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| <b>Title:</b>             | Wu Ginger Restaurant   |
| <b>Projects:</b>          | Conditional Use Permit CUP-23-0005 and Coastal Development Permit CDP-23-0006  |
| <b>Location:</b>          | 1835 4 <sup>th</sup> Street  |
| <b>APN:</b>               | 002-064-008  |
| <b>Applicants:</b>        | JiaQing Wu, LiJun Zhao, and FuQuan Zhang   |
| <b>Property Owners:</b>   | JiaQing Wu, LiJun Zhao, and FuQuan Zhang   |
| <b>Purpose/Use:</b>       | Restaurant in an existing commercial building  |
| <b>Application Date:</b>  | July 20, 2023  |
| <b>General Plan:</b>      | HSC – Highway Service Commercial   |
| <b>Zoning:</b>            | CS – Service Commercial  |
| <b>CEQA:</b>              | Exempt under §15301, Class 1 Existing Facilities   |
| <b>Staff Contact:</b>     | Millisa Smith, Assistant Planner   |
| <b>Appealable to CCC:</b> | No   |
| <b>Recommendation:</b>    | Hold a public hearing; and<br>Adopt a resolution finding the project is exempt from CEQA and approve the project with conditions.  |
| <b>Motion:</b>            | <i>“I move the Planning Commission adopt a resolution finding the project is exempt from CEQA and conditionally approving a Conditional Use Permit and Coastal Development Permit for a restaurant use at 1835 4<sup>th</sup> Street.”</i> |

Figure 1: Location Map

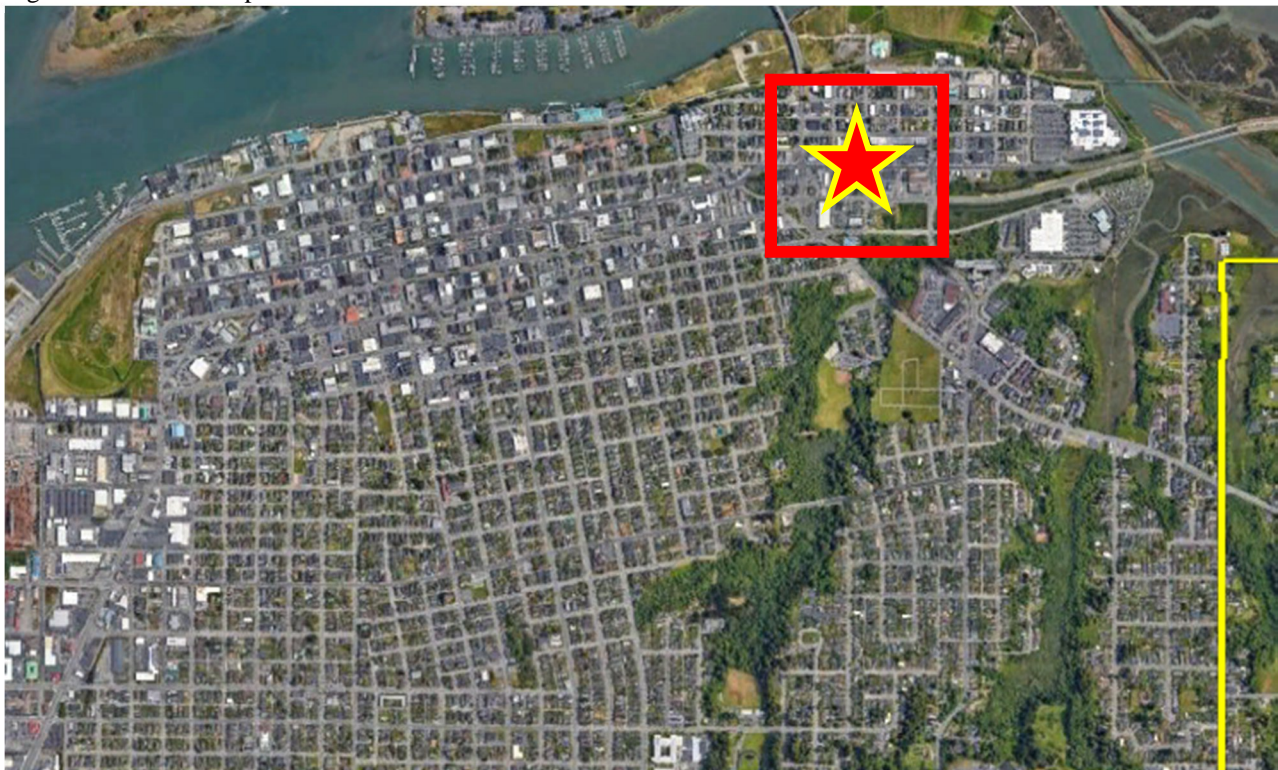
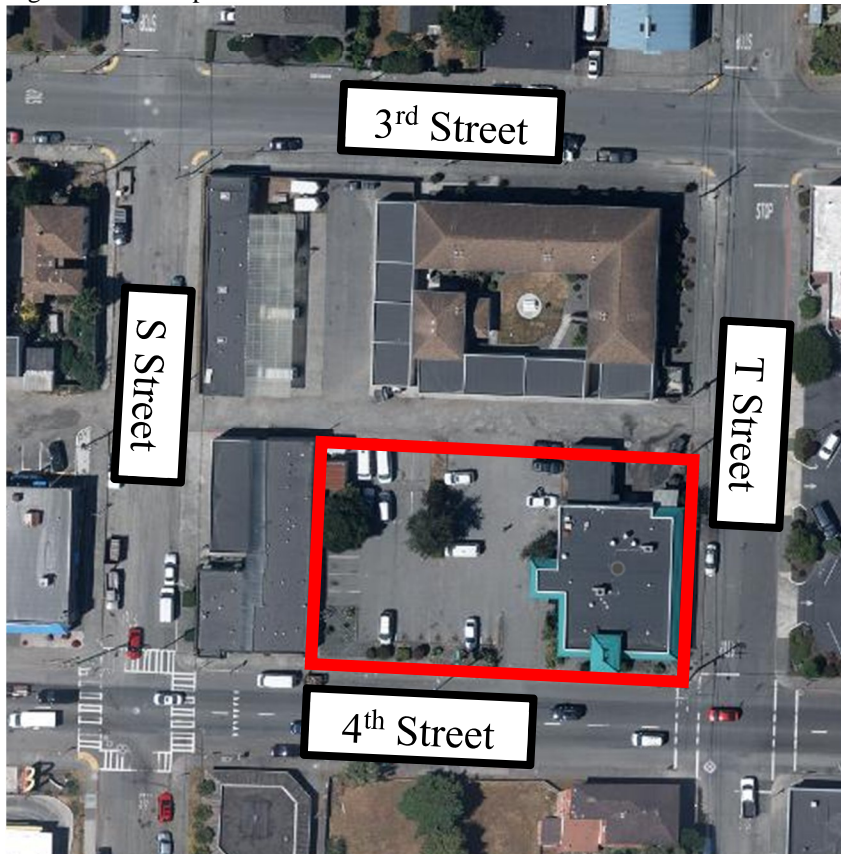


