

**CALIFORNIA COASTAL COMMISSION**

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# F10b

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SI Found: 4/11/2019  
Staff: M. Vaughn-LB  
Staff Report: 10/29/2021  
Hearing Date: 11/19/2021

## STAFF REPORT: Appeal - De Novo

**Appeal No.:** A-5-LGB-19-0010

**Applicant:** Surf & Sand Resort, Regency Properties, L.P.

**Agents:** Shawna Schaffner, CAA Planning  
Sherman Stacey, Gaines & Stacey, LLP

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with Conditions

**Appellants:** Mark & Sharon Fudge

**Project Location:** 1555 South Coast Highway, Laguna Beach, Orange County

**Project Description:** Renovation of an existing resort hotel.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing renovations to an existing resort hotel. The subject lot is a 3.18 acre site that slopes from the level of South Coast Highway to the beach below ([Exhibit 1](#)). The proposed project includes, with one exception, repair and maintenance activities that would otherwise be exempt from coastal development permit requirements if not for its location on and within 50 feet of a coastal bluff. The proposed project includes non-structural measures to conform to the Americans with Disabilities Act (ADA) and health and safety codes. In addition, some non-structural cosmetic changes are also proposed. A detailed description of the proposed changes can be found beginning on page 10 and are also reflected in [Exhibit 3](#), project plans. Although non-conforming development (as to LCP policies) is present at the site, the proposed project will not increase the size or degree of the nonconformities.

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In addition to the repair and maintenance activities proposed, the applicant is also requesting after the fact approval of an addition of 37% of the foundation area of one of the eight buildings on site, the Spa building. The Spa building is located adjacent to South Coast Highway. The Catalina and Surfside buildings are located seaward of the Spa building. Because the area of foundation additions is 37% (less than 50%), this work does not rise to the level of a major remodel, and so LCP policies regarding removal of non-conformities are not triggered by any part of this project.

City of Laguna Beach records indicate the site supported motel/hotel, retail, and restaurant uses since at least the 1950s. The existing hotel guest room buildings at the site, which are located at the seaward side of the property and cascade along the bluff to the beach below (called the Surfside, Catalina, Seaview, and Towers buildings), were all constructed prior to February 1, 1973, the effective date of Coastal Commission jurisdiction. The Catalina building was present in the 1950s. The Surfside and Seaview buildings were present in the 1960s. The Towers building was present by 1972. The landward buildings (Spa building, Sand Castle/Starfish building, and Conference center; see [Exhibit 5](#)) also pre-date Coastal Commission jurisdiction. In 1989 the Commission approved CDP 5-89-136 and CDP Amendment 5-89-136-A1, allowing the addition of 26 hotel guest rooms, the construction of the restaurant now known as Splashes, and various other modifications to the existing resort. The CDP Amendment also approved a seawall at the site.

This project does not include demolition, removal, and/or reconstruction of exterior cladding or framing systems, and will not involve demolition, removal, and/or reconstruction of the existing roof framing systems or structural floor systems. No structural roof framing work is proposed. The only structural work proposed will be to the foundation of the Spa building. No additions to existing square footage or increase in existing heights are proposed. No change to existing building envelopes or uses of the buildings are proposed. While the proposed work is extensive in that the renovations will occur resort-wide, the work is minor in terms of the complexity and degree of change and the absence of any structural work to the existing buildings, other than to the Spa building. Although pre-Coastal nonconforming development exists at the site, the project will not increase the size or degree of the existing nonconformity. For these reasons, the proposed development does not rise to the level of a major remodel/new development. Consequently, existing nonconformities are not required to be brought into conformance at this time.

The proposed project includes changes to comply with ADA requirements within the hotel guest rooms as well as throughout the hotel property. Other changes are proposed to comply with various code requirements, including energy efficiency, fire, plumbing, and safety codes. Cosmetic improvements are proposed to enhance the guest experience and aesthetic appeal. In addition, a sculpture is proposed to be added in the motor court area to comply with the City's Art in Public Places ordinance. A more detailed description of the proposed development can be found beginning on page 10 and are also reflected in [Exhibit 3](#), project plans.

The hotel lobby, located in the Towers building, is proposed to be expanded by converting two adjacent hotel guest rooms into expanded lobby area. The expanded lobby area will be remodeled. The lobby remodel will replace all interior finishes, add an ADA-compliant restroom, provide an ADA-compliant check-in area, and employee areas will also be made to conform to ADA requirements. The proposed lobby remodel would also provide an ADA-accessible common lobby area.

The number of parking spaces on site will remain 216, but the parking spaces will be re-configured to accommodate seven new ADA accessible parking spaces (currently there are no ADA spaces). The project will add two motorcycle parking spaces and a new bike rack. Twelve electric vehicle charging stations (5% of the total parking spaces) will be provided. The applicant will run conduit to 40 additional parking spaces as part of the proposed project, which will allow for future installation of charging stations as demand increases.

Staff is recommending **APPROVAL** of the proposed project with **nine (9) special conditions** regarding: 1) no addition, demolition, or modifications to structural elements (other than Spa building foundation); 2) no construction activities on the beach adjacent to the subject site; 3) all construction parking be accommodated on the subject site; 4) all lighting to be shielded and down directed to avoid light spillage and transparent balconies will use bird safe material; 5) implementation of water quality Best Management Practices (BMPs) during construction, 6) only the work currently proposed is approved by this CDP and any changes will require an amendment or new CDP; 7) preservation of any public rights that exist or may exist on the site; 8) the applicant's assumption of the risk of development; and, 9) recordation of a deed restriction indicating that the permit is subject to restrictions on the use and enjoyment of the property and imposing the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property.

On 11/7/2018 the City of Laguna Beach approved Local Coastal Development permit 18-2147 for renovations to the resort hotel. On 2/13/2019 the City's approval was appealed to the Coastal Commission. On 4/11/2019 the Commission found that the appeal raised a substantial issue. The finding that the appeal raised a substantial issue hinged primarily on lack of information in the local file adequate to determine the extent of the proposed work and whether it rose to the level of new development/major remodel. The applicant has since provided additional information and clarification as to the extent of the proposed development and staff is now recommending approval of the proposed project with the nine special conditions listed above.

The motion to approve the project is on page 5.

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## EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – On Site Development Chart
- Exhibit 3 – Project Plans
- Exhibit 4 – Towers Building Rooftop Mechanical Existing
- Exhibit 5 – Historic Photos
- Exhibit 6 – CDP 5-89-136
- Exhibit 7 – CDP 5-89-136 Staff Report
- Exhibit 8 – CDPA 5-89-136-A1
- Exhibit 9 – CDPA 5-89-136-A1 Staff Report
- Exhibit 10 – Certificate of Use Splashes Restaurant
- Exhibit 11 – Proposed Balcony Lighting Sconce
- Exhibit 12 – Beach View
- Exhibit 13 – Spa Building Foundation Plans
- Exhibit 14 – Spa Building Patio & Plunge Pool Plan
- Exhibit 15 – Pavilion Terrace Location
- Exhibit 16 – Spa Building Location

- Exhibit 17 – Sandcastle Building Location
- Exhibit 18 – 1972 Historic Photo
- Exhibit 19 – 1989 Site Plan
- Exhibit 20 – Unite Here Comment Letter, 4/14/2021
- Exhibit 21 – Appellants’ Comment Email 4/9/2021
- Exhibit 22 – Applicant’s Response to Appellants’ 4/9/2021 Comments
- Exhibit 23 – Applicant’s Response to Unite Here 4/14/2021 Comments

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-19-0010 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves Coastal Development Permit No. A-5-LGB-19-0010 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of

time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

#### 1. **Addition/Demolition/Modification.**

As proposed by the applicant, other than the addition to the Spa building foundations as shown on [Exhibit 13](#), no addition, demolition, or modification to existing structural elements is approved by this CDP A-5-LGB-19-0010. No increase in existing building square footage, height, footprint, or building envelope is approved by this CDP A-5-LGB-19-0010.

#### 2. **No Construction Activities to Occur on the Beach.**

As proposed by the applicant, no construction related activities shall occur on or from the adjacent beach, with the limited exception of non-mechanized activities conducted by hand and in compliance with the water quality BMPs outlined in Special Condition No. 5 of this CDP.

#### 3. **Construction Parking.**

As proposed by the applicant, all construction parking for the proposed development shall be accommodated on the Surf & Sand Resort property. As proposed by the applicant, on-site construction shall be phased to coincide with the phased closure of hotel guest rooms and resort facilities, such that on-site construction parking will be available during the related decrease in parking demand due to hotel guest room closures.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall prepare and submit, for the review and approval of the Executive Director, a Temporary Construction Parking and Project Phasing Plan. The Plan shall illustrate the means for ensuring that all construction parking will be accommodated on the project site for the duration of the proposed development. The permittee shall undertake development in conformance with the approved plan.

