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# W12e

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## STAFF REPORT: REGULAR CALENDAR (CONSOLIDATED CDP)

**Application No.:** 5-21-0641

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

**Project Location:** Hobo-Aliso Canyon Area: East of Barracuda Way and Loretta Drive; and Adjacent to northern terminus of Marilyn Drive and Driftwood Drive, and east of Driftwood Drive and Ocean Vista Drive, City of Laguna Beach, Orange County (APNs: 056-240-62, 056-240-67, 056-240-68, 656-035-03, 656-191-40, 056-240-54, 056-240-56, 056-240-57, 056-240-65, 656-071-13, and 656-071-18)

**Project Description:** Fuel modification on approximately 10.51 acres of undeveloped hillside canyon areas adjacent to existing residential development, and a mitigation plan to offset direct impacts to very-high value habitat. No building, structure, hardscape or grading is proposed.

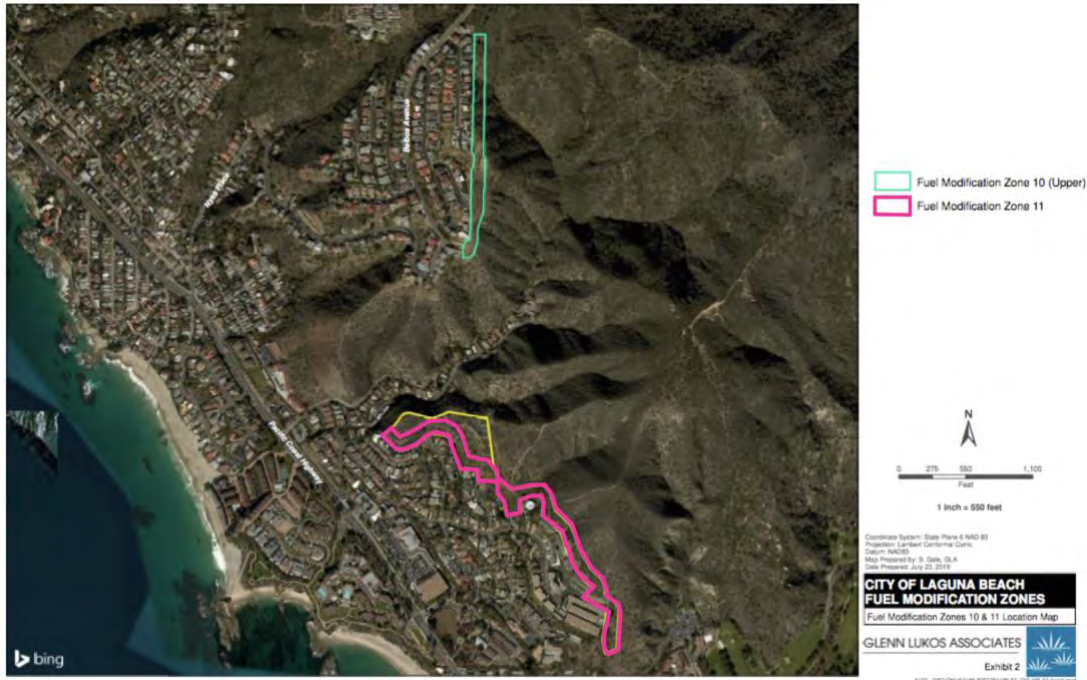
**Staff Recommendation:** Approval with conditions.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency, and following California Assembly Bill 361, and the Governor's Executive Orders N-1-22, N-15-21, 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](http://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.

## SUMMARY OF STAFF RECOMMENDATION

The project site consists of two areas totaling approximately 11.62 acres that the applicant has designated as Upper<sup>1</sup> Fuel Modification Zone (FMZ) 10 (approx. 3.94 acres) and FMZ 11 (approx. 7.68 acres). The project site is located in the Hobo-Aliso Canyon area. Upper FMZ 10 is generally located on the east side of Barracuda Way and Loretta Drive, and FMZ 11 is generally located adjacent to northern terminus of Marilyn Drive and Driftwood Drive, and east of Driftwood Drive and Ocean Vista Drive in the City of Laguna Beach, Orange County. See **Exhibit A** below for mapping of the project location.

**Exhibit A** Mapping of areas designated by applicant as Fuel Modification Zones 10 & 11.



The proposed project, fuel modification adjacent to existing residential development, constitutes repair and maintenance work that is necessary to protect life and property. The proposed fuel modification is intended to maintain a defensible space adjacent to existing development to protect the existing development from fire hazards. Of the 11.62 acres of the project site, only 10.51 acres are being treated for fuel modification because areas with crownbeard will be avoided.

The extent of proposed fuel modification involves 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 maintaining a safe firebreak between undeveloped canyon areas and existing development in Hobo Canyon and Aliso Canyon. A combination of two management methods for vegetation thinning is 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). A gas- or diesel-powered chipper will be used to cut removed vegetation

<sup>1</sup> Lower FMZ 10 is in the City's certified permit jurisdiction and is not before the Coastal Commission.

into pieces. Approximately 9.45 acres of vegetation will be subject to hand clearing, and 1.06 acres of vegetation will be subject to goat grazing.

Although the proposed development will occur in sensitive habitat areas, which consist of coastal sage scrub/southern chaparral and southern maritime chaparral habitats, the proposed project minimizes adverse impacts to coastal resources, and therefore is not a significant disruption of the habitat values, specifically 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, with removal of native vegetation in high- and very-high value habitat areas, only when fire safety goals would not otherwise be achieved; 3) requiring a qualified biologist to conduct pre-vegetation clearing biological surveys to enable flagging and avoidance of impacts to special status species, and requiring the presence of a qualified biologist during project activities; 4) implementing measures to avoid impacts to bird nests; 5) implementing erosion control measures; 6) and proposing a mitigation plan to offset direct impacts to very-high value habitat. While the project is not a use dependent upon the resource, as required by Section 30240 of the Coastal Act for uses within Environmentally Sensitive Areas (ESA) / Environmentally Sensitive Habitat Areas (ESHA), the project is necessary repair and maintenance activity to protect life and property and it has been carefully designed so as not to represent a significant disruption of the habitat values in and adjacent to sensitive habitat. In addition, the certified LCP, which is used as guidance, recognizes that this fuel modification may be necessary where pre-existing development abuts undeveloped open space and/or wildlands. Special conditions are recommended to ensure that the method of repair and maintenance limits impacts to Environmentally Sensitive Areas – defined by the LCP as areas that contain environmentally sensitive habitat resources as identified through an on-site biological assessment process which meets the definition of environmentally sensitive area in Section 30107.5 of the Coastal Act<sup>2</sup> – to only where they are required for fire protection and that the project will not significantly degrade ESA. Additionally, the applicant is proposing to mitigate for any impacts to very-high value habitat. The LCP requires fuel modification proposals situated in ESA to preserve habitat areas within very high value habitat and, when appropriate, that mitigation measures be enacted.

The applicant is proposing 1.46 acres of significant habitat restoration as mitigation for anticipated direct impacts to very-high value habitat. The project site contains approximately 2.92 acres of very-high value habitat. The applicant's proposal to restore 1.46 acres of habitat is akin to restoring habitat at a ratio of 0.5:1 (mitigation-to-impact area ratio).

The Commission has typically required mitigation at a 3:1 (acres of restored habitat to each acre of impacted habitat) ratio for permanent impacts to ESA containing habitat that support State or Federally listed rare, threatened, or endangered species, species of special concern, or CNPS 1b or 2 listed plants (e.g., CDP 5-15-2097 and CDP 5-03-013, among others). However, in this case, although the proposed fuel modification project is anticipated to permanently impact ESA by reducing the habitat coverage by 50 percent for

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<sup>2</sup> 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.

as long as fuel mod activities are carried out (indefinitely), Commission staff believes that the proposed methods of fuel modification are a more environmentally sensitive approach compared to past more damaging and less effective fuel modification programs. The proposed fuel mod program presents unique circumstances whereby a mitigation ratio that is lower than the traditional 3:1 ratio would be appropriate.

A mitigation-to-impact ratio for habitat restoration/creation at 0.5:1, or for habitat enhancement at 1:1 ratio, would be adequate to offset the anticipated impacts to very-high value habitat because the value of the habitat will be diminished but not be completely lost with the proposed 50% thinning. Therefore, **Special Condition 3** would require that the applicant submit, for the review and approval of the Executive Director, a final Habitat Mitigation Plan, prepared by a biologist or environmental resource specialist with qualifications acceptable to the Executive Director, to provide off site mitigation for all sensitive habitat disturbed and/or permanently displaced by fuel modification activities. The plan shall provide for: (1) 0.5:1 mitigation ratio for habitat restoration or creation, or 1:1 mitigation ratio for habitat enhancement; (2) site plan with topography showing the location, size and species of the non-native plants to be removed, native plants to be protected, and native plants to be added to the restoration area; (3) biological survey of the project site and identification with flags of all areas of existing native vegetation; (4) erosion control; (5) planting schedule; (6) biological monitoring; (7) performance standards for habitat restoration; and (8) maintenance of the restoration area. Only with mitigation to offset the anticipated impacts to very-high value habitat could the project be found consistent with the policies the certified LCP, serving as guidance, and with Section 30240 of the Coastal Act.

