

SANTA BARBARA COUNTY PLANNING COMMISSION
Accessory Dwelling Unit (ADU) Ordinance Amendment

Hearing Date: January 31, 2018

Deputy Director: Daniel Klemann

Staff Report Date: January 24, 2018

Staff Contact: Noel Langle

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

Phone No.: (805) 568-2067

Environmental Document: Exempt [State 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.** Recommend to the Board of Supervisors (Board) that the Board 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 (County LUDC), of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment C; and
- 1.2 Case No. 16ORD-00000-00016.** Recommend to the Board that the Board 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 (Article II), of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment D.

The proposed ordinance amendments revise existing development standards and permit procedures in order to implement recent State legislation regarding ADUs.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 16ORD-00000-00014.** Follow the procedures outlined below and recommend that the Board 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 California Environmental Quality Act (CEQA) findings, and recommend that the Board make the findings for approval of the proposed amendment including CEQA findings (Attachment A);
 2. Recommend that the Board determine that the adoption of this ordinance is categorically exempt from the CEQA pursuant to Section 15282(h) of the State CEQA Guidelines (Attachment B); and,
 3. Adopt a Resolution recommending that the Board approve Case No. 16ORD-00000-00014, an ordinance amending the County LUDC, 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 approve Case No. 16ORD-00000-00016 as shown in Attachment D 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 make the findings for approval of the proposed amendment including CEQA findings (Attachment A);
2. Recommend that the Board determine that the adoption of this ordinance is statutorily exempt from CEQA pursuant to Sections 15282(h) and 15265 of the State CEQA Guidelines (Attachment B); and,
3. Adopt a Resolution recommending that the Board approve Case No. 16ORD-00000-00016, an ordinance amending Article II, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment D).

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

3.0 JURISDICTION

3.1 Case No. 16ORD-00000-00014. The County Planning Commission is considering the amendments to the County LUDC pursuant to Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.104 of the County LUDC. The Government Code and the County LUDC require that the County Planning Commission, as the designated planning agency for the unincorporated area of the County outside the Montecito Community Plan Area, review and consider proposed amendments to the County LUDC and provide a recommendation to the Board.

3.2 Case No. 16ORD-00000-00016. The County Planning Commission is considering the amendments to Article II pursuant to Section 2-25.2 of Chapter 2 of the Santa Barbara County Code. Section 2-25.2 provides that the County Planning Commission review and consider proposed amendments to the County LUDC and provide a recommendation to the Board.

4.0 BACKGROUND

4.1 In general.

In 2017, the Planning and Development Department (Department) began the process of amending the existing regulations contained in the County LUDC, the Montecito LUDC, and Article II (together known as the “zoning ordinances”) in order to conform the zoning ordinances to Government Code Section 65852.2. Staff presented draft zoning ordinance amendments to the Montecito Planning Commission and the County Planning Commission for consideration; after considering the amendments, both Commissions adopted resolutions recommending the adoption of the amendments as revised by the Commissions. The Department presented these recommendations to the Board on September 12, 2017, however, at this hearing the Board chose to not take action on the proposed amendments for the following reasons:

- The State legislature was expected to pass, and Governor Brown was expected to sign into law, Assembly Bill 494 and Senate Bill 229, which had been introduced earlier in 2017 as “clean-

up” legislation to the revisions to Section 65852.2 that resulted from Assembly Bill 2299 and Senate Bill 1069. The amendments that staff presented to the Board were inconsistent with the language of Section 65852.2 that would result from adoption of the two bills. The Board did not want to adopt the proposed amendment, only to have to adopt new amendments after the State adopted Assembly Bill 494 and Senate Bill 229.

- The Board had several concerns regarding the proposed amendments that the Board wanted the Department to address, including:
 - Minimizing the differences between the Montecito Community Plan area and the remainder of the County, especially in regard to allowed floor area;
 - Having a person other than County staff involved in the review and approval of applications for ADUs (i.e., the Chair of the Montecito Board of Architectural Review);
 - Whether the process is truly ministerial if the action on a permit may be appealed;
 - The applicability of the County’s Local Agency Management Program (LAMP) regarding the minimum lot area required per dwelling unit if a septic system is proposed for wastewater disposal;
 - The scope of the mandated 120 day review period; and
 - Removal of discretionary criteria.

