COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
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TOM BURNS, PLANNING DIRECTOR

November 20, 2007

AGENDA DATE: December 4, 2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Regulatory Reform for Small-Scale Residential Projects

Members of the Board:

In June your Board conducted a study session to consider a proposal from Planning staff to simplify regulations for small-scale residential projects, as the first phase of a process to methodically review, update and reform our current land use regulatory system. After initial feedback and a subsequent discussion in August, you endorsed the proposal and directed staff to draft ordinance amendments to implement the proposed reforms and to take the proposed ordinance amendments before the Planning Commission and the Agricultural Policy Advisory Committee (APAC) for their review and recommendation. The purpose of this item is to bring the proposed regulatory changes before you for final consideration and action.

Background

The intent of the reform package is to streamline the planning process for small residential projects, including accessory structures, second units, small-scale projects in the Coastal Zone, and repairs and additions to non-conforming structures. While such projects are typically minor in nature, they often encounter significant regulatory hurdles and extensive process delays under our current regulations. As a result, potential applicants are frustrated by the costs, time delays and process, which leads the public to question the value of the County's land use regulations and reflects poorly on the County in general. Additionally, the frustrations of the current system undoubtedly lead to homeowners proceeding with work outside of the permit process.

The proposed regulatory changes will simplify the planning process for such projects by eliminating unnecessary regulations, reducing the scope of certain regulations, and establishing the proper level of discretionary review. (The proposed changes are summarized in table format in Attachments 4 and 5, and explained in greater detail in the August 28th Board letter included as Attachment 11.) By reducing permit costs and processing times, and allowing applicants more flexibility, the reform measures are intended to encourage more applicants to work within the permit process rather than constructing structures illegally.

The goal of these reforms is to balance the need for simplifying the process with continuing to protect the quality of the environment and neighborhoods. As such, the revisions will generally not allow for the construction of structures that cannot currently receive permits. Rather, duplicative and confusing regulations are proposed to be eliminated, levels of review and process are proposed to be reduced, and physical features within buildings are allowed to be more flexible. For example, while the proposed changes will allow the construction of toilets in habitable accessory structures with a building permit, toilets are currently allowed in habitable accessory structures with a discretionary permit.

Along with providing conceptual approval of the proposed reforms in August, your Board also directed staff to report back with further details on programs to implement or enhance the proposed reforms. These programs include a clearer explanation of the Level IV review process to ensure adequate opportunities for public input in the planning process, a proposal for streamlining the building permit process for minor residential projects, options for assisting with financing construction of affordable second units, and more details regarding the proposed companion code compliance program.

As the substance of the proposed reforms has been discussed in detail in two previous Board letters, this letter focuses on addressing concerns raised by your Board and the Planning Commission.

Concerns Raised by the Board

Your Board directed staff to provide more information on a number of programs intended to help implement the proposed reforms:

Clarification of the Level IV review process

The proposed regulatory reforms would change the level of discretionary review for several categories of projects from a Level V (a noticed public hearing before the Zoning Administrator) to a Level IV (public notice, with the option of a Zoning Administrator Hearing), as described in Attachments **4** and 5. Although supportive of staffs recommendation to streamline the review process and reduced processing costs for types of projects that are typically not controversial, your Board directed staff to better define the Level IV process, specifically with regard to how the decision is made to move a project to a Level V public hearing.

In response to your Board's concern, staff has developed a more formal process which will involve the project planner, Development Review Manager and Planning Director in the review of public comments to ascertain the nature of the concern, options for addressing them within the Level IV permit process, and ultimately, if such concerns cannot be readily resolved, referral to a formal Zoning Administrator public hearing. For Level IV projects in the Coastal Zone, a public hearing would be held automatically if requested by a member of the public, as is required by State law.

Streamlining the building permit review for minor residential structures

In tandem with simplifying aspects of the discretionary review process for minor types of residential structures, the Board asked staff to consider measures to streamline the review of building permits for minor residential structures (those structures less than 500 square feet in

size). Staff has worked with representatives of the various reviewing agencies and other sections of the Planning Department to explore options for reducing review times for building permits for these minor structures. Recent changes in the new Fire Code will exempt most additions or non-habitable accessory structures less than 500 square feet in size from fire department review. While we are still working out the details with Public Works, the goal is to restrict reviews of smaller projects to minor issues, with a quick turnaround. Within the Planning Department, Environmental Planning will limit reviews of minor structures to those that are in sensitive habitats or have geologic issues, and the Zoning Plan Check process will be greatly simplified as a result of the pending ordinance amendments. At this point, the remaining issue is to resolve coordinating permit review with Public Works. We anticipate completing the changes needed to implement this new system in early **2008.**

Financial assistance for construction of affordable second units

One proposed regulatory change would remove the current requirement that Second Units be for family members or rented to low-income households, with the County screening tenants for income eligibility. While the Board supported this change, recognizing the ineffective nature of the current requirements, interest was expressed in whether the County or Redevelopment Agency could create a financial assistance program to assist homeowners interested in creating new second units as affordable housing units.

You may recall that the Agency currently funds a program to provide such assistance, structured as a loan of up to **$20,000,** forgiven **1/20th** each year. In the event that the homeowner is no longer able to rent the unit to a low-income household, the balance of the loan is due. This program has proven to be ineffective for a number of reasons. Unless the homeowner is motivated for other reasons, the subsidy is typically not adequate to make the project financially feasible. But, as Redevelopment law has evolved over the years, that program is no longer in conformance with State law, which requires that subsidized rental units be affordable for a minimum of forty-five years. Given the changing nature of property owner needs and transitions from one owner to another, it does not appear to be practical to finance such a program from Agency sources.

Staff will continue to explore whether other communities have developed such financial assistance programs, as well as exploring the use of other, less restrictive funding sources for affordable second unit assistance.

Proactive code compliance program

As was discussed in the prior staff reports on the residential reform proposals, we believe that changes with regard to accessory structures should be accompanied with a more proactive compliance inspection program. Staff was directed to work with the County Administrative Office on the financing and staffing issues associated with such a program as part of the proposed FY 2008-09 budget, with an additional direction to include a report on non-general fund options to finance code compliance inspections.

In order to address the range of possible non-general fund sources, the ordinance before you includes an amendment to Section **13.10.611** (d) providing the Planning Director with the express authority to levy an inspection fee in connection with the issuance of a permit for an accessory structure, in the event that it is chosen as a component of the financing for this program. The current thinking is that such fees would be deposited into a trust fund, and

drawn down as compliance inspections are performed. The recommended fee would be included in our FY 2008-09 fee schedule.

In addition, as we discover illegal units through our proactive inspection efforts and our ongoing complaint enforcement program, we will seek recovery of illegal rents as authorized under the County Code. Presently, the Code requires that any illegal rents recovered through our enforcement actions must be deposited into the County's affordable housing fund. This made sense at the time this authority was first enacted, as the affordable housing fund had few resources. However, since the housing fund has sufficient resources available through other sources, we are recommending that your Board amend Section 13.10.611 (e) of the Code to allow such funds to be deposited into a fund designated by the Board – in anticipation of creating an inspection trust fund early next year (see Exhibit A to Attachment 1). Further code changes to allow this to take place will be included in proposed ordinance amendments early next year.

In addition to securing a source of funding for the code compliance inspections, staff has been continuing to work on other aspects of the program. We have worked with County Counsel to revise the declaration of restrictions form that a property owner will be required to sign and record on title that spells out the limitations for the use of their accessory structure. For some structures, the declaration will also include notice to the property owner, and subsequent owners, that the County reserves the right to conduct periodic compliance inspections to ensure that the structure is being used in a lawful manner. As is current practice, the County will continue to provide notice and obtain consent prior to such inspections, and obtain a warrant when consent for an inspection is not granted by the property owner.

Further details of this pro-active inspection program will be developed over the next several months and will be reviewed with the Board at that time.

Concerns Raised by the Planning Commission

At their meeting on November 6th, the Planning Commission recommended that your Board adopt the proposed ordinance amendments. Additionally, the Commission recommended that staff further evaluate several issues raised during the hearing, including ensuring due process for proactive code compliance inspections, the proposed process for considering second unit applications from property owners with less than 50% ownership, and understanding possible impacts of the proposed reforms on water usage. The Commission also recommended that staff meet with parties who had testified regarding potential environmental impacts of the proposed reforms.

Discussion of concerns regarding due process for code compliance inspections
Several members of the public raised concerns regarding the constitutionality of the proposed proactive code compliance inspections, based in part on the perception that such inspections would take place without noticing to or permission from the property owner, and that staff would conduct "warrantless searches". Such inspections would only be conducted as we currently do by providing notice to property owners prior to all inspections, and obtaining a warrant prior to inspecting the property when the owner does not grant permission for an inspection. To further clarify this issue, staff is recommending that your Board, as part of the proposal before you at this time, delete existing language in Section 13.10.611 of the Zoning

Ordinance that currently authorizes staff to inspect a property without obtaining permission from the property owner. With this change, the County Zoning Ordinance would formalize the current practices and provide clear assurance to property owners regarding noticing and inspections through the County's enforcement program.

Discussion of ownership requirements for the construction of second units

During the Planning Commission meeting, several members of the public raised concerns regarding the proposal that ownerships of less than 50% could be required to provide more information, at the request of the Planning Director, to demonstrate the particular circumstances of that ownership interest prior to receiving a permit for the construction of a second unit (see Section 13.10.681 (e) **(2)** of Attachment 2). Members of the public expressed concerns that properties with tenants in common would not be allowed to construct second units, that the requirement would treat property owners with less than a 50% ownership unfairly, and that this requirement would act as a barrier to the construction of second units. Staff does not believe that the requirements would treat property owners unfairly, since they would not be charged an additional fee for such review, and property owners with legitimate property interests including tenants in common, would be allowed to apply for a second unit permit. Staff continues to recommend this proposal as a reasonable measure to ensure that second unit permits will be granted to property owners residing on the property with a legitimate property interest.

Water issues

During the Planning Commission meeting, and in correspondence received on this item, representatives of the San Lorenzo Valley (SLV) Water District and others expressed concerns regarding a possible increase in water usage that would result from the new regulations. Specifically, the SLV water district expressed concern that allowing toilets in habitable accessory structures without requiring a discretionary permit and allowing the construction of more accessory structures on residential properties would lead to an increase in water consumption. The core issue is whether the regulatory reforms would allow for a substantial increase in the construction of such units and associated water consumption, beyond what would have otherwise occurred under the current regulations.

Board members will recall that toilets are currently allowed in nonhabitable and habitable accessory structures, subject to obtaining discretionary and building permits. The proposed reforms would allow toilets in habitable accessory structures subject to obtaining only a building permit. While in some cases an applicant might be unable to receive a discretionary permit for a bathroom, they could still construct the habitable building and use the bathroom in the main house. The purpose of the proposed reforms is to recognize that there are currently a substantial numbers of illegal structures being constructed, in part due to the strict nature of the current regulations. The intent of the regulations is less about inducing more construction than it is about making it possible for more structures to be built under the guidance of the building permit process.

To the second issue, the proposed regulatory changes do not authorize the construction of more accessory structures than are allowed under current regulations. In fact, the proposed changes will place a limit, for the first time, on the number of habitable accessory structures on a property to two, and could therefore potentially decrease the number of such structures that will be built throughout the County.

In conclusion, since the proposed changes do not allow development where it could not currently take place and, in fact, will place some restrictions on the number of such buildings that can be constructed, the new regulations will not result in an intensification of land use, nor will they result in an increase in water usage.

Meeting with parties concerned about potential environmental impacts

As recommended by the Planning Commission, staff met with representatives of the Sierra Club and the SLV Water District to discuss concerns expressed at the Commission's public hearing. It was helpful to have the time, outside the formality of a public hearing, to thoroughly review the recommended proposals and compare them to what is currently allowed. While we believe that the meeting resulted in reducing the scope of concerns by participants, it appeared that some issues remain. As of the date of this report, we had not received formal response from any of the parties with regard to their current positions.

In response to questions from the meeting participants, staff has clarified the language in the table summarizing the proposed changes, noting that current policies allow certain types habitable accessory structures on properties with a second unit (see item #5 on page 1 of Attachment 5). Staff is also recommending that Section 13.10.681 (d) (7) of the Zoning Ordinance be amended, as shown in Attachment 2, to clarify the language and explicitly state that a habitable accessory structure and a second unit may both be allowed on the same property. (Although this specific language was not reviewed by the Planning Commission, staff discussed the change in concept with the Commission.)

Recommendation of the Agricultural Policy Advisory Commission

On October 18th, the Agricultural Policy Advisory Commission (APAC) held a public hearing for their review and recommendation of the ordinance amendment eliminating the requirement for discretionary approval for additions or accessory structures less than 1,000 square feet that extend no further into the agricultural buffer than the existing residential development. APAC recommended approval of the amendment, with modifications to require the installation of a physical barrier for the entire residential development, rather than just the proposed development. The changes recommended by APAC have been incorporated into the ordinance amendment to Section 16.50.095, as shown in Attachment 2. The APAC resolution is included as Attachment 8, and the minutes from the October 18th Meeting are included as Attachment 9.

Consistency with Coastal Regulations

The proposed changes are consistent with the Coastal Act and with the Local Coastal Program. The proposed reforms will not impede coastal access, will not allow further impingements on the coastal viewshed, and will not threaten agricultural land.

The proposal to reduce the level of review required for minor development in the Coastal Zone from a Level 5 discretionary review (public hearing) to a Level 4 review (public noticing) is consistent with Section 30624.9 of the Public Resources Code, which allows minor development to be approved without holding a public hearing. Minor development is defined as development that is consistent with the Local Coastal Program, requires no discretionary

permit other than the Coastal Permit, and does not have an adverse effect on resources. Under such definitions, demolition outside the appealable jurisdiction, additions to existing homes, and minor grading would all be considered as minor development.

CEQA Exemption

Staff has found this project to be exempt from CEQA review under Section 15061 (b) (3) of the CEQA Guidelines, a general rule which states that CEQA applies only to projects with the potential to cause a significant effect on the environment. The proposed regulatory reforms do not have the potential to cause significant direct or indirect physical changes in the environment, and therefore do not have the potential for causing a significant effect on the environment (Attachment 3).

Conclusion and Recommendations

This letter has provided an analysis of questions raised by Board members, the Planning Commission, APAC, and members of the public regarding the proposed residential regulatory reforms. Staff believes that the proposed ordinance amendments will provide for significant improvements to the planning experience for many applicants applying to build small residential structures. The programs recommended to support and enhance the proposed reforms, including a proactive code compliance program, a mechanism to ensure that discretionary projects receive a full public hearing when warranted, and a more streamlined review of related building permits, will allow for an effective implementation of the proposed reforms.

It is therefore RECOMMENDED that your Board take the following actions:

1. Conduct a public hearing on the proposed ordinance amendments implementing the residential regulatory reforms;

2. Adopt the resolution (Attachment 1) approving the proposed ordinance amendments and forwarding them to the Coastal Commission for consideration;

3. Adopt the proposed ordinance amendments (Attachment 2) as recommended by the Planning Commission and the Agricultural Policy Advisory Commission; to be effective outside the Coastal Zone on the 31st day after adoption, and effective inside the Coastal Zone upon Coastal Commission Certification;

4. Certify the CEQA Notice of Exemption (Attachment 3);

5. Direct staff to continue to work with the County Administrative Office on the financing and staffing issues associated with a proactive code compliance program as part of the FY 2008-09 budget proposal;

6. Direct Planning and Public Works staffs to continue to work together to streamline the review process for building permits for small residential structures, with the goal of having the streamlined system in place by February 1st 2008; and

7. Direct staff to submit the proposed ordinance amendments to the Coastal Commission, as part of the next Coastal "Rounds" package.

Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan A. Mauriello
County Administrative Officer

Attachment 1 -- Resolution approving the proposed ordinance amendments
Exhibit A to Attachment 1 – Strikeout copy of proposed ordinance amendments
Attachment 2 – Clean Copy of the ordinance
Attachment 3 – CEQA Notice of Exemption
Attachment 4 – Table of Existing and Proposed Requirements for Accessory Structures
Attachment 5 – Table Summarizing the Proposed Regulatory Reforms
Attachment 6 – Planning Commission Resolution
Attachment 7 -- Planning Commission Meeting Minutes
Attachment 8 -- APAC Resolution
Attachment 9 -- APAC Meeting Minutes
Attachment 10 – Correspondence
Attachment 11 – Letter of the Planning Director to the Board dated August 16, 2007
Attachment 12 – Report to the Planning Commission dated October 11, 2007 (on file with the Clerk to the Board)

cc: County Counsel
Planning Commission
Board of Realtors – Phil Tedesco
Coastal Commission

Attachment 1

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. _____

On the motion of Supervisor
duly seconded by Supervisor
the following is adopted:

BOARD OF SUPERVISORS RESOLUTION AMENDING CHAPTERS 13.10, 13.20, AND 16.50 OF THE SANTA CRUZ COUNTY CODE TO SIMPLIFY REGULATIONS FOR SMALL-SCALE RESIDENTIAL STRUCTURES.

WHEREAS, small-scale residential projects such as additions to existing homes, accessory structures, and second units constitute the majority of applications to the Santa Cruz County Planning Department; and

WHEREAS, many of the regulations in the County Code governing such projects are outdated, including regulations that are overly restrictive or require high levels of review for simple non-controversial projects, resulting in a planning process that is unnecessarily restrictive, expensive and time consuming for applicants; and

WHEREAS, on June 19,2007 the Board of Supervisors conducted a study session to consider amending the Santa Cruz County Code to simplify the planning process for small-scale residential projects while continuing to protect important community values and resources; and

WHEREAS, the Board of Supervisors on August 28th 2007 approved "in concept" a package of ordinance amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code simplifying the regulatory process for such projects; and

WHEREAS, on October 24, 2007, the Planning Commission conducted a public hearing to consider the amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code to simplify regulations for small-scale residential structures; and

WHEREAS, the Planning Commission has found that the ordinance amendments will be consistent with the policies of the General Plan, the Local Coastal Program, and the California Coastal Act; and

WHEREAS, the ordinance amendments have been found to be not subject to further review under the California Environmental Quality Act.

Attachment 1

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Board of Supervisors, pursuant to Ordinance (Exhibit A to Attachment 1), has amended Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code to simplify regulations for small-scale residential structures, and concludes that the project is exempt from CEQA review, and authorizes submittal to the California Coastal Commission as part of the next round of LCP Amendments.

IT IS FURTHER RESOLVED AND ORDERED THAT these amendments shall take effect 31 days after their adoption for those areas outside the Coastal Zone, and shall take effect on the date of final certification by the Coastal Commission for those areas within the Coastal Zone.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____,2007 by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
Chairperson of the Board of Supervisors

ATTEST:

_____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

_____
County Counsel

DISTRIBUTION: County Counsel
Planning Department

Exhibit A to Attachment 1

ORDINANCE NO. _____

AN ORDINANCE AMENDING VARIOUS SECTIONS OF SANTA CRUZ COUNTY CODE CHAPTERS 13.10, 13.20 AND 16.50 REGARDING REGULATIONS FOR SMALL-SCALE RESIDENTIAL PROJECTS

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Subsection (b) of Section 13.10.265 of the Santa Cruz County Code is hereby amended to read as follows:

(b) The structural enlargement, extension, reconstruction, or alteration which conforms to the site development standards of the district in which the structure is located may be made to a nonconforming structure upon issuance of only those building permits and/or development permits required by other Sections of the County Code if the property's use is made to conform to the uses allowed in the district and provided that the structure is not significantly nonconforming as defined in this Section~~, and further provided that where the floor area of an addition exceeds 800 square feet net, a Level IV Use Approval shall be required~~

SECTION II

Subsection (k) of Section 13.10.265 of the Santa Cruz County Code is hereby amended to read as follows:

(k) For the purposes of this section, a structure is significantly nonconforming if it is any of the following:

1. Located within five feet of a vehicular right-of-way;
2. Located across a property line;
3. Located within five feet of another structure on a separate parcel; or
4. Located within five feet of a planned future public right-of-way improvement (i.e. an adopted plan line)~~.; or,~~

~~5. Exceeds the allowable height limited by more than 5 feet.~~

SECTION III

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by revising the category "Habitable accessory structure, 640 square feet or less subject to the provisions of Section 13.10.611" to read as follows:

Habitable accessory structure when incidental to a residential use and not for agricultural	BP/4	BP/4	BP/4

purposes, ~~640 square feet or less~~ subject to the provisions of Section 13.10.61 ▮

SECTION IV

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by repealing the category "Habitable accessory structures greater than 640 feet, subject to the provisions of Section 13.10.611 (see farm outbuildings).

~~Habitable accessory structures greater than 640 feet, subject to the provisions of Section 13.10.611 (see farm outbuildings)~~ ~~5 5 5~~

SECTION V

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by revising the category "Non-habitable accessory structure when incidental to a residential use and not for agricultural purposes" to read as follows:

Non-habitable accessory structure when incidental to a residential use and not for agricultural purposes (subject to the provisions of Section 13.10.611 and 13.10.313(a)).	BP/4 BP/4 BP/4
~~Total area of 500 square feet or less~~	~~BP2 BP2 BP2~~
~~Total area of 501 to 1,000 square feet~~	~~BP3 BP3 BP3~~
~~Total area of more than 1,000 square feet~~	~~3 3 3~~

SECTION VI

Section 13.10.322(b), Uses in residential districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures and uses, including:" to read as follows:

Accessory structures and uses, including:	
One Accessory structure, habitable (subject to Sections 13.10.611 and 13.10.323 ~~installation of certain plumbing fixtures may require Level 4 approval)~~	BP/4 BP/4 BP/4 BP/4 BP/4
~~Total area of 640 square feet or less~~	

~~and not to exceed 1-story and 17 feet in height~~	~~BP3~~	~~RDQ~~	~~RDQ~~	~~RDQ~~	
~~Total area of more than 640 square feet or exceeding 1-story or 17 feet in height~~	~~5~~	~~5~~	~~5~~	~~5~~	~~5~~
Accessory structures:, non-habitable ~~.outside the Urban Services Line and Rural Services Line (~~subject to Sections 13.10.611 and 13.10.323~~;installation of certain plumbing fixtures may require Level 4 approval)~~ comprised of:					
Animal enclosures: barns, stables, paddocks, hutches and coops (subject to the provisions of Section 13.10.641 Stables and Paddocks; .643 Animal Keeping in the RA Zone; .644 Family Animal Raising; .645 bird and small animal raising; .646 Turkey Raising: these provisions require Level 5 in some cases).	BP/4	BP/4	BP/4	--	--
~~When total area of the structure is:~~					
~~1,000 square feet or less~~	~~BP3~~	~~RDQ~~	~~BP3~~		
~~more than 1,000 square feet~~	~~BP3~~	~~5~~	~~5~~		
Carports, detached; garages, detached; garden structures; storage sheds (subject ~~for~~ to Sections 13.10.61 ▮ and 13.10.323~~, installation of certain plumbing fixtures may require Level 4 approval) when total area of structure is:~~	BP/4	BP/4	BP/4	BP/4	BP/4
~~1,000 square feet or less~~	~~BP3~~	~~BP3~~	~~RDQ~~	~~RDQ~~	~~BP3~~
~~Accessory structures, non-habitable. inside the Urban Services Line and Rural Services Line (subject to Section 13.10.611 and 13.10.323; installation of certain plumbing fixtures may~~					

~~require Level 4 approval) comprise of:~~

~~Animal enclosures: barns, stables paddocks, hutches and coops (subject to the provisions of Sections 13.10.641 Stables and Paddocks; .643 Animal Keeping in the RA Zone; .644 Family Animal Raising; .645 bird and small animal raising; .646 Turkey Raising: these provisions require Level 5 in some cases).~~

~~When total area of the structure is:~~

~~1,000 square feet or less~~	~~BP3~~	~~3~~	~~3~~	~~--~~	~~--~~
~~more than 1,000 square feet~~	~~5~~	~~5~~	~~5~~	~~--~~	~~--~~
~~Carports, detached; garages, detached; garden structures; storage sheds (subject for Sections 13.10.611 and .323, installation of certain plumbing fixtures may require Level 4 approval) when total area of structure is:~~					
~~640 square feet or less~~	~~BP3~~	~~BP3~~	~~BP3~~	~~BP3~~	~~BP3~~
~~more than 640 square feet~~	~~5~~	~~5~~	~~5~~	~~5~~	~~5~~
Air strips (see Section 13.10.700-A definition)	7	**7**	--	--	--
Parking, including:					
Parking, on-site, for principal permitted uses (subject to Sections 13.10.550 et seq.)	BP2	BP2	BP2	BP2	BP2
Parking, on-site, for non-principal permitted uses (subject to Sections 13.10.580 et seq.)	**4**	**4**	**4**	**4**	**4**
Recycling collection facilities in association with a permitted community or public facility, subject to Section 13.10.658, including:					
reverse vending machines	BPI	BPI	BPI	BPI	BPI

small collection facilities	3	3	3	3	3
Signs, including:					
Signs for non-principal permitted uses (subject to Sections 13.10.580, et seq.)	4	4	4	4	4
Signs for principal permitted uses (subject to Sections 13.10.580, et seq.)	P	P	P	P	P
Storage tanks, water or gas, for use of persons residing on site					
less than 5,000 gallons	BP2	BP2	BP2	--	--
more than 5,000 gallons	BP3	BP3	BP3	--	--
Swimming pools, private and accessory equipment	BP3	BP3	BP3	--	--

SECTION VII

Subsection 13.10.323(e)6(b) of the Santa Cruz County Code is hereby amended to read as follows:

(B) Side and Rear Yards.

i. An accessory structure which is attached to the main building shall be considered a part thereof, and shall be required to have the same setbacks as the main structure;

ii. A detached accessory structure which is located entirely within the required rear yard and which is smaller than one hundred twenty (120) square feet in size and ten (10) feet or less in height may be constructed to within three feet of the side and rear property lines;

iii. Garden trellises, garden statuary, birdbaths, freestandinn barbeques, play equipment, swimming pool equipment, freestanding air conditioners, heat pumps and similar HVAC equipment and ground-mounted solar systems, if not exceeding six (6) feet in height, are not required to maintain side and rear yard setbacks and are excluded in the calculation of allowable lot coverage.

SECTION VIII

Subsection 13.10.323(e)6(C) of the Santa Cruz County Code is hereby amended to read as follows:

(C) Separation. The minimum distance between any two detached structures shall be ten (10) feet with the following exceptions:

i. Eeaves, chimneys, cantilevered, uncovered, unenclosed balconies, porches, decks and uncovered, unenclosed stairways and landings may encroach three feet into the required ten (10) separation,;

ii. No separation is required between water tanks located on the same parcel;

iii. No separation is required between garden trellises, garden statuary, birdbaths, freestanding barbeques, play equipment, swimming pool equipment, freestanding air conditioners, heat pumps and similar HVAC equipment and around-mounted solar systems and other structures located on the same parcel.

SECTION IX

Section 13.10.332(b), Uses in commercial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, non-habitable, not including warehouses (subject to Section 13.10.611)" to read as follows:

Accessory structures, non-habitable, not including warehouses ~~(subject to Section 13.10.611)~~					
Less than 500 sq. ft.	3	3	3	3	3
500 – 2,000 sq. ft.	4	4	4	4	4
Greater than 2,000 sq. ft.	5	5	5	5	5

SECTION X

Section 13.10.342(b), Uses in industrial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, non-habitable, subject to Section 13.10.611, including:" to read as follows:

Accessory structures, non-habitable, ~~subject to Section 12.10.611,~~ including:			
Outdoor storage, incidental, screened from public streets	4/5/6*	4/5/6*	4/5/6*
Parking, on-site, developed in accordance with Sections 13.10.550 et seq.			
Signs in accordance with Section 13.10.581			
Storage, incidental, or non-hazardous materials within an enclosed structure.			

SECTION XI

Section 13.10.342(b), Uses in industrial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, habitable, subject to Section 13.10.611, including:" to read as follows:

Accessory structures, habitable, ~~subject to Section 13.10.611~~, including:	4	4	4
Watchman's living quarters, one, located on the same site and incidental to an allowed use			

SECTION XII

Section 13.10.352(b), Uses in the Parks, Recreation and Open Space zone district, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, pursuant to a Master Site Plan according to Section 13.10.355, such as:" to read as follows:

Accessory structures, pursuant to a Master Site Plan according to Section 13.10.355, such as:	4AP
Accessory structures, non-habitable ~~(subject to Section 13.10.611)~~	
Parking, on-site, for an allowed use, in accordance with Section 13.10.550 et seq.	
Signs, in accordance with Section 13.10.582	

SECTION XIII

Section 13.10.521 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Right-of-way Access. A parcel, newly created by a tentative map or conditional certificate of compliance, may not be used as a building site unless it has its principal frontage on a public street or on a private right-of-way at least 40 feet wide~~, or if it is located on a private right-of-way less than 40 feet in width and developed properties are located beyond the property on the same right-of-way~~, nor may a new vehicular riaht-of-wav be created less than 40-feet in width ~~or~~ unless a Level ~~III~~ V Use Approval is obtained for principal frontage and access on a narrower right-of-way. For any project requiring a subdivision or minor land division tentative map approval, or a conditional certificate of compliance, use of streets not meeting the minimum County standard shall require approval of a roadway exception processed pursuant to Section 15.10.050(f). ~~Streets improved and used as a street prior to July 1962 are exempt from this provision.~~

SECTION XIV

Subsection (c)(2) of Section 13.10.525 of the Santa Cruz County Code is hereby amended to read as follows:

(2) Except as specified in Sections 13.10.525(c)(3), and 16.50.095, no fence and/or retaining wall shall exceed six feet in height if located within a required side or rear yard not abutting on a street, and no fence, hedge, and/or retaining wall shall exceed three feet in height if located in a front yard abutting a street or other yard abutting a street, except that heights up to six feet may be allowed by a Level III Development Permit approval, and heights greater than six feet may be allowed by a Level V Development Permit Approval. (See Section 12.10.070(b) for building permit requirements.)

SECTION XV

Section 13.10.611 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Purpose. It is the purpose of this Section to provide for the orderly regulation of residential accessory structures allowed as a use in any zone district, to insure that accessory structures are subordinate and incidental to the main structure or main use of the land, and to provide notice to future and current property owners that illegal conversion of any accessory structure is subject to civil penalties.

(b) Application Requirements.
- (1) The proposed use of the structure shall be identified.
- (2) Applications for habitable accessory structures and non-habitable accessory structures shall be processed as specified in ~~the use chart for appropriate zone district~~ Tables One and Two of this Section.

(c) Restriction on Accessory Structures,
- (1) Any accessory structure shall be clearly appurtenant, subordinate and incidental to the main structure or main use of the land as specified in the purposes of the appropriate zone district.~~, with the exception that a non-habitable accessory structure not exceeding 12 feet in height or 600 square feet in size shall be allowed in the absence of a main structure or main use of the land.~~
- (2) Regulations on amenities for accessory structures on parcels with a main residence are as indicated in Table One:

Section 13.10.611(c)(2)
TABLE ONE
AMENITIES REGULATIONS

AMENITY	NON-HABITABLE	HABITABLE
SINK	Allowed	Allowed
TOILET	Pool cabanas: Allowed All other uses: Not allowed unless a Level IV use approval is obtained	Allowed
SHOWER AND/OR BATHTUB	Pool cabanas: Allowed All other uses: Not allowed	Not allowed
WASHER/ DRYER AND WATER HEATER	Allowed	Allowed
INSULATION/ SHEET ROCK OR OTHER FINISHED WALL COVERING	Both allowed	Both required
BUILT IN HEATING/COOLING	Not allowed	Heating: Required Cooling: Allowed
KITCHEN FACILITIES, EXCLUDING SINK, AS DEFINED IN 13.10.700-K	Not allowed	Not allowed
ELECTRICAL SERVICE MAXIMUM	100A/220V/single phase maximum unless a Level IV use approval is obtained	100A/220V/single phase maximum unless a Level IV use approval is obtained
SEPARATE ELECTRIC METER	Not allowed unless a Level IV use approval is obtained	Not allowed unless a Level IV use approval is obtained
USE FOR SLEEPING PURPOSES	Not allowed	Allowed
RENT, LET OR LEASE AS AN INDEPENDENT DWELLING UNIT	Not allowed	Not allowed

(3) Regulations for level of review, size, number of stories and locational restrictions for accessory structures are as indicated in Table Two:

Section 13.10.611(c)(3) TABLE TWO LEVEL OF REVIEW, SIZE, HEIGHT, NUMBER OF STORIES AND LOCATIONAL REGULATIONS		
	NON-HABITABLE	**HABITABLE**
SIZE, STORY AND HEIGHT RESTRICTIONS AND PERMIT REQUIRED	Outside the USL: Building Permit only for up to 1,000 square foot size, 3 stow and 28-foot height on lots less than one acre in size; Building Permit only for UP to 1,500 square foot size, 3-story and 28-foot height on lots one acre or greater in size.	Within the Urban Services Line (USL): Building Permit only for up to 640 square foot size, 2 stow and 17-foot height. Outside the USL: Building Permit only for up to 640 square foot size, 3 stow and 28-foot height.
PERMIT REQUIRED IF EXCEEDS SIZE, STORY OR HEIGHT RESTRICTIONS	Level IV use approval	Level IV use approval
NUMBER OF ACCESSORY STRUCTURES	No limit, if in compliance with the site regulations of the zone district .	One with Building Permit only. Maximum of two with Level IV use approval.
LOCATIONAL RESTRICTIONS	None, if in compliance with the site regulations of the zone district	In addition to the site regulations of the zone district, shall be no more than 100 feet from the main residence, accessed by a separate driveway or right-of-way nor constructed on a slope greater than 30%, unless a Level IV use approval is obtained.

(4) Regulations for accessory structures on parcels with no main residence are as follows:

i. A habitable accessory structure is not allowed;

ii. One non-habitable accessory structure not exceeding 12 feet in height or 600 square feet in size is allowed. No electricity or plumbing other than hose bibs is allowed unless a Level IV approval is obtained.

~~(6)~~(5) No accessory structure shall be mechanically heated, cooled, humidified or dehumidified unless the structure or the conditioned portion thereof meets the energy conservation standards of the California ~~Administrative~~ Energy Code, Title 24, adopted by Chapter ~~12.20~~ 12.10 of this Code.

~~(8)~~(6) Any building permit for the construction of or conversion to an independent dwelling unit shall require an allocation for one housing unit as provided in Section 12.02.030 and shall comply with the dwelling density allowed for the zone district in which the parcel is located, except as provided by 13.10.681.

~~(2) No habitable and no non-habitable accessory structure shall have an electrical meter separately from the main dwelling, and no accessory structure may have electricity in the absence of a main dwelling, except as may be approved pursuant to the use charts for the zone district or a Level V use approval.~~

~~(3) Plumbing and electrical equipment appropriate to the use of the structure may be installed, with the following exceptions:~~

~~i. No electrical service exceeding 110A/220V/single phase may be installed to an accessory structure incidental to a residential use unless a Level V approval is obtained;~~

~~ii. No accessory structure shall have a toilet installed. An exception may be granted to allow a toilet and appropriately sized drain lines, subject to a Level IV use approval, for structures smaller than those defined as habitable under the State Building Code (less than 70 square feet), or where required under the particular circumstance, for example, facilities required for employees;~~

~~iii. An accessory structure shall not have any waste lines installed which are larger than one one-half inches in size. An exception to allow two inch drain lines may be granted, subject to Level IV use approval, when more than one plumbing fixture is needed in the structure, including, for example, a washer and an utility sink in a garage.~~

~~(4) No habitable accessory structure incidental to a residential use shall be located more than 100 feet from the main dwelling, or be accessed by a separate driveway or right-of-way, or be constructed on a slope greater than 30% unless a Level V Use Approval is obtained. furthermore, a guest house can only be constructed and occupied on property where the property owner is a resident of the main structure.~~

~~(5) The number of habitable accessory structure shall be limited to one per parcel unless a Level V use approval is obtained.~~

~~(7) An accessory structure shall not have a kitchen or food preparation facilities and shall not be rented, let or leased as an independent dwelling unit.~~

(d) Restrictions on Electrical Service for Residential Accessory Uses Other than Structures or on Vacant Residential Parcels

1. A 60-amp maximum service for well use is allowed.
2. A 60-amp maximum service for irrigation svstems, lighting svstems, electric gates and similar appropriate incidental residential uses (not involving a structure) on vacant or developed parcels may be authorized by the Planning Director or designee.
3. Amperages greater than 60-amp require a Level IV use approval.
4. An agreement, as described in Subsection 13.10.681(e), is required to be recorded prior to issuance of an electric permit application.

~~(d)~~ (e) Required Conditions.

~~1.~~ Any building or development permit issued for the construction or renovation of a non-habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any structure for human habitation in violation of this Code~~,. and a~~Any building or development permit issued for the construction, conversion to or renovation of a habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any other independent habitable structure in violation of this Code. Anv electric permit or development permit issued for electrical service for a residential accessory use other than a structure or on a vacant residential parcel, as allowed in Subsection 13.10.681(d), shall include a condition requiring an agreement not to use the electrical service for other uses or structures than that authorized bv the electric permit or development permit. Each agreement required by this subsection shall provide the recovery by the County of reasonable attorney fees and costs in bringing any legal action to enforce the agreement together with recovery of any rents collected for the illegal structure or, in the alternative, for the recovery of the reasonable rental value of the illegally converted structure or, in the alternative, for the recovery of the reasonable rental value of an illegally converted structure from the date of construction. The amount of any recovery of rents or of the reasonable rental value of an illegally converted structure shall be deposited ~~in the County's Affordable Housing Fund~~ into a fund designated by the Board of Supervisors. The agreement shall provide for periodic condition compliance inspections by Planning Department staff. The agreement shall be written so as to be binding on future owners of the property, include a reference to the deed under which the property was acquired by the present owner, and shall be filed with the County Recorder. Proof that

the agreement has been recorded shall be furnished to the County prior to the granting of any building permit permitting construction on the property.

2. The Planning Director may charge a fee, as stated in the Uniform Fee Schedule, for the cost of periodic condition compliance inspections.

~~2. As a condition of approval, permit for accessory structures shall provide for inspection as follows:~~

~~i. The structure may be inspected for condition compliance twelve months after approval, and at any time thereafter at the discretion of the Planning Director. Construction of or conversion to an accessory structure pursuant to an approved permit shall entitle County employees or agents to enter and inspect the property for such compliance without warrant or other requirement for permission.~~

SECTION **XVII**

Subsection (c)(1) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(1) Location. The second unit shall be located on a residentially-zoned parcel or on a parcel designated for residential use in the General Plan which contains no more than one existing detached, single-family dwelling, or where one detached single-family dwelling shall be constructed concurrently with the proposed second unit, or where more than one second unit is proposed to be constructed in coniunction with a Tentative Map Application. A second unit may be located on agriculturally-zoned land outside the Coastal Zone or on a parcel designated for agricultural use in the General Plan outside the Coastal Zone;

SECTION **XVIII**

Subsection (d)(4) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(4) Site Standards. All site standards of the zoning district in which the second unit is proposed shall be met. Within the Urban Services Line, second units exceeding seventeen (17) feet in height or one story may be constructed if a Level ~~V~~ IV Development Permit is obtained, pursuant to Chapter 18.10. of this code. Outside the Coastal Zone, on land zoned or designated agricultural, all setbacks of the agricultural zone districts shall be met and all second units must meet the buffering requirements of County Code Section 16.50.095(f), as determined by the Agricultural Policy Advisory Commission, if applicable.

SECTION XIX

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Subsection (d)(5) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(5) Parking. Offstreet parking shall be provided to meet the requirements of Section 13.10.550 for the main dwelling and one additional ~~non-tandem~~ space for each bedroom in the second unit.

SECTION XX

Subsection (d)(7) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(7) Other Accessory Uses. Not more than one second unit shall be constructed on any one parcel. A second unit ~~and any other accessory residential structure (including but not limited to~~ and agricultural caretakers quarters ~~and guest houses~~, except ~~—~~ farmworker housing on agricultural parcels greater than ten (10) acres outside the Coastal Zone~~)~~, shall not be permitted on the same parcel. Habitable and nonhabitable accessory structure~~s such as artist's studios, garages, or workshops~~ may be allowed subject to all applicable requirements of the underlying zone district and Section 13.10.611.

