



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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TOM BURNS, PLANNING DIRECTOR

March 3, 2008

AGENDA DATE: March 18, 2008

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:

Last June, Planning staff outlined a set of reforms to streamline the planning process for small-scale residential structures -- the first in a series of regulatory reform packages. Your Board endorsed a modified proposal in August and directed staff to draft ordinance amendments to implement the proposed reforms for formal consideration through Environmental Review and the Planning Commission. In December, your Board formally considered those ordinance amendments. At that time, the item was deferred to allow staff to address a number of questions raised by the Board. The item before you at this time addresses those questions and recommends final actions to enact the first phase of regulatory reform measures.

Background

The intent of the proposed reform package is to simplify the planning process for minor residential projects, including accessory structures, second units, small-scale residential projects in the Coastal Zone, non-conforming structures, and other minor residential projects. By establishing appropriate levels of discretionary review, clarifying inconsistencies in the County Code, eliminating redundant reviews and unnecessary regulations, and updating our regulations to comply with state law, the reforms are intended to make the regulatory framework for small residential projects more reasonable, affordable and less-time consuming for applicants. While streamlining regulations, the proposals are also intended to continue to protect important community resources, including the environment and the quality of neighborhoods. Ultimately, the reforms are intended to create a regulatory environment that encourages more County residents to work within the permit process for their residential projects.

While the concept of streamlining regulations for small-scale residential projects has received broad support, members of the Board and public have raised questions regarding certain details of the proposals. In December, the Board continued the public hearing, directing staff to return with additional information on the following topics:

- appropriate CEQA documentation for the proposed ordinance amendments;
- more detailed discussion of the Level 4 permit review process;
- simplified building processes for small-scale residential structures;
- further options for provide funding support for affordable second units; and
- expanded discussion of potential approaches for more pro-active code enforcement efforts that might be warranted in light of less stringent standards for accessory units.

Revised Regulatory Reform Package

Staff evaluated each proposed reform measure within the context of existing local regulations, state law, including CEQA regulations, and in relation to the other proposed regulatory changes. Additionally, staff also reviewed relevant permit history and extensive public comments received at and since the public hearings. Finally, staff met twice with representatives of the Sierra Club and the San Lorenzo Valley Water District to discuss their concerns regarding specific proposals. As a result of this analysis, staff has concluded that several of the proposed regulatory changes warrant further review, either with regard to technical or environmental issues. As a result, staff is recommending that your Board approve a smaller package of residential regulatory reforms at this time, deferring some aspects of the original package for further analysis and possible future action.

The following section of the letter briefly reviews each category of the residential reform proposal: accessory structures, second units, non-conforming structures, small-scale structures in the Coastal Zone, and other minor residential projects. A summary of the original reform proposals, with staff recommendations to approve, defer or delete each proposed change, is included as Attachment 3. The proposed ordinance amendments, reflecting the proposed changes and ready for action at this time, are provided in Attachments 1 and 2.

Accessory structures

Analysis and review of project history suggests that three of the proposed regulatory changes to accessory structure regulations merit further evaluation to address environmental and other factors. Those include proposals to allow toilets by right in habitable accessory structures, to allow by right 28' heights for habitable accessory structures in rural areas, and to increase from 1,000 to 1,500 square feet the limit below which a non-habitable structure could be built in the rural areas by right. Staff is recommending that your Board defer consideration of these three proposals until staff has provided a more thorough analysis of their potential environmental effects, as recommended in Attachment 3.

Staff continues to believe that the remaining proposed changes to regulations for accessory structures do not have the potential for significant environmental effects, and will provide significant improvements to the planning process for many applicants. Staff is recommending that your Board approve the other proposed reforms to accessory structure regulations from the original regulatory reform package, as summarized on pages 1 through 3 of Attachment 3.

Second units

Staff has reviewed the proposed changes to regulations for second units in the context of state law, including CEQA statutes. State law requires that local ordinances provide for the construction of second units, and that they do not unreasonably restrict the ability of homeowners to create second units. A review of permit history for second units suggests that many of our second unit regulations could conflict with the intent of state law. Furthermore, CEQA statutes exempt from CEQA review local ordinances enacting state provisions for second units. In light of this, staff is recommending that your Board approve changes to second unit regulations which remove barriers to their construction, as summarized on page 4 of Attachment 3.

Staff is recommending that your Board delete the earlier proposal to require property owners with less than 50% property ownership to demonstrate a substantial financial interest in the property prior to obtaining a second unit permit, due to its limited benefits and the great deal of confusion regarding the proposal.

Non-conforming Structures

Staff is recommending that your Board approve the proposal to allow structural repairs and additions to non-conforming structures that exceed height limits by more than 5 feet. This will allow for safe repairs of over-height structures, which comprise a large percentage of residential structures in the County due to changes in the way the County has measured height over the years.

After discussions with the Sierra Club and others, staff recognizes that it may not be appropriate to allow large additions to non-conforming structures in sensitive habitats including riparian areas. Therefore staff is recommending that your Board defer consideration of the proposal to allow additions greater than 800 sq ft by right to non-conforming structures, pending further review and modification.

Projects in the Coastal Zone

The changes proposed to regulations for the Coastal Zone will provide significant savings in time and cost for small-scale residential projects, while continuing to protect the environment and sensitive habitats. The proposed reforms are also consistent with the Coastal Act. Therefore, staff is recommending approval of all the original proposed reforms to residential regulations for the Coastal Zone, as summarized on page 6 of Attachment 3.

Other recommended modifications

The majority of the proposed changes to other residential regulations eliminate other barriers to routine residential land uses, by deleting reviews that duplicate reviews conducted by other agencies, and eliminating unnecessary regulations. At the same time, these proposals will not result in significant physical changes to the environment. Staff is recommending approval of these proposals, as recommended on page 7 of Attachment 3.

However, upon further review, staff believes that the prior proposal to allow low-amperage electrical service on undeveloped properties needs additional evaluation. Therefore, staff is recommending deferral of this proposal pending further staff review.

CEQA Analysis

Since the December hearing, additional letters of concern have been received – mostly from various local water districts. Staff has worked with County Counsel to more carefully review CEQA issues with regard to each proposed reform proposal, in light of the public concerns that have been raised. In response, a number of modifications to the package and CEQA findings are recommended. Most importantly, as noted above, several reform measures are now recommended to be dropped or deferred, to allow staff more time to review alternatives and environmental issues. Additionally, for the remaining proposals, more proposal-specific CEQA exemptions have been developed for individual proposals. A summary of the proposed CEQA actions is provided in Attachment 4. As well, the formal CEQA documents are provided in Attachment 5.

Level 4 Review Process

Several of the regulatory changes would lower the level of discretionary review from Level 5 to Level 4. This lower level of review would result in significant savings in cost and time to applicants and applies to categories of projects which are generally non-controversial. However, it is still important to ensure that neighbors that may be affected by projects have adequate notification of and information regarding projects and sufficient opportunity to discuss their concerns with the project planner, and that projects with unresolved controversies receive adequate review, potentially including public hearings.

Comparison of Level 4 and Level 5 Reviews

As requested by your Board, staff is providing a summary of the Level 4 and Level 5 reviews:

Submittal, Public Notice, Hearing and Appeal Requirements	Level 4	Level 5
Applicant submits application form, plot plans, building plans, and site development plans. Staff site visit.	X	X
Notice at application submittal mailed to owners of property within 300 feet and to occupants within 100 feet of subject property.	X	
Notice posted on site with project and contact information of applicant and planner.	X	X
Notice of public hearing mailed to owners of property within 300 feet and to occupants within 100 feet of subject property.		
Public hearing (Zoning Administrator)	(X) If moved to Level 5	X
Legal advertisement of pending action	X	
Decision can be appealed	To Planning Director	To Planning Commission

As can be seen from the above chart, both Level 4 and 5 require plans, site visits, public noticing, postings at the site, opportunities for public comment, and allow for appeals. The primary differences in the Level 4 and 5 review processes are with regard to public hearings, noticing requirements, and hearing bodies. Level 4 projects receive public hearings only in cases where the Planning Director elects to refer the project to a public hearing, as allowed by the Zoning Ordinance. Level 4 projects are noticed twice, whereas Level 5 projects are noticed only once. The Level 4 review process projects involves the public from the beginning of the project review, with a notice mailed to affected property owners and residents within the first two weeks of application submittal. For Level 5 projects, notice is mailed within the last 2 weeks prior to the public hearing. Decisions on both Levels may be appealed: Level 4 projects are appealed to the Planning Director, whereas Level 5 projects are appealed to the Planning Commission.

Improvements to the Level 4 Review process

Staff is in the process of implementing several changes to the internal review process for Level 4 projects. In order to ensure that the public receives comprehensive information on projects, all mailed notices will include an 8 1/2" by 11" set of project plans, including a site plan, floor plans and elevations. Staff is also implementing a more formal process for determining when a Level 4 project would be referred for formal public hearing. If neighbors raise substantive land use concerns regarding a project during the public comment period, then the staff will review those concerns with management staff of the department. In cases where such issues cannot readily be addressed through project conditions or modifications, then the Planning Director will refer the project for a public hearing.

With these improvements in place, the Level 4 review process will continue to provide more extensive project noticing than Level 5 reviews, more complete project information for use during the public review process, and safeguards to ensure that projects which warrant a full public hearing will receive one.

Streamlining the Building Permit Review for Minor Residential Structures

During the process of developing the proposed reform measures, the Board had asked staff to recommend additional measures to streamline the building permit process for such small-scale residential structures. Staff has evaluated a number of measures to streamline the review of smaller residential building permit applications, or minor ("M") permits. These applications are for residential structures less than 500 square feet in size, such as residential additions, habitable and non-habitable structures and remodels. This category also includes other minor structures such as swimming pools, water tanks, retaining walls and foundation upgrades.

Some of the changes that we would like to implement must await the final action on the ordinance amendments discussed in this letter and pending further review. However, staff has initiated other changes that will begin to streamline the review of building permits for minor residential structures. These changes include narrowing the scope of agency reviews, revising the reviewing requirements to comply with changes to the Fire Code and Building Code, and eliminating reviews that seldom, if ever, result in any requirement. For example, applications for swimming pool would not be routed to the fire districts, DPW Road Engineering and Driveways Sections, or to OES (for creating addresses).

We believe that the combination of the proposed regulatory reforms in conjunction with ongoing administrative reforms will substantially reduce review times and the permit process for such minor residential structures.

Additional Options for Funding Second Unit Assistance

As part of the December 2007 report, staff provided your Board with an analysis with regard to the potential for using RDA housing funds to finance a program to encourage homeowners to consider the construction of rent-restricted affordable units. At that time we explained that limits of State law did not enable the use of RDA funds for this purpose. In essence, we did not believe that adequate safeguards could be put into place to guarantee that units would be maintained long-term as affordable rental units, given changing homeowner needs and ownership transitions. In response, the Board asked staff to evaluate other possible funding sources that could be made available, including the County's In-Lieu Housing Fund. The Board asked staff to evaluate the suitability of using the In-Lieu Fund to support this program as it is not encumbered by the same restrictions as RDA housing funds.

Before evaluating funding sources, it is beneficial to put into context the potential level of funding commitment to support such a program. As a result of evaluating our prior effort which was largely unsuccessful, it would appear that subsidies in the \$50,000 per unit level would be required to generate homeowner interest in any program. Assuming that somewhere between 10-20 units would be funded a year, the program would need an ongoing funding source of \$500,000-\$1,000,000 per year.

The County's In-Lieu Housing Fund receives funds from a number of sources, mostly from the payment of Measure J In-Lieu payments. Because of its funding sources, the annual revenues to the fund vary from year to year, but average about \$250,000 per year. Historically, this fund has been used either for low-cost ongoing program activity, such as Winter Shelter, CAB, and the Eviction Protection Program, or one-time projects that cannot be funded by the RDA (e.g. project assistance within one of the cities). Given current one-time and ongoing commitments, projections would suggest that this fund could support additional annual expenditures not exceeding \$75,000. Given the funding level described above it does not appear that the program could be sustained by this funding source.

At this time, staff is not aware of another funding source that would be appropriate for such a program. We will continue to explore what other communities are doing in this area and report back to the Board in the future, in the event that other options are revealed.

Proactive Code Compliance Inspection Program

One of the primary concerns that arose in our meetings with the community and your Board regarding the regulatory reform proposals was the need for an effective monitoring program to ensure that accessory structures remain, over time, as they were originally permitted. A proactive inspection program was discussed in our earlier letters as one method to ensure that both habitable and non-habitable accessory structures retain the features and remain consistent with the use granted by the underlying permit. Your Board asked for additional information on how such a program will work, and what the impacts will be on our existing Code Compliance Program.

The monitoring program will be anchored by a clearly worded declaration that will be required of all homeowners at the time of permit issuance, defining both the permitted features and the legal uses for the building. This declaration will be recorded on the property title and run with the land to ensure that future purchasers are also made aware of the restrictions that apply to the permitted accessory building. The declaration will also provide notice of the County's intent to conduct periodic compliance monitoring. To accomplish this, a compliance-monitoring fee will be collected at the time of permit issuance, as authorized by Section 13.10.611 (d) of the ordinance before your Board. This fee will be included in the next update to the Unified Fee Schedule as part of our budget proposal for the FY 08-09 fiscal year. These monies will be deposited into a special fund set aside for this purpose.

To minimize program costs and staff impacts, we will implement a compliance-monitoring program that includes a combination of mailed affidavits and on-site inspections. Inspections will be scheduled if an owner fails to complete the affidavit, or if there were inconsistencies in the material provided. Inspections will also be scheduled on a random basis to verify the accuracy of the affidavits. We believe that this will be an effective approach without overburdening the existing code compliance staff. If violations are found at the time of inspection, we will initiate corrective code enforcement action, and related cost-recovery for time spent achieving compliance. It is our intention to require participation for nearly every category of accessory structures, with the exception of attached garages, open structures such as carports and barns, and very small accessory buildings where conversion risks are minimal.

