

**MONTECITO GROWTH MANAGEMENT ORDINANCE**

**ORDINANCE NO. 4763 (Case No: 09ORD-00000-00014)**

**AMENDED BY ORDINANCE 4816 (Case No: 11ORD-00000-00028)**

*(Effective January 5, 2012 in the Inland Area; effective March 8, 2012 in the Coastal Zone)*

**ORDINANCE AMENDING CHAPTER 35B, MONTECITO GROWTH MANAGEMENT ORDINANCE OF THE SANTA BARBARA COUNTY CODE, 35B TO RENEW AND EXTEND THE PROVISIONS OF CHAPTER 35B TO DECEMBER 31, 2030; AMEND SECTIONS 35-1, SHORT TITLE PURPOSE;, 32B-2, FINDINGS; SECTION 35B-3, APPLICABILITY; SECTION 35B-4, DEFINITIONS; SECTION 35B-5, ESTABLISHMENT OF ANNUAL DWELLING UNIT PERMIT ALLOCATIONS; SECTION 35B-6, PROCEDURES FOR ALLOCATIONS; SECTION 35B-7, POINT ASSIGNMENT SYSTEM; DELETING SECTION 35B -8 AND RENUMBERING SUBSEQUENT SECTIONS; AMENDING SECTION 35B-9, EXEMPTIONS; SECTION 35B-10, MODIFICATIONS; AND SECTION 35B-11, EXPIRATION**

WHEREAS, the public health and safety, the preservation of the semi-rural character of the Montecito area and the necessity of assuring adequate services consistent with available resources and environmental constraints require adoption of a system for growth management in the Montecito Planning Area;

WHEREAS, the County, in consultation with the General Plan Advisory Committee (GPAC), has completed studies, including an Environmental Impact Report, which evaluate the need for and effects of a comprehensive Growth Management Plan for the Montecito Planning Area as defined in the County Comprehensive Plan, including management of residential development; and

WHEREAS, the County has prepared a Montecito Growth Management Plan, consisting of this ordinance, Comprehensive Plan and Coastal Plan goals, policies and implementation measures and residential land use designations, and a growth management overlay to all zone districts in the Montecito Planning area; and

WHEREAS, the Growth Management Ordinance is necessary to implement certain provisions of the Montecito Growth Management Plan; and

WHEREAS, the County has determined that the most effective method of preserving opportunities to meet the County's affordable housing needs in the Montecito Planning Area is to provide priorities and/or exemptions under a growth management plan as implemented by this growth management ordinance while continuing to explore other feasible alternative methods by which these needs might be met; and

WHEREAS, duly noticed public hearings have been held pursuant to Government Code §§ 65090 and 65091 before the Montecito Planning Commission and the Board of Supervisors to allow participation and comments on the adequacy of the MCP EIR (92-EIR-03), the SEIR (10EIR-00000-00003), and the provisions of this ordinance, and which have afforded an opportunity for all interested parties and affected property owners to appear and present testimony in connection with these matters; and

WHEREAS, the County has completed and certified the Environmental Impact Report (EIR), including the 2010 Supplement to the EIR, which analyzed appropriate management programs for the Montecito area and assessed a range of alternative growth scenarios; and

WHEREAS, the annual one-fourth percent permit allocation rate alternative, which provides for a

total permitted number of 10 units a year, as analyzed in the EIR had no significant benefits compared to the project; and

WHEREAS, the County-adopted permit allocation growth rate of one-half percent along with exemptions will enable the County to meet its affordable housing obligations in the most feasible and environmentally protective manner; and

WHEREAS, prior to the growth management ordinance the Montecito Planning Area had an average population increase of 2.26 percent per year which was out of balance with community resources; and

WHEREAS, Land Use Policy Number 4 of the Land Use Element obligates the County to perform its long-term and land use permitting functions for new development consistent with available groundwater resources and other resource and public service constraints; and

WHEREAS, the Montecito Growth Management EIR, and the Montecito Community Plan EIR and its 2010 Supplement, confirmed existing resource and service deficiencies including but not limited to the following areas: water supply and demand, traffic capacity and levels of service, air quality, fire protection, sanitary services; and

WHEREAS the primary purpose for adoption of a growth management ordinance is to pace development at a rate appropriate for the community and that affords the best opportunity for bringing resources related to water, fire, sanitary services, transportation infrastructure and service, and air quality into balance with development; and

