# CALIFORNIA COASTAL COMMISSION



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 Commission Action:

## STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-90-1120-A

APPLICANT: City of San Clemente AGENT: Lynn Hughes

PROJECT LOCATION: San Clemente Pier, City of San Clemente, Orange County

## DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:..

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Addition of 1,710 square feet of exterior deck area and interior storage/refrigeration area to an existing 7,951 square foot restaurant on the Municipal Pier. The additional deck area adds seating for 56 persons.

## **DESCRIPTION OF AMENDMENT:**

Addition of 4,656 square feet of space to the north and south buildings and 2,186 square feet of deck area with 44 additional seats. The additional building area is for increased pedestrian circulation, storage, refrigeration, scullery, cooking area, office space, employee conference room, employee changing rooms, 128 square feet of service area for the oyster bar and public rest rooms. Fifty-eight (58) new pilings will be required. New deck area includes widening the side deck extensions approved in 5-90-1120 by 2.6 feet and adding new sections of deck to the north and south buildings adjacent to the landward side of the pier ramp.



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## SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

<u>PROCEDURAL NOTE</u>: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

In this case, the Executive Director has determined that the proposed amendment is a material change. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [14 California Code of Regulations Section 13166].

## STAFF NOTE:

There are currently three coastal development permits for development on the San Clemente Pier which were approved by the Commission and issued by the Executive Director. These permits are: 5-90-1120, 5-97-086 and 5-97-087. Only CDP 5-90-1120 is activated. CDPs 5-97-086 and 5-97-087 have been issued but are not activated. CDP 5-97-086 expires in June 1999 and CDP 5-97-087 expires in May 1999. A complete description of these permits is included in Section B of this staff report (Project History).

The development proposed in 5-90-1120-A is different from that proposed in permits 5-97-086, 5-97-087. Staff concluded that rather than amending CDPs 5-97-086, 5-97-087 and 5-90-1120, it would be less confusing to handle the new development as an amendment only to Coastal Development Permit 5-90-1120 because CDP 5-90-1120 has already been activated and because this CDP most closely involves the development now being proposed by the permit amendment. The development proposed in permit 5-90-1120-A involves extending the decks approved by CDP 5-90-

1120 by 2.6 feet and adding new building area. Additional deck seating area is also proposed in this amendment which adds 44 seats and triggers the requirement for 11 parking spaces. The oyster bar does not have seating but does have service area. Service area for the oyster bar is 128 square feet and requires 3 parking spaces (1 space per 50 sq. ft.). In prior permits the Commission has consistently used the City's restaurant seating standard of one parking space per each four seats.

In order to address the fact that there would be three permits for development on the San Clemente Pier, staff is including a special condition that would require the City to determine which of the active permits it chooses to implement and allow to expire those active permits which the City does not intend to implement. The City representative has agreed that this condition is acceptable.

## **ISSUES OF CONTROVERSY:**

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Staff has received no letters or phone calls voicing objection to the proposed development. Staff does not know at this time whether the City agrees with the special conditions. This information will be provided to the Commission at the hearing.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of San Clemente

**SUBSTANTIVE FILE DOCUMENTS**: City of San Clemente Certified Land Use Plan, Coastal development permits concerning the pier including: 5-90-1120, 5-92-012, 5-92-012A, 5-92-470, 5-97-086, and 5-97-087

## STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution:

## I. APPROVAL WITH CONDITIONS

The Commission hereby <u>approves</u> the amendment to the coastal development permit, subject to the conditions below, on the grounds that the proposed amendment, as conditioned, is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, 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, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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. Special Conditions

The special conditions of CDP 5-90-1120 shall be replaced by the special conditions identified below.

### 1. Parking Requirements

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a parking plan which demonstrates how 28 parking spaces will be provided for the use of the Fisherman's Wharf Restaurant. The plan shall include evidence that the 28 spaces are not required for parking elsewhere in the San Clemente Pier area. The plan shall utilize available parking from any of the 3 following parking lots: (1) Linda Lane; (2) Marine Safety Headquarters; and (3) N. Alameda.

Development shall occur consistent with the approved plan. Any proposed changes to the approved plan shall require an amendment to this coastal development permit.

### 2. Future Improvements

The subject permit is only for the development described in Coastal Development Permit No. 5-90-1120-A. Any additions or change in the number of seats, changes in restaurant/bar service area, permitted structures, changes of use, future structures or improvements to the property will require a permit from the Coastal Commission.

