

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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RECORD PACKET COPY

**Tue 6a**

Filed: April 15, 2002
49th Day: June 3, 2002
180th Day: October 12, 2002
Staff: EL-SD
Staff Report: May 22, 2002
Hearing Date: June 10-14, 2002

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: San Diego Unified Port District

DECISION: Approved

APPEAL NO.: A-6-PSD-02-063

APPLICANT: Loews Coronado Bay Resort

PROJECT DESCRIPTION: Conversion and expansion of a 3,967 sq. ft. fitness center to a spa with 10,197 sq. ft. of enclosed area and 2,450 sq. ft. of patio area, replacing the easternmost 2 of 5 existing tennis courts on a site containing a 438-room resort complex, also including a restaurant, meeting rooms, retail area and an 81-slip marina. Also, the project includes installation of new hardscape & landscape improvements, and extension of the existing pool deck over the spa expansion area.

PROJECT LOCATION: 4000 Coronado Bay Road, Coronado, San Diego County.

APPELLANTS: Coronado Friends of the Beach

SUMMARY OF STAFF RECOMMENDATION:

An appeal of this project was filed on April 15, 2002, within the legal appeal period. The Commission opened and continued the item at its May hearing, as the Port file had not arrived in time to prepare a recommendation for the May agenda. All pertinent information has now been reviewed, and staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proposed development, as approved by the San Diego Unified Port District, is consistent with the Certified Port Master Plan and the public access and recreation policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Notice of Board Action, March 28, 2002;
Coastal Development Permit Resolution #2002-73; Negative Declaration UPD

#83356-ND-502; Certified Port District Master Plan; Appeal Application dated 4/15/02; UPD #83356-EIR-4; CCC file #A-6-PSD-02-063

I. Appellants Contend That:

The proposed development is inconsistent with access policies as they relate to providing adequate parking, inconsistent with a prior EIR's mitigation measures and findings, and inconsistent with CEQA. The appellants maintain that the existing hotel resort is already deficient in parking and the expansion will only increase the deficiency, and that traffic impacts have been understated in the current Negative Declaration. They further maintain that impacts to Air Quality and Noise are understated and that additional mitigation in these areas is necessary.

II. Local Government Action. The Board of Port Commissioners approved the hotel expansion as submitted by the applicant on March 26, 2002. They found the proposed development conforms to the certified Port Master Plan and Chapter 3 policies of the Coastal Act, and approved the issuance of a coastal development permit. The appellants submitted a letter of objection on the day of the hearing, which gives them standing to file the subject appeal.

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Port Master Plan (PMP), the Coastal Act provides for limited appeals to the Coastal Commission of certain Port actions on coastal development permits. Projects within the Port Districts may be appealed if they fall within certain categories of development, including hotels and recreational small craft marinas.

Section 30717 of the Coastal Act states:

The governing bodies of ports shall inform and advise the commission in the planning and design of appealable developments authorized under this chapter, and prior to commencement of any appealable development, the governing body of a port shall notify the commission and other interested persons, organizations, and governmental agencies of the approval of a proposed appealable development and indicate how it is consistent with the appropriate port master plan and this division. An approval of the appealable development by the port governing body pursuant to a certified port master plan shall become effective after the 10th working day after notification of its approval, unless an appeal is filed with the commission within that time. Appeals shall be filed and processed by the commission in the same manner as appeals from local government actions as set forth in Chapter 7 (commencing with Section 30600) of this division. No appealable development shall take place until the approval becomes effective.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a port master plan, that no substantial issue exists as to conformity with the certified port master plan.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the port (or their representatives), and the port itself. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the port's decision that the development is consistent or inconsistent with the certified port master plan;
2. The extent and scope of the development as approved or denied by the port;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the port's decision for future interpretations of its PMP;
and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the port's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the San Diego Unified Port

District does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-PSD-02-063 raises NO substantial issue as to conformity with the certified port master plan.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. *A-6-PSD-02-063* does not present a substantial issue as to conformity with the certified port master plan.

Findings and Declarations.

1. Project Description/Site History. The project before the Commission on appeal consists primarily of the conversion of two existing types of recreational use, tennis courts and a fitness center, to another type of recreational use, a spa facility, located within an existing recreational resort. The existing hotel resort consists of 438 guest rooms, 23,413 sq.ft. of meeting rooms, a 220-seat restaurant, 3,585 sq.ft. of retail area, an 81-slip small craft marina, and 644 surface and subterranean parking spaces. Existing ancillary improvements include swimming pools, tennis courts and a fitness center. The existing 3,967 sq.ft. fitness center, which includes exercise equipment and limited spa facilities, will be increased to 10,197 sq.ft. of enclosed area and converted for spa use. There will also be 2,450 sq.ft. of outdoor patio area associated with the spa use. Part of the area where the expanded spa is proposed is now occupied by two tennis courts. Three other existing tennis courts will remain. Facilities proposed to be provided in the new spa include a reception area, lounge, juice bar, hair/nail salon, 300 sq.ft. of retail area, aerobics and weight rooms, two new Jacuzzis, and ten indoor treatment rooms. The outdoor patio area will be occupied by four massage cabanas and a massage pool.

In addition to these facilities, new hardscape and landscape features will be installed. These elements include extension of the existing pool deck over the new spa area. This

will include an architectural trellis, railing and perimeter landscaping. The spa itself will have a new covered entry walk and decorative trellis. The new facilities will be one-story in height (11 feet) and will be consistent with the existing hotel facilities in design.

The Commission reviewed development on this site previously in 1987, when a prior Port-approved coastal development permit was appealed to the Commission (see A-6-PSD-87-155, Joelen Enterprises). The earlier proposal had gone through full environmental review, with the EIR assessing the impacts of a similar, but significantly larger, hotel resort complex with the same range of amenities as the existing hotel: lodging, restaurants, meeting rooms, and recreational facilities such as a marina, swimming pool, Jacuzzis, tennis courts and fitness center. The permit was appealed by three residents of the adjacent Coronado Cays subdivision, on the grounds that it interfered with public views, created significant traffic circulation problems, and did not provide adequate public access or commercial facilities. The Commission found that the proposed hotel was consistent with the certified PMP and Chapter 3 policies and concluded that no substantial issue existed relative to the grounds of the appeal.

The hotel that was ultimately built was significantly smaller than the hotel originally approved. The Port District approved the smaller hotel on the grounds that it was in substantial conformance with the earlier documents and required no additional review.

2. Appellants' Contentions. The appellants have raised a number of concerns, all related to the intensity of use vis-a-vis the adequacy of on-site parking. In raising the issues of public beach access, traffic circulation/parking and CEQA compliance, the appellants do not identify specific inconsistencies with the certified PMP; however, they do allege inconsistencies with the policies of the Coastal Act. The specific contentions are detailed below.

The appellants' first contention is that the project will result in a reduction of beach access, due to the inadequacy of on-site parking facilities. This results in employees parking on neighboring streets or at the adjacent Silver Strand State Park, eliminating public parking spaces otherwise available for the beach-going public. The PMP policies which appear to best address these concerns are:

On Page 40 of the PMP, under **Local Streets and Parking**, the following statements are made: "Parking facilities in sufficient quantity and located within close proximity to the activity they serve are stressed. As a guideline, parking ratios of one stall for every three seats for restaurants and other eating and drinking establishments, and five stalls for every 1,000 square feet of general commercial activity is encouraged. Parking needs for multiple use complexes need evaluation on a case-by-case basis."

The Commission finds that the appeal does not raise a substantial issue regarding the consistency of the proposed development with the policies of the PMP and will not result in adverse impacts to beach access. With regard to the adequacy of the proposed parking, the Commission finds:

- 1) The cited policies only supply a guideline for restaurants and retail uses. There is no parking guideline included in the PMP for guest rooms, meeting rooms or dock facilities.
- 2) Under current Port parking guidelines, the expanded hotel facilities require 534 parking spaces (535 if the retail use is counted separately from the spa within which it is located). If the guidelines contained in the certified PMP were applied to the restaurant and retail components of the expanded development, the parking requirement would be 592 spaces. The hotel currently provides 644 off-street parking spaces, well in excess of either standard.
- 3) Most significantly, the Loews resort is a multi-use complex, including a variety of lodging, eating, meeting, boating and physical recreation facilities. The PMP recognizes that uses within such complexes are generally overlapping, and therefore states that parking for such developments must be determined on a case-by-case basis.

Given these facts, the Commission finds that the parking already supplied at the Loews resort is adequate for the proposed spa expansion. The certified PMP allows the Port flexibility in assigning parking requirements for diverse, multi-use complexes on an individual basis. The PMP, the old Port parking guidelines in effect when the hotel was first built, and the current Port parking guidelines do not give a parking ratio for ancillary uses that are not expected to generate a significant amount of outside traffic or parking need. The new spa facilities are such a use, as the clientele will be derived primarily from hotel guests, with the Negative Declaration finding that an insignificant average of five additional users per day may come to use the new spa facilities. Existing ancillary facilities at the hotel include the fitness center and tennis courts. The expanded spa replaces these other recreational facilities and does not extend beyond the footprint of the original complex.

With respect to the public access and recreation policies of Chapter 3 of the Coastal Act, the following are most applicable to the subject appeal:

Section 30221.

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

Section 30222.

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have

priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

These policies stress the importance of providing commercial recreational opportunities to the public. A hotel, and its ancillary amenities, is considered a priority use under the Coastal Act. The proposed spa facilities are simply one of several accessory uses provided at the subject hotel, and will replace existing recreational amenities consisting of a fitness center and two tennis courts. The spa will also incorporate fitness facilities into its design by virtue of the proposed weight and aerobics rooms, and three other existing tennis courts will remain on the property.

