

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4402
 VOICE (619) 767-2370
 FAX (619) 767-2384

**W18c**

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 Hearing Date: 12/14/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-22-0185

Applicant: CHSP TRS Mission Bay LLC

Agent: Jacquelyn Chung

Location: 1441 Quivira Road, Mission Bay Park, San Diego, San Diego County (APN 760-029-02)

Project Description: After-the-fact approval for placement of two event tents that cover a total area of 10,600 sq. ft. within a parking lot at Hyatt Regency Mission Bay

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of after-the-fact approval of two event tents at the Hyatt Regency Mission Bay Spa and Marina, a hotel located within an existing City of San Diego recreational park leasehold. The tents are located in an existing parking lot within the Hyatt's leasehold and have been used intermittently since at least the year 2000. The primary concern raised by the project is the impact to public access in the form of spillover of event guests into adjacent public parking spaces that provide access to the shoreline within Mission Bay Park. The applicant is proposing several public access improvements in order to resolve the violation and mitigate for the impacts caused by the tents, including installation of two public benches and one water bottle filling station along the waterfront public accessway; placement of public access signage in three locations along the public accessway within their leasehold; installation of a picnic bench and trash can for public use within their leasehold adjacent to the southern

terminus of Quivira Road; addition of information about public access amenities to their website; and the Hyatt will also contract with a laundry vendor that uses a facility that prevents microplastic pollution. **Special Condition #1** requires final plans to ensure that these are implemented. In order to monitor and address any future impacts to public parking, **Special Condition #2** requires a parking monitoring plan. **Special Condition #3** limits the permit term to five years with the possibility of extension, subject to Executive Director approval, should the monitoring confirm that public parking is not being impacted. Finally, **Special Condition #4** places the permittee on notice that only the development explicitly specified herein is authorized, and that further development on the leasehold will require additional review and potential permitting by the Commission.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0185, 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 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Images of Tents](#)

[Exhibit 4 – Proposed Public Access Improvements](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0185 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 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. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 3. 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.
- 4. 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. Revised Final Plans and Public Access Improvements.

- a. **WITHIN 90 DAYS OF COMMISSION ACTION**, the applicant shall submit, for the review and written approval of the Executive Director, the following:
 - i. Final plans approved by the City of San Diego that incorporate the following:
 - a. Three public access signs in substantial conformance to the plan received by the Coastal Commission's San Diego office on November 30, 2021.
 - b. Two public benches at the public access walkway along the waterfront.
 - c. One water bottle filling station at the public access walkway along the waterfront.
 - d. One picnic bench and trash can within the Hyatt leasehold adjacent to the terminus of Quivira Road
 - ii. Evidence that public access amenities have been added to the Hyatt website.
 - iii. Evidence that the Hyatt's laundry service is upgraded to a facility designed to prevent microplastic pollution.
- b. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Parking Monitoring Plan.

- a. **WITHIN 90 DAYS OF COMMISSION ACTION**, the applicant shall submit, for the review and written approval of the Executive Director, a Parking Monitoring Plan that includes, at a minimum, the following information:
 - i. Daily average usage and peak usage per month of parking spaces throughout the leasehold
 - ii. All dates that the tents are in place
 - iii. Dates and times of events held in the tents
 - iv. Total number of guests during each event, and any parking instructions provided to event guests
 - v. Any observations of event guests using public parking in the street or public lot on Quivira Road
 - vi. Documentation of any instances in which overflow off-site parking was utilized
 - vii. Provisions for the submittal of an annual report to the Executive Director no later than January 31.

