

**CALIFORNIA COASTAL COMMISSION**

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# W9.1 & W9.2

September 5, 2023

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Director of Enforcement  
Rob Modellmog, Headquarters Enforcement  
Justin Buhr, Headquarters Enforcement Supervisor

SUBJECT: ADDENDUM TO ITEM NO. W9.1, & 9.2 CONSENT CEASE AND DESIST  
ORDER NO. CCC-23-CD-04 AND CONSENT ADMINISTRATIVE  
PENALTY NO. CCC-23-AP3-03 (PARADISE POINT) FOR THE  
COMMISSION MEETING OF SEPTEMBER 6, 2023.

The purposes of this addendum are to update the record by supplementing it with correspondence that Coastal Commission ("Commission") staff received after the staff report for this matter was issued on August 25, 2023, as well as to respond to a number of statements raised in the letters.

1. Documents Received after the Staff Report:
  - A. Letter of support for the enforcement action from Eco San Diego dated August 30, 2023 (Exhibit 1).
  - B. Letters from UNITE HERE Local 30 ("Local 30") dated September 1, 2023 (Exhibit 2) and September 4, 2023 (Exhibit 3) providing comments and requesting the incorporation of various changes into the proposed Consent Orders.
2. Responses to Comments Received.

Commission staff recommends that the Commission incorporate these responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that Commission adoption of the staff recommendation will include adoption of these findings and responses.

We appreciate the input we have received from all interested persons regarding this matter. We realize that this facility is of significant interest to the public and

we greatly appreciate their interest and involvement. As interested persons may recall, the Respondent in this matter, LHO Mission Bay, L.P. (Paradise Point Resort) (hereafter “Respondent”) submitted a Coastal Development Permit (“CDP”) application that was set to be heard at the Commission hearing in March of this year. That CDP, if approved, would have resolved many of the violations at issue in this hearing. However, prior to the hearing Commission staff received numerous comments, including from UNITE HERE Local 30 (“Local 30”), suggesting that the violations at issue are of a substantial nature and that resolution through the more formal order hearing process would be more appropriate than through a CDP, and that the proposed penalty in the staff report for the CDP hearing for resolution of the violations was not sufficient in light of the nature of the violations. In addition, Local 30 alerted Commission headquarters enforcement staff to new violations. Taking the comments of the public into consideration, Respondent withdrew its CDP application and worked with Commission staff to come to the terms of the Consent Orders as proposed. This proposed Consent Cease and Desist Order package, along with the proposed Consent Administrative Penalty represents a significantly increased set of public access amenities and a significant new administrative penalty. To the extent appropriate, staff incorporated and addressed in the proposed Consent Cease and Desist Order and Consent Administrative Penalty action many of the concerns and suggestions raised previously.

Responses to requests from Local 30:

As a threshold matter, we note that we received two letters from Local 30, the second arriving on the Monday Labor Day holiday two days before the hearing. This second letter largely reiterates the issues raised in their September 1, 2023 letter and the responses below respond to both letters.

1. On page 1 and 2 of the September 1 letter from Local 30, Local 30 requests that the hearing be postponed one month until the October Commission hearing, which will be held in San Diego where Paradise Point is located. On page 2, Local 30 comments that holding a hearing far away from where the violations occurred and where most interested persons live would be inconsistent with the Commission’s March 8, 2019 Adopted Environmental Justice Policy. On page 2 of the letter, Local 30 comments that pre-COVID Commission enforcement proceedings generally took place less than 50 miles away, or at least less than 200 miles away.
  - A. Commission enforcement staff seeks to remedy violations at the soonest possible opportunity, and in this case that opportunity is this September 2023 hearing. Staff had actually hoped to have this item heard at the August 2023 hearing, but were unable to do so. The Commission Headquarters Enforcement team is small in size and moving items through to hearing as quickly as possible allows attention to be diverted to the resolution of other matters. Commission staff have found that regardless of how “resolved” a case is, even with a signed Consent Order from the Respondent in hand,

large amounts of staff time will be directed towards a case until it is heard before the Commission and an order is issued. Thus, what might seem like an insignificant delay by postponing an item by one month will result in delay for every other case at the Headquarters level.

- B. Since the Commission' Environmental Justice Policy was adopted in 2019, the Commission has regularly held hearings that allow for public comment to take place virtually, which will also be the case here. The additional opportunity to participate in hearings virtually has greatly expanded the ability for the public to be heard, regardless of hearing location. For example, Commission enforcement staff's last hearing for a Cease and Desist Order in June of 2023 was entirely virtual (Wildman and Mancuso, Malibu, Los Angeles County), even though an in-person hearing in adjacent Orange County was scheduled for the following month.
  - C. For enforcement matters, the timing is slightly different than for permit matters. Unlike permit matters where the applicant is seeking an entitlement and timing is governed by the Permit Streamlining Act, for enforcement cases, the enforcement staff bring as many cases as quickly as possible. For ongoing violations, there is a strong interest in bringing matters forward and obtaining resolution and removal of violations as quickly as possible and although we try to accommodate local interests this isn't always possible. Prior to COVID, the Commission heard many enforcement cases at hearing locations that were far away from the location of the violations. Local 30 cites some cases where we were able to arrange for more local hearings, but fails to cite many more instances where, given the timing and the need to resolve things as quickly as possible and to juggle workload and case development, we were not. These pre-Covid, pre-Zoom hearings necessarily provided less opportunity for the public to comment remotely outside of written comments, unlike today, where the public can comment via phone or videoconference.<sup>1</sup> In addition, if Commission enforcement staff are required to hold all hearings locally, this would cause major delays for the headquarters enforcement process, as the Commission's Headquarters Enforcement Unit works on cases throughout the entire coastline, not just in one particular district.
2. On page 2 and 3 of the September 1 letter from Local 30, Local 30 comments that the Consent Orders are being rushed, and that a one-month delay is warranted. Local 30 also comments that the Consent Orders were agreed to in approximately two weeks to resolve violations that were over six years old, and

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<sup>1</sup> Just a few examples are Sept 2012 Caspar/Fort Bragg, Shea Homes, CCC-12-CD-10 (Orange County case held in Mendocino County), Sept 2013 Eureka, Signal Landmark, CCC-13-CD-08 (Orange County case held in Humboldt County), April 2016 Santa Rosa, Dana Point Headlands, CCC-16-CD-02 (Orange County case held in Sonoma County), November 2017 Bodega Bay, Bixby Ranch, CCC-17-CD-03 (Santa Barbara County case held in Sonoma County), July 2018 San Diego, Ritz-Carlton CCC-03-CD-14-A (San Mateo County case held in San Diego County), September 2018 Fort Bragg, Knipe CCC-18-CD-03 (Los Angeles County case held in Mendocino County). Other cases were also heard fully remotely and the CCC provided full public participation opportunities.

that the public has only had one week to provide written comments, which Local 30 comments is inconsistent with the Commission's Environmental Justice Policy.

- A. In fact, the violations at issue were first discovered in 2015, a Notice of Violation was sent in 2017, and this case was elevated from District Enforcement to Headquarters Enforcement in the fall of 2022. Since then, Headquarters Enforcement staff has worked on this matter for approximately one year, during which time Commission staff have been negotiating the terms that would eventually be written into the proposed Consent Orders.
  - D. The proposed Coastal Development Permit that was scheduled for the March 2023 hearing, which Local 30 commented on in a letter dated February 8, 2023, also included many of the same proposed terms of the proposed Consent Orders, including the Environmental Justice program for underserved students and their families, the Marine Debris Reduction Plan, and the proposed construction of public restrooms and drop off stations for the public. Therefore, Local 30 has had more public notice of the terms of the proposed Consent Orders than is typical.
  - E. Commission enforcement staff often posts staff reports in the Commission's monthly addendum to the agenda due to the fact that negotiations usually occur up until the deadline for mailing the staff report for publication for that month's hearing. In any event, the mailings for enforcement matters meet, as did this one, all legal requirements for notice. And here enforcement staff spent a great amount of time on outreach and providing information to the public in advance of the mailing. Again, as noted above, staff's focus is on resolving the Commission's many cases as efficiently as possible.
  - F. In this case, Commission enforcement staff knew that Local 30 was very interested in this matter, from the February 8, 2023 letter and other discussions between Local 30 and Commission staff. Commission enforcement staff emailed Local 30's representative on August 17, 2023, as soon as the agreement was reached but prior to the staff report being drafted or posted online, in an attempt to provide the maximum amount of notice to Local 30. At that time, Commission staff intended to provide Local 30 with information about the proposed Consent Orders prior to the staff report being posted online but did not receive any email in reply. Commission enforcement staff continued to reach out and eventually did speak with Local 30's representative on August 30, 2023, after the staff report was posted, to help answer questions regarding the proposed Consent Orders.
3. Local 30 comments on page 3 of the September 4 letter stating that the staff report did not provide relevant evidence or analysis of the eight years of likely profit from unauthorized event tents on public parking spaces and years of blocked public access to the public pathway adjacent the Barefoot Bar and

calling for the “payback” of profits, known as disgorgement.

