

# Attachment A

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## ATTACHMENT A DISCUSSION

### **Project Description**

The 2009-2014 Housing Element identified ten changes to bring the Monterey County Code into compliance with current state and federal housing laws and to remove regulatory barriers to housing opportunities. The ten changes are:

1. Definition of Family – The Housing Element recommends revision of the definition of family to ensure no discrimination against special needs populations and to classify on the basis of land use rather than familial status. The ordinance as presented places the emphasis on “non-transient” people living together in a dwelling unit. This approach provides a distinction between a hotel/motel but still provides a broad definition of family consistent with law.
2. Residential Care Facility – State law requires that a Residential Care Facility serving six or fewer persons (excluding caregivers/operators); be treated the same under zoning as other family dwellings of the same type in the same zone. Accordingly, such facilities must be allowed in those zoning districts where family dwellings are allowed. The ordinance broadens Residential Care Facilities to allow “small” Residential Care Facilities to be located in residential zones as an allowed use and in other non residential zones subject to the same requirements as a residence. The ordinance also makes provisions for Large Residential Care Facilities (7-13 residents) which require approval of a Use Permit.
3. Transitional Housing or Transitional Housing Development and Supportive Housing – State law requires that the County consider transitional and supportive housing to be a residential use of property which is subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. The ordinance allows Transitional and Supportive housing as a specific residential use type, consistent with how that particular use type is currently permitted in each zone (e.g. single family dwelling, duplex or multiple family dwelling.) The definition within the proposed ordinance for the Transitional and Supportive Housing defines these uses consistent with State law.
4. Agricultural Employee Housing – State law requires that agricultural employee housing facilities for up to 12 dwelling units or 36 beds in a group quarters be treated as an agricultural use of the property in Agricultural Land Use Designations. The Agricultural Employee Housing is not required to be located on the same property where the agricultural employee is employed. Title 20 (Coastal Zoning Ordinance) currently allows “farm employee housing facilities” and “farm worker family housing facilities” of different specified resident numbers. Permit requirements vary depending on the number of units or beds. In order to reduce confusion and remain consistent with the State law, the existing Farm Worker Housing references have been removed. In their place, Agricultural Employee Housing of 12 units or 36 beds is permitted in agricultural zones as an allowed use. Larger facilities will be permitted subject to a Use Permit. In the proposed ordinance, smaller facilities will be addressed by allowing “employee housing” in certain zones. This combination of housing types effectively replaces the existing Farm Worker Housing Types in both Agricultural Zones and in Residential Zones, consistent with State law. Additionally, the term “agricultural employee” replaces “farm worker” and “farm employee”.

5. Employee Housing – State law requires that “employee housing” providing accommodations for six or fewer employees be deemed a “single-family structure with a residential land use designation” and that no conditional use permit, zoning variance or other zoning clearance be required of a family dwelling of the same type in the same zone. Employee Housing in the current draft has been defined with reference to the State law, which defines employee housing very broadly. It is included as a permitted use in the residential districts. It is not called out separately in the agricultural districts because these districts already allow single family dwellings for employees.
6. Single Room Occupancy (SRO) Units – State law requires that local jurisdictions address the provision of housing for extremely low income individuals or households, including Single Room Occupancy (SRO) Units. The ordinance identifies properties zoned High Density Residential as appropriate locations for SRO facilities. These would require approval of a Use Permit.
7. Homeless Shelters – State law defines “Emergency Shelters” (Homeless Shelters) as housing with minimal supportive services for homeless persons that is limited to occupancy of six months or fewer. The County is required to identify at least one zoning district where Emergency Shelters will be permitted by right. The ordinance identifies properties zoned High Density Residential as appropriate locations for Emergency Shelters because these zones are generally located in the more developed areas of the unincorporated County, with access to public transportation and services.
8. Accessory Dwelling Units – California Government Code Section 65852.2 requires that second units be allowed ministerially, subject to compliance with certain statutory standards, in single-family and multifamily residential zones except for areas which a local agency has excluded by ordinance due to infrastructure constraints. A local agency must either apply the State law or adopt and apply local regulations that meet state law requirements. Additionally, the “Granny” housing statute (Government Code Section 65852.1) became inoperative on January 1, 2007 as to any second unit approved after that date; all Senior Units approved prior to that date are considered to comply with 65852.2 or a local ordinance adopted pursuant to that law.

