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DATE: July 18, 2024

TO: Commissioners and Interested Persons

FROM: Steve Hudson, District Director
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SUBJECT: Los Angeles County - Santa Monica Mountains Local Coastal Program
Amendment No. LCP-4-MMT-24-0022-1 (Habitat Impact Fee Update) for
August 9, 2024 Commission Meeting

SUMMARY OF STAFF RECOMMENDATION

The County of Los Angeles' proposed Local Coastal Program (LCP) Amendment No. LCP-4-MMT-24-0022-1 consists of changes to the Land Use Plan (LUP) and Local Implementation Program (LIP) portions of its certified LCP. Staff recommends that the Commission, after public hearing, **approve** the proposed LCP amendment, as submitted by the County of Los Angeles. No modifications are necessary because the proposed amendment to the LUP, as submitted, is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. Additionally, the proposed amendment to the LIP, as submitted, conforms with and is adequate to carry out the provisions of the Land Use Plan as amended. The motions and resolutions for Commission action can be found starting on **page 5** of this staff report.

The proposed amendment includes changes to two LUP policies (CO-86a and CO-86b) and related LIP provisions in Section 22.44.1950 that pertain to updating the County's habitat impact in-lieu fee that is used to ensure that all unavoidable impacts from approved development to H1 and H2 Habitats (two subsets of the habitat that meets the Coastal Act definition of environmentally sensitive habitat, or ESHA) are fully mitigated, and to make related, clarifying text changes.

The proposed updated fee is based on the results of an up-to-date in-lieu fee study that is required by LUP Policy CO-86. Specifically, the County is proposing to (1) increase the per-acre in-lieu fee from \$15,500 (in 2014 dollars, adjusted annually for inflation) to \$83,478 (in present dollars, adjusted annually for inflation) for unavoidable habitat impacts in the approved building site area, driveway/access roads and turnaround areas, any required irrigated fuel modification zones, and required off-site brush clearance areas; (2) increase the per-acre in-lieu fee from \$3,900 (in 2014 dollars, adjusted annually for inflation) to \$20,870 (in present dollars, adjusted annually for inflation) for unavoidable habitat impacts

in non-irrigated fuel modification zones; and (3) add minor corrections and clarifications to the policies related to the habitat impact fee update.

In the past, prior to certification of the County's Santa Monica Mountains LCP, the Commission used an in-lieu fee as one form of mitigation for unavoidable impacts to environmentally sensitive habitat areas from development that is permitted to provide property owners with a reasonable economic use to avoid a constitutional taking of private property. The fee was based on the cost per acre to restore or create coastal sage scrub or chaparral habitat types, and the acreage of habitat affected by the project. The payment amount to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, fuel clearance areas, and off-site brush clearance areas), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (irrigated zone required for fuel modification) was \$12,000 per acre. A payment of \$3,000 per acre was applied to areas where the vegetation would be thinned, but not irrigated. The fee amount was based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting).

However, in certifying the Santa Monica Mountains LCP, the Commission found that the in-lieu fee amounts previously required in Commission permit actions warranted re-evaluation to ensure that the true cost of habitat acquisition for compensatory impact mitigation is provided. Therefore, LUP Policy CO-86 allowed the County to use the Commission's former habitat impact mitigation in-lieu fee amounts for a limited, transitional period of time (five years) following certification of the LCP, if adjusted for inflation, to allow the County time to conduct a fee study. The purpose of the required fee study is to determine the appropriate habitat impact mitigation fee that is proportional to development impacts upon H2 habitat, and impacts to H1 habitat resulting from the provision of less than a 100-foot H1 habitat buffer, and the estimated reasonable costs of land/habitat acquisition that the fees would be used for.

The proposed LCP amendment to update the habitat impact fee pursuant to the County's 2023 fee study is intended to fulfill the requirement of the LCP to update the fee to more closely reflect the true cost of preserving off-site environmentally sensitive habitat areas in the Santa Monica Mountains coastal zone to ensure unavoidable impacts from permitted development are fully mitigated. The fee proposed is based on a thorough, data-informed analysis which is described further in this staff report, and incorporates input from conservation organization stakeholders in the area, such as the Mountains Recreation and Conservation Authority/Santa Monica Mountains Conservancy, California Department of Parks & Recreation, the National Park Service, and the Santa Monica Mountains Resource Conservation District. In addition, Commission staff and County staff coordinated closely on the proposed amendment.

