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Scott Drapkin, Planning Manager
Community Development Department
City of Laguna Beach
Via email: sdrapkin@lagunabeachcity.net

Subject: Comments on Negative Declaration for Update to the Historic Preservation Ordinance, General Plan, and Municipal Code

Dear Mr. Drapkin:

I write to comment on the Initial Study and draft Negative Declaration (Neg Dec) for the proposed project to materially amend the City's Historic Preservation Ordinance, General Plan, and Municipal Code.

For the last seven years I have been involved as a passionate volunteer in historic preservation advocacy in southern California. My partner and I purchased our home in Laguna Beach about five years ago. We chose Laguna, rather than neighboring beach communities, *because of* the strong protections for historic resources here, which have played such an obviously important role in preserving the unique character of our community. We were deeply dismayed when we learned that these protections were under attack and when we read the draft Ordinance, and the companion planning documents, because of the irreparable damage they will do to Laguna's historic fabric.

The proposed amendments to these documents would significantly impact the City's unique aesthetic, historic, and cultural character and require an Environmental Impact Review process to disclose those impacts to the public as well as to the City Council.

The Neg Dec has an absurd and untenable central premise: that Laguna Beach can switch to a voluntary historic preservation program and redefine what counts as a historic resource without causing a significant environmental impact. A project that would remove codified protections for hundreds of properties that the City has recognized for almost four decades as historically significant cannot be approved with a finding that it "could not have a significant effect on the environment."

The amendments would have substantial and cumulatively considerable adverse impacts on hundreds of historic resources and on the aesthetics of Laguna Beach writ large.

Laguna Beach has prepared the wrong environmental clearance document. There is a fair argument that the project may have significant environmental impacts. The City has a mandatory duty to conduct an EIR process.

1. Laguna Cannot Make Preservation Voluntary Through a Negative Declaration

Laguna Beach is not creating a Historic Preservation Ordinance de novo. The City added a Historic Resources Element to the General Plan in 1981 and adopted its Ordinance in 1989. The Neg Dec states that the proposed new Ordinance “complies with the mandates of State law” (p. 6) and “recogniz[es] the minimum requirements of CEQA” (p. 30), but its assertions are unsupported. The City failed to evaluate the *changes* proposed to the existing Ordinance and other planning documents.

The proposed amended Historic Preservation Ordinance would codify two crucial changes affecting City resources: 1) making the preservation of local historic resources voluntary and 2) narrowing the definition of ‘historic resource.’ These changes are important on their own and in their interaction.

The word “voluntary” is found nowhere in the present Ordinance, which states as its first “Intent and Purpose”: “Safeguard the heritage of the city by *providing for the protection* of historic resources representing significant elements of its history” (Historic Preservation Ordinance, updated 2006, 25.45.002 (A), italics added. The proposed new Ordinance would instead pronounce an intent only to “Safeguard the heritage of the city by *encouraging the voluntary* protection of historic resources representing significant elements of its history” (revised Laguna Beach Historic Preservation Ordinance, 2019, 25.45.002 (A), italics added). The current ordinance truly *safeguards* the heritage of the city without qualification; the proposed revised ordinance erodes protections because they are now merely “encouraged” and “voluntary.” The word “voluntary” is added twice more in the Intent and Purpose section to emphasize that neither property owners nor the City would be expected or required to preserve or protect properties currently recognized as historic.

Incredibly, the Neg Dec states that “[n]o substantive changes are proposed in this section [Intent and Purpose]” (p. 7). Yet reducing protection of historic resources by making them voluntary is a substantive and significant change. In *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, the California Supreme Court held that the decision of a city council to change its existing historic preservation program to a voluntary program required preparation of an EIR, even when the change to the ordinance would occur through voter approval of a ballot measure. Changing to a voluntary program triggers an EIR because substantial adverse impacts may result to qualified properties that lose their historic status.

Moreover, the Neg Dec explains that under the amended Ordinance “the City will not treat the property as a [sic] potentially eligible for the Local Historic Register without the owner’s consent” (p. 9). There is a new mandatory criterion for listing on the Laguna Beach Historic Register: “The owner of the property agrees that the property is an historic resource” (revised Ordinance, 2019, 25.45.006 (C)(1).

