

CALIFORNIA COASTAL COMMISSION

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Th15a

Staff: M. Alvarado-LB
270th Day: 04/26/2020
Staff Report: 11/27/2019
Hearing Date: 12/12/2019

STAFF REPORT: REGULAR CALENDAR (CONSOLIDATED CDP)

CDP Number: 5-19-0909

Applicant: Jacqueline Sanson

Agent: Steven H. Kaufmann

Project Location: 791 Barracuda Way (APN# 656-035-03) and adjacent 149-acre site (APN# 056-240-67 and 056-240-68 (formerly 656-191-23 and 56-241-55)), Laguna Beach (Orange County)

Project Description: Request for after-the-fact approval of a lot line adjustment to add approximately 0.17-acre (7,200 sq. ft.) of open space from a 149-acre undeveloped site known to contain sensitive habitat to an existing 7,150 sq. ft. lot developed with a single-family residence, and of installation of hardscape (e.g. approx. 650± square feet of patio), three non-native established trees/shrubs, and a fence. The proposed project includes a revegetation plan with native plant species appropriate for this area, and the removal of steps made out of railroad curb ties from the 0.17-acre area. The applicant also proposes to record an open space/conservation deed restriction over the 0.17-acre area.

Staff Recommendation: Approval with Conditions

PROCEDURAL NOTE: In October 1995, the City of Laguna Beach (City) granted a local approval for a lot line adjustment (LLA 95-04) that would add approximately 0.17-acre of open space from a 149-acre undeveloped site to an existing developed residential lot; the local approval, however, did not include a coastal development permit. Lot line adjustments are a type of development subject to regulation under the Coastal Act and the certified LCP. In addition, circa 1995, when LLA 95-04 was recorded, a fence, hardscape improvements and ornamental vegetation and grass turf were installed at the 0.17-acre area without benefit of a coastal development permit.

On August 6, 2013, the City of Laguna Beach approved a local coastal development permit (No. 13-266) for the “after-the-fact” approval for the 1995 lot line adjustment. This local coastal development permit was subsequently appealed to the Coastal Commission on August 28, 2013.

Three appellants – Coastal Commissioners Brian Brennan and Mary Shallenberger, and the Sierra Club, Save Hobo Aliso Task Force (Attn: Penny Elia) – concurrently filed appeals of the City’s action, challenging the consistency of the proposal with the City’s certified Local Coastal Program (LCP). On October 9, 2013, the Commission found that the appeals raised a substantial issue and accepted the appeals for a full de novo review of the City’s approval of the coastal development permit for the lot line adjustment. Since 2013, the applicant has worked with Commission planning and enforcement staff to try to resolve the issues raised in the appeal and any violations onsite and to obtain a coastal development permit. Commission staff reviewed and considered various project alternatives with the applicant, but ultimately determined that Commission staff’s current recommendation is the most protective of coastal resources.

Because the proposed development includes elements both within the certified and uncertified jurisdiction of the City of Laguna Beach, the Commission is authorized to review a consolidated coastal development permit application for the proposed development under Section 30601.3 of the Coastal Act. The City and the applicant are in agreement with processing the application for the proposed development as a consolidated coastal development permit application (**5-19-0909**). Moreover, the applicant has withdrawn the original application subject to the appeal, rendering the de novo hearing moot. Therefore, the standard of review for this consolidated coastal development permit application is Chapter 3 of the Coastal Act, with the City’s LCP used as guidance.

Because the lot line adjustment is unpermitted development, the reconfigured lots (and any subsequent structural and landscape improvements to the 0.17-acre open space area undertaken in connection with the lot line adjustment) must be reviewed for consistency with the Coastal Act. Therefore, the proposed development must be viewed in the context of the lot configuration and condition of the project site as they existed prior to the lot line adjustment.

Since the City’s original approval of the lot line adjustment in 1995, the subject LLA has been intertwined with appeals of other coastal development permits for lot line adjustments, land divisions and related litigation, and enforcement actions that the Commission has been involved with since at least 2007; a summary of that history is provided as **Exhibit 6**. The Commission must ensure that all the terms and conditions relative to any enforcement matters are properly followed with respect to the properties involved in this case.

SUMMARY OF STAFF RECOMMENDATION

The subject site is a trapezoid-shaped approximately 7,150-square-foot lot developed with a single-family residence at 791 Barracuda Way (hereafter referred to as Parcel 1) and an adjacent 7,200-square-foot (0.17-acre) area from within a 149-acre undeveloped parcel (hereafter referred to as Parcel 2) located in the Hobo/Aliso area of Laguna Beach. Parcel 1 is developed with a single-family residence, associated appurtenances, and landscaping. Parcel 2 contains mostly undeveloped steeply-sided canyon lands incised by ravines with small streams and covered with sensitive habitat, with the exception of some unpermitted non-native landscaping and accessory structural improvements associated with the residence (including, but not limited to, approximately 650± square feet of patio, fencing, and steps out of railroad curb ties) located along the border of Parcel 1.

The applicant is seeking after-the-fact Coastal Act authorization for a lot line adjustment (LLA 95-04) to add approximately 0.17-acre of previously undeveloped open space from Parcel 2 to Parcel 1 (**Exhibit 2**). In addition, the applicant is requesting after-the-fact approval for the installation of approximately 650± square feet of patio pavers, three established non-native trees/shrubs, and fencing, which is at least partially located on Parcel 2 (**Exhibit 3**). The applicant also has agreed to record an open space/conservation easement over the entire 0.17-acre area in order to limit development on the site, consistent with Parcel 2's designation as open space.

One of the primary issues raised by the proposed project concerns consistency with the land resource protection policies of Chapter 3 of the Coastal Act, primarily as it relates to the sensitive habitat contained throughout the 149-acre undeveloped Parcel 2. Section 30240 provides that development in areas adjacent to ESHA shall be sited and designed to prevent impacts that would significantly degrade those areas and is compatible with the continued existence of the ESHA. Based on a recent mapping of sensitive biological resources prepared by Glenn Lukos for the City's Fire Department in 2019, the native vegetation found in the 149-acre parcel (Parcel 2) supports big-leaved crownbeard (*Verbesina dissita*) and paniculate tarplant (*Deinandra paniculata*), which are state and federally-listed threatened plant species. Commission staff ecologist Dr. Jonna Engel likewise has determined that Parcel 2 contains ESHA, including coastal sage scrub and southern maritime chaparral that supports California gnatcatcher and big-leaved crownbeard.

As to the project site, although native coastal sage scrub plant species currently occupy the 0.17-acre open space area, along the canyon side, including *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (California buckwheat), *Rhus integrifolia* (lemonade berry), *Rhus ovata* (sugar bush), *Opuntia littoralis* (prickly pear cactus), and *Baccharis pilularis* (coyote brush), Dr. Engel has observed the site and determined that the landscaping and fringe of disturbed coastal sage scrub currently found on the 0.17 acre open space area do not qualify as ESHA.

Applying the certified LCP as guidance, the proposed project is not consistent with numerous LCP policies protecting ESHA and open space areas. The applicant has proposed to record an open space and conservation deed restriction over the 0.17 acre area, however, the applicant still seeks after-the-fact approval of the construction of a patio and a fence bordering the pre-LLA property line. The 0.17-acre area at issue is locally-zoned for open space (OSP), and has been zoned for open space since before LLA 95-04 was recorded. Under Section 25.41.004 (Open Space Zone) of the certified Implementation Plan, structural improvements (such as fences and patios) are *not* a permitted use in areas zoned for open space. The addition of undeveloped land that is locally-zoned (although not certified) as Open Space/Passive (OSP) to an existing developed parcel that is zoned for Residential Low Density could result in the establishment of additional development potential and an increase in the intensity of use of land. Therefore, the City's LLA in 1995 made clear that structural improvements were not allowed in the 0.17-acre area (only minor landscaping), and the City's approval of the CDP in 2013 also confirmed that development in the 0.17-acre area must be limited to landscaping.

Under Section 30240 of the Coastal Act, the Commission typically requires a 100-foot buffer between proposed development and ESHA to ensure that potential indirect impacts to ESHA are avoided. Here, based on Dr. Engel's determination, ESHA exists in the open space immediately adjacent to what would be the new property line (after approval of the LLA), and a minimum 100-foot buffer around this ESHA is required to be consistent with Section 30240. Here, however, the proposed structural improvements would all occur within 100 feet of the ESHA on

Parcel 2. In addition, even setting aside these aspects of the proposed development, the proposed lot line adjustment, without additional protections, could affect nearby ESHA by facilitating development on, and use of, the applicant's (expanded) property immediately adjacent to ESHA (**Exhibit 4**).

Thus, although the Commission could deny the project as inconsistent with Section 30240 of the Coastal Act, the Commission may also approve the lot line adjustment with conditions to protect the adjacent ESHA. Thus, Commission staff recommends that the Commission approve the lot line adjustment and open space and conservation deed restriction, on the condition that the proposed accessory structural improvements are removed from the 0.17-acre portion added to Parcel 1, including, but not limited to, the patio, railroad curb tie-steps, and fence.