There will be a gradual ramp-up for this program, as it will be many months following final adoption of the ordinance before permits are issued, structures are built, and the owner obtains a final inspection by the County. Funds will start to accrue right away in the special fund. But realistically, it will be one to two years from now before active monitoring and inspection actually commences. It will likely take a few years after that before we can accurately assess the effectiveness of our efforts and the true impacts on our code staff. If there are very few violations and a high degree of cooperation, this program should not create a big demand on the field investigators. Conversely, if there are a large number of illegal conversions, then it may be necessary to evaluate the proper level of staff resources, adjust the fee, or otherwise modify the program to address the impacts of the proactive compliance-monitoring program. Initially, we believe that we will be able to launch this program with our existing staff resources.

Commission Review

As discussed in the December 2007 report, the Planning Commission recommended that your Board approve the proposed ordinance amendments implementing the residential regulatory reform package at their hearing on November 6th, 2007 (Attachment 7).

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 was included in the November 20, 2007 Board letter (Attachment 7).

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 in the Coastal Act 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 Compliance

Staff believes that the package of regulatory reforms for small-scale residential projects, as revised, is exempt from review under CEQA. Subsequent to the December Board letter, staff has reviewed each proposed amendment separately relative to its status under CEQA. As discussed elsewhere in this letter and summarized in Attachment 4, staff is recommending that reform measures with the potential for environmental impacts be omitted from this reform package. Staff has also determined that several different CEQA exemptions apply to the revised regulatory reform package. The appropriate CEQA exemption for each proposed reform measure is noted in the revised Notice of Exemption (Attachment 5).

Conclusion and Recommendations

This letter has provided additional analysis and information requested by Board members. Additionally, staff has responded to ongoing concerns of your Board and members of the public by removing from the residential regulatory reform package several earlier proposed reforms which had raised concerns. As revised, 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, while protecting the environment and local neighborhoods.

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

1. Conduct a public hearing on the proposed revised 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 revised CEQA Notice of Exemption (Attachment 5);
5. Direct staff to proceed with the development of a proactive code compliance program as recommended in this letter;
6. Direct staff to continue exploring any programs from other communities which provide financial assistance for the construction of affordable second units;
7. Direct staff to continue working with Public Works and other agencies to streamline the review process for minor residential building permits; and
8. 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 – Summary of Proposed Regulatory Reforms
- Attachment 4 – Summary of Proposed CEQA Actions
- Attachment 5 – CEQA Notice of Exemption
- Attachment 6 – Correspondence Received Since December 4th, 2007 Hearing
- Attachment 7-- Staff Report to the Board dated November 20, 2007 (on file with Clerk of the Board)
- Attachment 8 – Staff Report to the Board dated August 16, 2007 (on file with Clerk)
- Attachment 9 – Report to the Planning Commission dated October 11, 2007 (on file with the Clerk)
- Attachment 10 – Staff Report to the Board dated June 5, 2007 (on file with the Clerk)

cc: County Counsel
 Planning Commission
 Board of Realtors – Phil Tedesco
 Coastal Commission
 Kevin Collins, Sierra Club
 San Lorenzo Valley Water District
 Soquel Creek Water District
 Central Water District
 Ted Benhari, Rural Bonny Doon Association

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 _____, 2008 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 (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 II

Section 13.10.312(b), Agricultural Uses Chart, 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 BP/4 BP/4 BP/4
to a residential use and not for agricultural
purposes, 640 square feet or less subject to the
provisions of Section 13.10.611

SECTION III

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

Exhibit A to Attachment 1

SECTION IV

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)).	<u>BP/4</u>	<u>BP/4</u>	<u>BP/4</u>
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 V

Section 13.10.322(b), Residential uses, 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 <u>13.10.323</u> installation of certain plumbing fixtures may require Level 4 approval)	<u>BP/4</u>	<u>BP/4</u>	<u>BP/4</u>	<u>BP/4</u>	<u>BP/4</u>
Total area of 640 square feet or less and not to exceed 1-story and 17 feet in height	BP3	BP3	BP3	BP3	BP3
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:

Exhibit A to Attachment 1

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 RD3~~

~~more than 1,000 square feet~~

Carports, detached; garages, detached; garden structures; storage sheds (subject ~~for to~~ Sections 13.10.611 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 BP3 BP3 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:~~

Exhibit A to Attachment 1

1,000 square feet or less	BP3	3	2		
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	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					

Exhibit A to Attachment 1

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 VI

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, 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 VII

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) foot 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.

Exhibit A to Attachment 1

SECTION VIII

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 IX

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 13.10.611~~, 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 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, 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 XI

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 4AP
according to Section 13.10.355, such as:

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 XII

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 right-of-way 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 XIII

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 or front 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

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feet may be allowed by a Level V Development Permit Approval. (See Section 12.10.070(b) for building permit requirements.)

SECTION XIV

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:

Exhibit A to Attachment 1

<u>AMENITY</u>	<u>NON-HABITABLE</u>	<u>HABITABLE</u>
<u>SINK</u>	<u>Allowed</u>	<u>Allowed</u>
<u>TOILET</u>	Pool cabanas: <u>Allowed</u> All other uses: <u>Not allowed</u> unless a Level IV use approval is obtained (see 13.10.611 (c)(6)).	<u>Not Allowed unless a Level IV</u> <u>use approval is obtained (see</u> <u>13.10.611 (c)(6)).</u>
<u>SHOWER AND/OR</u> <u>BATHTUB</u>	Pool cabanas: <u>Allowed</u> All other uses: <u>Not allowed</u>	<u>Not allowed</u>
<u>WASHER/ DRYER AND</u> <u>WATER HEATER</u>	<u>Allowed</u>	<u>Allowed</u>
<u>INSULATION/ SHEET</u> <u>ROCK OR OTHER</u> <u>FINISHED WALL</u> <u>COVERING</u>	<u>Both allowed</u>	<u>Both required</u>
<u>BUILT IN</u> <u>HEATING/COOLING</u>	<u>Not allowed</u>	<u>Heating: Required</u> <u>Cooling: Allowed</u>
<u>KITCHEN FACILITIES,</u> <u>EXCLUDING SINK, AS</u> <u>DEFINED IN 13.10.700-K</u>	<u>Not allowed</u>	<u>Not allowed</u>
<u>ELECTRICAL SERVICE</u> <u>MAXIMUM</u>	<u>100A/220V/single phase</u> <u>maximum unless a Level IV use</u> <u>approval is obtained</u>	<u>100A/220V/single phase</u> <u>maximum unless a Level IV use</u> <u>approval is obtained</u>
<u>SEPARATE ELECTRIC</u> <u>METER</u>	<u>Not allowed unless a Level IV</u> <u>use approval is obtained</u>	<u>Not allowed unless a Level IV</u> <u>use approval is obtained</u>
<u>USE FOR SLEEPING</u> <u>PURPOSES</u>	<u>Not allowed</u>	<u>Allowed</u>
<u>RENT, LET OR LEASE</u> <u>AS AN INDEPENDENT</u> <u>DWELLING UNIT</u>	<u>Not allowed</u>	<u>Not allowed</u>

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

Exhibit A to Attachment 1

<u>Section 13.10.611(c)(3)</u> <u>TABLE TWO</u> <u>LEVEL OF REVIEW, SIZE, HEIGHT, NUMBER OF STORIES</u> <u>AND LOCATIONAL REGULATIONS</u>		
	<u>NON-HABITABLE</u>	<u>HABITABLE</u>
<u>SIZE, STORY AND</u> <u>HEIGHT</u> <u>RESTRICTIONS AND</u> <u>PERMIT REQUIRED</u>	<u>Within the Urban Services Line (USL):</u> <u>Building Permit only for up to 640</u> <u>square foot size, 2 story and 28-foot</u> <u>height.</u> <u>Outside the USL:</u> <u>Building Permit only for up to 1,000</u> <u>square foot size, 3 story and 28-foot</u> <u>height.</u>	<u>Building Permit only for up to</u> <u>640 square foot size, 1 story</u> <u>and 17-foot height.</u>
<u>PERMIT REQUIRED</u> <u>IF EXCEEDS</u> <u>SIZE, STORY OR</u> <u>HEIGHT</u> <u>RESTRICTIONS</u>	<u>Level IV use approval</u>	<u>Level IV use approval</u>
<u>NUMBER OF</u> <u>ACCESSORY</u> <u>STRUCTURES</u> <u>ALLOWED</u>	<u>No limit, if in compliance with the site</u> <u>regulations of the zone district .</u>	<u>One with Building Permit only.</u> <u>Maximum of two with Level IV</u> <u>use approval.</u>
<u>LOCATIONAL</u> <u>RESTRICTIONS</u>	<u>None, if in compliance with the site</u> <u>regulations of the zone district</u>	<u>In addition to the site</u> <u>regulations of the zone district,</u> <u>shall be no more than 100 feet</u> <u>from the main residence, shall</u> <u>not be accessed by a separate</u> <u>driveway or right-of-way, nor</u> <u>constructed on a slope greater</u> <u>than 30%, unless a Level IV</u> <u>use approval is obtained.</u>

(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

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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 ~~42.20~~ 12.10 of this Code.
- (3)(iii)(6) 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.
- (3)(iii)(7) 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.
- (8) 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)~~ (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. 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:~~

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~~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 XV

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 XVI

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 XVII

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 XVIII

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, excepting 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 ~~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 XIX

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. ~~If the property owner resides in 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 Ddeclaration 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 XX

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. ~~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 XXI

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 XXII

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. An accessory structure less than 70 square feet in size used for bathing or changing purposes in conjunction with a swimming pool.

SECTION XXIII

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, 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 XXIV

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:

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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. ~~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 XXV

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 XXVI

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 XXVII

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 XXVIII

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 exceed a 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 and/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 XXIX

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 XXX

If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, subdivision, paragraph, sentence clause or phrase of this ordinance irrespective of the fact that any one or more sections, subdivisions, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION XXXI

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 _____, 2008, by the following vote:

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

CHAIRPERSON, BOARD OF SUPERVISORS

0494A

Exhibit A to Attachment 1

ATTEST: _____
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 (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 II

Section 13.10.312(b), Agricultural Uses Chart, 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 13.10.61 1" to read as follows:

Habitable accessory structure when incidental to a residential use and not for agricultural purposes, subject to the provisions of Section 13.10.61 1	BP/4 BP/4 BP/4
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SECTION III

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 13.10.61 1 (see farm outbuildings).

SECTION IV

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-

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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 V

Section 13.10.322(b), Residential uses, 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 animal raising; .646 Turkey Raising: these provisions require Level 5 in some cases).

BP/4 BP/4 BP/4 -- --

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)

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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

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 VI

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;

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- 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 VII

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) foot 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 VIII

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 IX

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

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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	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 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, 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 XI

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 XII

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

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(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 XIII

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, rear or front 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 XIV

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.

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- (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 (see 13.10.611 (c)(6)).	Not Allowed unless a Level IV use approval is obtained (see 13.10.611 (c)(6)).
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:

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Section 13.10.611(c)(3) TABLE TWO LEVEL OF REVIEW, SIZE, HEIGHT, NUMBER OF STORIES		
	NON-HABITABLE	HABITABLE
		HABITABLE
SIZE, STORY AND HEIGHT RESTRICTIONS AND PERMIT REQUIRED	<p>Within the Urban Services Line (USL): Building Permit only for up to 640 square foot size, 2 story and 28-foot height.</p> <p>Outside the USL: Building Permit only for up to 1,000 square foot size, 3 story and 28-foot height.</p>	Building Permit only for up to 640 square foot size, 1 story and 17-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, shall not be 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;

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- 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) 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.
 - (7) 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.
 - (8) 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) 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. 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

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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 XV

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 XVI

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 XVII

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

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(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 XVIII

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 XIX

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.

(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 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 XX

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 XXI

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

SECTION XXII

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. An accessory structure less than 70 square feet in size used for bathing or changing purposes in conjunction with a swimming pool.

SECTION XXIII

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 13.10.61 1(c)(2) Table One for Habitable Accessory Structures.

SECTION XXIV

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 1(c)(2) Table One for Non-Habitable Accessory Structures.

SECTION XXV

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 XXVI

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 XXVII

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 XXVIII

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 and/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 XXIX

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 XXX

If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, subdivision, paragraph, sentence clause or phrase of this ordinance irrespective of the fact that any one or more sections, subdivisions, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION XXXI

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.

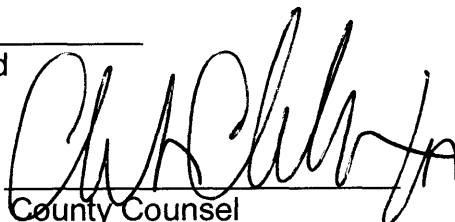
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this _____ day of _____, 2008, by the following vote:

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

CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____
Clerk of the Board

APPROVED AS TO FORM:


County Counsel

SUMMARY OF PROPOSED REGULATORY REFORMS: SMALL-SCALE RESIDENTIAL PROJECTS

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

Reforms of accessory structure regulations are intended to establish the appropriate level of discretionary review, clarify inconsistencies in the Santa Cruz County Code, provide additional protection to the environment, and/or allow for minor changes to structures. Reforms are also intended to make regulations more reasonable and encourage more property owners to obtain permits for their projects. As noted, staff is recommending deferral of several of the proposals due to public concerns regarding potential environmental impacts.

Current regulations	Issues	Proposed reforms and recommendation to Board
1) Habitable accessory structures exceeding the specified size, height and number of stories require a public hearing (Level 5).	<ul style="list-style-type: none"> Public hearings are generally not necessary, since most new accessory structures create few impacts. The approval process is unnecessarily expensive and time-consuming for owner. 	<ul style="list-style-type: none"> Eliminate the requirement for a public hearing, but require discretionary review with public noticing (Level 4). Public hearings could be held for controversial projects, at the discretion of the Planning Director. Recommendation: Approve
	<ul style="list-style-type: none"> This requirement is difficult to enforce, and not effective at preventing illegal conversions into dwelling units. 	<ul style="list-style-type: none"> 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 for habitable accessory structures. Recommendation: Approve
3) Current regulations are contradictory as to whether habitable accessory structures are allowed on the same property with a second unit.	<ul style="list-style-type: none"> Contradictory regulations are confusing to the public and staff, and may lead to inconsistent applications of the County Code. 	<ul style="list-style-type: none"> Clarify regulations to clearly state that habitable accessory structures are allowed on properties with a second unit. Continue to require deed restrictions to prevent illegal conversions to dwelling units. Recommendation: Approve
4) Two or more habitable accessory structures on a property require a Level 5 approval (public hearing).	<ul style="list-style-type: none"> More than 2 habitable accessory structures on a property are generally not required, since property owners may construct multiple non-habitable accessory structures on their property, subject to site regulations. 	<ul style="list-style-type: none"> Require a building permit only for one habitable accessory structure, and allow a maximum of 2 with a discretionary permit (Level 4). Recommendation: Approve
5) Bathrooms are prohibited in most habitable and non-habitable accessory structures such as guest houses and detached art studios. Sinks are allowed. Toilets are allowed under some circumstances with Level IV Approval.	<ul style="list-style-type: none"> Property owners are prevented from constructing fully functional accessory structures with appropriate sanitation facilities. 	<ul style="list-style-type: none"> Allow toilets in habitable accessory structures with a building permit only. Continue to require deed restrictions prohibiting illegal conversions. Recommendation to defer proposal for further study, due to concerns that allowing toilets in habitable accessory structures will lead to increased water usage.

