

CALIFORNIA COASTAL COMMISSION

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W13a

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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-17-0506-A1

Applicants: Southern California Edison (Attn: Xinling Ouyang)

Property Owners: Driftwood Properties, LLC

Location: 2.78-acre undeveloped parcel located at the northern terminus of Driftwood Drive (APN #: 656-191-40), City of Laguna Beach, Orange County

Original Project Description: Request for after-the-fact approval for partial removal and decommissioning of five utility poles, and approval for complete/partial removal and decommissioning of eight additional utility poles from properties known to contain sensitive habitat. Proposed project includes a one-time removal of exotic vegetation; one-time seeding of native vegetation appropriate for the habitat type in the area; and repair of the Driftwood Property chain-linked perimeter fence. No replacement poles are proposed, and no grading is proposed. (Project Locations: Laguna Terrace Mobile Home Park (APN #: 656-191-38 & 056-240-64 and 2.78-acre undeveloped parcel located at the northern terminus of Driftwood Drive (APN #: 656-191-40), City of Laguna Beach, Orange County)

Description of Proposed Amendment: Habitat re-vegetation/restoration to mitigate for removal of coastal sage scrub species within the Driftwood Property environmentally sensitive habitat area (ESHA) resulting from unpermitted vegetation clearing at four distribution pole sites.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is a request by Southern California Edison (SCE) to amend a previously approved permit in order to authorize SCE to restore habitat and mitigate for impacts that resulted from unpermitted vegetation clearing work performed in January

5-17-0506-A1 (Southern California Edison)

2020 at four distribution pole sites within a 2.78-acre undeveloped parcel known to contain ESHA (coastal sage scrub that supports big-leaved crownbeard and California coastal gnatcatcher and maritime chaparral) located at the northern terminus of Driftwood Drive in Laguna Beach (herein referred to as “Driftwood Property”). However, SCE is not requesting after-the-fact authorization for the impacts that resulted from the vegetation clearing work.

The Coastal Commission retains its permitting jurisdiction in areas of deferred certification. The subject site is located within the Hobo Canyon area of deferred certification. Certification in this area was deferred due to issues regarding development in sensitive habitat areas.

The primary issue raised by this project relates to potential adverse impacts to ESHA. On January 21, 2020, an SCE contractor undertook vegetation clearing around four utility distribution pole sites (i.e., Pole 1087503E, Pole 1331399E, Pole 1331400E, and Pole 1331729E) on the Driftwood Property. The vegetation clearing work was undertaken without authorization pursuant to any CDP or permit amendment and, therefore, is unpermitted. SCE indicates that it did not authorize the subject vegetation clearing and that the work occurred as a result of an SCE contractor having used outdated plans and information. SCE has subsequently communicated with the contractor and verified that they will implement appropriate procedures in the future.

The unpermitted vegetation clearing directly impacted 0.024 acres of coastal sage scrub habitat. Although SCE’s application does not request after-the-fact authorization for the impacts resulting from the 2020 vegetation clearing removal work, SCE is requesting that the permit, as amended, resolve the violation as well as authorize the proposed restoration and mitigation.

SCE is proposing replacement planting at a 1:1 ratio (impact-to-mitigation area ratio) to restore the disturbed areas. The replacement planting will be sited in areas contiguous to the impact areas to prevent future interruption resulting from future maintenance of the pre-existing utility distribution poles. SCE is also proposing additional restoration at a 4:1 ratio to mitigate for the impacts resulting from the unpermitted removal of coastal sage scrub habitat. In total, SCE is proposing 0.12-acres of habitat restoration (0.024 acres of disturbed habitat multiplied by 5). Therefore, the proposed project, as conditioned, will avoid significant disruption of habitat values required by the Coastal Act.

However, SCE’s proposed habitat restoration does not include a method to evaluate its success at mitigating the impacts of unpermitted vegetation clearing. In addition, the proposal lacks detail regarding monitoring. Therefore, staff recommends the Commission impose habitat restoration as mitigation for the unpermitted vegetation clearance within ESHA pursuant to **Special Condition 9**, requiring the applicant to submit a final habitat restoration and monitoring plan, prepared by a qualified biologist or resource specialist, that clearly identifies final success criteria to ensure that implementation of the proposed restoration results in the successful establishment of coastal sage scrub habitat.

