

ATTACHMENT 16: 05-31-2017 COUNTY PLANNING COMMISSION STAFF REPORT

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SANTA BARBARA COUNTY PLANNING COMMISSION
Accessory Dwelling Unit Ordinance Amendment

Hearing Date: June 7, 2017

Assistant Director: Dianne Black

Staff Report Date: May 31, 2017

Staff Contact: Noel Langle

Case Nos. 16ORD-00000-00014 & 16ORD-00000-00016

Phone No.: (805) 568-2067

Environmental Document:

County LUDC - CEQA Guidelines Section 15282(h)

Article II CZO - CEQA Guidelines Sections 15265 and 15282(h)

1.0 REQUEST

Hearing on the request of the Planning and Development Department that the County Planning Commission:

- 1.1 Case No. 16ORD-00000-00014.** Adopt a recommendation to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 16ORD-00000-00014) amending Article 35.2, Zones and Allowable Land Uses, Article 35.3, Site Planning and Other Project Standards, Article 35.4, Standards for Specific Land Uses, Article 35.7, Site Development Regulations, Article 35.8, Planning Permit Procedures, Article 35.10, Land Use and Development Code Administration, and Article 35.11, Glossary, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment C; and
- 1.2 Case No. 16ORD-00000-00016.** Adopt a recommendation to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 16ORD-00000-00016) amending Division 2, Definitions, Division 4, Zoning Districts, Division 7, General Regulations, Division 11, Permit Procedures, Division 12, Administration, Division 13, Summerland Community Plan Overlay, and Division 16, Toro Canyon Plan (TCP) Overlay District, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment F.

The proposed ordinance amendments revise existing development standards and permit procedures in order to implement recent State legislation regarding accessory dwelling units (currently referred to as “residential second units” in the zoning ordinances). The proposed amendment to the County Land Use and Development Code also deletes language that only applies within the Coastal Zone.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 16ORD-00000-00014.** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 16ORD-00000-00014 as shown in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:
1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);

2. Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15282(h) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the Board of Supervisors approve Case No. 16ORD-00000-00014, an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

2.2 Case No. 16ORD-00000-00016. Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 16ORD-00000-00016 as shown in Attachment F based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment D);
2. Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Sections Section 15282(h) and 15265 of the Guidelines for Implementation of CEQA (Attachment E); and,
3. Adopt a Resolution recommending that the Board of Supervisors approve Case No. 16ORD-00000-00016, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment F).

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

3.0 JURISDICTION

3.1 Case No. 16ORD-00000-00014. This project is being considered by the County Planning Commission based upon Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.104 of the Santa Barbara County Land Use and Development Code. The Government Code and the County Land Use and Development Code require that the County Planning Commission, as the designated planning agency for the unincorporated area of the County outside of the Montecito Community Plan Area, review and consider proposed amendments to the County Land Use and Development Code and provide a recommendation to the Board of Supervisors.

3.2 Case No. 16ORD-00000-00016. This project is being considered by the County Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code that provides that the County Planning Commission makes recommendations to the Board of Supervisors on text amendments to the Article II Coastal Zoning Ordinance of Chapter 35, Zoning, of the County Code.

4.0 BACKGROUND

4.1 Existing regulations.

Residential second units (RSUs), which is the existing term used in the zoning ordinances for accessory dwelling units, provide complete, independent living facilities for one or more persons that include permanent provisions for cooking, eating, living, sanitation, and sleeping. As allowed by the existing zoning ordinances, RSUs may either be an attached RSU which is attached to the principal dwelling, or a detached RSU that is located in a separate accessory structure or is attached to a separate accessory structure. A property owner may apply for an RSU that is accessory to an existing principal dwelling, or for an RSU that will be constructed concurrently with a principal dwelling.

RSUs are currently regulated by:

- The County Land Use and Development Code (CLUDC) Section 35.42.230 that applies to applications for RSUs located outside of the Coastal Zone and outside of the Montecito Community Plan area.
- The Article II Coastal Zoning Ordinance (Article II) Section 35-142 that applies to applications for RSUs located within the Coastal Zone including the area within the Montecito Community Plan area.

Currently RSUs may be allowed in the:

- AG-I-5, AG-I-10, AG-I-20 (Agricultural-I, five, 10 and 20 acre minimum lot area) agricultural zones,
- RR (Residential Ranchette), R-1/E-1 (One-Family Residential) and EX-1 (One-Family Exclusive Residential) residential zones,
- NTS (Naples Townsite) and OT-R (Old Town - Residential) special purpose zones, and
- OT-R/LC (Old Town - Residential/Light Commercial) and OT-R/GC (Old Town - Residential/General Commercial) special purpose zones where the principal use of the property is a single-family dwelling.