## 3. Selection of Preferred Project

This permit shall not be effective until either: (1) CPD # 5-97-86 and CDP # 5-97-87 have expired, or (2) the applicant surrenders CDP # 5-97-86 and CDP 5-97-87 to the Commission and acknowledges in writing that they will not pursue the development approved pursuant to CDP # 5-97-86 and CDP 5-97-87.

## 4. Proof of Legal Ability to Develop

Prior to the issuance of the coastal development permit, the applicant shall provide proof of their legal ability to develop the property as conditioned herein. This evidence may include a copy of an amendment to the lease from the Sate Lands Commission or a letter from the State Lands Commission indicating that no amendment is required.

- 5. Assumption of Risk, Waiver of Liability and Indemnity Agreement
- (a) By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to

assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

(b) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit (1) a written agreement by the applicant in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition; and (2) a written agreement by the <u>State of California acting through</u> the State Lands Commission ("State"), in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's lease of the property that is the subject of this coastal development permit, the State agrees (i) to be bound to terms of clause (a) of this condition if it becomes the owner of the possessory interest in such property, and (ii) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of clause (a) of this condition.

## III. Findings and Declarations:

The Commission hereby finds and declares as follows:

## A. **Project Description**

The applicant is proposing to add 4,656 square feet of area to the north and south pier buildings and 2,186 square feet of deck area with 44 additional seats (see Exhibits 4, 5 and 6). In addition, the applicant will provide an additional 128 square feet of service area for the oyster bar which requires 3 parking spaces. The additional building area is for increased pedestrian circulation, storage, refrigeration, public rest rooms, employee changing rooms, an employee conference room, office space, a scullery, and cooking area. 58 new pilings will be required. New deck area includes widening the side deck extensions approved in 5-90-1120 by 2.6 feet and adding new sections of deck to the north and south buildings adjacent to the landward side of the pier ramp.

The pier includes a north building and a south building separated by a central walkway (see Exhibit 3). Exhibit 2 is a map of the Pier Bowl showing the municipal parking lot,

Linda Lane Park, the San Clemente Pier and other landmarks. A copy of CDP 5-90-1120 is provided as Exhibit 9.

### B. Project History

The San Clemente Pier has an extensive permit history. The permits can be broken down into two categories: building and deck expansions and other permit actions, primarily pier repair.

### 1. Building and Deck Expansions:

This category of development includes permits 5-92-012, 5-92-012A, 5-97-086 and 5-97-087. Coastal development permits 5-97-086 and 5-97-087 were for the development approved in CDP 5-92-012 and 5-92-012-A, which had expired.

<u>Coastal Development Permit 5-97-086</u> was approved in June 1997 and issued on 12-10-98. The permit expires in June 1999. Development in this permit on the south building of the pier included a 740 square foot food service building with no interior seating and 744 square feet of new deck with tables and 70 seats. Development on the north building of the pier included a 360 square foot beach recreation-retail rental shop, 360 square foot gift shop and 352 square feet of new deck with tables and 30 seats (see Exhibits 7 and 8). Seven pilings were required for proposed development on the south building. Finally, the existing 800 square foot concession building landward of the pier in the railroad right-of-way was proposed to be vacated by the City.

This permit was approved with three special conditions. Special condition 1 required the applicant to provide 27 parking spaces. Special condition 2 stated that a permit would be required for the re-striping of the Pier Bowl Municipal Parking Lot. Special condition 3 stated that the 740 square foot food service building did not include interior seating.

<u>Coastal Development Permit 5-97-087</u> was approved in May 1997 and issued on 7-1-97. This permit expires in May 1999. Development in this permit included a 570 square foot oyster bar on the south building and a 765 square foot fish market on the north building (see Exhibits 7 and 8). The oyster bar would displace 135 square feet of existing unenclosed deck with seating for 16 and the fish market would displace deck seating for 36. This permit was approved with two special conditions. Special condition 1 was for a seating plan for the oyster bar. Special condition 2 was for State Lands Commission review.

<u>Coastal Development Permit 5-92-012</u> was approved by the Commission in 1992 and subsequently expired. This permit included all the development which was later divided into permits 5-97-086 and 5-97-087. Development in this permit included the expansion and relocation of the base of the pier beach concession from the Santa Fe

Railroad right-of-way to City property, construction of an oyster bar, fish market, gift shop, beach rental shop and new deck and seating. The improvements would have added an 800 square foot fish market, 720 square foot food service, and 744 square feet of new deck to the south building. The improvements would have added a 360 square foot beach rental shop, 360 square foot gift shop, 396 square foot deck expansion for the oyster bar, and a 352 square foot deck and seating area to the north building.

