

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



Th15b

ADDENDUM

August 9, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th15b, CDP AMENDMENT APPLICATION NO. 5-19-0909-A1 FOR THE COMMISSION MEETING OF THURSDAY, AUGUST 11, 2022.**

This addendum is designed to achieve the following objectives. First, Section I updates the record by supplementing it with correspondence that Commission staff received after the staff report was issued. Second, Section II provides responses to issues raised in the correspondence, which responses Commission staff proposes the Commission incorporate into its findings. Section III provides some minor corrections to the staff report. Finally, Section IV provides a minor update to the exhibits of the staff report.

I. CORRESPONDENCE RECEIVED

As of August 9, 2022, Commission staff has received one letter from the applicant's attorney in support of staff's recommendation, and one letter on behalf of the Sierra Club in opposition to staff's recommendation, which are available online on the Agenda under the Correspondence Tab for this item, as well as in the record file at the South Coast District Office in Long Beach.

II. RESPONSES TO COMMENTS

Commission staff responds to comments received as indicated below and recommends that the Commission incorporate these responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that adoption of the staff recommendation will include adoption of these findings.

In a letter dated August 4, 2022, the Sierra Club is requesting that the Commission reconsider some concerns raised in letters submitted for the February 2020 hearing on the underlying permit, indicating that these concerns have not been addressed by staff.

However, on February 11, 2020, Commission staff prepared an addendum to the staff report dated January 30, 2020, to respond and address to the comments raised at that time.

For example, in 2020, the Sierra Club requested that the underlying CDP application should be continued, and that Commission Enforcement staff bring resolution of the violations of the Coastal Act raised by the project through enforcement action instead of the CDP process. However, as addressed in the February 11, 2020 addendum (attached herein as **Exhibit A**), the Commission's permitting and enforcement processes can occur together where appropriate to try to resolve any violations that may exist on a property. The Commission has the discretion to resolve violations through CDPs.

Regarding prior comments related to the lot line adjustment (LLA) on the subject property, the LLA was permitted at the February 2020 hearing. The 2020 comments do not alter the analysis regarding retention of a portion of the patio and pool fencing, which is the subject of the CDP amendment application currently before the Commission.

In the August 2022 letter, the Sierra Club also raises concerns about the Commission relying on the applicant's biological technical memoranda instead of Commission Senior Staff Ecologist Dr. Jonna Engel's memorandum to evaluate whether the project is sufficiently set back from sensitive habitat. Prior to its approval of the underlying CDP, Dr. Engel provided testimony and evidence concerning appropriate ESHA buffers, and other evidence was provided by the Applicant's biologist based on his review of the project site, supporting the contention that a slightly reduced 85-foot buffer is sufficient to protect ESHA in the adjacent canyon. It is the Commission's purview to consider the evidence and testimony in the record and determine whether the project is sited and designed in such a way that adjacent ESHA is adequately protected consistent with Section 30240 of the Coastal Act.

The Sierra Club is requesting that the Commission condition the recommended approval of the CDP amendment with a minimum of 4:1 mitigation for impacts to ESHA if the Commission approves the application. However, the project is not located in ESHA and no ESHA will be directly affected by the proposal to retain some additional patio and pool fencing. In addition, if the Commission determines that the proposed development is sufficiently set back from habitat that it will not have a significant impact, mitigation is not required to ensure consistency with Section 30240 of the Coastal Act.

III. CORRECTIONS TO STAFF REPORT

The following changes are made to the staff report dated July 28, 2022. Language to be added is shown in **bold underlined** text, and language to be deleted is identified by **~~bold strikethrough~~**.

a) Correct Description of Proposed Amendment on page 1 as follows:

Description of Proposed Amendment: Request after-the-fact approval for retention of a portion of an on-grade patio and a portion of ~~an existing~~ 5.17-ft. high pool fencing encroaching into the 0.17-acre open space area. Unpermitted remaining portions of the patio and fencing would be removed.

b) Summary of Staff Recommendation, correct the first paragraph as follows:

The project area is **located at 791 Barracuda Way in Laguna Beach and consists of** a trapezoid-shaped, approximately 7,150-square-foot lot developed

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

c) Summary of Staff Recommendation, correct the sixth paragraph on pages 3-4 as follows:

Although the Commission previously found, based on the opinion of the Commission's staff ecologist, that a 100-foot buffer from coastal sage scrub and chaparral ESHA was necessary to prevent impacts that would significantly degrade the ESHA, the Applicant has provided evidence to support her contention that a reduced ESHA buffer of 90 to 95 feet, and the retention of the additional patio and pool fencing, is sufficient to protect nearby coastal sage scrub and chaparral ESHA. In ~~a~~ technical memorandum ~~and~~ dated January 10, 2020 and February 3, 2020, the Applicant's biological consultant concluded that a reduced ESHA buffer from the nearest undisturbed native vegetation is sufficient to protect the adjacent biological resources. Under the Applicant's proposal, there would be no structural development within 90 feet of the adjacent ESHA at the southern portion of the property or within 95 feet at the northern end of the property, except that a small portion of the wrought iron pool fence at the northern portion of the property would be allowed within the 95-foot buffer area.

d) Summary of Staff Recommendation, correct the sixth paragraph on pages 3-4 as follows:

In addition, the Applicant proposes to amend **Special Condition 2** of the CDP to prohibit "night-lighting" on the patio to minimize impacts of the Applicant's use of the allowed patio on the adjacent ESHA. Special Condition 2 requires submission and Executive Director approval of a final revised revegetation plan that provides for revegetation with ~~additional native or drought-tolerant non-native~~ plants in the ESHA buffer area.

e) Section II Special Conditions, Special Condition 2, renumber as appropriate (Special Condition 2.A.v. is being stricken).

f) Section III.D Environmentally Sensitive Habitat Areas, correct the last paragraph on page 15 as follows:

The Commission previously found, based on the opinion of the Commission's staff ecologist that a 100-foot buffer from ESHA was necessary to prevent impacts that would significantly degrade the ESHA. However, in ~~a~~ technical memorandum ~~and~~ dated January 10, 2020 and February 3, 2020, the Applicant's biological consultant

(Glenn Lukos) found that a reduced ESHA buffer from the nearest undisturbed native vegetation is sufficient to protect the adjacent biological resources and would allow for the retention of additional patio areas (**Exhibit 3**). The Applicant's biological consultant also concluded that a reduced buffer plus additional native plantings between the buffer and the subject patio areas would provide adequate protection for the adjacent ESHA. Glenn Lukos' findings provide adequate evidence to support that a reduced ESHA buffer of 90 feet (at the southern end of the property) and 95 feet (at the northern end of the property), and the retention of the additional patio and pool fencing, are sufficient in this case to protect nearby coastal sage scrub and chaparral ESHA.

The applicant's biological consultant further concluded that the uses within the patio areas would be passive and not disruptive of the adjacent habitat values.

g) Section III.D Environmentally Sensitive Habitat Areas, correct the paragraph before the Conclusion on page 16 as follows:

The Applicant proposes to revegetate most of the 0.17-acre area with native ~~and drought-tolerant non-native~~ plant species, consistent with the Settlement Agreement **(see Exhibit 2). Special Condition 2**, as modified, allows for a final revised revegetation plan that provides for ~~additional native or drought-tolerant non-native plants in the 0.17-acre area.~~ **revegetation with only native or drought-tolerant non-native plants in the ESHA buffer area that are appropriate for coastal Orange County and the Laguna Beach canyons (e.g., coastal sage scrub and chaparral species), except for certain identified non-native trees that the applicant is allowed to retain in the buffer area. Therefore, the final revegetation plan should be modified to include the removal of five (5) or so podocarpus within the ESHA buffer.**

In addition, **Special Condition 2**, as modified, requires a prohibition on lighting in the patio area from dusk to dawn each day in order to protect species from light pollution.