Review by the applicable Board of Architectural Review (BAR) is not required; however, the existing procedure does require review and approval by the Chair of the applicable BAR or designee.

The following tables show the permit requirements for both attached and detached RSUs:

COASTAL ZONE		
	Attached RSU	Detached RSU
AG-I-5, AG-I-10, and AG-I-20	Coastal Development Permit	Minor Conditional Use Permit
Residential Zones	Coastal Development Permit	Coastal Development Permit

INLAND AREA		
	Attached RSU	Detached RSU
AG-I-5, AG-I-10, and AG-I-20	Land Use Permit	Land Use Permit
Residential Zones	Land Use Permit	Land Use Permit
NTS	Conditional Use Permit	Conditional Use Permit
OT-R, OT-R/LC, OT-R/GC	Land Use Permit	Land Use Permit

4.2 Effect of recent legislation.

The purpose of recent legislation (Assembly Bill 2299 and Senate Bill 1069) enacted by the State legislature in 2016 is promote the development of additional housing opportunities in California by streamlining the process for property owners to add a second dwelling unit on residentially zoned property in addition to an existing primary dwelling. This legislation, which became effective on January 1, 2017, revised the language of Government Code Section 65852.2 that provides the regulations regarding the development of these second dwelling units which are referred to in the statute as accessory dwelling units (ADUs). Section 65852.2, as revised:

- Requires that applications for ADUs in residential zones shall be processed in a ministerial manner,
- Includes development standards that local jurisdictions must use in reviewing applications for ADUs, and
- Limits the scope of development standards that local jurisdictions may use in reviewing applications for ADUs.

See Attachment G for the complete text of Section 65852.2.

Section 65852.2 also provides that local regulations that are not in compliance with the Section as revised are null and void as of January 1, 2017 as they apply to residential zones. Since the County's adopted regulations contained in the County Land Use and Development Code (CLUDC) and the Montecito Land Use and Development Code (MLUDC) are inconsistent with Section 65852.2, they became null and void as of January 1, 2017. Therefore, until such time as the CLUDC and the MLUDC are amended to conform to Section 65852.2, any applications for ADUs that are submitted for property located outside the Coastal Zone must be reviewed and approved in accordance with the specific standards of the statute. However, according to a recent memorandum from the Coastal Commission (see Attachment H), the adopted ADU regulations contained in the Article II Coastal Zoning Ordinance (Article II) remain in effect since they are part of a part of a certified Local Coastal Program that is not superseded by Government Code Section 65852.2.

A local jurisdiction may either amend their existing regulations in a manner that conforms to the new requirements, or not amend their existing regulations and instead simply approve applications for ADUs if the proposed development conforms to the requirements of Section 65852.2.

Therefore, the Planning and Development Department is proposing to amend:

- The CLUDC and the MLUDC in a manner that conforms to the requirements of Section 65852.2, and
- Article II so that it more closely conforms to Section 65852.2 while still maintaining coastal resource protection standards.

A summary of the proposed changes to County's existing regulations that are required to implement Section 65852.2 is provided below in Section 5.0 (Project Description and Analysis).

4.3 Montecito Planning Commission review.

The Montecito Planning Commission held public hearings on the proposed amendments to the Montecito Land Use and Development Code and Article II on March 22nd, April 12th, and May 17th. At

the conclusion of the May 17th hearing the Montecito Planning Commission adopted two resolutions (see Attachment K) recommending that:

- The Board of Supervisors adopt the proposed amendment to the Montecito Land Use and Development Code as revised by the Montecito Planning Commission during the May 17th hearing, and
- Your Commission consider the recommendation of the Montecito Planning Commission and recommend that the Board of Supervisors adopt the proposed amendment to Article II as revised by the Montecito Planning Commission during the May 17th hearing.

The sections of the proposed amendment to Article II (see Exhibit 1 of Attachment F) that only apply within the Montecito Community Plan area have been revised to reflect the revisions made by the Montecito Planning Commission. Additionally, certain of these revisions have also been incorporated into the proposed amendment to the CLUDC (see Exhibit 1 of Attachment C) as well as the sections of Article II that apply outside of the Montecito Community Plan area. The revisions recommended by the Montecito Planning Commission, including whether or not they were included in the CLUDC and the applicable sections of Article II that apply outside of the Montecito Community Plan area, are discussed below in Section 5.0 (Project Description and Analysis).