- A. Disgorgement is not a tool available to the Commission and is not appropriate. Chapter 9 of the Coastal Act details the methodology for penalties in detail and this analysis is reflected in the Staff Report for this matter.
  - B. Respondent’s May 15, 2000 lease from the City of San Diego requires that Respondent run a profitable resort. Respondent’s profits are then shared with the City of San Diego via many complicated profit-sharing lease terms written into their lease. Therefore, any action that Respondent takes must by definition be in furtherance of their lease requirement to run a profitable resort. Thus, all of the violations, not just the violations with regards to the event tent and Barefoot Bar, were done in service of economic profits, as required by their lease with the City. That Coastal Act violations were done for profit is not unique, as many of the Commission’s enforcement cases involve for-profit corporations.
  - C. While one of the factors of 30820 requires the Commission to consider whether or not there was an economic profit when assessing administrative penalties, it does not require the Commission to provide an economic study of the amount of profits gained by each individual violation. Commission enforcement staff does not have professional economists on staff, and, moreover, does not have the legal ability to require that violators provide information that Commission enforcement staff requests. Commission enforcement staff does note that several other California agencies, such as the Regional Water Quality Control Boards, do have the ability to issue information orders that require violators to provide any information requested under penalty of perjury. Having that kind of information gathering power would be a great resource for Commission staff but, as of now, Commission staff remains devoid of that authority.
4. Local 30 comments on page 3 of their September 1 letter that they have requested but not received four of the referenced exemptions for the temporary event tent in the staff report.
- A. On August 9, 2023, Commission Senior Attorney Robin Mayer responded to Local 30’s request for documents related to the exemptions for the temporary event tents and emailed the exemption letters for all six exemptions, 6-21-0248-X, 6-21-0386, 6-22-0079-X, 6-22-0300-X, 6-22-0301-X, and 6-23-0039-X, and three applications for the later exemptions, to Local 30’s representative. With that email, an offer was made to inspect any paper files, as staff reported the earlier applications were not in electronic form. No response was received to that email. On subsequent inquiry, the other applications are missing and not available; however, as stated, all exemptions were sent and thus, all responsive documents held by the CCC have been

provided.

5. Local 30 requests that the Staff Report be revised to include the record of exemptions issued to Respondent.
  - A. The Notice of Intent, which included information regarding the exemptions, is included as Exhibit 10 to the Staff Report. Regardless, the record for this matter is hereby revised to reflect that Respondent has received Exemptions 6-21-0248-X, 6-21-0386, 6-22-0079-X, 6-22-0300-X, 6-22-0301-X, and 6-23-0039-X for temporary event tents.
6. Local 30 comments that Respondent's event tents have been installed at least 13 times between 2015 and 2020, which is more than the six exemptions issued to Respondent between 2021 and 2023. Local 30 comments that Commission enforcement staff acknowledges that this tent is part of the violations, but Local 30 requests that Commission enforcement staff include an analysis in the staff report of the days that the tent was put up, and the economic profits gained by the tent per day.
  - A. As stated above in 3.B, Commission enforcement staff does not have the ability to issue information orders to require that violators provide requested information under penalty of perjury, including economic profits. Therefore, Commission staff relies on publicly available information and site visits to determine the extent of violations such as this one.
  - B. In this case, Commission enforcement staff hereby notes that, based on publicly available images and photos taken during site visits, Commission enforcement staff can find no imagery where an unpermitted tent was not visible in the southern public parking area from July of 2015 to March of 2020. Respondent purchased the facility in late November 2018, and the tents were apparently in place at that time. However, following the COVID pandemic, Respondent began obtaining exemptions for a temporary event in approximately the same location. After March of 2020, Commission staff has no evidence, again based on the publicly available images and site visits, that Respondent placed a tent in this location outside of the temporary time periods authorized by the exemptions.
7. Local 30 also comments on page 4 of their September 1 letter and again on page 1 of their September 4 letter that not all equipment and signage associated with the tent has been removed following the conclusion of their exemptions.
  - A. Commission enforcement staff is aware that many obstructions to public access currently remain within the southern public parking area, including large dumpsters and trash compactors. As part of the Removal Plan required by the proposed Consent Orders, Respondent will be required to identify all unpermitted development for removal and remove it under the terms of the

- proposed Consent Orders. Commission enforcement staff does not know to what extent that the different obstructions in this public parking area were used for tents, or are used for the restaurants at Respondent's resort, or for other uses, but regardless, all unpermitted development in the southern public parking area from any and all uses is required to be removed under the proposed Consent Orders.
- B. Section 6.3 of the proposed Consent Orders requires Respondent to include all signs at the resort within their Sign Element, so that Commission enforcement staff can review all existing signage to ensure it does not impair public access. Commission enforcement staff agrees with Local 30 that the signs making reference to event spaces will need to be replaced by the required signs explaining that the area is open to public parking, and Commission enforcement staff expects that there are more existing signs that might confuse the public and therefore will also need to be removed pursuant to the proposed Consent Orders. Conforming signage to reflect and be consistent with the permit requirements and the requirements of this proposed Order is a requirement of the Consent Orders.
8. Local 30 also comments that some of the exemptions issued to Respondent appear to not follow the Commission's Temporary Events Guidelines and requests in its September 4 letter that the Commission place a 5-year ban on special event tents.
- A. Proposed activities that are exempt from the Coastal Act may be governed by the Commission's Temporary Events Policy. In this matter, Commission planning staff determined that the proposed temporary event tents met Commission guidelines for temporary events, many of which occur in public parking areas adjacent the shoreline up and down the state. However, to avoid further issues regarding questions of exemptions for temporary events in this area, the proposed Consent Orders require in section 7.4 that Respondent not apply for any more temporary event exemptions for this area.
9. On page 5 of the September 1 letter, Local 30 again requests that Commission enforcement staff analyze the economic profits for particular violations, and comments that Local 30 estimates the profits from the tent to be \$2.6 million per year, and that therefore, given that the total estimated value of the proposed resolution is \$3 million, only some of the profits have been disgorged.
- A. As discussed above, the Coastal Act penalty provisions are not based on disgorgement of profits by for-profit businesses. The penalty provisions in the Coastal Act are designed to both be high enough to create a disincentive for violators, and to be applied in a way to encourage resolution of violations as quickly as possible. The amount of penalties being proposed here is significant. Moreover, we note that given the extremely high property values along the coast, requiring disgorgement of profits for every violation would

also require complex assessments of land values and, in the case of ongoing businesses, of business costs and profit margins and other complex business accounting information. As also described above, the Commission does not have the ability that other state agencies have to issue information orders to request information such as economic profits or land values. In this case, because Respondent's profits are required to be shared by the City pursuant to Respondent's lease, it is also unclear to what extent those profits were shared with the City and thus not profits to the business itself.

10. On page 5 of the letter, Local 30 also requests that Commission enforcement staff provide an estimate of maximum penalties for all of the violations.
  - A. The Commission's administrative penalty provisions provide for penalties of \$11,250 per day, per violation. Because there are many violations and the violations lasted for multiple years, it is likely that the total maximum penalties could be in the tens of millions, or more and the application of the statutory factors to the penalty amounts is discussed more fully in the Staff Report for this matter. Commission enforcement staff has sought to avoid litigation and has therefore used its prosecutorial discretion and believes that the total resolution value of approximately \$3 million in the proposed Consent Orders provides a great value to the public. We also note that avoiding litigation and the attendant costs is of great value to the State and to the public, and obtaining resolution of the violations and implementation of the in lieu public access provisions in an expedited manner without requiring the delay and costs of litigation is of enormous value to the public, and these factors are also to be included in an analysis of penalties under the Coastal Act. If we were to routinely require in settlements the full payment of the maximum amount of penalties theoretically available under the Coastal Act in litigation, there would be few settlements and greatly increased litigation. The option is settlement or a full litigated resolution and the latter brings with it both risks and delays that are avoided here at great benefit to the state and public. In fact, the elements contained in Section 30820(c) that govern assessment of penalties under the Coastal Act, expressly recognize the value of settlements by including cost to the state of bringing the action as a factor in determining the appropriate penalty amount. This is further outlined in the Staff Report.
11. On page 6 of the September 1 letter and again in its Labor Day letter, Local 30 requests that the Removal Plan include removal of the tent on site and any associated equipment.
  - A. The Removal Plan required by the Consent Orders requires removal of all unpermitted development in the public parking areas, and therefore, that includes any development observed by Local 30 to be blocking public parking spaces there. As noted above, Commission enforcement staff is aware that large trash compactors and dumpsters are still there, but Respondent will be required to submit a full survey of unpermitted development in that area,



- which will then be required to be removed under the proposed Consent Orders.
- B. Commission enforcement staff hereby adds to the record that any unpermitted HVAC equipment blocking public parking spaces in the southern parking area, used for any reason, shall be removed pursuant to the proposed Consent Orders.
12. On page 6 of its September 1 letter and again in its September 4 letter, Local 30 also requests that the Commission bar any event tents at the Resort for five years, and that any tents be subject to a CDP application.
- A. As described above, the proposed Consent Orders require that Respondent will never again apply for any temporary event exemptions, for any use, in the southern public parking area.
13. On page 6, Local 30 also requests that the Commission provide the public and the City of San Diego with Respondent's eventual proposed Sign Element of the Public Access Plan, for their review and comments.
- A. If and when Respondent submits their proposed Sign Element, it will be a public document. Therefore, Commission enforcement staff will consider Local 30's request to be a request for that document and will provide it to them at that time.
- B. Section 28 of the proposed Consent Orders requires compliance with all other applicable laws. Commission enforcement staff expects that some local authorizations could be necessary for sign installation. In addition, the City's lease requires that Respondent not post signs without the City's authorization. Therefore, Commission enforcement staff anticipates that Respondent will have to obtain City authorization for the proposed signs, and that the City will therefore be reviewing the proposed Sign Element. Commission enforcement staff has also been coordinating with the City and will continue to do so.
14. Local 30 also requests on page 6 that the public or the City review the proposed Marine Debris Reduction Plan and Lagoon Mitigation Plan.
- A. As described above, Commission enforcement staff has been coordinating with the city and will continue to do so. Respondent is leasing this land from the City and therefore presumably will have to obtain City authorizations for much of the development required by the Marine Debris Reduction Plan, including installation of water bottle refill stations, as well as any measures to improve circulation in the bayfront "lagoon" water feature. The Marine Debris Reduction Plan measures are ones that the CCC staff has been working on for a number of years and enforcement staff has been coordinating with our experts in this area, and will continue to do so, to ensure that the plan and

elements incorporate the state-of-the-art best practices on these issues.

- B. Once the Commission acts on a matter, staff conducts a ministerial process to ensure that further compliance activities align with the Commission's directions, and reviews submittals in coordination with the relevant subject matter experts within the Commission staff. It is not generally necessary or appropriate for outside persons to participate in compliance; however, they can be noticed of significant developments, and they are welcome to make suggestions compliant with the Orders, CDPs for the facility, and the Coastal Act.

