

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-16-0406

Applicants: Loews Coronado Bay Resort and California State Parks

Agent: Dean Griffin

Location: Silver Strand State Beach, 5000 Highway 75, Coronado, San Diego County (APN Nos. 615-030-03, 615-040-02)

Project Description: After-the-fact authorization of the temporary placement of a 49 sq. ft. concession hut in the parking lot and beach chairs/umbrellas on the beach, as well as operation of limited food and beverage service during the summer from May through September, to provide amenities for hotel guests and the public. The proposed amenities on the beach would occupy a maximum area of 150 ft. in length and 36 ft. in width, or 5,400 sq. ft.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary Coastal Act issue raised by the proposed development is public access. The project site is an extremely popular State Beach and the location of the proposed concession hut could potentially impact the public's ability to park at the beach. Additionally, operation of the proposed concession program could potentially impact the public's ability to enjoy the beach. However, both hotel guests and the public will have

access to all of the proposed amenities. Thus, the public will gain the benefit of beach chair/umbrella rentals and limited food and beverage service where none now exists.

Regardless, because the proposed project is a private commercial operation on a public beach, several significant public access issues are raised. Although the amenities are proposed to be available to anyone, it is critical that they not appear to be private, such that the general public would hesitate to use them or feel deterred from accessing the adjoining beach. To address this, the applicants propose to locate the concession hut in an area of the parking lot that will not occupy any existing parking spaces nor impede public access. Additionally, chairs and umbrellas will be set up on the beach as they are requested or rented to ensure the beach does not appear to be reserved for hotel guests. Finally, the applicants propose to limit the number of amenities and area on the beach where amenities will be placed, which will ensure that the entire beach is not overwhelmed.

Commission staff is recommending special conditions to ensure that public access is protected. **Special Condition No. 1** requires that the applicants submit and comply with final plans, including site, operation and signage plans. **Special Condition No. 2** implements the public access provisions. **Special Condition No. 3** limits the permit term to two and a half years and **Special Condition No. 4** requires the applicants to submit a monitoring report at the end of each operating season so that any unanticipated impacts of the concession program can be analyzed before authorizing the program to continue in future years. Unpermitted development occurred on the subject site during summer 2016 including the placement of the hut, beach chairs, umbrellas, and a walkway on the public beach. The hut was removed in October 2016; but on a recent site visit, Coastal staff discovered that the hut is now again in operation, and thus remains unpermitted development. To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. 5** requires that the applicants satisfy all conditions of this permit within 30 days of Commission action, or within such additional time as the Executive Director may grant for good cause. Finally, **Special Condition No. 6** requires the applicants to assume the risk of developing in an area subject to waves, wind, storms, and flooding.

Commission staff recommends **approval** of coastal development permit application 6-16-0406 as conditioned.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Map](#)

[Exhibit 3 – Photograph of Signage](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-16-0406 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit 6-16-0406 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Submittal of Revised Final Plans

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, the following revised final plans, modified as required below.
 - i. **Site Plan** that substantially conforms with the plans submitted to the Commission, titled Option 1 and received at the San Diego Coastal Commission office on April 10, 2017, except that they shall be modified as required below:
 - A. The following shall be identified to scale: concession hut, adjoining daytime storage area, overnight storage area, and 150 ft. long by 36 ft. wide maximum area of beach for amenities.
 - B. Plans for the roll-up boardwalk shall be deleted.
 - ii. **Operations Plan** that conforms with the plans submitted to the Commission, titled Updated Project Plan and received at the San Diego Coastal Commission office on June 3, 2017, except that they shall be modified to comply with Special Condition No. 2.
 - iii. **Signage Plan** that conforms with the plan submitted to the Commission, and received at the San Diego Coastal Commission office on June 12, 2017, except that the plan shall be modified as required below:
 - A. At minimum, one sign on each of the three walls that contains signage shall be fully dedicated to notification of public availability.
 - B. The size of each sign and the associated sign text shall be large enough to be clearly visible. At minimum, the public access signs shall be at least 2.5 ft. by 2.5 ft.
 - C. The content, location, and dimensions of each sign shall be identified.

D. Any materials developed to advertise the project, as required to comply with Special Condition No. 2(k), shall be identified.

- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Public Access Provisions. By acceptance of this permit, the applicant agrees to comply with and implement the following public access provisions:

- (a) All amenities (i.e., chairs, umbrellas, towels, food/beverage service) shall be available to any member of the public, as well as hotel guests.
- (b) No reservation system shall be implemented to secure amenities by hotel guests or members of the public. Amenities may become available only on the same day as they are used, and may be used for a maximum of one day.
- (c) No area of the beach shall be reserved at any time.
- (d) No pre-staging of amenities may occur on the beach. Amenities shall be set up on demand, as hotel guests request amenities or as members of the public rent amenities.
- (e) The maximum area on the beach where amenities are permitted may not exceed 36 ft. by 150 ft. (5400 sq. ft.), as approved in the Final Site Plan submitted in accordance with Special Condition No. 1.
- (f) No motorized equipment in connection with the approved project is allowed on the beach at any time. Any deliveries of amenities shall occur by foot or non-motorized dolly from the parking lot.
- (g) The maximum rental charge for a full set of amenities (i.e. two beach chairs, one umbrella, and two towels) may not exceed \$10. The maximum rental charge for a single set of amenities (i.e. one beach chair, one umbrella, and one towel) may not exceed \$8.
- (h) During operating months, amenities shall be stored overnight within Public Parking Lot 2 outside marked parking stalls, as approved in the Final Site Plan submitted in accordance with Special Condition No. 1. Storage shall be complete by 8 p.m. of the operating day.
- (i) No more than 100 chairs and 50 umbrellas may be set up on the beach each day the program is in operation.
- (j) The hut shall be stored in the State Park maintenance yard during non-operating months. The hut shall be stored within three days of the hut's closure, and by October 3 at the latest, of every year the hut is in operation.

- (k) The public amenities shall be advertised on the Loews Coronado Bay Resort and Silver Strand State Park websites. Websites shall clearly identify that the amenities are available to the public for rent.

3. Term of Permit.

- (a) This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of two and a half (2.5) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-16-0406 and through September 30, 2017; from May 1, 2018 through September 30, 2018; and from May 1, 2019 through September 30, 2019, after which time the authorization for continuation or retention of any development approved as part of this permit shall cease. To renew, the applicant must apply to the Commission for an amended Coastal Development Permit at least 90 days before the permit's expiration. After the permit expires, the project will require the issuance of a new or amended coastal development permit.
- (b) If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue the project prior to expiration of the permit, the applicant shall cease implementation of the project upon expiration of the permit.
- (c) All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to all special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

4. Monitoring Report. Within 30 days of the hut's closure, and by October 30 at the latest, of every year the hut is in operation, the permittee shall submit a monitoring report that documents how the concession program operated the previous season with respect to public versus private use. Specifically, documentation shall consist of weekly usage counts categorized by hotel guests and members of the public.

5. Condition Compliance. Within 30 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the permittees acknowledge and agree (i) that the site may be subject to hazards, including but not limited to waves, wind, and storms, all of which will may worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers,

agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The applicants, Loews Coronado Bay Resort (Loews) and California State Parks (State Parks), propose temporary placement of a concession hut south of the lifeguard tower in Public Parking Lot 2 at Silver Strand State Beach ([Exhibit 1](#)) that would provide beach chairs, umbrellas, towels, boogie boards, and limited food and beverage service to hotel guests and members of the public.

The proposed concession hut is approximately 49 sq. ft., and a towel drop and boogie board rack would occupy approximately 10 sq. ft. directly adjacent to the concession hut. The hut would have two 2.5 ft. by 2.5 ft. chalkboard signs on three of its four walls, for a total of six signs announcing weather information, that the hut is "Open to the Public" and its hours of operation. Two additional oval shaped signs that measure 1.5 ft. by 1 ft. would advertise "Loews at the Strand."

The chairs would typically be available in sets including two chairs, one umbrella, and two towels, with a maximum of fifty such sets proposed for daily use. The sets would be available for rent by the public for \$10 per day and a single person would be able to rent a chair, umbrella, and towel for \$8. The chairs and umbrellas would be stacked and stored north of and adjacent to the concession hut in an area of the parking lot that does not contain parking spaces. Food and beverage service would consist of food in to-go containers, chips, bottled water, and soft drinks, to be stored at Loews and delivered to the concession hut upon order. The amenities would be transferred on foot, or by non-motorized dolly, by staff from the concession hut to the beach. A 150 ft. wide by 36 ft. long area (5,400 sq. ft.) of beach has been pre-authorized by State Parks ([Exhibit 2](#)) to locate the amenities. The applicant proposes to provide the amenities seasonally, operating daily from May through September, 9 am to 6 pm, with all amenities removed from the beach by 7 pm each night.