To ensure that the concerns and issues stated above are properly addressed and/or avoided, the Commission imposes **Special Condition 1**, which memorializes the applicant's agreement to record an Open Space and Conservation Deed Restriction over the 0.17-acre open space area. **Special Condition 1** would ensure that this project does not facilitate future development of the site that harms adjacent ESHA. In addition, **Special Condition 2** requires the removal of any structural improvements encroaching into the 0.17-acre open space (e.g. patio, fence, railroad curb tie-steps) but authorizes a replacement fence within and along the eastern property line of the residentially developed Parcel 1 (or original pre-LLA eastern property line of 791 Barracuda Way) that would be located outside of the open space and conservation deed restricted area.

With regard to the unpermitted installation of non-native landscaping and grass turf in the open space area, the applicant is proposing a revegetation plan to enhance the 0.17-acre open space area, excepting the area occupied by the existing hardscape, with native vegetation. The plant list consists of primarily native to coastal Orange County and appropriate to the habitat type of the surrounding canyon area. **Special Condition 2** requires that the applicant submit revised plans to include revegetation of all areas of the 0.17-acre open space that were previously disturbed by unpermitted structural and non-native landscaping improvements, including the area occupied by the existing hardscape, with the exception of three established non-native trees/shrubs which will remain in place; replacement vegetation shall consist of only native vegetation consistent with the applicant's proposed native plant palette. **Special Condition 2** also limits irrigation to temporary, above-ground irrigation systems. Re-vegetating with native vegetation will help prevent erosion and will enhance the 0.17-acre open space area. In addition, **Special Condition 2** requires that the revegetation plan be redesigned in a manner that discourages human use of the 0.17-acre area.

Staff is recommending the Commission **approve** the coastal development permit application with **eight** special conditions, including: **1)** open space and conservation deed restriction; **2)** final revised project/revegetation plan; **3)** Lbfd approval; **4)** assumption of risk, waiver of liability and indemnity; **5)** best management practices and erosion control; **6)** future improvements; **7)** deed restriction; **8)** application fee; and **9)** condition compliance; .

The proposed project, *only as conditioned*, can be found consistent with Chapter 3 of the Coastal Act.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Sites
- Exhibit 2 – LLA 95-04 (pre- and post-LLA configurations)
- Exhibit 3 – Project/Revegetation Plan
- Exhibit 4 – Dr. Engel’s Memorandum dated November 26, 2019
- Exhibit 5 – Letter from City dated September 18, 2012
- Exhibit 6 – History of Commission Actions Related to Subject Properties

I. MOTION AND RESOLUTION

Motion #1:

I move that the Commission approve Coastal Development Permit Application No. 5-19-0909 subject to the conditions set forth in the staff recommendation.

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

Resolution:

The Commission hereby approves Coastal Development Permit Application No. 5-19-0909 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and

possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Open Space and Conservation Deed Restriction.

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the 0.17-acre open space area depicted on **Exhibit 1, Page 2**, except for:
- 1) The activities described in the Revegetation Plan (Landscaping Plan) approved by the Executive Director pursuant to **Special Condition 2**, including the removal of any unpermitted hardscape and accessory structures, which include but are not limited to the patio, railroad curb ties and steps, and including the removal of non-native plant species, planting of native plant species, and temporary above ground irrigation to provide for the establishment of native plant species;
 - 2) Habitat restoration/enhancement;
 - 3) Necessary vegetation trimming, thinning, or removal for fuel modification purposes, only as authorized in writing by the ED or the Coastal Commission.

Except for the revegetation plan approved by **Special Condition 2**, this permit does not authorize the activities listed above. If the permittee wishes to undertake development on the property subject to this permit, the permittee must obtain all required coastal development permits (CDP) pursuant to the requirements of the Coastal Act and the Commission's regulations as described further in Special Condition 6.

- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area, as generally described above and shown on **Exhibit 1, Page 2 of the Commission staff report dated November 27, 2019**, prepared by a licensed surveyor based on an on-site inspection of the open space area.
- C. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- D. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

2. Final Project/Revegetation Plan.

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full-sized sets of a final revised Revegetation Plan, which shall be in substantial conformance to the plans submitted to the Coastal Commission's South Coast District Office on July 31, 2019, except that it shall include and be consistent with the following provisions:
- i. All unpermitted structural improvements, including fencing, patio, and railroad curb tie steps, encroaching into the 0.17-acre open space zone must be removed.

- ii. Replacement plant species shall consist of only drought tolerant, non-invasive native plant species appropriate for coastal Orange County and the Laguna Beach canyons. No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.
 - iii. The *existing* pine tree (*Pinus halepensis*), strawberry tree (*Arbutus unedo*), and xylosma evergreen tree/shrub (*Xylosma congestum*) may be maintained but only with authorization from the City of Laguna Beach Fire Department pursuant to **Special Condition 3**. These three (3) trees/shrubs cannot be replaced if at any time in the future they die.
 - iv. Temporary, above-ground irrigation is permitted for a maximum of three years after planting begins or until the revegetation has become established, whichever occurs first. No permanent irrigation is permitted.
 - v. A replacement fence is permitted within and along the original pre-lot line adjusted eastern property line of 791 Barracuda Way in Laguna Beach that would be located outside of the open space and conservation deed restricted area.
 - vi. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the revegetation plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
 - vii. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental revegetation plan for the review and written approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. WITHIN 60 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant in writing for good cause, the permittee shall implement the revegetation plan and shall remove all unpermitted structures in conformance with the approved final plans of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- C.** The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
- 3. City of Laguna Beach, Fire Department Approval. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall provide to the Executive

Director a copy of a permit issued by the City of Laguna Beach, Fire Department (LBFD) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the LBFD. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

4. **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 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.

5. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicants 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 permittees 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 applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - j. The discharge of any hazardous materials into any receiving waters shall be prohibited.

- k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
 - m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit 5-19-0909. 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 5-19-0909. Accordingly, any future improvements shall require an amendment to Permit 5-19-0909 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
8. **Application Fee.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for after-the-fact development, which equals \$11,241.
9. **Condition Compliance.** WITHIN 180 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement or any other aspect of the permit and its conditions may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & LOCATION

The applicant is requesting after-the-fact approval of a lot line adjustment (LLA 95-04) to add approximately 7,200-square-foot (0.17-acre) of open space from a 149-acre undeveloped parcel known to contain sensitive habitat to an existing property developed with a single-family residence. The applicant is also requesting after-the-fact approval for approximately 650± square feet of hardscape, installation of non-native landscaping (i.e. a pine tree (*Pinus halepensis*), a strawberry tree (*Arbutus unedo*), and a xylosma evergreen tree/shrub (*Xylosma congestum*), and construction of a fence within the subject 0.17-acre area of the 149-acre undeveloped parcel (**Exhibit 3**). The fence and patio encroach into the 0.17-acre area from along the pre-LLA property line of Parcel 1. The proposed project includes a revegetation plan that would involve the replacement of all other non-native vegetation and grass turf with native plant species appropriate for this area, removal of existing railroad curb tie-steps from within the 0.17-acre open space, and recordation of an open space/conservation easement over the entire 0.17-acre area. The applicant also proposes to replace 267 square feet of non-native podocarpus, a non-native shrub, along the pre-LLA property boundary of the residentially developed lot with native plant species to “offset” retention of a portion of the patio encroaching into the 0.17 acre area. The pre- and post-LLA configuration of the lots that is sought by the applicant is depicted in **Exhibit 2**. In its’ pre-LLA configuration, Parcel 1 is fairly typical for the area, in terms of its level topography, size and configuration, and the single-family residence developed on it.

The proposed project affects two properties: a trapezoid shaped approximately 7,150-square-foot lot developed with a single-family residence at 791 Barracuda Way (Parcel 1) and an adjacent 0.17-acre open space area from within a 149-acre¹ undeveloped parcel (Parcel 2) (APN# 056-240-67 and 056-240-68 (formerly 656-191-23 and 56-241-55 when LLA 95-04 was recorded))) located in the Hobo/Aliso area of Laguna Beach, Orange County (**Exhibit 1**). Parcel 1 is developed with a single-family residence (constructed c. 1989), associated appurtenances, and landscaping. Parcel 1 is located within one of the City’s certified categorical exclusion areas (Cat Ex Area 7, Portafina Area). The land use designation for Parcel 1 is Residential Low Density (R1) and the adjacent parcels to the north and south are also developed with single-family residences. Parcel 2 contains mostly undeveloped steeply sided canyon lands incised by ravines with small streams and covered with sensitive habitat, with the exception of the unpermitted non-native landscaping and hardscape improvements and fence. Parcel 2 is partially locally-zoned² Residential/Hillside Protection (RHP) and partially zoned Open Space/Passive (OSP). More specifically, the 0.17-acre area at issue is currently locally-zoned as Open Space/Passive, and was zoned Open Space/Conservation when LLA 95-04 was recorded.

