

CALIFORNIA COASTAL COMMISSION

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Staff Report:	January 19, 2006
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Commission Action:	

Item W15b**STAFF REPORT: MATERIAL AMENDMENT**

AMENDMENT NUMBER: 5-04-042-A1

APPLICANT: HEG Enterprises, Inc.

AGENT: Robert Novello

PROJECT LOCATION: Landward of the San Clemente Municipal Pier, 611 Avenida Victoria, San Clemente, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Improvements to existing concession stand, including seating area expansion, enclosure of patios with windscreens, replacement of asphalt with interlocking pavers, and addition of evening operating hours for exclusive restaurant use.

DESCRIPTION OF AMENDMENT: Extension of concession stand/restaurant food service into the off peak beach use season and construction of an 814 square foot permanent cover over an existing outdoor dining area and installation of sidewalls and sliding storefront enclosures.

LOCAL APPROVALS RECEIVED: Approval-in-Concept from the San Clemente Planning Department dated May 10, 2005 and approval of Amendment to Conditional Use Permit 03-005 and Amendment Minor Cultural Heritage Permit 03-065 by Planning Commission dated May 4, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, City of San Clemente Pier Bowl Specific Plan, Parking Availability Review Conducted for The Crab Pot Restaurant and Beach Eatery prepared by IBI Group dated October 8, 2003 and Parking Availability Review Addendum #1 prepared by IBI Group dated March 2, 2005.

SUMMARY OF STAFF RECOMMENDATION:

The lessee of an existing concession stand known as "The Crab Pot" seeks a modification of a previously approved permit to allow the construction of a permanent cover, wall enclosures and a sliding storefront at an existing outdoor seating area in order to accommodate new off-season use. The proposed project is located in the railroad right-of-way on property leased by the City from the railroad, between the first public road and the sea. The major issues addressed in the staff report involve the protection of lower-cost visitor serving uses, the provision of adequate parking, and preservation of scenic resources.

The Crab Pot currently offers low-cost food service and public seating immediately landward of the San Clemente Pier. The proposed physical improvements would change the character and function of the only low-cost beach concession operation in the vicinity, creating the appearance and parking demand of a destination restaurant. There are other such destination restaurants in the immediate vicinity, including those on the Pier itself. However, the subject concession building is the only such low-cost concession at this beach. No additional parking is proposed to serve the proposed development. Parking for the subject site and all surrounding commercial development and recreational uses in the Pier Bowl area is served by an already overburdened pool of parking spaces. In addition, the construction of a new permanent roof and wall enclosures at the subject site would obstruct a scenic view of the beach from the frontage road above the site.

Staff recommends the Commission **DENY** the proposed development because the proposed development would have adverse impacts on public access and scenic resources, inconsistent with the Coastal Act.

STAFF NOTE:

The item was originally scheduled for the Commission's November 2005 hearing. The applicant requested a postponement to respond to the staff recommendation of denial. Since that time, Commission staff has had multiple phone conversations with the applicant's agent and met with the applicant and agent to discuss the project.

The item was re-scheduled for the Commission's January 2006 hearing, but was postponed by the Commission due to time constraints. No further discussions between staff and the applicant or agent have taken place since the January hearing. The applicant still opposes the staff recommendation of denial.

The applicant has expressed strong disagreement with staff's analysis of the public access impacts resulting from the construction of a permanent patio cover at the subject site. According to the applicant, the general public will not be discouraged from utilizing the patio area if a permanent cover is constructed. The front (beach-facing) side of the seating area would be entirely open to the public and signage would inform the public of their ability to sit under the patio cover. In an effort to illustrate the open appearance of the proposed covered patio area, the applicant had an artistic rendering prepared. Staff maintains that the proposal would effectively discourage casual public use of the concession stand site, as well as obstruct public views of the beach and ocean from inland viewpoints.

The applicant continues to formally propose their original submittal, but has considered the option of a more temporary roof design. The "temporary" roof would consist of a permanent metal frame over the patio area. The frame would be used to support a canvas (or like) covering that would be erected at the beginning of the off-season and disassembled before the peak beach use season. An artistic rendering was also prepared for this alternative. (No formal plans were submitted for Commission consideration.) The frame would remain year round. The alternative does not resolve the fundamental issue at hand. The site is currently an open and uncovered patio that appears available to the public year round. With this alternative, the site becomes a defined area with a permanent cover. Even a metal frame covering can give the impression of a privatized area. As such, if formally proposed by the applicant, staff would continue to recommend denial of the covering.

