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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-22-0127

Applicant: LHO Mission Bay Hotel, LP

Agent: Alicia Calhoon

Location: 1404 Vacation Rd, Mission Bay Park, San Diego, San Diego County (APN: 760-038-03-00)

Project Description: Remodel and redevelop various office, retail, dining, and guest room structures, construct 8 new guest rooms, construct new public access improvements and amenities, including several public pedestrian improvements and access signage and landscape improvements, approximately 3,300 cubic yards of grading across the 52-acre Paradise Point Resort leasehold, after-the-fact approval of renovation of an existing pier, and address alleged Coastal Act violations by constructing public restrooms and comfort station, providing \$250,000 worth of value over 5 years to a science education and family vacation program for underserved students, and implementing a marine debris reduction plan.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Paradise Point began operations in 1962 as Vacation Village, and over the years has grown to encompass approximately 52 acres of Vacation Island in Mission Bay Park in

the City of San Diego, with approximately 462 guest rooms, 60,033 square feet of meeting space, 18,374 square feet of restaurant space, 12,477 square feet of hotel operation space, 2,331 square feet of retail space, and various guest athletic and pool facilities. The leasehold is bounded by approximately 4,200 feet of public beach and bay water on its north and west, public park space to the south, and Ingraham Street to the east. The applicant, LHO Mission Bay Hotel, LP, proposes to conduct targeted remodels, redevelopment, and new construction across the 52-acre leasehold in order to rebrand it as Jimmy Buffett's Margaritaville Resort.

While the proposed development will reduce the amount of hotel operation and retail space, it will marginally increase the amount of convention meeting space and substantially increase the amount of restaurant space such that the new parking requirement will be 1,008 parking spaces. Paradise Point proposes to add new public parking spaces and redesignate existing parking spaces further within the leasehold and closer to the beach as public parking. The applicant also proposes to add 104 parking spaces to raise the total parking inventory to 1,015, exceeding the new parking requirement.

While Paradise Point will be adding to the public parking inventory on the premises, the presence of dozens of acres containing hundreds of guest rooms can deter the public from walking across it due to the appearance of exclusivity or obscuring of coastal beaches. To address this, Paradise Point is proposing to implement a significant public access plan consisting of several pedestrian improvements and access signage to make the property more inviting. The public access plan consists of identifying the various pedestrian paths through the leasehold to help the public reach the shoreline. Additionally, Paradise Point will reconstruct the severely degraded pedestrian walkway around the North Cove beach area to improve pedestrian access, as well as provide an additional public access path along a waterfront balcony on the west side of the convention center.

Paradise Point is considered a higher-cost hotel; in the off season, rooms can range from \$284 per night for a guest room up to \$1,650 per night for a presidential suite, and in the summer can range from \$424 per night for a guest room up to \$3,145 per night for the presidential suite. In addition, Paradise Point charges a daily \$39 resort fee for use of internet, phone, pools, and athletic/recreational equipment.

The applicant proposes to demolish six tennis courts on the east side of the leasehold to replace them with eight new trailer-type guest accommodations, a new playground, and 97 public parking spaces. On the west side of the leasehold, two 4-room beachfront guest structures will be wholly or partially demolished and rebuilt in the same area. Thus, the project will result in sixteen new or redeveloped guest rooms.

While the eight guest rooms on the west side of the leasehold will be of the same character as the rest of the bungalows and suites, the eight trailers in the east represent a new type of "glamping" accommodation. As part of its proposal, Paradise Point will designate four of the new trailer accommodations, representing 25% of the 16 new rooms, as lower-cost accommodations. Paradise Point has agreed to work with the

Commission to craft an advertising program to publicize the availability of the lower-cost rooms to the public and when windows open to book those rooms. Additionally, because an overly restrictive cancellation policy can deter people from booking a room, Paradise Point is proposing a 48-hour minimum cancellation policy to give the public flexibility while ensuring sufficient time for a new member of the public to book the cancelled room.

The Paradise Point leasehold fronts approximately 4,200 feet of public beach and bay waters (which are not part of the leasehold except for the waters around its marina) along its western and northern boundaries. However, even with 4.1 feet of sea level rise and during a 100-year storm, the majority of the Paradise Point leasehold will be free of flooding, with flooding concentrated at the southernmost parking lot adjacent to the convention center where the applicant is proposing a 15,000 sq. ft. tent pavilion. Should flooding hazards become serious, the tent could be relocated or removed relatively easily.

No adverse visual resource impacts are expected since the majority of the work consists of remodeling existing structures, with the majority of the new structures being in the interior except for two new beachfront guest structures. None of the proposed development consists of multi-level structures, nor will any of the renovations result in the addition of upper stories. The two new beachfront guest rooms will be in the same location as the existing structures and retain their low-lying, one-story design.

Unpermitted development has occurred on the subject site, including privatization of and encroachment into public access areas and accessways that were required by conditions of previously issued CDPs, unpermitted renovation and improvement of an existing southern pier, and intensification of the use of the resort without authorization under the Coastal Act. More specifically, the public access violations included fencing off and paving over a grassy public picnic area for private events, removal of parking spaces available to the public, placement of a guard kiosk at the resort entrance, and encroachment into a CDP-required beach accessway. On January 27, 2017, Commission staff sent a Notice of Violation to the prior leaseholder. In 2018, the applicant took over the lease and began working with Commission enforcement staff on a plan to resolve and mitigate for the violations.

The applicant now proposes to remove the unpermitted development and to open all CDP-required public access areas and accessways. In addition, the applicant proposes to undertake both mitigation projects and a project in-lieu of an administrative penalty in order to fully resolve the violations of the Coastal Act. As mitigation for the violations, the applicant proposes to 1) provide new public restrooms/comfort station and associated public access improvements on the western side of the resort pursuant to **Special Condition No. 14**, and 2) implement a Marine Debris Reduction Plan for the resort pursuant to **Special Condition No. 13**. In order to address the Commission's ability to impose monetary penalties for these violations of the Coastal Act, and to otherwise fully resolve the violations at issue, the applicant is also proposing to plan and provide a science education and family vacation program for underserved students in coordination with a non-profit or governmental organization, and to provide \$250,000 of

value towards running the program over the course of five years. To ensure the applicant's proposal is effectively implemented, **Special Condition No. 15** requires participant eligibility criteria be followed and regular monitoring reports be submitted.

In the aggregate, Commission staff estimates that the total package of penalties and mitigation for the violations at issue greatly exceeds \$1 million. In particular, funding for construction of permanent public restrooms, and maintenance thereof in perpetuity, can be difficult to obtain along the coast and is a critical practical benefit to the public using the access improvements here. For example, the City of San Diego's recent replacement of aging, dilapidated public restrooms at North Cove, at the northeast corner of the resort, was budgeted for \$2.3 million, not including operation or maintenance. The applicant's proposal thus represents a very significant long-term funded commitment for an amenity in an area where public access would be greatly improved.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by this permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations specifically described therein.

To ensure that the proposed development is conducted in an approved manner that maximizes its public benefits and minimizes adverse impacts to public access, several special conditions are necessary. **Special Condition No. 1** requires the submittal of final project plans detailing the location and scope of all approved development, both to the resort and the public access amenities, to ensure they are performed as required by the Commission. **Special Condition No. 1** also requires the submittal of final landscaping plans that avoid the use of non-native plants and rodenticides, as well as a final lighting plan that limits light spillover into adjacent coastal waters, harming visual and habitat quality. **Special Condition Nos. 2 and 3** require the submittal of construction-stage Best Management Practices (BMP) plans and post-construction BMP plans, respectively, to ensure that runoff from the site is limited, captured, and infiltrated before it can enter coastal waters. **Special Condition No. 4** addresses the grading involved in the development by requiring that all excess spoils be deposited in a legal site outside the coastal zone. Due to Paradise Point being adjacent to a public beach and offering equipment rentals to its guests and the public, **Special Condition No. 5** prohibits the storage of beach equipment on the public beach and requires that equipment rentals from the resort be set up only when in use by the guest and removed once the use is completed. Because Paradise Point will be adding or redeveloping 16 new rooms, **Special Condition No. 6** requires that 25% of the new rooms be provided at a lower-cost rate proposed by the applicant and details the manner in which the rooms will be advertised and operated. **Special Condition No. 7** notifies the applicant that it agrees that all hotel facilities will be open to the general public and no fractional ownership or long-term occupancy will be offered, in order to protect the overnight accommodation character of the resort. As Paradise Point is located on land owned by the City of San Diego, **Special Condition No. 8** notifies the permittee that these permit conditions prevail in case of any conflicts with local requirements. Because the resort is located in the middle of Mission Bay Park, which used to be coastal waters and estuary,

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and is adjacent to bay waters, **Special Condition No. 9** gives notice that this permit does not grant any waiver to the public's right to public trust lands. **Special Condition No. 10** has the applicant assume the risk of developing a waterfront property and requires that they amend their lease with the City of San Diego to reflect the requirements of this permit. **Special Condition No. 11** prohibits the construction of shoreline protection to protect the development approved under this permit in case of future hazards. Additionally, because a substantial portion of this project constitutes public access improvements, **Special Condition No. 12** details the public access plan that must be implemented on the resort property as approved by this permit to ensure that it is designed and built in the manner that best promotes public access. As mitigation for the violations, **Special Condition No. 13** requires the implementation of a marine debris reduction program that will phase out single-use material and maximize recycling of waste, while **Special Condition No. 14** requires the applicant to build, provide, and maintain restrooms, a comfort station, and other associated amenities for the public at the western side of the resort. To resolve the Commission's monetary claims for the violations, **Special Condition No. 15** establishes the criteria and requirements for a science education family vacation program for underserved students. **Special Condition No. 16** requires the applicant, should there be a future sale or transfer of the lease, to obtain a letter from the buyer acknowledging the special conditions of this permit and that they run with the land.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0127, as conditioned. The motion is on page 8. The standard of review is Chapter 3 of the Coastal Act.

