



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: Set Hearing on 03/5/2013 for
03/12/2013
Placement: Administrative (on 03/5/2013)
Departmental (on 03/12/2013)
Estimated Tme: 15 minutes (on 03/12/2013)
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director Glenn Russell, Ph.D. (805) 568-2085
Contact Info: Dianne Black, Assistant Director (805)568-2086

SUBJECT: Natural Disaster Reconstruction Time Extension Ordinance Amendment

County Counsel Concurrence
As to form: Yes

Auditor-Controller Concurrence
As to form: N/A

Other Concurrences: N/A

Recommended Actions:

On March 5, 2013, set a hearing for March 12, 2013 to consider the recommendation of the Montecito Planning Commission to approve Case No. Case No. 12ORD-00000-00016 which would amend 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, to give the Director the discretion to grant an additional extension to the time period in which the reconstruction of a nonconforming structure must commence in situations where substantial offsite infrastructure improvements are required to be completed prior to commencement of reconstruction.

On March 12, 2013, your Board's action should include the following:

- A. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment A;
- B. Determine that the adoption of this ordinance is exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment B; and
- C. Approve Case No. 12ORD-00000-00016, an ordinance amending 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 included as Attachment C.

Summary Text:

1. Background.

The Montecito Land Use and Development Code (LUDC) defines a nonconforming structure as a “structure that was lawful prior to the effective date of [the Montecito LUDC] or any amendments, or previously adopted County Zoning Ordinances, and that does not conform to the present regulations of the [Montecito LUDC], including height, location, lot coverage, or setbacks” (Montecito LUDC, Division 35-10 - Glossary). Montecito LUDC Section 35.491.030.B currently allows a nonconforming structure that is “damaged or destroyed by a natural disaster or other calamity beyond the control of the owner” to be reconstructed provided that the reconstruction commences within the 24 months following the time of damage. The Montecito LUDC also allows the Director to extend this 24-month time limit one time for good cause provided a written request that includes the reasons for the time extension is filed with the Department before the expiration of the 24-month period. The Montecito LUDC also provides that if the reconstruction does not commence within the initial 24 months or extended time period granted by the Director, then the structure may only be reconstructed in full compliance with the zone requirements and other development standards of the current Montecito LUDC.

On November 13, 2008, the Tea Fire damaged or destroyed approximately 168 structures within the Montecito Community Plan area and adjacent unincorporated County area. Due to the age of the many of the structures, several of them were considered nonconforming because they did not comply with the zone requirements and other development standards of the Montecito LUDC such as height limits and setback requirements.

On November 13, 2010 the Director of the Planning and Development Department granted several two year time extensions to owners who were not able to commence reconstruction within the initial 24 months following the fire for various reasons. However, even with the additional two years many owners were still not able to commence reconstruction prior to November 12, 2012, due to substantial offsite infrastructure improvements that had to be completed before reconstruction could commence. For example, seven lots on Upper Hyde are currently not able to commence reconstruction until the road is widened to meet current Montecito Fire Protection District standards.

Under the Montecito LUDC, the nonconforming structures may only be reconstructed in a manner that conforms to the current Montecito LUDC requirements. Although it is generally preferred that structures be built in a conforming manner, this can also prove to be a considerable hardship for many people due to costly additional site improvements (e.g., grading new building pads, driveway extensions) that may be required and substantial lot constraints. Therefore, this ordinance amendment is proposed in order to give the Director the discretion to grant an additional extension to the time period in which the reconstruction of a nonconforming structure must commence in situations where substantial offsite infrastructure improvements are required to be completed prior to commencement of reconstruction.