Current regulations	Issues	Proposed reforms and Recommendation to Board
6) In urban and rural areas, height of habitable accessory structures is limited to 17 feet and one story.	<ul style="list-style-type: none"> • In rural areas, height requirements for second units, non-habitable accessory structures, and second units are inconsistent. 	<ul style="list-style-type: none"> • In rural areas only, increase height allowed for habitable accessory structures to 28 ft. • Recommendation to defer proposal for further study, due to concerns regarding potential visual impacts.
7) Non-habitable accessory structures such as detached garages and workshops are not allowed to have both sheetrock and insulation.	<ul style="list-style-type: none"> ◦ Many property owners want to finish non-habitable structures such as garages with sheetrock and insulation. 	<ul style="list-style-type: none"> ◦ 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. ◦ Recommendation: Approve
8) In rural areas, 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.	<ul style="list-style-type: none"> • Non-habitable accessory structures that exceed size limits typically generate few impacts. 	<ul style="list-style-type: none"> ◦ In rural areas, require a Level 4 (public notice) approval for non-habitable accessory structures that exceed specified size limits. • Public hearings could be held for controversial projects, at the discretion of the Planning Director. ◦ Recommendation: Approve
9) In urban areas, Level 5 Approval (public hearing) is required for non-habitable structures exceeding specified limits.	<ul style="list-style-type: none"> • Non-habitable accessory structures that exceed size limits typically generate few impacts. 	<ul style="list-style-type: none"> ◦ Require Level 4 approval (public noticing) for non-habitable accessory structures in urban areas that exceed specified size limits. ◦ Public hearings could be held for controversial projects, at the discretion of the Planning Director. ◦ Recommendation: Approve
10) • 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 in urban areas.	<ul style="list-style-type: none"> • Different size limits for animal enclosures and other types of non-habitable accessory structures lead to confusion for applicants. 	<ul style="list-style-type: none"> • In urban areas, limit size of all non-habitable accessory structures to 640 sq ft., including animal enclosures. • Recommendation: Approve

Current regulations	Issues	Proposed reforms and Recommendation to Board
<p>11) All structures greater than 18" in height must meet all site regulations, including setback and lot coverage requirements.</p>	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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. • Recommendation: Approve
	<ul style="list-style-type: none"> ◦ On large rural properties, property owners frequently need barns or other structures larger than 1,000 sq ft. 	<ul style="list-style-type: none"> • On rural properties 1 acre or greater, allow non-habitable accessory structures up to 1,500 sq ft with a building permit only. • Recommendation to defer proposal for further study, due to concerns that allowing larger structures by right could result in environmental impacts.

Second Units

The proposed reforms for second unit regulations update existing regulations, and comply with State requirements that local second unit ordinances shall not unreasonably restrict property owners from constructing second units.

Current regulations	Issues	Proposed reforms and Recommendation to Board
1) Property owners must reside on the property in order to obtain a permit for a second unit.	<ul style="list-style-type: none"> ◦ Difficult for developers of new subdivisions to construct second units, since they do not live on the property. • Second units planned during subdivision process can be better integrated into the surrounding neighborhood than those constructed after the subdivision is built. 	<ul style="list-style-type: none"> ◦ 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. ◦ Recommendation: Approve
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.	<ul style="list-style-type: none"> ◦ 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. 	<ul style="list-style-type: none"> ◦ To verify the owner residency requirements for a second unit permit, the Planning Director may require an applicant with less than 50% ownership to demonstrate a substantial financial interest. ◦ Recommendation to delete proposed reform, due to public concern and confusion regarding proposal.
3) Second units can be occupied only by qualifying households. The rent charged for second units cannot exceed certain levels.	<ul style="list-style-type: none"> ◦ 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. 	<ul style="list-style-type: none"> • Eliminate occupancy and rent-level restrictions for second units. • Recommendation: Approve
4) Level 5 approval required for second units that exceed 17' height limit in urban areas.	<ul style="list-style-type: none"> • Neighborhood impacts of second units 28 ft in height are likely to be minimal. 	<ul style="list-style-type: none"> ◦ Lower the level of discretionary review required (to Level 4) for second units exceeding 17 feet in urban areas. ◦ Recommendation: Approve
5) No more than 5 second units per year may be constructed in the Live Oak area.	<ul style="list-style-type: none"> • Infrastructure improvements in Live Oak over the past 20 years have eliminated the need for the annual cap. • Property owners in all areas of the County should have the opportunity to construct new second units. 	<ul style="list-style-type: none"> ◦ Eliminate the annual cap on second units in the Live Oak area. ◦ Recommendation: Approve

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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, while continuing to protect the environment.

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Current regulations	Issues	Proposed reforms and Recommendation to Board
1) 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").	<ul style="list-style-type: none"> Owners of such residences find it very difficult to make essential repairs or alterations, and may make unsafe repairs that don't conform to California Building Code. Many houses in the County fall into this category due to changes in the way the County has measured height over the years. 	<ul style="list-style-type: none"> 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. Recommendation: Approve
2) Conforming additions greater than 800 square feet to non-conforming structures require discretionary approval (Level 4).	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Allow conforming additions of any size to non-conforming residences with a building permit only. Recommendation to defer proposed reform, due to concerns that allowing repairs of structures within riparian buffer zones may harm riparian areas and waterways.

Coastal Regulations

The proposed reforms of coastal regulations are intended to make it easier for residents' property owners to make some improvements to their property.

Current regulations	Issues	Proposed reforms and Recommendation to Board
1) Demolition of structures in rural areas of the Coastal Zone requires discretionary approval with a public hearing (Level 5 Approval).	<ul style="list-style-type: none"> Demolition generally creates few impacts. Discretionary review with a public hearing is not necessary for most demolition projects. Property owners may proceed with demolition outside the permit process, resulting in unsafe or environmentally damaging demolitions. 	<ul style="list-style-type: none"> 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. Recommendation: Approve
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).	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. Recommendation: Approve
3) Grading exceeding 100 cubic yards in the Coastal zone requires Coastal Approval with a public hearing (Level 5).	<ul style="list-style-type: none"> Required grading permits addresses most grading impacts. Some impacts, such as visual impacts, are not addressed during the review of the grading permit. 	<ul style="list-style-type: none"> 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 5 Approval. Public hearing would be held only if requested. Recommendation: Approve
4) County regulations require discretionary review of solar energy systems in certain areas of the Coastal Zone (Level 5 Approval).	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. Recommendation: Approve

Other Recommended Modifications

The proposed reforms simplify several regulations that unnecessarily create barriers to routine residential land uses, by eliminating reviews that duplicate reviews conducted by other agencies or as part of other required permits and eliminating unnecessary regulations.

Current regulations	Issues	Proposed reforms and Recommendation to Board
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 including Public Works and the Fire Department 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. • Recommendation: Approve
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 is 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, as recommended by the Agricultural Policy Advisory Commission. • Condition project to require the installation of a physical barrier. • Recommendation: Approve
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.	<ul style="list-style-type: none"> 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. 	<p>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.</p> <p>• Recommendation: Approve</p>
4) Current regulations require a permit for the construction of a water tank on a vacant residential parcel.	<ul style="list-style-type: none"> Eliminating the separation requirement between water tanks will not impact neighboring properties, and will require less grading and be less visually obtrusive. 	<ul style="list-style-type: none"> Eliminate the separation requirement between water tanks. Recommendation: Approve
5) 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).	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. Recommendation to defer proposed reform, due to concerns that allowing electric service on vacant parcels will encourage illegal camping and RV use.

SUMMARY OF PROPOSED CEQA ACTIONS

Policy Proposal	Staff Recommendation	CEQA status
<p>2. Amend Section 13.10.611(c)(5) of the County Code to restrict the number of HAS on a property to 2 w/ Level 4 Approval.</p> <p>3. Amend Section 13.10.681(d)(7) of the County Code to clarify requirements and formalize current interpretation of rules to allow HAS on property w/ Second unit.</p> <p>4. Amend Section 13.10.611(c)(4) of the County Code to eliminate requirement that owner live on site to have heat in HAS.</p> <p>5. Allow 28' height of HAS in rural areas by-right, consistent w/ SFDs and ADUs.</p> <p>6. Allow toilets by-right in HAS</p>	<p>Approve – Does not change what is allowed to be built, increases public notice, provides for Level 5 public hearings for controversial projects, and requires that projects comply with all environmental regulations.</p>	<p>Exempt -This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to CEQA Guidelines Section 15060.</p>
	<p>Approve - More restrictive than current regulations.</p>	<p>Categorically exempt under CEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.</p>
	<p>Approve - No change to current practices – simply clarifies regulation to match practice.</p>	<p>This amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(2). The amendment it is not a project, but is instead general policy and procedure making.</p>
	<p>Approve - Property owners typically use portable heating in HAS. This change would simply allow for more energy efficient heating systems.</p>	<p>Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will have a significant effect on the environment.</p>
	<p>Defer for further analysis</p>	<p>Defer for further analysis</p>
	<p>Defer for further analysis</p>	<p>Defer for further analysis</p>
Non-Habitable Accessory Structures		
<p>1. Amend subsection 13.10.700(n) of the County Code to allow both sheetrock and insulation.</p>	<p>Approve: This amendment will not result in a physical change in the environment, but merely allows for non-habitable structures to be constructed more efficiently in terms of energy usage, providing a more comfortable environment for workshops, garages, etc.</p>	<p>This amendment is not a project as defined by CEQA Guidelines Section 15378, and is therefore not subject to CEQA pursuant to Section 15060.</p>

2. On rural parcels over 1 acre in size, expand size of structure allowed by right from 1,000 to 1,500 sq. ft.	Defer: From staff research, not many of these applications.	Defer for further analysis	
3. Amend subsection 13.10.322(b) of the County Code to lower level of review of rural structures that exceed height or size limits from Level 5 to 4 and increase review level in the RA and SU Zone Districts from 3 to 4.	Approve: Does not change what is allowed to be built, increases public notice, provides for Level 5 public hearings for controversial projects, continues to require discretionary approval, and requires that projects comply with all environmental regulations.	Exempt - This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.	
4. Amend subsection 13.10.322(b) of the County Code to lower level of review for urban structures that exceed height or size limits from Level 5 to 4.	Approve: Does not change what is allowed to be built, increases public notice, provides for Level 5 public hearings for controversial projects, continues to require discretionary approval, and requires that projects comply with all environmental regulations.	Exempt - This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.	
5. Amend subsection 13.10.322(b) of the County Code to restrict size of all non-habitable accessory structures in urban areas to 640 sq feet.	Approve: This is more restrictive than current regulations. Brings maximum size of animal enclosures from 1,000 to 640 sq feet, consistent with other Non-HAS.	Categorically Exempt under CEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.	
6. Allow more flexibility for placing typical backyard facilities less than 6 feet high in side and back yard setback areas.	Approve: This amendment will not impact the environment, since it allows only items with no potential to impact neighbors to be placed in setbacks, such as dog houses, play structures, solar collectors, all less than 6 feet in height.	Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will have a significant effect on the environment.	
Second Units (aka ADUs)			
1. Amend subsection 13.10.681(c)(1) of the County Code to allow developers to pre-plan and build ADUs as part of subdivisions.	Approve: Affected properties currently allow ADUs, but would allow them to be built at same time as main house, providing for better planning and design review.	Statutorily exempt under PRC section 21080.17 and CEQA Guidelines Section 15282(h) – Adoption of a second unit ordinance to implement Government Code Sections 65852.1 and 65852.2.	
2. Verify property ownership interest for less than 50% ownership situations.	Delete proposal: Has caused too much confusion.	Delete proposal.	

3. Amend subsection 13.10.681(e) of the County Code to eliminate occupancy and rent restrictions for ADUs.	Approve: Recognizes that current affordability restriction program has not been successful in creating affordability. Would continue other current regulations regarding construction and siting of units.	Statutorily exempt under PRC section 21080.17 and CEQA Guidelines Section 15282(h). Occupancy and rent restrictions are overly restrictive and not consistent with case law, in that they are deterring the construction of affordable second units.
4. Amend subsection 13.10.681(d)(4) of the County Code to lower level of review for urban units exceeding 17 foot height requirements from Level 5 to 4.	Approve: Does not change what is allowed to be built, increases public notice, and still provides for Level 5 public hearings. Regulations requiring Level 5 approval for second units exceeding 17' in height are overly restrictive for owners of small urban lots, who may have limited options in placing a second unit on their property.	Statutorily exempt under PRC section 21080.17 and CEQA Guidelines Section 15282(h).
5. Amend subsection 13.10.681(f) of the County Code to Eliminate 5 unit/year cap for ADUs in the Live Oak Planning Area.	Approve: Initially put in place prior to RDA investment in area infrastructure. Demand for ADUs in Live Oak not high, but sometimes requires delay for some applicants, needing to wait until next calendar year.	Statutorily exempt under PRC section 21080.17 and CEQA Guidelines Section 15282(h). Requirement is overly restrictive for property owners in Live Oak, and is inconsistent with state law.
Non-Conforming Structures		
1. Allow by right conforming additions of any size to existing non-conforming structures residences	Defer: Recognizes that current policy requiring Level 4 of additions of >800 square feet has not resulted in changes on the ground. Issues have been raised regarding application in riparian corridors.	Defer for further analysis
	Approve: This amendment will not result in a significant effect on the environment. All repairs and additions to over-height structures must comply with all requirements of the zoning district, including height, and comply with all environmental regulations in the zoning ordinance.	Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will have a significant effect on the environment.

