

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-20-0598

Applicant: McKinley Family Trust

Agent: Mark McGuire

Location: 612 Avenida Victoria, San Clemente, Orange County
(APN No.: 692-021-03)

Project Description: Expand an existing 617 sq. ft. restaurant by converting 770 sq. ft. of retail space adjacent to the existing restaurant to restaurant use, resulting in a 1,171 sq. ft. restaurant with a 216 sq. ft. covered dining patio. The applicant will contribute \$3,000 annually to the City of San Clemente to be used to promote multi-modal access to the Pier Bowl. A portion of the first annual contribution will be used to fund the creation of two new metered public parking spaces in the Pier Bowl.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to expand an existing 617 sq. ft. restaurant by converting 770 sq. ft. of retail space adjacent to the existing restaurant to restaurant use, resulting in a 1,171 sq. ft. restaurant with a 216 sq. ft. covered dining patio. The applicant will contribute \$3,000 annually to the City of San Clemente to be used to promote multi-

modal access to the Pier Bowl. A portion of the first annual contribution will be used to fund two new metered public parking spaces in the Pier Bowl.

The Commission's standard of review for the proposed development is Chapter 3 policies of the Coastal Act and the City of San Clemente's certified Land Use Plan (LUP) may be used for guidance.

The project site is located on the ground floor of 612 Avenida Victoria in the Pier Bowl area of San Clemente, Orange County.¹ The site is designated Mixed Use 4 (MU4) in the LUP and the proposed project is consistent with the MU4 designation to provide visitor-serving commercial uses. The proposed conversion of 770 sq. ft. of retail space to restaurant space is consistent with Chapter 3 of the Coastal Act and is consistent with the prevailing commercial character of the surrounding area which is comprised of other visitor-serving establishments and residential units.

The main Coastal Act issue concerns coastal access due to the project's potential impacts on coastal and beach parking availability. Public access to the beach and the San Clemente Pier is located approximately 200 feet seaward of the site. The Pier Bowl area is pedestrian-oriented and attracts visitors to the commercial area close to the beach. Any increase in demand for parking resulting from the proposed change in use of the 770 sq. ft. of retail space will be mitigated by the applicant's proposal to contribute \$3,000 annually to the City of San Clemente to fund multi-modal access. A portion of the first annual contribution will be used to fund two new metered public parking spaces in the vicinity.

In addition, the applicant is proposing to incorporate a Transportation Demand Management Program (TDMP), including an employee education program to inform employees of public transit options, ridesharing, and bicycle infrastructure nearby, with the aim of reducing the need for on-site parking at the restaurant. In addition to providing employees information about alternatives to driving to work and parking in the Pier Bowl, the applicant will reimburse all employees 100% of the public transportation fares incurred to travel to and from work. Thus, to protect public parking, **Special Condition 1** requires the applicant to submit a final TDMP which, at a minimum, requires the applicant to contribute \$3,000 annually to the City of San Clemente to be used to promote multi-modal access to the Pier Bowl, with a portion of the first annual contribution used to fund two new metered public parking spaces in the Pier Bowl, and an employee public transportation education and fare reimbursement program.

The expansion of the restaurant may bring more visitors to the area, which will potentially lead to an increase in pollution in the form of trash and debris entering coastal waters that are near the subject site. Thus, **Special Condition 2** requires the

¹ A hotel is located within the same structure on the second and third floors.

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applicant to participate in a marine debris reduction program to reduce waste and single-use plastic foodware and packaging.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-20-0598, as conditioned. The motion to carry out the staff recommendation is on page 5 of the staff report.

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EXHIBITS

- Exhibit 1: Vicinity Map and Project Site**
- Exhibit 2: Project Plans**
- Exhibit 3: Transportation Demand Management Plan (TDMP)**

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

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

Resolution:

The Commission hereby approves the Coastal Development Permit No. 5-20-0598 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 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. **Final Transportation Demand Management Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director a final transportation demand management plan that substantially conforms with the written plan submitted to the Commission, titled Transportation Demand Management Plan received on February 12, 2021 (attached as **Exhibit 3**). The plan shall apply to the permittee and any future successor or assigns to the permit.

A. The proposed project shall implement the Transportation Demand Management Program. By acceptance of this permit, the permittee agrees to maintain the program at all times which includes, but is not limited to, the following:

- i. The permittee and its successors and assigns shall actively encourage employee participation in using public transportation, bicycling, walking, or a rideshare program to and from work through a public transportation education and incentive program. A public transit fare reimbursement program shall be implemented by the permittee or its successors and assigns. The permittee shall offer full reimbursement to one hundred percent of the employees of the development for public transit fare to and from work.
- ii. Annual contributions of \$3,000 to the City of San Clemente to fund multi-model access in the Pier Bowl. A portion of the first annual payment shall be used to fund the creation of two new public metered parking spaces in the Pier Bowl.

Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is required.

2. **Marine Debris Reduction Program. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a robust and comprehensive plan to reduce waste and single-use plastic foodware and packaging. The plan shall include commitments consistent with all of the following, and the applicant shall implement the approved version of the plan.

A. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP) or Surfrider's Ocean Friendly Restaurants (OFR) or a substantially similar program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout

orders. The applicant shall be responsible for the fees needed to participate in the program.

