

**COUNTY OF SANTA BARBARA  
PLANNING AND DEVELOPMENT**

**MEMORANDUM**

TO: Board of Supervisors

FROM: Val Alexeeff, Director

STAFF CONTACT: Alicia Harrison, Comprehensive Planning (884-8060)

REPORT DATE: November 20, 2003

HEARING DATE: December 2, 2003

RE: Supplement to Board Letter on Residential Second Units Ordinance Amendments (November 4, 2003) to consider adoption of ordinances amending Article II Coastal Zoning Ordinance (03ORD-00000-00002), Article III Inland Zoning Ordinance (03ORD-00000-00003) and Article IV Montecito Zoning Ordinance (03ORD-00000-00004)

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On November 4, 2003, proposed amendments for the Residential Second Units Ordinance were heard by the Board of Supervisors. During that hearing Board members and the public raised a number of questions. The Board continued the item to December 2, 2003 requesting staff to return with additional information.

The purpose of the December 2, 2003 Board of Supervisors hearing is to review additional information provided by staff and consider proposed ordinance amendments for the Residential Second Units Ordinance in Articles II, III and IV.

**PROJECT INFORMATION**

**1. Prohibit detached second units from being closer to the street**

The proposed amendments include a development standard that would prohibit the detached second unit from being closer to the primary abutting street than the principal dwelling on properties less than one acre in size. The amendment is proposed to help maintain the character of the existing neighborhood by making second units less visually apparent from the street.

On November 4<sup>th</sup> Board members expressed an interest in providing more flexibility for this development standard for properties with existing conditions that make this development standard infeasible to implement. For example, if an existing primary dwelling unit is located closer to the rear setback than the front setback, then the only feasible location for a second unit would be in the front yard which would be closer to the abutting street than the primary dwelling and thereby inconsistent with the proposed development standard.

To address this issue, staff recommends including a modification in the development standard that allows for flexibility given certain guidelines. Staff recommends the following language:

In residential zone districts, except where the proposed detached residential second unit is to be located in a permitted structure existing on July 1, 2003, and no exterior alterations are proposed, a detached residential second unit shall not be located closer to the principal abutting street than the principal dwelling unless other provisions of this Article prohibit construction of the second unit in the rear of the lot on parcels less than one acre or less in size.

## **2. On-site property owner occupancy requirement**

Existing second unit standards require the property owner to live on-site either in the primary dwelling or second unit. Concern was raised that this standard may potentially be too restrictive for the property owner, in terms of living location flexibility as well as resale. However, the Board also recognized the importance of the requirement in terms of maintaining the quality and character of existing single family neighborhoods. The Board expressed interest in expanding the occupancy restriction to include family members and/or a family trust to provide more flexibility for the owner while also maintaining protection for neighborhoods.

- Restricting occupancy to family members raises the issue of violation of constitutional rights to privacy and association. Court decisions have invalidated zoning ordinances which seek to distinguish related from unrelated “family.”
- Expanding the restriction to include members of a family trust as eligible for owner occupancy is reasonable if the property is owned by the family trust (meaning the family trust is listed as an owner on the deed) and the individual family members that the owner intends to be eligible to meet the owner occupancy requirement are listed in the trust.

Additional exceptions that may provide relief for the property owner include:

- a. When disability or infirmity require institutionalization of owner;
- b. Director or the Director’s designee approves in writing owner’s written request for a temporary absence due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause.

These could be included in the ordinance language or in the owner-occupant agreement required to be signed and recorded with the county prior to permit issuance.

## **3. Allow second units in Special Problems Areas under special circumstances If reviewed by Special Problems Area Committee and approved by Planning and Development – Increase in development potential**

Board members expressed an interest to allow more flexibility for properties located within Special Problem Areas (SPA) to be considered for second unit development. General direction included (a) identifying a near term alternative process that would allow review of second unit

projects located in SPAs on a case by case basis, and (b) exploring a longer term task that would include updating existing obsolete SPA designations.

This amendment is separate from another proposed amendment being considered by the Board that would allow second units in Special Problems Areas if there exists two developable contiguous lots under one ownership and development potential in the SPA would not increase.

