



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 East Anapamu Street, Room 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Planning & Development  
**Department No.:** 053  
**For Agenda Of:** 11/01/2011  
**Placement:** Departmental  
**Estimated Tme:** 60 minutes  
**Continued Item:** Yes, from 10/4/2011  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Department Director Glenn Russell, Ph.D. (805) 568-2085  
Contact Info: Dianne Black, Development Services Director (805) 568-2086  
**SUBJECT:** General Package Ordinance Amendments

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**County Counsel Concurrence**  
As to form: Yes

**Auditor-Controller Concurrence**  
As to form: N/A

**Other Concurrences:** N/A

**Recommended Actions:**

That the Board of Supervisors consider the recommendations of the County and Montecito Planning Commissions to approve Case Nos. 11ORD-00000-00012, 11ORD-00000-00013 and 11ORD-00000-00014 which would amend, respectively, the County Land Use and Development Code, the Montecito Land Use and Development Code, and the Article II Coastal Zoning Ordinance, to implement a series of amendments that address emerging issues and correct and clarify existing language, and take the following actions:

**A. Case No. 11ORD-00000-00012 (County LUDC Amendment):**

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment A of the Agenda Letter for the October 4, 2011 hearing;
2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment B of the Agenda Letter for the October 4, 2011 hearing; and,
3. Approve Case No. 11ORD-00000-00012, an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code included as Attachment C of the Agenda Letter for the October 4, 2011 hearing, and as amended to reduce the additional parking allowed in Section 8 of Attachment C as discussed on page 9 of this Agenda Letter.

**B. Case No. 11ORD-00000-00013 (Montecito LUDC Amendment):**

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment D of the Agenda Letter for the October 4, 2011 hearing;

2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment E of the Agenda Letter for the October 4, 2011 hearing; and,
3. Approve Case No. 11ORD-00000-00013, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code included as Attachment F of the Agenda Letter for the October 4, 2011 hearing.

**C. Case No. 11ORD-00000-00014 (Article II Coastal Zoning Ordinance Amendment):**

1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment G of the Agenda Letter for the October 4, 2011 hearing;
2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA included as Attachment H of the Agenda Letter for the October 4, 2011 hearing; and,
3. Approve Case No. 11ORD-00000-00014, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code included as Attachment I of the Agenda Letter for the October 4, 2011 hearing, and as amended to reduce the additional parking allowed in Section 4 of Attachment I as discussed on page 9 of this Agenda Letter.

**Summary Text:**

This package of ordinance amendments was initially considered by the Board of Supervisors on October 4, 2011. At this hearing the Board of Supervisors requested that the Planning and Development Department return to the Board on November 1, 2011 with additional information regarding the following amendment topics:

AMENDMENT TOPIC	APPLICABILITY		
	CLUDC	MLUDC	ART II
Animal keeping (household pets)	✓	✓	✓
CUP/DP phasing procedures	✓	✓	✓
Demolition and reclamation plans; Oil drilling and production plan; Oil and gas facilities	✓		✓
Modifications not associated with CUPs and DPs	✓	✓	✓
Motor Vehicle and Material Storage	✓	✓	✓
Substantial Conformity Determinations & Amendments Procedures	✓	✓	✓
Surface Mining/Reclamation Plan CUP Clearance Process	✓	✓	

Additional information on the proposed amendments relating to (a) abalone shell processing, (b) campground/recreational vehicle corrections, (c) indemnification, (d) land use permit timelines, (e) micro-breweries, (f) residential second units, (g) shopping center's use determinations, (h) trailer storage, and (i) wastewater treatment system definitions was not requested.

Additional information regarding the topics shown in the table above is provided below. The discussion addressing several of these topic areas contains suggested revisions to the text of the proposed amendments that relate to comments and concerns expressed at the Board hearing on October 4, 2011. However, except for the potential reduction in the number of vehicles allowed to be parked on a lot in relation to lot size identified in the discussion on motor vehicle storage and material storage on page 9

of this Agenda Letter (see (3) Allowed number of operative and inoperative vehicles), the Planning and Development Department recommends that the Board of Supervisors adopt the proposed amendments with the language recommended for approval by the County and Montecito Planning Commissions, and direct the Department to return with new amendments that address the revisions suggested at the October 4<sup>th</sup> hearing, as well any additional concerns that may arise at the November 1<sup>st</sup> hearing, so that the Planning Commissions have the opportunity to review and make recommendations regarding any revised language. This approach is recommended in order to comply with State law that requires that revisions to ordinances on issues that were not discussed by the advisory body (i.e., the Planning Commissions) are reviewed by the advisory body prior to action by the Board.