WHEREAS, the estimates of existing water supply are subject to uncertainties in the quantities of water delivered from year to year affecting deliveries from major water sources of supply and changes in hydrologic and physical conditions affecting the method of determining the availability of water; and

WHEREAS, estimates of water demand are subject to uncertainties involving 1) the effect of long term water conservation measures, 2) the use of ground water by private pumpers, and 3) pricing and water use policies of the Montecito Water District; and

WHEREAS, because uncertainty in both supply and demand figures will affect the available balance of water supplies in the Montecito Planning area, it is the policy of Santa Barbara County to closely monitor this data on an ongoing basis and to evaluate supplies and adjust development controls and allowable rates accordingly; and

WHEREAS, traffic levels on Montecito Planning Area roads are exceeding or approaching their design and acceptable capacities and pacing development will allow the County to plan for a more efficient use of its transportation network before roadways are additionally and unduly strained; and that is consistent with Montecito Community Plan policies that protect narrow road widths and minimal traffic lights in order to maintain community character; and

WHEREAS, meeting community needs for fire protection services would be impaired by lack of adequate water supply and pressure, and uncontrolled residential development increases the probability of inadequate response times; and

WHEREAS, the infrastructure of the existing sanitary service area may not be adequate to meet build-out of the Montecito Planning Area under current general plan designations;

THEREFORE, the Board of Supervisors of the County of Santa Barbara ordains as follows:

#### SECTION 1:

Chapter 35B of the Santa Barbara County Code is hereby amended as follows:

**SECTION 35B-1 SHORT TITLE. PURPOSE.**

- 1.1 This Section 35B shall be known as the "Montecito Growth Management Ordinance" and is referred to herein as "this Ordinance."
- 1.2 It is the purpose of this Ordinance to accomplish the following:
  - 1.2.1 Pace residential growth and prevent rapid depletion of constrained resources in the Montecito Planning Area until such time as development and growth can be brought into balance with resources, services, and infrastructure.
  - 1.2.2 Augment and implement goals, policies and objectives expressed in the Comprehensive Plan, including the Local Coastal Plan and Zoning Ordinances relating to water resources, transportation/circulation, fire protection, sanitary services and housing.
  - 1.2.3 Preserve the semi-rural character, quality of life, open space and environmental resources of the community.

**SECTION 35B-2: FINDINGS**

The provisions of this Ordinance are based on the following Findings:

- 2.1 Necessity of Growth Management Ordinance.** The County must plan for a steady, rather than fluctuating, overly rapid rate of growth each year so as to allow resources, services, and infrastructure capacities in the County to be properly and effectively monitored and provided without further overextending existing facilities or incurring the increasing cost of short-sighted facility expansion, and to bring all deficient services to required standards through long-range planning.
- 2.2 Existing Policies.** The County has adopted a Comprehensive Plan including a Local Coastal Plan consisting of land use designations, and development goals and policies as well as zoning ordinances regulating residential, commercial and industrial development in the Montecito area. The Comprehensive Plan including the Coastal Land Use Plan and the Montecito Community Plan, contain the following applicable policies, which mandate that growth occur at a steady, defined rate and within existing resources and service levels:
  - 2.2.1 "Environmental constraints on development shall be respected. Economic and population growth shall proceed at a rate that can be sustained by available resources." (Land Use Element: Countywide Goals and Policies 1.a. Environmental Goal)

"In order to pace development within long-term readily available resources and services (i.e., water, sewer, roads, schools), the County shall not permit the number of primary residential units to exceed an annual rate of one half of one percent of the permitted 1989 housing stock unless specifically exempted by ordinance. This rate shall represent the maximum allocated residential growth rate until such time that the County determines, through a periodic public review of the status of services and infrastructure in the Montecito Planning Area, that further growth can be accommodated by acceptable and reliable supplies and capacities without diminishing the quality of life in the community." (Land Use Element Policy I.A.1)

"A temporary reduction in the annual one-half percent dwelling unit permit rate and corresponding reduction in number of permit allocations for the Montecito Planning Area may be enacted by the Board of Supervisors, if the short term availability of resources is jeopardized by the continued allocation of such permits." (Land Use Element Policy I .A. 2)
  - 2.2.2 "Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service

extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.” (Land Use Element Policy 4, Coastal Land Use Plan Policy 2.6)