Coastal Regulations		
1. Amend Chapter 13.20 of the County Code to exclude most demolition projects from needing separate coastal permit, except for environmentally sensitive or historic sites.	Approve: Most demo projects occur within context of development proposals, but sometimes are required as separate projects to address safety concerns. Would still require coastal permit for historic or sensitive habitat sites.	Statutorily exempt under PRC section 21080.9 and CEQA Guidelines Section 15265 – CEQA does not apply to plan amendment approvals pursuant to the California Coastal Act for adoption of a Local Coastal Program.
2. Amend subsection 13.20.100(a) of the County Code to lower level of review for rural additions from Level 5 to 4.	Approve: Does not change what is allowed to be built, increases public notice, provides for Level 5 public hearings upon request, and requires that projects comply with all environmental regulations.	Statutorily exempt under PRC section 21080.9 and CEQA Guidelines Section 15265.
3. Amend subsection 13.20.100(a) of the County Code to lower level of review for grading projects from Level 5 to 4, but still require grading permits with related review.	Approve: Building aspect of project still subject to coastal permit requirements, and grading still subject to grading ordinance requirements. Provides for Level 5 public hearings upon request.	Statutorily exempt under PRC section 21080.9 and CEQA Guidelines Section 15265.
4. Amend Chapter 13.20 of the County Code to allow installation of solar energy systems in Coastal Zone by right, consistent with other zoning regulations.	Approve: State law does not allow requiring discretionary permits for solar energy systems. Zoning standards would not allow solar system to exceed zone district heights by more than 3 feet.	Statutorily exempt under PRC section 21080.9 and CEQA Guidelines Section 15265.
Miscellaneous Changes		
1. Amend Section 13.10.521(a) of the County Code to delete requirement for discretionary permit for use by an existing lot of record of an existing right-of-way less than 40-foot wide.	Approve: Requirement predates many current review requirements, including Department of Public Works and Fire Department reviews. Requirement is outdated and does not change outcomes, since the project is reviewed by other agencies, which may condition project to address all project impacts.	Exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(2). The amendment is not a project, but is instead general policy and procedure making and does not result in a physical change to the environment.
2. Allow additions to residences within an agricultural buffer, if less than 1,000 square feet in size, no closer to agricultural land, and conditioned to provide agricultural barrier.	Approve: Currently such projects require discretionary review permits, with the outcome always for agricultural barrier as specified in the zoning ordinance. Requiring barrier as a standard condition would result in same outcome with less costly and lengthy process.	This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.

3. Amend subsection 13.10.525(c)(2) of the County Code to allow for by right construction of 6-foot fences on flag lots in "front yards".	Approve: Regulations never intended to apply in these situations that are not real front yards. Permits always approved. Since these fences are not located adjacent to a right of way, they will not impact public views or sight distance.	This amendment is not a project as defined by as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.
4. Amend subsection 13.10.525(c)(2) of the County Code to eliminate separation requirements between water tanks.	Approve: While separation requirements between other structures makes sense, it does not for water tanks, and in some cases can require excessive grading. Allowing zero separation between water tanks is consistent with the Building Code.	Categorically exempt under CEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.
	Defer: Current regulations are not clear and have not been upheld by courts. Owners argue that there are legitimate uses that require well water and power in rural areas.	Defer for further analysis

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 from 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: Amendments to Chapters 13.10, 13.20, and 16.50 of the Santa Cruz County Code to simplify regulations for small-scale residential structures.

Person or Agency Proposing Project: County of Santa Cruz

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

- A. ☒ 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. ☒ Categorical Exemption*
- F. ☒ 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.*

* Note: See table below for the appropriate exemption for each amendment.

F. Reasons why the project is exempt: The purpose 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 over-height structures. The reforms establish the proper level of discretionary review, clarify inconsistencies in the Santa Cruz County Code, eliminate reviews that duplicate reviews conducted by other agencies or as part of other required permits, provide additional protection to the environment, are necessary to comply with state law, and/or allow for minor changes to structures. None of these amendments will have a significant effect on the environment. The amendments for second units and for projects in the Coastal Zone are statutorily exempt under CEQA.

Policy Proposal	CEQA Exemption	Reason why exempt, and response to public comments
Habitable Accessory Structures		
<p>1. Amend Section 13.10.322(b) of the County Code to lower the level of discretionary review from Level 5 to 4 for structures exceeding size and height limits.</p>	<p>This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.</p>	<p>Reason: This amendment will not result in any direct or reasonably foreseeable indirect physical change in the environment. It does not change what is allowed to be built, is subject to the same environmental regulations as Level 5 projects under the Zoning Ordinance, while increasing public notice and providing for Level 5 public hearings for controversial projects.</p> <p>Comment 1: Lower level of review will lead to development of more structures.</p> <p>Response: The lower level of review will not result in more habitable accessory structures. Cost savings from a level 5 to Level 4 of review are estimated to amount to less than one percent of overall permit and construction costs, and are therefore unlikely to induce development or result in more structures being constructed.</p> <p>Furthermore, the change in review from Level 5 to Level 4 will apply only to those structures exceeding specified size and height limits. Structures meeting size and height limits currently require only a building permit. This option is already available to those wanting to construct a unit with the least expensive and shortest review process.</p> <p>Comment 2: If the amendment results in the construction of additional habitable accessory structures, then there is a potential for more occupants in the additional structures, resulting in turn in potential growth-inducing impacts.</p> <p>Response: Since there is no reasonable basis for assuming that this amendment would increase the number of structures, the amendment will not result in growth-inducing impacts.</p> <p>Comment 3: The Level 4 process will result in less environmental protection.</p> <p>Response: Regulations in the County Code protect the environment from impacts of new construction such as erosion impacts and grading. Local regulations also protect sensitive habitats and sites including sand hills and riparian corridors, structures in high geologic hazard areas, Native American sites, historic structures, etc. These apply to all projects regardless of the level of review. Projects may be conditioned to address all project impacts, or may be denied under a Level 4 Review.</p>

2. Amend Section 13.10.611(c)(5) of the County Code to restrict the number of Habitable Accessory Structures on a property to 2 w/ Level 4 approval.	Zategorically exempt under ZEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.	Reason: This amendment limits the number of habitable accessory structures from an unspecified number to a maximum of two, and is therefore more restrictive than current regulations.
3. Amend Section 13.10.681(d)(7) of the Santa Cruz County Code to clarify that habitable accessory structures are allowed on properties with a second unit.	This amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(2). The amendment it is not a project, but is instead general policy and procedure making and does not result in a physical change to the environment.	Reason: This amendment is necessary to clarify inconsistencies in the existing ordinance. The amendment will formalize the interpretation of the ordinance that has been followed for the last 10 years allowing habitable accessory structures on properties with a second unit, and therefore will not result in physical changes in the environment.
4. Amend Section 13.10.611(c)(4) of the County Code to eliminate requirement that owner live on site to have built-in heat in habitable accessory structures.	Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will have a significant effect on the environment.	Reason: Property owners and residents currently use portable heaters in habitable accessory structures. This change would simply allow for more energy efficient heating systems, regardless of whether owner lives on property. Comment: Requiring built-in heat in habitable accessory structures will make units more functional as rental units, resulting in growth-inducing impacts and cumulative impacts to County resources. Response: Since portable heaters are frequently used in habitable accessory structures, there is no evidence for assuming that the addition of built-in heat would make these units more “rentable”, particularly since such units could not have kitchens or bathrooms.

Non-Habitable Accessory Structures

1. Amend subsection 13.10.700(n) of the County Code to allow both sheetrock and insulation, rather than sheetrock or insulation.	This amendment is not a project as defined by CEQA Guidelines Section 15378, and is therefore not subject to CEQA	Reason: This amendment will not result in a physical change in the environment, but merely allows for non-habitable structures to be constructed more efficiently, providing a more comfortable environment for workshops, garages, etc. Comment: Allowing both sheetrock and insulation in non-habitable accessory structures will encourage the illegal use of these structures as detached bedrooms or rentals.
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Attachment 5

	pursuant to Section 15060.	Response: It is not “reasonably foreseeable” to assume that allowing non-habitable accessory structures to have both sheetrock and insulation will result in the illegal use of these structures for sleeping purposes or as illegal rental units.
2. Amend subsection 13.10.322(b) of the County Code to lower level of review for urban structures that exceed height or size from Level 5 to Level 4.	This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.	Reason: This amendment will not result in any direct or reasonably foreseeable indirect physical change in the environment. It does not change what is allowed to be built, subjects projects to the same environmental regulations under the Zoning Ordinance, while increasing public notice and providing for Level 5 public hearings for controversial projects. See also comments 1 and 3 to amendment 1 of “Habitable Accessory Structures”
3. Amend subsection 13.10.322(b) of the County Code to lower level of review of rural structures that exceed height or size from 5 to 4. In RA and SU Zone Districts in rural areas, increase review from Level 3 to Level 4.	This amendment is not a project as defined by PRC Section 21065, and is therefore not subject to CEQA pursuant to Section 15060.	Reason: See reason and comments under amendment 2 above. Additionally, this amendment will increase the level of review in the RA and SU Zone District from a Level 3 to a Level 4, so that all non-habitable accessory structures exceeding the specified size or height limit will now be subject to the same level of discretionary review.
4. Amend subsection 13.10.322(b) of the County Code to reduce allowed size of animal enclosures in urban areas from 1,000 to 640 sq feet, consistent with other non-habitable accessory structures.	Categorically exempt under CEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.	Reason: This amendment is for the protection of the environment: Reducing the size allowed for animal enclosures in urban areas from 1,000 square feet to 640 square feet protects nearby residents from potential environmental effects such as noise, objectionable odors, etc.
5. Amend subsection 13.10.323(e) of the County Code to allow more flexibility for placing typical backyard facilities less than 6 feet high in backyard setback areas.	Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will have a significant effect on the environment.	Reason: This amendment will not impact the environment, since it allows only items with no potential to impact neighbors to be placed in setbacks, such as bird baths, play structures, and solar collectors, all less than 6 feet in height.

Second Units (aka ADUs)		
1. Amend subsection 13.10.681(c)(1) of the County Code to allow developers to pre-plan and build Second Units as part of subdivisions.	Statutorily exempt under PRC Section 21080.17 and CEQA Guidelines Section 15282(h) – Adoption of an ordinance regarding second units to implement Government Code Sections 65852.1 and 65852.2.	Reason: This amendment is necessary in order to comply with the purpose and intent of Gov. Code Section 65852.150 and related sections, namely that a local ordinance “should not be so arbitrary, excessive or burdensome as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.” Comment: This amendment will lead to the construction of more second units, with growth-including impacts. Response: As this amendment is statutorily exempt under CEQA, potential impacts are not subject to analysis under CEQA.
2. Amend subsection 13.10.681(e) of the County Code to eliminate occupancy and rent restrictions for Second Units.	Statutorily exempt under PRC Section 21080.17 and CEQA Guidelines Section 15282(h).	Reason: See 1 above.
3. Amend subsection 13.10.681(d)(4) of the County Code to lower level of review for urban units exceeding 17 foot height requirements from Level 5 to 4.	Statutorily exempt under PRC Section 21080.17 and CEQA Guidelines Section 15282(h).	Reason: This amendment is necessary in order to comply with the purpose and intent of Gov code Section 65852.150 and related provisions. Requiring Level 5 approval for second units exceeding 17 feet in urban areas is restrictive to property owners of small urban lots, whose only option may be to construct a second unit above an existing structure such as a garage due to restrictions on lot coverage. (See also 1 above).
4. Amend subsection 13.10.681(f) of the County Code to eliminate 5 unit/year cap for Second Units in Live Oak Planning Area.	Statutorily exempt under PRC Section 21080.17 and CEQA Guidelines Section 15282(h).	Reason: As stated in subsection 13.10.681(f) of the Zoning Ordinance, the annual cap on second units for the Live Oak area was implemented due to “Public services deficiency of roadway design and drainage”. Since the cap was implemented, the Redevelopment Agency has undertaken numerous infrastructure projects in the Live Oak area, so that the infrastructure is now comparable to other areas of the County. Demand for second units in Live Oak is not high, but oftentimes requires delay for some applicants, needing to wait until next calendar year. Since the deficiencies in infrastructure have been largely corrected, the cap restricts the ability of property owners in Live Oak from constructing second units, and is not consistent with State law.
Non-Conforming Structures		
1. Amend subsection 13.10.265 (k) of the County Code to redefine residential structures exceeding the height limit by	Exempt under CEQA Guidelines Section 15061(b)(3) – there is no possibility that the amendment will	Reason: This amendment will not result in a significant effect on the environment. All repairs and additions to over-height structures must comply with all requirements of the zoning district, including height, and comply with all environmental regulations in the zoning ordinance. Comment: Repairs of over-height structures may be unsafe,

more than 5 feet as non-conforming rather than significantly non-conforming, allowing owners of such structures to make needed structural repairs “by right.”	have a significant effect on the environment.	since such structures are frequently constructed on steep slopes. Response: There is no evidence to suggest that repairs or additions to structures on steep slopes, when done in compliance with the California Building Code, are unsafe.
Coastal Regulations		
1. Amend Chapter 13.20 of the County Code to exclude most demolition projects from needing separate Coastal permit, except for environmentally sensitive sites.	Statutorily exempt under PRC Section 21080.9 and CEQA Guidelines Section 15265 – CEQA does not apply to plan amendment approvals pursuant to the California Coastal Act for adoption of a Local Coastal Program.	Since this Zoning amendment requires an amendment to the Local Coastal Program, the California Coastal Commission is responsible for CEQA compliance.
2. Amend subsection 13.20.100(a) of the County Code to lower level of review for rural additions in the Coastal Zone from Level 5 to 4.	Statutorily exempt under PRC Section 21080.9 and CEQA Guidelines Section 15265.	Since this Zoning amendment requires an amendment to the Local Coastal Program, the California Coastal Commission is responsible for CEQA compliance.
3. Amend subsection 13.20.100(a) of the County Code to lower level of review for grading projects in the Coastal Zone from 5 to 4, but still require grading permits.	Statutorily exempt under PRC Section 21080.9 and CEQA Guidelines Section 15265.	Since this Zoning amendment requires an amendment to the Local Coastal Program, the California Coastal Commission is responsible for CEQA compliance.
4. Amend Chapter 13.20 of the County Code to allow installation of solar energy systems in the Coastal Zone by right, consistent with other zoning regulations.	Statutorily exempt under PRC Section 21080.9 and CEQA Guidelines Section 15265.	This amendment is necessary to comply with State law, which does not allow requiring discretionary permits for solar energy systems. Solar energy systems in the Coastal Zone must still comply with other zoning regulations, including not exceeding zone district heights by more than 3 feet, and complying with all local environmental regulations.