LLA 95-04 was recorded in October 1995. Based on historical aerials and the City’s online record file documents, it involved James & Katherine Conrad Family Trust (Conrad) and the Esslinger Family Trust (Esslinger). The structural and landscape improvements were installed sometime

¹ In 2015, Orange County Transportation Authority (OCTA) acquired approximately 147-acres of the 149-acre undeveloped property consistent with the intent of the Coastal Commission’s Cease and Desist Order CCC-10-CD-01 and Restoration Order CCC-10-RO-01. Driftwood, Properties LLC still holds ownership over approximately 1.5 acres of the original 149-acre parcel. However, for purposes of reviewing the proposed development and for simplification, the 149 acres of land will be characterized as a single parcel consistent with the lot configuration that was recognized by the Commission at the time of the recordation of the unpermitted lot adjustment in 1995.

² This local zoning designation has not been certified by the Coastal Commission because Parcel 2 is located within an area of deferred certification.

between 1989 and 2002. The property previously owned by Conrad, which consists of Parcel 1 and the 0.17-acre open space area, was sold three times after the recordation of the LLA and prior to the purchase of Parcel 1 and the 0.17-acre open space area by Ms. Sanson in 2013. The property previously owned by Esslinger, which consists of Parcel 2, is now owned by Driftwood Properties, LLC and the Orange County Transportation Authority (OCTA).

The proposed development that is subject to this permit application (No. 5-19-0909) is located within multiple permit jurisdictions – the approximately 149-acre parcel is located within the Commission's retained jurisdiction; the 791 Barracuda Way property is located within the City of Laguna Beach's certified jurisdiction.

B. PROJECT HISTORY

In October 1995, the City of Laguna Beach approved a Lot Line Adjustment (LLA) 95-04 for the 791 Barracuda Way property and an adjoining parcel; the City's approval, however, did not include a coastal development permit. Lot line adjustments are a type of development subject to regulation under the Coastal Act and the certified Local Coastal Program (LCP). This lot line adjustment purports to add an area of undeveloped land from adjacent vacant parcels known to contain sensitive habitat to an existing developed residential lot. The current applicant/landowner of 791 Barracuda Way did not own the property and was not involved when, in 1995, LLA 95-04 was originally recorded. However, the current owner (the applicant) was made aware of the unpermitted development during the property acquisition process in 2013.

In May 2007, Coastal Commission staff sent to the City a "Notice of Violation" clarifying that the parties to the LLA were required to obtain a coastal development permit for Lot Line Adjustment 95-04, which is not exempt development pursuant to the Coastal Act. Since the City's original approval, the subject LLA has been intertwined with appeals of other coastal development permits for lot line adjustments, land divisions and related litigation, and enforcement actions related to Parcel 2 that the Commission has been involved with since at least 2007. A summary of that history is provided as **Exhibit 6**.

On August 6, 2013, the City Council of the City of Laguna Beach conditionally-approved local Coastal Development Permit (CDP) No. 13-1266 after holding a public hearing, and adopted a CEQA Categorical Exemption. According to the City, the purpose of the City's action was to give "after-the-fact" approval of a coastal development permit for the lot line adjustment that the City processed in 1995 (LLA No. 95-04) that was not given all required approvals at that time. Local CDP No. 13-1266 did *not* authorize structural encroachments into the added adjustment area.

The City's approval of local CDP No. 13-1266 included the following conditions:

1. The added adjustment area from Parcel 2 of Lot Line Adjustment 95-04 shall be limited to landscaping only and subject to Design Review for any modifications to existing conditions.
2. With the exception of irrigation, no structures of any kind shall be allowed in the adjustment area.
3. Development standards including, but not limited to, setbacks and site coverage shall be determined from the pre-lot line adjustment property lines.
4. This Coastal Development Permit was only applicable to the property located within the City's Coastal permitting jurisdiction.

On August 28, 2013, the City Council's action was appealed to the Coastal Commission: one of the appeals was by former Commissioners Brian Brennan and Mary Shallenberger, and another appeal was filed by Ms. Penny Elia on behalf of the Sierra Club, Save Hobo Aliso Task Force. The two appeals were assigned one case number (Appeal No. A-5-LGB-13-0235). The appellants alleged that the City's approval was inconsistent with LCP policies that protect sensitive habitat area. More specifically, the appellants contended:

1. That the proposed lot line adjustment includes a parcel of land that is identified on the City's biological resource values maps as containing high value and very high value habitat. These areas, and perhaps others, are likely also Environmentally Sensitive Areas (ESAs) that are subject to special treatment and protection under the policies of the certified LCP. LCP policies, such as Open Space Conservation Element Policy 8-J, require that detailed biological assessments be prepared for all development within and adjacent to ESAs and that identified ESAs be protected. The City's approval didn't include the required biological assessment & doesn't establish adequate protections for sensitive habitat in conjunction with the lot line adjustment, as is required in the LCP.
2. The City's action did not consider hazards such as those related to fire and attendant impacts to native vegetation associated with fuel modification. Nor did the City's action adequately address the potential effects that seismically induced landslides and liquefaction may have on the area.
3. The area of land proposed to be taken from the larger approximately 149-acre parcel is located within an area where the Commission presently retains jurisdiction. The City's approach to protecting habitat in this case was to require that no structure be built on the lot area being added to the existing developed lot. The City did not have the authority to impose such a requirement in an area where they do not have coastal development permit authority. Only the Commission itself could impose that requirement. Furthermore, the City's condition does not specifically address protection of sensitive habitat.
4. The subject area is addressed by Commission Cease and Desist Order No. CCC-10-CD-01, which guarantees to the State Coastal Conservancy right of first refusal to purchase 80 acres of the approximately 149-acre parcel³ that are appropriately part of the parcel, i.e. that were part of the parcel prior to any unpermitted LLAs, if the owner of the parcel proposes to sell the property; the 80 acres encompassed the 0.17-acre area at issue in this project. The Commission must ensure that all the terms and conditions relative to that CDO are properly followed with respect to this property.

At its October 9, 2013 meeting, the Commission found Substantial Issue on Appeal No. A-5-LGB-13-0235 based on the grounds on which the appeals were filed, and accepted the appeal for a full de novo review of the City of Laguna Beach's approval of the coastal development permit for the lot line adjustment. Since 2013, the applicant has worked with Commission planning and enforcement staff to try to resolve the issues raised in the appeal and any violations onsite and to obtain a coastal

³ In the staff report dated September 27, 2013 for the Substantial Issue hearing of Appeal No. A-5-LGB-13-0235, Commission staff inaccurately stated that the Cease and Desist Order No. CCC-10-CD-01 guaranteed to the State Coastal Conservancy the right of first refusal to purchase all 150-acres of the Driftwood site but only 80-acres of the 149-acre parcel was part of preemptive purchase right agreement area. The 80 acres included in the PPR area encompassed the 0.17-acre area at issue.

development permit. Commission staff reviewed and considered various project alternatives with the applicant, but ultimately determined that Commission staff's current recommendation is the most protective of coastal resources.

Because a coastal development permit has not been officially obtained for the lot line adjustment by either the applicant or adjacent property owner, Driftwood Properties, LLC, the reconfigured lots (and any subsequent structural and landscape improvements to the 0.17-acre open space area subject to the lot line adjustment) are not recognized under the Coastal Act. The effect of the development must be viewed in the context of the lot configuration and condition of the project site areas as they existed prior to those lot line adjustments.

C. STANDARD OF REVIEW

Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

The proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach. The area of land proposed to be taken from the vacant Parcel 2 is located within Hobo Canyon, an area where the Commission presently retains jurisdiction. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified. The standard of review for the elements of the project in the deferred certified areas (Coastal Commission's jurisdiction), i.e., Parcel 2, is the Chapter 3 policies of the Coastal Act.

The proposed development also involves the property located at 791 Barracuda Way (i.e., Parcel 1), located within a certified area under the Laguna Beach Local Coastal Program. Because the proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach, under Section 30601.3 of the Coastal Act the Commission may review the application as a consolidated coastal development permit application. The City and the applicant are in agreement with processing the application for the proposed development as a consolidated coastal development permit application (**5-19-0909**). Moreover, the applicant has withdrawn the original application subject to the appeal, rendering the need to hold a de novo hearing moot. The standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3(a) is Chapter 3 of the Coastal Act, with the City's LCP used as guidance.

D. ESAS/ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks*

and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Like Section 30240 of the Coastal Act, preservation and enhancement of the City's ESHA is a goal supported by the environmental protection policies certified LCP, which serves as guidance.

Policy 4-F of the OS/C Element of the certified LUP states:

Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs)

Policy 4-I of the certified OS/C 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 7-K of the certified OS/C Element 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.

Policy 8-C of the certified OS/C Element states:

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

Policy 8-F of the certified OS/C Element states:

Require detailed biological assessments for all subdivisions and fuel modification proposals located within areas designated as "High" or "Very High Value" on the Biological Values Maps.

Policy 8-G of the certified OS/C Element states:

When subdivision or fuel modification proposals are situated in areas designated as "High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved to the greatest extent possible.

