

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



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Filed: May 23, 2007  
49th Day: July 11, 2007  
180th Day: November 19, 2007  
Staff: Gary Cannon-SD  
Staff Report: July 19, 2007  
Hearing Date: August 8-10, 2007

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-07-63

Applicant: Babe's At The Beach

Agent: Judie Williams

Description: Installation and operation of a beverage/snack cart adjacent to the south side of the South Cardiff State Beach parking lot for a two-year period.

Site: South end of South Cardiff State Beach parking lot, west side of South Coast Highway 101, Cardiff, Encinitas, San Diego County. APN 263-011-16 and 36.

Substantive File Documents: Certified City of Encinitas LCP

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposal to operate a private beverage/snack cart 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 parking lot, it will not take up any parking spaces and will not be readily visible from South Coast Highway 101 to the east. 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.

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-07-63 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 of the concession cart, 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 cart, but is limited to the following dimensions (minimum required by the County) and must be placed on one of the cart 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 cart or canopy, 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 beverage/snack cart for a period of two years on the south side of the South Cardiff State Beach day use parking lot area. The applicant is proposing the sale of coffee drinks, cold drinks, smoothies and snack foods. The concession facility consists of an approximately 7-foot long, 3-foot wide stainless steel cart that includes a 7-ft. high canvas canopy. The concession stand will be located in an unimproved area or on a section of concrete along the southern side of an approximately 412 space asphalt public parking lot. The concession cart will be sited so as to not occupy or interfere with any public parking space nor block any public accessways. While the concession stand will be visible from within the parking lot, it will not be visible from Highway 101 nor from the beach itself.

South 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 cart will be placed in an existing concrete or dirt area on the south side of a 412 space State Park public parking lot below an inland bluff. The proposed cart location is approximately 115 feet west of South Coast Highway 101 and approximately 350 feet east of the sandy beach. It will not be located within any parking space and the cart is only about 7 ft. long and 3 ft. wide. The subject development is located at the south end of Cardiff State Beach which at this location has one of the largest public beach parking lots in the area. 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. As such, the beach attracts local, regional, and international visitors. However, State Parks has indicated in previous Commission actions that the existing parking lot rarely, if ever, is fully occupied (Ref. CDP 6-03-41/State Parks). In fact, the only time State Parks has documented the lot at full capacity has been on July 4<sup>th</sup> and during a surfing contest when sections of the parking lot had also been occupied by tents and promotional items. The proposed concession cart will not interfere with public parking or access, although employees of the concession cart will likely occupy 1 or 2 parking spaces. While 1 or 2 employees may need to use parking spaces, they will be required to pay the same daily fee as any other user. Since there are 412 parking spaces in the lot, the use of 1 or 2 by the concession staff is not considered significant, especially because this parking lot is rarely full.

There are no easily accessible general food or grocery establishments or restaurants in the immediate area of South Cardiff State Beach. In this case, beachgoers must either bring their own food and beach items, or walk or drive to obtain them. The proposed concession will offer an alternative by providing beverages and snacks at a walk-up facility in close proximity to the beach. 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 the southbound side of South Coast Highway 101, 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 cart 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 cart and its associated canopy will not be visible from the beach or from motorists traveling along South Coast Highway 101. The concession cart will be located at a lower elevation than the adjacent highway so there will be no view impacts from the highway. In addition, the public beach is at a lower elevation than the subject parking lot area such that unless beachgoers are within the parking lot, views of this minimally designed structure will not be available.

Other than the concession cart and its 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 front of the cart 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 cart. Special Condition #2 limits the size of this sign to the minimum allowed by the Health Department, and stipulates that it be placed on one of its 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 within the public parking lot; however, it cannot be seen from South Coast Highway 101 and does not block any existing views across to the ocean or shoreline. In addition, the Commission 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 cart 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 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.

