

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: **A-5-LGB-20-0010**

Applicant: **City of Laguna Beach Fire Department**

Local Government: City of Laguna Beach

Local Decision: Approval

Appellants: Mark & Sharon Fudge

Project Location: Laguna Canyon Area: Laguna Canyon Road from ¼ mile south of Canyon Acres Drive to El Toro Road, and along Canyon Acres Drive, City of Laguna Beach, Orange County

Project Description: Fuel modification on approximately 44 acres of undeveloped hillside canyon area adjacent to existing schools and residential, commercial, and industrial development; and offsite mitigation including approximately 3.0 acres of habitat creation and approximately 1.5 acres of habitat enhancement. No building, structure, hardscape or grading is proposed.

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE: This is a substantial issue only hearing. Testimony will be taken **only** on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes **total** per side. Please plan your testimony accordingly. Only the applicants, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the project, as approved by the City of Laguna Beach, is consistent with the habitat protection, view protection, and hazards policies and standards of the City's certified Local Coastal Program. Although the proposed development (fuel modification adjacent to existing development) will occur in sensitive habitat areas, the project minimizes adverse impacts to coastal resources and includes adequate mitigation for any potential impacts consistent with the Local Coastal Program. The City's approval minimizes adverse impacts to habitat area by: 1) thinning vegetation rather than removing it entirely; 2) imposing a hierarchy of vegetation removal of non-native and/or dead and dying first, and only allowing removal of native vegetation in high and very-high value habitat areas when fire safety goals otherwise would not be achieved; 3) requiring the presence of a qualified biologist while the project is carried out, including the requirement for pre-fuel modification biological surveys to enable flagging and avoidance of impacts to special status species; 4) including measures to avoid impacts to bird nests; 5) requiring erosion control measures; and 6) including a mitigation plan to offset potential project impacts. Therefore, the Commission finds that the City's approval of local Coastal Development Permit No. 19-4900 is consistent with the policies of the certified LCP and raises no substantial issue with regard to the grounds upon which the appeal was filed.

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EXHIBITS

[EXHIBIT 1 – Project Location](#)

[EXHIBIT 2 – Site Plans](#)

[EXHIBIT 3 – Appeal](#)

[EXHIBIT 4 – City Resolution For Local CDP No. 19-4900](#)

[EXHIBIT 5 – Vegetation Maps](#)

[EXHIBIT 6 – MND Biologic and Geologic Mitigation Measures](#)

[EXHIBIT 7 – Applicant’s Response To Appeal](#)

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-LGB-20-0010 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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

Resolution: The Commission hereby finds that Appeal No. **A-5-LGB-20-0010** presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action for the City of Laguna Beach's approval of Local CDP No. 19-4900 on January 27, 2020. Local CDP No. 19-4900 approves fuel modification for fire prevention purposes adjacent to existing development within areas along Laguna Canyon Road.

The Commission issued a Notification of Appeal Period on January 29, 2020. On February 10, 2020, Mark and Sharon Fudge filed an appeal during the ten (10) working day appeal period ([Exhibit 3](#)). No other appeals were received. Mark and Sharon Fudge opposed the project at the local hearing and thus qualify as "aggrieved persons" pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111.

The appellants contend that the City's approval does not comply with the City's certified Local Coastal Program (LCP), particularly with policies that protect natural and visual resources in open space zones. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City-approved project would significantly impact environmentally sensitive areas, and the proposed mitigation plan is unclear, insufficient, and does not include mitigations within City limits which is inconsistent with the certified LCP.
- 2) The City-approved project would significantly impact visual resources.
- 3) The City-approved project has the potential to lead to flooding/mud slides/ landslides, and the City did not account for potential chimney effect concerning fire hazards.
- 4) The City failed to consider alternatives to the proposal, which is inconsistent with the certified LCP.
- 5) The project may be inconsistent with Chapter 25.41 of the certified LCP.

- 6) The City failed to make the specific findings related to Residential Hillside Protection Zone required by LCP Section 25.15.012.
- 7) Goat Grazing will be used for future maintenance of high- and very-high value habitat areas.
- 8) The City-approved project is not consistent with Policy 8-N of the certified LCP.

The appellants' allegations that describe a valid ground for appeal are discussed in the Substantial Issue Analysis section of this staff report.

Commission staff received a letter dated February 21, 2020, from the City of Laguna Beach Fire Department, courtesy of Fire Chief Mike Garcia. Commission staff applies the City's certified LCP policies to the proposed project as outlined in this report, and going forward would recommend the City do so similarly, while acknowledging the Fire Department's interpretation of City policies. The Fire Department's letter is included as [Exhibit 7](#).

III. LOCAL GOVERNMENT ACTION

On December 4, 2019, and January 8, 2020, the City of Laguna Beach Planning Commission held public hearings for the local coastal development permit (CDP) application for a fuel modification plan.

On December 4, 2019, the Planning Commission approved Local CDP No. 19-4900, and other discretionary approvals, authorizing a fuel modification program in Laguna Canyon for fire prevention purposes. The area where fuel modification is approved is adjacent to existing development along Laguna Canyon Road in an area that the permit designates as City Fuel Modification Zones 23 and 24. On January 8, 2020, the permit application was brought back to the Planning Commission because a correction needed to be made to the City's Resolution that was adopted on December 4, 2019, to authorize Local CDP No. 19-4900. However, no modifications were made to the project at the January 8, 2020 hearing. The Resolution approving Local CDP No. 19-4900 is attached as [Exhibit 4](#).

The Planning Commission adopted a Mitigated Negative Declaration prepared by Aspen Environmental Group, dated November 2019, in accordance with the California Environmental Quality Act (CEQA) guidelines, which imposes mitigation measures to offset significant impacts to sensitive habitat, and to ensure the protection of tribal resources and other cultural resources that may be discovered within the project area. No local appeal was filed.

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDP applications. Development approved by cities or counties may be appealed if located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by

counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:...
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The project site is approximately one-mile inland of any beach, coastal bluff, or mean high tide line and is not located between the sea and the first public road. However, Section 30603(a)(2) of the Coastal Act establishes the project site as being in an appealable area because it is located within 100 feet of a stream.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

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

Section 30625(b)(2) of the Coastal Act requires a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). De novo review of the merits of the project uses the certified LCP as the standard of review. (Section 30604(b).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal are that the approved development does not conform to the standards set forth in the certified LCP. (Section 30603(b)(1).)

Qualifications to Testify before the Commission

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Therefore, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), the appellants, other persons who

opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The project site consists of two areas that the applicant has designated as fuel modification zones: Fuel Modification Zone (FMZ) 23 (14.9 acres) and FMZ 24 (29.4 acres). Out of the total 54 acres of the project location, fuel modification is only proposed within approximately 44 acres. FMZ 23 and FMZ 24 are located in the Laguna Canyon area, generally on the east side of Laguna Canyon Road (except for a short portion surrounding Laguna College of Art and Design on the west side of that road) from ¼ mile south of Canyon Acres Drive to El Toro Road, and along both sides of Canyon Acres Drive in the City of Laguna Beach. See [Exhibit 1](#) for mapping of the project location. Habitat within the project site includes a variety of sensitive plant communities such as chaparral and coastal sage scrub. Non-native vegetation and ornamental species are also present. FMZs 23 and 24 are bordered by two schools and residential, commercial, and industrial development. FMZs 23 and 24 are comprised of a number of partially developed and undeveloped lots. The project site traverses through various lots with varying land use **designations** including: Residential/Hillside Protection, Central Business District, and Permanent Open Space. The project site will traverse the following land use **zones**: Civic Arts Zone, Open Space/Conservation Zone, and Residential Hillside Protection Zone.

The fuel modification activities would span approximately 44 acres, extending from the edge of developed property lines or edge of existing residential landscaping approximately 100 feet into undeveloped, steeply sloped canyons ([Exhibit 2](#)). The fuel modification would involve thinning 50 percent of woody (chaparral) or woody-herbaceous (coastal sage scrub) cover types, and up to 80 percent of native and 100 percent of non-native species in herbaceous (grassland) cover types, with the goal of maintaining a safe fireguard between the undeveloped canyon areas and the existing residential, commercial, and industrial development and schools located along the rim of Laguna Canyon in the City of Laguna Beach. A combination of two management methods for vegetation thinning are proposed: hand clearing and goat grazing. Vegetation thinning by hand will be accomplished by hand crews with hand tools (e.g. chain saws, brush-cutters). As approved by the City, approximately 22.7 acres of vegetation will be subject to hand clearing, and approximately 17.4 acres of vegetation will be subject to goat grazing, and approximately 1.7 acres will be treated with a mixed treatment of the two clearing methods, as shown on Table 1 below.