AB 494 and SB 229 passed and the Governor signed them into law on October 8, 2017; they became effective on January 1, 2018. See Attachment E for the complete text of Section 65852.2 as revised. The following table lists the major changes to Section 65852.2 that resulted from the passage of AB 494 and SB 229:

Issue Area	Section 65852.2 (2017)	Section 65852.2 (2018)	Effect of Change
Zones where ADUs may be allowed	Single-family and multi-family residential zones.	Areas zoned to allow single-family or multi-family use.	Increases the number of zones that an ADU may be allowed in, for example, agricultural and commercial zones that allow dwellings.
Accessory to primary dwelling	ADU is accessory to an existing primary dwelling.	ADU is accessory to an existing or proposed primary dwelling.	Extends restrictions on scope of development standards that may be applied to ADUs applications that are submitted for vacant lots.
Parking requirements	One parking space per bedroom or ADU.	One parking space per bedroom or ADU, whichever is less.	Reduces the number of required additional parking spaces from one per bedroom to one per ADU.
Utility connection fees and capacity charges	Local agencies (e.g., cities and counties) are subject to restrictions on such fees and charges.	Local agencies, special districts, and private water corporations are subject to restrictions on such fees and charges.	Does not affect proposed ordinances; extends applicability of restrictions on fees and connection charges to special districts and private water corporations that previously only applied to local agencies.

4.2 Montecito Planning Commission review.

The Montecito Planning Commission held a public hearing on the revised amendments to the Montecito LUDC and Article II on January 3, 2018. At the conclusion of the January 3rd hearing the Montecito Planning Commission adopted resolutions recommending that:

- The Board of Supervisors adopt the proposed amendment to the Montecito LUDC as revised by the Montecito Planning Commission during their January 3rd hearing, and
- The County Planning 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 their January 3rd hearing. These revisions are discussed in detail in Section 5.2.3 (Different development standards recommended by the Montecito Planning Commission).

5.0 PROJECT DESCRIPTION AND ANALYSIS

The following provides a summary of the development standards previously recommended for approval at the County Planning Commission hearing on June 7, 2017 (shown below as “June 7, 2017, County PC Recommendation”) that are proposed to be revised in order to either comply with Section 65852.2 as revised, or to respond to the Board’s concerns (shown below as “Proposed”). Exhibit 1 of Attachments C and D, which provides the complete text of the ordinance amendments, includes highlighted text that shows the proposed major revisions to the development standards previously recommended for approval.

Also discussed below in Section 5.2.3 (Different development standards recommended by the Montecito Planning Commission), are those areas where the proposed amendment to Article II, as recommended by the Montecito Planning Commission, differs from the proposed amendment to Article II, as recommended by the Department, which would apply outside of the Montecito Community Plan area. This discussion includes whether Department’s recommendation as to whether the County Planning Commission should:

- Accept the Montecito Planning Commission’s recommendation and forward it to the Board, or
- Revise the recommendation and the reasons why.

As mentioned above, the complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C (County LUDC Resolution and Ordinance Amendment) and Exhibit 1 of Attachment D (Article II Resolution and Ordinance Amendment). 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 County LUDC 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.

5.1 Comparison of recommended versus proposed development standards.

For purposes of clarity the following discussion divides the ADU regulations into separate categories in order to clarify which regulations apply to the different types of ADUs:

- **Category A:** The ADU is proposed to be developed on a lot that contains an existing principal dwelling and the ADU would be located entirely within an existing building (either the existing principal dwelling or an existing accessory building).
- **Category B:**
 - The ADU is proposed to be developed on a lot that either contains an existing principal dwelling or the construction of a principal dwelling is proposed as part of the application for the ADU, and

- The ADU is proposed to be located within either (1) an addition to the principal dwelling or an addition to an existing accessory building, or (2) a new accessory building.

Previous hearings included discussion of development standards for what was termed Category C ADUs which applied to situations where the lot did not contain an existing principal dwelling at the time of application for the ADU. However, since Section 65852.2 was revised to also apply to ADUs that would be accessory to proposed dwellings, that distinction no longer applies.