PROCEDURAL NOTE:

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.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The current proposal is a material change to the underlying permit. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

LIST OF EXHIBITS:

1. Vicinity Map
 2. Location Map
 3. Project Plans
 4. Artistic Rendering
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I. MOTION AND RESOLUTION:

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission approve proposed Coastal Development Permit Amendment No. 5-04-042-A1 for the development as proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

Resolution to Deny Permit Amendment No. 5-04-042-A1:

The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of Chapter 3 of the Coastal Act and will 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 amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND

1. Project Location

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

The project site is located within a railroad right-of-way leased to the City. The City subleases the property to the applicant, HEG Enterprises. The site is currently developed with an approximately 800 square foot food concession building constructed in 1952. The concession building/restaurant is commonly known as "The Crab Pot." The Crab Pot offers the only walk-up food concession service on the beach in the popular San Clemente Pier area. There are other "destination" restaurants in the project vicinity, including the Fisherman's restaurant located on the Pier. However, the Crab Pot is the only concession offering lower-cost food service.

The concession building is surrounded by a small seating area to the north, an outdoor storage area to the east, a seating area to the south, and the public beach and asphalt access road to the west. Public restrooms are located beyond the seating area to the south. Photos of the subject site are provided in Exhibit 3. An artistic rendering is proposed in Exhibit 4.

2. Description of Project Approved in 2004

In March 2004, the Commission approved improvements to the concession stand and surrounding area, including expansion of the seating area, enclosure of patios with removable wind screens, replacement of asphalt with interlocking pavers, and addition of evening operating hours for restaurant use with table service. Daytime operations were to remain focused on walk-up service with casual seating (i.e. no table service) that remains open to all beachgoers whether or not they are patrons of the food concession. No work was proposed to the existing concession building. No additional parking was provided. The project was approved subject to the following conditions: 1) operational requirements to ensure adequate parking and maximum public access; 2) future improvements return to the Commission for review; 3) submittal of revised plans showing removal of permanent features seaward of building; 4) timing of construction to be outside of peak beach use season; 5) conformance with drainage plan submitted; 6) use of construction best management practices (BMPs); and 7) the debris disposal site to be located outside the coastal zone. These conditions were imposed, in part, to preserve the Crab Pot as a low-cost, beach concession with casual service designed to accommodate beachgoers.

3. Project Description

The site currently provides daytime walk-up food service and evening table service during the peak beach use season (Summer). Food service is also offered on limited weekends throughout the rest of the year as weather permits. The applicant wishes to formally extend food service into the

off-season (Fall-Spring) and to make physical changes to the structure to accommodate this new kind of service. The applicant proposes to construct an 814 square foot permanent cover, sidewall enclosures and a sliding storefront all at the existing outdoor seating area immediately south of the concession building. The temporary 4'0"—6'0" high wood framed sand blasted tempered glass windscreen enclosures approved by the original permit would become permanent sidewalls as part of the current amendment. The new cover and wall enclosures would be designed to match the architecture of the existing concession stand, with wood framing and a shingled roof. The previously approved temporary windscreens would become part of the new permanent walls along the east and south sides of the building and a new sliding storefront and door would be placed along the west (ocean facing) side of the patio. There is no covered seating area currently provided at the concession stand. As proposed, the Crab Pot would become a year-round food service operation. The new cover and walls would accommodate table service in inclement weather and allow for special events in the evening and off-peak season. Daytime walk-up concession service would continue during the peak summer months, but the site could be reserved for both daytime and evening events during the off-peak months.

The majority of the seating area south of the building would be covered (814 sq. ft.), while a portion would remain uncovered (360 sq. ft.). The uncovered portion would be sited seaward of the proposed covered area, adjacent to the asphalt access road. There is a smaller seating area located north of the building that will remain uncovered. All seating will remain open to the public in the daytime hours during the peak summer season. According to the applicant, the cover will *"give some beachgoers the choice of sitting under a cover while taking a break from the sun or utilizing the other outdoor seats."*

In response to staff concerns regarding the uninviting/proprietary appearance of the proposed patio roof and enclosures, the applicant formally modified the project description to add skylights and signage. Four 24" x 54" skylights have been added and new "open to the public" signs have been included. On September 23, 2005, the applicant submitted revised plans, approved by the City, which reflect these changes.

4. Alternatives Analysis

Instead of the proposed permanent cover, the applicant could erect a temporary cover on an as-needed basis. Temporary cover options could include a retractable canvas or plastic roof that could be dismantled entirely when not in use. This would be consistent with the City's Special Condition #15, which states,

Prior to issuance of any permit, the applicant or designee shall demonstrate to the satisfaction of the City Planner or designee that approval by the California Coastal Commission has been obtained for the project. City approval of potential CCC required modifications to the design of the permanent cover, including conversion to a removable structure, may be approved by the City Planner or designee, in consultation with the DRSC as deemed necessary.

