

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



W32a

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original staff report](#)

Addendum

March 5, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W32a**, Coastal Commission Revocation Request for
CDP #6-12-061 (Grand & Strand, LLC), for the Commission Meeting of
March 11, 2015.

The purpose of this addendum is to add the following letter as Exhibit 7 – Letter in Support of Revocation to the staff report.

CCCC0315

4465 Ocean Boulevard #62
San Diego, CA 92109
March 3, 2015

DOCKET# 32a
OPPOSED TO PERMIT
FAVORING REVOCATION

California Coastal Commission
C/O San Diego Coast District
7575 Metropolitan Drive #103
San Diego, CA 92108-4421

RECEIVED

MAR 05 2015

RE: Permit Number 6-12-061-REV, Grand & Strand LLC
Revocation Hearing, March 11, 2015

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

My impression is that the Coastal Commission has, astoundingly, ruled that expansion of the serving area of the Shore Club from 4456 sqft to 6351 sqft while reducing the on-site parking spaces from 29 to 26 (actual number in dispute) will somehow improve access to the public beaches in this parking starved area.

The ruling, that valet parking will mitigate Shore Club parking impact, is problematic. My observation of traffic patterns from my condo at Crystal Pier overlooking Garnet and the 710 Beach Club, suggests the Transportation Demand Management Program(TDM) will exacerbate parking difficulties in the surrounding area.

The western-most half block of Grand Avenue dead-ends at a public restroom. Here vehicles must make a U-turn, mixing with the boardwalk traffic of pedestrians, skateboards, bicycles, and many homeless squatters. Traffic is made more convoluted by vehicles one way northbound on Ocean Boulevard feeding into the intersection.

For some thirty years, I have occupied a condo two blocks to the north, overlooking the similar, but less complex, dead end of Garnet Avenue at Crystal Pier. Human nature dictates that people will pay a great price in time and frustration to avoid paying for parking. Pay parking is usually available one block away, yet people double park at idle for many minutes, waiting for a vacant spot to open. At risk of a physical confrontation, people stand in a vacant space, holding it for a friend. When a space is vacated, drivers maneuver, at risk of a fender-bender, to improve their position in the queue. Serious accidents are rare due to slow speeds. Loud spats are frequent, but usually not physical and sans weapons.

While I offer only my observations, not a sophisticated traffic study, paid valet parking, in a dedicated Shore Club parking area, will only increase demand for the scarce free parking on the street, and exacerbate congestion by adding to the queue of vehicles waiting to park for free. **Staff conclusions about Shore Club parking defy credulity!**

Regards,

Jon I. Fellers
Jon I. Fellers

EXHIBIT NO. 7

APPLICATION NO.

6-12-061-REV

Letter in Support

Of Revocation



California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W32a

Submitted: 2/3/15
Staff: B. Laver-SD
Staff Report: 2/25/15
Hearing Date: 3/11/15

STAFF REPORT: REVOCATION REQUEST

Application No.: 6-12-061-REV

Applicant: Grand & Strand, LLC

Agent: San Diego Land Lawyers

Project Location: 4315 Ocean Boulevard, Pacific Beach, San Diego,
San Diego County (APN No. 423-111-1600)

Project Description: Construction of a 1,895 square foot second-floor outdoor dining patio with glass siding for an existing restaurant, and removal of an unpermitted automated payment machine and signage at an existing mixed-use building.

Revocation Requested By: San Diegans for Responsible Planning

Staff Recommendation: Denial

Motion & Resolution: Pages 5 and 6

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **deny** the proposed request for revocation on the basis that no grounds have been shown to exist for revocation under Section 13105 of Title 14 of the California Code of Regulations.

The coastal development permit (CDP) that is the subject of this revocation request is for construction of a 1,895 sq. ft. second-floor outdoor dining patio with glass siding for the existing 4,456 sq. ft. restaurant, PB Shore Club, and removal of an unpermitted automated payment machine and signage from the on-site parking lot. The Commission approved this permit on July 13, 2013, with special conditions that required the applicant to adhere to final construction plans, and timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access. At the hearing, the Commission added a special condition requiring a Transportation Demand Management (TDM) program, which includes implementation of an on-site valet parking program to maximize on-site parking efficiency and installation of additional bicycle racks.

The party requesting revocation contends that grounds for revocation exist pursuant to Section 13105(a), because the applicant allegedly submitted inaccurate, erroneous, and incomplete information to the Commission in connection with CDP Application No. 6-12-061. The alleged inaccurate, erroneous, and incomplete information relates to a lease agreement dated July 27, 2007 that entitles the tenant of the first-story retail business to four of the 26 on-site parking spaces, as well as the unrestricted right to rent those four spaces. The request further contends that, pursuant to Section 13105(a), the alleged inaccurate, erroneous, and incomplete information was supplied by the applicant intentionally, due to an identity of interest as the managing member of the permit applicant, Grand & Strand LLC, and the retail tenant's landlord, 4343 LLC, is the same person, and the fact that the subject lease agreement predated the permit application and Commission action. Finally, the party seeking revocation contends that had the Commission known of this information, the Commission would have denied the permit or imposed additional or different conditions based on the Commission's concern with parking and public access impacts related to the approved development throughout this permit process.

However, while the information in the lease agreement between private parties was not part of the proceedings record for CDP No. 6-12-061, there is no evidence of intentional misleading of the Commission, as required by Section 13105(a). Moreover, even if the additional information cited in the revocation request had been known to the Commission, there is no basis for the Commission to have acted differently. In the Commission's action on this permit, the Commission found that the existing development on the subject site plus the approved patio addition would require a minimum of 21 parking spaces to meet parking requirements. The City of San Diego's standard for required parking would still be met if those four spaces were discounted. The Commission found that the applicant met the LCP standard with more than enough parking spaces supplied by the proposed development, and that the proposed development is consistent with the Coastal Act as conditioned. Although the existing and approved development currently meet the required off-street parking standards, the Commission required a valet parking program to maximize on-site parking efficiency. The Commission would have had no basis for acting differently had they known of the subject lease agreement. Furthermore, renting these four spaces would require a separate CDP, and the renting has ceased, making this a moot claim.

Pursuant to Section 13106 of Title 14 of the California Code of Regulations, when a revocation request is received, the Executive Director is required to review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. Upon reviewing the subject request, and comparing it to the administrative record, the Executive Director found the revocation request to be without merit. Specifically, the Executive Director has determined that in this case, in accord with Section 13106, **no grounds exist for revocation of the permit**.

Nevertheless, because some familiarity with the record is necessary in order to demonstrate the lack of merit of this particular revocation request, and to maximize the opportunity for the revocation requester and the public to be heard, the Executive Director determined it would be prudent to set a hearing for an examination of the request and the record.

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EXHIBITS

Exhibit 1 – February 5, 2015 Notice of Revocation Request Letter

Exhibit 2 – January 29, 2015 Revocation Request Submittal

Exhibit 3 – Letter from Jerry Hemme to CCC Executive Director, dated February 2, 2015

Exhibit 4 – Applicant Response Letter to Revocation Request, dated February 13, 2015

Exhibit 5 – CDP 6-12-061 9/17/14 Commission Staff Revised Findings Report

Exhibit 6 – Transcript of July 13, 2013 Commission Hearing

PROCEDURAL NOTE: STANDARD OF REVIEW

The California Code of Regulations, Title 14, Section 13105 states that the requested grounds for the revocation of a coastal development permit are as follows:

a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;

Revocation of a permit removes a previously granted permit. Even if a permit is vested (i.e., the permittee has begun construction of the project), if the Commission revokes the permit, the permittee is required to stop work and, if wishing to continue, to reapply for a new permit for the project. If the Executive Director determines that evidence clearly shows that there are grounds for revocation, Section 13107 of the Commission's regulations provides that permit be suspended. In this case, the Executive Director has determined that grounds for revocation *do not exist* and that the operation of the permit is not suspended.

Because of the impact on a permittee, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to have second thoughts on a previously-issued permit based on information that comes into existence after the granting of a permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit, or an allegation that a violation has occurred, are not grounds for revocation under the California Code of Regulations. The grounds for revocation are confined to information in existence at the time of the Commission's action.

I. MOTION AND RESOLUTION

Motion:

I move that the Commission grant revocation of Coastal Development Permit No. 6-12-061.

Staff recommends a **NO** vote on the foregoing motion. Passage of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit No. 6-12-061 on the grounds that there was no:

- (a) intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; OR*
- (b) failure to comply with the notice provisions of § 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.*

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND BACKGROUND

The coastal development permit that is the subject of this revocation request was approved by the Commission on July 11, 2013. The Commission approved construction of a 1,895 sq. ft. second-floor outdoor dining patio with glass siding for the existing 4,456 sq. ft. restaurant, PB Shore Club, and removal of an unpermitted automated payment machine and signage from the on-site parking lot. The proposed second-floor dining patio will be located outside of and connected to the restaurant on its southern end while being supported by ground-floor columns. Due to the placement of these support structures for the second floor outdoor patio and bringing the parking lot up to compliance with the Americans with Disabilities Act, the total number of on-site parking spaces will drop from 29 to 26 upon completion of the project. Thus, the Commission's July 11, 2013 action approved the permit with the addition of a special condition requiring a Transportation Demand Management (TDM) program, which includes implementation of an on-site valet parking program to maximize on-site parking efficiency and installation of additional bicycle racks on the project site. The Commission approved the revised findings for this added condition on February 13, 2014. The San Diego Superior Court directed the Commission to hold a new public hearing on the revised findings because the Commission did not provide adequate public notice for the original hearing on the revised findings. The Commission again approved the revised findings on October 8, 2014. The Superior Court subsequently denied San Diegans for Responsible Planning's petition for writ of mandate challenging the Commission's approval of the permit and adoption of revised findings.

The PB Shore Club is a 4,456 sq. ft. bar and restaurant in a two-story, 23'1" high mixed-use building, with the restaurant located on the second floor and a 3,283 sq. ft. visitor retail business called Wave Original on the first floor. Adjacent to the mixed-use building on the same lot is a small, one-story, 391 sq. ft. visitor-serving commercial beach equipment rental business called PB Surf Shop. The subject lot is located at the southeast corner of Ocean Boulevard and Grand Avenue in Pacific Beach. Pacific Beach is a popular beach community within the City of San Diego, just a few blocks west of

Mission Boulevard, the main north-south coastal access route through this area. Adjacent to the PB Shore Club is the Pacific Beach boardwalk and the sandy beach. These areas are popular destinations with both locals and tourists; and, during the summer tourist season, the volume of usage of the area is very high, with bikers and pedestrians passing through the area in addition to drivers parking nearby or unloading passengers. The San Diego Lifeguard Services have a regional station building located across the boardwalk from PB Shore Club from which they organize their patrols, monitor the beach, and provide medical services. The PB Shore Club is a high priority, visitor serving use on an ocean-fronting site adjacent to the beach and a popular tourist destination, and consistently sees high public usage throughout the year.

In addition to the TDM program, the Commission's approval of CDP 6-12-061 included several special conditions that required the applicant to adhere to final construction plans so as to limit impacts to public views and potential bird strikes, and timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access. The permit was issued on April 30, 2014 after condition compliance was completed, and has since been vested as patio construction has begun.

B. REVOCATION REQUEST CONTENTIONS

1. Summary of Revocation Request Contentions

On January 29, 2015, Kevin K. Johnson, APLC submitted a revocation request for CDP 6-12-061 on behalf of San Diegans for Responsible Planning ([Exhibit 2](#)). The request for revocation contends that grounds for revocation in Section 13105(a) of the Commission's regulations exist because the applicant intentionally submitted inaccurate, erroneous, and incomplete information to the Commission in connection with CDP 6-12-061 with regard to a lease agreement that entitles the tenant of the first-floor retail business, Wave Original, to four of the on-site reserved parking spaces, as well as the unrestricted right to rent those four spaces ([Exhibit A](#) of the revocation request letter). The requestors further contend that this information was intentionally withheld, and thus grounds for revocation exist, because this lease agreement predates the CDP application and the Commission's action on CDP 6-12-061 and due to an identity of interest between 4343, LLC and the permit applicant, Grand & Strand, LLC as the managing member of the permit applicant, Grand & Strand LLC, and the retail tenant's landlord, 4343 LLC, is the same person. Finally, the requestors contend that had the Commission known of this information regarding the lease agreement, they would have denied the permit or imposed additional or different conditions based on the Commission's concern with parking and public access impacts related to the approved development throughout this permit process.

2. Revocation Request Contentions with Respect to Section 13105(a)

The primary focus of this request for revocation is the claim that the applicant intentionally withheld the existence and content of a lease agreement that was entered into by and between 4343, LLC as landlord and Wave Original, Inc. as tenant. The lease agreement, as amended on July 27, 2007, states, in relevant part:

8. *PARKING: Tenant is entitled to zero (0) unreserved and four (4) reserved vehicle parking spaces. The right to parking is included in the Base Rent charged pursuant to paragraph 3. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked in parking spaces or on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises. No overnight parking is permitted. Tenant may rent its assigned parking spaces. (emphasis added)*

The revocation request asserts that this information was intentionally omitted based on several facts. First, the lease agreement, as amended on July 27, 2007, was in existence prior to the Commission's review process for the subject CDP, which began in November 2008 when the applicant first submitted project plans to the Commission. Second, the managing member of the permit applicant, Grand & Strand LLC, and the retail tenant's landlord, 4343 LLC, is the same person, and the requestor claims that as a result, an identity of interest exists. Third, the requestor alleges the applicant has previously provided inaccurate, incomplete information to the City of San Diego in regards to the amount of PB Shore Club employees. Specifically, the applicant allegedly underreported the amount of employees working at PB Shore Club to the City as three employees, when there were actually 70 workers.

The revocation request letter claims that this information was deliberately left out of the permit process and would have changed the outcome of the Commission hearing. Parking and public access impacts were major points of concern at the Commission hearing and throughout the entire CDP review process. The revocation request states, on Page 14:

These concerns are evidenced in: the Commission's correspondence with the applicant regarding these concerns; the public comments and testimony received by the Commission questioning compliance with required parking ratios; the Commission's Public Access/Parking findings; and the conditions imposed on the permit to (1) remove the automated payment machine and (2) submit a TDM Program including an on-site valet to facilitate maximum parking efficiency while not deterring the use of on-site parking by patrons.

The requestors offer to support the claim of intentional inaccuracy by citing excerpts of the administrative record related to CDP 6-12-061, also attached as [Exhibit C](#) of the revocation request, which is provided as [Exhibit 2](#) of this staff report. The primary focus of the cited excerpts is the issue of sufficient parking at the subject site. The revocation request asserts that the applicant "convinced Commission staff that an expansion of a business with concomitant expansion of customers and square footage could be permitted with a reduction in required parking" by applying an incorrect parking ratio requirement.

The letter concludes that had the Commission been aware of the terms of the lease agreement that entitles the retail tenant to rent four of the on-site parking spaces, thus making these four spaces "unavailable and subject to paid parking use in a way

incompatible with the Commission's conditions and findings," the Commission would have required additional or different conditions on this permit or denied it.

C. APPLICABLE STANDARDS OF REVIEW

The following Coastal Act policies and Commission regulations in Title 14 of the California Code of Regulations are relevant to the consideration of this revocation request.

ARTICLE 16. REVOCATION OF PERMITS

§ 13105. Grounds for Revocation.

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application...

§ 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in [Public Resources Code, Sections 30820 through 30823](#).

§ 13108. Hearing on Revocation.

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence,

it shall deny the request.

D. ANALYSIS OF ASSERTED GROUNDS FOR REVOCATION

The request for revocation contends that grounds for revocation in Section 13105(a) of the Commission's regulations exist because the applicant intentionally submitted inaccurate, erroneous and incomplete information to the Commission in conjunction with the subject CDP application with regards to a lease agreement that entitles the tenant of the first-floor retail business, Wave Original, to four of the on-site reserved parking spaces, as well as the unrestricted right to rent those four spaces ([Exhibit A](#) of the revocation request letter, which is provided as [Exhibit 2](#) of this staff report).

Grounds for revocation under Section 13105(a) can be reduced to three tests, all of which must be satisfied for the Commission to grant revocation:

Test 1: Did the applicant for the coastal development permit include inaccurate, erroneous or incomplete information in connection with its application?

Test 2: If the applicant included inaccurate, erroneous or incomplete information, was the inclusion of such information intentional?

Test 3: If the answers to both Test 1 and Test 2 are yes, would accurate and complete information have caused the Commission to require additional or different conditions or to deny the application?

The following is an analysis of these three tests as they relate to the subject revocation request for CDP 6-12-061.

1. Analysis of Revocation Request Contentions with Respect to Section 13105(a)

Test 1: Did the applicant for CDP 6-12-061 (Grand & Strand, LLC) include inaccurate, erroneous or incomplete information in connection with its application?

Test 1 Analysis:

The requestor alleges a deliberate omission on the part of the applicant, or in the words of the request, alleges the applicant's "intentional failure to include material, complete and accurate information" in connection with the permit application. This in turn implies the record before the Commission was incomplete, or contained information that was inaccurate or erroneous. Neither implication is true. The Commission was unaware of the lease agreement that entitles the tenant of the first-floor retail business to four of the on-site reserved parking spaces, as well as the unrestricted right to rent those four spaces, until the subject revocation request was submitted on January 29, 2015. However, as demonstrated below, this information was irrelevant to the Commission's consideration, and therefore its lack does not mean the record was incomplete or that other aspects of the record were in error.

Test 2: If the applicant included inaccurate, erroneous or incomplete information, was the inclusion of such information intentional?

Test 2 Analysis:

Neither the Coastal Act nor the Coastal Commission regulations define the term “intent” for purposes of determining whether an applicant has intentionally submitted inaccurate, erroneous or incomplete information to the Commission. In general, the Commission may review the evidence on a matter and conclude there was intent based on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (14 C.C.R Section 13065). The law related to fraudulent misrepresentation, however, explores the definition of intent in the context of misrepresentation of facts, which is what is at issue in a revocation hearing. As a result, this area of law is instructive to the Commission when it considers a revocation request.

One element of a claim for fraudulent misrepresentation is the intent to defraud or induce reliance. *Cicone v. URS Corporation* 183 Cal. App. 3d 194, 200 (1986). In establishing this element, “the only intent by a defendant necessary to prove a case of fraud is the intent to *induce reliance*. Moreover, liability is affixed not only where the plaintiff’s reliance is intended by the defendant but also where it is *reasonably expected* to occur.” *Lovejoy v. AT&T Corp.* (2001) 92 Cal. App. 4th 85, 93 (emphasis in original). Thus, a defendant may be liable for fraud even for unanticipated reliance by a plaintiff. *Id.* at p. 94. In addition, a party’s intent to induce reliance may be inferred from his or her failure to disclose facts as required by statute. *Lovejoy v. AT&T Corp.* (2004) 119 Cal. App. 4th 151, 161. Thus, the Commission may infer that the applicant intentionally submitted inaccurate, erroneous or incomplete information if it finds that the applicant failed to disclose facts as required by the Coastal Act.

The requestor has failed to demonstrate an intent to induce reliance. Neither did the Commission rely on the alleged missing facts as rental agreement was not germane to its final determination of the number of parking spaces needed. The applicant complied with all statutory requirements.

The requesting party does not supply any relevant evidence that the applicant intentionally failed to supply the Commission with complete information. The revocation request asserts that the alleged omission was intentional for three reasons: this lease agreement predates the CDP application and the Commission’s action on CDP 6-12-061, there is an identity of interest between 4343, LLC and the permit applicant, Grand & Strand, LLC, and the applicant allegedly previously supplied inaccurate, incomplete information to the City of San Diego in regards to the amount of PB Shore Club employees. First, the fact that the lease agreement predates the Commission’s review of this permit is irrelevant because the applicant provided all information thought to be relevant to its permit application (Page 3 of [Exhibit 4](#)). The fact that the rental information was in existence prior to the Commission’s review of this permit is not proof that the information was intentionally withheld from the Commission. Second, the identity of interest between the retail tenant’s landlord and the permit applicant is irrelevant because it does not prove intentional misleading of the Commission. The

applicant has indicated that 4343, LLC and Grand & Strand, LLC are “two separate entities, both legally and functionally,” and that only 4343, LLC has authority over the retail tenant of Wave Original (Page 1 of [Exhibit 4](#)). The Commission commonly receives applications from business entities. That an individual may be part of more than one entity does not create evidence of intentional misrepresentation. Third, the applicant’s representation to the City of San Diego is irrelevant. It is entirely unrelated to the subject permit application and further does not prove an intentional misleading of the Commission.

Finally, when the Commission notified the applicant in May 2013 that the automated pay machine previously used to charge the public a fee to use the on-site parking spaces was unpermitted development, the pay machine and associated signage were subsequently removed. The three tenants, Wave Original, PB Shore Club, and PB Surf Shop, were notified that non-customer parking was prohibited ([Exhibit C](#) within [Exhibit 4](#)). The retail tenant informed Commission staff that the landlord, 4343 LLC, requested that the parking space rentals cease until the tenant obtains a coastal development permit for such action, and that the rentals have indeed ceased ([Exhibit 3](#)). This corrective action does not support the requesting party’s contentions that the applicant was intentionally misleading the Commission.

Therefore, there is no evidence of intentional withholding of information, and thus the revocation request does not meet the requirements of Section 13105(a) for establishing grounds for revocation.

Test 3: If the answers to both Test 1 and Test 2 are yes, would accurate and complete information have caused the Commission to require additional or different conditions or to deny the application?

Test 3 Analysis:

Although the revocation request fails Test 1 and Test 2, it is important to analyze whether the knowledge of the information in the lease agreement would have caused the Commission to take a different action on this permit.

When considering the permit, the Commission’s standard of review consisted of Chapter 3 policies of the Coastal Act (Public Resources Code, § 30200 et seq.) with San Diego’s LCP used as guidance. The Superior Court judge agreed with the Commission that the LCP supplied guidance rather than law, and throughout the decision, upheld the Commission’s actions as the findings were based on substantial evidence in the record. It is significant, however, that the applicant met the LCP standard with more than enough parking spaces supplied by the proposed development. Under the LCP and under the Coastal Act, *and without consideration of the four tenant-leased spaces*, there is adequate parking.

Parking often posing a controversial issue, the Commission closely reviewed the potential impacts to parking and public beach access as a result of the approved development (ref. the Public Access/Parking findings on Pages 7-11 of the 6-12-061 revised findings staff

report, attached as [Exhibit 5](#) to this staff report, and the transcript from the July 11, 2013 Commission hearing, attached as [Exhibit 6](#) to this staff report). As previously mentioned, the subject site is located in a very popular beach area and serves a high volume of patrons, particularly during peak summer months. Parking for public and private uses in this area can be difficult, and it is crucial to ensure that parking impacts as a result of new development are minimized as required by Coastal Act Sections 30210 and 30252.

The permit staff report and revised findings provide that there is a distinction between charging customers of the Shore Club and charging for and allowing beach parking (Pages 10-11 of [Exhibit 5](#)). The City's parking ratios are intended to provide sufficient parking to meet the needs of the approved use. For example, in this case, sufficient parking is needed to service employees, patrons, and deliveries for the on-site developments. By providing sufficient off-street parking to serve various types of development, on-street parking is able to remain available for public beach access. On the other hand, as stated on Page 11 of the revised findings staff report:

[w]hen a development sells its parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking.

In the approval of CDP 6-12-061, the Commission found that the on-site parking lot was meeting the City's standard for adequate parking for the on-site developments (PB Shore Club, Wave Original, and the PB Surf Shop) as well as for the approved patio addition to the Shore Club. Pursuant to the City's Land Development Code, the certified IP for its LCP, the existing and approved developments totaling 10,025 square feet of floor area are required to have a minimum of 21 parking spaces. This is calculated by applying the regulatory parking ratio for mixed-use developments zoned as CV-1-2 (Commercial Visitor) in the Transit Overlay Zone, which requires 2.1 parking spaces for every 1,000 square feet of floor area, as discussed in the [Public Access/Parking findings of CDP 6-12-061](#). Thus, the approved 26 on-site parking spaces will provide sufficient parking beyond what is required by the LCP. However, as the LCP is used for guidance in this area of original Commission jurisdiction and parking is not abundant in this community or this particular location, the Commission was still concerned with minimizing parking and public access impacts associated with the approved development. For this reason, the Commission required the applicant to implement a TDM program that utilizes on-site valet parking and bike racks in a manner that encourages their use by patrons so as to maximize on-site placement of vehicles and facilitate alternative methods of transportation. According to the applicant, this valet program will allow approximately five more cars to park on site, for a total of 31 parking spaces where only 26 could be typically accommodated on the lot.

The revocation request contends that had the Commission known that four of the 26 on-site parking spaces were entitled to and could be rented out by the tenant of the first-floor

retail store, Wave Original, the Commission would have imposed different or additional conditions or denied the permit. This is not the case for several significant reasons.

First, designation of four spaces to Wave Original helps ensure that these spaces are used by Wave Original employees and patrons, as they are intended to be, and it is not unusual for sub-lessees to have their respective parking spaces assigned to them. In addition, this arrangement helps ensure that the other 22 spaces are used by PB Shore Club and PB Surf Shop employees and patrons and further supports the Shore Club's expanded capacity from the approved patio addition.

Second, the retail tenant has indicated that the rental of the four assigned spaces were of the same nature as the unpermitted pay machine operation that the Commission discovered was occurring over the remainder of the subject parking lot. As described by the retail tenant, the public could pay \$5 per hour to park at these four spaces that were each designated with a Wave Original sign. The four spaces were not always occupied by a renter and thus were available for employee use, especially in non-summer months. In the approval of CDP 6-12-061, the Commission determined that this lot could not be legally used as a commercial parking facility, as it would have required a separate CDP and such an operation would prevent the supply of on-site parking from meeting the intended parking needs of the patrons and employees of the on-site developments. The case with the subject rentals is no different, and the rental operation has ceased ([Exhibit 3](#)).

In conclusion, although the information in the lease agreement could have provided further insight to the parking conditions at the subject site, the fact remains that the provided parking for the on-site development exceeds the requirements in the LCP. A CDP is required to convert the on-site parking established to serve patrons and employees to a commercial parking facility open to others, and the rental arrangement is no longer happening, thus the requesting party's assertions are moot.

Therefore, there is no evidence that the Commission would have required additional or different conditions or denied this permit application altogether had the information in the lease agreement been known, and thus the revocation request does not meet the requirements of Section 13105(a) for establishing grounds for revocation.

E. SECTION 13108(D) OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Section 13108(d) of the California Code of Regulations, if the Commission finds that the request for revocation was not filed with due diligence, it shall deny the revocation request. Revocation grounds are limited to those based on information in existence at the time of the Commission's action on the coastal development permit application.

The requestor offered information that was not readily available to the public and made the request in a timely manner. The revocation request letter asserts that the requesting party and its attorneys only became aware of the above-described lease agreement on or

about January 19, 2015, and subsequently submitted the revocation request on January 29, 2015. The revocation request occurred approximately four months after the second approval of the revised findings for CDP 6-12-061 on October 8, 2014. Thus, this request does not provide grounds for a “lack of due diligence” denial under Section 13108(d).

F. CONCLUSION

Nevertheless, for the reasons discussed in detail in the preceding sections of this report, the revocation request does not demonstrate that the applicant knowingly and intentionally provided inaccurate, erroneous, or incomplete information relevant to the Coastal Act analysis as to whether the development approved by the Commission pursuant to CDP 6-12-061 is consistent with the Chapter 3 policies of the Coastal Act. Furthermore, there is no evidence that the Commission would have required additional or different conditions or denied this permit application altogether had the information in the lease agreement been known. Thus, the grounds necessary for revocation under Section 13105(a) of the Commission’s regulations have not been satisfied. Therefore, the Commission finds that the revocation request must be denied because the contentions raised in the revocation request do not establish the grounds identified in Sections 13105(a) of Title 14 of the California Code of Regulations.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



February 5, 2015

Grand & Strand, LLC
510 1st Avenue, Suite 1904
San Diego, CA 92101

Re: Notice of Revocation Request for CDP No. 6-12-061

To whom it may concern:

As you may already be aware, a request by the San Diegans for Responsible Planning, represented by Kevin K. Johnson, APLC, for revocation of coastal development permit (CDP) No. 6-12-061 has been filed in the San Diego District Office of the California Coastal Commission. The request is made pursuant to Section 13105(a) of Title 14 of the California Code of Regulations, asserting the applicant's intentional inclusion of inaccurate, erroneous, or incomplete information in connection with the subject CDP application. Please see the copy of this revocation request attached to this letter for further details.

Section 13108 of Title 14 of the California Code of Regulations states that revocation requests shall be reported to the Commission with a recommendation on the merits of the request at the next regularly scheduled meeting, and after the permittee and all interested parties have been given proper notice. Thus, we will be tentatively scheduling this revocation request for the March hearing, which will take place from March 11th to 13th in Chula Vista, San Diego County. As the permittee, you shall receive an official hearing notice once the staff report has been published. At the hearing, you shall be afforded a reasonable time to present a rebuttal against the request for revocation. Pursuant to Section 13108 of Title 14 of the California Code of Regulations, a permit may be revoked by a majority vote of the members of the Commission present if it finds that the grounds for revocation specified in Section 13105 exist. If the Commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

Please feel free to call me at the phone number above with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "BL", written over a horizontal line.

Brittney Laver
Coastal Program Analyst

cc: Architect Mark D. Lyon, Inc.

(G:\Digital Permit Files\2012\6-12-061-REV\notice of revocation request.docx)

EXHIBIT NO. 1

APPLICATION NO.

6-12-061-REV

Notice of Revocation

Request Letter



California Coastal Commission

KEVIN K. JOHNSON, APLC

KEVIN K. JOHNSON
JEANNE L. MacKINNON
HEIDI E. BROWN

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600 WEST BROADWAY, SUITE 225
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 696-6211
FAX (619) 696-7516

January 29, 2015

SENT VIA U.S. MAIL

Dr. Charles Lester, Executive Director
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

SENT VIA EMAIL AND U.S. MAIL

Ms. Sherilyn Sarb, Deputy Director
South Coast District Office
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: REQUEST FOR REVOCATION
CDP No. 6-12-061
Permit Applicant - Grand & Strand LLC

Dear Dr. Lester and Ms. Sarb:

This firm represents San Diegans for Responsible Planning and we submit the following Request for Revocation of Coastal Development Permit 6-12-061. This request is made pursuant to 14 California Code of Regulations section 13105(a) due to the applicant's intentional failure to include material, complete and accurate information in connection with CDP 6-12-061.

Specifically, parking impacts, parking capacity and public access impacts associated with the Shore Club bar and restaurant business expansion authorized by CDP 6-12-061 were the subject of Commission and public concern throughout the application, review, hearing and approval process. However, the applicant failed to inform the Commission or its staff that by lease agreement dated July 27, 2007, the retail business located on the same premises as the applicant is entitled to four reserved parking spaces of the twenty-six parking spaces onsite. See Exhibit A Lease Amendment 2 dated July 27, 2007 attached hereto and Exhibit B Commercial Lease

EXHIBIT NO. 2

APPLICATION NO.
6-12-061-REV

Revocation Request

Submittal

 California Coastal Commission

January 29, 2015

Agreement dated October 18, 2005 attached hereto.

In addition, the retail business is by the terms of its lease permitted to rent these spaces out without restriction. See Exhibit A para. 1.8. ("Tenant may rent its assigned parking spaces.") The landlord, managing member and signatory on Exhibits A and B agreeing to these terms is S. Barrett Rinzler who is also the managing member of the CDP applicant, Grand & Strand LLC (Administrative Record ("A.R") pp. 360, 1105)¹.

The requesting party and its attorneys only became aware of this lease, the identity of interest between the landlord and the applicant and secured a copy of the relevant documents on or about January 19, 2015 and promptly began investigating and preparing this Request for Revocation. Due to the applicant's failure to include this material, accurate and complete information, requesting party and its members were deprived of any opportunity to fully address this issue and the Shore Club expansion's actual impact on parking and public access.

The availability of parking spaces on-site and paid parking were ongoing public access concerns and issues throughout the processing of CDP 6-12-061. As expressly recognized by the Commission, "[i]ntensity of use and parking issues arise due to potential for increased dining space to affect traffic and parking in the surrounding area" (A.R. p. 1). Accordingly, the Commission imposed conditions on the permit to require submission of a Transportation Demand Management ("TDM") Program which "shall include, at a minimum... Provision of **on-site valet service that will facilitate maximum parking efficiency while not deterring use of on-site parking by patrons.**" (A.R. p. 1000). In addition, the Commission required removal of the on-site paid parking machine after finding:

"When a development sells it parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking. By removing the unpermitted payment machine and signage, as proposed

¹ Cites to the Administrative Record ("A.R.") refer to the Commission's certified record of the proceedings relating to CDP 6-12-061 prepared by the Commission in connection with San Diego Superior Court Case no. 37-2013-00066223 entitled San Diegans for Responsible Planning v. California Coastal Commission. Excerpts of the A.R. are attached hereto as Exhibit C.

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with this application, these adverse impacts to public access are avoided.”

A.R. p. 9.

Had the Commission been informed that four of the twenty-six spaces on-site were reserved for the retail business and under the terms of the lease agreement these spaces could be rented out by the retail business, this information would have caused the Commission to require additional or different conditions on the permit or deny the application.

FACTUAL BACKGROUND OF CDP 6-12-061

The Shore Club bar and restaurant is located in Pacific Beach, a popular, busy and heavily trafficked beach community within the City of San Diego, a few blocks west of Mission Boulevard, the main north-south coastal access route through this area. Adjacent to the Shore Club is the Pacific Beach boardwalk and the beach. These areas are popular destinations with both locals and tourists, and during the summer tourist season the volume of usage of the area is very high, with bikers and pedestrians passing through the area in addition to drivers parking nearby or unloading passengers. The San Diego Lifeguard Services has a regional station building located across the boardwalk from the Shore Club from which they organize their patrols, monitor the beach, and provide medical services. (A.R. p. 6.)

The Shore Club is located within the Coastal Zone, the Beach Impact Area, the Parking Impact Overlay zone and a Transit Overlay zone (A.R. pp. 8, 414, 507). The Beach Impact Area refers to those areas of the Coastal Zone “that are subject to higher levels of traffic congestion and parking need” (A.R. p. 415).

The Shore Club consists of an existing 4,456 square foot bar and restaurant in a two-story building, with the bar and restaurant situated on the second floor and a separate 3,283 square foot retail business on the first floor. The lease at issue relates to this retail business. The Shore Club’s hours overlap with the hours of the other businesses on site, and the bar/restaurant is open throughout the day and night from 11 am to 2 am Monday through Friday and 8 am to 2 am Saturday and Sunday. The retail business is open from 9 a.m. to 9 p.m. Adjacent to the two-story building on the same lot and premises is a one-story 391 square foot visitor commercial beach equipment rental business (A.R. p. 6).

The Shore Club site is zoned CV 1-2 and before approval of the CDP had 29

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parking spaces (A.R. p. 8). The expansion as approved will add 1,895 square feet to the bar and restaurant for a total of 6,351 square feet (A.R. p. 6). In addition, the expansion as approved will add an estimated 126 patrons raising the current bar and restaurant capacity from 186 to 312 (A.R. p. 54). Although it will be expanding its capacity by 68% and its square footage by 43%, the expansion as approved reduces parking spaces from 29 to 26 spaces.

The Shore Club site is located in an area of original jurisdiction of the Commission.

From the permit application's inception in 2008, a year after the lease amendment granting 4 reserved, rentable spaces to the retail tenant, the lack of appropriate and required parking to support the Shore Club expansion was recognized by Commission staff as well as by the applicant and its consultants (A.R. pp. 188, 190, 191). In an email dated 11/18/08, to Commission staff, the applicant's architect described the expansion and 1,895 square foot deck addition "**which would trigger additional parking requirements**" and continued, the "Owners are intending to add the 8 required parking stalls through a shared parking agreement with a nearby business" (A.R. pp. 188, 328). Commission staff responded by stating: "[t]he previous owner tried to do this about two years ago and **there was a lack of parking to support the deck approval...**The main issue would be if parking can be secured through the arrangement you have suggested" (A.R. pp. 188, 327).

Even the applicant's plans submitted in 2008 recognize additional parking will be required and that a deficit of seven spaces will be "obtained through shared parking agreement (in process)" (A.R. p. 156). Commission staff cautioned the applicant on a number of occasions about the need for additional parking. On 12/16/08, staff indicated: "Parking. Need to be absolutely certain that any off-site parking secured is free of any other encumbrances" (A.R. pp. 190, 323). On 01/13/09, staff stated: "Of course, you definitely need to secure the off-site parking so if that can be worked out it appears that the project is one that we could recommend approval of" (A.R. pp. 191, 320). The applicant responded on 01/14/09: "We are working on the Shared Parking Agreement and will have that to you as soon as possible" (A.R. p. 320).

In a description of the method of calculating required parking partially consistent with San Diego Municipal Code section 142.0560², the applicant's own site

² Section 142.0560 of the San Diego Municipal Code entitled "Development and Design Regulations for Parking Facilities" indicates:

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plans dated 01/05/09, indicate that calculation of the required parking requires two separate calculations for the expansion and retail space on site resulting in a total of 34 parking spaces: (1) calculation of the parking requirements for the 3,674 square foot first floor retail space on site at a ratio of 2.1 parking spaces per 1,000 GFA [gross floor area] for a total of 8 parking spaces; and (2) a separate and additional calculation for the second floor expanded Shore Club at a ratio of 4.3 parking spaces per 1,000 GFA for a total of 26 parking spaces for the Shore Club expansion alone (A.R. p. 336).

However, in August 2012, the Commission staff was prepared to require even more parking spaces consistent with the requirements of the Pacific Beach Community Plan stating:

[A]s the project site is within the boundaries of the coastal zone, the boundaries of the certified Pacific Beach Community Plan, and within the boundaries of the Beach Impact Zone designated within said Community Plan...the parking regulations contained therein take precedence over the more general parking regulations contained within the San Diego Municipal Code when the two are in conflict.

Currently, the lot on which the project site is located provides 28 parking spaces -27 regular spaces and 1 handicapped space. According to Appendix I of the [Pacific Beach] Community Plan..., the lot on which the project site is located needs to provide 31.51 parking spaces –which under §142.0560(a)(1) of the San Diego Municipal Code...is rounded up to 32 parking spaces – as the property is *currently configured*. **Thus, there is an existing deficiency in parking. With the proposed outside patio addition, the parking requirements for the lot would climb to 40.99 parking spaces – 41 spaces.**

Commission staff wishes to know how the applicants plan to provide the requisite number of parking spaces as required by the Certified Pacific Beach Community Plan. If off-site

“(a) (2) For mixed uses on the same *premises* , the required parking spaces shall be either of the following: (A) The sum of the requirements for each individual use computed separately; or (B) In compliance with Section 142.0545 *shared parking* requirements.” (A.R. p. 350).

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parking is proposed, you must document that the spaces are available for the exclusive use by your business and that they are not otherwise encumbered.

(A.R. p. 346).

In response to the foregoing correspondence, using a legal sleight of hand and in complete disregard of the Community Plan and other applicable provisions of the Municipal Code consistent therewith, the applicant's lawyers argued that another section of the Municipal Code applied. Specifically, the applicant's attorneys argued section 142.0530(a) of the Code relating to mixed uses applied because the Shore Club structure contained both a retail use and a commercial use and the required parking ratio was only 2.1 spaces per 1,000 square feet for the total combined retail and commercial square footage (A.R. p. 352).

In support of its position, the applicant relied on a brief, possibly incomplete and cursory review by a member of the City of San Diego Development Services Department indicating the parking calculation was based on a table for mixed-use development in the same structure (A.R. p. 355). In the process, the applicant and the City staff ignored a host of other applicable parking requirements including: parking standards in the Community Plan (A.R. p. 503); Code prohibitions against reductions in existing parking (A.R. p. 513); provisions applicable to restaurants indicating the City recognizes that eating and drinking establishments have unique and greater parking requirements than other commercial development (A.R. pp. 519-522, 560-562); and provisions relating to calculation of parking for mixed uses on the same premises (A.R. p. 540).

The applicant successfully convinced Commission staff that an expansion of a business with concomitant expansion of customers and square footage could be permitted with a reduction in required parking. **Based upon the Administrative Record of the CDP proceedings, there is no evidence that the applicant at any time informed the Commission or its staff that four of the parking spaces on-site were subject to a lease agreement and available for rent by the retail tenant.**

The expansion came before the Pacific Beach Planning Group in June 2009 at the request of the Commission for planning group input (A.R. p. 344). One third, or five, members of the planning group board were absent. Many Pacific Beach community members expressed concern about any reduction in parking and indicated calculations under the Code required a minimum of 34 parking spaces. A motion to deny the project based on inadequate parking failed on a closely divided 4-5 vote. A subsequent

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motion to approve on the express condition the Shore Club keep its 29 existing parking spaces narrowly carried on a 5-4 vote (A.R. p. 344).

In the Summer of 2010, the general membership of the Pacific Beach Town Council held a forum on the expansion and voted to oppose the expansion with 133 opposed and 89 in favor (A.R. pp. 55, 65).

The Commission received numerous letters of opposition to the expansion from Pacific Beach citizens, including Petitioner's members, detailing the Shore Club's failure to provide adequate parking for the expansion, or comply with parking provisions of the San Diego Municipal Code and the applicable Community Plan (A.R. pp. 25-154). The Commission staff report on the expansion recognized:

Public space and public parking are at a premium, with demand usually outstripping supply.

Additionally, the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses. Many businesses in the Pacific Beach area are previously conforming regarding parking ratios, and some rent spaces from nearby businesses that have excess parking, though the opportunities for that are rare. The surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area.

A.R. p. 8.

Two commissioners expressed concern about the illogic of expanding a business but reducing its parking and opposed the permit (A.R. p. 863). Commissioner Groom had the following exchange with Commission staff:

Commissioner Groom: Somehow that math doesn't work for me, that you expand and you get—end up with less parking places.

Ms. Sarb: Right. But if you apply that transit overlay standard to the square footage of the existing uses, you come up with a requirement of a certain number of parking spaces.

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Commissioner Groom: I guess I don't think that's a correct –I guess I just don't think that's a correct policy, to expand and then be allowed to have fewer parking places. It doesn't make sense to me...

(A.R. p. 912: 1 – 10.)

Nevertheless, on July 11, 2013, the Commission, with 2 members opposed, approved the expansion permit to construct a 1,895 square foot second floor outdoor dining area at the Shore Club with conditions to address the public access and parking issues identified by the public and staff and requiring removal of an unpermitted parking payment machine. The unpermitted payment machine was ordered to be removed because it "was counter to the intent and requirements of applicable parking ratios" (A.R. p. 9). In fact, the Commission staff report indicated:

When a development sells its parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking. By removing the unpermitted payment machine and signage, as proposed with this application, these adverse impacts to public access are avoided.

A.R. p. 9.

Had the Commission been informed that the retail tenant had the right to four reserved parking spaces and the unrestricted right to rent these spaces, it would have imposed additional conditions on the CDP such as prohibiting such paid parking or denied the permit altogether.

The Commission's conditions included future formulation of a Transportation Demand Management ("TDM") Program to include implementation of an on-site valet parking program and installation of bike racks. (A.R. p. 929). The Commission therefore recognized that the expansion did not provide sufficient parking and attempted to cure this problem by requiring a TDM Program.

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According to Commission documents, the TDM Program “shall include, at a minimum... Provision of on-site valet service that will facilitate maximum parking efficiency while not deterring use of on-site parking by patrons.” (A.R. p. 1000). The Commission’s revised findings regarding Public Access/Parking are found at A.R. pp. 1001-1005 and provide in pertinent part:

While the subject property has an on-site parking lot with sufficient parking to support the proposed development under the certified LCP, the popularity of the Pacific Beach community with beachgoers and other visitors highlights the need to ensure that parking impacts to the surrounding areas are minimized and alternative transportation are encouraged. Valet parking is an effective method for maximizing on-site parking due to the greater parking density and efficiency that can be achieved for a given space....In requiring such an on-site valet program, **the Commission’s intent is to make achieving such parking efficiency a common occurrence and to ensure the valet parking program is structured in such a way, in regards to cost and timing, as to not deter patrons from making use of it. For example, while the Commission believes the use of valet parking can maximize parking supply, fees for valet parking can also deter patrons from utilizing the on-site parking and thus lead to off-site parking impacts.**

A.R. p. 1004.

Commission findings on public access/parking found at pp. 1004-1005 of the Administrative Record provide:

- (1) “[p]ublic space and public parking are at a premium with demand usually outstripping supply”;
- (2) “the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses”;
- (3) “[t]he surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area”;
- (4) there is a “need to ensure that parking impacts to the surrounding area are minimized”;
- (5) “[v]alet parking is an effective method for maximizing on-site parking”;
- (6) “the Commission’s intent is to... ensure the valet parking program is structured in

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such a way, in regards to cost and timing, as to not deter patrons from making use of it”;

(7) “the Commission believes... fees for valet parking can also deter patrons from utilizing the on-site parking and thus lead to off-site parking impacts”;

(8) “[w]hen a development sells its parking... there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking which can in turn lead patrons to park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking”.

(A.R. pp. 1003-1005).

The findings then continue:

To ensure that the applicant conducts development in a manner consistent with these findings...Special Condition No. 4 requires the applicant to implement a Traffic Demand Management program that utilizes on-site valet parking and bike racks **in a manner that encourages their use by patrons so as to minimize parking impacts to the surrounding community** by maximizing on-site placement of vehicles and encouraging alternative methods of transportation.

A.R. p. 1005.

The Commission clearly identified public access and parking concerns; these concerns are reflected throughout the totality of the record and in the Commission’s findings in connection with CDP 6-12-061. Information that four of the twenty-six remaining parking spaces were unavailable and subject to paid parking use in a way incompatible with the Commission’s conditions and findings would have resulted in the Commission requiring additional or different conditions on the permit or denial of the application.

SAN DIEGANS FOR RESPONSIBLE PLANNING HAS ESTABLISHED GROUNDS FOR REVOCATION OF CDP 6-12-061

The Commission’s regulations pertaining to revocation of a CDP provide:

Grounds for revocation of a permit shall be:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit

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application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

14 Cal. Code Reg. §13105.

According to Commission staff reports relating to other requests for revocation, the grounds for revocation are confined to information in existence at the time of the Commission's action, and are identified in either section 13105(a) or 13105(b) of the relevant regulations. The three elements of section 13105(a) that must be satisfied before a CDP can be revoked are:

- (1) The applicant provided incomplete, inaccurate or erroneous information; and
- (2) The inaccurate, erroneous or incomplete information was supplied intentionally; and
- (3) If the Commission had known of the information, it would have denied the permit or imposed additional or different conditions.

THE LEASE AGREEMENT GRANTING THE RETAIL TENANT FOUR RESERVED PARKING SPACES AND THE RIGHT TO RENT THOSE SPACES EXISTED AT THE TIME OF THE COMMISSION'S ACTION ON CDP 6-12-061

As Exhibit A establishes, the Lease Amendment 2 granting the retail tenant four reserved parking spaces and the right to rent those spaces was entered into on July 27, 2007. Exhibit A was an amendment to the Commercial Lease Agreement dated October 18, 2005 which has a term of 20 years and 2 months commencing November 1, 2005 and terminating December 31, 2025 (See Exhibit B to Request for Revocation).