All special conditions applied to the property pursuant to Coastal Development Permit 5-17-0506 remain in effect and apply equally to this amendment. Previously imposed special conditions require, among other things: a biological monitor onsite during project activities,

marking native vegetation clearly for maintenance personnel, demarcation of the limits of work, and requires that the applicant demonstrate it has received all required authorizations from the property owner(s) or easement holder(s), including the California Coastal Conservancy.

As conditioned, the amended project will be consistent with biological protection policies of Chapter 3 of the Coastal Act. Thus, staff recommends that the Commission **approve** CDP Amendment Application 5-17-0506-A1 as conditioned and as further discussed in this report.

PROCEDURAL NOTE – Coastal Development Permit Amendments:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The amendment request involves changes to the previously authorized project. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit. The proposed amendment would not lessen the intended effect of 5-17-0506, as amended, because the project would restore and continue to protect sensitive coastal resources, consistent with the original permit, and would apply new monitoring requirements to ensure the enhancement and preservation of the habitat. Therefore, the Executive Director accepted the amendment request for filing.

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

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

APPENDIX B – LIST OF ALL CONDITIONS THAT APPLY TO CDP 5-17-0506, AS
AMENDED

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Conceptual Habitat Restoration Plan](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the proposed Coastal Development Permit Amendment Application No. 5-17-0506-A1 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves Coastal Development Permit Amendment 5-17-0506-A1 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A1. All of the Commission's adopted special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this action, continue to apply in the most recently approved form unless explicitly changed in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permit 5-17-0506, as amended through amendment number A1 and reflected in Appendix B, remain in effect.

This permit, as amended, is granted subject to the following special conditions:

9. Final Habitat Restoration and Monitoring Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AS AMENDED, the applicant shall submit, for review and approval of the Executive Director, a Final Habitat Restoration and Monitoring Plan prepared by a qualified biologist, acceptable to the Executive Director, in substantial conformance with the Conceptual Habitat Restoration Plan titled Idle Line Removal Project Mitigation Recommendations dated January 27, 2021. The plan shall include native plant re-vegetation at areas contiguous to the four poles where

unpermitted coastal sage scrub habitat clearance occurred and restoration at an appropriate mitigation site(s) reviewed and approved by the Executive Director.

This plan shall include, but not be limited to, the following:

A. Pole Re-Vegetation Plan:

- (1) Identification of native coastal sage scrub species removed at each pole and plans to re-plant same species within an area contiguous with the impact areas at each respective pole.
- (2) One gallon or larger container plants must be used and the source of the plants must be South Laguna Beach canyons; Supplemental hydro-seeding can be done if necessary.
- (3) Plans for ensuring successful establishment and growth of the plants including planting timing and plans for temporary watering if deemed necessary for plant establishment and survival.
- (4) Description of monitoring methods (photos, plant size measurements, etc.) for tracking the health and growth of the plants.
- (5) Quarterly monitoring year one and bi-annual monitoring for a minimum of two additional years.
- (6) Detailed description of success criteria.
- (7) Annual reports submitted to the Executive Director with a final report at the end of three years or when success criteria are met, whichever is longer.

B. Restoration Plan for Mitigation Site(s):

- (1) Baseline assessment of habitat(s) and vegetation (native and non-native species) on proposed site including a vegetation map that depicts the distribution and abundance of any sensitive species, detailed descriptions of existing conditions, and photographs taken from pre-designated sites annotated to the map.
- (2) An exhibit/map of the proposed restoration plan including elevations, boundaries, habitat type(s) and native species.
- (3) The location, type, and height of any temporary fencing and timing as to when this fencing will be removed.
- (4) Goals of the restoration including habitat type, native species, sensitive species, and wildlife usage.
- (5) Qualitative methods (quadrats, transects, etc.) for sampling percent cover and richness of native plants and percent cover of non-native invasive plants within the vegetated portions of the project shall be described. A statistical power analysis should be completed to estimate the necessary replication.
- (6) Photos taken from specific photo points to visually track the progress of vegetative coverage shall be taken during each monitoring period.
- (7) An exhibit/map depicting locations of the photo points.
- (8) Detailed description of specific final success criteria. The statistical method by which success will be evaluated shall be described. Success criteria shall include both native species percent cover criteria and criteria for native species diversity and/or richness and no more than five percent (5%) cover on non-native invasive species.
- (9) Monitoring shall occur monthly quarterly for the first year and bi-annually for the second and third year and annually thereafter until success criteria are met.

