

## CALIFORNIA COASTAL COMMISSION

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**Thu 10b**

Filed: January 21, 2003  
49<sup>th</sup> Day: March 11, 2003  
180<sup>th</sup> Day: July 20, 2003  
Staff: DL-SD  
Staff Report: May 21, 2003  
Hearing Date: June 11-13, 2003

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-119

Applicant: Beach House Restaurant

Agent: Jeff Goldfarb

Description: Follow-up to emergency permit (#6-97-144-G) to repair existing rip rap revetment to include the addition of approximately 40 tons of new stones, and after-the-fact approval to construct a 750 sq.ft. restaurant addition, a 420 sq.ft. upper story balcony dining area and a 1,172 sq.ft. outdoor patio dining area.

Site: 2530 South Highway 101, Encinitas, San Diego County.  
APN 261-162-23

Substantive File Documents: Certified City of Encinitas Local Coastal Program;  
CCC Files #F2857; #F5483; #F9335; #6-84-437; #6-83-21; #6-97-144-G;  
#6-97-144;

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of revetment repair and the after-the-fact additions to the restaurant. The restaurant is located in a hazardous location, where the established form of shoreline protection is rock revetment. Adequate parking can be provided to serve the proposed restaurant additions. However, some of the rip rap and a portion of the outdoor dining area have been located within a public accessway previously required by the Commission, blocking lateral access in the pathway in an area where little sandy beach normally exists. Therefore, Special Conditions placed on the project require that all encroachments in the accessway be removed and the pathway restored such that the proposed dining area does not obstruct lateral public access along the shore.

In addition, because the new additions to the restaurant and the placement of additional riprap do impact public access and the usability of the previously required public path, Special Conditions require that the applicant provide and clear a public accessway connecting the existing path on the site to the public walkway on the adjacent site to the north. In this manner, the disadvantages to the beach-going resulting from the

construction of additional development on the site will be offset by public access improvements on the site.

Other Special Conditions require the maintenance of the revetment, a physical delineation between the private restaurant uses and the accessway, approval by the State Lands Commission, and a parking program than prohibits charging for the valet parking required to accommodate the needed parking on the site.

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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. 6-02-119 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. 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 surveyed plans submitted to the Commission, by Spear & Associates dated 1/20/03, but shall be revised to include cross-sections, and shall graphically depict or indicate in plan notes the following items:

- a. All encroachments within the existing 8-foot wide public accessway, including riprap, decorative rock, patio improvements, tables and chairs shall be removed to the same elevation as the adjacent patio such that accessway is not obstructed.
- b. The proposed revetment has been engineered such that the encroachment onto the beach is the minimum size necessary to protect the structure, and that all riprap that has migrated beyond the toe of the revetment has been removed or incorporated into the revetment. In no case shall the repaired revetment encroach seaward further than the existing revetment, as shown on Exhibit #4.
- c. The plan shall provide for a structural separation between the 8 ft.-wide access easement and the outdoor dining area such as a minimally designed, 3 ft. high rail or fence.
- d. An 8-ft-wide public accessway beginning at the northwest corner of the existing dedicated accessway on the subject site, and extending seaward along the northern property line until it lines up with the existing public access easement on the adjacent site to the north, as shown in concept on Exhibit #6).

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. 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 public access along the coast, public views, or fill of tidelands.

3. Provisions for taking measurements of the reconfigured revetment documenting the location of the toe, sides and elevation of the revetment and the alignment of the 8 ft.-wide public access path between the existing restaurant and patio areas and the revetment. The plan shall identify exactly where such measurements will be taken, e.g. by reference to benchmarks, survey positions, or points shown on an exhibit, 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 removal of obstructions in 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 to the Executive Director by May 1 of every year for the life of the structure of a monitoring report 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.

### 3. Lateral Access Condition

A. The applicant shall establish an eight (8) foot wide accessway to the public for pedestrian access along the shoreline. The accessway shall be located between the revetment and the restaurant. The accessway shall include the access way recorded pursuant Coastal Development Permit #F2857 (County of San Diego File/Page No. 76-39306, recorded on November 23, 1976) and in addition shall include an 8-ft-wide public accessway beginning at the northwest corner of the existing dedicated accessway on the subject site, and extending seaward along the northern property line until it lines up with the existing public access easement on the adjacent site to the north, as shown in concept on Exhibit #7). The applicant shall keep the entire access way clear of all obstructions, including riprap, tables, and chairs. The applicant shall allow a public agency or private association approved by the Executive Director to construct improvements on the public accessway for the purpose of facilitating public access. The public accessway established pursuant to this condition shall replace and supercede the access way created pursuant to Coastal Development Permit #F2857 (County of San Diego File/Page No. 76-39306, recorded on November 23, 1976).

**B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT,** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #7 attached to this staff report.

4. Staging Area for Construction. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit final construction staging and access plans to the Executive Director for review and written approval. The final plans shall specifically indicate in written notes that:

- a. No overnight storage of equipment or materials shall occur on sandy beach. 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 during the summer between Memorial Day weekend and Labor Day of any year.

- d. 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.

5. Construction Responsibilities and Debris Removal. The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion or dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the beach within 7 days of completion of construction;
- (c) All excavated beach sand shall be redeposited on the beach;
- (d) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;

6. State Lands Commission Approval. The applicant 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.

7. 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 #6-02-119. 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.

8. 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.

9. 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.

10. Parking. The applicant shall provide at least 96 valet parking spaces on the site during operating hours. No fee shall be charged for the use of valet parking on the site.

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. 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.

13. 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

remove the encroachments from the 8 ft.-wide public access path, consistent with Special Condition #1, and from the easement area required by Special Condition #3. 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 site consists of an existing 2-story, approximately 9,629 sq.ft. oceanfront restaurant located in the Cardiff area of the City of Encinitas. The 35,284 sq.ft. lot is protected by an existing approximately 145-foot long riprap revetment located immediately west of the restaurant, which extends approximately 10 to 30 ft. seaward across the length of the western side of the property. The site is currently striped for approximately 58 parking spaces; however, fee-based valet parking operates during all business hours.

The proposed development has several components to it. First, it constitutes the follow-up permit to an emergency permit issued in November 1997 (#6-97-144-G). This emergency permit authorized the repair and maintenance of the existing riprap revetment located seaward of the restaurant, consisting of the addition of twenty 4 to 5-ton stones to the existing revetment. However, the amount of stone actually placed on the revetment was approximately forty tons of new stone, significantly less than authorized by the emergency permit.

The subject application also requests after-the-fact authorization for several additions and changes which have been made to the restaurant without a coastal development permit, including the enclosure of a 750 sq.ft. "garden room" dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and construction of a 420 sq.ft. upper deck used for dining.

The proposed development is located within the City of Encinitas which has a certified LCP; however, it is located on filled public trust lands 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. Site History. The site has been the subject of a number of coastal development permit (CDP) applications. In October 1976, the Commission approved a permit for removal of an existing structure, construction of the Triton Restaurant (now the Beach House), provision of 58 parking spaces, installation of a monument sign and the reconstruction of an existing riprap revetment (CDP #F2857). Conditions of approval on that permit required the recordation of an eight-foot wide public access easement running parallel to the riprap between the riprap and the restaurant. The exact wording of the condition is as follows:



That the applicant agrees to record in favor of the public an 8 foot wide easement parallel to the existing alignment of the rubble seawall delineating the western limit of raised portions of the applicant's parcel. The purpose of such easement is to insure some public agency the opportunity to construct, at some future date, a public walkway which would provide "dry land" access parallel to the beach during periods of high tide or storm conditions and a route of travel for those not wishing to walk on sandy beach areas because of handicaps or personal preferences. Evidence of the required recordation of the easement and a map delineating such easement must be filed with the Commission prior to the commencement of construction.