SECTION XXI

Subsection (e) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(e) Occupancy Standards. The following occupancy standards shall be applied to every second unit and shall be conditions for any approval under this section:

(1) Occupancy Restrictions. The maximum occupancy of a second unit may not exceed that allowed by the State Uniform Housing Code, or other applicable state law, based on the unit size and number of bedrooms in the unit. ~~Rental or permanent occupancy of the second unit shall be restricted for the life of the unit to either:~~

~~(A) Households that meet the Income and Asset Guidelines established by the Board of Supervisors resolution for lower income households; or~~

~~(B) Senior households, where one household member is sixty-two (62) years of age or older, that meet the Income and Asset Guidelines requirements established by Board resolution for moderate or lower income households; or~~

~~(C) Persons sharing residency with the property owner and who are related by blood, marriage, or operation of law, or have evidence of a stable family relationship with the property owner.~~

(2) Owner Residency. The property owner shall permanently reside, as evidenced by a Homeowner's Property Tax Exemption on the parcel, in either the main dwelling or the second unit. The Planning Director may require a

property owner with less than 50% ownership in a property to demonstrate a substantial financial interest in the property.

~~the second unit, either the property owner or the residents of the primary single family dwelling must meet the income or familial requirements of subsection (e)(1) of this section.~~

~~(3) Occupancy Status. Prior to final inspection approval of the unit, the property owner shall submit a statement to the administering agency, as defined in Subsection 17.10.020(a), indicating whether the second unit will be rented, occupied by family members, or left vacation. Whenever a change in occupancy occurs, the owner shall notify the administering agency, by registered or certified mail, that the occupancy has changed, and indicating the new status of the unit.~~

~~(4) Rent Levels. If rent is charged, the rent level for the second unit, or the for the main units, shall not exceed that established by the Section 8 Program of the Department of Housing and Urban Development (HOUD) or its successor, or the rent level allowed for affordable rental units pursuant to Chapter 17.10 of the County Code, whichever is higher.~~

~~(5) Certification Requirements. No person, including family members of the owner, shall rent or permanently occupy a second unit unless he/she has first obtained certification of his/her eligibility from the administering agency. The property owner must refer persons who wish to rent or permanently occupy the unit to the administering agency for certification, prior to occupancy. The administering agency may also charge a fee to the applicant for the certification process.~~

~~(6) Status Report. The owner shall report the occupancy status of the second unit, when requested by the administering agency, at least once every three years. This report shall include the status of the unit, the name of the current occupant(s) and the monthly rent charged, if applicable.~~

(3) Deed Restriction. Prior to the issuance of a building permit, the property owner shall provide to the Planning Department proof of recordation of a Declaration of Restrictions containing reference to the deed under which the property was acquired by the present owner and stating the following:

~~(A) The unit may be occupied or rented only under the conditions of the development permit and in accordance with this section and any amendments thereto.~~

(A) The property owner shall permanently reside, as evidenced by a Homeowner's Property Tax Exemption on the parcel, in either the main dwelling or the second unit.

(B) The ~~D~~declaration is binding upon all successors in interest;

(C) The Declaration shall include a provision for the recovery by the County of reasonable attorney fees and costs in bringing legal action to enforce the Declaration together with recovery of any rents collected during any occupancy not authorized by the terms of the agreement or, in the alternative, for the recovery of the reasonable value of the unauthorized occupancy.

SECTION XXII

Subsection (f) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(9 Permit Allocations. Each second unit may be exempt from the Residential Permit Allocation system of Chapter 12.02 of this Code. ~~However, due to public service deficiencies of roadway design and drainage within the Live Oak planning area, no more than five second units shall be approved within the Live Oak planning area in any calendar year.~~

SECTION XXIII

Section 13.10.700-G of the Santa Cruz County Code is hereby amended by repealing the definition of "Guest House."

~~Guest House. A subordinate habitable accessory structure as regulated by Section 13.10.611, the use of which is appropriate and customarily incidental to that of the main structure or use and contains space that is temperature-controlled for the provision of human occupancy, but has no kitchen facilities.~~

SECTION XXIV

Section 13.10.700-P of the Santa Cruz County Code is hereby amended by adding the definition of "Pool Cabana" to read as follows:

Pool Cabana. A small accessory structure used for bathing or changing purposes in coniunction with a swimming pool.

SECTION XXV

The definition of "Habitable Accessory Structure" found in Section 13.10.700-H of the Santa Cruz County Code is hereby amended to read as follows:

Habitable Accessory Structure. A detached, subordinate structure, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use and contains all of the required amenities and some or all of the allowed amenities shown in Subsection 13.10.611(c)(2)Table One for Habitable Accessory Structures. ~~space that is heated, cooled, humidified or dehumidified for the provision of human comfort; and/or insulated and finished in plasterboard; and/or which contains plumbing other than hose bibs. Exceptions: Such plumbing features appropriate to the use of the structure, such as a washer or water heater in a garage, a utility sink in a barn or workshop. An exception will not be granted for a full or half bath in any accessory structure.~~

SECTION XXVI

The definition of "Non-Habitable Accessory Structure" found in Section 13.10.700-N of the Santa Cruz County Code is hereby amended to read as follows:

Non-Habitable Accessory Structure. A detached subordinate structure, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use and contains some or all of the features and amenities shown in Subsection 13.10.61 I(c)(2)Table One for Non-Habitable Accessory Structures. ~~no plumbing other than hose bibs, except as provided by the definition of habitable accessory structure; no space that is heated, cooled, humidified or dehumidified for the provision of human comfort; nor insulation and finished walls.~~

SECTION XXVII

Chapter 13.20 of the Santa Cruz County Code is hereby amended by adding Section 13.20.069 to read as follows:

13.10.069 Solar energy system exemption.
(a) Any solar collector or other solar energy device whose primary purpose is to provide the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating is exempt.
(b) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating is exempt.

SECTION XXVIII

Chapter 13.20 of the Santa Cruz County Code is hereby amended by adding Section 13.20.079 to read as follows:

13.20.079 Demolition on lands outside the Urban Services Line and Rural Services Line exclusion.
Demolition of structures on lands outside the Urban Services Line and Rural Services Line is excluded, except as follows:
(a) Projects located within any of the following areas:
(1) Between the sea and first through public road paralleling the sea, except in the areas shown on the map entitled "Residential Exclusion Zone," hereby adopted by reference and considered a part of this County Code; or
(2) Within three hundred (300) feet of the inland extent of any beach or of the mean high tide line where there is no beach, or within three hundred

(300) feet of the top of the seaward face of any coastal bluff, whichever is the greater distance: or

(3) On land subject to public trust; or

(4) On lots immediately adjacent to the inland extent of any beach, or the mean high tide line where there is no beach; or

(5) Within one hundred (100) feet of any wetland, estuary, or stream; or

(6) Within a biotic resource area as designated on the General Plan and Local Coastal Program Resources Maps: or

(7) Within a Special Community designated on the General Plan and Local Coastal Program Land Use Plan maps.

(b) Any structure designated by the Board of Supervisors as an historic resource.

SECTION XXIX

Subsection (a) of Section 13.20.100 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Review Process. All regulations and procedures regarding Coastal Zone Approvals, including application, noticing, expiration, amendment, enforcement, and penalties, shall be taken in accordance with the provisions for Level V (Zoning Administrator) Approvals pursuant to Chapter 18.10 except for the following categories of development which shall be taken in accordance with the provisions for Level IV (Public Notice) with the exception that any request from the public will trigger a Level V review:

(1) Residential additions and accessory structures greater than 500 square feet in size outside the appeal jurisdiction of the Coastal Commission;

(2) Grading of 100 cubic yards or greater volume, except that grading volumes meeting the criteria found in Section 16.20.040(a) shall be processed at Level VI.

Provision for challenges to determination of applicable process is contained in Section 13.20.085.

SECTION XXX

Subsection (b) 1 of Section 16.50.095 of the Santa Cruz County Code is hereby amended to read as follows:

1) Provide and maintain a two hundred (200) foot buffer setback between Type 1, Type 2 or Type 3 commercial agricultural land and non-agricultural uses involving habitable spaces including dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use, except that if an existing legal dwelling already encroaches within the two hundred (200) foot buffer setback, proposed additions thereto, habitable accessory structures or private recreational facilities--none exceeding 1,000

square feet in size--shall be exempt from this subsection so long as they encroach no further than the existing dwelling into the buffer setback and an appropriate vegetative or other physical barrier for all existing and proposed development, as determined necessary, either exists or is provided and maintained. For the purposes of this Section, outdoor areas designed for intensive human use shall be defined as surfaced ground areas or uncovered structures designed for a level of human use similar to that of a habitable structure. Examples are dining patios adjacent to restaurant buildings and private swimming pools. The two hundred (200) foot agricultural buffer setback shall incorporate vegetative or other physical barriers as determined necessary to minimize potential land use conflicts.

SECTION XXXI

The first paragraph of Subsection (g) of Section 16.50.095 of the Santa Cruz County Code is hereby amended to read as follows:

(g) Proposals to reduce the required two hundred (200) foot agricultural buffer setback for additions to existing residential construction (dwellings, habitable accessory and private recreational facilities not otherwise exempted by Section 16.50.095(b)1) and for the placement of agricultural caretakers' mobile homes on agricultural parcels shall be processed as a Level 4 application by Planning Department staff as specified in Chapter 18.10 of the County Code with the exception that:

SECTION XXXII

This Ordinance shall take effect on the 31st day after the date of final passage outside the Coastal Zone and on the 31st day after the date of final passage or upon certification by the California Coastal Commission, whichever date is later, inside the Coastal Zone.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this _____ day of _____, 2007, by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____

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Clerk of the Board

APPROVED AS TO FORM: _____
County Counsel

Copies to: **Planning**
County Counsel

ORDINANCE NO. _____

AN ORDINANCE AMENDING VARIOUS SECTIONS OF SANTA CRUZ COUNTY CODE CHAPTERS 13.10, 13.20 AND 16.50 REGARDING REGULATIONS FOR SMALL-SCALE RESIDENTIAL PROJECTS

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Subsection (b) of Section 13.10.265 of the Santa Cruz County Code is hereby amended to read as follows:

(b) The structural enlargement, extension, reconstruction, or alteration which conforms to the site development standards of the district in which the structure is located may be made to a nonconforming structure upon issuance of only those building permits and/or development permits required by other Sections of the County Code if the property's use is made to conform to the uses allowed in the district and provided that the structure is not significantly nonconforming as defined in this Section.

SECTION II

Subsection **(k)** of Section 13.10.265 of the Santa Cruz County Code is hereby amended to read as follows:

(k) For the purposes of this section, a structure is significantly nonconforming if it is any of the following:

1. Located within five feet of a vehicular right-of-way;
2. Located across a property line;
3. Located within five feet of another structure on a separate parcel; or
4. Located within five feet of a planned future public right-of-way improvement (i.e. an adopted plan line).

SECTION III

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by revising the category "Habitable accessory structure, 640 square feet or less subject to the provisions of Section 13.10.611" to read as follows:

Habitable accessory structure when incidental to a residential use and not for agricultural purposes, subject to the	BP/4	BP/4	BP/4

provisions of Section 13.10.611

SECTION IV

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by repealing the category "Habitable accessory structures greater than 640 feet, subject to the provisions of Section 13.10.611 (see farm outbuildings)."

SECTION V

Section 13.10.312(b), Uses in agricultural districts, Allowed Uses, of the Santa Cruz County Code is hereby amended by revising the category "Non-habitable accessory structure when incidental to a residential use and not for agricultural purposes" to read as follows:

Non-habitable accessory structure when incidental to a residential use and not for agricultural purposes (subject to the provisions of Section 13.10.611 and 13.10.313(a)).	BP/4	BP/4	BP/4

SECTION VI

Section 13.10.322(b), Uses in residential districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures and uses, including:" to read as follows:

Accessory structures and uses, including:					
One Accessory structure, habitable (subject to Sections 13.10.611 and 13.10.323)	BP/4	BP/4	BP/4	BP/4	BP/4
Accessory structures, non-habitable (subject to Sections 13.10.611 and 13.10.323), comprised of:					
Animal enclosures: barns, stables, paddocks, hutches and coops (subject to the provisions of Section 13.10.641 Stables and Paddocks; .643 Animal Keeping in the RA Zone; .644 Family Animal Raising; .645 bird and small	BP/4	BP/4	BP/4	--	--

animal raising; .646 Turkey Raising: these provisions require Level 5 in some cases).					
Carports, detached; garages, detached; garden structures; storage sheds (subject to Sections 13.10.611 and 13.10.323)	BP/4	BP/4	BP/4	BP/4	BP/4
Air strips (see Section 13.10.700-A definition)	7	7	--	--	--
Parking, including:					
Parking, on-site, for principal permitted uses (subject to Sections 13.10.550 et seq.)	BP2	BP2	BP2	BP2	BP2
Parking, on-site, for non-principal permitted uses (subject to Sections 13.10.580 et seq.)	4	4	4	4	4
Recycling collection facilities in association with a permitted community or public facility, subject to Section 13.10.658, including:					
reverse vending machines	BPI 3	BPI 3	BPI 3	BPI 3	BP1 3
small collection facilities					
Signs, including:					
Signs for non-principal permitted uses (subject to Sections 13.10.580, et seq.)	4	4	4	4	4
Signs for principal permitted uses (subject to Sections 13.10.580, et seq.)	P	P	P	P	P
Storage tanks, water or gas, for use of persons residing on site					
less than 5,000 gallons	BP2	BP2	BP2	--	--
more than 5,000 gallons	BP3	BP3	BP3	--	--
Swimming pools, private and accessory equipment	BP3	BP3	BP3	--	--

SECTION VII

Subsection 13.10.323(e)6(b) of the Santa Cruz County Code is hereby amended to read as follows:

(B) Side and Rear Yards.

i. An accessory structure which is attached to the main building shall be considered a part thereof, and shall be required to have the same setbacks as the main structure;

ii. A detached accessory structure which is located entirely within the required rear yard and which is smaller than one hundred twenty (120) square feet in size and ten (IO) feet or less in height may be constructed to within three feet of the side and rear property lines;

iii. Garden trellises, garden statuary, birdbaths, freestanding barbeques, play equipment, swimming pool equipment, freestanding air conditioners, heat pumps and similar HVAC equipment and ground-mounted solar systems, if not exceeding six (6) feet in height, are not required to maintain side and rear yard setbacks and are excluded in the calculation of allowable lot coverage.

SECTION VIII

Subsection 13.10.323(e)6(C) of the Santa Cruz County Code is hereby amended to read as follows:

(C) Separation. The minimum distance between any two detached structures shall be ten (10) feet with the following exceptions:

i. Eaves, chimneys, cantilevered, uncovered, unenclosed balconies, porches, decks and uncovered, unenclosed stairways and landings may encroach three feet into the required ten (10) separation;

ii. No separation is required between water tanks located on the same parcel;

iii. No separation is required between garden trellises, garden statuary, birdbaths, freestanding barbeques, play equipment, swimming pool equipment, freestanding air conditioners, heat pumps and similar HVAC equipment and ground-mounted solar systems and other structures located on the same parcel.

SECTION IX

Section 13.10.332(b), Uses in commercial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, non-habitable, not including warehouses (subject to Section 13.10.611)" to read as follows:

Accessory structures, non-habitable, not including warehouses					
Less than 500 sq. ft.	3	3	3	3	3
500 – 2,000 sq. ft.	4	**4**	**4**	4	4
Greater than 2,000 sq. ft.	5	5	5	**5**	**5**

SECTION X

Section 13.10.342(b), Uses in industrial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, non-habitable, subject to Section 13.10.611, including:" to read as follows:

Accessory structures, non-habitable, including:			
Outdoor storage, incidental, screened from public streets Parking, on-site, developed in accordance with Sections 13.10.550 et seq. Signs in accordance with Section 13.10.581 Storage, incidental, or non-hazardous materials within an enclosed structure.	4/5/6*	4/5/6*	4/5/6*

SECTION XI

Section 13.10.342(b), Uses in industrial districts, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, habitable, subject to Section 13.10.611, including:" to read as follows:

Accessory structures, habitable, including:	4	**4**	4
Watchman's living quarters, one, located on the same site and incidental to an allowed use			

SECTION XII

Section 13.10.352(b), Uses in the Parks, Recreation and Open Space zone district, Allowed uses, of the Santa Cruz County Code is hereby amended by revising the category "Accessory structures, pursuant to a Master Site Plan according to Section 13.10.355, such as:" to read as follows:

Accessory structures, pursuant to a Master Site Plan according to Section 13.10.355, such as:	4AP
Accessory structures, non-habitable	
Parking, on-site, for an allowed use, in accordance with Section 13.10.550 et seq.	
Signs, in accordance with Section 13.10.582	

SECTION XIII

Section 13.10.521 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Right-of-way Access. A parcel, newly created by a tentative map or conditional certificate of compliance, may not be used as a building site unless it has its principal frontage on a public street or on a private right-of-way at least 40 feet wide nor may a new vehicular right-of-way be created less than 40-feet in width unless a Level V Use Approval is obtained for principal frontage and access on a narrower right-of-way. For any project requiring a subdivision or minor land division tentative map approval, or a conditional certificate of compliance, use of streets not meeting the minimum County standard shall require approval of a roadway exception processed pursuant to Section 15.10.050(f).

SECTION XIV

Subsection (c)(2) of Section 13.10.525 of the Santa Cruz County Code is hereby amended to read as follows:

(2) Except as specified in Sections 13.10.525(c)(3), and 16.50.095, no fence and/or retaining wall shall exceed six feet in height if located within a required side or rear yard not abutting on a street, and no fence, hedge, and/or retaining wall shall exceed three feet in height if located in a front yard abutting a street or other yard abutting a street, except that heights up to six feet may be allowed by a Level III Development Permit approval, and heights greater than six feet may be allowed by a Level V Development Permit Approval. (See Section 12.10.070(b) for building permit requirements.)

SECTION XV

Section 13.10.611 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Purpose. It is the purpose of this Section to provide for the orderly regulation of residential accessory structures allowed as a use in any zone district, to insure that accessory structures are subordinate and incidental to the main structure or

main use of the land, and to provide notice to future and current property owners that illegal conversion of any accessory structure is subject to civil penalties.

(b) Application Requirements.
(1) The proposed use of the structure shall be identified.
(2) Applications for habitable accessory structures and non-habitable accessory structures shall be processed as specified in Tables One and Two of this Section.

(c) Restriction on Accessory Structures.
(1) Any accessory structure shall be clearly appurtenant, subordinate and incidental to the main structure or main use of the land as specified in the purposes of the appropriate zone district.
(2) Regulations on amenities for accessory structures on parcels with a main residence are as indicated in Table One:

Section 13.10.611(c)(2)
TABLE ONE
AMENITIES REGULATIONS

AMENITY	NON-HABITABLE	HABITABLE
SINK	Allowed	/Allowed
TOILET	Pool cabanas: Allowed All other uses: Not allowed unless a Level IV use approval is obtained	Allowed
SHOWER AND/OR BATHTUB	Pool cabanas: Allowed All other uses: Not allowed	Not allowed
WASHER/ DRYER AND WATER HEATER	Allowed	Allowed
INSULATION/SHEET ROCK OR OTHER FINISHED WALL COVERING	Both allowed	Both required
BUILT IN HEATING/COOLING	Not allowed	Heating: Required Cooling: Allowed
KITCHEN FACILITIES, EXCLUDING SINK, AS DEFINED IN 13.10.700-K	Not allowed	Not allowed
ELECTRICAL SERVICE MAXIMUM	100A/220V/single phase maximum unless a Level IV use approval is obtained	100A/220V/single phase maximum unless a Level IV use approval is obtained
SEPARATE ELECTRIC METER	Not allowed unless a Level IV use approval is obtained	Not allowed unless a Level IV use approval is obtained
USE FOR SLEEPING PURPOSES	Not allowed	Allowed
RENT, LET OR LEASE AS AN INDEPENDENT DWELLING UNIT	Not allowed	Not allowed

SIZE, STORY AND HEIGHT RESTRICTIONS AND PERMIT REQUIRED	Within the Urban Services Line (USL): Building Permit only for up to 640 square foot size, 2 story and 28-foot height. Outside the USL: Building Permit only for up to 1,000 square foot size, 3 story and 28-foot height on lots less than one acre in size; Building Permit only for **up** to 1,500 square foot size, 3-story and 28-foot height on lots one acre or greater in size.	Within the Urban Services Line (USL): Building Permit only for up to 640 square foot size, 1 story and 17-foot height. Outside the USL: Building Permit only for up to 640 square foot size, 3 story and 28-foot height.
PERMIT REQUIRED IF EXCEEDS SIZE, STORY OR HEIGHT RESTRICTIONS	Level IV use approval	Level IV use approval
NUMBER OF ACCESSORY STRUCTURES ALLOWED	No limit, if in compliance with the site regulations of the zone district .	One with Building Permit only. Maximum of two with Level IV use approval.
LOCATIONAL RESTRICTIONS	None, if in compliance with the site regulations of the zone district	In addition to the site regulations of the zone district, shall be no more than 100 feet from the main residence, accessed by a separate driveway or right-of-way nor constructed on a slope greater than 30%, unless a Level IV use approval is obtained.

(4) Regulations for accessory structures on parcels with no main residence are as follows:
   i. A habitable accessory structure is not allowed;
   ii. One non-habitable accessory structure not exceeding 12 feet in height or 600 square feet in size is allowed. No electricity or plumbing other than hose bibs is allowed unless a Level IV approval is obtained.

(5) No accessory structure shall be mechanically heated, cooled, humidified or dehumidified unless the structure or the conditioned portion thereof meets the energy conservation standards of the California Energy Code, Title **24,** adopted by Chapter 12.10 of this Code.

(6) Any building permit for the construction of or conversion to an independent dwelling unit shall require an allocation for one housing unit as provided in Section 12.02.030 and shall comply with the dwelling density allowed for the zone district in which the parcel is located, except as provided by 13.10.681.

(d) Restrictions on Electrical Service for Residential Accessory Uses Other than Structures or on Vacant Residential Parcels

1. A 60-amp maximum service for well use is allowed.
2. A 60-amp maximum service for irrigation systems, lighting systems, electric gates and similar appropriate incidental residential uses (not involving a structure) on vacant or developed parcels may be authorized by the Planning Director or designee.
3. Amperages greater than 60-amp require a Level IV use approval.
4. An agreement, as described in Subsection 13.10.681(e), is required to be recorded prior to issuance of an electric permit application.

(e) Required Conditions.

1. Any building or development permit issued for the construction or renovation of a non-habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any structure for human habitation in violation of this Code. Any building or development permit issued for the construction, conversion to or renovation of a habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any other independent habitable structure in violation of this Code. Any electric permit or development permit issued for electrical service for a residential accessory use other than a structure or on a vacant residential parcel, as allowed in Subsection 13.10.681(d), shall include a condition requiring an agreement not to use the electrical service for other uses or structures than that authorized by the electric permit or development permit. Each agreement required by this subsection shall provide the recovery by the County of reasonable attorney fees and costs in bringing any legal action to enforce the agreement together with

recovery of any rents collected for the illegal structure or, in the alternative, for the recovery of the reasonable rental value of the illegally converted structure or, in the alternative, for the recovery of the reasonable rental value of an illegally converted structure from the date of construction. The amount of any recovery of rents or of the reasonable rental value of an illegally converted structure shall be deposited into a fund designated by the Board of Supervisors. The agreement shall provide for periodic condition compliance inspections by Planning Department staff. The agreement shall be written so as to be binding on future owners of the property, include a reference to the deed under which the property was acquired by the present owner, and shall be filed with the County Recorder. Proof that the agreement has been recorded shall be furnished to the County prior to the granting of any building permit permitting construction on the property.

2. The Planning Director may charge a fee, as stated in the Uniform Fee Schedule, for the cost of periodic condition compliance inspections.

SECTION XVII

Subsection (c)(1) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(1) Location. The second unit shall be located on a residentially-zoned parcel or on a parcel designated for residential use in the General Plan which contains no more than one existing detached, single-family dwelling, or where one detached single-family dwelling shall be constructed concurrently with the proposed second unit, or where more than one second unit is proposed to be constructed in conjunction with a Tentative Map Application. A second unit may be located on agriculturally-zoned land outside the Coastal Zone or on a parcel designated for agricultural use in the General Plan outside the Coastal Zone;

SECTION XVIII

Subsection (d)(4) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(4) Site Standards. **All** site standards of the zoning district in which the second unit **is** proposed shall be met. Within the Urban Services Line, second units exceeding seventeen (17) feet in height or one story may be constructed if a Level IV Development Permit is obtained, pursuant to Chapter 18.10 of this code. Outside the Coastal Zone, on land zoned or designated agricultural, all setbacks of the agricultural zone districts shall be met and all second units must meet the buffering requirements of County Code Section 16.50.095(f), as determined by the Agricultural Policy Advisory Commission, if applicable.

SECTION XIX

Subsection (d)(5) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(5) Parking. Offstreet parking shall be provided to meet the requirements of Section 13.10.550 for the main dwelling and one additional space for each bedroom in the second unit.

SECTION XX

Subsection (d)(7) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(7) Other Accessory Uses. Not more than one second unit shall be constructed on any one parcel. A second unit and agricultural caretakers quarters, except farmworker housing on agricultural parcels greater than ten (10) acres outside the Coastal Zone, shall not be permitted on the same parcel. Habitable and nonhabitable accessory structures may be allowed subject to all applicable requirements of the underlying zone district and Section 13.10.611.

SECTION XXI

Subsection (e) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(e) Occupancy Standards. The following occupancy standards shall be applied to every second unit and shall be conditions for any approval under this section:

(1) Occupancy Restrictions. The maximum occupancy of a second unit may not exceed that allowed by the State Uniform Housing Code, or other applicable state law, based on the unit size and number of bedrooms in the unit.

(2) Owner Residency. The property owner shall permanently reside, as evidenced by a Homeowner's Property Tax Exemption on the parcel, in either the main dwelling or the second unit. The Planning Director may require a property owner with less than 50% ownership in a property to demonstrate a substantial financial interest in the property.

(3) Deed Restriction. Prior to the issuance of a building permit, the property owner shall provide to the Planning Department proof of recordation of a Declaration of Restrictions containing reference to the deed under which the property was acquired by the present owner and stating the following:

(B) The property owner shall permanently reside, as evidenced by a Homeowner's Property Tax Exemption on the parcel, in either the main dwelling or the second unit.
(B) The Declaration is binding upon all successors in interest;
(C) The Declaration shall include a provision for the recovery by the County of reasonable attorney fees and costs in bringing legal action to enforce the Declaration together with recovery of any rents collected during any occupancy not authorized by the terms of the agreement or, in the alternative, for the recovery of the reasonable value of the unauthorized occupancy.

SECTION XXII

Subsection (f) of Section 13.10.681 of the Santa Cruz County Code is hereby amended to read as follows:

(f) Permit Allocations. Each second unit may be exempt from the Residential Permit Allocation system of Chapter 12.02 of this Code.

SECTION XXIII

Section 13.10.700-G of the Santa Cruz County Code is hereby amended by repealing the definition of "Guest House."

SECTION XXIV

Section 13.10.700-P of the Santa Cruz County Code is hereby amended by adding the definition of "Pool Cabana" to read as follows:

Pool Cabana. A small accessory structure used for bathing or changing purposes in conjunction with a swimming pool.

SECTION XXV

The definition of "Habitable Accessory Structure'' found in Section 13.10.700-H of the Santa Cruz County Code is hereby amended to read as follows:

Habitable Accessory Structure. A detached, subordinate structure, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use and contains all of the required amenities and some or all of the allowed amenities shown in Subsection 13.10.611(c)(2) Table One for Habitable Accessory Structures.

Attachment 2

SECTION XXVI

The definition of "Non-Habitable Accessory Structure" found in Section 13.10.700-N of the Santa Cruz County Code is hereby amended to read as follows:

Non-Habitable Accessory Structure. A detached subordinate structure, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use and contains some or all of the features and amenities shown in Subsection 13.10.611(c)(2) Table One for Non-Habitable Accessory Structures.

SECTION XXVII

Chapter 13.20 of the Santa Cruz County Code is hereby amended by adding Section 13.20.069 to read as follows:

13.10.069 Solar energy system exemption.
(a) Any solar collector or other solar energy device whose primary purpose is to provide the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating is exempt.
(b) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating is exempt.

SECTION XXVIII

Chapter 13.20 of the Santa Cruz County Code is hereby amended by adding Section 13.20.079 to read as follows:

13.20.079 Demolition on lands outside the Urban Services Line and Rural Services Line exclusion.
Demolition of structures on lands outside the Urban Services Line and Rural Services Line is excluded, except as follows:
(a) Projects located within any of the following areas:
(1) Between the sea and first through public road paralleling the sea, except in the areas shown on the map entitled "Residential Exclusion Zone," hereby adopted by reference and considered a part of this County Code; or
(2) Within three hundred (300) feet of the inland extent of any beach or of the mean high tide line where there is no beach, or within three hundred (300) feet of the top of the seaward face of any coastal bluff, whichever is the greater distance; or
(3) On land subject to public trust; or

(4) On lots immediately adjacent to the inland extent of any beach, or the mean high tide line where there is no beach; or
(5) Within one hundred (100) feet of any wetland, estuary, or stream; or
(6) Within a biotic resource area as designated on the General Plan and Local Coastal Program Resources Maps; or
(7) Within a Special Community designated on the General Plan and Local Coastal Program Land Use Plan maps.

(b) Any structure designated by the Board of Supervisors as an historic resource.

SECTION XXIX

Subsection (a) of Section 13.20.100 of the Santa Cruz County Code is hereby amended to read as follows:

(a) Review Process. All regulations and procedures regarding Coastal Zone Approvals, including application, noticing, expiration, amendment, enforcement, and penalties, shall be taken in accordance with the provisions for Level V (Zoning Administrator) Approvals pursuant to Chapter 18.10 except for the following categories of development which shall be taken in accordance with the provisions for Level IV (Public Notice) with the exception that any request from the public for a public hearing will trigger a Level V review:

(1) Residential additions and accessory structures greater than 500 square feet in size outside the appeal jurisdiction of the Coastal Commission;
(2) Grading of 100 cubic yards or greater volume, except that grading volumes meeting the criteria found in Section 16.20.040(a) shall be processed at Level VI.

Provision for challenges to determination of applicable process is contained in Section 13.20.085.

SECTION XXX

Subsection (b) 1 of Section 16.50.095 of the Santa Cruz County Code is hereby amended to read as follows:

1) Provide and maintain a two hundred (200) foot buffer setback between Type 1, Type 2 or Type 3 commercial agricultural land and non-agricultural uses involving habitable spaces including dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use, except that if an existing legal dwelling already encroaches within the two hundred (200) foot buffer setback, proposed additions thereto, habitable accessory structures or private recreational facilities--none exceeding 1,000 square feet in size--shall be exempt from this subsection so long as they encroach no further than the existing dwelling into the buffer setback and an appropriate vegetative or other physical barrier for all existing and proposed

development, as determined necessary, either exists or is provided and maintained. For the purposes of this Section, outdoor areas designed for intensive human use shall be defined as surfaced ground areas or uncovered structures designed for a level of human use similar to that of a habitable structure. Examples are dining patios adjacent to restaurant buildings and private swimming pools. The two hundred *(200)* foot agricultural buffer setback shall incorporate vegetative or other physical barriers as determined necessary to minimize potential land use conflicts.

SECTION XXXI

The first paragraph of Subsection (g) of Section 16.50.095 of the Santa Cruz County Code is hereby amended to read as follows:

(g) Proposals to reduce the required two hundred *(200)* foot agricultural buffer setback for additions to existing residential construction (dwellings, habitable accessory and private recreational facilities not otherwise exempted by Section 16.50.095(b)1) and for the placement of agricultural caretakers' mobile homes on agricultural parcels shall be processed as a Level **4** application by Planning Department staff as specified in Chapter 18.10 of the County Code with the exception that:

SECTION XXXII

This Ordinance shall take effect on the 31st day after the date of final passage outside the Coastal Zone and on the 31st day after the date of final passage or upon certification by the California Coastal Commission, whichever date is later, inside the Coastal Zone.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this _____ day of _____, 2007, by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____
Clerk of the Board

Attachment 2

APPROVED AS TO FORM: _____
County Counsel

Copies to: Planning
County Counsel

Attachment 3

CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa **Cruz** County Planning Department has reviewed the project described below and has determined that it is exempt fiom the provisions of CEQA as specified in Sections 15061 - 15332 of the CEQA Guidelines for the reason(s) which have been specified in this document.

Application Number: N/A
Assessor Parcel Numbers: Various parcels throughout County
Project Location: Countywide

Project Description: Regulatory Reform for Small-scale Residential Projects: Amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code

Person or Agency Proposing Project: County of Santa Cruz

Contact Phone Number: Annie Murphy (831) 454-3111

A. __X__ The proposed activity is not a project under CEQA Guidelines Section 15378.

B. ____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).

C. ____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.

D. ____ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

E. __X__ **Categorical Exemption**

F. __X__ This project is exempt under CEQA Guidelines section 15061 (b) 3, a general rule which states that where it can be determined with certainty that an activity has no possibility of **a** significant environmental effect, the activity is not subject to CEQA.

F. Reasons why the project is exempt: This project is exempt fiom CEQA review because CEQA applies only to projects with the potential for causing a significant effect on the environment. Under CEQA, significant effects may include both direct and indirect physical changes in the environment. However, indirect physical changes that are speculative or unlikely to occur need not be considered under CEQA (CEQA Section 15064 (d)). The proposed regulatory reforms do not have the potential to cause significant direct or indirect physical changes in the environment for including but not limited to the following reasons:

1) The proposed regulatory changes do not authorize any new types of development as compared to the existing code. Although many of the reforms lower the level of or eliminate discretionary review for certain projects, such as adding toilets to a habitable accessory structure or adding a large addition to a non-conforming structure, these activities are currently allowed under current regulations subject to obtaining necessary permits

Attachment 3

2) All projects which fall under the scope of the proposed regulatory changes will continue to be subject to the same level of review for compliance with environmental regulations. Environmental Planning reviews projects for potential environmental impacts regardless of the level of permit review, and projects within environmentally sensitive habitats such as riparian corridors will also be subject to the same requirements. Similarly, the Environmental Health Department treats all habitable accessory structures as bedrooms, in determining the impacts of such structures on the septic system, regardless of whether such structures contain a toilet.

3) It is unlikely that the proposed reforms will lead to the construction of more accessory structures. Although the proposed reforms are expected to result in more accessory structures being built with the benefit of a permit rather than being constructed illegally, it would be speculative to assume that more unpermitted structures will be built due to the proposed reforms. The additional permit costs associated with the construction of habitable accessory structures have historically limited their appeal in favor of the construction of non-habitable accessory structures with lower permit costs. It is estimated that only a few hundred permits for habitable accessory structures have been issued. Furthermore, the proposed changes could potentially reduce, rather than increase, the number of habitable accessory structures being built: the new regulations will limit the number of habitable accessory structures on a property to 2, whereas currently an unlimited number of habitable accessory structures may be built, subject to meeting all site standards and to obtaining a discretionary permit.

4) The proposed reforms are not likely lead to an increase in population, or to impact the water supply (an indirect physical change in the environment). Even if the regulatory changes resulted in the construction of more habitable accessory structures, this would be unlikely to lead to an increase in population: since occupants of habitable accessory structures are required to share kitchen facilities and shower and bath facilities with the main house, it is unlikely that allowing toilets in habitable accessory structures with a building permit rather than requiring a discretionary permit would result in more people living on properties with habitable accessory structures than do so currently. Since the proposed reforms are unlikely to result in population growth, the potential increase in the number of toilets that would likely result from the proposed reforms is not expected to result in increased water usage.

5) Members of the public raised concerns that allowing toilets in habitable accessory structures would require the installation of larger drain lines, which could facilitate the illegal addition of full baths in such structures. Such structures could then be used illegally as independent dwelling units, resulting in population growth and other potential impacts. Potential environmental impacts resulting from illegal activity are not reasonably forseeable environmental impacts under **CEQA.**

Annie Murphy: Project Planner Date: 11/20/07

EXISTING AND PROPOSED REQUIREMENTS FOR ACCESSORY STRUCTURES AND SECOND UNITS (Changes in bold)

	NON-HABITABLE	HABITABLE	SECOND UNITS
EXAMPLES OF USES:	Workshop or office (unheated), barn, detached garage, pool cabana	Heated office, heated workshop, detached bedroom, art studio, guest house	Independent dwelling unit – Can be rented to a separate household
SINK	Allowed	Allowed	Required
TOILET	Allowed under certain circumstances with Level IV Approval (Public Notice)	Currently: Allowed under certain circumstances with Level IV Approval (Public Notice) **Proposed: Allow with Building Permit**	Required
SHOWER/ BATHTUB	Not allowed except for pool cabanas	Not allowed	Required
WASHER/ DRYER AND WATER HEATER	Allowed	Allowed	Allowed
INSULATION/ SHEET ROCK	Currently: Either sheetrock or insulation allowed, but not both **Proposed: Allow both**	Currently: Allowed **Proposed: Required**	Required
BUILT IN HEATING/COOLING	Not allowed	Currently: Allowed **Proposed: Heating required**	Heating required
[illegible]			Owner required to live on property
USE FOR SLEEPING PURPOSES	Not allowed (deed restriction)	Allowed	Allowed

	NON-HABITABLE	HABITABLE	SECOND UNITS
PERMIT REQUIRED – MEETS SIZE RESTRICTIONS	Currently: Urban: Building Permit (BP) only for carports, garages etc, up to 640 sq ft., 28' height 1,000 sq ft, 28 ft height allowed for animal enclosures. Rural: BP for 1,000 sq ft 28 ft height. **Proposed: Urban: 640 sq ft for all non-habitable accessory structures. Rural: Allow 1,000 sq ft on lots less than 1 acre, and 1,500 sq ft on lots 1 acre or greater.**	Building Permit (BP) for up to 640 sq ft, 1 story, 17 ft height (urban and rural). **Proposed:** **Allow 28 ft height in rural areas.**	Urban: Building Permit (BP) for 640 sq ft, 17 ft height, 1 story. Rural: 28 ft height allowed. Larger size limits depending on size of parcel.
PERMIT REQUIRED – EXCEEDS SIZE RESTRICTIONS	Currently: Level 5, but Level 3 in RA zone (residential agriculture). **Proposed:** **Level 4 (public notice) in all areas.**	Currently: Level 5 (public hearing). **Proposed: Level 4 (public notice).**	Currently: Level 5 (public hearing) to exceed 17' height or 1 story in urban areas. **Proposed: Lower approval to Level 4 (public notice) to exceed specified height and story limit in urban areas.**
NUMBER OF UNITS ALLOWED	No set limit – (Number limited by lot coverage requirements)	Currently: One with BP, more than 1 with Level 5 approval **Proposed**: 1 with BP, **Maximum of 2 with discretionary permit (Level 4 – public notice)**	One only
PARKING AND IMPACT FEES REQUIRED?	No	Required based on number of potential bedrooms	Required based on number of potential bedrooms

ATTACHMENT 5

SUMMARY OF PROPOSED REGULATORY REFORMS: SMALL-SCALE RESIDENTIAL PROJECTS

Accessory Structures (art studios, detached garages, workshops, detached bedrooms, etc.)

