



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: April 16, 2013

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Request From Councilmember Francisco And Councilmember Rowse Regarding Alternatives To Narrowing Lower State Street

RECOMMENDATION:

That Council consider the request from Councilmember Francisco and Councilmember Rowse regarding alternatives to the narrowing of Lower State Street.

DISCUSSION:

Attached is a memorandum from Councilmember Francisco and Councilmember Rowse requesting that Council receive community and staff input on the advisability of narrowing Lower State Street. Also attached is a memorandum from Community Development which outlines the history of the La Entrada project and the various design considerations. The City Attorney will also be submitting a separate memorandum to Council outlining key legal issues related to the street improvements that are part of the La Entrada project.

ATTACHMENTS:

1. Memorandum from Councilmember Francisco and Councilmember Rowse
2. Memorandum from Community Development dated April 9, 2013, regarding Entrada Project and Narrowing Lower State Street

PREPARED BY: Jennifer Jennings, Administrator's Office Supervisor

SUBMITTED BY: Jim Armstrong, City Administrator

APPROVED BY: City Administrator's Office



City of Santa Barbara
Mayor and Council Office

Memorandum

DATE: March 26, 2013

TO: James L. Armstrong, City Administrator

FROM: Dale Francisco, Council Member 
Randy Rowse, Council Member

SUBJECT: Alternatives to Narrowing Lower State Street

- Summary of Information to be Presented to the City Council

Twelve years ago the City Council approved a plan to narrow State Street from four lanes to two lanes between the railroad tracks and Cabrillo Boulevard. This was part of the Entrada project.

Now a very different Entrada project is going forward. Commercial and retail activity is exploding in the adjoining Funk Zone. The area has changed enormously from what it was twelve years ago, and there is concern in the community that the proposed narrowing of State Street may result in traffic gridlock.

We want to bring together all the interested parties, including particularly the environmental community and waterfront area businesses, to discuss whether this idea still makes sense, and if not, what are the possible alternatives. (See attached document for more information.)

- Statement of Specific Action the Council will be asked to take

Listen to community and staff input on the advisability of narrowing State Street, and based on discussion, give direction to staff on how or whether to proceed.

- Statement of the Reasons Why it is Appropriate and Within the Jurisdiction of the Council to Consider this Subject Matter and to Take the Requested Action

Transportation policy is of vital importance to the social and economic health of the city, and is within the purview of City Council.

Entrada and the Narrowing of State Street

The long-anticipated, long dormant “La Entrada” project now finally seems to be becoming a reality. In the twelve years that have passed between the original conception and the latest iteration, much has changed about the project and its surroundings. The City Council that originally approved this project viewed a vastly different use (fractional unit ownership vs. the now proposed luxury hotel), adjoined on one side by a group of low-intensity or “ocean-use related” properties known as the Funk Zone.

The Funk Zone has now for some time been in the midst of a commercial and retail explosion, with no end in sight. New development will bring with it traffic impacts that were not anticipated twelve years ago. Many in the community are concerned that the old plan to narrow State Street between the railroad tracks and Cabrillo Boulevard from four lanes to two now has the potential to create significant traffic congestion and a major bottleneck, particularly during weekends in the peak tourist season.

Some have argued that this narrowing simply continues the changes that were made many years ago to the State Street “Plaza” north of Gutierrez without any serious problems. This ignores the glaring fact that State Street north of Gutierrez is supplemented by Chapala Street and Anacapa Street for commercial deliveries and customer parking. No such alternative routes exist below the freeway.

The existing wide boulevard creates an open vista that allows for pedestrian, motorist, and cyclist views of our mountain skyline. Narrowing the roadway, combined with the construction on both sides of new multi-story buildings, will likely result in a constricted urban “canyon” effect.

The city has committed to enhancing public safety by rejecting hardscape constrictions on major arterials. The De la Vina Y and Cliff Drive re-stripings are excellent examples of this. The Tsunami Impact Zone overlays the Entrada development area; the restriction of egress from the coastal zone is antithetical to established efforts and policies.

Lastly the narrowing of this primary gateway to the city creates a physical and psychological barrier to both vehicular and pedestrian transit to our downtown, and would be a further detriment to a commercial zone that already suffers from the impacts of restricted parking, traffic congestion, and street crime.

We believe that the entire community and all the various stakeholders deserve an open forum to discuss whether this major change to State Street still makes sense, and what superior alternatives might exist.



City of Santa Barbara
Community Development

Memorandum

DATE: April 9, 2013

TO: Mayor and Council

FROM: Allison De Busk, Project Planner

SUBJECT: Entrada Project and Narrowing Lower State Street

This memo provides background information that the Staff believes is appropriate for the City Council to have in connection with the request from Council members Francisco and Rowse to agendaize a discussion of the public improvements required as part of the Entrada project approval.

A. Entrada Project Time Line and City Approval History Concerning Project Related Street Improvements

- May 22, 1998 – Project submitted for review.
 - July 1998 – Planning Commission Concept review
 - September 1998 – HLC Concept review
 - December 1998 – Planning Commission Scoping Hearing; at completion of hearing City Planning Commission directs staff to prepare a Mitigated Negative Declaration instead of a EIR focused on public view concerns as had been recommended by City Planning Staff.
 - February 4, 1999 – Planning Commission hearing on Draft Mitigated Negative Declaration (First Revision to Initial Study)
 - March 16, 1999 – Planning Commission/City Council/Redevelopment Agency Joint Workshop on Lower State Street Improvements, as related to Entrada de Santa Barbara project. Council indicated support for the proposed public improvements.
 - March 23, 1999 – City Council public hearing on Lower State Street Improvements, as related to Entrada de Santa Barbara project.
City Council also conceptually approves encroachment permit request for arcade entry feature in public right of way on Mason Street (Site A)
 - March 25, 1999 – Planning Commission public hearing on City discretionary land use permits for the Entrada project
 - April 8, 1999 – Continuation of Planning Commission public hearing on Project
 - April 14, 1999 – Planning Commission/Historic Landmarks Commission First Joint Work Session

- April 22, 1999 – Planning Commission/ Historic Landmarks Commission Second Joint Work Session
- May 27, 1999 – Planning Commission hearing on Draft Mitigated Negative Declaration (Second Revision to Initial Study)
- June 24, 1999 – Continued Planning Commission public hearing on discretionary permits needed for the Project
- July 1, 1999 – Planning Commission approves Entrada MND and the permits necessary for the Project.
- August 10, 1999 – City Council hearing on appeal of Planning Commission approval of Project.
- August 17, 1999 – City Council denied appeal of Planning Commission’s approval
- September 1999 – Appeal filed with California Coastal Commission. Issues included protection of public views, traffic and congestion, and loss of lower cost visitor serving uses. Coastal Commission staff recommends Project approval with special CCC conditions of approval to address loss of lower cost visitor serving uses, maintenance of parking facilities and restrictions on changes of use.
 - November 4, 1999 – Coastal Commission hearing on determination of Substantial Issue relative to appeal of City approval of project by Environmental Defense Center and “Cars R Basic.”
 - January 13, 2000 – Coastal Commission hearing on appeal by Environmental Defense Center and Cars R Basic appeals.
 - April 12, 2000 – Coastal Commission hearing continued after Santa Barbara Superior Court ruling invalidates Entrada MND and orders the preparation of a focused EIR.
- May 30, 2000 – Superior Court final judgment that focused EIR was required for views; previous City land-use approvals vacated.
- Spring 2001 – local group calling itself “Streets R Us” begin circulating a proposed City initiative measure which would adopt a City ordinance banning any changes to the existing design of lower State Street, Cabrillo Boulevard, or Shoreline Drive without the approval of City voters.
- May 8, 2001 – Joint Planning Commission/HLC Workshop on Redesigned Entrada Project
- June 19, 2001 – Elizabeth Donati and “Streets R Us” file Superior Court declaratory relief action against the City seeking a judicial determination that the initiative measure they circulated for signatures in an effort to qualify for the November 2001 City election is a constitutionally appropriate initiative measure.
- July 11, 2001 – Planning Commission certifies EIR focused on public view impacts and approved project.
- August 21, 2001 – City Council denies appeal of Planning Commission’s Project approval through the adoption of comprehensive “Findings” Resolution - Santa Barbara City Council Resolution No. 01-103.
- August 24, 2001 – Santa Barbara Superior Court Judge Anderle determines that the proposed “Streets R Us” initiative measure is preempted by the state Vehicle Code and, thus, constitutionally impermissible. “Streets R Us” & Elizabeth Donati appeal this decision to the Second District Court of Appeal.

