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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-21-0106

Applicant: CHSP Mission Bay, LLC

Agent: Jacquelyn Chung

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

Project Description: Replace existing overwater decking and seven wood beams and install two pile jackets at Red Marlin restaurant; repair existing pile caps at the Red Marlin, Stay Fit, and Market Mission Bay buildings; and install new plywood at commercial dock.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of repairs to existing overwater structures at the Hyatt Regency Mission Bay Spa and Marina, a hotel located within an existing City of San Diego recreational park leasehold. The primary concerns raised by the project are potential impacts to public access and water quality during construction. **Special Condition #1** requires final plans to ensure that the project is undertaken according to plans that minimize impacts to the surrounding area. **Special Condition #2** requires the applicant to prevent adverse impacts to water quality due to construction activities and the use of preservative-treated wood. **Special Condition #3** 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 from the Commission.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-21-0106, 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 – Site Plan](#)

[Exhibit 4 – Construction Staging Area](#)

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. 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 plans:
 - i. Final plans approved by the City of San Diego that are in substantial conformance with the plans prepared by Building Consultants, Ltd. and received by the Coastal Commission's San Diego office on February 25 and May 18, 2021.
 - ii. Final construction staging and storage plans that show the location of all staging and storage related to the development approved in this permit, which shall occur outside of public parking and public rights-of-way. The plan shall identify where employees and customers will be directed to park while the parking spaces are unavailable. Employees and customers shall not be directed to park in public parking spaces. All parking spaces adjacent to Red Marlin shall be made available for use after construction is complete.
- 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. **Water Quality Best Management Practices..** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, Water Quality Best Management Practices Plan that includes, at a minimum, the following requirements to protect coastal water quality:

- a. Type of Treated Wood Used for Overwater Structures. For all components of the overwater structures that the applicant proposes to replace with preservative-treated wood, a type of treated wood shall be selected that minimizes the risk of aquatic and sediment toxicity, as follows:
 1. Wood treated with the preservative Ammoniacal Copper Zinc Arsenate (ACZA) shall be used, as proposed, for all wood components that will be replaced, including the deck framing, beams, and plywood sub-decking. Trex composite decking will be installed as the new decking surface material, as proposed.
 2. The ACZA-treated replacement wood used for the structures shall be treated to a preservative retention level of 0.60 pcf, for Use Category 4B, as proposed. This is the appropriate preservative retention level, as the

replacement treated wood will not be subject to saltwater splash.

3. Where available, only treated wood that has been certified for use in aquatic environments shall be used (as indicated by a BMP Quality Mark or Certificate of Compliance), in accordance with industry standards such as the Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments by the Western Wood Preservers Institute, et al.
- b. Best Management Practices (BMPs) for Use of Treated Wood in the Aquatic Environment
1. Treated wood sawdust and debris shall not be allowed to enter coastal waters. If treated wood is saw-cut, drilled, or sanded during demolition, removal, installation, or maintenance, all sawdust and debris generated shall be contained and removed. Sawing, drilling, and sanding of treated wood shall not be conducted overwater, to the extent feasible.
 2. If a topical wood preservative (such as Copper Naphthenate) is used for field-treatment of cut ends and drilled holes in treated wood, drips or spills of the preservative shall not be allowed to enter coastal waters. Apply field-treatment of a topical preservative sparingly to cut ends and drilled holes in treated wood, because it does not bond as strongly to wood compared to pressure-treatments. Application of a topical preservative to treated wood shall not be conducted overwater, to the extent feasible.
 3. Treated wood and treated-wood debris shall be stored a minimum of 50 feet from coastal waters (measured from the high-tide line), drainage courses, and storm drain inlets; shall be stored on an impervious surface; and shall be covered during rain events.
- c. Use of Paints, Coatings, Sealants, and Other Products
1. Any paint, coating, wrapping, pile jacket, sealant, adhesive, caulk, or other product used in construction of the overwater and in-water structures shall be inert when fully dried and cured, and therefore not leach chemicals that could contribute to aquatic toxicity. These products shall be applied in a manner that prevents leaks and spills of the product from entering coastal waters during application.
 2. For overwater treated-wood components to which a non-toxic penetrating sealer (such as the proposed Thompson's Water Seal Penetrating Timber Oil) is proposed to be applied, the sealer shall be applied prior to installation of the treated wood component, and shall not be applied overwater, to the extent feasible.
 3. Maintenance and reapplication of a coating, sealer, or paint on treated wood used in overwater structures such as dock decking shall follow BMPs to

minimize the release of treated wood particles and leaching of preservative chemicals into coastal waters.

