

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-22-0959

Applicant: Loews Coronado Bay Resort and California State Parks

Agent: Ben Spaulding

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

Project Description: 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.

The hut and amenities were originally placed at Silver Strand Beach without a CDP during the summer of 2016. The Commission approved CDP No. 6-16-0406 for the after-the-fact development in 2017, Immaterial Amendment No. 6-16-0406-A1 to extend the operating term in 2018, and Amendment No. 6-16-0406-A2 in 2019 to extend the expiration date of the permit for one year and add monitoring and employee training requirements. CDP No. 6-16-0406-A2 inadvertently expired during the Covid-19 pandemic and the applicants are now proposing the same project as was previously approved by CDP No. 6-16-0406 and as amended. From 2016 to 2019, Commission staff found several violations of the permit; however, the applicants have indicated that they are committed to complying with the subject CDP going forward.

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 one year only 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. **Special Condition No. 5** requires an employee training plan to be submitted and approved by the Executive Director, and the public access provisions and site plans to be posted inside of the hut for employee reference. **Special Condition No. 6** prohibits single-use plastics since the site is located on the beach adjacent to the ocean. Finally, **Special Condition No. 7** requires the applicants to assume the risk of developing in an area subject to waves, wind, storms, and flooding.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0959, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Proposed Site Plan](#)

[Exhibit 3 – Hut Photograph](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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

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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Submittal of Revised Final Plans.** 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:
 - a. Revised Site Plan that substantially conforms with the plans submitted to the Commission, titled Site Plan and received at the San Diego Coastal Commission office on November 20, 2022, except that 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. Revised Operations Plan that conforms with the plans submitted to the Commission, titled Operations Plan and received at the San Diego Coastal Commission office on November 20, 2022, except that they shall be modified to comply with Special Condition No. 2.h.
 - c. Revised Signage Plan that conforms with the plan submitted to the Commission, titled Exhibit 4 Beach Hut, and received at the San Diego Coastal Commission office on November 20, 2022, except that the materials developed to advertise the project shall be identified, as required by Special Condition No. 2.I.

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. Operation of the hut and amenities shall take place from May 1 through September 30 only.
 - b. All amenities (i.e., chairs, umbrellas, towels, food/beverage service) shall be available to any member of the public, as well as hotel guests.
 - c. 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.
 - d. No area of the beach shall be reserved at any time.
 - e. 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.

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- f. 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.
 - g. 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.
 - h. 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.
 - i. 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.
 - j. No more than 100 chairs and 50 umbrellas may be set up on the beach each day the program is in operation.
 - k. 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.
 - l. 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.** This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of one year from Commission action 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.

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.

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, 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 and weekly photographs of the hut's signage and amenities on the beach.
- 5. Employee Training.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, an employee training plan that contains a list of public access provisions required by Special Condition No. 2 as well as the site plan referenced in the public access provisions and required by Special Condition No. 1(a). The approved employee training plan shall be posted inside of the hut at all times for employees to reference.
- 6. Single-use Plastics Prohibited.** By acceptance of this permit, the permittees acknowledge and agree that the use of single-use plastic foodware and packaging on-site and for takeout is prohibited.
- 7. 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 and Background

Loews Coronado Bay Resort (Loews) and California State Parks (State Parks) propose to temporarily place a 49 sq. ft. concession hut south of the lifeguard tower in Public Parking Lot 2 at Silver Strand State Beach ([Exhibit 1](#)) to provide beach chairs, umbrellas, towels, boogie boards, and limited food and beverage service to hotel guests and members of the public. 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.

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 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. 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. Pre-setting the chairs and umbrellas would effectively reserve a portion of the beach for only those persons using the concession hut services and create a feeling of exclusivity, which could make the public feel as though they were not welcome. In this case, the applicants propose to set up chairs and umbrellas upon rental/request by the public or hotel guest only to avoid privatizing a portion of the beach.

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.

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In addition, 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. One chalkboard on each side of the concession hut would contain signage to provide notification of public availability. Two additional oval shaped signs that measure 1.5 ft. by 1 ft. would advertise “Loews at the Strand.”

Special Condition No. 1 requires that the applicants submit final site, operation, and signage plans. **Special Condition No. 2** memorializes the public access provisions to ensure that the general public is allowed equal access to the beach and amenities and requires the applicants to also provide notification of public availability on marketing materials developed to advertise the amenities on the Loews and State Parks websites.