The Loews Resort is located on a peninsula within the Coronado Cays community of the City of Coronado. This area of homes and boat channels was created prior to the Coastal Act by filling tidelands along the western perimeter of San Diego Bay to create an exclusive, water-oriented development. The plan included two commercial recreation areas, both on peninsulas separated from the residential area by manmade channels. The commercial areas are under the jurisdiction of the Port District, while the residential areas are under the jurisdiction of the City of Coronado. One of these areas (Grand Caribe Isle) is accessed through the gated residential community, but the other (Crown Isle) is north of the residential development and has its own access road off SR 75 (Silver Strand Highway). Crown Isle is the location of the Loews Resort.

It appears that the appellants' allegations regarding the inadequacy of parking on a daily basis are derived from both the earlier EIR for a larger hotel project and the Environmental Assessment that was conducted in 2000, when the applicant was proposing a much larger addition that included 13,000 sq.ft. of new meeting area. It was this part of the overall expansion that was identified as having parking impacts, and a number of letters of objection were received from nearby homeowners. When the proposal to add meeting space was dropped from the project, before adoption of the Final Negative Declaration in March, 2002, those letters of objection were withdrawn.

The resort appears to have adequate parking for normal peak daily use, but it does host 15 special events each year that exceed the parking capacity of the hotel. For these events, off-site parking arrangements are made with a number of Coronado facilities and shuttle service is provided. The Silver Strand State Park parking areas are used for only one event each year, the Taste of the Nation. North of Crown Isle is the bayside portion of Silver Strand State Park. This beach and picnic facility has its own parking lot, but is also connected (via tunnel under SR 75) with the much larger state facility on the ocean side of the Silver Strand. The ocean part of the park includes four very large parking lots, the northernmost of which is used for en route RV overnight camping. Except for major summer holidays like the Fourth of July and Labor Day weekend, the entire state park is underutilized, with the bayside especially low in use.

The Loews Taste of the Nation event is held annually on the third weekend of May, beginning at 3:00 p.m. and running into the evening hours. Since this event is held outside of the summer season, and begins at a time when most beachgoers are leaving for

home, the event is not expected to result in any adverse impacts to beachgoers. Moreover, this, and the other special events, have been ongoing for some time and are not related to the spa expansion in any way.

In summary, the Commission finds that the proposed spa expansion does not change or intensify the use of the existing hotel complex in a significant way; it merely provides more room for an existing type of recreational experience for the resort's guests. It does not increase the intensity of use of the site in any significant manner, nor does it generate the need for additional parking, except, depending on interpretation, one possible additional space for the 300 sq.ft. of new retail use which is contained within the spa itself. Since the hotel currently has excess parking, the additional space is fully accommodated. As an ancillary use that will not generate significant off-site clientele, the spa facilities are included in the parking required for guest rooms. Employee parking is also included in the parking required for the various categories of use within the hotel complex. Thus, the Port's action is consistent with the cited PMP and Coastal Act policies. Therefore, the Commission finds that no substantial issue is raised relative to the grounds on which the subject appeal is based.

The appellants also express concern over possible air quality and noise impacts. There do not appear to be any policies in the certified PMP addressing these concerns. These impacts are associated only with the construction phase of the project, and are identified in the Negative Declaration as temporary impacts that may occur. The Port-issued coastal development permit includes standard provisions to minimize these temporary impacts, such as dust and machinery noise. Although such things are annoying for those living, working or recreating nearby, the proposed development is expected to be constructed in ten months. In addition, there are no nearby environmentally sensitive habitat areas, which might otherwise be adversely affected by construction activities and require mitigation measures beyond those included in the Port's permit. Construction-related impacts are a part of nearly all development projects, and the Commission finds that no substantial issue is raised with these concerns.

The remainder of the appellants' contentions center around the adequacy of the Negative Declaration addressing the proposed expansion, and compare it extensively to the EIR for the originally proposed, much larger hotel. Specific contentions address parking requirements/supply and traffic issues, and state a belief that the hotel has understated the number of employees and outside clients that are anticipated for the spa expansion.

CEQA compliance is not grounds for appeal under the Coastal Act. However, the Commission finds that the parking has already been appropriately analyzed in the previous findings. The differences between the originally approved project and the hotel that was actually built are significant and account for the existing hotel requiring far less parking than was called for in the prior EIR. The following comparison demonstrates this fact:

	<u>Original Hotel</u>	<u>Loews Resort</u>
Hotel rooms	450	438

Meeting rooms	42,430 sq.ft.	23,413 sq.ft.
Restaurant*	510 seats	220 seats
Retail space	4,500 sq.ft.	3,885 (including new retail in spa)
Marina slips	97	81

*The above calculations were provided by the Port. The EIR for the original hotel actually identified three separate eating facilities (hotel dining room/lounge, gourmet restaurant, and café) with a total seating capacity of 855.

The Port's current parking guidelines include the following standards: for guest rooms – one space per room; for hotel restaurants – 0.11 spaces per seat; for meeting rooms – 1.6 spaces per 1,000 sq.ft.; for hotel retail – 2.2 spaces per 1,000 sq.ft.; and for hotel marinas – 0.3 spaces per slip. The same parking ratios can be applied to both developments to see what the difference in parking requirements would be. The parking requirement for the existing Loews Resort is 534 or 535 parking spaces, depending on whether or not the spa retail is counted separately, as it was above. The original hotel would require a total of 613 parking spaces, using the figures provided by the port. If the additional restaurants identified in the EIR are included, the total would be a requirement of 651 parking spaces. The hotel provides 644 off-street parking spaces, which is adequate to meet the parking demand generated by the hotel as built.

To summarize, the Coastal Commission finds that the Port's action in approving the spa facilities is consistent with the certified PMP, which allows the Port flexibility in assigning parking requirements for multi-use complexes like the subject resort. The spa is a facility often associated with a resort and does not significantly change or increase the intensity of use of the hotel complex, nor result in any adverse impacts to beach access. Thus, the Commission finds that no substantial issue exists with respect to the project's consistency with the PMP and public access and recreation policies of the Coastal Act.



