

ORDINANCE NO. 3522

**AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO TO ESTABLISH
THE LOS OSOS HABITAT CONSERVATION PLAN MITIGATION FEES**

WHEREAS, on December 15, 2020, the Board of Supervisors of the County of San Luis Obispo ("County") approved the form of the Los Osos Community-wide Habitat Conservation Plan (LOHCP);

WHEREAS, on February 15, 2024, the United States Fish and Wildlife Service approved the LOHCP and issued an Incidental Take Permit which authorizes the County to confer incidental take authorization through issuance of Certificates of Inclusion to project proponents who participate in the LOHCP's implementation, including mitigation of project-related impacts;

WHEREAS, the benefits of LOHCP implementation and mitigation of project-related impacts accrue to project proponents and it is the intent of the County not to provide a General Fund subsidy to project proponents;

WHEREAS, to implement the LOHCP, mitigation fees need to be established by the County;

WHEREAS, the LOHCP sets forth the amounts, basis, and adjustments for fee calculations associated with mitigating the direct, indirect, and cumulative impacts of development on covered habitat and species;

WHEREAS, as contemplated by the LOHCP, the fees established under this mitigation fee ordinance include costs to replenish the general fund loan being made available by the County to help jumpstart implementation and mitigation credit accrual during the first ten years of the LOHCP's implementation in accordance with existing general fund loan policies of the County; and

WHEREAS, in accordance with Government Code Sections 25124, 36934, 66004, 66016, 66017, and 66018, a public hearing was duly noticed and conducted by the Board of Supervisors on February 4, 2025, regarding adoption of this new mitigation fee ordinance.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

SECTION 1: The Board of Supervisors finds and determines:

a This Ordinance shall be known as the "Los Osos Habitat Conservation Plan Mitigation Fee Ordinance".

b That it has the authority to establish the mitigation fees set forth under the LOHCP to mitigate and offset impacts from development projects under the general laws of the State of California, including Government Code Section 66000 et seq.

c The County Auditor-Controller has certified to this Board that the overhead rates are calculated in accordance with accounting standards set by the Federal Government's Office of Management and Budget, in accordance with Circular A-87.

d The fees shown on "Exhibit A" reflect the Board-approved charges necessary to implement the LOHCP, which are limited to those items included in the Federal Office of Management and Budget Circular A-87; provided, however, that fees for zoning and planning matters, including municipal and district organizational and re-organizational matters, as specified in Government Code Section 66016, do not exceed estimated reasonable costs of those services for which the fees are charged.

e By definition, these charges are not a "tax" and are exempt from voter approval pursuant to California Constitution Code Article XIII C, section 1, paragraph (e)(1)[charge for specific benefit conferred]/(2)[charge for specific service provided] (Prop. 26).

f Public Notice has been given in accordance with Government Code Sections 66016 and 66018.

SECTION 2: The Board of Supervisors hereby establishes the Los Osos Habitat Conservation Plan Mitigation Fees ("LOHCP Mitigation Fees") as follows:

a The LOHCP Mitigation Fees shall be collected by the Department of Planning and Building ("Department") in the amounts set forth in "Exhibit A", subject to the annual and periodic adjustments set forth under this ordinance and the LOHCP, prior to issuance of a Certificate of Inclusion conferring incidental take coverage under the County's Incidental Take Permit for all projects proposing new land disturbance within the LOHCP Area that require a land use, construction, or encroachment permit issued by the County. Because of the LOHCP requirement that habitat mitigation efforts stay ahead of project impacts, LOHCP Mitigation Fees may, in the discretion of the Department, be collected prior to mitigation credits being available for issuance of a Certificate of Inclusion.

b The LOHCP Mitigation Fees collected pursuant to this Ordinance shall be used for the purposes described in the LOHCP.

c Upon receipt of fees subject to this ordinance, the Department shall deposit, invest, account for, and expend the fees pursuant to California Government Code Section 66006.

d A portion of the fees shall be used to establish the endowment that will fund post-permit management and monitoring and post-permit administration; and such portion shall be provided to the National Fish and Wildlife Foundation (NFWF) for deposit in a separate trust account on behalf of the County as described in the LOHCP.

e Automatic Annual Fee Adjustment. In accordance with Chapter 7 of the LOHCP, an annual adjustment to account for inflationary changes in costs shall be applied to the LOHCP Mitigation Fees, as presented in Exhibit A. The basis for the annual adjustment shall be the percentage increase or decrease for the "Los Angeles-Long Beach-Anaheim, CA" CPI for

Urban Consumers as published by the Bureau of Labor Statistics, for the period ending April of the previous fiscal year. The adjustment shall be by a percentage equal to the percentage increase of the CPI between the April published CPI and the corresponding CPI for the same period twelve months previous and the adjustment shall be applied to the amounts shown in Exhibit A, beginning on July 1, 2026, and continuing each July 1st thereafter.

f. Implementation Cost Fee Adjustment. Annually, each July 1st, in addition to the automatic annual fee adjustment, the level of fees in "Exhibit A" shall be updated, as necessary, to reflect projected full-cost recovery based on the latest estimated costs of LOHCP implementation, including the timely repayment of any General Fund loan proceeds disbursed from the County for start-up support of LOHCP implementation. The fee level shall be increased or decreased as necessary to incorporate all LOHCP implementation costs, including outstanding General Fund loan obligations, land acquisition, administration, restoration, mitigation and management costs to maintain stay ahead mitigation status and reflect the changes in actual and estimated costs of LOHCP implementation.

g **SECTION 3:** This ordinance shall take effect and be in full force and effect sixty (60) days after its adoption; and before the expiration of fifteen (15) days after passage of this ordinance, a summary shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

INTRODUCED at a regular meeting of the Board of Supervisors held on the 10th day of December 2024, and **PASSED and ADOPTED** by the Board of Supervisors on the 4th day of February 2025, by the following roll call vote, to wit:

AYES:	Supervisors Bruce S. Gibson, Jimmy Paulding, Heather Moreno and Chairperson Dawn Ortiz-Legg
NOES:	Supervisor John Peschong
ABSENT:	None
ABSTAINING:	None

/s/ Dawn Ortiz-Legg
Dawn Ortiz-Legg
Chairperson of the Board of Supervisors

ATTEST:

MATTHEW P. PONTES
County Administrative Officer and
Ex-Officio Clerk of the Board of Supervisors

By: Niki Martin
Deputy Clerk

[SEAL]

APPROVED AS TO LEGAL FORM AND EFFECT:

RITA L. NEAL

County Counsel

Dated: September 20, 2024

By: /s/ Brian J. Stack

Deputy County Counsel

Exhibit A

Mitigation Fee Summary per Square Foot¹

Restoration /Management/Administration Fee	1.72
Habitat Protection Fee	0.23
Total	1.95

¹ Project fees will be charged by multiplying the area of ground-disturbing activities in square feet by the values listed here.