

CALIFORNIA COASTAL COMMISSION

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Filed: April 6, 2009
49th Day: May 25, 2009
180th Day: October 3, 2009
Staff: Liliana Roman-LB
Staff Report: May 21, 2009
Hearing Date: June 10-12, 2009
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-09-066

APPLICANT: DEKK Associates LP

PROJECT LOCATION: 213 Avenida Del Mar, San Clemente, Orange County

PROJECT DESCRIPTION: Remodel exterior/interior and reuse of existing vacant 3,951 sq.ft. commercial building into 3,284 sq.ft. restaurant with 667 sq.ft. enclosed patio totaling 70 interior seats and 38 patio dining seats on an 8,000 sq. ft. commercial, mixed-use site. No additional parking will be provided. Minimal landscaping and no grading is proposed.

LOCAL APPROVALS RECEIVED: City of San Clemente Planning Division Approval-in-Concept dated April 21, 2009, Conditional Use Permit (CUP) 08-314314 and Cultural Heritage Permit (CHP) 08-315.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP), City of San Clemente Parking Needs Assessment Study dated July 1995, CDP 5-99-335(San Clemente Property LLC)

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves the remodel of an existing commercial structure into a restaurant. The primary issue associated with this commercial development is the adequacy of parking and how it affects coastal access.

The proposal involves significant use of a parking waiver/in lieu program that the Commission has not yet reviewed/approved and has some deficiencies; nevertheless staff recommends approval because in this case, the applicant has demonstrated that ample parking exists in the area to support the proposed development. The parking resources present in this area are used to support the public's use of the visitor serving commercial development that is the prime attraction in this downtown area. Thus, even though the parking that would be utilized to support this development is part of the pool of public parking spaces, the Commission doesn't view that use of these public parking spaces as a public beach access issue because the spaces aren't generally used by the public to access the beach.

The Commission has previously identified some concerns with the City's existing parking program. However, those issues can't be addressed in the context of this permit but do need to be

addressed by the City in their Implementation Plan (IP) in order to assure that parking issues don't result in public coastal access issues.

Staff recommends **APPROVAL** of the proposed development with special conditions regarding conformance with drainage/runoff plans, landscaping controls, construction BMPs, and notification of coastal development permit requirements for any future development/change in intensity of use of the site.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review are the policies of the Coastal Act. The certified Land Use Plan may be used for guidance.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points Exhibit
4. Project Plans
5. Photos of Existing Site and Artistic Rendition of Proposed Restaurant

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-09-066 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. STANDARD CONDITIONS:

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. Conformance with Construction Phase Erosion Control Plans

The applicant shall conform to the construction phase erosion and run-off control plan dated May 5, 2009. Any proposed changes to the approved plan shall be reported to Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Construction Best Management Practices

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

- (1) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone.
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
 - (2) The applicant shall develop and implement spill prevention and control measures;
 - (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm drain, open ditch or surface water; and
 - (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
3. Landscaping - Drought Tolerant, Non Invasive Plants
- A. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).
- B. The applicant shall conform to the revised landscaping plan submitted April 6, 2009 showing all areas affected by construction activities not occupied by structural development as re-vegetated for erosion control purposes consisting of native and/or non-invasive drought tolerant plant species. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Development/Parking

This permit is only for the development described in Coastal Development Permit No. 5-09-066. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to an increase in square footage or any other change in the intensity of use of the property, divisions of land, repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-09-066 from the Commission or shall require an additional coastal development permit from the Commission.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is an inland lot located at 233 Avenida del Mar in the downtown core of the City of San Clemente, Orange County (Exhibits 1 & 2). The 8,000 square-foot lot consists of a generally flat pad with frontage along Avenida del Mar and rear access from Avenida Granada. Surrounding development consists of commercial and mixed-use sites and multiple-family residences. The site is located approximately one half mile from the beach. The nearest coastal access is available via pedestrian walkways at either Linda Lane City Park or the San Clemente Municipal Pier area (Exhibit 3). The site is designated as Mixed-Use with Central Business and Architectural Overlays (MU3-CB-A-CZ) in the certified Land Use Plan, and the proposed project is consistent with this designation.

The applicant is proposing a major exterior/interior remodel and reuse of an existing approximately 4,000 square foot, one-story commercial building located at 233 Avenida Del Mar in the downtown area of the City of San Clemente. The proposed development consists of the renovation of the existing commercial building into a restaurant. The renovation will result in a new restaurant consisting of 70 indoor seats and 36 outdoor patio seats. Eight (8) on-site parking spaces will be retained and two (2) spaces acquired off-site, totaling ten (10) parking spaces. No additional parking will be provided. No grading is proposed. The existing surface parking lot is proposed to be re-paved and parking re-striped per site plan. Project plans are included as Exhibit 4. The project plans include planters utilizing native and/or non-native plant species that are drought tolerant and non-invasive as typically recommended by the Commission.

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 commercial retail use to a restaurant use. Therefore, due to the proposed change in intensity of use, the current renovation project is considered development by Commission standards. Furthermore, the subject site does not meet the criteria of Categorical Exclusion Order No. E-82-1 issued by the Coastal Commission to the City of San Clemente as it consists of a change in the intensity of use of the site and as it requires a Conditional Use Permit for outdoor dining areas exceeding 16 seats and a waiver of parking requirements; thereby, the project requires a coastal development permit.

Previous Commission Actions in the Area

On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The Downtown Parking Waiver Program was included in that Implementation Plan (IP) submittal to the Coastal Commission to support their certified Land Use Plan (LUP) and Commission staff made numerous suggested modifications. However, the City did not approve the IP with Commission staff suggested modifications within the required time frame and the suggested modifications expired October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. Neither the IP nor the Parking Waiver Program were certified by the Commission. The only Commission certified document is the CLUP.

