

**CALIFORNIA COASTAL COMMISSION**

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# W12a

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Staff Report: 02/24/22  
Hearing Date: 03/09/22

## STAFF REPORT: APPEAL – DE NOVO

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

**Applicant:** **Highgate Hotels**

**Agents:** Alan Kusov, Steven H. Kaufmann, McCabe and Associates, Morris Skenderian and Associates, Mark A. Hoffman

**Local Government:** City of Laguna Beach

**Local Decision:** Approval with conditions

**Appellants:** Unite Here Local 11, Attn: Jonah Breslau

**Project Location:** 647 S Coast Hwy and 610-668 Sleepy Hollow Lane, Laguna Beach, Orange County (APNs: 644-021-01, 644-021-02, 644-021-03, 644-021-04, 644-022-02, 644-022-04, 644-022-05, 644-022-06, 644-022-07, 644-022-16, 644-022-17)

**Project Description:** Remodel of existing Pacific Edge Hotel, including remodel of nine buildings supporting 131 hotel rooms, construction of 25 new hotel rooms, expansion of restaurant, new office and conference areas, new café, and new pool and spa. The applicant also proposes transportation demand management measures, 220 vehicle parking spaces with 11 electric vehicle charging stations, dedication of lateral public access easement across the beach fronting the hotel, designation of six hotel rooms at a lower cost rate of \$130 per night, and payment of a mitigation fee in lieu of providing an additional one-quarter of one lower cost room on-site.

**Staff Recommendation:** Approval with conditions

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID 19 emergency, and following California Assembly Bill 361, and the Governor's Executive Orders N-1-22, N-15- 21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

## **SUMMARY OF STAFF RECOMMENDATION**

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

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

Transportation demand management measures are proposed along with 220 vehicle parking spaces, which is less than the 280 vehicle parking spaces that would be required based on a strict interpretation of the implementation plan/zoning code. The applicant will provide eleven electric vehicle charging stations (5% of the total) and electrical equipment will be developed to allow for installation of additional electric vehicle charging infrastructure in the future as demand increases, consistent with the California Green Building Standards. The applicant proposes and the City has applied a 20% reduction in required vehicle parking spaces due to proposed transportation demand management measures and a study by a traffic consultant. The applicant also

proposes and the City has also approved a variance for a new elevator that will exceed the maximum building height, finding that it was necessary to comply with fire code and reach the top floors of the existing building, which is already over the maximum building height. The existing development is legally nonconforming with regard to parking, open space, height, and setback policies of the certified Laguna Beach Local Coastal Program (LCP). The proposed interior and exterior remodel does not exceed 50% alteration and/or demolition of any structural component or constitute a major remodel/new development under the definition in the LCP. Consequently, existing nonconformities are not required to be brought into conformance at this time.

Since the Commission found that the appeal raised a substantial issue, the applicant has proposed to provide six lower cost hotel rooms on the project site, to be rented for \$130 per night, inclusive of parking costs and resort fees, every night of the year. The applicant's proposal nearly satisfies the standard the Commission has applied in other projects where new hotel rooms have been proposed, that 25% of new hotel rooms should be provided at a lower cost rate (25 new hotel rooms x 25% = 6.25). The additional fractional room that is not being provided at lower cost would be mitigated through a one-time in lieu fee payment of \$31,750. The applicant would be entitled to increase the lower cost room fee consistent with the consumer price index each year. The applicant has also provided additional information to substantiate that the existing development is a high cost hotel, with a pre-covid (2015-2019) average daily room rate of approximately \$230, which increased to \$380 during the summer of 2021, the most recent period of reporting. Finally, the applicant has agreed to more robust transportation demand management measures.

Staff recommends **APPROVAL** of the proposed project with **fifteen (15) special conditions** requiring: 1) submittal of final site, drainage, and landscape plans; 2) submittal of a final transportation demand management plan; 3) implementation of construction best management practices; 4) implementation of a marine debris reduction program; 5) use of lighting and materials to avoid bird impacts; 6) prohibition of storage or staging of chairs or paraphernalia on the beach; 7) provision of lower cost accommodations on site and a payment in lieu of providing a fraction of one additional room; 8) a general occupancy agreement that the hotel will not be operated as a timeshare or for long term guests; 9) compliance with the conditions imposed by the local government, unless they conflict with Commission imposed conditions; 10) public rights and public trust shall apply; 11) assumption of risk, waiver of liability and indemnity; 12) waiver of rights to future shoreline protective device; 13) dedication of lateral public access easement on the beach 14) generic deed restriction; and 15) liability for cost and attorneys' fees. The motion and resolution to approve the permit are on page five of this staff report.

The City of Laguna Beach LCP was certified by the Commission on January 13, 1993. This development is located between the first public road and the sea. Therefore, the standard of review for de novo consideration of the project is conformance with the certified LCP and public access and recreation policies of the Coastal Act.

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### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Project Plans and Renderings

Exhibit 3 – Detailed Project Description and Remodel Calculations

Exhibit 4 – Draft Lateral Public Access Easement

## I. MOTION AND RESOLUTION

**Motion:** I move that the Commission **approve** Coastal Development Permit No. A-5-LGB-21-0060 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-21-0060 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. Submittal of Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two copies of final site plans, drainage plans, and landscape plans prepared by a qualified professional(s), which include:

- A. The site plan shall identify all buildings, accessory features, and the property boundaries, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
- B. The drainage plan shall include features to avoid runoff onto the beach and shall identify flow directions.
- C. The site plan shall identify the six lower cost rooms which the applicant proposes to rent to any member of the general public for \$130 per night every night of the year, which may be increased annually consistent with the Consumer Price Index.
- D. The landscape plan shall identify all existing landscaping and all new landscaping on the site, which shall consist of drought tolerant non-invasive plant species native to coastal Southern California and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<https://www.cnps.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<https://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (<https://ucanr.edu/sites/WUCOLS/files/183488.pdf>); and

Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or micro-spray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**2. Final Transportation Demand Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, the final version of a Transportation Demand Management Plan that includes, at a minimum, the following components:

- A. A minimum of 220 parking spaces to serve the resort shall be provided on-site at all times (although during construction, the number of spaces available may be limited pursuant to the approved Construction Plan described in Special Condition 3);
- B. A minimum of seven (7) ADA accessible parking spaces shall be provided as part of the 220 on-site parking spaces;
- C. Valet parking shall be provided to maximize the number of parking spaces available on site;
- D. A minimum of two (2) motorcycle parking spaces shall be provided on site;
- E. A minimum of eleven (11) electric vehicle charging stations shall be provided as part of the 220 parking spaces;
- F. Conduit shall be run to accommodate a minimum of 22 additional electric vehicle charging stations that may be installed in the future as demand increases, as part of the 220 on-site parking spaces;
- G. Bicycle racks providing a minimum of 22 bicycle parking spaces shall be provided on site;
- H. The rental of bicycles for hotel guests shall be facilitated by the hotel concierge. Hotel guests shall be made aware of this transportation option, at a minimum, on the hotel website, upon making a reservation, and upon check-in;
- I. The hotel shall promote, make available, and fully fund public transit passes for any employee desiring to commute to and/or from work.
- J. Guest or other vehicles associated with the resort shall be parked only in the assigned facility consistent with the approved plan. Resort employees shall not park on public streets. During work hours, resort employees must park only in those spaces under the control of the resort, and the resort shall reserve on-site spaces adequate for all employees driving to work to park on-site.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**3. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.**