In compliance with this condition, the applicant actually recorded a dedication (not simply an easement) for an 8-foot wide walkway with the condition that it remain:

"open to the public for access to the Pacific Ocean and its shoreline for walking and agrees that Dedicator shall not construct any improvements on or in said public access area...Said public access privilege shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective..."

In April, 1977, the Commission approved CDP #F5483, which was an amendment to the original permit. It proposed changes to the roofing and architectural design of the restaurant, but did not include modifications to the building footprint, siting, square footage, parking or landscaping. It was approved with no special conditions and neither the previously-recorded access easement nor the revetment was addressed in, nor affected by, that action.

A third application was submitted in August, 1984, proposing construction of a fifty sq.ft. storage building as an addition to the existing restaurant (CDP #6-84-437). Staff notes in the file recorded two meetings with the applicant's agent discussing the items needed to complete the file as well as discussions regarding the access easement. The notes indicate concern that the proposed storage structure was improperly sited and would obstruct the eight-foot-wide access easement area. The notes also indicate that staff specifically informed the applicant that any expansion of dining area, including new outdoor dining, would require a coastal development permit. Staff informed the applicant that if the intent of the proposed storage unit was for storage of tables and chairs for outdoor dining, then such outdoor dining must also be included in the proposed project. The items required to complete the file were never received; thus, the application was never filed or processed.

In November 1997, the Commission issued an emergency permit authorizing the addition of twenty 4 to 5-ton stones to the existing revetment and also authorized the retrieval by mechanized equipment of stones which had migrated seaward from the existing revetment onto the sandy beach (CDP #6-97-144-G). A letter received in Commission office on August 28, 1998, indicated there was no way to get equipment onto the beach to reposition migrated stones, and the migrated stones were not visible in any event. Thus, that portion of the authorized emergency repairs did not occur. Also, a smaller amount of

stone was ultimately imported than had been approved in the emergency action, such that a total of only forty tons of new stone was actually placed on the revetment.

In June 1998, the applicant submitted a follow-up permit to the emergency permit (#6-97-144). However, the permit was withdrawn on March 5, 1999, prior to Commission action, and thus, the emergency work has not yet been authorized.

3. Public Access/Parking. Numerous 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 Off-Street Parking section of the City of Encinitas' certified LCP states, in part:

30.54.020. General Provisions.

A. Off-street parking facilities, for both motor vehicles and bicycles, shall be provided on a development site as required in this chapter in terms of both the number of spaces required and their development and landscaping requirements as follows:

1. All new structures on a development site require all parking facilities on the site to meet the current standards.
2. Addition of new building square footage (attached or detached) to existing building(s) on a development site requires that parking be provided at current ratios for the additional square footage without any reduction to existing parking.

[...]

F. All required off-street parking spaces shall be designed, located, constructed, and maintained so as to be fully usable during workday periods or as needed by the use of the premises, and shall be permanently available without charge to all uses as intended under this title. Valet parking service may be used but signs must be posted to advise "NO CHARGE".

30.54.030 Schedule of Required Off-Street Parking.

A. The number of off-street parking spaces required for automobiles shall be no less than that set forth in the following table:

<u>USE</u>	<u>PARKING SPACES REQUIRED</u>
Restaurants	1 space for each 100 sq. ft. of gross floor area. In an area with an adopted Specific Plan, the regulations of the Specific Plan shall apply. (Ord. 94-11)

## Public Access and Recreation

The subject application includes the request for after-the-fact approval of the installation of approximately 40 tons of rock, enclosure of a 750 sq.ft. "garden room" dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and a 420 sq.ft. upper deck used for dining.

The subject site is the middle of three contiguous properties all improved with restaurants (known locally as "restaurant row"). The three sites are located on the oceanfront in the Cardiff area of the City of Encinitas. The properties are located between two state beaches, the North Cardiff State Beach and South Cardiff State Beach to the south. Adequate vertical access to the beach is currently available at the adjacent North Cardiff State Park facility, which provides approximately 105 parking spaces. However, Cardiff reef, one of the most popular surfing spots in San Diego County is located seaward of the State Parks facility. 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. This is an area where very little sandy beach currently exists, and there is no lateral public access available except at the lowest tides.

The Commission, through past permit actions, required public access easements on all three of the restaurant row properties (ref. CDPs #6-83-165/Saxten, #F2857/Triton, #6-85-4/Chart House). These were to be located on the dry upland area between the existing restaurants and the revetments located seaward of the restaurants, in order to provide dry access during all tidal regimes and storm conditions. (The accessways, however, were required at different times and, thus, do not quite form a contiguous path). Exhibit #5 identifies the locations of the public access easements fronting these three restaurants.

The subject property is currently developed with a two-story restaurant, a paved parking lot, landscaped areas and a riprap revetment. The original Commission action on the subject site approved construction of the restaurant in a location that would allow the an eight-foot-wide public accessway to be provided between the restaurant and the revetment. However, although the restaurant appears to be sited in its approved location, the current plans and on-site conditions show that the existing riprap revetment, proposed herein for after-the-fact maintenance and augmentation, and a portion of the dining patio, which is also proposed for after-the-fact approval, are located within the dedicated public accessway, thereby precluding improvement of the walkway and the potential for the public to use the area. (see Exhibit #4).

In past conversations between Commission staff and the restaurant lessee, the restaurant lessee suggested that the riprap was probably modified repeatedly, during the interim between the Commission's last action in 1977 and the time the current lessee took over the property. Severe winter storms in 1982-1983, and again in 1987-1988, resulted in the construction of many shoreline protective devices up and down much of the coastline of San Diego County (and elsewhere in California). No records of emergency permits have been found for the subject site.

Most recently, the subject applicant augmented its existing riprap revetment under an emergency permit (CDP #6-98-144-G) approved in 1998. As a result, riprap has been placed landward of the originally approved location, directly over the dedicated public accessway. Placement of riprap and patio in the accessway is inconsistent with the terms of the dedicated accessway, which requires that the area remain open to the public for walking.

Permitting the after-the-fact revetment repair and patio construction as proposed would be in direct conflict with the Commission's past action, since it would allow the applicant to maintain the riprap in a manner that violates the requirement to provide a public accessway. Provision of the public access easement was required in the earlier action to mitigate the impacts of the development proposed at that time, particularly the reconstruction of the revetment, on public lateral access as it then existed. Only with the access dedication was the Commission able to find that earlier development consistent with Chapter 3 of the Act. Likewise, approval of the proposed development would be inconsistent with the cited Coastal Act policies, especially Section 30212, because it would perpetuate the applicant's inability to provide the required lateral access, due to the unpermitted location of the existing revetment. Thus, ongoing access impacts would remain unmitigated and the maximum access required by the Coastal Act would not be provided.

The applicant has suggested that instead of removing the improvements from the accessway, a new accessway could be located seaward of the existing one, by notching out a path on top of the revetment, installing a layer of filter cloth with an approximately 8-inch layer of gravel, topped by 6 inches of a sand or slurry mix (Exhibit #6).

This accessway design is very similar to the access improvements recently required by the Commission for the adjacent restaurant to the north (CDP #6-02-8/Charlie's), in the case of that permit, the improvements will be located on the existing public access easement, upland of the revetment. In contrast, the subject applicants are suggesting moving the accessway seaward. The advantage of this concept is that the revised walkway would then line up with and connect with the accessway to the north at Charlie's.

However, the Commission's engineer has reviewed the proposed walkway design, and determined that in order to accommodate a path on the riprap, it would likely require that the existing revetment be pushed further out onto beach than the existing revetment, thereby covering more beach area and impacting lateral public access opportunities. The public access concept plan submitted by the applicant (Exhibit #6) suggests that at least the upper portion of the revetment would have to extend further seaward than the current revetment. There is little sandy beach along this area and pushing the public further towards the water might mean eliminating sandy beach access altogether. Given the already limited lateral access opportunities in front of the restaurant, pushing the revetment even further seaward cannot be found consistent with the public access and recreation policies of the Coastal Act.

