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Staff Report: 8/25/23
Hearing Date: 9/6/23

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order and Consent Administrative Penalty Action

Consent Cease and Desist Order No.: CCC-23-CD-04

Consent Administrative Penalty No.: CCC-23-AP-03

Related Violation File: V-6-16-0115

Violator: LHO Mission Bay Hotel, L.P.

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 Hotel, L.P.) San Diego, CA 92109, APN 760-038-03 (“the Leased Tidelands”).

Violation Description: Development that has occurred on the Leased Tidelands and on adjacent public trust lands that 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 to Mission Bay; and 6) reconstruction of a pier.

Substantive File Documents: Public documents in Consent Cease and Desist Order File No. CCC-23-CD-04 and Consent Administrative Penalty File No. CCC-23-AP-03; Exhibits 1 through 10; and Appendix A of this staff report.

CEQA Status: Categorically Exempt (Cal. Code of Regs., tit. 14, §§ 15321(a)).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves a private resort, Paradise Point, owned and operated by LHO Mission Bay Hotel, L.P. (“Respondent”), that leases public trust tidelands from the City of San Diego in Mission Bay. Respondent violated the Coastal Act in a number of ways, as will be described in further detail later, including the installation of multiple obstructions to public access to Commission-required public pathways and public parking at the resort. Mission Bay is located to the north of San Diego Bay, and the area of tidelands Respondent leases is located on over 50 acres of Vacation Isle within Mission Bay. The remaining approximately 75 acres of Vacation Isle are filled with public parks, beaches, and parking lots, and the entire area is a popular destination for visitors for picnics, swimming, and fishing.

The City of San Diego first leased these tidelands to a resort called Vacation Village in 1964. Since then, various lessees have received CDPs for development of the leased resort area. Over time, the CDPs approved by the Commission for the private resort development have collectively required that hundreds of parking spaces within the resort be open to the public. In addition, the Commission required a lateral public pathway along a bayfront water feature, as well as two other public pathways in other areas of the resort. However, the Commission’s CDPs required only one public access sign, to be located deep within the resort. Thus, although the surrounding parks and beaches are popular with the public, it has not been easy for the public to know that public beaches and public parking exist on this part of Vacation Isle. Respondent, instead of helping to raise public awareness of the public rights on the Leased Tidelands, failed to install the one required sign, and instead installed unpermitted development that exacerbated the situation further and actively obstructed public access. Respondent’s unpermitted development included a guard at the primary vehicular entrance, as well as encroachments within the public pathways and public parking, all of which were unpermitted, and further served to impede public use of the area and reinforce the impression that the entire area was private.

However, Respondent has now agreed to the terms of the proposed Consent Orders that would require the removal of this unpermitted development, and would provide for mitigation that would address the problem of public awareness, by requiring over 70 public access signs across the Leased Tidelands, in addition to a public awareness

campaign that includes advertising and the addition of information to their website and social media accounts that will help inform the public of the access opportunities that exist for them at the resort. If approved, Respondent will also provide many more very important public amenities to make the Leased Tidelands and adjacent unleased public trust shoreline more inviting, including two new vertical public access points, an uninterrupted bayfront pathway across the entire three-quarter mile long bayfront length of the Leased Tidelands, and new public restrooms valued at approximately \$1 million near the beach. Further, Respondent would pay a monetary penalty of \$1 million and pay another \$500,000 to fund an environmental justice program to bring lower income students and their families from nearby communities for free overnight stays at the resort, which will include science education and family recreation.

In sum, the proposed agreement would provide well over \$3 million in total value to the public. In addition, it would create by far the most dramatic improvement of public access in the nearly six-decade history of the Leased Tidelands. The Leased Tidelands would transform from an area that is severely underutilized by the public with only one CDP-required public access sign located deep inside the 50+ acre grounds, to an inviting experience with ample signs directing the public along an uninterrupted bayfront public pedestrian trail three-quarters of a mile long, as well as to convenient access to hundreds of free public parking spaces, dozens of new public EV chargers, and a new public restroom near the beach.

Background

In 1945, the State of California granted tidelands held in the public trust to the City of San Diego (“the City”), including the tidelands that are the subject of this case (“the Leased Tidelands”). In doing so, the State of California “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. Since then, the City has held these lands in trust for the public and has leased much of Mission Bay to private commercial businesses for recreational purposes.

Although the Leased Tidelands are privately operated, much of the shoreline itself is not part of the leasehold, but is still held in trust for the public by the City. In addition, hundreds of public parking spaces are required by both the CDP’s and lease for the resort facility. The bayfront around the Leased Tidelands provides opportunities for recreational activities such as fishing, swimming, kayaking, picnicking, and beachcombing, and the public parking was required to ensure the public the opportunity to be able to continue to undertake those activities both around and on the Leased Tidelands. The fact that these public beaches, pathways, and parking are here make providing awareness of and access to them extremely valuable.