- A. The applicant shall comply with the following construction-related requirements:
  - i. No construction related activities shall occur on or from the sandy beach;
  - ii. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - iii. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - iv. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during

- construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters;
- v. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and stored as far away from a storm drain inlet and receiving waters as possible; and
  - vi. The plan shall specify where construction vehicles will park during the period of active construction work. Construction vehicles shall avoid occupying public parking spaces used for coastal access for an extended period, beyond the time needed to deliver materials and workers to the job site.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- i. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
  - ii. The applicant shall develop and implement spill prevention and control measures;
  - iii. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
  - iv. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**4. Marine Debris Reduction Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a robust plan, including a comprehensive monitoring and evaluation framework, to reduce waste and single-use items (including litter, plastic and Styrofoam foodware, containers, and packaging). The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:

- A. The applicant shall install and maintain smoke-free signage in all rooms and/or areas of the proposed development.
- B. The applicant shall install and maintain educational signage for staff and patrons that promotes and encourages the use of reusable items (instead of single-use items).

- C. The applicant shall install and maintain precautionary signage to prohibit litter and debris as well as provide a Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the project area of the proposed development and weekend maximum usage statistics to ensure that an adequate number of bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
- D. Adhere to the following criteria:
  - i. Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining, specifically prohibiting the use of plastic cups, utensils or any other serviceware.
  - ii. Prohibit the use of plastic straws and only provide reusable straws, paper straws, or straws made from naturally occurring materials, upon request.
  - iii. Prohibit the use of expanded polystyrene (aka Styrofoam).
  - iv. Prohibit the use of plastic bags on-site or for takeout/to-go orders.
  - v. Only provide single-use (biodegradable or compostable) utensils, straws, condiments, containers, and other accessory items upon request for takeout/to-go orders.
  - vi. Prohibit the sale of beverages in plastic bottles.
  - vii. Prohibit the use of plastic, single-use shampoo, conditioner, soap and lotion bottles.
  - viii. Follow proper recycling practices.
  - ix. Install a microfiber filtration system for all hotel laundry to capture and remove microfibers from the water during the laundering process.
  - x. All waste resulting from restaurant activities should be exported outside the Coastal Zone.
- E. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP) or Surfrider's Ocean Friendly Restaurants (OFR) or a substantially similar program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.

The permittee shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission which includes the Marine Debris and Reduction Program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

- 5. Lighting and Bird-Safe Building Materials.** By acceptance of this permit, the permittee agrees that oceanfront deck railing systems, fences, screen walls, gates, windows and the like that are authorized for construction or replacement by this permit shall use materials designed to minimize bird-strikes with the deck railing, wall, fence, gate, window, or similar feature. Such materials may consist all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless it contains UV-reflective glazing that is visible to birds designed to reduce bird strikes by reducing reflectivity and transparency. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Any new lighting installed shall be downward directed with fixtures to minimize spillover and shall not be directed towards the beach.
- 6. No Storage or Staging of Chairs or Paraphernalia on the Beach.** By acceptance of this permit, the permittee agrees that chairs or similar paraphernalia (such as, but not limited to, beach umbrellas, tables, chaises, towels, or mats) for the exclusive use of hotel guests, shall not be stored or staged on the sandy beach. Guests wishing to utilize chairs or paraphernalia may request items from the hotel and they may be placed on the beach while in use by the guest, but the hotel shall not place such materials in a block, install ropes or signage or any other kind of barrier or enclosure, or arrange them in any way that would restrict public use of the beach or public access across the beach or give the impression that the beach is under the control of the hotel or any other private entity.
- 7. Provision of Lower-Cost Overnight Accommodations.** As proposed by the applicant in a letter titled Revised Project Proposal dated 1/12/22, the permittee, and any and all other successors or assigns, shall provide actual lower cost accommodation on the site of the hotel, subject to the following requirements:

  - A. The permittee shall implement its proposal to provide 25% of the 25 new rooms ( $25 \times 0.25 = 6.25$ , rounded to 6 rooms) at \$130.00 per room per night, inclusive of parking costs and resort fees, which may be adjusted in the future according to Consumer Price Index not more than once per year, with written notice to the Executive Director.
  - B. If the permittee seeks to increase the rates or reduce the percentage of lower-cost accommodations, they shall obtain an amendment to this permit that will authorize the change in conjunction with a requirement to mitigate for any increased rates (i.e. payment of in-lieu mitigation fees or provision of alternate lower cost rooms).
  - C. The following six (6) rooms will initially be designated for this lower-cost purpose, in what is currently known as the Seas Building: Room Nos. 24, 25, 26, 27, 28, and 29. If the hotel operator seeks to change the designated

- rooms or the location of such rooms they shall notify the Executive Director who shall determine whether a permit amendment is required.
- D. The rates shall apply every day of the year and shall not be adjusted seasonally.
- E. Lower-cost rooms shall be reserved through a first-come, first-serve reservation system on the hotel website. Interested guests may also call the hotel to inquire about lower cost room availability and make a reservation if there is availability.
- F. The hotel operator shall promote and publicize availability of the lower-cost rooms to underserved communities, such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access.
- i. The hotel operator shall identify strategies for both online advertising and offline marketing efforts, which shall include targeted outreach to community organizations focused on underserved communities such as local non-profits, environmental justice groups, labor unions, or recipients of public benefits programs by coordinating with local program administrators.
  - ii. Marketing and media materials shall be distributed beyond the City of Laguna Beach to neighboring underserved communities in the greater area and acknowledge the California Coastal Commission's role in providing public access at this location.
  - iii. All materials shall be distributed in English and other languages including but not limited to Spanish, tailored to be culturally relevant, and written in plain language to prevent educational and cultural barriers to access to the pods.
  - iv. The hotel operator shall identify additional actions or measures that could be taken to improve access by underserved communities, if necessary as determined by the Executive Director upon review of the monitoring reports required by Subsection G of this condition.
- G. The permittee shall submit an annual monitoring report for review and written approval by the Executive Director that provides evidence of operation of the affordable accommodations in compliance with all requirements of this permit, including sufficient detail to demonstrate the total number of rooms rented daily in the hotel, the number of lower-cost hotel rooms rented for each night, the room rates for the lower-cost hotel rooms, and the total cost (which shall include parking fees and resort fees) charged to guests for the reservation of these rooms.

The monitoring report shall include a description of proposed lower-cost rates for the upcoming year (which shall be allowed to increase at no more than the annual Consumer Price Index each year without a CDP amendment), and an assessment of compliance with the terms and conditions of this CDP regarding the low-cost units. The permittee shall provide the monitoring information required by this condition to the Executive Director annually for the life of the development.

