

# SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION

## General Package Ordinance Amendments

**Hearing Date: April 27, 2011**

**Staff Report Date: April 11, 2011**

**Case Nos. 11ORD-00000-00013 & 11ORD-00000-00014**

**Environmental Document: CEQA Guidelines Section 15061(b)(3)**

**Development Services Director: Dianne Black**

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### 1.0 REQUEST

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission:

- 1.1 Case No. 11ORD-00000-00013.** Adopt a recommendation to the Board of Supervisors that they adopt an ordinance (Case No. 11ORD-00000-00013) amending Division 35.4, Montecito Standards for Specific Land Uses, Division 35.7, Montecito Planning Permit Procedures, and Division 35.10, Glossary, 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; and
- 1.2 Case No. 11ORD-00000-00014.** Adopt a recommendation to the County Planning Commission that they recommend to the Board of Supervisors that they adopt an ordinance (Case No. 11ORD-00000-00014) amending Division 1, In General, Division 2, Definitions, Division 7, General Regulations, Division 8, Services, Utilities and Other Related Facilities, and Division 11, Permit Procedures, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code, as set forth in Attachment F

The proposed ordinances would implement new regulations and make other minor clarifications, corrections and revisions regarding:

- Animal keeping - allow the keeping of household pets accessory to a residence in all zones that allow residential uses (MLUDC and Article II).
- Conditional Use Permits and Development Plans phasing agreements - include procedures to allow the review authority to approve phasing agreements concurrently with Conditional Use Permits and Development Plans for project that are expected to take several years to complete (MLUDC and Article II).
- Demolition and Reclamation Permits - Provide that the Zoning Administrator is the decision-maker (review authority) for demolition and reclamation permits that may be appealed to the Coastal Commission and include processing requirements, and allow revisions to approved Demolition and Reclamation Permits through the Substantial Conformity and Amendment process (Article II only).
- Indemnification agreements - Require the submittal of an agreement to indemnify the County as part of an application for a planning permit (MLUDC and Article II).
- Land Use Permits expiration periods - include expiration and time extension procedures for Land Use Permits (MLUDC and Article II).
- Modifications not associated with Conditional Use Permits and Development Plans - clarify language regarding allowable modifications not associated with Conditional Use Permits and Development Plans, and provide a waived hearing process (MLUDC and Article II).
- Motor vehicle and material storage - add new regulations that include (1) restrictions on the number of motor vehicles that can be stored outside, (2) limiting the amount of yard area devoted to storage of materials, and (3) provide screening requirements for both motor vehicles and material storage, on residential zoned property (MLUDC and Article II).

- Residential second units - allow in addition to a farm employee dwelling if the lot is zoned AG-I (Article II only).
- Surface Mining/Reclamation Plan process - shift permit requirement to implement a Conditional Use Permit for surface mining and reclamation from a Land Use Permit to a Zoning Clearance (MLUDC only).
- Substantial Conformity Determinations/Amendments Procedures - Include process requirements for applications for Substantial Conformity Determinations and Amendments to discretionary permits (MLUDC and Article II).
- Temporary uses - eliminate the permit exemption for temporary uses of property where the property is rented for periods of less than 30 days (MLUDC and Article II).
- Trailers - allow for the storage of trailers other than recreational vehicles as a use accessory to a residence (MLUDC and Article II).
- Wastewater treatment systems - include a definition of alternative wastewater treatment system consistent with the County Public Health Department (MLUDC and Article II).

## **2.0 RECOMMENDATION AND PROCEDURES**

**2.1 Case No. 11ORD-00000-00013.** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 11ORD-00000-00013 as shown in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Adopt the findings for approval, including CEQA findings, and recommend that the Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment A);
2. 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,
3. Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 11ORD-00000-00013, 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).

**2.2 Case No. 11ORD-00000-00014.** Follow the procedures outlined below and recommend to the County Planning Commission that they recommend to the Board of Supervisors that the Board approve Case No. 11ORD-00000-00014 as shown in Attachment F based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Adopt the findings for approval, including CEQA findings, and recommend to the County Planning Commission that the County Planning Commission adopt the findings for approval and recommend that the Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment D);
2. Recommend to the County Planning Commission that the County Planning Commission recommend to the Board of Supervisors 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 E); and,
3. Adopt a recommendation to the County Planning Commission that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors approve Case No. 11ORD-00000-00014, 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.

