Attachment A

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ATTACHMENT A
DISCUSSION

Project Description

There are 10 different changes required in the 2009-2014 Housing Element in order to bring the Monterey County Code into compliance with current State and Federal housing laws and to remove regulatory barriers to housing opportunities identified by the Housing Element. The 10 changes are:

1. Definition of Family – The Housing Element recommends revision of the definition of family to ensure no discrimination against special needs populations. The ordnance 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 Zoning Ordinance (Coastal) 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 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: caretakers 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 their zoning laws and other land use regulations 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 review.

10. Density Bonuses and Incentives – California Government Code Sections 65915 through 65918 establish regulations for Density Bonuses and Incentives and require 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.

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. This results in slight differences which can be summarized as follows:

- Accessory Dwelling Units in the Coastal zone (Title 20) will require a Coastal Administrative Permit. Coastal Development Permits are required for most 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, Title 20 has Chapter 20.70.120 entitled Exemptions from Coastal Development Permits, where uses can 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. The same revisions made to the Coastal Ordinance implementing AB2222 will be made to the Inland ordinance in the future.

Project Issues

After 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 (Also see Attachment E, the Coastal Commission staff report for more detail):

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 Accessory Dwelling Units would be allowed on lots greater than 5 acres within "Zone 2C".
2. Modify Section 20.64.180 "Density of Development" to reflect changes made pursuant to modification 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 would be added to limit 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 would require 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 introduces the ability of 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 clarifies the ordinance and does 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 would be 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.

Density Bonus and Incentives (Modification #4)

California Government Code Sections 65915 through 65917 establishes regulations for Density Bonuses and Incentives and requires that the County adopt an ordinance specifying how State law will be complied with. In the absences of a density bonus ordinance, the County is still required to provide a density bonus pursuant to the requirements of State Law. The density bonus ordinance was drafted to closely mirror state law and yet simplify and clarify how the process will work within the Monterey County context including the relationship to the inclusionary housing requirements of the County. The State law is permissive of density bonus meaning that a density bonus must be granted for qualifying projects. The State law also requires granting of incentives for qualifying projects unless specific findings are made to deny those incentives. The distinction is between the density bonus and any other incentives or concessions.

The Coastal Commission staff's suggested modifications would not allow granting of a density bonus if the density bonus would conflict with the Local Coastal Program. This type of additive regulation is made possible by subsection (m) of Section 65915 of the density bonus law which states "*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…*" The ordinance (based on State law), allows for denial of incentives if specific findings are made to deny them. Staff has negotiated alternative language with the California Coastal Commission staff that addresses their concerns (See Section 20.65.045 of the proposed ordinance for the added language). The negotiated change includes adding the following language to the Density Bonus chapter:

"B. For applicants who qualify for and seek a Density Bonus pursuant to Section 20.65.050.A, the County may not reduce residential densities below the density sought by the applicant if the density is within the permitted density or range of density provided in this Chapter, unless the Appropriate Authority makes a finding, based on substantial evidence, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with the County's certified Local Coastal Program."

Additional changes to the Density Bonus section of the ordinance have been necessitated by a new State law (Assembly Bill 2222). Those changes include the following:

- Change the affordability restriction on qualifying units from 30 years to 55 years;
- Include very low and low income families among initial occupants of for-sale units instead of only for-rent units; and
- Incorporate new provisions for applying a density bonus when a proposed housing project would result in demolishing or vacating existing lower income housing units.

These changes are reflected in the attached draft ordinance.

Reasonable Accommodations (Modification # 6)

Housing laws require the County to make "Reasonable Accommodations" to zoning and land use standards to provide disabled persons equal access to housing. The ordinance creates a process that allows the Director of Planning to approve projects that require an exception to the zoning standards, when that exception is required to accommodate housing for a person with a disability. For instance if a wheelchair ramp is needed to access a home, the Director could approve the ramp even if the ramp did not meet setbacks for the zoning district in which it is located.