**4. Lighting & Bird Safe Balcony Materials.**

a) As proposed by the applicant, all new lighting fixtures shall be shielded to prevent light spillage beyond the area intended to be illuminated; shall minimize bulb brightness such that the least brightness necessary to achieve the lighting goal is used; and shall be directed downward and away from the night sky.

b) As proposed by the applicant, all transparent elements of replacement balconies on the seaward side of the property shall be Ornilux (or equivalent) bird safe material.

**5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored on the beach or anywhere it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.

- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

## **6. Future Permit Requirement**

This permit is only for the development described in coastal development permit (CDP) A-5-LGB-19-0010. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP A-5-LGB-19-0010. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP A-5-LGB-19-0010 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government, unless the Executive Director determines that no amendment is legally required. In addition thereto, an amendment to CDP A-5-LGB-19-0010 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b), unless the Executive Director determines that no amendment is legally required.

## **7. Public Rights and Public Trust**

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

**8. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs



(including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

**9. Generic Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Location**

The applicant is proposing renovations to the existing Surf & Sand Resort ([Exhibit 1](#)). The resort is currently developed with eight buildings. Four of the eight buildings include a total of 167 hotel guest rooms (the Towers, Surfside, Seaview and Catalina Buildings). In addition to hotel guest rooms, the nine-story Towers building also houses the hotel lobby and meeting/conference rooms. The four-story Catalina building also contains a gym for use by hotel guests, a small retail boutique, a fourth-level outdoor terrace area, and one apartment unit. The three-story Surfside and five-story Seaview buildings contain only hotel guest rooms. The remaining four buildings include Splashes, a 3,353 square foot, split-level restaurant and bar; the 7,354 square foot, two-story Conference Center; the 3,000 square foot, two-story Starfish/Sand Castle building includes meeting rooms; and the 3,728 square foot, two-story plus partial basement Spa building. There

are 216 on-site surface (Coast Highway level) and below grade parking spaces. The Conference Center, Starfish/Sand Castle, and Spa buildings are located landward of the hotel guest room buildings. There is one apartment on site, proposed to remain in the same configuration and location. In addition, there is an open-air pool and pool deck area. Splashes restaurant and bar is adjacent to and also extends beneath the pool deck. The lowest level of Splashes is at beach level. [Exhibit 2](#) lists the area, height/number of stories, number of guest rooms, age, etc. of each building. With the exception of Splashes restaurant, which was approved pursuant to CDP 5-89-136/5-89-136-A1, all of the seaward-most buildings were constructed prior to the effective date of the Coastal Act (that is, prior to February 1, 1973). All of the buildings are proposed to undergo repair and maintenance activities. The only structural work proposed is less than 50% alteration of the Spa building's foundations (a 37% alteration).

The subject site is located at 1555 South Coast Highway, in the city of Laguna Beach, Orange County. The subject lot is a 3.18 acre site that slopes from the level of South Coast Highway to the sandy beach below ([Exhibit 1](#)). The subject site is land use designated Commercial Tourist Corridor (CTC) and zoned C-1 Local Business, which is the implementing zone for the Commercial Visitor Corridor designation. The C-1 zone prioritizes visitor commercial development. The principal permitted uses in the Commercial Tourist Corridor are visitor-serving facilities such as hotels, motels, restaurants, theaters, museums, specialty shops, and beach related retail uses. Other uses may be allowed subject to approval of a conditional use permit and may not exceed 50% of the gross floor area and must be located above the ground floor. Hotels are allowed in the C-1 zone. The Surf & Sand Resort is consistent with the certified land use designation and zoning.

To the north, also in the C-1 zone, is another hotel (Capri Laguna); to the south is an R-3 zoned (High Density Residential) property developed with a condominium building (Laguna Sands); and the sandy beach and ocean are located to the west. On the inland side of Coast Highway opposite the subject site are commercial retail uses, offices, restaurants, and another hotel ([Exhibit 1b](#)). The subject lot is located between the first public road (South Coast Highway) and the sea. The public beach in front of the subject site is accessed from the public accessway located approximately 1,500 feet down coast of the site at Blue Bird Canyon Drive, and from the public accessway located approximately 1,500 feet upcoast at Mountain Road. Metered public parking is available along Coast Highway and on the side streets in the project area.

The entirety of the proposed project, with the exception of the Spa building foundation work, consists of repair and maintenance activities that would otherwise be exempt if not for the site location on and within 50 feet of a coastal bluff. The project does not include demolition, removal, and/or reconstruction of exterior cladding or framing systems and will not involve demolition, removal, and/or reconstruction of the existing roof framing systems or structural floor systems. No structural roof framing work is proposed. The Spa building foundations are proposed to be altered by less than 50% (37%). No additions to existing square footage or increase in existing heights are proposed. No change to existing building envelopes or use of the buildings are

proposed. Many of the proposed renovations are proposed to comply with the Americans with Disabilities Act (ADA), as well as measures to comply with Health and Safety codes. In addition, non-structural, cosmetic improvements to refresh the resort's appearance are also proposed.

The applicant is requesting after the fact approval of the Spa building foundation alterations, which occurred in 2001. The area of the slab-on-grade foundation present under the Spa building prior to the 2001 alterations totals 1,832 square feet. The caisson and grade beam foundations total 352 square feet. The area of compaction grouting totals 325 square feet. Total additional (constructed in 2001) foundation area is 677 square feet. Compared to the existing foundation area, the additional area represents 37% alteration to the Spa building foundations ( $677/1,832 = 36.9$  or 37%).

The foundation work conducted in 2001 is structural work and requires approval of a CDP. However, the work represents less than 50% alteration to the existing foundations. Conversion of the structure from office and retail to the spa use is consistent with the existing hotel use. The proposed development is a hotel use. Uses such as restaurant, spa, and meeting rooms/conference center are ancillary to the hotel use. The hotel use, with typically associated ancillary uses has been at the site since prior to the effective date of the Coastal Act. Retail use and spa use are both ancillary uses typically associated with resort hotels. The change from retail to spa in this case, does not trigger the need for a CDP because they are both ancillary hotel uses with no change in intensity of use. Thus, the proposed development does not constitute an intensification of use at the site. Because the proposed (after the fact) alterations to the Spa building foundation constitute well below the 50% alteration threshold, the alterations to the Spa building foundation do not constitute a major remodel. The proposed foundation alterations do not increase the size or degree of non-conformity of the Spa building's location on or within 50 feet of a coastal bluff.

#### Americans With Disabilities Act (ADA) Improvements

Measures proposed to comply with the ADA include improvements both within the existing hotel guest rooms as well as throughout the resort. All hotel guest rooms will receive standardized improvements that will enhance access for persons with disabilities, including generally widening clearances throughout the guestrooms and bathrooms ([Exhibit 3p](#) Plan Sheet A0-100 and [Exhibit 3r](#) Plan Sheet A0-102). Specific measures proposed to comply with the ADA within hotel guest rooms include: widening guest room entry door frames and replacing door hardware with ADA compliant doors and hardware; replacing doorway thresholds with low-profile code-compliant thresholds at the entry and balcony doors; replacing existing furniture (for aesthetic purposes but also to enhance maneuverability and facilitate movement throughout the room); and modifications to existing bathroom interiors to accommodate ADA accessibility and maneuvering space including: replacing shower and bath fixtures, and enlarging guest room bathroom space. Grab bars will be installed next to toilets and in showers within specific ADA compliant rooms. In order to enlarge the guest room bathrooms, the interior guest room wall that separates the bathroom from the rest of the guest room will be relocated within the guest room ([Exhibit 3p](#) Plan Sheet A0-100 and [Exhibit 3r](#) Plan

Sheet A0-102). Also proposed is the conversion of eight existing hotel guest rooms to fully ADA-accessible rooms, and converting a total of twelve existing guest rooms to serve hearing impaired guests, including measures such as installation of alarms and/or flashing lights, etc.

An ADA-accessible ramp will be added from the street to the main drive area of the hotel, and from the motor court to the lobby. Measures proposed to comply with the ADA throughout the resort include: installation of ramps and curb cuts; modifying existing drive aisles and paved areas to provide an ADA-compliant passenger loading zone with access also for taxis and ride share; and creation of seven ADA accessible parking spaces. Select planters and hardscape will be reconfigured and/or removed to improve circulation and ADA accessibility; existing walkways that connect buildings will be modified to comply with ADA-appropriate grade changes; installation of an outdoor ADA access platform lift between the pool deck level and the Seaview deck above ([Exhibit 3j](#) Plan Sheet A0-004 and [Exhibit 3g](#) Plan Sheet A0-101); and installation of a new ADA spa chair to convey guests from the pool deck into the spa. There is already an ADA pool chair in place. In addition, interior common areas within the buildings will be upgraded for ADA accessibility by providing clear turning radii to create better flow throughout the resort's interior areas, and improvements to common restroom areas including installation of grab bars in toilet stalls and in pool area showers; and rearranging toilet partitions to allow for maneuvering space; and enhancing signage and wayfinding to facilitate accessible flow throughout the resort.

