

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E. Ocean Blvd., SUITE 300
Long Beach, CA 90802-4830
VOICE (562) 590-5071
FAX (562) 590-5084



W15c

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Hearing Date: 10/13/2021

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-LGB-21-0060

Applicant: Highgate Hotels

Agents: Alan Kusov, Steven H. Kaufmann, Morris Skenderian & Associates, Mark A. Hoffman

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Unite Here Local 11, Attn. Jonah Breslau

Project Location: 647 S Coast Hwy and 610-668 Sleepy Hollow Lane, Laguna Beach, Orange County

(APNs: 644-021-01, 644-021-02, 644-021-03, 644-021-04, 644-022-02, 644-022-04, 644-022-05, 644-022-06, 644-022-07, 644-022-16, 644-022-17)

Project Description: Appeal of City of Laguna Beach local Coastal Development Permit 19-5507 for remodel of existing Pacific Edge Hotel, including remodel of nine buildings supporting 131 hotel rooms, construction of 25 new hotel rooms, expansion of restaurant, new office and conference areas, new café, and new pool and spa. Transportation demand management measures are proposed along with 220 vehicle parking spaces. A variance was required for a new elevator that will exceed the maximum building height. Special Conditions require the project to include an offer to dedicate a lateral access easement across the beach fronting the hotel and pay a mitigation fee of \$625,000 to the Crystal Cove Conservancy in lieu of providing lower cost visitor accommodations on-site.

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTES: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID19 emergency, California Assembly Bill 361, and the Governor’s Executive Orders N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

SUMMARY OF STAFF RECOMMENDATION

The Laguna Beach City-approved project is described as an upgrade to an existing oceanfront hotel resort known as the Pacific Edge Hotel, including new amenities, new parking areas, and revised valet parking operations. The hotel resort includes buildings and facilities on eleven lots encompassing 102,498 sq. ft. between the first public road and the sea adjacent to Sleepy Hollow Beach (and thus in an appealable area). Hotel buildings and facilities were constructed between 1932 and 1967, prior to passage of the Coastal Act. The site is in a developed commercial area – some of the lots are zoned CHM (Commercial-Hotel-Motel) and some are zoned C1 (Local Business District) under the certified Implementation Plan, which is the City’s zoning code. Some of the lots are designated as Commercial Tourist Corridor and some are designated as Village High Density under the certified Land Use Plan. Hotel guests access Sleepy Hollow Beach via a private stairway located on the project site. Public beach access is available via a public stairway at the end of Cleo Street, approximately 350 feet south of the project site. Portions of the beach fronting the hotel are currently owned in fee by the applicant; the City has imposed Special Conditions requiring the project to include an offer to dedicate a lateral access easement across the beach fronting the hotel and the applicant has agreed.

Cumulatively, the development includes remodel of 131 hotel rooms, construction of 25 new hotel rooms, expansion of a restaurant, new office and conference areas, a new café, and new pool and spa. Development would occur on eleven parcels owned by the applicant and identified with a detailed scope of work on the approved plans. The approved plans also include calculations of demo/remodel of roof, walls, and foundation. The demo/remodel calculations range from 1.7% of the structure at 647 S Coast Highway to 21.8% of the structure at 627 Sleepy Hollow Lane; all structures are under the 50% threshold categorized as a major remodel where non-confirming conditions would be

required to be addressed pursuant to the certified LCP. Transportation demand management measures are proposed along with 220 vehicle parking spaces, which is less than the 280 vehicle parking spaces that would be required based on a strict interpretation of the implementation plan/zoning code. The applicant will provide eleven electric vehicle charging stations and electrical equipment will be developed to allow for installation of additional electric vehicle charging infrastructure in the future as demand increases, consistent with the California Green Building Standards. The City applied a 20% reduction in required vehicle parking spaces due to proposed transportation demand management measures and a study by a traffic consultant. The City approved a variance for one new elevator that will exceed the maximum building height, finding that it was necessary to comply with fire code and reach the top floors of the existing building, which is already over the maximum building height.