According to the Commission's administrative record, the applicant first submitted plans to the Commission in November 2008 (A.R. pp. 155-162). Thereafter, an application for CDP 6-12-061 was submitted by Grand & Strand LLC (A.R. 163 et seq.). Commission documents dated from 2008 through 2012 relevant to the CDP application are found at pages 163 through 299 of the administrative record. An amended application of the CDP dated May 1, 2013 is found commencing at p. 300 of the record.

The record and Exhibits A and B clearly establish that the relevant lease

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agreement between the retail tenant and 4343 LLC predates and was in existence at the time of the Commission's action on CDP 6-12-061.

THE APPLICANT PROVIDED INCOMPLETE, INACCURATE OR ERRONEOUS INFORMATION

The applicant Grand & Strand LLC failed to inform the Commission that by the terms of a Lease Amendment entered into by 4343 LLC and the retail tenant, the retail tenant was entitled to four reserved parking spaces with the right to rent these assigned parking spaces. See Exhibit A ¶1.8. Parking.

This omission is particularly troublesome because:

(1) There is an identity of interest between 4343 LLC and the permit applicant, Grand & Strand LLC. The managing member of both LLCs is S. Barrett Rinzler. Mr. Rinzler is the signatory on the lease with the retail tenant (Exhibit A p. 2), is the signatory for both Grand & Strand LLC and 4343 LLC on the Commercial Lease between these 2 parties commencing January 1, 2008 and ending December 31, 2015 (A.R. pp. 236-264), and is identified as the managing member of Grand & Strand LLC on numerous Commission documents (A.R. pp. 360, 1105);

(2) From the permit application's inception in 2008, the lack of appropriate and required parking to support the Shore Club expansion was recognized by Commission staff, the applicant and its consultants and members of the public (A.R. pp. 156, 188, 190, 191, 320, 323, 327-329, 336, 346). Commission findings on public access/parking found at pp. 930-934, 1004-1005 of the Administrative Record provide:

- “[p]ublic space and public parking are at a premium with demand usually outstripping supply”;
- “the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses”;
- “[t]he surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area”;
- there is a “need to ensure that parking impacts to the surrounding area are minimized”;

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- “[v]alet parking is an effective method for maximizing on-site parking”;
- “the Commission’s intent is to... ensure the valet parking program is structured in such a way, in regards to cost and timing, as to not deter patrons from making use of it”;
- “the Commission believes... fees for valet parking can also deter patrons from utilizing the on-site parking and thus lead to off-site parking impacts”;
- “[w]hen a development sells its parking... there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking which can in turn lead patrons to park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking”.

(A.R. pp. 1003-1005).

(3) This is not the first time the applicant has failed to provide accurate, complete information. As reflected in the Administrative Record, Grand & Strand LLC, doing business as the Shore Club, underreported the number of its employees to the City of San Diego as 3 employees when the Shore Club actually had 70 employees (A.R. pp. 75, 98-103).

In view of the foregoing, the information relating to the lease arrangement with the retail client was material and the applicant’s failure to provide it to the Commission satisfies the first condition of section 13105(a) for revocation because the applicant provided incomplete, inaccurate or erroneous information.

THE INACCURATE, ERRONEOUS OR INCOMPLETE INFORMATION WAS SUPPLIED INTENTIONALLY

Due to the identity of interest between the permit applicant, Grand & Strand LLC and the retail tenant’s landlord, 4343 LLC, the date of the lease as predating the permit application and the fact that the signatory for the applicant and 4343 LLC are the same person, Grand & Strand LLC and its managing member, S. Barrett Rinzler, had direct knowledge of the lease arrangement, had direct knowledge of the reserved parking arrangement and the retail tenant’s right to rent such parking spaces. According to the Commission’s record, there is no evidence the applicant ever revealed this material information to the Commission or its staff.

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**IF THE COMMISSION HAD KNOWN OF THE INFORMATION, IT WOULD
HAVE DENIED THE PERMIT OR IMPOSED ADDITIONAL OR DIFFERENT
CONDITIONS**

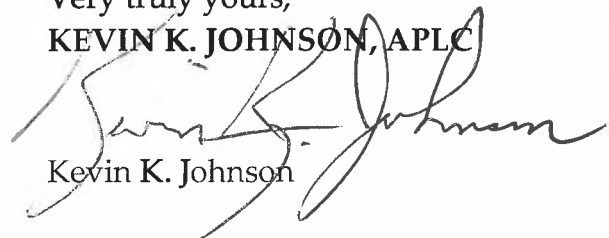
The record of the proceedings for CDP 6-12-061 presents a clear, consistent picture of serious public and Commission parking and public access concerns related to the Shore Club business expansion. These concerns are evidenced in: the Commission's correspondence with the applicant regarding these concerns; the public comments and testimony received by the Commission questioning compliance with required parking ratios; the Commission's Public Access/Parking findings; and the conditions imposed on the permit to (1) remove the automated payment machine and (2) submit a TDM Program including an on-site valet to facilitate maximum parking efficiency while not deterring use of on-site parking by patrons. This evidence in the record collectively establishes that had the Commission been informed that four parking spaces were not only reserved by the retail tenant but subject to rental by that tenant without restriction, the Commission would have imposed additional or different conditions on this permit or denied it.

Accordingly, and pursuant to 14 Cal. Code Reg. §13108, San Diegans for Responsible Planning requests that this matter be heard at the March 2015 Commission meeting to be held in Chula Vista, CA and that this requesting party be afforded 20 minutes to present this request.

In addition, pursuant to 14 Cal. Code Reg. §13107, requesting party requests that having established that grounds exist for revocation of the permit, that: (1) the operation of the permit be automatically suspended until the Commission has an opportunity to hear and vote on this matter and; (2) the applicant be informed that any development undertaken during the suspension of the permit may be in violation of the Coastal Act and subject to penalty. Thank you for your consideration of these issues.

Very truly yours,

KEVIN K. JOHNSON, AP/C

A handwritten signature in black ink, appearing to read "Kevin K. Johnson", is written over the typed name.

Kevin K. Johnson

Cc: Jamee Jordan Patterson, Supervising Deputy Attorney General (via email)

EXHIBIT A

LEASE AMENDMENT 2

THIS LEASE AMENDMENT ("Amendment"), dated as of July 27, 2007 is entered by and between 4343, LLC, as landlord, and Wave Original, Inc., as tenant, and is the second amendment to the lease between the parties.

RECITALS

A. Sam Kholi Enterprises, Inc. as the original Landlord, and Tenant entered into that certain Commercial Lease Agreement, dated as of October 18, 2005, (the "Original Lease") pursuant to which Landlord agreed to sublease to Tenant and Tenant has agreed to sublease from Landlord the portions of the first floor of 4315 Ocean Blvd., San Diego, CA as shown on Exhibit "A" to the Lease (the "Original Premises"). 4343, LLC is the assignee of Sam Kholi Enterprises, Inc.

B. Paragraph 8 of the Original Lease provides that Tenant is entitled to multiple customer unreserved and two reserved vehicle parking spaces. The parties desire to modify that provision such that Tenant's parking is limited to four reserved spaces and no unreserved spaces.

C. Paragraph 39(4) provides that Tenant may install two coolers and one freezer and additional appliances require written approval of Landlord, which approval may not be unreasonably withheld. Landlord grants consent to add one more cooler or freezer.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Paragraph 8 of the Original Lease shall be deleted in full and replaced with the following provision:

8. PARKING: Tenant is entitled to zero (0) unreserved and four (4) reserved vehicle parking spaces. The right to parking is included in the Base Rent charged pursuant to paragraph 3. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked in parking spaces or on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises. No overnight parking is permitted. Tenant may rent its assigned parking spaces.

2. Pursuant to paragraph 39(4), Landlord grants Tenant consent to add one more cooler or freezer.

3. Except as amended or modified herein, all the terms of the Original Lease, and the first amendment to the lease, shall remain in full force and effect and shall apply with the same force and effect.

Dated: 7/31, 2007

4343, LLC

By: 

S. Barrett Rinzler
Managing Member

Dated: 7/30, 2007

Wave Original, Inc.

By: 

Elad Shasho
President

EXHIBIT B



CALIFORNIA
ASSOCIATION
OF REALTORS®

COMMERCIAL LEASE AGREEMENT

(C.A.R. Form CL, Revised 10/01)

Date (For reference only): October 18, 2005

Sam Khali Enterprises, Inc. (sublessor) ("Landlord") and

Wave Original, Inc. (sublessee) ("Tenant") agree as follows:

1. **PROPERTY:** Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as:
First Floor of 4315 Ocean Blvd., San Diego CA 92109 ("Premises"), which
comprise approximately _____ % of the total square footage of rentable space in the entire property. See exhibit A for a further
description of the Premises.

2. **TERM:** The term shall be for 20 years and 2 months, beginning on (date) November 1, 2005 ("Commencement Date").
(Check A or B):

☒ A. **Lease:** and shall terminate on (date) December 31, 2025 at 11:00 ☐ AM ☒ PM.

Any holding over after the term of this agreement expires, with Landlord's consent, shall create a month-to-month tenancy that either party may terminate as specified in paragraph 2B. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

☐ B. **Month-to-month:** and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable local laws. Such notice may be given on any date.

☐ C. **RENEWAL OR EXTENSION TERMS:** See attached addendum _____

3. BASE RENT:

A. Tenant agrees to pay Base Rent at the rate of (CHECK ONE ONLY):

☒ (1) \$ 15,500.00 per month, for the term of the agreement.

☐ (2) \$ _____ per month, for the first 12 months of the agreement. Commencing with the 13th month, and upon expiration of each 12 months thereafter, rent shall be adjusted according to any increase in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers ("CPI") for (the city nearest the location of the Premises), based on the following formula: Base Rent will be multiplied by the most current CPI preceding the first calendar month during which the adjustment is to take effect, and divided by the most recent CPI preceding the Commencement Date. In no event shall any adjusted Base Rent be less than the Base Rent for the month immediately preceding the adjustment. If the CPI is no longer published, then the adjustment to Base Rent shall be based on an alternate index that most closely reflects the CPI.

☐ (3) \$ _____ per month for the period commencing _____ and ending _____ and
\$ _____ per month for the period commencing _____ and ending _____ and
\$ _____ per month for the period commencing _____ and ending _____

☐ (4) In accordance with the attached rent schedule.

☐ (5) Other: _____

B. Base Rent is payable in advance on the 1st (or ☐ _____) day of each calendar month, and is delinquent on the next day.

C. If Commencement Date falls on any day other than the first day of the month, Base Rent for the first calendar month shall be prorated based on a 30-day period. If Tenant has paid one full month's Base Rent in advance of Commencement Date, Base Rent for the second calendar month shall be prorated based on a 30-day period.

4. RENT:

A. **Definition:** ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except security deposit.

B. **Payment:** Rent shall be paid to (Name) Sam Khali Enterprises, Inc., at (address) 4315 Ocean Blvd., San Diego, CA 92109, or at any other location specified by Landlord in writing to Tenant.

C. **Timing:** Base Rent shall be paid as specified in paragraph 3. All other Rent shall be paid within 30 days after Tenant is billed by Landlord.

5. EARLY POSSESSION: Tenant is entitled to possession of the Premises on October 18, 2005

If Tenant is in possession prior to the Commencement Date, during this time (i) Tenant is not obligated to pay Base Rent, and (ii) Tenant ☐ is not obligated to pay Rent other than Base Rent. Whether or not Tenant is obligated to pay Rent prior to Commencement Date, Tenant is obligated to comply with all other terms of this agreement.

6. SECURITY DEPOSIT:

A. Tenant agrees to pay Landlord \$ 11,200.00 as a security deposit. Tenant agrees not to hold Broker responsible for its return. (IF CHECKED:) ☐ If Base Rent increases during the term of this agreement, Tenant agrees to increase security deposit by the same proportion as the increase in Base Rent.

B. All or any portion of the security deposit may be used, as reasonably necessary, to: (i) cure Tenant's default in payment of Rent, late charges, non-sufficient funds ("NSF") fees, or other sums due; (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (iii) broom clean the Premises, if necessary, upon termination of tenancy; and (iv) cover any other unfulfilled obligation of Tenant. **SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT.** If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within 5 days after written notice is delivered to Tenant. Within 30 days after Landlord receives possession of the Premises, Landlord shall: (i) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and (ii) return any remaining portion of security deposit to Tenant. However, if the Landlord's only claim upon the security deposit is for unpaid Rent, then the remaining portion of the security deposit, after deduction of unpaid Rent, shall be returned within 14 days after the Landlord receives possession.

C. No interest will be paid on security deposit, unless required by local ordinance.

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Landlord and Tenant acknowledge receipt of a copy of this page.

Landlord's Initials (SK) (g)

Tenant's Initials (Sh) (g)

Reviewed by

Broker or Designee _____

Date _____



CL-11 REVISED 10/01 (PAGE 1 of 6)

COMMERCIAL LEASE AGREEMENT (CL-11 PAGE 1 OF 6)

Goode, Hemme Peterson & Saylor 6256 Greenwich Drive, San Diego CA 92122
Phone: (858) 587-3555 Fax: (858) 587-3545 Thomas Goode

Wave Original,

7. PAYMENTS:

	TOTAL DUE	PAYMENT RECEIVED	BALANCE DUE	DUE DATE
A. Rent: From <u>11/01/2005</u> To <u>11/30/2005</u>	\$ <u>15,500.00</u>	\$ _____	\$ <u>15,500.00</u>	<u>November 1, 2005</u>
B. Security Deposit	\$ _____	\$ _____	\$ _____	
C. Other: _____	\$ _____	\$ _____	\$ _____	
Category _____				
D. Other: _____	\$ _____	\$ _____	\$ _____	
Category _____				
E. Total:	\$ <u>15,500.00</u>	\$ _____	\$ <u>15,500.00</u>	

8. PARKING: Tenant is entitled to multiple customer unreserved and two (2) reserved vehicle parking spaces. The right to parking ☒ is ☐ is not included in the Base Rent charged pursuant to paragraph 3. If not included in the Base Rent, the parking rental fee shall be an additional \$ _____ per month. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked in parking spaces or on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises. No overnight parking is permitted.
9. ADDITIONAL STORAGE: Storage is permitted as follows: Small storage area in back and under stairs.
The right to additional storage space ☐ is ☐ is not included in the Base Rent charged pursuant to paragraph 3. If not included in Base Rent, storage space shall be an additional \$ _____ per month. Tenant shall store only personal property that Tenant owns, and shall not store property that is claimed by another, or in which another has any right, title, or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other dangerous or hazardous material. Tenant shall pay for, and be responsible for, the clean-up of any contamination caused by Tenant's use of the storage area.
10. LATE CHARGE; INTEREST; NSF CHECKS: Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within 10 calendar days after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$ 150.00 as late charge, plus 10% interest per annum on the delinquent amount and \$25.00 as a NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 4, or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.
11. CONDITION OF PREMISES: Tenant has examined the Premises and acknowledges that Premise is clean and in operative condition, with the following exceptions: _____
Items listed as exceptions shall be dealt with in the following manner: _____
12. ZONING AND LAND USE: Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representations or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.
13. TENANT OPERATING EXPENSES: Tenant agrees to pay for all utilities and services directly, This is a "gross" full service lease. Tenant shall not pay any operating expenses of the premises at any time during the lease.
14. PROPERTY OPERATING EXPENSES:
A. Tenant agrees to pay its proportionate share of Landlord's estimated monthly property operating expenses, including but not limited to, common area maintenance, consolidated utility and service bills, insurance, and real estate taxes, based on the ratio of the square footage of the Premises to the total square footage of the rentable space in the entire property. _____

OR B: ☒ (If checked) Paragraph 14 does not apply.

15. USE: The Premises are for the sole use as
- (See Exhibit "B")

No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost. Tenant will comply with all Laws affecting its use of the Premises.

16. RULES/REGULATIONS: Tenant agrees to comply with all rules and regulations of Landlord (and, if applicable, Owner's Association) that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant do not, disturb, annoy, endanger, or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or committing a waste or nuisance on or about the Premises.

17. MAINTENANCE:

A. Tenant OR ☐ (If checked, Landlord) shall professionally maintain the Premises including heating, air conditioning, electrical, plumbing and water systems, if any, and keep glass, windows and doors in operable and safe condition. Unless Landlord is checked, if Tenant fails to maintain the Premises, Landlord may contract for or perform such maintenance, and charge Tenant for Landlord's cost.B. Landlord OR ☐ (If checked, Tenant) shall maintain the roof, foundation, exterior walls, common areas and lighting. Tenant agrees to the use of florescent lighting

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Landlord and Tenant acknowledge receipt of a copy of this page.

Landlord's Initials (_____)

Tenant's Initials (_____)

Reviewed by

Broker or Designee

Date



18. **ALTERATIONS:** Tenant shall not make any alterations in or about the Premises, including installation of trade fixtures and signs, without Landlord's prior written consent, which shall not be unreasonably withheld. Any alterations to the Premises shall be done according to Law and with required permits. Tenant shall give Landlord advance notice of the commencement date of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against Landlord's interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises.
19. **GOVERNMENT IMPOSED ALTERATIONS:** Any alterations required by Law as a result of Tenant's use shall be Tenant's responsibility. Landlord shall be responsible for any other alterations required by Law.
20. **ENTRY:** Tenant shall make Premises available to Landlord or Landlord's agent for the purpose of entering to make inspections, necessary or agreed repairs, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Landlord or Landlord's representative may enter Premises at any time without prior notice.
21. **SIGNS:** Tenant authorizes Landlord to place a FOR SALE sign on the Premises at any time, and a FOR LEASE sign on the Premises within the 90 (or ☐) day period preceding the termination of the agreement.
22. **SUBLETTING/ASSIGNMENT:** Tenant shall not sublet or encumber all or any part of Premises, or assign or transfer this agreement or any interest in it, without the prior written consent of Landlord, which shall not be unreasonably withheld. Unless such consent is obtained, any subletting, assignment, transfer, or encumbrance of the Premises, agreement, or tenancy, by voluntary act of Tenant, operation of law, or otherwise, shall be null and void, and, at the option of Landlord, terminate this agreement. Any proposed sublessee, assignee, or transferee shall submit to Landlord an application and credit information for Landlord's approval, and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one sublease, assignment, or transfer, shall not be construed as consent to any subsequent sublease, assignment, or transfer, Tenant's obligations under this agreement shall terminate upon any such assignment or sublease.
23. **POSSESSION:** If Landlord is unable to deliver possession of Premises on Commencement Date, such date shall be extended to the date on which possession is made available to Tenant. However, the expiration date shall remain the same as specified in paragraph 2. If Landlord is unable to deliver possession within 60 (or ☐) calendar days after agreed Commencement Date, Tenant may terminate this agreement by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid.
24. **TENANT'S OBLIGATIONS UPON VACATING PREMISES:** Upon termination of agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces; (iv) deliver Premises to Landlord in the same condition as referenced in paragraph 11; (v) clean Premises; (vi) give written notice to Landlord of Tenant's forwarding address; and, (vii)

All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may nevertheless require Tenant to remove any such improvement that did not exist at the time possession was made available to Tenant.

25. **BREACH OF CONTRACT/EARLY TERMINATION:** In event Tenant, prior to expiration of this agreement, breaches any obligation in this agreement, abandons the premises, or gives notice of tenant's intent to terminate this tenancy prior to its expiration, in addition to any obligations established by paragraph 24, Tenant shall also be responsible for lost rent, rental commissions, advertising expenses, and painting costs necessary to ready Premises for re-rental. Landlord may also recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination; (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after expiration until the time of award exceeds the amount of such rental loss the Tenant proves could have been reasonably avoided; and (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided. Landlord may elect to continue the tenancy in effect for so long as Landlord does not terminate Tenant's right to possession, by either written notice of termination of possession or by reletting the Premises to another who takes possession, and Landlord may enforce all Landlord's rights and remedies under this agreement, including the right to recover the Rent as it becomes due.
26. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Landlord shall have the right to restore the Premises by repair or rebuilding. If Landlord elects to repair or rebuild, and is able to complete such restoration within 90 days from the date of damage, subject to terms of this paragraph, this agreement shall remain in full force and effect. If Landlord is unable to restore the Premises within this time, or if Landlord elects not to restore, then either Landlord or Tenant may terminate this agreement by giving the other written notice. Rent shall be abated as of the date of damage. The abated amount shall be the current monthly Base Rent prorated on a 30-day basis. If this agreement is not terminated, and the damage is not repaired, then Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in Rent shall be made.
27. **HAZARDOUS MATERIALS:** Tenant shall not use, store, generate, release or dispose of any hazardous material on the Premises or the property of which the Premises are part. However, Tenant is permitted to make use of such materials that are required to be used in the normal course of Tenant's business provided that Tenant complies with all applicable Laws related to the hazardous materials. Tenant is responsible for the cost of removal and remediation, or any clean-up of any contamination caused by Tenant.
28. **CONDEMNATION:** If all or part of the Premises is condemned for public use, either party may terminate this agreement as of the date possession is given to the condemnor. All condemnation proceeds, exclusive of those allocated by the condemnor to Tenant's relocation costs and trade fixtures, belong to Landlord.
29. **INSURANCE:** Tenant's personal property, fixtures, equipment, inventory and vehicles are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is to carry Tenant's own property insurance to protect Tenant from any such loss. In addition, Tenant shall carry liability insurance in an amount of not less than \$ 1,000,000.00. Tenant's liability insurance shall name Landlord and Landlord's agent as additional insured. Tenant, upon Landlord's request, shall provide Landlord with a certificate of insurance establishing Tenant's compliance. Landlord shall maintain liability insurance insuring Landlord, but not Tenant, in an amount of at least \$ 1,000,000.00, plus property insurance in an amount sufficient to cover the replacement cost of the property. Tenant is advised to carry business interruption insurance in an amount at least sufficient to cover Tenant's complete rental obligation to Landlord. Landlord is advised to obtain a policy of rental loss insurance. Both Landlord and Tenant release each other, and waive their respective rights to subrogation against each other, for loss or damage covered by insurance.

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Landlord and Tenant acknowledge receipt of a copy of this page.

Landlord's Initials ()

Tenant's Initials ()

Reviewed by

Broker or Designee _____ Date _____



0. TENANCY STATEMENT (ESTOPPEL CERTIFICATE): Tenant shall execute and return a tenancy statement (estoppel certificate), delivered to Tenant by Landlord or Landlord's agent, within 3 days after its receipt. The tenancy statement shall acknowledge that this agreement is unmodified and in full force, or in full force as modified, and state the modifications. Failure to comply with this requirement: (i) shall be deemed Tenant's acknowledgment that the tenancy statement is true and correct, and may be relied upon by a prospective lender or purchaser; and (ii) may be treated by Landlord as a material breach of this agreement. Tenant shall also prepare, execute, and deliver to Landlord any financial statement (which will be held in confidence) reasonably requested by a prospective lender or buyer.

11. LANDLORD'S TRANSFER: Tenant agrees that the transferee of Landlord's interest shall be substituted as Landlord under this agreement. Landlord will be released of any further obligation to Tenant regarding the security deposit, only if the security deposit is returned to Tenant upon such transfer, or if the security deposit is actually transferred to the transferee. For all other obligations under this agreement, Landlord is released of any further liability to Tenant, upon Landlord's transfer.

12. SUBORDINATION: This agreement shall be subordinate to all existing liens and, at Landlord's option, the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions. However, as to the lien of any deed of trust or mortgage entered into after execution of this agreement, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant pays the Rent and observes and performs all of the provisions of this agreement, unless this agreement is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground lessor elects to have this agreement placed in a security position prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Tenant, this agreement shall be deemed prior to that mortgage, deed of trust, or ground lease, or the date of recording.

33. TENANT REPRESENTATIONS, CREDIT: Tenant warrants that all statements in Tenant's financial documents and rental application are accurate. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report at time of application and periodically during tenancy in connection with approval, modification, or enforcement of this agreement. Landlord may cancel this agreement: (i) before occupancy begins, upon disapproval of the credit report(s); or (ii) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency, if Tenant fails to pay Rent or comply with any other obligation under this agreement.

34. DISPUTE RESOLUTION:

A. MEDIATION: Tenant and Landlord agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 34B(2) below. Paragraphs 34B(2) and (3) apply whether or not the arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

B. ARBITRATION OF DISPUTES: (1) Tenant and Landlord agree that any dispute or claim in Law or equity arising between them out of this agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 34B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

(2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from Mediation and Arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

(3) **BROKERS:** Tenant and Landlord agree to mediate and arbitrate disputes or claims involving either or both Brokers, provided either or both Brokers shall have agreed to such mediation or arbitration, prior to, or within a reasonable time after the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the agreement.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Landlord's Initials _____ / Tenant's Initials _____ /

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Landlord and Tenant acknowledge receipt of a copy of this page.

Landlord's Initials ([Signature])
Tenant's Initials ([Signature])



Reviewed by
Broker or Designee _____ Date _____

5. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this agreement, jointly with every other Tenant, and individually, whether or not in possession.
16. **NOTICE:** Notices may be served by mail, facsimile, or courier at the following address or location, or at any other location subsequently designated:

Landlord: Sam Kholi Enterprises, Inc.Tenant: Wave Original, Inc.4315 Ocean Blvd.4315 Ocean Blvd.San Diego, CA 92109San Diego, CA 92109

Notice is deemed effective upon the earliest of the following: (I) personal receipt by either party or their agent; (II) written acknowledgement of notice; or (III) 5 days after mailing notice to such location by first class mail, postage pre-paid.

37. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same breach or a waiver of any subsequent breach.
38. **INDEMNIFICATION:** Tenant shall indemnify, defend and hold Landlord harmless from all claims, disputes, litigation, judgments and attorney fees arising out of Tenant's use of the Premises.
39. **OTHER TERMS AND CONDITIONS/SUPPLEMENTS:** 1) The front walkway of the premises is to remain clear for handicap access. 2) Structural changes or tenant improvements greater than \$10,000 shall require written approval of Landlord. Said approval shall not unreasonably be withheld. 3) Use of tobacco products and drugs is strictly prohibited. 4) Tenant may install two coolers and one freezer. Additional appliances require written approval of Landlord. Approval may not unreasonably be withheld. 5) Landlord shall have access to the electrical room at all times.

The following ATTACHED supplements/exhibits are incorporated in this agreement: Exhibit A: Description of premises;
Exhibit B: Use of premises; Exhibit C: Sublease and Exhibit D: Right of First Refusal.

40. **ATTORNEY FEES:** In any action or proceeding arising out of this agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs from the non-prevailing Landlord or Tenant, except as provided in paragraph 34A.
41. **ENTIRE CONTRACT:** Time is of the essence. All prior agreements between Landlord and Tenant are incorporated in this agreement, which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this agreement. Any provision of this agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this agreement. This agreement shall be binding upon, and inure to the benefit of, the heirs, assignees and successors to the parties.
42. **BROKERAGE:** Landlord and Tenant shall each pay to Broker(s) the fee agreed to, if any, in a separate written agreement. Neither Tenant nor Landlord has utilized the service of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as named in this agreement, in connection with any act relating to the Premises, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this agreement. Tenant and Landlord each agree to indemnify, defend and hold harmless the other, and the Broker(s) specified herein, and their agents, from and against any costs, expenses, or liability for compensation claimed inconsistent with the warranty and representation in this paragraph 42.

43. **AGENCY CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:

Listing Agent: _____ (Print Firm Name) is the agent of (check one):

☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.

Selling Agent: _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one):

☐ the Tenant exclusively; or ☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.

Real Estate Brokers are not parties to the agreement between Tenant and Landlord.

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Landlord and Tenant acknowledge receipt of a copy of this page.

Landlord's Initials (SK)

Tenant's Initials (WOG)



Landlord and Tenant acknowledge and agree that Brokers: (i) do not guarantee the condition of the Premises; (ii) cannot verify representations made by others; (iii) will not verify zoning and land use restrictions; (iv) cannot provide legal or tax advice; (v) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this agreement, Brokers: (vi) do not decide what rental rate a Tenant should pay or Landlord should accept; and (vii) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance, and other desired assistance from appropriate professionals.

Tenant Shasho Date 2/15/06
Have Original, Inc.
 (Print name)

Address 4315 Ocean Blvd. City San Diego State CA Zip 92109

Tenant _____ Date _____
Sam Kholi Enterprises, Inc.
 (Print name)

Address 4315 Ocean Blvd. City San Diego State CA Zip 92109

Landlord _____ Date _____
 (owner or agent with authority to enter into this agreement)

Address 4315 Ocean Blvd City San Diego State _____ Zip _____

Landlord _____ Date _____
 (owner or agent with authority to enter into this agreement)

Address _____ City _____ State _____ Zip _____

Agency relationships are confirmed as above. Real estate brokers who are not also Landlord in this agreement are not a party to the agreement between Landlord and Tenant.

Real Estate Broker (Leasing Firm) _____
 By (Agent) _____ Date _____

Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____
 By (Agent) _____ Date _____

Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

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 625 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____
 Broker or Designee _____

CL-11 REVISED 10/01 (PAGE 6 OF 6)

COMMERCIAL LEASE AGREEMENT (CL-11 PAGE 6 OF 6)



Wave Original

EXHIBIT A

Leased premises: All areas on first floor including parking lots.

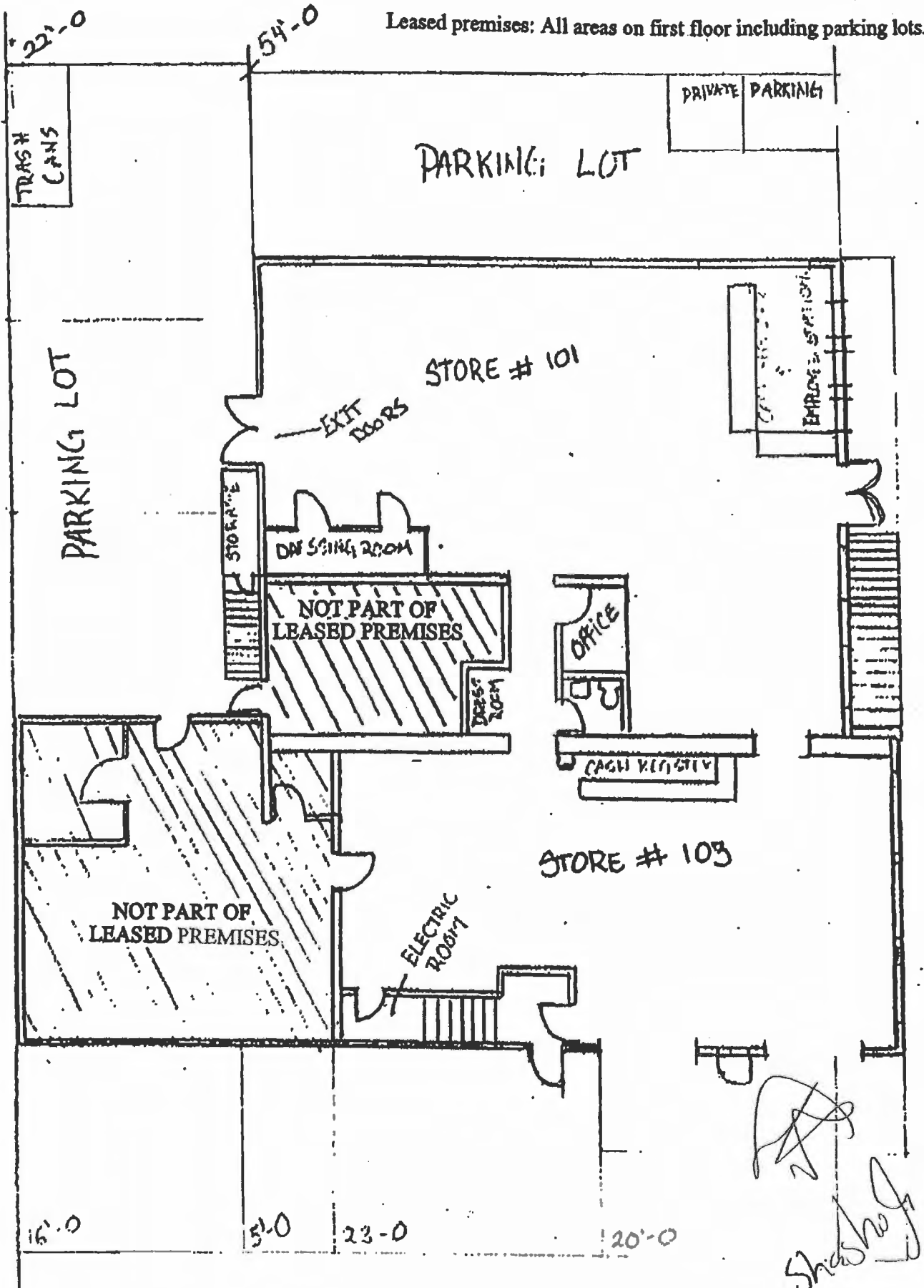


EXHIBIT B
USE OF PREMISES

Tenant may make any legal use of the Premises which does not compete with the business on the second floor of the property and is authorized by the Master Lease. Landlord agrees not to permit any business which competes with Tenant to be conducted on the second floor of the property.



EXHIBIT C

SUBLEASE

Sublease. Landlord is the tenant under a certain Lease Agreement dated June 28, 1996 ("Master Lease"), pursuant to which Carolyn Paul ("Master Landlord") leased to Ronald W. Blackman, Tom Hays and Charles Kahan ("Original Tenants"), each as to an undivided one-third interest, the real property located in the City of San Diego, County of San Diego, State of California, described as 4315 Ocean Boulevard, San Diego, CA 92109. The Original Tenants assigned their interest in the Master Lease to Donegal Times, Inc. in or about April, 2002. On or about May 27, 2004, Donegal Times, Inc. assigned all of its interest in the Master Lease to Landlord. A copy of the Master Lease has been provided to Tenant.

All applicable terms and conditions of the Master Lease are incorporated into and made a part of this Commercial Lease Agreement ("Sublease") as if Landlord were the Master Landlord, Tenant the Original Tenants, and the Premises the Master Premises. Tenant assumes and agrees to perform the lessee's obligations under the Master Lease during the Term to the extent that these obligations are applicable to the Premises. However, the obligation to pay rent to Master Landlord under the Master Lease will be considered performed by Tenant to the extent and in the amount rent is paid to Landlord in accordance with Section 3 of this Sublease. Tenant will not commit or suffer any act or omission that will violate any of the provisions of the Master Lease. Landlord will exercise due diligence in attempting to cause Master Landlord to perform its obligations under the Master Lease for the benefit of Tenant. If the Master Lease terminates, at the option of Master Landlord, this Sublease will terminate and the parties will be relieved of any further liability or obligation under this Sublease. However, if the Master Lease terminates as a result of a default or breach by Landlord or Tenant under this Sublease or the Master Lease, the defaulting party will be liable to the non-defaulting party for the damage suffered as a result of the termination. If Landlord fails to make timely and full payments to Master Landlord under the terms of the Master Lease, Tenant shall have the right to make payments directly to Master Landlord. Regardless, if the Master Lease gives Landlord any right to terminate the Master Lease in the event of the partial or total damage, destruction, or condemnation of the Master Premises or the building or project of which the Master Premises are a part, the exercise of this right by Landlord will not constitute a default or breach.

Warranty by Landlord. Landlord warrants to Tenant that the Master Lease has not been amended or modified except as expressly set forth in this Sublease; that Landlord is not now, and as of the commencement of the Term (defined in this Sublease) of this Sublease will not be, in default or breach of any of the provisions of the Master Lease; and that Landlord has no knowledge of any claim by Master Landlord that Landlord is in default or breach of any of the provisions of the Master Lease.

A handwritten signature in black ink, appearing to read "Sharb", is located in the bottom right corner of the page. The signature is stylized and includes a checkmark-like symbol above the first few letters.

EXHIBIT D

RIGHT OF FIRST REFUSAL

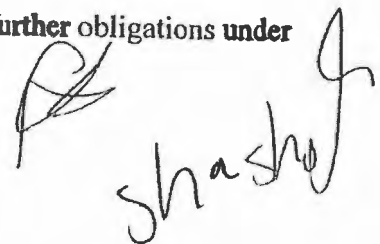
Landlord agrees not to transfer, assign or sell his interest in the Master Lease, his leasehold interest in the second floor of the building, or his business which occupies the second floor of the building (referred to as the "Property", which refers to any one interest or all of them), without first offering the Property to Tenant.

Before Landlord agrees to transfer, assign or sell the Property, Landlord shall offer (First Offer) to sell the Property to Tenant, in writing and on terms and conditions substantially identical to those proposed for the sale of the Property to a third party. The First Offer shall, at a minimum, include the following information:

- (i) the purchase price proposed for the sale to the third party;
- (ii) the method of purchase price payment;
- (iii) the amount and terms of any proposed Landlord financing in connection with the proposed purchase;
- (iv) the amount of any earnest money deposit;
- (v) the time and location for the close of escrow;
- (vi) the name of the proposed purchaser; and
- (vii) the other material terms and conditions of the proposed sale of the Property.

Tenant shall have 30 days from the date of the First Offer to accept the First Offer ("Acceptance Period") by delivering to Landlord the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period. If Tenant fails to accept the First Offer on or before the last day of the Acceptance Period, the First Offer shall be deemed to be rejected.

If Tenant responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first refusal shall terminate and the response shall be deemed an offer to purchase the Property on the terms and conditions in the response ("Counter Offer"). Landlord shall be entitled to accept or reject the Counter Offer at Landlord's sole discretion. If the Counter Offer is rejected, Landlord shall have no further obligations under this agreement to grant a right of first refusal.

 Shashidhar

If Tenant accepts the First Offer, Tenant shall have 60 days following acceptance of the First Offer (Closing Period) to consummate the purchase of the Property pursuant to the terms and conditions of the First Offer. If Tenant fails to consummate the purchase of the Property within the Closing Period, any earnest money paid by Tenant pursuant to the acceptance shall be paid to Landlord as Landlord's liquidated damages, and the agreement to purchase the Property together with this Agreement shall be terminated. After that termination, Landlord shall be free to enter into an agreement concerning the sale of the Property with any third party on whatever terms Landlord may choose without further obligation under this Agreement.

If within 90 days after Tenant rejects the First Offer Landlord enters into negotiations with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to Landlord than those contained in the First Offer, then Landlord shall offer to sell the Property to Tenant on those new terms by giving Tenant written notice ("Second Offer"). Tenant shall have 60 days from receipt of the Second Offer to accept the new terms. If Tenant fails to accept the new terms or rejects the new terms in writing, Landlord shall be free to consummate the transaction with the third party without any liability to Tenant. If Tenant accepts the new terms, then Tenant shall immediately consummate the transaction with Landlord on the terms and conditions specified in the Second Offer. The consummation shall be the later time specified for consummation in the Second Offer or 60 days following the date of the Second Offer.

A handwritten signature in black ink, appearing to read "Shagh" followed by a stylized flourish or initial.

LEASE AMENDMENT

THIS LEASE AMENDMENT ("Amendment"), dated as of April 30, 2007 is entered by and between 4343, LLC, as landlord, and Wave Original, Inc., as tenant.

RECITALS

A. Sam Kholi Enterprises, Inc. as the original Landlord, and Tenant entered into that certain Commercial Lease Agreement, dated as of October 18, 2005, (the "Original Lease") pursuant to which Landlord agreed to sublease to Tenant and Tenant has agreed to sublease from Landlord the portions of the first floor of 4315 Ocean Blvd., San Diego, CA as shown on Exhibit "A" to the Lease (the "Original Premises"). 4343, LLC is the assignee of Sam Kholi Enterprises, Inc.

B. Landlord, who occupies the second floor of the building, is remodeling the space. As a part of that project, Landlord is required to install an elevator lift to comply with the regulations relating to the Americans with Disabilities Act. To install the elevator lift, Landlord needs to modify Tenant's space. Tenant has agreed to permit the modification of its space on the condition that the Landlord gives Tenant the area on the first floor known as the "Liquor Room" to compensate for the loss of space in the area where the elevator lift will be installed. In addition, Tenant will release to Landlord its interest in the storage area located at the rear of the building ("Storage Area"), the Elevator lift area described in Section 1A below ("Elevator Area") and any other portion of the premises currently being used by Tenant depicted as "Not part of leased premises" in Exhibit "A". The areas described in the immediately prior sentence are collectively referred to as "Tenant's Released Areas".

C. Tenant agrees to accept the Liquor Room area (the "Expansion Space") and also agrees to release the Tenant's Released Areas on the terms and conditions set forth herein. The Original Premises and the Expansion Space are collectively referred to herein as the "Premises." The Original Lease together with this Amendment are collectively referred to herein as the "Lease."

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Tenant releases to Landlord:

(a) All interest acquired by Tenant under the Original Lease to the area where Landlord intends to install an elevator lift. The area conveyed to Landlord is an area which is approximately 5.125 feet by 13.5 feet near the stairs at the lobby entrance off Grand Avenue. Exhibit "A" is the Exhibit "A" to the Original Lease and the elevator lift area is depicted as indicated on Exhibit "A". Exhibit "B" is the plan view of the space and the proposed finished dimensions of the elevator area.

(b) The Storage Area at the rear of the building as indicated on Exhibit "A".

- (c) Any other portion of the premises located within the Tenant's Released Areas.
- (d) Tenant agrees to remove any and all personal property and fixtures located within Tenant's Released Areas.

2. Landlord shall bear all expenses relating to the installation of the elevator lift and the modification of the first floor area to accommodate the elevator lift. In the event the construction of the permanent wall which will separate the Elevator Area from the Tenant's eased premises takes longer than nineteen (19) days, Landlord agrees to pay Tenant delay damages in the amount of \$1,000.00 per day starting on the Twentieth day after construction begins.

3. Landlord leases to Tenant, and Tenant leases from Landlord the space known as the "Liquor Room". The additional space leased by Tenant is depicted on Exhibit "A".

4. Tenant, at its own expense, may modify (in accordance with the terms and conditions set forth in the lease as it relates to modification of the leased premises) the Expansion Space for the purpose of incorporating the space into its retail floor plan. Landlord shall remove all personal property and fixtures located in the Expansion Space which was used by the Landlord for storage.

5. The addition of the Expansion Space to Tenant's premises shall not change the terms of Tenant's rent obligations under the Lease. Tenant shall continue to pay rent as provided in the Original Lease. There shall be no abatement of rent.

6. The parties will cooperate with each other to effect the intent of the Lease Amendment.

7. Except as amended or modified herein, all the terms of the Original Lease shall remain in full force and effect and shall apply with the same force and effect to the Expansion Space as to the remainder of the Premises.

Dated: 5/1, 2007

4343, LLC

By: [Signature]

S. Barrett Rinzler
Managing Member

Dated: 5/1/07, 2007

Wave Original, Inc.

By: [Signature]

Elad Shasho
President

EXHIBIT A

Leased premises: All areas on first floor including parking lots.

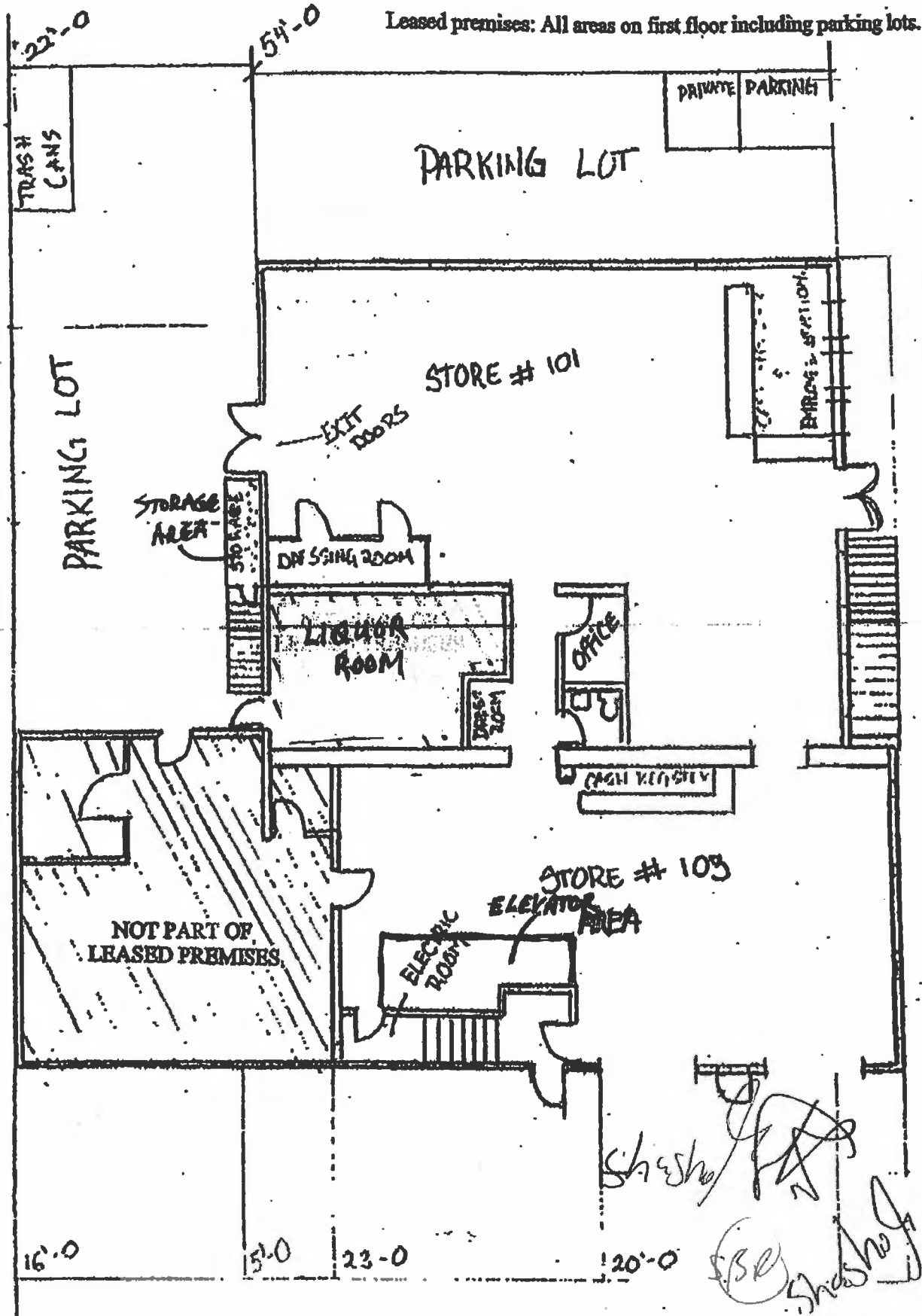
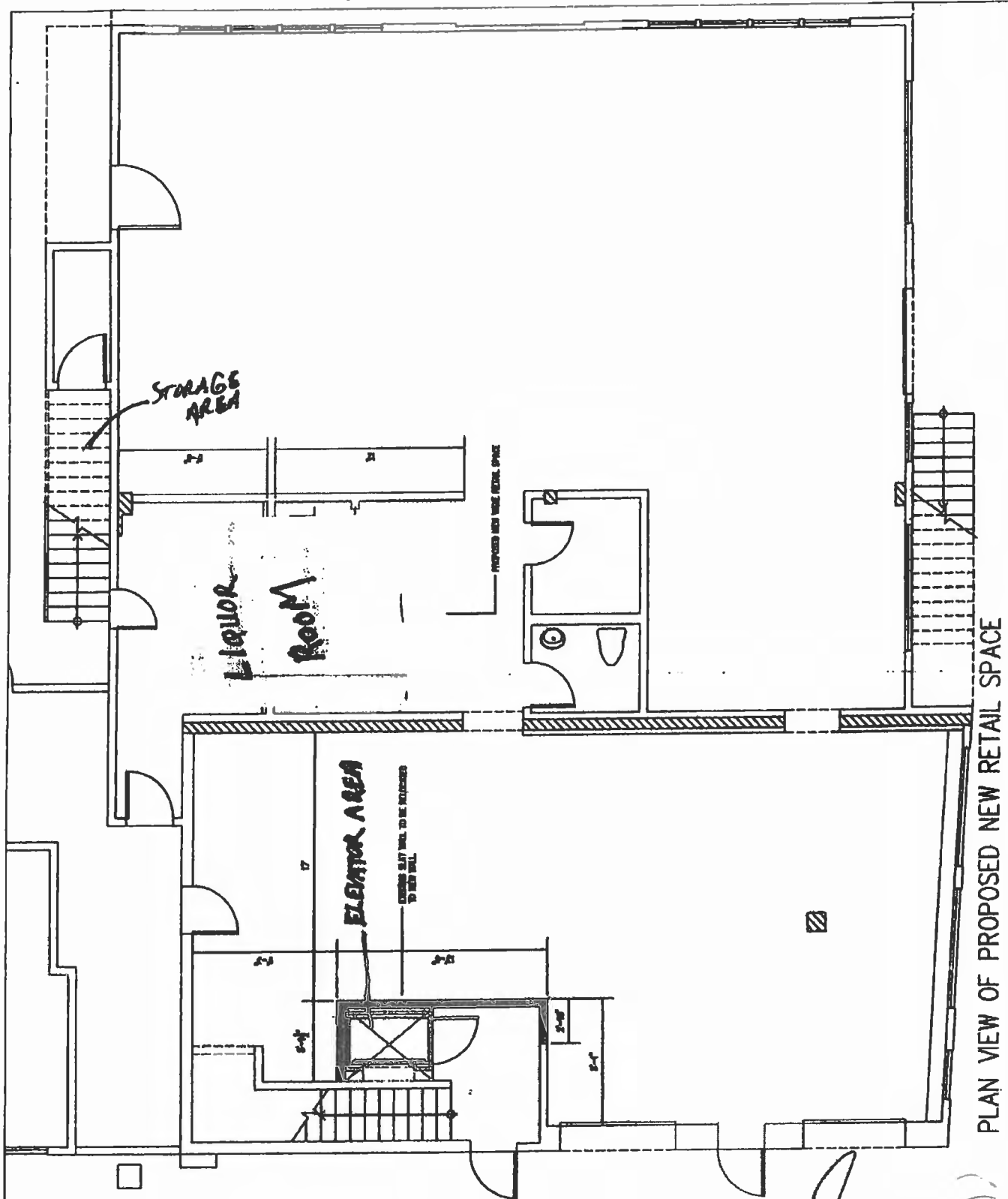


EXHIBIT B



shushof

SBC

EXHIBIT C

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

(619) 767-2370



Th17b

COMMISSION ACTION ON JUL 11 2013

- ☐ Approved as Recommended
☐ Denied as Recommended
☒ Approved with Changes
☐ Denied
☒ Other *Revised Finding Required*

Filed: 5/20/13
180th Day: 11/16/13
Staff: A. Llerandi-SD
Staff Report: 6/17/13
Hearing Date: 7/10-11/13

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-12-061

Applicant: Grand & Strand, LLC

Agent: Architect Mark D. Lyon, Inc.