At its December 1999 hearing, the Commission approved CDP 5-99-335 (San Clemente Property LLC - Plaza Del Mar) for an interior/exterior remodel of a vacant 16,387 sq. ft. commercial structure mixed use development consisting of three restaurants, four retail spaces and three residential units. In keeping with staff's suggested modifications to the IP, (since at the time of this CDP approval, the City of San Clemente had re-submitted for certification a revised IP), no more than 16 seats and 4 tables were permitted to receive parking waivers for each restaurant. The Commission approved the project with revised final plans so that no one restaurant had more than 16 outdoor seats if no parking spaces were provided for that outdoor seating. The proposed IP allowed the City to waive the parking space requirements for a maximum of 180 parking spaces in the Downtown Parking Study Area. However, as previously noted that IP submittal was withdrawn and the Parking Waiver Program never included in a Commission certified document.

B. ACCESS

Coastal Access

The proposed development is located on the 200 block of Avenida Del Mar between South Ola Vista and N Calle Seville in the City of San Clemente downtown area. The project site is located approximately one half mile from the beach. The site is separated from the ocean by multiple blocks of commercial development, the Community Center, residential development and the OCTA railroad tracks. The nearest primary coastal access points are located at Linda Lane City Park and the San Clemente Municipal Pier (see Exhibit 5). Each of these primary coastal access points provides public parking and a foot path to the beach. There are 135 off-street parking spaces available at Linda Lane and 133 off-street/102 on-street (235 total) at the Municipal Pier. It is unlikely beach-goers would choose to park in the downtown area when visiting San Clemente beaches due to the availability of public parking at each of the aforementioned access points, the distance to the beach and the 2-hour parking limitation at the parking meters in the downtown area.

Parking

The Coastal Act provides that development should maintain and enhance public access to the coast.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Sections VI.2, VI.3 and VII(d) of the City of San Clemente Certified Land Use Plan (LUP) contain policies regarding development within Downtown San Clemente 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 Three policies of the Coastal Act are applied as the standard of review and the LUP policies are used as guidance.

Chapter 3, Section F of the LUP discusses special districts within San Clemente, including the downtown area. The City's LUP envisions Downtown as follows:

Downtown San Clemente, which functions as the symbolic "core" of the City, will continue to emphasize its pedestrian and "village" character. Community and visitor serving uses, with residential units on the upper stories, are encouraged. Architecture is required to be Spanish Colonial Revival, and site design will emphasize buildings along street frontages that incorporate courtyards, arcades, streetscape, and similar designs to encourage pedestrian activity.

Policies for Downtown San Clemente are contained in Sections VI.1 through VI.4 of the LUP.

Policy VI.2 states:

Accommodate the development of community and visitor serving commercial uses, including retail, financial, household supply and furnishings, eating and drinking establishments, food sales, drug stores, personal and business services, professional offices, art and cultural facilities, overnight accommodations, public facilities, and similar uses.

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... (d) providing adequate parking facilities or a substitute means of serving the development with public transportation.

The proposed development involves the renovation of a one-story, 24' high, 3,951 square foot commercial structure with eight (8) existing parking spaces on a back surface parking lot (accessible from Avenida Granada). After renovation, the structure will be a 3,951 square foot commercial structure (consisting of a 3,951 sq. ft. interior and 667 outdoor covered patio) with eight (8) on-site parking spaces including an ADA compliant space and two (2) off-site parking spaces.

The issues of concern to the Commission triggered by development at this location include potential adverse impacts on parking resulting in impaired access to the coast. 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 and parking requirements typically imposed by the Commission to evaluate the proposed development.

Coastal Commission and City Parking Standards

The Coastal Commission parking guidelines are contained in the South Coast Regional Interpretive Guidelines adopted October 14, 1980. The guideline for "restaurants, night clubs, bars and similar establishments for the sale and consumption of food or beverages on the premises" is 1 space for each 50 square feet of service floor area. According to this standard, the applicant would have to provide approximately 44 parking spaces (staff estimated the total service area at 2,204 sq. ft. based on project site plan). This information is provided for context; as the Commission has typically deferred to the San Clemente City parking standards in the downtown core instead of the guidelines (which were developed in consideration of parking requirements for businesses that are close to the beach) because of the distance of this area from the beach.

City parking standards for restaurant developments require one parking space per five (5) seats. In addition, outdoor dining areas are permitted sixteen (16) seats without providing additional parking. The project proposes thirty-six (36) outdoor seats requiring four (4) parking spaces (as the first 16 seats are exempt from parking requirements). Therefore, the proposed project would require fourteen (14) parking spaces for 70 indoor seats and four (4) for the 36 outdoor seats for a total of 18 parking spaces.

The applicant proposes to satisfy the project's total eighteen (18) space parking requirement required by the City parking standard by providing ten (10) physical parking spaces and through a four (4) parking space waiver for the indoor dining seat parking requirement from the City's Downtown Parking Waiver Program and four (4) parking space exemption for the outdoor dining parking requirement through a Conditional Use Permit. The City granted the applicant 4 parking waivers from the Downtown Parking Waiver Program and exempted 4 more parking spaces by issuing a Conditional Use Permit for outdoor dining on March 3, 2009 (discussed in following section). By City standards, no parking spaces are required for the first 16 of the 36 outdoor dining seats.

To summarize, the proposed project would be required to provide **18** parking spaces under current City parking standards. However, **4** spaces have been "exempted" and **4** required parking spaces have been "waived" and no parking spaces are required for 16 of 36 outdoor dining seats. Therefore, the **10** physical parking spaces provided by the project satisfy the City's parking requirements.

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. However, in this case, the project is located over half a mile from the beach. Parking in the project area is not utilized for beach parking.

The applicant is providing a total of 10 parking spaces—8 on-site and 2 spaces at the adjacent 215 Avenida del Mar surface parking lot through a shared parking agreement. The on-site parking will not be managed with a payment system. The parking lot will be posted for general public parking use (i.e. the spaces are not reserved exclusively for the restaurant patrons). The applicant will also designate one (1) disabled space in the on-site surface parking lot.

