

MONTECITO PLANNING COMMISSION
Staff Report for the
COVID-19 Temporary Ordinance Amendments Regarding Suspension of Compliance with
Certain Requirements of Approved Permits

Hearing Date: June 3, 2020

Staff Report Date: May 27, 2020

Case Nos.: 20ORD-00000-00005 and
20ORD-00000-00006

Environmental Document: CEQA Exempt
MLUDC and Article II: CEQA Guidelines
Sections 15301, 15303, 15305, and
15061(b)(3)

Deputy Director: Travis Seawards

Division: Development Review

Supervising Planner: Joseph Dargel

Phone #: 805-568-3573

Supervising Planner: Tess Harris

Phone #: 805-568-3319

1.0 REQUEST

Hearing on the request of the County of Santa Barbara Planning and Development Department, that the Montecito Planning Commission consider the following:

1.1 Case No. 20ORD-00000-00006

Adopt a resolution recommending to the Board of Supervisors (Board) that the Board adopt an ordinance (Case No. 20ORD-00000-00006) amending Division 35.7, Montecito Planning Permit Procedures, and Division 35.9, Montecito Land Use and Development Code Administration, of Section 35-2, of the Santa Barbara County Montecito Land Use and Development Code (MLUDC), of Chapter 35, Zoning, of the Santa Barbara County Code; and

Recommend that the Board determine that ordinance Case No. 20ORD-00000-00006 is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15301, 15303, 15305, and 15061(b)(3) of the State Guidelines for the Implementation of CEQA; and

1.2 Case No. 20ORD-00000-00005

Adopt a resolution recommending to the County Planning Commission that it recommend to the Board of Supervisors (Board) that the Board adopt an ordinance (Case No. 20ORD-00000-00005) amending Division 11, Permit Procedures, and Division 12, Administration, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code.

Recommend that the County Planning Commission recommend that the Board determine that ordinance Case No. 20ORD-00000-00005 is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15301, 15303, 15305, and 15061(b)(3) of the State Guidelines for the Implementation of CEQA.

The proposed zoning ordinance amendments are designed to temporarily allow non-residential uses to use outdoor areas to ensure proper social distancing or other public health requirements can be met and to provide other temporary forms of relief. The ordinance amendments would authorize the temporary suspension of compliance with the project description and/or conditions of approval related to the following development standards: setbacks; site coverage maximums; minimum open space; parking and loading standards; signs; the requirement that uses shall occur within a completely enclosed building; restrictions on uses in the right of way; limitations on food service at wineries and tasting rooms in the coastal zone; and/or other development standards as determined by the Director to be necessary for the protection of public health related to COVID-19.

2.0 RECOMMENDATION AND PROCEDURES

2.1 Case No. 20ORD-00000-00006

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 20ORD-00000-00006 based on the ability to make the required findings.

Your Commission's motion should include the following:

1. Make the required findings for approval of the ordinance amendment (Attachment A), including California Environmental Quality Act (CEQA) findings, and recommend that the Board of Supervisors make the findings for approval of the proposed ordinance amendment;
2. Recommend that the Board of Supervisors determine the ordinance amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15301, 15303, 15305, and 15061(b)(3), included as Attachment B; and,
3. Adopt a Resolution recommending that the Board of Supervisors approve Case No. 20ORD-00000-00006, an ordinance amending Section 35-2, the MLUDC, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

2.2 Case No. 20ORD-00000-00005

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 20ORD-00000-00005 based upon the ability to make the required findings.

Your Commission's motion should include the following:

1. Make the required findings for approval of the ordinance amendment, including CEQA findings, and recommend to the County Planning Commission that the County Planning Commission make the findings for approval and recommend that the Board of Supervisors make the findings for approval of the proposed ordinance amendment (Attachment D);
2. Recommend to the County Planning Commission that the County Planning Commission recommend to the Board of Supervisors that the Board determine that the ordinance amendment is exempt from CEQA pursuant to CEQA Guidelines Sections 15301, 15303, 15305, and 15061(b)(3), included as Attachment E; and,
3. Adopt a resolution recommending that the County Planning Commission adopt a resolution recommending that the Board approve Case No. 20ORD-00000-00005, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code (Article II) (Attachment F).

