

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
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SAN DIEGO, CA 92108-4402
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Th16b

6-22-0127 (LHO Mission Bay Hotel, LP)

February 2023

CORRESPONDENCE



THE CITY OF SAN DIEGO

TODD GLORIA

MAYOR

Th16b – LHO Mission Bay Hotel, LP
Application No. 6-22-0127
Request to postpone

February 7, 2023

Kate Huckelbridge
Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Kate.Huckelbridge@coastal.ca.gov

Dear Director Huckelbridge:

As the Mayor of San Diego, I am writing to request the postponement of item Th16b, a Coastal Development Permit (CDP) application for the proposed new construction and redevelopment of Paradise Point Resort, to provide the City an opportunity to engage with the applicant and better understand their project and its impacts to the terms of their lease with the City of San Diego.

Paradise Point Resort encompasses approximately 52 acres and 4,200 feet of public beach and bay water of Vacation Island in Mission Bay Park through a lease with the City of San Diego. As such, it is a significant property for protecting public coastal access and the City would like the necessary time to ensure adherence of the proposed project to the California Coastal Act and local lease requirements.

Regrettably, the City has not been provided with information related to the project by the applicant to determine conformance with their City lease agreement. As a matter of health, safety, and public access, the City should have the opportunity to review the improvements prior to a Coastal Commission determination.



THE CITY OF SAN DIEGO

TODD GLORIA

MAYOR

Additionally, Paradise Point Resort has outstanding California Coastal Act violations which are intensifying the use of the resort and restricting public access to the coast. These violations persist despite special conditions placed on the previous CDP. Paradise Point was made aware of these violations by Commission enforcement staff in January 2017. It is my understanding that part of the Coastal Development Permit before you addresses issues related to these violations. The City would want to review those actions for conformance with our lease.

I respectfully request that the Coastal Commission postpone or deny this CDP, direct the applicant to meet with the City to confer on this project and its conformance with our lease agreement. Thank you for your consideration.

Sincerely,

TODD GLORIA
Mayor
City of San Diego

Cc: California Coastal Commission
Karl Schwing, District Director, San Diego Coast and South Coast,
Orange County



LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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February 7, 2023

VIA EMAIL:

California Coastal Commission
SanDiegoCoast@coastal.ca.gov

RE: ITEM TH16B, APPLICATION NO. 6-22-0127 (LHO MISSION BAY HOTEL, LP, SAN DIEGO)

Dear Chair Brownsey, Honorable Coastal Commissioners, and Staff:

On behalf of UNITE HERE Local 30 and its members (collectively “**Local 30**”), this Office respectfully provides the California Coastal Commission (“**Commission**”) and its staff the following comments¹ regarding the Coastal Development Permit (“**CDP**”) for the proposed redevelopment and new construction across the 52-acre leasehold in order to rebrand Paradise Point as Jimmy Buffett’s Margaritaville Resort (“**Project**” or “**Resort**”), as well as other actions to address years of unpermitted development and extensive violations of previously issued CDPs (“**Enforcement Action**”) at Paradise Point.

UNITE HERE Local 30 has considerable interest in this issue as an organization that represents thousands of hotel and hospitality workers throughout San Diego county, is dedicated to social, racial, environmental, and economic justice, and believes that working families have the right to access and enjoy coastal resources.

In short, Local 30 is troubled by the January 26, 2023 “**Staff Report**”² recommending approval of the CDP—especially in light of the well-documented, extensive violations of the California Coastal Act (“**CCA**” or “**Act**”) as outlined in staff’s Notice of Violation dated January 27, 2017 (“**NOV**”), attached hereto as “**Exhibit A**.” By granting the CDP to allow even more expansion before first addressing all Enforcement Action, the Commission set a dangerous precedent of rewarding bad actors who violate the Act. For the sake of brevity, Local 30 wishes to highlight the following critical points for your consideration.

First, granting CDPs after years of non-compliance with prior CDPs incentivize further bad behavior that places private profits over public access. The Resort has a long history of very serious unpermitted development and violations of prior CDP special conditions—since at least 2016, if not earlier. This includes erecting fences, expanding restaurant/dining/event spaces in public access areas, and removing public parking (e.g., Eco Alley, event tents, Sunset Pavilion, Sunset Terrace, pier extending into bay, etc.). (See NOV, pp. 4-6, 8-9.) For example, five-foot and ten-foot public pathways and public access signage were never installed per special conditions attached to these

¹ Please note that pages cited herein are either to the page’s stated pagination (referenced herein as “**p. ##**”) or the page’s location in the hyperlinked PDF document (referenced herein as “**PDF p. ##**”).

² <https://www.dropbox.com/s/eshbert763jvyym/Th16b-2-2023-report.pdf?dl=0>.