5.0 PROJECT DESCRIPTION AND ANALYSIS

5.1 Executive Summary.

As required by Government Code Section 65852.2, an ADU:

- Shall be deemed to be an accessory use or an accessory building.
- Shall not be considered to exceed the allowable density for the lot that it is located on.
- Is considered a residential use that is consistent with the existing Comprehensive Plan and zoning designation for the lot that it is located on.
- May not be considered in the application of any local ordinance, policy, or program to limit residential growth.

State law requires that applications for ADUs located in residential zones shall be approved through a ministerial process (e.g., a Land Use Permit or Zoning Clearance) provided the proposed project complies with the applicable development standards.

The primary impact of the revisions to Section 65852.2 is on applications for ADUs that are accessory to an existing principal dwelling located in residential zones as Section 65852.2 restricts the scope of development standards that a local jurisdiction may use in determining whether to approve or deny an application for an ADU that meets these criteria. These development standards are different depending on whether the ADU would be located (1) entirely within an existing principal dwelling or accessory structure, or (2) partially within or attached to an existing principal dwelling or existing accessory structure, or within a proposed new accessory structure. Section 65852.2 does allow local jurisdictions greater latitude in applying development standards when the ADU would either not be accessory to an existing principal dwelling on a residentially-zoned lot or would be located on a lot that is not zoned residential.

The amendments propose to:

- Delete existing CLUDC Section 35.42.230 (Residential Second Units) and replace it with a new Section 35.42.015 titled “Accessory Dwelling Units,”
- Delete existing Article II Section 35-142 (Residential Second Units) and replace with a new Section 35-142 titled “Accessory Dwelling Units,”
- Revise the development standards in both the CLUDC and Article II that apply to ADUs that are accessory to existing principal dwellings located in residential zones to be consistent with Section 65852.2,
- Generally maintain the existing development standards for applications for ADUs that are either not accessory to existing principal dwellings or are located on a lot zone AG-I or NTS,
- Add new definitions and revise existing definitions regarding ADUs, and
- Revise various sections of the CLUDC and Article II to provide internal consistency within the zoning ordinances with the new regulations that apply to ADUs (e.g., location within setbacks, provision of additional parking) including replacing the term “residential second units” with “accessory dwelling units.”

The complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C (CLUDC) and Exhibit 1 of Attachment F (Article II). Proposed deletions are shown by striking through the text and proposed additions are underlined. The use of an ellipsis (...) indicates that sections where the text is unchanged have been omitted for the sake of brevity. The CLUDC ordinance amendment also includes the deletion of standards and references that only apply within the Coastal Zone or merely distinguish between coastal and non-coastal requirements since Article II continues to be the implementing ordinance of the County’s certified Local Coastal Program.

5.2 Comparison of existing versus proposed permit requirements and development standards.

The following provides a summary of the major changes to the existing permit requirements and development standards that apply to ADUs that are required to be consistent with Section 65852.2 in regards to the restrictions that may be applied to ADUs that are accessory to existing principal dwellings located on residentially zoned lots. As mentioned above, the proposed ordinance amendments generally maintain the existing permit requirements and development standards that apply to ADUs that are either not accessory to an existing principal dwellings or are located lots zoned AG-I or NTS; however the proposed amendments do revise these development standards in order to provide greater clarity and better organization.

To provide clarity regarding which regulations apply to the different types of ADUs, the amendments divide the regulations into three separate categories. Within this staff report these categories are referred to respectively as Category A, Category B, or Category C.

- **Lot contains an existing principal dwelling, no new construction is proposed, and is not zoned AG-I or NTS:** The ADU is proposed to be developed on a lot that (1) is not zoned Agricultural I (AG-I) or Naples Townsite (NTS), (2) contains an existing principal dwelling, and (3) the ADU would be located entirely within an existing principal dwelling or existing accessory building.
- **Lot contains an existing principal dwelling, new construction is proposed, and is not zoned AG-I or NTS:** The ADU is proposed to be developed on a lot that (1) is not zoned AG-I or NTS, (2) contains an existing principal dwelling and, (3) in order to accommodate the ADU,

the project includes either additions to the principal dwelling or an existing accessory building, or the construction of a new accessory building that the ADU will be located within.

- **Lot does not contain an existing principal dwelling, or is zoned AG-I or NTS:** The ADU is proposed to be developed on a lot that does not contain an existing principal dwelling, and the ADU would be built concurrently with the principal dwelling, or the lot is zoned AG-I or NTS.

