

CALIFORNIA COASTAL COMMISSION

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**Item W 20e**

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Staff Report:	February 26, 2004
Hearing Date:	March 17-19, 2004
Commission Action:	

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-04-042**RECORD PACKET COPY****APPLICANT:** HEG Enterprises, Inc.**AGENT:** Robert Novello**PROJECT LOCATIONS:** Landward of the San Clemente Municipal Pier, 611 Avenida Victoria, San Clemente, Orange County**PROJECT DESCRIPTION:** Improvements to existing concession stand, including seating area expansion, enclosure of patios with windscreens, replacement of asphalt with interlocking pavers, and addition of evening operating hours for exclusive restaurant use.**LOCAL APPROVALS RECEIVED:** Approval-in-Concept from the San Clemente Planning Department dated January 22, 2004 and approval of Conditional Use Permit 03-005/Minor Cultural Heritage Permit 03-065 by Planning Commission dated January 7, 2004.**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan, City of San Clemente Pier Bowl Specific Plan, Parking Availability Review Conducted for The Crab Pot Restaurant and Beach Eatery prepared by IBI Group dated October 8, 2003 and CDP 5-97-086.**SUMMARY OF STAFF RECOMMENDATION:**

The lessee of an existing concession stand proposes to expand and enclose the seating area and to extend the hours of operation to accommodate a new restaurant use during the evening. The proposed project is located in the railroad right-of-way on property leased by the City from the railroad, between the first public road and the sea immediately landward of the San Clemente Municipal Pier. The major issues addressed in the staff report involve public access, parking and water quality.

Staff recommends the Commission **APPROVE** the proposed development with seven (7) special conditions which require 1) operational requirements to ensure adequate parking and maximum public access; 2) future improvements return to the Commission for review; 3) submittal of revised plans showing removal of permanent features seaward of building; 4) timing of construction to be outside of peak beach use season; 5) conformance with drainage plan submitted; 6) use of construction best management practices (BMPs); and 7) the debris disposal site to be located outside the coastal zone.

LIST OF EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Photos
4. Project Plans
5. Limits of Allowable Temporary and Permanent Features

STAFF RECOMMENDATION:

The staff recommends that the Commission **APPROVE** the permit with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-04-042 pursuant to the staff recommendation.

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. 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 this permit is reported to the Commission. 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.

III. SPECIAL CONDITIONS

1. Operational Requirements

The permittee shall comply with the following operational requirements:

- (a) The daytime concession stand and evening restaurant operations shall not encroach upon public accessways and/or public gathering areas at any time; and
- (b) The concession stand shall remain open to the public until 4:00 p.m. and shall provide solely walk-up, window service during that period; and
- (c) No table service shall be provided during concession stand hours identified above; and
- (d) A restaurant providing table service may operate between 5:00 p.m and 11:00 p.m., with set-up between 4:00 p.m and 5:00 pm.; and
- (e) No windscreens or any other form of barrier shall be erected on the seaward side of the concession stand during concession stand hours identified above; and
- (f) Concession stand/restaurant seating shall not exceed 76 seats.

2. Future Improvements

This permit is only for the development described in Coastal Development Permit No. 5-04-042. Pursuant to Title 14, California Code of Regulations, Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code, Section 30610(b) shall not apply. Accordingly, any future improvements to the development authorized by this permit that would result in an increase in square footage or any other change in the intensity of use of the property including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources Code, Section 30610(d) and Title 14, California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to Permit No. 5-04-042 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

3. Submittal of Revised Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised project plans which reflect the following:
1. No permanent features, including but not limited to, fixed tables, chairs, cueing controls, planters and heat lamps, shall be installed within the seating areas or seaward of the existing concession building, as generally depicted in Exhibit 5 of this staff report.
 2. Permanent windscreens may be erected along the eastern (rear), northern (upcoast) and southern (downcoast) perimeter of the subject site, but shall not extend west (seaward) of the footprint of the existing concession building, as generally depicted in Exhibit 5 of this staff report.

3. Temporary features, including but not limited to, removable windscreens, tables, chairs, cueing controls, planters and heat lamps, may be installed within the seating areas, but shall not extend beyond the seaward extent of the northern (upcoast) retaining wall, as generally depicted in Exhibit 5 of this staff report.
4. Temporary windscreens may be erected on the seaward side of the concession stand after 4:00 p.m.
5. Signage shall be placed at the subject site welcoming the general public to utilize the seating areas during the concession stand operating hours (i.e. use of the seating is not limited to concession stand patrons).

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

4. Timing of Construction and Public Access

By acceptance of this permit, the applicant agrees to minimize adverse impacts to public use of the adjacent beach areas resulting from construction activities as required below.

- a) No construction shall occur during the “peak use” beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.
- b) Pedestrian access between the project site and the Municipal Pier shall not be obstructed during construction.

5. Conformance with Drainage and Run-Off Control Plan

By acceptance of this permit, the applicant agrees to carry out the project in conformance with the plans submitted, which demonstrates that the existing asphalt pavement will be replaced with interlocking pavers on a concrete sub-deck within the seating areas and in front of the existing concession building.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be

implemented include, but are not limited to: stormdrain inlet protection with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting shall be held to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.

- (d) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition No. 7.

7. Location of Debris Disposal Site

The applicant shall dispose of all demolition and construction debris resulting from the proposed projects at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Location, Description and Background

Project Location

The proposed project is located immediately landward of the base of the San Clemente Municipal Pier in the City of San Clemente, Orange County (Exhibits 1 & 2). An approximately 20' wide asphalt access road separates the subject site from the Pier. The Pier and the sandy beach are located seaward of the subject site, beyond the asphalt access road. Public access to the shoreline is available via both an at-grade paved railroad crossing and a below-grade underpass at the base of the Pier.

The project site is located within a railroad right-of-way leased to the City. The City subleases the property to the applicant, HEG Enterprises. The site is currently developed with an approximately 800 square foot concession building constructed in 1952. The concession building is surrounded by a sparsely vegetated area to the north, an outdoor storage area to the east, and a paved asphalt area used for temporary seating to the south. Public restrooms are located beyond the seating area to the south. Photos of the subject site are provided in Exhibit 3.

Project Description

The applicant is proposing improvements to the existing concession stand and surrounding area, including expansion of the seating area, enclosure of patios with wind screens, replacement of asphalt with interlocking pavers, and addition of evening operating hours for exclusive restaurant use. No work is proposed to the existing concession building. Work is proposed along the perimeter of the building, within the applicant's leasehold area. No additional parking is proposed. Plans are provided in Exhibit 4.

The project involves the creation of a new 12' 6" x 30' seating area in an undeveloped portion of the site to the north of the existing concession building. This area will accommodate temporary tables and chairs with seating for 18 people. According to the applicant, seating for 56 is currently provided within an existing 30' by 30' asphalt paved area to the south of the concession building during normal hours of operation. (The temporary tables and chairs are removed after 4:00 pm.) The applicant proposes to provide 76 seats as part of the current proposal—58 seats in the existing seating area to the south of the building and 18 seats to the north of the building. This will result in an increase of 20 seats from current conditions.

