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# Th15b

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## STAFF REPORT: MATERIAL AMENDMENT (CONSOLIDATED CDP AMENDMENT)

**Application No.:** 5-19-0909-A1  
**Applicant:** Jacqueline Sanson  
**Agent:** Steven Kaufmann  
**Location:** 791 Barracuda Way (APN# 656-035-03), Laguna Beach (Orange County)

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

**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.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION

The project area is 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

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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.

**Exhibit A:** Project Area (Parcel 1 and 0.17-acre area)



Photo source: Datatree.com

On February 13, 2020, the Coastal Commission approved consolidated Coastal Development Permit (CDP) No. 5-19-0909 with special conditions. That action authorized a lot line adjustment (LLA 95-04) to add an approximately 0.17-acre of previously undeveloped open space from Parcel 2 to Parcel 1, and required removal of non-native vegetation, replanting with native vegetation, removal of previously unpermitted development; required a 100-foot buffer from development to coastal sage scrub and chaparral ESHA; and required recordation of an open space/conservation deed restriction on the portion of Parcel 2 added to the Applicant's property. During the Commission's review of the CDP application, the Applicant objected to the requirement to remove a patio and fencing that was constructed on Parcel 2 by a prior owner without a coastal development permit. On May 26, 2020, the Applicant filed a lawsuit seeking to invalidate the permit conditions requiring removal of the unpermitted development. (*Sanson v. California Coastal Commission*, Orange County Superior Court Case No. 30-2020-01140041-CU-WM-CXC) (this "Lawsuit"). After engaging in settlement discussions, the parties agreed to resolve the litigation through a settlement in which the Commission agreed to consider an amendment to its approved CDP that would authorize the Applicant to retain some additional patio and pool fencing in the 0.17-acre area added to their property. Therefore, the subject CDP amendment (No. 5-19-0909-A1) proposes to modify conditions of the Commission-approved permit to accommodate retention of some of the Applicant's patio and pool fencing currently required to be removed, specifically:

1. Modify Special Conditions 1 and 2 of the underlying CDP to allow the Applicant to retain a portion of an on-grade patio and approximately 30 linear feet of pool fencing. Any unpermitted remaining portions of the patio and fencing would need to be removed under the CDP.

2. Modify Special Condition 1 of the underlying CDP to prohibit development on the portion of the Applicant's property within a 90-foot buffer from adjacent environmentally sensitive habitat areas (ESHA) at the southern portion of the property and within a 95-foot ESHA buffer at the northern end of the property, where the 90-foot buffer extends slightly north of the halfway point to allow the Applicant to retain some additional patio area, as well as a small portion of the wrought iron pool fence at the northern portion of the property within the 95-foot buffer area.
3. Prohibit night lighting on the patio;
4. Revise landscaping plan that provides for additional native or drought-tolerant non-native plants in the 0.17-acre area as required by Special Condition 2 of the CDP, except for the allowed patio and the area used for fencing.

The Applicant proposes to amend a consolidated permit approved by the Coastal Commission pursuant to Section 30601.3 of the Coastal Act. Therefore, the standard of review is Chapter 3 of the Coastal Act, and the City's certified Local Coastal Program provides guidance.<sup>1</sup>

The main issue raised by the Applicant's permit amendment application is whether the project will adequately protect sensitive habitat that qualifies as ESHA under Section 30240 of the Coastal Act. Section 30240(a) provides that environmentally sensitive habitat areas (ESHA) must be protected against any "significant disruption of habitat values," and only uses dependent on the resources are allowed within ESHA, while Section 30240(b) provides that development adjacent to ESHA may be permitted 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.

In its approval of CDP No. 5-19-0909, the Commission determined that coastal sage scrub and chaparral constituting ESHA exists in an open space area adjacent to the Applicant's property and prohibited most development on the Applicant's property within 100 feet of the adjacent ESHA. In particular, the CDP required removal of all of the Applicant's unpermitted patio and fencing in the 0.17-acre area added to her lot. Pursuant to this permit amendment, **Special Condition 1** of the underlying CDP would be modified to allow the Applicant to retain some additional patio and pool fencing in the 0.17-acre area. The Applicant would record an open space deed restriction limiting development on the 0.17-acre open space area.

