

ATTACHMENT O: 09-27-2013 MONTECITO PLANNING COMMISSION STAFF REPORT

SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION 2013 General Package Ordinance Amendment

Hearing Date: October 16, 2013

Assistant Director: Dianne Black

Staff Report Date: September 27, 2013

Staff Contact: Noel Langle

Case Nos. 13ORD-00000-00009 & 13ORD-00000-00010

Phone No.: (805) 568-2067

Environmental Document:

Montecito LUDC - CEQA Guidelines Section 15061(b)(3)

Article II CZO - CEQA Guidelines Sections 15061(b)(3) and Section 15265

1.0 REQUEST

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

- 1.1 Case No. 13ORD-00000-00009.** Adopt a recommendation to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 13ORD-00000-00009) 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 35.7, 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, of Chapter 35, Zoning, of the County Code, as set forth in Attachment C; and
- 1.2 Case No. 13ORD-00000-00010.** Adopt a recommendation to the County Planning Commission that they recommend to the Board of Supervisors that Board of Supervisors adopt an ordinance (Case No. 13ORD-00000-00010) amending Division 2, Definitions, Division 4, Zoning Districts, Division 6, Parking, Division 7, General Regulations, Division 10, Nonconforming Structures and Uses, 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:

- Comprehensive Plan, Development Code, and Zoning Map amendment processes - Revising existing language and implementing new procedures regarding the processing of amendments to the text and maps of the Comprehensive Plan, and the text and maps of the Montecito Land Use and Development Code. (Montecito LUDC only)
- Exterior material storage screening requirements - Revising the existing language regarding the required screening for the exterior storage of materials in residential zones to specify that the screening must be located in close proximity to the storage area. (Montecito LUDC and Article II)
- Exterior vehicle (trailer) storage requirements - Including recreational vehicles in the limits on the number of vehicles that can be stored outside of a garage or similar structure, and allowing the use of permeable materials in the construction of driveways and parking areas. (Montecito LUDC and Article II)
- Impermissible structural alterations to nonconforming structures - Adding language that specifies that a nonconforming structure that is structurally altered in violation of the zoning ordinance loses its status as a nonconforming structure and must either be demolished or remodeled as a conforming structure. (Montecito LUDC and Article II)

- Phased Conditional Use Permit and Development Plan maximum build-out periods - Including a maximum period of time in which the permits required to allow the build-out of a project that has a phasing agreement must be issued. (Montecito LUDC and Article II)
- Pool and pool equipment setbacks for interior lots - Specifying the setbacks for pools and attendant equipment when located on an interior lot. (Montecito LUDC and Article II)
- Special care homes restrictions on the number of clients - Reducing the number of clients served in a special care home that qualifies as a permitted use the specific zone from 14 to six. (Article II only)
- Surface mining and reclamation regulations for idle mines - Changing the review authority of applications for interim management plans filed for surface mines that have become idle from the Planning Commission to the Director, and allowing additional extensions of the time limit on interim management plans to be consistent with recent amendments to State law. (Montecito LUDC and Article II).
- Time extensions review authorities and noticing procedures- Clarifying the existing process including appropriate review authority and noticing requirements. (Montecito LUDC only)

2.0 RECOMMENDATION AND PROCEDURES

2.1 Case No. 13ORD-00000-00009. Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 13ORD-00000-00009 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 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. 13ORD-00000-00009, 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. 13ORD-00000-00010. 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. 13ORD-00000-00010 as shown in Attachment F based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Make 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 the adoption of this ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Sections 15061(b)(3) and 15265 of the Guidelines for Implementation of CEQA (Attachment E); and,
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. 13ORD-00000-00010, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment F).

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

3.0 JURISDICTION

3.1 Case No. 13ORD-00000-00009. This project is being considered by the Montecito Planning Commission based upon Sections 65854 to 65857, inclusive, of the California Government Code and Chapter 35.494 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

3.2 Case No. 13ORD-00000-00010. 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 the Article II Coastal Zoning Ordinance (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. The following amendments:

- Implement revisions in State law.
- Respond to requests by the Board of Supervisors.
- Clarify existing procedures and requirements.
- Correct errors and omissions.

4.2 Public Participation. The proposed package of amendments was reviewed by the Montecito Association Land Use Committee at their meeting of October 1, 2013. Staff will provide a summary of their comments at the October 16th hearing.

5.0 PROJECT DESCRIPTION

The following table shows which of the proposed revisions amend both the Montecito LUDC and Article II) or just the Montecito LUDC, or just Article II. Similar amendments will be presented to the County Planning Commission on October 30, 2013.

The revisions to the Montecito LUDC will take effect 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, the revisions will take effect only after the Coastal Commission grants final certification to the amendment.