- August 2001 – Second Appeal filed with Coastal Commission over the Entrada Project by group called “Streets R Us,” Citizen’s Planning Association, and League of Women Voters of Santa Barbara.
- October 9, 2001 – Coastal Commission conducts “substantial issue” hearing; Commission finds “no substantial issue” with the appeal as recommended by CCC staff. Commission affirms Project Coastal Act approval with special conditions added by Commission as part of the 2000 appeal process.
- December 11, 2001 – Coastal Commission issues a Final Decision stating “no substantial [Coastal Act] issue” with the second Entrada appeal. [The Coastal Commission specifically references that its decision requires the incorporation of the City public street improvement conditions, among other conditions of approval, as CDP permit conditions of approval and expressly provides that any modification or revisions to these Conditions of Approval will constitute a modification of the Entrada CDP and will thus require the issuance of a new Coastal Development Permit.]
- January 2002 - Santa Barbara Superior Court CEQA Litigation filed regarding the City’s environmental review of the Entrada Project; Judgment is ultimately issued in favor of the Applicant and the City that CEQA compliance was appropriate. (No appeal filed of this judgment.)
- April 29, 2003 – Second District Court of Appeal affirms Judge Anderle’s decision that “Streets R Us” Initiative Measure is unconstitutional.
- December 9, 2003 – City Council authorizes the City Administrator to execute and record (in the official records of Santa Barbara County) the City’s standard form “Agreement for Land Development Improvements” concerning the public improvements for State Street and Mason Street.
- December 9, 2003 – City Council adopts City Ordinance No. 5299 approving the City’s standard form of “Agreement for Land Development Improvements” for the Entrada Project which has an Exhibit A consisting of the “C1” engineering plans showing improvements for all State Street and Mason Street Project street and sidewalk changes.
- April 13, 2004 – City Council formally approves the Final Entrada Subdivision Maps and authorizes the City Public Works staff to execute the necessary and standard Development and Subdivision Map Agreements.
- Early December 2005 – All Entrada/City Project Agreements fully executed by Applicant and City staff.
- December 12, 2005 – Entrada “Escrow” Closes and a City Building Permit for Entrada Area C and all Public Street Improvements is issued. All recordable agreements are recorded in the official records of Santa Barbara County, Final Subdivision Maps recorded with County Surveyor’s office and all related agreements signed and delivered. City receives permit and mitigation fees in the amount of \$1.434 million (not including School District fees and County property tax proration paid by Entrada owner) and City Public Works staff receives payment and performance bonds to secure completion of the required State and Mason Public Improvements in the amount of \$5,497,500.
- April 16, 2009 – Revised “Agreement to Construct and Install Land Development Improvements” is executed with MF (Mountain Funding) Santa Barbara – the successor-in-interest to original Entrada Developer/Applicant is executed by City staff and recorded in

official records of Santa Barbara County. Payment and Performance bonds are renewed and accepted by City for public improvements in accordance with new schedule attached to the City's 2009 Substantial Conformance Determination.

- March 2010 – new Substantial Conformance Determination issued by City to MF Santa Barbara which Determination revises schedule for street and sidewalk Public Improvements.
- December 2010 – Amended Substantial Conformance Determination issued to 35 State Street Hotel Partners LLC (Michael Rosenfeld.) Schedule for Public Improvements revised.
- March 4, 2013 - Amended "Agreement to Construct and Install Stage I Land Development Improvements" is executed by City staff and 35 State Street Hotel Partners LLC (the successor-in-interest to MF Santa Barbara) and recorded in official records of Santa Barbara County. Public Works and City Attorney Staff confirms that existing Developer Public Improvement Payment and Performance bonds issued in 2010 remain in place and secure the obligation to build the public improvements in accordance with the anticipated schedule for Phase II and Phase III Public Improvements to be determined by the City's 2013 Substantial Conformance Determination and to coincide with the construction of the Entrada Project. Phase 1 Public Improvements (west side of State and west block of Mason at State) begin in accordance with December 2010 SCD amendment.

B. Entrada Project – Required Public Street and Sidewalk Improvements

The Entrada Project Description, as summarized in the July 11, 2001 Planning Commission staff report, includes the following description of the required Public Improvements:

"At the request of the City and the Redevelopment Agency, the Entrada project proposes an agreement with the Agency for the rehabilitation of three block faces of State Street sidewalk frontage and for extensive streetscape improvements at the intersection of State Street and Mason Street, including along the first blocks of east and west Mason Street. The Entrada Project is proposing a reconfiguration of existing on-street public parking on Mason Street and Helena Avenue, a widening of the State Street sidewalks so that they are at least 15 feet wide from curb to building line, a reduction in the number of vehicle traffic lanes on State Street, and a redesign of the look of the State Street/Mason Street intersection. This reconfiguration of State Street (including the use of new sidewalk paving materials) would be consistent with the City's existing State Street pedestrian "Plaza" as it presently exists in the City's Central Business District along State Street from Gutierrez Street to Victoria Street. All of these streetscape changes would involve design and landscape improvements such as paving the sidewalk with brick pavers, new landscaping, new street trees, new street furniture, and improvements for better disabled accessibility. Similar streetscape improvements are also proposed for Mason Street and Helena Avenue.

Staff supports the Entrada project with or without the proposed State Street narrowing.

A new traffic signal is proposed at the intersection of State Street and Mason Street. In addition, a signalized pedestrian crossing is proposed mid-block on

State Street between the proposed Visitor Information Center and the new public parking lot at 125 State Street.”

This is essentially the same public improvement description which was included with the project in 1999 when it was initially approved by the Planning Commission and City Council. All of the public improvement plans for the improvements described above were issued Public Works permits by the City in December 2005 and those permits remain valid. As indicated in the above timeline, a standard City Agreement for Land Development Improvements was executed and recorded, and improvement security bonds were provided to the City.

As part of the Substantial Conformance Determination that was made in March 2010, the 35 State Street Hotel Partners was required to undertake those public improvements identified above (and outlined in the original project conditions of approval required by the Coastal Commission) within a certain time period. The public improvements were originally divided into 3 phases for construction – somewhat to coincide with the three phase construction of the Entrada Project itself. The first phase was the west side of State Street and W. Mason Street. Updated improvement plans for just this phase were approved by the City in Fall 2012, and construction of the Phase 1 improvements began in March 2013.

C. The Purpose of the Required Public Improvements.

The sidewalk widening/road narrowing was intended to be consistent with the City’s longstanding State Street Plaza design north of Highway 101 to allow for the consistent development of this portion of State Street.