Commission staff recommends that, after a public hearing, the Commission approve Coastal Development Permit No. 5-21-0641 with a total of **10 special conditions**, which address the following: **1)** submittal of final fuel modification plan; **2)** final habitat mitigation plan; **3)** habitat and sensitive species protection measures during project activities; **4)** timing and operational constraints (sensitive bird species); **5)** staging and storage of equipment; **6)** assumption of risks of development in a hazardous areas; **7)** conformance with requirements of resource agencies; **8)** collaboration with OCTA to minimize fuel modification; **9)** coordination with Southern California Edison for FMZ 11 access; and **10)** coordination with Hometown America and mitigate for impacts within the Hometown America Restoration Site. The motion and resolution are on page 6 of this report.

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#### **PROCEDURAL NOTE:**

Because the proposed development includes elements both within the certified and uncertified jurisdiction of the City of Laguna Beach, the Commission is authorized to review a consolidated coastal development permit application for the proposed development under Section 30601.3 of the Coastal Act. The City and the applicant are in agreement with processing the application for the proposed development as a consolidated coastal development permit application (**5-21-0641**). Therefore, the standard of review for this consolidated coastal development permit application is Chapter 3 of the Coastal Act, with the City's LCP used as guidance.

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## TABLE OF CONTENTS

|  |    |
|--|----|
| I. MOTION AND RESOLUTION .....                       | 6  |
| II. STANDARD CONDITIONS .....                        | 6  |
| III. SPECIAL CONDITIONS .....                        | 6  |
| IV. FINDINGS AND DECLARATIONS .....                  | 13 |
| A. PROJECT LOCATION & DESCRIPTION .....              | 13 |
| B. SITE HISTORY .....                                | 15 |
| C. STANDARD OF REVIEW .....                          | 16 |
| D. ESA / ESHA .....                                  | 18 |
| E. HAZARDS .....                                     | 34 |
| F. VISUAL RESOURCES .....                            | 36 |
| G. WATER QUALITY .....                               | 38 |
| H. PUBLIC ACCESS AND RECREATION .....                | 39 |
| I. LOCAL COASTAL PROGRAM .....                       | 40 |
| J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ..... | 41 |
| <br>   |    |
| APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....        | 43 |

### EXHIBITS

EXHIBIT 1 – PROJECT LOCATION

EXHIBIT 2 – PROPOSED TREATMENT AREAS IN FMZ 10 & 11

EXHIBIT 3 – OCTA PACIFIC HORIZON PRESERVE

EXHIBIT 4 – SCE POLE MAINTENANCE AND REMOVAL AND RESTORATION AREAS

EXHIBIT 5 – HOMETOWN AMERICA RESTORATION SITE

## I. MOTION AND RESOLUTION

**Motion:** I move that the Commission approve Coastal Development Permit Application No. 5-21-0641 pursuant to the staff recommendation.

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

**Resolution:** The Commission hereby approves Coastal Development Permit Application No. 5-21-0641 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 will substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Fuel Modification Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, final plans depicting the areas where work is proposed to occur, taking into consideration all of the requirements and limitations established under these conditions of approval, including but not limited to the areas where goats will be utilized, which shall only apply to areas dominated by non-native grasses or ornamental vegetation. Such plans shall accurately depict the location and physical extent of native plants to be avoided and flagged pursuant to these conditions of approval. The applicant shall provide written notification to the Executive Director of the date and time that the work will commence at least two (2) business days prior to commencement of the work. Work shall not commence without the written authorization of the Executive Director. In addition, the final fuel modification plans shall comply with the following requirements:
  - A. For Fuel Modification Zone (FMZ) 10:
    - i. Hand Clearing/Trimming: All vegetation removal shall occur by hand in areas identified as maritime chaparral, disturbed maritime chaparral, maritime chaparral/coastal sage scrub, coastal sage scrub, and disturbed coastal sage scrub; goats shall only be used in areas with non-native grassland and ornamental vegetation (maintained or non-maintained) and only for the minimum time necessary to achieve the City's targets for fuel reduction in these areas. Grazing Treatment Protocols shall be implemented as detailed in the document titled Laguna Beach Treatment Protocols for Fuel Modification Zones Subject to Coastal Development Permitting.
    - ii. Goat Grazing: Grazing Treatment Protocols shall be implemented as detailed in the document titled Laguna Beach Treatment Protocols for Fuel Modification Zones Subject to Coastal Development Permitting.
  - B. For FMZ 11: All vegetation removal shall occur by hand and only for the minimum time necessary to achieve the City's targets for fuel reduction in these areas. In order to achieve the City's targeted 50% reduction in fuel loading, native plants may be removed in areas where native plant coverage is comprehensive or nearly comprehensive. In areas where native plants are mixed with non-native plants, non-native plants shall be removed first to reach the targeted reduction in fuel loading.
  - C. For both FMZ 10 and 11:
    - i. Non-native plant cuttings and seeds removed as part of the subject fuel modification activities shall be removed from the site and shall not be left on the soil where they remain a seed source. When a biologist determines that a plant has already gone to seed, and where seeds are already on the ground, the applicant is not required to collect such seeds.
    - ii. All vegetation removal shall be limited to the area within 100 feet of the edge of developed property lines.
    - iii. Prior to removing the non-native plants and preparation of the soil, the permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and streams are protected from sedimentation. The storage or stockpiling of soil, silt, and other organic or earthen materials shall not occur where such materials could pass into any waterway.
    - iv. All work shall be conducted by qualified contractors with experience in fuel modification activities within sensitive habitat. A minimum of one qualified biologist for each three contractors shall be present on-site and shall monitor all fuel modification activities. If work is phased so that workers remain

- grouped in one area, then the ratio of one biologist to three contractors may be reduced. Workers may collect (rake and haul) plant matter which has already been trimmed without the supervision of a biologist.
- v. No grading or scraping is permitted in the project site. No heavy machinery may be used in the project site.
  - vi. The use of rodenticides is prohibited.
  - vii. No dead plants shall be left on site and no persistent chemicals shall be employed.
  - viii. No bird nests shall be disturbed at any time.
  - ix. Root systems of native perennial plants shall be left intact to preserve soil stability.
- D. Inspection and Monitoring. The permittee shall actively inspect and monitor the project site. If there are any significant changes to the landscape or site conditions beyond what is permitted, a Commission amendment to this coastal development permit is required.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

2. **Habitat Mitigation Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final Habitat Mitigation Plan. The final Habitat Mitigation Plan shall be prepared by a qualified biologist with experience restoring coastal sage scrub and southern maritime chaparral habitat. The final Habitat Mitigation Plan shall closely conform with the "FMZ 10 + 11 Habitat Enhancement Plan" prepared by the Laguna Canyon Foundation and dated August 17, 2021, and describe in detail the activities the permittee will undertake to restore and enhance degraded habitat adjacent to FMZ 11 at an undeveloped parcel located at the northern terminus of Driftwood Drive (APN: 056-240-65), and shall include the following provisions:
- A. The final Habitat Mitigation Plan shall provide for habitat restoration or creation at a 0.5:1 mitigation ratio for direct impacts to very-high value habitat, or for habitat enhancement at a 1:1 mitigation ratio for direct impacts to very-high value habitat.
  - B. New impacts within active restoration areas providing required mitigation for impacts associated with Hometown America Mobile Home Park projects shall be mitigated at a 1:1 ratio of impact to restoration.
  - C. Mitigation Site Plan. A site plan (with topography) shall show the boundaries, habitat types, and acreages of the areas proposed for restoration/creation and enhancement.
  - D. Southern Maritime Chaparral and Coastal Sage Scrub Container Plant Lists. New vegetation planted on the site shall include the following dominant native southern maritime chaparral species - big pod ceanothus (*Ceanothus megacarpus*), bush rue (*Cneoridium dumosum*), and little-leaved redberry (*Rhamnus crocea*) as well as the associated southern maritime chaparral species - lemonade berry (*Rhus integrifolia*), toyon (*Heteromeles arbutifolia*), mesa bushmallow (*Malacothamnus*



*fasciculatus*), and laurel sumac (*Malosoma laurina*) - in the container plant list in the "FMZ 10 + 11 Habitat Enhancement Plan." New vegetation planted on the site shall also include the following dominant coastal sage scrub species - California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), California sunflower (*Encelia californica*), black sage (*Salvia mellifera*), deerweed (*Acmispon glaber*) and coastal goldenbush (*Isocoma menziesii*) - in the container plant list in the "FMZ 10 + 11 Habitat Enhancement Plan."