Policy 8-H of the certified OS/C Element states:

When subdivision or fuel modification proposals are situated in areas designated as "Very High Value" habitats on the Biological Values Maps and where these are confirmed by

subsequent on-site assessment, require that these habitats be preserved and, when appropriate, that mitigation measures be enacted for immediately adjacent areas.

Policy 8-I of the certified OS/C 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 Maps 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 Maps 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 certified OS/C Element states:

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 damaged 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; and

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.

Policy 8-L of the certified OS/C Element states:

Preserve and protect fish and wildlife species for future generations.

Policy 8-N of the certified OS/C Element states:

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

Action 3.10.1 of the LUE of the certified LUP states:

Establish criteria for placement of new development on the most suitable area of the lot to maximize the preservation of sensitive resources.

Policy 5.2 of the LUE of the certified LUP states:

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.

Policy 7.3 (same as Policy 10.2) of the LUE of the certified LUP states:

Design and site new development to protect natural and environmental 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 of the LUE of the certified LUP states:

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 impact 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. (Similar to Policies 5.2 and 10.3)

Action 7.4.2 of the LUE of the certified LUP states:

Continue preparation of initial studies, pursuant to the California Environmentally Quality Act (CEQA), for any proposed development, including single-family residences located within environmentally sensitive areas (Same as Action 10.3.1).

Action 10.2.1 of the LUE of the certified LUP states:

Adopt standards that require new development and related improvements to be located on the most suitable areas of the site so as to maximize safety and the preservation of sensitive resources.

The applicant is seeking after-the-fact approval for a lot line adjustment (LLA 95-04) to add approximately 0.17-acre (7,200 square feet) of adjacent land from a 149-acre undeveloped parcel (Parcel 2) to a residentially developed approximately 7,150-square-foot parcel (Parcel 1). In addition, the applicant is requesting after-the-fact approval for the installation of approximately 650± square feet of patio, three non-native shrubs/trees, and fencing. Finally, the applicant proposes to record an open space deed restriction over the 0.17-acre area.

ESHA Determination

One of the primary issues raised by the proposed project concerns consistency with the land resource protection policies of Chapter 3 of the Coastal Act. Section 30240(a) provides that environmentally sensitive habitat areas (ESHA) must be protected against any “significant disruption of habitat values,” and only uses dependent on the resources are allowed *within* ESHA, while Section 30240(b) provides that development *adjacent* to ESHA is allowed as long as it is sited and designed to prevent impacts that would “significantly degrade” the ESHA and is compatible with the continued existence of the ESHA. Parcel 2 has areas that the City of Laguna Beach has identified as containing high value and very high value habitat. Parcel 2 has varied topography of moderate to steep slopes and includes a mosaic of vegetation types including southern maritime chaparral and coastal sage scrub. Section 30107.5 of the Coastal Act defines ESHA as “*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*”

Based on a recent mapping of sensitive biological resources prepared by Glenn Lukos for the City’s Fire Department in 2019, the native vegetation found in the 149-acre parcel (Parcel 2) supports the coastal California Gnatcatcher, big-leaved crownbeard (*Verbesina dissita*), paniculate tarplant (*Deinandra paniculata*), which are state and federally-listed threatened species. Commission staff ecologist Dr. Jonna Engel has reviewed the project site and determined that Parcel 2 contains ESHA, including coastal sage scrub and southern maritime chaparral that supports California gnatcatcher and big-leaved crownbeard that is located directly adjacent to the 0.17-acre area proposed to be added to Parcel 1. In a memorandum dated November 26, 2019, Dr. Engel states:

*“GLA [Glenn Lukos Associates] mapped most of the 0.17 acres as “ornamental” with a thin strip of “disturbed Artemisia californica/Eriogonum fasciculatum” along its border ... GLA also mapped “very high value habitat” within 50 feet of the 0.17 acre area and a large area of big-leaved crownbeard within approximately 100 feet of the 0.17 acre area ... The “very high value habitat” consists of coastal sage scrub occupied by big-leaved crownbeard, coastal California gnatcatchers, and other sensitive species and big pod ceanothus (*Ceanothus megacarpus*)/southern maritime chaparral occupied by big-leaved crownbeard which is a habitat type with a global and state rarity ranking of G3 S3⁴ ...*

⁴ Global and State Level 3 communities and species are identified as “vulnerable – at moderate risk of extinction due to a restricted range, relatively few populations (often ≤80), recent and widespread declines, or other factors” (<http://www.natureserve.org/conservation-tools/conservation-status-assessment>).

On April 18, 2019, I observed the habitat between the 0.17 acre area and the “very high value habitat” during a site visit... We made a stop right above 791 Barracuda Way and I saw that the approximately 50 foot wide area consisted of coastal sage scrub dominated by healthy California sagebrush and California buckwheat adjacent to the border of the 0.17 acre area that GLA described as “disturbed Artemisia californica/Eriogonum fasciculatum.

The coastal sage scrub between the 0.17 acre area and the “very high value habitat” area, that is dominated by California sagebrush and California buckwheat, is ideal habitat for CAGN... In fact, on April 18, 2019, during the site visit to FMZ 10, just above 791 Barracuda Way, we heard CAGN vocalizations. I find, based on CNDDDB records and the vocalizations of CAGN in April 2019, that the coastal sage scrub adjacent to the 0.17 acre area very likely support CAGN.”

As to the project site (791 Barracuda Way and 0.17-acre adjacent land from Parcel 2), currently there is no ESHA. Based on site-specific information provided by the applicant specifically concerning the 0.17-acre area, most of the 0.17-acre area in question was disturbed and landscaped with ornamental vegetation without a coastal development permit that the applicant is proposing to mostly restore to a native plant community. There are, nevertheless, native coastal sage scrub plant species that occupy the border of the 0.17-acre open space area, along the canyon side, surrounding the ornamental landscape vegetation (**Exhibit 4**). These shrubs consist of *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (California buckwheat), *Rhus integrifolia* (lemonade berry), *Rhus ovata* (sugar bush), *Opuntia littoralis* (prickly pear), and *Baccharis pilularis* (coyote brush). These native species have persisted onsite despite the history of development and the fact that the subject 0.17-acre open space area appears to have been historically subjected to limited vegetation clearance for fuel modification. The fact that native vegetation is found within the surrounding canyon slopes and within the 0.17-acre area along the canyon side is indicative that the subject 0.17-acre area was likely occupied by native vegetation at some point in time. Dr. Engel has observed the site and determined that the landscaped ornamental vegetation and the disturbed fringe of coastal sage scrub currently found on the 0.17 acre open space area do not qualify as ESHA. Nevertheless, as stated above, Dr. Engel has determined that Parcel 2 currently contains extensive habitat that meets the definition of ESHA, which is located adjacent to the 0.17-acre area. Therefore, the project site is, at a minimum, immediately adjacent to ESHA. In addition, although the 0.17-acre area likely contained ESHA at some point in time, Dr. Engel could not determine whether ESHA existed when the unpermitted LLA was approved in 1995 and/or when the unpermitted structures were installed, or whether the area had already been impacted by required fuel modification. Therefore, there is insufficient evidence as to whether the 0.17-acre area should be treated as ESHA for purposes of this request for after-the-fact approval of the LLA and associated unpermitted development.

Applying the City’s certified LCP as guidance, a lot line adjustment like the proposed LLA, along with the proposed structural improvements is inconsistent with LCP policies. For example, Policy 8-J(3)(d) (cited above) prohibits the creation of new parcels entirely *in* ESHA or ESAs; although the proposed lot line adjustment would not result in a new parcel, it is modifying existing parcels into parcels with new configurations. As stated above, however, there is currently no ESHA in the 0.17-acre area and there is insufficient evidence as to whether the 0.17-acre area should be treated as ESHA. In addition, the applicant has proposed to record an open space and conservation deed

restriction over the 0.17-acre area which would address the proposed LLA's consistency with the goal of Policy 8-J to protect ESA/ESHA.

The applicant still seeks after-the-fact approval of the construction of a patio and a fence bordering the pre-LLA property line. In addition, the 0.17-acre area at issue is locally⁵ zoned for open space, OSP (Open Space/Passive) and was previously zoned for open space when LLA 95-04 was recorded in 1995. Areas designated as open space in the LCP are intended to preserve land in its natural state for open-space purposes. The LUE of the certified LCP states that open space lands *"are typified by special ecological, wildlife, or scientific study potential and are areas of topographical, geological, and historical importance. Passive recreational uses such as walking and hiking are encouraged in appropriate areas. Additional low-impact passive uses may be permitted, subject to a condition use permit, where the City Council finds that those uses will not conflict with the open-space uses described above and will not have significant effect on the environment."* The addition of undeveloped open space land that is adjacent to an existing developed parcel that is zoned for Residential Low Density is intended to and would facilitate further development of the open space area with structures/improvements associated with the residential development, which is precisely what has occurred here.