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 dated January 10, 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

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<sup>1</sup> The proposed development that is subject to this permit amendment application is also located entirely within Parcel 2, which is an area of deferred certification where the Commission is the permit-issuing authority. Therefore, even if the proposed development did not require an amendment to a Commission-approved consolidated permit, the standard of review would be Chapter 3 of the Coastal Act.

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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.

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 additional native or drought-tolerant non-native plants in the ESHA buffer area.

Staff recommends that the Commission **approve** the proposed amendment to CDP No. 5-19-0909, as conditioned. The motion and resolution can be found on Page 6.

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### **EXHIBITS**

[Exhibit 1 – Project Location/Site](#)

[Exhibit 2 – Project/Revegetation Plan](#)

[Exhibit 3 – Technical Memorandum prepared by Glenn Lukos Associates dated January 10, 2020](#)

[Exhibit 4 – Settlement Agreement \(\*Sanson v. California Coastal Commission, Orange County Superior Court Case No. 30-2020-01140041-CU-WM-CXC\*\)](#)

## I. MOTION AND RESOLUTION

**Motion:** I move that the Commission **approve** Coastal Development Permit Amendment No. 5-19-0909-A1 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 the coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## II. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 5-19-0909-A1. All of the Commission's adopted standard and special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-19-0909, as amended, remain in effect. New standard and special condition language is shown in underline, and deletions are shown as ~~struckthrough~~ text.

### SPECIAL CONDITIONS

#### 1. Open Space and Conservation Deed Restriction.

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the 0.17-acre open space area depicted on [Exhibit 1, Page 1](#), except for:
  - 1) The removal of unpermitted structural improvements (including, but not limited to, unpermitted portions of patios, and unpermitted fencing, and railroad curb ties and the removal of non-native vegetation, revegetation with locally indigenous, native vegetation, and installation of temporary above-ground irrigation to provide for the establishment of native plant species as contained in the approved Revegetation Plan pursuant to **Special Condition 2**. (A portion of the on-grade patio and a portion of the approximately 5.17-foot-high pool fence

are authorized by this permit and allowed to be retained in the open space area as depicted in [Exhibit 4, Page 5](#)

- 2) Any additional habitat restoration/enhancement activities, only as authorized in writing by the ED or the Coastal Commission under an amendment to this permit or a new coastal development permit.
  - 3) Necessary vegetation trimming, thinning, or removal for fuel modification purposes, only as authorized in writing by the ED or the Coastal Commission under an amendment to this permit or a new coastal development permit.
- B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- C. The deed restriction shall be recorded free of prior liens, and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- D. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.
- 2. Final Project/Revegetation Plan.**
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full-sized sets of a final revised Revegetation Plan, which shall be in substantial conformance to the plans submitted to the Coastal Commission's South Coast District Office on July 31, 2019, except that it shall include and be consistent with the following provisions:
- i. All unpermitted structural improvements (including unpermitted portions of fencing and patios, and railroad curb tie steps) encroaching into the 0.17-acre open space and conservation deed restricted area must be removed.
  - ii. Replacement plant species shall consist of only drought tolerant, non-invasive native plant species appropriate for coastal Orange County and the Laguna Beach canyons (e.g. coastal sage scrub and chaparral species). No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
  - iii. The *existing* pine tree (*Pinus halepensis*), strawberry tree (*Arbutus unedo*), and xylosma evergreen tree/shrub (*Xylosma congestum*) may be maintained but only with authorization from the City of Laguna Beach Fire Department pursuant to **Special Condition 3**. These three (3) trees/shrubs cannot be replaced if at any time in the future they die or are removed.

