



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: 5/19/2009
Placement: Set hearing
Estimated Tme: 45 minutes (on 6/2/2009)
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director John Baker (805) 568-2085
Contact Info: Dianne Black, Development Services Director (805) 568-2086
SUBJECT: Montecito Environmentally Sensitive Habitat Overlay Ordinance Amendment

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 set for hearing of June 2, 2009 to consider the recommendation of the Montecito Planning Commission and:

- A. Adopt findings for approval of the proposed ordinance (Attachment A);
- B. Find that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the Guidelines for Implementation of CEQA (Attachment B); and
- C. Adopt an Ordinance (Case No. 09ORD-00000-00003) amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment D).

Summary Text:

The existing language of the Montecito Land Use and Development Code (Montecito LUDC) states that the purpose and intent of the Environmentally Sensitive Habitat (ESH) Overlay is to:

- Protect and preserve specified areas in which plant species, animal species, and/or their habitats are rare or are especially valuable because of their role in the ecosystem, and
- Ensure that any and all projects permitted in such areas are designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

The mechanism to review and condition the proposed activity so that environmentally sensitive habitats are protected is only triggered when a permit for development is applied for. Within the Coastal Zone, major vegetation removal (the removal of native vegetation, brush, trees or orchards, involving a cumulative total of one-half acre or land or more) is defined as development and thus

requires a Coastal Development Permit (CDP) which must be found consistent with the protections of the ESH overlay. However, outside the Coastal Zone, activities that do not require a permit (e.g., brush clearing, tree removal) are not subject to the requirements of the ESH overlay unless they are done in conjunction with development that is subject to a permit. Therefore, significant removal of vegetation may occur within a designated ESH area without any review. Additionally, without a permit requirement, the Planning and Development Department is unable to ensure that all activities occurring within the environmentally sensitive habitat areas are consistent with the policies of the Montecito Community Plan that address the protection of biological resources.

More recently adopted ESH overlays for the Goleta and Toro Canyon areas have addressed this deficiency by specifying that certain activities require a permit which can be conditioned to protect the environmentally sensitive habitat. These activities are:

1. Grading in excess of 50 cubic yards of cut or fill.
2. The removal of vegetation along creek banks.
3. The removal of vegetation that exceeds a specified area.
4. Vegetation fuel management for fire protection purposes beyond 100 feet from any existing structure on the property.
5. The removal of native trees unless:
 - a) The tree is dead and is not of significant habitat value.
 - b) The tree prevents the construction of a project for which a permit has been issued and project redesign is not feasible.
 - c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity.
 - d) The tree is so weakened that it poses an imminent danger to persons or property.

The Goleta and Toro Canyon ESH overlays also require the approval of a conditional use permit when proposed vegetation removal exceeds one acre, or along 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill.

At the request of the Montecito Planning Commission, the Planning and Development Department conducted a workshop with the Montecito Planning Commission on December 17, 2008 regarding the rules and regulations that apply to property zoned with the ESH overlay. At the conclusion of this workshop the Montecito Planning Commission directed the Planning and Development Department to return with a proposed ordinance amendment that provides for increased protection of environmentally sensitive habitats along the lines what presently exists for Goleta and Toro Canyon.

The Planning and Development Department returned to the Montecito Planning Commission on March 25, 2009 with the requested ordinance. As presented to the Montecito Planning Commission the ordinance would require:

1. Either a Coastal Development Permit or a Land Use Permit for the following activities:
 - a. Grading in excess of 50 cubic yards of cut or fill.
 - b. The removal of native vegetation along 50 linear feet of creek bank or removal that, when added to the previous removal of native vegetation within the affected habitat, would total 50 feet or more linear feet of vegetation along a creek bank.
 - c. Except for vegetation fuel management within 100 feet of an existing, the removal of native vegetation from an area greater than 5,000 square feet, or the removal of native vegetation

that, when added to the previous removal of native vegetation within the affected habitat, would total more than 5,000 square feet..

- d. Vegetation fuel management beyond 100 feet from any existing structure on the property (Toro Canyon only).
 - e. Except for vegetation fuel management within 100 feet of an existing structure, the removal of any native trees greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees which are used as a habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Planning and Development Department makes one of the following findings:
 - 1) The tree is dead and is not of significant habitat value.
 - 2) The tree prevents the construction of a project for which a Coastal Development Permit or Land Use Permit has been issued in compliance with the overlay, and project redesign is not feasible.
 - 3) The tree is diseased and poses a danger to healthy trees in the immediate vicinity.
 - 4) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.
2. The approval of a Conditional Use Permit for native vegetation removal that exceeds one acre, or along 500 linear feet of creek bank (unless the removal of vegetation is for fuel management and is located within 100 feet of an existing structure), or where grading exceeds 1,500 cubic yards of cut and fill.

At this hearing there was testimony from the Montecito Association (see Attachment F) requesting that the Montecito Planning Commission revise the draft ordinance so that the threshold for requiring a permit for vegetation removal includes the removal of native and non-native species, arguing that the removal of non-native vegetation within an ESH area also has the potential to damage the habitat. However, there was also testimony requesting that the Montecito Planning Commission not include non-native species due to the feeling that the requirement to obtain a permit could be an impediment to improving the value of a particular habitat by the removal of non-native species.

At the conclusion of the hearing the Montecito Planning Commission declined to include the removal of non-native species in the threshold for vegetation removal and, by a unanimous vote, adopted a resolution (Attachment D) recommending that your Board approve Case No. 09ORD-00000-00003 amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code as shown in Attachment D.

Please refer to Attachment E, Montecito Planning Commission staff report for further background information and analysis.

Fiscal and Facilities Impacts:

Budgeted: Yes.

Fiscal Analysis:

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-295 of the adopted Planning and Development Department's budget for fiscal year 2008-09. There are no facilities impacts.

Staffing Impact(s):

<u>Legal Positions:</u>	<u>FTEs:</u>
0	0

Special Instructions:

1. The Planning and Development Department will satisfy all noticing requirements.
2. The Clerk of the Board will send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Noel Langle.

Attachments:

- A. Findings
- B. CEQA Notice of Exemption
- C. Ordinance (Case No. 09ORD-00000-00003)
- D. Planning Commission Resolution No. 09-03
- E. 3/25/2009 Montecito Planning Commission report (w/o attachments)
- F. 3/19/2009 Montecito Association letter

Authored by:
Noel Langle (805.568.2067)

ATTACHMENT A FINDINGS

CASE NO. 09ORD-00000-00003

In compliance with Section 35.494.060 (Findings Required for Approval of Amendment) of the Santa Barbara County Montecito Land Use and Development Code, the following findings shall be made by the Montecito Planning Commission in order to recommend approval of a text amendment to the Montecito Land Use and Development Code, and the Board of Supervisors shall adopt the following findings in order to approve a text amendment to the Montecito Land Use and Development Code:

1. The request is in the interests of the general community welfare.

The proposed ordinance amendment is in the interest of the general community welfare since the amendment will provide additional protection for environmentally sensitive habitat areas as a result of the additional permit requirements and serve to better implement the goals, policies and development standards of the Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan relating to biological resources.

2. The request is consistent with the Comprehensive Plan including the Montecito Community Plan, the requirements of State planning and zoning laws, and the Montecito Land Use and Development Code.

Adoption of the proposed ordinance amendment will result in an Environmentally Sensitive Habitat Overlay that better implements the goals, policies and development standards of Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan relating to biological resources.

These revisions will not result in any inconsistencies with the adopted policies and development standards of the County's Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan. The proposed ordinance amendment is also consistent with the remaining portions of the Montecito Land Use and Development Code that would not be revised by this amendment. Therefore, this amendment may be found consistent with the Comprehensive Plan including the Montecito Community Plan, the requirements of State Planning and Zoning Laws, and the Montecito Land Use and Development Code.

3. The request is consistent with good zoning and planning practices.

The proposed amendment is consistent with sound zoning and planning practices to regulate land uses for the overall protection of the environment and community values. As discussed above in Finding 2, the amendment is consistent with the Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan, and the Montecito Land Use and Development Code.

ATTACHMENT B: NOTICE OF EXEMPTION

NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors
FROM: Noel Langle, Senior Planner
Planning and Development Department

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County guidelines for the implementation of CEQA.

APN(s): Not applicable.

Case No.: 09ORD-00000-00003

Location: The proposed ordinance amendment would apply solely to the area of Santa Barbara County within the Montecito Community Plan Area.

Project Title: Environmentally Sensitive Habitat Overlay Ordinance Amendment.

Project Description: 09ORD-00000-00003 proposes to amend Division 35.2 - Montecito Zones and Allowable Land Uses of, and make other revisions as necessary to, Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code to revise the existing procedures permitting development within areas designated as environmentally sensitive habitat areas.

Exempt Status: (Check one)

- Ministerial
- Statutory
- Categorical Exemption (Section 15308)
- Emergency Project
- No Possibility of Significant Effect Section 15061(b)(3)

Cite specific CEQA Guideline Section: The proposed amendment is recommended to be determined to be exempt from environmental review in compliance with Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA) which states actions taken by regulatory agencies to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for the protection of the environment is not subject to CEQA.

Reasons to support exemption findings:

The purpose and intent of Section 35.428.040 of the Montecito Land Use and Development Code, the Environmentally Sensitive Habitat (ESH) Overlay, is to “protect and preserve specified areas in which plant species, animal species, and/or their habitats are rare or are especially valuable because of their role in the ecosystem and which could be easily disturbed or degraded by human activities and developments” and “ensure that any and all projects permitted in such areas are designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.”

However, the mechanism to review and condition the proposed activity so that environmentally sensitive habitats are protected is only triggered when a permit for development is applied for. Within the Coastal Zone, major vegetation removal (the removal of native vegetation, brush, trees or orchards, involving a cumulative total of one-half acre or land or more) is defined as development and thus requires a Coastal Development Permit which must be found consistent with the protections of the ESH overlay. However, outside the Coastal Zone, activities that do not require a permit are not subject to the requirements of this overlay. Therefore, significant removal of vegetation may occur within a designated ESH area if it is not associated with an application for an activity that requires a permit.

Also, except for those activities that are regulated within the Coastal Zone, without a permit requirement, the Planning and Development Department is unable to ensure that all activities occurring within the

environmentally sensitive habitat areas are consistent with the policies of the Montecito Community Plan that address the protection of biological resources.

Adoption of this ordinance would expand the applicability and permit requirements of this overlay to certain additional activities as follows:

Activities that would require the approval of a Coastal Development Permit or Land Use Permit:

1. Grading in excess of 50 cubic yards of cut or fill.
2. The removal of native vegetation along 50 linear feet of creek bank or removal that, when added to the previous removal of vegetation within the affected habitat, would total 50 feet or more linear feet of vegetation along a creek bank.
3. Except for vegetation fuel management within 100 feet of an existing structure, the removal of native vegetation from an area greater than 5,000 square feet, or the removal of vegetation that, when added to the previous removal of vegetation within the affected habitat, would total more than 5,000 square feet.
4. Vegetation fuel management beyond 100 feet from any existing structure on the property.
5. Except for vegetation fuel management within 100 feet of an existing structure, the removal of any native trees greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees which are used as a habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Planning and Development Department makes one of the following findings:
 - a) The tree is dead and is not of significant habitat value.
 - b) The tree prevents the construction of a project for which a Land Use Permit has been issued in compliance with the overlay, and project redesign is not feasible.
 - c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity.
 - d) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.

Activities that would require the approval of a Conditional Use Permit:

Except for vegetation fuel management within 100 feet of an existing structure, the removal of native vegetation that exceeds one acre, or along 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill.

Therefore, this ordinance would provide greater protection of the environment by increasing the scope of activities occurring within an environmentally sensitive habitat area that require review and approval of a permit that may be conditioned to protect the habitat.

(Signed and dated copy on file)

Department/Division Representative

Date

Acceptance Date (date of final action on the project): _____

Date Filed by County Clerk: _____

Note: A copy of this form must be posted at Planning and Development six days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days to begin a 35 day statute of limitations on legal challenges.

Distribution: (for posting six days prior to action, and posting original after project approval)

Hearing Support Staff
Project file

ATTACHMENT C: ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE, BY AMENDING SECTION 35.428.030, ENVIRONMENTALLY SENSITIVE HABITAT (ESH) OVERLAY ZONE, OF CHAPTER 35.428, MONTECITO OVERLAY ZONES, OF DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE LAND USES; AND MAKE OTHER MINOR REVISIONS AS NECESSARY TO REVISE THE EXISTING PROCEDURES FOR PERMITTING ACTIVITIES WITHIN AREAS DESIGNATED WITH THE ENVIRONMENTALLY SENSITIVE HABITAT (ESH) OVERLAY ZONE.

Case No. 09ORD-00000-00003

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph A (Purpose and Intent) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

- A. Purpose and intent.** The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:
1. Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and
 2. Ensure that each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

SECTION 2:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph B (Applicability) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

B. Applicability.

1. **Determination of applicability.** The Zoning Map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.
2. **Identification of newly documented sensitive habitat areas.** If an environmentally sensitive habitat area is identified by the Director to be located onsite during permit application review, but the habitat area does not have an ESH overlay zone designation, the applicable requirements of Subsection C through Subsection O below, shall apply. The Director will periodically update the Zoning Map to apply the ESH overlay zone to the new

habitat areas and applicable setback areas (including the 250-foot area around the habitat).

3. **Relationship to primary zone.** Each land use and proposed project within the ESH overlay zone shall comply with all applicable requirements of the primary zone in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the primary zone, the requirements of this Section shall control.
4. **Relationship to overlay zone.** Each land use and proposed project within the ESH overlay zone shall comply with all applicable requirements of any additional overlay zone, in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the any other overlay zone, the requirements of this Section shall control.

SECTION 3:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph C (Permit and processing requirements) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

C. Permit and processing requirements. An application for a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.110) or Land Use Permit (Section 35.472.110) for a project located within the ESH overlay zone shall be submitted in compliance with Chapter 35.470 (Permit Application Filing and Processing) and the requirements of this Section.

1. **Coastal Development Permit or Land Use Permit requirement.** A Coastal Development Permit approved in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit approved in compliance with Section 35.472.110 (Land Use Permits) shall be required for the following activities, in addition to those activities required to have either a Coastal Development Permit or Land Use Permit by the primary zone:
 - a. The removal of native vegetation along 50 linear feet or more of a creek bank or removal that, when added to the previous removal of native vegetation within the affected habitat on the site, would total 50 or more linear feet of native vegetation along a creek bank.
 - b. Grading in excess of 50 cubic yards of cut or fill.
 - c. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure:
 - (1) The removal of native vegetation over an area greater than 5,000 square feet or that, when added to the previous removal of native vegetation within the affected habitat on the lot, would total an area greater than 5,000 square feet.
 - (2) The removal of any native tree greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees that are used as habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Director makes one or more of the following findings:
 - (a) The tree is dead and is not of significant habitat value.
 - (b) The tree prevents the construction of a project for which a Coastal Development Permit has been issued in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit has been

issued in compliance with Section 35.472.110 (Land Use Permits) and this Section, and project redesign is not feasible.

- (c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity. The Department may require evidence of this to be presented by an arborist, licensed tree surgeon, or other qualified person.
- (d) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.

2. Conditional Use Permit requirement. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure, a Conditional Use Permit approved in compliance with Section 35.472.060 (Conditional Use Permits) is required where native vegetation is proposed to be removed which would exceed one acre, or 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill.

3. Application review - Inland area. Upon receipt of an application for a Conditional Use Permit (Section 35.472.110), Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project located within the ESH overlay zone in compliance with this section or sections governing the primary zone, the Director shall determine if the proposed project is located in or within 100 feet of an environmentally sensitive habitat area.

a. Site inspection.

- (1) If the Director determines that the proposed project is located in or within 100 feet of an environmentally sensitive habitat area, a site inspection shall be required, if the Director determines it necessary, by a qualified biologist to be selected jointly by the Director and the applicant. Upon completion of the site inspection, and if determined to be necessary, conditions shall be applied to the permit that will protect the environmentally sensitive habitat area to the maximum extent feasible, consistent with the applicable development standards in Subsection D. through Subsection O. below.
- (2) If the Director determines that the proposed project is not located in or within 100 feet of an environmentally sensitive habitat area, then a site inspection by a qualified biologist is not required.

4. Application review - Coastal Zone. Upon receipt of an application for a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.110) or Land Use Permit (Section 35.472.110) for a project located within the ESH overlay zone, the Director shall determine the potential of the proposed project to adversely impact an environmentally sensitive habitat area.

a. Coastal Development Permits and Land Use Permits.

- (1) **Project with no adverse impact.** If the proposed project is determined by the Director to (1) be exempt from the California Environmental Quality Act, (2) have no potential for adverse impact on an environmentally sensitive habitat area and (3) meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the permit in compliance with the applicable provisions of Subsection C.5 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below.

- (2) **Project with potential adverse impact.** If the proposed project is determined by the Director to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.
- (a) If the environmental review indicates that the proposed project has no significant unavoidable adverse impacts on an environmentally sensitive habitat area and meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the permit in compliance with the applicable provisions of Subsection C.5 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below, with appropriate conditions if necessary.
- (b) If the environmental document indicates that the proposed project has significant unavoidable adverse impacts on an environmentally sensitive habitat area, then the Montecito Commission shall be the review authority for the application for the Coastal Development Permit or Land Use Permit.
- (i) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.
- (ii) Notice of the time and place of the hearing shall be given in compliance with Section 35.496.020 (Notice of Public Hearing and Review Authority Action) and the hearing shall be conducted in compliance with Section 35.496.100 (Hearing Procedure).
- (iii) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).

b. Conditional Use Permits.

- (1) **Project with no adverse impact.** If the proposed project is determined by the Montecito Commission to (1) be exempt from the California Environmental Quality Act (2) have no potential for adverse impact on an environmentally sensitive habitat area and (3) meets all the other requirements for a Conditional Use Permit, the Montecito Commission shall approve the permit in compliance with the applicable provisions of Subsection C.5 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below.
- (2) **Project with potential adverse impact.** If the proposed project is determined to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.

- (a) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.
 - (b) Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 35.496 (Noticing and Public Hearings).
 - (c) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).
- 5. Findings required for Coastal Development Permit, Conditional Use Permit, Land Use Permit or Zoning Clearance approval.** An application for a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.060), Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project that is subject to compliance with this section shall be approved or conditionally approved only if the review authority first finds that the proposed project will meet all applicable development standards contained in Subsection D through Subsection O, below, in addition to the findings required to be adopted by the review authority in compliance with Section 35.472.050 (Coastal Development Permits), Section 35.472.060 (Conditional Use Permits), Section 35.472.110 (Land Use Permits and Section 35.472.190 (Zoning Clearances), as applicable.
- 6. Conditions of approval.** A Coastal Development Permit (Section 35.472.050), Conditional use Permit (Section 35.472.060), Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) may be approved with conditions of approval as determined by the Director to be necessary to ensure protection of the habitat areas. The conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development project to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements.
 - a. Coastal Zone.** The conditions may also expressly alter any regulation of the primary zone in furtherance of the purposes of the ESH overlay zone, except the land uses that are permitted or conditionally permitted by the primary zone.
 - b. Inland area.** The conditions may also expressly alter any regulation of the primary zone in furtherance of the purposes of the ESH overlay zone, except the land uses that are permitted or conditionally permitted by the primary zone, provided that the alteration is not less restrictive than the regulations of the primary zone.

SECTION 4:

Except as amended by this Ordinance, Division 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5:

Within the Coastal Zone portion of Santa Barbara County, this ordinance and any portion of this ordinance approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage a

summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

SECTION 6:

Within the non-Coastal Zone portion of Santa Barbara County, this ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 2nd day of June, 2009, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

JOSEPH CENTENO
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By (Signed and dated copy on file)
Deputy County Counsel

ATTACHMENT D: MONTECITO PLANNING COMMISSION RESOLUTION

**RESOLUTION OF THE SANTA BARBARA COUNTY MONTECITO PLANNING COMMISSION
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

IN THE MATTER OF RECOMMENDING TO THE)
BOARD OF SUPERVISORS THE ADOPTION OF)
AN AMENDMENT TO SECTION 35-2 OF) RESOLUTION NO.: 09 - 03
CHAPTER 35 OF THE COUNTY CODE, THE)
SANTA BARBARA COUNTY MONTECITO) CASE NO.: 09ORD-00000-00003
LAND USE AND DEVELOPMENT CODE,)
REGARDING THE PERMITTING OF PROJECTS)
WITHIN ENVIRONMENTALLY SENSITIVE)
HABITAT AREAS.

WITH REFERENCE TO THE FOLLOWING:

- A. On November 27, 2007, by Ordinance 4660, the Board of Supervisors adopted the Santa Barbara County Montecito Land Use and Development Code, Section 35-2 of Chapter 35 of the Santa Barbara County Code; and
- B. The Montecito Planning Commission now finds that it is in the interest of the orderly development of the County and important to the preservation of the health, safety and general welfare of the residents of the County to recommend that the Board of Supervisors adopt an ordinance (Case No. 09ORD-00000-00003) amending Section 35-2 of Chapter 35 of the Santa Barbara County Code, the Santa Barbara County Montecito Land Use and Development Code, to revise the permit process for projects proposed to be located in Environmentally Sensitive Habitat Overlay areas.

Said Ordinance is attached hereto as Exhibit 1 and is incorporated herein by reference.

- C. The proposed Ordinance is consistent with the Coastal Act of 1976, the Santa Barbara County Coastal Plan, the Santa Barbara County Comprehensive Plan including Montecito Community plans, and the requirements of the State Planning, Zoning and Development Laws.
- D. The proposed Ordinance is in the interest of the general community welfare, since it will provide increased protection to environmentally sensitive habitats and serve to better implement the goals, policies and development standards of the Montecito Community Plan relating to biological resources.
- E. This Commission has held a duly noticed public hearing, as required by Section 65854 of the Government Code, on the proposed Ordinance at which hearing the proposed Ordinance was explained and comments invited from the persons in attendance.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

- 1. The above recitations are true and correct.
- 2. In compliance with the provisions of Section 65855 of the Government Code, this Commission recommends that the Board of Supervisors of the County of Santa Barbara, State of California, following the required noticed public hearing, approve and adopt the above mentioned recommendation of this Commission.

4. A certified copy of this resolution shall be transmitted to the Board of Supervisors.
5. The Chair of this Commission is hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above mentioned action by the Montecito Planning Commission.

PASSED, APPROVED AND ADOPTED this March 25, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

(Signed and dated copy on file)

MICHAEL PHILLIPS, Chair
Santa Barbara County Montecito Planning Commission

ATTEST:

(Signed and dated copy on file)

DIANNE MEESTER BLACK
Secretary to the Commission

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By *(Signed and dated copy on file)*
Deputy County Counsel

EXHIBITS:

1. 09ORD-00000-00003

EXHIBIT 1

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE, BY AMENDING SECTION 35.428.030, ENVIRONMENTALLY SENSITIVE HABITAT (ESH) OVERLAY ZONE, OF CHAPTER 35.428, MONTECITO OVERLAY ZONES, OF DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE LAND USES; AND MAKE OTHER MINOR REVISIONS AS NECESSARY TO REVISE THE EXISTING PROCEDURES FOR PERMITTING ACTIVITIES WITHIN AREAS DESIGNATED WITH THE ENVIRONMENTALLY SENSITIVE HABITAT (ESH) OVERLAY ZONE.

Case No. 09ORD-00000-00003

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph A (Purpose and Intent) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

- A. Purpose and intent.** The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or ~~endangered~~ sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:
1. Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and
 2. Ensure that ~~development~~ each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

SECTION 2:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph B (Applicability) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

- B. Applicability.**
1. **Determination of applicability.** The Zoning Map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.
 2. **Identification of newly documented sensitive habitat areas.** If an environmentally sensitive habitat area is identified by the Director to be located onsite during permit application review, but the habitat area does not have an ESH overlay zone designation, the applicable requirements of Subsection C through Subsection O below, shall apply ~~to the~~

~~development~~. The Director will periodically update the Zoning Map to apply the ESH overlay zone to the new habitat areas and applicable setback areas (including the 250-foot area around the habitat).

3. **Relationship to primary zone.** Each land use and proposed ~~development~~ project within the ESH overlay zone shall comply with all applicable requirements of the primary zone in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the primary zone, the requirements of this Section shall control.
4. **Relationship to overlay zone.** Each land use and proposed ~~development~~ project within the ESH overlay zone shall comply with all applicable requirements of any additional overlay zone, in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the any other overlay zone, the requirements of this Section shall control.

SECTION 3:

DIVISION 35.2, Montecito Zones and Allowable Land Uses, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Paragraph C (Permit and processing requirements) of Section 35.428.040, Environmentally Sensitive Habitat (ESH) Overlay Zone, of Chapter 35.428, Montecito Overlay Zones, to read as follows:

C. **Permit and processing requirements.** An application for ~~development~~ a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.110) or Land Use Permit (Section 35.472.110) for a project located within the ESH overlay zone shall be submitted in compliance with Chapter 35.470 (Permit Application Filing and Processing) and the requirements of this Section.

1. **Coastal Development Permit or Land Use Permit requirement.** A Coastal Development Permit approved in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit approved in compliance with Section 35.472.110 (Land Use Permits) shall be required for the following activities, in addition to those activities required to have either a Coastal Development Permit or Land Use Permit by the primary zone:
 - a. The removal of native vegetation along 50 linear feet or more of a creek bank or removal that, when added to the previous removal of native vegetation within the affected habitat on the site, would total 50 or more linear feet of native vegetation along a creek bank.
 - b. Grading in excess of 50 cubic yards of cut or fill.
 - c. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure:
 - (1) The removal of native vegetation over an area greater than 5,000 square feet or that, when added to the previous removal of native vegetation within the affected habitat on the lot, would total an area greater than 5,000 square feet.
 - (2) The removal of any native tree greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees that are used as habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Director makes one or more of the following findings:
 - (a) The tree is dead and is not of significant habitat value.

- (b) The tree prevents the construction of a project for which a Coastal Development Permit has been issued in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit has been issued in compliance with Section 35.472.110 (Land Use Permits) and this Section, and project redesign is not feasible.
- (c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity. The Department may require evidence of this to be presented by an arborist, licensed tree surgeon, or other qualified person.
- (d) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.

2. Conditional Use Permit requirement. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure, a Conditional Use Permit approved in compliance with Section 35.472.060 (Conditional Use Permits) is required where native vegetation is proposed to be removed which would exceed one acre, or 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill.

13. Application review - Inland area. Upon receipt of an application for ~~development~~ a Conditional Use Permit (Section 35.472.110), Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project located within the ESH overlay zone in compliance with this section or sections governing the primary zone, the Director shall determine if the proposed ~~development~~ project is located in or within 100 feet of an environmentally sensitive habitat area.

a. Site inspection.

- (1) If the Director determines that the proposed ~~development~~ project is located in or within 100 feet of an environmentally sensitive habitat area, a site inspection shall be required, if the Director determines it necessary, by a qualified biologist to be selected jointly by the Director and the applicant. Upon completion of the site inspection, and if determined to be necessary, conditions shall be applied to the permit that will protect the environmentally sensitive habitat area to the maximum extent feasible, consistent with the applicable development standards in Subsection D. through Subsection N. below.
- (2) If the Director determines that the proposed ~~development~~ project is not located in or within 100 feet of an environmentally sensitive habitat area, then a site inspection by a qualified biologist is not required.

24. Application review - Coastal Zone. Upon receipt of an application for ~~development~~ a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.110) or Land Use Permit (Section 35.472.110) for a project located within the ESH overlay zone, the Director shall determine the potential of the proposed ~~development~~ project to adversely impact an environmentally sensitive habitat area.

a. ~~Project with no adverse impact~~ Coastal Development Permits and Land Use Permits.

- (1) Project with no adverse impact. If the proposed ~~development~~ project is determined by the Director to (1) be exempt from the California Environmental Quality Act and is determined by the Director to (2) have no potential for

adverse impact on an environmentally sensitive habitat area and (3) meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the permit in compliance with the applicable provisions of Subsection C.35 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below.

b. (2) Project with potential adverse impact. If the proposed ~~development project~~ is exempt from the California Environmental Quality Act and is determined by the Director to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.

(1a) If the environmental ~~document~~ review indicates that the ~~development~~ proposed project has no significant unavoidable adverse impacts on an environmentally sensitive habitat area and meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the ~~Coastal Development Permit~~ permit in compliance with the applicable provisions of Subsection C.35 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below, with appropriate conditions if necessary.

(2b) If the environmental document indicates that the ~~development~~ proposed project has significant unavoidable adverse impacts on an environmentally sensitive habitat area, then the Montecito Commission shall be the review authority for the application for ~~development~~ the Coastal Development Permit or Land Use Permit.

(ai) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.

(bij) Notice of the time and place of the hearing shall be given in compliance with Section 35.496.020 (Notice of Public Hearing and Review Authority Action) and the hearing shall be conducted in compliance with ~~Chapter 35.496 (Noticing and Public Hearings)~~ Section 35.496.100 (Hearing Procedure).

(eiii) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).

b. Conditional Use Permits.

(1) Project with no adverse impact. If the proposed project is determined by the Montecito Commission to (1) be exempt from the California Environmental Quality Act (2) have no potential for adverse impact on an environmentally sensitive habitat area and (3) meets all the other requirements for a Conditional Use Permit, the Montecito Commission shall approve the permit in compliance with the applicable provisions of Subsection C.5 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval) below.

(2) Project with potential adverse impact. If the proposed project is determined to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.

(a) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.

(b) Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 35.496 (Noticing and Public Hearings).

(c) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).

35. Findings required for Coastal Development Permit, Conditional Use Permit, ~~or~~ Land Use Permit ~~or~~ Zoning Clearance approval. An application for a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.060), ~~or~~ a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project ~~within the ESH overlay zone~~ that is subject to compliance with this section shall be approved ~~or conditionally approved~~ only if the Director review authority first finds that the proposed development project will meets all applicable development standards contained in Subsection D through Subsection O, below, in addition to the findings required for Coastal Development Permit or a Land Use Permit to be adopted by the review authority in compliance with Section 35.472.050 (Coastal Development Permits), Section 35.472.060 (Conditional Use Permits), Section 35.472.110 (Land Use Permits and Section 35.472.190 (Zoning Clearances), as applicable.

46. Conditions of approval. A Coastal Development Permit (Section 35.472.050), Conditional use Permit (Section 35.472.060), ~~or~~ a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) may be approved with conditions of approval as determined by the Director to be necessary to ensure protection of the habitat areas. The conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the ~~development project~~ to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements.

a. Coastal Zone. The conditions may also expressly alter any regulation of the primary zone in furtherance of the purposes of the ESH overlay zone, except the land uses that are permitted or conditionally permitted by the primary zone.

b. Inland area. The conditions may also expressly alter any regulation of the primary zone in furtherance of the purposes of the ESH overlay zone, except the land uses that are permitted or conditionally permitted by the primary zone, provided that the alteration is not less restrictive than the regulations of the primary zone.

SECTION 4:

Except as amended by this Ordinance, Division 35.2, Montecito Zones and Allowable Land Uses, of

Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5:

Within the Coastal Zone portion of Santa Barbara County, this ordinance and any portion of this ordinance approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

SECTION 6:

Within the non-Coastal Zone portion of Santa Barbara County, this ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

JOSEPH CENTENO
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel

**SANTA BARBARA MONTECITO PLANNING COMMISSION
Environmentally Sensitive Habitat Overlay Amendment Staff Report**

Hearing Date: March 25, 2009
Staff Report Date: March 10, 2009
Case Nos.: 09ORD-00000-00003
Environmental Document: CEQA Guidelines Section 15308

Development Services Director: Dianne Black
Staff: Noel Langle
Phone No.: 805.568.2067

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-00000-00003) amending Division 35.2 - Montecito Zones and Allowable Land Uses 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 development located in designated environmentally sensitive habitat areas.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 09ORD-00000-00003 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 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the Guidelines for Implementation of CEQA (Attachment B); and,
- Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 09ORD-00000-00003, an ordinance amending Section 35-2, the Santa Barbara County 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 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

On December 17, 2008, Planning and Development staff discussed with your Commission in a

workshop the existing language of the Montecito LUDC Environmentally Sensitive Habitat (ESH) Overlay that seeks to “protect and preserve specified areas in which plant species, animal species, and/or their habitats are rare or are especially valuable because of their role in the ecosystem and which could be easily disturbed or degraded by human activities and developments” and “ensure that any and all projects permitted in such areas are designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.”

However, as was discussed at the workshop, the mechanism to review and condition the proposed activity so that environmentally sensitive habitats are protected is only triggered when a permit for development is applied for. Within the Coastal Zone, major vegetation removal (the removal of native vegetation, brush, trees or orchards, involving a cumulative total of one-half acre or land or more) is defined as development and thus requires a Coastal Development Permit (CDP) which must be found consistent with the protections of the ESH overlay. However, outside the Coastal Zone, activities that do not require a permit (unless they are done in conjunction with activities that are subject to a permit) are not subject to the requirements of this overlay. Therefore, significant removal of vegetation may occur within a designated ESH area if it is not associated with an application for an activity that requires a permit.

Also, except for major vegetation removal within the Coastal Zone discussed above, without a permit requirement, the Planning and Development Department is unable to ensure that all activities occurring within the environmentally sensitive habitat areas are consistent with the policies of the Montecito Community Plan that address the protection of biological resources.

ESH overlays for the Goleta (adopted July 1993) and Toro Canyon (adopted February 2002) areas have addressed this situation by specifying that the following activities require a Land Use Permit (LUP) which can be conditioned to protect the environmentally sensitive habitat:

1. Grading in excess of 50 cubic yards of cut or fill.
2. The removal of vegetation along 50 linear feet of creek bank or removal that, when added to the previous removal of vegetation within the affected habitat, would total 50 feet or more linear feet of vegetation along a creek bank. The Toro Canyon overlay specifies native vegetation.
3. The removal of vegetation from an area greater than 5,000 square feet (Goleta) or 21,780 square feet (Toro Canyon), or the removal of vegetation that, when added to the previous removal of vegetation within the affected habitat, would total more than 5,000 square feet (Goleta) or 21,780 square feet (Toro Canyon). The Toro Canyon overlay again specifies native vegetation and also provides an exception for vegetation fuel management for fire protection within 100 feet of an existing structure which the Goleta overlay does not.
4. Vegetation fuel management beyond 100 feet from any existing structure on the property (Toro Canyon only).
5. Except for vegetation fuel management within 100 feet of an existing structure, the removal of any native trees greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees which are used as a habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Planning and Development Department makes one of the following findings: *(Note - this reflects the Toro Canyon overlay language; the Goleta overlay is somewhat different in that it (1) does not include the exemption for vegetation fuel management and (2) regulates the removal of native trees greater than six inches in diameter measured 4.0 feet above existing grade, or more than six feet in height.)*
 - a) The tree is dead and is not of significant habitat value.

- b) The tree prevents the construction of a project for which a Land Use Permit has been issued in compliance with the overlay, and project redesign is not feasible.
- c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity.
- d) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.

The Goleta and Toro Canyon ESH overlays also require the approval of a conditional use permit when proposed vegetation removal exceeds one acre, or along 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill. The Toro Canyon overlay again specifies native vegetation and includes the exemption for vegetation fuel management within 100 feet of an existing structure.

Based on the direction received at the December 17th workshop staff is now requesting that your Commission recommend adoption of the proposed ordinance amendment to the County Board of Supervisors. In general the ordinance uses the smaller area and linear feet thresholds from the Goleta ESH overlay, but includes the restriction to native vegetation and the exemption for vegetation fuel management from the Toro Canyon ESH overlay

5.0 PROJECT DESCRIPTION

5.1 Section 35.428.040.A Purpose and intent.

Section 35.428.040.A is amended to (1) replace the word “endangered” with “important or sensitive” to be more consistent with the Montecito Community Plan and (2) replace the word “development with “each project” to be more specific as to what is regulated under this section.

A. Purpose and intent. The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or ~~endangered~~ important or sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:

1. Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and
2. Ensure that ~~development~~ each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

5.2 Section 35.428.040.B Applicability.

Section 35.428.040.B is amended to make minor revisions and replace the word “development” with “project” where appropriate.

B. Applicability.

1. **Determination of applicability.** The Zoning Map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.

2. **Identification of newly documented sensitive habitat areas.** If an environmentally sensitive habitat area is identified by the Director to be located onsite during permit application review, but the habitat area does not have an ESH overlay zone designation, the applicable requirements of Subsection C through Subsection O below, shall apply ~~to the development~~. The Director will periodically update the Zoning Map to apply the ESH overlay zone to the new habitat areas and applicable setback areas (including the 250-foot area around the habitat).
3. **Relationship to primary zone.** Each land use and proposed ~~development~~ project within the ESH overlay zone shall comply with all applicable requirements of the primary zone in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the primary zone, the requirements of this Section shall control.
4. **Relationship to overlay zone.** Each land use and proposed ~~development~~ project within the ESH overlay zone shall comply with all applicable requirements of any additional overlay zone, in addition to the requirements of this Section. If a requirement of this Section conflicts with a requirement of the any other overlay zone, the requirements of this Section shall control.

5.3 Section 35.428.040.C Permit and Processing Requirements.

A new **Subsection 1 (Coastal Development Permit or Land Use Permit requirement)** is added to specify that the following activities require the approval of either a CDP or a LUP that can be conditioned to protect the environmentally sensitive habitat. This Subsection 1 uses the linear distance and area thresholds from the Goleta overlay, but, similar to the Toro Canyon overlay, restricts the permit requirement to the removal of native vegetation, utilizes the 4.5 foot diameter and more than six feet in height measurement criteria, and includes the exemption for vegetation fuel management required for fire protection within 100 feet of an existing structure.

1. Coastal Development Permit or Land Use Permit requirement. A Coastal Development Permit approved in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit approved in compliance with Section 35.472.110 (Land Use Permits) shall be required for the following activities, in addition to those activities required to have either a Coastal Development Permit or Land Use Permit by the primary zone:

- a. The removal of native vegetation along 50 linear feet or more of a creek bank or removal that, when added to the previous removal of native vegetation within the affected habitat on the site, would total 50 or more linear feet of native vegetation along a creek bank.
- b. Grading in excess of 50 cubic yards of cut or fill.
- c. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure:
 - (1) The removal of native vegetation over an area greater than 5,000 square feet or that, when added to the previous removal of native vegetation within the affected habitat on the lot, would total an area greater than 5,000 square feet.
 - (2) The removal of any native tree greater than six inches in diameter measured 4.5 feet above existing grade and more than six feet in height, or non-native trees that are used as habitat by Monarch butterflies for roosting, or by nesting raptors, unless the Director makes one or more of the following findings:

- (a) The tree is dead and is not of significant habitat value.
- (b) The tree prevents the construction of a project for which a Coastal Development Permit has been issued in compliance with Section 35.472.050 (Coastal Development Permits) or a Land Use Permit has been issued in compliance with Section 35.472.110 (Land Use Permits) and this Section, and project redesign is not feasible.
- (c) The tree is diseased and poses a danger to healthy trees in the immediate vicinity. The Department may require evidence of this to be presented by an arborist, licensed tree surgeon, or other qualified person.
- (d) The tree is so weakened by age, disease, storm, fire, excavation, removal of adjacent trees, or any injury so as to cause imminent danger to persons or property.

A new **Subsection 2 (Conditional Use Permit requirement)** is also added to specify that a conditional use permit (CUP) is required where native vegetation is proposed to be removed which would exceed one acre, or 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill. This CUP can be conditioned to protect the environmentally sensitive habitat. It also contains the exemption for vegetation fuel management required for fire protection within 100 feet of an existing structure from the Toro Canyon overlay.

2. Conditional Use Permit requirement. Except for vegetation fuel management required for fire protection within 100 feet of an existing structure, a Conditional Use Permit approved in compliance with Section 35.472.060 (Conditional Use Permits) is required where native vegetation is proposed to be removed which would exceed one acre, or 500 linear feet of creek bank, or where grading would exceed 1,500 cubic yards of cut and fill.

Subsection 3 (Application review - Inland area), formerly Subsection 1, is revised to apply to applications for Zoning Clearances in addition to applications for Conditional Use Permits and Land Use Permits.

13. Application review - Inland area. Upon receipt of an application for development a Conditional Use Permit (Section 35.472.110), Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project located within the ESH overlay zone in compliance with this section or sections governing the primary zone, the Director shall determine if the proposed development project is located in or within 100 feet of an environmentally sensitive habitat area.

Subsection 4 (Application review - Coastal Zone), formerly Subsection 2, is substantially revised to (1) clarify the permit process for CDPs and LUPs and (2) provide a permit process for CUPs which is required due to the addition of Subsection 2. as shown above. The CUP permit process includes the requirements for environmental review and site inspections by biologists that are currently required for CDPs.

24. Application review - Coastal Zone. Upon receipt of an application for development a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.110) or Land Use Permit (Section 35.472.110) for a project located within the ESH overlay zone, the Director shall determine the potential of the proposed development project to adversely impact an environmentally sensitive habitat area.

a. **Project with no adverse impact Coastal Development Permits and Land Use Permits.**

(1) Project with no adverse impact. If the proposed ~~development project~~ project is determined by the Director to (1) be exempt from the California Environmental Quality Act and is determined by the Director to ~~(2)~~ (2) have no potential for adverse impact on an environmentally sensitive habitat area and ~~(3)~~ (3) meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the permit in compliance with the applicable provisions of Subsection C.35 (Findings required for Coastal Development Permit, Conditional Use Permit, or Land Use Permit or Zoning Clearance approval) below.

b. **(2) Project with potential adverse impact.** If the proposed ~~development project~~ project is ~~exempt from the California Environmental Quality Act and~~ is determined by the Director to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.

~~(1a)~~ (1a) If the environmental ~~document~~ review indicates that the ~~development~~ proposed project has no significant unavoidable adverse impacts on an environmentally sensitive habitat area and meets all the other requirements for a Coastal Development Permit or Land Use Permit, the Director shall approve the ~~Coastal Development Permit~~ permit in compliance with the applicable provisions of Subsection C.35 (Findings required for Coastal Development Permit, Conditional Use Permit, or Land Use Permit or Zoning Clearance approval) below, with appropriate conditions if necessary.

~~(2b)~~ (2b) If the environmental document indicates that the ~~development~~ proposed project has significant unavoidable adverse impacts on an environmentally sensitive habitat area, then the Montecito Commission shall be the review authority for the application for ~~development~~ the Coastal Development Permit or Land Use Permit.

~~(ai)~~ (ai) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.

~~(bii)~~ (bii) Notice of the time and place of the hearing shall be given in compliance with Section 45.496.020 (Notice of Public Hearing and Review Authority Action) and the hearing shall be conducted in compliance with ~~Chapter 35.496 (Noticing and Public Hearings)~~ Section 35.496.100 (Hearing Procedures).

~~(eiii)~~ (eiii) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).

b. **Conditional Use Permits.**

(1) Project with no adverse impact. If the proposed project is determined by

the Montecito Commission to (1) be exempt from the California Environmental Quality Act (2) have no potential for adverse impact on an environmentally sensitive habitat area and (3) meets all the other requirements for a Conditional Use Permit, the Montecito Commission shall approve the permit in compliance with the applicable provisions of Subsection C.5 (Findings required for Coastal Development Permit, Conditional Use Permit, Land Use Permit or Zoning Clearance approval) below.

- (2) Project with potential adverse impact.** If the proposed project is determined to have the potential for adverse impacts on an environmentally sensitive habitat area, then the project shall require environmental review in compliance with the California Environmental Quality Act and, where necessary, a site inspection by a qualified biologist to be selected jointly by the County and the applicant shall be required.
- (a) The Montecito Commission shall hold at least one public hearing on the requested application and shall approve, conditionally approve or deny the request.
 - (b) Notice of the time and place of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 35.496 (Noticing and Public Hearings).
 - (c) The action of the Montecito Commission is final subject to appeal in compliance with Chapter 35.492 (Appeals).

Subsection 5 (Findings required for Coastal Development Permit, Conditional Use Permit or Land Use Permit approval), formerly Subsection 3, is revised to include Conditional Use Permits and Zoning Clearances in the list of permits which require the adoption of the special finding.

35. Findings required for Coastal Development Permit, Conditional Use Permit, or Land Use Permit or Zoning Clearance approval. An application for a Coastal Development Permit (Section 35.472.050), Conditional Use Permit (Section 35.472.060), or a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) for a project ~~within the ESH overlay zone~~ that is subject to compliance with this section shall be approved or conditionally approved only if the Director review authority first finds that the proposed development project will meets all applicable development standards contained in Subsection D through Subsection O, below, in addition to the findings required ~~for Coastal Development Permit or a Land Use Permit to be adopted by the review authority in compliance with Section 35.472.050 (Coastal Development Permits), Section 35.472.060 (Conditional Use Permits), Section 35.472.110 (Land Use Permits and Section 35.472.190 (Zoning Clearances), as applicable.~~

Subsection 6 (Conditions of approval), formerly Subsection 4, is revised to include CUPs in the list of permits which may be determined by the Director to require special conditions of approval to protect the ESH area.

46. Conditions of approval. A Coastal Development Permit (Section 35.472.050), Conditional use Permit (Section 35.472.060), or a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) may be approved with conditions of approval as

determined by the Director to be necessary to ensure protection of the habitat areas. The conditions may, among other matters, limit the size, kind, or character of the proposed work, require replacement of vegetation, establish required monitoring procedures and maintenance activity, stage the work over time, or require the alteration of the design of the development project to ensure protection of the habitat. The conditions may also include deed restrictions and conservation and resource easements.

6.0 ENVIRONMENTAL REVIEW

The proposed amendment is exempt from environmental review in compliance with Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA) which states actions taken by regulatory agencies to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for the protection of the environment is not subject to CEQA. The proposed ordinance will provide additional protection for environmentally sensitive habitat areas as a result of the additional permit requirements. See Attachment B for further discussion.

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 the Montecito Community Plan. In order to approve any application that results from this ordinance, the application still must be found consistent with the Comprehensive Plan and the Montecito Community Plan.

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 Planning Commission may recommend approval, approval with revisions, or denial of staff's recommendations for the proposed amendment to the Montecito LUDC.

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 Ordinance
- D. December 17, 2008 Montecito Planning Commission Workshop Staff Report

ATTACHMENT F: 3/19/2009 MONTECITO ASSOCIATION LETTER



The voice of our community

PLANNING & DEVELOPMENT

RECEIVED

MAR 20 2009

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 3/25/09

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- William Palladini
1st Vice President
- Diane Pannkuk
2nd Vice President
- Monica Brock Petersen
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Victoria Greene

Office Coordinator:

Brook Rademacher

Office:

1469 E. Valley Road
Santa Barbara, CA 93108

P.O. Box 5278
Santa Barbara, CA 93150
Tel: (805) 969-2026
Fax (805) 969-4043

info@montecitoassociation.org

March 19, 2009

Montecito Planning Commission
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: Proposed Land Use Development Code Amendments to Environmentally Sensitive Habitat Provisions, MPC Agenda of March 25, 2009

Dear Commissioners:

As you know, the Montecito Association initially requested the proposed changes to the Environmentally Sensitive Habitat provisions of the Montecito Land Use Development Code. We continue to urge adoption of these proposed amendments. We truly appreciate planning staff's efforts to bring this item forward in a timely manner and thank you for your endorsement to date.

Adoption of the proposed changes are important to ensuring that the policies of the Montecito Community Plan for protection of Environmentally Sensitive Habitat are implemented and can be enforced. We strongly endorse this long overdue effort.

We would like to suggest one minor change to the proposed ordinance. We suggest that Section 35.428.040.C Permit and Processing Requirements be drafted such that 50 linear feet of vegetation removal along a creek require a permit regardless whether or not all or part of the vegetation is native. Any vegetation removal along a creek has the potential to damage the creek habitat and wildlife and cause erosion and siltation regardless of the type of vegetation removed. The existence of the permit requirement in these cases would allow for appropriate mitigation and conditioning to ensure maximum protection of the sensitive riparian habitat.

Thank you for your efforts to further the intent of the Montecito Community Plan.

Sincerely,

Peter van Duinwyk
Peter van Duinwyk, President