Location: 4315 Ocean Boulevard, Pacific Beach, San Diego,
San Diego County (APN No. 423-111-1600)

Project Description: Construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage at an existing mixed-use building.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of this project, with conditions. The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the adjacent parking lot. The project site is the PB Shore Club bar and restaurant, an existing restaurant in a two-story mixed-use building (with first floor visitor commercial retail), located at the corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The proposed project raises issues of intensity of use and parking, visual impacts, biological resource impacts, and community character. Intensity of use and parking issues arise due to potential for increased dining space to affect traffic and parking in the

000001

surrounding area. Visual resource issues arise due to project site's proximity to the beach and the fact that the proposed dining patio will obstruct some ocean views from a public alleyway. Biological resource issues arise due to the risk of bird-strike from the placement of glass paneling in a previously unobstructed visual area. Community character issues arise from the expansion of late-night dining in a popular and developed tourist area.

Recommended conditions include requiring the applicant to adhere to final construction plans so as limit impacts to views and birds, and timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access.

Commission staff recommends **approval of** coastal development permit amendment 6-12-061, as conditioned.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Current Site Photo

Exhibit 4 – Rendering of Rear Patio

Exhibit 5 – Rendering of Front Patio

Exhibit 6 – Unpermitted Pay Machine

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 6-12-061 pursuant to staff recommendation.*

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:

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. 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

This permit is granted subject to the following 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 applicant 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 of 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY.

The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the on-site parking lot. The project site is the PB Shore Club bar and restaurant, an existing 4,456 square foot restaurant in a two-story, 23'1" high mixed-use building, with the restaurant situated on the second floor and a 3,283 square foot visitor retail business on the first floor. Adjacent to the mixed-use building on the same lot is a small, one story, 391 square foot visitor commercial beach equipment rental business. The proposed second-floor dining patio would be located outside of and connected to the restaurant on the south while being supported by ground-floor columns. The subject lot is located at the southeast corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The PB Shore Club is located in Pacific Beach, a popular beach community within the City of San Diego, just a few blocks west of Mission Boulevard, the main north-south coastal access route through this area. Adjacent to the PB Shore Club is the Pacific Beach boardwalk and the sandy beach. These areas are popular destinations with both locals and tourists, and during the summer tourist season the volume of usage of the area is very high, with bikers and pedestrians passing through the area in addition to drivers parking nearby or unloading passengers. The San Diego Lifeguard Services have a regional station building located across the boardwalk from PB Shore Club from which they organize their patrols, monitor the beach, and provide medical services.

The project site is located in an area of original jurisdiction of the Coastal Commission, as such, the standard of review for the proposed development is Chapter 3 of the Coastal Act, with the City of San Diego's certified LCP used as guidance.

B. PUBLIC ACCESS/PARKING.

The following Coastal Act policies are most pertinent to this issue, and state in part:

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,

either pass through, visit the beach, or to drop off/pick up passengers. Public space and public parking are at a premium, with demand usually outstripping supply.

Additionally, the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses. Many businesses in the Pacific Beach area are previously conforming regarding parking ratios, and some rent spaces from nearby businesses that have excess parking, though the opportunities for that are rare. The surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area.

The Pacific Beach Community Plan, the certified LUP for the area, general identifies the area within three blocks of the water, which includes the project site, as being within the “Beach Impact Area” (BIA) of the City of San Diego’s certified LCP. The City’s LCP in turn defines the BIA as being part of the Parking Impact Overlay Zone, which is designed to provide supplemental parking regulations for specified coastal, beach, and campus areas that have parking impacts. The project site is also located within the certified LCP’s Transit Overlay Zone, the purpose of which is to provide supplemental parking regulations for areas receiving high levels of transit service.

The Pacific Beach Community Plan has several provisions allowing alternative parking ratios for development located within transit oriented areas. The Community Plan states that for development in the coastal zone, development shall provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process. The Community Plan goes on to delineate some of the standards that signify a transit-oriented development, including, but not limited to: minimizing building setbacks, bringing buildings close to sidewalks; located parking to the rear of lots, off of the alleys; articulate building facades to provide variety and interest through arcades, porches, bays, and particularly balconies, which minimize a walled effect and promote activity on the street; promote activity on balconies through such means as outdoor seating for restaurants, orient primary commercial building entrances to the pedestrian-oriented street, as opposed to parking lots, provide bicycle racks, etc. The existing and proposed development contains a majority of these features and thus promotes a pedestrian and transit-oriented character.

Currently, the project site has 29 off-street parking spaces located in an on-site parking lot for use by the patrons of the mixed use building and neighboring commercial beach rental business located in the adjacent parking lot. These 29 parking spaces currently meet and exceed the certified LCP’s parking requirements and thus are not non-conforming. Due to the placement of support structures for the second floor outdoor patio and bringing the parking lot up to compliance with the Americans with Disabilities Act, the total number of parking spaces will drop from 29 to 26 upon completion of the project. These spaces serve the mixed-use building containing the PB Shore Club and first-floor retail as well as a separate beach equipment rental store also located on the lot.

Currently the mixed-use building has 4,456 square feet of restaurant use (the PB Shore Club) and 3,283 square feet of retail. The separate beach equipment rental store is 391

square feet. The City's Land Development Code, the certified IP for its LCP, lists the parking ratios required of non-residential uses in Section 142.0530. Table 142-05D of that section establishes the required ratios for retail sales, commercial service, and mixed-use developments in a single structure that include an allowed use from at least two of the following categories: retail sales, commercial services, and offices. The project site is zoned as CV-1-2 (Commercial Visitor), which, in the Transit Overlay Zone, has a required parking ratio of 2.1 parking spaces for every 1,000 square feet of floor area in a mixed-used building. Applying the regulatory ratio to the existing square footage, the existing development is required to provide 17 parking spaces, while the proposed square footage of the outdoor dining patio will require an additional 4 parking spaces, for a total of 21 parking spaces. This number is below the 26 spaces the applicant will offer once the proposed development is completed. Thus, adequate on-site parking will be provided for the proposed development.

In addition to meeting applicable parking ratios, the applicant is proposing removal of an unpermitted automated payment machine and related signage from the on-site parking lot. The automated payment machine and signage advertised public beach parking for an hourly rate, regardless of whether the person was patronizing the commercial establishments. In addition to being unpermitted, the applicant was told that such usage of the on-site parking lot was counter to the intent and requirements of applicable parking ratios. Parking ratios are provided for in land use regulations because various types of development can be anticipated to need various amounts of parking spaces in order to service employees, patrons, and deliveries. Municipalities encourage sufficient off-street parking so as to mitigate traffic and parking impacts to surrounding businesses and residences. When a development sells its parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking. By removing the unpermitted payment machine and signage, as proposed with this application, these adverse impacts to public access are avoided.

To ensure that the applicant conducts development in a manner consistent with these findings, **Special Condition No. 1** requires the applicant to adhere to final plans that are in substantial conformance with the plans approved by the Commission as part of this application submittal.

In summary, the Commission finds the proposed outdoor dining patio and removal of the unpermitted automated payment machine will not result in adverse impacts to coastal access. Parking will remain adequate for approved uses. Therefore, the Commission finds that all access and resource concerns associated solely with development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the cited policies of the Coastal Act.

C. VISUAL RESOURCES/COMMUNITY CHARACTER

Section 30251 of the Act addresses scenic and visual qualities, and states, in part:

Agenda # Th17b
Permit # 6-12-061
Marcie Beckett
Opposed

RECEIVED

July 7, 2013

JUL 08 2013

Dear California Coastal Commissioners,

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Please vote NO on PB Shore Club 1895 sq ft deck expansion

I am a life-long resident of Pacific Beach, parent of two teenagers and very involved in my community and in a multitude of efforts to improve Pacific Beach. I live approximately 6 blocks from the PB Shore Club. I am opposed to the proposed expansion of the PB Shore Club with an 1895 sq ft deck because it will have many serious negative impacts on my community. My main concerns regarding negative impacts on parking, public safety, community character and public access are summarized below, with supporting materials attached.

Parking is Inadequate

Adding this deck will allow this establishment to serve an additional 126 patrons and increase their capacity from 186 to 312 persons – that represents a 68% increase in patron capacity. However, they are being allowed to reduce their parking spaces from 29 to 26. This establishment is located in an area with well documented parking shortages. This project is being allowed to use reduced parking requirements (mixed use shared parking). This is contrary to the Pacific Beach Community Plan, which indicates reductions in parking requirements will not be pursued within the Beach Impact Area (in which this establishment is located) (Attachment 1). In addition, both the PB Shore Club and the downstairs retail are open from early morning until late at night, so the complementary use (non-overlapping) rationale for having reduced mixed use parking requirements does not apply in this case. The restaurant is the “primary use” and as such, it should be held to the parking requirements for “eating and drinking establishments” which is 4.3 spaces per 1000 sq ft, which would require 27 spaces for the existing restaurant and 35 spaces after adding the new deck.

Reducing the existing parking is in violation of San Diego Municipal Code (142.0510(c)) which states “Existing Parking Not to be Reduced” and “...existing off-street parking facilities that are provided and maintained on the same premises before parking was required and which serve a use now requiring off-street parking spaces shall not be reduced in number, dimensions...” (Attachment 2).

PB Shore Club has been illegally charging for parking for years and they should not be rewarded for this behavior by allowing them to expand and create more parking demand while providing fewer parking spaces.

The net result of adding more patrons and providing inadequate parking is that more patrons will park in the surrounding residential neighborhoods. Since the PB Shore Club is a restaurant that

operates like a bar (more on that later), this means that more inebriated patrons will be roaming our neighborhoods in the middle of the night looking for their cars, disturbing our peace, urinating in our alleys and yards, vandalizing, littering and driving drunk on our streets, putting all of us at risk. All of these impacts severely damage our community character as a residential community with good quality of life.

PB Shore Club Operates Like a Bar - Expanding It Will Increase Crime, Decrease Public Safety and Decrease Public Access

The Coastal Act, in section 30210, includes a provision that Commission decisions shall be "consistent with public safety needs." PB Shore Club is located in census tract 79.01 which has alcohol crime that is 22 times the city average and general crime that is 6 times the city average (Attachment 3). Alcohol crime includes DUI, drunk in public, open container and other crimes involving alcohol. General crime includes assault, rape, robbery, murder and car theft. This establishment has a restaurant alcohol license, but operates like a bar (which is permissible under ABC regulations) and already contributes to the high crime in the area by engaging in business practices that encourage excessive consumption of alcohol. Their website (Attachment 4) divides the premises into "Bar North" and "Bar South", they used to have beer pong on Monday nights, now they have goldfish racing on Wednesday nights, daily drink specials, and the kitchen closes at 10 pm, so from 10 pm to 2 am this typically packed joint is serving primarily alcohol to its 186 patrons (or 312 if they get the deck). PB Shore Club participates in pub crawls and other events, such as the "Daisy Duke Contest", that usually involve excessive drinking (Video DVD attached). At closing time these highly inebriated patrons are released into the community in quantities that the police cannot handle now, so adding 126 more patrons will only make the crime worse. Many residents and visitors avoid the area around PB Shore Club, especially at night, because they do not feel safe there, and this, in effect, limits public access to this coastal area. In the interests of public safety, public access and maintaining the community character as a nice place to live and visit, the PB Shore Club expansion should not be allowed.

Community Groups Voted Against PB Shore Club Expansion

In April of 2009, the board of directors of the Pacific Beach Town Council voted unanimously (10-0) to NOT support the expansion of the PB Shore Club license to serve alcohol on the proposed outside deck (Attachment 5). In summer of 2010, the general membership of the Pacific Beach Town Council held a forum on the issue and voted by mail to OPPOSE (133-89) the proposed deck expansion of the PB Shore Club (Attachment 6). From these votes it is evident that a majority of the members of this group, which is focused on community improvement, view the PB Shore Club deck expansion as a degradation to the community.

In June of 2009, the Pacific Beach Planning Group (with at least 5 members absent) narrowly approved (5-4) the PB Shore Club deck expansion with the condition that it **provide 29 parking spaces** (Attachment 7). Board and audience members in opposition were concerned about inadequate parking, the use of paid parking, noise nuisances, and adding more drunks in the community. The PB Shore Club's current proposal provides only 26 parking spaces, which is in violation of the condition imposed by the Pacific Beach Planning Group and thereby nullifies their support.

ATTACHMENT 5

Pacific Beach Town Council Board Meeting April 1, 2009

Present: Rick Oldham, Diane Faulds, Ruby Houck, Nini Balistrieri,
Marcie Beckett, Nici Boyle, Jim Menders, Glenn Olson, Joe Wilding,
Mel Zeddies, Jason Nienberg

Staff: Mary Lee Poparad

Absent: Rose Galliher, Jerry Hall, June Sandford

Commenced: 6:35 pm

Presentations

Scott Chipman from the PB Planning Committee discussed the creation of an Advisory Subcommittee that would have representatives from PBTC and DPB that would allow the business owners to present their requests for support to one entity rather than each one separately.

Request for Support

MB Town Council presented a request for support and financial assistance for the equipment to be donated to the SDPD in order to help enforce the Motorcycle Noise Ordinance. Motion: Letter of recommendation to support MBTC. Original letter to be modified by Marcie. Beckett(1) Zeddies(2) Passed 9-2-0

PB Ale House request for support: Motion: Letter in support to their request to extend their outside patio service hours from Midnight to 1:30am. Menders(1) Houck(2) Failed 3-7-1 Motion: Letter not to support request because the area has very high crime and this extension would increase alcohol serving, aggravate crime and is not in the best interests of the community. Beckett(1) Wilding (2) Passed 6-4-1 Beckett to write letter.

* Shore Club presented a request for support. Motion: Letter not in support to an extension of their alcohol license to serve alcohol on the proposed new outside deck. Menders (1) Nienberg (2) Passed 10-0-1

Tabled Business

Graffiti Day – Gregg Barnes reported that all invoices have been presented and paid. All supplies have been inventoried.

Honorary Mayor Selection Procedures – Motion: Subcommittee to be formed to research the Honorary Mayor selection process and come back with options and recommendations to vote on. Beckett (1) Nienberg(2) Passed 9-0-2 Committee: Beckett, Houck, Wilding and Boyle

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ATTACHMENT 6 - page 1

Pacific Beach Town Council
General Meeting
September 15, 2010
Location: The Pacific Beach Women's Club

(see page 2
and page 4)

Present: Rose Galliher, Ruby Houck, Jennifer Dreyfus, Glenn Olson,
Nini Balistreri, Nanci Dalzell, Chris Decker, Alan Harris,
Susan Lowary, Jeffrey Montez, Todd Sarouhan, Joe Wilding
Absent: Rick Armstrong, Chip Bonghi, Chris French, Edward Reay
Parliamentarian: Mel Zeddies
Office Staff: Mary Lee Poparad
Commenced: 6:38 pm

Ruby Houck Approval of agenda:

Motion to approve agenda (1) Sarouhan (2)
Decker Passed 22,0,0

Board Report

Website committee: Todd Sarouhan –
pbtowncouncil.org has been up for about 9
months now. If you have any suggestions
please send to Mary Lee at the Pacific Beach
Town Council Office

Nominating Committee – Ruby Houck – There
are 2 directors seats open, and the officer
positions. Nomination slate will be presented in
October.

Representative Reports
Thyme Curtis

Kevin Faulconer's Office: Prop D will be on
ballot. Kate sessions District 5 Council Woman
Emerald is supposed to put it on the October
agenda, please voice your request for this issue
to be docketed.

Nooria Faizi

Deputy City Attorney: Community Court
Session Thursday Evening – 24 participants

Karolyn Estrada

Park Ranger: Lease Terns Sites to be taken
down

John Weil

Pam Slater-Price: County board of Supervisors
– Defacto Fire Department. The chair will be
the chief Winsor of Cal Fire.

Jim Filley

San Diego police foundation events, October
20th at sports arena. There should not be any
more "topias" an emergency ordinance was
enacted to close the loopholes.

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ATTACHMENT 6 - page 2

Sarah Bern

Discover Pacific Beach: Beachfest October 9th
still merchant booths available. Tuesday
hospitality task force will be cleaning up from 3-
6 pm check in at PB Shore Club. Holiday
Parade is Dec 11th, Tree lighting is Dec 5th, PB
Community advisory committee meets on the
3rd Tues of the month at 6pm.

New Business:

None

Non Debatable Public Comments

Barbara - Signs "Beach Bar" with an arrow.
They are for a movie that is shooting in PB.

Announcements:

Ruby thanked all men and women in uniform

→ Results of Ballot

Rose Galliher announced results: 222 total
votes out of 652 members. No's 133; Yes 89 ← *

Meeting Adjourned

8:11 pm (1) Wilding (2) Dalzell

Secretary:

Jennifer Dreyfus

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ATTACHMENT 6 - page 3

Pacific Beach Town Council
General Meeting
June 16, 2010
The Pacific Beach Women's club

Present: Rose Galliher, Ruby Houck, Nini Balistreri, Chip Bonghi, Nanci Dalzell, Chris Decker, Chris French, Susan Lowary, Jeffrey Montez, Rick Oldham, Ed Reay, Joe Wilding
Absent: Rick Armstrong, Jennifer Dreyfus, Alan Harris, Glenn Olson, Todd Sarouhan
Parliamentarian: Mel Zeddies
Office Staff: Mary Lee Poparad
Commenced: 6:42

Introductions

Approval of Agenda

Presentation

Karl Jaedtke

Board Report

Rose Galliher

Representative reports:

John Weil

Pam Slater-Price

Thyme Curtis

Kevin Faulconer

Deanneka Goodwin

Susan Davis

Motion: Rick Oldham (1) Nanci Dalzell (2) passed

Dan Froelich Award of \$500 to Marlee Glasgow of MBHS

Wine tickets on sale

Appt. bylaws committee -- Jeff Montez (chair), Glenn Olson, Todd Sarouhan, Chris Decker and Mel Zeddies

As of today there are 26,000 ballots still to be counted to complete election count. Total registered voters in SD are 1.4 million but just over 340,000 actually voted.

New fire fighting helicopter just came on.

Free PB.org has applied for a \$7500 grant for disposable dumpsters for the 4th of July & Labor Day weekends at the beaches.

Council passed a balanced budget with no major cuts this year but a 75 million deficit is anticipated for next year.

Kevin Faulconer used \$17,000 of his budget to help fund fire pits for one more year.

Brought monthly newsletter. Congresswoman is working diligently.

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ATTACHMENT 6 - page 4

Capt. Chris Ball
SDPD

Angela Geisler
Deputy City Attorney

Scott Chipman
PB Planning Group

Leigh Gibson
Olde City Grill

Meeting Adjourned 8:28

Secretary Pro Tem

Ruby Houck

Nest town hall meeting is Friday, July 9 at UTC mall at 5 p.m.


Beach team is ready to go for summer. Additional resources will be added at Kate Sessions Park this summer as well.

Working on Floatopia loopholes for easier enforcement. Next Floatopia is heard to be scheduled July 11th at Sail Bay.

announced she is transferring and introduced her replacement, Nooria Faizi.

Next Community Court is scheduled for June 24th.

**Motion: As a general member I move that the Pacific Beach Town Council take a mail-in vote of the general membership and ask the following question:
Shall the Town Council provide a letter of support for a premise expansion of the PB Shore Club to allow alcohol consumption to 2 am on a proposed 1895 square foot deck and which would increase the maximum occupancy from 186 to 312 persons?
Yea (35) Nay (34)**



Have the Shore Club give a formal presentation at the next general meeting prior to a mail-in ballot.

Discussion

Motion Withdrawn

It was decided that a public forum would be held

Motion to Adjourn: Wilding (1) Dalzell (2)

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Agenda number: Th17b
Permit number: 6-12-061
Scott Chipman
Opposed to project

July 7, 2013

California Coastal Commission San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421 I

This project is opposed by many individuals in Pacific Beach for these reasons:

- Parking & Traffic
- Noise, Public Access and Public safety
- Community character

RECEIVED

JUL 08 2013

Parking

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

The Parking Calculations: There is something very peculiar about the parking analysis in the staff report. Characterizing the Shore Club's retail, restaurant/bar and rental shack as "Mixed-Use" is inaccurate. Use of the parking ratio table for Mixed Use is incorrect, because section 142.0530 (b) trumps (a) when it comes to Eating and Drinking Establishments. (See Exhibit-Pages 11-17 muni code)

The key phrase in (b) is, "eating and drinking establishments that are the primary use on a premise." The retail is 3674sf, the restaurant/bar is 4456, and they want to add 1895sf – clearly the primary use.

Two things are important about that phrase : Section (b) trumps section (a) when it comes to eateries; and the words, "primary use" describes a combination of uses –as in "mixed use." But where an eatery/bar is the primary use – you have to use the next table, which requires 4.3 spaces/1000sf – not 2.1.

The food and drink primary use is substantially greater than the retail. Currently it is about 36% greater. With a new deck addition the food and drink proportion becomes 93% greater than the retail.

So the existing Shore Club should have a parking requirement of 27 (they have 29). The new deck would push that requirement up to 35 spaces.

The sanity-check on this interpretation of the Code is simple – if any restaurant/bar could put in a little retail, like a gift shop – and that allowed them to use the "Mixed Use" parking

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requirement of 2.1 rather than 4.3 – why in the world hasn't every bar and restaurant put in a gift shop? And if the current calculation were to be approved it would set a precedent that any amount of retail would qualify as "Mixed Use."

There are a lot of different Commercial Services, that could add up to "mixed use," including residential over the commercial. But Eating and Drinking Establishments are a different animal when it comes to parking requirements – there is food & drink, and then there is everything else. This current parking calculation is just plain incorrect. Although a request for reconsideration is being sent to San Diego Development Services, time is short and in this case it is critical that The Coastal Commission reevaluate these calculations and correct the error rather than institutionalize the error.

The Pacific Beach Planning Group: The original proposal provided to the Pacific Beach Planning Group was a hotly contested item occurring on a night when several members were absent on holiday. As approved, the motion required the project to maintain 29 parking spaces. It is inaccurate to represent that this project has been approved by the local planning group. (see exhibit Pacific Beach Planning Group

It is also curious that the project was reviewed and substantially altered with regards to parking and evidently there were discussions between coastal and San Diego Development Services Department about these changes. However, the project was not brought back to the local planning group for a review of the changes. I think this could and should be considered a violation of the process and in reality no local planning group review has occurred.

General Size and Capacity Increase: Staff report indicates *"Public space and public parking are at a premium, with demand usually outstripping supply."* As a long term resident of the area I would characterize this as an understatement and begs the question why the staff would approve a premise expansion of 43%. The patron capacity increase is even greater from 186 to 312 (a 68% increase) with no provision for additional parking and even allowing a reduction in parking.

Noise, Public Access, Public Safety

There is strong audio and video evidence and community member statements that this establishment diminishes the quality of the environment including the area of the boardwalk and nearby beach. Access to a degraded environment is as serious as diminished access. When community members, families and tourists don't want to be at the beach near a noisy bar scene where their experience is diminished by amplified unwanted music and crowd noise then it is the similar to reduced access.

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Police reports provided indicate serious noise violations and violent crime at the PB Shore Club. (see exhibit Crime Reports for the Pacific Beach Shore Club and Declaration)

Community Character

There is considerable concern over the current direction of community character. Because of decisions to expand bar-like restaurants such as the PB Shore Club Pacific Beach has gotten the reputation of being a community where drinking is out of control. On June 27th, 2013 the Encinitas City Council held a meeting where one of the key topics for the evening was addressing the concerns of residents that the Encinitas business area was becoming a "new Pacific Beach." At the meeting Encinitas residents said "their downtown is turning into a Pacific Beach-like atmosphere with partying and drinking spiraling out of control. On Wednesday night, they asked the Encinitas City Council to do something to fix it."

The Channel 10 news headline was: Encinitas residents complain to city council that downtown area is becoming new Pacific Beach. (See exhibit with the same title)

<http://www.10news.com/news/encinitas-residents-complain-to-city-council-that-downtown-area-is-becoming-new-pacific-beach-06262013>

This story and regional attitude about Pacific Beach is not new. However, the current and worsening reputation of Pacific Beach should cause the Coastal Commission to pause and consider if their decision is adding to or diminishing the current and future reputation of this area of Pacific Beach as a place with "partying and drinking spiraling out of control." Expanding this premise with a deck would certainly add to this reputation.

According to police reports this area of Pacific Beach generates the highest violent crime making Pacific Beach the most violent community in the region, approximately 5 times the city community average (See Exhibit, **Top Ten SD Communities, Most Violent Crimes, 2008-2012**). Assaults from and between bar patrons is the number one cause of this statistic.

According to Police reports Pacific Beach generates about 4 times more DUIs than the next highest community in the region.

DUI

From Voice of San Diego:

Fact Check: Where Do People Get Arrested for DUI?

<http://voiceofsandiego.org/2010/07/21/fact-check-where-do-people-get-arrested-for-dui/>

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Statement: "Pacific Beach has typically around 600 DUI's a year," Scott Chipman, a member of the Pacific Beach Planning Group, said on the KPBS program These Days on July 1.

Determination: True

Analysis: Appearing on KPBS, Chipman advocated for greater regulation of alcohol licensing in Pacific Beach. He blamed the neighborhood's high bar density for continuing a rowdy reputation and large presence of certain crimes like DUI.

To check out Chipman's estimate, we asked the Police Department for DUI arrest statistics from the previous two years. To compare communities, the department uses police beats that generally follow neighborhood boundaries. It's a more narrow view than zip codes or City Council districts.

Last year, police made 514 DUI arrests in the police beat that roughly covers the Pacific Beach neighborhood. The previous year, they made 594 arrests for DUI.

For some comparison, the average police beat across the city had just 33 DUI arrests last year. The East Village had the second most DUI arrests behind Pacific Beach with 152. Other high ranking police beats covered central neighborhoods like North Park and Hillcrest.

The Pacific Beach Shore Club regularly shows up on the county's Place of Last Drink (POLD) survey of drunk drivers.

Public Urination: According to the San Diego Union Tribune after reviewing police department citation data Pacific Beach generates approximately one third of all San Diego's public urination citations with only about 3% of the city's population. (See Exhibits Violent Crime By Community, Urination tickets Saturate Pacific Beach).

These and other quality of life, community character issues are directly related to decisions to allow bar-like restaurants such as PB Shore Club to operate and expand. Allowing this deck will certainly add to these problems and certainly will not diminish them. We need the Coastal Commission to protect public safety and the public environment at the beach and deny this deck expansion.

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And, The Character and Credibility of the Applicant

The staff report indicates that an unpermitted automated parking machine has been in place for years. Parking that possibly should have been provided by the establishment for the patrons has only been available for a fee further exacerbating local parking problems. There seems to be no good reason to reward this behavior with a lowered parking requirement.

There is strong evidence this business has other integrity issues. On February 23, 2012 the Voice of San Diego published a report exposing one aspect of the character of this business.

The Bars That Can't Count in PB (see exhibit with the same name)

BY: SANDY CORONILLA | FEBRUARY 23, 2012

<http://voiceofsandiego.org/2012/02/23/the-bars-that-cant-count-in-pb/>

When the Pacific Beach Shore Club registered for its business license, it told the city of San Diego it had three employees.

The booming bar and restaurant, just steps from the beach, actually has 70.

With two full bars, 21 televisions, and wild midweek goldfish races, the Shore Club may employ just three janitors to clean up afterward. There is no mistaking that this is a large beach ensemble, with plans to expand.

The Pacific Beach Shore Club is a "restaurant" that operates much like a bar for much of the time. This is evidenced by the advertizing indicating the kitchen closes at 10 pm but drink specials continue to 2am closing. (see exhibit PB Shore Club Ads).

Conclusion

Much more could be said about all the reasons this expansion should not be allowed. But this should be enough. This type of establishment operation is not good for the parking, community character, public safety, or public access to this area and nearby beach.

Sincerely,
Scott Chipman
2247 Emerald St.
San Diego, CA 92109

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The Bars That Can't Count in PB

BY: SANDY CORONILLA
([HTTP://VOICEOFSANDIEGO.ORG/AUTHOR/SANDYCORNILLA/](http://voiceofsandiego.org/author/sandycoronilla/))
| FEBRUARY 23, 2012 | COMMENTS (10)

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business-district/)

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When the Pacific Beach Shore Club registered for its business license, it told the city of San Diego it had three employees.

The booming bar and restaurant, just steps from the beach, actually has 70.

With two full bars, 21 televisions, and wild midweek goldfish races, the Shore Club may employ just three janitors to clean up afterward. There is no mistaking that this is a large beach ensemble, with plans to expand

By underreporting the number of employees on its business tax certificate, the Shore Club saved \$441 a year.

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The beach area's business improvement district, Discover Pacific Beach, also assesses local businesses based partly on employee counts. The improvement district is currently more than \$20,000 in the red, making the annual \$90 the Shore Club shortchanged it a sweet, if small, stash of cash.

The figure might be pocket change for most businesses but it puts owner Doug Sandomowicz in a tough spot.

He sits on the board of Discover Pacific Beach, and is specifically tasked with bringing about an increase in the economic well-being of residents, employees and businesses.

Last month we wrote about problems (http://www.voiceofsandiego.org/this_just_in/article_51823398-4c77-11e1-8dd8-0019bb2963f4.html) in the Discover Pacific Beach organization uncovered by a city audit, including the underreporting of employees in a number of local businesses.

Now, we've received the list of 23 businesses. Current and former board members' businesses accounted for more than half of the six-fold increase in employees discovered by the audit.

Sandomowicz isn't alone. The board's president, Eric Lingenfelder, oversees Tavern by the Beach and Brewley's Pint, which reported a total of 20 employees but

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actually have 69. Todd Brown's Bub's Dive Bar reported four but actually has 50; he's the board's former vice president.

In essence, by understating their employee counts, the three board members shorted the city out of business tax fees (a total of \$1,133), and their own business improvement district out of assessments designed to help improve conditions in the district (a total of \$450).

The total sums aren't large, but they show how, up until last year, employee counts were entirely dependent on the honor system

(http://www.voiceofsandiego.org/this_just_in/article_feboe586-4d1d-11e1-aff1-0019bb2963f4.html).

There are two ways in which underreporting of employees are detrimental to the city's finances and to the improvement districts themselves.

Businesses pay fees to the city based on their employee counts. Small businesses with 12 employees or fewer pay a small flat rate of \$34, while those with 13 or more pay a \$125 flat fee plus an additional \$5 per employee. Any employee working less than 10 hours weekly is not counted.

Businesses in improvement districts also assess themselves based partly on employee counts. The city auditor's investigation, which was sparked by a whistleblower

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complaint, only looked into 23 of the more than 1,200 businesses included within Pacific Beach's improvement district.

Bars by the beach are big business.

It's no small feat getting small business owners to talk on the record in Pacific Beach.

Lingenfelder, Sodomowicz and Brown all didn't respond to numerous attempts for comment.

Within the district, there's a rift between alcohol and entertainment-related businesses and small businesses and residents who claim the community is struggling with high crime rates due to drunken fights and residential burglaries. Some business owners complain that bars and restaurants run the business district.

Discover Pacific Beach Executive Director Sara Berns says small businesses like retail don't have the time, or the people resources to get involved in the improvement district. They're in the thick of running their businesses daily and don't have many employees to designate as representatives for community involvement.

This results in an abundance of representation in Discover Pacific Beach by bars, restaurants and resorts.

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Crystal Pier Hotel owner Bill Allen says he's simply too old now to deal with the absurdity going on in the improvement district, but he was willing to go on the record.

Allen, whose family has owned the hotel for half a century, says Pacific Beach has been going downhill for the past 10 years. He blames neighborhood bars, especially Shore Club, which is a block away from his hotel. Allen says bars in the area make enormous amounts of money by over-serving alcohol to patrons. Rowdy and inebriated, beachgoers have even caused Allen to have to comp rooms in his hotel because of guest complaints.

"They have no respect for the citizens in this community," Allen said. "They're the kind of people you just want to hit 'delete' and have them out of your life."

Sandy Coronilla reports on local government and education for voiceofsandiego.org. She is on the Armen E. Keteyian Scholarship for Investigative Reporting. You can contact her directly at sandy.coronilla@voiceofsandiego.org (<mailto:sandy.coronilla@voiceofsandiego.org>) or 619.325.0528.

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**SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE AND TDD (619) 767-2370
FAX (619) 767-2384**



A completed application includes the APPLICATION FOR COASTAL DEVELOPMENT PERMIT, the appendices to the application, and **Required Attachments**.

- Please answer all questions. If a question is not applicable to your project, indicate "N/A".
- Refer to pages 8 – 9 of the APPLICATION for a list of **Required Attachments**.
- Incomplete applications will not be accepted for filing.
- All exhibits must be legible.

The following checklist is provided for the convenience of applicants in gathering necessary application materials; it is not a complete statement of filing requirements.

	Page	Item
<input type="checkbox"/> Proof of applicant's interest in the property.	7	1
<input type="checkbox"/> Assessor's parcel map(s) showing the proposed development site and all adjacent properties within 100 feet of the property boundary.	7	2
<input type="checkbox"/> Stamped envelopes (no postage meter please) addressed to neighboring property owners and occupants and other interested parties and a list of the same.	7, 8	4, 5
<input type="checkbox"/> Vicinity map.	8	6
<input type="checkbox"/> One set of project plan(s), site plan(s), and applicable other plans. (Incl. reduced 8 1/2 x 11 site plan)	8	7, 11
<input type="checkbox"/> Copy of any environmental documents (DRAFT AND FINAL EIRs, EISs, NEGATIVE DECLARATION) if prepared for the project and any comments and responses.	8	9
<input type="checkbox"/> Verification of all other permits, permissions or approvals applied for or granted by public agencies.	8	10
<input type="checkbox"/> Copy of geology or soils report (if necessary).	8	11
<input type="checkbox"/> Local approval of the project.	Appendix B	
<input type="checkbox"/> Has the Notice of Pending Permit been posted in a conspicuous place?	Appendix D	
<input type="checkbox"/> Filing fee.	Appendix E	

Have you and the agent (if appropriate) signed the application at the appropriate lines on pages 9, 10, and 13?

time I could meet with you would be Dec. 1st. anytime bet. 8AM to 4:30PM.

-----Original Message-----

From: Consultant [mailto:Consultant@mdla.net]
Sent: Tuesday, November 18, 2008 4:59 PM
To: Laurinda Owens
Subject: RE: 4315 Ocean Blvd.

Hi Laurinda,

Thanks for your response. We would be happy to submit plans to you for a preliminary review. If you could please let me know where you are located and if you would like to make an appointment to meet in person or if I should just leave the plans for you. Please let me know.

Thank you,

Maureen Dant
Project Designer

Architect Mark D. Lyon, inc.
(858) 459-1171

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, November 18, 2008 3:50 PM
To: Consultant
Subject: RE: 4315 Ocean Blvd.

Is this by any chance the shop at the corner near the lifeguard station? The previous owner tried to do this about two years ago and there was a lack of parking to support the deck approval. This sounds more complicated than an exemption and, in fact, would not qualify for an exemption. The main issue would be if parking can be secured through the arrangement you have suggested. I think what would be a good idea is if you could submit a preliminary package to us for review (as in a pre-application meeting) just to give us the details and show us the plans. Then I can review it and determine what issues might come up before you actually submit your CDP application to us.

-----Original Message-----

From: Consultant [mailto:Consultant@mdla.net]
Sent: Tuesday, November 18, 2008 3:41 PM
To: Laurinda Owens
Subject: RE: 4315 Ocean Blvd.

Hi Laurinda,

I didn't know you needed specific information. Sorry.

The Project is an Outdoor Deck Addition to an Existing 2nd Floor Restaurant over 1st Floor Retail. There is currently on grade site parking. The Proposed Deck would be over the parking area. Structural supports for the deck would require re-striping of the parking. The deck addition is 1,895 S.F. which would trigger additional parking requirements. The Owners are intending to add the 8 required parking stalls through a shared parking agreement with a nearby business. The Existing Retail will remain as is. The Second Floor Existing Restaurant will also remain as is except for windows being converted to doors for access to the deck.

Please let me know if you need additional information.

Thank you,

000188

Sent: Tuesday, December 16, 2008 10:23 AM
To: Maureen Dant
Subject: RE: P.B. Shore Club

Hi, we are currently experiencing a very large volume of projects which will be reviewed the next Coastal Commission Meeting in January which will be in San Diego. As a result, we are experiencing a work overload with deadlines that must be met this week and early next week. We must prioritize that work over everything else. Nonetheless, I did address this project in our staff meeting recently and two issues came up:

1) Parking. Need to be absolutely certain that any off-site parking secured is free of any other encumbrances (i.e., tied to old coastal development permits for other projects for off-site parking), etc.).

2) Potential View Impacts. There is currently an ocean view from the alley looking west. With the proposed second-level deck it appears that these views will be impacted. We'd like to see a perspective (plan) that clearly shows the "before" and "after" views. There was a concern with regard to the loss of those views.

That's it for now. If you can submit the plan perspective to us we can take a look at it but it will definitely have to be after the first of the year. Thanks.

Laurinda Owens

-----Original Message-----

From: Maureen Dant [mailto:Consultant@mdla.net]
Sent: Tuesday, December 16, 2008 8:22 AM
To: Laurinda Owens
Subject: P.B. Shore Club

Hi Laurinda,

I am inquiring about the status of the P.B. Shore Club Proposed Deck Addition. We met about the project on November 20th. You said you would be meeting with your staff to review the project shortly thereafter. Almost a month has gone by and we haven't received any information. We would really like a response about this review. We would also like to receive information on what the next step will be and get a general overview of the Coastal Permit process. We need to inform our clients of what they can expect and give them some type of reasonable time frame. Could you please let us know what is happening with this project and what we can do to process a Coastal Permit in a timely manner? We would really like a response as to the status of this project before the end of the year.

Thank you for your time and attention,

Maureen Dant
Architect Mark D. Lyon, Inc.
(858) 459-1171

000190

6/2/2009

Maureen Dant

From: Laurinda Owens [lowens@coastal.ca.gov]
Sent: Tuesday, January 13, 2009 9:17 AM
To: Maureen Dant
Subject: P.B. Shore Club

Maureen,

We discussed your project in our staff meeting and we can find the deck acceptable as long as you try to keep the view as open as possible. Of course, you definitely need to secure the off-site parking so if that can be worked out it appears that the project is one that we could recommend approval of. Thank you.

Laurinda Owens

6/2/2009

000191

COMMERCIAL LEASE

by and between

4343, LLC
"Landlord"

and

GRAND & STRAND, LLC
"Tenant"

for

4343 Ocean Blvd Street, San Diego, CA 92109
"the Premises"

RECEIVED

AUG 13 2012

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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COMMERCIAL LEASE

Preamble

This lease is made and entered into on January 1, 2008, by and between 4343, LLC, a California Limited Liability Company ("Landlord"), and GRAND & STRAND, LLC, a California Limited Liability Company ("Tenant").

Landlord, for and in consideration of the rent to be paid by Tenant and of the covenants and provisions to be kept and performed by Tenant under this lease, hereby leases to Tenant, and Tenant agrees to lease from Landlord, the following: the real property commonly known as 4343 Ocean Blvd, San Diego, CA 92109, and described on Exhibit A attached hereto ("the Property"), together with improvements thereon including the fixtures described on Exhibit B attached hereto (collectively referred to as "the Improvements") located on the Property. The term "Premises" as used in this lease shall mean both the Property and the Improvements.

ARTICLE 1. TERM OF LEASE

Original Term

Section 1.01. This lease shall be for a term of Eight (8) years, commencing at 12:01 a.m. on January 1, 2008 ("Commencement Date"), and ending at 12:01 a.m. on December 31, 2015 ("Original Term"), unless terminated earlier pursuant to the provisions of this lease.

Extended Term

Section 1.02. In the event Tenant is not then in default under this lease, Tenant shall have the option and right to extend the Original Term of this lease for one period of five (5) years, commencing on expiration of the Original Term. Tenant shall have the further option to extend the term of this lease one additional period of five (5) years, commencing on expiration of the initial five year extension period. If both extension options are exercised, the term of this lease shall be eighteen (18) years. If Tenant elects to extend the term of this lease, Tenant must give Landlord written notice of Tenant's election to extend at least ninety (90) days before expiration of the original or initial five year extension Term. During the Extended Term of this lease, if any, Landlord and Tenant shall be bound by all of the obligations, covenants, and agreements of this lease except that Tenant shall have no right to further extend the term of this lease beyond or after expiration of the two five year periods granted under this section. References throughout this lease to "the term of this lease" shall include both the Original Term and the Extended Term, if any, unless otherwise indicated.

Holding Over

Section 1.03. In the event Tenant holds over and continues in possession of the Premises after expiration of the Original Term (when Tenant has not validly exercised its option to extend the term of the lease in accordance with Section 1.02) or after expiration of the Extended Term (when Tenant has validly exercised its option to extend the term of the lease in accordance with Section 1.02), Tenant's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and Conditions of this lease.

Tenant's Inability to Obtain Possession

Section 1.04. Tenant is intending to purchase certain assets of SAM KHOLI ENTERPRISES, INC, the occupant of the Premises as of the date of execution of this lease. If Tenant is for any reason unable to obtain possession of the Premises on the Commencement Date set forth in Section 1.01 of this lease, this lease shall not be void or voidable nor be liable to Landlord for any loss or damage resulting from failure to obtain possession so long as Tenant has exercised, and continues to exercise, reasonable diligence to obtain possession of the Premises. No rent shall, however, accrue or become due from Tenant to Landlord under this lease until the actual physical possession of the Premises is obtained, or the right to actual unrestricted physical possession of the Premises under Tenant's agreement with SAM KHOLI ENTERPRISES, INC is obtained by Tenant. Notwithstanding the foregoing, at Tenant's option, Tenant may elect to extend the term of this lease by the period of time during which Tenant is unable to obtain possession of the Premises after the Commencement Date set forth in Section 1.01.

Termination for Failure of Possession

Section 1.05. Notwithstanding any provisions of Section 1.04 of this lease, if Tenant for any reason fails to obtain actual physical possession of the Premises, or fails to obtain the right to unrestricted physical possession of the Premises under Tenant's agreement with SAM KHOLI ENTERPRISES, INC within sixty (60) days after the date specified in Section 1.01 of this lease for commencement of the term of this lease, either party may terminate this lease by giving either party written notice of its election to do so. In the event either party elects to so terminate this lease, this lease shall become null and void as of the date such party delivers its written notice of termination, and thereafter neither party to this lease shall be under any further obligation or liability to the other because of this lease. If either party elects to terminate this lease in accordance with the provisions of this section, it shall give written notice of its election to terminate not later than ten (10) days after the date specified above.

ARTICLE 2. RENT

Minimum Rent

Section 2.01. Tenant agrees to pay to Landlord a fixed minimum rental for the use and occupancy of the Premises (the "Minimum Rent"). The amount of Minimum Rent payable for each month during the Original Term shall be payable Seven Thousand Five Hundred Dollars (\$7,500.00), subject to adjustment as hereinafter provided.

The Minimum Rent shall be payable on the first day of each and every month commencing November 1, 1998 (the "Rent Commencement Date"), at the office of Landlord at 7201 E. Camelback Rd #210, Scottsdale, AZ 85251, or at any other place or places as Landlord may from time to time designate by written notice delivered to Tenant. Minimum Rent for partial calendar months occurring at the commencement and termination of the term of this lease shall be prorated accordingly.

