

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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## RECORD PACKET COPY

**Mon 9c**

Filed: January 16, 2002  
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Date of Ext. Req. June 18, 2002  
Length of Ext: 90 days  
Final Date for  
CCC Action: September 16, 2002  
Staff: GDC-SD  
Staff Report: August 22, 2002  
Hearing Date: September 9, 2002

REGULAR CALENDARSTAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-008

Applicant: Charlie's by the Sea

Agent: David Skelly

Description: Construction of public access path, repairs to existing revetment and storm-damaged parking lot, construction of an approximately 250 sq. ft. concrete pad for outdoor dining. In addition, the project includes the request for after-the-fact approval of a roof, an outdoor dining area and approximately 45 tons of rip-rap.

Lot Area	19,500 sq. ft.
Building Coverage	4,030 sq. ft. (21%)
Pavement Coverage	6,290 sq. ft. (32%)
Landscape Coverage	3,300 sq. ft. (17%)
Unimproved Area	5,880 sq. ft. (30%)
Parking Spaces	21 (80 total with Valet service)
Zoning	VSC
Plan Designation	Visitor Serving Commercial

Site: 2526 S. Highway 101, Cardiff, Encinitas, San Diego County.  
APN 261-162-20 and 21

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed development with conditions. The primary coastal issue involved with the proposal is public access along the shoreline. As conditioned, the subject application assures the construction and maintenance of a minimum 8 ft.-wide public access path between the existing restaurant and the rip-rap and assures that the existing rip-rap will be repositioned so as to improve public access opportunities. In addition, before any

outdoor dining is authorized, the applicant must document additional parking is available such that patrons will not usurp public parking spaces. Special conditions of approval include the standard waiver of liability, future maintenance and monitoring of the rip-rap, revised plans, and with documentation of adequate parking.

September 16, 2002 represents the 270 day since the subject application was filed. Therefore, pursuant to the Permit Streamlining Act, the Commission must act on the application at its September hearing.

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Substantive File Documents: Certified City of Encinitas Local Coastal Program; CDP Files #F1183, F2857/Triton, #6-83-165 and #6-85-4/Chart House.

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**I. PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-02-008 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions.**

See attached page.

### III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director final plans for the proposed development that substantially conform with the plans submitted to the Commission, titled "Charlie's By The Sea Restaurant" by Skelly Engineering dated June 12, 2002, but shall be revised to include the following:

- a. The approximately 250 sq. ft. concrete patio addition shall be deleted.
- b. The approximately 4 ft. high retaining wall on the west side of the proposed parking lot repair area shall either be deleted or revised so as not to be higher than 18 inches.
- c. The surface treatment of the 8 ft.-wide public access path shall be permeable so as to permit runoff to filter through the path.
- d. The plan shall document a minimum 10 ft.-wide buffer between the 8 ft.-wide open space easement and the area proposed for outdoor dining in which no restaurant activity such as placement of tables, chairs or equipment shall occur consistent with Exhibit #3 of the staff report.

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

2. Condition Compliance. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3. Storage and Staging Areas/Access Corridors. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final plans indicating the location of access corridors to the construction site and staging areas to the Executive Director for review and written approval. The final plans shall indicate that:

- a. No overnight storage of equipment or materials shall occur on sandy beach or public parking spaces. During the construction stages of the project, the permittee shall not store any construction materials or waste

where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform repairs to the revetment and construct the public access path. Construction equipment shall not be washed on the beach.

- b. Construction access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends or holidays between Memorial Day weekend and Labor Day of any year.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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.

4. State Lands Commission Approval. The applicants shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

5. Other Permits. The permittee shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-06-008. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

6. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee

shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

7. Maintenance Activities and Future Alterations. The permittee shall be responsible for removing or redepositing any debris, rock or material that becomes dislodged after completion of the approved shoreline protection as soon as possible after such displacement occurs. The permittee shall contact the Coastal Commission District Office immediately to determine whether such activities require a coastal development permit.

8. Shoreline Protection Monitoring Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a monitoring plan, prepared by a licensed geologist, or civil or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the performance of the existing revetment and shall include at a minimum:

1. A description of the approved shoreline protection device;
2. A discussion of the goals and objectives of the plan, which shall include maintenance of the revetment to assure its optimum designed performance without adversely affecting surrounding development or coastal resources.
3. Provisions for taking measurements of the reconfigured revetment documenting the location of the toe, sides and elevation of the revetment and the minimal 8 ft.-wide public access path between the existing restaurant and patio areas and the revetment, including identification of exactly where such measurements will be taken, e.g. by reference to benchmarks, survey positions, points shown on an exhibit, etc. and the frequency with which such measurements will be taken;
4. Provisions for submission of "as-built" plans for the repaired revetment and public access path, showing the permitted structures in relation to the existing topography and showing the measurements described in subsection (3) above, within 30 days after completion of construction of the repairs to the revetment and construction of the public access path;
5. Provisions for inspection of the condition of the shoreline protection device by a licensed geologist, or civil or geotechnical engineer, including the scope and frequency of such inspections.
6. Provisions for submittal of a report to the Executive Director of the Coastal Commission by May 1 of every year for the life of the structure that has been prepared by a licensed geologist, or civil or geotechnical engineer. Each monitoring report shall contain the following:

- a. An evaluation of the condition and performance of the approved shoreline protection device, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the device,
- b. All measurements taken in conformance with the approved monitoring plan,
- c. A description of any migration or movement of rock that has occurred on the site, and
- d. Recommendations for repair, maintenance, modifications or other work to the device.

If a monitoring report contains recommendations for repair, maintenance or other work, the permittee shall contact the Coastal Commission District Office to determine whether such work requires a coastal development permit.

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

**9. Parking Plan. PRIOR TO THE OPERATION OF ANY OUTDOOR DINING FACILITIES,** in the area designated for outdoor dining on Exhibit 3 of the staff report, the applicant shall provide documentation for review and written approval of the Executive Director that additional parking is provided to accommodate the additional dining area at a ratio of one space parking space per every 75 sq. ft. of outdoor dining up to a maximum of 440 sq. ft.