Figure 2: Site Map



**PROJECT SUMMARY**

The applicant is requesting approval of a Coastal Development Permit (CDP) and a Conditional Use Permit (CUP) to utilize the existing commercial building and associated parking lot at 1835 4<sup>th</sup> Street for a restaurant use.

**BACKGROUND**

The project is located in the Coastal Zone, and restaurants are a conditional use in the Service Commercial (CS) zone district requiring a CUP. Pursuant to Eureka Municipal Code (EMC) §10-5.2401(c), projects requiring a use permit also require a CDP.

The 0.45-acre subject property is located on the north side of 4<sup>th</sup> Street

(Highway [Hwy] 101 South), west of T Street, east of S Street, and contains an existing approximately 4,400-square-foot (sf) commercial building, which was historically used as a restaurant, and a parking lot containing 37 standard parking spaces, as well as two parking spaces compliant with the Americans with Disabilities Act (ADA) (Figure 4). Although the site has historically been used a restaurant, the previous restaurant was a nonconforming use that had not

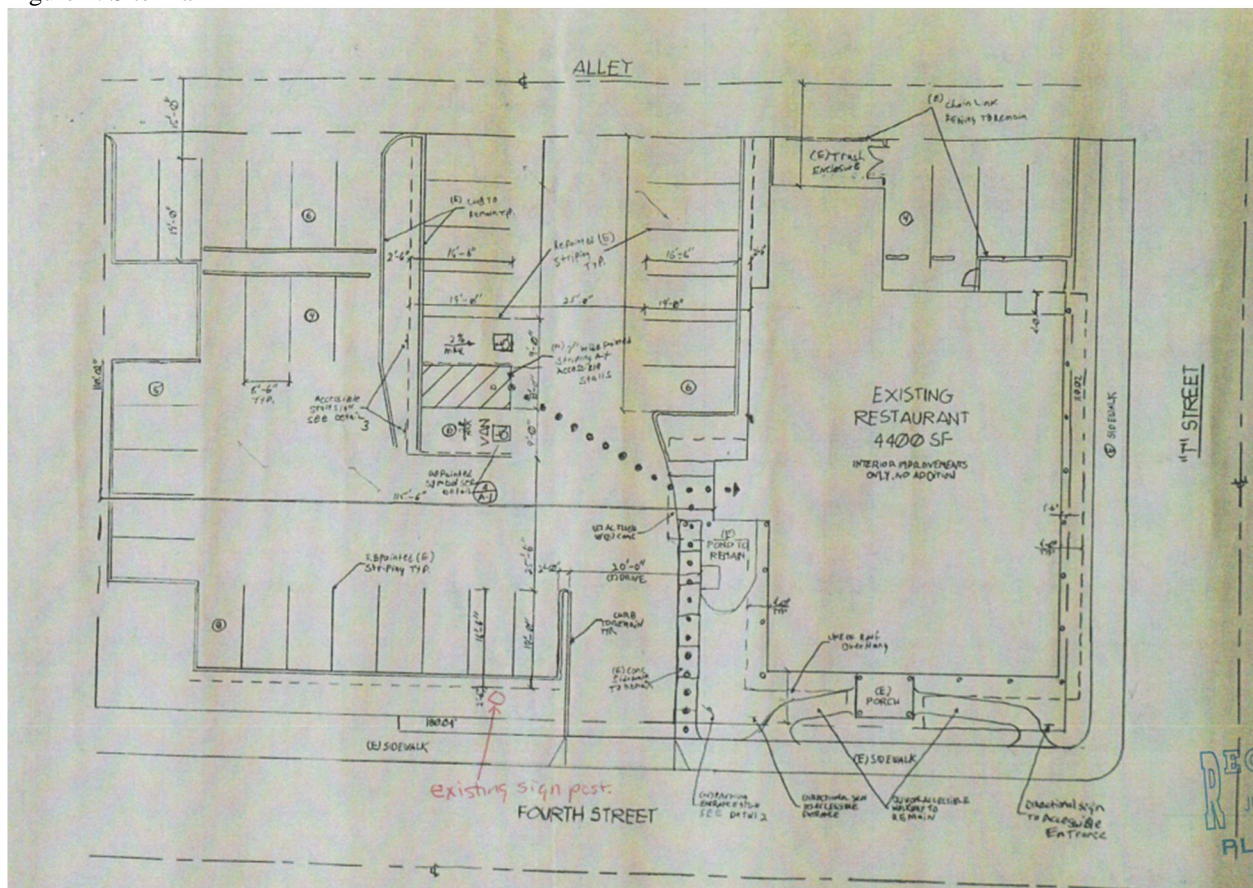
Figure 3: Street view from 4<sup>th</sup> Street (facing north)



obtained a CUP, or associated CDP. Per EMC 10-5.2202, nonconforming uses can continue unless otherwise provided in Article 22. EMC 10-5.2204 (Abandonment of Nonconforming Uses) states that whenever a nonconforming use has been abandoned for a continuous period of 90 days or more, the nonconforming use shall not be reestablished and the use of the site or structure thereafter shall be conforming with the regulations for the district, which thus requires this new restaurant use to obtain a CUP and associated CDP.

The applicant is requesting approval to utilize the existing vacant commercial building as a restaurant which, if approved, will operate seven days a week from 11:00 a.m. to 9:00 p.m., with an estimated 15 employees. The dining area will occupy approximately 2,640-sf of the existing building, the commercial kitchen, storage, and employee areas will occupy approximately 1,600-sf, and the remaining approximately 160-sf will be dedicated to the ADA accessible restroom (Figure 5).

Figure 4: Site Plan



Exterior site improvements proposed by the applicant include striping the parking lot, replacing ADA parking signage, and maintaining or replacing landscaping in-kind. Interior site improvements include upgrades to the bathroom for ADA compliance, removal of seating at the bar area, and repair or replacement of existing kitchen equipment (Figure 5). The applicant indicated at the time their application was submitted that a sign cabinet will be installed on top of the existing pole where a pole sign existed for the previous restaurant. Since the application was submitted, the sign cabinet was installed without the benefit of permits or review. This sign will require an after-the-fact Sign Permit which will be reviewed under a separate permit application,

and the use permit has been conditioned requiring the Sign Permit, and the associated building permit, be obtained.

