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# W11a

DATE: March 24, 2022

TO: California Coastal Commissioners and Interested Public

FROM: Steve Hudson, Deputy Director  
Barbara Carey, District Manager  
Jacqueline Phelps, District Supervisor

SUBJECT: **County of Ventura Local Coastal Program Amendment No. LCP-4-VNT-21-0069-2 (ESHA Update), for public hearing and Commission action at the April 6, 2022 Commission Hearing**

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## **SUMMARY OF STAFF RECOMMENDATION**

The County of Ventura (County) is requesting an amendment to the certified Coastal Area Plan (LUP) and certified Coastal Zoning Ordinance (IP) portions of its certified Local Coastal Program (LCP) to add policies and provisions to update the existing environmentally sensitive habitat area and biological resource protection policies, to add a new environmentally sensitive habitat areas (ESHA) map for the South Coast (Santa Monica Mountains) area of the County, and to remove the existing Harbor Planned Development Zone. The existing biological resource protection policies, provisions, and maps have not been updated since the County's LCP was originally certified in 1983.

The proposed amendment includes new resource protection objectives, goals, and policies within the LUP. Additionally, existing language in the LUP relating to tree protection and water efficient landscaping is proposed to be modified where the language addresses resource protection. The existing resource protection policies are located in three separate sections, each for a geographic area of the County (North Coast, Central Coast, and South Coast), which results in some repetition of objectives and policies within each section. The proposed policies would apply to all areas and would be located in one section of the LUP in order to reduce redundancy and improve readability. As a component of the proposed amendment, the South Coast Subarea and the Santa Monica Mountains Map (Figure 4.1.3-3), which contains a significant portion of the ESHA in the coastal zone, would be replaced with an updated version that includes a more precise and current delineation of ESHA habitats.

Within the IP new standards to implement the proposed policies of the LUP, definitions, submittal requirements and findings for coastal development permits are proposed. The proposed amendment also includes removal of the Harbor Planned Development Zone, as the areas that had that zoning designation are now located within the Channel Islands Harbor Public Works Plan area.

A wide range of topics relating to resource protection are proposed to be addressed within the subject amendment, including: ESHA protection, environmental review, ESHA and buffer zone determination, siting and design techniques for new development, wetlands and wet environments (terrestrial environments that are associated with the presence of water either perennially or ephemerally), habitats supporting critical life stages (such as nesting and roosting areas), pesticides and pest management, land divisions, and compensatory mitigation.

Commission and County staff have coordinated extensively on the contents of the subject amendment. During amendment pre-submittal discussions, respective staffs identified and addressed the key issues, worked out an approach to various procedures, and coordinated on specific language to be included in the subject amendment. This coordination effort began in 2014; however most pre-submittal coordination occurred in 2017 and 2018. The subject amendment was brought to the Planning Commission in August of 2018 but following the Woolsey and Hill fires that occurred in November 2018, the subject amendment was postponed until 2021 when the item was brought back to both the Planning Commission and Board of Supervisors.

Following postponement, new policies and provisions relating to “Dark Sky” lighting provisions, pesticide use, and fuel modification were added to the subject amendment, and language relating to various policies and procedures that respective staffs had previously coordinated on were modified. Since receipt of the subject amendment, Commission and County staff have continued to coordinate extensively on the contents of the proposal. The suggested modifications are primarily a result of the new and modified language, and many of the suggested modifications are intended as clarifications rather than substantive changes.

Commission staff recommends that the Commission, after public hearing, **reject** the County’s proposed LCP amendment as submitted, and **certify** the proposed amendment only if modified pursuant to staff’s recommended suggested modifications, which can be found in Exhibits 1 and 2 of this staff report. The suggested modifications are necessary to ensure that the LUP portion of the amendment meets the requirements of, and is consistent with, the policies of Chapter 3 of the Coastal Act. Likewise, the suggested modifications to the IP are necessary to ensure that the IP conforms with, and is adequate to carry out, the provisions of the certified LUP, as conditionally certified with those suggested modifications. The motions and resolutions to accomplish this recommendation are found on **pages 5-8** of this staff report.

## TABLE OF CONTENTS

I. PROCEDURAL OVERVIEW .....	4
A. STANDARD OF REVIEW .....	4
B. PUBLIC PARTICIPATION .....	4
C. TRIBAL CONSULTATION .....	5
D. PROCEDURAL REQUIREMENTS .....	5
II. STAFF RECOMMENDATION, MOTIONS, & RESOLUTIONS FOR THE COASTAL LAND USE PLAN .....	5
A. DENIAL OF LUP AMENDMENT AS SUBMITTED .....	6
B. APPROVAL OF LUP AMENDMENT WITH SUGGESTED MODIFICATIONS .....	6
III. STAFF RECOMMENDATION, MOTIONS, & RESOLUTIONS FOR THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE .....	7
A. DENIAL OF IP AMENDMENT AS SUBMITTED .....	7
B. APPROVAL OF IP AMENDMENT WITH SUGGESTED MODIFICATIONS .....	8
IV. FINDINGS FOR DENIAL OF THE LUP/IP AMENDMENT AS SUBMITTED & APPROVAL OF THE LUP/IP AMENDMENT IF MODIFIED AS SUGGESTED .....	8
A. AMENDMENT DESCRIPTION AND BACKGROUND .....	8
B. LAND AND MARINE REOSURCES .....	10
1. Coastal Act Policies .....	10
2. Introduction and Setting .....	14
3. ESHA Designation .....	15
4. Protection of Land and Marine Resources .....	19
5. Fuel Modification .....	27
6. Wet Environments and Wetlands .....	30
7. Beaches .....	33
8. Night Lighting/Dark Skies .....	35
9. Pesticides and Pest Management .....	37
10. Conclusion .....	39
C. CALIFORNIA ENVIRONMENTAL QUALITY ACT .....	39

## EXHIBITS

- [Exhibit 1 – Suggested Modifications to the proposed Coastal Area Plan \(LUP\)](#)
- [Exhibit 2 – Suggested Modifications to the proposed Coastal Zoning Ordinance \(IP\)](#)
- [Exhibit 3 – County of Ventura Board of Supervisors Resolution No. 21-142](#)
- [Exhibit 4 – County of Ventura proposed Coastal Area Plan \(LUP\) amendment text](#)
- [Exhibit 5 – County of Ventura proposed Coastal Zoning Ordinance \(IP\) amendment text](#)

## **I. PROCEDURAL OVERVIEW**

### **A. STANDARD OF REVIEW**

The Coastal Act provides:

The Commission shall certify a land use plan, or any 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 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 in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director...(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 LUP is whether the proposed amendment is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the County's certified IP, 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 provisions of the LUP portion of the County's certified LCP.

### **B. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in the preparation, approval, certification and amendment of any local coastal program (LCP). The County held several stakeholder meetings that were open to the public regarding the subject LCP amendment between May 2018 and September 2021. Specifically, these meetings

occurred with residents, community groups, business owners, landowners, and subject matter experts, and included handouts, briefing sheets, and presentations relating to the subject amendment request. Additionally, the County held public hearings on August 23, 2018, August 19, 2021, and October 19, 2021. All County hearings were duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment was posted in a local newspaper at least ten days prior to the April 6, 2022 Coastal Commission hearing, and individual notices have been distributed to all known interested parties.

### **C. TRIBAL CONSULTATION**

Consistent with the Commission's Tribal Consultation Policy, during the process of reviewing the subject amendment application and developing this recommendation, Commission staff contacted representatives from Native American Tribes understood to have current and/or historic connections to the Ventura County Coastal Zone. Letters were sent describing the proposed amendment via mail and email to all individuals on the Native American Heritage Commission (NAHC) contact list. Staff received responses from the Fernandeano Tataviam Band of Mission Indians and the Coastal Band of the Chumash Nation and responded to questions regarding the subject proposal; however, a formal consultation was not requested by either Tribe.

### **D. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551(b) of the California Code of Regulations, the County resolution for submittal of the local coastal program (LCP) amendment can either require formal local government adoption after Commission approval or designate that an amendment will take effect automatically upon Commission approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. However, if the Commission approves this amendment with any modifications, as recommended, the County must act to accept the certified suggested modifications within six months from the date of Commission action for the amendment to become effective (14 CCR Sections 13544.5 and 13537). Pursuant to Section 13544 of the California Code of Regulations, the Executive Director shall determine whether the County's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission denies the LCP Amendment, no further action is required by either the Commission or the County.

## **II. STAFF RECOMMENDATION, MOTIONS, & RESOLUTIONS FOR THE COASTAL LAND USE PLAN**

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 LUP AMENDMENT AS SUBMITTED**

### **Motion I:**

I move that the Commission certify Land Use Plan Amendment No. LCP-4-VNT-21-0069-2 as submitted by the County of Ventura.

### **Staff Recommendation to Deny:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Land Use 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 appointed Commissioners.

### **Resolution to Deny:**

The Commission hereby **denies** certification of the Land Use Plan Amendment No. LCP-4-VNT-21-0069-2 as submitted by the County of Ventura and adopts the findings set forth below on grounds that the Land Use Plan Amendment as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use 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 land use plan as submitted.

## **B. APPROVAL OF LUP AMENDMENT WITH SUGGESTED MODIFICATIONS**

### **Motion II:**

I move that the Commission certify Land Use Plan Amendment No. LCP-4-VNT-21-0069-2 for the County of Ventura 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 the certification of the Land Use Plan Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

### **Resolution to Certify with Suggested Modifications:**

The Commission hereby **certifies** the Land Use Plan Amendment No. LCP-4-VNT-21-0069-2 for the County of Ventura if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan Amendment with suggested modifications 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, 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 Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

### **III. STAFF RECOMMENDATION, MOTIONS, & RESOLUTIONS FOR THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE**

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 IP AMENDMENT AS SUBMITTED**

##### **Motion I:**

I move that the Commission reject Implementation Plan Amendment No. LCP-4-VNT-21-0069-2 for the County of Ventura as submitted.

##### **Staff Recommendation of Rejection:**

Staff recommends a **YES** vote. Passage of this motion will result in denial of the 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 Deny:**

The Commission hereby **denies** certification of the Implementation Plan Amendment No. LCP-4-VNT-21-0069-2 submitted for the County of Ventura and adopts the findings set forth below on the 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 as amended. 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. APPROVAL OF IP AMENDMENT WITH SUGGESTED MODIFICATIONS**

### **Motion II:**

I move that the Commission certify Implementation Plan Amendment No. LCP-4-VNT-21-0069-2 for the County of Ventura 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 the certification of the Implementation Plan Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the Commissioners present.

### **Resolution to Certify with Suggested Modifications:**

The Commission hereby **certifies** Implementation Plan Amendment No. LCP-4-VNT-21-0069-2 for the County of Ventura if modified as suggested and adopts the findings set forth below on the 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 as amended. 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 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 Implementation Plan Amendment as submitted.

## **IV. FINDINGS FOR DENIAL OF THE LUP/IP AMENDMENT AS SUBMITTED & APPROVAL OF THE LUP/IP AMENDMENT IF MODIFIED AS SUGGESTED**

The following findings support the Commission's denial of the Local Coastal Program (LCP) Amendment as submitted, and approval of the LCP Amendment if modified as indicated in Exhibits 1 and 2 (Suggested Modifications) to this staff report. The Commission hereby finds and declares as follows:

### **A. AMENDMENT DESCRIPTION AND BACKGROUND**

#### Amendment Description

The County of Ventura ("County") is requesting an amendment to the Coastal Area Plan (LUP) and Coastal Zoning Ordinance (IP) components of its certified Local Coastal Program (LCP) in order to update the existing environmentally sensitive habitat area and biological resource protection policies, to add a new environmentally sensitive habitat areas (ESHA) map for the South Coast (Santa Monica Mountains) area of the County, and to remove the existing Harbor Planned Development Zone. The existing biological resource protection policies, provisions, and maps have not been updated since the County's LCP was originally certified in 1983.