IV. CHANGES TO EXHIBITS OF STAFF REPORT

Commission staff neglected to attach the applicant's biological technical memorandum dated February 3, 2020, as an exhibit to the staff report. Therefore, attached to the addendum is the February 2020 memo as **Exhibit B**.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802
(562) 590-5071



Th14c

ADDENDUM

February 11, 2020

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th14c, APPLICATION NO. 5-19-0909 (SANSON)
FOR THE COMMISSION MEETING OF THURSDAY, February 13, 2020.**

I. CHANGES TO STAFF REPORT

Commission staff recommends changes to the staff report dated January 30, 2020 to make the following corrections. Language to be added to the conditions and findings is shown in underlined text, and language to be deleted is identified by ~~strike out~~.

a) **Changes to Page 12, first complete paragraph, following the third sentence, revise as follows:**

...Parcel 1 is developed with a single-family residence (constructed c. 1989), associated appurtenances, and landscaping. Parcel 1 is located within one of the City's certified categorical exclusion areas (Cat Ex Area 87, Portafina Area) of the City's previous Categorical Exclusion Order E-79-4, which was approved by the Commission in 1979 and was effective during the construction of the single-family residence circa 1989.

b) **Changes to Page 12, Footnote #1, revise the following:**

In 2015, Orange County Transportation Authority (OCTA) acquired approximately 147-acres of the 149-acre undeveloped property to maintain it as an open space preserve (known as the Pacific Horizon Preserve; formerly known as the Aliso Canyon Preserve) consistent with the intent of the Coastal Commission's Cease and Desist Order CCC-10-CD-01 and Restoration Order CCC-10-RO-01. Driftwood, Properties, LLC...

c) **Changes to Page 31, list of Land Use Element policies, delete the following:**

~~Policy 3-A of the Open Space Conservation Element of the Land Use Element states: *Ensure adequate consideration of environmental hazards in the development review process.*~~

d) **Changes to Page 31, last paragraph, delete first sentence:**

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

II. CORRESPONDENCE RECEIVED FROM APPLICANT; STAFF'S RESPONSE TO CORRESPONDENCE

A letter dated February 7, 2020 was submitted by Mr. Steven H. Kaufmann, on behalf of the applicant. In this letter, Mr. Kaufmann asks that the Commission approve the project without any conditions requiring the removal of the fence and patio encroaching into the 0.17-acre area and asks that the Commission consider a reduced ESHA buffer, which the applicant's biologist asserts is appropriate in this case because he maintains that this area is not suitable for gnatcatchers, and that previous surveys have not documented gnatcatchers within 100 feet of the property and that special status plants are a significant distance from the project site.

As described in greater detail in Commission staff biologist's memoranda, Dr. Engel viewed the habitat surrounding the project site in April during a site visit with the City and Fire department staff. Dr. Engel described the habitat as healthy and nearly pristine coastal sage scrub suitable for gnatcatchers who are obligate, year-round residents of coastal sage scrub with significant territory size requirements during the breeding and non-breeding seasons: 2 to 25 acres during the breeding season and much bigger territories in the non-breeding season. Dr. Engel also heard gnatcatchers in the vicinity of the project site during the April site visit. It is important to note that no formal protocol gnatcatcher surveys has been conducted for this exact location but that gnatcatchers have been identified in the area by the California Natural Database and 2015 surveys conducted for Parcel 2. Dr. Engel acknowledges in her memoranda that the big-leaved crownbeard, a special status species, exists approximately 100-feet from the subject 0.17-acre area. However, the presence of gnatcatcher and big-leaved crownbeard in the vicinity speaks to the value of the habitat in areas of Parcel 2 near the subject 0.17-acre area. Moreover, Dr. Engel determined that the coastal sage scrub dominated by California sagebrush and California buckwheat located within 100 feet of the project site is ideal habitat for gnatcatchers and rises to the level of ESHA.

Dr. Engel recommends a minimum 100-foot buffer distance to protect the ESHA that occurs 100 feet from Parcel 1. The standard under section 30240(a) is whether development will result in "significant disruption of habitat values" of ESHA, and the standard under 30240(b) is whether development adjacent to ESHA will "significantly degrade" the ESHA or not be compatible with its continued existence. Given the type of development proposed and its associated uses as described in Dr. Engel's January 29, 2020 memoranda, the presence of ESHA, and the proximity to thousands of acres of pristine and valuable native habitat, that supports a myriad of sensitive species and blue line streams (which serve as wildlife corridors), Dr. Engel concluded that: "100 feet is the minimum appropriate buffer distance to prevent significant disruption and degradation of the coastal sage scrub habitat." Therefore, Commission staff does not recommend making changes to the staff recommendation.