**10. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wave run-up and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**11. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director:

(1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Construction of Public Access Improvements. **WITHIN 60 DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant for good cause, the applicant shall complete construction of the 8 ft.-wide public access path that lies between the restaurant and the revetment as consistent with Special Condition #1. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject development involves the construction of a public access path between an existing restaurant and a rip-rap revetment, repairs to the existing rip-rap revetment and storm-damaged parking lot, addition of approximately 250 sq. ft. of concrete patio area seaward of the restaurant to be used for outdoor dining. In addition, the project also includes the request for after-the-fact approval for the addition of an approximately 630 sq. ft. unroofed outdoor dining area located on an existing concrete pad, a hardened roof above approximately 620 sq. ft. of dining area to replace a canvas cover and approximately 45 tons of rip-rap to the existing revetment on site of an existing approximately 5,850 sq. ft. two-story restaurant on an approximately 19,500 sq. ft. beachfront lot.

The unpermitted placement of approximately 45 tons of rip-rap occurred in approximately 1998 following the El Nino storms of 1997-98. The applicant is proposing to remove approximately 10 large riprap stones that lie within an existing public access easement located between the seaward side of the restaurant and an approximately 145 ft.-long rock rip-rap revetment and place a layer of filter fabric on top the underlying stones within the path and cover the path with approximately 8 inches of gravel. The removed rock will be repositioned into the existing revetment. The applicant proposes to repair the existing approximately 145 ft.-long revetment by moving migrated rock onto the revetment and to reshape the slope of the revetment to an angle of 1:1.5 or 1:2. The applicant also proposes to repair a portion of the asphalt parking lot that has been damaged by wave action. The repairs consist of constructing an approximately 4 ft.-high,

8 in. wide, 22 ft.-long retaining wall on the seaward side of the parking lot to support the application of approximately 286 sq. ft. of new asphalt. The applicant's plan indicate that most of the retaining wall will be below-grade with only approximately 6 inches to be above grade.

The Commission has previously reviewed two applications for development at the subject site. In 1974, the Commission approved the construction of a wooden windscreen enclosure with an canvas roof around an approximately 620 sq. ft. outdoor dining area on the southwest corner of the restaurant (F1183/Wood). A permanent hardened roof which currently exists above this approximately 620 sq. ft. dining area was not proposed or approved at the time. In 1983, the Commission approved the partial demolition of the existing restaurant, enlargement of the 12 spaced parking lot to a lot containing 21 spaces, and the addition of an approximately 1,820 sq. ft. second story addition (CDP #6-83-165/Saxten). In addition, the Commission also granted after-the-fact approval for the import of approximately 1,000 tons of rip-rap (approximately 150 rocks) that were placed on the seaward side of the restaurant during the winter of 1982-83 following a series of high tides and storms which damaged the restaurant. The placement of the approximately 1,000 tons of rock was added to an existing rock revetment that predated the Coastal Act.

In approving the approximately 1,000 tons of rip-rap and restaurant expansion, the Commission required that lateral access across the site be secured by an irrevocable offer to dedicate public access seaward of the restaurant, that a 10 ft.-wide public access path seaward of the restaurant be treated to allow continual lateral access along the shoreline between the revetment and the restaurant, that the revetment be surveyed and be designed to protect the existing structures, and that the applicant and all future property owners assume the risks associated with developing at a hazardous site subject to wave and storm action. The stated purpose of the public access easement was to allow for continuous dry land lateral access during periods of high tides or storms. Although the restaurant improvements were all constructed and the access dedication recorded, the applicant did not complete the required access improvements. Today, the revetment, in its current state, inhibits lateral movement across the access easement east of the revetment. The subject application includes a request to formalize an 8 ft.-wide path by removing large rocks from within the area, laying down a filter cloth and infilling with gravel. It should be noted, however, that although the irrevocable offer to dedicate the public access was recorded in November of 1983, unless the access area is assumed by a public or private entity (which to date has not occurred), the offer will expire on November 7, 2004.

The subject oceanfront site is located on the west side of Highway 101 along "Cardiff Restaurant Row" in the City of Encinitas. This section of Highway 101 traverses across the mouth and seaward side of San Elijo Lagoon and contains a series of restaurants on both the seaward and landward sides of the highway. North Cardiff State Beach parking lot is located on the adjacent north side of the subject site.

The proposed development is located within the City of Encinitas which has a certified LCP; however, it is located within the Commission's area of original jurisdiction and as



such, the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

2. Geologic Hazards. Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In addition, Section 30253 of the Coastal Act is applicable and states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject restaurant site fronts Cardiff State Beach on the west side of Highway 101 in the Cardiff community of Encinitas. North Cardiff State Beach day use facility, an approximately 105 spaced parking lot, is located on the north side of the subject site and two similarly sized restaurants are located on the south side of the subject site. An approximately 145 ft.-long rip-rap revetment is located immediately west of the restaurant and extends approximately 30 to 40 ft. seaward. Similar rip-rap fronts the two restaurants to the south of the subject site. While much of the existing rock was installed prior to enactment of the Coastal Act, approximately 1,000 tons of rock was added in approximately 1983 following winter storms. This additional rock was permitted after-the-fact by the Commission in 1983.

Among other things, the subject application includes an after-the-fact request to add approximately 45 tons (approximately 7 to 8 rocks) to the existing revetment. According to the applicant, the 45 tons of rock was added in approximately 1998 to fill voids in the revetment created by the El Nino storms of 1997-98. In addition to the unpermitted placement of 45 tons of rock, the applicant proposes to reposition rocks that have migrated or fallen from the revetment and relocate any large revetment stones that lie within the public access between the restaurant and the revetment. The applicant is not proposing to change or expand the existing footprint of the previously approved revetment, but will reposition the existing rock to a slope of 1 ½ to 1 (vertical/horizontal) to assure a maximum level of protection for the existing restaurant. The repositioning and maintenance of the existing rip-rap is consistent with the maintenance requirements

of CDP #6-83-165/Saxten which authorized the additional approximately 1,000 tons of rock to the pre-Coastal Act revetment structure.

Section 30235 of the Coastal Act requires that shoreline devices only be permitted if they are required to protect existing development and are designed to eliminate or mitigate adverse effects to sand supply. In approving the addition of approximately 1,000 tons of rock to the pre-existing revetment in 1983 (CDP 36-83-165/Saxten), the Commission determined that the revetment was necessary to protect the existing restaurant and that no other feasible alternative was available to provide that protection. The Commission also determined that the revetment pre-existed the Coastal Act and, as such, did not require mitigation for impacts on sand supply. In addition, the Commission determined that a rip-rap revetment was the historical type of shoreline protection used along this approximately 1 mile long stretch of beach. Both the two restaurants located south of the site and portions of South and North Cardiff State Beach facilities contain similar seaward rip-rap structures as well as portions of Highway 101.