The proposed amendment includes new resource protection objectives, goals, and policies within the LUP. Additionally, existing language in the LUP relating to tree protection and water efficient landscaping is proposed to be modified where the language addresses resource protection. The existing resource protection policies are located in three separate sections, each for a geographic area of the County (North Coast, Central Coast, and South Coast), which results in some repetition of objectives and policies within each section. The proposed policies would apply to all areas and would be located in one section of the LUP in order to reduce redundancy and improve readability. As a component of the proposed amendment, the South Coast Subarea and the Santa Monica Mountains Map (Figure 4.1.3-3), which contains a significant portion of the ESHA in the coastal zone, would be replaced with an updated version that includes a more precise and current delineation of ESHA habitats.

Within the IP, new standards to implement the proposed policies of the LUP, definitions, submittal requirements and findings for coastal development permits are proposed. The proposed amendment also includes removal of the Harbor Planned Development Zone, as the areas that had that zoning designation are now located within the Channel Islands Harbor Public Works Plan area.

A wide range of topics relating to resource protection are proposed to be addressed within the subject amendment, including: ESHA protection, environmental review, ESHA and buffer zone determination, siting and design techniques for new development, wetlands and wet environments (terrestrial environments that are associated with the presence of water either perennially or ephemerally), habitats supporting critical life stages (such as nesting and roosting areas), pesticides and pest management, land divisions, and compensatory mitigation.

### Background

The proposed LCP amendment has been undertaken by the County as part of a series of amendments that are intended to clarify and standardize regulations, update coastal resource protection policies, and improve enforcement of new and existing coastal regulations. This effort began in 2012 and has resulted in four separate LCP amendments. Phase One (MAJ-2-12) was certified by the Commission in February 2013 and updated the IP to revise the format and organization, administrative procedures, exemptions and categorical exclusions, and to make other relatively minor policy modifications. Phase 2A (LCP-4-VNT-16-0033-1) was certified by the Commission in December 2016, and included policies and provisions relating to signs,

temporary film production, parking and loading, water efficient landscaping, tree protection, archaeological and paleontological resources, and public noticing. Phase 2A also included a new format and organization of the LUP, as well as the correction of grammatical and typographical errors. In June 2017, the Commission certified Phase 2B (LCP-4-VNT-16-0069-2), which included policies and provisions relating to the California Coastal Trail, wireless communication facilities, and civil administrative penalties. The subject amendment is the final phase (Phase 2C) of this planned LCP update effort. However, the County was also awarded grant funding through Round 3 of the Commission's Local Coastal Program Local Assistance Grant to support the preparation of a sea level rise vulnerability assessment, adaptation plan, and corresponding LUP policies. As such, the County also has been working to incorporate sea level rise policies and provisions into the LCP, which the County would submit to the Commission for approval at a later date.

Commission and County staff have coordinated extensively on the contents of the subject amendment. During amendment pre-submittal discussions, respective staffs identified and addressed the key issues, worked out an approach to various procedures, and coordinated on specific language to be included in the subject amendment. This coordination effort began in 2014; however most pre-submittal coordination occurred in 2017 and 2018. The subject amendment was brought to the Planning Commission in August of 2018 but following the Woolsey and Hill fires that occurred in November 2018, the subject amendment was postponed until 2021 when the item was brought back to both the Planning Commission and Board of Supervisors.

Following postponement, new policies and provisions relating to "Dark Sky" lighting provisions, pesticide use, and fuel modification were added to the subject amendment, and language relating to various policies and procedures that respective staffs had previously coordinated on had been modified. Since receipt of the subject amendment, Commission and County staff have continued to coordinate extensively on the contents of the proposal. The suggested modifications are primarily a result of the new and modified language, and many of the suggested modifications are intended as clarifications rather than substantive changes.

## **B. LAND AND MARINE REOSURCES**

### **1. Coastal Act Policies**

Section 30107.5 of the Coastal Act states that:

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 30230 states:

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

Section 30231 states:

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

Section 30233 states in relevant part that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities.

Section 30253 states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30236 states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 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 30250(a) states:

- (a) 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 only 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 surrounding parcels.

Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

One of the chief objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. Section 30240 requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development, with the exception of uses dependent on the resources, is allowed within any ESHA. This policy further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. Finally, development adjacent to parks and recreation areas must be sited and designed to prevent such impacts.

In addition to requiring protection as ESHA, the Coastal Act requires that streams and associated riparian habitat be protected in order to maintain the biological productivity and quality of coastal waters. Section 30231 requires that natural vegetation buffer areas that protect riparian habitats are maintained, and that the alteration of natural streams is minimized. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat.

Marine resources are protected to sustain the biological productivity of coastal waters and to maintain healthy populations of all species of marine organisms. Section 30230 requires that marine resources be maintained, enhanced, and where feasible restored. Uses of the marine environment must provide for the biological productivity of coastal waters and maintain healthy populations of marine organisms. Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative, and such actions are restricted to a limited number of allowable uses. Additionally, Section 30231 requires the use of means, including managing wastewater discharges,

controlling runoff, protecting groundwater and surface water, encouraging waste water reclamation, and protecting streams, in order to maintain and enhance water quality.

Finally, Section 30253, requires that new development minimize risks to life and property in areas of high hazard and that such development neither create nor contribute to erosion, geologic instability or destruction of the site or surrounding area. The scenic and visual qualities of coastal areas be considered and protected as a resource of importance pursuant to Coastal Act Section 30251, and Section 30250 requires that development be located and designed to ensure that significant adverse impacts on coastal resources, both individual and cumulative, be avoided.

## **2. Introduction and Setting**

The Ventura County (County) coastline extends 43-miles from Santa Barbara County on the north to Los Angeles County on the south. The County's coastal zone encompasses approximately 1,873 square miles, large portions of which contain numerous rare plants and animals that are easily disturbed and degraded by human activities and are therefore considered "environmentally sensitive habitat area" (ESHA).

Within the County's coastal zone, both the Santa Clara River, which is the largest Southern California river system remaining in a relatively natural state, and the Ventura River reach the ocean. The Ormond Beach/Mugu Lagoon and Santa Clara River estuaries are of global importance for migratory birds. Over 270 migratory bird species, including five endangered species, utilize these estuarine marshes. Several smaller streams are also located in the County, including Rincon Creek, Calleguas Creek, Madranio Canyon, Javon Canyon, Padre Juan Canyon, Line Canyon, La Jolla Canyon, Big Sycamore Canyon, Serrano Canyon, Deer Creek Canyon, and Little Sycamore Canyon.

Beaches throughout the County vary and include narrow, cobble segments, in addition to wide, sandy segments that can be found at both Hollywood and Silver Strand beaches. Dune systems, beaches, and associated tidal marshes and wetlands are found throughout the Central Coast of the County including at the Point Mugu Naval Station, Ormond Beach, Mandalay, and McGrath Lake.

The County of Ventura also contains a large portion of the Santa Monica Mountains, which is a unique habitat area. On a global scale, the Santa Monica Mountains area is part of the Mediterranean Scrub biome. This biome type is found in only five areas worldwide: around the Mediterranean Sea, Chile, South Africa, Australia, and Southern California. All of these areas occur on the west coast of the respective continents where there are cold ocean currents offshore. The Mediterranean climate includes wet winters and dry summers with precipitation ranging from 15 to 40 inches per year. Temperatures are moderated by the maritime influence and fog associated with the cold ocean currents. Worldwide, this biome occupies a small area, and a very small percentage of the historical extent remains undisturbed.

The Santa Monica Mountains are part of the Transverse Ranges, the only mountain range in California that is oriented in an east to west direction. The Transverse Ranges extend from the Santa Barbara Coast to the Mojave Desert, creating a natural barrier between Central and Southern California.

This area is characterized by dramatic and varied topography, with numerous deep, parallel canyons. An extraordinary feature of this section of coast is the large number of watersheds. The upper reaches of these streams are relatively undisturbed and often consist of steep canyons containing riparian oak-sycamore bottoms, with coastal sage scrub and chaparral ascending the canyon walls. With the Santa Monica Mountains “transverse” range oriented in an east-west direction, the streams within this unique topographic setting have south-facing riparian habitats, which have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region.

There are several habitat types and individual plant species within the Santa Monica Mountains portion of the County that are considered sensitive. The California Department of Fish and Wildlife has identified habitats that are considered sensitive because of their scarcity and because they support a number of endangered, threatened, and rare plants, as well as sensitive bird and animal species. The many different physical habitats of the Santa Monica Mountains support at least 17 native vegetation types<sup>1</sup> including the following habitats considered sensitive by the California Department of Fish and Wildlife: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem. The Santa Monica Mountains still include large areas of intact habitat, an extraordinary fact given the dense urban development that surrounds the area.

### **3. ESHA Designation**

The Coastal Act provides a definition of “environmentally sensitive area” (ESHA) as: “Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments” (Section 30107.5).

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<sup>1</sup> From the NPS report ( 2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct “alliances” or vegetation types.

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the County, rare species and habitats generally fall within one of two common categories. Most rare species or habitats within the County are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present, may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, some areas may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable" for the species in an ecosystem to qualify as ESHA. Within the County, this test is met for those areas throughout the County that are integral parts of their ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem. Other areas may meet this test for other reasons, for example for especially valuable roles in marine systems.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the County, as in most of urban southern California, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

As described within the proposed policies and provisions, ESHA is defined as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments, consistent with Coastal Act Section 30107.5. Specifically, ESHA includes; areas of biological significance as identified by the State Water Resource Control Board, coastal bluff habitats, coastal

dune habitats, Coastal sage scrub and chaparral plant communities in the Santa Monica Mountains, seasonal habitats supporting critical life stages of certain species, habitat connectivity corridors, native grassland and savannah habitats, oak and other native tree woodlands, rock outcrop habitats, special status species habitats, and wet environments. Land Use Plan Policy (Policy) 1.1 requires the protection of ESHA against any significant disruption of habitat values, and only uses dependent upon those resources shall be allowed within those areas, except when required to provide a reasonable economic use (as discussed in further detail in Section 4 below). In order to ensure that the text of this policy is consistent with the Coastal Act, a minor change to Policy 1.1 is required by **LUP Suggested Modification 1**. In addition, **LUP Suggested 6 and IP Suggested Modification 3 and 21** are necessary to ensure that this requirement is properly stated as protecting ESHA against any significant disruption of habitat values. If the county finds that it is necessary to approve development within ESHA in order to provide a reasonable economic use of private property (through the process described in detail in Section 4 below), development siting and design must nonetheless protect ESHA to the maximum extent feasible, to limit the size and scope of development, and to mitigate any impacts to the maximum extent feasible.

Policy 1.4 describes that the ESHA standards apply to all coastal development permit applications with potential to result in adverse impacts to ESHA or buffer zone. This policy also states that all areas mapped as ESHA and that meet the definition of ESHA are subject to the ESHA policies and provisions. In certain instances, there may be more than one applicable policy, and as such, this policy describes that where multiple policies are applicable, the policy that is most protective of the biological resource shall apply and cites Public Resources Code section 30007.5. This section of the Coastal Act addresses conflict resolution, which is a situation when a proposed project is inconsistent with one or more Chapter 3 policies, but denial of the project or modification of the project to render it consistent with all Chapter 3 policies would be inconsistent with another policy. In these instances, Section 30007.5 of the Coastal Act provides for resolution of such a policy conflict. However, the resolution of conflicts pursuant to Section 30007.5 of the Coastal Act are not the types of conflicts described in the subject policy. As such, **LUP Suggested Modification 2** is required to delete this incorrect reference. This Policy also includes a footnote which indicates that the annual dredging operation that is conducted at the Channel Islands Harbor by the U.S. Army Corps of Engineers is exempt. This is an incorrect reference, as these activities are reviewed by the Federal Consistency Unit of the Coastal Commission. As such, **LUP Suggested Modification 2** is required to delete this incorrect reference.