The existing Zoning Ordinance has two types of accessory dwelling units: caretaker units and senior citizens units. Consistent with the changes to State law, the proposed ordinance repeals the “senior citizen unit” regulations and substitutes “Accessory Dwelling Units” for the Caretaker unit regulations. Caretaker Units for on-site security would still be allowed within non-residential zoning districts and will be evaluated through the General Development Plan process rather than regulated by the special regulations. Units previously permitted as a “Senior Citizen Unit” or “Caretaker Unit” would automatically be considered an Accessory Dwelling Unit. Where both a Senior Citizen Unit and Caretaker Unit were permitted on a lot, the property will become non-conforming.

Regulations that were applicable to caretaker units have been carried through and applied to Accessory Dwelling Units (ADU’s) including limiting ADU’s in North County (see further discussion on second units below), limiting ADU’s in the Carmel area to lots greater than 40 acres only, limiting ADU’s in Big Sur to overall build out numbers that were previously applicable to caretaker units, and limiting or prohibiting ADU’s in the B-8 overlay areas or where a specific plan sets limits on accessory units.

During the first round of public review of the ordinance, the name “Second Dwelling Units” was changed to “Accessory Dwelling Units”. The 2010 General Plan and the Del Monte Forest Land Use Plan refer to Accessory Dwelling Units, and there are existing allowances for “Second single family dwellings meeting the zoning density” which staff thought could be confused with “second units”.

9. Reasonable Accommodation – Federal and state fair housing law prohibit discrimination in housing based on disability and require local governments to make reasonable accommodations in land use to provide disabled persons equal access to housing. In the event that a zoning regulation may preclude a person with disabilities from constructing improvements to provide access, the State law requires that a process be available to grant the person with a disability the ability to make such improvements as necessary to have access to their dwelling, provided that it does not change the nature of the area, or violate policy objectives of the General Plan. The ordinance has been written so that Reasonable Accommodation requests would be applicable to “housing types” in any zoning district. The reasoning behind the “type” and not the “zoning district” is that dwelling units may exist in non-residential zoning districts, such as in Commercial, Agricultural or Industrial Districts. The Reasonable Accommodation would basically be a ministerial permit granted by the Planning Director unless the request is combined with a different discretionary permit application. The purpose of the process proposed by the ordinance is to provide persons with disabilities the opportunity to obtain a reasonable accommodation without going through discretionary land use review.
10. Density Bonuses and Incentives – California Government Code Sections 65915 through 65918 require local government to provide Density Bonuses and Incentives to proposed housing developments that meet certain affordability criteria, and state law requires that the County adopt an ordinance specifying how State law will be complied with. The ordinance reconciles the provision of the State Density Bonus regulations with the County of Monterey Inclusionary Housing Regulations contained in Chapter 18.40 of the Monterey County Code. As discussed further below, the Coastal Commission also required some modifications to County’s proposed regulations to address the relationship between the Density Bonus law and Coastal Act.

Most of the regulations for the different housing related ordinances will be carried out in Title 20 in the same manner as adopted in the amendment to Title 21. Amendments to Title 21 (Inland Zoning Ordinance) were adopted on May 24, 2011. Title 20 is different than Title 21 in that almost all activity requires some type of permit. Additionally, through the process of submission of the draft regulations to the California Coastal Commission (CCC), the CCC has required some modifications to the proposed regulations to address compliance with the Coastal Act. The slight differences in Title 20 as compared to the adopted Title 21 regulations can be summarized as follows:

- Accessory Dwelling Units in the Coastal zone will require a Coastal Administrative Permit. Coastal Development Permits are required for all development in the Coastal Zone pursuant to the California Coastal Act. Monterey County has a Coastal Administrative Permit process which is the equivalent of a Coastal Development Permit but with a streamlined process for projects that are “minor and noncontroversial.” The 2011 proposed amendment would have eliminated the requirement for a public hearing for second units in residential zones, as allowed by state second unit law; however, the Coastal Commission staff required reinserting the requirement for public hearings for

permits for ADUs in the Coastal zone, based on a provision in the state second unit law that provides that it does not supersede the Coastal Act.

