

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Staff: EL-SD
Staff Report: September 18, 2003
Hearing Date: October 7-10, 2003

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-03-027

Applicant: YMCA San Diego/Jim Stark

Agent: James G. Kidrick

Description: Construction of temporary facilities (booths, stages, fencing, etc.) for America's Finest City Freedom Festival, October 25th and 26th, 2003. The Festival will include live entertainment, beach games, a kid zone, and extreme games shows and demonstrations. Also included will be military displays, patriotic observances, commercial vendors and fireworks. Set-up begins Wednesday, October 22nd and take-down will be complete Monday, October 27th. The temporary event will restrict public access to Fiesta Island and imposes a fee on the general public for both parking and admission.

Site: Fiesta Island, Mission Bay Park, San Diego, San Diego County.

Substantive File Documents: Certified Mission Bay Park Master Plan; Adopted Guidelines for the Exclusion of Temporary Events from Coastal Commission Permit Requirements

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed temporary improvements, with conditions requiring final plans for the event, a schedule of events for the festival, including set-up and take-down times, and a copy of the City's approved special event or park use permit. The primary issue raised by this proposal is restricting public access to areas normally available for public use. A concern is also raised by the proposed fireworks show's potential adverse effects on water quality. The recommended special conditions, and project modifications made by the applicant, address all concerns, and will assure the minimum disruption of general public use on Fiesta Island. They also recognize that the festival itself is open to the public and provides an alternative form of entertainment for the price of admission and parking.

Moreover, there is no admission charge for military, law enforcement, or firefighting personnel, or their families, and these are expected to make up the majority of attendees.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-03-027 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.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans/Description. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final project plans (graphic and narrative), including a revised description of the access program, consolidating all modifications to the access program proposed by the applicant. Said modifications shall allow the maximum free and continual access to those areas of Fiesta Island not reserved for the event. The changes would provide bikers and joggers at all times, and motorists arriving prior to

8:00 am on event days, free access to Fiesta Island. In addition, event admission fees will be collected at the gates to the event venue, not at the entrance to the island.

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

2. Revised Schedule of Activities. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a revised schedule for the event, addressing which access restrictions will be necessary at which times, and including a schedule for set-up and take-down.

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

3. Fireworks Debris Removal. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a program for the removal of all fireworks debris. The program must be implemented within 24 hours of the fireworks show.

4. City Permit. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a copy of the City's Special Event or Park Use permit, whichever is required. Any mitigation measures or other changes to the project required through said permit shall be reported to the Executive Director. Such changes shall not be incorporated into the project until the applicant obtains a Coastal Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant proposes staging an event to be held in conjunction with Fleet Week, an annual celebration of the Navy's presence in the San Diego community. The proposed America's Finest City Freedom Festival will be similar to a street fair or carnival, but with a patriotic theme. Live entertainment is proposed, along with beach games, a kid zone, extreme sports shows and demonstrations, military displays and fireworks (on Saturday night only). Commercial vendors will provide food, drink and merchandise. The event is proposed for the last weekend in October, and will

be held on Fiesta Island within Mission Bay Park. The proposed event venue is an inland area used primarily for over-the-line competitions (an annual amateur series of softball with three-person teams) and designated in the certified Mission Bay Park Master Plan (land use plan) for special events.

Although the Mission Bay LCP segment has a certified land use plan, there are no implementing ordinances in place as yet. Thus, Mission Bay Park remains an area of deferred certification where the Coastal Commission is the coastal development permit-issuing agency. Much of the park is also built on filled tidelands and, as such, will remain in the Commission's original permit jurisdiction even if an Implementation Plan is certified. Many temporary events are exempted pursuant to the adopted Guidelines for the Exclusion of Temporary Events from Coastal Commission Permit Requirements. It was determined that this event was not exempt pursuant to the guidelines because it usurps a large area of the park at a time when beach use is still often high (October). Although there is no admission charge for military, law enforcement, or firefighting personnel, or their families, all other attendees will be required to pay to occupy areas otherwise open for free public recreation.

2. Public Access and Recreation. The following Coastal Act policies are most applicable to the subject permit application:

Section 30210.

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

Section 30211.

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

Section 30212.5.

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213.

