

CALIFORNIA COASTAL COMMISSION

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**Item Th 14c**

Filed:	July 15, 2005
49 th Day:	September 2, 2005
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Staff:	ALB/LB <i>ALB</i>
Staff Report:	November 3, 2005
Hearing Date:	November 16-18, 2005
Commission Action:	

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-05-267**APPLICANT:** DBA Pierside Schleppey's**AGENT:** Carl Kepner**PROJECT LOCATION:** 250 Avenida Calafia, Calafia Beach Park, San Clemente, Orange County**PROJECT DESCRIPTION:** Extension of service hours into the evening (5pm-10pm) and installation of 42" high tubular metal fencing around an existing outdoor seating area at Schleppey's at the Beach Concession.**LOCAL APPROVALS RECEIVED:** Approval-in-Concept from the San Clemente Planning Department dated May 13, 2005, Approval of Resolution No. 05-37 by San Clemente City Council on May 17, 2005 and Approval of Resolution 43-2005 by the California State Park and Recreation Commission on June 10, 2005.**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan and CDP 5-04-042 (HEG).**SUMMARY OF STAFF RECOMMENDATION:**

The lessee of an existing concession stand known as "Schleppey's" proposes to install 42" high tubular fencing around an existing outdoor seating area and extend the hours of operation to accommodate a new restaurant use with alcohol sales during the evening. No further physical changes are proposed. The proposed project will not change the character or function of the concession stand use and will continue to serve beachgoers visiting Calafia Beach Park. The project is located on property leased by the City from California State Parks, between the first public road and the sea, landward of the OCTA railroad tracks. The major issues addressed in the staff report involve public access and parking.

Staff recommends the Commission **APPROVE** the proposed development with three (3) special conditions which require 1) operational requirements to ensure adequate parking and maximum public access, 2) inclusion of signage informing the public that all seating is available until 5:00 pm; and 3) future improvements return to the Commission for review.

At the time of this staff report, the applicant objects to the signage requirement. Staff has requested the applicant provide a written explanation of their specific objections. If provided in a timely manner, these will be forwarded to the Commission by staff in an addendum.

LIST OF EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Project Plans
4. Photo Simulations

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-05-267 pursuant to the staff recommendation.

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Operational Requirements

The permittee shall comply with the following operational requirements:

- (a) Table service shall be limited to the hours of 5:00 p.m. to 10:00 p.m.;
- (b) Table service seating shall not exceed 38 seats, as currently provided; and
- (c) Concession stand walk-up window service shall remain open to the public during operating hours, as proposed.

2. Signage

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a signage plan informing the general public that use of the seating provided within the fenced area is open to the public without purchase until 5:00 pm and seating outside the fenced area is always open to the public. The plan shall include at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil.

3. Future Improvements

This permit is only for the development described in Coastal Development Permit No. 5-05-267. 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. Accordingly, any future improvements to the development authorized by this permit that would result in an increase in square footage or any other change in the intensity of use of the property including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources Code, Section 30610(d) and Title 14, California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-267 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND

Project Location

The proposed project is located at Schleppy's Concession Stand at Calafia Beach Park in the City of San Clemente, Orange County (Exhibits 1 & 2). The project site is located on State Parks property leased to the City. The City subleases the property to the applicant, DBA Pierside Schleppy's, Inc. The site is currently developed with a concession building and public restrooms. The building is surrounded by a 205 space public parking lot. The railroad tracks, rip-rap and the sandy beach are located seaward of the subject site, beyond a row of parking. Public access to the shoreline is available via an at-grade crossing approximately 100 feet seaward of the site.

Project Description

The applicant is proposing minor physical improvements to the existing concession stand seating area and a year-round extension of operating hours into the evening (5 pm—10 pm). Specifically, the applicant proposes to install 42" high tubular metal fencing and three new gates at the northern and southern perimeters of an approximately 1,000 square foot outdoor seating area. (Plans are provided in Exhibit 3. Photo simulations are provided in Exhibit 4.) The new fencing and gate will match existing fencing along the west side of the seating area. There are currently 38 stationary concrete seats provided in the area to be fenced (5 four-person tables, 1 eight-person table and 1 ten-person bar) and 8 seats (2 four-person tables) and four benches outside the area to be fenced. A new public seating bench is also proposed outside of the fenced seating area.

