

SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION
Accessory Dwelling Unit Ordinance Amendment

Hearing Date: January 3, 2018

Deputy Director: Daniel Klemann

Staff Report Date: December 29, 2017

Staff Contact: Noel Langle

Case Nos. 16ORD-00000-00015 and 16ORD-00000-00016

Phone No.: (805) 568-2067

Environmental Document: Exempt [CEQA Guidelines Sections 15265 and 15282(h)]

1.0 REQUEST

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

- 1.1 Case No. 16ORD-00000-00015.** Recommend to the Board of Supervisors (Board) that the Board adopt an ordinance (Case No. 16ORD-00000-00015) amending Division 35.2, Montecito Zones and Allowable Land Uses, Division 35.3, Montecito Site Planning and Other Project Standards, Division 35.4, Montecito Standards for Specific Land Uses, Division 35.6, Montecito Site Development Regulations, Division 35.7, Montecito Planning Permit Procedures, Division 35.9, Montecito Land Use and Development Code Administration, and Division 35.10, Glossary, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC), of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment C; and
- 1.2 Case No. 16ORD-00000-00016.** Recommend to the County Planning Commission that the County Planning Commission recommend to the Board that the Board adopt an ordinance (Case No. 16ORD-00000-00016) amending Division 2, Definitions, Division 4, Zoning Districts, Division 7, General Regulations, Division 11, Permit Procedures, Division 12, Administration, Division 13, Summerland Community Plan Overlay, and Division 16, Toro Canyon Plan (TCP) Overlay District, of Article II, the Santa Barbara County Coastal Zoning Ordinance (Article II), of Chapter 35, Zoning, of the Santa Barbara County Code, as set forth in Attachment D.

The proposed ordinance amendments revise existing development standards and permit procedures in order to implement recent State legislation regarding accessory dwelling units (currently referred to as “residential second units” in the zoning ordinances). The proposed amendment to the Montecito Land Use and Development Code also deletes language that only applies within the Coastal Zone.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 16ORD-00000-00015.** Follow the procedures outlined below and recommend that the Board approve Case No. 16ORD-00000-00015 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 including CEQA findings (Attachment A);
 2. Recommend that the Board determine that this ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the

Guidelines for Implementation of CEQA (Attachment B); and,

3. Adopt a Resolution recommending that the Board approve Case No. 16ORD-00000-00015, an ordinance amending Section 35-2, the Montecito LUDC, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

2.2 Case No. 16ORD-00000-00016. Follow the procedures outlined below and recommend to the County Planning Commission that they recommend to the Board that the Board approve Case No. 16ORD-00000-00016 as shown in Attachment D based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make the findings for approval, including CEQA findings, and recommend to the County Planning Commission that the County Planning Commission make the findings for approval and recommend that the Board make the findings for approval of the proposed amendment including CEQA findings (Attachment A);
2. Recommend to the County Planning Commission that the County Planning Commission recommend to the Board that the Board determine that the adoption of this ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Sections Section 15282(h) and 15265 of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Adopt a Resolution recommending that the County Planning Commission adopt a Resolution recommending that the Board approve Case No. 16ORD-00000-00016, an ordinance amending Article II, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment D).

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

3.0 JURISDICTION

3.1 Case No. 16ORD-00000-00015. The Montecito Planning Commission is considering the amendments to the Montecito LUDC pursuant to Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.494 of the 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.

3.2 Case No. 16ORD-00000-00016. The Montecito Planning Commission is considering the amendments to Article II pursuant to Section 2-25.2 of Chapter 2 of the Santa Barbara County Code. Section 2-25.2 provides that the Montecito Planning Commission may make recommendations 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 BACKGROUND

In 2016 the State legislature enacted two bills (Assembly Bill 2299 and Senate Bill 1069) to streamline the process for property owners that want to add an accessory dwelling unit (ADU) on their

residentially-zoned property in addition to an existing primary dwelling by either (1) converting floor area within existing structures, (2) adding floor area to existing structures, or (3) building a new structure. These bills, which became effective on January 1, 2017, revised the language of Government Code Section 65852.2 (hereafter Section 65852.2) that provides the regulations regarding the development of ADUs. The revisions included adding development standards that local jurisdictions must use in reviewing applications for ADUs that are accessory to existing single-family dwellings on residentially-zoned lots. The revisions also had the effect of nullifying local regulations that applied outside of the Coastal Zone that did not comply with Section 65852.2 as revised. Since the County's adopted regulations contained in the County Land Use and Development Code (County LUDC) and the Montecito LUDC were inconsistent with Section 65852.2, those regulations became null and void as of January 1, 2017, when Assembly Bill 2299 and Senate Bill 1069 became effective.

