

Laguna Beach Historic Preservation Coalition

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Chair Donne Brownsey and Commissioners  
California Coastal Commission  
via email

January 28, 2022

**Re: Agenda Item 9b - City of Laguna Beach LCP Amendment No. LCP-5-LGB-20-0053-1  
(Historic Preservation).**

Dear Chair Brownsey and Members of the California Coastal Commission:

The Laguna Beach Historic Preservation Coalition writes to express strong opposition to the proposed revisions to Laguna Beach's Historic Preservation program. By design, the changes to Laguna's LCP would eliminate protections for hundreds of identified and potential historic resources. We are astonished at the Report's conclusion that these changes would not have a substantial adverse impact on the significance of historic resources and on the aesthetics and visual community character of Laguna Beach, under both the California Environmental Quality Act (CEQA) and the Coastal Act.

Although unmentioned in the Report, Laguna Beach is recognized by the National Park Service as a Historic American Landscape (HAL), the only one in Orange County. This honor recognizes Laguna's obvious natural amenities but also its extraordinary historic built environment, including many buildings that date from its early days as an artist colony through numerous later buildings by distinguished modern architects such as John Lautner, William Pereira, Gregory Ain, and former resident J. Lamont Langworthy, among others. Our Historic American Landscape falls within your purview and changes, especially on this scale, to cultural resources require careful consideration.

The Coastal Commission is charged with "the burden of CEQA compliance" in the adoption of an LCP, which means that it must disclose impacts and comply with CEQA's substantive mandate "that each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (CEQA Guidelines, Cal. Code of Regulations, Title 14 § 15265(c); Public Resources Code § 21002.1(b)). The Coastal Act likewise protects community character, which has for many decades been defined in relation to Laguna's remarkably intact historic fabric and its "village" charm.

There is no discussion in the Report of the detailed, fact-based objections to the proposed changes and evidence of their environmental impacts, which were submitted in writing to Coastal staff in September 2021. The rationale for the Report's conclusions seems to be "the City states" or "the City has indicated" certain intentions (Report, pp. 9, 10, 15, 16, 17). Such conclusory statements are not evidence that satisfies CEQA's environmental review mandates.

The Report refers to "some local concern" (Report, pp. 10, 15), but concern about the impacts of these changes is not just a local affair. Six million people visit Laguna Beach each year. They come for the ocean, and they come for the historic environment. Visitors as well as residents strongly oppose these changes. The revisions will irreparably damage Laguna's historic fabric and ability to tell its story as a unique historic California beach town.

We urge you to reject the proposed revisions to the LCP and the minor modifications proposed by staff. The most egregious are the revisions that would allow owner consent to determine a property's historic status—a significant, substantive change to Laguna's program. If the Commission approves that change other cities might well follow suit, with consequences across California. No other aspect of the environment is treated in this way: owners do not get to decide whether their property is an environmentally sensitive area, or whether it is located on a bluff. Historic status is a matter of expert identification not owner preference.

Effects on the environment that must be avoided or mitigated include not only the direct impacts of individual development projects but also "reasonably foreseeable indirect physical changes in the environment," which is why revisions to a Local Coastal Program qualify as a project under CEQA (CEQA Guidelines § 15064 (2) (d)). Avoiding indirect impacts is feasible in this case. By no means would Laguna have to start from scratch if the Commission rejects the amended LCP. Laguna worked for years on a quite different, fully drafted ordinance revision. The original, laudable goal was to preserve protections for identified and potential historic properties while clarifying expectations and simplifying the project review process for property owners. Please note that "protections" does not mean "no changes"; rather it signifies that there is appropriate environmental review to ensure that proposed alterations do not adversely impact historic resources.

We ask that you reject the proposed changes and instruct the City to return to a program based on the original goal: to protect historic resources and create a clearer review process for owners. Such a program would likely comply with CEQA and the Coastal Act and preserve the unique character of this historic town for residents and the public. The City should also be urged to complete a new citywide historic resources survey. That way, the community and individual property owners would understand which buildings are historic, and the City would stop flying by the seat of its pants every time a project involving an older building comes up for review.