- E. The final Habitat Mitigation Plan shall identify the seed sources and plant communities of the plants planned to be employed.
- F. Temporary irrigation. If a temporary irrigation system is necessary, it shall be indicated on the mitigation site plan.
- G. Non-Native Plant Removal and Erosion Control. Prior to the removal of non-native vegetation, a qualified biologist shall survey the project site and identify with flags all areas of existing native vegetation. The permittee shall ensure that the areas of existing native vegetation are protected from disturbance during the implementation of the approved project. Prior to removing the non-native plants and preparation of the soil, the permittee shall employ Best Management Practices (BMPs) to ensure that erosion is minimized. The storage or stockpiling of soil, silt, and other organic or earthen materials shall not occur where such materials could pass into any waterway.
- H. Planting Schedule. The final Habitat Mitigation Plan shall include a schedule for the removal of non-native invasive plants and installation of native plants in the restoration area. Implementation of the approved final Habitat Mitigation Plan shall commence as soon as possible in the fall (and shall be completed outside of gnatcatcher breeding season (February 15 – August 31). The initial planting shall be completed no later than six weeks from the commencement of planting, in compliance with the final Habitat Mitigation Plan approved by the Executive Director. The permittee shall notify the Executive Director in writing within five (5) days of the date of commencement of the implementation of the approved final Habitat Mitigation Plan.
- I. Inspection and Monitoring. For up to five (5) years and a minimum of three (3) (if performance standards are met by year three) following the initial planting, the permittee shall actively inspect (remove non-native invasive plants and replace dead/dying native container plants) and monitor (sample using quadrats or transects and photo plots) the mitigation area. The permittee shall inspect the mitigation area no less than once a quarter and sample the mitigation site once in the spring during the first year that follows the initial planting. Thereafter, the permittee shall inspect the mitigation area at least biannually and monitor in the spring each year. Each year, for a minimum of three (3) years (if performance standards are met by year three) or up to five (5) years from the date of commencement, the permittee shall submit, for the review and approval of the Executive Director, an annual monitoring report prepared by a qualified biologist which certifies that the approved final Habitat Mitigation Plan is being implemented in conformance with the requirements of this coastal development permit. The annual monitoring report shall include photographic documentation of plant species and monitoring data including native vegetation percent cover in the respective mitigation areas.

- J. Performance Standards. At the end of a minimum of three (3) years and up to five (5) years (following the date of commencement), a minimum of seventy percent (70%) of the southern maritime chaparral mitigation areas and seventy-five percent (75%) of the coastal sage scrub mitigation areas shall be covered with the respective dominant and associated plants native to these habitats. No more than five percent (5%) of the restoration area shall be covered with non-native invasive plants. If the annual monitoring report indicates that any of the mitigation areas are not in conformance with or have failed to meet these performance standards, the permittee shall submit a revised or supplemental Habitat Mitigation Plan for the review and approval of the Executive Director. The final Habitat Mitigation Plan re-vegetation plan must be prepared by a qualified biologist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the final Habitat Mitigation Plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- K. No grading or scraping is permitted in the mitigation area. No heavy machinery may be used in the mitigation area.
- L. The use of rodenticides is prohibited. No dead plants shall be left on site and no persistent chemicals shall be employed.
- M. If herbicide use is deemed necessary, after employing an integrated pest management approach where herbicides are used only after alternative non-pesticide approaches such as grow/mow cycles, grazing, hand removal, and mechanical removal to eradicate non-natives are ruled out, all herbicide work must be completed under the supervision of a licensed and experienced herbicide applicator, all trained pesticide applicators must wear appropriate protective gear, only herbicides certified for use in California must be used, the appropriate herbicide for the respective non-natives must be used, and herbicide application must be done per the exact label instructions.
- N. No bird nests shall be disturbed at any time.
- O. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed on the project site. No plant species listed as a 'noxious weed' by the State of California, or the U.S. Federal Government shall be utilized within the property.
- P. Native vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the final Habitat Mitigation Plan.

The permittee shall undertake mitigation in accordance with the approved final Habitat Mitigation Plan and schedule and other requirements. Any proposed changes to the approved final Habitat Mitigation Plan shall be reported to the Executive Director. No changes to the approved final Habitat Mitigation Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**3. Habitat and Sensitive Species Protection Measures During Project Activities.**

- A. Within 48 hours prior to commencement of fuel modification activities, a qualified biologist shall conduct a biological survey for any special status species including, but not limited to, big-leaved crownbeard, cliff spurge (*Euphorbia misera*), fish's milkwort (*Polygala cornuta var. fishiae*), and western dichondra (*Dichondra occidentalis*). All special status species identified shall be flagged prior to commencement of fuel modification activities.
- B. Both native and non-native plants located within the proposed work area that are required overstory to big-leaved crownbeard will be flagged for avoidance by work crews, and otherwise protected under the guidance of a qualified biologist who shall be on site during all plant removal activities. The minimum area preserved as overstory shall be the area within 15 feet surrounding any big-leaved crownbeard. Non-natives within 15 feet of crownbeard which are not providing overstory for the crownbeard may be removed.
- C. The limits of work shall also be clearly demarcated to identify the boundaries of the fuel modification 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.
- D. An appropriately trained biologist shall monitor all project activities for disturbance to sensitive species or habitat area. Based on field observations, the biologist shall advise the applicants regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The biological monitor shall have the authority to stop work if any adverse impacts to sensitive species at the project site and/or within the project vicinity could result from continuation of the proposed development. The applicant 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.

**4. Timing and Operational Constraints - Sensitive Bird Species.**

- A. To avoid adverse impacts on sensitive bird species, all project activities shall not occur during gnatcatcher breeding season between February 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 fuel modification activities and/or restoration activities are authorized by the resource agencies to occur during gnatcatcher breeding season (February 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 project activities 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 project area. If an active nest or nesting activity is determined to be located within 500 feet of active fuel modification 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. 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.

5. **Staging and Storage.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director a Staging Plan, which shall provide for:
  - A. Designated areas for staging of project-related equipment and materials. No project-related 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.
6. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the sites may be subject to hazards from bluff and slope instability, erosion, landslides, fires, or other natural hazards; (ii) to assume the risks to the applicant and the properties that are the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
7. **Conformance with the Requirements of the Resource Agencies.** This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to the California Department of Fish and Wildlife, California State Water Quality Control Board, Regional Water Quality Control Boards, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality, the marine environment, and sensitive species. Any change in the approved project, which is required by the above-stated agencies, shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
8. **Orange County Transportation Authority Preserve.** The applicant shall collaborate with Orange County Transportation Authority (OCTA) on implementation of fuel modification for areas adjacent to residences within the Preserve (see [Exhibit 3](#)). The applicant shall avoid fuel modification in any identified active restoration areas in the

OCTA Preserve. The applicant shall coordinate all activities with the OCTA's designated land manager and shall install field markers to delineate the maximum boundaries of the FMZ, as well as the OCTA Preserve Boundary, which shall be verified in the field by the OCTA and provided in plans to the Executive Director. In the event that any active restoration area within the OCTA Preserve is disturbed in the course of or as a result of the proposed work, the applicant shall take all steps necessary, in a timely fashion, to return the disturbed restoration area to the condition in which it existed prior to the disruption caused by the applicant.

9. **Southern California Edison and FMZ 11 Access.** The applicant shall coordinate with Southern California Edison to gain access to the site through the locked gate. The gate shall be locked at the conclusion of each day's activities. The applicant shall avoid fuel modification in any identified Southern California Edison pole maintenance and removal and active habitat restoration areas (Ref: CDP No. 5-17-0506) (see [Exhibit 4](#)). The applicant shall install field markers to delineate the maximum boundaries of the FMZ and the Southern California Edison pole maintenance and removal and habitat restoration area. In the event that any active restoration area within the SCE pole maintenance and removal and habitat restoration area is disturbed in the course of or as a result of the proposed work, the applicant shall take all steps necessary, in a timely fashion, return the disturbed restoration area to the condition in which it existed prior to the disruption caused by the applicant.
10. **Hometown America Restoration Site.** The applicant shall collaborate with Hometown America on implementation of the Fuel Modification Plan (FMP) for areas adjacent to residences within the Hometown America Restoration Site (see [Exhibit 5](#)) within the Driftwood Property (FMZ 11). The applicant shall coordinate all activities with the Hometown America's designated land manager and shall install field markers to delineate the maximum boundaries of the FMZ, as well as the Hometown America Restoration Site boundary, which shall be verified in the field by Hometown America and provided in plans to the Executive Director. If any fuel modification activities occur in an active restoration area within the Hometown American Restoration Site that has been identified as required mitigation for impacts associated with Hometown America Mobile Home Park projects, those impacts shall be mitigated at a 1:1 ratio within the active restoration area in a timely fashion and as required by the habitat mitigation plan detailed in Special Condition 3.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION & DESCRIPTION

The project site consists of two areas totaling approximately 11.62 acres that the applicant has designated as "Upper Fuel Modification Zone (FMZ) 10" (approx. 3.94 acres) and "FMZ 11" (approx. 7.68 acres). The project site is located in the Hobo-Aliso Canyon area. Upper FMZ 10 is generally located on the east side of Barracuda Way and Loretta Drive, and FMZ 11 is generally located adjacent to northern terminus of Marilyn Drive and Driftwood Drive, and east of Driftwood Drive and Ocean Vista Drive in the City of Laguna Beach, Orange County. See [Exhibits 1 & 2](#) for mapping of the project location. Habitat within the project includes southern maritime chaparral and coastal sage scrub. Non-native vegetation and ornamental species are also present. FMZs 10 and 11 are bordered by

residential development. FMZs 10 and 11 are comprised of a number of lots with varying land use designations including: Residential/Hillside Protection, Village Low Density, Open Space, and Hillside Management/Conservation, Village High Density. The project site will traverse the following land use zones: Residential Hillside Protection Zone, Open Space/Passive Zone, Open Space/Conservation Zone, Residential Low Density, and Residential High Density.

