COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
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August 16,2007

AGENDA DATE: August 28,2007

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

Subject: Regulatory Reform for Small-Scale Residential Projects

Members of the Board:

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

Overview of Small-Scale Residential Reforms and June Discussion

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

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

- Wanting to design the specific reforms in a fashion that does not result in increased illegal conversions of structures to more intense land uses. These concerns addressed both the scope and specifics of the reforms as well as related enforcement efforts.
- Wanting to make sure that the levels of review for specific discretionary permits are carefully selected to balance applicants' desire for a streamlined process with the

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

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

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

Proposed Reforms of Accessory Structure Regulations

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

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

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

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

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

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

Allowed features and permit requirements for accessory structures

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

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

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

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

Accessory structure regulations related to density of development

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

Review levels for accessory structures exceeding specified limits

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

Decks and site standards

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

Second Units

Occupancy limits

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

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

Ownership requirements

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

Improvements to Code Compliance Process

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

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

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

Legal Authority

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

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

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

Staffing Resources

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

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

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

Financing

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

Streamlining the Building Permit Process

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

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

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

Conclusion/Recommendation

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

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

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

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

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

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

Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan A. Mauriello
County Administrative Officer

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

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

ATTACHMENT 1

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

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

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

SUMMARY OF PROPOSED REGULATORY REFORMS: SMALL-SCALE RESIDENTIAL PROJECTS

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

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

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

Accessory Structures (continued)

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

Second Units

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

Non-conforming Structures

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

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

Coastal Regulations

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

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

Other Recommended Modifications

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

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

Other Recommended Modifications (continued)

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

ATTACHMENT 3

COUNTY OF SANTA CRUZ

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OFFICE OF THE COUNTY COUNSEL

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August 14,2007
Agenda: August 28,2007

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

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

Dear Members of the Board:

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

1. Existing County Imposed Occupancy Limits

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

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

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

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

2. Historical Development of the State Housing Law

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

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

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

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

ATTACHMENT 3

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

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

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

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

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

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

3. Conclusion

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

DANA MCRAE, COUNTY COUNSEL

By _____
Rahn Garcia
Chief Deputy County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

cc: Tom Bums, Planning Director

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET: 4TH FLOOR: SANTA CRUZ, CA 95060
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TOM BURNS, PLANNING DIRECTOR

June 5,2007

AGENDA DATE: June 19,2007

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

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

Members of the Board:

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

Background

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

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

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

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

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

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

Goals of Reform Effort

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

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

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

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

Timing for Overall Regulatory Reform Proposals

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

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

Overview of Small Scale Residential Issues

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

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

Changes for Accessory Structures

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

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

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

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

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

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

Changes to Regulations Related to Second Units

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

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

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

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

Non-Conforming Structures

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

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

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

Coastal Regulations

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

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

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

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

Other Changes

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

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

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

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

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

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

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

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

Related Code Enforcement Issues

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

Conclusion/Recommendation

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

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

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

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

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

Sincerely,

Tom Burns
Planning Director

RECOMMENDED:

Susan A. Mauriello
County Administrative Officer

Attachment 1 – Summary of Proposed Regulatory Changes

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

SUMMARY OF PROPOSED AMENDMENTS

Accessory Structures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Second Units

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

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

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

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

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

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

2) Delete income and occupancy restrictions for second units.

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

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

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

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

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

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

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

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

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

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

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

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

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

orm Structures

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

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

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

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

Proposed solution: Staff is recommending that all conforming additions to non-conforming structures would no longer require discretionary approval, and would **be** allowed with an approved building permit.

2) Reclassify structures that exceed the height limit by more than five feet from significantly non-conforming to non-conforming, allowing for structural enlargement, reconstruction, repairs and alterations of such structures.