AMENDMENT TOPIC	APPLICABILITY	
	Montecito LUDC	ART II
Comprehensive Plan, Development Code and Zoning Map amendment processes	✓	
Exterior material storage screening requirements	✓	✓
Exterior vehicle (trailer) storage requirements	✓	✓
Impermissible structural alterations to nonconforming structures	✓	✓
Phased CUP/DP maximum build-out periods	✓	✓
Pool and pool equipment setbacks for interior lots	✓	✓
Special care homes permit requirements		✓
Surface mining and reclamation regulations for idle mines	✓	✓
Time extensions review authorities and noticing procedures	✓	

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 and has 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.

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. The Montecito LUDC and Article II ordinance amendments also include minor corrections and language revisions that do not materially change the existing regulations and serve only to clarify or correct existing language. These revisions, including the deletion of Coastal Zone language, are not discussed in this staff report but are shown through the use of underlines and strikethroughs in the attached ordinances (Attachments C and F).

The Montecito LUDC and Article II are collectively referred to in the following discussion as the “zoning ordinances;” however, if only the Montecito LUDC or Article II is revised by the amendment then that document will be specifically identified.

5.1 Amendment required by changes in State law.

1. Surface mining and reclamation regulations for idle mines, Montecito LUDC (Attachment C SECTION 9) and Article II (Attachment F SECTION 11).

The following proposed amendment implements recent revisions to the California State Mining and Reclamation Act (SMARA). There are currently no active mines within the Montecito Community Plan area.

The California Surface Mining and Reclamation Act (SMARA) requires that within 90 days of a surface mine becoming idle that the surface mine operator must file an interim management plan for review and approval by the local agency. SMARA also provides that the review and approval of the interim management plan is not considered a project for the purposes of environmental review, and that the plan shall provide measures that the operator will implement to maintain the site in compliance with SMARA and the conditions of the local permit. Surface mine operations in Santa Barbara County, including agricultural soil export operations, require the approval of a conditional use permit that includes a reclamation plan.

Due to the limited scope of the scope of the interim management plan and review in compliance

with SMARA, the proposed amendment to the Montecito LUDC shifts the jurisdiction over the review and approval of interim management plans from the Montecito Planning Commission to the Director.

The proposed amendments also include changes to the existing allowances for time extensions that apply to interim management plans. These revisions are required by recent amendments to the California Surface Mining and Reclamation Act that allow for multiple five year extensions of the interim management plan (which has an initial five year time limit) in place of the existing allowance for only one five year extension.

The existing Article II does not include specific procedures for reviewing and extending interim management plans. The proposed amendment to Article II adds the Director as having jurisdiction over the review and approval of interim management plans, and includes procedures for approving time extensions consistent with the recent amendments to the California Surface Mining and Reclamation Act.

5.2 Amendments requested by the Board of Supervisors.

1. Exterior vehicle (trailer) storage requirements, Montecito LUDC (Attachment C SECTIONS 2, 3 and 5) and Article II (Attachment F SECTIONS 2, 3 and 5).

The series of amendments to the Land Use and Development Codes and Article II adopted by the Board of Supervisors in 2011 included regulations that apply to the exterior parking of vehicles on residentially zoned lots. During their discussion of the new regulations, the Board directed the Department to return with amendments that would:

- Include recreational vehicles within regulations that govern the number and location of vehicles that may be parked outside of a fully enclosed or fully screened structure.
- Specify that car covers, fabric shelters, tarps, etc., do not satisfy the requirement that certain vehicles shall not be visible from any adjoining lot, public road or other public use area.
- Allow driveways and parking areas to be constructed of pervious materials in addition to asphalt and concrete.

The proposed amendments include these revisions.

2. Phased CUP/DP maximum permit issuance period, Montecito LUDC (Attachment C SECTIONS 7 and 8) and Article II (Attachment F SECTIONS 9 and 10).

The 2011 amendments also included new procedures that authorize the adoption of phasing plans for projects allowed by Conditional Use Permits and Development Plans where it is expected that the project development will occur over several years and that the normal time allowed to complete the development prior to expiration could be insufficient. The Board of Supervisors, during their review of the new procedures, voiced its concern that the regulations do not include any upper limit on the length of time the permits that allow the development of the project would be valid, and directed the Department to return with an amendment that addresses this issue. In response to this direction, the proposed amendments include language that specifies that the time limit(s) included in the phasing plan shall require that all required Land Use Permits and Zoning Clearances shall be issued within 10 years of the effective date of the Conditional Use Permit or Final Development Plan.

5.3 Amendments that clarify existing procedures and requirements.

1. Comprehensive Plan, Development Code and Zoning Map amendments, Montecito

LUDC only (Attachment C SECTION 12).