Permit History

The area has been the subject of multiple leases and permits over the years. The City first leased these tidelands to Vacation Village in 1964. The various lessees of the Leased Tidelands have applied for and been issued several CDPs since 1976. On

November 13, 1978, the Commission approved CDP No. F7293, which authorized Vacation Village Hotel to expand the resort with new 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 hotel facilities.

CDP No. F7293 authorized this new development, but also required the public access to the Leased Tidelands be protected and enhanced. In addition, Special Conditions No. 2 and 3 were specifically designed to ensure public access to the shoreline would not be impeded by the approved development. Special Condition No. 2 requires the permittee to “construct a minimum 5’ [foot] wide [public] walkway” along the bayfront lagoon water feature. Special Condition No. 3 requires the permittee to “provide a minimum 10’ [foot] wide public walkway” in an area near the beach.

After the resort was renamed Princess Resort, the then-lessee obtained more CDPs. CDP No. 6-90-135, approved in August 1990, and CDP No. 6-90-135-A1, approved in March 1991, cumulatively authorized construction of additional guestrooms, service areas, and meeting rooms for the convention center, all on the upland portion of the leasehold. Then, 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 was renamed with the current name, Paradise Point. In August 1999, Respondent obtained CDP No. 6-99-117, which authorized renovations and expansions of existing structures such as the café, fitness center, and presidential suites, among other development. Special Condition No. 2 required Respondent to submit a landscape plan for approval by the Commission. This plan, as approved by the commission, includes a Public Area Repavement Plan that further protected public access, including the use of parking spaces at various lots throughout the resort. The approved Public Area Repavement Plan was subsequently integrated into Respondent’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, Respondent has also obtained several exemptions using the Commission’s Temporary Events Guidelines for temporary events over an area that is usually designated for public parking spaces in the southern parking lot, located southeast of the convention center. In March of 2023, a CDP hearing was scheduled for Respondent’s application to undertake new development, which included development meant to provide a penalty and mitigation for the violations. Respondent withdrew their application prior to the hearing.

Violation and Enforcement History

In 2015, staff discovered unpermitted development on the Leased Tidelands, including development in violation of CDP Nos. F7293 and 6-99-117. Unpermitted development on the southern end of the leasehold, in violation of both CDPs, included 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. Unpermitted development also included expansion of outdoor dining facilities seaward of the “Barefoot Bar” into a public pathway required by CDP No. F7293, obstructing the pathway from public use. In addition, the failure to provide the required public access sign in that area also violated the conditions of the permit. On January 27, 2017, Commission enforcement staff sent a Notice of Violation (“NOV”) to Respondent. Following the Notice of Violation, that same year Respondent worked with Commission district enforcement staff to remove some unpermitted development obstructing public access and install a few interim public access signs near the CDP-required public pathways. In addition, Respondent began obtaining exemptions from the Commission for the formerly unpermitted event tent in the southern public parking area.

During a site visit on February 3, 2021, to follow up and further address the issues previously noted, Commission staff discovered a guard and associated kiosk at the primary vehicular entrance to the Leased Tidelands, placed without a CDP. Commission staff requested that the guard be removed, and Respondent complied and removed the guard. Then, in the fall of 2022, this case was elevated to the Commission’s Headquarters Enforcement to address the remaining violations at the facility. A new guard was then stationed at a different part of the entrance road from sometime in August 2022 until March of 2023, when Commission headquarters enforcement staff learned of it and requested that the guard be immediately removed. Respondent again complied and removed the guard.

Since then, in researching permit history and reviewing development at the site, staff also found that some bayfront infrastructure at the resort has been reconstructed without a CDP, including decks at the bayfront “lagoon” water feature. Commission staff also discovered that the pre-Coastal Act in-flow pipes and pump house for the pre-Coastal bayfront lagoon water feature have been replaced with a new pipe and pump, without a CDP. In addition, a small pre-Coastal Act pier at the south end of the Leased Tidelands has been redeveloped with new wood and railings.

A Matter of Environmental Justice

The public access violations here present a threat of environmental injustice given that the public has the right to access all of the beaches on Vacation Isle and the many public parking spaces and public pathways on the Leased Tidelands, but the unpermitted development obstructed public access to these destinations. Respondent’s lease does not allow it to obstruct public rights of access.

People from environmental justice communities may not be able to afford to stay overnight at the Leased Tidelands, but that does not mean that they should not be able to easily access the adjacent public beaches, as well as enjoy the Commission-required public pathways and public parking on the Leased Tidelands. It is an important precept of environmental justice in California and the Chapter 3 policies of the Coastal Act that all of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by unpermitted obstructions to beaches and coastal amenities.

