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Date: November 19, 2020

To: Commissioners and Interested Persons

From: Steve Hudson, District Director
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Subject: **County of Santa Barbara Local Coastal Program Amendment No. LCP-4-STB-19-0157-1 (2019 General Package) for December 10, 2020 Commission Meeting**

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, reject proposed Santa Barbara County LCP Amendment No. LCP-4-STB-19-0157-1, as submitted, and approve the amendment only if modified pursuant to two suggested modifications. The suggested modifications are necessary to ensure that the proposed Implementation Plan/Coastal Zoning Ordinance (IP/CZO) amendment is consistent with and adequate to carry out the policies of the County's certified Land Use Plan (LUP). The motions and resolutions for Commission action can be found starting on **page 7**. The recommended suggested modifications language can be found in **Exhibit 1**.

The proposed amendment includes a number of changes to clean up different parts of the existing IP/CZO; however, the primary component of the amendment request involves modifying the processing and permitting requirements for certain types of commercial telecommunication facilities. The amendment is designed to make the LCP consistent with recent federal legislation (Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, 47 U.S.C. § 1455) and its associated implementing regulations (47 C.F.R. Sections 1.6001–1.6100). This staff report will refer to both collectively as the "Spectrum Act". The Spectrum Act includes provisions to restrict local governments from imposing a discretionary permitting process for certain modifications to existing telecommunication facilities that do not substantially change the physical dimensions of an existing wireless tower or base station and that involve co-location of new transmission equipment, or the removal or replacement of transmission equipment. The amendment also includes permit procedure changes related to small wireless facilities to ensure consistency with the Spectrum Act's limits on a local jurisdiction's ability to regulate the deployment of "small wireless facilities" and reduces the time period (or "shot clock") that a local government has to take action on permit applications for such facilities. This shot clock is 60 days for collocated small

wireless facilities and 90 days for locating small wireless facilities on new structures.

The Commercial Telecommunications section of the existing IP/CZO (Section 35-144F) currently divides telecommunications facilities into four categories or “tiers.” Tier 1 projects, which are non-exempt temporary facilities and hub sites that are located within an existing building and do not require new construction, are required to obtain Coastal Development Permits (CDPs) that can be approved by the Planning Director without a public hearing in some cases (unless the facility is in the appeals jurisdiction of the Coastal Commission and a public hearing is not waived or is requested). Tier 2 projects consist of certain very small facilities, tenant improvements, and collocated facilities and are required to obtain a Development Plan (a discretionary permit) in addition to a CDP. These may be approved by the Director without a public hearing in some cases, unless a public hearing is requested, in which case a noticed public hearing would be held before the Zoning Administrator or the Planning Commission. Tier 3 and Tier 4 projects consist of the larger and more complex telecommunication projects that require a Conditional Use Permit (CUP) in addition to a CDP that must be approved by the Zoning Administrator or the Planning Commission in a noticed public hearing.

The primary issues raised by the amendment request relate to the proposed changes to the CDP and public hearing procedures for certain Tier 1 and Tier 2 commercial telecommunication projects designed to expedite these projects to meet the federal deadlines discussed above. The proposed amendment would add a new Tier 1 project category (1(b)) to the tiered permitting structure of IP/CZO Section 35-144F for commercial telecommunication facilities to allow for modifications to an existing eligible wireless telecommunication facility with a ministerial Zoning Clearance action. As provided in the Spectrum Act and proposed in this amendment, an eligible facility request can only modify an existing wireless facility that has already been permitted by the County for such use, and that involves either the collocation of new transmission equipment or the removal or replacement of transmission equipment, as long as the proposed modifications would not “substantially change” the physical dimensions of the existing wireless tower or base station, as defined by the Spectrum Act. Federal law requires local governments to approve eligible Spectrum Act facility modifications within 60 days of application submittal. To meet this deadline, the County proposes to process these Tier 1(b) Spectrum Act facility modification projects through a ministerial Zoning Clearance, rather than a CDP, in order to expedite these projects to meet the federal deadline. However, a Zoning Clearance is not a type of CDP action under the County’s IP/CZO and not all facility modifications that qualify as Tier 1(b) projects may be exempt from the requirement to obtain a CDP pursuant to the County’s certified IP/CZO, the Coastal Act, and the Commission’s Regulations. Section 35-51B of the County’s IP/CZO and Section 13253 of the Commission’s Regulations identify the classes of development associated with improvements to existing structures that require a CDP because they involve a risk of adverse environmental effect.