In 2017 the Planning and Development Department (Department) began the process of amending the existing regulations contained in the County LUDC, the Montecito LUDC, and Article II (together known as the "zoning ordinances") in order so that they will conform to the new requirements of Section 65852.2. Staff presented draft zoning ordinance amendments to the Montecito Planning Commission and the County Planning Commission for consideration; after considering the amendments, both Commissions forwarded revised amendments to the Board with a recommendation for adoption. However, at the Board hearing on the amendments on September 12, 2017, the Board did not take action on the proposed amendments for the following reasons:

- The State legislature was expected to pass, and Governor Brown was expected to sign into law, Assembly Bill 494 and Senate Bill 229, which had been introduced earlier in 2017 as "clean-up" legislation to the revisions to Section 65852.2 that resulted from Assembly Bill 2299 and Senate Bill 1069. The amendments that staff presented to the Board were inconsistent with the language of Section 65852.2 that would result from adoption of the two bills. The Board did not want to adopt the proposed amendment, only to have to adopt new amendments later on.
- The Board had several concerns regarding the proposed amendments that the Board wanted the Department to address, including:
 - Minimizing the differences between the Montecito Community Plan area and the remainder of the County, especially in regards to allowed floor area;
 - Having a person other than County staff involved in the review and approval of applications for ADUs (i.e., the Chair of the Montecito Board of Architectural Review);
 - Whether the process is truly ministerial if the action on a permit may be appealed;
 - The applicability of the County's Local Agency Management Program (LAMP) regarding the minimum lot area required per dwelling unit if a septic system is proposed for wastewater disposal;
 - The scope of the mandated 120 day review period; and
 - Removal of discretionary criteria.

The Governor signed AB 494 and SB 229 into law on October 8, 2017. The following table lists the major changes to Section 65852.2 that will become effective on January 1, 2018, as a result of these laws:

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

5.0 PROJECT DESCRIPTION AND ANALYSIS

5.1 Executive Summary.

ADUs provide complete, independent living facilities for one or more persons that include permanent provisions for cooking, eating, living, sanitation, and sleeping. ADUs may either be an attached ADU which is attached to the principal dwelling, or a detached ADU that is located in a separate accessory structure. As required by Government Code Section 65852.2, an ADU:

- Shall be deemed to be an accessory use or an accessory building
- Shall not be considered to exceed the allowable density for the lot on which it is located
- Is considered a residential use that is consistent with the existing Comprehensive Plan and zoning designation for the lot on which it is located
- May not be considered in the application of any local ordinance, policy, or program to limit residential growth (e.g., the Montecito Growth Management Ordinance)

The County’s zoning ordinances currently refer to ADUs as “residential second units” and, within the Montecito Community Plan area, provide that:

- ADUs are only allowed in the R-1/E-1 (One-Family Residential) zone;
- Applications for ADUs may be approved through a Coastal Development Permit or a Land Use Permit provided the proposed project complies with applicable development standards;
- A lot must have a minimum lot size of 6,000 square feet to have an attached ADU or five acres to have a detached ADU; and
- The Montecito Board of Architectural Review’s (MBAR’s) review is not required; however, the existing procedure does require the Chair of the MBAR’s or designee’s review.

As discussed above these standards are not currently applicable in the Inland Area. The proposed amendments will:

- Delete existing Montecito LUDC Section 35.442.160 (Residential Second Units) and replace it with a new Section 35.442.015 titled “Accessory Dwelling Units;”
- Revise existing Article II Section 35-142 (Residential Second Units) to re-title it as “Accessory Dwelling Units;”
- Revise the development standards in both the Montecito LUDC and Article II that apply to ADUs to be consistent with Section 65852.2;
- Add new definitions and revise existing definitions regarding ADUs; and
- Revise various sections of the Montecito LUDC and Article II to provide internal consistency within the zoning ordinances with regard to the new regulations that apply to ADUs (e.g., location within setbacks, provision of additional parking), including replacing the term “residential second units” with “accessory dwelling units.”

The complete texts of the ordinance amendments are contained in Exhibit 1 of Attachment C (Montecito LUDC Resolution and Ordinance Amendment) and Exhibit 1 of Attachment D (Article II Resolution and Ordinance Amendment). Proposed deletions are shown by striking through the text and proposed additions are underlined. The use of an ellipsis (...) indicates that sections where the text is unchanged have been omitted for the sake of brevity. The Montecito LUDC ordinance amendment also includes the deletion of standards and references that only apply within the Coastal Zone or merely distinguish between coastal and non-coastal requirements since Article II continues to be the implementing ordinance of the County’s certified Local Coastal Program.