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

Originally, Commission staff reviewed this proposal as being potentially exempt from the coastal permit process pursuant to the adopted Guidelines for the Exclusion of Temporary Events from Coastal Commission Permit Requirements. The event does not occur within the summer and will not occupy sandy beach. However, it will charge fees, both to park on Fiesta Island and to attend the festival. Fiesta Island is used for a number of different public purposes, including jogging, biking, Jet-skiing, fishing and dog-walking. In addition, there is a youth aquatic camp operated by the Boy Scouts along the shoreline east/northeast of the proposed special event venue. Other than the youth camp, there are no fees involved with any of these recreational activities, and there is no charge for any of the public parking in Mission Bay Park.

The applicant's initial proposal was to collect both parking and event fees at the entrance to the island, which is connected to the main shoreline by a causeway. As the event is to honor those protecting America's freedoms, all military, law enforcement, or firefighting personnel, and their families, are admitted free. Because this is intended to be a large gathering of public service and military people, site security is a legitimate concern, and is the reason for the initially proposed access requirements.

The only other initially proposed exemptions from the fees were for those persons carrying fishing poles, towing Jet skis, or on a list for the youth camp. This would result in persons coming to Fiesta Island for other purposes, but not to attend the festival, either not being allowed on Fiesta Island at all or having to pay fees for amenities otherwise available to them free of charge. The applicant has since proposed to adjust the event access system to also accommodate bikers and joggers at all times, and motorists arriving prior to 8:00 am on event days. In addition, although parking fees will continue to be collected at the entrance to Fiesta Island for all motorists not exempted above, the event admission fees will be collected at the gates to the event venue, not at the entrance to the island. Thus, persons arriving by car after 8:00 a.m. may have to pay a parking fee, but they will not have to pay admission to the event unless they are actually attending the event. Special Condition #1 requires submittal of final plans and a revised narrative description incorporating all these recently proposed changes.

With temporary events that result in public access restrictions, an important consideration is how long the temporary facilities will be in place. Generally, security fencing must be maintained from when set-up begins until take-down is complete. This application was submitted several months ago, when the applicant wanted to stage the event over the 4th of July. This was denied at the local level and Commission staff advised that they would recommend against it also, due to the already over-crowded conditions in Mission Bay Park over that holiday. In resetting the timeframe to the end of October, the summer beach season is officially ended, although October weekends can see high levels of beach

attendance if the weather stays warm and sunny. Since changing the event dates, the applicant has not submitted a new event schedule. Special Condition #2 requires an updated schedule for the October dates.

In summary, the proposed special conditions address the Commission's concerns over potential public access conflicts during the running of the proposed temporary event. As conditioned, maximum access to Fiesta Island amenities outside the temporary event venue will be maintained throughout the event. Generally, public use of Fiesta Island occurs along the shoreline, not inland. With the special conditions assuring that the shoreline areas remain open, and free, to persons not attending the event, the Commission finds the proposal consistent with the cited Coastal Act policies. As required for developments between the sea and first coastal roadway, the Commission further finds that, as conditioned, the proposal is consistent with all other public access and recreation policies as well.

3. Visual Resources. The following Coastal Act policy addresses visual concerns, and states:

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The applicant is not proposing any unusually large or bulky structures in association with the proposed temporary event. Although there will be several temporary structures in an area usually devoid of structures, they are not located along the shoreline, but inland, and are not anticipated to be very visible from other public recreational areas. Moreover, the structures will be in place less than one week, and that week is outside the summer beach season, such that far fewer people will be in the area to be impacted in any way. Therefore, the Commission finds the proposal consistent with Section 30251 of the Act.

4. Water Quality. The following Coastal Act policy is most pertinent to this issue, and states, in part:

Section 30231.

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,

The proposed temporary event will not have any significant adverse effects on water quality. There will be no change in the amount of impervious surfaces at the site – it is a dirt area and will remain so. No grading or other landform alteration is required to place the temporary structures on flat ground. The event promoters will provide trash receptacles and chemical toilets for the attendees.

The proposed Saturday night fireworks appear to be the only aspect of the proposal that could potentially degrade marine resources. During review of the Sea World Master Plan, it was acknowledged that fireworks' debris can be scattered over a fairly wide area. Due to the proximity of the Bay to the proposed temporary event venue, there is legitimate concern that firework debris can degrade both Mission Bay itself and upland areas of Fiesta Island. Special Condition #3 provides for the removal of all such debris within 24 hours of the fireworks show. Debris on land would generally be gathered by hand, whereas debris in water might be skimmed from the surface or may require diving to retrieve. As conditioned, the Commission finds the proposal consistent with Section 30231 of the Coastal Act.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, with the attached special conditions, such a finding can be made.

