SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for 2019 General Package Ordinance Amendments

Hearing Date: November 7, 2019
Staff Report Date: October 30, 2019
Case Nos.: 19ORD-00000-00003 & 19ORD-00000-00005
Environmental Document:
CLUDC – CEQA Guidelines Section 15061(b)(3)
Article II CZO – CEQA Guidelines Sections 15061(b)(3) and 15265
Telecommunications Amendments – CEQA Guidelines Section 15162 (97-ND-02 and Addendum dated March 4, 2011)

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1.0 REQUEST

Hearing on the request of the Planning and Development Department for the County Planning Commission to consider the following:

1.1 **Case No. 19ORD-00000-00003.** Adopt a resolution recommending to the Board of Supervisors (Board) that the Board adopt an ordinance (19ORD-00000-00003) amending the following articles of Section 35-1, the Santa Barbara County Land Use and Development Code (CLUDC), of Chapter 35, Zoning, of the Santa Barbara County Code: Article 35.1, Development Code Applicability; Article 35.2, Zones and Allowable Uses; Article 35.3, Site Planning and Other Project Standards; Article 35.4, Standards for Specific Land Uses; Article 35.5, Oil and Gas, Wind Energy and Cogeneration Facilities; Article 35.6, Resource Management; Article 35.8, Planning Permit Procedures; Article 35.10, Land Use and Development Code Administration; and Article 35.11, Glossary.

1.2 Recommend that the Board determine that ordinance Case No. 19ORD-00000-00003 is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines for the Implementation of CEQA, and accept 97-ND-02 and Addendum dated March 4, 2011, as adequate environmental review for the amendments to telecommunications facilities pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA.

1.3 **Case No. 19ORD-00000-00005.** Adopt a resolution recommending to the Board that the Board adopt an ordinance (19ORD-00000-00005) amending the following divisions of the Santa Barbara County Coastal Zoning Ordinance, Article II, of Chapter 35, Zoning, of the Santa Barbara County Code: Division 2, Definitions; Division 7, General Regulations; Division 11, Permit Procedures; and Division 12, Administration.

1.4 Recommend that the Board determine that ordinance Case No. 19ORD-00000-00005 is exempt from the provisions of CEQA pursuant to Sections 15061(b)(3) and 15265 of the State Guidelines for the Implementation of CEQA, and accept 97-ND-02 and Addendum dated March 4, 2011, as

adequate environmental review for the amendments to telecommunications facilities pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA.

The proposed ordinances implement federal and state regulations and make other minor clarifications, corrections, and revisions regarding commercial telecommunications facilities and recordable documents. In addition, 19ORD-00000-00003 amends the CLUDC to delete uncertified regulations that were intended to apply solely within the Coastal Zone; delete repealed regulations regarding Small Wind Energy Systems; and delete expired regulations regarding time extensions due to economic hardship.

The proposed ordinances also include minor corrections and language revisions that do not materially change the existing regulations and serve only to clarify or correct existing language.

2.0 RECOMMENDATION AND PROCEDURES

2.1 Case No. 19ORD-00000-00003. Follow the procedures outlined below and recommend that the Board approve Case No. 19ORD-00000-00003 based upon the ability to make the required findings. Your Commission's motion should include the following:

1. Make the required findings for approval, including CEQA findings, and recommend that the Board make the required findings for approval of the proposed amendment (Attachment A).
2. Recommend that the Board 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 B), and accept 97-ND-02 and Addendum dated March 4, 2011, as adequate environmental review for the amendments to telecommunications facilities pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA (Attachment A).
3. Adopt a resolution recommending that the Board approve Case No. 19ORD-00000-00003, an ordinance amending the CLUDC (Attachment C).

2.2 Case No. 19ORD-00000-00005. Follow the procedures outlined below and recommend that the Board approve Case No. 19ORD-00000-00005 based upon the ability to make the required findings. Your Commission's motion should include the following:

1. Make the required findings for approval, including CEQA findings, and recommend that the Board make the required findings for approval of the proposed amendment (Attachment D).
2. Recommend that the Board 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 E), and accept 97-ND-02 and Addendum dated March 4, 2011, as adequate environmental review for the amendments to telecommunications facilities pursuant to Section 15162 of the State Guidelines for the Implementation of CEQA (Attachment D).
3. Adopt a resolution recommending that the Board approve Case No. 19ORD-00000-00005, an ordinance amending Article II (Attachment F).