Coastal Zoning Ordinance (CZO) Section 8178-2.2 also addresses applicability of the subject ESHA policies and provisions.<sup>2</sup> Specifically, this section identifies the locations where new development has the potential to adversely impact ESHA or buffer zone. These areas include locations classified as ESHA, buffer zone, or lands within a certain distance of parkland or wet environments. If a project contains ESHA or is located in

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<sup>2</sup> All references in this staff report to provisions of Section 8178-2 are to the CZO.

one of the listed areas, then the policies and provisions, including those relating to siting and design, apply to that development. Therefore, it is critical to ensure that this provision is clear and includes all areas where ESHA or buffer zone could be impacted so that the policies and provisions of this section apply. As such, **IP Suggested Modification 7** is required to ensure that this section clearly applies to all new development that has the potential to adversely impact ESHA or buffer zone.

Once it is determined that the ESHA policies and provisions apply, this triggers the County's environmental review process, which includes a site-specific environmental assessment, least environmentally damaging alternatives analysis, and coordination with other natural resource agencies. Section 8178-2.3 requires that a site-specific environmental assessment called a Coastal Initial Study Biological Assessment (CISBA), is prepared pursuant to the standards of this section. Accurate delineation of ESHA and buffer zone on a project site is critical to ensure that the least environmentally damaging project alternative is identified and that appropriate siting and design standards are applied based on the habitat types present. As proposed, the site-specific habitat mapping section of this policy does not clearly state the need to delineate habitats located on the entire project site, which could lead to an inadequate analysis of project alternatives and adverse impacts to ESHA. In order to ensure that habitat mapping is conducted on the entire project site, **IP Suggested Modification 8** is required to clarify that the minimum extent of field-surveys for habitat mapping shall occur within a 500-foot radius of the proposed development envelope, unless an expanded fuel modification zone (discussed in detail in Section 5 below) is proposed for new or existing structures, in which case 100 feet beyond the maximum allowable expanded fuel modification zone would be required. Outside of these areas, mapping of the remaining portions of the parcel will be completed utilizing certified ESHA maps and other informational sources. Furthermore, this suggested modification requires that the County Planning Staff Biologist confirm the content and conclusions of the applicant prepared CISBA to ensure that it is completed consistent with the policies and standards of the LCP.

The proposed policies and provisions specify the types of habitats that meet the definition of ESHA, and indicate that under certain circumstances, habitat areas that previously met the definition of ESHA shall continue to be protected as such. Specifically, Policy 3.1 requires that ESHA continues to be defined as ESHA under the following circumstances: (a) ESHA is retained within an expanded fuel modification zone; (b) ESHA supports a critical life stage for a special status species; (c) ESHA was illegally removed or degraded; or (d) the ESHA was destroyed by natural disaster. Part D allows for the County to determine that ESHA was permanently destroyed in accordance with Section 8178-2.4.2. Specifically, this section allows for an area to no longer constitute ESHA if, after fifteen years, the destroyed ESHA has been permanently replaced by an alternative habitat not defined as ESHA. As described in further detail in Section 5, habitats throughout the County are frequently impacted by wildfire. If the time identified in these provisions is too short, ESHA may still be in the process of recovering after a disaster, and incorrectly classified as no longer constituting ESHA. Therefore, in order to ensure that the time specified more closely matches the natural fire cycle associated with the habitat types that constitute ESHA,

**LUP Suggested Modification 3 and IP Suggested Modification 41** are required to modify the time from fifteen years to twenty years.

Section 8178-2.4.2 also describes the term “existing, legally-established development”, which means that the development was established before the effective date of the Coastal Act (January 1, 1977) in conformity with all applicable local laws in effect at the time, or the development was established after the effective date of the Coastal Act and authorized by an effective coastal development permit. Several additional sections in the proposed amendment address legally existing development, however they contain alternate language which implies that to determine whether development is legally existing, an analysis is only required to review whether the development existed on the site prior to January 1, 1977. Therefore, in order to clarify the proposed provisions and to add a new definition, **IP Suggested Modifications 1, 43, 44, and 45** are required.

The Coastal Area Plan contains two certified ESHA maps (Figures 4.1.3-1 and 4.1.3-2) that identify the general locations of ESHA in the North Coast Subarea and the Central Coast Subarea. As these maps were certified during the 1980s, they may not depict the current accurate location of all ESHA. However, in all cases the precise boundaries of ESHA and other sensitive coastal habitats will be determined on a case-by-case basis based on evidence such as site-specific biological surveys and site-specific maps. As a component of the proposed amendment, the South Coast Subarea and the Santa Monica Mountains Map (Figure 4.1.3-3), which contains a significant portion of the ESHA in the coastal zone was updated to include a more precise and current delineation of ESHA habitats. County and Commission staff worked closely to update this map to depict the current location of ESHA accurately to the scale of the map. County staff has indicated that there is an inadvertent error in the depiction of the boundaries of the Santa Monica Mountains (M) Overlay shown on this map. As such, **LUP Suggested Modification 29** to modify Figure 4.1.3-3 - Environmentally Sensitive Habitat Areas on the South Coast is necessary to accurately depict the extent of the M-overlay boundaries.

#### **4. Protection of Land and Marine Resources**

##### Economically Viable Use/Constitutional Takings

Section 30240 of the Coastal Act 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 LCP, 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, 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 in connection with approving, denying, or implementing local coastal programs), to exercise its power to approve or deny a proposed local coastal program or to grant or deny a coastal development permit (or to take some other formal governmental action) 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 issue 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 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 merely prohibiting a use that was *already* forbidden under “background principles of the State’s law of property and nuisance” at the time the property was acquired. (*Id.* at 1029.) At this time, no published California case has held as matter of general applicability that restrictions on development of wetlands, or non-wetland ESHA, categorically would defeat a potential takings claim based on “background principles” of nuisance and property law (although there could potentially be instances in specific cases where it would). Thus, when all economic use of a parcel would be prohibited because the lot in question is entirely ESHA, the Commission reads *Lucas* as the controlling case law and Section 30010 as the controlling statutory law. In addition, even if a governmental restriction on use does not deny *all* economic use of a private property, a court may nonetheless consider whether the restriction constitutes an unconstitutional 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 nuisance and property law identified in *Lucas*.

In sum, the Commission interprets Section 30010, together with the *Lucas* decision, 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 yet 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. In other words, Section 30240 of the Coastal Act cannot be read to justify such an uncompensated deprivation, because 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.

The proposed policies and provisions outline an approach to protect environmentally sensitive habitat areas, while allowing for development in order to avoid a constitutional taking of private property. Policy 4.1 and Sections 8178-2.5.1 and 8178-2.5.2 describe the resource dependent and non-resource dependent uses that are allowed in ESHA

and requires that such development is the minimum amount necessary and that the project constitutes the least environmentally damaging alternative. Specifically, allowed resource dependent uses are passive recreation, nature study, directional or educational signs, and habitat restoration. Allowed non-resource dependent uses are a wireless telecommunication facility when mandated by federal law, a new public works facility when necessary to protect public health/safety or provide essential public services for legally permitted development, a shoreline protective device, and non-resource dependent uses required to provide for an economically beneficial use. This policy and provision also state that in ESHA, existing public works facilities shall be maintained, repaired, and replaced in accordance with the repair and maintenance exemptions of the LCP. However, the referenced exemption section only allows for the repair and maintenance of such facilities, and not replacement. In order to clarify that replacement is not covered under the cited exemption and to ensure that both the LUP and IP are internally consistent, **LUP Suggested Modification 5 and IP Suggested Modification 13** are required.

If any proposed development has the potential to result in adverse impacts to ESHA or buffer zone, the proposed Policy 5.1 and Sections 8178-2.3 and 8178-2.6.1 require the completion of an alternatives analysis to determine whether the project constitutes the least environmentally damaging alternative. This analysis requires an assessment of all proposed development (including any required fuel modification) as well as preparation of two or more siting and design alternatives. In order to clarify that the content of the required analysis and to ensure that impacts to both on-site and off-site ESHA are analyzed, **IP Suggested Modification 8 and 14** are required.

Policies 4.2 and 4.3 allow for a reasonable economic use of the property in order to avoid a constitutional taking of private property. Where it is not possible to site development (and any required fuel modification, where applicable) outside of ESHA on a legal parcel, Policy 5.2 and Section 8178-2.6.2 establish the maximum “building site” area that would be allowed. In the Santa Monica Mountains area, the building site area may not exceed 10,000 square feet, or 25 percent of the parcel size, whichever is less. In the “existing community” areas of the County, the maximum building site is 10,000 square feet, or 25 percent of the parcel size, whichever is greater. However, the lot sizes vary substantially within the existing communities, and as such, the designation of 10,000 square feet could potentially exceed the maximum lot coverage allowed by other provisions of the applicable zone district (e.g. setbacks, lot coverage, etc.). In order to clarify this policy, **LUP Suggested Modification 7** is required to ensure that the maximum building site shall not exceed the maximum lot coverage allowed by zoning. Policy 5.2 and Section 8178-2.6.2 also state that if a buffer for an off-site wet environment is located on the property, additional encroachment into the buffer may be allowed. Increasing the degree of a development’s non-conformance to ESHA wet environment buffer requirements could result in new adverse impacts to the habitat. As such, **IP Suggested Modification 15** requires that new development shall not increase the size or degree of any buffer-zone non-conformity.

Sections 8178-2.6.2.2 and 8178-2.9.4.1 allow for adjustments to the maximum allowable building site. The maximum allowable building site may be reduced if a lot is

highly constrained, and if an adequate amount of land is not available for development. The maximum building site may also be increased to up to 15,000 square feet through an incentive program, where lots containing ESHA are retired or merged, and when the remaining portion of the lot is protected in perpetuity through a conservation easement or conservation instrument. As proposed, lots merged would only be preserved outside of the development envelope, which is a large area of the parcel that could include ESHA or buffer zone areas. As such, **IP Suggested Modification 34** is required to ensure that all ESHA and buffer zones located outside of the building site and mandatory fuel modification zone are preserved.

Specifically, the building site is defined as the primary developed area of a legal lot. This area contains all structures for a residential, commercial, agricultural or industrial use, including the building pad, all primary structures and accessory structures/uses (e.g., animal enclosures, barns, deck/patio, garages, parking areas, swimming pool, storage sheds, water storage tank). The building site is located within the property's "development envelope", which is the full extent of allowable development on a legal lot. In addition to structures within a building site, the development envelope may include a driveway or road, fire department turnarounds, fire/fuel modification zones, water tanks (firefighting), entry gate/fences, utility trenches and other site grading, septic systems, wells, and drainage improvements.

The proposed amendment also includes definitions for conservation easement and conservation instrument. A conservation easement is a legally binding way to retain land predominantly in its natural or open space condition, that is recorded in a deed and granted to a third party. A conservation instrument is a legal mechanism used to ensure the protection of coastal resources from development in the form of a deed restriction or other similar mechanism that is recorded in the chain of title. A deed restriction is an appropriate way to preserve coastal resources, however, it is unclear what type of restriction would be utilized as a "similar mechanism". In order to ensure that all open space is recorded either as a conservation easement or deed restriction, **IP Suggested Modifications 1 and 50** are required. The appendices also contain information regarding legal instruments for conservation, including the types of restrictions that should be utilized and the uses allowed within those areas once they are established as open space. To ensure that these sections adequately preserve coastal resources, **IP Suggested Modifications 47, 48, and 49** are required to clarify the required extent of such instruments, recording process, and allowable uses.

Policy 5.8 and several sections of the proposed amendment address on-site open space requirements. These sections indicate that all on-site ESHA, buffer zones, and slopes over 30 percent are required to be permanently retained in their natural state through a conservation easement or conservation instrument. In order to clarify that this requirement applies to all coastal development permits that include approval of development within ESHA, buffer zone, and steep slopes, **LUP Suggested Modification 12 and IP Suggested Modification 15 and 16** are required.