CDP 5-92-012 was approved with special conditions regarding public access/parking, public use signs and State Lands Commission approval. The parking special condition required that 22 parking spaces be provided.

<u>Coastal Development Permit 5-92-012A</u> was approved by the Commission and allowed the City to obtain parking space credit for 4 of 8 newly constructed parking spaces in the North Alameda lot (5-92-470) and 9 parking spaces in the Marine Safety Headquarters. This permit has also expired.

<u>Coastal Development Permit 5-90-1120</u> was issued in January 1991, was extended 5 times and the permit has been activated. The required parking spaces have been provided.

Development in this permit was for addition of 1,710 square feet of exterior deck area and interior storage/refrigeration area, with 56 additional seats. The permit was approved with two special conditions. Special condition 1 required that 14 parking spaces be provided within 300 feet of the restaurant. Special condition 2 was for a waiver of liability.

### 2. Other Permit Actions

The Commission has approved a number of miscellaneous permits for the San Clemente Municipal Pier. These are:

<u>Coastal Development Permit 5-82-205</u> -- for the remodel and conversion of an existing private boat club to a restaurant facility with 305 seats. The remodel included the construction of two exterior decks around the existing structures. This CDP was activated.

<u>Coastal Development Permit 5-82-773</u> – for the removal and replacement of 15 pier pilings and a portion of the pier decking because of dry rot. This CDP was activated.

<u>Coastal Development Permit 5-83-249</u> – for the reconstruction of 400 feet of the pier which had been damaged during the 1983 winter storms. This CDP was activated.

<u>Coastal Development Permit 5-83-739</u> – for Phase II of pier reconstruction for rebuilding 256 feet of the pier.

<u>Coastal Development Permit 5-84-534</u> – Phase III of pier reconstruction for reconstruction of 420 feet of pier and reconstruction of several fishing bays. This permit was activated.

<u>Coastal Development Permit 5-86-793</u> – for a 40% increase in seating from 305 to 419 and the addition of 680 square feet of storage/refrigeration/food preparation area, windscreens and pilings. This permit was conditioned to provide 28 parking spaces. This permit expired.

## C. Public Access/Parking

Sections 30210, 30211, and 30252 of the Coastal Act apply to public access and recreational opportunities.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

There are also policies in the certified LUP concerning the Pier and public access.

Policy X.7 of Chapter 3 of the LUP states:

Existing recreation and visitor-serving uses, including public parking facilities, in the Pier Bowl and North Beach areas shall be protected. ... In no case, however, shall off-site parking displace existing visitor-serving and beach recreational parking on Avenida Victoria or in the Pier Bowl area.

The provision of adequate parking as a condition of new development is an essential component of the Coastal Act. The Commission has found adequate parking to be especially important when new development is located in a public beach area. The aim in requiring that sufficient parking is included in new development is to ensure that parking for beach access will not be hindered or otherwise adversely impacted by the new development. The access and recreation policies of the Coastal Act call for the protection of public access to the beach and the preservation of oceanfront lands for recreational uses which support public access.

The provision of adequate parking is important as it relates to the ability of the general public to gain access to the shoreline. When new development occurs near the beach or near beach access roads without the provision of adequate parking, patrons and employees of that development are forced to compete with beach visitors for limited public parking opportunities.

The Fisherman's Restaurant and San Clemente Pier are unique and an attraction to residents and visitors within a 50 mile stretch of coast. The Pier Bowl Municipal Parking Lot provides parking for the popular Pier Bowl beach, the San Clemente Pier, the restaurant on the pier, and the retail stores and restaurants in the Pier Bowl. The Commission notes that though there are other beaches for beachgoers to use, the demand for the use of those beaches is growing rapidly as Orange County and the neighboring counties rapidly urbanize. The demand for beach use is increasing, but the beaches are limited resources. The Coastal Act requires that development not interfere with the public's right of access to the sea by providing adequate parking to serve that development.

In its 1982 review of the conversion of the boat club to restaurant use, the Commission found it appropriate to use the City's parking standards as the basis for estimating the parking demand generated by the project and has used the City's standard in all subsequent actions on the subject restaurant. The City's parking standard for restaurant use is one parking space for each four seats. The Commission's parking guidelines recommend one space for each 50 square feet of service area.

