

CALIFORNIA COASTAL COMMISSION

455 MARKET ST, SUITE 300
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
TDD (415) 597-5885



W9.1 - 9.2

CCC-23-CD-04 and CCC-23-AP-03 (Paradise Point)

APPENDIX A

**CONSENT CEASE AND DESIST ORDER CCC-23-CD-04 AND
CONSENT ADMINISTRATIVE PENALTY CCC-23-AP-03**

1. CONSENT CEASE AND DESIST ORDER CCC-23-CD-04

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the Commission hereby orders and authorizes LHO Mission Bay Hotel L.P., and its successors in interest, lessees, sublessees, assigns, managers, employees, agents, contractors, and any persons or entities acting in concert with or on behalf of any of the foregoing, including any future owners, lessees, or sublessees of LHO Mission Bay Hotel L.P.’s May 15, 2000 lease, to take all actions required and authorized by Consent Cease and Desist Order No. CCC-23-CD-04, including, but not limited to, the following:

- 1.1 Cease and desist from engaging in or undertaking any further development, as that term is defined in the Coastal Act (PRC § 30106), and that requires a Coastal Development Permit (“CDP”), as required by the Coastal Act, on any of the property identified in Section 5.3 below (“the Leased Tidelands”), unless authorized under the Coastal Act, which includes development authorized through these Consent Orders, as that term is defined in Section 5.1., or is found to be exempt pursuant to the Coastal Act (PRC sections 30000-30900).
- 1.2 Refrain from undertaking any activity in violation of the Coastal Act or in violation of CDP No. F7293 and CDP No. 6-99-117, including any attempts to block, limit, or interfere with any public access rights to and within the tidelands, beaches and parking lots located on or adjacent to the Leased Tidelands, and comply with the terms and conditions of CDP No. F7293 and CDP No. 6-99-117, as well as the May 15, 2000 lease between the City of San Diego and LHO Mission Bay Hotel L.P., and Consent Administrative Penalty CCC-23-AP-03.
- 1.3 Remove, pursuant to and consistent with the terms of an approved Public Access Plan, as required in Section 6, but also pursuant to Section 7 below, and pursuant to the terms and conditions set forth herein, all unpermitted development, as defined in Section 5.2, below, including that which restricts or interferes with public access to, on, or across the Leased Tidelands.
- 1.4 Obtain all other mandatory approvals or permits for the work required herein that are required by other government agencies having jurisdiction over that work, consistent with these Consent Orders, and comply with the terms and conditions of any such government agency permit(s). These Consent Orders provide authorization under the Coastal Act for the development required herein, so long as such development is undertaken in accordance with the terms and conditions of these Consent Orders.

2. CONSENT ADMINISTRATIVE PENALTY CCC-23-AP-03

Pursuant to its authority under PRC Section 30821, the Commission hereby imposes

upon Respondent and Respondent agrees to pay an administrative civil penalty as specified in Section 17, below.

PROVISIONS COMMON TO THESE CONSENT ORDERS

3. PERSONS SUBJECT TO THESE CONSENT ORDERS

LHO Mission Bay Hotel L.P., and any of their successors in interest, lessees, sublessees, assigns, managers, employees, agents, contractors, and any persons or entities acting in concert with or on behalf of any of the foregoing, including any future owners, lessees, or sublessees of LHO Mission Bay Hotel L.P.'s May 15, 2000 lease ("Respondent"). Respondent is jointly and severally subject to all requirements of these Consent Orders. Respondent shall undertake the work required herein and shall cause their lessees, employees and agents, and any contractors performing any of the work required herein, and any persons acting in concert with any of these entities to comply with the terms of these Consent Orders. Respondent shall notify any potential future lessee or sublessee of the May 15, 2000 lease, between the City of San Diego and LHO Mission Bay Hotel L.P., of the obligations of these Consent Orders and that they, too, must comply with the terms and conditions of these Consent Orders. Respondent shall provide notice to all successors, assigns, and potential sublessees of the May 15, 2000 lease, between the City of San Diego and LHO Mission Bay Hotel, L.P., of any remaining restrictions or obligations under these Consent Orders.

4. NATURE OF ORDER, PENALTY, AND OF CONSENT

- 4.1 Respondent agrees that the jurisdictional requirements for issuance and enforcement of these Consent Orders have been met and shall not contest the issuance or enforcement of these Consent Orders. Through the execution of the Consent Orders, Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders order and authorize the removal and mitigation activities, among other activities, outlined in these Consent Orders. Nothing in these Consent Orders guarantees or conveys any right to undertake development on the Leased Tidelands other than the work expressly authorized herein. Any development subject to Coastal Act requirements that is not specifically authorized under these Consent Orders requires authorization or determination of exemption under the Coastal Act.
- 4.2 Respondent further agrees to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

5. DEFINITIONS

- 5.1 "Consent Orders"

Refers collectively to Coastal Commission Consent Cease and Desist Order No. CCC-23-CD-04 and Consent Administrative Penalty CCC-23-AP-03.