In addition, the subject application includes construction of additional restaurant floor area on the seaward site of the existing restaurant, including a new garden room and outdoor patios. The additions have the potential to impact public access because they further reduce the upland area between the previously approved restaurant structure and the previously approved riprap. The combination of the new additions and the after-the-fact riprap that has been placed in the accessway, eliminates all of the usable upland area where the public might otherwise be able to walk along the shoreline. In order to maintain public access, either the restaurant additions cannot be allowed, and must be removed, or the revetment needs to be pulled back out of the public accessway.

Given that there is already a dedicated public accessway located along the seaward side of the restaurant, public access can and should be provided where originally required by the Commission and provided for in the recorded dedication. Nothing in the original permit condition or the language of the dedication requires that the applicant construct a finished walkway with paving or gravel, etc. However, no (private) improvements can be located on or in the public access area, and the path must be open to the public for access to the Pacific Ocean and its shoreline for walking. Therefore, Special Condition #1 requires that the applicant submit revised plans to a) remove the riprap located within the dedicated accessway to the same elevation as the patio; b) remove the portion of the patio and tables and chairs located within the accessway; c) ensure the walkability of the accessway by leveling the path as necessary and removing any rock from the remaining revetment that would render the pathway unsafe for passage. Removal of the riprap is required in order to approve the proposed restaurant additions without significant public access impacts.

As conditioned, the public will be able to enjoy lateral public access along the shoreline as previously required by the Commission. However, as discussed above, at the time the original pathway was required by the Commission, there was no outdoor dining patio associated with the restaurant. Although Special Condition #1 requires that the patio and dining within the accessway be removed, there will still be room between the accessway and the restaurant where some outdoor dining can and presumably will continue.

The patio dining, which is also being authorized through this permit after-the-fact, (except for the portion in the accessway) will result in the private restaurant uses, including the chairs, tables, diners, wait services, etc., being much closer to the accessway than it was when originally permitted without a patio. This has the effect of privatizing the accessway, and making it less attractive and available to the public.

At Charlie's restaurant to the north, the Commission required either the provision of a minimum 10 foot-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 is permitted to occur, or a structural separation between the 8 ft.-wide open space easement and the outdoor dining area such as a minimally designed, 3 ft. high, rail or fence.

In the case of the subject site, there is insufficient room on the patio to provide a 10 foot-wide buffer between the accessway and the restaurant and allow outdoor dining. Therefore, Special Condition #1a requires that a structural separation between the dedicated walking and the outdoor dining area must be provided.

Nevertheless, allowing the patio to be located immediately adjacent to the accessway is still likely to discourage public uses of the walkway, particularly because the walkway does not currently meet up with the walkway to the north. People would be more likely to walk alongside an obviously private dining area if it were part of a continuous path, rather than a just a destination point for standing, and then walking back. In addition, although this permit is not authorizing any more beach encroachment than currently exists, there have been substantial augmentations to and enlargement of the revetment since the restaurant was originally approved, culminating in this most recent emergency permit request for additional rock.

There is only a minor disconnect from the end of the northwest corner of the Beach House accessway to the start of the walkway at Charlie's to the north. A small north/south extension of the pathway would result in a connection between the two walkways. This area of the site already contains a concrete drainage way and very little riprap, so it would be relatively easy to clear a pathway in this location. Therefore, in order to make up for the disincentive to use the accessway that the proposed patio dining creates, Special Condition #3 requires that an 8-foot wide accessway be established at the northwest corner of the existing accessway south towards the beach, such that access is available from the subject site to the existing public accessway to the north (see Exhibit #7).

Special Condition #6 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 #8 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.

### **Parking**

Although the subject site is within the original permit jurisdiction of the Commission, the City of Encinitas' certified LCP contains policies regarding parking and public access that the Commission has found consistent with the Coastal Act for this area, and thus, contains useful guidance for the review of the subject project.

The subject permit application includes the after-the-fact addition of a 750 sq.ft. garden room and two outdoor patio dining areas, a 1,172 sq.ft. lower patio and a 420 sq.ft. upper deck for a total addition of 2,342 sq.ft. In total, the restaurant will have approximately 9,629 sq.ft. of floor area.



As noted above, the Encinitas certified LCP requires 1 parking space for every 100 sq.ft. of gross floor area for restaurants. (The applicants have suggested that the City's parking requirement applies only to "public area" and not gross square footage. However, the Commission approved the City's LCP with the language quoted above, and City Encinitas staff have confirmed the requirement applies to the entire square footage of the structure, including outdoor dining areas (Bill Weedman, City Planner, pers. comm., 3/7/03)). Thus, as proposed, the project would require 96 parking spaces.

The on-site restaurant parking lot has approximately 58 striped parking spaces. However, the applicant has submitted a parking plan that demonstrates that by using valet parking, which currently operates during all business hours, the applicant can accommodate up to 121 cars on the site. Therefore, all of the required parking for the proposed structure can be accommodated on the subject site as long as valet service is provided.

However, the applicant has been charging for valet parking, which is inconsistent with the City's certified LCP, and could have an adverse impact on public access and recreation. There is free street parking on Highway 101 within walking distance of the Beach House, which is normally used by beach goers. If the Beach House were to continue charging for parking, it is likely that some restaurant patrons would use the free parking rather than paying for valet parking, thereby displacing the beach-going public. However, the applicant can only provide the required parking through the use of valet parking. Therefore, Special Condition #10 requires that the applicant agree to continue to provide valet parking for at least 96 vehicles during working hours, but that no fee shall be charged for the valet service.

In addition to valet parking, the applicant has been utilizing two separate overflow parking lots. The first overflow lot is the Plastino Building, a commercial structure with a 54 space parking garage located across Highway 101 from the Beach House at 2533 South Coast Highway 101. The owner and/or operator of this lot have entered into a lease with the applicant to make available, on a non-exclusive basis, 52 spaces Monday through Friday from 5 pm to close, and all day Saturdays and Sundays.

However, the Commission approved a permit in March 1983 (CDP #6-83-21) for construction of building and parking garage, that contains a specific requirement that the 54 spaces be made available for public parking from 5:00 pm to 3:00 am Monday through Friday, and from 8:00 am to 3:00 am on weekends and National Holidays. Thus, it inconsistent with the terms of the approved coastal development permit for the Plastino site to make these spaces available to the Beach House. This apparent violation of the Coastal Act will be addressed in a separate enforcement action with the owner of the Plastino site.

The second overflow lot used by the Beach House is the Headline Graphics building located several blocks away at 131 Aberdeen Drive. The Commission approved a permit in April 1981 for construction of a 2-story office building on this site (CDP #F9335), without any restrictions on the use of the parking. The Beach House has a lease



agreement for the exclusive right to use this lot, Monday through Saturday 5 pm to 12 am, and all day Sunday. This site is now within the City of Encinitas' coastal permit jurisdiction, and any changes of use on the site or changes to the parking lot that might conflict with the applicant's use of the lot would be reviewed by the City. Use of this site as an overflow parking lot is not specifically authorized or addressed by the subject permit.

In conclusion, the subject proposal for the after-the-fact placement of riprap and the addition of additional square footage to the Beach House restaurant has the potential to adversely impact public access. As proposed, the riprap, a patio and dining tables and chairs would be located in a dedicated accessway required to be open to the public. Therefore, Special Conditions have been added that require all encroachment into the accessway be removed such that the public is not impeded from walking in the accessway. Even when removed from within the accessway itself, the construction of a private patio dining area immediately adjacent to the walkway will have the effect of discouraging use of the walking, contrary to the intent of the access requirement. Thus, Special Conditions require the construction of physical barrier between the accessway and the restaurant dining, and require that an easement be granted on the northwest portion of the site such that continuous public access will be available across the site and to the accessway to the north.

As the applicant has demonstrated that through the use of valet parking there is adequate parking on-site to accommodate all of the existing and proposed restaurant floor area, without using the off-site lot across the street, the remaining portions of the proposed patio dining and restaurant additions are consistent with the public access and recreation policies of the Coastal Act.