### Siting and Design

New development can adversely impact ESHA through many means including, but not limited to, grading, landform alteration, vegetation clearance, erosion, sedimentation runoff, stream siltation, and reduced water percolation. Additionally, wildlife can be impacted by fencing that blocks migration and by artificial night lighting. In order to protect habitat values as required by Section 30240 of the Coastal Act, the Commission finds that it is necessary to consider alternatives for siting and designing of development in order to ensure that the alternative chosen is the one that avoids adverse impacts ESHA, and minimizes impacts when the allowance of some impacts is necessary to allow some reasonable economic use of private property.

The proposed LCP amendment contains numerous policies and provisions that address siting and design to ensure resource protection. Policy 5.9 requires that new development minimizes grading, alteration of landforms, and brush/vegetation removal, and Policy 5.10 requires protection of water quality and minimization of impacts to wet environments. Additionally, Section 8178-2.6.13 requires that construction staging and storage areas are identified, limited to locations in the existing legally disturbed areas and development envelope, and to the maximum extent feasible outside of ESHA and buffer zone. Impacts to ESHA from construction staging could include habitat degradation as well as the introduction of harmful substances or invasive species from equipment. It is therefore necessary to limit when such construction materials may be located adjacent to ESHA. As such, **IP Suggested Modification 22** requires that construction equipment and storage areas are located outside of buffer and ESHA unless the development was approved to allow for an economically beneficial use.

Policy 5.4 and Section 8178-2.6.3 require that new development is clustered near existing and proposed development and roadways in order to minimize the loss or fragmentation of ESHA and to take advantage of overlapping fuel modification zones. However, given that proposed development may not eventually be permitted, clustering with such development could lead to unnecessary adverse impacts to ESHA if there is an alternate location on site that may be the least environmentally damaging. Therefore, **LUP Suggested Modification 9** is required to clarify that development is clustered with existing or permitted development. Clustering with development sited on adjacent properties, as well as clustering development within a proposed building site serves to reduce adverse impacts to ESHA by utilizing overlapping fuel modification zones or by minimizing the extent of the fuel modification zone. In order to clarify that clustering development is applicable for both adjacent development and on-site development **IP Suggested Modification 16** is required.

The proposed policies and provisions also require application of bird-friendly building standards and avoidance/removal of invasive species. In addition to the existing LCP tree protection ordinance, the proposed policies and provisions also protect plant and tree communities through delineating woodlands as ESHA and by prohibiting the removal of tree communities that constitute ESHA. Furthermore, habitats of protected species are protected, and include bird nesting and roosting sites, as well as colonial roosting habitat for butterflies. Policy 7.3 states that natural features used as bat roosts by special status species are protected. However, this policy limits this protection to the duration of construction and outdoor festivals/sporting events. In order to ensure that

bat roosts are also protected during the siting and design of new development, **LUP Suggested Modification 21** is required.

Policy 5.19 and Section 8178-2.6.14.1 address fencing, gates, and walls and prohibit such development outside of the approved development envelope, as well as fencing that would isolate wildlife or that is constructed with spikes, barbs, glass, or razors. As described above, the development envelope of a property is a large area that contains all site development, including fuel modification zones and roads, which could total as much as an approximately 10-acre area. The allowance of fencing within that area would be overly expansive and could result in adverse impacts to ESHA and wildlife movement. In order to ensure that fencing is restricted to a smaller area that is closer to concentrated development, **LUP Suggested Modification 14 and IP Suggested Modification 23** require that fencing, gates, and walls are not allowed within the expanded fuel modification zone. These modifications also prohibit the perimeter fencing of a parcel.

Policy 5.7 and Section 8178-2.6.6.2 address water and on-site wastewater treatment systems. Specifically, Policy 5.7 states that water wells may be permitted if they would not individually or cumulatively cause significant adverse impacts on groundwater aquifers, streams, riparian vegetation, or other coastal resources. However, the language of this policy limits its applicability to when there is an intensified use. In order to clarify that this policy applies to both new development and an intensified use of existing development, **LUP Suggested Modification 11** is required.

The proposed policies and provisions address siting and design of access roads and driveways. Section 8178-2.6.8 only allows for access improvements when necessary to meet Ventura County Fire Protection District standards or to provide one access road/driveway to a lot. Although this policy limits the ability to construct access roads and driveways, additional clarification is necessary to ensure that adverse impacts to ESHA are avoided for the construction of such development if the development that it is serving is not legally existing, and therefore not entitled to obtain such development. Therefore, **IP Suggested Modification 17** is required to clarify that an access road and driveway may only be allowed when necessary to meet Ventura County Fire Protection District standards or to provide one access road/driveway to permitted development on a lot.

Within the proposed amendment, language relating to findings that must be made for certain types of development is located throughout various sections. In order to ensure that all required findings are located within Section 8181-3.5.3 – Required Findings, **IP Suggested Modification 40** is required. Lastly, to correct inadvertent errors or to make minor clarifications, the following Suggested Modifications are required: **LUP Suggested Modifications 4, 8, and 23 and IP Suggested Modifications 1, 4, 5, 10, 30, 46, 51.**

#### Compensatory Mitigation

The proposed policies and provisions require mitigation for allowable development that results in unavoidable loss or degradation of ESHA or other sensitive biological resources. Policy 10.1 and corresponding provisions require proportionate in-kind mitigation through either on-site restoration, establishment, or enhancement, or off-site preservation, restoration, establishment, or enhancement of ESHA. Section 8178-2.10.6 specifies the required baseline mitigation ratios that are used as the foundation for compensatory mitigation requirements. These ratios are based on the type of ESHA that is removed or degraded:

- 2:1 Baseline Ratio: Coastal sage scrub or chaparral, except when occupied by federal or state endangered or threatened species.
- 4:1 Baseline Ratio: Wetland, estuary, lagoon, or lakes.
- 3:1 Baseline Ratio: All other ESHA types, including wet environments not listed above, and habitat occupied by federal or state endangered or threatened species.

Compensatory mitigation required for adverse impacts to coastal sage scrub and chaparral may be implemented on or off-site. For adverse impacts to wet environments and oak/native woodland habitats, priority shall be given to on-site mitigation unless off-site restoration establishment, or enhancement is provided through an available federal/state mitigation bank or in-lieu fee program. For other habitat types, on-site mitigation is preferred but off-site mitigation may be authorized. Section 8178-2.10.4 specifies the criteria for selection of off-site mitigation locations. As proposed, this section allows for flexibility in the location of mitigation to locations outside of the Coastal Zone and outside of the County. In order to ensure that impacts are mitigated within the County, and within the Coastal Zone when feasible, **IP Suggested Modification 37** is required.

Section 8178-2.10.5 outlines the standards for ESHA mitigation sites and specifically describes the criteria that would be required for passive restoration if it is implemented as a component of ESHA enhancement. In order to ensure that this type of mitigation adequately compensates adverse impacts to ESHA, **IP Suggested Modifications 36 and 38** is required to specifically state the types of restoration and enhancement activities that must occur. Additionally, to ensure that passive restoration is defined, **IP Suggested Modification 1** is required. All areas that are subject to compensatory mitigation must be included in an ESHA Mitigation Plan developed by the applicant's biological consultants in order to increase the potential for long-term success. Additionally, all areas that are subject to compensatory mitigation must be preserved in perpetuity for conservation and/or open space purposes.

Policy 10.2 and Section 8178-2.10.1 address the illegal removal of ESHA and require full restoration of the disturbed area(s) on-site as well as compensatory mitigation. Restoration may be allowed off-site in certain limited circumstances, such as if the impacted area is within the approved building site. In order to clarify these provisions and ensure consistency between the LUP and IP, **IP Suggested Modification 35** is required.

Program 5 and Section 8178-2.10.8 provide the standards for implementation of the County's proposed in-lieu fee program. This would be a new program that would allow for a permittee to provide payment of an in-lieu fee to the County's Coastal Habitat Impact Mitigation Fund for impacts to coastal sage scrub and chaparral habitats classified as ESHA in the Santa Monica Mountains. The proposed amendment includes an interim fee that will be valid for a period of five years following certification of the subject amendment. The established interim in-lieu fee amount is based upon the calculation utilized in the certified Los Angeles County Santa Monica Mountains LCP for a similar in-lieu fee program. The required interim fee is \$29,170 per acre of ESHA fully removed and \$7,340 per acre of ESHA that is thinned according to LCP requirements within an expanded fuel modification zone (discussed in more detail in Section 5 below). Funds collected by the County would be periodically transferred to a County-approved conservation organization or natural resource agency for the acquisition and preservation of land containing ESHA in the Santa Monica Mountains. This proposed program and corresponding standards also include requirements for the County to establish administrative procedures, as well as a permanent fee. Commission staff has coordinated closely with County staff regarding this proposed program, and as a result of those coordination efforts **LUP Suggested Modification 26 and IP Suggested Modification 39** are required. These modifications clarify the intent of the program, adjust the amount of the interim in-lieu fee to reflect inflation, modify the criteria to be utilized in creation of the permanent fee, and modify the timing requirement for submittal of the permanent in-lieu fee from five to six years in order to provide the County with adequate time to determine the appropriate fee amount.

### Animal Facilities

The proposed amendment provides that confined animal facilities, such as corrals, are allowed within an approved building site on lots that exceed one acre and within a mandatory fuel modification zone that overlaps with ESHA buffer. If located in a mandatory fuel modification zone, no component of the facility can result in the expansion of fuel modification. In addition, lighting and irrigation are prohibited and fencing must protect native trees and be wildlife permeable. Additionally, these facilities cannot be located on slopes greater than 20% or within a wet environment buffer. A manure management plan is required, and measures must be implemented to ensure that sediment, animal waste, and stormwater runoff are not discharged into ESHA or buffer zone.

Section 8175-5.2.4 identifies the allowed types and number of allowed animals and fowl. As a component of the proposed amendment, this section would be modified to clarify allowable uses within multiple zones, including the Santa Monica Mountains M-Overlay. An additional standard that allows for the continuance of non-conforming animal keeping uses and structures in the Santa Monica Mountains M-Overlay is also proposed. As proposed, this section would allow for the continuance of non-conforming animal uses and structures in perpetuity. In order to ensure that these uses are brought into conformity when the use is discontinued or the project site is redeveloped, **IP Suggested Modification 2** is required.

### Public Accessways, Trails, and Low-Impact Campgrounds

The proposed policies and provisions provide that low-impact campgrounds, public accessways, and trails are considered resource-dependent uses to be allowed in ESHA and buffer zone. Such uses shall be the minimum amount necessary, constitute the least environmentally damaging alternative, and sited and designed in accordance with the policies and provisions of the LCP. Specifically, the IP defines low-impact campgrounds as a campground used for “carry-in, carry-out” tent camping accessed by foot, with few or no support facilities or services, and excluding any structures for permanent uses and roads. In addition to the extensive policies and provisions relating to the California Coastal Trail which were added to the LCP in Phase 2B of the phased comprehensive LCP update, existing LCP provisions also require that development not preclude the use of or preempt the establishment of inland mapped recreational trails and specify a minimum alignment width of 25-feet.

### Land Divisions

All land divisions constitute development for which a coastal development permit is required. As part of the proposed amendment, a definition of land division would be added to the IP and the permit requirements would be clarified in Section 8774-5 – Permitted Uses by Zone. Policy 9.1 and Section 8178-2.9.1 are also proposed to ensure that as a component of land division applications, the location of all development on resulting lots is identified and can be constructed consistent with the policies and provisions of the LCP, and that the lots constitute buildable lots. The standards in Section 8178-2.9.1 also require that a coastal development permit for a land division include a condition of approval requiring the remaining portion of the parcel located outside of the identified development envelope to be protected as open space. In order to clarify that while the restricted area is to be permanently maintained in its natural state, certain development is allowed pursuant to Section AE-2.2.2, **IP Suggested Modification 32** is required. Furthermore, Section 8178-2.9.2 requires a created lot located in the Santa Monica Mountains that abuts a public park or a lot permanently protected by a conservation easement to include a 200-foot buffer between future physical development and from the parkland. However, because fuel modification could extend up to 300-feet from a building site it is necessary to adjust this buffer width. Therefore, **IP Suggested Modification 33** is required to modify the width of the buffer to 300-feet.