Facility modifications that involve collocation of new transmission equipment or the removal or replacement of transmission equipment in certain locations can have the potential to result in impacts to coastal resources. The modifications can impact public views of the coast and the ocean, or if located within or immediately adjacent to environmentally sensitive habitat areas (ESHA), can result in both direct and/or indirect impacts to surrounding habitat and wildlife, such as creating a predator perch, shadow

effects, or noise disturbance. Projects that involve a risk of such impacts require approval of a CDP because it is through the review and approval of a CDP that the policies of the certified LCP are invoked, impacts are assessed, project alternatives are considered, and mitigation measures are incorporated. Without this process, adequate coastal resource protection cannot be assured. Therefore, to be consistent with the permitting requirements of the LCP and Coastal Act, and to adequately protect coastal resources, Staff is recommending Suggested Modification 1 to clarify that a CDP is required for Tier 1(b) Spectrum Act facility modifications, unless they are determined to be exempt from the requirement to obtain a CDP. When a CDP is required for eligible Tier 1(b) projects, it can be approved by the Director without a public hearing, unless the facility is in the appeals jurisdiction of the Coastal Commission and a public hearing is not waived by County staff or a hearing is requested by a member of the public. In cases where a facility modification is proposed within the appeals jurisdiction of the Coastal Commission, the County would need to process the application more quickly in order to comply with the 60-day deadline for County action under federal law and to account for the potential need for a public hearing under the LCP if a hearing is requested by a member of the public receiving notice of the County's decision to waive the hearing requirement ("noticed recipient").

The proposed amendment also includes expanding the scope of telecommunication facilities that may be processed as Tier 2(a) projects through a Director-approved Development Plan and CDP. Instead of Tier 2(a) projects being limited to "very small facilities" in non-residential zones only, the proposed amendment would allow slightly larger "small wireless facilities" in all zones, including residential zones, subject to size limitations and additional standards as defined by the FCC Order. Currently, for all wireless facilities proposed within residential zones, no matter how small the facility, they are classified as Tier 4 projects that require a major CUP and CDP with a public hearing before the County or the Montecito Planning Commission. The proposed amendment would serve to streamline the permit process for small wireless facilities in order to comply with the requirements of the FCC Order. Although the proposed amendment includes size limitations regarding what facilities may be processed as a Tier 2(a) project, instead of a Tier 3 or 4 project, the maximum allowable height for any antennas and associated support structures for such facilities would not change, and the requirement for a CDP would not change. The only difference is in how the permit is processed and the hearing requirement.

The proposed amendment would also revise the public hearing requirement for all eligible Tier 2 projects (small wireless facilities, tenant improvements, and collocated facilities) to remove the ability for a noticed recipient to request a public hearing. As such, the proposed amendment would allow Director-level approval of the CDP and Development Plan for Tier 2 projects without an opportunity for public hearing upon request. However, Section 13566 of the Commission's regulations requires public participation in the form of at least one public hearing for all appealable CDP's, and Section 30624.9 of the Coastal Act only allows public hearing requirements to be waived for minor development that meets certain requirements after public notice is provided. Section 30624.9 also provides for public participation in the form of a public hearing if a noticed recipient requests a hearing. To comply with the public hearing mandate of the Coastal Act for CDP's, Staff is recommending Suggested Modifications

1 and 2 to restore the public hearing requirement and noticing language for Tier 2 project applications that is proposed to be deleted from Subsection B of Section 35-144F (Commercial Telecommunications Facilities) and Section 35-181.8 (Contents of Notice) of the County's IP/CZO. These sections provide that the Director shall act as the decision-maker on a Development Plan and CDP for Tier 2 projects, unless a public hearing is requested. Public notice of a Director-level decision must be mailed 10 days prior to the Director's decision, and if a public hearing is requested during that time, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or the Planning Commission in a noticed public hearing. Suggested Modifications 1 and 2 also clarify that this hearing provision is only applicable to facilities that are appealable to the Coastal Commission since the Coastal Act requires at least one public hearing to be held for appealable development if one is requested. In cases where a Tier 2 facility is proposed within the appeals jurisdiction of the Coastal Commission, the County would need to process the application more quickly in order to comply with the 60 and 90 day deadlines for County action under federal law and to account for the potential need for a public hearing under the LCP if a hearing is requested by a noticed recipient. The suggested modifications were developed in cooperation with County staff.

For the reasons described in this report, Staff recommends that the Commission find the proposed IP/CZO amendment, only if modified as suggested, consistent with and adequate to carry out the policies of the County's certified LUP and related Coastal Act requirements.

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EXHIBITS

[Exhibit 1 - Suggested Modifications to the Proposed Coastal Zoning Ordinance Amendment](#)

[Exhibit 2 – County of Santa Barbara Ordinance No. 5095 - Proposed Amendment Text](#)

I. PROCEDURAL OVERVIEW

A. Standard of Review

The Coastal Act provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)

The Commission may suggest modifications... (Section 30513)

The standard of review for the proposed amendment to the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) component of the County of Santa Barbara's certified Local Coastal Program (LCP), pursuant to Sections 30513 and 30514 ("proposed amendments to a certified [LCP] shall be submitted to, and processed by, the commission in accordance with the applicable procedures ... specified in Sections 30512 and 30513...") of the Coastal Act, is that the Commission must approve it unless the proposed IP/CZO amendment is not in conformance with, or is inadequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified County of Santa Barbara LCP. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County of Santa Barbara LUP as guiding policies pursuant to Policy 1-1 of the LUP.

