



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: 12/10/2019
Placement: Departmental
Estimated Time: 1 hour
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
(805) 568-2072
SUBJECT: 2019 General Package Ordinance Amendments

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Recommended Actions:

That the Board of Supervisors (Board):

Consider the recommendations of the County and Montecito Planning Commissions to adopt three ordinances, Case Nos. 19ORD-00000-00003, 19ORD-00000-00004, and 19ORD-00000-00005, which would amend, respectively, the County Land Use and Development Code (CLUDC), the Montecito Land Use and Development Code (MLUDC), and the Coastal Zoning Ordinance (Article II), to implement a series of amendments that revise procedures and regulations for commercial telecommunications facilities and recordable documents to implement federal and state regulations; delete repealed and expired regulations; delete uncertified regulations from the CLUDC and MLUDC that were intended to apply solely within the Coastal Zone; and make other minor clarifications, corrections, and revisions. In addition, consider recommendations regarding submittal of the Article II amendments to the California Coastal Commission (Coastal Commission) for certification as amendments to the Santa Barbara County Local Coastal Program (LCP).

a) Case No. 19ORD-00000-00003 (CLUDC)

- i) Make the required findings for approval, including California Environmental Quality Act (CEQA) findings, of the proposed ordinance (Attachment 1);
- ii) Determine that the adoption of this ordinance is exempt from the provisions of CEQA pursuant to Section 15061(b)(3) of the State Guidelines for the Implementation of CEQA (Attachment 2), and accept Negative Declaration 97-ND-02 and the Addendum dated March 4, 2011, as

Auditor-Controller Concurrence

As to form: N/A

adequate environmental review for the amendments to the telecommunications facilities regulations pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA (Attachment 3); and

- iii) Adopt an ordinance amending the CLUDC (Case No. 19ORD-00000-00003), Section 35-1 of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment 4).

b) Case No. 19ORD-00000-00004 (MLUDC)

- i) Make the required findings for approval, including CEQA findings, of the proposed ordinance (Attachment 5);
- ii) Determine that the adoption of this ordinance is exempt from the provisions of CEQA pursuant to Section 15061(b)(3) of the State Guidelines for the Implementation of CEQA (Attachment 6), and accept Negative Declaration 97-ND-02 and the Addendum dated March 4, 2011, as adequate environmental review for the amendments to the telecommunications facilities regulations pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA (Attachment 3); and
- iii) Adopt an ordinance amending the MLUDC (Case No. 19ORD-00000-00004), Section 35-1 of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment 7).

c) Case No. 19ORD-00000-00005 (Article II)

- i) Make the required findings for approval, including CEQA findings, of the proposed ordinance (Attachment 8);
- ii) Determine that the adoption of this ordinance is exempt from the provisions of CEQA pursuant to Section 15061(b)(3) and Section 15265 of the State Guidelines for the Implementation of CEQA (Attachment 9), and accept Negative Declaration 97-ND-02 and the Addendum dated March 4, 2011, as adequate environmental review for the amendments to the telecommunications facilities regulations pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA (Attachment 3); and
- iii) Adopt an ordinance amending the Coastal Zoning Ordinance (Case No. 19ORD-00000-00005), Article II, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment 10).

d) Submittal of Article II Coastal Zoning Ordinance Amendments to Coastal Commission

- i) Adopt a resolution authorizing the submittal of the Article II ordinance amendments (Case No. 19ORD-00000-00005) to the Coastal Commission for certification as an amendment to the Santa Barbara County LCP (Attachment 11);
- ii) Find that the transmittal of this resolution is an administrative activity of the County which will not result in direct or indirect physical changes in the environment and is therefore not a “project” as defined for purposes of CEQA under State CEQA Guidelines Section 15378(b)(5); and
- iii) Direct the Planning and Development Department to transmit the adopted resolution to the Executive Director of the Coastal Commission.

Please refer the matter to staff if the Board takes other than the recommended actions for the development of appropriate materials.

