

CALIFORNIA COASTAL COMMISSION

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Th11b

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STAFF REPORT: PERMIT AMENDMENT

Application No.: 5-19-0218-A1

Co-Applicants: The Beach House at the River, LLC & City of Seal Beach

Agent: Rosie Ritchie

Location: 15 1st Street, Seal Beach, Orange County (APN: 043-171-02)

Description of Original Project Approved Pursuant to Permit No. 5-19-0218:
Renovation of an existing (pre-Coastal Act), 15' 2" tall, 868 sq. ft. restaurant on the beach with 1,897 sq. ft. of existing outdoor patio area and a 522 sq. ft. covered patio. Proposed project would result in a 15'2" tall restaurant with parapet walls and a 22' 6" tall tower.

Description of Pending Permit Amendment No. 5-19-0218-A1: Extend the outdoor patio of the restaurant by 600 sq. ft. and plant the beach area in front of the patio with native dune vegetation. The total seating capacity of the restaurant (159 seats) will remain unchanged.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is to amend CDP No. 5-19-0218 to allow for the extension of the outdoor patio area of the existing restaurant by 600 sq. ft. and plant the beach area in front of the patio with native dune vegetation. The total seating capacity of the restaurant (159 seats) will remain unchanged.

Chapter 3 of the Coastal Act is the standard of review, as the City of Seal Beach does not have a certified Local Coastal Program (LCP).

The project site is located at 15 1st Street, in the City of Seal Beach. The project site is located on the beach, seaward of a public beach parking lot, and is between the first public road and the sea ([Exhibit 1](#)), adjacent to the mouth of the San Gabriel River. The subject site consists of a 2,937 sq. ft. parcel with an existing restaurant structure, which is currently vacant. In the vicinity there are public restrooms, a beach parking lot, and other ancillary development including walkways and landscaping. A quarry stone rock jetty exists between the subject site and the river.

The main Coastal Act issues raised by the project are biological productivity and the potential impact to public access due to the proposed encroachment of the patio extension onto public beach. Commission staff recommends approval with **three new special conditions** to apply to the patio, in addition to the eight special conditions of the underlying permit which would continue to apply. To ensure that the applicants complete ice plant removal and dune planting as proposed, staff recommends the Commission impose **Special Condition 9**. To ensure that all development is reviewed by the State Lands Commission, which has issued a lease over the beach area covered by the existing and proposed development, staff recommends **Special Condition 10**. To ensure that public access over public lands is maintained and enhanced, **Special Condition 11** would require the applicants to implement a Public Areas Management Program. The Program would require the outdoor patio seating area to be open to the general public, and prohibit any signage that is inconsistent with maintaining public access. As conditioned, the development would be consistent with Coastal Act policies requiring preservation of biological productivity and maximization of public access. The motion and resolution can be found on **Page 5**.

PROCEDURAL NOTES: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

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In this case, the Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting coastal access.

Section 13166(a) of the Commission's Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen or avoid the intended effect of the previously approved permit.

The proposed amendment would not lessen the intended effect of Coastal Development Permit No. 5-19-0218 envisioned in the Commission's October 2020 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID19 emergency, California Assembly Bill 361, and the Governor's Executive Orders N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-19-0218-A1 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit Amendment No. P-5-19-0218-A1 on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 1. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-19-0218, as amended, remain in effect. New special condition language is shown in **bold underline**.

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit **amendment** is not valid and development shall not commence until a copy of the permit **amendment**,

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signed by the applicant or authorized agent, acknowledging receipt of the permit **amendment** and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit **amendment** 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 **amendment** 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.

Special Conditions

9. **Submittal of Final Planting Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit, for review and approval of the Executive Director, two (2) sets of final planting plans that substantially conform with the landscaping plan submitted to the Commission on 8/25/2021 by Glenn Lukos Associates, that include the following:**
 - A. **Proposed 1,200 sq. ft. extent of planting area fronting the length of the patio on the sandy beach; and**
 - B. **Type and quantity of proposed native dune vegetation seeds/plants.**

The permittees 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 plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
10. **State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit a copy of the amended lease agreement with the State Lands Commission, showing proof of State Lands Commission's approval of the proposed project.**