5.1.1 Allowable zones.

The following table shows where ADUs would be allowed as per the June 7, 2017, County PC recommendation versus what is included in the revised ordinance amendments. The additional zones are proposed to be added in order to comply with the requirement of Section 65852.2 that ADUs be allowed in all zones where single-family or multi-family residential uses are allowed.

Zone	June 7, 2017 County PC Recommendation	Proposed
Agricultural Zones		
Agriculture I (AG-I)	Allowed	Allowed
Agriculture II (AG-II)	Not allowed	Allowed
Resource Protection Zones		
Mountainous - Gaviota (MT-GAV)	Not allowed	Allowed
Mountainous - Goleta (MT-GOL)	Not allowed	Allowed
Mountainous - Toro Canyon (MT-TORO)	Not allowed	Allowed
Resource Management (RMZ)	Not allowed	Allowed
Residential Zones		
Residential Ranchette (RR)	Allowed	Allowed
Single Family Residential (R-1/E-1)	Allowed	Allowed
One-family Exclusive Residential (EX-1)	Allowed	Allowed
Two-family Residential (R-2)	Not allowed	Allowed
Design Residential (DR)	Not allowed	Allowed
Multi-Family Residential - Orcutt (MR-O)	Not allowed	Allowed
Planned Residential Development (PRD)	Not allowed	Allowed
Small-lot Planned Development	Not allowed	Allowed
Commercial Zones		
Limited Commercial (C-1)	Not allowed	Allowed (1)
Community Mixed Use - Los Alamos (CM-LA)	Not allowed	Allowed
Special Purpose Zones		
Mixed Use (MU)	Not allowed	Allowed
Naples Townsite (NTS)	Allowed	Allowed
Old Town Residential (OT-R)	Allowed	Allowed
Old Town Residential/Light Commercial (OT-R/LC)	Allowed (2)	Allowed (2)
Old Town Residential/General Commercial (OT-R/GC)	Allowed (2)	Allowed (2)

Notes:

1. Only allowed on a lot where a one-family dwelling is an allowed use.
2. Restricted to lots where the primary use is a one-family dwelling.

See pages 4, 6, 9, 10, 11, 16, 17, and 23 of the County LUDC amendment (Exhibit 1 of Attachment C), and Section 35-142.2 of the Article II amendment (Exhibit 1 of Attachment D, page 6), for actual ordinance language.

5.1.2 Coastal resource protection and environmentally sensitive habitat areas (Article II only).

June 7, 2017, County PC Recommendation:

Category B only:

- The development of an ADU shall comply with the requirements of the Environmentally Sensitive Habitat Overlay Zone if applicable.
- All development associated with the construction of an ADU shall be located:
 - A minimum of 50 feet from the outer edge of a designated environmentally sensitive habitat area in urban areas and a minimum of 100 feet from the outer edge of a designated environmentally sensitive habitat area in rural areas. If the habitat area delineated on the applicable zoning maps is determined by the County not to be located on the particular lot or lots during review of an application for a permit, then this development standard shall not apply.
 - A minimum of 100 feet from the periphery of wetlands consistent with the requirements of Section 35-97.9 (Development Standards for Wetland Habitats).
 - ADUs shall not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.
 - ADUs shall not obstruct public access to and along the coast, or public trails.

Proposed:

Category B only:

- All development associated with the construction of an accessory dwelling unit shall be located in compliance with the requirements of Section 35-97 (ESH - Environmentally Sensitive Habitat Area Overlay District).
- ADUs shall not significantly obstruct public views from any public road or from a public recreation area to, and along, the coast.
- ADUs shall not obstruct public access to and along the coast or public trails.
- **Lots zoned AG-I and AG-II.** The development of a detached ADU on lots zoned AG-I or AG-II) shall also comply with the following development standards in addition to the development standards shown above. If these requirements are in conflict with other provisions of the Coastal Land Use Plan or any applicable community or area plan, Article II, or any permit conditions established by the County, the requirements which are most protective of coastal resources shall control.
 - The proposed ADU shall be sited so as to minimize impacts to ongoing agriculturally-related activities and shall avoid prime soils to the maximum extent feasible.
 - The development of the ADU shall preserve natural features, landforms, and native vegetation such as trees to the maximum extent feasible.