The applicant's agent has also submitted a supplemental letter dated February 10, 2020 in response to correspondence received from appellants and members of the public, which are referenced in Section III below.

III. CORRESPONDENCE RECEIVED FROM APPELLANTS AND THE PUBLIC; STAFF'S RESPONSE TO CORRESPONDENCE

The Commission's South Coast District office received three letters in opposition to the proposed development and staff's recommendation submitted by Mr. Mark and Mrs. Sharon Fudge, who are local residents; Penny Elia on behalf of the Sierra Club, Save Hobo Aliso Task Force ; and former Commissioners Brian Brennan and Mary Shallenberger. All correspondence received has been included in the "Correspondence" section for this item on the online agenda.

In one of the letters, submitted by Mr. and Mrs. Fudge, the commenters request that the Commission deny the application and have it returned to the City for design review, or request postponement. As noted in Section IV.C of the staff report, the 0.17-acre area proposed to be transferred to the owners of Parcel 1 is located within Hobo Canyon, an area of deferred certification where the Commission is the coastal development permit-issuing authority. The City is *not* the permit-issuing authority for the areas of the project located in an area of deferred certification, and, therefore, cannot issue a coastal development permit for the application before the Commission. The standard of review for the elements of the project in the deferred certified areas (Coastal Commission's jurisdiction), i.e., Parcel 2, is the Chapter 3 policies of the Coastal Act. The proposed development also involves the property located at 791 Barracuda Way (i.e., Parcel 1), located within a certified area under the Laguna Beach Local Coastal Program (LCP). However, most of the proposed development is located within the Commission's permit-issuing jurisdiction, including work proposed under the revegetation plan. Because the proposed development includes elements within the certified and uncertified jurisdiction of the City of Laguna Beach, the application is being reviewed as a consolidated coastal development permit application consistent with Section 30601.3 of the Coastal Act. The standard of review for such consolidated coastal development permit applications is the Chapter 3 policies of the Coastal Act.

In all three of the opposition letters, commenters are requesting that the hearing on this application to be continued and that Commission Enforcement staff bring resolution of the violations of the Coastal Act raised by this project through enforcement action. The Commission's permitting and enforcement processes can be used together where appropriate to try to resolve any violations that may exist on a property. In addition, as noted in Section IV.I of the staff report, the issuance of this permit pursuant to the staff recommendation and compliance with all of the terms and conditions of this permit, including undertaking all required work, will result in resolution going forward of the violation of the Coastal Act.

The letter from Mr. and Mrs. Fudge raises concerns regarding references to the policies of the LCP in the staff report, as they assert that the Commission should not resolve this matter because Commission staff has not yet provided Mr. and Mrs. Fudge a complete copy of the certified LCP. However, although a complete certified copy of the LCP has not yet been delivered to Mr. and Mrs. Fudge in response to their Public Records Act request, files containing LCP related documents are available for review by the public in the South Coast District Office, and staff expects to provide Mr. and Mrs. Fudge the remaining portions of the certified LCP soon. In any event, the standard of review for this project is the Chapter 3 policies of the Coastal Act, and the certified LCP is guidance only. All of the LCP policies discussed in the staff report have been confirmed by staff to be certified. The findings are consistent with the policies of Chapter 3 of

the Coastal Act and therefore, no public process is impeded by moving forward with this permit at this time, regardless of the status of the PRA for the LCP.

Another comment in Mr. and Mrs. Fudge's letter relates to the City's responsibility under the Subdivision Map Act. It should be noted, however, that enforcement of the Subdivision Map Act falls outside of the Coastal Commission purview and this CDP application is a consolidated permit application where Chapter 3 of the Coastal Act is the standard of review, and the project is consistent with all Chapter 3 policies, as discussed in the staff report. The project may require additional discretionary approvals from the City after approval of this CDP.

