



**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:** 10/04/2011  
**Placement:** Departmental  
**Estimated Tme:** 15 minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

---

**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:** Chapter 21 Appeals and Certificates of Compliance Process 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:

- A. Introduce (first reading) an ordinance (Case No. 11ORD-00000-00011) amending Chapter 21, Land Division, of the Santa Barbara County Code to update the procedures regarding accepting and processing of appeals, and add procedures for processing certificates of compliance, and:
- B. Continue to October 18, 2011 to:
  1. Make the findings for approval, including CEQA findings, of the proposed ordinance as shown in Attachment A;
  2. Approve the Notice of Exemption included as Attachment B and direct staff to file the Notice of Exemption with the County Clerk;
  3. Adopt (second reading) an ordinance (Case No. 11ORD-00000-00011), included as Attachment C, amending Chapter 21, Land Division, of the Santa Barbara County Code.

**Summary Text:**

The Planning and Development Department is committed to keeping the land development codes accurate and up-to-date by routinely processing amendments that address emerging issues, and correct and clarify existing language in order to better ensure that regulations keep pace with current trends and policies, as well as State Law. In 1997, the County recommitted itself to this cyclical update program.

Chapter 21 of the County Code, which contains the land division regulations for Santa Barbara County, has not been amended in any significant manner since 2001 and as such does not reflect the

process improvements that were made to the County's zoning ordinances through the adoption of the County and Montecito Land Use and Development Codes in 2006. The proposed amendment would:

- revise the existing appeals process in Chapter 21 to be more consistent with the appeals processes contained in the zoning ordinances; and,
- add procedures for processing applications for Certificates of Compliance and Conditional Certificates of Compliance consistent with State law.

## **1.0 Appeals Process.**

The following summarizes the more significant revisions to the existing text within Chapter 21 regarding the processing of appeals. These revisions primarily address appeals of decisions of the Zoning Administrator that are submitted to and processed by the Planning and Development Department. Any reference in the following discussion to "the Planning Commission" includes both the County Planning Commission and the Montecito Planning Commission unless specified otherwise. The proposed ordinance also includes minor text corrections and revisions.

### **1.1 Who may appeal.**

**Existing:** Chapter 21 currently allows appeals to be filed by the applicant and any "interested person" adversely affected by the decision.

**Proposed:** The proposed ordinance would restrict the ability to appeal to applicants and "aggrieved persons" as opposed to interested persons. This would apply to both appeals filed with the Planning and Development Department and the Clerk of the Board. An aggrieved person is defined as any person who either appeared at a public hearing in connection with the appealed decision, or informed the decision-maker of the nature of their concerns prior to the decision, or who for good cause was unable to do either. An aggrieved party may be a third-party such as a neighbor or interested group. Revising Chapter 21 to restrict appeals to those filed by the applicant and aggrieved persons is consistent with the current provisions in the County and Montecito Land Use and Development Codes and the Article II Coastal Zoning Ordinance.

**1.2. Appeals of decisions of the County Surveyor or the Planning Commission.** Appeals of decisions of the County Surveyor and the Planning Commission are currently heard by the Board of Supervisors. The proposed ordinance would maintain this procedure.

### **1.3. Appeals of decisions of the Zoning Administrator.**

#### **a. Jurisdiction over appeals.**

**Existing:** Appeals of decisions of the Zoning Administrator are currently heard by the Board of Supervisors.

**Proposed:** The proposed ordinance would instead provide that appeals of decisions of the Zoning Administrator are heard by the Planning Commission. However, the Planning Commission decision on the appeal could still be appealed to the Board of Supervisors.

In this instance "Planning Commission" only refers to the County Planning Commission since the Montecito Planning Commission acts as the Zoning Administrator on applications for projects located within the Montecito Community Plan area. Appeals of decisions by the Montecito Planning Commission are heard by the Board of Supervisors.

Revising Chapter 21 in this manner is consistent with the current provisions in the County and Montecito Land Use and Development Codes and the Article II Coastal Zoning Ordinance.

**b. Requirements for contents of an appeal.**

**Existing:** The existing requirements merely provide that the appellant shall state specifically in the appeal how the decision of the Zoning Administrator is inconsistent with the purposes of Chapter 21 and/or the State Subdivision Map Act, or that an error or abuse of discretion was committed by the Zoning Administrator.

**Proposed:** The proposed procedures would require that the appellant provide:

- A clear, complete, and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of Chapter 21 (Land Divisions) of the County Code or other applicable law; or,
- If it is claimed that there was an error or abuse of discretion on the part of the decision-maker, or other officer or authorized employee, or that there was a lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration leading to the making of the decision or determination that is being appealed, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made, then the grounds for these claims shall be specifically stated.

Revising Chapter 21 in this manner is consistent with the current provisions in the County and Montecito Land Use and Development Codes and the Article II Coastal Zoning Ordinance.

**c. Rejection of appeals:**

**Existing:** Currently there is no existing process regarding the rejection of appeals. All appeals filed within the appeal period must be brought to a hearing whether or not the appeal is filed by the applicant or a third-party or states a reason for the appeal.

**Proposed:** Consistent with the appeals procedures contained in the zoning ordinances, the proposed ordinance provides that the each appeal would be reviewed by the Director of the Planning and Development Department, and gives the Director the authority to reject an appeal if it does not comply with the requirements discussed above. The decision of the Director to reject an appeal would be final and not subject to appeal.

Revising Chapter 21 in this manner is consistent with the current provisions in the County and Montecito Land Use and Development Codes and the Article II Coastal Zoning Ordinance.