On January 16, 2013, by a unanimous vote of five to zero, the Montecito Planning Commission adopted Resolution 13-5 (Attachment D) which recommends that your Board adopt an ordinance that amends Section 35.491.030 of the Montecito LUDC to give the Director the discretion to grant, for

property located within the Montecito Community Plan area, an additional extension to the time period in which the reconstruction of a nonconforming structure must commence in situations where substantial offsite infrastructure improvements are required to be completed prior to commencement of reconstruction. As recommended by the Montecito Planning Commission the ordinance would:

- Allow the Director to grant an additional time extension of up to 36 months.
- Require that the application for the additional time extension be filed either prior to the expiration of the initial time extension or within the 180 days following the expiration.
- Provide that the application for the additional time extension is noticed to the neighbors in the same manner that an application for a Land Use Permit is noticed (i.e., mailed notice and posting a placard on the subject property).
- Provide that the decision of the Director on the additional time extension is subject to appeal to the Montecito Planning Commission, and that the decision of the Montecito Planning Commission may be appealed to the Board of Supervisors.

The revisions also amend the existing text to limit the initial time extension to a maximum of 24 additional months in order to provide certainty regarding the Director's discretion in determining the appropriate time period associated with the initial time extension.

Please refer to Attachment E, the Montecito Planning Commission staff report dated January 3, 2013, and Attachment F, the Montecito Planning Commission staff memo dated January 16, 2013, for further background information and analysis. Attachment C of this Board Agenda Letter shows the proposed revisions to the Montecito LUDC.

Fiscal Analysis:

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-138 of the adopted Planning and Development Department's budget for fiscal year 2012-13. There are no facilities impacts.

Special Instructions:

1. The Planning and Development Department will satisfy all noticing requirements.
2. The Clerk of the Board will send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Noel Langle.

Attachments:

- A. Findings
- B. CEQA Notice of Exemption
- C. Ordinance
- D. Montecito Planning Commission Resolution and Ordinance

- E. 01/03/2013 Montecito Planning Commission report (w/o attachments)
- F. 01/16/2013 Montecito Planning Commission memo (w/o attachment)

Authored by:

Noel Langle, Planner - Planning and Development Department (805.568.2067)

ATTACHMENT A: FINDINGS

CASE NO. 12ORD-00000-00016

1.0. CEQA FINDINGS

1.1 CEQA Guidelines Exemption Findings

- 1.1.1 The Board of Supervisors finds that the proposed project, 12ORD-00000-00016, is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) as discussed in Attachment B (Notice of Exemption).

2.0 ADMINISTRATIVE FINDINGS

In compliance with Section 35.494.060 (Findings Required for Approval of Amendment) of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC), the Board of Supervisors shall make the following findings in order to approve a text amendment to the Montecito LUDC:

2.1 **The request is in the interests of the general community welfare.**

The proposed ordinance amendment is in the interest of the general community welfare since the amendment will enable the Director to grant a second extension of the period of time in which to commence the reconstruction of a nonconforming structure that has been damaged or destroyed by an earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner in situations where the Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit currently allowed by the Montecito LUDC. This lessens the potential of the owner suffering a hardship by not being able to reconstruct the structure in the same manner as it existed prior to the damage or destruction.

2.2 **The request is consistent with the Comprehensive Plan, the requirements of State planning and zoning laws, and the Montecito Land Use and Development Code. If the Amendment involves an Amendment to the Local Coastal Program, then the request shall also be found to be consistent with the Coastal Land Use Plan.**

Adoption of the proposed ordinance will only provide owners of nonconforming structures that have been damaged or destroyed by an earthquake, fire, flood, vandalism, or other calamity beyond their control the ability to apply for additional time beyond that already allowed by the Montecito LUDC in which to commence the reconstruction of the structure without having to rebuild in a conforming manner. The proposed ordinance will not result in any inconsistencies with the adopted policies and development standards of the Comprehensive Plan including the Montecito Community Plan since the ordinance will only allow the reconstruction to commence beyond the time frame already provided by the Montecito LUDC. The proposed ordinance amendment is also consistent with the remaining portions of the Montecito LUDC that would not be revised by this ordinance. Therefore, this ordinance may be found consistent with the Comprehensive Plan including the Montecito Community Plan, the requirements of State Planning and Zoning Laws, and the Montecito LUDC.

