

## ATTACHMENT H: ORDINANCE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE, BY AMENDING DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE LAND USES, DIVISION 35.3, MONTECITO SITE PLANNING AND OTHER PROJECT STANDARDS, DIVISION 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION, AND DIVISION 35.10, GLOSSARY, AND MAKE OTHER MINOR REVISIONS AS NECESSARY TO REVISE THE PROCEDURES FOR PERMITTING SOLAR ENERGY SYSTEMS.

Case No. 09ORD-00000-00002

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

### SECTION 1:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Subsection 1, Activities and structures exempt both within the Inland area and the Coastal Zone, of Subsection B., Exempt activities and structures, of Section 35.420.040, Exemptions from Planning Permit Requirements, of Chapter 35.420, Development and Land Use Approval Requirements, to amend Subsection n., Solar energy collectors, read as follows:

- n. Solar energy systems.** The addition of solar energy systems to the roofs of existing structures. See Section 35.430.160 (Solar Energy Systems) and Section 35.492.030 (Appeals to the Montecito Commission) for special permit, notice and appeal procedures.

### SECTION 2:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Subsection 2., Activities and structures exempt within the Inland area, of Subsection B., Exempt activities and structures, of Section 35.420.040, Exemptions from Planning Permit Requirements, of Chapter 35.420, Development and Land Use Approval Requirements, to add a new Subsection f. to read as follows and to re-number existing Subsection f. through Subsection h. as Subsection g. through Subsection i.:

- f. Solar energy systems.** The installation of freestanding solar energy systems. See Section 35.430.160 (Solar Energy Systems) and Section 35.492.040 (Appeals to the Montecito Commission) for special permit, notice and appeal procedures.

### SECTION 3:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph C (Development Plan approval required) of Section 35.422.030, Resource Protection Zone Allowable Land Uses, of Chapter 35.422, Resource Protection Zone, to read as follows:

- C. Development Plan approval required.** Final Development Plan approval in compliance with Section 35.472.080 (Development Plans) is required prior to the approval of a Land Use Permit in compliance with Section 35.472.110 (Land Use Permit) or the issuance of a Zoning Clearance in compliance with Section 35.472.190 (Zoning Clearance) for all development, including

grading, except for solar energy systems allowed in compliance with Section 35.430.160 (Solar Panels).

SECTION 4:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph E (Accessory Structures and Uses) of Section 35.422.030, Resource Protection Zone Allowable Land Uses, of Chapter 35.422, Resource Protection Zone, to read as follows:

- E. Accessory Structures and Uses.** Accessory structures and uses that are customarily incidental to the primary use allowed by Table 2-4 (Allowed Land Uses and Permit Requirements for Resource Protection Zone) are not allowed except as follows:
- 1. Swimming Pools and Water Storage Tanks.** Swimming pools and water storage tanks shall be approved or conditionally approved as accessory structures in compliance with Section 35.472.080 (Development Plans).
  - 2. Solar energy systems.** Solar energy systems allowed in compliance with Section 35.430.160 (Solar Panels).

SECTION 5:

DIVISION 35.3, Montecito Site Planning and Other Project Standards, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.430.160 (Solar Panels) of Chapter 35.430, Standards for All Development and Land Uses, to read as follows:

**35.430.160 - Solar Energy Systems**

**A. Coastal Zone.**

- 1. Roof mounted.** Solar panels energy systems located on the roof of an existing structure are exempt from design review and do not require planning permit approval.
- 2. Freestanding.** Freestanding solar energy systems shall require the issuance of either a Coastal Development Permit in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.82.110 (Land Use Permits) as applicable.
  - a. Development that may be appealed to the Coastal Commission.** Applications for Coastal Development Permits for development which is defined as appealable development in compliance with State law (Public Resources Code Section 30603) that would normally be processed in compliance with Section 35.472.050.D.2 (Coastal Development Permit for development that is appealable to the Coastal Commission in compliance with Chapter 35.492 (Appeals)) shall, in compliance with Government Code Section 65805.5(b), instead be processed in compliance with Section 35.472.050.D.1 (Coastal Development Permit for development that is not appealable to the Coastal Commission in compliance with Chapter 35.492 (Appeals) or is not processed in conjunction with a Conditional Use Permit, Minor Conditional Use Permit, or Final Development Plan).
    - (1) Notwithstanding the language of Section 35.496.020 (Notice of Public Hearing and Review Authority Action) and Section 35.496.030 (Coastal Development Permits and Land Use Permits within the Coastal Zone), notice of the

application and pending decision on the application shall be in compliance with Section 35.496.020 (Notice of Public Hearing and Review Authority Action).