While the existing revetment provides substantial protection for the existing restaurant, the applicant's engineer has demonstrated that even with a properly designed and maintained rock revetment, overtopping of the revetment will occur in the future during periods of storm waves such as occur during an El Nino winter, subjecting the existing improvements to threat. Currently there is no dry sand at all (i.e., usable beach) in front of the restaurant except at the lowest tides. In addition, because the revetment is founded entirely on sand, the rock is subject to settling or sinking and must be maintained on an "almost yearly basis, especially when subject to extreme oceanographic conditions." (Letter from Skelly Engineering dated January 15, 2002). The addition of the 45 tons of rock, therefore, is considered to be part of the revetment's ongoing maintenance requirement. However, even with the additional rock and the proposed reconfiguration of the revetment, it will not provide full protection to the existing structures. The applicant acknowledges this and also indicates that a higher revetment or vertical wall would eliminate public views from the restaurant and may require a much larger footprint for the revetment on the beach.

Section 30253 of the Act requires that new development minimize risk to life and property, not lead to erosion or instability to surrounding sites or require the construction of shoreline protective devices. In addition to the after-the-fact approval for the placement of 45 tons of rock on the existing revetment, the applicant is also requesting after-the-fact approval for construction of a hardened roof above an existing approximately 620 sq. ft. of walled dining area, placement of tables and chairs on an approximately 630 sq. ft. outdoor concrete patio area. The project also includes new development including the addition of an approximately 250 sq. ft. concrete patio area for additional outdoor seating, reconstruction of the storm-damaged section of an existing parking lot and the proposal to formalize a public access path between the existing restaurant and the revetment which the Commission previously required with CDP #6-83-165/Saxten.

The applicant acknowledges that the proposed development will be located in an area subject to wave action especially during winter storms and, as such, must assume all

liability associated with the development. Therefore, Special Condition #10 has been attached which requires the applicant and property owner to assume all liability associated with the proposed development. Only with these conditions can the proposed development be found to be consistent with Sections 30235 and 30253 of the Coastal Act.

Although the Commission is not required to approve new development in hazardous areas without such Special Conditions as proposed above, the proposed repair to the parking lot, the roof over the existing walled dining area and the outdoor seating on an existing concrete patio all represent development that does not increase the footprint of the existing restaurant or parking area. Therefore, the hazard associated with the location of these elements does not essentially differ from what currently or previously existed. However, the applicant also proposes to construct a new approximately 250 sq. ft. patio seaward of the existing patio on the northwest corner of restaurant between the restaurant and the rip-rap revetment. The additional patio is proposed to accommodate additional outdoor seating for the restaurant. The additional approximately 250 sq. ft. concrete, therefore, will be subject to threat from waves and the concrete could become loosened and damaged in the future. Any loosened sections of the concrete combined with high waves could cause damage to the existing restaurant or result in debris deposited onto the beach or into ocean waters. Thus, the proposed additional patio area would not only be subject to damage to itself, it could also result in damage to the existing restaurant inconsistent with Section 30253 of the Coastal Act. As such, Special Condition #1 has been attached which requires the applicant to submit revised final plans for the subject development deleting the proposed 250 sq. ft. of additional concrete.

As described previously, the applicant also proposes to reconstruct approximately 286 sq. ft. of the parking lot that was destroyed by wave action during the winter storms of 1997/1998. The plans submitted with the application proposes the construction of an approximately 4 ft.-high, 8 inch-wide 22 ft. long, mostly buried, retaining wall on the west side of the area proposed for repair. Construction of the wall raises questions as to whether the retaining wall would function as a new shoreline protective device which would be inconsistent with Section 30235 of the Coastal Act, since it does not appear to be necessary to protect existing structures and does not mitigate its effect on local sand supplies. The applicant has not provided support for the need for such a substantial wall on the seaward side of the parking lot. Because this structure would be inconsistent with Sections 30235 of the Act, Special Condition #1 requires the applicant to submit revised final plans that eliminates the approximately 4 ft. high retaining wall seaward of the repaired parking lot or that it be revised to not exceed 18 inches in height.

In addition to the after-the-fact placement of the approximately 45 tons of rock, the applicant proposes to reconfigure the revetment back into its original footprint which included a "feathering" design at its northern end to inhibit flanking that results in damage to the subject parking lot and, potentially, to the neighboring State Parks parking lot. If these repairs are performed as designed, the applicant's parking area and property north of the site may be afforded greater protection than currently exists. Therefore, the proposal is consistent with Section 30235 which requires that development minimize the risk to surrounding property.

Finally, the applicant proposes to formalize a public access path between the restaurant and the revetment by removing large rocks lying within the path and installing a filter fabric over the path with overlying gravel or other material. The Commission previously required that the top of the revetment be treated so as to accommodate lateral public access (ref. CDP #6-83-163/Saxten), but the path was not constructed as required and, according to the plans submitted by the applicant, it appears that only about 8 feet of area is currently available between the restaurant and the revetment for the construction of an access path. Such a path would be similar to the 8 ft.-wide public access path approved by the Commission seaward of the two restaurants located immediately adjacent and south of the subject site (CDP #6-85-4/Chart House and F2857/Triton). Therefore, the applicant's proposal to formalize an 8 ft.-wide path conforms to the Commission's intent of providing a public access path between the existing restaurant and the revetment. In addition, the path will be similar to public access paths that exist south of the subject site.

To assure ongoing maintenance occurs and that no additional shoreline protective devices or additional rock be placed at the site without benefit of a coastal development permit, Special Conditions #8 has been attached. This condition requires the applicant to perform a survey of the revetment and easement following the repairs to the revetment and construction of the public access path, monitor the revetment and the public access path on an annual basis to assure it continues to perform as designed and if repairs are necessary to immediately contact the Commission to see whether permits are necessary to perform the repairs. With this condition, the Commission can be assured that the revetment will perform as designed without resulting in adverse impacts to surrounding areas or occupying additional public beach area. In addition, through monitoring and maintenance, the Commission can be assured that the public access path will continue to be provided and unencumbered seaward of the restaurant.