- iv. Temporary, above-ground irrigation is permitted for a maximum of three years after planting begins or until the revegetation has become established, whichever occurs first. No permanent irrigation is permitted.
  - v. ~~Replacement perimeter fencing is permitted west of the original pre-lot line adjusted eastern property line of 791 Barracuda Way in Laguna Beach, and outside of the 0.17-acre open space and conservation deed restricted area.~~
  - vi. Night lighting on the patio is prohibited, which applies from dusk to dawn each day.
  - vii. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the revegetation plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
  - viii. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental revegetation plan for the review and written approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. WITHIN 60 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant in writing for good cause, the permittee shall implement the revegetation plan and shall remove all unpermitted structures in conformance with the approved final plans of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- C.** The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

### **III. FINDINGS AND DECLARATIONS**

#### **A. PROJECT LOCATION & DESCRIPTION**

The project area is 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 a 149-acre undeveloped parcel (hereafter referred to as Parcel 2) located in the Hobo/Aliso area of Laguna Beach ([Exhibit 1](#)). Parcel 1 is located within one of the City's categorical exclusion areas (Cat Ex Area 8, 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. The land use designation for Parcel 1 is Residential Low Density (R1) and the adjacent parcels to the north and south are also developed with single-family residences. Parcel 2 contains mostly undeveloped steeply sided canyon lands incised by ravines with small streams and covered with sensitive habitat, with the exception of the unpermitted non-native landscaping and hardscape improvements and fence. Parcel 2 is partially locally-zoned<sup>2</sup> Residential/Hillside Protection (RHP) and partially zoned Open Space/Passive (OSP). More specifically, the 0.17-acre area at issue is currently locally-zoned as Open Space/Passive, and was zoned Open Space/Conservation when LLA 95-04 was recorded in 1995, as well as when the sand-set pavers of the subject patio areas were installed in 2013.

The Applicant is proposing to amend a previously approved permit (No. 5-19-0909) to request after-the-fact approval for retention of an approximately 600-square-foot portion of an on-grade patio and approximately 30 linear feet of a 5.17-foot-high pool fencing encroaching into a 0.17-acre area of the Applicant's property that is required by the CDP to be subject to an open space and conservation deed restriction ([Exhibit 2](#)). Unpermitted remaining portions of the patio and fencing would be removed. Special Conditions 1 and 2 of the underlying CDP must be amended to allow for the retention of portions of the patio and pool fencing in the 0.17-acre open space area.

## **B. PROJECT HISTORY**

On February 13, 2020, the Coastal Commission approved the consolidated Coastal Development Permit (CDP) No. 5-19-0909 with special conditions. That action authorized the lot line adjustment (LLA 95-04) to add the subject approximately 0.17-acre of previously undeveloped open space from Parcel 2 to Parcel 1 (residentially developed approximately 7,150-square-foot parcel) and required removal of non-native vegetation, replanting with native vegetation, removal of previously unpermitted development, and recordation of an open space/conservation deed restriction. A total of eight special conditions were imposed, including: 1) open space and conservation deed restriction that ensures that the approval of the lot line adjustment does not facilitate future development that harms ESHA adjacent to the project area and, consequently, ensures that the project will not expand the development potential of Parcel 1 (where the residence is located) or the 0.17-acre open space area of Parcel 2 in such a way that would harm adjacent ESHA; 2) final revised project/revegetation plan that is redesigned in a manner that discourages disturbance of the 0.17-acre area, which is located within the recommended 100-foot ESHA buffer; 3) Laguna Beach Fire Department approval; 4) assumption of risk, waiver of liability and indemnity; 5) best management practices and erosion control; 6) future improvements; 7) deed restriction; and 8) application fee.

Ms. Sanson, the Applicant, objected to some of the conditions the Commission imposed and filed a lawsuit on May 26, 2020, challenging those conditions. (*Sanson v. California Coastal Commission*, Orange County Superior Court Case No. 30-2020-01140041-CU-WM-CXC) ("Lawsuit"). The parties agreed to settle the litigation, which was finalized in November 2021. As reflected in the final settlement agreement ([Exhibit 4](#)), the

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

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Commission agreed to consider a CDP amendment application (No. 5-19-0909-A1) that would allow the Applicant to retain some additional patio and pool fencing in the 0.17-acre area.

