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VIA U.S. MAIL

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Laguna Beach Heritage Committee
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651
Attn: Martina Caron

Re: Proposed Historic Preservation Ordinance Update

Dear Members of the Heritage Committee:

This firm represents Village Laguna, the South Laguna Civic Association and Kay Becknell Jones, as an individual (collectively the Preservation Coalition), in connection with pending amendments to the Laguna Beach Historic Preservation Ordinance. I am a land use and environmental lawyer admitted in California and Illinois with more than 35 years of experience in zoning and historic preservation. I am also a member of the College of Fellows of the American Institute of Certified Planners (FAICP), due primarily to my contributions in the field of historic preservation. I am the former executive director of Landmarks Illinois, a long-time trustee of the California Preservation Foundation, co-chair of the CPF legislative advocacy committee, and a co-founder of the Los Angeles Historic Theater Foundation. I have advised communities on drafting historic preservation ordinances, served as environmental and land use counsel for preparation of historic guidelines, and litigated numerous CEQA cases, including preservation-related disputes.

Our client, the Preservation Coalition, has asked us to comment on methods to protect Laguna Beach's Contributive structures ("C" historic resources) through the proposed Historic Preservation Ordinance (HPO). Staff has proposed to redefine "C" resources as non-historic under the California Environmental Quality Act (CEQA) in order to avoid preparation of environmental impact reports (EIRs) when modifications to the structures are proposed. According to Staff, the EIR process is too cumbersome, costly and time-consuming when applied to alteration or modification of small structures whose significance lies in their contribution to the overall character of the neighborhoods.

BACKGROUND

Drafts of the HPO propose to identify “C” resources as contributors to the history of their neighborhoods, but not as historic resources under the California Environmental Quality Act (CEQA) or being eligible for the City’s Historic Register. By designating them as “non-historic” structures under CEQA, the proposed HPO will also make most C-rated applications categorically exempt from environmental review under CEQA. While providing for the Heritage Committee to advise the Design Review Board, the draft HPO neither establishes special criteria for assessing impacts of modifications on “C”-rated structures, nor requires review of cumulative impacts from multiple changes. In effect, the proposed HPO eliminates CEQA review and special historic standards for modifying “C” resources, even though these are the most effective legal tools available to preserve the character of small beach cottages and bungalows that have contributed so greatly to Laguna’s special village character for the past 80 years.

DISCUSSION OF ISSUES

The contributions of “C” resources can be efficiently and lawfully protected through a well-drafted HPO and properly categorized Historic Inventory. The Coalition has made numerous suggestions for amendments to the proposed language where it unnecessarily sacrifices historic character, and they will continue to be actively involved in the review process. Their hope is that this letter will offer practical solutions to the legal and planning challenges raised in connection with the draft HPO.

ISSUE #1: CAN “C” RESOURCES BE DESIGNATED AS “HISTORIC” UNDER LOCAL REGULATIONS, BUT “NON-HISTORIC UNDER CEQA? NO.

All resources included in an adopted local register or inventory are “presumed” to be historically significant under CEQA. Pub.Res.Code §21084.1. Further, resources that are not on a national, state or local register may be treated as “historic” under CEQA if they are determined to meet local register standards, such as the criteria in Section 25.45.004(D)(2) of the City’s Zoning Code. CEQA gives the same importance to locally-designated historic resources as to buildings on the National or California Registers, and the same review procedures apply.

“C” resources are currently listed on the City’s adopted Historic Inventory, and therefore they are automatically treated as “historic resources” under CEQA. Pub.Res.Code §§ 5020.1(k), 21084.1. The City Council has formally determined that the Historic Inventory is a listing of the best representative examples of historically significant architectures within the City of Laguna Beach.” Reso. 82.111 (1982). The Historic Resources Element of the General Plan recognizes the contribution of “C” resources “to the overall historic character of the neighborhood.” (H.R.E, p.2.) Policies 2.1, 2.2 and 2.3 mandate Heritage Committee review of all structures on the Historic

Inventory, require historic character and context assessment, and call for development of specific rehabilitation guidelines similar to those proposed in this letter. The Historic Resources Element specifically identifies the “Beach Cottage Style” as a unique indigenous architectural style that provides much of the City’s charm and historic ambiance. (H.R.E, pp. 15, 19). The Historic Resources Element recognizes the “variety and number of older homes and buildings” as one of the character-defining features of the City. (H.R.E., p. 1.) The General Plan and Historic Inventory are the City’s official determination that all “C” resources are historic resources.

CEQA applies to all projects that potentially affect the environment because they “may cause a substantial adverse change in the significance of an historic resource.” Pub.Res.Code §21084.1. The Historic Resources Element defines “C” resources as properties that not only contribute to overall historic character, but that are cumulatively “important to the streetscape of Laguna Beach.” (H.R.E., p. 2.) The purpose of CEQA is to avoid or mitigate significant impacts to the physical environment, including historical resources. Pub.Res.Code §21000. CEQA does not distinguish between elements of the physical environment that have local, as opposed to state-wide, designation or significance.