5.2 Comparison of recommended versus proposed development standards.

The following provides a summary of the development standards previously recommended for approval at the Montecito Planning Commission hearing on May 17, 2017 (shown below as “May 17, 2017 Montecito PC Recommendation”) and any changes to those development standards that are either required to be consistent with Section 65852.2 as revised on January 1, 2018, or are proposed in order to respond to the Board’s concerns (shown below as “Proposed”). Attachments C and D include highlighted text that shows, through the use of strikethroughs and underlining, proposed revisions to the development standards previously recommended for approval by the Montecito Planning Commission. Additionally, to provide clarity regarding which regulations apply to the different types of ADUs, the revised amendments divide the regulations into two separate categories:

- **Category A:** The ADU is proposed to be developed on a lot that contains an existing principal dwelling and the ADU would be located entirely within an existing building (either the principal dwelling or an accessory building).
- **Category B:**
 - The ADU is proposed to be developed on a lot that either contains an existing principal dwelling or the construction of a principal dwelling is proposed as part of the application for the ADU, and
 - The ADU is proposed to be located within either (1) an addition to the principal dwelling or an addition to an existing accessory building, or (2) a new accessory building.

Previous hearings included discussion of development standards for what was termed Category C ADUs which applied to situations where the lot did not contain an existing principal dwelling at the time of application for the ADU. However, due to the recent revisions to Section 65852.2, that distinction no longer applies.

In regards to the Article II ordinance amendment, the following discussion focuses on zones and development standards that apply within the Montecito Community Plan area, and does not provide a comprehensive discussion of the whole of the ordinance amendment.

5.2.1 Allowable zones.

May 17, 2017, Montecito PC Recommendation: ADUs are only allowed in the R-1/E-1 (One-Family Residential) zone.

Proposed: ADUs may be allowed in the following zones within the Montecito Community Plan Area:

- Agriculture I (AG-I) (Coastal Zone only)
- Resource Management Zone (RMZ) (Inland Area only)
- One-family Residential (R-1/E-1) (Coastal Zone and Inland Area)
- Two-family Residential (R-2) (Coastal Zone and Inland Area)
- Design Residential (DR) (Coastal Zone and Inland Area)
- Planned Residential Development (PRD) (Inland Area only)

This revision is proposed to comply with the requirement of Section 65852.2 that ADUs may be allowed in zones where single-family or multi-family uses are allowed.

See pages 2, 4, and 5 of the MLUDC amendment (Exhibit 1 of Attachment 3), and Section 35-142.2 of the Article II amendment (Exhibit 1 of Attachment D, page 6), for actual ordinance language.

5.2.2 Appearance and style.

May 17, 2017, Montecito PC Recommendation:

Category A: Any exterior alterations to an existing building that result from the conversion of all or a portion of the existing building to an ADU are limited to minor changes, (e.g., the addition of doors and windows).

Category B: The Chair of the Montecito Board of Architectural Review, or designee, reviews and approves the proposed design of the ADU based on the following criteria:

- The design of an ADU that will be attached to an existing building reflects the exterior appearance and architectural style of the existing building and uses the same or comparable exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.
- The design of an ADU that will not be attached to an existing building reflects the exterior appearance and architectural style of the existing or proposed principal

dwelling and uses the same or comparable exterior materials, roof covering, colors and design for trim, windows, roof pitch and other exterior physical features.

- The entrance to an ADU that will be attached to the existing or proposed principal dwelling is structurally shielded so that the entrance is not visible when viewed from any street abutting the lot on which the accessory dwelling unit is located. This standard may be waived by the Director if it would prohibit the construction of an attached accessory dwelling unit on the lot.
- All exterior lighting complies with Section 35.430.120 (Outdoor Lighting).
- Proposed landscaping will screen the ADU, including any architectural elements such as foundations and retaining walls, mechanical equipment, and parking required to be provided for the ADU, from public viewing areas (e.g., public road, trails, recreation areas). Said landscaping shall be compatible with existing landscaping on the lot in terms of plant species and density of planting.

Proposed:

Category A: No change.

Category B: The Director of the Planning and Development Department reviews and approves that proposed design of the ADU based on the criteria listed above; however, the Chair of the Montecito Board of Architectural Review, or designee, may review the design of the proposed ADU and provide comments to the Director regarding whether the application complies with the design criteria.

This revision is proposed to respond to the Board's concern regarding that the State requirement that the application is reviewed in a non-discretionary manner. This also responds to the Board's desire to minimize the differences between the Montecito Community Plan area and the remainder of the County since the proposed amendment to the County Land Use and Development Code, and Article II as it applies outside of the Montecito Community Plan area, provides that the Director reviews and approved design of the ADU.

