

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)

EXHIBITS

- | | |
|------------|---------------------------------------------------------------------------------------------|
| Exhibit 1 | Region Map |
| Exhibit 2 | Overview Map of Mission Bay |
| Exhibit 3 | Overview Map of Leased Tidelands on Vacation Isle |
| Exhibit 4 | Map of Single Current CDP-Required Public Access Sign on the Leased Tidelands |
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Mission
Bay

Region Map

San Diego Bay

Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Data CSUMB SFML, CA OPC
Data USGS

Exhibit 1

Google

Imagery Date: 12/1/2022 32°47'43.41" N 117°16'54.70" W elev 0 ft eye alt 2

Map of Mission Bay

Campland

Vacation Isle

Fiesta
Island

Sea
World

Exhibit 2

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Imagery Date: 8/1/2021 32°47'15.00" N 117°15'39.98" W



Leased Tideland on Vacation Isle



Exhibit 3

The Single Current CDP-Required Public Access Sign



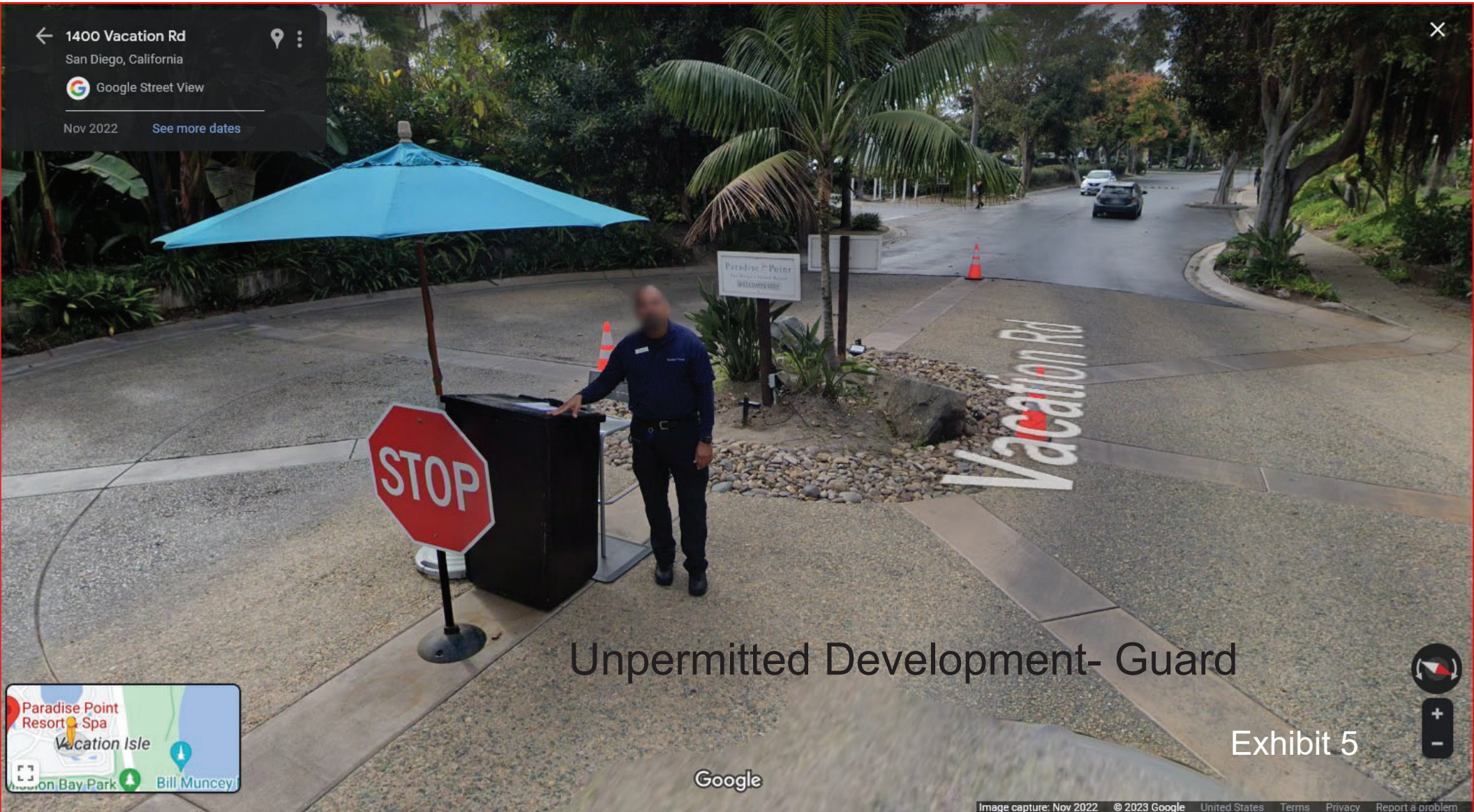
Public Access Sign

Exhibit 4

← 1400 Vacation Rd
San Diego, California

Google Street View

Nov 2022 See more dates




Unpermitted Development- Guard

Exhibit 5

Google

Image capture: Nov 2022 © 2023 Google United States Terms Privacy Report a problem