## **5. Fuel Modification**

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high fire hazard. Fire is an inherent threat to development and residents throughout Ventura County, and particularly in the Santa Monica Mountains. Vegetation in the coastal areas of the County consists largely of native coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances. The long, dry summer season in combination with frequent “Santa Ana” winds, dense vegetation that provides fuel for

fire, steep canyon and hillside terrain, inappropriate development siting and design, and often inadequate road access combine to present extreme fire hazards every year.

Fire hazard is a measure of the potential wildfire burning characteristics (i.e. intensity, rate of spread, flame length) produced from a specific set of environmental conditions. As part of a statewide approach to fire hazard severity, CAL FIRE identified “fire hazard severity zones” throughout the State for the purpose of establishing and requiring adherence to wildland urban interface building codes and reducing structure loss from wildfire. These fire hazard severity zones are areas that have similar burn probabilities and fire behavior characteristics. Under this analysis, nearly the entire coastal zone of the County is classified by CAL FIRE as a “Very High Fire Hazard Severity Zone”. Additionally, nearly the entire coastal zone of the County is designated as a “State Responsibility Area”, which determined by the Board of Forestry and Fire Protection and constitutes an area where the State has financial responsibility for wildland fire protection.

AB 2911 was approved in 2018 and became effective on January 1, 2019. This law resulted in numerous changes to the Government Code and the Public Resources Code (PRC) relating to fire safety. As described above, the subject amendment was initially brought to the Planning Commission in August of 2018 but following the Woolsey and Hill fires that occurred in November 2018, it was postponed until 2021 when the item was brought back to both the Planning Commission and Board of Supervisors. Prior to when the subject amendment was brought back to the decision-making bodies, County staff revised the proposed policies and provisions relating to fuel modification in order to incorporate changes to state law that occurred pursuant to the passage of AB 2911.

The proposed approach to fuel modification within the County has several components. First, the proposed policies and provisions require measures that will ensure that new development will minimize risks from fire hazard. These measures generally include: siting development in topographic areas that are less in danger from fire; siting development where adequate access for fire and other emergency vehicles can be provided; designing development to incorporate fire-safe features and materials; and creating defensible space around new development through fuel modification.

While impacts to habitat can be reduced through siting and design alternatives for new development, they cannot be completely avoided given the high fire risk throughout the County, and particularly in the Santa Monica Mountains. As such, modification of fuel sources to protect life and property from wildfire is required. Policy 5.6 includes measures that must be implemented in order to minimize risk from fire and outlines the proposed approach to fuel modification. Throughout the coastal zone of the County, the mandatory width of a fuel modification zone around legally-established development located within the building site is 100-feet. Pursuant to the requirements of AB 2911, in certain designated circumstances, the County also has proposed to allow for an expanded fuel modification zone that may extend to a distance of 300-feet from a legally established structure located within the building site. Within the expanded fuel modification zone vegetation management would be required to meet the proposed thinning standards of 50% of vegetation removal per ¼ acre within the 101-150-foot

zone and 30% per ¼ acre within the 151(+)-foot zone. Habitat located within the expanded fuel modification zone would continue to constitute ESHA, and allowable uses within this area would be limited to thinning for fuel modification and resource-dependent uses.

Although the proposed policies and provisions contain standards guiding implementation of the mandatory and expanded fuel modification zone, Commission staff had concerns as to whether the proposal provided for adequate resource protection. Through coordination with County staff, an approach to address these concerns was created and is required by **LUP Suggested Modifications 10 and 25 and IP Suggested Modifications 1, 18, 19, 20, and 52**. Specifically, these suggested modifications would allow for an expansion of the mandatory fuel modification zone up to a distance of 200-feet if it is determined by the Fire Department that the increased fuel modification area is needed to protect life and property from wildland fires based on site-specific environmental conditions (such as topography, type of vegetation present, width of access road) and that there are no other feasible mitigation measures possible. Allowance of this wider mandatory fuel modification zone would provide the Fire Department the flexibility necessary to modify the required fuel modification based on an assessment of the unique site-specific conditions of properties.

While preparing the proposed policies and provisions, the County researched past authorizations that included fuel modification as well as the amount of existing vegetation clearance on properties. The County found that permits granted before 2009 often did not specify the width of the fuel modification zone and that many properties had existing clearance of over 100 feet. To address this situation the County proposed the following:

- Fuel modification width not specified by the permit – If a previously authorized coastal development permit did not specify the extent of fuel clearance allowed, landowners may continue to clear their “historic vegetation clearance” for fuel modification, or up to a 200-foot radius, whichever area is smaller. The 200-foot standard is proposed to be consistent with prior guidance issued by the VCFPD to residents, which indicated a preference for the 200-foot radius that is also used by Los Angeles County. The term “historic vegetation clearance” is defined as vegetation removed around existing, legally established structures, as demonstrated in aerial photographs taken on October 18, 2018 and October 31, 2018, which are on file with the Planning Division and would be compared to the most-recent aerial photographs taken for the County.
- Fuel modification width specified by the permit – If a permit specifies the amount of fuel clearance, then landowners must abide by the limits in the permit or request a permit modification.
- Fuel modification width established prior to the Coastal Act – Where the development predated the Coastal Act and there is no permit on file, a fuel modification area that has been consistently maintained as of the date the

Coastal Act went into effect (January 1, 1977), regardless of width, will be considered the legally established fuel modification zone.

As described above, on certain unique properties and based on the site-specific characteristics, existing vegetation clearance beyond the required 100-feet has occurred. Provision of an expanded mandatory fuel modification zone would allow for the County Fire Department to continue the practice of assessing risk based upon the unique factors at each project site. Furthermore, the allowance of up to 200-feet is consistent with the requirements in the neighboring jurisdictions of Los Angeles County and the City of Malibu.

## **6. Wet Environments and Wetlands**

In addition to protection as ESHA under Section 30240 of the Coastal Act, streams and associated riparian habitat are protected under additional Coastal Act policies in order to preserve stream function and to maintain the biological productivity and quality of coastal waters. Section 30231 requires that natural vegetation buffer areas that protect riparian habitats be maintained, and that the alteration of natural streams be minimized. Additionally, Section 30236 of the Coastal Act limits the alteration of streams in order to maintain hydrological function, flood control, and minimize erosion and sedimentation. Channelizations, dams, or other substantial alterations of rivers and streams must include the best mitigation measures feasible and are limited to only three purposes: necessary water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development; or improvement of fish and wildlife habitat.

Similarly, in addition to protection as ESHA, other policies of the Coastal Act require the protection of wetlands. Section 30231 provides that the biological productivity and the quality of wetlands and estuaries shall be maintained, and where feasible restored to maintain optimum populations of marine organisms. Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and where restricted to a limited number of allowable uses.

New development results in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of land on project sites. The reduction in permeable surface therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. One cumulative effect of increased impervious surface is that the peak stream discharge is increased, and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, runoff from impervious surfaces flows more rapidly, increasing its ability to erode sediment from the undeveloped areas of a site, resulting in increased erosion and sedimentation.

To avoid direct impacts to the habitat area, it is necessary to site and design new development such that an adequate buffer is provided between the outer edge of the canopy of riparian vegetation and development. Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, which filters impurities before the water is introduced to the stream course. Additionally, the infiltration of runoff extends the time between the precipitation event and the peak stream flow, as well as avoiding increases to the amount of peak flow. Therefore, adequate stream buffers minimize cumulative impacts to stream morphology. Further, protecting natural vegetation buffers where runoff can infiltrate reduces the potential for erosion and sedimentation. The proposed policies and provisions require siting and design to avoid adverse impacts to streams and wetlands, as well as a buffer between development and these areas.

The proposed LUP Environmentally Sensitive Habitat Areas (ESHA) map for the South Coast area of the County, incorporates the U.S. Fish and Wildlife Service National Wetland Inventory (2013) data, and generally shows the streams wetlands, lakes, and coastal waters in the Santa Monica Mountains area. Additionally, any watercourse that meets the definition of stream or wetland provided in the LCP shall be accorded all protection provided by the stream policies and provisions. Streams are designated as ESHA, whether or not there is riparian vegetation present.

The proposed amendment utilizes the term “wet environment” to describe terrestrial environments that are associated with the presence of water, either perennially or ephemerally. These areas include wetlands, rivers, lakes, streams, estuaries, lagoons, seeps, springs, and the vegetative communities associated with these physical settings. Additionally, the proposed amendment contains numerous definitions relating to these areas. One such definition is for lagoon, which is defined as a shallow body of salt water close to the ocean but separated from it by other shoreline features such as a sand bar, rocks, or a narrow strip of land. However, because lagoons may not always be characterized by salt water, **IP Suggested Modification 1** is required to clarify this definition. Furthermore, Appendix 1 of the LUP and Appendix E1 of the IP contains detailed information regarding how to delineate wetland areas as part of a Coastal Initial Study Biological Assessment (CISBA). However, some of the content of these sections is dated, so to ensure that wetland delineations are carried out appropriately and pursuant to the newly proposed criteria in the subject amendment, **LUP Suggested Modification 28 and IP Suggested Modification 43** are required.

Policy 6.12 prohibits the channelization or alteration of streams, except for: 1) necessary water supply projects; 2) protection of existing structures in the floodplain where there is no other feasible alternative; or 3) improvement of fish and wildlife habitat. Any alteration approved for one of these three purposes must minimize impacts to coastal resources and include maximum feasible mitigation measures to mitigate for any unavoidable impacts. In the case of flood protection for existing development, bioengineering alternatives that primarily rely on “soft solutions” shall be preferred over concrete, riprap, or other hard structures. Additionally, Section 8178-2.5.1.1 describes these allowable uses, however the language in this section is not consistent with the LUP, including Section 30236 of the Coastal Act, which is incorporated into the LCP. **IP**

**Suggested Modification 11** includes changes that would bring the provision into conformity with the LUP including Coastal Act Section 30236.

Policy 6.13 and Section 8178-2.7.3.2 prohibit the alteration of a wet environment for a new road crossing, except where there is no feasible, less environmentally damaging alternative to access public recreation areas or legally established development, and when the crossing is accomplished by bridging and the bridge columns are located outside of the bed and bank. Shared bridges for multiple developments must be utilized where possible. The use of a culvert may be permissible for the crossing of a minor drainage where the culvert is designed to allow for the unrestricted movement of fish and other wildlife.

Policy 6.10 and Section 8178-2.7.3 require that all development within 500 feet of a wet environment or wetland is sited and designed to maintain water quality and prevent degradation of ecosystem function. This policy and provision also specify that evaluations of development adjacent to these areas should utilize higher levels of sea level rise. Although sea level rise must be considered in new development, the County is currently preparing a specific amendment to address sea level rise and as such, specifying projections in the subject amendment would be premature. Therefore, **LUP Suggested Modification 19 and IP Suggested Modification 31** are required to remove references to specific sea level rise projections. Policy 6.8 modifies an existing LUP policy, and requires that when shoreline protective devices are permitted, they incorporate mitigation measures to reduce intertidal or nearshore habitat loss and impacts to local shoreline sand supply to the maximum extent feasible. **LUP Suggested Modification 18** is required to clarify the policy and to delete a change to existing policy language that would state that mitigation shall occur to the maximum extent feasible.