For the reasons described in this report, Staff recommends that the Commission find that the proposed LUP amendment, as submitted, is consistent with Chapter 3 policies of the Coastal Act, and the LIP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. As such, staff recommends that the Commission approve the subject LCP amendment as submitted.

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Exhibits

Exhibit 1 – Adopted County Board of Supervisors Resolution

Exhibit 2 – Proposed LUP Amendment Text Changes in Strikethrough/Underline

Exhibit 3 – Proposed LIP Amendment Text Changes in Strikethrough/Underline

Exhibit 4 – Santa Monica Mountains Habitat Mitigation Fee Study

I. PROCEDURAL OVERVIEW

A. Standard of Review

The Coastal Act provides:

The Commission shall certify a land use plan, or amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) ... (Section 30512(c))

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... (Section 30513)

...The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions 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)

Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the Commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513... (Section 30514(b))

Pursuant to Section 30512(c), the standard of review that the Commission utilizes in reviewing the adequacy of the proposed amendment to the County's certified land use plan (LUP) is whether the proposed amendment is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the County's certified Local Implementation Program (LIP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the policies of the County's certified LUP, including the LUP as amended by the Commission through the proposed LUP Amendment that is the subject of this submittal.

B. Procedural Requirements

If the Commission certifies the LCP amendment as submitted, no further County 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 County 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 County Board of Supervisors may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the County 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 after the Executive Director reports the determination to the Commission at its next regularly scheduled meeting. If the County 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 public input in the preparation, approval, certification, and amendment of any LCP. The County held a series of public hearings on the subject amendment request. The County's Planning Commission held one public hearing on the proposed amendment on April 19, 2023. The County's Board of Supervisors held a public hearing on the proposed amendment on October 24, 2023. The hearings were duly noticed, consistent with the provisions of Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission's consideration of the subject amendment has been distributed to all known interested parties and published in a newspaper this is circulated in the area.

II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LAND USE PLAN AMENDMENT

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

A. Approval of the Land Use Plan Amendment As Submitted

MOTION:

I move that the Commission certify the County of Los Angeles Santa Monica Mountains Land Use Plan Amendment No. LCP-4-MMT-24-0022-1 as submitted.

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Land Use Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby **certifies** the Santa Monica Mountains Land Use Plan Amendment No. LCP-4-MMT-24-0022-1 as submitted by the County of Los Angeles and adopts the findings set forth below on the grounds that the amendment will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan 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 land use plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan amendment may have on the environment.

III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LOCAL IMPLEMENTATION PLAN AMENDMENT

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

A. Approval of the Local Implementation Plan Amendment as Submitted

MOTION:

I move that the Commission reject the County of Los Angeles Santa Monica Mountains Implementation Plan Amendment No. LCP-4-MMT-24-0022-1 as submitted.

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Local Implementation Plan Amendment as submitted and 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 IMPLEMENTATION PLAN AS SUBMITTED:

The Commission hereby **certifies** the County of Los Angeles Santa Monica Mountains Local Implementation Plan Amendment No. LCP-4-MMT-24-0022-1 as submitted and adopts the findings set forth below on the grounds that the Local Implementation Plan Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, and certification of the Local Implementation Plan amendment will meet the requirements of 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 Local Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will

result from certification of the Local Implementation Plan amendment.