A temporary roof alternative would allow the applicant to hold special events during the off-season, but would lessen the appearance that the site isn't open to the public for casual use during the peak use season. The applicant does not wish to propose such an alternative. However, in response to suggestions by staff to consider various options, the applicant has developed a "temporary" cover alternative for discussion purposes. An artistic rendering was prepared which shows a permanent metal frame over the patio area. (No formal plans were submitted for Commission consideration.) According to the agent, the frame would be used to support a canvas

(or like) covering that would be erected at the beginning of the off-season and disassembled before the peak beach use season. The frame would remain year round. The alternative does not resolve the fundamental issue at hand. The site is currently an open and uncovered patio that appears available to the public. With this alternative, the site becomes a defined area with a permanent cover year round. Even a metal frame covering can give the impression of a privatized area. The frame would also obstruct public views from the street toward the ocean (albeit to a lesser extent than a full roof). If formally proposed by the applicant, the concept of a permanent metal covering with detachable canvas would be considered inconsistent with the public access and view protection policies of the Coastal Act.

The “no structural improvements” alternative must also be considered. Without construction of the proposed roof and walls, the concessionaire would be able to continue operating as is currently allowed—daytime food concession service and evening restaurant service during the summer and on selected weekends throughout the year. Even without the roof and walls, the applicant could also extend service in the off-season (subject to necessary approvals) as weather permits.

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 primarily summertime business to a year-round business. The square footage of the building will not change and the number of outdoor seats will not change. However, substantial physical improvements will be added to the outdoor patio area that will change it to a largely enclosed facility. Due to the proposed change in intensity of use and the physical development, the current renovation project is considered development under the Coastal Act.

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

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

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

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

Section 30221 states,

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial

recreational activities that could be accommodated on the property is already adequately provided for in the area.

2. Land Use Plan Policies

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

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

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

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

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

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

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

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

The primary issues of concern to the Commission triggered by development at this location include adverse impacts to lower cost visitor-serving development and insufficient parking resulting in impaired access to the coast.

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 would adversely impact continued use and enjoyment of a popular lower cost, visitor serving development. The project involves improvements to an existing concession stand located landward of the Municipal Pier. The subject site is considered the most popular beach area in San Clemente. As such, the project site is located in a prime location for lower cost, visitor-serving commercial development.

The proposed project will create a roof and new structural enclosures around an existing outdoor public seating area. The project will also extend table service into the off-season.

The proposed physical improvements would change the character and function of The Crab Pot concession operation in a manner that would adversely impact low-cost, visitor-serving use of the subject site. This concession stand is the only low-cost beach concession operation in the vicinity of the sandy beach and San Clemente Pier. The proposed walls and roof create the appearance of a destination restaurant rather than a walk-up concession stand. There are other destination restaurants in the immediate vicinity, including the Fisherman's Restaurant located at the entrance to the Pier. Maintaining the subject site as a concession stand and outdoor seating area designed to serve beachgoers is important to providing low-cost recreational opportunities for the public.

The proposed changes will create the appearance that the outdoor seating area is limited to patrons of the Crab Pot, which is not the case. The site is a City leasehold, open to the public. With the prior Commission approval in 2004, additional tables and chairs were permitted in the outdoor seating areas. The increased seating was approved with the stipulation that all seating remain open to the public (without purchase from the concession) and that signage be placed at the site welcoming the public to use the available tables and chairs. Although the seating has remained open to the public, the signage and the décor suggest otherwise. The signage reads, *"During concession hours, use of the seating area is not limited to concession stand patrons."* This is somewhat confusing and does not clearly encourage public use. Additionally, the applicant has placed umbrellas at each table, which read, "The Crab Pot Restaurant and Beach Eatery." At the time of Commission consideration, it was not specified in the applicant's proposal that these umbrellas would be installed. As such, already the applicant has established a proprietary atmosphere at the site. The proposed amendment would further this apparent conversion of an open, public seating area to a private restaurant amenity. The erection of a permanent roof and sidewalls would give the appearance that both the enclosed seating area and the outdoor seating area were limited to Crab Pot customer use only. The applicant argues that it is not their intent to create a private restaurant, or the appearance of one. They insist that the proposed storefront will remain open during daytime hours and that the signage will continue to invite the public to use the seating area. Nonetheless, beachgoers leaving the sandy beach in search of a place to sit and/or eat will not be as apt to walk up to an enclosed structure as to an open seating area. The proposed project will create a more formalized restaurant appearance that will not be inviting to beachgoers seeking a casual environment.