Current regulations	Issues	Proposed reforms
1) Bathrooms are prohibited in most habitable and non-habitable accessory structures such as guest houses, detached offices and art studios. Sinks are allowed. Toilets are allowed under certain circumstances with a Level IV Approval.	• Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units. • Not effective at preventing illegal conversions. • Property owners are prevented from constructing fully functional and comfortable accessory structures with appropriate sanitation facilities.	■ Allow toilets in habitable accessory structures with a building permit only. ◦ Continue to allow toilets under certain circumstances in non-habitable accessory structures with a Level 4 approval. • Allow exception for toilets and showers in pool cabanas • Continue to require deed restrictions prohibiting illegal conversions, and provide for inspections.
2) In urban and rural areas, height of habitable accessory structures is limited to 17 feet and one story.	• In rural areas, height requirements for second units, non-habitable accessory structures, and second units are inconsistent.	◦ In rural areas only, increase height allowed for habitable accessory structures to 28 ft.
3) Habitable accessory structures exceeding the specified size, height and number of stories require a public hearing (Level 5).	• Public hearings are generally not necessary, since most new accessory structures create few impacts and are non- controversial. ◦ The approval process is unnecessarily expensive and time- consuming for owner.	• Eliminate the requirement for a public hearing, but require discretionary review with pubic noticing (Level 4). • Public hearings could be held for controversial projects, at the discretion of the Planning Director.
4) Property owners must live on site in order to install heating or cooling systems in a habitable accessory structure.	• This requirement is difficult to enforce, and not effective at preventing illegal conversions into dwelling units. • Limits options for property owner.	◦ Require heating systems, and allow cooling systems, to be installed in habitable accessory structures with a building permit, and do not require owner-occupancy on the property. ◦ Continue to require deed restrictions and provide for inspections of habitable accessory structures.
5) Current regulations are inconsistent regarding allowing a habitable accessory structure and a second unit on the same property. More than 2 habitable accessory structures require a Level 5 approval (public hearing).	Restrictions were implemented to prevent the illegal conversion of accessory structures into dwelling units. Restrictions prevent property owner from making full use of their property. Example: Owner cannot have a both a second unit and a heated workshop.	◦ Allow the construction of habitable accessory structures on a property with a second unit. ◦ Require a building permit only for one habitable accessory structure, and allow a maximum of 2 with a discretionary permit (Level 4). ◦ Continue to require deed restrictions to prevent illegal conversions to dwelling units, and provide for inspections.

ATTACHMENT 5
0452

Current regulations	Issues	Proposed reforms
6) Non-habitable accessory structures such as detached garages and workshops are not allowed to have both sheetrock and insulation.	◦ Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units. ◦ Many property owners want to finish non-habitable structures such as garages with sheetrock and insulation.	◦ Allow non-habitable accessory structures to be finished with sheetrock and insulation. ◦ Continue to require deed restrictions prohibiting the conversion of non-habitable accessory structures to habitable uses, and provide for inspections.
7) • In rural areas, non-habitable accessory structures are limited to 1,000 sq ft, regardless of lot size. • Non-habitable accessory structures exceeding the specified size limits require Level 3 Approval in RA (residential agriculture) zones, and public hearing (Level 5) in all other zones	• On large rural properties, property owners frequently need barns or other structures larger than 1,000 sq ft. • On large rural properties, larger non-habitable accessory structures generally do not impact neighboring properties.	◦ On rural properties 1 acre or greater, allow non-habitable accessory structures up to 1,500 square feet with a building permit only. ◦ In rural areas, require a Level 4 (public notice) approval for non-habitable accessory structures that exceed specified size limits.
8) • In urban areas, size of non-habitable accessory structures such as garages and carports is limited to 640 sq ft. • Allowed size of animal enclosures is 1,000 sq ft. • Level 5 Approval (public hearing) is required for non-habitable structures in urban areas exceeding specified limits.	• Different size limits for animal enclosures and other types of non-habitable accessory structures lead to confusion for applicants. • Non-habitable accessory structures that exceed size limits typically generate few impacts.	• In urban areas, limit size of all non-habitable accessory structures to 640 sq ft., including animal enclosures. • Require Level 4 approval (public noticing) for non-habitable accessory structures in urban areas that exceed specified size limits.
9) All structures greater than 18" in height must meet all site regulations, including setback and lot coverage requirements.	• Definition of structure is overly restrictive. • Objects that have no potential to impact neighboring properties, such as bird baths and 5-foot garden trellises, are considered structures and are prohibited in side or rear yards.	◦ Allow objects less than 6 feet in height that do not create health and safety or other impacts to be placed in side and rear yards. ◦ Examples: Garden trellises, garden statuary, play equipment, and ground-mounted solar systems less than 6 feet in height. Decks taller than 18" and buildings would not be allowed in side and rear yards.

ATTACHMENT 5

Second Units

Current regulations	Issues	Proposed reforms
1) Property owners must reside on the property in order to obtain a permit for a second unit.	◦ Difficult for developers of new subdivisions to construct second units, since they do not live on the property. ◦ Restrictions on second units in new subdivisions limit a significant potential source of second units in the County. ◦ Second units planned during subdivision process can be better integrated into the surrounding neighborhood than those constructed after the subdivision has been built.	◦ Continue to require that the property owner live on-site in order to construct a second unit, but allow an exception for developers of second units within new subdivisions.
2) Ordinance does not specify the level of financial interest required by a property owner to meet the owner occupancy requirements for a second unit permit.	◦ Owner with 1% interest in property who lives on property meets owner occupancy requirements under current regulations. ◦ Property ownership requirements can be difficult to quantify, since there may be circumstances where there are several legitimate property owners.	◦ To verify the owner residency requirements for a second unit permit, the Planning Director may require an applicant with less than 50% ownership in the property to demonstrate a substantial financial interest in the property.
3) Second units can be occupied only by qualifying households. The rent charged for second units cannot exceed certain levels.	◦ Restrictions on occupancy and rent levels may act as disincentives for the construction of new second units. ◦ Occupancy and rent level restrictions are not accomplishing the intended goal of ensuring that second units are rented primarily by low- income or senior households.	◦ Eliminate occupancy and rent-level restrictions for second units, in order to encourage the construction of more second units.
4) Level 5 approval required for second units that exceed 17' height limit in urban areas.	• Neighborhood impacts of second units 28 ft in height are likely to be minimal. • Requiring public hearings (level 5 approval) for units taller than 17 feet in urban areas may discourage the construction of second units on properties with limited lot coverage.	◦ Lower the level of discretionary review required (to Level 4) for second units exceeding 17 feet in height in urban areas.
5) No more than 5 second units per year may be constructed in the Live Oak area.	◦ Infrastructure improvements in Live Oak over the past 20 years have eliminated the need for the annual cap on second units in Live Oak. ◦ Property owners in all areas of the County should have the opportunity to construct new second units.	◦ Eliminate the annual cap on second units in the Live Oak area.

ATTACHMENT 5

0455

ATTACHMENT 5

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Non-conforming Structures

After numerous amendments to the original County Zoning Code enacted in 1958, the number of residential non-conforming structures - structures that do not conform to the current height, setback, lot coverage, or floor area ratio requirements- continues to increase. The proposed reforms are intended to make it easier for residential property owners to make needed repairs and other improvements to their residences.

Current regulations	Issues	Proposed reforms
1) Conforming additions greater than 800 square feet to non-conforming structures require discretionary approval (Level 4).	◦ Conforming additions generally create few impacts, and such projects are rarely conditioned, so that discretionary review is not needed. ◦ Restrictions on size of additions and permit requirements are especially burdensome to owners of smaller non- conforming residences.	◦ Allow conforming additions of any size to non-conforming residences with a building permit only.
2) Discretionary approval with a public hearing (Level 5 Approval) is required for structural repairs of structures exceeding the allowed height limit by more than 5 feet ("Significantly non-conforming).		◦

ATTACHMENT 5
0456

Coastal Regulations

The proposed reforms of coastal regulations are intended to make it easier for residential property owners to make small-scale improvements to their property.

Current regulations	Issues	Proposed reforms
1) Demolition of structures in rural areas of the Coastal Zone requires discretionary approval with a public hearing (Level 5 Approval).	• Demolition generally creates few impacts. • Discretionary review with a public hearing is not necessary for most demolition projects.	◦ Exclude most demolition from requiring a Coastal Approval (would still require demolition permit). ◦ Continue to require Coastal Approval for demolition on sensitive sites such as biotic habitats, and for historic structures.
2) Additions greater than 500 square feet outside the Urban and Rural Service Lines in the Coastal Zone require discretionary review with a public hearing (Level 5 Approval).	• Impacts of such additions are generally minor. • Potential project impacts, including visual impacts, could be fully addressed with a lower level of discretionary review, and do not require a public hearing.	• Lower the level of discretionary review required (to Level 4) for additions outside the Rural and Urban Service Lines in the Coastal Zone, reducing the time and expense required by the applicant. • Public hearing would be held only if requested. • Level 5 approval would still be required for additions with the appeal jurisdiction.
3) Grading exceeding 100 cubic yards in the Coastal zone requires Coastal Approval with a public hearing (Level 5).	• Required grading permits addresses most grading impacts. • Some impacts, such as visual impacts, are not addressed during the review of the grading permit.	• Lower the level of discretionary review required (to Level 4) for grading in the Coastal Zone, except that grading in the appeal jurisdiction would still require a Level V Approval . • Public hearing would be held only if requested.
4) County regulations require discretionary review of solar energy systems in certain areas of the Coastal Zone (Level 5 Approval).	• New California State Law does not allow discretionary review of solar energy systems. • The county should remove barriers to the installation of sustainable energy systems for residences.	◦ Allow the installation of solar energy systems in the Coastal Zone with a building permit only. • Continue to require that roof-mounted solar systems shall not exceed the height limit for the zoning district by more than 3 feet.

ATTACHMENT 5
0467

Other Recommended Modifications

The proposed reforms simplify several regulations that unnecessarily create barriers to routine residential land uses

Current regulations	Issues	Proposed reforms
1) A discretionary permit (Level 3 Approval) is required when using an existing right-of-way less than 40 feet wide to access an existing lot of record.	Other agencies now review all building permits, and can condition building permits to address any issues with rights-of way.	Delete the requirement for a separate discretionary approval for using a less than 40-foot right of way to access an existing lot of record.
2) For properties adjacent to agricultural land, discretionary review (Level 4) is required for additions and new accessory structures within the required 200' agricultural buffer.	For properties with an existing house already in the agricultural buffer, discretionary review of additions or new accessory structures that do not extend further into the buffer area may be redundant.	• Eliminate the requirement for discretionary review of additions or accessory structures less than 1,000 square feet that extend no further into the buffer area than the current residential development. • Condition project to require the installation of a physical barrier.
3) Current regulations require an administrative approval (Level 3) for front-yard fences exceeding 3 feet in height, including front yards of "flag lots" that face another property instead of facing the street.	• Property owners of flag lots and similar lots must obtain a permit to construct privacy fences between their property and the adjacent property. • The construction of privacy fences is allowed without permits between other adjoining properties.	Allow the construction of six-foot fences in the front yard of flag lots and other lots that do not face a right of way, without requiring discretionary review or a building permit.

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Other Recommended Modifications (continued)

Current regulations	Issues	Proposed reforms
4) A ten-foot separation is currently required between water tanks on a parcel.	• The building code does not require separation between water tanks. • Eliminating the separation requirement between water tanks will not impact neighboring properties.	• Eliminate the separation requirement between water tanks.
	• Electric service on vacant lots can be important for fire suppression, or for allowed family gardens. • Electric service for outbuildings may be necessary for the construction of electric gates or other structures such as barns located away from the main dwelling.	• Allow low-amperage electric service under specified situations. Owner would be required to obtain all required electrical or building permits. • Require a Declaration of Restrictions to clearly indicate the allowed use of such electric service for current and future property owners, and provide for inspections.

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ATTACHMENT C

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BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 40-07

On the motion of Commissioner Shepherd
duly seconded by Commissioner Aramburu
the following is adopted:

PLANNING COMMISSION RESOLUTION RECOMMENDING TO THE SANTA CRUZ COUNTY BOARD OF SUPERVISORS TO APPROVE AMENDMENTS TO CHAPTERS 13.10, 13.20, AND 16.50 OF THE SANTA CRUZ COUNTY CODE TO SIMPLIFY REGULATIONS FOR SMALL-SCALE RESIDENTIAL STRUCTURES.

WHEREAS, small-scale residential projects such as additions to existing homes, accessory structures, and second units constitute the majority of applications to the Santa Cruz County Planning Department; and

WHEREAS, many of the regulations in the County Code governing such projects are outdated, including regulations that are overly restrictive or require high levels of review for simple non-controversial projects, resulting in a planning process that is unnecessarily restrictive, expensive and time consuming for applicants; and

WHEREAS, on June 19, 2007 the Board of Supervisors conducted a study session to consider amending the Santa Cruz County Code to simplify the planning process for small-scale residential projects while continuing to protect important community values and resources; and

WHEREAS, the Board of Supervisors on August 28th 2007 approved "in concept" a package of ordinance amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code simplifying the regulatory process for such projects; and

WHEREAS, on October 24, 2007, the Planning Commission conducted a public hearing to consider the amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code to simplify regulations for small-scale residential structures; and

WHEREAS, the Planning Commission finds that the ordinance amendments will be consistent with the policies of the General Plan, the Local Coastal Program, and the California Coastal Act; and

WHEREAS, the ordinance amendments have been found to be categorically exempt from further review under the California Environmental Quality Act.

EXHIBIT A

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Planning Commission recommends that the ordinance amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code (Attachment 1 to Exhibit A), and the Notice of Exemption, incorporated by reference, be approved by the Board of Supervisors.

PASSED AND ADOPTED by the Planning Commission of the County of Santa Cruz, State of California, this 24th day of October, 2007 by the following vote:

AYES: COMMISSIONERS Messer, Aramburu, Dann, Gonzalez, and Shepherd
NOES: COMMISSIONERS
ABSENT: COMMISSIONERS
ABSTAIN: COMMISSIONERS

Chairperson of the Planning Commission

ATTEST:

Secretary

APPROVED AS TO FORM:

County Counsel

DISTRIBUTION: County Counsel
Planning Department

ATTACHMENT 7

County of Santa Cruz
Planning Commission Minutes

0471

Planning Department, 701 Ocean Street, Suite 400, Santa Cruz, CA 95060

Meeting Date : **Wednesday, October 24,2007 9:00 AM**

Location : Board of Supervisors Chambers, Room 525
County Government Center
701 Ocean Street
Santa Cruz, CA 95060

VOTING KEY
Commissioners: Chair: Shepherd, Vice Chair: Gonzalez, Bremner, Aramburu, Dann
Alternate Commissioners: Hummel, Britton, Hancock, Messer, Danna

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REGULAR AGENDA ITEMS

1. **Roll Call**

   Commissioners present were Messer, Aramburu, Dann, Vice Chair Gonzales and Chair Shepherd.

2. **Planning Director's Report**

3. **County Counsel Report**

4. **Additions and Corrections to Agenda**

5. **Oral Communications**

   Planning Commissions will hear brief (5- minute maximum) statements regarding items not on this agenda.

CONSENT ITEMS

6. **Approval of minutes**

   To approve the minutes of the October 10, 2007 Planning Commission meeting as submitted by the Planning Department.

   Approved minutes as submitted. Aramburu made the motion and Dann seconded. Voice vote carried 5-0, with ayes from Messer, Aramburu, Dann, Gonzalez, and Shepherd.

SCHEDULED ITEMS

7. **06-0156(**)** **546 Beach Drive, Aptos** **APN: 043-152-70**

   Proposal to construct a 3-story single-family dwelling of about 4,048 square feet (heated space) and grade about 1,070 cubic yards in a Coastal Scenic Area. Requires a Coastal Development Permit, a Variance to increase the number of stories to 3 within the Urban Services Line, Preliminary Grading Review, and Environmental Review. Property located

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on the bluff side of Beach Drive, about 1 mile southeast of Rio Del Mar Esplanade (at 546 Beach Drive). 0472
Applicant: Jim Mosgrove, Architect
Supervisorial District: 2
Project Planner: Maria Perez, 454-5321
Email: pln110@co.santa-cruz.ca.us

Approved staff recommendation with additions. Aramburu made the motion and Gonzalez seconded. Roll call vote carried **3-2** *with ayes from Messer, Aramburu, and Gonzalez. Commissioners Dann and Shepherd voted no.*

8. Proposal to consider a County-sponsored Redesignation of APN **071-161-05.** Requires a General Plan Amendment to change the land use designation from C-O (Professional and Administrative Offices) to Suburban Residential and a rezoning from PA (Professional and Administrative Office) to the **R-1-15** (Single-family Residential, **15,000** square feet) zone district. The property is located on the east side of Highway 9 in **Felton**, across from the San Lorenzo Valley High School (at **6950** Highway 9.)

Applicant: County of Santa Cruz
Supervisorial District: 5
Project Planner: Sarah Neuse 454-3290
Email: pln320@co.santa-cruz.ca.us

Approved staff recommendation. Shepherd made the motion and Gonzalez seconded. Voice vote carried 5-0, with ayes from Messer, Aramburu, Dann, Gonzalez, and Shepherd.

9. Public Hearing to consider proposed amendments to Santa Cruz County Code Chapters **13.10, 13.20,** and **16.50** to simplify the County's regulations for small scale residential structures, with particular emphasis on accessory structures and second units, non-conforming structures, and projects in the Coastal Zone. (Chapters **13.10, 13.20,** and **16.50** are Coastal Implementing Ordinances.)

Applicant: County of Santa Cruz
Supervisorial District: Countywide
Project Planner: Annie Murphy, 454-3111
Email: pln400@co.santa-cruz.ca.us

Approved staff recommendation and adopted resolution recommending approval to the board of supervisors with the direction that the discussion at the Planning Commission included water issues in the San Lorenzo Valley and CEQA. Also directed Planning Department staff to meet with concerned parties, including Sierra Club and San Lorenzo Valley Water. Shepherd made the motion and Aramburu seconded. Roll call vote carried 5-0 with ayes from Messer, Aramburu, Dann, Gonzalez, and Shepherd.

10. Public Hearing to consider an ordinance amendment to Section **13.10.375** of the Santa Cruz County Code in order to increase the minimum parcel size required for rezoning to the Timber Production (TP) zone district from 5 acres to 40 acres. Chapter **13.10** is a local Coastal Program Implementing Ordinance.

Applicant: County of Santa Cruz
Supervisorial District: Countywide
Project Planner: Sarah Neuse 454-3290
Email: pln320@co.santa-cruz.ca.us

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Approved staff recommendation. Aramburu made the motion and Dann seconded. Roll call vote carried 3-2 with ayes from Aramburu, Dann, and Shepherd. Commissioners Messer and Gonzalez voted no.

11. **Public Hearing to consider 2008 Growth Goal Report and setting of 2008 Population Growth Goal of 0.5%.**

Applicant: County of Santa Cruz
Supervisorial District: Countywide
Project Planner: Frank Barron, 454-2530
Email: pln782@co.santa-cruz.ca.us

Approved staff recommendation. Shepherd made the motion and Gonzalez seconded. Voice vote carried 5-0, with ayes from Messer, Aramburu, Dann, Gonzalez, and Shepherd.

APPEAL INFORMATION

Denial or approval of any permit by the Planning Commission is appealable to the Board of Supervisors. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Planning Commission. To file an appeal you must write a letter to the Board of Supervisors and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the Planning Department lobby, or contact the project planner.

APPEALS OF COASTAL PROJECTS

(*) This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission.

(**) This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110) The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of local action. Denial or approval of the Coastal Zone Permit is appealable to the Board of Supervisors; the appeal must be filed within 14 calendar days of action by the Planning Commission.

Note regarding Public hearing items: If any person challenges an action taken on the foregoing matter(s) in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

Agenda documents may be reviewed at the Planning Department, Room 420, County Government Center, 701 Ocean Street, Santa Cruz.

The County of Santa Cruz does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. The Board of Supervisors chambers is located in an accessible facility. As a courtesy to those persons affected, please attend the meeting smoke and scent free. If you wish to attend this meeting and you will require special assistance in order to participate, please contact the ADA Coordinator at 454-3055 (TTD number is 454-2123 or 763-8123 from Watsonville area phones) at least 72 hours in

advance of the meeting to make arrangements. **As** a courtesy to those persons affected, please attend the meeting smoke and scent free.

ATTACHMENT 7

EXHIBIT A
ATTACHMENT 8

BEFORE THE AGRICULTURAL POLICY ADVISORY COMMISSION
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

0475

RESOLUTION NO. _____

On the motion of Commissioner
duly seconded by Commissioner
the following Resolution is adopted:

AGRICULTURAL POLICY ADVISORY COMMISSION RESOLUTION REGARDING PROPOSED AMENDMENTS TO COUNTY CODE CHAPTER 16.50 TO ELIMINATE THE REQUIREMENT FOR DISCRETIONARY APPROVAL FOR RESIDENTIAL ADDITIONS, ACCESSORY STRUCTURES AND PRIVATE RECREATIONAL FACILITIES LESS THAN 1,000 SQUARE FEET THAT EXTEND NO FURTHER INTO THE AGRICULTURAL BUFFER THAN THE EXISTING RESIDENTIAL STRUCTURES.

WHEREAS, County Code Chapter 16.50, the Agricultural Land Preservation and Protection Ordinance, requires a buffer between commercial agricultural land and residential land uses to minimize conflicts between such land uses in order to protect agricultural land; and

WHEREAS, County Code Chapter 16.50 allows for residential additions and habitable accessory structures within the buffer area, subject to Level IV discretionary review and the installation of an appropriate physical barrier between the proposed residential development and adjacent commercial agricultural land; and

WHEREAS, for new residential additions, habitable accessory structures, and private recreational facilities less than 1,000 square feet that extend no further into the agricultural buffer than the existing residential structures, the installation of an appropriate physical barrier can be required as a standard condition of approval to a building permit without requiring discretionary review.

NOW, THEREFORE, BE IT RESOLVED, that the Agricultural Policy Advisory Commission recommends that the amendments to County Code Chapter 16.50, attached hereto as Exhibit B, be approved by the Board of Supervisors.

PASSED AND ADOPTED by the Agricultural Policy Advisory Commission of the County of Santa Cruz, State of California, this _____ day of _____, 2007 by the following vote:

AYES: COMMISSIONERS
NOES: COMMISSIONERS
ABSENT: COMMISSIONERS
ABSTAIN: COMMISSIONERS

_____
Chairperson

ATTEST: _____
Steven Guiney, Secretary

APPROVED AS TO FORM:

_____
COUNTY COUNSEL

cc: County Counsel
Planning Department

ATTACHMENT 9

County of Santa Cruz
Agricultural Policy Advisory Commission Minutes

Planning Department, 701 Ocean Street, Suite 400, Santa Cruz, CA 95060

Meeting Date: Thursday, October 18, 2007 1:30 PM

Location: Agricultural Extension Auditorium
1432 Freedom Boulevard
Watsonville, CA 95076

Members Present: Bruce Dau, Frank McCrary, Sam Earnshaw, Ken Kimes, Mike Manfre
Staff Present: None
Public Present: None

SCHEDULED ITEMS

1. Call to Order
2. Approval of Minutes and Modification

   (a) Approval of September 20, 2007 minutes
   (b) Additions/Corrections to Agenda
   APPROVED
3. Review of APAC correspondence

   Paiaro ley Water g g
   MOVED TO END OF MEETING FOR DISCUSSION
4. Com : . ner's Presentations
5 al i

CONSENT ITEMS

6. **07-0280** **164** PLEASANT VALLEY ROAD, WATSONVILLE
   APN(s): **108-161-21, -62, -63, -64,** and **-65**

   Proposal to transfer land between four existing parcels; APN 108-161-62, 16.60 acres; APN 108-161-63, 7.46 acres; APN 108-161-64, 21.25 acres and APN 108-161-21/65, 34.28 acres; to result in four parcels of 16.60 acres, 18.05 acres, 24.40 acres and 20.50 acres respectively. Requires a Lot Line Adjustment. Properties located on the East side of Pleasant Valley Road at about 350 feet north of the intersection with Freedom Boulevard (160 and 164 Pleasant Valley Road).
   PROJECT PLANNER: STEVEN GUINEY, PHONE 454-3172,
   PLN950@CO.SANTA-CRUZ.CA.US
   APPROVED: ALL AYES

REGULAR AGENDA ITEMS

7. **07-0215** **151** SILLIMAN RD,
   WATSONVILLE **APN(s): 110-141-08**

ATTACHMENT 9

Proposal to install two 14 feet wide by 64 feet long mobile office buildings for temporary office use for a period not to exceed 3 years to be used for offices at an-existing agricultural research facility. Requires an Agricultural Buffer Determination and a Minor Variation to Development Permits 01-0422 and 03-0195. Property located at the northwest side of Silliman Road at 151 Silliman Road, about 1500 feet north from Riverside Road (Highway 129) in rural Watsonville.
OWNER: BERKSHIRE INVESTMENTS LLC
APPLICANT: ROBERT GOLDSPINK ARCHITECTS
PROJECT PLANNER: STEVEN GUINEY, PHONE 454-3172,
PLN950@CO.SANTA-CRUZ.CA.US
APPROVED; ALL AYES

8. **07-0132** **VICINITY, CREST DR & LINDEN DR**
APN(S): 046-271-25

Proposal to construct a 2,394 square foot single-family dwelling and a detached 864 square foot garage/shop. Requires an Agricultural Buffer Determination to reduce the required the 200 foot agricultural buffer to 10 feet. Property located on the northeast side of an unnamed right-of-way at about 165 feet northwest of its intersection with Crest Drive at about 215 feet west of the intersection with Linden Drive.
PROJECT PLANNER: STEVEN GUINEY, PHONE 454-3172,
PLN950@CO.SANTA-CRUZ.CA.US
APPROVED: ALL AYES

9. **PROPOSED ORDINANCE AMENDMENTS TO THE SANTA CRUZ COUNTY CODE**

Public hearing to consider amending Chapter 16.50 to eliminate the requirement for discretionary approval and noticing requirements for minor residential additions to existing residential construction within an agricultural buffer, as long as the new development extends no further into the agricultural buffer than the existing residential structures.
APPLICANT: COUNTY OF SANTA CRUZ
SUPERVISORIAL DIST: COUNTY-WIDE
PROJECT PLANNER: ANNIE MURPHY, (831) 454-3111
EMAIL: pln400@co.santa-cruz.ca.us
APPROVED: ALL AYES

10. **PAJARO VALLEY WATER MANAGEMENT AGENCY**

DISCUSSION OF APAC CORRESPONDENCE AND PVWMA

ORAL COMMUNICATIONS

The Commission will receive oral communications regarding any item of interest to the public before or after consideration of any item. Oral Presentations may be limited to 5 minutes and may address an item on the agenda or may be separate subject matter, which is not on the agenda, provided that the subject matter is within the Commission's jurisdiction. This Commission may not take action or respond immediately to any presentation, which involves a subject, which has not been duly noticed in accordance with the State Brown Act, but the Commission may choose to follow-up at a later time.

APPEALS

In accordance with Section 18.10.340 of the Santa Cruz County Code, any interested person may appeal an action or decision taken under the provisions of such County Code. Appeals to the decisions of the Agricultural Policy Advisory Commission are made to the Board of Supervisors. Appeals to the Board shall be taken by filing a written notice of appeals with the Clerk of the

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ATTACHMENT 9

Board of Supervisors no later than fourteen calendar days following the date of the hearing fiom which the action was taken. The Clerk of the Board shall send notice of such appeal to the Planning Department within one day of filing of the appeal.

The County of Santa Cruz does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. The meeting room is located in an accessible facility. If you wish to attend this meeting and you will require special assistance in order to participate, please contact the ADA Coordinator at 454-3055 (TTD number is 454-2123 or 763-8123 fiom Watsonville area phones) at least 72 hours in advance of the meeting to make arrangements. Persons with disabilities may request a copy of the agenda in an alternative format. As a courtesy to those persons affected, please attend the meeting smoke and scent free.

ATTACHMENT 10

Stanley M. Sokolow
301 Highview Court
Santa Cruz, CA 95060
Phone 831-423-1417 • Fax 831-423-4840
Email stanley@thesokolows.com

August 7,2007

Board of Supervisors
county of santa Cruz
701 Ocean St., Room 500
Santa Cruz, CA 95060

RE: Proposed revision of land-use ordinances for **second units** presented June 19, 2007, scheduled for further consiaeration in the August 14,2005, agenda.

Dear Supervisors:

I am writing to provide my input for your consideration of the Planning Department's proposed revisions which were presented at your June 19,2007, regular meeting as item 54. I have some information regarding the written and oral proposals by the Planning Department and in response to questions and issues raised by individual Board members at that meeting. In brief, I oppose the proposed regulation that would require a minimum 50% ownership percentage by the resident owner in order to apply for and/or continue to use a second unit. Such a regulation does not serve a useful purpose in that a co-owner of any percentage, residing on the property, would have the same care and concern about the construction and occupancy as a 50% owner. All owners under a tenants-in-common deed, regardless of their percentage of ownership, have full legal rights to use of the entire property on an equal basis with any other owner of the parcel. A 50% rule would have unintended consequences, which I'll illustrate below. I agree with the staff proposal to remove the other occupancy restrictions and rent controls. Further, I urge the Board to allow an owner of two contiguous parcels, that is, two parcels which touch each other at a common side or lot corner, to develop and rent out a second unit on the parcel which is not the owner's residence provided that the owner lives on one of the two parcels.

I agree with most of the reforms proposed by the Planning Department staff report, however, the proposal that "Section 13.10.681(e) be modified to require that a property owner applying for a permit for a second unit must maintain at least 50% ownership in the property in order to receive a permit" has serious problems. The report proposes this as a solution to the enforcement issue it cites on page 4: "In one code compliance case, the owner was attempting to define a party who had a 1% stake in the property as being eligible for owner-occupancy status." Before adopting the proposal, the Board should carefully consider the possible scenarios that it would affect.

There are two distinct issues to keep separate. First, who qualifies to be an applicant for the ministerial second unit building permit. Second, who qualifies as an owner for the requirement that the owner shall reside on the parcel when the second unit is occupied. The proposed language confounds these two issues by saying that the applicant must maintain at least a 50% ownership in order to receive a permit. This seems to imply that the owner-applicant must continue to reside on the parcel and

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continue to be at least a half-owner at the time the permit is granted, but why use the term "maintain"? The "code compliance" case mentioned seems to be one involving the continued occupancy of a second unit when only a 1% owner resides on the parcel. The granting of a permit to build a second unit is an entirely different issue. Ownership at the time of granting the permit is a one-time matter. Maintaining ownership beyond the granting of the permit makes no sense as a requirement for granting a permit. If you mean that 50% ownership must be maintained after the permit is issued in order to continue using the second unit, then there are other problems created.

Scenario 1: The owner-occupant is granted the permit, builds the second unit, resides on the parcel and allows the second unit to be occupied by a tenant or family member, and then sells the place. The new owner is not the owner-applicant. The proposed regulation language would not apply to him or her.

Scenario 2: The owner dies and the heirs inherit the property in equal parts as tenants in common, but only one of the heirs moves into the home. If there are more than two heirs, no one of them is at least a 50% owner. The proposed regulation would not allow any of the heirs, even one actually residing in the house, to apply to build a second unit or to continue to operate an existing second unit.

Scenario 3: For estate planning purposes, the owner(s) give a part-ownership of the home to the adult children, taking advantage of the gift-tax exclusion. After the gift, neither the parent nor any one of the children are 50% owners, similar to scenario 2. Then neither the parent (nor any one of the children if the parent moves away) would qualify to build a second unit nor to allow it to be occupied, even if he or she resides in the existing house.

Scenario 4: To be able to afford the purchase, a low-income household partners with an investor or relative who agrees to be an equity-sharing non-resident co-owner. (Such equity-sharing financing does exist and is usually arranged between unrelated investors by realtors who specialize in making a market for home loans, or by relatives such as parents and their young adult children.) The resident household may put in less than 50% of the acquisition cost (down payment., closing costs, etc.) and the non-resident investor puts in the rest, and they own the property as tenants in common, each owning a share in proportion to the respective contribution to the purchase and ongoing expenses. The proposed regulation would not allow any second unit to be built because the owner-occupant is not at least a 50% owner.

As you can see, the proposed 50% ownership regulation, which would forbid the second unit in the above scenarios, goes against the public purpose of providing for second units without unreasonably burdensome restrictions. It also would unnecessarily interfere with owners who want or need to apply the tools legally available to them for estate planning and home financing. The ownership residency requirement has the purpose of ensuring that an owner will provide close oversight of the second unit so that it is not a nuisance to neighbors. Regardless of the percentage of ownership, any owner actually residing on the property will have that sort of concern about the second unit occupancy. Likewise, even if the applicant for the second unit owns less than 50%, all of the owners would be reasonably concerned about the construction of a second unit, since they all would own their percentage of it according to the deed. Imposing an ongoing 50% ownership rule for continued use of the second unit would thus unreasonably restrict the right of owners to use their property.

With regard to the continued owner-occupancy requirement, I urge you to extend the requirement to allow an owner of two adjacent parcels to develop and rent out a second unit on the parcel that is not the owner's residence. This would still provide close supervision, since the owner would be living in close proximity not only to the second unit but also to the main house, both of which could be tenant occupied. This relaxation of the requirement would better serve the purpose of

creating additional affordable housing without loss of owner supervision-

At the June 19 meeting, various questions arose during the **Board's** discussion of the staff proposal on second units.

Supervisor Beutz was concerned that "ten surfers" would rent **the** second unit, creating an unreasonable burden and nuisance to the neighbors. Of course, this could happen to any house that is rented out, with or Without a second unit, so it's a matter of the code compliance department enforcing the housing over-crowding regulations that already exist. The state housing code, which applies to all housing in the County, provides ample regulatory basis for code compliance staff to put **an** end to such over-occupancy of any dwelling. The state housing code allows any sleeping room (that is, any room other than bathrooms, hallways, closets, and stairwells) to be occupied **by** one person if it is at least 70 square feet of floor area, or by two persons if it is at least 120 square feet. For each additional 50 square feet, one more person can sleep in the room. Sleeping rooms must have an exterior door or window of a certain minimum size for emergency access, ***so*** completely interior rooms can't legally be used for sleeping. Since the housing code comes under the statewide uniform building codes, a city or county can adopt more stringent occupancy standards ONLY IF it ***makes*** express findings that the changes are reasonably necessary because of local climatic, geological, **or** topographical conditions. No legal basis exists in this county for more stringent local restrictions **on** the number of persons who can occupy **a** dwelling unit.

Moreover, **the** California Fair Employment and Housing Act **makes** it unlawful to discriminate against any persons in housing accommodations on the basis of familial ***status*** (having children under age **18** in the household). Generally **the** state recognizes an occupancy limit of two persons per bedroom plus one additional person, for purposes of investigating **housing** discrimination under the Act. **Any** more stringent restrictions could be considered discrimination against families with children.

Therefore, the County is stuck with applying the statewide occupancy standard, but this is no problem because it nevertheless provides reasonable restrictions that would prevent the over-crowding problem that Supervisor Beutz is womed about.

Supervisor Beutz also repeated the concern expressed in **past years,** whenever the second unit regulations came before the Board, that the regulations essentially allow every house to become **a** duplex. Yes, that's the way the state Legislature set up the statute on **second** units. Faced with a long-standing critical statewide shortage of housing, the Legislature had to make tough decisions balancing various conflicting factors. There's no point rehashing those decisions, since the County is bound by **the** statute and already has adopted its own ordinance providing for second units. Supervisor Pirie got it right when she said that the proposed changes in second unit regulations don't change that fact.

Supervisor Beutz **was** concerned that removal of the occupancy restrictions and rent controls on second units would make "crime the norm." She wondered how many illegal second units already exist in the County, units which would now be made legal if these restrictions **are** lifted. Of course, removal of the occupancy restrictions and rent controls would not in itself make illegal units, that is, units built or converted without any building permit, into legal structures- **A** building permit would still be required so that the County can ensure safe construction **exists,** What the relaxation of restrictions would do is remove burdensome regulations that have discouraged homeowners from creating these additional small and relatively affordable units without government funds. It's really telltale that the County has only 276 legal second units, out of the 10,000 or so that could exist according to the data cited by the planning department in the housing element. The County's second unit ordinance has existed since 1982, 25 years ago. That's an average **of** 11 Units built per year. The more the regulations were relaxed over the recent years, the faster the units were built. The existing regulations just are not fulfilling the purpose intended.

A free-market approach would work better. In **a** letter dated September 13, 1995, to County

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Counsel Wittwer regarding second units in the housing element, the Housing and Community Development Department mentioned the experience of the city of Sausalito, which had no rent controls on second units. A 1992 study by that city found that 82% of the second units were affordable to moderate, low, and very low income households even though there were no rent level restrictions on them. Sausalito, being a desirable place to live which is in close proximity to the major employment center of San Francisco, is reasonably comparable to the County, so that study is relevant to this County. With a greater supply of second units of varying size, quality, and location, normal market forces will tend to keep a check on the rent levels.

The loss of privacy that people complained about to Supervisor Beutz would be exactly the same if a neighbor were to add onto their existing house. A second-story bedroom addition over an attached garage has the same impact on neighbors as a second story second unit does. The County allows home additions without any of the rent controls and occupancy restrictions the current regulations impose on second units. We all must realize that living in a civilized society creates various benefits and burdens. All neighbors have equal rights to add onto their house or build a second unit, so no one should complain that it's unfair to allow a neighbor to build a second unit, even if it's the first one in the neighborhood. Someone will always be the first, but that doesn't mean it's out of character for a residential neighborhood or an unreasonable invasion of privacy.

Supervisor Beutz said that the limit of 5 second unit permits per ***year*** in the Live *Oak* area was not imposed for lack of infrastructure (sewer and water), but rather to control the growth of rentals in Live Oak, which has more than its proportionate share of higher density housing in the County. However, the state statute says that the number of second unit permits may not be restricted by any policy limiting growth. Therefore, the County has no legal authority to maintain the 5-units-per-year restriction once the rational basis for it has been eliminated, which the planning director says is now the case. You should follow his recommendation and comply with state law by removing the unjustifiable 5-unit growth limit.

In *summary*, I urge you not to impose a 50% ownership requirement in the second unit restrictions. An owner of any percentage, regardless of how small, should still be equally qualified to be the resident owner for the purposes of the second unit ordinance. Further, an owner of two contiguous parcels should be able to develop and rent out a second unit on the parcel which is not owner-occupied as long as one of the two parcels is owner-occupied.

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

cc: County Planning Director
County Counsel

County of Santa Cruz
Planning Department

Planning Commission
Meeting Date: 10/24/07
Agenda Item: # 9
Time: After 9:00 a.m.

Additions to the Staff Report for the Planning Commission

Item: 9

Late Correspondence

SIERRA CLUB
FOUNDED 1892

SANTA CRUZ COUNTY GROUP
----------Of The Ventana Chapter----------
P.O. Box 604, Santa Cruz, CA 95061 phone (831) 426-4453
www.ventana.org e-mail: scscrg@cruzio.com

October 15,2007

Santa Cruz County Planning Commission
701 Ocean St. 4th floor
Santa Cruz, CA 95060

Subject: October 24,2007 Meeting -- Agenda item #9
Public Hearing to consider proposed amendments to Santa Cruz County Code Chapters 13.10, 13.20, and 16.50 to simplify the County's regulations for small scale residential structures, with particular emphasis on accessory structures and second units, non-conforming structures, and projects in the Coastal Zone.

Dear Commission Members and Staff:

Please accept the following comments as our preliminary response to the captioned proposals drafted by the Planning Department. The impacts that the proposed changes could have on rural areas of the County are dramatic in scope and effect. They are likely to make rural areas no longer rural and to destroy community character in urban neighborhoods throughout the County. Therefore, we are making extensive comments in the hope that they will lead you to reconsider the fundamental land use issues that would be altered by the proposed Amendments.

1. First, we want to address some procedural deficiencies:

1.1. These proposals intend to overturn and extensively revise many sections of Santa Cruz County land use and building codes. Yet, these code sections are not identified in this proposal. In the present form, recommendations from this Commission will be forwarded to the Board of Supervisors without a specific review by the Commission or the public of the existing code provisions and the proposed replacement language.
Therefore, we request that a strikeout version of the proposed changes to the code's text be provided to this Commission and the public.

1.2. No account is given of the cumulative environmental impacts of the proposed changes. The proposed changes are so extensive that they will create increased residential density which will have innumerable and cumulative impacts on the environment, including at least the following:

- increased impacts upon water supplies, on waste water treatment and disposal and on non-point source water pollution;
- increased impacts on wild lands and rare plant and animal habitats as they are converted to residential uses;
- increased impacts on off-street vehicle parking areas, local traffic circulation, and emergency vehicle access to areas of increased density.
- In addition, this proposal seems to remove minimum width requirements for rural roads' right of way, without any evaluation of the impact that such changes in engineering standards might have on health and safety issues that will be created by such changes.