The proposed fencing is necessary to accommodate beer and wine sales at the site in conjunction with a new evening dining program. The evening dining program will involve table service and a change in menu during the evening hours. All seats will continue to be open to the general public until the evening dining program begins operation at 5:00 pm (i.e. use of the seats is open to concession patrons and the general public alike). The proposed gates will remain open during daytime hours. Service will not be limited to exclusive restaurant use during the evening. The concession stand walk-up window and the seats outside the fenced area will remain open to the public. However, the seats within the fenced area would be used exclusively by restaurant patrons at night (5:00 pm--10:00 pm). No work to the existing concession building is proposed. No additional seating is proposed. No additional parking is proposed.

B. COASTAL ACCESS

1. Coastal Act Policies

As defined by Section 30106 of the Coastal Act, "*development*" means change in the density or intensity of use of land or construction, reconstruction, demolition, or alteration of the size of any structure. The proposed project involves a change in land use from a daytime only concession stand (commonly known as the Schleppy's) to a concession stand and evening restaurant. The square footage of the building will not change. The number of outdoor seats will not increase. Fencing is proposed to accommodate a new evening dining program. Due to the physical development and proposed change in intensity of use, the current project is considered development under the Coastal Act.

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

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

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

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

Section 30221 states,

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

2. Land Use Plan Policies

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

Public access at Calafia is discussed in Chapter 2 (Area Description) as follows:

The third beach access point in the Calafia/South Area is at the northwestern edge of the San Clemente State Beach. Access is available via Avenida Calafia, which terminates at the beach. Avenida Calafia is one of the most direct, and therefore easiest, routes to the shoreline. Pedestrian access is also available from Avenida Lobiero through Calafia Park.

Present facilities at Calafia Beach include:

- *Beach concession stand*
- *Restrooms*
- *Showers*
- *Picnic Tables*
- *Metered Parking*

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

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

3. Parking Requirements

The primary issues of concern to the Commission triggered by development at this location include 1) potential adverse impacts on parking resulting in impaired access to the coast and 2) provision of lower cost visitor-serving development. Since parking is considered the most significant issue

raised by the proposed project, this section outlines parking requirements used by the City of San Clemente to evaluate the proposed development.

The City of San Clemente uses a parking standard of one (1) parking space to every four (4) seats for restaurant uses. The concession stand currently provides 48 stationary seats. No additional seats are proposed by this application. Applying the City's parking standard, a restaurant providing 48 seats would require 12 parking spaces. Parking to serve the concession stand is provided in the adjacent Calafia Beach Park parking lot, which contains 205 spaces. No new parking is proposed to serve the expanded use of the concession stand into the evening.

Public access to the coast can be adversely impacted by new development if adequate parking spaces are not provided. Patrons of the new development will compete with beach-goers for public parking spaces. In this case, the project is located immediately adjacent to the beach within a parking lot committed to beach parking. However, unlike conditions at the San Clemente Pier and the Pier Bowl area (where multiple uses draw upon limited parking there), the parking lot at this site only serves Calafia Beach Park and the existing concession. No other uses are served by this parking pool. As such, impacts from the proposed project on beach parking must be evaluated.

The project involves the creation of a new evening restaurant use where there is no evening use currently. The peak parking period for the proposed restaurant use will be in the evenings, after the peak day use of the beach has ended. The new restaurant use will operate from 5:00 pm to 10:00 pm. During the evening, the restaurant will create a use that doesn't exist currently. The restaurant will be a full service operation with table service and a full menu with alcoholic beverages. The existing seats to be enclosed with low-profile gating would be used exclusively by restaurant patrons in the evening. The new restaurant will create a demand where there is none now. Nonetheless, the evening operation demonstrates an opportunity for shared use parking, where the various land uses have different peak parking times and the existing parking supply is sufficient to serve both day and evening activities. Because the restaurant will operate in off-peak hours, there will be no adverse impact on public access resulting from the proposed evening operation.