Section 25.41.004 (Open Space Zone) of the certified Implementation Plan provides that structural improvements are not a permitted use in areas designated as open space. Nor is such a use consistent with the City's approval of LLA 95-04 in 1995 and of local CDP No. 13-1266 in 2013, which was the permit subject to Appeal No. A-5-LGB-13-0235. On September 5, 1995, in its approval of LLA 95-04, the City determined the following (**emphasis added**):

*"...The request is consistent with zoning regulations in that the existing residence is located on R-1 portion of the site, whereas the newly-acquired area within the Open Space Zone will be used for minor landscape purposes only. **Structural improvements of any kind** i.e., (buildings, sheds, fences, pools, etc.) **are prohibited** in the Open Space/Conservation Zone."*

Although the City does not have the authority to issue a coastal development permit for the above-mentioned accessory structures, as the 0.17-acre area is within a deferred certification area where the Commission must issue CDPs, the City clearly believed that hardscape improvements as have been proposed here would not be consistent with the LCP. Thus, in a letter dated September 18, 2012, the City clarified that a patio is not consistent with the terms and conditions of the LLA 95-04 (see **Exhibit 5**). The City noted that pursuant to LLA 95-04, the open space area is to be used for minor landscape purposes only, and that structural improvements (e.g. buildings, sheds, fences, pools, etc.) are prohibited in open space zones.

Furthermore, the City's approval of the lot line adjustment under local CDP No. 13-1266 included the following conditions:

"...The added adjustment area from Parcel 2 of Lot Line Adjustment 95-04 shall be limited to landscaping only and subject to Design Review for any modifications to existing

⁵ The City's zoning designation of the 0.17-acre site is locally-recognized but has not been certified by the Coastal Commission because the 0.17-acre site is located within an area of deferred certification.

conditions...With the exception of irrigation, no structures of any kind shall be allowed in the adjustment area.”

Thus, using the certified LCP as guidance, and as confirmed by the City, the proposed structural improvements in open space that is adjacent to ESHA are not consistent with Section 30240 of the Coastal Act.

Potential Impacts from Development Adjacent to ESHA

Coastal Act Section 30240 requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade ESHA, and shall be compatible with the continuance of ESHA.

When applying section 30240, the Commission typically requires a minimum buffer of 100 feet between proposed development and environmentally sensitive habitat areas. A buffer, in the context of the Coastal Commission, is not itself a part of the ESHA, but is a barrier, “safe zone”, or bordering strip of natural habitat or land between ESHA and development or human related disturbance (e.g. noise, artificial lighting; hazards of herbicides, pesticides and other pollutants; shading from buildings, non-native or invasive landscaping activities, and domestic pets). The purpose of a buffer is to create a zone where there will be little or no human activity; to “cushion” species and habitats from disturbance and allow native species to go about their “business as usual.” Buffers provide the necessary horizontal spatial separation to preserve the integrity and natural function of individual species and habitats and protect biological productivity. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. Buffers may also provide ecological functions essential for species in the ESHA. The required width for buffers varies depending on the type of ESHA and on the type of development, location and topography of the site, and the sensitivity of the resources to the particular kind of disturbance.

In a natural environment there are often wildlife and habitat corridors. For example, in the region of coastal Orange County, the vast open space in the Laguna Hills provide a corridor for wildlife, specifically birds, to reach the Pacific Ocean from Inland areas. The areas of Parcel 2 adjacent to the project site that contain sensitive habitat serve such a purpose. Section 30240 states that development in areas adjacent to environmentally sensitive habitat areas (ESHA) shall be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitats. There is significant ESHA immediately adjacent to the project site, such that any development would be located within close proximity to some habitat areas, and therefore is required to be sited and designed to prevent impacts to, and be compatible with the continuance of those habitats. In this case, that would include development that preserves the site’s natural connectivity. In order to prevent fragmentation, the boundary of the open space must be designed to allow for the movement of wildlife such as coyotes, which is in conflict with the proposal to develop a patio in the open space area. Impacts from the loss of habitat linkages due to the current proposal’s physical impediments may include disturbances from domestic animals, noise, light, pesticides and herbicides, and other human activity which would all intensify at the site and would be detrimental to the existing adjacent habitat and wildlife.

The ESHA in Parcel 2 should be free from non-resource-dependent development and should serve as a buffer to adequately protect the identified resource. The subject 0.17-acre area is located immediately adjacent to ESHA along the east (canyon-ward side) of the site, and any development

including accessory structural improvements (i.e. fence and patio) that would encroach into this open space and further into the canyon would intensify the type of use of the site and would facilitate on-going human activity, which could significantly impact the ESHA immediately adjacent to the project site. Development that facilitates on-going activities on the site resulting in additional noise or disturbance impacts would negatively impact sensitive avian species, habitat areas, and the presence of rare native vegetation, and are inconsistent with Coastal Act Section 30240, which requires development adjacent to ESHA to be consistent with the continuance of the habitat areas.

Dr. Engel has reviewed the project site and determined that a minimum buffer of 100 feet from the coastal sage scrub and maritime chaparral ESHA located right up to the canyon-ward limits of the project site is necessary to ensure protection of the ESHA. The 0.17-acre area of Parcel 2 in question is approximately 90 feet wide by 80 feet deep. Consequently, the proposed project would include siting portions of the patio and fence within 73 and 65 feet of the adjacent ESHA.⁶ These physical structures would not only encroach into areas that should serve as a buffer for the adjacent ESHA, but they would also facilitate on-going human use of the 0.17-acre area, which is not appropriate in an ESHA buffer. Based on Dr. Engel's assessment of the required buffer for this ESHA, and the adverse impacts of private development within 100 feet of the ESHA, the proposed encroachments are not consistent with Section 30240 of the Coastal Act.

The applicant proposes to revegetate most of the 0.17-acre area with native plant species appropriate for the area. As this area is located entirely within area that should be set aside as buffer for the adjacent ESHA, all of the area should be planted with native vegetation consistent with and appropriate for the habitat type it surrounds. The Commission has typically required ESHA buffers to be planted in appropriate native vegetation and protected in perpetuity to prevent future development from impacting the ability of the buffer to protect adjacent ESHA. As presently designed, however, the revegetation plan would accommodate an unofficial sedge pathway. On-going human use of the 0.17-acre area would also be facilitated by the presence of this pathway, which would not be appropriate in an ESHA buffer. Therefore, the applicant's proposed revegetation plan should be modified to discourage use of the 0.17-acre area, in addition to being set aside and protected through the applicant's proposed open space deed restriction.

Fuel Modification in Buffers

The applicants have not proposed, nor does this CDP authorize, fuel modification work on the applicant's property subject to the lot line adjustment. However, given the residence's proximity to open space in the canyon and that there is the potential for brush fires, fuel modification is implemented in this area of Laguna Beach. The fact that fuel modification will need to occur in certain areas and under certain circumstances in the City is recognized throughout the certified LCP. Parcel 1 (791 Barracuda Way) is within an area recognized by the City with "Very High Fire Hazard Severity". The certified LCP, serving as guidance, contains policies, such as Land Use Element Policy 10.6 and related actions and Open Space Conservation Element Policies 8-G, 8-H and 10-G that pertain to fuel modification, new subdivisions and requirements to protect sensitive habitat. Therefore, the Commission must consider whether the proposed lot line adjustment will

⁶ The subject patio would encroach approximately 15 feet and the fence would encroach approximately seven feet into the 0.17-acre area.

affect the location of required fuel modification to protect the applicant's property in a manner that would increase impacts to ESHA on Parcel 2.

Policy 10.6 of the LUE of the certified LUP states:

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 endanger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site. Fuel modification performed by private property owners cannot go beyond property lines without agreement by the adjacent property owners. Fuel modification on public land to protect existing development should be avoided whenever feasible; if avoidance isn't feasible, measures must be employed to minimize the amount of fuel modification necessary on public land.

Action 10.6.1 of the LUE of the certified LUP states:

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. Alternative means of thinning and/or removal of native vegetation for fire hazard management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible.

Action 10.6.2 of the LUE of the certified LUP states:

Equivalent methods of fire risk reduction shall be determined on a case-by-case basis by the City and may include the following, or a combination of the following, but are not limited to: compliance with Building Code and Fire Code requirements for projects; tile roof treatments; irrigated buffer zones; installation of masonry or other non-combustible fire resistant wall; boxed eaves; reduced landscaping; other alternative construction to avoid the need for vegetation thinning, pruning or vegetation removal.

Action 10.6.3 of the LUE of the certified LUP states:

No new division of land shall be allowed which would require new fuel modification (e.g. vegetation removal) or new fuel breaks in environmentally sensitive habitat areas or on public open space or park lands to protect new development within the resultant lots.

Action 10.6.4 of the LUE of the certified LUP states:

Update the Safety Element to incorporate current fuel modification and fuel break practices and requirements.

Policy 8-G of the OS/C Element of the certified LUP states:

When subdivision or fuel modification proposals are situated in areas designated as "High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved to the greatest extent possible.

Policy 8-H of the OS/C Element of the certified LUP states:

When subdivision or fuel modification proposals are situated in areas designated as "Very High Value" habitats on the Biological Values Maps and where these are confirmed by subsequent on-site assessment, require that these habitats be preserved and, when appropriate, that mitigation measures be enacted for immediately adjacent areas.