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Table 1 Proposed Treatment by Acreage

Treatment Methods	FMZ 23	FMZ 24
Goat	4.9	12.5
Hand	9.2	13.5
Mixed	0.0	1.7
Stream buffers (invasive control only)	0.8	1.7
Total	14.9	29.4

Source: Laguna Canyon Foundation, Laguna Canyon Unified Fuel Modification and Habitat Restoration Project, June 20, 2019.

Fuel modification by hand will be implemented in high and very-high value habitat. Goat grazing will occur in low to moderate value habitat. Portions of the project locations (FMZ 23 & 24) are owned by Orange County (OC) Parks. Goat grazing and other intensive forms of vegetation removal are prohibited within OC Parks preserve areas with sensitive habitat.

Fifty percent thinning in coastal sage scrub and chaparral habitat areas will be achieved using a removal hierarchy: first, all invasive and non-native vegetation; dead, diseased, or dying material; and ornamental vegetation would be removed. Second, if additional vegetation removal is necessary to attain the 50 percent thinning threshold, common native species would be removed and/or trimmed. Last, sensitive vegetation (e.g. indicator and associated species of high value and very high value habitat) would only be removed if the 50 percent thinning threshold had not yet been met.

Tree-form shrubs that are over six feet will be pruned to increase their crown base height to 50 percent of the plant height to disrupt “fuel ladder” potential, in other words, the branches will be trimmed from the bottom up. The project also includes the removal of pampas grass (invasive grass) within 50 feet (25-foot buffer on either side) of blue-line ephemeral drainages or streams. The streams, which are blue-line ephemeral drainages, are located along the floor of Laguna Canyon. Herbicides may be used for spot treatment only of invasive species. The intent of the proposed fuel modification is to reduce the overall fuel load of FMZs 23 and 24 by 50 percent to maintain a defensible space adjacent to existing development in Laguna Canyon. Any necessary treatments outside of the range of FMZs 23 and 24 would be subject to removal of only targeted non-native, invasive vegetation, or tree thinning and dead branch removal.

The City-approved project includes protection measures to minimize and/or prevent significant impacts to natural resources. These measures include: 1) the designation of a biologist, 2) a pre-fuel modification biological survey for special-status species (plants and wildlife), 3) nesting bird avoidance including avoiding nesting season if possible, 4) requiring pre-construction clearance surveys during bird nesting season, 5) identification of buffer areas around special-status biological resources and/or any bird nest within or near the project site, 6) biological monitoring, and 7) environmental training of field workers. Special status plant species (e.g. least Bell’s vireo (*Vireo belli pusillus*) and Laguna Beach dudleya (*Dudleya stolonifera*)) will be identified, flagged and avoided during fuel modification activities. The project biologist will also flag coast live oak seedlings and western sycamore seedlings to ensure goats do not remove these seedlings. The project biologist will also conduct quarterly monitoring of the project site for 12 months after the completion of the fuel modification.

To mitigate for any potential loss of habitat, the project includes the creation of 3.0 acres of native upland habitat that will include coastal sage scrub and chaparral species, as well as enhancement of an additional 1.5 acres of similar habitat to offset impacts. This habitat will be created or enhanced in and adjacent to Laguna Coast Wilderness Park per the Rattlesnake Canyon Restoration Project and along west side of Laguna Road per the Cactus Restoration Project.

To preserve soil stability on the steep canyon slopes, the root systems of native perennial plants will be left intact to minimize erosion; all non-native vegetation waste will be removed from the project site and will not be used for erosion control. In addition, mulch and other erosion control measures (such as straw wattles and/or jute netting) will be installed as necessary for additional protection.

Initial fuel modification activities are expected to occur over the course of two years. Maintenance fuel modification performed by hand crews is expected to occur annually in perpetuity, but is expected to require a much less intensive effort after the initial vegetation thinning.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Laguna Beach Local Coastal Program (LCP) was certified on January 13, 1993. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP). The City's Land Use Plan is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (LCP) is comprised of over 10 documents, including Title 25, the City's Zoning Code. The Coastal Land Use Element of the LCP was updated and replaced in its entirety via LCPA 1-10 in 2012. 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 project site is located within the City of Laguna Beach's certified jurisdiction and is subject to the policies of the certified LCP.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a substantial issue:

1. The degree of factual and legal support for the local government's decision that the development, as approved, is consistent with the relevant provisions of the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to any factor. Staff is recommending that the Commission find that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's non-conformity with the policies of the LCP. The subject coastal development permit is appealable to the Commission due to the project's location within 100 feet of a stream. The appellant's grounds for appeal are attached as [Exhibit 3](#).

Appellants' Argument No. 1: The City-approved project would significantly impact environmentally sensitive areas, and the proposed mitigation plan is unclear, insufficient, and does not include mitigations within City limits which is inconsistent with the certified LCP.

First, the appellants assert that the City-approved project will result in significant impacts to environmentally sensitive areas, inconsistent with numerous LCP policies that require the protection of sensitive habitat areas. Second, the appellants argue that this project would result in far more impacts than the City's previously approved and implemented fuel modification zone in Nyes/Oro Canyon, particularly because this project includes the use of goat grazing unlike in Nyes/Oro Canyon. The Nyes/Oro Canyon is a canyon in Laguna Beach where the Commission determined that the City-approved fuel modification zone raised no substantial issue in its review of A-5-LGB-15-0045 on August 13, 2015. Third, the appellants assert that the proposed mitigation measures to offset any adverse impacts or effects of the project are insufficient, unclear, located outside of the City boundaries, and are inconsistent with Policy 7.4.

As described above, the appellants first assert that the City-approved project will significantly impact environmentally sensitive areas, inconsistent with numerous LCP policies that require the protection of sensitive habitat areas. Based on the City's record, the project site has areas with 'high value habitat' and 'very-high value habitat'.

The OSCE defines 'high value habitat' as:

These are extensive areas dominated by indigenous plant communities which possess good species diversity. They are often, but not always, linked to extensive open space areas, within or outside of the City, by traversable open space corridors. Their faunal carrying capacity is good to excellent; many areas are utilized as bedding and foraging sites by mule deer, or possess large resident populations of birds or native small animals.

Also included in this category are locales of maritime desert scrub and ceanothus chaparral, whether extensive or fragmented, because of the locally unique character of these communities.

The OSCE defines ‘very high value habitat’ as:

These include the habitats of endangered, rare or locally unique native plant species. Also included are areas of southern oak woodland and natural (not irrigation augmented) springs and seeps. Among the very high value habitats inventories are areas of significant rock outcrop exposures, because of the assemblages of sensitive plant species that often occupy such settings.

According to the applicant’s biological assessment (GLA, 2019), the study area surveyed encompassed the approximately 44 acres in which the proposed project would occur¹, and is generally located on both sides of Canyon Acres Drive and areas east of Laguna Canyon Road. FMZ 23 is predominantly located on the east side of Laguna Canyon Road south of El Toro Road intersection to Canyon Acres Drive, and FMZ 24 includes narrow alignments on the north and south sides of Canyon Acres Drive behind private residences. The vegetation types were mapped and biological surveys were conducted to determine where special status species occur within the Study Area. The areas were also evaluated for the presence of aquatic features. See [Exhibits 1 & 2](#) for a map showing the location of the fuel modification areas (FMZs 23 and 24). The Vegetation Maps are attached as [Exhibit 5](#).

The site-specific biological assessment by GLA found that, although approximately 9.58 acres of the Study Area were mapped by the City’s Geographic Information Systems (GIS) maps as high value habitat, approximately 2.58 acres did not exhibit characteristics associated with ‘high value habitat’. In addition, out of approximately 5.11 acres of the Study Area mapped by the City’s GIS as very high value habitat, approximately 1.66 acres did not exhibit characteristics associated with ‘very high value habitat’. These areas are primarily located immediately adjacent to existing development and exhibit high levels of disturbance and a lack of vegetation or are comprised wholly of ornamental vegetation. Therefore, according to the biological assessment, the areas of work proposed within the high and very high value habitats are less than anticipated.