The Coastal Commission staff's suggested modifications would add the following language to the reasonable accommodations section: Section 20.61.050.C.7 "*The accommodation minimizes inconsistencies with and will not require a fundamental alteration of the County's LCP.*" Staff has negotiated updated language that addresses the Coastal Commission staff concerns and is more descriptive of the circumstances by which a request for a Reasonable Accommodation may be denied and it makes clearer that a request for a Reasonable Accommodation cannot be denied in a manner that would be inconsistent with the federal Fair Housing Act. An excerpt of Section 20.61.050 C and D is included here:

C. The Appropriate Authority in its consideration of a request for Reasonable Accommodation may grant, deny, or modify, in whole or in part, said request for Reasonable

Accommodation. A grant of Reasonable Accommodation shall require the following findings, based on substantial evidence:

1. The housing, which is the subject of the request for Reasonable Accommodation, will be used by an individual(s) with a disability protected under fair housing laws;
2. The requested accommodation is necessary to make housing available to an individual with a disability protected under the fair housing laws;
3. The requested accommodation would not impose an undue financial or administrative burden on the County;
4. The requested accommodation is the minimum necessary to address the circumstances;
5. The Reasonable Accommodation would not negatively impact property;
6. Alternative accommodations which may provide an equivalent level of benefit do not exist; and
7. The accommodation minimizes inconsistencies with and will not require a fundamental alteration of the County's Local Coastal Program.

D. In no case shall the Appropriate Authority apply the requirements of this section in a manner that is inconsistent with the federal Fair Housing Act.

Accessory Dwelling Units in North County (Modification #1)

The County's Housing Element identified the need to update the County's second unit regulations due to changes in Government Code §65852 et seq. The State Law that enabled "senior units" or "granny units" became inoperative for units approved after January 1, 2007 (Government Code Section 65852.1) and new enabling legislation for "Second Units" (which the County is referring to as ADUs to avoid confusion with "second dwelling units meeting the density at the site) were added. The new Second Unit Law allows local governments to adopt a local ordinance regulating permitting of second units subject to the limitations outlined in the law. When a local government has not adopted an ordinance pursuant to the Second Unit Law, the agency is required to consider permits for ADUs pursuant to the regulations contained within the State Law, including permitting ADUs by right in residential zones provided they meet minimum development standards. The Second Unit law contains detailed regulations pertaining to permitting of ADUs but also provides that nothing within the law can supersede or in any way alter or lessen the effect of the Coastal Act. Without a local ordinance regulating second units or ADUs, there is contradictory and confusing information between the existing zoning regulations and State law. Part of the confusion involves permitting ADUs in residential areas that were previously considered inappropriate for second units, senior units, and/or caretaker units (such as the North County area outside Zone 2C). The State Law requires ministerial approval of ADUs in residential zones but also requires application of the Coastal Act policies. Amendment of Title 20 is needed to align current zoning regulations with state second unit law.

The 2011 ordinance considered by the Board of Supervisors and previously submitted to the Coastal Commission would have eliminated regulations for senior units and replaced regulations for caretaker units with regulations for Accessory Dwelling Units (ADUs). Proposed new regulations for ADU's included a prohibition on ADU's in the North County Coastal area

outside of zone 2C. Within zone 2C, ADUs would have been permitted on lots served by sewer, or if on septic, on lots over 5 acres in size.

After submission of the ordinance to the Coastal Commission for certification, the California Coastal Commission staff recommended to the Coastal Commission a modification to prohibit Accessory Dwelling Units within the entire North County Land Use Plan area (including within Zone 2C).

Development in the North County Coastal Zone area is specifically subject to the North County Land Use Plan. The following North County Land Use Plan policies set the standards for water resources in the area:

- Key Policy 2.5.1 states "*The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term water supplies*."
- General Policy 2.5.2.3 states "*New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.*" ; and
- Specific Policy 2.5.3.A.2 states "*The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs*."

Coastal Commission staff explained its suggested revision to prohibit Accessory Dwelling Units as follows "*The North County LUP policies explicitly protect groundwater aquifers and require new development to be restricted to that which can be supplied by an identifiable, available, long-term water supply (i.e., limit groundwater use to safe yield level). Absent additional information regarding the long-term benefit for the diversion project, it is not appropriate to except ADU development from the development prohibition in North Monterey County*. (pg. 21 of Attachment F)"

The County is in the process of gathering additional data on the effects of the Salinas Valley Water project. As described in the 2010 General Plan Policy PS-3.1 (as amended by the Board of Supervisors), the County is preparing a study regarding zone 2C that, among other things, will evaluate existing data for seawater intrusion and groundwater levels. Although the 2010 General Plan does not apply to the Coastal Zone, the study will include groundwater information in the Zone 2C area.