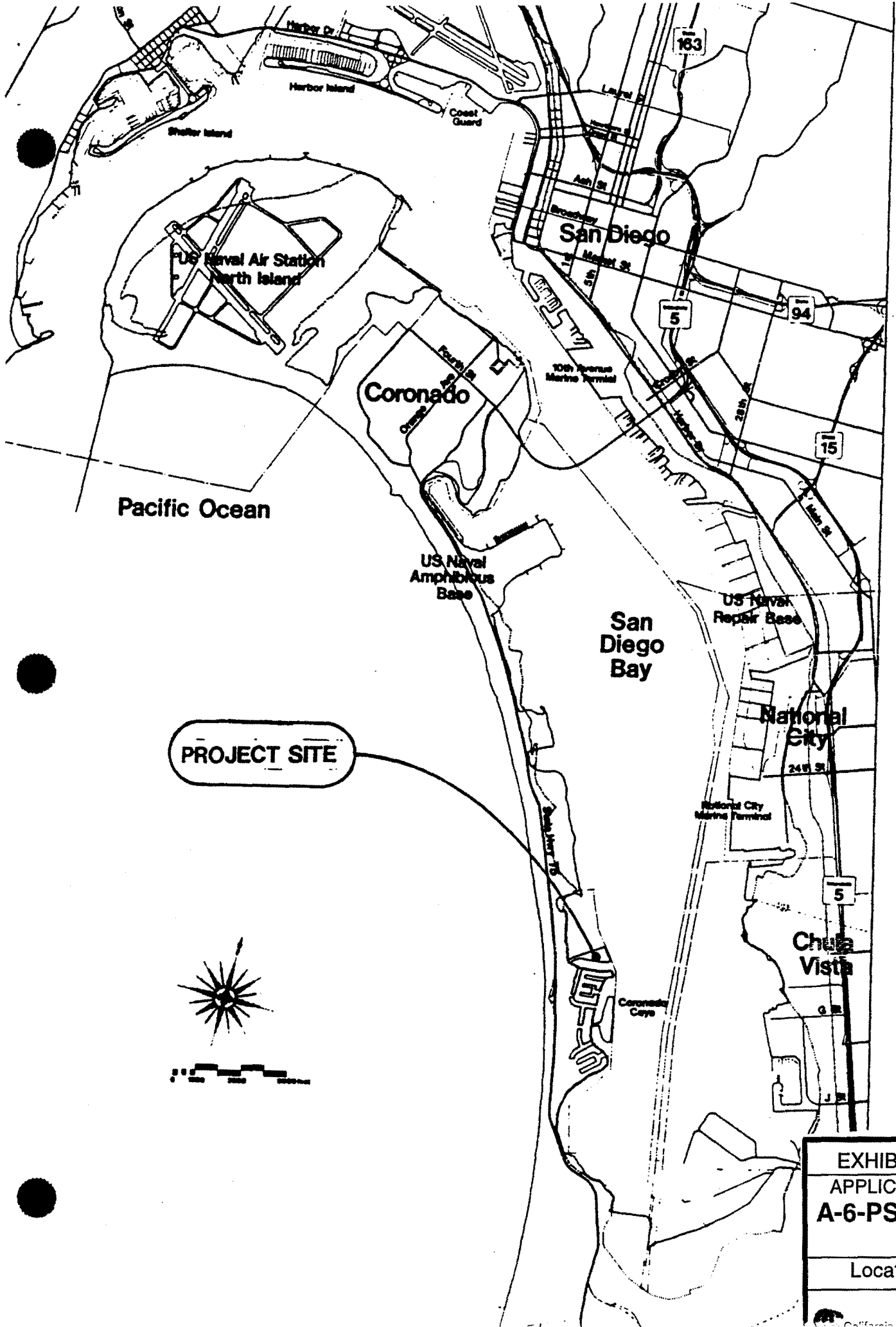


EXHIBIT NO. 1
APPLICATION NO.
A-6-PSD-02-063
Location Map

LOEWS CORONADO BAY-EXPANSION

NEW SITE PLAN

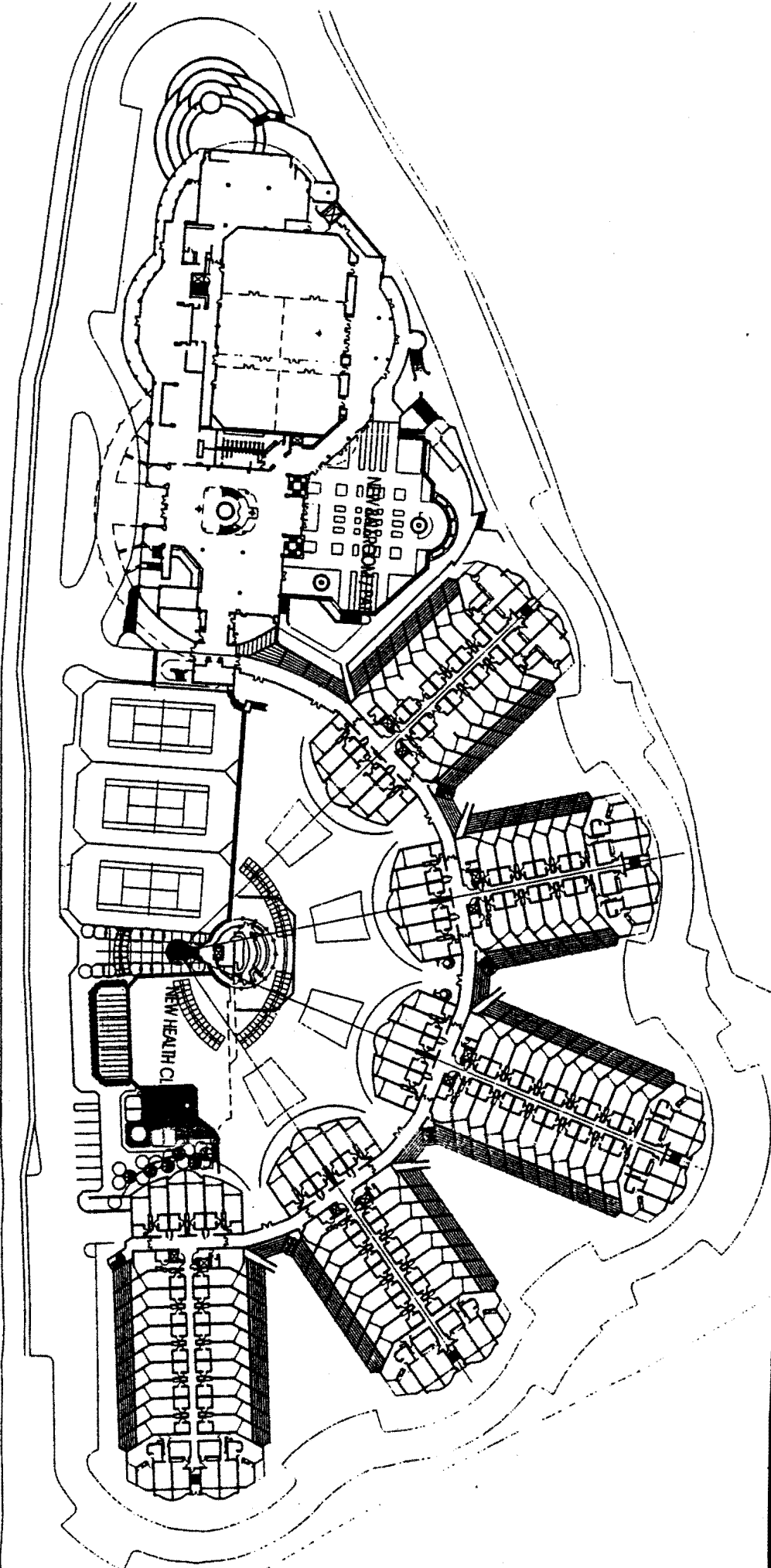

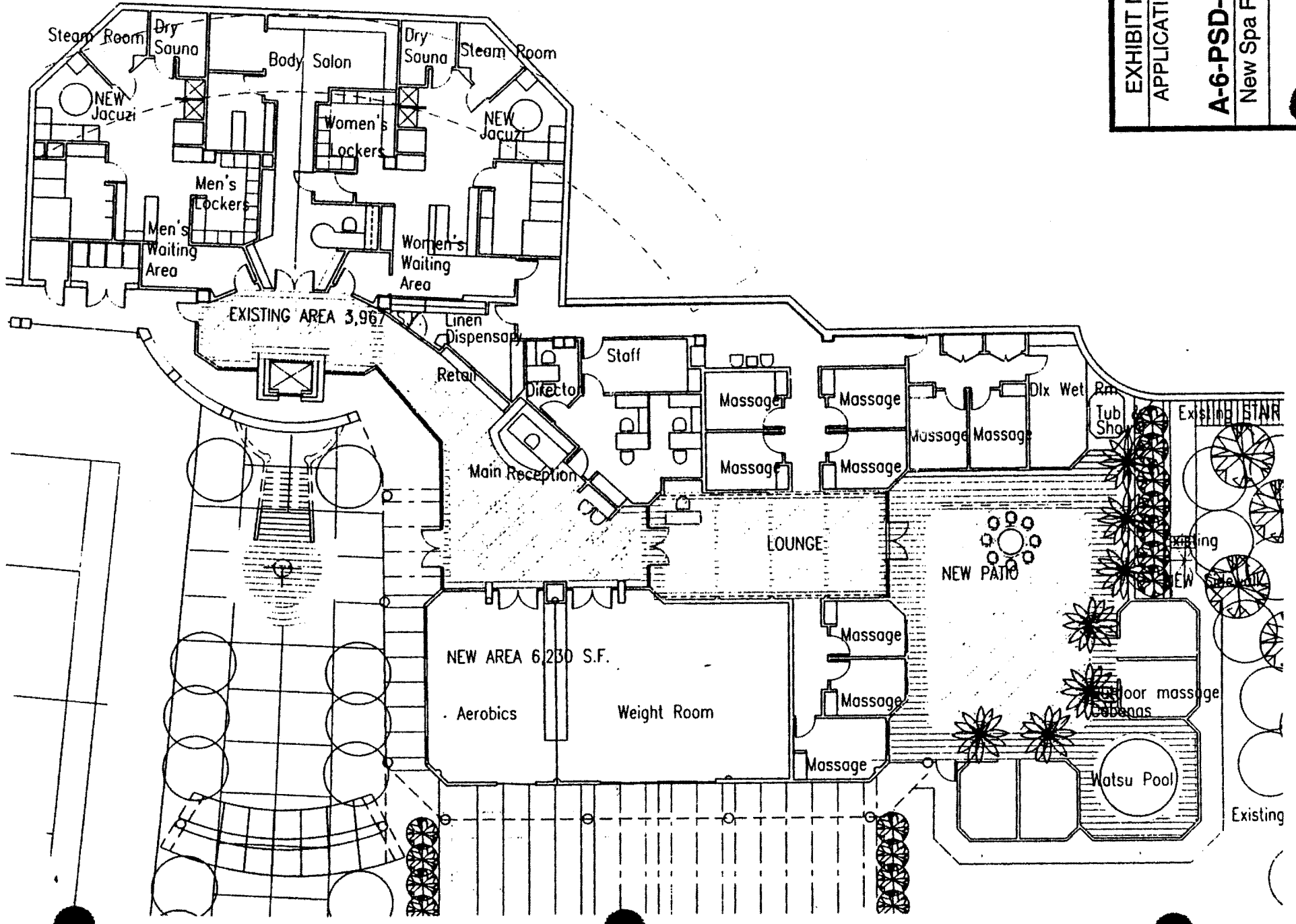
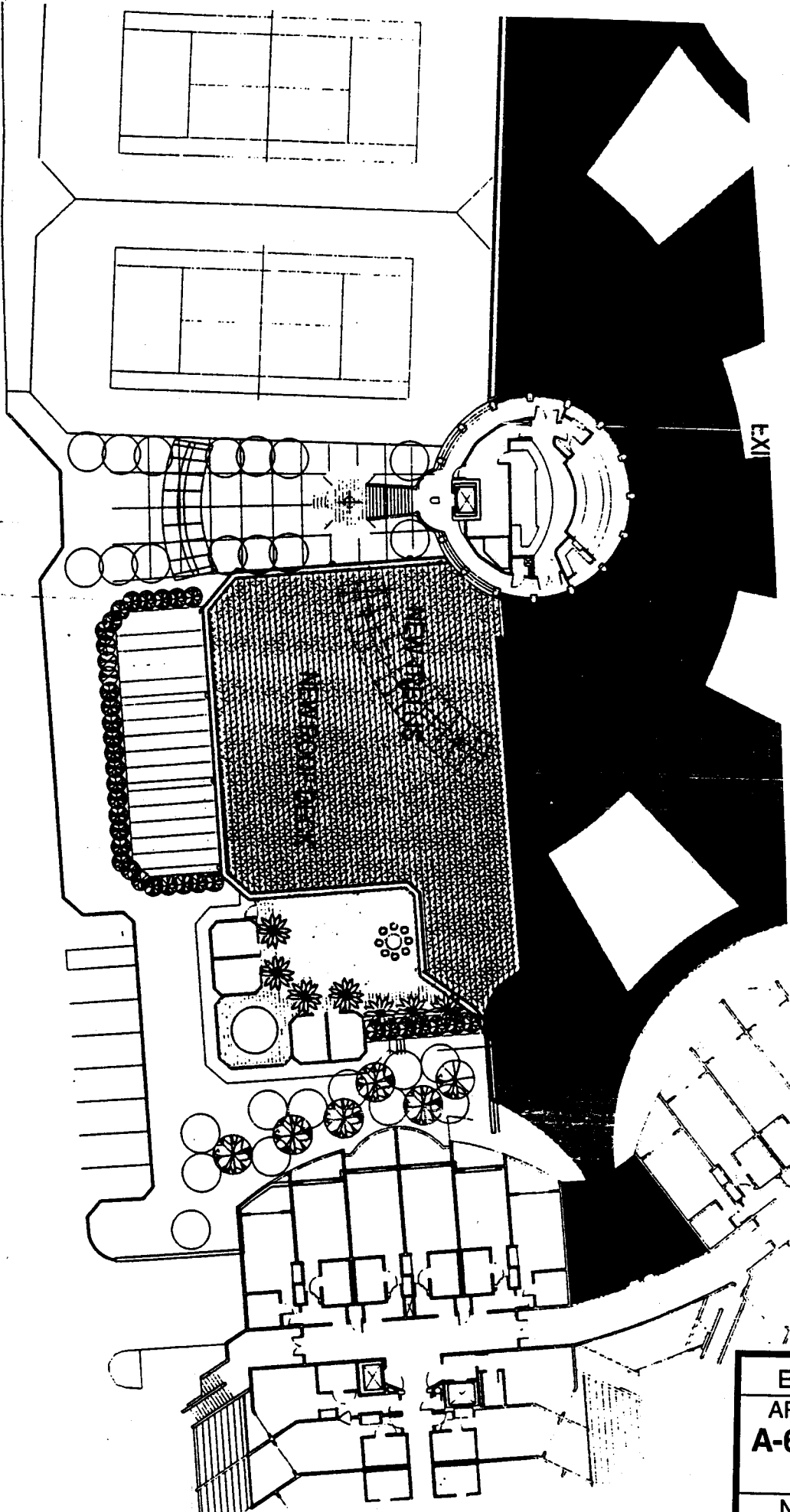