It should be noted that some LCP policies reference Environmentally Sensitive Areas, which is a broader designation in that it includes areas that contain any sensitive habitat, may include ‘moderate’, ‘high’, and ‘very high’ value habitat areas; but not all environmentally sensitive areas are ‘high value habitat’ and ‘very high value habitat’. Policy 8-I of the OSCE of the certified LUP designates Environmentally Sensitive Areas (ESAs) as areas that contain environmentally sensitive habitat resources as identified through an on-site biological assessment process which meets the definition of

¹ The initial conceptual fuel modification zones totaled approximately 54 acres. However, after detailed evaluations of the area by the Laguna Canyon Foundation, refinements were made and there was an overall reduction of the area down to approximately 44 acres proposed for fuel modification.

environmentally sensitive area in Section 30107.5 of the Coastal Act.² In addition, Policy 8-I designates streams as ESA.

Policy 8-I of the OSCE of the certified LUP 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.

Furthermore, the Land Use Element (LUE) Glossary of the certified LUP also contains a definition for environmentally sensitive area habitat areas that is also based on Section 30107.5 of the Coastal Act:

42 . Environmentally Sensitive Habitat Area (ESHA) - The Coastal Act defines environmentally sensitive area 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.

The LUE Glossary also contains a definition for environmentally sensitive lands/resources:

43. Environmentally Sensitive Lands/Resources - Land or resources that have been identified in the City's General Plan as having one or more of the following characteristics: 1) high- or very-high-value biological habitat, as described in the Open Space/Conservation Element; 2) located on the oceanfront; 3) a City-mapped watercourse; 4) geologic conditions such as slide-prone formations, potentially active fault, inactive fault, landslide potential, liquefaction potential, and soft coastal headlands; 6) hillside slopes greater than 45%; 7) adjacent wildland area, which requires fuel modification; and 8) major or significant ridgelines.

Pursuant to Policy 8-I and definitions contained in the LUE, areas with higher value habitat are designated as ESA, environmentally sensitive habitat areas, and environmentally sensitive resources. For purposes of this substantial issue analysis and for simplification,

² Section 30107.5 of the Coastal Act states: "Environmentally sensitive area" means 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.

environmentally sensitive areas, environmentally sensitive habitat areas, and environmentally sensitive resources will hereafter be referred to only as 'ESAs'.

Based on GLA's assessment, the project would occur within 7 acres of high value habitat (9.58 acres mapped minus 2.58 acres that do not exhibit the characteristics to qualify) and 3.45 acres of very high value habitat (5.11 acres mapped minus 1.66 acres that do not exhibit the characteristics), for a total of 10.45 acres of ESA. From the 10.45 acres of high and very high value habitat (7 acres plus 3.45 acres), GLA's assessment estimates that most of the valuable habitat will be "avoided," so that only 2.7 of the 7 acres of high value habitat and only 0.46 acres of the 3.45 acres of very high value habitat would be impacted. Accordingly, GLA estimated that, the fuel modification as proposed to preserve as much habitat as possible, has the potential to impact approximately 2.70 acres of high value habitat and 0.46 acres of very-high value habitat, and will have a combined impact to 3.16 acres of ESA.

Although areas containing moderate habitat may also qualify as ESAs, Policies 8-G and 8-H only specifically apply to areas containing high and very high value habitat.

Policy 8-G of the Open Space/Conservation Element (OSCE) of the certified LUP states: When subdivision or fuel modification proposals are situated in areas designated as "high value habitats" on the Biological Values Map 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 OSCE 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 8-G requires that when fuel modification proposals occur within 'high value habitats,' these habitats must be preserved to the greatest extent possible. Policy 8-H requires that when fuel modification occurs within 'very high value habitats', those habitats must be preserved, and that mitigation measures must be enacted for immediately adjacent areas, when appropriate.

Like Policies 8-G and 8-H, the following are additional, relevant natural resource protection policies that require or encourage the preservation of sensitive habitat areas:

Policy 4-I of the certified OSCE 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 OSCE states:

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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 recontouring and replanting where the natural landscape has been disturbed.

Policy 8-A of the certified OSCE states:

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

Policy 8-C of the certified OSCE states:

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

Policy 8-E of the certified OSCE states:

Protect the remaining stands of native Coastal Live Oak (*Quercus Agrifolia*) and Western Sycamore (*Platanus Racemosa*) located in upper Laguna and El Toro Canyons, and in Top of the World Park as a unique and irreplaceable resource.

Policy 8-N of the certified OSCE states:

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

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 onsite, 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)

Preservation and enhancement of the City's ESA and environmentally sensitive resources is a goal supported by the environmental protection policies of the certified LCP, including Policies 8-G and 8-H, as well as Policies 4-I, 7-K, 8-A, 8-C, 8-E, 8-N, 5.2, 7.3, and 7.4. Policy 4-I promotes the protection, restoration, and preservation of water bodies and habitat; Policy 7-K requires that natural landscapes be preserved; Policies 8-A and 8-C require that canyon wilderness and wildlife habitat areas be protected and preserved; Policy 8-E requires the protection of Coastal Live Oaks and Western Sycamore trees in this canyon area; Policy 8-N encourages the preservation of native vegetation; Policy 5.2 and 7.4 require that proposed development emphasize impact avoidance over impact mitigation, but if mitigation is necessary, they offer specifications for onsite and offsite mitigation; and Policy 7.3 requires that natural and environmental sensitive resources be protected.

The proposal for fuel modification is designed to preserve the habitat to the maximum extent possible, but it is anticipated that the proposed fuel modification activities have the potential to impact 0.46-acres of 'very high value habitat'. Although the City approved the project anticipating impacts to these 0.46-acres, consistent with Policy 8-H the project does propose appropriate mitigation for these impacts, while working to preserve as much very high value habitat as possible, consistent with the requirement to "when appropriate, that mitigation measures be enacted for immediately adjacent areas." The City-approved the project with mitigation to offset the anticipated impacts to very high value habitat because only with mitigation could the project be found consistent with the policies of the certified LCP, including Policy 8-H.

In addition, it is anticipated that the project has the potential to impact 2.7 acres of 'high value habitat', however consistent with Policy 8-G, which requires preservation of the habitat to the maximum extent possible, as explained below, the project has been designed to avoid impacts to habitat to the maximum extent possible. Therefore, even with the anticipated impacts to the habitat, the project is consistent with Policies 8-G and 8-H.

The LCP policies do allow for fuel modification to take place within sensitive habitat areas, as evidenced by the policies which reference the activity occurring in the habitat areas, including Policies 8-G and 8-H, and the City-approved project was specifically designed to emphasize impact avoidance and preservation of habitat to the maximum extent practicable, consistent with other habitat protection policies, such as Policies 4-I, 7-K, 8-A, 8-C, 8-E, 8-N, 5.2, 7.3, and 7.4.

While the City-approved project is consistent with the LCP policies, it should be noted that since the filing of this appeal, the City has clarified that the 0.46-acre estimate of impacts to 'very high value habitat' is an error. The two plant communities listed as 'very high value habitat' were California Sagebrush and Oak Woodland. The California Sagebrush was incorrectly listed as 'very high value habitat' when in fact it is designated as 'high value habitat' by the LCP as confirmed by the Commission staff Ecologist. Secondly, the Oak Woodlands are 'very high value habitat' but they have specific treatment plans that only allow for trimming of the limbs and no trees will be removed. As such, the proposed project will not have any impacts to 'very high value habitat'.

The City further clarified that the 0.46-acres figure was estimated without taking into account the protective measures that were incorporated into the project proposal to ensure

that all very high value habitat be preserved. The protective measures include pre-fuel modification biological surveys that will be conducted by a qualified biologist within 48 hours prior to commencement of any fuel modification activities to survey for special status plant species (e.g. Laguna beach dudleya, intermediate mariposa-lily and Nuttall's scrub oak) and oak woodlands, which meet the definition of very high value habitat (e.g. endangered, rare or locally unique native plant species, and areas of southern oak woodland). For any special status plants identified, secure enclosures will be established to maintain 50-foot (for Laguna Beach dudleya) or 15-foot (for any other special status species) minimum buffers to ensure these plant species are avoided and protected from fuel modification treatments. No work will be permitted within these buffers. For areas with oak woodlands (i.e. Coastal Live Oak) and/or Western Sycamore, trees will not be removed and will be preserved pursuant to not only Policy 8-H, but also Policy 8-E, which requires that native Coastal Live Oak and Western Sycamore in this area be protected as unique and irreplaceable resources. Rather, such trees will be pruned of dead components, and lower small branches removed to a height of eight feet or one half their height, whichever is less, to disrupt "fuel ladder" potential. The City indicated that although the GIS maps of the high and very high value habitat areas date back to the early 1990s and do not account for areas of habitat that may have transitioned into, or is no longer, high and very high value habitat, GLA's vegetation maps, do accurately map on-the-ground conditions with regard to habitat plant communities and species. The City indicates that regardless if areas are or are not mapped by the City's GIS mapping system as high and very high value habitat, the protective measures incorporated into the proposal will ensure the preservation and protection of all plant species on the ground that meet the definition of 'very high value habitat', which is consistent with Policy 8-H.