Currently owner consent is required for a property to be formally listed on the Register, but properties that are eligible for the Register are treated as historic resources in Laguna Beach. By *changing* the Ordinance to require owner consent before a property is *considered eligible* for the Register, by making, in other words, the owner’s belief that the property is historic a necessary condition for finding it to be so, the Ordinance places

substantial new limits on what Laguna Beach considers to be historic and thus reduces salutary protection under both local and state law.

2. Changing the Definition of “Historic Resources” Would Require an EIR

At present, under the current Historic Preservation Ordinance and Historic Resources Element, Laguna considers properties identified in the 1981 Historic Resources Inventory and the 1983 South Laguna Specific Plan (hereafter “Inventory”) to be historic resources and subject to CEQA review when they are threatened with substantial adverse changes. Their historic status is independent of whether they are formally designated on a Register or whether the property owner agrees that the property is historic. The proposed amended Ordinance would codify owner agreement as essential to the City’s definition of a local historic resource and would be a significant change that could lead to needless demolition of hundreds of identified historic resources.

Another destructive proposed change to the Ordinance and Historic Resources Element is the elimination of all references to the Inventory and the properties identified as historically significant within it. The Neg Dec is oblivious to the fact that by doing so the City is *changing the definition of a historic resource*, excluding hundreds of properties that are now historic for purposes of CEQA review.

The Historic Resources Element was amended as recently as 2006, when Council again affirmed that it “provides the foundation for the protection and preservation of historic structures *identified in the inventory*” (p. 1, italics added). Properties identified as historic in the Inventory are eligible for the Laguna Beach Historic Register; properties identified in the Inventory or listed in the Register are required to go through a special process before they can be demolished. Although the language that the City uses is variable in the absence of a “definitions” section in the current Ordinance—it refers sometimes to “historic structures” or “historically significant structures” or “historic buildings”—it is clear that both Register *and* Inventory properties qualify as local historic resources according to Laguna’s current Ordinance, Code, General Plan, and Guidelines as well as its practices, and thus they qualify as historic resources under CEQA.

The Neg Dec recites that the new historic preservation program would not “cause a substantial adverse change in the significance of a historic resource” because “the Proposed Program will not remove historic resources from the local Historic Register, the California Register, or the National Register” (VCS Environmental, December 2019, p. 31). This is specious reasoning insofar as CEQA review is not limited to properties that are formally designated on a historic register, and the project the Neg Dec is ostensibly reviewing upends the significance of hundreds of historic resources by changing the definition of a historic resource in the City’s documents. It is no consolation that “Any proposed demolition or modification of a property *that meets the City’s definition of a historic resource* would be required, under CEQA, to prepare a Historic Resource Assessment Report to determine if the project involves a substantial change in the significance of the historic resource” (p. 31, italics added). The City would cease to require historic resource assessments of hundreds of properties listed in the Inventory when demolition or “modification” (by which I assume the consultant means something like *substantial alteration to the exterior*) is proposed.

The consultant claims that under the City's previous system of categorizing historic resources ("E" for "Exceptional"; "K" for "Key"; "C" for "Contributive"), the C-rated buildings would not "generally be found eligible under the proposed updated 'Criteria for Historic Register Listing' included in the proposed Ordinance revisions" (p. 30) but provides no supporting evidence. C- as well as E- and K-rated properties are currently identified as historic resources. C-rated buildings could be found eligible under the new criterion 4) "It exemplifies the cultural, political, economic, social or historical heritage of the community" or 7) "It embodies distinguishing architectural characteristics of a style, type, period or method of construction that exemplify a particular architectural style or way of life important to the City." Without further research we have no way of knowing whether a C-rated resource also meets 5) "It is identified with a person, events, culture, or site significant in local, state or national history" or 10) "Is one of the remaining examples in the City, region, state or nation possessing distinguishing characteristics of architectural, cultural or historical importance." Without analysis of these buildings, and the E- and K-rated buildings, the environmental review document assumes what it is required to establish: that the project "could not have a significant effect on the environment."

In finding that the project would have a less than significant impact on the significance of a historic resource, the Neg Dec states that E- and K-rated properties

may hold individual significance under the proposed updated definition of historic resources and/or under the City's eligibility criteria for the Local Historic Register. While property owner consent is required for local designation and listing on the Local Historic Register, if a permit application proposing demolition, remodel or alteration occurs involving these properties, or similarly situated properties that were not identified on the Survey, that project will require compliance with CEQA or other State law, in which case the City will follow the mandates of State law (p. 30).