B. Procedural Requirements

If the Commission certifies the LCP amendment as submitted, no further Board of Supervisors action will be necessary pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the Board of Supervisors, and the LCP amendment is not effective, pursuant to Section 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the Board of Supervisors may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the Board of Supervisors' acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if

the Commission concurs with the Executive Director's Determination that the Board of Supervisors' action in accepting the suggested modifications approved by the Commission for this LCP Amendment is legally adequate. If the Board of Supervisors does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

C. Public Participation

Section 30503 of the Coastal Act requires the provision of maximum opportunities for public input in preparation, approval, certification and amendment of any LCP. The County held a series of public hearings regarding the amendment. The hearings were noticed to the public consistent with Section 13515 of Title 14 of the California Code of Regulations. Notice of the Commission's consideration of the subject amendment has been distributed to all known interested parties.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS FOR THE IMPLEMENTATION PLAN AMENDMENT

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided prior to each resolution.

A. Denial of the Implementation Plan Amendment As Submitted

MOTION I:

I move that the Commission reject County of Santa Barbara Implementation Plan Amendment No. LCP-4-STB-19-0157-1 as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment No. LCP-4-STB-19-0157-1 and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby **denies** certification of the County of Santa Barbara's Implementation Plan/Coastal Zoning Ordinance Amendment No. LCP-4-STB-19-0157-1, as submitted, and adopts the findings set forth below on grounds that the Implementation Plan Amendment, as submitted, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen

the significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment as submitted.

B. Certification of the Implementation Plan Amendment with Suggested Modifications

MOTION II:

I move that the Commission certify County of Santa Barbara Implementation Plan Amendment No. LCP-4-STB-19-0157-1 if it is modified as suggested in this staff report.

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of this motion will result in certification of Implementation Plan Amendment No. LCP-4-STB-19-0157-1 with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby **certifies** the County of Santa Barbara Implementation Plan Amendment No. LCP-4-STB-19-0157-1, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment, if modified as suggested, 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 Implementation Plan Ordinance Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. FINDINGS FOR DENIAL, AS SUBMITTED, AND APPROVAL OF THE AMENDMENT, AS SUGGESTED TO BE MODIFIED

The following findings support the Commission's denial of the proposed Implementation Plan/Coastal Zoning Ordinance (IP/CZO) Amendment as submitted, and approval of the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) Amendment if modified as indicated in **Exhibit 1 (Suggested Modifications)** of this staff report. The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The County of Santa Barbara is requesting an amendment to the IP/CZO portion of its certified Local Coastal Program (LCP) to implement new regulations and revisions

regarding commercial telecommunications facilities, recordable documents, time extensions, and to make other minor corrections and revisions. The full text of the County's proposed changes to the IP/CZO are included as Exhibit 2 of this report, and are summarized below:

Commercial Telecommunications Facilities

The proposed amendment would modify processing and permitting requirements for certain types of commercial telecommunication facilities. The amendment is designed to be consistent with recent federal legislation (Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, 47 U.S.C. § 1455) which includes provisions to restrict local governments from imposing a discretionary permit process for certain modifications to existing telecommunication facilities that do not substantially change the physical dimensions of an existing wireless tower or base station and that involve co-location of new transmission equipment, or the removal or replacement of transmission equipment. The amendment also includes permit procedure changes related to small wireless facilities to ensure consistency with a new Federal Communications Commission Order. On September 26, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order 18-133 (FCC Order) and promulgated 47 C.F.R. Sections 1.6001–1.6100 in order to implement the above legislation. For the purposes of this report, the Spectrum Act and its implementing regulations will be referred to collectively as the "Spectrum Act." The Spectrum Act limits a local jurisdiction's ability to regulate the deployment of "small wireless facilities." It establishes new standards for permit fees and aesthetic requirements for small wireless facilities, and reduces the time period (or "shot clock") that a local government has to take action on permit applications for such facilities—60 days for collocated small wireless facilities and 90 days for locating small wireless facilities on new structures.

The Commercial Telecommunications section of the existing IP/CZO (Section 35-144F) currently divides telecommunications facilities into four categories or "tiers." Tier 1 projects, which are non-exempt temporary facilities and hub sites that are located within an existing building and do not require new construction, are required to obtain Coastal Development Permits (CDPs) that can be approved by the Planning Director without a public hearing in some cases (unless the facility is in the appeals jurisdiction of the Coastal Commission and a public hearing is not waived by the County or a hearing is requested by a member of the public). Tier 2 projects consist of certain very small facilities, tenant improvements, and collocated facilities and are required to obtain a Development Plan (a discretionary permit) in addition to a CDP that may be approved by the Planning Director without a public hearing in some cases (unless a public hearing is requested). Public notice of a Director-level decision must be mailed 10 days prior to the Director's decision, and if a public hearing is requested during that time, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or the Planning Commission in a noticed public hearing. Tier 3 and Tier 4 projects consist of larger and more complex telecommunication projects that require a Conditional Use Permit (CUP) in addition to a CDP that must be approved by the Zoning Administrator or the Planning Commission in a noticed public hearing.