#### Code-Required Upgrades

Changes proposed to comply with various code requirements include: replacement of current heating and ventilation systems; reconfiguring rooftop mechanical equipment to consolidate the rooftop mechanical elements footprint with no change to existing height; replacing the emergency generator; and fire safety system upgrades. Exterior guardrails, handrails, and stairs will be updated to meet safety codes. Fire safety systems will be replaced to comply with code, including dry pipe systems and risers as well as fire hose and possible sprinkler upgrades. New window and sliding door glazing and interior building insulation are proposed to comply with energy codes (Title 24 Building Efficiency Standards). Electrical lighting and power systems will be upgraded, to comply with Title 24. Plumbing fixtures and main lines will be upgraded to meet water efficiency requirements. In addition, a sculpture is proposed to be added in the motor court area to comply with the City's Art in Public Places ordinance.

#### Cosmetic

Cosmetic improvements are proposed to enhance the guest experience and aesthetic appeal. Proposed cosmetic improvements include exterior and interior painting of all buildings; replacing all exterior hallway tile, carpet, and lighting fixtures; replacing windows and doors within existing openings; new stone and tile paving is proposed throughout the resort; replace existing, exterior metal guardrails with new metal guardrails; pool deck finishes will be replaced; installation of fiber optic data network; and remove and replace security equipment. Shallow soffits will be added in existing exterior corridors to accommodate new mechanical distribution. Landscape changes

were previously included as part of the proposed project; however, those changes have been deleted from the project. No landscape work is part of the proposed project.

Changes proposed within hotel guest rooms include: replacing flooring (carpet and tile), wall and ceiling finishes (mixture of vinyl wall covering, tile, and paint), new window treatments (shutters/drapes), replacing balcony flooring (tile) and wall/ceiling finish (paint); existing metal guard rails on the ocean-facing hotel guest room balconies will be replaced with bird safe glass railings; sliding glass doors leading from guest rooms to balconies will be replaced within the same openings; and installation of lighting sconces on outdoor walls at guest room balconies.

#### Lobby Expansion

In addition to the work described above, the existing hotel lobby, located in the Towers building, is proposed to be expanded from 1,056 square feet to 1,953 square feet by converting two existing, adjacent hotel guest rooms into expanded lobby area. The expanded lobby area will be remodeled. All work will occur within the existing Towers building, no expansion of square footage would result. The lobby remodel will replace all interior finishes, add an ADA-compliant restroom, provide an ADA-compliant check-in area, and employee areas will also be made to conform to ADA requirements. The proposed lobby remodel would also provide ADA-accessible common lobby area. The specific components of the lobby include reception, concierge, valet, and a back office. These components will remain, albeit with more space for each distinct lobby function.

#### Air Conditioning

The proposed project includes installation of a new air conditioning system, and related cooling towers, and replacement of current heating and ventilation systems which must be brought up to code. The current heating is floorboard heating which is not in compliance with Title 24 Building Energy Efficiency Standards. Also, the entire ventilation system needs to be updated because each room (heating and fan) needs to be independently keyed so that it does not operate when guest rooms are vacant. The 2016 Building Energy Efficiency Standards, Title 24, Part 6, Subchapter 3 - Hotel/Motel Occupancies – Mandatory Requirements specify dedicated exhaust and fresh air compliance. While air conditioning is not mandated, exhaust and fresh air are mandated. Installation of air conditioning will meet the mandate regarding fresh air and exhaust. The applicant has indicated that installation of air conditioning is the best option to achieve the required fresh air and exhaust compliance. Currently, there is no air conditioning at the resort. The proposed hotel-wide air conditioning system will require two new mechanical cooling towers, which will be placed within a mechanical yard surrounded by a walled enclosure. The mechanical yard is proposed to be located within an existing parking area adjacent to the Starfish/Sand Castle building, on the Coast Highway side of the site. The five displaced parking spaces will be relocated on site. The towers will be 17 feet tall and will be surrounded by 17'3" tall enclosure walls. The walls will connect to the Starfish/Sand Castle building. The proposed towers enclosure will be visible from Coast Highway but the enclosure is intended to make it blend in and appear as if it is another of the on-site structures. There is currently no view from Coast Highway to the ocean in the area because that view is obstructed by

an existing wall and the existing Seaview building which is two stories above the level of Coast Highway, seaward of the proposed enclosure.

#### Rooftop Mechanical Consolidation

In addition, the rooftop of the Towers building currently supports various mechanical equipment ([Exhibit 3b](#) Plan Sheet A0-001 and [Exhibit 3s](#) Plan Sheet A0-103 and [Exhibit 4](#)). The proposed project includes reconfiguring and consolidating the rooftop mechanical equipment under a new single, screened enclosure, reducing the footprint of rooftop mechanical area from 710 square feet to 447 square feet. The proposed reconfigured rooftop mechanical equipment and enclosure will be no taller than the tallest existing rooftop equipment, so no increase in height will result. The Towers Building is nine stories tall from the beach level, and four stories above Coast Highway level, and the rooftop equipment is not visible from the street or from the beach. In any case, the proposed enclosure will screen views of the consolidated rooftop mechanical equipment.

#### Parking

The Surf & Sand Resort currently provides 216 on-site parking spaces ([Exhibit 3g](#) Plan Sheet A0-001e and [Exhibit 3h](#) Plan Sheet A0-001f). The proposed project includes reconfiguring the existing 216 on-site parking spaces to accommodate seven new ADA accessible parking spaces and provide replacement spaces for the five spaces displaced by the new cooling towers ([Exhibit 3e](#) Plan Sheet A0-001c and [Exhibit 3f](#) Plan Sheet A0-001d). Currently there are no ADA accessible spaces on site. All of the 216 parking spaces are valet parked 100% of the time. This is necessary to maximize the available parking. The proposed reconfiguration of parking spaces will retain all 216 parking spaces on site, and will add two motorcycle spaces. Twelve of the parking spaces (5%) will include electric vehicle charging stations. Conduit will also be run to 40 additional parking spaces as part of the proposed project, which will allow for future installation of charging stations as demand increases. In addition, a bicycle rack will be added. The proposed changes will not create an increase in the existing parking demand.

#### Higher Cost Overnight Accommodations

The existing hotel rooms are higher cost.<sup>1</sup> The proposed project is primarily repair and maintenance. None of the proposed work rises to the level of new development or major remodel. No changes to the current status of higher cost room rates will occur or are proposed. No new rooms are proposed.

#### Spa Building Foundations

In addition to the repair and maintenance activities described above, the applicant is also requesting after the fact approval for modifications to existing foundations of the 3,728 square foot, two-story plus a partial basement Spa building. The foundation

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<sup>1</sup> The Surf & Sand Resort website on 3/5/2021 showed rooms rates ranging from \$699/night on July 4<sup>th</sup> 2021 weekend to \$354/night mid-week in early February 2022.



alterations occurred in 2001. The foundation work included installation of a caisson<sup>2</sup> and grade beam system in one area, and installation of compaction grouting in another. The compaction grouting is located beneath the existing partial basement area and the caisson and grade beams are located beneath the remainder of the Spa building ([Exhibit 13](#)). The caisson and grade beam system involved placement of eleven, 30-inch diameter caissons. The caissons are connected by grade beams above. Compaction grouting consolidates and compacts soils in place by injecting soil cement grout under high pressure into the soil. Recompaction of the soils also occurred in 2001 within the footprint of the patio area adjacent to the south side of the Spa building. Soil recompaction is not considered foundation work, but rather typical construction related site preparation. In addition, minor accessory development including two “plunge pools” and site walls were added in this area. The site walls provide separation between individual spa patio areas, as well as from the adjacent parking area. The Spa building is located at the northeast corner of the site, adjacent to South Coast Highway. The Catalina and Surfside buildings are located between the Spa building and the beach.

## **B. Standard of Review**

Section 30604(b) of the Coastal Act states:

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

In addition, Section 30604(c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The standard of review for projects heard on appeal by the Coastal Commission that are located between the first public road and the sea, like this one, are the City’s certified Local Coastal Program and the public access and recreation policies of the Coastal Act. The City of Laguna Beach Local Coastal Program was certified by the Commission on January 13, 1993 (except for the areas of deferred certification: Three Arch Bay, Blue Lagoon, Hobo Canyon, and Irvine Cove). The subject site falls within the City’s certified LCP jurisdiction. The City’s LCP Land Use Plan portion is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element (OSC), and the Coastal Technical Appendix. The Implementation Plan portion of the LCP is comprised of a number of documents including Title 25 Zoning Code.

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<sup>2</sup> The terms “caisson” and “drilled pier” are used interchangeably.

Section 25.07.008 of the City's Zoning Code/certified Implementation Plan describes development that is exempt from the requirement for a coastal development permit. Repair and maintenance activities fall within this category, unless the repair and maintenance is located within fifty (50) feet of the edge of a coastal bluff (pursuant to Section 25.07.008(C)(4) of the certified IP. The subject site is located on and within 50 feet of a coastal bluff and therefore the proposed activities are not exempt, and require approval of a coastal development permit.