Consistent with current operating procedures the concession stand will remain open until 4:00 pm daily. All seats have been, and will continue to be open to the general public, on a first come basis, until that time (i.e. use of the seats is open to concession patrons and the general public alike). However, in a change from current use, the applicant proposes to re-open the concession stand as a restaurant at 5:00 pm. (Conversion to restaurant use will occur between 4:00 pm and 5:00 pm.) The restaurant will be a full service operation with host seating, table service and a full menu with alcoholic beverages. Temporary heat lamps and windscreen enclosures would be installed around the patios during evening hours. The restaurant would employ table service rather than walk-up concession. The seats would be used exclusively by restaurant patrons at night (5:00 pm—11:00 pm).

The applicant proposes to construct new 4'0"—6'0" high wood framed sand blasted tempered glass windscreen enclosures around the seating areas and along the rear perimeter of the building. The original proposal included permanent windscreens around the entire concession building and patio area. However, to address staff concerns, the applicant modified the project description to include permanent windscreens only in the rear and along the sides of the site. No permanent windscreen is now proposed in front (on the seaward side) of the concession building or patio. Only a new pole and rope cueing area is proposed in front of the building to ensure that daytime patrons do not encroach into the access road. A 3' wide planter is proposed along the southernmost perimeter of the leasehold area to screen the adjacent public restrooms and trash enclosure. No permanent development will encroach seaward of the existing building footprint. The only development to occur beyond the building footprint will be surface replacement. The applicant proposes to install interlocking pavers on a concrete sub-deck within the seating areas and in front of the existing concession building. The sub-deck will have drains that allow water to percolate into the soil. This change will serve as a water quality improvement as the existing seating area is currently paved with asphalt, which does not allow percolation.

Prior Commission Action

In June 1997, the Commission approved 5-97-086 for a new pier concession area on the San Clemente Pier. The new pier concession area was to include a 740 square foot food service building with no interior seating and 744 square feet of new deck with tables and chairs and 70 seats on the south building and a 360 square foot beach recreation-related rental shop, 360 square foot gift shop and 352 square feet of new deck with tables and 30 seats on the north building. Seven new pilings would be required for the south building development. As part of the project description, the City stated, "*the existing 800 square foot concession building landward of the pier in the railroad right-of-way will be vacated by the City (the current lessee).*" In the staff report, the concession building was said to have "*six (6) picnic tables with seating for approximately 18.*" Conditions of approval required the provision of 27 parking spaces and restricted the new food concession building to take-out food service only. The 27 spaces were deemed necessary to serve the new gift shop and a new daytime food service use. The permit was never activated. The

concession building located landward of the pier (the site of the current proposal) was not abandoned and has continued providing daytime food service during the summer months.

B. COASTAL ACCESS

1. Coastal Act Policies

As defined by Section 30106 of the Coastal Act, "development" means change in the density or intensity of use of land or construction, reconstruction, demolition, or alteration of the size of any structure. The proposed project involves a change in land use from a daytime only concession stand (commonly known as the Crab Pot) to a daytime concession stand and evening restaurant. The square footage of the building will not change. However, the number of outdoor seats will increase and physical improvements will be added to the patio areas. Due to the proposed change in intensity of use, the current renovation project is considered development under the Coastal Act.

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of lower cost visitor and recreational facilities. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast. It states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...(2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads,...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. It states:

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

Section 30221 states,

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

2. Land Use Plan Policies

Chapter 3 (Goals and Policies) of the City of San Clemente Certified Land Use Plan (LUP) contains policies regarding development within the Pier Bowl area and public access to the shoreline. However, until such time as the City's Implementation Plan (IP) is approved and the Local Coastal Program (LCP) has been certified by the Commission, the Chapter 3 policies of the Coastal Act are applied as the standard of review and the LUP will be used as guidance.

Public access in the Pier Bowl is discussed in Chapter 2 (Area Description) as follows:

The Municipal Pier access is in the Pier Bowl, a City Redevelopment Project Area. This access is located at the base of the Municipal Pier adjacent to commercial shops, train and bus stops, a park, the beach and the Marine Safety Headquarters. The beach is very popular for surfing, body boarding, swimming, and sunbathing. The pier offers fishing and scenic walks, as well as a small concession and bait and tackle shop at the end and the Fisherman's restaurant, bar and beach concession stand at the base. The Pier Bowl area is also known for its special community events—such as the Fourth of July fireworks show, the Chowder Cook-Off, and the Ocean Festival. Due to the diversity of attractions in the Pier Bowl, the Municipal Pier access receives the highest use of any access in the City.

Chapter 3, Section F of the LUP discusses special districts within San Clemente, including the Pier Bowl area. The City's LUP describes future plans for the Pier Bowl as follows:

Plan policy provides for the continuation of the Pier Bowl as a recreational activity area. Coastal recreational uses include retail, restaurant, hotel, bed and breakfast, time share, and residential are allowed. Cultural and recreational activities, including the Ocean Festival, are encouraged. Building design in the Pier Bowl is required to preserve public views, encourage pedestrian activity, to be sensitive to the Pier Bowls' topography and to be a Spanish Colonial Revival Architecture style.

Mirroring Section 30252 of the Coastal Act, Section VII(d) of the LUP states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...(2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads,...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

3. Local Parking Requirements

The primary issues of concern to the Commission triggered by development at this location include 1) potential adverse impacts on parking resulting in impaired access to the coast and 2) provision of lower cost visitor-serving development. Since parking is considered the most significant issue raised by the proposed project, this section outlines parking requirements used by the City of San Clemente to evaluate the proposed development.

The City of San Clemente uses a parking standard of one (1) parking space to every four (4) seats for restaurant uses. The concession stand currently provides 56 seats and 20 additional seats are proposed, for a total of 76. Applying the City's parking standard, a restaurant providing 76 seats would require 19 parking spaces. However, no new parking is proposed to serve the expanded use of the concession stand.

The existing concession building is not served by an exclusive parking pool. Parking to serve the various uses within the Pier Bowl District is provided in the public parking lot and at on-street spaces. According to the *Parking Needs Assessment* prepared by the IBI Group in 1995, "the Pier Bowl has a total inventory of 554 parking spaces. Of the available spaces, 37 spaces are private and 517 spaces are public. Of these 554 spaces, 379 are metered parking spaces, including 136,

6 hour, on-street meters and 243, 6-hour meters in one public lot. There are also 138 on-street parking spaces which are unmetered and unrestricted.”