CDPs. The Resort even constructed the Barefoot Bar and Dining Room inconsistent with plans approved by the Commission that obstructed the five-foot public pathway. (NOV, pp. 11-13.) These unpermitted improvements are directly inconsistent with, and flagrant violations of Coastal Act Sections 30106 as well as Special Conditions No. 2 and 3 attached to the Resort's CDPs issued in 1978 and 1999 (i.e., CDP Nos. F7293 & 6-99-117. (Id.) Also instructive, no CDP was ever secured by the Resort for the construction of Eco Alley, including large event tents.

This unpermitted development and extensive Coastal Act violations directly furthered the Resort's profits interest at the expense of public access. This is a clear pattern and practice that the Resort is willing to accept the benefits of expansion under a CDP while ignoring its obligations to maintain public access per Special Conditions. Also telling is that the Resort has not cured these violations since 2016 but only now seeks to resolve its 2017 Enforcement Action years later in conjunction with another CDP to expand its development. This practice serves as a bad precedent for the Commission that incentivizes other coastal property owners to violate the Act and evade Commission and then seek after-the-fact forgiveness only when they seek to get further expansion approvals. The Commission should reject the CDP and first resolve the Enforcement Action.

Last, we are concerned that the proposed Special Conditions cannot be relied upon when Resort has a track record of ignoring them. Here, staff recommends several Special Conditions to ensure the Project will be built per the CCA and staff recommendations. (See Staff Report, pp. 3-4.) For example, final plans are to be submitted to Commission staff involving building plans and public access plans (i.e., Special Conditions No. 1 and 12). (Staff Report, p. 4.) However, as discussed above, the Resort has demonstrated it will ignore Special Conditions attached to CDPs, such as failing to construct public pathways and even constructing dining areas in violation of plans approved by the Commission. (See NOV, pp. 11-13.) As a result, the Commission cannot rely on Special Conditions for the proposed CDP when proven ineffective in the past. The solution is to require the Resort to cure its past violations before granting yet another CDP to expand operations.

Second, the Resort should seek approval of the City of San Diego lease amendment prior to the Commission taking any action on the CDP. Here, staff is recommending Special Condition 10, which would purportedly require the Resort to seek an amendment to its lease with the City of San Diego ("City"). (Staff Report, p. 4.) However, in addition to having a history of ignoring special conditions (discussed supra), the prior unpermitted development seems to violate its lease with the City (see NOV, p. 13), such as sections 6.4 (i.e., Improvements/Alterations) and 6.12 (i.e., Development Plan) of the lease.³ Before the Commission takes action on the CDP to permit further expansion of the Resort, it should insist that the Resort engages with the City to rectify past unpermitted development. This is important because the City should consider substantial compliance to a proper baseline (i.e., what was approved)—not what currently exists due to unpermitted development by the Resort (i.e., in violation of the Act and lease).

Third, low-cost accommodation conditions need to be reworked. The condition for four low-cost trailers is insufficient to satisfy the low-cost accommodations under the Coastal Act Section 30213, which is insignificant in light of the current 460-plus hotel rooms that can go as high as \$2,000 or even \$3,000 per night. (See Staff Report, p. 40.) Here, staff recommends only four of the new 16 rooms (trailers actually) be made available as lower-cost. (Staff Report, pp. 4, 20.) However, this is far too narrow a view of low-cost accommodation obligations under the Act. As well-documented

³ https://www.dropbox.com/s/hlsc1ysyhzgj94r/LHO%20Mission%20Bay_LEGALDOCUMENTS_AGREEMENTS.pdf?dl=0.

by staff, the entire Resort includes dozens of acres of guest rooms, a convention center, and other private space events that obscure the coast (see Staff Report, p. 34-35) – which has been expanded by the unpermitted development and expanded operations of the Resort since at least 2016 (see NOV, pp. 4-11.) Collectively, all this impacts public access, which the Commission may consider cumulatively. Yet, the Staff Report does not address the question of cumulative low-cost accommodation under the Act. Far more than a mere four lower-cost trailers are required. The entire low-cost accommodation program at the entire Resort should be disclosed and reviewed before this CDP is processed.

Fourth, the \$250,000 donation to an education program over five years for the extensive Act violations here pales in comparison to the Resort's ill-gotten gains and potential civil penalties exceeding \$20 million over five years. (See NOV, p. 13.) Here, staff suggests a \$250,000 over a five-year period for an education program would suffice to resolve past violations. (Staff Report, pp. 27, 31.) This low sum seems woefully inadequate in light of the persistent violations since 2016 and the potential of \$11,250 civil penalties per day for each violation per Coastal Act Section 30821 (equivalent to roughly \$20.5 mil over five years). (NOV, p. 15.) Nowhere in the Staff Report or NOV are the additional profits monetized that the Resort has pocketed by its unpermitted development—such as fencing off and removing public picnic areas for “private events.” (NOV, pp. 3,46.) The proposed CDP in fact would further expand the Resort’s capabilities to promote private events, such as a new 15,000-square-foot tent pavilion. (Staff Report, p. 3.) Hence, the \$250,000 appears way too low.

