

CALIFORNIA COASTAL COMMISSION

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W9b

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-21-0776

Applicant: Global Franchise Group and City of Santa Monica

Agent: Tanaka Riley Architects, Attn. Michael Riley

Location: 1633 Ocean Front Walk, City of Santa Monica, Los Angeles County

Project Description: Demolition of an existing 440 square foot take-out restaurant (Hot Dog on a Stick) and construction of a new 16.5 foot high, 660 square foot take-out restaurant to meet ADA requirements in same location along beach promenade.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants propose to replace an existing take-out restaurant with a new take-out restaurant in the same location, just southeast of the Santa Monica Pier. The new building will be one-story 660 square feet, approximately 220 square feet larger than the existing building and similar in height, but with a mechanical roof screen extending to 16.5 feet. Issues raised by the proposed development include protection of scenic resources, public access, and marine resources. Staff recommends that the Commission grant a permit for the proposed development with conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; and 3) construction responsibilities and debris removal. As conditioned, the proposed development

conforms with the visual resources, coastal access and marine resource protection policies of the Coastal Act.

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EXHIBITS

[Exhibit 1 - Vicinity Map](#)

[Exhibit 2 - Aerial View](#)

[Exhibit 3 – Street View](#)

[Exhibit 4 - Plans](#)

I. MOTION AND RESOLUTION

Motion:

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

Staff recommends a **YES** vote. Passage of this motion will result in approval of all permits included on the consent calendar. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

Resolution:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity Agreement Applicable to Applicants.

A. By acceptance of this permit, the applicants, Global Franchise Group and City of Santa Monica, acknowledge and agree (i) that the site may be subject to hazards from wave and tidal action; (ii) to assume the risks to the applicants, City of Santa Monica, 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; (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; and (v) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of this condition.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, Global Franchise Group and the City of Santa Monica, as applicants, shall submit written agreements, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition

2. No Future Shoreline Protective Device.

A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0776, and any other future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) are required to remove the development authorized by this permit, including the restaurant structure, if any other government agency with legal jurisdiction has issued a final

order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.

C. In the event that portions of the development leaves the walkway unusable or makes it hazardous to the public, the landowner(s) shall remove all recoverable debris associated with the development from the public walkway, beach, and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Construction Responsibilities and Debris Removal. Applicants shall not allow discharge of silt or debris into coastal waters as a result of this project. By acceptance of this permit, the applicants agree that the permitted development shall be conducted in a manner that protects water quality pursuant to the implementation of the following BMPs:

A. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.

B. Staging and storage of construction machinery and storage of debris shall not take place on the beach.

C. Any and all debris resulting from construction activities shall be removed from the beach area on a daily basis and disposed of at an appropriate location.

D. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during project staging, demolition and construction. BMPs shall include a pre-construction meeting to review procedural and BMP guidelines.

E. The applicants shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location outside the coastal zone. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

F. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash or construction material has been left on the beach or in the water, and that the project has not created any hazard to navigation.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The applicants are proposing to rebuild the existing take-out Hot Dog on a Stick restaurant in the same location, just southeast of the Santa Monica Pier along Ocean Front Walk (Promenade). The existing one story 440 square foot take-out only restaurant will be demolished, and a new 660 square foot facility will be constructed in same location along the beach fronting pedestrian promenade. The proposed project will result in an increase of 220 square feet over the existing building to bring the facility into compliance with current building and health codes and the American with Disabilities Act. The one story building's footprint will expand from 10 foot wide by 44 foot long to 15 foot wide by 44 foot long. The height of the new one-story building will be similar in height to the existing building, measuring 13.5 foot high, as measured to the top of the roof parapet, with a 3 foot high roof screen for screening roof mounted mechanical equipment for an overall building height of 16.5 feet.

The take-out restaurant is a single stand-alone building located within a 64 space public beach parking lot that fronts the 20 to 30 foot wide Promenade. To the north of the public parking lot there is existing one and two-story commercial development consisting of take-out and sit down restaurants, retail shops and mixed use commercial/residential development. To the south there is a three-story and a four-story multi-residential building. To the west, seaward of the Promenade, there is a lifeguard headquarters building, beach area and municipal pier.

Because of the small size of the facility, no indoor or outdoor seating, and location immediately adjacent to the pier, beach commercial area and beach, the facility's demand is mainly from visitors that come to the pier and beach and is not a destination type restaurant that generates a parking demand. Furthermore, employees are generally from the area and either walk to work or use alternative transportation, such as bicycles or mass transit. Hot Dog on a Stick has operated at this site since 1945 as a walk-up facility and will continue as a walk-up facility. As proposed, the project will not adversely impact public beach parking and will provide ADA accessibility to an existing commercial visitor-serving use that will help support visitor and recreational use in the area.

Construction will take approximately 2 months and will be conducted during the non-summer period (after Labor Day). During construction the parking lot will remain open but some spaces immediately adjacent to the construction area will be temporarily unavailable for public use but will be available once construction has been completed. No parking spaces will be permanently removed due to the proposed project. Construction BMPs (**Special Condition 3**) are imposed to ensure that the project does not negatively impact water quality of the beach and the Santa Monica Bay.

The proposed project will not impact coastal views from the Promenade as views are to the north and south along the beach area and directly seaward of the Promenade. Views of the beach and ocean from the adjacent side streets will continue to be

available with no significant impact from the proposed project. Along Appian Way, directly behind the project site, the roadway is elevated approximately 12 to 15 feet above the grade of the public parking lot and the take-out restaurant. In this location public coastal views from the roadway extend out to the pier and beach area. In addition, due to the roadway's elevation above the parking lot, views of the beach and ocean are currently available over the roof of the existing restaurant building. The proposed building, with an increase in height of 3 feet, will not have a significant impact on existing public coastal views along Appian Way. With the minor increase in height, views of the beach and ocean will continue to be available from Appian Way over and along either side of the roof and screened mechanical equipment.

The beach is over 400 feet wide, and beach properties are generally protected from wave up rush by the wide beach and by the pier and breakwater. However, with projected sea level rise, development at such a location is inherently risky; therefore, the Commission is imposing its waiver of liability special condition (**Special Condition 1**) to ensure that the applicants are aware of the hazards and restrictions on the subject property. The Commission imposes **Special Condition 2**, which prohibits the applicants from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future.

The applicants previously applied for permits to construct the new restaurant (CDP No. 5-13-0461 and 5-16-0778), which were approved by the Commission; however, the permits expired before construction began.

Chapter 3 of the Coastal Act is the standard of review for this application, and the City's certified LUP can be used as guidance.

B. Development

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act.

C. Access

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. Hazards

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts

such devices have upon, among other things, public access, visual resources, and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to prohibit construction of protective devices (such as a seawall) in the future and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the proposed development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

E. Water Quality

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. As conditioned, the Commission finds that the proposed development conforms with Sections 30230 and 32031 of the Coastal Act.

F. Water Quality

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District). On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. California Environmental Quality Act

The City of Santa Monica is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA under Class 15061(b)(3).

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).) In order for the Commission's program to qualify for that certification, Section 21080.5(d)(2)(A) of CEQA required that

the program be designed such that it would not approve any development as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. No public comments regarding potential significant adverse environmental effects of the project were received by the Commission prior to preparation of the staff report. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect, individual and cumulative, that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.