Per the terms of the applicant's lease agreement with the City, the City is responsible to provide parking for base of pier improvements where possible. Because no opportunities for new parking exist in the vicinity of the site, and in keeping with the provisions of the Pier Bowl Specific Plan (PBSP) for uses within the area, City staff considered whether existing off-site parking resources could support additional seating requested for the Crab Pot. To this end, a parking study was conducted by the IBI Group evaluating peak summer parking demands during the proposed evening hours of operation. The study concluded that adequate public parking exists in close proximity to the subject site to serve the new evening restaurant use. City staff concluded, *“the parking study is in compliance with the PBSP provisions for off-site parking and has been reviewed by the City Traffic Engineer who has confirmed the study's conclusions and determined that the additional seating proposed will not negatively impact neighboring development.”*

a. Site Specific Parking Analysis

Public access to the coast can be adversely impacted by new development if adequate parking spaces are not provided. Patrons of the new development will compete with beach-goers for public parking spaces. In this case, the project is located immediately adjacent to the beach. As such, parking in the project area may be utilized for beach parking.

The proposed project involves two changes that must be evaluated—1) the intensification of use resulting from the placement of 20 additional seats during the daytime and 2) the creation of a new evening restaurant use where there is no evening use currently. (After 4:00 pm, the concession stand is closed and all tables and chairs are put away.) The applicant states that there are currently 56 seats and proposes to add 20 more, for a total of 76. In the 5-97-086 staff report, the concession building was said to have *“six (6) picnic tables with seating for approximately 18.”* City staff indicates that during summer months there are anywhere from 20 to 50 seats placed adjacent to the concession stand. As such, it is unclear how many seats are to be added as part of the current proposal. To ensure that the seating increase does not create adverse parking conditions during the peak beach use season (daytime or evening), the availability of parking must continue to be evaluated.

To evaluate the parking impacts of the proposed project, the applicant submitted a *Parking Availability Review* conducted for the Crab Pot Restaurant and Beach Eatery prepared by the IBI Group dated October 8, 2003, which provides a follow-up to the 1995 *Parking Needs Assessment*. The new report examines the existing parking supply, the project parking requirements, and presents conclusions related to the parking needs of the project relative to the available parking in the area. The report focuses on the impacts of the new evening operation, rather than the impacts of additional seats during the daytime. The study concludes that there would be available parking for the expanded summer operating hours for the restaurant. According to the report, this is based on three observations:

1. *There is adequate parking within the immediate vicinity (1,000) feet of the restaurant.*
2. *A significant portion of patrons may not require parking as they are already in the area as beachgoers, motel patrons or local residents.*
3. *Additional parking is available, sufficient to meet the project demand, beyond the immediate 1,000 foot radius and within a reasonable walking distance (up to ¼ mile).*

The peak parking period for the proposed restaurant will be in the evenings, after the peak beach use period has ended. The new restaurant will operate from 5:00 pm to 11:00pm. During the evening, the restaurant will create a use that doesn't exist currently. The restaurant will be a full service operation with host seating, table service and a full menu with alcoholic beverages. Temporary heat lamps and windscreen enclosures would be installed around the patios during evening hours. The seats would be used exclusively by restaurant patrons in the evening, where currently there are no seats available in the evening. The new restaurant will create a "destination" where there is none now. As such, there will be a demand for parking where there is none now. Nonetheless, the evening operation demonstrates an opportunity for shared use parking, where the various land uses have different peak parking times and the existing parking supply is sufficient to serve both day and evening activities. Because the restaurant will operate in off-peak hours, there will be no adverse impact on public access resulting from the proposed evening operation.

During the daytime, it is anticipated that visitors may go to more than one destination in the Pier Bowl area, thereby reducing parking demand through shared use. This is consistent with Section 30252, which requires that new development maintain and enhance public access to the coast by "*providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads.*" The concession stand will continue to cater to the beach-going public and will not serve as a destination. As such, the additional seats being placed at the concession stand during the daytime will not create additional parking demand. Those seats will serve the public that is already visiting the beach and the Pier.

b. Special Conditions Related to Parking

To ensure that adequate parking is provided to serve the proposed development now and in the future, the Commission finds it necessary to impose three special conditions.

Special Condition 1 requires the applicant to comply with specific operational requirements to ensure that the proposed use of the site will not create adverse parking conditions in the Pier Bowl area. As required by Section 30252 of the Coastal Act, new development "*should maintain and enhance public access to the coast by... (d) providing adequate parking facilities or a substitute means of serving the development with public transportation.*" As discussed in the previous section, there will be an increase in outdoor seating from 56 to 76 seats during the day and from 0 to 76 seats in the evening. No additional parking is proposed to serve the additional seating. To ensure that the concession stand remains an amenity catering to beach-goers during the day, the Commission imposes Special Condition 1. Special Condition 1 requires that the site remain a concession stand open to the public until 4:00 p.m. No windscreens or other form of barrier may be placed seaward of the concession building during that time. The condition requires the stand to provide solely walk-up, window service during that period, but allows restaurant table service in the evenings (5:00 pm to 11:00 pm). In addition, the condition specifies that the concession stand/restaurant seating shall not exceed 76 seats, consistent with the City's approval of the project. This condition is intended to prohibit the creation of a "destination" during the peak beach use hours, which would create an increased parking demand.

Special Condition 2 informs the applicant that any future development which changes the intensity of use of the site or which changes the use of the site requires an amendment to this permit or a new coastal development permit. This ensures that the Commission will have the opportunity to review future improvements to the structure that could affect parking demand. This type of special condition is consistent with those imposed in previous permits issued in high use, visitor-serving areas.

Thus, only as conditioned does the Commission find the proposed development consistent with Section 30252 of the Coastal Act.

4. Lower Cost Visitor-Serving Commercial Development and Recreational Use

As cited previously, Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. Section 30221 requires that oceanfront land suitable for recreational use shall be protected for recreational use and development. The proposed project presents an opportunity for increased visitor serving development in the subject area. The project involves improvements to an existing concession stand located landward of the Municipal Pier. The subject site is considered the most popular beach area in San Clemente. As such, the project site is located in a prime location for lower cost, visitor-serving commercial development.