### **The Inventory is a Historic Register for Purposes of CEQA**

The Report wrongly takes at face value the City's claim that the Historic Resources Inventory is outdated and invalid because it is more than five years old. Apart from the obvious—that properties tend to get more historic, not less, over time—the City misrepresents the status of the Inventory, as we pointed out in our September letter. Because the Inventory was adopted by Council resolution in 1982 as "the best representatives of historically significant architecture within the City of Laguna Beach" (Resolution 82.111), the Inventory is a "Local register of historical resources," which is defined under the Public Resources Code as "a list of properties officially designated or *recognized as historically significant by a local government pursuant to a local ordinance or resolution*" (§ 5020.1(k), emphasis added). Properties listed in the Inventory are thus historic resources under CEQA and until now have been treated as such.

The revised ordinance is the product of the City's ambition to avoid mandatory CEQA review for projects involving historic resources identified in the Inventory. The loss of codified protections for these properties would clearly lead to "reasonably foreseeable indirect" impacts on these resources, and these impacts would be cumulatively considerable.

## The Report Misunderstands the Proposed Revisions and Their Impacts on Resources

The Report relies on an unidentified document from Laguna to allay concerns that the City's elimination of the existing Historic Resources Inventory and refusal to update the Inventory would impact historic resources. That document is the City's "Historic Preservation Ordinance Update, Frequently Asked Questions," prepared by the City Attorney, February 17, 2017 (hereafter FAQ). The Report quotes the FAQ at length.

The City states... 'that decision [to eliminate, without updating, the Inventory] would have no impact whatsoever on whether any structure is or is not a historic resource. Instead, its elimination would mean that property owners and the City would have to conduct historical resource assessment from scratch for each project involving modifications to, or demolition of, structures over 45 years of age. This is time consuming and expensive, and the results may take property owners by surprise. Simply put, elimination of the Inventory does not give a 'free pass' for development; all future projects would still need to be reviewed by the City for historical resource impacts. Essentially, the homes that were on the Inventory would be reclassified into the "un-surveyed" group of homes [really buildings] more than 45 years of age' (Report, pp. 9-10).

The City would do none of this under the proposed revisions.

The Report fails to mention that the 2017 FAQ, which paints such a rosy picture of the diligent environmental review still to be done in Laguna, came out three and a half years before the Council adopted the current proposed historic preservation ordinance. In 2017 owner consent was not proposed as a requirement for a property to be considered historically significant in Laguna.

The owner consent requirement only became an entrenched part of Laguna's revised program in October 2018, when the Council instructed staff to change course and scrap everything staff had been working on over many years, at many more public meetings than described under "Public Participation" (Report, p. 4). Simply put, the FAQ upon which the Report relies in no way describes the proposed "voluntary" historic preservation program under your consideration.

The 2017 FAQ describes the *existing process under the current historic preservation program, not the program proposed to replace it*. Laguna Beach *now* treats properties identified on the Historic Resources Inventory as historic resources that are eligible for the Laguna Beach Historic Register (Laguna Register) and it also considers whether other properties over 45 years old (the "un-surveyed" group) are eligible for the Laguna Register. At present, in Laguna Beach *eligibility for the Laguna Register makes a property a historic resource*.<sup>1</sup> The FAQ quoted in the Report outlines what *would have happened* if the Inventory were eliminated *under the current program*: hundreds of properties, which include commercial, institutional, and residential buildings found to be historic therein, would go into the un-surveyed group. If a development project was proposed, these properties would not be presumed historic and would have been assessed individually as potential historic resources, i.e., as properties eligible for the Laguna Register.

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<sup>1</sup> See also the presentation by city planner Martina Caron to the Laguna Beach Planning Commission, March 15, 2017, when she details the process the City follows for assessing whether a property is historically significant ([https://lagunabeachcity.granicus.com/player/clip/642?view\\_id=3&redirect=true,timestamp=1.55.10](https://lagunabeachcity.granicus.com/player/clip/642?view_id=3&redirect=true,timestamp=1.55.10)). This meeting was likewise before the addition of the owner consent provision; as Ms. Caron put it at the time: "if it's a historic resource it's a historic resource."

