

Laguna Beach Historic Preservation Coalition

31423 Coast Highway #28
Laguna Beach, CA 92651
(949) 424-5228 lagunabeachhpc@gmail.com

Marlene Alvarado, Coastal Program Analyst
Zach Rehm, District Supervisor
Amber Dobson, District Manager
California Coastal Commission
via email

September 16, 2021

Re: Laguna Beach LCP Amendment Request No. LCP-5-LGB-20-0051-3 Related to Historic Preservation Program

Dear Ms. Dobson, Mr. Rehm, and Ms. Alvarado:

Thank you for taking the time to meet with us on August 30. The Laguna Beach Historic Preservation Coalition, Preserve Orange County, and Village Laguna write this letter to explain in more detail our concerns about the proposed Local Coastal Program amendments submitted by Laguna Beach for California Coastal Commission approval and certification.

There are significant problems with what the City proposes to do. In its cover letter to John Ainsworth dated August 24, 2020, the City minimizes the extent of the proposed changes to its historic preservation program and Local Coastal Program (LCP). If the proposed changes go into effect:

- the historic status of hundreds of historic resources in the City would suddenly be contingent on owner consent, which has nothing to do with whether a property qualifies as historic;
- CEQA protections for hundreds of historic resources would be eliminated;
- the community character, scenic qualities, and historic built environment, for which Laguna Beach was nationally recognized in 2017 by the National Park Service's Historic American Landscape program, would suffer significant adverse impacts.

Under separate cover we will soon submit a red-line version of the documents the City sent to the Commission. Our proposed revisions address the objections outlined in this letter, ensure compliance with CEQA and the California Coastal Act, and would preserve Laguna's historic coastal community character that attracts six million visitors a year.

LCP Amendment and CEQA Compliance

We understand that under Title 14 § 15265 of the Cal. Code of Regulations, CEQA does not apply to the activities and approvals by a *local government* in its preparation and adoption of a local coastal program pursuant to the Coastal Act; rather, "this section shifts the burden of CEQA compliance from the local agency...to the California Coastal Commission" (15265(c)).

CEQA explicitly considers historic resources and aesthetics as part of the environment. The City approved the LCP with a Negative Declaration that found the change to a voluntary preservation program "could not have a significant effect on the environment." The Neg Dec erroneously insisted that "approval of the Proposed Program" would not impact historic resources or aesthetics because the program "would not *in itself* cause specific new development activity." However, CEQA mandates consideration not only of direct physical impacts but also of "reasonably foreseeable

indirect physical changes in the environment,” which is why adoption of a Local Coastal Program constitutes a “project” under CEQA (CEQA Guidelines § 15064 (2) (d)). The City’s untenable central premise is that a project designed to remove codified protections for hundreds of historic resources would do so without impacting those resources. 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 occur 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.

Because Laguna Beach did not prepare an adequate environmental review for its LCP amendments, we look to the Coastal Commission’s functional equivalent of the EIR process to 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” (Pub. Res. Code 21002.1(b)).

It is feasible in this case. By no means would Laguna have to start from scratch if the Commission were to reject or seek changes to the amended LCP. Laguna worked for years on a revision to its historic preservation program, coming up with a different fully drafted ordinance. The original goal was to preserve protections for identified and potential historic properties, while clarifying expectations and simplifying the project review process for property owners. That made great sense. But after dozens of hearings, workshops, and meetings, the City Council voted on October 23, 2018, to shift gears. It directed staff to prepare a “voluntary” preservation program. The Council felt pressure from some property owners who had expressed in public meetings that they wanted to be free to treat their historic properties like any other property, including demolishing them. With the Commission’s clear direction on the issue of a “voluntary” program an ordinance could be prepared that would comply with the existing LCP and CEQA.

We ask that the Commission reject the proposed amendments on three grounds. First, the revised LCP fails to comply with CEQA, due to its failure to include feasible mitigation measures and alternatives despite foreseeable substantial adverse impacts on historic resources and aesthetics. Second, the revised LCP fails to comply with the Coastal Act due to the substantial adverse impacts it would have on community character. Finally, we note that the City failed to update its Land Use Element (LUE), part of the LCP. Many provisions of the LUE conflict with the City’s proposed changes; therefore the revised program is internally inconsistent and conflicts with Laguna’s LCP.

The City has done much of the groundwork to craft a program that complies both with the substantive mandate and the spirit of CEQA and the Coastal Act and that would maintain and enhance the irreplaceable historic character of Laguna for another 140 years. It should finish the job.