The Proposed Resolution

Respondent has worked very quickly with Commission enforcement staff to reach this proposed consensual resolution in which Respondent agrees to resolve the violations and to also provide measures to both address civil penalties and to mitigate for lost public access. The proposed agreement has five general provisions. The first set of requirements in the proposed Order requires Respondent to comply with the requirements of their CDPs and lease, and to remove all unpermitted development on the Leased Tidelands, to comply with all the CDP requirements in the future, and to apply for an After-the-Fact CDP providing Coastal Act review for some of the unpermitted development, including the reconstructed pier, and to remove any development that is not approved by the CCC.

The second set of requirements in the proposed Order requires Respondent to mitigate for the lost public access by raising awareness of the coastal resources there by installing over 70 public access signs across the Leased Tidelands, and by implementing an advertising campaign and changing their websites to alert the public to the access opportunities available at the resort. This will dramatically improve public access, as there is currently little public awareness of the many coastal resources available to the public on and adjacent the Leased Tidelands. Respondent will also institute an employee training program to ensure that their staff are well aware of public rights to the Leased Tidelands, which is designed to help avoid the potential for misdirection and confusion.

The third element requires Respondent to mitigate for the lost public access by installing many new public amenities. Respondent will install public access signs, many with maps, along the entire bayfront of the resort which measures three-quarters of a mile long. This will allow the public to easily walk from one end of the Leased Tidelands to the other end on both the beach and pedestrian bayfront trails. In addition, while some members of the public do know that there are public beaches adjacent the Leased Tidelands, they do not go to many of those beaches due to the lack of public amenities. Thus, Respondent will also provide public restrooms, valued at approximately \$1 million, so that the public can better enjoy their beach experience adjacent the Leased Tidelands. Further, Respondent will provide two new vertical public access points so that the public can more easily reach the bayfront trail, beaches, and public parking from the adjacent parks on Vacation Isle. Respondent will also expand the public parking area beyond that required by CDPs to add approximately two dozen more parking spaces along an underutilized portion of Vacation Road. Respondent will also install dozens of EV chargers for use by the public. All of this public access mitigation will dramatically improve public access on the Leased Tidelands and improve the experience of the public who visit.

The fourth element of this proposed settlement is that Respondent has agreed to a significant penalty that includes a payment to the VRA and to also fund an environmental justice program at the facility. Under the terms of the proposed orders, Respondent is required to pay a \$1 million penalty to the Violation Remediation Fund ("VRA"), and provide and fund a \$500,000 environmental justice program to bring

underserved students and their families from nearby communities to the Leased Tidelands. Once there, they will enjoy science education, family recreation, and free overnight stays and access to resort amenities and watercraft rentals. In addition, \$250,000 of the penalty to the VRA payment will be dedicated to projects that improve water quality, in order to mitigate for the water quality impacts of the unpermitted replacement of the pump and pipe, and the unpermitted redevelopment of the pier. Further, Respondent will also mitigate for those water quality impacts by undertaking a mitigation plan to study how best to improve water quality within the bayfront lagoon water feature, such that water quality and native species within adjacent Mission Bay are protected.

The fifth element of the proposed settlement requires Respondent to institute a marine debris reduction program to reduce plastic pollution on the Leased Tidelands, which will include such measures as installing water bottle refill stations, discontinuing use of single use plastics at the resort and restaurants, adding laundry filters to avoid microplastic discharges, and a myriad of other related measures. In addition, Respondent will be required to ensure that all dumpsters and other waste are stored in bins that are covered, so that native species cannot get into them, to avoid adversely affecting their behavior and habits. In sum, the total combined value to the public is estimated to be over \$3 million, as well as the intangible value of what would be by far the most dramatic improvement of public access to the beaches and coast in this part of Vacation Isle in the sixty-year history of the Leased Tidelands.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-23-CD-04 and Consent Administrative Penalty CCC-23-AP-03.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTION 9

II. HEARING PROCEDURES 10

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-23-CD-04
AND CONSENT ADMINISTRATIVE PENALTY ACTION NO CCC-23-AP-03. 11

 A. Property Location 11

 B. Permit History..... 11

 C. Violation and Enforcement History 12

 D. Basis for Issuing Consent Cease and Desist Orders 13

 1. Statutory Provision 13

 2. Factual Support for Statutory Elements..... 13

 E. Consent Administrative Civil Penalty Action 17

 1. Statutory Provision 17

 2. Application to Facts 17

 F. Consent Orders are Consistent with Chapter 3 of the Coastal Act..... 22

 G. California Environmental Quality Act..... 22

IV. SUMMARY OF FINDINGS OF FACT 23

APPENDIX A –

Proposed Consent Cease and Desist Order No. CCC-23-CD-04 and
Consent Administrative Penalty Action No. 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
- Exhibit 5 Photos of Unpermitted Development
- Exhibit 6 Proposed Pedestrian Public Access Mitigation Improvements
- Exhibit 7 Proposed Vehicular Public Access Mitigation Improvements
- Exhibit 8 Staff Report for CDP F7293
- Exhibit 9 Staff Report for CDP 6-99-117
- Exhibit 10 July 27, 2023 Notice of Intent to Issue a Cease and Desist Order and
Administrative Penalty