### **3.0 JURISDICTION**

- 3.1 Case No. 11ORD-00000-00013.** This project is being considered by the Montecito Planning Commission based upon Section 65855 of the Government Code and Section 35.494.050 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.
- 3.2 Case No. 11ORD-00000-00014.** 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 that provides that the Montecito Planning Commission may make recommendations to the County Planning Commission on text amendments to Article II of Chapter 35 of the County Code that will affect land use decisions within the Coastal Zone portion of the Montecito Planning Area.

### **4.0 ISSUE SUMMARY AND BACKGROUND**

- 4.1 General Information.** The Planning and Development Department is committed to keeping the zoning ordinances accurate and up-to-date by routinely processing amendments that address emerging issues, and correct and clarify existing language in order to better ensure that regulations keep pace with current trends and policies, as well as State Law. In 1997, the County recommitted itself to this cyclical update program. The following proposed amendments have been suggested for inclusion by review authorities, citizen groups, staff, and other Board of Supervisors' constituents.
- 4.2 Public Participation.** The proposed package of amendments was reviewed by the Montecito Association Land Use Committee at their meeting of April 5, 2011. Staff will provide a summary of their comments at the April 27<sup>th</sup> hearing.

### **5.0 PROJECT DESCRIPTION**

The following table shows which of the proposed amendments amend just the Montecito Land Use and Development Code (MLUDC), just the Article II Coastal Zoning Ordinance, or both. Similar amendments will be presented to the County Planning Commission on May 4, 2011. The Board of Supervisors hearing is projected to occur on June 21, 2011.

The amendments to the MLUDC will take effect in the Inland area 30 days after the Board of Supervisors adopts the ordinance. Because the amendment to Article II constitutes an amendment to the County's certified Local Coastal Program, new language will take effect only after the Coastal Commission acts to give final certification to the amendment.

AMENDMENT TOPIC	APPLICABILITY	
	MLUDC	ART II
Animal keeping (household pets)	✓	✓
CUP/DP phasing procedures	✓	✓
Demolition and reclamation plans		✓
Indemnification	✓	✓
Land Use Permits - include expiration and time extension	✓	✓
Modifications not associated with CUPs and DPs	✓	✓
Motor Vehicle and Material Storage	✓	✓
RSUs - allow in addition to guest houses, etc., in AG-I zone		✓
Substantial Conformity Determinations/Amendments Procedures	✓	✓
Surface Mining/Reclamation Plan CUP Clearance Process	✓	
Temporary uses - address short term rental issues	✓	✓
Trailers - allow for storage of trailers on residential lots used to haul boats, etc.	✓	✓
Wastewater treatment systems - define alternative	✓	✓

A summary of the proposed amendments and their purpose is provided below. The complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C and Exhibit 1 of Attachment F. 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 following summary includes references to the sections within the actual ordinances where the specific text revisions may be found. Text amendments that do not materially change the existing regulations and serve only clarify or correct existing language are not included in this summary.

**5.1 Animal Keeping, MLUDC (Attachment C SECTIONS 3 and 4) & Article II (Attachment F SECTION 9).**

Household pets are defined as animals that are customarily kept within a dwelling or a yard for the personal use or enjoyment of the residents, and include domestic birds, cats and dogs, fish, rabbits, rodents and snakes, but do not include horses, mules, goats, cows, hogs, or other similar size animals, or roosters or peacocks. These amendments would allow the keeping of household pets accessory to an existing residential use in zones that allow residential uses but at present do not allow for the keeping of any animals whatsoever.

The amendment to the MLUDC would add the keeping of household pets in the Neighborhood Commercial (CN) and Recreation (REC) zones.

The amendment to Article II would add the keeping of household pets in the Student Residential (SR), Limited Commercial (C-1), Retail Commercial (C-2), Professional and Institutional (PI), Resort/Visitor Serving Commercial (C-V), Recreation (REC), Mobile Home Park (MHP) and Coastal Related Industry (M-CR) zones. At present only the C-V and REC zones apply within the Coastal Zone portion of Montecito Community Plan area.

**5.2 Conditional Use Permits and Development Plans phasing agreements MLUDC (Attachment C SECTIONS 8 and 9) & Article II (Attachment F SECTIONS 15 and 17).**

The purpose of this amendment is to provide procedures to allow review authorities to adopt phasing plans for projects allowed by Conditional Use Permits and Development Plans where it is expected that project development will occur in phases and that the normal time allowed by the Development Code to fully develop the project prior to permit expiration would be insufficient.