Municipal Code Amendments

In the August 24 cover letter to Mr. Ainsworth the City characterizes proposed changes to the Municipal Code, the General Plan, and the City’s Residential Design Guidelines to “reinstitute a locally voluntary preservation program.” To this end, the City highlights four changes to its Municipal Code:

- adds a definition of “historic resource”;
- adds a mandatory “owner consent” criterion for a property to be eligible for the Laguna Beach Historic Register;
- eliminates references to the “outdated” Historic Resources Inventory—a 1981 survey of historic properties built before 1940;

--expands incentives for historic preservation.

Allowing a property's historic status to be dependent on owner consent would be a significant, substantive change to Laguna's program, and if the Commission approves it other cities might try to follow suit with consequences across California. No other aspect of the environment is treated in this way. Owners, for example, do not get to decide whether their property is an environmentally sensitive area, or whether it is located on a bluff top. Historic status is a matter of expert identification not owner whim.

Laguna is *not* "reinstating" a voluntary local program; it is creating one. Owner consent has always been required for a property to be listed on the Laguna Beach Historic Register, which allows owners to take advantage of numerous benefits. But owner consent has not been required for a property to be considered historic. The original ordinance of 1989 did not make historic status dependent on the voluntary choice of the owner, nor did the revised ordinance of 2006. Under the current program, Laguna considers any property that is eligible for the local Register—that is, any property over fifty years old that meets one of six criteria—to be a historic resource. Thus they have treated properties that may be eligible for the Register as potential historic resources for purposes of CEQA. As the City Attorney put it in a May 8, 2018 Memo: "the Laguna Beach Municipal Code provides that properties that are not on the Register, but that contain structures that are over fifty years in age and meet [one of six criteria] are 'eligible' for the City's Historic Register," and "if City decision-makers determine, based upon 'substantial evidence,' that a property is eligible for listing on the City's Historic Register, it is considered an historic resource" (p. 1-2).

The Memo also noted that CEQA does not permit the City to "wait...to see if others raise the issue of historicity"; the City must be "proactive" (p. 5). City Attorney Kathy Jenson told Council on December 16, 2017: "you don't have a choice to answer the question of whether or not you are dealing with a historic resource"; because "you have chosen through your [Historic Resources] Element and through having a Register that currently has, um, C-, K-, and E-[rated properties], all, any structures that are potentially eligible for that can be considered a potential historic resource" (https://lagunabeachcity.granicus.com/player/clip/711?view_id=3&redirect=true, timestamp, 34:40). Martina Caron, the planner formerly in charge of historic resource projects and who led the review of the City's preservation program, described the three categories staff use to classify properties at the March 15, 2017, Planning Commission Hearing: 1) "the structures that have been put on the Register"; 2) "the structures that are on the 1981 Inventory"; and 3) "the structures that have never been surveyed." The latter, if they are over fifty years old, "would typically have to be reviewed on a case by case basis as they came in for development" to see if they are historic (https://lagunabeachcity.granicus.com/player/clip/642?view_id=3&redirect=true timestamp, 1:155:10). The City now proposes only to consider properties in the first category as historic resources, unless they are listed on or formally determined eligible for listing on the National or California registers, exceptions that apply only to a handful of properties.

Properties on the Inventory are among those eligible for the Laguna Beach Historic Register. The City refuses to acknowledge that the Inventory has no expiration date. 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 itself a historic register. Public Resources Code § 5020.1(k) defines a "Local register of historical resources" as "a list of properties officially designated or *recognized as historically significant by a local government pursuant to a local ordinance or resolution*" (emphasis added). A Laguna Beach Historic Preservation Ordinance FAQ Sheet (Feb. 27, 2017) states that "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" (p. 5). In a presentation to the Planning Commission on February 26, 2020 on the revised

program, Ms. Caron stated that “if the City adopts the proposed definition of ‘historic resource’ it will further clarify that the property previously listed on the Inventory will not be flagged or identified differently than a property not included on this list during the development review process” (https://lagunabeachcity.granicus.com/player/clip/1097?view_id=3&redirect=true, timestamp, 3:07:10). By deleting references to the Inventory in its planning documents and changing the definition of a historic resource, the City proposes to circumvent environmental review for future projects involving these historic resources.

In short, the proposed amendments to the historic preservation ordinance are designed to fundamentally alter how Laguna Beach treats historic properties. A property would be eligible for the Register and thus a locally significant historic resource, not based on specific criteria that the property meets as is the current policy, but only if the property owner says it is. Hundreds of properties listed on the Inventory would lose protections under CEQA, as would additional properties that are eligible for the Register but whose owners disapprove, with obvious foreseeable impacts on the historic resources and aesthetics of Laguna Beach.