The proposed ordinance does not involve an amendment to the Local Coastal Program.

2.3 The request is consistent with good zoning and planning practices.

The proposed ordinance is consistent with sound zoning and planning practices to regulate land uses for the overall protection of the environment and community values since it will provide owners of nonconforming structures that have been damaged or destroyed by an earthquake, fire, flood, vandalism, or other calamity beyond their control the ability to apply for additional time beyond that already allowed by the Montecito LUDC in which to commence the reconstruction of the structure without having to rebuild in a conforming manner. As discussed in Finding 2.2, above, the amendment is consistent with the Comprehensive Plan including the Montecito Community Plan, and the Montecito Land Use and Development Code

ATTACHMENT B: NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors
FROM: Noel Langle, Senior Planner
Planning and Development Department

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970 as defined in the State and County guidelines for the implementation of CEQA.

APN(s): Not applicable.

Case No.: 12ORD-00000-00016

Location: The proposed ordinance amendment would apply solely to the unincorporated area of Santa Barbara County located within the Montecito Community Plan Area not including the Coastal Zone.

Project Title: Nonconforming Reconstruction Time Extension Ordinance Amendment.

Project Description: 12ORD-00000-00016 proposes to amend 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 County Code, to give the Director of the Planning and Development Department the discretion to grant a second time extension to the time period in which to commence the reconstruction of a nonconforming structure that has been damaged or destroyed by an earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner in situations where the Director determines that the requirement to complete substantial offsite infrastructure improvements warrants the granting of the second time extension.

Exempt Status: (Check one)

- Ministerial
- Statutory
- Categorical Exemption
- Emergency Project
- No Possibility of Significant Effect Section 15061(b)(3)

Cite specific CEQA Guideline Section: Section 15061(b)(3) - No possibility of significant effect.

Reasons to support exemption findings:

As proposed the amendment gives the Director the discretion to grant a second time extension to the time period in which to commence the reconstruction of a nonconforming structure that has been damaged or destroyed by an earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner in situations where the Director determines that the requirement to complete substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the existing time limit. The proposed language also provides that:

- The length of the initial time extension is limited to 24 months.
- The length of the second time extension is limited to 36 months.
- The application for the second time extension must be filed either prior to the expiration of the initial time extension or within the 180 days following the expiration of the initial time extension.

- The application for the second time extension is noticed to the neighbors in the same manner that an application for a Land Use Permit is noticed (mailed notice and posting a placard on the property).
- The decision of the Director to approve, conditionally approve or deny the second time extension is subject to appeal to the Montecito Planning Commission.

The effect of the ordinance is merely to allow the reconstruction of previously existing structures to commence beyond the time frame already allowed by the Montecito Land Use and Development Code. Therefore, no significant environmental impacts would occur as a result of these ordinance revisions.

Department/Division Representative _____ Date _____

Acceptance Date (date of final action on project): _____

Date Filed by County Clerk: _____

Note: A copy of this form must be posted at Planning and Development six days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days.

Distribution: (for posting six days prior to action, and posting original after project approval)

Hearing Support Staff
12ORD-00000-00016 file

ATTACHMENT C: 12ORD-00000-00016 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 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION TO 4, MONTECITO STANDARDS FOR SPECIFIC LAND USES, DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES, AND DIVISION 10, GLOSSARY, TO GIVE THE DIRECTOR OF THE PLANNING AND DEVELOPMENT DEPARTMENT THE DISCRETION TO GRANT A SECOND EXTENSION OF THE TIME LIMIT TO COMMENCE THE RECONSTRUCTION OF A NONCONFORMING STRUCTURE.

