

ATTACHMENT M: 01-31-2014 COUNTY PLANNING COMMISSION STAFF MEMO



**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: County Planning Commission

FROM: Noel Langle

DATE: January 31, 2014

RE: Case Nos. 13ORD-00000-00008 & 13ORD-00000-00010
Revised Exhibit 1 of Attachment C (County LUDC Ordinance Amendment) and
Exhibit 1 of Attachment F (Article II CZO Ordinance Amendment)

The purpose of this memorandum is to advise your Commission regarding:

- The Montecito Planning Commission's action on the proposed ordinances on January 22, 2014.
- Additional revisions to the County Land Use and Development Code (County LUDC) and the Article II Coastal Zoning Ordinance (Article II) proposed by the Planning and Development Department to address issues that have recently arisen.

1. Montecito Planning Commission.

Your Commission continued this item to February 12, 2014, in order that the Montecito Planning Commission could complete their review of the proposed ordinance amendments and, specific to the Article II Coastal Zoning Ordinance (Article II) amendment, make a recommendation to your Commission regarding the language of the amendment.

On January 22, 2014, the Montecito Planning Commission adopted Resolution No. 14-02 recommending that your Commission recommend to the Board of Supervisors that the Board approve Case No. 13ORD-00000-00010 amending Article II subject to the revisions discussed below regarding (1) structural alterations to nonconforming structures and (2) maximum time frames associated with phased Conditional Use Permits and Final Development Plans.

Impermissible structural alterations to nonconforming structures.

Nonconforming structures are structures that were legally constructed and are conforming as to use, but do not conform to present zoning requirements such as height, lot coverage, setbacks and other standards. The existing zoning ordinances provide that nonconforming structures may remain so long as they are otherwise lawful, but also discourage the long-term continuation of such structures. Except in limited circumstances pertaining to seismic retrofits and historical landmarks, nonconforming structures may be enlarged, extended, moved, or structurally altered only when the enlargement, extension, etc., complies with the current height, lot coverage,

setback, and other requirements of the zoning ordinance. The amendment as initially discussed by your Commission on October 30, 2013, proposed to add language to the County LUDC and Article II specifying that if a nonconforming structure is structurally altered in violation of the zoning ordinance, then the structure loses its status as a nonconforming structure and must either be demolished or remodeled in a manner such that it qualifies as a conforming structure.

During the October 16, 2013, November 20, 2013, and January 22, 2014 hearings, the Montecito Planning Commission heard testimony that this amendment could have a negative impact on potentially historical structures within the Montecito Community Plan area. For example, structural alterations are often desired in older residences in order to make the residence more livable by removing interior walls in order to enlarge a kitchen or bedroom. Under the previously proposed language, this would not be allowed even if the alteration would not change the outward appearance of the residence. This could lead to the scenario that the residence is demolished and reconstructed with a different design. There was also testimony regarding the negative impact the proposed language could have on other potentially historical structures (e.g., barns and water tanks) that no longer qualify as residential accessory structures.

The Montecito Planning Commission addressed this situation by revising the language of the Montecito LUDC amendment, and recommends that your Commission revise the language of the Article II amendment, to allow structural alterations to nonconforming structures devoted to conforming residential uses and accessory uses (including historically accessory uses) provided that (1) the alteration does not result in a structure that extends beyond the existing exterior and (2) if the structure is 50 years old or greater that the Director has determined that the alteration will not result in a detrimental effect on any potential historical significance of the structure. The revision adds the following additional language:

- (4) Conforming residential uses and residential accessory uses. A nonconforming structure that is devoted to a conforming residential use or that is normally or historically accessory to the primary residential use may be structurally altered in a manner that is not otherwise allowed in compliance with Subsection A.1.a, above, provided that the alteration does not result in a structure that extends beyond the existing exterior, and, for structures that are 50 years old or greater, the Director determines that the alteration will not result in a detrimental effect on any potential historical significance of the structure.**

The Montecito Planning Commission also followed the recommendation of the Planning and Development Department and included the following new language that clarifies that when a structural alteration to the nonconforming structure is allowed that a Coastal Development Permit or Land Use Permit be issued to document the allowed alteration, unless that alteration would otherwise be exempt from a permit:

- c. Permit required. The issuance of a Land Use Permit in compliance with Section 35.82.110 (Land Use Permits) is required prior to the commencement of any structural alteration allowed in compliance with Subsections A.1.a or A.1.b, above, unless the alteration is determined to be exempt in compliance with Section 35.82.040 (Exemption from Planning Permit Requirements).**

Both the County LUDC and Article II amendments attached to this memorandum have been revised to include these new subsections. See highlighted language in SECTION 23 (page 28) of Exhibit 1 of Attachment C and SECTION 8 (page 6) of Exhibit 1 of Attachment F for the actual ordinance language.