The proposed project will provide commercial development that will serve the surrounding community as well as visitors. The concession stand currently offers reasonably priced food and drinks, such as hamburgers and fish and chips. During the day, the concession stand will continue to serve the same fare. During the evening, the concession stand will be converted to a restaurant that will serve both food and alcohol. The applicant indicates that the same reasonably priced items would remain on the menu during the evening operation. As such, the continued concession use and the new restaurant use would provide a lower cost visitor-serving commercial development.

a. Impediments to Public Access and Recreation

The project includes the installation of wood framed sandblasted tempered glass windscreens around the patio areas, varying in height from 4'0" in the front (seaward side) to 6'0" along the sides and rear. The original proposal included the windscreens extending along the entire frontage of the concession building and patio areas. The windscreens would have extended approximately 12' seaward of the existing building. Commission staff expressed concern with this design, as it would create a physical barrier to the existing public seating area. Currently, beachgoers are able to sit at the concession area without being required to purchase anything. There is no signage or physical impediment to entering the seating area. However the windscreen would create a separated area that would give the impression of a private restaurant. The applicant indicated that signage would be placed on the exterior of the walls to invite the public to continue to use the seating area. Even with signage, the erection of a new windscreen would effectively discourage casual use of the area. Therefore, after further discussion with the applicant, the project design was modified (in writing) to remove the permanent windscreens in the front the concession building. The applicant proposes to place temporary windscreens up in the evening for warmth and to meet alcohol service requirements. The project plans have not been modified to reflect this change. As such, revised plans must be submitted.

b. Special Conditions Related to Public Access

As described above, the originally proposed windscreens would present a physical and psychological barrier to public access and recreation. Special Condition 3 requires the submittal of revised project plans demonstrating the removal of all permanent features within the patio area and beyond the existing concession building. The prohibition includes all fixed tables and chairs, cueing controls and heat lamps. As described in the condition, permanent windscreens may only be erected along the rear of the building and along the north and south perimeter of the patio

areas. A planter may also be constructed along the south perimeter of the patio area. No permanent development may extend beyond the footprint of the existing concession building. As such, the applicant will not be allowed to create permanent encroachments into public area.

During the daytime, temporary features will be allowed within the patio areas, so long as they do not extend beyond the limit of the existing retaining wall on the north side of the site. This is the area currently utilized by the concessionaire. Removable windscreens may be placed in the patio areas and beyond the existing concession building in the evenings only. Temporary use of the patios is consistent with the current operation of the site. However, this permit does not authorize even temporary encroachment beyond the extent of area that is currently utilized by the applicant, demarcated by the existing retaining wall. Exhibit 5 depicts the limits of allowable permanent and temporary development.

Special Condition 3, described above, addresses permanent impediments to public access and recreation. Construction impacts, such as obstruction of lateral or vertical access to the shoreline with trucks and/or equipment, can also affect the public's ability to access the beach and recreate on it. As described previously, the project involves improvements around the perimeter of the existing concession building located immediately landward on the Municipal Pier. A paved asphalt access road is located between the subject site and the Pier. Construction related impacts can be partially alleviated by limiting construction work to the off-peak season (fall and winter) when beach use by the public is typically low. With this in mind, the City intends to initiate construction in the off-peak season. The City has also indicated that beach access will not be affected during construction, as alternative access will be provided during construction. Although the applicant intends to complete the project prior to peak beach use season and to maintain public access during construction, there is a possibility for delay and/or unexpected construction impacts. Therefore, to guarantee that public access is maintained during peak beach use season, the Commission imposes Special Condition No. 4. This special condition requires construction to occur prior to the Memorial Day weekend and/or following the Labor Day weekend. The condition also requires that the access road remain open to the public during construction.

Therefore, the Commission finds that the development, as conditioned, does not pose any adverse impacts to lower cost visitor and recreational facilities and is consistent with Section 30213 of the Coastal Act.

C. Water Quality

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act states:

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 entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.

The applicant proposes to carry out improvements, including surface replacement, surrounding an existing concession stand immediately landward of the Municipal Pier. As shown in Exhibit 3, the project is located adjacent to coastal waters. The applicant proposes to replace existing asphalt with interlocking pavers on a concrete sub-deck within the seating areas and in front of the existing concession building. The sub-deck will have drains that allow water to percolate into the soil. This will result in an improvement to existing water quality. These proposed elements are essential to addressing water quality issues at the site associated with the increased intensity of use of the site. Thus, in order to assure the applicant implements the proposal, the Commission imposes Special Condition 5. Special Condition 5 requires the applicant to carry out the project in conformance with the plans submitted, which includes the creation of a permeable surface area at the subject site.

Although the proposed project will have positive post-construction impacts on coastal waters, construction impacts have the potential to negatively affect water quality. Storage or placement of construction materials, debris, or waste in a location which may be discharged into coastal waters would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, Special Condition No. 6 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Special Condition No. 7 requires the debris disposal site to be located outside the coastal zone. These conditions ensure that construction activities will not have a negative impact on coastal resources.

As discussed above, the proposed project will improve post-construction water quality. During construction, special precautions will be followed to ensure that materials are stored properly and debris is disposed of at an appropriate location. Only as conditioned for appropriate construction practices, does the Commission find that the proposed development is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

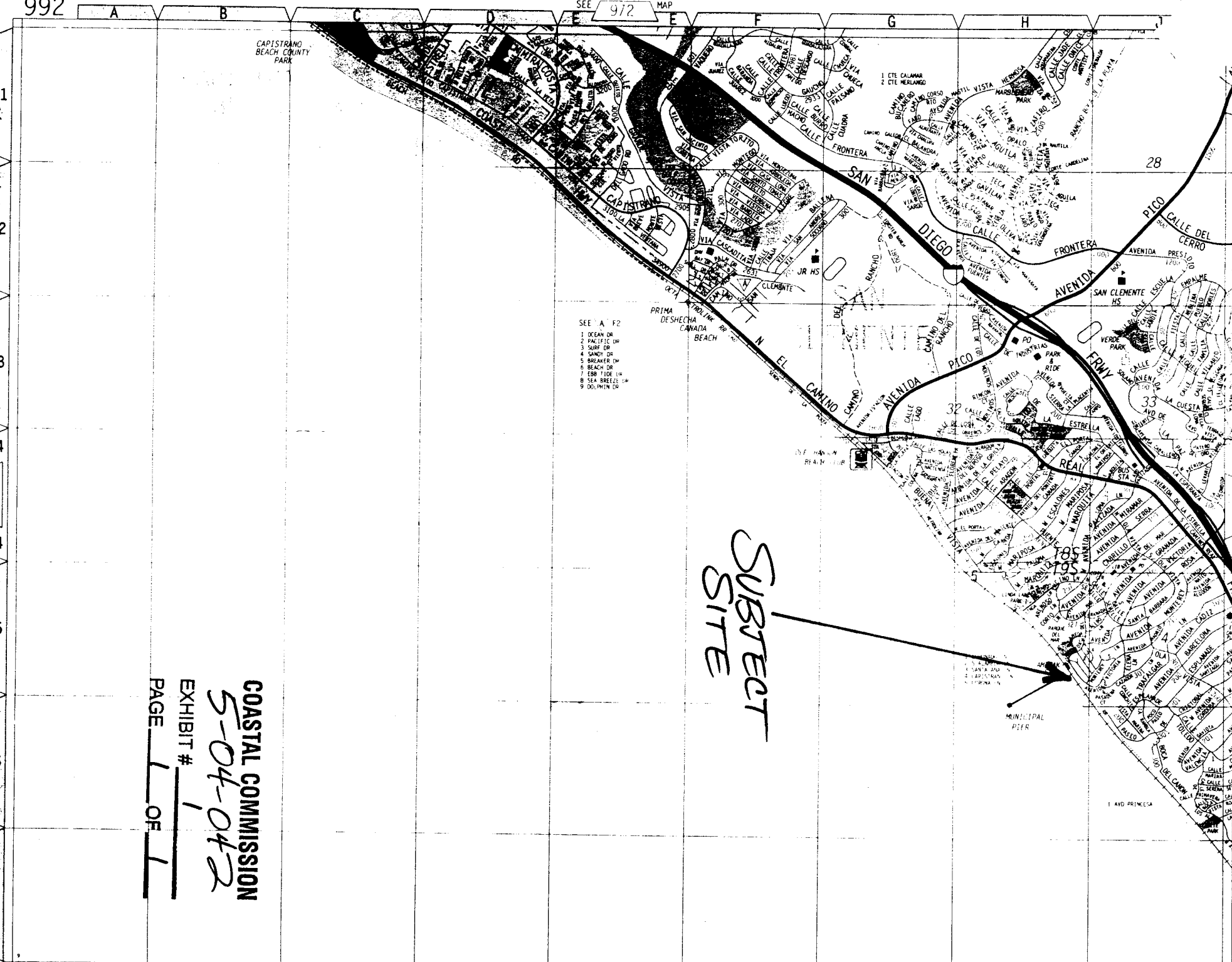
The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3

policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. Consistency with the California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, 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 found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require 1) operational requirements to ensure adequate parking and maximum public access; 2) future improvements return to the Commission for review; 3) submittal of revised plans showing removal of permanent features seaward of building; 4) timing of construction to be outside of peak beach use season; 5) conformance with drainage plan submitted; 6) use of construction best management practices (BMPs); and 7) the debris disposal site to be located outside the coastal zone. No further alternatives, or mitigation measures, beyond those imposed by this permit amendment, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

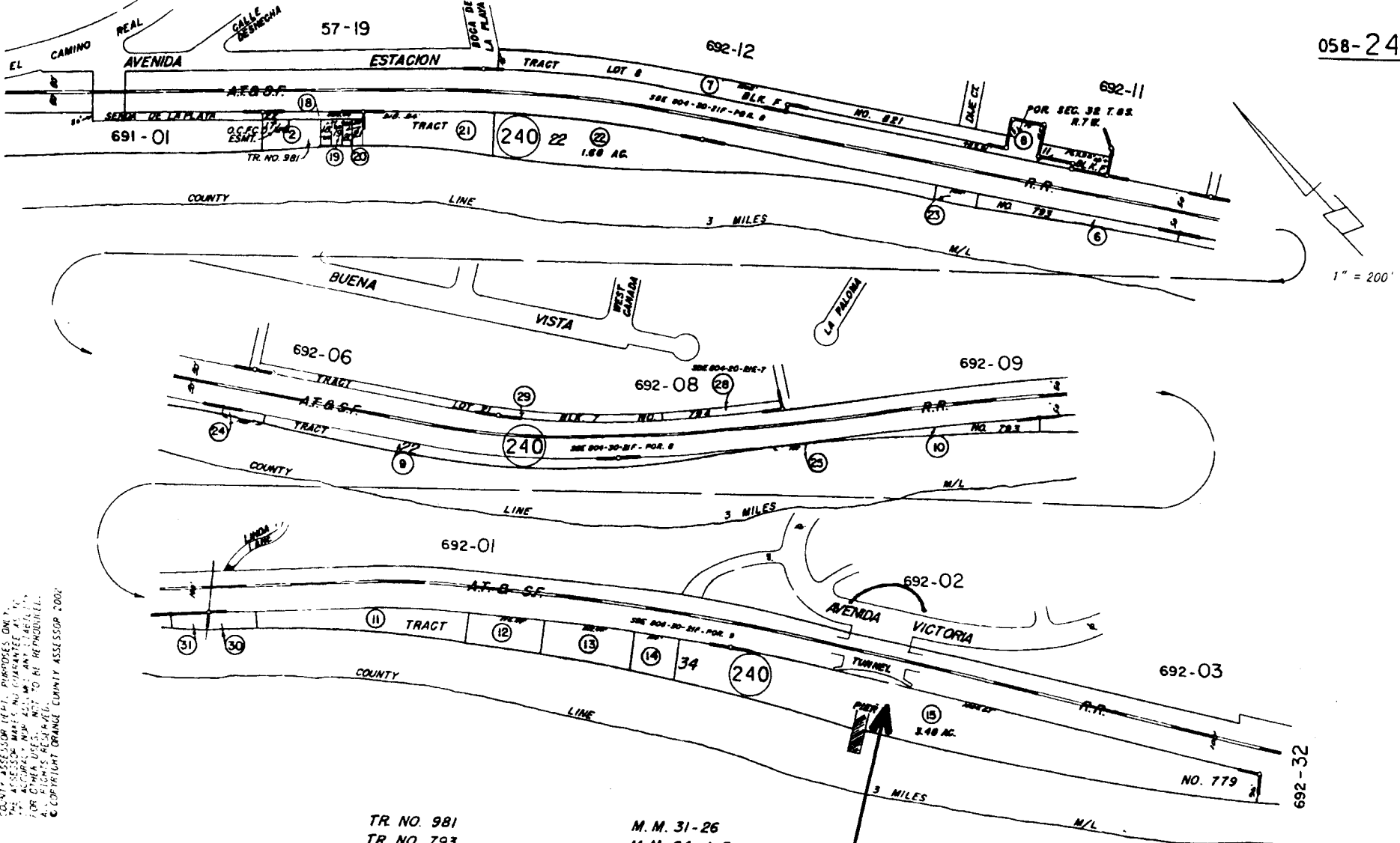


SEE 'A' F2
 1 OCEAN DR
 2 PACIFIC HWY
 3 SURF DR
 4 SANDY DR
 5 BREAKER HWY
 6 BEACH DR
 7 EBB TIDE HWY
 8 SEA BREEZE HWY
 9 OCEANVIEW DR

SUBJECT
 SITE

COASTAL COMMISSION
 EXHIBIT # 5-04-042
 PAGE 1 OF 1





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MARCH 1950

TR NO. 981
 TR NO. 793
 TR NO. 779
 TR NO. 821
 TR NO. 794

M. M. 31-26
 M. M. 24-1-5
 M. M. 23-19-25
 M. M. 24-49-50
 M. M. 24-26-7

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 058 PAGE 24 COUNTY OF ORANGE