Proposed Tier 1 Permit Structure Changes

Under the proposed amendment, a new subsection would be added to the tiered permitting structure of Section 35-144F for commercial telecommunication facilities. Tier 1 projects consist of the most basic project types that generally have little potential for environmental impacts, and are permitted through a Coastal Development Permit (CDP) only. With this amendment, a new Tier 1 project category would be added to allow for modifications to an existing eligible wireless telecommunication facility with to be approved with only a ministerial Zoning Clearance, in compliance with the Spectrum Act. As provided in the Spectrum Act and proposed in this amendment, an eligible facility request can only modify an existing wireless facility (i.e. a structure built for the sole purpose of supporting FCC-licensed antennas and associated facilities, or a base station) that has already been permitted by the County for such use (i.e. permitted by a Development Plan, Minor Conditional Use Permit (CUP), or Major CUP, along with a concurrent CDP), and that involves either the collocation of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment. Such modifications would not qualify as a Tier 1 project with a ministerial Zoning Clearance if the proposed modifications would substantially change the physical dimensions of the existing wireless tower or base station, as defined by the Spectrum Act. The addition of the new permit tier would allow for any modifications that would not substantially change the dimensions of the facility to be processed through a Zoning Clearance, as they would substantially conform to the existing CDP, and Development Plan, Minor CUP, or Major CUP.

Proposed Tier 2 Permit Structure Changes

The proposed amendment also includes two changes to the Tier 2 project permit structure. Currently, Tier 2 projects consist of smaller types of facilities located in any zone except residential, and are permitted with a Development Plan and concurrent CDP approved by the County's Planning Director. The first change for this tier is to the size and scope of Tier 2(a) projects from their current designation of "very small facilities" (antennas and associated above ground equipment of not more than a combined volume of one cubic foot), to include slightly larger "small wireless facilities" with size limitations and additional standards defined by 47 C.F.R. § 1.6002(l) (antennas no more than three cubic feet in volume and associated equipment no more than 28 cubic feet in volume). The amended Tier 2(a) includes two standards carried over from "very small facilities"; new objective standards regarding colors and materials, and a new requirement for architectural integration if an antenna were to be mounted on the façade of a building. The permit requirement would continue to be a Director-approved Development Plan with a concurrent CDP. The second change to the Tier 2 permit structure would allow Tier 2(a) small wireless facilities to be permitted in all zones, including residential. Currently, for all wireless facilities proposed within residential zones, no matter how small the facility, they are permitted under Tier 4 and require a major CUP and CDP, which requires a public hearing before the County or the Montecito Planning Commission. These proposed changes would serve to streamline the permit process for small wireless facilities in order to comply with the requirements of the Spectrum Act.

Proposed Public Hearing and Noticing Requirement Changes for Tier 2 Projects

As mentioned previously, one of the main purposes of this amendment is to modify permit procedures to allow the County to comply with the deadlines imposed by the Spectrum Act. Currently, the required CDP and Development Plan for Tier 2 facility projects may be acted upon by the Director and do not mandate a public hearing unless a public hearing is requested. A notice of a pending decision must be mailed ten days prior to the Director's decision and include a statement that the person to whom the notice was mailed may request a public hearing. If a public hearing is requested during the ten day noticing period, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or the Planning Commission in a noticed public hearing. The County has stated that the current hearing process does not provide adequate time for the County to process Tier 2 telecommunication facility projects within the 60 or 90 day timelines required by the FCC Order; thus, the amendment also proposes to revise the Tier 2 permit requirements to remove the option for a noticed recipient to request a public hearing for Tier 2 facility projects. The County asserts that holding a public hearing upon request would not be feasible within the 60 or 90 day deadlines for action that are mandated by the federal regulations. As such, the proposed amendment would allow a Director-level approval of the CDP and Development Plan for Tier 2 projects without an opportunity for public hearing upon request. However, all other noticing requirements and the ability to appeal a Director's decision would remain unchanged.

Proposed Changes to Required Findings for Telecommunication Projects

In order to bring the telecommunication facility regulations of IP/CZO Section 35-144F into accordance with the Spectrum Act, the amendment proposes to remove the "significant gap" and "least intrusive means" findings from the required findings to approve a telecommunications facility. Currently, the LCP requires applicants to demonstrate, and decision makers to find, that (1) the approval of a wireless facility in a certain location is necessary to provide coverage for an area that would not otherwise be served by the carrier proposing the facility, and (2) the applicant has demonstrated that the proposed facility design and location are the least intrusive means feasible of filling that gap in coverage or capacity. These findings were adopted on the bases of the test applied by the 9th Circuit Court of Appeal in *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009) to determine if a local regulation prohibits, or has the effect of prohibiting, personal wireless service under the Telecommunications Acts of 1996. In implementing these regulations, the FCC rejected the use of the 9th Circuit's "significant gap/least intrusive means" test, and instead reaffirmed the test set forth in the FCC's *California Payphone* decision (*California Payphone Ass'n*, 12 FCC Rcd 14191 (1997)), which determined that a local regulation must "materially limit or inhibit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment" in order to constitute an "effective prohibition." Therefore, the amendment deletes the "significant gap" and "least intrusive means" findings from Section 35-144F of the IP/CZO in order to bring it into conformance with the 2018 FCC Order.

