

CALIFORNIA COASTAL COMMISSION

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49th Day: July 9, 2007
180th Day: November 17, 2007
Staff: Gary Cannon-SD
Staff Report: July 19, 2007
Hearing Date: August 8-10

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-07-61

Applicant: Espresso by the Sea

Agent: Karen Barmakian
Joe Corica

Description: Installation and operation of a mobile beverage and snack concession trailer on an unimproved dirt area adjacent to the North Cardiff State Park Day Use parking lot for a two year period.

Site: 2050 South Coast Highway 101, Cardiff, Encinitas, San Diego County.

Substantive File Documents: Certified City of Encinitas LCP; Applicant's "Operations Plan" dated received May 21, 2007.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposal to operate a private food and beverage concession trailer through a contractual arrangement with the California Department of Parks and Recreation at the subject site. The proposal raises potential issues involving public access and parking availability, as well as protecting public views in this public recreation area. While the operation will occur within a state beach day use facility, it will not take up any parking spaces, will be removed from the site daily and will not be visible from the adjacent Coast Highway 101. The proposed design and siting addresses public access and public view concerns, and special conditions addressing the term of the operation and signage are recommended to respond to the terms of the applicant's contract with State Parks and to concerns over visual resources.

The project site is in the Coastal Commission's area of original jurisdiction and, thus, Chapter 3 of the Coastal Act is the legal standard of review.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-07-61 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Term of Permit. The subject permit authorizes the proposed activities for the same two-year period identified in the final concession contract with State Parks and Recreation. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval a copy of the final concession contract so as to document the authorized two-year period of operation. Any continuation of the program beyond State Parks approved two-year concession contract will require a new coastal development permit.

2. Signage Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a signage plan including the following features:

- a. The principal business sign shall be located on the front (west facing side) or end of the trailer, and shall not extend above the height of the cart and/or canopy.
- b. Additional signage, as required by the County Department of Environmental Health, may be applied to the trailer, but is limited to the following dimensions (minimum required by the County) and must be placed on one of the trailer ends:
 1. Business name not to exceed three inches in height.
 2. Name of permittee not to exceed 1 inch in height.
 3. City, State and Zip Code not to exceed 1 inch in height.
- c. No other signage is permitted on the outside of the trailer, and no freestanding signage is permitted.

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant proposes to install and operate a mobile food concession for a period of two years within the North Cardiff State Beach day use parking lot area. The applicant is proposing the sale of coffee drinks, cold drinks and snack foods. The concession facility consists of an approximately 8-foot long, 40-inches wide, 40-inches high mobile trailer and an approximately 7 ft. high "EZ-Up" 10'x10' canopy cover for shade. The applicant is proposing to remove the trailer and canopy at the end of each day. The concession stand will be located in an unimproved area within the northeastern part of the State Beach parking lot adjacent to Highway 101. The trailer will not occupy any public parking spaces, nor block any public accessways. While the concession stand will be visible from the beach, it will not be visible from Highway 101 because of the extensive amount of high vegetation that lies between it and Highway 101.

North Cardiff State Beach is located within the City of Encinitas. Although the City has a certified LCP, the specific project site is in the Coastal Commission's area of original jurisdiction. Thus, Chapter 3 of the Coastal Act is the legal standard of review, with the City's certified LCP used for guidance.

2. Public Access/Use of Public Parkland. The following Coastal Act policies addressing public access are most applicable to the proposed development, and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby,

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The proposed mobile concession trailer will be placed in an unimproved area on the northeast corner of a 105 space public parking lot that lies between the sandy beach area of Cardiff State Beach and South Coast Highway 101. It will not be located within any

parking space and is only about 8 feet long and 40 inches wide. Cardiff State Beach is highly used by the public for a variety of beach and ocean activities and consists of an approximately 2-3 mile long beach park adjacent to several restaurants and includes “Cardiff Reef” one of Southern California’s most popular surfing locations. As such, the beach attracts local, regional, and international visitors. During holidays and the summer the parking lot is often full to capacity during parts of the day. The proposed trailer will not interfere with public parking or access, however an employee of the concession will likely occupy a parking space. The applicant has identified that the concession will be staffed by the two owner-operators. Parking by the concession staff will occur in the State parking lot and they will be required to pay the same daily fee as any other user. Since there are 105 parking spaces in the lot, the use of 1 or 2 by the concession staff will not be significant. In addition, the applicant is not proposing to operate the facility all day long. The concession proposes to operate, at a minimum, from 8:00 a.m. to 12:00 p.m. during the winter months and from 8:00 a.m. to 2:00 p.m. during the summer. Pursuant to its contract with State Parks it could operate at additional times as well during the two-year time period of the contract. In this case, however, based on the applicant’s survey of beach attendance, these limited hours of operation seem to be the most optimum from a business perspective. Therefore, the effect of the concession staff parking in 1 or 2 spaces during the day will likely be insignificant in terms of an adverse impact to public access. In addition, free public parking is available along the west side of Highway 101 north and south of the subject site.