Policy 6.11 sets forth the limited instances in which the diking, filling or dredging not only of wetlands, but also of open coastal waters, and estuaries could be allowed, where there is no feasible less environmentally damaging alternative and where all feasible mitigation measures have been provided. Such diking, filling or dredging is limited to the uses identified in Coastal Act Section 30233, including incidental public service purposes, habitat restoration, or nature study, aquaculture, or similar resource dependent activities. Section 8178-2.5.1.2 outlines those allowable uses, however another use not specified in Coastal Act Section 30233 is proposed. Specifically, the County has proposed to allow for water extraction from lakes and ponds by the Ventura County Fire Protection District (or authorized emergency response personnel) when necessary to protect public health/safety during a wildfire event. Therefore, as proposed, this policy is not consistent with Section 30233 of the Coastal Act. In order to assure consistency, **IP Suggested Modification 12** is required to delete water extraction from the list of allowable uses.

Finally, Policy 6.15 states that lagoon breaching or water level modification shall not be permitted unless it can be demonstrated that there is a health or safety emergency, there is no feasible alternative, and all feasible mitigation measures are included to minimize adverse effects. In order to correct an inadvertent error in this policy, **LUP Suggested Modification 20** is required.

## 7. Beaches

After certification of the LCP, the County was delegated authority to consider coastal development permits in the coastal zone. However, any development proposed within tidelands or submerged lands remains under the permit jurisdiction of the Coastal Commission. Nonetheless, the approved LUP provides for the protection of marine resources and ESHA throughout the County. Additionally, the proposed amendment contains policies and provisions regarding development on inland areas that could impact marine resources. As described above, the LUP policies require the minimization of grading and landform alteration, the limitation or prohibition of earthmoving during the rainy season, and the landscaping or revegetation of cut and fill slopes and other areas disturbed by construction to ensure that erosion and sedimentation will be minimized. Marine resources are very sensitive to sedimentation. Policy 6.4 requires the minimization of human-induced erosion through implementation of best management practices to prevent or reduce non-point source pollution, to protect water quality and maintain marine resources. Furthermore, the proposed policies and provisions require the protection of marine mammal haul-outs, seabird nesting/roosting sites, intertidal areas, and dunes.

Appendix E1 contains a detailed description of dune habitat to provide guidance on habitat delineation conducted as part of a Coastal Initial Study Biological Assessment (CISBA). In addition, a definition of dune and a description of the habitat are proposed in the IP. The proposed definition and habitat description describe the typical components of a dune system; however, portions of these definitions could limit applicability. As such, **IP Suggested Modification 1 and 42**, are required to ensure that the IP definition and habitat description appropriately characterize the habitat type.

Proposed Policy 6.1 and Section 8178-2.7.1.1 require the protection of coastal dune habitat and state that allowable uses must be the minimum amount necessary. This policy and standard also promote dune restoration, including the removal of non-native species with low-intensity vegetation removal techniques and the use of native vegetation, preferably from local seed sources. Both also contain language requiring that allowable uses in dunes are designed utilizing higher levels of sea level rise. Although sea level rise must be considered in new development, the County is currently preparing a specific amendment to address sea level rise and as such, specifying projections in the subject amendment would be premature. Therefore, **LUP Suggested Modification 15 and LIP Suggested Modification 25** are required to remove references to specific sea level rise projections.

The County has included provisions to regulate beach nourishment, including the requirement to conduct a pre-project evaluation to identify the type of material, time and method of placement, potential adverse impacts to coastal resources, as well as measures to avoid such impacts. Additionally, the sediment must be tested to ensure that it is free of contaminants and of suitable grain size and color. Beach replenishment projects would also be carried out in consultation with natural resource agencies, and would utilize best available science, including for sea level rise. Although the standards for beach nourishment are included in the proposed amendment, the requirement for a

coastal development permit is not explicitly stated. As such, in order to ensure that beach replenishment activities are only conducted pursuant to a valid coastal development permit, **IP Suggested Modification 29** is required.

The County has also proposed policies and provisions to regulate beach grooming on Hollywood and Silver Strand beaches. These standards allow for year-round hand removal of trash/debris or driftwood that presents a clear public safety hazard and mechanical grooming above the monthly highest-tide line, only when located outside of ESHA and ESHA buffer. The proposed standards also limit mechanical grooming and vehicle use below the highest tide line in order to prevent adverse impacts to grunion fish eggs, which are typically located in the sand from March 1 to August 31. However, in order to ensure that adverse impacts to grunion eggs are avoided, the correct timing must be implemented. As such, **IP Suggested Modification 26** is required to limit beach maintenance activities when grunion eggs are present. Furthermore, **LUP Suggested Modification 17** is required to ensure that beach maintenance activities do not adversely impact shorebird populations. Lastly, **IP Suggested Modification 27** is required to ensure that these activities are only conducted pursuant to a valid coastal development permit.

As a component of the subject amendment, the County has created policies for the removal of sand located immediately adjacent to beachfront residences. Specifically, Policy 6.3 and Section 8178-2.7.1.4, allow for the removal of sand at Hollywood and Silver Strand Beaches for the sole purpose of preventing physical damage to existing, legally permitted beachfront residential and commercial development from wind-blown sand inundation. Sand removal may only within a 50-foot area that extends from the rear property line, and sand redistribution may occur within 150-feet of that area. Sand removal may occur within the buffer zone of ESHA, and sand redistribution may only occur outside of both ESHA and buffer. However, in order to ensure that impacts to grunion fish are also avoided, **IP Suggested Modification 28** is required to limit work to above the highest monthly high tide line. Although the standards for sand removal and redistribution are included in the proposed amendment, the requirement for a coastal development permit is not explicitly stated. As such, in order to ensure that beach replenishment activities are only conducted pursuant to a valid coastal development permit, **LUP Suggested Modification 16** is required.

Hollywood and Silver Strand Beach areas are wide, sandy beaches that contain sensitive dune habitats and sensitive species nesting areas, including grunion fish, western snowy plover, and California least terns. These beaches are also the site of numerous maintenance activities as well as the location of a “sand trap” (to minimize longshore transport of sand into the mouth of Channel Islands Harbor) and corresponding dredging operation. Furthermore, these beaches are popular recreational destination points for both residents and visitors to the County.

The numerous activities that occur at these beaches can result in adverse impacts natural resources, and in order to ensure that the various maintenance activities and uses are protective of sensitive resources, **LUP Suggested Modification 27** requires development of a comprehensive beach management plan and processing of a multi-

year master permit within three years from the certification date of the subject amendment in order to address development, including maintenance activities on these beaches.

## **8. Night Lighting/Dark Skies**

Night lighting of ESHA may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Animals typically fall into one of several patterns of daily activity. Diurnal animals are active during the day; nocturnal animals are active at night; crepuscular animals are active at dawn and dusk; and 24-hour pattern animals have activity bursts during the night, dawn, and dusk. While humans are diurnal in nature, most other mammals are nocturnal (e.g. 80% of primates, all bats), crepuscular (e.g. rabbits, rodents), or have a 24 hour pattern where they are most active at night, dawn, and dusk (e.g. ungulates, large carnivores, some smaller carnivores)<sup>3</sup>. Thus, daily behavioral activities such as sleeping, foraging, eating, moving, and resting occur at different times for different animals such that a single habitat is partitioned into temporal niches regulated by light. Most predators are specifically adapted to hunt under particular light conditions (intensity, wavelength) and in most natural habitats, there is a distinct “changing of the guard”, from a suite of animals that are active during the day to a suite of animals that are active at dusk or dawn and/or at night. The majority of activity of many nocturnal and all crepuscular animals tends to occur during the periods of changing natural light levels - the hours at and just after dusk and just prior to dawn. Introducing artificial night lights to an area will change the ambient setting and can adversely impact animals. Significant adverse impacts to these species include avoidance of the lit area, disorientation, disruption of foraging patterns, increased predation risk, disruption of biological clocks, disruption of reproduction, and disruption of dispersal, to name a few. Any one or a combination of these impacts can lead to reduced survival and/or an increase in mortality. While the impacts of light trespass and sky glow and glare may be deemed inconsequential from a human perspective, the impacts of artificial night lights are very significant and adverse from a wildlife perspective, based on their high sensitivity to light levels and their numerous adaptations to making a living at night.

Night lighting can also adversely impact migrating birds - more than 60 species of waterfowl, raptors, shorebirds, and songbirds are known to regularly migrate through Ventura County; traveling at night and stopping for a time by inland and coastal creeks, wetlands, woods, and neighborhoods on their northward spring and southward fall migrations. Spring migration occurs during the months of late March through May and fall migration occurs during September, October, and the first part of November. Depending on the types of migrating birds, certain pathways (e.g. bordering the ocean, along valleys, etc.) will be more frequented, and certain habitats (woodlands, riparian areas, wetlands) will be more important stopovers, than others. Most migratory movement occurs early in the evening so any impacts to migrating birds due to night

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<sup>3</sup> Chepesiuk, R. 2009. Missing the Dark: Health effects of light pollution. *Environmental Health Perspectives*. v. 117 (1): A20-A-27

lighting are likely to occur during the first two to three hours after sunset<sup>4</sup>. Birds that migrate at night use the moon and stars for navigation. During clear weather they appear to be able to distinguish artificial lighting from light emanating from planets and stars. However, during inclement weather, birds can become confused and drawn to artificial lights. This phenomenon has been observed on numerous occasions at lighted buildings, oil platforms, and athletic fields. Once drawn into an artificial light source a number of negative outcomes including mortality can occur; birds may crash into something, circle the light source becoming exhausted, or become confused and drawn off course.

In order to minimize potential adverse individual and cumulative impacts to wildlife and sensitive habitats, the proposed policies and provisions require lighting to avoid encroachment into ESHA throughout the Coastal Zone. Specifically, Policies 5.18 and 9 require that development is sited and designed to avoid light encroachment into ESHA and that night lighting in the Santa Monica Mountains is specifically limited. Although this policy requires avoiding and minimizing night lighting, it does not contain the specific components of night lighting that must be reduced in order to ensure that light encroachment is avoided. As such, **LUP Suggested Modification 13 and 24** is required to clarify that avoidance and minimization of outdoor lighting is required to reduce light trespass or spill, glare, skyglow, and light pollution.

Section 8178-2.6.15 is proposed in order to ensure that night lighting avoids impacts to ESHA throughout the Coastal Zone. These provisions require that outdoor light fixtures shall only be installed outside ESHA and in locations where light trespass into and the direct illumination of ESHA are avoided, except when outdoor lighting is necessary for a resource-dependent use within ESHA. This section also requires that to the maximum extent feasible, outdoor lighting is installed outside the buffer zone, and outlines the standards that must be implemented for lighting located in the buffer zone. In order to ensure that these standards adequately avoid adverse impacts resulting from night lighting in buffer zone, **IP Suggested Modification 24** is required to modify the allowable amount of light trespass, the time that facilities may be illuminated, as well as the color temperature of the lighting. Furthermore, unnecessary night lighting of accessory facilities such as tennis courts and other recreational facilities have the potential for significant individual and cumulative adverse impacts to ESHA and the scenic, rural dark-sky character of the area. Therefore, **IP Suggested Modification 24** also prohibits outdoor lighting for tennis courts or other recreational facilities.

Section 8177-4.1.11 contains the standards for outdoor lighting in the Santa Monica Mountains area of the County. This section applies to all new development, and existing development that does not comply currently must do so within one year of the certification date of the subject amendment. This section identifies certain types of

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<sup>4</sup> McCrary, M.D., R.L. McKernan, R.E. Landry, W.D. Wagner & R.W. Schreiber. 1982. Nocturnal Avian Migration Assessment of the San Geronio Wind Resource Study Area. Report Prepared for Research and Development, Southern California Edison Company, Rosemead, California through the Los Angeles County Natural History Museum Foundation, Section of Ornithology, Los Angeles, California.

lighting, such as emergency or temporary uses that are exempt from the standards. One such exempt category is for outdoor light fixtures with a maximum output of 60 lumens or less. In order to ensure that this exempt lighting avoids adverse impacts to sensitive biological resources, **IP Suggested Modification 6** is required to ensure that lighting is downward facing and fully shielded.