Recordable Documents

Another component of the proposed amendment request is to add a new Recordable Documents section (Section 35-179D) to the IP/CZO to authorize the recordation of certain documents with the Santa Barbara County Clerk-Recorder to ensure consistency with state law. California Government Code Section 27201(a)(1)(A) allows the County Clerk-Recorder to record documents authorized by local ordinance and this law is the basis for the County to record certain Notices to Property Owners (NTPO) that are not otherwise statutorily authorized. The County, through mitigation measures and conditions of approval on permits, currently requires the recordation of a variety of documents, including NTPOs. Some of these documents are statutorily authorized while others are not, nor are they authorized by a local ordinance. This inconsistency with state law has led to complications when a property owner attempts to record a document in compliance with permit conditions of approval and the County Clerk-Recorder determines that the documents can't be recorded because it is not authorized by statute or local ordinance. The proposed amendment would add a new section (Section 35-179D) to the IP/CZO, which authorizes the recordation of NTPOs and other documents (such as notices and agreements) when required pursuant to permit conditions of approval. The amendment also identifies uses for which permit conditions of approval typically require the recordation of said documents.

Time Extensions Due to Economic Hardship

As part of the subject amendment request, an expired provision regarding time extensions due to economic hardship will be deleted from the IP/CZO. Following the economic downturn of the late 2000s, a new provision (Section 35-179B.D.8) was added to the IP/CZO, which allowed the Director to extend the expiration of a planning permit or entitlement for an additional 24-month period, provided the Director determined it was necessary due to an economic hardship. Included within the provision of Section 35-179B.D.8 was the stipulation that the subsection "shall expire, and be of no further force or effect, on January 12, 2015, unless extended by ordinance". The subject amendment proposes to delete these provisions, as they were not extended by ordinance and have not been in effect since January 12, 2015.

Floor Below Grade Adjustment Figures

The LCP amendment also includes a change to Section 35-191 (Summerland Community Plan Overlay) of the certified IP/CZO which currently includes Figures 13-1, 13-2, and 13-3 that illustrate the calculation of the floor below grade adjustment. This adjustment is used to determine the amount of floor area of a "floor below grade" (a basement or other floor of living space that is wholly or partially located below the existing grade of the project site) that must be included in the total floor area of a residence for the purpose of conforming to the maximum total floor area standard in the Summerland Community Plan area of the County. The amendment includes minor revisions to these figures to provide a clearer and more illustrative example of the floor below grade adjustment. The proposed changes would also renumber and title the figures as Figure 13-1. The methodology to calculate the floor area would not change.

Other Minor Changes

The proposed amendment also includes other minor changes, such as amending Section 35-58 (Definitions) of the IP/CZO to add a new definition (“Telecommunication Facility, Base Station”) to comply with federal telecommunication regulations, and to reorder and renumber Division 15 (Montecito Community Plan Overlay District), Division 16 (Toro Canyon Plan Overlay District), and Division 18 (Gaviota Coast Plan Overlay) of the IP/CZO to Division 15 (Toro Canyon Plan Overlay District), Division 16 (Montecito Community Plan Overlay District), and Division 17 (Gaviota Coast Plan Overlay). No other text changes are proposed within any of these Divisions. All corresponding references to those Divisions in the LCP would be corrected.

B. Background Federal Preemption

A primary component of the subject LCP amendment includes changes to the regulation of wireless service facilities that are also regulated by federal law. The proposed amendment was necessitated by changes in federal law enacted prior to the submission of this LCP amendment and which affect the County’s ability to process commercial telecommunications projects in a timely manner. With this understanding, the consideration of this LCP amendment must take into account changes in federal law, as further discussed below.

The Federal Telecommunications Act of 1996 (the Telecommunications Act) established federal regulatory authority over the deployment of personal wireless telecommunications facilities across the nation. The Telecommunications Act preserved local zoning authority over the placement, construction, and modification of personal wireless service facilities. That local authority is subject to several limitations, including that local regulation must not “prohibit or have the effect of prohibiting” the provision of personal wireless services, and local governments must act on applications to deploy personal wireless facilities “within a reasonable period of time”. In 1997, the County adopted a tiered permitting structure in order to comply with the new regulations. In 2011, the County amended the tiered permitting structure to increase public hearings for certain projects, increase public noticing, and establish requirements and findings regarding the existence of a gap in coverage or capacity and alternative siting (least intrusive means analysis).

In November of 2009, the FCC adopted and released a Declaratory Ruling concerning provisions in 47 U.S.C. Sections 253 (Removal of Barriers to Entry) and 332(c)(7), regarding state and local review of wireless facility siting options and interpreting the requirement that local governments act on applications “within a reasonable period of time”. This Declaratory Ruling provided direction that affected the County’s processing requirements. The FCC found that a “reasonable period of time” was presumptively 90 days for collocated facilities applications and 150 days for all other applications. If state or local governments do not act upon applications within those timeframes, then a personal wireless service provider may claim that a prohibited “failure to act” under 47 U.S.C. Section 332(c)(7) has occurred and personal wireless service providers may seek redress in court within 30 days, as provided in 47 U.S.C. Section 332(c)(7)(B)(v). The state or local government would have the opportunity to rebut the presumption of

reasonableness. In addition, under California Government Code Section 65964.1, an application for a personal wireless facility may be deemed approved if the County does not take action on the application in accordance with the time periods and procedures established by the FCC. The federal government has since enacted a new law and promulgated new regulations that affect the County's review of wireless telecommunications facilities, which have required the County to amend the zoning ordinance to comply with these regulations. The Spectrum Act required that local governments ministerially approve an "eligible facilities request" for a modification of an "existing wireless tower or base station" that does not "substantially change the physical dimensions" of that facility. The Spectrum Act also established new timeframes (known as "shot clocks") for these applications, requiring the County to approve the modification requests within 60 days of application submittal. The Spectrum Act did not modify the original shot clocks for other collocated facilities applications (90 days) and applications for facilities that are not collocated (150 days).

