

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-17-0506

Applicants: Southern California Edison (Attn: Xinling Ouyang),
and Hometown America, LLC

Property Owners: Hometown America, LLC, and Driftwood Properties, LLC

Location: Laguna Terrace Mobile Home Park (APN #: 656-191-38 & 056-240-64) and a 2.78-acre undeveloped parcel located at the northern terminus of Driftwood Drive (APN #: 656-191-40), City of Laguna Beach, Orange County

Project Description: Request for after-the-fact approval for partial removal and decommissioning of five utility poles, and approval for complete/partial removal and decommissioning of eight additional utility poles from properties known to contain sensitive habitat. Proposed project includes a one-time removal of exotic vegetation; one-time seeding of native vegetation appropriate for the habitat type in the area; and repair of the Driftwood Property chain-linked perimeter fence. No replacement poles are proposed, and no grading is proposed.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project includes the after-the-fact partial¹ removal and decommissioning of five Southern California Edison (SCE) utility poles, and includes the complete/partial removal and

¹ "Partial removal" of poles is comprised of removal of wires, cross-arms and top half of the poles, which allows the lower half of certain poles to remain in place along with telecommunication cables that are presently attached.

decommissioning of eight additional utility poles within two properties in Hobo Canyon as part of SCE's maintenance program. Of the eight additional poles, six are being completely removed. The project area is located in two separate properties: 2.78-acre undeveloped parcel (APN: 656-191-40) (herein referred to as "Driftwood Property"); and portion of the Laguna Terrace Mobile Home Park (APN: 656-191-38 & 056-240-64) (herein referred to as "Park").

The Coastal Commission has permit jurisdiction over the areas located within areas of deferred certification. The subject site is located within the Hobo Canyon area of deferred certification. Certification in this area was deferred due to issues regarding development in sensitive habitat areas. As conditioned, the project will be consistent with the Coastal Act. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

The primary issue raised by this project relates to potential adverse impacts to environmentally sensitive habitat areas (ESHA). Anticipated impacts to ESHA will be caused by accessing the work sites (poles) and performing the proposed maintenance activities. SCE is proposing to access the poles by vehicle and by foot within the Driftwood Property, and by crane and use of existing developed roads within the Park. SCE estimates that the project impact area will be limited to 3,703 square feet (0.085-acre) of coastal sage scrub and southern maritime chaparral habitat. SCE is proposing a one-time enhancement (one-time weed abatement and seeding) of habitat disturbed by project maintenance activities because it asserts that only temporary impacts to habitat are anticipated, and because the area of impact has been reduced to the minimum necessary to accomplish the goals of the project. The proposed habitat enhancement would help facilitate the recovery of native vegetation that may be disturbed by the development. The Commission imposes habitat enhancement per **Special Condition 4**, be implemented if impacts to ESHA persist after 90 days following completion of all pole removal activities.

The proposal, however, does not include a requirement for remedial measures should the habitat enhancement fail, and should the impacted areas not fully recover to pre-construction baseline conditions. Should habitat disturbed by pole removal activities at a minimum not fully recover to baseline pre-construction conditions, the proposed one-time habitat enhancement is inadequate with regard to, among other things: the low ratio of mitigation area to impact area (the applicant proposes 1:1, while for past projects, the Commission has required a minimum of 3:1 mitigation for permanent impacts), lack of specific success criteria, minimal monitoring of the habitat restoration, and the need for additional steps.

To assess the extent of all impacts and to assure that all unavoidable adverse impacts to habitat (including potentially temporal loss) are adequately mitigated, the Commission imposes **Special Condition 3**, which requires the submittal of a Pre-Construction Survey to document baseline pre-construction conditions based on a Reference Site(s) ("Reference Site(s)") of all areas newly and formerly disturbed by the proposed pole removal activities (inclusive of areas disturbed by the unpermitted development). If the Pre-Construction Survey identifies that impacts remain in areas formerly disturbed by unpermitted pole removal activities, the applicants will be required to submit an amendment to this CDP to propose adequate mitigation for such impacts. This condition also requires the submittal of a Post-Construction to assess the recovery of all impacted areas by the proposed development one (1) year after completion of all pole removal activities. If the Post-

Construction Survey identifies that impacts remain in all areas disturbed by the newly proposed pole removal activities, the applicants shall be required to submit an amendment to this coastal development permit to propose adequate mitigation.