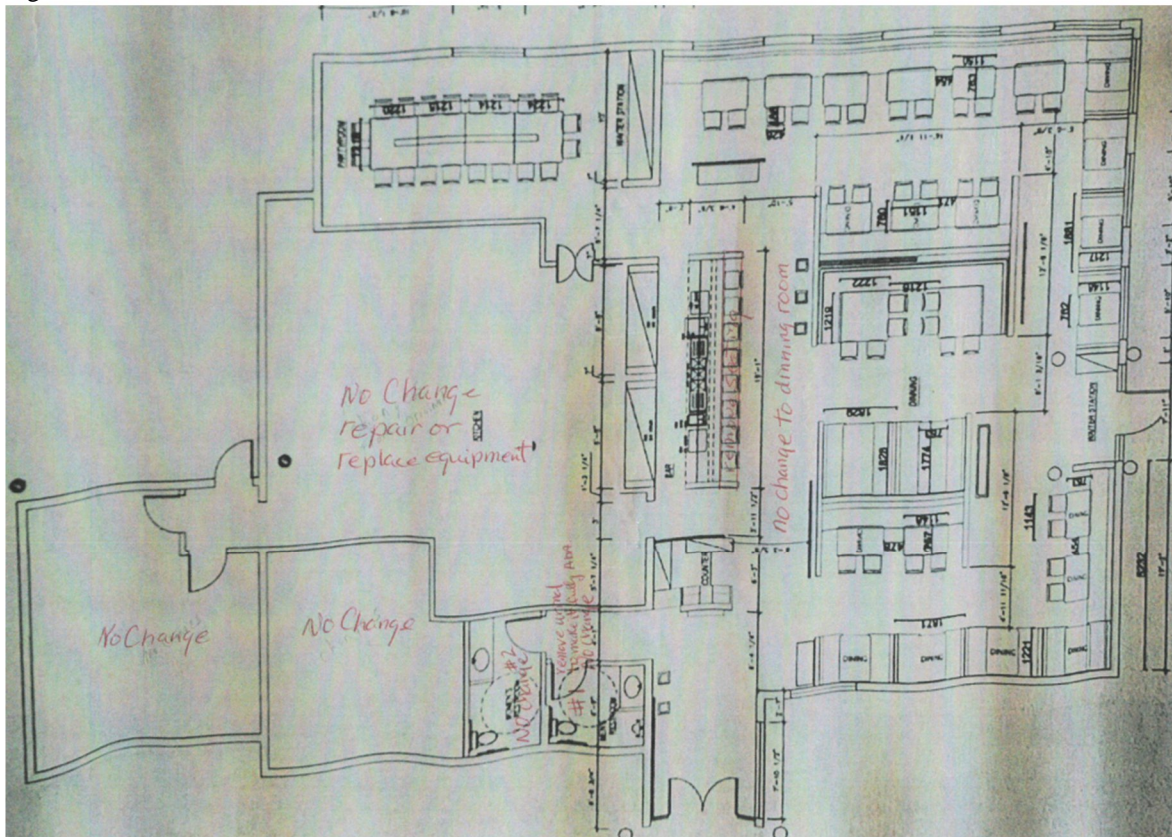
### **COASTAL DEVELOPMENT PERMIT ANALYSIS**

To approve a CDP, the Planning Commission must find the proposed development conforms to the policies of the certified Local Coastal Program per EMC §10-5.29310.2.

The Local Coastal Program is divided into two components: the Land Use Plan and Implementation Plan. The first component, the Land Use Plan, is the General Plan specific to land in the coastal zone. It outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the general plan map.

The project site has a land use designation of Highway Service Commercial (HSC) which provides for retail uses that are oriented primarily to traffic on Highway 101, such as hotels, motels, service stations, and restaurants. The maximum Floor Area Ratio (FAR) for the HSC land use designation is 0.50. The proposed use is a restaurant along the Highway 101 corridor in an existing building with a FAR of 0.22, consistent with the purpose of the HSC land use designation.