Additionally, on September 16, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order 18-133 (FCC Order). The FCC Order limits a local jurisdiction's ability to regulate the deployment of "small wireless facilities", and establishes new standards for permit fees and aesthetic requirements for small wireless facilities. The Order also reduces the shot clocks to 60 days for collocated small wireless facilities and 90 days for small wireless facilities located on new structures. The goal of the new FCC Order is to ensure that the deployment of small wireless facilities is not materially impeded by local government regulations. According to the County, the proposed amendment modifies permit processing procedures to comply with the recent FCC Order regarding shorter processing time requirements, through revisions to the tiered permitting structure and to the contents of notice. As described further below, the suggested modifications would change the processing requirements to conform with the coastal development permit public hearing requirements of the Coastal Act while also allowing compliance with the shorter processing timelines required by the FCC Order.

C. Consistency Analysis

The standard of review for the proposed amendment to the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) of the certified Local Coastal Program (LCP), pursuant to Section 30513 and 30514 of the Coastal Act, is whether the IP/CZO, with the proposed amendment, would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of Santa Barbara County's certified LCP. The proposed amendment's consistency with the certified LUP is detailed below.

Commercial Telecommunication Facilities

All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as

otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.

In order to ensure that new development is sited in areas able to accommodate it and where it will not have significant cumulative impacts on coastal resources, as required by Section 30250 of the Coastal Act (incorporated by reference into the certified LUP), the siting and design of new development must adhere to the requirements of other applicable policies of the certified LUP. Such policies include but are not limited to, policies and provisions regarding coastal protection and the protection of agricultural productivity, bluff top development, environmentally sensitive habitat areas, public access, visual resources, and shoreline processes and development.

The County's LUP does not contain details about CDP processing and procedures, as those details are addressed in the IP/CZO. The LUP does, however, provide policies and provisions to protect coastal resources, and the processing of CDPs is one of the key means of implementing these protection policies. Since the proposed amendment modifies the processing provisions of CDPs related to commercial telecommunication facilities, those portions of the amendment must also be reviewed for consistency with the relevant permit processing requirements of the Coastal Act and the Commission's Regulations.

The proposed amendment would add a new Tier 1 project category, Tier 1(b), to the tiered permitting structure of IP/CZO Section 35-144F for commercial telecommunication facilities. This new category would allow for modifications to an existing eligible wireless telecommunication facility without a CDP and with only a ministerial Zoning Clearance, in an attempt to comply with the Spectrum Act. As provided in the Spectrum Act and proposed in this amendment, an eligible facility request can only modify an existing wireless facility (i.e. a structure built for the sole purpose of supporting FCC-licensed antennas and associated facilities, or a base station) that has already been permitted by the County for such use (i.e. permitted by a Development Plan, Minor Conditional Use Permit (CUP), or Major CUP, along with a concurrent CDP), and that involves either the collocation of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.

Such modifications would not be allowed to be processed as a Tier 1(b) project (i.e. with just a ministerial Zoning Clearance) if the proposed modifications would "substantially change" the physical dimensions of the existing wireless tower or base station, as defined by the Spectrum Act (47 C.F.R. § 1.6100). For wireless towers located within a public right-of-way or base station, a substantial change would exist if (1) the

modification increases the height of the structure by more than 10 percent, or by more than 10 feet, whichever is greater, or (2) the modification adds an appurtenance to the body of the structure by more than six feet, or (3) the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or (4) the modification involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure. 47 C.F.R. § 1.6100(b)(7)(i). For wireless towers not located within the public right-of-way, a substantial change would exist if (1) the modification increases the height of the structure by more than 10 percent, or by the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet, whichever is greater, or (2) the modification adds an appurtenance to the body of the tower by more than twenty feet, or by more than the width of the tower structure at the level of the appurtenance, whichever is greater. 47 C.F.R. § 1.6100(b)(7)(ii).

When proposed modifications to an existing wireless tower or base station do not exceed the physical dimensions identified above, federal law requires local governments to approve or deny¹ the modifications within 60 days of application submittal. The County proposes to process these Tier 1(b) Spectrum Act facility modification projects through a ministerial Zoning Clearance, rather than a CDP, in order to expedite these projects to meet the federal deadline. However, a Zoning Clearance is not a type of CDP action under the County's IP/CZO and not all facility modifications that qualify as Tier 1(b) projects may be exempt from the requirement to obtain a CDP pursuant to the permit exemptions identified in the County's certified IP/CZO as well as in Section 30610 of the Coastal Act and further specified in Chapter 6 of the Commission's regulations. Section 35-51B of the County's IP/CZO and Section 13253 of the Commission's regulations identify the classes of development associated with improvements to existing structures that require a CDP because they involve a risk of adverse environmental effect.

