

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-17-0648

Applicant: Department of Parks and Recreation

Agent: James Newland

Location: Crystal Cove State Park, Cottage No. 15, 8471 North Coast Hwy, Orange County

Project Description: Deck expansion to accommodate approximately 422 sq. ft. of new patron service area within the developed footprint of an existing café, and repair/renewal of outdoor hostess area in-kind.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is an expansion of an existing outdoor deck that would increase the outdoor dining and bar area of Cottage No. 15 (Beachcomber Café), which is located within the Historic District of Crystal Cove State Park. The proposed project includes no structural changes or exterior improvements to the principal Cottage. The standard of review for the proposed project is the Coastal Act, with the Crystal Cove Certified Public Works Program (PWP) serving as guidance.

The proposed project raises issues regarding impacts to public access, coastal hazards, visual impacts, and water quality. The permit is conditioned to assure that the proposed project is consistent with the Chapter 3 policies of the Coastal Act. The recommended special conditions are: **1)** best management practices; **2)** future development restrictions; **3)** assumption of risk; and **4)** no future shoreline protective device.

Staff is recommending **APPROVAL** of the proposed coastal development permit as conditioned.

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EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Project Plans

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act 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

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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 of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant(s) shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials.

Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

(l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

(m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

2. Future Development Restriction. This permit is only for the Cottage No. 15 outdoor deck expansion development project described in Coastal Development Permit No. 5-17-0648 and conditioned herein. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. 5-17-0648 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission, or may be processed as a Public Works Plan Specific Project pursuant to Sections 30605 and 30606 of the Coastal Act.

3. No Future Protective Devices and Development Duration.

A. **No future right to shoreline and bluff structures.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no new shoreline protective device(s) shall be constructed in the Historic District to protect the development approved pursuant to Coastal Development Permit No. 5-17-0648 including, but not limited to, the Cottage No. 15 deck expansion, and any other future improvements in the event that the development is threatened with damage or destruction from sea level rise, waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicants acknowledge that as new development, the proposed deck construction is not entitled to a shoreline protective device and hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such new devices that may exist under Public Resources Code Section 30235.

B. **Development Duration.** Development shall be removed and the affected area restored to a natural condition if: (a) a government agency declares the development unsafe for occupancy and/or use; (b) the development requires new and/or augmented shoreline protective devices (including additional elevation for structures already elevated); (c) the development encroaches onto State tide lands (including as the public trust lands migrates); (d) access and utilities are no longer available to serve the development; and/or (e) as recommended by any reports required under this condition; (f) consultation, review and comment are undertaken with the State Historic Preservation Officer as required in California Public Resources Code 5024.5 regarding demolition or removal of any or all of the contributing structures, elements or features of the National Register of Historic Places listed Crystal Cove Historic District property. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the permittee and/or landowner

shall remove the development authorized by this permit, including the deck expansion, if any government agency has ordered that the structures are not to be used or occupied due to hazards from sea level rise, waves, storm events, flooding, and erosion. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit and consultation with the State Historic Preservation Officer as defined in California Public Resources Code 5024.5.

- 4. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site of the Crystal Cove Historic District is subject to hazards from sea level rise, waves, storm events, flooding, and erosion; (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 defiance of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & LOCATION

The applicant, Department of Parks and Recreation, is proposing an expansion of an existing outdoor deck, an accessory to a main structure, to accommodate approximately 422 square feet of additional patron service area for the café, and is requesting to repair/renew outdoor hostess area in-kind (**Exhibit 2**). The proposed deck extensions are to match the construct of the existing deck (i.e. construction, redwood deck and rails with cable ties), which is approximately 36 inches above ground level. The additional patron service area will have the capacity for approximately 40 additional seats. The expansion of the accessory structure will be within the developed footprint of the café. No additional square footage, change in height, or additional exterior work is proposed to the principal structure.

The subject site is the Beachcomber Café, or Cottage No. 15, located within the Historic District of Crystal Cove State Park. Crystal Cove State Park is located in Orange County at the southern end of Newport Beach between the community of Corona del Mar in Newport Beach and the City of Laguna Beach (**Exhibit 1**). The 2,791-acre State Park includes a 3.25-mile long coastal section west of Pacific Coast Highway (PCH), and an inland campground and wilderness area. The coastal strip includes sandy beach, rocky tide-pools, an underwater park, bluffs and bluff-top trails, the 'Crystal Cove Historic District' cottages, and the Beachcomber beachfront restaurant and bar. The interior portion includes a Visitor Center, campground, and upland trails that extend into interior canyons and ridges. The park provides a large amount of open space surrounded by urbanized areas and is a major recreational and environmental resource.

The Crystal Cove Historic District (CCHD) consists of forty-six (46) historic seaside cottages, originally constructed between the 1930s and 1940s when the land was owned by the Irvine Company (TIC). The cottages were built by local residents including artists and Irvine ranch employees, among others, and eventually leased from TIC as private residential units. The CCHD was listed on the National Register of Historic Places in 1979 “because of its exceptional significance as a unique self-contained Southern California coastal community with a vernacular character that has remained intact since the 1930s.” The property was acquired in 1979 by the State for use as a park. The cottage tenants were required to leave in July 2001 following several lease extensions granted during the planning effort for the future of the CCHD. Since 2001, State Parks began the process of restoring the CCHD and adapting cottages for visitor serving uses. The CCHD includes many visitor-serving elements such as restaurants, beach access, nearby hiking and biking trail access, educational programs, historic and museum features, and overnight stays.

The goal of the CCHD is to provide public access and enjoyment of the unique coastal resources. The Crystal Cove Public Works Plan (PWP) was conditionally approved by the Commission on May 20, 1982. When the Commission approved the PWP and approved the restoration of the cottages, it recognized the CCHD as a special coastal community. The proposed deck expansion is consistent with the Crystal Cove Certified PWP.

The currently proposed development will accommodate additional outdoor seating area at Cottage No. 15 (Beachcomber Café), which is a visitor-serving use. The increase in service area of a food service use is traditionally assumed to increase parking demand. Because of its unique characteristics, CCHD already represents a popular visitor destination and a highly active visitor recreational area, both for day use and overnight use. Consequently, as indicated by the applicant, the wait-time to be served by the food service use at Cottage No. 15 within CCHD is frequently 45 minutes to two hours, particularly on the weekend. The addition of deck seating area will provide a limited increase in capacity to help support the already existing demand and help reduce the wait time and is not expected to significantly increase parking demand.

In addition, the applicant has indicated that the restriping of the Los Trancos parking lot in spring 2017 created 37 additional parking spaces within the existing parking lot. These 37 new parking spaces are more than adequate to accommodate the project’s minimal impacts on public beach access parking.

Crystal Cove is a unique coastal resource containing tidepools and an underwater park. It is also in a State Marine Conservation Area. The coastal waters located directly off the CCHD are within a designated Area of Special Biological Significance. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 1**, which outlines construction best management practices, construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Ornamental plantings to be trimmed are limited to two Birds of Paradise bushes located in the upcoast front expansion area. The applicant has indicated that the State Historian has approved the removal of these historic ornamental plants with no adverse effect to the historical resource.

The applicant is proposing to commence and undertake the subject deck expansion outside of the summer peak season and bird breeding season.

Moreover, to ensure negative impacts to public access to the coast are avoided, any future improvements to Cottage No. 15 (Beachcomber Café) authorized by this Coastal Development Permit No. 5-17-0648, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-17-0648 from the Commission as imposed by **Special Condition 2**.

The subject site is a seaside cottage at CCHD that is subject to seasonal wave attack. The beach seaward of the subject site does not adequately buffer the beachfront development from wave uprush during storm events and high tides. These circumstances present the potential for wave uprush damage and flooding to occur at the subject site in the future. Therefore, the Commission imposes **Special Condition 3** and finds that it is necessary to require that the applicant assume the risks for developing in this location that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property.

The Coastal Act discourages shoreline protection devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Adverse impacts associated with shoreline protection devices include: as a sandy beach erodes, the shoreline will generally migrate landward, toward the structure, resulting in reduction and/or loss of public beach area and in some cases, public trust lands, while the landward extent of the beach does not increase; oftentimes the protective structure is placed on public land rather than on the private property it is intended to protect, resulting in physical loss of beach area formerly available to the general public; the shoreline protection device may actually increase the rate of loss of beach due to wave deflection and/or scouring (this is site-specific and varies depending on local factors); shoreline protection devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views; and, shoreline protection devices can lead to loss of ecosystem services, loss of habitat, and reduction in biodiversity compared to natural beaches.¹

Shoreline protective devices, by their very nature, tend to conflict with Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "...create [or] 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."