Summary Text:

The Planning and Development Department is committed to keeping the zoning ordinances accurate and up-to-date by routinely processing amendments that address emerging issues, and correct and clarify existing language, in order to ensure that regulations keep pace with current trends, policies, and state law, and to provide clarity to the regulations. The following amendments:

- Remove expired, repealed, and uncertified language
- Clarify existing procedures and requirements
- Implement revisions in state law
- Implement revisions in federal law
- Correct errors and omissions

The following table identifies the proposed amendments and the affected zoning ordinances.

AMENDMENT TOPIC		APPLICABILITY		
		CLUDC	MLUDC	ARTICLE II
1	Delete Coastal Zone regulations and language	√	√	
2	Commercial Telecommunications Facilities	√	√	√
3	Recordable Documents	√	√	√
4	Delete Small Wind Energy Systems	√	√	
5	Delete Time Extension Due to Economic Hardship	√	√	√
6	Delete Residential Agricultural Units	√		
7	Floor Below Grade Adjustment Figures – Summerland Community Plan	√		√
8	Delete Compliance with Measure A96		√	
9	Delete Attachment 1 – Community Plan Development Standards	√	√	

The discussion below presents a summary of the proposed amendments and the purpose of each amendment, including references to where specific ordinance text revisions can be found. The discussion collectively refers to the CLUDC, MLUDC, and Article II as the “zoning ordinances;” however, if the amendments only revise the CLUDC, MLUDC, or Article II then that document will be specifically identified. The complete texts of the ordinance amendments are included in Attachment 4 (CLUDC), Attachment 7 (MLUDC), and Attachment 10 (Article II). Proposed deletions are shown by striking through the text and proposed additions are underlined in red font. The use of an ellipsis (...) indicates sections where the text is unchanged and has been omitted for the sake of brevity.

The CLUDC, MLUDC, and Article II ordinance amendments also include minor corrections and language revisions, including renumbering and formatting tables, which do not materially change the existing regulations and serve only to clarify or correct existing language. These revisions are not discussed in this Board Letter.

The amendments to the CLUDC and MLUDC will take effect 30 days following Board adoption of the ordinance. However, the amendments to Article II constitute an amendment to the County’s certified Local Coastal Program and, therefore, will take effect following Coastal Commission certification of the Article II amendments.

A. Ordinance Amendments

1. Delete Coastal Zone Regulations and Language (CLUDC – Attachment 4 Sections 2, 3, 4, 5, 6, 7, 8, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 30, 32; MLUDC – Attachment 7 Sections 1, 4, 5, 6, 8, 15, 17)

Background. On November 27, 2007, the Board of Supervisors adopted the CLUDC and MLUDC, which combined the land use regulations of the Coastal and Inland Zoning Ordinances and clarified where the regulations differed. However, the Coastal Commission did not certify the CLUDC or MLUDC, and the regulations of Article II continue to apply within the Coastal Zone. With limited exceptions, the CLUDC and MLUDC ordinance amendments delete all remaining regulations, language, standards, and references that were intended to apply within the Coastal Zone of the County, yet were never certified by the Coastal Commission and, consequently, never became operative. As such, the zoning regulations set forth in Article II continue to govern within the Coastal Zone. Deleting the inoperative regulations will eliminate confusion as to which regulations (Article II, MLUDC, or CLUDC) apply within the Coastal Zone. These revisions, which are extensive, are not depicted in the attached ordinances but are shown using strikethrough and underlined text in Attachments 12 and 13. Additional deletions of Coastal Zone regulations include deletion of any regulations associated with zones, overlay zones, development standards, or uses that only occur within the Coastal Zone.

The few references to the Coastal Zone that remain serve to clarify that the CLUDC and MLUDC do not apply within the Coastal Zone. For example, Transfer of Development Rights (Chapter 35.64 and Chapter 35.454, respectively), are retained because they apply to both inland areas and the Coastal Zone.

