
CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-21-0259

Applicant: CHLN, Inc.

Agent: Kenneth Ehrlich

Location: 2588 South Coast Highway 101, Cardiff, Encinitas, San Diego County (APN: 261-162-22)

Project Description: Remodel and rebrand an existing approximately 7,011 sq. ft. 2-story oceanfront restaurant, including an approximately 460 sq. ft. addition; consolidate thirteen underlying lots into one single lot; update valet parking program; new landscaping and hardscape improvements on a combined approximately 27,948 sq. ft. lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to remodel, rebrand, and construct an addition to an existing restaurant (currently Chart House) and then operate the rebranded restaurant as a Mastro's Ocean Club restaurant. As a visitor-serving use, the use of this site as a restaurant is a high priority use under the Coastal Act. The restaurant also serves locals within the Cardiff community of Encinitas.

The subject site is located on the west side of South Coast Highway 101 adjacent to Cardiff State Beach. The surrounding area that encompasses the project site is known locally as "Restaurant Row" and surrounding uses include one restaurant to the north of the subject site, several restaurants and commercial and office uses to the east across Coast Highway, Cardiff State Beach to the south, and the Pacific Ocean to the west.

The proposed project is located in an area where coastal hazards exist and can adversely impact development. A riprap revetment protects the restaurant and was approved by the Commission in 1975, along with the restaurant's original construction. The revetment also supports an eight-foot wide lateral public accessway, which connects to a similar accessway on the neighboring restaurant property to the north. The applicant has submitted a coastal hazards analysis that ultimately concludes that impacts from coastal hazards will be limited until around the end of the restaurant's anticipated economic life (approximately 30-35 years) at which point anticipated sea level rise may cause hazards to become more intense and more frequent. Based on the range of possible flooding on the site that is likely to worsen over time with rising sea level, the Commission's Senior Engineer believes the proposed addition will likely be exposed to wave overtopping from high tides and large waves over the lifespan of the development. Despite the likely exposure to overtopping, the proposed addition is not likely to experience significant damage and the Commission's engineers agree with the applicant's conclusions that the proposed addition will be reasonably safe from hazards for the remaining anticipated life of the structure. In addition, should hazardous conditions occur, the restaurant may suspend service in the outdoor dining area until hazards subside. No changes to the revetment or public access path are currently proposed; however, the path will likely experience increased wave and storm action in the future as sea level rises. Because the project site is in a hazardous area already protected by existing armoring, **Special Conditions #4 and 5** require the applicant to acknowledge the hazards present onsite, assume the risk of such hazards, and waive the right to construct further shoreline armoring for the development authorized through this permit. To ensure the proposed new development minimizes risks to life and property when coastal hazards threaten the safety of the site, **Special Conditions #5 and 6** also requires the applicant in the future to remove or relocate development authorized by this CDP to accommodate the inland migration of the eight-foot wide public accessway and public accessway signage due to sea level rise. Other circumstances such as loss of access to the site via South Coast Highway 101, encroachments into public trust lands, or a government agency order condemning the property due to hazards will also require future removal, modification, or relocation of the development.

While no work is proposed to the revetment or public access path through this permit, the applicant is proposing to convert a landscaped area on the northwestern portion of the building into new dining space. To separate the new outdoor dining area from the rest of the site and meet California Department of Alcohol Beverage Control requirements, the applicant has proposed a 3 ft.-high "knee-wall." While delineation is important to avoid spillover of the restaurant use into the public accessway, the proposed wall could function as a form of shoreline protection. And as new development, the dining area addition is not entitled to protection under Section 30235

of the Coastal Act. In addition, should the revetment become overtopped with wave action, the knee wall may increase flooding on the lateral public accessway by restricting the movement of flood waters. Therefore, **Special Condition #1c** requires the submittal of revised final plans that remove the "knee wall" and instead utilize a more permeable barrier to delineate the outdoor dining space from the lateral access easement (e.g., planters, open fencing).

Existing Commission-required public access signage located on the northwestern corner of the restaurant is within the area intended to be developed with the new outdoor dining area addition. To ensure that the public continues to be informed about the availability of this accessway, **Special Condition #1b** requires the applicant to relocate the existing sign approximately 8 ft. seaward to the opposite side of the public access path. And to ensure that the accessway is maintained open and unobstructed by vehicles, **Special Condition #1e** also requires the placement of wheel stops at the westernmost parking spaces. Finally, to ensure that the existing public accessway is maintained in its open and intended state, **Special Condition #1d** requires revised final plans that clearly state that no development is to encroach into the lateral accessway.

The subject oceanfront site is located west of Highway 101 in an area known locally as "Restaurant Row". Restaurant Row is a popular dining destination among visitors and locals alike; however, parking is constrained. The proposed project will provide sufficient on-site parking through the use of a valet program. Valet parking is proposed to be provided during the restaurant's hours of operation and will be subject to a fee. To ensure that the valet fee does not encourage patrons to utilize neighboring beach parking, **Special Condition #1g** requires that the valet fee be no more than \$12, which is the cost of a day-use pass at nearby Cardiff State Beach. Because all on-site parking will be subject to a valet program, it is possible that employees will look elsewhere for free parking, resulting in adverse impacts on public access. Therefore, **Special Condition #7** requires that the applicant submit and implement a Transportation/Parking Demand Management Program to promote the use of transit and minimize parking demand. **Special Condition #1h** also requires the restaurant to provide free valet parking or reserved carpool spaces for carpools of three or more workers. To further minimize energy consumption associated with automobile use, **Special Condition #1f** requires the applicant to provide one EV charging station space.

South Coast Highway 101 is designated in the City's certified LCP as a scenic corridor that provides expansive views of the Pacific Ocean and the San Elijo Lagoon. Many of the existing buildings along Restaurant Row partially block public views of the ocean. The proposed addition is on the seaward side of the restaurant within an enclosed area and will not significantly block views of the ocean from Coast Highway. No impacts to public views from the public accessway will occur.

The project will include some hardscape improvements and will result in a minor increase in impervious surfaces on-site. Runoff from parking lots can be a major contributor of non-point source pollution in stormwater, which ultimately is discharged into coastal waters. To ensure the proposed development does not adversely impact water quality, **Special Condition #2** requires the applicant to submit a Construction and Pollution Prevention Plan, prepared by a licensed engineer, that incorporates BMPs

designed to address contaminants associated with construction activity. Additionally, to ensure that BMPs for the parking lot are in place upon completion of the project, **Special Condition #3** requires the applicant to submit a Post-Development Runoff Plan implementing BMPs to reduce runoff from the various impervious surfaces.