The MLUDC and Article II require that prior to the commencement of development allowed by a Conditional Use Permit that a Coastal Development Permit, Land Use Permit or Zoning Clearance shall be issued to ensure that all the pre-development conditions of the Conditional Use Permit have been fulfilled. The MLUDC and Article II also provide that at the time of approval of the Conditional Use Permit, a reasonable time limit shall be established within which the Coastal Development Permit, Land Use Permit or Zoning Clearance must be issued, and that the time limit be based on the nature and size of the proposed development or use. If a time limit is not specified, then the Coastal Development Permit, Land Use Permit or Zoning Clearance must be issued within 18 months from the effective date of the Conditional Use Permit. The time limit may be extended one time for good cause for an unspecified amount of time.

Under the existing MLUDC and Article II regulations, substantial physical construction of the development allowed by a Final Development Plans must have occurred, subject to the approval of a Coastal Development Permit, Land Use Permit or Zoning Clearance, within five years of the effective date of the Final Development Plan. One time extension of one year may be granted for good cause.

While these provisions are sufficient for most projects allowed with a Conditional Use Permit and Development Plan, they have proven problematic in certain instances due to the scope of the project and having to satisfy conditions of approval that pertain to the whole of the project before the Coastal Development Permit, Land Use Permit or Zoning Clearance can be issued. This is especially true for organizations that rely on fund-raising to obtain the funds necessary to develop the project. In some projects special phasing timelines have been accommodated in the actual conditions of the Conditional Use Permit or Development Plan. These proposed amendments to the MLUDC and Article II zoning ordinances will provide a process within the zoning ordinances themselves to approve the phasing of development allowed by a Conditional Use Permits and Development Plans.

In summary the proposed amendment would provide that:

- (1) A phasing plan for development of the project may be adopted by the review authority at the time of approval of the Conditional Use Permit or Development Plan.
- (2) The phasing plan will specify the time limits in which to obtain the required permits for the different phases of the project.
- (3) These time limits may be revised through the approval of a revised phasing plan by the review authority that originally approved the phasing plan.
- (4) If the time limit(s) in which to obtain the required permits for any phase of the project authorized by the Conditional Use Permit or Development Plan has expired and an application to revise the phasing plan has not been submitted, then:
  - (a) The Conditional Use Permit or Development Plan shall be considered void and of no further effect as to that phase and any subsequent phase(s) of the project.
  - (b) The Conditional Use Permit or Development Plan is automatically revised to eliminate phases of project from the project authorized by the Conditional Use Permit or Development Plan that are considered void an of no further effect.

### **5.3 Demolition and Reclamation Permits, Article II only (Attachment F SECTIONS 12, 13 and 14).**

The proposed amendments to Article II would have no affect within the Coastal Zone portion of the Montecito Community Plan area as there are no existing oil and gas facilities that would be

proposed for demolition. Within the Coastal Zone outside of the Montecito Community Plan area the amendment would (1) require that a Coastal Development Permit be processed concurrently with the Demolition and Reclamation Permit, and (2) post-approval procedures to allow changes to approved permits through the Substantial Conformity Determination and Amendment processes that currently exist for Conditional Use Permits and Final Development Plans.

**5.4 Indemnification agreements, MLUDC (Attachment C SECTION 7) & Article II (Attachment F SECTION 1).**

The following standard condition of approval is applied to all discretionary projects:

“The Owner/Applicant shall defend, indemnify and hold harmless the County or its agents or officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this project. In the event that the County fails promptly to notify the Owner/Applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.”

The purpose of these amendments is to provide within both the MLUDC and the Article II zoning ordinances the authority for the County to require that a “defense and indemnification agreement” acceptable by the County be filed with every application, and that an application will not be accepted for processing nor will application processing commence unless a executed defense and indemnification agreement is submitted by the applicant. This would apply to both ministerial and discretionary applications since ministerial permit can also subject the County to substantial legal costs.

The amendment to Article II also includes language similar to what currently exists in the MLUDC that pertains to application filing eligibility (i.e., who may file an application) and the payment of application processing fees.

**5.5 Land Use Permits expiration periods, MLUDC (Attachment C SECTIONS 10 and 14) & Article II (Attachment F SECTION 19).**

Coastal Development Permits and Land Use Permits are initially approved, and then later, once any conditions of approval have been satisfied, are issued. This allows the permit to be appealed, and the appeal decided on, prior to the applicant having to expend money complying with the conditions of approval. Construction of the development allowed by the Coastal Development Permit or Land Use Permit cannot commence until the Coastal Development Permit or Land Use Permit is issued.