15. On page 6 of the September 1 letter, Local 30 also requests that all improvements required by the Public Access Plan in the proposed Consent Orders, as well as any future conditions attached to future CDPs, be explicitly codified in a Lease Agreement between the City and Respondent. This point is reiterated and is the main topic of the September 4, 2023 letter, wherein Local 30 suggests that the terms of the proposed Order be "explicitly codified in the lease agreement between the Resort and the City of San Diego." They also request that we interpret the terms of the lease to determine whether these changes are "substantial" (presumably a term significant to that lease) and to require that the terms of the Order be added to the lease.

- A. With regards to the City, the City has not been noticed as a violator, and so the Commission cannot currently require the City to enter into any agreements with Respondent, or take any other actions related to this matter. We certainly have no objection to any of these terms being incorporated into leases for this area, but we have no legal authority to compel amendment of such leases.
- B. With regards to Respondent, Commission enforcement staff believes that the proposed Consent Orders are adequate to ensure that Respondent complies with the Orders and the Coastal Act. In a similar agreement entered into with Campland and Mission Bay RV Resort in 2021, the violators were not required to amend their lease with the City of San Diego, and they have complied with their agreement very well since then.
- C. The Commission is not a party to the lease and cannot provide legal interpretations of the understanding of the parties as to its terms. Should those parties desire to amend their lease and seek Commission input, we would be happy to be of any assistance regarding the effects and terms of this proposed Order.
- D. The City previously required that the Commission's public parking requirements be included in their current lease, and they are thus included as an exhibit to that lease. Also, much of the unpermitted development at issue would have required City authorization under the terms of the City's lease, but

it is unclear to what extent Respondent or the preceding leaseholders obtained authorization from the City but not the Commission, or simply did not obtain authorization from either entity. If the City wants to enforce the current lease or wants to require that Respondent amend that lease to further promote enforcement of the Coastal Act, the Commission's CDPs, or the proposed Consent Orders, Commission enforcement staff agrees that this would assist in enforcement generally and would support this and would be happy to assist in any way we can.

16. On pages 1 and 2 of the September 4 letter, Local 30 also requests that the Consent Agreement include all fixtures that obstruct all public access, that the Executive Director solicit comments on the submitted Public Access Plan and other compliance documents; that no loss of public parking will occur in the southwestern lot, and that the Commission ask the Respondent if the unpermitted development or the order terms means a substantial change in the lease.
  - A. Commission enforcement staff believes that the proposed Consent Orders are adequate to ensure that Respondent complies with the Orders and the Coastal Act. We note that the Orders contain stipulated penalties for any violations of the terms of the Orders.
  - B. Regarding the submittal of compliance documents and the solicitation of comments, as noted above, enforcement staff can likewise ensure that all compliance follows the direction of this Commission action.
  - C. The concern about the southwestern lot is noted. Commission enforcement staff believes that the proposed Consent Orders are adequate to ensure that Respondent complies with the Orders and the Coastal Act and as noted above, the agreement itself directly addresses this issue and contains an agreement not to seek such development in this location.



August 31, 2023

**RE: W9.1 - 9.2 Recommendations and Findings for Consent Cease and Desist Order and  
Consent Administrative Penalty Action  
Consent Cease and Desist Order No.: CCC-23-CD-04  
Consent Administrative Penalty No.: CCC-23-AP-03  
LHO Mission Bay Hotel, L.P.**

Dear Chair Brownsey and Commissioners,

Let me begin by saying thank you to the Commission and to your staff for your steadfast protection of the public's right to the coast. Since 2015 the Environmental Center of San Diego has been dedicated to making sure the public has access, where feasible, to the coastal waters of San Diego. So, we're with you all the way!

Regarding the settlement with LHO Mission Bay Hotel, L.P., we think staff has extracted fines and resolutions to the best of their ability. The required number of signs should dispel any questions about public access at this location. Removing tents and waste containers from public parking will clean up the area and, hopefully, instill a more welcome attitude towards the public. It will also serve to protect native birds' species from ingesting the junk food coming out of the waste containers.

Concerning the likely entrainment caused by the pumping activity drawing water from the bay, please make sure this is adequately monitored. Conversely, impingement should be avoided once screens are installed.

Adding bathroom facilities to the required settlement will afford the public a place to use the facilities without disrupting the resort or using the beach as a bathroom. Removing unpermitted structures will remove barriers to access. Both of these requirements are long overdue.

Does the punishment fit the crime of years of blocked, or obfuscated, coastal access? How do we judge if this is enough? Time will be the indicator of success. Twenty years from now we will know if the public understands that they have rights to the water regardless of the obstacles put in their way. We can only hope so.

Environmental Center of San Diego  
[contactecosd@gmail.com](mailto:contactecosd@gmail.com)  
805-835-1833

Exhibit 1

The violations at Paradise Point are egregious, as they were at Campland and Princess St. While we support staff's recommendations the larger question still looms -how do we stop these violations to begin with. Somehow the penalties for these violations should include funding for annual or bi-annual inspections of all the Public Trust tidelands to prevent violations from arising or expanding.

We applaud the Commission staff for working with the State Lands Commission staff on these violations. We realize that these two state agencies, like many others, receive the short end of the stick when it comes to funding protections. This makes efforts to keep an eye on Public Trust Lands all but impossible.

Along with our rights to the coastal waters comes the responsibility to make sure those rights are protected. No entity is tasked with the duty to protect coastal access. This must change. While individuals and nonprofit organizations can help, it will take a concerted effort going forward.

The settlement negotiated by the Commission will go a long way to put other lessees, that have the privilege of doing business in the public's tidelands, on notice that they too will be scrutinized for violations. Until the state can help monitor these Public Tidelands, it will be left up to an educated citizenry to work with the Commission in identifying those trying to privatize the Public's tidelands.

Thank you all for the stellar job you do in protecting the coast. Your staff reflects the same dedication in their work.

Most sincerely,

A handwritten signature in cursive script that reads "Pamela Heatherington".

Pamela Heatherington  
Board of Directors  
Environmental Center of San Diego



**LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS**

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September 1, 2023

**VIA EMAIL:**    [executivestaff@coastal.ca.gov](mailto:executivestaff@coastal.ca.gov); [sandiegocoast@coastal.ca.gov](mailto:sandiegocoast@coastal.ca.gov);  
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**RE:    ITEMS W9.1-9.2; CONSENT CEASE AND DESIST ORDER NO. CCC-23-CD-04 & CONSENT  
ADMINISTRATIVE PENALTY NO. CCC-23-AP-03; LHO MISSION BAY HOTEL, LP, SAN DIEGO**

Dear Chair Brownsey, Honorable Coastal Commissioners, and Staff:

On behalf of UNITE HERE Local 30 ("**Local 30**"), this office respectfully provides the California Coastal Commission ("**Commission**") and its staff the following comments<sup>1</sup> regarding the Consent Cease and Desist Order CCC-23-CD-04 and Consent Administrative Penalty CCC-23-AP-03 ("**Consent Agreement**") to resolve California Coastal Act ("**Act**") violations ("**Enforcement Act**") by LHO Mission Bay Hotel, L.P. (doing business as "**Paradise Point**") at its 51.57-acre bayfront site on West Vacation Isle in Mission Bay Park ("**Resort**"), which Paradise Point leases from the City of San Diego ("**City**"). According to the "**Staff Report**"<sup>2</sup> dated August 25, 2023 (pp. 2-3, 6-7, 19-22), the proposed Consent Agreement entails five general components, including:

- i. Removing and/or seeking after-the-fact Coastal Development Permit ("**CDP**") for unpermitted development);
- ii. Mitigating lost public access by installing 70 signs within the Resort, implementing an advertising campaign on the Resort's website, and instituting an employee training program;
- iii. Installing new public access amenities, including a new public restroom, two new vertical public access points, and 24 additional parking spaces (some with EV chargers);
- iv. Paying \$1 mil. to the Violation Remediation Fund (inclusive of funds for a new water quality plan) and \$500,000 to the environmental justice ("**EJ**") program for underserved students; and
- v. Developing a marine debris reduction program to reduce plastic pollution and covering dumpsters and other waste to prevent access by native birds and other species.

After reviewing the relevant documents, Local 30 respectfully requests that the Commission postpone the above-referenced items for one month to be heard at the October meeting to be held in San Diego for the following four reasons:

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<sup>1</sup> Please note that pages cited herein are either to the page's stated pagination (referenced herein as "**p. ##**") or the page's location in the hyperlinked PDF document (referenced herein as "**PDF p. ##**").

<sup>2</sup> Inclusive of associated "**Exhibit(s)**" and "**Appendix A**" retrieved on Commission website.

- 1. This Enforcement Action hearing should take place in San Diego, where all alleged Coastal Act violations occurred and where most relevant/interested parties are located—not over 750 miles away in Eureka at the furthest distant Commission hearing location, which is inconsistent with Commission Environmental Justice Policy.**

For this Enforcement Action hearing, the Commission will take testimony from the relevant parties and any interested party. (See Staff Report, p. 10.) The Resort and most relevant/interested parties are in or around San Diego. Holding the hearing in Eureka, Humboldt County amounts to an undue logistical hurdle for members of the Commission, the City, and the public (including Local 30 members and disadvantaged communities) based in San Diego County. Thus, consistent with the Commission's EJ policy to agendize hearings at relevant times and locations,<sup>3</sup> the Commission should hold this Enforcement Action hearing next month in San Diego, roughly 20 miles from the Resort.<sup>4</sup> This would also be consistent with the pre-COVID Commission practice of generally holding Enforcement hearings within the same/nearby counties (i.e., less than 50 miles away) or at least in the same SoCal/Bay regional area (i.e., less than 200 miles away).<sup>5</sup>

- 2. The Consent Agreement is being rushed, and a 1-month delay is appropriate under the circumstances.**

This Enforcement Action involves many Act violations documented over the last eight years between 2015 and 2023. (See Staff Report, pp. 12-14, 19.) During this time, Commission staff issued a Notice of Violation (“**NOV**”) in January 2017 (6+ years ago) (id., at p. 18) with Paradise Point seeking even more development under a new CDP subsequently withdrawn in March 2023 (id., at p. 12). As compared to the Resort's long delay to cure these Coastal Act violations (i.e., 8+ years), Local 30's review of the public records concludes that a draft Consent Agreement was sent to

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<sup>3</sup> See CCC EJ Policy (adopted 3/8/19), pp. 16-17, [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf).