During non-operating months, the applicants propose to move the hut to State Park's off-site maintenance yard, and amenities would be removed from the State Beach.

B. PUBLIC ACCESS AND USE OF PUBLIC PARKLAND

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with

public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

(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 of the Coastal Act states, in part:

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

The proposed project would be located in the parking lot and on the public beach at Silver Strand State Beach. Silver Strand State Beach is a widely popular beach, attracting local, regional, and even international visitors. The beach extends 2 ½ miles and averages over 300 feet in width. State Parks staff has indicated that, based on utilization of the 719 parking stalls in the day use area, there is an average of over 50% attendance capacity at this beach between the months of June and September, with attendance increasing to 100% in July and 80% in August.

The location of the proposed concession hut could impact public access if it were located on the beach or within existing parking spaces. However, in this case, the concession hut

is proposed to be located in the northwest corner of the State Beach parking lot, in an area that does not contain parking spaces nor block access to the beach ([Exhibit 2](#)). The applicants conducted an alternatives analysis that identified the proposed location as having the least impact on public access. Thus, the proposed location of the concession hut would not impact public access.

The setup of the proposed chairs and umbrellas could also impact public access if the amenities were to take up the width of the beach and impede lateral access. In this case, the applicants propose to limit the area that amenities are allowed to a 36 ft. wide by 150 ft. long area in the middle of the beach. Because Silver Strand State Beach is a relatively wide beach (averages over 300 ft. in width), the proposed 36 ft. wide area for beach chairs and umbrellas would not impede lateral access along the beach, even during high tides. The public would continue to have the ability to walk west (seaward) of the amenities along the water, as well as north, south, and east of the amenities.

While the proposed project is a hotel amenity, it is also proposed as a public concession. The public is as free to use the amenities as any hotel guest; however, the public would be required to pay \$10 per set (2 chairs, 2 towels, 1 umbrella). Public benefits of such a program include use of beach equipment and limited food/beverage service where none currently exists.

However, because the proposed project is a private, commercial operation on a public beach, several significant public access issues are raised. Although the amenities are proposed to be available to anyone, it is critical that they not appear to be private, such that the general public would hesitate to use them or feel deterred from accessing the beach. The project must ensure that the public retains the ability to access and enjoy the beach.

Originally, the applicant proposed to set up chairs and umbrellas daily to occupy an area of the beach amounting to approximately 5,400 sq. ft., as well as install a 49 ft. long roll-up wood walkway. Pre-setting the chairs and umbrellas would have effectively reserved that portion of the beach for only those persons using the concession hut services. It would have created a feeling of exclusivity, which could have made the public feel as though they were not welcome in that area.

However, following coordination with Coastal staff, the applicants removed the boardwalk and modified the project description to set up chairs and umbrellas upon rental/request by the public or hotel guest only. **Special Condition No. 1** requires that the applicants submit a revised final site plan reflecting this change. In addition, Special Condition No. 1 requires the applicants to submit a revised signage plan that conforms to the signage shown in [Exhibit 3](#), to ensure the public is aware of the proposed amenities, and to dedicate at least one chalkboard on each side of the concession hut that contains signage to provide notification of public availability. Finally, Special Condition No. 1 requires the applicants to provide notification of public availability on marketing materials developed to advertise the amenities on the Loews and State Parks websites, as required in **Special Condition No. 2**.

Additionally, if an unlimited number of umbrellas with the hotel's logo were allowed to be set up at any location on the beach, the entire beach would be overwhelmed with beach equipment, effectively privatizing the beach and discouraging public access. However, the applicants propose to set a maximum of 50 sets of the amenities in a pre-determined area; thus the amenities will be limited and contained to a portion of the beach. **Special Condition No. 2** implements the public access provisions to ensure that the general public is allowed equal access to the beach and amenities.

Even with recommended special conditions, unexpected impacts to public access could occur. **Special Condition No. 3** limits the permit term to two and a half years (for the rest of 2017, and the seasons of 2018 and 2019). **Special Condition No. 4** requires the applicant to monitor the public versus private use and submit a report to the Coastal Commission annually at the end of each operating season. This provides the opportunity to analyze any unexpected impacts of the proposed program before authorizing the program to continue in future years.