2. Commercial Telecommunications Facilities (CLUDC – Attachment 4 Sections 18, 29, 31; MLUDC – Attachment 7 Sections 8, 14, 16; Article II – Attachment 10 Sections 1, 2, 5)

Background. The Federal Telecommunications Act of 1996 (Act) established federal regulatory authority over the deployment of personal wireless telecommunications facilities across the nation. The Act generally preserved local zoning authority over the placement, construction, and modification of personal wireless service facilities. However, that local authority is subject to several limitations, including that local regulation must not “prohibit or have the effect of prohibiting” the provision of personal wireless services, and that local governments must act on applications to deploy personal wireless facilities “within a reasonable period of time” (47 U.S.C.A. § 322(c)(7)(B)). In 1997, the County adopted a tiered permitting structure to comply with the new regulations. In 2011, the County amended the tiered permitting structure to increase public hearings for certain projects, increase public noticing, and establish requirements and findings regarding the existence of a gap in coverage or capacity and alternative siting (a least intrusive means analysis).

On November 18, 2009, the Federal Communications Commission (FCC) adopted and released a Declaratory Ruling interpreting the requirement that local governments act on applications “within a reasonable period of time.” This Declaratory Ruling provided direction that affects the County’s processing requirements. The FCC found that a “reasonable period of time” is presumptively 90 days for collocated facilities applications and 150 days for all other applications. If a local jurisdiction does not act upon applications within those timeframes, then a personal wireless service provider may seek redress in court within 30 days, as provided in 47 U.S.C. Section 332(c)(7)(B)(v). In addition, under California Government Code Section 65964.1, an application for personal wireless facilities may be “deemed approved” if the County does not take action on the application in accordance with the time periods and

procedures established by the FCC, and the applicant satisfies certain requirements. However, these timeframes (also known as “shot clocks”), in general, may be extended by mutual agreement of the parties.

Since 2009, the federal government has promulgated new regulations that affect the County’s review of wireless telecommunications facilities, which require the County to amend the zoning ordinances to comply with these regulations. First, the Spectrum Act of 2012 requires that local governments ministerially approve an “eligible facilities request” for a modification of an “existing wireless tower or base station” that does not “substantially change the physical dimensions” of the facility. Subsequent FCC regulations defined these terms. The Spectrum Act also established a new shot clock for these applications. The County must approve these Spectrum Act modification requests within 60 days of application submittal. The Spectrum Act did not modify the original shot clocks for other collocated facilities applications (90 days) and applications for facilities that are not collocated (150 days).

Second, on September 26, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order 18-133 (FCC Order). The FCC Order limits a local jurisdiction’s ability to regulate the deployment of “small wireless facilities.” It establishes new standards for permit fees and aesthetic requirements for small wireless facilities. It also reduces the shot clocks to 60 days for collocated small wireless facilities and 90 days for locating small wireless facilities on new structures. Lastly, the FCC Order established a uniform definition for the meaning of the phrase “prohibit or have the effect of prohibiting” under the Telecommunications Act of 1996. The FCC Order became effective on January 14, 2019. The goal for the new FCC rules is to ensure deployment of small wireless facilities is not materially impeded by various local government regulations.

The proposed ordinance amendments provide essential permit procedures for (1) eligible facilities requests that comply with the Spectrum Act, and (2) small wireless facilities that comply with the new FCC Order, pursuant to 47 C.F.R. Section 1.6100 *et seq.*

Planning and Development staff will be recommending that the Board include a new ordinance amendment project in the 2020/2021 Annual Work Program that will involve working with the Boards of Architectural Review to develop objective standards to address aesthetic and visual resource impacts from eligible facilities (e.g., reducing clutter, establishing distance requirements between poles, and identifying preferred locations) in compliance with the FCC Order.