This revision is proposed in order to delete overlapping language (e.g., compliance with Environmentally Sensitive Habitat Area standards in addition to siting ADUs specified distances away from sensitive habitat areas and wetlands) and to include the special development standards that apply to agriculturally zoned lots.

See Section 35-142.7.3 of the Article II amendment (Exhibit 1 of Attachment D, page 9) for actual ordinance language.

5.1.3 Historic Landmarks Advisory Commission.

June 7, 2017, County PC Recommendation:

Category B only:

Coastal Zone: If the ADU 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 on which the Historic Landmarks Advisory Commission may choose to comment.

Inland Area: If the ADU is proposed to be located entirely or partially within a building that was constructed prior to 1960, 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 on which the Historic Landmarks Advisory Commission may choose to comment.

Proposed:

Coastal Zone: No change.

Inland Area: If the ADU 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 on which the Historic Landmarks Advisory Commission may choose to comment.

The Montecito Planning Commission recommended that the language shown above that would apply to the Coastal Zone (“a building that is 50 years old or greater”) also apply to the inland portion of the Montecito Community Plan area. Therefore, the Department is recommending that the language that would apply to the Coastal Zone also apply to the Inland Area located outside of the Montecito Community Plan area in order to respond to the Board’s desire to minimize the differences in standards between the different jurisdictional areas of the County.

See Section 35.42.015.G.5 of the County LUDC amendment (Exhibit 1 of Attachment C, page 36), and Section 35-142.7.5 of the Article II amendment (Exhibit 1 of Attachment D, page 10) for actual ordinance language.

5.1.4 Parking requirements.

June 7, 2017, County PC Recommendation:

Category A. No additional parking spaces are required to be provided.

Category B. Except in certain circumstances, a minimum of one off-street parking space shall be provided on the same lot on which the ADU will be located, for each bedroom or other room used for sleeping in the ADU.

Proposed: In order to comply with Section 65852.2 as revised, the number of required additional off-street parking spaces is reduced from one space per bedroom in the ADU to just one space. Otherwise no other changes are proposed in regards to proposed parking development standards.

See Section 35.42.015.G.7 of the County LUDC amendment (Exhibit 1 of Attachment C, page 36), and Section 35-142.7.7.a of the Article II amendment (Exhibit 1 of Attachment D, page 11) for actual ordinance language.

5.1.5 Permit Required.

June 7, 2017, County PC Recommendation::

Coastal Zone: A Coastal Development Permit would be required for all ADUs unless:

- The approval of a Minor Conditional Use Permit is required for a detached ADU because the lot is zoned AG-I, or
- The approval of a Conditional Use Permit is required because the lot is zoned NTS.

Inland Area:

Category A: A Zoning Clearance would be required for all Category A ADUs.

Category B: A Land Use Permit would be required for all Category B ADUs.

Proposed:

Coastal Zone: A Coastal Development Permit would be required for all ADUs; this would delete the require for a Minor Conditional Use Permit

Inland Area: No change.

Also, new language is included that applies to both the Coastal Zone and the Inland Area that would exempt an ADU from having to comply with any Final Development Plan approval requirements for ADUs proposed to be located in the AG-I, AG-II, DR, PRD, R-1/E-1, and RMZ zones.

Additionally, during the Board of Supervisors' hearing on the proposed ordinances, there was discussion regarding whether the requirement that a Land Use Permit must be approved for Category B ADU complies with the requirement of Section 65852.2 that an application for an ADU shall be considered ministerially without discretionary review or a hearing given that the action on the Land Use Permit may be appealed and that the appeal must be considered in a public hearing. The Department's opinion is that the process as described in the proposed ordinances complies with Section 65852.2 in that the application for the ADU will be approved or denied by the Department based on specific criteria. However, to address the concern regarding a subsequent appeal of the decision on the Land Use Permit, additional language is proposed to be included in the ordinance amending the County LUDC which specifies that:

- The grounds for an appeal of an approved Land Use Permit be limited to whether the project is consistent with the applicable development standards,
- If the approval of a Land Use Permit is appealed, then the appellant must identify how the ADU will be inconsistent with applicable development standards, and
- The Director will not accept the appeal for processing if the appellant fails to identify how the approved project is inconsistent with the applicable development standards.