Once the Cross-town Freeway was completed by CALTRANS in the early 1990’s, State Street was no longer a main arterial road to Highway 101. The narrowing of State Street to two lanes below Highway 101 was designed and intended to restore a sense of place to the Waterfront Area. At peak times of use, pedestrians outnumber cars on this portion of State Street. The public improvements focus on increasing the capacity for pedestrians as well as enhancing the pedestrian environment.

These public improvements were found to be consistent with the Local Coastal Plan, Circulation Element and Downtown Waterfront Visioning Report, which encourage pedestrian friendly amenities and decreased dependence on the automobile. As mentioned above, these improvements are now also Project Conditions imposed by the state Coastal Commission in connection with the Coastal Commission’s Fall 2001 decision to find that the appeal of the Entrada Project to the Commission presented “no substantial issue” with respect to its consistency and compliance with the State Coastal Act.

D. Entrada Project Traffic Analysis.

As mentioned throughout the staff reports prepared by Community Development and Public Works Transportation staff for the project review history shown above, congestion at the signal at State Street and Cabrillo Boulevard is the primary limiting factor in the area. Consequently, the proposed narrowing of State Street does not reduce the number of vehicle lanes at the intersection of State Street and Cabrillo

Boulevard or otherwise negatively impact pedestrian access. Currently State Street could deliver more cars to the State/Cabrillo intersection than that intersection can handle (the intersection can accommodate only 600-900 vehicles per hour but the existing two lanes of travel can send 2,800 vehicles per hour to the intersection.)

Even after reducing the number of lanes on State Street at the mid-block points, at peak times State Street will still deliver more cars to the State and Cabrillo intersection (1,400 vehicles per hour) than the intersection can handle due to the existing pedestrian activity. In other words, since the limiting factor is the intersection of State and Cabrillo and the number of pedestrians and vehicles that use that intersection, the Entrada State Street Sidewalk improvements will not increase congestion and congestion levels (at peak times) will continue with or without State Street narrowing. In addition, the Mitigated Negative Declaration prepared for the Entrada project noted that the Level of Service (LOS) of the State Street/Mason Street intersection would be reduced from LOS A to LOS B as a result of the narrowing of State Street. This was identified as a less than significant impact. Therefore, the City concluded that the result of the public improvements would be a betterment to the area in the form of an enhanced pedestrian experience without affecting congestion levels.

CITY OF SANTA BARBARA

INTEROFFICE MEMORANDUM

TO: Mayor and City Council
James L. Armstrong, City Administrator

FROM: Stephen P. Wiley, City Attorney 

DATE: April 11, 2013

SUBJECT: Council Agenda Item for April 16, 2013 Council Meeting – Entrada Project Public Right of Way Improvements.

This memorandum is to provide the City Council with some additional background information regarding the obligation imposed on the owners of the approved Entrada de Santa Barbara Hotel/Commercial Project to construct what have been called the “State Street Plaza” public improvements within the State and Mason Street rights-of-way (hereinafter the “Plaza Improvements” – as depicted in Exhibits A1 – A3 attached hereto.) In particular, this memo is to provide the Council with information regarding the litigation involving the City which occurred concerning the Entrada project and the “Plaza Improvements” in the early 2000s and the status of the current contracts between the Entrada owner and the City for the construction of the Plaza Improvements as part of the approved Entrada project.

As discussed in more detail below, this memo concludes that there would likely be substantial CEQA, state Coastal Act, and City Zoning Ordinance “permitting” and legal implications if the City were to attempt to change or defer the State Street Plaza Improvements from their current status – that of being a contractually obligated condition of approval imposed on the construction of the Entrada project when it was approved by the City Council in August of 2001.

1. The CEQA Review of the Entrada Project, the “Streets R Us” Initiative Litigation, and Coastal Act Appeal over the State Street Plaza Improvements.

A. The Use of an MND for the Entrada Project Environmental Review.

As you know, it is typical for City Public Works staff and City planners to exact new public right-of-way improvements (among other things) from a developer which is developing a larger non-residential project within the City. This is especially true when the necessary exactions are in a context such as this one – a discretionary approval within a state statutory scheme such as the state Subdivision Map Act or the state Coastal Act. Consequently, from the time of its first master land use application to the City in 1998, there has been an explicit expectation on the part of all concerned that the Entrada project, if approved by the City, would be responsible for constructing those public improvements necessitated by the potential impacts caused by the project or for which an apparent policy nexus could be made by the City for an exaction under

the City’s General Plan, including, in particular in this case, our Local Coastal Plan and the City’s Circulation Element.

As a result, with this early and consistent staff recommendation that the Entrada Project be required to construct the Plaza Improvements as part of its development, the Entrada applicant simply incorporated the Plaza Improvements into the Entrada “project description” at a early stage of its conceptual review. This is potentially legally significant now because the Entrada project was initially reviewed and approved for CEQA purposes, in part, through the use of a Mitigated Negative Declaration (an “MND”) which MND included the Plaza Improvements as part of the official CEQA Entrada “ project description.” Thus certain environmental, LCP, Coastal Act and City General Plan/Zoning Ordinance findings were eventually made by the City Council when it approved the Project (on appeal) in August of 2001 and these findings were based on the assumption that the Entrada project fundamentally included the Plaza Improvements. In fact, ultimately, despite two separate rounds of Santa Barbara Superior Court CEQA litigation over the City’s approval of the Entrada project, neither lawsuit resulted in a judicial determination that the City’s environmental and land use findings based on or related to the inclusion of the Plaza Improvements in the Entrada Project were legally inappropriate or somehow factually inadequate.¹

In effect, having used an MND for environmental review in 1999 and in 2001, if the City were to now change the Entrada “Project Description,” it would also be necessary for the City to also re-open the environmental review of the Entrada Project and to publicly determine if the use of an MDN remains consistent with the requirements of CEQA. Further, even if the City Council were to eventually find that an MND was still warranted for a project without the Plaza Improvements (or with some form of modified street improvements), this Council determination could be subjected to a new round of CEQA litigation - when, otherwise, the Entrada Project approvals are now apparently well beyond any risk of a timely new CEQA lawsuit.

B. The “Street R Us” Initiative Measure and Litigation Concerning that Initiative.

The Entrada Project was also the subject of an indirect legal challenge when the City itself was sued over the Plaza Improvements in June of 2001 by an organization calling itself “Streets R Us” and an individual named Elizabeth Donati. The basis for this suit was several fold but primarily had to do with a desire by “Streets R Us” and Ms. Donati to obtain a Superior Court declaration of the validity of a proposed City initiative ordinance measure which would have prevented the City Council from making any alterations to the existing design of lower State Street, Cabrillo Boulevard, or Shoreline Drive in order to re-configure or re-stripe these streets in

¹ To be more precise, neither CEQA lawsuit (both of which were filed by CPA and the League of Women Voters of Santa Barbara) actually or specifically challenged the appropriateness of or need for the State Street Plaza Improvements; However, both lawsuits did allege that the 1999 Entrada MND’s traffic, circulation, and parking analysis was inadequate for CEQA purposes - and the Superior Court Judge deciding these lawsuits disagreed with and ruled against all of these assertions in both instances.

a way which removed parking or traffic lanes without first obtaining the express approval of City voters for such alterations.