A summary of the current proposed ordinance amendments for telecommunications facilities is provided below. Please refer to the summaries provided in the staff reports to the Montecito Planning Commission (Attachment 16, Section 5.2.A through 5.2.D) and County Planning Commission (Attachment 17, Section 5.2.A through 5.2.D).

3. Recordable Documents (CLUDC – Attachment 4 Section 22; MLUDC – Attachment 7 Section 10; Article II – Attachment 10 Section 4)

Background. The Santa Barbara County Clerk-Recorder is responsible for recording documents. The California Government Code Section 27201(a)(1)(A) provides:

The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice that is authorized or required by statute, or court order to be recorded, or authorized or required to be recorded by a local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property, if the instrument, paper, or notice contains sufficient information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible. [emphasis added]

This statute, which allows the Recorder to record documents authorized by local ordinance, is the basis for the County to record certain Notices to Property Owners (NTPO) that are not otherwise statutorily authorized.

The zoning ordinances require the recordation of NTPOs for certain structures and/or uses identified in the zoning ordinances. Some examples include agriculture employee dwellings (Article II Section 35-144R.G), guest houses (CLUDC Subsection 35.42.150.L, MLUDC Subsection 35.442.120.L, and Article II Section 35-120.11), and home occupations (CLUDC Subsection 35.42.190.C.2, MLUDC Subsection 35.442.130.C.2, and Article II Section 35-121.3.2). The NTPOs ensure that current and future property owners are aware of the applicable ordinance development standards and conditions of approval regarding the use of these structures.

The County, through mitigation measures and conditions of approval on permits, requires the recordation of a variety of documents. Some of these documents are statutorily authorized (such as informational sheets included with the recordation of final maps pursuant to the State Subdivision Map Act), while others are not statutorily authorized, nor are they authorized by local ordinance (such as a “buyer beware” notification). This inconsistency with state law has, at times, led to complications when a property owner attempts to record a document in compliance with permit conditions of approval and the Recorder determines that the document cannot be recorded because it is not authorized by statute or local ordinance.

The purpose of this ordinance amendment is to add new sections to the CLUDC (Section 35.82.050), MLUDC (Section 35.472.050), and Article II (Section 35-179D), which authorize the recordation of certain documents. The new section would authorize the recordation of NTPOs and other documents (such as notices and agreements) when required pursuant to permit conditions of approval. The ordinance amendments identify uses for which permit conditions of approval typically require the recordation of such documents.

4. Small Wind Energy Systems (CLUDC – Attachment 4 Sections 12, 21, 32; MLUDC – Attachment 7 Sections 3, 9, 17)

Background. In 2010, the County amended the CLUDC by adding Section 35.57.060, Small Wind Energy Systems to Chapter 35.57, Wind Energy Conversion Systems, and the MLUDC by adding Chapter 35.446, Wind Energy Conversion Systems, to allow small wind energy systems in certain zones and provide a permit process and standards for their location and operation. The amendments were required in order to be consistent with regulations set forth in Article 2.11 (Wind Energy) of the California Government Code (Section 65893 *et seq.*), which was added to the Government Code by Assembly Bill (AB) 45 (approved by the Governor on October 11, 2009). The California State legislature enacted AB 45 as a measure to reduce California's dependence on nonrenewable energy sources by encouraging the development of small, private wind energy systems. AB 45 amended the Government Code to add Article 2.11 that allowed for the development of systems that primarily serve the property where they are located, provided the lot is at least one acre in size and located outside of urbanized areas.

Section 65899 of Article 2.11 provided that these regulations shall remain in effect only until January 1, 2017, and as of that date are repealed, unless extended by statute enacted by the State of California prior to January 1, 2017. Section 35.57.060.H of the CLUDC and Chapter 35.57 of the MLUDC included the same requirement. The State of California did not enact a new statute extending the provisions of the law; thus, Section 35.57.060 of the CLUDC and Section 35.446.070 of the MLUDC were repealed effective January 1, 2017. The current amendments would delete the language of these sections and associated definitions and height standards set forth elsewhere in the CLUDC and MLUDC, which are no longer in effect, and reserve the sections for future use.