- (2) The action of the Director is final subject to appeal in compliance with Chapter 35.492 (Appeals), and shall also be subject to appeal to the Coastal Commission in compliance with Section 35.492.060 (Appeals to the Coastal Commission).

**b. Development that may not be appealed to the Coastal Commission.** Applications for Coastal Development Permits for development which is not defined as appealable development in compliance with State law (Public Resources Code Section 30603) shall be processed in compliance with Section 35.472.050.D.1 (Coastal Development Permit for development that is not appealable to the Coastal Commission in compliance with Chapter 35.492 (Appeals) or is not processed in conjunction with a Conditional Use Permit, Minor Conditional Use Permit, or Final Development Plan).

- (1) Notice of the application and pending decision on the application shall be in compliance with Section 35.496.030 (Coastal Development Permits and Land Use Permits within the Coastal Zone).
- (2) The action of the Director is final subject to appeal in compliance with Chapter 35.492 (Appeals).

**B. Inland area.** Solar energy systems located on the roof of an existing structure and freestanding solar energy systems are exempt from design review and do not require planning permit approval, however such systems do require the issuance of a Building Permit, Electrical Permit, Plumbing Permit and/or Solar Use Permit, as applicable, in compliance with Chapter 10 (Building Regulations) of the County Code.

**1. Solar Use Permit.** If the Building Official has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the Building Official may require the applicant to additionally apply for a Solar Use Permit in compliance with this Subsection. The decision of the Building Official to require the applicant to apply for a Solar Use Permit may be appealed to the Commission in compliance with Chapter 35.492 (Appeals).

**a. Contents of application.** An application for a Solar Use Permit shall be submitted in compliance with Chapter 35.470 (Permit Application Filing and Processing).

**b. Processing.**

- (1) The Building Official shall review the Solar Use Permit application for compliance with this Development Code and approve, conditionally approve, or deny the request.

(a) The Building Official shall not deny an application for a Solar Use Permit unless he makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

- (2) The action of the Building Official to approve, conditionally approve, or deny an application for a Solar Use Permit is final subject to appeal in compliance with Chapter 35.492 (Appeals).

- (3) No entitlement for development (e.g., building permit) shall be granted prior to the effective date of the Solar Use Permit. A Solar Use Permit shall not be issued and deemed effective:
    - (a) Prior to the expiration period of the appeal period, or, if appealed, prior to final action on the appeal by the review authority in compliance with Chapter 35.492 (Appeals).
    - (b) Until all conditions of the Solar Use Permit that are required to be satisfied prior to issuance of the Solar Use Permit have been satisfied.
    - (c) Until all necessary prior approvals have been obtained.
  - (4) Notice of the approval or conditional approval of a Solar Use Permit shall be given in compliance with Section 35.496.050 (Land Use Permits).
- c. Findings required for approval.** A Solar Use Permit application shall be approved or conditionally approved only if the Building Official first makes all of the following findings. In compliance with the limitation on the ability of the Building Official to deny an application for a Solar Use Permit contained in Subsection B.1.b, the Building Official may approve the application subject conditions that will provide the basis for making the following findings.
- (1) The proposed installation will not have a specific, adverse impact upon the public health or safety.
  - (2) The proposed installation conforms with the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).
  - (3) The proposed installation is on a legally created lot.
  - (4) The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code and any applicable zoning violation enforcement and processing fees have been paid. This Subsection shall not be interpreted to impose new requirements for legal nonconforming uses and structures in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).
- d. Permit expiration.**
- (1) A Solar Use Permit shall remain valid only as long as compliance with all applicable provisions of this Development Code and the Solar Use Permit conditions continues.
- 4. Conditions.** Any conditions imposed on an application to install a solar energy system, including a Solar Use Permit, which are required to mitigate a specific, adverse impact upon the public health and safety shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

#### SECTION 6:

DIVISION 35.9, Montecito Land Use and Development Code Administration, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.492.040 (Appeals to the Montecito