The approval of a Coastal Development Permit is valid for one year from the date of approval. This may be extended one time for one year for good cause by the review authority that initially approved the Coastal Development Permit. If Coastal Development Permit is not issued within the one or two-year period, then it expires. Once issued the Coastal Development Permit is then valid for a two year period. This may also be extended for one time for one year for good cause by the review authority that initially approved the Coastal Development Permit. If construction of the development authorized by the issued Coastal Development Permit is not commenced within this two or three-year period, then the Coastal Development Permit expires.

However, the zoning ordinances do not include any expiration language regarding approved Land Use Permits, and only state that once issued that Land Use Permits are valid for a two year period from date of issuance (with the possibility of one, one year extension for good cause by the Director. This means a substantial period of time could transpire between the approval and issuance of the permit, which can lead to problems due to changes in environmental setting and zoning regulations,

such that the basis for the findings that were made when the permit was originally approved may no longer be appropriate.

The proposed amendments to the MLUDC and Article II zoning ordinances would add the same one-year timeframe and possibility for one, one year time extensions for Land Use Permit approvals that currently exists for Coastal Development Permit approvals.

**5.6 Modifications not associated with Conditional Use Permits and Development Plans, MLUDC (Attachment C SECTIONS 11 and 12) & Article II (Attachment F SECTIONS 20 and 21).**

Amendments to the Article II and Article IV (predecessor to the MLUDC) zoning ordinances adopted in June 1996 included a new process whereby certain zone development standards could be modified by the Zoning Administrator (later the Montecito Planning Commission within the Montecito Community Plan area) as part of a noticed, public hearing for development projects approved through a ministerial permit and not associated with Conditional Use Permits and Development Plans. In the Inland portion of the Montecito Community Plan area the development standards that may be modified in this manner are limited to the required number of parking spaces and setbacks. In the Coastal Zone, outside the Montecito Community Plan area, zone development standards relating to floor area ratios (within the Summerland Community Plan area) and height (throughout the Coastal Zone) may also be modified through a Modification application in addition to parking and setbacks.

Over the intervening years it has become apparent that a public hearing should not be required in all instances if the request is minor and not likely to be opposed by neighboring landowners. Therefore, this amendment proposes to add a “waived hearing process” similar to that which currently exists for some appealable Coastal Development Permits and other applications (e.g., time extensions) whereby a notice would be mailed to the owners of property located within 300 feet of the project site advising that the Director intends to waive the public hearing for a certain application unless a hearing is requested by a person receiving notice. If a hearing is not requested, then jurisdiction over the Modification would shift to the Director who would approve or deny the request without a public hearing.

This amendment also addresses some confusion that has arisen as to how to treat applications for modifications that request a reduction in setback area when portions of the setback area are already occupied by nonconforming structures. Currently the zoning ordinances requires that the area of a front, side or rear setback may not be reduced through a modification by more 20 percent of what the minimum setback area would normally be, but does not specifically address if the calculation should include setback area that is already occupied by existing structures. The proposed language would specify that if a portion of a setback is occupied by a nonconforming structure(s), then the setback area occupied by the nonconforming structure(s) shall be included in determining whether the requested reduction would result in a reduction of more than 20 percent of the normally required setback area.

**5.7 Motor vehicle repair and storage and material storage, MLUDC (Attachment C SECTIONS 2 and 18) & Article II (Attachment F SECTIONS 3 and 10).**

Neither the MLUDC nor Article II zoning ordinances contain provisions that specifically regulate the use of property for storage of motor vehicles and materials accessory to the residential use. The purpose of this amendment is to provide regulations that limit the number of motor vehicles and the amount of materials that may be kept on a residentially zoned lot, and require that the storage of motor vehicles and materials comply with a set of development standards, in order to

minimize the potential for neighboring properties to be negatively impacted.