Unpermitted
Development-
Obstructions in
Public Pathway

Exhibit 5



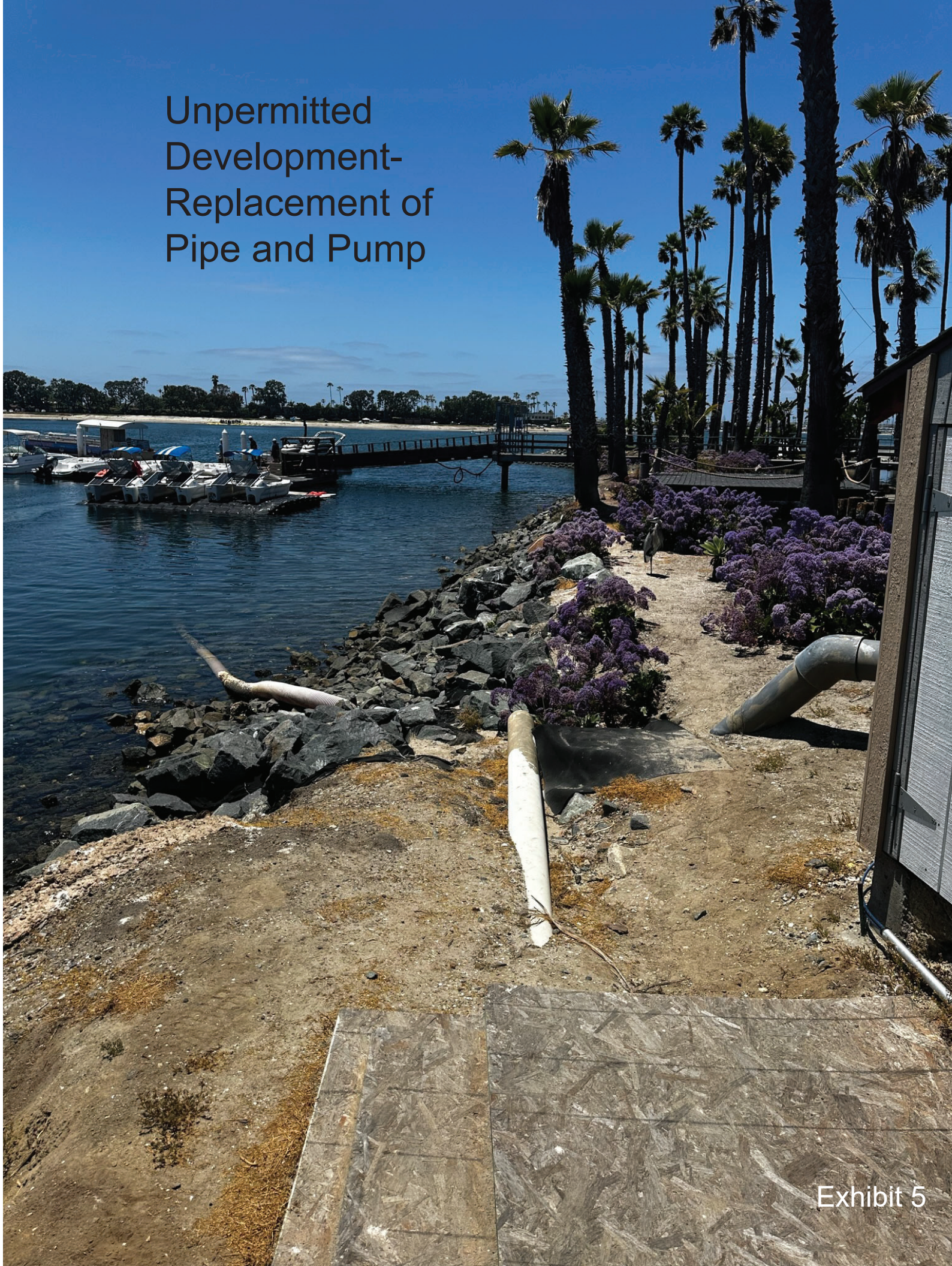
Unpermitted
Development-
Event Tent in
Public Parking
Spaces

Exhibit 5

Unpermitted Development- Dumpsters in Public Parking Spaces



Unpermitted Development- Replacement of Pipe and Pump



Proposed Pedestrian Public Access Mitigation Improvements



Exhibit 6

Proposed Vehicular Public Access Mitigation Improvements



Exhibit 7



SAN DIEGO COAST REGIONAL COMMISSION

6154 MISSION GORGE ROAD, SUITE 220

SAN DIEGO, CALIFORNIA 92120—TEL. (714) 280-6392

COPY

DEVELOPMENT PERMITRECEIVED
NOV 16 1978CALIF. COASTAL COMMISSION
SAN DIEGO REGION

CONTROL NO.: F7293

ROBERT C. FRAZEE
ChairmanVIRGINIA BRIDGE
Vice ChairmanJEFFERY D. FRAUTSCHY
Representative to the
California Coastal CommissionBruce H. Warren
Executive Director

DATE OF COMMISSION ACTION: September 8, 1978

APPLICANT: Vacation Village Hotel
1404 West Vacation Rd.
San Diego, Ca. 92109

AGENT: None

PROJECT LOCATION: Vacation Isle in Mission Bay Aquatic Park, 1404 W. Vacation Rd., San Diego.
APN 60-038-435, Tidelands—Mission Bay.

You are hereby granted a coastal development permit. This permit is issued after a duly held public hearing before the San Diego Coast Regional Commission and after the Regional Commission found that the proposed development is in conformity with the provisions of the California Coastal Act of 1976 including the following:

1. That the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30200).

2. That the permitted development will not prejudice the ability of any affected local government to prepare a local coastal program that is in conformity with Chapter 3 of the California Coastal Act of 1976.

3. That if the development is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976 (Public Resources Code, Sections 30210 -- 30224).

4. That there are no feasible alternatives or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

This permit is limited to development described below and set forth in material on file with the Regional Commission and subject to the terms, conditions, and provisions hereinafter stated:

A. DEVELOPMENT: (SEE THE ATTACHED SHEET).

RECEIVED

NOV 14 1978

VACATION VILLAGE

Exhibit 8

ATTACHMENT

A. DEVELOPMENT:

Expansion of the existing Vacation Village Hotel facilities by the addition of 110 guest units, including 54 guest units with kitchenettes. Also proposed is the enlargement of an existing unit (336 sq. ft.), the construction of a new 1-story, 1,787 sq. ft. restaurant, expansion of the existing coffee shop (428 sq. ft.), addition of office space under an existing covered walkway (1,140 sq. ft.), addition of a restroom area for the existing banquet room, construction of a new entrance bridge, remodel of housekeeping and gardening area including provision of on-site laundry, relocation of existing repair and maintenance facilities, construction of two tennis courts, relocation of existing tennis pro shop, and construction of a salt water lagoon. 235 new parking spaces are proposed to serve the new facilities for a total of 1,076 spaces for the entire hotel complex. Access will be from the existing hotel entrance on Ingraham St.