EXHIBIT NO. 2
APPLICATION NO.
A-6-PSD-02-0
Site Plan
 California Coastal Commission





EXI

EXHIBIT NO. 4
APPLICATION NO.
A-6-PSD-02-000

New Roof Deck

California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

CORONADO FRIENDS OF THE BEACH, ATTN STEVEN OGLES
826 ORANGE AVE. #236
CORONADO CA 91228 (619) 437-8107
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: SAN DIEGO UNIFIED PORT DISTRICT

2. Brief description of development being appealed: EXPANSION OF LOEWS CORONADO BAY RESORT INCLUDING A TOTAL OF 12,647 SQUARE FEET.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 4000 CORONADO BAY ROAD, CORONADO CA.

4. Description of decision being appealed: APPROVAL OF LOEWS EXPANSION

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-PSD-02-063

DATE FILED: 4/15/02

DISTRICT: _____

EXHIBIT NO. 5
APPLICATION NO.
A-6-PSD-02-063
Appeal Form
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other PORT AUTHORITY

6. Date of local government's decision: _____

7. Local government's file number (if any): UPD 83356-ND-502

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

LOEWS CORONADO BAY RESORT
4000 CORONADO BAY RD.
CORONADO, CA 92118

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) SEE ATTACHED LIST

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

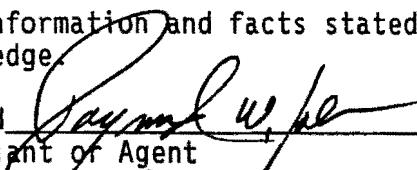
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

THE PROPOSED PROJECT IS INCONSISTENT WITH ACCESS
POLICIES ESPECIALLY AS THEY RELATE TO
PROVIDING ADEQUATE PARKING. THE PROJECT DOES
NOT COMPLY WITH CEQA.
SEE ATTACHED.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed 
Appellant or Agent

Date April 15, 2002

JOHNSON & SEDLACK
26785 CAMINO SECO
TEMECULA, CA 92590
(909) 506-9925

ATTYS FOR COLORADO FRIENDS OF THE BEACH

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed X
Appellant

Date _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed _____
Appellant or Agent

Date _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed [Signature]
Appellant

Date 04-10-02

Andy Kahn
Davis Cowell & Bowe, LLP
100 Van Ness Ave, 20th Floor
San Francisco CA 94102

Steve Kawashima /

Coronado Cays Residents

Montego Village Residents:

Lisa Niviza ✓
4 Montego Court
Coronado CA 92118

Greg & Judy Gerding ✓
24 Montego Court
Coronado CA 92118

Peggy Wiess ✓
26 Montego Court
Coronado CA 92118

Chester Kross ✓
26 Montego Court
Coronado CA 92118

Jack Cason ✓
28 Montego Court
Coronado CA 92118

Maxine Cason ✓
30 Montego Court
Coronado CA 92118

Eric & Gene Lyon-Woop ✓
14 Montego Court
Coronado CA 92118

Environmental Health Coalition
1717 Kettner Blvd, Suite 100
San Diego CA 92101

The project as approved will result in reduction of beach access. The project currently does not have adequate parking and proposes to increase the size of the development without adding additional parking. The lack of parking results in employee parking on neighboring streets thus preventing beach goers from using street parking. Large crowds at events also result in employees and others using parking at the Silver Strand Beach thus reducing available parking for beach goers. Additionally, the project does not comply with CEQA, in that parking impacts as well as noise and air quality impacts are not adequately mitigated.

This project is covered under the Crown Isle Hotel/Marina Coronado Cays EIR UPD document number of 20236. (UPD #83356-E.I.R.-4; SCH # 85041713) This EIR was certified by the Board of Port Commissioners on January 6, 1987, by Resolution Number 87-13.

The proposed Negative Declaration is inconsistent with the prior EIR in a number of significant areas. The Negative Declaration uses, as a base, a figure of 534 required parking spaces based upon the District's current parking requirements. This is not the appropriate figure to be used. The prior EIR determined that a minimum of 875 parking places were required to reduce potential impacts below level of significance (EIR page 4-37). The prior EIR provided a detailed analysis of the parking requirements for the project. (See EIR Appendix D, pages 1-22 for a detailed parking demand analysis.) It determined that in order to prevent there from being a significant impact on parking, especially to neighboring residential streets and beach access, a minimum of 875 parking spaces were required. The 875 parking places were established as a Mitigation Measure in the prior EIR.

The project, as it is currently built does not comply with the prior EIR's Mitigation Measures and Conditions of Approval. Rather than providing a surplus of 110 parking spaces as stated in the proposed Negative Declaration, the project actually provides a shortage of 234 spaces based upon the prior EIR. The parking analysis in the Negative Declaration does concede that the hotel rooms will result in demand for 450 parking spaces but it does not consider the parking demand created by the restaurants, meeting rooms, shops, and marina as identified in the prior EIR. The attached web pages from the Loews Coronado Bay Resort clearly indicate meeting spaces for 3,000 people. These uses were considered in the prior EIR in calculating the required number of parking spaces. The proposed Negative Declaration disingenuously asserts that there will be no new parking demand for the project because it will be utilized by existing hotel guests. The Negative Declaration consistently understates the number of employees at the facility. The EIR provided an estimate of 320 employees. **The Negative Declaration would ask us to believe that a total of 70 employees are capable of providing house cleaning for 450 rooms, cooking for 6,000 square feet of kitchen space, bussing and waiting for 875 seats in restaurants and bars, clerks for 4,500 square feet of retail space, in addition to staffing reception, administration, accounting, maintenance and recreation services as well as providing all services necessary for the up to 3,000 guests attending receptions in the banquet facilities.** This flawed logic however, does not even consider parking required for employees of the proposed spa. Given the assumed luxurious nature of the spa and the facilities to be provided within the spa, it would be safe to assume that there would be a minimum of forty

employees for the expanded spa. This number of employees would be consistent with the estimates in the prior EIR. The Negative Declaration does not account for parking for these forty new employees or potential clients. The Negative Declaration assumes that the new 8,500 square foot spa facility will only account for an additional five guests per day. Such a statement is ludicrous.

Where, as here, the prior EIR establishes mitigation necessary to reduce an impact below a level of significance is inappropriate and inconsistent with CEQA to use a Negative Declaration to reduce the level of mitigation. This is especially true, when, as here, surrounding neighbors and the applicant itself has provided substantial evidence of the fact that parking at the facility is currently inadequate and that employees often park on residential streets in the neighborhood and that adjacent beach parking is used for employee and overflow parking. Not only does this inadequate parking create a significant impact, it also represents an unfair trade practice as this developer is not complying with mitigation measures and conditions of approval and thus achieving an unfair advantage over those businesses which do comply with the law. This use of neighboring beach parking, and even residential parking, results in decreased access to the public beaches.

The Negative Declaration also grossly understates the traffic impacts of the existing facility and proposed changes. The prior EIR contained detailed studies (see EIR Appendix B) and established that the original facility would generate 4,500 trips per day. The Negative Declaration, illogically and without substantiation, assumes that rather than 4,500 trips per day the existing facility only generates 114 trips (one way) per day and the proposed expansion will only add 10 trips per day. The Negative Declaration also illogically determines that the total miles traveled by vehicles associated with the site is only 2,298 miles. This is contrasted with 90,000 miles based upon the traffic study completed for the EIR. The EIR stated that any impact that would result in traffic reaching LOS "D" or worse would result in a significant impact. Current conditions on SR 75 exceed LOS "C". The addition of an additional 40 employees or 40 turning movements on the highway during rush hour would result in a significant impact to traffic.