See Section 35.442.015.E.1 and 35.442.015.F.2 of the MLUDC amendment (Exhibit 1 of Attachment C, pages 11 and 12), and Section 35-142.6.1 and 35-142.7.2 of the Article II amendment (Exhibit 1 of Attachment D, page 8), for actual ordinance language.

5.2.3 Coastal resource protection (Article II only).

May 17, 2017, Montecito PC Recommendation:

Category B only:

- All development associated with the construction of an ADU shall be located:
 - A minimum of 50 feet from the outer edge of a designated environmentally sensitive habitat area in urban areas and a minimum of 100 feet from the outer edge of a designated environmentally sensitive habitat area in rural areas. If the habitat area delineated on the applicable zoning maps is determined by the County not to be located on the particular lot or lots during review of an application for a permit, then this development standard shall not apply.

- A minimum of 100 feet from the periphery of wetlands consistent with the requirements of Section 35-97.9 (Development Standards for Wetland Habitats).
- Accessory dwelling units shall not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.
- Accessory dwelling units shall not obstruct public access to and along the coast, or public trails.

Proposed:

Category B only:

- All development associated with the construction of an accessory dwelling unit shall be located in compliance with the requirements of Section 35-97 (ESH - Environmentally Sensitive Habitat Area Overlay District).
- Accessory dwelling units shall not significantly obstruct public views from any public road or from a public recreation area to, and along, the coast.
- Accessory dwelling units shall not obstruct public access to and along the coast or public trails.
- **Lots zoned AG-I.** The development of a detached accessory dwelling unit on lots zoned AG-I (Agriculture I) shall also comply with the following development standards in addition to the development standards shown above. If these requirements are in conflict with other provisions of the Coastal Land Use Plan or any applicable community or area plan, this Article, or any permit conditions established by the County, the requirements which are most protective of coastal resources shall control.
 - The proposed accessory dwelling unit shall be sited to avoid prime soils to the maximum extent feasible or where there are no prime soils be sited so as to minimize impacts to ongoing agriculturally-related activities.
 - The development of the accessory dwelling unit shall preserve natural features, landforms, and native vegetation such as trees to the maximum extent feasible.

This revision is proposed in order to delete overlapping language (e.g., compliance with Environmentally Sensitive Habitat Area standards in addition to siting ADUs specified distances away from sensitive habitat areas and wetlands) and to include standards that would apply to lots zoned AG-1.

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

5.2.4 Environmentally Sensitive Habitat Areas.

May 17, 2017, Montecito PC Recommendation:

Category B only: The development of an ADU shall comply with the requirements of the Environmentally Sensitive Habitat Overlay Zone if applicable.

Proposed:

Category B only:

Coastal Zone: Delete standard and include in coastal resource protection standards.

Inland Area: No change.

As discussed above, in the Article II ordinance this standard is now combined with the larger set of standards addressing the protection of coastal resources.

See Section 35.442.015.F.3 of the MLUDC amendment (Exhibit 1 of Attachment C, page 13), and Section 35-142.7.3 of the Article II amendment (Exhibit 1 of Attachment D, page 9) for actual ordinance language.

5.2.5 Fees.

May 17, 2017, Montecito PC Recommendation:

All ADUs: The applicant will be required to pay development impact mitigation fees in compliance with ordinances and/or resolutions adopted by the County. The amount of the required fee shall be based on the fee schedules in effect when paid.

Proposed: No change.

See Section 35.442.015.G.1.a of the MLUDC amendment (Exhibit 1 of Attachment C, page 16), and Section 35-142.8.1.a of the Article II amendment (Exhibit 1 of Attachment D, page 13) for actual ordinance language.

5.2.6 Height limit.

May 17, 2017, Montecito PC Recommendation:

Category B only: The height of the ADU is limited to 16 feet unless:

- The portion of the ADU that would exceed this limit is located within the existing space of a one-family dwelling or an accessory building, or
- An increased height is necessary to allow the roofline of the ADU to match the roofline of the existing building to which the ADU is being added, in order to accommodate the ADU.

Proposed: No change.

See Section 35.442.015.F.4 of the MLUDC amendment (Exhibit 1 of Attachment C, page 13), and Section 35-142.7.4 of the Article II amendment (Exhibit 1 of Attachment D, page 10) for actual ordinance language.

5.2.7 Historic Landmarks Advisory Commission.

May 17, 2017, Montecito PC Recommendation:

Category B only: If the ADU is proposed to be located entirely or partially within a building that is 50 years old or greater, then the application shall be submitted to the Historic Landmarks Advisory Commission for review and comment as to the compatibility of the proposed development with the historical context of the building, whether the development will result in a detrimental effect on any existing or potential historical significance of the building, and other factors on which the Historic Landmarks Advisory Commission may choose to comment.