By the third anniversary of the approval of this CDP, and by the same date every three years thereafter, the permittee shall retain an independent auditing company, approved by the Executive Director, to perform an audit to evaluate compliance with the CDP. The permittee will ensure that the auditing company provides the Executive Director with a report that satisfies the following criteria: 1) The auditor's report will evaluate compliance by the permittee during the prior three-year period. 2) The report shall identify the auditor's findings, conclusions and the evidence relied upon, including the sufficiency of both the information required by the CDP to perform the audit and the information made available by the permittee. 3) After the first report by the auditing company, the three-year audit period may be extended to five years upon written approval of the Executive Director. 4) The Executive Director may grant such approval if each of the previous audits revealed compliance with the conditions in the auditor's opinion, if confirmed by the Executive Director.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant, and any and all successors or assigns, shall pay the mitigation fee for the excess (one) new high cost hotel room that is not being mitigated through the provision of the six lower cost hotel rooms on site. The mitigation fee shall be \$31,750 (25% of the cost to develop one lower cost hotel room, not including land costs, adjusted for inflation since the \$100,000 mitigation rate was established in 2015). The fee shall be further adjusted to include any increases due to inflation based on the Turner Building Index from the date of Commission action until the fee is deposited by the applicant into an interest bearing account(s) consistent with the provisions of this condition below.

The required mitigation fee shall be deposited into an interest-bearing account(s), to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: the Crystal Cove Conservancy, the State Coastal Conservancy, a governmental agency or related non-profit organization, or a similar entity approved by the Executive Director. The purpose of the account shall be to establish lower-cost overnight visitor accommodations, such as lower cost hotel and motel rooms, hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of Laguna Beach or the greater Orange County coastal area, or a similar project to promote access to the coast.

- 8. General Occupancy Agreement.** By acceptance of this permit, the permittee agrees that all hotel facilities shall be open to the general public. No timeshare or other fractional ownership or long-term occupancy of hotel rooms is permitted without an amendment to this permit. No hotel rooms shall be rented for more than 30 consecutive days. Rooms shall be rented in accordance with any local government limitations on length of hotel stay.

- 9. Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Laguna Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.
- 10. 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.
- 11. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee 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.
- 12. No Future Shoreline Protective Device(s) to Protect the Proposed Development.**
- A. By acceptance of this permit, the permittee agrees, on behalf of itself and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-5-LGB-21-0060 including, but not limited to, the new hotel rooms, restaurant, pool, spa and accessory structures, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.
  - B. By acceptance of this Permit, the permittee further agrees, on behalf of itself and all successors and assigns, that it is required to remove all or a portion of the development authorized by this permit and restore the site, if:

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- i. The City of Laguna Beach or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
- ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
- iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. A-5-LGB-21-0060 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

**13. Lateral Public Access Easement.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall execute and record a document granting a permanent lateral public access easement along the shoreline of the resort, from the mean high tide line to the seaward edge of the development identified in Exhibit C (metes and bounds description of the easement) and C-1 (graphic depiction of the easement), in substantial conformance with the document submitted to the Commission on 2/22/22 and in compliance with Laguna Beach Municipal Code Section 25.53.022(F), except for that area adjacent to the Villa property (627 Sleepy Hollow Lane), where such lateral public access presently exists. The permittee shall submit to the Executive Director for review and approval a preliminary title report demonstrating that the permittee/landowner has executed and recorded the document.

**14. Generic Deed Restriction(s).** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant/ landowner shall submit to the Executive Director for review and approval documentation demonstrating that the applicant/ 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.

**15. Liability for Costs and Attorneys' Fees.** The landowner/permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees—including (1) those charged by the Office of the Attorney General, and (2) any court costs or attorneys' fees that the Coastal Commission may be required by a court to pay—that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the landowner/permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION, DESCRIPTION, AND HISTORY**

#### Location

The proposed project is an upgrade to an existing oceanfront hotel resort, with new amenities, new parking areas, and revised valet parking operations. The hotel resort includes buildings and facilities on eleven lots encompassing 102,498 sq. ft. between the first public road and the sea adjacent to Sleepy Hollow Beach (**Exhibit 1**). Hotel buildings and facilities were constructed between 1932 and 1967, prior to passage of the Coastal Act.

The site is in a developed commercial area – some of the lots are zoned CHM (Commercial-Hotel-Motel) and some are zoned C1 (Local Business District) under the certified Implementation Plan, which is the City's zoning code. Some of the lots are designated as Commercial Tourist Corridor and some are designated as Village High Density under the certified Land Use Plan. All existing uses were initiated prior to the effective date of the Coastal Act and prior to the Commission's certification of the Laguna Beach LCP. Regardless, the subject hotel and restaurant uses, and ancillary office and conference facilities, are consistent with the land use designation and zoning. Surrounding development includes hotels, restaurants, and single and multi-unit housing.

Hotel guests access Sleepy Hollow beach via a private stairway located on the project site. Public beach access is available via a public stairway at the end of Cleo Street, approximately 350 feet south of the project site. Portions of the beach fronting the hotel

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are currently owned in fee by the applicant; the City has imposed conditions through its local approval requiring the project to dedicate a lateral public access easement across the beach fronting the hotel, and the applicant has agreed to dedicate the public access and drafted a document to record (**Exhibit 4**).

Description

The plans (**Exhibit 2**) and detailed project description and remodel calculations (**Exhibit 3**) break the development into 10 elements:

- 1) General - new landscaping and lighting throughout the project area, new re-paving and striping in existing parking areas;
- 2) 610/620 Sleepy Hollow Lane – new trash enclosure, re-pave and restripe existing parking lots, and new landscaping and lighting;
- 3) 619 Sleepy Hollow Lane – remodel street-front patio and legally establish upper dining area at existing restaurant;
- 4) 627 Sleepy Hollow Lane – remodel two hotel rooms, remodel existing lobby space, remodel existing restaurant/bar and increase seating;
- 5) 633/635 Sleepy Hollow Lane – remodel 35 existing hotel rooms, demolish swimming pool, new port cochere;
- 6) 636 Sleepy Hollow Lane – remodel and subdivide 15 existing hotel rooms to create 21 hotel rooms;
- 7) 647 S Coast Highway – remodel 5 existing hotel rooms, convert portion of lobby to retail and public patio, and replace driveway and curb;
- 8) 667 Sleepy Hollow Lane – repair building façade, railings, and decks, remodel 24 existing hotel rooms, add 15 new hotel rooms, construct new parking structure, new pool, and landscaping;
- 9) 668 Sleepy Hollow Lane – remodel and subdivide 34 existing hotel rooms to create 38 hotel rooms; and
- 10) 653 Sleepy Hollow Lane – repair building façade, railings, and decks, and replace stairs, remodel 15 hotel rooms and one cottage, new landscaping and re-pave existing parking lot.

Cumulatively, the development includes remodel of 131 hotel rooms, construction of 25 new hotel rooms, expansion of a restaurant, new office and conference areas, new café, and new pool and spa. The plans include calculations of demo/remodel of roof, walls, and foundation. The demo/remodel calculations range from 1.7% of the structure at 647 S Coast Highway to 21.8% of the structure at 627 Sleepy Hollow Lane; all

structures are under the 50% threshold categorized as a major remodel where nonconforming conditions would be required to be addressed pursuant to the certified LCP.