Policy 10-G of the OS/C Element of the certified LUP states:

Fuel modification plans, where appropriate shall be included within the boundary of the developed land use zone.

Fuel modification can have significant adverse impacts on sensitive habitat. In fact, fuel modification, because of maintenance, thinning, or clearing, is not typically considered to be compatible with protection of ESHA. Also, during review of new land divisions, including lot line adjustments, development is required to be sited such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space. Moreover, in areas where fuel modification is necessary the Commission requires an ESHA buffer that is separate and distinct from fuel modification zones, *unless* it is determined infeasible due to the *pre-existing* development layout and site constraints.

Policy 10.6 of the certified LCP (cited above), serving as guidance, requires that all fuel modification be located within the site being developed unless findings can be made that other alternatives are not available and strict application of this provision would endanger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site. Here, the applicant does not currently accommodate both an ESHA buffer and fuel modification zone for protection of the *existing* single-family residence on Parcel 1 (the pre-LLA residential lot) due to its *pre-existing* development layout and size (existing prior to the LLA and development at issue). Parcel 1 is less than 100 feet long and was subdivided prior to the effective date of the Coastal Act (1977). In addition, the applicant's residence (constructed c. 1989) on Parcel 1 only maintains a 4-foot to 22-foot setback from the applicant's pre-LLA rear property line. Therefore, fuel modification currently is implemented beyond the boundary limits of Parcel 1.

More specifically, periodic fuel modification is implemented 100 feet from the canyon-ward edge of the pre-LLA property line of Parcel 1 (791 Barracuda Way); consequently, the subject 0.17 acre site is located entirely within the locally recognized Fuel Modification Zone (FMZ) 10 area. Such vegetation thinning has previously been authorized by Commission through emergency permits (e.g. G-5-15-0032 and G-5-19-0033); Coastal staff is currently in the process of reviewing the City's request for a coastal development permit (CDP) for fuel modification in FMZ 10. However, it should be noted that the Commission's standard has been to limit fuel modification within 100 feet from *principal structures* and not property lot lines. In addition, the coastal development permit

currently before the Commission (5-19-0909) does not authorize the City's request for a CDP for fuel modification in FMZ 10, which is currently being reviewed under a separate application, or any future proposal for fuel modification in the project site, which would require written authorization from the Coastal Commission in the form of an amendment to this permit or a separate coastal development permit. Any fuel modification would need to be approved by the Commission and designed to ensure protection of the adjacent ESHA.

Consequently, it seems the subject 0.17-acre area, which is only 80 feet long, therefore, has to serve both as an ESHA buffer *and* fuel modification zone for the existing primary residence on Parcel 1. In addition, approval of the proposed lot line adjustment, if conditioned to ensure appropriate restrictions are in place restricting the use of the additional 0.17-acre area of undeveloped land as "open space", would not result in a *new* fuel modification zone with new fuel breaks because fuel modification associated with the *existing* residence to date is already being implemented within 100 feet of the pre-LLA property line and would not result in a larger developable lot (approximately 13,387 square feet) that could extend further into Hobo Canyon and closer to sensitive habitat areas inconsistent with Section 30240 of the Coastal Act. The subject 0.17-acre open space area should only serve as a transitional area between the residential development (single-family residence and accessory structure in Parcel 1) and environmentally sensitive habitat, which is particularly important here given that the applicant's residence along Barracuda Way is not sufficiently setback from the rear pre-LLA property line and Parcel 1, which is less than 100 feet long, is not long enough to maintain a 100-foot ESHA buffer onsite.

Conclusion

Due to the potential impacts to ESHA immediately adjacent to the project site, the request for after-the-fact approval of structural improvements including, but not limited to, the patio and fence encroaching the 0.17-acre open space area is not consistent with the certified LCP or Chapter 3 of the Coastal Act. Approving development that would further encroach into the canyon would result in a change in the type of use and level of human activity on a site that should more appropriately serve to provide an ESHA buffer between ESHA and development or human disturbance. Even setting aside the structural improvements, the LLA without appropriate restrictions in place restricting the use of the additional 0.17-acre area as open space would facilitate disturbance of the adjacent ESHA by expanding the owner's property further towards the canyon. Thus, although the Commission could deny the project as inconsistent with Section 30240 of the Coastal Act, the Commission may also approve the lot line adjustment with conditions to protect the adjacent ESHA. Thus, Commission staff recommends that the Commission approve the lot line adjustment and open space and conservation deed restriction, on the condition that the proposed accessory structural improvements are removed from the 0.17-acre portion added to Parcel 1, including, but not limited to, the patio, railroad curb tie-steps, and fence.

To ensure that the concerns and issues stated above are properly addressed and/or avoided, the Commission imposes **Special Condition 1**, which memorializes the applicant's agreement to record an Open Space and Conservation Deed Restriction over the 0.17-acre open space area. **Special Condition 1** would ensure that this project does not facilitate future development of the site that harms ESHA adjacent to the project site. Moreover, the open space and conservation deed restriction would place future buyers of the property on notice the requirement to treat that the added land be treated as open space. **Special Condition 1** would allow the applicant's proposed revegetation to be undertaken within the 0.17-acre (with modifications discussed in the next paragraph), as well as necessary fuel modification, although any such development not

explicitly authorized by this permit would need to approval through a permit amendment or written authorization of the Executive Director. In addition, **Special Condition 2** requires the removal of any structural improvements encroaching into the 0.17-acre open space (e.g. patio, fence, railroad curb tie-steps) but authorizes a replacement fence within and along the eastern property line of the residentially developed Parcel 1 (or original pre-LLA eastern property line of 791 Barracuda Way) that would be located outside of the open space and conservation deed restricted area.

With regard to the unpermitted installation of non-native landscaping and grass turf in the open space area, the applicant is proposing a revegetation plan to enhance the 0.17-acre open space area with native vegetation. Habitat enhancement/restoration is consistent with Section 30240 because it is a resource-dependent use and will not significantly degrade the ESHA (and, in fact, will enhance it). The plant list consists primarily of vegetation native to coastal Orange County and appropriate to the habitat type of the surrounding canyon area. To memorialize these measures, **Special Condition 2** also requires that replacement vegetation consist of native vegetation, and limits irrigation to temporary, above-ground irrigation systems. Re-vegetating with native vegetation will help prevent erosion and will enhance the 0.17-acre area. As previously stated, however, the proposed revegetation plan accommodates an unofficial sedge pathway that would also facilitate on-going human use of the 0.17-acre area, and has been determined to be inappropriate in an ESHA buffer. Therefore, **Special Condition 2** also requires that the revegetation plan be redesigned in a manner that discourages human use of the 0.17-acre area.

Special Condition 3 requires that the applicant provide a copy of a permit/approval issued by the Laguna Beach Fire Department (LBFD) of the final revegetation plan that has been designed with fuel modification requirements in mind. Approval from the LBFD should help limit any future need for fuel modification of the subject site.

Alternative Projects

There are several alternatives to the proposed project. First, the applicant analyzed a “no project” alternative. This alternative would maintain the status quo and violations would remain on site, including the subject lot line adjustment and unpermitted structural and landscape improvements encroaching into the added lot, and the permit would not resolve the violations or impacts to ESHA. Resolution would not be achieved unless and until the property owners also obtain approval of a coastal development permit from the Commission.

Second, resolution of the violations in question could be obtained through the Commission’s Cease and Desist Order (CDO) No. CCC-10- CD-01 (issued 2010), which guarantees to the State Coastal Conservancy right of first refusal to purchase the subject 0.17-acre area if at any time in the future the ownership of the underlying property owner (Driftwood Properties, LLC) of a fee title interest in the 0.17-acre is confirmed by administrative or judicial action, including action by the Coastal Commission retroactively authorizing the lot line adjustment described in City of Laguna Beach LLA 95-04 or similar lot line adjustment(s), and if the underlying owner of the parcel proposes to sell the property. The Commission may deny the proposed LLA and associated accessory development. If the Commission were to deny the proposed LLA, the LLA would not be effective and the 0.17-acre area would revert to the prior owner of the property upon additional enforcement action. Exactly how that would play out is difficult to determine, as neither of the original owners of Parcel 1 or Parcel 2 are current owners of the properties in question. However, the proposed

patio and fence and other improvements would remain unpermitted development, and would need to be removed pursuant to a coastal development permit, or otherwise resolved through an enforcement order.

Third, the applicant analyzed a project alternative that is essentially a slightly scaled down version of the current proposal. This alternative would be a request for approval to maintain fencing and the part of the patio sited in an area that the City designates “Fuel Modification Zone A” but that would still encroach into the 0.17-acre area. A typical landscape/fuel modification installation in Laguna Beach consists of a 20-foot setback zone (FMZ A), a minimum 50-foot zone typically irrigated (FMZ B), with an additional 125-foot minimum of vegetation thinning zones (FMZ C and D), all measured from the primary residence. These fuel modification zones are detailed in the City of Laguna Beach Fuel Modification Guidelines (of the Safety Element of the City’s General Plan as adopted by Resolution 89.104) of the certified LCP, which is not the standard of review in this case but serves as guidance. FMZ A typically represents the structure setback area for the applicant’s primary residence, accessory structures, and other hardscape improvements, and hardscape development is not typically permitted beyond FMZ A to reduce fire risk.