Mr. and Mrs. Fudge state that the Orange County Transportation Authority's (OCTA) must be a co-applicant for the project. As described in Footnote No. 1 of the staff report, OCTA acquired only approximately 147 acres of the 149-acre undeveloped property in 2015. OCTA does not and has never owned Parcel 2 in its entirety. Driftwood Properties, LLC still hold ownership over approximately 1.5 acres of the original 149-acre parcel. The 1.5 acres owned by Driftwood Properties, LLC is located immediately adjacent to the subject 0.17-acre area, which would have been part of the remnant parcel that Driftwood Properties, LLC currently owns. Consequently, OCTA has no legal interest in the 0.17-acre open space area at issue. In addition, Section 30601.5 of the Coastal Act provides that the applicant must demonstrate authority to comply with all conditions of approval. Here, although the City-approved 1995 lot line adjustment has not been formally authorized through a coastal development permit, the applicant is still listed on the deed as the *record* owner of the subject 0.17-acre area. Therefore, the applicant has demonstrated authority to comply with all conditions of approval consistent with Section 30601.5 of the Coastal Act.

Mr. and Mrs. Fudge question why the permit was conditioned to require a 'revegetation plan' for the 0.17-acre area, in lieu of a 'habitat restoration plan,' when the 0.17-acre area most likely contained ESHA prior to approval of the lot line adjustment in 1995. However, as noted on page 20-21 of the staff report, there is not sufficient evidence to determine whether the 0.17-acre area contained ESHA in 1995 when the City approved the lot line adjustment, or whether sensitive habitat had been removed prior to the City's approval of the lot line adjustment.

Mr. and Mrs. Fudge state that the entirety of the City has been designated as Very High Fire Hazard Zone and, therefore, there is nothing unique about this designation on these subject parcels. However, it is the *location* of the applicant's residential lot, and the neighboring residential lots along Barracuda Way, which distinguishes it from interior lots as it is located immediately adjacent to open space. For clarification, Commission staff would refer to the City's *certified* Fuel Modification Guidelines of the Safety Element of the General Plan as adopted by Resolution 89.104 as guidance when reviewing coastal development applications for future fuel modification. In any case, this proposal, as conditioned, would improve fire safety because the permit is conditioned to require approval from the Laguna Beach Fire Department. Therefore, the project, as conditioned, should help limit any future need for fuel modification of the subject site.

Mr. and Mrs. Fudge assert that although Parcel 1 is located in a categorical exclusion area, the construction of the applicant's single-family residence in Parcel 1 was not exempt from coastal development permit requirements under the City's current Categorical Exclusion Order E-93-1

(approved by the Commission in 1993), because Parcel 1 is either located within one hundred feet from the upland limit of any stream or located in an area of geographic concern; and therefore, the construction of the single-family residence required a coastal development permit. However, the single-family residence in Parcel 1 was constructed circa 1989, when the City's previous Categorical Exclusion Order E-79-4 (approved by the Commission in 1979) was effective. Categorical Exclusion Order E-79-4 did not contain all of the same qualifications that the current Categorical Exclusion Order E-93-1 provides. In any case, the legality of the applicant's single-family residence is not currently before the Commission.

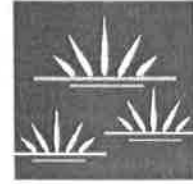
IV. EX-PARTE

Two Ex Parte communications (one from Commissioner Howell and one from Commissioner Uranga) have been received to date. All Ex-Parte communications are available online in the "Ex-Parte" section for this item on the agenda.

TECHNICAL MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 14740001LOTL

TO: Jacqueline Sanson

FROM: Tony Bomkamp

DATE: February 3, 2020

SUBJECT: Responses to January 29, 2020 Memorandum Prepared by Dr. Jonna Engel Addressing the Buffer Analysis Associated with Lot Line Adjustment for 791 Barracuda Way, Laguna Beach Prepared by me as Senior Biologist for Glenn Lukos Associates, Dated January 10, 2020 ("Buffer Memo")¹

My January 10, 2020 Buffer Memo ("January 10, Buffer Memo") set forth the results of my December 26, 2019 site visit to evaluate the biological resources associated with the rear yard and adjacent area of your residence on Barracuda Way, in Laguna Beach. The purpose of the evaluation was to determine the appropriate buffer from areas of native vegetation proposed in the Landscape Plan (October 30, 2018), prepared by Daniel Stewart and Associates in connection with your application. During the site visit, the limits of undisturbed native vegetation, consisting of coastal sage scrub dominated by California sagebrush (*Artemisia californica*) Shrubland Alliance (G5 S5) were mapped using sub-meter GPS Technology. I also reviewed the November 26, 2019 Memorandum ("November Memorandum") prepared by Jonna D. Engel, Ph.D., Senior Ecologist for the Coastal Commission. The November Memorandum referenced and discussed a Biological Technical Report for Proposed Fuel Modification Zones 10 (upper) and 11 Laguna Beach, which I prepared for the Laguna Beach Fire Department in early 2019.