Commission) of Chapter 35.492, Appeals, to read as follows:

**35.492.040 - Appeals to the Montecito Commission**

- A. Decisions appealed to the Montecito Commission.** The following decisions may be appealed to the Montecito Commission provided the appeal complies with the requirements of Subsection 35.492.020.C through Subsection 35.492.020.E above.
- 1. Montecito Board of Architectural Review decisions.** The following decisions of the Montecito Board of Architectural Review may be appealed to the Montecito Commission:
    - a. Any decision of the Montecito Board of Architectural Review to grant or deny preliminary approval.
    - b. Any decision of the Montecito Board of Architectural Review to grant or deny final approval in compliance with Subsection 35.492.020.C.2.c (Appeals of final decisions of the Montecito Board of Architectural Review).
  - 2. Building Official decisions.** The following decisions of the Building Official may be appealed to the Montecito Commission.
    - a. The decision of the Building Official to require an applicant for a solar energy system to apply for a Solar Use Permit. The grounds for an appeal of a decision to require a Solar Use Permit are restricted to a demonstration that the solar energy system would not have a specific, adverse impact upon the public health and safety.
    - b. Any decision of the Building Official to approve, conditionally approve, or deny an application for a Solar Use Permit.
  - 3. Director decisions.** The following decisions of the Director may be appealed to the Montecito Commission:
    - a. Any determination on the meaning or applicability of the provisions of this Development Code.
    - b. Any determination that a discretionary permit application or information submitted with the application is incomplete as provided by Government Code Section 65943.
    - c. Any decision of the Director to revoke an approved or issued Coastal Development Permit or Land Use Permit.
    - d. Any decision of the Director to approve or deny an application for a Coastal Development Permit or Land Use Permit except as follows:
      - (1) Land Use Permits approved in compliance with Section 35.442.260 (Temporary Uses and Trailers) not including Subsection 35.442.180.G (Trailer Use).
    - e. Any decision of the Director to revoke an issued Zoning Clearance.
    - f. Any decision of the Director to approve, conditionally approved, or deny an application for a Development Plan.
    - g. Any decision of the Director to approve, conditionally approved, or deny any other discretionary application where the Director is the designated review authority.
    - h. Any other action, decision, or determination made by the Director as authorized by this Development Code where the Director is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.

- B. Report to the Commission.** The Department shall transmit to the Montecito Commission copies of the permit application including all maps and data and a statement identifying the reasons for the decision by the Montecito Board of Architectural Review, Building Official or Director before the hearing on an appeal.
- C. Scope of appeal hearings.** The hearings on the appeal shall be de novo.
- D. Action on appeal.** The Montecito Commission shall affirm, reverse, or modify the decision of the Board of Architectural Review, Building Official or Director.
- 1. Decision on the appeal of Solar Use Permits.** The action of the Montecito Commission, and the action of any subsequent County review authority, shall not have the effect of denying the application to install the solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
    - a. Any conditions imposed by the Montecito Commission on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

#### SECTION 7:

DIVISION 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.500.020, Definitions of Specialized Terms and Phrases, of Chapter 35.500, Definitions, to add a new definition of Solar Energy Collection System read as follows:

**Solar Energy System.** Solar energy system means either (a) any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating, or (b) any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating. Additionally, the following terms and phrases are defined for the purposes of permitting solar energy systems:

- 1. Feasible method to satisfactorily mitigate or avoid the specific adverse impact.** A "feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes any cost-effective method, condition, or mitigation imposed by the County on another similarly situated application in a prior successful application for a permit. The County shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.
- 2. Specific, adverse impact.** A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

#### SECTION 8:

Except as amended by this Ordinance, Division 35.2, Division 35.3, Division 35.9 and Division 35.10 of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

**SECTION 9:**

Within the Coastal Zone portion of Santa Barbara County, this ordinance and any portion of this ordinance approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

**SECTION 10:**

Within the non-Coastal Zone portion of Santa Barbara County, this ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:  
NOES:  
ABSTAINED:  
ABSENT:

\_\_\_\_\_  
JOSEPH CENTENO  
Chair, Board of Supervisors  
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL  
County Counsel

By \_\_\_\_\_  
Deputy County Counsel