The Report misses that the level of environmental scrutiny described in the FAQ will be gone. Indeed, *that is the City's point in making the revisions*, so that it would no longer have to consider whether any properties over 45 years old qualify as local historic resources. The Report's reliance on the FAQ from 2017 to justify the lack of impacts is bewildering, especially so given that the modifications it proposes to the Land Use Element include *removing this language*: "Special preservation consideration should also be given to any structure over 45 years old" (emphasis added), because the City forgot to remove it (Report, p. 10). And yet the Report *still insists* that "a historic resource assessment will still be required for structures constructed over forty-five years ago" (p. 15). *No, it won't be*, if the proposed changes take effect.

The Report does not explain that Laguna proposes to *change the definition of a historic resource* in a way that would strip environmental protections from identified historic resources in the Inventory and eliminate the need to consider historic resource impacts for other, un-surveyed properties. The misunderstanding is evident here:

The City has indicated that the proposed changes do not modify the historic status of any property, and if the property has been determined to be a historic resource in a manner consistent with California law and *meets the criteria for the State Register*, it will continue to be protected pursuant to CEQA (p. 10).

Here is the difference. Properties that *meet the criteria for the State Register* "will continue to be protected." But properties that *are in the Inventory and meet the criteria for the Laguna Register* will cease to be protected. By making owner consent a requirement for local significance, the City proposes to implement a much stricter threshold for historical significance than currently exists—listing in, or determined eligible for listing in, the National or California Registers.

The sixth proposed definition of a historic resource—a property "the City is mandated by law to treat as an historic property or resource"—is a catch-all designed to let Laguna off the hook for the legal consequences of these revisions down the line. But it's an empty category. If the City is allowed to change what qualifies as a historic resource, its legal obligations change too. As held in *Friends of the Willow Glen Trestle v. City of San Jose* (2016) 2 Cal. App.5th 457, 473-474, and *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4t 1039, 1074, an agency presented with evidence that an unlisted resource may qualify as historic cannot approve a project that may demolish or substantially alter the resource without first making a finding supported by substantial evidence that it does not qualify as historic under CEQA. Prior agency findings that may have supported non-historic status are insufficient; an agency must make a fact-based supportable finding as to historic status concurrent with consideration of a current project. The City's intention to make owner consent a prerequisite for Laguna Register eligibility would unlawfully avoid consideration of compelling evidence of a property's objective local historical significance.

*The whole point of CEQA* is to review changes that may result in environmental impacts and both consider and adopt feasible ways to reduce or avoid such impacts. While "the City has indicated" that the historic status of properties would not change under the proposed LCP amendment, that's not true, for the reasons outlined above. The Report takes the City's statements at face value without even questioning their adequacy or consistency. By placing substantial new limits on what Laguna Beach considers to be historic, the proposed revisions to

the LCP reduce salutary protection under both local and state law. The impacts to historic resources are obviously foreseeable. They also would be devastating.<sup>2</sup>

### A “Voluntary” Program Is Contrary to Protecting Community Character

Laguna has had a robust preservation program for forty years. The character of Laguna Beach, and its value for both residents and visitors, is inextricably tied to that program. This is no doubt one reason that the City did not include an owner consent provision when it updated its program in 2006.

The City itself recognizes the importance of Laguna’s historic character. As stated in the Historic Resources Element of the General Plan (1983; revised 2006):

*A defining feature of Laguna Beach is its variety and number of older homes and buildings. If the positive image of Laguna Beach as a pedestrian community with a unique village atmosphere and significant aesthetic amenities can be maintained, the City will continue to enjoy prosperity and increased property values.*

*The loss of numerous older buildings due to the escalating coastal real estate market and changes in the housing sizes and styles was the catalyst for the original Historic Resources Element adopted by the City in 1983. The City Council recognized the importance of enacting measures to protect its numerous historic buildings.*

*Through the Historic Resources Element and the Historic Preservation Ordinance, the City incorporates historic preservation as a major component of its local planning process and recognizes its importance to maintaining the quality of life of its residents, as well as promoting its attraction to visitors” (p. 1, emphasis added).*

The variety, quantity, and quality of Laguna’s historic buildings, in other words, are vital to community character, and the City acknowledges their appeal both to residents and the public, to the tune of some six million visitors a year. The City’s preservation program was created to prevent the loss of character by actively discouraging the loss of historic buildings. None of this language has been dropped from the proposed revisions to the Historic Resources Element that is part of the City’s revised preservation program. The Element is not part of the LCP, but it still qualifies as evidence of the way Laguna’s sense of its character has been defined for decades.