Transportation demand management measures are proposed along with 220 vehicle parking spaces, which is less than the 280 vehicle parking spaces that would be required based on a strict interpretation of the implementation plan/zoning code. The applicant will provide eleven electric vehicle charging stations and electrical equipment will be developed to allow for installation of additional electric vehicle charging infrastructure in the future as demand increases, consistent with the California Green Building Standards. The applicant proposes and the City has applied a 20% reduction in required vehicle parking spaces due to proposed transportation demand management measures ("innovative parking solutions" per the City). The applicant also proposes expanded outdoor dining areas which would require five additional vehicle parking spaces based on a strict interpretation of the code. The proposed reduction in on-site vehicle parking is supported by a study by a traffic consultant (LSA Associates, February 2021) which found that the parking plan will be adequate to meet demand on the site. The applicant proposes and the City has approved a variance for a new elevator that will exceed the maximum building height, finding that it was necessary to comply with fire code and reach the top floors of the existing building, which is already over maximum building height.

### History

The Laguna Beach City Council approved Coastal Development Permit 19-5507, Conditional Use Permit 20-6317 (amending Conditional Use Permit 11-01), Planning Commission Design Review 19-5506, and Variance 19-5505 in conjunction with a Mitigated Negative Declaration for the hotel project on August 10, 2021. Unite Here Local 11 submitted an appeal which was accepted by the Commission on September 7, 2021. The Commission found that the appeal raised a substantial issue on October 13, 2021, in part because of the proposed payment of a mitigation fee in lieu of providing lower cost visitor accommodations on site and in part because the transportation plan lacked detail and could have resulted in hotel employees and guests occupying street parking to the detriment of public coastal access.

Since the finding of substantial issue, the applicant has proposed to provide six lower cost hotel rooms on the project site, to be rented for \$130 per night, inclusive of parking costs and resort fees, every night of the year. The applicant's proposal nearly satisfies the standard the Commission has applied in other projects where new hotel rooms have been proposed, that 25% of new hotel rooms should be provided at a lower cost rate (25 new hotel rooms x 25% = 6.25). The additional fractional room that is not being provided at lower cost is proposed to be mitigated through a \$25,000 in lieu fee paid to the Crystal Cove Conservancy. **Special Condition 7** would require the in lieu fee to be increased to \$31,750 in order to account for inflation that has occurred since the Commission determined that a lower cost hotel room could be developed for approximately \$100,000, excluding land costs, in 2015. The applicant would be entitled to increase the lower cost room fee consistent with the consumer price index each year.

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The applicant has also provided additional information to substantiate that the existing development is a high cost hotel, with a pre-covid (2015-2019) average daily room rate of approximately \$230, which increased to \$380 during the summer of 2021, the most recent period of reporting. And the applicant has agreed to more robust transportation demand management measures, which will be implemented consistent with **Special Condition 2**.

**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 project site is located between the first public road and the sea. Therefore, the standard of review for this project is the City's certified LCP and the Chapter 3 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 (IP) portion of the LCP is comprised of a number of documents including Title 25 Zoning.

**C. DEVELOPMENT**

The proposed development includes remodeling of existing nonconforming buildings and accessory structures, additions to existing nonconforming buildings and accessory structures, a new "Reef Building" landward of the existing ocean-fronting "Reef Building," new accessory features like decks and a pool, and a new indoor/outdoor cafe fronting Coast Highway. The LCP defines nonconforming buildings and structures:

**IP Section 25.56.002** 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.

Some of the existing structures on the 11 lots that make up the existing hotel are legally nonconforming with regard to parking, open space, height, and setback policies of the certified Laguna Beach LCP. Those policies are copied below.

**IP Section 25.52.012 Hotel/motel: 1 space for each room (as defined in Chapter 25.08), which opens to a public way or corridor, yard or court, plus 1 space for each 15 rooms or fraction thereof, plus 2 spaces per each residence. Additional parking may be required** based on operational information such as the number of employees for shifts, when the greatest number of employees is on duty, the hours of operation and the amount of area devoted to particular uses... A 20% reduction from the total parking required for ancillary uses may be granted subject to approval authority's approval.

**IP Section 25.20.008 (D) Building Height Standards.** The following building height limits represent the maximum heights permitted and may be reduced as determined appropriate by the design review authority...

(1) ...Height Permitted Above Upper Curb or Street Elevation: 20 ft. [for over 10% slope]...

(2) The height of any building (per the building height definition in Municipal Code Section 25.08.016) shall not exceed thirty-six feet, including parking garage floor levels with access ramps located outside the structure's ground floor footprint. This thirty-six-foot height limit shall include roof chimneys, vents, mechanical equipment, mechanical enclosure, elevator shafts, stairways and other such structural elements required for the operation of the building.

**IP Section 25.50.004 Building setback lines...**no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply...

**IP Section 25.50.010 Open space requirements...**

(A) It shall contain a minimum area of forty percent of the total gross living area on the lot;

(B) At least sixty percent of the total area required shall be located at ground level and shall be open from ground to sky;

(C) It shall be contained entirely within the buildable area of the lot (as defined by the property development standards of the applicable zone exclusive of Chapter 25.50)...

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The subject development is legally nonconforming in that it complied with permitting requirements in effect at the time of construction in 1932 and 1967. Current LCP policies cannot be retroactively applied to existing, legally nonconforming development unless the existing nonconformities are proposed for major remodel or new development:

**LUE 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.

**IP Section 25.56.009** 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.

Pursuant to the definition below, a major remodel consists of any work that increases the area of the existing structure by more than 50% or demolishes, removes, replaces, or reconstructs the existing structure by more than 50%.

**LUE Glossary Entry 89.** 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

The definition indicates that greater specificity is included in the Laguna Beach Municipal Code (certified IP). The below IP sections further specify that the original gross floor area should be considered, and define this as the gross floor area when initially constructed.

**IP Section 25.08.012** “Floor area, original gross” means the gross floor area (as defined herein) of a separate unattached structure when initially constructed.

**IP Section 25.10.008** A major remodel is a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot.

In this case, the applicant and the City have indicated that the existing structures are legally nonconforming as to the City zoning and building codes, which pre-date the Coastal Act and the LCP. Detailed plans from the original construction are not available. The applicant’s submitted project plans and percentage remodel calculations

are based on the location and condition of the structures onsite; there is no evidence that the structures underwent substantial structural changes or additions since original construction.

As stated in LUE Action 7.3.10, existing oceanfront and oceanfront bluff structures that are legally nonconforming may be maintained and repaired, but improvements that increase the size or degree of nonconformity would constitute new development. New development must bring all associated features into conformity with the LCP. However, the proposed development does not exceed the 50% alteration or 50% addition threshold. Most project elements constitute improvements rather than new development, while some project elements like the new “Reef Building” and adjacent new pool, and new indoor/outdoor cafe fronting Coast Highway do constitute new development.