In summary, as conditioned, the proposed development while located in a hazardous area subject to wave action will not require additional shoreline protection other than what currently exists. In addition, the applicant has determined that while the existing revetment does not provide complete protection to the restaurant structure, it is the best alternative for protection in this case. The Commission, in its previous action on the site, recognized the need to protect the existing restaurant from such hazards and found the rip-rap revetment, in this case, consistent with Coastal Act policies. In addition, the applicant does not propose to place any additional rock seaward of the previously approved toe and through the proposed maintenance will provide continuing protection for the subject site. Finally, as conditioned to delete construction of the 4 ft.-high retaining wall seaward of the parking lot and elimination of the approximately 250 sq. ft. patio, new structures in the hazardous area have not been permitted. Therefore, as conditioned, the proposed development is consistent with Section 30235 and 30253 of the Coastal Act.

3. Public Access\Parking. Several policies of the Coastal Act require that new development protect or enhance public access to and along the shoreline. These policies include:

Section 30210

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

Section 30211

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

Section 30212

(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....

Section 30213

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

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The subject application includes the request for after-the-fact approval of the installation of approximately 45 tons of rock, construction of a hardened roof above an existing one-story, approximately 620 sq. ft. of walled dining area and placement of tables and chairs

on an approximately 630 sq. ft. outdoor concrete patio area. In addition, the project also includes the new proposed addition of an approximately 250 sq. ft. concrete patio area for additional outdoor seating, reconstruction of the storm-damaged section of an existing parking lot, a proposal to construct a public access path between the restaurant and the revetment and to reconfigure the revetment to its previously approved state.

The subject site is located on the beach west of Highway 101 in the Cardiff community of Encinitas. While the amount of sandy beach seaward of the restaurant is largely non-existent during most of the year except at very low tides, the ocean fronting the site is heavily used for surfing and other water activities. Adequate vertical access to the beach is currently available at the North Cardiff State Park facility adjacent to the site. In addition beach parking is currently available at the approximately 105-spaced lot at the North Cardiff State Beach Day Use facility. However, Cardiff reef, one of the most surfed spots in San Diego County is located seaward of the State Parks facility. One of the reason Cardiff reef is popular is because according to former longboard champion Joel Tudor, "it breaks almost every day, all year round". Therefore, it is critical that public access at this location not be adversely affected by new development.

In addition to ocean access, public access along the shoreline is a high priority of the Coastal Act. In approving previous development at the subject site and at two sites to the south, the Commission has required recordation of offers to dedicate a north/south directed public access easement be placed on the dry upland area between the existing restaurants and the revetments located seaward of the restaurants (ref. CDP Nos. 6-83-165/Saxten, F2857/Triton, 6-85-4/Chart House). Exhibit #4 identifies the locations of the public access way fronting these three restaurants as depicted in the offers to dedicate. In addition, as can be seen on Exhibit #4, the Commission extended the public access easement area throughout the seaward extent of the subject property including the area occupied by the pre-existing Coastal Act revetment. In 1983, the Commission approved a significant addition of rock to the pre-Coastal Act revetment and a substantial renovation to the restaurant with conditions that also required a public access path on the east side of the revetment be "treated" in some form to assure that a path would be available for use. However, while the applicant added the rock to the revetment and substantially renovated the restaurant, the public access path was not constructed and currently several large rocks lie within the path such that public access is inhibited. The applicant proposes to remove the large rock within an 8-ft.-wide area and install a layer of filter cloth with an approximately 8-inch layer of gravel. In addition, the applicant proposes to construct a topping to the gravel of either low strength concrete or sand. Final design of the path, therefore, has not been completed. Special Condition #1 requires that final plans for the public access path be submitted for review by the Executive Director before final work can commence. To assure that the applicant's proposal to improve the public access path are implemented, Special Condition #12 requires that the applicant complete construction of the proposed 8 ft.-wide public access path that lies between the restaurant and the revetment, consistent with Special Condition 1, within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause.

Although the Commission has previously required the applicant to record a deed restriction on the property with an offer to dedicate an open space easement for public access, other public rights or ownerships may exist at the site. Special Conditions #4, has

been attached requiring the applicant to provide documentation that the State Lands Commission has reviewed the subject development request to make sure public lands are not involved with the project or that any work on public land has been properly authorized. In addition, Special Condition #6 has been attached to notify the applicant and property owner that the Commission's action does not affect any other public rights that might exist on the property.

The proposed formalization of the public access path and the placement of approximately 45 tons of rock within the footprint of the existing revetment will not adversely affect public access to or along the shoreline above what currently exists. In fact, the construction of the public access path will only serve to enhance public access opportunities. In addition, reconfiguration of the revetment will make it tighter and hopefully reduce its footprint which improves public access by making more of the beach available for public use. Therefore, the Commission finds that the addition of approximately 45 tons of rock as maintenance for the existing revetment and the construction of a public access is consistent with the public access provisions of the Coastal Act.

However, because of the high demand for beach and ocean use adjacent to the subject site, it is important that the other elements of the subject development request not result in adverse impacts to the current level of public parking available in the area. As described previously, Cardiff reef is one of the most popular surfing locations in San Diego County. In addition, the west side of Highway 101 at this location contains three popular restaurants (including the subject restaurant) and several other restaurants located across the street on the east side of Highway 101. In fact, the area is known as Cardiff's "restaurant row" and is extremely popular for dining by visitors and locals alike. Most of the restaurants were constructed prior to the Coastal Act and incorporation of the City of Encinitas, such that they do not all currently meet City parking standards. Given the popularity of this area, especially during the summer, parking during many times of the year is very difficult at this location. The concern is that if parking is not available onsite for patrons of the restaurant, patrons would likely use the only available nearby public parking spaces within the North Cardiff State Beach Day Use area. This usurpation of public parking would adversely affect beach and ocean users since it is the only public parking area within close proximity to the beach at this location since street parking along Highway 101 is not available at this site. The three elements of the subject development request that could affect the level of onsite parking for the existing restaurant are the after-the-fact installation of an approximately 630 sq. ft. area of outdoor dining, a request to construct a new approximately 250 sq. ft. area of concrete to accommodate additional outdoor dining, and the reconstruction of an approximately 286 sq. ft. storm-damaged portion of a 21 spaced asphalt parking area.