Special Conditions require the project to implement construction best management practices, implement a valet parking plan that stores all vehicles on site, offer to dedicate a lateral access easement across the beach fronting the hotel, and pay a mitigation fee of \$625,000 to the Crystal Cove Conservancy in lieu of providing lower cost visitor accommodations on-site. The mitigation fee was calculated based on 25% of the proposed 25 new hotel rooms, which will all be higher cost, for 6.25 multiplied by \$100,000 per room. No mitigation was required for the remodel of the existing 131 hotel rooms, which the City found were not lower cost. The Crystal Cove Conservancy submitted a letter in support of the project, pledging to use the in lieu fee for preservation of existing cottages which are in a state of disrepair, to be rented to members of the public at affordable rates consistent with CDP 5-16-0552 (approved by the Commission 3/8/17). The Conservancy letter provides an update on funding for cottage restoration, and updates on programs to provide access and environmental education to students from inland communities and access to Tribal members.

The appellant contends that: 1) the payment of a fee in lieu of providing lower cost visitor accommodations on site violates Coastal Act and LCP policies, and 2) the project requires additional mitigation measures to comply with Coastal Act and LCP public access policies related to vehicle parking.

Commission staff have reviewed the appeal in the context of the City's action and the relevant Coastal Act and LCP policies. Regarding the appellant's first contention, payment of an in lieu fee for lower cost visitor accommodation is allowed by LCP policies and will partially fund a project that will provide lower cost visitor accommodation facilities at a nearby State Park. The Commission has approved a CDP for that project and in lieu fees from a CDP for a hotel in Newport Beach have been applied to that project, so the City's action has precedent. The appellant's arguments related to vehicle parking misinterpret the applicant's proposal and the City's conditions of approval. The applicant has stated they have no intention to use off-site parking facilities for vehicles of hotel staff or guests and the City applied a condition of approval which affirms this commitment to only utilize on-site parking. The City-imposed condition is stricter than the appellant's requested condition.

Therefore, Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal number A-5-LGB-21-0060 has been filed. The motion and resolution can be found on Page 5 of the staff report.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Project Plans and Renderings
- Exhibit 3 – Detailed Project Description and Remodel Calculations
- Exhibit 4 – Lower Cost Overnight Accommodations Mitigation
- Exhibit 5 – Appeal

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine that Appeal No. A-5-LGB-21-0060 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission finds that Appeal No. A-5-LGB-21-0060 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On September 7, 2021, the Commission received an appeal from Unite Here Local 11 of City of Laguna Beach local CDP No. 19-5507 (**Exhibit 5**). The appellant contends that the City's approval does not comply with the City's certified LCP. More specifically, the appellant raises the following concerns with the City-approved development:

- 1) The payment of a fee in lieu of providing lower cost visitor accommodations on site violates Coastal Act and LCP policies; and
- 2) The project requires additional mitigation measures to comply with Coastal Act and LCP public access policies.

III. LOCAL GOVERNMENT ACTIONS AND APPEALS

On August 10, 2021, the Laguna Beach City Council approved Coastal Development Permit 19-5507, Conditional Use Permit 20-6317 (amending Conditional Use Permit 11-01), Planning Commission Design Review 19-5506, and Variance 19-5505 in conjunction with a Mitigated Negative Declaration for the hotel project. The City Council action occurred at a noticed public hearing.

The City's Notice of Final Local Action for local Coastal Development Permit No. 19-5506 was received in the Coastal Commission's Long Beach office on August 23, 2021, at which point the Coastal Commission's required 10 working-day appeal period was established. The Commission issued a Notification of Appeal period on August 24, 2021. Unite Here Local 11 submitted the subject appeal on September 6, 2021, a State Holiday. The appeal was accepted by the Commission on September 7, 2021, the last day of the 10 working-day appeal period. No other appeals were received during the appeal period.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The project site is in an appealable area because it is located between the sea and the first public road paralleling the sea and is within 300 feet of the inland extent of any beach (Section 30603(a)(1)). The issues raised in the subject appeal apply to proposed development located in the appealable area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding that a substantial issue does exist, and there is no motion from the Commission to find no substantial issue, the