Proposed: No change.

See Section 35.442.015.F.5 of the MLUDC amendment (Exhibit 1 of Attachment C, page14), and Section 35-142.7.5 of the Article II amendment (Exhibit 1 of Attachment D, page 10) for actual ordinance language.

5.2.8 Location on lot.

May 17, 2017, Montecito PC Recommendation:

Category B only: A detached accessory dwelling unit shall not be located closer to the principal abutting street than the principal dwelling unless other provisions of this Development Code such as setback requirements prohibit compliance with this standard.

Proposed: This standard is proposed to be deleted in response to discussion by the Board regarding the necessity of this standard.

5.2.9 Maximum living area requirements.

May 17, 2017, Montecito PC Recommendation:

Category A:

Attached ADU: 50 percent of the living area of the principal dwelling that exists at the time of application for the accessory dwelling unit, not to exceed 1,200 square feet.

Detached ADU: 1,200 square feet.

Category B: The floor area of an ADU is restricted based on the size of the lot as shown below:

Lot Area (unless specified = net lot area)	Maximum ADU Living Area
0 - 9,999 square feet	400 square feet
10,000 - 19,999 square feet	600 square feet
20,000 square feet - 1 acre	800 square feet
Over 1 acre to 2 acres	1,000 square feet
Over 2 acres	1,200 square feet

Additionally, the living area of an attached ADU shall not exceed 50 percent of the living area of the existing or proposed principal dwelling.

Proposed:

Category A: No change.

Category B: The living area of the accessory dwelling unit shall not exceed eight percent of the net lot area of the lot on which the accessory dwelling unit will be located, provided that the living area of the accessory dwelling unit has a minimum living area of 300 square feet and does not exceed 1,200 square feet. This change is proposed in response to the Board’s desire to minimize the differences between the Montecito Community Plan area and the remainder of the County, especially in regard to allowed living area.

The following table compares the maximum ADU living area allowed by the May 17, 2017 Montecito Planning Commission recommendation versus the proposed language:

Lot Area (unless specified = net lot area)	Maximum ADU Living Area May 17, 2017, MPC Recommendation	Maximum ADU Living Area Proposed
0 - 9,999 square feet	400 square feet	300 to 800 square feet
10,000 - 19,999 square feet	600 square feet	800 to 1,200 square feet
20,000 square feet - 1 acre	800 square feet	1,200 square feet
Over 1 acre to 2 acres	1,000 square feet	1,200 square feet
Over 2 acres	1,200 square feet	1,200 square feet

See Sections 35.442.015.E.2 and 35.1442.015.F.6 of the MLUDC amendment (Exhibit 1 of Attachment C, pages 11 and 14), and Sections 35-142.6.2 and 35-142.7.6 of the Article II amendment (Exhibit 1 of Attachment D, pages 8 and 11) for actual ordinance language.

5.2.10 Maximum lot coverage.

May 17, 2017, Montecito PC Recommendation:

Category B only. The total gross floor area of all buildings located on a lot, including an ADU, shall not exceed 40 percent of the gross lot area of the lot on which the ADU is proposed to be located. For the purposes of this development standard, gross floor area includes any partially enclosed or unenclosed floor area covered by a permanent roof.

Proposed: This standard is proposed to be deleted in response to the Board’s desire to minimize the differences between the Montecito Community Plan area and the remainder of the County.

5.2.11 Other structures not allowed if in addition to an ADU.

May 17, 2017, Montecito PC Recommendation:

Category B only. If an ADU exists or has been approved for development on a lot, then a guesthouse or similar structure (e.g., artist studio) shall not subsequently be approved unless the ADU is removed or converted to an allowed accessory structure.

Proposed: No change.

See Section 35.442.120.D of the MLUDC amendment (Exhibit 1 of Attachment C, page 19), and Section 35-120.14 of the Article II amendment (Exhibit 1 of Attachment D, page 5) for actual ordinance language.

5.2.12 Parking requirements.

May 17, 2017, Montecito PC Recommendation:

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

Category B. A minimum of one off-street parking space shall be provided on the same lot on which the ADU will be located, for each bedroom or other room used for sleeping in the ADU; however, this shall not apply in the following circumstances:

- The accessory dwelling unit is located within one-half mile of public transit (e.g., a bus stop).
- The accessory dwelling unit is located within an architecturally and historically significant historic district.
- When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- When there is a car share vehicle located within one block of the accessory dwelling unit.