The existing approximately 5,850 sq. ft. restaurant site includes approximately 6,290 sq. ft. of paved area that can accommodate up to 21 parking spaces. However, the applicant offers a free valet parking service which the applicant contends can accommodate up to 50 cars on site. In addition, the restaurant has leased approximately 30 spaces in a parking lot located on the east side of Highway 101 that is available for the use by the restaurant in the evenings on weekdays after 5:30 p.m. and at all times on weekends. Therefore, the existing approximately 5,850 sq. ft. restaurant has up to 80 spaces

available to serve the restaurant after 5:30 p.m. and on weekends. The parking standards in place by the City of Encinitas require that 1 space be provided for every 75 sq. ft. of restaurant. Using this standard, the existing restaurant requires 78 parking spaces. Therefore, only during the operation of the valet service in the evening hours and on weekends when 80 spaces are available does parking for the existing restaurant conform to City standards.

However, the applicant proposes to add additional outdoor dining areas seaward of the restaurant. City parking standards require that outdoor seating areas be treated comparable to indoor space such that the standard for outdoor dining is also 1 space per 75 sq. ft. As previously discussed, the Commission does not authorize the proposed construction of the approximately 250 sq. ft. of concrete patio area seaward of the restaurant since such new development would be located in a hazardous area and may itself cause future damage to the restaurant or nearby coastal resources. Therefore, the remaining request to increase outdoor dining involves the use of an existing approximately 630 sq. ft. patio area.

A portion of the existing concrete patio lies immediately adjacent to the proposed improved and treated public access path. The placement of tables and chairs immediately adjacent to the public access path may result in conflicts with users of the public access path as patrons of the restaurant move tables or chairs or restaurant staff service the tables. In addition, users of the public access path may feel inhibited by the proximity of the tables and chairs and fail to recognize which areas are available for public uses. Therefore, in order to avoid any potential conflict and to assure the public is not inhibited from using the access path by either physical or psychological barriers, the area for outdoor dining should be located at a reasonable distance from the access path such that a buffer exists between the outdoor dining facilities and the public access path. Based on the applicant's existing site plan, it appears that a buffer extending 10 feet east of the public access path would afford the applicant sufficient space to place tables and chairs, service the patrons and still afford unencumbered access for the public wishing to walk along the public easement path. The remaining usable outdoor patio area would involve approximately 440 sq. ft. of concrete patio area (see Exhibit #3). Based on photographic evidence the approximately 440 sq. ft. of concrete patio area currently (although unpermitted) supports 7 tables with approximately 30 chairs. To address these concerns, Special Condition #1 requires the applicant to submit revised plans that documents an approximately 10 foot buffer between the 8 ft.-wide public access easement and the proposed outdoor dining area consistent with the depiction of authorized outdoor dining on Exhibit #3 of the staff report. However, as discussed below, this permit does not authorize the applicant to operate any outdoor dining facilities until they document adequate parking for the up to 440 sq. ft. of outdoor dining.

Although the remaining approximately 440 sq. ft. of patio area could physically support outdoor dining, the additional dining area should not occur if it will result in adverse effects on public beach parking. Based on City parking standards, the 440 sq. ft. of outdoor dining would require a total of 6 parking spaces. Currently during the weekday before 5:30 p.m. the existing restaurant can only support up to 21 cars in parked spaces or if valet service is used, 50 spaces. However, to conform to current City standards, the existing restaurant would require 78 spaces. Therefore, on weekdays before 5:30 p.m.



the existing restaurant does not have adequate parking on or offsite. Since it is likely that use of the outdoor dining area will occur before 5:30 p.m. during weekdays, the applicant has failed to document the availability of adequate parking to support additional dining areas before 5:30 p.m. weekdays. In addition, since the applicant will require up to 6 parking spaces for the addition of approximately 440 sq. ft. of outdoor dining, the applicant has also failed to demonstrate that an additional 6 spaces are available after 5:30 p.m. weekdays or anytime on the weekends. Therefore, to assure that the proposed expansion of dining area has adequate parking, Special Condition #9 has been attached. Special Condition #9 requires that prior to any operation of any outdoor dining on the existing outdoor patio area, the applicant must submit documentation to the Executive Director that an additional parking space has been secured for each additional 75 square feet of dining area within the existing outdoor patio area specified on Exhibit #3. This is consistent with the requirements of the City of Encinitas certified Implementation Plan (IP), which the Commission may use for guidance when applying Chapter 3 policies within the original jurisdiction areas of the City. Although it appears that at certain times the existing restaurant does not conform to the City's parking standards, the City's IP does not require that an entire restaurant be brought into conformance when additional dining area is proposed. Instead, only the additional dining area must conform to existing City parking standards. In this case, the applicant must demonstrate the addition of up to 6 parking spaces in order to avoid any conflict with public access to the beach.

Because of the potential impacts and conflicts with public access that can occur during construction of the proposed development, Special Condition #3 has been attached which prohibits construction activities from occurring on weekends or holidays during the summer, overnight storage of equipment on the beach and requires the construction corridors be designed to avoid conflicts with public access.

In summary, the proposed placement of 45 tons of rock within the footprint of the existing revetment and the construction of a treated public access path seaward of the existing restaurant are both consistent with the public access and recreation policies of the Coastal Act especially since public access will be enhanced as a result. In addition, as conditioned to require adequate parking, the approximately 440 sq. ft. of outdoor dining will also be consistent with the public access and recreation policies. Therefore, as conditioned, the proposed development is consistent with Sections 30210, 30211, 30212, 30213 and 30252 of the Coastal Act.

4. Visual Resources. Section 30251 of the Coastal Act states as follows:

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

The proposed development will be sited adjacent to the public beach on the west side of Highway 101 in the Cardiff community of Encinitas. This section of Highway 101 is designated in the City's certified LCP as a scenic highway with expansive views of the ocean to the west and San Elijo Lagoon to the east. Therefore any new development along Highway 101 has the potential to adversely affect public views of coastal resources. In this case, however, the proposed development will not result in any adverse visual impacts over what currently exists. Currently the subject two-story restaurant obstructs views of the ocean as motorists pass along Highway 101 such that any new development on the seaward side of the restaurant such as placement of outdoor dining or altering the revetment would not be visible by motorists. In addition, the pre-existing approximately 145 ft. long, up to 40 ft.-wide rock revetment will not be increased in height by the proposed placement of approximately 45 tons of rock above that which previously existed. Other elements of the subject development involve the after-the-fact construction of a hardened roof over an existing one-story walled patio and reconstruction of the damaged portion of the parking lot. The parking lot will not expand above what previously existed and the proposed 4 ft.-high retaining wall, as conditioned, will be removed from the proposal. The after-the-fact roof is generally flat in appearance and will be located on the seaward side of the two-story structure and in some ways will be less obtrusive than the previously used canvas/tent covering. Since this walled patio area is a single-story, the generally flat roof will also not be visible to motorists along Highway 101. In addition, views from the beach or ocean will not be obscured or adversely affected by any of the proposed developments over what currently exists. Therefore, as conditioned, the proposed development is consistent with Section 30251 of the Coastal Act.