### **C. Appeal Background**

On November 7, 2018, the City of Laguna Beach Planning Commission approved local coastal development permit 18-2147 with conditions. The City's Notice of Final Local Action for Local CDP No. 18-2147 was received in the Coastal Commission's Long Beach Office on December 20, 2018. However, the NOFA included an incomplete or unclear project description. Consequently, Commission staff sent a Notice of Deficient Notice to the City on December 24, 2018, requesting corrected information regarding the project description as well as project plans. The City responded with the requested information, which was received in the Commission's South Coast District Office on January 30, 2019, at which point the Coastal Commission's required 10 working-day appeal period was established. On February 13, 2019, the appeal of Mark & Sharon Fudge was received. No other appeals were received prior to the end of the appeal period at 5 p.m. on February 13, 2019. The 49th working day from the date the appeal was filed was April 24, 2019. On April 11, 2019, the Commission found that the appeal raised a substantial issue. Because the Commission found that a substantial issue existed based on the grounds on which the appeal was filed in 2019, the local government action was stayed and the Commission is required to conduct a de novo review on the merits of the project subject to this application (No. A-5-LGB-19-0010).

The finding that the appeal raised a substantial issue hinged primarily on whether the proposed work rose to the level of new development/major remodel. The certified LUP/Land Use Element (LUE) defines Major Remodel as:

Major Remodel - Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

At the time of the finding that the appeal raised a substantial issue, there was insufficient information in the record provided by the City to fully understand the extent of the proposed project. However, since the Commission found that the appeal raised a substantial issue, information describing the extent of the proposed development has been provided in detail by the applicant (written descriptions of the proposed project, detailed project plans, background information, etc.).

The timeframe to schedule an appeal before the Commission is limited, and staff must rely on the record provided by the City. For example, at the time of the substantial issue question, work was shown on the plans provided by the City that was not otherwise



described in the record. The finding of substantial issue was based primarily on insufficient information in the record to determine whether the project approved by the City rose to the level of a major remodel or not. This is reflected in the substantial issue findings, which state: “Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the appeal raises substantial issues because it is not clear that the entire project is fully described, which creates questions as to the consistency of the project approved by the City with various LCP policies including those addressing public access, coastal bluff development, visual resources and water quality, and with the public access policies of the Coastal Act.”

The plans show that the project does not include demolition, removal, and/or reconstruction of exterior cladding or framing systems and will not involve demolition, removal, and/or reconstruction of the existing roof framing systems or structural floor systems. No structural roof framing work is proposed. After the fact approval is requested for alterations to the foundation of one of the eight buildings on site, the Spa building. The foundation alteration totals 37%, less than 50%, and so does not constitute a major remodel or new development. No additions to existing square footage or increase in existing heights are proposed. No change to existing building envelopes or use of the buildings are proposed. While the proposed work is extensive in that the renovations will occur resort-wide, the work is minor in terms of the complexity and degree of change and the absence of any structural work to the existing buildings, other than the 37% alteration to the foundation of one building. Although pre-Coastal, nonconforming development is present at the site, the project will not increase the size or degree of the existing nonconformity. For these reasons, the proposed development does not rise to the level of a major remodel/new development. Consequently, existing nonconformities are not required to be brought into conformance at this time.

#### **D. Response to Unite Here Letter from 4/14/2021**

This project was previously scheduled for the Coastal Commission’s April 16, 2021 hearing. However, a letter objecting to the proposed project was sent late in the afternoon of April 14, 2021 ([Exhibit 20](#)) to Commissioners and the Executive Director. The information below responds to Unite Here’s allegations.

Unite Here in its 4/14/2021 letter alleges the presence of potentially unpermitted development at the site. These allegations include: 1) allegedly unpermitted expansion of a blufftop terrace in the area of the wedding pavilion approved by the Commission in 1989; 2) the entire Sandcastle building is unpermitted; and 3) the Spa building is unpermitted and also that it had been converted from an office and retail space to the current spa use, and that plunge pools and drilled piers (caissons) and compaction grouting had been installed without a required CDP. The applicant’s response to Unite Here’s April letter is included as [Exhibit 23](#).

##### 1) Wedding Pavilion/Terrace Expansion

Unite Here alleges that a bluff top terrace was expanded in the area of the wedding pavilion approved by the Coastal Commission in 1989 (in the area between the hotel

pool and the Surfside building). However, it is clear from a comparison of the plans approved by the Commission in 1989 to the current site plan, that the terrace in its current configuration is in substantial conformance with the approved pavilion footprint. This is made clear when comparing the seaward terrace edge to the adjacent Surfside building and to a nearby stairway. Both the Surfside building and the stairway were present in 1989 and remain in the same location today ([Exhibit 15](#)). The location of the seaward edge of the terrace, when compared to the location of the Surfside building and the stairs, is in the same location today as in 1989.

CDPA 5-89-136-A included approval of the pavilion, referring to it as a bluff top wedding pavilion. Thus, the terrace is in substantial conformance with terrace area approved by the Commission in 1989. The terrace has not been expanded. The terrace referenced by Unite Here is not unpermitted. It reflects the pavilion location approved by the Commission's 1989 CDPA action. The pavilion's upper structure was ultimately never constructed, but the terrace area was and remains unchanged. The terrace has not been expanded beyond what was approved by the Commission in 1989. Thus, this allegation by Unite Here is disproven by evidence.

## 2) Sandcastle Building

Unite Here alleges that the Sandcastle<sup>3</sup> building did not exist in 1989 and has since appeared with no record of an approved CDP. As evidence of this, the letter presents a copy of a 1989 site plan. However, the site plan presented by Unite Here is a lower level site plan (below the level of South Coast Highway). The Sandcastle building sits at the level of South Coast Highway and does in fact appear on the 1989 street level site plan. The 1989 site plan clearly reflects the presence of the Sandcastle building (labeled "existing shops"), the footprint and location are virtually identical between the with current site plan and the 1989 site plan ([Exhibit 16](#)). In fact, the building has been present on the site since the 1950s. In any case, there is sufficient evidence to demonstrate it was recognized as present at the site at the time of the Commission's 1989 actions (1989 site plan, [Exhibit 19](#)). And a 1972 photo shows it present at the site, meaning the Sandcastle building is a pre-Coastal structure.

It appears that the Sandcastle building was approved for demolition in the 1989 CDP and CDPA, but was never demolished. That the building was never demolished does not make it an unpermitted structure. The Sandcastle building is currently used for meeting/conference space. Unite Here expressed concerns that shifting to the current use from the pre-1989 retail use went beyond repair and maintenance. In support of that allegation, Unite Here referenced plans that were to be forwarded to Coastal Commission staff, but Unite Here has not provided the referenced plans as of the time of preparation of this staff report more than six months after submittal the original letter. Nevertheless, as is described elsewhere in this staff report (as well as in the April 2021 staff report), the 1989 approvals included additional conference space, as follows:

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<sup>3</sup> Also referred to as the Starfish/Sandcastle building.

“Currently on-site there is 9,540 square feet of meeting space. The approved plans included in the 1989 files do not include the plans for all of the resort buildings. There are no plan drawings in the file depicting the converted conference center, and there are no plan drawings depicting the additional meeting/conference areas, so it is difficult to ascertain the precise area of conference/meeting rooms based on the 1989 CDP/CDPA files. However, because meeting rooms/conference space were known to be present throughout the site prior to the conversion of the Boardwalk restaurant to a conference center, it is reasonable to accept the larger square footage figure (13,794) as correct for the total area of meeting/conference area recognized by the 1989 approvals. However, based upon the complete set of plans reflecting site development in the current file, the total area dedicated to conference/meeting space is recognized as 9,540 square feet.”

Conference space of up to 13,794 square feet was approved by the Coastal Commission in the 1989 approvals. Present on site now is 9,540 square feet of conference/meeting space, of which the Sandcastle building contributes 1,800 square feet. The conference/meeting space use in the Sandcastle building was approved by the Coastal Commission in 1989. No information supporting the allegation that work on the Sandcastle building exceeded repair and maintenance has been provided. The Sandcastle building has been present at the site since the 1950s. The Unite Here allegation is inaccurate.

### 3) Spa Building

Unite Here alleges that the Spa building did not exist in 1989 and has since appeared with no record of an approved CDP. As evidence of this, the letter presents a copy of a 1989 site plan. However, the site plan presented by Unite Here is a lower level site plan (below the level of South Coast Highway). The Spa building sits at the level of South Coast Highway and does in fact appear on the 1989 street level site plan. The 1989 site plan clearly reflects the presence of the Spa building (labeled “existing shops”), the footprint and location are virtually identical between the current site plan and the 1989 site plan ([Exhibit 17](#)). In fact, the Spa building has been present on the site since the 1950s. In any case, there is sufficient evidence to demonstrate it was recognized as present at the site at the time of the Commission’s 1989 actions (1989 site plan, [Exhibit 19](#)). And a 1972 photo shows it present at the site, meaning the Spa building is a pre-Coastal structure ([Exhibit 18](#)).