Because the City initially anticipated potential impacts to approximately 0.46-acres of very high value habitat, it determined that mitigation was appropriate and necessary in this case to offset any unavoidable impact pursuant to the requirement of Policy 8-H, which requires that when appropriate, mitigation measures be enacted for immediately adjacent areas. Accordingly, the City-approved project includes an off-site mitigation plan for coastal sage scrub/chaparral habitat creation and enhancement. However, as discussed above, with the protective measures set forth in the City-approved fuel modification proposal, very high value habitat will be fully preserved, which removes any requirement set forth by Policy 8-H for mitigation, although mitigation is required pursuant to other LCP policies, as discussed later.

These protective measures are also intended to ensure the preservation of high value habitat to the greatest extent possible, which is consistent with Policy 8-G. In areas with plant communities that meet the definition of high value habitat, regardless if it is mapped as high value habitat or not by the City's GIS mapping system, only hand thinning/trimming or removal will be implemented. In addition, a thinning hierarchy will be utilized to remove first non-natives and dead and dying plants to achieve the 50% threshold, then only if the threshold cannot be achieved otherwise, woody native species will be removed based upon a specific hierarchy of first coastal goldenbush, then coyote brush, then California buckwheat, then black sage, and finally California sagebrush and monkeyflower. Only when these measures still do not meet the 50 percent threshold will the following plants be removed, in the following order: laurel sumac, toyon, and then lemonade berry. The proposal also requires on-site monitoring by biologist to ensure the appropriate treatment

is being undertaken in areas of high value habitat.

In addition, the City-approved project has been designed to limit fuel modification activities to areas not more than 100 feet from existing properties lines in an attempt to preserve more habitat than would be potentially preserved under a standard modification plan. Pursuant to the Fuel Modification Guidelines in the certified LCP, a standard fuel modification plan for a new construction or subdivision project would consist of graduated fuel modification zones broken into four zones (Zones A-D), and the area subject to fuel modification could be as wide as 270 feet (20-foot backyard setback in Zone A plus 250 feet for Zones B-D) in higher fire hazardous zones, with greater degrees of vegetation thinning nearest to structures and lesser thinning in the zones furthest from structures, and in some instances may include clear-cutting or true firebreaks. However, the City-approved project represents an alternative, environmentally sensitive approach to fuel modification that avoids these impacts to most of the sensitive habitat areas by limiting the fuel modification activities to the area within 100 feet of existing development and to use a thinning hierarchy in areas of high and very-high value habitat. As previously discussed above, a thinning hierarchy will be utilized to remove first non-natives and dead and dying plants to achieve the 50% threshold, then only when these measures still do not meet the 50 percent threshold will native plants be removed following a very specific hierarchal list. Special status species and oak woodlands would be fully preserved. The City's proposal to utilize this alternative fuel modification program is the "alternative means and methods" as described below for existing legal building sites in high and very-high habitat value areas is consistent with Action 7.6.2 of the certified LUP, which states:

Allow fuel modification alternative means and methods for existing legal building sites in areas where high- and very-high-value habitat may otherwise be impacted and in areas where an Environmentally Sensitive Habitat Area (ESHA) ("ESHA" as defined in the LCP Glossary), may otherwise be impacted.

The City-approved project also includes removal of invasive pampas grass that has colonized areas near streams at the bottom of the canyon, using herbicide for spot treatments only, which is essentially additional habitat enhancement, supplementary to the proposed offsite mitigation. This aspect of the project is consistent with Policy 8-A, which requires that canyons, particularly streambeds, be preserved. In addition, removal of the invasive pampas grass is consistent with Policy 8-C, which requires that habitat areas be identified and maintained in their natural state. Removal of the invasive plants from the streambed will contribute to maintaining the habitat in a more natural state.

As approved by the City, the fuel modification project includes a number of protective measures relative to biological resources designed to preserve the habitat to the maximum extent possible. A qualified biologist will be retained to provide careful on-site and on-the-ground monitoring, including: identification and marking of very high value habitat and monitoring for nesting birds, prior to commencement of fuel modification activities, on-site monitoring of the vegetation thinning in areas of high value habitat to ensure compliance with the 50 percent thinning hierarchy protocol, conducting worker awareness practices, monitoring during invasive plant removal, and limiting herbicide application to the pampas grass.

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The appellants argue that this project will result in far more impacts than the City's previously approved and implemented fuel modification zone in Nyes/Oro Canyon, particularly because this project includes the use of goat grazing unlike in Nyes/Oro Canyon. Although goat grazing if not controlled can be damaging to sensitive habitat areas, here it will be limited to areas that have been identified as low- to moderate value habitat in the site-specific biological assessments, which are characterized by higher levels of disturbance, a lack of vegetation, and/or are dominated by ornamentals.

Therefore, appropriate measures have been incorporated into the project to ensure habitat preservation consistent with Policies 4-I, 7-K, 8-A, 8-C, 8-E, 8-G, 8-H, 8-N, 5.2, 7.3, and 7.4 while achieving a reduction of the overall fuel load of FMZs 23 and 24 by 50 percent to maintain a defensible space to protect existing development in Laguna Canyon. In addition, the City-approved project will protect water bodies (consistent with Policy 4-I), natural landscapes (consistent with Policy 7-K), canyon wilderness (consistent with Policy 8-A), wildlife habitat areas (consistent with Policy 8-C), and Coastal Live Oak and Western Sycamores (consistent with Policy 8-E). The project will preserve the high value habitat to the greatest extent possible consistent with 8-G; and as recently clarified by the City, very high value habitat will be fully protected consistent with Policy 8-H. In addition, by imposing the requirement (as proposed by the applicant) to limit vegetation removal to 50 percent of the existing vegetation (or overall fuel load), the City-approved permit will not result in removal of all vegetation within 100 feet of the residential, commercial, and industrial development and schools. Limiting removal to no more than 50 percent of the overall fuel load assures that at least parts of the habitat will endure within the 100-foot wide fuel modification area. Moreover, selective removal of vegetation based upon habitat value (i.e. removal of non-natives and dead and dying plants first), could potentially result in increased habitat value in those areas of the project that will achieve or approach the 50 percent vegetation removal of only non-native and dead/dying vegetation.

The appellants also assert that the project is inconsistent with Policy 7.4 of the certified OSCE (cited above) because the proposed offsite mitigation will be located outside of the city's boundaries. Although the appellant did not cite Policy 5.2 of the OSCE (cited above) in their appeal, this policy reads similarly to Policy 7.4 with regard to mitigation requirements. Both Policy 7.4 and Policy 5.2 require that if onsite mitigation is not possible, off-site mitigation should be located within the City's boundaries in close proximity to the project. The City determined that onsite mitigation is not possible for this project. According to the City's record, two sites out of six total sites were identified in the City's review of the project as possible locations for off-site mitigation. The proposed mitigation may be created and enhanced in and adjacent to the Laguna Coast Wilderness Park and along the west side of Laguna Canyon Road on public lands owned by Orange County. The City determined that there was not a more feasible mitigation site closer to the project area that would satisfy the mitigation requirements.

Although the mitigation sites may be located outside of the City limits, both sites, along with both FMZs 23 and 24, are located in the Laguna Canyon watershed, which would support and is appropriate for chaparral and coastal sage scrub habitat. In addition, one of the habitat restoration sites is located immediately across the street from the fuel modification sites, very near the project site as required by both policies. According to the City's record, it was simply not feasible to locate a mitigation site both near the area of

impact and within the City's borders. As such, the City determined it was more appropriate to locate off-site mitigation in closer proximity to the project site and just outside of the City's border, which is better for the nearby habitat, than it was to locate it a significant distance from the project site but within the City's borders. In this particular case, it was simply not possible to be fully consistent with Policies 7.4 and 5.2, which require that the mitigation be both close to the project and within the City's borders. Had the City decided to locate the mitigation site within the City's boundaries, but much farther away from the area of impact, the project would still not be fully consistent with these policies. As such, there is no fully compliant outcome. The fact that the mitigation sites will be located outside of the City's boundaries does not, on its face, raise a substantial issue. Had the City not required mitigation when the natural resources protection policies do require it, that would have raised a substantial issue. When determining if a local action raises a substantial issue, the Commission must consider five factors. This particular point does not raise a substantial issue, as explained in more detail below.