<sup>4</sup> See Commission Meeting Calendar, <https://www.coastal.ca.gov/meetings/mtgdates.html>.

<sup>5</sup> See e.g., Agenda (10/10/18) Items W8.1 & W8.2 (Enforcement Action [i.e., CCC-18-CD-04 & CCC-18-AP-03] involving Rosalena Owners' Association [Carlsbad, San Diego County] approved by Commission in San Diego, San Diego County [i.e., 30-mile drive]), [https://documents.coastal.ca.gov/reports/2018/10/W8.1 & 8.2/W8.1s-10-2018-report.pdf](https://documents.coastal.ca.gov/reports/2018/10/W8.1&8.2/W8.1s-10-2018-report.pdf); Agenda (2/13/20) Items Th5.1 & 5.2 (Enforcement Action [i.e., CCC-20-CD-01 & CCC-20-AP-01] involving Tivoli Cove Homeowners Association [Malibu, L.A. County] approved by Commission in Long Beach, L.A. County [i.e., 46-miles drive]), <https://documents.coastal.ca.gov/reports/2020/2/Th5.1-Th5.2/Th5.1-5.2-2-13-2020-Staff Report.pdf>; Agenda (5/8/19) Items W11 & W12 (Enforcement Action [i.e., CCC-19-CD-01 & CCC-19-AP-02] involving Sunshine Enterprises [Santa Monica, L.A. County] approved by Commission in Oxnard, Ventura County [i.e., 48-mile drive]), <https://documents.coastal.ca.gov/reports/2019/5/W11&12/W11&12-5-2019-report.pdf>; Agenda (8/9/18) Items Th8 & Th9 (Enforcement Action [i.e., CCC-18-CD-02 & CCC-18-AP-02] involving Katz and 11 Lagunita, LLC [Laguna Beach, Orange County] approved by Commission in Redondo Beach, L.A. County [i.e., 50-mile drive]), <https://documents.coastal.ca.gov/reports/2018/8/Th8s/th8s-8-2018-report.pdf>; Agenda (10/7/19) Items Th14.1, 14.2, 14.3 (Enforcement Action [i.e., CCC-19-CD-05, CCC-19-CD-06, CCC-19-ACP-04] involving Malibu Outrigger Homeowners Association [Malibu, L.A. County] approved by Commission in Chula Vista, San Diego County [i.e., 152-mile drive in Southern California]), <https://documents.coastal.ca.gov/reports/2019/10/Th14.1 thru 14.3/Th14.1-14.3-10-2019-report.pdf>; Agenda (4/10/19) Items W15.1 & W15.2 (Enforcement Action [i.e., CCC-19-CD-02 & CCC-19-RO-01] involving J.A. Mattos property [unincorporated Marin County] approved by Commission in Salinas, Monterey County [i.e., 162-mile drive in Bay Area]), <https://documents.coastal.ca.gov/reports/2019/4/W15.1s/15.1s-4-2019-report.pdf>;

Paradise Point on or around August 4, an agreement was reached on or around August 17, and the Staff Report for the item was posted on August 25 for a hearing to be held on September 6 (i.e., 33 days after draft shared). This office is unaware of any Consent Agreement being drafted, agreed to, and heard by the Commission at such speed. Furthermore, because public comments are distributed only if submitted before 5 p.m. on September 1, the public and disadvantaged communities have had only one week to review and comment on the more than 80 pages involving the technical Consent Agreement (inclusive of the Staff Report, Exhibits, and 26-page Consent Agreement), which in turn references other lengthy/technical documents that are not readily available to the public (discussed further below). Consistent with the EJ Policy to expand public comment opportunities and encourage input,<sup>6</sup> the hearing should be postponed at least one month so the public has a meaningful opportunity to review the relevant documents.

**3. *The Staff Report fails to provide relevant evidence and analysis of the eight years of likely profit from unauthorized event tents on public parking spaces and years of blocked public access at the Barefoot Lounge.***

The Staff Report claims the Resort has been issued six temporary event exemptions over the past years by the Commission's Executive Director per applicable Temporary Events Guidelines. (Staff Report, pp. 4, 12; id., Exhibit 10, p. 4 [Notice of Intent (7/27/23) referencing Exemption Nos. 6-21-0248-X, 6-21-0386-X, 6-22-0300-X, 6-22-0301-X, 6-23-0039-X, and 6-23-0153-X].) However, there are several issues with this claim.

First, there is no evidence of four of the referenced exemptions. Local 30 has been provided only evidence of two of the above-referenced exemptions (i.e., 6-22-0300-X and 6-22-0301-X) and one more that is an entirely different exemption number (i.e., 6-22-0079-X).<sup>7</sup> Local 30 is still awaiting documentation of the other four referenced exemptions, which is nowhere in the Staff Report. The Staff Report should be revised to include all evidence substantiating these exemptions.

Second, the tents have been up more than just six periods over the last eight years—including at least 13 times between 2015 and 2020. According to Google Maps and Google Earth screenshots, the event tents were in place in the Resort's southern parking lot no less than 13 times between April 2015 through March 29, 2020. (See "**Exhibit A**" attached hereto.<sup>8</sup>) This far exceeds the claimed six exemptions referenced in the Staff Report, which appear to us to be all issued between 2021 and 2022. The Staff Report acknowledges this use was "unpermitted" (pp. 4, 5) but does not address either (a) the number of days event tents were present without permission (each day being a violation) or (b) the Resort's economic profit resulting from this unpermitted development.

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<sup>6</sup> CCC EJ Policy, *supra* fn. 3.

<sup>7</sup> See Exemption Letters Nos. 6-22-0300-X dated 11/8/22 (<https://www.dropbox.com/scl/fi/2n0u0c09lkgxq2anrrhn3/6-22-0300-X-Paradise-Point-March-tent.pdf?rlkey=e8a9a4blwlfjyag6u0ecpse&dl=0>), 6-22-0301-X dated 11/8/22 (<https://www.dropbox.com/scl/fi/33vxt7ognm77mw5gz4fda/6-22-0301-X-Paradise-Point-May-tent.pdf?rlkey=fbmzkzcyqpzeoe4626znewu6la&dl=0>), and 6-22-0079-X dated 4/14/22 (<https://www.dropbox.com/scl/fi/wpsiihbq793s1gncfn4d3/6-22-0079-X-Paradise-Point-Temporary-Tent.pdf?rlkey=ei82x14g5l4lbjdk8y19ztnmq&dl=0>).

<sup>8</sup> See also Item Th15a (3/9/23 hearing) Staff Report, Exhibits, PDF p. 36 [NOV referencing tents during June 9, 2015 site visit], <https://documents.coastal.ca.gov/reports/2023/3/Th15a/Th15a-3-2023-exhibits.pdf>.



Third, not all equipment and signage associated with the Tent has been removed. The Staff Report is silent as to whether any tent equipment is still present on site, but the draft Consent Agreement (see Appendix A) does not include the tents as part of the unpermitted development that needs to be removed (§ 6.2), states that the Resort may not seek any further temporary event exemptions for the tents, but does allow it to seek approval of the tents in a potential future CDP (§ 7.4). However, photos taken this week by Local 30 show signs directing Resort patrons to the tent area (commonly called the ‘Sunset Pavilion’) and tent equipment staged on public parking spaces (seemingly air conditioning and other HVAC equipment). (See “**Exhibit B**” attached hereto.)

Fourth, some issued exemptions seem inconsistent with the Act and Commission Guidelines. The Act authorizes the Executive Director to exempt temporary events from CDP requirements, consistent with adopted Commission Guidelines. (See Pub. Res. Code § 30610 (i)(1).) Under the Commission Guidelines Memo dated January 23, 1998 (“**Memo**”),<sup>9</sup> ‘temporary events’ involve functions of ‘limited duration,’ defined as not exceeding two weeks (continual basis) or four months (intermittent basis). (See Memo, PDF p. 5 [referencing Guidelines § V(a) & (b)].) Here, however, there seem to be several inconsistencies with these applicable rules, such as:

- i. CDP Exemption Nos. 6-22-0300-x authorized tents for 33 continual days (in February and March 2023) and CDP Exemption Nos. 6-22-0301-x authorized tents for 30 continual days (May 2023).<sup>7</sup> In both instances, the exemptions exceed the plain language of Commission Guidelines limit of not exceeding two weeks of continual days.
- ii. The Memo explains that temporary events—explicitly volleyball tournaments, art/music festivals, surfing contests, boat/auto races, farmers markets—have a *de minimis*<sup>10</sup> impact on coastal resources and raise no concern. (See Memo, PDF p. 1.) Here, however, the tents are erected for 30-plus days (well beyond the explicit events typically lasting one day or weekend). Nor can the tents be called *de minimis* when they occupy 65 parking spaces<sup>7</sup> otherwise dedicated to the public and, therefore, inconsistent with the Act’s Chapter 3 policies concerning public access. (See e.g., Pub. Res. Code §§ 30210 [“maximum access” shall be provided], 30211 [“Development shall not interfere with the public’s right of access to the sea ....”], & 30212 [Public access to the shoreline shall be provided and nothing in this division shall restrict public access].)
- iii. In practice, the Commission has denied temporary event exemptions for a volleyball tournament involving 100 percent paid seating (see Memo, PDF p. 1), as well as denying an exemption for a one-night, 15-minute fireworks display despite assurance that no public easement would be blocked. (See *Gualala Festivals Committee v. California Coastal Com.* (2010) 183 Cal.App.4th 60, 64.). Here, the Resort event tents are perhaps even more intense given they each involved at least 30 days (well beyond a weekend volleyball tournament or 1-night/15-minute firework show) and blocked 65 public parking spaces<sup>7</sup> (counter to assuring no blocked public easements).