The Negative Declaration also understates the impacts of Air Quality and Noise during construction. While it is anticipated that construction may take up to one year, the analysis for both of the impacts concedes that impacts may exceed significance thresholds, but the impacts would be only temporary and thus not significant. The fact that they may only last for one year is of little consolation to neighboring residents whose use and enjoyment of their property is impaired for that period. Additionally, the noise and air quality impacts would impact people utilizing the beach. Because there is a potentially significant impact from noise and air quality,

the District must provide mitigation to insure that impacts are below significance thresholds or prepare a new EIR.



Port of San Diego

and Lindbergh Field Air Terminal

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March 28, 2002

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APR 02 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Brian Manning
Loews Coronado Bay Resort
4000 Coronado Bay Road
Coronado CA 92118

NOTICE OF BOARD ACTION on a Coastal Development Permit for

Applicant: Brian Manning, Loews Coronado Bay Resort, (619) 424-4000
Project: Loews Coronado Bay Resort Spa Expansion
Location: 4000 Coronado Bay Road, Coronado CA 92118

PROJECT DESCRIPTION

The proposed project consists of the spa conversion/expansion located at the Loews Coronado Bay Resort Spa Expansion at 4000 Coronado Bay Road in Coronado. The proposed project consists of an 8,680-square-foot conversion and expansion of the existing 3,967-square-foot fitness center to a new spa facility. The proposed spa conversion and expansion would increase the size of the spa facility to 10,197 square feet of building area, with an additional 2,450-square-foot outdoor patio area, for a total spa area of 12,647 square feet. The spa facility expansion will replace the easternmost two of the existing five tennis courts. The existing spa area will be reconfigured and remodeled, and the spa conversion and expansion will include: a main reception area, lounge, juice bar, hair/nail salon, a 300-square-foot retail area, aerobics and weight rooms, two new jacuzzis, and 10 indoor treatment rooms. The new outdoor patio will contain four outdoor massage cabanas and a Watsu massage pool. The new spa expansion wing will have an exterior covered walkway with new hardscape and a decorative entry trellis. The existing pool deck area above the spa facility will be extended over the spa expansion area and will include a new architectural trellis, perimeter hedge, and railing. The project appearance will match that of the existing hotel, with the proposed height of the expanded spa facility at 11 feet. The spa conversion and expansion will take about 10 months to complete.

EXHIBIT NO. 6
APPLICATION NO.
A-6-PSD-02-063
Notice of Board Action
Page 1 of 4

CONSISTENCY WITH CERTIFIED PORT MASTER PLAN

The project site is located in Planning District 8, Silver Strand South, on property classified in the Port Master Plan as Commercial Recreation. The proposed project is the conversion and expansion of an existing spa facility, which is an ancillary hotel use. Hotels and ancillary uses are allowable under the Commercial Recreation land use designation. Therefore, the proposed project conforms to the certified Port Master Plan.

CONSISTENCY WITH CALIFORNIA COASTAL ACT

The project is consistent with the Chapter 3 policies of the Coastal Act, as follows:

ARTICLE 2—PUBLIC ACCESS. The project is consistent with Sections 30210, 30211, 30212, 30212.5, and 30214. The Port Master Plan does not designate any areas on or near the Loews site for public access since the entire isle is part of a tenant leasehold. Furthermore, the proposed project will result in the replacement of two of the five existing tennis courts with the spa expansion, and it is anticipated that the three remaining tennis courts will be sufficient in meeting existing and future demand of the hotel. The proposed project: will not interfere with the public's right of access to the sea; parking facilities on the project site are distributed throughout several sites (to the extent feasible for a hotel facility); and public access to the existing hotel facility would not be affected or limited.

ARTICLE 3—RECREATION. The proposed project is consistent with Sections 30220, 30221, 30222.5, and 30224. The proposed project is located within an existing hotel facility, and therefore would not impact: coastal areas suited for water-oriented recreational activities, oceanfront land suitable for recreational use; upland area to support coastal recreational uses; and recreational boating use of coastal waters.

ARTICLE 4—MARINE ENVIRONMENT. The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project will be located within an existing hotel facility, and therefore does not involve: any marine resources; any water bodies; use of crude oil, gas, petroleum products, or hazardous substances; diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline-altering construction; alterations of rivers and streams; and Bolsa Chica wetlands.

ARTICLE 5—LAND RESOURCES. The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project will be located within an existing hotel facility, and therefore, the project: will not be located in or adjacent to any environmentally sensitive habitat areas; would not involve any prime agricultural land; will not involve productive soils and timberlands; and would not involve archaeological or paleontological resources.

ARTICLE 6—DEVELOPMENT. The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. Consistent with Section 30250, the new commercial development will be located within an existing developed area. Consistent with Section 30251, the height of the spa expansion will match that of the existing hotel at 11 feet. Consistent with Section 30252, the proposed project will provide adequate parking facilities as the Loews' parking supply of 644 spaces exceeds the hotel's parking requirement of 534 spaces by 110 spaces, or 21 percent. Consistent with Section 30253, the proposed project: will not contribute significantly to erosion or geologic instability; will not negatively impact air quality; and will not increase energy consumption or vehicle miles traveled. Consistent with Sections 30254 and 30254.4, the proposed project does not involve public works facilities and does not involve the development of a sewage treatment plant. Consistent with Section 30255, the proposed project does not preclude any coastal-dependent development.

ARTICLE 7—INDUSTRIAL DEVELOPMENT. The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project: does not involve a coastal-dependent industrial facility or use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

BOARD ACTION

By Resolution No. 2002-73, dated March 26, 2002, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [X] This development has been approved as submitted.
- [] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

Mr. Brian Manning
Page 4
March 28, 2002

BRUCE B. HOLLINGSWORTH
Executive Director

By: Bill Chopyk
WILLIAM B. CHOPYK
Manager, Planning Services

cc: ✓ Sherilyn Sarb, CA Coastal Commission
David Watson, Gray Cary Ware & Freidenrich
Steve Kawashima, Hotel Organizing Project

**SDUPD RESPONSE TO APPEAL FILED BY CORONADO FRIENDS OF THE
BEACH REGARDING THE SDUPD'S DECISION TO ISSUE
A COASTAL DEVELOPMENT PERMIT FOR THE
LOEWS CORONADO BAY RESORT SPA EXPANSION (A-6-PSD-02-063)**

The Appellant therefore provides no evidence that the spa expansion project will result in a significant impact to traffic.

APPELLANT COMMENT M: The ND also understates the impacts of Air Quality and Noise during construction. While it is anticipated that construction may take up to one year, the analysis for both of the impacts concedes that impacts may exceed significance thresholds, but the impacts would be only temporary and thus not significant. The fact that they may only last for one year is of little consolation to neighboring residents whose use and enjoyment of their property is impaired for that period. Additionally, the noise and air quality impacts would impact people utilizing the beach. Because there is a potentially significant impact from noise and air quality, the District must provide mitigation to insure that impacts are below significance thresholds or prepare a new EIR.

PORT RESPONSE M: The ND does not state that during construction, air quality and noise impacts "may exceed significance thresholds" (see pages 11-12 and 18 in Attachment A, Initial Study, of the Final ND). These pages state that air quality impacts may occur during construction, and that noise levels may increase, or people's exposure to severe noise levels may occur. In all cases, the Initial Study checklist indicated that a less than significant impact would result from the project. Although no significant impacts were identified, the coastal development permit for the spa expansion, when issued, will include the following standard provisions to minimize air quality and noise impacts during project construction:

- To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
- To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.
- All trucks hauling loose material during project construction, either on-site or off-site, shall be covered.
- Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
- Access points onto local paved roads shall be swept twice per day if visible soil material is carried onto adjacent public paved roads using a water sweeper (once during the day and once at the end of the day).

EXHIBIT NO. 7
APPLICATION NO.
A-6-PSD-02-063
Additional Info from Port District
California Coastal Commission

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www.graycary.com

David E. Watson
Admitted to practice in California

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APR 23 2002

COURT FILE
SAN DIEGO

April 22, 2002

OUR FILE NO. 2500559-1

Via Facsimile and U.S. Mail

Sherilyn Sarb, District Manager
California Coastal Commission, San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

**Re: Loews Coronado Bay Resort
Appeal No. A-6-PSD-02-063**

Dear Ms. Sarb:

We represent 51st St. & 8th Ave. Corp., owner of Loews Coronado Bay Resort ("Loews") in connection with its spa expansion (the "Project"), approved by the San Diego Unified Port District ("Port District") on March 26, 2002. By Resolution No. 2002-73, the Port District Board of Commissioners (the "Board") found that the Project conformed to the certified Port Master Plan of the San Diego Unified Port District and approved the issuance of a coastal development permit ("CDP").

Coronado Friends of the Beach ("Appellant") has filed an appeal (the "Appeal") with the California Coastal Commission (the "Commission") which alleges that the Project is inconsistent with public access policies and does not comply with the California Environmental Quality Act ("CEQA"). We believe the appeal is invalid and should not be allowed to go forward because Appellant is not an "aggrieved person" who has exhausted its local appeals as required by the California Code of Regulations. The Appellant did not submit oral or written testimony directed to the relationship of the Project to the Port Master Plan as required by the Port District regulations. Further, the Appeal is patently frivolous as set forth in Public Resources Code section 30620(d).