It appears that the Spa building was approved for demolition in the 1989 CDP and CDPA, but was never demolished. That this building was never demolished does not make it an unpermitted structure. The existing building was converted from retail use to spa use. Retail use and spa use are both ancillary uses typically associated with resort hotels. The change from retail to spa does not trigger the need for a CDP because they are both ancillary hotel uses with no change in intensity of use.

However, the Unite Here letter also describes installation of eleven drilled piers<sup>4</sup> and compaction grouting beneath the Spa building. Since receipt of the Unite Here letter last April, the applicant has provided additional information regarding development that occurred at the Spa building in 2001. The 2001 foundation work included installation of a caisson and grade beam system beneath one area of the Spa building and installation of compaction grouting beneath another area of the Spa building. The compaction grouting was installed beneath the existing partial basement area and the caisson and grade beams were installed beneath the remainder of the building ([Exhibit 13](#)). The caisson and grade beam system involved placement of eleven, 30-inch diameter caissons. The caissons are connected by grade beams above. Compaction grouting consolidates and compacts soils in place by injecting soil cement grout under high pressure into the soil. In addition, recompaction of soil (a different action than recompaction grouting) also occurred within the footprint of the patio area adjacent to the south side of the Spa building in 2001. Soil recompaction is not considered foundation work, but rather typical construction related site preparation. In addition, accessory development including two “plunge pools” and site walls were added in this area ([Exhibit 14](#)). The site walls provide separation between individual spa patio areas, as well as from the adjacent parking area. The Spa building is located at the northeast corner of the site, adjacent to South Coast Highway. This work would have required approval of a CDP, but there is no CDP for the 2001 structural work to the Spa building. The applicant has requested that this development be added, after the fact, to the currently proposed project.

Comments also were also received from the project appellants in response to the staff report prepared for the April 16, 2021 hearing ([Exhibit 21](#)). The applicant’s response to the appellants’ letter is included as [Exhibit 22](#).

#### **E. History of Development & Past Coastal Commission Actions at the Site**

City records indicate the site supported motel/hotel, retail, and restaurant uses since at least the 1950s.<sup>5</sup> The existing hotel guest room buildings at the site, which are located at the seaward side of the property and cascade along the bluff to the sandy beach below (the Surfside, Catalina, Seaview, and Towers buildings), were all constructed prior to February 1, 1973, the effective date of Coastal Commission jurisdiction. In fact, with the exception of the building constructed pursuant to CDP/CDPA in 1989, all of the structures on site pre-date the effective date of Coastal Commission jurisdiction. The Spa building, Starfish/Sandcastle building, and Conference Center date to at least the 1950s. The Catalina building was present in the 1950s. The Surfside and Seaview buildings were present in the 1960s. The Towers building was present by 1972 ([Exhibit 5](#)).

In 1989, the Coastal Commission approved CDP 5-89-136 and CDP Amendment (CDPA) 5-89-136-A1 ([Exhibits 6 and 7](#) and [Exhibits 8 and 9](#)). Together these approvals allowed, among other things: demolition of 19 hotel units and construction of

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<sup>4</sup> The terms “caisson” and “drilled pier” are used interchangeably.

<sup>5</sup> [https://www.lagunabeachcity.net/cityhall/citygov/cityclerk/access\\_city\\_documents.htm](https://www.lagunabeachcity.net/cityhall/citygov/cityclerk/access_city_documents.htm)

45 new hotel units (a net increase of 26 hotel units), demolition of portions of existing development, and construction of a new restaurant. The CDP was issued on 11/20/1989 and the CDPA was issued on 11/27/1989. The applicant submitted a Certificate of Use for Splashes restaurant ([Exhibit 10](#)) issued by the City on 2/12/1991, verifying that commencement of development approved pursuant to CDP 5-89-0136 and CDPA 5-89-0136-A1 was implemented and thus the CDP/CDPA were vested within the required two-year time frame.

The 1989 files for CDP 5-89-136 and 5-89-136-A1 contain inconclusive information, especially with regard to the approved/signed project plans. The approved/signed plans included in the 1989 files do not include the plans for all of buildings on site. The staff reports for the 1989 CDP and CDPA do not describe the extent of existing development the approved permit and amendment would modify, only the modifications. This makes it difficult to reconcile changes made by the approved CDP/CDPA with development already present at the site at the time. For example, plan notes on the approved/signed project plans indicate that the former “Boardwalk” restaurant would be converted to the current conference center, but a plan depicting the converted conference center is not included in the file. Moreover, this conversion of restaurant space to conference center area is not discussed in either of the staff reports. Yet the conversion is recognized on the approved project plans plan notes.

There is also a discrepancy as to the amount of conference/meeting space approved and existing on site subsequent to the 1989 approvals. For example, the square footage for the “Boardwalk” restaurant is listed as 7,354 square feet in a plan note. But the same plan page of the approved/signed plans identifies “conference facilities” at 6,440 square feet. The approved staff report for 5-89-136-A1 references 6,440 square feet of conference area as part of the approved project description. The total of 6,440 and 7,354 is 13,794. However, it is unclear if the square footage referenced in the staff report encompassed all of meeting room/conference area at the site. Why are there two distinct area figures referenced on the plan note (7,354 square feet and 6440 square feet), but not depicted on the plan drawings? Meeting/conference rooms in addition to the area proposed to be converted to conference center were present throughout the site in 1989. There is a site survey in the 1989 file that identifies the Boardwalk restaurant, and it is in the same configuration and location as the current Conference Center building. So, it is reasonable to assume that the 7,354 square foot figure applies to the Conference Center and the 6,440 square foot figure applies to the conference/meeting space located throughout the rest of the resort.

Currently on-site there is 9,540 square feet of meeting space. The approved plans included in the 1989 files do not include the plans for all of the resort buildings. There are no plan drawings in the file depicting the converted conference center, and there are no plan drawings depicting the additional meeting/conference areas, so it is difficult to ascertain the precise area of conference/meeting rooms based on the 1989 CDP/CDPA files. However, because meeting rooms/conference space were known to be present throughout the site prior to the conversion of the Boardwalk restaurant to a conference center, it is reasonable to accept the larger square footage figure (13,794) as correct for

the total area of meeting/conference area recognized by the 1989 approvals. However, based upon the complete set of plans reflecting site development in the current file, the total area dedicated to conference/meeting space is recognized as 9,540 square feet.

Approval of the restaurant now known as Splashes is clearly depicted on the approved 1989 project plans. The current project plans depict Splashes restaurant in the same location and configuration as depicted on the approved 1989 plans. The approved CDP 5-89-136 staff report states that the project includes “demolition of 2,357 square feet of restaurant space from the existing 6,540 square feet.” As reflected in the staff report for CDPA 5-89-136-A1, the amendment approved the addition of 1,002 square feet of beach front dining area, including 359 sq. ft. dining terrace, and a 750 sq. ft. seafood bar under the existing pool. The amendment also approved 2,000 square feet of storage and support areas. Although it is difficult to precisely match the square footage figures approved in 1989 and the current square footages, the 1989 approved plans clearly depict the then-new restaurant in the same configuration and location as the current plans. The area Splashes restaurant currently occupies is 4,794 square feet and will remain so based upon the complete set of plans reflecting site development in the current file.

In addition, although the approved findings clearly include demolition of 19 hotel rooms and construction of 45 hotel rooms as part of the approved project, approved/signed plans for this work are limited to one plan view of a row of seven hotel guest room balconies and an elevation view, both labeled “new units.” Exhibit 5 of CDP 5-89-136 staff report depicts “new units” behind the Surfside building, but this site plan is not included as part of the approved/signed plans. In any case, the “new units” footprint depicted on Exhibit 5 of the 1989 CDP staff report differs from the current footprint of the Catalina building in the same area. Furthermore, there are no demolition plans other than a site plan with an area cross hatched by hand that is labeled “area of demolition.” There are no floor plans for the 45 new units. There is no site plan depicting the location of the new units (only those plans mentioned above), although the plan showing the balconies does depict them behind the Surfside building, which coincides with the area on the plan with the cross hatched area labeled “areas to be demolished.” In any case, it is clear from the number of hotel units present at the site now that not all of the 45 units (a net of 26 units) were constructed. Nor is it clear whether or how many of the 19 units approved for demolition were actually demolished. Other than the net increase of 9 units between 1989 and now, how that increase in units was accomplished is not reflected on any plans in the file.