This statement appears to miss the whole point of the proposed changes to the Ordinance. First, references to E- and K-rated properties would be stricken from all City documents. These classifications would have no meaning going forward. If these properties "may hold individual significance" under the new Ordinance it would be because some of them meet the City's new definition of a historic resource: they are already listed on the National, California, and/or Laguna Beach Register or have been formally determined eligible for the National or California Register (25.45.004 Definitions). "[S]imilarly situated properties" would simply be ones that likewise meet that new definition. All the Neg Dec states here is that projects involving historic resources would have to comply with CEQA, and the City has to follow State law, which is not news. But what *counts as a historic resource in Laguna* is proposed to be radically narrowed, and it is that change that must be reviewed in an EIR process.

Furthermore, the City Council has already made it clear that it has no intention of considering whether properties that do not meet the proposed new, narrow definition of a historic resource may be historically significant. At the March 5, 2019 City Council meeting, Council voted 5-0 to strike the following language from the proposed new definition of a historic resource: "[P]roperties or structures that are identified in the Historic Resources Element of the City's General Plan as being eligible for the State

Register or the National Register have the potential to be historic resources. An historical assessment will be necessary for such properties or structures prior to alterations, remodels, or demolitions” (Staff Report, City Council, March 5, 2019, p. 4; City Council Minutes, p. 17). Council voted to treat properties that have been found to National and California Register-eligible no differently from any other property in Laguna.

The Neg Dec fails to incorporate information from Appendix F, the SHPO-CHRIS Historic Properties Data File. First, it does not include the properties identified in 1983 in South Laguna, because it was part of unincorporated Orange County until 1987. Second, the Data File uses California Historical Resource Status Codes, not Laguna Beach codes, and virtually all of the referenced 852 properties have a status code of 1 – 5, which makes them historic resources for purposes of CEQA. The Neg Dec dispenses with them by asserting that “they appear to be attributed to the December 1982 historic sites inventory, references to which are removed from the proposed Ordinance update because the 1982 Inventory does not meet the requirements of the Public Resources Code section 5024(g) and does not create a presumption that a property is a historic resource” under CEQA (p. 29).

Importantly, Laguna Beach has already exercised its discretion to treat the Appendix F properties as historic under its current Ordinance, Historic Resources Element, and Guidelines. Summary branding of the Inventory as “outdated” is insufficient. Historic resources get more not less rare over time. The City cannot legally decide to wipe the slate clean and eliminate the hundreds of properties it currently considers to be historic without EIR review, mitigation, and consideration of alternatives, due to potentially significant impacts to those historic resources.

3. The City Must Disclose Impacts on Historic Resources and Aesthetics

Aesthetic impacts subject to CEQA include visual qualities of high value to the community. From its inception, CEQA’s protections have encompassed the cultural and historic resources of the ‘built environment’ as well as protected natural resources like air and water. Decades before CEQA codified a definition of “historic resource” (Pub. Resources Code, § 21094.1, adopted in 1992), the California Legislature proclaimed as “the policy of the state” that agencies must “take all action necessary to provide ... enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.” (Pub. Resources Code, § 21001 (b).)

Well-settled case law recognizes the logical overlap between impacts to historic resources and aesthetics. Much public appreciation of historic buildings and cultural landscapes is visual, including but not limited to architectural features and scenic views of both natural and built resources. In the recent *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129 1146 and *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, EIRs were required based in large part on the subjective opinions of area residents as to potentially significant aesthetic impacts of development in an historic community. *The Pocket Protectors v. City Sacramento* (2004) Cal.App.4th 124 903 addressed proposed amendments to a land use plan as well as aesthetic impacts of a development project, and thus set aside a Neg Dec.