substantial issue question will be considered presumed, and the Commission will conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review (Section 30604(b)). In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act (Section 30604(c)). Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project is described as an upgrade to an existing oceanfront hotel resort, with new amenities, new parking areas, and revised valet parking operations. The hotel resort includes buildings and facilities on eleven lots encompassing 102,498 sq. ft. between the first public road and the sea adjacent to Sleepy Hollow Beach (**Exhibit 1**). Hotel buildings and facilities were constructed between 1932 and 1967, prior to passage of the Coastal Act. The site is in a developed commercial area – some of the lots are zoned CHM (Commercial-Hotel-Motel) and some are zoned C1 (Local Business District) under the certified Implementation Plan, which is the City’s zoning code. Some of the lots are designated as Commercial Tourist Corridor and some are designated as Village High Density under the certified Land Use Plan. Hotel guests access Sleepy Hollow beach via a private stairway located on the project site. Public beach access is available via a public stairway at the end of Cleo Street, approximately 350 feet south of the project site. Portions of the beach fronting the hotel are currently owned in fee by the applicant; the City has imposed Special Conditions requiring the project to include an offer to dedicate a lateral access easement across the beach fronting the hotel and the applicant has agreed.

The plans (**Exhibit 2**) and detailed project description and remodel calculations (**Exhibit 3**) referenced in the City-approved CDP break the development into 10 elements:

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1) General - new landscaping and lighting throughout the project area, new re-paving and striping in existing parking areas;

2) 610/620 Sleepy Hollow Lane – new trash enclosure, re-pave and restripe existing parking lots, and new landscaping and lighting;

3) 619 Sleepy Hollow Lane – remodel street-front patio and legally establish upper dining area at existing restaurant;

4) 627 Sleepy Hollow Lane – remodel two hotel rooms, remodel existing lobby space, remodel existing restaurant/bar and increase seating;

5) 633/635 Sleepy Hollow Lane – remodel 35 existing hotel rooms, demolish swimming pool, new port cochere;

6) 636 Sleepy Hollow Lane – remodel and subdivide 15 existing hotel rooms to create 21 hotel rooms;

7) 647 S Coast Highway – remodel 5 existing hotel rooms, convert portion of lobby to retail and public patio, and replace driveway and curb;

8) 667 Sleepy Hollow Lane – repair building façade, railings, and decks, remodel 24 existing hotel rooms, add 15 new hotel rooms, construct new parking structure, new pool, and landscaping;

9) 668 Sleepy Hollow Lane – remodel and subdivide 34 existing hotel rooms to create 38 hotel rooms; and

10) 653 Sleepy Hollow Lane – repair building façade, railings, and decks, and replace stairs, remodel 15 hotel rooms and one cottage, new landscaping and re-pave existing parking lot.

Cumulatively, the development includes remodel of 131 hotel rooms, construction of 25 new hotel rooms, expansion of a restaurant, new office and conference areas, new café, and new pool and spa. The approved plans include calculations of demo/remodel of roof, walls, and foundation. The demo/remodel calculations range from 1.7% of the structure at 647 S Coast Highway to 21.8% of the structure at 627 Sleepy Hollow Lane; all structures are under the 50% threshold categorized as a major remodel where non-confirming conditions would be required to be addressed pursuant to the certified LCP. Transportation demand management measures are proposed along with 220 vehicle parking spaces, which is less than the 280 vehicle parking spaces that would be required based on a strict interpretation of the implementation plan/zoning code. The applicant will provide eleven electric vehicle changing stations and electrical equipment will be developed to allow for installation of additional electric vehicle changing infrastructure in the future as demand increases, consistent with the California Green Building Standards. The City applied a 20% reduction in required vehicle parking spaces due to proposed transportation demand management measures ("innovative parking solutions" per the City), and the City further reduced the required number by not requiring five vehicle parking spaces to serve outdoor

dining areas. The reduction was also supported by a study by a traffic consultant (LSA Associates, February 2021). The City approved a variance for a new elevator that will exceed the maximum building height, finding that it was necessary to comply with fire code and reach the top floors of the existing building which is already over maximum building height.