The fuel modification (vegetation thinning and clearance) activities would span approximately 10.51 acres, extending from the edge of developed property lines approximately 100 feet into undeveloped, steeply sloped canyons. Of the 11.62 acres of the project site boundaries, only 10.51 acres are being treated for fuel modification because areas with crownbeard will be avoided ([Exhibit 2](#)). The extent of proposed fuel modification involves 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 firebreak between undeveloped canyon areas and existing development in Hobo Canyon and Aliso Canyon. A combination of two management methods for vegetation thinning is 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). A gas- or diesel-powered chipper will be used to cut removed vegetation into pieces. Approximately 9.45 acres of vegetation will be subject to hand clearing, and 1.06 acres of vegetation will be subject to goat grazing as shown on Table 1 below.

**Table 1** Proposed Treatment by Acreage

| <b>Treatment Methods</b> | <b>FMZ 10</b> | <b>FMZ 11</b> |
|--------------------------|---------------|---------------|
| Goat                     | 1.06          | 0.0           |
| Hand                     | 2.76          | 6.69          |
| Total                    | 3.82          | 6.69          |

All vegetation clearing in FMZ 11 will be limited to hand clearing. In FMZ 10, fuel modification by hand will be implemented in high- or very-high value habitat and goat grazing will occur in low to moderate value habitat.

There is a drainage course that extends into FMZ 11 that meets the characteristics for a stream but it is not depicted as a blue line drainage on the USGS Map Laguna Beach. However, no riparian habitat was identified within project site. Nevertheless, the project includes a 25-foot setback from the edge of any identified stream, which would include the requirement to avoid any riparian habitat.

Regarding hand treatment, the 50 percent thinning factor in coastal sage scrub and chaparral habitat areas is intended to be achieved applying a removal hierarchy: first all non-native vegetation and dead or dying material would be removed, and then trimming of woody native species would occur only if the 50 percent thinning threshold is not achieved after the initial removal of non-natives (including unmaintained ornamental vegetation) and dead/dying vegetation. 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.

The intent of the proposed fuel modification is to reduce the overall fuel load of the subject 10.51 acres by only 50 percent to maintain a defensible space adjacent to existing development. Any necessary treatments outside of the range of Fuel Modification Zones 10 and 11 would be subject to removal of only targeted non-native, invasive vegetation, or tree thinning and dead branch removal.

The proposed 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 will be identified, flagged and avoided during fuel modification activities.

The applicant proposed that if the site biologist recommends herbicides use for spot treatment for invasive species, it will be used in small quantities and in a manner that would not adversely affect nearby sensitive species.

To mitigate for direct impacts to very-high value habitat, the project includes 1.46 acres of significant habitat restoration. 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.

The City proposes to maintain fuel modification areas in perpetuity after the initial fuel modification of the project site. Fuel modification activities will be undertaken approximately one to two months annually or biannually. Maintenance fuel modification is expected to occur annually or biannually but is expected to require a much less intensive effort after the initial vegetation thinning.

## **B. SITE HISTORY**

In 2015, the City of Laguna Beach Fire Department applied for two emergency permits for fuel modification as necessary to reduce fire hazards at the project site (within City-designated Upper Fuel Modification Zone 10 and FMZ 11). On October 15, 2015, the Coastal Commission issued Emergency Permit Nos. G-5-15-0031 and G-5-15-0032 for this work, which included vegetation removal as necessary to reduce fire hazards, limited to removal by hand crews of dead and non-native grasses only, and limited goat grazing (in FMZ 10 only). The emergency permits required that all vegetation removal be a minimum of 15 feet away from any protected status plants, including but not limited to big-leaved crownbeard (*Verbesina dissita*); that vegetation removal be limited to within 100 feet of property lines or structures; and no protected status plants be removed.

In 2017, the City applied for an emergency permit for fuel modification at Fuel Modification Zone 11 only. On September 22, 2017, the Commission issued Emergency Permit No. G-5-17-0034 authorizing fuel modification limited to the removal of dead, non-native plants within 100 feet of southerly private property lines; except for non-native plants that are

5-21-0641 (Laguna Beach Fire Department)

required overstory to and for the survival of big-leaved crownbeard. Removal of native plants was not permitted.

In 2019, the City applied for an emergency permit for fuel modification at upper FMZ 10 only. On July 19, 2019, the Commission issued Emergency Permit No. G-5-19-0033 authorizing fuel modification limited to hand removal in areas identified as maritime chaparral, disturbed maritime chaparral, maritime chaparral/coastal sage scrub, coastal sage scrub, and disturbed coastal sage scrub; goat grazing permitted in areas with non-native grassland and ornamental vegetation. The emergency permit limited all vegetation removal within 100 feet of structures on the east side of Barracuda Way.

On June 2, 2020, the City applied for an emergency permit for fuel modification at upper FMZ 10 and at FMZ 11. On June 25, 2020, the Commission issued Emergency Permit No. G-5-20-0008 authorizing vegetation removal as necessary to reduce fire hazards at City-designated Fuel Modification Zones (FMZ) 10 and 11. For FMZ 10, proposed vegetation removal was limited to hand removal in areas identified as maritime chaparral, disturbed maritime chaparral, maritime chaparral/coastal sage scrub, coastal sage scrub, and disturbed coastal sage scrub; goat grazing was permitted in areas with non-native grassland and ornamental vegetation. For FMZ 11, all vegetation removal was limited to hand removal. The emergency permit limited all vegetation removal to within 100 feet of any combustible primary structures.

In 2021, the City applied for an emergency permit for fuel modification at upper FMZ 10 and at FMZ 11. On April 26, 2021, the Commission issued Emergency Permit No. G-5-21-0014 authorizing vegetation removal as necessary to reduce fire hazards at City-designated Fuel Modification Zones (FMZ) 10 and 11. The work was similar to that authorized by the 2020 emergency permit.

The subject coastal development permit application (No. 5-21-0641) is the follow-up permit application for the above-referenced five emergency permits and is an application for additional future fuel modification work.

It should be noted that there are a few unpermitted accessory structure encroachments in FMZ 10. These are not legal structures and are thus not entitled to protection.

### **C. STANDARD OF REVIEW**

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

The proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (a.k.a. Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified. Approximately 12.3 acres of the project site is located within Hobo Canyon, an area of deferred certification where the Commission is



the permit-issuing authority. The standard of review for the project in the deferred certified area (Coastal Commission's jurisdiction) is the Chapter 3 policies of the Coastal Act.

Approximately 2.7 acres of the project site (lower FMZ 11) is located within a certified area under the Laguna Beach Local Coastal Program. Because the proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach, under Section 30601.3 of the Coastal Act the Commission may review the application as a consolidated coastal development permit application. The City (applicant) is in agreement with processing this application as a consolidated coastal development permit application. The standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3(a) is Chapter 3 of the Coastal Act, and the City's certified LCP provides guidance.

#### Coastal Permit Required for Repair and Maintenance within ESA/ESHA

The proposed fuel modification is intended to maintain a defensible space to protect the existing development from fire hazards. The project constitutes repair and maintenance work. The Commission has expressly recognized, since 1978, certain types of repair and maintenance work as exempt from permit requirements pursuant to Section 13252 of the Commission's regulations and Section 30610(d) of the Public Resources Code. (See California Public Resource Code ("PRC") Section 30610(d) and the "Repair, Maintenance and Utility Hook-Up Exclusions From Permit Requirements" (adopted by the Commission on September 5, 1978) (hereafter, "R&M Exclusions") Appendix I, § 3 (referring to "installation of slope protection devices, minor drainage facilities").) However, the exemptions provided by the above referenced sections and the R&M Exclusions are limited. Section 30610 of the Coastal Act provides, in relevant part: "Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: [...] (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. Accordingly, California Code of Regulations, Title 14 ("14 CCR"), Section 13252(a) lists extraordinary methods of repair and maintenance that do still require a permit. Among those methods is any repair or maintenance "located in an environmentally sensitive habitat area" (14 CCR § 13252(a)(3)). Since this project would occur within such an area, the method by which this project is conducted is not exempt, and a permit is required.