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- [Exhibit 6 – Unite Here Local 30 comment letter](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0127 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. **Expiration.** For development that has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Submittal of Final Plans.

a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and written approval of the Executive Director, a full-size set of the following final plans:

- i. Final construction plans that conform with the plans titled “Jimmy Buffett’s Margaritaville” from Rossi Architecture, submitted February 9, 2022, and modified in part through subsequent communications with the Commission. The plans shall identify the location of the four (4) lower-cost accommodations that the applicant proposes to rent to any member of the general public for \$112.19 per night every night of the year, inclusive of applicable resort fees. The rate may be increased annually consistent with the Consumer Price Index.
- ii. Final construction staging and storage plans that site all construction staging and storage and worker parking outside of public parking, beach area, and coastal waters.
- iii. Final landscaping plans prepared by a licensed landscape architect or a qualified resource specialist who shall certify in writing that that the final landscape plans are in conformance with the following requirements:
 - A. The plans shall include a planting schedule that indicates that the planting plan shall be implemented within sixty (60) days of completion of construction. Within ninety (90) days of completion of construction, the Permittee shall submit for the review and written approval of the Executive Director a landscaping implementation report, prepared by a licensed Landscape Architect or qualified resource specialist who certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The implementation report shall include photographic documentation of plant species and plant coverage.
 - B. All cut and fill slopes shall be stabilized with planting at the completion of final grading. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
 - C. Landscaping shall consist of primarily native drought tolerant plants, as listed by the California Native Plant Society. (See <http://www.cnps.org/cnps/grownative/lists.php>.) Some non-native drought tolerant non-invasive plants may be used within 30 feet of habitable structures and retained in the public park areas. Use of turf shall be minimized and irrigated only with micro-spray systems. No

plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize within any portion of the Paradise Point leasehold. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.

- D. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements. The Permittee shall submit for the review and written approval of the Executive Director two landscaping monitoring reports. The first monitoring report shall be submitted three years from the date of the issuance of the coastal development permit. The second report shall be submitted five years after permit issuance. The landscaping monitoring reports shall be prepared by a licensed Landscape Architect or qualified resource specialist that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring reports indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised or supplemental landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

- E. The use of rodenticides containing any anticoagulant compounds is prohibited.
- F. All irrigation systems shall limit water use to the maximum extent feasible. Use of reclaimed water for irrigation is encouraged. If permanent irrigation systems using potable water are included in the landscape plan, they shall use water conserving emitters (e.g., microspray) and drip irrigation only. Use of reclaimed water ("gray water" systems) and rainwater catchment systems are encouraged.

Other water conservation measures shall be considered, including use of weather-based irrigation controllers.

- iv. Final lighting plan for all night lighting impacts associated with the proposed development; the final lighting plan shall at a minimum include the following:
- A. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed three feet in height above finished grade, are shielded and directed downward, and are no greater than 2700 kelvin in color temperature, unless a greater number is authorized in writing by the Executive Director.
 - B. Security lighting attached to the structures shall use a control device or automatic switch system or equivalent functions to minimize lighting and is limited to 2700 kelvin in color temperature. The control system shall include controls that automatically extinguish all outdoor lighting when sufficient daylight is available.
 - C. The minimum necessary to light entry areas, driveways, and pedestrian paths at no more than 2700 kelvin color temperature. This lighting shall be shielded and directed downward.
 - D. No lighting around the perimeter of the site, no lighting directed onto beach or open water areas, and no lighting for aesthetic purposes is allowed.

b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Construction Pollution Prevention Plan.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the written approval of the Executive Director, a Construction Pollution Prevention Plan that demonstrates that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

a) General Construction-Phase Best Management Practices

- i. Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction and demolition activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater runoff, and minimize land disturbance and soil compaction, as applicable.

The plan shall specify the description and location of all BMPs to be implemented during construction and demolition.

- ii. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training), to protect coastal water quality.
- iii. All BMPs shall be maintained in a functional condition throughout the duration of the construction and demolition activities and shall be promptly removed when no longer required.
- iv. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways, and erosion control.
- v. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.

b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
- ii. Grading shall be avoided during the rainy season (from November 15th to April 15th), unless the Executive Director grants an exemption or extension.
- iii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- iv. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sediment from construction-related activities from entering coastal waters or the storm drain system.
- v. Tracking control BMPs (such as a stabilized construction entrance/exit, or street sweeping) shall be installed or implemented as needed to prevent vehicles leaving the construction area from tracking sediment off-site.
- vi. To minimize wildlife entanglement and plastic debris pollution, the use of temporary erosion and sediment control products that contain plastic netting

(such as fiber rolls, erosion control blankets, and mulch control netting) shall be prohibited. Heavy-duty silt fences reinforced by plastic or metal netting shall also be prohibited. Only products that contain natural-fiber netting, or that do not contain netting, shall be allowed.

- c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction and demolition activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
- i. **Stockpile and Debris Management**
 - A. All stockpiles, demolition and construction materials, debris, and waste shall be covered during rain events, protected from stormwater runoff using temporary perimeter barriers, and located a minimum of 50 feet from coastal waters and storm drain inlets.
 - B. Demolition or construction waste and debris shall be removed from work areas as soon as feasible, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters or the storm drain system. Adequate disposal facilities shall be provided for solid waste produced during demolition or construction activities.
 - C. Trash receptacles shall be provided on-site and covered during rain events, and all trash shall be disposed of in the proper trash and recycling receptacles by the end of every construction day.
 - D. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - ii. **Spill Prevention and Equipment Maintenance**
 - A. 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, drainage courses, or the storm drain system shall be prohibited.
 - B. 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.

- C. Construction vehicles 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.
- D. 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 area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets (unless these inlets are blocked to protect against fuel spills). 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.
- E. Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into storm drain inlets. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

iii. **Control of Non-Stormwater Runoff**

- A. Runoff control BMPs (such as a concrete washout facility or a dewatering tank) shall be installed or implemented to retain, infiltrate, or treat non-stormwater runoff resulting from demolition and construction activities.

d) **Additional BMPs for Construction Adjacent to Coastal Waters.** The permittee shall implement additional BMPs to protect coastal water quality during demolition and construction activities taking place adjacent to Mission Bay, if there is a potential for demolition or construction debris, materials, or chemicals to enter coastal waters, including:

- i. No construction equipment, debris, or materials shall be allowed on the beach or shoreline at any time.
- ii. Tarps or similar devices shall be used during demolition or construction activities adjacent to Mission Bay to capture and remove debris, oil, grease, rust, sawdust, fine particles, and spills to prevent these materials from entering coastal waters.
- iii. Vegetable oil-based hydraulic fluids shall be used in heavy equipment used adjacent to coastal waters, if feasible, for demolition and construction activities lasting one week or longer. Standard hydraulic fluids are based on petroleum products, and due to their high aquatic toxicity, they pose a risk if leaked or spilled in or near sensitive aquatic habitats. Vegetable oil-based

hydraulic fluids are formulated for rapid biodegradability and low aquatic toxicity, and do not bioaccumulate in aquatic organisms.

- iv. Biodiesel fuel shall be used in heavy equipment used adjacent to coastal waters, if feasible, for demolition and construction activities lasting one week or longer. Diesel fuel may leak or spill from heavy equipment and vehicles used in construction and demolition, and where these activities take place near coastal waters, diesel poses a risk of aquatic toxicity. Biodiesel is a non-petroleum alternative fuel that is less toxic than diesel fuel and can be used in construction equipment and vehicles operating near sensitive aquatic habitats.
- e) **Construction Site Map and Narrative Description.** The Construction Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
 - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, minimize the discharge of other pollutants resulting from construction and demolition activities, and control non-stormwater runoff. Include calculations that demonstrate proper sizing of BMPs, as applicable.

A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

3. Post Development Runoff Plan.

- a) **Water Quality and Hydrology Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Water Quality and Hydrology Plan that demonstrates that the project complies with the following requirements for post-development protection of coastal water quality:
- i. **Use a Low Impact Development Approach to Stormwater Management.** Use a Low Impact Development (LID) approach to stormwater management to replicate the site's pre-development hydrologic balance, by implementing site design strategies that reduce runoff, integrated with small-scale, distributed

Best Management Practices (BMPs) to retain stormwater runoff close to the source.

The project shall comply with the following LID Site Design strategies and BMPs:

- A. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
- B. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
- C. Maintain or enhance on-site infiltration of runoff to the greatest extent appropriate and feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; avoiding unnecessary soil compaction; amending soil if needed to enhance infiltration; directing runoff to permeable landscaped areas; and installing an infiltration BMP (e.g., rain garden or bioretention system).
- D. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in redevelopment. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
- E. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious pavement; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation or plumbing. Convey runoff from impervious surfaces into permeable areas in a non-erosive manner.
- F. Where appropriate and feasible, direct stormwater runoff from all impervious surfaces (e.g., parking areas and driveways, roofs,

walkways, and patios) to, in order of priority, a) landscaped areas or open spaces capable of infiltration; b) earthen-based infiltration BMPs (such as a bioretention basin) c) manufactured infiltration BMPs (such as a permeable pavement system) or rainwater harvesting BMPs (such as a cistern); d); flow-through biofiltration BMPs (such as a vegetated swale or green roof); and if infiltration is not feasible, e) proprietary filtration systems (such as an inlet filter) or runoff flow control systems (such as a stormwater detention vault).