Figure 5: Floor Plan



### **Land Use Plan Analysis**

The proposed project involves reuse of an existing building and parking lot previously used as a restaurant on a major arterial (Hwy 101 South) in a dense urban area of the City, over a quarter mile from the bay shoreline and three blocks inland from the first public road (1<sup>st</sup> Street/Waterfront Drive). Staff reviewed the goals and policies in the adopted and certified Land Use Plan (LUP) to

determine whether the project conforms to the LUP. The review found the project does not conflict with any adopted LUP policies, and is consistent with and supported by the following:

***Goal 1.A Land Use and Development Framework.*** *To establish and maintain a land use pattern and mix of development in the Eureka area that protects residential neighborhoods, promotes economic choices and expansion, facilitates logical and cost-effective service extensions, and protects valuable natural and ecological resources.*

***Policy 1.A.4*** *To promote the public safety, health, and welfare, and to protect private and public property, to assure the long-term productivity and economic vitality of coastal resources, and to conserve and restore the natural environment, the City shall protect the ecological balance of the coastal zone and prevent deterioration and destruction.*

***Goal 1.L Commercial Development.*** *To ensure an adequate supply of commercial land for and promote the development of commercial uses to meet the present and future needs of Eureka residents and visitors and to maintain economic vitality.*

The proposed restaurant will occupy an existing commercial building located along a major arterial (Hwy 101 South) at an appropriate location capable of accommodating the proposed commercial intensity/density, away from exclusively residential neighborhoods. The project will create a new restaurant, which will promote economic choice and expansion. The proposed use will utilize an existing building, and no demolition of existing structures or construction of new structures on vacant land will occur, thus protecting existing facilities used for other industries and preventing the deterioration or destruction of existing coastal resources. The project will not require service extensions, as the site is already connected to water, sewer, electrical, and gas utilities. The project will result in the reuse of land with no valuable natural or ecological resources. The revitalization of the existing building on-site will have a positive effect on the City's economic vitality. Furthermore, the project was reviewed by Caltrans and Public Works – Engineering, and no concerns regarding ingress and egress to and from the site were expressed. Due to its location along the Hwy 101 corridor, the restaurant will be easily accessible to visitors from elsewhere in the City, and by out of town visitors. For all the reason described above, the proposed project is consistent with Goals 1.A and 1.L and Policy 1.A.4.

***Goal 6.A Aquatic Resources and Marine, Wetland, and Riparian Habitat.*** *To protect and enhance the natural qualities of the Eureka area's aquatic resources and to preserve the area's valuable marine, wetland and riparian habitat.*

***Policy 6.A.7*** *Within the Coastal Zone, the City shall ensure environmentally sensitive habitat areas are protected against significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.*

The vast majority of proposed site improvements will be inside the existing building, with anticipated exterior site improvements having the potential for only minor ground disturbance in previously disturbed areas, resulting in no new impervious surface. The

project site is not adjacent to, nor contains any, environmentally sensitive habitat areas. Although the site is not directly adjacent to any environmentally sensitive habitat areas, wetlands associated with Cooper Gulch/ First Slough do exist approximately 620 feet southeast of the project site. In order to prevent adverse impacts to nearby sensitive habitats or the species that depend on them, and to prevent potential cumulative impacts of light trespass skyward, the project has been conditioned to require any new outdoor lighting to be shielded/recessed, directed downward, and “dark sky compliant,” consistent with the City’s standard outdoor lighting requirements for the inland zone. Additionally, proposed site improvements include maintaining or replacing landscaping, and a condition has been included requiring no invasive species be planted or allowed to persist on-site. For all the reasons discussed above, the proposed project can be found consistent with Goal 6.A and associated Policy 6.A.7.

*Goal 7.D To minimize the risk of loss of life, injury, damage to property and economic and social dislocations resulting from flood hazards.*

The site is relatively flat and located outside of the FEMA mapped 100- and 500-year flood zones and the mapped tsunami inundation area (Tsunami Inundation Map for Emergency Planning, California Geological Survey, August 13, 2020). The site is at 28-32 feet in elevation (NADV88), over 17 feet above the current 100-year stillwater event at the North Spit tide gage (10.2 ft elevation) and thus not anticipated to be vulnerable to sea level rise (SLR) through 2100 even under the most extreme SLR scenarios. Thus, the project minimizes risk from flood hazards consistent with Goal 7.D and associated policies.