5.2 “Unpermitted Development”

Means all “development” as that term is defined in the Coastal Act (PRC section 30106) that has occurred on the Leased Tidelands and on adjacent public trust lands, as defined in 5.3, below, and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not limited to: 1) the installation of a guard and associated kiosk within the entrance road; 2) obstruction of a public access pathway with dining furniture and failure to provide required public access signage, in violation of CDP No. F7923; 3) construction and placement of fences, pavement, event tents, uncovered dumpsters, and storage containers across public pedestrian pathways and public parking spaces, in violation of CDP No. F7923 and CDP No. 6-99-117; 4) placement of new inflow pumps that draw Mission Bay’s waters into a “lagoon” water feature adjacent the bay; 5) construction of new decks over the lagoon water feature adjacent Mission Bay; and 6) reconstruction of a pier.

5.3 “Leased Tidelands”

The property that is the subject of these Consent Orders is located at 1404 Vacation Road, a 51.57-acre bayfront site on West Vacation Isle in Mission Bay Park, recorded in Exhibit A of a May 2000 Memorandum of Ground Lease between the City of San Diego and LHO Mission Bay Hotel, L.P., San Diego, alternatively known as San Diego County Assessor’s Parcel Number 760-038-03.

6. PUBLIC ACCESS PLAN

6.1 Within 30 days of issuance of these Consent Orders, Respondent shall submit, for the review and approval of the Executive Director, a proposed Public Access Plan (“Access Plan”) that provides for the means for, and ensures the continued availability of public access to, on, and across the Leased Tidelands, as required by CDP No. F7293 and CDP No. 6-99-117, as well as the May 15, 2000 lease, and in compliance with any new leases issued to Respondent by the City of San Diego. Respondent or any subsequent lessee shall also provide and maintain all public amenities required by this Access Plan so long as Respondent or any subsequent lessee leases the areas where the public amenities are located. The Access Plan shall include a Removal Element, Sign Element, Restroom Element, Electric Vehicle Charger Element, Employee Training Element, and Website Element. It is the sole responsibility of Respondent to design and, upon approval by the Executive Director, successfully implement and maintain the Access Plan. The Executive Director, in their discretion, may review and approve amendments to the Access Plan, as requested by Respondent in the future, as consistent with the terms and conditions of these Consent Orders. The Access Plan shall include full public access to all parts of the public shoreline and bay via land and water, and public parking access, and a means to assure and verify compliance

therewith.

6.2 Removal Element

As part of the Access Plan, Respondent shall submit a Removal Plan consistent with these Consent Orders to govern the removal of the uncovered dumpsters, storage containers, and fences that block access to public parking spaces and public pedestrian pathways, as well as the removal of any remaining signs or other obstructions that restrict public access to the beach on the Leased Tidelands. In addition, the Removal Plan shall include the removal of approximately ten feet of non-native landscaping that has spread into an unpaved pathway between the adjacent park and the pier, to ensure that the public can easily access the pier from the adjacent park. Further, the Removal Plan shall include the removal of sufficient amounts of non-native landscaping near the southernmost vehicular access point to the resort to allow for public pedestrian access to the public pathway there, from the adjacent park. The Removal Plan shall also include the removal of all “tow away” signs on Vacation Road, and any other signs that restrict or deter public parking on Vacation Road or in the public parking lots on the Leased Tidelands.

The Removal Plan shall include the following components:

- 6.2.A A timetable for removal activities that will provide for removal of all dumpsters, fences, storage containers, and signs restricting public access within 3 days of approval of this Removal Plan by the Executive Director.
- 6.2.B A site plan, drawn to scale and depicting the boundary lines of the Leased Tidelands, the locations of the Unpermitted Development, and the specific locations and directions from which photographs will be taken pursuant to Section 6.2.E, below.
- 6.2.C A notation that Respondent shall obtain permission from the City of San Diego pursuant to Section 9, below, for any activities that will be undertaken pursuant to these Consent Orders on tidelands not leased by Respondent.
- 6.2.D The identity and location of the licensed disposal or recycling facility to which removed materials will be transported. If the proposed destination for the removed materials is located within the Coastal Zone and is not an existing, legal sanitary landfill or recycling center, a CDP is required for such disposal. All hazardous materials must be transported to and properly disposed of at a licensed hazardous waste disposal facility.
- 6.2.E Within seven days of completion of removal activities pursuant to this Section, Respondent shall submit a written report, for the review and approval of the Executive Director, documenting all activities performed pursuant to the approved Removal Plan. This report shall include a summary of dates on which work was performed and photographic documentation from the locations depicted on the

site plan required by Section 6.2.B, documenting implementation of the Removal Plan and removal of all physical items and structures required to be removed pursuant to these Consent Orders. After review of the evidence, if the Executive Director determines that the removal activities have in part, or in whole, been unsuccessful, based on the requirements of the approved Removal Plan and these Consent Orders, Respondent shall submit a Revised Removal Plan for the review and approval of the Executive Director. The Revised Removal Plan shall specify any measures necessary to ensure that the removal activities comply with the approved Removal Plan, these Consent Orders, and the Coastal Act. Respondent shall implement any specified measures within the timeframe specified by the Executive Director.