I. MOTIONS AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-23-CD-04 to LHO Mission Bay Hotel L.P., pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the resolution immediately below and issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Approve the Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-23-CD-04, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, and in violation of CDP No. F7293 and CDP No. 6-99-117, and the Coastal Act, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Administrative Civil Penalty Action:

I move that the Commission **issue** Consent Administrative Penalty No. CCC-23-AP-01 to LHO Mission Bay Hotel L.P., pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and the issuance of the Consent Administrative Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty Action:

The Commission hereby assesses an administrative civil penalty by adopting Consent Administrative Penalty No. CCC-23-AP-01, as set forth in Appendix A, and adopts the findings set forth below on the grounds that activities and failures to act have occurred on properties leased by LHO Mission Bay Hotel, L.P. without a coastal development permit, and in violation of CDP No. F7293 and CDP No. 6-99-117, and the Coastal Act, and that these activities or failures to act have limited or precluded public access and violated the public access policies of the Coastal Act.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission's regulations at California Code of Regulations, Title 14 ("14 CCR") Section 13185 and Section 13195. The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act (Pub. Resources Code, Div. 20) are set forth in Section 30821(b), which specifies that penalties shall be imposed by majority vote of all Commissioners present at a public hearing in compliance with the requirements of Section 30810, 30811, or 30812. Therefore, the procedures employed for a hearing to impose administrative penalties may be the same as those used for a Cease and Desist Order hearing.

For a Cease and Desist Order hearing and an Administrative Penalty action, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Chair may allow the alleged violators to use any reserved rebuttal time to respond to comments from interested persons and may then allow staff to respond to the testimony and to any new evidence introduced.¹

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and Section 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and impose an Administrative Penalty, either in the form recommended by staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in the issuance of the Consent Cease and Desist Orders and imposition of a Consent Administrative Penalty.

¹ Note that there are in use virtual hearing procedures, available at <https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf>.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-23-CD-04 AND CONSENT ADMINISTRATIVE PENALTY ACTION NO CCC-23-AP-03.²

A. Property Location

The resort that is the subject of these Consent Orders is located on the Leased Tidelands, on Vacation Isle, in Misson Bay in the city of San Diego (Exhibit 1). The Leased Tidelands/resort stretch across over 50 acres in the northwest portion of the island, but do not include the beaches adjacent to them. Respondent operates the Leased Tidelands as Paradise Point Resort. The Leased Tidelands are surrounded by public parks, beaches, and parking lots that cover the remaining approximately 75 acres of Vacation Isle. Vacation Isle is a popular destination for picnics, swimming, and fishing.

Although the Leased Tidelands are not entirely surrounded by a fence, there are currently only a few public access points to the Leased Tidelands. Currently, to access the Leased Tidelands, the public can walk along the beach from North Cove, walk through the primary vehicular access road at Vacation Road, or walk through a secondary vehicular access road farther south. The rest of the Leased Tidelands is separated from the rest of Vacation Isle by a fence along a busy road, or by landscaping. There is currently only one public access sign required by a CDP to be on the Leased Tidelands, and no public access signs are currently required at any of the entrances to the resort.

B. Permit History

The area has been the subject of multiple leases and permits over the years. The City first leased these tidelands to Vacation Village in 1964. The various lessees of the Leased Tidelands have applied for and been issued several CDPs since 1976. On November 13, 1978, the Commission approved CDP No. F7293, which authorized Vacation Village Hotel to expand the resort with new 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 hotel facilities.

CDP No. F7293 authorized this new development, but also required the public access to the Leased Tidelands be protected and enhanced. In addition, Special Conditions No. 2 and 3 were specifically designed to ensure public access to the shoreline would not be impeded by the approved development. Special Condition No. 2 requires the permittee to “construct a minimum 5’ [foot] wide [public] walkway” along the bayfront

² These findings also hereby incorporate by reference the Summary at the beginning of the August 25, 2023 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Orders, Consent Restoration Orders, and Consent Administrative Penalty Actions”) in which these findings appear, which section is entitled “Summary of Staff Recommendations and Findings.”

lagoon water feature. Special Condition No. 3 requires the permittee to “provide a minimum 10’ [foot] wide public walkway” in an area near the beach.

After the resort was renamed Princess Resort, the then-lessee obtained more CDPs. CDP No. 6-90-135, approved in August 1990, and CDP No. 6-90-135-A1, approved in March 1991, authorized construction of additional 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 was renamed with the current name, Paradise Point. In August 1999, Respondent 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 Respondent to submit a landscape plan for approval by the Commission. This plan, as approved by the commission, includes a Public Area Repavement Plan that further protected public access to parking spaces at various parking areas throughout the resort. The approved Public Area Repavement Plan was subsequently integrated into Respondent’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, Respondent has also obtained several exemptions using the Commission’s Temporary Events Guidelines for temporary events over an area that is usually designated for public parking spaces in the southern parking lot, located southeast of the convention center. In March of 2023, a CDP hearing was scheduled for Respondent’s application to undertake new development, which included development meant to provide a penalty and mitigation for the violations. Respondent withdrew its application prior to the hearing.