The project, as a whole, does not increase the size or degree of nonconformities. The project will provide greater vehicle parking than the existing conditions and additional permeable areas (impervious surfaces will be reduced from 77% of the total property area to 72% by reconfiguring at grade parking areas and adding landscaped areas with predominantly native drought tolerant species). The new “Reef Building” will cover approximately 1,200 sq. ft. of space that is currently undeveloped, but the lot it will be developed on is the largest of the 11 lots, at 19,031. sq. ft., which contains other buildings but also contains more open space than most of the other lots. Additional vehicle parking will be added underneath the proposed pool on that same lot, which will more than make up for the increased parking demand associated with the 15 new hotel rooms in the new “Reef Building.” Ten more hotel rooms will be developed throughout the property (for a net gain of 25) by remodeling or adding on to existing buildings without increasing lot coverage. The new indoor/outdoor cafe fronting Coast Highway will be part of the existing “Coast Building” and the parking and landscaping around the new café will be reconfigured so that lot is less dominated by hardscape. The only non-conforming condition that will potentially be increased in scope (although not in severity) by the development is the height of the new elevator tower, but that is required to serve the new “Reef Building” (which does conform to the height limit) and the existing “Reef Building” (which does not conform to the height limit and currently lacks an elevator). In order to enable the new elevator to serve both buildings and meet fire code, the height of the new elevator must exceed the height limit. However, this feature will be located landward of the existing “Reef Building” (which is the same height) so it will not be visible from the beach, and the portion of it that will be visible from Coast Highway looking down is no higher than the adjacent existing “Reef Building.” The new project elements conform to the setback requirements of the LCP and are not ocean-fronting, so they will not rely on the existing foundation for protection from sea level rise or related hazards. The project will not change the existing uses on the site. The new project elements will not increase the degree of nonconformity of the whole site. As such, the project is consistent with IP Section 25.56.002 allowing legally nonconforming structures to continue and maintain use.

**IP Section 25.56.002** 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.

#### Conclusion

The proposed development does not result in demolition and/or alteration of any major structural component by 50% or more, and does not add greater than 50% of new floor area to any non-conforming structure, and thus does not constitute a major remodel. It also doesn't increase the size or degree of existing nonconformities onsite. To ensure that the final plans approved by the City for development identify all elements do not constitute a major remodel and do not increase the degree of non-conformity, **Special Condition 1** requires the applicant to submit final plans which shall identify all buildings, accessory features, and the property boundaries, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas. Additionally, **Special Condition 9** states that the Commission CDP has no effect on conditions imposed by the City of Laguna Beach pursuant to an authority other than the Coastal Act. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail. As conditioned, the proposed development is consistent with the development policies of the certified LCP.

#### **D. PUBLIC ACCESS AND RECREATION**

Both the Coastal Act and the certified LCP require that development maximize public access to the coast.

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.

The Coastal Act section cited above is expressly incorporated into the certified LUP Coastal Technical Appendix.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The project site is located between the sea and the first public road (South Coast Highway) and is adjacent to the sandy public beach. The City's public beaches are popular visitor amenities which support swimming, surfing, volleyball, and other recreation. The public beach in front of the subject site is accessed from a public stairway at the end of Cleo Street, approximately 350 feet south of the project site. Metered public parking is available along Coast Highway and on side-streets in the project area.

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. This is generally why new development must provide onsite parking. The below LCP policy specifies the parking required for new hotel/motel development:

**IP Section 25.52.012** Hotel/motel: 1 space for each room (as defined in Chapter 25.08), which opens to a public way or corridor, yard or court, plus 1 space for each 15 rooms or fraction thereof, plus 2 spaces per each residence. Additional parking may be required based on operational information such as the number of employees for shifts, when the greatest number of employees is on duty, the hours of operation and the amount of area devoted to particular uses... A 20% reduction from the total parking required for ancillary uses may be granted subject to approval authority's approval.

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

The above policy would require at least 280 parking spaces on site, accounting for the hotel and restaurant uses, if the application was deemed to be a new development or major remodel. In this case, the hotel and restaurants have been on the site since 1967 or earlier, and while the project does not constitute a major remodel, the proposed development will increase the existing number of hotel rooms and restaurant seats. As such, the proposed project will create an increase in parking demand. The applicant has thus proposed to reconfigure parking areas to increase the number of vehicle parking spaces, provide valet parking services for all spaces, and provide other transportation

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demand management measures. Under the applicant's plan, 220 vehicle parking spaces will be provided.

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

Since the Commission found that a substantial issue was raised by the appeal of the City's approval of the local CDP, the applicant has agreed to enhanced transportation demand management measures, which are identified in **Special Condition 2**. Among the requirements which the applicant has agreed to are: provision of a minimum of seven (7) ADA accessible parking spaces as part of the 220 on-site parking spaces; valet parking shall be provided to maximize the number of parking spaces available on site; a minimum of two (2) motorcycle parking spaces shall be provided on site; a minimum of eleven (11) electric vehicle charging stations shall be provided as part of the 220 parking spaces; conduit shall be run to accommodate a minimum of 22 additional electric vehicle charging stations that may be installed in the future as demand increases, as part of the 220 on-site parking spaces; bicycle racks providing a minimum of 22 bicycle parking spaces shall be provided on site; the rental of bicycles for hotel guests shall be facilitated by the hotel concierge. Hotel guests shall be made aware of this transportation option, at a minimum, on the hotel website, upon making a reservation, and upon check-in; the hotel shall promote, make available, and fully fund public transit passes for any employee desiring to commute to and/or from work; and guest or other vehicles associated with the resort shall be parked only in the assigned facility consistent with the approved plan. Resort employees shall not park on public streets. During work hours, resort employees must park only in those spaces under the control of the resort, and the resort shall reserve on-site spaces adequate for all employees driving to work to park on-site.

The applicant has stated that they have no intention to use off-site parking facilities to park vehicles of hotel staff or guests and the City applied a condition of approval which affirms this commitment. The City's Special Condition 40 requires that all parking be provided on-site, with no use of off-site lots: "Guest or other vehicles associated with the resort shall be parked only in the assigned facility consistent with the approved valet plan." The City also applied Special Condition 20: "Resort employees shall not park on public streets. During work hours, resort employees must park only in those spaces under the control of the Resort, and the Resort shall reserve on-site spaces adequate for all employees driving to work to park on-site." And Special Condition 21 requires: "To control employee parking demand, the permittee shall fully fund the appropriate fixed route transit passes for any employee desiring to commute to and/or from the resort..." City-imposed conditions that do not conflict with conditions imposed by this permit are required to be satisfied pursuant to **Special Condition 9** of this permit.

Several LCP policies require development to enhance public access along dry sand beaches, and where feasible, formalize, continued public use over areas used historically by the public.

**OS/CE Policy 3-A** Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

**LUE Action 4.3.2** Maintain and improve public pedestrian access to and along beaches and oceanfront bluff using public rights-of-way and public easements. Protect, and where feasible, formalize, continued public use over areas used historically by the public (i.e. public prescriptive rights) to gain access to and along beaches, oceanfront bluffs, and other recreational areas

Portions of the dry sand beach fronting the hotel are currently owned in fee by the applicant, and have historically been used by both hotel guests and the general public for beach recreation. Through the subject development, the applicant has proposed and the City has required dedication of a lateral public access easement across the beach fronting the hotel, and the applicant has drafted a document to record (**Exhibit 4**). Prior to the appeal, the document included a provision that appeared to grant special privileges on the beach to the hotel, but the applicant has agreed to remove this provision and it is not included in the latest draft document, which is required by **Special Condition 9** to be recoded prior to construction of the hotel, in consultation with the City and the Executive Director. To ensure the document is recorded correctly, the condition requires the permittee to submit to the Executive Director for review and approval a preliminary title report demonstrating that the permittee/landowner has executed and recorded the document.