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<sup>9</sup> [https://www.coastal.ca.gov/la/docs/temp\\_events\\_guidelines.pdf](https://www.coastal.ca.gov/la/docs/temp_events_guidelines.pdf).

<sup>10</sup> Pub. Res. Code § 30624.7 authorizes waivers for *de minimis* developments involving “no potential for any adverse effect, either individually or cumulatively, on coastal resources and that it will be consistent with the policies of Chapter 3.” [emph. added]” such as Article 2 Public Access policies (id., §§ 30210-30214).

Fifth, the Staff Report must address the Resort's ill-gotten gains secured by the unpermitted development. As urged in prior Local 30 comment letters, Enforcement Actions do not deter bad actors if they amount to a mere slap on the wrist or the cost of doing business at the expense of public access.<sup>11</sup> The Coastal Act allows the Commission to consider the "degree of culpability" and "economic profits" resulting from the Resort's violations. (Staff Report, p. 20 [citing Act § 30820(c)].) While the Staff Report states that the Resort's actions "likely resulted in economic profits" in the aggregate, it does not attempt to quantify the ill-gotten gains from the Coastal Act violations, such as the following:

- i. As explained in its letter dated March 4, 2023 (pp. 2-3),<sup>12</sup> Local 30 conservatively estimated that renting the 15,000 square foot luxury event/tent space just once a week would generate roughly \$50,000 in direct/indirect revenues (e.g., rental fees, dinner costs, guest stays, etc.)—equivalent to \$2.6 million per year in revenue for the Resort. Even if the Consent Agreement amounts to a total of \$3 million in penalties and mitigation (Staff Report, pp. 7, 20), that disgorges the profits of only approximately 14 months over the last 96 months (i.e., eight years). Every day beyond that, the Resort enjoyed a windfall in profits that should be accounted for if this Enforcement Action serves as more than just the cost of doing business for Paradise Point. This can be achieved given that the Commission may authorize penalties of up to \$11,250 per day for each violation for up to five years (discussed further below). (See Staff Report, p. 17.)
- ii. Similarly, how many more meals were sold and events held due to the expanded outdoor dining facilities that impeded the mandatory 5-foot public accessway at the Barefoot Bar along the approximate 200 linear feet along the artificial lagoon? (Id., at pp. 5, 12, 15; Exh. 5.<sup>13</sup>).

Sixth, the Staff Report must address concurrent violations and the total value of the penalties and mitigation in the context of maximum permissible penalties the Commission can levy. The Staff Report acknowledges "many different violations have persisted on the Leased Tidelands for many years" (p. 20), causing "years of public access losses that can never be recovered" (p. 21), and thus a "moderate to high penalty is justified here" (p. 22). However, the Staff Report does not identify how many violations have been concurrent—each subject to a minimum \$1,000 and up to a maximum \$11,250 fine per day. Assuming just one violation per day over a five-year period, the Commission can levy penalties of no less than \$1.825 million<sup>14</sup> and up to \$20.531 million.<sup>15</sup> Is \$3 million moderate or high compared to this range? How much higher could that range be when considering the years of concurrent violations that led to massive profits for the Resort?

#### **4. Additional defects appear in the proposed Consent Agreement.**

There appear to be several inadequacies of the proposed Consent Agreement (see Appendix A), such as the following:

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<sup>11</sup> Item Th15a Staff Report Exhibits, supra fn. 8, PDF pp. 27-30 (Local 30 letter dated 2/7/23).

<sup>12</sup> Local 30 Letter dated 3/4/23, <https://www.dropbox.com/scl/fi/o9qh1pii063iy7scft99/CCC-Letter.pdf?rlkey=i4j0kn3kpdaxdm7rpp9m82lx&dl=0>.

<sup>13</sup> See also Item Th15a Staff Report Exhibits, supra fn. 8, PDF p. 41 (NOV, pp. 10-11).

<sup>14</sup> Calculated: (\$1,000) (365 days) (5 years) = \$1,825,000.

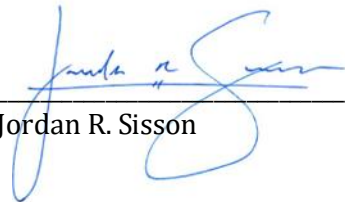
<sup>15</sup> Calculated: (\$11,250) (365 days) (5 years) = \$20,531,250.

- i. The Public Access Plan (§ 6 et seq.) includes the Removal Element (§ 6.2) that should also include the removal of the unpermitted tent equipment currently on site (discussed supra). Additionally, to address the years of unpermitted tent usage, the Commission should consider revising the after-the-fact CDP provisions (§ 7 et seq.) to bar any event tents at the Resort for a minimum of five years and subject to a new CDP application.
- ii. The Public Access Plan includes a Sign Element requiring the installation of roughly 70 signs (§ 6.3 et seq.), instituting employee training (§ 6.6 et seq.), and providing an information campaign on the Resort's website (§ 6.7 et seq.). (See also Staff Report, pp. 2-3, 6-7, 19-22.) However, the Public Access Plan requires the review and approval of only the Commission Executive Director (§ 6.1). It should also provide the public and the City landowner an opportunity to give feedback or comments (e.g., adequacy of signs, appropriate locations, past employee tactics that have been most damaging, etc.).
- iii. Similarly, before the Executive Director's approval, there should be an opportunity for the public or City to review and provide feedback on the Marine Debris Reduction Plan intended to reduce plastics pollution (§ 17.3 et seq.) and the Lagoon Mitigation Plan to undertake water quality study (§ 17.4 et seq.).
- iv. As explained in prior comments, the Resort has a pattern and practice of defying CDP conditions contrary to the Coastal Act and, thus, there is a nexus to justify enhanced compliance measures.<sup>16</sup> As such, the Consent Agreement should add a special condition requiring all physical improvements under the Public Access Plan (§ 6) and future CDP application (§ 7) be explicitly codified in a lease agreement between the Resort and City.

In conclusion, Local 30 respectfully requests that the Commission continue the matter for one month to be held in San Diego—consistent with the Commission's Environmental Justice policies. Thank you for your consideration of these comments. We ask that it be placed in the administrative file for this Project.

Sincerely,

LAW OFFICE OF GIDEON KRACOV



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Jordan R. Sisson

ATTACHMENT

Exhibit A: Documentation of Unpermitted Tents (2015-2020)  
Exhibit B: Documentation of Unpermitted Tent Equipment (8/30/23)

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<sup>16</sup> Supra fnn. 11 & 12.

**EXHIBIT A**



3/29/20 (Google Earth)



Exhibit 2



8/17/19 (Google Earth)

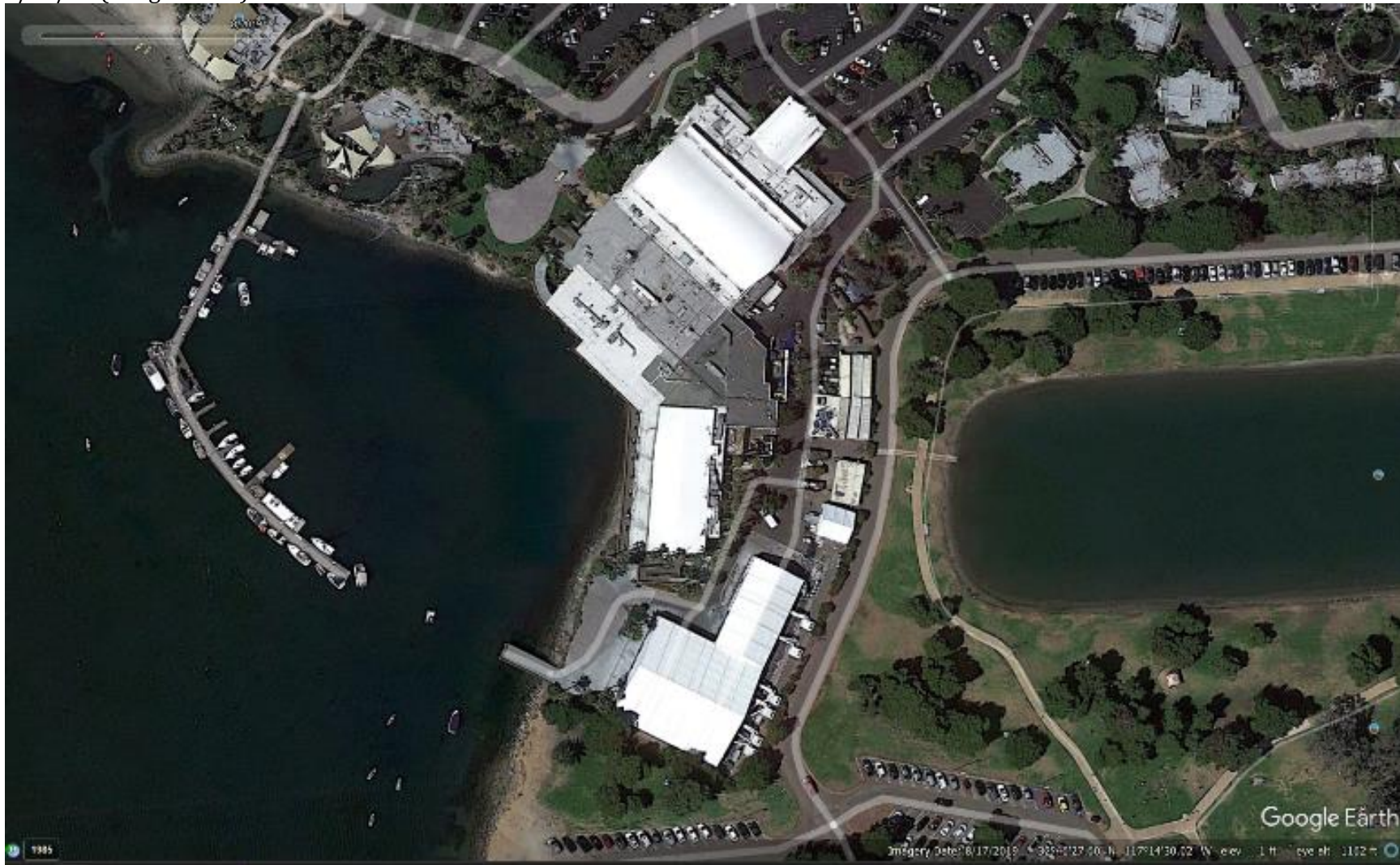


Exhibit 2

April. 2019 (Google Maps)