Similarly, 14 CCR Section 13252(a) states that "activities specifically described in the [R&M Exclusions guidance document that] that will have a risk of substantial adverse impact on... environmentally sensitive habitat area" are not exempt based on that document and may require a coastal development permit, pursuant to the normal application of section 13252. Section 13252 provides, in relevant part (emphasis added): "For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact: [...] **(3) Any repair or maintenance to facilities or structures or work located in an environmentally**

**sensitive habitat area**, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include: (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials; (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials [...] The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.[...]"

Thus, in this case, although the project is a repair and maintenance project, since the work is to be performed within an ESHA, Section 13252(a)'s limits on the repair and maintenance exemption do apply, and this project does require a permit to ensure that the method employed is as consistent as possible with the Chapter 3 policies of the Coastal Act. Therefore, a coastal development permit is required for this project.

#### **D. ENVIRONMENTALLY SENSITIVE AREAS / ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

Both the Coastal Act and the Laguna Beach certified Local Coastal Program include policies for development in environmentally sensitive habitat areas.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

"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.

The Laguna Beach certified LCP provides policy guidance and like Section 30240 of the Coastal Act; preservation and enhancement of the City's land resources is a goal supported by the policies of the LCP.

Policy 4-F of the certified Open Space/Conservation (OS/C) Element of the certified Land Use Plan (LUP) states:

Water Conservation and Native Plants – Ensure that development encourages water conservation, efficient irrigation practices and the use of native or drought tolerant non-invasive plants appropriate to the local habitat to minimize the need for

fertilizer, pesticides herbicides and excessive irrigation. Prohibit the use of invasive plants and require native plants appropriate to the local habitat where the property is in or adjacent to Environmentally Sensitive Areas (ESAs).

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

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

Policy 7-K of the certified OS/C Element states:

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

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

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

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

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

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

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

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

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

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

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

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

5-21-0641 (Laguna Beach Fire Department)

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.

Action 3.10.1 of the Land Use Element (LUE) of the certified LUP states:

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

Policy 5.2 of the LUE of the certified LUP states:

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

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

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

Policy 7.4 of the LUE of the certified LUP states:

Ensure that development, including subdivisions, new building sites and remodels with building additions, is evaluated to ascertain potential negative impacts on natural resources. Proposed development shall emphasize impact avoidance over impact mitigation. Any mitigation required due to an unavoidable negative impact should be located on-site, where feasible. Any off-site mitigation should be located within the City's boundaries close to the project, where feasible. (Similar to Policies 5.2 and 10.3)

Action 7.4.2 of the LUE of the certified LUP states:

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

## Habitat Onsite

One of the primary issues raised by the proposed project is consistency with the land resource protection policies of Chapter 3 of the Coastal Act. Section 30240(a) provides that environmentally sensitive areas (ESHA) must be protected against any “significant disruption of habitat values,” and only uses dependent on the resources are allowed within ESHA, while Section 30240(b) provides that development adjacent to ESHA is allowed as long as it is sited and designed to prevent impacts that would “significantly degrade” the ESHA and is compatible with the continued existence of the ESHA. 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.” To assist in the determination of whether a project is consistent with Section 30240 of the Coastal Act, the Commission has, in past coastal development permit actions for new development in Hobo/Aliso Canyon, looked to the certified Laguna Beach LCP for guidance. Policies of the LUP, such as Policies 4-I, 7-K, 8-A, 8-C, 8-G, 8-H, 8-N, 5.2, 7.3, and 7.4, in concert with the policies of the Coastal Act, limit development within environmentally sensitive areas / environmentally sensitive habitat areas.

Some LCP policies reference “Environmentally Sensitive Areas,”<sup>3</sup> which include 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 environmentally sensitive area in Section 30107.5 of the Coastal Act.<sup>4</sup> 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.

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<sup>3</sup> The Coastal Act and the certified LCP use “ESA” and “ESHA” interchangeably.

<sup>4</sup> 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.

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

Glenn Lukos Associates (GLA) prepared a biological assessment (dated August 2019) for the project. The study area surveyed in the biological assessments encompasses the approximately 11.62 acres that make up the City-designated FMZs 10 and FMZ 11. In this biological assessment, the vegetation types of the project site were mapped based on the City's Geographic Information Systems (GIS) mapping of biological resources. On May 11, 2021, GLA assessed the value of the habitat based on site-specific on-the-ground characteristics. The vegetation maps are attached as [Exhibit 1, Pages 3-4](#).

According to the 2021 vegetation maps, the Study Area includes a mosaic of vegetation types including southern maritime chaparral, coastal sage scrub, grasslands and ornamental vegetation. The project site includes native vegetation that supports the coastal California Gnatcatcher (*Polioptila californica*), big-leaved crownbeard (*Verbesina dissita*), and least Bell's vireo (*Vireo belli pusillus*), which are state and federally-listed threatened species. No riparian habitat was identified within project site. Approximately 1.27 acres of FMZ 10 and approximately 0.42 acres of FMZ 11 are mapped and identified as 'high value habitat.' Approximately 0.43 acres of FMZ 10 and approximately 3.60 acres of FMZ 11 are mapped and identified as 'very high value habitat.' Accordingly, GLA estimated that, the fuel modification as proposed to preserve as much habitat as possible, has the potential to impact approximately 1.69 acres of high value habitat (1.27 acres plus 0.42 acres) and approximately 4.03 acres of very-high value habitat (0.43 acres plus 3.60 acres). However, the applicant will be avoiding all areas identified as very- high value

habitat with crownbeard; therefore, the project is only anticipated to impact approximately 2.92 acres of very-high value habitat (excluding crownbeard).

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.

In the absence of any Coastal Act policy directly related to fuel modification, which is necessary in this case to reduce fire hazard consistent with Coastal Act Section 30253 (as described in greater detail in Section IV.E (Hazards) of this staff report), the Commission must consider all the competing requirements. On May 13, 2020, the Commission found that an appeal related to a fuel modification project in Laguna Beach that was designed consistent with the certified LCP, and with the same fuel modification protocol as this proposal, did not raise a substantial issue (Appeal No. A-5-LGB-20-0010). In considering that appeal, special importance was given to impacts to high- and very- high value habitat and how those impacts were mitigated, which was consistent with and pursuant to the certified LCP. Therefore, for consistency with recent City of Laguna Beach action regarding fuel modification that was designed according to the certified LCP policies, the following analysis is guided by the certified LCP’s designations of high- and very- high value habitats and the LCP’s specific requirements regarding fuel modification in areas with such designations. As previously noted, the proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach and, thus, the Commission is reviewing the application as a consolidated CDP application. The standard of review for a consolidated CDP application is Chapter 3 of the Coastal Act, but the City’s certified LCP provides guidance relevant to the circumstances specific to the City of Laguna Beach.

### **Consistency Analysis**

The Commission finds that habitat, such as the native vegetation located on the subject site, provides important habitat for native plant and animal species. Coastal Act Section 30240(a) requires that ESA shall be “protected against any significant disruption of habitat

values,” and Section 30240(b) requires that development in areas adjacent to ESA shall be sited and designed to prevent impacts which would significantly degrade ESA and shall be compatible with the continuance of ESA. In addition, preservation and enhancement of the City’s ESA/ESHA and environmentally sensitive resources is a goal supported by the environmental protection policies of the certified LCP, including Policies 4-I, 7-K, 8-A, 8-C, 8-G, 8-H, 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-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; 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 proposed 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 sensitive habitat, particularly approximately 2.92 acres of ‘very high value habitat.’ Although the project is anticipated to impact these 2.92 acres of very high value habitat, 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, “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 1.69 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 practicable because fuel modification will only be carried out within areas near residential development and with partial thinning of non-native plants before native plants are thinned. Therefore, even with the anticipated impacts to the habitat, the project is consistent with Policies 8-G and 8-H.

The LCP policies 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.

Fuel modification can have significant adverse impacts on sensitive habitat. Fuel modification is a method of modifying fuel load by reducing the amount of non-fire-resistant vegetation or altering the type of vegetation to reduce the fuel load, which includes removal of brush or vegetation, including trimming. Fuel modification, because of



maintenance, thinning, or clearing, is not typically considered to be compatible with protection of ESA. During review of new land divisions, including lot line adjustments, development is required to be sited such that fuel modification within sensitive habitat is avoided and that adequate setbacks are incorporated into the developed area to provide all required defensible space (LUP Action 10.6.3; cited below). Moreover, in areas where fuel modification is necessary, the Commission typically requires an ESA buffer that is separate and distinct from fuel modification zones for new structural development, unless it is determined infeasible due to the pre-existing development layout and site constraints.