4. 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.

As discussed above, the subject application includes a follow-up request to permanently authorize the repair and maintenance of the existing riprap revetment located seaward of the restaurant, consisting of the addition of approximately forty tons of new stone to the existing revetment. 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.

The Commission has acknowledged in numerous permit actions that the three restaurants along restaurant row, as well as Highway 101 and the various public beach facilities in the area, are subject to wave action and erosion, that shoreline protection is required to protect the existing restaurants, and that no other feasible alternative is available to provide that protection (CDP 6-83-165/Saxten; 6-85-4/Chart House; 6-94-81/Chart House; 6-94-163/Chart House; 6-96-147/CA State Parks; 6-02-8/Charlie's; 6-02-022/CA State Parks; 6-02-023/CA State Parks). Riprap revetment is the historical type of shoreline protection used along this approximately 1 mile long stretch of beach. All three of the restaurants and portions of South and North Cardiff State Beach facilities contain similar seaward riprap structures, as well as various stretches of Highway 101.

Even with a properly designed and maintained rock revetment, overtopping of the revetment is expected to occur in the future during periods of storm waves such as occur during an El Nino winter, subjecting the existing improvements to threat. There is little sand at all 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 regularly. However, a higher revetment or vertical wall would eliminate public views from the restaurant, thereby diminishing the attractiveness of the use as an oceanfront restaurant.

In addition to the approval for the placement of 40 tons of rock on the existing revetment, the applicant is also requesting after-the-fact approval for enclosure of a 750 sq.ft. garden room dining area, the construction of a 1,172 sq.ft. patio dining area, and a 420 sq.ft. upper deck used for dining. 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.

The Commission is not required to approve new development in hazardous areas, and the proposed additions are located on the seaward side of the existing restaurant or parking area. Nevertheless, as noted above, the proposed revetment is not intended to protect the subject site from all hazard, but only to reduce the threat. The hazard associated with the location of the new additions is not expected to be substantially greater than what previously existed. However, the revetment does need to be tightened and engineered, and all stray pieces of rock that have migrated or fallen from the revetment repositioned such that the toe of the revetment is "pulled-in" as tight as possible while still providing protection to the restaurant and does not extend further seaward than the existing revetment as shown on Exhibit #4. As such Special Condition #1b requires that the applicant engineer the revetment such that the encroachment onto the beach is minimized

to the greatest extent feasible and that all migrated riprap has been removed or incorporated into the revetment. In no case may the repaired revetment encroach seaward further than the existing revetment.

Because the proposed development will be located in an area subject to wave action especially during winter storms, the applicant must assume all liability associated with the development. Therefore, Special Condition #9 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.

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 Condition #2 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. As conditioned, the project will not result in the placement of any additional rock seaward of existing revetment toe, and the proposed maintenance will provide continuing protection for the subject site. Therefore, as conditioned, the proposed development is consistent with Section 30235 and 30253 of the Coastal Act.

5. 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 new restaurant construction, the addition of outdoor dining and altering the revetment would not be visible by motorists. In addition, as conditioned, the pre-existing approximately rock revetment may not extend onto the beach further than existing conditions. 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.

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 enclosure of a 750 sq.ft. "garden room" dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and a 420 sq.ft. upper deck used for dining. The permit also authorizes the placement of approximately 40 tons of rock onto the existing revetment as a follow-up to an emergency permit granted in November 1997. To assure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #12 has been attached which requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, to ensure that the encroachments into the previously required public access path are removed in a timely manner, Special Condition #13 requires the applicant to complete the encroachment removal in both the existing accessway and the additional accessway required herein, 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.

In addition, the applicant has been utilizing an off-site parking lot at 2533 South Coast Highway 101 to valet park cars of restaurant patrons. Private use of this site after business hours is prohibited by the terms of coastal development permit #6-83-21. This apparent violation of the Coastal Act will be pursued as a separate enforcement matter with the owner of the off-site lot. The Commission's enforcement division will evaluate further actions to address this matter.

Although these developments have taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the City's certified LCP and/or Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to these violations of the LCP or Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

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. 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 discussed above, only as conditioned can the proposed development be found consistent with the City's Certified LCP regarding public access and parking. Therefore, approval of the proposed development would not prejudice the ability of the City to continue 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.

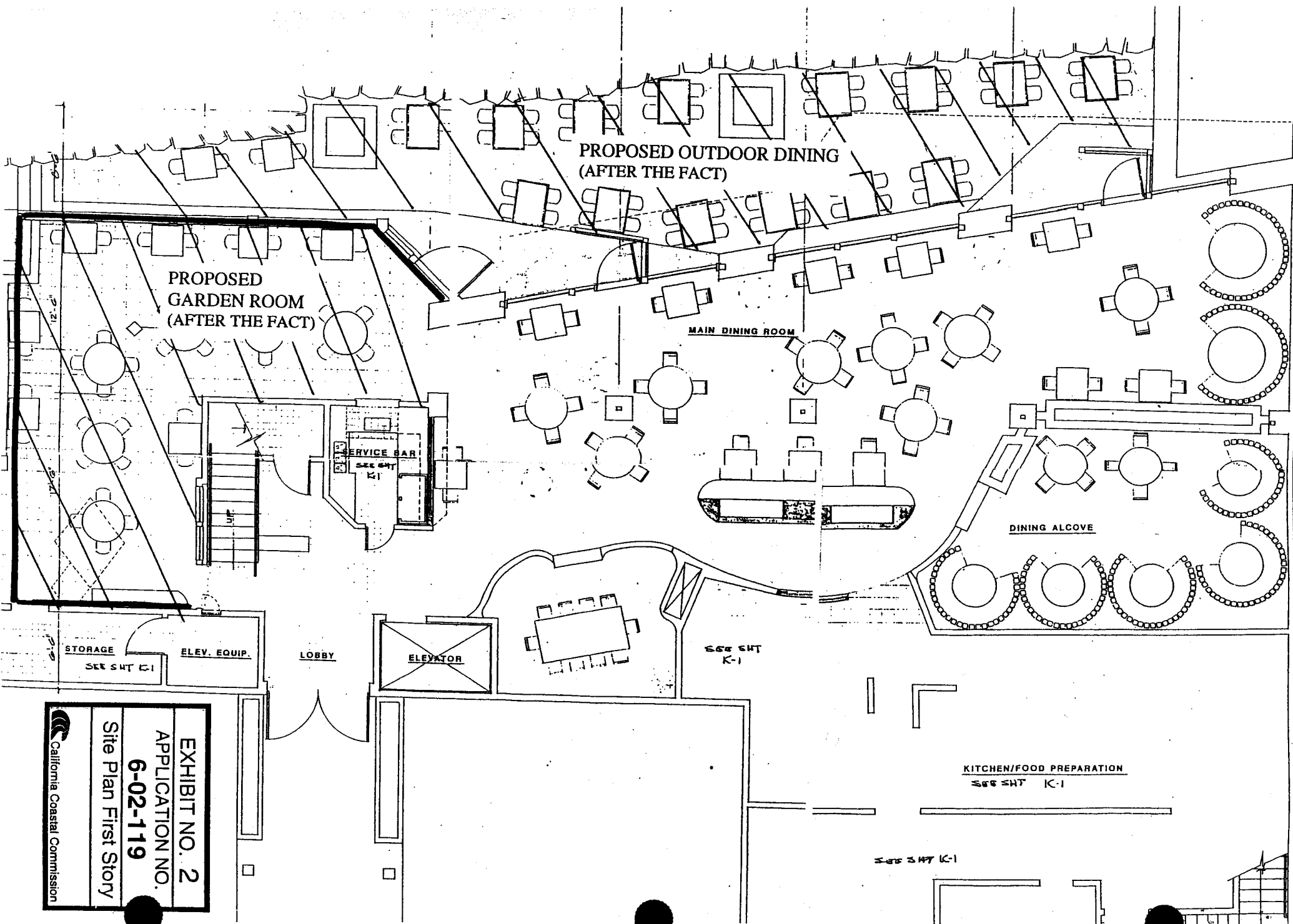
The proposed project has been conditioned in order to be found consistent with the geologic stability and public access policies of the Coastal Act. Mitigation measures, including submission of revised plans and maintenance and monitoring requirements, will minimize all adverse environmental impacts.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