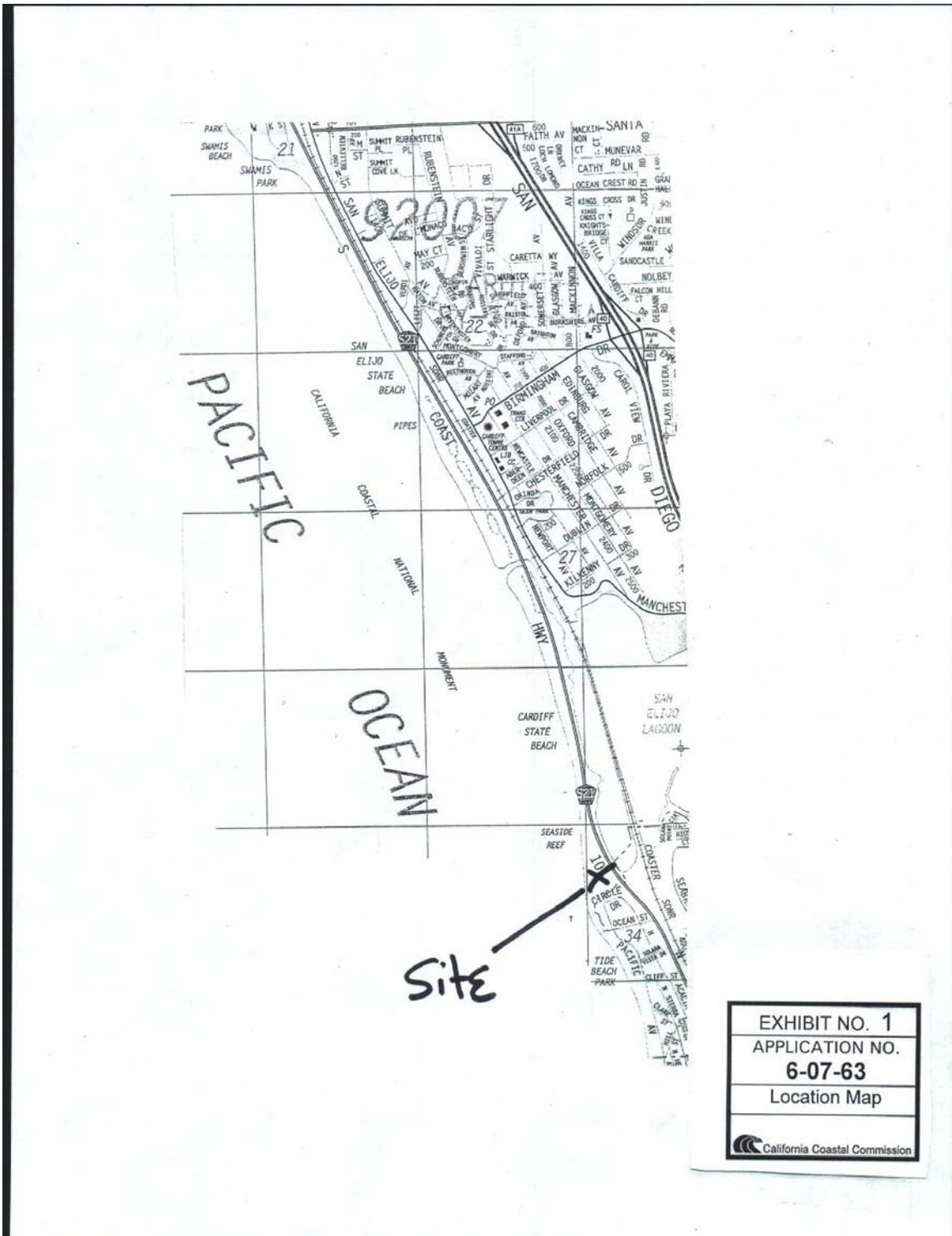
5. Consistency with the California Environmental Quality Act (CEQA).

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.



Site

EXHIBIT NO. 1  
APPLICATION NO.  
6-07-63  
Location Map  
California Coastal Commission





EXHIBIT NO. 3  
APPLICATION NO.  
**6-07-63**  
Depiction of Cart  
 California Coastal Commission