Problem and regulatory context: Currently, structures that exceed the allowable height limit by more than five feet are considered significantly non-conforming under section 13.10.265(j). Significantly non-conforming structures (which also include structures built over property lines, within five feet to a structure on an adjoining property or within five feet of a vehicular right-of-way) are considered to be detrimental to the general welfare of the County. A Level V permit is therefore required for any structural change to a significantly non-conforming structure. In contrast, houses that exceed the required height limit by less than five feet are currently considered non-conforming rather than significantly non-conforming. Owners of such houses can make structural repairs and construct conforming additions with an approved building permit.

A large number of houses in the County exceed the current height limit by more than five feet, and are thus considered significantly non-conforming, due to changes in the way the County has measured height over the years. This is particularly the case for structures located on sloping lots. Owners of such structures find it extremely difficult to properly maintain, repair or add to their homes, since current regulations require a Level V approval for any structural alterations. By making it difficult for such property owners to make needed structural repairs, the County may in fact be encouraging deterioration of structures, conflicting with the intent of the ordinance to promote orderly development in the County.

It is clear how other types of significantly non-conforming structures, such as structures located across a property line, could be detrimental to the general welfare. It is less clear how structures exceeding the height limit by more than five feet are as problematic, especially since they were initially permitted by the County. The degree of non-conformity posed by structures exceeding the height limit by more than five feet seems more similar to structures classified as non-conforming, such as structures that extend over a required setback.

Proposed solution: Staff recommends eliminating height as a significantly non-conforming category, and treating all structures over the height limit as non-conforming structures. This would allow owners of over-height structures to make needed structural repairs and construct conforming additions to such structures.

Coastal Regulations

1) Allow Coastal exclusions for demolition of structures in rural areas in the Coastal Zone.

Problem and regulatory context: In the Coastal Zone, demolition within the appealable jurisdiction of the Coastal Commission, and demolition outside of the Urban and Rural Services Lines (rural properties) requires a Level V Coastal Approval with a full public hearing. However, demolition in other areas of the Coastal zone is excluded from permit requirements, pursuant to 13.20.071. In discussions with staff, it was agreed that for most demolition projects, requiring a full public hearing is unnecessary and is burdensome for applicants, since demolition normally creates few impacts. Other counties in the Coastal Zone, such as Marin County, exclude demolition from requirements for Coastal Approval, unless the demolition occurs within an environmentally sensitive habitat.

Proposed solution: Staff is recommending that the Coastal regulations be modified to allow exclusions for most demolitions. However, any demolition that could affect a prehistoric or historic resource, a biotic resource or sensitive habitat, or cause damage to a significant tree would still require Coastal Approval. Demolition within the appealable areas would still be subject to Coastal Approval. During preliminary discussions, the Coastal Commission expressed their willingness to consider this approach to demolition.

2) Develop an administrative Coastal Approval process for residential additions greater than 500 sq ft in rural areas of the Coastal Zone.

Problem and regulatory context: Section 13.20.071 in the Coastal regulations requires Coastal Approval with a Level V public hearing for additions greater than 500 square feet in rural areas. However in non-rural areas of the Coastal Zone, additions generally require only a building permit. Since additions to homes in rural areas in the Coastal Zone typically generate few impacts, such projects generate little public concern and receive very few comments during public hearings. However, there are a few limited situations where large additions in rural areas have the potential to create minor visual impacts or other impacts. Although a full public hearing is not needed to address the minor impacts of such projects, staff still finds it appropriate to retain a level of discretionary authority.

Proposed solution: Fortunately, the Coastal Act allows for minor projects such as rural additions to be approved administratively without a public hearing, as long as the project is noticed properly and a public hearing is held if requested.

Several other Coastal Counties include provisions for administrative approval of certain categories of projects in the Coastal Zone. Staff believes that an administrative review process for rural additions in the Coastal Zone would give the approving body sufficient discretionary authority to address any project impacts. The Coastal Commission has expressed their willingness to consider an administrative approval process.

3) Develop an administrative Coastal Approval process for grading in the Coastal Zone.