11. **Public Areas Management Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit a public areas management program, subject to the review and approval of the Executive Director, that protects the rights of the public to enter and use the patio area and associated amenities. That program shall incorporate the following:**
- A. **Seating. Should members of the general public choose to sit in the patio area without purchasing food or beverages, restaurant staff shall not ask the general public to leave and shall not infringe on the ability of the public to access the deck.**
 - B. **At no time shall the restaurant be converted to a membership-based restaurant or otherwise inhibit access to the general public. The entire indoor restaurant area shall not be rented out for private events more than ten days or nights per calendar year. The outdoor patio space shall not be used for private events.**
 - C. **Signage. At no time shall the applicant display signage indicating that the patio space or the beach area adjacent to the restaurant are for exclusive use of the restaurant, or otherwise display signage that is inconsistent with maintaining public access.**

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

The project site is located at 15 1st Street, in the City of Seal Beach. The project site is located on the beach, seaward of a public beach parking lot, and is between the first public road and the sea ([Exhibit 1](#)), adjacent to the mouth of the San Gabriel River. The subject site consists of a 2,937 sq. ft. parcel with an existing restaurant structure, which is currently vacant. In the vicinity there are public restrooms, a beach parking lot, and other ancillary development including walkways and landscaping. A quarry stone rock jetty exists between the subject site and the river.

On October 7, 2020, the Commission approved CDP No. 5-19-0218 which approved the renovation of the existing (pre-Coastal Act), 15 ft. 2 in. tall, 868 sq. ft. restaurant with 1,897 sq. ft. of outdoor patio area and a 522 sq. ft. covered patio. The remodel of the structure would take place in the same footprint and would result in a 15 ft. 2 in. tall restaurant with parapet walls and a 22 ft. 6 in. tall tower. The remodel would include new shiplap paneling on the exterior walls, replacement of window and door features, and interior remodeling including new drywall and reconfiguration of the bathroom and kitchen. Along with the new tower, the project also would replace the existing roof shingles with a new metal roof.

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The currently proposed project is to amend CDP No. 5-19-0218 to allow for the extension of the outdoor patio area of the existing restaurant by 600 sq. ft. and landscape the area in front of the patio with native dune vegetation ([Exhibit 2](#)). The total seating capacity of the restaurant (159 seats) will remain unchanged.

The project site is located on land owned by the State Lands Commission and is currently leased to the City of Seal Beach for a period of 30 years (June 22, 2016 – June 21, 2046). The City of Seal Beach is the owner of the development on the site including the subject restaurant structure. The subject application has two co-applicants: The Beach House at the River, LLC and the City of Seal Beach. The Beach House at the River, LLC is a tenant of the City of Seal Beach, with a commercial lease to operate a restaurant in the existing structure for 20 years, and seeks the proposed renovations for the restaurant patio. The Beach House at the River, LLC intends to operate a full-service restaurant on the site, with dine in and take-out service including a take-out window.

State Lands Commission staff has clarified that extending the outdoor patio would require an amendment to the lease agreement made between the State Lands Commission and the City of Seal Beach, and subsequent State Lands Commission approval. The applicants are currently in the process of seeking this amendment.

Standard of Review

The City of Seal Beach does not have a certified Local Coastal Program (LCP) or a certified Land Use Plan (LUP). Therefore, the standard of review for this permit is Chapter 3 of the Coastal Act.

B. Public Access and Recreation

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 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.

The project site is located on the northwestern-most edge of the public beach, at the southern terminus of the San Gabriel River bike trail, which is a coastal recreational amenity. The site has historically been developed with a casual restaurant since 1976, which is primarily frequented by visitors to the beach and the bike trail. The use of the public oceanfront land for a restaurant is consistent with Coastal Act Section 30221 because ample recreational amenities and a wide public beach surround the site. Additionally, the restaurant is a visitor-serving facility.

The restaurant does not have a dedicated parking lot for its customers; many of its customers use the beach parking lot containing 111 spaces and visit both the restaurant and the beach. The Commission has consistently found that the ability of visitors to park near the coast is important for coastal access. The subject restaurant shares the 1st Street beach parking lot with beachgoers, windsurfers, and other visitors. The operation of the restaurant is a historic use and the restaurant is not expected to generate increased parking demand because it will continue to serve coastal visitors. Importantly, the proposed patio extension will not result in increased seating capacity of the restaurant (159 seats).

However, the proposed development consists of an expansion of the restaurant's outdoor patio seating area, which will result in seaward encroachment of the patio onto public beach ([Exhibit 2](#)), thereby adversely impacting public access to the beach. In addition, the use of existing public beach area for private business activity is inconsistent with Section 30210 of the Coastal Act, which provides for maximum protection of coastal access and recreational opportunities for all people. Moreover, as previously discussed, the applicants leased this public land from State Lands Commission, which grants them a privilege, not a right, to use the land for private benefit. The lease agreement between the State Lands Commission (Lessor) and the City of Seal Beach (Lessee) states, under Section 3, Paragraph 6(a)(3), that the "lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease." Consistent with this clause, the proposed patio extension must provide reasonable public access and recreational opportunities that are open for the general public.