In 1995, the City conducted a Downtown Parking Study as part of the *City of San Clemente Parking Needs Assessment* prepared by IBI Group. The report concluded that a surplus of parking opportunities exists in the downtown area and "up to 200,000 sq. ft. of new development in the downtown area could be accommodated without the need for additional parking." The City used this information to determine that 180 excess parking spaces exist in the downtown area at the time of the study and initiated a parking waiver program for downtown business development. In 1996, the City incorporated the Downtown Parking Waiver Program into the San Clemente Zoning Ordinance (SCZO). The program allows for the waiver of parking requirements for downtown business expansion (i.e. additions, changes in use).

The Downtown Parking Waiver Program is not certified by the Coastal Commission nor is it included in the certified Land Use Plan.

Since the inception of the City's Downtown Parking Waiver Program in 1996, 41 of the 180 possible waivers have been granted by the City.. Prior to the granting of a parking waiver, the City must first make the following two findings: 1) a determination that the City has not granted more

than 180 parking waivers (the parking surplus identified in the Downtown Area Parking Study) since implementation of the program; 2) adequate parking to support the change of use/development and provide adequate beach parking within the Study Area; 3) parking study that shows parking occupancy is less than 90% during daytime summer weekends; and 4) public parking is available in close proximity to the project site.

City staff determined that the proposed project met all of the required findings for participation in the Downtown Parking Waiver Program. The project received City approval with 10 parking spaces and waived 4 required parking spaces. Furthermore, the City also granted a separate parking waiver for all outdoor dining requirements at the subject site. The San Clemente Zoning Ordinance (SCZO) promotes outdoor dining by allowing outdoor seating without requiring additional on-site parking. Outdoor dining permits on private property involving up to 16 seats can be approved by City staff or the City Zoning Administrator. Requests for outdoor dining permits on private property involving more than 16 seats, including requests for a waiver of the associated parking, require approval by the Planning Commission.

According to the City's interpretation of the SCZO, projects with 16 or fewer outdoor dining seats may be approved with no on-site parking requirement. Therefore, the first 16 outdoor dining seats (which otherwise would require 3 parking spaces) are considered "free" from any parking requirement. Furthermore, restaurants exceeding sixteen (16) outdoor seats may be further exempt from parking requirements with the approval of a Conditional Use Permit according to SCZO Section 17.28.205.D.c when *"the outdoor dining facility contributes and enhances the village/pedestrian atmosphere of the Architectural Overlay District by incorporating paseos and/or plazas that are specifically designed for outdoor dining facilities"* and when *"off street public parking is available within a block of the restaurant."*

On March 3, 2009, the City made these findings for the proposed project and issued Conditional Use Permit 08-314 waiving the parking requirement of four (4) parking spaces for the remaining 20 outdoor seats.

Currently, there is no limit to the number of outdoor seats that can receive a waiver of required parking under the City's existing Outdoor Dining Ordinance. In addition, there is no process in place for recording the number of 16-seat "freebees" or "over and above" (greater than 16 seats) parking waivers that have been issued for outdoor dining. A parking problem is likely without appropriate tracking and monitoring of parking demands. Finally, according to the City, a "freebee" would result in an exclusion of that development from coastal development permit requirements (under the City's Categorical Exclusion), as the Categorical Exclusion excludes commercial development in the downtown core from coastal development permit requirements if a Condition Use Permit is not required. The Commission hasn't yet endorsed this interpretation.

Without the parking exemptions granted for all of the 36 outdoor patio seats and waiver of 4 out of 14 parking spaces required for the 70 indoor seats, the applicant would be required to provide a total of 21 parking spaces for restaurant uses. With the waiver and "outdoor dining exemptions" the applicant may provide only 10 parking spaces, a reduction of 11 parking spaces.

Through the procurement of parking waivers and exemptions, the applicant meets the City of San Clemente's parking standards. However, because the site is deficient in physical parking spaces, it is probable that persons visiting the restaurant will park on-street or utilize nearby off-street public lots identified by the City as under-capacity when the restaurant's own on-site parking is full. In addition, the applicant has indicated that peak parking period for the proposed restaurant is in the evenings, after most of the other uses within the project area are closed. Also, residents in surrounding neighborhoods may choose to walk to the project site, thereby lessening the potential parking demand. This 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. As such, no significant parking impacts are anticipated.

As described above, the Commission has identified some concerns with the City's existing parking program. However, those issues can't be addressed in the context of this permit but do need to be addressed by the City in their implementation plan in order to assure that parking issues don't result in public coastal access issues. In this case, the Commission has been provided evidence that there is ample parking in the area to serve the proposed development. The parking resources present in this area are used to support the public's use of the visitor serving commercial development that is the prime attraction in this downtown area. Thus, even though the parking that would be utilized to support this development is part of the pool of public parking spaces, the Commission doesn't view that use of these public parking spaces as a public beach access issue because the spaces aren't generally used by the public to access the beach.

In order to ensure that any future expansion/intensification of use of the site is reviewed for consistency with Coastal Act requirements, including coastal access, the Commission imposes **SPECIAL CONDITION NO. 4** which requires the applicant to seek a permit amendment if an addition of square footage or further intensification of use (e.g. additional seats) is proposed in the future.

Conclusion

The site was previously developed with a commercial establishment and is located within a primarily commercial area. The question of concern is whether this development would adversely impact beach parking. Due to the significant distance to the beach (one mile away) and the existing 2-hour parking time limit in the downtown area, parking in the project area is not utilized for beach parking. Ample parking exists in the subject area to support the proposed development.

Therefore, the Commission finds that the proposed development, as conditioned, will not have any adverse impacts on beach parking and is consistent with Section 30252 of the Coastal Act and Section VII.1(d) of the City of San Clemente LUP.

C. WATER QUALITY AND MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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:

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. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City of San Clemente's storm drain system ultimately draining to the Pacific Ocean. Beach closures occurring throughout Orange County, are typically attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

Typically, in cases of substantial demolition and improvements to a principal structure, the Commission imposes a special condition requiring site drainage plans. In this particular case, the proposed project involves an interior/exterior remodel including the re-paving of the surface parking lot and no building demolition/new building construction. As the majority of the proposed work will be interior renovations, staff is not imposing a special condition for drainage plans.

