

**CALIFORNIA COASTAL COMMISSION**

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**F14b**

**6-21-0259 (Mastro's Ocean Club)**

**November 19, 2021**

**CORRESPONDENCE**

November 17, 2021

**VIA E-MAIL**

California Coastal Commission  
South Central Coast Area  
89 South California Street, Suite 200  
Ventura, CA 93001  
(805) 585-1800

Re: CDP No. 6-21-0259  
Item: F14b  
Applicant: CHLN, Inc.  
Address: 2588 South Coast Highway 101, Cardiff, Encinitas, CA

Dear Commissioners:

We submit this letter on behalf of our client, applicant CHLN, Inc., in support of the proposed project at 2588 South Coast Highway 101, Cardiff, Encinitas, CA (the “Property”) consisting of a remodel to an existing approximately 7,011 sq. ft. 2-story oceanfront restaurant into a Mastro’s Ocean Club restaurant with an approximately 460 sq. ft. addition (together, the “Project”).

The applicant has worked cooperatively with CCC Staff since the inception of the Project, well before the City of Encinitas approved the Project at the local level in February 2021. The applicant supports Staff’s recommendation to approve this Project, and we agree that the remodel and rebranding of this restaurant will result in an attractive visitor-serving use designated as a high priority use under the Coastal Act. (*See Coastal Act § 30222.*) We appreciate Staff’s hard work and patient coordination with the applicant team, including Staff’s changes to the Special Conditions specified in the Addendum to the Staff Report, created in response to the applicant’s concerns.

Although we agree with Staff’s recommendation to approve the Project and support the changes made to the Special Conditions outlined in the Addendum, we recommend additional changes to the Special Conditions #1 and #5, as set forth below. As discussed in this letter, these changes are fair to the applicant and consistent with the Coastal Act.

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**I. The CCC Should Modify Special Condition #1(g) To Allow A Valet Charge Not To Exceed The Rate Charged At North Cardiff State Beach Day Use Parking Facility.**

Special Condition #1, subsection (g) proposes to limit the restaurant’s valet parking charge to \$15.00. This amount functions to be consistent with the parking charge at the North Cardiff State Beach Day Use parking facility (the “State Beach lot”), and is designed to ensure that a higher valet charge at the restaurant does not encourage restaurant patrons to park in public State Beach parking spaces. (Staff Report, pp. 26-27; Addendum, p. 1.)

However, price increases remain likely to occur at the State Beach lot over time. Instead of limiting the Project valet charge to specific maximum (i.e., \$15.00), the Project valet charge should be set at a rate not to exceed the amount charged at the State Beach lot. This would (1) still ensure that that the restaurant patrons are not encouraged to park in in the State Beach parking spaces, and (2) allow the applicant to match the State Beach lot rate without having to seek future Commission approval—certainly saving the Commission, Staff, and the applicant time and effort. Our proposed redlines to subsection (g) are as follows:

**(g). Valet parking.** Parking plans shall indicate that the valet program will operate during all hours of restaurant operation and the charge for valet parking shall be no more than ~~\$15.00~~ **the daily rate charged for visitor parking at the public parking lot for Cardiff State Beach north of the Development located at 2500 S. Coast Highway 101, Cardiff, CA 92007.**

CCC Staff claims that the Coastal Act bars a variable valet fee because changes to valet fees could affect access to the adjacent public beach area and could constitute a change in the intensity of the use of the subject Property, and therefore requires Commission approval each time. We respectfully disagree with Staff’s position.