In summary, the proposed hotel amenity and public concession on a public beach raises a number of issues, primarily concerning public access. Most important is that the public not be unduly disturbed by these operations, and that they are aware that use of the amenities is not restricted to guests of Loews Resort. The program is proposed to operate during the summer season when the demand for beach use is highest. However, the proposed operation will provide some offsetting benefits to the general public. The applicants are offering new amenities not previously available to the general public in this location, including beach equipment rentals and purchase of limited food and beverage service, while the program is in operation. Therefore, as conditioned, the Commission finds the proposal consistent with the public access and recreation policies of the Coastal Act.

C. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

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 entire California coastline is a scenic resource, and the proposed site is a location often seen on calendars and postcards. The proposed umbrellas are blue with the Loews emblem and the beach chairs are white.

There is no question that the proposed amenities will be visible on the beach, especially when viewed together. Although they are temporary, being placed and removed daily throughout the summer season, they will be on the beach during most daylight hours

when the greatest numbers of people are using the beach. However, the majority of people in close proximity to the proposed beach amenities would be those actually using the amenities or purchasing food/beverage items from the concession hut. Moreover, some would view the beach equipment as a normal part of a popular swimming and surfing beach; essentially, the equipment would not conflict with the character of the beach. Currently, beach chairs and umbrellas brought by members of the public are found all along Silver Strand State Beach, and small tents to provide shade for young children have become popular as well. Finally, the proposed amenities will be available to the general public, as well as to guests of Loews Resort.

However, if the closed concession hut were to be left in place during the non-operating season, it could impact views from the parking lot towards the beach. **Special Condition No. 2** requires the hut be moved within three days of the huts closure and by October 3rd annually, and **Special Condition No. 1** requires that the applicants submit a revised Operations Plan incorporating this provision.

Therefore, the Commission finds that the temporary and intermittent visual impacts of the proposed beach equipment are not significant, and are offset by the recreational and access enhancements of the proposal. Moreover, the permit term is limited to May through September of 2017 through 2019 only. If the experienced impacts of the proposed development are different or greater than currently anticipated, permits for future operations may be subject to further conditions or denied. Thus, the Commission finds the proposal, as conditioned, consistent with Section 30251 of the Coastal Act.

D. COASTAL HAZARDS

Section 30253 of the Act states, in part:

New development shall...: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs [...]

Silver Strand State Beach is located on a narrow peninsula dividing the Pacific Ocean and San Diego Bay ([Exhibit 1](#)). As such, this area is vulnerable to sea level rise and exposed to high tides, rip currents, and breaking waves. Future sea level rise could cause flooding of the project site which could affect the long-term stability of the proposed project. However, the concession hut is portable by design and would be removed if it is in danger. Thus, the proposed project would not require future protective devices.

The project is proposed to be located on and adjacent to the beach for a period of five months each year. During that time, the site will likely be subject to wave action and flooding. Therefore, **Special Condition No. 6** requires the applicants to assume all risks for developing in a location that is subject to coastal hazards, including but not limited to, waves, wind, storms, and flooding.

Therefore, the proposed project, as conditioned, minimizes risks to life and property in areas of high flood hazard and would not require the construction of protective devices in the future, consistent with Coastal Act Section 30253.

E. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject site during summer 2016 including the placement of the hut, beach chairs, umbrellas, and a walkway on the public beach. The hut was removed in October 2016; but on a recent site visit, Coastal staff discovered that the hut is now again in operation, and thus remains unpermitted development. While Loews had the approval of State Parks for this development, they did not have the required coastal development permit. This application seeks approval for this same development from May through September annually.

To ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. 5** requires that the applicant satisfy all conditions of this permit within 30 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

The applicants are requesting after-the-fact approval of the unpermitted development noted above and identified in the project description. Although the development has taken place prior to submittal of this application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and as though the development was not in place. Commission review and action on this permit will resolve the violations identified in this section once the permit has been fully executed and the terms and conditions of the permit complied with by the applicants.

F. LOCAL COASTAL PLANNING

Silver Strand State Beach is a State Parks holding located within the City of Coronado. 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. The City's LCP encourages the public's use of the extensive beach frontage along Silver Strand. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not interfere with the City's implementation of its LCP where the City has permitting authority.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.

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 public access, 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.