

**SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION**  
**Revised Staff Report for**  
**Solar Energy Systems Permit Requirements Ordinance Amendment**

**Hearing Date: April 22, 2009**  
**Staff Report Date: April 6, 2009**  
**Case No. 09ORD-00000-00002**  
**Environmental Document: CEQA Guidelines Section 15061(b)(3)**

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## **1.0 REQUEST**

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission consider and adopt a recommendation to the Board of Supervisors that they adopt an ordinance (Case No. 09ORD-00000-00002) amending Division 35.2, Montecito Zones and Allowable Land Uses, Division 35.3 - Montecito Site Planning and Other Project Standards, 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 that would revise the existing procedures for permitting solar energy systems to be consistent with the limitations imposed on cities and counties by Government Code Section 65850.5.

## **2.0 RECOMMENDATION AND PROCEDURES**

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 09ORD-00000-00002 based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

- Adopt the findings for approval and recommend that the Board of Supervisors adopt the findings for approval of the proposed amendment (Attachment A);
- Recommend that the Board of Supervisors find that this amendment is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
- Adopt a Resolution:
  - 1) Rescinding Resolution No. 09-02 adopted February 22, 2009.
  - 2) Recommending that the Board of Supervisors adopt Case No. 09ORD-00000-00002, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C).

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

## **3.0 JURISDICTION**

This project is being considered by the Montecito Planning Commission based upon 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 Planning Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

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

The Montecito LUDC currently provides that solar energy collection systems are exempt from planning permits if they are located on the roof of a structure, but require a Coastal Development Permit or a Land Use Permit if they are freestanding. The Montecito LUDC does not require design review for solar energy systems. Building permits (especially in the case of roof mounted systems) and electrical permits are typically required.

On February 22, 2009, at the request of the Planning and Development Department, your Commission adopted a resolution recommending that the Board of Supervisors adopt an ordinance that would:

- Allow freestanding solar energy systems in the Resource Management Zone as an accessory structure,
- Exempt freestanding solar energy systems from the requirement to have a Final Development Plan approved prior to their construction, and
- Shift the permit requirement for freestanding solar energy systems in the Inland area from a Land Use Permit (with notice and the possibility for appeal) to a Zoning Clearance (no notice, no appeal) provided the project complies with all other zoning requirements (e.g., height, location) and a specific set of development standards designed to address compatibility issues such as location and visibility.

However, County Counsel and the Planning and Development Department recently concluded that this proposed permit scheme does not fully comply with Government Code Section 65850.5 (Attachment E) which imposes strict limitations on the ability of local governments to regulate the installation of solar energy systems. In summary, Section 65850.5:

- Requires that a city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit.
- Limits the review of the application to install a solar energy system to the building official's review of whether it meets all health and safety requirements of local, state, and federal law.
- Limits the requirements of local law to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety.
- Allows the building official to require the application for a "use permit" if there is a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety.
- Provides that a city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- Allows for an appeal of both (1) the decision by the building official to require a use permit and (2) the decision by the building official on the use permit.

- Restricts any conditions imposed on an application to install a solar energy system to those designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

However, Government Code Section 65850.5 does not appear to be consistent with the requirements the Coastal Act which is embodied in the Public Resources Code. Therefore, staff has prepared a revised ordinance (see Attachment C) which complies with the limits of Section 65850.5 yet also maintains the requirements of the Coastal Act for the installation of solar energy systems in the Coastal Zone. A similar ordinance will be presented to the County Planning Commission on April 8, 2009, and staff will relate the results of that hearing at your hearing on April 22<sup>nd</sup>.

## **5.0 PROJECT DESCRIPTION**

**5.1 Amending the Resource Management Zone.** In order to allow freestanding solar energy systems as an accessory structure within the Resource Management Zone this amendment proposes to amend the Resource Management Zone regulations by:

1. Providing an exemption for solar energy systems.
2. Including solar energy systems as an accessory use allowed in the Resource Management Zone.