In any case, as previously discussed, since the filing of this appeal, the City has clarified that the City-approved project will fully preserve very high value habitat, with zero acres of impact, which removes any requirement for mitigation as required by policy 8-H. Additionally, as discussed below, the mitigation required for the project is consistent with other LCP policies.

In conclusion, as approved by the City, the project is consistent with the natural resources policies of the certified LUP. These policies provide a definition of ESA (OSCE Policy 8-I); require that projects in or adjacent to ESAs prepare a detailed, site specific biological assessment; require that canyon and stream beds be preserved and protected, that wildlife habitats be identified and maintained as necessary for the preservation of species; that development in and adjacent to ESA protects and maintains the ESA, including maximum preservation of higher value habitats; and also require, when appropriate, adequate mitigation to offset impacts. The City-approved project addresses all of these elements and includes adequate mitigation. Therefore, the Commission finds that the City's approval of local CDP No. 19-4900 is consistent with the natural resource protection policies of the certified LCP and raises no substantial issue with regard to the grounds upon which the appeal was filed.

Appellants' Argument No. 2: The City-approved project would significantly impact visual resources.

The appellants assert that the City-approved project will significantly impact visual resources, which would be inconsistent with Policy 7.3 of the certified Land Use Plan (LUP). The appellants argue that the proposal includes the removal of up to 100 percent of invasive or non-environmentally sensitive vegetation, in addition to up to 50 percent of native vegetation and, therefore, there will be a greater than 50 percent change to the visual continuity of vegetation on the hillsides along Laguna Canyon Road, which is designated as a scenic highway.

Policy 7.3 of the LUE of the certified LUP states:

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.

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(Same as Policy 10.2.)

Policy 7.3 requires that new development be designed in a manner that is protective of unique scenic quality and public views, in a manner that is visually compatible with surrounding uses. Like Policy 7.3, OSCE Policy 7-A requires that visual resources be preserved.

Policy 7-A of OSCE of the certified LUP states:

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

The resources that must be protected in this area include views of and across the few remaining unbroken tracts of coastal sage scrub and chaparral that define Southern California's coastal hillsides and canyons.

In this case, no structures are proposed, and all vegetated areas will retain at least 50% of the vegetation with the intent to protect and preserve the visual quality of the project site to the greatest extent feasible pursuant to Policy 7-A, and is designed to protect scenic quality and visual compatibility pursuant to Policy 7.3. The City-approved project consists of fuel modification activities that would span approximately 44 acres, extending from the edge of existing residential landscaping approximately 100 feet into undeveloped, steeply sloped canyons ([Exhibits 1 & 2](#)). The fuel modification would involve thinning 50 percent woody (chaparral) or woody-herbaceous (coastal sage scrub) cover types, and up to 80 percent of native and 100 percent of non-native species in herbaceous (grassland) cover types, with the goal of reducing the overall fuel load of FMZs 23 and 24 by 50 percent to maintain a safe firebreak between the undeveloped canyon areas and the existing development. Visual impacts will be minimized by the 50 percent proposed retention of shrubs and 20 percent retention of grasses, which will maintain species within the sites emblematic of the natural condition and habitat. During the applicant's (City Fire Department) presentation to the City Planning Commission during its January 2020 public hearing, the applicant presented sample images/aerials and indicated that the fuel modification methodology approved by the City's Vegetation Management Treatment Protocol is intended to leave a natural appearing condition as well as viable habitat.

The canyon is a highly scenic area and that there are many factors of the landscape that contribute to and enhance the scenic nature of the area, but this particular fuel modification program with an emphasis on preservation of the habitat, will not have a significant impact on visual resources. Thus, the project is not inconsistent with LUE Policy 7.3 and OSCE Policy 7-A.

As with many of the LCP requirements regarding fuel modification, distinctions are made between standards for new development that would result in **new construction** and **new land divisions** compared to necessary fuel modification in **pre-existing neighborhoods** that abut open space, as is reflected in OSCE Policy 7-G(b) compared with 7-G(c).

Policy 7-G of OSCE of the certified LUP states:

The Design Review process for an individual project shall include criteria for treatment of the urban edge between existing development and open space in areas designated "Residential/Hillside Protection: on the Land Use Plan Map. The

criteria shall be developed to reflect topographic constraints and shall include at a minimum:

- a. Treatments to screen development, including the use of vegetation, variable setbacks and modified ridgelines or berms;
- b. Fuel modification techniques for new development which provide the following: result in graduated fuel modification zones in which on the minimum amount of native vegetation is selectively thinned; prohibit grading or discing for fuel modification; confine fuel modification to the development side of the urban open space edge to the maximum extent; avoid fuel modification encroachment into environmentally sensitive areas; locate structures with respect to topographic conditions to incorporate setbacks, minimize fuel modification requirements and maximize hazards; and provide requirements for ongoing maintenance.
- c. Treatments for fuel modification and maintenance techniques for existing development consistent with standards in (b) above to the maximum extent feasible.

Policy 7-G(b) applies to development such as new construction or new land divisions, where constraints are fewer. Policy 7G(c) applies to pre-existing development and recognizes the likelihood of constraints in applying fuel modification requirements. For example, in the case of existing schools and residential, commercial, and industrial structures such as those surrounding the subject site, relocating a structure to minimize fuel modification into adjacent open space is infeasible. These structures have already been constructed in their locations. However, as approved by the City, the fuel modification plan does incorporate the aspects of Policy 7-G(b) that are feasible as required by the LCP. This includes minimizing the amount of native vegetation that is thinned. In any case, the proposed fuel modification plan will not create adverse impacts on visual resources.

Therefore, the Commission finds that the City's approval of local CDP No. 19-4900 is consistent with the policies of the certified LCP and therefore raises no substantial issue with regard to the grounds upon which the appeal was filed.

Appellants' Argument No. 3: The City-approved project has the potential to lead to flooding/ mud slides/ landslides, and the City did not account for potential chimney effect concerning fire hazards.

The appellants assert that the City-approved project has the potential to lead to flooding/ mud slides/ landslides.

The appellants contend that fuel modification project will likely create much greater hazards in destabilizing slopes as a result of the vegetation thinning proposed. Below are the relevant Hazard policies of the OSCE and LUE:

Policy 10-C of the OSCE of the LUP states:

Require projects located in geological hazard 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

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stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.

Policy 10-E of OSCE of the certified LUP states:

Development in the areas designated “Residential Hillside/Protection” on the Land Use Plan Map or within potential geologic hazard areas identified on the Geological Conditions Map of the Open Space/Conservation Element shall not be permitted unless a comprehensive geological and soils report is prepared pursuant to Title 14 of the City’s Municipal Code, and adequate mitigation measures have been approved and implemented by the City’s geologist. For projects located in areas subject to hazards as identified on the Geologic Conditions Map or subject to erosion, landslide or mudslide, earthquake, flooding or wave damage hazards confirmed by a geologic assessment, as a condition of approval or new development a waiver of liability shall be required through a deed restriction.

Action 7.3.2 of the LUE of the certified LUP states:

Review all applications for new development to determine potential threats from coastal and other hazards.

Action 7.3.4 of the Land Use Element states:

Require new development to 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.

The project site (FMZs 23 and 24) is located on the border of liquefaction zones and landslide zones, and includes properties designated as Residential Hillside/Protection. In addition, Laguna Canyon Road is located at the base of the canyon, which is steeply sloped and would act as a channel for potential liquefaction events, which makes the project site a geologic hazard area. In order to assess the suitability of the landscape for the proposed activities, a Geotechnical Evaluation of Potential Slope Stability Impacts (Geofirm, 2019) was prepared for the fuel modification project. Based on the geotechnical report, the City determined that the project activities would not exacerbate seismic-related ground failure such as liquefaction because the proposed fuel modification methodology will not completely remove vegetation, which will reduce the probability of seismic-related ground failure events and will provide additional soil stability. In addition, the geotechnical report includes recommended guidelines to assure soil stability in conjunction with the fuel modification. The recommended guidelines include conducting the fuel modifications in the spring and summer, to allow for some re-establishment of the native canopy prior to the next rainfall season; limiting the fuel modification efforts to the canopy, minimizing damage to the existing root systems; and application of surficial amendments, such as spray adhesives, fiber rolls, or jute matting, after the fuel modification is complete and prior to the winter season. Root systems will remain in the thinned areas in order to reduce erosion. The recommended geotechnical guidelines have been included in the adopted Mitigated Negative Declaration (MND) and incorporated into the City-approved project ([Exhibit 6](#)).