Therefore, the Commission imposes **Special Condition 11**, which requires the applicant to implement a Public Areas Management Program. The Program shall require the outdoor patio seating area to be open to the general public, restrict the number of private events, and prohibits signage which restricts access. This condition is consistent with past Commission actions involving similar beachfront visitor-serving

facilities,¹ and will ensure that public access to public land on and adjacent to the beach is maintained and enhanced.

State Lands Commission staff has clarified that extending the outdoor patio would require an amendment to the lease agreement made between the State Lands Commission and the City of Seal Beach, and subsequent State Lands Commission approval. The applicants are currently in the process of amending this lease; thus the Commission imposes **Special Condition 10**, which requires the applicant to submit a copy of the amended lease agreement prior to issuance of this coastal development permit amendment. If the State Lands Commission does not approve the lease amendment, the permit will not be issued.

As conditioned, the proposed development's adverse impacts on public access to the coast will be avoided. Thus, as conditioned, the proposed development conforms with Section 30210, 30211, and 30221 of the Coastal Act.

C. Biological Resources

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.

The project proposes to extend the outdoor patio fronting the beach, which has a potential to impact potentially significant sand dune habitat by covering up sandy beach. In order to analyze the impacts to biological resources associated with the project, the applicants submitted a biological survey of the project site dated July 2021 by Glenn Lukos Associates, Inc. The survey included vegetation mapping, general biological surveys, inventory of vegetation and plant species, and inventory of use by wildlife.

The survey concluded that the entirety of the survey area exhibited disturbance from long-term recreational use from beach visitation and recreation. The majority of existing vegetation within the study area was comprised of ornamental and non-native species typical of developed areas, including iceplant, Mexican fan palm, ornamental banana, Canary island pine, and fox tail agave. Two individuals of silver beachweed (*ambrosia chamissonis*) were observed growing within the non-native iceplant. The survey identified that silver beachweed is a common native species that is not listed as rare and in this instance, due to the limited cover, did not define the vegetation cover. No

¹ See CDP Nos. 5-17-0795 (City of Long Beach, Granada Concession), 5-17-0796 (City of Long Beach, Junipero Concession), and 5-17-1037 (City of Long Beach, Alamitos Beach Concession).

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plant or wildlife species considered rare or special-status were observed within the study area.

The Commission's senior ecologist Dr. Jonna Engel reviewed the survey and site photos, and similarly concluded that, due to the heavy disturbance of the project site, the area does not rise to a level of environmentally sensitive habitat area. However, Dr. Engel added that, if left undisturbed, the area has a potential to grow native dune species and develop an ESHA.

In an effort to enhance the biological resources of the area, the applicants have submitted a preliminary planting plan, which proposes to vegetate 1,200 sq. ft. of the area in front of the proposed patio extension with native dune vegetation (*ambrosia chamissonis*, *abronia maritima*, and *calystegia soldanella*). The Commission imposes **Special Condition 9**, which requires the applicants to submit a final planting plan that specifies the proposed extent of the planting area and the type and quantity of the proposed vegetation. Because the proposed development will not impact any species of biological significance and will enhance the biological resource of the project site, the Commission finds the development will be consistent with Section 30230 of the Coastal Act.

D. Local Coastal Program

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.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. The Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

E. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, 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 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 this case, the City of Seal Beach is the lead agency, and the Commission is a responsible agency for the purposes of CEQA. On February 3, 2021, the City of Seal Beach determined that the proposed development is exempt for the purposes of CEQA. The preceding findings of this staff report, incorporated herein by reference, disclose the relevant coastal resource impacts of the proposed project. In addition, the proposed project has been conditioned in order to minimize and mitigate impacts to coastal resources consistent with Chapter 3 of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application No. 5-19-0218-A1 and associated file documents.
- Biological Report for Property Improvements at the Beach House, by Glenn Lukos Associates, Inc., dated July 2021.
- State Lands Commission Lease No. PRC 3792.1

APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-19-0218 THROUGH CDP AMENDMENT NO. 5-19-0218-A1

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-19-0218, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-19-0218-A1. Any changes, pursuant to amendment A1, from the previously approved special conditions are shown in **bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit **amendment** is not valid and development shall not commence until a copy of the permit **amendment**, signed by the applicant or authorized agent, acknowledging receipt of the permit **amendment** and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit **amendment** 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 **amendment** 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.