The proposed ordinance amending Article II does not contain similar restrictions on appeals due to past actions by the Coastal Commission in their review of ordinances that attempted to limit the grounds on which an approved permit in the Coastal Zone may be appealed. Their actions were based on Public Resources Code Section 30603(b)(1) which states that the grounds for appeal of any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance, which includes ADUs, shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies.

Another option to consider is to require a Zoning Clearance for all ADUs. Since Zoning Clearances are not subject to appeal, this would alleviate the concern regarding whether the proposed permit process complies with the requirement that an application for an ADU shall be considered ministerially without discretionary review or a hearing.

Section 65852.2 also requires that an application for an ADU shall be approved or denied within 120 days after receiving the application. There was discussion at the Board regarding whether this 120 day period also included the review of the building permit application. The Department's position is that this 120 day period only applies to the review of the planning permit (i.e., Coastal Development Permit, Land Use Permit, or Zoning Clearance) as the statute does not reference a building permit as it does specifically in other sections of the statute, and does reference sections of the Government Code that address zoning ordinance requirements. Additionally, if the building permit review is required to be completed within the 120 day period, then the Department would have to require that full construction plan sets, including all technical specifications and engineering analyses, be submitted with the application. Applicants typically do not want to submit construction plan sets prior to action on a zoning permit due to the uncertainty of whether the planning permit will be approved as submitted, and the cost of producing such plan sets.

See Sections 35.21.030.C, 35.22.030.C, 35.23.030.C, 35.24.030.C, 35.26.030.C, 35.42.015.D, 35.42.015.I, 35.42.015.J, 35.102.C.2.b, and 35.106.050.A.1.e of the County LUDC amendment (Exhibit 1 of Attachment C, pages 1, 2, 5, 6, 7, 8, 15, 21, 22, 32, 38, 44, and 45), and Sections 35-142.4.1 and 35-169.2 of the Article II amendment (Exhibit 1 of Attachment D, pages 7 and 15) for actual ordinance language.

5.1.6 Tree protection.

June 7, 2017, County PC Recommendation:

Category B only.

- All development associated with the ADU 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 a protected tree including the area six feet outside of tree driplines unless the

conclusion of a report submitted by the applicant and prepared by a licensed arborist is that the proposed grading, paving, or other site disturbance will not damage or harm the tree(s).

- For the purposes of these development 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.

Proposed:

Category B only.

Coastal Zone: Within the Coastal Zone, the standard is proposed to be revised to read as shown below.

- All development associated with the ADU shall avoid the removal of or damage to all protected trees. For the purposes of this Section, protected trees are defined as mature native, naturalized, or roosting/nesting trees that do not pose a threat to health and safety and include:
 - Oaks (*Quercus agrifolia*).
 - Sycamores (*Platanus racemosa*).
 - Willow (*Salix sp.*).
 - Redwoods (*Sequoia sempervirens*).
 - Maples (*Acer macrophyllum*).
 - California Bay Laurels (*Umbellularia californica*).
 - Cottonwood (*Populus fremontii* and *Populus balsamifera*).
 - White Alder (*Alnus rhombifolia*).
 - California Walnut (*Juglans californica*).
 - Any tree serving as known or discovered raptor nesting and/or raptor roosting sites.
 - Any trees serving as Monarch butterfly habitat, including aggregation sites.
- No grading, paving, and other site disturbance shall occur within the dripline of a protected tree including the area six feet outside of tree driplines unless the conclusion of a report submitted by the applicant and prepared by a licensed arborist is that the proposed grading, paving, or other site disturbance will not damage or harm the tree(s).

This revision is proposed in order to be consistent with language approved by the Coastal Commission as part of their review of a similar tree protection measure contained in the recently-certified Eastern Goleta Valley Community Plan

Inland Area. The standard is proposed to be revised as shown below only to include the language regarding what qualifies as a specimen tree with the standard that protects specimen trees.

- All development associated with the ADU shall avoid the removal of or damage to all native trees including native oak trees, and specimen trees. For the purposes of this Subsection F.11 (Tree protection), 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.

- No grading, paving, and other site disturbance shall occur within the dripline of the tree including the area six feet outside of tree driplines unless the conclusion of a report submitted by the applicant and prepared by a licensed arborist is that the proposed grading, paving, or other site disturbance will not damage or harm the tree(s).