The primary purpose of the concession stand at this site is to provide food and beverages for beach visitors. True concession uses, like the one at this site, won't typically have a parking demand independent of beach visitor demands. During the daytime, the concession stand will continue to cater to the beach-going public and will not have the restaurant component which would have a parking demand independent of beach visitor demands. As such, no additional parking demand will be created in the daytime. When the evening dining program begins at 5:00 pm, City staff has indicated that many beachgoers are leaving the park. According to City staff, the number of people leaving the beach will likely exceed the number of people that would be arriving to specifically take advantage of the evening dining service. In addition, many of the patrons anticipated to take advantage of the evening dining program would likely already be visiting the beach. Finally, no other uses draw upon the reservoir of parking available at this beach park. Therefore, as proposed, the project will not adversely affect parking conditions in the subject area.

To ensure that adequate parking is provided to serve the proposed development now and in the future, the Commission finds it necessary to impose three special conditions. Special Condition 1 requires the applicant to comply with specific operational requirements to ensure that the proposed use of the site will not create adverse parking conditions. As required by Section 30252 of the Coastal Act, new development "*should maintain and enhance public access to the coast by... (d) providing adequate parking facilities or a substitute means of serving the development with public transportation.*" As discussed in the previous section, there will be an increase in outdoor seating (in the form of the new evening table service) from 0 to 38 seats in the evening. No additional parking is proposed to serve the extended service hours.

Special Condition 1 also ensures that the concession stand remain an amenity catering to beach-goers during the day. Special Condition 1 requires that table service be limited to the hours of 5:00 p.m. to 10:00 p.m. and that concession stand walk-up, window service remain open to the public during operating hours. The condition also requires concession stand/restaurant seating not to exceed 38 seats to ensure that the parking demand is not increased without proper consideration. This condition is intended to prohibit the creation of a "destination" during the peak beach use hours, which would create an increased parking demand.

To further ensure that sufficient amenities are provided to serve the beach-goer, the Commission imposes Special Condition 2. Special Condition 2 requires the submittal of a signage plan to inform beachgoers that the seating area inside the fence remains open to the public during the daytime. The sign must specify that no purchase at the concession stand be required in order to use the seats. Sample language may read: "PUBLIC SEATING No Purchase Required Before 5:00 pm." The seats outside of the fence will continue to be open to the public during the evening.

Special Condition 3 informs the applicant that any future development which changes the intensity of use of the site or which changes the use of the site requires an amendment to this permit or a new coastal development permit. This ensures that the Commission will have the opportunity to review future improvements to the structure that could affect parking demand. This type of special condition is consistent with those imposed in previous permits issued in high use, visitor-serving areas.

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

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

As cited previously, Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. Section 30221 requires that oceanfront land suitable for recreational use shall be protected for recreational use and development. The proposed project presents an opportunity for diversification of the types of visitor serving development available in the subject area, where there are presently limited options. The project involves improvements to an existing concession stand located at Calafia Beach Park. The project site is located in a prime location for a facility that offers a range of lower cost, visitor-serving commercial options.

The proposed project would expand the range of commercial options available at this beach in a manner that will serve the surrounding community as well as preserve lower-cost, casual fare for beach visitors. The concession stand currently offers reasonably priced food and drinks. During the day, the concession stand will continue to serve the same fare and cater to beach visitors. The character of the outdoor seating area will not change dramatically from existing conditions and will continue to be inviting to beach visitors seeking a low-cost, casual establishment. During the evening, the concession stand will also provide table service that will serve both food and alcohol. The applicant indicates that the same reasonably priced items would remain on the menu during the evening operation. As such, the continued concession stand use and the new restaurant use would provide a range of lower cost visitor-serving commercial development.

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

C. LOCAL COASTAL PROGRAM

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

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

D. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require 1) operational requirements to ensure adequate parking and maximum public access, 2) inclusion of signage informing the public that all seating is available until 5:00 pm; and 3) future improvements return to the Commission for review. No further alternatives, or mitigation measures, beyond those imposed by this permit, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

ORANGE CO.