C. Violation and Enforcement History

Violation and Enforcement History

In 2015, staff discovered unpermitted development on the Leased Tidelands, including development in violation of CDP Nos. F7293 and 6-99-117. Unpermitted development on the southern end of the leasehold in violation of both CDPs included 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. Unpermitted development also included expansion of outdoor dining facilities seaward of the “Barefoot Bar” into a public pathway required by CDP No. F7293, obstructing the pathway from public use. In addition, the failure to provide required public access signage in that area also violated the conditions of the permit. On January 27, 2017, Commission staff sent a Notice of Violation (“NOV”) to Respondent. Following the Notice of Violation, that same year Respondent worked with Commission district enforcement staff to remove some unpermitted development obstructing public access and install a few interim public

access signs near the CDP-required public pathways. In addition, Respondent began obtaining exemptions from the Commission for the formerly unpermitted event tent in the southern public parking area.

During a site visit on February 3, 2021, to follow up and further address the issues previously noted, Commission staff discovered a guard and associated kiosk at the primary vehicular entrance to the Leased Tidelands, placed without a CDP. Commission staff requested that the guard be removed. Upon that request, Respondent removed the guard. Then, in the fall of 2022, this case was elevated to the Commission's Headquarters Enforcement to address the remaining violations at the facility. Subsequently, a new guard was stationed at a different part of the entrance road from sometime in August 2022 until March of 2023, when Commission headquarters enforcement staff learned of it and requested that the guard be immediately removed.

Since then, in researching permit history and reviewing development at the site, staff also found that some bayfront infrastructure has been reconstructed without a CDP, including decks at the bayfront "lagoon" water feature. Commission staff also discovered that the pre-Coastal Act in-flow pipes and pump house for the pre-Coastal bayfront lagoon water feature have been replaced with a new pipe and pump, without a CDP. In addition, a small pre-Coastal Act pier at the south end of the Leased Tidelands has been reconstructed with new wood and railings.

D. Basis for Issuing Consent Cease and Desist Orders

1. Statutory Provision

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

- (a) [I]f the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, an 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 or governmental agency to cease and desist...
- (b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

2. Factual Support for Statutory Elements

The statutory provision requires the Commission to demonstrate that either Respondent undertook an activity that requires a CDP where Respondent did not secure one, or that Respondent undertook an activity inconsistent with a previously issued CDP.

In this case, both grounds for issuance of a Cease and Desist Order have been met. It is uncontroverted that Respondent does not have a CDP for the development at issue here, and that the unpermitted development is inconsistent with multiple CDPs. The subsequent step is demonstrating Respondent took an action requiring a CDP or inconsistent with a CDP. 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. "Development" is broadly defined by Coastal Act Section 30106, in relevant part:

... 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...

Under the Coastal Act's definition of development, various development was performed and maintained without the required CDP upon property leased by Respondent, and for which the responsibility under the Coastal Act runs with the land. Moreover, much of the unpermitted development is also directly inconsistent with the permits issued for these properties, as discussed above. This development includes the following acts of "development":

Development that has occurred on the Leased Tidelands and on adjacent public trust lands and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not limited to development without a permit and/or which was also inconsistent with previous permit conditions:

- 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.

All of the above activities fall clearly within the Coastal Act definition of development and, therefore, required Respondent to secure a CDP to authorize the development. In addition, the change in intensity of use of water, or of access thereto, is expressly listed as development. Respondent's encroachment into the various required public access pathways and parking areas all restricted public access here.

None of this development, however, received any such Coastal Act authorization. Therefore, all of these items and activities constituted unpermitted development and/ or violations of Respondent's CDPs, and pursuant to Section 30810, this development constituted an activity that required a permit from the Commission without securing the permit. Thus, this triggered the independent criterion in section 30810(a), therefore authorizing the Commission's issuance of this Cease and Desist Order.

a. The Unpermitted Development is not Consistent with the Terms and Conditions of Previously Issued Permits (CDP No. F7923 and CDP No. 6-99-117)

As described above in greater detail, unpermitted development was also undertaken that was inconsistent with the CDP conditions. This unpermitted development took place on the Leased Tidelands. Moreover, as also noted above, the failure to implement certain measures, such a required signage, constitutes violations of the permits issued for this facility.

Unpermitted development on the southern end of the leasehold in violation of both CDPs included construction of an event space and associated development, including placement of unpermitted fences, and private event tents across public pedestrian pathways and public parking areas that were required by CDP Nos. F7293 and 6-99-117 to be public areas.

