

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA OFFICE
 300 EAST OCEAN BLVD., SUITE 300
 LONG BEACH, CA 90802
 (562) 590-5071

**F17a**

Appeal Filed:	2/28/2019
49th Day:	Waived
Staff:	M. Revell-LB
Staff Report:	10/04/2019
Hearing Date:	10/18/2019

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO

Appeal Number: A-5-LGB-19-0015

Applicant: City of Laguna Beach, Department of Public Works

Local Government: City of Laguna Beach

Local Decision: Approval with Conditions

Appellants: Mark and Sharon Fudge

Project Location: 20612 Laguna Canyon Road, Laguna Beach, Orange County APN 629-061-04

Project Description: Construction of erosion control devices within the creek including articulating concrete block lining along portions of the creek banks, weirs, and rip rap within Laguna Canyon Creek. Relocation of pedestrian bridge, new retaining wall with cable railing, wood fencing around the parking lot perimeter and onsite and offsite habitat restoration is also proposed.

Staff Recommendation: Determine that **Substantial Issue** exists and **approve** the permit

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because the City relied on outdated biological documents that did not address ESHA, which raises a substantial issue as to project's

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Commission staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed because the City relied on outdated biological documents that did not address ESHA, which raises a substantial issue as to project's

consistency with the City of Laguna Beach certified Local Coastal Program (LCP). Staff also recommends that, after a public hearing, the Commission **approve the de novo permit** with special conditions.

The primary issue areas raised by the proposed development are adverse impacts to protection, preservation and/or enhancement of vegetation and wildlife resources related to installation of erosion control devices in a Blue-line stream (Laguna Canyon Creek), visual resources, natural hazards, water quality, and archeological and paleontological resources. The City's approval of a development within the Blue-line stream and riparian habitat may adversely impact environmentally sensitive habitat within and adjacent to Laguna Canyon Creek, thereby failing to protect, preserve, and maintain the habitat as required by the City's LCP policies.

The substantial issue recommendation is based on the lack of findings in the City's staff report that discuss the significant habitat value in the creek that merits protection. The City determined that the proposed development meets the criteria for a variance from the required 25-foot setback from the centerline of the stream. The City found the variances acceptable based on special circumstances (that the work is necessary to protect the existing Animal Shelter and Pacific Marine Mammal Center structures), and that the work will act to preserve, enhance or restore the significance of the watercourse which currently has low habitat value, and was based on an outdated biological survey. Furthermore, Laguna Canyon Creek is a "Blue-line" stream, designated as such on the official USGS Map. Blue-line streams and their riparian habitat are rare in Southern California and are threatened. Pursuant to the policies in the City's LCP, the existence of riparian habitat in this area, as well as Laguna Canyon Creek's status as a "Blue-line" stream, required a determination by the City as to whether or not the creek supports ESHA, based on current biological surveys. The appellants also contend that the City did not fully address the capacity for the proposed project to meet flood conveyance objectives of the proposed project. As such, the proposed project approved by the City raises a substantial issue, as do those elements of the proposed development that may adversely affect land and marine resources.

The appellants also contend that the City did not fully address cumulative impacts of other recently approved projects and future projects located along Laguna Canyon Creek, and that the proposed project may adversely impact archeological or paleontological resources. Given the substantial issues that exist relating to the development in the stream and the habitat protection policies of the LCP, the Commission's de novo review of the proposed development can consider whether the proposed development is consistent with all the applicable standards set forth in the certified LCP.

Staff is recommending the Commission **approve** the de novo coastal development permit application with special conditions. **Special Condition 1** requires the applicant to submit a final Habitat Restoration Plan and provide annual monitoring reports. **Special Condition 2 and 3** require biological monitoring and restricts construction timing to avoid impacts to sensitive species as a result of the project. **Special Condition 4** requires conformance with all conclusions and recommendations contained in the Geotechnical Reports. **Special Condition 5** requires the applicant to acknowledge and accept the assumption of risk, waiver of liability and indemnity. **Special Condition 6** requires the applicant to submit an application for a Coastal Development Permit or an amendment to this permit for any future improvements. **Special Condition 7** requires the applicant to follow additional Best Management Practices.

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. (14 CCR § 13117.) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plans

Exhibit 3 – Proposed Landscaping Plan

Exhibit 4 – *Laguna Canyon Creek Erosion Control and Restoration Project*,
prepared by Dr. Jonna Engel, CCC Senior Ecologist, October 2, 2019.

Exhibit 5 – *Appeal A-5-LGB-19-0015, Laguna Canyon Creek Restoration*,
prepared by Dr. Lesley Ewing, CCC Senior Coastal Engineer, September 30, 2019.

Exhibit 6 – Appeal by Sharon and Mark Fudge

Exhibit 7 – City’s Notice of Final Action for Coastal Development Permit 18-1686

Exhibit 8 – City’s Resolution Approving Local Coastal Development Permit 18-1686

Exhibit 9 – City’s Response to Issues Raised by the Appeal

I. MOTION AND RESOLUTION - SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-LGB-19-0015 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

*The Commission hereby finds that Appeal No. A-5-LGB-190015 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

On January 24, 2019, the City of Laguna Beach City Council approved Local Coastal Development Permit No. 18-1686 for the installation of erosion devices, including articulating concrete block lining, weirs and rip rap, within Laguna Canyon Creek to protect the Animal Shelter from creek erosion, and to relocate the existing pedestrian bridge, construct a cable railing to support the parking lot, wood fencing around the parking lot perimeter, and landscaping (**Exhibit 2**). On February 12, 2019 the Coastal Commission's South Coast District Office received the Notice of Final Action for Local Coastal Development Permit No. 18-1686 (**Exhibit 7**). On February 28, 2019, the Commission received a valid appeal from Mark and Sharon Fudge (**Exhibit 6**). March 4, 2019 was the last day of the ten working-day appeal period (due to the South Coast Office being closed for a period of 3 business days). The appeal asserts that the City-approved development does not conform to the requirements of the certified City of Laguna Beach LCP.

A. Summary of Appeal Contentions

The appellant has raised several contentions with regard to the local approval of the proposed development. First, the appellant contends that the proposed project fails to sufficiently protect natural resources and adversely impacts Environmentally Sensitive Habitat Areas. Secondly, the appellant contends that the locally approved project does not promote the preservation and restoration of natural drainage channels by installing artificial erosion control devices, and does not adequately address flood concerns. Third, the appellant contends that the local approval does not sufficiently protect the watercourse by allowing construction in the stream, (i.e. armoring, caissons and retaining wall) without consideration of necessary setbacks, for which the City granted a variance. The appellants' fourth contention is the locally approved project adversely

impacts visual resources. Fifth, the appellant contends that the local approval did not require monitoring during ground-disturbing work for archaeological, paleontological, or cultural resources. Finally, the appellant contends that the proposed project violates the California Environmental Quality Act (CEQA) because the City failed to take into account the cumulative impacts of this project and other proposed projects in this location.

B. Summary of Applicant's responses to Appeal Contentions

In response to the Appellants Mark and Sharon Fudge's contention that the proposed project adversely impacts riparian habitat, natural resources, and does not appropriately address the flooding concerns, the City states that the project site in its current state is neither pristine in character, physical complexity or biological diversity and is not within a High or Very High Biologically Sensitive Area, but is rather Low Value Habitat and is presumptively not in ESHA. However, the City stated that upon project completion, the project area will be restored with greater native plant diversity that will increase the biological functions and habitat values, will prevent further degradation of the creek system, and will promote increased native plant biodiversity long-term.

With regard to the appellants' contention that the proposed project does not sufficiently address flooding concerns, the City asserts that the primary criterion for the proposed project is erosion control, in addition to flood control, and that the improvements are required to address recent storm damage and to install improvements that will protect the existing structure adjacent to the channel. The proposed articulated concrete block (ACB) lining along both channel banks on the north end of the creek and immediately north of the existing vehicular access bridge is required in order to prevent and control erosion of the creek banks and the widening of the channel will aid in flood conveyance. The channel floor remains soft bottom, and the proposed ACB product allows plant growth in the open cells. Landscaping has been coordinated to comply with the Laguna Beach Fire Department (LBFD) fuel modification guidelines and in cooperation with California Department of Fish and Wildlife (CDFW) to achieve a balance between protecting the creek's natural environment and protecting the existing structures in the event of a fire. The proposed landscaping will include the removal of non-native and invasive species, and the installation of new native trees and shrubs. This new vegetation will complement the area's intended natural setting and enhance the creek's habitat value.

With regard to the City allowing construction in the stream without the consideration of needed setbacks, the City granted a variance for the construction based on the special circumstances applicable to the subject property. According to the City, the project will minimize the potential of future flooding-related damage and protect the creek from further erosion.

III. LOCAL GOVERNMENT ACTION

On November 29, 2018, and January 24, 2019, the City of Laguna Beach Design Review Board held public hearings on the proposed project. At the conclusion of the public hearings on January 8, 2014, the City of Laguna Beach Planning Commission approved with conditions Local Coastal Development Permit No. 18-1686, Design Review No. 18-1685, Variance 18-1702 and the Mitigated Negative Declaration/Mitigation Monitoring Program for the project.

On February 12, 2019, the Coastal Commission’s South Coast District Office received from the City the Notice of Final Action for Local Coastal Development Permit No. 18-1686, and the ten working-day appeal period commenced.

IV. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within one hundred feet of any wetland, estuary, or stream [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a “major public works project” or a “major energy facility” [Coastal Act Section 30603(a)(5)].

Section 30603 of the Coastal Act states, in part:

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

Section 30603(a)(2) of the Coastal Act establishes the project site as being appealable by its location within one hundred feet of a stream (Laguna Canyon Creek).

The grounds for appeal of an approval, by a certified local government, of a local coastal development permit authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [the Coastal Act].*

The grounds listed for the current appeals include contentions that the approved development does not conform to the standards set forth in the certified LCP regarding setbacks, biological resources and visual resources.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to section 30603. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review.

In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. The project site is not located between the sea and the first public road paralleling the sea, therefore, public access considerations are not required. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

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

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. At the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The project site is located in Laguna Canyon Creek, directly east of Laguna Canyon Road (State Route 133), two and a half miles inland of Main Beach (**Exhibit 1**). The project site is within a City-owned parcel, which currently contains the Laguna Beach Animal Shelter and Pacific Marine Mammal Center. Laguna Canyon Creek is a major stream corridor that cuts through the parcel from north to south along its western side (**Exhibit 2**). The lot is located in the Institutional Zone of the Laguna Canyon Annexation Area Specific Plan.

The local coastal development permit authorized the construction of erosion control devices, including articulating concrete block lining (ACB) along both channel banks on the north end of the creek and immediately north of the existing vehicular access bridge; removal of the existing pedestrian bridge and lining, and construction of a new pedestrian bridge to the south, immediately adjacent to the existing vehicular bridge; construction of an approximately 6-foot high concrete retaining wall with cable railing attached to wood-textured posts along the western channel bank adjacent to the parking lot; installation of bioengineered slope protection, including un-grouted rip-rap and three bend way weirs along the toe of the eastern slope immediately west of the Pacific Marine Mammal Center; Removal of nineteen existing trees to accommodate stream bank recontouring and meet fuel modification zone requirements; installation of landscaping, including replanting eleven trees in accordance with Laguna Beach Fire Department (LBFD) fuel modification zone guidelines and removing non-native and invasive species; and installation of six-foot high wood fencing around the Animal Shelter parking lot perimeter to replace existing chain link fencing.

The project site is surrounded by a mix of uses including light industrial, open space, and residential hillside areas. The light industrial uses are located to the north and south, and open space and residential hillside uses are located to the east. A dog daycare kennel abuts the northerly property line, and the City's Alternative Sleeping Location – operated by The Friendship Shelter-- abuts the southern property line. Vehicular access to the site is taken only from Laguna Canyon Road, which runs along the western property line.

Ongoing erosion of the creek channel has threatened the Animal Shelter and Marine Mammal Center, which were both constructed prior to 1975, and is undermining the paved surface parking lot that serves these two uses. Interim erosion control measures consisting of grouted and loose rip rap, some constructed without the benefit of a coastal development permit, have been installed along the channel banks over the years to protect the adjacent improvements. Over time, these measures have resulted in a disjointed array of partially supported embankments for the paved parking area and creek banks immediately adjacent to the creek. The flow capacity of the creek is also restricted by several bridges that cause pinch-points that constrict the flow of the creek. Narrowed creek banks and reduced water flow have created conditions that have encouraged the settlement of sediment, which has promoted the growth of invasive vegetation to encroach into the channel, further reducing the creek's capacity to convey storm flows, and also decreasing the habitat value of the creek.