SEE MAP

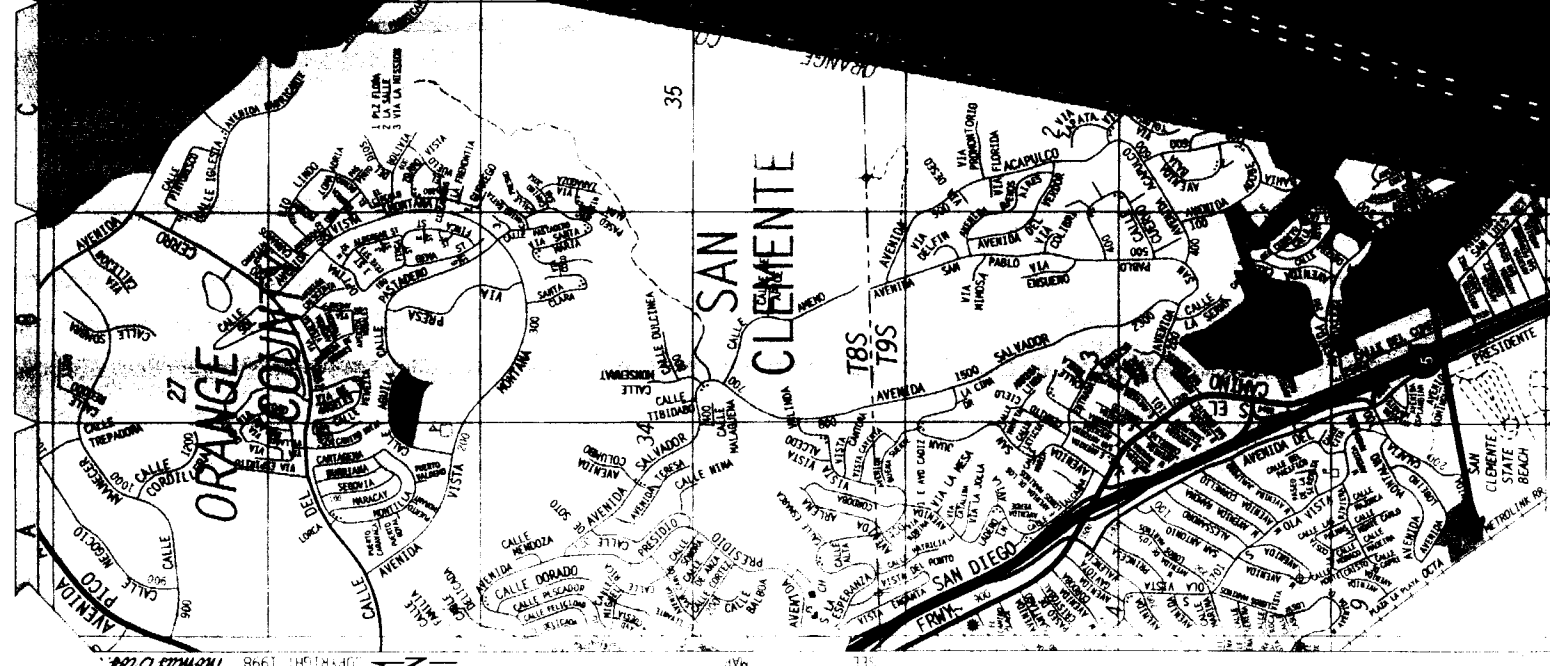
COASTAL COMMISSION
5-05-267
EXHIBIT # 1
PAGE 1 OF 1