Unpermitted development inconsistent with the permits also included expansion of outdoor dining facilities seaward of Barefoot Bar into a public pathway required by CDP No. F7293, obstructing the pathway, which was required by the permit to be public, from public use. In addition, the failure to provide required public access signage in that area also violated the conditions of CDP No. F7293.

These violations greatly impacted the ability of the public to use these required public pathways and parking areas, and also therefore violated the conditions of the CDPs requiring these public access easements and deed restrictions.

b. The Unpermitted Development at Issue is not Consistent with the Coastal Act's Access Provisions and Principles of Environmental Justice

The following discussion does not address a required element of Section 30810 of the Coastal Act, and the findings in this section are therefore not required for the Commission to issue a cease and desist order. These findings are, however, important for context, and for understanding the totality of impacts associated with the violations and for analyzing factors discussed in the sections below, and for noting that this proposed resolution would benefit all public users and the impacts noted herein by restoring and improving public access to this area.

Public Resources Code Section 30210 states:

In carrying out the requirements 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.

Additionally, Section 30013 provides:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division.

Section 30107.3 defines Environmental Justice as:

... the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

The public access violations here present a threat of environmental injustice, given that the public has the right to access all of the beaches on Vacation Isle and the many public parking spaces on the Leased Tidelands, but the unpermitted development and the actions inconsistent with the permits both obstructed public access to them. Respondent's lease also does not allow them to obstruct public rights of access.

People from environmental justice communities may not be able to afford to stay overnight at the Leased Tidelands, but that does not mean that they should not be able to easily access the adjacent public beaches, as well as enjoy the Commission-required public pathways and public parking on the Leased Tidelands. It is an important precept of environmental justice in California that all of the public should enjoy access for recreation at coastal areas. Public access and coastal recreation continue to be threatened by unpermitted obstructions to beaches and coastal amenities.

The proposed \$500,000 value environmental justice program for underserved students and their families would help to address the environmental justice impacts of the violations at issue. The proposed program is to be valued at \$50,000 a year for 10 years and would bring students and their families to the resort for free overnight stays, including free access to amenities and recreation like watercraft rental. In addition to recreation, the program would have a science education component to help students learn about environmental issues affecting Mission Bay and San Diego, such as water quality issues. This program would help to bring people who might otherwise have difficulty accessing or affording to stay at this resort to the coast, so that they could enjoy the coast as well.

E. Consent Administrative Civil Penalty Action

1. Statutory Provision

The statutory authority for imposition of administrative penalties is provided for in the Coastal Act in Public Resources Code Section 30821, which states, in relevant part:

(a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

Section 30822 states:

Where a person has intentionally and knowingly violated any provision of this division or any order issued pursuant to this division, the commission may maintain an action, in addition to Section 30803 or 30805, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Through the proposed Consent Order and Consent Administrative Penalty , Respondent has agreed to resolve their financial liabilities under all of these sections of the Coastal Act.

2. Application to Facts

This case, as discussed above, includes violations of the public access provisions of the Coastal Act. These provisions include, but are not necessarily limited to, Section 30210, which states in relevant part that “maximum access... and recreational opportunities shall be provided for all the people.” As detailed above, the public was unable to walk

through Commission-required public pathways due to obstructions by outdoor dining furniture and had no way of knowing of the existence of those pathways due to the failure of Respondent to install required public access signs in the area. In addition, dumpsters and, at one point, an event tent obstructed public access to many public parking spaces. Further, Respondent placed a guard at the primary vehicular entrance to the Leased Tidelands without a permit, which further discouraged public access during the times the guard was there. Therefore, these actions to block public access constituted unpermitted development and violations of the permits issued for the facility in violation of the Coastal Act.

The following pages set forth the basis for the issuance of this administrative penalty by providing substantial evidence that the Unpermitted Development and failure to comply with permit requirements meets all of the required grounds listed in Coastal Act Sections 30821 for the Commission to issue Administrative Penalty Actions.

a. Exceptions to Section 30821 Liability Do Not Apply

Under section 30821(h) of the Coastal Act, in certain circumstances, a party who is in violation of the public access provisions of the Coastal Act can nevertheless avoid imposition of administrative penalties by correcting the violation within 30 days of receiving written notification from the Commission regarding the violation. This safe harbor provision of Section 30821(h) is inapplicable to the matter at hand, for multiple reasons as outlined below. For 30821(h) to apply, there are three requirements, all of which must be satisfied: 1) the violation must be remedied consistent with the Coastal Act within 30 days of receiving notice, 2) the violation must not be a violation of a permit condition, and 3) the party must be able to remedy the violation without performing additional development that would require Coastal Act authorization.