Attachment J provides a comprehensive comparison of the existing and proposed development standards that would apply to applications for ADUs that are accessory to existing principal dwellings on lots zoned residential.

Permit requirements.

Existing: A Coastal Development Permit or Land Use Permit is required for all ADUs unless:

- The application is for a detached ADU on a lot located in the Coastal Zone and zoned AG-I which requires the approval of a Minor Conditional Use Permit, or
- The application is for an ADU on a lot zoned NTS which requires the approval of a Conditional Use Permit.

Proposed: Under the proposed permit requirements:

- Applications for ADUs that qualify under Category A and are located outside of the Coastal Zone would require the issuance of a Zoning Clearance in order to comply with Section 65852.2(e) which does not allow local jurisdictions to require an appealable zoning permit. Within the Coastal Zone a Coastal Development Permit would still be required since an ADU qualifies as development under the Coastal Act and is not exempt from the requirement to obtain a Coastal Development Permit.
- Applications for ADUs that qualify under Category B would continue to require the issuance of either Coastal Development Permit or a Land Use Permit.

Section 65852.2(b) also requires that an applications for ADUs that qualify under Categories A and B must be acted upon within 120 days of the receipt of the application.

See Section 35.42.015.D.1 of the County LUDC amendment (Exhibit 1 of Attachment C, page 11) and Section 35-142.4 of the Article II amendment (Exhibit 1 of Attachment F, page 5).

Lot area requirements.

Existing: An attached ADU may only be located on a lot that has a minimum area of 7,000 square feet (6,000 if lot was legally created before June 2, 1966); a detached ADU may only be located on a lot that has a minimum area of 10,000 square feet.

Proposed: The proposed standards for ADUs that qualify under Category A or B do not include a minimum lot area requirement since Section 65852.2 does not include minimum lot area requirements in the allowable restrictions.

Lot coverage limit.

Existing: The total gross floor area of all covered structures, including an ADU, shall not exceed 40 percent of the gross lot area.

Proposed: The Montecito Planning Commission recommended that this standard be maintained for property located within the Montecito Community Plan area. However, the Department is concerned that imposing a lot coverage requirement may preclude the development of an ADU on some lots which appears to directly conflict with the intent of Section 65852.2. Therefore, this lot coverage limitation is not included in the amendments that apply outside of the Montecito Community Plan area.

Floor area limits.

Existing: The floor area of an ADU is restricted based on the size of the lot as shown below:

Type of Accessory Dwelling Unit	Lot Area (unless specified = net lot area)	Maximum Accessory Dwelling Unit Gross Floor Area
Attached	6,000 - 9,999 square feet	600 square feet
	10,000 - 19,999 square feet	800 square feet
	20,000 square feet or more	1,200 square feet
Detached	10,000 - 19,999 square feet	800 square feet
	20,000 square feet or more	1,200 square feet

Proposed:

The Montecito Planning Commission recommended that the floor area of ADUs continue to be restricted based on the size of the lot as their recommendation include adding the following requirements to the development standards that would apply within the Montecito Community Plan area:

- The living area of the accessory dwelling unit shall not exceed the maximum shown in the table below for the applicable lot area:

Lot Area (unless specified = net lot area)	Maximum Accessory Dwelling Unit Living Area
0 - 9,999 square feet	400 square feet
10,000 - 19,999 square feet	600 square feet
20,000 square feet - 1 acre	800 square feet
Over 1 acre to 2 acres	1,000 square feet
Over 2 acres	1,200 square feet

- The living area of an attached accessory dwelling unit shall not exceed 50 percent of the living area of the principal dwelling that exists at the time of application for the accessory dwelling unit.

Although Sections 65852.2 (a)(1)(B)(i) and (c) that were not amended in 2016 appear to allow the County to set minimum and maximum ADU sizes, the amended provisions of Section 65852.2(a)(1)(D)(iv) and (v) and (c) appear to specifically set ADU size maximums and minimums, thus removing this discretion and authority from the County. Since, subdivision (D) includes specific language regarding the maximum allowable size of an ADU, it appears that this governs over the general language in (B), such that the County is preempted from setting its own

ADU sizes. Therefore, a similar lot coverage limitation is not included in the amendments that apply outside of the Montecito Community Plan area. Instead, in compliance with the limitations imposed by Section 65852.2(a)(1)(D)(iv) and (v), the amendments include the following standards that would apply to applications for ADUs that qualify under Category A or B:

- Attached ADU - Not to exceed 50 percent of the existing living area of the principal dwelling at the time of application for the ADU to a maximum of 1,200 square feet.
- Detached ADU - 1,200 square feet.