Minimum Rent During Extended Term

Section 2.02. The Minimum Rent payable for the Extended Term shall be the "Fair Market Rent Value" of the Premises, as determined herein. Landlord shall determine "Fair Market Rent Value" by using its best good faith judgment. Such "Fair Market Rent Value" shall be determined by Landlord in accordance with the prevailing market rentals being paid for comparable space in the surrounding area. In determining "Fair Market Rent Value," Landlord shall specifically exclude any consideration of Tenant's occupancy or use of the Premises, the value of any fixtures purchased from SAM KHOLI ENTERPRISES, INC, and the value of any improvements to the Premises made by Tenant which Tenant has negotiated for the right to remove at the end of the term. Landlord shall use its best efforts to provide written notice of such amount within thirty (30) days (but in no event later than sixty (60) days) after Landlord's receipt of Tenant's election to extend ("Notice") as required in Section 1.02 above. Tenant shall have fifteen (15) days after receipt of Landlord's notice of the new Minimum Rent within which to accept such new Minimum Rent or to reasonably object thereto in writing ("Tenant's Review Period"). In the event Tenant objects to the "Fair Market Rent Value" submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such "Fair Market Rent Value," using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such "Fair Market Rent Value" within fifteen (15) days following Tenant's Review Period (the "Outside Agreement Date"), then each party's determination of such "Fair Market Rent Value" shall be submitted to arbitration in accordance with the provisions set forth below. Failure of Tenant to so elect in writing within such period shall conclusively be deemed its approval of the new Minimum Rent.

(a) Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the appraisal of commercial properties in the surrounding area. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted "Fair Market Rent Value" for the Premises is the closest to the actual "Fair Market Rent Value" for the Premises as determined by the arbitrators, taking into account the requirements of this section. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date.

(b) The two arbitrators so appointed shall within fifteen (15) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators.

(c) The three arbitrators shall within thirty (30) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted "Fair Market Rent Value" and shall notify Landlord and Tenant thereof. Such decision shall be based upon the prevailing "Fair Market Rent Value" for comparable space in the surrounding area.

(d) The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant.

(e) If either Landlord or Tenant fails to appoint an arbitrator within the time period set forth hereinabove, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

(f) If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association.

(g) The cost of arbitration shall be paid by Landlord and Tenant equally.

(h) Notwithstanding the foregoing provisions of this section, in no event shall the Minimum Rent during the applicable Extended Term be less than the Minimum Rent payable by Tenant during the final year of the then concluding term. In addition, in no event shall the Minimum Rent during the first five (5) year Extended Term following the Original Term exceed by twelve percent (12%) the Minimum Rent payable by Tenant during the final year of the Original Term. Such reference herein to "Fair Market Rent Value" shall include any lease concessions offered by landlords for comparable space for leased premises including, free rent, tenant improvement allowances, and any other payments or concessions.

Minimum Rent Increase

Section 2.03. The Minimum Rent payable under Sections 2.01 and 2.02 of this lease shall be adjusted annually by an amount equal to the greater of:

(a) The increase, if any, in accordance with the Master Lease that Landlord is subject to for the duration of the Master and this Lease;

Percentage Rent

Section 2.04. Section intentionally omitted.

Gross Sales Defined

Section 2.05. Section intentionally omitted.

Gross Sales Exclusion

Section 2.06. Section intentionally omitted.

Books and Records

Section 2.07. Tenant shall at all times keep or cause to be kept on the Premises complete and accurate records and books of account showing the total amount of gross sales made in, on, or from the Premises. Tenant covenants that it shall cause to be installed accurate cash registers, which shall show and record each and every sale made on and within the Premises and which also shall show the total of all daily sales. Tenant agrees to maintain on the Premises, or at such other location as Tenant may from time to time designate by written notice to Landlord, for a period of one (1) year following the close of each calendar month all records and books of account and all cash register tapes showing or in any way pertaining to the gross sales made in, on, or from the Premises during that calendar month.

Statement of Gross Sales and Audit

Section 2.08. Section intentionally omitted.

ARTICLE 3. USE OF PREMISES

Permitted Use

Section 3.01. During the term of this lease (including the Original Term and the Extended Term, if any), the Premises shall be used for the exclusive purpose of operating

and conducting a restaurant and cabaret, including live music and dancing (if approved by applicable governmental entities), and for uses normally incident to that purpose, and for no other purpose. Tenant shall not use or permit the Premises to be used for any other purpose, without the prior written consent of Landlord. Such consent shall not be unreasonably withheld. In conducting the business specified in this section in and on the Premises, Tenant may sell merchandise customarily sold by business of the same type in San Diego County.

Operation of Business

Section 3.02. During the term of this lease, Tenant shall, unless prevented by conditions beyond Tenant's control, conduct business of the type and nature specified in Section 3.01 of this lease on the Premises in a diligent and businesslike manner and keep the Premises open for business not less than Thirty-Five (35) hours each week and not less than five (5) days each week. Tenant shall at all times keep the business adequately stocked and shall employ a sufficient number of personnel to conduct the business in a manner consistent with sound business and management practices.

Insurance Hazards

Section 3.03. Tenant shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the Improvements on the Premises. Tenant shall, at its own cost and expense, comply with any and all requirements of Landlord insurance carriers necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the Improvements on the Premises, to the extent such requirements are the result of Tenant's occupancy of the premises.

Waste or Nuisance

Section 3.04. Tenant shall not commit or permit the commission by others of any waste on the Premises; Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Civil Code section 3479 on the Premises; and Tenant shall not use or permit the use of the Premises for any unlawful purpose.

Compliance with Laws

Section 3.05. Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal (including those requiring capital improvements to the Premises, but excluding structural elements of the Building as defined in Section 5.03), relating to Tenant's use and occupancy of the premises (including those related to Tenant's Liquor License or use of a Liquor License), whether those statutes, ordinances, regulations and requirements are now in force or are subsequently enacted. The judgment of any court of competent jurisdiction, or a ruling in

a proceeding brought against Tenant by any governmental entity, that Tenant has violated any such statute, ordinance, regulation, or requirement material to the interests of the Landlord in the Premises or under this lease shall constitute grounds for termination of this lease by Landlord nothing herein shall limit the rights of Tenant to contest the findings of any such proceeding or reasonably comply with any such findings.

ARTICLE 4. TAXES AND UTILITIES

Utilities

Section 4.01. Tenant shall pay, and hold Landlord and the property of Landlord free and harmless from, all charges for the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, and other public utilities to the Premises during the term of this lease. All such charges shall be paid by Tenant directly to the provider of the service and shall be paid as-they become due and payable but in any event before delinquency.

Personal Property Taxes

Section 4.02. Tenant shall pay before thy become delinquent all taxes, assessments, and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property placed by Tenant in, on, or about the Premises, including, without limiting the generality of the other terms used in this section, any shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, plant equipment, office equipment, television or radio antennas, and communication equipment brought on the Premises by Tenant.

Real Property Taxes

Section 4.03.

(a) In addition to the rent specified in this lease, Tenant shall pay all real property taxes and general and special assessments levied or assessed against the Premises during the term of this lease. Tenant's obligation to pay all real property taxes and general and special assessments on the Premises shall also include the obligation to pay any increases in real property taxes and general and special assessments, whether the increase results from an increase in the property tax rate and/or increase in the valuation of the Premises. Tenant shall not be obligated to pay for an increase in real property taxes as a result of reassessment caused by a voluntary or involuntary transfer of Landlord's title to the Premises nor penalties arising from Landlord's failure to pay real property taxes when due. Tenant shall have the right to contest, with the cooperation of Landlord, any such tax or assessment.

(b) If the Premises are assessed and taxed as part of a larger parcel of real property owned by Landlord (referred to in this lease as the "Tax Parcel"), the amount payable under this section by Tenant shall be twenty-five Percent (25%).

(c) The taxes and assessments levied against the Premises during the first and last years of the term of this lease shall be prorated between Landlord and Tenant for purposes of this section as of 12:01 a.m. on date of commencement and termination, respectively, of this lease.

(d) If any tax, assessment, or charge may be paid in one sum or in installments, Tenant may elect either method of payment and its election shall be binding on Landlord. If Tenant makes the election to pay any tax, assessment, or charge in installments and any installment is payable after termination of this lease, the unpaid installment shall be prorated as of the date of termination and the amount payable after the date termination shall be paid by Landlord.

(e) Tenant shall not be required to pay estate, gift, inheritance, succession, transfer, franchise, income, or other taxes of a similar nature that may be payable by Landlord or Landlord's legal representatives, successors, or assigns. Tenant also shall not be required to pay any tax that might become due on account of Landlord's ownership of property other than the Leased Property, notwithstanding that tax may become a lien on the Leased Property or be collectible from it.

ARTICLE 5. ALTERATIONS AND REPAIRS

Condition of Premises

Section 5.01. Tenant accepts the Premises, as well as the Improvements located on the Premises, in their present condition and stipulates with Landlord that the Premises and Improvements are in an acceptable, clean, safe, and tenantable condition as of the date of this lease. Tenant further agrees with and represents to Landlord that the Premises have been inspected by Tenant, that it has received assurances acceptable to Tenant by means independent of Landlord or any agent of Landlord of the truth of all facts material to this lease, and that the Premises are being leased by Tenant as a result of its own inspection and investigation and not as a result of any representations made by Landlord or any agent of Landlord except those expressly set forth in this lease.

Tenant Improvements

Section 5.02. Tenant agrees that it will, at its sole cost and expense after the execution of this lease, commence and pursue to completion the construction of the Improvements to be erected by Tenant as specified on Exhibit C attached hereto and

incorporated herein by this reference as though set forth in full. Tenant agrees that it will cause all Tenant Improvements to be designed and constructed in strict accordance with the requirements set forth on Exhibit C. Tenant shall be solely responsible for the costs of all the Improvements installed by Tenant on or in the Premises, including any and all permit fees, utility connection fees and charges, license fees, or other fees or charges in connection with the use and improvement of the Premises by Tenant and the operation of Tenant's business on or in the Premises.

Maintenance by Landlord

Section 5.03. This is a true Net Lease and Landlord shall not be liable to make any repairs to the premises. Notwithstanding anything in this section to the contrary, Tenant shall promptly reimburse Landlord for the full cost of any repairs made pursuant to this section required because of the negligence or other fault, other than normal and proper use, of Tenant or its employees or agents or subtenants, if any.

Landlord and its agents shall have the right to enter the Premises at all reasonable times (and at any time during an emergency) for the purpose of inspecting them or to make any repairs required to be made by Landlord under this lease. Landlord shall comply with all reasonable requests of Tenant in an effort not to disrupt the business of Tenant.

Maintenance by Tenant

Section 5.04. Except as otherwise expressly provided in Section 5.03 of this lease, Tenant shall, at its own cost and expense, keep and maintain all portions of the Premises and all Improvements located on the Premises in good order and repair and in as safe and clean a condition as they were when received by Tenant from Landlord, reasonable wear and tear excepted. Tenant's obligation to repair shall specifically include necessary repairs to the heating, ventilation, and air conditioning systems, interior walls, floor coverings, ceilings, painting and maintenance of exterior wall surfaces, and the interior and exterior portions of all doors and maintain in good condition and repair the structural elements of the Building. For purposes of this section, "structural elements" shall mean the exterior roof, exterior walls (except window glass and doors), structural supports, and foundation of the building. Tenant shall also be solely responsible for maintenance and repairs to the parking lot and surrounding areas.

Maintenance of Plate Glass

Section 5.05. Tenant shall, at its own cost and expense, repair and replace any glass window on the Premises that is broken regardless of any cause, except by fault of Landlord or by fault of some employee or agent of Landlord. Should Tenant fail to repair or replace any glass broken in a show window Landlord may replace or repair the broken glass and Tenant shall promptly reimburse Landlord for the cost of the repair or replacement. In addition, Tenant shall pay Landlord interest on those costs at the rate of

twelve percent (12%) per year from the date the costs were incurred by Landlord to the date they are reimbursed to Landlord by Tenant.

Alterations and Liens

Section 5.06. Tenant shall not make or permit any other person to make any alterations to the Premises or to any Improvements on the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold this consent. Tenant shall keep the Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the instance or request of Tenant. Furthermore, any and all alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Tenant or any other person shall on expiration or earlier termination of this lease become the property of Landlord and remain on the Premises. Landlord shall have the option, however, on expiration or termination of this lease, of requiring Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, improvements, or fixtures from the Premises, unless such construction was previously consented to by Landlord.

Inspection by Landlord

Section 5.07. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Tenant is complying with the terms of this lease, for the purpose of doing other lawful acts that may be necessary to protect Landlord's interest in the Premises, or for the purpose of performing Landlord's duties under this lease. Landlord shall comply with all reasonable requests of Tenant in an effort not to disrupt the business of Tenant.

Surrender of Premises

Section 5.08. On expiration or earlier termination of this lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they are now at the date of this lease, excluding reasonable wear and tear and repairs required to be made by Landlord under this lease.

ARTICLE 6. INDEMNITY AND INSURANCE

Hold Harmless by Tenant

Section 6.01. Except as the following may affect insurance coverage provided for herein, Tenant agrees to protect, indemnify, and save Landlord harmless from and against any and all liability to third parties resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:

(a) The death or injury of any person or persons, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, and caused or allegedly caused by either the condition of the Premises (but excluding structural elements of the Building as defined in Section 5.03), or some act or omission of Tenant or of some agent, contractor, employee, servant, subtenant, or concessionaire of Tenant on the Premises;

(b) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any agent or employee of Tenant; and

(c) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Landlord or the leased premises by any duly authorized governmental agency or political subdivision.

Hold Harmless by Landlord

Section 6.02. Except as the following may affect insurance coverage provided for herein, Landlord agrees to protect, indemnify, and save Tenant harmless from and against all liability to third parties resulting from any claim, liability, loss or damage arising by reason of any occurrence on the Premises caused by any negligent act or omission of Landlord or its agents.

Public Liability and Property Damage Insurance

Section 6.03. Tenant shall, at its own cost and expense, procure and maintain during the entire term of this lease comprehensive form public liability insurance, property damage insurance, and liquor liability coverage issued by an insurance company acceptable to Landlord and insuring Landlord against loss or liability caused by or connected with Tenant's occupation and use of the Premises under this lease in amounts not less than:

(a) One Million Dollars (\$1,000,000) for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than Two Million Dollars (\$2,000,000) for injury to or death of two or more persons as a result of any one accident or incident during the Original Term, the first five (5) year extension option, and during the additional five (5) year extension option; and

(b) One Million Dollars (\$1,000,000) for damage to or destruction of any property of others.

The insurance required under this section shall be issued by a responsible insurance company or companies authorized to do business in California and shall be in a form reasonably satisfactory to Landlord. Tenant shall prior to obtaining the right to physical possession of the Premises deposit with Landlord a certificate showing that

insurance to be in full force and effect. Landlord and Tenant each hereby release and relieve the other, and waive their entire right of recovery against the other, for loss or damage arising out of or relating to the perils insured against occurring in or about the Premises, whether due to the negligence of Landlord or Tenant, or their agents, employees contractors or invitees. Landlord and Tenant shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carrier(s) that the foregoing mutual waiver of subrogation is contained in this lease.

Personal Property

Section 6.04. Tenant shall, during the full term of this lease and any renewals or extensions thereof, maintain, at Tenant's own cost and expense, an insurance policy issued by a reputable company authorized to conduct insurance business in California insuring for their full insurable value all fixtures and equipment owned by Landlord, and, to the extent possible, all merchandise owned by Landlord that is not otherwise insured pursuant to Section 604, and that is, at any time during the term of this lease, in or on the Premises against damage or destruction by fire, theft, or the elements.

Fire and Extended Coverage Insurance

Section 6.05. Landlord shall maintain during the term of this lease "All Risks" insurance on the building against damage by fire, vandalism, malicious mischief, and other perils contained within the classification of "All Risks" for an amount not less than ninety percent (90%) of the replacement costs of the building. Such insurance shall contain a replacement cost endorsement and reasonable deductibles, and shall not contain a coinsurance clause or contribution clause. Landlord may, but shall not be obliged to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonable determine advisable, but not exceeding the greater of the replacement cost or fair market value of the building and improvements. Notwithstanding any contributions by Tenant to the cost of insurance premiums with respect to the building or any alterations of the Premises, as may be provided herein, Tenant acknowledges that it has no right to receive any proceeds for loss to the building or alterations to the Premises from any such insurance policies carried by Landlord.

Tenant shall pay to Landlord, in addition to the rent specified in this lease, its pro rata share of the cost of said insurance, which is agreed to be twenty-five Percent (25%). Tenant shall pay to Landlord the cost of said insurance within ten (10) days after receipt of an invoice from Landlord.

With respect to said "All Risks" insurance, Landlord and Tenant agree that Landlord's insurable interest in the Premises includes all Improvements to the Premises, except Tenant's removable trade fixtures or Tenant's personal property which are insured by Tenant's personal property insurance.

Cancellation Requirements

Section 6.06. Each of the insurance policies shall be in a form reasonably satisfactory to Landlord and shall carry an endorsement that, before changing or canceling any policy, the issuing insurance company shall give Landlord at least thirty (30) days' prior written notice. Duplicate originals or certificates of all such insurance policies shall be delivered to Landlord.

ARTICLE 7. SIGNS, TRADE FIXTURES AND LIQUOR LICENSE

Installation and Removal of Trade Fixtures

Section 7.01. Tenant shall have the right at any time and from time to time during the term of this lease, at Tenant's sole cost and expense, to install and affix in, to, or on the Premises any items, herein called "trade fixtures," for use in Tenant's trade or business that Tenant may, in Tenant's sole discretion, deem advisable. Any and all trade fixtures that can be removed without structural damage to the Premises or any building or Improvements on the Premises shall, subject to Section 7.02 of this lease, remain the property of the Tenant and may be removed by Tenant at any time before the expiration or earlier termination of this lease, provided Tenant repairs any damage caused by the removal.

Unremoved Trade Fixtures

Section 7.02. Any trade fixtures described in this Article that are not removed from the Premises by Tenant within ten (10) days after the expiration or earlier termination, regardless of cause, of this lease shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed.

Signs

Section 7.03. Tenant may erect, maintain, permit, and from time to time remove any signs in or about the Premises that Tenant may deem necessary or desirable, provided that any signs erected or maintained by Tenant shall comply with all requirements of any governmental authority with Jurisdiction and Tenant has received the prior written consent of Landlord. Landlord shall not unreasonably withhold this consent.

Liquor License

Section 7.04. Tenant shall use reasonable diligence to obtain a liquor license with the minimum number of restrictions concerning the sale of liquor, entertainment, or other conditions affecting Tenant's use and occupancy of the Premises ("License Conditions"). Tenant shall provide Landlord a copy of the License Conditions, including a diagram of the licensed premises as approved by the Department of Alcoholic Beverage

Control. Thereafter, Tenant shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will result in a material increase in the License Conditions that may affect the interests of the Landlord in the Premises or under this lease. In all matters, hearings, or otherwise related to the Liquor License or License Conditions, Tenant shall give Landlord written notice of the License Event within two (2) days after Tenant has received notice thereof.

Landlord's Right to Approve Counsel

Section 7.05. During the term of this lease, Tenant shall be represented by legal counsel in all matters, hearings, or otherwise related to the Liquor License or License Conditions. Tenant shall obtain the prior written consent of Landlord in its selection of such legal counsel where such legal representation does not present an actual conflict of interest between the interests of Tenant and Landlord. Landlord shall not unreasonably withhold this consent.

Landlord's Right of First Refusal to Purchase Liquor License

Section 7.06. Section intentionally omitted.

Landlord's Right of First Refusal to Purchase Business

Section 7.07. If Landlord exercises its option to purchase the Liquor License as provided in Section 7.06 above, and Tenant not in default under this lease, such events shall give rise to a concurrent mandatory obligation to purchase the business of Tenant operated in and on the Premises. In such event Tenant shall give Landlord written notice of the intention to transfer ("Notice") naming the proposed purchaser, the proposed purchaser's business and residence address, the price, and the terms of the transfer. For thirty (30) days following receipt of the Notice, Landlord shall have the obligation to purchase the business of Tenant at the price and terms specified in the Notice.

ARTICLE 8. DESTRUCTION OF PREMISES

Landlord's Obligation to Repair

Section 8.01. Except as otherwise provided in Section 8.02 below, if at any time during the Original Term of this lease or any Extended Term the building on the Premises is damaged or destroyed by any cause, Landlord shall promptly repair, rebuild, or restore the building to substantially the same condition as the building was delivered to Tenant at the commencement of this lease (i.e., exclusive of tenant fixtures and equipment) and shall be entitled for that purpose and to that extent to any and all insurance proceeds for loss or damage to the building. Landlord shall have the obligation to repair, rebuild, or

restore as described in this section whether or not the insurance proceeds paid to Landlord are sufficient to cover the total cost of repair, restoration, or rebuilding. Landlord shall commence repair, restoration, or rebuilding, as appropriate, not later than ninety (90) days after occurrence of the event causing damage or destruction and shall cause construction to be completed not later than one hundred eighty (180) days after the occurrence of the event causing damage or destruction. Landlord's obligation to commence and complete construction within the time periods described in this section shall not be extended by the fact that Landlord may not yet have been paid the insurance proceeds. In the event Landlord does not commence or complete construction within the time periods described in this section, Tenant shall have the right to terminate this lease by giving Landlord written notice within thirty (30) days after expiration of either time period.

Landlord's Right to Terminate Lease

Section 8.02. Notwithstanding Section 8.01, Landlord shall have the right to terminate this lease and shall have no obligation to repair, restore, or rebuild the Premises or the building under any of the following circumstances:

- (a) Damage or destruction from an insured casualty when the damage or destruction cannot reasonably be repaired, restored, or rebuilt within a period of fifteen (15) months;
- (b) Damage or destruction from an uninsured casualty when the cost of repair, restoration, or rebuilding exceeds a total of fifty percent (50%) of the then replacement cost of the building;
- (c) Damage or destruction from an uninsured casualty occurring during the last six (6) months of the Original Term or any extended term of this lease, unless Tenant elects to exercise any remaining extension option(s) under Section 1.02 of this lease.

If Landlord elects to terminate this lease under any of the above circumstances, Landlord shall give written notice to Tenant not later than thirty (30) days after occurrence of the casualty and Tenant shall have fifteen (15) days thereafter to exercise any remaining extension options by written notice to the Landlord.

Abatement of Rent

Section 8.03. If damage or destruction to the Premises renders the operation of Tenant's business impossible and Tenant in fact ceases to operate its business, the rent required under this lease shall abate during the period in which Landlord is required to perform repairs or restoration or to rebuild ("Abatement Period"). Tenant shall also be excused from the payment of taxes and insurance attributable to that repair, restoration, or rebuilding period. In such an event Tenant may elect to extend the Original Term or any extended term of this lease for a period equal to the Abatement Period by giving

Landlord written notice not later than thirty (30) days after occurrence of the casualty. In the event Tenant is able to continue partial operation of its business, Tenant shall continued to pay the monthly Percentage Rent provided for under this lease, but the monthly Minimum Rent shall be reduced during the period of repair, restoration, or rebuilding by the same percentage as the Tenant's gross sales for the full month preceding the event causing the damage bears to the Tenant's gross sales for the full month following the event causing the damage.

ARTICLE 9. CODEMMATION

Total Condemnation

Section 9.01. If at any time during the term of this lease title and possession of all of the Premises is taken under the power of eminent domain by any public or quasi public agency or entity, this lease shall terminate as of 12:01 a.m. of the date actual physical possession of the Premises is taken by the agency or entity exercising the power of eminent domain, and both Landlord and Tenant shall thereafter be released from all obligations under this lease, except those described in Section 9.04.

Termination Option for Partial Condemnation

Section 9.02. If at any time during the term of this lease title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi public agency or entity, Tenant may, at Tenant's option, terminate this lease if more than ten percent (10%) is taken under the power of eminent domain. If Tenant elects to exercise the option granted under this section, Tenant shall give Landlord at least thirty (30) days prior written notice within thirty (30) days after Tenant receives notice of the taking that designates the precise area of the Premises to be taken. This lease shall terminate as of the date specified for termination in Tenant's notice or on the date actual physical possession of the Premises is taken by the public or quasi public agency or entity, whichever date is earlier.

Partial Condemnation Without Termination

Section 9.03. If Tenant fails to exercise the option described in Section 9.02 of this lease or if the portion of the Premises taken under the power of eminent domain is insufficient to give rise to the option described in Section 9.02 of this lease:

(a) This lease shall terminate as to the portion of the Premises taken by eminent domain as of 12:01 a.m. of the day actual physical possession of that portion of the Premises is taken by the agency or entity exercising the power of eminent domain (the "date of taking");

(b) The Minimum Rent specified in Sections 2.01 and 2.02 of this lease, but not the Percentage Rent specified in Section 2.04 of this lease, shall, after the date of taking, be reduced by an amount that bears the same ratio to the minimum rent specified

in Section 2.01 of this lease as the square footage ground area of the portion of the Premises taken under the power of eminent domain bears to the total square footage ground area of the Premises as of the date of this lease;

(c) If remodeling and reconstruction of the building remaining on the portion of the Premises renders the operation of Tenant's business impossible and Tenant in fact ceases to operate its business, the rent required under this lease shall abate during the period in which Landlord is required to remodel or reconstruct the building. Tenant shall also be excused from the payment of taxes and insurance attributable to that repair, restoration, or rebuilding period. In the event Tenant is able to continue partial operation of its business, Tenant shall continued to pay the monthly Percentage Rent provided for under this lease, but the monthly Minimum Rent shall be reduced during the period of remodeling and reconstruction by the same percentage as the Tenant's gross sales for the full month preceding the event causing the remodeling and reconstruction bears to the Tenant's gross sales for the full month following the event causing the remodeling and reconstruction; and

(d) Landlord, at Landlord's own cost and expense, shall remodel and reconstruct the building remaining on the portion of the Premises not taken by eminent domain into a single architectural unit as soon after the date of taking, or before, as can be reasonably done; provided, however, that neither the Minimum nor Percentage Rent specified in this lease shall be abated or reduced, except as provided in subparagraphs (b) and (c) of this section, during remodeling and reconstruction.

Condemnation Award

Section 9.04. If at any time during the term of this lease title and possession of all or any portion of the Premises is taken under the power of eminent domain by any public or quasi public agency or entity, the compensation or damages for the taking shall be awarded to and be the sole property of Landlord, except to the extent the award is made as compensation for relocation of tenant, or loss or damage to Tenant's business, removable trade fixtures, or personal property. To the extent, if any, that a separate award is specifically made for loss of tenant improvements in excess of the fair market value of the property, such award shall be shared equally between Landlord and Tenant. Except as otherwise provided herein, Tenant hereby waives any and all rights to share in any damages or award.

ARTICLE 10. DEFAULT, ASSIGNMENT, AND TERMINATION

Restriction Against Subletting or Assignment

Section 10.01. Tenant shall not encumber, assign, or otherwise transfer this lease, any right or interest in this lease, or any right or interest in the Premises, including the right to operate a business on the Premises, or any of the Improvements that may now or hereafter be constructed or installed on the Premises without first obtaining the express written consent of Landlord, which shall not be unreasonably withheld. Tenant shall not

sublet the Premises or any part of the Premises or allow any other person, other than Tenant's agents, servants, and employees, to occupy the Premises or any part of the Premises without the prior written consent of Landlord. A consent by Landlord to one assignment, one transfer, one subletting, or one occupation of the Premises by another person shall not be deemed to be a consent to any subsequent assignment, transfer, subletting, or occupation of the Premises by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Landlord, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Landlord, terminate this lease. The consent of Landlord to any assignment of Tenant's interest in this lease or the subletting by Tenant of the Premises or parts of the Premises shall not be unreasonably withheld. The consent of Landlord, as set forth in this section, shall not be unreasonably withheld. Subject to the provisions of this Article 10, Tenant may issue or transfer an Interest to a person or entity under common control with, controlled by or controlling Tenant, without prior approval of Landlord, although Tenant shall give Landlord written notice of any such transfer not later than thirty (30) days prior to the transfer and supply to Landlord a copy of each signed instrument by which assignment is affected. The transfer, merger, assignment or hypothecation of any interest in Tenant in the aggregate during the term of this lease in excess of forty-nine percent (49%) shall be deemed an assignment and require the consent of Landlord as set forth above.

Default Defined

Section 10.02. The occurrence of any of the following shall constitute a material default and breach of this lease by Tenant:

- (a) Any failure by Tenant to pay the rent or to make any other payment required to be made by Tenant under this lease (when that failure continues for ten (10) days after written notice of the failure is given by Landlord to Tenant).
- (b) The abandonment or vacation of the Premises by Tenant (the absence of Tenant from or the failure by Tenant to conduct business on the Premises for a period in excess of ten (10) consecutive days shall constitute an abandonment or vacation for purposes of this lease). Such period shall exclude periods during which Tenant does not conduct business due to construction of improvements to the Premises where Tenant has obtained the prior written consent of Landlord. Such consent shall not be unreasonably withheld.
- (c) The voluntary or involuntary suspension of the liquor license for a period of more than thirty-five (35) days.
- (d) A failure by Tenant to observe and perform any other provision of this lease to be observed or performed by Tenant, when that failure continues for thirty (30) days after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the nature of that default is such that it cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if Tenant commences

that cure within the thirty (30) day period and thereafter diligently prosecutes it to completion.

(e) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this lease, when possession is not restored to Tenant within thirty (30) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this lease, when that seizure is not discharged within thirty (30) days.

Termination of Lease and Recovery of Damages

Section 10.03. In the event of any default by Tenant under Section 10.02 of this lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this lease and all rights of Tenant hereunder by giving written notice of the termination. No act of Landlord shall be construed as terminating this lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the lease. In the event Landlord elects to terminate this lease, Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of termination of the lease;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this lease.

The term "rent" as used in this section shall mean the Minimum Rent, the Percentage Rent, and all other sums required to be paid by Tenant pursuant to the terms of this lease. As used in subsections (a), (b) and (c) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per year.

Landlord's Right to Continue Lease in Effect

Section 10.04.

(a) If Tenant breaches this lease and abandons the Premises before the natural expiration of the term of this lease, Landlord may continue this lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all its rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease. For as long as Landlord does not terminate this lease, Tenant shall have the right to assign or sublease the Premises with the Landlord's prior written consent. Landlord shall not unreasonably withhold consent.

(b) No act of Landlord, including but not limited to Landlord's entry on the Premises, efforts to relet the Premises, or maintenance of the Premises, shall be construed as an election to terminate this lease unless a written notice of that intention is given to Tenant or unless the termination of this lease is decreed by a court of competent jurisdiction.

Landlord's Right to Relet

Section 10.05. In the event Tenant breaches this lease, Landlord may enter on and relet the Premises or any part of the Premises to a third party or third parties for any term, at any reasonable rental, and on any other terms and conditions that Landlord in its reasonable discretion may deem advisable, and shall have the right to make alterations and repairs to the Premises. In the event Landlord relets the Premises, Tenant shall pay all rent due under and at the times specified in this lease, less any amount or amounts actually received by Landlord from the reletting.

Landlord's Right to Cure Tenant Defaults

Section 10.06. If Tenant breaches or fails to perform any of the covenants or provisions of this lease, Landlord after thirty (30) days written notice, may, but shall not be required to, cure Tenant's breach. Any sum expended by Landlord, with the then maximum legal rate of interest, shall be reimbursed by Tenant to Landlord with the next due rent payment under this lease.

Security Deposit

Section 10.07. Concurrent with execution of this lease, Tenant has deposited with Landlord the amount of Seven Thousand Five Hundred Dollars (\$7500.00), receipt of which is hereby acknowledged by Landlord, said deposit being given to secure the faithful performance by Tenant of all of the terms, covenants, and conditions of this lease by Tenant to be kept and performed during the term hereof. Such security deposit shall be increased to a total amount equal to three hundred percent (300%) of the Minimum Rent for any Extended Term, due on the first day of such Extended Term. Tenant agrees that if Tenant shall fail to pay the rent herein reserved promptly when due, said deposit may, at the option of Landlord (but Landlord shall not be required to), be applied to any rent due and unpaid, and if Tenant violates any of the other terms, covenants, and conditions of

this lease, said deposit shall be result of Tenant's default to the extent of the amount of the damages suffered.

The security deposit shall be held by Landlord for Tenant and the claim of Tenant to such payment of deposit shall be prior to the claim of any creditor of Landlord except a trustee in bankruptcy. Landlord may claim of such deposit only such amounts as are reasonably necessary to remedy Tenant's defaults and payment of rent, to repair damages to the Premises caused by Tenant, or to clean such Premises upon termination of the tenancy. Any remaining portion of such deposit shall be returned to Tenant no later than two (2) weeks after termination of its tenancy.

Nothing contained in this section shall in any way diminish or be construed as waiving any of Landlord's other remedies as provided by law or in equity. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, on the written demand of Landlord, forthwith remit to Landlord a sufficient amount in cash to restore said security deposit to its original amount, and Tenant's failure to do so within fifteen (15) days after the date of such statement of demand shall constitute a material breach of this lease. Should Tenant comply with all of the terms, covenants, and conditions of this lease and promptly pay all of the rental herein provided for as it falls due and all other sums payable by Tenant to Landlord hereunder, said security deposit shall be returned in full to Tenant at the end of the term of this lease, or upon the earlier termination of this lease, except in the event the Premises are sold as a result of the exercise of any power of sale under any mortgage or deed of trust, in which event this lease shall be automatically amended to delete any reference to this section, and Tenant shall be entitled to immediate reimbursement of its security deposit from the Landlord.

Late Charges

Section 10.08. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee by the tenth (10th) day of each month, the Tenant shall pay to Landlord a late charge equal to One Hundred Sixty-Five Dollars (\$165.00) or five percent (5%) of the amount due, whichever is higher, provided that such amount will not exceed the maximum rate permitted by law, plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

Cumulative Remedies

Section 10.09. The remedies granted to Landlord in this Article shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this lease.

Waiver of Breach

Section 10.10. The waiver by Landlord of any breach by Tenant of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or another provision of this lease.

ARTICLE 11. GUARANTY

Individual Guaranty

Section 11.01.

(a) In consideration for the covenants contained herein, the undersigned Guarantors jointly and severally unconditionally guarantee and promise to pay Landlord, or order, on demand, any and all debts, obligations, and liabilities of Tenant due under this lease, including but not limited to damages described in Section 10.03 hereof, made, incurred, or created at any time, whether voluntary or involuntary, absolute or contingent, whether recovery is or becomes unenforceable. This is a continuing guarantee related to any indebtedness arising under successive transactions that will either continue the indebtedness or from time to time renew it.

(b) The obligations under this guaranty are joint and several and are independent of the obligations of Tenant. A separate action may be brought against Guarantors regardless of whether an action is brought against Tenant or whether Tenant may be joined in any action. Guarantors waive the benefit of any statute of limitation affecting their liability under this guaranty. Guarantors waive any right to require Landlord to proceed against Tenant, or otherwise.

(c) Guarantors will have no right to subrogation, and waive any right that Landlord may have against Tenant, and waive right to participate in any security held by Landlord. Guarantors waive all demands for performance, protest, notices of protest, notices of dishonor, and notices of acceptance of this guaranty and its existence, creation, or incurring of new or additional obligations.

(d) If Landlord desires to sell, finance, or refinance the Premises or any part thereof, Guarantors hereby agree to deliver to any lender or buyer designated by Landlord such financial statements of Guarantors as may be reasonably required by such lender or buyer. Such statements shall include the most current financial statement of Guarantors.

All such financial statements shall be received by Landlord in confidence and shall be used only for the foregoing purposes.

(e) This guaranty shall apply to the lease, any extension, renewal, modification, or amendment thereof, and to any assignment, subletting, or other tenancy there under or to any holdover term following the term granted under the lease or any extension or renewal thereof, regardless of whether Guarantors consent thereto or receive notice thereof.

(f) In the event this guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction, or in the event of any limitation of Guarantors' liability hereunder other than as expressly provided herein, then Guarantors shall be deemed to be a tenant under the lease with the same force and effect as if Guarantors were expressly named as a joint and several tenant therein with respect to the obligations and rights of Tenant there under hereby guaranteed.

(g) In the event of any litigation between Guarantors and Landlord with respect to the subject matter hereof, the unsuccessful party to such litigation agrees to pay to the successful party all fees, costs, and expenses thereof, including reasonable attorney's fees and expenses.

(h) No delay on the part of Landlord in exercising any right hereunder or under the lease shall operate as a waiver of such right or of any other right of Landlord under the lease or hereunder, nor shall any delay, omission, or waiver on any one occasion be deemed a bar to a waiver of the same or any other right on any future occasion.

S. Barrett Rinzler

Matt Engstrom

Doug Sodomowicz

ARTICLE 12. MISCELLANEOUS

Force Majeure - - Unavoidable Delays

Section 12.01. If the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of

delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult solely because of the financial Condition of the party required to perform the act.

Attorney's Fees

Section 12.02. If any litigation is commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation to the Premises or to this lease, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorney's fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

Notices

Section 12.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either party to this lease by the other party to this lease shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed or, in lieu of personal service, five (5) business days after deposit in the United States mail, first-class postage prepaid, addressed as follows:

To Tenant:

GRAND & STRAND, LLC
4343 Ocean Blvd
San Diego, CA 92109

To Landlord:

4343, LLC
7201 E. Camelback Rd #210
Scottsdale, AZ 85251

Either party, Tenant or Landlord, may change its address for the purpose of this section by giving written notice of that change to the other party in the manner provided in this section.

Binding on Heirs and Successors

Section 12.04. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant, but nothing in this section shall be construed as a consent by Landlord to any assignment of this lease or any interest therein by Tenant except as provided in Section 10.01 of this lease.

Partial Invalidity

Section 12.05. If any provision of this lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

Sole and Only Agreement

Section 12.06. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, or the lease term created under this lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void.

Time of Essence

Section 12.07. Time is expressly declared to be of the essence in this lease.

Confidentiality by Tenant

Section 12.08. Except to the extent reasonably required for purposes related to sale of the business or obtaining capital or financing, this lease, and all information contained herein shall be kept in the strictest confidence by Tenant, and will not be disclosed by any means to any person except with the Landlord's prior written consent. This prohibition applies to Tenant's members prior to the date of the agreement, and Tenant's employees, agents or other third parties, except where Tenant is required to disclose such information as a matter of law. Tenant agrees to indemnify and hold Landlord harmless on account of any loss, injury, damage, or claim that may result from the failure of Tenant to maintain the confidentiality in the manner provided in this section.

Confidentiality by Landlord

Section 12.09. All books, records and statements of gross sales as described in Sections 2.07 and 2.08 of this lease shall be kept in the strictest confidence by Landlord, and will not be disclosed by any means to any person except with the Tenant's prior written consent. This prohibition applies to Landlord's partners, employees, agents or other third parties, except where Landlord is required to disclose such information as a matter of law. Landlord agrees to indemnify and hold Tenant harmless on account of any loss, injury, damage, or claim that may result from the failure of Landlord to maintain the confidentiality in the manner provided in this section.

Counterparts

Section 12.10. This lease may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This lease shall not be effective until the execution and delivery between the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed Counterparts shall be sufficient proof of this lease.

Dated: January ____, 2008

LANDLORD:
4343, LLC

By: _____
S. BARRETT RINZLER, MEMBER

Dated: January ____, 2008

TENANT:
GRAND & STRAND, LLC

By: _____
S. BARRETT RINZLER,
BARR-MATT MANAGEMENT, INC

Dated: January ____, 2008

GUARANTOR:

By: _____
S. BARRETT RINZLER
BARR-MATT MANAGEMENT, INC

Dated: January ____, 2008

GUARANTOR:

By: _____
MATT ENGSTROM
BARR-MATT MANAGEMENT, INC

Dated: January ____, 2008

GUARANTOR:

By: _____
DOUG SONDOMOWICZ

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

SECTION I. APPLICANT

1. Name, mailing address, and telephone number of all applicants.

Grand i Strand, LLC
510 1st Avenue Suite #1904
San Diego, CA 92101 (619) 733-1239
(Area code/daytime phone number)

Note: All applicants for the development must complete Appendix A, the declaration of campaign contributions.

2. Name, mailing address and telephone number of applicant's representatives, if any. Please include all representatives who will communicate on behalf of the applicant or the applicant's business partners, for compensation, with the Commission or the staff. (It is the applicant's responsibility to update this list, as appropriate, including after the application is accepted for filing. Failure to provide this information prior to communication with the Commission or staff may result in denial of the permit or criminal penalties.)

Architect Mark D. Lyon, Inc.
910 BIRD ROCK AVENUE
La Jolla, CA 92037 (858) 459-1171
(Area code/daytime phone number)

SECTION II. PROPOSED DEVELOPMENT

Please answer all questions. Where questions do not apply to your project (for instance, project height for a land division), indicate Not Applicable or N.A.

1. Project Location. Include street address, city, and/or county. If there is no street address, include other description such as nearest cross streets.

4315 Ocean Boulevard
number street
San Diego San Diego
city county

Assessor's Parcel Number(s) (obtainable from tax bill or County Assessor):

423-111-1600

FOR OFFICE USE ONLY	RECEIVED	_____
	FILED	_____
	FEE	_____
	DATE PAID	_____
APPLICATION NUMBER		_____

2. Describe the proposed development in detail. Include secondary improvements such as grading, septic tanks, water wells, roads, driveways, outbuildings, fences, etc. (Attach additional sheets as necessary.)

Second Floor Outdoor Deck Addition (+1,895 s.f.) to
Existing Second Floor Restaurant
Over Existing On-grade parking.

Removal of existing paid parking machine.

a. If multi-family residential, state:

Number of units			Number of bedrooms per unit (Indicate existing and proposed)	Type of ownership (Indicate existing and proposed)
Existing units	Proposed new units	Net number of units on completion of project		
				<input type="checkbox"/> rental <input type="checkbox"/> condominium <input type="checkbox"/> stock cooperative <input type="checkbox"/> time share <input type="checkbox"/> other _____

b. If land division or lot line adjustment, indicate:

Number of lots			Size of lots to be created (Indicate net or gross acreage)	
Existing Lots	Proposed new lots	Net number of lots on completion of project	Existing	Proposed

3. Estimated cost of development (not including cost of land) \$ 350,000.
4. Project height: Maximum height of structure (ft.) Existing height to remain - 23'-1"
- above existing (natural) grade ✓
 - above finished grade
 - as measured from centerline of frontage road
5. Total number of floors in structure, including subterranean floors, lofts, and mezzanines 2 floors
6. Gross floor area excluding parking (sq.ft.) 9,276 S.F. restaurant & retail
- Gross floor area including covered parking and accessory buildings (sq.ft.) 12,221 S.F.
7. Lot area (within property lines) (sq.ft. or acre) 13,368 S.F.

Please see sheet T1.1 of Architectural Plans for breakdown of project & Site square footages.

Improvement	Existing (sq.ft. or acre)	New proposed (sq.ft. or acre)	Total (sq.ft. or acre)
Building	4,895 S.F.	1,895 S.F.	6,790 S.F.
Paved area	8,430 S.F.	0	8,430 S.F.
Landscaped area	0	43 S.F.	43 S.F.
Unimproved area	—	—	—
Grand Total (including accessory buildings)			15,263 (deck over parking)

8. Is any grading proposed? ☐ Yes ☒ No

If yes, complete the following:

a) Amount of cut	cu. yds.	d) Maximum height of cut slope	ft.
b) Amount of fill	cu. yds.	e) Maximum height of fill slope	ft.
c) Amount of Import or export (circle which)	cu. yds.	f) Location of borrow or disposal site	

Grading, drainage, and erosion control plans must be included with this application, if applicable. In certain areas, an engineering geology report must also be included. See page 7, items # 7 and 11.

Please list any geologic or other technical reports of which you are aware that apply to this property:

None

9. Parking:

b. Will any existing structures be demolished? ☐ Yes ☒ No

Will any existing structures be removed? ☐ Yes ☒ No

If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable.

2. Is the proposed development to be governed by any Development Agreement? ☐ Yes ☒ No

3. Has any application for development on this site including any subdivision been submitted previously to the California Coastal Zone Conservation Commission or the Coastal Commission? ☐ Yes ☒ No

If yes, state previous application number(s) _____

4. a. Is the development between the first public road and the sea (including lagoons, bays, and other bodies of water connected to the sea) ☒ Yes ☐ No

b. If yes, is public access to the shoreline and along the coast currently available on the site or near the site? ☒ Yes ☐ No

If yes, indicate the location and nature of the access, including the distance from the project site, if applicable.

Public access to the Beach is along Ocean Boulevard,
the Boardwalk, Lorand Avenue and through the
Project's parking lot

c. Will the project have an effect on public access to and along the shoreline, either directly or indirectly (e.g., removing parking used for access to the beach)? ☐ Yes ☒ No

If yes, describe the effect:

- b. Park, beach, or recreation area ☒ Yes ☐ No
- c. Harbor area ☐ Yes ☒ No
11. Does the site contain any: (If yes to any of the following, please explain on an attached sheet.)
- a. Historic resources ☐ Yes ☒ No
- b. Archaeological resources ☐ Yes ☒ No
- c. Paleontological resources ☐ Yes ☒ No
12. Where a stream or spring is to be diverted, provide the following information:
- Estimated streamflow or spring yield (gpm) _____
- If well is to be used, existing yield (gpm) _____
- If water source is on adjacent property, attach Division of Water Rights approval and property owner's approval.

SECTION IV. REQUIRED ATTACHMENTS

The following items must be submitted with this form as part of the application.

1. **Proof of the applicant's legal interest in the property.** A copy of any of the following will be acceptable: current tax bill, recorded deed, lease, easement, or current policy of title insurance. Preliminary title reports will not be accepted for this purpose. Documentation reflecting intent to purchase such as a signed Offer to Purchase along with a receipt of deposit or signed final escrow document is also acceptable, but in such a case, issuance of the permit may be contingent on submission of evidence satisfactory to the Executive Director that the sale has been completed.

The identity of all persons or entities which have an ownership interest in the property superior to that of the applicant must be provided.
2. **Assessor's parcel map(s)** showing the page number, the applicant's property, and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor.)
3. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc., as noted on Local Agency Review Form, Appendix B. Appendix B must be completed and signed by the local government in whose jurisdiction the project site is located.
4. **Stamped envelopes** addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2" x 4 1/8"). Include first class postage on each one. Metered postage is not acceptable. Use Appendix C, attached, for the listing of names and addresses. (Alternate notice provisions may be employed at the discretion of the District Director under extraordinary circumstances.)

preliminary title reports, land surveys, legal descriptions, subordination agreements, and other outside agreements will be required prior to issuance of the permit.

In addition, the Commission may adopt or amend regulations affecting the issuance of coastal development permits. If you would like notice of such proposals during the pendency of this application, if such proposals are reasonably related to this application, indicate that desire.....

☒ Yes ☐ No

SECTION VI. COMMUNICATION WITH COMMISSIONERS

Decisions of the Coastal Commission must be made on the basis of information in the public record available to all commissioners and the public. Permit applicants and interested parties and their representatives may contact individual commissioners to discuss permit matters outside the public hearing (an "ex parte" communication). However, the commissioner must provide a complete description of the communication either in writing prior to the hearing or at the public hearing, to assure that such communication does not jeopardize the fairness of the hearing or potentially result in invalidation of the Commission's decision by a court. Any written material sent to a commissioner should also be sent to the commission's office in San Francisco and the appropriate district office for inclusion in the public record and distribution to other commissioners.

SECTION VII. CERTIFICATION

1. I hereby certify that I, or my authorized representative, have completed and posted or will post the Notice of Pending Permit card in a conspicuous place on the property within three days of submitting the application to the Commission office.
2. I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attached appendices and exhibits is complete and correct. I understand that the failure to provide any requested information or any misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Commission.
3. I hereby authorize representatives of the California Coastal Commission to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 A.M. and 5:00 P.M.