I. Aggrieved Person.

Section 13111(a) of the California Code of Regulations states: "An appeal of a local government's decision on a coastal development permit application . . . may be filed by an applicant or any aggrieved person who exhausted local appeals, or any two members of the Commission." C.C.R. § 13111(a). Appellant is not the applicant, and no two members of the Commission filed an appeal within the appeal period. Thus, Appellant is entitled to bring an appeal only if it is an "aggrieved person" who exhausted its local appeals.

EXHIBIT NO. 8
APPLICATION NO. A-6-PSD-02-063
Letters from Loews Attorney
Page 1 of 7

Sherilyn Sarb, District Manager

Page 2

April 22, 2002

For purposes of the California Coastal Act, an "aggrieved person" is one who meets the requirements of Public Resources Code, section 30801. C.C.R. § 13006. Section 30801 states:

[A]n "aggrieved person" means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either.

The Port District's Coastal Development Permit Regulations, section 11(g) state:

The public hearing on a proposed appealable development shall be conducted in accordance with current procedures of the Board and shall afford persons the opportunity to appear at the hearing and inform the Board of the nature of their concerns regarding the project. Testimony shall be directed to the relationship of the project to the Port Master Plan. Oral and written comments shall be submitted prior to the close of the public hearing. [Emphasis added.]

Appellant's attorney submitted a letter the day of the hearing. That letter did not comment upon the CDP, but only upon the Negative Declaration ("ND") prepared for the Project. The letter did not comment on the Project's relationship to the Port Master Plan. The Port District received a fax of the letter, but never received the original. Appellant did not testify at the hearing or send any representative to do so. The Appeal form includes one name, Steve Ogles, as Appellant's contact. Mr. Ogles has not previously participated in this matter — he did not provide oral or written testimony at the Port District hearing. Appellant did not list itself as a party that spoke or submitted written testimony regarding the CDP.

Appellant did not appear at the public hearing held by the Board on March 26, 2002. Appellant did not submit testimony on the relationship of the Project to the Port Master Plan. In fact, no person spoke in opposition to the Project at that hearing.

The list of interested parties in Appellant's Appeal form does not include anyone who opposed the CDP at the hearing. Following is a summary of each listed party's participation:

Andy Kahn	Submitted letters dated 11/26/01 and 11/29/01 to the Board that commented on the ND. No comments were made in Mr. Kahn's letter regarding the CDP.
Steve Kawashima	Signed a Declaration accompanying Mr. Kahn's 11/29/01 letter. No comments were made in Mr. Kawashima's Declaration regarding the CDP.

Sherilyn Sarb, District Manager

Page 3

April 22, 2002

Coronado Cays Residents Submitted a letter dated 01/22/02 to the Board that commented on the CDP and the ND, but these residents rescinded their letter of opposition prior to the Board hearing.

Montego Village Residents Submitted two letters to the Board that commented on the CDP and ND, but these residents rescinded all of their letters of opposition prior to the Board hearing.

Environmental Health Coalition ("EHC") Submitted an undated letter to the Board that commented on the ND. No comments were made in the EHC's letter regarding the CDP.

Several days before the Board hearing, the Coronado Cays Residents and the Montego Village Residents submitted letters stating their concerns with the Project and, in particular, informed Loews of their concerns regarding the CDP and parking issues. Loews worked closely with these residents to resolve their concerns in the days that followed, and all of the residents rescinded their letters before the hearing took place. In fact, many of these former opponents attended the hearing to speak in favor of the Project.

In its appeal, Appellant added comments regarding the CDP to its form of letter to the Port District and then resubmitted the letter as its Appeal. To be an "aggrieved person" under section 30801, an appellant must inform the Board of the nature of its concerns either prior to or at the hearing. See Cal. Pub. Res. Code § 30801. Appellant cannot meet the statutory requirements of an "aggrieved person" by trying to fulfill these requirements by changing its document after the hearing. Appellant should be prevented from introducing new issues in its appeal when it had ample opportunity to present such issues to Loews and to the Board prior to or at the hearing.

Allowing this appeal to go forward would defeat the purpose of requiring a party to exhaust its local appeals. Numerous courts have held that one reason to require exhaustion of administrative remedies is to allow government agencies and applicants the opportunity to address public concerns. In this situation, Loews had no opportunity to resolve issues with a previously unknown party. See *Browning-Ferris Indus., Inc. v. City Council* 181 Cal. App. 3d 825 (1981); *Leff v City of Monterey Park* 218 Cal. App. 3d 674 (1990).

Finally, Appellant has not given any "good cause" explaining why it did not appear at the Board hearing or otherwise timely inform Loews or the Board of its objections to the CDP.

For these reasons, Appellant is not an "aggrieved person" who exhausted its local appeals and is not entitled to bring an appeal objecting to the issuance of the CDP.

II. Grounds for Appeal.

Appellant's appeal does not meet either of the limited grounds for a CDP appeal. Public Resources Code section 30603(b) states: "The grounds for an appeal . . . shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." Appellant states that its reason for appeal are because "[t]he proposed project is inconsistent with access policies

Sherilyn Sarb, District Manager
Page 4
April 22, 2002

especially as they relate to providing adequate parking. The project does not comply with CEQA." Appellant does not allege that the Project violates the local coastal program ("LCP").

Appellant's reasons are not supported by the facts. First, the Project does comply with public access policies. It provides more than adequate parking because Loews Coronado Bay Resort, after buildout of the Project, will have 110 more parking spaces than required under current Port District regulations. The purported "evidence" suggesting otherwise was rescinded by the neighbors. Second, Appellant's allegation that the Project does not comply with CEQA is not one of the grounds for an appeal. As such, the appeal is patently frivolous.

Finally, Appellant refers to portions of its letter which it submitted as an attachment to its Appeal. As stated above, the resubmitted letter adds provisions which comment on the CDP that were not included in the original letter submitted to the Board on March 26, 2002. Thus, Appellant did not inform the Board of these comments before the Board issued its decision on the CDP, and such comments cannot now be raised.

In summary, Appellant does not have standing as an "aggrieved person" to bring this appeal and the appeal should not be allowed. In addition, the Executive Director should find that the Appeal is patently frivolous as provided in section 30620(d) of the Public Resources Code. For the reasons stated above, we believe that, if necessary, the Commission should find that the Appeal raises no substantial issue regarding public access or conformity with the LCP. See Cal. Pub. Res. Code § 30625(b).

Very truly yours,

Gray Cary Ware & Freidenrich LLP



David E. Watson

DEW/ct

cc: Mr. Jeff Stewart (via email)
Ms. Kathleen Cochran (via facsimile)
Ms. Wileen Manaos (via facsimile and U.S. Mail)

Gray Cary\SD\1504589.1
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David E. Watson
Admitted to practice in California

May 13, 2002

Via Facsimile and U.S. Mail

Ms. Ellen Lirley
California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

**Re: Loews Coronado Bay Resort – Spa Expansion
Appeal No. A-6-PSD-02-063**

Dear Ms. Lirley:

We represent 51st St. & 8th Ave. Corp., owner of Loews Coronado Bay Resort ("Loews") in connection with its spa expansion (the "Project"), approved by the San Diego Unified Port District ("Port District") on March 26, 2002.

Coronado Friends of the Beach ("Appellant") has filed an appeal (the "Appeal") with the California Coastal Commission (the "Commission") which alleges that the Project is inconsistent with public access policies and does not comply with the California Environmental Quality Act ("CEQA"). We believe that the Appeal does not raise a substantial coastal issue because the Project does comply with public access policies and CEQA is not a valid basis for bringing an appeal under the California Coastal Act (the "Act").

We concur with the Port District detailed response to the Appeal dated May 7, 2002.

I. There Is No Public Access Issue.

The Project does not result in any impairment of the public's access to the beaches of Coronado. Appellant alleges that (i) Loews does not have adequate parking which will be exacerbated by the Project, (ii) Loews does not comply with the 1990 EIR prepared for the resort, and (iii) the Project creates traffic impacts that were understated in the Negative Declaration. Appellant is incorrect on all points.

A. Parking

Loews has more than adequate parking to meet the demands created by its patrons. For example, in August, 2001, the month with highest parking demand in the last year, the average

daily total of self-parked cars was 248. Loews has 644 parking spaces. It, therefore, has more than adequate parking to meet this demand. Furthermore, Loews exceeds its current required parking supply. The Port's current parking regulations were developed based on parking surveys conducted in the San Diego Bay tideland area and other national sources of research data. These current parking regulations are more accurate than the standards identified in the 1990 EIR and reflect current parking demand. Under these current Port District regulations, Loews is required to have 534 parking spaces. With 644 parking spaces, Loews has 110 spaces more than required.

Not only is Loews' current parking more than adequate, the Project will not adversely affect Loews' parking availability because the spa is not a separate parking demand generator under current Port District parking guidelines. Because spa users are primarily hotel guests, the spa parking demand has already been factored into the hotel room parking demand. Therefore, no additional parking is required for the Project.

B. 1990 EIR

Appellant also alleges that the Project is inconsistent with the Environmental Impact Report ("EIR") prepared for development of this site in 1990. Appellant is incorrect, however, because the 1990 EIR analyzed a much larger project than the existing Loews. The 1990 EIR anticipated a resort with 42,430 square feet of meeting space and 510 restaurant seats. Loews has only 23,413 square feet of meeting space and 220 restaurant seats. In addition, the proposed resort was to have 4,500 square feet of retail space and 97 boat slips. Loews has only 3,585 square feet of retail space and 81 boat slips. The proposed resort had 450 rooms; Loews has 438.

Based on the larger resort and on Port District parking requirements at the time, the Port District and the applicant agreed to a parking mitigation measure of 875 parking spaces. That measure is inappropriate for Loews because Loews is smaller. Furthermore, the mitigation measure was based, in part, upon Port District parking requirements at the time. As stated above, under existing Port District parking requirements, Loews has 110 excess parking spaces.