The Report notes that “it is possible to alter historic buildings and preserve their historic character” (p. 17). Very true. But it continues: “It is also possible to replace an older structure with a new structure that maintains or recreates the character of [a] previous structure, thereby maintaining and preserving community character” (p. 17). We disagree. A tile roof and stucco do not a Spanish Colonial Revival make. The Report embraces ersatz character in lieu of the real thing, which suggests how little consideration Laguna’s community character, which in this case is the *historic* character of a Historic American Landscape, has received. At any rate, Laguna’s design review process is inadequate to ensure what the Report conceives. There is no requirement in Laguna (or at the Commission) that a new building “maintain or recreate the character of” a previous building. Impacts to community character through increased demolitions and substantial alterations of historic resources are self-evident.

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<sup>2</sup> The Report errs when it states that the number of identified historic resources would be reduced from 65 to 27 (p. 10). Staff are confusing the number of Inventory properties just within the Downtown Specific Plan area with the number citywide.

Nor is this reassuring: the Report states that “impacts to community character will continue to be determined on a case-by-case basis through the coastal development permit process” (p. 10). This statement glosses over the reality of what the City proposes to do, and how a planning document like an LCP, which creates a citywide framework for development, actually functions. The City’s proposed revisions demonstrate a lack of commitment to preserving the historic community character that exists right now, unless individual property owners agree to preserve it. Community character would certainly erode, which may not be the goal of the proposed revisions but is the inevitable result.

### **The Report Does Not Take Consideration of Indirect Impacts Under CEQA Seriously**

The Report takes the same approach to historic resource impacts as it does to community character. It asserts as reasons the LCP amendment complies with CEQA that “a project would still be required to be consistent with the City’s Historic Preservation Ordinance and would need a coastal development permit to substantially alter or demolish a historic building” (p. 16). Neither of these considerations means what the Report implies they do, because changes to the ordinance would redefine what counts as a historic building in Laguna. Buildings that have been determined eligible for the State Register would count, buildings listed in the Inventory or that meet the criteria for listing in the Laguna Register, unless an owner consents, would not. This is precisely why CEQA protects against “reasonably foreseeable indirect” changes to the environment. It won’t matter that a coastal development permit is required before a historic building is demolished if that building has, through an LCP amendment, lost its historic status and the protections that go with it.

When Sierra Madre’s City Council similarly decided to change its existing historic preservation program to a voluntary program, the California Supreme Court held that CEQA applied even though the change would have occurred through voter approval of a ballot measure (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165). We raise this case to illustrate that the Court recognized that changing to a voluntary program would cause foreseeable substantial adverse impacts to historic resources simply by virtue of losing their historic status.

### **Conclusion**

There is ample evidence presented here that the Report does not adequately represent the changes proposed by the City. It fails to identify environmental impacts and mitigate or avoid them where feasible, despite the Report’s claim to have done just that (p. 20). Hundreds of long identified and potential local historic resources in Laguna Beach would lose protections under CEQA; staff would no longer analyze projects involving such properties for historic resource impacts *unless the owner agrees* that a property should be treated as a historic resource.

We ask that you reject the proposed amendment to the LCP because they will have an obvious and irreparably detrimental impact on Laguna’s community character and to properties long recognized as historic resources under CEQA. For example, *some sixty historic properties along Coast Highway* alone, which is an eligible State Scenic Highway, would lose protections if the Inventory is abandoned.

Members of public interest groups participated at every stage of the review process, submitting written comments and speaking on behalf of an improved preservation program and, later, objecting to the gutting of the program that Council finally approved. We laid out detailed objections to the inadequate environmental review process that absurdly found no

foreseeable adverse impacts to historic resources or the aesthetics or character of Laguna by removing protections from hundreds of historic resources that are, as the Historic Resources Element puts it, “defining feature[s]” of our City. We urgently look to you to set the City on a better course, one that will respect the historic character of Laguna Beach and allow it to flourish for another 120 years.

Thank you for your consideration.

Sincerely,



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