The site is located within a very-high fire hazard severity zone and within the floodway and 100-year floodplain. The Laguna Canyon Creek has been designated as a "Blue-line stream" on the USGS 7.5 Minute Quadrangle Series Map. Laguna Canyon Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach LCP was certified by the Coastal Commission on January 13, 1993. The City's LCP is comprised of a variety of planning documents including the Land Use Element, Conservation/Open Space Element, and Laguna Canyon Annexation Specific Plan. The Implementation Plan (IP) portion is Title 25, the City's Zoning Code.

As provided below, the City of Laguna Beach certified LCP contains a number of coastal resource policies that are applicable to this proposed development including, but not limited to, the management and protection of biological and visual resources.

Open Space/Conservation Element Policies:

4-A: Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.

4-I: Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.

7-A: Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.

7-C: Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.

7-F: As a condition of approval for new building construction, require the dedication of open space easements, development rights, or the use of some similar instrument for the purpose of protecting unusually significant natural features. Preserve and provide an optimum setting for prominent site features such as natural rock outcroppings, promontories and ridges.

7-K: Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to consider scenic and conservation values, impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and recontouring and replanting where the natural landscape has been disturbed.

8-A: Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.

8-C: Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

8-I: Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

8-J: Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:

- 1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*
- 3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:*
 - (a) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively,*
 - (b) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;*
 - (c) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damage or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent.*

(d) No new parcels shall be created which are entirely within a coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.

8-L: Preserve and protect fish and/or wildlife species for future generations.

8-M: Preserve a continuous open space corridor within the hillsides in order to maintain animal migration opportunities

8-N: Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.

9-A: Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.

9-C (a): Streams on the Major Watershed and Drainage Courses Map which are also "Blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.

9-C(b): Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.

9-D: Permit extensions of decks and other portions of a structure within the required setback for significant natural drainage areas only if:

- a. There are no supports to the ground within the setback areas; and*
- b. The extensions do not encroach closer than fifteen feet from the centerline of flow.*

9-F: Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.

9-I: Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.

9-J: Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

9-K: Promote preservation and enhancement of the natural drainage of Laguna Beach

9-Q: Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.

10A: Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.

10C: Require projects located in geological hazard areas to be designed to avoid the hazards, where feasible. Stabilization of hazard area for purposes of development shall only be permitted where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as open space.

10F: To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."

Laguna Beach Land Use Element Policies:

Goal 2: Preserve, enhance and respect the unique character and identity of Laguna's residential neighborhoods.

Policy 2.1: Maintain the diversity and uniqueness of individual neighborhoods. Development standards and design review guidelines shall minimize the scale and bulk of new construction and/or renovation and require development to be compatible with the surrounding residences.

Policy 2.2: Encourage the preservation of historically significant residential structures and protect the character-defining components of Laguna Beach's traditional neighborhoods.

Policy 2.7: Evaluate the impact of proposed development on hillsides and along ridgelines and require building design, location, and arrangement to avoid continuous and intrusive impacts on hillside view areas and skyline profiles.

Policy 2.8: Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography and/or other

significant onsite resources, and protect public views as specified in the Design Guidelines and the Landscape and Scenic Highways Resource Document.

Policy 2.9: Require the use of appropriate landscaping, special architectural treatments, and/or siting considerations to protect public views for projects visible from major highways and arterial streets.

Policy 2.10 Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.).

Goal 3: Preserve, enhance, and respect the unique, small-scale village character and individual identity of Laguna Beach’s commercial areas.

Policy 3.10: Require building design and siting to be compatible and integrated with natural topographic features, minimize significant alteration of natural topography or other significant on-site resources, and protect public views as specified in Design Guidelines and Landscape and Scenic Highways Resource Document by maintaining the low-profile character of structures. Require use of appropriate landscaping, special architectural treatments, and siting considerations for projects visible from major highways and arterial streets. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff-top trails, visitor-serving facilities, etc.).

Goal 5: Promote compatibility among land uses in the community.

Policy 5.1: Establish standards and review procedures to ensure that infill development and/or redevelopment is neighborhood compatible.

Policy 5.2: Ensure that all new development, including subdivisions and the creation of new building sites and remodels that involve building additions, is adequately evaluated to ascertain potential negative impacts on natural resources and adjacent development, emphasizing impact avoidance over impact mitigation. Required mitigation should be located on-site rather than off-site. Any off-site mitigation should be located within the City’s boundaries and in close proximity to the project.

Goal 6: Provide a diversity of land uses that enhance the community.

Policy 6.6: Preserve and promote an increase in the stock of residential rental units in the City.

Policy 6.14: Encourage art-related uses and art in public places in appropriate zones.

Goal 7: Protect, preserve, and enhance the community’s natural resources.

Policy 7.3: Design and site new development to protect natural and environmentally sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Policy 7.4: Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impacts avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible.

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).

Policy 7.10: Require new construction and grading to be located in close proximity to preexisting development to minimize environmental impacts and growth-inducing potential.

Goal 10: Ensure that proposals for new development, subdivisions, and major remodels are sufficiently evaluated to protect public health and safety and natural resources.

Policy 10.1: Require that all subdivisions, including parcel maps, are compatible with neighborhood character including building pad elevations, visual and physical relationships to natural topography, open space, view corridors and surrounding residences, and neighborhood access.

Policy 10.2: Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations.

Policy 10.3: Ensure that all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.

Policy 10.7: 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.)

Laguna Canyon Annexation Area Specific Plan Policies:

Section III, Topic 1: Rural Atmosphere

Goals: A. Preserve and enhance the rural character of the Laguna Canyon Properties area.

Policy 1: Ensure that proposed land uses in the Laguna Canyon Annexation area have a rural character.

Policy 3: Require the preservation of ridgelines and encourage the preservation of undeveloped hillside slopes and existing open space.

Policy 4: Require that new development along Laguna Canyon Road provide landscaping to improve the scenic quality of the Canyon. The planting of native oaks and sycamores, and eucalyptus and shrubs should be encouraged to screen new development from Laguna Canyon Road.

Policy 8: Encourage owners of existing and proposed building sites which support mature trees and other vegetation to properly care for and preserve such habitats.

Policy 10: Require that any development be of small-scale in order to maintain the rural character of the Canyon.

Section III, Topic 3: Light Industrial Uses

Goal: Maintain a land use pattern which responds to the historical development pattern of residential and industrial uses.

Policy 1: Ensure that industrial development in Laguna Canyon is compatible with surrounding residential uses.

Policy 2: Require new light industrial uses to provide landscaping to improve the scenic quality of the Canyon. Encourage planting of native vegetation to screen these uses from Laguna Canyon Road and to provide a buffer for adjacent residential, agricultural, recreational and open space areas.

Section III, Topic 4: Biology and Habitat

Goal: Preserve and enhance significant biological resources and wildlife habitats.

Laguna Beach LCP Technical Appendix Policies:

Section 30233: (A) The diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible, less environmentally damaging alternative.

Section 30236: *Channelization, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30240 (A): *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

Section 30240 (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 such areas, and shall be compatible with the continuance of such habitat areas.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Factors Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified LCP and, if applicable, the access policies of Chapter 3 of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has been guided by the following five factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the local coastal development permit may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625 of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue as to the project’s consistency with the certified LCP or, if applicable, the access policies of the Coastal Act.

It is staff’s assessment that the appellant raises several substantial issues with the City’s approval of a CDP for this project. This staff report addresses the most significant issues in detail and

recommends a fuller review of all of the issues when the Commission reviews the project de novo.

The appellants' first contention that the City-approved project adversely impacts Environmentally Sensitive Habitat Areas (ESHA), because the site is within a "Blue-line" stream and meets the definition of ESA under the City's LCP and past Commission action on a nearby project located upstream involving Laguna Canyon Creek. Moreover, the appellants assert that the Biological Habitat Assessment for the subject project was performed in December of 2013, making the report five years old at the time of the appeal and therefore outdated. Finally, the appellants assert that the removal of 19 trees and only replanting 11 to comply with fuel modification standards fails to sufficiently protect natural resources and is inconsistent with the LCP. This contention raises a substantial issue. The relevant LCP policies state:

Environmentally Sensitive Areas

Policy 8-I of the Open Space/Conservation Element states:

Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

Policy 8-J of the Open Space/Conservation Element states, in part: *Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

- 1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

Policy 8-A of the Open Space/Conservation Element states: *Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.*

Policy 8-C of the Open Space/Conservation Element states: *Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*

Furthermore, the Open Space/Conservation Element contains many policies that encourage and promote the protection, preservation, and restoration of water bodies and habitat such as the Creek at issue in this appeal. For example, the following policies are representative of the emphasis placed on the value of such habitat:

Policy 4-A of the Open Space/Conservation Element states: *Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.*

Policy 4-I of the Open Space/Conservation Element states: *Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.*

Policy 9-A of the Open Space/Conservation Element states: *Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.*

Policy 9-F of the Open Space/Conservation Element states: *Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.*

Policy 9-K Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach.*

The Habitat Assessment conducted on behalf of the City performed by RBF Consulting, dated December 10, 2013, found that the proposed project site supports habitat in a narrow strip at the bottom of Laguna Canyon along the banks of Laguna Creek that consists of native riparian forest, ruderal, wetland, and disturbed plant communities. The riparian forest is dominated by black willow (*Salix gooddingii*) and arroyo willow (*Salix lasiolepis*). RBF stated that the majority of the wildlife observed during the habitat assessment consisted of avian species, but no reptiles, mammals, fish, or amphibians were observed during the survey. RBF concludes in their report that the onsite habitats have been “heavily disturbed from existing development, channelization of Laguna Creek, and routine human activity.” Further, the report concludes that although the riparian forest plant community on the project site “provides foraging and cover habitat for year-round/seasonal avian residents and migrating songbirds that could occur in the area, the project site supports a disturbed/modified riparian forest plant community that has a low to moderate

potential to provide suitable nesting and foraging habitat for Cooper’s hawk, least Bell’s vireo, and other non-sensitive avian species.”

Moreover, in response to the contention that the project allows the removal of native vegetation in ESHA, the City’s response to the appeal dated April 3, 2019 stated that:

“The project site, according to the attached Local Coastal Plan, is not within a High or Very High Biologically Sensitive Area. Therefore, this implies that it is not within an ESHA. The existing condition of the site is neither pristine in character, physical complexity or biological diversity. The site in its current condition would be described as a Low Value Habitat given that it is disturbed, impacted, biologically simplified and is of low faunal carrying capacity. Furthermore, that native habitat present at the site (e.g. Typha latifolia and Salix lasiolepis) is neither rare nor does it support individual rare species as biological resources reports and surveys conducted for the project determined that no endangered or special status species were identified within the project site or its proximity.”

Policy 8-I defines the creek as an ESA, *Environmentally Sensitive Areas (ESA’s) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map*, despite the City’s position that the creek is not an ESA based the fact that the creek is not mapped as High or Very High habitat value in the LCP (which is not the sole criteria for defining an ESA). Because the Creek is an ESA, and because policy 8-J above requires detailed biological assessments for all development proposed in ESAs, the biological data needs to be relevant to the site and reflect current conditions. The City relied on the outdated habitat assessment when approving the CDP. The Findings of the City’s staff report did not comment on the presence of ESHA and did not discuss the project’s compliance with the City’s many LCP policies that encourage and/or require protecting, preserving, restoring, enhancing, and maintaining such habitat, which raises a substantial issue.

Fuel Modification

The appellants also contend that the City’s restoration plan did not comply with the LCP policies for fuel modification. Such policies include:

Land Use Element Actions and Policies:

Action 7.4.3 Review development to minimize adverse impacts to abutting dedicated open-space areas: taking into consideration both the appropriate habitat buffer zones and the required fuel modification zones.

Policy 7.6: Implement individualized fuel modification programs for existing legal building sites whenever environmentally sensitive resources are present.

Action 7.6.2: Allow fuel modification alternative means and methods for existing legal building sites in areas where high-and very-high-value habitat may otherwise be impacted and in areas where an Environmentally Sensitive Habitat Area (ESHA) may otherwise be impacted.

Policy 10.6: *Require all fuel modification to be located within the site being developed. Exceptions may be granted for existing legal building sites when findings can be made by the approval authority that other alternatives are not available and a strict application of this provision would danger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site...*

Policy 10.6.1: *The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Any required thinning of flammable vegetation shall be conducted outside of bird nesting season if feasible...*

Open Space/Conservation Policies:

8-N: *Prohibit intrusion of fuel modification programs into environmentally sensitive areas, including chaparral and coastal sage scrub.*

The appellants argue that since the City's approved project occurs within an ESA, and the LCP prohibits the intrusion of fuel modification programs in ESAs, the project is inconsistent with the LCP. Action 7.6.2 allows for alternative fuel modification methods in ESAs, while Policy 8-N prohibits fuel modification in ESAs. This aspect of the project also raises a substantial issue.