ISSUE #2: DOES THE CITY HAVE DISCRETION TO TREAT “C” RESOURCES DIFFERENTLY THAN “E” AND “K” RESOURCES UNDER CEQA? YES.

The current General Plan and HPO designate “E,” “K” and “C” resources for different reasons. “E” resources are usually unique or architect-designed structures in excellent condition. “K” resources maintain integrity and reflect particular architectural styles and time periods. “C” resources include structures that “most represent character, interest or value as part of the heritage of the city,” and as “the exemplification of a particular architectural style or way of life important to the city.” Laguna Beach Zoning Code §25.45.004(D)(2). The local criteria most applicable to “C” resources differ significantly from National and California Register criteria, especially in their emphasis on the visual connection of these structures to a locally important way of life, such as pre- and post-World War II beach cottages, artists’ colonies and summer homes. Even though the City does not yet designate districts, “C” resources are prized for their cumulative visual contributions to historic neighborhood character.

The Historic Resources Element describes eight historic architectural styles and their typical characteristics prior to 1945. (H.R.E., p.17-24.) Each style is accompanied by a list of character-defining features that define the genre, even if the buildings are not individually distinctive. These categories reflect local ideas about what makes “C” resources historic; they reflect the development patterns, interests, finances, vacation habits and priorities of the City’s early inhabitants, rather than the vision of individual architects or mass-market developers. (H.R.E., p. 15.) According to Staff, “the great preponderance of these buildings contribute greatly

to the visual fabric of Laguna Beach and are important in a more general historical architectural context.” (FAQ 8-18-16, p.2.) “Laguna Beach architecture illustrates the personality that results from one-of-a-kind interpretations of styles, as well as strong European influences in the desire to emphasize the village quality.” Id. The Historic Resources Element acknowledges that loss or alteration of these “C” resources would significantly affect the City’s visual character and appeal.

CEQA defines a “substantial adverse change” in an historical resource when a project “demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register ...” CEQA Guidelines 15064.5(b)(2)(B). For “C” resources, this means that CEQA review is required when changes diminish their ability to convey the heritage of the City, to exemplify a particular architectural style or way of life, or to contribute to neighborhood character. The City, with input from the Heritage Committee, may list those general physical characteristics of “C” resources that justify their inclusion on the Historic Inventory, and they may be different from those identified for “E” and “K” resources. These specified physical characteristics may even vary within the “C” category depending on location, neighborhood or type, and they may include features like windows, rooflines, materials, size, height, setbacks, articulation or relationship to the streetscape.

ISSUE #3: DOES AN EIR HAVE TO BE PREPARED EVERY TIME ALTERATION OF A “C” RESOURCE DOES NOT SATISFY THE SECRETARY OF THE INTERIOR’S STANDARDS AND GUIDELINES? NO.

CEQA requires an EIR when a project has a “substantial adverse impact” on the significance of an historic resource and the impact is not avoided or mitigated. CEQA Guideline §15064. Compliance with the Secretary of the Interior’s Standards and Guidelines is just one way to mitigate adverse impacts to historical resources. CEQA Guidelines §15126.4(b)(1). Because they focus on the preserving the historic condition of particular buildings, the Standards are most applicable to “E” and “K” structures that reflect individual architectural significance. However, even the Secretary’s Standards focus on changes to the physical characteristics that define significance, typically referred to as “character-defining features.” Not every change to the exterior of a “C” resource will affect those character-defining features found to be significant by the City.

CEQA does not require an EIR for a proposed change to a “C” resource when it does not adversely alter its character-defining features, i.e. change the physical characteristics that supported its inclusion on the adopted Historic Inventory. For instance, replacing windows installed within the past few years typically would not affect character-defining features of a pre-World War II cottage. In addition, CEQA does not require an EIR if impacts to character-defining features are fully mitigated by following design standards or guidelines. For instance, removing a

historically appropriate door might be mitigated by replacing it with a similar but not identical door, depending on the importance of the original door to designation of the “C” resource. If there are no unmitigated significant impacts to a “C” resource, most rehabilitation projects would qualify for an exemption from CEQA.

ISSUE #4: CAN THE CITY ADOPT ITS OWN GUIDELINES TO MITIGATE IMPACTS TO “C” RESOURCES THAT ARE DIFFERENT FROM THE SECRETARY OF THE INTERIOR’S STANDARDS AND GUIDELINES? YES.