5. Time Extension Due to Economic Hardship (CLUDC – Attachment 4 Section 26; MLUDC – Attachment 7 Section 11; Article II – Attachment 10 Section 3)

Following the economic downturn of the late 2000s, the County added a new provision to the CLUDC (Subsection 35.84.030.D.8), MLUDC (Subsection 35.474.030.D.7), and Article II (Section 35-179B.D.8) that allowed the Planning Director (Director) to extend the expiration of a planning permit or entitlement for additional 24-month periods provided the Director determined it was necessary due to an economic hardship resulting from the continuing national economic downturn. The County always intended for these provisions to be temporary, until the national economy recovered. Thus, the provisions of CLUDC Subsection 35.84.030.D.8, MLUDC Subsection 35.474.030.D.7, and Article II Subsection 35-179B.D.8 concluded with the stipulation that the subsections “shall expire, and be of no further force or effect, on January 12, 2015, unless extended by ordinance.” Staff proposes to delete these provisions, as they were not extended by ordinance and have not been in effect since January 12, 2015.

6. Residential Agricultural Unit Program (CLUDC – Attachment 4 Sections 15, 32)

The Board of Supervisors adopted Section 35.42.210 in 1999 to allow a second residential unit on certain lands zoned Agricultural-II provided the second dwelling would be incidental and supportive of the primary agricultural use of the land. The Board of Supervisors included an expiration date for the program (July 6, 2008) unless the Board extended the program prior to its expiration. Section 35.42.210 was not extended and has not been in effect since 2008; thus, staff recommends the program be deleted from the CLUDC and the section number reserved for future use.

7. Floor Below Grade Adjustment Figures – Summerland Community Plan (CLUDC – Attachment 4 Section 10; Article II – Attachment 10 Section 6)

The CLUDC and Article II each include three figures (Figures 2-4, 2-5, and 2-6, and Figures 13-1, 13-2, and 13-3, respectively) that illustrate the calculation of the floor below grade adjustment, which is used to determine the amount of floor area of a floor below grade to include in total floor area of a residence in the Summerland Community Plan. The amendments include minor revisions to the figures to correct an error and to provide a more illustrative example. However, the methodology to calculate the floor area of a floor below grade will not change.

8. Compliance with Measure A96 (MLUDC – Attachment 7 Sections 13, 18)

The electorate of Santa Barbara County approved Measure A96 on March 26, 1996. Measure A96 requires that any legislative approvals that would authorize or allow the development, construction, installation, or expansion of any onshore support facility for offshore oil and gas activity in the South Coast of the County of Santa Barbara shall not be final unless such authorization is approved by a majority of the votes cast by the voters of the County in a regular election. Only onshore support projects that require legislative acts (i.e., general plan amendments, zoning ordinance amendments) are subject to the referendum requirement. However, Measure A96 does not apply within the inland area of the Montecito Community Plan area. MLUDC Subsection 35.494.050.C and Appendix A were added to the MLUDC to ensure compliance with the measure in the Coastal Zone, where it does apply. However, as the Coastal Commission did not certify the MLUDC, these regulations would be deleted from the MLUDC to eliminate confusion as to which regulations apply within the Coastal Zone. The requirements of Measure A96 will remain unchanged in the CLUDC and Article II.

9. Attachment 1 – Community Plan Development Standards (CLUDC – Attachment 4 Sections 9, 34; MLUDC – Attachment 7 Section 19)

Attachment 1 of the CLUDC and MLUDC excerpts some of the development standards found within seven of the County’s community and area plans. As stated in Part 1 of the attachment:

Parts 2 through 8 of Attachment 1 provide excerpts from the adopted Community, Specific and Area plans. The development standards provided are not incorporated into the Land Use and Development Code. These standards are included as an Attachment to the Land Use and Development Code to serve solely as a resource to the user. The applicable policy or development standard reference is noted after each development standard excerpt. ... Please refer to the applicable Community, Specific, or Area plan document for the entirety of the development standards, the policy framework from which the development standards were derived, and any attachments, appendices or figures referenced with the applicable Community, Specific, or Area plan. [Attachment 1 of the MLUDC provides the same statement but refers only to the Montecito Community Plan.]