Flood Control

The appellant's second contention is that the locally approved project does not promote the preservation and restoration of natural drainage channels by installing artificial erosion control devices, and does not adequately address flood concerns. Additionally, the appellants refer to Coastal Development Permit 5-92-363, which was issued to "construct a 10-foot wide concrete lining with cut-off walls within Laguna Canyon Creek to protect an existing foot bridge" which was located in front of the Animal Shelter. The appellants note that that Special Condition No. 4 of that permit required that *if the existing footbridge is removed, demolished or substantially improved, the subject creek lining will be removed and the creek bed will be returned to a natural state...and a bridge design that does not require channelization of the creek or disruption of the environmentally sensitive area.* The appellants contend that the City's action regarding this project is inconsistent with this permit, which is not grounds for appeal, but will be addressed in the De Novo staff report.

The appellants also contend that the locally approved project will not adequately accommodate the projected maximum flood conveyance goal of 1,800 cubic feet per second (cfs), because as proposed it will only be able to convey 900 cfs., which only meets 50% of the flood conveyance goal.

Substantial flooding has occurred in Laguna Canyon in 1937, 1938, 1941, 1966, 1969, 1978, 1980, 1983, 1995, and has caused extensive damage to life and property. During winter storms of 2010, the Laguna Beach Animal Shelter and Pacific Marine Mammal Center were severely flooded and

sustained major structural damage. The most recent rains in February 2019 also flooded Laguna Canyon and caused road closures along the floodplain of the Creek. According to the City, the erosion of the creek bank in front of the Animal Shelter Building has eroded significantly. In 1995 the top of the slope was approximately eighteen feet from the Animal Shelter building.

Subsequent to significant storm damage, a 2009 survey of the property shows the top of the slope had moved to within only six feet of the Animal Shelter structure. Over the years the City has implemented various types of temporary erosion control devices to stabilize and protect the slope, some which were permitted by the Commission, and some that were not. The appellants raise concerns regarding the unpermitted development that the City has undertaken in order to stabilize the creek banks over the years, which are not a valid grounds for appeal, but will also be addressed in greater detail in the De Novo portion of the staff report.

The City's LCP contains several policies that prioritize the preservation of the natural character of the landscape in Laguna Beach when analyzing development in the coastal zone:

Policy 8-C of the Open Space/Conservation Element states: *Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.*

Furthermore, the Open Space/Conservation Element contains many policies that encourage and promote the protection, preservation, and restoration of water bodies and habitat such as the Creek at issue in this appeal. For example, the following policies are representative of the emphasis placed on the value of such habitat:

Policy 9.13 of the Land Use Element states: *Continue to require nonstructural methods for flood control, such as preservation of watershed lands and natural drainage channels, rather than structural methods, such as a concrete flood channels whenever feasible.*

Policy 4-A of the Open Space/Conservation Element states: *Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.*

Policy 4-I of the Open Space/Conservation Element states: *Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.*

Policy 9-A of the Open Space/Conservation Element states: *Promote the preservation and restoration of Laguna's natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.*

Policy 9-F of the Open Space/Conservation Element states: *Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.*

Policy 9-G of the Open Space/Conservation Element states: *Develop standards for maintenance of free and adequate flow in natural drainage channels.*

Policy 9-H of the Open Space/Conservation Element states: *Coordinate, wherever possible, natural and man-made drainage structures so that natural channels will contribute to transport a volume of runoff equal (or as close as possible) to that which would have occurred if the project watershed were in its natural condition before development.*

Policy 9-I of the Open Space/Conservation Element states: *Require new development projects to control the increase in the volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

Policy 9-J of the Open Space/Conservation Element states: *Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

Policy 9-K of the Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach.*

Policy 9-L of the Open Space/Conservation Element states: *In conjunction with the County of Orange, prepare a flood control plan and program of implementation for Laguna Canyon and all tributaries, pending funding availability.*

Policy 9-M of the Open Space/Conservation Element states: *Where feasible, require flood control programs to incorporate non-structural methods, such as preservation of watershed lands and natural drainage channels, rather than structural methods such as concrete flood channels and engineering works. In cases where structural methods are necessary, drainage structures shall be invisible conveyances, undergrounded and revegetated to camouflage any disturbance created during construction in order to provide the least damaging environmental alternative possible.*

Policy 9-N of the Open Space/Conservation Element states: *Encourage private property owners to inspect and maintain private drainage structures, particularly before the rainy season and during heavy storms.*

Policy 9-O of the Open Space/Conservation Element states: *Investigate methods of establishing and maintaining debris collection devices at suitable locations in the major canyon areas prior to the rainy season, pending funding availability.*

Policy 9-P of the Open Space/Conservation Element states: *Initiate proceedings to amend the Master Plan of Drainage to allow expenditure of funds for debris collection devices.*

Policy 9-Q of the Open Space/Conservation Element states: *Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology. Policy 9R of the Open Space/Conservation Element states: Periodically review the City Master Plan of Drainage to ensure it promotes the objectives of the City's General Plan.*

Policy 9-S of the Open Space/Conservation Element states: *Erosion control measures shall be required for new development in areas designated Residential/Hillside Protection, as specified in Title 25 of the City's Municipal Code for properties adjacent to the Aliso Greenbelt. No grading, trenching or similar activity shall be permitted within Aliso/Wood Canyon Watershed during the rainy season from October 1 to April 1.*

Policy 9-T of the Open Space/Conservation Element states: *All graded areas shall be planted and maintained for erosion control and visual enhancement purposes. Use of native plant species shall be emphasized.*

In addition to the policies of the LCP that prioritize the preservation and restoration of natural drainage channels, the LCP also contains policies that address when it may be permissible to implement artificial erosion control measures:

Policy 9-B Open Space/Conservation Element states: *Prohibit filling and substantial alteration of streams and/or diversion or culverting of such streams **except as necessary to protect existing structures in the proven interest of public safety, where no other methods for protection of existing structure in the flood plain are feasible** or where the primary function is to improve fish and wildlife habitat. This provision does not apply to channelized section of streams without significant habitat value.* (emphasis added)

After the appeal was filed, the City provided an Updated Habitat Assessment Report prepared by Michael Baker International dated May 1, 2019, which states that Laguna Canyon Creek “has been channelized for flood control purposes.” As stated previously, the City has installed interim erosion control measures over the years along the channel banks within the subject segment of the creek, which include a combination of loose and grouted rip rap along portions of the stream banks in an effort to protect the adjacent structures and improvements such as the pedestrian bridge, auto bridge, and parking lot. The non-cohesive nature of the miscellaneous improvements has resulted in limited flood conveyance capacity, erosion and sedimentation problems. However, there are significant lengths of the stream banks in this location that are comprised entirely of soil and riparian vegetation, thus the stream is only partially channelized (**Exhibit 4**).

With regard to the flood conveyance issue, the City contends that although there were alternatives analyzed for this project that could have accommodated 1,800 cfs. of flood water, those alternatives did not provide the best restoration opportunity like the project that was selected, or resulted in the removal of public parking. These alternatives will be addressed in further detail in the De Novo portion of the staff report.

In this case, pursuant to Policy 9-B, the City of Laguna Beach determined, in part, that due to the fact that this segment of Laguna Canyon Creek is already partially channelized with loose and grouted riprap, and that the proposed project restores the creek’s hydrologic and biologic values by removing the grouted rip rap, invasive vegetation and accumulated sediment, and replanting with native riparian vegetation, the approved project does partially restore the creek to a more natural state. Regardless of such biologic or hydrologic improvements, the City found that the proposed project is necessary to protect the two existing structures, in the proven interest of public safety.

With regard to the determination that the proposed project is “necessary” to prevent further erosion and flood control, Commission staff’s coastal engineer Dr. Lesley Ewing reviewed the project and determined that the proposed alternative was not the best option for flood control or erosion, which is explained in further detail in the De Novo section of this staff report. Given the conflicting professional opinions on this issue, more analysis should be conducted to determine the “necessity” of the proposed project to prevent further erosion and flood control.

Whether or not the approved work in the creek is necessary, or whether there are any feasible alternatives for protecting existing structures in the flood plain, must be further analyzed, therefore this contention raises a substantial issue in regards to consistency with the LCP.

Creek Setbacks

The appellants’ third contention that the local approval does not sufficiently protect the watercourse by allowing construction in the stream without consideration of necessary setbacks for which the City granted a variance also raises a substantial issue. The Laguna Canyon Creek has been designated as a “Blue-Line” stream on the USGS 7.5 Minute Quadrangle Series Map. The LCP requires that development be set back from streams with the width of the setback varying depending on the circumstances. Policies 9-C(a) and 9-C(b) in the City’s LCP address the applicable setbacks for development streams, and when variances to these standards may be issued:

9-C (a) of the Open Space/Conservation Element states:

Streams on the Major Watershed and Drainage Courses Map which are also “Blue-line” streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.

9-C(b) of the Open Space/Conservation Element states:

Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in

special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.

Here, the City's Implementation Plan (LBMC 25.05.025(F)) states the findings that the City must make so that a variance can be approved:

- 1) *Variances may be granted when there are special circumstances applicable to the property involved, including size, shape, topography, location and surroundings, that would cause the strict application of the zoning ordinance to deprive the property of the privileges enjoyed by other property in the vicinity and under identical zoning classification*
- 2) *Such a variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which is a right possessed by other property owners under like conditions in the same vicinity and zone.*
- 3) *The granting of the variance would not be detrimental to the public health, safety, convenience and welfare or injurious to property or improvements in the vicinity in which the property is located*
- 4) *The granting of such a variance will not be contrary to the objectives of the zoning ordinance or the general plan.*

In addition, the City's Implementation Plan articulates the following for Setbacks in Significant Watercourses 25.50.030 (4 and 5).

- 1.) *Extent. A setback of twenty-five feet shall be maintained from both sides of the centerflow line (as determined and approved by the city engineer) of significant watercourses. The setback may be increased in the interest of protecting or mitigating stated environmental concerns as approved by the director of community development director.*
- 2.) *Disturbance of Vegetation Prohibited.*
 - a. *No disturbance of the native vegetation within an established watercourse setback area is permitted at any time, except as part of a fuel modification program approved by the director of community development.*
 - b. *The design review board may approve landscape programs within established setbacks designed to enhance or restore native riparian vegetation or the aesthetic character of the watercourse.*
- 3.) *Building and Structures Prohibited. No building or structure may be placed in an established setback from a significant watercourse, except for bridge structures for access purposes.*
- 4.) *Encroachment Variances. Variances for the purpose of placing a building or structure within an established watercourse setback area, other than as permitted in subdivision 3 of this subsection may be granted only when the following findings are made in addition to those listed in Section 25.05.025(F)*
 - a. *The proposed encroachment will act to preserve, enhance or restore the significance of the watercourse.*
 - b. *The proposed encroachment is not likely to impair the functional, scenic, and ecological purposes of the watercourse.*

- 5.) *Encroachment variances shall be subject to the conditions that no physical disturbance of the watercourse shall occur at any time; and that, where feasible, specified native riparian vegetation shall be replanted where disturbance of vegetation occurs during construction.*

Pursuant to Policy 9-C(a) and relevant policies of the Implementation Plan discussed above, the City of Laguna Beach granted two variances to be able to: 1) replace the existing chain-link fence around the perimeter of the Animal Shelter with a wooden fence, and 2) construct the ACB, bridge support, hydraulic transition structure, retaining wall, and grading within the 25-foot setback.

In this case, pursuant to Policy 9-C(a), the City of Laguna Beach determined, in part, that due to the fact that the work would be occurring within and adjacent to Laguna Canyon Creek, the required setback for this project should be 25 feet from the centerline of the creek, and that the City would need to issue variances to encroach into that required setback. Based on the language of the LCP, there are multiple elements contained in each of the policies which must be analyzed, all of which raise questions that, pursuant to the five-factor test, necessitate a finding of Substantial Issue.

The City found that there were special circumstances applicable to the property, including the location of the existing structures that if the strict application of the zoning ordinance is applied, will deprive the property of privileges enjoyed by others. According to the City, special circumstances include the proximity of the structures to the creek, i.e., the Animal Shelter at its closest point is only six feet from the creek banks due to continued erosion. In 2010, due to insufficient flow capacity, significant flooding at both the Animal Shelter and PMMC occurred, and to protect the facilities from further loss due to erosion and flooding, the variance was necessary.