Construction Impacts to Water Quality

However, the storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into storm drains leading to coastal waters via rain or wind 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. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. The applicant indicated that storm runoff from the site sheet flows to existing City on-street storm drains. In order to minimize adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 1** requires conformance with the submitted construction phase erosion control plan. Furthermore, **SPECIAL CONDITION NO. 2** provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. These best management practices (BMP) are designed to minimize erosion and prevent debris from entering the storm drain system. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

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. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of San Clemente Planning Division is the lead agency for California Environmental Quality Act (CEQA) purposes. On March 3, 2009, the City deemed the proposed project Categorically Exempt as a Class 3 exemption pursuant to CEQA Guidelines Section 153011 as the project consists of the remodel of an existing commercial structure into a restaurant located within an urbanized area. The Coastal Commission adopts additional mitigation measures, found below, to ensure that the proposed project will conform to the requirements of the Coastal Act.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the public access and water quality policies of the Coastal Act. Mitigation measures include: special conditions related to conformance with submitted erosion control plans, provides landscape controls, a special condition requiring construction-related best management practices (BMPs) and a special condition for future improvements to return to the Commission for review.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

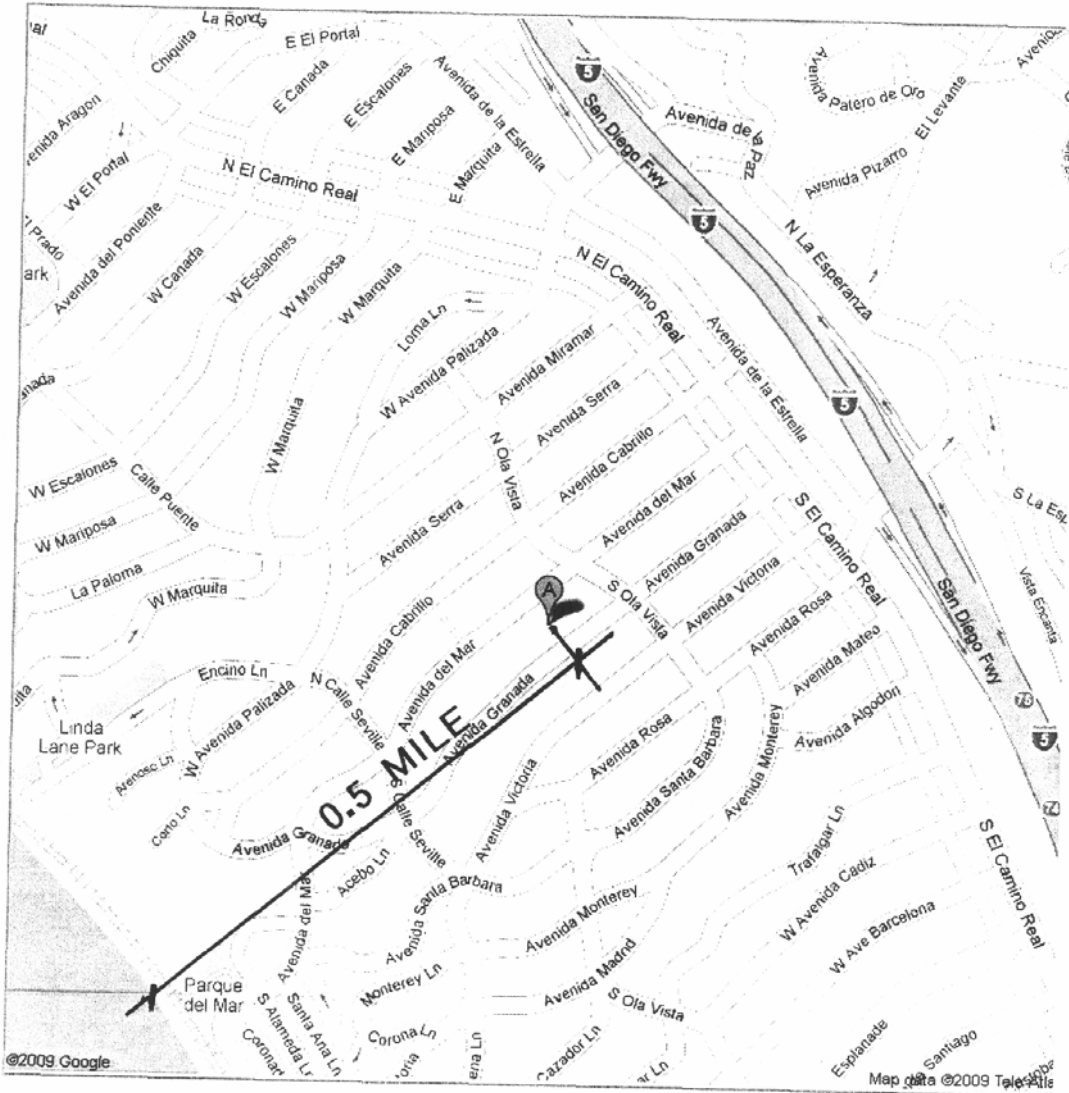

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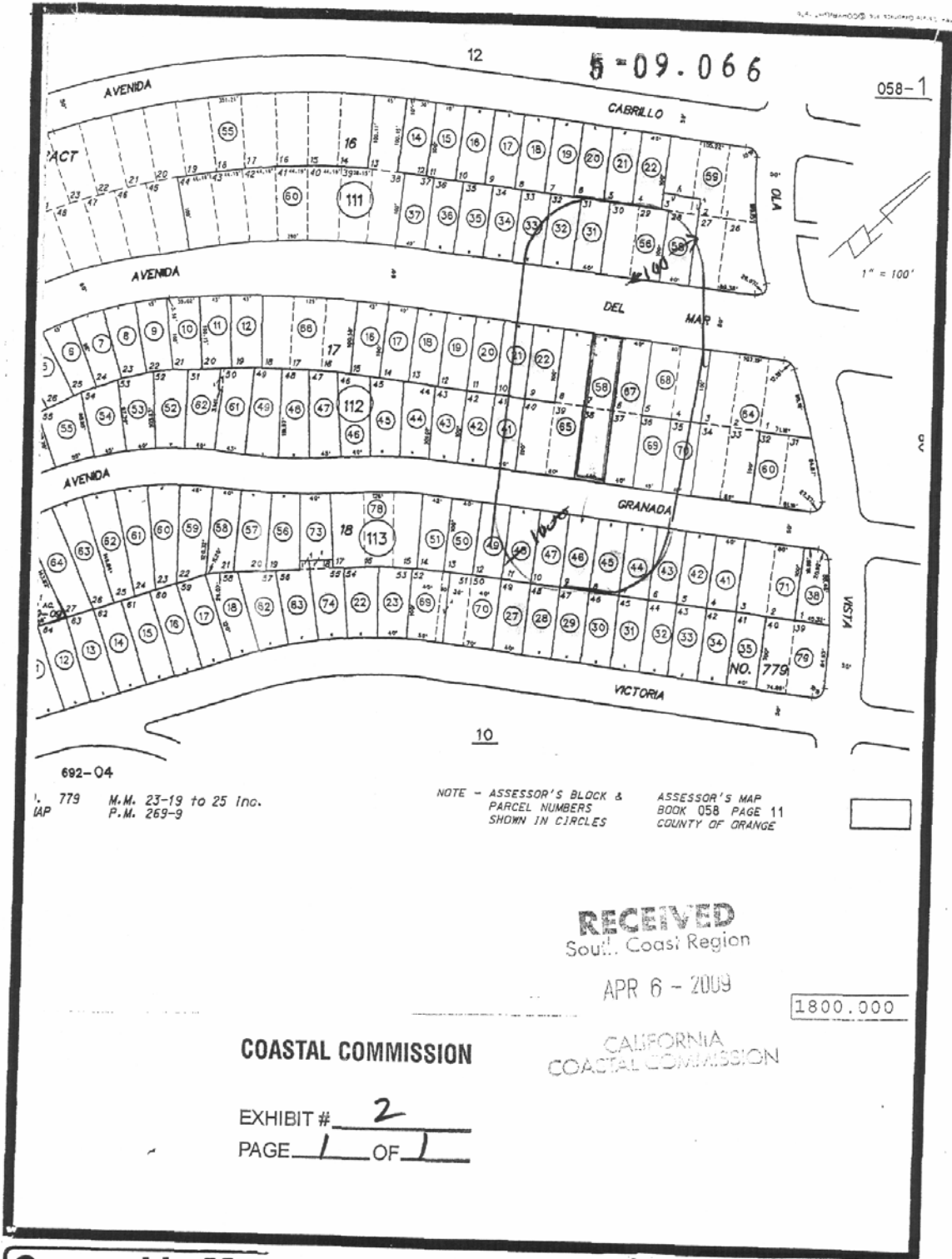
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 MAP 779 M.M. 23-19 to 25 Inc.
 P.M. 269-9