SUBJECT SITE

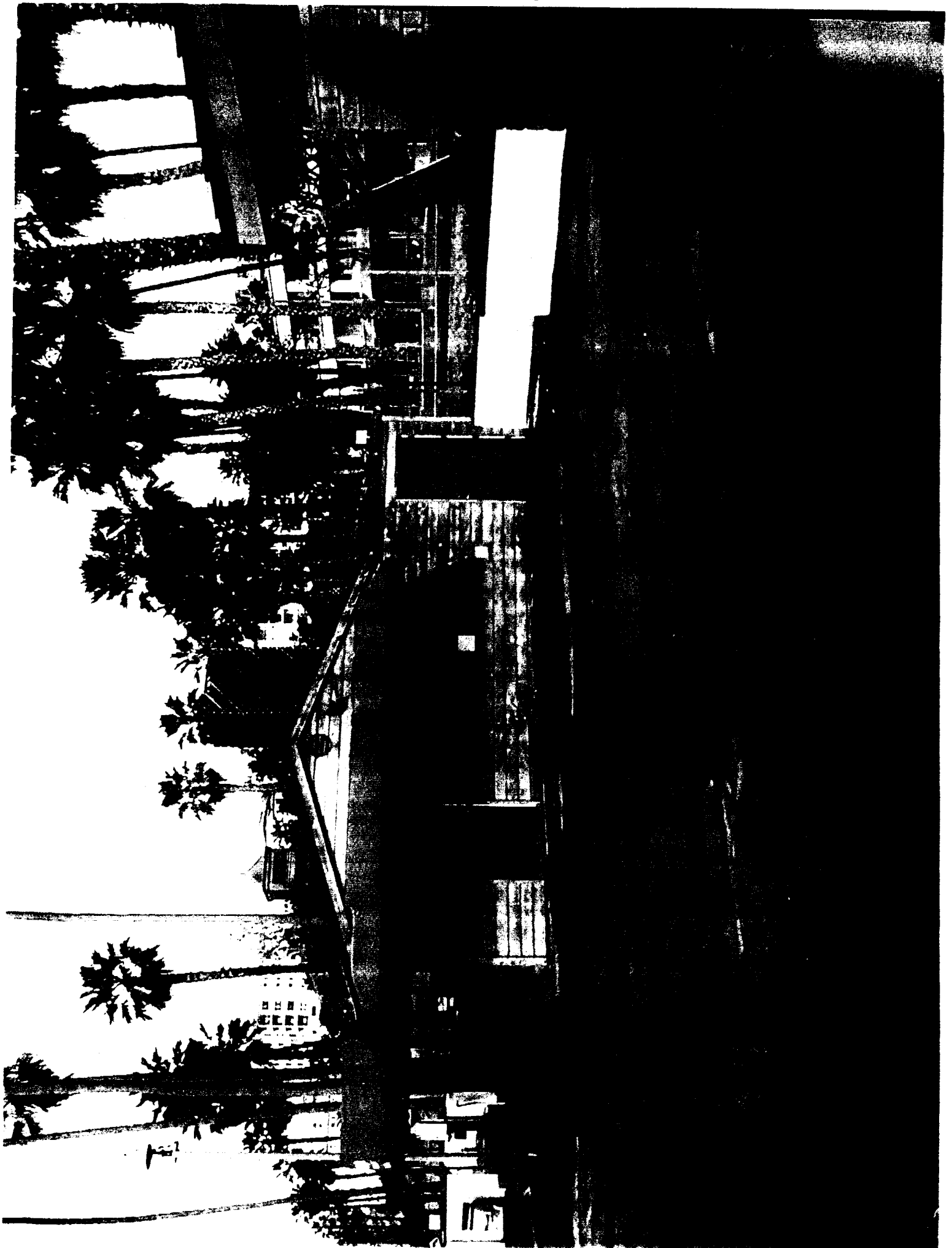
COASTAL COMMISSION
 EXHIBIT # 5-04-042
 PAGE 1 OF 1

3599.000 Feet



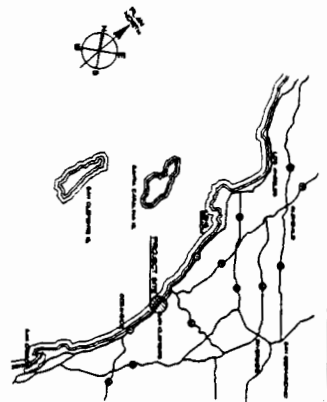
COASTAL COUNTY
5-14-68
EXHIBIT 3
PAGE 1 OF 5