See Section 35.42.015.G.9 of the County LUDC amendment (Exhibit 1 of Attachment C, page 37), and Section 35-142.7.9 of the Article II amendment (Exhibit 1 of Attachment D, page 11) for actual ordinance language.

5.2 Additional Board concerns.

5.2.1 Private and public services. Pursuant to the County’s Local Agency Management Program (LAMP), which is required by the State Water Quality Control Board and administered locally by the Public Health Department, a minimum lot area of one acre per dwelling is required if an onsite wastewater treatment system (OWTS) is proposed to provide wastewater disposal for the property. This means that a lot must be at least two acres in size in order to have an ADU in addition to a principal dwelling. During the Board hearing on the proposed ordinances, there was discussion regarding whether this requirement is consistent with the restrictions imposed by Section 65852.2(a)(5) which states: “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.” Since this one acre per dwelling unit standard implements a requirement of the State Water Resources Quality Control Board regarding the use of OWTS, and since Section 65852.2(a)(1)(D)(ix) requires “approval by the local health officer where a private sewage disposal system is being used”, the Department’s opinion is that this is a valid restriction. See also California Water Code Section 13291 and 23CCR Section 2924.

5.2.2 Timing of occupancy of the ADU. The proposed development standards that would apply to Category B ADUs include that “Final building permit inspection for the proposed principal dwelling shall be approved prior to final building permit inspection approval for the accessory dwelling unit.” This development standard would apply to instances where the subject lot is vacant and the applicant applies to construct both the principal dwelling and the ADU. During the Board hearing on the proposed ordinances, there was discussion regarding whether an applicant should be able to construct the ADU prior to constructing the principal dwelling, and live in the ADU during construction of the principal dwelling. The Department does not recommend that this be permitted because this would allow an applicant build the ADU subject to the relaxed development standards as required by State law (e.g., limitation on required parking and payment of impact fees) and then let the permit lapse for the principal dwelling. The result would be that the ADU would become the principal dwelling; however, it would be inconsistent with the zoning requirements that would apply to the principal dwelling.

5.2.3 Different development standards recommended by the Montecito Planning Commission. The following summarizes those areas where the Montecito Planning Commission’s recommended amendment to Article II are different than what the Department originally proposed to the Montecito Planning Commission in response to the concerns expressed during the Board’s discussion on September 12, 2017.

Location on lot. The Article II amendment recommended for approval by the Montecito Planning Commission at their May 10, 2017, hearing included the requirement that within the Montecito Community Plan area an ADU may not be located closer to the principal abutting street than the principal dwelling unless other zoning provisions such as setback requirements

would prohibit compliance with this requirement. The Article II amendment recommended for approval by the Department at the Montecito Planning Commission’s hearing on January 3, 2018, did not include this requirement in response to discussion by the Board regarding the necessity of this requirement and because it was not proposed to apply outside of the Montecito Community Plan area. However, the recommendation adopted by the Montecito Planning Commission at their January hearing retains this requirement.

The Department continues to recommend that this additional requirement should not be added to the development standards that apply within the Montecito Community Plan area based on the discussion by the Board at their September 2017, hearing, and it is not included in the proposed amendments to Article II attached to this staff report as Exhibit 1 of Attachment D.

Maximum living area requirements. The Article II amendment recommended for approval by the Montecito Planning Commission at their May 10, 2017, hearing included restricting the size of a Category B ADU based on the lot area as shown in the following table:

Lot Area (unless specified = net lot area)	Maximum ADU 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 Article II amendment recommended for approval by the Department at the January Montecito Planning Commission hearing did not include this table and instead included the development standard recommended for approval by the County Planning Commission at their June 7, 2017, hearing that the living area of a Category B ADU be limited to eight percent of the lot, provided that the living area does not exceed 1,200 square feet. The Department’s recommendation was in response to the Board’s desire to minimize the differences between the Montecito Community Plan area and the remainder of the County, especially in regard to the allowed living area of an ADU. The Montecito Planning Commission did not follow this recommendation and instead is recommending that size of the ADU be restricted based on lot size as shown in the above table.