6.3 Sign Element

As part of the Access Plan, Respondent shall submit a Sign Element that contains written and graphic plans for all public access related signs and all interpretive signs. The Sign Element shall include a description of the size of all signs, the materials of each sign, all languages used in the sign text, and the specific text and content of each sign. In addition, any other signs (proposed or existing), other than those required in the Sign Element, in or near the resort entrances, the public parking areas, or the public pedestrian areas, shall also be included within the Sign Element to ensure that such signs do not deter or preclude public use of public areas. Respondent shall not post signs restricting public access in any way at or adjacent to the resort entrances, public parking areas, public pathways, or the shoreline. All public access signs placed on the Leased Tidelands pursuant to the Sign Element shall include the language: "Public Access provided in cooperation with the California Coastal Commission," with the California Coastal Commission logo, and all interpretive signs placed on the Leased Tidelands pursuant to the Public Access Sign Element shall include the language: "This sign provided in cooperation with the California Coastal Commission."

6.3.A New Access Signs

The Sign Element shall also include the design, installation, and maintenance of the new public access signs as listed, below. The signs shall meet the specifications below and shall be submitted for review and approval of the Executive Director. All signs, unless otherwise specified, shall be at least 9 square feet and made of metal or other material that can withstand weathering and the other effects of being located in the marine environment. Respondent shall design, fabricate, and provide the sign(s) and if the City requests to install said signs, Respondent shall reimburse the City for the costs of installation. If necessary, Respondent shall propose to adjust the size or specifications of these signs to meet any City requirements, subject to the review and approval of the Executive Director.

The Sign Element shall include:

6.3.A.1 A new sign attached to the wooden sign at the corner of Vacation Road

and Ingraham Street, placed below the top sign that says 'Vacation Isle – Paradise Point Resort' that states that the beaches are open to the public there and that there is free parking available to the public there.

- 6.3.A.2 The installation of two signs attached to the two "Paradise Point" ground signs near the corner of Vacation Road and Ingraham Street that state that the beaches are open to the public there and that there are free public parking spaces there.
- 6.3.A.3 Six signs, three on each side of Vacation Road, spaced apart in conspicuous locations that state that public parking is allowed on both sides of Vacation Road.
- 6.3.A.4 Twelve signs, six for each of the main public parking lots on the Leased Tidelands reached by Vacation Road, that state that free public parking is available in those parking lots.
- 6.3.A.5 One sign near the informal public path between the park and the pier explaining that there are public beaches and pathways on the Leased Tidelands and that the pier is open to the public.
- 6.3.A.6 Two signs explaining that the pier is open to the public and may be used for fishing, one sign on the pier itself and one sign adjacent to the pier.
- 6.3.A.7 Six signs demarcating the two public pathways between the pier and the bayfront lagoon water feature, one along the parking lot to the east, and one along the decks attached to the convention center along the water.
- 6.3.A.8 Six signs along the decks adjacent the bayfront lagoon water feature demarcating the public access pathway and explaining that the path leads to the beach and public restrooms, arranged pursuant to the alignment of the path authorized by the after-the-fact CDP applied for in Section 7 of these Consent Orders. If the after-the-fact CDP is denied, Respondent shall propose another accessway along the bayfront lagoon water feature for the Executive Director's approval.
- 6.3.A.9 Three signs in the main parking area notifying the public of the availability of the public restrooms required to be provided pursuant to Section 6.5, below.
- 6.3.A.10 Six signs adjacent the beach between the Tidal Restaurant and North Cove, explaining that the beach is open to the public, and that public restrooms are available at the south end of the beach.
- 6.3.A.11 Four signs at North Cove Beach explaining that all beaches adjacent to or on the Leased Tidelands are public.

- 6.3.A.12 Three signs between the Model Yacht Pond and the Leased Tidelands, including one sign next to the southern vehicular access road on the Leased Tidelands, explaining that public beaches, public pathways, and free public parking are available on the Leased Tidelands.
- 6.3.A.13 Four signs on and near the marina, explaining that the marina is public and that watercraft rentals are available to the public there.
- 6.3.A.14 Two signs, one in each median at the intersection of Ingraham Street and Vacation Road, in the standard brown 'Coastal Access' format with the depiction of feet, with arrows pointing towards the resort.
- 6.3.A.15 Four signs explaining where the public vehicle drop off zone is located near the restrooms, pursuant to the Restroom Plan at Section 6.5.
- 6.3.A.16 Four signs stating that the restrooms required by Section 6.5, below, are open to the public, including one on each restroom stall itself.

6.3.B New Interpretive Signs

The Sign Element shall also include at least three (3) new interpretive signs. The signs shall be designed by an Interpretive Sign Specialist, to be proposed by Respondent within 10 days of approval of the Consent Orders, for review and approval by the Executive Director. The Interpretive Sign Specialist(s) shall have experience making interpretive signs and shall have knowledge of the subject areas covered in the signs. The interpretive signs shall include color photos and graphics and each sign shall measure a minimum of 3' x 4'. Each interpretive sign shall be located near to the water, including one near the pier, in conspicuous locations visible to adults and children and in locations that minimize impacts to public views of Mission Bay. The interpretive signs shall provide educational information regarding the area through photographs, diagrams, and text. Each sign shall be unique in design, but the set of signs shall display all three themes listed by C.1, C.2, and C.3 immediately below.

- 6.3.C.1 A sign providing information about the native birds that live in Mission Bay.
- 6.3.C.2 A sign explaining the history of this area as used by native peoples.
- 6.3.C.3 A sign explaining how sea level rise will impact the future of Mission Bay.