The proposed amendments, which would only apply to residential zones, include the following provisions:

- (1) **Storage of building materials and construction used in a construction project.** The proposed ordinance includes provisions for using property to store building materials and equipment being used in a construction project on the same or adjacent site as long as a valid building permit is in effect for construction. The proposed ordinance also requires that when storage is proposed on a lot adjacent to the site on which the construction is occurring, that the planning permit application for the construction project also include the adjacent lot and describe the storage proposed to occur on the adjacent lot.
- (2) **Parking, repair and storage of operative and inoperative motor vehicles.**
  - (a) **Repair.** Vehicle repair, including restoration, would be restricted to the repair of personal vehicles by the owner on a lot either owned or rented by the owner as his or her personal residence. The proposed ordinance specifies that owned or rented does not include transient occupancies where the rental of the lot is for a period of 30 days or less.
  - (b) **Parking and storage.** The following standards would apply to the keeping, parking, or storage of operative and inoperative vehicles for the purposes of maintaining a personal collection, or for repair, alteration, restoration of personal vehicles for hobby or other personal use outside of an enclosed garage or other completely enclosed structure. The proposed standards would not apply to residential parking that is required to satisfy the residential zone parking requirement, or the temporary parking of vehicles for less than five consecutive days by guests of the owner.
    - (i) The number of vehicles kept, parked or stored outside of an enclosed garage or other completely enclosed structure would be limited to five vehicles.
    - (ii) The area on which the vehicles are kept, parked or stored would have to comply with all of the following:
      - The cumulative area on which the vehicles are kept, parked or stored is limited to 700 square feet.
      - The area must be paved with a minimum of two inches of asphalt, brick, concrete, pavers, or equivalent.
      - The area shall be located so that vehicles are not visible from any public road or other area of public use (e.g., park, trail), or any adjoining lot.
      - The area shall not be located within required front setback or side setback areas.
    - (iii) Vehicles which do not have a current, unexpired registration with the California Department of Motor Vehicles that allows the vehicle to be driven, moved, towed or left standing (parked) upon any road or street that are kept, parked or stored for a period in excess of 14 days would need to be drained of gasoline, oil and other flammable liquids.
    - (iv) All vehicles kept, parked or stored on a lot outside of an enclosed garage or other completely enclosed structure would either:



- Have a current, unexpired registration with the California Department of Motor Vehicles that allows the vehicle to be driven, moved, towed or left standing (parked) upon any road or street; or,
- Have a certificate of non-operation or planned non-operation on file with the California Department of Motor Vehicles.

The proposed amendments also include that the keeping, parking or storage of operative and inoperative vehicles that does not comply with these standards may be allowed in compliance with a Conditional Use Permit.

- c. Wrecked and abandoned vehicle dismantling or storage.** Wrecked and abandoned vehicle dismantling or storage is not allowed outside of an enclosed garage or other completely enclosed structure.

These standards would not allow a lot to be used for acquiring and fixing motor vehicles and then selling them as a home business as the existing Home Occupation regulations preclude this possibility.

- (3) Stockpiled materials, scrap and junk.** The following standards would apply to the storage of miscellaneous materials (including building materials not associated with the construction of a structure for which there is an valid planning and/or building permit), articles, equipment, motor vehicle parts, scrap, tools or junk outside of a completely enclosed structure:

- a. Area occupied by stored materials.** Stored materials would be limited to the following maximum area, based upon the area of the site.

<u>Lot Area (gross)</u>	<u>Maximum Allowed Area of Storage</u>
<u>Less than 10,000 sq. ft.</u>	<u>300 sq. ft.</u>
<u>10,000 sq. ft. to less than 1 acre</u>	<u>500 sq. ft.</u>
<u>One acre or larger</u>	<u>1,000 sq. ft.</u>

- b. Maximum height of stored materials:** The maximum height of stored materials would be limited to five feet.

- c. Fencing required.** Except for the outdoor storage of stacked, cut firewood for on-site domestic use, the accessory storage outdoors of scrap, junk or miscellaneous materials would be required to be enclosed within a six-foot high solid wood or masonry fence. This proposed ordinance provides that this requirement may be:

- (i) Waived by the Director where the Director determines that the proposed storage area is not visible from any public road or other area of public use (e.g., park, trail), or any adjoining lot; or,
- (ii) Modified by the Director to increase the height of the solid wood or masonry fence where the Director determines that due to the topography of the subject lot and adjacent area a six foot high fence would not adequately screen the proposed storage area from any public road or other area of public use (e.g., park, trail), or any adjoining lot.

- d. Location of storage.** Storage would not be allowed within required front setback or side setback areas.

The proposed amendments also include that the stockpiled materials, scrap and junk that does not comply with these standards may be allowed in compliance with a Conditional Use Permit.