While it is likely that many projects that fall under the guidelines of 47 C.F.R. § 1.6100(b)(7)(i)-(ii) will also qualify for an exemption, some may not. Facility modifications that involve collocation of new transmission equipment or the removal or replacement of transmission equipment in certain locations can have the potential to result in impacts to coastal resources. The modifications can impact public views of the coast and the ocean, or if located within or immediately adjacent to environmentally sensitive habitat areas (ESHA), can result in direct and/or indirect impacts to surrounding habitat and wildlife, such as creating a predator perch, shadow effects or noise disturbance. Projects that involve a risk of such impacts require approval of a CDP because it is through the review and approval of a CDP that the policies of the certified LCP are invoked, impacts are assessed, project alternatives are considered, and mitigation measures are incorporated. Without this process, adequate coastal resource protection cannot be assured.

¹ 47 C.F.R. § 1.6100(c) says, "A State or local government may not deny and shall approve any eligible facilities request" and Subsection (c)(4) says, "In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted."

Therefore, to be consistent with the permitting requirements of the LCP and Coastal Act and to adequately protect coastal resources, **Suggested Modification 1** is necessary to clarify that a CDP is required for Tier 1(b) Spectrum Act facility modifications, unless determined to be exempt from the requirement to obtain a CDP, in which case, only a Zoning Clearance would be required. When a CDP is required for eligible Tier 1(b) projects, it can be approved by the Director without a public hearing, unless the facility is in the appeals jurisdiction of the Coastal Commission and a public hearing is not waived by the county or a hearing is not requested by a member of the public. In cases where a facility modification is proposed within the appeals jurisdiction of the Coastal Commission, the County would need to process the application more quickly in order to comply with the 60 day deadline for County action under federal law and to account for the potential need for a public hearing under the LCP if a hearing is requested by a noticed recipient.

The proposed amendment also includes expanding the scope of telecommunication facilities that may be processed as Tier 2(a) projects through a Director-approved Development Plan and CDP. Instead of Tier 2(a) projects being limited to “very small facilities” in non-residential zones only, the proposed amendment would allow slightly larger “small wireless facilities” in all zones, including residential zones, subject to size limitations and additional standards as defined by the Spectrum Act. Currently, all wireless facilities proposed within residential zones, no matter how small the facility, are permitted as Tier 4 projects that require a major CUP and CDP with a public hearing before the County or the Montecito Planning Commission. The proposed amendment would serve to streamline the permit process for small wireless facilities in order to comply with the requirements of the Spectrum Act. Although the proposed amendment includes size limitations regarding what facilities may be processed as a Tier 2(a) project, instead of a Tier 3 or 4 project, the maximum allowable height for any antennas and associated support structures for such facilities would not change, and the requirement for a CDP would not change. The only difference is in how the permit is processed and the hearing requirement.

Currently, the required CDP and Development Plan for Tier 2 facility projects may be acted upon by the Planning Director and do not mandate a public hearing unless a public hearing is requested by a noticed recipient. A notice of a pending decision must be mailed to residents of property located within a 300 foot radius of the parcel at least ten days prior to the Director decision and include a statement that the person to whom the notice was mailed may request a public hearing. If a public hearing is requested during the ten day noticing period, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or the Planning Commission in a noticed public hearing. The County has stated that the current hearing process does not provide adequate time for the County to process Tier 2 telecommunication facility projects within the 60 or 90 day timelines required by the Spectrum Act. This shot clock is 60 days for collocated small wireless facilities and 90 days for locating small wireless facilities on new structures. The amendment would revise the Tier 2 permit requirements to remove the option for a noticed recipient to request a public hearing for Tier 2 facility projects. As such, the proposed amendment would allow a Director-level approval of the CDP and Development Plan for Tier 2 projects without an opportunity for public hearing upon request.

However, Section 13566 of the Commission's regulations requires public participation in the form of at least one public hearing for all appealable CDP's, and Section 30624.9 of the Coastal Act also provides for public participation in the form of a public hearing if a noticed recipient requests a hearing. However, Section 30624.9 also allows public hearing requirements to be waived for minor development that meets certain requirements after public notice is provided.. To comply with the public hearing mandate of the Coastal Act for CDP's, **Suggested Modifications 1 and 2** are necessary to restore the public hearing requirement and noticing language for Tier 2 project applications that is proposed to be deleted from Subsection B of Section 35-144F (Commercial Telecommunications Facilities) and Section 35-181.8 (Contents of Notice) of the County's IP/CZO. These sections provide that the Director shall act as the decision-maker on a Development Plan and CDP for Tier 2 projects, unless a public hearing is requested. Public notice of a Director-level decision must be mailed 10 days prior to the Director's decision, and if a public hearing is requested during that time, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or the Planning Commission in a noticed public hearing.

Suggested Modifications 1 and 2 also clarify that this hearing provision is only applicable to facilities that are appealable to the Coastal Commission since the Coastal Act requires at least one public hearing to be held for appealable development if one is requested. In cases where a Tier 2 facility is proposed within the appeals jurisdiction of the Coastal Commission, the County would need to process the application more quickly in order to comply with the 60 and 90 day deadlines for County action under federal law and to account for the potential need for a public hearing under the LCP if a hearing is requested by a noticed recipient. The Commission finds that only if modified as suggested above, the proposed amendment will be consistent with, and adequate to carry out, the relevant permit processing requirements of the Coastal Act and the Commission's Regulations as incorporated by reference into the LUP.