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MARINE CORPS BASE
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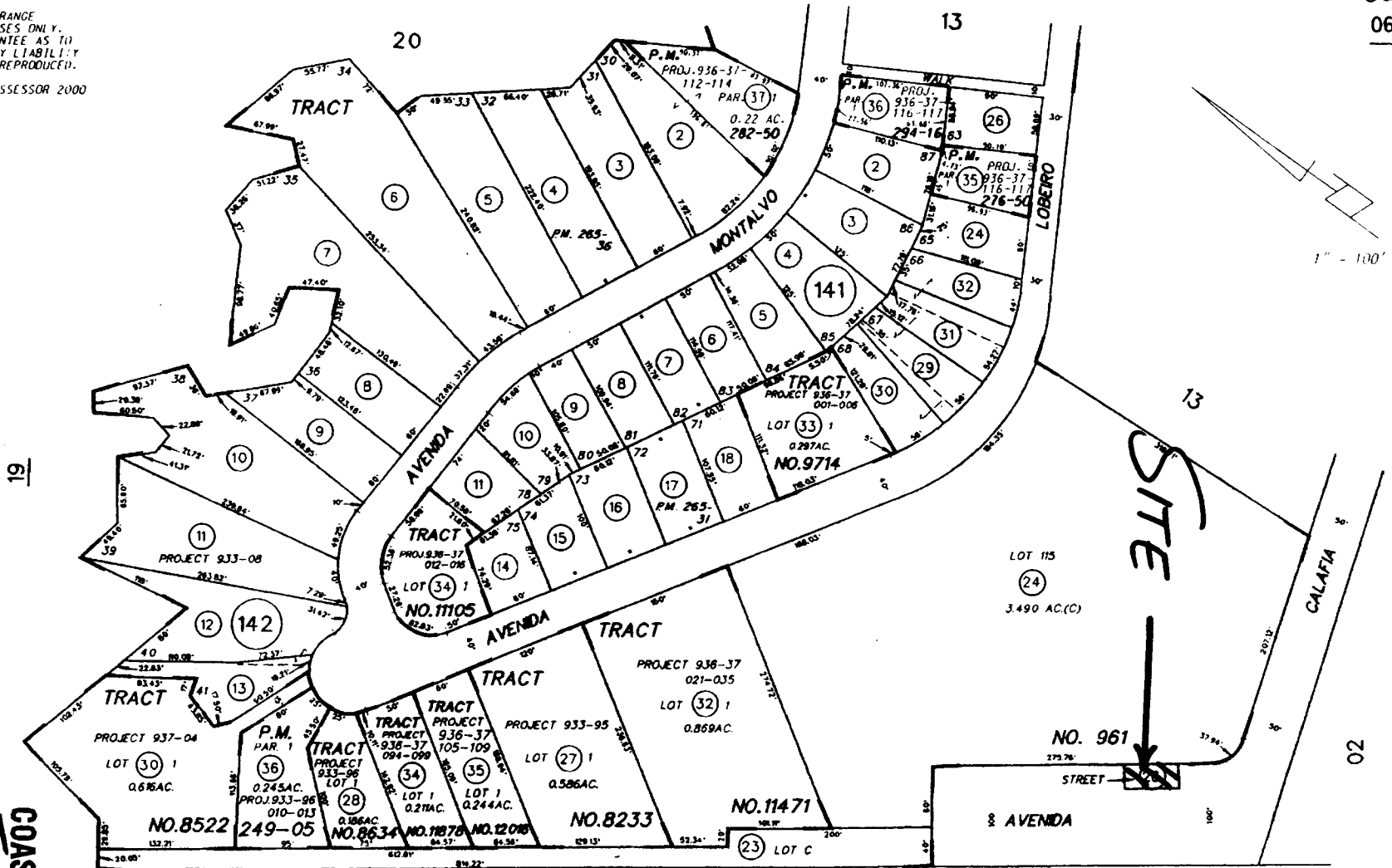
SAN DIEGO COUNTY



SEE MAP
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COASTAL COMMISSION
 EXHIBIT # 5-05-10
 PAGE 1 OF 1
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TRACT NO. 961	M.M. 30-31	TRACT NO. 11105	M.M. 503-21.22	02
TRACT NO. 8233	M.M. 333-46.17	TRACT NO. 12016	M.M. 520-47.48	
TRACT NO. 8634	M.M. 349-40.41	TRACT NO. 11878	M.M. 526-46.47	
TRACT NO. 8522	M.M. 393-17.18	PARCEL MAP	P.M. 36-21. 249-05	
TRACT NO. 9714	M.M. 442-33.34	PARCEL MAP	P.M. 282-50. 276-50	
TRACT NO. 11471	M.M. 501-37.38			