As noted in the subject line above, the purpose of this further Technical Memorandum is to address the January 29, 2020 Memorandum ("January Memorandum") prepared by Coastal Commission Ecologist Dr. Jonna Engel that addresses parts of my Buffer Memo. Below I address specific issues raised or addressed by Dr. Engel in the January Memorandum, with a focus on the site-specific conditions, which inform some of the issues raised in Dr. Engel's January Memo:

- Biological resources associated with the Aliso Canyon Preserve and Buffer Requirements;

¹Subsequent to the mapping, GLA discovered an error in the GPA Unit used to map the CSS. This has been re-surveyed and corrected, and the CSS is generally coincident with the edge of FMZ 10.

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- The extent of Environmentally Sensitive Habitat Area (ESHA) mapped by the City of Laguna Beach for the adjacent open space;
- Benefits of the proposed landscape plan relative to the adjacent open space;

Each of these is addressed below in detail and, importantly, they are focused on the site-specific conditions associated with your property and habitat areas in the Aliso Canyon Preserve. It remains my opinion that a 50-foot buffer is more than adequate and that the minor improvements (pool fence and on-grade patio) next to the house and which apparently have been present for many years now create no adverse impacts on those off-site habitat areas.

ALISO CANYON RESERVE AND BUFFER REQUIREMENTS

In Dr. Engel's "January Memorandum," she referenced the November Memorandum as follows:

Currently, I find that the that the 50 foot wide area immediately adjacent to the 0.17 acre area, characterized by healthy coastal sage scrub dominated by California sagebrush and California buckwheat, is ESHA because it supports the extremely rare big-leaved crownbeard and likely supports rare CAGN. I make this determination based on my site visit observations, the GLA 2019 biology report, and CNDDDB queries.

As depicted on Exhibit 4 of my January 10 Buffer Memo, the nearest big-leaved crownbeard is 107 feet from your Lot 2 property boundary and does not occur within 50 feet of the parcel.. While the CSS is potentially suitable for the California gnatcatcher, it is noteworthy that previous surveys have not documented CAGN within 100 feet of your parcel, especially because of the area to the east of the lot steeply drops off into the canyon below and thus is less suitable for CAGN, and further because the CSS has not been included as High or Very High Value Habitat in the City GIS Database. Figure 4 of Dr. Engel's January Memorandum shows CAGN approximately 650 feet to the north just east of Moulton Meadows Park where the topography is gentle and over 1,100 feet to the south just beyond the Aliso Canyon Preserve. It is also important to note that occurrences mapped in CNDDDB are not sufficiently accurate to make determinations regarding buffer widths.

In the January Memorandum, Dr. Engel's January Memorandum characterizes the Aliso Canyon Preserve ("ACP") and its special-status resources as follows:

In 2015 Bonterra conducted biological surveys for the ACP including focused surveys for special status species. They found several rare plants including big-leaved crownbeard, Catalina Mariposa lily, intermediate Mariposa lily, paniculate tarplant, western dichondra, and many-stemmed dudleya and coastal California gnatcatchers on the preserve (Figure 4)

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Each of the plants to which Dr. Engel refers are a significant distance from your property. The big-leaved crownbead and CAGN are addressed above. The nearest Catalina mariposa lily is over 1,000 feet to the southeast. The closest intermediate mariposa lily is over 200 feet to the south. Paniculate tarplant is approximately 635 feet to the south. Western dichondra is about 450 feet to the south. Finally, many-stemmed dudleya is just over 400 feet to the east. Thus, there are no special-status plants at all within 100 feet of the boundary of Lot 2 (and this does not include an added buffer area).