Mission Bay Park has a certified Master Plan, but is primarily unzoned, and no implementing ordinances have yet been proposed. Thus, the LCP segment remains an area of deferred certification; moreover, most of Mission Bay was constructed on filled tidelands and will remain in the Commission's original permit jurisdiction even after full certification. As a whole, Mission Bay Park is a dedicated public park, and Fiesta Island is designated in the certified Mission Bay Park Master Plan for future park and shoreline improvements, and retention of all existing facilities to continue their existing uses. Along with South Shores, Fiesta Island is also designated as a site for temporary events and group functions. The proposed development is consistent with the designation in the Mission Bay Park Master Plan, and, as conditioned, has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Special Condition #4 addresses the City's temporary event or park use permit, and assures the two permits will not be in conflict. Therefore, the Commission finds that approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to prepare a fully certifiable LCP for its Mission Bay Park segment.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California

Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing public access and water quality will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is found consistent with the requirements of the Coastal Act to conform to CEQA.

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 on which the Commission voted on the application. 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.

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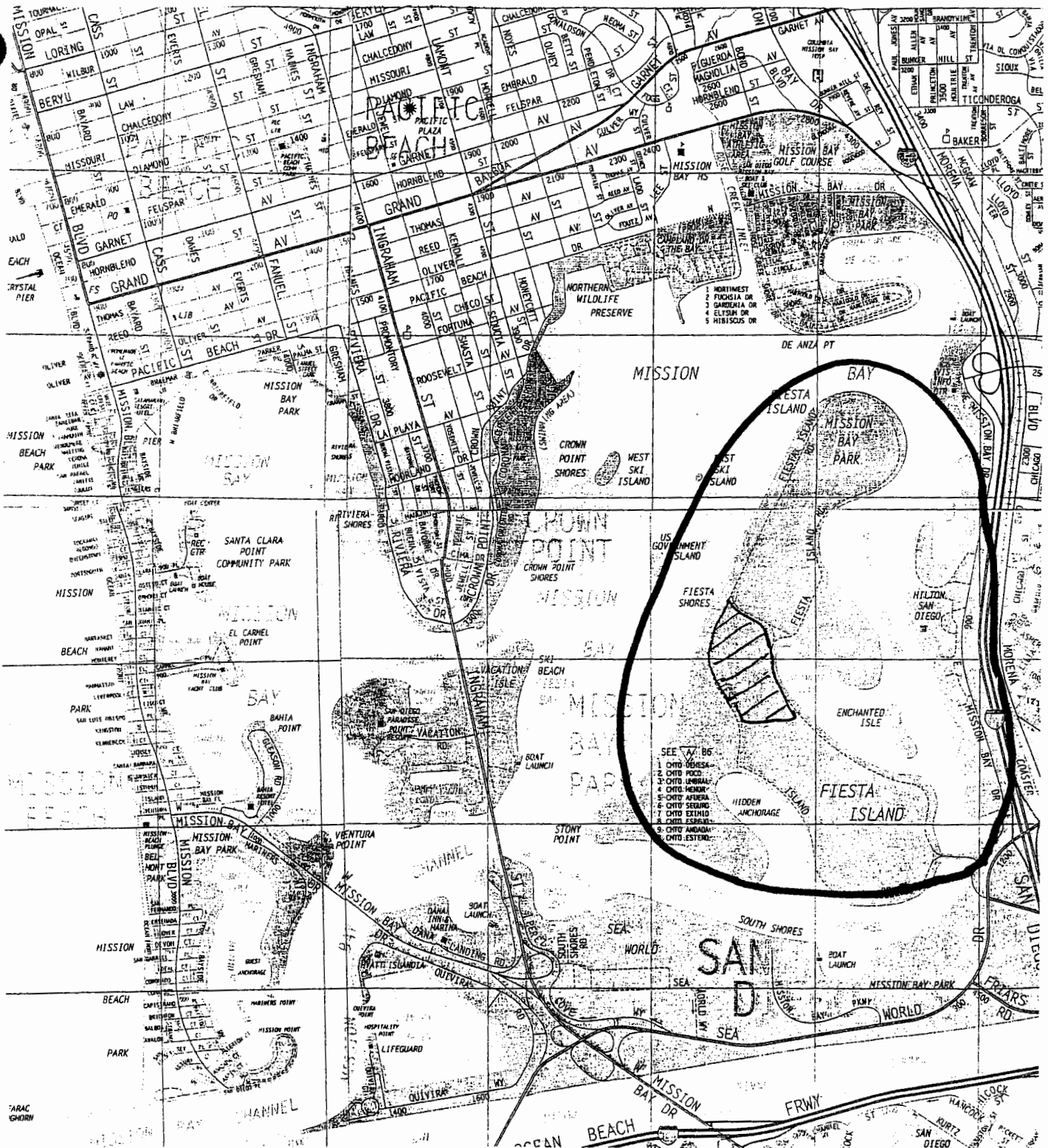