6.3.D Public Access Information Signs

The Sign Element shall include the location of four public access information areas that Respondent shall provide, one located near the pier, one near the large public parking lot, one near the public restrooms, and one near North Cove, that includes an informational/educational sign at the public beaches that includes a map that describes,

through text and photographs and/or graphics, and all free public amenities located on the Leased Tidelands, as well as concessions available to the public, such as the restaurants and watercraft rentals. The signs shall also include a QR code and link to a webpage that also explains where the free public amenities are located. In addition, the signs shall visually show how the public can walk along the bayfront uninterrupted from North Cove to the pier, across the bayfront length of the Leased Tidelands.

- 6.3.D.1 The public access information areas shall also contain brochures, to be created as part of the Access Plan and submitted to the Executive Director for review and approval. The brochures shall always be stocked and otherwise made available to all members of the public. The brochure shall include information about how the public can utilize all the free public access amenities, including the free public parking areas and beaches, the pedestrian pathways, the restrooms, the electric vehicle chargers, and the piers. The brochure shall include color photos and a map, and shall be at least 8.5 by 11 inches. Brochures shall also include information about promotion of reusables and prohibition of plastics.

6.4 Electric Vehicle Charger Element

- 6.4.A As part of the Access Plan, Respondent shall submit an Electric Vehicle Charger Installation Plan ("the Charger Plan"), the amount of which shall follow the latest California Green Building Standards Code for the three public parking lots shown on Exhibit 3 and not include private video advertising, and also include the following:

- 6.4.B All charging spaces shall include a sign adjacent to it stating that use of the charger and associated parking space is limited to the time required to charge the vehicle.

- 6.4.C All electric vehicle chargers shall be provided and maintained as ready for vehicles to charge.

6.5 Restroom Element

- 6.5.A As part of the Access Plan, Respondent shall submit a Restroom Element, that shall provide for the construction and ongoing maintenance of two (2) permanent restroom stalls near the intersection of Sunset Road and Mission Bay Lane. Respondent shall provide and maintain these free public unisex restrooms with water-operated sink(s), toilets, and handwashing facilities, and each shall also include diaper changing station(s). One of the stalls shall meet the accessibility standards of the Americans with Disabilities Act ("ADA"). The restrooms shall be located adjacent to or on the edge of the public parking area but shall not take up any existing or potential public parking spaces. The restrooms shall be open the same hours as the public parking lot. The Restroom Plan shall include a proposed schedule of maintenance and cleaning to ensure health and safety.

6.5.B As part of the Restroom Plan, Respondent shall also submit a plan to construct, provide, and maintain a public shower and drinking fountain adjacent to the restrooms. The public shower shall be at least six feet high. The Restroom Plan shall include a water bottle fill station, as well as a standard drinking fountain. The public shower shall be located near the beach in an area where the water can run off into the sewer system and not into the bay.

6.5.C As part of the Restroom Plan, Respondent shall also submit a plan to provide public vehicle drop off zones in the vicinity of the restrooms.

6.6 Employee Training Element

6.6.A As part of the Access Plan, Respondent shall submit an Employee Training Plan. Respondent's employees who staff the resort's parking operation (collectively "Representative Employees") shall be trained regarding the access provisions of these Consent Orders and be required to inform anyone who makes any inquiry about beach access, bay access, or parking in the area, about the onsite, free public coastal access parking available and provide the member of the public with a public access amenities brochure.

6.6.B Respondent shall, on a biannual basis, conduct a coastal access training seminar for the Representative Employees on how to inform anyone who makes any inquiry about the beach, bay access, or parking, about the onsite, free public coastal access parking available at the resort. Respondent shall submit a report to the Executive Director as part of the biannual report verifying that the seminar was conducted, listing the titles and number of employees that attended the training, and include the agenda of the seminar. The report shall describe how new employees are trained between seminars.

6.7 Website Element

6.7.A As part of the Access Plan, Respondent shall submit a Website Plan. Respondent shall amend their website to prominently state on the resort's home page and other appropriate pages that the resort include public beaches and free public parking, and that the restaurant and watercraft rentals at the resort are available to the general public at the same rate and terms as paying guests of the resort. Further, if Respondent commissions advertising or issues press releases during the duration of the Science Education and Family Vacation Program for Underserved Students, as described in Section 17.2., below, Respondent shall state in that material that the resort features a public beach and free public parking, and that all concessions are available to the general public at the same rate and terms as paying guests of the resort. In addition, web pages that mention the free public parking may state that public parking areas may not be used for overnight vehicle storage.

6.7.B In addition, Respondent shall produce, for the review and approval of the Executive Director, a one to two-minute video that includes diverse participants and states how to access the public parking lots and public beach at the resort, explains the free amenities required by this Access Plan, and highlights the amenities and concessions available at the resort. Following the Executive Director's approval, Respondent shall post the video on the resort's website and social media platforms, and shall propose to market the video.

6.8 Implementation

6.8.A Respondent shall fully implement the approved Access Plan based on the following timeframe to commence and complete development. Within seven days of approval of the Access Plan by the Executive Director, Respondent shall commence implementation of the Access Plan as authorized by these Consent Orders.

6.8.B Respondent shall fully implement the Access Plan no more than 60 days following approval of the Access Plan.