IV. FINDINGS FOR APPROVAL OF THE LOCAL COASTAL PROGRAM AMENDMENT AS SUBMITTED

The following findings support the Commission's certification of the proposed Land Use Plan and Implementation Plan Amendment as submitted. The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The proposed amendment to the Land Use Plan (LUP) and the Local Implementation Plan (LIP) portions of the County's certified Santa Monica Mountains Local Coastal Program (LCP) would update the Habitat Impact Fee (established by Policy CO-86 of the certified LUP) based on an in-lieu fee study (Santa Monica Mountains Habitat Mitigation Fee Update Technical Report, prepared by Economic & Planning Systems, Inc. (ESP) and Jodi McGraw Consulting (JMc), dated February 2023) (**Exhibits 1-4**). Specifically, the County is proposing to (1) increase the per-acre in-lieu fee from \$15,500 (in 2014 dollars, adjusted annually for inflation) to \$83,478 (in present dollars, adjusted annually for inflation) for unavoidable habitat impacts in the approved building site area, driveway/access roads and turnaround areas, any required irrigated fuel modification zones, and required off-site brush clearance areas; (2) increase the per-acre in-lieu fee from \$3,900 (in 2014 dollars, adjusted annually for inflation) to \$20,870 (in present dollars, adjusted annually for inflation) for unavoidable habitat impacts in non-irrigated fuel modification zones; and (3) add minor corrections and clarifications to the policies related to the habitat impact fee update.

The Santa Monica Mountains segment of Los Angeles County's coastal zone extends inland from the shoreline approximately five miles and encompasses approximately 50,000 acres. The Santa Monica Mountains, an east-west trending mountain range, is geologically complex and characterized by generally steep, rugged terrain of mountain slopes and canyons, with elevations ranging from sea level to over 3,000 feet. Numerous deep, parallel canyons drain south into Santa Monica Bay. An extraordinary feature of this section of coast is the large number of watersheds. Most of these watersheds originate at or near the northern plan area boundary and connect to habitats within the adjacent coastal City of Malibu and ultimately discharge into the ocean. For these reasons, the Santa Monica Mountains are a rugged landscape with large areas of environmentally sensitive habitat (ESHA).

The County's Santa Monica Mountains LCP was certified by the Commission in 2014. The LCP divides the habitat areas into three categories: H1 habitat, H2 habitat, and H3 habitat. H1 and H2 habitats are collectively described as Sensitive Environmental Resource Areas (SERA's). H1 and H2 habitats constitute ESHA as defined by the Coastal Act. The LCP policies and provisions distinguish between H1 and H2 habitats in order to carry out a different regulatory approach for the protection of each category of habitat.

The most sensitive and geographically constrained habitats such as riparian corridors, oak

and walnut woodlands, native grasslands, rocky outcrops, coastal bluff scrub, dunes, wetlands, streams, and populations of rare plants are designated as H1 habitats. H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for the ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem. H2 habitat includes large, contiguous areas of coastal sage scrub and chaparral-dominated habitats. A subcategory of H2 habitat is H2 “High Scrutiny” habitat, which comprises rare natural communities and species associated with H2 habitat. H3 habitats are developed or legally disturbed areas that may retain some residual habitat values, but are not considered to be ESHA.

The certified LUP prohibits most development within H1 habitats, with the exception of resource-dependent uses, certain public works projects, and access roads to parcels within H2 or H3 habitats when there is no other way to access the parcels. Resource-dependent uses are allowed in H1 and H2 habitat areas if located, designed, and maintained to avoid significant disruption of habitat values in H1 and H2 habitat areas and avoid impacts to other coastal resources to the maximum extent feasible. LUP Policy CO-87 requires mitigation for unavoidable permanent impacts to H1 habitat for one of the non-resource-dependent uses allowed by the LCP within H1 habitat by, at a minimum, restoration and/or enhancement of like habitat type, at the ratio of 4:1 (acres of restored habitat to each acre of impacted H1 habitat) for wetland habitat, or the ratio of 3:1 (acres of restored habitat to each acre of impacted H1 habitat) for all other H1 habitat types.

In H2 habitat (coastal sage scrub/ chaparral habitat), the certified LCP generally reflects the policy approach the Commission had implemented through individual coastal development permit actions in the Santa Monica Mountains prior to LCP certification in 2014. When necessary to provide a reasonable economic use of property or to allow property owners to realize their reasonable investment-backed expectations, non-resource dependent development and/or development that significantly disrupts habitat may be allowed in H2 habitat, and limited uses may also be allowed in the H1 habitat buffer. However, permitted development is allowed only where it is consistent with all other applicable policies and where it is determined that there is no feasible alternative, impacts to habitat are avoided to the maximum extent feasible, and unavoidable impacts are minimized and fully mitigated.