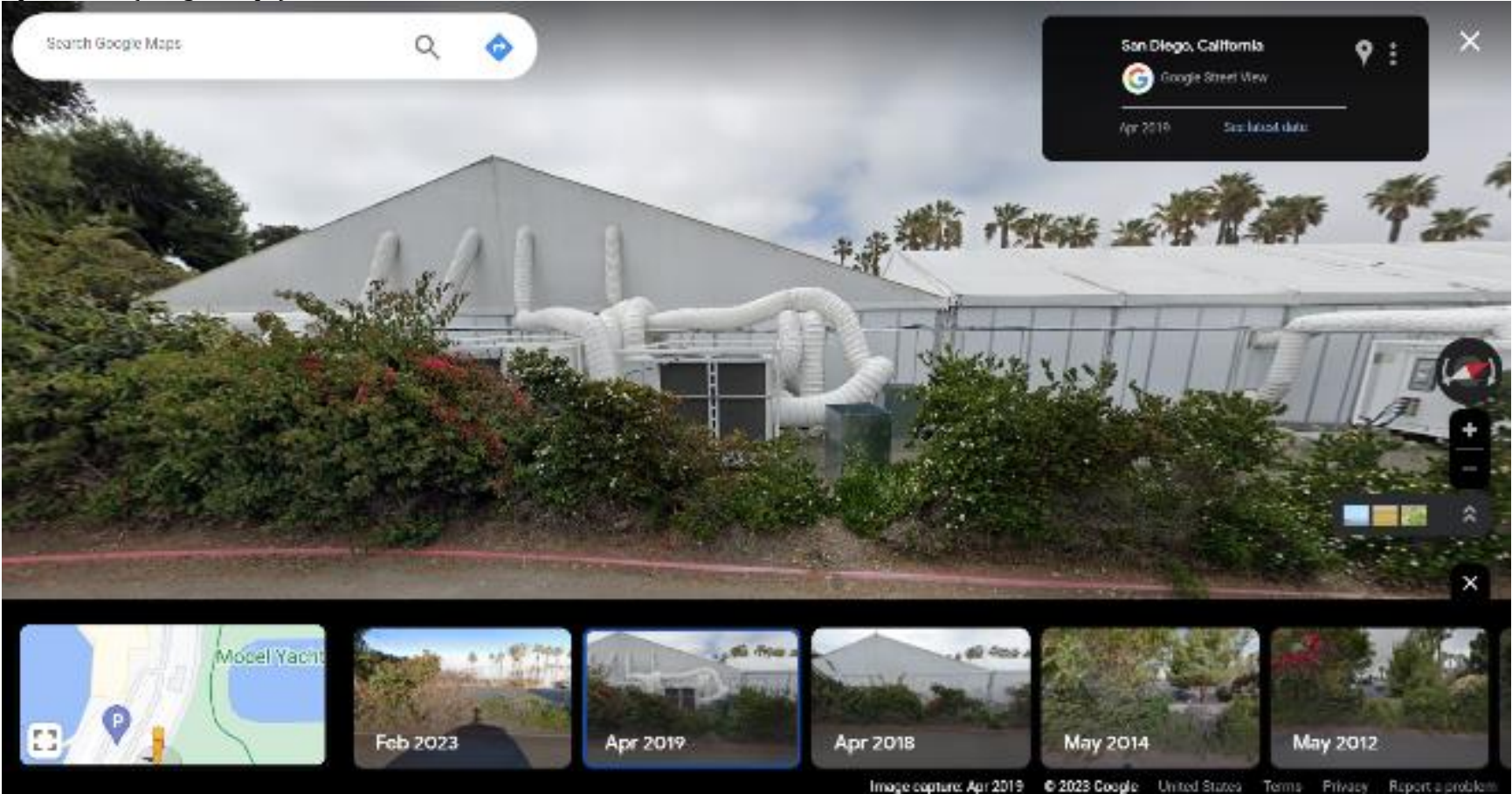


Exhibit 2



11/17/18 (Google Earth)



Exhibit 2



8/13/18 (Google Earth)



Exhibit 2



April 2018 (Google Maps)

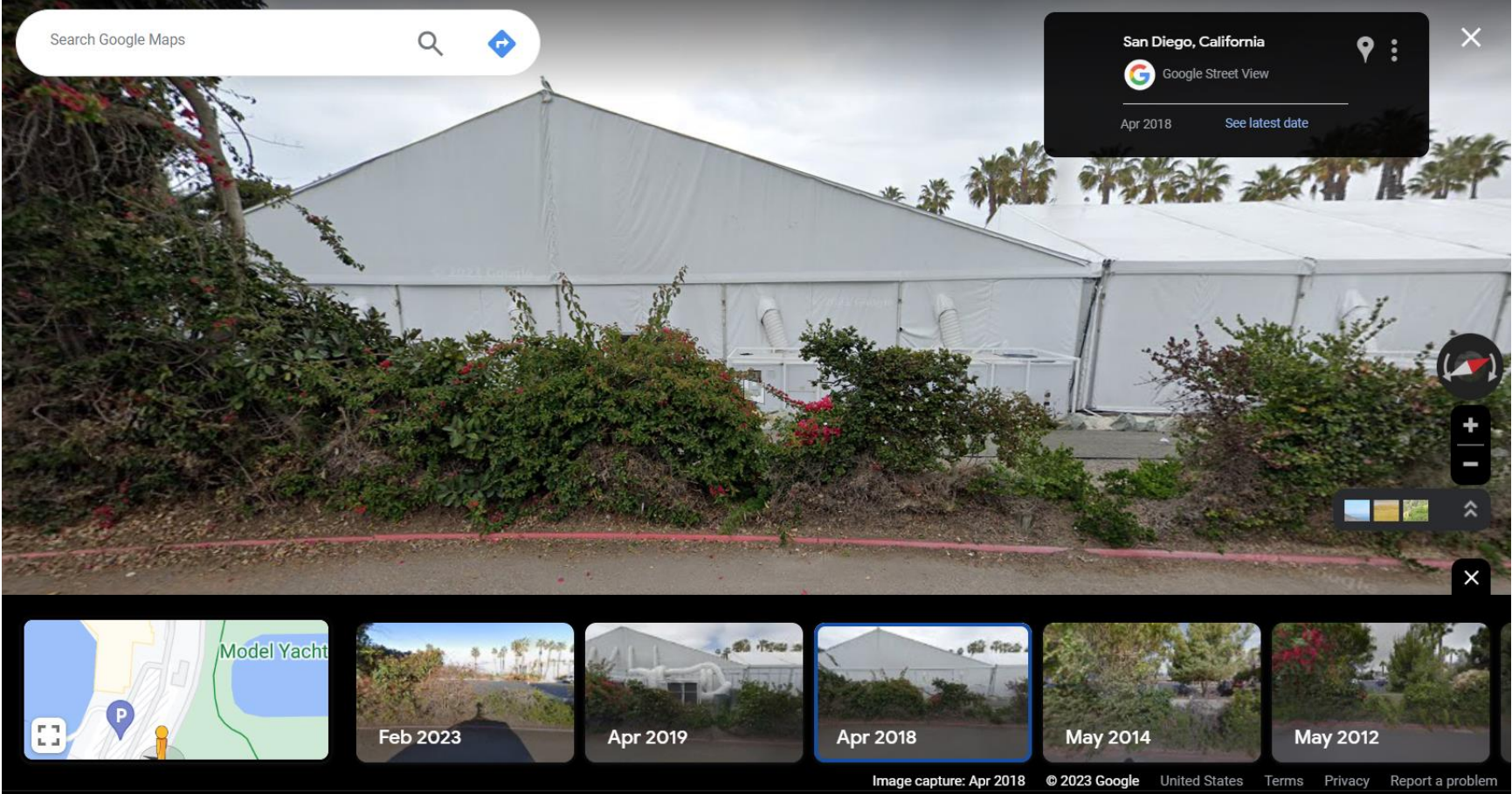


Exhibit 2

Mar. 2018 (Google Maps)