There are no easily accessible general food or grocery establishments in the immediate area, although there are a number of restaurants along this section of Highway 101 commonly called “restaurant row”. Unless the beachgoers are prepared to dine at the adjacent restaurants, they must either bring their own food and beach items, or walk or drive to obtain them. During high season, vacating a parking space to go get drinks and snacks would probably result in no parking space being available when one returned. The proposed concession will offer an alternative by providing beverages and snacks at a walk-up facility in close proximity to the beach where shoes and shirts are not required. This could also potentially increase use of alternative transit, since beachgoers would not necessarily need to carry as many items with them to the beach. An existing bus route has stops along South Coast Highway 101 at this location, allowing people access from the highway directly to the beach at this location.

In summary, the proposed development is consistent with the cited public access and recreation policies because it provides a public amenity not currently available in this location. In doing so, the concession trailer does not usurp any sandy beach or any public parking spaces, and is proposed in a location that will not block the flow of people from the parking lot to the beach. The minimal amount of parking required for concession employees is insignificant in comparison to the number of public spaces remaining available. Special Condition #1 limits the proposed activity to two years consistent with the State Parks concession contract which is also for two years only. If State Parks wishes to continue a concession operation in this location beyond the proposed two years, it will be required to put the contract out to bid. This two-year trial period provides the opportunity to analyze any potential adverse impacts of the proposed facility before

authorizing such an operation to continue in future years. As conditioned, the Commission finds the proposal consistent with the public access and recreation policies of the Coastal Act.

3. Visual Resources. Section 30251 of the Coastal Act addresses the preservation and enhancement of visual resources, and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

The proposed concession trailer and its associated canopy will be visible from the beach, but will not be visible to motorists along Highway 101 because they will be effectively screened by extensive vegetation. In addition, the site is also set down below the roadway elevation such that southbound motorists would be unlikely to see the trailer even if the vegetation were not present. The mobile trailer is only about 40 inches high and the 10' x10' "E-Z Up" canopy proposed for shade is the same type of canopy used by beachgoers on a regular basis throughout California. Therefore, the proposed facility will be consistent with the type of structures routinely seen by beachgoers.

Other than the trailer and canopy, the primary visual concern is potential signage. Special Condition #2 establishes the parameters for signage. The only advertising signage permitted is one sign on the western facing side of the trailer or on one end, identifying the name of the business. This sign cannot extend beyond the canopy either vertically or horizontally. The County Department of Public Health requires a second sign for such businesses to be placed on one other side of the trailer. Special Condition #2 limits the size of this sign to the minimum allowed by the Health Department, and stipulates it cannot be placed on the back of the trailer facing the highway (i.e., it must go on one of the ends). No other outside signage is allowed on the trailer, and no freestanding signs are allowed.

The Commission acknowledges that the proposed development will be visible from the beach, although it cannot be seen from Highway 101 and does not block any existing views across to the ocean or shoreline. However, the Commission further acknowledges that the proposed concession trailer will provide a new recreational support facility to the general public, in the form of food and beverage service. Therefore, the Commission finds that the visual impacts of the proposed concession trailer are not significant, and are offset by the recreational enhancements of the proposal. Also, the required signage shall be the minimum necessary to advise the public of the availability of these services. Moreover, the activity is limited to a two-year trial period, and cannot be renewed without further review by both State Parks and the Coastal Commission. Thus, the

Commission finds the proposal, as conditioned, consistent with Section 30251 of the Coastal Act.

4. Local Coastal Planning. The subject site is located on the east side of the public beach and on the west side of South Coast Highway 101 in the Cardiff community of the City of Encinitas. Although the City of Encinitas has a Certified LCP, the project site lies within the Commission's area of original jurisdiction such that the standard of review is Chapter 3 policies of the Coastal Act with the City's LCP used as guidance.