Miscellaneous Changes		
<p>1. Amend Section 13.10.521(a) of the County Code to delete requirement for discretionary permit for use of a less than 40 foot existing right of way.</p>	<p>This amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(2). The amendment is not a project, but is instead general policy and procedure making and does not result in a physical change to the environment.</p>	<p>Reason: The requirement for discretionary review of existing right of way less than 40 feet in width is redundant, since Public Works and the Fire Department already review building permit applications for these projects and can apply all necessary conditions to the building permit. The requirement for discretionary approval of such rights-of-way was implemented prior to the reviews by other agencies.</p> <p>A review of such permits indicates that eliminating the requirement for a separate discretionary permit will not result in significant physical changes to the environment: Out of 22 such permits issued in the past 4 years, the only conditions added regarding rights-of-way were added by Public Works or the Fire Department. The Fire Department and Public Works has the ability to add necessary conditions equally to building permits.</p> <p>Comment: The proposed amendment may affect or weaken rules regarding the construction of roads and driveways.</p> <p>Response: The amendment will not change the requirements for private road and driveway construction as specified in Section 16.20.180 of the County Code, including driveway and road widths, road gradients, road drainage control, as well as all grading requirements in Chapter 16.20, and erosion control requirements in Chapter 16.22.</p>
<p>2. Amend Section 16.50.095 of the County Code to allow additions to residences within an Agricultural buffer, if less than 1,000 square feet in size, no closer to agricultural land, and conditioned to provide agricultural barrier.</p>	<p>This amendment is not a project as defined by CEQA Guidelines Section 15378, and is therefore not subject to CEQA pursuant to Section 15060.</p>	<p>Reason: This amendment will not result in any direct or reasonably foreseeable indirect physical change in the environment, and therefore does not meet the definition of project under CEQA. Permits for minor additions or structures to existing residential development within an agricultural buffer are conditioned to require the installation of a physical barrier as mandated by the zoning ordinance. This condition can be applied as a standard condition for building permit applications, resulting in the same outcome.</p> <p>A review of such projects supports the conclusion that omitting Level 4 approval requirement, and instead requiring a physical barrier as a standard condition, will result in the same project outcomes. Out of the 17 projects reviewed by the Agricultural Policy Advisory Commission (APAC) in the past 2 years, the Commission approved all 17 projects, and did not add any conditions, nor did members of the public pull the projects for discussion. APAC approved the proposed amendment, modified as recommended by APAC to require an agricultural buffer for all existing and proposed development.</p> <p>Comment: This amendment will increase the number of people exposed to impacts for agricultural operations, such as dust, noise and chemicals.</p>

		Response: This amendment will apply only to properties with existing residential development within an agricultural buffer, and for development which will extend no further into the agricultural buffer.
3. Amend subsection 13.10.525(c)(2) of the County Code to allow by right construction of 6-foot fences on flag lots in “front yards”.	This amendment is not a project as defined by CEQA Guidelines Section 15378, and is therefore not subject to CEQA pursuant to Section 15060.	Reason: This amendment will not result in any direct or reasonably foreseeable indirect physical change in the environment, and therefore does not meet the definition of project under CEQA. The amendment will allow 6 foot fences in all yards that do not abut a street. This amendment will allow for greater privacy between neighbors, but will not affect public views or sight distance. Comment: Allowing 6 foot fences in the front yards of flag lots may obstruct neighbor’s views. Response: Private views are not protected under CEQA.
4. Amend subsection 13.10.525(c)(2) of the County Code to eliminate separation requirements between water tanks.	Categorically exempt under CEQA Guidelines section 15308 – Action by Regulatory Agencies for the protection of the environment.	Reason: Currently, a 6-foot separation is required between water tanks. This requires additional grading for two separate pads, and may also create additional visual impacts. Allowing water tanks to be placed adjacent to one another will protect the environment by minimizing grading and potentially reducing the visual impact of such structures.


 Annie Murphy: Project Planner

Date: 3/3/08

0530

CENTRAL WATER DISTRICT
400 Cox Road – Post Office Box 1869
Aptos, California 95001-1869
(831) 688-2767

January 15, 2008

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

Proposed Regulatory Changes for Small-Scale Residential Projects

Honorable Members of the Board:

The Central Water District supports the Planning Department's decision to break down County land use regulations into thematic groups. In regard to small-scale residential structures, we are concerned that the proposed changes could increase the number of toilets and sinks in our rural area. We are cognizant of the potential impact of any increased demand for water on our aquifers.

Central Water District urges that the CEQA review process be followed carefully, and any exemptions from that review be confirmed as appropriate, to ensure that the proposed regulations not have a significant impact on the environment.

The District appreciates your time and consideration of our concerns.

Sincerely,



Ralph Bracamonte
District Manager

RMB:es

18 January 2008

Tom Burns, Director,
Planning Department
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Small-Scale Residential Regulation Reform Package
as presented to the Rural Bonny Doon Association, 9 January 2008

Dear Mr. Burns:

As residents of the unincorporated County area, we are aware of the complexities of zoning regulations and their restrictions on building -- and, as a result, the citizenry's extreme disgust with the permitting process and equally extreme choice to ignore it. We applaud your attempt to simplify and apply rationality to this cumbersome system. And we are sincerely grateful to you and **Ms.** Glenda Hill for coming to our meeting, for preparing an excellent presentation and handouts, for answering questions, and for soliciting our comments.

As you graciously requested, here are what seem to us some pertinent concerns.

Need we say anything about abandoning a requirement that property owners must live on site if they create second units? Or the size of the units? Or their affordability? **What** developer wouldn't like these proposals? Certainly, they ensure that applicants will leave the Planning Department happy, and that the county's well-heeled population will increase.

We agree that discovering which regulations most annoy applicants is a useful approach to reforming zoning code, though perhaps not the only one. But, we argue, the results of this discovery should be reviewed by an independent, non-applicant group. For instance, many rural applicants would eagerly both sheetrock and insulate their chicken coops, or put toilets in their barns. And they, citing various pressing concerns (at our meeting, for example, Ms. Hill mentioned one person's wife, who didn't want him to come into the house with dirty shoes to use the bathroom), will express frustration if these requests are denied. In fact, as contractors at the meeting pointed out, sheetrock plus insulation makes a

space habitable. Likewise, the four inch drain for a toilet leaves -- for someone who isn't too particular about permits -- plumbing options for a complete dwelling.

We suggest that applications for the examples above should be considered -- but as applications for second units. Which is, in fact, what they will become under the current enforcement regime.

True, you stated that the proposed regulations, if instituted, would be accompanied by more vigorous follow-up inspections and tough penalties. We're sorry to say that most rural residents, including ourselves, don't believe this for a second. For starters, we ask, whence will the funds come for enforcement? How many staffers would enjoy meeting some of our more truculent neighbors? The Wild West mountain attitude is, "We'll go ahead with our plans and start worrying later -- it's OUR property, that's the way it's always been, and we have good relations with our neighbors who play the same game."

Actually, we are really glad if the Planning Department is serious about enforcement. But, if you are, this part of the proposal should be separated from new zoning policies and instituted before they are considered, let alone adopted. Then, perhaps, in a while, the citizenry will believe your brave words.

Our comments are offered in a collaborative spirit. We recognize the great difficulty of your task and wish you well in the quest for tough solutions to a most vexing problem.

Sincerely, . . .

*Miriam Beames
Paul Tutwiler*

Miriam Beames and Paul Tutwiler
1411 Pine Flat Road
Santa Cruz, CA 95060

cc: Supervisors, County of Santa Cruz
Ted Benhari, Chair, Rural Bonny Doon Assbciation

January 28, 2008

0533

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

Subject: Proposed Regulatory Reform for Small-Scale Residential Projects

Dear Members of the Board:

The Soquel Creek Water District (SqCWD) Board of Directors has reviewed the proposed regulatory reform for small-scale residential projects as presented to the Board of Supervisors on December 4, 2007. We hope that these reforms achieve the stated objective of encouraging more applicants to work within the permit process rather than constructing structures illegally.

SqCWD has a number of policies regarding water service to new development, including a requirement to install high efficiency plumbing fixtures and offset the increase in water demand through retrofits within the SqCWD service area. Without the following provisions in the County Government Code Sections relating to building permit applications, known as the "Will Serve" process, it would be very difficult for SqCWD to communicate our requirements to applicants prior to construction and enforce compliance with SqCWD policies:

- a. Section 12.01.050(b) 9 which requires the applicant to submit letters from cities and special districts providing service to the new projects certifying their ability to provide domestic water service and sewer service, and meet the fire protection requirements. service to mirror that for other projects with respect to requiring the applicant to obtain a written statement from the local water provider
- b. Section 13.10.324.1 (b) which states that all requirements of the local sanitation district and water district shall be met.

SqCWD would like to request that, along with any regulatory reforms, County Planning staff adopt a practice of requiring all applicants for building permits on projects that include plumbing to be subject to the requirements of the above code sections.

SqCWD would like to further request that the County consider adopting a water demand offset requirement for all development within the Soquel-Aptos Groundwater Basin that is consistent with SqCWD's policy within our service area. District staff can provide details about our water demand offset program and assist the County with implementation.

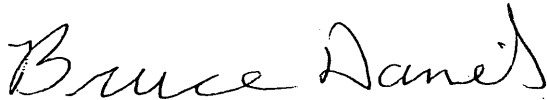
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Lastly, the SqCWD Board of Directors encourages the County to complete a **CEQA** analysis of the proposed reforms, in particular the estimated impacts within the Soquel-Aptos Groundwater Basin, prior to adoption.

Thank you for your consideration of our request.

Sincerely,

SOQUEL CREEK WATER DISTRICT

A handwritten signature in cursive script that reads "Bruce Daniels".

Bruce Daniels
Board President

Cc: Tom Burns, Planning Director

SMALL-SCALE RESIDENTIAL REGULATION REFORM PACKAGE
COMMENT CARD

Please share your comments or concerns about the proposed reform package:

I feel that these changes would result
in significant environmental impacts.

This should be given a thorough review
before implementation

Name (optional): Pam Newbury Contact Number (optional): 423-6904

You can view Board of Supervisors staff reports at www.co.santa-cruz.ca.us; click on "Agendas and Minutes"

SMALL-SCALE RESIDENTIAL REGULATION REFORM PACKAGE
COMMENT CARD

Please share your comments or concerns **about** the proposed reform package:

I AM VERY CONCERNED ABOUT INCREASED
DENSITY AND WATER USE AND ROAD USE -
IN BONNY DOON - MORE ACCESSORY UNITS
"WITH TOLLETS" SEEM LIKE MORE RENTALS
& MORE DENSITY - I AM OPPOSED

DON'T RELAX OWNER OCCUPIED IN RURAL
AREA ~

Name (optional) MARGARET K. WILSON Contact Number (optional): 423-9092

You can view Board of Supervisors staff reports at www.co.santa-cruz.ca.us; click on "Agendas and Minutes"

BOSSOWILLIAMS

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March 12, 2008

* Certified Specialist in Taxation Law
** Certified Specialist in Estate Planning, Trust & Probate Law
By the State Bar of California, Board of Legal Specialization

Board of Supervisors
Santa Cruz County
701 Ocean Street, 5th Floor
Santa Cruz, CA 95060-4073

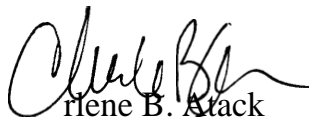
**Re: Summary of Proposed Regulatory Reforms:
Small-scale Residential Projects
Agenda - March 17, 2008**

Dear Chairperson Pirie and Members of the Board:

This letter is in support of the Planning Department's regulatory reforms relating to small-scale residential projects. I appreciate the time and effort the Planning Department and your Board have taken to make the planning process more efficient. Sometimes less is better.

I hope you will vote in favor of the recommended reforms.

Very truly yours,


Charlene B. Attack
Cha

CBA/kj

J:\wpdata\Charlene\BoardofSupervisors.ltr.wpd

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STEPHEN GRAVES & ASSOCIATES

Environmental and Land Use Consulting

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

March 14, 2008

As a professional land use consultant in the County of Santa Cruz for over 18 years, I am extremely pleased that the Planning Staff has taken the bold step of correcting long standing problems in the planning process and has forwarded to you for consideration a list of practical reforms for small residential projects. On behalf of myself, my colleagues, and my clients, I urge you to direct staff to proceed with formal ordinance amendments in SUPPORT OF ALL STAFF RECOMMENDED CHANGES. I commend both staff and the Board for having the willingness to correct and improve upon the planning process by easing these over-restrictive, and ineffective existing policies. Staff has accurately identified areas that have long served as a drain on staff time, as well as having placed unnecessary expense and restrictions on the average property owner. Generally, it appears that the push is for more and more restrictions regardless of their fairness and/or effectiveness. It is always easier to say NO than it is to correct mistakes of the past and to learn from situations which are not functioning effectively. **Kudos to staff for putting forth this effort.**

In particular, the changes regarding accessory structures and second units are long overdue. Most jurisdictions in the Central Coast have long ago shifted to the type of changes that staff has proposed which are more in line with recent State laws encouraging the construction of smaller second units, which by their nature are affordable and meet an unmet need for smaller units. The accessory structures changes are also logical and reasonable. The current policies force applicants into unreasonable designs and were put in place under the assumption that every guest house would be converted illegally to a second unit. Despite being a negative and pessimistic outlook, this is simply not true. Most homeowners if given a reasonable and clear process will do the right thing within the guidelines of the approval process. The other recommendations are common sense, reasonable and deserve your support. It is this type of proactive thinking, demonstrated by staff's proposed reforms, that can renew this community's faith that they will be treated fairly and reasonably by the County when they decide to embark on an application.