- i. Sanding, scraping, or pressure-washing treated wood decking shall be avoided, to the extent feasible, as this may increase the leaching of wood preservatives and the discharge of treated wood particles into the water.
 - ii. Deck cleaners and brighteners, especially those containing acid-based or highly oxidizing chemicals (such as bleach, sodium hydroxide, sodium percarbonate, oxalic acid, and citric acid) shall not be used on treated wood, as they may increase the leaching of wood preservatives, and they also contain ingredients that may directly harm aquatic life. Treated wood and treated-wood debris shall be stored a minimum of 50 feet from coastal waters (measured from the high-tide line), drainage courses, and storm drain inlets; shall be stored on an impervious surface; and shall be covered during rain events.
- d. BMPs for Overwater and In-water Demolition and Construction
1. Tarps or other devices shall be used to capture all debris, sawdust, oil, grease, rust, dirt, drips, and spills resulting from overwater demolition and construction activities, to protect the quality of coastal waters.
 2. Floating booms shall be used to contain any floating debris accidentally discharged into coastal waters during demolition and construction activities. Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible. The collected debris shall be removed as soon as possible, but no later than the end of each day.
 3. Hydraulic construction equipment operated for one week or longer in, over, or adjacent to coastal waters (within 50 feet, measured from the high-tide line) shall use vegetable-oil-based hydraulic fluid, if feasible.
- e. BMPs for Repair of Piles
1. An inert material that does not leach chemicals that could contribute to aquatic toxicity shall be used for the proposed pile jackets, such as the fiberglass-reinforced polymer pile jackets as proposed. The use of coal tar epoxy coatings, which leach polycyclic aromatic hydrocarbons (PAHs) that have high aquatic toxicity, shall be prohibited.
 2. All cleaning and preparation of surfaces shall use wet vacuum techniques, containment booms or heavy mesh containment netting so that any debris, chips, dust, dirt, and fine particles are collected and disposed of in a location

where they will not enter coastal waters.

3. Preparation of corroded concrete by chipping, v-notching, or demolition shall be conducted while using a wet vacuum or similar technique so that any debris, dust, and fine particles are collected and disposed of in a location where they will not enter coastal waters. Dip nets shall be on-site and used to retrieve debris if it accidentally falls into the water.
 4. Installation and application of epoxy, resin, or cementitious grout/fill shall be conducted when predicted weather and ocean conditions allow effective control and full containment and will remain dry until cured, in order to prevent any leaching of uncured treatment materials into coastal waters. It is preferable to perform the work in dry conditions (low tide) or off-site in a controlled-environment manufacturing facility, wherever feasible.
 5. All pressure-injection and gravity-feed applications of epoxy, resin, or cementitious materials shall be closely monitored visually to ensure that these materials do not leak or spill into coastal waters during application.
 6. The two proposed pile jackets shall be periodically monitored during the life of the structure, and shall be repaired or replaced if the materials begin to deteriorate, to ensure that fragments do not enter coastal waters and contribute to marine debris.
- f. BMPs for Spill Prevention and Equipment Maintenance
1. Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated fueling and maintenance area located a minimum of 50 feet from coastal waters (measured from the high-tide line), drainage courses, and storm drain inlets, unless these inlets are blocked to protect against the accidental discharge of fuel and other pollutants from maintenance activities. The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other pollutants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
 2. Construction vehicles and mechanized equipment operating at the project site shall be inspected daily to ensure there are no leaking fluids, and shall be serviced immediately if a leak is found.

3. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into coastal waters. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.
4. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The discharge of any construction products or materials into coastal waters shall be prohibited.
5. Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as feasible.

f. BMPs for Stockpile and Debris Management

1. All demolition and construction materials, equipment, debris, and waste shall be properly stored and contained, and shall not be placed or stored where they may be subject to wave, wind, rain, or tidal dispersion, to prevent pollutants from entering coastal waters, drainage courses, and the storm drain system.
2. All stockpiles, construction materials, and demolition debris shall be enclosed on all sides, covered during rain events, and not stored in contact with the soil, and shall be located a minimum of 50 feet from coastal waters (measured from the high-tide line), drainage courses, and storm drain inlets.
3. A dedicated concrete washout area shall be located a minimum of 50 feet from coastal waters (measured from the high-tide line), drainage courses, and storm drain inlets, unless these inlets are blocked to protect against the accidental discharge of concrete washwater. The washout area shall be designed to collect and retain all concrete washwater and solids in a leak-proof container.

3. **Future Development.** This permit is only for the development described in coastal development permit no. 6-21-0106. Except as provided in Public Resource Code section 30610 and applicable regulations, any future development as defined in Public Resource Code section 30106, including elimination of sportfishing, 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 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.

- CDP No. F5544 to enclose approx. 1,600 sq. ft. of restaurant patio.
- CDP Nos. F7279 & F9579 to add two tennis courts, fences, sidewalks, low walls, and landscaping.
- CDP No. 6-86-201-W to enclose approximately 300 sq. ft. of patio area.
- CDP No. 6-86-376 for a 3-story, 76-room addition and 78 parking spaces.
- CDP No. 6-91-180 for temporary facilities related to the America’s Cup.
- CDP No. 6-97-109 to add approx. 7,000 sq. ft. to an existing 8,000 sq. ft. ballroom.
- 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.
- 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.
- 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.
- CDP No. 6-12-085-W to remove and repair deteriorated concrete from in-water pilings under the existing restaurant.
- CDP No. 6-18-0215 to convert suites into hotel rooms and restripe onsite parking.

