

## CALIFORNIA COASTAL COMMISSION

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# W 23a

Filed: 6/20/07  
49th Day: 8/8/07  
180th Day: 12/17/07  
Staff: Laurinda Owens-SD  
Staff Report: 8/16/07  
Hearing Date: 9/5-7/07

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-89-260-A1

Applicant: William Clapperton

Agent: Erick Ricci

Original Description: Demolition of existing single-story wood-frame duplex. Construction of 5,101 sq.ft., 3-story, mixed-use building, including first level parking and retail, second level office and residential and third level residential on 3,062 sq.ft. lot.

Proposed Amendment: Conversion of existing mixed-use building including two residential and two commercial units to condominium ownership and after-the-fact conversion of ground floor retail space to office space.

Site: 802 & 802 ½ Tangiers Court, Mission Beach, San Diego, San Diego County. APN 423-572-14 & -15

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed permit amendment, with special conditions. The primary issues raised by the proposed project relate to adequacy of parking and protection of public views. The proposed amendment involves a conversion to condominium ownership of an existing mixed-use building and after-the-fact conversion of ground floor retail space to office use. No other changes are proposed at this time. The existing structure will maintain the same building footprint as the originally approved structure as well as the same building setbacks. In addition, to ensure that adequate parking will continue to be provided for the structure, a special condition also advises the applicant that any future changes in use to the structure will require further review and approval by the Commission. In addition, because any future installation of landscaping on the site (which is typically exempt) has the potential to impede public views to the shoreline, the condition also requires further review and approval by the Commission for any such installation in the future. The proposed change to condominium ownership will not result in any adverse impacts to public views or public access.

The project site lies partially within the Commission's Appeal jurisdiction (City of San Diego's permit jurisdiction) and partially within the Commission's original jurisdiction as noted in the staff report for the original coastal development permit. However, because the original coastal development permit was approved by the Commission and contained a special condition (deed restriction) which required further review and approval from the Commission if any changes were made to the approved uses in the building (future additions or conversions), it remains subject to the Commission's permit jurisdiction. With the special conditions, the proposed amendment is consistent with all applicable provisions of the certified LCP and the Chapter 3 policies of the Coastal Act.

Standard of Review: Certified LCP and Chapter 3

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Substantive File Documents: Certified Mission Beach Precise Plan; Certified Mission Beach Planned District Ordinance; CDP No. 6-89-269

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-89-260 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 the certified LCP. 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.

The permit is subject to the following conditions:

**1. Future Development Restriction.** This permit is only for the development described in coastal development permit No. 6-89-260-A1. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, conversion of office space to retail space, a change in the density or intensity of use land, or installation of on-site landscaping shall require an amendment to Permit No. 6-89-260-A1 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

**2. Condition Compliance.** Within 120 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.

**3. Deed Restriction.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. ***This deed restriction shall supersede and replace the deed restriction(s) recorded pursuant to Special Condition #1 of Coastal Development Permit #6-89-260, approved on 10/12/89, which deed recordation is recorded as Instrument No. 90 164730 on 3/28/90 in the official records of San Diego County.***

**4. Conditions Imposed Under the Original Permit.** Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 6-89-260 remain in effect.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. Proposed is the conversion of an existing three-story, approximately 4,998 sq.ft., mixed-use building to condominium ownership on a 3,062 sq.ft. lot. The building consists of a commercial office (real estate office) leasehold on the ground floor, additional commercial office (real estate office) use on the second floor and two residential units on the second and third floors. Through the proposed amendment, the two residential and two commercial office units will be converted to condominium ownership. In addition, also proposed is the after-the-fact conversion of the ground floor retail space to office use (this was apparently done by the original applicant/former property owner without authorization of a coastal development permit).