"...to explore. enjoy and protect the wild places of the earth"
Printed on Recycled Paper

Therefore, we request that an Environmental Impact Report be prepared, assessing the impacts of the proposed changes on the environment and the public health and safety.

1.3. In proposing the changes before you, the Planning Department has noted that the Board of Supervisors expressed a desire "to design the specific reforms in a fashion that does not result in increased illegal conversions of structures to more intense land uses. These concerns addressed both the scope and specifics of the reforms as well as related enforcement efforts." (source: from the staff proposal as agenda item 41, August 28,2007.)

Currently County Code Enforcement staff respond only to citizen complaints. Code enforcement is fundamental to any presumption about the effect of a change to the Code itself. Without the deterrent effect of prompt clear enforcement action, the code itself becomes an opportunity for violators to game the system and use intimidation to discourage neighboring land owners fiom filing complaints. At present, it appears that county staff does not initiate inspections or investigations to determine compliance with County Building, Zoning and Environmental Code – it reacts in response to the most egregious violations when they are filed as citizens' complaints.

The absence of enforcement is well understood by many contractors and property owners in the County. The result is a widespread flouting of code requirements and a willingness of many landowners to take the risk of building without permits because the consequences of being caught are not an effective deterrent to illegal construction, road building grading, etc. Members of the Sierra Club have personally witnessed situations were the Planning Department has violated its own rules and procedures in order to avoid exercising effective code enforcement. Code compliance is fundamental to consideration for this proposal. Otherwise this proposal simply becomes a means to legalize what was illegal instead of an attempt to rationally modify the code to accommodate legitimate land uses. This is a matter of priorities when it comes to the allocation of resources.
Therefore, we believe that it is of the utmost importance that any regulatory change make explicit how the new rules will be enforced and how the public will be protected from further degradation of the environment due to lack of enforcement.

2 In [illegible] following comments w [illegible] some specific elements o the proposed change

2.1. Fundamental to the proposal under review are the 3 classes of what the Planning staff calls "Accessory Structures." These are classified as Non-Habitable, Habitable and Second Units.

One of the proposed changes allows toilets in structures classified as "Habitable." The toilet is the most important plumbing addition to make a building function as a "Second Unit" or independently occupied unit. Toilets are proposed as permitted in "Habitable Structures" such as "heated office, workshop, detached bedroom, art studio, and guesthouse."

Toilets are currently not allowed in "Habitable" structures because prior Boards of Supervisors understood that the toilet is the key to the entire plumbing system and would provide for easily converting to a rental unit. The addition of a toilet may seem reasonable, but the problem is that the sewer drains are the basis of plumbing and the toilet sets the

scale of drains to accommodate any other additions to plumbing. Water supply lines and additional drains for a kitchen and bath are usually easy to retrofit onto most types of buildings and are not significant in this context. The toilet legalizes the connection of a large diameter drain to the septic system or sewer. With a toilet in a building, the conversion to an independent rental is a relatively straightforward matter for a property owner. This change would make an "office" or "detached bedroom" easily convertible into a rental unit without the attendant required increase in the capacity of the septic system and parking area that the rules for a "Second Unit" or rental unit would require.
The Planning Department claims to be focusing on the "physical features" of the building rather than on its "uses", however because both of these attributes are interlinked and can be modified after a building permit final inspection takes occurs, this distinction is meaningless in terms of predictable impacts. It is more reasonable to assume that a "habitable" unit can easily become a "second unit" and to review a permit application accordingly. Some enforceable legal mechanism needs to accompany a permit to build accessory structures that are convertible to rental units. Planning proposes the vague idea of a new type of agreement with the property owner to cooperate with inspections. This is not plausible considering the current void of staff initiated code enforcement actions by Planning.

The proposed new rules will allow the construction of more ancillary buildings on rural (and Urban Service Area) lots. The consequent result is that, over time, most of these buildings will be converted into rental units, whether legal or not. The financial incentive to rent living space is intense due to the high rents that can be charged. This means that whatever the original intention of the property owner is, the additional buildings constructed as a result of rule changes will very likely be rented out (with necessary internal utilities added without permit), resulting in dwelling units without adequate parking, septic system capacity or consideration for water supply. Rural dwelling density will increase without adequate review or consideration of environmental impacts.

2.2. Some have suggested that in some circumstances, less stringent review standards for accessory structures might be appropriate in less densely populated rural areas than would be appropriate in more densely populated urban areas. In response to those comments, staff is proposing to change some of the size and permit requirements for accessory structures to allow larger non-habitable structures on larger rural lots. Specifically, the proposal suggests that the size limit for non-habitable structures exempt fiom discretionary permits in rural areas on lots greater than one acre be increased from 1,000 to 1,5000 square ft. It is important to note that environmental review is more important in rural areas because environmental consequences tend to be greater, e.g., there are more open space and thus unspoiled resources that are at risk.

This idea of distinguishing between habitable and non-habitable is not enforceable because non habitable structures include finished buildings with windows and wiring, sheet rock and insulation that may originally be proposed as art studios or workshops and then later be converted into rental units.

2.3. Staff is also recommending that the number of habitable accessory structures on a property (in addition to any allowed Second Unit) be limited to one with a building permit, or two with a

discretionary permit. In addition this proposed change also includes removing the provision that the property be owner occupied.

The potential result of this change is that a single family detached house might wind up having 3 "accessory structures" on the property in addition to the original house: (one second unit, plus two "habitable" structures of 680 sq. ft. and 28 ft. high, or two 1,500 sq. ft. 28 ft. high "non-habitable" units that later could be illegally converted to independent occupancy). The prospect of having **4** occupied structures on one lot of record suggests that the County is going to convert the single family residential zones into areas where even an absentee owner could develop a rental complex of four units on each lot. An accessory structure with a toilet can be called a "guest house" or "detached bedroom" and be legal under the proposed rules because it is not formally a "second unit." This is a violation of the General Plan and any reasonable pretense of controlling land use so as to protect natural resources, and limit residential density in the interests of neighboring property owners.

3. <u>In the following sections we address excerpts from the rules matrix pages of the proposed rules, describing existing rules and proposed changes:</u>

3.1 Section: "Existing And Proposed Requirements For Accessory Structures and Second Units"

Definition: A "habitable unit" is a "heated office, heated workshop, detached bedroom, art studio, or guest house." It is supposedly not to be rented to a separate household. **A** "second unit" can be rented to a separate household. **A** non-habitable unit is "an unheated workshop or office, barn, detached garage, or pool cabana."
Comment: the distinction among the various classes of units is essentially unenforceable. It would require an excessively intrusive form of compliance monitoring.

Toilet: proposed change: to allow a toilet in some "non-habitable" units **and** allow toilets in all "habitable units." They are required in a "second unit."
Comment: By essentially allowing toilet connections in all types of units, they all become new residential structures on the same lot.

Insulation and sheetrock: proposed change: to allow in a non-habitable units. They are currently allowed in a habitable unit.
Comment: In essence, all units can be insulated, which (together with toilet connection) become new residential structures.

Built in Heating/Cooling: proposed change: to require built in heating in "habitable units."
Comment: Same as above.

Owner required to live on property if heated/cooled: proposed change: Do not require owner occupation for accessory structures to be heated/cooled.
Comment: This change will essentially convert lots zoned for single family occupancy into multi-family lots, with absentee landlords.

Use for sleeping purposes, no change. Sleeping in habitable units will continue to be a permitted use.
Comment: There is not any point in trying to make a distinction between habitable units and second units: they both allow sleeping, toilets, insulation, electricity – all the essential components for residential living.

Unit size restrictions (and has building permit): Currently Non-habitable Urban carports and garages up to 640 sq. ft. and 28' high, rural 1000 sq. ft. 28 ft. high.
Proposed change: same on lots of less than 1 acre. Rural allow 1,500 sq. ft. non-habitable units on lots 1 acre or greater. For habitable structures allow 28 ft. height in rural areas.
Comment: This allows for a 2 story habitable unit or a loft sleeping area and substantially increases the actual usable square footage of the building, essentially making a habitable unit the size of a substantial house.

Units *size* restrictions, if proposal exceeds size restrictions: Non-habitable currently requires a level 5 review, or level 3 in RA zone. Proposed change: Level **3** review in rural areas. Level 4 (public notice but not public hearing) in urban areas. Proposed change: Habitable units currently need Level 5 review to exceed size restrictions. Proposed change: Level 4 review, public notice **only.**
Comment: Reducing the level of review required to build larger than the size limits is an important matter for neighboring property owners and should continue to require Level 5 review and a public hearing so that adequate consideration is made for neighbors. Level 4 review is essentially an administrative decision with public notice.

Number of allowed units: Non-habitable; No set limit, the number is limited by lot coverage requirements. Proposed change: Second Unit plus Habitable units: 1 with building permit. Maximum of 2 with a level **4** (public notice) discretionary permit.

Existing rule "Second units are limited to 1 requiring a level ***5*** (public hearing) discretionary permit.
Comment: This provisionally allows 4 habitable units (depending of definition) for one home of record: the house, the second unit, and the 2 habitable units. The "Habitable units" would now be allowed to include toilets. Thus a property owner could build **4** independent units (with the temptation to upgrade kitchens and baths without permits or two legal detached bedrooms plus the house and second unit.)

3.2 Section: Accessory Structures (art studios, detached garages, workshops, detached bedrooms etc.)

3.2.1) Accessory structures: Planning discusses issue of bathrooms (document page **0438** agenda numbering) "Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units. Not effective at preventing illegal conversions. Property owners are prevented from constructing fully functional and comfortable accessory structures with appropriate sanitation facilities.
Comment: Planning acknowledges problem with enforcement of prohibitions and suggests the solution is simply to make what was previously illegal, now legal. Other communities have

effective code enforcement. Santa Cruz County has apparently decided to accept non-compliance as a predicted outcome because it is not willing to enforce its codes. This practice rewards those who constructed illegal units in the past without penalty or consequence; and is an affront to those who have abided by County permit requirements.

3.2.2) "In urban and rural areas, height of habitable accessory structures is limited to 17 ft and one story. Proposed Change: In rural areas **only,** increase height allowed for habitable accessory structures to 28 ft."
Comment: This change would allow a two story structure with a potential doubling of square footage if the stairs are on the exterior (less if stairs are interior). Height can be even a greater problem in rural areas because of its visual the impact on the rural character.

3.2.3) Currently the rules for Habitable structures exceeding the specified size and height and number of stories require a level 5 approval (public hearing).

Proposed change: Eliminate the requirement for a public hearing, but require discretionary review with public notice (level **4).** "Public hearings could be held for controversial projects at the discretion of the Planning Director."
Comment: This type of permit needs Level 5 approval to protect the interests of neighboring property owners.

3.2.4) Current rule: "Property owners must live on site in order to install heating or cooling systems in a habitable accessory structure.

Proposed change: Require heating systems, and cooling systems, to be installed in habitable accessory structures with a building permit, and do not require owner-occupancy on the property. Continue to require deed restrictions and provide for inspections of habitable accessory structures.
Comment: Considering the current state of code compliance, the effectiveness of this provision is implausible.

3.2.5) "**A** residential habitable accessory structure is [currently] not allowed on properties with **a** second unit. More than 2 habitable accessory structures require a level 5 approval (public hearing).

"Restrictions were implemented to prevent the illegal conversion of accessory structures into dwelling units. Restrictions prevent property owner from making full use of their property. Example: Owner cannot have **a** (sic) both **a** second unit and **a** heated workshop.

Proposed change: "Allow the construction of habitable accessory structures on a property with **a** second unit. Require a building permit only for one habitable accessory structure, and allow a maximum of 2 with a discretionary permit (level **4).** Continue to require deed restrictions to prevent illegal conversions to dwelling units, and provide for inspections.

Comment: Considering the current failure of code compliance enforcement, the effectiveness of this provision is not plausible. Again, this allows a property owner to have 4 possible fully legal dwelling units associated with one original home. Note: A legal Habitable Unit like a detached bedroom with a toilet is a legal "accessory structure" under this proposal. A "second unit" is a separately functioning apartment with kitchen and bath.

3.2.6) Non-habitable accessory structures such as detached garages and workshops are not allowed to have both sheetrock and insulation. Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units.

Change: Allow non-habitable accessory structures to be finished with sheetrock and insulation. Continue to require deed restrictions and provide for inspections.
Comment: same as previously mentioned.

3.2.7) In rural areas, non-habitable accessory structures are limited to 1,000 sq. ft. regardless of lot size.

Change: **On rural properties 1 acre or greater, allow non-habitable accessory structures up to 1,500 sq. ft. with a building permit only. In rural areas, require a level 3 (administrative) approval for non-habitable accessory structures that exceed specified size limits.**
Comment: Many one acre house lots are in steep terrain and the assumption that there is enough useable land so that a large "accessory structure" that will not interfere with neighboring home owners is incorrect. The actual conditions of the properties that will be subject to these rule changes are not being taken into consideration. Most homes in the rural area are in steep, unstable mountains and canyons where "useable land" (i.e. ≈10% grade plots), is very limited, even on large properties. This provision would encourage buildings that encroach on neighboring land owners and also result in extensive land grading and driveway construction.

3.2.8) In urban areas, size of non-habitable accessory structures such as garages and carports is limited to 640 sq. A. Allowed size of animal enclosures is 1,000 sq. ft.

Change: Require level 4 approval (public noticing) for non-habitable structures in urban areas that exceed specified size limits.
Comment: The problem of illegal conversion to second units and or "habitable structures" is not addressed.

3.3 Section: Second Units

3.3.1) Addresses issue that property owners must reside on the property in order to obtain a permit for a second unit. Commentary: "Difficult for developers of new subdivisions to construct second units, since they do not live on the property. Restrictions on second units in new subdivisions limit a significant potential source of second units in the County. Second units planned during subdivision process can be better integrated into the surrounding neighborhood than those constructed after the subdivision has been built."

Proposed change: Continue to require that the property owner live on site in order to construct a second unit, but allow an exception for developers of second units within new subdivisions.

Comment: This proposed rule turns the issue of second units on its head. The casual "right" to construct a second unit adjacent to a principal residence is based on the premise of a "granny unit" to house family members (whether or not a family member actually occupies the unit). It should not be reversed into a proposal to dramatically increase the number of legal dwellings permitted on each single family lot in a new subdivision. The issue of lot size is not addressed and is left entirely to speculation. This is a de-facto amendment of General Plan policy that is not acknowledged as such anywhere in this extensive proposal. It is unreasonable and excessive.

3.3.2) "Ordinance does not specify the level of financial interest required by **a** property owner to meet the owner occupancy requirements for a second unit."

Proposed change: Vague language about requiring a part owner to "demonstrate a substantial financial interest."

Comment: This is an unclear and, therefore, unenforceable rule change. The original proposal was "at least 50% ownership". This seems to be a reasonable solution

3.3.3) "Second units can be occupied by qualifying households. The rent charged for second units cannot exceed certain levels." Commentary: "Restrictions on occupancy and rent levels may act as disincentives for the construction of new second units. Occupancy and rent level restrictions are not accomplishing the intended goal of ensuring that second units are rented primarily by low-income or senior households.

Proposed change: Eliminate occupancy and rent-level restrictions for second units, in order to encourage the construction of more second units.

Comment: What is being proposed is to discard the socially useful, legal conditions to create affordable housing through second units. It proposes, instead, that it is in the public interest to promote the construction of second units, disregarding any impacts on water resources, water pollution, erosion, traffic, watershed protection, and conservation of rare plants and animals, and other impacts that are fundamental to zoning and land use regulations. This proposal will affect the Santa Cruz Mountains where natural resources are over-taxed and most rural lots have environmental constraints The present regulations emphasize affordable housing through accessory units. The proposed rules dismiss this emphasis because the County **does** not find it convenient to enforce rent restrictions.

3.3.4) "Level 5 approval required for second units that exceed 17' height limit in urban areas. Commentary: Neighborhood impacts **of** second units **28** ft. in height are likely to be minimal. Requiring public hearings (level 5 approval) for units taller than 17 ft. in urban areas may discourage the construction of second units on properties with limited lot coverage.

Proposed change: Lower the level of discretionary review required (to level 4) for second units exceeding 17 ft. in height in urban areas.

Comment: It is entirely incorrect to suggest that neighbors on urban streets will not be concerned by the construction of additional 28 ft. tall, 2 story structures next door. Exactly the opposite is likely to be the case. In **some** locations these second units will be larger than **680** ft.

through variances processes: and some will have garages or work-spaces below living space. Public hearings are currently required precisely in order to consider the concerns of neighboring property owners who may be hemmed in by 2 story tall second units.

3.3.5) "No more than 5 second units per year may be constructed in the Live *Oak* area. Commentary: Infrastructure improvements in Live *Oak* over the past 20 years have eliminated the need for the annual cap on second units in Live *Oak*. Property owners in all areas of **the** County should have the opportunity to construct new second units.

Proposed change: "Eliminate the annual cap on second units in the Live Oak area"
Comment: This proposal is a reversal of General Plan policy which is concerned with the preservation of neighborhood character. This proposal needs to be reviewed by an informed public with an environmental analysis which articulates the consequences of this major change.

3.4 Section: Non-Conforming Structures

3.4.1) "Conforming additions greater than 800 sq. ft. to non-conforming structures require discretionary approval (Level 4). Commentary: Conforming additions generally create few impacts, and such projects are rarely conditioned, so that discretionary review is not needed. Restrictions on size of additions and permit requirements are especially burdensome to owners of smaller non-conforming residences."

Proposed change: "Allow conforming additions of any size to non-conforming residences with **a** building permit only."
Comment: Staff asserts that conforming additions "generally create few impacts". The impacts that 800 sq. ft. house expansions, **or** in **this** case "additions **of** any **size", have** upon water supplies, water pollution, traffic, parking and so on, are substantial. Small old structures could be used as the basis to legalize what would be essentially new homes in sites that should never have been built on because of landslide hazards, incursions into riparian corridors, lack of adequate parking and other home site problems. The problems of "non-conforming structures" are often based on non-conformance to the Uniform Building Code **(UBC).** The UBC is fundamentally **a** means to insure the safety of housing to the home's occupants. Many older homes are "non-conforming" because they have old and potentially dangerous wiring, inadequate foundations, doorways and windows that are useless **as** for escaping a fire, **may be** located on hillslopes prone to landslides, may have failing or antiquated septic systems **and *so*** on. These are very common problems with old or illegally constructed housing. The proposed rules assert that "such projects are rarely conditioned, so that discretionary review is not needed". Enforcement of the existing rules should result in safety upgrades before new permits for major increases in square footage **are** issued. In the **1983** Love Creek landslide, the County was responsible for its part in issuing building permits for houses constructed on that slide which resulted in loss of life. In the years following that landslide the requirements for soils reports and engineered foundations became the norm. The proposed changes could result in the issuing of permits to expand houses built on 40% slopes without foundation upgrades to the original building. These considerations are probably the reason the current discretionary review rule exists. **This** proposed change to the code is counter to public safety, and to environmental protection.

3.4.2) "Discretionary approval with a public hearing (level 5 approval) is required for structural repairs of structures exceeding height limits by more than 5 ft. ("Significantly non-conforming") Commentary: "Owners **of** such residences find it very difficult to make essential repairs or alterations. Many houses in the County fall into this category due to changes in the way the County has measured height over the years."

Proposed change: "Treat structures exceeding the height limit by more **than** 5 ft. like other non-conforming structures, allowing owners to make needed repairs **and** alterations, and construct conforming additions, with a building permit **only.**
Comment: The restrictions in the current rule refer **only to "structural** repairs". Older tall houses may be more likely to have existing structural or foundation problems because the house is constructed on a slope. This is often the reason that a house exceeds the standard height limits. **A 28** ft tall 2 story house **with 8** ft ceilings and a standard 4 in 12 roof would have a foundation height of about 5 ft. Such a house is built into a hillside. A requirement that the structure be evaluated for safety by a qualified person **(a** county building inspector) before processing a building permit would be prudent. The existing rule suggests that **this** is an issue of structural integrity.

3.5 Section: Coastal Regulations

3.5.1) "Demolition of structures in rural areas **of** the Coastal Zone requires discretionary approval with a public hearing (Level 5 Approval" Commentary: Demolition generally creates few impacts. Discretionary review with a public hearing is not necessary for most demolition projects."

Proposed change: "Exclude most demolitions **from** requiring a Coastal Approval (would still require demolition permit). Continue to require Coastal Approval for demolition on sensitive sites such as biotic habitats, and for historic structures."
Comment: This proposed rule change appears to be reasonable. However, structure demolition often involves the use of bulldozers both to knock down structures and to pick up debris. In cases where the terrain upon which the proposed demolition will **take** place is steeper than 20 degrees above the horizontal, or **is** within a riparian exclusion zone **(60'** from a stream), the permit to demolish should not be issued without a site visit by Planning staff to evaluate potential erosion hazards and establish a designated path or paths to the building site by heavy equipment in order to limit ground disturbance. A grading permit should be required if foundations deeper than 18" below grade are to be removed. Without such controls, extensive and possibly unnecessary ground disturbance may occur.

3.5.2) "Additions greater than 500 sq. ft. in rural areas in the Coastal Zone require discretionary review with a public hearing (Level 5 Approval)." Commentary: "Impacts of such additions are generally minor. Potential project impacts, including visual impacts could be fully addressed with a lower level of discretionary review, and do not require a public hearing."

Proposed change: "Lower the level of discretionary review required (to Level 4) for rural additions to the Coastal Zone, reducing the time and expense required by the applicant. Public hearing would be held only if requested."

Comment: Level **4** review (public notice) may be adequate. However the public notice should be mailed to neighbors within at least 500 ft. and include the provision that a public hearing can be held if requested

3.5.3) "Grading exceeding 100 cubic yards in the Coastal Zone requires Coastal Approval with a public hearing (Level 5)." Commentary: "Required grading permits addresses (sic) most grading impacts. Some impacts, such as visual impacts, are not addressed during the review of the grading permit."

Proposed change: "Lower the level of discretionary review required (to Level 4) for grading in the Coastal Zone." Public hearing would be held only if requested.)
Comment: The County's Grading Ordinance itself needs updating. It is confusing and it is often violated or its provisions are ignored. It dates from the 1970's and it should be updated to bring it into a rational relationship with the Sec. 303(d) Clean Water Act listing for sediment pollution of many of the streams in Santa Cruz County. Level 4 approval for grading permits in the Coastal Zone is reasonable if that public notice includes the provision that a public hearing can be requested.

3.5.4) "County regulations require discretionary review of solar energy systems in certain areas of the Coastal Zone (Level 5 Approval). Commentary: "New California State Law does not allow discretionary review of solar energy systems. The County should remove barriers to the installation of sustainable energy systems for residences."

Proposed change: " Allow the installation of solar energy systems in the Coastal Zone with a building permit only. Continue to require that solar systems shall now exceed the height limit for the zoning district by more than *3* feet."
Comment: If as stated in this proposal, "New California State Law does not allow discretionary review of solar energy systems."; then this needs clarification. It is very unlikely that endangered plant communities can now be covered or extirpated by solar systems due to some change in state law. The actual text of the law needs to be understood before this change is adopted. To say that discretionary review is not permitted may mean that local government cannot prevent the installation of solar systems based on considerations such as impacts on view sheds and other ordinary residential concerns. If this is the case, it needs to be clearly understood. Solar system installation is basically in the public interest considering the alarming speed of climate change.

3.6 Section: Other Recommended Modifications

3.6.1) "A discretionary permit (Level 3 Approval) is required when using a right-of-way less than 40 ft. wide. to access an existing lot of record." Commentary: "Other agencies now review all building permits, and can condition building permits to address any issues with rights-of-way."

Proposed change: "Delete the requirement for discretionary approval for using a less than 40-foot right of way to access an existing lot of record.

Comment: The proposal needs to be clarified so that the actual text of the rule change will not affect the current rules for private roads and driveways. The suitability of a driveway is a critical matter which cannot be left to the vagaries of separate small fire districts that are not planning agencies. The pressure on small agencies to allow development on lots without reasonable access will be intense. Regulations would end up being variable and uncertain all across the County. Most of the rural and mountain lots with reasonable access in regard to legal width of a right of way and interrelated issues such as the slope, drivable width, and turn radii have already been developed. Many lots of record are simply not developable because to cut a road to them would cause tremendous erosion inducing grading in the form of tractor blading, slope cutting and stream crossings with culverts and bridges. Permanent hillslope failures, continuous erosion, and new landslides are the result of unregulated road cutting. The County recently (perhaps 3 or 4 years ago) attempted to clarify its driveway access requirements so that they worked with the rules used by fire districts. In the face of noisy opposition from land-owner and development interests this proposal was abandoned and the problem was left with an inadequate set of Planning regulations still in place. What is being proposed does not seem to correct the deplorable current situation.

3.6.2) "For properties adjacent to agricultural land, discretionary review (Level 4) is required for additions and new accessory structures within the required 200 ft. agricultural buffer." Commentary: "For properties with an existing house already in the agricultural buffer, discretionary review of additions or new accessory structures that do not extend further into the buffer area may be redundant."

Proposed change: Eliminate the requirement for discretionary review of additions or accessory structures less than 1,000 sq. ft. that extend no further into the buffer area than the current residential development. Condition project to require that installation of a physical barrier.
Comments: If the principal residence where the addition or accessory structure is proposed is a legal house of record and not illegally constructed, this proposal may be reasonable, however it will likely increase the number of occupants who are exposed to the noise, chemicals, and dust of agricultural operations. This should be considered. It is a public health matter.

3.6.3) "Current regulations require an administrative approval (Level 3) for front-yard fences exceeding 3 feet in height, including front yard "flag lots" that face another property instead of facing that street." Commentary: Property owners of flag lots and similar lots must obtain a permit to construct privacy fences between their property and the adjacent property. The construction of privacy fences is allowed without permits between other adjoining properties.

Proposed change: "Allow the construction of six-foot fences in the front yard of flag lots and other lots that do not face a right of way without requiring discretionary review or a building permit."
Comment: This proposal seems reasonable though it does not address the issue of the possible obstruction of landscape views from the adjoining property. If a 6 ft. tall fence is much longer than house it surrounds, the neighbor may have objections that are not clear in this discussion.

3.6.4) Current regulations require an administrative approval (Level 3) for front-yard fences exceeding 3 ft. in height, but required pool barriers must be at least 4 ft. in height."
Commentary: "Since County regulations require pool barriers to be at least 4 ft., approval of required pool barriers is always granted and administrative approval should not be required."

Proposed change: "Eliminate the requirement for administrative approval for required pool barriers in front yards with existing pools. Require that pool barriers in front yards be constructed with materials that do not obstruct site distance."
Comments: This proposal seems reasonable.

3.6.5) A ten-foot separation is currently required between structures on a parcel, and also between water tanks on a parcel." Commentary: "The building code requires only a six-foot separation between structures, and does not require separations between water tanks. Reducing the required separation between structures to 6 feet, and allowing zero separation between water tanks, will not impact neighboring properties.

Proposed change: "Require only 6-feet between structures located on a property. Eliminate the separation requirement between water tanks."
Comment: The six foot separation in the Uniform Building Code between structures is probably related to fire transmission between structures. The UBC standard is probably adequate. Many water tanks distort slightly when filled due to internal water pressure. In order to maintain the stability of large tanks it is a good idea to have a separation between the tanks of at least one foot so that the condition of the tank and its base can be determined.

3.6.6) "Electric power is not allowed on vacant residential parcels. Separate electric service for outbuildings on developed parcels requires discretionary review with a public hearing (Level 5)."
Commentary: "Electric service on vacant lots can be important for fire suppression, or for allowed family gardens. Electric service for outbuildings may be necessary for the construction of electric gates or other structures such as barns located away from the main dwelling."

Proposed change: "Allow low-amperage electric service under specified situations. Require a Declaration of Restrictions to clearly indicate the allowed use of such electric service for current and future property owners, and provide for inspections.
Comments: Electric power should not be permitted on "vacant" parcels because it may be used for camping or other illegal activity. It has no legitimate uses. It is more likely to cause a fire than be used to suppress one. Regarding the related issue of separate electric services on the same property, the requirement for a Level 5 approval is not a prohibition on this use in the case of out-buildings. It was the intention of former Boards of Supervisors to allow neighboring property owners to have the ability to address this issue as it impacts them. Separate electric services are a safety issue because each electric panel is grounded and has circuits designated and sized for a specific use such as a remote gate or a barn. It is not in the County's interests or in the interest of public safety to have live circuits run from building to building without the safety offered by separate eclectic service panels. This is also an issue of controlling the construction of illegal dwelling units on a property.

4. Conclusion.

We appreciate the opportunity to comment on the proposed Amendments and we are available to expand upon or clarify any of our comments. These proposed Amendments are very far reaching and will have enormous impacts on the natural environment, resources, and infrastructure of the County. Under the California Environmental Quality Act ("CEQA"), an Environmental Quality Report ("EIR") must be prepared when it can be fairly argued, based on substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. See Pub. Res. Code secs. 21080(d), 21082.2(d). If such substantial evidence of significant impacts is presented, the Lead Agency (here, the County of Santa Cruz) must prepare an EIR, even if it is presented with other substantial evidence that the project would not have significant impacts. See CEQA Guidelines sec. 15064. A "project" is defined broadly, and can include the enactment and amendment of zoning ordinances, and the adoption and amendment of local general plans. See CEQA Guidelines sec. 15378(a); Publ Res. Code sec. 21065.

Therefore, we request that you consider our comments, suggested revisions, and our request that a complete EIR be prepared so that everyone can be fully informed of the impacts of the proposed changes.

Sincerely,

Kevin Collins,
Member, Executive Committee
Sierra Club - Santa Cruz County Group

Aldo Giacchino,
Chair, Executive Committee
Sierra Club - Santa Cruz County Group

ATTACHMENT 10
0499

County of Santa Cruz
Planning Department

Planning Commission
Meeting Date: 10/24/07
Agenda Item #: 9
Time: After 9:00 a.m.

Additions to the Staff Report for the Planning Commission

Item: 9

Late Correspondence

ATTACHMENT 10

Santa Cruz Association
of REALTORS@,Inc.
www.scaor.org

Creating Better REALTORS®

EQUAL HOUSING

0500

October 22,2007

Santa Cruz County Planning Commission
701 Ocean St. 4th Floor
Saiita Cruz, CA 95060

Re: Residential Regulatory Reform Ordinance

Dear Coinmissioners:

As an advocate for affordable housing, the protection of private property rights. over 1800 REALTORS8 and real estate professionals throughout Santa Cruz County and Watsonville and as an active participant in the Residential Regulatory Reform Ordinance discussions, the Santa Cruz Association of REALTORS® (SCAOR) would like to express its appreciation to your Planning Department , and in particular, Mr. Tom Burns, for allowing our Association to provide its input during this process.

Mr. Burns has continuously engaged our Association during the formation of this policy, and has been exceptionally generous with his time, meeting with our members and making himself available to answer any questions or concerns we may have that pertain to land use and development issues. We believe that Mr. Burns has provided this Commission with a comprehensive, model ordinance, and we support the majority of the policies articulated within.

After a review of the summary of proposed amendments, SCAOR would like to offer some comment on three specific points of the suggested reform.

Addition of deed restrictions in lieu of zoning

It is suggested that all policies and regulations regarding a secondary unit, should be articulated through a restriction on the deed. We believe that a more uniform approach would be to change curreiit zoning, and expressly allow for second units. Leaving notice of a second unit and the related regulations to language on a deed, could lead to problems as the property changes hands over time. A clear articulation of policy, within the zoning code, would help owners and subsequent purchasers to avoid any ambiguity regarding policy and decrease the instances of deficiencies in notice.

2525 Main Street, Soauel. California 95073-2407 PHONE 831.464.2000 FAX 831.464.2881

Requirement regarding 50% ownership of the property

It is our belief that the requirement of a minimum 50% ownership percentage by the resident owner in order to apply for and/or continue to use a second unit, is problematic. Presumably, all common owners of a parcel will have the same level of care and concern regarding that parcel: regardless of their individual percentage of ownership. This requirement could unintentionally complicate the process to obtain a permit – which would be contrary to the Department's goal of simplifying the permitting process.

For example, owners of a parcel under a tenancy in common have equal legal access to and use of the parcel. To grant a permit on the basis of percentage of ownership, treats otherwise equal tenants, differently. This could lead to confusion. delay and other unintended consequences. Such a requirement seems antithetical to providing second units without undue burdens upon those seeking permission to construct such units. We therefore believe that requiring 50% of ownership should be reconsidered and removed from the reform.

Inspection process

Currently, the Planning Department may commence an inspection upon receipt of a complaint or to investigate, mitigate or address a health and safety issue. However, in the proposed reform, the Department would be entitled to initiate an inspectioii for permitting issues without prior notice of non-compliance with the County rules and regulations. Minimally, this approach seems invasive, and we are concerned that such an unwarranted inspection runs afoul of a property owner's legal rights. We urge the Commission to reconsider this proposal and maintain an inspection process that provides ample notice to property owners and articulates the specific reasons for the inspection.

As we noted previously, it has been a pleasure to communicate and collaborate with Mr. Burns and the Planning Department staff during this reform process. We thank you for the opportunity to express our concerns. Should you have any questions for our Association, we ask that you please contact our Chief Executive Officer. Mr. Philip Tcdesco, at 831.464.2000.

Sincerely,

Barbara J Palmer

Barbara Palmer, Chair
Local Government Relations Committee

cc: Tom Burns, Planning Director

ATTACHMENT 10

0502

Stanley M. Sokolow
301 Highview Court
Santa Cruz, CA 95060
Phone 831-423-1417 • Fax 831-423-4840
Email stanlev@,thesokolows.com

October 17,2007

Planning Commission
County of Santa Cruz
701 Ocean St., Suite 400
Santa Cruz, CA 95060

RE: Agenda item #9 on October 24,2007: Public hearing to consider reforms of County zoning.

Dear Commissioners:

This letter is to provide my comments regarding the proposed amendments dealing with County Code section 13.10.681 (second units). I will explain why I urge you to:

- Delete the proposed discretionary approval of second units by the Planning Director if owner-occupant owns less than a 50% share of the parcel.
- Retain the existing second unit owner-occupancy requirement based upon the filing of a Homeowner's Property Tax Exemption.
- Extend the owner-occupancy requirement to permit an owner of two contiguous parcels to build and to allow occupancy of a second unit on the parcel upon which the owner does not reside as long as the owner resides on one of the two parcels.
- Correct the proposed amendment to section 13.10.681(f) so it reads "shall" not "may".
- Approve the other staff recommendations for amendments of County Code section 13.10.681 (the second unit code).
- Add a "whereas" to the Commission's resolution to acknowledge that removal of the age restriction on second unit occupancy is to comply with the opinion of the court of appeal in ***Travis v.*** *County of Santa* ***Cruz*** that such a restriction is a form of age discrimination that is preempted by state statutes.

The proposed ordinance says regarding second units on page 14, section XX (page 22 of the entire packet):

> The Planning Director may require a property owner with less than 50% ownership in a property to demonstrate a substantial financial interest in the property.

As I explained when this proposal came before the Board of Supervisors in my letter reproduced for you on pages 96-99 in this item's packet, such a proposal conflicts with the second unit statute's requirement that second units be processed ministerially, which means by objective standards rather than by a discretionary decision. The proposed 50% rule gives discretion to the Planning Director to decide whether an owner has "substantial financial interest." That discretion is prohibited. Moreover, there are other reasons why this proposal is not justified even if it could be stated with objective standards, as explained in my letter. Further, it is common real estate law that an owner of any fraction as **a** tenant in cornmon with other owners has an equal right to use the entire property as any other owner does unless they agree otherwise amongst themselves. The 50% rule is unreasonably

restrictive, which conflicts with common law and the state second unit statute. The rule should continue to be the current rule: any percentage of ownership qualifies an owner-occupant as long as the owner-occupant files a Homeowner's Property Tax Exemption.

The proposed ordinance says on page 15, section XXI (page 23 of the entire packet) that the code shall be amended to read:

> "Each second unit **may** be exempt from the Residential Permit Allocation system of Chapter 12.02 of this Code." (Emphasis added.)

Notice that no words in this sentence are in strikeout font as deletions nor in underline font as insertions. This implies that the sentence is existing Code, but it is not. The current Code subsection 13.10.681(f) says:

> (f) Permit Allocations. Each second unit **shall** be exempt from the Residential Permit Allocation System of Chapter 12.02 of this Code. (Emphasis added.)

There is a huge difference between "may" and "shall". "May" indicates discretion to exempt or not, whereas "shall" indicates no discretion. The state second unit statute **requires** that second units be exempt from the County's permit allocation system. The Code should continue to say "shall". If you change it to "may", the Code subsection will be in conflict with the statute.

Here are my opinions on the Sierra Club's comments about second units in their letter dated October 15,2007. I express no opinion on the other issues they raise. In fairness to them, I want to point out that they are apparently not aware of the long history of the second unit controversy that is now being decided by the California Supreme Court in the case entitled *"Travis v. County of Santa Cruz"*. To make this matter clear to you and so that it is entered into the public record, I will briefly explain the history as it relates to the matter before you now.

That case originally had the title *"Travis et al. v. County of Santa Cruz"*, wherein the phrase *"et al."* is the abbreviation for *"et alii"*, Latin for "and others." My wife and I are the "others" who started that case in 1999, seeking to have the courts decide whether the rent control and occupancy restrictions on second units in the County's ordinance were lawful restrictions. We had read an article in the Santa Cruz Metro newspaper in 1998 which alerted us to the Costa-Hawkins Act, a California statute that took effect January 1, 1996, and which eliminated strict rent control. That article made us question why second units in Santa Cruz County have strict rent control. In 1998, we spoke with our Supervisor, wrote to the County Counsel, and made a presentation to the Board of Supervisors in a public hearing where Supervisor Ray Belgard had proposed suspending rent control for a test period in his south county district. The Board was adamant that rent control and occupancy restrictions were essential for second units. County Counsel wrote to us that the restrictions were all within the discretion of the County. Supervisor Wormhoudt told us that she would never vote for removing rent control unless ordered to do so by a court. So, acting as our own attorneys, we joined with Steven Travis and took the case to court to let a judge decide.

The case has been continuously in the courts for the past **8** years, migrating up and down and back up the court system. The most recent appellate court decision held that the existing restriction on occupancy of second units which allows moderate income households with a senior to occupy second units but which prohibits moderate income non-senior households from occupying them is age discrimination in housing, which is preempted by Government Code section 65008 and the Unruh Civil Rights Act. But the appellate court sided with the County on the other restrictions, including the rent control. The court wrote its decision as an "unpublished opinion," which means that it can't be cited by attorneys as authority for arguments in other cases, but it does apply to the Travis case and has legal implications in this County.

Every litigant has a right to have their superior court case appealed to the court of appeal, but there is no right to have the appellate opinion reviewed by the California Supreme Court. In civil

matters, the Supreme Court only takes cases which present important or unsettled issues of law, and it takes very few. Our case was among them, twice. Every Supreme Court opinion is published and citable as authority in other cases, so the outcome of the Supreme Court decision will have statewide effect. The case is currently fully briefed in the Supreme Court and is waiting for the Court to be ready to hear oral arguments. In the County's brief, the County said that it would abide by the appellate decision on age discrimination and would amend the second unit ordinance accordingly. That is not at issue in the Supreme Court. So, in the matter before you, removal of the preferential treatment of seniors is not a matter of the County's discretion, but rather it's required by the appellate court decision. The Commission's resolution really should have another "whereas" clause explaining that.

With regard to the rent control and other occupancy restrictions, the appellate court's opinion was that these were lawful restrictions. If the Supreme Court had agreed with the appellate court, it would merely have denied the petition for review of the appellate opinion and the issues would have been settled at that. Instead, the Supreme Court accepted the case for review of the lawfulness of the restrictions other than the age discrimination, which indicates to me that the Supreme Court disagrees with the appellate opinion and the Court is likely to decide that the rent control and occupancy restrictions based upon income and relationship with the owner are unlawful.

Apparently seeing the writing on the wall that the Supreme Court is likely to invalidate these second unit restrictions, County Counsel has presumably recommended that the Board of Supervisors amend the ordinance to remove the challenged conditions and then, once that is accomplished, County Counsel will ask the Court to drop the case as moot. (I say "presumably" because such a recommendation has never been made in open session nor has it appeared as an item for closed session.) I believe that this is the reason that the Board of Supervisors now has, after so many years of opposition to the idea, agreed to remove the rent control and occupancy restrictions on second units. The County was urged to make these changes by the State Housing and Community Development department years ago in a review of the Housing Element of the General Plan, but the County staunchly refused to do so, until now.