As discussed in greater detail above, the structural improvements would be sited within 100 feet of ESHA, and are neither considered appropriate in an ESHA buffer nor considered an allowable use for areas designated for open space. In addition, under this alternative, the applicant is still seeking approval to extend private development further into Hobo Canyon and closer to sensitive habitat areas, which could have negative impacts on those habitat areas as described in greater detail above. The subject 0.17-acre open space area should serve as a transitional area between pre-existing development and environmentally sensitive habitat because already the applicant’s residence along Barracuda Way is not sufficiently setback and the project site is not long enough to maintain the entire recommended 100-foot ESHA buffer.

Finally, the last alternative considered is the current proposal, which requests after-the-fact approval of LLA 95-04 and after-the-fact approval of fencing and *all* the patio pavers encroaching into the open space area. Under this proposal, the patio would encroach into what the City designates as FMZ A and FMZ B. FMZ B is intended for irrigated vegetation only. The applicant’s agent reasons that because the subject fencing and patio pavers are not flammable, the applicant should be allowed to maintain these structural improvements within the city-designated FMZ A and FMZ B areas. Moreover, the applicant is proposing to replace 267 square feet of non-native podocarpus, a non-native shrub, along the pre-LLA property boundary of the residentially developed lot with native plant species to “offset” retention of the portion of the patio encroaching into the city-designated FMZ B in the 0.17 acre area. However, as previously stated, the structural improvements would occur within 100 feet of ESHA, and are neither considered appropriate in an ESHA buffer nor considered an allowable use for areas designated for open space. In addition, approval of the subject LLA *and* the unpermitted structural improvements encroaching into the 0.17-acre open space would be inconsistent with what the CDO No. CCC-10- CD-01 was trying to achieve, which is preservation and protection of the subject 0.17-acre land as open space. Therefore, the current proposed project, only *as conditioned*, would be one feasible alternative that would substantially lessen any significant adverse effect which the activity may have on the environment, and would resolve the violation and help preserve the area as open space.

The project, only as conditioned, would be consistent with Section 30240 because it would be limited to restoration/revegetation with native species and removal of unpermitted development

(that is located within an area that must be set aside as a buffer from adjacent sensitive habitat in Parcel 2); and therefore, will not result in significant degradation of adjacent ESHA within the 149-acre parcel, and is compatible with the continuance of those habitat areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240 of the Coastal Act.

E. HAZARDS

Section 30253 of the Coastal Act states in relevant part:

New development shall:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Although not the standard of review here, the Laguna Beach Land Use Element contains more specific policies.

Action 7.3.3 of the Land Use Element states:

Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.

Policy 3-A of the Open Space Conservation Element of the Land Use Element states:

Ensure adequate consideration of environmental hazards in the development review process.

OS/C Element states:

In the case of hazards such as wildfires where very large areas are exposed to high but not necessarily imminent risks, open space can be used for protection by utilizing buffer strips around the periphery of developed areas. This function alone may be the basis for preservation of open space.

The proposed project is located atop a coastal canyon, which is an area that may be subject to potential damage or destruction from natural hazards, including fire hazard, slope instability, erosion, landslides, and earth movement given the general nature of coastal canyons in certain parts of the California coast and seismic activity of nearby faults. Development must be sited in a manner that avoids hazards. Section 30253 of the Coastal Act requires, in part, that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard, and not contribute significantly to erosion, geologic instability or destruction of the site or surrounding area.

Policy 3-A of the City's Open Space/Conservation Element (OS/C Element) of the certified LUP, serving as guidance, states that the City must "ensure adequate consideration of environmental

hazards in the development review process". OS/C Element Policy 10-C of the LUP states the City must "[r]equire projects located in geological hazardous areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or 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." Moreover, Policy/Action 7.3.2, 7.3.3 and 7.3.4 of the LUP states that the City must consider and address hazards in all new development.

Regarding geologic hazards, a geotechnical/soils report has not been prepared for the project site. Therefore, it is unclear whether the site is geologically stable. However, the City's maps of the project site indicate that the project site contains areas that are subject to seismically induced landslides and liquefaction.

Additionally, the project site is within an area mapped by the City as "very high fire hazard severity." As previously discussed above, because of the potential for brush fires given the proximity of the existing residences along Barracuda Way to the canyon and to open space, fuel modification is implemented in this area of Laguna Beach. Therefore, in this case, there are particular concerns about fire hazards associated with expanding a lot further into undeveloped canyon areas, and potential geologic hazards.

Section 30253(a) does not prohibit development in hazardous areas. Rather, new development must minimize risks to life and property in areas of high geologic and/or fire hazards. Here, the area appears to be an area of potential geologic hazards and also fire hazard. However, as conditioned to ensure protection of sensitive habitat areas, the project would involve only revegetation of the 0.17-acre area and installation of a fence at the original property line between Parcel 1 and Parcel 2, and the 0.17-acre area would be largely set aside to protect adjacent ESHA. Therefore, the proposed development does not present significant risks to life or property, and any such risks that may exist on-site would be lessened to some extent by removal of the private encroachments and recordation of the proposed deed restriction to limit human activity in the 0.17-acre area.

Given that the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from potential fire or geologic risks and, therefore, imposes **Special Condition 4**. Through the assumption of risk condition, the applicant acknowledges these risks may exist at this site, due to inherent hazards associated with development located at the top of a canyon, and that may affect the safety of the proposed development.

The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing, which could necessitate protective devices. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Drought-tolerant native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. Revegetation is proposed as part of this project. **Special Condition 2**, requires that the applicant submit final revised revegetation plan, which includes the removal of any accessory structural improvements including, but not limited to the patio pavers, railroad curb tie-steps, and fencing that encroach into the open space and

conservation deed restriction area, and implementation of revegetation of all of the 0.17-acre open space area with temporary above-ground irrigation in accordance. Only temporary above-ground irrigation is permitted.

To minimize erosion and ensure stability of the project site, the project must also include adequate erosion control measures. Implementation of standard construction best management practices (BMPs) is recommended for controlling runoff and erosion during removal of the non-conforming structures and during revegetation to prevent any significant destabilization at the project site. Therefore, the Commission imposes **Special Condition 5**, which requires the applicants to implement construction best management practices and requires erosion control plans for the treatment of runoff.

Because of the potential for future improvements to the proposed residence, which could potentially adversely impact the geologic stability, or other coastal resources, the Commission imposes **Special Condition 6**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-19-0909) or a new coastal development permit. To ensure that any prospective future owners of the property are made aware of the applicability of this condition, and all other conditions of this permit, the Commission imposes **Special Condition 7**, which requires that the property owner record a deed restriction against this property: a trapezoid-shaped approximately 7,150-square-foot lot developed with a single-family residence at 791 Barracuda Way (Parcel 1) and the adjacent 0.17-acre open space area from 149-acre⁷ undeveloped parcel (Parcel 2).

Therefore, *as conditioned*, the proposed development is consistent with all the applicable policies of the certified LCP and Chapter 3 of the Coastal Act, which require that development be sited in a manner that avoids hazards, landform alteration be minimized, and geologic stability is assured.

F. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Although not the standard of review here, the Laguna Beach Land Use Element also contains visual resource protection policies.

Policy 7.3 of the Land Use Element states:

⁷ In 2015, Orange County Transportation Authority (OCTA) acquired approximately 147-acres of the 149-acre undeveloped property consistent with the intent of the Coastal Commission's Cease and Desist Order CCC-10-CD-01 and Restoration Order CCC-10-RO-01. Driftwood, Properties LLC still holds ownership over approximately 1.5 acres of the original 149-acre parcel. However, for purposes of reviewing the proposed development and for simplification, the 149 acres of land will be characterized as a single parcel consistent with the lot configuration that was recognized by the Commission at the time of the recordation of the unpermitted lot adjustment in 1995.

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.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The resources that must be protected in this area include views to and across the few remaining unbroken tracts of coastal sage scrub and southern maritime chaparral that define Southern California's coastal hillsides and canyons.

The proposed development is located more than 500 feet inland of the beach and along a canyon that is currently developed with single-family residences. The proposed project is not anticipated to adversely impact public views of the coast and coastal canyon slopes from public street vantage points. No significant public coastal views currently exist across the site. In addition, the existing native vegetation to remain in place and located along the canyon-ward limits of the project site screen the single-family residence from public areas along the canyon; therefore, the aesthetic character of the vegetated hillsides will not be adversely affected by the proposed development, as conditioned. Thus, the project, as conditioned, is consistent with Coastal Act Section 30251.

G. PUBLIC ACCESS AND RECREATION

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Regarding promoting public access the City's certified LCP includes the following policies:

Land Use Element:

Policy 4.3 states:

Maintain and enhance access to coastal resource areas, particularly the designated public beaches, by ensuring that access points are safe, attractive, and pedestrian friendly.