- (10) Maintenance and monitoring of the restoration site shall be conducted for five years from the date of complete installation or until success criteria are met, whichever is longer.
 - a) No herbicides shall be employed.
 - b) Non-native invasive plant material shall be properly disposed of off the project site.
 - c) Best management practices to be implemented to avoid the recruitment or spread of non-native invasive species.
 - (11) One gallon or larger container plants must be used and the source of the plants must be South Laguna Beach canyons; Supplemental hydro-seeding can be done if necessary.
 - (12) The Project Biologist shall oversee implementation of the approved monitoring plan.
 - (13) The Project Biologist shall prepare an annual Monitoring Report each year over a minimum of five years, or until success criteria are met, whichever is longer, detailing progress toward success criteria, and finally an assessment of whether final success criteria have been met. The annual monitoring report shall be provided to the Executive Director within sixty days of the monitoring activity.
 - (14) Final monitoring for success shall take place after at least three (3) years with no remediation or maintenance other than weeding.
 - (15) Identification of adaptive measures that may be implemented should success criteria not be achieved within a five-year monitoring timeframe.
 - (16) The required final annual Monitoring Report must evaluate whether the restoration has achieved the goals and success criteria set forth in the approved monitoring plan.
- C. Any changes to the approved final Habitat Restoration and Monitoring Plan shall be reported to the Executive Director. No change(s) to the approved plan shall occur without a Coastal Commission approved subsequent amendment to this coastal development permit amendment or an approved coastal development permit unless the Executive Director determines that none is legally required.
- D. The permittee shall undertake development in accordance with the approved final Habitat Restoration and Monitoring Plan unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

III. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The proposed project is a request to amend a previously approved permit to restore habitat and mitigate for impacts to habitat resulting from unpermitted vegetation clearing work at four distribution pole sites. SCE is proposing replacement planting at a 1:1 ratio (impact-to-mitigation area ratio) to restore the disturbed areas, and additional restoration at a 4:1 ratio to mitigate for the impacts resulting from the unpermitted removal of coastal sage scrub habitat. In total, SCE is proposing habitat restoration of 0.12 acres (0.024 acres of disturbed habitat multiplied by 5) ([Exhibit 2](#)). The proposal does not request after-the-fact authorization for the impacts that resulted from this vegetation clearing work.

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The proposed project is located within a portion of the Driftwood Estates Property, a 2.78-acre property (“Driftwood Property”) ([Exhibit 1](#)), identified as coastal sage scrub and maritime chaparral ESHA. The subject utility pole sites are specifically located near the northern terminus of Driftwood Drive. Residential development borders the site to the south, west, and northwest. Open space borders the site to the east and northeast. The Driftwood property is owned by Driftwood Properties, LLC. SCE is the entity that is proposing to carry out the proposed project being amended.

The project areas are located on hilly terrain inland of Pacific Coast Highway, more than 650 feet inland of the beach. There are no public trails within the area subject to the habitat restoration/mitigation area. The proposed project is not anticipated to have any impacts on public coastal access.

B. BACKGROUND

CDP No. 5-17-0506

On March 17, 2017, SCE began the process of partially removing utility poles without a coastal development permit, using heavy equipment. On March 21, 2017, SCE received notification through local residents and the City of Laguna Beach of the Coastal Commission’s permit jurisdiction over the areas where the development was occurring. SCE then stopped all work pending further coordination with the Coastal Commission. On June 7, 2017, SCE submitted a coastal development permit application for the after-the-fact approval for the complete/partial removal of five utility poles, and for approval of the complete/partial removal of eight additional poles.

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

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

In 2017, the applicant applied to the Commission for a coastal development permit (CDP No. 5-17-0506) to resolve the issues related to the unpermitted development at the site and for the ATF approval of the unpermitted development. The application requested approval for the after-the-fact partial¹ removal and decommissioning of five Southern California Edison (SCE) utility poles and includes the complete/partial removal and

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

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

On October 12, 2018, after a public hearing, the Coastal Commission approved CDP No. 5-17-0506 with special conditions.

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On January 21, 2020, an SCE contractor undertook vegetation clearing around four utility distribution pole sites (i.e., Pole 1087503E, Pole 1331399E, Pole 1331400E, and Pole 1331729E) on the Driftwood Property. The vegetation clearing work was undertaken without authorization from a CDP or permit amendment and, therefore, is unpermitted.

On October 15, 2020, SCE formally applied for this CDP amendment application currently before the Commission to resolve the 2020 violation.

C. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

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

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

Unlike in the case of the underlying CDP, which affected two properties, this permit amendment application only relates to one of the two properties: a portion of the Driftwood Estates Property, a 2.78-acre parcel ("Driftwood Property") in the City of Laguna Beach. This property is known to contain coastal sage scrub and maritime chaparral ESHA. SCE provided a Biological Evaluation Report prepared by SCE's Environmental Services Department in June 2017, as well as a USFWS California Gnatcatcher Protocol Level Survey prepared by Keane Biological Consulting, dated May 30, 2017. In addition, SCE has submitted a Biological Evaluation Report dated August 5, 2020 and a Post-Construction Survey dated October 23, 2020, both prepared by Helix Environmental Planning.

Based on the biological assessment, the project site contains diverse habitat including five plant communities: *Encelia californica-erigonum fasciculatum scrub*, *Artemisia californica scrub*, *Heteromeles arbutifolia-Rhus integrifolia chaparral*, *Ceanothus meagacarpus chaparral*, *Annual grassland*, and *ornamentals*. Moreover, at least two State or Federally-listed threatened or endangered species (one plant and one bird species) occur or are

likely occur within the project area: big-leaved crownbeard (*Verbesina dissita*) and California gnatcatcher (*Polioptila californica*).

Historically, the Coastal Commission has recognized the existence of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between southern maritime chaparral and coastal sage scrub within the project site (Driftwood Property and Park). The Commission finds that the southern maritime chaparral and coastal sage scrub within the project area meet the definition of ESHA as these habitats, especially maritime chaparral, support populations of big-leaved crownbeard,² which is listed as “threatened” under both federal and state law and is endemic to this part of Orange County. Section 30107.5 of the Coastal Act defines ESHA as “*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*”

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

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

Impacts and Mitigation

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

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

Section 30240 states that only resource-dependent uses are allowed within ESHA and that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas.

On January 21, 2020, an SCE contractor undertook vegetation clearing around four utility distribution pole sites (i.e., Pole 1087503E, Pole 1331399E, Pole 1331400E, and Pole 1331729E) on the Driftwood Property. The vegetation clearing work was undertaken without authorization from a CDP or permit amendment and, therefore, is unpermitted. SCE indicates that it did not authorize the subject vegetation clearing and that the work occurred as a result of an SCE contractor having used outdated plans and information. SCE has subsequently communicated with the contractor and verified that they will be using the appropriate procedures in the future.

Following the unpermitted removal of vegetation, a biological assessment was conducted on July 23, 2020, and vegetation disturbance was noted adjacent to the four utility poles that were evaluated. The total vegetation disturbance area is estimated to be approximately 0.024 acres of members of coastal sage scrub habitat including lemonade berry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California sagebrush (*Artemisia californica*), California Encelia (*Encelia californica*), and California buckwheat (*Eriogonum fasciculatum*). No big-leaved crownbeard individuals or other special status species were previously observed, or identified as having been impacted, either at the base of or within the vicinity of four poles.

Although SCE's application does not request after-the-fact authorization for the impacts resulting from the 2020 vegetation clearing removal work, SCE is requesting that the permit, as amended, resolve the violation as well as authorize the proposed restoration and mitigation.

SCE is proposing replacement planting at a 1:1 ratio (impact-to-mitigation area ratio) to restore the areas directly disturbed by the unpermitted vegetation clearing. SCE is also proposing additional habitat restoration at a 4:1 ratio at a mitigation site(s) within the Driftwood property to mitigate for the impacts and disturbance to coastal sage scrub habitat as a result of the unpermitted removal of numerous mature individual coastal sage scrub species described above. The additional 4:1 habitat restoration will restore a large area of habitat that was degraded through historic unpermitted grading and utility maintenance, some of which was also unpermitted. In total, SCE is proposing 0.12 acres of habitat restoration (0.024 acres of disturbed habitat multiplied by 5).

The Commission has required a minimum of 3:1 mitigation for permanent impacts to habitat for projects that have not yet occurred. However, this application is intended to address unpermitted development that has already occurred and resulted in a long-term disruption of habitat due to the removal of mature native habitat. The habitat type that was impacted takes a long time to reach the level of maturity it had reached prior to the unpermitted vegetation clearing. Therefore, a higher impact-to-mitigation area ratio is required and has been proposed. As conditioned to ensure that the revegetation takes place contiguous to the impact sites and that the additional restoration takes place at an appropriate mitigation site(s) within the Driftwood Property, the development will avoid significant disruption of habitat values in ESHA as required by the Coastal Act.