On the first page of Dr. Engel's January Memorandum, she notes the presence of blueline streams within the ACP. The scale on Dr. Engel's exhibit (Figure 5) is such that figure makes it appear the blue line stream is proximate to your property, but it is not. The nearest blueline drainage at its closest point is 114 feet from the edge of Lot 2 (using the location of the blueline drainage on the USGS Map results in approximately 160 feet; however, we have used the distance based on the actual canyon bottom). The blueline drainage consists of an ephemeral drainage that does not support wetlands or riparian vegetation as defined by the Coastal Act, and thus the 114-foot setback from the parcel edge is more than adequate and is not a factor in a buffer analysis for your property. We also note that the City of Laguna Beach LCP, Policy 9C, only requires a 25-foot setback from ephemeral streams lacking wetlands or riparian vegetation, and, adhering to that policy, the Coastal Commission approved a 25-foot setback from Aliso Creek in a very similar setting nearby on the Scout Camp parcel at the The Ranch at Laguna Beach, while approving a 150-event limitation on that parcel.

Regarding the value of buffers, Dr. Engel provides a generalized discussion regarding functions; however, given the proposed turf removal and re-vegetation with native scrub, these are fully realized within the restored areas. Dr. Engel notes:

In this case, where a single family home located at the urban/rural boundary abutting pristine open space that supports rare habitat and species, blueline streams, and wildlife corridors, the primary function of the buffer is to protect against human disturbance and degradation in the form of noise pollution (voices, music, construction, machinery, etc.), light pollution (circadian rhythm disruption), aerosols (dust, fumes, and anthropogenic chemicals), and foot traffic. Domestic animals are often associated with residential development, and cats and dogs may hunt and otherwise disturb native organisms including the pollinators, other insects, amphibians, reptiles, birds, and mammals associated with the coastal sage scrub habitat. Additionally, landscaping irrigation around homes can negatively impact coastal sage scrub which is adapted to the wet winters and dry summers of the Mediterranean climate. And application of herbicides or pesticides for landscaping or building maintenance may be extremely harmful to the plants and animals that are part of the coastal sage scrub habitat. Buffers act as a barrier to both excessive water and anthropogenic chemicals. Buffers also protect against invasive plant and animal species that are often associated with humans and development. Such invasive species arrive on

car tires (both during and after construction), fill soils, construction materials, and in myriad other ways throughout the life of the development. Buffers may enable invasive species detection and eradication before they invade sensitive habitats.

As currently configured, the area that would remain following restoration will be a small existing patio consisting of on-grade pavers that straddles the on-site FMZ Zones A and B and would be capable of supporting a few pieces of furniture without any adverse impact to the restored native plant buffer area or the habitat off-site. Thus, the area would not be of sufficient size to support large gatherings that would result in measurable "noise pollution (voices, music, construction, machinery, etc.)." As noted in the January 10 Buffer Memo, no lighting would be directed to the open space; rather, it would be limited and shielded and would not spill into the open space. The retained small patio would not be a source of "aerosols (dust, fumes, and anthropogenic chemicals)," and with restoration of the turf area to native scrub as set forth in the landscape plan, such potential sources would be eliminated. Elimination of the small patio also would not affect the potential for domestic animals of reaching the open space in the ACP. With conversion of the turf to native grasses and native scrub habitat, irrigation would be reduced to mimic natural rainfall cycles and the conversion to scrub habitat would also eliminate the need for pesticides and herbicides. Conversion of the turf and associated ornamental landscaping would also ensure that no invasive species are present, thus ensuring that there would be no impacts from non-native invasive plants or animals.

It is also important to note that Zone A of the City's FMZ, which permits hardscape, cannot be planted with native scrub vegetation as can areas of FMZ B, the irrigated, thinning zone on your property.

Finally, in Dr. Engel's January Memorandum, she included the following observation regarding the functions of buffers:

A primary objective of buffers is to provide conditions where organism's normal behavior patterns are disturbed as little as possible. Buffers may also expand corridors for plant and animal dispersal and movement and reduce habitat fragmentation. While the peer reviewed scientific literature prescribes buffer distances from sensitive species and habitats much larger than 100 feet, I maintain that in this case, to respect and protect the coastal sage scrub ecosystem services and functions and associated plants and animals, 100 feet is the minimum appropriate buffer distance.