The original coastal development permit (CDP #6-89-260) was approved for the subject site on 10/22/89. The permit was for the demolition of an existing single-story wood-frame duplex and construction of a 3-story mixed-use building including parking and retail use on the first level, and second level office and residential use and third level residential use totaling to approximately 5,101 sq.ft. for all uses on site. A total of eight parking spaces were proposed and still exist on-site today. Although the original permit was for a 5,101 sq.ft. building, the current applicant has indicated that the gross floor area of the structure is actually 4,998 sq.ft. (a slight reduction from that originally approved in 1989). The break-down of uses is as follows:

|                    |                     |                          |                     |
|--------------------|---------------------|--------------------------|---------------------|
| Unit 1 Residential | 1,272 sq.ft.        | Unit 3 Commercial Office | 832 sq.ft.          |
| Unit 2 Residential | <u>1,325 sq.ft.</u> | Unit 4 Commercial Office | <u>1,292 sq.ft.</u> |
| (total)            | 2,597               | (total)                  | 2,124 sq.ft.        |

The residential units consist of two, three-bedroom units which are located on the second and third floors (Unit 1 = 1,272 sq.ft. and Unit 2 = 1,325 sq.ft.). Altogether, there will be a total of 2,124 sq.ft. of commercial office use and 2,597 sq.ft. of residential leasehold space in the building for a total of 4,721 sq.ft. for all uses on site. Including the interior access stairways and common space, the gross area of the building totals to 4,998 sq.ft., as earlier described.

The area is characterized by commercial, retail and multi-family development and is zoned Neighborhood Commercial North (NC-N) in the certified Mission Beach Precise Plan and Planned District Ordinance. The project is located at the northeast corner of Mission Boulevard and Tangiers Court in the Mission Beach community of the City of San Diego.

The standard of review is both the Coastal Act and the certified LCP, including the Mission Beach Planned District Ordinance.

2. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicant is requesting after-the-fact approval for the conversion of a retail leasehold on the ground floor to commercial/office use. To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition #2 requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although the conversion of retail space to office use has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the certified LCP. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

3. Public Access. Coastal Act sections 30210, 30211 and 30212(a) are applicable to the project and state the following:

#### Section 30210

In carrying out the requirement 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 30212(a)

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

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

#### Section 30211

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

In addition, Section 30252 of the Act is also applicable to the proposed development and states the following, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation . . . .

The Mission Beach PDO also contains the following plan goal:

The provision of increased parking in order to reduce the serious deficit that presently exists.” (p.61)

The project site is located at the northeast corner of Mission Boulevard and Tangiers Court. It is located seven lots west of Bayside Walk, a heavily utilized recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west courts and streets off of Mission Boulevard. Access to the beach adjacent to Mission Bay can be gained nearest the project site at the eastern terminus of Tangiers Court. Thus, adequate access exists very nearby, for purposes of Coastal Act Section 30212(a).

In addition, adequate on-site parking will be provided consistent with Section 30252 of the Act and the parking requirements of the certified LCP. As noted in the original permit, the PDO requires two parking spaces for each residential unit, one space per every 500 sq.ft. of office space and no parking for general commercial, retail or visitor-serving uses. In reviewing the Mission PDO as part of the City’s LCP submittal, the Commission found that the majority of users for the retail uses were residents in the area and visitors whose primary destination was the beach. As such, retail uses were found not to generate a need for additional parking. However, office/professional use was found to generate parking demand. With the provision of eight on-site parking spaces, it was found that the original project met all the requirements of the Mission Beach PDO. However, because the structure could be converted into more than two dwelling units or a higher intensity of use for which more parking would be required, the Commission approved the project with a special condition that required the applicant to record a deed restriction specifically requiring that any conversion to another use which would require additional parking would require further review and approval by the Commission.

In the subject proposal, the applicant has proposed a project that meets the parking requirements, consistent with the Mission Beach PDO. Specifically, the 2,124 sq.ft. of commercial office use would require a total of 4.2 spaces and the two residential units would require a total of four spaces resulting in  $4.2 + 4 = 8.2$  spaces required (which is rounded down to 8.0 spaces). Specifically, four spaces are provided in a garage that has two sets of tandem spaces, two additional spaces are provided in a carport and two tandem spaces are provided adjacent to the parking garage. As there are a total of eight on-site parking spaces being provided, adequate parking will continue to be provided for the mixed-use building, consistent with the PDO and the Coastal Act. However, to assure that this continues to be the case, Special Condition #1 advises the applicant that any change in the density or intensity of use of the structure in the future will require further review and approval by the Coastal Commission. In addition, Special Condition #4 advises the applicant that all conditions of the permit that aren’t explicitly altered by

the amendment shall remain in effect. Special Condition #3 also requires the applicant to record the permit as a deed restriction. Therefore, it can be found that no adverse impacts to public access will occur and adequate on-site parking will continue to be provided on this nearshore site.