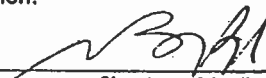


Signature of Authorized Agent(s) or if no agent, signature of Applicant

NOTE: IF SIGNED ABOVE BY AGENT, APPLICANT MUST SIGN BELOW.

SECTION VIII. AUTHORIZATION OF AGENT

I hereby authorize MARK LYON to act as my representative and to bind me in all matters concerning this application.



Signature of Applicant(s)

(Only the applicant(s) may sign here to authorize an agent)

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner from voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify himself or herself from voting on the project.

Each applicant must declare below whether any such contributions have been made to any of the listed Commissioners or Alternates (see last page).

CHECK ONE



The applicants, their agents, employees, family and/or any person with a financial interest in the project have not contributed over \$250 to any Commissioner(s) or Alternate(s) within the past year.



The applicants, their agents, employees, family, and/or any person with a financial interest in the project have contributed over \$250 to the Commissioner(s) or Alternate(s) listed below within the past year.

Commissioner or Alternate _____

Commissioner or Alternate _____

Commissioner or Alternate _____


Signature of Applicant or Authorized Agent

Date

Please type or print your name _____

Laurinda Owens

From: Maureen Dant [Consultant@mdla.net]
Sent: Wednesday, January 14, 2009 2:20 PM
To: Laurinda Owens
Subject: RE: P.B. Shore Club

Great! Thanks for letting us know. We are working on the Shared Parking Agreement and will have that to you as soon as possible. We will submit the complete coastal application at that time.

Thanks for your help.

Maureen

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, January 13, 2009 9:17 AM
To: Maureen Dant
Subject: P.B. Shore Club

Maureen,

We discussed your project in our staff meeting and we can find the deck acceptable as long as you try to keep the view as open as possible. Of course, you definitely need to secure the off-site parking so if that can be worked out it appears that the project is one that we could recommend approval of. Thank you.

Laurinda Owens

Laurinda Owens

From: Maureen Dant [Consultant@mdla.net]
Sent: Monday, January 05, 2009 10:27 AM
To: Laurinda Owens
Subject: RE: P.B. Shore Club

Okay, Thank you.

Maureen

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Monday, January 05, 2009 9:29 AM
To: Maureen Dant
Subject: RE: P.B. Shore Club

We are busy getting ready for the Commission Meeting in Oceanside on Thursday. It would be best if you just dropped it off at our office.

-----Original Message-----

From: Maureen Dant [mailto:Consultant@mdla.net]
Sent: Monday, January 05, 2009 8:24 AM
To: Laurinda Owens
Subject: RE: P.B. Shore Club

Hi Laurinda,

We have the Perspective View of the Proposed Deck for the P.B. Shore Club ready for your review. Should I drop it off at your Office or should I schedule a time with you? We wanted to have it ready in time for your meeting on January 7th, in case you will be meeting with your staff then. Let me know if there is a good time to bring it by.

Thank you,

Maureen Dant

Architect Mark D. Lyon, Inc.

Happy New Year!

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, December 16, 2008 1:35 PM
To: Maureen Dant
Subject: RE: P.B. Shore Club

Our staff meeting would usually be 1/7 but that is the first day of the CCC Mtg which is 1/7-9 so most likely our next mtg would be 1/14. Slight chance our staff mtg might still happen 1/7--just don't know with certainty at this point until the CCC mtg agenda is finalized.

-----Original Message-----

From: Maureen Dant [mailto:Consultant@mdla.net]
Sent: Tuesday, December 16, 2008 11:18 AM
To: Laurinda Owens
Subject: RE: P.B. Shore Club

Hi Laurinda,

Thanks for getting back to me. Do you know when your Coastal Commission Meeting in January is? We would like to have everything to you that you need before that date.

Thanks,

Maureen

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, December 16, 2008 10:23 AM
To: Maureen Dant
Subject: RE: P.B. Shore Club

Hi, we are currently experiencing a very large volume of projects which will be reviewed the next Coastal Commission Meeting in January which will be in San Diego. As a result, we are experiencing a work overload with deadlines that must be met this week and early next week. We must prioritize that work over everything else. Nonetheless, I did address this project in our staff meeting recently and two issues came up:

1) Parking. Need to be absolutely certain that any off-site parking secured is free of any other encumbrances (i.e., tied to old coastal development permits for other projects for off-site parking), etc.).

2) Potential View Impacts. There is currently an ocean view from the alley looking west. With the proposed second-level deck it appears that these views will be impacted. We'd like to see a perspective (plan) that clearly shows the "before" and "after" views. There was a concern with regard to the loss of those views.

That's it for now. If you can submit the plan perspective to us we can take a look at it but it will definitely have to be after the first of the year. Thanks.

Laurinda Owens

-----Original Message-----

From: Maureen Dant [mailto:Consultant@mdla.net]

Sent: Tuesday, December 16, 2008 8:22 AM

To: Laurinda Owens

Subject: P.B. Shore Club

Hi Laurinda,

I am inquiring about the status of the P.B. Shore Club Proposed Deck Addition. We met about the project on November 20th. You said you would be meeting with your staff to review the project shortly thereafter. Almost a month has gone by and we haven't received any information. We would really like a response about this review. We would also like to receive information on what the next step will be and get a general overview of the Coastal Permit process. We need to inform our clients of what they can expect and give them some type of reasonable time frame. Could you please let us know what is happening with this project and what we can do to process a Coastal Permit in a timely manner? We would really like a response as to the status of this project before the end of the year.

Thank you for your time and attention,

Maureen Dant

Architect Mark D. Lyon, Inc.

(858) 459-1171

Thanks for your response. We would be happy to submit plans to you for a preliminary review. If you could please let me know where you are located and if you would like to make an appointment to meet in person or if I should just leave the plans for you. Please let me know.

Thank you,

Maureen Dant

Project Designer

Architect Mark D. Lyon, inc.

(858) 459-1171

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, November 18, 2008 3:50 PM
To: Consultant
Subject: RE: 4315 Ocean Blvd.

Is this by any chance the shop at the corner near the lifeguard station? The previous owner tried to do this about two years ago and there was a lack of parking to support the deck approval. This sounds more complicated than an exemption and, in fact, would not qualify for an exemption. The main issue would be if parking can be secured through the arrangement you have suggested. I think what would be a good idea is if you could submit a preliminary package to us for review (as in a pre-application meeting) just to give us the details and show us the plans. Then I can review it and determine what issues might come up before you actually submit your CDP application to us.

-----Original Message-----

From: Consultant [mailto:Consultant@mdla.net]
Sent: Tuesday, November 18, 2008 3:41 PM
To: Laurinda Owens
Subject: RE: 4315 Ocean Blvd.

Hi Laurinda,

I didn't know you needed specific information. Sorry.

The Project is an Outdoor Deck Addition to an Existing 2nd Floor Restaurant over 1st Floor Retail. There is currently on grade site parking. The Proposed Deck would be over the parking area. Structural supports for

the deck would require re-striping of the parking. The deck addition is 1,895 S.F. which would trigger additional parking requirements. The Owners are intending to add the 8 required parking stalls through a shared parking agreement with a nearby business. The Existing Retail will remain as is. The Second Floor Existing Restaurant will also remain as is except for windows being converted to doors for access to the deck.

Please let me know if you need additional information.

Thank you,

Maureen Dant

Project Designer

Architect Mark D. Lyon, inc.

(858) 459-1171

From: Laurinda Owens [mailto:lowens@coastal.ca.gov]
Sent: Tuesday, November 18, 2008 2:37 PM
To: Consultant
Subject: RE: 4315 Ocean Blvd.

I need to know more what the project consists of. For example, is there an existing deck and is this just an extension of the deck? What is its purpose? Is it for dining? Does it require more parking? Is it for a residence? If it is just an addition to an existing deck which is a residential unit is likely exempt. You would need to fill out an exemption form and leave the plans with us and we would issue an exemption within five working days.

-----Original Message-----

From: Consultant [mailto:Consultant@mdla.net]
Sent: Tuesday, November 18, 2008 2:17 PM
To: Laurinda Owens
Subject: 4315 Ocean Blvd.

Hi Laurinda,

I spoke with Kevin Cook at the City of San Diego Development Services Department. He has informed me that our project - P.B. Shore club-Deck Addition at 4315 Ocean Blvd. is in the State Coastal jurisdiction and not the City of San Diego. I have submitted Coastal Permit projects frequently at the City of San Diego but never at the State Coastal. Could you please inform me where I can submit my project; and if

there are any special submittal requirements that are different than the City of San Diego? I would appreciate your assistance.

Thank you,

Maureen Dant

Project Designer

Architect Mark D. Lyon, inc.

(858) 459-1171

PACIFIC BEACH PLANNING GROUP
MINUTES JUNE 24, 2009
PACIFIC BEACH EARL AND BIRDIE TAYLOR LIBRARY

Call to order: 6:35 p Attendees: John Shannon, Marcie Beckett, Scott Chipman, Bob Citrano, Gregory Daunoras, Jim Krokee, Jim Morrison (6:55p), Chris Olson, Barry Schneider, Kevin Szepe, Paul Thackrey. **Quorum** established.

Agenda: Chris Olson made a **motion** to approve agenda. Jim Krokee seconded the motion. **Motion carried 9-0-0**

Minutes: Chris Olson made a **motion** to approve May minutes with one change: Add to paragraph regarding 4726 Ingraham Street project: "Board members recommended that wall materials complement main structure and be durable for long term." Scott Chipman seconded the motion. **Motion carried 7-0-2**

Chair's Report: John reported that a proposal to allow tandem parking throughout the city will be coming before the CPC soon. SD Bicycle Master Plan is being developed and input is welcome at sandiego.gov and at upcoming workshops.

Government Office reports:

Mayor's Sander's Office: (Ron Lacey) Not present

Council District 2: (Thyme Curtis) Kevin Faulconer now has a twitter account called kevin_faulconer. Councilmember Faulconer and Mayor Sanders are trying to persuade the state government not to borrow from San Diego.

Long Range Planner: (Lesley Henegar) Not present

Non-Agenda Public Comment: Don Gross reported that the project on Crown Point Drive is still having trouble getting past a very hard subsurface layer and progress is slow.

Informational Items:

Crown Point Construction Project – Don Gross handed out a map of sidewalk project proposed for south-bound Crown Point Drive near Pacific Beach Drive. Design should be completed in time for July PBPG meeting.

Action Items:

Alcohol Advisory Board - Scott Chipman handed out notes from the June 12 meeting with Kevin Faulconer. Everyone at meeting was in general agreement on the mission statement. Contention remains about whether the Alcohol Advisory Committee would be a subcommittee of the PBPG, or become a duty of the PB Special Events Committee. Scott proposed several ideas for composition of a PBPG subcommittee. Chris Olson said he liked mission statement and asked if group could be advisory to PBPG, instead of subcommittee. Marcie Beckett said the subcommittee would be indemnified by city. Kevin Szepe said he liked the first paragraph of the mission statement. Marcie Beckett said subcommittee should bring mission statement to full board for ratification. Al Strohlein (PB resident) said ABC has allowed PB to become oversaturated with alcohol licenses; ABC grants all license applications; ABC will not protect community; and community needs to take local control.

UCSD Urban Planning Department – PBPG Leverage Possibilities – Scott Chipman has talked to faculty at UCSD and to the Discover PB Design & Improvement committee about possibility of enlisting UCSD Urban Planning Department students to help develop and implement the master plan and vision for Pacific Beach. Discussion ensued. Scott Chipman made a **motion** to explore with UCSD Urban Planning Department and other local universities the possibility of upper level and graduate students providing pro bono service and advice to PBPG. Jim Krokee seconded the motion. **Motion carried 10-0-0**

San Diego Bicycle Master Plan – John Shannon intends to invite presenter for July meeting. All PBPG board members should review the Bicycle Master Plan information sent via email and formulate feedback and suggestions for July PBPG meeting.

Subcommittee Reports:

Residential/Commercial/Mixed Use Subcommittee Action Items (Chris Olson)

Next subcommittee is July 10, 2009 at the PB Library at 3:00p

4315 Ocean Blvd. PB Shore Club outdoor deck addition / covered parking; CA Coastal Permit submittal; 1,895 sf 2nd floor outdoor deck addition to an existing 3,946 sf 2nd floor restaurant. Subsequent submittals will be to City of San

Diego and to ABC (license modifications). Architect Mark Lyons and owner Barrett Rinzler were present. Barry Schneider recused himself (he rents to an owner of PB Shore Club). Subcommittee report by Chris Olson: CA Coastal wants PBPG recommendation before they review the proposed project. Deck addition does not include any expanded kitchen or bathroom facilities. Current alcohol license has no conditions on food/alcohol sales ratio. Live music allowed until midnight, no dancing allowed. Noise - One member commented that currently noise travels out to the beach and is sometimes loud and disturbing. Tom Frost (of The Beach Cottages nearby) said he likes the activity and noise, but wanted to make sure that noise from deck after 11 pm would not disturb his guests. Mr. Frost seemed satisfied by sound mitigation provided by solid, 6-foot east wall of proposed deck. Parking requirements were an issue. Currently, there are 29 onsite paid parking spaces, open to the public. City code requires "eating & drinking establishments (that) are the primary use of the premises" to provide 4.3 parking spaces per 1000 sf, which would mean 34 spaces for this project. The city has said the combination of the retail on the ground floor and the restaurant on the 2nd floor entitles this project to use the "mixed-use" parking ratio of 2.1 spaces per 1000 sf for the total building floor area, for a total parking requirement of 21 spaces. Applicant stated that they will provide 27 parking spaces.

Applicant **Mark Lyons** presented handout to board and gave an overview of project.

Public comment:

Melanie Menders (PB resident) opposed the project based on concerns that providing paid parking and increasing customer capacity with no additional parking will aggravate PB's lack of parking near the beach and in nearby residential neighborhoods.

Suzanne Landa (PB resident) submitted a letter in opposition citing the severe parking shortage in PB and requesting that the project be held to the strictest parking requirements.

Kathy Mateer (PB resident) opposed the project and said applying mixed-use parking requirements to this project was poor interpretation of city code and that restaurant parking requirements should be applied. Project violates city code 142.0510 (c) that states existing parking cannot be reduced in the coastal zone. Project is a nuisance for nearby residential neighborhoods – more noise from roof top deck until 2 a.m., paid parking means loud drunks walking to cars in the residential neighborhoods.

Joe Wilding (PB resident) is opposed and said PB doesn't need another 126 drunks begin let out into the community at 2 a.m.

Kathy Kelly (PB resident) wants the project to provide 34 parking spaces and make them for patrons, not paid parking.

Board Comment:

Jim Morrison – Raise west wall of deck to 6 feet to prevent noise and throwing of objects. (Owner Barrett Rinzler responds that they will use plastic cups on deck, could raise wall a foot, but don't want cage effect.)

Jim Krokee – Eliminate paid parking, use it for patrons, do not reduce existing parking (29 spaces).

Marcie Beckett – Parking is inadequate. PB Community Plan (p. 34) does not allow reduced parking requirements, such as mixed-use parking, in the Beach Impact Area. The restaurant and retail uses are overlapping and do not warrant mixed-use parking. PB Shore Club is open for breakfast, lunch, dinner and until 2 a.m.; retail is open 10 a.m. to 10 p.m. Occupant capacity is being increased by 68% (current is 186, new deck adds 126) yet parking is being reduced from 29 to 27 spaces; this doesn't make sense in an area with well-documented severe parking shortages and it sets a bad precedent. The building's primary use is a restaurant (5,993 sf PB Shore Club versus 3,674 sf retail), therefore, restaurant parking requirements should apply to PB Shore Club floor area.

Robert Citrano – Good mitigation of noise. Paid parking is a problem, make it free parking so it will be used. There is a lot of pedestrian and bicycle use in that area.

Kevin Szepe – Provide bike racks

Gregory Daunoras – doesn't want amplified music on deck (Owner Barrett Rinzler says there will be none)

Chris Olson asked each board member about their concerns and desired mitigation.

Marcie Beckett made a **motion** to deny project based on inadequate parking; use is primarily a restaurant and should be required to provide 4.3 parking spaces per 1000 sf as per municipal code. Jim Krokee seconded the motion.

Motion failed 4-5-0

Jim Krokee made a **motion** to approve the project with the conditions that it keep its 29 existing parking spaces and that the parking be dedicated for use by the restaurant and retail only. Paul Thackrey seconded the motion.

Motion carried 5-4-0

Dissenting votes and reasons:

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



August 28, 2012

Mark D. Lyon
410 Bird Rock Avenue
San Diego, CA 92037

FILE COPY

Re: Coastal Development Permit Application #6-12-061

Dear Mr. Lyon:

Commission staff has reviewed the above cited permit application for construction of a second-floor, 1,895 square foot outside patio addition at the PB Shore Club at 4315 Ocean Boulevard San Diego, CA 92109, and determined that additional information is necessary in order to properly review this application and schedule it for public hearing. Therefore, the application remains unfiled at this time. Specifically, the information that is necessary is:

1. Your plans state that this project site is a mixed-use development that, according to § 142.0530 of the San Diego Municipal Code, requires 2.1 parking spaces for every 1,000 square feet of building floor area, for a total of 21 parking spaces.

However, as the project site is within the boundaries of the coastal zone, the boundaries of the certified Pacific Beach Community Plan, and within the boundaries of the Beach Impact Zone designated within said Community Plan [See Attached], the parking regulations contained therein take precedence over the more general parking regulations contained within the San Diego Municipal Code when the two are in conflict.

Currently, the lot on which the project site is located provides 28 parking spaces – 27 regular spaces and 1 handicapped space. According to Appendix I of the Community Plan [See Attached], the lot on which the project site is located needs to provide 31.51 parking spaces – which under § 142.0560(a)(1) of the San Diego Municipal Code [See Attached] is rounded up to 32 parking spaces – as the property is *currently configured*. Thus, there is an existing deficiency in parking. With the proposed outside patio addition, the parking requirements for the lot would climb to 40.99 parking spaces – 41 spaces.

Commission staff wishes to know how the applicants plan to provide the requisite number of parking spaces as required by the Certified Pacific Beach Community Plan. If off-site parking is proposed, you must document that the spaces are available for the exclusive use by your business and that they are not otherwise encumbered.

2. A site visit by Commission staff to the project site identified that the parking lot serving the businesses on site is also currently being used as a fee lot for parking by

000346

- (b) Property Within More than One Parking Assessment District. Property located in more than one parking assessment district is entitled to the exemption provided in Section 142.0550(a) for each parking assessment district.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§142.0555 Tandem Parking Regulations

- (a) Tandem Parking for Residential Uses. Tandem parking regulations for residential uses are described in Chapter 13, Article 2, Division 9 (Residential Tandem Parking Overlay Zone).
- (b) Tandem Parking for Commercial Uses. Tandem parking for commercial uses may be approved through a Neighborhood Development Permit provided the tandem parking is limited to the following purposes:

- (1) Assigned employee parking spaces;
- (2) Valet parking associated with restaurant use; and
- (3) Bed and breakfast establishments.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§142.0560 Development and Design Regulations for Parking Facilities

- (a) General Regulations for Parking Areas
 - (1) In computing the required number of *off-street parking spaces* and bicycle spaces, a remaining fraction of one-half or more parking space is deemed a whole parking space; a remaining fraction of less than one-half is disregarded.
 - (2) For mixed uses on the same *premises*, the required parking spaces shall be either of the following:
 - (A) The sum of the requirements for each individual use computed separately; or
 - (B) In compliance with Section 142.0545 *shared parking* requirements.

March 28, 2013
Page 2

1. Parking is based on the mixed-use parking regulations in the San Diego Municipal Code.

According to your letter, the parking regulations of the Pacific Beach Community Plan (Plan) apply to this project because of a perceived conflict with the San Diego Municipal Code (SDMC). However, we do not believe there is a conflict. PBSC is a commercial tenant on the second floor of a mixed-use development which also includes ground floor retail sales tenants. The property is zoned CV-1-2 (Commercial Visitor) and lies within the Transit Area Overlay Zone. For those reasons, the mixed use parking regulations found in the SDMC apply. Specifically Table 142-05E of SDMC section 142.0530 establishes that the required parking ratio is 2.1 per 1,000 square feet for "mixed-use developments in a single structure that include an allowed use from at least two of the following use categories: (1) retail sales, (2) commercial services, and (3) offices." Importantly, the California Coastal Commission certified the SDMC mixed-use parking regulations most recently in 2006.

Furthermore, we don't believe the SDMC mixed-use parking regulations conflict with the goals and policies outlined in the Plan. Specifically, the Commercial Element of the Plan and the Coastal Parking Standards found in Plan Appendix I allow for parking reductions for mixed-use and transit oriented developments. (Plan pp. 46, 117). The Plan encourages commercial development with "...compact, pedestrian-oriented pattern of land uses with housing, jobs, services, plazas and public uses located on the transit system" as transit-oriented is described in the Plan (Plan, p. 45). PBSC has the transit oriented development features identified in the Plan, namely it is located within a mixed-use building which offers both retail and restaurant uses. It is located along the boardwalk with easy pedestrian and bicycle access, with minimal setbacks making it pedestrian-oriented. Parking is located in back of the building at the rear of the lot, off the alley. As with other transit-oriented developments, the primary entrances to the building are oriented at the streets and sidewalks, as opposed to parking lots. Finally, the property is within the Transit Area Overlay Zone, which applies in areas receiving a high level of transit service. PBSC is located along two major bus routes (MTS Routes 8 and 30) and within a few blocks of four MTS bus stops.

Moreover, the City has confirmed that the mixed-use parking regulations apply to PBSC and signed Appendix B of the CDP application. Specifically, the City's Cycle Issues Report, indicates "[t]he project complies with all development regulations of the zone. Parking calculation is based on Table 142-05[E] for mixed use development as the restaurant is one tenant of the mixed use commercial building. Appendix B for Cal. Coastal Commission has been signed off." A copy of Appendix B and the accompanying Cycle Issues Report is attached as **Exhibit A**.

000352

Cycle Issues



THE CITY OF SAN DIEGO
Development Services

1222 First Avenue, San Diego, CA 92101-4154

3/13/09 8:48 am

Page 1 of 1

L64A-003A

Project Information

Project Nbr: 170850

Title: P.B. Shore Club - Prelim

Project Mgr: Pangilinan, Carl

(619) 446-5124

cpangilinan@sanidiego.gov



Review Information

Cycle Type: 3 Prelim(IAS-Combined Review)	Submitted: 12/10/2008	Deemed Complete on 12/10/2008
Reviewing Discipline: IAS-Combined Review	Cycle Distributed: 12/10/2008	
Reviewer: Flaherty, Karen (619) 446-5222	Assigned: 12/11/2008	
Hours of Review: 0.80	Started: 01/16/2009	
Next Review Method: Prelim(IAS-Combined Review)	Review Due: 12/17/2008	
	Completed: 03/13/2009	COMPLETED LATE
	Closed: 03/13/2009	

- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- Last month IAS-Combined Review performed 669 reviews, 94.9% were on-time, and 92.8% were on projects at less than <3 complete submittals.

Zoning Review

Issue		
Cleared?	Num	Issue Text
<input checked="" type="checkbox"/>	1	Applicant submitted a proposal to construct a second story deck to accommodate outdoor dining for an existing mixed use development in the CV-1-2 zone. The deck addition will be constructed to provide covered parking for the existing on grade parking. Property is located in the Parking Impact Overlay zone, Coastal Zone and Transit Overlay zone. (New Issue)
<input checked="" type="checkbox"/>	2	The project complies with all development regulations of the zone. Parking calculation is based on Table 142-05D for mixed use development as the restaurant is one tenant of the mixed use commercial building. Appendix B for Cal. Coastal Commission has been signed off. (New Issue)

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTESTS OF:

Bozier Demaree, et al

Against the Premises to Premises (Premises Expansion)
of an On-Sale General Public Eating Place License to:

Grand and Strand, LLC
DBA: Pacific Beach Shore Club
4343 Ocean Boulevard
San Diego, CA 92109

FILE: 47-464930

REG: 11075620

LICENSE TYPE: 47

WORDS: 54,735

REPORTER: Fivecoat and With

PROPOSED DECISION

This matter was heard by Rodolfo Echeverria, Administrative Law Judge of the Department of Alcoholic Beverage Control, Administrative Hearings Office, at San Diego, California, on December 14, 2011 at 9:30 a.m.

Staff Counsel Kerry Winters represented the Department of Alcoholic Beverage Control.

The Applicant's member and principal owner, Barrett Rinzler, was present at the hearing and the Applicant was represented by William R. Winship, Jr.

Protestants, Bozier Demaree, Gerald Demaree, Marcie Beckett, Larose Hunt, Jerry Hall and Elvin Lai¹, were present at the hearing and they were not represented by counsel.

Evidence was received and the matter was argued and submitted. The Administrative Law Judge now finds, determines, and orders as follows:

¹ Alvin Lai substituted in as a Protestant in lieu of Al Sessler, the former manager of the Ocean Park Inn.

FINDINGS OF FACT

I

A. The Applicant has been operating a full service restaurant and bar serving seafood and American and Mexican food since February of 2007 at 4343 Ocean Boulevard in the Pacific Beach neighborhood of San Diego, California (hereinafter "the premises"). The premises are located on the second floor of a building situated on Ocean Front Walk which overlooks the Pacific Ocean and the Applicant has applied for an expansion of the premises to add a second floor deck.

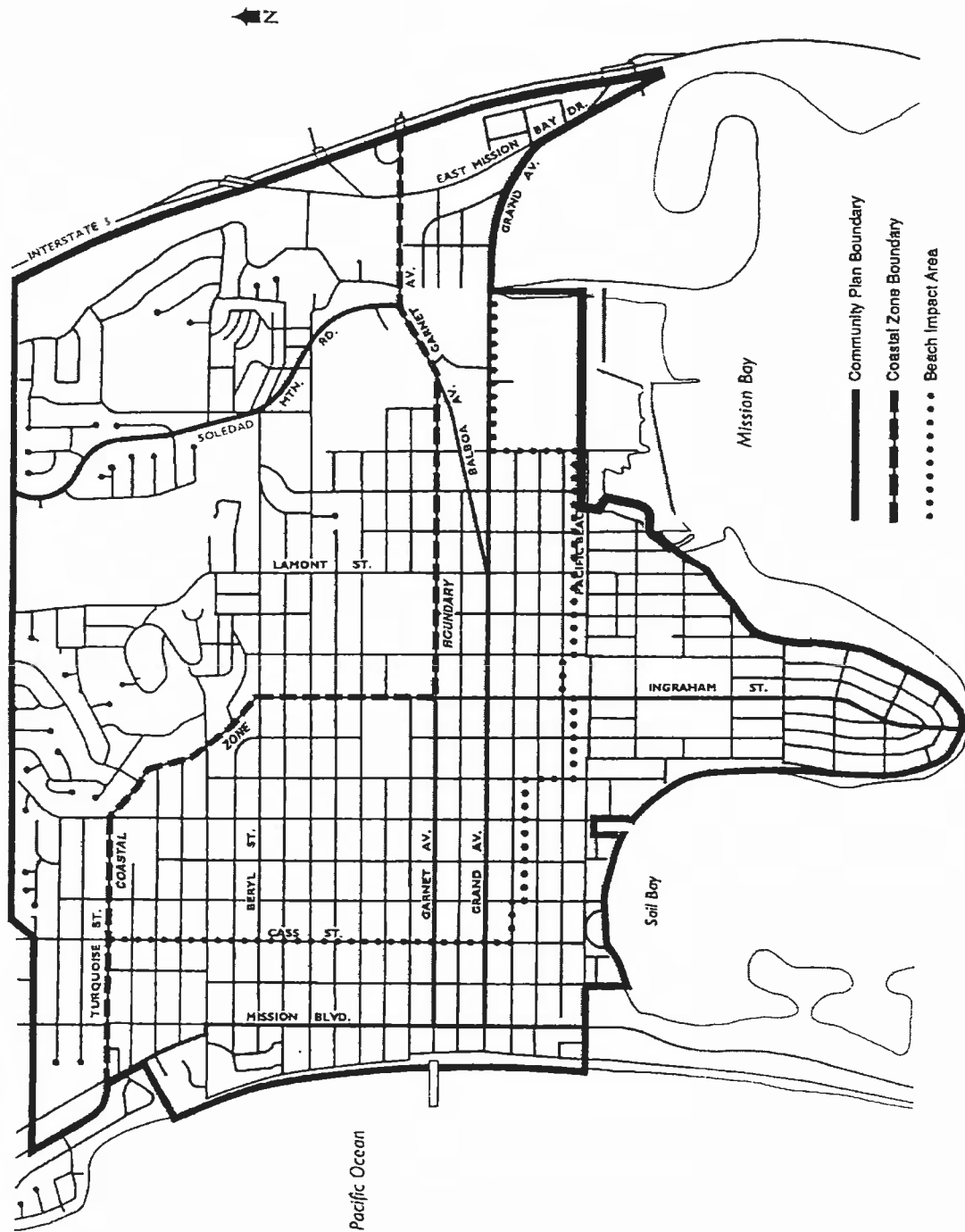
B. Should the applied-for license be issued, the Applicant has agreed to the fourteen conditions which are contained in Exhibit 11 which is attached hereto as Appendix A and incorporated herein by reference.

C. The premises are located in a mostly commercial area in a two story building on the boardwalk of Mission Beach. The existing premises are sixty feet by eighty feet and the planned expansion would add a deck approximately thirty feet by sixty feet. According to the Department's licensing representative, the expansion will add approximately one hundred twenty seats to the existing patron capacity of the premises. The Applicant estimated that the expansion is expected to provide additional seating for approximately seventy-five dinner patrons. The Applicant intends to serve lunch and dinner on weekdays and breakfast, lunch and dinner on weekends. The premises kitchen currently closes at 10:00 p.m. However, if the planned expansion is approved, a new condition on the license will require that food be available at all times when alcoholic beverages are being sold, served and consumed.

D. The premises have been unconditionally licensed intermittently with on-sale type licenses since June of 1940.

E. No residences are located within one hundred feet of the premises or its parking lot and there are no consideration points such as churches or schools located within 600 feet of the premises.

F. The San Diego Police Department filed a conditional protest in this matter and indicated that it would withdraw its protest if the Applicant accepted the six conditions it had recommended. The Police Department subsequently withdrew its protest after the Applicant agreed to the fourteen conditions recommended by the Department and which are stated in Exhibit 11.



Coastal Zone and Community Plan Boundaries

Pacific Beach Community Plan

6

FIGURE

Because of the area within the coastal zone, this community plan has the responsibility of including planning and development standards to protect and preserve the state's coastal resources pursuant to the adoption and certification of the City of San Diego's LCP.

A portion of the community also falls within the beach impact area which is applied to those areas of the coastal zone that are subject to higher levels of traffic congestion and parking need.

This Pacific Beach Community Plan and LCP Land Use Plan has incorporated the coastal issues that have been identified for the community, and has developed policies and recommendations in the various elements of the community plan to address those issues, as summarized below:

Public Access to the Beaches and Bay

The Parks and Open Space Element incorporates recommendations for improving vehicular, bicycle, and pedestrian access to the beaches and bays; both the Parks and Open Space and the Community Facilities Elements include recommendations for improving visual access through landscape maintenance programs and undergrounding of utilities.

Recreation and Visitor Serving Facilities

The Commercial Element recommends retaining existing commercial areas in proximity to the beach and bay with a commercial and visitor serving focus, while still providing community goods and services.

Preservation of Crystal Pier

The Heritage Resources Element and Appendix E contain design standards for the preservation of the historical integrity of Crystal Pier.

Provision of Community Parks & Recreation Areas

The Parks and Open Space Element recommends the identification of additional park and recreation opportunities through the joint use of school sites.

Provision of Low- and Moderate-Income Housing

The Commercial Element provides for an increased density for mixed-use projects, and promotes the development of Single-Room-Occupancy Hotels and Living Units to provide a greater opportunity for the development of more affordable housing.

The Residential Element further recommends revising multifamily development standards to encourage the development of smaller units.

APPENDIX I

Coastal Parking Standards

Off-street parking standards for uses within the coastal zone are the same for all uses as those specified in the citywide zones of the San Diego Municipal Code, except for restaurants. Within the coastal zone, restaurants are required to provide one (1) parking space for each two hundred (200) square feet of gross floor area, including all outdoor dining areas. It is expected that this standard shall continue in the community's beach impact area. These standards are based on the citywide and coastal zone parking regulations as they were written at the time of adoption of this plan and do not reflect subsequent changes that may be adopted. However, subsequent regulation changes and any revision to these land use plan standards will require further public review and local coastal program amendments to become effective.

Consolidated or shared-use parking areas are encouraged in all commercial and recreational areas. Parking requirement reductions will be considered for those mixed-use projects which are developed under discretionary review and employ transit-oriented development features.

Beach Impact Areas

Parking standards for the beach impact area are applied where the demand for near-shore parking is most critical among beach visitors, residents and patrons of commercial establishments.

- Commercial office, retail, service (except restaurants) and marine oriented establishments - one (1) parking space for each four hundred (400) square feet of gross floor area.
- Restaurants - one (1) parking space for each two hundred (200) square feet of gross floor area, including all outdoor dining areas.
- Hotel/motel units - one (1) parking space for each guest room or suite.
- Private clubs and similar establishments - one (1) parking space for each guest room or one (1) parking space for each two hundred (200) square feet of gross floor area, whichever is greater.
- Residential uses - one and one-half (1.5) spaces for each dwelling unit containing one (1) bedroom or less, and two (2) spaces for each dwelling unit containing two (2) or more bedrooms.
- New curb cuts shall not be permitted and existing curb cuts shall be removed where safe and efficient access is available from an abutting alley, except that new commercial or residential developments with a frontage of one hundred fifty (150) feet or greater shall be permitted one (1) curb cut twenty five (25) feet wide at the property line for every full one hundred fifty (150) feet of street frontage. Where alley access is not available or where access from an abutting alley would be precluded by the proposed retention of an existing commercial or residential development, one (1) curb cut not to exceed twenty five (25) feet in width at the property line may be permitted.

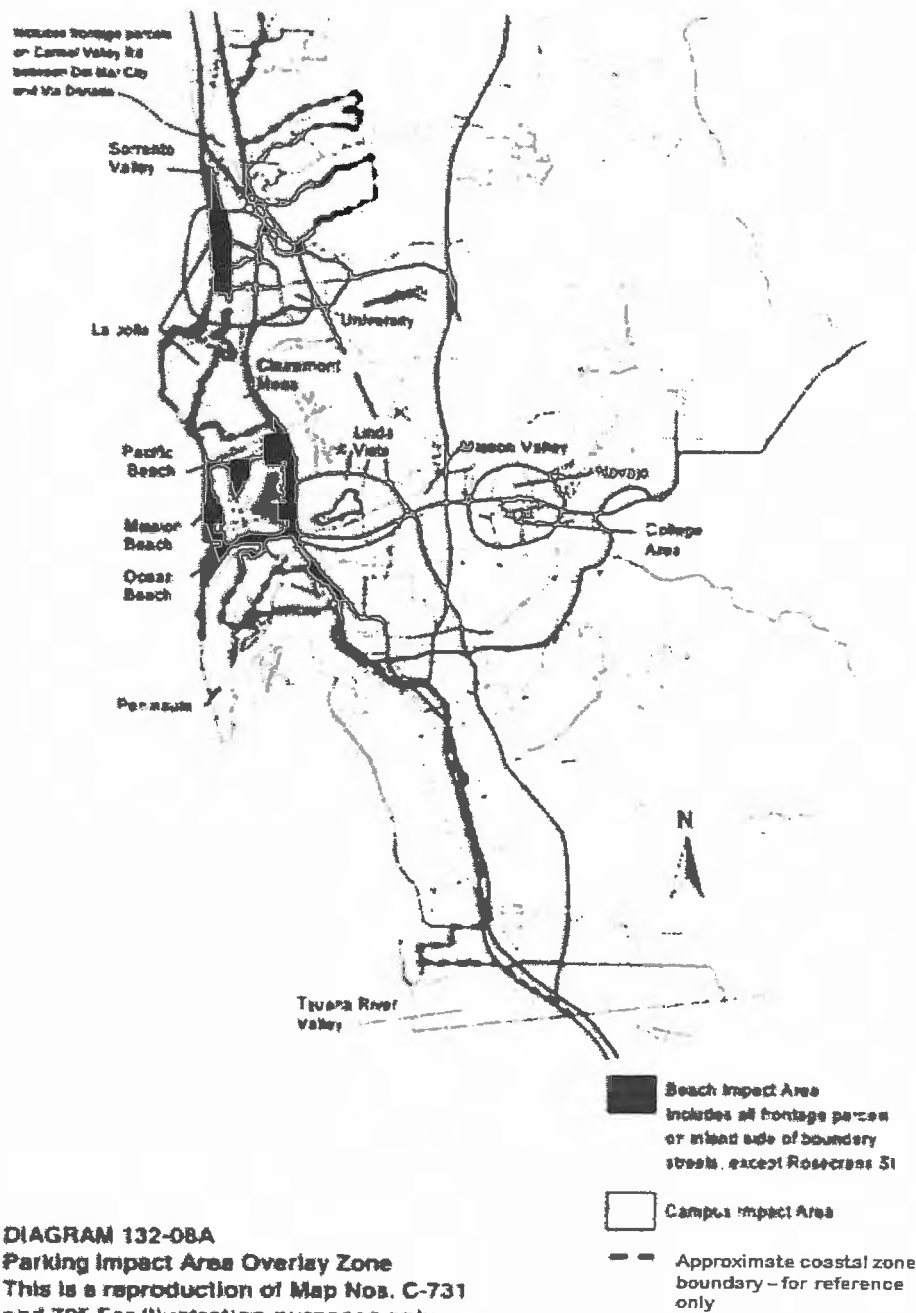


DIAGRAM 132-08A
Parking Impact Area Overlay Zone
This is a reproduction of Map Nos. C-731 and 795 For illustration purposes only.

§142.0510 General Parking Regulations

- (a) Use of Required Parking Spaces. Required *off-street parking spaces*, parking areas, and transportation facilities shall be used only for parking operable vehicles of residents, employers, employees, customers, and visitors as appropriate to the allowed uses of the applicable zone.
- (b) Parking Spaces to be Kept Clear. All *off-street parking spaces* and aisles shall be kept clear of any temporary or permanent obstructions.
- (c) Existing Parking Not to be Reduced. Notwithstanding any other provisions of the Land Development Code, existing off-street parking facilities that were provided and maintained on the same *premises* before parking was required and which serve a use now requiring *off-street parking spaces* shall not be reduced in number, dimension, or any other manner below the requirements of this division.
- (d) *Previously Conforming Premises*. Enlargement or change in use, or resumption of a discontinued use, for a *premises* that is *previously conforming* for the reason that it does not provide the number of *off-street parking spaces* required by this Division shall provide parking as follows:
 - (1) When the use is proposed to be enlarged, the additional *off-street parking spaces* required are the number required by this division for the enlargement. Within the beach impact area of the Parking Impact Overlay Zone, additional parking shall be provided at two times the number required for the enlargement but not exceeding the amount required for the entire development.
 - (2) When a change in use is proposed to a use that requires the same or fewer *off-street parking spaces* than the previous use, or for resumption of a discontinued use, no change in parking spaces is required, except as provided in Section 142.0510(d)(4).
 - (3) When a change in use is proposed to a use that requires more *off-street parking spaces* than the previous use, parking shall be required as provided in this division for the new use.
 - (4) A discontinued use may resume on a *premises* with *previously conforming* parking if:
 - (A) The use is permitted in accordance with the underlying base zone; and
 - (B) The *premises* is not located within the Parking Impact Overlay Zone; or

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(e) Supplemental Regulations.

- (1) All required parking shall be provided in non-tandem parking spaces.
- (2) Reduced Parking Demand Housing shall not be subject to the parking regulations of the Transit Overlay Zone and shall not be entitled to parking reductions provided for in Section 142.0550 (Parking Assessment District Calculation Exception).
- (3) The number of accessible parking spaces provided in accordance with Title 24 of the California Code of Regulations (California Building Standards Code) for Housing for Senior Citizens and housing for *disabled persons* shall be the number of spaces required in accordance with the basic parking ratio for multiple *dwelling units* in Table 142-05C.
- (4) An *applicant* that demonstrates compliance with Section 142.0527 shall receive a determination of *substantial conformance* with respect to the parking requirements specified in Section 142.0527 when such a determination is requested in accordance with Section 126.0112, provided that the *applicant* enters into a *shared parking* agreement with respect to the spaces determined to be surplus as a result of the *substantial conformance* review, pursuant to Section 142.0545.

(“Parking Regulations for Reduced Parking Demand Housing” added 11-16-2012 by O-20216 N.S.; effective 12-16-2012.)

§142.0530 Nonresidential Uses — Parking Ratios

- (a) Retail Sales, Commercial Services, and Mixed-Use Development.
- Table 142-05E establishes the ratio of required parking spaces to building *floor* area in the commercial zones, industrial zones, and planned districts shown, for retail sales uses and for those commercial service uses that are not covered by Table 142-05F or 142-05G. Table 142-05E also establishes the required parking ratios for mixed-use developments in a single *structure* that include an allowed use from at least two of the following use categories: (1) retail sales, (2) commercial services, and (3) offices.

Table 142-05E
Parking Ratios for Retail Sales, Commercial Services, and Mixed-Use Development

Zone	Parking Spaces Required per 1,000 Square Feet of <i>Floor Area</i> Unless Otherwise Noted (<i>Floor Area</i> Includes <i>Gross Floor Area</i> plus below <i>Grade Floor Area</i> and Excludes <i>Floor Area</i> Devoted to Parking)		
	Required Automobile Parking Spaces ⁽¹⁾		
	Minimum Required Outside a <i>Transit Area</i>	Minimum Required Within a <i>Transit Area</i> ⁽²⁾	Maximum Permitted
Commercial Zones			
CC-1-1 CC-2-1 CC-4-1 CC-5-1	2.5	2.1	6.5
CC-1-2 CC-2-2 CC-4-2 CC-5-2	2.5	2.1	6.5
CC-1-3 CC-2-3 CC-4-3 CC-5-3	5.0 ⁽³⁾	4.3	6.5
CC-3-4 CC-4-4 CC-5-4	2.5	2.1	6.5
CC-3-5	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5
CC-3-5/Beach impact area ⁽⁵⁾	2.5	2.1	6.5
CC-4-5	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5
CC-5-5	1.25	1.25	5.5
CN-1-1	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5
CN-1-2	5.0	4.3	6.5
CN-1-3	2.5	2.1	6.5
CR-1-1 CR-2-1	5.0 ⁽³⁾	4.3	6.5
CO-1-1 CO-1-2	5.0	4.3	6.5
CV-1-1	5.0	4.3	6.5

CV-1-2	2.5	2.1	6.5
Industrial Zones			
IH-1-1 IH-2-1	5.0	4.3	6.5
IL-1-1 IL-2-1 IL-3-1	5.0	4.3	6.5
IP-1-1 IP-2-1	5.0	4.3	6.5
IS-1-1	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5
Planned Districts			
Barrio Logan: Subdistrict B	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5
Barrio Logan: Except Subdistrict B	2.5	2.1	6.5
Carmel Valley	5.0	4.3	6.5
Cass Street	2.0	2.0	6.5
Central Urbanized	2.5	2.1	6.5
Golden Hill	1.25	1.25	5.5
La Jolla	1.7	1.7	5.5
La Jolla Shores	1.0	1.0 ⁽⁴⁾	5.5
Mid-City: CN-3 and CV-3	1.25	1.25	5.5
Mid-City: Except CN-3, CV-3	2.5	2.1	6.5
Mount Hope	3.3	2.8	6.5
Mission Valley: CV	2.5	2.1	6.5
Mission Valley: Except CV	5.0	4.3	6.5
Otay Mesa	5.0	4.3	6.5
Old Town	4.0	3.4	6.5
Southeast San Diego	2.5	2.1	6.5
San Ysidro	2.5	2.1	6.5
West Lewis Street	1.0 ⁽⁴⁾	1.0 ⁽⁴⁾	5.5

Footnotes For Table 142-05E

- ¹ Parking spaces for carpool vehicles and zero emissions vehicles are required in accordance with Section 142.0530(d). Bicycle parking is required in accordance with Section 142.0530(e).
- ² *Transit Area*. The *transit area* minimum parking ratios apply in the *Transit Area* Overlay Zone (Chapter 13, Article 2, Division 10) and in the Urban Village Overlay Zone (Chapter 13, Article 2, Division 11).
- ³ Uses Located above *Ground Floor*. The minimum parking ratio for retail sales and commercial services uses above the ground *floor* is 4.0 spaces per 1,000 square feet of *gross floor area*.
- ⁴ *Alley Access*. For properties with *alley* access, one parking space per 10 linear feet of *alley* frontage may be provided instead of the parking ratio shown in Table 142-05E. Within the beach impact area of the Parking Impact Overlay Zone, application of this policy shall not result in a reduction of required on-site parking.
- ⁵ Beach Impact Area. For area of applicability, see Chapter 13, Article 2, Division 8 (Parking Impact Overlay Zone).

- (b) Eating and Drinking Establishments. Table 142-05F establishes the required ratio of parking spaces to building *floor* area in the commercial zones, industrial zones, and planned districts shown, for eating and drinking establishments that are the primary use on a *premises*.

Table 142-05F
Parking Ratios for Eating and Drinking Establishments

Zone	Parking Spaces Required per 1,000 Square Feet of Eating and Drinking Establishment ⁽¹⁾ Floor Area Unless Otherwise Noted (Floor Area Includes Gross Floor Area plus below Grade Floor Area and Excludes Floor Area Devoted to Parking)		
	Required Automobile Parking Spaces ⁽²⁾		
	Minimum Required Outside a Transit Area	Minimum Required Within a Transit Area ⁽³⁾	Maximum Permitted
Commercial Zones			
CC-1-1 CC-2-1 CC-4-1 CC-5-1	2.5	2.1	25.0
CC-1-2 CC-2-2 CC-4-2	2.5	2.1	25.0
CC-5-2	2.5	2.1	25.0
CC-4-2/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0
CC-1-3 CC-2-3 CC-4-3 CC-5-3	15.0	12.8	25.0
CC-3-4 CC-4-4	2.5	2.1	25.0
CC-4-4/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0
CC-5-4	2.5	2.1	25.0
CC-3-5	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0
CC-3-5/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0
CC-4-5	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0
CC-5-5	1.25	1.25	20.0
CN-1-1	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0

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CN-1-2	15.0	12.8	25.0
CN-1-3	2.5	2.1	25.0
CR-1-1 CR-2-1	15.0	12.8	25.0
CO-1-1 CO-1-2	15.0	12.8	25.0
CV-1-1	15.0	2.1	25.0
CV-1-2	5.0	4.3	25.0
Industrial Zones			
IH-1-1 IH-2-1	15.0	12.8	25.0
IL-1-1 IL-2-1 IL-3-1	15.0	12.8	25.0
IP-1-1 IP-2-1	15.0	12.8	25.0
IS-1-1	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0
Planned Districts			
Barrio Logan: Subdistrict B	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0
Barrio Logan: Except Subdistrict B	2.5	2.1	20.0
Carmel Valley	15.0	12.8	25.0
Cass Street	5.0	4.3	25.0
Central Urbanized	2.5	2.1	6.5
Golden Hill	1.25	1.25	20.0
La Jolla	5.0	4.3	20.0
La Jolla Shores	1.0	1.0 ⁽⁵⁾	20.0
Mid-City: CN-3 and CV-3	1.25	1.25	20.0
Mid-City: Except CN-3, CV-3	2.5	2.1	25.0
Mount Hope	3.3	2.8	25.0
Mission Valley: CV	5.0	4.3	25.0
Mission Valley: Except CV	15.0	12.8	25.0
Otay Mesa	15.0	12.8	25.0

Old Town	4.0	3.4	25.0
Southeast San Diego	5.0	4.3	25.0
San Ysidro	5.0	4.3	25.0
West Lewis Street	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0

Footnotes For Table 142-05F

- 1 Eating and Drinking Establishments. The minimum parking ratios apply to eating and drinking establishments that do not have a common parking area with any other uses. There is no minimum parking requirement or maximum permitted parking for outdoor dining. Within the Coastal Overlay Zone, outdoor dining areas such as decks, patios, terraces, etc., are considered part of the eating and drinking establishment's *gross floor area* and are included in calculating parking requirements.
- 2 Parking spaces for carpool vehicles and zero emissions vehicles are required in accordance with Section 142.0530(d). Bicycle parking is required in accordance with Section 142.0530(e).
- 3 *Transit Area*. The *transit area* minimum parking ratios apply in the *Transit Area* Overlay Zone (Chapter 13, Article 2, Division 10) and in the Urban Village Overlay Zone (Chapter 13, Article 2, Division 11).
- 4 Coastal Overlay Zone. For area of applicability, see Chapter 13, Article 2, Division 4.
- 5 *Alley Access*. For properties with *alley* access, one parking space per 10 linear feet of *alley* frontage may be provided instead of the parking ratio shown in Table 142-05F. Within the beach impact area of the Parking Impact Overlay Zone, application of this policy shall not result in a reduction of required on-site parking.