View of subject site looking upcoast

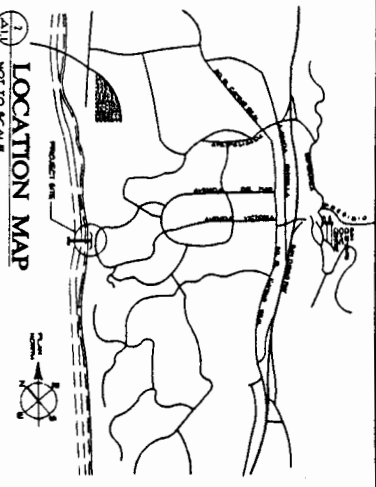




COASTAL COMMISSION
S-0-042
EXHIBIT # 3
PAGE 3 OF 3



(A1) VICINITY MAP



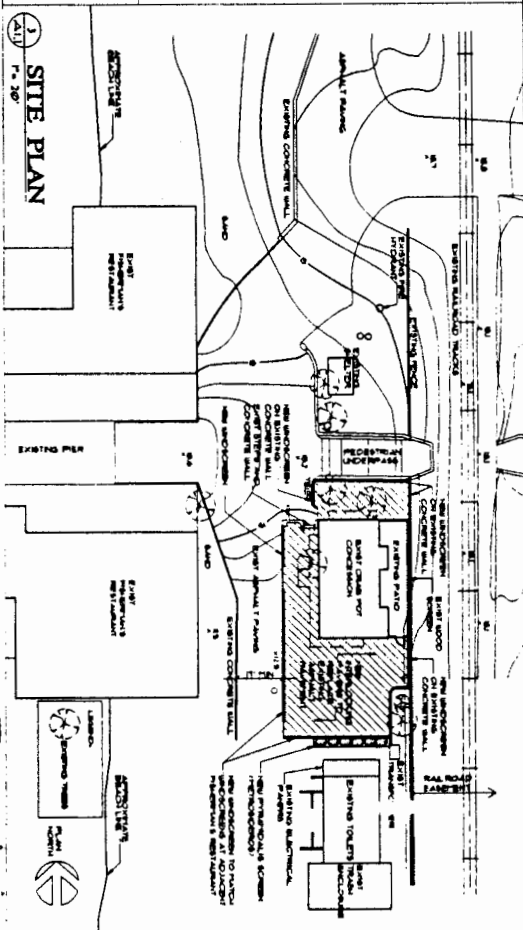
(A2) LOCATION MAP

MINIMUM CONSTRUCTION STANDARDS

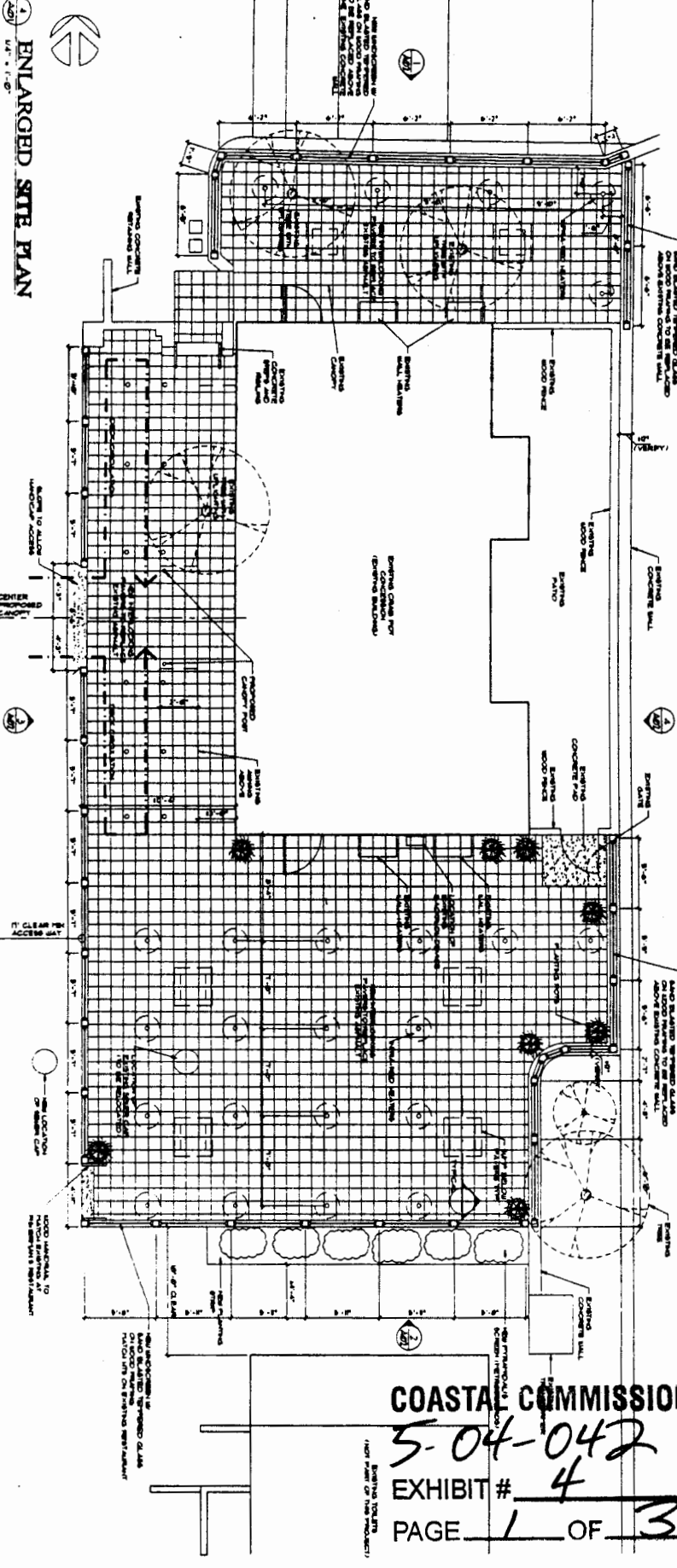
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.

PROJECT NOTES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE CONSTRUCTION STANDARDS.



(A3) SITE PLAN

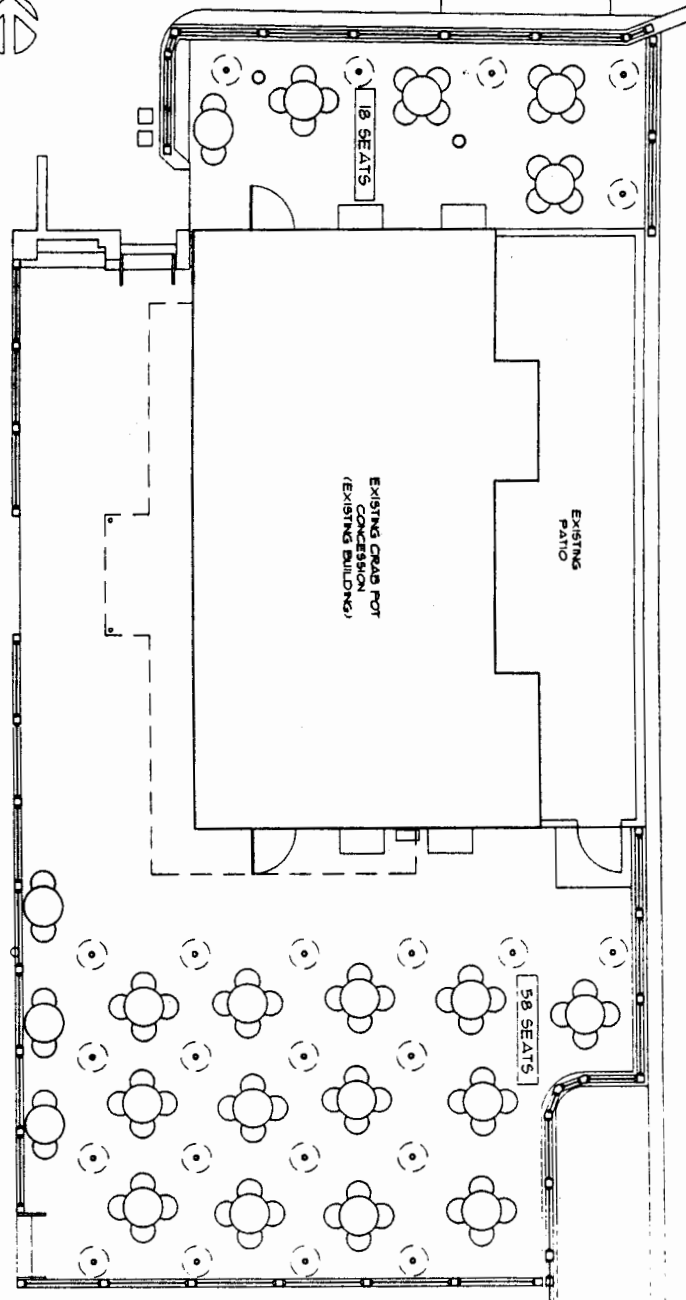


(A4) ENLARGED SITE PLAN

COASTAL COMMISSION
 5-04-042
 EXHIBIT # 4
 PAGE 1 OF 3

A01 SHEETS	2/20/02 PRE-APPLICATION 4/8/03 PLANNING CORRECTIONS 2/26/03 OWNER REVISION	PROJECT SCREENED AREA FOR CRAB POT CONCESSION SAN CLEMENTE CALIFORNIA	CLIENT HEG ENTERPRISES, INC. 611 AVENIDA VICTORIA SAN CLEMENTE CALIFORNIA 92372	CONSULTANTS STRICKER CATO MURPHY ARCHITECTS
	DATE DRAWN BY CHECKED BY APPROVED BY	PROJECT NO. SHEET NO.	SCALE	DATE