Total Lease Area (Land)	<u>44.3 acres</u>	
Proposed Develop. area	<u>9.82 acres</u>	
Building coverage	<u>68,203 sq. ft.</u>	(16%)
Paved area coverage	<u>81,900 sq. ft.</u>	(19%)
Landscape coverage	<u>277,590 sq. ft.</u>	(65%)
Parking (proposed)	<u>235</u>	
(existing)	<u>841</u>	
Zoning	<u>NA</u>	
General plan	<u>Mis. Bay Park Master</u>	
	<u>Plan-Guest Housing, Park & Shoreline</u>	
Project Density	<u>NA</u>	
New cottage units	<u>9' 4"</u>	
Laundry Bldg.	<u>18' 5"</u>	
Maintenance Bldg.	<u>8' 6"</u>	
Restaurant	<u>18'</u>	

B. TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project as approved by the Regional Commission.
2. That the applicant agrees to notify the Regional Commission (or State Commission if there is no Regional Commission) of any changes in the project.
3. That the applicant will meet all the local code requirements and ordinances and obtain all necessary permits from State and Federal Agencies.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Commission.
5. That the applicant agrees that the Commission staff may make site inspections of the project during construction and upon completion.

SPECIAL CONDITIONS

1. That no portion of the proposed shoreline restaurant, including deck areas, shall extend any further seaward than the top of the existing rip rap bank.

A revised site plan showing the location of the restaurant in compliance with this condition shall be submitted to, reviewed and determined adequate in writing by the Executive Director prior to the issuance of the permit.

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

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

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

4. That the applicant shall provide adequate access and special facilities for the handicapped consistent with all local government regulations, and the goals and policies of the proposed Mission Bay Park Master Plan.

Terms and conditions are to run with the land. These terms and conditions shall be perpetual, and it is the intention of the parties to bind all future owners and possessors of the subject property to said terms and conditions.

C. STANDARD PROVISIONS:

1. STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit under penalties established by California Coastal Act of 1976.
2. TIMELY DEVELOPMENT AND COMPLETION: Permittee shall commence development within one year following final approval of the project by the San Diego Coast Regional Commission. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
3. REQUEST FOR EXTENSIONS: Permittee may request an extension of time for the commencement of construction provided the request is applied for prior to expiration of the permit.
4. ASSIGNABILITY OF PERMIT: This permit is not assignable unless the permittee's obligations under the permit are assumed by assignee in writing within one year and a copy of the required assumption agreement delivered to the Regional Commission or State Commission if there is no Regional Commission.
5. APPEAL - Unless appealed to the State Commission within ten (10) working days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
6. DISCLAIMER: The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any questions on this permit, please contact the staff of the Regional Commission

Very truly yours,

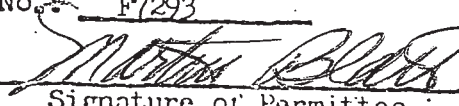


Bruce H. Warren
Executive Director

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Control No. F7293


Signature of Permittee

Martin Blatt
Managing Director
Vacation Village Hotel

Nov 14, 1978
Date

Exhibit 8

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

21-8036



Filed: 8/10/99
49th Day: 9/28/99
180th Day: 2/6/00
Staff: LRO-SD
Staff Report: 9/23/99
Hearing Date: 10/12-15/99

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-99-107

Applicant: Mike Marinkovich

Agent: Erik Edgmon

Description: Demolition of four single family cottages/studio units and one duplex and construction of a new three-story, 14,563 sq.ft., eight-unit condominium development over a 14 space subterranean parking garage, with seven surface parking spaces on a 12,500 sq.ft. lot.

Lot Area	12,500 sq. ft.
Building Coverage	5,258 sq. ft. (42%)
Pavement Coverage	5,889 sq. ft. (47%)
Landscape Coverage	1,353 sq. ft. (11%)
Parking Spaces	21
Zoning	RV (29 dua)
Plan Designation	Residential/Visitor Serving
Project Density	27.8 dua
Ht abv fin grade	30 feet

Site: 632-642 Missouri Street, Pacific Beach, San Diego, San Diego County.
APN 415-521-17, 18

Substantive File Documents: Certified Pacific Beach Land Use Plan and City of San Diego LCP Implementing Ordinances

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the

ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the demolition of four single family cottages/studio units and one duplex and construction of an eight-unit condominium complex which will be housed in two separate 30-foot high, three-story buildings totaling 14,563 sq.ft. in size on a 12,500 sq.ft. lot. A total of 14 parking spaces will be provided in the subterranean parking garages with the provision of seven surface parking spaces for residents, guests and the handicapped. The subject site is located on the north side of Missouri Street, west of Mission Boulevard about a half a block from the ocean in the Pacific Beach community of the City of San Diego. There is an existing alley to the north of the site.

In addition, grading is also proposed which will consist of 1,962 cy. of cut and 98 cy. of fill with 1,864 cy. to be exported off site. As the deposition site for the material to be exported has not been identified, Special Condition #1 requires the applicant to identify the deposition site and, if located within the coastal zone, that a coastal permit must first be obtained.

While the City has a certified LCP for the Pacific Beach Area, the subject site is located within an area of the Commission's original jurisdiction. As such, the standard of review is the Chapter 3 policies of the Coastal Act.