Action 4.3.1 states: *Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access*

and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

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

Coastal Land Use Plan Technical Appendix:

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

Open Space/Conservation Element:

Policy 3-A states:

Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

The properties subject to this application are not located between the first public roadway and the sea. The project area is located approximately 3,700 feet from the nearest public beach and public coastal accessway. Public coastal access is not available within the immediate vicinity of the project site; therefore, no adverse impacts to public access are anticipated.

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities, consistent with the applicable Chapter 3 policies of the Coastal Act concerning public access.

H. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges- and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial

interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Coastal Act policies identified above require the protection of marine resources.

Although not the standard of review here, the certified LCP also contain water quality protection policies.

Policy 7.7 of the Land Use Element states:

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). (Same as Policy 10.7.)

Policy 4-A of the certified OS/C Element states:

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

Policy 4-C of the certified OS/C Element states:

Ensure that development is designed and managed to minimize the volume and velocity of runoff (including both stormwater and dry weather runoff) to the maximum extent practicable, to avoid excessive erosion and sedimentation.

Policy 4-D of the certified OS/C Element states:

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

Policy 4-G of the certified OS/C Element states:

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

Policy 4-H of the certified OS/C Element states:

Require the property owner, homeowner's association or local government, as applicable, to continue the application and maintenance of Source Control and/or Structural Treatment Control BMPs as necessary to reduce runoff pollution, including appropriate construction related erosion and sediment control measures.

The proposed project will not result in any discharge of polluted runoff from the project site into coastal waters, is not anticipated to result in significant adverse impacts to marine resources. Therefore, the Commission finds that the proposed development conforms with Sections 30230

and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

I. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without any authorization through a coastal development permit, including the recordation of a lot line adjustment and the installation of landscape and structural improvements (including, but not limited to, ornamental vegetation, patio pavers, railroad curb tie-steps, and fence) on an undeveloped parcel. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

In October 1995, the City of Laguna Beach issued a local entitlement for a lot line adjustment (LLA 95-04), adding undeveloped land from Parcel 2, an adjacent vacant parcel (APN# 056-240-67 and 056-240-68 (formerly 656-191-23 and 56-241-55)), to Parcel 1, an existing developed residential lot (791 Barracuda Way), but did not issue or require an application for a coastal development permit. Between 1989 and 2002, it appears that the owner of the Parcel 1 at that time removed and replaced vegetation from within the 0.17-acre (7,200 square feet) of Parcel 2 with ornamental vegetation and grass and an approximately 650±-square-foot patio made of sand set pavers, and other accessory structures/improvements, all of which was done without benefit of a coastal development permit.

The current applicant/landowner of 791 Barracuda Way did not own the property and was not involved in 1995 when LLA 95-04 was originally recorded. However, the new owner (the applicant) was made aware of the unpermitted development during the acquisition process. In addition, since purchasing the property in 2013, the applicant has occupied the LLA area and maintained the unpermitted ornamental vegetation and structural improvements described herein. In a September 18, 2013, letter, Commission enforcement staff explained to the applicant that the LLA constitutes a violation of the Coastal Act, and, as it would be unlikely that Commission staff could recommend approval of the LLA, requested that the applicant apply for a coastal development permit to authorize reconfiguration of the parcel boundaries to their pre-LLA configuration and restoration of all resources damaged by unpermitted improvements. Instead of applying to reverse the LLA, as requested by staff, the applicant applied to the City, and later to the Commission, to retain the LLA. As described above, the City CDP authorizing the LLA was appealed to the Commission and substantial issue with the City's approval was found by the Commission. Throughout this process, Commission staff has endeavored to work with the applicant on a set of conditions of approval that would allow for authorization of the LLA after-the-fact in a manner that is consistent with the Coastal Act.

The applicant is requesting after-the-fact approval of the subject lot line adjustment, as well as approximately 650± square feet of patio pavers, fencing, and three established non-native trees/shrubs encroaching into the 0.17-acre land acquired through the LLA 95-04. With regard to all other ornamental and non-native landscaping and grass turf, the applicant is proposing a revegetation plan which involves revegetating the areas within the 0.17-acre occupied by non-native plants with native vegetation appropriate for Hobo Canyon. **Special Condition 1 and 2**, require that the applicant remove any accessory structural improvements including, but not limited to the patio pavers, railroad curb tie-steps, and fencing that would encroach into the open space and conservation deed restriction area, and implement revegetation of all of the 0.17-acre open space area in accordance with the approved final revegetation plan. **Special Condition 2** requires that the

revegetation be implemented immediately following (within 60 days of) the issuance of this coastal development permit to ensure that the revegetation is undertaken in a timely manner. In addition, to also ensure that the “prior to issuance” special conditions are satisfied in a timely manner, **Special Condition 9** requires that the applicant satisfy the requirements specified in these special conditions within 180 days of Commission action on this permit.

As addressed in greater detail in Section D of this staff report, various proposal alternatives were considered to try to resolve the violations at the site. Issuance of the permit pursuant to the staff recommendation and compliance with all of the terms and conditions of this permit, including undertaking all required work, will result in resolution going forward of the violations of the Coastal Act consisting of the unpermitted lot line adjustment and construction/installation of hardscape and landscape structures/improvements described above.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance. 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 implication of implied statement of the Commission’s position regarding the legality of any development undertaken on the site without a coastal development permit, other than the development approved herein, or that all aspects of the violation have been fully resolved. In fact, approval of this permit is possible only because of the conditions included herein, such as **Special Conditions 1, 2, and 9** described above. Failure to comply with these conditions would also constitute a violation of this permit, the certified LCP, and of the Coastal Act upon issuance. Accordingly, the applicant remains subject to enforcement action for any future violations of the conditions, unless and until staff’s recommended conditions of approval included in this permit are satisfied.

ADMINISTRATIVE FILING FEE FOR AFTER-THE-FACT DEVELOPMENT

Under this permit application, the applicant is requesting after-the-fact approval of a lot line adjustment (LLA 95-04), and approval of structural improvements encroaching into the open space area (i.e. patio, fence, and steps). Although development has taken place prior to submittal of this application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act.

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

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

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

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

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

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

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

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

The fee for the project is based on the fee related to development cost (Section II.B of the filing fee schedule) plus the fee for a lot line adjustment (Section III.B of the filing fee schedule). Based on the filing fee schedule for the 2018/2019 fiscal year, the permitting fee based on development cost is \$3,747, and the fee for a lot line adjustment is \$3,747. Two times the sum of the two fees (\$7,494) is \$14,988, which has not been fully paid by the applicant. Because the applicant of CDP No. 5-10-180 has already paid \$3,747, **Special Condition 8** requires the applicant to pay the

balance of \$11,241 prior to issuance of the permit, consistent with the requirements of California Code of Regulations Section 13055(i).

J. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Laguna Beach Local Coastal Program (LCP) was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time. The Land Use Plan of the LCP consists of the Coastal Land Use Element, Open Space/Conservation Element, Coastal Technical Appendix, and Fuel Modification Guidelines (of the Safety Element of the City's General Plan as adopted by Resolution 89.104). The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. The certified Implementation Plan of the LCP is comprised of a number of different documents, but the main document is the City's Title 25 *Zoning Code*. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification. Laguna Beach has a certified Local Coastal Program (LCP), but there are four areas of deferred certification in the City: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay.

The proposed development that is subject to this permit application (No. 5-19-0909) is located within multiple permit jurisdictions – the approximately 149-acre parcel is located within the Commission's retained jurisdiction; the 791 Barracuda Way property is located within the City of Laguna Beach's certified jurisdiction. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (formerly known as Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified.

As discussed above, the proposed development, *as conditioned*, will not adversely impact coastal resources and public access. Therefore the Commission finds that approval of this project, as conditioned, will not prejudice the ability of the City of Laguna Beach to prepare a Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

K. 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 responsible for certifying that the proposed project is in conformance with the California Environmental Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Exempt from Provisions of CEQA citing CEQA Guidelines section 15305. However, 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).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require the applicant to: **1)** record an open space and conservation deed restriction (protect area as open space); **2)** submit final revised project/revegetation plan, **3)** obtain approval from the fire department; **4)** assumption of risk; **5)** best management practices; **6)** future improvements; **7)** deed restriction; **8)** application fee; and **9)** condition compliance.

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.

Appendix A – Substantive File Documents

1. Appeal No. A-5-LGB-13-0235
2. California Coastal Commission Notice of Violation of the Coastal Act dated September 18, 2013 sent to Jacqueline Sanson;
3. California Coastal Commission Notice of Violation of the Coastal Act dated May 4, 2007 sent to the Athens Group and Laguna Terrace Park, LLC;
4. Consent Cease and Desist Order No. CCC-10-CD-01 and Restoration Order CCC-10-RO-01
5. City of Laguna Beach Lot Line Adjustment No. 95-04;
6. City of Laguna Beach Lot Line Adjustment No. 95-01;
7. CDP Application No. 5-19-0200 (City of Laguna Beach, Fire Department Fuel Modification Application)