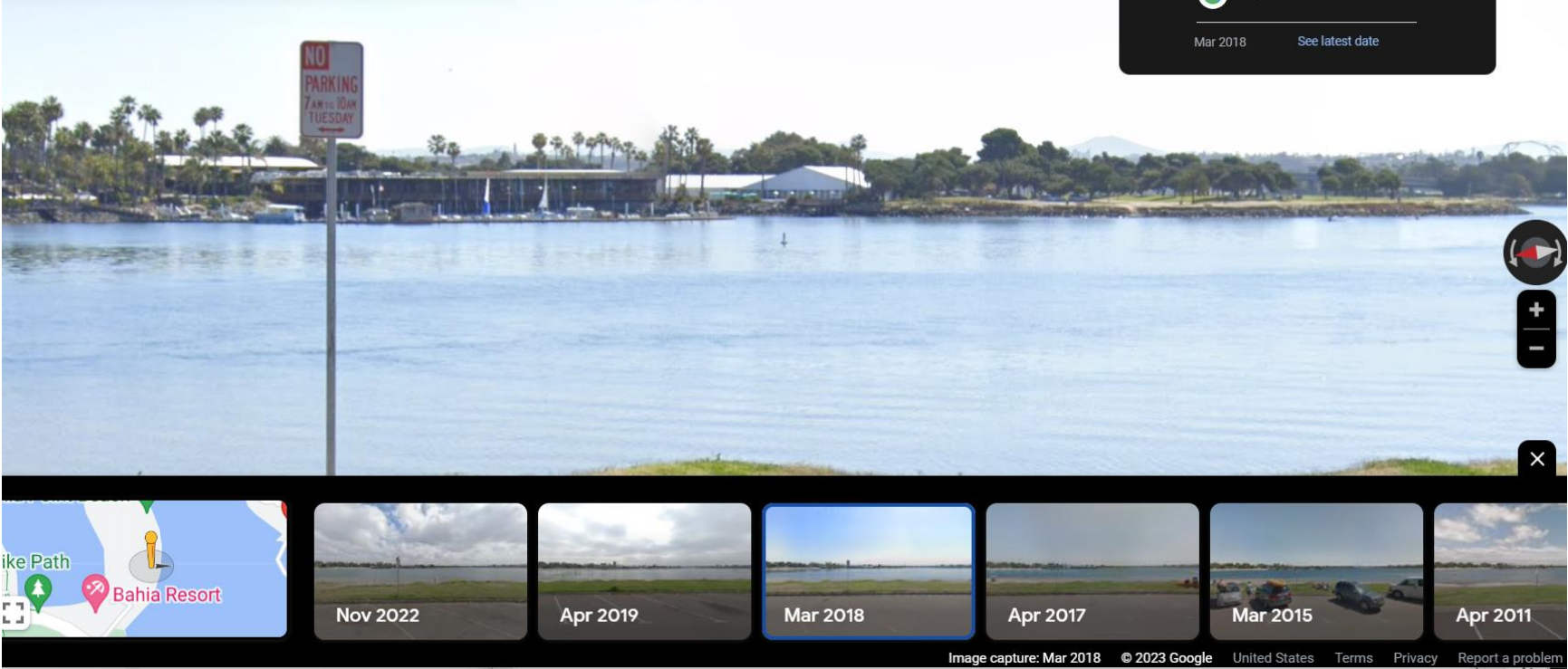


Exhibit 2



12/7/17 (Google Earth)



Exhibit 2

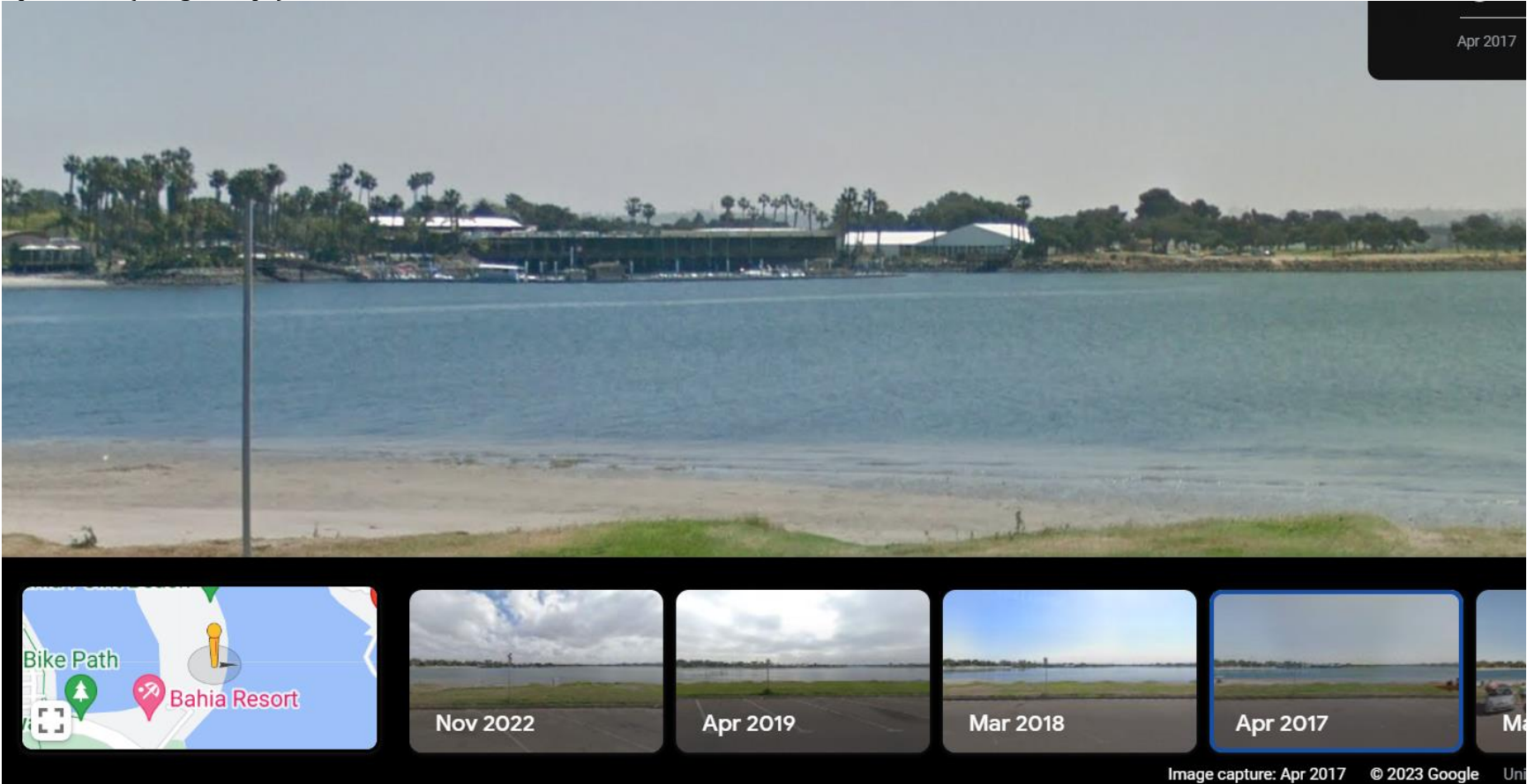
8/13/17(Google Earth)



Exhibit 2



April 2017 (Google Maps)



11/8/16 (Google Earth)



Exhibit 2



3/22/16 (Google Earth)

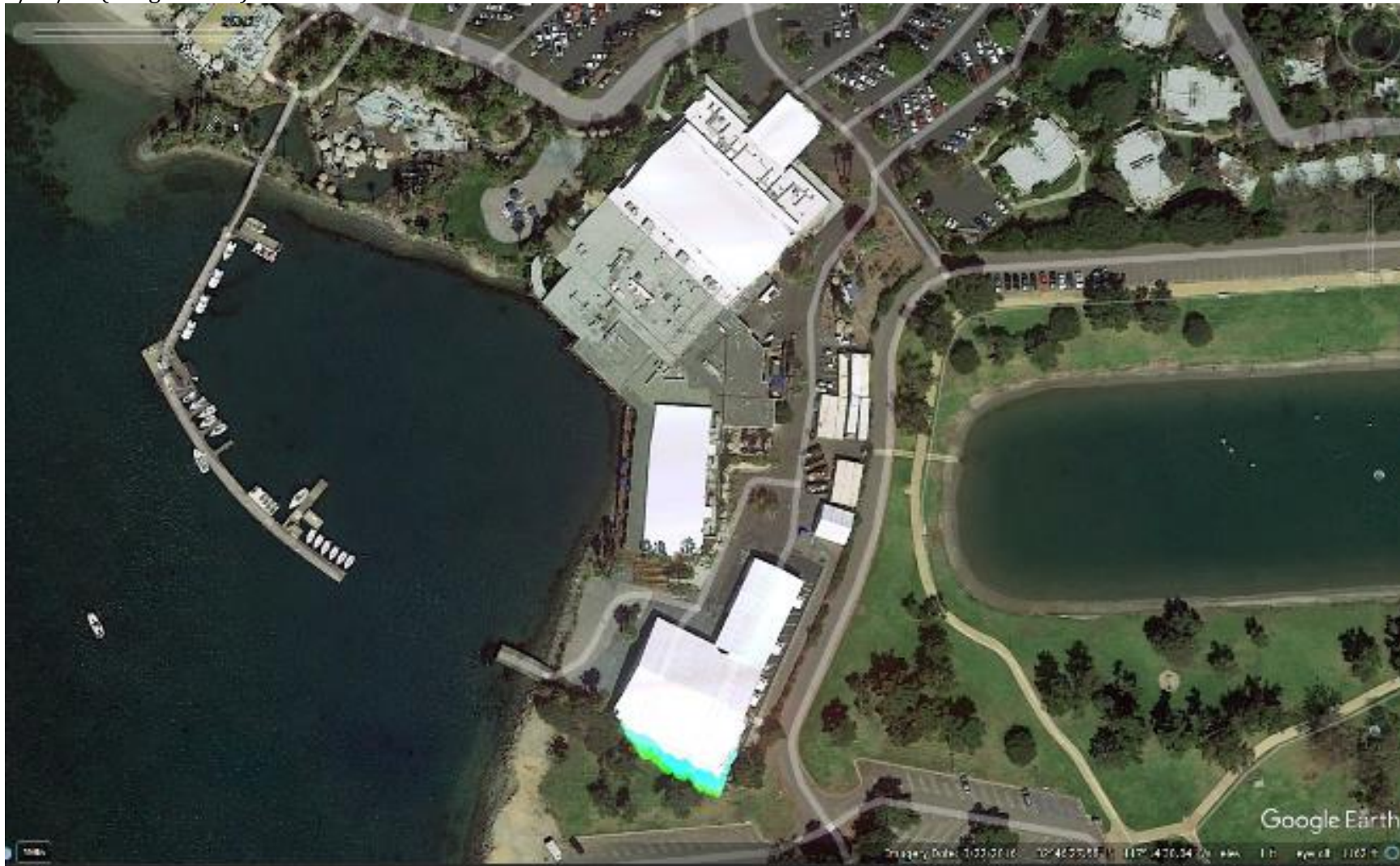


Exhibit 2



7/22/15 (Google Earth)