While I disagree with the assertion that proposed revisions of the accessory structures ordinance will have potential environmental impacts, I understand staff's recommendation to the Board to adopt all of the remaining proposals. **I URGE YOU TO APPROVE THIS PACKAGE AND DIRECT STAFF TO FOLLOW THROUGH WITH THE REMAINING CHANGES TO THE ACCESSORY STRUCTURES ORDINANCE.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Graves', followed by a large handwritten number '67'.

Steve Graves

2735 Porter Street
Soquel, CA 95073

Phone (031)465-0677 Fax (031)4-65-0670

BETTY COST, AICP

PPS

PLANNING AND PERMIT SERVICES, LLC

Mailing address: PO Box 355 Aromas, CA 95004-0355
Phone: Office (831) 724-4597 Watsonville Cell: (831) 227-3903
Email: BC@BettyCostPPS.com or BettyCostPPS@aol.com

March 12, 2008

**RE: MARCH 18, 2008, BOARD OF SUPERVISORS AGENDA
ITEM REGARDING PROPOSED REGULATORY REFORMS FOR RESIDENTIAL PROJECTS**

Dear Board Members:

I am writing in **SUPPORT** of approval of **ALL** of the proposed ordinance changes for small-scale residential projects. I believe these reforms will greatly benefit residential homeowners in Santa Cruz County. They are all needed, and I appreciate Planning staff's proposal of all the these changes. It will make getting permits for these small-scale projects much more reasonable and manageable. The permits will be less costly and time-consuming for homeowners, and consequently will promote in general the obtaining of permits for such projects.

I particularly support the removal of occupancy and rent level restrictions for second units. I believe this type of unit is a good answer to the need for small residential units within the housing market. These units are particularly good for singles and new families, as well as seniors and others who cannot afford larger units.

I also think that the safeguards that planning is proposing are perfectly fine for each item.

Thank you for your support of these reforms.

Sincerely,

Betty Cost, AICP

cc: Annie Murphy
Tom Burns



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

March 14, 2008

Santa Cruz County Board of Supervisors
 701 Ocean St. 5th Floor
 Santa Cruz, CA 95060

Subject: Agenda Item 67- Proposed amendments to Santa Cruz County Code Chapters 13.10, 13.20 and 16.50, otherwise known as "Regulatory Reform for Small Scale Residential Projects".

Some changes have been made to this Planning Department proposal that lessen the environmental impacts. We appreciate that our concerns are being considered. However there are still four code changes in particular that are obviously growth inducing and that oblige the County to do environmental review in order to comply with the California Environmental Quality Act. These changes are those that loosen the requirements for "Habitable Accessory Structures" and that make building second units a "right" for developers of new subdivisions, especially those subdivisions outside the Urban Services Line. We are also concerned about specific reductions in the level of review for applications and by the poor state of code enforcement.

The inclusion of toilets has been removed from the code changes currently under consideration for "Habitable Accessory Structures", however this does not alter the fact that these units can be used for full time occupancy and that they can be used as rental units. Current code 13.10.611 Accessory Structures states that: "The number of habitable accessory structure shall be limited to one per parcel unless a Level V use approval is obtained." The proposed change in the text at our disposal states: "Amend Section 13.10.611(c)(5) of the County Code to restrict the number of HAS on a property to 2 w/ Level 4 Approval". Code section 13.10.681 Second Units states: "A second unit and any other accessory residential structure (including but not limited to agricultural caretakers quarters and guest houses on residential parcels; but excepting farmworker housing on agricultural parcels greater than ten (10) acres outside the Coastal Zone) shall not be permitted on the same parcel." "Current practice" as described on page one, number 3, of the Planning Department proposal summary appears to violate County Code.

Amending 13.10.322(b) of the County Code to lower the level of review from Level V to IV for "Habitable Accessory Structures" (and non-habitable) exceeding size and height requirements can make approval of over height and size buildings relatively automatic. The same is true for the height of Second Units in section 13.10.681(d)(4). In urban neighborhoods the height and square footage of adjacent buildings is a major impact on neighbors. In rural areas this change is so sweeping that Level V review is absolutely necessary. We think this proposed change in the

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level of review is a mistake and it should be removed from consideration. As we state below, Level V review should be changed to include public notice just as Level IV does.

Level IV approval is an internal ministerial decision that does not require the kind of consideration or public review required by Level V or a Zoning Administrator public hearing. Level V review procedure needs to be changed to include public notice to near-by property owners. We agree that the proposed improvements in Level IV public notice would be more useful to neighbors, however a Level V hearing is more appropriate for those discretionary permits allowing additional habitable structures and oversize buildings. A permit to build substantial additional square footage of habitable buildings on their lot is a major financial benefit to those landowners who receive it. There is nothing unreasonable about requiring a public hearing that is paid for by the applicant. In our opinion it is good public policy and we are confused as to why carefully considered decisions by a previous County Board of Supervisors are being disposed of in this way.

Amending the Code to remove occupancy and rent requirements for Second Units is an odd proposal in a time where affordable housing is such a major topic of discussion. We do not understand why this set of rules is not retained in some manner that does not disposed of it entirely as recommended by the Planning Department Proposal.

Permitting four habitable units (rather than two) on a one acre rural lot (the house, the second unit and two habitable accessory structures) is a major code change and an intense land use that will affect many R1, RR, RA and other rural zoned areas. We fundamentally oppose such an intense land use especially on smaller parcels. The Planning staff do not seem to be able to envision these impacts. The buildings, their parking, driveways, septic systems and additional storage and utility areas will cover the entire lot. This intensity of development will dramatically degrade surface water quality, reduce ground water recharge, eliminate wildlife habitat and convert rural mountain neighborhoods into urban style subdivisions. Amending the approval process to allow staff approval (Level IV) places this change outside the view of everyone in the community except for those residents within the 300 ft. notification perimeter. Most County residents do not know how to respond to a notification letter from the Planning Department and they may not understand what is being proposed in their neighborhoods or in their private road associations.

The apparent basis of the Planning Department's claim that the new proposed rules for Habitable Accessory Structures are more restrictive than the existing code has to do with the rules for lot coverage.

The density of development legally permitted on any rural (or urban) lot, in various zone designations is limited by County Code Sections and by the physical attributes of the parcel or lot. These attributes include slope (steepness on various areas of a parcel), road and driveway access, septic system suitability, property line and road setbacks, stream channel set backs, biotic resources, timber or agricultural zoning and so on. The impact with smaller lots will be more intense than the cumulative impact with large lots because there are many more smaller lots than large ones. A realistic cumulative analysis of the impact of these changes to the Code can only be answered by a detailed review of the existing parcel land base. Only the County staff

themselves have the ability to do this kind of analysis by using their proprietary **GIS** system (Geographic Information System). This would be the basis of a CEQA compliant Environmental Impact Report assessing these proposed changes to County Code.

This short explanation is the basis of our assertion that it is very uncertain what the impacts of the proposed changes to the Code may be regarding rules for "Habitable Accessory Structures" and why these changes need CEQA review.

Because only the County staff themselves can answer the question about cumulative development impacts, the public is **left** in the dark about the real impact to neighborhoods, water resources, public and private road systems and wildlife and biotic communities. This is why the Sierra Club continues to assert that the County is obligated to do CEQA (California Environmental Quality Act) analysis.

The second of the two proposed code changes we are most concerned about is the change to amend subsection 13.10.681(c)(1) and allow developers to build ADUs [Second Units] as part of new subdivisions. In areas **of** the County outside the Urban Services Line this is a major change in policy essentially doubling the density of dwellings on the same land area. The impact to septic system loading will be a major impact. Everyone supplied from the City of Santa Cruz Water Department should view this proposal with alarm because their water supply will be more polluted. What developer would not take advantage of this rule change? It will be automatic that every new subdivision will have twice the number of units on the same land area. Package septic systems will be much more likely to be overloaded. We are incredulous that Environmental Health is so unconcerned about this proposal.

The changes to rules for fences, water tanks and other minor issues are reasonable. It is not our intent to obstruct reasonable changes in County Code that are duplicative or unnecessary. The problem for us is that this Proposal blends both major and minor changes into one package. As a former general building contractor with experience of several different city and county building permit processes, I understand the frustration that homeowners can experience when applying for permits. In my opinion the most important problems have to do with incorrect information that is conveyed to applicants. Building in an area like the Santa Cruz Mountains is inherently complex and there is no way to "streamline" rules for geologic hazard, slope, water quality protection, or other landscape based constraints. These rules must take into account the physical conditions of an individual parcel or they will be useless. People accustomed to the permitting on converted farmland or other flat terrain are surprised by the rules that they must deal with when attempting to build in this county. This is why there needs to be improved and clarified rules for grading, septic systems and other fundamental regulations. Santa Cruz County is close to build-out. Those parcels that are still undeveloped are generally not suitable for development in the first place. Training **of** Planning staff to accurately convey the landscape restraints on building permits is an ongoing and basic necessity to avoid unnecessary conflicts with the Planning Department. There is no substitute for consistent and accurate information.

The ineffectiveness of code enforcement underlies all our concerns with this proposal.

People avoid the permit process simply because they can. No one enjoys applying for a building permit or paying the fees. The Planning Department does not like this basic part of their job and code enforcement **has** deteriorated to a state where it can actually be advantageous to build without permits because there are no consequences for illegal building if you understand how to game the system. Imagine a highway patrol system where compliance with the speed limits was enforced only by citizens filing written reports that include their name and address. In the first case it would be too late to stop the speeder, violations are constant, and in the second case the citizens would doubt their confidentiality and be afraid to report speeders or drunk driving. This is a reasonable allegory to the current state of building code compliance.

This situation mocks those who comply with County Code **and** it can be immensely profitable to violators. Citizens who file complaints are often ignored by Planning staff and many eventually give up. This is convenient for a Department that seems to view enforcement as an annoyance and a job assigned to new hires who may immediately plan to move out of that job. Code enforcement needs to be well paid and respected. It is **a** difficult job. It needs the resources to be effective. The Sierra Club **asks** the Board of Supervisors to require a basic reorganization of the Planning Department that will bring this essential function back into the position of importance it needs in order to be effective. Nearly every homeowner eventually breaks some County Code and we are not obsessed with the smaller issues of building repairs or small scale remodeling, though even small repairs done incorrectly can be life threatening. When the Code is flaunted so brazenly that it can be relatively easy to build entire houses from the ground up illegally, or to cut roads across the landscape with no engineering or erosion control supervision, then we have a major environmental problem that must be addressed.

Regards,



Kevin Collins

Vice Chair, Sierra Club **Santa** Cruz County Group

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 8:09 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Bert Lemke

Email : bert@seascape-design.com

Address : 258 Farallon Court
Aptos, California 95003

Phone : (831) 688-6642

Comments :

I support all of the proposed zoning amendments to improve the permit process.
I hope that the Board of Supervisors will approve all.
Thank you.

3/17/2008

67

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Saturday, March 15, 2008 11:33 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : David and Maryann Koch

Email : mask1228@aol.com

Address : 277 Enos Lane
Corralitos
95076

Phone : 831-724-4811

Comments :

We urge the Board of Supervisors to approve this item.

We applaud and fully support the Planning Department efforts to eliminate conflicts and unnecessary requirements to make the planning processes more usable and responsive to the residents of Santa Cruz County.

Despite what some have expressed, I note the the proposed changes do not encourage increased density or the construction of more units than would be allowed under current law. Instead, the changes would simply provide more practical, logical, common-sense processes and conditions for law-abiding property owners to gain approval for what is already allowed.

Please approve the proposed changes!

Thank You!
David and Maryann Koch

3/17/2008

67

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Saturday, March 15, 2008 10:02 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Leslie DeRose

Email : lesleerd@yahoo.com

Address : 45 La Jolla Street
Watsonville, CA 95076

Phone : 831-724-5309

Comments :

Dear Supervisors,

I want to express my concerns for the current zoning regulations for small residential structures. I encourage you to adopt the proposed amendments to Santa Cruz County Code chapters 13.10, 13.20 and 16.50

Thank you
Leslie De Rose

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Friday, March 14, 2008 5:14 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Gwen Kaplan

Email : gwen@lomakgroup.com

Address : Not Supplied

Phone : 831-476-3627

Comments :

Please vote yes for this agenda item. Simple construction improvements are becoming onerous and expensive. The current code imposes unneeded costs on homeowners, takes up the time which the planners could put to better use. If you want proper compliance to the code, make it easier and less expensive for the applicants.

Thank you.

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Friday, March 14, 2008 4:52 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Leslee Long

Email : lll-mbba@pacbell.net

Address : 2541 Orchard St.
Soquel, CA 95073

Phone : 831-688-6481

Comments :

I strongly support the planning department's revisions proposal. They are just common sense changes. If Santa Cruz County rejects common sense we are more broken than Washington, D C.

If you care about your constituents, please pass these changes.

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Friday, March 14, 2008 3:35 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Gary Smith

Email : garyws@charter.net

Address : 270 Evening Hill Ln.
Watsonville, CA 95076

Phone : 831-724-7665

Comments :

Hello Board Members,

I am writing to offer my support for the great work accomplished by Tom Burns and his planning staff regarding the proposed regulatory reforms for small-scale residential projects. I worked in the Santa Cruz County fire service as a fire chief for over 20 years and I have served as the Executive Director of Leadership Santa Cruz County for the last 4 years. I can tell you unequivacally, that complaints about the Planning Department are very common, especially if you are doing any kind of building project requiring a permit. The challenge for those of us who respect the need for Planning requirements has been to define the specific changes needed without taking down the entire Planning system. Most of us respect the need for planning and building requirements but at the same time realize that the current status of the regulatory system is "out of control". Tom and his staff has accomplished a remarkable achievement by recommending appropriate changes to the regulations; their recommendations are very appropriate! The only reason not to accept these changes is to purposefully want to keep the planning requirements rigorous to prevent people from wanting to ever use the system to add to or improve their residential property. So what does that gain? A lot of illegal activity and/or very frustrated conscientious tax payers and community leaders who have no answer except to work at cross-purposes with the system. This will lead to many more political and legal problems in the future, a wasteful and inappropriate way to govern! Please support the regulatory reforms offered by the Planning Director and encourage that the next moves for regulatory reasonableness occur for small business development in Santa Cruz County.