See Sections 35.42.015.F.4.a and 35.42.015.G.5.a of the County LUDC amendment (Exhibit 1 of Attachment C, pages 14 and 17) and Sections 35-142.6.4.a and 35-142.7.6.a of the Article II amendment (Exhibit 1 of Attachment F, pages 6 and 10).

Height limits.

Existing: The existing height limits that apply to ADUs are shown below:

- **Attached accessory dwelling units.** 16 feet as measured from the lowest finished floor of the accessory dwelling unit to:
 - **If located below an existing floor.** The bottom of the support system of the floor above.
 - **If located above an existing floor or on-grade where there is no floor above.** The highest points of the coping of a flat roof or to the mean height of the highest gable of a pitch or hip roof that covers the accessory dwelling unit.
- **Detached accessory dwelling units not connected to a detached accessory structure.** 16 feet.
- **Detached accessory dwelling unit connected to a detached accessory structure.** 16 feet as measured from the lowest finished floor of the accessory dwelling unit to:
 - **Located below an existing floor.** The bottom of the support system of the floor above.
 - **Located above an existing floor or on grade where there is no floor above.** The highest points of the coping of a flat roof or to the mean height of the highest gable of a pitch or hip roof that covers the accessory dwelling unit.

The height of the combined structure is limited to 25 feet.

Proposed:

- No height limit is proposed for ADUs that qualify under Category A since they would be constructed entirely within an existing building.
- The proposed amendments maintain the existing standards for ADUs that qualify under Category B except that new language allows the applicable height limit to be exceeded in the situation where the project involves an addition to an existing building and the increased height is necessary to allow the roofline of the addition to match the roofline of the existing building.

See Sections 35.42.015.F.3 and 35.42.015.G.4 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 13 and 16) and Sections 35-142.6.3 and 35-142.7.5 of the Article II amendment (Exhibit 1 of Attachment F, pages 6 and 9).

Setbacks.

Existing: The setbacks that apply to the principal dwelling also apply to the ADU.

Proposed: The follow setback requirements are proposed in order to comply with Section 65852.2:

- No increase in the existing setback is required for ADUs that qualify under Category A provided that the side and rear setbacks are sufficient for fire safety purposes. (Section 65852.2(e))
- The setbacks that apply to the principal dwelling also apply to ADUs that qualify under Category B except that:
 - No additional setback is required for garage conversions. (Section 65852.2(a)(1)(D)(vii))
 - A setback of no more than five feet from the side and rear lot lines may be required if the ADU is constructed above an existing garage. (Section 65852.2(a)(1)(D)(vii))

See Sections 35.42.015.F.10 and 35.42.015.G.11 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 15 and 18) and Sections 35-142.6.10 and 35-142.7.12 of the Article II amendment (Exhibit 1 of Attachment F, pages 8 and 12).

Parking requirements.

Existing: One additional parking space shall be provided for each sleeping room in the ADU. The parking spaces may be allowed to be located in the side and rear setback areas if Director finds that due to location of principal dwelling or lot topography the normal setback requirements cannot be met.

Proposed: Section 65852.2(a)(1)(D)(x)(I) allows local jurisdictions to require an additional space for each sleeping room in the ADU; however, it also provides that an ADU is exempt from this requirement if any of the following circumstances apply: (Section 65852.2(d))

- The ADU would be developed entirely within an existing one-family dwelling or accessory structure on a single-family residentially zoned lot.
- The ADU is located within one-half mile of public transit (e.g., a bus stop).
- The ADU is located within an architecturally and historically significant historic district.
- When on-street parking permits are required but not offered to the occupant of the ADU.
- There is a car share vehicle located within one block of the ADU.

Based on the language of Section 65852.2 these exemptions would apply to applications for ADUs that qualify under Category A, B, and C.

Section 65852.2 also requires that:

- The parking space may be provided as tandem parking on a driveway. Section 65852.2(a)(1)(D)(x)(II)
- The parking space shall be allowed in setback areas in locations determined by the County unless specific findings are made that parking in setback areas is not feasible based on (1) site

topography or (2) fire, life and safety conditions, or is not permitted elsewhere in the County. (Section 65852.2(a)(1)(D)(x)(II))

- When a garage, carport, or covered parking structure is converted or demolished in conjunction with the construction of an ADU, any replacement parking spaces required to satisfy the parking requirement for the principal dwelling may be provided in as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. (Section 65852.2(a)(1)(D)(xi))

The Montecito Planning Commission recommended that within the Montecito Community Plan area that tandem parking not be allowed on lots located within very high fire hazard severity zone due to concerns that tandem parking may delay rapid evacuations during wildfire events. This prohibition has been included in the standards that would apply to the remainder of the County for ADUs that qualify under Category B.