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

3.0 JURISDICTION

3.1 **Case No. 19ORD-00000-00003.** The County Planning Commission is considering this project based on Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.104.050.A.1 of the CLUDC, which require that the County Planning Commission, as the designated planning agency for the unincorporated area of the County located outside of the Montecito Community Plan area, review and consider proposed amendments to the CLUDC, and provide a recommendation to the Board.

3.2 **Case No. 19ORD-00000-00005.** The County Planning Commission is considering this project in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code, which provides that the County Planning Commission makes recommendations to the Board on text amendments to Article II.

4.0 BACKGROUND

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

5.0 PROJECT DESCRIPTION

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

AMENDMENT TOPIC		APPLICABILITY	
		CLUDC	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 Attachment 1 – Community Plan Development Standards	√	

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

The following discussion presents a summary of the proposed amendments and the purpose of each amendment, including references where specific ordinance text revisions can be found. The complete texts of the ordinance amendments are included in Exhibit 1 of Attachment C and Attachment H (CLUDC), and Exhibit 1 of Attachment F (Article II). Proposed deletions are shown by striking through the text and proposed additions are underlined in red font. The discussion collectively refers to the CLUDC and Article II as the "zoning ordinances;" however, if the amendments only revise the CLUDC or Article II then that document will be specifically identified.

The CLUDC and Article II ordinance amendments also include minor corrections and language revisions, including renumbering 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 staff report but are shown using strikethrough and underlined text in the attached ordinances (Exhibits 1 of Attachments C and F) and Attachment H.

5.1 Delete Coastal Zone Regulations and Language

Background. On November 27, 2007, the Board of Supervisors adopted the CLUDC, which combined the land use regulations of the Coastal and Inland Zoning Ordinances (Article II and Article III) and clarified where the regulations differed. The Coastal Commission did not certify the CLUDC and the regulations of Article II continue to apply within the Coastal Zone. With limited exceptions, the CLUDC ordinance amendment deletes all remaining regulations, language, standards, and references that were intended to apply within the Coastal Zone of the County outside of the Montecito Community Plan area, 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 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 Attachment H. 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, such as development standards for aquaculture (which only apply in the Coastal Zone) and Findings for the Agriculture-Residential Cluster Overlay (which only occurs in the Coastal Zone).

The few references to the Coastal Zone that remain serve to clarify that the CLUDC does not apply within the Coastal Zone. Chapter 35.64, Transfer of Development Rights, is retained because it applies to both inland areas and the Coastal Zone.

5.2 Commercial Telecommunications Facilities

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 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 of Supervisors 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.

A. Revisions to the Tiered Permitting Structure – Tier 1

Tier 1 projects consist of the most basic project types that have no potential for environmental impacts and can be permitted with a ministerial permit. Staff proposes to add a new Tier 1 permit process for modifications to an existing eligible wireless facility in compliance with the Spectrum Act. As provided in the Spectrum Act and proposed in the amendment, an eligible facility request can only modify an existing wireless facility (i.e., a structure built for the sole purpose of supporting FCC-licensed antennas and associated facilities, or a base station) that has been permitted by the County for such use and:

- Involves collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

In addition, a modification shall not be allowed if it "substantially changes" the physical dimensions of the existing wireless tower or base station. Pursuant to 47 C.F.R. Section 1.6100 *et seq.* a "substantial change" to the physical dimensions would be any of the following: (1) height increases above specified limits; (2) the addition of appurtenances that protrude from the edge of a tower beyond specified limits; (3) the addition of ground equipment cabinets if none pre-exist; (4) the addition of ground cabinets that exceed specified size limits if ground cabinets already exist; (5) installation of more than the standard number of equipment cabinets for the technology involved, but not to exceed four cabinets; (6) excavation or deployment outside of the current site; or (7) would defeat the concealment elements of the support structure. [See Attachment C, Exhibit 1, CLUDC Subsection 35.44.010.C.1.b.(2) and Attachment F, Exhibit 1, Article II Subsection 35-144F.C.1.b.2).]

The new permit tier would allow these types of modifications that comply with the Spectrum Act with a ministerial Zoning Clearance. A Zoning Clearance is the appropriate entitlement because to be eligible for this permit tier, the structure to be modified must have been permitted specifically as a wireless facility or base station; either a Conditional Use Permit or Development Plan would have permitted these facilities. Any modification that would not substantially change the dimensions of the existing facility would therefore substantially conform to the existing discretionary permit, and could be permitted with a ministerial Zoning Clearance.