6.8.C Within 14 days of fully implementing the Access Plan, Respondent shall provide a written report, including photographic evidence, depicting all aspects of the Access Plan and demonstrating that all elements of the Access Plan were fully implemented pursuant to the requirements of the Access Plan, as approved by the Executive Director. Pursuant to Section 13, below, the Executive Director may require revision of deliverables if necessary.

6.8.D Respondent shall pay all costs associated with the planning, preparation, implementation, construction, maintenance, and monitoring of the Access Plan. If any signs required by this plan are removed or otherwise require maintenance or replacement, Respondent shall repair them or replace them within 30 days of needing such repair/replacement. If Respondent requires more time to repair or replace them, Respondent may request and the Executive Director may grant an extension of this deadline as necessary, pursuant to Section 14, below.

6.8.E Public access to all beaches and public parking areas, and public amenities required by these Consent Orders and this Access Plan, such as restrooms and electric vehicle chargers either on the Leased Tidelands or adjacent to the tidelands, shall be free to the public (except for electricity charges for the vehicle chargers that will not exceed market rates for the San Diego area) and open to the public from 4am to 2am. The beaches and pedestrian pathways shall be open to the public 24 hours a day, 365 days a year. Concessions, such as food and watercraft rentals may be open during their posted hours of operation.

6.8.F Respondent shall submit an annual monitoring report to the Executive Director of the Coastal Commission by December 31 of each year, clearly detailing the requirements of the Access Plan as described above, and Respondent's

compliance with the Access Plan, including the requirements for EV charging stations, provision of public parking, and the existence of access and educational signage, website information and other items included in these Consent Orders. The annual report shall include, but is not limited to, a narrative report that includes photos of and a description of the continued availability of amenities required by these Consent Orders and the Access Plan, as well as screenshots of Respondent's websites. The annual report shall include narrative descriptions of any maintenance or repair issues involving amenities required by the Access Plan, and detail Respondent's prompt attention and resolution of any issues.

ADDITIONAL PROVISIONS COMMON TO THESE CONSENT ORDERS

7. COASTAL DEVELOPMENT PERMIT

- 7.1 Within six months of the effective date of these Consent Orders, Respondent shall submit to the Commission's San Diego District office, all information necessary to file a complete CDP application for the items of development listed in section 7.2 and 7.3. If Respondent wishes to apply to retain the specific items of unpermitted development listed in section 7.4, they shall include those items in the same application.
- 7.2 The following items of development must be included in the Coastal Development Permit application. The items of after-the-fact development that Respondent shall apply for are a pump and pipe for the bayfront lagoon water feature and the reconstructed pier. The items of new development that Respondent shall apply for are a fish screen for the pump for the bayfront lagoon water feature, and a public accessway along the bayfront lagoon. If Respondent obtains authorization for the unpermitted decks over the bayfront lagoon pursuant to Section 7.3, below, Respondent may propose to provide the public accessway on that deck pursuant to 7.3, below.
- 7.3 As part of an after-the-fact application for the decks over the bayfront lagoon water feature, Respondent may apply to provide a physically separated public pathway along the waterfront edge of the deck, delineated with a physical barrier such as a railing, to separate the public pathway and any outdoor dining area at the restaurant.
- 7.4 In addition, Respondent may also apply to provide a different configuration of public parking and public pathways around the convention center, such that public access is improved, which may include an after-the-fact permit application for the areas of pavement shown on Exhibit 1. However, public access shall still be provided along the bayfront side of the convention center area. Regardless, Respondent shall not apply for any further temporary event exemptions for the area of the southern public parking lot. Nothing in this provision shall be interpreted to restrict Respondent from applying for a CDP or CDP Amendment consistent with the Coastal Act and the terms of these Consent Orders.

- 7.5 Within two years of the effective date of these Consent Orders, or within three months of any denial or partial denial of a permit application, whichever is sooner, Respondent shall submit, for the review and approval of the Commission's Executive Director, a Removal Plan for removal of any unpermitted development listed in Section 7.3 or Section 7.4 that Respondent does not apply to retain or for which Respondent does apply to retain but such application is denied by the Commission. This removal plan shall be consistent with the provisions set forth in Section 6, above.

8. SUBMITTAL OF DOCUMENTS

All documents submitted to the Commission pursuant to these Consent Orders must be emailed to:

California Coastal Commission
Attn: Rob Modellmog
455 Market Street, Suite 300
San Francisco, CA 94105

With a paper copy sent to:

California Coastal Commission
Attn: Marsha Venegas
7575 Metropolitan Drive #103
San Diego, CA 92108

All documents must be sent via electronic mail to Rob Modellmog (Robert.Modellmog@coastal.ca.gov) with a copy sent to Marsha Venegas (Marsha.Venegas@coastal.ca.gov). Upon request a hard copy will be sent via U.S. mail to these same Commission representatives or designated recipients.