- b. Monitoring shall commence upon approval of this coastal development permit and shall continue for the entire duration of the approved five-year permit term.
 - c. If the annual report indicates that events held in the tents caused spillover into adjacent public parking, the applicant shall submit an amendment to this CDP to address the impact.
 - d. The permittee shall undertake development in accordance with the approved Parking Monitoring Plan unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.
- 3. Duration of Permit.** This coastal development permit is valid for a period of five (5) years from the date of Commission approval (i.e., until December 14, 2027). Continued use of the event tents beyond this date will require an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 4. Future Development.** This permit is only for the development described in coastal development permit no. 6-22-0185. Except as provided in Public Resource Code section 30610 and applicable regulations, any future development, including any change in use, as defined in Public Resource Code section 30106, shall require an amendment to this permit from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The Hyatt Regency Mission Bay Spa and Marina (“Hyatt”) is a 19-acre leasehold encompassing land and water area along Quivira Basin in southwest Mission Bay Park, in the city of San Diego ([Exhibit 1](#)). The Hyatt is one of several commercial leases within Mission Bay Park offering overnight accommodations to visitors. The overall resort complex consists of an 18-story guestroom tower (274 rooms), Bay I and Bay II buildings (88 guest rooms), a marina building (75 guest rooms), surface parking lots, a parking structure, a marina, restaurants, lounges, a fitness area, meeting and banquet rooms, and a courtyard pool area. A total of 438 guestrooms are currently provided, approximately 548 parking spaces exist on the leasehold, and the 189-slip marina and commercial dock accommodate sport fishing, boat rentals and sales, slip rentals, and transient occupancy slips.

The Hyatt is requesting after-the-fact authorization to assemble two event tents on a periodic basis within an existing parking lot along the western boundary of their leasehold ([Exhibit 2](#)). The tents are 25 ft. 5 inches tall and measure 80 ft. by 110 ft. and

30 ft. by 60 ft., for a total area of 10,600 sq. ft. The Hyatt assembles the tents when additional meeting space is needed.

As described in Section C., Unpermitted Development, the tents have been periodically erected without benefit of a coastal development permit since at least the year 2000 ([Exhibit 3](#)). The applicant is proposing several public access improvements in order to resolve the violation and mitigate for the impacts caused by the tents. Two public benches will be installed along the waterfront public accessway; public access signage will be installed and information about these public access amenities will be added to the Hyatt website; and one picnic table and trashcan will be added to the leasehold for public use. The Hyatt will also upgrade its laundry services to a facility that is designed to prevent microplastic pollution.

The majority of the Hyatt resort complex was developed prior to passage of the Coastal Act, but the Commission has approved several permits over the years for the site.

1. CDP No. F5544 to enclose approx. 1,600 sq. ft. of restaurant patio.
2. CDP Nos. F7279 & F9579 to add two tennis courts, fences, sidewalks, low walls, and landscaping.
3. CDP No. 6-86-201-W to enclose approximately 300 sq. ft. of patio area.
4. CDP No. 6-86-376 for a 3-story, 76-room addition and 78 parking spaces.
5. CDP No. 6-91-180 for temporary facilities related to the America's Cup.
6. CDP No. 6-97-109 to add approx. 7,000 sq. ft. to an existing 8,000 sq. ft. ballroom.
7. CDP No. 6-98-083 to demolish and replace the 33,549 sq. ft. 192-slip dock and marina space with a 46,744 sq. ft. 179-slip dock and marina space, including a sportfishing dock.
8. CDP No. 6-06-095 to convert a portion of the existing fitness facility and meeting rooms to three guest rooms, convert a portion of the existing restaurant into a spa, convert a meeting room into a fitness area, remove two meeting rooms and a guest room, and construct an 18-ft. tall water slide.
9. CDP No. 6-08-113 to install a floating dock to rent personal watercraft to guests and the general public. The staff report for this permit notes that sportfishing would continue at the commercial dock. Special Condition No. 1 requires a future coastal development permit for any change in use.
10. CDP No. 6-12-085-W to remove and repair deteriorated concrete from in-water pilings under the existing restaurant.
11. CDP No. 6-18-0215 to convert suites into hotel rooms and restripe onsite parking.
12. CDP No. 6-21-0106 to make various repairs to the overwater infrastructure at the Red Marlin, Stay Fit, and Market Mission Bay buildings and commercial dock.

Mission Bay Park is an area of both original and deferred certification, where the Commission retains jurisdiction and Chapter 3 policies of the Coastal Act are the standard of review. The Commission has certified the Mission Bay Park Master Plan as the Land Use Plan (LUP) for Mission Bay Park and uses the Master Plan as guidance.