2. Parking. Sections 30211 and 30212 of the Act all provide for the protection and provision of public access opportunities in new development projects. In addition,

Section 30252 of the Act states, in part: "The location and amount of new development should maintain and enhance public access to the coast by...providing adequate parking...." In coastal communities, and particularly in their nearshore or key visitor destination spots and along major coastal access routes, the Commission is concerned about assuring the adequacy of off-street parking to support proposed development. This concern arises out of the fact that should sufficient off-street parking not be provided, displacement of available public parking or street parking may result which could have adverse impacts on access to the coastline. In Pacific Beach, like most other areas of the City of San Diego, there is very little available public parking facilities. Most beach visitors must rely on street parking in the nearshore area for public access.

As noted above, the subject site is located just half a block from the ocean within the LCP identified Beach Impact Area (BIA) Overlay. The BIA generally includes the 3-4 blocks immediately adjacent to sandy beach or coastal bluffs for most nearshore communities within the City boundaries bordering both Mission Bay and the Pacific Ocean. These areas are most impacted by beach visitor traffic, as public recreational areas or viewpoints would be within reasonable walking distance. Therefore, more stringent parking standards are enforced throughout the BIA Overlay zone. The parking standards for residential uses in the BIA are 1.6 spaces per each one bedroom unit and 2.0 spaces per each two-bedroom unit.

Proposed are eight three-bedroom residential units which will be located in two separate buildings. The building fronting on Missouri Street will contain six units and the building fronting on the alley to the south north will contain two units. Seven of the units will each have a subterranean two-car garage. One unit in the building fronting on the alley will have surface parking. The subject proposal will have a total of 21 parking spaces including guest and handicapped parking, which is adequate to serve the proposed development. In addition, it should also be noted that the BIA requires that existing curb cuts must be removed when a property with alternative access (alley access) is redeveloped. In this particular case, there are no existing curb cuts on the property and through the redevelopment of the site, access to all of the parking will be obtained from the alley, consistent with the BIA requirements. Therefore, the proposed parking spaces are more than sufficient to serve the existing development and the subject proposal will not result in adverse impacts to public access in this location. The proposed project, can thus be found consistent with the BIA standards and Sections 30211, 30212 and 30252 of the Act.

3. Visual Resources/Community Character. Section 30251 of the Act calls for the protection of visual resources and that new development be visually compatible with the character of the surrounding area. The subject proposal involves the demolition of several existing residential units and the construction of an 8-unit condominium development. The area surrounding the subject site is comprised of various multi-family structures of various sizes, heights (including 3-stories), style and architecture. As such, the proposed eight-unit condominium development in two three-level structures will be compatible with the character of the surrounding community. Given the siting of the

structure and that there is other development immediately to the west of the site, the subject development will not block any public views toward the ocean. Also, the applicant proposes to install ample landscaping on the site which will preserve the visual amenities of this nearshore area. Thus, the proposal, as conditioned, can be found consistent with Section 30251 of the Coastal Act pertaining to visual resources.

4. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as conditioned, such a finding can be made.

The City of San Diego has a certified LCP. However, the subject site is located in the Commission's area of original jurisdiction and as such, the standard of review is Chapter 3 policies of the Coastal Act, with the LCP used as guidance. The site is currently zoned "RV" and is designated for residential/visitor-serving development under the implementing zone in the certified Pacific Beach Land Use Plan and City of San Diego LCP Implementing Ordinances. The zone permits residential development at 29 dwelling units per acre. The proposed project represents 27.8 du. The proposed multi-family development is consistent with LUP designations and with all applicable policies of the Coastal Act as well. Therefore, the Commission finds project approval, as conditioned, should not result in any adverse impacts to coastal resources nor prejudice the ability of the City of San Diego to continue to implement its fully-certified LCP for the Pacific Beach area.

5. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act. Mitigation measures, including a condition addressing disposal of graded spoils, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