Refer back to staff if the Montecito Planning Commission takes other than the recommended action for the development of appropriate materials.

3.0 JURISDICTION

3.1 Case No. 20ORD-00000-00004

This project is being considered by the Montecito Planning Commission based on County Code, Section 2-25.1(b), California Government Code, Sections 65854 to 65857, and Chapter 35.494 of the MLUDC. The County Code, Government Code, and the MLUDC 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 MLUDC and provide a recommendation to the Board of Supervisors.

3.2 Case No. 20ORD-00000-00005

This project is being considered by the Montecito Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code. Section 2-25.2 provides that the Montecito Planning Commission may make recommendation to the County Planning Commission on text amendments to Article II that will affect land use decisions within the coastal zone portion of the Montecito Planning Area.

4.0 ISSUE SUMMARY

Currently, the MLUDC and Article II do not contemplate authorizing temporary changes to approved projects in response to a public health pandemic such as COVID-19, nor do they provide relief of certain development standards to allow businesses and community entities to operate within the bounds of social distancing practices necessary to limit the spread of COVID-19. Without these amendments, temporary changes to an approved project to modify operations to ensure social distancing and/or comply with other public health requirements to operate would require an application for and approval of a minor change, substantial conformity determination, amendment, or revision, depending upon the change proposed. The proposed MLUDC and Article II ordinance amendments would authorize the temporary suspension of compliance with project descriptions and/or conditions of approval related to the following development standards, if necessary to ensure social distancing and/or other public health requirements can be met: setbacks; site coverage maximums; minimum open space; parking and loading standards; signs; the requirement that uses shall occur within a completely enclosed building; restrictions on uses in the right of way; limitations on food service at wineries and tasting rooms in the coastal zone; and/or other development standards as determined to be necessary by the Director for the protection of public health related to COVID-19. Projects making changes consistent with these ordinance amendments during the defined time period would not require a planning permit to make the temporary change.

5.0 BACKGROUND

On March 4, 2020, the Governor of California proclaimed a statewide health emergency due to the novel coronavirus (COVID-19). On March 11, the World Health Organization declared COVID-19 a worldwide pandemic. On March 19, 2020, the Governor issued Executive Order N-33-20, which directed “shelter in place” for Californians to reduce the spread of COVID-19 and protect the public health of residents. These actions included provisions for essential businesses to continue operations and non-essential businesses to close.

On March 12, 2020, the Santa Barbara County Director of Emergency Services proclaimed a local emergency related to COVID-19 pursuant to Government Code Section 8550 et seq. and Chapter 12, Section 12-5(a) of the Santa Barbara County Code. The Board of Supervisors ratified this proclamation on March 17, 2020. On March 12, 2020, the Health Officer of the County of Santa Barbara determined that there is an imminent and proximate threat to public health from the introduction of COVID-19 in the County of Santa Barbara, and proclaimed a Local Health Emergency as a result. The Board of Supervisors ratified this proclamation on March 17, 2020.

On May 21, 2020 a new County of Santa Barbara Health Officer Order No. 2020-8.2 was issued allowing the County of Santa Barbara to begin to reopen businesses that qualify under Stage 2 (e.g., retail, dine-in restaurants). Additional businesses and community entities will be allowed to reopen in later phases. To encourage recovery of businesses, restaurants, retail, and other community entities that were required to close or curtail operations under the Governor's shelter in place order, the County has created the Small Business and Community Partnership Enhancement Program (SBCPEP). This program contemplates how to allow businesses and community entities, under a phased re-opening, to conduct operations within safe social distancing parameters recommended by the Centers for Disease Control and Prevention and the County Public Health Department. The proposed ordinance amendments would provide temporary suspension of compliance with project descriptions and/or conditions of approval related to certain development standards so that business and community entity operations can use outdoor areas to ensure they can meet social distancing and/or comply with other public health requirements put in place by federal, state, or local public health officials to manage the spread of COVID-19 and to provide other forms of temporary relief.

6.0 PROJECT INFORMATION

The proposed ordinance amendment for the MLUDC and Article II would:

- Add language in the MLUDC and Article II to temporarily suspend compliance with certain requirements of approved permits if necessary to protect public health from the effective date of the ordinance (for Article II, the effective date of the ordinance would be the date that the Executive Director of the Coastal Commission executes a waiver of the emergency coastal permit requirements pursuant to Public Resources Code Section 30611) until December 16, 2020 or when the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier;
- Add language in the MLUDC and Article II that, for approved projects, would authorize the temporary suspension of compliance with the project description and/or conditions of approval related to the following standards: setbacks; site coverage maximums;

minimum open space; parking and loading standards; signs; the requirement that uses shall occur within a completely enclosed building; restrictions on uses in the right of way; limitations on food service at wineries and tasting rooms (only in Article II); or other development standards as determined to be necessary by the Director for the protection of public health related to COVID-19; and,

- Add language in the MLUDC and Article II that would establish the requirements under which a project would have to comply in order to qualify for the temporary suspension of these requirements of their approved permit.

The complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C (MLUDC) and Exhibit 1 of Attachment F (Article II). Proposed additions are underlined.

7.0 PROJECT ANALYSIS

7.1 Environmental Review

The proposed ordinance amendments, Case Nos. 20ORD-00000-00006 and 20ORD-00000-00005, can be found exempt from environmental review based upon Sections 15301, 15303, 15305, and 15061(b)(3), of the CEQA Guidelines.

CEQA Guidelines Section 15301 [Existing Facilities] states that a project is exempt from CEQA if the project “consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.”

CEQA Guidelines Section 15303 [New Construction or Conversion of Small Structures] states that a project is exempt from CEQA if the project “consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.”

CEQA Guidelines Section 15305 [Minor Alterations in Land Use Limitations] states that a project is exempt from CEQA if the activity consists of “minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density[.]”

CEQA Guidelines Section 15061(b)(3) [Review for Exemption] states that a project is exempt from CEQA if “the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. 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, the activity is not subject to CEQA.”

See Attachments B and E to this staff report for a detailed discussion of these exemptions.

7.2 Comprehensive Plan Consistency

The proposed ordinance amendments do not alter the purpose and intent of any policies or development standards of the Comprehensive Plan, including the relevant community plan(s), or the Coastal Land Use Plan. The adoption of the proposed ordinance amendments will not result in inconsistencies with applicable adopted policies and development standards. The ordinance amendments require that, besides the temporary change to the project necessary to ensure social distancing and/or comply with other public health requirements, the project otherwise complies with its approved project description, conditions of approval, applicable development standards, and the Comprehensive Plan, including Coastal Land Use Plan policies.

The following discussion focuses on the ordinance amendments’ consistency with policies related to land use and biological resources.

REQUIREMENT	DISCUSSION
LAND USE DEVELOPMENT	
<p>Land Use Element, Land Use and Development Policy #4 and CLUP Policy 2-6: <i>Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.</i></p>	<p>Consistent: The ordinance amendments are consistent with the policy that development have available adequate public or private services (i.e. water, sewer roads, etc.) because the temporary suspension of compliance with certain aspects of project descriptions and/or conditions of approval are temporary in nature, and do not exempt projects from having approved public and/or private service and utility services. Further, the amendments do not allow for the construction or erection of new structures and cannot result in the expansion of existing capacity of the business or community entity, therefore no population growth or the expansion of a use is allowed</p>

	<p>and therefore no new services for projects are required pursuant to these ordinance amendments.</p> <p>The businesses and community entities that would take advantage of this temporary development standard suspension are already existing and have existing services, as required on prior planning permit approvals. The ordinance amendments would not create any new demand for services.</p>
<p>Coastal Act Policy 30250. (a): <i>New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases, for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.</i></p>	<p>Consistent: The ordinance amendments are consistent with the policy that development does not individually or cumulatively impact coastal resources because the temporary suspension of compliance with project descriptions and/or conditions of approval must also meet other requirements. The ordinance amendments also do not authorize any new development or vegetation removal in sensitive habitat areas, and therefore no coastal resources will be negatively impacted. In addition, the ordinance amendments would not generate new development because the project changes are temporary in nature and the construction or erection of new structures is not allowed. And any activities would be located within or in close proximity to existing developed areas and cannot result in the expansion of the existing capacity of the business. Therefore, the ordinance amendments would not result in new development.</p>
BIOLOGICAL RESOURCES	
<p>CLUP Policy 2-11: <i>All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer</i></p>	<p>Consistent: The ordinance amendments are consistent with the policies that development does not adversely impact environmentally sensitive resources because the temporary suspension of compliance with project descriptions and/or conditions of approval are temporary in nature, do not authorize the</p>

zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.

Montecito Community Plan Policy BIO-M-I.3:
Environmentally Sensitive Habitat (ESH) areas within the Montecito Planning Area shall be protected, and where appropriate, enhanced.

Montecito Community Plan Policy BIO-M-1.6:
Riparian vegetation shall be protected as part of a stream or creek buffer. Where riparian vegetation has previously been removed, (except for channel cleaning necessary for free-flowing conditions as determined by the County Flood Control District) the buffer shall allow the reestablishment of riparian vegetation to its prior extent to the greatest degree possible. Restoration of degraded riparian areas to their former state shall be encouraged.

Montecito Community Plan Policy BIO-M-I.7:
No structures shall be located within a riparian corridor except: public trails that would not adversely affect existing habitat; dams necessary for water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety, other development where the primary function is for the improvement of fish and wildlife habitat and where this policy would preclude reasonable development of a parcel. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

construction or erection of new structures, and do not authorize any new development or vegetation/tree removal. Therefore no environmentally sensitive resources (vegetation, trees, or habitat) will be negatively impacted. In addition, the ordinance amendments would not generate new development, and any activities would be located within or in close proximity to existing developed areas. The activities allowed by these amendments would not encroach into ESH area any further than the already approved land use. Therefore, the ordinance amendments ensure any project changes will avoid impacts on habitat resources.

Montecito Community Plan Policy BIO-M-I.16: <i>All existing native trees regardless of size that have biological value shall be preserved to the maximum extent feasible.</i>	
--	--

7.3 Zoning Ordinance Compliance

The proposed ordinance amendments are consistent with the MLUDC and Article II as they would not allow construction of structures, would not allow an increase in capacity of the business or community entity, and would provide only temporary suspension of specific development standards until December 16, 2020, or until the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier. Planning and Development anticipates receiving requests for temporary changes to approved projects in commercial zones and residential zones. The purpose of commercial zones is to provide retail and service commercial activities that serve the local community. The purpose of residential zones is to protect the residential characteristics of an area and to promote a suitable environment for family life. The ordinance amendments would be consistent with the intent of commercial and residential zones, while limiting the business or community entity to their existing maximum capacity to ensure the project remains consistent with their original approval. Other than the temporary change to the project, which must be necessary to ensure social distancing and/or comply with other public health requirements, the project is otherwise required to comply with its project description, conditions of approval, and applicable development standards.

8.0 PROCEDURES

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

Article II: The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance amendment to the County Planning Commission, who will then recommend approval, approval with revisions, or denial to the Board of Supervisors.

9.0 APPEALS PROCEDURE

Ordinance amendments recommended for approval or denial are legislative acts that are automatically forwarded to the Board of Supervisors for final action. Therefore, the ordinance amendments are not subject to appeal.

ATTACHMENTS

- A. 20ORD-00000-00004 (MLUDC) Findings
- B. 20ORD-00000-00004 (MLUDC) Notice of Exemption
- C. 20ORD-00000-00004 (MLUDC) Resolution and Proposed Ordinance
- D. 20ORD-00000-00005 (Article II) Findings
- E. 20ORD-00000-00005 (Article II) Notice of Exemption
- F. 20ORD-00000-00005 (Article II) Resolution and Proposed Ordinance