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES
 ASSESSOR'S MAP BOOK 058 PAGE 11 COUNTY OF ORANGE

RECEIVED
 Southern Coastal Region

APR 6 - 2009

1800.000

COASTAL COMMISSION

CALIFORNIA
 COASTAL COMMISSION

EXHIBIT # 2
 PAGE 1 OF 1

Ownership Map

95251

SUSAN W. CASE, INC.
 917 GLENNEYRE ST #7
 LAGUNA BEACH CA 92651

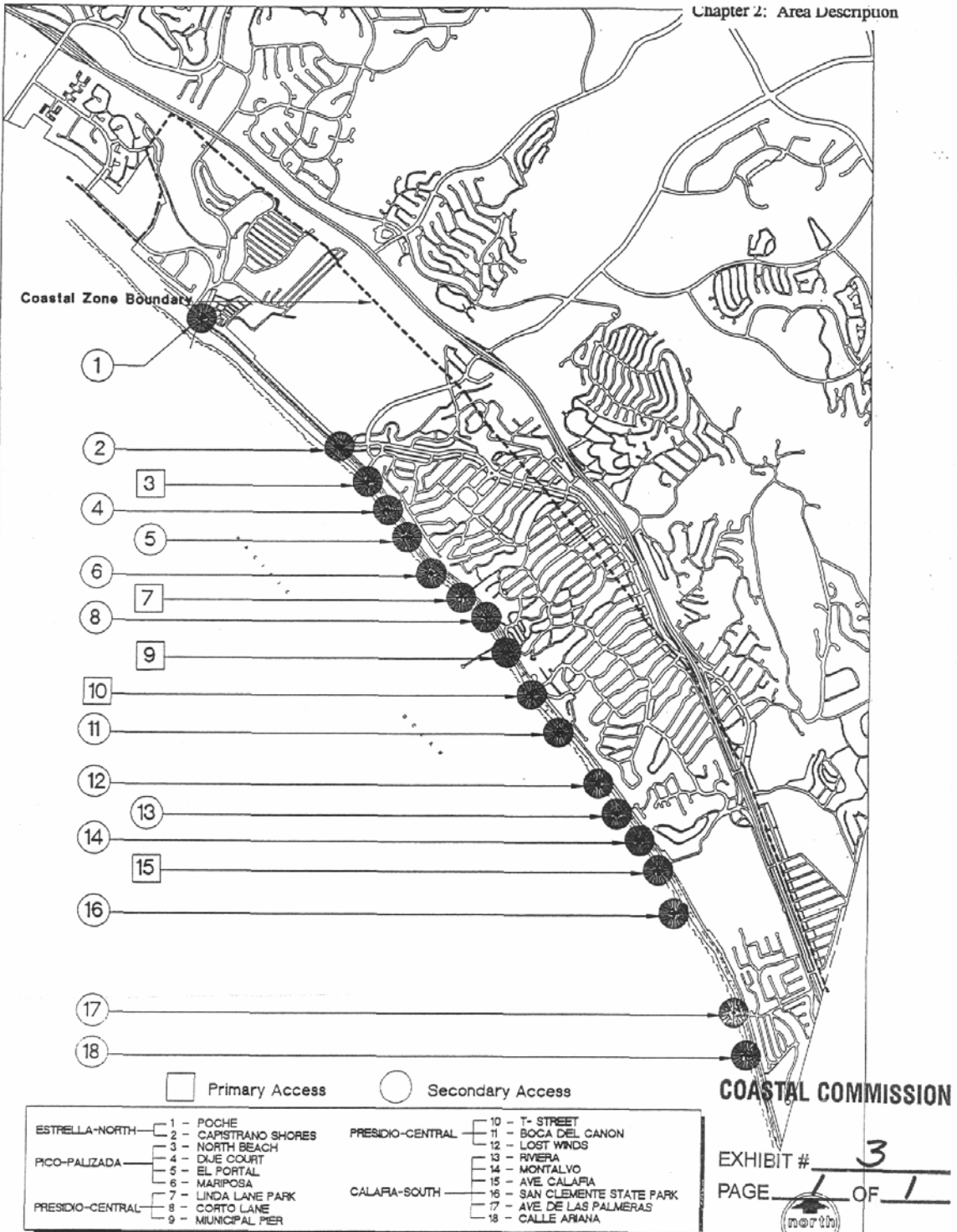


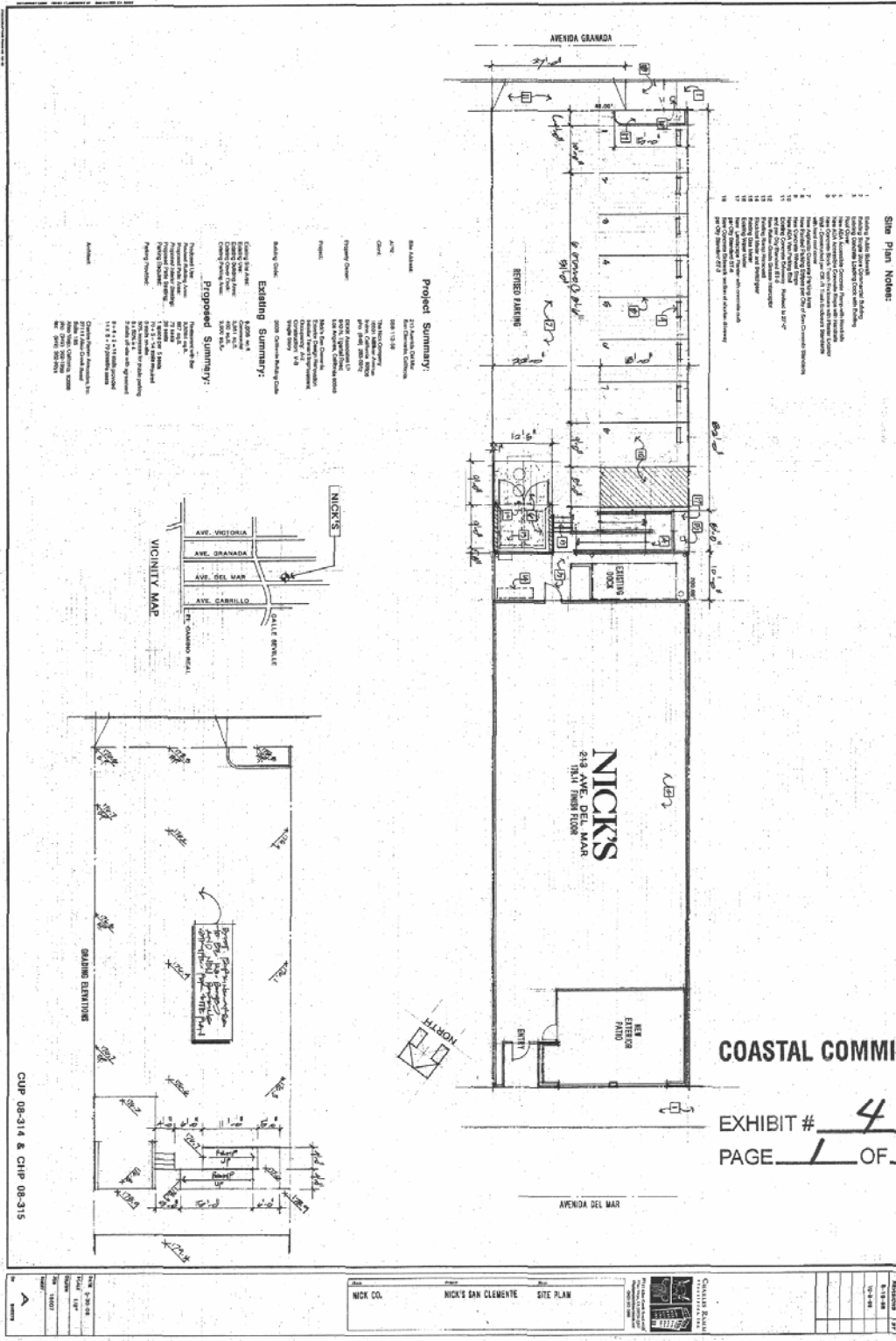
FIGURE 2-5

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 1 OF 1



**CITY OF SAN CLEMENTE
 COASTAL ACCESS POINTS**



Site Plan Notes:

1. Existing building footprint shown in black.
2. Proposed building footprint shown in white.
3. Existing parking spaces shown in hatched pattern.
4. Proposed parking spaces shown in white.
5. Existing landscaping shown in green.
6. Proposed landscaping shown in green.
7. Existing site features shown in grey.
8. Proposed site features shown in grey.
9. Existing site boundaries shown in dashed lines.
10. Proposed site boundaries shown in solid lines.
11. Existing easements shown in dashed lines.
12. Proposed easements shown in solid lines.
13. Existing utility lines shown in dashed lines.
14. Proposed utility lines shown in solid lines.
15. Existing setbacks shown in dashed lines.
16. Proposed setbacks shown in solid lines.
17. Existing zoning shown in dashed lines.
18. Proposed zoning shown in solid lines.
19. Existing permits shown in dashed lines.
20. Proposed permits shown in solid lines.