Special Conditions

1. **No Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the permittee(s) agree, on behalf of themselves and all other successors and assigns, that the project is new development for which there is no right to shoreline protection and hereby waives on behalf of themselves, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. 5-19-0218,

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and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural coastal hazards in the future.

- B.** By acceptance of this permit, the permittee(s) further agree, on behalf of themselves and all successors and assigns, that the permit authorizes the development only for so long as the permittee has adequate legal interest in the property and that the permittee is required to remove the development authorized by this permit, including restaurant and patio, if the structure is either no longer authorized to remain pursuant to a valid State Land Commission lease or if any 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 fall to the beach before they are removed, the permittee(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the beach and Pacific Ocean.

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

By acceptance of this permit, the permittee(s) acknowledge and agree (i) that the site may be subject to hazards, including but not limited to flooding, wave uprush, sea level rise, and erosion, all of which will may 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.

- 3. Future Improvements.** This permit is only for the development described in Coastal Development Permit No. **5-19-0218**. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, hardscape improvements including perimeter walls or fencing shall require an amendment to Permit No. **5-19-0218** from the Commission or shall require an

additional coastal development permit from the Commission or from the applicable certified local government.

4. Permit Compliance. The permittee shall undertake development in accordance with the approved final plans/proposal dated March 11, 2019, subject to all the requirements of all conditions herein. Any proposed change or deviation from the approved plans shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Conditions Imposed by Local Government. This action has no effect on requirements imposed by the City of Seal Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittees are responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by local government permits, except that, in the event of conflicts between approvals from the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail.

6. Construction Staging and Corridor Plan.

A. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a full size set of final construction staging plans for the summer season, from Memorial Day weekend to Labor Day, which indicate that the construction staging area(s) will not result in impacts to public access. The plans shall include, at a minimum, the following:

- (1) Limits of the staging and storage areas
- (2) Equipment staging area
- (3) Worker parking areas
- (4) Location of construction fencing and temporary structures, such as portable restrooms, waste bins, storage containers, etc.
- (5) No street closure or use of public parking shall occur. No construction staging or storage is allowed in public rights-of-way, public parking spaces, public roads, on the sandy beach, or in other locations where such use would restrict public access to the coast at any time. All construction worker parking and materials storage (including, but not limited to, portable restrooms, waste bins, storage containers, etc.) must be contained within the boundaries of the project site.
- (6) The applicant shall submit evidence that the approved staging and storage plans/notes have been incorporated into construction bid documents.
- (7) The staging site shall be removed and/or restored immediately following completion of the development.

B. The permittee shall undertake the development in conformance with the approved final construction staging plans unless the Commission amends this permit or the

Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 7. Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion;
 - (2) Staging and storage of construction machinery and storage of debris shall not take place on any sandy beach areas or areas containing any native vegetation;
 - (3) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (4) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - (5) Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
 - (6) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
 - (7) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
 - (8) Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project.
- 8. Bird Strike Prevention.** By acceptance of this permit, the permittee agrees that oceanfront deck railing systems, fences, glass windows and doors, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the development. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds or appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 ft. by 3 ft. area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall

be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

- 9. Submittal of Final Planting Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit, for review and approval of the Executive Director, two (2) sets of final planting plans that substantially conform with the landscaping plan submitted to the Commission on 8/25/2021 by Glenn Lukos Associates, that include the following:**

- A. Proposed 1,200 sq. ft. extent of planting area fronting the length of the patio on the sandy beach; and**
- B. Type and quantity of proposed native dune vegetation seeds/plants.**

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

- 10. State Lands Commission Approval. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit a copy of the amended lease agreement with the State Lands Commission, showing proof of State Lands Commission's approval of the proposed project.**

- 11. Public Areas Management Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicants shall submit a public areas management program, subject to the review and approval of the Executive Director, that protects the rights of the public to enter and use the patio area and associated amenities. That program shall incorporate the following:**

A. Seating. Should members of the general public choose to sit in the patio area without purchasing food or beverages, restaurant staff shall not ask the general public to leave and shall not infringe on the ability of the public to access the deck.

B. At no time shall the restaurant be converted to a membership-based restaurant or otherwise inhibit access to the general public. The entire indoor restaurant area shall not be rented out for private events more than ten days or nights per calendar year. The outdoor patio space shall not be used for private events.

C. Signage. At no time shall the applicant display signage indicating that the patio space or the beach area adjacent to the restaurant are for exclusive use of the restaurant, or otherwise display signage that is inconsistent with maintaining public access.