See Sections 35.42.015.F.5 and 35.42.015.G.6 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 14 and 17) and Sections 35-142.6.5 and 35-142.7.7 of the Article II amendment (Exhibit 1 of Attachment F, pages 7 and 11).

Design review.

The existing standards require that the proposed design of the ADU be reviewed and approved by the Chair of the applicable Board of Architectural Review (BAR), or designee, in order to comply with the mandate of Section 65852.2 that applications for ADUs shall be considered ministerially without discretionary review. However, this has proven to be problematic for several reasons, including:

- There is little guidance for the Chair to on which to base their decision.
- It adds a degree of uncertainty to the process, both in terms of the outcome of the review and the length of time to complete the review.
- There is no process that allows an applicant or aggrieved person to appeal the decision of the chair or designee.

To address this situation, the ordinance amendments propose for ADUs that qualify under Categories B and C to:

- Shift the responsibility from the Chair of the applicable BAR to the Director of the Planning and Development Department (decisions of the Director may be appealed to the Planning Commission).
- Add the following development standards that the project planner would apply to applications for ADUs.
 - The design of an accessory dwelling unit that will be attached to an existing building shall reflect the exterior appearance and architectural style of the existing building and use the same or comparable exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.
 - The design of an accessory dwelling unit that will not be attached to an existing building shall reflect the exterior appearance and architectural style of the principal dwelling and use the same or comparable exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.

- The entrance to an accessory dwelling unit that will be attached to the principal dwelling is structurally shielded so that the entrance is not visible when viewed from any street abutting the lot on which the accessory dwelling unit is located. This standard may be waived by the Director if it would prohibit the construction of an attached accessory dwelling unit on the lot.
- All exterior lighting complies with the applicable outdoor lighting regulations that apply to the project site.
- Proposed landscaping will screen the accessory dwelling unit, including any architectural elements such as foundations and retaining walls, mechanical equipment, and parking required to be provided for the accessory dwelling unit, from public viewing areas (e.g., public road, trails, recreation areas). Said landscaping shall be compatible with existing landscaping on the lot in terms of plant species and density of planting.

The Montecito Planning Commission recommended that the last two standards regarding exterior lighting and landscaping apply within the Montecito Community Plan area. They have also been included as standards that would apply outside of the Montecito Community Plan area. The Montecito Planning Commission also recommended that for applications located within the Montecito Community Plan area the responsibility for design review remain with the Chair of the Montecito BAR or designee. Outside the Montecito Community Plan area, as indicated above, the proposed amendments would shift the responsibility from the Chair of the applicable BAR to the Director of the Planning and Development Department.

See Sections 35.42.015.G.1 and 35.42.015.H.2 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 15 and 19) and Sections 35-142.7.1 and 35-142.8.2 of the Article II amendment (Exhibit 1 of Attachment F, pages 8 and 14).

Owner-occupancy requirement.

Existing:

- The property owner is required to live on-site as their principal place of residence in either the principal dwelling or the ADU except when (1) a disability or infirmity requires institutionalization of the owner, or (2) the Director approves in writing the owner's written request for a temporary absence due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause.
- Upon the sale or transfer of the property the new owner is also required to live on-site as their principal place of residence in either the principal dwelling or the ADU. If the new owner chooses not to live on-site, then the ADU must either be converted to some other legal use of the property or removed.
- Prior to the approval or issuance of the applicable planning permit the property owner shall sign and record a Notice to Property Owner that includes any specific conditions that apply to the permit (e.g., the requirement to reside on-site).

Proposed: The proposed amendments maintain these requirements for all categories of ADUs and also include the following new requirements:

- Prior to issuance of the permit the property owner shall have received a Homeowners' Property Tax Exemption from the County Assessor or have submitted to the Department a signed and notarized affidavit stipulating that the lot is owner-occupied.
- If the principal dwelling and the ADU are constructed concurrently, then within 90 days of final building permit inspection for the principal dwelling, the owner shall have received a Homeowners' Property Tax Exemption from the County Assessor or have submitted to the Department a signed and notarized affidavit stipulating that the lot is owner-occupied.
- Upon sale or transfer of ownership of the lot, the new owner shall, within 90 days of taking possession of the property, either receive a Homeowners' Property Tax Exemption from the County Assessor or submit to the Department a signed and notarized affidavit stipulating that the lot is owner-occupied.