SCE is proposing to implement protective avoidance measures during project activities, which are listed on **Exhibit 3**. To ensure that measures protective of habitat and sensitive species are implemented, **Special Condition 1** and **Special Condition 5** requires, among other things: a biological monitor onsite during project activities, timing restrictions for the pole maintenance activity so that the work occurs outside of identified bird breeding seasons and does not disrupt nesting activities, marking native vegetation clearly visible to maintenance personnel, and demarcation of the limits of work.

In addition, staff is recommending **Special Condition 2** requiring the submittal of a final project staging plan, and **Special Condition 6** requires that the applicants demonstrate they have received all required authorizations from the property owner(s) or easement holder(s), including the California Coastal Conservancy. **Special Condition 7** requires that the applicant repair the chain-linked perimeter fence as proposed, and that it be maintained for the life of all project related activities.

As conditioned, the project will be consistent with biological protection policies of Chapter 3 of the Coastal Act, and no permanent or unmitigated impacts to coastal resources are anticipated.

Thus, staff recommends that the Commission **approve** Coastal Development Permit Application 5-17-0506 as conditioned and as further discussed in this report.

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Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Work Plan

Exhibit 3 – SCE Proposed Avoidance Measures

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-17-0506 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 5-17-0506 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 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 permittees 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 of 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 permittees 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. Habitat and Sensitive Species Protection Measures During Construction

- A. Prior to any project activities, a qualified Resource Specialist shall survey the project site and identify with flags all areas of existing native vegetation. Avoidance measures shall be implemented for native coastal sage scrub, maritime chaparral, and rare plant species in areas where these species exist as a natural community and in areas where these species co-occur with non-native species. Such avoidance measures shall include stakes, flags, or other markers clearly visible to maintenance personnel.
- B. The limits of work shall also be clearly demarcated to identify the boundaries of the construction area. Temporary pole and animal movement-friendly single cable or rope fencing shall be used delineate the site. All plans shall include a note apprising all on-site workers of the sensitive nature of the on-site habitat.
- C. An appropriately trained biologist shall monitor all project activities for disturbance to sensitive species or habitat area. Based on field observations, the biologist shall advise the applicants regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The biological monitor shall have the authority to stop work if any adverse impacts to sensitive species at the project site and/or within the project vicinity could result from continuation of the proposed development. The applicants shall not undertake any activity that would disturb sensitive species or habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.

2. Staging and Storage. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and approval of the Executive Director a Staging Plan, which shall provide for:

- A. Designated areas for staging of construction equipment and materials, including receptacles and temporary stockpiles of materials. All stock piles and construction materials shall be covered, enclosed on all sides, located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion.
- B. Designated and confined areas for maintaining and washing machinery and equipment specifically designed to control runoff. Thinners or solvents shall not be discharged anywhere on the Properties, including into sanitary or storm sewer systems. The discharge of hazardous materials into any receiving waters is prohibited.

3. Site Surveys. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a sampling design plan for quantitative Pre-Construction Surveys to document the present site conditions of all areas within limits of all the proposed work and Post-Construction Surveys, to document site conditions, one (1) year following completion of the proposed construction, in all areas within the limits of the completed work. The sampling design plan must include the sampling

approach (e.g. distribution and number of samples), methods (e.g. quadrats, transects), and similarity criteria that will be employed to document the pre-and post-construction site conditions.

A. Pre-Construction Survey.

B. The quantitative Pre-Construction Survey must document the present site conditions of all the areas within the limits of the proposed work, where no work has previously occurred. Additionally, the quantitative Pre-Construction Survey must identify the extent of impacts to the areas that were previously disturbed by unpermitted pole removal activities. All the areas within the limits of the present proposed work, including those areas previously disturbed by the unpermitted work, shall be quantitatively sampled to determine native species richness and absolute total native cover values. The survey shall also identify the number and status (area cover) of all the rare native species within the limits of the proposed work. The survey shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g. placement of quadrats and or transects). The results of the pre-construction surveys shall be submitted to the Executive Director within fifteen business days after completion.

i. Areas Formerly Impacted by Unpermitted Pole Removal Activities

a. The survey shall identify the native plant species richness, absolute total native cover, and the number and status of rare native plants within the areas formerly impacted by unpermitted pole removal activities to determine actual impacts and the success of habitat recovery in meeting at a minimum the baseline pre-construction conditions based on a Reference Site (s) (see b. below). The survey shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g. placement of quadrats and or transects). The results of the pre-construction surveys, including the survey data for the Reference Site(s), shall be submitted to the Executive Director within fifteen (15) business days after completion. If the Pre-Construction Survey results identify that the native habitat has failed to recover, based on the approved similarity criteria, and impacts remain within the areas previously disturbed by unpermitted pole removal activities, within 90 days of the submittal of the Pre-Construction Survey, the applicant shall apply for an amendment to this coastal development permit to obtain approval for additional habitat restoration and mitigation.