The Driftwood Property will be accessed by foot at the northern terminus of Driftwood Drive. The four subject poles located on the Driftwood Property are located north of the Driftwood Drive terminus (see Figure 1 below). The poles themselves no longer contain active SCE-related utility infrastructure and do not need to be maintained by SCE. However, the poles do contain active utility infrastructure owned by another entity and will likely need to be maintained in the future.

Figure 1: Aerial of a portion of the Driftwood Property –
The four pole sites subject to this CDP Amendment Application are circled in white.



SCE's proposed habitat restoration does not include a method to evaluate its success at mitigating the impacts of unpermitted vegetation clearing. In addition, the proposal lacks detail regarding monitoring. Therefore, the Commission requires habitat restoration and monitoring per **Special Condition 9**. Special Condition 9 requires the applicant to submit a final habitat restoration and monitoring plan, prepared by a qualified biologist or resource specialist, that clearly identifies final success criteria to ensure that implementation of the proposed restoration results in the successful establishment of coastal sage scrub habitat.

All special conditions applied to the property pursuant to CDP 5-17-0506 remain in effect and apply equally to this amendment. Previously imposed special conditions require, among other things: a biological monitor onsite during project activities, marking native vegetation clearly for maintenance personnel, demarcation of the limits of work, and requires that the applicant demonstrate it has received all required authorizations from the property owner(s) or easement holder(s), including the California Coastal Conservancy. SCE will not have to perform additional mitigation for the original violation (e.g., trampling) that was the subject of the original CDP 5-17-0506 because the habitat recovery from the original violation meets the survey criteria required by the previously imposed special conditions.

As conditioned, the Commission finds the amended project is consistent with Section 30240 of the Coastal Act regarding protection of ESHA.

C. COASTAL ACT VIOLATION

On January 21, 2020, an SCE contractor cleared vegetation around four utility distribution pole sites (i.e., Pole 1087503E, Pole 1331399E, Pole 1331400E, and Pole 1331729E) on

the Driftwood Property. The vegetation clearing work was undertaken without authorization from a CDP or permit amendment and, therefore, is unpermitted development, which constitutes a violation of the Coastal Act. SCE indicates that the work occurred as a result of an SCE contractor having used outdated plans and information. SCE has subsequently communicated with the contractor and verified that they will be using the appropriate procedures in the future; granted, all SCE equipment has been removed from the area of the site where the vegetation removal occurred, and, thus, the need for SCE to do any future maintenance in this area has been reduced if not eliminated. SCE states that they did not discover the unpermitted work until February 10, 2020 when SCE's biological team went out to the site to finish sampling work required by the underlying permit (CDP No. 5-17-0506).

In February 2020, Commission staff became aware of the violations at issue, and on February 14, 2020, SCE asked the Commission's South Coast District Office staff for the appropriate procedures to rectify the inadvertent violation. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. Commission review and action on this permit amendment will resolve the violations identified in this section once the permit, as amended, has been fully executed and the terms and conditions of the permit and permit amendment complied with by the applicant.

On October 15, 2020, SCE formally applied to the Commission for a CDP amendment to resolve the issues related to the unpermitted development at the site and has paid the appropriate application fee. Although this permit amendment application does not request after-the-fact authorization for the impacts resulting from the vegetation clearing removal work at issue, SCE is requesting that the permit, as amended, resolve the violation as well as authorize the proposed restoration and mitigation.

SCE is proposing replacement planting at a 1:1 ratio (impact-to-mitigation area ratio) to restore the disturbed areas, and additional restoration at a 4:1 ratio to both mitigate for impacts that resulted from the unpermitted removal of mature coastal sage scrub habitat and to address any claims the Commission has for monetary penalties for the violation described in this section. In total, SCE is proposing habitat restoration at a 5:1 ratio to mitigate for the impacts to native habitat as a result of the unpermitted vegetation clearing, or a total of 0.12 acres of habitat restoration (0.024 acres of disturbed habitat multiplied by 5).

Despite this unpermitted development, consideration of CDP Amendment No. 5-17-0506-A1 by the Commission is based solely upon the Chapter 3 policies of the Coastal Act, with guidance from the policies of the certified Local Coastal Program.

D. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3

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

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

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

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project, as amended, has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Special Conditions imposed will mitigate adverse impacts to coastal resources and public access. Therefore, the Commission finds that, as conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect of the proposed project, as amended, and there are no remaining significant environmental impacts within the meaning of CEQA, and the project is consistent with CEQA and the policies of the Coastal Act.