SEATING PLAN
1/2" = 1'-0"



TOTAL SEAT COUNT
18 + 58 = 76 SEATS

COASTAL COMMISSIC.
5-04-042
EXHIBIT # 4
PAGE 3 OF 3

A03

DATE: 1/27/03
DRAWN BY: JAM

2/28/02	PRE-APPLICATION
4/18/03	PLANNING CORRECTIONS
2/18/03	OWNER REVISION

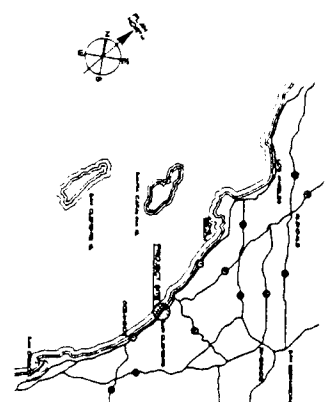
PROJECT:
SCREENED AREA FOR
CRAB POT CONCESSION
SAN CLEMENTE
CALIFORNIA

CLIENT:
HEG ENTERPRISES, INC.
81 AVENIDA VICTORIA
SAN CLEMENTE
CALIFORNIA 92672

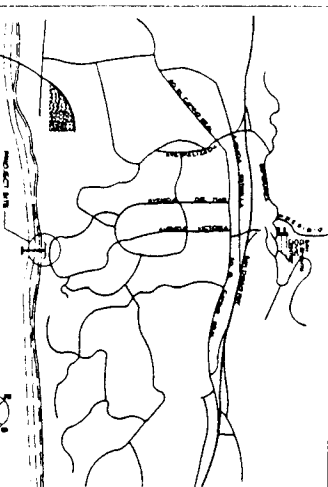
CONSULTANTS:

NOT TO SCALE
DATE: 1/27/03
DRAWN BY: JAM





(A) VICINITY MAP
SCALE: 1" = 100'



(A) LOCATION MAP
NOT TO SCALE

MINIMUM CONSTRUCTION STANDARDS
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ELECTRICAL CODE AND ALL APPLICABLE ORDINANCES.
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA MECHANICAL CODE AND ALL APPLICABLE ORDINANCES.
 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA PLUMBING CODE AND ALL APPLICABLE ORDINANCES.
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FIRE CODE AND ALL APPLICABLE ORDINANCES.
 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA LAND DEVELOPMENT CODE AND ALL APPLICABLE ORDINANCES.

PROJECT NOTES
 1. REFER TO ALL SHEETS FOR ALL NOTES.
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ELECTRICAL CODE AND ALL APPLICABLE ORDINANCES.
 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA MECHANICAL CODE AND ALL APPLICABLE ORDINANCES.
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 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FIRE CODE AND ALL APPLICABLE ORDINANCES.
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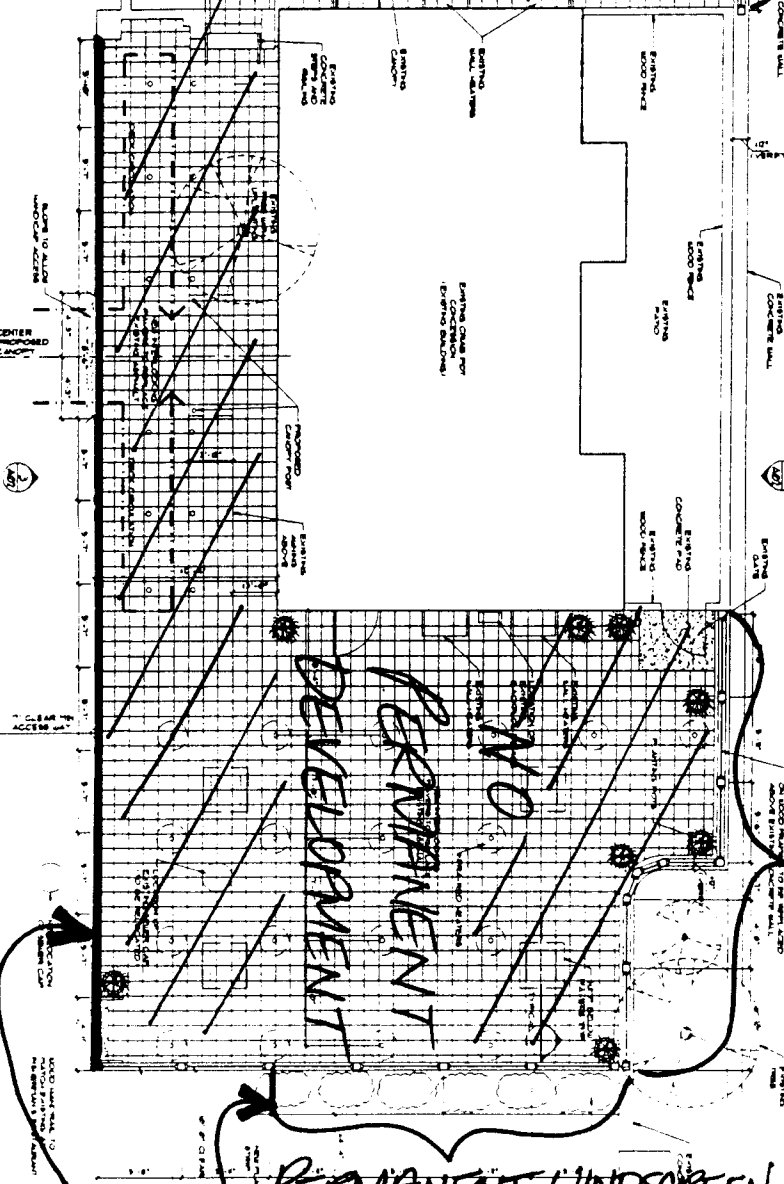
PERMANENT WINDSCREEN

PERMANENT WINDSCREEN

PERMANENT WINDSCREEN

PERMANENT WINDSCREEN

(A) ENLARGED SITE PLAN
SCALE: 1" = 100'



LIMIT OF TEMPORARY DEVELOPMENT

LIMIT OF PRINTER

COASTAL COMMISSION
 5-04-042
 EXHIBIT # 5
 PAGE 1 OF 1

A01

NO. OF SHEETS	1
TOTAL SHEETS	1
DATE	
BY	
CHECKED BY	
APPROVED BY	

PROJECT: SCREENED AREA FOR CRAB POT CONCESSION
 SAN CLEMENTE CALIFORNIA

CLIENT: HEG ENTERPRISES, INC.
 81 AVENIDA VICTORIA
 SAN CLEMENTE CALIFORNIA 92672

DATE	
BY	
CHECKED BY	
APPROVED BY	

NO. OF SHEETS	1
TOTAL SHEETS	1
DATE	
BY	
CHECKED BY	
APPROVED BY	