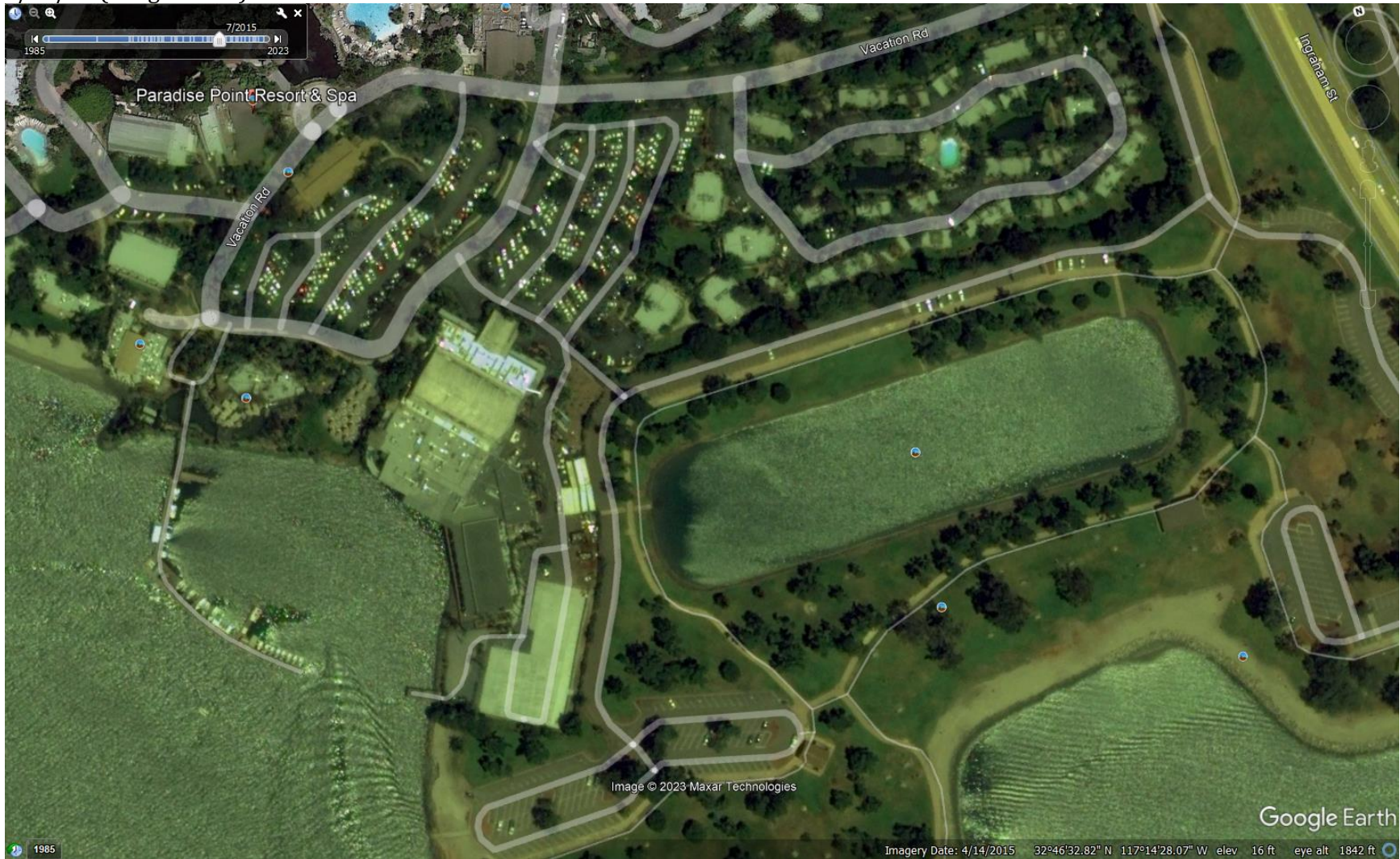


Exhibit 2



4/14/15 (Google Earth)



Exhibit 2

**EXHIBIT B**



8/30/23 (Local 30 Site-Visit)



Exhibit 2



**LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS**

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**RE:     SUPPLEMENTAL COMMENTS LOCAL 30 REGARDING ITEMS W9.1-9.2;**

Dear Chair Brownsey, Honorable Coastal Commissioners, Ms. Haage, and Staff:

On behalf of Local 30, these comments are submitted to supplement our prior comment letter (dated 9/1/23)<sup>1</sup>—regarding the draft Consent Agreement to resolve an Enforcement Action against Paradise Point at its Resort located on Vacation Isle in Mission Bay, San Diego. If the matter is not postponed and is heard this coming week, Local 30 wishes to stress the following five points.

First, we want to thank the CCC staff for the opportunity to speak with them about the matter. We truly appreciate the effort by Commission staff—particularly Ms. Haage and Mr. Moddelmog—regarding this Enforcement Action, *which has been strengthened as a direct result of the public and Local 30's participation in the matter*. For example, in March 2023, Paradise Point withdrew its CDP application that would have resolved this Enforcement Action in addition to authorizing more expansions at the Resort. At that time, Local 30 and the public informed Commission staff of additional ongoing Coastal Act violations (e.g., re-establishing the kiosk guard). A subsequent investigation found other violations previously unknown to the Commission staff (e.g., new intake inflow at a man-made lagoon). Now, yet again, Local 30 and the public have uncovered new ongoing violations at the Resort (e.g., event tent equipment staged on public parking). Local 30 thanks staff for the opportunity to aid its Enforcement Action.

*Second, concerning the proposed Consent Agreement, Local 30 respectfully requests that Commission staff clarify the following:*

- i.    The Removal Element (§ 6.2) must include all event tents, dumpsters, and associated equipment (as well as any other type of fixtures) that obstruct the public's access to any and all parking spaces reserved for the public.
- ii.   Before the Executive Director approves the Public Access Plan (§ 6.1), the Director should notify and solicit comments from the public, including the Sign Element (§ 6.3), Employee Training Element (§ 6.6), Website Element (§ 6.7), or implementation documentation (§ 6.8). Similarly, the Director should notify and solicit comments from the public regarding the adequacy and/or recommendations concerning the Lagoon Mitigation Plan (§ 17.4).

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<sup>1</sup> All abbreviations defined in the 23-page Local 30 comment letter (inclusive of exhibits attached thereto). (See [https://www.dropbox.com/scl/fi/lkvf8f6ae4c4s8l83nt2f/2023.09.01\\_Paradise-Point-CCD-Letter\\_Unite-Here-Local-30.pdf?rlkey=v2q56enp1d8seidukew0b67jt&dl=0](https://www.dropbox.com/scl/fi/lkvf8f6ae4c4s8l83nt2f/2023.09.01_Paradise-Point-CCD-Letter_Unite-Here-Local-30.pdf?rlkey=v2q56enp1d8seidukew0b67jt&dl=0).)

- iii. For the future after-the-fact CDP application from the Resort involving a possible change in public parking configuration to purportedly improve public access (§ 7.4), any reduction of public parking spaces must not be allowed in the Resort's southwestern parking lot where the unpermitted Eco Alley and luxury event tent was erected.<sup>2</sup>
- iv. Whether (a) past unpermitted development (e.g., installation of guards, obstructions to public pathways, Eco-Alley/event tents on public parking, new lagoon inflow pipes, etc.) (see Staff Report, pp. 1, 4-5) or (b) proposed new development (e.g., after-the-fact CDP approval for past unpermitted activity, 70 public access signs, new bayfront trails, public restroom, dozens of electrical vehicle chargers) (id., at pp. 4-6) are considered a substantial change to the development and operation of the Resort under the Lease with the City. Local 30 urges the Commission to ask the Resort whether they believe the proposed changes are substantial.

Third, Local 30 believes future enforcement of the Consent Agreement requires additional enforcement resources. Local 30 appreciates the Commission staff's efforts. However, it has been eight years since enforcement first discovered violations in 2015 and six years since the CCC issued its NOV in January 2017 (id., at p. 5). Furthermore, it was the public that made staff aware of new/ongoing violations in March and August of this year. We urge the Commission to ask both staff and the Resort to add a special condition to the Consent Agreement requiring all physical improvements under the Public Access Plan (§ 6) and future CDP application (§ 7) to be explicitly codified in the lease agreement between the Resort and City of San Diego.

Fourth, Local 30 asks staff to clarify how many concurrent violations have occurred and the full range of potential penalties that could be levied. The Staff Report acknowledges many different violations have persisted for many years, likely resulting in economic profits, which justify a moderate to high penalty (each subject to a \$1,000 - \$11,250 penalty per day for a 5-year period). Assuming just one violation per day over a five-year period, the Commission can levy penalties of up to \$20.531 million. We urge the Commission to ask staff how many concurrent violations occurred at the Resort and how high the total penalties could be.

Fifth, Local 30 believes there should be a five-year ban on the special events tent. As detailed in our prior letter, event tents have been up at least 13 times since 2015 (i.e., eight years), but CDP exemptions have only started since 2021 (i.e., six years with no CDP or exemptions). For six unpermitted years, the tents likely generated significant revenue for the Resort (estimated \$2.6 million per year) at the expense of public access, which dwarfs the \$3 million total value of the penalties and mitigation under the Consent Agreement (estimated by staff). We urge the Commission to ask both staff and the Resort how much profit was gained by this unpermitted event space. Rather than requesting higher penalties, there should be a five-year ban from any special event tents.

Thank you for your consideration of these supplemental comments.

Sincerely, LAW OFFICE OF GIDEON KRACOV

  
Jordan R. Sisson

<sup>2</sup> As referenced in staff's January 27, 2017 Notice of Violation (V-6-16-0115), pp. 5-6.