Moreover, even when shoreline protection is not present, the placement of structures along an eroding shoreline can impact beach areas and public trust lands. As the shoreline migrates inland, structures may become located on beach areas and/or public trust lands, including tide lands and

¹ Summarized from <http://www.beachapedia.org/Seawalls>

submerged lands that the State holds in trust for the public's use and enjoyment, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits.

Here, no shoreline protective device is currently proposed. The proposed development is limited to new additions to an accessory structure that can be removed if it is deemed at risk of hazards. To ensure that the applicant acknowledges and accepts the prohibition of future protective devices for protection of this accessory structure, the Commission imposes **Special Condition 4**, which provides that no future shoreline protection is allowed, and requires that the development approved by this coastal development permit must be removed if it is no longer safe for use if a government agency makes such a determination or if the development encroaches onto migrating State tide lands, and after consultation with the State Historic Preservation Officer.

The Commission, therefore, finds that the proposed project, as conditioned, will not have adverse impacts to public access and will be consistent with the Chapter 3 policies of the Coastal Act and all applicable policies of the Crystal Cove Certified PWP.

B. STANDARD OF REVIEW AND CONSISTENCY WITH THE CRYSTAL COVE PUBLIC WORKS PLAN

Section 30605 of the Coastal Act provides, in pertinent part, that:

Where a plan for a public works or state university or college or private university development project has been certified by the commission, any subsequent review by the commission of a specific project contained in the certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1.

Section 30606 of the Coastal Act states:

Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university shall notify the commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified public works plan or long range development plan. No development shall take place within 60 working days after the notice.

Section 13359 of the Commission's Administrative Regulations states, in relevant part:

(b) The Commission shall...determine whether the proposed development is consistent with the certified public works plan...

The Crystal Cove Public Works Plan (PWP) was approved by the Commission with conditions on May 20, 1982. The most recent PWP amendment was authorized in June 2003 (PWP-4-82-A2). The current proposal is first evaluated under Section 30605 of the Coastal Act, cited above, to determine whether it establishes the applicable standard of review. In review of development proposed subject to a PWP, the first threshold question is whether the specific project is contained in the PWP. If it is, then the Commission's review is limited to the imposition of

conditions. The Commission cannot deny a project that it previously certified as part of the PWP; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the PWP. Once it is determined that a project is contained in the PWP, the second question is whether or not the project is consistent with the PWP. Alternatively stated, to the extent a specific project component was already considered and approved under the PWP, subsequent review is limited to imposing reasonable conditions per Sections 30605 and 30607; to the extent a specific project component falls outside the scope of the PWP, the project is evaluated for full consistency with Chapter 3 policies under the Coastal Act.

In this particular case, Commission staff has determined that the key portions (i.e. square footage of service area) of the proposed project were not previously and specifically contemplated and are, therefore, not contained in the PWP. Notwithstanding the fact that some current project components may not have been contemplated or approved under the PWP, the currently proposed project as a whole may be supported if the proposal is found to be consistent with the Coastal Act.

In short, the Coastal Act serves as the standard of review for the proposed project, with the Crystal Cove Certified PWP serving as guidance.

C. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition must be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

E. HAZARDS

Development adjacent to the ocean is inherently hazardous. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require that the landowner and any successor-in-interest assume the risk of undertaking the development, prohibit shoreline protective devices for this project and require the landowner and any successor-in-interest waive any right to shoreline protection that may exist, and require the landowner and any successor-in-interest remove the development if it is threatened, requires a shoreline protective device, or is no longer located on private lands due to migration of State tidal lands. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

F. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, and the use of non-invasive drought-tolerant vegetation to reduce and treat the runoff discharged from the site to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

G. LOCAL COASTAL PROGRAM AND PUBLIC WORKS PLAN

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

(a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The County of Orange Newport Coast (formerly Irvine Coast) Local Coastal Program (LCP) was certified by the Commission in January 1988. The Newport Coast LCP acknowledges that Crystal Cove State Park was certified separately under the PWP in 1982. Since this project proposal falls outside of and is not proposed under the PWP, the project is neither subject to the LCP nor the PWP and is therefore evaluated for consistency under Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development as conditioned will not prejudice the existing Local Coastal Program nor the PWP, and is consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of 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 Department of Parks & Recreation (State Parks), acting as lead CEQA agency, determined that the proposed project is categorically exempt from CEQA, and thus the Department did not identify

any significant adverse environmental effects from the proposed project. The Coastal Commission's review and analysis of coastal development permit applications has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate conditions to avoid and/or lessen any potential for adverse impacts to said resources.

There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the proposed development activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.