Nevertheless, a comparison of the approved 1989 plans with current plans also indicates, to the extent that 1989 plans exist for them, the site’s buildings correspond in layout. A further complication in understanding the project approved in 1989 is the fact that not all development approved then was constructed, as described above regarding hotel guest units. Although the approved 1989 staff reports describe demolition of various uses, it is not entirely clear where the uses were located on the site, except for the northwest area of the site, inland of the Surfside building. It appears, based upon the staff report exhibit, that the Catalina building may possibly have been contemplated



for demolition or partial demolition. However, based upon historic photos, it appears the Catalina building was present in essentially its current form since the 1950s. The Catalina building footprint does not correspond to the plans showing “new units.” This supports the likelihood that the current Catalina building is in substantially the same configuration it has historically occupied.

According to the approved 1989 staff reports, the 1989 project included the addition of 95 parking spaces. But based on the number of parking spaces that were present prior to the 1989 project (203 parking spaces) and the current number of parking spaces (216 parking spaces), only 13 parking spaces were added subsequent to the 1989 approval. However, the Commission’s 1989 approval found that the proposed development would decrease the parking demand at the site, and, while acknowledging the benefit of the additional 95 parking spaces, found that the 1989 project would not generate additional parking demand beyond that of the existing, pre-Coastal development already present at the site. This is reflected in findings from the 5-89-136-A1 approved staff report, which states: “After subtracting the reductions in parking demand from increases, the approved project will result in an improvement to the present parking scenario of a parking demand reduction of 33.42 spaces.”

The applicant has submitted information stating that in 1971 through 1989, 158 hotel guest rooms were present on the site. In addition, plan notes on the approved 1989 plans indicate that the project would result in 184 hotel rooms, which would include the net addition of 26 new units. Thus, the number of hotel units present prior to the 1989 project was 158 hotel guest rooms. The staff reports for the 1989 CDP and CDPA do not describe the extent of existing development the approved permit and amendment would modify, only the modifications. Current project plans reflect the presence of 167 hotel guest rooms at the site now, which indicates that nine of the approved 26 (net) new hotel rooms were constructed. Conversion of the former Towers restaurant to seven hotel rooms was undertaken subsequent to the 1989 approvals. Given that the 1989 approvals allowed demolition of restaurant area and construction of new hotel guest rooms, this work is considered to be in substantial compliance with the approved 1989 CDP/CDPA. In addition, the Aquaterra Spa building formerly housed retail and office space.

CDPA 5-89-136-A1 also approved construction of a seawall in front of and below the level of the restaurant ([Exhibit 12](#)). In approving the seawall, the Commission required that an Offer to Dedicate a lateral public access easement on the sandy beach seaward of the resort footprint be made, consistent with the applicant’s proposal. The OTD was recorded on 10/5/1989. The area has long been available to the general public for beach use.

The 1989 Coastal Commission actions clearly approved the addition of 26 hotel guest rooms, the construction of the restaurant now known as Splashes, and various other modifications to the existing resort, including construction of a seawall. In addition, the CDP/CDPA approved the addition of 95 new parking spaces at the subject site, of which only 13 were created. The development currently proposed is minor and will not change

any use or alter any building footprints, heights, location, envelopes or square footage/area of existing site development.

#### **F. Extent of Project/Non-Conforming Development**

Application of a number of LUP policies, particularly with regard to bluff development, hinges on whether a proposed development would alter nonconforming development and to what degree. The certified LCP IP includes the following language regarding nonconforming development:

##### **25.56.002 Nonconforming building, structure or improvement.**

A nonconforming building, structure or improvement is one which lawfully existed on any lot or premises at the time the first zoning or districting regulation became effective with which such building, structure or improvement, or portion thereof, did not conform in every respect.

Any such nonconforming building, structure or improvement may be continued and maintained, except as otherwise provided in this chapter, but may not be moved in whole or in part unless and except every portion thereof is made to conform to the provisions of this title.

##### **25.56.008 Adding to or enlarging nonconforming structure.**

A legal nonconforming structure may be enlarged or expanded if:

- (A) The enlargement or expansion complies in every respect with all applicable provisions of this Title 25 Laguna Beach Zoning Code; and
- (B) When Design Review is required, the approval authority finds that the proposed enlargement or expansion and the project as a whole complies with the Design Review Ordinance Intent and Purpose Section 25.05.040(A) and Design Review Criteria as set forth in Section 25.05.040(H). (The existing nonconformities shall be identified in the public hearing notice.); and
- (C) The required number of parking spaces is provided per Chapter 25.52, Parking Requirements. However, existing single-family dwellings that have a nonconforming number of required parking spaces may be enlarged or expanded without complying with the required number of spaces, if the total gross floor area of the residential structure, including the proposed enlargement or addition, does not exceed fifteen hundred square feet and at least one parking space is provided on the property. (Ord. 1515 § 6, 2009; Ord. 1416 § 22, 2002; Ord. 1282 § 1, 1994).

##### **25.56.009 Modification of existing nonconforming structure.**

If any part of a nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations. (Ord. 1282 § 1, 1994).

Pursuant to Section 25.56.002 above, the existing Surf & Sand Resort is legally nonconforming. It is nonconforming with regard to the required bluff setback in that it



extends from the street level to the beach below. It is also nonconforming with regard to parking in that it does not provide the number of parking spaces required by current parking standards (Chapter 25.52 of the IP/Zoning Code). It is legally nonconforming in that it complied with the permitting requirements in effect at the time the buildings were constructed (1950s and 1960s).

Work that occurred at the site later, such as development of the Splashes restaurant and the seawall, was constructed pursuant to approved coastal development permits (CDP 5-89-136 and CDPA 5-89-135-A1). The term “major remodel” was not defined in 1989. Bluff edge location and bluff top setback requirements were also not defined in the then-certified LUP as they are now; and the IP had not yet been certified. Thus, the current LUP policies that prohibit development seaward of the blufftop setback did not apply when the nonconforming development was constructed, and cannot be retroactively applied to the existing, legally nonconforming development, unless the existing nonconformities are proposed to be added to, demolished, or modified as described in the definition of major remodel (below) and in IP Section 25.56.009 (above).

The LUE definition of major remodel referenced in Action 7.3.10 is:

**Major Remodel** - Alteration of or an addition to an existing building or structure that increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure; greater specificity shall be provided in the Laguna Beach Municipal Code.

Pursuant to the above definition, a development is a major remodel when it increases the existing building square footage by 50% or more, and/or demolishes, removes, replaces and/or reconstructs 50% or more of an existing structure. Section 25.56.008 allows enlargement or expansion of a non-conforming structure if it complies with all applicable provisions of the City’s zoning code. Section 25.56.009 requires nonconformities to be brought into conformance when the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building. Generally, the Commission applies the 50% criteria of the major remodel definition to changes to structural elements of an existing structure. As stated in LUE Action 7.3.10 below, existing oceanfront and oceanfront bluff structures that are legally nonconforming may be maintained and repaired, but if improvements that increase the size or degree of nonconformity are undertaken, those improvements constitute new development and the proposed project would be required to bring the nonconforming oceanfront and oceanfront bluff structures into conformance. That is, the nonconforming structure would be required to conform to current the bluff setback.

**ACTION 7.3.10** Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but

not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

In this case, with one exception described below, the proposed development constitutes repair and maintenance. Only one building will include modifications to structural elements of the existing eight structures on site. The proposed project does not include demolition, removal, and/or reconstruction of exterior cladding or framing systems and will not involve demolition, removal, and/or reconstruction of the existing roof framing systems or structural floor systems. No structural roof framing or foundation work is proposed, with one exception that applies to the foundations of the Spa building. No additions to existing square footage or increase in existing heights are proposed. No change to existing building envelopes or footprints or to use of the buildings are proposed. The proposed project does not include enlargement, expansion, or addition to the existing on-site buildings. The proposed development will include converting two hotel guest rooms into expanded lobby area. This does not represent a change in land use. The use is a hotel and it will remain hotel use with the expanded lobby area. In addition, the proposed project will not create an increase to the existing parking demand. The number of parking spaces will remain the same. The proposed project will not increase the size or degree of existing nonconformities. The proposed project does not meet the definition of major remodel.

The one exception to the absence of any structural alterations proposed with the current project, is the alteration to the pre-Coastal Spa building's foundation. Proposed Spa building foundation work includes installation of a caisson and grade beam system beneath the Spa building footprint and installation of compaction grouting beneath the Spa building's existing partial basement area ([Exhibit 13](#)).<sup>6</sup> The caisson and grade beam system involve placement of eleven, 30-inch diameter caissons. The caissons are connected by grade beams above. Compaction grouting consolidates and compacts soils in place by injecting soil cement grout under high pressure into the soil. In addition, recompaction of the soils (which is different than compaction grouting) is also proposed within the footprint of the patio area adjacent to the south side of the Spa building. Soil recompaction is not considered foundation work, but rather typical construction related site preparation. In addition, minor accessory development including two "plunge pools" and site walls are proposed in this area. The site walls provide separation between individual spa patio areas, as well as from the adjacent parking area ([Exhibit 14](#)). The Spa building is located at the northeast corner of the site, adjacent to South Coast Highway. The Catalina and Surfside buildings are located between the Spa building and the beach. Due to this existing development between the Spa building and the beach, it is unlikely that the foundation alterations will ever become exposed.