Furthermore, to ensure that the public has equal access as hotel guests to the newly dedicated beach, **Special Condition 6** requires that no storage or staging of chairs or paraphernalia by the hotel shall occur on the beach. By acceptance of this permit, the permittee agrees that chairs or similar paraphernalia (such as, but not limited to, beach umbrellas, tables, chaises, towels, or mats) for the exclusive use of hotel guests, shall

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not be stored or staged on the sandy beach. Guests wishing to utilize chairs or paraphernalia may request items from the hotel and they may be placed on the beach while in use by the guest, but the hotel shall not place such materials in a block, install ropes or signage or any other kind of barrier or enclosure, or arrange them in any way that would restrict public use of the beach or public access across the beach or give the impression that the beach is under the control of the hotel or any other private entity. To ensure that the public's rights are protected in the future, **Special Condition 10** states that 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.

These conditions will ensure the project contributes to enhancing public access adjacent to the site consistent with OS/CE Policy 3-A and legally formalizes that access consistent with LUE Action 4.3.2.

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 3** prohibits construction equipment, vehicles, activities or access on the public beach, consistent with the applicant's proposal. The City's permit also requires the applicant to limit restaurant, bar, and ancillary uses on the site during construction, to limit parking demand so that there is adequate space for construction staging, which will occur on site in some existing parking areas.

In summary, because the project includes additional vehicle parking and transportation demand measures to meet the development's parking demand, because the development will provide a lateral public access easement over the beach, and because construction will not impede public access to the coast, the proposed project, as conditioned, is consistent with the LCP public access policies cited above and with the public access and recreation policies of the Coastal Act.

#### **E. LOWER COST OVERNIGHT ACCOMMODATIONS**

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

Section 30213 of the Coastal Act states:

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 the evaluation of methods to define whether a hotel use is low-, moderate-, or high-cost. These measures must be created by the City. Once created, they would be applied to new hotel development. However, the subject project must be evaluated based on statewide hotel data and Commission precedent because the City has not implemented these measures.

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

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels based on the average daily rates of hotels and motels across the entire State of California. Under this formula, lower cost is determined as the average daily room rates for all hotels within a specific area that have a room rate 75% less than the statewide average daily room rate. This percentage reflects the Coastal Conservancy’s 2019 “Explore the Coast” study,<sup>1</sup> in which lower cost coastal accommodations were defined as those having a daily rate of 75% or less of the statewide average daily room rate. To obtain data inputs for the formula, statewide

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<sup>1</sup> [https://scc.ca.gov/webmaster/ftp/pdf/sccbb/2019/1903/20190314Board04E\\_ETCO-Report.pdf](https://scc.ca.gov/webmaster/ftp/pdf/sccbb/2019/1903/20190314Board04E_ETCO-Report.pdf)

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average daily room rates are collected monthly by Smith Travel Research and are available on the “Visit California” webpage. To be most useful, peak season (summer) rates for standard, double occupancy rooms are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties, that are rated one- and two-diamond rated hotels. Once the low-cost rate is identified, the Commission has determined that the high-cost rate are generally prices 125% of the statewide average daily room rate. By definition, the hotel rooms that are more expensive than the low-cost room rate as calculated, but less expensive than the high-cost room rate as calculated, qualify as moderate-cost rooms.

First, using the Commission’s methodology to define the low-cost room price threshold, Commission staff obtained statewide peak season (July and August 2019) average daily room rates collected monthly by Smith Travel Research and available on the “Visit California” webpage, which were \$172.66 for July 2019 and \$173.85 for August 2019. The average daily room rates for the year 2019 are being used since the average daily room rates for 2020 have dropped significantly due to the COVID-19 pandemic and would not correctly reflect average daily room rates under non-pandemic circumstances. Hotel data from 2021 is not available. Using the July 2019 average daily room rate, the low-cost rate is \$129.50, high-cost rate is \$215.83, and the moderate-cost is between \$129.51 and \$215.82. Using the August 2019 average daily room rate, the low-cost rate is \$130.39, high-cost rate is \$217.31, and the moderate-cost is between \$130.39 and \$217.30.

The applicant has provided seven years of room rate information for the subject hotel, with a pre-covid (2015-2019) average daily room rate of approximately \$230, which increased to \$380 during the summer of 2021, the most recent period of reporting.

2015 – \$215.80 average daily rate  
2016 – \$230.59 average daily rate  
2017 – \$230.85 average daily rate  
2018 – \$226.33 average daily rate, \$304.61 average July/August rate  
2019 – \$238.86 average daily rate, \$324.02 average July/August rate  
2020 – \$228.06 average daily rate, \$293.56 average July/August rate  
2021 – \$279.22 average daily rate, \$380.69 average July/August rate

In correspondence submitted with the appeal of the City’s permit, project appellants alleged a \$100 per night rate listed on TripAdvisor in the summer of 2020 (during the height of the covid-19 pandemic), but staff and the appellants were not able to substantiate that claim. Based on the information provided by the applicant and this analysis of statewide hotel rates, the applicant’s argument that the existing hotel is high cost is supported by the evidence. It does not appear that the existing hotel provides lower cost accommodations onsite; as such, the applicant is not obligated to maintain or

provide lower cost accommodations with the proposed remodel of existing hotel rooms. However, the project will result in the creation of 25 new hotel rooms.

In the application to the City, appealed to the Commission, the applicant proposed to provide a mitigation fee that would fund provision of lower cost overnight accommodation off site. The fee was calculated based on 25% of the proposed 25 new hotel rooms, which will be higher cost, for 6.25 multiplied by \$100,000 per room, which in past actions the Commission found was adequate to construct a new lower cost hotel room, excluding land costs. The City considered alternative projects toward which to direct the fee, but selected the cottages at Crystal Cove State Park based on the following analysis: “Crystal Cove State Park is a significant, regional coastal park that also provides convenient access to Laguna Beach. The non-profit Crystal Cove Conservancy would be a responsible partner with an ongoing partnership with the Coastal Commission and an active affordable visitor accommodation project. It should also be noted that the Conservancy has previously received in-lieu fees related to a hotel development project in Newport Beach.” The Crystal Cove Conservancy submitted a letter in support of the project, pledging to use the in lieu fee for preservation of existing cottages which are in a state of disrepair, to be rented to members of the public at affordable rates consistent with CDP 5-16-0552 (approved by the Commission on March 8, 2017). The Conservancy letter provided an update on funding for cottage restoration, as well as updates on programs to provide access and environmental education to students from inland communities and access to Tribal members. However, in reviewing the appeal, the Commission found that the applicant’s offer to fund off site lower cost accommodation was not adequate, and did not agree with the applicant’s analysis that it was infeasible to provide lower cost accommodation on site.