The ability to establish owner-occupancy through the submission of a signed and notarized affidavit stipulating that the lot is owner-occupied in addition to receiving a Homeowners' Property Tax Exemption from the County Assessor was recommended to be added by the Montecito Planning Commission. As shown above this has been included as a standard that would apply Countywide.

See Sections 35.42.015.F.9, 35.42.015.G.10, and 35.42.015.H.13 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 14, 18 and 23) and Sections 35-142.6.9, 35-142.7.11, and 35-142.8.13 of the Article II amendment (Exhibit 1 of Attachment F, pages 7, 12 and 18).

Minimum length of rental.

The existing regulations allow an ADU to be rented but a minimum rental period is not specified. The proposed ordinance amendments continue to allow the ADU to be rented, and also add a new requirement for all ADU categories that if the ADU is used as a rental that the length of any rental shall be longer than 30 consecutive days. This additional requirement is consistent with Government Code Section 65852.2(a)(6) and also implements one of the purposes of the State legislation that amended Government Code Section 65852.2 which is to facilitate the development of additional rental housing stock in order to meet current and future housing demand in California.

See Sections 35.42.015.F.8, 35.42.015.G.9, and 35.42.015.H.12 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 14, 18 and 23) and Sections 35-142.6.8, 35-142.7.10, and 35-142.8.12 of the Article II amendment (Exhibit 1 of Attachment F, pages 7, 11 and 17).

Not allowed if in addition to certain other structures.

Existing: An ADU shall not be allowed on a lot in addition to a guesthouse, dwellings other than the principal dwelling determined to be nonconforming as to use, or agricultural employee housing. If an ADU has been approved on a lot, a guesthouse or similar structure shall not subsequently be approved unless the ADU is removed.

Proposed: Section 65852.2 does not include any restrictions regarding whether an ADU may be approved in addition to other structures. Therefore, the proposed amendments only include the existing requirement that if an ADU has been approved on a lot, a guesthouse or similar structure shall not subsequently be approved unless the ADU is removed or converted to an allowed accessory structure.

Environmentally sensitive habitat areas.

The Montecito Planning Commission recommended the addition of a new standard that within the Montecito Community Plan area applications for ADUs that qualify under Categories B and C shall comply with the requirements of the applicable environmentally sensitive habitat overlay. This standard has been included in the standards that would apply to the remainder of the County.

Tree protection.

The Montecito Planning Commission recommended the addition of a new standard that within the Montecito Community Plan area applications for ADUs that qualify under Categories B and C shall comply with the following tree protection standards. These standards have been included in the standards that would apply to the remainder of the County.

- All development associated with the accessory dwelling unit shall avoid the removal of or damage to all native trees including native oak trees, and specimen trees.
- No grading, paving, and other site disturbance shall occur within the dripline of the tree including the area six feet outside of tree driplines.
- For the purposes of these standards specimen trees are defined as mature native trees that are healthy and structurally sound and have grown into the natural stature particular to the species.

See Sections 35.42.015.G.12 and 35.42.015.H.15 of the County LUDC amendment (Exhibit 1 of Attachment C, pages 19 and 23) and Sections 35-142.7.13 and 35-142.8.15 of the Article II amendment (Exhibit 1 of Attachment F, pages 12 and 18).

Additional development standards included by the Montecito Planning Commission that are not recommended to apply Countywide.

In addition to the specific development standards added by the Montecito Planning Commission that are discussed above, they also added recommended adding the following standards that would apply to property located in the Montecito Community Plan area. These are not included in the proposed amendments that would apply outside the Montecito Community Plan area due to the reasoning included below.

- **Historic Landmarks Advisory Commission review.** If the accessory dwelling unit is proposed to be located entirely or partially within a building that is 50 years old or greater, then the application shall be submitted to the Historic Landmarks Advisory Commission for review and comment as to the compatibility of the proposed development with the historical context of the building, whether the development will result in a detrimental effect on any existing or potential historical significance of the building, and other factors that the Historic Landmarks Advisory Commission may choose to comment on.

The Montecito Planning Commission felt that it is important to include this additional standard given the number of historical structures and structures that have the potential to have historical significance located within the Montecito Community Plan area.

This standard is not proposed to apply outside of the Montecito Community Plan area since it would require this review if the application included the modification of a dwelling built after 1967. This would include a large number of the dwellings that are located in the various tract

developments that occurred in the Eastern Goleta Valley Community Plan, Goleta Community Plan, and the Orcutt Community Plan areas.