- Agricultural Employee Housing, Residential Care Facilities, Emergency Shelters, Transitional and Supportive Housing are allowed uses (ministerial uses) in the non-coastal zone (Title 21), but in the Coastal Zone the minimum permit requirement is a Coastal Administrative Permit (discretionary permit). These uses will typically be housed in existing structures, thus would not create a potential to adversely impact coastal resources. To address these types of circumstances, Section 20.70.120, entitled “Exemptions from Coastal Development Permits,” allows for uses to move into existing structures without a discretionary process. These housing types have been added to this exemption.
- In 2014, the Legislature adopted revisions to the State Density Bonus Law (Assembly Bill 2222). Since the Coastal Ordinance is still in process, revisions have been incorporated into the ordinance to comply with the changes made by AB2222. A separate effort will be needed to update the Inland Density Bonus regulations that have already been adopted. Staff intends to bring forward in the future for Board consideration amendments to Title 21 that make the same revisions as are included in the Coastal Ordinance to implement AB2222.
- Coastal Commission staff introduced and the Coastal Commission required modifications to ensure consistency of the amendments with Coastal Act protections (see discussion below).

### **Coastal Commission edits**

The proposed Housing Amendments have been through two rounds at the Coastal Commission. After the Board’s first adoption of a resolution of intent, the County submitted the Local Coastal Plan amendment to the Coastal Commission on November 29, 2011. The Coastal Commission staff issued a staff report on February 21, 2013 recommending denial of the amendments as submitted by the County and approval of the amendments with modifications. Coastal Commission staff suggested modifications as follows:

1. Modify Section 20.64.030 “Regulations for Accessory Dwelling Units” to prohibit Accessory Dwelling Units in the North County Land Use Plan area.
  - As submitted in 2011, the regulations would have allowed Accessory Dwelling Units in the North County coastal area on lots greater than 5 acres within “Zone 2C”.
2. Modify Section 20.64.180 “Density of Development” to reflect changes made pursuant to item 1 and to add clarifying language regarding density in relationship to the uses added as part of the ordinance (i.e. residential care facilities, supportive and transitional housing, etc...are subject to density).
  - These changes are necessary if Modification 1 is made. In addition, the density language only clarifies the ordinance and does not change the effect;
3. Modify Proposed Changes to Section 20.64.030 to fix typos;
4. Add new Section 20.65.045 to the proposed new “Density Bonus and Incentives” (Chapter 20.65) to require consistency with the Local Coastal Plan and the Coastal Act.
  - This new section limits the ability of an applicant to receive a Density Bonus if that Density Bonus would conflict with Land Use Plan regulations (other than density).

5. Modify Section 20.61.040.B.6 to require an applicant for a Reasonable Accommodation for a disability to submit an explanation of how a particular zoning section precludes a Reasonable Accommodation.
  - This amendment requires a specific written explanation by the applicant as part of a request for an accommodation and would not change the effect of the ordinance.
6. Add Section 20.61.050.C.7 to require that Reasonable Accommodations minimize inconsistencies with the County's Local Coastal Plan.
  - This edit enables the County to deny a reasonable accommodation request if that request would require a fundamental alteration to the Land Use Plan.
7. Modify Section 20.64.030.E.8 to add language clarifying that Accessory Dwelling Units are subject to cumulative site development standards including site coverage and floor area ratio.
  - This edit clarified the ordinance and did not change the effect;
8. Delete sentence two of Section 20.64.030 which would have eliminated public hearings for Coastal Administrative permits for Accessory Dwelling Units.
  - With the Coastal Commission staff suggested modification, Accessory Dwelling Unit applications are subject to the normal Coastal Administrative Permit process, including a public hearing if requested.

With a couple of exceptions, the modifications suggested by the Coastal Commission staff were mostly clarifying in nature and resulted in little to no change in the effect of the ordinance. The three modifications that involved a change to the effect of the ordinance came from modifications #'s 1, 4, and 6. Because of the change in policy as a result of suggested modification number 1, County staff withdrew the Local Coastal Plan amendment prior to the Coastal Commission hearing on March 6, 2013 so that staff could bring the policy issues to the Board.

Following withdrawal of the application for certification with the Coastal Commission, the Board of Supervisors considered the modifications suggested by the Coastal Commission staff. The Board directed staff to meet with stakeholders in the North County Land Use Plan area to discuss the proposed prohibition on accessory dwelling units in that area. Staff met with the North County Citizens Advisory Committee and, at the direction of the Planning Commission, staff met with each Land Use Advisory Committee that was tasked with providing input on projects proposed on properties within the coastal zone. Staff revised the proposed ordinance to incorporate the modifications that were consistent with the original intent and negotiated with Coastal Commission staff on some of the modifications to address Coastal Commission concerns. Following outreach efforts, the Planning Commission recommended, and on June 23, 2015, the Board of Supervisors adopted, a resolution of intent to approve the revised housing amendments to the Local Coastal Program and submit them to the Coastal Commission for certification.