## **9. Pesticides and Pest Management**

The introduction of pesticides to the environment has potential individual and cumulative impacts to environmentally sensitive wildlife species, environmentally sensitive habitat areas, and water quality. In a perfect world, pesticides would not be necessary. However, there are situations where pesticide use is the most effective and safe approach. Ideally, all feasible alternatives to pesticides are first explored before pesticides are employed. Organic and inorganic pesticides are designed to eradicate/kill target pest(s) and therefore decisions to use them must be made judiciously. Even the most conscientious and appropriate application of pesticides can result in spillover to non-target organisms with sub-lethal and lethal consequences.

Certain rodenticides, particularly those containing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife. As the target species tend to be preyed upon by raptors, mountain lions, or other predators and scavengers, these compounds can bioaccumulate in the animals that have consumed the rodents to concentrations that are toxic to the ingesting non-target species. The California Department of Fish and Wildlife contends that the use of poison baits to control rodents has injured and killed hundreds or thousands of pets and wild animals throughout California, including the golden eagle, great-horned owl, black bear, fisher, San Joaquin kit fox (federally endangered), coyote, mountain lion, bobcat, and badger. In the greater Santa Monica Mountains area in particular, the U.S. National Park Service has documented the deaths of coyotes, bobcat, mountain lions, and fox due to coagulopathy, or internal bleeding caused by anticoagulant rodenticides. Rodenticides have caused at least six known mountain lion deaths in the Santa Monica Mountains area, including three within the past approximately two years.

Other types of pesticides can also cause impacts to wildlife, ESHA, and water quality, especially when the respective pesticide is not an appropriate one for the particular target pest, is not certified for use in California, or is not applied exactly per the label instructions. For example, the use of herbicides (substances used to control unwanted plants) within sensitive wetland and riparian habitat may result in the loss of native vegetation and have adverse impacts upon water quality. The potential exists, especially when herbicides are not applied per the label instructions, for herbicide to enter aquatic environments and for non-targeted vegetation to receive overspray. Another example are insecticides that are highly specific to eliminating mosquito larvae, which may have an adverse impact on the ecosystem with the removal of mosquito larvae that are important food for native amphibians, reptiles, fish and birds. Furthermore, neonicotinoid-based

insecticides, when absorbed by plants, can be present in pollen and nectar, thus making them toxic to bees.

The proposed amendment contains policies and provisions relating to pesticide use and pest management in the Coastal Zone in order to implement LUP ESHA Goal 8, “to minimize adverse impacts on ESHA, coastal water quality, and wildlife through the reduced use of pesticides, including insecticides, herbicides, rodenticides or any other similar toxic chemical substances.” Policy 8.1 specifically prohibits the use of such substances where application would have the potential to significantly degrade ESHA, coastal water quality, or harm wildlife, unless non-chemical methods are infeasible and when used concurrently with an integrated pest management plan. Policy 8.2 similarly limits the use of such substances specifically in the Santa Monica Mountains. Furthermore, Policy 8.3 prohibits the use of second-generation anticoagulant rodenticides, as set forth in Food and Agricultural Code Section 12978.7.

It is important to note that state law now generally prohibits the use of second generation anti-coagulant rodenticides due to their threat to mountain lions and other wildlife. Specifically, the California Ecosystem Protection Act of 2020 (Assembly Bill 1788 (Bloom)), approved by the Governor on September 29, 2020 and effective as of January 1, 2021, prohibits the use of second generation anti-coagulant rodenticides (containing the active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone), with some exceptions, until the Department of Pesticide Regulation (DPR) has completed a reevaluation of second generation anticoagulant rodenticides and adopts any additional restrictions that are necessary to limit significant adverse effects on non-target wildlife.

Under this law, prohibited uses include residential or home uses and most industrial and institutional uses. For example, prohibited uses include use in and around restaurants (that do not have an attached brewery or winery), grocery stores, airports, offices, construction sites, transport vehicles (e.g. ships, trains, aircraft), ports and terminal buildings, shipyards, timber yards, schools, shopping malls, sewers, and sewage treatment plants. Many non-production agricultural uses are also prohibited (such as use around man-made structures at cemeteries, golf courses, and parks). The law does allow for certain exemptions such as for agricultural activities, public health activities, protecting water supply infrastructure and facilities, vector control, eradication of nonnative invasive species on offshore islands, and/or research purposes.

As proposed, Policy 8.3 is consistent with the restrictions in AB 1788 and allows for changes over time after DPR reevaluates these rodenticides and adopts other control measures. **LUP Suggested Modification 22** is included to provide a minor clarification in Policy 8.3 that except in cases where other policies of the LCP require more restrictive measures, the use of second generation anticoagulant rodenticides is prohibited as detailed in Food and Agricultural Code Section

12978.7. The suggested change is not substantive but will more closely align Policy 8.3 with the wording of proposed Policy 8.2.

Furthermore, County staff and Commission staff have coordinated closely with the staff of the California Department of Pesticide Regulation (DPR) prior to submittal of the subject amendment and more recently with regard to the subject staff report. DPR staff has indicated that they do not have concerns with the proposed policies regarding pesticide use, as suggested to be modified by **LUP Suggested Modification 22**.

## **10. Conclusion**

In conclusion, for all of the reasons stated above, the Commission finds that (1) the LUP amendment, only if modified as suggested in this staff report, will meet the requirements of, and be in conformity with, the Chapter 3 policies of the Coastal Act; and (2) the IP amendment, only if modified as suggested in this staff report, conforms with, and is adequate to carry out, the policies of the certified LUP, 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 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, and the Commission's local coastal program 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 local coastal program.

Nevertheless, the Commission is required, in approving a local coastal program submittal to find that the approval of the proposed local coastal program, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended local coastal program will not be approved or adopted as proposed if there are feasible alternative 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 LUP amendment and an IP amendment. As discussed above, the LUP amendment as originally submitted does not conform with and is not adequate to carry out Chapter 3 of the Coastal Act. The Commission has, therefore, suggested modifications to the proposed LUP to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with 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 LUP

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 amendment into conformity with the policies of the Coastal Act.

Further, the IP amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the LUP, as amended. The Commission has, therefore, suggested modifications to the proposed IP to include all feasible measures to ensure that such 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 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 amendment into conformity with the LUP, as amended, 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.

**CALIFORNIA COASTAL COMMISSION**

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# W11a

## ADDENDUM

April 4, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: **Addendum to Item W11a, County of Ventura LCP Amendment No. LCP-4-VNT-21-0069-2 (ESHA Update) for the Commission Meeting of Wednesday, April 6, 2022**

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The purpose of this addendum is to clarify the suggested modifications in the staff report dated March 24, 2022 and to respond to correspondence received. Straight type reflects the proposed LCPA language with the suggested modifications recommended in the Staff Report. ~~Strikethrough~~ indicates text deleted pursuant to this addendum and underline indicates text added pursuant to this addendum.

### I. REVISIONS TO SUGGESTED MODIFICATIONS

1. Part B of LUP Suggested Modification 12 shall be modified as follows:
  - b. All *coastal development permits* that include the approval of development within ESHA, buffer zones, steep slopes, or adjacent to parklands shall be conditioned to require the remaining *ESHA, buffer zones, and slopes* over 30 percent gradient located outside of the approved *building site and mandatory fuel modification zone* are preserved in perpetuity through a *conservation easement or conservation instrument, according to the policies and standards of the LCP.*
2. Part B of LUP Suggested Modification 27 shall be modified as follows:
  - b. The County Harbor Department will apply for a multi-year "master permit" within three years of [DATE OF ORDINANCE EFFECTIVE DATE] to comprehensively address *development*, including beach maintenance activities conducted by the County at Hollywood and Silver Strand Beaches. If the geographic area covered by the permit includes land under the permit jurisdiction of the County *and* the California Coastal Commission, then a consolidated permit may be processed through the Coastal Commission, pursuant to Coastal Act

Section 30601.3. Beach maintenance activities ~~implemented prior to issuance of the master permit shall be required to obtain a separate~~ require a coastal development permit.

3. The definition of Fuel Modification Zone, Mandatory and Development Envelope in IP Suggested Modification 1 shall be modified as follows:

Development Envelope – The full extent of allowable *development* on a *legal lot*. In addition to *structures* or other *development* within a *building site*, the *development envelope* may include, but is not limited to, driveway or road, fire department turnarounds, ~~fire/fuel modification zone~~, water tanks (firefighting), entry gate/*fences*, utility trenches and other site grading, septic systems, wells, and drainage improvements. (See definition for *Building Site*.)

Fuel Modification Zone, Mandatory - The minimum area of vegetation removal around legally established *structures* located in the *building site* that is required by the Ventura County Fire Protection District Ordinance. The standard width of the *mandatory fuel modification zone* is 100 feet, as measured from each side and from the front and rear of the legally established *structure*. Under unique site-specific conditions, the Ventura County Fire Protection District may determine that it is necessary to expand the *mandatory fuel modification zone* for new *development* up to 200 feet if needed to protect life and property from wildland fires.

4. Part A(1)(i), Part B(1), and B(4) of IP Suggested Modification 8 shall be modified as follows:

A(1)(i). The site-specific map shall be adequate to determine all potentially adverse direct, indirect and *cumulative* impacts to *ESHA* resources and confirm that the proposed project is the least environmentally damaging alternative. The minimum geographic extent of field surveys for a site-specific *ESHA* map shall be the area within a 500-foot radius of the proposed *development envelope*. When ~~unless~~ an *expanded fuel modification zone* is proposed for existing structures, ~~in which case~~ the geographic extent of the field surveys shall include a 100 foot radius beyond the proposed *expanded fuel modification zone* (see in Appendix E1, Section AE-1.3.2.(g)(1)(iv). All portions of the subject *lot* that lie outside the required 500-foot field survey area shall be mapped using certified *ESHA* maps, aerial photographs and/or *habitat*/wildlife information available from federal/state/local *natural resource agencies* (e.g., National Park Service or other vegetation maps, wildlife tracking *GIS* data, *monarch butterfly overwintering sites*, *California Natural Diversity Database*. (See Appendix E1, Section AE-1.3.1(a) and AE-1.3.2(g)(2)); and

B(1). Written description and graphic depiction of two or more project design alternatives on a site plan that provide a reasonable range of options that minimize direct and indirect, adverse impacts on *ESHA* and encroachment within *buffer zones*. Project design alternatives shall depict all proposed *development*

and shall include different locations, shapes and sizes that include, but are not limited to the following project components: *building site*, *structures* (e.g., house, garage, barn), *site features* (e.g., pool, patio, *fences*, landscaping), *fuel modification zones* (including the mandatory fuel modification zone required by the fire department and the maximum allowable expanded fuel modification zone), water tanks and other proposed *development* sited outside the *building site*, animal containment areas, driveway/access road(s), and water/wastewater systems. ~~The width of the mandatory fuel modification zone and the maximum allowable expanded fuel modification zone shall be evaluated for each location. The design alternatives for the proposed fuel modification zone shall be the width recommended and authorized by the Ventura County Fire Protection District for each alternative.~~

B(4). The Planning Staff Biologist, ~~or~~ County's designated biological consultant, or Coastal Commission on appeal shall determine if the content and conclusions of the CISBA and the graphic depiction of habitats on the site-specific *ESHA* map were completed pursuant to the policies and standards of the LCP.