The Hyatt proposes to replace decking, replace seven deteriorated wood beams, and install two pile jackets at the Red Marlin restaurant; repair existing pile caps at the Red Marlin, Stay Fit, and Market Mission Bay buildings; and remove decking, install new plywood, and reinstall decking at the commercial dock ([Exhibits 2 and 3](#)).

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. A public walkway runs along the bay side of the resort complex providing access to the marina, commercial dock, and three overwater structures (Red Marlin restaurant, Stay Fit, and Market Mission Bay). 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.

Construction will last approximately ten weeks and equipment will be staged in employee parking spaces within the Hyatt leasehold adjacent to the Red Marlin restaurant ([Exhibit 4](#)). Public access along the Red Marlin walkway and commercial dock will temporarily be impacted during construction. The public walkway outside of Red Marlin will be unavailable during the anticipated ten-week construction phase for the Red Marlin deck repairs. The commercial dock will not be accessible during the anticipated one-week phase for the dock repairs. Public access along the boardwalk adjacent to the Stay Fit and Market Mission Bay buildings will remain available during construction. Once completed, the proposed repair and maintenance of the overwater structures and commercial dock will not change the current patterns of public access to and through the site. In order to prevent employees or customers from using the adjacent public parking spaces during construction, **Special Condition #1** requires the applicant to submit final plans that include a construction staging plan directing employees and customers where to park within the Hyatt leasehold during construction.

The applicant proposes to use preservative-treated wood for the repairs. The use of preservative-treated wood in overwater and in-water structures has the potential to adversely impact water quality and aquatic species, especially in areas with a low water circulation rate (such as harbors and marinas). To avoid adverse impacts to water quality from the proposed use of preservative-treated wood, **Special Condition #2** requires the applicant to minimize the amount of preservative in wood that may leach into coastal waters and implement best management practices (BMPs) for use of treated wood. Construction activities in, over, or near coastal waters have the potential to adversely impact water quality. To avoid such impacts, **Special Condition #2** further requires BMPs for overwater and in-water demolition and construction, repair of piles, spill prevention and equipment maintenance, and stockpile and debris management.

The proposed work will not change the existing overwater coverage nor will it disturb the seafloor. A survey submitted by the applicant did not find any eelgrass or *Caulerpa taxifolia* in the project vicinity. Therefore, no adverse impacts to marine habitats are anticipated.

Staff has received inquiries in the past alleging that sportfishing was no longer being offered at the Hyatt's commercial dock inconsistent with Special Condition No. 1 of 6-08-113. Sportfishing is a form of recreational fishing, which is recognized and protected by Section 30234 of the Coastal Act. Sportfishing operations typically offer partial or full day fishing trips to the public for a fraction of the cost of owning and maintaining a boat

and fishing equipment. Thus, sportfishing offers a more affordable opportunity for the public to participate in recreational fishing. In addition, it offers recreational opportunities supported by Section 30210. Although the tenants at the commercial dock have changed over time, the applicant has provided evidence that there is a sportfishing company that currently operates out of the commercial dock, in addition to other companies offering recreational opportunities such as whale watching. Because sportfishing is still being offered at the dock, there has not been a change in intensity of use from the initially approved project with respect to sportfishing. **Special Condition No. 3** 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. A change in use that would increase required parking or convert existing commercial recreational uses of the dock to private uses would constitute a change in intensity of use that requires a coastal development permit. The applicant should consult with Commission staff to determine whether any proposed change in use, including eliminating sportfishing from the commercial dock, would require a permit.

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 LUP for Mission Bay Park and uses the Master Plan as guidance.

B. Biological Resources

Coastal Act policies 30240 and 30251 restrict the alteration of natural landforms and protects sensitive habitats. Section 30231 of the Coastal Act requires that coastal waters are protected and runoff minimized.

The proposed development will not have an adverse impact on any sensitive habitat, and, as conditioned, will not result in erosion or adverse impacts to water quality, as adequate temporary erosion controls (construction BMPs) will be provided. Thus, the project is consistent with the resource protection policies of Chapter 3 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. Unpermitted Development

Staff has identified unpermitted development within the Hyatt leasehold that includes, but may not be limited to, the placement of two event tents in the western parking lot, displacing parking spaces for the resort, without a coastal development permit. Staff informed the entity that manages the Hyatt by contract, CHSP TRS Mission Bay LLC, which is an entity under the same umbrella company as the applicant for this project,

that the tents are unpermitted. CHSP TRS Mission Bay LLC has submitted a separate application (CDP Application No. 6-22-0185) requesting after-the-fact authorization of the tents, and the application is currently being reviewed by staff. The applicant is not proposing to include the unpermitted tent structure in this application, and thus, violations remain on the site that will not be addressed by the Commission's action on this application. Consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

E. Local Coastal Planning

The LUP for the Mission Bay Park LUP segment of the City of San Diego LCP was certified on May 11, 1995, but no implementation plan has been developed as yet, and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. 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 water quality 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

- Mission Bay Park Master Plan