5. Runoff/Water Quality. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained by, among other means, controlling runoff and states, in part, that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrapment, controlling runoff, ....

The construction of impervious surfaces can be associated with impacts to water quality when water runoff from hard surfaces contains pollutants that eventually drain onto beaches or other coastal waters. In urban areas, runoff can contain oil, gasoline, brake dust, particles of roofing material and construction matter, chemicals, trash and other contaminants. Filters, catch basins, permeable paving surfaces such as modular pavers, grassed parking areas, and permeable pavements can be employed to trap vehicle-generated pollutants and reduce runoff volumes.

In approving new development, the Commission typically requires the incorporation of these types of Best Management Practices to assure protection of coastal waters. In this case, however, the applicants are not proposing to increase the amount of impervious surfaces above that which previously existed. Although a public access path will be formalized through the removal of existing rock, laying down of a filter fabric, installation of 8 inches of gravel along with a surface treatment, Special Condition #1 has been attached which requires any surface treatment remain permeable so as to allow filtering of runoff. However, although so conditioned, the permeable nature of the new path will not be substantially different that already occurs. Currently the public access site is underlined with rip-rap with a covering of gravel, sand and dirt. The other elements of the project (new roof for the walled patio area in place of canvas cover, repairs to a portion of the parking lot, outdoor dining on existing patio and placement of 45 tons of rip-rap on the existing revetment) also do not increase or create new impervious surfaces or will result in an increase of runoff or pollutants over that which currently exists. Therefore, as conditioned, the Commission finds the proposed development consistent with the water quality protection policies of the Coastal Act.

6. Unpermitted Development. The proposed development will occur on a site where several developments have occurred without the benefit of a coastal development permit. These include the replacement of a previously approved canvas roof with a hardened roof above a one-story walled patio area, installation of outdoor dining on an existing concrete pad, and placement of approximately 45 tons of rock onto the existing revetment. To assure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #2 has been attached which requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, to ensure the applicant's proposal to improve the previously required public access path and remove any unpermitted obstacles or stones within the path is implemented in a timely manner, Special Condition #12 requires the applicant to complete construction of the proposed 8 ft.-wide public access path that lies between the restaurant and the revetment, consistent with Special Condition #1, within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause.

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

The subject site is located on the east side of the public beach and on the west side of Highway 101 in the Cardiff community of the City of Encinitas. Although the City of Encinitas has a Certified LCP, the project site lies within the Commission's area of original jurisdiction such that the standard of review is Chapter 3 policies of the Coastal Act. However, the proposed development is also consistent with the City's Certified LCP. The subject site is designated as Visitor-Serving Commercial in the certified City of Encinitas Land Use Plan and the proposed development is consistent with that

designation. In addition, Circulation Policies 6.1, 6.2 and 6.3 of the LUP provides for the protection and enhancement of access opportunities along the shoreline in cooperation with the State. As conditioned, the proposal is consistent with the City's parking standards. Also, an offer to dedicate a public access easement across the subject site has been recorded and with the subject proposal to formalize the public access path, the proposed development is consistent with the City's certified LUP policy and approval of the proposed development would not prejudice the ability of the City to implement its certified LCP.

8. Consistency with the California Environmental Quality Act (CEQA).

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

The proposed project has been conditioned in order to be found consistent with the geologic stability, visual quality, and public access policies of the Coastal Act. Mitigation measures, including submission of revised plans and maintenance and monitoring requirements, 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.

STANDARD CONDITIONS:

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

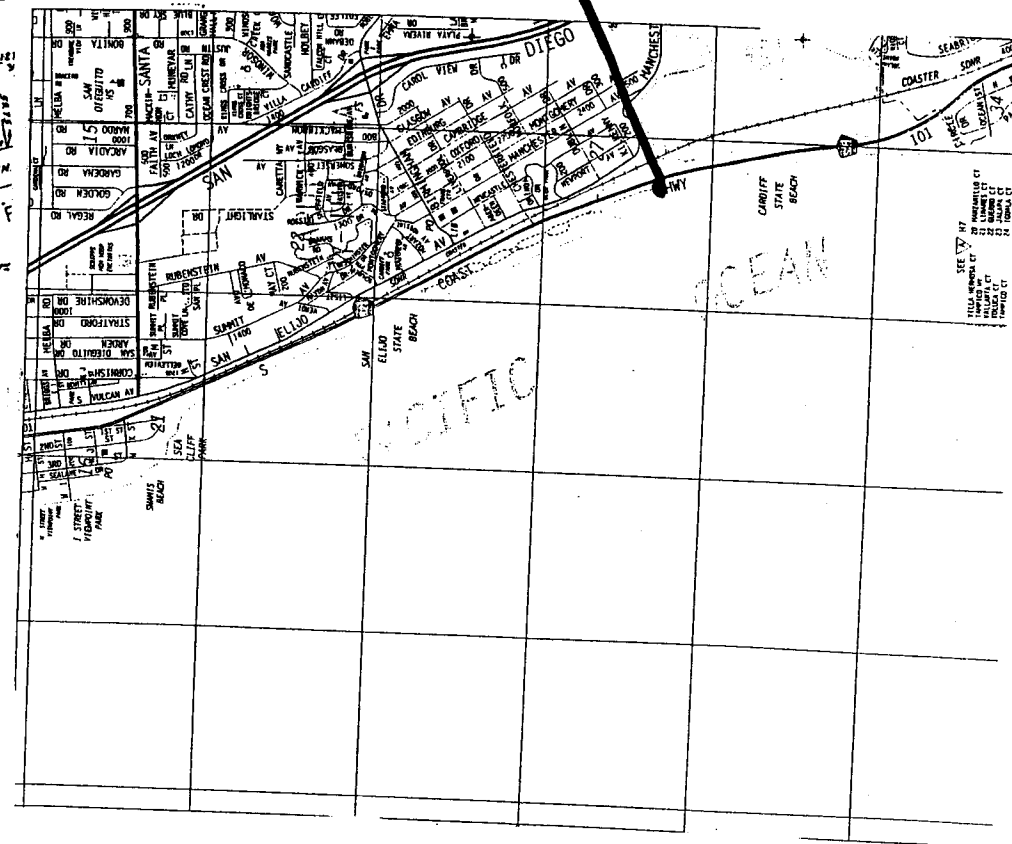
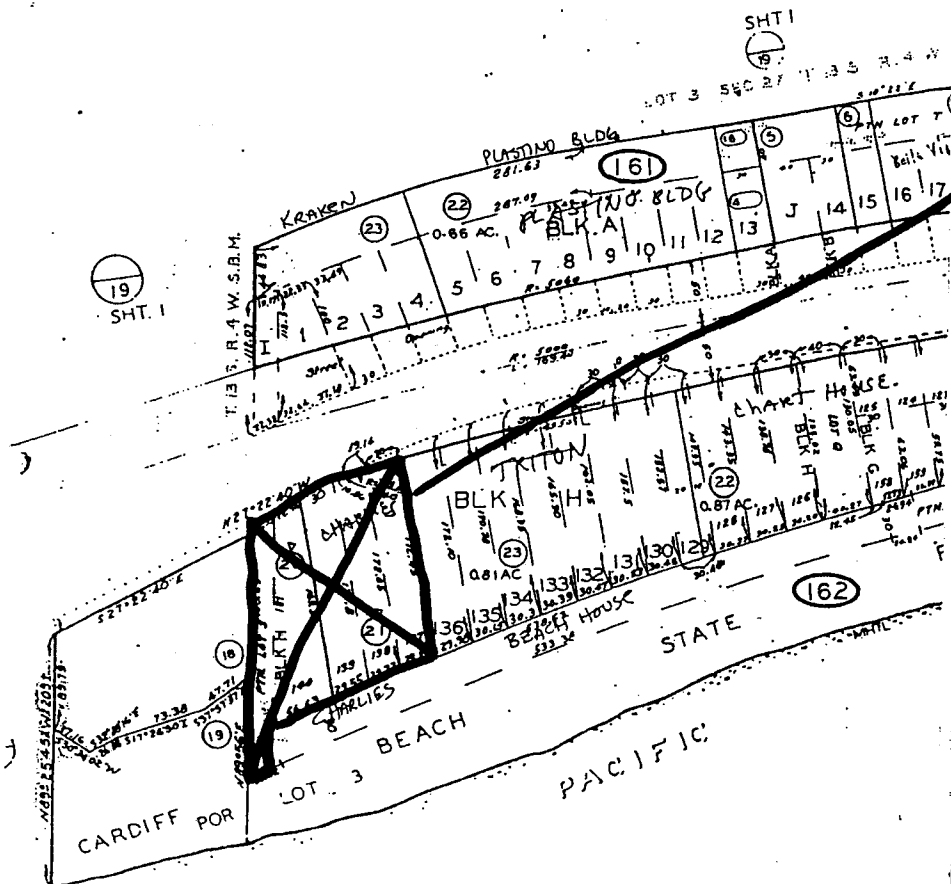
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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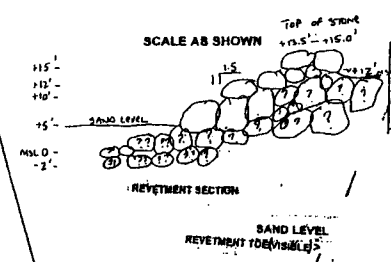
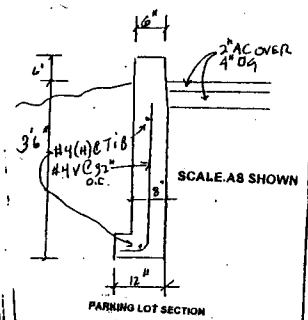
California Coastal Commission