Because of the project's location immediately adjacent to the sandy beach, lighting could also adversely impact sensitive biological resources. A condition of the City's minor use permit and design review permit requires that all light sources shall be shielded, directed away from sensitive habitats, and all fluorescent bulbs be replaced with low-emitting LEDs with a color temperature between 2,700 to 3,000 degrees Kelvin, which is consistent with the Commission's typical requirements for lighting in order to minimize impacts to wildlife. In addition, the applicant has agreed to **Special Condition #1a**, which requires the applicant to remove the existing beach lighting located on the seaward side of the restaurant. **Special Condition #8** requires this removal to occur within 90 days of issuance of the CDP.

To ensure that future property owners are properly informed regarding the terms and conditions of this approval, **Special Condition #9** requires a deed restriction to be recorded against the properties affected by the development.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0259, as conditioned. The motion is on Page 6. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Existing Conditions](#)

[Exhibit 3 – Proposed Site Plan/Valet Parking Plan](#)

[Exhibit 4 – Proposed Parking/Valet Plan](#)

[Exhibit 5 – Public Access Signage](#)

[Exhibit 6 – Potential Flooding Index](#)

[Exhibit 7 – Beach Lighting to be Removed](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-21-0259 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

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

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

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.
- (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.
- (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.

2. Construction and Pollution Prevention Plan (CPPP)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, a CPPP prepared and signed by a licensed engineer that, at a minimum, includes the following:

- (a) Construction shall protect and maximize public access, including by:

- i. Staging and storage of construction equipment and materials (including debris) shall not take place on the beach or in the lateral public accessway. Staging and storage of construction equipment and materials shall occur in inland areas at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible. Construction is prohibited outside of the defined construction, staging, and storage areas.
- ii. All construction methods to be used, including all methods to keep the construction areas separated from public recreational use areas (e.g., using unobtrusive fencing or equivalent measures to delineate construction areas), shall be clearly identified on the construction site map and described in a narrative description.
- iii. All beaches, beach access points, and other recreational use areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.
- iv. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

(b) Best Management Practices (BMPs) designed to prevent spillage and runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall include:

- i. No demolition or construction materials, equipment, 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;
- ii. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- iii. 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 or storm drains;
- iv. Erosion control and sedimentation BMPs shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to placement of sandbags around drainage inlets to prevent runoff or sediment transport into coastal waters;
- v. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- vi. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

- vii. 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;
- viii. All construction materials stockpiled on site shall be covered and enclosed on all sides to ensure that the materials are not discharged to a storm drain inlet or receiving waters;
- ix. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. If thinners, petroleum products or solvents must be used on site, they shall be properly recycled or disposed after use and not be discharged into storm drains, sewers, receiving waters or onto the unpaved ground;
- x. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- xi. 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 designated area shall be equipped with spill control materials and located to minimize the risk of spills reaching receiving waters, storm drains, sewers or unpaved ground;
- xii. BMPs and Good Housekeeping Practices (GHPs) designed to prevent spillage and 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; and
- xiii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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 plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Post Development Runoff Plan (PDRP)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and written approval of the Executive Director a Post Development Runoff Plan (PDRP) that includes a map, drawn to scale, showing the property boundaries, building, footprint, runoff flow directions, relevant drainage and water quality features, impervious surfaces, permeable pavements, and landscaped areas. The PDRP shall demonstrate that the project:

- (a) Minimizes disturbance of coastal waters and natural drainage features; minimizes removal of native vegetation; and avoids, to the extent feasible, covering or compaction of highly permeable soils;
- (b) Preferentially uses Low Impact Development (LID) techniques to retain and disperse runoff on site;
- (c) Uses infiltration to the greatest extent feasible to retain runoff; minimize the addition of impervious surfaces; disconnect impervious surfaces from the storm drain system by interposing strategically-located pervious areas. Where infiltration is not appropriate or feasible, uses alternative BMPs to minimize changes in the runoff flow regime (e.g., direct roof runoff into rain barrels or cisterns for later use, evaporate roof runoff, employ a green roof, construct a rain garden, and/or plant trees);
- (d) Unless specifically prohibited by conditions as documented in a detailed site analysis certified by a licensed engineer, runoff from the development, up to and including the 85th percentile, 24-hour runoff event, shall be infiltrated on-site;
- (e) Minimizes pollutants associated with landscaping and building materials;
- (f) Directs drainage from all parking areas and driveways, roofs, walkways, patios, and other impervious surfaces to, in order of priority, a) landscaped areas or open spaces capable of infiltration, b) earthen-based infiltration BMPs, c) flow-through bio-filtration BMPs designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations, d) proprietary filtration systems designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations and product documentation;
- (g) Conveys excess runoff off-site in a non-erosive manner;
- (h) Where flow-through BMPs are used, includes supporting calculations and product documentation; and
- (i) Includes all maintenance and operating procedures that will be conducted to keep the water quality provisions effective for the life of the development.

The permittee shall undertake development in conformance with the approved PDRP. No changes to the plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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.

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 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 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 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, or if any public agency requires the structures to be removed;
 - (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.
- (c) The approved project may be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy and on private property. If any portion of the development 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.
- (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.

6. Obligation to Provide Lateral Public Access.

By acceptance of this Coastal Development Permit (CDP), the permittee acknowledges and agrees, on behalf of themselves and all successors and assigns, that the temporary elimination of safe lateral public access along the revetment due to coastal hazards, including but not limited to extreme tide conditions, storms, wave run-up, or rising sea levels, shall trigger a review to determine if there continues to be adequate lateral public access. Such review shall be triggered when three or more times during any rolling 12 month period, safe lateral access is eliminated at least once per day, over three consecutive days. Safe lateral public access along the revetment may be considered temporarily eliminated when the maximum water elevation of the tide, plus wave effects, exceeds the empirical mild flood threshold on the Coastal Data Information Program/Scripps Institution of Oceanography (CDIP/SIO) Potential Flooding Index for Cardiff, or a comparable flood threshold that is developed by the applicant and submitted to the Executive Director for review and approval. If the Executive Director determines that safe lateral public access cannot be provided seaward of the development authorized by this CDP, the permittee agrees to remove, in part or in whole, such development. The Permittees shall apply for an amendment to this CDP in order to conduct removal activities, unless the Executive Director determines that an amendment is not legally required. Alternative options may be considered provided that such options ensure continued lateral public access seaward of the development.