- G. Implement Runoff Control BMPs that are sized and designed to retain runoff on-site (by means of infiltration, evaporation, uptake by plants, or harvesting for later on-site use), to the extent appropriate and feasible. Examples include a bioretention basin, rain garden, permeable landscaped area, permeable pavement system, and cistern.
- H. If the proposed development will not retain on-site the runoff using an LID approach, an alternatives analysis shall be conducted. The alternatives analysis shall demonstrate that on-site runoff retention is maximized to the extent appropriate and feasible, and there are no appropriate and feasible alternative project designs (such as a reduction in impervious surface area) that would enable on-site retention of the design storm runoff volume.
- I. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows. Alternative BMPs shall also be used where infiltration BMPs are not adequate to treat a specific pollutant of concern attributed to the development, or where infiltration practices would conflict with regulations protecting groundwater. Examples include an evapotranspiration BMP that does not infiltrate into the ground but uses evaporation and uptake by plants to reduce and attenuate runoff flows (e.g., a vegetated “green roof,” flow-through planter, biofiltration basin, or retention pond); a rainwater harvesting BMP to capture and store runoff for later use in landscape irrigation (e.g., a rain barrel or cistern); directing runoff to an off-site infiltration facility; or a BMP to reduce runoff flow rate (e.g., a manufactured stormwater detention vault) prior to directing runoff to the storm drain system.

- ii. **Implement Treatment Control BMPs if Necessary.** Treatment Control BMPs are structural systems designed to remove pollutants from runoff by processes such as gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or other physical, biological, or chemical process. Examples include vegetated swales, bioretention basins, and storm drain inlet filters. Runoff Control BMPs that promote infiltration or evapotranspiration may also provide Treatment Control.

- A. Implement a Treatment Control BMP (or suite of BMPs) that is sized and designed to remove pollutants of concern from that will not be retained on-site.
 - B. Where infiltration BMPs are not adequate to remove a specific pollutant of concern attributed to the development, an effective Treatment Control BMP (or suite of BMPs) shall be required prior to infiltration of runoff, or else an alternative BMP that does not involve infiltration shall be substituted for the infiltration BMP.
- iii. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste. Waste disposal receptacle within the leasehold shall be of a scavenger-proof design to prevent access by animals.
- iv. **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:
- A. New outfalls discharging stormwater or dry weather runoff to coastal waters shall be prohibited, and runoff shall be directed inland to the storm drain system or to an existing outfall. If no storm drain system or existing outfall is present, runoff shall be directed to an existing drainage channel. Runoff shall not be allowed to sheet flow to the beach or the bay.
 - B. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to cause erosion.
 - C. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope

protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).

- D. Design and manage the development to minimize discharge of dry weather runoff to coastal waters, to the maximum extent feasible. For example, use efficient landscape irrigation techniques, and design vehicle washing areas to convey wash water to vegetated areas, infiltration system, or the sanitary sewer system to minimize off-site runoff.
- v. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and staff training) to keep the water quality provisions effective for the life of the development.
- vi. **Site Plan and Narrative Description.** The Water Quality and Hydrology Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
 - A. A California-licensed professional (e.g., Registered Professional Civil Engineer, Geotechnical Engineer, Geologist, Engineering Geologist, Hydrogeologist, or Landscape Architect) qualified to complete this work shall prepare the Water Quality and Hydrology Plan.
 - B. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
 - C. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
 - D. A polluted runoff and hydrologic characterization of the existing site (e.g., potential pollutants in runoff, soil properties, infiltration rate, depth to groundwater, and the location and extent of confining layers such as bedrock), as necessary to design the proposed BMPs.
 - E. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Specify the number, location, size, design, and stormwater management function of all BMPs. Include a schedule for installation or implementation of all post-development BMPs.

- F. Supporting calculations demonstrating that all required Runoff Control and Treatment Control BMPs shall be sized, designed, and managed to infiltrate, retain, or treat, at a minimum, the runoff produced by the 85th percentile 24-hour storm event for volume-based BMPs, or the 85th percentile 1-hour storm event (multiplied by a safety factor of two) for flow-based BMPs, to the extent appropriate and feasible, for the portions of the project site that are determined to not already be able to infiltrate the volume produced by an 85th percentile 24-hour storm event. Indicate the values used in the calculations, and the source of data for each variable.
 - G. For the portions of the project site where the 85th percentile 24-hour design storm runoff volume cannot be retained on site using an LID approach, an alternatives analysis shall demonstrate that no feasible alternative project design would substantially improve runoff retention.
 - H. Runoff from all new or replaced impervious and semi-pervious surfaces shall be addressed in the plan. For sites where the area of new or replaced impervious and semi-pervious surfaces is greater than or equal to 50% of the pre-existing impervious and semi-pervious surfaces, runoff from the entire developed area, including the pre-existing surfaces, shall be addressed in the plan.
 - I. A description and schedule for the ongoing management of all post-development BMPs, including operation, maintenance, inspection, and staff training, that will be performed for the life of the development, if required for the BMPs to function properly.
- b) The permittee shall undertake development in accordance with the approved Water Quality and Hydrology Plan, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

4. Disposal of Graded Spoils and Hazardous Materials.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of all excess graded spoils and hazardous materials. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission.

5. No Storage or Staging of Chairs or Beach Equipment.

BY ACCEPTANCE OF THIS PERMIT, the permittee agrees that beach equipment (such as, but not limited to, beach chairs, beach umbrellas, tables, chaises, towels, mats, or firepits) for the exclusive use of hotel guests, shall not be stored or staged on the sandy beach. Guests wishing to utilize beach amenities may request items

from the hotel and the amenities may be placed on the beach while in use by the guest and removed once such use is finished, but the hotel shall not place such items in a block, install ropes or signage or any other kind of barrier or enclosure, or arrange the amenities in any way that would restrict or discourage public use of the beach or public access across the beach or give the impression that the beach is under the control of the hotel or any other private entity.

6. Provision of Lower-Cost Overnight Accommodations.

BY ACCEPTANCE OF THIS PERMIT and as proposed by the applicant, the permittee, and any and all other successors or assigns, shall provide actual lower-cost accommodations on the site of the hotel, subject to the following requirements:

- A. The permittee shall implement its proposal to provide 25% of the 16 new rooms ($0.25 \times 16 = 4$) at \$112.19 per room per night, inclusive of parking costs and resort fees, which may be adjusted in the future according to Consumer Price Index not more than once per year, with written notice to the Executive Director.
- B. If the permittee proposes to increase the rates or reduce the number of lower-cost accommodations, it shall obtain an amendment to this permit that will authorize the change in conjunction with a requirement to mitigate for any increased rates (i.e., payment of in-lieu mitigation fees or provision of alternate lower cost rooms).
- C. Guests of the lower-cost rooms shall have free access to the same amenities provides to the gusts in the market-rate rooms, including amenities associated with a resort fee (i.e. internet, phone, pools, athletic/recreational equipment, etc.).
- D. If the hotel operator seeks to change the designated rooms or the location of such rooms, the permittee shall notify the Executive Director, who will determine whether a permit amendment is required.
- E. As proposed, the rates shall apply every day of the year and shall not be adjusted seasonally.
- F. Lower-cost rooms shall be reserved through a first come, first-serve reservation system on the hotel website. Interested guests may also call the hotel to inquire about lower cost room availability and make a reservation if there is availability.
- G. The permittee shall promote and publicize availability of the lower-cost rooms to underserved communities, such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access.

- i. The hotel operator shall identify strategies for both online advertising and offline marketing efforts, which shall include targeted outreach to community organizations focused on underserved communities such as local non-profits, environmental justice groups, labor unions, or recipients of public benefits programs by coordinating with local program administrators.
 - ii. Marketing and media materials shall be distributed beyond the City of San Diego to neighboring underserved communities within fifty miles of City limits. Marketing and media materials shall acknowledge the California Coastal Commission's role in providing public access at this location.
 - iii. All materials shall be distributed in English and other languages including but not limited to Spanish, tailored to be culturally relevant as appropriate, and written in plain language, in order to prevent educational and cultural barriers to access to the rooms.
 - iv. The hotel operator shall identify additional actions or measures that could be taken to improve access by underserved communities, if necessary, as determined by the Executive Director upon review of the monitoring reports required by Subsection H of this condition.
- H. The permittee shall submit an annual monitoring report for review and written approval by the Executive Director that provides evidence of operation of the affordable accommodations in compliance with all requirements of this permit, including sufficient detail to demonstrate the total number of rooms rented daily in the hotel, the number of lower-cost hotel rooms rented for each night, the room rates for the lower-cost hotel rooms, and the total cost (which shall include parking fees and resort fees) charged to guests for the reservation of these rooms.

The monitoring report shall include a description of proposed lower-cost rates for the upcoming year (which may increase at no more than the annual Consumer Price Index for the previous year), and an assessment of compliance with the terms and conditions of this CDP regarding the lower-cost units. The permittee shall provide the monitoring information required by this condition to the Executive Director annually by January 30 for the life of the development.

By the third anniversary of the approval of this CDP, and by the same date every three years thereafter, the permittee shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with the CDP. The permittee will ensure that the auditing company provides the Executive Director with a report that satisfies the following criteria: 1) The auditor's report will evaluate compliance by the permittee during the prior three-year period. 2) The report shall identify the

auditor's findings, conclusions and the evidence relied upon, including the sufficiency of both the information required by the CDP to perform the audit and the information made available by the permittee. 3) After the first report by the auditing company, the three-year audit period may be extended to five years upon written approval of the Executive Director. 4) The Executive Director may grant such approval if each of the previous audits revealed compliance with the conditions in the auditor's opinion, if confirmed by the Executive Director.

7. General Occupancy Agreement.

BY ACCEPTANCE OF THIS PERMIT, the permittee agrees that all hotel facilities shall be open to the general public. No fractional ownership such as time shares, or long-term occupancy of 30 days in any hotel rooms is allowed without an amendment to this permit.

8. Conditions Imposed by Local Government.

The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.

9. Public Rights and Public Trust.

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

10. 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) 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. 12.