C. Traffic

Appellant also alleges that the Project will result in traffic impacts that were understated in the Negative Declaration. A recent traffic assessment was conducted by Linscott Law & Greenspan ("LLG"). LLG found that the current ADT on State Route 75 is 23,600, which is well within LOS C's capacity of 30,000 ADT. LLG concluded that the Project would not result in a significant impact because it will generate only a nominal amount of additional traffic. Appellant's reference to traffic impacts anticipated in the 1990 EIR and mitigation measures to address those impacts is inapplicable to Loews because Loews is a smaller resort. Also, the 1990 EIR assumed that access to the resort would be via the main Coronado Cays entrance at State Route 75 and Coronado Cays Boulevard. When Loews was built, however, a separate signalized entrance at Coronado Bay Road was constructed off State Route 75 to minimize traffic conflicts with residents entering the Cays community at Coronado Cays Boulevard. The effect of this separate entrance as a mitigation measure was not analyzed in the 1990 EIR, so that EIR's traffic analysis does not accurately reflect existing improved circumstances.

Ms. Ellen Lirley
California Coastal Commission
May 13, 2002
Page 3

II. CEQA Is Not A Valid Basis For Appeal.

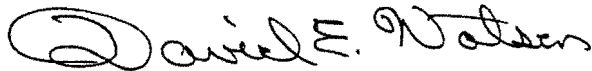
Appellant's allegation that the Project does not comply with CEQA is not a valid basis for appeal under the Act. Public Resources Code section 30603(b) states: "The grounds for an appeal . . . shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." Of these two limited bases for appeal, Appellant's allegation that the Project is inconsistent with public access policies is unfounded and inaccurate, as discussed above. Appellant has not alleged that the Project is inconsistent with the local coastal program ("LCP"). Appellant's allegation regarding CEQA is not one of the bases permitted under section 30603(b).

Further, as pointed out in the Port District's detailed response dated May 7, 2002, the Negative Declaration fully complied with CEQA.

For the reasons stated above, we believe that the Appeal raises no substantial issue regarding public access or conformity with the LCP pursuant to section 30625(b) of the Public Resources Code. As set out in my letter to Sherilyn Sarb dated April 22, 2002, we also believe the Appeal is invalid because the Appellant did not exhaust its local appeals and comply with Port District regulations as required by the California Code of Regulations.

Very truly yours,

Gray Cary Ware & Freidenrich LLP



David E. Watson

DEW:mnc

cc: Ms. Sherilyn Sarb (via U.S. Mail)
Mr. Jeff Stewart (via email)
Ms. Kathleen Cochran (via facsimile)
Ms. Wileen Manaos (via facsimile and U.S. Mail)
Mr. B. Kim Howlett (via facsimile)

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May 17, 2002

RECEIVED

MAY 20 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

VIA FEDERAL EXPRESS

California Coastal Commission
7575 Metropolitan Dr, Suite 103
San Diego, CA 92108

Gentlemen:

This firm represents Coronado Friends of the Beach, a local environmental group, and submits these comments on their behalf. This project is covered under the Crown Isle Hotel/Marina Coronado Cays EIR UPD document number of 20236. (UPD #83356-E.I.R.-4; SCH # 85041713) This EIR was certified by the Board of Port Commissioners on January 6, 1987, by Resolution Number 87-13.

The approval of the Project and Negative Declaration are based totally upon false data, inconsistent data, fraud, distortion and misrepresentation.

The ownership of Loews presented the information to the Port Authority upon which the preparation of the Negative Declaration, Findings and Project approval were based. The picture presented by Loews was one of minor changes to a project which already has an overabundance of parking, very low occupancy with no traffic generated. The analysis was based upon the following "facts" presented:

- The hotel is a 438 unit project (IS Page 13)
- There are 3,585 Sq. Ft. of retail space (IS Page 13) (Spa Expansion Environmental Information Page 2)
- There are 81 boat slips (IS Page 13)
- There are 23,413 Sq. Ft. of meeting space (IS Page 13)
- There are 220 restaurant seats (IS Page 13)
- Total existing customers per day of 179 for the entire project (EA Page 4) (Response to Comments Page 12)
- Spa expansion will add 10,197 Sq.Ft. of space. (Response to Comments Page 8)
- The parking required for the Project is 534 Spaces (IS Page 13) (Spa Expansion Environmental Information Page 2)
- The parking provided is 644 spaces (IS Page 13)
- There are existing agreements to handle overflow parking.
- Total number of Employees 55 (EA Page 4) (Response to Comments Page 11)
- Most employees use mass transit (EA Page 4) (Response to Comments Page 11)
- Total number of trips per day for the total project 57 (EA Page 4)
- Total Peak Hour trips generated will be 50 a.m. and 60 p.m. (Spa Expansion Environmental Information Attachment A thereto page 2)

W/o Exhibits

EXHIBIT NO.
APPLICATION NO.
A-6-PSD-02-063
Letter from
Appellants Attorney
Page 1 of 7

- Total mileage of all trips per day 2,298 miles (EA Page 4)
- Average total parking demand .5 parking spaces per room (2000) and .38 parking spaces per room (2000) (Spa Expansion Environmental Information Page 2) (Response to Comments Page 10)
- Spa expansion would not result in any increased parking demand since it will be primarily for hotel guests. (Spa Expansion Environmental Information Page 3) (Spa Expansion Environmental Information Page 5) (Response to Comments Page 8)
- Spa Expansion will result in no new guests (Spa Expansion Environmental Information Page 3) (Spa Expansion Environmental Information Page 5)
- The increased spa will result in 10-15 new employees. (Response to Comments Page 11)

Analysis of the myth:

The facts presented to the Port Authority by Loews is inconsistent, inaccurate misleading and in cases down right false.

- **The hotel is a 438 unit project** (IS Page 13)
This is one of a few statements that is accurate.
- **There are 3,585 Sq. Ft. of retail space** (IS Page 13) (Spa Expansion Environmental Information Page 2)
This is one of a few statements that is accurate.
- **There are 81 boat slips** (IS Page 13)
This is one of a few statements that is accurate.
- **There are 23,413 Sq. Ft. of meeting space** (IS Page 13)
This is one of a few statements that is **nearly** accurate. According to the Loews Website the total square footage for convention space is 24,691. (See Exhibit A) **The capacity of these facilities is 3,800 persons for receptions.** (See Exhibit A)
- **There are 220 restaurant seats** (IS Page 13)
This is one of a few statements that is accurate.
- **Total existing customers per day of 179 for the entire project** (EA Page 4) (Response to Comments Page 12)
There is absolutely no justification for this statement to be found anywhere. Loews own records have been summarized for the years 2000 and 2001 in Exhibit "B". According to their own data, the year round average was an average 320 occupied rooms per day in 2000, and 331 rooms per day in 2001. If you assume an average of 1.5 persons per room this amounts to **480 -495 persons per day for the hotel only** and does not consider any other users for restaurants, spa, meeting rooms with a capacity of 3,800, or the 81 slip marina. Elsewhere in the data provided, Loews indicated that only 1/3 of the hotel occupants had automobiles. If this were the case, there would only be a parking demand of 60 cars per day. Their own parking records indicate an average of over 200 per day. (these records are

subject to criticism as well for being understated.) **The 179 person per day use figure has no basis in reality and was provided only to try to minimize the appearance of impact.**

- **Spa expansion will add 10,197 Sq.Ft. of space.** (Response to Comments Page 8)
This is one of a few statements that is accurate.

- **The parking provided is 644 spaces (IS Page 13) The parking required for the Project is 534 Spaces (IS Page 13) (Spa Expansion Environmental Information Page 2)**

This statement is inaccurate and a total misrepresentation of the facts. The Negative Declaration uses, as a base, a figure of 534 required parking spaces based upon the District's current parking requirements. This number is irrelevant however. The prior EIR determined that a minimum of 875 parking places were required to reduce potential impacts below level of significance (EIR page 4-37). The prior EIR provided a detailed analysis of the parking requirements for the project. (See EIR Appendix D, pages 1-22 for a detailed parking demand analysis.) It determined that in order to prevent there from being a significant impact on parking, especially to neighboring residential streets and beach access, a minimum of 875 parking spaces were required. The 875 parking places were established as a Mitigation Measure in the prior EIR. (See EIR Page 4-37 - 4-38; Certification "Exhibit "C" page 2; Resolution "Exhibit "D" page 1; Port of San Diego Letter "Exhibit "G"), The 875 parking spaces required in the EIR was at variance from the parking requirements of both the City of Coronado and the Port District. At the time of the certification of the EIR, the Port District requirements were 1,200 parking spaces. (EIR Page 4-37) The Coronado requirements were 653. (EIR Page 4-37) The EIR concluded that the 1,200 spaces required by the District were unnecessary but that the 653 required by the City were inadequate to mitigate the parking impacts of the project. (EIR pages 4-37 - 4-38)

The implication of Loews is that there is an excess of parking of 110 parking spaces based upon current Port District requirements. Port district requirements do not apply however because the 875 parking spaces were adopted as **mitigation** in the prior EIR. Rather than there being a parking surplus of 110 spaces there is in reality a **deficit of 231 spaces**. **The project, as it is currently built does not comply with the prior EIR's Mitigation Measures and Conditions of Approval.**

The minimal parking analysis in the Negative Declaration does concede that the hotel rooms will result in demand for 450 parking spaces but it does not consider the parking demand created by the restaurants, meeting rooms, shops, and marina as identified in the prior EIR. These uses were considered in the prior EIR in calculating the required number of parking spaces.