**2.0 Certificates of Compliance Process.**

Government Code Sections 66499.34 and 66499.35 of the California Subdivision Map Act (SMA) provide a process by which a property owner (including a person under a contract of sale to purchase property) may establish the legality of a parcel of land for the purposes of sale, lease or finance through the recordation of either a Certificate of Compliance or a Conditional Certificate of Compliance.

The SMA provides that an owner of a parcel of land may request, and the County shall issue (record) an unconditional Certificate of Compliance if the creation of the parcel complied with the SMA and County land division regulations in effect at the time of creation. The SMA also provides that if the parcel was not created in compliance with the SMA and County land division regulations in effect when the parcel was illegally subdivided, that the County normally shall issue a Certificate of Compliance, but allows the County to attach conditions to the Certificate that regulate any future development of that parcel. These are known as Conditional Certificates of Compliance. The SMA also limits the scope of the conditions that may be attached to a Conditional Certificate of Compliance.

These limits are discussed in Subsection 2.5, below.

Currently Chapter 21 does not contain any procedures regarding how applications for Certificates of Compliance or Conditional Certificates of Compliance are to be processed except to state that the County Zoning Administrator is the decision-maker responsible for approving Conditional Certificates of Compliance. This amendment would add appropriate processing procedures for Certificates of Compliance and Conditional Certificates of Compliance to Chapter 21. These procedures are summarized below. In addition, the proposed ordinance also includes minor text corrections and revisions to Chapter 21.

- 2.1 Application filing and review.** In compliance with State law, the proposed ordinance provides that any person who owns a parcel of land, or a purchaser who has entered into a contract of sale for a parcel of land, may submit an application for a Certificate of Compliance to the County. The proposed ordinance further provides that this initial application is made to the County Surveyor.
- 2.2 Initial review by County Surveyor.** After the application is submitted, the County Surveyor reviews the application materials and determines whether the parcel is eligible for an unconditioned Certificate of Compliance (because it was created in compliance with applicable laws governing land divisions in effect at the time of creation), or for a Conditional Certificate of Compliance (because the parcel was not created in compliance with applicable laws). The determination of the County Surveyor may be appealed to the Board of Supervisors by either the applicant or an aggrieved person.
- 2.3 Certificates of Compliance.** If the County Surveyor determines that the property is eligible for an unconditioned Certificate of Compliance, then the County Surveyor will prepare and record a Certificate of Compliance with the County Recorder.
- 2.4 Conditional Certificates of Compliance.** If the County Surveyor determines that a Conditional Certificate of Compliance is required, then the County Surveyor will direct the applicant to file an application for a Conditional Certificate of Compliance with the Planning and Development Department. After receipt of the application the Planning and Development Department will process the application through the following steps:
  - a. CEQA review.** Review the application in compliance with the requirements of the California Environmental Quality Act.
  - b. Subdivision/Development Review Committee review.** Refer the application to the Subdivision/Development Review Committee so that the different County agencies that constitute the Committee (Air Pollution Control District, County Fire Department, Park Department, Planning and Development Department, Public Health Department, Public Works Department) may review the application and submit recommendations to the decision-maker regarding appropriate conditions to be recorded with the Certificate.
  - c. Noticed, public hearing.** Hold a noticed, public hearing on the application. At the conclusion of the hearing the Zoning Administrator (or Montecito Planning Commission for applications within the Montecito Community Plan area) will approve the application subject to appropriate conditions. This action is subject to appeal to the County Planning Commission if the Zoning Administrator is the decision-maker, or the Board of Supervisors if the Montecito Planning Commission is the decision-maker. The County may not deny the application for the Conditional Certificate of Compliance if it is properly filed, but can require that any future development of the parcel comply with appropriate conditions.

**2.5 Conditions of approval.** The SMA limits the scope of the conditions that the County may require based on whether or not the applicant is considered an “original subdivider.”

- a. Owners are original subdividers.** If the owners of the property are the original subdividers, (i.e., they created the illegal subdivision), then the decision-maker may impose any conditions that would be applicable to a current application for a subdivision of the property, regardless of when the property was divided. For example, if the illegal subdivision occurred in 1980, and the application for the Conditional Certificate of Compliance is filed in 2011, then the County may impose those conditions that would be appropriate to an application for a subdivision approved in compliance with today’s standards.
- b. Owners are not original subdividers.** If the owners of the property had no responsibility for the subdivision that created the parcel, then the decision-maker may only impose conditions that would have been applicable to the subdivision at the time the parcel was acquired by the current owners. For example, if the illegal subdivision occurred in 1980, and the owner requesting the Certificate acquired the property in 1990, then the County is limited to applying those conditions that would have been appropriate for a subdivision approved in 1990.
- c. Timing of compliance with conditions.** The SMA also provides that compliance with conditions shall not be required until the time that a permit or other grant of approval for development of the property is issued by the County.

**2.6 Completion of process (Conditional Certificates of Compliance).** Following either the expiration of applicable appeal periods, or, if an appeal has been filed, final action on the appeal, the County Surveyor will record the Conditional Certificate of Compliance with the approved conditions with the County Recorder. The Certificate will identify the property and serve as notice to the owner or subsequent purchaser that fulfillment and implementation of the conditions approved by the County shall be required before subsequent issuance of a permit or other approval for the development of the property.

**3.0 Planning Commission Review.** Planning and Development Department staff reviewed the proposed amendment to Chapter 21 with the Montecito Planning Commission on April 21, 2011, and the County Planning Commission on May 4, 2011. While the Commissions were generally supportive of the amendment, they took no formal action since they are not an advisory body to the Board of Supervisors on amendments to Chapter 21.

**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.

**Attachments:**

- A. Findings
- B. CEQA Notice of Exemption
- C. Ordinance Amendment (showing proposed revisions)

**Authored by:**

Noel Langle, Planner (805.568.2067)