scrub, coastal sage scrub and mixed chaparral. In addition, at least five State or Federally-listed threatened or endangered birds make use of the Reserve's habitat, including the California least tern, California gnatcatcher, the light-footed clapper rail, Belding's savannah sparrow and the western snowy plover. As such, any development or use in close proximity to these sensitive resources must be sensitively designed to avoid adverse impacts.

All existing runoff from the subject restaurant, existing dumpster and asphalt parking areas currently flows untreated into the adjacent coastal waters of San Elijo Lagoon and, ultimately, the Pacific Ocean. Impervious surfaces are associated with impacts to water quality when water runoff from hard surfaces contains pollutants that eventually drain onto beaches or other coastal waters. Parking lots areas such as at the subject site can contain oil, gasoline, brake dust, particles of roofing material and construction matter, chemicals, trash and other contaminants. Filters, catch basins, and vegetated areas can be employed to trap vehicle-generated pollutants and reduce runoff volumes. In this case, no new impervious surfaces will be constructed over what has existed at the site for well over a decade. As previously described, the applicant is requesting authorization to retain the asphalt on the adjacent lot, but this asphalt was installed in approximately 1994 by another restaurant lessee. In addition, the applicant is proposing the use of Best Management Practices, such as the use of an earthen berm to direct flows into a new vegetated area, to control and filter polluted runoff before it enters into coastal waters. This initial runoff control plan was developed in consultation with the San Elijo Lagoon Foundation. Therefore, the project as proposed will provide better water quality protection than currently exists.

To assure that the water quality protection measures are effective and well maintained, Special Condition #2 has been attached. Special Condition #2 requires the applicant to submit a Best Management Practices (BMPs) Plan for Executive Director approval that incorporates structural and non-structural BMPs to reduce, the volume, velocity and pollutant load of stormwater and dry weather flows so as to minimize water quality impacts to surrounding coastal waters. In addition, Special Condition #3 requires that a deed restriction be placed on the subject restaurant lot which identifies the Special Conditions of approval. In this way, in the event the restaurant lessee is no longer in business, the underlying property owner will be aware of the ongoing responsibility to maintain the required BMPs. As proposed and conditioned, the Commission finds the

proposed development consistent with the water quality protection policies of the Coastal Act.

6. Unpermitted Development. Unpermitted development has occurred on the subject site including, but not limited to, the placement of approximately 2,000 sq ft of asphalt paving on a dirt lot adjacent to the San Elijo Lagoon. The applicant is seeking after-the-fact approval for the asphalt paving in this permit application. In addition, the applicant has identified the existing restaurant as being approximately 6,428 sq. ft. in size. Commission staff has reviewed all coastal development permits for the subject site and has determined the permit to construct the restaurant along with approved permits to add onto the restaurant total to no more than 4,533 sq. ft. in size. Therefore, any restaurant square footage above 4,533 sq. ft. is in violation of the Coastal Act. This matter is not addressed in this permit application and will be handled through a separate enforcement action.

Although a violation of the Coastal Act has occurred, consideration of this permit application by the Commission has been based solely upon the policies of Chapter 3 of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations. To ensure that the matter of unpermitted development in the form of the offsite asphalt parking lot is resolved in a timely manner, Special Condition #4 requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

7. Local Coastal Planning.

The subject site is located on the east side of San Elijo Lagoon and the west side of South Coast Highway 101 in the Cardiff community of the City of Encinitas. Although the City of Encinitas has a Certified LCP, the project site lies within the Commission's area of original jurisdiction such that the standard of review is Chapter 3 policies of the Coastal Act. However, the proposed development is also consistent with the City's Certified LCP. The subject site is designated as Visitor-Serving Commercial in the certified City of Encinitas Land Use Plan and the proposed development is consistent with that designation. As conditioned, the proposal is consistent with the City's certified LUP policy and approval of the proposed development would not prejudice the ability of the City to continue to implement its certified LCP.

8. Consistency with the 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 City of Encinitas is the lead

agency on this project for purposes of CEQA review, and the project was determined to be categorically exempt pursuant to Class 15301, Item d.

The proposed project has been conditioned in order to be found consistent with the visual resource, water quality, and public access policies of the Coastal Act. Mitigation measures, including submission of revised plans and implementation of a Best Management Plan to address polluted runoff 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.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