b. Baseline pre-construction conditions shall be based on a Reference Site (s) near Poles 1729013E and 1331732E. The Reference Site (s) shall be undisturbed and may be located on-site or, if such a site is not present, in the general vicinity of the project site. The pre- and post-construction surveys shall include a detailed description of the Reference Site (s), including rationale for selection, location, and species composition. The Reference Site (s) shall serve as the baseline for measuring success of habitat recovery or enhancement activities for the areas formerly impacted by unpermitted pole removal activities. The quantitative survey approach and methods conducted at the Reference Site (s) shall be exactly the same as those conducted for pre-and post-construction surveys in the work areas.

C. Post-Construction Survey.

D. The extent of impacts to the native habitats in all areas within the limits of all the proposed work shall be re-sampled and documented in a post-construction quantitative survey taken one (1) year after the completion of the pole removal activities. The post-construction survey results shall be submitted to the Executive Director within fifteen (15) business days

of completion of the survey. In order to document post-construction conditions, all the areas within the limits of the present proposed work, including those areas previously disturbed by the unpermitted work, shall be quantitatively sampled, per the exact approach and methods used for the pre-construction surveys, to determine native species richness, absolute total native cover, and number and status of rare native plants. The survey shall identify the native plant species richness, absolute total cover, and number and status of rare native plants, of the impacted areas to determine actual impacts and the success of habitat recovery in meeting, at a minimum the baseline pre-construction conditions, per the approved similarity criteria, of the areas where no unpermitted work occurred. Impact upon areas where unpermitted work occurred will be determined based on reference site (s) data (see subsection A.i.b. above). The survey shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g. placement of quadrats and or transects). If the post-construction survey results show that impacts remain, within 90 days of the submittal of the Post-Construction Survey, the applicant shall apply for an amendment to this coastal development permit to obtain approval for additional habitat restoration and mitigation.

- 4. Proposed Habitat Enhancement.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a detailed Habitat Enhancement Plan. The Habitat Enhancement shall include the following:
- A. If no impacts to ESHA are apparent 90 days after completion of pole removal activities within all the areas of the limits of the proposed pole removal activities, habitat enhancement is not required. If impacts persist after 90 days, the proposed habitat enhancement shall be implemented.
 - B. Site Plan. A site plan (with topography) with the boundaries of the development work, and the location and species of non-native invasive plants to be removed and the location and species of the native plants to be protected in place.
 - C. The boundaries of the habitat enhancement area shall be physically delineated in the field. Temporary signage with text such as “habitat enhancement, please keep out” may be permitted. The Habitat Enhancement Plan shall state that all delineation materials shall be removed when no longer needed, and verification of such removal shall be provided in the final post-construction survey.
 - D. Habitat enhancement shall include removal of all non-native invasive plant species, and seeding with locally sourced native coastal sage scrub and/or southern maritime chaparral plant species.
 - i. During habitat enhancement, only manual methods (e.g., hand-pulling, shovels, and other hand tools) shall be used to remove target non-native invasive plants. And native plants will be avoided to the maximum extent feasible during the course of manual plant removal activities;
 - ii. No herbicides shall be employed.
 - iii. Non-native invasive plant material shall be properly disposed of off the project site.
 - iv. Best management practices to be implemented to avoid the recruitment or spread of non-native invasive species;
 - v. If plants, cuttings, or seeds are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. Non-native plant species shall not be employed, which could supplant native plant species in the habitat enhancement area.

The permittees shall undertake habitat enhancement in accordance with the approved final Habitat Enhancement Plan. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Timing and Operational Constraints.

- A. To avoid adverse impacts on sensitive bird species, all project activities shall not occur during the bird nesting season between March 15 and August 31 of any year, unless written permission from the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service is obtained and provided to the Executive Director for review and approval.
- B. If construction and/or restoration activities are to occur during bird nesting season (March 15 through August 31), a qualified biologist, with experience in conducting bird surveys, shall conduct a bird nesting survey(s) within the thirty (30) days prior to commencement of construction to detect any active raptor and/or California Department of Fish & Wildlife (CDFW) listed species and/or species of special concern nests or nesting activity within 500 feet of the construction area. If an active nest or nesting activity is determined to be located within 500 feet of active construction and/or restoration activities, all such activities within 500 feet from raptor nests and 300 feet from CDFW listed species and/or species of special concern, shall cease until the qualified biologist has confirmed that the detected nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. The 500-foot limit (raptors) and/or 300-foot limit (CDFW listed species and/or species of special concern) shall be identified and protected with flagging, stakes, or animal migration-friendly fencing. Construction personnel shall be instructed by the qualified biologist on the sensitivity of the area and biological importance of maintaining the buffer area to allow the continuation of the natural nesting and fledgling process. The biologist shall record the results of the recommended protective measures described above to document compliance with this special condition and with applicable State and Federal laws pertaining to protection of nesting birds. These biologist's recorded results shall be submitted to the Executive Director within fifteen (15) days of discovery of the nest(s), along with a description of protective measures implemented.