Additionally, the additional parking spaces may be permitted in the side or rear setback areas, or through tandem parking, unless:

- The Director makes specific findings that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or
- The project site is located in a very high fire hazard severity zone, in which case tandem parking is not allowed.

Proposed: The number of required additional off-street parking is reduced from one space per bedroom in the ADU to just one space. Otherwise no other changes are proposed in regards to parking required for the ADU. Section 65852.2 provides that when a garage, carport, or covered parking structure, or portion thereof, is converted or demolished in conjunction with the construction of an accessory dwelling unit, any replacement parking spaces which are required to satisfy the parking requirement for the principal dwelling may be provided in any configuration on the same lot as the accessory dwelling unit, including covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. The County Planning Commission included in their recommendation that a parking lift shall:

- Not be located on a driveway between the principal dwelling and any adjacent street.
- Be located a sufficient distance away from any structures in order to comply with any fire clearance requirements.
- Not be used to provide replacement parking spaces if the project site is located in a very high fire hazard severity zone.

- Be rated for all-weather use unless located within a building.
- Be located so that the lift and any vehicles parked thereon are screened from view from any public road or other area of public use (e.g., park, trail), or any adjoining lot.

These requirements are also included in the proposed amendments to the MLUDC and Article II. This revision is proposed in order to conform the language that applies within the Montecito Community Plan to the language that applies to the rest of the County.

See Sections 35.436.070.H and 35.442.015.F.8 of the MLUDC amendment (Exhibit 1 of Attachment C, pages 9 and 15), and Sections 35-114.2.a.1 and 35-142.7.7 of the Article II amendment (Exhibit 1 of Attachment D, pages 4 and 12) for actual ordinance language.

5.2.13 Permit Required.

May 17, 2017, Montecito PC Recommendation:

Coastal Zone: Coastal Development Permit for all ADUs.

Inland Area:

Category A: Zoning Clearance.

Category B: Land Use Permit.

Proposed: No change. However, new language is included that exempts an ADU from having to comply with the requirement that a Final Development Plan be approved for all development (except for solar energy systems that are accessory to the principal use of the property) if located within the DR, PRD, R-1/E-1 (if the development exceeds 20,000 square feet), and RMZ zones.

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

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

Another option to consider is to require a Zoning Clearance for all ADUs. Since ADUs are not subject to appeal, this would alleviate the concern regarding whether the proposed permit

process complies with the requirement of Section 65852.2 that ADU applications shall be considered ministerially without discretionary review or a hearing.

The proposed ordinance amending Article II does not contain similar restrictions on appeals due to past actions by the Coastal Commission in their review of ordinances that attempted to limit the grounds on which an approved permit in the Coastal Zone may be appealed.

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

See Sections 35.442.015.D, 35.442.015.H, 35.442.015.I, 35.492.020.C.2.b, and 35.496.050.A.1.e of the MLUDC amendment (Exhibit 1 of Attachment C, pages 11, 17, 21, and 22), and Section 35-142.4.1 of the Article II amendment (Exhibit 1 of Attachment D, page 7) for actual ordinance language.

5.2.14 Private and public services.

May 17, 2017, Montecito PC Recommendation:

All ADUs:

- **Potable water.** Where service by a public water district or mutual water company is not available, a private water system may serve the ADU, subject to the Public Health Department's or State's review and approval (as applicable).
- **Wastewater.** Where public sewer service is not available, an onsite wastewater treatment system may serve the ADU, subject to the Public Health Department's review and approval.

Proposed: No change.

Pursuant to the County's Local Agency Management Program (LAMP), which is required by the State Water Quality Control Board and administered locally by the Public Health Department, a minimum lot area of one acre per dwelling is required if an onsite wastewater treatment system (OWTS) is proposed to provide wastewater disposal for the property. This means that a lot must be at least two acres in size in order to have an ADU in addition to a principal dwelling. During the Board of Supervisors' hearing on the proposed ordinances there was discussion regarding whether this requirement is consistent with the restrictions imposed by Section 65852.2(a)(5) which states: "No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision." Since this one acre per dwelling unit implements State policy regarding the use of OWTS, the Department's opinion is that this is a valid restriction.

See Section 35.442.015.G.1.c of the MLUDC amendment (Exhibit 1 of Attachment C, page 16), and Section 35-142.8.1.c of the Article II amendment (Exhibit 1 of Attachment D, page 13) for actual ordinance language.

5.2.15 Rental and sale.

May 17, 2017, Montecito PC Recommendation:

All ADUs:

- An ADU may be used for rentals provided that the length of any rental shall be longer than 30 consecutive days.
- An ADU shall not be sold separately from the principal dwelling.

Proposed: No change.