Special Conditions require the project to implement construction best management practices, implement a valet parking plan that stores all vehicles on site and does not rely on parking in the public right-of-way, offer to dedicate a lateral access easement across the beach fronting the hotel, and pay a mitigation fee of \$625,000 to the Crystal Cove Conservancy in lieu of providing lower cost visitor accommodations on-site. The mitigation fee was calculated based on 25% of the proposed 25 new hotel rooms, which will be higher cost, for 6.25 multiplied by \$100,000 per room. No mitigation was required for the remodel of the existing 131 hotel rooms, which the City found were not lower cost. The Crystal Cove Conservancy submitted a letter in support of the project (**Exhibit 4**), pledging to use the in lieu fee for preservation of existing cottages which are in a state of disrepair, to be rented to members of the public at affordable rates consistent with CDP 5-16-0552 (approved by the Commission on March 8, 2017). The Conservancy letter provides an update on funding for cottage restoration, as well as updates on programs to provide access and environmental education to students from inland communities and access to Tribal members.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach LCP was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan portion of the certified LCP is comprised of 19 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified LCP, but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. The project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP. The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access and recreation policies of the Coastal Act.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires a de novo hearing on an appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603. Section 13115(c) of the Commission's regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that

the development is consistent or inconsistent with the relevant provisions of the LCP and Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

D. SUBSTANTIAL ISSUE ANALYSIS

Contention 1: The payment of a fee in lieu of providing lower cost visitor accommodations on site violates Coastal Act and LCP policies.

The appellant contends that the City-approved project does not preserve existing lower cost visitor accommodations and does not provide new lower cost visitor accommodations. The appellant alleges that the existing 131 hotel rooms should be treated as lower cost, that improvements to the hotel will inherently make it higher cost, and that 25% of all rooms provided on site as a result of the project should be lower cost. The appellant asserts that the City's analysis that it would not be feasible for the applicant to provide 25% of all rooms at an affordable rate is not justified and the City's action to require a mitigation fee for 25% of the new rooms is inconsistent with Coastal Act and LCP policies. The appellant asserts that the policies suggest lower cost visitor accommodations should be provided on-site and that the applicant and the City did not justify why it would be infeasible to do so.

The following Coastal Act and LCP policies pertain to lower cost visitor accommodations:

Coastal Act Section 30213 (in relevant part) Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

LUE Action 6.2 Preserve and encourage an increase of the City's stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible provide, affordable overnight accommodations.

LUE Action 6.2.2 Investigate and, if appropriate, amend the Municipal Code to ensure that affordable hotel and motels are maintained for short-term visitor occupancy. A method to define whether a facility providing overnight accommodation is low, moderate, or high cost shall be evaluated as part of the investigation. Establish standards that would require new high-cost visitor

accommodations provide affordable overnight accommodation or pay an “in-lieu” fee.

The appellant alleged (without evidence) that some hotel rooms at the subject site were rented for as low as \$75 per night in 2012. The applicant states that hotel rooms at the subject site have generally been rented at a high cost, when considering the average daily rate, and that any referenced lower rates would be due to an unusual circumstance like a promotion during a period of low demand. The applicant indicated that in 2019 (prior to the COVID-19 pandemic which strongly affected hotel rates and occupancy) the average daily rate of all hotel rooms during July and August was \$333.65 and \$314.39, respectively. During other months outside of the summer, the hotel had a lower average daily rate, but the rate would not fall into the category of “lower cost” as analyzed by the City or as defined by the Commission in previous actions. Based on evidence provided by the applicant, the City found that the existing hotel is high cost and the hotel will remain high cost after the project.

LUE Policy 6.2.2 requires that the City take steps to ensure affordable hotels and motels are maintained for short term occupancy, including possible amendments to the Municipal Code and the evaluation of methods to define whether a hotel use is low-, moderate-, or high-cost. These measures must be created by the City. Once created, they would be applied to new hotel development. However, the subject project must be evaluated based on statewide averages because the City has not implemented these measures.

In a constantly changing market, it can be difficult to define what price point constitutes low-, moderate-, and high-cost accommodations for a given area. As such, the Commission has utilized different approaches over time to define such terms, including by considering the unique factual circumstances for each particular project. In previous actions, the Commission has addressed appropriate terms for lower-cost and high-cost hotels, including applying a quantitative methodology for determining what is considered “lower cost.” The formula is based on California hotel and motel accommodations (single room up to double occupancy), and does not account for hostels, RV parks, campgrounds or other alternative accommodations, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels and campgrounds are generally lower-cost, and are the type of facilities that a mitigation measure for the loss of lower-cost overnight accommodations might require.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels based on the average daily rates of hotels and motels across the entire State of California. Under this formula, lower cost is determined as the average daily room rates for all hotels within a specific area that have a room rate 75% less than the statewide average daily room rate. This percentage reflects the Coastal Conservancy’s 2019 “Explore the Coast” study,¹ in which lower cost coastal accommodations were defined as those having a daily rate of 75% or less of the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates are collected monthly by Smith Travel Research and are available on the “Visit California” webpage. To be most useful, peak season (summer) rates for standard, double occupancy