Case No. 12ORD-00000-00016

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

SECTION 1:

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 Subsection B.4 (Reconstruction shall commence within 24 months) of Subsection B. (Damage) of Section 35.491.030 (Nonconforming Structures) of Chapter 35.491 (Nonconforming Uses, Structures, and Lots) to read as follows:

4. Reconstruction shall commence within 24 months.

- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.

b. Extensions.

(1) Initial time extension. The 24-month time limit may be extended by the Director one time for a maximum of 24 additional months for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the initial 24-month period.

(2) Additional time extension.

(a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time for a maximum of 36 additional months provided:

(i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with Chapter 35.470 (Permit Application Filing and Processing) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.

(ii) Notice of the application for the time extension shall be provided in compliance with Section 35.496.050 (Land Use Permits).

(iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.

(b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject to appeal in compliance with Chapter 35.492 (Appeals).

c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

SECTION 2:

Except as amended by this Ordinance, Division 35.9 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 3:

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 12th day of March, 2013, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

SALUD CARBAJAL
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel

ATTACHMENT D: MONTECITO PLANNING COMMISSION RESOLUTION AND ORDINANCE

RESOLUTION OF THE SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF RECOMMENDING TO THE BOARD)	
OF SUPERVISORS THE ADOPTION OF AN AMENDMENT)	
TO SECTION 35-2, THE SANTA BARBARA COUNTY)	
MONTECITO LAND USE AND DEVELOPMENT CODE,)	RESOLUTION NO.: 13 - 5
OF CHAPTER 35, ZONING, OF THE COUNTY CODE,)	
AMENDING DIVISION 35.9, MONTECITO LAND USE)	CASE NO.: 12ORD-00000-00016
AND DEVELOPMENT CODE ADMINISTRATION, TO)	
GIVE THE DIRECTOR OF THE PLANNING AND)	
DEVELOPMENT DEPARTMENT THE DISCRETION TO)	
GRANT A SECOND EXTENSION OF THE TIME LIMIT TO)	
COMMENCE THE RECONSTRUCTION OF A)	
<u>NONCONFORMING STRUCTURE.</u>)	

WITH REFERENCE TO THE FOLLOWING:

- A. On November 27, 2007, by Ordinance 4660, the Board of Supervisors adopted the Santa Barbara County Montecito Land Use and Development Code, Section 35-2 of Chapter 35 of the Santa Barbara County Code; and
- B. The Montecito Planning Commission now finds that it is in the interest of the orderly development of the County and important to the preservation of the health, safety and general welfare of the residents of the County to recommend that the Board of Supervisors adopt an ordinance (Case No. 12ORD-00000-00016) amending Section 35-2 of Chapter 35 of the Santa Barbara County Code, the Santa Barbara County Montecito Land Use and Development Code, to give the Director of the Planning and Development Department the discretion to grant a second extension of the time limit to commence the reconstruction of a nonconforming structure.

Said Ordinance is attached hereto as Exhibit 1 and is incorporated herein by reference.
- C. The proposed Ordinance is consistent with the Santa Barbara County Comprehensive Plan including the Montecito Community Plan, and the requirements of the State Planning, Zoning and Development Laws.
- D. The proposed Ordinance is in the interest of the general community welfare since it will serve to allow the reconstruction of a nonconforming structure to commence beyond the time frame already provided by the Montecito Land Use and Development Code, and lessen the potential of the owner of the nonconforming structure to suffer a hardship by not being able to reconstruct the structure in the same manner as it existed prior to the damage or destruction, without compromising community values, environmental quality, or the public health and safety.
- E. This Montecito Planning Commission has held a duly noticed public hearing, as required by Section 65854 of the California Government Code, on the proposed Ordinance at which hearing the proposed Ordinance was explained and comments invited from the persons in attendance.