See Section 35.442.015.G.1.d of the MLUDC amendment (Exhibit 1 of Attachment C, page 16), and Section 35-142.8.1.d of the Article II amendment (Exhibit 1 of Attachment D, page 13) for actual ordinance language.

5.2.16 Residency of lot owner.

May 17, 2017, Montecito PC Recommendation:

All ADUs:

- The owner of the lot shall reside on the lot, either in the principal dwelling or in the ADU except when a disability or infirmity requires institutionalization of the owner, or the Director approves in writing the owner's written request for a temporary absence due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause. Before the issuance of a permit for the ADU, the owner-occupant shall sign and record a Notice to Property Owner that includes at a minimum the requirement that the owner reside on the lot.
- Prior to issuance of a permit for the ADU, the owner shall have either received a Homeowners' Property Tax Exemption from the County Assessor, or submitted a signed and notarized affidavit stipulating that the lot is owner-occupied to the Department.
- Upon sale or transfer of ownership of the lot, the new owner shall reside on the lot and shall, within 90 days of taking possession of the property, either receive a Homeowners' Property Tax Exemption from the County Assessor or submit to the Department a signed and notarized affidavit stipulating that the lot is owner-occupied or the use of the ADU shall be discontinued and the ADU shall be:
 - **Attached ADU.** Removed or converted into a portion of the principal dwelling or a legal attached accessory structure.
 - **Detached ADU.** Removed or converted into a legal detached accessory structure.

Proposed: No change.

See Section 35.442.015.G.1.e of the MLUDC amendment (Exhibit 1 of Attachment C, page 16), and Section 35-142.8.1.e of the Article II amendment (Exhibit 1 of Attachment D, page 13) for actual ordinance language.

5.2.17 Setbacks.

May 17, 2017, Montecito PC Recommendation:

Category A. The existing side and rear setbacks may be increased only when required to provide a sufficient setback for fire safety purposes.

Category B. An accessory dwelling unit shall comply with the setback regulations that apply to the principal dwelling except that a setback of five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above an existing garage.

Proposed: No change.

See Sections 35.442.015.E.4 and 35.442.015.F.8 of the MLUDC amendment (Exhibit 1 of Attachment C, pages 12 and 15), and Sections 35-142.6.4 and 35-142.7.8 of the Article II amendment (Exhibit 1 of Attachment D, pages 8 and 12) for actual ordinance language.

5.2.18 Site preparation.

May 17, 2017, Montecito PC Recommendation:

Category B only.

- Grading associated with the development of the accessory dwelling unit shall not exceed 1,500 cubic yards of cut and fill.
- Any freestanding retaining wall shall not exceed eight feet in height. The height of the wall shall be measured from the natural or finished grade at the base of the lower side of the wall to the top edge of the wall material.

Proposed: No change.

See Section 35.442.015.F.9 of the MLUDC amendment (Exhibit 1 of Attachment C, page 15), and Section 35-142.7.10 of the Article II amendment (Exhibit 1 of Attachment D, page 13) for actual ordinance language.

5.2.19 Timing of occupancy of the ADU.

May 17, 2017, Montecito PC Recommendation:

Category B only. The accessory dwelling unit shall not be occupied prior to occupation of the principal dwelling.

Proposed:

Category B only. Final building permit inspection for the proposed principal dwelling shall be approved prior to final building permit inspection approval for the accessory dwelling unit.

This development standard would apply to instances where the subject lot is vacant and the applicant applies to construct both the principal dwelling and the ADU. During the Board of Supervisors' hearing on the proposed ordinances, there was discussion regarding whether an

applicant should be able to construct the ADU prior the principal dwelling, and live in the ADU during construction of the principal dwelling. The Department does not recommend that this be permitted because this would allow an applicant build the ADU subject to the relaxed development standards required by State law (required parking, payment of fees) and then let the permit lapse for the principal dwelling. The result would be that the ADU would become the principal dwelling; however, it would be inconsistent with the zoning requirements that would apply to the principal dwelling. The Department recommends that the proposed development standard be modified as shown above in order to be consistent with other Department standards that address the timing of final building permit inspection.

See Section 35.442.015.F.1 of the MLUDC amendment (Exhibit 1 of Attachment C, page 12), and Section 35-142.7.1 of the Article II amendment (Exhibit 1 of Attachment D, page 8) for actual ordinance language.

5.2.20 Tree protection.

May 17, 2017, Montecito PC Recommendation:

Category B only.

- All development associated with the accessory dwelling unit shall avoid the removal of or damage to all native trees including native oak trees, and specimen trees.
- No grading, paving, and other site disturbance shall occur within the dripline of the tree, including the area six feet outside of tree driplines.
- For the purposes of these development standards, specimen trees are defined as mature native trees that are healthy and structurally sound and have grown into the natural stature particular to the species.