 EXHIBIT NO. 2  
APPLICATION NO.  
6-02-119  
Site Plan First Story

California Coastal Commission



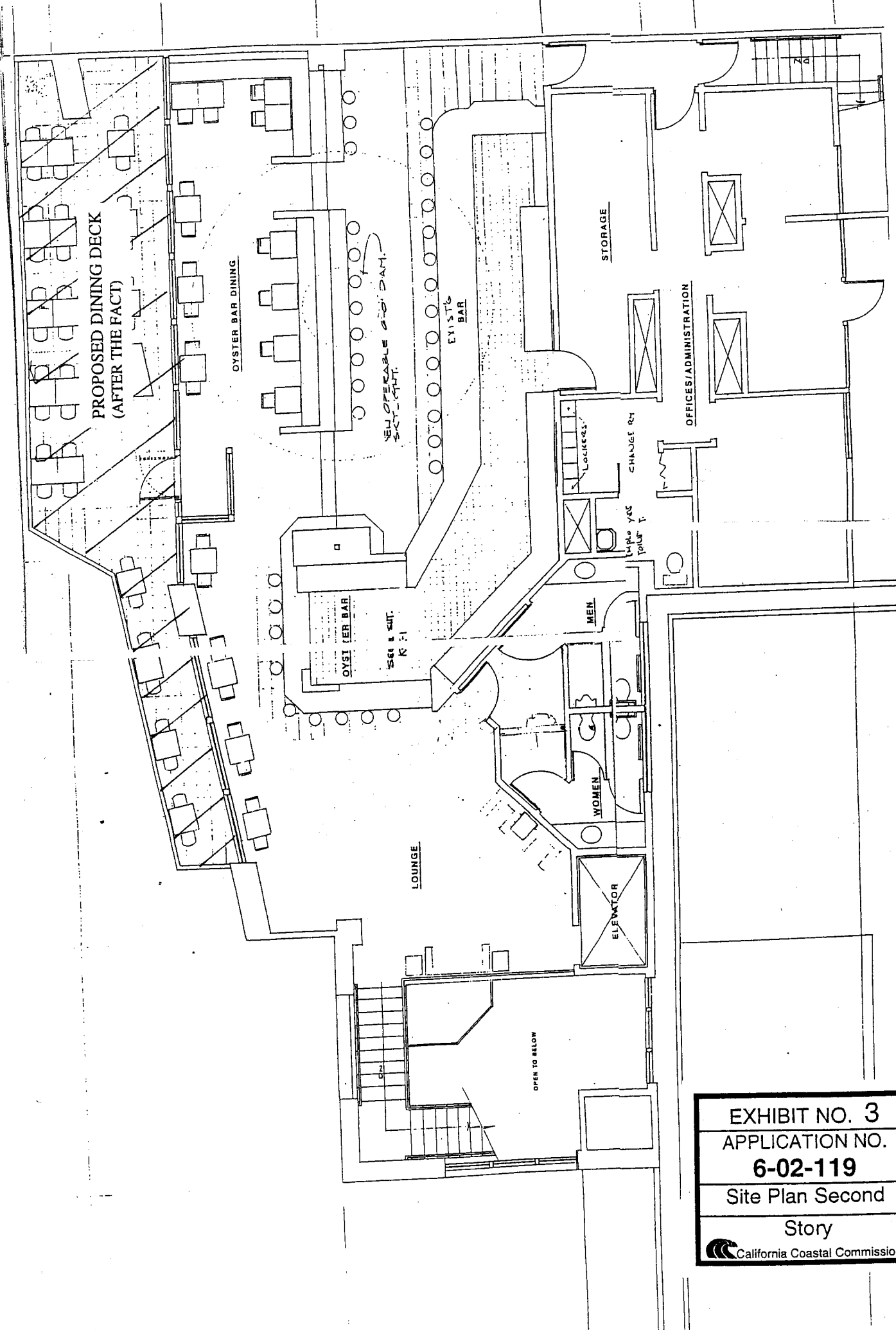
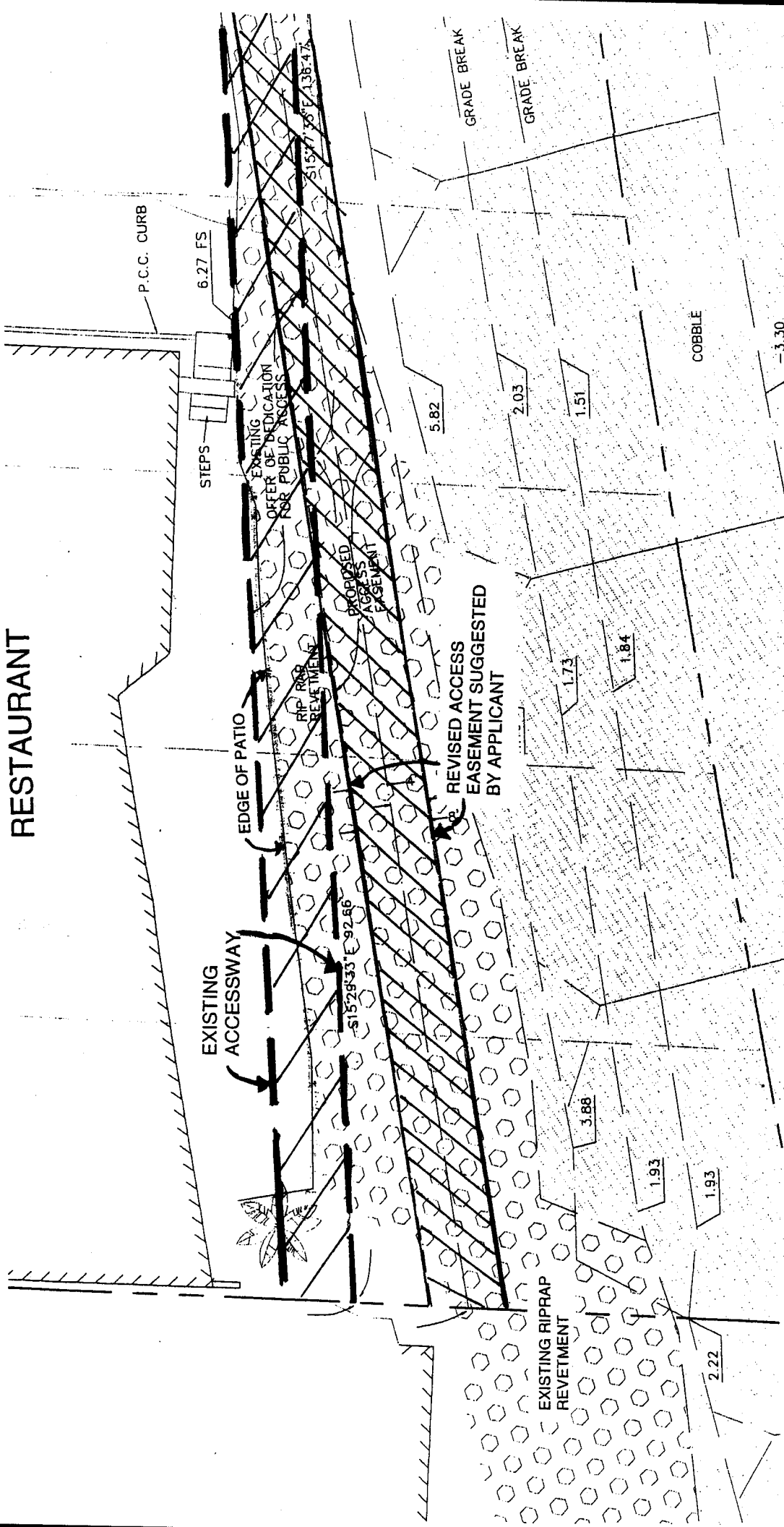