Although this project includes the removal of some native vegetation in ESA, the certified LCP recognizes that this fuel modification may be necessary where pre-existing development abuts undeveloped open space and/or wildlands. The fact that fuel modification will need to occur in certain areas and under certain circumstances in the city is recognized throughout the certified LCP. The project site is within an area recognized by the City with "Very High Fire Hazard Severity." The certified LCP, serving as guidance, contains policies, including Policies 8-G and 8-H, as well as Land Use Element Policy 10.6 and related actions and Open Space Conservation Element Policy 10-G that pertain to fuel modification, new subdivisions and requirements to protect sensitive habitat.

Policy 10.6 of the LUE of the certified LUP states:

Require all fuel modification to be located within the site being developed. Exceptions may be granted for existing legal building sites when findings can be made by the approval authority that other alternatives are not available and a strict application of this provision would endanger environmentally sensitive resources or deny a property owner reasonable use of an already existing legal building site. Fuel modification performed by private property owners cannot go beyond property lines without agreement by the adjacent property owners. Fuel modification on public land to protect existing development should be avoided whenever feasible; if avoidance isn't feasible, measures must be employed to minimize the amount of fuel modification necessary on public land.

Action 10.6.1 of the LUE of the certified LUP states:

The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Any required thinning of flammable vegetation shall be conducted outside of bird nesting season if feasible. Alternative means of thinning and/or removal of native vegetation for fire hazard management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible.

Action 10.6.2 of the LUE of the certified LUP states:

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

5-21-0641 (Laguna Beach Fire Department)

Action 10.6.3 of the LUE of the certified LUP states:

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

Action 10.6.4 of the LUE of the certified LUP states:

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

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

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

The proposed development constitutes necessary repair and maintenance work. While the project is not a use dependent upon the resource, as identified within Section 30240 of the Coastal Act, the project is necessary repair and maintenance work to protect life and property. The proposed fuel modification is necessary to sustain a defensible space adjacent to existing development to protect and maintain the existing development from fire hazards. As previously stated in Section IV.C of this staff report, the Commission has expressly recognized certain types of repair and maintenance work as exempt from permit requirements pursuant to Section 13252 of the Commission's regulations and Coastal Act Section 30610(d). However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as described in Section 13252 of the Commission's regulations. Similarly, Section 30610 of the Coastal Act provides, in relevant part: "notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:... (d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter."

Although the proposed repair and maintenance activities will not add to or enlarge any development and is not designed to accommodate new expanded development, the proposed work involves the temporary use of handheld mechanized equipment within 50 feet of ESA. As explained above, any repair or maintenance "located in an environmentally sensitive habitat area" per 14 CCR § 13252(a)(3) requires a permit. Thus, in this case, although the project is a repair and maintenance project, since the work is to be performed within an ESA, Section 13252(a)'s limits on the repair and maintenance exemption do apply, and this project does require a permit to ensure that the method employed is as consistent as possible with the Chapter 3 policies of the Coastal Act.

Also, Policy 10.6 of the certified LCP 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, however, previously developed residential properties adjacent to open space and habitat areas in the Laguna Canyon area do not currently accommodate individualized fuel modification zones due to pre-existing development layout and size. There is not enough space on the individual properties to incorporate a 100-foot fuel mod zone (and potential ESA buffer) without removing the existing development on the properties. Therefore, a strict application of Policy 10.6 (and related actions) 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 Commission. Thus, the project proposes fuel modification zones onsite (where there is space to accommodate it) and offsite (where site constraints exist) adjacent to these developed residential properties. Although non-resource development is proposed in ESA, there are no alternative methods of accomplishing the proposed repair and maintenance project that will avoid ESA, and the Commission is only able to review the method by which the applicant carries out repair and maintenance. Regardless of consistency with 30240, the project is consistent with the LCP policies which require mitigation for impacts to habitat because of fuel modification projects.

Pursuant to 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 (100 percent vegetation clearance).

In an attempt to preserve more habitat than would be potentially preserved under a standard modification plan in Laguna Beach, the proposed project has been designed to avoid impacts to most of the sensitive habitat areas by limiting the fuel modification activities to the area within 100 feet of developed property lines, using a thinning hierarchy in areas of high- and very- high value habitat, and by limiting the reduction of total fire load (existing vegetation) by not more than 50 percent. 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, healthy live native plant species will be removed based upon a specific hierarchy in accordance with the hierarchical list below, beginning with the first species listed, then in descending order through the list until 50% vegetative cover has been attained:

1. Coastal Goldenbush (*Isocoma menziesii*)
2. California Buckwheat (*Erigonium fasciculatum*),
3. Black Sage (*Salvia mellifera*)
4. California Sagebrush (*Artemisia californica*)
5. Monkeyflower (*Mimulus aurantiacus*)
6. Laurel Sumac (*Malosma laurinus*)
7. Toyon (*Heteromeles arbutifolia*)
8. Lemonade Berry (*Rhus integrifolia*)

The City's project represents an alternative, environmentally sensitive approach to fuel modification that avoids 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 the

thinning hierarchy described above. The City's proposal to utilize this alternative fuel modification program is the "alternative means and methods" for existing legal building sites in ESA and 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.

Although goat grazing is proposed, 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.

Moreover, in the past, firebreaks, including some in the City of Laguna Beach, involved complete removal of all vegetation within up to 270 feet from development, under the misunderstanding this was most protective against fire hazards. However, that method has since been called into question. In some cases, this earlier method of excessive vegetation removal for fuel modification and fire breaks includes, almost counter-intuitively, increased fire hazard (according to the California Chaparral Institute). Although the bare soil would not burn, the bareness invites invasion of weeds and flashy fuels that tend to ignite more easily and spread more quickly than native vegetation and provide a "ladder" for flames to spread. Creating a bare zone around residences also creates a direct, unimpeded pathway for embers to reach a structure. Other issues raised by excessive vegetation removal include the creation of a false sense of security (embers can be blown a mile or more into the urban environment), the costs associated with removing and maintaining the level of vegetation removal, and maintenance (annual removal of the weedy species that replace the removed native vegetation is required whereas a properly thinned, 100-foot vegetation management zone can avoid such a yearly expense). Moreover, the root systems of native plants help minimize erosion and assure soil stability on the canyon slopes.

Additionally, the recently devised California Vegetation Treatment Program (CAVTP), developed by the Board of Forestry and Fire Protection, limits fuel modification to only areas necessary and requires mitigation for fuel modification impacts to habitat. The CAVTP prioritizes habitat preservation and enhancement but if that is infeasible, also allows for other mitigation options (such as habitat creation, mitigation credits, significant restoration and enhancement, and relocation) to avoid or minimize negative impacts to habitat values.

The proposed fuel modification is an alternative to the potentially more environmentally damaging, potentially less effective programs employed in the past. The project is intended to protect existing residential development, including by increasing the time available to evacuate these properties should it become necessary. In considering the project, and in absence of any Coastal Act policy directly related to fuel modification, which is necessary in this case to provide protection from fire hazard consistent with Section 30253, as described in greater detail in Section IV.E (Hazards) of this staff report, the Commission must consider all the competing requirements, and apply the policies in the manner that minimizes adverse impacts to the habitat to the greatest extent feasible. The proposed

project will minimize 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; and proposing 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. In addition, the removal of invasive plant species within the project areas would be beneficial to adjacent habitat.

If the subject residential properties, some of which are located within the City's certified permit jurisdiction, were being redeveloped today, the LUP 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 new residences 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.

Although the proposed project is the environmentally preferred alternative, it will still result in some unavoidable adverse impacts to habitat onsite. The proposal for fuel modification is designed to preserve the habitat to the maximum extent possible but, as previously stated, it is anticipated that the proposed fuel modification activities have the potential to impact 2.92 acres of very-high value habitat. In past permit actions, the Commission has found that in order to ensure that repair work is as consistent as possible with both Section 30240 of the Coastal Act and the above referenced resource protection policies of the LCP, all sensitive habitat areas on site that will be displaced as a result of proposed development should be mitigated. Therefore, the Commission finds that mitigation is necessary to ensure that adverse effects to the sensitive habitat from fuel modification are minimized and to offset the anticipated impacts.

The Commission has considered impacts to be "temporary" if no ground disturbance (e.g., grading) or vegetation removal has occurred and if the area temporarily impacted has recovered to its pre-impact status one year following the respective impact. Permanent impacts include those areas with sensitive habitat that are to be developed, or vegetation removed, or that will be frequently disturbed to maintain the development, or where during development the ground will be significantly disturbed or the vegetation killed, or where the impact to the habitat lasts longer than one year. In this case, vegetation removal is proposed and the impact to the habitat will be in perpetuity as the fuel modification areas will be maintained to a reduced total fire load (existing vegetation) of 50 percent. Therefore, the proposed development will result in a permanent impact to sensitive habitat.