¹ https://scc.ca.gov/webmaster/ftp/pdf/scbb/2019/1903/20190314Board04E_ETCO-Report.pdf

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rooms are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties, that are rated one- and two-diamond rated hotels. Once the low-cost rate is identified, the Commission has determined that the high-cost rate are generally prices 125% of the statewide average daily room rate. By definition, the hotel rooms that are more expensive than the low-cost room rate as calculated, but less expensive than the high-cost room rate as calculated, qualify as moderate-cost rooms.

First, using the Commission's methodology to define the low-cost room price threshold, Commission staff obtained statewide peak season (July and August 2019) average daily room rates collected monthly by Smith Travel Research and available on the "Visit California" webpage, which were \$172.66 for July 2019 and \$173.85 for August 2019. The average daily room rates for the year 2019 are being used since the average daily room rates for 2020 have dropped significantly due to the COVID-19 pandemic and would not correctly reflect average daily room rates under non-pandemic circumstances. Using the July 2019 average daily room rate, the low-cost rate is \$129.50, high-cost rate is \$215.83, and the moderate-cost is between \$129.51 and \$215.82. Using the August 2019 average daily room rate, the low-cost rate is \$130.39, high-cost rate is \$217.31, and the moderate-cost is between \$130.39 and \$217.30. Based on the information provided by the applicant and this analysis of statewide hotel rates, the City's conclusion that the existing hotel is high cost is supported by the evidence.

The second part of the appellant's contention is that the City should have required actual lower cost visitor accommodation to be provided on site rather than accepting the applicant's analysis that doing so would be infeasible. The applicant proposes to establish 25 new hotel rooms through renovations to existing buildings and an addition to the "Reef Wing" at 667 Sleepy Hollow Lane and indicated that high construction and operations costs as well as a complex rate-setting algorithm makes it infeasible to designate some of the new rooms as lower cost. The City made findings incorporating these statements and other reasons why provision of lower cost hotel rooms on site was infeasible, and instead required the applicant to provide a fee that would fund provision of lower costs off site. The fee was calculated based on 25% of the proposed 25 new hotel rooms, which will be higher cost, for 6.25 multiplied by \$100,000 per room. The City considered alternative projects to direct the fee toward, but selected the cottages at Crystal Cove State Park based on the following analysis: "Crystal Cove State Park is a significant, regional coastal park that also provides convenient access to Laguna Beach. The non-profit Crystal Cove Conservancy would be a responsible partner with an ongoing partnership with the Coastal Commission and an active affordable visitor accommodation project. It should also be noted that the Conservancy has previously received in-lieu fees related to a hotel development project in Newport Beach." The Crystal Cove Conservancy submitted a letter in support of the project (**Exhibit 4**), pledging to use the in lieu fee for preservation of existing cottages which are in a state of disrepair, to be rented to members of the public at affordable rates consistent with CDP 5-16-0552 (approved by the Commission on March 8, 2017). The Conservancy letter provides an update on funding for cottage restoration, as well as updates on programs to provide access and environmental education to students from inland communities and access to Tribal members.

The City's action to require a mitigation fee for 25% of new high cost hotel rooms is consistent with recent Commission actions and is supported by Coastal Act Section 30213 and LUE Action 6.2 which requires lower cost visitor accommodations to be provided where feasible. In this case, the City determined that it was not feasible to require lower cost visitor accommodations to be provided on site, but through Special Conditions, it required the applicant to pay an in lieu fee that will ensure actual lower cost visitor accommodations are provided nearby. LUE Action 6.2.2 suggests that the City should establish standards which would require new high-cost visitor accommodations provide affordable overnight accommodation or pay an "in-lieu" fee, and while the City has not established such standards through its implementation plan, the subject action to require an in lieu fee is consistent with the policy and will not prejudice the City's ability to establish standards in the future.

The City's action is consistent with the public access policies, specifically related to lower cost visitor accommodation, of the Coastal Act and the certified LCP. Thus, the appellant's contention regarding lower cost visitor accommodations does raise a substantial issue.