- (c) Nonresidential Uses. Table 142-05G establishes the required ratio of parking spaces to building *floor* area for the nonresidential uses shown that are not covered by the parking requirements in Section 142.0530(a) and (b).

§142.0560 Development and Design Regulations for Parking Facilities

(a) General Regulations for Parking Areas

- (1) In computing the required number of *off-street parking spaces* and bicycle spaces, a remaining fraction of one-half or more parking space is deemed a whole parking space; a remaining fraction of less than one-half is disregarded.
- (2) For mixed uses on the same *premises*, the required parking spaces shall be either of the following:
 - (A) The sum of the requirements for each individual use computed separately; or
 - (B) In compliance with Section 142.0545 *shared parking* requirements.
- (3) Where five or more required spaces are provided on a *premises*, each space shall be clearly delineated with paint or other more durable material contrasting in color with the surface to which it is applied.
- (4) Parking areas with fewer than 5 spaces are not required to be delineated. The number of spaces in undelineated parking areas shall be determined by dividing the square footage of the usable parking area by 350.

- (b) *Minimum Dimensions for Off-street Parking Spaces.* The minimum dimensions for single and tandem spaces for specific types of parking spaces are shown in Table 142-05K , except as provided in Section 142.0560(e) for certain pre-existing parking facilities. Compact spaces are not permitted.

area of the Parking Impact Overlay Zone, application of this policy shall not result in a reduction of required on-site parking.

5 Alley Access. For properties with alley access, one parking space per 10 linear feet of alley frontage may be provided instead of the parking ratio shown in Table 142-05E. Within the beach impact area of the Parking Impact Overlay Zone, application of this policy shall not result in a reduction of required on-site parking. Beach Impact Area. For area of applicability, see Chapter 13, Article 2, Division 8 (Parking Impact Overlay Zone).

- (b) Eating and Drinking Establishments. Table 142-05F establishes the required ratio of parking spaces to building *floor* area in the commercial zones, industrial zones, and planned districts shown, for eating and drinking establishments that are the primary use on a *premises*.

Table 142-05F
Parking Ratios for Eating and Drinking Establishments

Zone	Parking Spaces Required per 1,000 Square Feet of Eating and Drinking Establishment ^(3,1) Floor Area Unless Otherwise Noted (Floor Floor Area Includes Gross Floor Area plus below Grade Floor Area and Excludes Floor Area Devoted to Parking)			
	Required Automobile Parking Spaces ⁽²⁾			Required Bicycle Parking Spaces ⁽²⁾
	Minimum Required Outside a Transit Area	Minimum Required Within a Transit Area ^(4,3)	Maximum Permitted	Minimum Required
Commercial Zones				
CC-1-1 CC-2-1 CC-4-1 CC-5-1	2.5	2.1	25.0	0-1
CC-1-2 CC-2-2 CC-4-2	2.5	2.1	25.0	0-1
CC-5-2	2.5	2.1	25.0	0-1
CC-4-2/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0	0-1
CC-1-3 CC-2-3 CC-4-3 CC-5-3	15.0	12.8	25.0	0-1
CC-3-4 CC-4-4	2.5	2.1	25.0	0-1
CC-4-4/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0	0-1
CC-5-4	2.5	2.1	25.0	0-1

CC-3-5	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	0.1
CC-3-5/Coastal Overlay Zone ⁽⁴⁾	5.0	4.3	25.0	0.1
CC-4-5	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	
CC-5-5	1.25	1.25	20.0	0.1
CN-1-1	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	0.1
CN-1-2	15.0	12.8	25.0	0.1
CN-1-3	2.5	2.1	25.0	0.1
CR-1-1 CR-2-1	15.0	12.8	25.0	0.1
CO-1-1 CO-1-2	15.0	12.8	25.0	0.1
CV-1-1	15.0	2.1	25.0	0.1
CV-1-2	5.0	4.3	25.0	0.1
Industrial Zones				
IH-1-1 IH-2-1	15.0	12.8	25.0	0.1
IL-1-1 IL-2-1 IL-3-1	15.0	12.8	25.0	0.1
IP-1-1 IP-2-1	15.0	12.8	25.0	0.1
IS-1-1	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	0.1
Planned Districts				
Barrio Logan: Subdistrict B	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	0.1
Barrio Logan: Except Subdistrict B	2.5	2.1	20.0	0.1
Carmel Valley	15.0	12.8	25.0	0.1
Cass Street	5.0	4.3	25.0	0.1
Central Urbanized	2.5	2.1	6.5	0.1
Golden Hill	1.25	1.25	20.0	0.1
La Jolla	5.0	4.3	20.0	0.1
La Jolla Shores	1.0	1.0 ⁽⁵⁾	20.0	0.1
Mid-City: CN-3 and CV-3	1.25	1.25	20.0	0.1
Mid-City: Except CN-3, CV-3	2.5	2.1	25.0	0.1
Mount Hope	3.3	2.8	25.0	0.1
Mission Valley: CV	5.0	4.3	25.0	0.1
Mission Valley: Except CV	15.0	12.8	25.0	0.1
Otay Mesa	15.0	12.8	25.0	0.1
Old Town	4.0	3.4	25.0	0.1

Southeast San Diego	5.0	4.3	25.0	0.1
San Ysidro	5.0	4.3	25.0	0.1
West Lewis Street <u>Street</u>	1.0 ⁽⁵⁾	1.0 ⁽⁵⁾	20.0	0.1

Footnotes For Table 142-05F ~~Footnotes For Table 142-05F~~

- ¹ Eating and Drinking Establishments. The minimum parking ratios apply to eating and drinking establishments that do not have a common parking area with any other uses. There is no minimum parking requirement or maximum permitted parking for outdoor dining. Within the Coastal Overlay Zone, outdoor dining areas such as decks, patios, terraces, etc., are considered part of the eating and drinking establishment's gross floor area and are included in calculating parking requirements.
- ² Parking spaces for carpool vehicles and zero emissions vehicles are required in accordance with Section 142.0530(d). Bicycle parking is required in accordance with Section 142.0530(e).
- ¹² Transit Area. The transit area minimum parking ratios apply in the Transit Area Overlay Zone (Chapter 13, Article 2, Division 10) and in the Urban Village Overlay Zone (Chapter 13, Article 2, Division 11).
- ³ Bicycle Parking. See Section 142.0530(e)
- ³ Eating and Drinking Establishments. The minimum parking ratios apply to eating and drinking establishments that do not have a common parking area with any other uses. There is no minimum parking requirement or maximum permitted parking for outdoor dining. Within the Coastal Overlay Zone, outdoor dining areas such as decks, patios, terraces, etc., are considered part of the establishment's gross floor area and included in calculating parking requirements.
- ⁴ through ⁵ [No change in text.]

- (c) Nonresidential Uses. Table 142-05G establishes the required ratio of parking spaces to building floor area for the nonresidential uses shown that are not covered by the parking requirements in Section 142.0530(a) and (b).

**Table 142-05G
Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of Floor Floor Area Unless Otherwise Noted (Floor Floor Area Includes Gross Floor Area Area plus below Grade Floor Grade Floor Area Area, and Excludes Floor Floor Area Devoted to Parking)				
	Required Automobile Parking Spaces ⁽¹⁾				Required Bicycle Parking Spaces ⁽²⁾
	Minimum Required Outside a Transit Area Transit Area	Minimum Required Within a Transit Area Transit Area ⁽¹²⁾	Maximum Permitted	Carpool Minimum ⁽²⁾	Minimum
Institutional					
Separately regulated uses					
Botanical Gardens and Arboretums	3.3	2.8	N/A	N/A	2% of Auto Minimum
Churches and places of	1 per 3 seats, or 1 per 60 inches of	85% of Minimum	N/A	N/A	2% of Auto Minimum

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14. **CONSENT CALENDAR (removed from Regular Calendar).** Staff moved 2 items [18a, 18b] to the expanded consent calendar and recommended approval with conditions.

Motion & vote: Brennan moved to approve the consent calendar pursuant to the staff recommendation and recommended a yes vote, seconded by Sanchez. Chair Shallenberger ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

15. **LOCAL COASTAL PROGRAMS (LCPs)**

- a. **City of Carlsbad LCP Amendment No. CAR-MAJ-1-13 (Housing Element 2.1 – Barrio) Time Extension.** Staff recommended approval of the time extension.

Motion & vote: Sanchez moved to grant the time extension and recommended a yes vote, seconded by Brennan. Chair Shallenberger ruled that the vote was unanimous in favor of the motion. **Approved.**

- b. **City of Imperial Beach LCP Amendment No. IMB-MAJ-2-12 (Commercial Mixed Uses).** [POSTPONED]

16. **NEW APPEALS.**

- a. **Appeal No. A-6-ENC-13-210 (Lindstrom, Encinitas)** [POSTPONED]
b. **Appeal No. A-6-NLC-13-211 (Marina Gateway Development Co. LLC, National City)** [POSTPONED]

17. **COASTAL PERMIT APPLICATIONS.**

- a. **Application No. 6-12-059 (Seascape Management Corporation, Solana Beach)** Staff recommended approval with conditions.

Motion & vote: Sanchez moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Bochco. Chair Shallenberger ruled that the vote was unanimous in favor of the motion. **Approved with conditions.**

- b. **Application No. 6-12-061 (Grand & Strand, LLC, San Diego)** Staff recommended approval with conditions.

Motion & vote: Mitchell moved to approve pursuant to the staff recommendation and recommended a yes vote, seconded by Brennan. The roll call vote was 9 in favor (Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, Zimmer, Shallenberger) and 2 opposed (Groom, Sanchez). **Approved with conditions.**

CALIFORNIA COASTAL COMMISSION

JULY 2013 AGENDA (PARTIAL)
CITY OF VENTURA
CITY HALL - COUNCIL CHAMBERS
501 Poli Street
Ventura, California 93011

July 11, 2013

REPORTER'S TRANSCRIPT OF PROCEEDINGS:

Application No. 6-12-061 (Grand & Strand, LLC, San Diego)
[ADDENDUM] Application of Grand & Strand, LLC to
construct 1,895 sq.ft. second-floor outdoor deck addition
to existing restaurant and remove unpermitted automated
parking payment machine and associated signs, at 4315
Ocean Blvd., Pacific Beach, San Diego, San Diego County.

Reported By: Antonia Sueoka, RPR, CSR No. 9007

(Transcribed From Digital Recording.)

1 asking. Somehow that math doesn't work for me, that you
2 expand and you get -- end up with less parking places.

3 MS. SARB: Right. But if you apply that transit
4 overlay standard to the square footage of the existing
5 uses, you come up with a requirement of a certain number
6 of parking spaces.

7 COMMISSIONER GROOM: I guess I don't think
8 that's a correct -- I guess I just don't think that's a
9 correct policy, to expand and then be allowed to have
10 fewer parking places. It doesn't make sense to me, but I
11 under -- but those are the facts.

12 As -- the other question that I have is as to
13 the reports that we've received, does this establishment
14 have on-site security?

15 MR. LESTER: Ask someone to come up (inaudible).

16 MS. SARB: That would be a question for the
17 applicant.

18 CHAIRWOMAN SHALLENBERGER: Would you like the
19 applicant to speak?

20 COMMISSIONER GROOM: Yes. Thank you.

21 MS. MADAFFER: Robin Madaffer for the applicant.

22 Commissioner Groom, yes, the project site does
23 have on-site security.

24 I also must clarify your previous question
25 regarding the parking.

1 CHAIRWOMAN SHALLENBERGER: Actually, this is not
2 the time for you to do additional testimony.

3 MS. MADAFFER: But there is a misunderstanding,
4 and I would like for staff to clear up what would be --

5 CHAIRWOMAN SHALLENBERGER: Perhaps --

6 MS. MADAFFER: -- required.

7 CHAIRWOMAN SHALLENBERGER: Perhaps one of the
8 Commissioners would ask you that question.

9 COMMISSIONER GROOM: So there is on-site
10 security.

11 My -- my last question is if we do add a
12 condition on valet parking, but it's subject to the
13 City's approval of that, what happens if we approve this
14 and we wanted the valet, and then the City says, "No, you
15 can't have valet"?

16 MS. SARB: If we make it that they -- that prior
17 to issuance they have to have an approved valet parking
18 program that's approved by the City of San Diego and they
19 can't get that, then they would have to come back for an
20 amendment.

21 COMMISSIONER GROOM: Okay. Thank you.

22 CHAIRWOMAN SHALLENBERGER: Commissioner Garcia.

23 COMMISSIONER GARCIA: Thank you.

24 Just a question, and I didn't see it in the --
25 in the staff Report. And I also, I think, have a

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

COMMISSION ACTION ON FEB 13 2014**Th16b**

- ☐ Approved as Recommended
☐ Denied as Recommended
☐ Approved with Changes
☐ Denied
☒ Other **ADJUTED**

Staff: A. Llerandi-SD
Staff Report: 1/16/14
Hearing Date: 2/12-13/14

REVISED CONDITIONS AND FINDINGS

Application No.: 6-12-061

Applicant: Grand & Strand, LLC

Agent: Architect Mark D. Lyon, Inc.

Location: 4315 Ocean Boulevard, Pacific Beach, San Diego,
San Diego County (APN No. 423-111-1600)

Project Description: Construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage at an existing mixed-use building.

Staff Recommendation: Approval with Conditions

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on July 11, 2013. In its action, the Commission approved the permit with the addition of Special Condition No. 4, which requires a Transportation Demand Management program that includes implementation of an on-site valet parking program and installation of additional bicycle racks. The amended motion begins on Page 4. The addition of Special Condition No. 4 begins on Page 5. Findings to support this modification can be found starting on Page 10.

Commissioners on Prevailing Side: Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, and Zimmer, and Chair Shallenberger

000924

SUMMARY OF COMMISSION ACTION
SUMMARY OF STAFF RECOMMENDATION

~~Staff is recommending approval of this project, with conditions.~~ The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the adjacent parking lot. The project site is the PB Shore Club bar and restaurant, an existing restaurant in a two-story mixed-use building (with first floor visitor commercial retail), located at the corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The proposed project raises issues of intensity of use and parking, visual impacts, biological resource impacts, and community character. Intensity of use and parking issues arise due to potential for increased dining space to affect traffic and parking in the surrounding area. Visual resource issues arise due to project site's proximity to the beach and the fact that the proposed dining patio will obstruct some ocean views from a public alleyway. Biological resource issues arise due to the risk of bird-strike from the placement of glass paneling in a previously unobstructed visual area. Community character issues arise from the expansion of late-night dining in a popular and developed tourist area.

~~Recommended-~~ Special conditions include requiring the applicant to adhere to final construction plans so as limit impacts to views and birds, ~~and~~ timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access, and implementation of a Transportation Demand Management program to maximize utilization of the on-site parking lot through use of an on-site valet parking program during peak use periods and installation of additional bicycle racks. The Commission added the condition requiring the furnishing of on-site valet parking in recognition of the location of the subject property adjacent to a popular beach and boardwalk area and the fact that maximizing on-site parking efficiency would help address potential parking impacts to the surrounding area.

~~Commission staff recommends approval of coastal development permit amendment 6-12-061, as conditioned.~~

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Current Site Photo

Exhibit 4 – Rendering of Rear Patio

Exhibit 5 – Rendering of Front Patio

000926

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on July 11, 2013, concerning approval of Coastal Development Permit No. 6-13-061.

Staff recommends a YES vote. Passage of this motion will result in adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, Zimmer, and Chair Shallenberger

Resolution:

The Commission hereby adopts the revised findings set forth below for Coastal Development Permit No. 6-12-061 on the ground that the findings support the Commission's decision made on July 11, 2013, and accurately reflect the reasons for it.

Motion:

~~I move that the Commission approve Coastal Development Permit No. 6-12-061 pursuant to staff recommendation.~~

~~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:

~~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. 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.~~

3. **Automated Payment Machine Condition Compliance.** WITHIN 30 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence that all unpermitted existing pay machine(s) and related signage have been removed. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
4. **Transportation Demand Management (TDM) Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Transportation Demand Management Program to the Executive Director for review and written approval. Said program shall include, at a minimum, the following provisions:
 - a. Provision of on-site valet service that will facilitate maximum parking efficiency while not deterring use of on-site parking by patrons, subject to a plan that has been reviewed and approved by the City of San Diego;
 - b. Provision of on-site bike racks available to the general public.

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


CERTIFICATION

CDP 6-12-061 (Grand & Strand LLC)

I, Christopher Pederson, certify that I am Deputy Chief Counsel for the California Coastal Commission, and that the foregoing documentary record of the proceedings before the California Coastal Commission in the above entitled matter, consisting of six volumes, is a true and correct copy of the official record of said Commission in said proceedings and a true and correct copy of documents on file with said Commission and which are in the custody of said Commission.

DATE:

5/29/14


CHRISTOPHER PEDERSON
Deputy Chief Counsel

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W14a

Staff: A. Llerandi-SD
Staff Report: 9/17/14
Hearing Date: 10/8-10/14

REVISED CONDITIONS AND FINDINGS

Application No.: 6-12-061

Applicant: Grand & Strand, LLC

Agent: Architect Mark D. Lyon, Inc.

Location: 4315 Ocean Boulevard, Pacific Beach, San Diego,
San Diego County (APN No. 423-111-1600)

Project Description: Construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage at an existing mixed-use building.

Staff Recommendation: Approval with Conditions

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on July 11, 2013. In its action, the Commission approved the permit with the addition of Special Condition No. 4, which requires a Transportation Demand Management program that includes implementation of an on-site valet parking program and installation of additional bicycle racks. The amended motion begins on Page 4. The addition of Special Condition No. 4 begins on Page 5. Findings to support this modification can be found starting on Page 10.

Commissioners on Prevailing Side: Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, and Zimmer, and Chair Shallenberger

The Commission originally approved these revised findings on February 13, 2014. The San Diego Superior Court has directed the Commission to hold a new public hearing on

000995

the revised findings because the Commission did not provide adequate public notice for the original hearing on the revised findings.

SUMMARY OF COMMISSION ACTION
SUMMARY OF STAFF RECOMMENDATION

~~Staff is recommending approval of this project, with conditions.~~ The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the adjacent parking lot. The project site is the PB Shore Club bar and restaurant, an existing restaurant in a two-story mixed-use building (with first floor visitor commercial retail), located at the corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The proposed project raises issues of intensity of use and parking, visual impacts, biological resource impacts, and community character. Intensity of use and parking issues arise due to potential for increased dining space to affect traffic and parking in the surrounding area. Visual resource issues arise due to project site's proximity to the beach and the fact that the proposed dining patio will obstruct some ocean views from a public alleyway. Biological resource issues arise due to the risk of bird-strike from the placement of glass paneling in a previously unobstructed visual area. Community character issues arise from the expansion of late-night dining in a popular and developed tourist area.

~~Recommended-~~ Special conditions include requiring the applicant to adhere to final construction plans so as limit impacts to views and birds, and timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access, and implementation of a Transportation Demand Management program to maximize utilization of the on-site parking lot through use of an on-site valet parking program during peak use periods and installation of additional bicycle racks. The Commission added the condition requiring the furnishing of on-site valet parking in recognition of the location of the subject property adjacent to a popular beach and boardwalk area and the fact that maximizing on-site parking efficiency would help address potential parking impacts to the surrounding area.

~~Commission staff recommends approval of coastal development permit amendment 6-12-061, as conditioned.~~

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Current Site Photo

Exhibit 4 – Rendering of Rear Patio

Exhibit 5 – Rendering of Front Patio

Exhibit 6 – Transcript of July 13, 2013 Hearing

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on July 11, 2013, concerning approval of Coastal Development Permit No. 6-13-061.

Staff recommends a YES vote. Passage of this motion will result in adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, Zimmer, and Chair Shallenberger

Resolution:

The Commission hereby adopts the revised findings set forth below for Coastal Development Permit No. 6-12-061 on the ground that the findings support the Commission's decision made on July 11, 2013, and accurately reflect the reasons for it.

Motion:

I move that the Commission approve Coastal Development Permit No. 6-12-061 pursuant to staff recommendation.

~~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:

~~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. 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.~~

3. **Automated Payment Machine Condition Compliance.** WITHIN 30 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence that all unpermitted existing pay machine(s) and related signage have been removed. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
4. **Transportation Demand Management (TDM) Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Transportation Demand Management Program to the Executive Director for review and written approval. Said program shall include, at a minimum, the following provisions:
 - a. Provision of on-site valet service that will facilitate maximum parking efficiency while not deterring use of on-site parking by patrons, subject to a plan that has been reviewed and approved by the City of San Diego;
 - b. Provision of on-site bike racks available to the general public.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY.

The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the on-site parking lot. The project site is the PB Shore Club bar and restaurant, an existing 4,456 square foot restaurant in a two-story, 23'1" high mixed-use building, with the restaurant situated on the second floor and a 3,283 square foot visitor retail business on the first floor. Adjacent to the mixed-use building on the same lot is a small, one story, 391 square foot visitor commercial beach equipment rental business. The proposed second-floor dining patio would be located outside of and connected to the restaurant on the south while being supported by ground-floor columns. The subject lot is located at the southeast corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The PB Shore Club is located in Pacific Beach, a popular beach community within the City of San Diego, just a few blocks west of Mission Boulevard, the main north-south coastal access route through this area. Adjacent to the PB Shore Club is the Pacific Beach boardwalk and the sandy beach. These areas are popular destinations with both locals and tourists, and during the summer tourist season the volume of usage of the area is very high, with bikers and pedestrians passing through the area in addition to drivers parking nearby or unloading passengers. The San Diego Lifeguard Services have a regional station building located across the boardwalk from PB Shore Club from which they organize their patrols, monitor the beach, and provide medical services. Due to its location, the PB Shore Club is a high priority visitor serving use on an oceanfronting site adjacent to the beach and a popular tourist destination, and consistently sees high public usage throughout the year.

The project site is located in an area of original jurisdiction of the Coastal Commission, as such, the standard of review for the proposed development is Chapter 3 of the Coastal Act, with the City of San Diego's certified LCP used as guidance.

B. PUBLIC ACCESS/PARKING.

The following Coastal Act policies are most pertinent to this issue, and state in part:

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 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

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.

[...]

Section 30604 of the Coastal Act states, in part:

[...]

- (c) *Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

The PB Shore Club is located at the corner of Grand Avenue and Ocean Boulevard, where Grand Avenue ends at the Pacific Beach boardwalk and life guard station. The area is used heavily by the public, both local and tourist, for beach access and viewing.

High volumes of pedestrians, bikers, skate boarders, and vehicles come to the area to either pass through, visit the beach, or to drop off/pick up passengers. Public space and public parking are at a premium, with demand usually outstripping supply.

Additionally, the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses. Many businesses in the Pacific Beach area are previously conforming regarding parking ratios, and some rent spaces from nearby businesses that have excess parking, though the opportunities for that are rare. The surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area.

The Pacific Beach Community Plan, the certified LUP for the area, general identifies the area within three blocks of the water, which includes the project site, as being within the "Beach Impact Area" (BIA) of the City of San Diego's certified LCP. The City's LCP in turn defines the BIA as being part of the Parking Impact Overlay Zone, which is designed to provide supplemental parking regulations for specified coastal, beach, and campus areas that have parking impacts. The project site is also located within the certified LCP's Transit Overlay Zone, the purpose of which is to provide supplemental parking regulations for areas receiving high levels of transit service.

The Pacific Beach Community Plan has several provisions allowing alternative parking ratios for development located within transit oriented areas. The Community Plan states that for development in the coastal zone, development shall provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process. The Community Plan goes on to delineate some of the standards that signify a transit-oriented development, including, but not limited to: minimizing building setbacks, bringing buildings close to sidewalks; located parking to the rear of lots, off of the alleys; articulate building facades to provide variety and interest through arcades, porches, bays, and particularly balconies, which minimize a walled effect and promote activity on the street; promote activity on balconies through such means as outdoor seating for restaurants, orient primary commercial building entrances to the pedestrian-oriented street, as opposed to parking lots, provide bicycle racks, etc. The existing and proposed development contains a majority of these features and thus promotes a pedestrian and transit-oriented character.

Currently, the project site has 29 off-street parking spaces located in an on-site parking lot for use by the patrons of the mixed use building and neighboring commercial beach rental business located in the adjacent parking lot. These 29 parking spaces currently meet and exceed the certified LCP's parking requirements and thus are not non-conforming. Due to the placement of support structures for the second floor outdoor patio and bringing the parking lot up to compliance with the Americans with Disabilities Act, the total number of parking spaces will drop from 29 to 26 upon completion of the project. These spaces serve the mixed-use building containing the PB Shore Club and first-floor retail as well as a separate beach equipment rental store also located on the lot.

Currently the mixed-use building has 4,456 square feet of restaurant use (the PB Shore Club) and 3,283 square feet of retail. The separate beach equipment rental store is 391 square feet. The City's Land Development Code, the certified IP for its LCP, lists the parking ratios required of non-residential uses in Section 142.0530. Table 142-05D of that section establishes the required ratios for retail sales, commercial service, and mixed-use developments in a single structure that include an allowed use from at least two of the following categories: retail sales, commercial services, and offices. The project site is zoned as CV-1-2 (Commercial Visitor), which, in the Transit Overlay Zone, has a required parking ratio of 2.1 parking spaces for every 1,000 square feet of floor area in a mixed-used building. Applying the regulatory ratio to the existing square footage, the existing development is required to provide 17 parking spaces, while the proposed square footage of the outdoor dining patio will require an additional 4 parking spaces, for a total of 21 parking spaces. This number is below the 26 spaces the applicant will offer once the proposed development is completed. Thus, adequate on-site parking will be provided for the proposed development.

While the subject property has an on-site parking lot with sufficient parking to support the proposed development under the certified LCP, the popularity of the Pacific Beach community with beachgoers and other visitors highlights the need to ensure that parking impacts to the surrounding area are minimized and alternative transportation options are encouraged. Valet parking is an effective method for maximizing on-site parking due to the greater parking density and efficiency that can be achieved for a given space under such programs. For example, the valet parking attendants can use the space behind each parking space, which is usually left vacant to permit drivers to back out of the parking space, to park additional cars. Thus, the implementation of such a program, especially for a site located directly adjacent to the beach and boardwalk, during the busiest periods of the weekends, holidays, and summer, would allow the applicant to park more vehicles on site than the proposed 26 parking spaces. In requiring such an on-site valet program, the Commission's intent is to make achieving such parking efficiency a common occurrence and to ensure the valet parking program is structured in such a way, in regards to cost and timing, as to not deter patrons from making use of it. For example, while the Commission believes the use of valet parking can maximize parking supply, fees for valet parking can also deter patrons from utilizing the on-site parking and thus lead to off-site parking impacts.

Additionally, because the community of Pacific Beach is relatively flat and the subject property is located adjacent to the boardwalk and close to local transit, biking is already a popular method of travel for visitors and residents alike. Currently, public bike racks exist in the local surrounding area and are heavily used by visitors, sometimes beyond capacity. The provision of additional bike racks on the subject property would further encourage alternative transportation to the subject property and surrounding area.

In addition to meeting applicable parking ratios, the applicant is proposing removal of an unpermitted automated payment machine and related signage from the on-site parking lot. The automated payment machine and signage advertised public beach parking for an hourly rate, regardless of whether the person was patronizing the commercial establishments. In addition to being unpermitted, the applicant was told that such usage

of the on-site parking lot was counter to the intent and requirements of applicable parking ratios. Parking ratios are provided for in land use regulations because various types of development can be anticipated to need various amounts of parking spaces in order to service employees, patrons, and deliveries. Municipalities encourage sufficient off-street parking so as to mitigate traffic and parking impacts to surrounding businesses and residences. When a development sells its parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking. By removing the unpermitted payment machine and signage, as proposed with this application, these adverse impacts to public access are avoided.

To ensure that the applicant conducts development in a manner consistent with these findings, **Special Condition No. 1** requires the applicant to adhere to final plans that are in substantial conformance with the plans approved by the Commission as part of this application submittal. **Special Condition No. 4** requires the applicant to implement a Traffic Demand Management program that utilizes on-site valet parking and bike racks in a manner that encourages their use by patrons so as to minimize parking impacts to the surrounding community by maximizing on-site placement of vehicles and encouraging alternative methods of transportation.

In summary, the Commission finds the proposed outdoor dining patio and removal of the unpermitted automated payment machine will not result in adverse impacts to coastal access. Parking will remain adequate for approved uses. Therefore, the Commission finds that all access and resource concerns associated solely with development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the cited policies of the Coastal Act.

C. VISUAL RESOURCES/COMMUNITY CHARACTER

Section 30251 of the Act addresses scenic and visual qualities, and states, in part:

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 public views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas...

The PB Shore Club is a second-floor restaurant located in a two-story mixed-use building at the southeast corner of Grand Avenue and Ocean Boulevard. Adjacent to and west of the building is the Pacific Beach boardwalk and the beach beyond. The restaurant itself faces to the west and north, giving patrons inside close and direct views to and along the boardwalk and beach. The purpose of the proposed project is to create a second-floor outdoor dining patio to further expand ocean view dining capacity.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



October 15, 2014

FILE COPY

Grand & Strand, LLC
Attn.: Barrett Renzler
510 First Ave Ste. 1904
San Diego, CA 92101

Re: Coastal Development Permit Application No. 6-12-061

Dear Mr. Renzler:

At the Wednesday, October 8, 2014, hearing, the California Coastal Commission adopted the recommended revised findings for Coastal Development Permit No. 6-12-061, authorizing the construction of a 1,895 square-foot second-floor outdoor dining patio and removal of unauthorized paid parking machines at 4315 Ocean Boulevard, San Diego CA, 92109.

The recommended revised findings adopted at the October 2014 hearing are identical to the recommended revised findings adopted by the California Coastal Commission at the February 2014 hearing, aside from a staff note explaining how the original February adoption was remanded back to the Coastal Commission by the San Diego Superior Court, as well as an attached exhibit with the transcript of the February hearing.

Should you have any questions regarding the above item, you may contact the Coastal Commission's San Diego District office at (619) 767-2370.

Sincerely,

A handwritten signature in black ink that reads "Alex Llerandi".

Alexander Llerandi
Coastal Program Analyst II
California Coastal Commission
San Diego District

cc: Supervising Deputy Attorney General Jamee Jordan Patterson

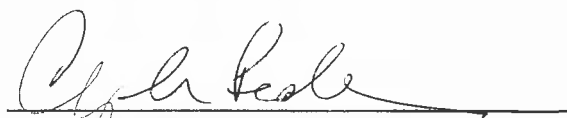
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CERTIFICATION

SAN DIEGANS FOR RESPONSIBLE PLANNING V. CCC

I, Christopher Pederson, certify that I am Deputy Chief Counsel for the California Coastal Commission, and that the foregoing documentary material comprises a supplement to the documentary record of the proceedings before the California Coastal Commission, in the above entitled matter, which record was certified on May 29, 2014. I further certify that this supplement, consisting of one volume, is a true and correct copy of this portion of the official record of said Commission in said proceedings and a true and correct copy of documents on file with said Commission and which are in the custody of said Commission.

DATE: 11/18/14


CHRISTOPHER PEDERSON
Deputy Chief Counsel

001107

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A PROFESSIONAL CORPORATION

JERRY HEMME
MANAGING PARTNER

6256 GREENWICH DRIVE, SUITE 500
SAN DIEGO, CALIFORNIA 92122

TELEPHONE
858.587.3555

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FACSIMILE
858.587.3545

February 2, 2015

VIA U.S. MAIL

Dr. Charles Lester, Executive Director
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

VIA EMAIL AND U.S. MAIL

Ms. Sherilyn Sarb, Deputy Director
South Coast District Office
California Coastal Commission
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4421

Re: REQUEST FOR REVOCATION
CDP No. 6-12-061
Permit Applicant – Grand & Strand LLC

Dear Dr. Lester and Ms. Sarb:

I represent Wave Original, Inc. which is a tenant at the property that is the subject of the above referenced Permit. We understand that the San Diegans for Responsible Planning have submitted a Request for Revocation of the Permit based in large part on the terms of my client's sublease. We were requested to provide you with the current status of my client's sublease:

1. The Sublease and the two lease amendments attached to the Request for Revocation remain in full force and effect.
2. The Sublessor, 4343 LLC, has confirmed to us in writing that it will continue to maintain four reserved parking spaces for my client's business after the completion of the improvements which are the subject of the Permit. We presently have dispute over the location of the four spaces. My client would like to keep the four spaces in the location it has had for seven years; the Sublessor has relocated the four spaces to another area of the parking lot.
3. The Sublease provides that my client can rent its parking spaces. The Sublessor has demanded that my client stop renting the spaces unless it

EXHIBIT NO. 3

APPLICATION NO.

6-12-061-REV

Letter from

Jerry Hemme

 California Coastal Commission

February 2, 2015

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obtains a permit from the California Coastal Commission. My client has ceased renting its spaces.

If you need further information regarding my clients' lease, please do not hesitate to contact me.

Sincerely yours,



Jerry D. Hemme

JDH/tr

pc: Elad Shasho
Kevin Johnson, Esq.

Robin Madaffer, Esq.
Justine Nielsen, Esq.
Morgan Wazlaw, Esq.

Lynne Heidel, Esq.
Of Counsel



Writer's Email:
justine@sdlandlaw.com

Writer's Direct:
(619) 239-7604

February 13, 2015

Via Electronic Mail & US Mail

Ms. Brittney Laver, Coastal Program Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
brittney.laver@coastal.ca.gov

**Re: Applicant Response to Request for Revocation
Coastal Development Permit #6-12-061**

Dear Ms. Laver:

We represent Applicant Grand & Strand LLC dba PB Shore Club (PBSC) with respect to Coastal Development Permit No. 6-12-061 (CDP) granted on July 11, 2013. The CDP authorizes construction of a second-floor outside patio addition at the PBSC restaurant located at 4315 Ocean Boulevard in San Diego. We understand San Diegans for Responsible Planning (SDRP) has submitted a Request for Revocation of the CDP alleging PBSC intentionally misled the Commission. For the reasons set forth below, we disagree with all of SDRP's allegations and urge the Commission to deny the revocation request.

The property is owned by The Paul Family Revocable Trust. 4343, LLC,¹ is the primary tenant and sub-landlord. It subleases the property to three tenants including PBSC, a retail business (Wave Original) which is located on the ground floor of the same building as PBSC, and a small surf shop located in a separate building on the property. Pursuant to a 2007 sublease amendment, 4343, LLC granted Wave Original four reserved on-site parking spaces, which Wave Original could rent at its discretion.

SDRP contends that grounds for revocation exist because PBSC failed to inform the Commission of Wave Original's four reserved parking spaces, which it was offering to non-customers for a fee. However, as explained below, PBSC did not provide inaccurate or

¹ Barrett Rinzler, through his corporation, is the managing member of both 4343, LLC and Grand & Strand LLC. However, they are two separate entities, both legally and functionally. Only 4343, LLC has authority over the sub-tenants pursuant to their respective subleases.

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incomplete information nor were the terms of the 2007 sublease to Wave Original material to the Commission's decision to approve the CDP.

PROJECT DESCRIPTION AND BACKGROUND

PBSC submitted its CDP application in 2012 for the development of a 1,895 square foot outdoor dining patio with glass siding. In May of 2013, Commission staff notified PBSC that only patrons of the mixed-use development could use the on-site parking spaces and that the automated parking machine was not permitted. Commission staff asked PBSC to amend its application to include removal of the automated parking machine and the signage associated with public parking. PBSC immediately remedied the problem by amending its application, removing the automated parking machine and signage. Moreover, 4343, LLC notified Wave Original in writing that non-customer parking and fee-based parking was prohibited on-site.

On July 11, 2013, the Commission approved the CDP for the development of the dining patio and removal of an automated payment machine and signage from the parking lot. In acting on the proposed project, the Commission added additional conditions related to a Transportation Demand Management Plan (TDM Plan), which necessitated preparation of Revised Findings. SDRP filed a lawsuit challenging the Commission's July 11, 2013 decision. The Commission considered and approved the Revised Findings on February 13, 2014. SDRP filed a second lawsuit challenging the Commission's approval of the Revised Findings. As a result of a court order in the second lawsuit, a third Commission hearing was held on October 8, 2014, where the Commission voted again to approve the CDP with Revised Findings. On January 29, 2015, SDRP submitted a Request for Revocation of the CDP. Both lawsuits are still ongoing.

GROUND FOR REVOCATION

The grounds for revocation are necessarily narrow due to the profound impacts it may have on an applicant. According to the Commission staff report dated February 23, 2001 regarding an unrelated revocation request:

The rules of revocation do not allow the Commission to have second thoughts on a previously issued permit based on information that comes into existence after the granting of the permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation....

Specifically, a revocation request based on Section 13105(a) of the Commission's regulations must prove three elements before a permit can be revoked: (1) The applicant provided inaccurate or incomplete information; (2) that any inaccurate or incomplete information was supplied knowingly and intentionally; and (3) that, if the Commission had the accurate and complete information, it would have denied the permit or imposed different conditions.

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PBSC DID NOT PROVIDE INACCURATE OR INCOMPLETE INFORMATION

SDRP contends that PBSC failed to disclose the terms of the Wave Original's sublease granting Wave Original four reserved parking spaces and the right to rent those parking spaces to non-customers. This contention is meritless for several reasons.

Until 2013, PBSC and Wave Original offered their on-site parking spaces to non-customers for a fee. However, in 2013, Commission staff notified PBSC that non-customer, fee-based parking was not permitted. Commission staff was aware of the non-customer, fee-based public parking and even included a discussion of the issues in its staff report. Therefore, the Commission had this information at this time of the hearing.

Second, Commission staff had all relevant information in determining whether the site had sufficient parking to accommodate the proposed development. They were fully aware that the property was a mixed-use development comprised of three different tenants and uses, as indicated in the staff report. Commission staff considered the parking demands of all businesses on the site when it determined the applicable mixed-use parking ratio and concluded parking was sufficient to satisfy the demands of all businesses on-site. Whether a business on the premises had particular spaces designated for its customers makes no difference in determining the applicable parking requirements.

PBSC did not provide inaccurate or incomplete information; any perceived inaccuracies or omissions were not knowing or intentional. As discussed above, from 2007 to 2013, PBSC and Wave Original offered their on-site parking spaces, to non-customers for a fee. PBSC installed an automated parking machine to facilitate its parking transactions while Wave Original collected its fees directly. **During this time, PBSC was not aware that offering its on-site parking spaces to non-customers for a fee was prohibited by the Commission.** It is very common for restaurants and other commercial establishments in Pacific Beach to offer their on-site parking spaces to non-customers for a fee. Therefore, it was reasonable for PBSC to assume such actions were permitted.

It wasn't until May 2013, a year after the CDP application for the proposed patio was submitted, when Commission staff explained that non-customer parking was not permitted without a coastal development permit and notified PBSC that the automated parking machine must be removed. Commission staff stated that non-customer parking was prohibited because it "was counter to the intent and requirements of applicable parking ratios." PBSC remains unaware of any Commission regulations which specifically address whether commercial businesses can offer their on-site parking spaces to the public for a fee. Moreover, Commission staff has advised PBSC if it wanted to maintain the automated parking machine, it needed a coastal development permit, which staff indicated it would not support. Thus, it is not part of the approved CDP.

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PBSC TOOK CORRECTIVE ACTION WHEN IT WAS NOTIFIED IT COULD NOT OFFER ITS PARKING SPACES TO THE NON-CUSTOMERS FOR A FEE

In May 2013 Commission staff notified PBSC that only patrons of the mixed-use development could use the on-site parking spaces and that the automated parking machine was not permitted. PBSC immediately complied with Commission staff's request and removed the machine and associated parking signage. A copy of the amended application is attached as **Exhibit A**. Photos showing removal of the automated parking machine and associated signage are attached as **Exhibit B**.

Moreover, when PBSC became aware that it could no longer offer its spaces to non-customers for a fee, it informed its landlord, 4343, LLC which took corrective action with respect to all of its subtenants. As discussed above, 4343, LLC is the sub-landlord of a mixed-use development with three tenants, including PBSC and Wave Original. After PBSC was notified that non-customer parking was prohibited, the sub-landlord notified Wave Original that its four parking spaces could only be used by patrons of the mixed-use development and that it could no longer charge the public for use of the parking spaces. 4343, LLC informed Wave Original that it would terminate its sublease if Wave Original refused to comply. A copy of this letter is attached as **Exhibit C**.

Wave Original has acknowledged in writing that its four parking spaces are reserved for its business patrons and that it no longer charges a fee for use of those parking spaces. A copy of this acknowledgement is attached as **Exhibit D**.

THE EXISTENCE OF WAVE ORIGINAL'S FOUR RESERVED PARKING SPACES WAS NOT MATERIAL TO THE COASTAL COMMISSION'S DECISION TO APPROVE THE CDP

Notwithstanding the fact that PBSC did not intentionally withhold information related to Wave Original's reserved parking spaces, such information was not material to the Coastal Commission's decision to approve the CDP. In approving the CDP, the Commission considered the parking requirements for the entire site, not just PBSC's proposed expansion, and found parking was adequate for all businesses on the site. Under the City of San Diego's Land Development Code, the certified Implementation Plan for the Local Coastal Program, parking requirements for mixed-use developments are calculated per site, not per business on a site. Special parking ratios apply to "mixed-use developments in a single structure that include...at least two...retail sales, commercial services, [or] office [uses]."

Using these parking ratios, the entire mixed-use development requires a minimum of 21 parking spaces. Notwithstanding, **PBSC agreed to provide 26 parking spaces for use by patrons of the mixed-use development** and agreed to provide a Transportation Demand Management Plan (TDM) which includes a valet program to mitigate any potential impacts to the surrounding neighborhood. Therefore, in approving the CDP, the Commission found "adequate on-site parking will be provided for the on-site development."

February 13, 2015

Page 5

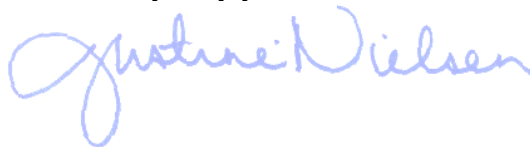
Whether a business on the premises had particular spaces designated for its customers makes no difference in determining the applicable parking requirements.

For these reasons, whether four spaces are designated for use by one particular tenant's patrons is immaterial to the Commission's decision because the Commission considered parking requirements for the mixed-use site as a whole.

CONCLUSION

We believe this revocation request is meritless and is merely another attempt to derail the project, which has been repeatedly approved by the Commission. SDRP has failed to establish the narrow grounds for revocation of a permit. PBSC did not provide inaccurate or incomplete information to the Coastal Commission and certainly did not do anything intentional to mislead the Commission. For all of these reasons, we urge the Commission to deny the revocation request.

Very truly yours,



Justine Nielsen

cc: Jamee Jordan Paterson, Supervising Deputy Attorney General

Exhibit A

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

SECTION I. APPLICANT

1. Name, mailing address, and telephone number of all applicants.

Grand & Strand, LLC
510 1st Avenue Suite #1904
San Diego, CA 92101 (619) 733-1239
(Area code/daytime phone number)

Note: All applicants for the development must complete Appendix A, the declaration of campaign contributions.

2. Name, mailing address and telephone number of applicant's representatives, if any. Please include all representatives who will communicate on behalf of the applicant or the applicant's business partners, for compensation, with the Commission or the staff. (It is the applicant's responsibility to update this list, as appropriate, including after the application is accepted for filing. Failure to provide this information prior to communication with the Commission or staff may result in denial of the permit or criminal penalties.)

Architect Mark D. Lyon, Inc.
910 BIRD ROCK AVENUE
La Jolla, CA 92037 (858) 459-1171
(Area code/daytime phone number)

SECTION II. PROPOSED DEVELOPMENT

Please answer all questions. Where questions do not apply to your project (for instance, project height for a land division), indicate Not Applicable or N.A.

1. **Project Location.** Include street address, city, and/or county. If there is no street address, include other description such as nearest cross streets.

4315 Ocean Boulevard
number street
San Diego San Diego
city county

Assessor's Parcel Number(s) (obtainable from tax bill or County Assessor):

423-111-1600

FOR OFFICE USE ONLY

RECEIVED

FILED

FEE

DATE PAID

APPLICATION NUMBER

2. Describe the proposed development in detail. Include secondary improvements such as grading, septic tanks, water wells, roads, driveways, outbuildings, fences, etc. (Attach additional sheets as necessary.)

Second Floor Outdoor Deck Addition (+ 1,895 s.f.) to
Existing Second Floor Restaurant
Over Existing On-grade parking.

Removal of existing paid parking machine.

a. If multi-family residential, state:

Number of units			Number of bedrooms per unit (both existing and proposed)	Type of ownership (proposed)
Existing units	Proposed new units	Net number of units on completion of project		<input type="checkbox"/> rental <input type="checkbox"/> condominium <input type="checkbox"/> stock cooperative <input type="checkbox"/> time share <input type="checkbox"/> other _____

b. If land division or lot line adjustment, indicate:

Number of lots			Size of lots to be created (indicate net or gross acreage)	
Existing Lots	Proposed new lots	Net number of lots on completion of project	Existing	Proposed

3. Estimated cost of development (not including cost of land) \$ 350,000.
4. Project height: Maximum height of structure (ft.) Existing height to remain - 23'-1"
- above existing (natural) grade ✓
 - above finished grade
 - as measured from centerline of frontage road
5. Total number of floors in structure, including subterranean floors, lofts, and mezzanines 2 floors
6. Gross floor area excluding parking (sq.ft.) 9,276 S.F. restaurant & retail
- Gross floor area including covered parking and accessory buildings (sq.ft.) 12,221 S.F.
7. Lot area (within property lines) (sq.ft. or acre) 13,368 S.F.