### **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 Applicant proposes to amend a consolidated permit approved by the Coastal Commission pursuant to Section 30601.3 of the Coastal Act. The proposed development that is subject to this permit amendment application is located within an area of deferred jurisdiction not subject to the City's certified LCP, where the Commission is the permit-issuing authority and Chapter 3 of the Coastal Act is the standard of review. Therefore, the standard of review is Chapter 3 of the Coastal Act, and the City's certified Local Coastal Program provides guidance.<sup>3</sup>

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

Section 30240 of the Coastal Act states:

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

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

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

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

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

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<sup>3</sup> The proposed development that is subject to this permit amendment application is also located entirely within Parcel 2, which is an area of deferred certification where the Commission is the permit-issuing authority. Therefore, even if the proposed development did not require an amendment to a Commission-approved consolidated permit, the standard of review would be Chapter 3 of the Coastal Act.

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

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

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

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

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

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

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

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

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

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

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

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

Environmentally Sensitive Areas (ESA's) as defined in Section 30107.5 of the California Coastal Act shall be identified and mapped on a Coastal ESA Map. The following areas shall be designated as Environmentally Sensitive Areas: those areas shown on the Biological Resource Values Maps in the Open Space/Conservation Element as "Very High" habitat value, and streams on the Major Watersheds and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series and any other areas which contain environmentally sensitive habitat resources as identified through an on-site biological assessment process, including areas of "High" and "Moderate" habitat value on the Biological Resources Values Maps and areas which meet the definition of ESA's in Section 30107.5 of the Coastal Act, including streams, riparian habitats, and areas of open coastal waters, including tidepools, areas of special biological

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significance, habitats of rare or endangered species, near-shore reefs and rocky intertidal areas and kelp beds.

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

Detailed biological assessments shall be required for all new development proposals located within areas designated as Environmentally Sensitive Areas on the Coastal ESA Map. To protect these resources, the following shall be required:

1. No new development proposals shall be located in areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map except for uses dependent upon such resources.
2. When new development proposals are situated in areas adjacent to areas designated as "Environmentally Sensitive Areas" on the Coastal ESA Map and where these are confirmed by subsequent on-site assessment, require that development be designed and sited to prevent impacts which would significantly degrade such areas.
3. Where development is proposed on an existing subdivided lot which is otherwise developable (i.e., able to be served by utilities and access, and on slopes able to accommodate development consistent with City provisions on slope/density, grading, hazards, subdivisions and road access), and is consistent with all other policies of this Land Use Plan except for its location entirely within an identified ESA as confirmed by a site-specific assessment, the following shall apply:
  - a) Resource Management uses including estuaries, nature centers and other similar scientific or recreational uses are permitted subject to a Conditional Use Permit to assure that uses are sited and designed to prevent degradation of the resource value; or alternatively;
  - b) Transfer of a density bonus to another property in the vicinity able to accommodate increased density consistent with the policies of the Land Use Plan concurrent with the recordation of an open space easement or other similar instrument over the habitat area of the parcel;
  - c) Existing dwellings shall be designated as nonconforming uses but shall be allowed to be rebuilt or repaired if damaged or destroyed by natural disaster provided however, that the floor area, height and bulk of the structure not exceed that of the destroyed structure by more than 10 percent; and
  - d) No new parcels shall be created which are entirely within a Coastal ESA or which do not contain a site where development can occur consistent with the ESA policies of this Plan.

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

Preserve and protect fish and wildlife species for future generations.

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

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

Action 3.10.1 of the LUE of the certified LUP states:

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

Policy 5.2 of the LUE of the certified LUP states:

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

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

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

Policy 7.4 of the LUE of the certified LUP states:

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

Action 7.4.2 of the LUE of the certified LUP states:

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

Action 10.2.1 of the LUE of the certified LUP states:

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

One of the primary issues raised by the proposed project concerns consistency with the land resource protection policies of Chapter 3 of the Coastal Act. Section 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." Section 30240(a) provides that environmentally sensitive habitat areas (ESHA) must be protected against any "significant disruption of habitat values," and only uses dependent on the resources are allowed within ESHA, while Section 30240(b) provides that development adjacent to ESHA may be permitted if it is sited and designed to prevent impacts that would "significantly degrade" the ESHA and is compatible with the continued existence of the ESHA. Parcel 2 has areas that the City of Laguna Beach has identified as containing high value and very high value habitat. Parcel 2 has varied topography of moderate to steep slopes and includes a mosaic of vegetation types including southern maritime chaparral and coastal sage scrub.