6. Proof of Legal Ability to Comply with Conditions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall demonstrate the permittees' legal ability or authority to comply with all the terms and conditions of this coastal development permit.

7. Fence Repair. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall repair the Driftwood Property chain-linked perimeter fence, and shall maintain this fence for the life of the project (inclusive of habitat enhancement and restoration if required).

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The proposed project includes a request for after-the-fact approval for partial removal and decommissioning of five utility poles, and request for approval of complete/partial removal and decommissioning of eight additional utility poles from areas known to contain sensitive habitat. Of the eight additional poles, six idle poles will be completely removed. “Partial removal” of poles is comprised of removal of only idle section of 12kV distribution line (removal of wires, cross-arms and top half of the poles), which allows the lower half of certain poles to remain in place along with telecommunication cables that are presently attached. The proposed project includes one-time removal of exotic vegetation and one-time seeding of native vegetation appropriate for the habitat type in the area within all areas disturbed by the proposed development. No grading is proposed. No replacement poles are proposed.

The proposed project is located within two separate properties: within a portion of the Driftwood Estates Property, a 2.78-acre property (“Driftwood Property”); and within portions of the Laguna Terrace Mobile Home Park (“Park”) in the City of Laguna Beach (**Exhibit 1**). The subject poles are specifically located near the northern terminus of Driftwood Drive and adjacent to M and K Street. Residential development borders the site to the south, west, and northwest. Open space borders the site to the east and northeast. The Driftwood property is owned by Driftwood Properties, LLC. The Park is owned by Hometown Laguna Terrace, LLC. Of the two property owners, the owner of the Park has joined as a co-applicant for the project although both property owners received invitations to do so. SCE is the entity that is proposing to carry out the proposed development.

The project areas are located on hilly terrain inland of Pacific Coast Highway, more than 650 feet inland of the beach. The proposed project is not anticipated to have any impacts on public coastal access.

B. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject utility poles are located within two properties: a portion of the Driftwood Estates Property, a 2.78-acre parcel (“Driftwood Property”); and a portion of the Laguna Terrace Mobile Home Park (“Park”) in the City of Laguna Beach. These properties are known to contain sensitive biological resources. SCE has provided a Biological Evaluation Report prepared by SCE’s Environmental Services Department in June 2017, as well as a USFWS California Gnatcatcher Protocol Level Survey prepared by Keane Biological Consulting, dated May 30, 2017. Based on the

biological assessment, the project site contains diverse habitat including five plant communities: *Encelia californica-eriogonum fasciculatum scrub*, *Artemisia californica scrub*, *Heteromeles arbutifolia-Rhus integrifolia chaparral*, *Ceanothus meagacarpus chaparral*, *Annual grassland*, and *ornamentals*. Moreover, at least two State or Federally-listed threatened or endangered species (one plant and one bird species) occur or are likely occur within the project area: big-leaved crownbeard (*Verbesina dissita*) and California gnatcatcher (*Polioptila californica*). Big-leaved crownbeard plant species were observed at the base of or within the vicinity of six poles at the Driftwood Property and observed at the base of the slope below a pole at the Park.

Historically, the Coastal Commission has recognized the existence of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between southern maritime chaparral and coastal sage scrub within the project site (Driftwood Property and Park). The Commission finds that the southern maritime chaparral and coastal sage scrub within the project area meet the definition of environmentally habitat areas (ESHA) as these habitats, especially maritime chaparral, support populations of big-leaved crownbeard², which is listed as “threatened” under both federal and state law and is endemic to this part of Orange County. Section 30107.5 of the Coastal Act defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

Both the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (Evans 2001) consider the various types of coastal sage scrub and the maritime chaparral that occur on the property to be “sensitive” or “special status” plant communities. Southern maritime chaparral is listed as a rare plant community by the CDFW’s Natural Diversity Data Base and it performs the important ecosystem function of providing habitat to rare and threatened species such as big-leaved crownbeard. Although there are thousands of acres of coastal sage scrub still in existence in California, over 85 percent of the original acreage has been lost. The loss in the coastal zone is probably much higher and is especially significant because coastal sage scrub provides critical habitat for the coastal California gnatcatcher, a “threatened” species under the Endangered Species Act. In its review of the Driftwood Estates proposal at the subject site, the CDFW (Tippets 2001) found that, “The quality of the coastal sage scrub on the site varies, but it is generally not high quality. However, this vegetation community is widely regarded as threatened, and any loss is generally considered directly and cumulatively significant. In addition, rufous-crowned sparrow, a species of special concern strongly associated with coastal sage scrub, was observed on the site.”

California gnatcatchers have also been observed at the site.³ In this setting, both the southern maritime chaparral and the coastal sage scrub are rare habitat types, they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities. Finally, most of the slopes within the property boundaries are maritime chaparral mapped as “very high value” habitat under the City of Laguna Beach General

² In the United States, natural populations of big-leaved crownbeard are only found on coastal hillsides and canyons in Laguna Beach. Although generally restricted to southern maritime chaparral, big-leaved crownbeard also occurs to a lesser extent in coastal sage scrub and mixed chaparral. There has been an 82 to 93 percent loss of maritime chaparral habitat in southern California due to urbanization and agriculture. The majority of remaining populations is on private land and threatened with residential development.

³ California Department of Fish and Wildlife Natural Diversity Database: Laguna Beach Quad (No. 3311757/071D), California gnatcatcher (*Polioptila californica*) observation 836. Gnatcatchers were also observed on the Driftwood Property by both Southern California Edison and Commission Staff on April 6, 2017.

Plan. Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of ESHA under the Coastal Act.

Impacts and Mitigation

Section 30240 states that only resource-dependent uses are allowed within ESHA and that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas. The project constitute maintenance of utility poles, as the safe removal of utility poles is ultimately part of their maintenance, otherwise if left in place without such work, they could degrade in place and constitute hazards. SCE is proposing the complete/partial removal and decommissioning of eight (out of thirteen) utility poles as part of its maintenance program; six out of the eight poles would be completely removed. For some of the utility poles, only partial removal is proposed (removal of the top half and electrical components) because the lower half of the pole in place will continue to support telecommunication cables. Although utility poles are not a resource-dependent use, the Commission's evaluation of maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the existing development. The Commission does, however, regulate the method of maintenance to ensure that it conforms to the Chapter 3 policies of the Coastal Act.

The Driftwood Property will be accessed at the northern terminus of Driftwood Drive. The eight poles located within the Driftwood Property are located approximately 380 feet to 830 feet north of the Driftwood Drive terminus. To minimize impacts to native vegetation, vehicular access (by line truck) to these eight poles will be accomplished along areas previously disturbed by the unpermitted development extending from Driftwood Drive up to a point near Pole 1331731E (**Exhibit 2**). From that point, foot access is planned to access and complete work at Poles 1331732E and 1729013E; these poles would be removed by using a portable pole jack, and maintenance personnel using hand tools.

The other five poles are within the Laguna Terrace Mobile Home Park and will be removed by a crane staged along M Street and K Street, including Pole 1331733E which is located on a steep slope above Hobo Canyon with no road access. Removal of Poles 1331732E and 1331731E by crane staged along K Street is not possible because these poles are located more than 200 feet from the street and the crane's work range is limited to 38 feet to 140 feet.

As characterized by SCE, removal of the poles will help reduce ongoing impacts to sensitive biological resources in the area, including exposure to FIFRA-approved chemicals (e.g. creosote, chromated copper arsenate, or pentachlorophenol) commonly used to treat wooden poles.

However, because the location of the utility poles, which are in ESHA and/or adjacent to rare plant species, dictates the location of equipment and physical work required to perform the removal activities, the proposed construction/maintenance activities are anticipated to result in impacts to ESHA. SCE estimates that a total of 3,703 square feet (0.085-acre) of habitat area would be impacted, and maintains that the project has been designed to avoid and minimize adverse impacts by: 1) accessing the poles within the Driftwood Property using a pre-existing dirt road, reuse of an unpermitted but existing temporary "drive and crush" vehicular path (from the prior unpermitted work), and by foot; 2) using a large crane that will be staged on existing developed access roads within the Park; and 3) implementation of habitat and sensitive species protective measures. In

addition, SCE characterizes the anticipated impacts as “temporary” because no permanent displacement of habitat is anticipated to occur.

SCE is proposing a one-time enhancement of the habitat areas disturbed by the project activities following the completion of the proposed construction/maintenance work. The proposed habitat enhancement includes a one-time removal of non-native plants by hand from areas disturbed by the pole removal activities (to occur winter or early spring), and one-time seeding with a mixture of native shrubs to prevent the weeds from reestablishing within the treated areas (to subsequently occur in fall) to mitigate for the impacts to the surrounding ESHA and rare plant species. Weedy species within the disturbed areas include tree tobacco seedlings, purple false brome, and African fountain grass. The intent of the habitat enhancement is to help the recovery of plants that have been temporarily or permanently impacted by project activities and to help promote native plant establishment. The Commission imposes habitat enhancement per **Special Condition 4**, be implemented if impacts to ESHA persist after 90 days following completion of all pole removal activities.

What SCE characterizes as an existing “dirt road” has not been in use for decades and is vegetated with maritime chaparral and coastal sage scrub. Furthermore, this particular road was subject to restorative activities pursuant to Consent Orders (CCC-10-CD-01 and CCC-10-RO-01) approved by the Commission, which has allowed the natural recruitment of sensitive native vegetation to occur along this road, including big-leaved crownbeard and coastal sage scrub. SCE has not proposed replacement planting nor a method by which success of the proposed habitat enhancement will be evaluated for determining whether it would be successful at mitigating the impacts of the proposed development work.

In addition, the project includes the request for after-the-fact (ATF) approval for the development work that has already occurred without a coastal development permit. The ATF component includes the partial removal and decommissioning of five (out of thirteen) utility poles, as well as the impacts to ESHA that resulted from the vehicular “drive and crush” of four big-leaved crownbeard plants and trampling of coastal sage scrub species on March 17, 2017. Although in October 2017, SCE provided Commission staff photographic evidence that the four big-leaved crownbeard plants impacted by this work exhibited signs of regeneration/resprouting, a subsequent survey has not been provided to demonstrate that the all vegetation impacted by this work has fully recovered. Demonstration of full recovery will be difficult as baseline pre-construction conditions were not recorded prior to any of the unpermitted development.

The Commission has considered impacts to be “temporary” if no ground disturbance (e.g. grading) or vegetation removal has occurred and if the area temporarily impacted has recovered to its pre-impact status one year following the respective impact. The following procedure is employed for temporary impacts: (1) If no impacts are apparent after 90 days, no action is required; (2) If impacts persist after 90 days, the habitat must be restored through SCE’s proposed enhancement plan; (3) If no impact is found after one year, no additional mitigation is required; and, (4) If after one year from the date of impact the habitat has not recovered, the impact is, by definition “permanent” and must be mitigated. Permanent impacts include those areas of ESHA that are to be developed, or that will be frequently disturbed to maintain the development, or where during development the ground will be significantly disturbed or the vegetation killed, or where the impact to the habitat lasts longer than one year. The applicants will be required to submit an amendment to this permit if

its impacts to ESHA are determined to be “permanent,” so that the Commission may impose adequate mitigation.

The habitat enhancement as proposed is essentially passive restoration within the disturbance footprint only, i.e. 1:1 (impact-to-mitigation area ratio) on-site mitigation with no maintenance or monitoring proposed. The proposal does not include a requirement for remedial measures should the habitat enhancement fail, and should the impacted areas not fully recover to pre-construction baseline conditions. Should habitat disturbed by pole removal activities at a minimum not fully recover to baseline pre-construction conditions, the proposed one-time habitat enhancement would be inadequate with regard to, among other things: the low ratio of mitigation area to impact area, lack of specific success criteria, minimal monitoring of the habitat restoration, and the need for additional steps.

To assess the extent of all impacts and to assure that all unavoidable adverse impacts to habitat (including potentially temporal loss) are adequately mitigated, the Commission imposes **Special Condition 3**, which requires the submittal of a Pre-Construction Survey to document baseline pre-construction conditions based on a Reference Site(s) (“Reference Site(s)”) of all areas newly and formerly disturbed by the proposed pole removal activities (inclusive of areas disturbed by the unpermitted development). If the Pre-Construction Survey identifies that impacts remain in areas formerly disturbed by unpermitted pole removal activities, and the applicant shall be required to submit an amendment to this coastal development permit to propose adequate mitigation. This condition also requires the submittal of a Post-Construction Survey to assess the recovery of all impacted areas by the proposed development one (1) year after completion of all pole removal activities. If the Post-Construction Survey identifies that impacts remain in all areas disturbed by the newly proposed pole removal activities, as the applicant shall be required to submit an amendment to this coastal development permit to propose adequate mitigation.

Only as conditioned, can the project be found to be in conformance with the Section 30240 of the Coastal Act regarding protection of ESHA.

Other Necessary Habitat Protection Measures

SCE proposes, among other protective measures, to: (1) schedule all work between September 1 and February 15 to avoid impacts to sensitive bird species; (2) a 72-hour pre-construction survey of natural resources (nesting birds/sensitive plants) prior to any work (resources to be flagged for avoidance); (3) a biological monitor present during work operations to ensure the implementation of minimization measures; (4) implementation of best management practices; and (5) limit vehicle and foot access to existing access roads or previously disturbed/developed areas and limit egress and ingress to the same paths to the extent practicable. SCE has also indicated that no blading, removal, grubbing, or cutting of native vegetation would be done. For a list of all protective measures proposed by SCE, see **Exhibit 3**.

To ensure that these measures protective of habitat and sensitive species are implemented, **Special Condition 1** is imposed. This special condition also requires the physical demarcation of the limits of work. To ensure the proposed project implements this measure, the Commission imposes **Special Condition 5**, which specifies time and operation constraints to avoid adverse impacts on sensitive species and bird nesting activities.

SCE has indicated that staging and stockpiling will be sited within existing access roads or previously disturbed/developed areas. Because a staging plan has not yet been provided to staff and to ensure that ESHA is not significantly disrupted, **Special Condition 2** requires the submittal of a final staging plan for review and approval by the Executive Director.

In addition, SCE is proposing to repair the Driftwood Property chain-linked perimeter fence to prevent trespassing and as additional protection measure to protect ESHA onsite. **Special Condition 7** requires that the applicant repair the chain-linked perimeter fence as proposed, and that it be maintained for the life of all project related activities.

Alternatives

SCE asserts that the proposed project is the least environmentally damaging feasible alternative. Section 30108 of the Coastal Act states that “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, social and technological factors. Alternative methods of pole removal and decommissioning considered include: (1) “no project” alternative and (2) removal by helicopter. When facilities are no longer in service, per SCE’s standards, these facilities are removed. The “no project” alternative would keep the status quo. The utility poles, which are not resource-dependent and are not allowable uses within ESHA, would remain within the project site as they presently stand. Under the proposed project, SCE would only completely remove 6 out of thirteen utility poles. However, partial removal of the other seven poles would result in the removal of SCE-operated and maintained facilities supported by the poles, which would help reduce future potential adverse impacts to ESHA as SCE would no longer need to further maintain their facilities within the project site. Under the second alternative, removal by helicopter method would not reduce disturbance and would require the evacuation of all residents within the fly zone, which would be logistically infeasible as there are many residences adjacent to the project sites.

SCE assert that the proposal is the preferred alternative. Although the project will inevitably result in impacts, the project, as conditioned, has been designed to minimize impacts to ESHA to the greatest extent feasible. In addition, no grading is proposed. As such, the current proposed project is the least environmentally damaging practicable alternative.

The Driftwood Property is covered by a conservation easement held by the California Coastal Conservancy. Pursuant to Consent Orders approved by the Coastal Commission in 2010, the Driftwood Property is deed restricted for open space conservation and public access, and per the easement, only “development”, as defined in the Coastal Act, associated with habitat restoration and removal of existing above ground structures for the sole purpose of protecting or improving sensitive habitat is allowed pursuant to a CDP. This project is consistent with the easement because it results in the removal or partial removal of existing above ground structures, which will improve the sensitive habitat on site. All other “development”, including the removal of “major vegetation” is prohibited.

The Commission finds that the proposed development, as conditioned, is consistent with Section 30240 of the Coastal Act concerning biological resource protection.

C. UNPERMITTED DEVELOPMENT

On March 17, 2017, SCE began the process of partially removing utility poles without a coastal development permit, using heavy equipment. On March 21, 2017, SCE received notification

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through local residents and the City of Laguna Beach of the Coastal Commission's permit jurisdiction over the areas where the development was occurring. SCE then stopped all work pending further coordination with the Coastal Commission. On June 7, 2017, SCE submitted a coastal development permit application for the after-the-fact approval for the complete/partial removal of five utility poles, and for approval of the complete/partial removal of eight additional poles.

The work performed in March 2017 includes the removal of the only the top half of five poles (Poles 1087503E, 1331399, 1331400E, 1331729E, 1331730E) (**Exhibit 2**). Removal of cut segments were left on the ground at two of these pole locations. No work has begun with regard to the remaining eight poles.