Land Use Element

In the letter to Mr. Ainsworth, Laguna announced its proposed deletion of the following implementation action 2.2.1: Update the City’s Historic Inventory.

We note that the City does not appear to have voted on this or any other amendment to the LUE, last updated in 2012. Moreover, the LUE contains other references to the Inventory, including in its definition of “Buildings with ‘Special Qualities’” (A-3). “Historically significant” buildings are defined as “Buildings and their settings, improvements, structures, objects, monuments, sites and areas within the City that reflect special elements of the City’s architectural, artistic, cultural, engineering, aesthetic, historical, political, social and other heritage and/or character” (A-8). Nothing here makes historic significance “voluntary.” Similarly, “historic preservation” is defined as “the preservation of historically significant structures in order to facilitate restoration of such structure(s) to a former condition. Destruction or alteration of properties with historic significance, *as identified in the City’s historic resources inventory* or historic register, should be avoided whenever possible. *Special preservation consideration should also be given to any structure over 45 years old*” (A-8, emphasis added). The existing LUE conflicts with proposed changes to other parts of the LCP, including the Zoning Ordinance and the Design Guidelines.

Design Guidelines – A Guide to Residential Development

Laguna proposes to revise this document to “eliminate references to the outdated Historic Inventory.”

As mentioned above, the Inventory is not “outdated.” Moreover, the City omits a crucial change to the Design Guidelines. Design Review Criteria LBMC 25.05.040(H) states that “Destruction or alteration of properties with historic significance, *as identified in the City’s historic resources inventory* or historic register, should be avoided whenever possible. *Special preservation consideration should also be given to any structure over 45 years old*” (emphasis added). Because the Inventory surveyed many but not all historic properties in Laguna, and the cut-off date for inclusion was 1940, staff have regularly evaluated properties built after 1940 that are older than 45 years and proposed for demolition or substantial alteration for potential impacts to historic resources. Note that while this sentence is proposed to be struck from the Design Guidelines, it is still part of the LUE.

A “Voluntary” Program Is Contrary to Protecting Community Character As Well As Historic Resources

Laguna has had a robust preservation program for forty years, and the character of Laguna Beach, and its value for both residents and visitors, is inextricably tied to that program. The City itself recognizes this. 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 to the City, which 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 amended in the revision to the Historic Resources Element that is part of the City’s revised Preservation Program (but is not part of the LCP and thus not subject to Commission review).

Conclusion

The City failed to identify or consider alternative proposals to avoid or mitigate the impacts of the proposed changes to its preservation program. Hundreds of historic resources in Laguna Beach would lose their CEQA protections; staff would no longer analyze projects involving such properties for historic resource impacts unless the owner agrees that a property is historic.

We ask that you urge the Commission not to adopt and certify the proposed amendments to the LCP because they would have an irreparably detrimental impact on Laguna’s historic resources and aesthetics and thus its community character. For example, some sixty historic properties along Coast Highway, which is an eligible State Scenic Highway and a County “Viewscape Corridor,” would lose protections if the Inventory is abandoned. Furthermore, the entire city along with its greenbelt has been recognized by the National Park Service as a Historic American Landscape, the only one in Orange County. Laguna’s historic built environment is key to the ongoing national significance of this landscape.

Members of our public interest groups participated at every stage of the process to review and revise the historic preservation program, 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 claims that there would be 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.

Finally, we must point out that the proposed revisions to the City's Downtown Specific Plan (LCP-5-LGB-20-0052-2), which have also been submitted to the Commission and await review, present similar problems. The revised DSP creates detailed, finely-grained development standards and provides for significant changes to current policies by way of promoting development in the historic downtown, including allowing additional stories on many historic buildings. The revised DSP is likewise written to eliminate protections for historic resources. By reducing the number of identified historic resources from 65 to 27, and by changing the policies governing historic resources, it occasions the same "reasonably foreseeable indirect physical changes in the environment" under CEQA that the revised historic preservation program does.

Thank you very much for your consideration.

Sincerely,

Catherine Jurca, Laguna Beach Historic Preservation Coalition
Krista Nicholds, Preserve Orange County
Anne Caenn, Village Laguna

Cc: Susan Brandt-Hawley
Deborah Rosenthal

Attachments:

Laguna Beach Historic Preservation Ordinance Update FAQ Sheet, February 17, 2017

Laguna Beach Historic Resources Element, revised 2006

Memo from the City Attorney, May 8, 2018

Laguna Beach Historic Preservation Coalition Presentation to City Council, July 14, 2020