Prior to LCP certification, the Commission allowed for several options to mitigate for the loss of ESHA in this area including habitat conservation, habitat restoration, and payment of an in-lieu fee to be used for the acquisition of habitat. In past Commission permit actions, applicants typically chose the in-lieu fee option (Habitat Impact Mitigation In-Lieu Fee) which was not updated beyond inflation adjustments between the time the Commission began implementing the fee in 2002 and certification of the LCP in 2014. The fee was based on the cost per acre to restore or create coastal sage scrub or chaparral habitat types, and the acreage of habitat affected by the project. The payment amount to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, the “A” zone required for fuel modification, and off-site brush clearance areas), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the “B” zone or any other irrigated zone required for fuel modification) was \$12,000 per acre. A payment of \$3,000 per acre was applied to areas where the vegetation will be thinned, but not irrigated (“C” zone or

other non-irrigated fuel modification zone). The fee amount was based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting).

However, in certifying the Santa Monica Mountains LCP, the Commission found that the in-lieu fee amounts required in past permit actions by the Commission warranted re-evaluation to ensure that the true cost of habitat acquisition for compensatory impact mitigation is provided. Therefore, Policy CO-86 allowed the County to use the Commission's former habitat impact mitigation in-lieu fee amounts for a limited, transitional period of time (five years) following certification of the LCP, if adjusted for inflation, to allow the County time to conduct a fee study. The purpose of the required fee study is to determine the appropriate habitat impact mitigation fee that is proportional to development impacts upon H2 habitat, and to impacts to H1 habitat resulting from the provision of less than a 100-foot H1 habitat buffer, and the estimated reasonable costs of land/habitat acquisition that the fees would be used for.

The subject proposed LCP amendment to update the habitat impact fee pursuant to the County's 2023 fee study is intended to fulfill the requirement of the LCP to update the fee.

The certified LUP also includes a Resource Conservation Program (RCP), under Policy CO-86, in which the County commits \$2,000,000 for the strategic acquisition and permanent preservation of land containing substantial areas of H1 and/or H2 habitats within the coastal zone of the Santa Monica Mountains near existing public parklands and open space. This fund provides in-kind, off-site compensatory mitigation for unavoidable adverse impacts to H2 habitat, and to H1 habitat from the provision of less than a 100 foot buffer, from permitted development. The RCP is managed similar to a mitigation bank whereby the habitat mitigation fee requirement for each individual coastal development permit involving the removal of H2 habitat would be debited from the account and closely tracked on an annual basis for a period of ten years. The LCP requires that the County prepare annual reports summarizing habitat acquisitions made, coastal development permits issued, including the number of acres of H1 and H2 habitats impacted by development approved in issued coastal development permits, and the amount of habitat impact mitigation fees that would otherwise be required in order to approximate the value of the habitats impacted for purposes of analyzing the progress and success of the program.

In approving coastal development permits, the County has aimed to direct development away from H1 and H2 habitat areas (ESHA), and has been successful at doing so. As of its last annual RCP report for the year 2023, the County has spent \$13,720,127.50 on acquiring new land for habitat conservation, and the County only assessed \$43,937.66 of in-lieu fees between 2014 and 2023 to mitigate a cumulative total of 4.43 acres of habitat impacts from issued coastal development permits (CDPs).¹

¹ Although approved CDPs that involved unavoidable habitat impacts between 2019 and present were not allowed to utilize the in-lieu fee (since the current fee expired five years after LCP certification without an updated in-lieu fee certified by the Coastal Commission through an LCP amendment), the impacts of those projects were still calculated in the annual RCP reports for tracking purposes since those CDPs were conditioned to require either (1) compensatory habitat restoration as mitigation or (2) utilize the fee as compensatory mitigation should the