EXHIBIT 1

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 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION TO 4, MONTECITO STANDARDS FOR SPECIFIC LAND USES, DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES, AND DIVISION 10, GLOSSARY, TO GIVE THE DIRECTOR OF THE PLANNING AND DEVELOPMENT DEPARTMENT THE DISCRETION TO GRANT A SECOND EXTENSION OF THE TIME LIMIT TO COMMENCE THE RECONSTRUCTION OF A NONCONFORMING STRUCTURE.

Case No. 12ORD-00000-00016

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

SECTION 1:

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 Subsection B.4 (Reconstruction shall commence within 24 months) of Subsection B. (Damage) of Section 35.491.030 (Nonconforming Structures) of Chapter 35.491 (Nonconforming Uses, Structures, and Lots) to read as follows:

4. Reconstruction shall commence within 24 months.

- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.

b. Extensions.

(1) Initial time extension. The 24-month time limit may be extended by the Director one time for a maximum of 24 additional months for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the initial 24-month period.

(2) Additional time extension.

(a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time for a maximum of 36 additional months provided:

(i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with Chapter 35.470 (Permit Application Filing and Processing) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.

(ii) Notice of the application for the time extension shall be provided in compliance with Section 35.496.050 (Land Use Permits).

(iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the

reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.

(b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject to appeal in compliance with Chapter 35.492 (Appeals).

c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

SECTION 2:

Except as amended by this Ordinance, Division 35.9 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 3:

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 _____, 2013, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

SALUD CARBAJAL
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel

ATTACHMENT E: 01/03/2013 MONTECITO PLANNING COMMISSION REPORT

SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION Nonconforming Reconstruction Time Extension Ordinance Amendment

Hearing Date: January 16, 2013
Staff Report Date: January 3, 2013
Case Nos. 12ORD-00000-00016
Environmental Document: CEQA Guidelines Section 15061(b)(3)

Development Services Director: Dianne Black
Staff Contact: Noel Langle
Phone No.: 805.568.2067

1.0 REQUEST

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission adopt a recommendation to the Board of Supervisors that the Board adopt an ordinance (Case No. 12ORD-00000-00016) amending 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 County Code, as set forth in Attachment C.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 12ORD-00000-00016 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 CEQA findings, and recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);
2. Recommend that the Board of Supervisors determine that this ordinance is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 12ORD-00000-00016, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C).

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

3.0 JURISDICTION

This project is being considered by the Montecito Planning Commission based upon Sections 65854 through 65857, inclusive, of the California Government Code and Chapter 35.494 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

4.0 ISSUE SUMMARY AND BACKGROUND

Nonconforming structures are defined in Section 35.500.020 (Definitions of Specialized Terms and Phrases) of the Montecito LUDC as a "structure that was lawful prior to the effective date of [the Montecito LUDC] or any amendments, or previously adopted County Zoning Ordinances, and that does not conform to the present regulations of the [Montecito LUDC], including height, location, lot coverage, or setbacks." Section 35.491.030.B (Damage) of the Montecito LUDC currently allows the

reconstruction or restoration of a nonconforming structure that is damaged or destroyed by a natural disaster or other calamity beyond the control of the owner, provided that the reconstruction or restoration commences within 24 months of the time of damage and be diligently carried out to completion. The Montecito LUDC also allows the Director to grant a time extension to this 24-month time limit one time for good cause provided a written request that includes a statement of the reasons for the request is filed with the Department before the expiration of the 24-month period. However, if the reconstruction does not commence within the initial 24 months or extended time period, then the structure may only be reconstructed in full compliance with the zone requirements and other development standards of the current Montecito LUDC.

On November 13, 2008 the Tea Fire damaged or destroyed approximately 168 structures within the Montecito Community Plan area and adjacent unincorporated County area. Due to the age of the many of the structures, several of them were considered nonconforming because they did not comply with the zone requirements and other development standards of the present Montecito LUDC including height limitations and setback requirements.