Contention 2: The project requires additional mitigation measures to comply with Coastal Act and LCP public access policies.

The appellant contends that the City failed to require adequate parking on site or mitigation measures which would prevent the project from impacting public parking along South Coast Highway and at other parking lots in the Coastal Zone used for coastal access. The appellant asserts that the City should require valet operators to occupy all 220 on-site vehicle parking spaces before using any off-site parking.

The following Coastal Act and LCP policies pertain to public access and vehicle parking requirements:

Coastal Act Section 30212, in relevant part: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.[...]

IP Section 25.52.004 (E) General Provisions, Intensification of Use.

(1) When...more than fifty percent of the gross floor area of an existing building is proposed to be remodeled or reconstructed, or a use is changed to a use which has a greater parking requirement, or when the floor area of an existing building is enlarged, then the property owner or applicant shall provide parking or purchase in-lieu parking certificates equivalent to the number of parking spaces required by current parking regulations (up to the maximum allowed in Section 25.52.006(E) for the proposed use having a greater parking requirement, or for the entire building

which is enlarged less credit for the following:

- (a) The actual number of parking spaces provided on-site, if any;
- (b) The number of previously paid for in-lieu parking certificates for the subject premises, if any; and
- (c) The number of parking spaces that would have been required by the parking regulations in effect in 1958 for the use currently existing on the property, if the building was built prior to that time, minus the actual number of parking spaces provided on-site, if any.

IP Section 25.52.012 Parking Spaces Required, use table.

Hotel/motel with integrated restaurant uses or conference facilities: 1 space for each room (as defined in Chapter 25.08), which opens to a public way or corridor, yard or court, plus 1 space for each 15 rooms or fraction thereof, plus 2 spaces per each residence. Additional parking may be required based on operational information such as the number of employees for shifts, when the greatest number of employees is on duty, the hours of operation and the amount of area devoted to particular uses... A 20% reduction from the total parking required for ancillary uses may be granted subject to approval authority's approval. A greater reduction may be allowed, if a traffic study, conducted by a licensed traffic engineer, is submitted and approved by the approval authority.

Food services including restaurants...: 1 space for each 100 square feet of gross floor area, including outdoor seating area(s), or 1 space per 3 seats whichever is greater. Full service restaurants shall provide no fewer than 5 spaces. Additional parking may be required based on operational information such as the number of employees for shifts, when the greatest number of employees is on duty, the hours of operation and the amount of area devoted to particular uses. The minimum number of spaces for drive-thru restaurants shall be 10 spaces. Parking spaces may include those spaces allocated in drive-thru lane(s).

The project site is located between the sea and the first public road (South Coast Highway) and is adjacent to the sandy public beach. The City's public beaches are popular visitor amenities which support swimming, surfing, volleyball, and other recreation. The public beach in front of the subject site is accessed from the public stairway at the end of Cleo Street, approximately 350 feet south of the site. Members of the public may park their vehicles on portions of Cleo Street and on both sides of South Coast Highway in order to access the stairway to the beach.

The availability of adequate parking to serve development promotes public access. When private development fails to provide adequate vehicle parking on site, parking spaces that would otherwise be available to general coastal visitors can end up serving the private development instead, displacing coastal visitors' opportunity to park near coastal amenities. This is generally why new development must provide onsite parking.

In this case, 220 vehicle parking spaces are proposed, which is less than the 280 spaces that would be required based on a strict interpretation of implementation plan/zoning code Section 25.52.012 if the hotel and restaurant were new uses. However, the uses are not new; they are expansions of existing uses. The City found that a major remodel was not proposed based on calculations of the extent of demolition of structural elements including the foundation, walls, and roof. Thus, pursuant to Section 25.52.004, the applicant is not required to provide parking for the existing uses based on the current code.