Absent the results of the ongoing groundwater study pursuant to PS-3.1, the California Coastal commission staff will not allow ADUs in the North County Coastal Area. The Coastal

Commission staff's position on this issue is documented in both the staff report prepared for the Coastal Commission hearing (Exhibit D) and in the later correspondence between the County and the Coastal Commission staff (Exhibit E). Therefore, staff's recommended approach is to accept the Coastal Commission revisions and prohibit Accessory Dwelling Units in the North County area at this time. This approach is consistent with the North County (Inland) regulations. General Plan policy NC – 1.5 restricts development on residentially designated lands to the first single family dwelling on a legal lot of record in the Inland areas of North Monterey County.

Other Notable changes to the ordinance (County initiated)

There have been a couple of changes in County Code and the County organization since the drafting of the Coastal Housing ordinance that require changes to maintain consistency. First, the Del Monte Forest Land Use Plan has been updated and it now refers to Accessory Dwelling Units instead of caretaker units so there is no longer a need to amend the plan for that purpose. In addition, "golf courses" have been removed from Uses Allowed subject to a Coastal Development Permit in residential zoning districts. This change is reflected in the updated ordinance attached. References to the Housing and Redevelopment Agency have been removed and replaced with reference to the Economic Development Department. Finally, changes have been made to the Density Bonus chapter to reflect changes made in state law (Assembly Bill 2222). Other than these changes and the Coastal Commission staff suggested modifications, the rest of the ordinance remains the same.

Additional Outreach to the Land Use Advisory Committees

At the direction of the Planning Commission, staff met with the Carmel Highlands/Unincorporated LUAC, the North County Coastal LUAC, the Del Monte Forest LUAC, and the Big Sur/South Coast LUAC at their regular meetings. Staff provided the LUACs with the packet submitted to the Planning Commission on February 25, 2015 in advance of the each of the meetings and attended the meetings to provide a presentation on the ordinance. Each LUAC had some general questions about the effect of the ordinance but no specific revisions or objections were presented. At the North County Coastal Land Use Advisory Committee meeting, one of the members recalled the discussion of the North County citizens Advisory Committee regarding allowing ADUs on lots of 10 acres or more. After explaining the outcome of negotiations with the Coastal Commission staff on this topic, there was an agreement amongst members to move forward as presented. At the Big Sur/South Coast LUAC, there was a philosophical discussion of housing needs and limitations in Big Sur. The Big Sur/South Coast Advisory Committees expressed concerns the following specific concerns in their area:

- Lack of affordable housing in the community;
- Lack of employee housing; and
- Use of housing for short-term rentals

As a result of lengthy discussion on these topics, it was understood that this ordinance will improve potential for employee housing and affordable housing in the coastal zone. In general, there was a desire among the committee members to look more comprehensively at a specific approach to housing types and housing needs in Big Sur through the Land Use Plan update. A comprehensive approach would take into consideration various housing types such as single room occupancy units, employee housing facilities, accessory dwelling units, single family

dwellings, land use densities, zoning regulations, and more. A separate effort is underway to address short-term rentals in the Coastal zone. The Del Monte Forest LUAC and the Carmel Highlands/Unincorporated LUAC did not raise and substantive issues with the ordinance. There has been no direction from any of the LUAC that would indicate a desire to change the ordinance from the version presented to the Planning Commission on February 25, 2015.

On February 25, 2015, the Planning Commission continued the hearing on this item to May 27, 2015 in order to provide time for staff to conduct additional outreach. On May 27, 2015, staff presented the results of the outreach described above to the Planning Commission. After consideration, the Planning Commission voted to recommend approval of the LCP amendments and coastal housing ordinance to the Board of Supervisors by a vote 10-0.

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). Due to the edits proposed to the coastal ordinance, an Addendum to the adopted Negative Declaration has been prepared. The Addendum describes how 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 CEQA Guidelines. It is recommended that the Planning Commission consider the Addendum together with the previously adopted Negative Declaration prior to adopting the Resolution contained in Exhibit B.

Recommendation

Staff recommends that the Board of Supervisors adopt a resolution of intent to approve the Land Use Plan amendments and ordinance and submit them to the Coastal Commission for certification.