The existing Montecito LUDC includes procedures for amending the text of the Montecito LUDC and the County zoning map as it applies to the Montecito Community Plan area outside the Coastal Zone; however, there are no procedures for submitting and processing amendments to the County's Comprehensive Plan including the Montecito Community Plan. The proposed amendment to the Montecito LUDC adds procedures for accepting and processing Comprehensive Plan amendments, and also restructures the processing procedures for Development Code and zoning map amendments so that they are better organized, read more clearly, and are consistent with the Government Code.

Montecito LUDC text amendments and zoning map amendments

The existing Montecito LUDC provides that a text or zoning map amendment may be initiated by the Board of Supervisors, the Montecito Planning Commission, or the Director of the Planning and Development Department. The Montecito LUDC also provides that a text amendment may be initiated by any person with a substantial interest in the proposed amendment, and that a zoning map amendment may be initiated by one or more persons owning property representing at least 50 percent of the assessed valuation of property that would be rezoned. However, because the Board of Supervisors is the decision-maker on such amendments, they are considered to be legislative acts and the County has full discretion in deciding whether to process an application for an amendment that has been filed by a private individual. Therefore, the proposed amendments include new procedures that:

- Allow the Director to refer the decision on whether to accept the application for processing to the Planning Commission if the Director determines that the application is:
 - Inconsistent with the Comprehensive Plan, including a recent Comprehensive Plan or Community Plan update, or
 - Inconsistent with the remainder of the Montecito LUDC that is not proposed to be amended, or
 - Precedent setting in nature, or
 - In conflict with any recent action by the Board, or
 - The subject matter either has generated or is likely to generate substantial public controversy.
- Provide that if the Planning Commission, after reviewing the recommendation of the Director, decides to accept the application for processing then normal application review would proceed, but that if the Planning Commission declines to accept the application for processing, then the application is referred to the Board of Supervisors for a final decision on whether to accept the application.

Comprehensive Plan (text and map) amendments

The proposed amendment to the Montecito LUDC regarding the processing of amendments the Comprehensive Plan:

- Provides that the amendment may be initiated by the Board of Supervisors, the Montecito Planning Commission, the Director, and any person with a substantial interest in the proposed amendment.

- Includes the same procedure discussed above regarding accepting private applications for processing.
- Adds additional criteria that the County may decline to process the application if it is determined that the proposed amendment is not in the public interest as required by Government Code Section 65358(a), or that the specific proposal is inconsistent with the remainder of the Comprehensive Plan that is not proposed to be amended.

2. Exterior material storage screening requirements, Montecito LUDC (Attachment C SECTION 1) & Article II (Attachment F SECTION 7).

The series of amendments adopted by the Board of Supervisors in 2011 included regulations that apply to the exterior storage of miscellaneous materials on residentially zoned lots. One of the requirements is that the area where the outdoor storage occurs must be screened by enclosing the area within a six-foot high solid wood fence or masonry wall. However, some people have interpreted this to mean that if the lot on which the storage occurs is surrounded by a six foot high perimeter fence, which may be a long distance from the storage area, that this perimeter fence satisfies the screening requirement. To alleviate this confusion, the proposed amendments include language that specifies that the fence or wall must be located in close proximity to the materials being stored so as to effectively screen the storage area.

3. Impermissible structural alterations to nonconforming structures, Montecito LUDC (Attachment C SECTION 11) & Article II (Attachment F SECTION 8).

Nonconforming structures are structures that are conforming as to use but do not conform to present zoning requirements such as height, lot coverage, setbacks and other standards. Nonconforming structures were either built before they were subject to zoning regulations or they complied with the regulations in effect when originally constructed. The existing zoning ordinances provide that nonconforming structures may remain so long as they are otherwise lawful, but also discourage the long-term continuation of such structures. Except in limited circumstances pertaining to seismic retrofits and historical landmarks, nonconforming structures may not be enlarged, extended, moved, or structurally altered unless the enlargement, extension, etc., complies with the current height, lot coverage, setback, and other requirements of the zoning ordinance. However, the zoning ordinances do not clearly state that if the nonconforming structure is altered in violation of this restriction, then the structure is no longer considered to be nonconforming. Structural alteration is currently defined as “a change in the supporting members of a structure, including bearing walls, column beams, girders, or trusses, or in the dimensions, support members, or configuration of the roof.” Structural alterations typically have the effect of prolonging the usable life of the structure in violation of the zoning ordinances.

The proposed amendments add language that states that if an existing nonconforming structure is altered in violation of the above restriction that:

- It is no longer considered to be nonconforming and the rights to continue the nonconforming structure are terminated, and
- If the owner fails to either demolish the structure or alter the structure to make it a conforming structure, then it will be considered a violation of the zoning ordinances and subject to enforcement.

4. Pool and pool equipment setbacks for interior lots, Montecito LUDC (Attachment C SECTION 4) & Article II (Attachment F SECTION 4).