Staff intends to delete Attachment 1 from both ordinances because the attachments are not part of the CLUDC or MLUDC, have not been maintained, and are out of date. For example, since the CLUDC was first adopted, three plans have been amended (Orcutt, Summerland, and Mission Canyon, which was revised from a specific plan to a community plan) but revised development standards have not been incorporated into the attachment. In addition, two new plans have been adopted, for the Eastern Goleta Valley and Gaviota Coast; the development standards of these plans have also not been incorporated. Consequently, Attachment 1 does not provide accurate development standard language, which could mislead the public with regard to the correct applicable standards that might apply to any given project. Updating the attachment would require additional staff resources that are best used elsewhere.

Subsection 35.28.210.B of the CLUDC states:

The Community Plan or Area Plan standards found within each Community Plan or Area Plan, and the following Subsections [of the CLUDC] apply to subdivisions, development and land uses within the boundaries of the applicable community or area plan in addition to all other applicable requirements of this Development Code. If a requirement of a community or area plan standard conflicts with another provision of this Development Code, the community or area plan standard shall control unless otherwise indicated.

In addition, to approve a permit or other land use entitlement, the CLUDC (Chapter 35.82, Permit Review and Decisions) and the MLUDC (Chapter 35.472, Permit Review and Decisions) require findings of consistency with any applicable community or area plan, which includes policies as well as development standards. Although providing plan development standards within the CLUDC and MLUDC may offer convenience, applicants and staff should always directly consult the applicable plan for full context, complete policy and development standard language, and proper citation (e.g., whether a policy or development standard) to ensure that the correct policies and/or development standards that may apply to a particular permit application are addressed or incorporated into a project.

B. Planning Commissions Review and Recommendations

Montecito Planning Commission. The Montecito Planning Commission reviewed the amendments at its October 16, 2019, hearing and voted 3-0 (two absent) to adopt a resolution (Resolution No. 19-03) recommending that the Board adopt the amendments to the MLUDC with three revisions to the commercial telecommunications section of the MLUDC. The Montecito Planning Commission also

adopted a resolution (Resolution No. 19-04) recommending that the County Planning Commission recommend approval of the Article II amendments to the Board with the same three revisions for the Montecito Planning Area. The Montecito Planning Commission's recommended revisions include the following:

- (1) Revise the permit review process for Tier 2(a) "small wireless facilities" within the Montecito Planning Area to require that a member of the Montecito Planning Commission shall participate in the review of any application submitted to the Director for Tier 2(a) "small wireless facilities" that is subject to initial review and approval by the Director;
- (2) Add a development standard for "small wireless facilities" within the Montecito Planning Area requiring that any telecommunications equipment installed by an applicant for "small wireless facilities" shall, when it is feasible, also be made available for use by any other carrier if that additional use is compatible with any existing use; and
- (3) Retain the existing finding that the proposed wireless facility design and location is the least intrusive means feasible for the carrier proposing the facility to provide the needed coverage.

County Planning Commission. The County Planning Commission reviewed these amendments at its November 7, 2019, hearing and voted 5-0 to adopt Resolution Nos. 19-05 and 19-06 recommending that the Board adopt the amendments to the CLUDC and Article II (See Attachment 15 County Planning Commission Action Letter). The County Planning Commission did not incorporate the Montecito Planning Commission's recommended revisions to Article II concerning telecommunications facilities.