The subject site is zoned and planned for visitor-serving uses in the certified City of Encinitas LCP. The proposed development is consistent with these designations. As conditioned, the Commission finds the proposed development consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development, as conditioned, will not adversely affect the City's continued implementation of its certified LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

State Parks is the lead agency on this project for purposes of CEQA review, and the project was determined to be categorically exempt pursuant to Class 15311, Item C. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing signage, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development

shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

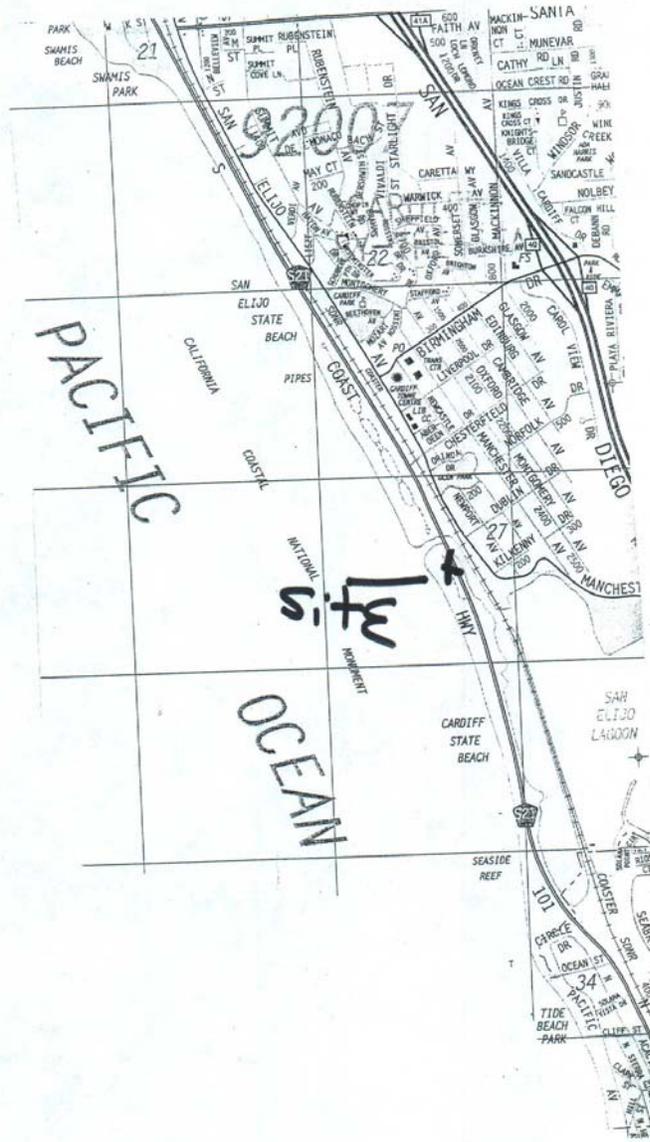
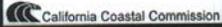
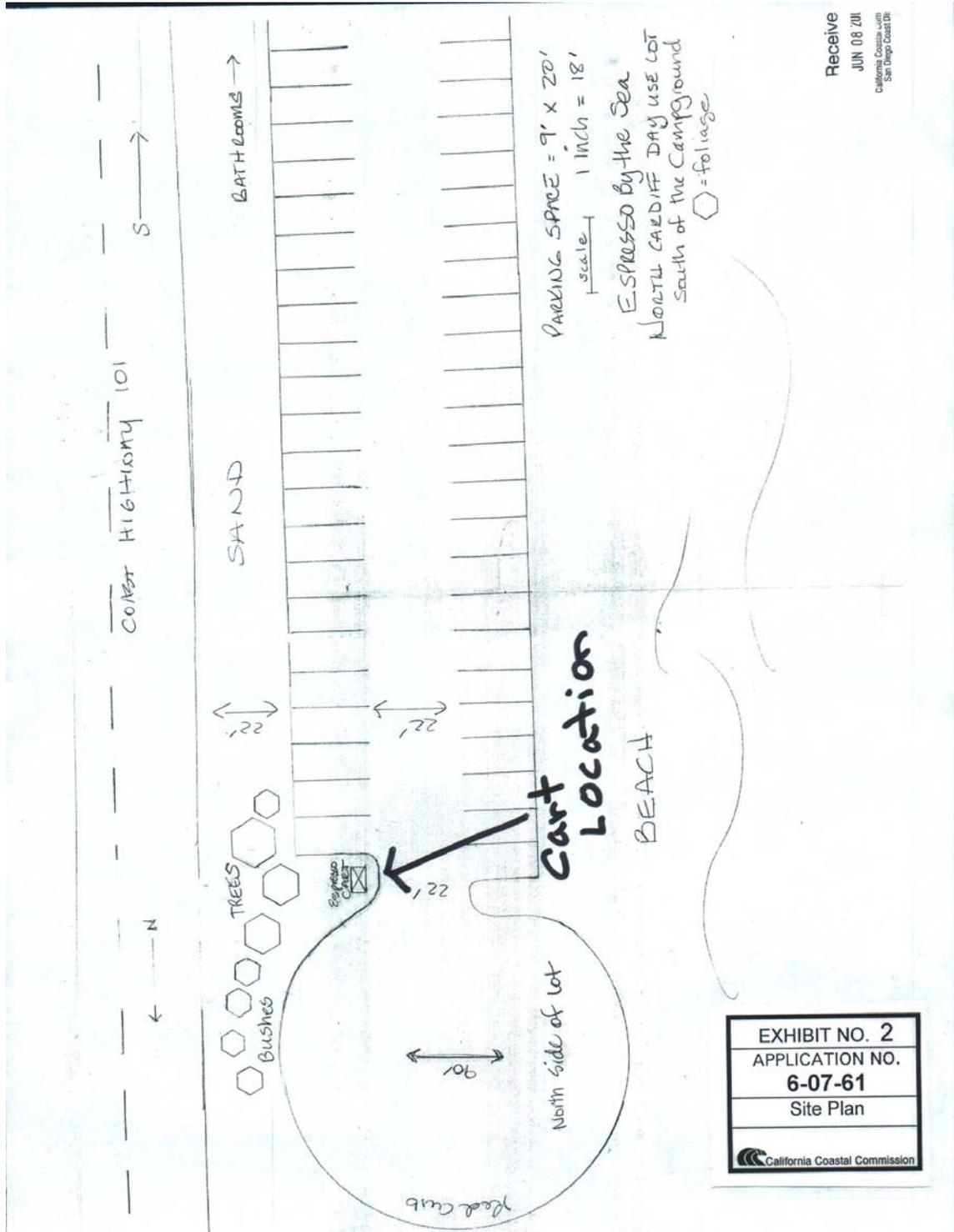