5. Part A of IP Suggested Modification 15 shall be modified as follows:
  - a. Santa Monica Mountains: Within the Santa Monica Mountains (M) overlay zone, the maximum allowable building site shall be 10,000 square feet, or 25 percent of the legal lot size, whichever is less. The allowable building site may be increased above the maximum allowed by this Section when authorized pursuant to the incentive program in Section 8178-2.9.4.1, and it may be decreased pursuant to Section 8178-2.6.2.2(b). If the development is authorized to provide an economically beneficial use the permit shall be conditioned to require the remaining area of the parcel lot located outside of the building site and mandatory fuel modification zone is preserved in perpetuity through a conservation easement or conservation instrument, except as otherwise set forth in the project's associated Coastal Development Permit and any allowable future development that is consistent with Section AE-2.2.2.
6. Part E of IP Suggested Modification 16 shall be modified as follows:
  - e. On-Site Open Space Requirements – *Development* shall not be permitted in areas with greater than or equal to 30 percent *slope*. All on-site *ESHA*, *buffer zones*, *slopes* over 30 percent shall be permanently maintained in their natural state through a *conservation easement* or *conservation instrument* when a ~~coastal development permit that includes approval of development within ESHA, buffer zone, and slopes over 30 percent, including for development:~~ (1) identified on an applicant prepared site-specific *ESHA* map, and/or (2) located in the Coastal Open Space (COS) zone, Santa Monica Mountains (M) overlay zone, or Coastal Industrial (CM) zone.
7. Parts A and C of IP Suggested Modification 18 shall be modified as follows:

a. A new or *expanded fuel modification zone* shall only be authorized through a new or modified *Coastal Development Permit*. Vegetation removed for *fuel modification* purposes shall be conducted in accordance with a Planning Division and Ventura County Fire Protection District-approved *Fuel Modification Plan* and *ESHA Vegetation Management Plan, as applicable* (See Appendix E2, Section AE-2.4). *Low-intensity vegetation removal techniques* shall be used when removing vegetation in ESHA or *buffer zone*.

c. Where an expanded fuel modification zone is ~~approved~~ proposed within ESHA or buffer zone, an approved *ESHA Vegetation Management Plan* (see Appendix E2, Section AE-2.4) is required to retain the ESHA or buffer zone within that area.

8. IP Suggested Modification 19 shall be modified to include the following changes to the last paragraph of Section 8178-2.6.9.2:

Allowable uses within an *expanded fuel modification zone* shall be limited to approved vegetation management activities for fire protection purposes in accordance with Appendix AE-2.5 ~~(when applicable)~~, and *resource-dependent uses* described in Section 8178-2.5.1 that do not require the further expansion of any *fuel modification zone*.

9. Part D of IP Suggested Modification 20 shall be modified as follows:

d. An expanded *fuel modification zone* thinned pursuant to AE-2.5 may be authorized up to 300 feet from a legally established *structure* located within the building site or to the property line, whichever distance is shorter, if it is determined by the Ventura County Fire Protection District that it is necessary to protect life, property, and natural resources from unreasonable risks associated with wildland fires. In making this determination, the Ventura County Fire Protection District may consider whether there are any other feasible mitigation measures possible.

10. Part B shall be added to IP Suggested Modification 24 and Part 3 shall be modified as follows:

b. Buffer Zones — To the maximum extent feasible, outdoor *light fixtures* shall be installed outside a *buffer zone* and in locations where *light glare* and *light trespass* into the *buffer zone* is minimized to avoid or minimize impacts to biological resources. When ~~outdoor lighting is placed~~ allowed in a *buffer zone*, it shall comply with the following:

~~3. Outdoor lighting for a pool, that is accessory to a dwelling shall be shielded or screened from nearby ESHA. If such lighting causes light trespass in excess of~~

~~0.01 foot candles at the vertical plane and the horizontal plane at the edge of a buffer zone or ESHA, then the facility shall not be illuminated between 10 p.m. and sunrise. Outdoor lighting for tennis courts or other recreational facilities that are accessory to a dwelling is prohibited to avoid or minimize impacts to biological resources.~~

11. Part E of IP Suggested Modification 32 shall be modified as follows:
  - e. A *Coastal Development Permit* authorizing a *land division* shall include conditions of approval that restrict *development* to an approved *development envelope*. Outside the *development envelope*, future *development* shall be prohibited within any onsite *ESHA(s)*, *buffer zone(s)*, and/or areas with *slopes* over 30 percent gradient. Notwithstanding the foregoing, Areas subject to such *development* restrictions shall be permanently maintained in their natural state except as otherwise provided in Section AE-2.2.12 through recordation of a *conservation* easement or *conservation instrument* deed restriction.
12. Part A of Suggested Modification 34 shall be modified as follows:
  - a. Merges the lot upon which the proposed building site is located with an abutting legal lot or lots containing at least three acres of undeveloped land and meeting the standards for an off-site preservation lot stated in Section 8178-2.10.5(b). All areas of the resulting lot outside of the building site and mandatory fuel modification zone must be preserved in perpetuity through a conservation easement or conservation instrument, except as otherwise set forth in the project's associated Coastal Development Permit and any allowable future development that is consistent with Section AE-2.2.1; or
13. Part B(1) of IP Suggested Modification 37 shall be modified as follows:
  1. Permittee - Off-site compensatory mitigation area must be located within the Ventura County *coastal zone*. If a property is bisected by the coastal zone boundary, up to 50 percent of the area may be located outside of the coastal zone. Off-site mitigation sites shall be selected based on proximity to the impacted *ESHA ecosystem*, in the following order of priority:
14. Part D(8) of IP Suggested Modification 39 shall be modified as follows:
  8. Timing of Compensatory Mitigation – Whenever feasible<sup>1</sup>, land acquisition shall be conducted within three years of the receipt of fees in the Coastal Habitat Impact Fund. Fees will be paid prior to a zoning clearance ~~for construction.~~
15. The following shall be added as Part B of Suggested Modification 40, subsequent parts shall be relabeled, and Parts C and G shall be modified as follows:
  - b. Increase of a Mandatory Fuel Modification Zone – New *development* with a *mandatory fuel modification zone* greater than the standard 100-foot width

requires a finding supported by a determination made by the Ventura County Fire Protection District, that the increased *fuel modification zone* of up to 200-feet is needed to protect life and property from wildland fires based on site-specific environmental conditions and that there are no other feasible mitigation measures possible.

c. Expanded Fuel Modification Zone – If the width of a fuel modification zone exceeds 100 feet, the Ventura County Fire Protection District has authorized the expanded fuel modification zone, ~~provided documentation illustrating the width of the expanded zone,~~ and determined that it is necessary to protect life, property, and natural resources from unreasonable risks associated with wild land fires and there are no other feasible mitigation measures possible.

g. Open Space Restriction – All ESHA, buffer zones, and slopes over 30 percent gradient located on the lot outside of the *building site* and *mandatory fuel modification zone* are preserved in perpetuity through a *conservation easement* or *conservation instrument* except as otherwise set forth in the project's associated *Coastal Development Permit* and any allowable future *development* that is consistent with Section AE-2.2.2.

16. Part G(3)(viii) of IP Suggested Modification 43 shall be modified as follows:

When an expanded fuel modification zone ~~reduced County In-Lieu Fee for ESHA thinning pursuant to Section 8178-2.6.9.3~~ is proposed, pre-disturbance vegetation surveys for the *expanded fuel modification zone* shall be conducted when vegetation growth is at its greatest density (e.g., March-June). This survey may be combined with the general floristic mapping required for the site-specific *ESHA* map.

17. Part A(2) of IP Suggested Modification 45 to modify Part A(2) shall be modified as follows:

2. If an *ESHA* or *buffer zone* overlaps with any ~~extended~~ expanded fuel modification zone that has been widened for the proposed project beyond the 100-foot mandatory fuel modification standard, then a written determination ~~documentation~~ shall be obtained from the Ventura County Fire Protection District ~~confirming the authorization of~~ that states the *expanded widened fuel modification zone* (see CZO Section 8178-2.6.9.2 (e) *is necessary to protect life and property from wildland fires*. This determination shall be used for the permit findings for the project site and for alternate sites identified in during the least damaging alternatives analysis (see CZO Section 8178-2.3 (b)).

18. IP Suggested Modification 47 shall be modified as follows:

*A conservation instrument* shall be used to conserve on-site *ESHA*, *buffer zones*, and *slopes* over 30 percent located outside of the building site and mandatory

fuel modification zone that are not used as compensatory mitigation. The conservation instrument area shall be preserved in perpetuity, except as otherwise set forth in the project's associated *Coastal Development Permit* and any allowable future *development* that is consistent with Section AE-2.2.2.

19. IP Suggested Modification 49 shall be modified as follows:

When a *conservation easement* or deed restriction is used to conserve areas as compensatory mitigation, the *conservation easement* or deed restriction shall include terms and conditions such that the instrument meets the following: (1) definition for a *conservation easement* in CZO Article 2; and (2) the requirements for compensatory mitigation in CZO Section. 8178-2.10.1~~(e)~~. New uses and *development* in the conservation area shall only be allowed pursuant to a valid *coastal development permit* and shall be limited to the following:

20. IP Suggested Modification 50 shall be modified as follows:

When a conservation instrument is used for on-site development restrictions, pursuant to CZO Section 8178-2.6.3(e), the conservation instrument shall include terms and conditions such that the instrument meets the definition in Article 2 and the requirements in CZO Section 8181-3.5.3(i)(2). New (or modified) uses and development in the restricted area shall only be allowed pursuant to a valid coastal development permit (or discretionary permit modification) and shall be limited to the following:

a. General Requirements - When a deed restriction is used as a *conservation instrument* to avoid potential impacts associated with *development*, it shall include terms and conditions such that the instrument meets the definition of a *conservation instrument* in Article 2.

b. Allowable Uses and Development - New uses and *development* in the area subject to the deed restriction/permit condition shall be limited to the following:

1. All allowable uses provided by Section AE-2.2.1(c) and 8178-2.5.1;
2. Replacement of a failed water well and associated water tank or septic system that meets the following standards: (i) a replacement system was not identified by the existing permit, and (ii) substantial evidence is provided that no feasible, alternate location is available within the approved *development envelope*; and
3. Fuel modification authorized required by the Ventura County Fire District, if undertaken in accordance with a *ESHA Vegetation Management Plan* approved by the County pursuant to a *Coastal Development Permit*.
4. The siting of safety infrastructure required by state law (e.g., fire department turn arounds, roads, water tank) that is based upon substantial evidence that no feasible alternate location is available within the previously entitled *building site* or *mandatory fuel modification zone*.

21. The following shall be added to IP Suggested Modification 51 to modify Part B(2)(i):
- i. Using the Site Plan Maps, identify and quantify the amount of *ESHA* or *buffer zone* within the *expanded fuel modification zone* that will be removed or altered and all *ESHA* or *buffer zone* areas retained. Applicants ~~applying for the reduced County in-lieu mitigation fee for coastal sage scrub and chaparral habitat removal~~ shall provide a detailed explanation of the methods and calculations used to determine the total percent of ~~the coastal sage scrub and chaparral habitat or buffer zone proposed for removal~~ vegetation thinned pursuant to AE-2.5. If priority vegetation removal could not be met, describe why.
22. The following shall be added to IP suggested Modification 52 to add Part B, and all subsequent parts shall be relabeled:
- b. Consistent with the fuel management objectives ((a) above), steps shall be taken to minimize erosion, soil disturbance, and the spread of flammable nonnative grasses and weeds.

## II. RESPONSE TO CORRESPONDENCE RECEIVED

Included in the Correspondence Tab is a letter received from the Mountains Recreation and Conservation Authority (MRCA). Within this letter MRCA staff express their general support for the subject amendment and also outline concerns relating to the County's proposed in-lieu mitigation fee program for impacts to coastal sage scrub and chaparral habitats in the Santa Monica Mountains. Specifically, MRCA staff expresses concern regarding the proposed mitigation ratio and fee amount and indicate that it is insufficient to provide for a full offset of impacts due to the high cost of land acquisition within the Santa Monica Mountains area of the County. As described in Section 4 of the Staff Report, the mitigation proposed to be provided through an in-lieu fee program is modeled on the approach taken by the County of Los Angeles in the certified Santa Monica Mountains LCP, as well as that taken by the Commission in its approval of CDPs in Los Angeles County prior to LCP certification. Additionally, the proposed fee is interim, and will be updated following an in-depth fee study in order to establish the permanent amount.