More specifically, in the Spring of 2001, the “Streets” group appeared to have obtained more than the required ten percent (10%) City voter signatures needed to place their initiative measure on the City’s November 2001 election ballot. However, out of a concern that their initiative measure might be unconstitutional, in June 2001, Streets R Us retained an attorney and chose to file a lawsuit to obtain a declaratory relief judgment from Superior Court on the constitutionality of their measure. Both the City and “Streets” stipulated to the Superior Court judge hearing the case that an expedited hearing schedule was appropriate in the interest of advising the voters prior to the election and in light of the pressing need for the City Clerk’s office to print the election materials. In the end, the judge ruled, in late August 2001, that the proposed “Streets” initiative measure was unconstitutional because it was preempted by express provisions of both the state Vehicle Code and the state Redevelopment Act. As a result, the judge ordered the proposed “Streets” initiative removed from the City’s election ballot.²

C. The “Streets R Us” Appeal to the State Coastal Commission.

In addition, concurrently with the “Streets” initiative efforts and their initiative litigation, “Streets” was independently challenging the Plaza Improvements by appealing the Coastal Development Permits issued by the City for Entrada to the state Coastal Commission. And, unlike the concurrent Coastal Commission appeal filed by CPA/League of Women Voters, the basis of the “Streets” Coastal Act appeal was their belief that the Plaza Improvements were a bad idea which would have negative traffic and vehicle circulation impacts and, thus, would adversely impact public access to the Coastal Zone contrary to the state Coastal Act.

Consequently, the ultimate resolution of the “Streets” state Coastal Act appeal before the Coastal Commission also appears to be very relevant to the question of whether the City can now unilaterally insist on revising or deferring the Plaza Improvements. In other words, in the end, when, in December 2001, the Coastal Commission denied the “Streets” appeal, the Commission’s response to the concerns raised by “Streets” was to insist on making the construction of the Plaza Improvements an express condition of their denial of the “Streets” appeal; thus, a necessary pre-condition of the Coastal Commission’s implied approval of the City CDPs required for both the Entrada Project and the Plaza Improvements is the affirmative obligation to construct the Plaza Improvements as part of the Entrada project. This Commission action was likely a function of the fact that, at the appeal hearing, the City staff argued for the denial of the “Streets” appeal by pointing out that the Plaza Improvements were directly related to the City’s approved LCP and Circulation Element policies – policies designed to promote greater public access to the Coastal Zone (especially pedestrian access from the CBD portion of

² This judgment was then appealed to the Second District Court of Appeal in Ventura which decided, in April 2003, that the Superior Court decision finding the “Streets” initiative measure unconstitutional was correct.

State Street) as required by the Coastal Act – an argument which was also strongly supported by the Commission staff in their written appeal recommendations to their Commission.

As a result, if the City were to now attempt to revise the Plaza Improvement plans (or to somehow disconnect it from the construction of the Entrada Project), the Entrada owner would likely need to file a revised CDP application with the City and, essentially, start over on the Coastal Act permitting for the Entrada Project. Such an application would, of course, also independently trigger a CEQA requirement for a proper environmental review of the revised CDP before it could be approved and issued by the City. (I.e., this would be in addition to the MND CEQA issue discussed above concerning new revisions to the original “project description” of that MND.)

2. The Contractual Basis for City’s Inability to Unilaterally Cancel the Plaza Improvements.

It is also clear that the City could not now, as a matter of basic contract law, unilaterally act to revise the Plaza Improvement Plans or unilaterally act to defer those improvements in order to disconnect them from the construction of the Entrada Project.

Initially, such a deferral or a revision might have been possible for a brief period of time shortly after the City Council approved the Entrada project on appeal in August of 2001. This is because both City staff and the Entrada representatives recognized that, with the uncertainty surrounding the “Streets” initiative and the possibility that the Plaza Improvements might need to be submitted to the voters for their approval (as well as the pendency of the “Streets” appeal to the Coastal Commission), it was necessary, at least at first, to not make the Entrada project directly responsible for the construction of the Plaza Improvements. In other words, if the Entrada project had been expressly required to construct the Plaza Improvements and if the “Streets” initiative was determined to be constitutional, the Entrada Project would have been inextricably linked to the Plaza Improvements and Entrada could not have moved forward unless and until the City voters voted to approve the Plaza Improvements. Such a linkage did not seem fair or appropriate or necessary to either City staff or the Entrada representatives.

As a result, the Entrada Plaza Improvements condition of approval (as submitted to and approved by the Council in August 2001) was written in the alternative; that is, it was drafted in such a way that, while the Entrada Project would always be required to pay for the Plaza Improvements, actual construction of the Plaza Improvements themselves were initially the responsibility of the City Public Works Department – unless and until the City Council adopted a City ordinance providing otherwise. This approach allowed each aspect of the Entrada project to move forward independently and did not necessarily hold the Entrada project hostage to the Plaza Improvements – while at the same time assuring that, if the City ultimately had the clear legal authority to accomplish the Plaza Improvements, it could opt to re-impose this as an affirmative obligation on the Entrada project developer through a City Council decision to adopt a City ordinance making that change.

So, when the “Streets” initiative litigation was finally resolved against the constitutionality of the proposed initiative and with the Coastal Commission’s December 2001 decision to directly link the Entrada Project Coastal Act approvals with the construction of the Plaza Improvements (and upon the recommendation of City staff), the City Council decided to adopt an ordinance making the Plaza Improvements a construction obligation to be accomplished by the Entrada developer in conjunction with the construction of the private property aspects of the project.

This ordinance was adopted on December 9, 2003 as City Ordinance No. 5299; it expressly authorized the City Administrator to execute and record a standard Public Works form of “Agreement for Land Development (Public) Improvements” with the Entrada developer which agreement references a comprehensive series of “civil” engineer drawings describing the Plaza Improvements in detail and almost exactly as they remain designed today. This “Land Development” agreement also required the Entrada developer to construct all of these “public improvements” in phases, as they had requested, as part of the phased construction of the Entrada project. This agreement was duly executed and recorded in County records in December of 2005 at the time the City issued a building permit for Entrada Area C. And, while it has been amended in recent years to reflect the new Entrada property owners and to provide for a revised schedule of construction and, more recently, to provide for a March 2013 start of construction of the Phase I Plaza Improvements (and to defer the later phases until the 2014 construction of the actual Entrada project), it remains a binding bi-lateral contractual obligation of the City. This Agreement also provides for security in the form of payment and performance bonds in the amount of \$5,497,500 in favor of the City in order to assure that the full and proper completion of the public improvements will occur to the satisfaction of the City Engineer.

In short, the City entered into a binding enforceable contract for the construction of the Plaza Improvements more than seven years ago and it does not now have the legal ability to unilaterally amend or cancel that contract.

3. The Possible Land Use Permitting Implications of Cancelling or Amending the Plaza Improvements in connection with the Pending Request for a Substantial Conformance Determination.

It may be that some members of the public see the recent request by the Entrada owner for a Substantial Conformance Determination (hereinafter a “SCD”) as a potentially appropriate opportunity for the City to substantively change the Entrada conditions of approval, in particular to alter the obligation to construct the Plaza Improvements. However, this is not the case.

The planning basis for Santa Barbara having a City SCD process is to allow the flexibility necessary for a project applicant (actually, more often than not, the project’s architect or engineers) the flexibility to respond to those project design changes which they may belatedly realize are necessary as a project progresses from its early conceptual stages to its final “building permit” stage, i.e., as a project makes its way through the City design review and “plan check”

process. At the same time (and generally concurrent with City design and plan check process), the ability to obtain an SCD seems to be an appropriate venue for a project applicant who wishes to respond to current market conditions or who belatedly discovers a need to address newly apparent engineering feasibility or cost concerns.