CEQA allows the City to adopt general “performance standards” that will mitigate future projects affecting “C” resources, without the need for individual EIRs. The Secretary’s Standards and Guidelines are pre-approved as performance standards in the CEQA Guidelines, but the City can also apply its own local standards to “C” resources, so long as they are well thought-out and appropriate. The test is whether the local standards and guidelines are effective to avoid loss of historic character when a “C” resource is proposed for remodeling.

By adopting local historic guidelines, the City is not required to apply inappropriate sections of the Secretary’s Standards to “C” resources. For instance, the date of construction is very important for most National Register properties, but it may not be critical to preserving reflections of a “way of life” or an indigenous architectural style. The City may therefore choose to allow appropriate additions to a “Beach Cottage,” even though the Secretary’s Standards do not allow changes to the historic look of a building. Similarly, the Standards require original materials to be used when a structure is repaired, but prohibit new construction that looks historic. The City may decide that specific materials are not an important character-defining feature of “C” resources, or that additions may reflect historic styles because “C” resources are primarily important due to their contributions to the streetscape. In this case, the City may adopt local guidelines that protect the historic character of the neighborhood or the streetscape while allowing changes in individual “C” resources without an EIR.

Local guidelines, while fully adequate to implement General Plan and CEQA policies for “C” resources will not satisfy either the Mills Act or the Federal Preservation Tax Incentives. By law, any individual owner who wants to participate in either of these incentive programs must follow the Secretary’s Standards for Rehabilitation. Also, this discussion is limited to “C” resources; the City would need to evaluate its reasons for designating “E” and “K” resources as individually significant structures before adopting local guidelines instead of the Secretary’s Standards for the “E” and “K” buildings.

ISSUE #5: CAN THE CITY AMEND THE HPO AND REMOVE EXISTING PROTECTIONS FOR “C” RESOURCES WITHOUT PREPARING AN EIR UNDER CEQA? NO.

The HPO Update will change the rules and procedures for reviewing historic properties by amending the Laguna Beach Zoning Code. It will downgrade the status of “C” resources, and weaken the criteria for reviewing physical modifications of these listed structures. CEQA applies to all “projects” that have a potential for resulting in a direct or indirect change in the environment, including zoning amendments. CEQA Guidelines §15378(a)(1). The HPO Update is a zoning amendment, and its purpose is to loosen or decrease preservation requirements for “C” resources by defining them as “non-historic” under CEQA and changing their status in the Inventory. As a result, most projects affecting “C” resources in the future will be exempt from environmental review under CEQA.

CEQA prohibits the City from adopting the HPO amendment without analyzing the potential for physical changes resulting from decreased historic protection for “C” resources. *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165. Inevitably, more “C” resources will be approved for modification or demolition because they will no longer be subject to special historic criteria under the HPO or protected as historical structures under CEQA. Many owners will apply for demolition and substantial modification of small “C” resources once they realize that CEQA does not apply. The design guidelines for “C” resources appear to allow complete demolition, so long as the new buildings or features are compatible with height, mass and setbacks in the surrounding neighborhood. In fact, the draft HPO does not include any enforceable standards that protect those character-defining features of “C” resources that are important to the City’s heritage and historic character. Draft HPO 25.45.016(E). Under the proposed HPO amendment, virtually every “C” resource could be demolished and replaced with a modern new building.

As a result, a full EIR is required before adoption of the draft HPO. The EIR must consider the impact of removing “C” structures from the Historic Inventory, replacing the stringent Secretary’s Standards with a set of vague design standards for future modifications, and redefining more than 250 properties as “non-historic resources.” The EIR must acknowledge that the proposed HPO is inconsistent with the policies and resource categories in the Historic Resources Element of the General Plan. CEQA Guidelines §15125(d). Finally, the EIR must consider alternatives and mitigation measures that will avoid or lessen the draft HPO’s significant adverse impacts on designated “C” resources.

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RECOMMENDED ALTERNATIVE APPROACH

Properly drafted local historic design guidelines can mitigate the adverse impact of the proposed HPO under CEQA, thereby reducing the necessity for a program EIR due to unmitigated significant impacts. Equally important, compliance with local historic guidelines will allow individual property owners to avoid preparation of project-specific EIRs. Just as the Secretary's Standards mitigate impacts to architecturally significant individual buildings, local guidelines can mitigate potential impacts to "C" resources by preserving what makes them important – the historic charm, variety and character they bring to the City's streetscape. Given the importance of "C" resources recognized in the Historic Resources Element, mitigation for potential losses caused by the proposed HPO is mandatory as part of the CEQA process.

The Preservation Coalition is available to assist the Heritage Committee and city staff in whatever ways may be beneficial to developing responsible local guidelines that will allow the HPO to be updated in compliance with CEQA, and will provide flexibility for alterations to C-rated structures without sacrificing the heritage of the City.

Very truly yours,



Deborah M. Rosenthal, FAICP, Esq

cc: Ms. Kay Becknell Jones
South Laguna Civic Association
Village Laguna