Thank You! Gary W. Smith

PS. I have a meeting in Colorado that ends on Tuesday morning; I am going to try to get back in time to attend the public hearing.

3/17/2008

67

Annie Murphy

From: Barbara J Palmer [bpalmer@baileyproperties.com]
Sent: Thursday, March 13, 2008 11:32 AM
To: Annie Murphy
Subject: RE: Regulatory reform Board hearing scheduled for March 18th at 1:30 pm

Dear Annie:

I appreciate you sending me the latest information on reform as well as the information concerning the time. This is a great help when we try to understand everything. We admire the staff at the Planning Dept. for attempting these changes. I had no idea it would become controversial; it seemed so benign when we attended the first presentation.

These are were of concern:

1. The Deed Restriction. Now that we understand it will probably help us as Realtors to have the notation that will show on the Preliminary Report that a ancillary structure is non-habitable it should help buyers better understand what they are purchasing, (and what they are not purchasing, a rental unit on the property.)

Somewhat of a concern:

1. The primary residence -- shown by a Homeowner's exemption -- can have the second unit. I hope my understanding is correct: that if the owner became sick and needed to go into a care facility they could rent their home out for an interim period of time to help pay for their care. We have heard horror stories at the Santa Cruz City over this issue, that people were forced into a sale -- which had adverse tax consequences because they had to temporarily move away to take care of a sick parent.

Still of concern:

1. Random visits. This is a personal concern for me, and probably grounded in emotion as much as logic. My perception is that the Planning Dept. will keep a list of non-habitable ancillary units that are permitted, and when time allows go visit all or some of them. I understand when complaints are made about too much traffic, people living in garages and other places that are unsafe and unhealthy for them as well as the surrounding neighborhood it is necessary for the County Planning Dept to check these places for possible violations -- which is much different than keeping a list and making random visits.

If I am wrong on any of these assumptions or conclusions please let me know.

Thanks again for your hard work as well as the notice.

Barbara J Palmer, REALTOR® *CRB*
 Business Manager
 Bailey Properties Inc.
 831-688-7434 x 603

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

June 18, 2007

Subject: Residential Small Project Reform Discussion, Agenda Item# 6/19/07.

Dear Board of Supervisors:

I am writing this letter on behalf of my husband and myself in support of ALL STAFF RECOMMENDED CHANGES and list of reforms for small residential projects.

We commend the staff and the Board for working towards making reforms that make the permit process more streamline for both applicants and staff.

We have had a terrible time over some wording in our discretionary easement that has affected the use of our private road to use our 50 acres for a horse retirement ranch. We have spent many hours and many thousands of dollars to have some wording removed from the discretionary easement to continue to operate our ranch that cares for 15 older horses. We have met with Glenda and other staff members and are in the process of having the issue resolved . I believe that both the County staff, ourselves , and our land use consultant would agree that the process has been expensive and time-consuming at no benefit to anyone involved.

I spoke in support of these changes at the last meeting it was on the agenda. I listened carefully to the objections by environmental groups and others and found none of the objections to be based on fact.

The proposed changes do not eliminate the requirement for a project to comply with current environmental standards. They simply make the process more streamline, less confusing, and in my opinion more reasonable and fair to the property owner.

I believe that most land owners want to comply with County rules and regulations but often the cost and complexity of the process causes them to make changes without permits. The more reasonable and simple the process is the more compliant land owners will be.

These small changes will make big positive changes to many land owners and I
COMMEND THE BOARD AND STAFF FOR BRINGING THESE CHANGES
FORWARD.

Sincerely,

Natalie and Steven Miles

67

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 9:46 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Libby Huyck

Email : Not Supplied

Address : Not Supplied

Phone : Not Supplied

Comments :

To the Board of Supervisors:

I would like to compliment you on the difficult attempt at simplifying the permit restrictions. However, your efforts do fall short of what is truly required. More burdensome regulations are not the solution, but rather, the cause of the exponential rise in the number of illegal units in this county. Perhaps a little lesson in history is helpful here. It was only 235 years ago when the Revolution against the British troops for invading homes for violations of the tariff laws occurred. Americans fought for property rights then and we fight for property rights now because "freedom and property rights are inseparable. You cannot have one without the other" (George Washington 1776). Once government works against the people by enforcing "compliance monitoring", as mentioned in the below program, you risk the complete ire of all the people. Quite simply, you are violating the Constitution, Federal and State. These are the laws that we must abide by so that we, the people, run the government and not the other way around. We are a young country so please learn from history.

I strongly urge you to make necessary changes to make sure every single sentence in your "reforms" complies with the Constitution. To name just one egregious example, the periodic inspection procedure for monitoring compliance violates the California Code of Civil Procedure 1822.50 which allows a search warrant to be issued only after permission to inspect has been sought and refused. Local laws are void when a state law exists.

So please learn to work with property owners, especially since your livelihood depends upon the taxes they pay. Rather than an antagonistic relationship with the people, please strive for a symbiotic relationship.

Thank you.

Libby Huyck

P.S. I noticed the County Counsel who signed all the forms doesn't have the name printed below the signature which is the standard protocol for such legal forms. Since the signature is illegible, please change this format so the public knows who is signing on behalf of the County Counsel.

Proactive Code Compliance Inspection Program

One of the primary concerns that arose in our meetings with the community and your Board regarding the regulatory reform proposals was the need for an effective monitoring program to ensure that accessory structures remain, over time, as they were originally permitted. A proactive inspection program was discussed in our earlier letters as one method to ensure that both habitable and non-habitable accessory structures retain the features and remain consistent with the use granted by the underlying permit. Your Board asked for additional information on how such a program will work, and what the impacts will be on our existing Code Compliance Program.

3/18/2008

67

The monitoring program will be anchored by a clearly worded declaration that will be required of all homeowners at the time of permit issuance, defining both the permitted features and the legal uses for the building. This declaration will be recorded on the property title and run with the land to ensure that future purchasers are also made aware of the restrictions that apply to the permitted accessory building. The declaration will also provide notice of the County's intent to conduct periodic compliance monitoring. To accomplish this, a compliance-monitoring fee will be collected at the time of permit issuance, as authorized by Section 13.10.61 I (d) of the ordinance before your Board. This fee will be included in the next update to the Unified Fee Schedule as part of our budget proposal for the FY 08-09 fiscal year. These monies will be deposited into a special fund set aside for this purpose. To minimize program costs and staff impacts, we will implement a compliance-monitoring program that includes a combination of mailed affidavits and on-site inspections. Inspections will be scheduled if an owner fails to complete the affidavit, or if there were inconsistencies in the material provided. Inspections will also be scheduled on a random basis to verify the accuracy of the affidavits. We believe that this will be an effective approach without overburdening the existing code compliance staff. If violations are found at the time of inspection, we will initiate corrective code enforcement action, and related cost-recovery for time spent achieving compliance. It is our intention to require participation for nearly every category of accessory structures, with the exception of attached garages, open structures such as carports and barns, and very small accessory buildings where conversion risks are minimal.

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 5:51 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date :

Item Number :

Name : Ken McCrary

Email : kenm@big-creek.com

Address : Not Supplied

Phone : Not Supplied

Comments :

Re: Accessory Structure Ordinance 13.10.681.8(d)2

Please reject proposed ordinance 13.10.681 8 (d) 2, Section XIV (e) regarding searches of property as a condition for a building permit. A fundamental, inherent right, guaranteed by the U.S. Constitution, is not conditional for any reason, including as a condition for a building permit.

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 5:42 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Katherine Woodthorp

Email : katewood33@aol.com

Address : Not Supplied

Phone : Not Supplied

Comments :

To:

Santa Cruz Board of Supervisors

Regarding: County Ordinance Code Chapters 13.10 - 13.20, and 16.50, rent control, occupancy rates, and additional strike-outs.

First I would like to commend the Board of Supervisors for being willing to revisit these issues and draft them more closely to accepted and existing law. This is a vital link to establishing a better relationship with property owners.

Many people in the community have been adversely impacted by these requirements since these ordinances were put into effect. I think it is important for the BOS to also establish a plan to rectify the unauthorized or non-conforming filings (i.e. rent control, occupancy rates, deed restrictions, and red tags) that citizens have been required to record against their property; and further, to establish guidelines for allowing those recordings to accurately reflect the precepts of County ordinances as passed and approved. In other words, if a property owner has been required to file a non-conforming instrument against their property because of an ordinance which has been modified or is currently no longer in effect, the Board and County should provide those citizens relief from these filings which are no longer necessary. This action would establish the County's commitment to removing this burden from property owners in a positive and practical manner.

Once again, I appreciate the Board and County's efforts to resolve these issues.

Regards,

Katherine Woodthorp
P.O. 1171
Ben Lomond CA, 95006
831-420-7024

3/18/2008

67

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 5:42 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 67

Name : Katherine Woodthorp

Email : katewood33@aol.com

Address : Not Supplied

Phone : Not Supplied

Comments :

To:

Santa Cruz Board of Supervisors

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Once again, I appreciate the Board and County's efforts to resolve these issues.

Regards,

Katherine Woodthorp
P.O. 1171
Ben Lomond CA, 95006
831-420-7024

3/18/2008

67

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Monday, March 17, 2008 5:39 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 3/18/2008

Item Number : 9

Name : Katherine Woodthorp

Email : katewood33@aol.com

Address : Not Supplied

Phone : Not Supplied

Comments :

To:

Santa Cruz Board of Supervisors

Regarding: County Ordinance Code Chapters 13.10 - 13.20, and 16.50, rent control, occupancy rates, and additional strike-outs.

First I would like to commend the Board of Supervisors for being willing to revisit these issues and draft them more closely to accepted and existing law. This is a vital link to establishing a better relationship with property owners.

Many people in the community have been adversely impacted by these requirements since these ordinances were put into effect. I think it is important for the BOS to also establish a plan to rectify the unauthorized or non-conforming filings (i.e. rent control, occupancy rates, deed restrictions, and red tags) that citizens have been required to record against their property; and further, to establish guidelines for allowing those recordings to accurately reflect the precepts of County ordinances as passed and approved. In other words, if a property owner has been required to file a non-conforming instrument against their property because of an ordinance which has been modified or is currently no longer in effect, the Board and County should provide those citizens relief from these filings which are no longer necessary. This action would establish the County's commitment to removing this burden from property owners in a positive and practical manner.

Once again, I appreciate the Board and County's efforts to resolve these issues.

Regards,

Katherine Woodthorp

3/18/2008

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Water Department, 809 Center Street, Santa Cruz, CA. 95060 (831) 420-5200

March 17, 2008

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

**Subject: Regulatory Reform for Small-Scale Residential Projects, March 18, 2008
Board of Directors Meeting – Agenda item # 67**

Members of the Board:

The City of Santa Cruz Water Department (City) has reviewed the proposed “ordinance amending various sections of Santa Cruz County Code chapters 13.10, 13.20 and 16.50 regarding regulations for small-scale residential projects” and related documents contained in the December 4, 2007 and March 18, 2007 agendas of the Santa Cruz County Board of Supervisors (Board) meetings. As you likely know, the City serves several unincorporated areas within Santa Cruz County (County), owns several parcels of watershed lands within the County, and our water sources are located entirely within the County jurisdiction. The City is concerned that the proposed changes could result in increased water demand within the City’s service area and could have negative impacts on our watershed lands and drinking water sources. Thank you for considering our comments before approving the proposed amendments.

In its letter to the Board dated November 20, 2007, the Planning Department (Planning) states that “there are currently a substantial number of illegal structures being constructed” (415-4). Planning also states that the proposed changes will “not result...in an increase in water usage” (416-1). This statement is based on the assumption that the number of structures that will be built legally under the relaxed regulations will not exceed the number of structures currently being built illegally. If there are indeed a substantial number of structures currently being built illegally, then it is contradictory to assume that there is not an associated increase in water usage; a substantial number of structures being built likely results in an increase in water usage, whether those structures are built legally or illegally. Seeing as how there are currently no available data on how many structures are being built illegally (and hence how many are likely to be built legally), the City encourages the Board to direct Planning to obtain the data necessary to determine what effect the proposed changes would have on water supply before any of the suggested changes are made to the County code.

The City has a vested interest in several watershed lands and streams within the unincorporated areas of the County, and is concerned that the proposed amendments easing size restrictions for additional units and allowing for structures with larger square footage

could result in an associated increase of impervious surfaces, which in turn would result in decreased infiltration, reduced groundwater recharge, increased overland flow, increased erosion and sedimentation, and increased flashiness and flooding. The City therefore recommends that the Board directs Planning to determine what measures will be taken to mitigate any negative effect on water quality and supply before the proposed changes are approved.

Planning is recommending that the Board approve certain proposed changes that Planning believes are exempt from CEQA review, while several other proposed changes have been deferred for further CEQA analysis. The City believes that some of these changes that Planning states are exempt from CEQA review, in addition to some of those that have been deferred, will increase water demand, alter flow regimes, have an adverse impact on biotic resources and other significant affects on the environment. The City recommends that the board direct Planning to conduct an initial study under CEQA to ensure that all potential negative environmental impacts are addressed before approving any changes.

The City recognizes the need for Planning to streamline its permitting process and recommends that the County takes the opportunity during this process to include enhancements to its enforcement program and hence ensure the protection of the County's water resources. This could be achieved by updating the Water Conservation Policy to include a plumbing retrofit program for major additions and remodels, implementing a water conservation incentive program that would encourage projects to result in a net decrease in water usage (such as drought-tolerant landscaping, rainwater catchment, off-site offsets, etc), and updating the functions of the stormwater permit review process to include a stormwater run-off reduction incentive program, such as encouraging dry wells, infiltration basins/rainwater gardens, and porous pavement.

Finally, the City would like to see more coordination and involvement in the issuance of permits within the City of Santa Cruz Water Service Area. Having a role in the permitting process will help the City in determining any potential impacts a particular development may have on the City's water supply.