B. Public Access and Recreation

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 30220 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.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by [...] (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, [...]

The Coastal Act emphasizes the need to protect and provide for public access to and along the coast. The proposed development will be within an existing resort located on a 19-acre leasehold within Mission Bay Park, owned by the city of San Diego and leased to Hyatt.

Mission Bay Park is a public aquatic park built primarily on tidelands granted to the City of San Diego. The project site is located between the first coastal roadway and the sea (in this case, Mission Bay). Public lateral access is available along most of the Mission Bay shoreline, including through the subject commercial leasehold along the water's edge. Pedestrian and bicycle traffic can also use the adjacent public street, Quivira Road, and there are public parking lots across the street from the Hyatt to the west and north.

Public access through and around this leasehold is readily available; there are no perimeter fences preventing the public from entering the premises, and a walkway runs along the bay side of the resort complex. The property includes a 189-slip marina that also contains a commercial pier from which various recreational commercial businesses operate out of through subleases with the City of San Diego via the Hyatt, including a sport fishing operation, boat charters, and whale watching tours. Elsewhere within the

leasehold, the on-site restaurant, lounge, and spa areas service the general public as well as Hyatt guests.

The primary concern raised by the proposed development is the potential impact to public access in the form of spillover of hotel visitors into public parking along Quivira Road. The tents will decrease the Hyatt's off-street parking supply by taking up existing parking spaces while increasing the Hyatt's required parking spaces by increasing the site's meeting space, a use required by the LCP to provide off-street parking. Because the Hyatt is a pre-coastal facility that predates current parking regulations, its current parking supply of 548 parking spaces is previously non-conforming with regard to currently required on-site parking, and thus there are potential concerns regarding the presence of adequate on-site parking supply to support the Hyatt's various uses. The Mission Bay Park Master Plan, which is part of the certified LUP and serves as guidance, contains "Appendix G – Design Guidelines," which includes parking requirements based on square footage of each distinct use within "commercial leaseholds" such as the Hyatt. These parking requirements are stricter than those elsewhere in the City as specified in the Land Development Code, which serves as the Implementation Plan of the certified LCP, in recognition of the high visitation that Mission Bay Park receives and the parking issues that can arise with all of the public parking being free while most of the commercial leaseholds charge for parking.

The tents would add 10,600 sq. ft. of meeting space to the Hyatt's existing uses, which include approximately 15,332 sq. ft. of meeting space, 5,496 sq. ft. of lobby area, 7,700 sq. ft. of restaurant, 932 sq. ft. of fitness area, 555 sq. ft. of sundries, 2,203 sq. ft. of spa, 189 boat slips, and a commercial dock serving three commercial boating operations. In addition, the tents take up approximately 62 parking spaces, decreasing the available parking to 486 spaces. Under the Master Plan's parking requirements, the existing uses would require approximately 694 parking spaces to be provided and the tents would require an additional 53 spaces, bringing the total required spaces to 747. The Master Plan allows up to a one-third reduction in the parking requirement for those uses that are shown to overlap with guest uses, such as meeting space, restaurant/lounge, and spa. Such a reduction lowers the total parking requirement to approximately 690 parking spaces when the tents are erected and 654 spaces when they are not.

Thus, when the tents are erected, the Hyatt's on-site parking supply of 486 parking spaces is 204 parking spaces short of the 690-space parking requirement of the Master Plan. When the tents are not assembled, the supply of 548 spaces is 106 spaces short of the 654-space requirement. Because the Hyatt was constructed in the 1960's, well before the Coastal Act of the 1970's and the Mission Bay Master Plan of the 1990's, its previously conforming status is long established. However, Mission Bay Park is a very popular coastal destination for both local and national visitors, and the provision of adequate parking is important to limit the adverse impact to public access arising from a commercial leasehold's parking demand spilling out into public streets or lots and occupying parking that would otherwise be used by coastal visitors.