The habitat impact fee that is determined to be appropriate pursuant to the required fee study, discussed further below, would be used for several purposes:

- (1) to analyze the progress and success of the RCP by comparing the County's habitat acquisitions with the habitat mitigation fee (valuation of off-site compensatory mitigation for habitat impacts) that would otherwise apply to mitigate habitat impacts from approved development in the absence of the RCP;
- (2) to apply to coastal development permits approved by the County, as a condition of approval, to mitigate habitat impacts from approved development, in the event the RCP is discontinued;
- (3) to apply to coastal development permits approved by the County, as a condition of approval, to mitigate habitat impacts from approved confined animal facilities that involve: a) expansion of fuel modification requirements for the principal permitted use from confined animal facility structures, and/or b) equestrian pasture sited outside of the fuel modification area of a principal permitted use.

Habitat Impact Fee Study

As required by the LCP, the County of Los Angeles commissioned a study to update the Habitat Impact Fee pursuant to the Mitigation Fee Act (MFA), contained in California Government Code Sections 66000 *et seq.*, which guides the adoption and collection of development impact fees by local agencies. The MFA requires local agencies adopting impact fees to show that there is a reasonable relationship ("nexus") between the type of impacts, the use of fee revenue, and the development projects upon which the fee is imposed. The MFA also requires local agencies to show that the amount of the fee is roughly proportional to the impact of development projects and the estimated reasonable cost of plan activities that would be required to mitigate those impacts.

The County's fee study began in 2019 and involved interviewing several public and non-profit organizations involved in habitat preservation, restoration, and management in the Santa Monica Mountains. The interviews provided insights into current conservation activities and their costs, as well as expected future conservation efforts and associated issues. In 2022, the County and their consultant team conducted several meetings with conservation and resource management agencies, Ventura County, and Coastal Commission staff to discuss and refine study assumptions, collect additional data, and receive input on current costs associated with the acquisition and long-term management of property containing H1 and H2 habitats in the Santa Monica Mountains coastal zone. The final study adopted by the County is titled Santa Monica Mountains Habitat Mitigation Fee Update Technical Report, prepared by Economic & Planning Systems, Inc. (ESP) and Jodi McGraw Consulting (JMc), dated February 2023. The study results include a per-acre amount based on the cost the County expects to incur to preserve an acre of habitat elsewhere. This cost is further broken down into three components: habitat protection, land management, and administration. Each of these are estimated separately using available data and information and then summed to arrive at the total estimated cost to the County

updated fee be effective at time of condition compliance.

per acre of land preserved, and, consequently, the proposed per-acre Habitat Impact Fee.

The first and largest component of the fee, habitat protection, is the amount the County expects to spend to acquire an acre of habitat. This includes both the price of the land as well as any transaction costs, such as resources spent on preparing site evaluations or legal documents. The price of suitable land was estimated to be the average, real cost of an acre of land in a dataset of 12 acquisitions that the County had made between 2017 and 2022: \$61,770 (in July 2022 dollars). Based on feedback from stakeholders and County staff, transaction costs were assumed to be an additional five percent of the total value of the land. Thus, the first fee component, which allows the County to procure one acre of habitat, is \$64,860 per acre.

The second component of the fee, land management, is designed to fund the County's ongoing stewardship of the environmentally sensitive habitat. Based on the cost of managing an average acre in 12 representative preserves in 2004, one acre was estimated to require \$585 (in July 2022 dollars) worth of management each year. The study further noted that \$18,000 must be contributed to an endowment which achieves a 3.25% real return in order to sustain indefinite, annual withdrawals of \$585. Thus, the second component of the fee, which covers the cost of long-term management of one acre of habitat, is \$18,000 per acre of habitat impacted.

The final component of the fee, administration, is the cost of the County's oversight of the fee program. The study assumes that the cost of staff time and resources is 1 percent of the total value of the land, and sets this fee component at \$618 per acre.