Please see sheet T1.1 of Architectural Plans for breakdown of project & site square footages.

Lot coverage:	Existing (sq.ft. or acre)	New proposed (sq.ft. or acre)	Total (sq.ft. or acre)
Building	4,895 S.F.	1,895 S.F.	6,790 S.F.
Paved area	8,430 S.F.	0	8,430 S.F.
Landscaped area	0	43 S.F.	43 S.F.
Unimproved area	—	—	
Grand Total (should equal lot area as shown in #7 above)			15,263 (deck over parking)

8. Is any grading proposed? ☐ Yes ☒ No

If yes, complete the following:			
a) Amount of cut	cu. yds.	d) Maximum height of cut slope	ft.
b) Amount of fill	cu. yds.	e) Maximum height of fill slope	ft.
c) Amount of import or export (circle which)	cu. yds.	f) Location of borrow or disposal site	

Grading, drainage, and erosion control plans must be included with this application, if applicable. In certain areas, an engineering geology report must also be included. See page 7, items # 7 and 11.

Please list any geologic or other technical reports of which you are aware that apply to this property:

none

9. Parking:

b. Will any existing structures be demolished? ☐ Yes ☒ No

Will any existing structures be removed? ☐ Yes ☒ No

If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable.

2. Is the proposed development to be governed by any Development Agreement?..... ☐ Yes ☒ No

3. Has any application for development on this site including any subdivision been submitted previously to the California Coastal Zone Conservation Commission or the Coastal Commission? ☐ Yes ☒ No

If yes, state previous application number(s) _____

4. a. Is the development between the first public road and the sea (including lagoons, bays, and other bodies of water connected to the sea) ☒ Yes ☐ No

b. If yes, is public access to the shoreline and along the coast currently available on the site or near the site? ☒ Yes ☐ No

If yes, indicate the location and nature of the access, including the distance from the project site, if applicable.

Public access to the Beach is along Ocean Boulevard,
the Boardwalk, Grand Avenue and through the
Project's parking lot

c. Will the project have an effect on public access to and along the shoreline, either directly or indirectly (e.g., removing parking used for access to the beach)? ☐ Yes ☒ No

If yes, describe the effect

- b. Park, beach, or recreation area ☒ Yes ☐ No
- c. Harbor area ☐ Yes ☒ No
11. Does the site contain any: (If yes to any of the following, please explain on an attached sheet.)
- a. Historic resources ☐ Yes ☒ No
- b. Archaeological resources ☐ Yes ☒ No
- c. Paleontological resources ☐ Yes ☒ No
12. Where a stream or spring is to be diverted, provide the following information:
- Estimated streamflow or spring yield (gpm) _____
- If well is to be used, existing yield (gpm) _____
- If water source is on adjacent property, attach Division of Water Rights approval and property owner's approval.

SECTION IV. REQUIRED ATTACHMENTS

The following items must be submitted with this form as part of the application.

1. **Proof of the applicant's legal interest in the property.** A copy of any of the following will be acceptable: current tax bill, recorded deed, lease, easement, or current policy of title insurance. Preliminary title reports will not be accepted for this purpose. Documentation reflecting intent to purchase such as a signed Offer to Purchase along with a receipt of deposit or signed final escrow document is also acceptable, but in such a case, issuance of the permit may be contingent on submission of evidence satisfactory to the Executive Director that the sale has been completed.

The identity of all persons or entities which have an ownership interest in the property superior to that of the applicant must be provided.
2. **Assessor's parcel map(s)** showing the page number, the applicant's property, and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor.)
3. Copies of required **local approvals** for the proposed project, including zoning variances, use permits, etc., as noted on Local Agency Review Form, Appendix B. Appendix B must be completed and signed by the local government in whose jurisdiction the project site is located.
4. **Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same.** The envelopes must be plain (i.e., no return address), and regular business size (9 1/2" x 4 1/8"). Include first class postage on each one. **Metered postage is not acceptable.** Use Appendix C, attached, for the listing of names and addresses. (Alternate notice provisions may be employed at the discretion of the District Director under extraordinary circumstances.)

preliminary title reports, land surveys, legal descriptions, subordination agreements, and other outside agreements will be required prior to issuance of the permit.

In addition, the Commission may adopt or amend regulations affecting the issuance of coastal development permits. If you would like notice of such proposals during the pendency of this application, if such proposals are reasonably related to this application, indicate that desire.

☒ Yes ☐ No

SECTION VI. COMMUNICATION WITH COMMISSIONERS

Decisions of the Coastal Commission must be made on the basis of information in the public record available to all commissioners and the public. Permit applicants and interested parties and their representatives may contact individual commissioners to discuss permit matters outside the public hearing (an "ex parte" communication). However, the commissioner must provide a complete description of the communication either in writing prior to the hearing or at the public hearing, to assure that such communication does not jeopardize the fairness of the hearing or potentially result in invalidation of the Commission's decision by a court. Any written material sent to a commissioner should also be sent to the commission's office in San Francisco and the appropriate district office for inclusion in the public record and distribution to other commissioners.

SECTION VII. CERTIFICATION

1. I hereby certify that I, or my authorized representative, have completed and posted or will post the **Notice of Pending Permit** card in a conspicuous place on the property within three days of submitting the application to the Commission office.
2. I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attached appendices and exhibits is complete and correct. I understand that the failure to provide any requested information or any misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Commission.
3. I hereby authorize representatives of the California Coastal Commission to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 A.M. and 5:00 P.M.

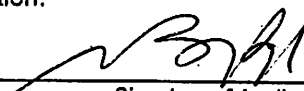


Signature of Authorized Agent(s) or if no agent, signature of Applicant

NOTE: IF SIGNED ABOVE BY AGENT, APPLICANT MUST SIGN BELOW.

SECTION VIII. AUTHORIZATION OF AGENT

I hereby authorize MARK LYNN to act as my representative
and to bind me in all matters concerning this application.



Signature of Applicant(s)

(Only the applicant(s) may sign here to authorize an agent)

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner from voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify himself or herself from voting on the project.

Each applicant must declare below whether any such contributions have been made to any of the listed Commissioners or Alternates (see last page).

CHECK ONE



The applicants, their agents, employees, family and/or any person with a financial interest in the project **have not contributed** over \$250 to any Commissioner(s) or Alternate(s) within the past year.



The applicants, their agents, employees, family, and/or any person with a financial interest in the project **have contributed** over \$250 to the Commissioner(s) or Alternate(s) listed below within the past year.

Commissioner or Alternate _____

Commissioner or Alternate _____

Commissioner or Alternate _____



Signature of Applicant or Authorized Agent

Date

Please type or print your name _____

Exhibit B







Exhibit C

Jason P. Williams*
Thomas W. Palecek

Of Counsel
David O'Mara**

*Licensed in CA & NV
**Licensed in NV

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JASON P. WILLIAMS

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January 28, 2015

Jerry Hemme, Esq.
Goode, Hemme, Peterson, APC
6256 Greenwich Drive, Suite 500
San Diego, CA 92122
Email: jhemme@sandiegoattorney.com

Sent Via Email Only

**Re: Wave Original Sublease
4315 – 4343 Ocean Boulevard, San Diego, CA**

Dear Mr. Hemme:

It was a pleasure speaking with you moments ago. As we discussed, after seeking clarification from the California Coastal Commission, your client will be able to retain four (4) reserved parking spots for his business. However, your client's use of the reserved parking spots must comply with all local, state and federal laws, regulations and ordinances as required under the Lease Agreement between our clients. **In doing so, your client's reserved spots must be used exclusively for patrons of his business and cannot be allocated for use by the general public. In addition, your client may not charge any money for the use of his reserved spots as doing so requires a permit from the California Coastal Commission and is subject to enforcement under the provisions of Chapter 9 of the Coastal Act.** I have attached excerpts from the Coastal Commission report that my client received outlining these restrictions and the reasoning behind them. These restrictions are not, in any way, related to my client's construction of a patio. These restrictions have always been in place and were only brought to the attention of my client during its recent dealings with the California Coastal Commission.

In order to accommodate your client, and reduce any potential interference with the use and enjoyment of his parking spots, your client's parking spots will be relocated to a different location within the parking lot. Specifically, it is my understanding that your client's parking spots will be relocated closer to the alley. The relocation of your client's parking spots will reduce the impact, if any, his parking spots may incur during the construction of the patio by the PB Shore Club in the short term, and further reduce any impact his parking spots may incur once the PB Shore Club is forced to implement valet parking at the property. You will find the valet parking requirement within the attached excerpts of the Coastal Commission report. In relocating your client's parking spots, my client will pay for, and install, new signs designating the parking spots as reserved for your client. The objective of moving your client's parking spots is to reduce any impact your client's parking spots may incur from the other businesses at

Jerry Hemme, Esq.
Re: Wave Original Sublease
January 28, 2015
Page 2

the property and to accommodate the revised parking lot plan required under the American with Disabilities Act (ADA). I propose that your client meet with Doug Sodomowicz to go over the specifics of where the parking spots will be relocated and the installation of the signage designating said parking spots.

Lastly, during the renovation of the PB Shore Club and the construction of the patio, my client will require access to your client's business for the installation of fire sprinklers. My client is seeking clarification from their contractors as to when this may occur and how long this will take. Once my client has further information in regards to the installation of the fire sprinklers, my client will discuss the same with your client in order to devise a mutually agreed upon plan as to how the installation of the fire sprinklers will occur.

I believe the foregoing addresses any concerns that your client may have previously had. If you need any further clarification or information on this issue, please feel free to contact me.

Thank you for your cooperation in this matter.

Sincerely,

LAW OFFICES OF JASON P. WILLIAMS

//ss// Thomas Palecek

Tom Palecek

ec: clients.

Exhibit D

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JERRY HEMME
MANAGING PARTNER

6256 GREENWICH DRIVE, SUITE 500
SAN DIEGO, CALIFORNIA 92122

TELEPHONE
858.587.3555

EMAIL ADDRESS
JHEMME@SANDIEGOATTORNEY.COM

WWW.SANDIEGOATTORNEY.COM

FACSIMILE
858.587.3545

February 2, 2015

VIA U.S. MAIL

Dr. Charles Lester, Executive Director
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

VIA EMAIL AND U.S. MAIL

Ms. Sherilyn Sarb, Deputy Director
South Coast District Office
California Coastal Commission
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4421

Re: REQUEST FOR REVOCATION
CDP No. 6-12-061
Permit Applicant – Grand & Strand LLC

Dear Dr. Lester and Ms. Sarb:

I represent Wave Original, Inc. which is a tenant at the property that is the subject of the above referenced Permit. We understand that the San Diegans for Responsible Planning have submitted a Request for Revocation of the Permit based in large part on the terms of my client's sublease. We were requested to provide you with the current status of my client's sublease:

1. The Sublease and the two lease amendments attached to the Request for Revocation remain in full force and effect.
2. The Sublessor, 4343 LLC, has confirmed to us in writing that it will continue to maintain four reserved parking spaces for my client's business after the completion of the improvements which are the subject of the Permit. We presently have dispute over the location of the four spaces. My client would like to keep the four spaces in the location it has had for seven years; the Sublessor has relocated the four spaces to another area of the parking lot.
3. The Sublease provides that my client can rent its parking spaces. The Sublessor has demanded that my client stop renting the spaces unless it

February 2, 2015

Page 2

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obtains a permit from the California Coastal Commission. My client has
ceased renting its spaces.

If you need further information regarding my clients' lease, please do not hesitate to
contact me.

Sincerely yours,



Jerry D. Hemme

JDH/tr

pc: Elad Shasho
Kevin Johnson, Esq.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W14a

Staff: A. Llerandi-SD
Staff Report: 9/17/14
Hearing Date: 10/8-10/14

REVISED CONDITIONS AND FINDINGS

Application No.: 6-12-061

Applicant: Grand & Strand, LLC

Agent: Architect Mark D. Lyon, Inc.

Location: 4315 Ocean Boulevard, Pacific Beach, San Diego,
San Diego County (APN No. 423-111-1600)

Project Description: Construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage at an existing mixed-use building.

Staff Recommendation: Approval with Conditions

STAFF NOTES

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on July 11, 2013. In its action, the Commission approved the permit with the addition of Special Condition No. 4, which requires a Transportation Demand Management program that includes implementation of an on-site valet parking program and installation of additional bicycle racks. The amended motion begins on Page 4. The addition of Special Condition No. 4 begins on Page 5. Findings to support this modification can be found starting on Page 10.

Commissioners on Prevailing Side: Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, and Zimmer, and Chair Shallenberger

The Commission originally approved these revised findings on February 13, 2014. The San Diego Superior Court has directed the Commission to hold a new public hearing on

EXHIBIT NO. 5**APPLICATION NO.
6-12-061-REV****Revised Findings****Staff Report**

the revised findings because the Commission did not provide adequate public notice for the original hearing on the revised findings.

SUMMARY OF COMMISSION ACTION **SUMMARY OF STAFF RECOMMENDATION**

~~Staff is recommending approval of this project, with conditions.~~ The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the adjacent parking lot. The project site is the PB Shore Club bar and restaurant, an existing restaurant in a two-story mixed-use building (with first floor visitor commercial retail), located at the corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The proposed project raises issues of intensity of use and parking, visual impacts, biological resource impacts, and community character. Intensity of use and parking issues arise due to potential for increased dining space to affect traffic and parking in the surrounding area. Visual resource issues arise due to project site's proximity to the beach and the fact that the proposed dining patio will obstruct some ocean views from a public alleyway. Biological resource issues arise due to the risk of bird-strike from the placement of glass paneling in a previously unobstructed visual area. Community character issues arise from the expansion of late-night dining in a popular and developed tourist area.

~~Recommended-~~ Special conditions include requiring the applicant to adhere to final construction plans so as limit impacts to views and birds, and timely adherence to permit conditions so as to remove the unpermitted development and mitigate impacts to public access, and implementation of a Transportation Demand Management program to maximize utilization of the on-site parking lot through use of an on-site valet parking program during peak use periods and installation of additional bicycle racks. The Commission added the condition requiring the furnishing of on-site valet parking in recognition of the location of the subject property adjacent to a popular beach and boardwalk area and the fact that maximizing on-site parking efficiency would help address potential parking impacts to the surrounding area.

~~Commission staff recommends approval of coastal development permit amendment 6-12-061, as conditioned.~~

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Aerial View

Exhibit 3 – Current Site Photo

Exhibit 4 – Rendering of Rear Patio

Exhibit 5 – Rendering of Front Patio

Exhibit 6 – Transcript of July 13, 2013 Hearing

I. MOTION AND RESOLUTION

Motion:

I move that the Commission adopt the revised findings in support of the Commission's action on July 11, 2013, concerning approval of Coastal Development Permit No. 6-13-061.

Staff recommends a **YES** vote. Passage of this motion will result in adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members of the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Bochco, Brennan, Garcia, Kinsey, McClure, Mitchell, Vargas, Zimmer, and Chair Shallenberger

Resolution:

*The Commission hereby adopts the revised findings set forth below for **Coastal Development Permit No. 6-12-061** on the ground that the findings support the Commission's decision made on July 11, 2013, and accurately reflect the reasons for it.*

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 6-12-061 pursuant to staff recommendation.*

~~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:

~~*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. 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

This permit is granted subject to the following 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 applicant 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 of 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

The permit is subject to the following conditions:

1. **Final Plans.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final project and BMP plans. Said plans shall be in substantial conformance with the plans drafted by Architect Mark D. Lyon, Inc. and submitted by Justine Nielson on May 17, 2013.

The permittee shall undertake the development in accordance with the approved 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. **Condition Compliance.** WITHIN 60 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions of the subject permit that the applicant is required to satisfy prior to issuance of this permit.

3. **Automated Payment Machine Condition Compliance.** WITHIN 30 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence that all unpermitted existing pay machine(s) and related signage have been removed. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
4. **Transportation Demand Management (TDM) Program.** PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit a Transportation Demand Management Program to the Executive Director for review and written approval. Said program shall include, at a minimum, the following provisions:
 - a. Provision of on-site valet service that will facilitate maximum parking efficiency while not deterring use of on-site parking by patrons, subject to a plan that has been reviewed and approved by the City of San Diego;
 - b. Provision of on-site bike racks available to the general public.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY.

The proposed project is to construct a 1,895 square foot second-floor outdoor dining patio with glass siding and removal of an unpermitted automated payment machine and signage from the on-site parking lot. The project site is the PB Shore Club bar and restaurant, an existing 4,456 square foot restaurant in a two-story, 23'1" high mixed-use building, with the restaurant situated on the second floor and a 3,283 square foot visitor retail business on the first floor. Adjacent to the mixed-use building on the same lot is a small, one story, 391 square foot visitor commercial beach equipment rental business. The proposed second-floor dining patio would be located outside of and connected to the restaurant on the south while being supported by ground-floor columns. The subject lot is located at the southeast corner of Ocean Boulevard and Grand Avenue, adjacent to the Pacific Beach boardwalk and beach.

The PB Shore Club is located in Pacific Beach, a popular beach community within the City of San Diego, just a few blocks west of Mission Boulevard, the main north-south coastal access route through this area. Adjacent to the PB Shore Club is the Pacific Beach boardwalk and the sandy beach. These areas are popular destinations with both locals and tourists, and during the summer tourist season the volume of usage of the area is very high, with bikers and pedestrians passing through the area in addition to drivers parking nearby or unloading passengers. The San Diego Lifeguard Services have a regional station building located across the boardwalk from PB Shore Club from which they organize their patrols, monitor the beach, and provide medical services. Due to its location, the PB Shore Club is a high priority visitor serving use on an oceanfronting site adjacent to the beach and a popular tourist destination, and consistently sees high public usage throughout the year.

The project site is located in an area of original jurisdiction of the Coastal Commission, as such, the standard of review for the proposed development is Chapter 3 of the Coastal Act, with the City of San Diego's certified LCP used as guidance.

B. PUBLIC ACCESS/PARKING.

The following Coastal Act policies are most pertinent to this issue, and state in part:

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 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

[...]

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

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.

[...]

Section 30604 of the Coastal Act states, in part:

[...]

- (c) *Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).*

The PB Shore Club is located at the corner of Grand Avenue and Ocean Boulevard, where Grand Avenue ends at the Pacific Beach boardwalk and life guard station. The area is used heavily by the public, both local and tourist, for beach access and viewing.

High volumes of pedestrians, bikers, skate boarders, and vehicles come to the area to either pass through, visit the beach, or to drop off/pick up passengers. Public space and public parking are at a premium, with demand usually outstripping supply.

Additionally, the Pacific Beach area in general has long experienced issues related to providing sufficient parking to both public and private uses. Many businesses in the Pacific Beach area are previously conforming regarding parking ratios, and some rent spaces from nearby businesses that have excess parking, though the opportunities for that are rare. The surrounding residential streets experience high levels of visitor parking as people either cannot find parking by the beach or wish to avoid paid parking, and thus park in front of the homes and walk to the beach area.

The Pacific Beach Community Plan, the certified LUP for the area, general identifies the area within three blocks of the water, which includes the project site, as being within the “Beach Impact Area” (BIA) of the City of San Diego’s certified LCP. The City’s LCP in turn defines the BIA as being part of the Parking Impact Overlay Zone, which is designed to provide supplemental parking regulations for specified coastal, beach, and campus areas that have parking impacts. The project site is also located within the certified LCP’s Transit Overlay Zone, the purpose of which is to provide supplemental parking regulations for areas receiving high levels of transit service.

The Pacific Beach Community Plan has several provisions allowing alternative parking ratios for development located within transit oriented areas. The Community Plan states that for development in the coastal zone, development shall provide parking in accordance with Appendix I of this plan, unless developed as a transit-oriented development through a discretionary process. The Community Plan goes on to delineate some of the standards that signify a transit-oriented development, including, but not limited to: minimizing building setbacks, bringing buildings close to sidewalks; located parking to the rear of lots, off of the alleys; articulate building facades to provide variety and interest through arcades, porches, bays, and particularly balconies, which minimize a walled effect and promote activity on the street; promote activity on balconies through such means as outdoor seating for restaurants, orient primary commercial building entrances to the pedestrian-oriented street, as opposed to parking lots, provide bicycle racks, etc. The existing and proposed development contains a majority of these features and thus promotes a pedestrian and transit-oriented character.

Currently, the project site has 29 off-street parking spaces located in an on-site parking lot for use by the patrons of the mixed use building and neighboring commercial beach rental business located in the adjacent parking lot. These 29 parking spaces currently meet and exceed the certified LCP’s parking requirements and thus are not non-conforming. Due to the placement of support structures for the second floor outdoor patio and bringing the parking lot up to compliance with the Americans with Disabilities Act, the total number of parking spaces will drop from 29 to 26 upon completion of the project. These spaces serve the mixed-use building containing the PB Shore Club and first-floor retail as well as a separate beach equipment rental store also located on the lot.

Currently the mixed-use building has 4,456 square feet of restaurant use (the PB Shore Club) and 3,283 square feet of retail. The separate beach equipment rental store is 391 square feet. The City's Land Development Code, the certified IP for its LCP, lists the parking ratios required of non-residential uses in Section 142.0530. Table 142-05D of that section establishes the required ratios for retail sales, commercial service, and mixed-use developments in a single structure that include an allowed use from at least two of the following categories: retail sales, commercial services, and offices. The project site is zoned as CV-1-2 (Commercial Visitor), which, in the Transit Overlay Zone, has a required parking ratio of 2.1 parking spaces for every 1,000 square feet of floor area in a mixed-used building. Applying the regulatory ratio to the existing square footage, the existing development is required to provide 17 parking spaces, while the proposed square footage of the outdoor dining patio will require an additional 4 parking spaces, for a total of 21 parking spaces. This number is below the 26 spaces the applicant will offer once the proposed development is completed. Thus, adequate on-site parking will be provided for the proposed development.

While the subject property has an on-site parking lot with sufficient parking to support the proposed development under the certified LCP, the popularity of the Pacific Beach community with beachgoers and other visitors highlights the need to ensure that parking impacts to the surrounding area are minimized and alternative transportation options are encouraged. Valet parking is an effective method for maximizing on-site parking due to the greater parking density and efficiency that can be achieved for a given space under such programs. For example, the valet parking attendants can use the space behind each parking space, which is usually left vacant to permit drivers to back out of the parking space, to park additional cars. Thus, the implementation of such a program, especially for a site located directly adjacent to the beach and boardwalk, during the busiest periods of the weekends, holidays, and summer, would allow the applicant to park more vehicles on site than the proposed 26 parking spaces. In requiring such an on-site valet program, the Commission's intent is to make achieving such parking efficiency a common occurrence and to ensure the valet parking program is structured in such a way, in regards to cost and timing, as to not deter patrons from making use of it. For example, while the Commission believes the use of valet parking can maximize parking supply, fees for valet parking can also deter patrons from utilizing the on-site parking and thus lead to off-site parking impacts.

Additionally, because the community of Pacific Beach is relatively flat and the subject property is located adjacent to the boardwalk and close to local transit, biking is already a popular method of travel for visitors and residents alike. Currently, public bike racks exist in the local surrounding area and are heavily used by visitors, sometimes beyond capacity. The provision of additional bike racks on the subject property would further encourage alternative transportation to the subject property and surrounding area.

In addition to meeting applicable parking ratios, the applicant is proposing removal of an unpermitted automated payment machine and related signage from the on-site parking lot. The automated payment machine and signage advertised public beach parking for an hourly rate, regardless of whether the person was patronizing the commercial establishments. In addition to being unpermitted, the applicant was told that such usage

of the on-site parking lot was counter to the intent and requirements of applicable parking ratios. Parking ratios are provided for in land use regulations because various types of development can be anticipated to need various amounts of parking spaces in order to service employees, patrons, and deliveries. Municipalities encourage sufficient off-street parking so as to mitigate traffic and parking impacts to surrounding businesses and residences. When a development sells its parking for purposes other than those related to the permitted business, there is no longer an assurance that the parking needs of the business will be met by the supply of on-site parking. This in turn can lead patrons, employees, and deliveries to then park in public spaces, adding to traffic congestion and displacing members of the public who wish to access the coast and park in free public parking. By removing the unpermitted payment machine and signage, as proposed with this application, these adverse impacts to public access are avoided.

To ensure that the applicant conducts development in a manner consistent with these findings, **Special Condition No. 1** requires the applicant to adhere to final plans that are in substantial conformance with the plans approved by the Commission as part of this application submittal. **Special Condition No. 4** requires the applicant to implement a Traffic Demand Management program that utilizes on-site valet parking and bike racks in a manner that encourages their use by patrons so as to minimize parking impacts to the surrounding community by maximizing on-site placement of vehicles and encouraging alternative methods of transportation.

In summary, the Commission finds the proposed outdoor dining patio and removal of the unpermitted automated payment machine will not result in adverse impacts to coastal access. Parking will remain adequate for approved uses. Therefore, the Commission finds that all access and resource concerns associated solely with development approved herein are adequately addressed, and that the proposed development, as conditioned, is consistent with the cited policies of the Coastal Act.

C. VISUAL RESOURCES/COMMUNITY CHARACTER

Section 30251 of the Act addresses scenic and visual qualities, and states, in part:

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 public views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas...

The PB Shore Club is a second-floor restaurant located in a two-story mixed-use building at the southeast corner of Grand Avenue and Ocean Boulevard. Adjacent to and west of the building is the Pacific Beach boardwalk and the beach beyond. The restaurant itself faces to the west and north, giving patrons inside close and direct views to and along the boardwalk and beach. The purpose of the proposed project is to create a second-floor outdoor dining patio to further expand ocean view dining capacity.

The outdoor patio is proposed to be built in the open space to the south of the mixed use building between the PB Shore Club and the neighboring two-story building (currently a Joe's Crab Shack restaurant), supported by columns over existing ground floor parking spaces. Currently, this area is part of the open air, at-grade parking lot for patrons of the mixed-use building, and provides a 36 foot, seven inch wide view corridor to the beach from the public alleyway to the east of the property. This alleyway is used by the public to walk, bike, or drive through the area while looking for parking or to access some of the restaurants and hotels in the area.

In order to gain local approval for the proposed dining patio, the applicant had to obtain an Alcohol Beverage Control (ABC) license, Condition No. 8 of which prohibits any internal sound system used by the restaurant from being audible 50 feet outside the premises in all directions. As such, the applicant originally proposed installing glass paneling only in the front of the dining patio, to give patrons ocean views, while installing a solid wall in the rear of the patio so as to help meet the ABC license's noise condition. While the Commission may consider noise impacts if noise from the proposed development will have an impact on coastal resources, the Commission's purview of noise impacts does not extend to noise impacts on the human population. In this case, the noise wall is not proposed as mitigation for impacts on coastal resources but rather mitigation for noise impacts on the human population. Thus, the Commission's main concern with the proposed noise wall involves mitigating the wall's impacts on visual resources, not mitigation of noise impacts. Because of the impacts to public views of the ocean, Commission staff held discussions with the applicant to consider alternative designs. Thus, the applicant is now proposing installation of 6-foot high glass panels on a 2-foot high wooden base along the rear of the dining patio, in addition to the glass paneling being installed in the front of the patio. This will mitigate impacts to public visual views by preserving more of the "open sky" view presently available across the premises and lessen the walling off effect on the boardwalk area. Furthermore, the applicant also revised the structural design of the ground floor support columns to utilize stronger, denser (and thus thinner) material so as to allow more see-through across the ground floor parking lot.

In relation to the surrounding community character, this stretch of the Pacific Beach boardwalk, as is almost the entirety of the boardwalk, is fully developed with visitor serving retail, commercial, and lodging of comparative size and scope. In addition to neighboring bars and restaurants, the boardwalk is home to multiple beach cottage rentals, motels, beach equipment rental facilities, retail establishments. The expanded size and make-up of the PB Shore Club after construction of the outdoor dining patio will be similar to other nearby establishments that offer outdoor dining with ocean views.

Special Condition No. 1 ensures the implementation of these mitigating measures by requiring the applicant to submit final plans in substantial conformance with those approved by the Commission in the submitted application. In summary, the Commission finds that the construction of the second-floor outdoor dining patio as proposed will not result in substantial adverse impacts to public views across the site. The use of alternative materials such as glass paneling and denser, thinner support beams will maximize the amount of light and views through the site that can occur. Therefore, the

Commission finds the proposed development, as conditioned, consisted with Chapter 3 of the Coastal Act.

D. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

[...]

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The PB Shore Club is a second-floor restaurant located in a two-story mixed-use building at the southeast corner of Grand Avenue and Ocean Boulevard. Adjacent to and west of the building is the Pacific Beach boardwalk and the beach beyond. The restaurant itself faces to the west and north, giving patrons close and direct views to and along the boardwalk and beach. The purpose of the proposed project is to create a second-floor outdoor dining patio to further expand ocean view dining capacity.

While the beach by the PB Shore Club is not designated as sensitive habitat for any particular bird species, the area does contain a significant number of birds of various types due to the presence of ocean, sand, and food – man-made or otherwise – in such close proximity. The proposed glass walls and railings at this oceanfront location raise concerns related to the risk of bird strikes to the walls and railings. Glass walls are known to have adverse impacts upon a variety of bird species; birds can strike glass walls, causing their death or stunning them, exposing them to further hazards. Birds strike the glass because they either do not see the glass or there is some type of reflection on the glass that attracts the birds (such as the reflections of trees, bushes, or water). Some type of treatment that reduces the potential for bird strikes is typically required when glass walls are allowed on oceanfront locations.

After discussion with Commission staff, the applicant is now proposing the installation of UV glass along the front and rear of the outdoor dining patio. Because birds are able to see light in the ultraviolet wavelength while humans cannot, the UV glass being proposed has a patterned, UV reflective coating which is visible to birds while invisible to the human eye. This is a superior alternative to other bird strike measures, such as stickers, because it has come to the Commission's attention that stickers have a tendency to fall off from glass walls over time due to exposure to the elements. Furthermore, the use of stickers is difficult for Commission staff to enforce on a consistent basis.

To ensure that the applicant constructs the proposed development in conformance with approved methods, **Special Condition No. 1** requires the applicant to submit and adhere to revised final construction and site plans that are in substantial conformance with Commission-approved plans. Thus, as proposed and conditioned, impacts to water

quality are avoided or mitigated and the proposed project can be found in conformance with the policies of Chapter 3 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without required coastal development permits, including, but not limited to, installation of an automated payment machine and related signage in the on-site parking lot. After discussion with Commission staff, the applicant is now proposing with this application to remove the unpermitted development. To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. 2** requires that the applicant satisfy all conditions of its permit that are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. **Special Condition No. 3** requires that the applicant remove all unpermitted pay machines and related signage within 30 days of Commission action so as to ameliorate the unpermitted parking situation in a timely manner.

Although development occurred prior to the submission of the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on these permit applications does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit.

F. LOCAL COASTAL PLANNING

Section 30604(a) 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, such a finding can be made.


The City of San Diego has a certified LCP and issues permits for development in its area of jurisdiction. However, the subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act as well as with the certified LCP which the Commission uses as guidance in this area. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Pacific Beach community.

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

The City of San Diego is the lead agency for purposes of CEQA review for this project, and the Coastal Commission is a responsible agency. 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 visual 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 consistent with the requirements of the Coastal Act to conform to CEQA.



0 0.25 0.5 miles 1:22,800 1 in = 1900 ft.

SEE 1227 MAP

MAP 1247

SAN DIEGO CO.

1

2

3

SEE 1248 MAP

4

5

6

RAND McNALLY



SEE 1267 MAP

EXHIBIT NO. 1
APPLICATION NO.
6-12-061
Location Map

California Coastal Commission



4315 Ocean Blvd, San Diego, CA 92109, USA

EXHIBIT NO. 2
APPLICATION NO.
6-12-061
Aerial View



EXHIBIT NO. 3
APPLICATION NO.
6-12-061
Current Site Photo



N.T.S.

ED ALLEY VIEW (REAR) REVISED 5/16/2013

EXHIBIT NO. 4
APPLICATION NO.
6-12-061
Rendering of Real



N.T.S.

BOARDWALK VIEW (FRONT) REVISED 5/16/2013

EXHIBIT NO. 5
APPLICATION NO.
6-12-061

Rendering of Front

CALIFORNIA COASTAL COMMISSION

JULY 2013 AGENDA (PARTIAL)
CITY OF VENTURA
CITY HALL - COUNCIL CHAMBERS
501 Poli Street
Ventura, California 93011

July 11, 2013

REPORTER'S TRANSCRIPT OF PROCEEDINGS:

Application No. 6-12-061 (Grand & Strand, LLC, San Diego)
[ADDENDUM] Application of Grand & Strand, LLC to
construct 1,895 sq.ft. second-floor outdoor deck addition
to existing restaurant and remove unpermitted automated
parking payment machine and associated signs, at 4315
Ocean Blvd., Pacific Beach, San Diego, San Diego County.

Reported By: Antonia Sueoka, RPR, CSR No. 9007
(Transcribed From Digital Recording.)



1 VENTURA, CALIFORNIA, JULY 11, 2013

2 - - -

3 MS. SARB: And that takes us to Item 17B, and I
4 do have a PowerPoint on this item, please.

5 This is Permit Number 6-12-61. The applicant is
6 Grand & Strand. There is an addendum that includes
7 several letters of support for this item and a number of
8 letters of opposition, and then there's been some
9 additional letters of support and opposition distributed
10 to you today.

11 This -- slide one shows -- this is the
12 construction of an 1895-square-foot outdoor second-floor
13 dining patio attached to an existing second-floor
14 restaurant known as the PB Shore Club. And this site is
15 located at the boardwalk in Pacific Beach at the terminus
16 of Grand Avenue, which is a major coastal access route.

17 This is a very popular visitor serving
18 destination. The site is designated as Zone CV for
19 commercial visitor/tourist-oriented uses, and, as I said,
20 it's immediately adjacent to the boardwalk and the beach.

21 The existing restaurant is on the left -- this
22 slide is taken from the boardwalk looking east -- is
23 4,456 square feet on the top floor, and there's a
24 3200-square-foot visitor serving retail use on the bottom
25 floor, and there's also a 391-square-foot beach equipment

1 rental business on this site.

2 I'm going to go back to this slide and show that
3 the alley adjacent to the project is here, and then
4 Mission Boulevard is here, and it's a major coastal
5 access route in this area.

6 Again, this is a view looking east where the --
7 the deck will be constructed across here.

8 And this is a view taken from the alley where it
9 shows that the deck will be here. The staff is concerned
10 about maintaining the openness of this area. This is not
11 a white water view, but there is a horizontal view of the
12 ocean here. There is also not a direct view to the ocean
13 from Mission Boulevard, which is further inland of this
14 site. And, again, that is the major coastal access route
15 in this area.

16 This is a view again looking west that shows the
17 rendering of the patio. It's taken from the alley, and
18 you'll see through this opening you can see -- through
19 the open -- well, hold on.

20 Oh, I'm sorry.

21 This is the rendering of the patio, and you'll
22 see the glass paneling that allows the patrons to look
23 out over the beach towards the ocean. This is looking
24 east.

25 And then this is a slide, again, of a rendering

1 looking west from the alley. Working with Commission
2 staff, the applicant replaced the original solid rear
3 wall with glass panels so -- to -- it could preserve more
4 of the open sky view of the corridor and allow more
5 natural light to shine through.

6 The first floor supports where narrowed in width
7 so as to minimize the impacts to see through from the
8 public alley toward -- towards the ocean. And these
9 panels are also proposed with UV reflective coating.
10 This is visible by birds but not by humans, and that's to
11 help prevent bird strikes.

12 Staff is recommending approval of the project
13 with conditions. Again, I draw your attention to the
14 addendum and the letters of opposition. They are
15 primarily due to the type of clientele that is drawn to
16 this beach-front area given the number of successful
17 alcohol-serving restaurants that are there, and from our
18 perspective, this is a priority use of ocean front land.
19 It is consistent with the commercial visitor zoning. Use
20 of alcoholic beverages are not regulated by the
21 Commission.

22 The parking is also raised as a concern, and
23 that was something that was closely reviewed by staff.
24 The City of San Diego LCP provides a transit overlay zone
25 in this area due to the proximity to Mission Boulevard,

1 which is served by transit.

2 The existing mixed-use development meets the
3 criteria for pedestrian orientation to allow the
4 application of the overlay parking standards, which are
5 2.1 spaces for every 1,000 square feet. There is
6 sufficient parking on the site to meet this standard for
7 the existing uses and the proposed deck.

8 In our review, we did discover that the existing
9 parking was being offered for charge to the general
10 public for beach parking. And this photo shows the
11 unpermitted automatic pay machine that's in the on-site
12 parking lot. It's not authorized, and it is being
13 proposed for removal now.

14 The required on-site parking is to serve the
15 demand for the parking for the on-site uses, and that is
16 to prevent the use of the street parking so that that can
17 remain available and open to the general public and beach
18 users. The permit is conditioned to require removal of
19 that payment sheet -- machine within 30 days of approval
20 of the permit.

21 I believe the conditions are acceptable to the
22 applicant, and I'll conclude my comments at this time.

23 CHAIRWOMAN SHALLENBERGER: All right. Thank
24 you.

25 Are there any ex parties on this item?

1 Seeing none, I'll open the public hearing, and
2 call Robin Madaffer. And I believe -- are you speaking
3 on behalf of the applicant? Is that accurate?

4 MS. MADAFFER: Yes, I am.

5 CHAIRWOMAN SHALLENBERGER: All right. And also
6 Barrett Rinzler is here. Is he going to be speaking or
7 just for questions?

8 MS. MADAFFER: Barrett is going to be
9 speaking.

10 CHAIRWOMAN SHALLENBERGER: Okay.

11 MS. MADAFFER: All three owners are here, and
12 they'll all be speaking.

13 CHAIRWOMAN SHALLENBERGER: All right. And how
14 much time would you like altogether?

15 MS. MADAFFER: Oh, altogether? Three, six,
16 nine -- 12 minutes?

17 CHAIRWOMAN SHALLENBERGER: You have 15.

18 MS. MADAFFER: All right. I'll take it.

19 Good morning, again. Robin Madaffer, this time
20 representing the Pacific Beach Shore Club, as we
21 mentioned, who are the owners of -- which are here today.

22 Staff did an excellent job describing what the
23 project is. Next slide, please.

24 So I don't want to spend a whole lot of time on
25 that, except to offer ourselves for any questions

1 specifically. But what is before you today is a coastal
2 permit to construct 1895-square-foot second-floor outdoor
3 dining patio, and -- and this is important for the
4 restaurant because just about every other restaurant in
5 this vicinity has an outdoor patio.

6 Next slide, please.

7 As was mentioned, this is in the heart of PB.
8 That's what we refer to Pacific Beach as in San Diego.
9 And this particular restaurant is at the end of Grand
10 Avenue right really at the heart of PB.

11 Next slide.

12 Consistent with that, the Community Plan land
13 use map, which is the land use planned for this site
14 designates this site, and you can see it's right there in
15 the middle of the visitor serving commercial area.

16 Next slide, please.

17 Parking, obviously there's a -- there's an
18 inconsistency or a -- or a balancing that needs to be
19 done in this particular area. On the one hand, it's in
20 the beach impact overlay zone; on the other hand, it's in
21 the transit area overlay zone. One of those overlay
22 zones wants to protect as much parking as possible, the
23 other one wants to minimize parking because there's
24 access to transit. And because of that, the Community
25 Plan has some standards as to when the mixed-use parking

1 ratios do apply.

2 Next slide, please.

3 This is a mixed-use building, and the reason it
4 is is because the ground floor is retail shops and the
5 top floor is the restaurant. The characteristic of the
6 transit-oriented development and the Pacific Beach
7 Community Plan each one of them applied to this site
8 which justifies the mixed-use parking ratio. There's
9 minimal setbacks. The buildings are very close to the
10 sidewalks. The parking lot is in the rear of the
11 building adjacent to the alley. And, in fact, it's one
12 of the only restaurants in this particular area that has
13 its own parking lot.

14 I think most specifically relative to this
15 particular coastal permit application is that promote
16 activity on balconies through such means as outdoor
17 seating. That is precisely what we're asking to do here
18 today with this -- with this approval.

19 Next slide, please.

20 So the ratio under the Municipal Code for the
21 mixed-use in a transit overlay zone for this type of
22 building would require 21 spaces. What is being
23 provided -- provided with this project is 26 spaces,
24 which is 5 more than what is required. So we think we're
25 balancing these two issues pretty well.

1 Next slide.

2 This is a picture of the PB Shore Club. Again,
3 the top floor is the restaurant, and the bottom floor is
4 the retail space.

5 Next slide.

6 Next slide. Because you've already seen these
7 pictures, next slide.

8 As I mentioned, this is a completely developed
9 area. These are pictures of other restaurants that are
10 in the vicinity, other types of uses in the vicinity, and
11 you can see the outdoor seating areas are commonplace.

12 When people come to PB, they most of the time
13 want to sit outside and have a meal, have a drink,
14 socialize with friends. That's visitors. That's
15 residents. It's just about everybody. It's one of the
16 gathering places, the hearts of the tourism for
17 San Diego.

18 Next slide, please.

19 I want to just talk briefly about the history of
20 the alcohol issue. Obviously we don't believe that this
21 is an issue before you; however, we understand that
22 you've received a lot of correspondence relative to this
23 issue. So we thought we'd give you an overview of how we
24 got here.

25 Uniquely, this ABC license, Alcohol Beverage

1 Control license, was issued in 1940. It's a completely
2 unrestricted license. There are absolutely no conditions
3 on it whatsoever. This area, or this space, has been a
4 restaurant since anyone can remember.

5 In December of 2004, the owners went to the ABC
6 to ask for permission to build the deck, to get the
7 license for the deck in order to start this whole
8 process. The San Diego Police Department protested that
9 license and asked for them to agree to six conditions in
10 order for them to be able to support it. And, in fact,
11 PB Shore Club agreed to 14 conditions, and you can see a
12 few of them there. But those are conditions on their ABC
13 license that if they violated, they get their -- their
14 alcohol permit suspended and subject to revocation.

15 In July 2012, that ABC license was issued for
16 the deck. The -- the consequence of not building the
17 deck would be that they would continue to operate the
18 restaurant under their existing ABC license, which is
19 completely unrestricted and has been since 1940.

20 I think they've shown good faith in agreeing to
21 very specific conditions in order to manage the visual
22 access, the noise, the -- the -- all kinds of issues
23 associated with what -- what happens at the facility.

24 And so based on that, we would hope that you --
25 getting that additional information, we would hope that

1 you would agree that those conditions are adequate. And
2 as was mentioned before, we are in total agreement with
3 all of the conditions that have been proposed by staff,
4 including removal of the parking payment machine. That
5 has actually been turned off and has not been used since
6 about April, I think, and it will be removed as soon as
7 we get back to San Diego.

8 So that's it for me. You can call Doug and --

9 CHAIRWOMAN SHALLENBERGER: Okay.

10 MS. MADAFFER: Again, if you have any questions,
11 I'm here.

12 CHAIRWOMAN SHALLENBERGER: Thank you very much.
13 Whoever would like to come next and just put your name on
14 the record.

15 MR. SONDOMOWICZ: My name is Doug Sandomowicz.
16 I've been the operating partner at Pacific Beach Shore
17 Club since we opened in 2007. I wanted to talk about
18 what PC Shore Club and myself contribute to the community
19 of PB. I have served on the board of directors of
20 Discover PB, the BID for the last three years, and I'm
21 also a member of the Hospitality Task Force, which is a
22 group of bar, restaurant owners, and employees that clean
23 the community, raise money for trash cans, listen to the
24 community concerns, and find solutions.

25 PB Shore Club has been a huge contributor to the

1 community. This past year the community wanted to set --
2 start a farmers' market, but didn't have the funds to
3 start one. We donated the seed money, and it now has
4 doubled the size in the last six months and has been
5 profitable for the community.

6 For the second time in three years, we were told
7 that the "Concerts on the Green," a summer concert series
8 at Kate Sessions Park that attracts several thousand per
9 event didn't have the funds to continue, so we donated
10 about \$5,000 for the second time in three years.

11 This year will be the fourth year in a row that
12 Pacific Beach Shore Club donated \$5,000 towards cardboard
13 trash cans on the beach and bay for the three major
14 holiday weekends: Labor Day, Memorial Day, and Fourth of
15 July.

16 A couple of years ago, the annual Christmas
17 parade was going to be canceled, but we stood up and
18 donated \$10,000 to save the parade for the community.

19 The last five years, our annual golf tournament
20 has raised over \$50,000 for local charities, which of
21 that 10,000 went to the fire station across the street to
22 remodel their kitchen, which is still in the process.

23 Over the last three years, Pacific Beach Shore
24 Club has given away over 10,000 tacos to the four major
25 San Diego Colleges to encourage the RADD Program, which

1 is a state-funded designated driver project.

2 We were also given an award by the state for
3 being the most active business in San Diego supporting
4 designated driver -- designated driving.

5 The list goes on, but I don't want to waste more
6 of your time on this.

7 Please understand that our business is very
8 competitive, and the six closest restaurant/bars to us
9 all have open deck patios. Adding the deck will drive
10 business and be a great experience for tourist and locals
11 alike.

12 Thank you for your time.

13 CHAIRWOMAN SHALLENBERGER: Thank you.

14 MR. RINZLER: Good morning. My name is Barrett
15 Rinzler. I'm the principal owner of the Shore Club.
16 We -- we could have -- we did submit to you quite a few
17 letters in support of us. We didn't want to bore you
18 with the multitudes that we could have if we'd gotten our
19 social media people involved because we think you guys
20 have the idea, but we do have one letter--

21 CHAIRWOMAN SHALLENBERGER: We thank you for
22 that.

23 MR. RINZLER: You're welcome. You're welcome.
24 Yeah. There's like 15,000 of us. So we didn't think
25 that would be appropriate, but --

1 CHAIRWOMAN SHALLENBERGER: No, we genuinely
2 thank you.

3 MR. RINZLER: Okay. No problem.

4 CHAIRWOMAN SHALLENBERGER: Because it's happened
5 to us before.

6 MR. RINZLER: No problem. Okay.

7 I do have one letter I'd like to read that was
8 written by one of our patrons, and I think it kind of
9 illustrates some points of what we do besides offer a
10 restaurant and a bar to the community. So I'd like to
11 just read that for you now.

12 This is from Captain Timothy Collins, U.S.
13 Marine Corp. It says:

14 "I'm writing to you, the California Coastal" --
15 "California Coastal Commission as a resident of Pacific
16 Beach in support of the PB Shore Club expansion. It is
17 not difficult to explain how much this place, quote,
18 'where Grand meets the sand,' and its employees mean to
19 me, my friends, and my family because it is so much more
20 than just a beach bar.

21 "Since opening, the Shore Club and its employees
22 have generously donated their time, space, and money to
23 raise tens of thousands of dollars in support of the
24 San Diego military community, local, and national
25 veterans' causes. Some of these charities include the

1 Veterans Medical Research Foundation, the Travis Manion
2 Foundation, First Marine Division Scholarship Fund, Toys
3 for Tots, Wounded Warrior Project, and the MARSOC
4 Foundation.

5 "Shortly after opening, the Shore Club inquired
6 about which veterans' causes to donate a portion of their
7 profits to from their annual Army/Navy game celebration,
8 and then asked if we could do more if -- by allocating
9 storage space for Toys and Tots donations.