Special Problems Areas by definition are areas “having present or anticipated flooding, drainage, grading, soils, geology, road width, access, sewage disposal, water supply, location or elevation problems.” For your information, the following is a list of all of the Special Problems Areas in the county followed by the issues impacting the area. A map is provided in Attachment B.

From south to north county:

- Shepard Mesa (273 acres) - Access, Fire
- Summerland (147 acres) – Soils, Geology
- Mission Canyon (1121 acres) - Soils, Septic, Access, Steep slopes
- Hollister at Modoc (17 acres) – Drainage, Grading, Access, Road Width
- Naples (677 acres) – Soils, Wastewater
- Janin Acres Subdivision (228 acres) – Shallow aquifer, Water contamination
- 246 at 154 (366 acres) – Wastewater
- Ballard (85 acres) - Flooding, Septic, Wastewater
- Los Olivos (497 acres) - Flooding, Septic, Wastewater
- Sweeny and Mail Road (2604 acres) – Drainage, Grading, Road Width, Access, Sewage Disposal, Water Supply, Location, Elevation
- Los Alamos (360 acres) – Flooding

a. Near term: Case by case review

As identified in the November 4<sup>th</sup> Board letter, an alternative case by case process was recommended by the County Planning Commission that would provide flexibility in SPAs. The process would allow Planning and Development to approve a second unit if the development standards stipulated in the residential second unit ordinance are met and the project is recommended by the Special Problems Area Committee (SPAC). The committee would assess whether the project can meet standards and not worsen the constraints in the SPA.

The SPAC opposes implementing a process that would provide flexibility from this restriction on a case-by-case basis. The primary concern is the potential impact of lifting a blanket prohibition without an upfront comprehensive approach. The Committee agrees the best first step is to review and redefine the designations prior to allowing an alternative review process.

b. Long term: Update SPA designations

As stated in the previous Board letter, staff supports the longer term task of reviewing and redefining SPA designations, however this task is not currently identified in the Department’s Five Year Work Program. There are many important and competing projects that need to be

completed over the next five years. At the time the Department brings the Five Year Work Program to the Board for review this project could be added if the Board finds it to be a high priority.

#### **4. Allow second units in additional zone districts**

The proposed amendments include allowing second units in additional zone districts including Design Residential (DR), Planned Residential Development (PRD) and Old Town (OT). DR and PRD are zone districts that allow for clustered housing away from sensitive habitat areas or to provide more open space on-site. OT is a downtown district in the Orcutt Planning Area.

Allowing second units in the DR and PRD zone districts raised a question regarding the potential conflict between Homeowner's Associations and the county, as DR and PRD often have CC&R's which have the potential to restrict second units in certain communities. CC&R's represent a contractual agreement between the private homeowner and the Homeowner's Association. They can be more restrictive than the county's zoning ordinance but they do not bind the county, as the county's ordinance applies countywide regardless of private contractual agreement. It is the responsibility of the property owner to know whether a property is restricted as to second unit development or not.

It has been suggested that one way to ensure compliance with a Homeowner's Association is to require that the applicant submit verification or approval from the Homeowner's Association stating that second unit development on the particular parcel is compliant with the CC&R's. County Counsel advises against such a requirement because compliance with and enforcement of CC&R's is a private function, and the County bases zoning decisions solely upon County ordinances and law.

#### **5. Orientation of second unit entrance to not face abutting street unless structurally shielded**

The proposed amendments include a standard that does not allow the second unit entrance to face an abutting street unless the entrance is structurally shielded so the entrance to the second unit is not apparent when viewed from the abutting street. The question was raised as to what exactly this development standard means. It means that the view of the door is blocked from the street by some sort of structure (wall, fence, etc.) and not just by landscaping.

#### **6. Increase allowable floor area for attached and detached second units**

The proposed amendments include increases in the allowable unit size to a maximum of 1,200 square feet. At both the Board hearing and through written public comment, the issue was raised that maintaining the maximum square footage of 1,000 square feet may more adequately provide second units that are more affordable by design, which is consistent with the county's policy of creating units that are affordable by design to help address the county's affordable housing need.