The updated Local Program Amendments was submitted to the Coastal Commission for certification in August of 2015. As part of their review of this application for an amendment, the Coastal Commission staff made two new suggested modifications to the proposed amendments. The two new suggested modifications include:

1. Modify Section 20.65.070(B)(3) "**Density Bonus and Incentives**" as follows:

The incentive would be contrary to the County's certified ~~Local Coastal Program~~ Land Use Plan (including but not limited to sensitive habitat, agriculture, public viewshed, public services, public recreational access and open space protections) or State or Federal law.

2. Modify Section 20.66.060(C)(1)(a) "**Standards for Agricultural Employee Housing**" as follows:

In the Coastal Agricultural Preserve and Agricultural Conservation Districts, agricultural employee housing consisting of not more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household requires a Coastal Administrative Permit. Such housing shall be located on the least agriculturally viable portion of the lot; shall avoid Critical Erosion Areas to the extent feasible; and shall be supported by adequate water and wastewater services.

On October 7, 2015, the Coastal Commission approved County's proposed revisions to the Land Use Plans and ordinance, if modified to include the above-two modifications.

Modification 1 is in keeping with the intent of the original language and the added language simply clarifies that intent. Therefore, staff recommends accepting the first modification.

Modification 2 is slightly more complicated. The initial language proposed by Coastal Commission staff was not acceptable because it may have contravened state law which requires agricultural employee housing consisting of 36 or fewer beds in a group quarters or 12 or fewer single family units in an agricultural zone be treated as an agricultural use and not subjected to any criteria that is not required of any other agricultural use on a property. Coastal Commission staff contended that the Coastal Act must be given equal weight to the housing law and that agricultural employee housing (or farm worker housing) must meet certain minimum standards including siting to protect viable farmlands and avoid critical erosion areas and to demonstrate an availability of water and wastewater services, while County pointed out that state law requires deferential treatment of small scale agricultural employee housing in agricultural zones. Ultimately, the language of modification 2 represented a compromise, balancing the competing goals of state housing law and the Coastal Act. If the Department of Housing and Community Development (HCD) were to take exception to the modified language, that debate is best resolved at the State government level.

The Coastal Commission's certification of the amendments with the modification expires on April 7, 2016. Accordingly, if the Board determines that the modifications are acceptable, the next step is adoption by the Board before that date. The County then must submit the County's action to the Coastal Commission, and the amendments will take effect after a confirmation process by the Executive Director and Commission. (See Oct. 23, 2015 letter from CCC.) If the Board finds the suggested modifications unacceptable, those sections or provisions that are unacceptable could be removed from the amendments and pursued on a separate track. This alternative action would require continuing the hearing with direction to staff to prepare the appropriate ordinances and resolutions for consideration at a future date.

### **Environmental Review**

An Initial Study was prepared dated February 15, 2011 for the proposed amendments to Titles 20 and 21. No significant or potentially significant effects were identified, and a Negative Declaration was circulated for public review from February 18, 2011 to March 19, 2011 (See Exhibit C). The Negative Declaration was adopted by the Board of Supervisors on May 24, 2011 prior to approving the ordinance amending the Inland Zoning Ordinance (Title 21) and adopting



the resolution of intent for the first round of coastal housing amendments. Due to the edits proposed to the coastal ordinance, an Addendum to the adopted Negative Declaration has been prepared. The Addendum finds that none of the circumstances described in Section 15162 of the California Environmental Quality Act (CEQA) Guidelines, calling for preparation of a subsequent EIR or negative declaration have occurred. No significant changes are needed to the original Negative Declaration; therefore, an Addendum has been prepared pursuant to Section 15164 of the CEQA Guidelines. It is recommended that the Board consider the Addendum together with the previously adopted Negative Declaration prior to adopting the Resolution contained in Exhibit B and the Ordinance contained in Exhibit C.

**Recommendation**

Staff recommends that the Board of Supervisors acknowledge receipt of the Coastal Commission resolution including the two modifications, consider the Addendum to the previously adopted Negative Declaration, adopt a resolution amending the North County, Del Monte Forest, Carmel, and Big Sur Land Use Plans, and adopt an ordinance amending the Coastal Implementation Plan inclusive of the modifications suggested by the Coastal Commission.