Even if the hotel and restaurant/cafe were entirely new uses or the development was a major remodel, Section 25.52.012 allows a 20% reduction in vehicle parking requirements where the approval authority finds that it may be justified based on project specific conditions, and a greater reduction if supported by a study from a traffic engineer. In this case, the approval authority applied a reduction based on the applicant's proposal to fund 100% of the cost of transit passes for any employee commuting by transit and to provide parking on-site for any employee driving to work. The approval authority also applied a reduction of five spaces that would have been required for outdoor dining. And finally, the applicant provided and the City reviewed a study and addendum from a consulting firm with licensed traffic engineers that provided the following conclusion: "LSA's February 2021 Parking Analysis for the Pacific Edge Hotel, Laguna Beach, California applies the provisions of the Laguna Beach Municipal Code. Based on that application of the Laguna Beach Municipal Code, the 220 on-site parking stalls will be sufficient to meet the project's parking requirement. The project will redesign the parking lot, including locating 14 valet staging parking spaces adjacent to the Surf building, resulting in greater efficiency for the valet operation and an improved ability to accommodate surges in parking demand. As such, the project will not require the use of an off-site lot for temporary or permanent parking."

The applicant has stated that they have no intention to use off-site parking facilities to park vehicles of hotel staff or guests and the City applied a condition of approval which affirms this commitment and is stricter than the appellant's request that valet operators occupy all 220 on-site vehicle parking spaces before using any off-site parking. The City's Special Condition 40 requires that all parking be provided on-site, with no use of off-site lots: "Guest or other vehicles associated with the resort shall be parked only in the assigned facility consistent with the approved valet plan." The City also applied Special Condition 20: "Resort employees shall not park on public streets. During work hours, resort employees must park only in those spaces under the control of the Resort, and the Resort shall reserve on-site spaces adequate for all employees driving to work to park on-site." And Special Condition 21 requires: "To control employee parking demand, the permittee shall fully fund the appropriate fixed route transit passes for any employee desiring to commute to and/or from the resort..."

Based on the information in the record and the project specific parking analysis that allows for a reduction in parking requirements as specified in the LCP, the City found that the project will not adversely impact public access to nearby beaches. The City's findings are supported by evidence and, as conditioned, the approved CDP is consistent with Coastal Act and LCP policies which require maximum public access to the coast. Thus, the appellant's contention regarding public access does raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP. The City substantially supported its approval of the project as being consistent with all of the applicable policies of the certified LCP, including public access policies related to lower cost visitor accommodation and parking, as well as other coastal resource protection policies not referenced in the appeal. The City’s findings were supported by evidence in the administrative record. Therefore, there is a high degree of factual and legal support for the local government’s decision that the project, as conditioned, is consistent with the LCP, and this factor supports a no substantial issue finding.

2. The extent and scope of the development as approved or denied by the local government. The City approved a Local CDP to develop eleven parcels to allow for the construction of hotel and visitor-serving commercial development. The proposed project would add compatible uses to the site consistent with the land use regulations for the site. The scope of the development is limited to infill urban development well served by a public highway and is not anticipated to have substantial impacts to adjacent sites or coastal resources along South Coast Highway. Thus, this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. California’s coastal beaches, bluffs, and creeks are all significant resources, and collectively represent a rare and visually pleasing landscape which California citizens and governments have historically sought to preserve. Development on beaches or coastal bluffs also can have significant impacts on scenic resources, recreation and public access opportunities. The LCP and the Coastal Act provide coastal bluffs and beaches with special protections. The proposed project is adjacent to the beach, but development consists primarily of improvements to existing structures, with one new structure which the City found was not on a beach or a bluff. Additionally, the City required the project to include an offer to dedicate a lateral access easement along the beach, which will enhance public access to a significant coastal resource. This factor supports a finding no substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP. The proposed project is consistent with the policies of the certified LCP, and the City interpreted the LCP in a manner that is consistent with the public access and coastal resource protection policies of the Coastal Act. Thus, the City’s decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The appeal raises issues about beachfront, visitor-serving recreational facilities and public access to the beach, which are resources of statewide concern. However, the proposed project is consistent with the policies of the LCP and as a result there will be no adverse

impacts to these resources. Additionally, the City required the project to include funding to preserve a nearby coastal amenity in Crystal Cove State Park which will provide low cost visitor accommodations, which will enhance public access to a significant coastal resource. Therefore, this factor supports a finding of no substantial issue.

Conclusion

In conclusion, the Commission finds that the appeal raises **no substantial issue** as to conformity with the policies of the City's certified LCP and the public access policies of the Coastal Act.

A-5-LGB-21-0060 (Highgate Hotels)
Appeal – No Substantial Issue

Appendix A – Substantive File Documents

1. City of Laguna Beach certified Local Coastal Program.
2. City of Laguna Beach Resolution and staff report for Local CDP No. 19-5507