First, the parking charge will not affect access to the beach. Indeed, the opposite is true: limiting the valet charge to the rate charged at the State Beach lot ensures that restaurant patrons do not have an incentive to park there. On the other hand, in the event the State Beach lot *reduces* its parking pricing to below \$15, the condition as drafted would actually allow the Project to charge restaurant patrons *more* than the State Beach lot, which would eviscerate Commission’s intention of ensuring that restaurant patrons are not encouraged to park in the State Beach lot. Thus, if the CCC seeks to promote beach access, a variable rate (not to exceed the State Beach lot rate) makes more sense. Second, we are not aware of any case law or Commission precedent stating that a change in parking pricing constitutes a change in the intensity of the use under the Coastal Act. In fact, various circumstances, such as the popularity of the restaurant, the hiring of new employees, or

special promotions change the intensity of the use as a practical matter but have never required Commission approval. Marginal increases to valet charges over time (not to exceed the State Beach lot) that will only help ensure access to the public beach area should be no different.

Numerous parking lots within the Coastal Zone change their parking fees frequently without seeking Commission approval. If this constitutes an enforcement issue, the CCC should address it through a statewide policy, rather than singling out this applicant which seeks a variable valet rate to save the Commission, Staff, and itself time and resources while ensuring that restaurant patrons do not have an incentive to park in the public State Beach lot. We ask the Commission to revise Special Condition #1 to allow this lawful and practical approach.

**II. The CCC Should Revise Special Condition #5 To Allow For The Executive Director To Consider Alternatives To Removal Of The Approved Addition.**

Special Condition #5, subsection (b) requires the applicant to remove or relocate the 460 sq. ft. addition when any one of three conditions are met: (1) any government agency with relevant authority and jurisdiction condemns the approved addition due to hazards, (2) essential services to the site can no longer be maintained (e.g., South Coast Highway 101), or (3) the development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies. Subsection (c), meanwhile, requires removal if, at any time, the approved addition encroaches onto public property.

While we appreciate Staff limiting Special Condition #5 to the approved addition in response to the applicant's concerns, the Executive Director should have the discretion to consider alternative options prior to requiring removal of the addition. Please consider the underlying facts of this matter:

- The applicant is a tenant, and not the fee owner of the real property. Accordingly, while the applicant intends to abide by the conditions of the CDP and all applicable laws and regulations, the applicant cannot control whether the fee owner chooses to remove the approved addition.
- Neither the Coastal Act nor Encinitas' LCP specifically require removal or relocation of structures endangered by coastal hazards.
- This request is consistent with Special Condition #6, which similarly requires removal of the development when coastal hazards eliminate safe lateral public access but nevertheless allows the Executive Director to consider "[a]lternative

options ... provided that such options ensure continued lateral public access seaward of the development. “ (Staff Report, p. 12.)

- Removing a portion of the development would partially eliminate what Staff and the Coastal agree is a high priority visitor serving use. (Staff Report, pp. 1, 22.)
- The need for alternative options (such as enhancements to the existing revetment) is likely to be minimal. As the Staff Report notes, “[T]he applicant’s engineers determined that the revetment is functioning as intended, is not in need of any maintenance, and is expected to adequately protect the structure for the remainder of its anticipated lifespan, minimizing the risk for additional shoreline protection.” (Staff Report at pp. 17-18.) It continues, “Despite the likely exposure to overtopping, the proposed addition is not likely to experience significant damage and the Commission’s engineers agree with the consultant’s conclusions that the proposed addition will be reasonably safe from hazards for the remaining anticipated life of the structure.” (Staff Report, p. 19)
- Staff’s suggestion that Section 30.34.040 of Encinitas’ LCP prohibits the consideration of alternative options (such as enhancements to the revetment) is incorrect. The Project lies within the Commission’s original jurisdiction. Thus, while Section 30.34.050 (which bars the use of flood protection works for structures in a 100-year floodplain) may serve as guidance, it is not dispositive. *See* Staff Report, p. 15. At the same time, Section 30235 of the Coastal Act authorizes alternative options such shoreline protection devices, stating that “revetments ... and other such construction that alters natural shoreline process shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion...” Coastal Act § 30235.
- Requiring removal when the addition “encroaches onto public property” may unlawfully intrude on the jurisdiction of the California State Lands Commission.