I concur that in most instances, these are general functions associated with buffers. However, it is important to note that the subject parcel lies fully within the City of Laguna Beach Fuel Modification Zone 10 ("FMZ 10"), which is subject to treatment in accordance with the City's fuel modification requirements. This includes a limited area of Zone A, Zone B, and Zone C. This is consistent with GLA's mapping that Dr. Engel referenced in the November

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Memorandum, specifically Figure 2, which shows most of FMZ 10, both north and south of the subject parcel, consisting of “disturbed” scrub, non-native grasslands and ornamental vegetation, consistent with the ongoing disturbance associated with the vegetation treatments. Thus, following conversion of the turf area to native scrub, your property, in particular, as restored will exhibit a high level of function when compared with neighboring properties.

APPROPRIATE BUFFER WIDTH

Based on the above considerations, I reiterate many of the points made in my January 10 Buffer Memo as the reason why I believe a 50-foot buffer is adequate for your property, given the native landscape plan:

- The presence of the FMZ 10 as currently identified by the City affects some of the buffer values along the canyon/ACP edge²
- The location of the nearest special-status plants (big-leaved crown-beard) as mapped by GLA for the City in support of the CDP Application, the closest of which is 107 feet from the boundary of the LLA area, and the next nearest rare plant (intermediate Mariposa lily is about 200 to the south.
- The topography to the east of your property, which drops off from the relatively flatter portion of the property to the canyon below, which provides vertical separation which enhances the buffer value for species such as the coastal California gnatcatcher addressed in more detail below; although as noted, the steep slope is not optimal for CAGN breeding.
- The proposed native plant landscaping plan you have proposed within FMZ 10, and specifically FM Zone B, the irrigated, thinning zone on your property, which includes native scrub and grassland species appropriate to the site;

Uses within the Lot Line Adjustment Area Buffer and the Adjacent Area

Much of the area within FMZ Zone B, as identified on the approved Landscape Plan, includes removal of non-native species and planting of native shrubs, grasses and sedges. As proposed, uses within the LLA area, and specifically FMZ B, would be limited to low-impact activity including maintenance, as well as a small portion of the existing on-grade patio closest to the house. Existing uses such as retention of existing patio area would be allowed along with associated uses, including a couple of outdoor lounges. The existing patio areas are approximately 85 feet from the edge of FMZ 10.

² Previously, FMZ was more expansive and has been reduced, and the limits of FMZ 10 shown on Exhibit 1 reflect the City’s current proposal for FMZ 10.

MEMORANDUM

February 3, 2020

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DISCUSSION/CONCLUSIONS

An 85-foot buffer as measured between the edge of the existing patio and edge of FMZ 10 would provide all necessary protections for areas of Very High Value Habitat and special-status plants as this would provide setbacks well exceeding 100 feet for all special-status plants and for the blue line drainage as discussed above. The buffer would also provide adequate protection for areas of native vegetation (e.g., California sagebrush scrub – G5 S5 and California sagebrush/California buckwheat scrub (G4 S4)). In considering the protection provided by the proposed buffer, it is worth noting that the on-site FMZ B, which is proposed to include site-appropriate native species, extends toward the residence resulting in an 85-foot buffer.

The native plantings would provide adequate protection for the areas of California sagebrush scrub and California sagebrush/California buckwheat scrub that could be used by the CAGN due to the following factors:

- As noted above, beginning just inside the LLA area along the eastern property boundary, the land slopes away and down from the property, providing vertical separation such that there is a visual barrier that would enhance the buffer values of the Zone B area (within the buffer and house-ward of the buffer);
- The uses within the patio areas, as noted above, would be passive and not disruptive of the habitat values for CAGN should CAGN occur in the California sagebrush scrub or California sagebrush/California buckwheat scrub down the slope from the buffer and Zone B area (within the buffer and house-ward of the buffer).

As a biologist with many years of experience of working with the CAGN and observing its behavior in areas proximate to development such as FMZ 10, and given the buffer recommendation and additional native planting in FMZ B, it is my professional opinion that there would be no measurable benefit for the CAGN in removing any of the small portion of hardscape associated with the on-grade patio in FMZ B or other existing development features in FMZ A which is typically defined as areas of hardscape within 20 feet of structures, to gain an additional 15 feet of native vegetation. Alternatively, simply confining the patio and fence to FMZ A, shifting the portions removed from FMZ B to FMZ A, would accomplish the same thing and provide the same habitat protection.