7. Transportation/Parking Demand Management Program.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and written approval, a Transportation/Parking Demand Management Program that includes, at a minimum, the following provisions:

- (a) Free valet parking or reserved carpool spaces shall be provided for carpools of three or more workers.
- (b) The permittee shall provide incentives for workers to use public transportation; including the provision of subsidized public transit passes or reimbursements.
- (c) The permittee shall encourage worker participation in a carpool plan and support the use of carpools, reasonable coordination of work schedules, the announcement of the availability of carpools with periodic reminders, and other incentives that are feasible for the permittee to offer.
- (e) The program shall be included in documents made available to all new hires.
- (f) The permittee shall undertake annual surveys of workers to document the frequency with which they are using alternative transportation to get to work and the success of the Transportation/Parking Management Program. Surveys shall

be submitted annually to the Executive Director by January 30 for the previous year for as long as this permit is in effect.

The Transportation/Parking Demand Management Program shall be implemented at all times consistent with the terms of this condition. No changes to the program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Lighting Removal.

Within 90 days of issuance of this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the permittee shall remove the existing beach lights on the seaward side of the restaurant in the area depicted by Exhibit #7.

9. Deed Restriction.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit 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 the terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the 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 entire parcel or parcels governed by this permit. 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.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project involves the remodel of an existing 7,011 sq. ft., two-story oceanfront restaurant, currently operating as the Chart House ([Exhibits 1 and 2](#)). The project includes a 460 sq. ft. addition, resulting in a 7,471 sq. ft. restaurant. The 460 sq. ft. addition consists of enclosure of a landscaped area into a 265 sq. ft. outdoor dining area and a 195 sq. ft. interior private dining space. Other renovations include reconfiguration of the indoor restaurant space, mechanical, plumbing and electrical upgrades, and interior layout modifications ([Exhibit 3](#)). The project includes demolition of approximately 18% of the existing exterior walls.

The applicant also proposes to modify the existing on-site parking, including re-striping, installation of one electric vehicle charging station, and changes to the existing valet program ([Exhibit 3](#)). The site currently appears to be striped to accommodate approximately 40 parking spaces, although the applicant operates a valet program and indicates that the program can accommodate 75 cars. The applicant is proposing to restripe the parking lot and plans provided indicate that they will be able to accommodate 78 parking spaces while utilizing a valet program. The three additional spaces provided will be ADA accessible. The valet program was approved by the Commission in 1994 (CDP #6-94-81). The Commission's records indicate that at that time, the valet program was proposed to accommodate 75 cars, would be operated during evening hours and 7 days per week, and would be complimentary for restaurant guests. The applicant is proposing modifications to this valet program, including that it will operate during all hours of the restaurant's operation and it will charge a fee of approximately \$10 to \$14.

In addition, the proposed project includes the installation of new drought-tolerant landscaping, and construction of several hardscape improvements including a new free-standing trash enclosure composed of an eight-foot high, stone veneer wall covered with a wooden trellis; a three-foot high, approximately 11-foot long stone veneer "knee-wall" abutting the seaward side of the new outdoor dining area addition; new concrete driveway aprons for egress from the restaurant's parking lot adjacent to South Coast Highway 101, and a new concrete walkway/pedestrian sidewalk along Coast Highway. Existing flood lights on the seaward side of the structure are proposed to be removed.

The structure's façade will be revised and updated to reflect the new Mastro's Ocean Club restaurant. The rebranding will also include modifications to the commercial signage on the site, which includes two new, illuminated signs mounted onto the street-facing side of the restaurant; two, non-illuminated signs mounted on a landscape planter; and modifications to two free-standing signs adjacent to South Coast Highway 101.

Finally, the 13 lots underlying the restaurant are proposed to be consolidated into one 27,948 sq. ft. lot. The applicant submitted a prepared tentative parcel map waiver as part of the CDP application submittal that is awaiting recordation upon the approval of this permit.

The subject site is located on the west side of Coast Highway adjacent to Cardiff State Beach in the Cardiff community of Encinitas. The surrounding area that encompasses the project site is known locally as "Restaurant Row" and surrounding uses include one restaurant to the north of the subject site, several restaurants and commercial and office uses to the east across Coast Highway, Cardiff State Beach to the south, and the Pacific Ocean to the west.

Site History/Past Permits

The property at 2588 South Coast Highway 101 has been subject to several CDP applications in the past, including the following:

- **F2973:** The restaurant was originally approved by the Commission in December 1975 as a 5,986 sq. ft. structure. The Commission's approval also required recordation of an 8-foot-wide lateral access easement located along the seaward side the property, and authorized a riprap revetment.
- **6-85-4:** Authorized improvements seaward of the existing restaurant including installation of an enclosed windscreen patio area, replacement of a deck, and repair of the riprap revetment. Conditions of approval required recordation of a lateral public access easement, placement of public access signage and recordation of the standard waiver of liability.
- **6-85-4-A1:** Request for after-the-fact construction of glass windscreen and sunshade awning over and adjacent to the public access path. Application withdrawn.
- **6-88-486:** Request for maintenance of the riprap revetment including replacement of dislodged stones and placement of additional stones to restore height.
- **6-91-086:** Authorized repair of the rock revetment along south property line and to west facing rock per 6-85-4.
- **6-92-036-G (see 6-94-163):** Emergency permit authorized augmentation of the existing riprap revetment with placement of approximately 100, 4- to 8-ton stones seaward of the restaurant.
- **6-94-081:** Authorized construction of a 404 sq. ft. addition, new fencing/walls with stone cladding, resurfacing and striping of parking lot and operation of a complimentary valet program, and various interior remodeling improvements.
- **6-94-158:** Application to remove existing dining area, construct new dining area, staircase, loft & bridge areas, increase interior floor area by approximately 300 sq.ft. Application was never filed.
- **6-94-163:** Authorized retention, repair and augmentation of the existing riprap revetment with placement of approximately 100, 4- to 8-ton stones seaward of the revetment. This served as the follow up CDP to 3-92-036-G.
- **6-98-087:** Application for realignment of the existing 8-foot-wide public access easement approximately 4-5 feet further seaward; also, (after the fact) retention of restaurant amenities (firepit, tables and chairs, windscreens, awning supports, etc.) seaward of the restaurant. Staff recommended denial and application was withdrawn.
- **6-04-080-X:** Update/revise three existing monument signs for Chart House restaurant with no increase in sign size.
- **6-18-0462-X:** Installation of screen mesh and track for four existing window panels and installation of exterior of windows.