EXHIBIT NO. 3
APPLICATION NO.
6-02-119
Site Plan Second
Story
 California Coastal Commission


RESTAURANT



STATE

BEACH

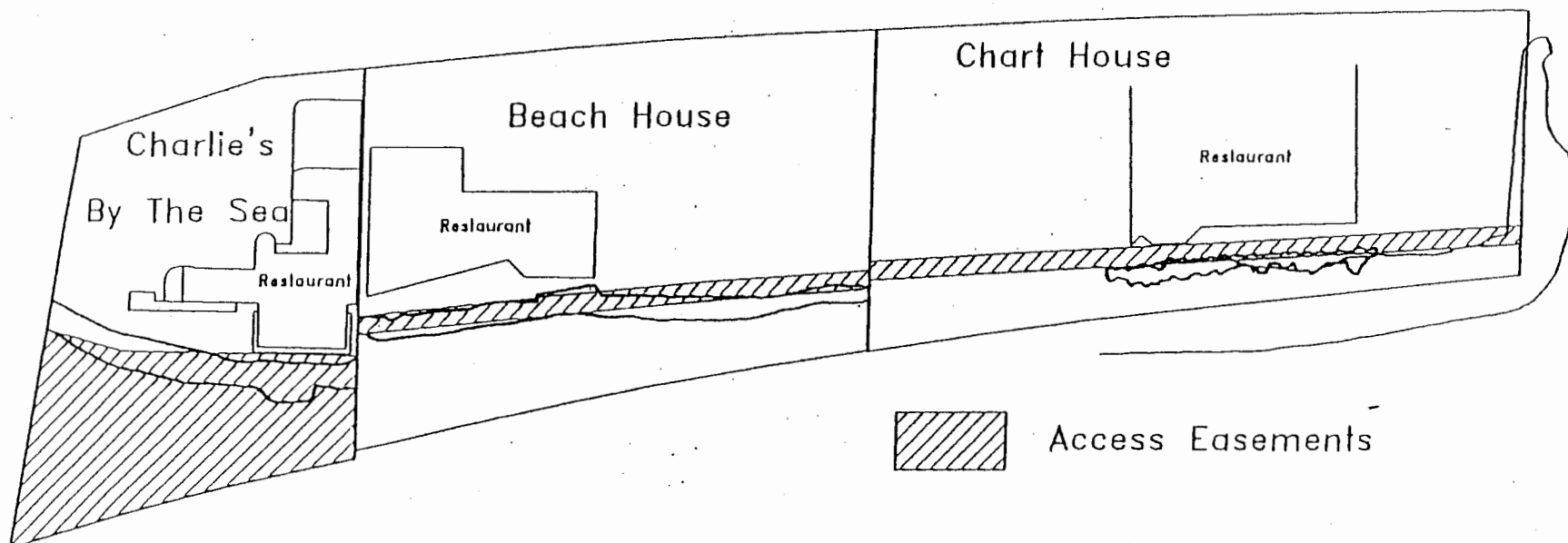
CARDIFF

EXHIBIT NO. 4
APPLICATION NO.
<b>6-02-119</b>
Accessways
 California Coastal Commission

# 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

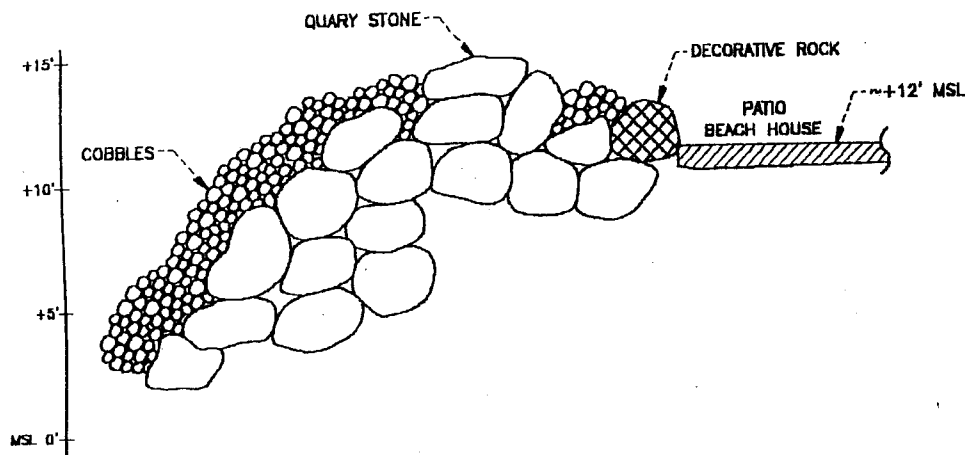
JVC, KJB, 1/99



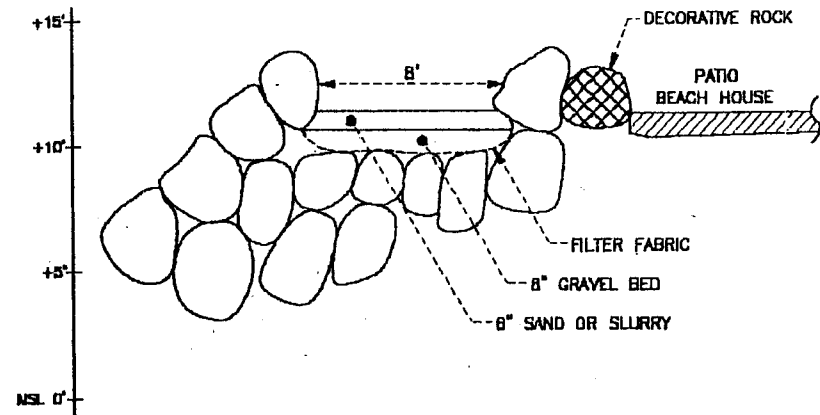
California Coastal Commission  
Division

EXHIBIT NO. 5  
APPLICATION NO.  
6-02-119  
Access Easements  
on Restaurant Row  
California Coastal Commission