The Commission has typically required mitigation at a 3:1 ratio (acres of restored habitat to each acre of impacted habitat) for permanent impacts to sensitive habitat areas containing habitat that support state or federally listed rare, threatened, or endangered species, species of special concern, or CNPS 1b or 2 listed plants (e.g., CDP 5-15-2097 and CDP 5-03-013, among others). The traditional 3:1 mitigation ratio applies to habitat **restoration or creation**. Established mitigation ratios for habitat restoration or replacement are important because: 1) in most cases there is a time gap with a loss of ecosystem function

between the direct, indirect, or cumulative impacts to, or removal of, the respective habitat, 2) the artificial creation or restoration of habitats can never completely compensate for impacts, and 3) there is no guarantee that habitat creation or restoration will be entirely or even partially successful. To compensate for the potential that a habitat creation or restoration project is not successful, the Commission has traditionally required more than a 1:1 mitigation ratio (i.e. the creation of more than one acre of habitat for every one acre of sensitive habitat that is permanently impacted). Creating more habitat than would be lost increases the potential that the number of acres of created habitat which successfully establish, in the end, is at least equal to the amount of sensitive habitat that is directly impacted. Furthermore, a habitat mitigation ratio in excess of 1:1 can compensate for sensitive habitat acreage and functional capacity lost during the establishment and maturation of the mitigation area.

For in-kind habitat **enhancement**, the Commission has historically required twice the traditional 3:1 mitigation for habitat restoration / creation because habitat enhancement is limited to the removal of invasive and non-native vegetation, and much more enhancement would be necessary to compensate for impacts to sensitive habitat at an amount that would be commensurate to habitat restoration or creation. Twice the traditional mitigation ratio would result in a 6:1 mitigation ratio requirement for habitat enhancement.

To offset direct impacts to very-high value habitat according to the resource protection policies that specifically address fuel modification in the certified LCP, the applicant is proposing 1.5 acres of significant habitat restoration onsite. Therefore, the applicant's mitigation proposal is akin to restoring habitat at a ratio of 0.5:1 (mitigation-to-impact area ratio). As discussed above, the Commission has typically required higher mitigation ratios for permanent impacts to sensitive habitat. However, in this particular case, although the proposed fuel modification project is anticipated to permanently impact sensitive habitat by reducing the habitat coverage by 50 percent indefinitely, the Commission recognizes that the proposed fuel modification is the alternative, environmentally sensitive approach to past more damaging and less effective fuel modification programs, as discussed above. The City's indicated that the use of their environmentally sensitive fuel modification protocol has increased high- and very- high value habitat on the site over time, despite fuel treatments. The proposed program presents unique circumstances whereby a mitigation ratio that is lower than the traditional 3:1 ratio would be appropriate, and the LCP does not cite a specific mitigation ratio for fuel modification impacts.

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 proposed 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.

Therefore, a mitigation ratio for habitat restoration/creation at 0.5:1 or for habitat enhancement at 1:1 ratio would be adequate to offset the anticipated impacts to ESA and would be appropriate in this case. These reduced mitigation ratios would provide the applicant with two options that may be appropriate within different areas within the proposed restoration site.

The Commission imposes **Special Condition 2**, which requires that the applicant submit, for the review and approval of the Executive Director, a final Habitat Mitigation Plan, prepared by a biologist or environmental resource specialist with qualifications acceptable to the Executive Director, for all sensitive habitat disturbed and/or permanently displaced by fuel modification activities. The plan shall provide for: (1) 0.5:1 mitigation ratio for habitat restoration or creation, or 1:1 mitigation ratio for habitat enhancement; (2) site plan with topography showing the boundaries, habitat types, and acreages of the areas proposed for restoration/creation and enhancement; (3) biological survey of the project site and identification with flags of all areas of existing native vegetation; (4) erosion control; (5) planting schedule; (6) biological monitoring; (7) performance standards for habitat restoration; and (8) maintenance of the restoration area. Only with mitigation to offset the anticipated impacts to ESA could the project be found consistent with the Coastal Act.

### **Additional Alternative Projects**

There are several additional alternatives to the proposed project. First, the Commission could deny the proposed fuel modification project. This is akin to a “no project” alternative. This alternative, however, would not provide any protection to existing residential development adjacent to open space from imminent fire hazards.

The second alternative considered is complete (100%) clearing of vegetation in the project site. However, as discussed above, the issue associated with methods of excess levels of vegetation removal for fuel modification and firebreaks is increased fire hazard.

The third alternative considered is a fuel modification program designed fully based upon the 1980s Fuel Modification Guidelines of the certified LCP. As previously discussed in this staff report, the fuel modification guidelines in the certified LCP allow vegetation thinning in the project area up to 270 feet from a structure but the project minimizes habitat impacts by allowing thinning only up to 100 feet.

The fourth alternative considered is the 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. 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 2 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 ESA. Moreover, placement of roads and other infrastructure 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.

A final alternative is approval of the proposed project with conditions to ensure that native vegetation removal is minimized in habitat and adequately mitigated. This is the staff recommendation. This alternative will serve both a fuel modification zone for the existing canyon-fronting residential development and a buffer for the adjacent sensitive habitat. The project will not result in new fuel breaks because fuel modification is associated with development, which mostly existed before the effective date of the Coastal Act. Some impacts to habitat appear to be unavoidable, due to the layout of the developed lots and the need for protection from fire; however, fuel modification areas on the project site where thinning occurs (and non-native vegetation is removed) will serve as transitional habitat between the residential development and environmentally sensitive habitat areas. This alternative will ensure such impacts are minimized to the greatest extent feasible.

The project includes measures to minimize significant impacts to natural resources. These measures include: 1) the designation of a biologist, 2) a pre-vegetation clearing survey for special-status species, 3) nesting bird avoidance including avoiding nesting season if possible, 4) requiring pre-vegetation 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. Special status plant species will be identified, flagged and avoided during fuel modification activities. The fur and hooves of goats will be cleaned of non-native seeds and debris to prevent distribution of weedy species. In addition, in the event that any blue-line streams are encountered, no fuel modification activities will occur within the 25-foot buffer on either side of the drainage bottoms, other than removal of invasive species. To memorialize some of these measures, and to ensure that other potential adverse impacts to



environmentally sensitive habitat are avoided, the Commission imposes the following special conditions discussed below. In addition, as discussed in greater detail above, to ensure that the appropriate amount of mitigation is implemented, the Commission imposes **Special Condition 2**.

**Special Condition 1** memorializes the applicant's proposal but requires that the applicant submit a final fuel modification plan for the review and approval by the Executive Director. **Special Conditions 1 & 2** also require that any deviation from the approved plans must be submitted for review by the Executive Director to ensure that any future changes are consistent with the policies of the Coastal Act.

- A. Inspection and Monitoring. The permittee shall actively inspect and monitor the project site. If there are any significant changes to the landscape or site conditions beyond what is permitted, a Commission amendment to this coastal development permit is required.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

To ensure that habitat and sensitive protection measures are implemented during project activities, the Commission imposes **Special Condition 3**.

The Commission imposes **Special Condition 4**, which specifies time and operation constraints to avoid adverse impacts on sensitive species and bird nesting activities, specifically gnatcatchers which have been observed nesting in the project area. **Special Condition 5** requires the submittal of a final staging plan for review and approval by the Executive Director.

**Special Condition 7** requires the applicant to conform with the requirements of other resources agencies, if necessary.

**Special Condition 8** requires that the applicant collaborate with the Orange County Transportation Authority (OCTA) with regard to any fuel modification in or near the OCTA Preserve, and requires that the applicant avoid fuel modification in any identified active restoration areas in the OCTA Preserve. In addition, **Special Condition 9** requires the applicant to coordinate with Southern California Edison (SCE) to gain access to FMZ 11 and requires that the applicant avoid fuel modification in any identified SCE pole maintenance and removal and active habitat restoration areas (Ref: CDP No. 5-17-0506).

**Special Condition 10** requires that the applicant collaborate with Hometown America on implementation of any fuel modification in area adjacent to residences within the Hometown America Restoration Site (Ref: CDP No. 5-13-471) in FMZ 11. If any fuel modification activities occur in an active restoration area within the Hometown American Restoration Site that has been identified as required mitigation for impacts associated with Hometown America Mobile Home Park projects, those impacts shall be mitigated at a 1:1

ratio within the restoration area as required by the habitat mitigation plan detailed in Special Condition 3.

### **Conclusion**

The project is necessary to protect life and property, it has been carefully designed so as not to represent a significant disruption of the habitat values, it has been designed to prevent impacts when occurring adjacent to sensitive habitat, and it includes mitigation to offset the anticipated direct impacts to very-high value habitat. The Commission has conditioned the project to ensure that the method of repair and maintenance limits impacts to ESA overall to the maximum extent feasible and that the project will not significantly degrade ESA. The repair and maintenance project, as conditioned, is therefore consistent with Coastal Act Section 30240 and the policies of the certified LCP relating to the protection of natural resources.