A Notice of Violation was sent on January 27, 2017 to Respondent. The violations at issue are nearly all permit condition violations. In addition, some violations that were not permit violations were not resolved within 30 days and some, such as some of the unpermitted decks, would have required a permit, which are additional reasons the safe harbor provision does not apply here.³

In addition, Section 30821(f) of the Coastal Act states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm

³ Violators are not barred by the Coastal Act from applying for CDPs. Further, the proposed Consent Agreement requires Respondent to apply for ATF CDPs for a few unpermitted items, and these will be considered by the Commission under the standard Coastal Act analysis. If the Commission denies these ATF CDP applications, Respondent is required to remove the unpermitted development. Also, Commission staff is aware that Respondent will likely be applying for a CDP for other improvements to the resort in the future.

will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

Section 30821(f) is also inapplicable in this case. As discussed above and more fully below, the unpermitted restriction of public access here is significant because it blocked public access to many parking spaces, public pathways, and the beach in an area for which the public had little awareness of public access rights. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

b. Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” Section 30820(b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), [and] not more than fifteen thousand dollars (\$15,000), per day for each day in which each violation persists.” Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation. Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the “administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.”

In this case, Commission staff has substantial evidence that Respondent performed unpermitted development such as encroachments within Commission-required public pathways and public parking areas as early as 2015. Therefore, there have been violations during the entire statutory period of five years during which administrative penalties may apply, however, Respondent has agreed to amicably resolve this matter, and agreed to the following penalties, as well as additional programs in lieu of greater penalties. First, Respondent has agreed to pay a \$1 million fine to the Violation Remediation Fund. \$250,000 of that penalty will go towards water quality improvement projects, to mitigate for the water quality violations with regards to the unpermitted replacement of the pump and pipe for the bayfront lagoon water feature, as well as for the unpermitted reconstruction of the pier.

Second, Respondent has also agreed to provide an environmental justice program worth \$500,000 in lieu of a larger monetary penalty. Under the terms of the proposed orders, Respondent’s program will bring underserved students and their families from nearby communities to the resort. Once there, they will enjoy science education, family recreation, and free overnight stays and access to resort amenities and watercraft rentals. Third, Respondent will also institute a marine debris reduction program to reduce plastic pollution on the Leased Tidelands, which will include such measures as water bottle refill stations, discontinuing use of single use plastics at the resort and restaurants, adding laundry filters to avoid microplastic discharges, and other related measures. This is in addition to the substantial mitigation that will be provided by

Respondent, which is not valued as part of the penalty.⁴ In sum, the total combined value of the settlement to the public is estimated to be over \$3 million, as well as the intangible value of what would be by far the most dramatic improvement of public access to the beaches and coast in this part of Vacation Isle in the sixty- year history of the Leased Tidelands. Thus, Commission staff recommends that the Commission approve the proposed resolution contained in the proposed Consent Cease and Desist Order and Consent Administrative Penalty action.

As discussed immediately below, Commission staff thoroughly analyzed the factors enumerated by the Coastal Act in crafting the proposed Consent Administrative Civil Penalty calculation for the Commission’s approval, and the Commission finds there is substantial evidence to support staff’s analysis. Under 30821(c), in determining the amount of administrative penalty to impose, “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.”

Section 30820(c) states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) The nature, circumstance, extent, and gravity of the violation.
- (2) Whether the violation is susceptible to restoration or other remedial measures.
- (3) The sensitivity of the resource affected by the violation.
- (4) The cost to the state of bringing the action.
- (5) With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require.

30820(c) (1): Applying the factors in Section 30820(c)(1) (nature, circumstance and gravity of the violation) to Respondent, the violation at hand should warrant the imposition of substantial civil liability; many different violations have persisted on the Leased Tidelands for many years, and over a large area adjacent to popular visitor destinations. These violations exacerbated the existing problem of a lack of awareness

⁴ Respondent will also provide very substantial value towards the total sum of the proposed settlement in the form of mitigation. As detailed in the summary, Respondent’s mitigation program includes installing public restrooms valued at over \$1 million, as well as installing over 70 signs and other public access improvements, in addition to installing dozens of public EV chargers, the value of which exceeds \$500,000.

by the public of their public access rights due to the lack of required signs on the Leased Tidelands. Therefore, the above factor weighs in favor of a medium to high penalty.

30820(C)(2): With regards to 30820(c)(2) (whether the violation is susceptible of restoration), the violation can be remedied going forward and compliance with these Consent Orders will ensure that adequate public access is maintained at this location. For example, under the proposed Consent Orders, Respondent will be installing over 70 signs and a host of new public amenities so that the public access experience is more inviting, which will help to restore the public access coastal resources that were impacted. However, there are years of public access losses that can never be recovered, and many people have been denied public access to the coast that they cannot now regain, and therefore, a moderate penalty is warranted under this subsection.