9. SITE ACCESS

- 9.1 Respondent shall not impede access to the Leased Tidelands or non-leased public trust lands by Commission staff or any other agency having jurisdiction over the work being performed under these Consent Orders. In addition, Commission staff may enter and move freely about the portions of the Leased Tidelands on which the violations are located and on which the public access amenities are to be implemented pursuant to these Consent Orders, including, but not limited to the following areas: (1) the portions of the Leased Tidelands on which the violations are located, (2) any areas where work is to be performed pursuant to these Consent Orders, (3) adjacent areas of the Leased Tidelands and any other area in order to view locations where work is being performed pursuant to the requirements of these Consent Orders, and (4) any other areas where evidence of compliance with these Consent Orders may lie for purposes

including, but not limited to, inspecting records, operating logs, and contracts relating to the property and overseeing, inspecting, documenting (including by photograph and the like), and reviewing the progress of Respondent in carrying out the terms of these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by any law.

10. EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

These Consent Orders shall become effective on the date these Consent Orders are approved by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11. FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-23-CD-04 and Consent Administrative Penalty No. CCC-23-AP-03.” The Commission has authorized the activities required under these Consent Orders and has determined them to be consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12. COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the Coastal Act violations on the Leased Tidelands pursuant to PRC Sections 30810 and 30821. In light of the desire of the parties to settle these matters, Respondent agrees to not, and shall not, contest the Commission’s jurisdiction to issue or enforce these Consent Orders at a public hearing or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or a court of law.

13. REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and Respondent shall revise any such deliverables consistent with the Executive Director’s specifications and resubmit them for further review and approval by the Executive Director by the deadline established by the modification request from the Executive Director.

14. MODIFICATION OF DEADLINES

Prior to the expiration of any of the deadlines established by these Consent Orders, Respondent may request from the Executive Director an extension of any such unexpired deadline. Such a request shall be made in writing ten (10) days in advance of the deadline, and directed to the Executive Director of the Commission, care of Rob Modellmogh, at the San Francisco address identified in Section 8, above. All requests

shall additionally be sent via electronic mail to Rob Modellmog at Robert.Modellmog@coastal.ca.gov. The Executive Director may grant an extension of deadlines for cause, including, but not limited to, if the Executive Director determines that Respondent has diligently worked to comply with their obligations under these Consent Orders but cannot meet a particular deadline due to time required by other government entities to process requests to authorize work required under these Consent Orders. A violation of deadlines established pursuant to these Consent Orders may result in stipulated penalties, as provided for in Section 18, below.

15. RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondent has not submitted a "Statement of Defense" form as provided for in Section 13181 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist Order and Administrative Penalty Proceedings dated July 27, 2023. Specifically, Respondent has agreed not to, and shall not, contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

16. SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondent hereby agrees not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17. SETTLEMENT/COMPLIANCE OBLIGATION

17.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to pay, and the Commission hereby orders Respondent to pay, a monetary settlement, which includes settlement of financial liability pursuant to PRC section 30821, as well as other sections, in the amount of \$1,000,000. Respondent shall pay the monetary settlement within thirty days (30) of the effective date of these Consent Orders. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823) and as designated by the Executive Director, shall be used for projects including ones that benefit the resources impacted by the unpermitted development. \$250,000 of the penalty shall be designated towards a water quality restoration project, preferably in Mission Bay, for mitigation of the violations involving the unpermitted pump without a fish screen and the reconstruction of the pier. The settlement payments shall be submitted to the Commission's San Francisco Office, at the address provided in Section 8, above, to the attention of Rob Modellmog of the Commission, payable to the account designated under the Coastal Act, and shall

include a reference to these Consent Orders by number.

17.2 Science Education and Family Vacation Program for Underserved Students

As part of the resolution of civil liabilities associated with the Unpermitted Development, Respondent shall submit, for the review and approval of the Executive Director, a plan for a year-round science education and family vacation program on the Leased Tidelands 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 ten years, for a total of \$500,000 in program value. The benefits will be provided by Respondent free of charge to program participants, including overnight accommodations, food and beverages and facility rentals, water sports equipment rentals, and transportation costs. The program shall also include the following:

17.2.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 family members who have been historically excluded from accessing the benefits of coastal opportunities and/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. Respondent shall use this low income calculation to qualify students for this program.

17.2.B Programmatic Elements

Respondent shall provide facility rentals free of charge to participants to facilitate engagement in real-world science experience and recreational events. 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. The programs may include:

17.2.B.1 Water Quality Monitoring (educational)

17.2.B.2 Environmental Justice science workshops

- 17.2.B.3 Workforce Development Science Trainings and College Planning (educational)
- 17.2.B.4 Recreational Events such as kayaking, surfing, volleyball, stand-up paddle boarding, overnight retreats, and end-of-year celebrations.

17.2.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:

- 17.2.C.1 Number of persons that benefited under the program, and how and why these persons met the qualifications, including where these persons reside.
- 17.2.C.2 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.
- 17.2.C.3 A map of the resort that shows the specific accommodations conferred during that quarter, including how many nights each accommodation was provided.
- 17.2.C.4 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.
- 17.2.C.5 A list of all nights that the free accommodations were provided.

17.2.D Termination

Should the chosen non-profit organization or government entity cease coordinating with the Science Education and Family Vacation Program for Underserved Students, Respondent shall, within 30 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.

17.2.E Implementation

The applicant shall begin implementing the Science Education and Family Vacation Program for Underserved Students within 30 days of the Executive Director approving the plan.