- 2.2.3 “The Board of Supervisors and/or Planning Commission shall not approve new housing developments within the unincorporated South Coast Area which would utilize new extractions or increases in extractions of groundwater from any physically overdrafted groundwater basin, or which through such new or increased groundwater extractions would create a condition of physical overdraft in any groundwater basin. A condition of existing physical overdraft or project-induced physical overdraft shall be verified by the County Water Agency.” (Land Use Element South Coast Policy 1)
- 2.2.4 “The Board of Supervisors strongly encourages the governing Board of the various water purveyors within the unincorporated area of the County to take steps to increase their firm water supplies, including but not limited to placing water supply augmentation projects and/or funding measures on the ballot for decision by the voters.” (Land Use Element South Coast Policy 2)
- 2.2.5. “New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.” (Coastal Land Use Plan Section 3.2.1, and Coastal Act section 30250)
- 2.2.6. “The long term integrity of groundwater basins or sub-basins located wholly within the coastal zone shall be protected. To this end, the safe yield as determined by competent hydrologic evidence of such a groundwater basin or sub-basin shall not be exceeded except on a temporary basis as part of a conjunctive use or other program managed by the appropriate water district. If the safe yield of a groundwater basin or sub-basin is found to be exceeded for reasons other than a conjunctive use program, new development, including land division and other use dependent upon private wells, shall not be permitted if the net increase in water demand for the development causes basin safe yield to be exceeded...” (Coastal Land Use Plan Policy 2.2)
- 2.3 Service and Resource Constraints.** The rate of growth in the Montecito Planning Area prior to growth management averaged 2.26 percent per year, which is in excess of the one half percent annual rate of primary units specified in the Land Use Element.
- 2.3.1 There is a documented limited amount of water available to the Montecito Planning Area for new construction, and available water resources must be carefully managed for the protection of the groundwater basin, the current users, and the potential new users.
- 2.3.2 Roadway segments and intersections in the Montecito Planning Area are currently operating close to or exceed the current design or acceptable capacity identified in the current Circulation Chapter of the Montecito Community Plan.
- 2.3.3 Other roadway segments or intersections are projected to exceed acceptable or design capacity standards over the next twenty years.
- 2.3.4. The South Coast of Santa Barbara County is state designated in non-attainment for ozone and particulate matter and is striving to reach attainment through measures adopted in the Clean Air Plan including the encouragement of growth management.
- 2.3.5 There approximately 3,840 existing permitted dwelling units in the Montecito Planning Area on record with the County.

- 2.3.6 Montecito is a wildland-urban interface area and experiences periodic wildland fires, including the 2008 Tea Fire and the 2009 Jesusita Fire.
- 2.3.7 A substantial portion of the Montecito Planning Area lies outside the five minute response time for fire protection. Montecito public facilities, such as sanitary infrastructure and pump station locations will need improvements and upgrades to keep pace with existing and future build-out.

## **2.4 Growth Rate.**

- 2.4.1 In view of the documented limited resources available, it is necessary and appropriate to establish an annual permit allocation for new dwelling units of not more than one-half percent of the currently existing permitted units.
- 2.4.2 The annual permit allocation for new dwelling units is a flat rate percentage of the base number of existing legally permitted dwelling units (approximately 3,800), using 1989 as a base year count. The one-half percent permit allocation limit will allow the County to work towards a balance between growth and resources. It is recognized that the short term annual increase in dwelling units may in fact exceed one half percent due to construction of units exempted from this ordinance, but that the cumulative impacts of these exemptions would not add substantially to the resource constraints already present in the community. One half percent would continue to be the most feasible rate for providing consistency with public resource goals for the long-term planning horizon.
- 2.4.3 An annual permit allocation of one-half percent, for purposes of this ordinance, is 19 dwelling units per year. Periodic resource and infrastructure constraint reports may cause the Board of Supervisors to further reduce this number. The growth rate will be monitored by tracking with allocations granted on a bi-annual basis. One-half of the yearly allocation will be distributed each six months.
- 2.4.4 The growth management ordinance establishes a priority for the distribution and timing of development which slows the service demands on the community by limiting the number of new dwellings allowed each year and by prioritizing those units based on a point system designed to give credit to development that demonstrates particularly reduced impacts on the services and resources which can best benefit from the establishment of such a point system.
- 2.4.5 A growth management ordinance establishes a mechanism that is "self-monitoring" and "self-regulating" because:
1. Resources will be closely monitored by the County and will be reviewed regularly in light of the demand created by the allowed growth rate. If the allowed growth rate is found to exceed the availability of water or of other service and infrastructure constraints the ordinance growth rate would be reassessed, and
  2. Conversely, if water or the availability of various services are found to be sufficient to allow for a higher rate of growth, the ordinance would be reviewed for an increase in the growth rate, and
  3. The periodic review procedure allows the County to assess and avoid possible future environmental impacts by maintaining a balance between growth and available resources, and
  4. The review procedure also provides for the establishment of a database containing current and periodically updated information on resources.
- 2.4.6 The limitation on the rate of development of new dwelling units provided by this plan is consistent with the County Comprehensive Plan, including the Montecito Community Plan, and the Local Coastal Plan. The growth management program as implemented through this Ordinance will augment policies and goals of the Comprehensive Plan, including the Montecito Community Plan