In recognition of the shortage of parking in comparison to the requirements of the Mission Bay Park Master Plan, the Hyatt submitted parking data to demonstrate that it is

able to serve current patron demand on site. In 2021, the Hyatt parked 54,653 cars for a daily average of 150. The peak demand was in August 2021 with a total of 9,091 cars and a daily average of 293. Prior data submitted by the Hyatt included daily averages of 165, 159, and 155 cars in 2016, 2017, and 2018 respectively. Thus, even before the significant decrease in travel due to the COVID-19 pandemic, there was a downward trend in the volume of cars parked on-site. Additionally, while averages do not speak to peak demands (such as during special events held on the premises), the Hyatt has indicated that even during special events they are able to accommodate their parking demand on site.

Although the Hyatt has demonstrated that it is able to meet the parking demands from the various uses within its leasehold, the addition of the tents could potentially impact public parking by causing spillover into the adjacent public spaces, as explained further in Section C, Unpermitted Development. Therefore, **Special Condition #2** requires the applicant to implement a parking monitoring plan in order to ensure that use of the tents does not cause spillover into public parking. If impacts are observed, the applicant must submit a CDP amendment to address the impacts. **Special Condition #3** limits the permit term to 5 years, with the option to extend after 5 years (for a total of ten years) if the monitoring demonstrates that the parking supply is adequate with the tents in use. If the monitoring demonstrates that the parking supply is not adequate, and if the Hyatt does not seek a CDP amendment to address this, then the authorization would expire and the tents would need to be removed.

C. Unpermitted Development

Unpermitted development has occurred on the site in violation of the Coastal Act, including the intermittent installation of event tents on a hotel parking lot. The applicant is requesting after-the-fact authorization of placement of the tents. Satellite imagery shows that the tents have been used on the Hyatt leasehold on a temporary basis since at least the year 2000 without a coastal development permit ([Exhibit 3](#)). The tents are located adjacent to Quivira Road, which contains free daily public parking providing access to the shoreline within Mission Bay Park ([Exhibits 1 and 3](#)). The Hyatt charges for parking on its premises, which could motivate a guest of an event in the tents to use the free public parking located immediately adjacent to the tents instead. Without any monitoring or mechanisms in place to prevent users of the tents from parking in these free spaces, it can be reasonably assumed that events in the tents have caused spillover parking into public parking, thereby impacting public access along Mission Bay.

In order to resolve the Coastal Act violation described above and mitigate for the public access impacts resulting from over 20 years of intermittent use of the tents, the applicant has agreed to implement several public access improvements as part of this coastal development permit. The Hyatt will install two public benches and one water bottle filling station along the waterfront public accessway; add public access signage in three locations along the public accessway within their leasehold; add information about public access amenities to their website; and install a picnic bench and trash can for public use within their leasehold adjacent to the southern terminus at Quivira Road ([Exhibit 4](#)). The Hyatt will also contract with a laundry vendor that uses a facility that

prevents microplastic pollution. **Special Condition #1** requires the submittal of revised final plans that incorporate these actions. **Special Condition #4** places the permittee on notice that only the work explicitly described in this permit is authorized, and that future development, including a change in use, will require Commission review and approval through a coastal development permit.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of applicant's liability for the violations described above. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the City's certified LUP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

D. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Commission certified the Mission Bay Park Master Plan on May 11, 1995, as the land use plan (LUP) component of its certified LCP, but no implementation plan has been prepared for this segment to date and Mission Bay Park is primarily unzoned. As a whole, Mission Bay Park is a dedicated public park, and the Hyatt is one of many designated commercial leases in the certified LUP. As conditioned, the proposed development is consistent with the Mission Bay Park Master Plan and has been found consistent with all applicable Chapter 3 policies of the Coastal Act. No other local discretionary actions are required as a result of the improvements proposed herein. Therefore, the Commission finds that the approval of the project will not prejudice the ability of the City of San Diego to prepare a fully certifiable LCP for its Mission Bay Park segment.

E. 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 City of San Diego found the proposed project to be exempt.

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 parking 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of San Diego Lease Agreement (Document No. RR-300863 filed Sept. 27 2005)
- Mission Bay Park Master Plan