The three components of the Habitat Impact Fee, when added together, amount to \$83,478 per acre to mitigate for the development area and irrigated fuel modification/brush clearance impacts in H1 and H2 habitat. For consistency with the current fee program, the fee for non-irrigated fuel modification impacts is equal to 25% of the other fee, or \$20,869 per acre. Both fees are proposed to be adjusted for inflation every March, beginning in 2025, using the Bureau of Labor Statistic's Consumer Price Index.

B. Consistency Analysis

Section 30240 of the Coastal Act states:

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

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

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means any area in which plant or animal life or their

habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act, which is cited by the LUP as corresponding to CO-33 through 102, requires protection of ESHA against significant disruption of habitat values and restricts development within ESHA to only those uses that are dependent on the resource. Non-resource dependent development that is permitted in the LUP, such as residential development, does not have to be located within ESHA to function and is not a use dependent on ESHA resources. Development in ESHA would require removal and/or modification of ESHA for construction and associated fuel modification for fire protection purposes, which would significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would require denial of such projects, as well as any other projects that would significantly disrupt habitat values.

However, Coastal Act Section 30010, and a long line of federal and state court cases interpreting the “takings” clauses of the United States and California constitutions, including *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2886, must also be considered. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission, or a local government carrying out the Coastal Act (including through its LCP), to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may therefore overcome the presumption of denial in some instances.

The *Lucas* case addressed the subject of when government action depriving a property owner of all of the economically viable use of a parcel would result in a “taking” in violation of the U.S. Constitution. In *Lucas*, the U.S. Supreme Court held that in order to withstand a claim of complete economic deprivation based on the “takings” clause, the regulation prohibiting development would have to be prohibiting a use that was already forbidden under “background principles of the state’s law of property and nuisance.” In addition, if a permit decision does not constitute a total taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U. S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations, as well as any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

The Commission interprets the Coastal Act and LCP, together with the federal and state constitutions and case law, to mean that if a denial of a project would deprive an applicant’s property of all reasonable economic use, based solely on the presence of ESHA or other statutory restrictions not held to constitute background principles of state property or nuisance law, and compensation is not available, some development must be allowed, even if a Coastal Act policy would otherwise prohibit it. Section 30240 cannot be interpreted to require the Commission, or local government carrying out the Coastal Act, to act in an unconstitutional manner. As such, notwithstanding Section 30240, development may be allowed in ESHA to permit an applicant a reasonable economic use of their

property consistent with Section 30010 of the Coastal Act.

In the past, prior to LCP certification, the Commission had used an in-lieu fee as a form of mitigation for unavoidable impacts to environmentally sensitive habitat areas from development that is permitted to provide property owners with a reasonable economic use to avoid a constitutional taking of private property. As discussed previously, the County's LCP (certified in 2014) allowed the County to use the Commission's prior in-lieu fee for a limited, transitional period of time (five years) following certification of the LCP, if adjusted for inflation. The intent was to allow the County adequate time to conduct a fee study to determine an updated, appropriate habitat impact mitigation fee that is proportional to development impacts upon H2 habitat, and impacts to H1 habitat from resulting from the provision of less than a 100-foot H1 habitat buffer, and the estimated reasonable costs of land/habitat acquisition that the fees would be used for. The proposed amendment to update the fee based on a current fee study aims to more closely reflect the true cost of preserving off-site environmentally sensitive habitat areas to ensure unavoidable impacts from permitted development are fully mitigated.

The new fee proposed is based on a thorough, data-informed analysis previously described in the background section of this report (under the heading "Habitat Impact Fee Study"). The report, which is required by the LCP, breaks down the cost of habitat preservation into several components, and then estimates the dollar amount of each component, using data points and well-justified assumptions informed by previous preservation efforts.

The largest of these components – the price of the land – is estimated using a dataset of the prices of 12 properties, amounting to a total of 824.4 acres, that the County previously acquired. Properties which were purchased below market value were deliberately excluded to avoid biasing the estimate downward. Furthermore, only properties located in the Santa Monica Mountains were included in the dataset, due to the unique character and quality of the region. These exclusions ensure that the dataset is as representative of the County's future land acquisitions as possible, leading the estimated per acre price to be as accurate as possible.

