

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



Th16b

ADDENDUM

February 8, 2023

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item TH16b**, Coastal Commission Permit Application No. **6-22-0127 (LHO Mission Bay Hotel, LP)**, for the Commission Meeting of February 9, 2023.

The purpose of this addendum is to: 1) update the record by supplementing it with a comment letter from UNITE HERE Local 30 (see Correspondence) that Commission staff received after publication of the staff report dated January 26, 2023, 2) respond to issues raised in the letter, and 3) make minor modifications to the staff report in response to the letter. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strike through~~ and additions shall be underlined:

1. Documents received after the staff report:

Letter of opposition to the staff recommendation for the CDP application from Jordan R. Sisson on behalf of UNITE HERE Local 30 and its members, dated February 8, 2023 (see Correspondence).

2. Responses to Comments Received

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

We are grateful for the input we have received from UNITE HERE Local 30 and its members, and hope that this addendum helps to clarify Commission staff's analysis and enforcement actions related to this matter.

The Enforcement Unit appreciates, here as elsewhere, the ongoing support by UNITE HERE for strong enforcement of the Coastal Act. We appreciate their thoughts and the opportunity to clarify the content of the proposed resolution of the violations at issue here.

- a. UNITE HERE Local 30 specifically requests that the Commission deny the CDP application and instead direct staff to take enforcement action to cure the violations and address liabilities, and then direct the applicant to renew their lease with the City of San Diego prior to a future CDP application. UNITE HERE Local 30 also made various comments stating that allowing violators to obtain CDPs prior to resolution of the violations is bad policy that rewards violators.
 - i. We note that the Commission does not have the legal authority to deny a CDP application or hearing on the basis of existing violations. The Commission agrees that this would be generally good public policy and notes that many local governments and other regulatory entities have this specific authority and exercise it routinely in order to expedite resolution of outstanding violations. The Commission has, on numerous occasions, sought legislation that would provide this authority, but to date, none have been successful.

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

- b. UNITE HERE Local 30 also specifically requested that a resolution should include higher penalties. Other comments in the letter state that \$250,000 is insufficient for a penalty here.
 - i. We agree that a higher penalty than \$250,000 is warranted, and in fact, the proposed resolution includes much more than that amount. The \$250,000 value for the 5-year science education and family vacation program for underserved students is only one fraction of the total value of mitigation and penalties proposed to resolve these violations. The educational and recreational value of this program is greater in value than its funding costs, and will provide rare opportunities for disadvantaged students, along with their families, to enjoy the coast, and to participate in programs such as water quality monitoring and environmental justice and science workshops, as well as recreational events such as kayaking and volleyball, and includes a program for free overnight accommodations for the participants and their families.

But the package of proposed measures required of the applicant to resolve the violations here also includes a number of other measures—including the construction and provision of restrooms and associated public access improvements in a key area of the resort, in addition to designing and implementing a robust marine debris reduction plan for the resort, which is critical given the location of the facility and the proven negative impacts of plastics on the marine environment. This marine debris reduction plan is subject to approval by the Executive Director, and is to include a broad array of plastic reduction measures such as using only reusable foodware for onsite dining, prohibiting use of plastic cups, utensils and straws, prohibiting the sale of beverages in plastic bottles and use of single-use plastic amenities for hotel guests, as well as use of a microfiber filtration system for all hotel laundry. They are to provide an annual report to Commission staff regarding this program.

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

- c. UNITE HERE Local 30 also states that Special Conditions cannot be relied on given that the resort has ignored them before.
 - i. Again, we share the goal of having permittees comply with their permit requirements and appreciate Unite Here's flagging of the importance of compliance. The violations of Special Conditions cited by UNITE HERE Local 30 in the January 27, 2017 Notice of Violation were undertaken by a prior leaseholder. The applicant did not obtain the lease for this resort until 2018, over a year after the Notice of Violation was sent. Regardless, Commission enforcement staff will remain vigilant with regard to any future Special Condition violations of this CDP. Should future violations of the Special Conditions occur, those new violations would incur new liabilities under the Coastal Act, and Commission enforcement staff would accordingly work to ensure that full compliance is achieved.
3. On Page 40 of the staff report, the final full paragraph shall be modified as follows to clarify that the applicant's proposal to provide 25% of the 16 new or redeveloped rooms as lower-cost is consistent with past Commission actions:

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