and the Local Coastal Plan. The Growth Management Ordinance paces development in order not to exacerbate the existing constraints that have required its implementation.

- 2.5 In addition, the pacing of new development is reasonably expected to:
- 2.5.1 Prevent the accelerated rate of depletion and/or overdrafting of the groundwater basin while encouraging cooperative efforts with Water Agencies and purveyors to obtain a long range, acceptable, and reliable source of water to serve the community.
  - 2.5.2 Reduce growth in future demand on the roadways while exploring Circulation Element and Montecito Community Plan alternatives and implementing new roadway and planning strategies which reduce the need for future capital improvements and increase efficiency.
  - 2.5.3 Encourage water conservation and monitoring the efficient use of available supplies.
  - 2.5.4 Prevent rapid depletion of service resources by monitoring and annually reporting on the status of services.

## **2.6 Housing Element Consistency.**

- 2.6.1 The growth rate is consistent with Housing Element identified goals as follows:  
The identified Regional Housing Needs Allocation for the South Coast Housing Market Area is 1,182 units as identified in the 2003-2008 Housing Element.
- 2.6.2 This ordinance provides for exemptions for affordable units and second residential units.
- 2.6.3 Based on the exemption provisions of affordable units, the delay in the construction of market rate and luxury units will have a negligible effect on the provision of housing opportunities in the region.
- 2.6.4 To achieve an appropriate balance in the type of housing provided, exemptions and incentives for affordable housing are provided in the growth management ordinance.
- 2.6.5 The Board of Supervisors finds, pursuant to Government Code §65863.6, that the public service needs of the residents of the region and the lack of availability of fiscal and environmental resources outweigh any effect of this ordinance on the housing needs of the region in limiting the number of housing units which may be constructed on the annual basis.

## **SECTION 35B-3: APPLICABILITY.**

The provisions of this Ordinance shall apply to the following:

- 3.1 All Land Use Permit, Zoning Clearance, and Coastal Development applications sought under Chapter 35, Zoning, of the Santa Barbara County Code, including the Montecito Land Use and Development Code and Article II or its successor which add or create the potential for additional new residential units in the Montecito Planning Area.
- 3.2 All new applications for Subdivisions (Tentative Maps), Lot Line Adjustments, Development Plans, Conditional Certificates of Compliance or any other action excluding applications for certain exempted classes, which could result in the potential to add a new primary residential unit where that potential did not previously exist.

## **SECTION 35B-4: DEFINITIONS.**

For the purposes of this ordinance, the following terms shall be defined as follows:

"Calendar Year" shall be defined as January 1 through December 31 of each year.

"Group Quarters" shall be defined as a lodging or boarding house, residence hall, sanitarium, or special care home.

"Dwelling Unit" shall be defined pursuant to the definition in the Montecito Land Use and

Development Code and Article II or its successor.

"Allocation" shall be defined as a written authorization which enables a property owner or agent to apply for a development permit or Zoning Clearance for a dwelling unit.

**SECTION 35B-5: ESTABLISHMENT OF ANNUAL DWELLING UNIT PERMIT ALLOCATIONS.**

Allocations for new dwelling units hereinafter granted while this ordinance is in effect shall be granted at a rate of 19 per year. Certain projects are exempt from the annual permit allocation pursuant to Section 35B-8.

**SECTION 35B-6: PROCEDURES FOR ALLOCATION.**

- 6.1 Determination of points and granting of an allocation shall be made in writing by the Director of the Planning and Development Department on applications that do not require approval by the Zoning Administrator, Montecito Planning Commission, or Board of Supervisors. Allocations shall be based on point assignments and, as necessary, lottery.
  - 6.1.1 The point assignment shall be adopted by the review authority as a finding of approval on discretionary projects. A subsequent allocation shall be granted by the Director of the Planning and Development Department if appropriate using the point assignment adopted by the review authority.
- 6.2 All appeals of actions on determinations of points and allocations shall be filed within the 10 calendar days following such action in compliance with Article II or its successor and the Montecito Land Use and Development Code requirements governing appeals.
  - 6.2.1 If an appeal of point assignment is granted such that the point assignment is increased, and the new assignment, when competitively ranked against other applications for allocation received in the allocation period in which the appealed point assignment was received, would result in an allocation being granted, then the allocation shall count toward the available allocation in the then current six month period. If the available allocations in the then current six month period are insufficient to distribute to all successful appellants, the allocations for the succeeding six month period shall be reduced accordingly.
- 6.3 Each allocation shall be valid only for the specific lot for which application was made, and the allocation shall run with the land.
- 6.4 Application for an allocation may be made at any time during the year, except within the 45-day period prior to June 15 and December 15 of each calendar year. With the exception of Category B exemptions, granting of allocations shall occur no later than the subsequent June 15 or December 15 following the date of their approval.
- 6.5 Applicants for an allocation not granted an allocation in one biannual period, may request in writing reconsideration in subsequent periods without re-application, if no substantial changes are made in the project description. Such application shall be required to compete against all other applications considered in the new period.
- 6.6 In the event that there are an insufficient number of allocations for distribution to all applicants for affordable projects, or to a group of applicants with an equal number of total points, available allocations will be awarded by lottery from amongst the applicants in that group, with priority given to the affordable housing units.
- 6.7 The number of allocations granted shall not exceed 19 per calendar year, nine to be granted by June 15, and 10 to be granted by December 15, except as otherwise provided in this ordinance. Allocations left unassigned may carry over to the next cycle of that calendar year providing that the annual distribution shall not exceed 19 allocations in the calendar year.

- 6.8 Upon request of the applicant, which may only be made at the time of submittal of an application for point assignment and allocation, duplexes, condominiums and adjacent parcels in identical ownership may be reviewed as though they are one application and allocations shall be awarded for each dwelling unit, if sufficient number of points are assigned. The point assignment shall be the average of the total of the number of points assigned to each parcel divided by the total number of parcels. If assignment of allocations of the aforementioned application results in the distribution of more than nine allocations for the first six month period or 10 allocations for the second six month period for the calendar year, available allocations for the following six month period shall be reduced accordingly.
- 6.9 An allocation shall be obtained prior to submittal of an application for the Montecito Board of Architectural Review (MBAR) process and development permit or zoning clearance. An allocation granted by the County shall expire, unless an application for MBAR review has been submitted within the six months following the granting of the allocation. An allocation shall be valid for no longer than three years following the granting of an allocation, The Director of the Planning and Development Department may extend this three year period one time for 90 days based upon documentation of active and substantial effort toward issuance of a Coastal Development Permit, Land Use Permit, or Zoning Clearance. An application for a development permit or zoning clearance shall substantially comply with the project submittal relied upon in granting the allocation; however withdrawal and submittal of applications for a "Minor Change" to a Coastal Development Permit, Land Use Permit, or Zoning Clearance in compliance with the Montecito Land Use and Development Code, Article II or its successor and Montecito Board of Architectural Review approval is allowed within this three year period. A change in the project submittal which could affect the assignment of points in any individual category, the affordability of a dwelling unit, the potential number of units, as determined by the Director of the Planning and Development Department, shall invalidate the granted allocation.
- 6.9.1 In addition to the 90 day time extension provided in Subsection 6.9, above, the Director for good cause may extend the expiration of an active, unexpired allocation for additional 24 month periods in compliance with the following:
- a. The Director has determined that a time extension is necessary due to an economic hardship resulting from the continuing national economic downturn.
  - b. The application for the time extension is filed with the Department in compliance with the following:
    - (1) The application shall be filed prior to the expiration of the allocation that is the subject of the time extension request; however, an application may only be filed within the six month period immediately preceding the date that the allocation would otherwise expire.

This Subsection 6.9.1 shall expire, and be of no further force or effect, on January 12, 2015, unless extended by ordinance.

- 6.10 Appropriate fees as established by resolution of the Board of Supervisors shall be charged for processing applications for allocations, reconsideration, and point assignments.

#### **SECTION 35B-7: POINT ASSIGNMENT SYSTEM**

- 7.1 Allocations for dwelling units subject to the allocation system shall be awarded twice a year, on the basis of a point assignment system. Projects with the highest number of points will be awarded available allocations for each six month period.
- 7.2 Projects shall be evaluated under the following:



- 7.2.1 Project includes an irrevocable agreement running with the land or change to a Comprehensive Plan Designation that reduces or eliminates potential residential development.  
 Number of points for one or more potential residential units removed ..... 20
- 7.2.2 Project demonstrates that it that it has obtained a Certificate of Water Service Availability or its equivalent and had submitted a conceptual water conservation plan approved by the MWD.  
 Number of points for one or more potential residential units removed ..... 10
- 7.2.3 Project demonstrates that it does not direct vehicular access to any of the following roadways:
  - 1. North Jameson Lane
  - 2. Olive Mill Road
  - 3. Sheffield Drive between Jelinda Drive and Birnam Wood Drive
  - 4. East Valley Road, between Cota and Picacho Lane
 Number of points ..... 20
- 7.2.4 Project is within 1/4 mile walking distance along roadways from a bus stop ..... 5
- 7.2.5 Project complies with all of the following:
  - a. Travel distance from nearest Montecito Fire Protection District fire station to proposed structure is less than three miles.
  - b. Response time for fire apparatus from fire station to proposed structure does not exceed five minutes.
  - c. The project shall be served by a fire district approved water supply system which satisfies fire flow criteria identified in Montecito Fire Protection District Standards.
 Number of points ..... 20
- 7.2.6 Project is located below hydraulic grade lines or a project certificate from the Montecito Water District (MWD) and Montecito Fire Protection District (MFPD) certifying adequate water pressure and/or the installation of private water tanks and pumps for fire protection.  
 Number of points ..... 5
- 7.2.7 Project proposed for development is located is located outside of:
  - High Fire and Very High Fire Zones.....10 points
  - Very High Fire Zone.....5 points
- 7.2.8 Portions of the site which would be disturbed for preparation and construction activities (including access, roads, structured pads, accessory structures and buildings, and exterior accessory areas) shall not exceed 10 percent slope  
 Number of points ..... 20
- 7.2.9 Project site does not contain any habitat areas  
 Number of points ..... 20
- 7.2.10 Project may receive points in the following categories; points may be awarded only if the applicant has the ability to site the project so that it would be located closer than the distances specified:
  - a. Project protects oak trees and oak woodland areas by providing a minimum of a 25 feet undisturbed buffer around all oak woodlands and all mature individual oak trees on site as measured from the tree trunk ..... 10 points
  - b. Project protects mapped monarch butterfly wintering sites from development by providing a minimum 100 foot undisturbed buffer from all butterfly trees ..... 10 points
  - c. Project includes restoration of all disturbed and/or artificially channelized wetlands or

riparian areas and surrounding stream habitats on the parcel ..... 10 points

d. Project protects undisturbed or restored stream(s), creek(s), and riparian vegetation by providing a minimum buffer strip of 75 feet from the top of the bank for urban area streams and 125 feet in other areas ..... 10 points

7.2.11 Project proposed for development is located outside the 100 year floodplain  
Number of points ..... 10

7.2.12 Project is outside Cold Springs and Montecito Union School District Boundaries  
Number of points ..... 10

7.2.13 Dedicated pedestrian pathways, and public hiking and/or equestrian trail(s) acceptable to the County and consistent with community plans is/are offered as part of the application for point assignment and allocation for dedication to the County  
Number of points ..... 20

7.2.14 Existing and proposed Right-Of-Way encroachments conform to the County’s Encroachment Policy (April 10, 2008, or its successor)  
Number of points ..... 5

7.2.15 Project connects to Montecito Sanitary District sewer system  
Number of points ..... 5

7.2.16 For projects that propose use of private sewage disposal systems, soil type indicates a less than moderate restriction for sanitary facilities, as indicated on the Soil Conservation Service Maps, unless the factors which indicate a moderate or severe restriction are not present on the specified project site  
Number of points ..... 5

**SECTION 35B-8: EXEMPTIONS**

There shall be three classes of exemptions:

**8.1 Category A: Projects which are exempt from all provisions of this ordinance.**

- 8.1.1 Any second residential dwelling unit located in a single family zone district, which provides complete independent living facilities for one or more persons in compliance with Sections 35-442.160 of the Montecito Land Use and Development Code, and Section 35-142, of the Article II Coastal Zoning Ordinance or its successor.
- 8.1.2 Facilities that provide housing for supervised seniors and/or handicapped persons, or group quarters.
- 8.1.3 Reconstruction or replacement of permitted or nonconforming units consistent with the nonconforming provisions of Article II and The Montecito Land Use and Development Code and the Article II Coastal Zoning Ordinance or its successor.
- 8.1.4 Conversions of existing units to condominiums.
- 8.1.5 Structures documented to exist prior to August 3, 1990 that have been continuously inhabited since that time than may be permitted as a dwelling unit in compliance with the Montecito Land Use and Development Code or the Article II Coastal Zoning Ordinance, as applicable, without requiring a land division.

**8.2 Category B: High Priority Units.**

- 8.2.1 Units not subject to the yearly allocation permit caps: Up to a maximum of eight affordable units

per year, on a first come basis, which meet the requirements of the County's Housing Element, shall not be counted against the yearly permit allocation cap of 19 units per year, nor subject to the biannual allocation system described in Section 35B-6.

- 8.2.2 Units subject to the yearly allocation cap, but exempt from the point allocation system: Up to (19) allocations may be granted in a calendar year for the following type of projects, per year. Allocations shall be made prior to the granting of any other allocations subject to the cap for a given six month period.
- a. Affordable units that meet the requirements of the County's Housing Element in excess of eight per year;
  - b. Market rate units that are part of a 50 percent or more affordable project qualifying under 9.2.1 above;

### **8.3 Category C: Hardship.**

A hardship exemption may be granted by the Montecito Planning Commission, upon notice and hearing, if all of the following findings can be made:

- 8.3.1. The application is for a single family dwelling that will be occupied as the primary residence of the applicant.
- 8.3.2. The applicant is not entitled to any other exemption enumerated in this ordinance.
- 8.3.3. The applicant has either applied for and made a good faith effort to compete with the maximum number of points possible, but failed to receive an allocation under the ordinance in the allocation period immediately preceding the request for exemption, but failed to receive an allocation.
- 8.3.4. Strict application of the ordinance will cause a substantial and irrevocable interference with owner's good faith, reasonable investment backed expectations.
- 8.3.4.1 For purposes of this subsection, purchase of the subject property on or after April 4, 1989 shall not be deemed to provide the basis for a reasonable expectation of development.
- 8.3.4.2 For purposes of this subsection, historic cash investment and carrying costs may be considered but shall not be determinative of entitlement to a hardship exemption. Factors which may be considered include, but are not limited to: date of purchase, purchase price, value of parcel in relation to other assets, financial impact of delayed development, location and value of current primary residence, purchase date and rental history of current primary residence, other real estate holdings, unanticipated unusual circumstances creating hardship, health considerations, household size.
- 8.3.5. The grant of the exemption shall not impair the purpose and intent of the ordinance. This finding shall not be made unless the applicant demonstrates that the dwelling will not measurably cause or exacerbate service and resource constraints enumerated in this ordinance and analyzed in the Montecito Community Plan EIR (92-EIR-03), including the SEIR (10EIR-00000-0003) or other relevant studies or documents.
- 8.3.6 An allocation based on hardship pursuant to this section shall automatically expire upon transfer of the property.
- 8.3.7 Decisions of the Montecito Planning Commission shall be the final decision of the County, pursuant to Section 35.492.050 of the Montecito Land Use and Development Code and Section 35-182 (A) (3) of Article II or its successor.
- 8.3.8 Applicant shall deposit fees to cover the costs of processing the exemption application pursuant to the fee resolution adopted by the Board of Supervisors.
- 8.3.9 The Montecito Planning Commission shall establish rules of procedure pursuant to County Code

Section 2-31.

**SECTION 35B-9: MODIFICATION AND AMENDMENT OF ORDINANCE.**

This ordinance shall be reviewed for possible amendments by the Board of Supervisors at least once every five years during its life. This ordinance may be amended as necessary by the Board of Supervisors to account for:

- 9.1 Changes in County-wide or Montecito Community Plan and policies. Consistency between this ordinance and the Comprehensive Plan, including the Montecito Community Plan, and the Local Coastal Plan shall be reassessed after adoption of said future updates of said elements and plan and this ordinance shall be amended a necessary to comply with those documents.
- 9.2 Changes in County or Montecito Community Plan area regional housing needs. Once the Housing Element is updated and housing estimates are produced, the residential growth rate shall be re-evaluated to ensure that affordable housing needs can be met.
- 9.3 Need for additional encouragement of the construction of affordable units.
- 9.4 Additions to or deletions from projects exempt under Section 35B-9.
- 9.5 Need for adjustment of the maximum number of yearly allocations based on information in the reports on available services and resources presented to the Board at the time of periodic ordinance review as provided by this section.
- 9.6 Need for additional or revised point assignment categories.
- 9.7 The need to allow the Director of the Planning and Development Department to grant additional time extensions to active, unexpired allocations, and to extend the period of time in which these time extensions may be approved, due to the continuing national economic downturn.

**SECTION 35B-10: SEVERABILITY**

This ordinance shall be fully severable. If any portion of this ordinance is determined to be invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**SECTION 35B-11: EXPIRATION**

- 11.1. This ordinance shall expire on December 31, 2030 unless the Board of Supervisors extends its provisions by amendment. It shall also cease to be in effect at any time the Board of Supervisors determines that public health and safety are no longer jeopardized by residential construction regulated by this ordinance.
- 11.2. The Planning and Development Department and Public Works Department, shall annually compile and forward to the Board for consideration a report on the considerations relevant to the public health and safety findings in Section 35B-2 regarding water resources, transportation/circulation , wastewater infrastructure, and fire protection services. Construction of the Highway 101 improvements shall also be monitored and reported on. Upon the conclusion of the Highway 101 improvements, a traffic study shall be conducted to reassess how post-construction Highway 101 improvements affect transportation/circulation in the Montecito Planning Area. The Director of the Planning and Development Department shall report sooner upon receipt of information indicating that the public health and safety is no longer jeopardized by residential construction regulated by this ordinance.
- 11.3. The Board of Supervisors shall receive the Director's report and may schedule a hearing to determine, for purposes of Section 35B-12.1, whether the public health and safety are no longer jeopardized by residential construction regulated by this ordinance.
- 11.4. For the purpose of Section 35B-12.1, the public health and safety will be considered no longer jeopardized and this Ordinance shall terminate if all of the following criteria are met:

**Water Resources:** Long and short term water demand is within reliable long and short term supply and is consistent with the 10 percent buffer as required by the Montecito Community Plan Policy WAT-M-1.5. If water demand approaches or exceeds water supply, the bi-annual allocation may be reduced until the situation is alleviated.

**Fire Protection:** The ratio of firefighters per population served has been reached and maintained at one-per-2000 or better, and response time to all areas within the Urban Boundary of Montecito is five minutes or better and/or a third fire station is operational.

**Waste Water Disposal:** Montecito Sanitary District infrastructure is sufficient to serve urban areas of the Montecito Planning Area at build-out under the land uses established as part of the Montecito Community Plan.

**Traffic and Circulation:** Completion of improvements to the following identified roadways, intersections and interchanges or completion of any equivalent or more effective measures that meet the goals of the Comprehensive Plan, including the Montecito Community Plan and Local Coastal Plan, and its associated implementation.

### **ROADWAYS**

North Jameson Lane Sheffield Drive between Jelinda Drive and Birnam Wood Drive  
East Valley Road between Cota Lane and Picacho Lane  
Olive Mill Road between Olive Mill Lane and Hot Springs Road

### **INTERSECTIONS**

Sycamore Canyon Road/ Barker Pass Road  
San Ysidro Road/ East Valley Road  
Olive Mill Road/Spring Road

### **U.S. 101 INTERCHANGES**

Olive Mill Road  
San Ysidro Road  
Sheffield Drive

### **SECTION 2:**

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 3:**

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 this 5<sup>th</sup> day of October 2010.**