Thank you for your time in considering our concerns. Please contact me with any questions.

Sincerely,



Bill Kocher, Director
City of Santa Cruz Water Department

cc: read file
John Ricker, Water Resources Division Director, County of Santa Cruz
Terrill Tompkins, Deputy Water Director, City of Santa Cruz Water Department
Zeke Bean, Environmental Projects Analyst, City of Santa Cruz Water Department



March 17, 2008

Dear Members of the Board of Supervisors and Mr. Tom Burns,

I object to proposed ordinance 13.10.681 ~~8(d)2~~.

One compelling reason for objection is that your authority does not include the power to require a citizen to forsake unalienable rights, guaranteed by the United States and California constitutions.

It is *shocking* that the Board would consider requiring forfeiture of 4th amendment search and seizure protections in exchange for "allowing" a compromised (and abused) exercise of 5th amendment property rights.

Under this proposed ordinance, the exercise of one's unalienable right to the reasonable use and enjoyment of private property would become conditioned on the surrender of 4th Amendment prohibitions of arbitrary searches. This action is unconstitutional (U.S. Supreme Court; Nollan vs. California Coastal Commission, 1987).

The Board ought not to burden its staff or government employees with the carrying out of such offensive actions. You should be aware, the Ninth Circuit in Crown Point v. City of Sun Valley unanimously rejected in 2007 the notion that government workers are absolutely immune for civil or criminal wrongdoing in performing their functions. By implementing this proposed ordinance officials put themselves at high risk of incurring personal liability when abusing property rights. It is no longer a valid defense to claim, 'Judge, I was just advancing a legitimate state interest or the common good.' (Crown Point). Abuse of the right to own and use property now requires just compensation. Mr. Burns and members of his department should understand this reality.

Is it your duty to advise employees of their risks under the law?

Please reject adoption of Section 13.10.681 ~~8(d)2~~.

Michael Shaw
Proprietor, Liberty Garden

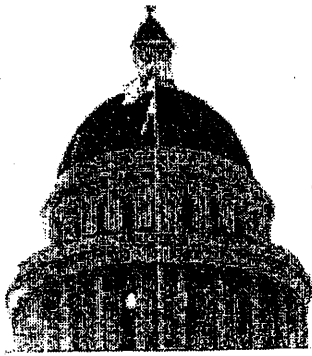
Enclosures

Zumbrun, Esq., Ronald. "Ninth Circuit resurrects Due Process Protections for Property Owners"
The DailyRecorder. 12 Nov. 2007

Shaw, Michael. "Principles of Equal Justice Encouraged by Ninth Circuit Court of Appeals."

FreedomAdvocates.org. 18 Jan. 2008

FreedomAdvocates.org. Understanding Sustainable Development Agenda 21 Freedom, CA
2007.



THE DAILY RECORDER

Official Newspaper for the City of Sacramento

901 H St., Suite 312, Sacramento, Calif. 95814 ♦ (916) 444-2355 ♦ Vol. 97, No. 220 ♦ 75¢ ♦ Monday, November 12, 2007

NINTH CIRCUIT RESURRECTS DUE PROCESS PROTECTIONS FOR PROPERTY OWNERS

By Ronald A. Zumbrun*

On November 1, 2007, the Ninth Circuit restored the ability of private property owners to access the substantive due process protections of the Fourteenth Amendment of the United States Constitution: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law...." A property owner's substantive due process rights are violated when government action (such as denial of a permit) is arbitrary or unreasonable. A separate constitutional provision, the Fifth Amendment, also precludes the government from taking private property for public use without just compensation. For years, the Fifth Amendment was considered the only recourse available for arbitrary and unreasonable conduct. In a case argued by J. David Breemer of Pacific Legal Foundation, *Crown Point Development, Inc. v. City of Sun Valley*, a Ninth Circuit Court of Appeals panel unanimously lifted that restriction.

The historic interplay between the Fifth and Fourteenth Amendments in the context of land use litigation exemplifies the United States Supreme Court's characterization of substantive due process as a treacherous field for the courts. *Crown Point Development* is the latest twist in the tale.

In a 1996 case, *Armendariz v. Penman*, the Ninth Circuit *en banc* held that the Fifth Amendment's takings clause preempted the broader protections encompassed by substantive due process. The property owner in that case was therefore precluded from maintaining a substantive due process claim against the City of San Bernardino, which had boarded up low-income housing units and evicted tenants out of a high crime area for the ostensible purpose of reducing urban blight. The property owners contended that one of the purposes of the sweep was pretextual: to enable a private commercial developer to acquire contiguous property on the cheap, bulldoze the low-income housing units, and replace them with a planned shopping center.

The property owners also contended that the City of San Bernardino failed to notify affected property owners in advance that the sweep would occur, did not inform owners of the time of the closures nor the reason why the buildings were being shut down, and did not identify specific code violations until after the sweep was completed and the buildings closed. Among other causes of action, the property owners contended that the City of San Bernardino's conduct was arbitrary and capricious in violation of their

due process rights under the Fourteenth Amendment.

In denying the property owners' claim for relief under substantive due process, the Ninth Circuit held that the Fifth Amendment provided an explicit textual source of constitutional protection against the particular sort of government behavior at issue. The Fifth Amendment, and not the more "generalized notion of substantive due process," was to be the guide for analyzing the property owners' claim. If, indeed, the City of San Bernardino's purpose was to deprive the plaintiffs of their property, either by forced sale or driving down the market value of the properties for the benefit of a private developer, a taking under the Fifth Amendment would occur because the "public use" requirement would not be satisfied.

In the wake of *Armendariz*, other challenges to excessive government regulation of private property were restricted to the Fifth Amendment, and not the broader protection of the Fourteenth Amendment. In *Macri v. King County*, for example, the Ninth Circuit in 1997 held that the denial of a property owner's application to subdivide property was actually a Fifth Amendment takings claim, not a claim of substantive due process. At the time, the United States Supreme Court had determined that land use regulations which fail to substantially advance legitimate state interests or deny an owner economically viable use of the property effect a Fifth Amendment taking. Thus, a claim seeking invalidation of an onerous regulation or arbitrary governmental conduct for failure to substantially advance legitimate state interests would preclude an alternative claim for violation of substantive due process.

In 2005, however, the United States Supreme Court in *Lingle v. Chevron U.S.A. Inc.* held that the failure of government conduct to substantially advance legitimate state interests is no longer an appropriate

test for determining whether a regulation effects a Fifth Amendment taking.

Although this takings test had been formulated by the United States Supreme Court in 1980 in *Agins v. Tiburon*, the Court concluded that it no longer plays a role in a Fifth Amendment takings analysis because the Fifth Amendment "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking."

Just compensation for a taking of private property is mandated by the Fifth Amendment, whenever property is taken. The Fifth Amendment takings clause itself presupposes that the government conduct is in furtherance of a public use. Under *Lingle*, the Fifth Amendment inquiry now "focuses directly upon the severity of the burden that government imposes upon private property rights" because "the 'substantially advances' inquiry reveals nothing about the *magnitude or character of the burden* a particular regulation imposes upon private property rights."

Although the United States Supreme Court in *Lingle* did not discuss *Armendariz* and its progeny, it expressly concluded that the "substantially advances" formula "prescribes an inquiry in the nature of a due process, not a takings, test, and that it has no proper place in our takings jurisprudence." The court emphasized that the "substantially advances" formula was derived from due process, not takings, precedents. Justice Anthony J. Kennedy, in a concurring opinion, likewise emphasized that the decision in *Lingle* "does not foreclose the possibility that a regulation might be so arbitrary or irrational as to violate due process."

Lingle thus set the stage for *Crown Point Development*, wherein the Ninth Circuit undertook a fresh assessment of the continuing relevance of *Armendariz* in the land use context, with specific focus on

claims involving arbitrary and unreasonable governmental conduct. The Ninth Circuit panel unanimously acknowledged that “*Lingle* pulls the rug out from under our rationale for totally precluding substantive due process claims based on arbitrary or unreasonable conduct.” Because there is no longer a “specific textual source in the Fifth Amendment” for protecting a property owner from conduct that furthers no legitimate governmental purpose, a property owner’s contention that government action is arbitrary or unreasonable can once again be analyzed under the rubric of substantive due process. Accordingly, the Ninth Circuit concluded that a developer may state a claim for relief based on alleged arbitrary or unreasonable denial of a permit application, independent of the Fifth Amendment. The court emphasized, however, that *Armendariz* has only been undermined “to the limited extent that a claim for wholly illegitimate land use regulation is not foreclosed.”

One of the benefits of restoring substantive due process protections for property owners is that government conduct can now be examined by a jury. In California, the determination of inverse condemnation liability is a role for the court. However, the determination of whether government conduct is arbitrary or unreasonable in the context of substantive due process can be a role for the jury. In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, a 1999 case, the United States Supreme Court confirmed that the jury’s role in vindicating constitutional rights brought under 42 U.S.C. § 1983 (the federal statute granting plaintiffs the right to sue for violations of due process) has “long been recognized by the federal courts.”

In that case, the high court concluded that a jury could resolve the question of whether a city’s decision to reject a particular development plan substantially advanced a legitimate public interest, viewed in the light of the protracted history of the development process. (The property owners submitted repeated development proposals consistent with zoning requirements and the city’s recommendations, yet received repeated denials.) Pursuant to *Lingle* and *Del Monte Dunes*, these land use questions are now to be resolved under the rubric of substantive due process, not the Fifth Amendment, and by a jury if the property owner so chooses.

It is hoped that the holdings in *Lingle* and *Crown Point Development* will provide much needed certainty for property owners and governmental entities and secure a less treacherous path for both while navigating through the land use litigation process.

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Principles of Equal Justice Encouraged by Ninth Circuit Court of Appeals



by Michael Shaw

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The recently decided Ninth Circuit case, *Crown Point vs. Sun Valley*, illustrates the contrast between social justice and equal justice. Social justice relies on the establishment of "civil law," which is designed to expand government and its partners authority at the expense of individual liberty. Equal justice on the other hand respects individual rights and private property. The *Crown Point* case sets an example for equal justice.

In a case with daunting ramifications, the Ninth Circuit Court of Appeals ruled that elected officials, "planning" bureaucracies and their agents no longer enjoy absolute immunity when processing land use applications.

In November the Ninth Circuit Court of Appeals unanimously applied a 2005 US Supreme Court decision that operates to change how inverse condemnations are evaluated. Inverse condemnations occur when government imposes restrictions or regulations that prohibit the reasonable exercise of private property rights.

The Federal Appeals Court held that government agencies and their employees can no longer use as a defense to a property owner's takings claim that they were simply 'advancing a legitimate state interest'. With this decision the federal courts will require compensation if the right to the reasonable use of private property has been abridged.

The case is *Crown Point v. City of Sun Valley* and various individuals involved with that City. The City defended against the takings claim with the Ninth Circuit's earlier ruling in *Armendariz*. *Armendariz* held that government and its individual officers can defend itself against claims of inverse condemnation by uttering the magical incantation: "We were working to substantially advance a legitimate state interest". This gave carte blanche to the implementation of the policies of Sustainable Development and its Smart Growth component.

Ironically, it was in the same Supreme Court rulings that established the right to sue for regulatory or inverse takings that also established the 'legitimate state interest' defense to such claims.

The holding in *Crown Point* was also based on US Supreme Court precedence. This is where the story becomes especially intriguing. In 2005 the Court unanimously decided *Lingle v. Chevron*. Mrs. Lingle is the Republican Governor of Hawaii. In *Lingle*, the Court held that there was no standard under takings analysis that allows government officials to claim that their efforts were in furtherance of the 'public interest'. Accordingly, inverse condemnation cases are to be decided without consideration of this defense.

Shortly following *Lingle*, the Supreme Court further changed the course of American political economics in *Kelo v. New London*. It did this by furthering the change in the meaning of the Constitutional phrase "public use" in reference to the government's eminent domain powers. Historically, public use meant that property taken by eminent domain was to be used by the public; e.g. roads, schools, post offices, police stations and the like. The concept in the *Kelo* decision was to change the meaning of the phrase "public use" and interpret that phrase to mean "public purpose".

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Public purpose has been given a broad interpretation by the Court. In effect, the court sanctioned public/private partnership economics with this ruling.

Around the country, there are emerging and growing calls for:

- privatizing our roads and jails,
- the creation of a trans-continental toll-based highway system owned by foreign corporations,
- directing public money for the construction of government controlled, privately built "affordable housing" projects in neighborhoods everywhere,
- the privatization of military forces,
- the collectivization of water resources,
- creation of greenbelts,
- the subsidization of favored industry and/or favored participants and
- Other Sustainable Development objectives.

When I was born this approach was called fascist economics or just plain fascism. Today it is euphemistically called "public private partnership".

In *Kelo* the Court sanctioned the exercise of a city's eminent domain power when that power was used to condemn blocks of single family homes to order to allow Pfizer Corporation, the multi- national pharmaceutical corporation, to build a parking lot.

However, surrounding the black cloud of the rise of public/private partnership, the citizens can find a silver lining and a defense to this economic trend coming out of Lingle and *Crown Point*: The court in *Crown Point* effectively held: As the political economy makes way for the increase in public/private partnership, it must pay reasonable compensation to the affected private property owner. No more hiding behind the social justice magical incantation that 'Judge, I was just pursuing the public good!' The courts will now look to the burden placed on the property owner. "Benefits to the public" are no longer a consideration in taking cases

Crown Point is a simple illustration of how the principles of equal justice contrast with the doctrine of "social justice". Social justice can be defined as law formulated to obtain government's social objectives at the expense of individual liberty. Many law schools, including my alma mater, now teach social justice principles when training new lawyers. The American concept of equal justice supports a respect for the independence and the unalienable rights of the individual. Social justice and equal justice are diametrically opposed standards of law. Private property is ultimately abolished under social justice doctrine.

What the court did in *Kelo* poses a terrible threat to Liberty. At least in *Crown Point* the court gave us - the mass of individuals, small concerns, and freedom defenders - a powerful tool designed to stop the systematic destruction of free enterprise, the abolition of private property, and the end of liberty:

'If you take from me the use of my property, you will have to pay for it' can now become the motto of all extorted landowners toyed with by planning and land use agencies.

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