Problem and regulatory context: Section 13.20.077 in the Coastal Zone regulations requires Coastal Approval with a full public hearing for grading that exceeds 100 cubic yards. Grading exceeding 100 cubic yards in all areas of the County also requires a grading permit. The review process for grading permits addresses most grading impacts, requiring implementation of erosion control measures and environmental review, such that in most situations the requirement for an additional Coastal Approval is redundant. Occasionally however, there may be potential minor visual impacts or other types of impacts that would not be addressed during the review of the grading permit, such that discretionary review may be appropriate. However, grading projects do not generate the level of impacts or public concern to justify a full public hearing. The current requirement for a full public hearing for grading projects requires the applicant to spend a disproportionate amount of time and expense to obtain approval of their project.

The requirement for a Level V Approval with a public hearing for grading in the Coastal zone also appears overly stringent in relation to other Coastal zone requirements. For example, single-family dwellings in certain areas of the Coastal Zone require only a building permit, but the grading for the house requires a Coastal Approval with a full public hearing if the grading exceeds 100 cubic yards.

Proposed solution: Similar to staffs recommendation for administrative review of rural additions, staff believes that an administrative review process for grading greater than 100 cubic yards in the Coastal Zone would give the approving body sufficient discretionary authority to address any project impacts and would provide a level of review in proportion to the level of impacts generated. The Coastal Commission has expressed their willingness to consider this approach.

4) Exempt solar energy systems in the Coastal Zone from requirements for Coastal Approvals, in compliance with state law. Continue to require that roof-mounted solar systems shall not exceed the height limit of the zone district by more than 3 feet.

Problem and Regulatory Context: State Law AB 2473 requires that local jurisdictions approve solar energy systems for residential, business and agricultural use, through the issuance of a building permit or other non-

discretionary permit. It further specifies that the review of such a system shall be limited to considering whether the system meets all health and safety requirements of local, state and federal law. The law prohibits design review of solar systems for aesthetic purposes. The state law does not provide for separate provisions within the Coastal Zone.

Currently, County regulations exempt improvements to single-family residences and to other structures within the Coastal Zone from requirements for Coastal Approvals. However, improvements to structures that are located within 50' of a coastal bluff or on a beach are not exempt. Those portions of our coastal regulations that require discretionary review of solar energy systems and allow for consideration of criteria other than health and safety do not conform to state law. Although a policy interpretation has been written to address immediate concerns, our Coastal zone regulations should be amended to comply with state law. Additionally, it is important for the County to remove barriers standing in the way of property owners wishing to install sustainable energy systems for their homes.

Proposed solution: To comply with state law, all solar energy systems will be exempt from requirements for Coastal Approval throughout the Coastal Zone. Existing County regulations prohibiting all roof-mounted solar systems from exceeding the height limit of the zone district by more than 3 feet should address visual impacts resulting from roof-mounted systems.

Other recommended modifications

1) Modify Section 13.10.521 to delete the requirement for a discretionary permit when using a less than 40-foot right-of-way as access to an existing lot of record.

At the time this ordinance was enacted in 1962, Planning was the only agency that reviewed development applications. Other agencies now review ministerial permits including the Fire Department and Public Works, and address any issues with rights of way and road standards as part of this review process. It is therefore no longer necessary and redundant to have a separate permit to use a less than 40-foot right-of-way as access to an existing lot of record. Deletion of this permit requirement would not alter the requirement to obtain discretionary approval to create a new less than 40-foot right-of-way or utilize one for a proposed lot.

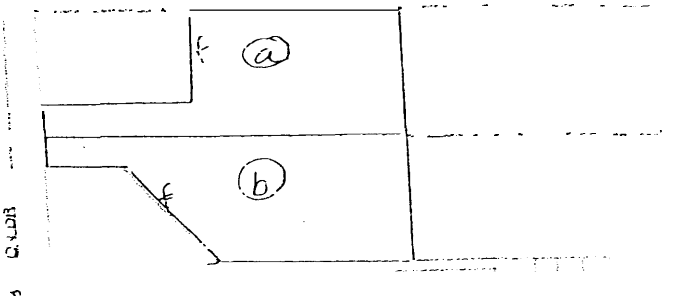
2) For residential properties with an existing house within an agricultural buffer, allow by right minor additions or new habitable accessory structures within the agricultural buffer, as long as the new development does not extend further into the agricultural buffer than the existing structure.