### **Implementation Plan Analysis**

The Implementation Plan includes zoning regulations and the zoning map for land in the coastal zone, as well as specific coastal zone ordinances necessary to implement the policies of the Land Use Plan. The project site is zoned CS – Service Commercial. The proposed restaurant will conform with the purpose and development standards of the CS zone district as described under the Use Permit analysis below.

In addition to specifying the regulations pertaining to specific zoning districts, the IP §10-5.2940 et. seq., specifies development standards that apply to all development in the coastal zone, including standards for public access, environmental resources, natural hazards, visual resources, public works, and new development. These standards largely reiterate certified LUP policies discussed in the LUP policy analysis above, and the applicable findings are incorporated as if set forth in full herein. There is one additional standard not covered under the LUP policy analysis above, which is EMC §10-5.2946.9:

*EMC 10-5.2946.9 Archaeological areas.*

- a) *When development is proposed within a known archaeological area, project design shall avoid or minimize impacts to the resource.*
- b) *When development in archaeological sites cannot be avoided, adequate mitigation measures shall be required. Mitigation shall be designed in accord with guidelines of State Office of Historic Preservation and the State of California Native American Heritage Commission. When, in the course of grading, excavation, or any other development activity, evidence of archaeological artifacts is discovered, all work which*

*could damage or destroy such resources shall cease and the City Planning Director shall be notified immediately of the discovery.*

- c) *The City Planning Director shall notify the State Historic Preservation Officer and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historic Preservation Officer, development of the site may be halted until an archaeological survey can be made and appropriate and feasible mitigation measures are developed.*

The project was referred to the Tribal Historic Preservation Officers (THPOs) of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria on August 1, 2023. No referral comments were received from any of the THPOs. Although the project is not specifically proposing ground disturbing activity, referral comments received from other agencies and departments indicated ground disturbing activity may need to occur for the installation of an in-ground grease interceptor. Although not specifically requested by one of the THPOs, due to the possibility of ground disturbing activity, a condition has been added requiring standard inadvertent discovery protocol for any ground disturbing activities undertaken in preparation for the proposed restaurant's operation.

Based on the discussion above, the finding can be made that the proposed project as conditioned conforms with the certified IP.

### **USE PERMIT ANALYSIS**

Pursuant to EMC §10-5.2407.1, to approve a Use Permit, the Planning Commission must make the following findings:

- (a) The proposed location of the conditional use is in accord with the objectives of Chapter 5 and the purposes and intent of the district in which the site is located;
- (b) The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;
- (c) The proposed conditional use will comply with each of the applicable provisions of Chapter 5; and
- (d) The proposed conditional use is consistent with the certified Local Coastal Program.

### **1. Code Consistency**

#### **Chapter 5 Objectives and Purpose**

Pursuant to EMC §10-5.102, the zoning regulations are adopted by the City Council in accordance with the City Charter to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare. More specifically, the chapter is adopted in order to achieve the following objectives:

- (a) *To provide a precise guide for the physical development of the City in such a manner as to achieve progressively the arrangement of land uses depicted in the General Plan adopted by the Council.*
- (b) *To foster a harmonious, convenient, workable relationship among land uses.*
- (c) *To promote the stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions.*

- (d) *To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the city as a whole.*
- (e) *To prevent excessive population densities and overcrowding of the land with structures.*
- (f) *To promote a safe, effective traffic circulation system.*
- (g) *To foster the provision of adequate off-street parking and off-street truck loading facilities.*
- (h) *To facilitate the appropriate location of community facilities and institutions.*
- (i) *To promote commercial and industrial activities in order to strengthen the city's tax base.*
- (j) *To protect and enhance real property values.*
- (k) *To safeguard and enhance the appearance of the city.*

As mentioned above in the CDP analysis, the project site has a land use designation of Highway Service Commercial (HSC) and a restaurant along the Highway 101 corridor in an existing building with a FAR of 0.22 is consistent with the purpose of the HSC land use designation.