- B. The applicant shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission which includes the Marine Debris and Reduction Program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The project site is located on the ground floor of 612 Avenida Victoria in the Pier Bowl area in San Clemente, Orange County ([Exhibit 1](#)).² The site is designated as Mixed Use 4 (MU4) in the City of San Clemente's certified Land Use Plan (LUP) and the proposed project is consistent with all MU4 policies.

The subject site is currently developed with a 617 sq. ft. restaurant and 770 sq. ft. of retail space ([Exhibit 2](#)). The applicant proposes to convert the retail space to restaurant use, resulting in a 1,171 sq. ft. restaurant with a 216 sq. ft. covered dining patio.

The project site is not located between the first public road and the sea and it is located approximately 200 feet from the nearest sandy beach. The subject site is not located in a hazardous area and the proposed development's expected life of 75 years is not expected to be subject to coastal hazards such as flooding, sea-level rise, coastal erosion or wave uprush.

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation. The Coastal Act prioritizes the protection of public access to the coast and, in Section 30252, specifically identifies adequate parking as an important component of new development. Therefore, in order to conform to the requirements of the Coastal Act, the proposed project must

² A hotel is located within the same structure on the second and third floors.

provide adequate parking and/or alternative modes of transportation to avoid negatively impacting coastal access.

The City's certified LUP does not include required minimum parking ratios for restaurants, however, the City's zoning code does provide parking ratios for restaurants which are based on the amount of indoor seats.³ Per the City's code, the project site requires one parking space per five indoor seats. The project will expand indoor seating from 14 indoor seats to 32 indoor seats, resulting in an increase of 18 seats. As proposed, the project will also expand the existing outdoor service area by 216 sq. ft., from 8 outdoor seats to 16 outdoor seats, resulting in an increase of 8 seats. According to the City's code, there is no required parking for outdoor service restaurant area. However, the Commission has consistently required the provision of parking for outdoor restaurant service area. Applying the parking spaces to the seat ratio of one parking space to five seats, the proposed project requires six additional parking spaces.⁴ Per the City's code, the current retail space of 770 sq. ft. requires one parking space per 400 sq. ft. resulting in two parking spaces. Since the retail space is proposed to be converted to restaurant space, the two required parking spaces of the retail space are subtracted from the proposed project's required six spaces. Thus, only four additional parking spaces are required for the proposed development.

Given the constraints of the subject site, it is not feasible to provide the required four parking spaces on the site without creating a curb cut and adversely impacting pedestrian access that fronts the restaurant. Thus, to mitigate for the potential parking impacts of the proposed development and to provide adequate parking for the restaurant expansion, the applicant proposes to donate \$3,000 annually to the City of San Clemente to create multi-modal access in the Pier Bowl and to use portions of the first payment to fund the creation of two on-street public new metered parking spaces in the Pier Bowl where parking was previously unavailable due to a bus stop that was discontinued in 2016.

In addition, the applicant is proposing to incorporate a Transportation Demand Management Program (TDMP), including an employee education program to inform employees of public transit options, ridesharing, and bicycle infrastructure nearby with the aim of reducing the need for on-site parking at the project site ([Exhibit 3](#)). In addition to providing employees information about alternatives to driving to work and parking in the Pier Bowl, the applicant will reimburse all employees 100% of the public transportation fares incurred to travel to and from work. Thus, to protect public parking, **Special Condition 1** requires the applicant to submit a final TDMP which, at a minimum, includes \$3,000 annually in contributions to the City of San Clemente to be used to promote multi-modal access to the Pier Bowl, with a portion of the first annual

³ Since the certified LUP does not have parking requirements for the proposed development, it is appropriate to reference the City's Zoning Code for the required parking ratios.

⁴ $18+8=26$. $26/5=5.2$ parking spaces (which rounds up to 6 parking spaces).

contribution used to fund two new metered public parking spaces in the Pier Bowl, and an employee education and reimbursement program.

The restaurant expansion may bring more visitors to the area, which may potentially lead to an increase in pollution in the form of trash and debris entering coastal waters near the subject site. Thus, **Special Condition 2** requires the applicant to participate in a marine debris reduction program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders.

As proposed, the proposed project will expand existing, visitor-serving facilities in the coastal zone. The proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities.

B. PUBLIC ACCESS

Public access is available on site and any impacts to public access during construction will be temporary. Therefore, as proposed and as conditioned, the project conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. MARINE RESOURCES

The proposed project has been conditioned to minimize any significant adverse effect the project may have on the environment by avoiding or mitigating impacts upon sensitive marine resources. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30224, 30230, 30231, and 30233 of the Coastal Act.

D. WATER QUALITY

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

E. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit for development in an area with no certified Local Coastal Program ("LCP") only if the project will not prejudice the ability of the local government having jurisdiction to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On August 2, 2019, a

comprehensive update to the City's LUP was effectively certified by the Coastal Commission. The City is currently also working on submittal of an Implementation Plan to complete the LCP; however, at this time the City has no certified LCP.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding public access and with the policies in Chapter 3 of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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). 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 City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is statutorily exempt from CEQA under Class 1. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and water quality policies of the Coastal Act. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A- SUBSTANTIVE FILE DOCUMENTS

1. City of San Clemente LUP