Current regulations (Section 16.50.095(g)) require Level IV Approval for additions to existing residential structures or for new habitable accessory structures within agricultural buffers, if the proposed construction is closer than 200 feet to commercial agricultural land. Such requirements were implemented primarily to allow staff to require the installation of appropriate physical barriers to minimize the need for the 200' buffer, and to require the property owner to record deed restrictions acknowledging their responsibility to permanently maintain the required barrier. However, such requirements can be included as standard project conditions, and do not require discretionary review. Since such properties already have a residential use within the 200-foot buffer area, requiring a Level IV discretionary approval for minor additions or new habitable accessory structures that extend no further into the agricultural buffer seems redundant.

Staff is proposing to eliminate the requirement for Level IV Approval for additions and habitable accessory structures less than 1,000 square feet that do not extend any further into the required agricultural buffer than the existing residential development. Staff would require as standard conditions of approval the installation of appropriate physical barriers and the recordation of a deed restriction acknowledging that the property owner must permanently maintain the required buffer setback and physical barrier.

3) Allow by right the construction of fences up to six feet in height in all residential yards that do not abut a street or right of way.

On some County properties such as corridor access lots, the front yard does not abut a street but is instead bordered by another property, as illustrated by lots A and **B at** right.



Although technically a front yard by definition, these yards effectively function more as side or rear yards. The front yard fence of such properties has no impact on the street and **do** not affect sight distance of neighboring driveways or roads. Existing regulations (Section 13.10.525(c)) require a Level III approval for all front yard fences taller than three feet, regardless of whether the front yard abuts a street or another property, yet regulations allow fences up to **six** feet in height in side and rear yards not abutting a street, and do not require permits for such fences. Staff is recommending that we allow by right fences up to **six** feet in height in all yards or portions of yards that do not abut a street or right of way, in order to allow all property owners the right to install privacy fences between adjoining properties.

4) Allow required pool barrier fencing to be four feet in height within required front and street side yards.

The Uniform Building Code and section 12.10.070 require a minimum four-foot high barrier fence around swimming pools for safety reasons. The current fence regulations limit the maximum fence height within front yards to three feet; therefore, the required fencing for pools located within front yards always requires Level III discretionary permits to exceed the three-foot height limitation. Since these Level III requests are always approved because of the four-foot minimum requirement, it makes sense to add an exception to the fence height requirements to allow the installation of a pool barrier four feet in height. However, the installation of any required pool barrier within a front yard must be constructed with materials that do not obstruct sight distance.

5) Reduce the10-foot required separation between structures on a property to 6 feet, and eliminate the separation requirement between water tanks.

Section 13.10.323(e)6(C) currently requires a ten-foot separation between any two structures on a parcel. However, the Fire Code and Building Code typically requires only six feet between habitable structures. The additional zoning restrictions were imposed to provide additional light, air, and privacy between structures on a parcel. It is logical from a zoning perspective to regulate privacy and light access between properties. For structures located on the same property however, it may be more appropriate to require sufficient separation between structures to protect health and safety, and to allow the property owner to determine the appropriate amount of light access or privacy required. Allowing a six-foot separation between structures on a property should have minimal impacts to neighboring properties, as required setbacks will protect privacy and access to light and air between structures on different parcels.

Existing zoning regulations also require a 10-foot separation between water tanks. However, Building and Fire Codes do not require any separation between water tanks. Additionally, the Fire Department now requires greater on-site water storage in some areas due to Urban-Wildland Intermix Code requirements, such that multiple water tanks may be required on a parcel. Allowing zero separation between water tanks provides greater flexibility for property owners, and has the potential to generate fewer visual impacts than requiring that water tanks located on separate areas of a parcel.