The site is located in the Service Commercial (CS) zone district. Restaurants are a retail use that serve residents of the City and its surrounding market areas and are a listed conditional use in the CS zone district. The project proposes a restaurant in a vacant building, which was historically used as a restaurant for decades, and is thus suitable for the use. The site is located on the north side of 4<sup>th</sup> Street (Hwy 101 South) between S Street and T Street (Figure 2) in an area largely zoned CS and envisioned to continue to grow as an area of diversely intermixed service commercial uses. To the north, across the existing alley, is a multi-family apartment complex. The adjacent parcel to the west contains a multi-family apartment building, and further west across S Street is another restaurant, Tandoori Bites Indian Cuisine. Across 4<sup>th</sup> Street (Hwy 101 South) to the south is a parcel containing a residence, as well as two vacant parcels. Across T Street to the east is a 2.8-acre site containing a commercial lodging establishment, Red Lion Hotel, which houses another restaurant, the Pacific Bar and Grill. The greater surrounding area includes other commercial lodging establishments, the fast-food restaurants Subway, McDonalds, and Burger King, and gas stations. The proposed use is consistent with the surrounding scale and mix of uses. The project will provide another convenient restaurant choice in the area, and granting the use permit will foster a harmonious and convenient workable relationship among land uses by providing another, similar use, in a vacant building.

The proposed restaurant will occupy a vacant commercial building among a mix of other commercial, restaurant, hotel, residential, and retail serving uses, which are all appropriate for the area. The project is proposed in an area that can handle an intensive restaurant use where such a use will serve the neighborhood, greater Eureka, and visitors, which will in turn benefit the City as a whole. Given the proposed use is a relatively small commercial development, granting the CUP will not result in increased population densities, and, given the proposed restaurant will utilize an existing vacant building, the use will not result in overcrowding of the land.

Ingress and egress to the proposed use will occur either via 4<sup>th</sup> Street (Hwy 101 south), using the existing curb cut and drive approach to accesses the parking lot from the south, or via the alley abutting the property to the north, running between S Street and T Street. Reliance on the existing driveways will avoid any new points of conflict with pedestrians and through traffic. The project



was reviewed by Caltrans and Public Works – Engineering, and no new or modified street access was determined necessary to accommodate the vehicular traffic which will result from the use.

Pursuant to the parking requirements of EMC §10-5.1503.2(e), restaurants are required to provide one parking space for every 200 sf of gross floor area, requiring this site to provide 22 parking spaces. The existing parking lot contains 37 parking spaces and two ADA accessible space, which far exceeds the parking space requirements for this site (Figure 4).

The proposed restaurant will contribute to, and potentially increase, the tax base via sales tax. The restaurant will also create new jobs, which will most likely be filled from the local population. The proposed restaurant will occupy a building currently vacant and boarded, reducing blight, increasing property values, and enhancing the appearance of the City.

It is for all of the above reasons, the proposed restaurant, as conditioned, will protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare, and can thus be found consistent with the objectives and purposes of the zoning code.

### **Purposes of the Service Commercial (CS) Zone District**

The purpose of the CS – Service Commercial zone district is to provide appropriately located areas for retail and wholesale commercial establishments that offer commodities and services required by residents of the City and its surrounding market. Furthermore, the purpose of the CS zone district is to allow for concentrations of retail stores, offices, service establishments, and wholesale businesses, for the convenience of the public in a mutually beneficial relationship to each other. Examples of conditionally permitted uses include, but are not limited to, restaurants, drive-in theaters, mobile home and trailer parks, and amusements parks.

The proposed restaurant is appropriate for the CS zone district, as it adds a commercial use to a diverse area of retail stores, service establishments, hotels and restaurants offering goods and services required by residents of the City and surrounding market area. If approved, the proposed restaurant will be conveniently and appropriately located adjacent to the highway and will have a mutually beneficial relationship with the other businesses in the area. As stated above, the restaurant will be located in a currently vacant and underutilized commercial building where there is adequate space to meet the needs of the proposed restaurant, including off-street parking, and both Caltrans and Public Works – Engineering deemed the project acceptable regarding no potential traffic impacts. Utilities are available on-site, and the restaurant is not of excessive size in relation to the parking lot and, as conditioned, will not overload utilities. The proposed use will not generate an unusual risk of fire, explosion, noxious fumes, or other hazards. As a result, the proposed project is consistent with the purpose of the CS zone district.

## **2. Public Health, Safety, and Welfare**

Referrals were sent to agencies and City departments with interest or jurisdiction over the property or the intended use of the property. Referral comments were received from Public Works – Engineering indicating a restaurant of this nature will require either an in-ground grease interceptor or an above-ground 100-120-gallon grease trap. A site visit was requested of the applicant to determine what type of grease trap exists on-site now and to determine, based on existing conditions, what would need to be installed in order to accommodate the proposed restaurant's grease output, but the applicant did not respond and the requested inspection was not conducted. A condition has been included requiring the installation of either a grease trap or grease interceptor,

to the satisfaction of Public Works – Engineering, prior to the finalization of any building permit or the issuance of the business license.