On November 13, 2010 the Director of the Planning and Development Department granted several two year time extensions to owners who were not able to commence reconstruction within the initial 24 months following the fire for various reasons including difficulties in settling insurance claims and problems with obtaining construction loans. However, even with the additional two years many owners were still not able to commence reconstruction prior to November 12, 2012, due to the requirement that substantial offsite infrastructure improvements be completed before reconstruction could commence. For example, seven lots on Upper Hyde are not able to commence reconstruction until the road is widened to meet current Montecito Fire Protection District standards.

Therefore, under the existing terms of the Montecito LUDC, the nonconforming structures may only be reconstructed in a manner that conforms to the Montecito LUDC requirements in effect at the time of reconstruction. Although it is generally preferred that structures be built in a conforming manner, this can also prove to be a considerable hardship for many people due to additional site improvements (e.g., grading new building pads, driveway extensions) that may be required.

This ordinance is proposed in order to give the Director the discretion to grant an additional extension to the time period in which reconstruction must commence in situations where substantial infrastructure offsite improvements are required to be completed before reconstruction may commence.

5.0 PROJECT DESCRIPTION

In order to allow the Director the ability to grant an additional time extension due to extenuating circumstances, the following revision to Subsection B.4 (Reconstruction shall commence within 24 months) of Section 35.491.030 (Nonconforming Structures) is proposed. Text proposed to be added is shown as underlined>.

B. Damage. This Section identifies the standards for allowing the reconstruction or restoration of a nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure.

4. Reconstruction shall commence within 24 months.

- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.

b. Extensions.

(1) Initial time extension. The 24-month time limit may be extended by the Director one time for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the 24-month period.

(2) Additional time extension.

(a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time provided:

(i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with Chapter 35.470 (Permit Application Filing and Processing) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.

(ii) Notice of the application for the time extension shall be provided in compliance with Section 35.496.050 (Land Use Permits).

(iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.

(b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject to appeal in compliance with Chapter 35.492 (Appeals).

c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

As proposed, the amendment allows the Director to grant additional time extension when the Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the existing time period. It also gives the Director the discretion to determine the appropriate period of time of the additional extension. Also, the proposed language provides that:

- The request to extend the time period a second time must be filed either prior to the expiration of the initial time extension or within the 180 days following the expiration of the initial time extension.
- The application for the second time extension is noticed to the neighbors in the same manner that an application for a Land Use Permit is noticed (mailed notice and posting a placard on the subject property).
- The decision of the Director to approve, conditionally approve or deny the second time extension is subject to appeal to the Montecito Planning Commission.

6.0 ENVIRONMENTAL REVIEW

The proposed amendment is recommended to be determined to be exempt from environmental review pursuant to Section 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. No significant environmental impacts would occur as a result of this ordinance amendment as discussed in Attachment B (Notice of Exemption).

7.0 POLICY CONSISTENCY

Under California Government Code Section 65855, a planning commission's recommendation to a legislative body regarding a proposed amendment to a zoning ordinance must include a statement of the relationship of the proposed amendment to applicable general and specific plans. The proposed amendment does not alter the purpose and intent of any Comprehensive Plan and Montecito Community Plan land use policies or development standards, and adoption of the proposed ordinance amendment will not result in any inconsistencies with the adopted policies and development standards of the County's Comprehensive Plan and Montecito Community Plan. The proposed ordinance amendments will only allow the reconstruction of nonconforming structures damaged or destroyed by a natural disaster or other calamity beyond the control of the owner to commence beyond the time frame already provided by the Montecito LUDC. Therefore, this amendment may be found consistent with the adopted Comprehensive Plan and the Montecito Community Plan.

8.0 ORDINANCE COMPLIANCE

The proposed ordinance is consistent with the remaining portions of the Montecito LUDC that are not revised by this amendment. In order to approve any specific reconstruction or restoration project based on this proposed amendment, the County review authority must determine that the project is consistent with the whole of the Montecito LUDC as applicable.