The proposed development is located within the City of Encinitas which has a certified LCP; however, the subject site is located within the Commission's area of original jurisdiction and as such, the standard of review is the Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

B. Geologic Hazards/Flooding & Inundation

Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, 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, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30253 of the Coastal Act states, in part:

New development shall... [m]inimize risks to life and property in areas of high geologic, flood, and fire hazard... [and] where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Land Use Policy 8.2 of the Encinitas certified Land Use Plan states, in part:

Development located within coastal and flood plain areas... must be limited to, designed to minimize hazards associated with development in these areas, and preserve area resources... No development shall occur within the 100-year floodplain that is not consistent and compatible with the associated flood hazard.

Section 30.34.040 of the Encinitas certified Implementation Plan states, in part:

Floodplain. Within the 100-year floodplain, permanent structures, road and other public improvement consistent with the Land Use Element will only be allowed if the applicant can demonstrate the following:

- a. The development is capable of withstanding periodic flooding, and does not require the construction of flood protective works, including but not limited to, artificial flood channels, revetments, and levees...

Project Setting

Developments located at the shoreline are directly subject to the risks associated with shoreline erosion, storms, large waves, flooding, earthquakes/tsunamis, and other geologic and coastal hazards. Low-lying coastal areas may experience more frequent flooding (temporary wetting) or inundation (permanent wetting), and the inland extents of 100-year floods. These risks can be exacerbated by rising sea levels.

The existing restaurant and adjacent segment of Coast Highway are located in the Flood Plain Overlay Zone district as identified in the certified LCP. Coast Highway provides the only vehicular access to the project site, but the highway and other surrounding low-lying public infrastructure are currently at risk from storms and wave impacts and will likely be inundated in the near future due to sea level rise. The topography of the project site and the surrounding area is relatively flat and is already subject to wave and storm action. As a result, riprap revetments armor the seaward side

of most establishments along this stretch of shoreline, including Highway 101 and the project site, which is protected by an existing, approximately 300 ft.-long riprap revetment. At high tides, there is currently little to no dry sand (i.e., usable beach) seaward of the restaurant. Just to the south of the subject site, the Cardiff Living Shoreline was constructed as a pilot project to explore a nature-based approach to protecting Coast Highway.

In past actions, the Commission recognized the need to protect the restaurant from such erosion hazards and found a proposed riprap revetment consistent with Coastal Act policies. The revetment was first approved by the Commission under F2973, along with construction of the restaurant, making the restaurant a pre-Coastal Act structure. Following storm damage in the winter of 1983, the property owners increased the revetment and cemented it with gunite without the benefit of a CDP. These unpermitted improvements were included in CDP #6-85-4, and the Commission authorized the improved revetment, which generally conformed to the previously approved revetment but with a new seaward projection of approximately 5-ft. compared to the pre-storm conditions. To address this encroachment onto the public beach, the Commission required the applicant to formalize the previously-required lateral public accessway through recordation of an offer to dedicate a lateral access easement. Prior approvals also acknowledge that it is the applicants' responsibility to maintain the revetment.

The applicant is requesting approval for remodeling and renovations to a structure located in a hazardous area. In addition, the proposed improvements involve a minor addition on the seaward side of the existing structure. As a result, the Commission must evaluate both the risk to the new addition, and the potential that the structure will result in the need for additional shoreline protection.

New Development

Section 30253 of the Coastal 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. While the revetment provides substantial protection for the restaurant, even with a properly designed and maintained rock revetment, overtopping could occur during periods of storm waves, such as those that occur during an El Niño winter, increasing the threat to the development.

Current and Future Risk

To evaluate the risk to the structure, the applicant submitted a coastal hazards report that considers the risks posed by erosion, flooding, and waves, including with sea level rise. The coastal hazard report estimates that the remaining economic life of the restaurant structure is between 30 and 35 years and states that the proposed addition will not significantly extend the life of the existing 46-year-old structure because there are no significant changes proposed to the existing foundation. The report acknowledges that the site is vulnerable to erosion typically caused by extreme winter wave events coupled with eroded beach conditions. Thus, there is present and historic need for the revetment. The 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.

In terms of current flooding, the report determined that the restaurant's finished floor elevation is located at an elevation above the highest observed still water level at a nearby tide gauge. However, the site has experienced some wave overtopping during periods of high tide and large swell.

To evaluate future water level with sea level rise, the applicant's report utilizes the 2018 OPC Sea Level Rise Guidance, which is the best available science at this time. Assuming a remaining lifespan of less than 50 years, the report concludes that the projected sea level rise range in ~2060 is between 0.9 ft. (low emissions) and 2.7 ft. (medium-high). Due to the elevation of the existing building's finished floor, even with 2.7 ft. of sea level rise, the applicant concludes that the proposed development will be above potential extreme still water level elevations (not considering the effects of waves).

Wave runup and overtopping pose a greater concern, and runup and overtopping will pose an increasing risk as sea level rises. The applicant's report states that the revetment has seldom been overtopped in the past and no building structural damage has occurred. During extreme events, the current Chart House restaurant has deployed plywood flood shields to prevent nuisance splash flooding and possible window damage. In addition, because the revetment is lower in a few sections fronting the parking lot, wave runup has transported sand into the parking lots in the past. With 2.7 ft. of sea level rise and the revetment maintained in place, overtopping will come over the revetment and strike the lower portion of the building. While such flooding may be able to be mitigated through the use of temporary measures such as sandbags or flood shields, these conditions would likely deter use of the public accessway. Without the revetment, this same amount of sea level rise would be more damaging, and overtopping water could transport cobbles and sand across Coast Highway and may flood or damage buildings on the other side.

Using the CoSMoS "Our Coast Our Future" online tool as another means to explore the potential impacts of sea level rise, the report determined that the site, including the public accessway, would experience overtopping during a 100-year storm event with ~2.5 ft (75 cm) of sea level rise, which could occur toward the end of the structure's lifespan (beyond about 2060). Using CoSMoS to demonstrate the potential effects of 3.3 ft. of sea level rise, the report concludes that the accessway would experience sustained flooding as would much of Coast Highway and some buildings across the highway, but the Mastro's restaurant would only experience wave overtopping.

The report concludes that the revetment is necessary to prevent wave overtopping damage to the building; the site is exposed to hazards from extreme waves, shoreline erosion, and flooding and will increasingly be so with sea level rise with a tipping point expected to occur between 2.5 feet and 3.3 feet of sea level rise. However, the restaurant has an expected remaining economic lifespan of less than 40 years and the proposed addition will not substantially extend the life of the structure, which is assumed to be limited by the life of the foundation. Additionally, the site will be above the

elevation of extreme still water levels and will benefit from the existing revetment. Based on the range of possible flooding that occurs at the parking area, and that is likely to worsen over time with rising sea level, the Commission's Senior Engineer believes the proposed addition will likely be exposed to wave overtopping from high tides and large waves over the lifespan of the development. 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.

While the addition itself should be relatively safe from the impacts of overtopping, people using the outside dining addition could be at risk. Relatively minor measures such as limiting use during periods of high swell can help minimize risk to restaurant guests. The applicant's coastal hazard report recommends the use of flood shields to prevent nuisance water/splash damage from wave overtopping, consistent with what the restaurant has done in the past. As overtopping gets worse with sea level rise, the restaurant owner might have to utilize such temporary methods more often and may eventually seek to install more permanent flood protective works to protect the patio and other seaward portions of the restaurant, which is prohibited by Section 30.34.040 of the Encinitas certified LCP, which bars the use of flood protection works for structures in a 100-year floodplain. Thus, in order to ensure that the restaurant is not subject to significant hazards risk in the future, and that additional shoreline protection is not required, and to preserve the integrity and availability of the public accessway, alternative and proactive sea level rise adaptation strategies must be utilized to address the risks identified above.

Minimize Risk and Adaptation Strategies

The only long-term strategies to avoid hazard risk on this site are to avoid siting any development in this area, move the development completely away from the hazards, or move the hazards away from the development.

The subject site is large, and there is adequate room to relocate a restaurant further inland on the site ([Exhibit #2](#)). However, because of the site's relatively flat topography, moving the structure inland would not significantly alleviate flooding risk. Some of the coastal hazards described in the applicant's report would span across the site, into Coast Highway, and perhaps beyond. Accommodating for the risk in place is also not a likely option since this would require raising the elevation of the building such that it is safe from flooding hazards. Doing so would require the applicant to retrofit portions of the building that are outside of the scope of the current proposal and would very likely push the current proposal into the redevelopment category, eliminating any entitlements to shoreline protection.

As previously described, overtopping events have already occurred at the site and overtopping will pose a risk to the public using the accessway seaward of the restaurant. Overtopping can be expected to increase in volume of flow and frequency with rising sea level, increasing the risks to those using the accessway. Hard protection

has already been implemented on the project site in the form of the riprap revetment and this structure already encroaches onto beach area and has caused narrowing of the available beach (shoreline squeeze) by preventing natural shoreline retreat. These impacts will continue or increase as additional shoreline migration is prevented and adding new rock would further worsen these impacts to beach area or would encroach into the public accessway, either of which may be inconsistent with other Coastal Act policies and previous Commission action on this site.

Although the project site is subject to periodic damage associated with certain storm events (e.g., El Niño winters), the damage has not exceeded the threshold where the restaurant can no longer function as a high priority visitor-serving use. There is clear evidence, however, that the project site will be at risk to increasingly intense and more frequent hazard conditions as the project reaches the end of its lifespan. Sand nourishment projects approved by the Commission, such as the City of Encinitas Opportunistic Beach Fill Program (CDP #6-08-110-A3), the San Elijo Lagoon Conservancy Annual Inlet Dredging Program (CDP #6-16-0248-A1) and the San Elijo Lagoon Restoration project (CDP #6-16-0275), are one strategy to help move the hazardous condition away from the development; however, there are concerns with giving too much credence to local sand nourishment projects as a means to protect this development. The City of Encinitas's Opportunistic Beach Fill Program provides sand only when available from construction projects that produce beach quality material, thus the amount is variable and unpredictable. CDP #6-16-0248-A1 allows sand and cobble from the San Elijo Lagoon inlet to be placed directly seaward of the project site. The underlying permit allowed most of the sand to be placed at the Cardiff Beach receiver site, but in February 2018, the underlying permit was amended to add a fourth receiver site, the Cardiff State Beach Living Shoreline Project, to which most of the dredged sand will be allocated going forward. Further, this permit was conditioned to include a 5-year term that ended in May 2021 and thus the future of this program is uncertain. The nourishment associated with the San Elijo Lagoon Restoration was divided amongst four sites, including Cardiff; however, sand placement will occur south of Restaurant Row and may not maximize the benefit to Mastro's. In short, to rely solely on sand nourishment projects is not sufficiently precautionary when the risks associated with coastal hazards are exacerbated by sea level rise and can threaten the safety of life and property.

Removal and Relocation

Thus, moving the development away from the hazards through a form of managed retreat is necessary to mitigate for these risks, and is likely the only feasible way to ensure that additional shoreline protection is not required. Once the restaurant itself is at risk, **Special Condition #5** requires the applicant to remove or relocate the development authorized by this permit when one of three conditions are met: (1) any government agency with relevant authority and jurisdiction condemns the site due to hazards, (2) essential services to the site can no longer be maintained (e.g. South Coast Highway 101), and (3) the development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies. Aside from the revetment/public access improvements, the new outdoor dining addition attached to

the building is one of the more seaward points of the development and thus would likely be the first structure to be removed/relocated if one of these three conditions for removal is met.

Furthermore, the future retreat of the development will facilitate the inland migration of the public accessway, which will be at risk from coastal flooding before the restaurant itself is at risk. To protect the public access path, **Special Condition #6** requires the applicant to obtain a CDP to remove or relocate any development authorized by this permit when, within any rolling 12-month period, there are at least three occurrences of safe lateral public access along the revetment being temporarily eliminated by coastal hazards at least one time per day over three consecutive days. Elimination of safe lateral access may be determined using the Coastal Data Information Program/Scripps Institution of Oceanography (CDIP/SIO) Potential Flooding Index for Cardiff (see Section C below), or a comparable flood threshold that is developed by the applicant and submitted to the Executive Director for review and approval.

With the development conditioned to be removed under the three different scenarios, and the obligation to maintain lateral public access, the Commission can be ensured that safe lateral public access will continue across at least a portion of the seaward side of the site while also reducing the hazards risk to the restaurant without adding additional shoreline protection, consistent with Section 30253.

Shoreline Protection

In addition to the requirement to minimize risk to life and property, Section 30253 of the Coastal Act requires that new development not require the construction of shoreline protective devices. Further, Section 30235 of the Coastal Act requires that shoreline protective devices be permitted when the devices are required to protect existing development in danger from erosion and only when designed to eliminate or mitigate adverse effects to sand supply.

There are a number of adverse impacts to coastal resources associated with the construction of shoreline protective devices. These include loss to the public of the sandy beach area that is displaced by the structure, "permanently" fixing the back of the beach, which leads to the narrowing and eventual disappearance of the beach in front of the structure, sand loss from the beach due to wave reflection and scour, accelerated erosion on adjacent unprotected properties, and the adverse visual impacts associated with construction of a shoreline protective device on the natural shoreline. As such, the construction of shoreline protection can raise consistency concerns with Coastal Act policies, including Sections 30210, 30211, 30212, [public access] and 30251 [visual resources] as well as 30235 and 30253. In addition, on this particular site, the placement of additional rock could adversely impact the public accessway located seaward of the restaurant.

No work is proposed to the revetment through this permit, but the applicant is proposing to convert an existing landscaped area on the northwestern portion of the building into new dining space, both outdoor and interior. To separate the new outdoor dining area from the rest of the site and meet California Department of Alcohol Beverage Control

requirements, the applicant has proposed an approximately 3 ft. high by 11 ft. wide “knee-wall” to demarcate the westernmost limit of the outdoor dining area ([Exhibit 4](#)). While delineation is important to avoid spillover of the restaurant use into the public accessway, the proposed wall could function as a form of shoreline protection. And as new development, the dining area addition is not entitled to protection under Section 30235 of the Coastal Act. Further, Section 30.34.040 of the Encinitas certified LCP prohibits the use of flood protection works for structures located in a 100-year floodplain. The proposed knee wall would function as a flood protective work should the revetment become overtopped with wave action, increasing flooding on the lateral public accessway by restricting the movement of flood waters. California Department of Alcohol and Beverage Control requires that any outdoor patio that serves alcohol shall be delineated from a non-licensed area by “...walls, railings, planters, fences, or other constructs...” that are intended to prevent patrons from exiting the patio with alcoholic beverages. Thus, there are alternative means to separate the dining area from the public area without constructing the knee wall. Therefore, **Special Condition #1** requires the submittal of revised final plans that replace the proposed “knee wall” with a more permeable barrier to delineate the outdoor dining space from the lateral access easement (e.g., planter, open fencing) while allowing water to flow into the outdoor dining space.

The proposed addition to the restaurant is new development not entitled to shoreline protections, even though the addition will be connected to a pre-Coastal Act structure. The new addition will benefit from the existing riprap revetment protection; however, if this addition were to require new or augmented shoreline protection now or at some point in the future, such protection for the improvement would likely be denied. The restaurant is located in a hazardous area subject to coastal hazards such as wave run-up, flooding, and inundation. As sea level rise exacerbates these hazards, the restaurant and proposed addition will be subjected to increased risks, at which point the applicant may seek approval of additional shoreline protection to protect the restaurant and proposed addition. The applicant must acknowledge the hazards and waive any right to construct a shoreline protective device for the addition in the future. **Special Conditions #4 and 5** requires the applicant to acknowledge the hazards present onsite, assume the risk of such hazards, and waive the right to construct further shoreline armoring for the development authorized through this permit (i.e., the new addition (outdoor dining area and indoor private dining room)). Therefore, as conditioned, the proposed project is consistent with Section 30235 and 30253 requirements for shoreline protection.

Conclusion

The Commission acknowledges that the existing development is currently subject to wave overtopping, and sea level rise is expected to increase wave activity and flooding. The remodeled structure may not be safe for the remaining economic life, but the improvements are being made to a long-standing, visitor-serving use. In addition, just over half of the new addition (and the most seaward portion) is an outdoor dining area, which should be more adaptable (i.e., temporarily discontinue outdoor dining during times of coastal storms or high swell) and more easily removed. Furthermore, as noted,

the public accessway seaward of the restaurant is at greater risk than the structure. The only way to ensure that this accessway is maintained is to require that it be moved inland at the point at which it can no longer provide safe public lateral access. Because the accessway is immediately adjacent to the existing structure at present, through this permit and its conditions, the applicant will be required to remove portions of the restaurant when necessary to ensure the public accessway can retreat inland, thereby maintaining a viable public accessway. There is currently a revetment protecting the existing structure, but as conditioned, no additional shoreline protection can be added to protect any of the development approved through this permit. Thus, the proposed project will allow the continued use of a high priority, visitor-serving facility for the remainder of its economic life, while ensuring that the public accessway will be available in the future. Therefore, as conditioned, the proposed development will minimize risks to life and property in an area of high flood hazard pursuant to Sections 30235 and 30253 of the Coastal Act.

C. Public Access/Parking

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby [...]

Section 30213 of the Coastal Act states, in part:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation [...]

Section 30.54.030 of the Encinitas certified Implementation Plan:

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

[. . .]

Restaurants 1 space for each 100 sq. ft. area. [...]

*Parking requirements for outdoor dining and/or sidewalk dining areas shall include such areas in the gross floor area requiring parking spaces.

Lateral Public Access

The subject site consists of an oceanfront property located west of Coast Highway and developed with a restaurant. Adjacent to the project site is Cardiff State Beach, which is home to Cardiff Reef, one of the most popular surfing and water recreation spots in San Diego County. Vertical access to the beach exists approximately 700 feet to the north of the site at the North Cardiff State Beach parking lot and just south of the site at the Cardiff Living Shoreline. Lateral public access exists along the seaward side of the property and generally consists of an 8 ft.-wide public access pathway located between the restaurant structure and the riprap revetment. This public accessway connects to lateral public accessways seaward of the other restaurant north of the site. This lateral accessway was first required per CDP #F2973 and again per CDP #6-85-4 when the Commission required the applicant to record an offer to dedicate for the lateral access easement. This authorization also required public access signage at the northern and southern ends of the path. In its requirement of the dedication, the Commission acknowledged that a small portion of the restaurant would encroach into the public accessway by approximately 4 feet. No additional encroachments are proposed with this application. **Special Condition #1** requires the applicant to submit final revised plans acknowledging that no new development or encroachments are permitted within the public accessway. This condition also requires installation of wheel stops at the

inland edge of the lateral public accessway to ensure that vehicles parked within the parking lot do not encroach into the accessway. In addition, to protect public access during construction, **Special Condition #2** prohibits the storage and staging of construction equipment and materials within the public accessway and on the beach.

Public use of this path as a means to traverse this section of the coastline and as a connection between the two parking reservoirs of Cardiff State Beach will become more critical with sea level rise. Rising sea levels will cause landward migration of beaches due to the combined effects of inundation and loss of sediment due to erosion. As the beach erodes away, lateral access across the sandy beach will disappear leaving this 8 ft.-wide public access path as the only dry accessway along this section of the beach. According to the Commission's Sea Level Rise Policy Guidance, public access is one of the coastal resources most at risk from accelerating sea level rise. One sea level rise adaptation strategy is to move the public accessway away from the coastal hazard by moving it inland; however, the accessway is backed by the restaurant that prevents any inland migration of the path. Thus, the only way to ensure lateral access continues to be provided along the shoreline seaward of the project site in the future as sea level rise continues is to remove or relocate development adjacent to the public accessway. Therefore, **Special Condition #6** requires the applicant to obtain a CDP to remove or relocate any development authorized by this permit when safe lateral public access along the revetment is temporarily eliminated by coastal hazards at least one time per day, over three consecutive days, three or more times during any rolling 12-month period. Elimination of safe lateral access may be determined using the Coastal Data Information Program/Scripps Institution of Oceanography (CDIP/SIO) Potential Flooding Index for Cardiff, or a comparable flood threshold. CDIP currently sends alerts to all the restaurant owners along Restaurant Row when it anticipates overtopping of the revetment, based on its 3-day flooding forecast, immediately adjacent to Coast Highway and at the parking lot near Mastro's. Overtopping of the revetment immediately adjacent to Coast Highway is anticipated when tides plus waves effects exceed the empirical moderate flood threshold (red line) on the Flooding Index for Cardiff. Overtopping of the revetment surrounding the Mastro's parking lot is anticipated when the empirical mild flood threshold (orange line) is exceeded on the Flooding Index for Cardiff ([Exhibit #6](#)). Exceedance of the empirical mild flood threshold provides a good trigger to determine unsafe conditions along the public access path, since the revetment, upon which the public access path is sited, would be completely overtopped. Thus, exceedance of the empirical mild flood threshold can be used as the trigger event to determine when safe lateral access along the revetment is temporarily eliminated by coastal hazards.

As the landowner and holder of the permits, the applicant is responsible for maintaining public access signage at the north and south ends of the restaurant near the public access path. Conspicuously posted signage for public access carries out the goal of providing maximum access seaward of the project site. While no work is proposed to the public accessway, and the new addition will not encroach into the public accessway, the existing public access sign located at the northern end of the accessway is within the landscaped area proposed to be converted into dining space and must be relocated. ([Exhibit #5](#)) Therefore, **Special Condition #1** requires the applicant to provide revised final plans that indicate that the northern sign will be relocated to the seaward side of

the lateral access way, approximately 8 ft. opposite its existing location. This new location will match the placement of the southern sign, which is located on the seaward edge of the public accessway, adjacent to the rock revetment. The relocated sign should not block the access path or obstruct the public's use, such as via a wheelchair.

Parking

Although the subject site is within the Commission's original permit jurisdiction, 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 Encinitas certified LCP requires one parking space for every 100 square feet of gross floor area for restaurants. Outdoor eating areas are included in the gross floor area calculation. Any fractional parking spaces must be rounded up to the next higher whole number.

Restaurant Row is a popular destination for visitors and locals, and the popularity strains the parking reservoirs in this area. Many of the restaurants along the row are relatively old and were constructed at a time when off-street parking was not required to be provided in conjunction with new development or was approved with less restrictive parking requirements than utilized today. If sufficient parking is not available onsite for restaurant patrons, they would likely use nearby public parking spaces at the North Cardiff State Beach parking lot or along the shoulder of South Coast Highway 101. The usurpation of public parking would adversely affect public access to the beach since these are the only public parking reservoirs within close proximity to the beach at this location.

Many restaurants in this area have established valet programs to maximize space within their parking lots or have off-site parking agreements with the owners of nearby parking lots. To provide the necessary parking for the subject restaurant, a valet program was approved by the Commission in 1994 (CDP #6-94-81). At that time, the valet program accommodated 75 cars, which was adequate for the restaurant use.

While the parking lot currently appears to be striped to accommodate approximately 40 cars, the applicant is proposing to restripe the parking lot and plans provided indicate that they will be able to accommodate 78 parking spaces while utilizing a valet program. Since the city's LCP requires 1 space per 100 square feet of gross floor area (rounded up to the nearest whole number), at 7,471 sq. ft., the restaurant (existing plus proposed) requires 75 spaces. Therefore, the proposal to provide 78 spaces, including three ADA accessible spaces, is consistent with LCP requirements. Thus, the proposed project will provide adequate onsite parking to avoid any "spill-over" impacts onto nearby public parking reservoirs.

It is important to note that full use of the parking lot is only possible through the operation of a valet program given the configuration of spaces. The valet program previously approved by the Commission was to operate 7 days a week, during evening hours, and would be complimentary for restaurant guests. The applicant is proposing changes to the valet program, including operation of the valet during all hours of restaurant operation and charging a fee of approximately \$10 to \$14. The cost to park in

the nearby North Cardiff State Beach Day Use facility is \$12. To ensure that a lower parking fee at the State Beach lot does not encourage restaurant patrons to park in public beach parking spaces, **Special Condition #1** requires that the valet fee at Mastro's be no more than \$12.00.

In addition to traditional parking spaces, the project includes 8 bicycle parking spaces, which may help offset the demand for automobiles. While not part of the City's LCP, the City of Encinitas Municipal Code requires that new non-residential buildings provide electric vehicle (EV) charging spaces for at least 8% of the total number of parking spaces, but in no case less than one (Section 23.12.110). New non-residential additions and alterations of buildings of 10,000 sq. ft. or more are also required to provide EV charging for 8% of spaces, or at least one space. While not considered an entirely new restaurant and not meeting the City's threshold for additions, the project includes essentially an entirely remodeled parking area with new spaces, new landscaping, and a revised valet program. Further, minimization of energy consumption is a requirement of Coastal Act section 30253. The applicant has proposed to install one EV charging station within the parking lot. Therefore, **Special Condition #1** requires that the project include one EV charging space, which is equal to 8% of the parking spaces that would be required for the new addition, rounded up to a whole number.

Because the only parking provided on site is subject to the valet program and associated fee, it is possible that restaurant employees will park off-site and could adversely impact public beach access parking supplies. Therefore, in addition to providing the required on-site parking, **Special Condition #7** also requires that the applicant submit and implement a Transportation/Parking Demand Management Program to promote the use of transit, minimize employee parking demand, and prevent restaurant employees from usurping public parking spaces. The Program shall encourage and reward employees for biking or carpooling to work, provide incentives for using public transportation, provide emergency rides for employees that normally use alternate transportation, and mandate that a survey of employees will be submitted annually to the Executive Director to gauge the effectiveness of the Program. The Program must be submitted to the Executive Director for review and written consent prior to issuance of this coastal development permit. Per the requirements of this Program, **Special Condition #1** also requires the applicant to identify which valet parking spots have been set aside for worker carpools.

Therefore, as conditioned, the project is consistent with the public access and recreation policies of the Coastal Act.

D. Biological Resources/Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a

manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states, in part:

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

Section 30.34.040 of the Encinitas certified Implementation Plan:

Floodplain. Within the 100-year floodplain, permanent structures, roads and other public improvement consistent with the Land Use Element will only be allowed if the applicant can demonstrate the following:

[. . .]

e. There will be no significant adverse water quality impacts to downstream wetlands, lagoons and other environmental sensitive habitat areas.

Resource Management Policy 2.1 of the Encinitas certified Land Use Plan states, in part:

In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health [...]

Resource Management Policy 2.3 of the Encinitas certified Land Use Plan states, in part:

To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways [...]

When approving new development, the Commission typically requires the incorporation of best management practices (BMPs) to assure protection of coastal waters. The project site immediately abuts Cardiff State Beach and contains a large, impervious parking lot. The proposed remodel construction will occur to the seaward side of the restaurant and without proper BMPs in place, debris and pollutants from the construction work could migrate into the ocean. In addition, depending on how the parking lot drains, runoff from the lot could wash pollutants across the beach and into coastal waters.

The project and its proposed improvements will result in a 3.6% increase in impervious area. A large portion of the impervious areas on the site are the parking lots. Runoff

from parking lots can be a major contributor of non-point source pollution in stormwater, which ultimately is disposed into coastal waters.

Special Condition #2 requires the applicant to submit a Construction and Pollution Prevention Plan, prepared by a licensed engineer, that incorporates BMPs designed to address contaminants associated with construction activity. **Special Condition #3** requires the applicant to submit a Post-Development Runoff Plan implementing BMPs to reduce runoff from the various impervious surfaces.

Because of the project's location immediately adjacent to the sandy beach, lighting could also adversely impact sensitive biological resources. A condition of the City's approval requires that all light sources shall be shielded in such a manner that the light is directed away from streets or adjoining properties and sensitive habitats. The City's approval also requires that fluorescent bulbs should be replaced with low-emitting LEDs with a color temperature between 2,700 to 3,000 degrees Kelvin, which is consistent with the Commission's typical requirements for lighting. Lights in this range of color temperature (2,000 to 3,000 Kelvin) are recommended by environmental groups, dark sky organizations, and the American Medical Association to reduce biological impacts associated with LED lighting.

In addition to new lighting proposed with this application, there are existing flood lights on the seaward side of the restaurant and aimed towards the beach ([Exhibit #7](#)). Such lighting is not consistent with the city's approval, nor is it consistent with Coastal Act requirements to protect biological and marine resources. Lighting aimed towards the beach could adversely impact sensitive species, such as grunion who utilize Cardiff State Beach for spawning and whose life cycles may be disrupted by the introduction of artificial lights. The applicant has agreed to remove this lighting and **Special Condition #1** requires removal of the existing beach lighting. **Special Condition #8** requires the lighting to be removed within 90 days of issuance of the CDP.

As conditioned, the proposed project will not result in adverse biological or water quality impacts, consistent with the resource protection policies of the Coastal Act and the City's LCP.

E. Visual Resources

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect 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. [...]

Land Use Policy 6.5 of the Encinitas certified Land Use Plan states, in part:

The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance. [...]

Section 30.54.030 of the Encinitas certified Implementation Plan:

The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development [...]

The proposed development will be sited adjacent to the public beach on the west side of Coast Highway in the Cardiff community. This section of Coast Highway is designated in the City's certified LCP as a "Scenic Highway" and it provides broad views of the ocean to the west and San Elijo Lagoon to the east. Therefore, any development along Coast Highway has the potential to adversely impact public views of coastal resources.

The proposed development will not result in significant adverse visual impacts beyond what currently exist on the site; the restaurant currently obstructs views of the ocean for pedestrians/drivers traveling along the Coast Highway corridor. The proposed restaurant addition will not be visible from Coast Highway as it will occupy space on the seaward side of the building that is currently enclosed by a stone veneer wall. Views for pedestrians traversing the lateral public access path will remain open and unobstructed.

Most of the proposed hardscape improvements are located at or near grade and will not significantly impact views of the ocean. In addition, the visual quality of the site may improve as the project includes new landscaping and planted areas. Therefore, as conditioned, the proposed development is consistent with Section 30251 of the Coastal Act.

F. 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 property is located within an area subject to the Commission's original jurisdiction meaning that the standard of review is the provisions of Chapter 3 of the Coastal Act; however, the proposed development is also consistent with the City's certified LCP. The subject site is designed as visitor-serving commercial in the certified City of Encinitas Land Use Plan and the proposed development is consistent with that designation.

Additionally, the certified IP provides parking standards for restaurants and limitations on development in floodplain areas. The certified LUP contains circulation policies that

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Mastro's Ocean Club

provide for the protection and enhancement of access opportunities along the shoreline in cooperation with the State. As conditioned, the proposed project is consistent with the City's parking standards and limitations on development in floodplain areas. Thus, the proposed development is consistent with the City's certified LUP/IP and approval of the proposed development would not prejudice the ability of the City to continue to implement its certified LCP.

G. California Environmental Quality Act

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 City of Encinitas Planning Commission determined that the proposed project was exempt from environmental review pursuant to CEQA Guidelines Sections 15301, 15301(a), 15301(e)(2), 15303 and 15061(b)(3). (Cal. Code of Regs., tit. 14.)

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing water quality, parking, and hazards 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of Encinitas certified LCP
- City of Encinitas Planning Commission Resolution 2021-02
- Coastal hazards report prepared by GeoSoils, Inc. titled “Coastal Hazard Discussion 2588 South Coast Highway 101, Cardiff CA” and dated March 22, 2021
- F2973
- 6-85-4
- 6-85-4-A1
- 6-88-486
- 6-91-086
- 6-92-036-G
- 6-94-081
- 6-94-158
- 6-94-163
- 6-98-087
- 6-04-080-X
- 6-18-0462-X