The Department continues to recommend that the development standard recommended for approval by the County Planning Commission at their June 7, 2017, hearing apply uniformly throughout the County in response to the Board’s discussion, and did not include the Montecito Planning Commission’s recommended development standard in the proposed amendments to Article II attached to this staff report as Exhibit 1 of Attachment D.

Maximum lot coverage. The Article II amendment recommended for approval by the Montecito Planning Commission at their May 10, 2017, hearing included the requirement that within the Montecito Community Plan area the total gross floor area of all buildings located on a lot, including an ADU, shall not exceed 40 percent of the gross lot area of the lot on which the ADU is proposed to be located. The Article II amendment recommended for approval by the Department at the Montecito Planning Commission’s January hearing did not include this requirement in response to the Board’s desire to minimize the differences between the Montecito Community Plan area and the remainder of the County. However, the recommendation adopted by the Montecito Planning Commission at their January hearing retained this requirement.

The Department continues to recommend that this additional requirement should not be added to the development standards that apply within the Montecito Community Plan area based on the discussion by the Board at their September 2017, hearing, and it is not included in the proposed amendments to Article II attached to this staff report as Exhibit 1 of Attachment D.

Replacement parking. Section 65852.2(a)(1)(D)(xi) allows the use of mechanical parking lifts to provide replacement parking when a garage, carport, or covered parking structure, or portion thereof, is converted or demolished in conjunction with the construction of an ADU.

The Article II amendment recommended for approval by the Montecito Planning Commission at their May 10, 2017, hearing included the use of parking lifts to provide replacement parking. During the discussion at the June 7, 2017, County Planning Commission hearing, the County Planning Commission recommended that a parking lift may be used to provide replacement parking provided that the parking lift complies with the following additional criteria:

- The parking lift shall not be located on a driveway between the principal dwelling and any adjacent street.
- The parking lift shall be located a sufficient distance away from any structures in order to comply with any fire clearance requirements.
- The parking lift shall not be used to provide replacement parking spaces if the project site is located in a very high fire hazard severity zone.
- The parking lift shall be rated for all-weather use unless located within a building.
- The parking lift shall be located so that the lift and any vehicles parked thereon are screened from view from any public road or other area of public use (e.g., park or trail), or any adjoining lot.

The Article II amendment recommended for approval by the Department at the January Montecito Planning Commission hearing included the development standard recommended for approval by the County Planning Commission shown above. However, at their January hearing, the Montecito Planning Commission recommended that the allowance for parking lifts be eliminated due to their concerns regarding the aesthetics of such a structure if not located within a garage, and that the lift may not be operable during emergency situations if, for example, there was no electricity available to power the lift.

However, the exclusion of the use of parking lifts may not be defensible as the language of Section 65852.2(a)(1)(D)(xi) specifically provides that:

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d). (emphasis added.)

Therefore, the proposed amendments to Article II attached to this staff report as Exhibit 1 of Attachment D includes that parking lifts may be used to provide replacement parking throughout the Coastal Zone including the Montecito Community Plan area.

6.0 ENVIRONMENTAL REVIEW

The proposed ordinance amending the County LUDC (Case No. 16ORD-00000-00014) and the proposed ordinance amending Article II (Case No. 16ORD-00000-00016) are recommended to be determined to be exempt from environmental review pursuant to Sections 15265 and 15282(h) of the State CEQA Guidelines.

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) states 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 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 and Area Plans, and the Coastal Land Use Plan, as applicable. However, Government Code Section 65852.2(a)(5) states: “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.” Therefore, if a policy inconsistency is identified 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 states:

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: “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 identifies 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 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 of Government Code Section 65852.2(a)(5) discussed above regarding the basis for the denial of a building permit or a use permit. Additionally, the proposed ordinances include the provision that where there are conflicts between the standards that apply to ADUs and other portions of the applicable zoning ordinance, that the specific ADU standards shall prevail except in the case of coastal resource protection, in which case the standard that is most protective of coastal resources shall apply.

9.0 PROCEDURES

- 9.1 County LUDC:** The County Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board.
- 9.2 Article II:** The County Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board. Such revisions may include amending the development standards as recommended by the Montecito Planning Commission.

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. Findings
- B. CEQA Notice of Exemption
- C. County LUDC Resolution and Ordinance Amendment
- D. Article II Resolution and Ordinance Amendment
- E. Government Code Section 65852.2

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