Appendix A - Substantive File Documents

- Coastal Development Permit (CDP) No. 5-17-0506
- *Biological Evaluation Report (SCE Project No. TD 1104776)* prepared by Southern California Edison, Environmental Services Department, dated June 2017.
- CDP Amendment Application No. 5-17-0506-A1
- *Vegetation Maintenance Summary for the TD1104776-Idle Line Removal Project* prepared by Helix Environmental Planning, dated August 5, 2020.
- *Revised Post-Construction Survey Report for the TD1104776- Idle Line Removal Project (Permit Application Number 5-17-0506)* prepared by Helix Environmental Planning, dated October 23, 2020.
- *Idle Line Removal Project Mitigation Recommendations* prepared by Helix Environmental Planning, dated January 27, 2021.

Appendix B - List of All Conditions that Apply to CDP 5-17-0506, as Amended

STANDARD CONDITIONS

This permit, as amended, is granted subject to the following standard conditions:

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

SPECIAL CONDITIONS

This permit, as amended, is granted subject to the following special conditions:

1. **Habitat and Sensitive Species Protection Measures During Project Activities**
 - A. Prior to any project activities, a qualified Resource Specialist shall survey the project site and identify with flags all areas of existing native vegetation. Avoidance measures shall be implemented for native coastal sage scrub, maritime chaparral, and rare plant species in areas where these species exist as a natural community and in areas where these species co-occur with non-native species. Such avoidance measures shall include stakes, flags, or other markers clearly visible to maintenance personnel.
 - B. The limits of work shall also be clearly demarcated to identify the boundaries of the construction area. Temporary pole and animal movement-friendly single cable or rope fencing shall be used delineate the site. All plans shall include a note apprising all on-site workers of the sensitive nature of the on-site habitat.
 - C. An appropriately trained biologist shall monitor all project activities, including but not limited to the removal of poles, accessing of the poles, and habitat enhancement, for disturbance to sensitive species or habitat area. Based on field observations, the biologist shall advise the applicants regarding methods to

minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The biological monitor shall have the authority to stop work if any adverse impacts to sensitive species at the project site and/or within the project vicinity could result from continuation of the proposed development. The applicants shall not undertake any activity that would disturb sensitive species or habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.

D. Vehicle speeds within the habitat areas shall not exceed 5 miles per hour.

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

A. Designated areas for staging of construction equipment and materials, including receptacles and temporary stockpiles of materials. All stock piles and construction materials shall be covered, enclosed on all sides, located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion.

B. Designated and confined areas for maintaining and washing machinery and equipment specifically designed to control runoff. Thinners or solvents shall not be discharged anywhere on the Properties, including into sanitary or storm sewer systems. The discharge of hazardous materials into any receiving waters is prohibited.

3. Site Surveys. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for review and written approval of the Executive Director, a sampling design plan for quantitative Pre-Construction Surveys performed between February 15 – March 15, 2019 to document the present site conditions of all areas within limits of all the proposed work and Post-Construction Surveys, to document site conditions, one (1) year following completion of the proposed construction, in all areas within the limits of the completed work. The sampling design plan must include the sampling approach (e.g. distribution and number of samples), methods (e.g. quadrats, transects), and similarity criteria that will be employed to document the pre-and post-construction site conditions.

A. Pre-Construction Survey.

The quantitative Pre-Construction Survey must document the present site conditions of all the areas within the limits of the proposed work, where no work has previously occurred. Additionally, the quantitative Pre-Construction Survey must identify the extent of impacts to the areas that were previously disturbed by unpermitted pole removal activities. All the areas within the limits of the present proposed work, including those areas previously disturbed by the unpermitted work, shall be quantitatively sampled to determine native species richness and absolute cover values. The survey shall also identify the number and status (area cover) of all the rare native species within the limits of the proposed work. The survey shall be conducted between February 15 – March 15, 2019 and shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g.

placement of quadrats and or transects). The results of the pre-construction surveys shall be submitted to the Executive Director within fifteen business days after completion.