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The Commission previously found that the project site does not contain ESHA, but sensitive coastal sage scrub and southern maritime chaparral that supports California gnatcatcher and big-leaved crownbeard is located on the adjacent 149-acre property and that this habitat does constitute ESHA.

Though not the standard of review, the City's certified LCP provides guidance. Preservation and enhancement of the City's ESHA or ESAs (Environmentally Sensitive Areas) is a goal supported by all the environmental protection policies of the certified LCP that are cited above. The City has identified areas adjacent to the Applicant's property as containing "very high value habitat". Regarding the project site, however, the subject 0.17-acre area is not mapped on the LCP certified Biological Values Map as high or very high value habitat. Based on site-specific information provided by the Applicant concerning the 0.17-acre area, most of the 0.17-acre area in question was disturbed and landscaped with ornamental vegetation without a coastal development permit.

Therefore, the 0.17-acre area is not automatically designated as an ESA pursuant to Policy 8-I. As stated above, the Commission previously determined that the 0.17-acre area is not ESHA based on an onsite biological assessment.

The 0.17-acre area is locally zoned for open space and was zoned as such when LLA 95-04 was originally recorded in 1995.<sup>4</sup> Areas designated as open space in the LCP are intended to preserve land in its natural state for open-space purposes. The LUE of the certified LCP states that open space lands "are typified by special ecological, wildlife, or scientific study potential and are areas of topographical, geological, and historical importance. Passive recreational uses such as walking and hiking are encouraged in appropriate areas. Additional low-impact passive uses may be permitted, subject to a condition use permit, where the City Council finds that those uses will not conflict with the open-space uses described above and will not have significant effect on the environment."

Section 25.41.004 (Open Space Zone) of the certified Implementation Plan provides that structural improvements are not a permitted use in areas designated as open space. The proposed amendment would allow the Applicant to retain some of the unpermitted patio and pool fencing structures in the open space portions of her property. Although the certified LCP provides guidance as to the project's consistency with Chapter 3 of the Coastal Act, it is important to note here that the Commission has not certified the LCP with respect to the 0.17-acre area, which is entirely within an area of deferred certification where Chapter 3 is the standard of review. In addition, evidence before the Commission supports the contention that adjacent ESHA will be protected from impacts associated with allowing some additional patio and pool fencing to remain in place.

When applying Section 30240, the Commission typically requires an adequate buffer between proposed development and environmentally sensitive habitat areas. A buffer is not itself a part of the ESHA, but is a barrier, "safe zone," or bordering strip of natural habitat or land between ESHA and development or human related disturbance (e.g. noise,

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<sup>4</sup> The City's zoning designation of the 0.17-acre site is locally-recognized but has not been certified by the Coastal Commission because the 0.17-acre site is located within an area of deferred certification.

artificial lighting; hazards of herbicides, pesticides and other pollutants; shading from buildings, non-native or invasive landscaping activities, and domestic pets). The purpose of a buffer is to create a zone where there will be little or no human activity; to “cushion” species and habitats from disturbance and allow native species to go about their “business as usual.” Buffers provide the necessary horizontal spatial separation to preserve the integrity and natural function of individual species and habitats and protect biological productivity. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. Buffers may also provide ecological functions essential for species in the ESHA. The required width for buffers varies depending on the type of ESHA and on the type of development, location and topography of the site, and the sensitivity of the resources to the particular kind of disturbance.

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

The boundary of the 0.17-acre open space area on the Applicant’s property is located approximately 20 feet from ESHA, and any development including accessory structural improvements (i.e., fencing and patios) encroaching into this open space and further into the canyon would intensify the type of use of the site and would facilitate on-going human activity, which could impact the ESHA immediately adjacent to the project site.

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 dated January 10, 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

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fencing, are sufficient in this case to protect nearby coastal sage scrub and chaparral ESHA.