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<sup>6</sup> The Spa building foundation work occurred in 2001, but is considered here as if it has not occurred. The applicant has requested that this work be added, after the fact, to the currently proposed project.

The area of the slab on grade foundation present under the Spa building prior to the proposed Spa building foundation work is 1,832 square feet. The area of the caisson and grade beam foundations totals 352 square feet. The area of compaction grouting totals 325 square feet. Total proposed foundation area is 677 square feet. Compared to the existing foundation area, the additional area represents 37% alteration to the Spa building foundations ( $677/1,832 = 36.9$  or 37%).

The proposed Spa building foundation alterations represent less than a 50% alteration to the existing foundations. A project meets the definition of major remodel when alterations meet or exceed 50% of the existing development. In this case, the proposed foundation additions to the Spa building are well below 50% of the area of the existing foundations, totaling only a 37% addition. Thus, this foundation work does not rise to the level of a major remodel. It will not increase the size of degree of nonconformity. Thus, LUP Policy Action 7.3.10 is not implicated and does not require that existing nonconformities on site be removed in conjunction with the proposed development.

With the exception described above (which itself does not rise to the level of a major remodel), the proposed work involves only non-structural upgrades to existing buildings to accommodate ADA compliance and to meet other code requirements. ADA work includes upgrades such as widening door frames and improving pathway gradients to make them more accessible. The code requirements are generally safety related, such as upgrades to fire safety and heating, ventilation, and air conditioning. The proposed work would also result in minor, non-structural cosmetic upgrades to improve the aesthetics of the site, such as exterior and interior painting, new window treatments etc. There will be no change to existing building square footage, height, footprint, or location.

This CDP will contribute to establishing baseline information of the extent of development present at the site. With this more detailed understanding of all development present at the site and its history, future determinations as to whether any future project that may be contemplated at the site constitutes a major remodel will be based on the information contained herein and any new information related to a future project. But it is worth reiterating that none of the currently proposed work will increase the degree of nonconformity or rise to the level of a major remodel.

### **G. Public Access**

Section 30252(4) of the Coastal Act states:

The location of and amount of new development should maintain and enhance public access to the coast by providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Both of the above cited Coastal Act sections are expressly incorporated into the certified LCP LUP's Coastal Technical Appendix.

The project site is located between the sea and the first public road (South Coast Highway) and is adjacent to the public beach. The City's public beaches are a popular visitor draw. The beach in front of the subject site is accessed from the public accessway located approximately 1,500 feet down coast of the site, at Blue Bird Canyon Drive and from the public accessway located approximately 1,500 feet upcoast, at Mountain Road. Metered public parking is available along South Coast Highway and on the side streets in the project area.

### Parking

The availability of adequate parking to serve development promotes public access. When private development fails to provide adequate 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. That is why new development is required to provide adequate parking on site.

In this case, the subject site currently provides 216 parking spaces. The proposed development will continue to provide 216 parking spaces, seven of which would be new ADA spaces where currently no ADA accessible spaces are available. In addition, the proposed development would add two new motorcycle parking spaces. Twelve of the parking spaces (5%) will include electric vehicle charging stations. Conduit will also be run to 40 additional parking spaces as part of the proposed project, which will allow for future installation of charging stations as demand increases. A bicycle rack is proposed near the surface parking area, clear of the path of travel. In addition, the hotel concierge arranges e-bike rentals for guests with a local bike shop. The hotel holds monthly drawings to reward employees who arrive via means other than single occupant car (e.g., carpool, bus, bike, walk). The proposed development would not increase the existing parking demand.

### Construction

The subject site is adjacent to the public beach. Construction equipment, vehicles, activities or access on the public beach would interfere with public use of the beach and with public access. No construction equipment, vehicles, activities or access are proposed to occur on or from the adjacent beach. To ensure that the proposed project does not interfere with public access to and along the adjacent public beach, **Special Condition No. 2** prohibits construction equipment, vehicles, activities or access on the public beach, with the limited exception of non-mechanized activities conducted by hand, in compliance with the water quality BMPs outlined in Special Condition No. 5 of this CDP.

### Construction Parking

Construction projects can adversely impact public access by displacing otherwise available on-street, public parking spaces if they are used by construction workers or to store construction vehicles. The applicant has indicated that the work is expected to be phased such that, while the hotel guestrooms are under renovation and not available for use, enough onsite parking spaces will be available to accommodate construction related vehicles. It is expected that half of the guest rooms will be under construction at a time. Construction parking is proposed to be accommodated on-site by using the spaces freed up by the closure of guest rooms during construction. Consequently, as proposed all construction parking will be accommodated on-site. [Exhibit 3u](#) (Plan Sheet A0-200) depicts proposed construction phasing.

The applicant has provided the following description of construction related parking:

“It is anticipated that a phase maximum of approximately 75 construction workers will be on-site during peak construction times, requiring parking for 50 cars attributed to construction work. Additionally, during the first phase of construction, 75 rooms are expected to be closed for construction, and during the second phase 90 rooms are expected to be closed for construction. If the improvements are implemented in a single phase, all 216 parking spaces would be available for contractor parking, which would be more than adequate. The Aquaterra Courtyard will primarily serve as the staging area during construction, so these spaces have not been counted toward contractor parking. A temporary parking plan and phasing plan will be prepared and submitted.”

Closure of guest rooms while they are being renovated will reduce the parking demand at the site. Construction parking can take advantage of this reduction in hotel parking demand and will thus be able to be accommodated entirely on-site as a result of this reduced parking demand. The applicant proposes to accommodate all construction parking on-site for the duration of the proposed development. For this reason, construction parking is not expected to interfere with generally available public parking spaces, such as on-street public parking spaces in the project vicinity. In order to ensure that all construction parking is accommodated on site as proposed by the applicant, **Special Condition No. 3** requires that the applicant submit a Construction Parking and Project Phasing Plan, as proposed.

The Coastal Commission approval of the 1989 CDP/CDPA included a requirement for recordation of an offer to dedicate all the sandy beach area seaward of the pre-Coastal development by the applicant. The offer was long ago made and accepted by the City of Laguna Beach. The beach area immediately adjacent to and seaward of the resort development’s footprint remains available to the general public. As proposed and as conditioned, no work will occur seaward of existing development footprint. No work will occur on the sandy beach.

No long term, post-project public access impacts are anticipated because the project will not result in any changes to current parking demand or to the current number of parking spaces provided on site. The proposed renovations will not create any changes

to existing public access conditions. Public access at Bluebird Canyon Drive and Mountain Road will remain unobstructed by the proposed development. As proposed by the applicant, all project-related construction parking will be accommodated on the subject site for the duration of the renovation project. In addition, as proposed by the applicant, no work will occur on the beach adjacent to the site. **Special Conditions 2 and 3** are imposed to ensure these proposed measures are carried out. In addition, **Special Condition 7** is imposed to acknowledge that the Commission's approval of this permit does not constitute a waiver of any public rights that exist or may exist on the property.

As proposed and as conditioned, the proposed development will not impact existing public parking available in the general area, and the proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. The proposed project, as conditioned, is consistent with the LCP public access policies cited at the beginning of this section and with the public access and recreation policies of the Coastal Act.

#### **H. Bluff Development**

**ACTION 7.3.10** Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

The certified LUP includes a number of policies regarding new development on bluff lots. However, the proposed development does not qualify as new development, and, as such, these policies are not applicable, including Policy 7.3.10 (above).

Because the proposed development does not rise to the level of major remodel, will not alter existing building square footages, heights, building envelopes, or footprints, and will not result in an intensification of use at the site, nonconformities such as the nonconforming bluff setback are not required to be brought into conformance. In addition, because the proposed development does not rise to the level of major remodel/new development, policies regarding new development on bluff lots are not applicable. Evaluation of the bluff edge location and related bluff edge setback is not triggered. To assure that the scope of work does not exceed that currently proposed, **Special Condition 1** requires that no additions, demolition, or modifications to structural elements (other than to the Spa building foundations) occur in conjunction with the proposed development. In addition, **Special Condition 6** acknowledges that CDP A-5-LGB-19-0100 is only for the project described herein. As proposed and conditioned, the proposed development is consistent with the bluff development policies of the certified LCP.

However, due to the site location between South Coast Highway and the beach below, the site itself is located in a hazardous area. Footage of the site during a recent storm event shows that existing development at the site may become impacted by storm events, although to date no significant damage has been reported. Given the site's location, expected future sea level rise, and the long term hazards associated with it, it would behoove the applicant to begin development of a sea level rise adaptation plan for the site. In this case, due to the limited nature of the work proposed, a requirement to prepare such a plan is not triggered.

The Commission finds that due to coastal hazards, the applicant should assume the risks of development in a hazardous area as a condition of project approval. Because this risk of harm cannot be eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 8**, will ensure that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission imposes **Special Condition 6**, which states that any future improvements to structures, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13253(b)(6) shall require an amendment from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes, structural stability, or elevate cumulative development to a major remodel receives review under the Coastal Act (or certified LCP) by the appropriate regulatory body.