The proposed Negative Declaration disingenuously asserts that there will be no new parking demand for the project because it will be utilized by existing hotel guests. According to other documents, the Spa Expansion will result in **5 new guests per day** (Response to Comments Page 12) and 20 new employees. (Spa Expansion Environmental Information Page 2) thus resulting in an increased parking demand of 25 spaces.

The Negative Declaration consistently understates the number of employees at the facility. The EIR provided an estimate of 320 employees. The Negative Declaration would ask us to believe that a total of 55 employees are capable of providing house cleaning for 438 rooms, cooking for 6,000 square feet of kitchen space, bussing and waiting for 875 seats in restaurants and bars, clerks for 4,500 square feet of retail space, in addition to staffing reception, administration, accounting, maintenance and recreation services as well as providing all services necessary for the up to 3,000 guests attending receptions in the banquet facilities. Hidden in the

document is a more realistic acknowledgement of the actual employment of 135 permanent employees not counting employees for special events. (Response to Comments Page 11) Also hidden in the response to comments is an assessment that the average peak parking demand for non-special events would be 75 spaces. (Response to Comments Page 11) **This is before the 20 new spa employees are added, thus bringing employee parking demand to 95 spaces. Rather than having a surplus of 110 parking spaces as asserted by Lowes, there will actually be a deficit of 251 parking spaces.**

Where, as here, the prior EIR establishes mitigation necessary to reduce an impact below a level of significant is inappropriate and inconsistent with CEQA to use a Negative Declaration to reduce the level of mitigation. This is especially true, when, as here, surrounding neighbors (See Exhibits "H" The residents subsequently sought to retract their request for an EIR or project denial but the letters remain as evidence of parking problems associated with the project) and the applicant itself has provided substantial evidence of the fact that parking at the facility is currently inadequate and that employees often park on residential streets in the neighborhood and that adjacent beach parking is used for employee and overflow parking. Not only does this inadequate parking create a significant impact, it also represents an unfair trade practice as this developer is not complying with mitigation measures and conditions of approval and thus achieving an unfair advantage over those businesses which do comply with the law. This use of neighboring beach parking, and even residential parking, results in decreased access to the public beaches.

Loews argues that parking usage is low with an average of .51 spaces per room in 2000 and .38 spaces per room in 2001. These figures are inaccurate. The numbers quoted by them are for self parking only and do not include valet parking. The totals are thus .63 and .52 respectively. These figures are an average at best. Monthly figures in 2000 ranged from .53 to .85. Monthly figures for the period post 9-11-01 are down substantially. These numbers are open to serious question. It appears that the parking usage is based upon in and out traffic using the ticket system. It does not likely include employee parking. Additionally it does not appear to count a car if it does not go in or out that day. In other words if it is parked for three days straight it isn't counted unless it goes in or out. This tends to be backed up by Loews own figures. According to them, the highest single parking day in the 2000-2001 period was 302 parking spaces. This is not consistent with the fact that they admit that on at least 19 occasions per year off-site parking was required. According to their data on the highest demand day in the past two years there was a surplus of 344 spaces. If so then why was off site parking required. Similarly there were numerous days where parking demand was between 25 and 75 parking spaces. This is less than the employee count. The bottom line is that the data provided by Loews is intended to minimize the impacts of parking and does not adequately reflect the actual parking that occurs.

- **There are existing agreements to handle overflow parking.**

This statement is patently false. Loews points to agreements with the Grand Caribe, a local school and the Silver Strand State beach. These agreements do not exist or are not certain. The Caribe property is in the process of development and will no longer be available. (See Exhibit "I") Similarly no agreements exist with the Silver Strand State Beach (See Exhibit "J") or the school (See Exhibit K). There is therefore no way to handle the 100 guests expected for special events or for banquet facilities.

• **Total number of Employees 55 (EA Page 4)**

This statement is totally inaccurate. There are in fact for normal days a total of 135 employees. (Response to Comments Page 11) This represents two shifts of 55 employees each and one with 25. This does not include the 20 new employees for the spa which represents nearly a fifty percent increase in the size of the largest shift. Additionally, this does not include employees for banquets or special events. Once again, Loews is playing with the numbers in an attempt to minimize the impact of the project.

• **Most employees use mass transit (EA Page 4)**

This comment is belied by the response to comments which discusses maximum parking demand for employees. (Response to Comments Page 11) In that response, Loews admitted that the parking requirements for employees were 55 for the first shift, 55 for the second shift and 25 for the third shift. Once again Loews attempts to use smoke and mirrors to hide the parking impacts.

• **Total number of trips per day for the total project 57 (EA Page 4)**

This is perhaps one of the most ludicrous statements in the entire document and is totally unsupported by any evidence. Even the most cursory look shows how ridiculous this estimate is. The 155 employees would generate 310 trips per day. The Brief Traffic Discussion prepared by Linscott Law and Greenspan (Exhibit "L") also clearly demonstrates that this assertion is inaccurate. Table 1 indicates 770 average daily trips. Unfortunately, this table is inaccurate as they made a major calculation error. LL&S used a trip generation rate of 4 per berth for the marina which resulted in 320 trips per day. When it came to the hotel, they used a trip generation rate of 8 trips per room, however they forgot to multiply the 438 by the generation rate. Rather than the 450 ADT's listed in the table, the correct figure should have been 3,500. The total ADT's then should have been 3,820 ADT's. **The correct figure is then over five times larger than what was claimed in this study or over 67 times the traffic generation considered in the Negative Declaration.**

				AM PEAK HOUR				PM PEAK HOUR					
		Generation Factor	Total Trips	% ADT	IN /	OUT SPLIT	VOLUME IN/ OUT		% ADT	IN /	OUT SPLIT	VOLUME IN/ OUT	
Hotel Rooms	438	8	3500	5	6:	4	105	70	7%	4:	6	100	150
Berths	81	4	320	3	3:	7	5	10	7%	4:	6	15	10
			3820				110	80				115	160

Peak hour volumes were also significantly understated with a.m. in volumes of 110 rather than the 30 in the report and out volume being 80 rather than 20. A.M. peak hour traffic volumes were understated by a factor of five. Similarly, p.m. peak hour volumes were grossly understated. Rather than being 20 in and 40 out the actual numbers are 115 in and 160 out.

The Negative Declaration also grossly understates the traffic impacts of the existing facility and proposed changes. The prior EIR contained detailed studies (see EIR Appendix B) and established that the original facility would generate 4,500 trips per day. The EIR stated that any impact that would result in traffic reaching LOS "D" or worse would result in a significant impact. Current conditions on SR 75 exceed LOS "C". (See Exhibit "M") The addition of an

additional 40 employees or 40 turning movements on the highway during rush hour would result in a significant impact to traffic.

- **Total mileage of all trips per day 2,298 miles (EA Page 4)**

The Negative Declaration also illogically determines that the total miles traveled by vehicles associated with the site is only 2,298 miles. This is contrasted with 90,000 miles based upon the traffic study completed for the EIR. The Negative Declaration thus understates total miles traveled by a factor of over 30.

- **Spa expansion would not result in any increased parking demand since it will be primarily for hotel guests. (Spa Expansion Environmental Information Page 3) (Spa Expansion Environmental Information Page 5) (Response to Comments Page 8) Spa Expansion will result in no new guests (Spa Expansion Environmental Information Page 3) (Spa Expansion Environmental Information Page 5)**

Once again, numbers used are inconsistent and understate the actual conditions. Spa Expansion will result in **5 new guests** per day. (Response to Comments Page 12) and will result in 10 new full time employees and ten part time employees. (Spa Expansion Environmental Information Page 2)

Additionally, the Negative Declaration states that the spa will not be marked to outside users. This is incorrect. The Coronado Beach Resort, a timeshare located across from the Hotel Del Coronado has an agreement with Loews which allows timeshare users and owners to utilize the Loews facilities. (See Exhibit "N") The timeshare project as 53 units occupied at any one time but any owner may use the Loews facilities for day use. Over 3,000 persons thus could use the Loews facilities on any given day. Obviously not all would but a substantial number could. Residents of the timeshare would also be able to receive a discount on the spa facilities. (See Exhibit "N")

OTHER IMPACTS

The Negative Declaration also understates the impacts of Air Quality and Noise during construction. While it is anticipated that construction may take up to one year, the analysis for both of the impacts concedes that impacts may exceed significance thresholds, but the impacts would be only temporary and thus not significant. The Negative Declaration also identifies potentially subjecting persons to health hazards during construction but dismisses them because the danger will only exist for one year. The fact that they may only last for one year is of little consolation to neighboring residents whose health and use and enjoyment of their property is impaired for that period. Additionally, the noise and air quality impacts would impact people utilizing the beach. Because there is a potentially significant impact from noise and air quality, and health threats, the District must provide mitigation to insure that impacts are below significance thresholds or prepare a new EIR.

The Negative Declaration also describes the various mitigation measures to be included in the project for water quality. Unfortunately these measures are not adopted as mitigation measures so they are not legally enforceable and are uncertain. (See Exhibit Response to Comments pages 2-5)

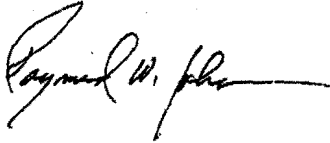
California Coastal Commission

May 17, 2002

Page 7

In summary, the facts have been misstated, understated, obfuscated or just plain ignored thus making the Negative Declaration and Findings totally unsupportable. A Subsequent EIR should be prepared to consider the significant impacts to parking, traffic, air quality, noise, water quality and health. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Raymond W. Johnson".

Raymond W. Johnson, Esq., AICP

/dj

Attachments