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

ASSESSOR'S MAP BOOK 060 PAGE 14 COUNTY OF ORANGE



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EXISTING GATE

NEW GROUND COVER

NEW FENCE & GATE

CONCESSION
Per Plan 2600

RESTROOMS

NEW SEATING

NEW GATE

NEW FENCE & GATE

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EXHIBIT # 5-05-267

PAGE 1 OF 1

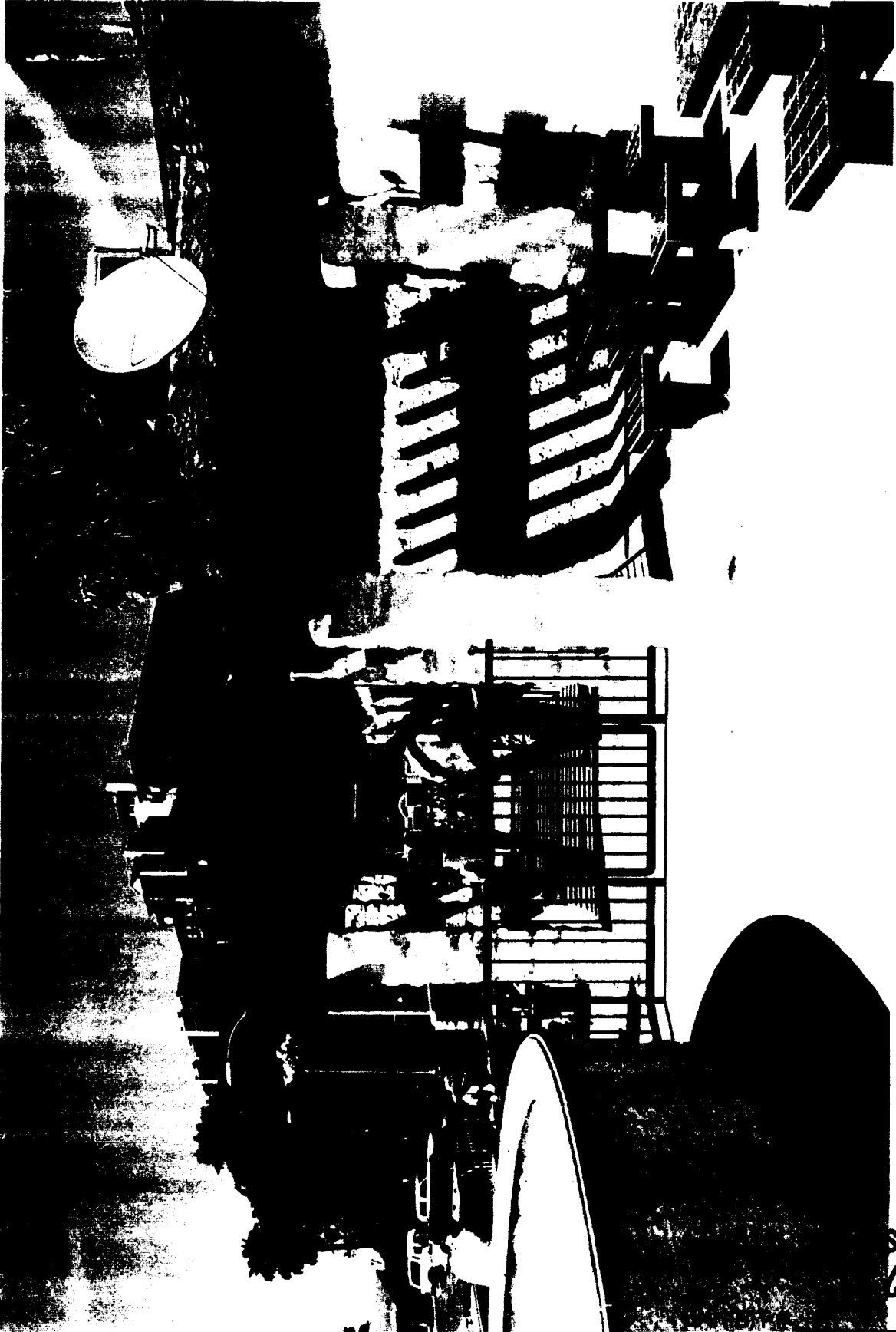
California Coastal Commission
South Coast District Office
APPROVED
Permit No. _____

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EXHIBIT 1
Schleppy's - BP&R Alternate Proposal



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Exhibit 2 - Photo Simulation: South View (BP&R)



Exhibit 3 – Photo Simulation: South Oblique View (BP&R)



Exhibit 4 – Photo Simulation: North View (BP&R)



Exhibit 5 - Photo Simulation: Ramp Gate (BP&R)

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EXHIBIT # 05-265

PAGE 4 OF 4