Project Summary:
 213 Avenida Del Mar, San Clemente, CA 92673
 Client: NICK'S
 Project: NICK'S SAN CLEMENTE STORE
 Project Owner: NICK'S INC.
 Architect: DEKK ASSOCIATES
 Date: 11/13/08

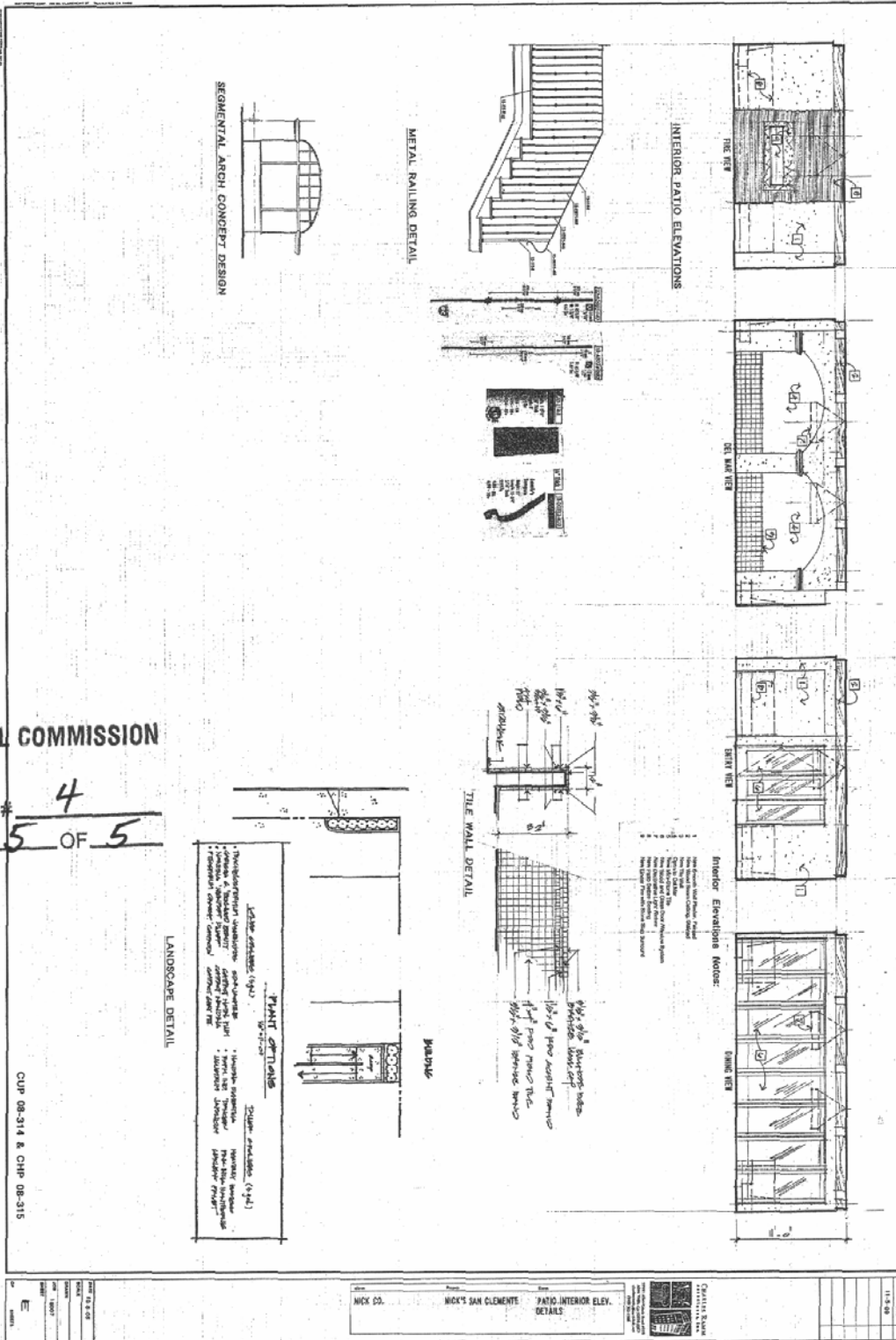
Existing Summary:
 213 Avenida Del Mar, San Clemente, CA 92673
 Existing Building: 213 Avenida Del Mar, San Clemente, CA 92673
 Existing Parking: 1000 Existing Parking Spaces
 Existing Landscaping: 1000 Existing Landscaping

Proposed Summary:
 213 Avenida Del Mar, San Clemente, CA 92673
 Proposed Building: 213 Avenida Del Mar, San Clemente, CA 92673
 Proposed Parking: 1000 Proposed Parking Spaces
 Proposed Landscaping: 1000 Proposed Landscaping



COASTAL COMMISSION
 EXHIBIT # 4
 PAGE 1 OF 5

Project Name	NICK'S SAN CLEMENTE
Client	NICK'S CO.
Site Plan	
Scale	AS SHOWN
Date	11/13/08
Drawn By	
Checked By	
Approved By	
Project No.	5-09-066
Sheet No.	16