Following the Commission’s finding of substantial issue, the applicant proposed to provide lower cost accommodation on site as part of the project. Coastal Act Section 30213 states that the Commission shall not require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, but in this case, the applicant has proposed to provide six rooms in the hotel at a lower cost, rather than providing lower cost accommodations off site. The applicant’s letter (and subsequent emails clarifying details of the proposal) state that six hotel rooms will be offered to members of the public at a rate of \$130.00 per room per night, inclusive of parking costs and resort fees, which may be adjusted in the future according to Consumer Price Index not more than once per year, with written notice to the Executive Director. The rate is not inclusive of transit occupancy taxes, which are assessed by the City, but would be consistent with the lower cost rate of \$130.39 from the Smith Travel Research data. In order to ensure that lower cost accommodation is provided long term, **Special Condition 7** would require the applicant to carry out the proposal to designate six of the new hotel rooms as lower cost, consistent with the proposal by the applicant in a letter titled Revised Project Proposal dated 1/12/22. The permittee, and any and all successors or assigns, shall provide actual lower cost accommodation on the site of the hotel. If the permittee seeks to increase the rates or reduce the percentage of lower-cost accommodations, they shall obtain an amendment to this permit that will authorize the change in conjunction with a requirement to mitigate for any increased rates (i.e. payment of in-lieu mitigation fees or provision of alternate lower cost rooms). Special

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Condition 7 would further require the hotel operator to carry out their proposal to offer the six lower-cost rooms, reserved through a first-come, first-serve reservation system on the hotel website. Interested guests may also call the hotel to inquire about lower cost room availability and make a reservation if there is availability. The hotel operator shall promote and publicize availability of the lower-cost rooms to underserved communities, such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access. To ensure that the program is being implemented consistent with the applicant's proposal, the permittee shall submit an annual monitoring report for review and written approval by the Executive Director that provides evidence of operation of the affordable accommodations in compliance with all requirements of this permit, including sufficient detail to demonstrate the total number of rooms rented daily in the hotel, the number of lower-cost hotel rooms rented for each night, the room rates for the lower-cost hotel rooms, and the total cost (which shall include parking fees and resort fees) charged to guests for the reservation of these rooms. The reports would be reviewed by an independent auditing company, approved by the Executive Director.

Because the applicant is proposing to provide six lower cost rooms, mitigation for up to 24 of the new rooms is being provided consistent with the Coastal Act and LCP policies; however the applicant proposes to mitigate for the additional fractional room that is not being provided at lower cost through a \$25,000 in lieu fee paid to the Crystal Cove Conservancy. **Special Condition 7** would require the in lieu fee to be increased to \$31,750 in order to account for inflation that has occurred since the Commission determined that a lower cost hotel room could be developed for approximately \$100,000, excluding land costs, in 2015. If the permit is issued more than one year from the date of Commission action, the fee shall be further adjusted for inflation based on the Turner Building Index from the date of Commission action. The required mitigation fee shall be deposited into an interest-bearing account(s), to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: the Crystal Cove Conservancy, the State Coastal Conservancy, a governmental agency or related non-profit organization, or a similar entity approved by the Executive Director. The purpose of the account shall be to establish lower-cost overnight visitor accommodations, such as lower cost hotel and motel rooms, hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of Laguna Beach or the greater Orange County coastal area, or a similar project to promote access to the coast.

To ensure that hotel rooms maximize public access to the coast and are not allocated to a long term residential use, **Special Condition 8** requires a general occupancy agreement, which provides that by acceptance of the permit, the permittee agrees that all hotel facilities shall be open to the general public. No timeshare or other fractional ownership or long-term occupancy of hotel rooms is permitted without an amendment to this permit. No hotel rooms shall be rented for more than 30 consecutive days. Rooms shall be rented in accordance with any local government limitations on length of hotel stay. 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 requires all hotel rooms to be identified on the project plans, so that it is clear how many rooms have been authorized by the permit to serve the public.

Finally, to ensure that future property owners/hotel operators are aware of the requirement to provide the lower cost accommodation on site or apply for a permit amendment to make any changes to the lower cost program proposed by the applicant, **Special Condition 14** requires the applicant to record a deed restriction against the parcel(s) governed by this permit, 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. To protect the Commission from the adverse effects of a lawsuit that could be brought against the Commission by the project appellant or other party who opposes the development, **Special Condition 15** requires that the landowner/permittee shall reimburse the Commission in full for all costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by another party.

As proposed and conditioned, the proposed development is consistent with the lower cost overnight accommodations policies of the certified LCP and Section 30213 of the Coastal Act.

## F. COASTAL HAZARDS

The existing development on the site has existed since before the enactment of the Coastal Act and prior to certification of the City's LCP. It is directly at the back of the beach, at an elevation of approximately +13 feet NAVD88, with a foundation that is essentially a large block wall. If the existing development were proposed today, a greater setback from the sandy beach would be required and different foundation elements would be required, in order to avoid setting the back of the beach and to allow for adaptation to sea level rise. Because the project does not rise to the level of a major remodel or new development, the existing buildings fronting the beach may remain, but the development subject to this permit may not rely on shoreline protection now or in the future, consistent with the following LCP policy:

**LUE Action 7.3.9** Ensure that new development, major remodels **and additions to existing structures on oceanfront and oceanfront bluff sites** do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title of the property as a deed restriction. [**emphasis added**]

A geotechnical investigation report was prepared for the proposed development by Petra Geosciences, dated April 6, 2018, and supplemented with additional information

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on January 17, 2019. The geotechnical report found that the site is vulnerable to liquefaction and provided recommendations for construction and drainage improvements. The applicant also obtained a coastal hazards analysis prepared by GeoSoils, Inc. dated March 18, 2019.

The applicant's coastal hazards analysis indicates that the proposed new development (new "Reef Building," additions to several buildings, new pool, and new café) would be safe from wave runup over the next 75 years with up to 4.2 feet of sea level rise (SLR). Pursuant to the Commission's 2018 "Science Update to the Sea Level Rise Policy Guidance", the anticipated SLR range for the subject site may be estimated from the La Jolla Tide Gauge<sup>2</sup> table provided in the Ocean Protection Council's (OPC's) 2018 Sea Level Rise Guidance document. The La Jolla Tide Gauge table estimates a low-risk to medium-high risk SLR range of 3.6 to 7.1 ft. for the project site. The medium-high risk scenario is higher than the applicant's submitted coastal hazards analysis.

The Coastal Storm Modeling System (CoSMoS) provides a GIS map showing potential wave run-up and flooding for the subject site based on differing SLR and storm scenarios. With 6.6 ft. of SLR (the closest value available to the upper end of the OPC's medium-high risk scenario of 7.1 ft.) and no coastal storm event, CoSMoS shows the foundations of the existing buildings on the back beach will be subject to inundation. The applicant's coastal hazards analysis finds that "wave runup will certainly reach the back beach at elevation +13 NAVD88 in the next 75 years. However, due to the elevation of the improvements (above 20.5 feet NAVD88) the wave runup will not significantly impact the improvements." The analysis also finds that the beach sand fronting the development may disappear if sea level rise is 4.5 feet or greater, but that "the erosion resistant bedrock will become natural shore protection with the existing foundations preventing further movement of the shoreline landward." The analysis also acknowledges that the existing and proposed new development could be inundated by a tsunami, but describes such events as low probability and notes that the City has a tsunami evacuation program.