17.3 Marine Debris Reduction Plan

As part of the resolution of civil liabilities associated with the Unpermitted Development, within 60 days of approval of these Consent Orders, Respondent 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:

- 17.3.A The applicant shall install and maintain smoke-free signage in all rooms and/or areas of the proposed development.
- 17.3.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.
- 17.3.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.
- 17.3.D Respondent shall propose a plan to ensure that all dumpsters, compost, or other trash bins are covered at all times such that native birds are unable to feed from them.
- 17.3.E Adhere to the following criteria:
 - 17.3.E.1 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 serveware.
 - 17.3.E.2 Prohibit the use of plastic straws and only provide reusable straws, paper straws, or straws made from naturally occurring materials, and only upon request.
 - 17.3.E.3 Prohibit the use of expanded polystyrene (aka Styrofoam).
 - 17.3.E.4 Prohibit the use of plastic bags on-site or for takeout/to-go orders.

- 17.3.E.5 Provide only biodegradable or compostable materials for single-use utensils, straws, condiments, containers, and other accessory items, and only upon request and only for takeout/to-go orders.
- 17.3.E.6 Prohibit the sale of beverages in plastic bottles.
- 17.3.E.7 Prohibit the use of plastic, single-use shampoo, conditioner, soap and lotion bottles.
- 17.3.E.8 Follow proper recycling practices.
- 17.3.E.9 Install a microfiber filtration system for all hotel laundry to capture and remove microfibers from the water during the laundering process.
- 17.3.E.10 All waste resulting from restaurant activities should be exported outside the Coastal Zone.
- 17.3.F 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.
- 17.3.G Respondent shall install upgrades to their laundry facilities to minimize micro-plastic pollution, including use of a microplastic filter for any laundry facilities.
- 17.3.H Respondent shall provide ten water bottle refill stations in the lobby and other high traffic areas, for guests and the public to refill reusable water bottles.
- 17.3.I 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.
- 17.4 Bayfront Lagoon Water Feature Hydrology and Water Quality Mitigation Plan (Lagoon Mitigation Plan)**
 - 17.4.A Respondent shall submit, for the approval of the Executive Director, a Lagoon Mitigation Plan to address the impacts of the unpermitted water pump without a fish screen. The Lagoon Mitigation Plan shall include a hydrology and water quality study of the current system of pumping bay

water into the bayfront lagoon water feature, where it is circulated before returning to the bay.

- 17.4.B The Lagoon Mitigation Plan shall also include recommendations for how to improve the water quality of the water that is returned to the bay. These recommendations shall include, if necessary, increasing circulation within the bayfront lagoon water feature or removing invasive plants within it.
- 17.4.C The Lagoon Mitigation Plan shall also study to what extent the bayfront lagoon water feature itself provides habitat for native species. The Lagoon Mitigation Plan shall provide recommendations for whether such habitat for native species is in the best interest of those species, and therefore, whether it should be encouraged or discouraged, and what actions the resort might take to encourage or discourage said species from using the bayfront lagoon water feature.
- 17.4.D The Executive Director, after reviewing the proposed Lagoon Mitigation Plan, shall determine to what extent modifications of the bayfront lagoon water feature are necessary to improve water quality in the bay and promote the health of native species that might use the bayfront lagoon water feature.

18. STIPULATED PENALTIES

Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 14, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$3,000 per day per violation. Respondent shall pay stipulated penalties regardless of whether Respondent has subsequently complied. If Respondent violates these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30820, 30821, 30821.3, 30821.6, or 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

19. SETTLEMENT OF CLAIMS

The Commission and Respondent agree that these Consent Orders settle the Commission's monetary claims for relief from Respondent for the violations of the Coastal Act specified in Section 5.2, above, occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, 30821, 30821.3, and 30822),

provided that the Public Access Plan in Section 6 is submitted and fully implemented and the obligations in Section 17 are fully satisfied, respectively, and with the exception that, if Respondent fails to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Leased Tidelands or elsewhere, other than those specified herein.

20. LIMITATION OF AUTHORITY

- 20.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act (PRC Sections 30800 to 30824), including the authority to require and enforce compliance with these Consent Orders and the authority to take enforcement action regarding Coastal Act violations beyond those that are specified in Section 5.2, above. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions, or any others, at a later time.
- 20.2 Correspondingly, Respondent has entered into these Consent Orders and agreed not to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondent has agreed not to, and shall not, contest the Commission's jurisdiction to issue and enforce these Consent Orders.

21. SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but these Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

22. GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent in carrying out activities pursuant to these Consent Orders.

23. GOVERNMENT JURISDICTION

These Consent Orders shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.

24. SUCCESSORS AND ASSIGNS

These Consent Orders shall run with Mission Bay Hotel L.P.'s May 15, 2000 lease, and any extensions of said leases, as well as any future leases held by Respondent over any area of the Leased Tidelands, binding Respondent and all successors in interest, lessees, sublessees, heirs, and assigns of Respondent. These Consent Orders bind the parties listed in Section 3, and Respondent is responsible for the work required by these Consent Orders. These Consent Orders constitutes both an administrative order issued to Respondent personally and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect and binding upon Respondent until all terms and conditions are fulfilled, regardless of whether Respondent leases the Leased Tidelands or has a financial interest in the Leased Tidelands or any other property within the Coastal Zone.