To ensure that any prospective future owner of the property is made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 9**, which requires the property owner record a deed restriction against the property, referencing all of the special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability. As proposed and conditioned, the project is consistent with the hazards policies of the certified LCP.

#### **I. Lower Cost Overnight Accommodations Coastal Act Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

**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.

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 evaluating 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. This policy does not apply to the proposed hotel renovation project.

The proposed project includes renovations to an existing higher cost hotel.<sup>7</sup> LUE Policy 6.2 suggests that when considering hotel uses, the provision of lower cost accommodations be considered. However, typically, such considerations are done in conjunction with new hotel projects or remodels that rise to the level major remodel/new development. The Commission finds that the requirement to consider offering lower cost rooms is not triggered by the proposed project. To ensure that only the proposed work occurs and that no work that would constitute a major remodel/new development occurs, **Special Condition 1** limits the project to only the work proposed and prohibits addition, demolition, or modification to existing structural elements (other than the Spa building foundations as described herein), or an increase in building square footage, height, footprint or building envelope. In addition, **Special Condition 6** acknowledges that the CDP is only for the project described herein, and that any changes be reported to the Executive Director to determine if an amendment or new CDP is required. **Special Condition 6** requires that any changes to the approved plans require an

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<sup>7</sup> The Surf & Sand Resort website on 3/5/2021 showed rooms rates ranging from \$699/night on July 4<sup>th</sup> 2021 weekend to \$354/night mid-week in early February 2022.



amendment to this permit unless the Executive Director determines that no amendment is legally required. As proposed and conditioned, the proposed development is consistent with the lower cost overnight accommodations policies of the certified LCP.

## J. Visual Resources

### Open Space/Conservation Element Policy 7A

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

### Open Space/Conservation Element Policy 7K

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

The OS/CE policies cited above encourage the protection of public views and scenic values. The proposed repair and maintenance project will not affect existing public views. Concerns were raised that the proposed balcony railing replacements from metal to glass would adversely impact public views due to glare and may pose a danger to birds. Concerns were also raised that the proposed addition of lighting sconces on either side of the doors leading to the balcony would also cause excessive light and glare.

The proposed balcony railings will be Ornilux<sup>8</sup> glass (or equivalent) which has a patterned, UV reflective coating which makes it visible to birds while remaining virtually transparent to the human eye. Use of this glass will prevent bird strikes. The sconces proposed on either side of the doors leading to the balconies will be shielded and down-directed, with no visible bulb. In addition, the five-foot wide balconies are semi-enclosed by the balconies above and below, and by the sidewalls separating each guest room's balcony from the neighboring balcony on the majority of the balconies, which also shields the lighting sconces from view. The type and location of sconces proposed effectively address concerns related to light and glare from the sconces ([Exhibit 11](#)).

Even with the proposed balcony railing changes and the new balcony lighting sconces, the resulting public views along the shoreline near the resort will be virtually identical pre- and post-project. Existing development will be refreshed (such as new paint, etc.), but will essentially look the same in terms of size, scale, and location. **Special Condition 4** requires that, as proposed, the balcony sconce lighting be shielded to prevent light spillage beyond the area intended to be illuminated, minimize bulb brightness such that the least brightness necessary to achieve the lighting goal is used, and directed downward and away from the night sky. **Special Condition 4** also requires that, as proposed, transparent elements of the replacement balcony railings be bird safe

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<sup>8</sup> <http://www.ornilux.com/index.html>

materials, such as Ornilux or equivalent. As proposed and conditioned, the proposed development is consistent with the public view protection policies of the certified LCP.

#### **K. Water Quality**

##### **LUE Policy 7.7**

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention).

##### **Open Space/Conservation Element Policy 4G**

Ensure that all development minimizes erosion, sedimentation and other pollutants in run-off from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading, and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils) to minimize impacts on water quality.

The LCP policies cited above require protection of water quality during construction. Currently, the majority of the site drains either into the existing storm drain system or to lift stations, and the storm water is pumped into the sanitary sewer. The few natural areas and the guest balconies drain to the beach. The proposed repair and maintenance project will not change existing site drainage. However, adverse impacts to water quality during construction could occur. To address this, the applicant is proposing Best Management Practices to be employed during construction including: avoiding work on rainy days; placement of sandbag barriers to contain site drainage during construction; storm drain inlet protection; practicing water conservation (keep water equipment in good working condition, repair water leaks promptly, avoid washing construction vehicles and equipment on site); spill prevention and control; solid waste management (designated waste collection areas on site; use of only watertight construction dumpsters); daily trash collection and removal; and appropriate disposal of liquid toxic waste such as paints, oils, solvents. In addition, **Special Condition 5** also requires BMPs to be implemented during construction to protect water quality. No construction access or work is proposed to occur on or from the adjacent beach. Also as proposed, no construction equipment or vehicles will be placed on the adjacent beach. To ensure protection of the public beach, **Special Condition 2** prohibits construction vehicles or construction activities on the adjacent beach, consistent with the applicant's proposal. Implementation of the construction BMPs and prohibition of construction activities on the beach will provide the necessary protection to ensure consistency with the LCP water quality protection policies. As proposed and conditioned, the proposed development is consistent with the water quality protection policies of the certified LCP.

#### **L. Unpermitted Development**

Violations of the Coastal Act that are associated with the subject development have been undertaken on the subject property, including Spa building foundation work consisting of installation of a caisson and grade beam system beneath the Spa building

footprint and installation of compaction grouting beneath the Spa building's existing partial basement area ([Exhibit 13](#)). The caisson and grade beam system involve placement of eleven, 30-inch diameter caissons. The caissons are connected by grade beams above. Compaction grouting consolidates and compacts soils in place by injecting soil cement grout under high pressure into the soil. Compaction grouting occurred beneath the existing Spa building partial basement. This unpermitted development occurred in 2001. The applicant has requested consideration of the unpermitted development as part of this current CDP review. The Spa building foundation work will alter only 37% (less than 50%) of the existing foundations, and so does not rise to the level of a major remodel. Staff is recommending approval of the Spa building foundation work. Special conditions are imposed to assure the project is carried out in conformity with the City's certified LCP and with the public access policies of the Coastal Act.

If the staff recommendation is approved by the Commission, and the permit is issued, and the applicant complies with all of its terms and conditions, the issues raised by the unpermitted Spa building foundation alterations will be resolved. However, if these actions do not occur as approved, enforcement staff will consider action to address the violations of the Coastal Act as a separate matter.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

#### **M. Local Coastal Program**

The City of Laguna Beach LCP was certified by the Coastal Commission on January 13, 1993. The City's LCP Land Use Plan is comprised of a variety of planning documents including the Land Use Element, the Conservation/Open Space Element, and the Coastal Technical Appendix, among others. The LCP Implementation Plan (IP) is also comprised of a number of documents, primarily Title 25, the City's Zoning Code. As discussed in this staff report, the proposed project, as conditioned, conforms to the provisions of the City of Laguna Beach Certified LCP.

#### **N. California Environmental Quality Act (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On November 7, 2018, the Laguna Beach City Council found that the proposed project “is exempt from the provisions of the California Environmental Quality Act in accordance with Section 15301(a) since the proposed action consists of alterations to existing private structures not involving the expansion of the building footprints beyond the existing area and no proposed expansion of use. The project would not involve an increase in the property’s parking requirements and would not have a negative effect on environmentally sensitive resources, as all proposed improvements are within existing developed areas. There is no evidence of any unusual environmental circumstances that might give rise to a reasonable possibility that the project will have a significant effect on the environment[.]”<sup>9</sup>

The proposed project has been conditioned in order to be found consistent with the certified LCP and public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, require that: 1) no addition, demolition, or modifications to structural elements occur; 2) no construction activities occur on the sandy beach adjacent to the subject site; 3) all construction parking be accommodated on the subject site; 4) as proposed by the applicant, all lighting is to be shielded and down directed to avoid light spillage and transparent balconies will use bird safe material; 5) water quality Best Management Practices (BMPs) be implemented during construction, 6) only the work currently proposed is approved by this CDP and that any changes will require an amendment or new CDP unless the Executive Director determines that none is legally required; 7) assurance that any public rights that exist or may exist on the site are preserved; 8) the applicant’s assumption of the risk of development; and, 9) recordation of a deed restriction indicating that the permit is subject to restrictions on the use and enjoyment of the property and imposing the special conditions of the permit as covenants, conditions and restrictions on the use and enjoyment of the property. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

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<sup>9</sup> City of Laguna Beach City Council Resolution No. 18-2145.

## **Appendix A – Substantive File Documents**

- 1) City of Laguna Beach Certified Local Coastal Program.
- 2) City File Record for Local Coastal Development Permit No. 18-2147
- 3) CDP 5-89-136 & CDPA5-89-136-A1 Files