Section 30820(c)(3) requires consideration of the resource affected by the violation in the assessment of the penalty amount. The resource affected by this violation, public access to beaches, parking, and public trust lands generally, is an oft-threatened and important resource across the State. Ensuring public access to all of California's beaches and public trust lands is promised to the people by the State Constitution and is essential for implementing the Coastal Act, and this violation directly blocked many members of the public from parking and accessing the beach and public trust tidelands. In addition, this is an area that is very popular and where, had the public been able to access it easier, many people might have enjoyed the coastal resources here. Therefore, an accessible beach here is a relatively sensitive resource in terms of access, and thus, a high penalty is warranted under this factor. However, the proposed resolution would greatly improve public access amenities here over what the permits require, including by providing many more signs and public amenities.

Section 30820(c)(4) takes into account the costs to the state of bringing this action. In this case, a low amount of Commission staff time was spent to bring this matter to a resolution relative to the Commission's other cases that are elevated to Headquarters Enforcement. Moreover, the proposed resolution here would enable the State to avoid litigation entirely and save it the costs and delays to restoring public access that such litigation would entail. Therefore, this factor warrants a low penalty.

Finally, **Section 30820(c)(5)** requires evaluation of the entity that undertook and/or maintained the unpermitted development and whether the violator has any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and such other matters as justice may require. Respondent runs a for-profit business, and so its encroachments and other unpermitted development that effectively converted public areas to private use very likely resulted in economic profits. In addition, Respondent was informed to not block the public pathway with outdoor dining furniture by Commission staff. Further, Respondent was told not to post a guard at the entrance and still did so again. However, Commission staff have observed that large resorts often struggle to comply

with permit conditions when their resort staff are unaware of those conditions, and the Consent Orders therefore require many public access signs and an employee training program to ensure these violations do not happen again. In the aggregate, this weighs toward a moderately high penalty.

Aggregating these factors, Commission staff concludes that a moderate to high penalty is justified here for Respondent. Staff recommends that the Commission exercise its prosecutorial discretion and adopt staff's recommendation to order Respondent, as a penalty, to pay \$1 million to the VRA, provide a \$500,000 environmental justice program for underserved students and their families, and provide over 70 signs and many new public access amenities, the total value of which is estimated to be over \$3 million. In summary, the proposed resolution represents a significant penalty to be paid by Respondent, in compliance with the criteria set forth in the statute.

Therefore, staff recommends that the Commission issue the Consent Administrative Penalty Actions CC-23-AP-03 attached as **Appendix A** of this staff report.

F. Consent Orders are Consistent with Chapter 3 of the Coastal Act

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require and authorize Respondent to, among other things, cease and desist from conducting any further unpermitted development on the properties, and to perform public access improvements as described in further detail above. Failure to provide the required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

Therefore, as required by Section 30810(b), the terms and conditions of these Consent Orders are necessary to ensure compliance with the Chapter 3 policies of the Coastal Act.

G. California Environmental Quality Act

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development and the restoration of the properties, among other things, as well as the implementation of these Consent Orders, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” *Id.* at § 21084. The CEQA Guidelines (which, like the Commission's regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 *et seq.*). Because the Commission's process, as demonstrated above, involves ensuring that the environment is protected throughout the process, one of those exemptions apply here: the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action that will ensure the environment is protected throughout the process, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

IV. SUMMARY OF FINDINGS OF FACT

1. The properties that are the subject of these Consent Orders are located at 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 Hotel, L.P.) San Diego, CA 92109, APN 760-038-03 (the Leased Tidelands).
2. Respondents’ CDPs required public access pathways and parking areas. These CDPs include CDP Nos F7923 and 6-99-117.
3. LHO Mission Bay Hotel, L.P., is the lessee of the Leased Tidelands, which are burdened by the requirements of CDP Nos F7923 and 6-99-117.
4. The Leased Tidelands are held in trust for the public, and the public is thus owed a high scrutiny level of scrutiny for private development thereof.
5. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the

Commission without securing a permit, or (2) is inconsistent with a permit previously issued by the Commission.

6. Unpermitted Development and violations of CDP conditions, as described above, has been undertaken on the Leased Tidelands and on adjacent public trust lands, 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.
7. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. The criteria for imposition of administrative civil penalties pursuant to Section 30821 of the Coastal Act have been met in this case. Sections 30820 and 30822 of the Coastal Act create potential civil liability for violations of the Coastal Act more generally.
8. The parties agree that all jurisdictional and procedural requirements for issuance of and enforcement of these Consent Orders, including Section 13187 of the Commission's regulations, have been met.
9. The work to be performed under these Consent Orders, if completed in compliance with the Consent Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
10. Respondent has agreed to assume the obligations of their Consent Orders, which settles all Coastal Act violations related to the specific violations described in #6.
11. As called for in Section 30821(c), the Commission has considered and taken into account all the factors in Section 30820(c) in determining the amount of administrative civil penalty to impose. The penalties agreed to in this settlement are an appropriate amount when considering those factors.