While the case worked its way through the courts, the state Legislature made some changes to the second unit statute. Previously, the County required two permits for construction of a second unit. First the applicant had to receive approval of the general concept drawings of the second unit, which was in the complete discretion of the Planning Department as a "development permit." Then the applicant applied for the actual building permit with detailed construction plans, which was a ministerial (objective, non-discretionary) permit. The Legislature changed the statute so that discretion was prohibited in second unit processing. All second unit applications must now be processed only with a ministerial permit using objective criteria. The County ordinance was amended to conform in 2003.

With this history and current status in mind, I now turn to the Sierra Club's opinions on the second unit issues before you, which appear on their pages 7-9 (pages 107-109 in the packet).

- Sierra Club says: The proposal that subdivision developers be allowed to include second units on the parcels in the subdivision "turns the issue of second units on its head."
  - o I disagree. The proposal is reasonable. Under the current laws, each purchaser of the homes in the subdivision would be entitled to a ministerial permit for building a second unit if it conforms with the design standards, lot coverage, etc. Design and construction of second units by the individual home owners will result in more of a hodge-podge of second units than would be the case if the entire subdivision had planned the second units into the subdivision map. Allowing the developer to incorporate second units into the subdivision plans will give the Planning Department more control over the second unit design for neighborhood harmony and will benefit the purchasers because they will be able to have the

development and construction work done for them as a turnkey purchase of a home with a second unit. I urge the Commission to approve this proposed change.

- Sierra Club says: The proposal for discretionary approval of the Planning Director that an owner of less than a 50% interest demonstrate a "substantial financial interest" is unclear and unenforceable.
  - o I agree. Moreover, this discretionary requirement conflicts with the statute that says second units must be processed ministerially. On the other hand, the Sierra Club's advocating the strict 50% ownership rule originally proposed by the Planning Director is an unreasonable restriction, as I explained in my letter to the Board of Supervisors. Unreasonable restrictions on second units are prohibited by Government Code section 65852.150. The existing regulation based upon the filing of a Homeowner's Tax Exemption is reasonable and sufficient for the purpose of establishing that a homeowner is residing on the premises to provide oversight.
- The Sierra Club is critical of the removal of occupancy and rent-level restrictions on second units. They say the existing restrictions are "socially useful, legal conditions to create affordable housing through second units."
  - o I disagree. Their position is identical to that of the County when it defended the current restrictions in court. However, when it comes to housing, a local government does not have complete discretion to regulate as it would like to do. The restrictions on housing in one locality have an effect on housing in neighboring communities and in the state as a whole. The Legislature has declared that the shortage of housing, particularly for low, moderate, and middle income households, is a critical statewide problem which requires that local governments follow state statutes on housing. After weighing the pros and cons, the Legislature adopted the Costa-Hawkins Rental Housing Act in 1995. It provides that rent control on new dwelling units is prohibited because it discourages the development and upkeep of rental housing. Costa-Hawkins also provides that the owner has unlimited discretion to set the rental rate for any existing dwelling unit when a new tenancy contract begins. In other words, the local government can't put a strict ceiling on rental rates. Strict rent control never allows the rent to be re-set to market rates, even when contracting with a new tenant. The existing regulations on second units set strict rent limits. Strict rent control discourages the development of new rental units and in some cases it may even be unconstitutional. The Legislature has decided that a market rate approach provides incentives for construction and maintenance of rental housing, and that an adequate supply and variety of units will allow market forces to moderate the rent levels. The California Housing and Community Development department has evidence that this is the best approach to providing an adequate supply of affordable rental housing. The meager production of second units under the County's second unit ordinance since its adoption 25 years ago, and the well-known fact that many illegal second units have been created and are being rented at market rates, tends to agree with HCD and contradict the Sierra Club. Planning Director Burns has decided that the second unit restrictions are defeating the purpose that the Sierra Club wishes they would provide. You may agree or disagree but the fact is that the Costa-Hawkins Act is the law in this state and the County's second unit ordinance must not conflict with that law. The County has argued that an exception in the Costa-Hawkins Act allows the County to place rent control on second units, but we disagree that the exception applies. Furthermore, occupancy restrictions which limit the income or wealth of second unit occupants are indirect rent controls. If the County's strict rent control is indeed outlawed on second units, so are the income and wealth restrictions outlawed.

The conditions which limit second unit occupancy to persons related to the owner have been held to be unlawful by appellate courts. The restrictions on the rent and occupancy of the main house when the owner lives in the second unit also conflict with Costa-Hawkins and other statutes. Moreover, the restrictions go too far and invade personal autonomy rights because they restrict the occupancy of a home with a second unit even when the owner is not renting out either dwelling. The Supreme Court is currently studying the issues and will decide whether the ordinance is lawful or not, but apparently, as I explained above, the Court feels that the restrictions are unlawful. If the Court holds that the restrictions are lawful and within the County's discretion, then the County's ordinance could be amended again to put the restrictions back in if that is what the Board of Supervisors wants to do. This amendment before you to remove the rent control and occupancy restrictions is in a sense premature, but on the other hand it seems to be a tactic of the County Counsel to try to persuade the Supreme Court not to reach a decision on the legality of the restrictions. Without such a decision, the appellate opinion would stand and the restrictions would be lawful and could be restored by the Board.

- The Sierra Club warns that removal of these rent and occupancy restrictions for affordability will lead to "disregarding any impacts on water resources, water pollution, erosion, traffic, watershed protection, and conservation of rare plants and animals, and other impact that are fundamental to zoning and land use regulations."
  - That is simply not true. Second units must still conform with all of the development standards applicable to the zones in which they are located. The County still requires the biotic checks, erosion controls, setbacks, habitat protection, and so on. The rent charged and who may occupy a second unit simply have no bearing upon these concerns.
- They say "The present regulations emphasize affordable housing through accessory units. The proposed rules dismiss this emphasis because the County does not find it convenient to enforce rent restrictions."
  - **As** I have said, rent decontrol is a matter of law, not convenience. Moreover, a study done in the City of Sausalito, where second units are allowed without rent or occupancy restrictions on them, showed that over 80% of the free-market second units were affordable to low or moderate or middle income households. The fact that the County has had so few permitted second units built in the past 25 years, and so many black market second units built without a permit, is evidence that the current restrictions are discouraging legal second units, as the Planning Director explained. It does no good to restrict second units for affordability and thereby not have them built in the quantities that the County's low, moderate, and middle income households need.
- "It is entirely incorrect to suggest that neighbors on urban streets will not be concerned by the construction of additional 28 ft. tall, 2 story structures next door. Exactly the opposite is likely to be the case."
  - You must keep in mind that a homeowner is entitled to build **a** two-story house or add a second story onto an existing house, up to 28 feet height, with only a level 4 permit. The impact on neighbors of a second-story or two-story second unit **is** no different than the impact of building a two-story house or adding a second story onto an existing house. It is unreasonable to restrict second units to a more stringent height requirement than the restrictions on the main dwelling itself, as long as the second unit is situated within the normal building envelope for a main dwelling. The County's ordinance requires that second units comply with the normal setbacks. The proposed amendment is reasonable and fair to all.

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- "This proposal (to eliminate the annual cap on second units in the Live *Oak* area) is a reversal of General Plan policy . . . ."
  - I disagree. The state second unit statute prohibits the County from limiting the growth rate of second units in areas unless it makes certain factual findings that justify a ban (or growth limit) in the particular area. The Planning Director has concluded that the original justification based on limited water and sewer capacity no longer exists in Live Oak. Therefore the County must remove the 5 unit per year limitation in that area. The County has no similar annual limit on additions of more rooms to existing houses in Live Oak, so there is no rational reason to limit the number of second unit permits issued per year in that area.

With regard to the owner-occupancy requirement, I urge you to consider what I have written in my letter to the Board of Supervisors when this matter came before the Supervisors for concept approval on August 28. The objective of owner occupancy is that the owner will keep the occupants of the second unit under closer observation than a non-resident owner would. This would help prevent the second unit occupants from being a nuisance to the neighbors. That same objective would be equally well served if the owner were living on a neighboring parcel contiguous with the second unit parcel. I urge you to extend the owner-occupancy requirement to allow an owner of two contiguous parcels to build and allow occupancy of the second unit as long as the owner resides on either of the contiguous parcels. This would allow someone with a large parcel to divide the parcel into two legal lots and build a house with a second unit on the empty one while continuing to reside on the piece with the existing main dwelling. The County desperately needs more housing for low, moderate, and middle income households, and this relaxation of the owner-occupancy requirement would enhance opportunities for second units to meet that need without detrimental effect on the neighborhood. Controlled in-fill housing is much preferred over expansion of housing into surrounding open lands.

In summary, I urge you to:

- Delete the proposed discretionary approval of second units by the Planning Director if owner-occupant owns less than a 50% share of the parcel.
- Retain the existing second unit owner-occupancy requirement based upon the filing of a Homeowner's Property Tax Exemption.
- Extend the owner-occupancy requirement to allow an owner of two contiguous parcels to build and to allow occupancy of a second unit on the parcel upon which the owner does not reside as long as the owner resides on one of the two parcels.
- Correct the proposed amendment to section 13.10.681(f) so it reads "shall" not "may".
- Approve the other staff recommendations for amendments of County Code section 13.10.681 (the second unit code).
- Add a "whereas" to the Commission's resolution to acknowledge that removal of the age restriction on second unit occupancy is to comply with the opinion of the court of appeal in *Travis v. County of Santa* ***Cruz*** that such a restriction is a form of age discrimination that is preempted by state statutes.

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

ATTACHMENT 1

SAN LORENZO VALLEY *WATER DISTRICT*
13060 Highway 9 • Boulder Creek, **CA** 95006-9119
Office (831) 338-2153 • **Fax** (831) 338-7986
Website: www.slvwd.com

0508

October 24,2007

Santa Cruz County
Planning Commission
Supervisors Chambers, Rm. 501
701 Ocean St.
Santa Cruz, California 95060

Subject: Public hearing to consider reforms of county zoning regulations for small-scale residential structures.

Dear Commissioners:

The Board of Directors of the San Lorenzo Valley Water District (the Board) discussed Santa Cruz County's proposed regulatory changes for small scale residential structures as an agendized item during its October 18,2007 regular board meeting. **As** a result of these discussions, the Board unanimously voted to write a letter in response to your commission, expressing its concerns about these proposed regulatory changes.

While the Board supports the County's intent to streamline the regulatory process for construction of small-scale structures, the Board is concerned that the County staff report has not adequately addressed potentially significant impacts that could directly or foreseeably indirectly result from these new ordinances. These potential significant impacts include increased demand for water, increased traffic, non-point source water pollution, and increased demands on sewer systems, such as the Bear Creek Estates Wastewater Treatment Facility, which the SLV Water District operates.

The October 24,2007 County staff report states that existing regulations have been revised to "allow more features in accessory structures that are most often requested by property owners." One of the "primary changes" to current regulations is to allow toilets in all habitable accessory structures, and in non-habitable structures, under certain conditions. The Board is concerned that the increased number of toilets in these accessory structures will significantly increase the demand for water in the San Lorenzo Valley.

In addition, the new regulations would allow more habitable **and** uninhabitable structures on many parcels in the San Lorenzo Valley. These additional structures would not **only** increase the number of toilets and sinks, but they also would likely increase the number of persons using these toilets and sinks. The staff report does not address the issue of increased water demand likely to result from these regulatory changes.

The resulting increase in residents would also likely result in increased traffic in the San Lorenzo Valley, where Highway **9** already suffers from severe traffic congestion.

In light of the history of illegal conversions in the San Lorenzo Valley, and the county's past inability to enforce code compliance, the Board also has concerns about the feasibility of the County's "development of a proactive inspection program for some accessory structures that are constructed under the new rules to ensure that legitimate accessory structures and uses are not **converted** into illegal dwelling units" (October 24 County staff report).

The County staff report further states that, "A key element needed to support some of the proposed changes is an effective program for proactively enforcing the various deed restrictions that are routinely recorded as part of the permit process for certain applications."

It is not clear how the county would enforce such deed restrictions. Without a clearly defined enforcement program, the problem of code compliance could worsen, rather than improve, as the number of accessory structures increases.

Given that the staff report does not discuss the issues of increased water demand, increased demand on sewer systems, increased traffic, and does not adequately address code compliance, the Board does not believe that these new regulations are exempt from CEQA under Section 15060(c), as stated in Exhibit E of the County staff report. The new regulations involve the exercise **of** discretionary powers by a public agency, and the new regulations will clearly result in a direct or foreseeable indirect physical change to the environment. Thus, the new regulations should not be exempt fi-om CEQA under Section 15060(c).

Therefore, the Board urges the Planning Commission to require a full Environmental Impact Report before recommending approval **of** these new regulations to the Santa Cruz County Board **of** Supervisors.

Yours truly,

Larry Prather

Larry Prather
President of the Board

ATTACHMENT 10

CBD BOSMAIL

From: CBD **BOSMAIL**
Sent: **Friday, August** 24, 2007 3:49 PM
To: CBD **BOSMAIL**
Subject: Agenda Comments

Meeting Date : 8/28/2007

Item Number : 41

Name : Stanley Sokolow

Email : overbyte@earthlink.net

Address : 301 Highview Ct
Santa Cruz, CA 95060

Phone : 831-423-1417

Comments :
Page 5 of Mr. Burns' new letter (Aug. 16) says that he proposes no "absolute specific percentage ownership requirement" but rather that it be, at the request of Planning Director, a requirement that the applicant demonstrate "the particular circumstances" to avoid "contrived ownership structures" that get around the owner-occupant requirement. I find this disturbing, even shocking, because (I) the County has no compelling reason to invade privacy to determine why a person is on deed, (2) it is ludicrous (even irrational) to think that an owner would irrevocably give away a part ownership of his property to a tenant by putting him/her on deed just to evade the owner occupancy requirement, (3) he offers no hint of what a "contrived" ownership means, and (4) the state second unit statute prohibits discretionary review of a second unit application, which is what Mr. Burns is proposing -- at his discretion under vague "flexible" criteria that he be empowered by the ordinance to decide whether a person on title is a legitimate owner for the purposes of the owner-occupancy requirement. The applicant is either on deed or not. I strongly request that the Board ask the County Counsel for a legal opinion on the authority of the County to adopt such a vague discretionary requirement for a ministerial second unit permit. I don't believe the County can lawfully do what Mr. Burns proposes.

On page 6, Mr. Burns says his department intends to require that an applicant for an accessory structure give up his constitutional right to demand a warrant before a search of his home is conducted. Statutes already provide for an administrative search warrant, and case law establishes some flexibility in use of such warrants, but I do not believe that the County can require an applicant for a government benefit (permit) to give up a fundamental right granted by the U.S. and California Constitutions protecting against warrantless searches of the home absent exigent circumstances. Again, I strongly suggest that the Board have County Counsel research the legal authority for this also shocking requirement. The Bill of Rights does apply to the County of Santa Cruz.

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Stanley M. Sokolow
301 Highview Court
Santa Cruz, CA *95060*
Phone **831-423-1417** • Fax **831-423-4840**
Email stanley@thesokolows.com

August 26,2007

TO: Board of **Supervisors, Santa Cruz County**

VIA **FAX** TO: **Clerk** of the Board, **831-454-2327**

RE: **Agenda** item **41 on** the **Aug.** *28,2007,* **agenda (regulatory reforms** for small projects)

Dear **Supervisors:**

I **feel** it is **important** that I **amplify upon** my **recent electronic mail message regarding** the Planning **Director's statement in his cover letter dated August 16 on this agenda** item, **pages** *5-6,* **that he** plans **to require** the owner to give blanket **consent to future administrative inspections of the property, without** a warrant, *to* **ensure ongoing code compliance** after the construction **has been given final approval.** I said **that** this **warrantless inspection scheme violates the** owner's constitutional **right to** demand **a warrant** for any search of **his home, absent exigent circumstances. I've** done a **little legal** research **on the issue.**

I **direct your attention** to **the appellate case** *Currier v. City of Pasadena* (1975), **48** Cal.App.3d **810. Here's a quotation** from **that** decision **[starting at page** 814]:

> **This case was decided in the trial court,** and **respondents seek to support the** judgment **here, on the theory that** the **ordinance is unconstitutional because** it **authorizes** warrantless **searches** of **private houses, citing Camara v. Municipal Court (1967) 387** U.S. **523** [**18** L.Ed.2d 930, 87 S.Ct. 1727] **as authority** for **that** contention. The city contends **that the ordinance** does not **mean that the inspections thereunder would be** made without **warrant** if *the* **applicant** for **a certificate refused consent to search. The city states in its brief that it recognizes that** the **ordinance is subject to the provisions** of **sections 1822.50** through **1822.57 of the Code** of **Civil Procedure. Read together, the** ordinance **and** the **statute require that** all **inspections under the** ordinance **could be made** only **pursuant to a warrant** if *the* **owner, whether or** not **he had applied** for a **certificate** of **occupancy, refused voluntarily to consent** to **the** inspection.
>
> We **think** it **clear that,** without this **concession, the ordinance would be** unconstitutional.
>
> . . .
>
> **However, we conclude that if,** but **only** if, **the ordinance is** read **and (48 Cal.App.3d 817] applied in** conjunction with the **statutory** scheme, **it** *can* **constitutionally be enforced.** fn. 8
>
> **In sections** 1822.50 **through** 1822.57 **of** the Code of Civil **Procedure,** the **Legislature** has **set** forth **a scheme** for **accomplishing the purposes of** the **ordinance before** *us* **in** this case. Those **sections provide for the issuance of a warrant** of inspection, **by a judge of a court** of **record on application made** *to* him, in affidavit **form, showing** "**cause**" for **the**

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desired inspection. In section 1522.52 the Legislature has defined the "cause" which must be shown: "Cause shall be deemed *to* exist if either reasonable legislative or administrative standards for conducting a routine or mea inspection are satisfied with respect to the particular place, dwelling, structure. premises, or vehicle, or there *is* reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises or vehicle."

[3] While those sections are often used to authorize the so-called "area" search, where a particular section *of* a city, containing many run-down and dilapidated buildings. exists, the statute, by its terms, also applies to "routine" inspections based on reasonable standards. We conclude that it is that portion of the statute which is material here. The City of Pasadena has, by the ordinance before us, provided a "routine" for inspections -- namely changes *of* ownership, occupancy or we involving a vacation of the ,premises and their reoccupancy by a new owner or lessee. As the briefs before us point out, that scheme provides an on-going check on the observance of the city's zoning, health and housing ordinances, in a manner involving a minimal invasion of privacy. It also permits any corrective action found necessary by the inspection to be performed with minor (and usually no) interference with an occupant. In Camara, the United States Supreme Court, after holding warrantless searches unconstitutional in inspection cases, expressly ruled that inspection searches made under the authority *of* a warrant. if based on reasonable standards, were valid. And. in *so* doing, that court rejected the contention that the inspection be triggered by a reasonable cause to believe that some improper condition existed in the particular place to be inspected.

A secondary question is whether the County may lawfully require that the owner give advanced blanket consent *to* warrantless searches as a condition for granting the building permit. It may not. I direct your attention to the following U.S. Supreme Court quotation:

> For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number *of* reasons, there *are* some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests . . . [*Perry v. Sindermann* (1972) 408 US 593, 597]

I urge you not *to* allow the Planning Director to put into effect a requirement that is unconstitutional.

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

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CBD BOSMAIL

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0513

From: CBD BOSMAIL
Sent: **Monday, August 27, 2007** 10:10 **PM**
To: CBD BOSMAIL
Subject: Agenda **Commehts**

Meeting Date : 8/28/2007

Item Number: 41

Name : Rose Marie McNair

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Address : 4743 Soquel Creek Road
Soquel, **CA** 95073

Phone : 831 476-2102

Comments :
August 28th Board of Supervisors Meeting
Honorable Supervisors:
I applaud the Planning Department's desire to streamlne the permit process, which, currently is, definitely complex and costly both in time and money. It is very important that our County work toward finding ways to make more housing availabile to teachers, nurses, fire and police persons, government workers and to those who work in the service industries, in construction, landscaping, etc. Second Units **is** an idea the State **of** California has mandated with only ministerial review.

I agree with the letter from Stanley Sokolow dated August 7. Eliminating price controls on Second Units will actually create more affordability, and his example regarding the successes of affordable units in Sausalito illustrates the point. **As** to the ownership requirement, **I** always wonder: when a property owner dies, or **sells** or whatever reason, and an investor purchases a property with a second unit, **is** that new owner (who is not going to reside there) really going to "board **up**" that perfectly livable Second Unit and leave it vacant? Will that unit have **to** be tom down, or have the kitchen and baths removed? Seems a waste.

Perhaps even more daunting than streamlining the Permit Process is the creation of the **newly** drafted ordinances which will provide direction--not only to the process--but to what the zoning **means, and** what is allowed on a particular property. **I** have seen so much misinformation about the perception **of** a property's zoning requirements--I am amazed! It is a huge jig saw puzzle! So many elements-are involved, and those dements or rules are not in one place. We **will** all look forward to clarity, order, and simplicity. We do love he GIS system--perhaps there's a way to consolidate for each parcel the zoning and use requirements?

As to a simpler way to obtain permits as suggested **by** Supervisor Beautz, **e.g.** for water heaters and roofs, perhaps allowing a licensed contractor full discretion for his work upon obtaining an over the counter permit. His license is on the line--he has to comply.

Finally, **I** will bring this up because **I** am NOT a fan of recording zoning requirements on property because zoning is transitory, and property is permanent. Once a "Deed Restriction" **is** placed on a property, 50 years from now, you can't remove it, without a quiet title action, which is tantamount to impossible. And, Deed Restrictions can also have a negative effect with lending institutions and property insurance.

And, I think the county should consider the fact that requiring inspections **on** private property, I believe will once again, will deter **folks from** obtaining permits **in** the first place! There are many people who demand privacy **and** will quote chapter and verse their constitutional rights.

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Thanks to the Planning Department for their diligence.

Rose Marie McNair, Broker/REALTOR(R)

ATTACHMENT 1

COUNTY OF SANTA CRUZ

0515

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

August 16,2007

AGENDA DATE: August 28,2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Regulatory Reform for Small-Scale Residential Projects

Members of the Board:

On June 19th your Board conducted a study session to consider a proposal from Planning staff to methodically review, update and reform our current land use regulatory system. The main topic of that discussion was the first phase of that effort -- focused on simplifying regulations for small-scale residential projects. While there was general support for the overall reform approach, Board members raised initial questions for further staff analysis. The purpose of this letter is to respond to those questions and recommend refined proposals for Board consideration. Once you complete this initial discussion, staff will draft specific regulatory changes for consideration by the Planning Commission and Board at formal public hearings.

Overview of Small-Scale Residential Reforms and June Discussion

As your Board may recall, the intent of this phase of reform is to streamline the planning process for small residential projects by eliminating unnecessary regulations, reducing the scope of certain regulations, and establishing the proper level of discretionary review required for certain types of projects. Additionally, staff suggested that significant benefits could be achieved from moving away from regulations that "pre-enforce" in favor of allowing owners more flexible use of their property, as long as those efforts are coupled with a proactive enforcement/inspection program.

Consistent with these goals, staff provided a preliminary list of possible reforms for the Board's June discussion. (The full staff report for this item is provided as Attachment **4.)** In response to those suggestions, Board members provided a number of initial comments, including:

- Wanting to design the specific reforms in a fashion that does not result in increased illegal conversions of structures to more intense land uses. These concerns addressed both the scope and specifics of the reforms **as** well as related enforcement efforts.

- Wanting to make sure that the levels of review for specific discretionary permits are carefully selected to balance applicants' desire for a streamlined process with the

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interest of surrounding neighbors to have input into changes occurring in their neighborhood.

- Suggesting that these reform efforts be coupled with reforms to streamline the processing time for review of small-scale residential building permits.

In response to initial Board comments, staff has carefully reviewed the June proposals and is proposing some refinements to those initial suggestions, particularly with regard to regulating accessory structures. Attachment 2 provides a summary of the various reform proposals, highlighting changes made in response to the June discussion. The following discussion focuses on the substantive changes made since the June meeting.

Proposed Reforms of Accessory Structure Regulations

A substantial portion of the June discussion focused on staffs proposal to relax accessory structure regulations to allow greater flexibility for use by owners **of** residential property. Board member comments ranged from questions about inducing illegal conversions to the number of accessory structures that could be allowed on any one parcel. In response to Board comments, staff has more comprehensively evaluated the range **of** regulations related to accessory structures in an attempt to address the comments and further simplify the current system and made substantial revisions to the June proposal.

The details of this revised proposal are included in Attachment 1. The proposal clarifies and categorizes the allowed features and permit requirements for non-habitable structures (not intended for sleeping) and habitable structures (structures that would allow sleeping but not independent living). These two types of accessory structures are **in** turn contrasted with Second Units (independent living units).

Figure I: Summary of Proposed Accessory Structure and Second Unit Features & Related Reauirernents

Features	Non-Habitable'	Habitable	Second Units
Sink	Allowed	Allowed	Required
Insulation & Sheetrock	Allowed	Required	Required
Toilet	Not allowed'	Allowed	Required
Built-in Heating	Not Allowed	Required	Required
Shower/Bath	Not allowed	Not allowed	Required
Related Requirements			
Owner Residency	Not required	Not required	Required
Used for Sleeping	Not allowed	Allowed	Allowed
Parking Required	Not required	Required	Required
School/traffic Fees	Not required	Required	Required

Attachment 1 specifies the allowed features and permit processes related to each type of accessory structure and to second units, and contrasts proposed revisions (in bold) to current regulations. Attachment 2 also contrasts the current proposal to the proposal offered in June. Figure 1 summarizes the key physical features and requirements for the two categories of accessory structures and for second units.

This proposed structure is a significant simplification of the current regulations, focusing less on uses and more on physical features within the building. For example, under the proposed revisions, a homeowner wishing to construct a detached office could choose to build it as a Non-Habitable structure (not allowing a toilet or built-in heating, and not requiring insulation or sheetrock) or as a habitable structure (requiring insulation, sheetrock, and heating, and allowing a toilet). But, if they built it as a Habitable structure, they would need to build it to meet all code requirements for a sleeping space and have the flexibility of using that space for a separate bedroom in the future. Finally, if they wanted the most flexible long-term use of the structure, they could build it as a Second Unit, including a small kitchen and full bathroom. Besides providing for greater flexibility for homeowners, such a regulatory structure reduces the scope of our code enforcement efforts, focusing more on habitable features, rather than the uses (often based on the furniture present in the room).

The following discussion explains in more detail the proposed changes with regard to accessory structures and second units that have taken place since the June discussion.

Allowed features and permit requirements for accessory structures

In June some Board members raised concerns about the number of accessory structures allowed on a property along with allowed features. With your Board's concerns in mind, staff has comprehensively reviewed our entire accessory structure regulations. Through this review, we considered what are legitimate desired uses for accessory structures, while at the same time attempting to avoid features that could allow such units to be easily converted into illegal separately rented dwelling units.

In our daily interactions with the public, we frequently receive requests for insulation and sheetrock in detached garages and workshops to protect belongings in these structures or simply "finish" a garage or workshop. Staff believes that this is a reasonable request and is recommending that insulation and sheetrock be allowed in **all** accessory structures without a discretionary permit. We also receive frequent requests for toilets in accessory structures. Staff believes that toilets should be allowed in habitable accessory structures to provide for comfortable structures with appropriate sanitary facilities. Toilets could be allowed in non-habitable structures only in limited circumstances, such as pool cabanas (by right) or in a rural setting at a specified distance from the main dwelling unit through a discretionary permit process. In response to Board comments about establishing regulations that do not too easily facilitate illegal expansions of use, staff is recommending that showers and bathtubs not be allowed in accessory structures (except in small pool cabanas and Second Units), since the presence of a shower along with a toilet, sink and heating could easily allow such units to become separate units through adding non-structural kitchen features. Built-in heating and cooling would be allowed in habitable accessory structures without requiring the owner to live on the property, but would not be allowed in non-habitable accessory structures.

Finally, in response to Board comments, staff is recommending that the number of habitable accessory structures on a property (in addition to any allowed Second Unit) be limited to one with a building permit, or two through obtaining a discretionary permit.

Staff believes that these modifications, in conjunction with the provision for code compliance inspections (discussed later in this report), will allow property owners to construct more functional and comfortable accessory structures, while at the same addressing concerns regarding potential illegal conversions.

Accessory structure regulations related to density of development

Some Board members suggested that in some circumstances, less stringent review standards and requirements for accessory structures might be appropriate in less densely populated rural areas than would be appropriate in more densely populated urban areas. In response to those comments, staff is proposing to change some of the size and permit requirements for accessory structures to allow larger non-habitable structures on larger rural lots (see Attachment 1). Specifically, we are suggesting that the size limit for non-habitable accessory structures exempt from discretionary permits in rural areas on lots greater than one acre be increased from 1,000 to 1,500 square feet.

Review levels for accessory structures exceeding specified limits

Board members commented that staffs initial recommendation to require only administrative review (Level 3 approval) for accessory structures that exceed the specified size and height limits would not allow for public input on projects that could potentially impact neighborhoods. Staff concurs with this concern and has revised the permit level to Level 4 for these permits. We are also proposing that oversized non-habitable structures in the rural area be subject to a Level 3 review rather than the current Level 5. Additionally, it is suggested that habitable accessory structures built in the rural areas be allowed without a discretionary permit up to 28 feet in height, consistent with the current standards for rural Second Units and non-habitable structures.

Decks and site standards

In response to Board member's concerns that elevated decks located close to adjoining properties could be problematic for neighbors, staff is modifying earlier recommendations and will specify that decks greater than 18 inches in height must meet all site standards (Attachment 2).

Second Units

Occupancy limits

During the discussion on proposed changes to regulations on second units, the Board directed County Counsel to research whether state law authorizes local jurisdictions to set occupancy limits on second units. The State Housing Code allows a sleeping room to be occupied by one person if the room is at least 70 square feet, and by two persons if the room is at least 120 square feet. For each additional 50 square feet, the Housing Code allows an additional person to sleep in the room. In their response, County Counsel concluded the County is preempted

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from adopting different standards from those set by the State Housing Code unless the County can make findings that varying from the state standards is reasonably necessary due to our particular climatic, geological, or topographical conditions (see Attachment 3).

Ownership requirements

Staff had previously recommended that a property owner must own at least 50% of the property in order to obtain a permit for a second unit. Staff is proposing to modify that proposal since it has been brought to our attention that there are many situations where property ownership may be shared among a group of individuals, each with less than 50% ownership. Rather than provide an absolute specific percentage ownership requirement, we are suggesting that ownerships of less than 50% could be required to provide more information, at the request of the Planning Director, to demonstrate the particular circumstances of that ownership interest. That would allow significant flexibility, but avoid contrived ownership structures to get around the owner-occupant requirement.

Improvements to Code Compliance Process

As discussed in our June report, relaxing the County's regulations to allow accessory structures to have more features than the rules presently allow will provide homeowners with greater flexibility to use their property for legitimate residential purposes. But it was argued that such changes could make it easier to convert a legal use to an illegal one. Therefore, the Board asked staff to report back on steps that could be taken to ensure that the regulatory reform effort did not result in increased frequencies of code violations.

In order to address those concerns, staff has modified the conceptual changes proposed in June to provide more definable physical distinctions between different accessory structures. As a result, the proposals downplay using features that can easily move in and out of a structure (like kitchens) to distinguish between legitimate and illegal uses, and instead focuses on less migratory features, particularly baths and showers. Not only will these physical distinctions be easier to enforce, but they will also help guide the nature of the use. For example, it is far less likely that a detached "bedroom" will become an illegal second unit if it does not include a shower or bath.

In addition to providing more logical and enforceable physical features to distinguish between various accessory structures, we are proposing the development of a proactive inspection program for some accessory structures that are constructed under the new rules to ensure that legitimate accessory structures and uses do not morph into illegal second units. The three basic components of such a program are discussed below.

Legal Authority

Presently, we require property owners to record a declaration of restrictions in connection with the issuance of a building permit for an accessory structure. This form gets recorded on title and runs with the land. These forms are effective in describing the limitations of the uses that are allowed for accessory buildings, and provide constructive notice to new owners as well. But the current form does not provide the authority to make periodic, proactive compliance inspections. Instead, we rely on the receipt of a complaint, and use our normal enforcement

process to investigate any report of an illegal conversion or use, including obtaining an administrative search warrant if necessary.

But with some minor modifications, the existing declaration can be amended to provide the express authority to make compliance inspections, even in the absence of a code compliance complaint. We intend to modify the current form and begin using this new form in the near future, but it's important to acknowledge that this new authority would only exist for such structures looking forward from a fixed point in time and would not extend inspection authority to previously permitted accessory structures.

Staffing Resources

As your Board is aware, our current code compliance program is responsible for the enforcement of violations of building, zoning, and environmental regulations throughout the County. Effectively managing the heavy workload with our existing resources is an ongoing challenge. Over the years, backlogs have developed, especially during times of staffing vacancies and turnover. Recently, we have done a better job of keeping the overall ratio of resolved violations in balance with the rate of new complaints, so that the backlog is not growing by any significant degree.

In our judgment, adding the additional responsibility for proactive inspections to the existing staff would be problematic and ineffective in light of their current caseloads. It is clear that the existing code staff's attention should continue to be devoted to cases where there is a citizen or neighborhood complaint, a confirmed violation, and a legitimate public expectation for the County to take whatever action is necessary to compel the property owner to resolve the violation.

Therefore, we believe that the best way to start a proactive inspection program ***is*** to over time expand current staff resources and create a compliance inspections program. This will ensure that we can make timely compliance inspections for all newly permitted accessory structures and take appropriate follow-up enforcement action when a violation is discovered. We will work with the County Administrative Office to consider such a position in our **FY** 2008-09 budget for the Planning Department.

Financing

The costs of a new position might be partially offset through inspection fees or the dedicated use of fines or penalties, but it is likely that there will be a general fund cost to sustain this function. Enforcement efforts do not typically pay for themselves. But we will survey other California cities and counties to find out how any other local agencies have financed such programs in their jurisdictions, and we will discuss and explore financing options with the County Administrative Office as part of the development of our FY 2008-09 budget.

Streamlining the Building Permit Process

As part of the June Board discussion, staff was asked to evaluate whether companion simplifications could be made to the building permit process for small-scale residential structures to simplify that process as well. In response to that request, staff has developed a

concept for simplifying the review process that would require reducing the scope of outside agency reviews for small residential structures (<500 square feet) and prioritize Planning staff resources to accelerate the review of such projects. For such a change to be successful, it will be essential to eliminate or dramatically simplify the review of these permits that currently are done by Public Works, General Services, and the various fire departments. We will continue to work on possible process simplifications and report back to you on these efforts when the other regulatory reforms come back before you for final action.

In addition you asked staff to research whether the County could eliminate building permit requirements for roofs and water heaters. The 2001 California Building Code specifically require building permits for new roofs, re-roofing, and installation of water heaters. State Law does not allow local jurisdictions to exempt such construction projects from permit requirements. Additionally, requiring permits for roofs and water heaters is important for safety reasons. Roofs that are not rated for fire safety can be combustible and pose significant fire dangers, and improperly installed roofs can compromise the structural stability of a building. For new water heaters, gas lines must be inspected to ensure that they are properly installed and do not pose a fire danger, proper ventilation must be achieved to avoid fire risks, and the water heaters must be strapped to meet seismic safety standards. In recognition of the small-scale nature and cost of these improvements, your Board has established building fees at below our full cost recovery for these two unique types of construction projects. Finally, these permits are handled as Over-the-counter Permits, allowing very fast permit issuance.

Conclusion/Recommendation

Staff believes that the modified regulatory reform proposals for small-scale residential projects will provide greater flexibility and a more streamlined planning process for property owners, while providing sufficient opportunities for public participation in the planning process, limiting opportunities for illegal conversion of structures to dwelling units, and protecting neighborhood character, public health and safety, and the environment.

It is therefore RECOMMENDED that your Board take the following actions:

1. Approve the concepts described in this letter for small-scale residential regulatory reform (illustrated in Attachment 2);

2. Direct staff to develop ordinance amendments to implement the modifications recommended in this report for review and comment by the Planning Commission and your Board as part of formal public hearings;

3. Direct staff to coordinate with other reviewing departments and agencies to simplify the building permit review process for small-scale residential projects, with the goal of eliminating outside agency reviews of these structures, with a further report on this item to be provided at the time of the public hearing on the proposed ordinance amendments; and

4. Direct the CAO and Planning Director to address the issue of staff and associated financing for the inspection/code enforcement aspect of this program as part of the FY 2008-09 Budget proposal.

Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan A. Mauriello
County Administrative Officer

Attachment 1 – Existing and Proposed Requirements for Accessory Structures
Attachment 2 – Summary of Proposed Regulatory Reforms
Attachment 3 – Letter from County Counsel
Attachment **4** – Letter of the Planning Director dated June 5, 2007

cc: County Counsel
Planning Commission
Board of Realtors – Phil Tedesco
Coastal Commission

ATTACHMENT 11

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ATTACHMENT 1

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EXISTING AND PROPOSED REQUIREMENTS FOR ACCESSORY STRUCTURES AND SECOND UNITS (Changes in **bold**)

	NON-HABITABLE	HABITABLE	SECOND UNITS
EXAMPLES OF USES:	Workshop or office (unheated), barn, detached garage, pool cabana	Heated office, heated workshop, detached bedroom, art studio, guest house	Independent dwelling unit – Can be rented to a separate household
SINK	Allowed	Allowed	Required
TOILET	Currently: Not allowed, except for pool cabanas **Proposed: Level 4 (public notice), must meet certain criteria. (Pool cabanas: Allow with Building Permit)**	Currently: Not allowed **Proposed: Allow with Building Permit**	Required
SHOWER/ BATHTUB	Not allowed, except for pool cabanas	Not allowed	Required
WASHER/ DRYER AND WATER HEATER	Allowed	Allowed	Allowed
INSULATION/ SHEET ROCK	Currently: Either sheetrock or insulation allowed, but not both **Proposed: Allow both**	Currently: Allowed **Proposed: Required**	Required
BUILT IN HEATING/COOLING	Not allowed	Currently: Allowed **Proposed: Heating required**	Heating required
OWNER REQUIRED TO LIVE ON PROPERTY IF HEATED/ COOLED?	(Not applicable)	Currently: Required **Proposed: Not required**	Owner required to live on property
USE FOR SLEEPING PURPOSES	Not allowed (deed restriction)	Allowed	Allowed

	NON-HABITABLE	HABITABLE	SECOND UNITS
PERMIT REQUIRED – MEETS SIZE RESTRICTIONS	Currently: Urban: Building Permit (BP) only for carports, garages etc, up to 640 sq ft., 28' height 1,000 sq ft, 28 ft height allowed for animal enclosures. Rural: BP for 1,000 sq ft, 28 ft height. **Proposed: Urban: 640 sq ft for all non-habitable accessory structures. Rural: Allow 1,000 sq ft on lots less than 1 acre, and 1,500 sq ft on lots 1 acre or greater.**	Building Permit (BP) for up to 640 sq ft, 1 story,17 ft height (urban and rural). **Proposed:** **Allow 28 ft height in rural areas.**	Urban: Building Permit (BP) for 640 sq ft, 17 ft height, 1 story. Rural: 28 ft height allowed. Larger size limits depending on size of parcel.
PERMIT REQUIRED – EXCEEDS SIZE RESTRICTIONS	Currently: Level 5, but Level 3 in RA zone (residential agriculture). **Proposed: Level 3 in rural areas. Level 4 (public notice) in urban areas.**	Currently: Level 5 (public hearing). **Proposed: Level 4 (public notice).**	Currently: Level 5 (public hearing) to exceed 17' height or 1 story in urban areas. **Proposed: Lower approval to Level 4 (public notice) to exceed specified height and story limit in urban areas.**
NUMBER OF UNITS ALLOWED	No set limit – (Number limited by lot coverage requirements)	Currently: One with BP, more than 1 with Level 5 approval **Proposed**: 1 with BP, **Maximum of 2 with discretionary permit (Level 4 – public notice)**	One only
PARKING AND IMPACT FEES REQUIRED?	No	Required based on number of potential bedrooms	Required based on number of potential bedrooms

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SUMMARY OF PROPOSED REGULATORY REFORMS: SMALL-SCALE RESIDENTIAL PROJECTS

Notes: Changes from earlier proposals are in **bold type**
~~Strikeout text~~ represents language deleted from earlier proposals

Accessory Structures (art studios, detached garages, workshops, detached bedrooms, etc.)