The Neg Dec claims to “disclose and evaluate direct and indirect impacts” associated with the proposed project (p. 1) but does not take into account *any* indirect impacts on aesthetics or cultural resources. It irrelevantly pronounces that “[a]pproval of the Proposed Program would not *in itself cause* specific new development activity...” (p. 18 and 19, italics added—this is also used to dismiss potential impacts from a number of other environmental categories), and “the Proposed Program would not *directly* cause any substantial adverse change in the significance of a historic resource pursuant to CEQA Guidelines Section 15064.5(b)” (p. 31, italics added). CEQA provides, by definition, that amendments to land use plans that may *indirectly* lead to future environmental impacts are themselves ‘projects’ subject to EIR review. (*E.g.*, CEQA Guidelines, § 15378 (a)(1); § 15064 (d) [CEQA requires consideration of “reasonably foreseeable indirect physical changes in the environment.”])

In *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.4th 1170, the court overturned a negative declaration for a proposed amendment of a beach master plan that failed to evaluate possible adverse impacts to the environment by likely increases in unleashed dogs. Here, proposed changes to Laguna’s historic preservation planning would all too likely increase demolitions of historic buildings to make way for new construction. In *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, the county’s adoption of a negative declaration was overturned in part because amendments to its general plan replaced mandatory requirements with more permissive and discretionary language that altered the County’s duties. The proposed amendments to Laguna’s Historic Resources Element and Historic Preservation Ordinance likewise reduce obligations on the part of the City.

The subject Neg fails to address potentially significant aesthetic impacts of a project that reduces protection to historic—and thus, aesthetic—resources. In 2017 the National Park Service recognized the entire City of Laguna Beach as a “Historic American Landscape.” This honor includes both the built and the natural environment and acknowledges Laguna’s architectural heritage and the remarkable historic fabric. In *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, the Court found that “any substantial, negative effect of a project on view and other features of beauty could constitute a ‘significant environmental impact under CEQA.’” Here, the potential significant aesthetic effect on Laguna’s nationally-renowned historic landscape that would accompany reduced or eliminated protections for hundreds of resources is blatant.

Under 4.1 Aesthetics, the Neg Dec quotes from CEQA Guidelines’ Appendix G to pronounce that eliminating protections for currently recognized historic resources would not have “a substantial adverse effect on a scenic vista” (a), would not “[s]ubstantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway” (b), and would not “[s]ubstantially degrade the existing visual character of public views of the site and its surroundings” (c). In addition to the true but irrelevant assertion that the project “would not in itself cause specific new development activity,” the Neg Dec cites as reasons for these unsupported findings that the Ordinance “would provide incentives that encourage the preservation, maintenance and rehabilitation of historic resources within the City” (p. 18, 19). There is however no evidence that incentives would *clearly*

reduce environmental impacts of the project to a level of insignificance, a prerequisite for any Neg Dec (CEQA Guidelines, § 15070 (b)(1)).

In the Landscape and Scenic Highways Element of its General Plan, Laguna Beach acknowledges that Coast Highway is an eligible State Scenic Highway. The Element states that “ocean, foothills, rock outcroppings, landscape, *and architecture* combine to form the visual attributes of Coast Highway” (p. 35, italics added). Coast Highway thus provides particularly sensitive context. County also considers Coast Highway, Laguna Canyon Road, and El Toro Road to be “Viewscape Corridors” in the Scenic Highway Plan of the County’s General Plan (p. 35).

Coast Highway is visually and aesthetically significant at state, county, and local levels. A total of 93 properties along Coast Highway were identified as historically significant in the Inventory, and another eleven in the South Laguna Specific Plan for a total of 104. Only 24 are listed on the Laguna Beach Historic Register. There is no evidence that the potential elimination of protections for 80 historic properties along Coast Highway “could not have a significant effect on the environment”—on aesthetics, on that scenic vista, and on the eligible State Scenic Highway. To the contrary, from just the block of South Coast Highway between Oak and Brooks, for example, properties that would no longer qualify as historic resources under Laguna’s proposed new Ordinance include the shops, restaurant, and bar at 1133 and 1143 (Tudor Revival), 1153 (Colonial Revival-influenced) and 1183 (Tudor Revival) S. Coast Highway. These properties were identified as historically significant in the Inventory but have not been designated on a Register; together they comprise about two-thirds of the west side of this block of South Coast Highway.