The proposed amendment to the commercial telecommunication facilities section of the County's IP/CZO also includes other minor changes to conform with the Spectrum Act. There are existing standards in the LCP for telecommunication projects regarding the protection of visual resources, environmentally sensitive habitat, agricultural resources, and public access, and those would not change as part of this amendment request. However, the subject amendment includes additional standards regarding colors, materials, and architectural integration for Tier 2 projects in compliance with the Spectrum Act, and these would serve to strengthen existing standards and protect visual impacts consistent with the visual resource protection policies of the certified LUP.

Therefore, for the reasons discussed above, the Commission finds that only if modified as suggested will the IP/CZO amendment regarding commercial telecommunication facilities conform with and be adequate to carry out the applicable policies of the certified LUP and the relevant permit processing requirements of the Coastal Act and the Commission's Regulations.

Recordable Documents and Other Minor Changes

Recordable Documents

The IP/CZO requires the recordation of Notice to Property Owners (NTPOs) for certain structures and/or uses identified in the zoning ordinance. Some examples include agriculture employee dwellings (Section 35-144R.G), guest houses (35-120.11), and home occupations (35-121.3.2). Some of these documents are statutorily authorized while others are not, nor are they authorized by a local ordinance. The County has experienced complications when a property owner attempts to record a document in compliance with permit conditions of approval and the County Clerk-Recorder determines that the documents can't be recorded because it is not authorized by statute or local ordinance. The amendment to the IP/CZO would add a new Recordable Documents section to the IP/CZO (Section 35-179D), to authorize the recordation of certain documents with the Santa Barbara County Clerk-Recorder when required pursuant to permit conditions of approval. The intent is to ensure consistency with California Government Code Section 27201(a)(1)(A), which allows the County Clerk-Recorder to record documents authorized by local ordinance and this law is the basis for the County to record certain Notices to Property Owners (NTPO) that are not otherwise statutorily authorized. As such, the amendment clarifies the broad types of documents that can be recorded, so as to allow the County Clerk-Recorder to record necessary documents for permits. These proposed changes do not create any adverse impacts to coastal resources and are consistent with, and adequate to carry out, the policies of the certified LUP.

Other Minor Changes

The proposed amendment also includes other minor changes, such as amending Section 35-58 (Definitions) of the IP/CZO to add a new definition ("Telecommunication Facility, Base Station") to comply with federal telecommunication regulations, and reordering and renumbering Division 15 (Montecito Community Plan Overlay District), Division 16 (Toro Canyon Plan Overlay District), and Division 18 (Gaviota Coast Plan Overlay) of the IP/CZO to Division 15 (Toro Canyon Plan Overlay District), Division 16 (Montecito Community Plan Overlay District), and Division 17 (Gaviota Coast Plan Overlay). No text would be modified within any of these three Divisions. All corresponding references to these Divisions in the LCP would also be corrected.

In addition, an expired provision regarding time extensions due to economic hardship would be deleted from the IP/CZO. Following the economic downturn of the late 2000s, a new provision (Section 35-179B.D.8) was added to the IP/CZO, which allowed the Director to extend the expiration of a planning permit or entitlement for additional 24-month period, provided the Director determined it was necessary due to an economic hardship. Included within the provision of Section 35-179B.D.8 was the stipulation that the subsection "shall expire, and be of no further force or effect, on January 12, 2015, unless extended by ordinance". The subject amendment proposes to delete these provisions, as they were not extended by ordinance and have not been in effect since January 12, 2015.

Section 35-191 (Summerland Community Plan Overlay) of the certified IP/CZO

currently includes Figures 13-1, 13-2, and 13-3 that illustrate the calculation of the floor below grade adjustment, which is used to determine the amount of floor area of a floor below grade to include in the total floor area of a residence in the Summerland Community Plan area of the County. The amendment includes minor revisions to these figures to provide a clearer and more illustrative example of the floor below grade adjustment. This adjustment is used to determine the amount of floor area of a “floor below grade” (a basement or other floor of living space that is wholly or partially located below the existing grade of the project site) that must be included in the total floor area of a residence for the purpose of conforming to the maximum total floor area standard in the Summerland Community Plan area of the County. The proposed changes would also renumber and title the figures as Figure 13-1. The methodology to calculate the floor area would not change.

None of these revisions would fundamentally alter the intent of the existing IP/CZO and would not affect the consistency of the IP/CZO with the policies of the LUP or its ability to carry out any of the other policies or provisions of the LUP or IP/CZO. Therefore, the Commission finds that these proposed changes are consistent with and adequate to carry out the policies of the LUP.

D. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP action.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

The County's LCP amendment consists of an IP/CZO amendment. As discussed above, the IP/CZO amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the LUP. The Commission has, therefore, suggested modifications to the proposed IP/CZO to include all feasible measures to ensure that potentially significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. These modifications represent the Commission's analysis and thoughtful consideration of all significant environmental issues raised in public comments received, including with regard to potential direct and cumulative impacts of the

proposed IP/CZO amendment, as well as potential alternatives to the proposed amendment. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed IP/CZO amendment into conformity with the LUP consistent with the requirements of the Coastal Act.

Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts, and the proposed IP/CZO amendment conforms with CEQA.