i. Areas Formerly Impacted by Unpermitted Pole Removal Activities

- a. The survey shall identify the native plant species richness, absolute total native cover, and the number and status of rare native plants within the areas formerly impacted by unpermitted pole removal activities to determine actual impacts and the success of habitat recovery in meeting at a minimum the baseline pre-construction conditions based on a Reference Site (s) (see b. below). The survey shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g. placement of quadrats and or transects). The results of the pre-construction surveys, including the survey data for the Reference Site(s), shall be submitted to the Executive Director within fifteen (15) business days after completion. If the Pre-Construction Survey results identify that the native habitat has failed to recover, based on the approved similarity criteria, and impacts remain within the areas previously disturbed by unpermitted pole removal activities, within 90 days of the submittal of the Pre-Construction Survey, the applicant shall apply for an amendment to this coastal development permit to obtain approval for additional habitat restoration and mitigation.
- b. Baseline pre-construction conditions shall be based on a Reference Site (s) near Poles 1729013E and 1331732E. The Reference Site (s) shall be undisturbed and may be located on-site or, if such a site is not present, in the general vicinity of the project site. The pre- and post-construction surveys shall include a detailed description of the Reference Site (s), including rationale for selection, location, and species composition. The Reference Site (s) shall serve as the baseline for measuring success of habitat recovery or enhancement activities for the areas formerly impacted by unpermitted pole removal activities. The quantitative survey approach and methods conducted at the Reference Site (s) shall be exactly the same as those conducted for pre-and post-construction surveys in the work areas.

B. Post-Construction Survey.

The extent of impacts to the native habitats in all areas within the limits of all the proposed work shall be re-sampled and documented in a post-construction quantitative survey taken during the same season or time frame baseline conditions were established and within 18 months after the completion of the pole removal activities. The post-construction survey results shall be submitted to the Executive Director within fifteen (15) business days of completion of the survey. In order to document post-construction conditions, all the areas within the limits of the present proposed work, including those areas previously disturbed by the unpermitted work, shall be quantitatively sampled, per the exact approach and methods used for the pre-construction surveys, to determine native species richness, absolute total native cover, and number and status of rare native plants. The survey shall identify the native plant species richness, absolute total cover, and number and status of rare native plants, of the impacted areas to determine actual impacts and the success of

habitat recovery in meeting, at a minimum the baseline pre-construction conditions, per the approved similarity criteria, of the areas where no unpermitted work occurred. Impact upon areas where unpermitted work occurred will be determined based on reference site (s) data (see subsection A.i.b. above). The survey shall include a site plan delineating all impacted habitat areas, exact acreage, and sampling design (e.g. placement of quadrats and or transects). If the post-construction survey results show that impacts remain, within 90 days of the submittal of the Post-Construction Survey, the applicant shall apply for an amendment to this coastal development permit to obtain approval for additional habitat restoration and mitigation.

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

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

5. Timing and Operational Constraints.

- A. To avoid adverse impacts on sensitive bird species, all project activities shall not occur during the bird nesting season between March 15 and August 31 of any year, unless written permission from the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service is obtained and provided to the Executive Director for review and approval.

- B. If construction and/or restoration activities are to occur during bird nesting season (March 15 through August 31), a qualified biologist, with experience in conducting bird surveys, shall conduct a bird nesting survey(s) within the thirty (30) days prior to commencement of construction to detect any active raptor and/or California Department of Fish & Wildlife (CDFW) listed species and/or species of special concern nests or nesting activity within 500 feet of the construction area. If an active nest or nesting activity is determined to be located within 500 feet of active construction and/or restoration activities, all such activities within 500 feet from raptor nests and 300 feet from CDFW listed species and/or species of special concern, shall cease until the qualified biologist has confirmed that the detected nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. The 500-foot limit (raptors) and/or 300-foot limit (CDFW listed species and/or species of special concern) shall be identified and protected with flagging, stakes, or animal migration-friendly fencing. Construction personnel shall be instructed by the qualified biologist on the sensitivity of the area and biological importance of maintaining the buffer area to allow the continuation of the natural nesting and fledgling process. The biologist shall record the results of the recommended protective measures described above to document compliance with this special condition and with applicable State and Federal laws pertaining to protection of nesting birds. These biologist's recorded results shall be submitted to the Executive Director within fifteen (15) days of discovery of the nest(s), along with a description of protective measures implemented.

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

7. Fence Repair. Immediately upon issuance of this coastal development permit, the applicants shall repair the Driftwood Property chain-linked perimeter fence as described in a final approved plan, and shall maintain this fence for the life of the project (inclusive of habitat enhancement and restoration if required).

8. Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit two sets of revised final plans to the Executive Director for review and approval. The final plans shall be in substantial conformance with the site and work plans as depicted in **Exhibit 2** of the staff report dated September 27, 2018, but shall be modified to relabel the area denoted as "existing dirt access road" to "drive and crush access – reuse prior path".