4. Public Views/Visual Quality. Section 30251 of the Coastal Act is applicable to the subject project and states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas,...

In addition, Section 103.0526.13 of the Mission Beach PDO, also contains the following requirement:

...Landscaping located within the required yards for Courts and Places shall protect pedestrian view corridors by emphasizing tall trees with canopy areas and ground cover. Landscaping materials shall not encroach or overhang into the Courts and Places rights-of-way below the height of 10 feet above the right-of-way. (p.10)

The certified Mission Beach Precise Plan and Local Coastal Program Addendum contain the following requirements:

Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation. (p.14)

In addition, Section 132.0403 of the City's certified Land Development Code states the following:

[...]

- (a) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[...]

- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

The City's certified implementation plan defines open fencing as "a fence designed to permit public views that has at least 75 percent of its surface area open to light." The proposed development is located between the first coastal road and sea. In the Mission Beach community, the public rights-of-way of the various courts and places, which are generally east/west running streets, comprise the community's public view corridors. In addition, the public boardwalk (Bayside Walk, in this case), which runs north/south along the bay, serve not only as highly popular public accessway, but also serves as a view corridor along the shoreline. The project site fronts on Mission Boulevard at the northeast corner with Tangiers Court and is approximately seven lots west of Mission Bay.

The Commission typically reviews projects to assure that any new proposed development does not encroach into the yard setback areas which could impede public views toward the bay. In this particular case, the building footprint is not changing and the proposed development will observe all required setbacks, therefore public views to the ocean will not be impacted. However, there is the potential for the installation of landscaping in the south side yard area to impede views to the bay. The applicant has submitted a site plan which shows existing on-site landscaping (palm trees and grass) and no new landscaping is proposed in connection with the subject permit application at this time. However, because the installation of new landscaping on the subject site may impact public views to the shoreline, Special Condition #1 puts the applicant on notice that future landscaping will require further review by the Coastal Commission. While the installation of landscaping on a developed site may normally be exempt, due to the potential for new landscaping to impede views to the bay, the condition notifies the applicant that any future on-site landscaping would need to be designed in a manner to preserve views toward the bay, consistent with the policies of the certified LCP enumerated above. The Commission typically permits the planting of two tall trees with thin trunks provided that they are placed close to the structure (within 3-5 ft. of the building and outside of the view corridor) so as not to obstruct views to and along the shoreline. As conditioned, it can be assured that any future landscape improvements proposed in the south side yard area that have the potential to impede public views toward the bay, will require further review and approval by the Commission. In addition, Special Condition #3 requires that the permit amendment be recorded to assure future property owners are aware of the permit amendment conditions.