Referral comments were also received from Humboldt County Department of Environmental Health (DEH) stating in December of 2022 plans were submitted to DEH for the Wu Ginger Restaurant which were not approved, and no resubmittal has been received by DEH since. The use permit has been conditioned that the project must receive DEH approval prior to the finalization of any required building permits or the issuance of the business license.

Public Works – Engineering also responded with comments stating that the applicant must ensure that the water service meets current City standards, including but not limited to, the use of an approved backflow device, and a condition has been added requiring, prior to the finalization of any required building permit or the issuance of the business license, the water service be inspected and approved to the satisfaction of Public Works – Engineering. The applicant must also ensure that the sewer discharge meets current City standards, including, but not limited to, CCTV inspection of the sewer lateral. Following the CCTV inspection, any necessary repairs to the sewer lateral must be made. A condition has been included requiring the sewer discharge be brought into compliance with City standards prior to the finalization of any building permit or issuance of the business license, to the satisfaction of Public Works – Engineering.

Additionally, all sidewalks adjacent to the property must be inspected and repaired where defective, and a condition has been added requiring any necessary sidewalk repairs be made, prior to the finalization of any required building permits or the issuance of the business license, to the satisfaction of Public Works – Engineering.

No comments were received that indicate the proposed restaurant will be detrimental to the public health, safety or welfare, or materially injurious to the properties or improvements in the vicinity. The proposed restaurant and on-site parking will bring light and activity to a site that is currently vacant and boarded, and restaurant lighting and activity is a passive way to provide a safer area for the public. Therefore, based on the discussion above, the finding can be made that the project, as conditioned, will not negatively impact the public health, safety or welfare.

### **3. Provisions of Chapter 5**

The applicable provisions of Chapter 5 include the development standards for yards, building height, size, bulk, off-street parking, loading, and landscaping. EMC 10-5.1708 Table 17-9: Pole Signs allows pole signs in the CS zone with an approved Administrative Sign Permit, per EMC 10-5.1707.2 (Administrative Sign Permits), and the project has been conditioned requiring the applicant to obtain an approved Administrative Sign Permit and associated building permit for the sign cabinet that was installed on-site after the application for the CUP/CDP was submitted. The finding can be made that the proposed restaurant, as conditioned, meets all applicable EMC development standards, and, therefore, complies with the applicable provisions of Chapter 5.

### **4. Local Coastal Program**

The Local Coastal Program includes the 1997 Coastal General Plan land use designations and map, and the EMC zone regulations and map, among other provisions. The proposed restaurant is consistent with the CS zone district and HSC land use designation, as described in detail above. The proposed improvements are also consistent with the certified Land Use Plan policies of the 1997 Coastal General Plan and the CDP chapter of the EMC, as discussed above in the CDP

Analysis section of this report. For all these reasons, the proposed conditional use described above is consistent with the certified Local Coastal Program.

### **ENVIRONMENTAL ASSESSMENT**

The City of Eureka, as Lead Agency, has determined the proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), in accordance with §15301, Existing Facilities, Class 1 of the CEQA Guidelines, which covers the operating of private structures involving negligible or no expansion of use. Since the proposed project will be located entirely within an existing building with no proposed expansion or enlargement of the building, the project qualifies for the Class 1 exemption.

### **PUBLIC HEARING NOTICE**

Public notification consisted of notification by mail of property owners and residents within a 300-foot radius of the site on or before September 1, 2023. In addition, the notice was posted on the City's website and bulletin boards, and a public hearing notice sign was posted on the site on or before September 1, 2023.

### **CONCLUSION**

Based on the analysis above, the proposed restaurant, as conditioned, is consistent with the General Plan, Zoning Code, and Local Coastal Program. The project is suitable for the site, and is compatible with existing and planned land uses in the vicinity. The project, as conditioned, is not detrimental to the public health, safety, and welfare, and is properly located within the City and adequately served by existing utilities and infrastructure.

### **STAFF CONTACT**

Millisa Smith, Assistant Planner; 531 K Street, Eureka, CA 95501; [planning@eurekaca.gov](mailto:planning@eurekaca.gov); (707) 441-4160

### **DOCUMENTS ATTACHED**

Attachment 1: Planning Commission Resolution 2023-\_\_