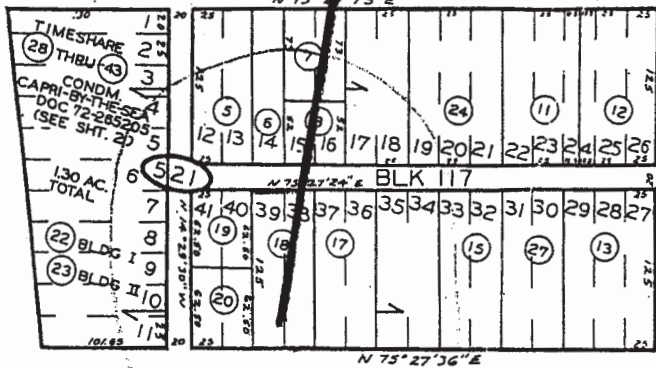


LA JOLLA

Project Site

CHALCEDONY ST

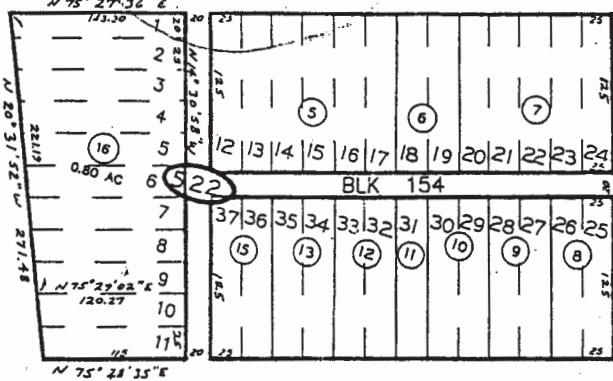
OCEAN



MISSOURI ST

MISSION ST

BLVD



DIAMOND ST

BLVD

EXHIBIT NO. 1
APPLICATION NO.
6-99-107
Location Maps

California Coastal Commission

Exhibit 9

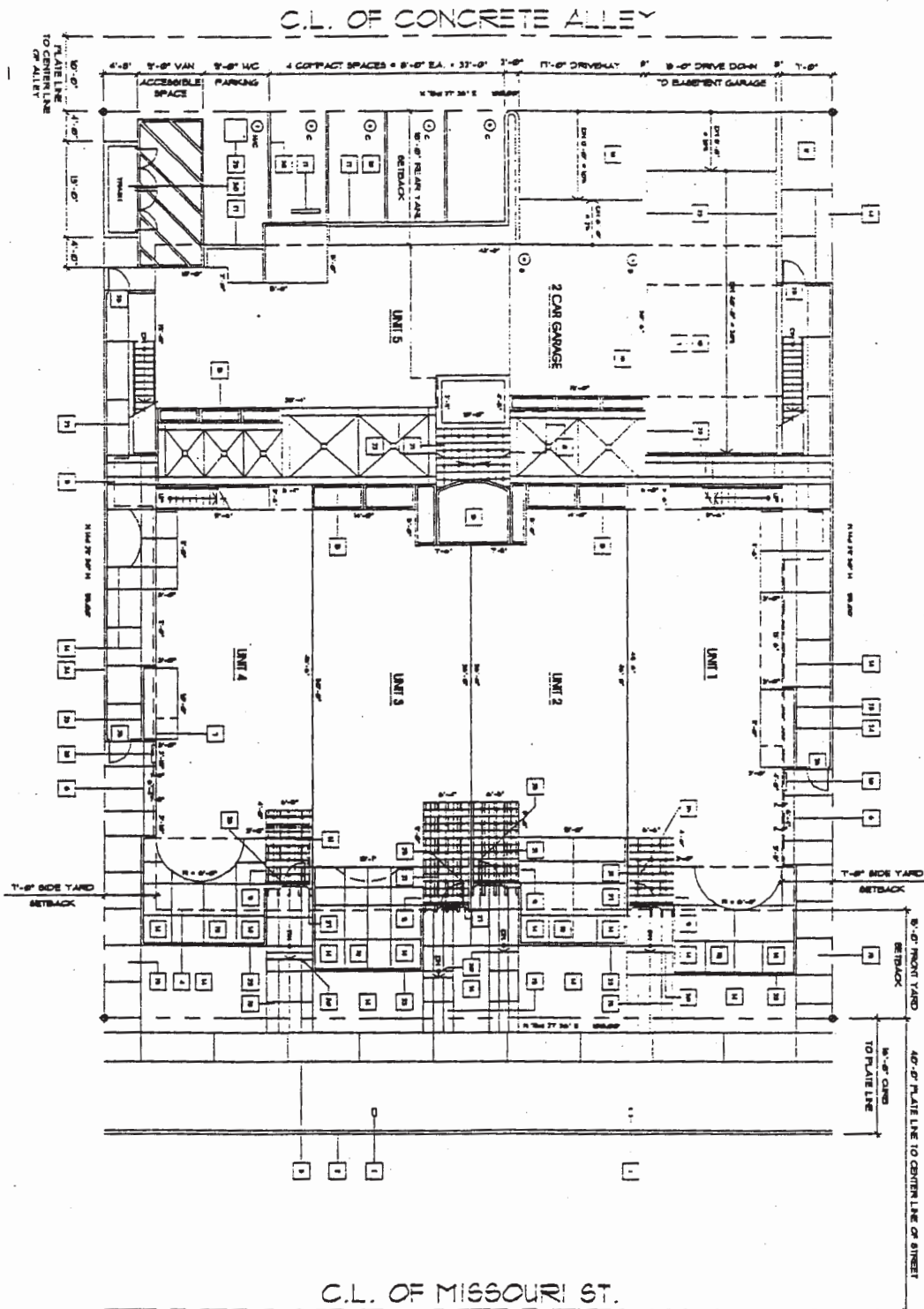


EXHIBIT NO. 2
APPLICATION NO.
6-99-107
Site Plan

CALIFORNIA COASTAL COMMISSION

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

**VIA CERTIFIED, REGULAR, AND ELECTRONIC MAIL**

July 27, 2023

Ted Harris
California Strategies
980 9th Street, Suite 2000
Sacramento, CA 95814

Jefferey Forrest
Sheppard Mullin
501 West Broadway 19th Floor
San Diego, CA 92101

David Danieli
Senior Vice President Asset Management
Pebblebrook Hotel Trust
4747 Bethesda Avenue, 11th Floor
Bethesda, MD 20814

**Subject: Notice of Intent to Commence Cease and Desist Order
and Administrative Civil Penalty Proceedings**

Violation File No.: V-6-16-0115

Property Location: 1404 Vacation Road (51.57-acre bayfront site on West Vacation Isle in Mission Bay Park, recorded in Exhibit A of a July 2018 Memorandum of Ground Lease between the City of San Diego and LHO Mission Bay Rosie Hotel, L.P.), San Diego, CA 92109, APN 760-038-03 ("the Leased Tidelands").

Violation Description¹: Unpermitted development, including but not limited to: 1) the installation of a guard and associated kiosk within the entrance road; as well as unpermitted development in violation of CDP No. F7923, including 2) obstruction of a public access pathway with dining furniture and failure to provide required public access signage; in addition to unpermitted development in violation of Coastal Development Permit ("CDP") No. F7293 and CDP No. 6-99-

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

117, including 3) construction of fences, pavement, and event tents across public pedestrian pathways and public parking spaces; 4) placement of uncovered dumpsters and storage containers across public pedestrian pathways and public parking spaces; in addition to 5) placement of new inflow pumps that draw Mission Bay's waters into a "lagoon" water feature adjacent the bay; 6) construction of new decks over the lagoon water feature adjacent Mission Bay; and 7) reconstruction of a pier.

Dear Mr. Harris, Mr. Forrest, and Mr. Danieli:

Thank you for your ongoing cooperation and commitment in working to resolve the above-named Coastal Act violations, including unpermitted development and non-compliance with existing CDPs. As you know, the permits and the public trust require public access at the tidelands of Mission Bay. Members of the public must be able to reach the shoreline within Paradise Point Resort at Vacation Isle. We understand that you want to reach a resolution as quickly as possible, and we share that goal, as discussed in our videoconference with you on May 31st, 2023.