# REVETMENT SECTION (TYPICAL)




# PUBLIC ACCESS CONCEPT



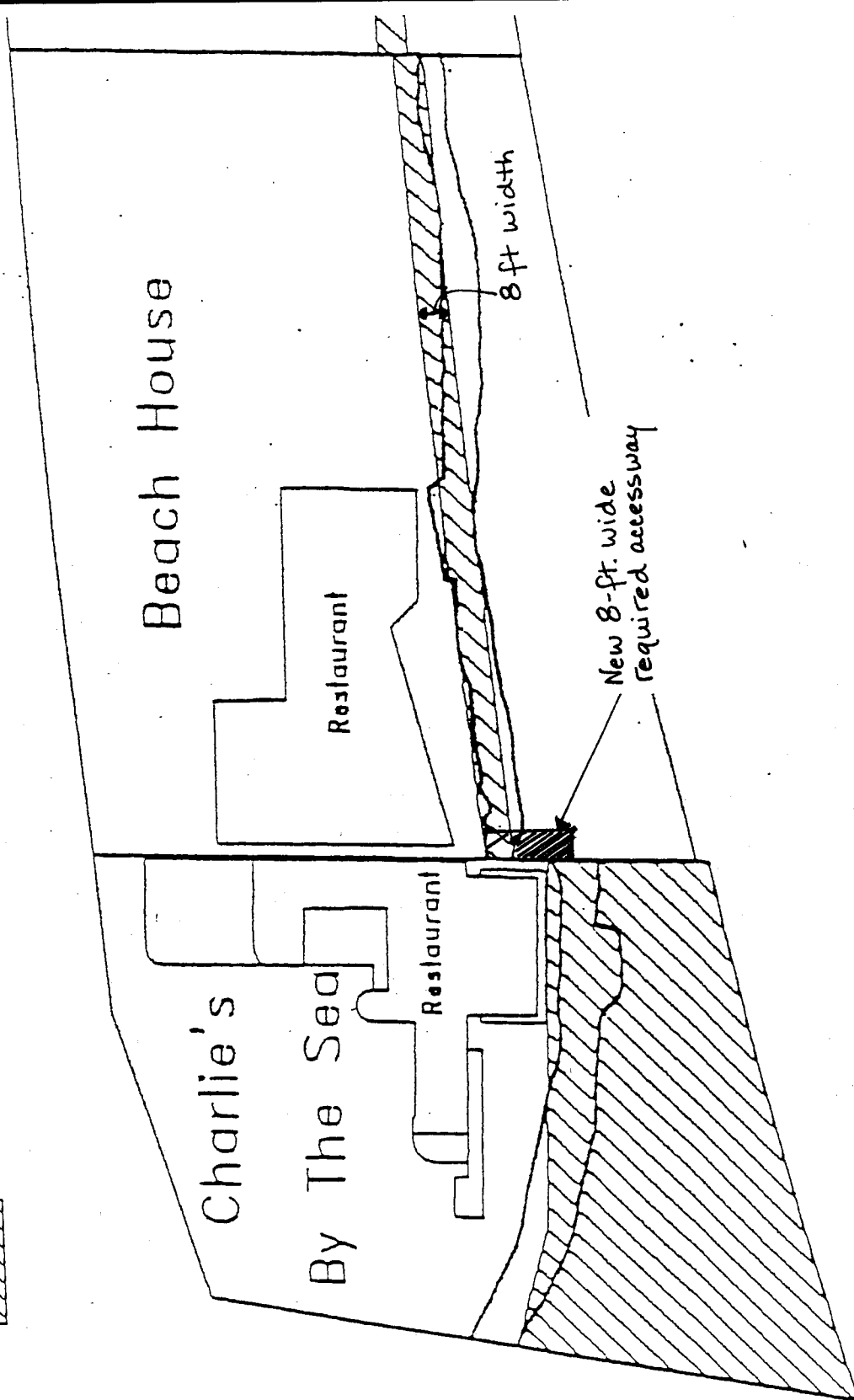
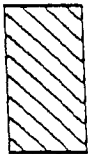
## BEACH HOUSE RESTAURANT

**SE SKELLY ENGINEERING**  
David W. Skelly MS, PE  
Coastal Engineer  
(760) 942-8379 PHONE/FAX


 California Coastal Commission	Concept
	Relocated Access
	6-02-119
	APPLICATION NO.
EXHIBIT NO. 6	

2/2/99

Existing  
Access Easements



Note: Locations approximate.  
For illustrative purposes only.

EXHIBIT NO. 7
APPLICATION NO.
6-02-119
Required New
Accessway
 California Coastal Commission

Note:



SAN DIEGO REGIONAL COMMISSION

1400 G STREET, SUITE 220  
SAN DIEGO, CALIFORNIA 92101-TEL. (714) 280-6992

MALCOLM A. LOVE  
Chairman

ROBERT C. FRAZEE  
Vice Chairman

JEFFERY D. FRAUENKEL  
Representative to the  
California Coastal Zone  
Conservation Commission

THOMAS A. CRANDALL  
Executive Director

DEVELOPMENT PERMIT

DATE: October 9, 1976  
APPLICANT: Triton Adventures, Inc.  
6011 El Cajon Bldg.  
San Diego, CA. 92115

CONTROL NO: F2857

AGENT: Jay Martin

PROJECT ADDRESS: 2530 So. Highway, Cardiff

You are hereby granted a development permit. This permit is issued after a hearing before the Commission and after the Regional Commission found that the proposed development will not have any substantial adverse environmental or ecological effect and is consistent with the findings and declarations set forth in Section 27001 and objections set forth in Public Resource Code Section 27302.

This permit is limited to development described below and set forth in material on file with the Commission, and subject to the terms, conditions, and provisions, hereinafter stated:

A. DEVELOPMENT:

Construction of a 2-story restaurant of approximately 6,000 sq. ft. in area which involves the removal of an existing wood frame structure of approximately 1,000 sq. ft. Total lot area is approximately 36,000 sq. ft. Approximate lot coverages: [Bldg. - 3,000 sq. ft. (8%) paving - 20,517 sq. ft. (57%), Sand - 10,000 sq. ft. (28%), Landscaping - 2,483 sq. ft. (7%) On-site parking is proposed for 58 autos. Reconstruction of an existing riprap wall will be involved, as will the erection of a 10 ft. high monument sign.

B. TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project as approved by the Commission.
2. That the applicant agrees to notify the Commission of any substantial changes in the project.
3. That the applicant will meet all the local code requirements and ordinances, and obtain all necessary permits from State and Federal Agencies.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Zone Conservation Commission.
5. That the applicant agrees that the Commission staff may make inspections of the project during construction and upon completion.
6. That construction on the project will start within one year of the Commission's approval of the project by the San Diego Coast Regional Commission.

EXHIBIT NO. 8

APPLICATION NO.

6-02-119

Original Permit &

Dedication (pg. 1 of 9)

California Coastal Commission

SEE ATTACHED

7. That the applicant agrees to record in favor of the public an 8 foot wide easement parallel to the existing alignment of the rubble seawall delineating the western limit of raised portions of the applicant's parcel. The purpose of such easement is to insure some public agency the opportunity to construct, at some future date, a public walkway which would provide "dry land" access parallel to the beach during periods of high tide or storm conditions and a route of travel for those not wishing to walk on sandy beach areas because of handicaps or personal preferences. Evidence of the required recordation of the easement and a map delineating such easement must be filed with the Commission prior to the commencement of construction.
8. That no construction shall commence in reliance upon this permit until a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features has been submitted to, reviewed, and determined adequate in writing by the Executive Director. Said landscape plan shall indicate a minimum of approximately 15% of the buildable lot area for planting with the maximum feasible amount of said landscaping located between Old Highway 101 and the proposed parking and building.
9. That the applicant strictly adhere to the Commission's parking guidelines of 1 (one) on-site parking space per every 105 sq. ft. of gross floor area. None of the parking spaces, or the loading area shall back out onto Highway 101.
10. That prior to the commencement of construction, revised plans for the monument sign showing a maximum height of 8 ft. shall be submitted to, reviewed, and determined adequate in writing by the Executive Director.
11. That the applicant agrees to participate in the traffic circulation/safety planning effort and abide by all recommendations of such a planning effort. That the applicant further agrees to participate in an overall precise planning effort for the area with other land owners in the area who are proposing new or expanded facilities if such a precise plan is required by the Commission as a condition of some future permit action.

Terms and Conditions are to run with the land. These terms and conditions shall be perpetual and it is the intention of the parties to bind all future owners and possessors of the subject property.

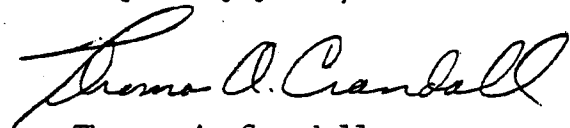
1/75

C. STANDARD PROVISIONS

- (1) STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit under penalties established by California Coastal Zone Conservation Act of 1972.
- (2) TIMELY DEVELOPMENT AND COMPLETION: Permittee shall commence development within one year following final approval of the project by the San Diego Coast Regional Commission. Completion of development shall occur no later than two years following Coast Commission approval of this permit.
- (3) ASSIGNABILITY OF PERMIT: This permit is not assignable unless the Permittee's obligations under the permit are assumed by assignee in writing within one year, and a copy of the required assumption agreement delivered to the Regional Commission.
- (4) APPEAL: Unless appealed to the State Commission within ten (10) working days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
- (5) DISCLAIMER: The permit is in no way intended to effect the rights and obligations heretofore existing under private agreements nor to effect the existing regulations of other public bodies.
- (6) PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) days Permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any question on this permit, please contact the staff of the Regional Commission.