To provide flexibility for larger lot neighborhoods, another option for the Board to consider is maintaining the maximum of 1,000 square feet on properties less than one acre in size and allow an increase to 1,200 square feet on properties with a lot size one acre or larger. This would

prevent the construction of larger units on smaller lot neighborhoods but provide flexibility for larger second homes on larger lots.

<b>Attached Residential Second Units</b>			
Lot Size	Existing Maximum Floor Area	Proposed Maximum Floor Area	<b>Proposed Option</b>
6,000 - 9,999 sq. ft.	400 sq. ft.	600 sq. ft.	600 sq. ft.
10,000-19,999 sq. ft.	600 sq. ft.	800 sq. ft.	800 sq. ft.
20,000 sq. ft. - 1 acre	800 sq. ft.	1,200 sq. ft.	<b>1,000 sq. ft.</b>
Over one acre	1,000 sq. ft.	1,200 sq. ft.	1,200 sq. ft.
<b>Detached Residential Second Units</b>			
10,000-19,999 sq. ft.	600 sq. ft.	800 sq. ft.	800 sq. ft.
20,000 sq. ft. - 1 acre	800 sq. ft.	1,200 sq. ft.	<b>1,000 sq. ft.</b>
Over one acre	1,000 sq. ft.	1,200 sq. ft.	1,200 sq. ft.

## **7. Do second units count toward the county's affordable housing allocation**

New second units, attached and detached, permitted by the county will count toward the county's housing allocation from the state. However, whether they count as part of the affordable housing allocation depends on whether their rental price falls into the county's affordability criteria. To monitor rental prices and count second units appropriately, the county proposes to add a question to the second unit application requesting anticipated rent for the second unit. If the anticipated rent falls into a county affordable housing category, then the unit may count toward meeting that income category for the county's Regional Housing Needs Assessment (RHNA).

## **8. Transfer of development rights/credits**

The Board also asked staff to review issues raised in the written public comments, and specifically to respond to the proposal for a transfer of development rights/credits program presented by the Citizens Planning Association.

In summary, the proposal requires property owners wanting to build a second unit to purchase a development credit for that second unit if they did not want to restrict the affordability of the unit. Those property owners that choose to restrict the affordability would not have to purchase the development credit. The proposal also recommends that the property owner would have to purchase additional credits to build at 1,200 square feet as opposed to the 1,000 square feet maximum currently allowed.

This proposed program is more restrictive than the current ordinance and the proposed amendments. It creates a barrier for the production of second units by penalizing property owners with an additional fee if they do not choose to restrict the affordability of their second unit. A potentially more effective program would include an incentive (such as a fee break) for a property owner to restrict the affordability of a unit as opposed to the county imposing additional

fees on second unit development. Current fees, including planning, building and service district fees already contribute a significant burden on the production of second units in the county.

An affordability restriction that would provide an incentive (fee break) to a property owner to restrict affordability of a second unit was discussed by the County Planning Commission but not recommended. Staff's recommendation is to monitor second units over the next year to formulate a basis to develop a voluntary affordability restriction policy in the future, if deemed appropriate by the Board at that time.

In addition, a program that makes the development of second units more burdensome for the property owner would likely not be supported by the state as they are moving more toward lifting barriers imposed by local governments.

## **9. Community plan buildout and impact of development on service districts**

The question was raised about wanting to understand what community buildout is, including what factors into it and how we get there, as well as understanding the potential impacts of second units on service districts and whether AB 1866 allows us to limit second units due to constraints.

Each community planning area in the county has a projected "buildout" of residential, commercial and industrial development. Buildout is the maximum planned capacity of an urban area based on its current land use and zoning designations (parcel acreage multiplied by the maximum density allowed on each parcel). This number is based on available unconstrained land within a community planning area and is thereby different for each community. With each development that occurs, a community moves incrementally closer to projected buildout.