The appellants also assert that the City did not account for potential chimney effect concerning fire hazards, and that the proposed fuel modification zones should be located upslope instead of the base of the canyon. They cite Section b (Urban Fringe) of the LCP's Fuel Modification Guidelines, which states, in relevant part, that "[t]he risk of fire at the base of hills adjacent to the existing urban area tends to be substantially less than that at the tops and upper slopes of ridges because fire normally accelerates upslope. The appellants also cite Section a (Hillsides) of the LCP's Fuel Modification Guidelines, which states, in relevant part, that "steep narrow canyons have a much higher fire hazard potential because heat and winds concentrate to drive the fire upwards, thereby creating a 'chimney effect.'"

All existing development in Laguna Canyon along Laguna Canyon Road is located at the base of the canyon. Further, understanding of the fuel modification process has evolved since the certification of the LUP Fuel Modification Guidelines in 1993. In designing the proposed fuel modification program, the City considered the effects of the 1993 Laguna Beach Fire, which destroyed most of the residences in the subject neighborhood despite the positioning of these residences at the bottom of the canyon. The City determined that the wildland-urban interface with native vegetation is the appropriate location to site the fuel breaks, and that the location of a fuel break above the existing development in a high fire hazard area would not provide benefits to these structures and may pose unreasonable environmental impacts. The City indicated that fire behavior studies conducted for the project determined that fuel accumulations near existing development were sufficient to pose significant threats. The project is intended to mitigate that threat directly.

In addition, the City-approved project is consistent with Policy 2 of the certified Fuel Modification Guidelines, which states, in relevant part, that "fuel modification should be limited to zones established adjacent to proposed or existing development." It is also consistent with Policy 7-G of the OSCE, which states, in relevant part, that the City must "confine fuel modification to the development side of the urban open space edge to the maximum extent."

Thus, the City's review of the proposed project required a geologic and soils report and incorporated the recommended geotechnical guidelines into the project to properly mitigate for any potential hazards and threats, as required by Policy 10-E. In addition, pursuant to Policy 10-C the project avoids hazards where feasible. Pursuant to Action 7.3.2, the project properly assessed the potential threats. Pursuant to Action 7.3.4, because the geotechnical study confirmed that the project would not exacerbate seismic-related ground failure and because the project is incorporating its suggested mitigation measures, the project will not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

Therefore, the Commission finds that the City's approval of local CDP No. 19-4900 is consistent with the policies of the certified LCP and raises no substantial issue with regard to the grounds upon which the appeal was filed.

Appellants' Argument No. 4: City failed to consider alternatives to the proposal, inconsistent with the certified LCP.

The appellants assert that there is no indication in the City's record that modifications to general fuel modification programs or alternative means and methods were considered, which is inconsistent with LUE Action 7.6.2, which states:

Allow fuel modification alternative means and methods for existing legal building sites in areas where high- and very-high-value habitat may otherwise be impacted and in areas where an Environmentally Sensitive Habitat Area (ESHA) ("ESHA" as defined in the LCP Glossary), may otherwise be impacted.

The appellants assert that the City did not consider alternatives to the proposal including minimizing building envelope, siting structures away from hazard areas, and/or the utilizing non-combustible or fire retardant building materials, as required by LUE Actions 10.6.1 and 10.6.2, and IP Section 25.15.004(A)(7).

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 the bird-nesting season if feasible. Alternative means to 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.

Section 25.15.004(A)(7) of the IP of the certified LCP states:

Fuel Modification. 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. Alternative means to 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.

Fire hazard is a significant threat in the majority of Laguna Beach, including in the area of the proposed fuel modification project. Therefore, the habitat policies of the certified LUP must be applied in a manner that is most protective of the habitat while recognizing the need to protect existing development (existing structures and residents).

The alternatives cited by the appellant are intended for new development specifically involving new construction and/or subdivisions, and is to be applied “where feasible.” The proposed fuel modification plan, however, is not new construction or subdivision project.

The proposed fuel modification is intended to protect existing schools and commercial, industrial, and residential development, including by increasing the time available to evacuate these properties should it become necessary. In approving the project, the City has considered all the competing requirements, and applied the policies in the manner that minimizes adverse impacts to the habitat to the greatest extent feasible. The City’s approval minimizes adverse impacts to habitat area by: thinning vegetation rather than removing it entirely; imposing a hierarchy of vegetation removal by requiring removal of non-native and/or dead and dying first, and only allowing removal of native vegetation, when otherwise fire safety goals would not be achieved; requiring the presence of a qualified biologist while the project is carried out, including the requirement for pre-commencement biological surveys to enable flagging and avoidance of impacts to special status species; and by proposing mitigation to offset project impacts to ESA.

If new construction projects were proposed today, the OSC Element policies would strictly apply. Assessing whether subdivisions should occur adjacent to sensitive habitat or whether the number of lots would need to be modified as necessary to protect habitat, would all be part of the coastal development permit review process. Likewise, construction of a new residence would need to consider siting and materials in order to reduce the need for fuel modification. However, in this case, the lots were subdivided and mostly developed before the Coastal Act was created. Thus, the habitat protection policies must be applied based on the pre-existing development layout.

Moreover, the LUE contains policies specific to fuel modification for **existing** and new development, including Action 7.6.2 (cited above), and the following policies:

Policy 7.6 of the LUE of the certified LUP states:

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

Action 7.6.1 of the LUE of the certified LUP states:

Allow fuel modification programs to be modified on existing legal building sites to address and mitigate impacts to environmentally sensitive resources, particularly for properties abutting open space areas.

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.

Policy 2 of the Fuel Modification Guidelines states, in relevant part:

[...] Fuel modification should be limited to zones established adjacent to proposed or existing development. Graduated trimming and clearing should be utilized within these zones to provide a transition between undisturbed wildland areas and the development edge.... Clearing or removal of native vegetation for fuel modification purposes should be minimized by placement of roads, trails, and other such man-made features between the development and woodland areas. To minimize fuel modification areas, other techniques (such as perimeter roads, techniques using fire resistant materials, elimination of wood balconies and decks, fire retardant siding and tile roofs) should be incorporated in the design and development of projects.

Policy 7-G of OSCE of the certified LUP (cited above).

Policy 10.6 of the certified LCP (cited above) requires all fuel modification to 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 in open space or deny a property owner reasonable use of an already existing legal building site. In this case, developed properties adjacent to open space and habitat areas in the Laguna Canyon area do not currently accommodate individualized fuel modification zones for protection of the existing development as required by Policy 7.6 due to pre-existing development layout and size. Therefore, a strict application of Policy 10.6 on these properties would deny the property owners reasonable use of these already existing developed sites. In addition, redevelopment of these sites is not currently before the City or the Commission. Thus, the City-approved project authorizes fuel modification zones onsite and offsite adjacent to these developed properties and not in a manner that is inconsistent with the certified LCP.

The appellants also contend that the City did not consider minimizing the clearance or removal of native vegetation by considering placement of roads, trails, or other such features between the development and the woodland areas pursuant to the requirements of Policy 2 of the LCP's Fuel Modification Guidelines (cited above). Policy 2 (cited above) requires that thinning of native vegetation for fuel modification should be minimized by placement of roads, trails, and other man-made features between development and habitat. However, placement of roads, trails, and other such man-made features between the development and woodland areas would result in permanent displacement of the adjacent habitat and would not minimize significant impacts to the ESAs. Moreover, placement of roads and other infrastructures into ESAs would be inconsistent with Policy 9.8 of the LUE, which requires that extension of such facilities into ESAs should be avoided.

Policy 9.8 of the LUE of the certified LUP states:

Avoid the extension of community facilities, roads, and other infrastructures into environmentally sensitive areas when surplus capacities could facilitate or discourage extension of new development detrimental to those areas. Avoid the extension of roads and other infrastructure for the support of cellular/radio communication towers into environmentally sensitive areas and to protect public coastal views whenever feasible.