Lastly, the proposed amendments state that after six months from the effective date of the amendments, motor vehicle and materials storage that does not comply with these standards or is not allowed by a Conditional Use Permit shall be considered a violation of the zoning ordinances and subject to enforcement and penalties.

**5.8 Residential second units, Article II only (Attachment F SECTION 8).**

Ordinance amendments regarding the permitting of residential second units (RSUs) were adopted by the Board of Supervisors in December of 2003 in response to a State law that required that permits for RSUs located in residential zones be processed in a ministerial manner. These amendments changed the permit requirement for detached RSUs from a Conditional Use Permit to either a Coastal Development Permit (Coastal Zone) or a Land Use Permit (Inland area) for residential zones, but kept the Conditional Use Permit requirement for RSUs located on AG-I zoned property.

These amendments also added new development standards that were intended to ensure that RSUs would be compatible with the surrounding neighborhood. One such standard provided that RSUs would not be allowed on a lot in addition to (1) a guest house, (2) nonconforming dwellings, or (3) agricultural employee dwellings unless the lot is zoned AG-I. This last exception was initially proposed to apply to both the whole of the Coastal Zone and the Inland area outside of the Montecito Community Plan area; however, during the adoption and certification process this exception was left out of the Article II ordinance amendment. This amendment would add the exception back into the Article II RSU development standards but it is proposed to only apply to the portion of the Coastal Zone located outside of the Montecito Community Plan area so that the prohibition of RSUs in addition to agricultural employee dwelling would be consistent within the entire Montecito Community Plan area.

**5.9 Substantial Conformity Determinations/Amendments Procedures, MLUDC (Attachment C SECTIONS 15 and 16) & Article II (Attachment F SECTIONS 16 and 18).**

The MLUDC and Article II provide that following the approval of Conditional Use Permits and Final Development Plans that certain changes to the development allowed by the Conditional Use Permit or Final Development Plan can be approved by the Department through either a Substantial Conformity Determination or an Amendment.

In order to approve a change through the Substantial Conformity Determination process the Director must determine that the change is in substantial conformity with the approved Conditional Use Permit or Final Development Plan using the guidelines that are contained in the zoning ordinances (MLUDC Appendix G; Article II Appendix B). If the Director cannot determine that the change is in substantial conformity with the approved Conditional Use Permit or Final Development Plan, then it is possible that the new development can be accommodated through the Amendment process. Substantial Conformity Determination are not subject to appeal. However, the MLUDC and Article II zoning ordinances do provide that either a Coastal Development Permit or Land Use Permit is required to allow the development and/or use authorized by the Substantial Conformity Determination. This Coastal Development Permit or Land Use Permit would be subject to appeal.

In order to approve a change through the Amendment process the area of the proposed new development must either have been:

- (1) Analyzed for potential environmental impacts and policy consistency as part of the processing of the approved Conditional Use Permit or Final Development Plan and an Addendum to the previous environmental document could be prepared to address the in proposed new development; or
- (2) Was not analyzed for potential environmental impacts and policy consistency as part of the processing of the approved Conditional Use Permit or Final Development Plan, but the proposed new development could be found exempt from environmental review.

Additionally, in order to approve the Amendment, the Director must also find:

- (1) That the findings required for approval of the Conditional Use Permit or Final Development Plan, including any environmental review findings made in compliance with the California Environmental Quality Act, that were previously made when the Conditional Use Permit or Final Development Plan was initially approved are still applicable to the project with the addition of the development proposed by the application for the Amendment.
- (2) That the environmental impacts related to the development proposed by the application for the Amendment are determined to be substantially the same or less than those identified during the processing of the previously approved Conditional Use Permit or Final Development Plan.

Amendments are considered to be a discretionary application and the decision of the Director to approve or deny an Amendment may be appealed to the Montecito Planning Commission.

However, the existing zoning ordinances provide very little in the way of actual processing procedures and requirements for Substantial Conformity Determinations and Amendments. Therefore, these amendments would add procedures and requirements regarding application contents, CEQA requirements, noticing and appeals, etc., to the MLUDC and Article II zoning ordinances.

In May 2007 the Board of Supervisors adopted amendments to the County and Montecito Land Use and Development Codes allowing the use of the Zoning Clearance process to be utilized to allow the actual commencement of the project following the approval of a Conditional Use Permit or Final Development Plan. Previously either a Coastal Development Permit or Land Use Permit was required. The use of the Zoning Clearance process was felt to be appropriate since the project allowed by the Conditional Use Permit or Final Development Plan had been reviewed through a noticed, discretionary process and the decision on the Conditional Use Permit or Final Development Plan was subject to appeal.