11. No Future Shoreline Protective Devices

- a) By acceptance of this Permit, the applicant agrees, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-22-0127 including, but not limited to, the new guest rooms in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- b) By acceptance of this Permit, the applicant further agrees, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. Essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.
- c) Approval of CDP No. 6-22-0127 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission.

12. Public Access Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final public access plan describing the manner in which the public shall be informed of their right to access and use existing and new public amenities. The plan shall contain, at a minimum:

- a) A signage plan identifying the location, design, size, and content of public access signs in and around the project site informing the public of their right of access and to park in the project site. The signs shall be located as depicted in Exhibit 3 and final plans submitted pursuant to Special Condition No. 1.
- b) In addition to the public access paths and signage proposed in the plans titled “Jimmy Buffet’s Margaritaville” from Rossi Architecture submitted on February 9, 2022, a public access path shall be provided through the western waterfront balcony of the convention center facility. The path shall have public access signage at both the northern and southern end informing the public of their right of access, and access along the balcony shall be provided at all times, including when private events are occurring within the convention center.
- c) No sign under the approved Public Access Plan shall measure less than two feet by three feet and all signs shall be double-sided where feasible, readily visible and legible, and made of material capable of withstanding long exposure to the elements. If any of the signs are damaged or missing for any reason, they shall be replaced by the applicant within thirty (30) days.
- d) All signs under the approved Public Access Plan shall contain information approved by the Executive Director informing the public of their right of access, and applicable hours of the access according to the subsections of this Special Condition, and the contact information of the relevant local and state authorities in the event that public access is not granted.
- e) The public access paths shall be open to the public 24 hours a day year-round.
- f) Fences and gates shall be prohibited on the public paths.
- g) If at any time during the duration of this permit the public pedestrian and bicycle path along the perimeter of North Cove becomes undermined for whatever reason, it shall be redesigned and relocated inland a sufficient distance to provide safe continued public use without reliance on shoreline protection. If necessary, any adjacent landscaping related to the resort’s operation shall be modified or removed to accommodate the inland movement of the public path.

- h) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

13. Marine Debris Reduction Plan

WITHIN 60 DAYS OF APPROVAL OF THIS PERMIT AND AS MITIGATION FOR THE COASTAL ACT VIOLATIONS, the applicant shall submit, for the review and written approval of the Executive Director, a robust plan, including a comprehensive monitoring and evaluation framework, to reduce waste and single-use items, including litter, plastic and Styrofoam foodware, containers, and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:

- A. The applicant shall install and maintain smoke-free signage in all rooms and/or areas of the proposed development, as well as at all beach accessway entrances.
- B. The applicant shall install and maintain educational signage for staff and patrons that promotes and encourages the use of reusable items instead of single-use items.
- C. The applicant shall install and maintain precautionary signage to prohibit litter and debris as well as provide a Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the project area of the proposed development and weekend maximum usage statistics to ensure that an adequate number of bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
- D. Adhere to the following criteria:
 - i. Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining, specifically prohibiting the use of plastic cups, utensils or any other serviceware.
 - ii. Prohibit the use of plastic straws and only provide reusable straws, paper straws, or straws made from naturally occurring materials, upon request.
 - iii. Prohibit the use of expanded polystyrene (aka Styrofoam).
 - iv. Prohibit the use of plastic bags on-site or for takeout/to-go orders.

- v. Only provide single-use (biodegradable or compostable) utensils, straws, condiments, containers, and other accessory items upon request for takeout/to-go orders.
 - vi. Prohibit the sale of beverages in plastic bottles.
 - vii. Prohibit the use of plastic, single-use shampoo, conditioner, soap and lotion bottles.
 - viii. Follow proper recycling practices for both hotel- and guest-utilized materials.
 - ix. Install a microfiber filtration system for all hotel laundry to capture and remove microfibers from the water during the laundering process.
 - x. All waste resulting from restaurant activities shall be exported outside the Coastal Zone.
- E. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP) or Surfrider's Ocean Friendly Restaurants (OFR) or a substantially similar program. Within 90 days of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.
- F. Respondent shall install upgrades to their laundry facilities to minimize micro-plastic pollution, including use of a microplastic filter for any laundry facilities.

The permittee shall provide an annual report for the review and written approval of the Executive Director of the Coastal Commission that includes the Marine Debris and Reduction Program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

The permittee shall undertake development in accordance with the approved plan, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

14. Public Restrooms, Comfort Station, and Associated Public Access Improvements

- A. **WITHIN 60 DAYS OF APPROVAL OF THIS PERMIT AND AS MITIGATION FOR THE COASTAL ACT VIOLATIONS**, the permittee shall submit a Restroom Plan that shall provide for the construction and provision of restrooms and a comfort station that meets the accessibility standards of

the Americans with Disabilities Act (“ADA”), adjacent to the public beach accessway at Sunset Road on the western side of the resort, for use by the public. The restrooms and comfort station shall include a sign stating that they are open to the public.

- B. The permittee shall also include related public access improvements in the Restroom Plan, including public drop off spaces at the adjacent parking lot, and signage that assists the public in finding these new public amenities.
- C. The permittee shall provide and maintain these public access improvements for public use in perpetuity.

15. Science Education and Family Vacation Program for Underserved Students.

WITHIN 60 DAYS OF APPROVAL OF THIS PERMIT AND IN LIEU OF A MONETARY PENALTY FOR THE COASTAL ACT VIOLATIONS, the applicant shall submit for the review and approval of the Executive Director a final plan for a year-round science education and family vacation program at Paradise Point for underserved youth, facilitated by a non-profit or government entity approved by the Executive Director, as detailed below, that provides \$50,000 of value per year for five years. There will be a \$250,000 total value of benefits provided free of charge to program participants by Paradise Point, including overnight accommodations, food and beverages and facility rentals, water sports equipment rentals, and transportation costs. The program shall also include the following:

A. Program Eligibility

The program shall include a process for determining eligibility of students and families. The phrase “underserved students” shall be defined as individuals or communities that have been historically excluded from accessing the benefits of coastal opportunities or disproportionately impacted by environmental burdens and includes, but is not limited to, low-income households; Black, Indigenous, and people of color; people with disabilities; youth who attend Title 1 schools (and their caregiver/s); and foster and transition age youth. The phrase “low income” as used herein shall be calculated using the Area Median Household Income and state income limits as published by the California Department of Housing and Community Development, the Federal Poverty Level, and the percentage of households in a census tract that is both low income (making less than 80% of the HUD area median income) and paying greater than 50% of their income to housing costs, as published by the CalEPA Office of Environmental Health and Hazard Assessment. Paradise Point shall use this calculation to find qualified individuals to qualify for this program.

B. Programmatic Elements

- i. Paradise Point shall provide facility rentals free of charge to participants to facilitate engagement in real-world science experience and recreational events, such as:
 - a. Water Quality Monitoring (educational)
 - b. Environmental Justice science workshops
 - c. Workforce Development Science Trainings and College Planning (educational)
 - d. Recreational Events such as:
 - 1. Kayaking
 - 2. Surfing
 - 3. Volleyball
 - 4. Stand-up paddle boarding
 - 5. Overnight retreats
 - 6. End-of-year celebrations
- ii. No more than 75% of the programs shall be educational, and at least 25% of the program shall be recreational. No more than 60% of the programming shall take place mid-week, and at least 40% shall take place on the weekends. No more than 75% of the program shall take place during the school year, and at least 25% of the program shall take place during the summer months.

C. Program Evaluation

The program shall include a robust program evaluation component, including, but not limited to, definitions of program success, key performance indicators (or metrics), including program eligibility metrics (such as race and income), methods to measure metrics that establish success criteria for the program, and overall goals to assess program effectiveness. The program evaluation shall be used to inform program evolution and shall include the following:

- i. Number of persons that benefited under the program, and how and why these persons met the qualifications, including where these persons reside.
- ii. A list of all benefits, including watercraft rentals and activities, that participants received as part of the program, including monetary value of all benefits conferred during that quarter, and total monetary value for each type of benefit provided.

- iii. A map of the resort that shows the specific accommodations conferred during that quarter, including how many nights each accommodation was provided.
- iv. A list of all transportation companies used, an accounting of all money paid in order to transport people to the program, and a list of how many buses were used and how many trips were undertaken, and from what locations.
- v. A list of the dates that the free accommodations were provided.

D. Termination

Should the chosen non-profit organization or government entity cease coordinating with the Science Education and Family Vacation Program for Underserved Students, Paradise Point shall, within 15 days of terminating the agreement with the entity, promptly propose a new non-profit or government entity to coordinate with, for the Executive Director's approval, and then implement the Program with the newly selected entity.

E. Implementation

The applicant shall begin implementing the Science Education and Family Vacation Program for Underserved Students within 60 days of the Executive Director approving the plan.