The applicant's coastal hazards analysis and CoSMoS modeling indicate that the existing development's foundations may be inundated by sea level rise, high tides, and storms in the future. The proposed addition to one of the existing beachfronting building and remodel of all three buildings, do not rise to the 50% threshold categorized as a "major remodel" whereby nonconforming conditions would be required to be addressed pursuant to the certified LCP. The proposed new "Reef Building," pool, and cafe would be located at a significantly higher elevation than the existing foundations and none of those elements are beach-fronting, elevated at between 20.5 and 25 feet NAVD88 according to the applicant's analysis. The report indicates that all of the proposed development will be safe from erosion, wave runup, and coastal flooding.

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<sup>2</sup> The project site is generally equidistant from the Los Angeles area and the La Jolla area, and there is no closer Tide Gauge table available in the OPC's "[State of California Sea-Level Rise Guidance: 2018 Update](#)." The applicant's coastal hazards report uses the La Jolla datum for the predicted SLR range.

As established in the previous section, the hotel is existing development, and the project includes proposals for repair and maintenance and some improvements that do not rise to the level of a major remodel. Because the site-specific hazards study provided by the applicant's coastal engineering consultant maintains that, even with expected future sea level rise, the proposed development is not expected to be threatened by coastal hazards and thus is not expected to need shoreline protection over the life of the development, the project can be found to conform with the hazards policies of the LCP. However, given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on these inland lots are borne by the applicant, not the public at large. Land Use Element Action 7.3.9 prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs.

Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized to protect development subject to this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. A shoreline protective device would further alter the natural landform of the back beach which the development is cited on and could reduce sedimentation and cause erosion on the sandy beach below. Therefore, it must be clear that all development approved by this permit is not entitled to a shoreline protection device now or in the future. **Special Condition 12** is imposed to require the applicant to acknowledge that the applicant has no right to a shoreline protective device for the project and that no future shoreline protective device will be allowed on site to protect the proposed development.

Given that coastal hazards may impact the proposed development before the end of its economic life as a result of sea level rise, the Commission must also find that the project assures stability and structural integrity and minimizes "risks to life and property" in an area of high flood hazard without a shoreline protective device. Here, it is important to note that the site is not currently threatened by coastal hazards and has been designed to be stable and structurally sound under current conditions.

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the existing foundations at the project site under the medium-high risk sea level rise scenario, and could threaten more of the structure if sea level rise is more severe than that scenario or if a tsunami occurs. Therefore, **Special Condition 12** further requires that if any part of the proposed development becomes currently and permanently unsafe for occupancy or use due to damage or destruction by coastal hazards, the development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be safe for the life of the development, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

The Commission also finds that due to the possibility of flooding and other coastal hazards, if the applicant chooses to build in this location despite those risks, they 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 11**, 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.

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 14**, which requires the property owner record a deed restriction against the property, referencing all of the above 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.

## **G. VISUAL RESOURCES**

The LCP includes policies that protect public views and the natural character of the landscape.

**Open Space/Conservation Element (OS/CE) Policy 7A** Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

**OS/CE 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; views to and along the beach/shoreline are protected by these policies. The subject site is located on the beachfront in a densely-developed commercial and

residential area. The project involves remodel of existing buildings and construction of a new building and a pool, which will not be visible from the beach.

The existing development effectively blocks the ocean view from Coast Highway at the pedestrian level. The new development will not change this condition, although it will add more visually appealing landscaping along Coast Highway.

The proposed project will include cosmetic exterior improvements, such as new plaster and architectural finishes, and new lighting, which the City design review found would improve the aesthetic value of the hotel by providing an updated, consistent finish. Because the project includes replacement of existing deck materials and glass railings and construction of a new building that includes glass, **Special Condition 5** requires the applicants to use opaque glass or plexiglas to reduce the risk of bird-strikes on the exterior railings and windows. This condition also requires that any new lighting installed shall be downward directed with fixtures to minimize spillover and shall not be directed towards the beach. The new materials and downward directed lighting will improve visual resources without harming adjacent wildlife or polluting the nighttime beach environment with bright light.

As proposed and conditioned, the proposed development is consistent with the public view protection policies of the certified LCP.

## **H. WATER QUALITY**

Several LCP policies require protection of water quality during construction and through operation and maintenance of development.

**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).

**OS/CE Policy 4-A** Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs), where feasible, to reduce to the maximum extent practicable, pollutants and runoff from the proposed development. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

**OS/CE Policy 4-C** Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

**OS/CE Policy 4-D** Ensure that development and existing land uses and associated operational practices minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers and lakes) to the maximum extent practicable.

**OS/CE Policy 4-G** Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff 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 the impacts on water quality.

Currently, storm water on the site drains either into the existing storm drain system or sheet flows to the beach. The proposed project will increase permeable surfaces and add bio-infiltration basins, as well as new roof drains that capture and partially filter water before it reaches the storm drain system. Grease traps will be required in the new restaurants to ensure that contaminants from the restaurants do not enter the stormwater system. New dumpsters and enclosures will be added to contain trash areas.

However, adverse impacts to water quality during construction could still occur during construction. To address this, the applicant is proposing Best Management Practices to be employed during construction including; placement of sandbag barriers to contain site drainage during construction and storm drain inlet protection; additional construction BMPs to preserve water quality are required by **Special Condition 3**. These BMPs are consistent with the following LCP policies.

In addition, **Special Condition 4** requires the applicant to implement a marine debris reduction program including a comprehensive monitoring and evaluation framework, to reduce waste and single-use items (including litter, plastic and Styrofoam foodware, containers, and packaging, as well as maintain a cigarette free environment to reduce pollution. No construction access or work is proposed to occur on or from the adjacent beach. As proposed, no construction equipment or vehicles will be placed on the adjacent beach. Implementation of the construction BMPs, the marine debris reduction program, and avoidance 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.

## **I. 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.

## **J. 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 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 August 10, 2021 the Laguna Beach City Council approved the project subject to mitigation measures identified in a Mitigated Negative Declaration.

The proposed project has been conditioned to be found consistent with the certified LCP and Coastal Act. Mitigation measures have been imposed through the Commission's review of the proposed project, in the form of special conditions requiring: submittal of final site, drainage, and landscape plans, submittal of a final transportation demand management plan, implementation of construction best management practices, implementation of a marine debris reduction program, use of lighting and materials to avoid bird impacts, prohibition of storage or staging of chairs or paraphernalia on the beach, provision of lower cost accommodations on site and a payment in lieu of providing a fraction of one additional room, public rights and public trust rights, assumption of risk, waiver of liability and indemnity, waiver of rights to future shoreline protective device, and dedication of lateral public access easement on the beach.

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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## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. City of Laguna Beach Certified Local Coastal Program.
2. City File Record for Conditional Use Permit 20-6317, Design Review 19-5506, Local Coastal Development Permit 19-5507, Variance 19-5505, and Mitigated Negative Declaration