- **Site preparation.** Grading associated with the development of the ADU shall not exceed 1,500 cubic yards of cut and fill, and any freestanding retaining wall shall not exceed eight feet in height.

The Montecito Planning Commission added this standard that the Chair of the Montecito BAR would use as part of their review of an application order to implement requirements of the Montecito Architectural Guidelines and Development Standards regarding site design, especially in hillside areas.

This standard is not proposed to apply outside of the Montecito Community Plan area since there is no similar requirement in the architectural guidelines that apply outside the Montecito Community Plan area.

6.0 ENVIRONMENTAL REVIEW

6.1 Case No. 16ORD-00000-00014. The proposed ordinance amendment to the County Land Use and Development Code is recommended to be determined to be exempt from environmental review pursuant to Section 15282(h) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15282(h) provides that “The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code” is statutorily exempt from the CEQA.

6.2 Case No. 16ORD-00000-00016. The proposed ordinance amendment to the Article II Coastal Zoning Ordinance is recommended to be determined to be exempt from environmental review pursuant to Sections 15265 and 15282(h) of the California Guidelines for Implementation of the California Environmental Quality Act (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 15282(h) provides that “The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code” is statutorily exempt from the CEQA.

7.0 POLICY CONSISTENCY

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including the Community Plans and Area Plans, or the Coastal Land Use Plan, and the adoption of the proposed ordinance amendments will not result in any inconsistencies with the adopted policies and development standards.

In order for a development permit to be approved based on these proposed amendments, it still must be determined that the project is consistent with the policies and development standards of the Comprehensive Plan, including the Community Plans and Area Plans, and the Coastal Land Use Plan, as applicable. As part of this process, a policy consistency analysis will be performed during the review of the application, and typically projects would not be approved unless they are determined to be consistent with applicable policies and the findings required for approval can be made.

However, Government Code Section 65852.2(a)(5) requires that “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.” Therefore, if this analysis identifies a policy inconsistency that cannot be overcome through project redesign (e.g., moving a detached ADU further away from a designated environmentally sensitive habitat area), then this inconsistency cannot be used as the basis for denial of the application for the ADU.

Additionally, Government Code Section 65852.2 provides that “An accessory dwelling unit that conforms to [Section 65852.2] shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.”

Lastly, Government Code Section 65852.2(j) states that:

Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Therefore, if the policy analysis does identify an inconsistency with one or more of the resource protection policies contained in the Coastal Act, then this inconsistency may be used as the basis for denial of an application for an ADU.

Therefore, given the requirements of the Government Code, these amendments may be found consistent with the adopted Comprehensive Plan, including the Community Plans and Area Plans, and the Coastal Land Use Plan.

8.0 ORDINANCE COMPLIANCE

The proposed ordinances are consistent with the remaining portions of the County LUDC and Article II that would not be revised by these ordinances. In order to approve a development project based on these proposed amendments, it still must be determined that the project is consistent with the whole of the County LUDC and Article II as applicable, subject to the constraints Government Code Section 65852.2(a)(5) which requires that “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.”

9.0 PROCEDURES

9.1 County Land Use and Development Code: The County Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

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

10.0 APPEALS PROCEDURE

Ordinance amendments are legislative acts that require final action by the Board of Supervisors, therefore an appeal of the action of the County Planning Commission is not required.

11.0 ATTACHMENTS

- A. 16ORD-00000-00014 County LUDC Findings
- B. 16ORD-00000-00014 County LUDC Notice of Exemption
- C. 16ORD-00000-00014 County LUDC Resolution and Ordinance
- D. 16ORD-00000-00016 Article II Findings
- E. 16ORD-00000-00016 Article II Notice of Exemption
- F. 16ORD-00000-00016 Article II Resolution and Ordinance
- G. Government Code Section 65852.2
- H. 04-18-2017 California Coastal Commission Memorandum
- I. December 2016 California Department of Housing and Community Development Accessory Dwelling Unit Memorandum (Revised January 2017)
- J. Comparison of Existing Versus Proposed Development Standards for Accessory Dwelling Units That Are Accessory to an Existing Primary Dwelling
- K. 05-17-2017 Montecito Planning Commission Action Letter
- L. 03-15-2017 Montecito Planning Commission Staff Report (without attachments)
- M. 04-05-2017 Montecito Planning Commission Memorandum (without attachments)
- N. 05-10-2017 Montecito Planning Commission Hearing Memorandum (without attachments)

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