### **Animal Keeping (County LUDC, Montecito LUDC & ARTICLE II).**

Household pets are defined as animals that are customarily kept within a dwelling or a yard for the personal use or enjoyment of the residents, and include domestic birds, cats and dogs, fish, rabbits, rodents and snakes, but do not include peacocks, roosters, horses, mules, goats, cows, hogs and other similar size animals. Keeping household pets does not require a permit provided the following standards are complied with:

- Keeping of household pets shall be accessory to a dwelling located on the lot where the animal keeping occurs.
- No more than three dogs permitted on a single lot.
- Household pets may not be kept for commercial purposes (e.g., no commercial breeding or boarding).
- The keeping of such animals shall not be injurious to the health, safety or welfare of the neighborhood and does not create offensive noise or odor as determined by the Director after advice from the Public Health Department.
- Enclosures for such animals shall be located no closer than 25 feet to any dwelling located on another lot.

Most residential zones allow household pets; however, some residential zones (e.g., the Mobile Home Park and the Student Residential zone used in Isla Vista), and many commercial and industrial zones that allow dwellings as a permitted or conditionally permitted use, do not allow household pets. The proposed amendments add the keeping of household pets as a permit-exempt use in all zones when accessory to a residential use.

Please refer to page 10 of Attachment C (County LUDC SECTION 10), page 8 of Attachment F (Montecito LUDC SECTION 5), and page 8 of Attachment I (Article II SECTION 7) for the actual text of the proposed amendments to the County LUDC, the Montecito LUDC and Article II.

### **Conditional Use Permits and Development Plans phasing agreements (County LUDC, Montecito LUDC & ARTICLE II).**

The purpose of this amendment is to provide procedures regarding the adoption of phasing plans for projects allowed by Conditional Use Permits and Development Plans as part of the project approval where it is expected that project development will occur in phases and that the normal time periods allowed by the zoning ordinances to fully develop the project prior to permit expiration may be insufficient.

For Conditional Use Permits, the zoning ordinances currently require that prior to the commencement of development allowed by a Conditional Use Permit that a Coastal Development Permit, Land Use Permit or Zoning Clearance is issued to ensure that all the pre-development conditions of the Conditional Use Permit have been fulfilled. The zoning ordinances also provide that at the time of

approval of the Conditional Use Permit, a reasonable time limit shall be established within which the Coastal Development Permit, Land Use Permit or Zoning Clearance must be issued, and that the time limit be based on the nature and size of the proposed development or use. However, the zoning ordinances do not include a maximum time limit that must be complied with. If a time limit is not specified, then the applicable permit must be issued within 18 months from the effective date of the Conditional Use Permit. The time limit may be extended one time for good cause for an unspecified amount of time. If the applicable permit is not issued within these time limits then the Conditional Use Permit expires.

For Final Development Plans, the existing zoning ordinances require that substantial physical construction of the development allowed by a Final Development Plan in compliance with an issued Coastal Development Permit, Land Use Permit or Zoning Clearance must occur within five years of the effective date of the Final Development Plan (10 years for Final Development Plans for agricultural uses). One time extension of one year may be granted for good cause. If the applicable permit is not issued within this time limit then the Final Development Plan expires.

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

In summary the proposed language would provide that:

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

Establishing phasing plans for larger projects can benefit both the project applicants and neighbors. Applicants are able to delay the construction of site improvements until the appropriate phase of construction, and neighbors have some certainty as to when construction of the project will occur. Several recently approved projects were approved with mandatory phasing to provide neighbors with time between phases of construction of a large project.

At the Board hearing on October 4<sup>th</sup> concerns were expressed that the proposed amendment did not include a maximum period of time in which the construction of the project must commence, and that

without such an outer limit, the situation might arise that the environmental review that was done at the time of initial project approval would no longer be appropriate when the actual construction occurred. The existing zoning ordinances do not include such a time limit, and recent projects that included multi-year project phasing within the conditions of approval did not include such a maximum time period. As proposed, the language of the amendments is flexible enough so that such a time limit could be incorporated into the phasing plan by the review authority on a case-by-case basis. However, the proposed language could be modified to include a new section (shown as highlighted) that contains a maximum time limit as shown below. This new section also includes a process whereby the maximum time limit may be extended by the review authority that initially approved the Conditional Use Permit or Development Plan provided that the findings that were made when the Conditional Use Permit or Final Development Plan was initially approved, including the CEQA findings, are still applicable to the project.

- (4) The phasing plan shall include the requirement that all required Land Use Permits and Zoning Clearances for all phases of development of the project authorized by the Conditional Use Permit shall be issued within 20 years following the effective date of the Conditional Use Permit.
  - (a) This time limit may be extended by the review authority that initially approved the application for the [Conditional Use Permit or Final Development Plan] provided that the findings for approval, including environmental review findings in compliance with CEQA, that were made when the [Conditional Use Permit or Final Development Plan] was initially approved are still appropriate.

Please refer to pages 27, 28 and 29 of Attachment C (County LUDC SECTIONS 19 and 20), pages 10, 11 and 12 of Attachment F (Montecito LUDC SECTIONS 8 and 9), and pages 17, 18, 22, 23 and 24 of Attachment I (Article II SECTIONS 14 and 16) for the actual text of the proposed amendments to the County LUDC, the Montecito LUDC and Article II.

### **Oil and Gas Facilities.**

The following proposed amendments revise the permit processing procedures for certain oil and gas facilities as described below.

#### **Demolition and Reclamation Permit (County LUDC & ARTICLE II).**

Demolition and Reclamation Permits are discretionary permit applications under the jurisdiction of the Director that are used to regulate the timely removal of abandoned oil and gas facilities and pipelines, and to ensure the proper reclamation of host sites. The proposed amendments would:

- (1) In the Coastal Zone, require the approval of a Coastal Development Permit concurrently with the Demolition and Reclamation Permit. If the development allowed by the Demolition and Reclamation Permit would be appealable to the Coastal Commission, then both the Demolition and Reclamation Permit and the Coastal Development Permit would be under the jurisdiction of the Zoning Administrator and would be subject to a public hearing requirement. This is consistent with the recently certified amendment to Article II that requires the concurrent processing of a Coastal Development Permit with Conditional Use Permits and Development Plans in order to avoid the possibility of repeat appeals to the Coastal Commission on the same project.
- (2) Allow changes to approved Demolition and Reclamation Permits through the Substantial Conformity Determination and Amendment processes that currently may be used to modify projects approved by either Conditional Use Permits or Final Development Plans. Please refer to the discussion regarding Substantial Conformity Determination & Amendment Procedures

on page 10 of this Agenda Letter.

Please refer to pages 25 and 35 of Attachment C (County LUDC SECTIONS 16 and 36), and pages 11 through 17 of Attachment I (Article II SECTIONS 11, 12 and 13) for the actual text of the proposed amendments to the County LUDC and Article II.

### **Oil Drilling and Production Plans (County LUDC).**

Oil Drilling and Production Plans are under the jurisdiction of the County Planning Commission and are required for oil and gas drilling and/or production facilities located outside of the Coastal Zone that may, because of size or location of the proposed development, have a potential to significantly impact natural resources or public health and safety. The proposed amendments to the CLUDC would:

- (1) Allow changes to approved Oil Drilling and Production Plans through the Substantial Conformity Determination and Amendment processes (see page 10 regarding the Substantial Conformity Determination & Amendment processes).
- (2) Similar to the existing process for Conditional Use Permits and Final Development Plans, the proposed amendment to the CLUDC would also provide that a Zoning Clearance may be used in certain instances to allow the construction of the project authorized by an Oil Drilling and Production Plan.

Zoning Clearances are used to verify that all the conditions of approval of the discretionary permit (e.g., Final Development Plan) have been satisfied and that the project proposed to be constructed is the same as shown on the approved discretionary permit. The decision of the Director to issue a Zoning Clearance is neither noticed nor subject to appeal. This prevents two separate appeals of the same project.

However, approval of a Substantial Conformity Determination is required to review and approve any proposed changes to the project, and the issuance of a Land Use Permit is required instead of a Zoning Clearance to allow the actual construction of the project change reviewed under the Substantial Conformity Determination. Land Use Permits are noticed to surrounding property owners, and the decision of the Director on the Land Use Permit may be appealed to the Planning Commission.

The use of the Zoning Clearance process to allow the actual commencement of the project following the approval of a Conditional Use Permit or Final Development Plan was added to the Land Use and Development Codes by the Board of Supervisors in May 2007; the use of the Zoning Clearance process in this manner was determined to be appropriate since the project allowed by the Conditional Use Permit or Final Development Plan had been reviewed through a noticed, discretionary process and the decision on the Conditional Use Permit or Final Development Plan was subject to appeal.

- (3) Allow one time extension of the approval of a Oil Drilling and Production Plans for 12 months for good cause provided the application for the time extension is submitted prior to expiration of the Oil Drilling and Production Plan and further provided that the findings for approval that were made when the Oil Drilling and Production Plan was initially approved are still appropriate. This is consistent with other time extensions already provided for in the zoning ordinances for other discretionary permits (e.g., Conditional Use Permits, Development Plans).

Please refer to pages 24, 25 and 34 through 39 of Attachment C (County LUDC SECTIONS 15, 33 and 36) for the actual text of the proposed amendments to the County LUDC.

### **Oil and Gas Facilities, in general (County LUDC)**

Consistent with the existing regulations for other types of development allowed by a Final Development Plans, the proposed amendments would allow the use of a Zoning Clearance to allow the development of oil and gas facilities approved by a Final Development Plan.

Please refer to pages 24 and 25 of Attachment C (County LUDC SECTION 15) for the actual text of the proposed amendment to the County LUDC.

### **Modifications not associated with Conditional Use Permits and Development Plans waived hearings (County LUDC, Montecito LUDC & Article II).**

The existing zoning ordinances include a process whereby certain zone development standards can be modified by the Zoning Administrator (Montecito Planning Commission within the Montecito Community Plan Area) as part of a noticed, public hearing. This process, called a Modification, is only available for development projects approved by a ministerial permit that are not associated with a Conditional Use Permit or a Development Plan. Modifications only allow for small variations to certain zone development standards; major variations still require the approval of a Variance. The development standards that may be modified through the Modification process differ depending on which zoning ordinance the development is subject to as shown below:

#### **County LUDC and Article II:**

- floor area ratios (maximum 10 percent increase, only applicable within the Summerland Community Plan area)
- height (maximum 10 percent increase)
- number of required parking spaces (amount not specified, not applicable within the residential zones in Isla Vista)
- setbacks (maximum 20 percent reduction)

#### **Montecito LUDC:**

- number of required parking spaces (amount not specified)
- setbacks (maximum 20 percent reduction)

Most Modifications are approved with no interest shown by the public. Therefore, this amendment proposes to add a process whereby the Director may waive the public hearing requirement; this “waived hearing process” is similar to the process that currently exists for some appealable Coastal Development Permits and other applications (e.g., time extensions). In order for the Director to waive the public hearing a notice is first mailed to all property owners located within 300 feet of the project site advising that the Director intends to waive the public hearing for the project unless a hearing is requested by a person receiving the notice. If a request for a hearing is not received within the 15 working (not calendar) days following the mailing of the notice, then jurisdiction over the Modification shifts to the Director who then takes action on the request without a public hearing.

Please refer to page 30 of Attachment C (County LUDC SECTION 23), page 13 of Attachment F (Montecito LUDC SECTION 12), and pages 30 and 31 of Attachment I (Article II SECTIONS 20) for the actual text of the proposed amendments to the County LUDC, the Montecito LUDC and Article II.

### **Motor vehicle storage and material storage (County LUDC, Montecito LUDC & Article II).**

The existing zoning ordinances do not contain provisions that specifically regulate the use of residentially zoned property for storage of motor vehicles and materials accessory to the residential use. The proposed amendments include requirements that address:

- Exterior storage of materials

- Dismantling of motor vehicles
- Parking of motor vehicles outside of a structure.

The overall purpose of the proposed amendments is to limit the amount of materials and the number of motor vehicles that may be kept on a residentially zoned lot, and require that the storage of materials and motor vehicles comply with a set of development standards that minimize the potential for neighboring properties to be negatively impacted. The proposed amendments also provide that the development standards may be modified through a minor Conditional Use Permit, and that if after six months from the effective date of the amendments these standards are not complied with, then the property is considered to be in violation of the zoning ordinances and subject to enforcement and penalties if a complaint is filed with the Planning and Development Department.

This amendment is proposed in response to several complaints from County residents regarding properties that are used to store (1) large numbers of motor vehicles in various states of repair and (2) large quantities of miscellaneous materials and junk.

The following general comments were expressed by individual Supervisors and the public during the October 4<sup>th</sup> hearing on the proposed amendments:

- What qualifies as junk?
- Recreational vehicles and trailers should be included in the limits on the number of vehicles that are allowed to be parked outside.
- The number of operative and inoperative vehicles that are proposed to be allowed based on lot size should be reduced in the County LUDC and Article II amendments to match the recommendation of the Montecito Planning Commission regarding the Montecito LUDC.
- Do car covers, tarps and similar devices qualify as screening?
- Pervious material should be allowed to be used in driveways and other parking areas.

The following discussion addresses these comments.

**(1) Storage of junk.**

The proposed amendments restrict the exterior storage of junk to no more than 100 feet. This area limitation is consistent with existing definition of “junk yard” in the zoning ordinances. The language of the proposed amendment specifies that it applies to the storage of scrap material, salvage material, and used materials that are stored for either recycling, reuse or resale.

**(2) Include recreational vehicles and trailers in the limits on vehicles that parked outside.**

Currently the proposed amendments regarding the number of vehicles that can be parked outside on a residential lot do not specifically include the storage of recreational vehicles and trailers. However, the section that limits the number of vehicles that may be parked outside of a fully enclosed or fully screened structure could be modified to address trailer parking by adding the following highlighted language:

**c. Trailers that are parked outside of a fully enclosed or fully screened structure shall be included in the limitation on the number of vehicles allowed in compliance with Subsections specified in Subsections K.1 and K.2, above.**

The proposed revision to the existing definition of “trailer” included with the proposed amendments includes recreational vehicles, campers, travel trailers, and trailers used for hauling materials and other vehicles including watercraft.



**(3) Allowed number of operative and inoperative vehicles.**

The proposed ordinances, as reviewed by the County and Montecito Planning Commissions, provided that in addition to exterior parking allowed either to comply with the zone parking standard or as allowed based on the number of bedrooms on the lot, that an additional number of vehicles could be parked outside of a structure. As originally proposed by staff this number ranged from one to five vehicles depending on the lot size as shown below:

<b>Lot Area (net)</b>	<b>Maximum Allowed Number of Vehicles</b>
Less than 10,000 sq. ft.	1
10,000 sq. ft. to less than 20,000 sq. ft.	3
20,000 sq. ft. or larger	5

The amendments to the County LUDC and Article II recommended for approval by the County Planning Commission reflect the numbers shown above. However, in response to testimony from the Mission Canyon Association, the Montecito Planning Commission, in their recommendation regarding the amendment to the Montecito LUDC, reduced the numbers shown from one, three and five to one, two and three.

The highlighted revision shown below would revise the proposed amendments to the County LUDC and Article II to be consistent with the proposed amendment to the Montecito LUDC.

The number of vehicles and the area used for the parking of said vehicles shall be limited to the following maximum number and area based upon the lot area of the lot on which the vehicles are parked:

<b><u>Lot Area (net)</u></b>	<b><u>Maximum Allowed Number of Vehicles</u></b>	<b><u>Maximum Allowed Parking Area</u></b>
<u>Less than 10,000 sq. ft.</u>	<u>1</u>	<u>140 sq. ft.</u>
<u>10,000 sq. ft. to less than 20,000 sq. ft.</u>	<u>2</u>	<u>420 sq. ft.</u>
<u>20,000 sq. ft. or larger</u>	<u>3</u>	<u>700 sq. ft.</u>

This issue was discussed by the County Planning Commission in their deliberations on the proposed amendments to the County LUDC and Article II. Therefore, if desired, the Board of Supervisors may revise the table contained in Subsection K.2.b.(1) of SECTION 8 of Attachment C (the ordinance amending the County LUDC) of the Agenda Letter for the October 4, 2011 hearing, and the table contained in Subsection 35-117A.1.b.2)a) of Attachment I (the ordinance amending Article II) of the Agenda Letter for the October 4, 2011 hearing, to reflect the reduction in the number of parked vehicles as shown above.

**(4) Visibility of parked cars and screening requirements.**

During the discussion at the October 4<sup>th</sup> hearing there were comments regarding whether the use of car covers or tarps that cover a vehicle qualify as meeting the screening requirements of the proposed amendments. The highlighted additional language shown below addresses this issue:

(2) Any area used for parking shall be located so that vehicles parked thereon, including any vehicle covering, are not visible from any public road or other area of public use (e.g., park, trail), or any adjoining lot.

If an owner cannot find a location on the lot where parked vehicle would not be visible from any public road, etc., due to topography or other site-specific situations, then they would not be able to comply with the development standard shown above, and therefore could not keep additional vehicles on the lot as otherwise may be allowed.

**(5) Allow the use of pervious material in parking areas and driveways.**

Currently the zoning ordinances require that “Uncovered parking areas and driveways shall be paved with a minimum of two inches of asphalt, concrete, or equivalent on a suitable base. The Planning and Development Department interprets this section to include other permanent materials such as concrete pavers and turf block, but not materials such as decomposed granite or gravel. The following revision to the existing zoning ordinance language specifically includes the use of pervious materials :

2. Uncovered parking areas and driveways shall be paved with a minimum of two inches of asphalt, concrete, or equivalent on a suitable base. **Equivalent materials include permanent, pervious materials such as concrete pavers and turf block, but do not include material such as decomposed granite or gravel.**

Please refer to pages 4, 5, 6 and 8 through 10 of Attachment C (County LUDC SECTIONS 4, 5 and 8), pages 1, 2, 3, 6 and 7 of Attachment F (Montecito LUDC SECTIONS 2 and 3), and pages 3, 4, 5, 9, 10 and 11 of Attachment I (Article II SECTIONS 4, 8 and 9) for the actual text of the proposed amendments to the County LUDC, the Montecito LUDC and Article II.

**Substantial Conformity Determinations & Amendments Procedures (County LUDC, Montecito LUDC & Article II).**

The existing zoning ordinances provide that following the approval of Conditional Use Permits and Final Development Plans that certain changes to the scope of the development allowed by the Conditional Use Permit or Final Development Plan may be approved by the Director through either a Substantial Conformity Determination or an Amendment.

Substantial Conformity Determinations

In order to approve a change to a project through the Substantial Conformity Determination process, the Director must determine that the change is in substantial conformity with the approved Conditional Use Permit or Final Development Plan using the standards for Substantial Conformity Determinations in the zoning ordinances that include that the Director considers such key issues as:

- has the project been the subject of substantial public controversy, or is there reason to believe the change requested by the Substantial Conformity Determination is likely to create substantial public controversy?
- will the change requested by the Substantial Conformity Determination alter the scope and intent of the previously approved project?
- will the change requested by the Substantial Conformity Determination alter the public’s perception of the project?
- will the change requested by the Substantial Conformity Determination result in environmental impacts that were not analyzed when the project was initially reviewed and approved and/or result in the need for additional mitigation measures?

If the answer to any of these questions is “yes” then the Director cannot make a determination of substantial conformity. Additionally, the zoning ordinances include criteria to assist the Director in determining whether proposed project changes are in

substantial conformity with the approved project; these criteria include:

- the change does not result in an increase of 1,000 square feet or more than 10 percent of building coverage, whichever is less.
- the project is located within the same general location as the approved plans, and is no closer than 10 percent closer to a property line than originally approved.
- the change does not result in an overall building height that is greater than 10 percent above the approved height.

Applications for Substantial Conformity Determinations are not noticed and the decision of the Director to approve or deny the request is not subject to appeal. However, following the approval of a Substantial Conformity Determination the zoning ordinances require that either a Coastal Development Permit or a Land Use Permit must be approved prior to commencement of the actual development of the project change authorized by the Substantial Conformity Determination. Coastal Development Permit and Land Use Permits are noticed and are subject to appeal to the Planning Commission.

### Amendments

If the Director cannot determine that the requested change to a project is in substantial conformity with the approved Conditional Use Permit or Final Development Plan, then the existing zoning ordinances provide that the Director may instead approve the change through an application for an Amendment. In order to approve an Amendment the Director must determine that the area where the project change is proposed to occur was either:

- Analyzed for potential environmental impacts as part of the processing of the approved Conditional Use Permit or Final Development Plan; or
- Was not analyzed for potential environmental impacts as part of the processing of the approved Conditional Use Permit or Final Development Plan, but the proposed change could be found exempt from environmental review.

Additionally, the Director must also find that:

- The findings that were required to be made when the Conditional Use Permit or Final Development Plan was initially approved are still applicable to the project including the requested project revision; and
- Any environmental impacts related to the development proposed by the project revision are determined to be substantially the same or less than those identified during the processing of the previously approved Conditional Use Permit or Final Development Plan.

Amendments are discretionary applications that require mailed notice to surrounding property owners, and the decision of the Director to approve or deny an Amendment may be appealed to the Planning Commission.

The zoning ordinance code sections regarding Substantial Conformity Determinations and Amendments presently only include very minimal processing requirements. The proposed amendments only add more specific procedures and requirements regarding application contents, CEQA review, decisions, noticing and appeals to the zoning ordinances that are consistent with the existing standards for approval of Substantial Conformity Determinations and Amendments summarized above in order to clarify for the public and staff the actual processing requirements.

Additionally, the existing zoning ordinances do not indicate what permit is required following the

approval of an Amendment to allow the actual construction of the project change authorized by the Amendment. Therefore, the proposed amendments to the County and Montecito LUDCs also specify that a Zoning Clearance is required in order to allow construction of the project change authorized by the Amendment. The use of the Zoning Clearance process is felt to be appropriate since the application for the Amendment is reviewed through a noticed, discretionary process and the decision on the Amendment is subject to appeal. However, within the Coastal Zone, since the Zoning Clearance process is not included in Article II, the proposed amendment to Article II instead provides that Land Use Permit is required to allow the development and/or use authorized by the Amendment if the development is not appealable to the Coastal Commission, and that a Coastal Development Permit with hearing is required if the development is subject to appeal to the Coastal Commission. In the latter instance the Amendment and Coastal Development Permit would be processed concurrently.

Please refer to pages 35 through 39 of Attachment C (County LUDC SECTION 36), pages 14, 15 and 16 of Attachment F (Montecito LUDC SECTIONS 15 and 16), and pages 18 through 22 and 24 through 29 of Attachment I (Article II SECTIONS 15 and 17) for the actual text of the proposed amendments to the County LUDC, the Montecito LUDC and Article II.

### **Surface Mining/Reclamation Plan CUP Clearance Process (County LUDC & Montecito LUDC).**

As discussed under Oil and Gas Facilities on page 5, above, except for Article II, the existing zoning ordinances allow the use of the Zoning Clearance process to allow the actual commencement of the project following the approval of a Conditional Use Permit or Final Development Plan. However, when the Board of Supervisors approved the amendment that added this provision in 2007, the amendment did not include revising the Surface Mining and Reclamation Plan sections of the County and Montecito LUDCs to also change the permit requirement following the approval of a Conditional Use Permit for surface mining and reclamation from a Land Use Permit to a Zoning Clearance. The purpose of this amendment is to correct that oversight in order to prevent multiple appeals of the same project.

Please refer to pages 30 and 31 of Attachment C (County LUDC SECTION 24), and page 14 of Attachment F (Montecito LUDC SECTION 13), for the actual text of the proposed amendments to the County LUDC and the Montecito LUDC.

### **Performance Measures:**

N/A.

### **Fiscal and Facilities Impacts:**

Budgeted: Yes

### **Fiscal Analysis:**

Funding for this ordinance amendment work effort is budgeted in the Administration Division on page D-308 of the adopted Planning and Development Department's budget for fiscal year 2011-2012.

### **Special Instructions:**

The Clerk of the Board shall send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Noel Langle.

### **Authored by:**

Noel Langle, Planner (805.568.2067)