25. MODIFICATIONS AND AMENDMENTS

Except as provided in Section 14 of these Consent Orders, and for minor, immaterial matters upon mutual written agreement between the Executive Director and Respondent, Respondent agrees to not modify these Consent Orders indirectly by seeking a permit or an amendment to an existing permit that would purport to authorize (i) any activity that is inconsistent with the terms and intent of these Consent Orders or (ii) any forbearance from any obligation under these Consent Orders. Otherwise, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Sections 13188(b) of Title 14 of the California Code of Regulations.

26. INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

27. CERTIFICATION OF AUTHORITY

The person(s) who sign this document on behalf of LHO Mission Bay Hotel, L.P., attests that they have the legal authority to bind this entity and represents that the aforementioned entity lease and/or manage the Leased Tidelands as defined in Section 5.3, above.

28. COMPLIANCE WITH OTHER LAWS

All work to be done under these Consent Orders shall be done in compliance with all other applicable laws.

29. STIPULATION

Respondent acknowledges, represents, and declares that they have carefully read

these Consent Orders, knows the content, and executes the same voluntarily and without duress or pressure. Respondent and their respective counsel have reviewed these Consent Orders, and the rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting party will not be employed in the interpretation of these Consent Orders. Respondent understands that their consent is final and stipulates to issuance of these Consent Orders by the Commission.

IT IS SO STIPULATED AND AGREED
On Behalf of Respondent:

Thomas C. Fisher
Signature

8/17/23
Date

Thomas C. Fisher
Name

Vice President
Title

Executed in _____ on behalf of the California Coastal
Commission:

Dr. Kate Huckelbridge
Executive Director
California Coastal Commission

Date

Map of Unpermitted Development



Obstruction of Public Path, Failure to Provide Access Signs, and New Decks

Inflow Pipe and Pump

Pavement

Guard

Guard and Kiosk

Uncovered Dumpsters in Public Parking Spaces and Public Path

Pavement

Reconstructed Pier

Event Tents in Public Parking Spaces

Exhibit 1

Map of Public Parking and Proposed Public Restrooms

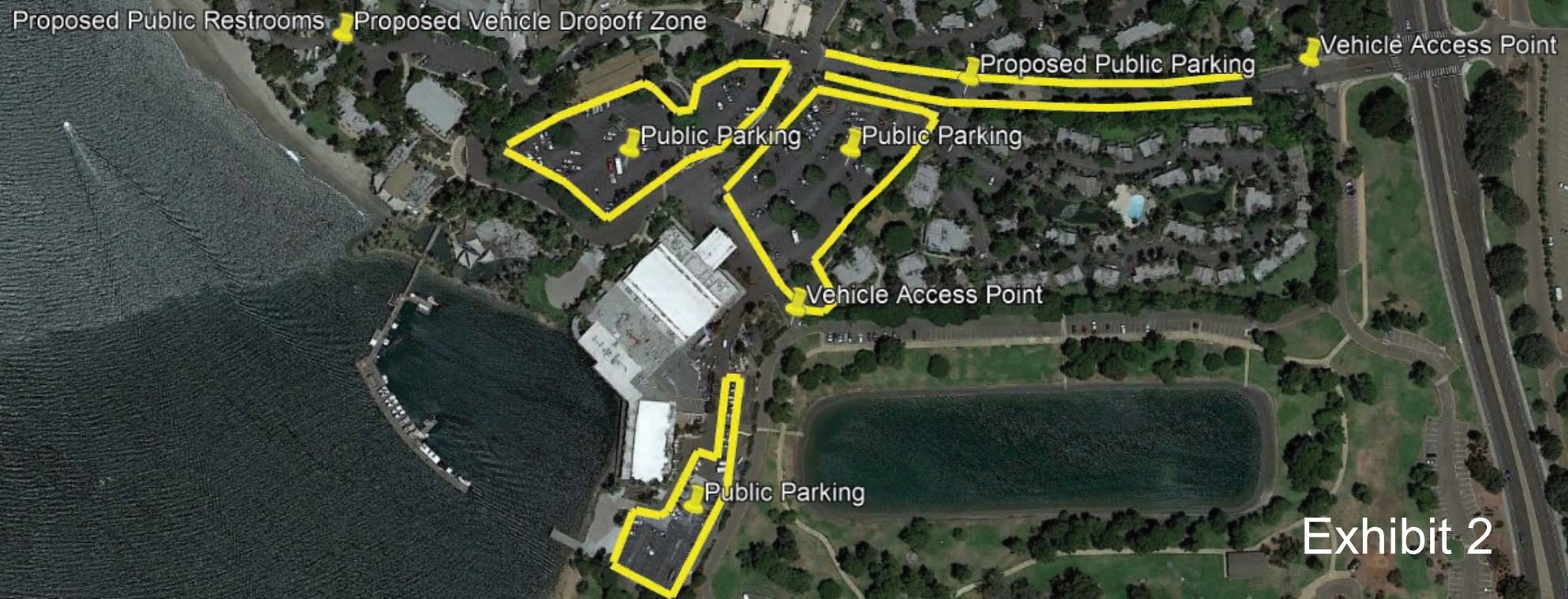


Exhibit 2

Map of Proposed Pedestrian Public Access Signs



Exhibit 3