Pursuant to the Settlement Agreement, the Applicant proposes to modify the ESHA buffer required in **Special Condition 1** of the underlying CDP to provide a 90-foot buffer at the southern portion of the property and a 95-foot buffer at the northern end of the property, where the 90-foot buffer extends slightly north of the halfway point to allow the Applicant to retain some additional patio area, as well as a small portion of the wrought iron pool fence at the northern portion of the property within the 95-foot buffer area.

**Special Condition 1**, as modified, would permit the retention of an approximately 600-square-foot portion of a small on-grade patio and approximately 30 linear feet of an existing 5.17-foot-high pool fencing encroaching into the 0.17-acre area consistent with the Settlement Agreement. To ensure that the concerns and issues stated above are properly addressed and/or avoided, **Special Condition 1** continues to memorialize the Applicant's agreement to record an Open Space and Conservation Deed Restriction over the 0.17-acre open space area. The open space and conservation deed restriction would place future buyers of the property on notice of the requirement. **Special Condition 1** ensures that this project does not facilitate future development of the site that harms ESHA adjacent to the project area and, consequently, ensures that the project will not result in any changes to the development potential of the project site beyond what the parties agreed to in the Settlement Agreement.

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. **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. 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.

### **Conclusion**

As explained above, evidence before the Commission supports the contention that adjacent ESHA will be protected from impacts associated with allowing some additional patio and pool fencing to remain in place. Therefore, the Commission finds that the proposed amendment, as conditioned, is consistent with Section 30240 of the Coastal Act.

### **E. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:



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

Section 30223 of the Coastal Act states:

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

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

Land Use Element:

Policy 4.3 states:

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

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

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

Coastal Land Use Plan Technical Appendix:

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

Open Space/Conservation Element:

Policy 3-A states:

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

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

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

## **F. WATER QUALITY**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

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

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

Policy 7.7 of the Land Use Element states:

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

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

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

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

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

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

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

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

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

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

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

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

**Special Condition 5** of the underlying permit continues to require the Applicant to implement construction best management practices. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the canyon sites and marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought-tolerant native vegetation and water conservative irrigation systems to reduce and treat any runoff, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. 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.

## **G. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without authorization through a coastal development permit, including the installation of landscape and structural improvements (including, but not limited to, ornamental vegetation, patio pavers, and fencing) on the subject 0.17-acre open space area. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

In October 1995, the City of Laguna Beach issued a local entitlement for a lot line adjustment (LLA 95-04), adding undeveloped land from Parcel 2, an adjacent vacant parcel (APN# 056-240-67 and 056-240-68 (formerly 656-191-23 and 56-241-55)), to Parcel 1, an existing developed residential lot (791 Barracuda Way), but did not issue or require an application for a coastal development permit. Between 1989 and 2002, it appears that the owner of the Parcel 1 at that time removed and replaced vegetation from within the 0.17-acre (7,200 square feet) of Parcel 2 with ornamental vegetation and grass and approximately a total of 650± square feet of concrete-slab patio, and other accessory structures/improvements, all of which was done without benefit of a coastal development permit. In 2013, the concrete-slab patios were replaced with patios made of sand set pavers.

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

On February 13, 2020, the Coastal Commission approved consolidated Coastal Development Permit (CDP) No. 5-19-0909 as conditioned. This action authorized the LLA and required removal of non-native vegetation, replanting with native vegetation, removal of previously unpermitted development; and a 100-foot buffer from coastal sage scrub and chaparral ESHA; and recordation of an open space/conservation deed restriction on the portion of Parcel 2 added to the Applicant's property. On May 26, 2020, the Applicant filed a lawsuit seeking to invalidate the permit conditions requiring removal of the unpermitted development. After engaging in settlement discussions, the parties agreed to resolve this litigation through a settlement, which was finalized in November 2021. The subject CDP amendment application has been submitted in consideration of the mutual promises and covenants made in the Settlement Agreement between Ms. Sanson and the Coastal Commission.

Through this amendment application, the Applicant is requesting after-the-fact approval of a portion of an on-grade patio and a portion of pool fencing encroaching into the 0.17-acre area added to the Applicant's property by the approved lot line adjustment and removal of any remaining unpermitted portions of the fencing and patio on this 0.17-acre area.