Proposed:

Category B only.

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

- All development associated with the accessory dwelling unit shall avoid the removal of or damage to all protected trees. For the purposes of this Section, protected trees are defined as mature native, naturalized, or roosting/nesting trees that do not pose a threat to health and safety and include:
 - Oaks (*Quercus agrifolia*).
 - Sycamores (*Platanus racemosa*).
 - Willow (*Salix sp.*).
 - Redwoods (*Sequoia sempervirens*).
 - Maples (*Acer macrophyllum*).
 - California Bay Laurels (*Umbellularia californica*).
 - Cottonwood (*Populus fremontii* and *Populus balsamifera*).
 - White Alder (*Alnus rhombifolia*).
 - California Walnut (*Juglans californica*).
 - Any tree serving as known or discovered raptor nesting and/or raptor

roosting sites.

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

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

Inland Area. The standard is proposed to be revised as shown below to allow grading, paving, and other site disturbance to occur within the dripline of the tree, including the area six feet outside of tree driplines, provided the conclusion of a report submitted by the applicant and prepared by a licensed arborist is that the proposed grading, paving, or other site disturbance will not damage or harm the tree(s).

- All development associated with the accessory dwelling unit shall avoid the removal of or damage to all native trees including native oak trees, and specimen trees. For the purposes of this Subsection F.11 (Tree protection), specimen trees are defined as mature native trees that are healthy and structurally sound and have grown into the natural stature particular to the species.
- No grading, paving, and other site disturbance shall occur within the dripline of the tree including the area six feet outside of tree driplines unless the conclusion of a report submitted by the applicant and prepared by a licensed arborist is that the proposed grading, paving, or other site disturbance will not damage or harm the tree(s).

This revision would conform the language that applies within the Montecito Community Plan with the language that applies to the rest of the County.

See Section 35.442.015.F.10 of the MLUDC amendment (Exhibit 1 of Attachment C, page 15), and Section 35-142.7.9 of the Article II amendment (Exhibit 1 of Attachment D, page 12) for actual ordinance language.

6.0 ENVIRONMENTAL REVIEW

The proposed ordinance amending the Montecito LUDC (Case No. 16ORD-00000-00015) and the proposed ordinance amending Article II (Case No. 16ORD-00000-00016) are recommended to be determined to be exempt from environmental review pursuant to Sections 15265 and 15282(h) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA).

Section 15265, the statutory exemption for the adoption of coastal plans and programs, including amendments thereto, provides that compliance with CEQA is the responsibility of the California Coastal Commission.

Section 15282(h) provides that “The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Section

65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code” is statutorily exempt from the CEQA.

7.0 POLICY CONSISTENCY

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

In order for a development permit to be approved based on these proposed amendments, it still must be determined that the project is consistent with the policies and development standards of the Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use Plan, as applicable. As part of this process, a policy consistency analysis will be performed during the review of the application, and typically projects would not be approved unless they are determined to be consistent with applicable policies and the findings required for approval can be made.

However, Government Code Section 65852.2(a)(5) states: “No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit.” Therefore, if this analysis identifies a policy inconsistency that cannot be overcome through project redesign (e.g., moving a detached ADU further away from a designated environmentally sensitive habitat area), then this inconsistency cannot be used as the basis for denial of the application for the ADU.

Additionally, Government Code Section 65852.2 states: “An accessory dwelling unit that conforms to [Section 65852.2] shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.”

Lastly, Government Code Section 65852.2(j) states: “Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.” Therefore, if the policy analysis identifies an inconsistency with one or more of the resource protection policies contained in the Coastal Act, then this inconsistency may be used as the basis for denial of an application for an ADU.

Therefore, given the requirements of the Government Code, these amendments may be found consistent with the adopted Comprehensive Plan, including the Montecito Community Plan, and the Coastal Land Use 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, subject to the constraints of Government Code Section 65852.2(a)(5) discussed above regarding the basis for the denial of a building permit or a use permit. Additionally, the proposed ordinances include the provision that where there are conflicts

between the standards that apply to ADUs and other portions of the applicable zoning ordinance, that the specific ADU standards shall prevail.

9.0 PROCEDURES

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

9.2 Article II: 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 legislative acts that require final action by the Board of Supervisors. Therefore, an appeal of the action of the Montecito Planning Commission is not required.

11.0 ATTACHMENTS

- A. Findings
- B. CEQA Notice of Exemption
- C. Montecito LUDC Resolution and Ordinance Amendment
- D. Article II Resolution and Ordinance Amendment