Related to the price of land are the transaction costs associated with its procurement. This includes resources spent on site evaluations, inspections, appraisals, and legal documents. Based on feedback from stakeholders and the County staff, the study assumes that transaction costs are 5 percent of the value of the land. This is within the typical range of transaction costs for other conservation plans, making it a reasonable assumption.

Another component of the fee is the ongoing cost of habitat management. For this, the study utilizes a dataset of preserves and the cost of managing them from a 2004 study. This dataset included preserves in California, Arizona, and Oregon, but the larger preserves were excluded to better reflect the expected size of future acquisitions in the Santa Monica Mountains. This makes the estimate of annual maintenance costs obtained from the dataset a reliable predictor of future stewardship costs in the Santa Monica Mountains. The study also turned to other conservation efforts to determine the endowment size required to fund the stewardship costs in perpetuity. The assumed annual, inflation-adjusted returns of the endowment are based on the practice of several regional habitat

conservation plans in California and feedback from conservation organization stakeholders, such as the Mountains Recreation and Conservation Authority/Santa Monica Mountains Conservancy, California Department of Parks & Recreation, the National Park Service, and the Santa Monica Mountains Resource Conservation District. Thus, the habitat management component of the fee, which reflects the per-acre amount required to sustain a non-depleting endowment, is also an informed, reliable estimate.

The last component of the in-lieu fee that the study estimates is the cost of administering the habitat impact fee program. This includes resources spent on writing staff reports, engaging consultants, and passing revenues on to the appropriate organizations. The study notes that this component of many fee programs accounts for between one and three percent of the total program costs, and assumes, in this case, a one percent administrative charge. This component, while not rigorously analyzed, is within the range and a small part of the overall fee.

The Commission finds that the habitat impact fee study upon which the proposed habitat impact fee update is based consists of a thorough analysis of the expected per-acre cost to acquire and preserve H1 and H2 habitats in the Santa Monica Mountains for the foreseeable future. The higher, revised fee more accurately reflects the actual cost of acquisition and preservation of H1 and H2 habitats to provide mitigation commensurate with habitat lost or impacted by development. With the change to the habitat impact fee, the amended LCP will improve and ensure protection of coastal resources for two reasons. First, an accurate in-lieu fee will cause applicants to internalize the true cost of habitat impacts when making development decisions, which encourages the use of less impactful alternatives. Second, it ensures that the County's costs of preservation will be covered by the fee, which makes the protection of ESHA financially sustainable. For both of these reasons, the revised habitat impact fee will work in concert with the other LCP policies and provisions to achieve the protection of environmentally sensitive habitat areas against significant disruption of habitat values as mandated by Section 30240.

Furthermore, it fulfills the requirement of LUP Policy CO-86 of the certified LCP that the County update the in-lieu fee. Specifically, the proposed amendment to the LUP makes modifications Policy CO-86a such that the new fee for the approved building site area, driveway/access roads and turnaround areas, any required irrigated fuel modification zones, and required off-site brush clearance areas be \$83,478 per acre, adjusted annually for inflation, and that the new fee for non-irrigated fuel modification areas be \$20,870 per acre, adjusted annually for inflation. The proposed amendment to the LIP (Section 22.44.1950 – Mitigation) reflects these changes to the fee as well. Minor text corrections and clarifications to Policies CO-86a and CO-86b and LIP Section 22.44.1950 are also proposed that do not change the terms of existing mitigation requirements beyond the fee update and are intended to ensure internal consistency.

The Commission therefore finds, for all of the reasons described above, that the proposed LUP amendment, as submitted, is consistent with Chapter 3 policies of the Coastal Act and the LIP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended.

C. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local governments 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 not obligated 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.

For the reasons discussed in this report, the LCP amendment as submitted is consistent with the intent of the applicable policies of the Coastal Act, the amendment will have no significant adverse effects on the environment within the meaning of CEQA, and no feasible alternatives are available which would substantially lessen any significant adverse effect which the approval would have on the environment. Therefore, the Commission further finds that the proposed LCP amendment, as submitted, is consistent with CEQA.