Phased CUP/DP maximum permit issuance period

In response to direction by the Board of Supervisors in 2011, the proposed amendments include language that specifies that the time limit(s) included in a phasing plan associated with a Conditional Use Permit or Final Development Plan shall require that all required Land Use Permits and Zoning Clearances shall be issued within 10 years of the effective date of the Conditional Use Permit or Final Development Plan. The Montecito Planning Commission received testimony that including a time limit could be problematic especially for organizations that rely primarily on fundraising efforts to raise capital to build projects. In response to this testimony, the Montecito Planning Commission recommended that the amendments be revised to include a new subsection that allows the Planning Commissions to grant a time extension to the 10 year period.

(4) The time limit(s) specified in the phasing plan shall require that all required Land Use Permits and Zoning Clearances shall be issued within 10 years of the effective date of the Final Development Plan.

(a) This 10 year period may be extended by the Commission provided an application for a Time Extension is submitted in compliance with Section 35.84.030 (Time Extensions).

The County LUDC and Article II amendments attached to this memorandum have been revised to include this new language. See highlighted language in SECTIONS 19 and 20 (pages 20 and 21) of Exhibit 1 of Attachment C and SECTIONS 10 and 12 (page 7) of Exhibit 1 of Attachment F) for the actual ordinance language.

2. Additional revisions proposed by the Planning and Development Department.

Following your Commission's initial hearing on the 2013 General Package Ordinance Amendment, certain issues arose that Planning and Development Department proposes to address in these ordinance amendments. These issues relate to:

- Development Plan requirements for projects located in the M-1 (Light Industry) and M-2 (General Industry) zones.
- Conflicts with proposed amendments to the County LUDC and Article II associated with the Summerland Community Plan amendments that are scheduled to be heard by your Commission on February 5, 2014.
- Conflicts with a proposed Article II Minor Amendment ordinance that is scheduled to be heard by the Montecito Planning Commission on February 19, 2014, and by your Commission on March 5, 2014.
- Definition of Zoning Administrator.

Development Plan requirements for projects located in the M-1 and M-2 zones (CLUDC only).

Permitted uses within the M-1 (Light Industry) and M-2 (General Industry) zones include agricultural uses that are permitted on an agriculturally or residentially zoned lot that is adjacent to the M-1 or M-2 zoned lot. For example, if a M-1 zoned lot is adjacent to a lot zoned Agricultural I (AG-I), since cultivated agriculture, orchards and vineyards are listed as permitted use in the AG-I zone, these uses are also considered permitted uses in the M-1 zone.

Subsection 1 (M-RP, M-1, M-2 zones) of Section 35.25.030.D (Development Plan approval required) states that “Within the M-RP, M-1, or M-2 zones, Final Development Plan approval in compliance with Section 35.82.080 (Development Plans) is required prior to any development, including grading, except within the M-1 and M-2 zones, for agricultural uses as permitted on an adjacent lot zoned agricultural or residential.” The intended meaning of this Subsection is that within the M-RP, M-1, M-2 zones, the approval of a Development Plan is required for all development unless the proposed use qualifies as an agricultural uses that is a permitted use on an adjacent lot zoned agricultural or residential. Building on the above example, on a lot zoned M-1, a Development Plan is required to construct a warehouse, but a Development Plan is not required to develop the land with cultivated agriculture.

However, due to the awkward sentence structure, Subsection 1 may also be read to not require a Development Plan for all development in the M-1 and M-2 zones. Therefore, the Department proposes to amend to County LUDC as shown below to clarify the meaning of Subsection 1. The reference to the M-CD zone in Subsection D.2 is proposed to be deleted since this zone only applies within the Coastal Zone. The County LUDC amendment attached to this memorandum has been revised to include this new language. See highlighted language in SECTION 10 (page 12) of Exhibit 1 of Attachment C. Article II is not proposed to be amended in a similar manner because the M-1 and M-2 zones are not included in Article II.