The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the

Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. **Final Habitat Restoration and Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director, a Final Habitat Restoration and Monitoring Plan prepared by a qualified biologist, acceptable to the Executive Director, in substantial conformance with the Conceptual Habitat Restoration Plan titled Idle Line Removal Project Mitigation Recommendations dated January 27, 2021. The plan shall include native plant re-vegetation at areas contiguous to the four poles where unpermitted coastal sage scrub habitat clearance occurred and restoration at an appropriate mitigation site(s) reviewed and approved by the Executive Director. This plan shall include, but not be limited to, the following:

A. Pole Re-Vegetation Plan:

- (1) Identification of native coastal sage scrub species removed at each pole and plans to re-plant same species within an area contiguous with the impact areas at each respective pole.
- (2) One gallon or larger container plants must be used and the source of the plants must be South Laguna Beach canyons; Supplemental hydro-seeding can be done if necessary.
- (3) Plans for ensuring successful establishment and growth of the plants including planting timing and plans for temporary watering if deemed necessary for plant establishment and survival.
- (4) Description of monitoring methods (photos, plant size measurements, etc.) for tracking the health and growth of the plants.
- (5) Quarterly monitoring year one and bi-annual monitoring for a minimum of two additional years.
- (6) Detailed description of success criteria.
- (7) Annual reports submitted to the Executive Director with a final report at the end of three years or when success criteria are met, whichever is longer.

B. Restoration Plan for Mitigation Site(s):

- (1) Baseline assessment of habitat(s) and vegetation (native and non-native species) on proposed site including a vegetation map that depicts the distribution and abundance of any sensitive species, detailed descriptions of existing conditions, and photographs taken from pre-designated sites annotated to the map.
- (2) An exhibit/map of the proposed restoration plan including elevations, boundaries, habitat type(s) and native species.
- (3) The location, type, and height of any temporary fencing and timing as to when this fencing will be removed.
- (4) Goals of the restoration including habitat type, native species, sensitive species, and wildlife usage.
- (5) Qualitative methods (quadrats, transects, etc.) for sampling percent cover and richness of native plants and percent cover of non-native invasive plants within the vegetated portions of the project shall be described. A statistical power analysis should be completed to estimate the necessary replication.

- (6) Photos taken from specific photo points to visually track the progress of vegetative coverage shall be taken during each monitoring period.
 - (7) An exhibit/map depicting locations of the photo points.
 - (8) Detailed description of specific final success criteria. The statistical method by which success will be evaluated shall be described. Success criteria shall include both native species percent cover criteria and criteria for native species diversity and/or richness and no more than five percent (5%) cover on non-native invasive species.
 - (9) Monitoring shall occur monthly quarterly for the first year and bi-annually for the second and third year and annually thereafter until success criteria are met.
 - (10) Maintenance and monitoring of the restoration site shall be conducted for five years from the date of complete installation or until success criteria are met, whichever is longer.
 - a) No herbicides shall be employed.
 - b) Non-native invasive plant material shall be properly disposed of off the project site.
 - c) Best management practices to be implemented to avoid the recruitment or spread of non-native invasive species.
 - (11) One gallon or larger container plants must be used and the source of the plants must be South Laguna Beach canyons; Supplemental hydro-seeding can be done if necessary.
 - (12) The Project Biologist shall oversee implementation of the approved monitoring plan.
 - (13) The Project Biologist shall prepare an annual Monitoring Report each year over a minimum of five years, or until success criteria are met, whichever is longer, detailing progress toward success criteria, and finally an assessment of whether final success criteria have been met. The annual monitoring report shall be provided to the Executive Director within sixty days of the monitoring activity.
 - (14) Final monitoring for success shall take place after at least three (3) years with no remediation or maintenance other than weeding.
 - (15) Identification of adaptive measures that may be implemented should success criteria not be achieved within a five-year monitoring timeframe.
 - (16) The required final annual Monitoring Report must evaluate whether the restoration has achieved the goals and success criteria set forth in the approved monitoring plan.
- C. Any changes to the approved final Habitat Restoration and Monitoring Plan shall be reported to the Executive Director. No change(s) to the approved plan shall occur without a Coastal Commission approved subsequent amendment to this coastal development permit amendment or an approved coastal development permit unless the Executive Director determines that none is legally required.
- D. The permittee shall undertake development in accordance with the approved final Habitat Restoration and Monitoring Plan unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.