Staff Recommendations. Staff recommends that the Board adopt the County Planning Commission's recommendations for the CLUDC and Article II. Staff recommends that the Board adopt the MLUDC amendments but without the Montecito Planning Commission's recommended revisions concerning telecommunications facilities for the following reasons (presented in the same order as the recommended revisions listed above):

- (1) Requiring a member of the Montecito Planning Commission to participate in the Tier 2(a) permit process raises several concerns: (a) whether such participatory review could be accommodated within the expedited 60 day review timeline; (b) it is unclear how to incorporate any meaningful input in the process; and (c) it would create procedural conflicts to insert a Montecito Planning Commissioner formally into the review and decision-making authority of the Director when the Director's decision is appealable to the Montecito Planning Commission.
- (2) Including an additional development standard would be redundant with existing ordinance provisions that require collocation of sites and facilities to the extent feasible, with standards to grant exemptions. Any requirement to share equipment such as antennas and associated equipment would raise issues of enforceability.
- (3) Retaining the finding that the proposed wireless facility design and location is the least intrusive means feasible would be inconsistent with the FCC Order. Deleting the finding is recommended to bring the County ordinances into accord with the FCC Order.

C. Environmental Review

Case Nos. 19ORD-00000-00003 and 19ORD-00000-00004. The County and Montecito Planning Commissions recommend that the Board determine that the amendments to the CLUDC and MLUDC are exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines for Implementation of the CEQA. Section 15061(b)(3) states "[w]here it can be seen with certainty that there

is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” See the attached Notices of Exemption (Attachments 2 and 6).

Case No. 19ORD-00000-00005. The County and Montecito Planning Commissions recommend that the Board determine that the amendments to Article II are exempt from environmental review pursuant to Sections 15061(b)(3) and 15265 of the State Guidelines for Implementation of the CEQA. Section 15265, the statutory exemption for the adoption of coastal plans and programs, including amendments thereto, provides that compliance with CEQA is the responsibility of the California Coastal Commission. Section 15061(b)(3) states “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” See the attached Notice of Exemption (Attachment 9).

Wireless Telecommunications Facilities. In 1997, the County adopted a Negative Declaration (97-ND-02) and an ordinance amendment streamlining the permitting requirements for wireless telecommunications facilities (96-OA-008, 96-OA-009, and 96-OA-010). In 2011, the County adopted amendments to the wireless telecommunications facilities, including an Addendum (dated March 4, 2011) to Negative Declaration 97-ND-02 for the subsequent revisions. (Both the Addendum and Negative Declaration are included as Attachment 3 to this Board Letter.) The potential environmental impacts of the previous ordinance amendments were evaluated in Negative Declaration 97-ND-02 and the Addendum dated March 4, 2011, and mitigation measures for these impacts were incorporated into the ordinance amendments as additional development standards that would apply to new telecommunications facilities projects.

Negative Declaration 97-ND-02 evaluated the potentially significant impacts of telecommunications facilities development pursuant to the streamlined permit process on aesthetics, air quality, biological resources, cultural (ethnic and historic) resources, and noise, and found that all of these potential impacts were subject to feasible mitigation measures. Mitigation measures included the incorporation of additional development standards into the final ordinance amendment, which adequately addressed potential environmental impacts. The Addendum dated March 4, 2011, found that no impacts previously found to be insignificant were significant with the 2011 amendments.

State CEQA Guidelines Section 15162 allows the use of a previously adopted negative declaration unless substantial evidence is presented that will require major revisions of the previous negative declaration due to substantial changes in the proposed project because of (1) new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes to the circumstances under which the project is undertaken due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance. Section 15162 of the State CEQA Guidelines is found to be applicable to the current project, case numbers 19ORD-00000-00003 and 19ORD-00000-00005, as no new significant environmental effects would occur, previously identified environmental effects will not increase in severity, no impacts previously found to be insignificant are now significant, and no new information of substantial importance will require revisions to the previously approved Negative Declaration 97-ND-02. The current project allows only one new type of project (i.e., modifications in compliance with the Spectrum Act) to be permitted with a ministerial permit, which would not undergo further environmental review. In these cases, the proposed facilities would only be allowed on structures that were previously permitted by a discretionary permit, which would have undergone environmental review, and the facilities cannot substantially change the physical dimensions of the existing facility. Thus, no new environmental impacts would result.