The proposed development consists of the addition of a total of 4,656 square feet of building area and 2,186 square feet of deck area with 44 additional seats. The additional building area is for increased pedestrian circulation, storage, refrigeration,

employee changing rooms, rest rooms, and 128 square feet of service area for the oyster bar. Fifty-eight (58) new pilings will be required. New deck area includes widening the side deck extensions approved in 5-90-1120 by 2.6 feet and adding new sections of deck to the north and south buildings adjacent to the landward side of the pier ramp.

The applicant has provided a seating plan for the entire restaurant and outdoor deck seating. Prior to the approval of CDP 5-90-1120 the Pier contained 305 seats. CDP 5-90-1120 added a total of 56 seats. The current amendment adds an additional 44 seats to the outdoor seating areas and brings the total number of seats on the pier to 405 seats. 305 of the total seats are for outdoor seating and 100 seats are for inside dining.

As stated above, in its approval of CDP 5-90-1120, the Commission required the applicant to provide 14 spaces for the 56 additional seats. In keeping with prior Commission policy that the parking space demand be determined based upon the number of seats provided, the Commission finds that the applicant shall provide 11 parking spaces for the 44 additional outside seats provided in the proposed development and three for the 128 square feet of service area in the oyster bar. Therefore, the total number of parking spaces conditioned to be provided in special condition no. 1 is 28 parking spaces. In addition, special condition no. 2 requires that any changes in the service area, provision of seating or other changes shall require a coastal development permit. Only as conditioned does the Commission find that the proposed development conforms to the parking and public access policies of Chapter 3 of the Coastal Act.

### D. Visitor Serving/Recreation

Section 30213 of the Coastal Act states in part:

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

Policies in the certified LUP concern the San Clemente Pier.

Policy XI.4 of the certified LUP states:

Protect the City's recreational resources including the recreational facilities, parks, surfing areas, and community events identified in section 207 of this plan.

The importance of the Pier Bowl is stated on page 2-28 of the certified LUP. It states:

The pier offers fishing and scenic walks, as well as a small concession and bait-andtackle shop at the end and the Fisherman's restaurant, bar, and beach concessions

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.

The California Coastal Conservancy publishes a document entitled "California's Public Piers," which provides locations and descriptions of public piers in California. Among the piers listed in this document is the San Clemente Municipal Pier. The Coastal Conservancy notes that the services which piers provide include: views of the off-shore coast and fishing without a license. Public piers tend to become visitor serving attractions as in the case of the Santa Monica Pier, the Huntington Beach Pier, the Newport Beach Pier and the San Clemente Municipal Pier, to name just a few.

There is no admittance fee to piers. People can walk on the piers if they don't like walking on sand. People can spend the day sitting on the pier watching people or nature. Piers are an excellent viewing platform from which to view the beach and coastline.

In short, the San Clemente pier is a low-cost, visitor-serving facility which provides public fishing opportunities, fresh ocean air, an opportunity to walk and look out at the ocean and to get a panoramic view of the coastline. Any development on a public pier is therefore subject to scrutiny as to whether the development would affect the public's recreational interest. In this case, the improvements do not adversely impact public access or recreation. The pier will remain open and available to the public as before. Therefore, the Commission finds that the proposed development is consistent with the provisions of Section 30213 of the Coastal Act.

The applicant obtained permission from the State Lands Commission for the development approved in 5-90-1120. However, the proposed development involves additional pilings which may require an amendment to the applicant's lease from the State Lands Commission. Therefore the applicant shall be required, as a condition of approval, to submit either an amendment to the lease from State Lands or a letter from the State Lands Commission stating that no amendment is required.

Finally, the proposed development is located on a sandy beach in an area that is subject to hazards from wave run-up, scour, and erosion. Because the risk of harm cannot be completely eliminated, the Commission is requiring the City of San Clemente (the applicant) and the landowner to agree to waive any claim of liability on the part of the Commission for damage to life and property which may occur as a result of the permitted development. The waiver of liability will show that the applicant and the landowner are aware of and appreciate the nature of the hazards which exists on the site and which may adversely affect the stability and safety of the proposed development. The

Commission finds that the proposed project, only as conditioned, is consistent with Sections 30253 of the Coastal Act.

## E. 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 IP portion of the Local Coastal Program. The suggested modifications were not accepted by the City within the 6 month time period and therefore the Commission's approval of the IP has expired. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding public access and recreation. 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).

## F. 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 conditioned in order to be found consistent with the access and recreation policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, 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 effects, 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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