Thus, typically, a project's "evolution" through our rigorous review processes results in the realization that there is a need to revise a project's "footprint" or its site plan or to alter its mix of commercial/retail/hotel space – yet with a desire and need to do so only within the parameters of the City's existing CEQA environmental review and the land use approvals previously issued by the City. Further, the City has found that our SCD review and approval process is especially helpful and, at times, very much needed by larger and more complicated development projects, particularly for those projects which have been delayed from construction by economic conditions, financing difficulties, land use litigation, or a combination of all three.

Yet, by its nature, an SCD request cannot and should not qualify for an approved SCD unless the land use concerns and potential environmental impacts and mitigation measures identified in City's original discretionary land use/environmental review process either remain the same or actually improve with the requested SCD changes. That is, an SCD should never result in the City's approval of substantive land use changes to an approved project, particularly if those changes might raise new or increased adverse environmental concerns or will possibly engender new City land use policy inconsistencies. So, in the past when the City has made SCD approval determinations, this parameter has always been observed – the approved SCD may not be used to validate a substantive change in a project. In fact, as it has been used previously, the SCD approval process has generally resulted only in project design and site plan revisions which have improved the land use and market functionality of a project or which have resulted in those changes which further minimize potential adverse environmental concerns. This is in fact how the City has approached all of the prior SCD requests made by the Entrada developer and is currently approaching the pending SCD request.

Consequently, because an SCD cannot be used to validate the substantive changes in an approved project and because City staff would invariably view project conditions of approval as substantive elements of a project, it has taken the position that changes to the required conditions of approval for a project cannot be any part of an SCD request. In this instance, knowing that the original certified MND for the Entrada project was based on a project description which included the Plaza Improvements as an integral part of the Project and knowing that the developer's obligation to construct the Plaza Improvement is now part of a binding contractual obligation for which a separate City CDP has been issued, to now revise the design of the Plaza Improvements or to defer their construction indefinitely and independent of the Entrada project would, in staff's opinion, be an inappropriate use of the City's SCD process.

In effect, if there were to be a City Council consensus to now amend the Entrada project to revise its "project description" or to amend the Plaza Improvement condition of approval, it would be appropriate and possible to do so under CEQA, the state Coastal Act, and the City General Plan

Mayor and City Council
April 11, 2013
Council Meeting Agenda Item – April 16, 2013
Entrada Project and the State Street Plaza Improvements

and Zoning Ordinance only within the context of a revised City master application for the Project. Such a revised application would itself need to undergo a new round of CEQA environmental and City land use review by the City staff and the Planning Commission – all, of course, within the context of the mandated public hearings for the possible issuance of a revised project approval by the City.

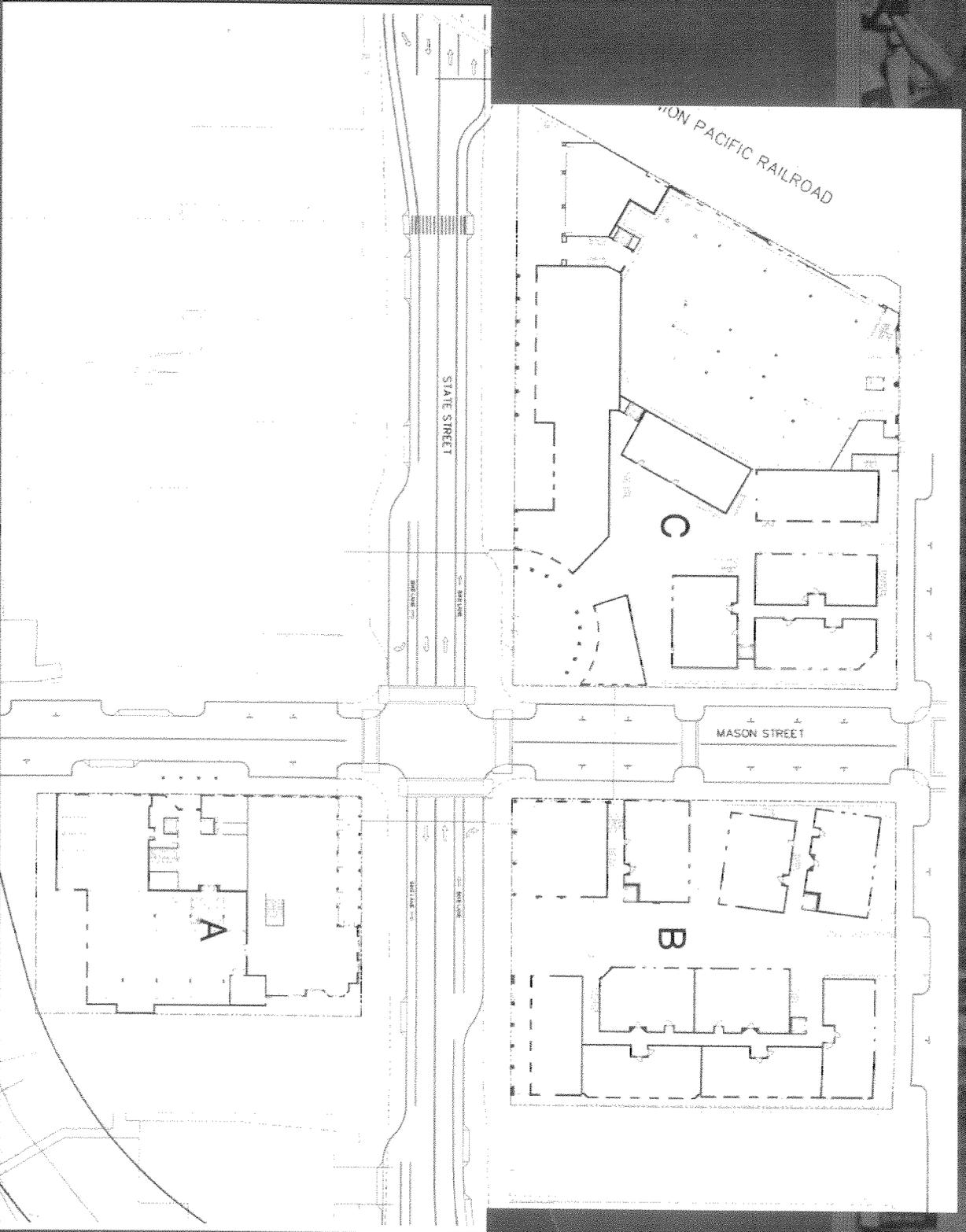
However, to our knowledge, there is nothing in all of this whereby the City can now mandate that the Entrada developer file such a revised application or under which the City could unilaterally cancel the Entrada developer's contractual obligation to construct the Plaza Improvements within the context of the existing City land use approvals as those approvals have been revised by the most recently approved SCD or, potentially, as it may be revised by the currently pending SCD request.