EXHIBIT NO. 1

6-03-027

Location Map

6-03-027

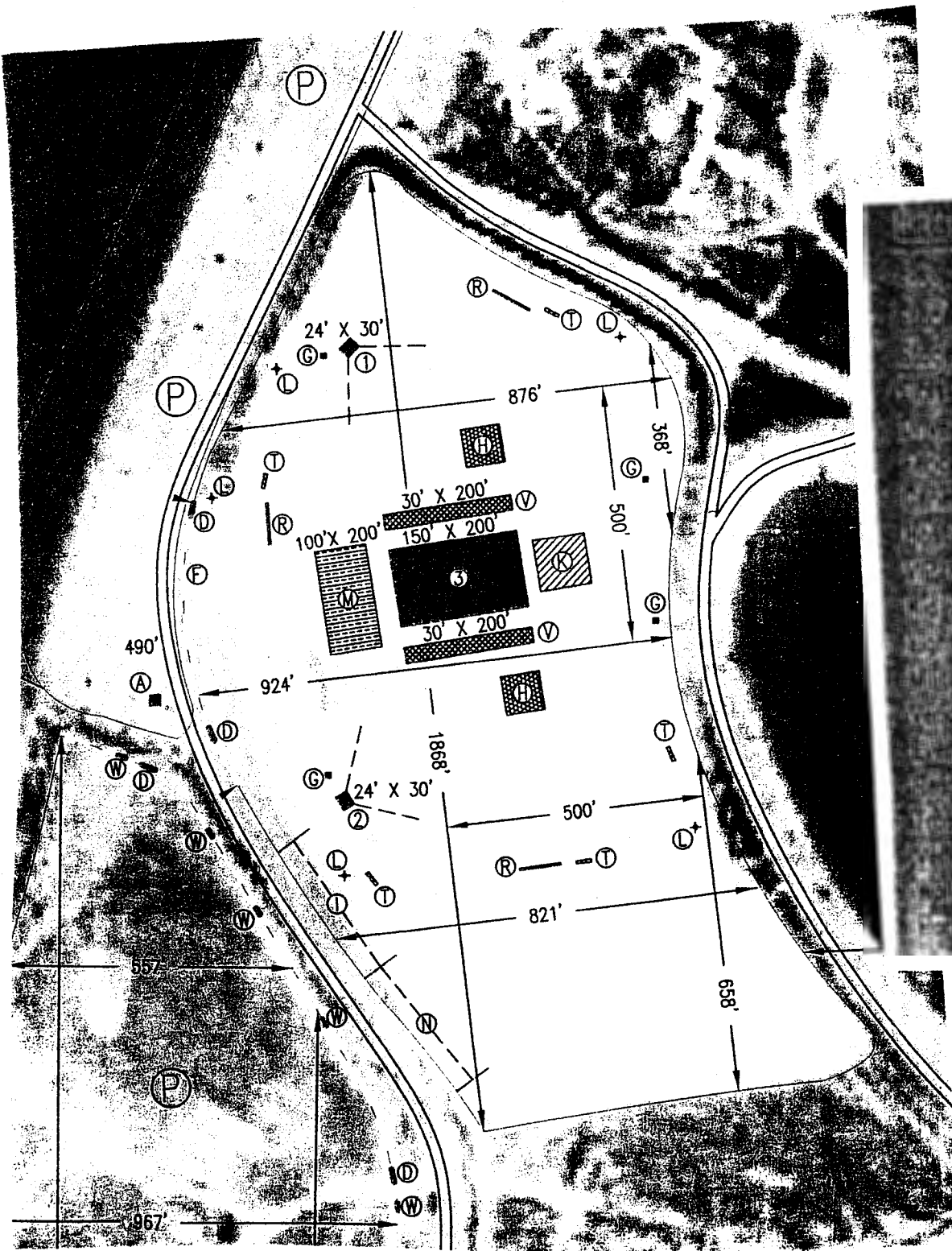


EXHIBIT NO. 2
APPLICATION NO.
6-03-027
Site Plan