6) Allow electric power to vacant residential parcels or separate electric meters on a parcel, in certain circumstances

Section 13.10.611 regulates the circumstances of when electric power is allowed for residential parcels. Currently, electric power is not allowed on vacant

residential parcels nor is a separate electric service allowed for outbuildings on developed residential parcels without first obtaining a Level V permit. This regulation was created as a method to deter the creation or conversion of illegal dwelling units.

Electric service to wells on vacant residential parcels is often appropriate to facilitate fire suppression or to allow family gardens, a permitted use. Separate electric service for other incidental residential uses, such as electric gates, are often necessary due to the use not being located near the single-family dwelling.

Staff is proposing that the regulations be changed to allow low amperage electric service for these types of situations. **A** Declaration of Restrictions could **be** required to clearly indicate the allowed use of the electric service for the current and future property owners.

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August 7,2007

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

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

Dear Supervisors:

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

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

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

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

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

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

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

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

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

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

creating additional affordable housing without loss of owner supervision.

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

cc: County Planning Director
County Counsel

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CBD BOSMAIL

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

Meeting Date : 8/28/2007

Item Number : 41

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Comments :
Page 5 of Mr. Burns' new letter (Aug. 16) says that he proposes no "absolute specific percentage ownership requirement" but rather that it be, at the request of Planning Director, a requirement that the applicant demonstrate "the particular circumstances" to avoid "contrived ownership structures" that get around the owner-occupant requirement. I find this disturbing, even shocking, because (1) the County has no compelling reason to invade privacy to determine why a person is on deed, (2) it is ludicrous (even irrational) to think that an owner would irrevocably give away a part ownership of his property to a tenant by putting him/her on deed just to evade the owner occupancy requirement, (3) he offers no hint of what a "contrived" ownership means, and (4) the state second unit statute prohibits discretionary review of a second unit application, which is what Mr. Burns is proposing -- at his discretion under vague "flexible" criteria that he be empowered by the ordinance to decide whether a person on title is a legitimate owner for the purposes of the owner-occupancy requirement. The applicant is either on deed or not. I strongly request that the Board ask the County Counsel for a legal opinion on the authority of the County to adopt such a vague discretionary requirement for a ministerial second unit permit. I don't believe the County can lawfully do what Mr. Burns proposes.

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

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August 26, 2007

TO: Board of Supervisors, Santa Cruz County

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

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

Dear Supervisors:

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

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

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

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> desired inspection. In section 1822.52 the Legislature has defined the "cause" which must be shown: "Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises or vehicle."
>
> [3] While those sections are often used to authorize the so-called "area" search, where a particular section of a city, containing many run-down and dilapidated buildings, exists, the statute, by its terms, also applies to "routine" inspections based on reasonable standards. We conclude that it is that portion of the statute which is material here. The City of Pasadena has, by the ordinance before us, provided a "routine" for inspections -- namely changes of ownership, occupancy or use involving a vacation of the premises and their reoccupancy by a new owner or lessee. As the briefs before us point out, that scheme provides an on-going check on the observance of the city's zoning, health and housing ordinances, in a manner involving a minimal invasion of privacy. It also permits any corrective action found necessary by the inspection to be performed with minor (and usually no) interference with an occupant. In Camara, the United States Supreme Court, after holding warrantless searches unconstitutional in inspection cases, expressly ruled that inspection searches made under the authority of a warrant, if based on reasonable standards, were valid. And, in so doing, that court rejected the contention that the inspection be triggered by a reasonable cause to believe that some improper condition existed in the particular place to be inspected.

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

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

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

Sincerely yours,

Stanley M. Sokolow

Stanley M. Sokolow

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CBD BOSMAIL

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

Meeting Date : 8/28/2007

Item Number : 41

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

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

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

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

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

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

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Thanks to the Planning Department for their diligence.

Rose Marie McNair, Broker/REALTOR(R)