B. Revisions to the Tiered Permitting Structure – Tier 2

Under the current zoning ordinances, Tier 2 projects consist of several smaller types of facilities that would be located in any zone except for residential zones, and would be permitted by a Development Plan (a discretionary permit) to be approved by the Director. Staff proposes two revisions to the Tier 2(a) project type. The first would revise the size and scope of what constitutes "very small facilities" (antennas and associated above ground equipment of not more than a combined volume of one cubic foot) to a slightly larger "small wireless facility" with size limitations and additional standards defined by the new FCC Order (antennas no more than three cubic feet in volume and associated equipment no more than 28 cubic feet in volume). Planning and Development rarely, if ever, receives permit applications for the existing Tier 2(a) "very small facilities." The amended Tier 2(a) would include two standards carried over from "very small facilities," new objective standards regarding colors and materials, and a new requirement for architectural integration if an antenna were mounted on the façade of a building. The permit requirement would continue to be a Director-approved Development Plan.

The second amendment would allow Tier 2(a) small wireless facilities in all zones, including residential zones, to be permitted under this tier, i.e., with a Director-approved Development Plan. Currently, the ordinances require a Conditional Use Permit for Tier 2(a) projects, which requires a hearing before the County Planning Commission, for all facilities within residential zones, no matter how small. The hearing process does not provide adequate time for the County to process these projects within the 60 to 90 day timelines required by the FCC Order; thus, staff is recommending the revised permit requirement for small wireless facilities within residential zones. Larger wireless facilities that do not qualify as a Tier 2(a) small wireless facility in residential zones will continue to be permitted under Tier 4, requiring a Conditional Use Permit and a hearing before the County Planning Commission.

C. *Revisions to Contents of Notice*

CLUDC Subsection 35.106.080.B.4 and Article II Subsection 35-181.8.2.e require that a notice of a pending decision by the Director regarding a Development Plan for a telecommunications facility include a statement that the person to whom the notice was mailed may request a public hearing. As mentioned previously, the purpose of this amendment is to provide permit procedures that will allow the County to comply with federal regulations and timeframes. To accomplish this goal, staff proposes the revisions to Tier 2(a), above, which revise the permit requirement such that a hearing is no longer required, allowing the County to process these applications within the mandated timeframes. Staff proposes deleting the notice requirement (originally adopted in 2011) that would allow a noticed recipient to request a hearing, as holding a hearing upon request would nullify the County's effort to comply with the federal regulations. All other noticing requirements, as well as the ability to appeal a Director's decision to the County Planning Commission, would remain unchanged.

D. *Deletion of Findings*

As briefly noted above, the County adopted ordinance amendments in 2011 that required applicants to demonstrate, and decision-makers to find, that (1) approval of a wireless facility in a certain location is necessary to provide coverage for an area that would not otherwise be served by the carrier proposing the facility, and (2) the applicant has demonstrated that the proposed facility design and location are the least intrusive means feasible of filling that gap in coverage or capacity.

These findings were adopted on the basis of the test applied by the 9th Circuit Court of Appeal to determine if a local regulation "prohibits or has the effect of prohibiting" personal wireless service under the Telecommunications Acts of 1996. The 2018 FCC Order rejected the use of the 9th Circuit's "significant gap/least intrusive means" test and instead reaffirmed the test set forth in the FCC's *California Payphone* decision as the "definitive test" for whether a local regulation constitutes an effective prohibition on personal wireless service. Under the FCC's *California Payphone* decision, a local regulation constitutes an "effective prohibition" if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." Therefore, staff proposes to delete the "significant gap" and "least intrusive means" findings from the CLUDC and Article II in order to bring them into accord with the 2018 FCC Order.

5.3 Recordable Documents

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 and Article II Section 35-120.11), and home occupations (CLUDC Subsection 35.42.190.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) 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.

5.4 Small Wind Energy Systems

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, to allow small wind energy systems in certain zones and provide a permit process and standards for their location and operation. The amendment was 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 <u>outside</u> 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 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 was repealed effective January 1, 2017. The current amendment would delete the language of this section and associated definitions and height standards elsewhere in the CLUDC, which are no longer in effect, and reserve the section for future use.