Any agreement reached must go through the Commission's administrative process; in this case, we hope, via a Consent Cease and Desist Order and Consent Administrative Penalty ("Consent Agreement"), which would then be taken to the California Coastal Commission ("the Commission") for its approval at a formal public hearing. If we are able resolve the above-described matters consensually, you can avoid a unilateral enforcement order and potential litigation. As my staff has expressed to you, we appreciate your willingness to reach such an agreement. We continue to desire to work with you to amicably resolve the violations discussed herein.

Prior to bringing an order to the Commission (be it a Consent Agreement or unilateral enforcement order), the Commission's regulations provide for notification of the initiation of formal proceedings. In accordance with those regulations, this letter notifies you of my intent, as the Executive Director of the Commission, to commence formal enforcement proceedings to address the Coastal Act violations noted above by bringing a proposal to the Commission for the issuance of a Cease-and-Desist Order and the assessment of an Administrative Penalty.

The intent of this letter is not to discourage or supersede productive settlement discussions; rather it is to provide formal notice of our intent to resolve these issues through the order process, which in no way precludes and is in fact a step towards a consensual resolution. My staff remains ready and willing to continue working with you towards a mutually acceptable outcome. This letter also incorporates by reference the Notice of Violation ("NOV"), sent to Paradise Point Resort on January 27, 2017.

However, please note that should we be unable to reach an amicable resolution in a timely manner, this letter also lays the foundation for Commission staff to initiate a

Exhibit 10

hearing before the Commission, during which proposed unilateral Orders, including an assessment of administrative penalties, would be brought to the Commission for consideration. The penalties would be brought against Paradise Point Resort.

Background

Vacation Isle

For background, and as you may know, in 1945, the State of California granted tidelands held in the public trust in what is now Mission Bay Park to the City of San Diego (“the City”), but “reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay with the right of convenient access to such waters,” among other conditions.

The area known as Paradise Point Resort encompasses a 51.57-acre bayfront site on Vacation Isle in Mission Bay Park. The resort at Vacation Isle was originally known as Vacation Village Hotel, which began operating in the 1960s after securing a 50-year lease from the City of San Diego. Vacation Village Hotel was succeeded by San Diego Princess Resort in 1983, and then by Paradise Point Resort in 1998. In 2000, LHO Mission Bay Hotel, L.P., the entity managing Paradise Point Resort, entered into a new 50-year lease with the City of San Diego on September 12, 2000. La Salle Hotel Properties, who owned and maintained LHO, merged with Pebblebrook Hotel Trust in 2018. Thus, the Pebblebrook Hotel Trust became the controlling entity for the current tenant (LHO). A new 50-year lease was also entered into at the time of the merger, running from 2018 until 2068.

Although Paradise Point Resort is privately operated, the shoreline is not part of the leasehold. In addition, and as noted below, public parking is also a requirement of the CDP and lease for the facility. At the North Cove and South Cove of the leasehold, large parking lots allow the public to enter the resort, as well as the adjacent public park, and generally enjoy the shoreline. The bayfront around Paradise Point Resort provides opportunities for recreational activities such as fishing, swimming, kayaking, picnicking, and beachcombing.

Permit History

The resort within this leasehold has applied for and been issued several CDPs. On November 13, 1978, the Commission approved CDP No. F7293, which authorized Vacation Village Hotel to expand the resort with the addition of guest units, tennis courts, a saltwater lagoon, and expansion of the convention center. The development also included construction of 235 new parking spaces to serve the new facilities, but which were also open to the general public pursuant to the conditions of CDP No. F7293.

CDP No. F7293 permitted new development, conditioned upon enhancement of public access at Paradise Point Resort. Among the conditions, Special Conditions No. 2 and 3 were included to ensure public access to the shoreline is not impeded by the approved development. Special Condition No. 2 required the permittee to “construct a minimum 5’

[foot] wide [public] walkway from the service road north of the convention building to the Barefoot Bar cocktail area.” Special Condition No. 3 requires the permittee to “provide a minimum 10’ [foot] wide public walkway across the landscaped area between the beach and the adjacent access road north of the proposed expanded unit #103.”

After the resort was renamed Princess Resort, it obtained more CDPs from the Commission. CDP No. 6-90-135, approved in August 1990, and CDP No. 6-90-135-A1, approved in March 1991, authorized construction of new guestrooms, service areas, and meeting rooms for the convention center, all on the upland portion of the leasehold. CDP No. 6-97-64, approved in August 1997, permitted construction of a 53-slip recreational boat marina and related support facilities.

In 1998, the resort obtained the name it has today. In August 1999, Paradise Point Resort obtained CDP No. 6-99-117, which permitted renovations and expansions of existing structures such as the café, fitness center, and presidential suites, among other development. Special Condition No. 2 required Paradise Point Resort to submit a landscape plan for approval by the Commission. This plan, as approved by the commission, included a Public Area Repavement Plan that requires that the public have access to parking spaces at the South Cove parking, the North Cove parking lot, and around the convention center. The approved Public Area Repavement Plan was subsequently integrated into Paradise Point Resort’s lease with the City of San Diego as the Parcel Map (Section 9.2) and Attachment A for the General Development Plan (Section 9.3).

During the last few years, the Commission has concurred with six exemptions granted by the Executive Director and issued to Paradise Point Resort (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). These exemptions allowed Paradise Point Resort to erect and maintain a 15,000 sq. ft. tent for temporary events over an area that is usually designated for 65 public parking spaces in the southern parking lot, located southeast of the convention center.