D. Development Plan approval required.

1. **M-RP, M-1, M-2 zones.** Within the M-RP, M-1, or M-2 zones, Final Development Plan approval in compliance with Section 35.82.080 (Development Plans) is required prior to any development, including grading, ~~except within the M-1 and M-2 zones, for agricultural uses as permitted on an adjacent lot zoned agricultural or residential~~ as provided in Subsection D.1.b, below.
 - a. Final Development Plan approval is required for a structure that is accessory to a permitted agricultural use, other than an agricultural reservoir, and that is not otherwise required by this Development Code to have discretionary permit approval and is 20,000 or more square feet in gross floor area, or is an attached or detached addition that together with existing structures on the site will total 20,000 square feet or more in gross floor area.
 - b. Certain allowed agricultural uses in the M-1 and M-2 zones.** Within the M-1 and M-2 zones, agricultural uses that are permitted on an adjacent lot zoned agricultural or residential do not require the approval of a Development Plan and may be allowed in compliance with a Land Use Permit issued in compliance with Section 35.82.110 (Land Use Permits).
2. **M-CR, ~~M-CD~~ zones.** Within the M-CR ~~and M-CD~~ zones, Final Development Plan approval is required for a structure, other than an agricultural reservoir, that is not otherwise required by this Development Code to have discretionary permit approval and is 20,000 or more square feet in gross floor area, or is an attached or detached addition that together with existing structures on the site will total 20,000 square feet or more in gross floor area.

Conflicts with the proposed Summerland Community Plan amendments.

The amendment as initially discussed by your Commission on October 30, 2013, proposed to add language to the County LUDC to incorporate within the applicable permit process sections additional findings regarding parking and water service that must be made for project within the Summerland Community Plan area. However, since the amendments associated with the Summerland Community Plan update propose to delete these additional findings, the County LUDC amendment no longer needs to include these additional findings, and therefore the appropriate sections of the amendment have been deleted.

Conflicts with upcoming Article II Minor Amendment

The language of the Article II amendment as attached to the original staff report partly overlaps with the language of a second Article II amendment that is scheduled to be heard by the Montecito Planning Commission on February 19, 2014, and by your Commission on March 5, 2014. Because this second amendment is being processed as a “minor amendment” in that it only involves minor changes in process and does not propose to add or change any allowable uses, it is likely that this minor amendment will be certified by the Coastal Commission before this Article II amendment currently under consideration by your Commission is certified. Therefore, in order to alleviate potential conflicts between the two amendments, the Article II amendment attached to this memorandum has been revised to remove overlapping text. The text that has been removed does not materially change the effect of this amendment since the deleted text was not proposed to be revised and was only included to provide context.

The attached amendment to the County LUDC was also revised slightly so that the noticing procedures are more consistent with the proposed language of the upcoming “minor amendment” to Article II. See highlighted language in SECTION 28 (page 42) and SECTION 30 (page 43) of Exhibit 1 of Attachment C for the actual ordinance language.

Definition of Zoning Administrator

The existing definition of Zoning Administrator in the County LUDC defines the Zoning Administrator as “A staff position authorized by Government Code Section 65900 *et seq.* created by ordinance, which authorizes a hearing officer to hear and decide on applications including Development Plans, Minor Conditional Use Permits and Variances, in compliance with this Development Code.” In Santa Barbara County, the Zoning Administrator is established by Article V, Zoning, of Chapter 2, Administration, of the County Code. Unlike the County LUDC definition, the County Code does not require that the Zoning Administrator be a staff position, only that the office of the Zoning Administrator is established in the Planning and Development Department and that the Zoning Administrator is appointed by the Director. Therefore, in order to create more flexibility in who may be appointed to the position, the attached amendment to the County LUDC proposes to revise the definition of Zoning Administrator as shown below (see SECTION 32, page 45 of Exhibit 1 of Attachment C).

Zoning Administrator. A staff position authorized by Government Code Section 65900 *et seq.* created by ordinance, which authorizes a hearing officer to hear and decide on applications including Development Plans, Minor Conditional Use Permits, Modifications and Variances, in compliance with this Development Code.

3. Recommendations and Procedures.

Case No. 13ORD-00000-000008. Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 13ORD-00000-000008 as shown in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

- Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);
- Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
- Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 13ORD-00000-000008, an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C).

Case No. 13ORD-00000-00010. Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 13ORD-00000-00010 as shown in Attachment F based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

- Make the findings for approval, including CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment D);
- Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Sections 15061(b)(3) and 15265 of the Guidelines for Implementation of CEQA (Attachment E); and,
- Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 13ORD-00000-00010, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment F).

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

Attachments:

1. Attachment C: Case No. 13ORD-00000-000008 Resolution and Ordinance
2. Attachment F: Case No. 13ORD-00000-00010 Resolution and Ordinance