Current regulations	Issues	Proposed reforms
1) Bathrooms are prohibited in most habitable and non-habitable accessory structures such as guest houses, detached offices and art studios.	▪ Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units. ▪ Not effective at preventing illegal conversions. ▪ Property owners are prevented from constructing fully functional and comfortable accessory structures with appropriate sanitation facilities.	▪ ~~Allow bathrooms with showers and baths in habitable and non-habitable accessory structures with a building permit.~~ • Allow sinks in all accessory structures (building permit only). • **Allow toilets** in **habitable** accessory structures with a building permit only. ▪ **Allow toilets under certain circumstances in non-habitable accessory structures with a Level 4 approval.** • **Allow exception for toilets and showers in pool cabanas.** • Continue to require deed restrictions prohibiting illegal conversions, **and provide for inspections.**
2) In urban and rural areas, height of habitable accessory structures is limited to 17 feet and one story.	• In rural areas, height requirements for second units, non-habitable accessory structures, and second units are inconsistent.	• **In rural areas only, increase height allowed for habitable accessory structures to 28 ft.**
3) Habitable accessory structures exceeding the specified size, height and number of stories require a public hearing (Level 5).	▪ Public hearings are generally not necessary, since most new accessory structures create few impacts and are non- controversial. ▪ The approval process is unnecessarily expensive and time- consuming for owner.	▪ Eliminate the requirement for a public hearing, **but require discretionary review with pubic noticing (Level 4).** ▪ **Public hearings could be held for controversial projects, at the discretion of the Planning Director.**
4) Property owners must live on site in order to install heating or cooling systems in a habitable accessory structure.	• See issues above under bathrooms. • This requirement is difficult to enforce.	▪ Require heating systems, and allow cooling systems, to be installed in habitable accessory structures with a building permit, and do not require owner-occupancy on the property. ▪ Continue to require deed restrictions **and provide for inspections of habitable accessory structures.**
5) A residential habitable accessory structure is not allowed on properties with a second unit. More than 2 habitable accessory structures require a Level 5 approval (public hearing).	▪ Restrictions were implemented to prevent the illegal conversion of accessory structures into dwelling units. ▪ Restrictions prevent property owner from making full use of their property. ▪ Example: Owner cannot have a both a second unit and a heated workshop.	▪ Allow the construction of habitable accessory structures on a property with a second unit. ▪ Require a building permit only for one habitable accessory structure, **and allow a maximum of 2 with a discretionary permit (Level 4).** ▪ Continue to require deed restrictions to prevent illegal conversions to dwelling units, and provide for inspections.

Accessory Structures (continued)

Current regulations	Issues	Proposed reforms
6) Non-habitable accessory structures such as detached garages and workshops are not allowed to have both sheetrock and insulation.	• Prohibitions were implemented to prevent the illegal conversion of accessory structures into dwelling units. • Many property owners want to finish non-habitable structures such as garages with sheetrock and insulation.	• **Allow non-habitable accessory structures to be finished with sheetrock and insulation.** • Continue to require deed restrictions prohibiting the conversion of non-habitable accessory structures to habitable uses, **and provide for inspections.**
7) • In rural areas, non-habitable accessory structures are limited to 1,000 sq ft, regardless of lot size. • Non-habitable accessory structures exceeding the specified size limits require Level 3 Approval in RA (residential agriculture) zones, and public hearing (Level 5) in all other zones.	• On large rural properties, property owners frequently need barns or other structures larger than 1,000 sq ft. • On large rural properties, larger non-habitable accessory structures generally do not impact neighboring properties.	• **On rural properties 1 acre or greater, allow non-habitable accessory structures up to 1,500 square feet with a building permit only.** • **In rural areas, require a Level 3 (administrative) approval for non-habitable accessory structures that exceed specified size limits.**
8) • In urban areas, size of non-habitable accessory structures such as garages and carports is limited to 640 sq ft. **• Allowed size of animal enclosures is 1,000 sq ft.** • Level 5 approval (public hearing) required for non-habitable structures in urban areas exceeding specified limits.	• Different size limits for animal enclosures and other types of non-habitable accessory structures lead to confusion for applicants. • Non-habitable accessory structures that exceed size limits typically generate few impacts, and do not require public hearings.	• **In urban areas, limit size of all non-habitable accessory structures to 640 sq ft., including animal enclosures.** • **Require Level 4 approval (public noticing) for non-habitable accessory structures in urban areas that exceed specified size limits.**
9) All structures greater than 18" in height must meet all site regulations, including setback and lot coverage requirements.	• Definition of structure is overly restrictive. • Objects that have no potential to impact neighboring properties, such as bird baths and 5-foot garden trellises, are considered structures and are prohibited in side or rear yards.	• Allow objects less than 6 feet in height that do not create health and safety or other impacts to be placed in side and rear yards. • Examples: Garden trellises, garden statuary, play equipment, and ground-mounted solar systems less than 6 feet in height. **Decks taller than 18" would not be allowed in side and rear yards.**

Second Units

Current regulations	Issues	Proposed reforms
1) Property owners must reside on the property in order to obtain a permit for a second unit.	• Difficult for developers of new subdivisions to construct second units, since they do not live on the property. • Restrictions on second units in new subdivisions limit a significant potential source of second units in the County. • Second units planned during subdivision process can be better integrated into the surrounding neighborhood than those constructed after the subdivision has been built.	• Continue to require that the property owner live on-site in order to construct a second unit, but allow an exception for developers of second units within new subdivisions.
2) Ordinance does not specify the level of financial interest required by a property owner to meet the owner occupancy requirements for a second unit permit.	• Owner with 1% interest in property who lives on property meets owner occupancy requirements under current regulations. • Property ownership requirements can be difficult to quantify, since there may be circumstances where there are several legitimate property owners.	• ~~Property owner must maintain at least a 50% ownership in the property to meet owner residency requirements for a second unit permit.~~ • **To verify the owner residency requirements for a second unit permit, the Planning Director may require an applicant with less than 50% ownership in the property to demonstrate a substantial financial interest in the property.**
3) Second units can be occupied only by qualifying households. The rent charged for second units cannot exceed certain levels.	• Restrictions on occupancy and rent levels may act as disincentives for the construction of new second units. • Occupancy and rent level restrictions are not accomplishing the intended goal of ensuring that second units are rented primarily by low- income or senior households.	• Eliminate occupancy and rent-level restrictions for second units, in order to encourage the construction of more second units.
4) Level 5 approval required for second units that exceed 17' height limit in urban areas.	• Neighborhood impacts of second units 28 ft in height are likely to be minimal. • Requiring public hearings (Level 5 approval) for units taller than 17 feet in urban areas may discourage the construction of second units on properties with limited lot coverage.	• Lower the level of discretionary review required (to Level 4) for second units exceeding 17 feet in height in urban areas.
5) No more than 5 second units per year may be constructed in the Live Oak area.	• Infrastructure improvements in Live Oak over the past 20 years have eliminated the need for the annual cap on second units in Live Oak. • Property owners in all areas of the County should have the opportunity to construct new second units.	• Eliminate the annual cap on second units in the Live Oak area.

Non-conforming Structures

After numerous amendments to the original County Zoning Code enacted in 1958, the number of residential non-conforming structures - structures that do not conform to the current height, setback, lot coverage, or floor area ratio requirements- continues to increase. The proposed reforms are intended to make it easier for residential property owners to make needed repairs and other improvements to their residences.

Current regulations	Issues	Proposed reforms
1) Conforming additions greater than 800 square feet to non-conforming structures require discretionary approval (Level 4).	• Conforming additions generally create few impacts, and such projects are rarely conditioned, so that discretionary review is not needed. ◦ Restrictions on size of additions and permit requirements are especially burdensome to owners of smaller non- conforming residences.	• Allow conforming additions of any size to non-conforming residences with a building permit only.
2) Discretionary approval with a public hearing (Level 5 Approval) is required for structural repairs of structures exceeding the allowed height limit by more than 5 feet ("Significantly non-conforming").	• Owners of such residences find it very difficult to make essential repairs or alterations. • Many houses in the County fall into this category due to changes in the way the County has measured height over the years.	• Treat structures exceeding the height limit by more than 5 feet like other non-conforming structures, allowing owners to make needed repairs and alterations, and construct conforming additions, with a building permit only.

Coastal Regulations

The proposed reforms of coastal regulations are intended to make it easier for residential property owners to make small-scale improvements to their property.

Current regulations	Issues	Proposed reforms
1) Demolition of structures in rural areas of the Coastal Zone requires discretionary approval with a public hearing (Level 5 Approval).	• Demolition generally creates few impacts. • Discretionary review with a public hearing is not necessary for most demolition projects.	◦ Exclude most demolition from requiring a Coastal Approval (would still require demolition permit). ◦ Continue to require Coastal Approval for demolition on sensitive sites such as biotic habitats, and for historic structures.
2) Additions greater than 500 square feet in rural areas in the Coastal Zone require discretionary review with a public hearing (Level 5 Approval).	Impacts of such additions are generally minor. ◦ Potential project impacts, including visual impacts, could be fully addressed with a lower level of discretionary review, and do not require a public hearing.	◦ Lower the level of discretionary review required (to Level 4) for rural additions in the Coastal Zone, reducing the time and expense required by the applicant. ◦ Public hearing would be held only if requested.
3) Grading exceeding 100 cubic yards in the Coastal zone requires Coastal Approval with a public hearing (Level 5).	◦ Required grading permits addresses most grading impacts. ◦ Some impacts, such as visual impacts, are not addressed during the review of the grading permit.	• Lower the level of discretionary review required (to Level 4) for grading in the Coastal Zone. ◦ Public hearing would be held only if requested.
4) County regulations require discretionary review of solar energy systems in certain areas of the Coastal Zone (Level 5 Approval).	◦ New California State Law does not allow discretionary review of solar energy systems. ◦ The county should remove barriers to the installation of sustainable energy systems for residences.	◦ Allow the installation of solar energy systems in the Coastal Zone with a building permit only. ◦ Continue to require that solar systems shall not exceed the height limit for the zoning district by more than 3 feet.

Other Recommended Modifications

The proposed reforms simplify several regulations that unnecessarily create barriers to routine residential land uses

Current regulations	Issues	Proposed reforms
1) A discretionary permit (Level 3 Approval) is required when using a right-of-way less than 40 feet wide to access an existing lot of record.	Other agencies now review all building permits, and can condition building permits to address any issues with rights-of way.	Delete the requirement for a separate discretionary approval for using a less than 40-foot right of way to access an existing lot of record.
2) For properties adjacent to agricultural land, discretionary review (Level 4) is required for additions and new accessory structures within the required 200' agricultural buffer.	For properties with an existing house already in the agricultural buffer, discretionary review of additions or new accessory structures that do not extend further into the buffer area may be redundant.	• Eliminate the requirement for discretionary review of additions or accessory structures less than 1,000 square feet that extend no further into the buffer area than the current residential development. • Condition project to require the installation of a physical barrier.
3) Current regulations require an administrative approval (Level 3) for front-yard fences exceeding 3 feet in height, including front yards of "flag lots" that face another property instead of facing the street.	• Property owners of flag lots and similar lots must obtain a permit to construct privacy fences between their property and the adjacent property. • The construction of privacy fences is allowed without permits between other adjoining properties.	Allow the construction of six-foot fences in the front yard of flag lots and other lots that do not face a right of way without requiring discretionary review or a building permit.
4) Current regulations require an administrative approval (Level 3) for front-yard fences exceeding 3 feet in height, but required pool barriers must be at least 4 feet in height.	Since County regulations require pool barriers to be at least 4 feet, approval of required pool barriers is always granted and administrative approval should not be required.	• Eliminate the requirement for administrative approval for required pool barriers in front yards **with existing pools.** • Require that pool barriers in front yards be constructed with materials that do not obstruct site distance.

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Other Recommended Modifications (continued)

Current regulations	Issues	Proposed reforms
5) A ten-foot separation is currently required between structures on a parcel, and also between water tanks on a parcel.	• The building code requires only a six-foot separation between structures, and does not require separation between water tanks. • Reducing the required separation between structures to 6 feet, and allowing zero separation between water tanks, will not impact neighboring properties.	• Require only 6-feet between structures located on a property. • Eliminate the separation requirement between water tanks.
6) Electric power is not allowed on vacant residential parcels. Separate electric service for outbuildings on developed parcels requires discretionary review with a public hearing (Level 5).	• Electric service on vacant lots can be important for fire suppression, or for allowed family gardens. • Electric service for outbuildings may be necessary for the construction of electric gates or other structures such as barns located away from the main dwelling.	• Allow low-amperage electric service under specified situations. • Require a Declaration of Restrictions to clearly indicate the allowed use of such electric service for current and future property owners, and provide for inspections.

ATTACHMENT 11
ATTACHMENT 4

COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

0532

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068
(831) 454-2040 FAX: (831) 454-2115

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August 14,2007
Agenda: August 28,2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, **CA** 95060

Re: AUTHORITY OF COUNTY TO LIMIT THE OCCUPANCY OF SECOND UNITS

Dear Members of the Board:

On June 19,2007, your Board directed this Office to prepare a report on the authority of the County to place occupancy limits on second unit dwellings. **As** explained below, the State Housing Law sets occupancy limits for residential units and the County is preempted from adopting a more restrictive standard unless certain findings can be made to justify **varying** from the state standard.

1. Existing County Imposed Occupancy Limits

The regulations pertaining to second units are found under § 13.10.681 of the Santa **Cruz** County Code. Subsection (e)(1) of that section limits occupancy of second units as follows:

> The maximum occupancy of a second unit may not exceed that allowed by the State Uniform Housing Code, or other applicable state law, based on the unit size and number of bedrooms in the unit.

Under the state standard established by the State Housing **Law,** every dwelling unit is required to have at least one room with a minimum of 120 square feet of floor space; other habitable rooms are required to have an area of at least 70 square feet; and in any room used for sleeping purposes, the required floor area must be increased at the rate of 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units".

In *Briseno v. City of Santa Ana* (1992) 6 Cal. App. 4th 1378, the Court expressly held that the occupancy standards in the State Housing Code generally preempt local ordinances with regard to occupancy. Although State law authorizes local governments to modify provisions in the uniform building codes, any such changes must be reasonably necessary because of local climatic, geological, or topographical conditions (Health & Safety Code Sections 17958.5 and 17958.7). The ***Briseno*** Court observed that it would be "highly unlikely, if not impossible", that the City of Santa Ana could make such findings regarding its climate, geology, or topography to justify a change in the Statewide occupancy standards. (Supra at 1386, fn 3). The *Briseno* ruling on preemption was based on an analysis of the changing nature of the State Housing Code, which will now be briefly reviewed.

2. Historical Development of the State Housing Law

The State Housing Law presently constitutes a legislative design to secure Uniform building standards throughout the state and to preempt local differences, except as specifically authorized by it.

A. Pre-1970 Law. Prior to 1970, the State Housing Law, although detailed and comprehensive, had not preempted the field of building safety standards because it specifically authorized local governments to enact building regulations imposing standards that were "equal to or greater" than those adopted by the state and it made the state standards inapplicable in those local jurisdictions which did so.

B. 1970 Legislative Changes. In 1970, however, the Legislature substantially revised the State Housing Law in order to establish a general uniformity of building standards throughout the state in matters such as safety and structure of buildings, details of construction, use of materials, and electrical, plumbing and heating specifications. (Stats. 1970, ch. 1436, § 7, p. 2786). It (1) directed the State Department of Housing and Community Development to adopt rules and regulations imposing "the same requirements" that are contained in various uniform industry building codes (Stats. 1970, ch. 1436, § 1, p. 2785, amending § 17922, subd. (a)); and then (2) it removed the authority of cities and counties to adopt more stringent building standards and required instead that every city and county adopt ordinances or regulations imposing those same requirements within their jurisdictions within one year, or they would be made applicable in them at that time by force of law *(id.*, § 3, p. 2786, adding § 17958).

When it adopted the 1970 amendments to the State Housing Act, the Legislature declared that "the uniformity of codes throughout the State . . . [was] a matter of statewide interest and concern since it would reduce housing costs and increase the efficiency of the private housing construction industry and its production" and that such "uniformity [could] be achieved within a framework of local autonomy, by allowing local governments to adopt changes making modifications in [the] codes based on differences in local conditions. . . ." (Stats. 1970, ch. 1436).

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In 60 Ops.Cal.Atty.Gen. 234 (1977) the Attorney General pointed out that the utilization of the uniform codes was an attempt to reduce housing costs by reducing production costs and increasing the efficiency of the housing industry. ***(Id.,*** at 237.) By allowing the industry to rely on a single set of standards rather than a different one for every area, it could develop more economical and efficient approaches to basic design, construction techniques and materials. ***(Id.,*** at 238.) Of course another purpose underlying the building regulations was the protection of the public health and safety. The Attorney General also noted that since uniform codes were based on professional expertise, research and testing that is not routinely available to local agencies, the adoption of statewide Uniform standards would also serve that end.

But even then local jurisdictions were allowed wide latitude to deviate fi-om the standards established under the State Housing Law. This is because while the 1970 amendments to the Law were designed to secure a uniformity of codes throughout the State, the Legislature showed a "sensitivity to, and deference for, local conditions and needs." (See ***Baum Electric Co. v.*** *City of Huntington Beach* (1973) 33 Cal.App.3d 573, 584.) In 55 Ops.Cal.Atty.Gen. 157 (1972), the Attorney General opined that the former provision demonstrated an intention to allow cities and counties to adopt regulations with additional or more restrictive building standards than those set by the state ***(id.,*** at 160-161), and in **54** Ops.Cal.Atty.Gen. 87 (1971), the Attorney General said that the latter provision meant that the law's requirement for uniformity did not apply to building activity that was already regulated by an existing local regulation enacted on or before November 23, 1970.

C. 1980 Legislative Changes. Significantly, in 1980 the Legislature (1) amended section 17958.5 of the State Housing **Law** to severely limit the types of local conditions for which local agencies could deviate from statewide building standards (Stats. 1980, ch. 130, p. 303, § 2; Stats. 1980, ch. **1238,** p. 4203, § 9), and (2) the Legislature deleted the exception fiom the requirement of uniformity previously found in section 17958.7 for nonconforming local building regulations **that** were enacted on or before November 23, 1970 (Stats. 1980, ch. 1295, **p.** 4381, § 1). These changes expanded the reach of state preemption in the field of building standard regulation. **As** amended, section 17958.5 permits a city or county to make changes or modifications to the building standards under limited circumstances when it determines they are "reasonably necessary because of local climatic, geological, or topographical conditions" (§ 17958.5).

Since the 1980 legislative changes to § 17958.5, there have been few cases analyzing how local governments may vary from the State Housing Law due to "local conditions". In ***Abs Inst. v.*** *City of* ***Lancaster*** (1994) 24 Cal. App. 4th 285, the Court upheld the City's prohibition against the use of acrylonitrile-butadiene-styrene **(ABS)** cellular pipe finding that it was not preempted by the state building code. The City based its prohibition on unchallenged testimony that the prevalence of major earthquake faults in the area and related health and safety reasons justified its deviation from state standards based on local geologic conditions.

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The reasoning employed in the *Briseno* decision was cited with approval in *College Area Renters and Landlord Association v. City of San Diego* (1996) 42 Cal. App. 4th 543. In the *San Diego* case, the Court struck down a City ordinance setting occupancy limits on the number of persons who could live in a nonowner occupied residence on the grounds that it irrationally distinguished between owner and nonowner occupied residences in violation of the equal protection clause of the California Constitution. After deciding that the City's ordinance was unlawful due to an equal protection violation, the Court went on to evaluate the preemption challenge brought by the *Landlord Association* as well. Although considered dicta, the Court concluded, in accord with *Briseno,* that the City was preempted from addressing neighborhood-overcrowding problems via residential occupancy standards that varied from those imposed by the state.

Finally, the court in *Building Industry Association of Northern California v. City of Livermore* (1996) 45 Cal. App. 4th 719, upheld the City's stricter standards for automatic fire-extinguishing systems. However, the *Building Industry Association* did not challenge the sufficiency of the § 17958.5 findings made by the City, but instead argued that residential fire sprinkler systems were not subject to § 17958.5 and thus the City was not permitted to adopt a standard that vaned from the state.

3. Conclusion

The State Housing Law sets occupancy limits for residential units and the County is preempted from adopting a different standard unless the County can make findings that varying from the state standards is reasonably necessary due to our particular climatic, geological, or topographical conditions. This would appear very difficult in light of the logic of the *Briseno* decision.

DANA MCRAE, COUNTY COUNSEL

By _____
Rahn Garcia
Chief Deputy County Counsel

RECOMMENDED:

_____
SUSAN A. MAURIELLO
County Administrative Officer

cc: Tom Bums, Planning Director

ATTACHMENT 1 ATTACHMENT

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

0536

June 5,2007

AGENDA DATE: June 19,2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Study Session to Consider Proposals for Land Use Regulatory Reform

Members of the Board:

As Board members are aware, over the course of the past several years the Planning Department has focused on a number of initiatives to improve customer services, including instituting more efficient systems at our permit centers, formalizing a method for developing and memorializing policy interpretations, simplifying permit review processes, and bringing forward minor changes to our regulatory system. The purpose of this letter is to initiate the next stage of that process – proposing more significant changes to the regulatory system to reduce the scope of land use regulation. Because of the nature of the recommendations, staff has scheduled this for a Study Session, providing Board members with a chance to receive a presentation on the item, consider initial public comments, and have staff return in August for more formal discussion and action. Only after action is taken at the August meeting would staff draft specific policy amendments for formal consideration by the Planning Commission and Board at public hearings in future months.

Background

While there is broad community support for'the concept of protecting the environment, the character of our neighborhoods, and public health and safety, there are widely divergent points of view of how that can best be achieved in our community. As a result, opinions vary widely with regard to the proper level of regulation that should take place in Santa Cruz County for proposed land use activities. While most residents would recognize the need for a very thorough process for larger development projects – subdivisions and large commercial projects -- the support for time-consuming and costly processes wanes as the scope of the project reduces in scale.

Over the years the Board has discussed the issue of regulatory reform; but those efforts have never materialized as there has not been agreement on the approach and scope of such an effort. Often past discussions have focused on wholesale revisions of Volume 2 of the County Code – a lengthy document that contains most of the County's land use regulations. It is no surprise that such approaches have floundered due to the sheer magnitude of such an endeavor.

Over the past year Planning Department staff has evaluated approaches for initiating such reforms. In developing a proposal for how to undertake a review of our regulations, it's important to remember that the department must dedicate a majority of its resources to processing pending development applications. As a result, any regulatory reform effort must be designed to be supported by a limited but sustained staff effort over time. Therefore, rather than taking a wholesale approach to code revisions, we are suggesting that efforts be focused in smaller more digestible thematic packages of reform concepts. **Such** an approach would allow your Board to engage in a focused manner on thematic areas, with an early emphasis on those areas of our regulations that impact the greatest number of local residents.

In evaluating how such an approach might operate, staff is suggesting that the initial thematic groups include the following topics, in the order noted:

- Small-scale residential issues, including related structures;
- Small-scale commercial issues, particularly streamlining processes for tenant turnover and reuse of existing commercial buildings; and
- Non-conforming building and use issues – both for residential and commercial activities.

Based on the success of these efforts, additional categories would be identified in the future.

Goals of Reform Effort

It is important to understand that the focus of these efforts is to reduce the scope of regulatory process while not sacrificing reasonable protection of the community's values. That said, it is equally important to understand that true reform cannot be accomplished without revisiting fundamental philosophical underpinnings of the current regulatory system. In other words, it will be essential, as we undertake any reform effort, to clearly understand the regulatory goal and the best approach to accomplish those goals, being mindful of the impact on affected property owners. For example, there are multiple approaches for addressing concerns about possible future conversions of workshops and garages to illegal living areas. On one hand, the regulations can be designed, as they currently are, to closely scrutinize every proposed accessory structure, subject many to public hearings, and limit the use of insulation, sheetrock, and plumbing fixtures. Alternatively, with the proper code enforcement effort, the regulation of such structures could **be** minimal, allowing property owners more latitude to meet their needs (within the limits *of* the code) and the County to focus resources on the small percentage of property owners who actually undertake illegal conversions of structures in the future.

In addition, there are a number of current regulations that made good sense at the time that they were developed but, with events that have occurred over the years, no longer do. For example, it was understandable why the Board wanted to limit the number of Second Unit permits in the Live Oak area back when there were significant infrastructure shortfall issues. However, in spite of the substantial investment of the Redevelopment Agency in area infrastructure and changes in State law with regard to Second Units, the regulations limiting the issuance of Second Unit permits in Live Oak remain on the books.

As staff considers input from users of the system and develops recommendations for your Board's consideration, the basis for recommended changes is proposed to include the following:

- Eliminating/modifying outdated regulations.
- Eliminating/modifying regulations that result in significant process costs and delays but typically no change to the ultimate project.
- Simplifying the process for applications requiring discretionary review to the lowest practical level of review to reduce applicant costs and delays.
- Resolving internal inconsistencies between regulations in different parts of the code.
- Shifting the philosophical underpinnings of the regulations **to** focus on regulating high-probability events and utilize the code enforcement program to address low probability events.

Timing for Overall Regulatory Reform Proposals

Given the time available to pursue the proposed overall regulatory reform process in the context of other project commitments, staff is proposing the following general schedule for considering the three first phases of reform discussed earlier. That schedule is as follows:

Topic Area	Initial Concept to Board	Possible Final Board Action
Small-scale Residential Issues	June 2007	Late 2007
Small-scale Commercial Issues	Late 2007	Spring 2008
Non-conforming Uses/Bldgs	Spring 2008	Fall 2008

Overview of Small Scale Residential Issues

Inquiries and permit requests for small-scale residential projects comprise the largest percentage **of** daily visits to the Planning Department. These every-day sorts of projects bring many residential **property** owners in the community to the Planning Department--some for the first time. Partly **as** a result of the difficulty in buying up *to* larger homes, many homeowners come to the County looking for ways to expand use from their older homes. Typical requests include: an owner wishing to build an art studio; a family that wants *to* add a room to an older home that does not conform to current height requirements; or a resident needing to add a minor addition on their home adjacent to farmland. While such applications appear very minor in nature, under our current regulations they oftentimes run into significant regulatory hurdles and extensive process issues. **As** a result, the potential applicants **are** frustrated by the costs, time delays and process. Such situations lead the public to question the value of the County's land use regutations and reflect poorly on the County in general. Additionally, such frustration can lead to property owners proceeding with the **work** outside of **the** permit process.

Based on the goals stated above, extensive internal staff discussions, and years of feedback from applicants using the current system, staff has identified a number of areas that we believe need to be addressed to reform the process for small-scale residential structures. In every instance the recommendations either substantially reduce or eliminate staff review, process and costs for applicants. The various proposals, which are described in more detail in Attachment 1, are summarized below.

Changes for Accessory Structures

Accessory structures (detached from the main residence) -- whether for habitable use (art studios, offices, etc.) or non-habitable (garages, workshops, etc.) -- are common features of most residential properties. In reviewing current regulations, it is clear that significant process was created with the intention of discouraging future illegal conversion of such structures. As a result, many well-intentioned homeowners are surprised at the regulatory barriers and intense process connected with relatively minor proposals for accessory structures. Staff believes that many of the current limitations can be reduced and thereby simplify the current processes. Those include:

- Lowering the level of discretionary review for habitable accessory structures exceeding 640 square feet in size or non-habitable structures exceeding 1,000 square feet or 17 feet in height from a Level V (ZA public hearing) to Level III (administrative review).

- Eliminating the requirement that an owner live on-site in order to permit habitable accessory structures to have heating or cooling features.

- Allowing bathrooms to be installed in accessory structures, under certain circumstances, solely with a required deed restriction, but not a discretionary permit.

- Allowing multiple habitable accessory structures to be built on the same property with the requirement of a deed restriction.

- Allowing many structures less than six feet in height (fence height or lower) to be allowed in side and rear yard setbacks without variances.

Changes to Regulations Related to Second Units

The County's Housing Element calls for the County to encourage the construction of second units, yet there remain significant barriers to second unit construction. Staff is suggesting the following changes to enhance use of second units as a key source of rental housing:

- Deleting the affordability requirements and occupancy restrictions for renters of second units, allowing units to be rented at market rate to any household without oversight by the County, but ensuring oversight by the homeowner by retaining the requirement for the owner to reside on the property.

- Lowering the level of review for second units exceeding 17 feet in height from Level V (ZA hearing) to Level IV (public notice, which can lead to ZA hearing).

- Eliminating the current annual limit of five second unit permits per year within the Live Oak Planning Area.

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Non-Conforming Structures

While more comprehensive changes *to* the non-conforming regulations are envisioned for a future round of policy changes, there are two areas that staff believes should be addressed at this time, as **part** of the residential changes:

- Allowing, without any discretionary permit, all conforming additions *to* non-conforming residential structures.

- Eliminating the Level V (ZA hearing) discretionary permit required to allow routine maintenance and repairs *to* structures that exceed the height limit **by** more than five feet by eliminating the requirement for a Level V discretionary permit.

Coastal Regulations

The County's coastal regulations present a number of challenges to homeowners wishing to do some relatively routine activities. As a result, staff is proposing:

- Allowing coastal exclusions for demolition *of* structures in rural portions of the Coastal Zone without coastal permits.

- Simplifying the coastal permit requirements for small residential additions and related grading activities.

- Exempting most solar energy systems from Level V (ZA hearing) coastal permits.

Other Changes

In addition *to* the four broad areas discussed above, staff is proposing amendments to the current regulations with several additional proposals that we believe unnecessarily create barriers to routine residential land uses:

- Eliminating the requirement for **a** discretionary permit for use of a right-of-way that is less than **40** feet in width.

- Eliminating the requirement for Agricultural Policy Advisory Committee **(APAC)** review of agricultural buffer issues in instances where small-scale residential additions or new accessory structures **do** not further encroach into the agricultural buffer setback than the existing residence.

- Allowing **six** foot fences in front yards of flag lots without requiring an over height fence permit.

- Providing consistency between the building and zoning codes with regard to setbacks between structures and between water tanks, by reducing the setback standards required by the zoning ordinance.

- Exempting front yard fencing required to comply with the County's swimming pool barriers policy from overheight fence permits.

- Allowing, in limited situations, the installation of electrical service on vacant properties

While these changes individually may appear to be minor in nature, cumulatively the proposed revisions would, if approved, substantially reduce the number of discretionary permits required for small-scale residential structures, thereby dramatically shortening the time required to get a permit, reducing the cost of permits, and eliminating public review for what would otherwise be minor building permits. Based on an ongoing monitoring of the weekly new discretionary applications, these changes could eliminate the requirement for or reduce the level of review of 15-25% the total number of discretionary permits currently required and processed annually by the department.

Related Code Enforcement Issues

A key element needed to support some of the proposed changes is an effective program for proactively enforcing the various deed restrictions that are routinely recorded as part of the permit process for certain applications. For those proposed regulatory reforms to be effective, staff resources would need to be redirected or augmented to allow for targeted periodic site inspections to verify compliance with the commitments of property owners to use structures in the manner allowed by their approved permits. Lacking such increased enforcement efforts, a **number** of these reforms could result in a greater level of **illegal** conversion of structures. Staff **will** bring recommendations for how to provide such enforcement services as part of the final report back on the current package.

Conclusion/Recommendation

After years of talk about reform of our current land use regulations, staff is proposing a structure for engaging in meaningful and achievable process for addressing the most significant areas where staff believes that our current regulatory system unnecessarily impacts property owners. That approach is intended to focus initial efforts on those areas of the code that create the most frustration for homeowners wanting to add an addition or small business **owners** wishing to make a timely business move.

As well, staff is suggesting the first topic for the Board's consideration – focused on small-scale residential structures. Staff believes that these proposed changes will both significantly reduce the process for future applicants and reduce the volume of code enforcement cases, while not compromising the core values of the community -- protecting the environment, the quality of neighborhoods, and public health and safety.

It is therefore RECOMMENDED that your Board take the following actions:

1. Conduct a Study Session on the concepts proposed, including receiving initial public testimony; and

2. Direct staff to schedule this item for further consideration by the Board on August 14, 2007.

Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan **A.** Mauriello
County **Administrative** Officer

Attachment 1 – Summary of Proposed Regulatory Changes

cc: County Counsel
Planning Commission
Board of Realtors – Phil Tedesco

SUMMARY OF PROPOSED AMENDMENTS

Accessory Structures

3) Lower the level of discretionary review required for habitable and non-habitable accessory structures exceeding the specified size, story or height limits.

Problem and regulatory context: Current regulations require a Level V (public hearing before the Zoning Administrator) discretionary review for habitable accessory structures that exceed 640 square feet, are over 17 feet in height, or are taller than one story. Non-habitable accessory structures exceeding 1,000 square feet also require a Level V approval (Level III approval allowed in the RA or SU zone districts). Generally, applications for accessory structures exceeding the specified limits are non-controversial, and raise few issues.

Residential property owners applying for permits for accessory structures exceeding the specified limits are frustrated with the long and expensive review process: applicants are required to pay a $1,500 to $2,500 deposit and proceed through a review process lasting several months. A 500 square foot art studio located over a garage, or a 700 square foot single-story detached guesthouse are two examples of accessory structures that typically generate few impacts but nonetheless require a Level V review. In contrast, the construction of a single family dwelling up to 7,000 square feet and 28 feet in height requires only a building permit.

Proposed solution: To bring accessory structures regulations in line with the impacts such projects generate, staff is proposing to lower the level of discretionary review required for accessory structures exceeding the specified limits to Level III (Administrative Review). Staff would still retain authority to address project impacts, and those projects that in the opinion of the Planning Director require more extensive review could be referred to a Level IV (Public Notice) review.

2) Allow for bathrooms in habitable and non-habitable accessory structures.

Problem and regulatory context: Regulations on accessory structures (13.10.611 (c)) prohibit the installation of toilets and bathrooms in most accessory structures. Residential property owners are frequently frustrated by these regulations, because projects which seem very reasonable, such as building a guesthouse with a bathroom for occasional guests, or adding a bathroom in a barn located far from the main house, are currently prohibited.

Restrictions on bathrooms in habitable accessory structures were implemented as a "pre-enforcement" measure to prevent the illegal conversion of habitable

accessory structures into dwelling units. However, staff believes that it is time to consider whether it is reasonable to restrict all property owners from constructing functional accessory structures in order to prevent a few property owners from illegally converting accessory structures to dwelling units. Other regulations exist to discourage illegal conversions, including requiring deed restrictions prohibiting conversion of accessory structures into dwelling units, and prohibiting kitchen facilities. Additionally, it is important to consider these regulations in the context of the current regulations for second units. Second units with bathrooms and kitchens are allowed with **no** discretionary permits. Our regulations may unintentionally force a property owner desiring a guesthouse with a bathroom on their property to instead construct an unwanted second unit in order to have a unit with a bathroom available for guests.

Proposed solution: Allow for the installation of bathrooms in existing and proposed habitable or non-habitable accessory structures. To prevent illegal conversion of accessory structures to dwelling units, continue to require recorded deed restrictions to acknowledge limits of use and inform future buyers of such limits, and implement periodic field checks to verify legal uses.

3) Eliminate the requirement that an owner live on site if a habitable accessory structure has heating or cooling features.

Problem and regulatory context: Accessory structure regulations (13.10.611 (c)) require that the property owner live on site in order for the structure to have a heating or cooling system. This requirement is very frustrating to property owners who do not currently reside on their property, and who see no logical reason why they should not **be** allowed to construct a heated detached office, workshop or other heated or air-conditioned accessory structure on their property.

Like the restrictions on bathrooms in accessory structures, restrictions on heating and cooling systems in habitable accessory structures were implemented to prevent the illegal conversion of habitable accessory structures into dwelling units. As discussed under (2) above, these regulations may unfairly restrict the majority of property owners who have no intention of illegally converting their accessory structures to dwelling units. Additionally, the heating and cooling requirement is not easily enforceable and staff has not found it to be an indicator of illegal conversion. Finally, it is unclear what happens once a property that was granted rights associated with owner occupancy becomes a rental property.

Proposed solution: Delete the requirement that the owner live on the property in order for a habitable accessory structure to have heating or cooling features. To prevent illegal conversion of accessory structures to dwelling units, continue to require recorded deed restrictions and implement periodic field checks to verify legal uses.

4) Allow for multiple residential habitable accessory structures on a property, and allow a second unit to be constructed on a property that also has habitable accessory structures.

Problem and regulatory context: Current regulations on second units (13.10.681 (d)(7) prohibit the construction of a second unit on a lot with other habitable residential accessory structures, such as a heated art studio or agricultural caretaker quarters. Regulations on accessory structures (13.10.611(c)(5) allow only one habitable accessory structure on a property unless a Level V permit is first obtained. The presumption behind these requirements is that residential accessory structures may be illegally converted into dwelling units, and therefore it is appropriate to limit the number residential accessory structures allowed, and to **prohibit** habitable accessory structures on lots with second units. It is important to note that the definition of "habitable accessory structure" is driven by a structure's proposed features: heating or cooling, sheetrock and insulation, or plumbing other than hose bibs. Therefore, a property containing an existing heated art studio may not have a detached garage with a sink without a Level V permit approval, and may not have a second unit at all.

As discussed under (2) above, these requirements unfairly restrict the majority of property owners who have no intention of illegally converting habitable accessory structures into dwelling units. Other regulations exist to discourage illegal conversions of habitable accessory structures, including requiring recorded deed restrictions prohibiting conversion of habitable accessory structures into dwelling units, and prohibiting the installation of kitchen facilities.

Proposed solution: Staff is recommending that regulations be amended to allow for residential accessory structures and a second unit both to be constructed on a property, and to allow multiple habitable accessory structures on the same parcel. To discourage the illegal conversion of residential accessory structures into dwelling units, we would continue to require recorded deed restrictions to acknowledge limits of use and inform future buyers of such limits.

5) Allow structures less than six feet in height that do not impact neighboring properties to be allowed within side or rear yards.

Problem and regulatory context: The current definition of structure (13.10.700-S) includes anything constructed or erected which requires a location on the ground and is greater than 18 inches in height, but excludes swimming pools, fences and walls, and decks less than 18 inches in height. Structures included in this definition **must** meet all site regulations such as side and rear yard setbacks, 10-foot separation between structures and lot coverage requirements.

This definition treats garden statuary and pool equipment the same as houses for potential impacts on neighboring properties. A homeowner placing a birdbath or a five-foot high garden trellis in a side or rear yard setback is in violation of the

County Code. Staff believes that our definition of structure is unnecessarily restrictive to property owners.

Certain types of these small structures can have an impact on neighboring properties, such as noise from exterior mechanical equipment, visual impacts from structures higher than **six** feet located immediately outside a window, and loss of privacy resulting from buildings located too close to a property line. Therefore, it is not proposed that there be a wholesale allowance for all structures, but the regulations should not prohibit benign small structures being located within side and rear yards.

Proposed solution: Structures that **do** not create impacts **and do** not present any health and safety risks should be excluded from site regulations. Staff is proposing that a number of structures, if they are less than 6 feet in height, be allowed in required side and rear yards and not count towards lot coverage requirements. Examples of such structures include trellises and arbors, garden ornaments, play equipment, and ground-mounted solar energy systems.

Second Units

1) Allow the construction of second units in new subdivisions and clarify ownership requirements.

Problem and regulatory context: Current regulations require that property owners live on the property in order to obtain a permit for **a** second unit. Staff agrees with this regulation. However, this requirement makes it difficult for developers of new subdivisions to construct second units, thereby discouraging second units to **be** incorporated into subdivision proposals. Ironically, once a unit is built on a recently subdivided lot, the property owner is able to obtain a second unit permit without County discretion. Establishing a regulatory framework for developers to incorporate second units into the subdivision application would allow the County to review the project in **its** entirely **(with** the inclusion of the second units), thereby furthering County policy to ensure that new developments are designed in **a** manner compatible with the surrounding neighborhood.

Additionally, there have been enforcement issues over the years in terms of what qualifies a resident to be considered an owner-occupant. In one code compliance case, the owner was attempting to define a party who had a 1% stake in the property **as** being eligible for owner-occupancy status.

To address these two issues, the meaning of the term "ownership" should be clarified with respect to owner occupancy requirements for second units.

Proposed Solution: Continue to require that the property owner reside on the property in order to obtain a permit for a second unit, but do not apply that requirement to developers of new subdivisions with second units. In such

instances, the initial purchasers would be required to be owner-occupants in order to utilize the second unit. This will encourage the inclusion of second units at a time in the planning process where the project design can be more thoroughly reviewed by County staff. Allowing second units in new subdivisions will also promote the development of new second units as a source of much needed housing for County residents. In order to address the second issue, staff is recommending that the owner residency requirements in Section 13.10.681 (e) be modified to require that a property owner applying for a permit for a second unit must maintain at least a 50% ownership in the propedy in order to receive a permit.

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2) Delete income and occupancy restrictions for second units.

Problem and regulatory context: Under current regulations (Section 13.10.681), only low-income households, moderate-income senior households, or family members can occupy second units. The rent levels charged for such units cannot exceed those set by the Department of Housing and Urban Development (HUD), which are based on fair market rent levels. Regulations also require that the County certify that tenants of second units meet the occupancy requirements, and require the property owner to periodically provide reports to the County with rent and occupancy information.

In light of the recent Travis decision that invalidated the County's occupancy restrictions for moderate-income seniors, the Board must revise the Second Unit regulations to comply with this ruling. To that end, staff is suggesting using this opportunity to review the regulations in their entirely with an eye toward removing the regulatory barriers and improving program efficiency.

Requiring owners to enter into legally binding agreement to restrict occupancy of second units serves as a deterrent to the development of second units among some property owners who would like more flexibility about who will be living on their property. In addition, because the rent limits are based on market rents, the rent restrictions create an added administrative burden without a clear public policy benefit. These factors combine to discourage the development of second units, and indirectly encourage illegal second units by owners seeking to avoid burdensome regulatory requirements.

The uses of second units suggest that our current regulations restricting occupancy and rent levels are not effectively serving low-income and senior households in the County. Out of the 276 designated second units in the unincorporated County, only 30 units are rented to a low-income household that has been certified by the County over the past three years - representing less than 11% of the inventory; only one unit is occupied by a moderate income senior households certified by the County.

While the income and occupancy restrictions included in this program are a worthy public policy goal, these goals are not being achieved, placing an administrative burden on the public and department, and resulting in a disincentive for construction of second units. 0548

Proposed solution: Staff recommends removing **all** income and occupancy restrictions for tenants of second units. This will encourage the development and use of second units as rental housing, addressing a critical housing need in the community. It is worth noting that given the smaller size and configuration of second units, generally speaking these units are more affordable than traditional housing in the market place and will continue to provide a source of rental housing for lower income households and seniors.

3) Lower the Approval Level required for second units exceeding 17 feet in height or one story from a Level V to a Level IV.

Problem and regulatory context: Second unit regulations (13.10.681(d)(4)) require Level V approval with a full public hearing for second units exceeding 17 feet in height or one story located within the Urban Services Line. Frequently however, the optimum location for a second unit is above an existing garage. This is often the case on smaller lots in urban areas where the construction of a second unit might not otherwise be possible due to restrictions on lot coverage.

Proposed Solution: Staff is proposing to lower the Approval Level required for second units exceeding 17 feet in height or one story from a Level V to a **Level** IV. Reducing the level of approval required **for** second units exceeding the specified standards would reduce the cost and **time** required for property owners applying for such units, and could potentially encourage more property owners to construct second units on their property and provide needed housing for County residents. Opportunities for neighborhood input would be retained and an application could **be** subject to a public hearing, **if** warranted.

4) Eliminate the annual cap on second units in the Live Oak Planning Area.

Problem and regulatory context: Section 13.10.681(f) requires that no-more than five second units be approved in the Live Oak area per year. This requirement was implemented in the 1980's when there were legitimate concerns that the infrastructure in Live Oak was insufficient to support a substantial increase in density. However, in the last two decades redevelopment projects undertaken in Live Oak have resulted in significant improvements to roadways, drainage systems and sidewalks. In addition, retaining the five unit limit is questionable, in light of the recent State mandated changes made to the second unit ordinance that remove local discretion from most second unit applications. Recently, the number of applications received for second units in Live Oak came close to exceeding the annual cap, and planning staff was required to inform the applicants that we would have to hold their application until the following year.

Staff believes that there is no longer a public policy or planning basis for the five unit limit and that the second unit program should be administered uniformly throughout the County. 0549

Proposed solution: Eliminate the annual five-unit cap on second units in Live Oak.

Non-conforming Structures

After numerous amendments to the original County Zoning Code enacted in 1958, the number of structures that do not conform to the current height, setback, lot coverage, or floor area ratio regulations, continues to increase. Although placing severe restrictions on repair and improvements to non-conforming structures was a logical requirement at the time the original zoning ordinance was enacted, such regulations may no longer be realistic given the large number of non-conforming structures in the County and the dwindling number of undeveloped or underdeveloped parcels. In a future ordinance revisions package, staff will bring to your Board recommendations for a broader review of non-conforming regulations.

In the meantime, staff is proposing to modify regulations affecting non-conforming structures that exceed the height limit, and regulations affecting additions to non-conforming structures. Both of these sets of regulations are especially problematic, as they severely limit the ability of many homeowners to repair, restore or modify their homes. Staff believes that the following recommendations will provide greater flexibility to property owners, while promoting orderly development in the County, consistent with the purpose of the regulations for non-conforming structures.

Allow by right all conforming additions to non-conforming structures.

Problem and regulatory context: Section 13.10.265 (b) requires discretionary approval for a conforming addition greater than 800 square feet to a non-conforming structure. Smaller conforming additions are allowed by right with a building permit. Since **by** definition all additions **must** conform to existing site standards, additions exceeding 800 square feet are generally compatible with **the** surrounding neighborhood. Requiring discretionary approval for larger additions particularly affects owners of older, smaller non-conforming homes who may wish to preserve the existing home for its charm and character, while adding to the home to increase its functionality. While regulating these larger additions may have seemed appropriate when adopted, to staffs knowledge, an application for a conforming addition to a nonconforming structure has never been denied or conditioned beyond the normal provisions imposed on building permits. When a category of discretionary application is always approved and not heavily conditioned, it is likely that the discretionary review with the associated costs and time required by the applicant is not warranted.

- Exempting front yard fencing required to comply with the County's swimming pool barriers policy from overheight fence permits. 0550

- Allowing, in limited situations, the installation of electrical service on vacant properties.

While these changes individually may appear to be minor in nature, cumulatively the proposed revisions would, if approved, substantially reduce the number of discretionary permits required for small-scale residential structures, thereby dramatically shortening the time required to get a permit, reducing the cost of permits, and eliminating public review for what would otherwise be minor building permits. Based on an ongoing monitoring of the weekly new discretionary applications, these changes could eliminate the requirement for or reduce the level of review of 15-25% the total number of discretionary permits currently required and processed annually by the department.

Related Code Enforcement Issues

A key element needed to support some of the proposed changes is an effective program for proactively enforcing the various deed restrictions that are routinely recorded as part of the permit process for certain applications. For those proposed regulatory reforms to be effective, staff resources would need to be redirected or augmented to allow for targeted periodic site inspections to verify compliance with the commitments of property owners to use structures in the manner allowed by their approved permits. Lacking such increased enforcement efforts, a number of these reforms could result in a greater level of illegal conversion of structures. Staff will bring recommendations for how to provide such enforcement services as part of the final report back on the current package.

Conclusion/Recommendation

After years of talk about reform of our current land use regulations, staff is proposing a structure **for** engaging in meaningful and achievable process for addressing the most significant areas where staff believes that our current regulatory system unnecessarily impacts properly owners. That approach is intended to focus initial efforts on those areas of the code that create the most frustration for homeowners wanting to add an addition or small business owners wishing to make a timely business move.

As **well,** *staff* is suggesting the first topic for the Board's consideration – focused on small-scale residential structures. Staff believes that these proposed changes will both significantly reduce the process for future applicants and reduce the volume of code enforcement cases, while not compromising the core values of the community -- protecting the environment, the quality of neighborhoods, and public health and safety.

It is therefore RECOMMENDED that your Board take the following actions:

1. Conduct a Study Session on the concepts proposed, including receiving initial public testimony; and

2. **Direct** staff to schedule this item for further consideration by the Board on August 14, 2007.

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Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan A. Mauriello
County **Ad**ministrative Officer

Attachment 1 – Summary of Proposed Regulatory Changes

cc: County Counsel
Planning Commission
Board of Realtors – Phil Tedesco

SUMMARY OF PROPOSED AMENDMENTS

Accessory Structures

1) Lower the level of discretionary review required for habitable and non-habitable accessory structures exceeding the specified size, story or height limits.

Problem and regulatory context: Current regulations require a Level V (public hearing before the Zoning Administrator) discretionary review for habitable accessory structures that exceed 640 square feet, are over 17 feet in height, or are taller than one story. Non-habitable accessory structures exceeding 1,000 square feet also require a Level V approval (Level III approval allowed in the RA or SU zone districts). Generally, applications for accessory structures exceeding the specified limits are non-controversial, and raise few issues.

Residential property owners applying for permits for accessory structures exceeding the specified limits are frustrated with the long and expensive review process: applicants are required to pay a $1,500 to $2,500 deposit and proceed through a review process lasting several months. A 500 square foot art studio located over a garage, or a 700 square foot single-story detached guesthouse are two examples of accessory structures that typically generate few impacts but nonetheless require a Level V review. In contrast, the construction of a single family dwelling up to 7,000 square feet and 28 feet in height requires only a building permit.

Proposed solution: To bring accessory structures regulations in line with the impacts such projects generate, staff is proposing to lower the level of discretionary review required for accessory structures exceeding the specified limits to Level III (Administrative Review). Staff would still retain authority to address project impacts, and those projects that in the opinion of the Planning Director require more extensive review could be referred to a Level IV (Public Notice) review.

2) Allow for bathrooms in habitable and non-habitable accessory structures.

Problem and regulatory context: Regulations on accessory structures (13.10.611 (c)) prohibit the installation of toilets and bathrooms in most accessory structures. Residential property owners are frequently frustrated by these regulations, because projects which seem very reasonable, such as building a guesthouse with a bathroom for occasional guests, or adding a bathroom in a barn located far from the main house, are currently prohibited.

Restrictions on bathrooms in habitable accessory structures were implemented as a "pre-enforcement" measure to prevent the illegal conversion of habitable

accessory structures into dwelling units. However, staff believes that it is time to consider whether it is reasonable to restrict all property owners from constructing functional accessory structures in order to prevent a few property owners from illegally converting accessory structures to dwelling units. Other regulations exist to discourage illegal conversions, including requiring deed restrictions prohibiting conversion of accessory structures into dwelling units, and prohibiting kitchen facilities. Additionally, it is important to consider these regulations in the context of the current regulations for second units. Second units with bathrooms and kitchens are allowed with no discretionary permits. Our regulations may unintentionally force a property owner desiring a guesthouse with a bathroom on their property to instead construct an unwanted second unit in order to have a unit with a bathroom available for guests.

Proposed solution: Allow for the installation of bathrooms in existing and proposed habitable or non-habitable accessory structures. To prevent illegal conversion of accessory structures to dwelling units, continue to require recorded deed restrictions to acknowledge limits of use and inform future buyers of such limits, and implement periodic field checks to verify legal uses.

3) Eliminate the requirement that an owner live on site if a habitable accessory structure has heating or cooling features.

Problem and regulatory context: Accessory structure regulations (13.10.611 (c)) require that the property owner live on site in order for the structure to have a heating or cooling system. This requirement is very frustrating to property owners who do not currently reside on their property, and who see no logical reason why they should not be allowed to construct a heated detached office, workshop or other heated or air-conditioned accessory structure on their property.

Like the restrictions on bathrooms in accessory structures, restrictions on heating and cooling systems in habitable accessory structures were implemented to prevent the illegal conversion of habitable accessory structures into dwelling units. As discussed under (2) above, these regulations may unfairly restrict the majority of property owners who have no intention of illegally converting their accessory structures to dwelling units. Additionally, the heating and cooling requirement is not easily enforceable and staff has not found it to be an indicator of illegal conversion. Finally, it is unclear what happens once a property that was granted rights associated with owner occupancy becomes a rental property.

Proposed solution: Delete the requirement that the owner live on the property in order for a habitable accessory structure to have heating or cooling features. To prevent illegal conversion of accessory structures to dwelling units, continue to require recorded deed restrictions and implement periodic field checks to verify legal uses.

4) Allow for multiple residential habitable accessory structures on a property, and allow a second unit to be constructed on a property that also has habitable accessory structures.

0554

Problem and regulatory context: Current regulations on second units (13.10.681 (d)(7) prohibit the construction of a second unit on a lot with other habitable residential accessory structures, such as a heated art studio or agricultural caretaker quarters. Regulations on accessory structures (13.10.611(c)(5) allow only one habitable accessory structure on a property unless a Level V permit is first obtained. The presumption behind these requirements is that residential accessory structures may be illegally converted into dwelling units, and therefore it is appropriate to limit the number residential accessory structures allowed, and to prohibit habitable accessory structures on lots with second units. It is important to note that the definition of "habitable accessory structure" is driven by a structure's proposed features: heating or cooling, sheetrock and insulation, or plumbing other than hose bibs. Therefore, a property containing an existing heated art studio may not have a detached garage with a sink without a Level V permit approval, and may not have a second unit at all.

As discussed under (2) above, these requirements unfairly restrict the majority of property owners who have no intention of illegally converting habitable accessory structures into dwelling units. Other regulations exist to discourage illegal conversions of habitable accessory structures, including requiring recorded deed restrictions prohibiting conversion of habitable accessory structures into dwelling units, and prohibiting the installation of kitchen facilities.

Proposed solution: Staff is recommending that regulations be amended to allow for residential accessory structures and a second unit both to be constructed on a property, and to allow multiple habitable accessory structures on the same parcel. To discourage the illegal conversion of residential accessory structures into dwelling units, we would continue to require recorded deed restrictions to acknowledge limits of use and inform future buyers of such limits.

5) Allow structures less than six feet in height that do not impact neighboring properties to be allowed within side or rear yards.

Problem and regulatory context: The current definition of structure (13.10.700-S) includes anything constructed or erected which requires a location on the ground and is greater than 18 inches in height, but excludes swimming pools, fences and wails, and decks less than 18 inches in height. Structures included in this definition must meet all site regulations such as side and rear yard setbacks, 10-foot separation between structures and lot coverage requirements.

This definition treats garden statuary and pool equipment the same as houses for potential impacts on neighboring properties. A homeowner placing a birdbath or a five-foot high garden trellis in a side or rear yard setback is in violation of the

County Code. Staff believes that our definition of structure is unnecessarily restrictive *to* property owners. 0555

Certain types of these small structures can have an impact on neighboring properties, such as noise from exterior mechanical equipment, visual impacts from structures higher than six feet located immediately outside a window, and loss of privacy resulting from buildings located too close to a property line. Therefore, it is not proposed that there be a wholesale allowance for all structures, but the regulations should not prohibit benign small structures being located within side and rear yards.

Proposed solution: Structures that do not create impacts and do not present any health and safety risks should be excluded from site regulations. Staff is proposing that a number of structures, if they are less than 6 feet in height, be allowed in required side and rear yards and not count towards lot coverage requirements. Examples of such structures include trellises and arbors, garden ornaments, play equipment, and ground-mounted solar energy systems.

Second Units

1) Allow the construction of second units in new subdivisions and clarify ownership requirements.

Problem and regulatory context: Current regulations require that property owners live on the property in order to obtain a permit for a second unit. Staff agrees with this regulation. However, this requirement makes it difficult for developers of new subdivisions to construct second units, thereby discouraging second units *to* be incorporated into subdivision proposals. Ironically, once a unit **is** built on a recently subdivided lot, the property owner is able to obtain a second unit permit without County discretion. Establishing a regulatory framework for developers to incorporate second units into the subdivision application would allow the County to review the project in its entirely (with the inclusion of the second units), thereby furthering County policy to ensure that new developments **are** designed in a manner compatible with the surrounding neighborhood.

Additionally, there have been enforcement issues over the years in terms of what qualifies a resident to be considered an owner-occupant. In one code compliance case, the owner was attempting to define a party who had a 1% stake in the property as being eligible for owner-occupancy status.

To address these two issues, the meaning of the term "ownership" should be clarified with respect to owner occupancy requirements for second units.

Proposed Solution: Continue to require that the property owner reside on the property in order to obtain a permit for a second unit, but do not apply that requirement to developers of new subdivisions with second units. In such

instances, the initial purchasers would be required to be owner-occupants in order to utilize the second unit. This will encourage the inclusion of second units at a time in the planning process where the project design can be more thoroughly reviewed by County staff. Allowing second units in new subdivisions will also promote the development of new second units as a source of much needed housing for County residents. In order to address the second issue, staff is recommending that the owner residency requirements in Section 13.10.681 (e) be modified to require that a property owner applying for a permit for a second unit must maintain at least a 50% ownership in the property in order to receive a permit.

2) Delete income and occupancy restrictions for second units.

Problem and regulatory context: Under current regulations (Section 13.10.681), only low-income households, moderate-income senior households, or family members can occupy second units. The rent levels charged for such units cannot exceed those set by the Department of Housing and Urban Development (HUR), which are based on fair market rent levels. Regulations also require that the County certify that tenants of second units meet the occupancy requirements, and require the property owner to periodically provide reports to the County with rent and occupancy information.

In light of the recent Travis decision that invalidated the County's occupancy restrictions for rnoderate-income seniors, the Board must revise the Second Unit regulations to comply with this ruling. To that end, staff is suggesting using this opportunity to review the regulations in their entirely with an eye toward removing the regulatory barriers and improving program efficiency.

Requiring owners to enter into legally binding agreement to restrict occupancy of second units serves as a deterrent to the development of second units among some property owners who would like more flexibility about who will be living on their property. In addition, because the rent limits are based on market rents, the rent restrictions create an added administrative burden without a clear public policy benefit. These factors combine to discourage the development of second units, and indirectly encourage illegal second units by owners seeking to avoid burdensome regulatory requirements.

The uses of second units suggest that our current regulations restricting occupancy and rent levels are not effectively serving low-income and senior households in the County. Out of the 276 designated second units in the unincorporated County, only 30 units are rented to a low-income household that has been certified by the County over the past three years - representing less than 11% of the inventory; only one unit is occupied by a moderate income senior households certified by the County.

While the income and occupancy restrictions included in this program are a worthy public policy goal, these goals are not being achieved, placing an administrative burden on the public and department, and resulting in a disincentive for construction of second units.

Proposed solution: Staff recommends removing all income and occupancy restrictions for tenants of second units. This will encourage the development and use of second units as rental housing, addressing a critical housing need in the community. It is worth noting that given the smaller size and configuration of second units, generally speaking these units are more affordable than traditional housing in the market place and will continue to provide a source of rental housing for lower income households and seniors.

3) Lower the Approval Level required for second units exceeding 17 feet in height or one story from a Level V to a Level IV.

Problem and regulatory context: Second unit regulations (13.10.681(d)(4)) require Level V approval with a full public hearing for second units exceeding 17 feet in height or one story located within the Urban Services Line. Frequently however, the optimum location for a second unit is above an existing garage. This is often the case on smaller lots in urban areas where the construction of a second unit might not otherwise be possible due to restrictions on lot coverage.

Proposed Solution: Staff is proposing to lower the Approval Level required for second units exceeding 17 feet in height or one story from a Level V to a Level IV. Reducing the level of approval required for second units exceeding the specified standards would reduce the cost and time required for property owners applying for such units, and could potentially encourage more property owners to construct second units on their property and provide needed housing for County residents. Opportunities for neighborhood input would be retained and an application could be subject to a public hearing, if warranted.

4) Eliminate the annual cap on second units in the Live Oak Planning Area.

Problem and regulatory context: Section 13.10.681(f) requires that no-more than five second units be approved in the Live Oak area per year. This requirement was implemented in the 1980's when there were legitimate concerns that the infrastructure in Live Oak was insufficient to support a substantial increase in density. However, in the last two decades redevelopment projects undertaken in Live Oak have resulted in significant improvements to roadways, drainage systems and sidewalks. In addition, retaining the five unit limit is questionable, in light of the recent State mandated changes made to the second unit ordinance that remove local discretion from most second unit applications. Recently, the number of applications received for second units in Live Oak came close to exceeding the annual cap, and planning staff was required to inform the applicants that we would have to hold their application until the following year.

Staff believes that there is no longer a public policy or planning basis for the five unit limit and that the second unit program should be administered uniformly throughout the County.

Proposed solution: Eliminate the annual five-unit cap on second units in Live Oak.

Non-conforming Structures

After numerous amendments to the original County Zoning Code enacted in 1958, the number of structures that do not conform to the current height, setback, lot coverage, or floor area ratio regulations, continues to increase. Although placing severe restrictions on repair and improvements to non-conforming structures was a logical requirement at the time the original zoning ordinance was enacted, such regulations may no longer be realistic given the large number of non-conforming structures in the County and the dwindling number of undeveloped or underdeveloped parcels. In a future ordinance revisions package, staff will bring to your Board recommendations for a broader review of non-conforming regulations.

In the meantime, staff is proposing to modify regulations affecting non-conforming structures that exceed the height limit, and regulations affecting additions to non-conforming structures. Both of these sets of regulations are especially problematic, as they severely limit the ability of many homeowners to repair, restore or modify their homes. Staff believes that the following recommendations will provide greater flexibility to property owners, while promoting orderly development in the County, consistent with the purpose of the regulations for non-conforming structures.

1) Allow by right all conforming additions to non-conforming structures.

Problem and regulatory context: Section 13.10.265 **(b)** requires discretionary approval for a conforming addition greater than 800 square feet to a non-conforming structure. Smaller conforming additions are allowed by right with a building permit. Since by definition all additions must conform to existing site standards, additions exceeding 800 square feet are generally compatible with the surrounding neighborhood. Requiring discretionary approval **for** larger additions particularly affects owners of older, smaller non-conforming homes who may wish to preserve the existing home for its charm and character, while adding to the home to increase its functionality. While regulating these larger additions may have seemed appropriate when adopted, to staffs knowledge, an application for a conforming addition to a nonconforming structure has never been denied or conditioned beyond the normal provisions imposed on building permits. When a category of discretionary application is always approved and not heavily conditioned, it is likely that the discretionary review with the associated costs and time required by the applicant is not warranted.

Proposed solution: Staff is recommending that all conforming additions to non-conforming structures would no longer require discretionary approval, and would be allowed with an approved building permit.

2) Reclassify structures that exceed **the height** limit **by more** than **five** feet **from** significantly non-conforming to non-conforming, **allowing for** structural enlargement, reconstruction, repairs and alterations **of** such structures.

Problem and regulatory context: Currently, structures that exceed the allowable height limit **by** more than five feet are considered significantly non-conforming under section 13.10.265(j). Significantly non-conforming structures (which also include structures built over property lines, within five feet to a structure on an adjoining property or within five feet of a vehicular right-of-way) are considered to **be** detrimental to the general welfare of the County. **A** Level V permit is therefore required for any structural change to a significantly non-conforming structure. In contrast, houses that exceed the required height limit by less than five feet are currently considered non-conforming rather than significantly non-conforming. Owners of such houses can make structural repairs and construct conforming additions with an approved building permit.

A large number of houses in the County exceed the current height limit by more than five feet, and are thus considered significantly non-conforming, due to changes **in** the way the County has measured height over the years. This is particularly the case for structures located on sloping lots. Owners of such structures find it extremely difficult to properly maintain, repair or add to their homes, since current regulations require a Level V approval for any structural alterations. By making it difficult for such property owners to make needed structural repairs, the County may in fact be encouraging deterioration of structures, conflicting with the intent of the ordinance to promote orderly development in the County.

It **is** clear how other types **of** significantly non-conforming structures, such as structures located across a property line, could be detrimental to the general welfare. It **is** less clear how structures exceeding the height limit by more than five feet are as problematic, especially since they were initially permitted by the County. The degree of non-conformity posed by structures exceeding the height limit **by** more than five feet seems more similar to structures classified as non-conforming, such as structures that extend over a required setback.

Proposed solution: Staff recommends eliminating height as a significantly non-conforming category, and treating all structures over the height limit as non-conforming structures. This would allow owners of over-height -structures to make needed structural repairs and construct conforming additions to such structures.

Coastal Regulations

1) Allow Coastal exclusions for demolition of structures in rural areas in the Coastal Zone.

Problem and regulatory context: In the Coastal Zone, demolition within the appealable jurisdiction of the Coastal Commission, and demolition outside of the Urban and Rural Services Lines (rural properties) requires a Level V Coastal Approval with a full public hearing. However, demolition in other areas of the Coastal zone is excluded from permit requirements, pursuant to 13.20.071. In discussions with staff, it was agreed that for most demolition projects, requiring a full public hearing is unnecessary and *is* burdensome for applicants, since demolition normally creates few impacts. Other counties in the Coastal Zone, such as Marin County, exclude demolition from requirements for Coastal Approval, unless the demolition occurs within an environmentally sensitive habitat.

Proposed solution: Staff is recommending that the Coastal regulations be **modified** to allow exclusions for most demolitions. However, any demolition **that** could affect a prehistoric or historic resource, a biotic resource or sensitive habitat, or cause damage to a significant tree would still require Coastal Approval. Demolition within the appealable areas would still **be** subject to Coastal Approval. During preliminary discussions, the Coastal Commission expressed their willingness to consider this approach to demolition.

2) Develop an administrative Coastal Approval process for residential additions greater than 500 sq ft in rural areas of the Coastal Zone.

Problem and regulatory context: Section 13.20.071 in **the** Coastal regulations requires Coastal Approval with a Level V public hearing for additions greater than 500 square feet in rural areas. However **in** non-rural **areas** of the Coastal Zone, additions generally require only a building permit. Since additions to homes in rural areas in the Coastal Zone typically generate few impacts, such projects generate little public concern and receive very few comments during public hearings. However, there are a few limited situations where large additions in rural areas have the potential to create minor visual **impacts** or other impacts. Although a full public hearing is not needed to address the minor impacts of such projects, staff still finds it appropriate to retain a level of discretionary authority.

Proposed solution: Fortunately, the Coastal Act allows for minor projects such as rural additions to be approved administratively without a public hearing, **as** long as the project is noticed properly and a public hearing **is held** if **requested.**

Several other Coastal Counties include provisions for administrative approval of certain categories of projects in the Coastal Zone. **Staff** believes that an administrative review process for rural additions in the Coastal Zone would give the **approving** body sufficient discretionary authority to **address** any project impacts. The Coastal Commission has expressed their willingness to consider an administrative approval process. 0561

3) Develop an administrative Coastal Approval process for grading in the Coastal Zone.

Problem and regulatory context: Section 13.20.077 **in** the Coastal Zone regulations requires Coastal Approval with a full public hearing for grading that exceeds 100 cubic yards. Grading exceeding 100 cubic yards in all areas **of** the County also requires a grading permit. The review process for grading permits addresses most grading impacts, requiring implementation **of** erosion control measures and environmental review, such that in most situations the requirement for an additional Coastal Approval is redundant. Occasionally however, there may **be** potential minor visual impacts or other types of impacts that would not be addressed during the review of the grading permit, such that discretionary **review** may be appropriate. However, grading projects **do** not generate the level of impacts or public concern to justify a full public hearing. The current requirement for a full public hearing for grading projects requires the applicant to spend a disproportionate amount of time and expense to obtain approval of their project.

The requirement for a Level V Approval with a public hearing **for** grading in the Coastal zone also appears overly stringent in relation to other Coastal zone requirements. For example, single-family dwellings in certain areas of the Coastal Zone require only a building permit, but the grading for the house **requires** a Coastal Approval with a full public hearing if the grading exceeds 100 cubic yards.

Proposed solution: Similar to staffs recommendation for administrative review of rural additions, staff believes that **an** administrative review process for grading greater than 100 cubic yards in the Coastal Zone would give **the** approving body sufficient discretionary authority to address any project impacts and would **provide** a level of review in proportion to the level of impacts generated. The Coastal Commission has expressed their willingness to consider this approach.

4) Exempt solar energy systems in the Coastal Zone from requirements for Coastal Approvals, in compliance with state law. Continue to require that roof-mounted solar systems shall not exceed the height limit of the zone district by more than 3 feet.

Problem and Regulatory Context: State Law **AO** 2473 requires that local jurisdictions approve solar energy systems for residential, business and agricultural use, through the issuance of a building permit or other non-

discretionary permit. It further specifies that the review of such a system shall be limited to considering whether the system meets all health and safety requirements of local, state and federal law. The law prohibits design review of solar systems for aesthetic purposes. The state iaw does not **provide** for separate provisions within the Coastal Zone.

Currently, County regulations exempt improvements to single-family residences and to other structures within the Coastal Zone from requirements for Coastal Approvals. However, improvements to structures that are located within 50' of a coastal bluff or on a beach are not exempt. Those portions of our coastal regulations that require discretionary review of solar energy systems and allow for consideration of criteria other than health and safety do not conform to state **law.** Although a policy interpretation has been written to address immediate concerns, our Coastal zone regulations should be amended **to** comply with state law. Additionally, it is important for the County to remove barriers standing in the way of property owners wishing to install sustainable energy systems for their homes.

Proposed solution: To comply with state law, all solar energy systems will be exempt from requirements for Coastal Approval throughout the Coastal Zone. Existing County regulations prohibiting all roof-mounted solar systems from exceeding the height limit of the zone district by more than 3 feet should address visual impacts resulting from roof-mounted systems.

Other recommended modifications

1) Modify Section 13.10.521 to delete the requirement for a discretionary permit when using a less than 40-foot right-of-way as access to an existing lot of record.

At the time this ordinance was enacted in 1962, Planning **was** the only agency that reviewed development applications. Other agencies **now** review ministerial **permits** including the Fire Department and Public Works, and address any issues with rights of way and road standards as part of this review process. It is therefore no longer necessary and redundant **to** have a separate permit to use a **less** than 40-foot right-of-way as access to an existing lot ***of*** **record.** Deletion of **this** permit requirement would not alter the requirement **to** obtain discretionary approval to create a new less than 40-foot right-of-way or utilize one for a proposed lot.

2) For residential properties with an existing house within an agricultural buffer, allow by right minor additions or new habitable accessory structures within the agricultural buffer, as long as the new development does not extend further into the agricultural buffer than the existing structure.

0563

Current regulations (Section 16.50.095(g)) require Level IV Approval for additions to existing residential structures or for new habitable accessory structures within agricultural buffers, if the proposed construction is closer than 200 feet to commercial agricultural land. Such requirements were implemented primarily to allow staff to require the installation of appropriate physical barriers to minimize the need for the 200' buffer, and to require the property owner to record deed restrictions acknowledging their responsibility to permanently maintain the required barrier. However, such requirements can be included as standard project conditions, and do not require discretionary review. Since such properties already have a residential use within the 200-foot buffer area, requiring a Level IV discretionary approval for minor additions or new habitable accessory structures that extend no further into the agricultural buffer seems redundant.

Staff is proposing to eliminate the requirement for Level IV Approval for additions and habitable accessory structures less than 1,000 square feet that do not extend any further into the required agricultural buffer than the existing residential development. Staff would require as standard conditions of approval the installation of appropriate physical barriers and the recordation of a deed restriction acknowledging that the property owner must permanently maintain the required buffer setback and physical barrier.

4) Allow required pool barrier fencing to be four feet in height within required front and street side yards.

The Uniform Building Code and section 12.10.070 require a minimum four-foot high barrier fence around swimming pools for safety reasons. The current fence regulations limit the maximum fence height within front yards to three feet; therefore, the required fencing for pools located within front yards always requires Level III discretionary permits to exceed the three-foot height limitation. Since these Level III requests are always approved because of the four-foot minimum requirement, it makes sense to add an exception to the fence height requirements to allow the installation of a pool barrier four feet in height. However, the installation of any required pool barrier within a front yard must be constructed with materials that do not obstruct sight distance.

5) Reduce the30-foot required separation between structures on a property to 6 feet, and eliminate the separation requirement between water tanks.

Section 13.10.323(e)6(C) currently requires a ten-foot separation between any two structures on a parcel. However, the Fire Code and Building Code typically requires only six feet between habitable structures. The additional zoning restrictions were imposed to provide additional light, air, and privacy between structures on a parcel. It is logical from a zoning perspective to regulate privacy and light access between properties. For structures located on the same property however, it may be more appropriate to require sufficient separation between structures to protect health and safety, and to allow the property owner to determine the appropriate amount of light access or privacy required. Allowing a six-foot separation between structures on a property should have minimal impacts to neighboring properties, as required setbacks will protect privacy and access to light and air between structures on different parcels.

Existing zoning regulations also require a IO-foot separation between water tanks. However, Building and Fire Codes do not require any separation between water tanks. Additionally, the Fire Department now requires greater on-site water storage in some areas due to Urban-Wildland Intermix Code requirements, such that multiple water tanks may be required on a parcel. Allowing zero separation between water tanks provides greater flexibility for property owners, and has the potential to generate fewer visual impacts than requiring that water tanks located on separate areas of a parcel.

6) Allow electric power to vacant residential parcels or separate electric meters on a parcel, in certain circumstances

Section 13.10.611 regulates the circumstances of when electric power is allowed for residential parcels. Currently, electric power *is* not allowed on vacant

residential parcels nor is a separate electric service allowed for outbuildings on developed residential parcels without first obtaining a Level V permit. This regulation was created as a method to deter the creation or conversion of illegal dwelling units.

Electric service to wells on vacant residential parcels is often appropriate to facilitate fire suppression or to allow family gardens, a permitted use. Separate electric service for other incidental residential uses, such as electric gates, are often necessary due to the use not being located near the single-family dwelling.

Staff is proposing that the regulations be changed to allow low amperage electric service for these types of situations. A Declaration of Restrictions could be required to clearly indicate the allowed use of the electric service for the current and future property owners.

ATTACHMENT 11

0566

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August 7,2007

Board of Supervisors
County of Santa Cruz
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RE: Proposed revision of land-use ordinances for **second units** presented June 19,2007, scheduled for further consideration in the Augusr 14,200'7, agenda.

Dear Supervisors:

I am writing to provide my input for your consideration of the Planning Department's proposed revisions which were presented at your June 19,2007, regular meeting as item 54. I have some information regarding the written and oral proposals by the Planning Department and in response to questions and issues raised by individual Board members at that meeting. In brief, I oppose the proposed regulation that would require a minimum 50% ownership percentage by the resident owner in order to apply for and/or continue to use a second unit. Such a regulation does not serve a useful purpose in that a co-owner of any percentage, residing on the property, would have the same care and concern about the construction and occupancy as a 50% owner. All owners under a tenants-in-common deed, regardless of their percentage of ownership, have full legal rights to use of the entire property on an equal basis with any other owner of the parcel. **A** 50% rule would have unintended consequences, which I'll illustrate below. I agree with the staff proposal to remove the other occupancy restrictions and rent controls. Further, I urge the Board to allow an owner of two contiguous parcels, that is, two parcels which touch each other at a common side or lot comer, to develop and rent out a second unit on the parcel which is not the owner's residence provided that the owner lives on one of the two parcels.

I agree with most of the reforms proposed by the Planning Department staff report, however, the proposal that "Section 13.10.681(e) be modified to require that a property owner applying for a permit for a second unit must maintain at least 50% ownership in the property in order to receive a permit" has serious problems. The report proposes this as a solution to the enforcement issue it cites on page 4: "In one code compliance case, the owner was attempting to define a party who had a 1% stake in the property as being eligible for owner-occupancy status." Before adopting the proposal, the Board should carefully consider the possible scenarios that it would affect.

There are two distinct issues to keep separate. First, who qualifies to be an applicant for the ministerial second unit building permit. Second, who qualifies as an owner for the requirement that the owner shall reside on the parcel when the second unit is occupied. The proposed language confounds these two issues by saying that the applicant must maintain at least a 50% ownership in order to receive a permit. This seems to imply that the owner-applicant must continue to reside on the parcel and

continue to be at least a half-owner at the time the permit is granted, but why use the term "maintain"? The "code compliance" case mentioned seems to be one involving the continued occupancy of a second unit when only a 1% owner resides on the parcel. The granting of a permit to build a second unit is an entirely different issue. Ownership at the time of granting the permit is a one-time matter. Maintaining ownership beyond the granting of the permit makes no sense as a requirement for granting a permit. If you mean that 50% ownership must be maintained after the permit is issued in order to continue using the second unit, then there are other problems created.

Scenario 1: The owner-occupant is granted the permit, builds the second unit, resides on the parcel and allows the second unit to be occupied by a tenant or family member, and then sells the place. The new owner is not the owner-applicant. The proposed regulation language would not apply to him or her.

Scenario 2: The owner dies and the heirs inherit the property in equal parts as tenants in common, but only one of the heirs moves into the home. If there are more than two heirs, no one of them is at least a 50% owner. The proposed regulation would not allow any of the heirs, even one actually residing in the house, io apply to build a second unit or to continue to operate an existing second unit.

Scenario *3:* For estate planning purposes, the owner(s) give a part-ownership of the home to the adult children, taking advantage of the gift-tax exclusion. After the gift, neither the parent nor any one of the children are 50% owners, similar to scenario 2. Then neither the parent (nor any one of the children if the parent moves away) would qualify to build a second unit nor to allow it to be occupied, even if he or she resides in the existing house.

Scenario 4: To be able to afford the purchase, a low-income household partners with an investor or relative who agrees to be an equity-sharing non-resident co-owner. (Such equity-sharing financing does exist and is usually arranged between unrelated investors by realtors who specialize in making a market for home loans, or by relatives such as parents and their young adult children.) The resident household may put in less than 50% of the acquisition cost (down payment, closing costs, etc.) and the non-resident investor puts in the rest, and they own the property as tenants in common, each owning a share in proportion to the respective contribution to the purchase and ongoing expenses. The proposed regulation would not allow any second unit to be built because the owner-occupant is not at least a 50% owner.

As you can see, the proposed 50% ownership regulation, which would forbid the second unit in the above scenarios, goes against the public purpose of providing for second units without unreasonably burdensome restrictions. It also would unnecessarily interfere with owners who want or need to apply the tools legally available to them for estate planning and home financing. The ownership residency requirement has the purpose of ensuring that an owner will provide close oversight of the second unit so that it is not a nuisance to neighbors. Regardless of the percentage of ownership, any owner actually residing on the property will have that sort of concern about the second unit occupancy. Likewise, even if the applicant for the second unit owns less than 50%, all of the owners would be reasonably concerned about the construction of a second unit, since they all would own their percentage of it according to the deed, Imposing an ongoing 50% ownership rule for continued use of the second unit would thus unreasonably restrict the right of owners to use their property.

With regard to the continued owner-occupancy requirement, I urge you to extend the requirement to allow an owner of two adjacent parcels to develop and rent out a second unit on the parcel that is not the owner's residence. This would still provide close supervision, since the owner would be living in close proximity not only to the second unit but also to the main house, both of which could be tenant occupied. This relaxation of the requirement would better serve the purpose of

creating additional affordable housing without loss of owner supervision.

At the June 19 meeting, various questions arose during the Board's discussion of the staff proposal on second units.

Supervisor Beutz was concerned that "ten surfers" would rent the second unit, creating an unreasonable burden and nuisance to the neighbors. Of course, this could happen to any house that is rented out, with or without a second unit, so it's a matter of the code compliance department enforcing the housing over-crowding regulations that already exist. The state housing code, which applies to all housing in the County, provides ample regulatory basis for code compliance staff to put an end to such over-occupancy of any dwelling. The state housing code allows any sleeping room (that is, any room other than bathrooms, hallways, closets, and stairwells) to be occupied by one person if it is at least 70 square feet of floor area, or by two persons if it is at least 120 square feet. For each additional 50 square feet, one more person can sleep in the room. Sleeping rooms must have an exterior door or window of a certain minimum size for emergency access, so completely interior rooms can't legally be used for sleeping. Since the housing code comes under the statewide uniform building codes, a city or county can adopt more stringent occupancy standards ONLY IF it makes express findings that the changes are reasonably necessary because of local climatic, geological, or topographical conditions. No legal basis exists in this county for more stringent local restrictions on the number of persons who can occupy a dwelling unit.

Moreover, the California Fair Employment and Housing Act makes it unlawful to discriminate against any persons in housing accommodations on the basis of familial status (having children under age 18 in the household). Generally the state recognizes an occupancy limit of two persons per bedroom plus one additional person, for purposes of investigating housing discrimination under the Act. Any more stringent restrictions could be considered discrimination against families with children.

Therefore, the County is stuck with applying the statewide occupancy standard, but this is no problem because it nevertheless provides reasonable restrictions that would prevent the over-crowding problem that Supervisor Beutz is worried about.

Supervisor Beutz also repeated the concern expressed in past years, whenever the second unit regulations came before the Board, that the regulations essentially allow every house to become a duplex. Yes, that's the way the state Legislature set up the statute on second units. Faced with a long-standing critical statewide shortage of housing, the Legislature had to make tough decisions balancing various conflicting factors. There's no point rehashing those decisions, since the County is bound by the statute and already has adopted its own ordinance providing for second units. Supervisor Pirie got it right when she said that the proposed changes in second unit regulations don't change that fact.

Supervisor Beutz was concerned that removal of the occupancy restrictions and rent controls on second units would make "crime the norm." She wondered how many illegal second units already exist in the County, units which would now be made legal if these restrictions are lifted. Of course, removal of the occupancy restrictions and rent controls would not in itself make illegal units, that is, units built or converted without any building permit, into legal structures. **A** building permit would still be required so that the County can ensure safe construction exists. What the relaxation of restrictions would do is remove burdensome regulations that have discouraged homeowners from creating these additional small and relatively affordable units without government funds. It's really telltale that the County has only 276 legal second units, out of the 10,000 or so that could exist according to the data cited by the planning department in the housing element. The County's second unit ordinance has existed since 1982, 25 years ago. That's an average of 11 units built per year. The more the regulations were relaxed over the recent years, the faster the units were built. The existing regulations just are not fulfilling the purpose intended.

A free-market approach would work better. In a letter dated September 13, 1995, to County

Counsel Wittwer regarding second units in the housing element, the Housing and Community Development Department mentioned the experience of the city of Sausalito, which had no rent controls on second units. A 1992 study by that city found that 82% of the second units were affordable to moderate, low, and very low income households even though there were no rent level restrictions on them. Sausalito, being a desirable place to live which is in close proximity to the major employment center of San Francisco, is reasonably comparable to the County, so that study is relevant to this County. With a greater supply of second units of varying size, quality, and location, normal market forces will tend to keep a check on the rent levels.

The loss of privacy that people complained about to Supervisor Beutz would be exactly the same if a neighbor were to add onto their existing house. A second-story bedroom addition over an attached garage has the same impact on neighbors as a second story second unit does. The County allows home additions without any of the rent controls and occupancy restrictions the current regulations impose on second units. We all must realize that living in a civilized society creates various benefits and burdens. All neighbors have equal rights to add onto their house or build a second unit, so no one should complain that it's unfair to allow a neighbor to build a second unit, even if it's the first one in the neighborhood. Someone will always be the first, but that doesn't mean it's out of character for a residential neighborhood or an unreasonable invasion of privacy.

Supervisor Beutz said that the limit of 5 second unit permits per year in the Live Oak area was not imposed for lack of infrastructure (sewer and water), but rather to control the growth of rentals in Live Oak, which has more than its proportionate share of higher density housing in the County. However, the state statute says that the number of second unit permits may not be restricted by any policy limiting growth. Therefore, the County has no legal authority to maintain the 5-units-per-year restriction once the rational basis for it has been eliminated, which the planning director says is now the case. You should follow his recommendation and comply with state law by removing the unjustifiable 5-unit growth limit.

In summary, **I urge you not to impose a 50% ownership requirement in the second unit restrictions. An owner of any percentage, regardless of how small, should still be equally qualified to be the resident owner for the purposes of the second unit ordinance. Further, an owner of two contiguous parcels should be able to develop and rent out a second unit on the parcel which is not owner-occupied as long as one of the two parcels is owner-occupied.**

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

cc: County Planning Director
County Counsel

ATTACHMENT 11

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Friday, August 24, 2007 3:49 PM
To: CBD **BOSMAIL**
Subject: Agenda Comments

0570

Meeting Date : 8/28/2007

Item Number : 41

Name : Stanley Sokolow

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Address : 301 Highview Ct
Santa Cruz, CA 95060

Phone : 831-423-1417

Comments :
Page 5 of Mr. Burns' new letter (Aug. 16) says that he proposes no "absolute specific percentage ownership requirement" but rather that it be, at the request of Planning Director, a requirement that the applicant demonstrate "the particular circumstances" to avoid "contrived ownership structures" that get around the owner-occupant requirement. I find this disturbing, even shocking, because (1) the County has no compelling reason to invade privacy to determine why a person is on deed, (2) it is ludicrous (even irrational) to think that an owner would irrevocably give away a part ownership of his property to a tenant by putting him/her on deed just to evade the owner occupancy requirement, (3) he offers no hint of what a "contrived" ownership means, and **(4)** the state second unit statute prohibits discretionary review of a second unit application, which is what Mr. Burns is proposing -- at his discretion under vague "flexible" criteria that he be empowered by the ordinance to decide whether a person on title is a legitimate owner for the purposes *of* the owner-occupancy requirement. The applicant is either on deed or not. I strongly request that the Board ask the County Counsel for a legal opinion on the authority of the County to adopt such a vague discretionary requirement for a ministerial second unit permit. I don't believe the County can lawfully do what Mr. Burns proposes.

On page 6, Mr. Burns says his department intends to require that an applicant for an accessory structure give up his constitutional right to demand a warrant before a search of his home is conducted. Statutes already provide for an administrative search warrant, and case law establishes some flexibility in use of such warrants, but I do not believe that the County can require an applicant for a government benefit (permit) to give up a fundamental right granted by the U.S. and California Constitutions protecting against warrantless searches of the home absent exigent circumstances. Again, I strongly suggest that the Board have County Counsel research the legal authority for this also shocking requirement. The **Bill** of Rights does apply to the County of Santa Cruz.

ATTACHMENT 1

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0571

August **26,2007**

TO: Board **of Supervisors, Santa** Cruz **County**

VIA **FAX** TO: **Clerk** of the Board, **831-454-2327**

RE: **Agenda** item 41 **on** the **Aug.** 28, 2007, **agenda (regulatory** reforms for small **projects)**

Dear Supervisors:

I feel it is **important** that I **amplify upon my recent electronic** mail **message regarding the** Planning **Director's statement in his cover** letter dated **August 16 on this** agenda item, **pages 5-6, that he plans to require** the owner **to** give blanket consent **to** future **administrative inspections of the property, without** a warrant, **to** ensure ongoing code **compliance after the** construction has **been given final approval. I said** that **this warrantless inspection scheme violates the owner's** constitutional **right to** demand **a warrant** for any **search** of his **home, absent exigent** circumstances. **I've done a little legal** research on **the issue.**

I **direct** your **attention** *to* **the appellate case *Currier v. City of Pasadena*** (1**975)** , **48** Cal.App.3d 8**10**. **Here's** a **quotation** from **that** decision [starting at **page 8143:**

> **This case was decided in *the*** trial court, and **respondents seek** to **support *the*** judgment **here, on the theory that** the ordinance **is** unconstitutional because it **authorizes** warrantless **searches** of **private houses,** citing **Camara** v. Municipal **Court (1967) 387** US. **523 [I8** L.Ed.2d 930, 87 S.Ct. 1727] **as authority** for **that** contention. The city **contends that** the ordinance does not **mean that the inspections thereunder** would **be** made without **warrant *if* the** applicant for **a certificate refused consent** to search. **The city states in its brief that it recognizes** that the **ordinance is subject to the provisions of sections 1822.50** through 1822.57 **of the Code of Civil Procedure. Read together,** the ordinance **and** the **statute require** that **all inspections under the** ordinance **could be made** only **pursuant to a warrant** if ***the* owner, whether** or not **he had applied for a certificate** of **occupancy. refused voluntarily** to consent to **the** inspection.
>
> We **think it clear that.** without this concession, the **ordinance** would **be** unconstitutional.
>
> . . .
>
> **However, we** conclude that if, but **only** if, the **ordinance is** read **and (48 Cal.App.3d 817] applied in** conjunction with the statutory scheme, it **can constitutionally be** enforced. fn. 8
>
> **In sections** 1822.50 through 1822.57 ***of* the** Codc of Civil **Procedure,** the **Legislature has set forth a scheme** for accomplishing **the purposes** of the ordinance **before *us* in** this case. Those sections provide **for** the **issuance of a warrant** of inspection, **by a judge of a** court **of record. on application made *to*** him, **in** affidavit form, showing **"cause" for the**

ATTACHMENT 11

desired inspection. In section 1822.52 the Legislature has defined the "**cause**" which must be **shown:** "**Cause** shall **be** deemed *to* **exist** if **either reasonable legislative** or administrative standards for conducting a **routine** or **area inspection are satisfied with respect** to the particular **place,** dwelling, structure, premises, or vehicle, **or** there **is** reason to believe that a condition of nonconformity **exists** with respect to **the** particular **place,** dwelling, structure, premises **or** vehicle."

[3] While those sections **are** often **used** to **authorize** the **so-called** "area" **search,** where a particular section of a city, containing many **run-down** and **dilapidated** buildings, **exists,** the statute, by its terms, **also applies** to "routine" inspections based on **reasonable** standards. We conclude that it **is** that portion of **the** statute which **is** material **here.** The City of Pasadena has, by the ordinance **before** us, **provided a** "routine" **for inspections** -- namely changes ***of* ownership,** occupancy or use involving a vacation of the **premises** and their reoccupancy by **a new** owner or **lessee. As the briefs** before **us point** out, **that** scheme provides **an** on-going check on the observance of the city's zoning, health **and** housing ordinances, in **a** manner involving **a** minimal invasion of privacy. It **also permits** any corrective action found necessary by the inspection **to** be performed with minor (and usually no) interference with **an occupant.** In Camara, **the** United **States Supreme** Court, **after** holding **warrantless** searches unconstitutional in inspection cases, **expressly** ruled that inspection searches made **under** the **authority** of a warrant, if **based** on **reasonable** standards, were valid. **And.** in ***so*** doing, that **court** rejected the contention that the inspection **bc** triggered by a reasonable **cause** to **believe that** some improper condition **existed** in **the** particular place to be **inspected.**

A secondary question ***is*** whether the County may **lawfully require that** the owner **give advanced** blanket consent *to* **warrantless searches as a** condition for **granting** the building permit. It **may** not. I direct **your** attention to the following U.S. Supreme Court **quotation:**

> For at **least a** quarter-century: this Court **has made** clear **that even though a person** has **no** "right" to **a valuable** governmental **benefit** and even **though the** government may deny him the benefit for *any* number *of* reasons, there ***are*** some **reasons upon which** the government may not rely. It may not deny **a benefit** to **a person** on **a** basis **that** infringes his constitutionally protected interests ... [*Perry v. Sindermann* **(1972) 408 US** 593. 597]

I urge you not to allow the **Planning** Director to **put** into **effect** a **requirement** that **is** unconstitutional.

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

ATTACHMENT 11

CBD BOSMAIL

0573

From: CBD BOSMAIL
Sent: Monday, August 27,2007 10:10 PM
To: CBD BOSMAIL
Subject: Agenda Commehts

Meeting Date : 8/28/2007

Item Number : 41

Name : Rose Marie McNair

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Address : 4743 Soquel Creek Road
Soquel, CA 95073

Phone : 831 476-2102

Comments :
August 28th Board of Supervisors Meeting
Honorable Supervisors:
I applaud the Planning Department's desire to streamlne the permit process, which, currently is, definitely complex and costly both in time and money. It is very important that our County work toward finding ways to make more housing availabile to teachers, nurses, fire and police persons, government workers and to those who work in the service industries, in construction, landscaping, etc. Second Units is an idea the State of California has mandated with only ministerial review.

I agree with the letter from Stanley Sokolow dated August 7. Eliminating price controls on Second Units will actually create more affordability, and his example regarding the successes of affordable units in Sausalito illustrates the point. As to the ownership requirement, I always wonder: when a property owner dies, or sells for whatever reason, and an investor purchases a property with a second unit, is that new owner (who is not going to reside there) really going to "board up" that perfectly livable Second Unit and leave it vacant? Will that unit have to be torn down, or have the kitchen and baths removed? Seems a waste.

Perhaps even more daunting than streamlining the Permit Process is the creation of the newly drafted ordinances which will provide direction--not only to the process--but to what the zoning means, and what is allowed on a particular property. I have seen so much misinformation about the perception of a property's zoning requirements--I am amazed! It is a huge jig saw puzzle! So many elements-are involved, and those dements or rules are not in one place. We will all look forward to clarity, order, and simplicity. We do love he GIS system--perhaps there's a way to consolidate for each parcel the zoning and use requirements?

As to a simpler way to obtain permits as suggested by Supervisor Beautz, e.g. for water heaters and roofs, perhaps allowing a licensed contractor full discretion for his work upon obtaining an over the counter permit. His license is on the line--he has to comply.

Finally, I will bring this up because I am NOT a fan of recording zoning requirements on property because zoning is transitory, and property is permanent. Once a "Deed Restriction" is placed on a property, 50 years from now, you can't remove it, without a quiet title action, which is tantamount to impossible. And, Deed Restrictions can also have a negative effect with lending institutions and property insurance.

And, I think the county should consider the fact that requiring inspections on private property, I believe will once again, will deter folks from obtaining permits in the first place! There are many people who demand privacy and will quote chapter and verse their constitutional rights.

ATTACHMENT 1

Thanks to the Planning Department for their diligence.

Rose Marie McNair, Broker/REALTOR(R)

0574

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October 25,2007

Board of Supervisors
Santa **Cruz** County
701 Ocean Street, Room 500
Santa Cruz, **CA** 95060

RE: Proposed revisions of County Code relating to second units (County Code 13.10.681)

Dear Supervisors:

Yesterday, the Planning Commission unanimously adopted a resolution approving and recommending adoption of the Planning Director's proposed revisions that you had approved in concept on August 28,2007. I'm sure you are tired of hearing from me as much as I am tired of writing to you about second unit topics, but I feel compelled to add this additional information for your consideration when the matter returns to you for final adoption of an ordinance.

The Proposed Substantial Financial Interest Requirement is in Conflict With State Law.

In my letters to you and to the Commission, I pointed out that the Planning Director is proposing to require that owners of less than a 50% interest in the property where a second unit is being applied for, or where a second unit exists, may be required by the Planning Director to show that the owner has a substantial financial interest in the property in order to qualify as the owner-occupant for purposes of the second unit permit approval and/or for continued occupancy of the existing second unit. The proposed language for this requirement does not provide any clear standards for what constitutes a substantial financial interest. I pointed out that this vagueness leaves it to the discretion of the Planning Director. This conflicts with the state second unit statute's requirement that the second unit permit must be considered as a ministerial process without discretionary review.

I brought this to the attention of the Commission as well **as** to you. I'm sure the Planning Director has read my letter to the Commission, since he did correct an error I pointed out in it regarding the use of the word "may" where "shall" is required by statute, but he did not comment on this concern. Some commissioners did express discomfort with the uncertainty of the substantial financial interest language, but they did not require or recommend any change to it. Neither did County Counsel attending the Commission meeting comment on the mandate for a ministerial process and that the vague requirement proposed is in conflict with that mandate.

To be sure you understand what the statute means when it says that a ministerial process is required, I offer the following explanation quoted from **a** letter sent to all local agencies' from the California Housing **and** Community Development Department (HCD) explaining the new requirements added by A.B. 1866 in the statutes of 2002 (Chapter 1062). It says:

1 Also **published** on **the** Internet at: http://www.hcd.ca.gov/hpd/hpd_memo_ab1866.pdf

What is Ministerial Review?

Chapter **I062** requires development applications for second-units to be ". . .considered ministerially without discretionary review or a hearing.," or, in the case where there is no local ordinance in compliance with subsections (a) or (c), a local government must "...accept the application and approve or disapprove the application ministerially without discretionary review..." In order for an application to be considered ministerially, the process must apply predictable, objective. fixed, quantifiable and clear standards. These standards must be administratively applied to the application and not subject to discretionary decision-making by a legislative body (For clarification see the attached definition of ministerial under California Environmental Quality Act (CEQA) Guidelines, Section **15369.).** The definition is generally accepted and was prepared pursuant to Public Resources Code.

An application should not be subject to excessively burdensome conditions of approval, should not be subject to a public hearing or public comment and should not be subject to any discretionary decision-making process. There should be no local legislative, quasi-legislative or discretionary consideration of the application, except provisions for authorizing an administrative appeal of a decision (see Appeal discussion below).

The intent of Chapter 1062 is to improve certainty and predictability in the approval process. Where special **use** or variances must apply, the locality should grant the variance or special use permit without a public hearing for legislative, quasi-legislative or discretionary consideration, as authorized by Government Code Section 65901. An application for consideration by a board of zoning adjustments or zoning administrator should **apply** a limited and fixed set of clear, predictable and objective standards without the application of discretionary conditions or public comment, [Underscore emphasis added.]

Thus, to comply with the mandate for a ministerial process, the second unit ordinance must contain a limited set of predictable, objective, fixed, quantifiable, and clear standards for approval or disapproval.[2] The proposal by the Planning Director does not meet that mandate. The County is bound by the State Constitution not to adopt or enforce any ordinances that are in conflict with general law (including statutes). This proposal conflicts with the State's second unit statute. If adopted as proposed, it would be null, void, and unenforceable.

Any 50% Ownership Requirement Would Infringe Upon Equal Protection Right of the Owner.

Even if the Board, Planning Director, and County Counsel were to craft a 50% ownership requirement that meets the mandate for ministerial consideration, such a requirement would be invalid. Every person is entitled to equal protection of the laws as a fundamental right. This means that persons who are equally situated with respect to the purpose of a law must be treated the same as other persons subject to that law. Laws are not required to treat everyone the same. However, any classification or differentiation among persons must serve a legitimate purpose of the law. The Planning Director has explained that the purpose of the owner-occupancy requirement for second units is to ensure that the owner will provide close oversight of the second unit's occupants, presumably so that the second unit occupants do not become a nuisance to the neighbors. With respect to that stated purpose, a rule which would treat a 49%-or-less owner differently than a 50%-or-greater owner does not provide equal protection. The idea behind owner-occupancy is that the owner, being in control of the rental

2 I also point out that the ministerial requirement precludes a public hearing, as the quotation says. Yet the proposed amendments to 13.10.681 will require a public hearing for second units which conform with the objective building requirements, such as height and setbacks, when there are objections from the neighbors. The only basis for such a hearing would be as an appeal by neighbors complaining that the proposed project does not conform with the objective standards, not any discretionary criteria.

agreement or lease contract which is executed with renters, would have the power to incorporate some controls in the contract so that the tenant may be legally compelled to behave without being a nuisance. Living on the parcel would put the owner-occupant in close proximity to the second unit, and thus the owner would be subjected to the same nuisance as the neighbors. This would alert the owner to the problem before the neighbors would have to seek government intervention to abate the nuisance, such as requesting police action to quiet loud parties. With respect to that purpose of the requirement, there is no rational reason to differentiate on the basis of percentage owned. Such a distinction without a legitimate purpose violates equal protection rights. Moreover, I submit that any percentage of ownership in a valuable piece of improved property is substantial.

There is a legal authority for the proposition that treating owner-occupants and tenant-occupants in a different manner violates equal protection. ***[College Area Renters & Landlord Assn. v.*** City ***of San Diego*** (1996) **43** Cal.App.4th 677] Here's a quotation starting on page 686:

> If a statute is found to discriminate between similarly situated persons, the classification (in ordinary cases) must bear a rational relationship to a legitimate state purpose, or (in cases involving suspect ciasses or fundamental interests) must be necessary to further a compelling state interest. (Elysium, supra, 232 Cal.App.3d at p. 427; Vehicular Residents Assn. v. Agnos (1990) 222 Cal.App.3d 996,999 [272 Cal.Rptr. 216].) Under the traditional, rational relationship test, the court conducts an inquiry into the correspondence between the classification and the legislative goals. (Elysium, supra, 232 Cal.App.3d at p. 427.) **A** zoning ordinance may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. (Id. at pp. 427-428.)
>
> [1b] Here, the purpose of the law is to address problems associated with excessive occupancy of detached homes in a single-family residence zone. Owners and tenants are similarly situated with respect to the overcrowding problem-i.e., both groups can overcrowd a neighborhood. Assuming arguendo (without addressing the issue) that this case only requires use of the rational relationship test, we are not persuaded that there is a sufficient relationship between the non-owner-occupied classification and the overcrowding problem, so as to justify imposing occupancy restrictions on tenant residents that do not apply to neighboring owner residents.
>
> To illustrate, one can envision a scenario of irrational differential treatment arising between two neighboring residences-one tenant-occupied and the other owner-occupied-with the tenant-occupied house being subject to **[43 Cal.App.4th 687]** the ordinance even though its residents happen to be the quiet, neat type who use bicycles as their means of transportation, whereas the owner-occupied house is not subject to the ordinance, even though its residents happen to be of a loud, litter-prone, car-collecting sort.
>
> . . .
>
> **As** stated by our Supreme Court in Adamson: "Population density can be regulated by reference *to* floor space and facilities. Noise and morality can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements. In general, zoning **[43 Cal.App.4th 688]** ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users." (Ibid., italics in original.)

In other words, an owner-occupant can be just as much or more of a nuisance to neighbors as a tenant-occupant and may allow a tenant-caused nuisance to go unabated. There are already County ordinances to deal with the nuisances directly rather than by this remote, indirect, and attenuated owner-occupancy requirement.[3]

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3 For example, see this article published in the Santa Cruz Sentinel: http://www.santacruzsentinel.com/archive/2007/October/25/local/stories/04local.htm

SAN LORENZO VALLEY WATER DISTRICT
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Website: www.slvwd.com

November 29, 2007

Santa Cruz County
Board of Supervisors
Supervisors Chambers, Rm. 501
701 Ocean St.
Santa Cruz, California 95060

Subject: Proposed regulatory changes for small-scale residential structures.

Dear Board of Supervisors:

The Board of Directors of the San Lorenzo Valley Water District (SLVWD) discussed Santa Cruz County's proposed regulatory changes for small scale residential structures as an agendized item during their October 18, 2007 regular board meeting. As a result of these discussions, the SLVWD Board of Directors unanimously voted to write a letter in response to the Planning Commission, expressing its concerns about these proposed regulatory changes. That letter, signed by SLVWD Board President, Larry Prather, was presented to the Planning Commission at its regularly scheduled meeting on October 24, 2007.

The Planning Commission considered the points raised by the SLVWD, but passed a resolution recommending that the Board of Supervisors approve the proposed ordinance changes, with the caveat that representatives from SLVWD and the Sierra Club would meet to discuss their concerns with the Planning Department, prior to the Board of Supervisors' consideration of this matter on December 4, 2007.

On November 15, SLVWD Environmental Analyst Dr. Betsy Herbert met with Planning Director Tom Burns, and two county planners to discuss SLVWD's concerns. Two members of the Sierra Club Executive Committee also attended the meeting to discuss their concerns.

Dr. Herbert restated SLVWD's primary issues regarding the proposed ordinances:

While SLVWD supports the County's intent to streamline the regulatory process for construction of small-scale structures, SLVWD is concerned that the County's staff report has not adequately addressed potentially significant impacts that could directly or foreseeably indirectly result from these new ordinances. These potential significant impacts include increased demand for water, increased areas of impervious surfaces, increased traffic, increased non-point source water pollution, and increased demands on sewer systems, such as the Bear Creek Estates Wastewater Treatment Facility, which is operated by SLVWD.

During these discussions, County planning staff reiterated what was stated in Exhibit E of the October 24 Planning Commission staff report:

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> "The revisions will not result in any new development that was not allowed under previous regulations. Any environmental impacts created from projects that fall under the scope of the new regulations will continue to be subject to environmental review."

However, this staff report presented no evidence to support the above statements. No historical data were given to demonstrate the past rate of construction of accessory structures, nor to identify a desirable target rate of construction. SLVWD believes that streamlining the permit process will likely result in more new development, because the stated intent of the regulation is to streamline the process and give applicants what they want. In addition, the new regulations generally require a lower level of environmental review, which will likely result in fewer and less effective required mitigations.

SLVWD believes that the Planning Department has conflated process changes with substantive changes in the ordinance, and that the substantive changes would likely result in significant cumulative impacts. For example, the October 24 County staff report states that one of the "primary changes" to current regulations is to allow toilets in all habitable accessory structures, and in non-habitable structures, under certain conditions. The new regulations will clearly result in more than just a change in the permit process. The proposed changes include substantive, physical changes, such as those that allow toilets in all habitable structures, and those that increase the size of uninhabitable structures from 1,000 to 1,500 square feet.

SLVWD remains concerned that streamlining the process to facilitate and encourage toilets in accessory structures will actually result in an increased number of toilets, which may significantly increase the demand for water in the San Lorenzo Valley. The new regulations would also encourage construction of accessory structures on many parcels in the San Lorenzo Valley, by decreasing the required level of review, and by allowing more easily rented structures to be built. These additional structures would not only increase the number of toilets and sinks, but they also would likely increase the number of persons using these toilets and sinks. The resulting increase in residents would also likely result in increased traffic in the San Lorenzo Valley, where Highway 9 already suffers from severe traffic congestion. Additional structures would also increase the number of square feet of impervious surface on each parcel, thereby increasing runoff. The staff report simply does not address the issues of increased water demand, increased demand on sewer systems, increased traffic, increased impervious surfaces or runoff.

Thus, SLVWD does not believe that the proposed regulations are exempt from CEQA under Section 15060(c), as stated in Exhibit E of the County staff report (October 24, 2007). Section 15060(c) gives three options, but county staff indicated that the applicable option is: "The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment."

The Planning Department has not presented any facts to support its conclusion that there will be no direct or reasonably foreseeable indirect physical change in the environment. SLVWD believes that the Planning Department could easily collect and analyze relevant facts to address the likelihood of direct or reasonably foreseeable indirect impacts. For example, how many accessory units have been legally built in the county each year since 1990? Since 2000? Is the trend increasing or decreasing? Is the trend different in different parts of the county, such as in the San Lorenzo Valley and in Live Oak? How many toilets and sinks have been legally installed in second units and accessory structures each year since 1990? Since 2000? How much additional water usage is estimated to have resulted from these new toilets and sinks in new structures? Once trends of existing data are described and analyzed, the Planning Department would be in a better position to determine what the cumulative impacts of additional structures might be.

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Additionally, SLVWD has found that the resolution approved by the Planning Commission was in error, with regards to CEQA. The last paragraph of the resolution states:

> "WHEREAS, the ordinance amendments have been found to be *categorically exempt* from further review under the California Environmental Quality Act" (Exhibit A, Planning Commission, Oct. 24, 2007).

The above paragraph does not agree with the CEQA Notice of Exemption (Exhibit E, Planning Commission, Oct. 24, 2007), which indicates that the project is not categorically exempt from CEQA, but rather:

> "The project is not subject to CEQA as specified under CEQA Guidelines Section 15060(c)."

SLVWD urges the Board of Supervisors to direct the Planning Department to conduct an initial study under CEQA to determine the likelihood of environmental impacts from these proposed regulations. Without an initial study, SLVWD does not believe that the county can support its claim that this project is exempt from CEQA.

Yours truly,

L. Prather /BB

Larry Prather, President of the Board

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Environmental Committee for the SLV
The Valley Women's Club
PO Box 574, Ben Lomond, CA 95005
831/338-1728 Fax: 831/338-7107

December 4, 2007

Members of the Board of Supervisors
Santa Cruz County
FAX: 454-3262

Dear Members of the Board,

The Valley Women's Club is very concerned about the proposed amendments to the County Code Chapters 13.10, 13.20 and 16.50 to simplify zoning regulations for small-scale residential structures. We concur that there is a need to streamline procedures but feel that the changes being planned have significant environmental impacts and fall well within the criteria for a CEQA review.

The various points made by the Sierra Club, with cogent documentation, support this view. We are especially concerned with the potential for significant expansion of the numbers and size of inhabited structures with insufficient environmental oversight and protection, both within and outside of riparian corridors. Their increased impact on water usage and waste, adding roadways and impermeable surfaces, polluted runoff, traffic, seasonal and year-round waterways, and erosion should be defined, evaluated and disallowed or mitigated, depending upon the results of a CEQA report.

Please postpone adoption of the changes and provide for CEQA review of these changes. They are considerably more significant that a cursory glance would indicate.

Sincerely,

Nancy B. Macy

Nancy B. Macy, Chair
Valley Women's Club's Environmental Committee for the SLV

The Valley Women's Club is dedicated to community action, awareness and leadership in environmental, educational, social, and political concerns which affect the health and welfare of the San Lorenzo Valley and our community. The Environmental Committee works to protect the watershed and to educate the public on forestry issues, erosion control, hazardous waste, recycling and other issues. We also monitor government policies and procedures.

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CBD BOSMAIL

From: CBD BOSMAIL
Sent: Thursday, November 29, 2007 6:32 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : Stanley Sokolow

Email : overbyte@earthlink.net

Address : Not Supplied

Phone : Not Supplied

Comments :
My letter dated October 25, 2007, regarding proposed revisions relating to second units, contained 4 pages but only 3 pages appear in the scanned documents for this agenda item. Please scan page 4 into the online-viewable file so the public can read all of it.

Thank you,
Stanley Sokolow

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CBD BOSMAIL

From: CBD BOSMAIL
Sent: Saturday, December 01, 2007 10:58 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : Betty Cost

Email : BC@BettyCostPPS.com

Address : 100 Doyle Street
Suite E
Santa Cruz, CA 95062

Phone : 425-6522

Comments :
I fully support all of these proposed amendments. I believe they will help enormously in enabling residential property owners to obtain permits for small projects. And I especially support the changes to the Second Dwelling Unit ordinances. I think these units are crucial to providing affordable units for singles and small families, such as women alone with small children. I want to thank and commend Planning staff for putting forth these changes and for the Planning Commission and the Board of Supervisors in approving them. Thank you!

I would also like you to consider allowing small well house structures to be exempt from the yard setbacks in rural residential areas. Wells sometimes need to be covered, and they are located near road rights-of-way sometimes. I think a small well house comvering (such as 120 square feet or less) should be exempted from setbacks, as long as they do not encroach into the right-of-way itself. Again, thank you for considering these amendments.

Betty Cost

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, December 03, 2007 2:32 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : David L. Robison

Email : Not Supplied

Address : Not Supplied

Phone : Not Supplied

Comments :
I support the recommendation to adopt proposed amendments to the County Code Chapters 13.10, 13.20 and 16.50 to simplify zoning regulations for small-scale residential structures.

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CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, December 03, 2007 3:06 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : James Vaudagna

Email : jvaudanga@pacbell.net

Address : 276 Beach Drive, Aptos

Phone : 408-998-1488

Comments :
I strongly support the Planning Commission's recommendation to adopt proposed amendments to the County Code Chapters 13.10, 13.20 and 16.50 to simplify zoning regulations for small-scale residential structures. We don't need governmental oversite over everything we do. It's costly and inefficient and usually creates more problems than it solves.

Thank You
Jim Vaudagna

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Tuesday, December 04, 2007 6:50 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : Ted Benhari, RBDA chair

Email : tbenhari@sbcglobal.net

Address : 2518 Smith Grade
Santa Cruz, CA 95060

Phone : 426-5053

Comments :
To the Santa Cruz County Board of Supervisors:

We are greatly alarmed and disturbed by many of the changes to the building code under consideration by the Board of Supervisors, specifically amending Chapters 13.10, 13.20 and 16.50 dealing with regulations for small-scale residential structures.

We believe that many of these changes will result in significant impacts to the environment and neighborhoods in rural areas, and violates the principles and spirit of the County's General Plan.

If enacted, these changes will inevitably result in increased density in the rural areas, put added pressure on limited water and septic systems, and increase the traffic on rural roads. At the very least, the impacts wrought by these changes should be studied, as required by CEQA, the California Environmental Quality Act, in an Environmental Impact Report. The law is clear that an EIR must be prepared when there is substantial evidence that a project may have a significant impact on the environment. See Pub. Res. Code secs. 2 1080(d), 2 1082.2(d). The RBDA Executive Board feels very strongly that such an EIR must be undertaken to truly understand the cumulative impacts of these changes.

As the lead agency, the County is obliged to prepare an EIR even if presented with other substantial evidence that the project would not have significant impacts. See CEQA Guidelines sec. 15064.

We particularly object to the removal of the requirement that second dwelling units may be rented out even if the property owner doesn't live on the property. This will inevitably lead to many more rural properties becoming investments rather than residences, fundamentally changing the character of neighborhoods as more and more people move in on a temporary basis without a vested and long-term interest in the area.

There are many possible negative consequences of these sweeping changes to the building code which need further study. They invite property owners to take advantage of the new rules because enforcement will be difficult. Economic considerations will induce people to convert non-habitable structures, now equipped with windows, wiring, sheetrock and insulation, into rentable dwellings. It will be even easier to do so with habitable structures containing toilets, which opens the way for easy, covert conversion into dwellings. It isn't difficult to imagine how an absentee owner could turn a parcel originally zoned for one home into a rental complex of four units, which is a gross violation of the General Plan.

These changes also increase the inducement to place buildings on steeper slopes, and to build additional

roads. This will lead to more non-point source water pollution and increased impacts on wild lands and rare plant and animal habitats.

We strongly endorse the objections raised by several others to these changes, particularly in the letters from the Sierra Club and the San Lorenzo Valley Water District.

Regrettably, we cannot attend today's meeting, but we urge you to reconsider these changes, and order an EIR prepared to study their impact.

Respectfully yours,

Ted Benhari
Rural Bonny Doon Association Chairman

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12/4/2007

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, December 03, 2007 9:17 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007 **Item Number :** 52

Name : Rose Marie McNair **Email :** realrose@norcalbroker.com

Address : Not Supplied **Phone :** Not Supplied

Comments :
December 4, 2007 Agenda

Members of the Board,

I am unable to attend the meeting, and it is with regret that I will not be able to speak before you on this subject. In examining the changes that will be made to Chapter 13.10, the reduction from Level V to Level IV, for some categories, will be helpful, unless discretionary oversight becomes prohibitive.

This agenda item and the changes have been billed as Regulatory Reform. However, it appears that obtaining permits for accessory structures, whether non habitable, habitable or a full blown ADU, will require restrictions that will be onerous and frightening to property owners who will be required to agree to deed restrictions that mandate periodic inspections. (You're already heard that deed restrictions create a disparity between the transitional zoning premise--ever changing, and real property--which is permanent. Lenders and insurance companies years from now will scratch their heads and may even decline services. And, as I recall, a few years back, the title companies were not pleased with the idea of the recordation of a deed restriction on title for the AG Disclosure when property sold, as pointed out by several attorneys. Thank you for the changes you made, instead!)

I still believe that the periodic inspection premise violates the 4th Amendment, and that in order for government to inspect a property, there must be "cause"...Basicly a property owner will be required to waive his/her constitutional right to quiet enjoyment of the property owned AND will be required to PAY for the inspection. Has the constitutionality of these types of inspections been tested in court? Creation of inspection trust funds, and other onerous activities will only serve to foster further illegal construction. I am seriously looking for the reasoning that deduces that the substantial number of illegal structures that exist, will somehow be ameliorated, or that folks will legalize such units. NONE OF THAT IS IN THIS PROPOSAL...I suggest that a look at using health and safety law as a guideline is far more productive than punitive government oversight, such as this.

If you are allowed to deed restrict and inspect property at will on accessory structures, at what point will you codify the next step by asking for inspections on ALL permits, and waiving rights--no matter how minor or how large?

I never have received an answer regarding the question I posed about an owner of property with a second unit, who dies, or is unable to reside in the property, or must sell eliminating investors because they will not be owner occupants. And if an owner occupant does NOT reside in one or the other of the units, will you

tear down or abandon a perfectly viable housing structure because of this rule?

You mention lower fees, yet the actual fees are not included in this item. Will you produce concise critical paths that validate the "streamlined process" that will occur as a result of the changes. How will that be measured? How will the changes to the adoption of the new international code streamline the process and reduce fees?

Thank you for your consideration; I trust that you will AMEND YOUR PROPOSAL, AND LOOK AT ANSWERS THAT ARE MORE USER FRIENDLY, AND PRODUCE THE DESIRED RESULT without punitive code enforcement.

Rose Marie McNair
(831) 476 2102

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CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, December 03, 2007 7:26 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : Susan Vaudagna

Email : casaowner@pacbell.net

Address : 379 Beach Drive
Aptos, CA 95003

Phone : 408-998-1488

Comments :
I support the Planning Commission's recommendation to adopt proposed amendments to the County Code Chapters 13.10, 13.20 and 16.50 to simplify zoning regulations for small-scale residential structures. I believe that it is more cost effective for property owners to manage small residential projects themselves rather than getting government agencies involved. Please help us to streamline this process. Thank you.

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, December 03, 2007 5:50 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 12/4/2007

Item Number : 52

Name : Matthew Thompson

Email : matt@tntarch.com

Address : 200 Washington St #201
Santa Cruz, CA 95060

Phone : 831.457.3939

Comments :
I strongly urge the Board approve the satff recommended changes to the Zoning Ordinace for small projects. These modest improvemnets will benefit folks trying to make simple improvements to their house. It will reduce temptations to build without the benefit of a permit. It is fair and will improve the public's view of the way the planning process works.

Sincerely,

Matthew Thomspson

David Reetz

From: Dale Skillicorn [daleskillicorn@gmail.com]
Sent: Monday, December 03, 2007 2:20 PM
To: Tony Campos; Mark Stone; Jan Beautz; Ellen Pirie; Neal Coonerty
Subject: non-hab changes

Hi;

I plan to attend the Board meeting tomorrow and speak on the proposed changes re: requirements for non-habitable structures in residential zones. I'm particularily concerned about retaining the current requirement to record a Declaration to Maintain a unit (or portion such as an attic) non-habitable. In the revision as I understand it, the property owner will also be required to acknowledge that the County has the right to have their Inspectors come onto subject properties at any time to inspect and verify that the recorded non-habitable unit or area has not been converted into habitable.

First off, that last is an outrageous insult to our citizens, implying that all property owners are "scoff-laws", more likely to make an illegal conversion than to follow the rules. I don't believe that is true of most people.

Aside from the Constitutional issue of unwarranted search and seizure, which I understand will be challenged in court if neccessary, signing such an agreement would also require people to give up guaranteed rights under duress and/or being required to give up such rights in order to receive approval for a legitimate permit-able project. As I see it, such requirements would not hold up in court.

Perhaps more importantly, ***the proposed revisions would have a heavy negative impact on the County budget.*** Recordation of the non-habitable unit or area would reduce the value of a property and be a red flag to potential buyers. Properties without a recorded restriction would be more attractive to buyers than those with restrictions.

A portion of the County budget depends on Property Taxes. Property is reassessed when it is sold, usually upwards. Even in this troubled housing market with falling prices, property sold at reduced prices are often still above what the current taxes may be based on. As an example, we acquired our house several years ago from my father-in-law. That meant that the tax base stayed the same as when my father-in-law bought it 20-some years earlier. If we were to sell our house now, even with a low market price, the property tax for the new owner would be at least three times what we are paying. Let's say there are another 100 properties like ours that might come on the market annually due to deaths or Seniors needing other living arrangements. That would still be an extra $150,000, at minimum, continued yearly in the County budget, constantly being added to each and every year, as even a slow-to-average year brings ongoing sales and increased Property Taxes. The County would lose some of that income if people decided not to buy properties with the proposed restrictions required.

Anyway, I'll present these concerns at the meeting tomorrow. Please give them some thought.

Regards,
Dale

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