16. Buyer's Acknowledgement

By acceptance of this coastal development permit, the leaseholder(s) of the property that is the subject of this permit agree that before any sale or transfer of any of that leasehold or any interest in that leasehold, the leaseholder-seller shall secure a letter from the buyer of the leasehold (1) acknowledging (a) that the conditions imposed by this permit run with the land, (b) that the use or development of the land is restricted by the special conditions of this permit, (c) that pursuant to the Special Conditions of the permit the public has certain rights with respect to use and enjoyment of the leasehold and surrounding public lands; and (2) agreeing that, prior to any further sale or transfer of any of the leasehold, that the buyer-turned-seller shall secure from its buyer a letter to the same effect. A copy of such letter(s) shall be provided to the Executive Director no later than the close of the sale.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

Paradise Point Resort and Spa is located on Vacation Island in Mission Bay Park on City of San Diego parkland that it leases from the city, with the current lease in effect through the year 2050. The leasehold is bounded by approximately 4,200 feet of public beach and bay water on its north and west, public park land to the south, and Ingraham Street to the east. The applicant, LHO Mission Bay Hotel, LLP, operates the property and proposes to conduct targeted remodels, redevelopment, and new construction across the 52-acre leasehold in order to rebrand it as Jimmy Buffett's Margaritaville Resort. The proposed development consists of the following:

- Remodel the main reception building containing lobby and office space to convert some of the lobby space into a new bar and outdoor patio.
- Convert standalone storage space into office space.
- Remodel the retail, office, and spa structure on the east side of the central pool to add a deli.
- Expand the bar and kitchen on the west side of the central pool area and construct a bridge over the central lagoon to it.
- Remodel the existing waterfront Tidal restaurant to reconfigure the interior and add a new public access way down to the beach seaward of the outdoor dining patio.
- Remodel the existing Landshark restaurant south of Tidal to expand the outdoor bar area.
- Demolish an existing four-room beachfront guest structure and demolish fifty percent of the neighboring four-room guest structure immediately to the north of Tidal to reconstruct the eight rooms in a new configuration.
- Construct a new standalone beachfront public comfort station north of the reconfigured guest rooms.
- Remodel the existing 54,000 sq. ft. waterfront convention center and add a standalone 16,000 sq. ft. tent pavilion at the southern end of the adjacent parking lot where approximately 50 parking spaces are currently located.
- Demolish six tennis courts on the east side of the leasehold and replace them with eight new trailer guestrooms, a playground, and approximately 97 new public parking spaces.
- Repave and add pedestrian improvements at vehicular entrance to the resort.

- Reconfigure and relandscape a central open space area.
- Add a new bathroom facility to one of the guest pool areas.
- Add new public access improvements throughout the leasehold including new public access signage and paths between public parking and the beach; redesignating various parking spaces across the leasehold as public parking with signage and adding at least seven Americans with Disabilities Act (ADA) spaces.
- As mitigation for the Coastal Act violations, add new public restrooms, comfort station, public access signage, and public drop-off zones on the west side of the resort, near the previously installed access path.
- As additional mitigation for the Coastal Act violations, implementing a plastics reduction program that will phase out single use plastics and maximize recycling.
- As a penalty for the Coastal Act violations, provide \$250,000 worth of value to a science education and family vacation program for underserved students over five years, in partnership with a non-profit or governmental entity.
- Obtain after-the-fact approval for the 2015 renovation and improvement of an existing pier over the water at the southern leasehold boundary, consisting of replacing the decking and adding railings atop the existing pilings.

History

Paradise Point began operations in 1962 as Vacation Village, and over the years has grown to encompass approximately 52 acres of Vacation Island in Mission Bay Park in the City of San Diego, with approximately 462 guest rooms, 60,033 square feet of meeting space, 18,374 square feet of restaurant space, 12,477 square feet of hotel operation space, 2,331 square feet of retail space, and various guest athletic and pool facilities. While the resort was constructed prior to passage of the Coastal Act, over the subsequent decades, the Commission approved multiple coastal development permits for various improvements and expansions. These consist of CDP Nos. F7293 (addition of 110 guest rooms, waterfront restaurant, office spaces, central lagoon, and tennis courts), 6-85-423 (gift shop expansion), 6-90-135 & 6-90-135-A1 (eleven new guest rooms and expansion of convention center), 6-97-064 (53-slip marina with two-story marina building), and 6-99-117 & 6-99-117-A1 (renovation and expansion of lobby, athletic, retail, and dining space). In addition, the Commission has approved exemptions for various repair and maintenance work and temporary event structures such as tents.

Standard of Review

Approximately half of Mission Bay Park is state tidelands now held in trust for the public by the City of San Diego. Mission Bay Park currently has a certified Land Use Plan, the Mission Bay Park Master Plan, that was first certified in 1994 and was last updated in 2002. However, the City has not fully certified Mission Bay Park to incorporate it into the certified LCP. Thus, the project site, like Mission Bay Park as a whole, is within an area

of retained jurisdiction and deferred certification where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP used 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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. [...]

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. [...]

Section 30220 of the Coastal Act 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 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Mission Bay Park is the largest municipal aquatic park in the country, consisting of approximately 4,235 acres in roughly equal parts land and water, with 27 miles of shoreline, 19 of which are sandy beach with eight officially designated swimming areas. The park receives over 15 million visitors annually, according to the City of San Diego.

Parking

To date, the City of San Diego has not added Mission Bay Park to its certified LCP. However, the park segment does have a certified land use plan, the Mission Bay Park Master Plan (Park Master Plan), that serves as guidance. Appendix G: Design Guidelines in the Park Master Plan contains "Commercial Parking Standards" in Section 14a, which lays out the parking requirements for the commercial leaseholds in the park.

Based on the amount of existing commercial area, Paradise Point has a parking requirement of approximately 899 parking spaces.

The applicant has stated that there are 911 parking spaces on the property. While the proposed development will reduce the amount of hotel operation and retail space, it will marginally increase the amount of convention meeting space and substantially increase the amount of restaurant space such that the new parking requirement will be 1,008 parking spaces. However, the proposed development will also add 104 parking spaces to raise the total parking inventory to 1,015, exceeding the requirement.

A June 23, 2020 "Paradise Point Parking Study" by Linscott, Law, and Greenspan found that even during the offseason (February 21 – 25, 2019), the resort had a room occupancy rate between 91% and 98%. Yet despite the high occupancy, the report noted that even with several events and conferences occurring during the week being surveyed, maximum parking demand was 488 parking spaces on a Sunday.

With regard to greater public parking on the site, Paradise Point proposes to add new public parking spaces and redesignate existing parking spaces further within the leasehold and closer to the beach as public parking. On the east side of the leasehold, Paradise Point proposes to remove six tennis courts to construct eight new trailer-type guest accommodations, a new playground, and approximately 97 new public parking spaces. These spaces would be in the east side of the leasehold in proximity to the entrance and an existing public parking lot to the north, increasing their visibility to the public and addressing the issue that the resort's size obscures the presence of public amenities. Paradise Point will also redesignate approximately 25 parking spaces spread out through the interior of the resort and closer to the beach as non-guest public parking in order to help the public load and unload beach equipment, as well as reconfigure the landscaping around the main parking lots to add approximately 20 parking spots. Additionally, Paradise Point will remove unpermitted trailers and equipment currently occupying designated public parking behind the convention center to restore those spaces to public use.

Pedestrian Access

While the Paradise Point leasehold is open to the public as well as guests, due to its substantial size and location between public park space and the public beach, it can be difficult for the public to realize that a beach is there, and it can give the appearance that the beach is part of the private resort exclusive to guests. Approximately 341 of the resort's parking spaces located in the two main parking lots, along the entrance road, and behind the convention center are open to public parking by non-guests, who may then walk through the leasehold to the public beach, eat at the on-site restaurants, or shop the on-site retail.

While Paradise Point will be adding to the public parking inventory on the premises, the presence of dozens of acres containing hundreds of guest rooms can deter the public from walking across it due to the appearance of exclusivity or obscuring of coastal resources such as beaches. To address this, and as part of its remediation of past

violations (explained in detail in Section G: Unpermitted Development below), Paradise Point is proposing a significant public access plan across its leasehold consisting of several pedestrian improvements and access signage to make the property more inviting. The public access plan consists of identifying the various pedestrian paths through the leasehold, such as around its central lagoon or through the most direct path to the beach, to help the public reach the shoreline. Additionally, Paradise Point will reconstruct the severely degraded pedestrian walkway around the North Cove beach area to improve pedestrian traffic.

In addition to the proposed public access paths and signage, the existing convention center at the southern end of the leasehold currently has a waterfront balcony that provides lateral access over the bay waters between the southern pier viewpoint and the leasehold north of the convention center. This balcony is not currently part of Paradise Point's proposed new public access paths. However, the public access policies of the Coastal Act call for placing public access as close to the water as feasible, and the existing balcony provides prime coastal access and views.

After coordinating with Commission staff, the applicant has revised the project to incorporate a public access path to the balcony. However, due to the large number of events that occur at the convention center, there is the potential risk that if the balcony were closed during private events, it would constitute a de facto exclusion of the public from the balcony accessway, especially during popular recreational hours in the weekend and summer. Recognizing this, it is important that the public access path on the balcony be open even during private events inside the convention center, and **Special Condition No. 12** requires the submittal of a final public access plan that includes this new public access path and continuous public access even during events.

Public Beach Area

While the public beach is not part of the Paradise Point leasehold, Paradise Point does offer recreational services to its guests, including the rental and setup of beach equipment and portable fire pits. The offering of commercial services on a public beach has the potential to displace the public and create an air of exclusivity that deters public use. However, as currently offered, Paradise Point does not store the equipment on the beach, and sets it up for guests only when they wish to use it and removes it once it is done being used. As this operating pattern mimics public use, it does not lead to the commercializing of the beach to the exclusion of the public, but it will remain important for the applicant and the Commission to ensure that the operation does not change to the public's detriment.

Given the substantial size and resources of Paradise Point, it will be important to ensure that their operations going forward under this permit protect and encourage public access. **Special Condition No. 1** requires the submittal of final project plans detailing the location and scope of all approved development, both to the resort and the public access amenities, to ensure they are performed as required by the Commission. **Special Condition No. 5** prohibits the storage of beach equipment on the public beach and requires that equipment rentals from the resort be setup only when in use by the

guest and removed once the use is completed. **Special Condition No. 7** requires that all hotel facilities will be open to the general public and no fractional ownership or long-term occupancy offered to protect the overnight accommodation character of the resort. As Paradise Point is located on land owned by the City of San Diego, **Special Condition No. 8** acknowledges that the City may impose its own requirements on the proposed development but that in case of conflict, the conditions of this CDP shall prevail. Because the resort is located in the middle of Mission Bay Park, which used to be coastal waters and an estuary, and is adjacent to the bay waters, **Special Condition No. 9** gives notice that this permit does not grant any waiver to the public's right to public trust lands. Finally, because a substantial portion of this project constitutes public access improvements. **Special Condition No. 12** details the public access plan that must be implemented on the resort property as approved by this permit to ensure that it is designed and built in the manner that best promotes public access. Thus, as conditioned, the project can be found consistent with the public access policies of the Coastal Act.

C. Lower Cost Overnight Accommodations

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30213 of the Coastal Act prioritizes visitor-serving and recreational uses over residential, industrial, or general commercial uses within the coastal zone. Section 30213 additionally requires permitted development to protect, encourage and, where feasible, provide lower-cost visitor and recreational facilities. In numerous past actions, the Commission has applied this policy to protect, and require provision of, lower-cost overnight accommodations in relevant development projects.

Trends in Coastal Overnight Accommodations

The Commission has approved hotel development along the coastline as high-priority visitor-serving facilities—however, high room rates can render these visitor-serving hotels exclusive.¹ The Commission has required mitigation for the use of land that

¹ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

would have otherwise been available for lower-cost and visitor-serving facilities.² The Commission has also approved projects and LCP amendments requiring development of overnight accommodations with facilities that serve a range of incomes.³ In past actions where the development proposed has not provided for a range of affordability onsite, the Commission has required offsite mitigation in the form of payment of an in-lieu mitigation fee to fund construction of lower-cost overnight accommodations, including hostels, recreational vehicle (RV) parks, and campgrounds.⁴

In November 2016, Commission staff presented a comprehensive study of lower-cost visitor accommodations eliminated from the coastal zone since 1989.⁵ The study found that, out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms were lost, compared to 11,247 rooms of the remaining five classes. These survey results indicate that nearly 70% of all hotel rooms eliminated from the coastal zone from 1989 to 2016 were economy rooms, whereas less than 10% of the rooms lost were in the upscale and luxury categories.

Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, lower-cost hotels, camping, and hostel opportunities are in high demand in coastal areas and there is an ongoing need to provide more lower-cost opportunities along California’s coast. Furthermore, the supply of affordable overnight accommodations in the coastal zone is an environmental justice issue. Section 30604(h) of the Coastal Act provides that when acting on a coastal development permit, the issuing agency “may consider environmental justice, or the equitable distribution of environmental benefits.” The Commission’s Environmental Justice Policy, adopted in March 2019, indicates that the Commission shall “strive for a no-net-loss of lower-cost facilities in the coastal zone, while implementing a longer-term strategy to increase the number and variety of new lower-cost opportunities.” In California, equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices, with greater barriers to access experienced by low-income communities, communities of color, and underserved communities.⁶ Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but

² [NPB-MAJ-1-06, Part A](#) (Marriott Hotel VSC)

³ [HNB-MAJ-2-06](#) (Huntington Beach-Timeshares); [A-5-RPV-2-324](#) (Rancho Palos Verdes-Long Point); [RDB-MAJ-2-08](#) (Redondo Beach); [SBV-MAJ-2-08](#) (Ventura); [5-98-156- A17](#) (Long Beach-Pike Hotel); [LOB-MAJ-1-10](#) (Long Beach-Golden Shore).

⁴ [5-18-0872](#) (Shore Hotel); [6-13-0407](#) (McMillin-NTC, LLC); [5-14-1785](#) (Olson Real Estate Group, Inc.)

⁵ Ref. [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

⁶ [“Free the Beach! Public Access, Equal Justice, and the California Coast”](#), Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005)

populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.⁷

Additionally, a State Coastal Conservancy-commissioned survey in 2017 identified that “low and middle-income households, people of color, and young people are less likely than higher-income, white, or older Californians to stay overnight at the California coast” and states: “Respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable.”⁸ The limited supply of low-cost accommodations further exacerbates coastal access inequalities by socioeconomic status and disproportionately restricts the ability of individuals from low-income communities to stay overnight on the coast. Most new hotels being developed in the coastal zone are high-cost hotels, while the remaining moderate and lower-cost hotels in the coastal zone include older structures that become less economically viable as time passes. It is often more lucrative for developers to replace these older structures with higher-cost accommodations. Such trends have thus made it difficult for visitors with limited means to access the coast; many of these visitors are traveling from inland locations and cannot easily make the trip to the coast and back home again in a single day. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a broader segment of the population will have the opportunity to visit the coast.

To facilitate provision or retention of lower-cost accommodations in proposed visitor-accommodating development, in previous actions, the Commission has required that applicants either: A) ensure a percentage of the proposed onsite overnight accommodations are provided at lower-cost; B) establish an equivalent number of lower-cost accommodations offsite or nearby; and/or C) ensure an adequate “in-lieu” fee is paid to a fund designated for creation of new lower-cost overnight accommodations. To implement these options, the Commission has first defined what constitutes a lower-cost accommodation (or “lower-cost unit”). The Commission has then determined how many lower-cost units are required per a given development project and, if necessary, whether an in-lieu fee is appropriate to facilitate provision of these units offsite.

Defining Lower-Cost Accommodations

In a market subject to constant change, it can be difficult to define what price points correspond to low-, moderate-, and high-cost accommodations for a given area. The Commission has utilized varying approaches to define such terms, including considering the unique circumstances for each project and applying a quantitative methodology for

⁷ [Coastal Access Equity and the Implementation of the California Coastal Act](#), Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

⁸ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

determining what is considered “lower cost.” The latter methodology relies on a formula based on California hotel and motel accommodations (single up to double occupancy) and does not account for hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower-cost and are the type of facilities that might be required as a mitigation measure for the loss of lower-cost overnight accommodations.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels based on the average daily rates of hotels and motels across the entire State of California. Under this formula, “lower-cost” is defined as hotel or motel rooms with a rate that is 75% less than the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates (ADRs) are collected monthly by Smith Travel Research and are available on the “Visit California” webpage. To be most useful, peak season (summer) rates for standard, double occupancy rooms are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties that are rated one- and two-diamond rated hotels. Following this formula, the Commission has determined that the high-cost rates are generally prices 125% higher than the statewide average daily room rate. By definition, the hotel rooms that are more expensive than lower-cost rooms, but less expensive than high-cost rooms, qualify as moderate-cost rooms. For example: if \$100 was the daily statewide average room rate, low-cost rooms would be 25% less (or \$75) and high cost would be defined as those rooms 125% above the statewide average and include rooms more than \$125 per night. The moderate-cost rooms would range between \$75 to \$125 per night.

Required Number of Lower-Cost Rooms

After defining the project as low-, moderate-, or high-cost, the Commission must next determine how many, if any, lower-cost rooms/units should be provided for a given project to mitigate impacts to existing (or potential) lower-cost visitor accommodations caused by the proposed development. In past projects, the Commission has found that one method of protecting lower-cost accommodations, as required by Section 30213, is to ensure at least 25% of the total proposed rooms are provided at lower-cost rates. The Commission has estimated that a range of room rates in the coastal zone improving equitable coastal access would include approximately 25% lower-cost rooms, 25% higher cost rooms, and more than 50% moderate cost rooms.

While the provision of lower-cost accommodations onsite is the preferred method as stated in Section 30212, in previous actions, where onsite provision is determined infeasible, the Commission has alternatively required “in-lieu” mitigation payments for the construction of an equivalent number of lower-cost rooms/units (such as hotel beds) offsite. The funds are paid into an account managed by an appropriate entity, including the local government, State Coastal Conservancy, California State Parks, Hostelling International, or a similar agency familiar with lower-cost accommodations

management, to ensure that such funds are spent on new lower-cost units, including new campground and hostel facilities.

Proposed Project with Lower Priced Accommodations

Paradise Point began operations in 1962 as Vacation Village, and over the years has grown to encompass approximately 52 acres of Vacation Island in Mission Bay Park in the City of San Diego, with approximately 462 guest rooms, 60,033 square feet of meeting space, 18,374 square feet of restaurant space, 12,477 square feet of hotel operation space, 2,331 square feet of retail space, and various guest athletic and pool facilities. Its inventory consists of guestrooms (standard room), bungalows (living room and kitchenette), and suites (living rooms, dining rooms, and fireplaces). Paradise Point is considered a higher-cost hotel; in the off season, the rooms can range from \$284 per night for a guest room up to \$1,650 per night for a presidential suite, and in the summer can range from \$424 per night for a guest room up to \$3,145 per night for the presidential suite. In addition, Paradise Point charges a daily \$39 resort fee for use of internet, phone, pools, and athletic/recreational equipment.

Because of the resort's already substantial size, the proposed project does not propose a large increase in new rooms. As proposed, the development will demolish six tennis courts on the east side of the leasehold to replace them with eight new trailer-type guest accommodations, a new playground, and 97 public parking spaces. On the west side of the leasehold, two 4-room beachfront guest structures will be wholly or partially demolished and rebuilt in the same area. Thus, the project will result in sixteen new or redeveloped guest rooms.

While the eight guest rooms on the west side of the leasehold will be of the same character as the rest of the bungalows and suites, the eight trailer spaces in the east are unlike the rest of the inventory and represent a new type of "glamping" accommodation that Paradise Point wishes to introduce. As part of its proposal, Paradise Point will designate four of the new trailer accommodations, representing 25% of the 16 new or redeveloped rooms, as lower-cost accommodations. This proposal is consistent with the Commission's recent March 2022 actions at hotel projects in Laguna Beach (A-6-LCP-5-21-0060 Highgate Hotels) and Santa Monica (LCP-5-21-0139 Ocean Avenue) where the Commission based the required number of lower-cost rooms on the total number of new or redeveloped guest rooms, excluding existing rooms that were not being redeveloped from the 25% calculation. The remaining existing rooms at Paradise Point are not being redeveloped, just rebranded, and thus will be minimally changed. With regard to booking the rooms, Paradise Point has agreed to work with the Commission to craft an advertising program to publicize the availability of the lower-cost rooms to the public and when windows open to book those rooms. Additionally, because an overly restrictive cancellation policy can deter people from booking a room, while both Paradise Point and the Commission have an interest in ensuring that cancelled bookings are made available to the public with sufficient time to find a new user, Paradise Point is proposing a 48-hour minimum cancellation policy to give the public flexibility while ensure sufficient time for a new member of the public to book the cancelled room.

With regard to the rate for the four lower-cost rooms, based on data 2021 data from Smith Travel Research (data for 2022 was not available at the time of this report), the statewide annual average daily rate (ADR) for coastal overnight accommodations was \$143.59, and based on the above 75% criteria, a daily rate at or below \$112.19 could be considered lower cost. Accordingly, Paradise Point is proposing to charge \$112.19 for the four proposed lower cost accommodations. In order to comply with the lower-cost threshold and ensure that guests of such accommodations are not excluded from the same amenities as the rest of the guests, the daily fee will be inclusive of any resort fees, and guests utilizing the lower-cost accommodations will be able to use the athletic, pool, internet, and phone amenities covered by such resort fees.

To ensure that the lower-cost accommodations are provided in the number and location approved by the Commission, **Special Condition No. 1** requires the submittal of final development plans that identify the lower-cost accommodations in the leasehold. **Special Condition No. 6** identifies the lower-cost rate that is proposed to be charged for the four lower-cost rooms, the manner in which future rate changes may occur (annual increases tied to the Consumer Price Index), and the manner in which the lower-cost rooms will be advertised to the general public to maximize their use by targeted lower-income groups. Further ensuring that the public access provisions of this permit, including the requirement to provide at least four lower-cost accommodations at the proposed rate, run with the land, **Special Condition No. 16** requires the applicant, in the event there is a future sale or transfer of the leasehold, to obtain from the buyer a letter acknowledging the requirements of this permit and that they run with the land and will continue to apply. Thus, as conditioned, the project can be found in conformance with the public access policies of the Coastal Act

D. Coastal Hazards

Section 30253 of the Coastal Act states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The Paradise Point leasehold fronts approximately 4,200 feet of public beach and bay waters (which are not part of the leasehold except for the waters around its marina) along its western and northern boundaries. The beach is generally free of shoreline protection save for approximately 200 feet of rip rap revetment at the northeastern corner of the leasehold along the east side of North Cove. Vacation Island, on which Paradise Point is located, sits in the middle of Mission Bay Park, and like most of the park, receives muted tidal action due to being separated from the Pacific Ocean save for the 850-foot-wide entrance channel at the southwest corner of the park.

The applicant submitted a sea level rise analysis by RJR Engineering and Consulting, Inc. in June 2022 that was reviewed by the Commission's technical staff. The analysis found that under the Ocean Protection Council's 2018 Sea Level Rise Guidance Update's Medium-High Risk Aversion scenario (0.5 percent probability), sea level rise is anticipated to be 0.9 feet by 2030, 2 feet by 2050, and 4 feet by 2075, which will result in accelerated beach erosion over time. While the City of San Diego has periodically nourished the beaches of Mission Bay Park after performing maintenance dredging on the boating channels, there is no guarantee that such nourishment will keep pace with accelerated erosion.

Utilizing records from the nearest National Oceanographic and Atmospheric (NOAA) National Ocean Survey tidal data station at La Jolla approximately five miles to the north, the highest historical water elevation, including El Niño effects, is approximately 4.9 feet mean sea level (MSL)/7.8 ft. North American Vertical Datum (NAVD). Paradise Point leasehold structures range from 8 to 13 feet MSL/10.5-15.5 NAVD. Furthermore, practically none of the Paradise Point leasehold is currently mapped by the Federal Emergency Management Agency's Flood Maps Service Center's maps as being in "Base Flood Elevation," defined as one percent chance of annual flood. As such, the proposed development is at an elevation that would not be exposed to coastal flooding under current conditions.

However, because shoreline development will be exposed to potential coastal hazards as conditions change over time, the best available science should be used to anticipate sea level rise and any related impacts. The United States Geological Survey (USGS) has developed a model called the Coastal Storm Modeling System (CoSMoS) for assessment of coastal areas to vulnerabilities to sea level rise and 100-year storm events. The CoSMoS modeling shows that even with 4.1 feet of sea level rise and during a 100-year storm, the majority of the Paradise Point leasehold will be free of flooding, with flooding concentrated at the southernmost parking lot adjacent to the convention center where the applicant is proposing a 15,000 sq. ft. tent pavilion. Due to being a tent, should flooding hazards become serious, the pavilion could be relocated or removed relatively easily.

Thus, 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 an island in the middle of Mission Bay Park, **Special Condition No. 10** requires the applicant to assume the risk of coastal hazards and waive liability, as well as include the assumption of risk condition in the current lease with the City of San Diego. To maximize the amount of public beach area over time, **Special Condition No. 11** requires the applicant and its successors in interest to waive any rights to future shoreline protection for the development approved in this permit. Thus, as conditioned, the proposed can development be found consistent with Chapter 3 of the Coastal Act.

E. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Paradise Point Resort is located on the northwest quadrant of Vacation Island in the middle of Mission Bay Park. Due to its prominent location, the outer boundaries of the leasehold are highly visible to park visitors from across the water or when driving along Ingraham Street bridge on the east side of the leasehold. The majority of the Paradise Point leasehold is low-lying, consisting of one-story guest cottages, lobbies, retail, and dining establishments. Due to this character, the interior structures of the leasehold are minimally visible to the public outside the leasehold.

While the proposed development consists of work across the 52-acre leasehold, the majority of the work consists of remodeling and renovating existing structures, with the majority of the new structures being in the interior except for two new 4-room beachfront guest structures. None of the proposed development consists of multi-level structures, nor will any of the renovations result in the addition of upper stories to the existing structures. The two new beachfront guest rooms will be in the same location as the existing structures and retain their low-lying, one-story design.

In order to ensure that the visual benefits of the proposed development are implemented, **Special Condition No. 1** requires final construction plans detailing the final design of the approved structures and remodels so that it does not exceed authorized heights and footprints. Furthermore, because Paradise Point borders the bay, **Special Condition No. 1** also requires a final lighting plan to ensure that the lighting will be shielded and downward facing so as to not spill over outside the leasehold boundaries or encroach into other park areas, potentially marring their scenic

quality. Thus, as conditioned, the proposed development can be found consistent with the visual resource policies of the Coastal Act.

F. Marine Resources and Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Mission Bay is listed as a Section 303(d) impaired water body under the federal Clean Water Act, with bacteria/pathogens, nutrients, and heavy metals identified as water quality problems for which Total Maximum Daily Loads (TMDLs) have been established for various pollutants such as nutrients and heavy metals.

The largest change in surface configuration is related to the demolition of six tennis courts on the east side of the leasehold and their replacement with eight new trailer guest accommodations, a playground, and approximately 97 public parking spaces. Because the Paradise Point leasehold is substantially built out, and the proposed project consists substantially of remodels and reconfiguration rather than new development, Paradise Point submitted a June 24, 2021, letter from Omega Engineering Consultants stating that the proposed project will not substantially modify the existing topography, surface types, or uses. Consequently, the peak flow rates from the property will be unchanged.

Under existing conditions, Paradise Point directs flows into its central lagoon, which has no surface connections with the nearby bay, or into vegetated areas that infiltrate runoff into below-grade lined pipes that direct excess infiltrated runoff into Mission Bay. This is because, according to a "Stormwater Infiltration Study" by Engeo, Inc, due to the high water table and liquefaction potential of the fill that Paradise Point is located on, the ability for the soil to infiltrate substantial amounts of runoff during a heavy storm is limited. Paradise Point submitted a drainage plan showing the drainage basins in the areas of the leasehold where the most substantial development will be occurring. The drainage plan shows the project areas will continue to use the existing storm drain infrastructure, with the inland areas either directing runoff into the central lagoon or into new or existing vegetated infiltration basins.

Paradise Point is a sizeable resort located in a prime beachfront location in the heart of one of the most popular coastal destinations in the city. As such, it serves tens of thousands of guests a year and utilizes substantial resources to maintain the state of its facilities and meet the hygienic and culinary needs of its guests, such as food containers, refuse disposal, and washing. The proposed remodeling and expansion of the resort facility will lead to even greater numbers of guests and non-guest visitors, and the related potential for harmful marine discharges due to litter and its long-lasting harmful effects, especially in the case of slow-to-degrade plastics, means that feasible measures must be implemented to avoid the creation of such waste in the first place. To that end, **Special Condition No. 13** requires the implementation of a marine debris reduction program, which, as detailed in the condition language, would maintain a smoke-free environment to reduce cigarette litter, install recycling receptacles to capture the greatest extent of material feasible, swap out one-time use containers for reusable containers where feasible, and join regional programs that implement and monitor such measures.

To ensure that the construction of the new structures and remodel of existing structures does not produce debris and pollution that could enter the adjacent bay, **Special Condition No. 1** requires the submittal of a final construction staging and storage plan demonstrating that all staging and storage will occur outside of marine and beach areas and in areas that minimize risks of discharge. Special Condition No. 1 also requires a final lighting plan to ensure that the lighting will be shielded and downward facing so as to not spillover outside the leasehold boundaries or encroach into marine areas, potentially harming the marine life therein. **Special Condition No. 2** requires the submittal of a final construction pollution prevention plan adhering to the listed measures to control the spread of debris and its prompt removal if it enters coastal waters, as well as the operation and maintenance of construction equipment during the project. **Special Condition No. 3** requires the submittal of a final post-development runoff plan that adheres to listed measures to capture, retain, and treat runoff on-site to the greatest extent feasible, in order to limit the amount of runoff flowing into coastal waters. Because the project will involve grading of approximately 800 cubic yards of cut and 2,500 cubic yards of fill, **Special Condition No. 4** requires that all excess grading material or hazardous material taken off-site must be disposed at a legal site outside the coastal zone. Thus, as conditioned, the development can be found in conformance with the water quality policies of the Coastal Act.

G. Unpermitted Development

Although the resort at Paradise Point is privately operated, the tidelands beneath it remain public. Thus, in past actions, the Commission required, as conditions of approval, the Resort to provide the public with access to the shoreline, including by providing public parking and constructing public access trails through and around the resort. Parking was provided in the southwest section of the resort where the general public would park to access the beach and the resort's facilities, such as bars and restaurants, which are also open to the public.

On January 27, 2017, Commission enforcement staff sent a Notice of Violation to a prior leaseholder of Paradise Point Resort that detailed the violations, including privatization of and encroachments into CDP-required public access areas and accessways that were required by conditions of previously issued CDPs, encroachment into a public accessway required by CDPs, and intensification of the use of the resort without authorization under the Coastal Act. More specifically, the public access violations included fencing off and paving over a grassy public picnic area for private events, removal of parking spaces available to the public, placement of a guard kiosk at the resort entrance, and encroachment into a CDP-required beach accessway. Additionally, the resort implemented unpermitted improvements to the existing pier at the southern leasehold boundary including the replacement of decking and installation of railings over the existing concrete pilings. In 2018, the applicant took over the lease and began working with Commission enforcement staff on a plan to resolve and mitigate for the violations.

Paradise Point then worked quickly with the Commission's headquarters enforcement team to craft an amicable resolution that includes projects to mitigate for the temporal losses of coastal resources and an environmental justice and education program to address civil liabilities associated with this enforcement matter. As mitigation, Paradise Point has proposed to provide public restrooms and a comfort station on the western side of the resort. These public restrooms and comfort station will also include public drop off spaces in the parking lot, and corresponding public access signs.

These new public access amenities included as mitigation for the violations will be located on the western side of the resort, because the beaches in this location are the least used by the public due to the current lack of public access improvements and facilities there. While the beaches on the north side of the resort currently feature easily accessible, adjacent public bathrooms, along with many public access signs directing people to the availability of the beaches and available public parking spaces nearby, the beaches on the western side of the resort are unknown to much of the public and underutilized. While no fault of Paradise Point's, the lack of clear signage and public restroom facilities on the western side of the resort have contributed to underuse of those beaches by the public. However, installation of the proposed new public restrooms, comfort station, and signs, as well as the drop off spaces required by **Special Condition No. 14**, will greatly enhance the accessibility and desirability of the western beaches, and will therefore attract many more visiting members of the public.

In addition to these new public access amenities, Paradise Point has proposed to implement a Marine Debris Reduction Plan. Accordingly, **Special Condition No. 13** requires that single use plastics not be used in on-site restaurants and other facilities, that microplastic filters be installed in on-site laundries, and that 'no smoking' signs be installed at the resort's beach accessways, among many other requirements. Cigarette butts are one of the state's top litter finds at Coastal Cleanup Day each year, and the placement of 'no smoking' signs at beaches has been shown to greatly reduce cigarette litter there.

Finally, in order to address the Commission's claims for monetary penalties for these violations of the Coastal Act, and to otherwise fully resolve the violations at issue, the applicant is also proposing to provide \$250,000 of value for a Science Education and Family Vacation Program for Underserved Students, in cooperation with a non-profit or government entity. The \$250,000 will be provided over the course of a 5-year program, benefiting participants from local environmental justice communities. The program benefits provided will include transportation to the resort and overnight lodging for underserved students and their families. While there, participants will enjoy science education, watercraft rentals and resort recreation, food and beverages, and event facility rentals for education and recreational activities. To ensure the success of the program, **Special Condition No. 15**, requires the applicant to demonstrate that participants meet the environmental justice criteria, and to report all of that information in regular monitoring reports that will be submitted to the Executive Director.

The proposed mitigation projects and Science Education program will greatly benefit public access and environmental justice at the resort. The combined value of the mitigation projects and Science Education program will resolve the historic violations at the site. This mitigation and penalty program will also complement the proposed comprehensive new public access plan also required by this CDP, and will help ensure that the public will be able to easier access the beaches and public amenities here in the future.

The Commission notes that, prior to this hearing, a letter of opposition to the staff recommendation for the CDP application from Jordan R. Sisson on behalf of UNITE HERE Local 30 and its members, dated February 8, 2023, was received by Commission staff. As stated in an addendum prepared prior to this hearing dated February 8, 2023, Commission staff are grateful for the input we have received from UNITE HERE Local 30 and its members, and hope that the below response helps to clarify Commission staff's analysis and enforcement actions related to this matter.

The Commission also notes that the Commission does not have the legal authority to deny a CDP application or hearing on the basis of existing violations. The Commission agrees that this would be generally good public policy and notes that many local governments and other regulatory entities have this specific authority and exercise it routinely in order to expedite resolution of outstanding violations and assist in permitting actions. The Commission has, on numerous occasions, sought legislation that would provide this authority, but to date, none have been successful.

In addition, the Commission does not have the legal authority to require that the applicant enter into a new lease with the City of San Diego prior to applying for a CDP. Instead, when the applicant completed its application for this CDP for the remodel and redevelopment of their facilities, the permit application became subject to the Permit Streamlining Act, which requires a Commission action within 180 days of completion of the application. As part of our ongoing efforts to resolve this violation, Commission enforcement staff thus again notified the applicant of the violations and explained that mitigation for the temporal losses associated with the violation and penalties would be required to resolve the matter, regardless of the pending permit application. But since there were continuing impacts to public access, Commission staff noted that a speedy resolution would be ideal. The applicant also expressed interest and willingness to resolve the enforcement matter at this time. Therefore, Commission enforcement staff worked with the applicant on a package of projects to provide mitigation for the interim losses and penalties to fully address the violations, which were in turn incorporated into the permit action via a revised project description and relevant, enforceable permit conditions. Thus, the violations will be resolved at the time that the applicant undertakes the requirements of this CDP.

Further, we agree with UNITE HERE Local 30 that a higher penalty than \$250,000 is warranted, and in fact, would like to clarify here that the proposed resolution offers much more than that amount. The \$250,000 value for the 5-year science education and family vacation program for underserved students is only one fraction of the total value of mitigation and penalties proposed to resolve these violations. The educational and recreational value of this program is greater in value than its funding costs, and will provide rare opportunities for disadvantaged students, along with their families, to enjoy the coast, and to participate in programs such as water quality monitoring and environmental justice and science workshops, as well as recreational events such as kayaking and volleyball, and includes a program for free overnight accommodations for the participants and their families. But the package of proposed measures required of the applicant to resolve the violations here also includes a number of other measures—including the construction and provision of restrooms and associated public access improvements in a key area of the resort, in addition to designing and implementing a robust marine debris reduction plan for the resort, which is critical given the location of the facility and the proven negative impacts of plastics on the marine environment. This marine debris reduction plan is subject to approval by the Executive Director and is to include a broad array of plastic reduction measures such as using only reusable foodware for onsite dining, prohibiting use of plastic cups, utensils and straws, prohibiting the sale of beverages in plastic bottles and use of single-use plastic amenities for hotel guests, as well as use of a microfiber filtration system for all hotel laundry. The applicant will provide an annual report to Commission staff documenting implementation of this program.

Again, we strongly share the goal of having permittees comply with their permit requirements and appreciate UNITE HERE's flagging of the importance of compliance. The violations of Special Conditions cited by UNITE HERE Local 30 in the January 27, 2017 Notice of Violation were undertaken by a prior leaseholder. The applicant did not obtain the lease for this resort until 2018, over a year after the Notice of Violation was

sent. Regardless, Commission enforcement staff will remain vigilant with regard to any future Special Condition violations of this CDP. Should future violations of the Special Conditions occur, those new violations would incur new liabilities under the Coastal Act, and Commission enforcement staff would accordingly work to ensure that full compliance is achieved.

In sum, Commission staff believes that the total package of penalties and mitigation for the violations at issue greatly exceeds \$1 million. As stated above, funding for construction of permanent restrooms, and perpetual maintenance thereof in perpetuity, can be difficult to obtain along the coast, and is a critical, practical benefit to the public using the public access areas here. The City of San Diego's recent replacement of aging, dilapidated public restrooms at North Cove, at the north end of the resort, was budgeted for \$2.3 million, not including operations or maintenance. The applicant's proposal thus represents a very significant long-term funding commitment for public amenities in an area where public access would be greatly improved.

Upon issuance of the permit, the subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations described above.

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 the development undertaken on the subject site without a CDP, or of any other development, other than the development approved herein. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in the unpermitted development or permit violations described herein and for any violations of this permit, unless and until the conditions of approval included in this permit are satisfied. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

H. Local Coastal Program

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 Land Use Plan (LUP) for the Mission Bay Park segment of the City of San Diego LCP was certified on May 11, 1995, but no implementation plan has been developed 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 LUP 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.

I. California Environmental Quality Act (CEQA)

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 deemed this project exempt from CEQA due to being in compliance with the Land Development Code and thus being a ministerial approval exempt from CEQA.

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 construction staging and storage, lighting, water quality, coastal hazards, and public access will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- “Storm Water Infiltration Feasibility Condition” by Engeo, Inc. dated January 24, 2020.
- “Paradise Point Parking Study” dated June 23, 2020, by Linscott, Law, and Greenspan
- “Sea Level Rise Analysis: Paradise Point” dated May 31, 2022, by RJR Engineering & Consulting, Inc.
- “Notice of Violation of the California Coastal Act” dated January 27, 2017