Fifth, the Resort has no vested right in unpermitted development or even CDPs where it has failed to abide by conditions.⁴ Nor is the Commission estopped from taking appropriate action to enforce CDP requirements, which serve the Coastal Act’s vital public interest.⁵ The Commission can review the current CDP as “as though the unpermitted development has not already occurred” in order to avoid condoning unpermitted development. (*LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 796-797 [emphasis added].) The Commission should also consider whether the proposed renovations (i.e., Project), in conjunction with both permitted and unpermitted development, have a cumulative impact on coastal resources requiring more extensive mitigation.⁶

⁴ See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791-798 (initial construction without a permit did not give the developer a vested right to complete the work); *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1348-1350 (existing permits for certain development did not create vested right to proceed with additional, unpermitted development); *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 818-824 (use permit issued in violation of zoning ordinance did not create vested right to maintain the permitted use).

⁵ See *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1377 (rejecting estoppel defense, the court noted “estopping the Commission because of its prior regulatory inaction would nullify otherwise valid restrictions adopted for the public benefit for as long as the [owners] own the property.”).

⁶ See e.g., *Remmenga v. Cal. Coastal Com* (1985) 163 Cal.App.3d 623, 628 (“It follows that even if an individual project does not create an immediate need for a compensating accessway, one may be required of it if its effect together with the cumulative impact of similar projects would in the future create or increase the need for a system of such compensating accessways.” Emphasis added); *Whaler’s Vill. Club v. Cal. Coastal Com* (1985) 173 Cal.App.3d 240, 261 (“construction of this revetment and others up and down the coast ... increase the sand loss on beaches with a tendency to recede constitutes a cumulative adverse impact and places a burden on public access to and along state tide and submerged lands for which corresponding compensation by means of public access is reasonable.” Emphasis original).

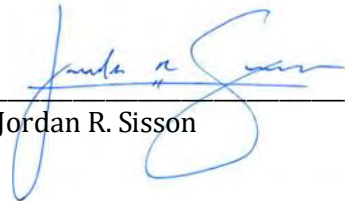
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In sum, the Resort has a long history of ignoring conditions and CDP requirements. The Commission set a dangerous precedent of rewarding bad actors who violate the Act by granting the CDP to allow even more expansion before first addressing all Enforcement Action(s). Local 30 respectfully requests that the Commission deny the CDP and direct staff to first take all appropriate action to cure past violations, including all potential civil remedies, and send the lease back to the City of San Diego. Then, a CDP with higher penalties and much more analysis of a Resort-wide low-cost affordable accommodation program can be brought before the Commission.

Thank you for your consideration of these comments. We ask that it is placed in the administrative file for this Project.

Sincerely,

LAW OFFICE OF GIDEON KRACOV



Jordan R. Sisson

ATTACHMENT

Exhibit A: Notice of Violation dated January 27, 2017

EXHIBIT A

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z 7011 2970 0000 5393 9189)**

January 27, 2017

San Diego Paradise Point Resort
Attn: Mr. McClennan
1404 Vacation Road
San Diego, CA 92109

Violation File Number: V-6-16-0115

Property Location: 1404 Vacation Road
Mission Bay; County of San Diego
APN: 760-038-03

Violations¹: 1) Impeding coastal access, including through privatization of public access amenities; 2) reconstruction of a pier and construction of other unpermitted structures; and 3) additional non-compliance with Coastal Development Permit ("CDP") Nos. 6-99-117 and F7293, specifically, Special Conditions Nos. 2 & 3 of F7293, which required, cumulatively, provisions of public access walkways and signage, which have not been provided as required.

Dear Mr. McLennan:

Thank you for taking time to meet with Commission staff on October 27, 2016. As we discussed during our meeting, we have identified several instances of unpermitted development on the leasehold, some of which has adversely impacted public access to the shoreline adjacent to the leasehold. As we emphasized during our meeting, public access has historically been provided for members of the public within the leasehold to reach the shoreline. Public access is a major concern for the Commission, thus we look forward to working with you to resolve any impediments to public access swiftly. Since

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

you had expressed a willingness to work with staff to resolve these issues, the purpose of this letter is to provide further details regarding the history of public access on this site, the **unpermitted development observed by Commission staff**, and the applicable sections of the Coastal Act as applied to that **unpermitted development**, and in addition, to identify the steps for you to take to resolve these issues in collaboration with the Commission. Furthermore, this letter also serves as an expression of our intent to work with you to resolve these issues promptly and amicably.

For your information, the California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the coast.

Development History and Public Access Background

The area known as Paradise Point encompasses the 51.57-acre bayfront site on West Vacation Isle in Mission Bay Park. When the Coastal Act was enacted in 1976, the resort at Paradise Point was known as Vacation Village Hotel and was later succeeded by San Diego Princess Resort in the early 1990s. The resorts, including Paradise Point, have applied for and been granted several applications for CDPs since 1976 resulting in a long permit history related to the Paradise Point area.

The tidelands of Vacation Isle are part of the public trust and thus covered by the public trust doctrine, which preserves the public's right to use navigable waters for a variety of purposes including general recreational purposes. As such, any development in the tidelands or on adjacent property that could affect the tidelands should protect and enhance public access. Development that imposes constraints on public access or removes existing access would be contrary to the public trust doctrine.

The isle currently provides public parking at the North Cove and South Cove parking lots and throughout the resort. The tidelands at the isle provide opportunities for recreational activities such as fishing, swimming, and picnicking, etc.

The resort is located in an area zoned as "Commercial-oriented Recreation," pursuant to the Mission Bay Master Plan, which is used as guidance for Commission permit and planning decisions. The Mission Bay Master Plan is not part of a certified land use plan; thus, the Coastal Act is still the standard of review.

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Permit History

The Commission has consistently acted to protect public access to the coast at Vacation Isle through past coastal development permits, including the permits described below. Although the resort at Paradise Point is privately operated, because the shoreline is not part of the leasehold and thus remains public property, permits for the resort have always required the public to have access to the shoreline, i.e. the tidelands, adjacent to the leasehold free of any physical barriers.

In addition, when obtaining a CDP, the leaseholder acknowledges that members of the public will utilize the resort's facilities and thus park on-site to access restaurants, shops, and, for a fee, the boat marina. Leaseholders in the past have provided a surplus of parking spots in the south-west section of the resort where the general public would park to access the resort's facilities.

CDP No. F7293, approved in November 13, 1978, allowed for a prior resort, Vacation Village Hotel, to expand the resort at Paradise Point with the addition of guest units, tennis courts, a salt water lagoon, etc. Also, the newly authorized development included construction of 235 new parking spaces to serve the new facilities, but which were also open to the general public pursuant to the terms and conditions of CDP No. F7293.

Approval of the new development was conditioned upon enhancement of public access to Paradise Point. For instance, Special Conditions No. 2 & 3 ensure public access to the shoreline would not be inhibited by the approved development.

CDP No. 6-90-135, approved in August 1990, and **No. 6-90-135-A1** approved in March 1991, authorized construction of new guestrooms, additional service areas and meetings rooms for the convention center on the upland portion of the leasehold. In August 1997, **CDP No. 6-97-64** was approved for construction of a 53 slip recreational boat marina and construction of support facilities.

In August 1999, **CDP No. 6-99-117** was approved for renovations and expansions of existing structures such as the café, fitness center, and presidential suites to name a few, and issued to San Diego Paradise Point Resort. The applicant also proposed some parking and landscape improvements, which were approved. The findings for **CDP No. 6-99-117** stated that the new development, authorized by the CDP, would "not displace any existing lower cost visitor serving recreational facilities."

To better accommodate for public access in the south-west section of the resort, San Paradise Point Resort, in CDP 6-99-117, proposed a Public Area Repavement Plan that would provide public access from the South Cove parking lot, around the convention center, and connect with a mandatory 5' public access way in front of Barefoot Bar & Grill. This same Public Area Repavement Plan was integrated into your percentage lease with the City of San Diego as the Parcel Map (Section 9.2) and Attachment A for the General Development Plan (Section 9.3).

Violations

A number of the violations described herein came to staff's attention while staff was reviewing CDP application No. 6-16-0297. On April 1, 2016, the San Diego District office received CDP application No. 6-16-0297 from San Diego Paradise Point Resort for the construction of a new 48 square foot guard booth and new barrier gates, among other things. In a letter addressed to San Diego Paradise Point Resorts' representatives dated April 28, 2016, Commission staff explained our concerns regarding the proposed booth and gates, stating that these structures would discourage public access to the shoreline adjacent to the resort. Application No. 6-16-0297 ultimately was withdrawn.

As part of our ongoing monitoring of public access availability at the site in preparation for receiving CDP applications for the site, Commission staff conducted a site visit on June 9, 2015. Commission staff observed that a new fence had been installed on the southern end of the leasehold, adjacent to Sunset Terrace, running the perimeter of the area referred to as "Eco Alley". Commission staff also confirmed the placement of additional new structures such as industrial sized recycling bins and cargo containers associated with "Eco Alley," two new large white event tents, and the conversion of Sunset Lawn to a new paved event space renamed as Sunset Terrace.

Additionally, most of the newly constructed development was placed on a parking lot. Displacement of the parking opportunities in this lot raises significant concerns regarding the project proposed through application 6-16-0297, since, according to the recently submitted application, the resort was experiencing a shortage of parking supply thus prompting the request to implement a paid parking program at the Paradise Point.

After an in depth investigation of the permit history associated with the subject property, staff has confirmed non-compliance with Special Conditions No. 2 and 3 in the previously issued F7239 permit and conditions of CDP No. 6-99-117 and that, in addition, various unpermitted development has occurred.

Turning first to the issue of the unpermitted development, which is described in more detail below, Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP, in addition to any other permit required by law. "Development" is broadly defined by Section 30106 of the Coastal Act as the following:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest

of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations

Staff has reviewed our records and determined that no CDP was obtained for construction of “Eco Alley,” Sunset Pavilion, and Sunset Terrace; installation of the fence; or expansion of the seating area seaward of Tidal. Please note that any development undertaken without the required CDP constitutes a violation of the Coastal Act.

Unpermitted Construction of Eco Alley, Sunset Pavilion, Sunset Terrace, and Outdoor Seating Seaward of Tidal

On June 9, 2015, Commission staff observed several large cargo containers and bins where a parking lot previously existed. The signage nearby labeled the area as “Eco Alley.” In addition to “Eco Alley,” staff observed two large event tents which we would later discover were designated as the north and south portions of Sunset Pavilion. West of Sunset Pavilion, Staff discovered that Sunset Lawn was replaced with Sunset Terrace, in other words, a patio had been constructed in place of the lawn. Lastly, staff discovered construction of an outdoor seating area seaward of Tidal restaurant.

The construction of “Eco Alley” involved the placement of structures such as a golf cart charging station and large recycling bins. Construction of Sunset Pavilion involved placement of structures, such as the event tents and air conditioning units. Construction of Sunset Terrace required the demolition of Sunset Lawn to construct the terrace and placement of a patio. Lastly, expansion of the seating area seaward of Tidal involved placement of artificial turf, chairs, tables, and palm trees on a walkway identified on the plans approved in conjunction with CDP No. F7293. Placement of these structures constitutes “development” as defined by the Coastal Act.



Eco Alley Sign



Sunset Terrace



Outdoor Seating Seaward of Tidal

Removal of Parking Spaces in the South-western Parking Lot

In addition to being unpermitted, placement of structures in the south-western parking lot to construct “Eco Alley” and the Sunset Pavilion also resulted in the loss of parking spaces, in non-compliance with the terms and conditions of Coastal Development Permit No. 6-99-117. Coastal Development Permit No. 6-99-117 authorized the repavement and reconfiguration of the parking lot with the acknowledgement of the applicant and the Commission that there would be no change to the number of spaces

provided. For instance, as part of your application for Coastal Development Permit No. 6-99-117, you submitted a detailed parking matrix based on the Mission Bay Park Master Plan parking ratios. That matrix demonstrated that prior to the development authorized through Coastal Development Permit No. 6-99-117, the site had 1,277 total parking spots, and after the development took place the site's new parking matrix was still supposed to provide 1,277 parking spots. Of those 1,277 parking spots, you state that 993 spaces were required to comply with the parking ratios set forth in the Mission Bay Park Master Plan. The additional 284 spaces were surplus to the resort's demand. You also mentioned at this time there was no apparent parking problem at the facility.

According to site plans³ submitted in conjunction with CDP No. 6-90-135 and CDP No. 6-04-84, the southwestern parking lot used for "Eco Alley" and Sunset Pavilion contained between 60-78 parking spots prior to their elimination by the unpermitted development at issue. This is concerning to Commission staff because in your recent application for a Coastal Development Permit No. 6-16-0297, you asserted that there is a shortage of parking due to the increase of members of the public parking onsite. As a result, you proposed to implement a paid parking program to address the parking issue. However, your removal of 60-78 parking spaces to accommodate "Eco Alley" and Sunset Pavilion suggests that the parking situation, to the extent that there is a shortage of parking, if any, is self-created.

In addition to reducing available parking spaces, the construction and operation of Sunset Pavilion has also increased parking demand. According to the Meeting Facility Overview, found via your website, Sunset Pavilion encompasses 14,874 square feet of space. Applying the parking ratios for meeting or conference facilities from the Mission Bay Park Master Plan, which Commission staff would do in reviewing a proposal to construct Sunset Pavilion, Sunset Pavilion would require 1 parking spot for every 200 square feet of space. In short, Sunset Pavilion alone would require an additional 74 parking spaces in order for you to comply with Mission Bay Park Master Plan. Sunset Terrace, another unpermitted development, is 4,000 square feet, and according to the Mission Bay Park Master Plan, would require 20 spaces. Considering the parking spaces lost for Sunset Pavilion and "Eco Valley," approximately 60-78 parking spots, and the parking required according to the Mission Bay Park Master Plan for Sunset Pavilion and Sunset Terrace, 74 parking spots plus 20 parking spots, you have reduced onsite parking at Paradise Point that is available to the public by a total of 154-172 parking spaces.

Unpermitted Placement of Fence

Commission staff has confirmed the installation of a new fence that wraps around the perimeter of "Eco Alley". The new fence replaced an old, rusted fence near the pier.

³ See for instance the site plans attached to the application for Coastal Development Permit No. 6-04-084, which was withdrawn, and to Coastal Development Permit No. 6-90-135.



Previous Fence along Riprap



Previous Fence looking from South Cove Public Parking Lot

The old fence, near the pier, was in a dilapidated state and some of the supporting poles were falling over onto the riprap. Staff also discovered that in addition to replacing the old fence, the resort extended the fence to include the addition of a gate to block traffic from entering the resort from the road leading to the South Cove public parking lot.



New Fence behind Sunset Pavilion

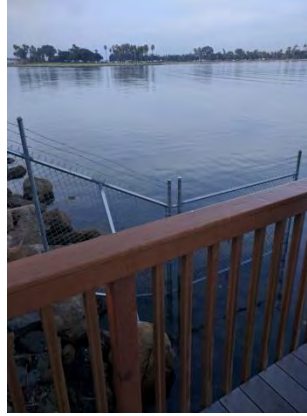


New Fence Gate Adjacent to Eco Alley

The fence was further extended down the riprap by the pier and into the water. Supporting poles were mounted into the riprap to attach the fence to the shoreline.



New Fence Parallel to Renovated Pier



*New Fence Extending into
the Bay*



*New Fence Pole Installed in
Riprap*

This fence is not only unpermitted, but it is also impedes public access to shoreline. The permit history for this site clearly states that the site is not fenced, or to be fenced, and that the public may use and walk along the shoreline of the resort free of any physical barriers. For instance, the proposed Public Area Repavement Plan, which appears in both CDP No. 6-99-117 and in Sections 9.2 - 9.3 of your lease, requires public access around the convention center to connect with the 5' public access way in front of Barefoot Bar & Grill. Additionally, CDP No. 6-99-117 and CDP No. 6-04-84 state the following:

[T]he existing resort facilities occupy a large portion of the western half of Vacation Isle, but the site is not fenced and most of the sandy beach is outside of the private lease area. The public can freely use the swimming beaches around the perimeter of the hotel site, and can walk along the shoreline areas within the leasehold.

The fence blocks public access from the South Cove parking lot to shoreline at the resort.

Unpermitted Renovation of Pier

Commission staff has observed the renovation of the pier during site visits. On June 9, 2015, staff observed that the pier's boards were weathered; the pier at this time did not have any guardrails.



Previous Pier



Additional View of Previous Pier from South Cove

On September 15, 2016, staff conducted another site visit and discovered that the pier had been renovated with new boards, and guardrails had been installed along the length of the entire pier.



Renovated Pier



Renovated Pier with Fence Merging into Pier

Renovation of the pier is “development” according the Coastal Act that requires a CDP. Moreover, staff is also concerned about the shading effects of the pier on the underlying eelgrass. In preparation for the construction of a 53 slip boat marina⁴ (see CDP No. 6-97-64), the lessee at the time, San Diego Princess Resort, adhered to an eelgrass mitigation plan because of the Commission’s concerns that the boat marina would have adverse effects on the eelgrass lining the bay; loss of eelgrass can result from shading impacts. Eelgrass is a valuable marine resource and key food source for aquatic species and certain shorebirds. Section 30230 of the Coastal Act states “Marine resources shall be maintained . . . Uses of the marine environmental shall be carried out in a manner that will . . . maintain healthy populations of all species of marine organisms. . . .”

⁴ Please refer to CDP. No. 6-97-64



*Pier Shaded Bed of
Eelgrass*



*Additional Image of Shaded
Eelgrass*

It is apparent from comparing photographs from a succession of staff visits subsequent to the renovation of the pier, that eelgrass around the pier may have been adversely affected, including as a result of shading. During one site visit, staff observed pieces of dead eelgrass floating on the water and washed up on the riprap. These impacts are potentially the result of, among other causes, the pier renovation, installation of the fence into water, or direct removal.



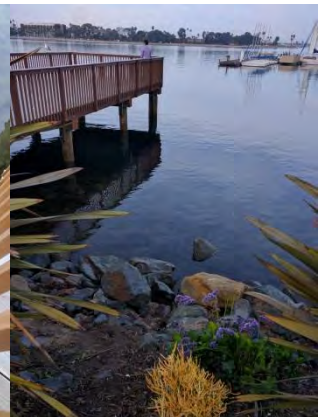
Cut Floating Eelgrass



Additional Cut Eelgrass



Cut Eelgrass on Riprap



Receding Eelgrass Bed

Unauthorized Expansion of Barefoot Bar & Grill and Relocation of Entertainment Stage

Staff observed on a recent site visit that the Barefoot Bar & Grill's dining area has been expanded, which resulted in the relocation of an entertainment stage that ultimately cut off a mandatory 5' public access way required by permit F7293. The expansion of the Barefoot Bar & Grill is "development" according to the Coastal Act because the outdoor seating includes placement of solid materials and structures and increases the footprint of the restaurant.

Thus, the expansion requires a new CDP. However, even more concerning here is the impediment to the mandatory 5' public access way caused by the relocation of the entertainment stage to make room for the outdoor dining area. As a result, public

access to the shoreline is impaired, which is a violation of several public access provisions of the Coastal Act.

Permit Non-Compliance

Now to address non-compliance with the Special Conditions of the CDPs. Staff has determined that non-compliance with terms and conditions of permit F7293 and, in addition, as noted above, CDP No. 6-99-117, has occurred on the site. CDP No. F7293 was issued for a major expansion of the site, including 9.82 acres of proposed development. To address concerns of potential interference with public access to the shoreline, the Commission conditioned permit F7293 to include Special Condition No. 2 and 3, which states the following:

2. To ensure that the proposed restaurant will not reduce access to the shoreline, the applicant shall construct a minimum 5' wide walkway from the service road north of the convention building to the Barefoot Bar Cocktail area, as generally indicated on Attachment "A." The walkway shall be designed and maintained so that public access is available to the boat dock and shoreline areas north of the proposed restaurant.

A final plan of the required walkway shall be submitted to, reviewed and determined adequate in writing, by the Executive Director prior to the issuance of the permit.

3. That the applicant shall provide a minimum 10' wide public walkway across the landscaped area between the beach and the adjacent access road north of the proposed expanded unit #103, also as generally indicated on Attachment "A." A sign shall be located at approximately position "S" shown on Attachment "A" and shall be clearly visible from the parking area. The specific wording on the sign shall be approved by the Executive Director, but is intended to direct the general public to this accessway. In addition, the applicant shall paint and maintain a continuous colored line (pedestrian directional line) on the paved road from the sign to the walkway required by this condition, and the sign shall give reference to this line. Detailed plans showing the final configuration of the walk-way, the proposed access sign, and directional line shall be submitted to, be reviewed and determined adequate, in writing, by the Executive Director prior to the issuance of the permit.

Vacation Village, a previous lessee, sent the Commission a letter demonstrating its intent to comply with both Special Condition No. 2 and 3. Specifically, the letter stated the following:

The purpose of this letter is to acknowledge receipt of the Special Condition required in order for our permit to be released and to advise you of the following compliance with the Special Conditions:

[...]

2. To ensure that the proposed restaurant will not reduce access to the shoreline, the applicant will construct a minimum 5' wide walkway from the service road north of the convention building to the Barefoot Bar Cocktail area. The walkway will be designated and maintained so that public access is available to the boat dock and shoreline areas north of the proposed restaurant. A final plan of the required walkway has been previously submitted to you.

3. The applicant will provide a minimum 10' wide walkway across the landscaped area between the beach and adjacent access road north of the proposed expanded unit #103. A sign will be located at approximately position "S" shown on Attachment "A" and will be clearly visible from the parking area. The specific wording on the sign will be as follows:

ACCESS TO PUBLIC BEACH

- Follow Blue Line
- Pedestrian and Bicycle Only
- Motor Vehicles Prohibited

REGISTERED HOTEL GUESTS

- Automobile Traffic Restricted
To Registered Hotel Guest's
Vehicles Only
- Registered Hotel Guests Must
Park in Assigned Space
- Unauthorized Vehicles Subject
To Removal

The applicant will paint and maintain a continuous blue colored (pedestrian directional line) on the paved road from the sign to the walkway required by this condition, and the sign will give reference to this line. Detailed plans showing the final configuration of the walkway, the proposed access sign, and directional line has been previously submitted to you.

Please note that the terms and conditions of previously issued permits run with the land. This means that as the current lessee of the site, development on the site that you undertake is subject to any conditions or terms set forth in previous permits for the site.

During staff's visit to Paradise Point on October 27, 2016, we observed that the mandatory minimum 5' wide walkway, the minimum 10' wide public walkway, and the public access signage had not been installed, and staff observed that in place of the minimum 5' wide walkway, Barefoot Bar and Grill expanded its dining area over the area designated for the 5' walkway. Floor plans, submitted and approved by the Commission for the Barefoot Bar and Dining Room⁵ as part of the amended F7293 permit, depict the Barefoot Bar dining area as an indoor area that would attach to the existing Barefoot Bar structure. The expansion of the dining area is non-complaint with the plans approved by the Commission. The plans also depict the approved location of the 5' and 10' walkways. As noted above, the 5' walkway has been obstructed by

⁵ See Barefoot Bar and Dining Room Floor Plan drafted by architecture firm Mosher/Drew/Watson Associates.

seating for the Barefoot bar and Grill and the 10' walkway has not been provided as required.

Please note that non-compliance with the conditions of a previously issued Coastal Development Permit, which is the case here, constitutes a violation of the Coastal Act.

Public Access Violation

Preserving the public's right of access is a high priority for the Coastal Commission. Public access provisions of the Coastal Act, such as Sections 30210 and 30211, require, respectively, that "maximum access" be provided and that "[d]evelopment shall not interfere with the public's right of access to the sea."

All previously issued permits at the site were conditionally approved subject to conditions necessary to ensure compliance with public access provisions of the Coastal Act. For instance, Permit F7293, through special conditions, required the 5', 10' public pathways, and public access signage accompanied by a blue directional line as a visual aid for the public seeking to use these pathways. CDP No. 6-99-117 required a "Public Area Repavement & Landscape Enhancement" plan over the south-west portion of the resort. These two permits had significant public access components and a violation of the terms and conditions of these provisions require immediate remedial action. As described above, development has occurred on the site that interferes with public access to the coast and is inconsistent with conditions of CDPs necessary to preserve public access, in violation of the public access provisions of the Coastal Act. This development includes:

1. Removal of parking spaces in the south-western parking lot;
2. Unpermitted placement of fence that restricts access; and
3. Failure to provide required public walkways and signage.

Please be advised that in cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation. Please consider this letter to be notification of our intent to pursue administrative penalties pursuant to Section 30821 if we cannot resolve this matter quickly.

Lease Non-compliance

Finally, it is our understanding that none of the development listed above is identified in the General Development Plan in your lease of public land. Section 6.12 of your percentage lease states the following:

Development Plan. LESSEE agrees to develop the leased premises substantially in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk . . . The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified

without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. . . . [F]ailure by LESSEE to substantially comply with the General Development Plan as required herein, to the reasonable satisfaction of the City Manager, shall constitute a major default and subject this lease to termination by the City. . . .

Section 6.12 of your percentage lease requires you to have changes to the General Development Plan authorized by the City Manager or in some case approved by the City Council. Please note that substantial non-compliance with Section 6.12 of your percentage lease could subject your lease to termination by the city.

Resolution

In some cases, violations involving unpermitted development and development undertaken in non-compliance with an approved coastal development permit may be resolved administratively through removal of the unpermitted development and compliance with the terms and conditions of the approved permit, or through obtaining a CDP to authorize the unpermitted development after-the-fact. However, please note that certain unpermitted development activities have been undertaken at the site in non-compliance with the conditions of previously issued CDPs, as detailed above. Pursuant to the Commission's regulations, California Code of Regulations Section 13166, staff must reject an application for an amendment to a permit that would lessen the intended effect of a previously issued CDP. For this reason, staff is requesting that you contact staff to discuss resolution of the development activities that have been undertaken in non-compliance with previously issued CDPs. Therefore, in order to resolve this matter administratively, you must do the following:

1. remove the unpermitted fence;
2. restore access to the 5' and 10' public walkways described herein, including by installing any required signage;
3. install the required public access signage and directional aids described herein;
4. remove the seating seaward of Tidal and restore the approved walkway in that location; and
5. submit a CDP application for staff review of the pier renovation and, due to the extensive work necessary to address these matters, contact staff to discuss resolution of the issues related to construction of Eco Alley, Sunset Terrace, and Sunset Pavilion.

Please undertake the actions described in Nos. 1-4, listed above, by no later than [60 days from the date of this letter]; please contact me by **February 19, 2017**, to confirm your intention to resolve this matter quickly and to discuss No. 5.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act.

As stated above, in cases involving violation(s) of the public access provisions of the Coastal Act, **Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.**

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If a notice of violation is ultimately recorded against the property, it will serve as notice of the violation to all successors in interest in the property⁶.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 619-767-2370.

Sincerely,

Dennis Davis
San Diego Enforcement

**cc: Deborah Lee, San Diego District Manager, CCC
Gabe Buhr, LCP Program Manager, CCC
Diana Lilly, District Regulatory Supervisor, CCC
Andrew Willis, Southern California Enforcement Supervisor, CCC
Alex Helperin, Senior Staff Counsel, CCC
Lisa Haage, Chief of Enforcement, CCC**

**Enclosures: Permit No. F7293
Plans for Barefoot Bar and Grill
Lease Parcel Map (Section 9.2): Public Area Repavement Plan**

⁶ Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will share liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.

**Lease General Development Plan Attachment A (Section 9.3): Public Area
Repavement Plan**

CDP No. 6-99-117 Exhibit No. 2: Public Area Repavement Plan

CDP No. 6-99-117 Detailed Parking Matrix

CDP No. 6-90-135 and CDP No. 6-04-84 Site Plans: SW Parking Lot