In general, community service districts, including but not limited to water and sanitary districts, plan their capacity and infrastructure to serve projected buildout at a minimum over the specified planning horizon. As service districts face constraints, the county works with districts on facility planning to identify sources of funds or other resources that can help districts upgrade infrastructure and/or capacity. If a district is constrained, the District can enact a moratorium while they plan for improvements to meet planned growth.

Over the last 10 years, close to 200 attached and detached second units have been permitted countywide. Staff is projecting 400 second units countywide during the current Housing Element planning period (January 2001 to July 2008). Since the state mandate for ministerial processing came into effect on July 1, 2003, 26 second unit applications have been submitted to the county for review. Sixteen of these are in the south county and ten are in the north county.

However, since second units are allowed countywide, it is hard to predict where they will occur during any given planning period. Thereby it is hard to assess the impact of second units on service districts countywide or in any particular community planning area. There are other barriers such as construction cost, development fees and service district fees that potentially serve as deterrents to second unit development that reduce the potential for second unit development even with the lessened processing requirements.

The question about impact on service districts was also raised with regards to Montecito specifically in terms of a potential decrease in minimum lot size for detached units. There are close to 3,000 parcels between 10,000 square feet and 5 acres in the Montecito Planning Area, however this overstates the potential for second unit development given that (1) the lot may already contain a second unit (legal or illegal) in addition to the primary dwelling, (2) the lot may contain a guest house that the owner does not want to convert to a detached second unit; (3) based on past production, staff is projecting 400 second units *countywide* over the next 10 years; and (4) only two detached units were permitted in the Montecito Planning Area over the last 10 years. Two of the 26 applications received since July 1 are located in Montecito. However, as stated above, since second units are allowed countywide, it is hard to predict where they will occur during any given planning period, and thereby difficult to assess the impact.

AB 1866 allows the county to restrict and/or prohibit second units in certain communities based on constraints, however prohibition of second units would require findings based on substantial evidence as to why second units can not be allowed. This was done at the time of adoption of the second unit ordinance for properties located within the Special Problems Areas.

## **ATTACHMENTS**

- A. Proposed Residential Second Units Ordinance Amendments:  
Outstanding Issues for Board Consideration, December 2, 2003
- B. Special Problems Area Map

Attachment A <b>PROPOSED AMENDMENTS</b>	<b>Recommended by County PC Articles II &amp; III</b>	<b>Recommended by Montecito PC Articles IV &amp; II pertaining to Montecito Planning Area</b>	<b>Included in Interim Amendments</b>	<b>Alternative Staff Recommendation</b> December 2, 2003	<b>Board of Supervisors</b>
To Meet State Requirements <ul style="list-style-type: none"> <li>▪ Require ministerial permit for detached second units in residential zone districts</li> <li>▪ Eliminate public hearing for attached second units in Coastal Zone appeals area</li> <li>▪ Limit appeals of approved second units</li> </ul>	<b>X</b>	<b>X</b>	<b>X</b>		General support, as proposed
A. Merge sections of the ordinance and revise definitions	<b>X</b>	<b>X</b>			General support, as proposed
<b>B. Allow second units in additional residential zone districts (DR, PRD, OT)</b>	<b>X</b>	<b>Maintain R-1 and E-1 only for attached RSUs</b>			<b>Requested additional information</b>
C. Allow second units in Special Problem Areas under certain circumstances  I. Two developable contiguous lots under one ownership – No increase in development potential	<b>X</b>	<b>X</b>			General support, as proposed
<b>AMENDMENTS</b>	<b>Recommended by County PC Articles II &amp; III</b>	<b>Recommended by Montecito PC Articles IV &amp; II pertaining to Montecito Planning Area</b>	<b>Included in Interim Amendments</b>	<b>Alternative Staff Recommendation</b>	<b>Board of Supervisors</b>
<b>C. (Continued)</b>  <b>II. If reviewed by Special Problems Area Committee</b>	<b>X</b>	<b>Not reviewed</b>		<b>Review and redefine Special</b>	<b>Requested additional</b>



Attachment A

Proposed Residential Second Units Ordinance Amendments  
Outstanding Issues for Board Consideration  
December 2, 2003