141



8 ft.-wide  
Public Access Path

CARDIFF STATE BEACH



Area Proposed  
For additional  
250 sq. ft. of  
Concrete Slab

Parking  
Lot Repairs

Toe of Revetment

QUARRY STONE  
REVEMENT

EXISTING PARKING LOT NORTH

SOUTH HWY  
101

Toe of Revetment  
ACCESS SECTION

Existing 2-story  
Restaurant

8 ft.-wide  
Public Access Path

California Coastal Commission

**EXHIBIT NO. 2**

**APPLICATION**

**6-02-008**

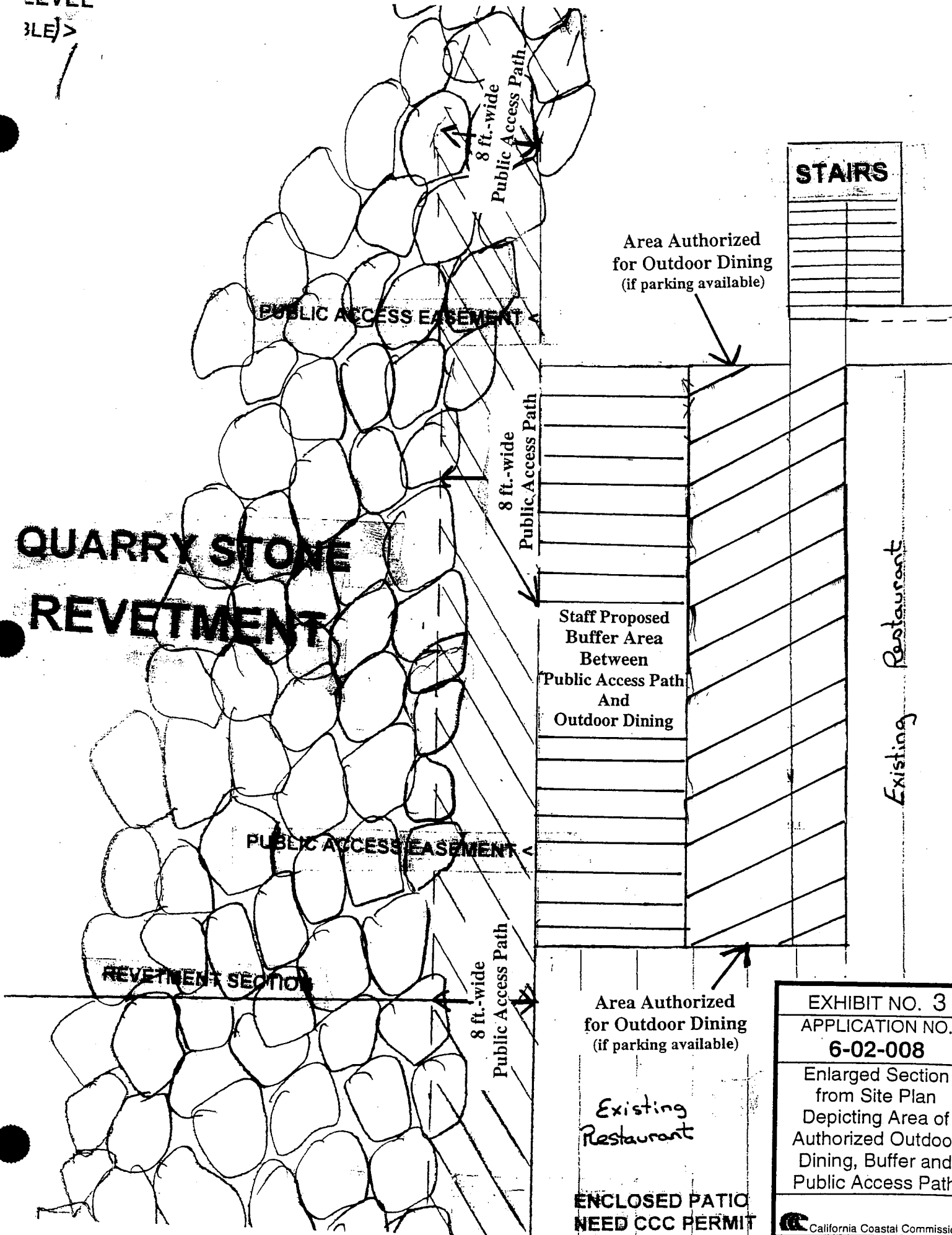
**Site Plan**



LEVEL

3LE>

# QUARRY STONE REVETMENT



STAIRS

Area Authorized  
for Outdoor Dining  
(if parking available)

8 ft.-wide  
Public Access Path

Staff Proposed  
Buffer Area  
Between  
Public Access Path  
And  
Outdoor Dining

Existing Restaurant

PUBLIC ACCESS EASEMENT

8 ft.-wide  
Public Access Path

Area Authorized  
for Outdoor Dining  
(if parking available)

Existing  
Restaurant

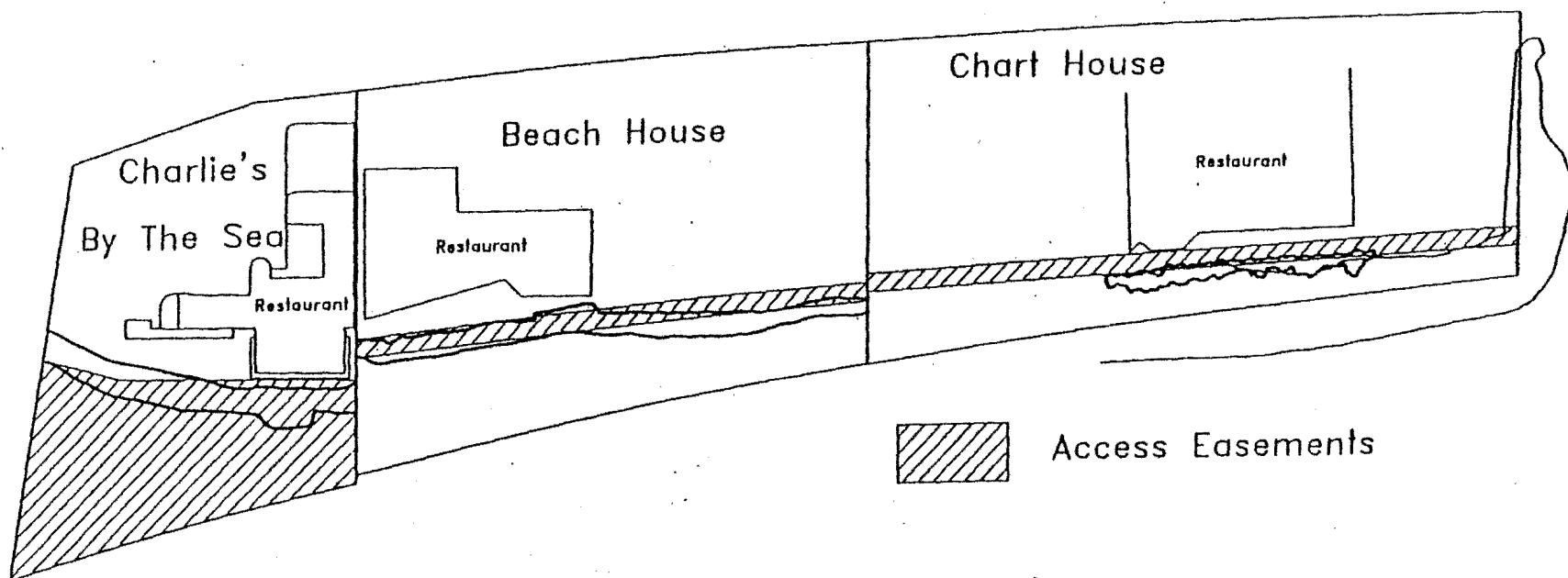
ENCLOSED PATIO  
NEED CCC PERMIT

EXHIBIT NO. 3  
APPLICATION NO.  
6-02-008

Enlarged Section  
from Site Plan  
Depicting Area of  
Authorized Outdoor  
Dining, Buffer and  
Public Access Path

Access Easement Comparison  
Charlie's By The Sea, Beach House, Chart House Restaurants  
Cardiff by the Sea, San Diego County

2/2/99



Scale: 1 inch equals approximately 50 feet

Note: Locations approximate.  
For illustrative purposes only.

Source: Permit file materials and plans

JVC, KJB, 1/99



California Coastal Commission  
Technical Services Division

EXHIBIT NO. 4  
APPLICATION NO.  
6-02-008  
Access Easement  
Comparison be  
Subject Site and  
Restaurants to Sout

California Coastal Commission