**Special Conditions 1 and 2**, as modified, require that the Applicant remove any unpermitted accessory structural improvements including, but not limited to the unpermitted remaining portions of patio pavers and fencing encroaching into the open space and conservation deed restriction area/ESHA buffer area, and implement revegetation of most of the 0.17-acre area (except for the allowed patio and the area used for fencing) in accordance with the approved final revegetation plan. **Special Condition 2** requires that the revegetation be implemented immediately following (within 60 days of) the issuance of this coastal development permit to ensure that the revegetation is undertaken in a timely manner.

Issuance of the permit amendment pursuant to the staff recommendation and compliance with all the terms and conditions of the underlying permit and this permit amendment, including undertaking all required work, will result in resolution going forward of the violations of the Coastal Act consisting of the construction/installation of hardscape and landscape structures/improvements described above. If the Applicant fails to fulfill the terms and conditions of the permit, and undertake all required work within a timely manner, enforcement staff will consider its options to address the violations of the Coastal Act at issue.

Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance. Commission review and action on this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implication of implied statement of the Commission's position regarding the legality of any development undertaken on the site without a coastal development permit, other than the development approved herein, or as otherwise expressed, or that all aspects of the violation have been fully resolved. In fact, approval of this permit amendment is possible only because of the conditions included herein and in the underlying CDP, such as **Special Conditions 1 and 2** as modified and described above. Failure to comply with these conditions would also constitute a violation of this permit amendment and the underlying permit, the certified LCP, and of the Coastal Act upon issuance. Accordingly, the Applicant remains subject to enforcement action for engaging in the unpermitted development described herein and any future violations of the conditions, unless and until staff's recommended conditions of approval included in the underlying permit (and as modified in this permit amendment) are satisfied.

## **H. LOCAL COASTAL PROGRAM**

Section 30604 (a) of the Coastal Act states:

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

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

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

The proposed development is located within multiple permit jurisdictions – the subject 0.17-acre area is located within the Commission's retained jurisdiction; the original 791 Barracuda Way property is located within the City of Laguna Beach's certified jurisdiction. When the Commission certified the Land Use Plan (LUP) for southern Laguna Beach in 1992, the Commission identified Hobo Canyon (formerly known as Mayer Group/Mahboudi-Fardi and Esslinger Property) as an area raising Coastal Act concerns that were not adequately addressed in the LUP. The Commission therefore carved Hobo Canyon out as an area of deferred certification to which the LUP did not apply. The area remains uncertified.

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

#### **I. 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). The City determined that in accordance with CEQA, the project is Exempt from Provisions of CEQA citing CEQA Guidelines section 15305. However, Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The project as conditioned incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. 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. CDP Application File No. 5-21-0903 and associated materials
1. Appeal No. A-5-LGB-13-0235
2. CDP Application File No. 5-19-0909 and associated materials
3. CDP Amendment Application File No. 5-19-0909-A1 and associated materials
4. California Coastal Commission Notice of Violation of the Coastal Act dated September 18, 2013 sent to Jacqueline Sanson;
5. California Coastal Commission Notice of Violation of the Coastal Act dated May 4, 2007 sent to the Athens Group and Laguna Terrace Park, LLC;
6. Consent Cease and Desist Order No. CCC-10-CD-01 and Restoration Order CCC-10-RO-01
7. City of Laguna Beach Lot Line Adjustment No. 95-04;
8. City of Laguna Beach Lot Line Adjustment No. 95-01;
9. Biological Technical Report for Proposed Fuel Modification Zones 10 (Upper) & 11 Laguna Beach, Orange County, California prepared by Glenn Lukos Associates dated August 2019 for CDP Application No. 5-19-0200 (City of Laguna Beach, Fire Department Fuel Modification Application)
10. Technical Memorandum prepared by Glenn Lukos Associates dated January 10, 2020
11. Settlement Agreement (*Sanson v. California Coastal Commission Orange County Superior Court Case No. 30-2020-01140041-CU-WM-CXC*)

## **APPENDIX B: SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-19-0909 AND CDP AMENDMENT NO. 5-19-0909-A1**

NOTE: This Appendix B provides a list of all special conditions imposed pursuant to Coastal Development Permit 5-19-0909, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-19-0909-A1. Thus, this Appendix B provides an aggregate list of all currently applicable adopted standard and special conditions.