The Neg Dec states “[l]ike other construction activities occurring in the City, projects involving historic [word or words missing here] would be subject to the City’s design review process and CEQA” (p. 19). If the missing word is “resources,” then this sentence does not indicate what happens to this block of Coast Highway or other stretches of it, because none of these properties would be historic resources any longer under the City’s new Ordinance and thus are not subject to EIR review by virtue of historic status. The Neg Dec continues: “*Through* CEQA and the design review process, potential impacts to scenic resource views from Coast Highway, Laguna Canyon Road and El Toro Road would be evaluated and where needed mitigation measures or design considerations would be identified to avoid or minimize significant impacts to scenic resources along a state highway” (p. 19, italics added). It is insufficient for the Neg Dec to suggest that “design considerations” and some vague future mitigation measures would be sufficient to “avoid or minimize significant impacts to scenic resources” when the project itself puts at risk vast sections of the City’s scenic resources.

The project’s potential adverse impacts to aesthetics and historic resources are “reasonably foreseeable.” Laguna Beach has been engaged in a long process to revise its Historic Preservation Ordinance. Despite seven years of meetings and workshops, in which some property owners complained about restrictions on what they can do with historic properties, while others urged the importance of historic resource protections to the unique character of Laguna, the City Council voted in December 2018 to start over with a new Ordinance based on voluntary participation, the one reviewed in the Neg Dec, and to revise the General Plan and other city documents to make that possible. The

Council's undisguised goal of removing properties from Laguna's list of historic resources is to facilitate their demolition and alteration without the encumbrance of historic resource evaluations, CEQA review, or regulations designed to ensure that changes conform to preservation standards. Substantial impacts to aesthetics and cultural resources from the proposed broad dismantling of protections for hundreds of historic resources in Laguna Beach are more than "reasonably foreseeable." They are guaranteed and cumulatively considerable.

4. The Neg Dec Does Not Analyze the Whole Project

CEQA requires analysis that addresses "the whole of the action." The Neg Dec states that the Project includes changes to the General Plan, but the proposed amendments are not included with the appendices. There is merely a description of the changes. It states that various references will be eliminated, including to the Inventory and to language in the Historic Resources Element that states "that goals and policies of the Downtown Specific Plan are consistent with policies of the Historic Resources Element" (p. 11). Why is this language being removed? Why will the City's Downtown Specific Plan goals and policies no longer need to be consistent with the Historic Resources Element? This is not a trivial change, and the consultant cannot guarantee that the project "could not have a significant effect on the environment" when the whole project is not even evaluated. The proposed amendments must be provided.

Conclusion

There is substantial evidence now before the City to support a fair argument that the proposed project may have a significant impact on the environment and that the Neg Dec is inadequate under the mandates of CEQA. The City proposes to eliminate hundreds of historic resources from its list of historically significant properties without analyzing whether they still qualify as historic. Acknowledging a resource is historic is an *identification*, like a wetlands or an endangered plant. The project instead treats resources as if owners—and the City—can wish away environmental status unrelated to qualifying facts, unlike any other aspect of the environment protected by CEQA.

This project would degrade the quality of the environment due to the likely increase in demolitions and alterations of historic resources that would cause aesthetic impacts as well as impacts to cultural resources. It would irreparably alter the image and feeling of the city of Laguna Beach, known for its "village character" around the world (see the book documenting the submission to the National Park Service, *Laguna Beach and the Greenbelt Celebrating a Treasured Historic American Landscape*, [Laguna Wilderness Press, 2017]). This project will also have substantial adverse effects on human beings—the residents of Laguna Beach and the 6 million visitors who come to enjoy this historic place each year. If Laguna Beach no longer has the image and character residents and visitors love and expect, as the ambiance deteriorates, the loss of historic resources will also degrade the economy and viability of the community.

The City must conduct an EIR process before considering the project. I hope, however, that the City will choose another route. Many residents have urged Council to consider a revised Historic Preservation Ordinance that clarifies and streamlines development applications while ensuring that the historic and aesthetic character of the community

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remains a factor in approvals. Necessary revisions to the existing Historic Preservation Ordinance that avoid the nuclear option of eliminating droves of historic properties from the City's Inventory, and of defining historic resources as properties owners agree to have, could well be approved based on a Neg Dec. The current project cannot.

Thank you very much for your consideration.

Sincerely,

Catherine Jurca

Cc Lisette Chel-Walker, City Clerk
Martina Caron, Senior Planner