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. 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.

The proposed food service use may result in the use of plastic food packaging, tableware, and bags. Plastic pollution is a persistent and growing problem that significantly impacts the health of California’s oceans and coasts. Therefore, **Special Condition No. 6** prohibits the use of single-use plastic foodware and packaging to reduce marine debris. As conditioned, the proposed project will not adversely impact marine resources and will conform with the marine and water quality protection policies of the Coastal Act

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. During that time, the site will likely be subject to wave action and flooding. Therefore, **Special Condition No. 7** 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.

The hut and amenities were originally placed at Silver Strand Beach without a CDP during the summer of 2016. The applicants applied for a CDP in 2017, however, the hut and amenities were again placed without the benefit of a CDP while the application was under review. In July 2017, the Commission approved CDP No. 6-16-0406 for the after-the-fact development and authorized the development to continue through September 30, 2017, and from May 1 through September 30 for two additional years (through September 30, 2019). In March 2018, Immaterial Amendment No. 6-16-0406-A1 was approved modifying Special Condition No. 3 of the permit to allow the development to operate from March through September for the remainder of the permit term (through September 30, 2019). The applicant submitted an amendment application to extend the permit term on June 27, 2019, and on August 2, 2019, Commission staff conducted a site visit to the project site and found several violations of the permit. Specifically, the applicant had staged chairs and umbrellas on the beach outside of the approved project site, the rental prices were higher than authorized, and the pricing signage did not indicate that towels were available to members of the public. In addition, the amenities were not advertised on the Loews or State Parks webpages. The permittees were notified of the violations the following day. On August 11, 2019, Commission staff conducted a follow-up site visit to the beach and saw that chairs and umbrellas continued to be staged on the beach and outside of the permitted area. While the signage for public rentals had been updated to reflect the permitted cost of the rentals, the signage was smaller and less visible than the previous signage used to advertise the price of the rentals. On August 12, 2019, Commission staff was notified that the signage had been updated and that Loews staff would continue to brief the team daily on the proper area of placement of chairs and umbrellas on the sand and verbiage for when guests and patrons request to be set-up outside of the approved area. On August 21, 2019, the Loews website was updated to advertise the public amenities and the State Parks website was also updated on December 26, 2019, thus bringing the project into compliance with the CDP upon making those changes. On February 14, 2020, the Commission approved the second amendment with a permit term of one year only, with the option to apply for an amendment to extend the permit at least 90 days before the expiration of the permit, and additional reporting and employee training requirements.

On May 10, 2022, State Parks staff contacted Commission staff requesting a copy of the approved coastal development permit and the applicants were notified that the permit had expired during the pandemic closures since an application to extend the permit term had not been submitted prior to the expiration of the permit. As such, the applicants have submitted the subject application which originally proposed the same project that was previously approved by the Commission with the exception of increasing rental rates for the public. However, after coordinating with Commission staff, the applicants agreed to reduce the rates to be consistent with the previously approved rates. Special Condition No. 1.b requires the applicant to submit a revised final operations plan with the revised rates. Thus, the project would be implemented consistent with the project previously approved by the Commission under CDP No. 6-

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16-0406 as amended. The applicants have indicated that they are committed to complying with the CDP going forward.

To ensure that the applicants comply with the required permit conditions, **Special Condition No. 3** limits the permit term to one year. To extend the permit term, the applicant must apply to the Commission for an amended Coastal Development Permit at least 90 days before the permit's expiration. **Special Condition No. 4** requires the applicant to monitor the public versus private use and submit a report to the Coastal Commission 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. Finally, **Special Condition No. 5** requires an employee training plan to be submitted and approved by the Executive Director, and the public access provisions and site plans to be posted inside of the hut for employee reference.

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP used as guidance.

B. Visual Resources

The development is located on a public beach and in a parking lot and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

C. Public Access/Parking

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

D. Marine Resources and Water Quality

As conditioned, the proposed project will not adversely impact marine resources and conforms to Section 30231 of the Coastal Act

E. Coastal Hazards

The development is located in an area that may be subject to coastal hazards. As conditioned, the risks of property damage or loss arising from such hazards will be borne by the applicant and not the public. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30253 of the Coastal Act.

F. Local Coastal Planning

Silver Strand State Beach is a State Park 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. California State Parks found the project to be exempt under Class 11, Seasonal Structures.

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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.