Policy 2 also requires that other techniques (such as perimeter roads, techniques using fire resistant materials, elimination of wood balconies and decks, fire retardant siding and tile roofs) should be incorporated in the design and development of projects to minimize fuel modification areas. This component of Policy 2 would strictly apply if the City-approved project included the redevelopment of the developed lots in the project site and within the context of individual properties, which is not the case here. The project at issue is limited to fuel modification activities undertaken by the City and not property owners. The City-approved project does not preclude individual property owners from incorporating these other techniques into their existing development or future development.

Moreover, as previously discussed in this staff report, although the fuel modification guidelines in the certified LCP allow vegetation thinning in the project area up to 270 feet from a structure, the project approved by the City minimizes habitat impacts by allowing thinning only up to 100 feet. The City-approved project is the alternative to a standard fuel modification plan, which is permissible and consistent with Action 7.6.2 of the certified LUP. Based on the foregoing, the fuel modification program approved by the City will retain some habitat value, and will require less maintenance and cost. Although some native vegetation will be removed, the certified LCP recognizes that that may be necessary where pre-existing development abuts undeveloped open space. In addition, Action 7.6.1 allows the City to require that impacts to environmentally sensitive resources be mitigated. Pursuant to Action 7.6.1, the City chose to require mitigation for impacts to the very high value habitat and designed the project to avoid and/or minimize impacts to habitat to the extent feasible.

Additionally, there is evidence in the record that the City ruled out other alternatives, including the use of mechanical equipment, prescribed fires, or broadcast use of pesticides and herbicides, which were all determined to be inappropriate for the project site.

Therefore, the Commission finds that the City's approval of local CDP No. 19-4900 is consistent with the policies of the certified LCP and raises no substantial issue with regard to the grounds upon which the appeal was filed.

Appellants' Argument No. 5: The project may be inconsistent with Chapter 25.41 of the certified LCP.

Consultation with Open Space Commission

The appellants assert that the City should have solicited a recommendation for the project from the Open Space Commission pursuant to Section 25.41.008 of the certified LCP because the project will affect open space parcels and required design review approval.

Section 25.41.008 of the Implementation Plan (IP) of the certified LCP states, in relevant part:

The city's open space lands provide a valuable contribution to Laguna Beach's identity that distinguishes it from other communities. In addition, this area contains important biological habitats as well as unique aesthetic resources. Due to the importance and sensitivity of these open space lands, the need for thorough evaluation of all proposed improvements or modifications is critical. Therefore, all such improvements or modifications shall be subject to design review board approval; the design review board shall solicit a recommendation from the open

space commission prior to its review. Such proposals shall be consistent with the following design objectives...

Section 25.41.008 requires that an Open Space Commission review any improvements or modifications subject to design review approval prior to review by the City's Design Review Board.

However, there has not been an Open Space Commission in the City of Laguna Beach in more than 20 years. Thus, such a review is no longer possible. Although the certified LCP should be amended to reflect that the City does not have an Open Space Commission, this issue is procedural in nature and is not relevant to the project's consistency with the policies of the certified LCP. The procedures in Chapter 25.41 of the certified IP provides the local government an additional review process beyond what is required by the Coastal Act; where a CDP is required for a project, the local government must comply with both Chapter 25.05 (for design review board decisions and other City entitlements) and Chapter 25.07 (for CDPs) of the IP. In this case, the Planning Commission reviewed the project, including consultation with the Laguna Canyon Foundation, which has similar expertise and interests to the now-defunct Open Space Commission, and made findings consistent with Chapter 25.05 and 25.07. Therefore, this contention does not raise a substantial issue.

Fuel Modification in Open Space Zones (Section 25.41.008(C))

The appellants assert that Section 25.41.008(C) of the certified IP provides criteria for review of fuel modification plans in areas zoned Open Space/Passive (OSP), but does not contemplate their use in areas zoned Open Space/Conservation (OSC). The appellants' logic is that because this section of the IP only specifies review of fuel modification plans in OSP zones, the makers of the law did not intend to allow fuel modification in OSC zones. Therefore, appellants maintain that the project, which includes fuel modification in OSC zones, is inconsistent with the certified LCP.

Section 25.41.008(C) of the IP of the certified LCP states, in relevant part (**emphasis added**):

(C) All buildings, structures and **improvements, including** landscaping, **fuel modification plans** and related signage proposed **in areas zoned Open Space/Passive** shall also be subject to the following criteria:

- (1) Buildings, Structures and Improvements. All buildings, structures and improvements including pipelines and service roads, should incorporate designs in which the scale, mass and height respect the undisturbed character of the area. Designs should follow existing topography, blend in with the natural landscape and otherwise minimize their visual prominence. Natural materials and earthtone colors shall be used.
- (2) Screening. While a primary goal of the development proposal is to integrate the building design with the surrounding landscape to minimize visual impacts, certain situations may warrant additional screening to achieve this goal. However, any walls, fences or other screens should utilize natural materials and they should be integrated, to the greatest extent possible, with the natural setting of the area.

- (3) Landscaping. Landscaping plans should minimize any impact on existing native vegetation, especially those species that are of high biological value. In addition, restorative landscaping should incorporate indigenous plant materials and is also encouraged as a means of mitigating visual impacts associated with the construction of new buildings, structures or other improvements within the zone.
- (4) Building Height. Building height shall be limited to one story, not to exceed fifteen feet as measured from natural grade.
- (5) Natural Environment. Buildings and structures should be unobtrusive and designed to minimize visual impact. And should be constructed only as necessary for purposes of the public health, safety and general welfare. Maintaining open space land in a natural state is the paramount objective when considering any development proposals.

Chapter 25.41 provides criteria and standards for development in open space zones, and lists uses that are permitted and prohibited in these zones. Although Chapter 25.41 does not specify fuel modification as a permitted use in open space zones, fuel modification is not specified as a used that is prohibited in open space zones. Section 25.41.007 lists the uses that are prohibited in open space.

Section 25.41.007 of the IP of the certified LCP states:

The following uses are prohibited in the open space zone:

- (A) The launching or landing of jet-skis or other similar types of motorized marine vehicles, except as may be determined necessary by the Coast Guard or Laguna Beach marine safety department for the public health and safety;
- (B) Any off-road vehicles and bicycles, including but not limited to motorcycles, all-terrain vehicles (ATVs), four-wheel-drive vehicles and mountain bikes, unless specifically permitted on designated trails or roads;
- (C) All structures, including radio, television or telecommunication antennas and related support structures and equipment, shall be prohibited within areas zoned as Open Space/Conservation.

If City intended Chapter 25.41 to prohibit fuel modification in open space zones, it would be specified under Section 25.41.007, but it is not.

Moreover, the fact that fuel modification will need to occur in certain areas for public safety, including areas in open space zones and under certain circumstances in the City, is recognized throughout the certified LCP. This is evidenced in the various policies that apply generally in the City addressing fuel modifications cited above.

The appellants also assert that the City-approved project does not maintain the open space land in a natural state as required by Section 25.41.008(C)(5) and, therefore, does not comply with the certified LCP.

Section 25.41.008(C)(5) of the IP (cited above) specifies that buildings and structures should be unobtrusive and designed to minimize visual impacts and that maintaining open space land in a natural state is the paramount objective. However, it should be noted that

this provision is only applicable to new development project involving new construction of “buildings and structures” in the Open Space Zones. The City-approved project is fuel modification for **existing development**. Therefore, the City-approved project is not inconsistent with the applicable policies of the certified LCP, and these contentions do not raise a substantial issue.

Appellants’ Argument No. 6: The City failed to make the specific findings required by Section 25.15.012 of the certified LCP.

The appellants assert that the City failed to make the specific findings related to the Residential Hillside Protection Zone required by LCP Section 25.15.012.

Section 25.15.012 of the IP of the certified LCP states:

In addition to such written findings as may be required by state law or the municipal code, the following written findings shall be made by the approving authority prior to the approval or conditional approval of any development project:

- (A) That the proposed development is in conformity with all applicable provisions of the general plan, including the Certified Local Coastal Program and the zoning code (Title 25).
- (B) That the proposed development will not result in adverse impacts to environmentally sensitive areas, and that any unavoidable, allowable impacts will be minimized following the incorporation of reasonable mitigation measures, and so will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
- (C) That the proposed development will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.
- (D) That the proposed development has adequately designed for and long-term implementation and maintenance measures have been established or conditioned to be established to reasonably protect the residents and their structures from wildfire hazards.