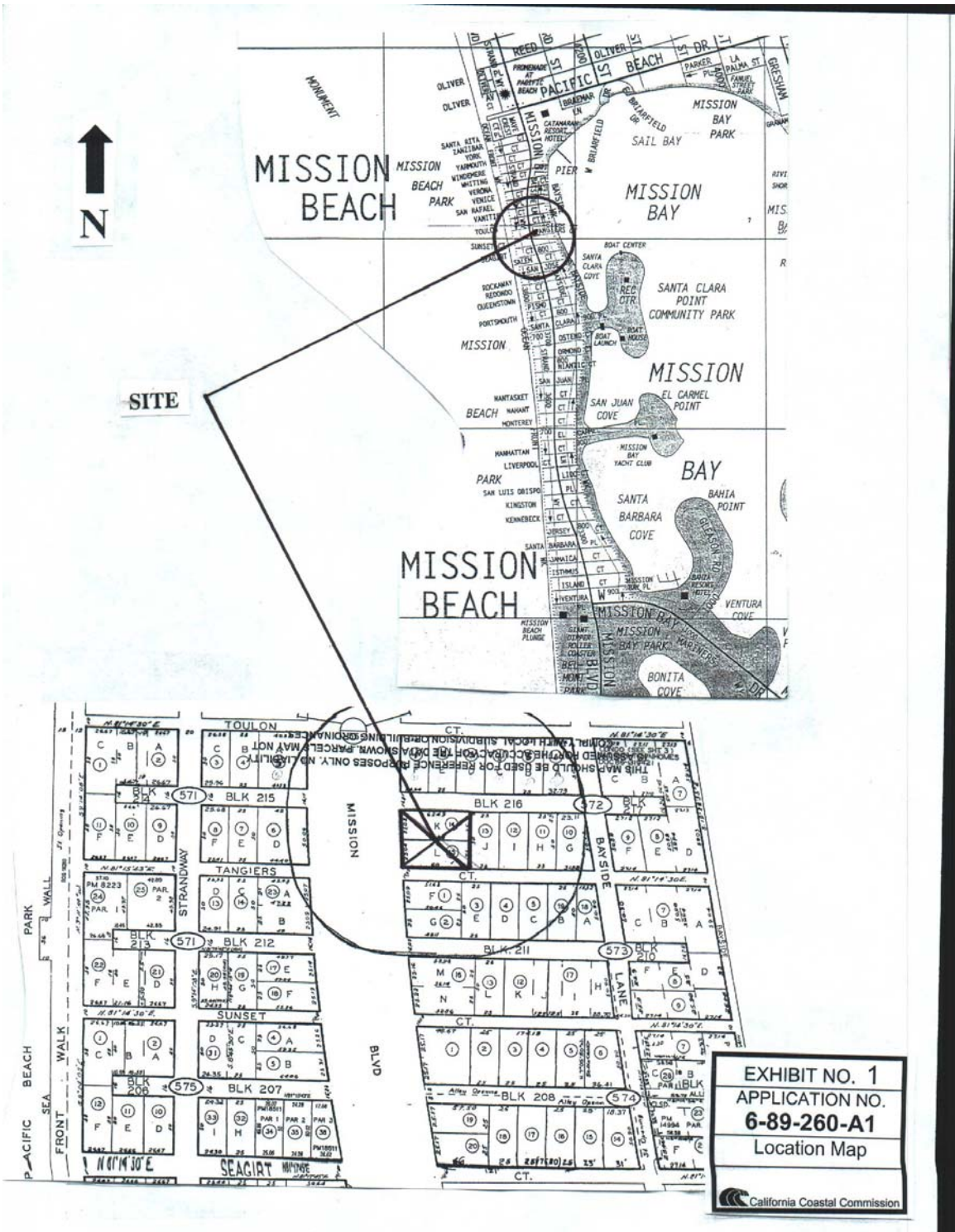
With regard to community character, the existing residences and structures in the area vary widely in architectural style and appearance. The proposed project represents a condominium conversion of an existing mixed-use building. The building will remain a mixed-use structure (commercial/residential) which is compatible with the surrounding mixture of commercial, retail and residential uses in this neighborhood-commercial zoned community. As such, the structure will remain compatible in character with the surrounding mix of retail, commercial and residential uses in this community. In summary, the proposed development, as conditioned, will not result in any public view blockage and is found visually compatible with the character of the surrounding neighborhood, consistent with Section 30251 of the Coastal Act and the certified LCP.