Violation History

In 2015, Commission staff discovered that unpermitted development was occurring at Paradise Point Resort, including violations of CDP Nos. F7293 and 6-99-117. Unpermitted development on the southern end of the leasehold in violation of both CDPs includes construction of an event space and associated development, including placement of unpermitted fences, and event tents across public pedestrian pathways and public parking areas that were required by CDP Nos. F7293 and 6-99-117. In addition to impacting public access to the shoreline, the placement of unpermitted and uncovered dumpsters attracts native birds and disrupts their natural feeding patterns. Unpermitted development also includes expansion of outdoor dining facilities seaward of Barefoot Bar into a public pathway required by CDP No. F7293, obstructing the pathway from public use. Moreover, the failure to provide required public access signage violates the conditions of the permit. In 2020, a guard and associated kiosk was placed at the end of the entrance road. After Commission enforcement staff discovered it and spoke with Mr. Harris in 2021, the guard was removed, however, the guard was

later installed further down the road.

Since then, staff also found structural unpermitted development at the “lagoon” water feature between Mission Bay and the restaurants. For example, sometime between 1978 and 1980, the deck adjacent to the restaurant was moved and expanded, but this new development was not authorized by an amendment to CDP No. F7293 or by any other CDP. In addition, between 1990 and 1991, an additional, unpermitted deck was installed between the existing large unpermitted deck and the revetment. Further, Commission staff have discovered that new in-flow pipes pulling in water from the bay for use in the lagoon water feature were installed after 1997 with no CDP. This is unpermitted development, but we also note that pumping seawater without a fish screen can suck in small fish and fish eggs. This can impact the overall biological productivity of Mission Bay, violating the Commission’s mandate to protect water quality in section 30231 of the Coastal Act.

Enforcement History

Many of the violations described herein first came to staff’s attention when reviewing CDP application No. 6-16-0297, in which Paradise Point Resort sought approval for the construction of a 48 square foot guard booth, as well as entrance gates, among other development. In a letter dated April 28, 2016, Commission staff explained their concerns regarding the proposed booth and gates, stating that these structures would discourage public access to the shoreline adjacent to the resort. Application No. 6-16-0297 was ultimately withdrawn.

In early 2017 Commission staff sent a Notice of Violation (“NOV”) to Paradise Point Resort. The NOV for V-6-16-0115 described in detail many public access violations, permit non-compliance, lease non-compliance, and other unpermitted development, such as the reconstruction of a pier. The NOV also outlined steps that Paradise Point Resort needed to take to resolve these violations.

During a site visit on February 3, 2021, to follow up and further address the issues previously noted, Commission staff observed a guard at the entrance road to Paradise Point Resort. Staff then scheduled a phone conversation with Mr. Harris to explain that this constituted a violation, that a permit was necessary for such action, and that the resort needed to remove the guard immediately. Accordingly, the guard appears to have been removed. In the fall of 2022, this case was elevated to the Commission’s Headquarters Enforcement. Subsequently, it appears that a new guard was stationed at a different part of the entrance road from August 2022 until March of 2023, when Commission headquarters enforcement staff learned of it and requested that the guard be removed.

Unpermitted Development:

“Development” is broadly defined by Coastal Act Section 30106, in relevant part as:

... the placement or erection of any solid material or structure... change in

the density or intensity of use of land, ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...

My staff has confirmed that activities constituting development were undertaken at Paradise Point Resort without Coastal Act authorization. The development that occurred required authorization pursuant to the Coastal Act, but no such authorization was obtained via a CDP.

Unpermitted development, including but not limited to:

1) the installation of a guard and associated kiosk within the entrance road; as well as unpermitted development in violation of CDP No. F7923, including 2) obstruction of a public access pathway with dining furniture and failure to provide required public access signage; in addition to unpermitted development in violation of Coastal Development Permit ("CDP") No. F7293 and CDP No. 6-99-117, including 3) construction of unpermitted fences, pavement, and event tents across public pedestrian pathways and public parking spaces; 4) placement of uncovered dumpsters and storage containers across public pedestrian pathways and public parking spaces; in addition to 5) unpermitted placement of new inflow pumps that draw Mission Bay's waters into a "lagoon" water feature adjacent the bay; 6) construction of new decks over the lagoon water feature adjacent Mission Bay; and 7) reconstruction of a pier.

Section 126.0708(b) of the San Diego Municipal Code states:

...A Coastal Development Permit or exemption for all coastal development on a project site located completely within the Coastal Commission Permit Jurisdiction or in the Deferred Certification Area must be obtained from the Coastal Commission...

The undertaking of the above-described actions constitutes "development" as defined by the Coastal Act. The unpermitted development is within a "Deferred Certification Area" and therefore requires a CDP from the Commission, as required by the Coastal Act and the City of San Diego LCP. Since no CDP was obtained to authorize this development, it is unpermitted and constitutes a violation of the Coastal Act and the City of San Diego LCP.

Public Access

Maximizing public access to and along the coast and maximizing public recreational opportunities in the coastal zone are some of the highest priorities for the Commission and are specifically protected in Chapter 3 of the Coastal Act, as well as stated as a basic goal for the Act (§ 30001.5(c)).

Section 30210 states:

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In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 states:

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

While the Chapter 3 policies of the Coastal Act are the standard of review for areas of deferred certification, the City of San Diego's LCP functions as guidance. Section §126.0708 of the San Diego Municipal Code, states:

An application for a Coastal Development Permit may be approved or conditionally approved only if...

(4) ... any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

The public trust tidelands grant from the state of California to the City of San Diego includes express conditions regarding public access, including the following:

There is also reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay with the right of convenient access to such waters under the real property hereby granted for the purpose of fishing.

The violations of unpermitted development and permit non-compliance negatively impact public access at Paradise Point Resort by limiting the availability of public parking and by impeding public access to the property. These violations of the Coastal Act are impacting public access and remain inconsistent with the Coastal Act provisions on public access, including Sections 30210 and 30211.