### **SPECIAL CONDITIONS**

#### **1. Open Space and Conservation Deed Restriction.**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the 0.17-acre open space area depicted on [Exhibit 1, Page 1](#), except for:
  - 1) The removal of unpermitted structural improvements (including, but not limited to, unpermitted portions of patios, and unpermitted fencing, and railroad curb ties and the removal of non-native vegetation, revegetation with locally indigenous, native vegetation, and installation of temporary above-ground irrigation to provide for the establishment of native plant species as contained in the approved Revegetation Plan pursuant to **Special Condition 2**. (A portion of the on-grade patio and a portion of the approximately 5.17-foot-high pool fence are authorized by this permit and allowed to be retained in the open space area as depicted in [Exhibit 4, Page 5](#))
  - 2) Any additional habitat restoration/enhancement activities, only as authorized in writing by the ED or the Coastal Commission under an amendment to this permit or a new coastal development permit.
  - 3) Necessary vegetation trimming, thinning, or removal for fuel modification purposes, only as authorized in writing by the ED or the Coastal Commission under an amendment to this permit or a new coastal development permit.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- C. The deed restriction shall be recorded free of prior liens, and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- D. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.



## 2. Final Project/Revegetation Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full-sized sets of a final revised Revegetation Plan, which shall be in substantial conformance to the plans submitted to the Coastal Commission's South Coast District Office on July 31, 2019, except that it shall include and be consistent with the following provisions:
- i. All unpermitted structural improvements (including unpermitted portions of fencing and patios, and railroad curb tie steps) encroaching into the 0.17-acre open space and conservation deed restricted area must be removed.
  - ii. Replacement plant species shall consist of only drought tolerant, non-invasive native plant species appropriate for coastal Orange County and the Laguna Beach canyons (e.g. coastal sage scrub and chaparral species). No plant species listed as problematic or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
  - iii. The *existing* pine tree (*Pinus halepensis*), strawberry tree (*Arbutus unedo*), and xylosma evergreen tree/shrub (*Xylosma congestum*) may be maintained but only with authorization from the City of Laguna Beach Fire Department pursuant to **Special Condition 3**. These three (3) trees/shrubs cannot be replaced if at any time in the future they die or are removed.
  - iv. Temporary, above-ground irrigation is permitted for a maximum of three years after planting begins or until the revegetation has become established, whichever occurs first. No permanent irrigation is permitted.
  - v. Night lighting on the patio is prohibited, which applies from dusk to dawn each day.
  - vi. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the revegetation plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
  - vii. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental revegetation plan for the review and written approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- B. **WITHIN 60 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant in writing for good cause, the permittee shall implement the revegetation plan and shall remove all unpermitted structures in conformance with the approved final plans of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
  - C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
- 3. **City of Laguna Beach, Fire Department Approval.** PRIOR TO ISSUANCE OF THIS COASTAL DELVEOPMENT PERMIT, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall provide to the Executive Director a copy of a permit issued by the City of Laguna Beach, Fire Department (LBFD) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the LBFD. Such changes shall not be incorporated into the project until the applicant obtains an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion, slope failure, landslides, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 5. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The applicant shall comply with the following construction-related requirements:
  - a. No demolition or construction materials, debris, equipment or waste shall be placed or stored in any location where it may enter or impact sensitive habitat areas, streams, wetlands, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
  - b. The permittees shall employ Best Management Practices (BMPs) to ensure that erosion is minimized and the stream is protected from sedimentation.
  - c. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
  - d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of

sediment and other debris that may be discharged into coastal waters or habitat areas.

- e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
  - f. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
  - g. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
  - h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
  - i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
  - j. The discharge of any hazardous materials into any receiving waters or habitat areas shall be prohibited.
  - k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
  - l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
  - m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit 5-19-0909. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit 5-19-0909. Accordingly, any future improvements shall require an amendment to Permit 5-19-0909 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property;

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and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

8. **Application Fee.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for after-the-fact development, which equals \$11,241.