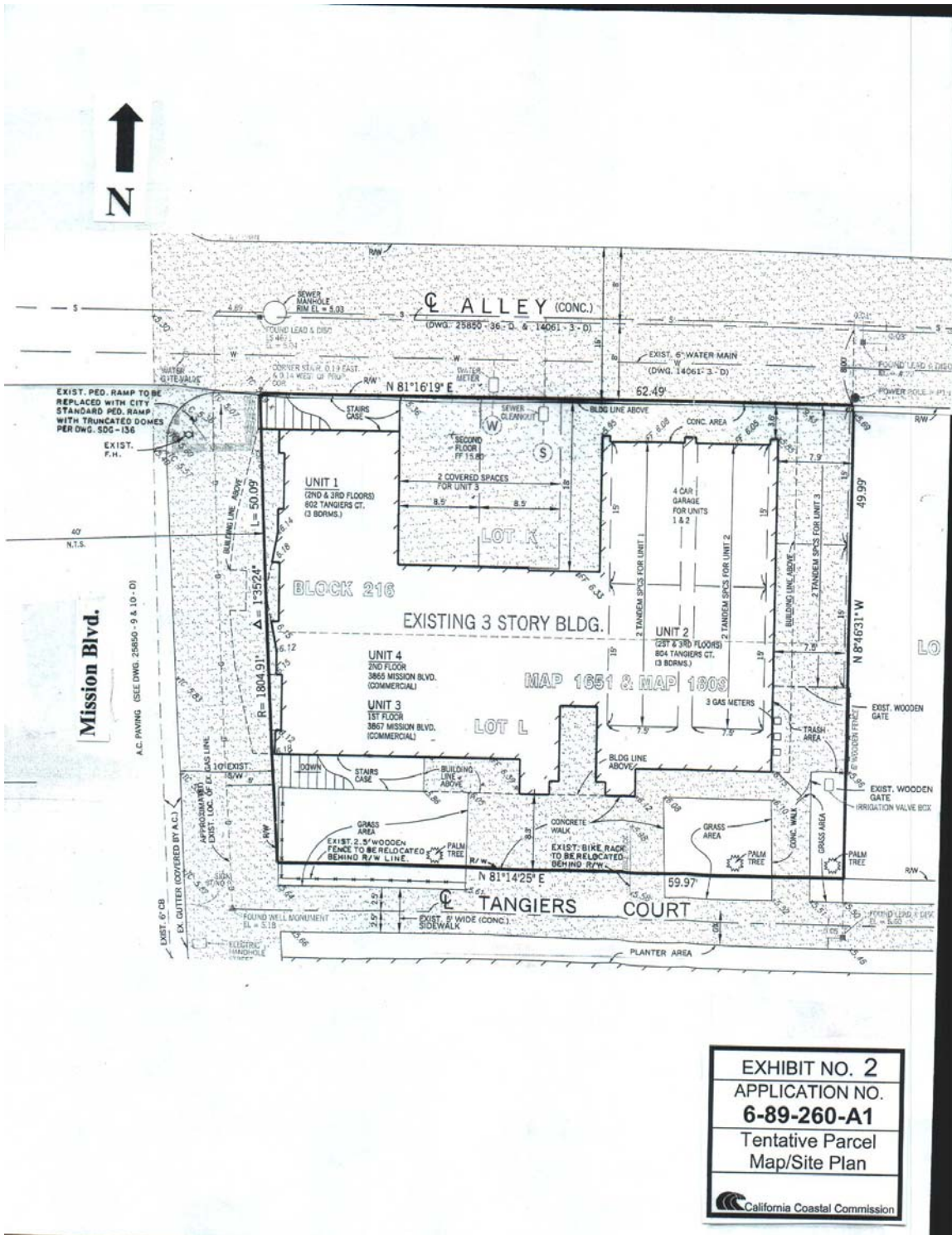


5. Local Coastal Planning. The subject site is located in the Neighborhood Commercial-North Zone (NC-N) Zone of the Mission Beach Planned District. The project site lies partially within the Commission's Appeal jurisdiction (City of San Diego's permit jurisdiction) and partially within the Commission's original jurisdiction as noted in the staff report for the original coastal development permit. However, because the original coastal development permit was approved by the Commission and contained a special condition (deed restriction) which required further review and approval from the Commission if any changes were made to the approved uses in the building (future additions or conversions), it remains subject to the Commission's permit jurisdiction. The subject permit will result in the conversion of a mixed-use (commercial/residential) building to condominium ownership. The project is consistent with the certified Mission Beach Precise Plan and all other applicable section of the LCP as well as the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as amended, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

6. 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 proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act and the certified LCP. Mitigation measures, including conditions addressing protection of public views to the bay and a use restriction such that any future changes to the intensity of use on the site require further Commission review to assure that adequate parking continues to be provided, 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.