The zoning ordinances currently prohibit swimming pools and spas, including appurtenant

equipment (filters, heaters, pumps, etc.) from being located in the front or side setbacks, but does allow their location in the rear setback provided they are no closer than five feet to the property line. However, the regulations do not address interior lots (lots that are not adjacent to any streets) and are inconsistent with other sections of the zoning ordinances that require that for interior lots that any structure shall be setback a minimum of 10 feet from all property lines. Therefore, the proposed amendments include language stating that swimming pools and spas, including appurtenant equipment, located on an interior lot shall not be located closer than 10 feet to the property line.

5. Special care homes permit requirements, Article II only (Attachment F SECTIONS 1 and 6).

In 2008, the County amended the County and Montecito Land Use and Development to lower the number of clients housed in a special care home that would require the approval of a conditional use permit from 15 to seven in order to more closely align the County's permit requirements with State law that requires that special care homes housing six or fewer clients shall be considered a residential use of property and prohibits the imposition of any permits and conditions on the operation that would not be required of any other residential use in the applicable zone. Article II was not amended at that time as it was thought that the Development Codes would replace Article II. However, since Article II continues to be the zoning ordinance for the Coastal Zone, the proposed amendment to Article II reduces the number of clients residing in a Special Care Home that qualifies as a permitted use from 14 to six consistent with the rest of the County, and decreases the number of clients that would require a conditional use permit from 15 to seven.

6. Time extension review authorities and noticing procedures, Montecito LUDC only (Attachment C SECTIONS 10, 13 and 18).

The proposed amendment to the Montecito LUDC restructures the processing and noticing procedures for time extensions so that they are better organized and read more clearly. The proposed amendment also:

- Allows that final action by the County to approve a request for a time extension may occur after the date that the permit would otherwise expire provided that the request is submitted prior to expiration of the permit.
- Requires that mailed notice of applications for all time extensions be provided to (1) property owners within 300 feet of the project site and (2) all residents within 300 feet of the project site if the application involves a telecommunications facility.
- Clarifies that the review authority with original jurisdiction over the planning permit is also the review authority for subsequent time extensions and not the review authority that may have approved the planning permit on an appeal.
- Includes new processing requirements for time extension applications for Land Use Permits regarding noticing, findings, appeal provisions, and when the time extension commences.
- Includes new processing requirements for time extension applications for Modifications regarding noticing, findings, and appeal provisions.
- Clarifies the existing language regarding the timing of when projects where the public hearing is proposed to be waived are listed on the Montecito Planning Commission's agenda by clearly stating that said listing occurs on the next available agenda following the mailing of the notice to the surrounding property owners of the Department's intent to waive the public hearing requirement.

- Deletes the requirement for newspaper publication of notice for applications for time extensions where the requirement for a public hearing has been waived.
- Requires that notice of applications for time extensions due to economic hardship are noticed in the same manner as other applications for time extensions that are under the jurisdiction of the Director.
- Adds a new section that provides the noticing procedures for time extensions that are under the jurisdiction of the Director. These procedures are similar to the existing procedures that apply to the noticing of applications for land use permits in that notice of the application and pending action by the Director on the time extension application is mailed to (1) all property owners within 300 feet of the project site and (2) all residents within 300 feet of the project site if the application involves a telecommunications facility.

6.0 ENVIRONMENTAL REVIEW

6.1 Case No. 13ORD-00000-00009. The proposed ordinance amendment to the Montecito Land Use and Development Code is recommended to be determined to be exempt from environmental review pursuant to Section 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. As explained further in Attachment B, no significant environmental impacts would occur as a result of these ordinance amendments.

6.2 Case No. 13ORD-00000-00010. The proposed ordinance amendment to the Article II Coastal Zoning Ordinance is recommended to be determined to be exempt from environmental review pursuant to Sections 15061(b)(3) and 15265 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 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. As explained further in Attachment E, no significant environmental impacts would occur as a result of these ordinance amendments.

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.

The proposed ordinance amendments primarily involve:

- Adding new processing procedures and revising existing processing procedures.
- Adding new application requirements.
- Implementing recent changes in State law.
- 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, including the Montecito Community Plan, and the Coastal Land Use Plan if applicable. 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, 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.

9.0 PROCEDURES

9.1 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.

9.2 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. 13ORD-00000-00009 Montecito LUDC Findings
- B. 13ORD-00000-00009 Montecito LUDC Notice of Exemption
- C. 13ORD-00000-00009 Montecito LUDC Resolution and Proposed Ordinance
- D. 13ORD-00000-00010 Article II Findings
- E. 13ORD-00000-00010 Article II Notice of Exemption
- F. 13ORD-00000-00010 Article II Resolution and Proposed Ordinance