5.5 Time Extension Due to Economic Hardship

Following the economic downturn of the late 2000s, the County added a new provision to the CLUDC (Subsection 35.84.030.D.8) and Article II (Section 35-179B.D.8) that allowed the 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 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.

5.6 Residential Agricultural Unit Program

The Board of Supervisors adopted Section 35.42.210 in 1999 to allow a second residential unit on 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 effect since 2008; thus, staff recommends the program be deleted from the CLUDC and the section number reserved for future use.

5.7 Floor Below Grade Adjustment Figures – Summerland Community Plan

The CLUDC and Article II 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.

5.8 Attachment 1 – Community Plan Development Standards

Attachment 1 of the CLUDC excerpts some of the development standards found within six of the County's community and area plans. As stated in the 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.

Staff intends to delete Attachment 1 because it is not part of the CLUDC, has not been maintained, and is out of date. 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 Eastern Goleta Valley and Gaviota; 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 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 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) requires findings of consistency with any applicable community or area plan, which includes policies as well as development standards. Although providing plan development standards with the CLUDC 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 policies and/or development standards that may apply to a particular permit application are addressed or incorporated into a project.

5.9 Montecito Planning Commission

The Montecito Planning Commission reviewed the same amendments for Article II on October 16, 2019 (Attachment I). The Montecito Planning Commission recommends approval of the Article II amendments with three revisions to the amendments for commercial telecommunications: (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.

6.0 ENVIRONMENTAL REVIEW

6.1 Case No. 19ORD-00000-00003. The proposed ordinance amendment to the CLUDC is recommended to be determined to be 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." As explained further in Attachment B, no significant environmental impacts would occur as a result of these ordinance amendments.

6.2 Case No. 19ORD-00000-00005. The proposed ordinance amendment to Article II is recommended to be determined to be 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." As explained further in Attachment E, no significant environmental impacts would occur as a result of these ordinance amendments.

6.3 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 97-ND-02 for the subsequent revisions. (Both the addendum and ND are included as Attachment G to this staff report.) The potential environmental impacts of the previous ordinance amendments were evaluated in 97-ND-02 and 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.

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. 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 ND unless substantial evidence is presented that will require major revisions of the previous ND 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 ND. 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.

7.0 COMPREHENSIVE PLAN CONSISTENCY

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including community plans, or the Coastal Land Use Plan, and the adoption of the proposed ordinance amendments will not result in any inconsistencies with adopted policies and development standards. In order for a development permit or other land use entitlement to be approved based on these proposed amendments, the decision-maker still must determine that the project is consistent with the policies and development standards of the Comprehensive Plan, including applicable community plans, and the Coastal Land Use Plan, if applicable. As part of this process, a policy consistency analysis will be performed during the review of an application, and projects will not be approved unless they are determined to be consistent with applicable policies and the findings required for approval can be made. Therefore, these amendments may be found consistent with the adopted Comprehensive Plan, including community plans and the Coastal Land Use Plan.

8.0 ORDINANCE CONSISTENCY

The proposed ordinances are consistent with the remaining portions of the CLUDC and Article II that would not be revised by these ordinances. In order to approve a development project based on these proposed amendments, the decision-maker must still determine that the project is consistent with the whole of the CLUDC and Article II, as applicable.

9.0 PROCEDURES

9.1 CLUDC: The County Planning Commission may recommend approval, approval with revisions, or denial of the proposed amendments to the CLUDC, to the Board of Supervisors.

9.2 Article II: The County Planning Commission may recommend approval, approval with revisions, or denial of the proposed amendments to Article II, to the Board of Supervisors.

10.0 APPEALS PROCEDURE

Ordinance amendments are legislative acts that require Board final action; therefore, no appeal is required.

11.0 ATTACHMENTS

A. 19ORD-00000-00003 CLUDC Findings for Approval
B. 19ORD-00000-00003 CLUDC Notice of Exemption
C. 19ORD-00000-00003 CLUDC Resolution and Proposed Ordinance Amendment (Exhibit 1)
D. 19ORD-00000-00005 Article II Findings for Approval
E. 19ORD-00000-00005 Article II Notice of Exemption
F. 19ORD-00000-00005 Article II Resolution and Proposed Ordinance Amendment (Exhibit 1)
G. Addendum dated March 4, 2011, and 97-ND-02
H. Proposed Draft Amended CLUDC with Track Changes
I. Montecito Planning Commission Action Letter dated October 16, 2019 (without attachments)

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