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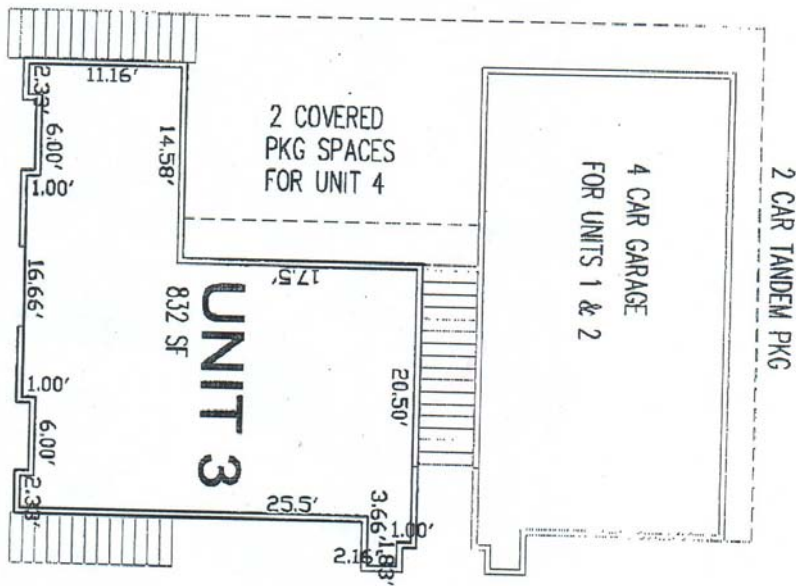
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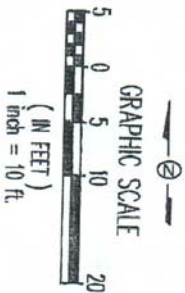
Unit area totals  
are calculated  
from exterior  
unit boundary &  
represent gross  
total not net  
interior  
condominium  
airspace.

LOVE SHACK  
CONDOMINIUM PLAN

SHEET 3 OF 6 SHEETS



FIRST FLOOR PLAN



|                    |
|--------------------|
| EXHIBIT NO. 3      |
| APPLICATION NO.    |
| <b>6-89-260-A1</b> |
| Floor Plans        |

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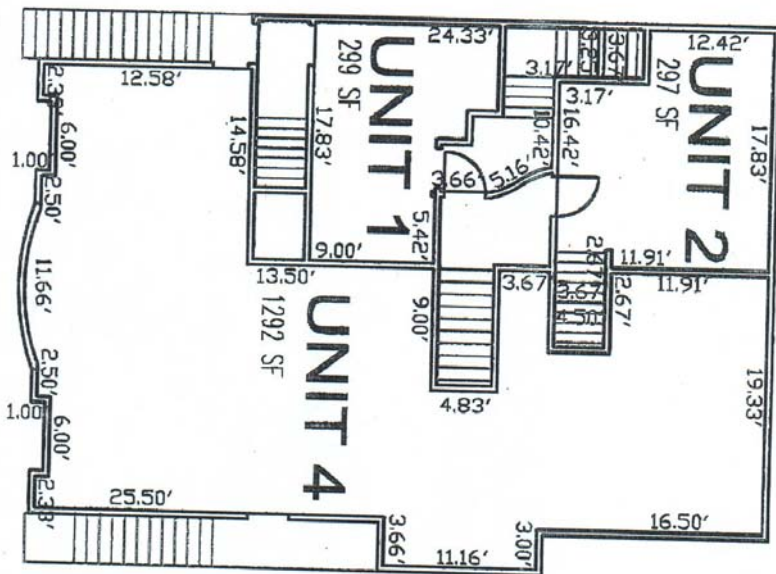
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Unit area totals  
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from exterior  
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LOVE SHACK  
CONDOMINIUM PLAN

SHEET 4 OF 6 SHEETS



SECOND FLOOR PLAN



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Unit area totals  
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