**5.2 Proposed permit process, Coastal Zone.**

As noted above, solar energy systems located within the Coastal Zone are exempt from planning permits if located on the roof of an existing structure but require a Coastal Development Permit if located on the ground. This amendment would maintain these permit requirements; however, it would also specify that Coastal Development Permit for solar energy systems that would normally require a public hearing due to their location would instead not require a public hearing. The pending action on Coastal Development Permits would still be noticed (mailed notice to property owners within 300 feet and residents within 100 feet; a minimum of one notice posted onsite). The Coastal Development Permit could still be appealed to the Planning Commission and the Board of Supervisors by aggrieved persons. Coastal Development Permits for solar energy systems that normally would have required a public hearing would also require published notice and could also be appealed to the Coastal Commission.

This process for systems that would normally require a hearing is the same approach the County presently uses for residential second units that are required per the Government Code to be processed in a ministerial manner.

**5.1 Proposed permit process, Inland area.**

Also as noted above, solar energy systems located in the Inland area are currently exempt from planning permits if located on the roof of an existing structure but require a Land Use Permit if located on the ground. This amendment would specify that all solar energy systems, regardless of location, would be exempt from planning permits and only require the issuance of a building permit, electrical permit or plumbing permit as applicable. The approval of such a permit could be appealed to the Board of Building Appeals (as is the case with all other building permits, etc.) however the scope of the appeal is limited by Section 65850.5 to whether it the system complies with all health and safety requirements of local, state, and federal law. Section 65850.5 further restricts the requirements of local law to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. Also, any conditions imposed on an application to install a solar energy system must be designed

to mitigate any specific, adverse impact upon the public health and safety at the lowest cost possible.

In compliance with Section 65850.5, the proposed amendment also provides a process whereby the Building Official, if he has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, may require the applicant to additionally apply for a Solar Use Permit. This decision to require a Solar Use Permit could be appealed to the Planning Commission and the Board of Supervisors; however, the grounds for such an appeal are restricted to a demonstration that the solar energy system would not have a specific, adverse impact upon the public health and safety.

The proposed process for a Solar Use Permit is similar to the existing process for a Land Use Permit except that the Building Official would be the review authority (decision-maker) on the Solar Use Permit. The decision of the Building Official on the Solar Use Permit would be noticed (mailed and posted) and could be appealed to the Planning Commission and the Board of Supervisors.

In compliance with Section 65850.5, in order to deny an application for a Solar Use Permit the Building Official would have to make written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact. Again, any conditions imposed on a Solar Use Permit must be designed to mitigate any specific, adverse impact upon the public health and safety at the lowest cost possible.

These same restrictions would apply to the Planning Commission and the Board of Supervisors in their consideration of an appeal of a Solar Use Permit.

Compliance with Government Code Section 65850.5 also requires amending Chapter 10 (Building Regulations) of the County Code to address the ability of the Building Official to require a Solar Use Permit, the ability to appeal both this decision and the decision on the Solar Use Permit, limitations on the review and action by Building Official on a solar energy system, and limitations on any appeals. This amendment to Chapter 10 will be presented to the Board of Supervisors at the same time the recommendations of the County Planning Commission and the Montecito Planning Commission on this new permitting process are presented to the Board.

## **6.0 ENVIRONMENTAL REVIEW**

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

## **7.0 POLICY CONSISTENCY**

Adoption of the proposed ordinance will not result in any inconsistencies with the adopted policies and development standards of the County's Comprehensive Plan and regional Community Plans. In order to approve any application that results from this ordinance, the application still must be found

consistent with (1) all applicable standards of the Montecito Land Use and Development Code including those development standards that implement Comprehensive Plan and the Montecito Community Plan policies and (2) the required provisions and conditions of any existing, approved permits for the subject lot.

## **8.0 ORDINANCE COMPLIANCE**

The proposed ordinance is consistent with the remaining portions of the Montecito LUDC that are not revised by this ordinance.

## **9.0 PROCEDURES**

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

## **10.0 APPEALS PROCEDURE**

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

## **11.0 ATTACHMENTS**

- A. Findings
- B. CEQA Notice of Exemption
- C. Resolution and Proposed Ordinance
- D. February 25, 2009 Montecito Planning Commission Ordinance Staff Report (w/o attachments)
- E. Government Code Section 65850.5