Accordingly, the Executive Director should have the discretion to consider alternative options to removal of the addition. Thus, Special Condition #5, subsection (b) should be amended as follows (note, redlines are to the Addendum):

(b) By acceptance of this Permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that the ~~landowner~~ permittee shall remove the approved addition

~~development~~ authorized by this Permit, ~~including the addition~~  
(~~indoor and outdoor dining areas~~), and restore the site, if:

- (i) Any government agency ~~has ordered that the structures are not to be occupied due to any of the hazards identified above,~~ or if any public agency requires the structures to be removed with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the approved addition is unsafe for occupancy or use due to natural hazards and that there are no measures that could make the structure suitable for use without the use of bluff or shoreline protective devices;
- (ii) Essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; or
- (iii) The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

**Notwithstanding anything to the contrary in this subsection (b), the Executive Director may consider alternative options to removal or relocation of the approved addition.**

Likewise, Special Condition #5, subsection (c) should be amended as follows:

- (c) The approved project may be constructed and used consistent with the terms and conditions of this permit for only as long as the approved addition it remains safe for occupancy and on private property. If any portion of the ~~development~~ approved addition at any time encroaches onto public property, the permittee shall remove the encroaching portion of the development. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

Notwithstanding anything to the contrary in this subsection (b), the Executive Director may consider alternative options to removal or relocation of the approved addition.

**III. Conclusion**

We appreciate Staff's efforts to address the applicant's concerns with the Special Conditions, and we agree with the changes to the Special Conditions set forth in the Addendum. However, Special Conditions #1 and #5 require additional revisions. Importantly, Special Condition #1, subsection (g) should be amended to permit a variable valet charge—an approach that is both practical and lawful. Special Condition #5, subsections (b) and (c) should be revised to allow the Executive Director to consider alternative options to removal of the addition. Without this safety valve, the condition is unfairly draconian, especially considering that the applicant is the lessee, not the fee owner of the Property.

Respectfully,



KENNETH A. EHRLICH,  
a Professional Corporation of  
Elkins Kalt Weintraub Reuben Gartside LLP

KAE:jdm

**From:** [Carney, Kaitlin@Coastal](mailto:Carney.Kaitlin@Coastal)  
**To:** [Carney, Kaitlin@Coastal](mailto:Carney.Kaitlin@Coastal)  
**Subject:** FW: Mastro's Addendum  
**Date:** Wednesday, November 17, 2021 12:02:15 PM

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**From:** Jackson D. McNeill <[JMcNeill@elkinskalt.com](mailto:JMcNeill@elkinskalt.com)>  
**Sent:** Tuesday, November 16, 2021 4:40 PM  
**To:** Carney, Kaitlin@Coastal <[kaitlin.carney@coastal.ca.gov](mailto:kaitlin.carney@coastal.ca.gov)>  
**Cc:** Prahler, Erin@Coastal <[Erin.Prahler@coastal.ca.gov](mailto:Erin.Prahler@coastal.ca.gov)>; Kenneth A. Ehrlich <[KEhrlich@elkinskalt.com](mailto:KEhrlich@elkinskalt.com)>  
**Subject:** RE: Mastro's Ocean Club CCC Staff Report Posted

Kaitlin:

Thank you for sharing the draft Addendum. We largely support Staff's changes to the Special Conditions in response to the applicant's concerns. However, although we believe that CCC staff should post the Addendum and keep the Project agendized for Friday, our client intends to submit supplemental correspondence recommending additional, relatively minor revisions to the Special Conditions, including requests that the CCC revise: (1) Special Condition #1 to tether the valet charge to the State Beach lot parking fee (the Mastro's valet fee would not exceed the public lot daily fee); and (2) Special Condition #5 to allow the Executive Director to consider alternative options to removal of the approved addition.

Should you wish to discuss this directly, please contact me on my cell [REDACTED] or call my colleague Ken Ehrlich at ([REDACTED]).