Very truly yours,



Thomas A. Grandall  
Executive Director

\*\*\*\*\*

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Control No. F2357

Signature of Permittee

P. 3 of 9

Date \_\_\_\_\_



DEDICATION

THIS TESTAMENT, made this 20th day of November, 1976, by Leo Wayne Mullane and Dolores Jeanne Mullane who are the owners of Lots 129, 130, 131, 132, 133, 134, 135 and 136 of Block H, Map No. 1642 in the County of San Diego, State of California, filed in the Office of the County Recorder of said San Diego County, hereinafter referred to as "the Dedicator";

WHEREAS, pursuant to the California Coastal Zone Conservation Act of 1972, Sections 27000 through 27650 of the California Public Resources Code, the Dedicator has made Application No. F-2857 to the California Coastal Zone Commission, San Diego Region, for the issuance of a permit for the development of certain real property owned by the Dedicator; and

WHEREAS, said Commission has determined to grant said application and issue a permit for the development of said real property subject to certain conditions among which are that the Dedicator shall give the public the privileges and right to pass and repass over a strip of Dedicator's said real property eight (8) feet in width, and that the Dedicator shall execute and deliver to said Commission a restriction in the form herein set forth.

NOW, THEREFORE, in consideration of the issuance of said development permit, Dedicator agrees to keep the following

described portions of said real property, but no other portion thereof, open to the public for access to the Pacific Ocean and its shoreline for walking and agrees that Dedicator shall not construct any improvements on or in said public access area. The area subject to said public access is the following portion of the real property described in said application, to wit;

That certain real property in the County of San Diego, State of California, described in Exhibit "A" attached and made a part hereof.

Said public access privilege shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development covered by said permit, or any modification of said development, remains in existence in or upon any part of the real property described in said application.

Nothing shall become payable to Dedicator, nor the heirs or assigns of Dedicator, for the public privilege herein set forth and Dedicator consents to said privilege being administered by any duly constituted public agency.

Executed the day above written.

By

Leo Wayne Mullane  
Leo Wayne Mullane

By

Dolores Jeanne Mullane  
Dolores Jeanne Mullane

TO 447 C  
(Individual)

TI

STATE OF CALIFORNIA  
COUNTY OF Orange } SS.

On November 20, 1976 before me, the undersigned, a Notary Public in and for said  
State, personally appeared LEO WAYNE MULLANE &  
DOLORES JEANNE MULLANE

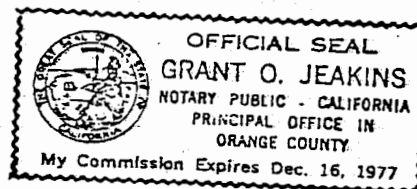
known to me  
to be the person S whose names ARE subscribed  
to the within instrument and acknowledged that THEY  
executed the same.

WITNESS my hand and official seal.

Signature Grant O. Jenkins

GRANT O JEEKINS

Name (Typed or Printed)



(This area for official notarial seal)

R. J. & R. R. TOAL, INC.

CIVIL ENGINEERS, LAND PLANNERS AND LAND SURVEYORS

139 AVENIDA NAVARRO • SAN CLEMENTE, CALIFORNIA 92672

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November 17, 1976

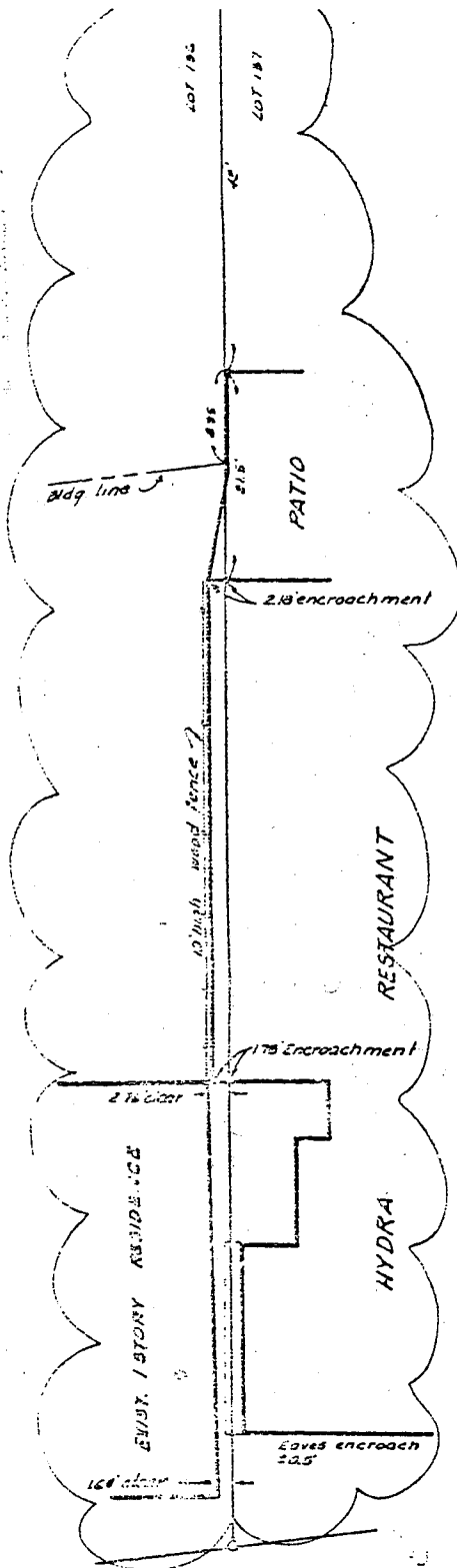
Job No. 3483

ENGINEER'S DESCRIPTION

An easement for public access over a portion of Lots 129, 130, 131, 132, 133, 134, 135 and 136 of Block H, Map No. 1642, in the County of San Diego, State of California, filed in the office of the County Recorder of said San Diego County, said easement being 8.00 feet wide, lying 8.00 feet Easterly of the following described line;

Beginning at a point in the Northerly line of said Lot 136, said point being 114.46 feet Westerly from the Northeast corner of said Lot 136; thence South  $15^{\circ}22'00''$  East, 92.66 feet; thence South  $15^{\circ}10'00''$  East, 136.33 feet to a point in the Southerly line of the Northerly 20.00 feet of said Lot 129.

EXHIBIT "A"



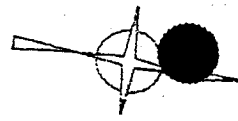
**DETAIL**  
Scale: 1"=10'

NOTE: Elevations based upon U.S.G.S. datum, per Rancho Santa Fe Eng. Co. drawing dated Sept. 23, 1971, titled 'N'y 20' lot 133, lots 133 through 140 & lots Block H, Crescent Beach, Map No 1642, Cardiff, California

Boundary information based upon said Rancho Santa Fe Eng. Co. drawing dated, Sept 23, 1971, and upon Rancho Santa Fe Eng. Co. drawing titled Survey Plat, lots 134, 135 & 136, Block H, Crescent Beach, Map No 1642

Both drawings supplied by owner.

<b>R.J. &amp; R.R. TOAL, INC.</b> Civil Engineers, Land Planners, Land Surveyors 138 Avenida Navarero San Clemente, Calif. 92672		DATE: _____ DRAWN: _____ CHECKED: _____ APPROVED: _____		DATE: 4-26-76	SKETCH SHOWING TRITON RESTAURANT PROPERTY WITH BUILDING/PUBLIC ACCESS RIGHTS LINE CARDIFF BY THE SEA CALIFORNIA PREPARED FOR THE TRITON RESTAURANT
SCALE: 1"=20' N. 1/4" = 10'		DATE: 1-20-76		1"=10'	



SCALE: 1"=20'

PACIFIC OCEAN