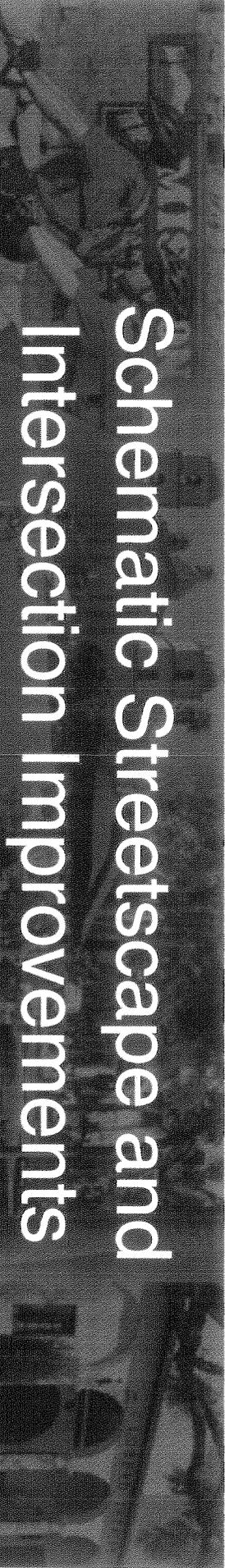
Please feel free to contact the City Attorney's office should you have any questions about this memorandum or if you need any further information on the Entrada project or the history of the City's review of the Plaza Improvements vis-à-vis the Entrada project.

Attachment: "Plaza Improvement" Power Point Slides from August 2001 A1-A3

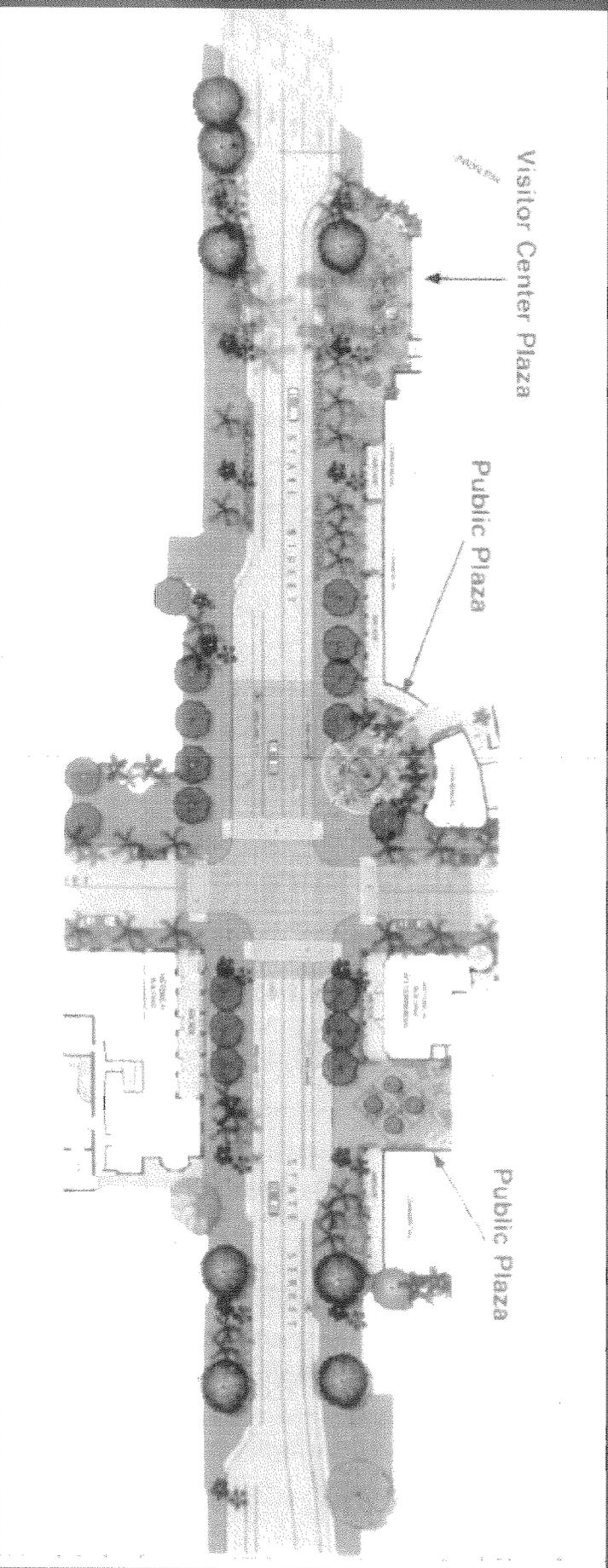
cc: Bettie Weiss, City Planner
Allison DeBusk, Project Planner
Rob Dayton, Principle Transportation Planner

