

**CALIFORNIA COASTAL COMMISSION**

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# W17a

## ADDENDUM

**May 9, 2022**

**To:** Commissioners and Interested Persons

**From:** California Coastal Commission  
San Diego Staff

**Subject:** Addendum to **Item W17a**, Coastal Commission Permit Application No. **6-21-0353 (Northeast MB, LLC)**, for the Commission Meeting of May 11, 2022.

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The purpose of this addendum is to grant additional time for the applicant to obtain an amended lease with the City of San Diego incorporating some of the requirements of this permit's special conditions as well as clarify the duration of the permit's authorization. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. On Page 19 of the staff report, Special Condition No. 5 shall be modified as follows:

### **5. Assumption of Risk, Waiver of Liability and Indemnity**

a) By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, 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.

b) PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit: ~~(1) a copy of a signed lease agreement, in a form and content acceptable to the Executive Director, between the applicant and the City of San Diego incorporating all of the above terms of subsection (a) of this Special Condition and of Special Condition No. 7, and (2) a written agreement by the City of San Diego, in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's lease of the property that is the subject of this coastal development permit, the City of San Diego agrees (i) to be bound by the terms of subsection (a) of this condition and of Special Condition No. 7 if it becomes the owner of the possessory interest in such property, and (ii) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and written approval of the Executive Director, incorporating all of the terms of subsection (a) of this Special Condition and Special Condition No. 7.~~

c) WITHIN ONE (1) YEAR OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT OR WITHIN SUCH ADDITIONAL TIME AS THE EXECUTIVE DIRECTOR MAY GRANT FOR GOOD CAUSE, the applicant shall submit a copy of a signed lease agreement, in a form and content acceptable to the Executive Director, between the applicant and the City of San Diego incorporating all of the above terms of subsection (a) of this Special Condition and of Special Condition No. 7.

2. On Page 22 of the staff report, Special Condition No. 8 shall be modified as follows:

### **8. Duration of Permit**

a) The operation of the development authorized in this coastal development permit is authorized until June 30, 2027. Any operation of the development authorized by the permit by the applicant or their successor in interest beyond that date shall require a new coastal development permit or an amendment to this permit, unless the Executive Director determines in writing that a new permit is not required.

b) By acceptance of this permit, the applicant agrees, on behalf of itself and all successor and assigns, that, at least one hundred and eighty (180) days prior to the expiration of this permit's authorization period ~~termination of the lease term~~ described in subsection (a) (i.e., January 30, 2027), the applicant shall submit a new coastal development permit application to i) remove some or all improvements within the lease area authorized by this permit, including, but not limited to, improved utilities and new landscaping and fencing, if requested by the City of San Diego; or ii) maintain the improvements for a new term limit.

3. On Page 24 of the staff report, the third paragraph shall be modified as follows:

In July 2020, in anticipation of redevelopment of the site for RV use, the applicant received a permit exemption from the Commission for the partial renovation, repair, and demolition of abandoned accessory structures and support facilities that previously served the mobile home residents (CDP Exemption No. 6-20-0022-X). To date, the exempted work has not yet been completed. ~~conducted.~~

4. On Page 31 of the staff report, the second paragraph shall be modified as follows:

Due to the presence of existing encroachments on public park area and the existing difficulty the public has in learning about the park amenities, which may be exacerbated by the substantial expansion of RV spaces, **Special Condition No. 7** requires the submittal of a final public access plan requiring removal of the encroaching development on the beach and a signage plan around and within the project area not already governed by the Consent Agreement Public Access Plan to better inform the public of their rights of access. The applicant has requested that public access to the shoreline pedestrian path be limited to the hours of 4 AM to 2 AM, consistent with the hours that public parking lots on De Anza Cove are open. While the City does restrict parking in public parking lots in Mission Bay Park, public access to the shoreline by foot or by bike is unrestricted. Therefore, **Special Condition No. 7** clarifies that parking in the public parking lot is restricted between the hours of 2 AM and 4 AM consistent with the surrounding public parking lots, but public access to all public access paths and vacant areas not operating as an RV facility shall be available 24 hours a day. Finally, **Special Condition No. 5** requires that the applicant, within one year of Commission action, obtain a modified lease from the City of San Diego showing that the public access requirements of Special Condition No. 7 will be incorporated into the current lease and any future leases. The one-year deadline is in recognition of the time it may take to obtain the City Council approval for such an amendment, and failure to provide the required lease amendment pursuant to the deadline may trigger the stipulated penalties of Consent Agreement CCC-21-CD-01 and CCC-21-AP-01. Thus, as conditioned, can the proposed development be found to maximize public access and conform to Chapter 3 of the Coastal Act.

5. On Page 33 of the staff report, the second paragraph shall be modified as follows:

As the peninsula is prime waterfront land in a popular coastal destination, the City is analyzing the feasibility of various combinations of uses, such as habitat restoration, recreational open space, continued RV overnight accommodation, and visitor-serving concessions such as a food stand. Because this development is envisioned by the City of San Diego as an interim use while it finalizes the De Anza Redevelopment Plan to convert the peninsula into additional recreational open space and habitat, it is important to ensure that the Commission's action does not create an expectation of permanent future approval for this

development, does not predispose selection of any specific final design, or impede the ability of the City to implement the final selected design that will subsequently be certified by the Commission due to this area being within state permit jurisdiction. Thus, Special Condition No. 8 places a limit on the duration of this permit and operation of the development it authorizes until June 30, 2027, to coincide with the longest possible duration of the lease between the applicant and the City of San Diego. In order to ensure a timely disposition of the development beyond the term of this permit, Special Condition No. 8 requires the applicant to return to the Commission at least 180 ~~ninety~~ days prior to the end of the lease term to submit a follow-up coastal development permit application to either remove improvements on the site authorized by this permit to facilitate future redevelopment of the peninsula or to maintain the improvements. Thus, as conditioned, the proposed development can be found in conformance with the habitat protection policies of the Coastal Act.

6. On Page 38 of the staff report, the fourth paragraph shall be modified as follows:

Thus, due to the short economic life of the proposed development, the location of the project site above both existing and projected sea level rise for the year 2030, as well as experiencing muted tidal action due to its location opposite from Mission Bay Park's entrance channel, the risk of coastal hazards and sea level rise posing substantial risk to public safety and development is low.

Nevertheless, because the project site is located on a coastal peninsula, **Special Condition No. 5** requires the applicant to assume the risk of coastal hazard and waive liability and to demonstrate the assumption of the risk condition in the current lease and that the City agrees to incorporate the assumption of risk in future leases. The City has informed Commission staff that obtaining an amendment to a City lease can require substantial time due to the required City Council authorization and believes a one-year deadline should allow adequate time to obtain that required amendment authorization. Because the Consent Agreement CCC-21-CD-01 and CCC-21-AP-01 requires continued adherence to the Coastal Act and stipulates penalties for future violations of the Coastal Act, and by extension this permit, failure to provide an amended lease within the required time may trigger these penalties. While the De Anza peninsula is protected by a rip rap revetment constructed prior to the Coastal Act and no work or expansion of the revetment is proposed with this development, **Special Condition No. 6** requires of the applicant and its successors in interest to waive any rights to future shoreline protection and further states that, should conditions change such that further use of the development is prohibited by order of the appropriate government agency, operation shall cease and development that is at risk possibly removed. Thus, as conditioned, can the proposed development be found consistent with Chapter 3 of the Coastal Act.