The 2007 amendment also specified that in instances where revisions to the project are proposed that are significant enough to require the approval of a Substantial Conformity Determination, that a Coastal Development Permit or Land Use Permit would be required. However, the amendment did not address what the appropriate permit would be following the approval of an Amendment to the Conditional Use Permit or Development Plan.

The amendment to the MLUDC would provide that a Zoning Clearance be required to allow the development and/or use authorized by the Amendment since the application for the Amendment is reviewed through a noticed, discretionary process and the decision on the Amendment is subject to appeal.

Since the Zoning Clearance process is not included in Article II, the amendment to Article II instead provides that Land Use Permit be required to allow the development and/or use authorized by the Amendment if the development is not appealable to the Coastal Commission,

and that a Coastal Development Permit with hearing be required if the development is subject to appeal to the Coastal Commission. This is consistent with language approved by the Coastal Commission in their recent action on the County and Montecito Land Use and Development Codes.

**5.10 Surface Mining/Reclamation Plan CUP Clearance Process, MLUDC only (Attachment C SECTION 13).**

In May 2007 the Board of Supervisors adopted amendments to the Montecito Land Use and Development Code allowing the use of the Zoning Clearance process to be utilized to allow the actual commencement of the project following the approval of a Conditional Use Permit or Final Development Plan. Previously either a Coastal Development Permit or Land Use Permit was required. The use of the Zoning Clearance process was felt to be appropriate since the project allowed by the Conditional Use Permit or Final Development Plan had been reviewed through a noticed, discretionary process and the decision on the Conditional Use Permit or Final Development Plan was subject to appeal.

However, the amendment mistakenly did not include amending the Surface Mining and Reclamation Plan section of the Montecito Land Use and Development Codes to also change the permit requirement following the approval of a Conditional Use Permit for surface mining and reclamation from a Coastal Development Permit or Land Use Permit to a Zoning Clearance. This amendment will correct that oversight.

**5.11 Temporary uses, MLUDC (Attachment C SECTION 5) & Article II (Attachment F SECTIONS 5, 6 and 7).**

The MLUDC and Article II zoning ordinances allow property located within the Montecito Community Plan area to be used, without a planning permit, for charitable and other noncommercial functions, including fundraisers, parties, receptions, weddings and other similar gatherings, provided the owner or tenant of the lot receives no remuneration and:

- (1) The use of the lot for charitable functions does not exceed three times within the same calendar year.
- (2) The number of persons present at the event at any one time does not exceed 300.

The zoning ordinances also specifically allow property to be used as commercial facilities for receptions, parties, weddings, and other similar gatherings, provided that a Conditional Use Permit is approved that allows that use.

However, to avoid having to obtain a Conditional Use Permit to regularly allow property to be used for weddings, etc., under the terms of the existing zoning ordinances an owner could rent the entire property to another person on a short-term basis (e.g., a day or weekend) such that that person then qualifies as a “tenant” and, since the “tenant” does not receive payment for hosting their own wedding, reception, etc., their event qualifies as a noncommercial function and is therefore not required to obtain a permit.

In order to close this loophole this amendment would specify that “tenant” does not include transient occupancies where the rental of the lot is for a period of 30 days or less.

**5.12 Trailers, MLUDC (Attachment C SECTIONS 6 and 17) & Article II (Attachment F SECTIONS 2 and 4).**

Currently the MLUDC and Article II zoning ordinances allows without a permit the storage of trailers designed for or capable of human habitation (e.g., a travel trailer) as a use accessory to a

residential use of property provided they are not lived in while they are being stored. However, there are other types of trailers that are routinely stored on residential lots such as those used for hauling watercraft and materials. The proposed amendments would amend the zoning ordinances to allow the storage of these types of trailers in addition to those used for human habitation subject to the following development standards:

- (1) Trailers shall not be kept, parked or stored in the required front setback areas or in parking spaces required to satisfy the parking requirement. (*New standard.*)
- (2) Trailers, including anything that is stored in or on the trailer, shall not exceed 8.5 feet in width, 13.5 feet in height (as measured from the surface upon which the vehicle stands to the top of the roof of the trailer), and 40 feet in length. (*Existing standard modified to specify the dimensions apply to anything stored on the trailer.*)
- (3) Trailers, including anything that is stored in or on the trailer, shall be screened from view from abutting streets. (*Existing standard.*)
- (4) The trailer shall not be used for human habitation while kept, parked or stored on the lot. (*Existing standard.*)
- (5) Trailers holding vehicles or used to store materials shall be in compliance with proposed MLUDC Subsection 35.423.050.B (Accessory Storage) or proposed Article Section 35-144J (Accessory Storage) . (*New standard relating to new language discussed under Section 5.7, Motor vehicle repair and material storage, above.*)

In the Coastal Zone there is an additional existing requirement that the storage of the trailer will be exempt from a Coastal Development Permit only when the trailer will:

- (1) Not be located within or adjacent to a wetland, beach, an environmentally sensitive habitat area, or on or within 50 feet of a coastal bluff; and
- (2) Not result in any potential adverse effects to public access to the beach or public hiking and equestrian trails (including where there is substantial evidence of prescriptive rights); and
- (3) Not result in significant adverse impacts to scenic views from beaches, parklands, public viewing areas and public roadways.

The existing definition of trailer is also proposed to be amended as follows:

**Trailer.** A vehicle with or without motor power which is designed or used for hauling materials, personal property, or vehicles, including watercraft, or for human habitation, office, or storage including camper, recreational vehicle, travel trailer, and mobile home but not including mobile homes on a permanent foundation.

### **5.13 Wastewater treatment systems, MLUDC (Attachment C SECTIONS 1 and 18) & Article II (Attachment F SECTIONS 3 and 11).**

The purpose of this amendment is to define alternative wastewater treatment systems consistent with how they are treated by the Environmental Health Services Division (EHS) of the County Public Health Department.

At present both the MLUDC and Article II zoning ordinances require the approval of a Conditional Use Permit for on-site wastewater (septic) treatment that are considered to be alternative systems; in Article II these systems as listed as “experimental.” However, EHS only considers mound and evapo-transpiration systems to constitute alternative systems. Because there is no definition of “alternative” or “experimental” wastewater treatment systems, state-of-the-art

systems such as shallow drip and shallow dispersal systems are mistakenly thought of as alternative systems. The proposed amendments would add the following definition:

**Wastewater Treatment System, Alternative.** A wastewater treatment system that utilizes a mound or evapo-transpiration type system to treat sewage before disposal.

The amendment to the MLUDC would also amend the planning permit exemption for certain wastewater treatment systems to specify that the exemption does not apply to alternative systems.

The amendment to Article II would also revise the text regarding the Conditional Use Permit requirement for “experimental” systems to refer instead to alternative systems.

## **6.0 ENVIRONMENTAL REVIEW**

The proposed amendments are 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 these ordinance amendments as discussed in Attachment B and Attachment E.

## **7.0 POLICY CONSISTENCY**

The proposed amendments do not alter the purpose and intent of any Comprehensive Plan, Coastal Land Use Plan and Montecito Community Plan development standards, and adoption of the proposed ordinance amendments will not result in any inconsistencies with the adopted policies and development standards of the County’s Comprehensive Plan, Coastal Land Use Plan and Montecito Community Plan. The proposed ordinance amendments primarily involve:

- adding and deleting certain types of land uses
- revising existing permit processing procedures
- adding new application requirements
- adding new development standards and restrictions pertaining to specific land uses
- correcting and clarifying existing text provisions.

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, Coastal Land Use Plan and Montecito Community Plan. As part of this process, a policy consistency analysis will be performed during the review of the application, and projects will not be approved unless they are determined to be consistent with applicable policies, and the findings required for approval can be made. Therefore, this amendment may be found consistent with the adopted Comprehensive Plan, the Local Coastal Program, and the Montecito Community Plan.

## **8.0 ORDINANCE COMPLIANCE**

The proposed ordinances are consistent with the remaining portions of the Montecito 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 Montecito LUDC and Article II as applicable.

## **9.0 PROCEDURES**

**Montecito Land Use and Development Code:** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

**Article II Coastal Zoning Ordinance:** The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the County Planning Commission.

## **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. 11ORD-00000-00013 Findings
- B. 11ORD-00000-00013 Notice of Exemption
- C. 11ORD-00000-00013 Resolution and Proposed Ordinance
- D. 11ORD-00000-00014 Findings
- E. 11ORD-00000-00014 Notice of Exemption
- F. 11ORD-00000-00014 Resolution and Proposed Ordinance