Additionally, the City found that the variance was necessary for the preservation and enjoyment of a substantial property right possessed by other owners in the same area because without the project, the operation of both facilities would be threatened due to continued erosion and potential flooding causing future damage. Furthermore, the granting of the variance would provide a benefit to public health, safety and welfare of the property and surrounding area by preventing further erosion, increasing flow capacity, thereby providing relief to the structures and the continued operation of the facilities. Moreover, the City found that the granting of the variance would not be contrary to the objectives of the zoning ordinance and the General Plan because given that the existing building site locations are situated within the watercourse setback, they were “grandfathered” at the time this portion of Laguna Canyon was annexed into the City of Laguna Beach, and the variance allowing the construction of erosion devices within the setback area to protect the structures is consistent with the uniqueness of the area.

The last two requirements that must be met for the City to grant the variance is that the variance will act to preserve, enhance or restore the significance of the watercourse, and that the granting of the variance would not likely impair the functional, scenic and ecological purposes of the watercourse. The City determined that the granting of the variance would help restore the watercourse by removing invasive species, restoring hydrologic and biologic functions of the creek, and planting native species. In addition, the erosion protection and increased flood conveyance benefit of the project would also help restore the watercourse. Finally, the City

determined that the granting of the variance would not impair the functional, scenic, and ecological purpose of the watercourse because the project proposes to remove invasive species and to plant native species, and the consolidation of two bridge locations into one site would reduce obstructions within the Creek.

Visual Resources

The appellants' fourth contention is that the approved removal of 19 trees, installation of the concrete retaining wall, wooden fence, and installing artificial channel improvements adversely impacts visual resources by degrading the visual character of the existing setting. Laguna Canyon Road – a rural scenic highway – is adjacent to Laguna Canyon Creek. Specifically, the appellants contend that the proposed project will remove visual resources (the trees), and the installation of a concrete retaining wall and a wooden fence may adversely affect the visual corridor which merits closer examination.

Policy 7.3 of the Land Use Element states: *Design and site new development to protect natural and environmentally sensitive resources, such as areas of unique scenic quality, public view, and visual compatibility with surrounding uses and to minimize natural landform alterations.*

Policy 7-C Open Space/Conservation Element states: *Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.*

Policy 7-K states: *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 Laguna Canyon Annexation Area Specific Plan (LCASP)(part of the certified LCP)- pg. 15: *Laguna Canyon Road has been designated by both the city and the County as a rural scenic highway.*

Here, the proposed project is located within and adjacent to Laguna Canyon Creek, a Blue-Line Stream, that abuts the Marine Mammal Center and Animal Shelter buildings in the Institutional Zone of Laguna Canyon, which provides for public, quasi-public and private institutional facilities. The parcel is situated between Coastal Kennels to the north, and the Alternative Sleeping Location to the south.

In addition to removing 19 trees, the project also proposes the installation of articulated concrete lining along portions of the channel banks immediately north of the existing vehicular bridge and next to the relocated pedestrian bridge, which is proposed to replace existing grouted rip rap. The channel bottom will remain natural. The proposed project also includes an approximately six-foot high concrete retaining wall with a cable railing attached to wood-textured posts along the western channel bank adjacent to the parking lot, that extends from the northerly property limit to the

existing vehicular bridge to the south. The retaining wall will function as a berm between the creek and the parking lot which is situated at a higher elevation. According to the City, only approximately one foot of the retaining wall will be visible from the parking lot and highway because the wall will be constructed at a lower elevation. In addition, the cable railing that will be built on top of the concrete retaining wall maintains several inches between cables which was selected to minimize view impacts, and will consist of dark tan split face masonry to blend with the rustic environment and will also have vines and shrubs planted alongside to soften the look of the wall (**Exhibit 2**).

A 6-foot high wooden fence is also proposed to replace an existing 6-foot high chain-link fence that was constructed prior to the City's annexation of the property. The proposed project is designed to utilize natural looking materials, specifically a wood cross-buck style fence (**Exhibit 2**) to enhance the character of the site and surrounding area. In addition, the proposed 6-foot high retaining wall along the creek is at a lower elevation, and approximately one foot of the fence will be visible from the Laguna Canyon Road side of the property. Such measures to reduce the project's visual impacts are acknowledged, but it does raise a substantial issue in regards to consistency with the Laguna Beach LCP.

Archeological and Paleontological Resources

The appellants' fifth contention is that the local approval did not require monitoring during ground-disturbing work for archaeological, paleontological, or cultural resources. Here, the appellants allege that the proposed project fails to address the following goals, policies and actions of the General Plan/LCP regarding cultural resources:

Policy 12A of the Open Space Conservation Element states: *Promote the conservation of land having archeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.*

Page 8 of the Laguna Canyon Annexation Specific Plan states: *Laguna Canyon has served as a major point of entry to the Laguna Beach area and has been inhabited by humans for over 5,000 years. Nich Magalousis, an archaeologist specializing in Native American Indians, indicates that the Gabrieleño tribe (or closely related tribe) is considered to be the first to inhabit the Canyon area. Radiocarbon research verified human habitation as far back as 3,000 years B.C.*

Page 11 of the Laguna Canyon Annexation Specific Plan states: *Indians walked the territory stretching alongside Laguna Canyon Road to their hunting camps. Cal Trans archaeologists digging in the greenbelt found ruins of a hunting village here.*

The appellants do not present any specific information as to why the City's findings are inadequate related to archaeological, paleontological or cultural resources. Therefore, a finding of substantial issue cannot be made regarding this contention.

CEQA

The appellants' sixth contention is that the proposed project violates the California Environmental Quality Act (CEQA). The appellants contend that the proposed project violates CEQA, because the City of Laguna Beach, as the lead agency, failed to take into account the cumulative impacts of

this proposed project in this location. As previously stated, the grounds for appeal of an approval, by a certified local government, of a local CDP authorizing development in the appealable area are stated in Section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [the Coastal Act].

The grounds for appeal of an approval by a local government of a local CDP are limited to allegations that the development does not conform to the standards in the local government’s certified LCP or the public access policies set forth in the Coastal Act. Compliance with CEQA is a separate process from that of obtaining a coastal development permit. The lead agency’s decision regarding compliance with CEQA is not appealable to the Commission. Therefore, a finding of substantial issue cannot be made regarding the City’s CEQA determination.

E. SUBSTANTIAL ISSUE – FIVE FACTORS

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not confirms that the appeal does raise a “substantial issue” per Section 30625(b)(2).

The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.

The City did not substantially support its finding that the project site was not ESHA, or that it should be described as “Low Value Habitat”. The City’s staff report demonstrates that the City did not substantially support its approval of the project’s consistency with all of the applicable policies of the certified LCP. Overall, there is a low degree of factual and legal support for the local government’s decision, and this factor does support a finding of substantial issue.

The extent and scope of the development as approved or denied by the local government.

Here, the proposed development approved is located within a “Blue-line” stream, and the extent and scope of the development may adversely impact sensitive habitat. The proposed project represents a small portion of the overall extent of the Laguna Canyon Creek, and the impacts to the habitat will be relatively minor, however the extent of the work proposed to occur in the creek is an extensive flood control project.

The significance of the coastal resources affected by the decision.

As expressed in the LCP, the resources of the Blue-line stream are significant. Policy 4-A of the Open Space/Conservation Element states: *Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.* Therefore, declining to accept this appeal could result in adverse impacts to sensitive and significant wetland, riparian and stream habitat, which are significant coastal resources. While the riparian habitat surrounding the creek in this area is not especially rare, it is sensitive and

continually becoming more rare due to the displacement of streams that pressure from development in the greater southern California area.

The precedential value of the local government’s decision for future interpretations of its LCP.

Prevention and/or minimization of adverse impacts to significant coastal resources is an important issue not only to the City, but throughout the State. As expressed in the LCP, the resources of the Blue-line stream are significant and are designated for protection. Ensuring that the project is sited and designed to be protective of natural and environmentally sensitive resources, as required by the LCP, is of significant precedential value for future decisions along Laguna Canyon Creek and other California waterways with significant habitat value. Sections of the Laguna Canyon Creek are individually owned. The subject section of the creek is owned and operated by the City, however the flood control project proposed here will set a precedent for other flood control projects that may be needed along the rest of the creek. Because the City does not have control over the rest of the creek, it is important that the City proposed project set the proper precedent for other applicant’s of flood control projects in the future.

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

The size of setbacks from this stream and other waterways can directly affect the quality of water that discharges into in the ocean, and ocean water quality is an issue of statewide concern. Accordingly, the appeal of the City’s approval does raise issues of local, regional, and statewide significance. As addressed above, prevention and/or minimization of adverse impacts to rare of threatened habitat is an important issue not only to the City, but throughout the State. Accordingly, the appeal of the City’s approval does raise issues of local, regional, and statewide significance.

Conclusion

In conclusion, to the appeal raises substantial issues as to whether the City-approved project is consistent with the certified LCP. Factual and legal support for the City’s decision to approve a coastal development permit for the proposed development is lacking. Taking into account the extent and scope of the development, the significance of the coastal resources affected by the decision, the potential for setting an adverse precedent regarding stream setbacks, and the fact that rare and threatened habitat is a statewide issue, the Commission finds that a substantial issue exists in regards to the interpretation the LCP policies that require development to be set back from streams and sensitive habitat areas.

Thus, although the City acknowledges that Laguna Canyon Creek is a natural drainage course, the value of the habitat, including the importance of Laguna Canyon Creek to the region and watershed is notably absent from the City’s support of its decision to approve the variances from the setback for the project. Therefore, because the habitat information regarding the Laguna Canyon Creek was more than 5 years old when the City approved the CDP for the project and described the site as lacking any significant habitat value, a substantial issue exists regarding the degree of factual and legal support for the local government’s decision regarding issuing the variance for the appropriate setback.

VI. MOTION AND RESOLUTION - DE NOVO PERMIT

Motion:

I move that the Commission approve Coastal Development Permit Application No. A-5-LGB-19-0015 subject to the conditions set forth in the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in conditional 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 Application No. A-5-LGB-19-0015 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan. 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 will substantially lessen any significant adverse impacts of the development on the environment.

VII. 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.

VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Habitat Restoration and Monitoring Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a final detailed habitat restoration and monitoring plan to restore disturbed habitat onsite and to address the off-site mitigation located at 650 Laguna Canyon Rd, Laguna Beach, CA 92651 in substantial conformance with the submitted *Habitat Mitigation and Monitoring Plan*, Michael Baker International, received Wednesday, July 1, 2019. A biologist qualified in the preparation of plans to restore coastal habitats shall design the revised restoration and monitoring plan. The revised restoration and monitoring plan shall at a minimum include the following:
 - A. Restoration plan including planting map, plant palette (to replace coffeeberry, *Rhamnus californica* with elderberry, *Sambucus mexicana* and remove or decrease the amount of deer grass, *Muhlenbergia rigens* and add mugwort, *Artemisia californica*; California blackberry, *Rubus irsinus*; and creeping wild rye, *Leymus triticoides*, consistent with the Commission Staff Ecologist’s recommendations), source of plant material, and schedule of plant installation, watering, erosion control, soil fertilization and weed abatement.
 - B. Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of the dominant perennial species are similar to relatively undisturbed vegetation of the same type in nearby reference areas. Species composition shall be considered similar if all the dominant species and at least 80% of the non-dominant species at the reference site are present at the restored site.
 - C. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.
 - D. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards. The performance monitoring period shall be five years. The final report must be prepared in conjunction with a qualified biologist. The reports must evaluate whether the

restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program.

- E. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.
 - B. The permittees shall monitor and manage the restoration site in accordance with the approved mitigation and monitoring plan, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved mitigation and monitoring plan shall be reported to the Executive Director. No changes to the approved mitigation and monitoring plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 2. Biological Monitor.** By acceptance of this permit, the applicant agrees that:
An appropriately trained biologist shall monitor the proposed development for disturbance to sensitive species or habitat area. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as dredging or construction that could result in disturbances to the raptors or sensitive species in the area. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity that would disturb 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.
- 3. Construction Timing.** By acceptance of this permit, the applicant agrees that:
- A. If construction activities, including but not limited to grading, construction, restoration activities, or other disturbance, are to occur between February 1 and September 15, a pre-construction nesting bird survey shall be conducted to determine the presence of active nests within 500 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. All ground-disturbance activities within 500 feet of raptor nests or other active nests or as specified below shall be halted until that nesting effort is finished.
 - B. The monitor shall review and verify compliance with these nesting boundaries and shall verify when the nests have been naturally vacated for the season, with no human interference. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to the Executive Director.

- C. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at the active nest of a listed species, as determined by the biological monitor. This shall be verified by weekly noise monitoring at an equivalent location conducted by a qualified acoustical engineer during the breeding season (February 1 to September 15) or as otherwise determined by a qualified biological monitor based on nesting activity.

The applicant further agrees that:

Construction during Breeding and Non-Breeding Seasons for Sensitive Species:

- D. Activities involving disturbance or removal of riparian vegetation shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15).
- E. Vegetation impacts shall be monitored by a qualified Biologist. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for sensitive bird occupation (i.e., California gnatcatcher, Belding savannah sparrow, light-footed clapper rail) and raptors.
- F. Prior to and during any disturbance of suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area a minimum of 300 feet away from the birds. No site disturbance shall occur until the individual birds have naturally vacated the area without human interference. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by impacts to Coastal Sage Scrub or other Scrub communities.
- G. Prior to initiating vegetation impacts or project construction, the biological monitor shall meet on-site with the construction manager or other individual(s) with oversight and management responsibility for the day-to-day activities on the construction site to discuss implementation of the relevant avoidance and minimization mitigation measures for gnatcatchers. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.

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

4. Conformance with Geotechnical Recommendations. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's

review and approval, along with a copy of each plan, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the project plans received by the South Coast District office dated on September 30, 2019.

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

5.Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, erosion, slope failure, landslides, and wildfire; (ii) to assume the risks to the applicant 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.

6. Future Improvements. This permit is only for the development described in Coastal Development Permit A-5-LGB-19-0015. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit A-5-LGB-19-0015. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit A-5-LGB-19-0015 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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

- a. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- b. The permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the stream is protected from sedimentation.
- c. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.

- d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- f. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- j. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

IX. FINDINGS AND DECLARATIONS – DE NOVO PERMIT

Note: The Findings and Declarations in the Substantial Issue section of this staff report are hereby adopted by reference into the Findings and Declarations for the De Novo Permit.

A. Project Description and Location

The project site is located in Laguna Canyon Creek, directly east of Laguna Canyon Road (State Route 133), two and a half miles inland of Main Beach (**Exhibit 1**). The project site is within a City-owned parcel, which currently contains the Laguna Beach Animal Shelter and Pacific Marine Mammal Center. Laguna Canyon Creek is a major stream corridor that cuts through the parcel from north to south along its western side (**Exhibit 2**). The lot is located in the Institutional Zone of the Laguna Canyon Annexation Area Specific Plan.

The project site in the creek is roughly bisected by the vehicular access bridge. The local coastal development permit authorized the construction of erosion control devices, articulating concrete block lining (ACB) along both channel banks on the north end of the project limit of the creek and ACB along both channel banks immediately north of the existing vehicular access bridge totaling approximately 3,980 square feet; removal of the existing pedestrian bridge and lining, and construction of a new pedestrian bridge to the south, immediately adjacent to the existing vehicular bridge; installation of a 16-foot long warped wingwall transition structure¹ located immediately north of the new pedestrian bridge that is approximately 5-feet above grade; construction of an approximately 6-foot high concrete retaining wall with cable railing attached to wood-textured posts along the western channel bank adjacent to the parking lot north of the vehicular bridge. South of the vehicular bridge, the project includes: installation of bioengineered slope protection, including un-grouted rip-rap and three bend way rock weirs along the toe of the eastern slope immediately west of the Pacific Marine Mammal Center; enhance the creek bed/soft bottom by excavating sediment; removal of nineteen existing trees to accommodate stream bank recontouring and meet fuel modification requirements (one tree will be removed north of the vehicular bridge); installation of landscaping, including replanting eleven trees in accordance with Laguna Beach Fire Department (LBFD) fuel modification guidelines. Outside of the creek channel the project includes installation of six-foot high wood fencing around the Animal Shelter parking lot perimeter to replace existing chain link fencing.

The proposed project also includes onsite and offsite habitat restoration and enhancement. Onsite, the project will remove invasive vegetation, and excavate approximately 375 cubic yards of sediment that are reducing creek flow. The installed ACB will be hydro-seeded with emergent and low-growing native vegetation, and will be naturally covered with sediment deposited from the natural flow of the creek.

Downstream of the existing box culvert auto bridge crossing, the project will remove invasive vegetation, establish stream bank terraces, and install un-grouted rock along the toe of the east bank of the creek. The rock structure will incorporate three bend-way weirs extending into the streambed which will be planted with arroyo willow trees. Portions of the streambed downstream of the existing box culvert will be widened through the removal of vegetation and soil from the west bank of the stream and reestablishing a new stream terrace and bank. The east and west stream banks downstream of the existing box culvert will be restored with sycamore and willow trees, native shrubs, and native understory vegetation. The project focuses on restoring the creek's functions and values by increasing flood conveyance as well as habitat enhancement.

The offsite mitigation component will occur in a nearby ephemeral drainage within the same watershed as the project area located at 650 Laguna Canyon Road, and will consist of non-native species removal and subsequent hand-broadcasting of cleared areas with a native seed mix.

¹ According to the project engineer, the concrete warped wingwall makes the transition between each type of channel geometry more smooth and gradual, and the gradual transition between the two types of channel sections will result in increased hydraulic efficiency through the channel and bridges. Sudden changes in geometry types within a river, creek, or channel cause more turbulence in the water, resulting in higher water surface elevations and greater flooding. Gradual and more uniform changes will have the opposite effect.

The project site is surrounded by a mix of uses including light industrial, open space, and residential hillside areas. The light industrial uses are located to the north and south, and open space and residential hillside uses are located to the east. A dog daycare kennel abuts the northerly property line, and the City’s Alternative Sleeping Location – operated by The Friendship Shelter-- abuts the southern property line. Vehicular access to the site is taken only from Laguna Canyon Road, which runs along the western property line.

Ongoing erosion of the creek channel has threatened the Animal Shelter and Marine Mammal Center, which according to the City were both constructed before 1975 prior to the Coastal Act. The erosion of the creek is undermining the paved surface parking lot, which was also constructed in approximately 1975, that serves these two uses and the erosion of the bank is threatening to undermine the foundation of the animal shelter. Interim erosion control measures consisting of grouted and loose rip rap, some implemented without the benefit of a coastal development permit, have been installed along the channel banks over the years to protect the adjacent improvements. Over time, these measures have resulted in a disjointed array of partially supported embankments for the paved parking area and creek banks immediately adjacent to the structures. The flow capacity of the creek is also restricted by several bridges that cause pinch-points that constrict the flow of the creek. Narrowed creek banks and reduced water flow have created conditions that have encouraged the settlement of sediment, which has promoted the growth of invasive vegetation to encroach into the channel, further reducing the creek’s capacity to convey storm flows, and also decreasing the habitat value of the creek.

The site is located within a very-high fire hazard severity zone and within the floodway and 100-year floodplain. The Laguna Canyon Creek has been designated as a “Blue-line stream” on the USGS 7.5 Minute Quadrangle Series Map. Laguna Canyon Creek is within the Laguna Canyon Watershed. Laguna Canyon cuts through the San Joaquin Hills, runs northeast to southwest, and is drained on the east side by tributaries of San Diego Creek and on the west side by Laguna Canyon Creek. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. Laguna Canyon Creek begins as an ephemeral creek draining a mountainside west of the valley floor down into the canyon. It is briefly culverted alongside Laguna Canyon Road within a small developed area but most of the upper course flows in a natural channel.

B. Biological Resources/Wetland Fill/Stream Alterations

Open Space/Conservation Element Policies:

4-A: Protect fresh water lakes, streams, waterways and riparian habitats, and preserve the borders and banks of lakes and streams in their natural state.

4-I: Promote the protection and restoration of offshore, coastal, lake, stream or wetland waters and habitats and preserve them to the maximum extent practicable in their natural state. Oppose activities that may degrade the quality of offshore, coastal, lake, stream or wetland waters and habitat and promote the rehabilitation of impaired waters and habitat.

7-F: As a condition of approval for new building construction, require the dedication of open space easements, development rights, or the use of some similar instrument for the purpose of protecting unusually significant natural features. Preserve and provide an optimum setting for prominent site features such as natural rock outcroppings, promontories and ridges.

7-K: Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to consider scenic and conservation values, impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and recontouring and replanting where the natural landscape has been disturbed.

8-A: Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.

8-C: Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

8-I: Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

8-J: Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:

- 7. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 8. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

9. *Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:*
- (e) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively,*
 - (f) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;*
 - (g) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damage or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent.*
 - (h) No new parcels shall be created which are entirely within a coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.*

8-L: Preserve and protect fish and/or wildlife species for future generations.

8-M: Preserve a continuous open space corridor within the hillsides in order to maintain animal migration opportunities

8-N: Encourage the preservation of existing drought-resistant, native vegetation and encourage the use of such vegetation in landscape plans.

9-A: Promote the preservation and restoration of Laguna’s natural drainage channels, freshwater streams, lakes and marshes to protect wildlife habitat and to maintain watershed, groundwater and scenic open space.

9-C (a): Streams on the Major Watershed and Drainage Courses Map which are also “Blue-line” streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where

development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.

9-C(b): Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.

9-D: Permit extensions of decks and other portions of a structure within the required setback for significant natural drainage areas only if:

- c. There are no supports to the ground within the setback areas; and*
- d. The extensions do not encroach closer than fifteen feet from the centerline of flow.*

9-F: Where possible, require restoration of deteriorated significant natural drainage courses that have been disturbed by development, but which retain potential for natural function.

9-I: Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.

9-J: Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.

9-K: Promote preservation and enhancement of the natural drainage of Laguna Beach

9-Q: Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.

Laguna Beach Land Use Element Policies:

Goal 7: Protect, preserve, and enhance the community's natural resources.

Policy 7.3: Design and site new development to protect natural and environmentally sensitive resources, such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize natural landform alterations.

Policy 7.4: Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impacts avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible.

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).

Policy 7.10: Require new construction and grading to be located in close proximity to preexisting development to minimize environmental impacts and growth-inducing potential.

Goal 10: Ensure that proposals for new development, subdivisions, and major remodels are sufficiently evaluated to protect public health and safety and natural resources.

Policy 10.2: Design and site new development to protect natural and environmentally sensitive resources such as areas of unique scenic quality, public views, and visual compatibility with surrounding uses and to minimize landform alterations.

Policy 10.3: Ensure that all new development, including subdivisions, the creation of new building sites and remodels that involve building additions, is evaluated to ascertain potential negative impacts on natural resources, ESHA and existing adjacent development. Proposed development shall emphasize ESHA impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site rather than off-site, where feasible. Any off-site mitigation should be located within the City's boundaries and in close proximity to the project.

Policy 10.7: 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.)

Laguna Canyon Annexation Area Specific Plan Policies:

Section III, Topic 4: Biology and Habitat

Goal: Preserve and enhance significant biological resources and wildlife habitats.

Laguna Beach LCP Technical Appendix Policies:

Section 30233: (A) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible, less environmentally damaging alternative.*

Section 30236: *Channelization, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30240 (A): *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

Section 30240 (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 such areas, and shall be compatible with the continuance of such habitat areas.*

The primary issue concerning biological resources is the proposed project's potential to impact the riparian habitat that exists in and along Laguna Canyon Creek within the project site. Laguna Canyon Creek is a "Blue-line" stream, as designated on the USGS 7.5 Minute Quadrangle Series Map. Laguna Canyon Creek drains the Laguna Canyon Watershed and outlets into the Pacific Ocean 2.5 miles south of the project site. The segment of the creek in this location is partially channelized with various artificial erosion control devices, including grouted and loose riprap, and an existing box culvert channel within the creek under the existing auto bridge, but most of the upper course flows in a natural channel.

According to the Project Feasibility Report and alternatives analysis conducted by RBF Consulting from January 2014, both structural and non-structural plans were considered. Structural plans include physical improvements to address the identified problems within the study area, and non-structural plans included floodplain management and maintenance activities. Of the eleven concepts reviewed, the five that passed the initial screening assessment were: 1) gabion channel lining²; 2) lowered parking and gabion channel lining; 3) relocated public parking and channel widening; 4) cantilevered parking and gabion channel lining; and 5) articulated concrete block (Armorflex) lining with restorative herbaceous planting. Each are discussed below.

Alternative 1: Gabion Channel Lining

The first alternative includes the construction of rock-filled gabion channel linings to limit erosion and increase the channel capacity. Stepped gabions would be placed on the channel banks the same height as the banks, the channel would be slightly widened to have a 20-foot base width, and the invert would be graded to remove existing sediment. The existing pedestrian bridge would be removed and replaced with the longer bridge to span the new channel width. This plan would increase the creek capacity from 600 cfs to approximately 1,300 cfs. Although the overall aesthetics of the stream would be improved with the removal of existing loose and

² A gabion is a wirework container filled with rock, broken concrete, or other material, used in the construction of dams, retaining walls, etc.

grouted riprap and the installation of native plantings, it has the least potential for environmental enhancement. It had also been expressed by the regulatory agencies in pre-application meetings that there were concerns regarding the strength of the gabion baskets being prone to breaking down over time and exposing banks to potential erosion. This alternative results in no reduction in parking.

Alternative 2: Lowered Parking Lot and Gabion Channel Lining

Alternative two includes the same improvements as alternative one above, except the stepped gabions would be placed on the channel banks to approximately 8-feet on the east bank and 5-feet on the west bank. The public parking adjacent to Laguna Canyon Road would be re-graded to lower the parking lot elevation by approximately 3 feet. The lowered parking lot would include concrete pavers and would function as a flood overbank during moderate storm events, which would increase the overall flow capacity along the project area. This plan would increase creek capacity from 600 cfs to approximately 1,500 cfs, and would result in loss of approximately 14 parking spaces.

Alternative 3: Relocated Public Parking and Channel Widening

The third alternative includes the removal of the existing public parking lot adjacent to Laguna Canyon Road, and the widening of the creek to expand into this area. The eliminated parking is proposed to be relocated to the existing City parking lot near the Alternative Sleeping Location and Dog Park south of this site. The existing pedestrian bridge and drive access bridge would be removed. Vehicular access to the animal shelter and mammal center would be provided by a new access road from the existing parking lot along the east bank of the creek. Stepped gabions approximately 8-feet high would extend along the entire east bank adjacent to the City's Animal Shelter and Pacific Marine Mammal Center (PMMC) and provide space and bank protection for the new access road. A meandering pedestrian trail is proposed through the terraced overbank area, and a new low-flow bridge crossing would be included along the trail for pedestrian access to the shelter and marine mammal center from Laguna Canyon Road. This alternative provides the greatest channel capacity and the most potential for habitat enhancement, and would increase the creek capacity to a flow rate of approximately up to 2,000 cfs. This alternative also meets the objectives for erosion control, flood conveyance, and habitat enhancement. However, this option results in the loss of the entire existing parking lot, and the proposed location for the parking lot to be relocated to is planned for another use.

Alternative 4: Cantilevered Parking and Gabion Channel Lining

Alternative four generally includes the same improvements as alternative no. 1, except the channel would be widened an additional 15 feet to a 35-foot base width, and the parking lot would be cantilevered over the widened channel area. This would increase the overall flow capacity along the project reach, and a reinforced concrete box culvert would be added adjacent to the auto bridge to convey flows from the creek widening. A new pedestrian bridge would be constructed at the location of the current bridge to span the wider creek. This plan meets all of the objectives or erosion control, exceeds the minimum flood conveyance goal of 1,800 cfs. The plan would also maintain the same number of parking spaces. However, the environmental enhancement potential was lower due to potential shading of the creek that would result from cantilevering a parking lot over the watercourse.

Alternative 5: Articulated Concrete Block Lining with Restorative Herbaceous Planting

Alternative five, which was the one that was ultimately selected and permitted by the City, includes the construction of ACB reinforcement mats on the channel side slopes in order to limit erosion and increase channel capacity. This was designed with the assistance of Army Corps of Engineers, and is also the Corps preferred alternative. With this alternative, the existing drive access bridge would remain in place and a poured-in-place concrete transition structure added to the existing RCB to convey flows from the creek widening. Re-grading of the stream downstream of the drive access bridge is proposed to enhance downstream vegetation. Non-native vegetation removal and introduction of herbaceous native plantings are proposed both upstream and downstream of the access bridge. The toe of the eastern slope adjacent to the Pacific Marine Mammal Center will incorporate riprap protection covered with earthen fill and bioengineered with willow cuttings for further support. The bend way weirs proposed at this location direct flows away from the slope and toward the channel. A few larger tree species are proposed for the top of slope upstream of the access bridge, and the re-graded area of the channel downstream of the auto bridge would be planted with native vegetation. Overall, this plan increases creek capacity to a flow rate of 915 cfs, which partially meets the flood conveyance objective. It meets the objective of erosion control, and restoration objectives. This alternative also does not result in any loss of parking.

Development Within the Creek

As addressed in the Substantial Issue portion of this staff report, the Laguna Beach certified LCP requires that development be setback 25-feet from the centerline of the Laguna Canyon Creek, but allows for variances from this requirement in certain circumstances. Pursuant to the City's Implementation Plan policies below, the City issued a variance for the development in significant watercourses in Section 25.50.030.

9-C (a) of the Open Space/Conservation Element states:

Streams on the Major Watershed and Drainage Courses Map which are also "Blue-line" streams identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City ordinances and other policies of this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.

9-C(b) of the Open Space/Conservation Element states:

Require a setback of a minimum of 25 feet measured from the centerflow line of all natural drainage courses other than streams referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the City engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.

Here, the City's Implementation Plan (LBMC 25.05.025(F)) states the findings that the City must make so that a variance can be approved:

- 5) *Variances may be granted when there are special circumstances applicable to the property involved, including size, shape, topography, location and surroundings, that would cause the strict application of the zoning ordinance to deprive the property of the privileges enjoyed by other property in the vicinity and under identical zoning classification*
- 6) *Such a variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which is a right possessed by other property owners under like conditions in the same vicinity and zone.*
- 7) *The granting of the variance would not be detrimental to the public health, safety, convenience and welfare or injurious to property or improvements in the vicinity in which the property is located*
- 8) *The granting of such a variance will not be contrary to the objectives of the zoning ordinance or the general plan.*

In addition, the City's Implementation Plan articulates the following for Setbacks in Significant Watercourses 25.50.030:

- 6.) *Extent. A setback of twenty-five feet shall be maintained from both sides of the centerflow line (as determined and approved by the city engineer) of significant watercourses. The setback may be increased in the interest of protecting or mitigating stated environmental concerns as approved by the director of community development director.*
- 7.) *Disturbance of Vegetation Prohibited.*
 - a. *No disturbance of the native vegetation within an established watercourse setback area is permitted at any time, except as part of a fuel modification program approved by the director of community development.*
 - b. *The design review board may approve landscape programs within established setbacks designed to enhance or restore native riparian vegetation or the aesthetic character of the watercourse.*
- 8.) *Building and Structures Prohibited. No building or structure may be placed in an established setback from a significant watercourse, except for bridge structures for access purposes.*

9.) *Encroachment Variances. Variances for the purpose of placing a building or structure within an established watercourse setback area, other than as permitted in subdivision 3 of this subsection may be granted only when the following findings are made in addition to those listed in Section 25.05.025(F)*

- a. *The proposed encroachment will act to preserve, enhance or restore the significance of the watercourse.*
- b. *The proposed encroachment is not likely to impair the functional, scenic, and ecological purposes of the watercourse.*

10.) *Encroachment variances shall be subject to the conditions that no physical disturbance of the watercourse shall occur at any time; and that, where feasible, specified native riparian vegetation shall be replanted where disturbance of vegetation occurs during construction. (emphasis added)*

Pursuant to Policy 9-C(a) and relevant policies of the Implementation Plan discussed above, the City of Laguna Beach granted variances to be able to 1) replace the existing chain-link fence around the perimeter of the Animal Shelter with a wooden fence, and 2) construct the ACB, bridge support, hydraulic transition structure, retaining wall, and grading within the 25-foot setback. The City found that there were special circumstances applicable to the property, including the location of the existing structures that if the strict application of the zoning ordinance is applied, would deprive the property owner of privileges enjoyed by other similarly situated property owners. According to the City, special circumstances include the proximity of the structures to the creek; the Animal Shelter at its closest point is only six feet from the creek banks due to continued erosion. In 2010, due to insufficient flow capacity, significant flooding at both the Animal Shelter and PMMC occurred, and to protect the facilities from further loss due to erosion and flooding, the variance was necessary.

Additionally, the City found that the variance was necessary for the preservation and enjoyment of a substantial property right possessed by other owners in the same area because without the project, the operation of both facilities would be threatened due to continued erosion and potential flooding causing future damage. Furthermore, the granting of the variance would provide a benefit to public health safety and welfare of the property and surrounding area by preventing further erosion, increasing flow capacity, thereby providing relief to the structures and the continued operation of the facilities. Moreover, the City found that the granting of the variance would not be contrary to the objectives of the zoning ordinance and the General Plan because given that the existing building site locations are situated within the watercourse setback, they were “grandfathered” at the time this portion of Laguna Canyon was annexed into the City of Laguna Beach, and the variance allowing the construction of erosion devices within the setback area to protect the structures is consistent with the uniqueness of the area.

The last two requirements for the City to grant the variance is that the variance will act to preserve, enhance or restore the significance of the watercourse, and that the granting of the variance would not likely impair the functional, scenic and ecological purposes of the watercourse. The City determined that the granting of the variance for the portion of the project within the 25 foot creek setback (which is the majority of the flood control work) would help restore the watercourse by removing invasive species, restoring hydrologic and biologic

functions of the creek, and planting native species. In addition, the erosion protection and increased flood conveyance benefit of the project would also help restore the watercourse. Finally, the City determined that the granting of the variance would not impair the functional, scenic, and ecological purpose of the watercourse because the project proposes to remove invasive species and to plant native species, and the consolidation of two bridge locations into one site would reduce obstructions within the Creek. The proposed restoration and enhancement of the riparian habitat in the creek will improve the habitat function and ecological purpose of the watercourse by improving creek flow and removing invasive non-native vegetation and replacing it with native riparian habitat. The Commission agrees with the City in this regard, and finds that the variance should be allowed in this instance, as explained later in the findings.

Environmentally Sensitive Areas

Policies contained in the Open Space/Conservation Element, Land Use Element, and the LCAASP including, but not limited to the following: 9-A, 9-F; 5.2, 7.3, 7.4, 10.2, and 10.3; and Topic 4, require and/or suggest the preservation and restoration of habitat and coastal resources be included in proposed development.

Open Space/Conservation Element Policy 8-I states: *Environmentally Sensitive Areas (ESA's) as defined in section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA map. The following areas shall be designated as Environmentally Sensitive Areas: Those areas shown on the Biological Resource Values Map in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Map and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds. (emphasis added)*

Open Space/Conservation Element Policy 8-I further states, in part: *Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:*

- 1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.*
- 2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.*

Commission staff ecologist Dr. Jonna Engel's review of the project and surrounding environment concludes that the creek, at the project site, supports riparian habitat and is an Environmentally Sensitive Habitat Area that warrants protection from the impacts of proposed development (**Exhibit 4**). Dr. Engel wrote:

Laguna Creek, a blue-line stream depicted on the Laguna Beach U.S. Geological Survey (USGS) topographic map within the Laguna Canyon Watershed, is unimpeded for most of the watershed. Laguna Canyon cuts through the [San Joaquin Hills](#), runs northeast to southwest, and is drained on the east side by tributaries of [San Diego Creek](#) and on the west side by Laguna Canyon Creek. A majority of the canyon is located within the Laguna Coast Wilderness; small portions are part of Aliso and Wood Canyons Regional Park and the Cities of Irvine, Laguna Beach, Laguna Woods and Aliso Viejo. The Laguna Coast Wilderness, that consists of 7,000 acres of pristine coastal canyon habitats, is connected to the City of Irvine open space and the two combined comprise over 20,000 acres of native unfragmented habitat. In addition to being one of two major creeks in the watershed, Laguna Creek is an important wildlife corridor that links the upper canyon and hills to the lower canyon and terrestrial/marine interface. Many species of native birds, mammals, reptiles and amphibians travel along creek and stream corridors to forage, migrate, disperse, and locate mates. The riparian habitat alongside creeks and streams is a critical component of wildlife corridors.

Laguna Creek is a blue-line stream in a nearly pristine coastal watershed within a larger area consisting of over 20,000 square feet of open space. Although the stretch of creek where the proposed creek erosion protection project is planned is constrained by development, two crossings, and has sections of grouted concrete rip rap and un-grouted rip rap bank, it continues to support native riparian habitat and to provide important processes and functions. Streams and creeks and the associated riparian habitat are rare and threatened throughout California and are easily disturbed and degraded by human activities and development such as channelization and slope stabilization. Therefore, I find that Laguna Creek and the associated riparian habitat is environmentally sensitive habitat (ESHA).

The above policies of Open Space/Conservation Element Policy 8-I are intended to implement Section 30240 of the Coastal Act, which states that environmentally sensitive areas: 1) shall be protected against any "significant disruption of habitat values," and only uses dependent on the resource are allowed within those areas, and 2) development adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts "which would significantly degrade those areas, and shall be compatible with the continuance" of the sensitive habitat areas. While there are minor discrepancies between the language in the LCP and Section 30240, the LCP must be interpreted consistent with the Coastal Act, however the standard of review for this project are solely the policies of the LCP.

Therefore, pursuant to Policy 8-I, proposed development located within areas designated as ESA's warrant special protection under the City's LCP. The above summary of the biological assessments provided by the project's consultant and Commission staff's ecologist Dr. Jonna Engel. Based on those biological assessments, it has been established that Laguna Canyon Creek

is identified as a “Blue-line” stream and contains riparian habitat. Pursuant to the definition of ESA in Policy 8-I, it can be established that ESAs exists within and adjacent to the proposed development.

Impacts to ESAs

Pursuant to Policy 8-I of the Open Space/Conservation Element, development in ESAs is limited to uses that are dependent upon the resource. In addition, development adjacent to ESAs must be designed and sited to prevent impacts and must not significantly degrade the resource. As discussed above, all of the project components are within or adjacent to the creek, and will therefore impact areas designated as ESA.

As discussed, Commission staff has determined that this segment of the Laguna Canyon Creek is an ESA. Open Space/Conservation Element Policy 8-I requires that development in designated ESAs is limited to uses that are dependent upon the resource and must be designed and sited to prevent impacts. Some elements of the project are designed for restoration and enhancement of the habitat such as, the enhancement of the creek bed/soft bottom by excavating sediment and removal of nineteen existing trees (11 of which will be restored/ replanted) to accommodate the stream bank recontouring which is an element of restoration of the habitat, which are resource dependent uses. Offsite, the applicant proposes a mitigation plan to enhance and restore degraded riparian habitat elsewhere in the City.

Although the proposed project does involve restoration of the degraded riparian habitat and creek that would qualify as an allowable use in an ESA, the proposed work cannot primarily be considered a restoration project, as its primary purpose is to improve flood conveyance and to prevent erosion in order to protect existing structures adjacent to the creek. The entirety of the project that will occur within the creek for flood control purposes are not uses dependent on the resource of the ESA. Therefore, the proposed project does not comply with Policy 8-I (1). Nevertheless, the project has been designed to minimize impacts to the creek and sensitive habitat, and includes habitat restoration that will improve the overall quality of the creek habitat in the project site. Of the alternatives described above, the proposed project is the alternative that includes the least amount of alteration of the stream and is the alternative that provides for the most opportunity for restoration of the stream habitat.

Allowable Stream Alterations

Even though the project does not comply with the LCP’s policies regarding ESAs, the project may still be approved if it satisfies the more specific requirements regarding allowable development in streams. Specifically, Policy 9-B of the Open Space/Conservation Element states (with emphasis added):

*Prohibit filling and substantial alteration of streams and/or diversion or culverting of such streams **except as necessary to protect existing structures in the proven interest of public safety, where no other methods for protection of existing structure in the flood plain are feasible** or where the primary function is to improve fish and wildlife habitat. This provision does not apply to channelized section of streams without significant habitat value.*

Policy 9-B, which, as the more specific policy, applies to the proposed development in Laguna Creek, allows filling and “substantial alteration of streams” when necessary to protect “existing structures” in the flood plain in the interest of public safety, and where no other methods for protecting the structures are feasible, or where the primary function is to improve fish and wildlife habitat. The LCP also incorporates a version of Section 30236, which similarly provides that substantial alterations of rivers and streams are allowed for, among other purposes, “flood control projects where no other method for protecting existing structures in the flood plain is feasible and where protection is necessary for public safety or to protect existing development,” and as long as the project incorporates the “best mitigation measures feasible.”

In this case, the structures adjacent to the creek, the Animal Shelter and the Marine Mammal Center, as well as the parking lot that supports these structures, all of which were constructed prior to adoption of the Coastal Act, are in danger from further erosion of the creek banks and flooding that has occurred many times over the years, and will inevitably continue and could get worse due to changes in climate. Under Policy 9-B of the Open Space/Conservation Element, and as analyzed in more detail below, the proposed work is necessary to protect these two structures and parking lot from damage or loss that could result from further deterioration of the creek banks, and will address public safety concerns at the site, because these structures are open to the public and assist with essential public services for animal control and animal rehabilitation.

The proposed project incorporates measures for flood control to increase the capacity of the creek in order to protect existing structures in the flood plan and restore the degraded creek. The articulating concrete block lining (ACB) along both channel banks north of the existing vehicular access bridge is necessary for erosion control on the banks closest to the existing development; the removal of the existing pedestrian bridge and lining, and construction of a new pedestrian bridge to the south, immediately adjacent to the existing vehicular bridge is necessary to allow for the ABC blocks to be installed along the banks of the creek and to allow for the widening of the creek where the existing pedestrian bridge and associated abutments create a “pinch point”; the construction of an approximately 6-foot high concrete retaining wall with cable railing attached to wood-textured posts along the western channel bank adjacent to the parking lot is necessary as a flood control device in the event that flood waters rise and overtop the creek banks. South of the vehicular bridge, the project includes: installation of bioengineered slope protection, including un-grouted rip-rap and three bend way weirs along the toe of the eastern slope immediately west of the Pacific Marine Mammal Center which will protect the existing development from erosion. These components are not resource dependent uses, however they are necessary for the protection of the existing structures in danger from erosion and flooding.

Some elements of the project are designed for restoration and enhancement of the habitat such as, the enhancement of the creek bed/soft bottom by excavating sediment and removal of nineteen existing trees (11 of which will be restored/ replanted) to accommodate the stream bank recontouring which is an element of restoration of the habitat, which are resource dependent uses. Offsite, the applicant proposes a mitigation plan to enhance and restore degraded riparian habitat elsewhere in the City. Consistent with Policy 9-B, some portions of the proposed project will improve wildlife habitat.

The project includes elements that occur outside of the creek channel including the installation of six-foot high wood fencing around the Animal Shelter parking lot perimeter to replace existing chain link fencing, which does not have an impact on the ESAs or involve any fill of the creek, or alternation of the stream.

The City of Laguna Beach determined, in part, that the proposed project is necessary to protect the two existing structures, in the proven interest of public safety. Commission staff's coastal engineer Dr. Lesley Ewing reviewed the project, and her memo states that while each of the conceptual designs showed a "general level of bank and channel coverage that should limit bank erosion at the project site as long as the creek is contained within the channel," the proposed alternative is not the preferred option for optimal flood conveyance (**Exhibit 5**). In her memo Dr. Ewing states:

As summarized in Table 3-7 of the RBF Project Feasibility Report, the Relocated Public Parking and Channel Widening could provide up to 2,000 cfs channel capacity and is the only alternative that could achieve the optimal flood conveyance goal. The two gabion channel lining alternatives (Gabion Channel Lining; and, Lower Parking Lot and Gabion Channel Lining) would improve channel conveyance to 1,300 cfs and 1,500 cfs respectively but the project summary notes that these two alternatives would not meet the flood conveyance goal. The preferred alternative of Armorflex Lining with Restorative Planting would improve channel capacity from 600 cfs to 915 cfs. It provides the least flood conveyance increase of all the examined alternatives, yet, the alternatives summary states that this option would "partially address flood conveyance goals". The Cantilevered Parking and Gabion Channel Lining would provide a channel capacity in excess of 2,000 cfs. This alternative would have the potential to cause off-site damage to the downstream bridge area due to overbank flows. It also has the highest cost and a low potential for restoration.

Thus, the proposed alternative (the current project) would provide some improvement to channel capacity, though not the maximum possible among the alternatives considered. The proposed alternative is the alternative that will result in the least amount of alteration of the creek (other than a no project alternative or temporary measures "soft protection" measures such as sand bags and placement of additional rip-rap). The LCP policies do not require that projects maximize flood control, rather, the LCP acknowledges that substantial alterations of streams are allowed for flood control purposes or to protect fish and wildlife habitat and, here, the project furthers both goals. In fact, the City acknowledges that the proposed alternative is not the best option for flood control and conveyance because it improves flood conveyance by 50%, which does not meet *optimal* flood conveyance goals. However, the City contends that the proposed installation of ACB was selected after a thorough alternatives review that sought to protect the creek and adjacent structures and parking lot and also optimizing the creek habitat (an important concern given the project is located in sensitive habitat that also is protected by LCP policies). According to the City's consultant, the proposed ACB will stabilize the degraded creek while allowing for groundwater percolation and vegetation growth. The ACB will replace existing and degrading grouted rock riprap which is being undermined and eroded by the creek. The three-bend-way weirs will also be planted with vegetation to help improve erosion. Additionally, the applicant proposes a mitigation plan to enhance and restore degraded riparian habitat off site, which is more

than sufficient to adequately mitigate for impacts that the project may have, which are considered the best mitigation measures feasible. Thus, the project includes mitigation measures to restore and benefit habitat, while at the same time improving flood control, all of which will help protect the adjacent, pre-Coastal structures.

Policy 9-B allows substantial alterations of streams where necessary to protect existing structures in the flood plain (where no feasible alternatives exist) or where the primary function is the protection of fish and wildlife habitat. Section 30236 of the LCP likewise allows substantial alterations of streams when necessary for flood control projects to protecting existing structures or where the primary function is fish and wildlife habitat. The proposed project contains components that serve both of these purposes, and is consistent with the LCP policies allowing development in streams.

Filling of Wetlands and Streams

Policies contained in the City’s LCP require protection of wetlands, and include but are not limited to the following: 4-D, 4-I, and 9-B. The Technical Appendix, a component of the LUP, incorporates Section 30233 of the Coastal Act as follows:

Section 30233: *(A) The diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible, less environmentally damaging alternative.*³

The version of Section 30233(a) reflected in the Technical Appendix is not consistent with the current version of Section 30233 of the Coastal Act, which states that fill of coastal waters and wetlands shall be permitted “where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects,” and when limited to certain allowable uses identified in the statute. Thus, the LCP definition does not include a limitation on allowable uses or require mitigation measures. However, as discussed above with respect to ESAs, this discrepancy is not significant in the context of this project, which involves development in a stream that is governed by the more specific Policy 9-B allowing alterations of streams for flood control purposes, and regardless, consistent with Section 30233 of the Coastal Act, the project proposes adequate mitigation measures.

According to the applicant, jurisdictional wetlands on the project site occur within the stream and are more specifically the soft bottom habitat of Laguna Canyon Creek. Based on the *Updated Delineation of Jurisdictional waters and CA Rapid Assessment for the Laguna Canyon Creek Erosion Protection Project* (RBF, 2013) and *Laguna Canyon Creek Erosion Control and Restoration Project Initial Study/Mitigated Negative Declaration* (RBF, 2014), the installation of the ACB, bend-way weirs, and un-grouted rip-rap on the south side of the creek would result in fill of approximately 0.10 acre of CCC jurisdictional wetlands. According the LCP version of Section 30233, this fill shall be permitted so long as there are no feasible, less environmentally damaging alternatives. Additionally, according to the Policy 9-B, the filling of the stream is allowed when necessary to protect existing structures.

The City's consultant submitted an *Updated Delineation of Jurisdictional Waters and CA Rapid Assessment for the Laguna Canyon Creek Erosion Protection Project*, conducted by RBF Consulting, dated September 23, 2013. The wetland delineation report included an alternatives analysis for the wetland impacts that would occur as a result of the five alternatives discussed in the previous section. Under alternative one (gabion channel), the project resulted in 0.10 acre of wetlands; alternative two (lowered parking), 0.12 acre of wetland; alternative three (relocated parking lot), 0.13 acre of wetland; alternative four (parking deck), 0.13 acre of wetland; and under alternative five, (the proposed alternative), the project would impact 0.10 acre of CCC wetland. According to the wetlands impacts associated with each alternative listed above, alternative one and alternative five would have the least amount of wetland impacts of 0.10 acre. The report specifies, however, that alternative five is the preferred alternative because it proposes restoration opportunities upstream and downstream of the vehicle bridge. An herbaceous plant palette would be implemented within the ACB mats upstream and downstream of the vehicle bridge along the western slope, and the toe of the slope along the eastern bank south of the vehicle bridge would be reinforced by riprap and willow cuttings. While the gabion baskets could be planted in associated with alternative one, the report determines that this alternative offers the least opportunity to enhance stream habitat. Therefore, since alternative five, the proposed project, is the least environmentally damaging alternative, it is consistent with the City's LCP regarding fill of jurisdictional wetlands. The proposed alternative is the preferred alternative of the Army Corps.

In addition, the applicant has proposed to grade 375 cubic yards of sediment from the downstream creek channel in order to open up more creek bed area proposed to be restored, which will mitigate for the impacts of the new fill. Thus, consistent with the LCP, there are no feasible, less environmentally damaging alternatives, and feasible mitigation measures have been provided to minimize adverse environmental effects.

The proposed project incorporates measures to limit erosion and increase the capacity of the creek in order to protect existing structures in the flood plan and restore the degraded creek. Each component of the proposed project to occur in the creek is designed for flood control: the articulating concrete block lining (ACB) along both channel banks north of the existing vehicular access bridge is necessary for erosion control on the banks closest to the existing development and will aid in flood conveyance; the removal of the existing pedestrian bridge and lining, and construction of a new pedestrian bridge to the south, immediately adjacent to the existing vehicular bridge is necessary to allow for the ACB blocks to be installed along the banks of the creek and to allow for the widening of the creek where the existing pedestrian bridge and associated abutments create a "pinch point"; the removal of the existing pedestrian bridge and removal of the concrete abutments will remove "fill" from the creek and the new proposed bridge will be completely span the creek; the construction of an approximately 6-foot high concrete retaining wall with cable railing attached to wood-textured posts along the western channel bank adjacent to the parking lot is necessary as a flood control device in the event that flood waters rise and overtop the creek banks. South of the vehicular bridge, the project includes: installation of bioengineered slope protection, including un-grouted rip-rap and three bend way weirs along the toe of the eastern slope immediately west of the Pacific Marine Mammal Center which will protect the existing development from erosion and the widening of the creek in this location will

aid flood conveyance. These components are not resource dependent uses, however they are necessary for the protection of the existing structures in danger from erosion and flooding.

Conclusion

As discussed above, the project is not consistent with the LCP policies regarding ESAs because the development is not a use dependent on the resource. Despite the inconsistency, the project can be approved as consistent with the LCP because it complies with the more specific LCP Policy 9-B that allows for fill and substantial alteration of streams for flood control purposes and for the improvement of fish and wildlife habitat.

Finally, the project is the least environmentally damaging alternative. Of the five alternative projects considered by the City, the chosen project is the least environmentally damaging alternative that can be found consistent with the LCP policies. While the proposed alternative will provide will not maximize conveyance of flood water compared to other alternatives considered, this alternative included the most opportunity for habitat restoration and proposes mitigation, and as such, is the least environmentally damaging alternative.

Lastly, the LCP contains specific policies, described above, that allow for flood control projects to occur in creeks and in ESAs, regardless of impacts. Encroachments into the creek set back are allowable for projects that enhance or restore the significance of the watercourse, will not impair the ecological function of the watercourse, and where feasible, specified native riparian vegetation shall be replanted where disturbance of vegetation occurs during construction. The project as proposed and as conditioned, abides by these specific requirements by including a Habitat Restoration Plan to restore a portion of the watercourse and by restoring the riparian vegetation (the trees and the understory found to be ESHA) after construction of the flood control devices.

Further, the applicant's consultant, Michael Baker International, expects implementation of the Habitat Restoration Plan to be successful, in part, because the target invasive species have been successfully eradicated in similar areas using the proposed methods, and because the plant palette to be utilized incorporates riparian species that naturally occur in Laguna Canyon Creek. In addition, the applicant has committed to commence the Habitat Restoration Plan in the fall after completion of the proposed development, which is not only outside of the nesting bird season (September 1 through February 14), but should present more favorable conditions and weather for plant establishment.

The applicant's proposed Habitat Restoration Plan has been reviewed and preliminarily approved by Commission staff. Final approval of all aspects of the Habitat Restoration Plan must still be made, therefore, **Special Condition 1** requires the applicant to submit a revised Habitat Restoration Plan for review and approval by the Executive Director, prior to issuance of the coastal development permit. **Special Condition 2 and 3** require biological monitoring of the project and restricts construction timing during bird nesting season. With the Habitat Restoration Plan incorporated into the proposed project, and as conditioned, the Commission finds that the proposed development complies with the habitat protection, preservation, and restoration policies in the City's LCP.

Therefore, as conditioned to restore and protect the creek and setback area from future development, the proposed project conforms to the ESA, wetland fill, and stream alteration policies in the LCP.

C. Visual Resources

Policy 7-A of the Open Space/Conservation Element states: *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.*

Policy 7-C Open Space/Conservation Element states: *Inventory and map positive and negative visual resources from Coast Highway and Laguna Canyon Road for use in reviewing development projects which might impact the viewshed of these designated scenic highways, pending funding availability.*

Land Use Element Policy 2.10 states: *Maximize the preservation of coastal and canyon views (consistent with the principle of view equity) from existing properties and minimize blockage of existing public and private views. Best efforts should be made to site new development in locations that minimize adverse impacts on views from public locations (e.g. roads, bluff top trails, visitor-serving facilities, etc.)*

The proposed project is located in the I Institutional Zone of Laguna Canyon, and adjacent to Laguna Canyon Road (State Route 133), which is a heavily utilized transportation corridor into and out of Laguna Beach. Laguna Canyon Road is one of the major roadways into and out of Laguna Beach, and the road provides public views of the surrounding canyon hillsides to residents and non-residents alike. It has been determined to be a “rural scenic highway” by the City. The proposed development, however, has been designed to avoid impacts to visual resources. According to the IP, the height limit for perimeter fencing in this zone allows fences in the front set-back of structures to be 4-feet high; however, the proposed project received a variance from the City to replace the existing 6-foot high chain link fencing that surrounds the perimeter of the parking lot with a 6-foot high wooden cross-buck style fence (**Exhibit 2**). Other components of the proposed project that could potentially impact visual resources include the 6-foot high concrete retaining wall that is proposed to be constructed along the westerly side of the creek between the paved parking lot and the creek. The retaining wall will extend from the northerly property limit to the existing vehicular bridge to the south. The retaining wall will be constructed below the grade of the parking lot and will function as a berm between the creek and the parking lot situated above. Only approximately one foot of the retaining wall will be visible from the highway. In addition, the concrete retaining wall will be a dark tan masonry finish, and will be partially covered with hedges and vines that will be planted in front of the wall to soften the look. Finally, the proposed ACB lining that will be placed along the banks on the creek will be covered up over time with sediment, and will also be vegetated after the hydroseeding becomes established, which will reduce the visibility of the structure.

As stated in the Substantial Issue section pertaining to visual resources, the City's LCP visual resource policies are broadly written and allow a fair amount of interpretation as to how they apply to a particular project. Thus, a project, such as the one at issue here, could be found to be in compliance with the requisite development standards even if there may be some impacts to visual resources and public views. The LCP does not prohibit impacts on coastal views. Rather, the

important question is whether the project has been designed to *minimize* impacts on views from public locations (Land Use Element Policy 2.10).

The proposed project underwent a design review, which was approved by both the Planning Commission and City Council (Design Review No. 18-1685). Project design, visual impact and neighborhood compatibility have been thoroughly reviewed by the local government, and its approval of the project is supported by substantial evidence (See the Substantial Issue section of this staff report). No shoreline views are currently available from this section of the canyon, which is three miles inland of the sea.

In conclusion, although the City's certified LCP contains broad language pertaining to the preservation of public views, the size, mass, and scale of the proposed development complies with the applicable development standards, and the project as approved by the City will not adversely affect significant public views of the shoreline or hillsides.

D. Water Quality

Policy 9-I of the Open Space/Conservation Element states: *Require new development projects to control the increase in volume, velocity and sediment load of runoff from the greatest development areas at or near the source of increase to the greatest extent feasible.*

Policy 9-J of the Open Space/Conservation Element states: *Require new developments to maintain runoff characteristics as near as possible to natural discharge characteristics by maintaining the natural conditions of the watershed.*

Policy 9-K of the Open Space/Conservation Element states: *Promote preservation and enhancement of the natural drainage of Laguna Beach*

Policy 9-Q of the Open Space/Conservation Element states: *Oppose new development within the City's surrounding areas that would result in significant adverse impacts to the City's hydrology.*

Policy 10A of the Open Space/Conservation Element states: *Require that plan review procedures recognize and avoid geologically unstable areas, flood-prone lands, and slopes subject to erosion and slippage.*

Policy 10F Open Space/Conservation Element states: *To minimize risk to life and structures, new development located in established floodprone lands shall incorporate all appropriate measures pursuant to the City's "Flood Damage Prevention and Prohibition Ordinance."*

As indicated in the City's Mitigated Negative Declaration, the project's potential impacts related to water quality would occur during the earthwork and construction phase of the project, when the potential for erosion, siltation, and sedimentation is the greatest. The proposed project is intended to restore the creek's hydrological and biological functions and values, and thus will not have a long-term impact on water quality, but will improve the quality of the water flowing through this segment of the creek. Nevertheless, **Special Condition 7** imposes additional construction and post-construction BMPs that the appellee/applicant is required to observe. Therefore, as

conditioned, the Commission finds that the proposed development is consistent with the City's LCP policies concerning water quality.

E. Cultural Resources

Policy 12A of the Open Space Conservation Element states: *Promote the conservation of land having archeological and/or paleontological importance, for its value to scientific research and to better understand the cultural history of Laguna Beach and environs.*

Page 8 of the Laguna Canyon Annexation Specific Plan states: *Laguna Canyon has served as a major point of entry to the Laguna Beach area and has been inhabited by humans for over 5,000 years. Nich Magalousis, an archaeologist specializing in Native American Indians, indicates that the Gabrieleño tribe (or closely related tribe) is considered to be the first to inhabit the Canyon area. Radiocarbon research verified human habitation as far back as 3,000 years B.C.*

Page 11 of the Laguna Canyon Annexation Specific Plan states: *Indians walked the territory stretching alongside Laguna Canyon Road to their hunting camps. Cal Trans archaeologists digging in the greenbelt found ruins of a hunting village here.*

As indicated in the City's Mitigated Negative Declaration, historical records research and surveys conducted by the City's consultant regarding cultural resources did not reveal any known resource sites within the project area, therefore the project is unlikely to impact archaeological, paleontological, or cultural resources.

F. Local Coastal Program

The City of Laguna Beach LCP was certified by the Coastal Commission on January 13, 1993. The City's LCP is comprised of a variety of planning documents including the Land Use Element, Conservation/Open Space Element, and Laguna Canyon Annexation Specific Plan. The Implementation Plan (IP) portion is 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.

G. Unpermitted Development

Violations of the Coastal Act have occurred at the site including, but not limited to, replacement of the footbridge in non-compliance with a previously issued coastal development permit and unpermitted work involving placement and removal of erosion control materials, as described in more detail below.

In 1993, the Commission issued Coastal Development Permit No. 5-92-363 for "construction of a 10-foot wide concrete creek lining with cut-off walls within Laguna Canyon Creek to protect an existing foot bridge", which is the same pedestrian bridge that is proposed to be relocated as a part of this permit application. Special Condition Four of the permit requires:

If the footbridge is removed, demolished, or substantially improved, the subject creek lining will be removed and the creek bed will be returned to a natural state. Any new bridge proposal in this location shall require a new coastal development permit, and

bridge design that does not require channelization of the creek or disruption of the environmentally sensitive area.

During winter rainstorms in 2010, the Animal Shelter and PPMC were severely flooded and sustained major structural damage when floodwater overtopped the creek and the footbridge was destroyed. The remaining portions of the bridge were removed and a simple, temporary wooden bridge using glue-lam beams was installed on drilled caisson piles with a rock revetment upstream and downstream of the bridge without benefit of a Commission-issued coastal development permit, as required by Coastal Development Permit No. 5-92-363. In addition, in response to damage incurred from this major storm event, the City performed emergency repairs to the channel banks including placement of rip rap with fabric underlayment. These emergency repairs occurred without the benefit of a Commission-issued coastal development permit.

In May of 2019, the City of Laguna Beach requested an emergency waiver of coastal development permit requirements for flood control channel repairs at this site that included: 1) placement of erosion control fabric; 2) use of an excavator to remove failed rip rap from the channel bottom and replacement of failed rip rap along the channel sides; and 3) installation of approximately 75 tons of additional rip rap to replace the failed slope protection location (Emergency Waiver Application No. G-5-19-0004-W). In that case, although the City demonstrated that the repair activities were necessary to protect life and public property, and that the proposed repair activities were temporary in nature, the City failed to notify the Commission of the repair activities within the required three-day timeframe required under Section 30611 of the Coastal Act; thus, the permit requirement was not waived, nor was a coastal development permit issued.

The applicant is proposing to remove both the footbridge that was installed in non-compliance with Coastal Development Permit No. 5-92-363 and the unpermitted erosion control devices described above [and to restore areas of the creek where this removal is proposed to occur]. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the future impacts from the violations noted above.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, other than the development addressed approved herein, undertaken on the subject site without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit are satisfied.

H. California Environmental Quality Act (CEQA)

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

The City of Laguna Beach is the lead agency for the purposes of CEQA review. On January 24, 2019, the City certified the Mitigated Negative Declaration for the proposed project (Mitigated Negative Declaration/Mitigation Monitoring Program for 20612 Laguna Canyon Road). Furthermore, the proposed project has been conditioned in order to be found consistent with the certified LCP. Mitigation measures, in the form of special conditions, require the applicant to: 1) provide an adequate buffer between the Blue-line stream and the proposed structures, 2) revise the project plans, 3) implement a Habitat Restoration Plan for the area along the Blue-line stream, 4) protect the restored area along the stream as open space, 5) conform to the geotechnical recommendations, 6) assume the risks of the development, and 7) implement best management practices to minimize adverse impacts to water quality during construction and operation of the development.

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.