10 "When our Naval Academy classmate and Navy SEAL
11 Lieutenant Dan Snossen lost his legs in Afghanistan, the
12 Shore Club helped raise money for his recovery. When
13 Marine Captain Dan Bartle was killed in Afghanistan in a
14 helicopter crash in 2012, the Shore Club hosted a
15 fund-raiser that earned money -- raised money for his
16 memorial.

17 "The stories of the Shore Club's positive impact
18 on all of us are endless. PB Shore Club is more than
19 just a beach bar. It's a place that our friends and
20 family gather to enjoy best foods, drinks, and sunsets in
21 Southern California. It's also a place for incredible
22 philanthropy, generosity, and patriotism. It's a place
23 where I can bring by best friends, as easy as I can bring
24 my 65-year-old mother or my 89-year-old grandfather, and
25 it's always the first place I bring visitors from out of

1 town.

2 "The expansion will not just increase the
3 capacity, it will also increase the capacity of a venue
4 that we use to raise money for local and national causes
5 and help active duty military and veterans and the
6 friends and family of servicemen wounded or killed in
7 action.

8 "For all these reasons and so many more, I would
9 urge you to approve the Coastal Commission permit to
10 allow the Shore Club deck expansion."

11 Please don't hesitate to call him if you have
12 questions.

13 CHAIRWOMAN SHALLENBERGER: Thank you very
14 much.

15 MR. RINZLER: Thank you.

16 MR. RAMIREZ: Good morning. Commission, thank
17 you for taking the time to listen to us. First, my name
18 is Billy Ramirez. I'm one of the managing partners of
19 the Pacific Beach Shore Club. Not only am I a managing
20 partner, but I'm a local resident of Pacific Beach. I've
21 lived in Pacific Beach for many, many years. I own
22 property down there, and actually am partners in a couple
23 other restaurants in Pacific Beach.

24 I'm not texting anybody. I'm actually taking
25 some notes here.

1 I'm also involved heavily in the community.
2 Being a local resident, I'm very proud to spend my
3 time -- my free time that I have working with on -- I'm
4 actually on the local planning group, Hospitality Task
5 Force, which is a group of bars, restaurants, and other
6 businesses that provide hospitality to visitors and
7 locals.

8 I would like to encourage the committee to --
9 the Commission to grant us our deck, and I appreciate
10 your time.

11 CHAIRWOMAN SHALLENBERGER: Thank you, very much.

12 All right. Does that complete the applicant's
13 presentation?

14 MS. MADAFFER: Yes.

15 CHAIRWOMAN SHALLENBERGER: All right. Thank
16 you.

17 Marcie Beckett, followed by Kathleen Limpet.
18 You will have three minutes a piece.

19 MS. BECKETT: Okay. Could we get 15 minutes
20 like the applicant did?

21 CHAIRWOMAN SHALLENBERGER: No. You get three
22 minutes a piece. That's how we --

23 MS. BECKETT: Okay.

24 CHAIRWOMAN SHALLENBERGER: -- (inaudible).

25 MS. BECKETT: I'm a lifelong Pacific Beach

1 resident. I live six blocks from the PB Shore Club. I'm
2 opposed to this project because of its negative impacts
3 on parking, public access, public safety, and community
4 character. My letter and attachments are in your packet.
5 I just want to highlight a few points.

6 Parking is inadequate and contrary to the
7 Community Plan. Adding this deck will increase occupancy
8 by 126 patrons. That's all day long, all night long.
9 Currently they have a capacity of 186. After the deck is
10 added, they'll have a capacity of 312, which is a
11 68 percent increase, but they will be reducing their
12 parking from 29 spaces to 26. This is contrary to the
13 Community Plan.

14 The PB Community Plan, which is the local
15 coastal land use program that has been approved by you,
16 on Page 34 it says, "No reduced parking, such as shared
17 parking, for mixed-use project in the beach impact area
18 where the PB Shore Club is located."

19 For years the Shore Club has been illegally
20 using their parking spaces for paid public parking. They
21 should not be rewarded for this behavior by allowing them
22 to expand and create more parking demand while providing
23 fewer spaces.

24 The Shore Club is a restaurant that operates
25 like a bar and encourages excessive drinking. Last year

1 they were cited by the ABC for overserving. The kitchen
2 closes at 10 p.m. They used to have beer pong. Now they
3 have goldfish races, daily drink specials, Daisy Duke
4 contest. I gave you that DVD. I hope you watch it.

5 They -- that contest shows two women using a
6 beer bong, women guzzling whiskey out of bottles,
7 dancing. They're not supposed to have dancing. It shows
8 people dancing. You can go on YouTube and find lots of
9 videos of people dancing at Shore Club.

10 By allowing them to expand without providing
11 adequate parking, what is going to happen is that
12 there -- additional patrons, more patrons going into the
13 neighborhoods to park their cars, and when they're
14 finished, they leave the Shore Club inebriated, go into
15 the neighborhoods disturbing the peace in the middle of
16 the night, urinating, vandalizing, driving drunk, putting
17 everybody at risk. It damages community character
18 because we would like to be seen and be a place -- a nice
19 place to live, but you can't do that when you have high
20 crime and the negative impacts from places like Shore
21 Club.

22 This area of the community already has very high
23 crime, and this expansion will make it worse. Your
24 Coastal Act requires you to make your decisions
25 consistent with public safety needs.

1 Community groups have opposed -- opposed this
2 project. In 2009, the Town Council board of directors
3 voted unanimously against it 10 to 0. In 2010, the Town
4 Council general membership voted against it 133 to 89.
5 In 2009, the Planning Group narrowly approved it with the
6 stipulation they keep 29 parking spaces, which they have
7 not. So I urge you to oppose this project. It only is
8 going to make the situation worse in Pacific Beach.

9 CHAIRWOMAN SHALLENBERGER: Thank you.

10 Kathleen Limpet.

11 MS. LIMPET: I have a copy (inaudible) of my
12 comments.

13 Hi, Commissioners. The beaches are a public --

14 CHAIRWOMAN SHALLENBERGER: Your name for the
15 record.

16 MS. LIMPET: Sorry?

17 CHAIRWOMAN SHALLENBERGER: Your name for the
18 record.

19 MS. LIMPET: Oh. Kathleen Limpet.

20 The beaches are a public resource, and the
21 Coastal Commission is the guardian of that resource. The
22 freedom to enjoy the beach is nearly impossible anywhere
23 near the Shore Club. Such operations whose business
24 models promote heavy alcohol consumption result in
25 patrons spilling out onto the boardwalk, streets, and

1 into nearby neighbors after hours of hard drinking from
2 drinking games, bar crawls, and cheap drink specials.
3 The result is a Doppler effect of problems for the
4 community and its residents.

5 Law enforcement, local emergency rooms,
6 emergency personnel, City maintenance, and nonalcohol
7 licensed businesses are left to deal with the crime,
8 assault, DUIs, traffic collisions, vandalism, litter, and
9 vomit.

10 You're the safety net for protecting the urban
11 environment in coastal areas. You can and should stop
12 expansions of abusive businesses in coastal areas from
13 putting the safety of community residents and their
14 ability to enjoy -- enjoy public beaches at further risk.

15 The Shore Club's use of this coastal resource --
16 resource usurps the rights of residents and beach-goers
17 who enjoy the beach in any traditional sense. Patrons
18 use up limited parking otherwise available to
19 beach-goers. Public safety concerns preclude beach-goers
20 and families from enjoying the nearby boardwalk and sand.
21 The cacophony of entertainment, DJs, crowd noise for the
22 Shore Club disturbs nearby residents and beach-goers
23 alike.

24 The California legislature directs Coastal
25 Commission to balance the use of coastal resources to

1 protect, maintain, and enhance and restore the overall
2 quality of the coastal zone environment. How can
3 allowing a noisy, crowded bar to nearly double in size,
4 increase noise, interfere with beach and boardwalk
5 enjoyment and gobble up limited parking fit into this
6 directive?

7 The Shore Club is a poster child for an
8 incompatible use. Their past and current behavior calls
9 for service irresponsible business practices and
10 inability to provide anywhere near the required parking
11 that they need. They're all good reasons to deny this
12 expansion.

13 The bar industry will tell you that the high
14 crime in this area is because of the number of visitors.
15 In fact, the number of violent crimes in Pacific Beach is
16 more than six times that San Diego's top four tourist
17 areas combined.

18 There are hundreds of community residents
19 working to improve the operating standards of alcohol
20 businesses in Pacific Beach. Please don't make their
21 work more difficult by allowing businesses like the Shore
22 Club to expand in a race to the bottom.

23 Please be the independent agency that you were
24 created to be and not rubber-stamp the decisions of other
25 agencies before you including your own. Thank you.

1 CHAIRWOMAN SHALLENBERGER: Thank you.

2 Robert Hall, and then it will be Scott Chipman.

3 MR. HALL: Hi, my name is Robert Hall. Thank
4 you for letting us speak to you today, taking the time to
5 consider this issue.

6 UNIDENTIFIED PERSON: (Inaudible).

7 MR. HALL: Thank you for giving us the time to
8 speak.

9 I'm a regular beach user. I like walking on the
10 beach, on the boardwalk. I like fishing. Two times last
11 summer on weekend afternoons in -- directly in front of
12 the Shore Club, I could hear -- I noticed that the steady
13 dull roar of people's voices. They weren't cheering for
14 a touchdown, or anything like that, just yelling, just
15 constant den of people yelling.

16 Once I was at the water's edge, more than a
17 hundred yards away -- I was fishing, in fact -- and all I
18 could hear was "aah" behind me. Okay?

19 The other time I was walking on the boardwalk
20 with a friend. When I got within 120 feet -- I measured
21 it -- I had to raise my voice to be able to be heard by
22 the person next to me because of the constant dull roar
23 of people yelling inside this bar. The noise detracts
24 from everyone's beach experience.

25 Now, out of town visitors who want to walk the

1 shore, they want to go to Crystal Pier. You saw it on
2 the map up there. If it's after dark, I have friends
3 come from out of town, I say, "We're not going there,"
4 because we're not going to be exposed to the noise, the
5 vulgar language, and the violent crime that occurs
6 directly in the census tract.

7 I'm going to hold this up. You all have this.
8 These are the most dangerous. The most violent crime
9 census tracts in the city are both urban, downtown,
10 homeless, gangs, drugs. This is Pacific Beach right at
11 Number 3. Every year it's in the top three. Every year
12 the community is in top three. This is that census
13 track, just a few blocks around this location.

14 Oh, by the way, the little tiny line you can't
15 see here, that's the average census tract.

16 Now, the mission of the Coastal Commission is to
17 protect, serve, restore, enhance environmental and
18 human-based resources of the California coast and ocean
19 for environmentally sustainable and prudent use by
20 current and future generations.

21 Sustainable and prudent use of the
22 environmentally-based resource means keeping the beach
23 and the ocean accessible for everyone to enjoy. We can't
24 enjoy the beach with more noise, more rowdy behavior by
25 drunken bar patrons. Adding 126 more seats to the bar

1 right on the beach is not consistent.

2 Sustainable and prudent use of human-based
3 resources, meaning ensuring that people -- me, you,
4 tourists, visitors -- of all ages can visit the beach,
5 the boardwalk, the stores, the burger joints, the taco
6 shops, the ice cream shops, and the other businesses in
7 Pacific Beach. Adding 126 more seats to a beach-front
8 bar while reducing the available parking will mean more
9 cars will park off-site or not come to PB because you're
10 going to have less beach -- less space for beach
11 visitors.

12 This project just isn't consistent with the best
13 uses of this coastal area. Thank you.

14 CHAIRWOMAN SHALLENBERGER: Thank you.

15 Scott Chipman. And Joe Weilding is here ceding
16 his time to you; is that accurate?

17 MR. CHIPMAN: Yes. Joe Wilding.

18 CHAIRWOMAN SHALLENBERGER: Oh, Joe Wilding. All
19 right.

20 MR. CHIPMAN: Thank you very much. Scott
21 Chipman, 38-year Pacific Beach resident, four-term PTA
22 president, Local Planning Group member. And I need to
23 say up front, there's been flawed notice. I did not
24 receive notice even though the local Commission admitted
25 that I had been on the list, but never received any

1 notice, and Kathy Limpet never received any notice.

2 There's something very particular about the
3 parking analysis in the Staff Report. Characterizing the
4 Shore Club's retail restaurant/bar and rental shack as
5 mixed-use is inaccurate. Use of the parking ratio table
6 for mixed-use is incorrect because Section 142.0530B
7 trumps "A" when it comes to eating and drinking
8 establishments, and I provided those pages.

9 But in Section B, eating and drinking
10 establishments, Table 142-05E establishes the ratio of
11 required spaces to building floor area in the commercial
12 zones, industrial zones, and planned districts shown for
13 eating and drinking establishments that are the primary
14 use on a premise.

15 The key phrase in Section B is eating and
16 drinking establishments that are the primary use on a
17 premise. Currently the retail is 3674 square feet. The
18 restaurant and bar is 4456, and the addition is 1895
19 square feet. Clearly the primary use is now food and
20 drink and will be even much more so if the deck were to
21 be approved.

22 Two things are important about Section B.
23 First, Section B is intended to trump Section "A" when it
24 comes to eateries. And the words "primary use" describes
25 a combination of uses as in mixed-use. But where an

1 eatery bar is the primary use, you have to use the next
2 table, 142-05E which requires 4.3 spaces per 1,000 square
3 feet, not 2.1 in a CV-1-2 zone.

4 The food and drink primary use is substantially
5 greater than the retail, currently 21 percent greater.
6 With a new deck addition, 73 percent greater. So the
7 existing Shore Club should have a parking requirement of
8 35 spaces when you use that table.

9 The sanity check on this interpretation of the
10 Code is simple. Using the table that the staff applied,
11 any restaurant/bar could put in a little retail, like a
12 gift shop, even smaller, or the size of a single parking
13 space, and that would then allow them to use the
14 mixed-use parking requirement of 2.1 rather than 4.3.

15 If the current calculation were to be approved,
16 it would set a precedent that adding any amount of retail
17 to a food and drink establishment would qualify as
18 mixed-use no matter what the proportion.

19 In food and drink establishments, the primary
20 use must determine the parking requirement. We believe
21 you should be very uncomfortable with the current
22 determination.

23 Now, noise, public access, and public safety.
24 We have provided strong audio and video evidence and
25 community member statements that this establishment

1 diminishes the quality of the environment, including the
2 area of the boardwalk and the nearby beach. Access to a
3 degraded environment is as serious as diminished access.

4 When community members, families, and tourists
5 don't want to be at the beach near a noisy bar scene
6 where their experience is diminished by amplified,
7 unwanted music and crowd noise, then it is similar to
8 reduced access.

9 It's interesting that the applicant emphasized
10 their donations to the community. They are a small
11 payoff. They also contribute crime and noise, and the
12 reasons they focus on their donations is because they
13 know their reputation for the business is a bad one in
14 the community.

15 Police reports provided to you indicate serious
16 noise violations and violent crime at the Shore Club.
17 There were four calls for service on one day,
18 December 10, 2011, prior to 8 p.m., including assault
19 with a deadly weapon, five arrests for drunk in public,
20 and arrests for disturbing the peace with violence, and
21 quoting the responding officer, Pat Vincent,
22 "Outrageously loud music." Because of the other more
23 serious calls, it took an hour for the police to arrive.

24 During that hour and many other hours, the peace
25 and the environment of the nearby beach and boardwalk

1 have been significantly degraded, and these incidents
2 occurred while the applicant for expansion was in place
3 consider -- and being considered, when you would expect
4 the establishment to be on their best behavior.

5 In this census tract, the alcohol-related crime
6 is 22 times the city average and the general crime is 6
7 times.

8 The Coastal Act in Section 30210 includes the
9 provision that Commission decisions shall be consistent
10 with public safety needs. The vast majority of violent
11 crime in this area are assaults or bar fights involving
12 bar patrons on the street or boardwalk. Expanding this
13 establishment would just make it worse. Increasing the
14 patrons, not providing additional parking, expanding the
15 noise, and the drunkenness and crime in this area further
16 discourages the general use of this beach, boardwalk, and
17 coastal area with -- of the public, and with a bar scene
18 atmosphere, it is diametrically opposed to the ideals of
19 the Coastal Act. You should deny the project.

20 And since the applicant brought up the ABC
21 licenses, the donations to the community is a small
22 payoff. Their license conditions are significantly
23 insufficient to protect the community, and after one
24 year, they can apply for variance to those, changes to
25 those conditions. And what happens at midnight when 126

1 patrons need to come indoors, immediately the
2 establishment is overcrowded. That -- those conditions
3 are completely insufficient.

4 CHAIRWOMAN SHALLENBERGER: All right. Thank
5 you.

6 I'll come back to staff for anything you'd like
7 to add.

8 MS. SARB: Thank you, Madam Chair. I just --
9 just would like to reiterate that parking was also the
10 staff's primary concern, and we concurred with the City's
11 analysis of how this particular project is in compliance
12 with the transit overlay zone and the zoning that applies
13 to the property.

14 We did get the revised design to address the
15 views. We are remedying the violation associated with
16 the unauthorized use of the parking fees in the parking
17 lot. This is again a priority use under the Coastal Act.
18 We think it is consistent with the community character in
19 this popular visitor serving destination zone, and we do
20 not identify any adverse impacts that aren't addressed to
21 the conditions of approval. As I said, the Commission
22 does not regulate the use of alcohol.

23 And that concludes my comments.

24 CHAIRWOMAN SHALLENBERGER: All right. Thank
25 you. We'll come back to the Commission.

1 Commissioner Sanchez.

2 COMMISSIONER SANCHEZ: Thank you, Madam Chair.

3 Well, first of all, I spent a lot of time in PB
4 and Mission Beach when I was growing up -- well, after
5 turning 21, and the -- the -- the boardwalk is a
6 wonderful place to be. You get to watch a lot of people,
7 a lot of families, a lot of residents, and the thing is
8 about PB and Mission Beach and our very special beaches
9 in San Diego, a lot of people, a lot of visitors come,
10 and unfortunately there's never ever as far -- and I'm
11 57. It's -- there's never been enough parking. Parking
12 is always gone into the residential areas. I would
13 probably even what? 20, 30 years ago would have to park
14 several blocks into residential, and, you know, you try
15 to make sure that you don't impact residents and be
16 quiet, but certainly parking -- this is a very, very,
17 very popular place, and parking is a premium. Parking is
18 a very, very big concern.

19 A thing that I really like about the way these
20 communities are governed, they have self-government in
21 the sense of being able to have these town councils and
22 make recommendations to the City Council, and so I think
23 it's very, very special that you have this kind of
24 community.

25 I am troubled by the -- you know, and for me

1 it's -- I have to deal with the Coastal Act issues here.
2 In terms of the intensity of use, I don't quite feel that
3 1 -- 126 additional seats, be they bar stools, whatever,
4 that -- that all you get is -- you know, need is four
5 more.

6 I do feel that this parking is going to impact
7 beach access because this parking situation is going to
8 impact beach access in a very -- in a negative way. And,
9 I mean, for able-bodied folks, great, you know, you can
10 walk, you know, you can park a few blocks away, but I'm
11 thinking in terms of families and those who are not able
12 to walk as well that we still do need this.

13 You know, I understand that San Diego is trying
14 to do better in terms of public transit, but they're
15 not -- you know, we're not there yet, especially in these
16 kind of areas where, again, they're very popular, but,
17 you know, you still -- still need to be able to find
18 parking. So I'm -- I am troubled by the -- by the ratios
19 in the Staff Report. Now I have conflicting information
20 that, in fact, it should have been 35 versus 26, which is
21 this going to go from 29 to 26.

22 The -- the visuals I'm bothered by less, but I
23 am in terms of the access. So I'm not sure if I can --
24 that I can support staff's recommendation on this one.
25 Thank you.

1 CHAIRWOMAN SHALLENBERGER: Commissioner Brennan.

2 COMMISSIONER BRENNAN: Thank you, Madam Chair.

3 I, too, have been a frequent visitor to that
4 area. In fact, I think this Commission when we were down
5 in San Diego had dinner not far from there at a
6 restaurant called Saska's I think that doesn't have any
7 parking. It's about, I think, 10, 12 blocks away.

8 Traditionally in that area it's been street
9 parking. Obviously this goes back to the '40s, '50s,
10 '60s. I think even when TD Hayes was a restaurant there,
11 it was a little bit of a concern to always find parking
12 and walking around.

13 Obviously it's starting to become -- well, it's
14 not starting. It has been an entertainment zone for a
15 long time. But what we're hearing here is from the
16 residents, and rightfully so, some major concerns. There
17 are management issues, and I think internally management
18 issues that have to be addressed, and it's not
19 necessarily, in my mind, a Coastal Commission concern.

20 The fact that I think the -- and I'm only
21 talking to this because it's a big part of what I think
22 we look at here, even though we don't consider it, and
23 that is the fact that there's been a lot of police calls,
24 there's been a lot of activity there. I think as we saw
25 earlier, the opportunity for the Police Department to get

1 a nose in the tent on a liquor license is very, very
2 difficult. They can do new licenses and overlays, but
3 all these older licenses according to law are
4 grandfathered in, so they don't have any nose in a tent.
5 The opportunity to get a nose in the tent with this going
6 forward, I think is a huge op -- huge opportunity for the
7 community.

8 And I'm not saying for Pacific Beach. There's
9 numerous communities using exactly this type of a program
10 to be able to deal with some of the alcohol problems that
11 they have. I say that some again in -- I think that
12 perhaps the opportunity to look at it further when it
13 comes back in a year is to maybe put tighter
14 restrictions.

15 They're going to be serving food on that deck.
16 They serve it -- food on that deck 8 o'clock in the
17 morning in the restaurant. There's very few places that
18 you can actually look at the ocean and do that. I can
19 see the deck being an opportunity to do that for visitor
20 serving use, but I think the management issues is really
21 the key.

22 I think their ability to perhaps condition some
23 of this on a maybe a 60/40 ratio, 60 percent food to 40
24 percent liquor. That's what a number of restaurants --
25 that's what a number of communities are doing.

1 Folks are buying a lot of old tired restaurants,
2 are buying restaurants that are, truth of the matter is,
3 there's not an awful lot of money in the food end of it;
4 there's more money in the liquor end of it. So that's
5 where everything ends up going. But there are
6 opportunities to get a nose in the tent and address some
7 of those management issues.

8 Now, getting back to my concern. I think while
9 we have some concern, staff I think is using the City's
10 guidelines. I'm wondering while -- the opportunity to
11 maybe condition this with valet parking hadn't been
12 talked about. The opportunity provides itself to add a
13 lot more parking in that area and perhaps get beyond even
14 just the 35 designated slots, and I'm wondering if we
15 could ask that question of staff if that was con -- some
16 consideration, and perhaps the applicant is willing to
17 take that as a condition.

18 MS. SARB: Thank you, Commissioner Brennan.

19 No, I think it's a good idea. I'm not sure that
20 we have talked to them about that or some of the other
21 transportation demand measures, for instance, that we
22 applied to the Harbor Side Restaurant and the previous
23 permit. So I don't know if you want to get the applicant
24 to the podium and see, you know, if that's something that
25 could be incorporated here, or if it's something that we

1 should delay this project and talk about for future
2 time.

3 COMMISSIONER BRENNAN: Okay. Well, I
4 certainly -- I would be happy to go ahead if they want to
5 look at the valet. That would solve my concern. Some of
6 the other issues about the bikes and transportation
7 management and the employee, I think they're getting
8 a way -- they're finding their way there now because
9 obviously there's -- it's a tough place to go, but
10 perhaps if the applicant was willing to give an answer
11 regarding the valet parking, that might help perhaps the
12 discussion up here on the dais.

13 Madam Chair, (inaudible).

14 CHAIRWOMAN SHALLENBERGER: Would you like them
15 to come forward?

16 COMMISSIONER BRENNAN: Yes. Please.

17 CHAIRWOMAN SHALLENBERGER: And we'll need you to
18 put your name on the record. And, again, this is just
19 not an opportunity to testify again --

20 MS. MADAFFER: I understand.

21 CHAIRWOMAN SHALLENBERGER: -- but to ask --
22 answer the Commissioner's question.

23 MS. MADAFFER: I understand.

24 COMMISSIONER BRENNAN: Yeah. I appreciate you
25 being here.

1 In regards to the valet parking on-site,
2 obviously there's -- we know valet provides huge
3 opportunities to increase parking. I'm wondering if
4 that's a condition you are willing to put on the
5 project.

6 MS. MADAFFER: Commissioner Brennan, Robin
7 Madaffer representing the applicant.

8 It is certainly a condition that we would be
9 willing do look into. We -- we -- obviously we would
10 need to determine the feasibility of providing that
11 additional parking off-site and -- and where exactly
12 people would drop off because that could create other
13 issues. But parking is -- is an issue for us, as well as
14 everybody who visits PB, and so we're certainly willing
15 to explore a condition relative to valet parking.

16 COMMISSIONER BRENNAN: And if I might, just a
17 clarification. You said off-site. I get that,
18 obviously, demand, but I'm wondering on-site.

19 MS. MADAFFER: There's no room for valet parking
20 on-site. Would you -- are you suggesting like double
21 parking people?

22 COMMISSIONER BRENNAN: Yeah. I mean, when you
23 have the keys, that's what valets do. They're able to --
24 I know that from my experience, we've been able to almost
25 double (inaudible).

1 MS. MADAFFER: I think I misunderstood your
2 question now, but now that you say it again, I think I'm
3 understanding. So valet parking on-site so that you
4 could use double parking in order to maximize the space
5 to get more cars there.

6 COMMISSIONER BRENNAN: Right. Because they
7 control the keys and they move the cars in and out,
8 so ...

9 MS. MADAFFER: That seems like it would be a
10 very easy thing for us to do, and we would certainly be
11 willing to do that assuming it was, you know, regulatory
12 and allowed.

13 CHAIRWOMAN SHALLENBERGER: Staff could
14 incorporate.

15 COMMISSIONER BRENNAN: Staff, are you -- ability
16 to perhaps incorporate that into a condition?

17 MS. SARB: We could do that. I think it would
18 have to be reviewed and approved by the City. As she
19 indicated, there could be a drop-off point circulation
20 issue, although there is an alley, so it's quite
21 possible.

22 COMMISSIONER BRENNAN: From my experience --
23 well, again, I'm not a transportation engineer and the
24 legalities of it, but it looks like it has all the
25 trappings of being able to provide the ideal situation.

1 MS. SARB: We could add a condition that the
2 applicant provide valet parking subject to a plan that is
3 reviewed and approved by the City of San Diego.

4 COMMISSIONER BRENNAN: On-site valet parking.
5 That would -- thank you.

6 MS. SARB: On-site valet parking.

7 COMMISSIONER BRENNAN: Thank you.

8 CHAIRWOMAN SHALLENBERGER: Commissioner Zimmer.

9 COMMISSIONER ZIMMER: In listening to the
10 testimony, I, too, was concerned that whether these
11 issues were Coastal Act issues, whether they're issues
12 that the Commission can address. But I -- I have a
13 question for staff and/or counsel here.

14 Section 30212.5 entitled Public Facilities
15 Distribution states, "Wherever appropriate and feasible,
16 public facilities, including parking areas or facilities,
17 shall be distributed throughout an area at" -- "so as to
18 mitigate against the impacts, social and otherwise of
19 overcrowding or overuse by the public of any single
20 area."

21 And so I guess my question to staff and/or
22 counsel is, is this -- does this authorize us to look at
23 these social impacts of overcrowding that has been
24 alleged or the increase in intensity of use of this site?

25 MS. SCHMELTZER: For one, I think as a starting

1 point, I believe this is about public parking facilities,
2 and I'm not sure that a private facility associated with
3 a private business is exactly what is being referred to
4 here that when planning for open public parking areas --
5 public facilities including parking areas, that they
6 would be distributed through an area. So I do think that
7 it's a way to look at social impacts, but I think it's
8 specifically directed at public facilities.

9 MR. LESTER: (Inaudible).

10 COMMISSIONER ZIMMER: Okay.

11 MR. LESTER: Madam Chair, I would also just add
12 that social impacts related to the public access that is
13 being distributed, so --

14 COMMISSIONER ZIMMER: So it's not helpful.

15 Okay.

16 MR. LESTER: -- not necessarily drinking on a
17 deck.

18 COMMISSIONER ZIMMER: Okay.

19 MS. SCHMELTZER: I agree with that.

20 COMMISSIONER ZIMMER: Thank you.

21 So the second question I had, and it may follow
22 on comments that were made earlier is with respect to
23 the -- to the staff's acceptance of the ratios that are
24 in the City's -- is this a fully certified LCP and the
25 ratios are in the implementation plan?

1 Those ratios are based on square footage
2 formulas in terms of additions, and I'm just noticing
3 that -- and I grant you it's a different area, but in the
4 prior application where I asked the question about TDM,
5 the Staff Report seemed to assume from an increase in
6 1,888-square-foot deck that there would be impacts that
7 had to be mitigated; whereas here we're relying strictly
8 on a formula of square footage.

9 And so my question is are we bound by that
10 formula? If they comply with the formula, and we -- if
11 they comply with the formula, can we look further and
12 look at the actual increase in intensity of use of the
13 site which has been described as an increase from up to
14 368 percent increase, so are we free to address that
15 intensity of use increase and impose additional
16 conditions based on that?

17 MS. SARB: I believe the answer would be, yes,
18 if we felt that there was adverse impacts associated with
19 just applying the ratios alone and that -- that we found
20 that there wasn't adequate parking and provide -- or
21 applying the ratios that are in the certified LCP.

22 In this case -- and I'll go back to your other
23 question. The Harbor Side Restaurant in that case, they
24 had no on-site parking at all, and so we felt that, you
25 know, it was clear that any increase was just going to

1 exacerbate an existing bad situation.

2 Here this restaurant does have an on-site
3 parking lot, and according to the transit overlay zone
4 ratios, they have enough parking to serve the demand for
5 the existing and the proposed restaurant addition. So we
6 didn't identify that there was an exacerbation of an
7 existing bad parking situation associated with this
8 addition that would have to be mitigated by either
9 additional parking or whatever other means.

10 COMMISSIONER ZIMMER: Okay. Well, so -- but
11 now it's being suggested that we essentially add
12 conditions related to valet parking. So are we adding
13 those only because the applicant has stated they're
14 willing to accept them, or because we think we can impose
15 them based on a difference of opinion as to whether this
16 increase intensity of use actually does exacerbate the
17 parking issues in the area?

18 MS. SARB: Well, I will say that I think that
19 we -- we can -- can find that any additional parking in
20 this area where parking is impacted will be beneficial,
21 and there is provisions in the Coastal Act to maximize
22 public access to the coast. So there is a basis for
23 supporting the requirement of additional parking in this
24 particular case.

25 COMMISSIONER ZIMMER: Okay. Thank you.

1 CHAIRWOMAN SHALLENBERGER: Commissioner
2 Bochco.

3 COMMISSIONER BOCHCO: Yes, Madam Chair.

4 I find the residents' arguments about
5 interference with access very interesting. I know we
6 don't regulate alcohol, and in some ways we don't even
7 regulate behavior on the beach, but it is an interesting
8 theory, and I would -- I would like to just get your
9 opinion of it as staff that if there is so much negative
10 activity, being whether it be drunken people, urinating
11 people, yelling people, and crime, could that indeed
12 qualify as an interruption of public access because it's
13 made the access to that location of the beach
14 intolerable?

15 It's a question I wanted your opinion on.

16 MR. LESTER: Yes, Commissioner Bochco,
17 generally, you know, we have policies that require us to
18 provide maximum public access consistent with public
19 safety and protection of private property and natural
20 resource areas from overuse. So we -- we do have our
21 mandate qualified by certain also -- also general
22 categories, and from time to time we will get asked to
23 consider restrictions on public access based on certain
24 kinds of social impacts, and we will ask for evidence of
25 those impacts in order to consider the restrictions, most

1 commonly restrictions on parking, such as overnight
2 parking, like in places like Venice.

3 COMMISSIONER BOCHCO: Right.

4 MR. LESTER: And from time to time, the
5 Commission has approved restrictions based on substantial
6 evidence that there's some problem that needs to be
7 addressed, but we're always doing that with a keen eye
8 towards making sure that public access is protected first
9 and foremost appropriately taking into account those
10 other potential impacts.

11 We also have the provision of the Coastal Act
12 that acknowledges and maintains local government's
13 ability to address a nuisance, a validly determined
14 nuisance. And so if that happens to be the case, then we
15 get into the intersection of when a nuisance is declared
16 based on some activity or behavior that might be
17 occurring and whether or not what the local entity is
18 doing to address the nuisances, the minimum amount
19 necessary to address that nuisance. Our position being
20 that going beyond that would then trigger permit
21 requirements under the Coastal Act.

22 So there are mechanisms to provide for that kind
23 of response to potentially adverse or negative social
24 behavior, but it -- it has to be taken into account
25 relative to the restrictions being put in place and their

1 impacts on public access in our view.

2 COMMISSIONER BOCHCO: Okay. Thank you. I
3 appreciate that.

4 I must say that reading these police reports of
5 the one day that the gentleman provided for us is
6 shocking. I mean, it's a terrible situation. So I don't
7 really believe, having considered everything that I've
8 heard and what our Executive Director Lester just said,
9 that we are in a position to deny a permit based upon
10 this kind of activity.

11 I mean, the Coastal Commission is always accused
12 of trying to take too much jurisdiction, and so I don't
13 want to fall into that trap of saying, "Well, we can
14 govern everything that is not really a coastal issue."
15 But if this isn't a nuisance, I don't know what is. I
16 mean -- and I think that's up to the City. And I think
17 nuisance lawsuits -- I'm not familiar, I've never been a
18 part of that kind of thing, but I'm just actually shocked
19 by what is presented here.

20 So I think, you know, the best case, you're not
21 a very good neighbor, and the worst case, you're a
22 nuisance, but I don't think that we can -- well, I don't
23 feel that we can deny the permit on that basis.

24 MR. LESTER: I also just wanted to add and
25 forgot to mention that, you know, there's a law

1 enforcement angle to this often, too. And we aren't a
2 law enforcement agency, and we also try very hard to not
3 have the lack of capacity to do enforcement of certain
4 laws be a reason to restrict public access, which is the
5 Coastal Act objective. So we don't want to see
6 restrictions being used instead of what may be a law
7 enforcement issue, recognizing there are issues there,
8 too, with adequate resources to do that, but we need to
9 be careful not to sacrifice state-wide policies on
10 coastal access when there's inadequate enforcement.

11 CHAIRWOMAN SHALLENBERGER: Commissioner Groom.

12 COMMISSIONER GROOM: Thank you, Madam Chair.

13 I'd like to go back to the parking. With the
14 addition of 1,895 square feet, how many parking spaces
15 does that require?

16 COMMISSIONER ZIMMER: Four.

17 COMMISSIONER GROOM: But I want -- but I want to
18 hear that again.

19 UNIDENTIFIED SPEAKER: Four (inaudible).

20 MS. SARB: Four.

21 COMMISSIONER GROOM: Four.

22 So what is the total parking now?

23 MS. SARB: The total parking outside is 29 and
24 with this project it goes down to 26.

25 COMMISSIONER GROOM: So that was what I was

1 asking. Somehow that math doesn't work for me, that you
2 expand and you get -- end up with less parking places.

3 MS. SARB: Right. But if you apply that transit
4 overlay standard to the square footage of the existing
5 uses, you come up with a requirement of a certain number
6 of parking spaces.

7 COMMISSIONER GROOM: I guess I don't think
8 that's a correct -- I guess I just don't think that's a
9 correct policy, to expand and then be allowed to have
10 fewer parking places. It doesn't make sense to me, but I
11 under -- but those are the facts.

12 As -- the other question that I have is as to
13 the reports that we've received, does this establishment
14 have on-site security?

15 MR. LESTER: Ask someone to come up (inaudible).

16 MS. SARB: That would be a question for the
17 applicant.

18 CHAIRWOMAN SHALLENBERGER: Would you like the
19 applicant to speak?

20 COMMISSIONER GROOM: Yes. Thank you.

21 MS. MADAFFER: Robin Madaffer for the applicant.

22 Commissioner Groom, yes, the project site does
23 have on-site security.

24 I also must clarify your previous question
25 regarding the parking.

1 CHAIRWOMAN SHALLENBERGER: Actually, this is not
2 the time for you to do additional testimony.

3 MS. MADAFFER: But there is a misunderstanding,
4 and I would like for staff to clear up what would be --

5 CHAIRWOMAN SHALLENBERGER: Perhaps --

6 MS. MADAFFER: -- required.

7 CHAIRWOMAN SHALLENBERGER: Perhaps one of the
8 Commissioners would ask you that question.

9 COMMISSIONER GROOM: So there is on-site
10 security.

11 My -- my last question is if we do add a
12 condition on valet parking, but it's subject to the
13 City's approval of that, what happens if we approve this
14 and we wanted the valet, and then the City says, "No, you
15 can't have valet"?

16 MS. SARB: If we make it that they -- that prior
17 to issuance they have to have an approved valet parking
18 program that's approved by the City of San Diego and they
19 can't get that, then they would have to come back for an
20 amendment.

21 COMMISSIONER GROOM: Okay. Thank you.

22 CHAIRWOMAN SHALLENBERGER: Commissioner Garcia.

23 COMMISSIONER GARCIA: Thank you.

24 Just a question, and I didn't see it in the --
25 in the staff Report. And I also, I think, have a

1 question for applicant, if that would ...

2 For the applicant, as far as the property
3 itself, and this is going back to what Commissioner
4 Brennan was talking about with -- with looking at parking
5 and ways of ensuring that there is, you know, obviously
6 access still, what -- what type of bike infrastructure
7 currently is present at the -- at the restaurant?

8 MS. MADAFFER: It's an excellent question.

9 UNIDENTIFIED SPEAKER: Sorry. I need your name
10 again.

11 MS. MADAFFER: Robin Madaffer for the applicant.
12 I understand.

13 Robin Madaffer for the applicant.

14 Commissioner Garcia, this -- this property is in
15 the transit area overlay zone. It's surrounded by public
16 parking, bike racks. There are bike racks immediately
17 across the street, as well as, I believe, very close to
18 the alley.

19 There's also a bus stop on the corner which is,
20 you know, less than a block away that serves three bus
21 routes that connect throughout the city. So there is --
22 there is a lot of alternatives that are consistent with
23 the transit overlay zone which justifies the 21 required
24 parking spaces under the Code, of which we're providing
25 26, which is more than what is required.

1 COMMISSIONER GARCIA: Can I also, for the
2 applicant as well, and maybe this will -- can be, you
3 know, a condition through staff is I do -- I think
4 that's -- that's important and everything, public
5 transit.

6 I think when we look at projects like this,
7 you've got to look at it from really a mobility point of
8 view as well; what are all the other -- what is happening
9 from a -- from a mobility standpoint, whether it's bike
10 infrastructure, public transit, other public -- public
11 parking lots that are in the area. And I would encourage
12 the applicant to not -- I mean, I think public bike racks
13 are great, but you find that establishments, whether it's
14 retail or restaurants, they include bike infrastructure
15 on-site at the restaurant in multiple -- the more bike
16 infrastructure you include on-site, and if you include it
17 in this project, you'll find they will be used and you'll
18 have less people bringing -- taking cars, essentially.
19 So you create multiple spaces for people, and so I would
20 encourage that of the applicant.

21 I don't know that -- if I can -- if staff can
22 make that a condition or not, but I would like to see
23 bike infrastructure included as one of the -- is that
24 possible?

25 CHAIRWOMAN SHALLENBERGER: You perhaps start by

1 asking the applicant if they would accept that.

2 COMMISSIONER GARCIA: Would you accept that?

3 MS. MADAFFER: As a matter of fact, I think once
4 you -- we remove the paid to park space, there will be a
5 space where we could provide bicycle parking spaces. And
6 I'm getting a nod from the owners who are agreeing to
7 that, yes.

8 MS. SARB: Staff could incorporate that into
9 the -- the staff recommendation.

10 COMMISSIONER GARCIA: Thank you.

11 And then -- and this is something just for -- on
12 this item for staff as well. Just in the future, I think
13 when we look at particularly restaurant spaces and retail
14 spaces when we do our conditions and we're looking at the
15 mobility section of recommendations, I think we should
16 always include bike infrastructure as a requirement for
17 any establishment.

18 MS. SARB: I agree.

19 COMMISSIONER GARCIA: Okay. Thank you.

20 CHAIRWOMAN SHALLENBERGER: Commissioner
21 Mitchell.

22 COMMISSIONER MITCHELL: I move that the
23 Commission approve Coastal Development Permit 6-12-061.
24 Pursuant to the Staff recommendation, I recommend a yes
25 vote.

1 COMMISSIONER BRENNAN: Second.

2 CHAIRWOMAN SHALLENBERGER: Move by Commissioner
3 Mitchell, seconded by Commissioner Brennan.

4 Would you like to speak to your motion?

5 COMMISSIONER MITCHELL: Yes.

6 I am also concerned by the issues that the
7 residents have raised and the police reports, but I just
8 don't find this to be our issue. I think it's -- it's
9 sad that the City of San Diego is not addressing this
10 because I think it's a real issue, and I know I was --
11 when I was in San Diego recently, some friends from
12 San Diego were driving me around, and they're like,
13 "Yeah, PB is getting not good anymore," that the -- the
14 crime issues, and they were -- they said, you know, it's
15 not a place that you want to hang out because there is
16 these crime issues, and it's, you know, deteriorated the
17 community.

18 So I understand that, and I think it's a very
19 real issue, but I just don't think that it's our issue,
20 that it needs to be addressed with the, you know,
21 San Diego City Council and the Police Department.

22 So given that -- I also do, though, like the
23 idea of valet parking. I think that works everywhere.
24 It gives people jobs and increases the capacity and
25 everything else. So whatever the resolution on that is I

1 would support, so ...

2 CHAIRWOMAN SHALLENBERGER: Commissioner Brennan,
3 to your second.

4 COMMISSIONER BRENNAN: Briefly. I think I spoke
5 a lot before. I do think that -- I would hope that if
6 this vote does pass, that management that is here today
7 would realize their ability to be a better player.

8 I think certainly when you get into a business,
9 I think 2007, and as I said, it was kind of anything goes
10 there, but I think you have an opportunity to look at
11 managing your business and being a better partner.

12 I heard some great testimonies about the great
13 stuff you do around the community, but this is the
14 community right here that I think you need to focus on
15 and try to make -- be a better player.

16 I think the opportunity for access on this deck
17 to have breakfast in it in the morning and look out I
18 think is a coastal issue that I think I'm very please if
19 this does pass in this regard.

20 I also wanted to let the residents know that
21 somebody who has sitting just in this chair about two
22 years ago just became your Planning Director for the City
23 of San Diego on Monday, and he was very instrumental in
24 working with the community in downtown Ventura on just
25 some of the issues you have. Basically blending

1 restaurants and what -- what could better -- lack of a
2 better word becomes an entertainment zone where you have
3 residents, and we're trying to activate downtowns and do
4 things to get more residents in there, but we're coming
5 up against some of those concerns. So I would encourage
6 you to work through that program, and Mr. Fulton was very
7 instrumental in helping move some of that through this --
8 through this community.

9 I also see that the community of Encinitas, and
10 this is for the operators, I think has put a moratorium
11 and is looking at cracking down on liquor licenses and
12 actually hours of operation. So I think the realization
13 is that you have an opportunity to manage your business
14 and it's not just inside your four walls. It's what --
15 how your business affects outside, and for somebody that
16 held a liquor license almost 25 years, I recognize that
17 it goes beyond the four walls. So I would hope that you
18 can start setting an example, and also in your remodel
19 and clean-up of the building will become much greater
20 part of the community down there.

21 So thank you on both sides for being here,
22 especially for the folks making the trip up from
23 San Diego. Thank you.

24 CHAIRWOMAN SHALLENBERGER: All right. We have a
25 motion before us. The maker and the second are asking

1 for a yes vote. I ask Ms. Miller to please call the
2 role.

3 MS. MILLER: Commissioner Bochco?

4 COMMISSIONER BOCHCO: Yes.

5 MS. MILLER: Bochco, yes.

6 Commissioner Brennan?

7 COMMISSIONER BRENNAN: Yes.

8 MS. MILLER: Brennan, yes.

9 Commissioner Garcia?

10 COMMISSIONER GARCIA: Yes.

11 MS. MILLER: Garcia, yes.

12 Commissioner Groom?

13 COMMISSIONER GROOM: No.

14 MS. MILLER: Groom, no.

15 Commissioner Kinsey?

16 COMMISSIONER KINSEY: Yes.

17 MS. MILLER: Kinsey, yes.

18 Commissioner McClure?

19 COMMISSIONER MCCLURE: Yes.

20 MS. MILLER: McClure, yes.

21 Commissioner Mitchell?

22 COMMISSIONER MITCHELL: Yes.

23 MS. MILLER: Mitchell, yes.

24 Commissioner Sanchez?

25 COMMISSIONER SANCHEZ: No.

1 MS. MILLER: Sanchez, no.

2 Commissioner Vargas?

3 COMMISSIONER VARGAS: Yes.

4 MS. MILLER: Vargas, yes.

5 Commissioner Zimmer?

6 Zimmer yes?

7 COMMISSIONER ZIMMER: Yes.

8 MS. MILLER: Commissioner Shallenberger?

9 CHAIRWOMAN SHALLENBERGER: Yes.

10 MS. MILLER: Shallenberger, yes.

11 The vote is nine yes, two no.

12 CHAIRWOMAN SHALLENBERGER: The project passes as
13 conditioned in the Staff Report and in this hearing.
14 Thank you very much.

15 UNIDENTIFIED MALE SPEAKER: Madam Chairman --
16 Chairwoman, can we ask for the conditions to be repeated?

17 CHAIRWOMAN SHALLENBERGER: You can talk with
18 staff on that, if you would like.

19 COMMISSIONER MITCHELL: Can I ask for
20 the conditions be repeated, because I wanted to be clear
21 what is in them as well so that was clear.

22 CHAIRWOMAN SHALLENBERGER: You may.

23 UNIDENTIFIED WOMAN COMMISSIONER: Seconded.

24 MS. SARB: We'll add a condition that calls for
25 transportation demand measures that include valet parking

1 program on-site that is subject to review and approval by
2 the City of San Diego. If approval is not obtained, that
3 you have to come back as amended -- for an amendment to
4 this permit, so that would come back to you, and also
5 that they have to provide bike racks on-site.

6 CHAIRWOMAN SHALLENBERGER: All right. Project
7 has been approved as conditioned. Thank you.

8 (End of audio recording for Item 17B.)

9 - - -

1 STATE OF CALIFORNIA)
2) SS
3 COUNTY OF SAN DIEGO)

4
5 I, ANTONIA SUEOKA, RPR, CSR No. 9007, certify
6 that the foregoing is a correct transcription from the
7 audible portions of the digital tape-recording.

8 I further certify that I am neither counsel
9 for, related to, nor employed by any of the parties to
10 the action in which this case is pending, and further
11 that I am not financially or otherwise interested in the
12 outcome of the action.

13
14 IN WITNESS THEREOF, I have subscribed my name
15 this 25th day of November, 2013.

16
17
18
19
20 _____
21 Antonia Sueoka, RPR, CSR NO. 9007
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23
24
25