Violation Impacts

All the unpermitted development at Paradise Point Resort described above adversely impacts public access and recreation, and in particular, access to public trust lands. Thus, these violations of the Coastal Act are impacting public access and remain inconsistent with Coastal Act provisions on public access, including Sections 30210 and

30211.

In addition, the violations relating to unpermitted replacement and/or installation of water pumps, as well as uncovered waste disposal, have impacts on coastal resources, including on native birds, fish, and other species that inhabit Mission Bay. The violations at Paradise Point Resort are impacting the water quality and biological productivity of Mission Bay, also in violation of the Coastal Act, in particular section 30231.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part:

If the commission, after public hearing, determines that any person ... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist.

Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to terms and conditions that the Commission determines are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material. In addition, Commission staff and the City of San Diego have coordinated regarding this case, including any coordination necessary to issue a Cease and Desist Order.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. As stated above, "Development" is defined by Section 30106 of the Coastal Act.

The various instances of unpermitted development at issue here clearly constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of Section 30600(a). A CDP was not issued to authorize the unpermitted development. Therefore, the criterion for issuance of a Cease and Desist Order under Section 30810(a) of the Coastal Act are thus satisfied.

For these reasons, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission's regulations, which are in Title 14 of the California Code of Regulations. As previously mentioned, these matters may be resolved in a consensual agreement between you and the Commission. The proposed Cease and Desist Order (whether it be consent or unilateral) will direct and authorize you to, among other things: 1) cease from performing any additional unpermitted development; 2) remove the physical items of unpermitted development

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that were placed or allowed to come to rest on Paradise Point Resort; 3) mitigate for the temporal and continuing losses to public access; 4) mitigate for temporal and continuing impacts to water quality and biological productivity in Mission Bay; and 5) cease all activities that block or interfere with public use of the beach, tidelands, and public parking areas.

In addition to the aforementioned items, any resolution of this matter via Consent Agreement would also include settlement of monetary claims associated with Paradise Point Resort's civil liability under the Coastal Act. If a consensual resolution is not reached, resolution of penalties under Section 30821 of the Coastal Act would be addressed unilaterally via an Administrative Penalty Action, as described below.²

Administrative Civil Penalties, Civil Liability, and Exemplary Damages

As my staff has discussed with you, under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil penalties by a majority vote of the Commissioners present at a public hearing. In this case, as described in detail above, there are multiple violations of the public access provisions of the Coastal Act; and therefore, the criteria of Section 30821 have been satisfied. The penalties imposed may be in an amount of up to \$11,250, for each violation, for each day in which each violation has persisted or is persisting, for up to five (5) years. If a person fails to pay an Administrative Penalty imposed by the Commission, under 30821(e) the Commission may record a lien on that entity's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgment lien.

The Coastal Act also includes a number of other penalty provisions that may still be applicable as well. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development. Civil liability under Section 30820(b) shall be imposed in an amount not less than \$1,000 per day and not more than \$15,000 per day, for each violation and for each day in which each violation persists. Section 30821.6 also provides that a violation of a Cease and Desist Order of the Commission can result in civil liabilities of up to \$6,000 for each day in which each violation persists. Lastly, Section 30822 provides for additional exemplary damages for intentional and knowing violations of the Coastal Act or a Commission Cease and Desist Order.

² Other liabilities under Chapter 9 of the Coastal Act would be addressed via litigation.

Response Procedure

In accordance with Sections 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Administrative Penalty proceedings by completing the enclosed statement of defense ("SOD") form. The SOD form should be directed to the attention of Rob Modellmog, at the address listed on the letterhead, no later than **August 17, 2023**.

However, should this matter be resolved via a Consent Agreement, an SOD form would not be necessary. In any case and in the interim, staff would be happy to accept any information you wish to share regarding this matter and the Executive Director may extend deadlines for submittal of the SOD form, to specifically allow additional time to discuss terms of a Consent Agreement and to resolve this matter amicably.

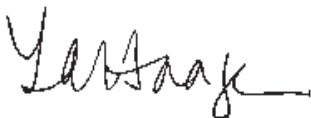
Commission staff currently intends to schedule the hearings for the Cease and Desist Order and Administrative Penalty action for the Commission's September 2023 hearing.

Resolution

As my staff has discussed with you, we would like to work with you to resolve these issues amicably through the Consent Agreement process. Such a process provides an opportunity to resolve these issues through mutual agreement. While requiring compliance with the Coastal Act, a Consent Agreement gives you additional input into the process and could potentially allow you to negotiate a penalty amount with Commission staff to resolve your civil liabilities. A Consent Agreement would provide for a permanent resolution of this matter and thereby resolve the complete violation without any further formal legal action. We are hopeful that we can find a mutually agreeable resolution to resolve this matter.

Another benefit of a Consent Agreement that you should consider is that in a consent proceeding, Commission staff will be presenting and recommending approval of an agreement between you and staff rather than addressing the violations through a contested hearing. Alternatively, if we are not able to reach a consensual resolution, we will need to proceed with a unilateral order at the next available hearing. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above in this letter. If you have any questions regarding this letter or the enforcement case, please call Rob Modellmog at (415) 904-5219.

Sincerely,



for

Kate Huckelbridge, Executive Director

Exhibit 10

cc:

Aaron McLendon, Deputy Chief of Enforcement
Justin Buhr, Headquarters Enforcement Supervisor
Andrew Willis, Southern California Enforcement Supervisor
Marsha Venegas, San Diego District Enforcement Analyst
Alex Llerandi, San Diego Coastal Program Analyst
Rob Modellmog, Headquarters Enforcement
Robin M. Mayer, Senior Attorney

Roswitha D. Sanchez, City of San Diego Department of Real Estate and Airport
Management

Enclosures:

Statement of Defense Form for Cease and Desist Order and Administrative
Civil Penalty