Because the current project meets the conditions for the application of State CEQA Guidelines Section 15162, preparation of a new negative declaration is not required.

D. Submittal of Article II Amendments to Coastal Commission

The action to adopt an ordinance amendments to Article II, as described above, constitutes an amendment to the Santa Barbara County LCP and, therefore, must be submitted to the Coastal Commission for review and certification.

The attached resolution (Attachment 11) directs staff to submit the Article II amendments to the Coastal Commission for certification. It follows the amendment process set forth in the Coastal Commission administrative regulations [Division 5.5 of Title 14, California Code of Regulations, Section 13551(b)(2)] for what are considered major amendments to the County's LCP. Therefore, following review and action by the Coastal Commission, the Board will have six months from the date of the Coastal Commission's action to evaluate any suggested modifications to the amendments approved by the Coastal Commission and decide whether or not to accept the modifications [Division 5.5 of Title 14, California Code of Regulations, Section 13537(b)].

If the Board decides to accept the modifications, then the Board must adopt a resolution agreeing to implement the ordinances as modified. This resolution is then transmitted to the Executive Director of the Coastal Commission who will review the resolution and recommend to the Coastal Commission whether the action of the Board complies with regulations of the Coastal Act and the California Code of Regulations. If the Executive Director recommends that the County's action is in compliance, and the Coastal Commission agrees with that recommendation, then the ordinances will become effective as of the date of that final action by the Coastal Commission.

Local governments may adopt a maximum of three resolutions per calendar year transmitting major amendments to the certified LCP to the Coastal Commission for review and certification; however, there are no limitations on the number of amendments included in each of the three submittals. The attached resolution (Attachment 11) constitutes Santa Barbara County's first major submittal for 2019.

Fiscal and Facilities Impacts:

Budgeted: Yes

Funding for the project is included in the Long Range Planning Budget Program on page D-269 of the County of Santa Barbara Fiscal Year 2019-2020 budget. There are no facilities impacts.

Special Instructions:

The Planning and Development Department will satisfy all noticing requirements.

The Clerk of the Board shall forward a copy of the minute order and executed copies of the ordinances and resolution to the Planning and Development Department, attention Julie Harris.

Attachments:

1. CLUDC Findings for Approval (Case No. 19ORD-00000-00003)
2. CLUDC Notice of Exemption (Case No. 19ORD-00000-00003)
3. Addendum dated March 4, 2011, and 97-ND-02
4. CLUDC Ordinance Amendment (Case No. 19ORD-00000-00003)
5. MLUDC Findings for Approval (Case No. 19ORD-00000-00004)

6. MLUDC Notice of Exemption (Case No. 19ORD-00000-00004)
7. MLUDC Ordinance Amendment (Case No. 19ORD-00000-00004)
8. Article II Findings for Approval (Case No. 19ORD-00000-00005)
9. Article II Notice of Exemption (Case No. 19ORD-00000-00005)
10. Article II Ordinance Amendment (Case No. 19ORD-00000-00005)
11. Resolution Authorizing Submittal of the Article II Ordinance Amendments (Case No. 19ORD-00000-00005) to the Coastal Commission
12. Proposed Draft Amended CLUDC with Track Changes
13. Proposed Draft Amended MLUDC Text with Track Changes
14. Montecito Planning Commission Action Letter dated October 16, 2019 including Resolution No. 19-03 and Resolution No. 19-04
15. County Planning Commission Action Letter dated November 7, 2019 including Resolution No. 19-05 and Resolution No. 10-06
16. Montecito Planning Commission staff report dated October 9, 2019 (without attachments)
17. County Planning Commission staff report dated October 30, 2019 (without attachments)

Authored by:

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