EXHIBIT NO. 1
APPLICATION NO.
6-07-61
Location Map





Receive
JUN 08 2011
California Coastal Commission
San Diego Coast Office

EXHIBIT NO. 2
APPLICATION NO.
6-07-61
Site Plan

California Coastal Commission

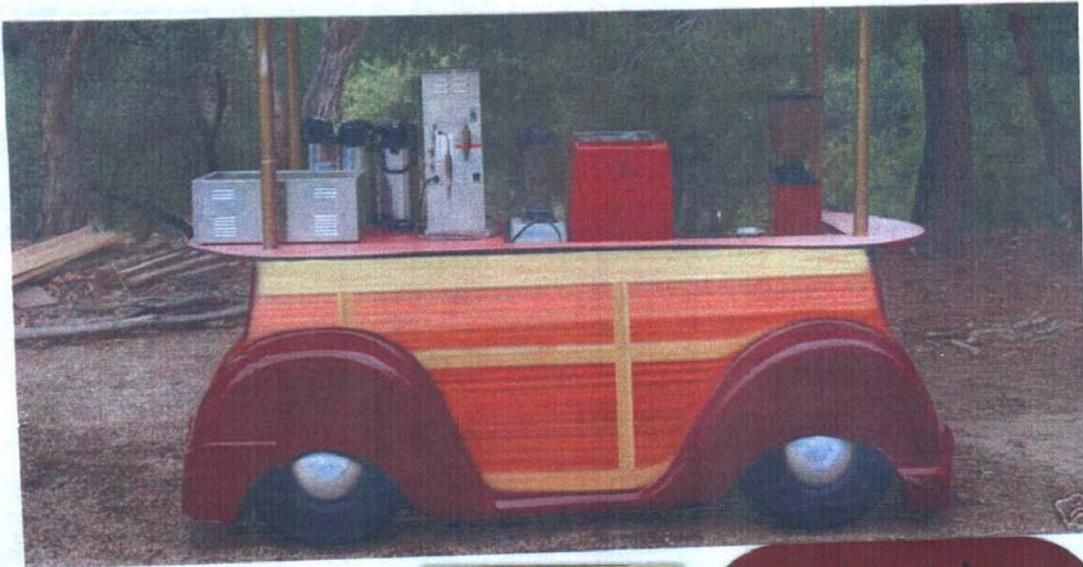


EXHIBIT NO. 3
APPLICATION NO.
6-07-61
Depiction of Cart
 California Coastal Commission