2001 Approved Entrada Plan

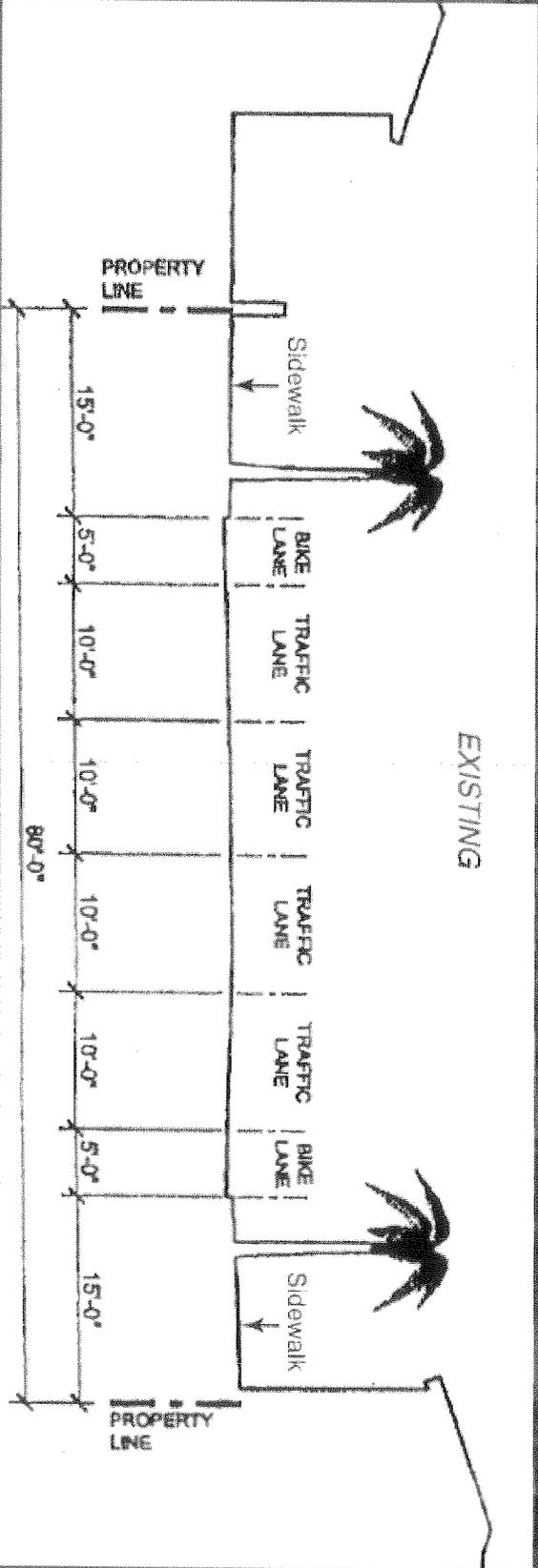




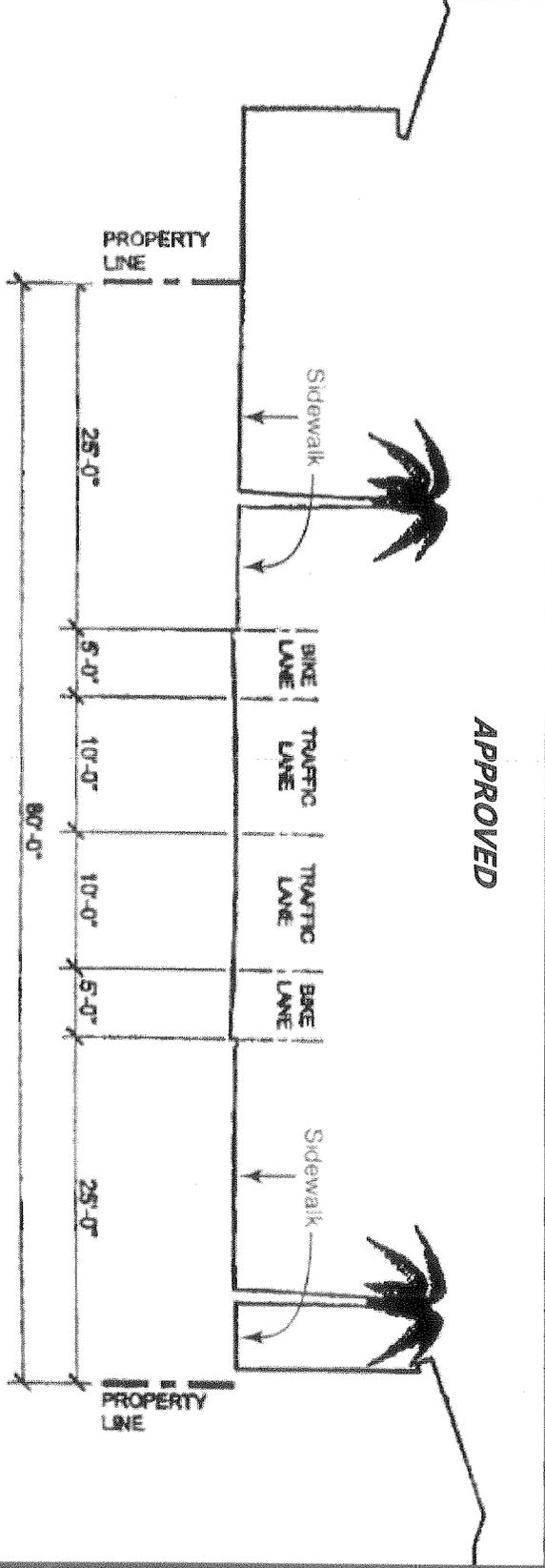
Schematic Streetscape and Intersection Improvements



State St. 00 Block Cross-Section



APPROVED





Public Improvements Associated with Entrada

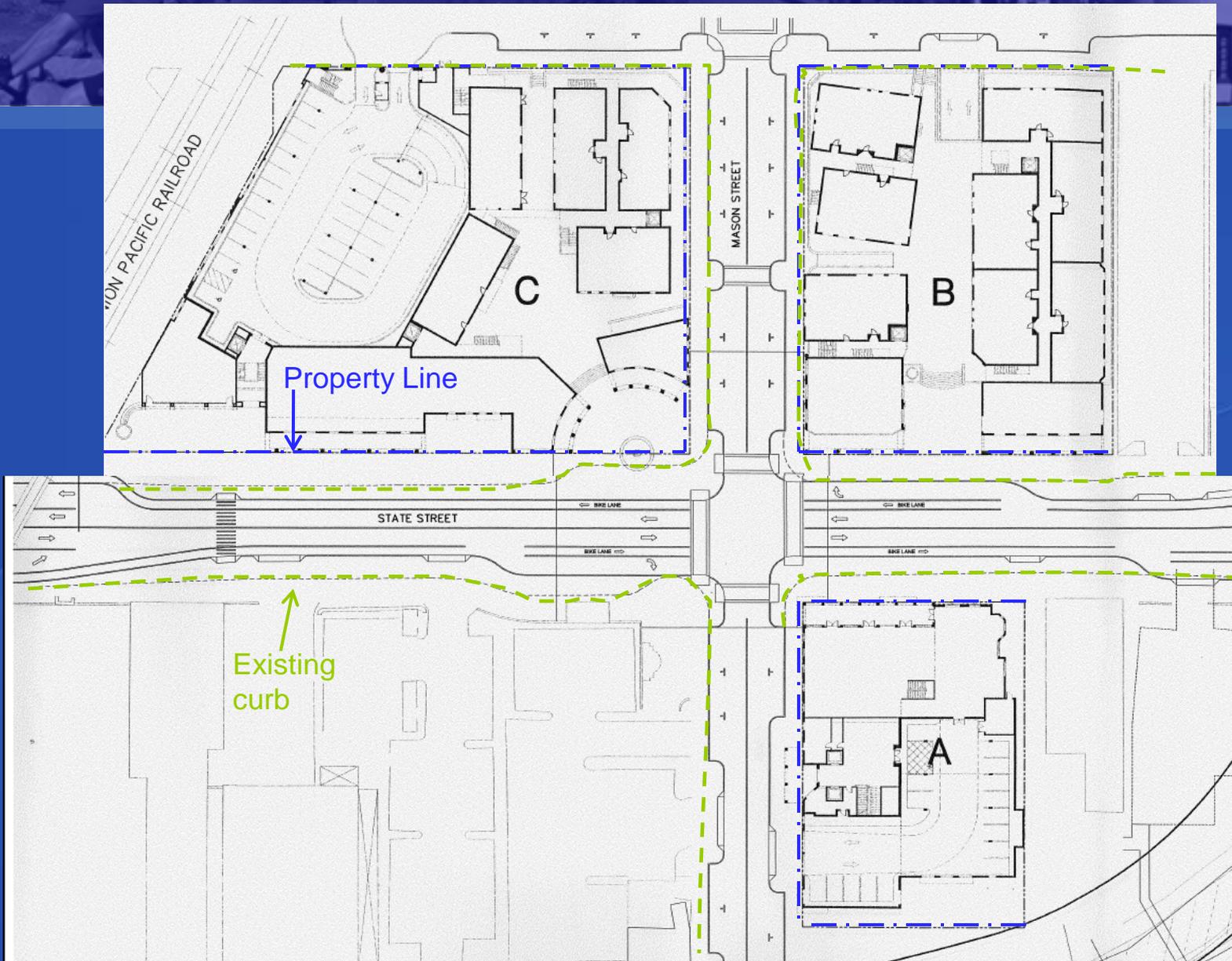


State Street Narrowing and Sidewalk Widening
April 16, 2013

Vicinity Map



2001 Approved Entrada Plan





Project Review History

- ◆ May 22, 1998 – Entrada Project submitted for review.
- ◆ March 16, 1999 – PC/ City Council/ RDA Joint Workshop on Lower State St. Improvements related to Entrada. Council indicated support for the proposed public improvements.
- ◆ March 23, 1999 – City Council public hearing on Lower State St. Improvements related to Entrada.

Project Approval History

- ◆ July 1999 – PC Approves Entrada Project and Adopts MND.
- ◆ August 1999 – City Council hearings on appeal of PC approval of Project; Council denies appeal.
- ◆ September 1999 – Appeal filed with CA Coastal Commission. Issues included protection of public views, traffic and congestion, and loss of lower cost visitor serving uses.
- ◆ May 30, 2000 – Superior Court final judgment that focused EIR was required for views, all other issues adequately addressed in MND; previous City land-use approvals vacated.