COASTAL COMMISSION

EXHIBIT # 4
 PAGE 5 OF 5

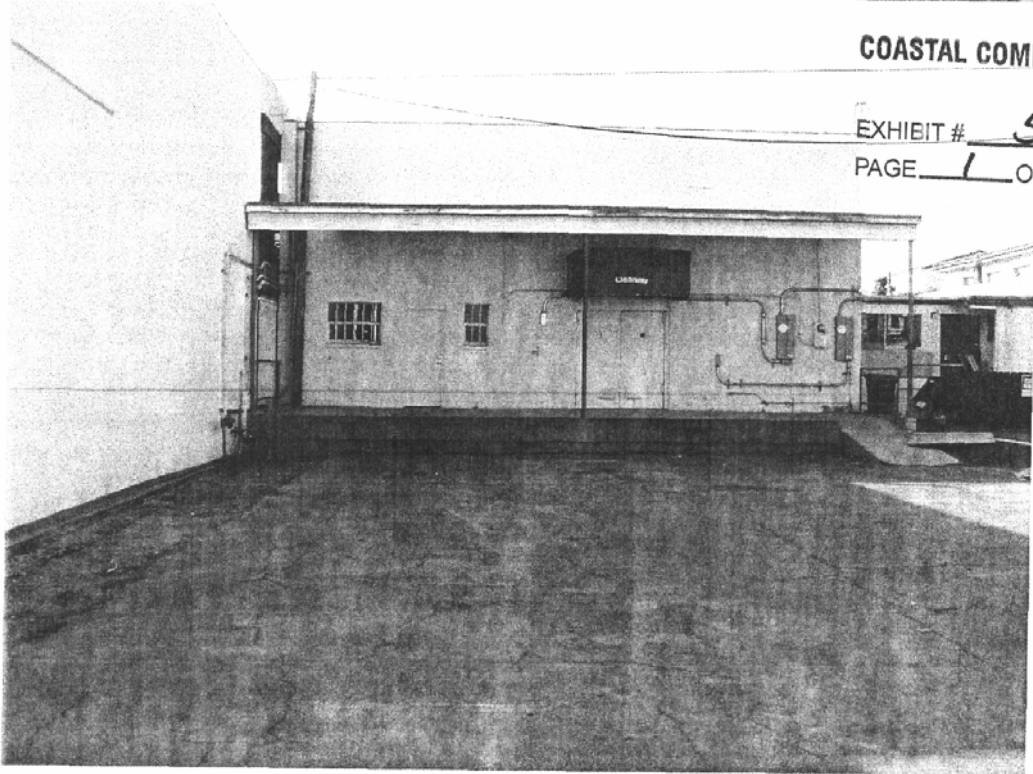
CUP 08-314 & CHP 08-315

NICK CO. NICK'S SAN CLEMENTE PATIO INTERIOR ELEV. DETAILS



DATE: 11.28.08
 SHEET: 11

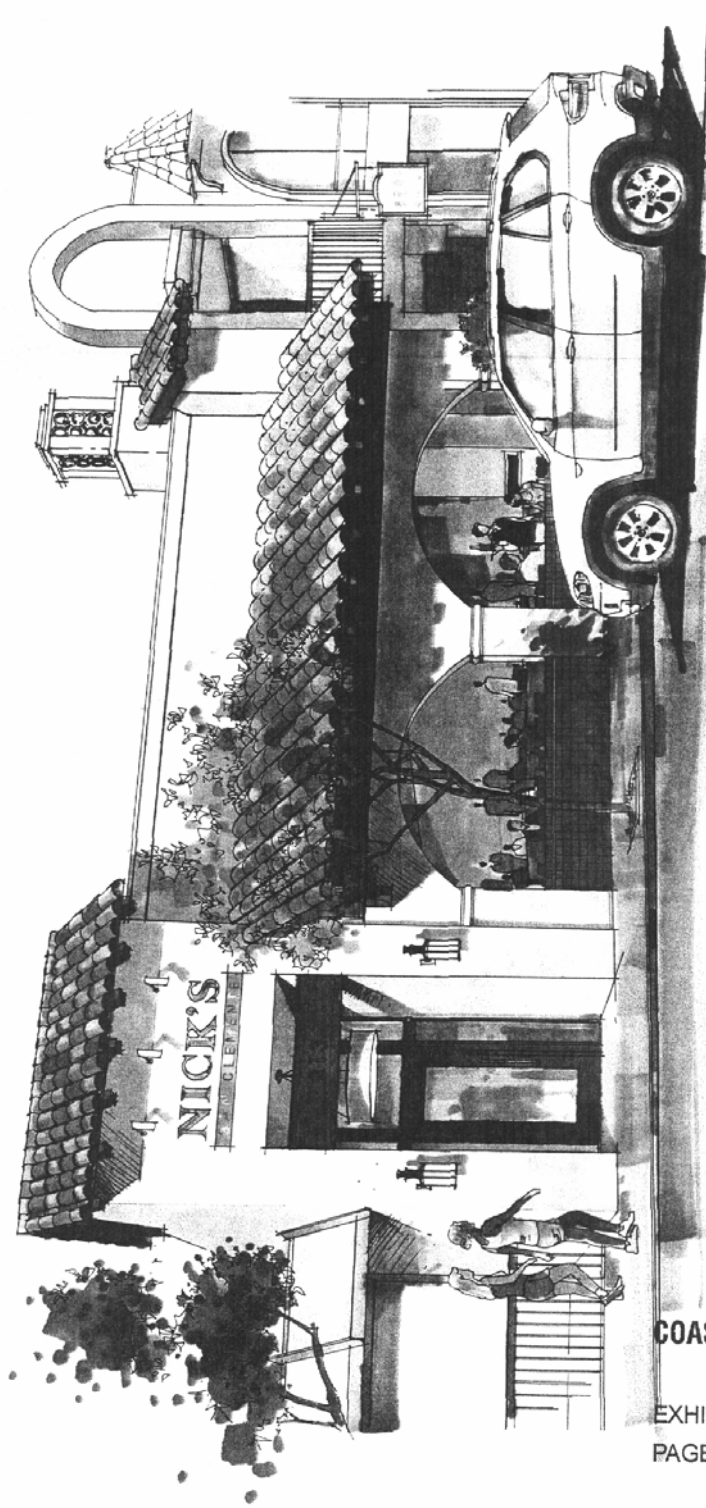
EXISTING SITE CONDITIONS 5-09.066



COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 2

ARTIST RENDERING - PROPOSED RESTAURANT



CHARLES RAMM
ARCHITECT, INC.
27111 Alvarado Creek Road #1105
Alhambra, CA 91806-2862
charlesramm.com
(919) 361-7806

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2