### **E. HAZARDS**

Section 30253 of the Coastal Act states in relevant part:

New development shall do all of the following:

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

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

The Laguna Beach Land Use Element contains more specific policies, which may be used as guidance.

Action 7.3.2 of the Land Use Element states:

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

Action 7.3.3 of the Land Use Element states:

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

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.

Policy 10-C of the Open Space Conservation Element of the Land Use Element 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

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

OS/C Element states:

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

The project site is within an area mapped by the City as “very high fire hazard severity.” The proposed project is not a structural development project and will not increase the demands for fire protection services. Because of the potential for brush fires given the proximity of the existing residences to the canyon and to open space, the proposed fuel modification is necessary repair and maintenance that is required in this area of Laguna Beach. Section 30253(a) does not prohibit development in hazardous areas. Rather, new development must minimize risks to life and property in areas of high geologic and/or fire hazards without the use of protective devices and without destruction of the site. Here, the intent of the proposed project is to reduce the overall fuel load of 10.51 acres by 50 percent to maintain a defensible space adjacent to existing residential development, which will minimize risks to life and property in areas of fire hazards.

The proposed project is located atop coastal canyons, which are areas that may be subject to potential damage or destruction from natural hazards, including slope instability, erosion, landslides, and earth movement given the general nature of coastal canyons in certain parts of the California coast and seismic activity of nearby faults. FMZ 10 is on the ridgeline and eastern slope of 100- to 300- foot-high hills. FMZ 11 is on the lower edge of the west-facing slope of a 200- to 300- foot-high ridge between Hobo Canyon and Aliso Canyon.

Section 30253 of the Coastal Act requires, in part, that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard, and not contribute significantly to erosion, geologic instability or destruction of the site or surrounding area. OS/C Element Policy 10-C of the LUP states the City must “[r]equire projects located in geological hazardous areas to be designed to avoid the hazards, where feasible. Stabilization of hazard areas for purposes of development shall only be permitted where there is no other alternative location or where such stabilization is necessary for public safety. The more unstable areas should be left ungraded and undeveloped, utilizing land use designations such as Open Space.” Moreover, Policy/Action 7.3.2, 7.3.3 and 7.3.4 of the LUP (cited above) state that the City must consider and address hazards.

In order to assess the project’s potential slope stability impacts, two geotechnical reports (Geofirm, 2017) were prepared. Neither FMZ 10 and FMZ 11 are designated as liquefaction zones by the California Geological Survey and based on the geotechnical reports, 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 proposed project does not include any grading or earth moving activities, or new construction and structural development; therefore, impacts from strong seismic ground shaking to existing

conditions are not anticipated to worsen as a result of the project activities.

To assure soil stability on the canyon slopes in conjunction with the fuel modification, the root systems of native 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, as recommended by the geotechnical reports. Therefore, the proposed project would not result in substantial soil erosion or loss of topsoil, and impacts would be less than significant. To memorialize these measures being proposed, the Commission imposes **Special Condition 2**, which requires the applicants to implement standard best management practices (BMPs) for controlling runoff and erosion during vegetation clearing/thinning to prevent any significant destabilization at the project site.

Given that the applicant is proposing development in a hazardous area, the Commission requires the applicant to assume the liability from potential fire or geologic risks and, therefore, imposes **Special Condition 6**.

Therefore, as conditioned, the proposed development is consistent with Section 30253 of the Coastal Act and applicable policies of the certified LCP relating to geologic hazards, which require that development minimize risks associated with hazards, minimize landform alteration, and assure geologic stability.

## **F. VISUAL RESOURCES**

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

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

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

Policy 2.10 of the LUE of the certified LUP states:

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

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.

Policy 7-A of the Open Space/Conservation Element (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.

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

Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require re-contouring and replanting where the natural landscape has been disturbed.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Policies 2.10, 7.3, 7-A, and 7-K of the certified LUP also require that canyon views and unique visual qualities be preserved. The resources that must be protected in this area include views to and across the few remaining unbroken tracts of coastal sage scrub and southern maritime chaparral that define Southern California's coastal hillsides and canyons.

The proposed development is located approximately 0.3 to 0.5 miles inland of the beach in the Hobo-Alison Canyon area that is currently developed with residential development. The proposed project is not anticipated to adversely impact public views of the coast and coastal canyon slopes from public street vantage points. The subject fuel modification areas are not generally accessed by the general public. The scope of the vegetation-thinning project will not be visible from Coast Highway or along the shoreline.

No structural development is proposed, and all vegetated areas will retain at least 50 percent 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 proposed fuel modification activities would span approximately 10.51 acres, extending from the edge of developed property lines into undeveloped, steeply sloped canyons ([Exhibit 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 10 and 11 by only 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. The City's indicated that the 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. Therefore, the aesthetic character of the vegetated hillsides will not be adversely affected by the proposed development. Thus, the project is consistent with Coastal Act Section 30251.

## **G. WATER QUALITY**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges- and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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

The certified LCP also contain water quality protection policies, which may be used as guidance.

Policy 7.7 of the Land Use Element states:

Protect marine resources by implementing methods to minimize runoff from building sites and streets to the City's storm drain system (e.g., on-site water retention). (Same as Policy 10.7.)

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

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

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

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

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

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

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

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

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

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

Section 30230 and 30231 of the Coastal Act, and LUE Policy 7.7 and OSCE Policies 4-A, 4-C, 4-D, 4-G, and 4-H require the protection of marine resources.

Fuel modification is proposed by hand clearing and goat grazing. No new construction or structural development is proposed. The proposed project would not create any additional impervious surfaces. Hand tools and chippers powered by gas and/or diesel fuel will be used temporarily during fuel modification. The applicant is proposing to implement onsite refueling using containment systems (e.g., plastic tub) to prevent spills. Herbicide use is not anticipated but may be used for spot treatment only of invasive species when identified as appropriate by the site biologist; herbicides would be used in a manner that would not pose excessive risk to nearby sensitive species or watercourses under the site biologist's oversight.

The Commission imposes **Special Condition 1**, which requires the applicant to implement best management practices for the preservation of land resources and water quality. Therefore, the Commission finds that the proposed development conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **H. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

5-21-0641 (Laguna Beach Fire Department)

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

Section 30223 of the Coastal Act states:

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

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

Policy 4.3 of the LUE of the certified LUP states:

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

Action 4.3.1 states: Continue to pursue dedication and acceptance of beach access and other offers-to-dedicate throughout the City. The City shall maintain an inventory of public access and open space dedication or offers-to-dedicate to ensure such areas are known to the public and are protected through the coastal development permit process. (Same as Action 6.9.1)

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

Coastal Land Use Plan Technical Appendix:

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

Policy 3-A of the OSCE of the certified LUP states:

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

The properties subject to this application are not located between the first public roadway and the sea. The project site is located approximately 0.3 to 0.5 miles from the nearest public beach and public coastal accessway. Public coastal access is not available within the immediate vicinity of the project site (there are no public trails); therefore, no adverse impacts to public access are anticipated.

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities, consistent with Section 30120, 30213, and 30223 of the Coastal Act concerning public access and recreation.

## **I. LOCAL COASTAL PROGRAM**

Section 30604 (a) of the Coastal Act states:



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

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

The project site is located within multiple permit jurisdictions – approximately 12.3 acres is located within the Commission's retained jurisdiction, and approximately 2.7 acres is located within the City of Laguna Beach's certified jurisdiction. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (formerly known as Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified.

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

#### **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

The City of Laguna Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). Following an Initial Study, the City submitted a Mitigated Negative Declaration for the proposed project on October 23, 2018 in accordance with CEQA. However, Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Protection measures, in the form of special conditions, to address the following: **1)** submittal of final fuel modification plan; **2)** final habitat mitigation plan; **3)** habitat and sensitive species protection measures during project activities; **4)** timing and operational constraints (sensitive bird species); **5)** staging and storage of equipment; **6)** assumption of risks of development in a hazardous areas; **7)** conformance with requirements of resource agencies; **8)** collaboration with OCTA to minimize fuel modification; **9)** coordination with Southern California Edison for FMZ 11 access; and **10)** coordination with Hometown America and mitigate for impacts within the Hometown America Restoration Site. The motion and resolution are on page 6 of this report.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Geotechnical Evaluation of Potential Slope Stability, Impacts, Proposed Fuel Modification Program, Zone 10, Hobo Canyon Area, Laguna Beach, California by Geofirm, February 6, 2017.
2. Geotechnical Evaluation of Potential Slope Stability, Impacts, Proposed Fuel Modification Program, Zone 11, Driftwood Estates to Ocean Vista, Laguna Beach, California by Geofirm, October 27, 2017.
3. Biological Technical Report for Proposed Fuel Modification Zones 10 (Upper) & 11 Laguna Beach, Orange County, California prepared by Glenn Lukos Associates dated August 2019.