Project Approval History

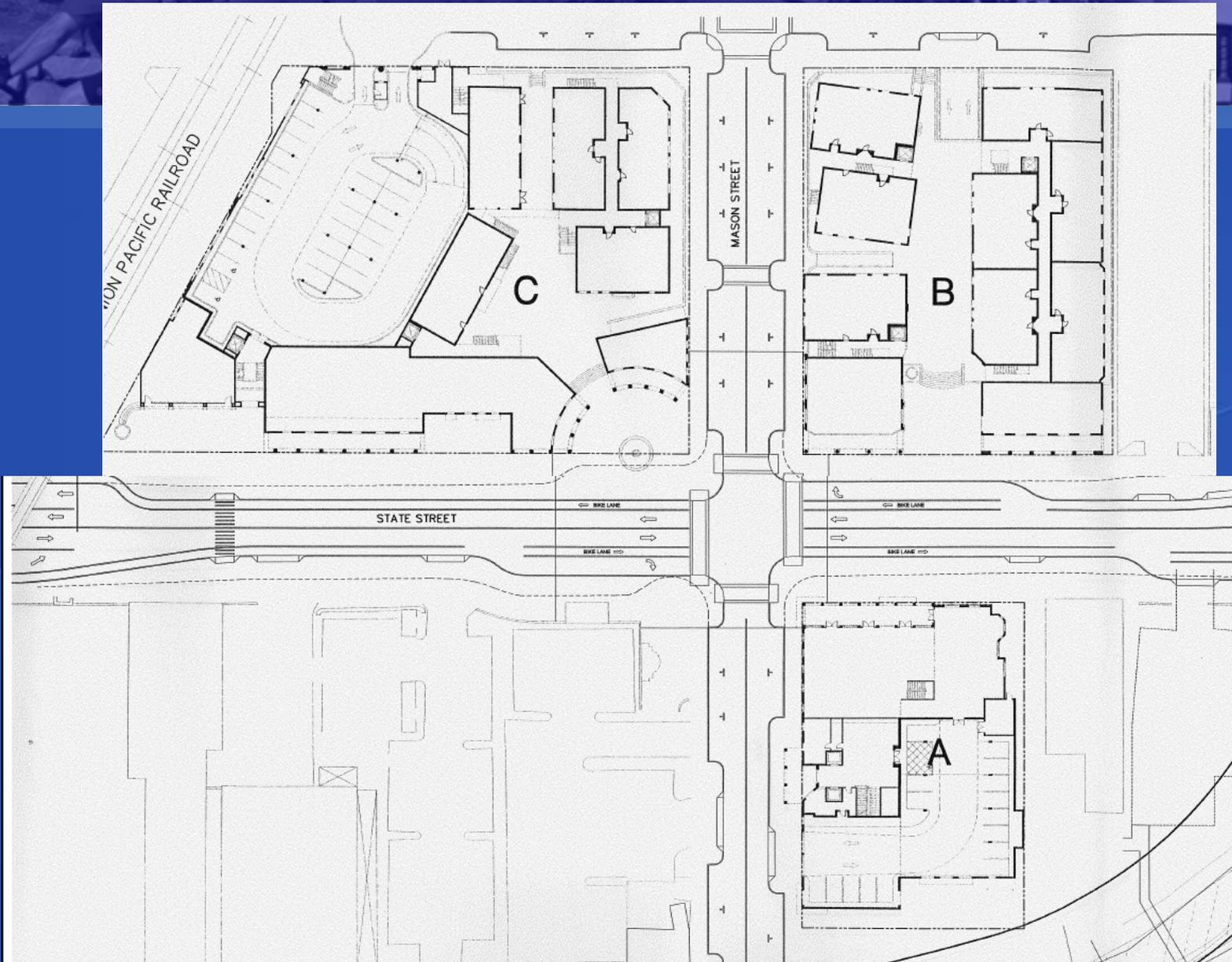
- ◆ July 2001 – PC Approves Entrada Project and certifies EIR for views.
- ◆ August 2001 – City Council denies appeal of PC's approval.
- ◆ October 9, 2001 – CA Coastal Commission (CCC) conducts “substantial issue” hearing; finds “no substantial issue” with the appeal.
- ◆ December 11, 2001 – CCC issues a Final Decision stating “no substantial [Coastal Act] issue” with the second Entrada appeal.



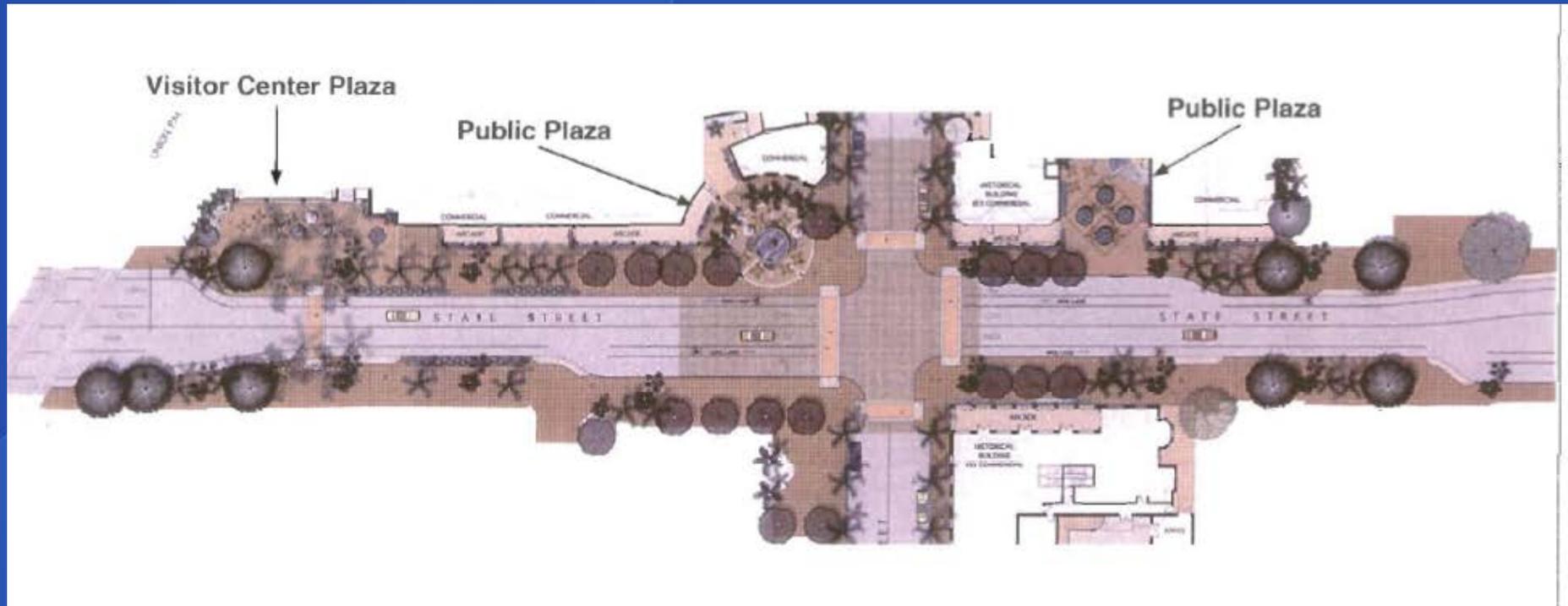
Post-Approval History

- ◆ December 9, 2003 – City Council adopts Ordinance No. 5299 approving the City’s standard form of “Agreement for Land Development Improvements” for the Entrada Project which has an Exhibit A consisting of the “C1” plans showing the Plaza Improvements.
- ◆ December 12, 2005 – Public Improvement Plans issued and Building Permit issued for Area C.
- ◆ March 2013 – Construction of Phase 1 public improvements began

2001 Approved Entrada Plan



Schematic Streetscape and Intersection Improvements



State St. 00 Block Cross-Section