SCE states that it believed the project was exempted under Coastal Act and the Repair, Maintenance, and Utility Hook-up Exclusions from Permit Requirements (September 5, 1978). In some cases, the removal of existing utility poles is exempt under the Coastal Act. However, pursuant to Section 13252 of the Commission's Regulations, the removal of existing utility poles is not exempt if the proposed activity has the potential to adversely impact ESHA, which is the case here, as described in more detail above in subsection IV.B (Biological Resources) of this staff report. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. Commission review and action on this permit will resolve the violations identified in this section once the permit has been fully executed and the terms and conditions of the permit complied with by the applicant.

The applicants have applied to the Commission for a coastal development permit (CDP No. 5-17-0506) to resolve the issues related to the unpermitted development at the site and for the ATF approval of the proposed project, and has paid the appropriate application fee.

Despite this unpermitted development, consideration of Coastal Development Permit (CDP) No. 5-17-0506 by the Commission is based solely upon the Chapter 3 policies of the Coastal Act, with guidance from the policies of the certified Local Coastal Program.

APPLICATION FILING FEE FOR AFTER-THE-FACT DEVELOPMENT

Under this permit application (CDP Application No. 5-17-0506), SCE is requesting after-the-fact approval of the unpermitted development noted above and described in more detail in the project description. Although the development has taken place prior to submittal of this application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act.

Section 30620 of the Coastal Act states, in relevant part:

The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of any application for a coastal development permit...

Section 13055 of the California Code of Regulations sets the filing fees for coastal development permit applications, and states in relevant part:

(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit, but in no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

(i) The required fee shall be paid in full at the time an application is filed. However, applicants for an administrative permit shall pay an additional fee after filing if the executive director or the commission determines that the application cannot be processed as an administrative permit. The additional fee shall be the amount necessary to increase the total fee paid to the regular fee. The regular fee is the fee determined pursuant to this section. In addition, if the executive director or the commission determines that changes in the nature or description of the project that occur after the initial filing result in a change in the amount of the fee required pursuant to this section, the applicant shall pay the amount necessary to change the total fee paid to the fee so determined. If the change results in a decreased fee, a refund will be due only if no significant staff review time has been expended on the original application. If the change results in an increased fee, the additional fee shall be paid before the permit application is scheduled for hearing by the commission. If the fee is not paid prior to commission action on the application, the commission shall impose a special condition of approval of the permit. Such special condition shall require payment of the additional fee prior to issuance of the permit.

Subsection (d) of California Code of Regulations Section 13055 indicates that the fee for an after-the-fact permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either: the permit application can be processed by staff without significant additional review time or the owner did not undertake the development for which the applicants are seeking the after-the-fact permit. In this case, the Executive Director did not reduce the fee because staff has spent significant additional time to review the proposed project as well as researching the (unpermitted) development's history. Also, one of the applicants of this permit application (SCE) undertook the development for which it is seeking the after-the-fact permit.

For considering calculating the fee for the project, the fee would be based on development cost (Section 11.B of the filing fee schedule). Based on the filing fee schedule for the 2016/2017 fiscal

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year, the permitting fee for this project based on development cost is \$3,399. Five times the regular permit fee of \$3,399 is \$16,995, which has been paid by SCE.

D. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to 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 provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach Local Coastal Program (LCP) was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time. The Land Use Plan of the LCP consists of the Coastal Land Use Element, the Open Space/Conservation Element, and the Coastal Technical Appendix. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 *Zoning Code*. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification.

The subject site is located within the Hobo Canyon area of deferred certification. Certification in this area was deferred due to issues regarding development in sensitive habitat areas. However, the proposed project, as conditioned, will be consistent with Chapter 3 of the Coastal Act, as there will be no significant disruption of habitat values. Therefore, the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Special Conditions imposed will mitigate adverse impacts to coastal resources and public access. The **Special Conditions** address the following issues: **1)** protection measures; **2)** staging of construction equipment and materials; **3)** pre-construction and post-

construction surveys and remedial measures if necessary; **4)** proposed habitat enhancement; **5)** timing and operational constraints; **6)** proof of legal ability to comply with conditions; and **7)** fence repair. Therefore, the Commission finds that, as conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect of the proposed project, there are no remaining significant environmental impacts within the meaning of CEQA, and the project is consistent with CEQA and the policies of the Coastal Act.

Appendix A - Substantive File Documents

- Coastal Development Permit Application (CDP) No. 5-17-0506
- *Biological Evaluation Report (SCE Project No. TD 1104776)* prepared by Southern California Edison, Environmental Services Department, dated June 2017.