Chapter 25.15 provides criteria and building standards for new construction of residential development. Section 25.15.002 states, in relevant part, that “the intent and purpose of [the R/HP Residential Hillside Protection Zone] is to allow for low-intensity, residential development.” The City-approved project is a fuel modification program/plan for existing development. Therefore, the requirements set forth by Section 25.15.012 are not applicable in this case. Where a CDP is required for a project, the local government must comply with both Chapter 25.05 (for design review board decisions and other City entitlements) and Chapter 25.07 (for CDPs) of the IP. The Planning Commission reviewed the project and made findings consistent with Chapter 25.05 and 25.07. Therefore, this contention does not raise a substantial issue.

Appellants' Argument No. 7: Goat Grazing will be used for future maintenance of high and very high value habitat areas.

The appellants raise concerns about the project's potential to adversely impact high and very-high value habitat during future maintenance activities of the fuel modification zones because of a goat grazing treatment protocol listed on page 5 of the City's adopted MND, which reads as follows:

“k. Where practicable and environmentally appropriate, goat grazing may be used as the maintenance method for areas which required initial clearance by hand crews.”

Initial goat grazing as approved by the City for FMZs 23 and 24 is limited to low and moderate value habitat areas. Sites with higher habitat value (high or very-high) are designated for hand clearance. This language could give the impression that goat grazing **will be** used as a treatment method for future maintenance of high and very-high habitat areas given that those habitat types are the areas that will be initially subject to hand clearing/thinning.

However, Goat Grazing Treatment Protocol “k” states that goat grazing may only be used as a future maintenance method where it has been deemed “environmentally appropriate” based on the City's Vegetation Management Treatment Protocol. Treatment Protocol “k” would only be applicable during future maintenance of FMZs 23 and 24 if for some reason the value of a habitat area were reclassified due to, for example, a non-native vegetation invasion. Only then could the City reconsider the methods of clearance/thinning for maintenance of the fuel modification zones in such habitat areas. It does not mean that additional expansion of goat grazing in FMZs 23 or 24 is necessarily anticipated. The measure appears to be more precautionary in nature. Therefore, this contention does not raise a substantial issue.

Appellants' Argument No. 8: The City-approved project is not consistent with Policy 8-N of the certified LCP.

The appellants assert that project is not consistent with Policy 8-N of the OSCE and that the City failed to consider this policy. The appellants contend that although OSCE Policy 8-N has not been certified by the Coastal Commission, the policy's language has been certified as a part of the Design Guidelines of the LCP, and is, therefore, applicable to the project.

The language contained in the Design Guidelines of the certified LCP which the appellants quote is a cross-reference to a policy in the OSCE and reads, in relevant part, as follows:

“The Open Space and Conservation Element identifies open space as an important asset to the community and discusses building sites in the relationship with hillside and coastal settings, adjacent wildland areas and attendant natural features, and natural hazards associated with the City environment.

The Open Space policies specifically related to design review are as follows: ...

Prohibit the intrusion of fuel modification programs into environmentally sensitive areas, including chaparral and coastal sage scrub (Policy 8-N)”

Contrary to the applicants' assertion that the City did not consider the policy, based on the City's staff report, the City did apply the policy language referenced in the Design Guidelines document to the project.

However, Policy 8-N of the OSCE **as certified** reads:

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

Therefore, the cross-reference in the Design Guidelines is incorrect. It is not clear if the cross-reference in the Design Guidelines to Policy 8-N duplicates an outdated policy that is no longer a part of the certified OSCE. The intent of the Design Guidelines document is to help Laguna Beach homeowners understand the requirements of the LCP, mainly when designing new homes or additions, and it does not contain its own policies. The City may have applied the language provided by reference in the Design Guidelines reasonably assuming it was the currently certified policy in the OSCE. However, the reference refers to a policy that is not currently a part of the certified LUP and, therefore, is not applicable to the proposed project. An LCP amendment would be necessary to remove the cross-reference from the Design Guidelines to prevent further confusion that the policy the reference alludes to is no longer in the LCP. However, such an LCP amendment is not currently before the Commission and is irrelevant to the appeal at hand.

Therefore, this contention does not raise a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.

The City's conclusion was adequately supported by sufficient evidence and findings. The City required preparation of site-specific biologic and geologic reports, and incorporated into the project proposal measures necessary to assure consistency with the certified LCP, including provisions regarding natural resource protection, hazards, and visual resource and cultural resource protection. The local coastal development permit contains a high degree of factual and legal support. The appellants have not provided factual evidence supporting inconsistency with the LCP.

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

The scope of the approved development is vegetation thinning/clearance of approximately 44 acres between developed lots and open space in State-recognized very high fire hazard severity zones. Although a 44-acre project necessarily includes a large scope, the City's approval limits the scope of the project by: allowing vegetation removal to 100 feet from developed properties, limiting vegetation removal to 50 percent of overall fuel load (existing vegetation), and establishing a hierarchy of vegetation types to be removed. Therefore, the scope of the approved development supports a finding that the appeal raises no substantial issues.

3. The significance of the coastal resources affected by the decision. The coastal resources affected are sensitive habitat and significant resources. However, the City's approval includes appropriate protective measures to assure that sensitive habitat is preserved as required by the LCP. One such measure is limiting fuel modification to hand treatment only in areas of higher value habitat. Other measures include pre-fuel modification biological surveys and onsite biological monitoring with special attention to very sensitive species to ensure avoidance is implemented as necessary. In addition, although the fuel modification guidelines in the certified LCP allow vegetation thinning in the project area up to 270 feet from a structure, the project approved by the City minimizes habitat impacts by limiting fuel modification only up to 100 feet from developed properties and by requiring a hierarchy of vegetation removal of non-native and/or dead and dying first, with removal of native vegetation in high and very high value habitat areas, only when fire safety goals would not otherwise be achieved. Furthermore, the City-approved project includes a voluntary mitigation plan, which exceeds the requirements of the certified LCP.

4. The precedential value of the local government's decision for future interpretations of its LCP. In the past the City has implemented fuel modification projects under nuisance abatement provisions and sought emergency permits from the Commission. Commission staff has indicated that, generally, these types of projects should be subject to the review associated with the coastal development permit process. Therefore, the precedential value of the local government's decision to process a coastal development permit, rather than issue a nuisance abatement, is positive. Although the proposed fuel modification will occur in sensitive habitat areas, the local coastal development permit includes adequate measures to minimize and/or avoid potential adverse impacts to coastal resources. The City's approval yields positive progress on the development of a proposed fuel modification plan/program that was designed to preserve the habitat to the maximum extent possible, which is consistent with the LCP policies. The City does not set a negative precedent for fuel modification in the future. In fact, the City has set a positive precedent to influence proactive preservation of habitat when fuel modification is proposed in the future. Therefore, the precedential value of the local government's decision represents progress.

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

Impacts to coastal resources, including habitat, are important statewide issues. The City complied with CEQA with the preparation and adoption of a Mitigated Negative Declaration. The City's approval considered the factors required by the LCP, considered project alternatives, and approved the project as consistent with the certified LCP. Fuel modification is an issue of statewide significance, but the City's action was based on its application of local procedures in the context of local conditions. However, the City-approved project has been designed with the preservation of the environment in mind, and includes measures, which are described in greater detail above, to assure that sensitive habitat is preserved to the greatest extent possible as required by the LCP, and voluntary mitigation that exceeds the requirements of the LCP. Therefore, the City-approved project is a model fuel modification proposal that can positively influence proactive preservation of habitat when fuel modification is proposed in the future throughout the state.

Conclusion

In conclusion, the issues raised by the appellant do not demonstrate that the City's action is inconsistent with the certified LCP. Therefore, staff recommends that the Commission find that no substantial issue exists with respect to whether the local government action conforms with the policies of the City's certified LCP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. City of Laguna Beach Treatment Protocols for Fuel Modification Zones Subject to Coastal Development Permitting
2. Biological Resources Summary for the Additional FMZ 23-Canyon Acres Area by Aspen Environmental Group, dated June 17, 2019 and revised November 25, 2019.
3. Geotechnical Evaluation of Potential Slope Stability Impacts by Geofirm, dated February 19, 2019.
4. Biological Technical Report for Proposed Fuel Modification Zones 23 & 24 in the Canyon Acres Area and Laguna Canyon Road, Laguna Beach, Orange County, California by Glenn Lukos Associates (GLA), dated July 2019, and revised November 2019.
5. Initial Study and Mitigated Negative Declaration by Aspen Environmental Group, dated November 2019.