When Commission staff expressed concern with the proposed design, the applicant revised the plans to include skylights to allow more light into the covered patio area. The applicant has also changed the signage to be more clear. The signs now state, "Seating is Open to the Public." Although these efforts are appreciated, the proposed amendment (as modified) would still effectively discourage public use of the seating area. Therefore, the Commission finds that the proposed development poses adverse impacts to lower cost visitor and recreational facilities and is inconsistent with Section 30213 of the Coastal Act.

4. Local Parking Requirements

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 76 seats. Applying the City's parking standard, a restaurant providing 76 seats would require 19 parking spaces. No additional seats are proposed by the current amendment. However, the amendment does involve extended food service into the off-season and creates a destination for special events. No new parking is proposed to serve the expanded use of the concession stand.

The existing concession building is not served by an exclusive parking pool. Parking to serve the various uses within the Pier Bowl District is provided in the public parking lot nearby and at on-street spaces. According to the *Parking Needs Assessment* prepared by the IBI Group in 1995, *"the Pier Bowl has a total inventory of 554 parking spaces. Of the available spaces, 37 spaces are private and 517 spaces are public. Of these 554 spaces, 379 are metered parking spaces, including 136, 6 hour, on-street meters and 243, 6-hour meters in one public lot. There are also 138 on-street parking spaces which are unmetered and unrestricted."*

Per the terms of the applicant's lease agreement with the City, the City is responsible to provide parking for base of pier improvements where possible. Because no opportunities for new parking exist in the vicinity of the site, and in keeping with the provisions of the Pier Bowl Specific Plan (PBSP) for uses within the area, City staff considered whether existing off-site parking resources could support the additional seating that was requested for the Crab Pot through the original permit. To this end, a parking study was conducted by the IBI Group in 2003 evaluating peak summer parking demands during the proposed evening hours of operation. The study concluded that adequate public parking exists in close proximity to the subject site to serve the evening restaurant use proposed in 2004. The City Traffic Engineer agreed with the conclusion.

The 2003 parking study was updated by the IBI Group through Addendum #1 dated March 2, 2005. As was the case in 2004, the City Traffic Engineer reviewed this report and concluded that adequate parking is available with a reasonable walking distance to support the proposed use, as discussed more fully below.

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

To evaluate the parking impacts of the proposed project, the applicant submitted a *Parking Availability Review* conducted for The Crab Pot Restaurant and Beach Eatery prepared by the IBI Group dated October 8, 2003 updated by *Addendum #1* dated March 2, 2005. The updated report assesses the impact of expanding the off-peak season operating hours of the restaurant. The report concludes, *"[t]he parking supply in the immediate vicinity of the pier is sufficient to support an extension of operating hours into the off-peak season."*

However, the proposed amendment involves more than an extension of service into the off-season. It also involves physical improvements that will create more of a restaurant atmosphere where once there was only a small concession stand. The construction of the roof and wall enclosures, as well as an apparent shift in service focus from walk-up concession to sit-down restaurant, will create a destination where there is none now. As such, there will be a demand for

parking where there is none now. No additional parking is proposed to serve the increased food service or to account for the potential demand created by a destination restaurant.

Another concern is the cumulative impact of the applicant's proposals. First the applicant proposed to increase the number of seats in the outdoor dining area and now the applicant proposes to make structural changes to the concession building and enclose the south side dining area. The result is a piecemeal intensification of the concession stand use without any parking to support it.

As proposed, the concession stand will no longer cater to the beach-going public and will serve as a destination. As such, the proposal will create additional parking demand. Patrons of The Crab Pot will compete for parking with beach goers and other visitors to the coast. Therefore, the Commission finds that the development poses adverse impacts to public access, inconsistent with Section 30252 of the Coastal Act.

C. SCENIC RESOURCES

Section 30251 of the Coastal Act pertains to visual resources. It states:

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...

The proposed project site is located immediately inland of the San Clemente Pier, a popular tourist spot in Orange County. The Crab Pot concession building and seating area is located along a beach level access road between the Pier and the OCTA railroad tracks. Although the site is located at a lower elevation than the frontage road and the railroad tracks, the new roof will create a view obstruction when looking toward the shoreline from the frontage road, Avenida Victoria. The beach is currently visible from the frontage road and grassy buffer located above the subject site. Umbrellas are now the only obstruction within the view corridor between the concession building and the restroom building. The proposed development would obstruct this existing scenic view, which currently consists of an approximately 30 foot wide blue water ocean view. Therefore, the Commission finds that, as proposed, the project is inconsistent with the visual resource protection policies of Section 30251 of the Coastal Act.

D. LOCAL COASTAL PROGRAM

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

The proposed development is inconsistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development would prejudice the City's

ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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

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

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as a temporary roof alternative or the no project alternative. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives that would lessen significant adverse impacts the activity would have on the environment. Therefore, the project must be denied.