Thank you.

**Jackson D. McNeill**

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## 1. Revised Final Plans.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and written approval of the Executive Director, revised final plans that are in substantial conformance with the plans prepared by DP3 Architects dated March 4, 2020, except that they shall comply with the following:

- (a) **Lighting.** The plans shall illustrate the existing beach lights on the seaward side of the restaurant structure, in the area depicted by Exhibit 7, to be removed as required by Special Condition #8. No lighting directed towards the revetment or beach is allowed.
- (b) **Public access signage.** The existing northern public access sign shall be relocated to the seaward side of the lateral accessway, approximately 8 ft. west of its existing location, as depicted in Exhibit 5.
- (c) **Knee wall.** The proposed knee wall on the seaward side of the new addition shall be replaced with a fence, gate, planter, or other similar permeable barrier between the outdoor dining area and public accessway. All portions of this barrier shall be located outside of the lateral public access easement.
- (d) **Lateral public accessway.** Plans should clearly state that no development is to encroach into the lateral public accessway. **Notwithstanding the foregoing, the Commission agrees and acknowledges that in requiring the recordation of a lateral public access easement in CDP 6-85-4, the Commission permitted a small portion of the restaurant to encroach into the public accessway by approximately 4 feet. Said encroachment is identified on the plans is excepted from this condition.**
- (e) **Parking space wheel stops.** Wheel stops shall be added along the inland edge of the lateral public accessway to prevent encroachment of vehicles into the lateral public accessway.
- (f) **Electric Vehicle (EV) charging station.** Parking plans shall provide for one Electric Vehicle charging station space.
- (g) **Valet parking.** Parking plans shall indicate that the valet program will operate during all hours of restaurant operation and the charge for valet parking shall be no more than **~~\$12.00~~ the daily rate charged for visitor parking at the public parking lot for Cardiff State Beach north of the Development located at 2500 S. Coast Highway 101, Cardiff, CA 92007.**
- (h) **Worker carpool.** Parking plans shall identify free valet parking or reserved carpool spaces for carpools of three or more workers.

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

## 5. No Future Bluff or Shoreline Protective Device

- (a) By acceptance of this Permit, the permittee agrees, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the ~~current 460 sq. ft. addition to the development approved pursuant to Coastal Development Permit No. 6-21-0259 including, but not limited to, the addition (indoor and outdoor dining areas),~~ including in the event that the ~~development~~current 460 sq. ft. addition is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the permittee hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- (b) By acceptance of this Permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that the landowner shall remove ~~current the 460 sq. ft. addition to the development authorized by this Permit, including the addition (indoor and outdoor dining areas),~~ and restore the site, if:
- (i) Any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above (“Occupancy Order”), or if any public agency requires the structures to be removed (“Removal Directive”); and the permittee or its successors or assigns either choose not to appeal such Occupancy Order or Removal Directive or have otherwise exhausted all appeals or right to appeal such Occupancy Order or Removal Directive;
  - (i) Essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; or
  - (ii) The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

~~Notwithstanding anything to the contrary in this subsection (b), the Executive Director may consider alternative options to removal or relocation of the addition.~~

- (c) The approved project may be constructed and used consistent with the terms and conditions of this permit for only as long as ~~it~~the current the 460 sq. ft. addition remains safe for occupancy and on private property. If any portion of the ~~development~~addition at any time encroaches onto public property, the permittee shall remove the encroaching portion of the development. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.

~~Notwithstanding anything to the contrary in this subsection (c), the Executive Director may consider alternative options to removal or relocation of the addition in order to address encroachments onto public property. Further, the Commission agrees and acknowledges that in requiring the recordation of a lateral public access easement in CDP 6-85-4, the Commission permitted a small portion of the restaurant to encroach into the public accessway by approximately 4 feet. Said encroachment shall not be considered an encroachment onto public property for~~

purposes of this subsection (c).

- (d) Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that portions of the development fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.