9.0 PROCEDURES

The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

10.0 APPEALS PROCEDURE

Ordinance amendments are automatically forwarded to the Board of Supervisors for final action, therefore no appeal is required.

11.0 ATTACHMENTS

- A. Findings
- B. Notice of Exemption
- C. Montecito Planning Commission Resolution and Proposed Ordinance

ATTACHMENT F: 01/16/2013 MONTECITO PLANNING COMMISSION MEMO



COUNTY OF SANTA BARBARA PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Members of the Montecito Planning Commission
FROM: Noel Langle, Planner III
Administration Division
DATE: 01-16-2013
RE: Minor revisions to proposed text of 12ORD-00000-00016

To provide certainty regarding the Director's discretion in determining appropriate time periods associated with time extensions, the following revisions to the text of the ordinance are proposed. These revisions are reflected in the attached Exhibit 1 which staff recommends be transmitted to the Board of Supervisors along with your recommendation.

4. Reconstruction shall commence within 24 months.

- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.
- b. **Extensions.**
 - (1) **Initial time extension.** The 24-month time limit may be extended by the Director one time for a maximum of 24 additional months for for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the initial 24-month period.
 - (2) **Additional time extension.**
 - (a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time for a maximum of 36 additional months provided:
 - (i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with Chapter 35.470 (Permit Application Filing and Processing) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.
 - (ii) Notice of the application for the time extension shall be provided in compliance with Section 35.496.050 (Land Use Permits).
 - (iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.
 - (b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject to appeal in compliance with Chapter 35.492 (Appeals).
- c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

EXHIBIT 1

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 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION TO 4, MONTECITO STANDARDS FOR SPECIFIC LAND USES, DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES, AND DIVISION 10, GLOSSARY, TO GIVE THE DIRECTOR OF THE PLANNING AND DEVELOPMENT DEPARTMENT THE DISCRETION TO GRANT A SECOND EXTENSION OF THE TIME LIMIT TO COMMENCE THE RECONSTRUCTION OF A NONCONFORMING STRUCTURE.

Case No. 12ORD-00000-00016

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

SECTION 1:

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 Subsection B.4 (Reconstruction shall commence within 24 months) of Subsection B. (Damage) of Section 35.491.030 (Nonconforming Structures) of Chapter 35.491 (Nonconforming Uses, Structures, and Lots) to read as follows:

4. Reconstruction shall commence within 24 months.

a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.

b. Extensions.

(1) Initial time extension. The 24-month time limit may be extended by the Director one time for a maximum of 24 additional months for for good cause, provided a written request, including a statement of the reasons for the request, is filed with the Department before the expiration of the initial 24-month period.

(2) Additional time extension.

(a) In addition to an extension granted by the Director in compliance with Subsection B.4.b.(1), above, the Director may extend the time limit for good cause a second time for a maximum of 36 additional months provided:

(i) An application for the extension, including a statement of the reasons for the request, is filed with the Department in compliance with Chapter 35.470 (Permit Application Filing and Processing) either prior to the expiration of a time extension allowed under Subsection B.4.b.(1), above, or within the 180 days following the expiration of said time extension.

(ii) Notice of the application for the time extension shall be provided in compliance with Section 35.496.050 (Land Use Permits).

(iii) The Director determines that the requirement for completion of substantial offsite infrastructure improvements has prevented the commencement of the reconstruction of the nonconforming structure within the time limit as extended in compliance with Subsection B.4.b.1), above.

(b) The action of the Director to approve, conditionally approve, or deny the application to extend the time limit in compliance with Subsection B.4.b.(2)(a), above, is final subject

to appeal in compliance with Chapter 35.492 (Appeals).

- c. If the reconstruction or restoration of the structure does not commence within 24 months, or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

SECTION 2:

Except as amended by this Ordinance, Division 35.9 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 3:

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 _____, 2013, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

SALUD CARBAJAL
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel