

**STAFF REPORT TO THE PLANNING COMMISSION**

WORKSHOP FOR DRAFT AMENDMENTS TO SECTION 22.32.140 OF THE DEVELOPMENT CODE  
RELATED TO SECOND DWELLING UNITS

Item No: 5.  
Project Area: Unincorporated Marin County  
Planner: Christine Gimmler, Senior Planner  
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Hearing Date: June 9, 2003

**SUMMARY RECOMMENDATION**

Conduct a public workshop to consider recommended revisions to Section 22.32.140 of the Draft Marin County Development Code to implement provisions of State law related to the permit process and regulations for second dwelling units. Staff recommends that the Planning Commission: 1) review proposed text revisions to the ordinance as outlined in Attachment 1 of this report; 2) allow public input on the draft amendments; and 3) provide staff with direction regarding proposed revisions as well as several options presented in the staff report.

**BACKGROUND**

Second dwelling units have been permitted in Marin County since 1982, when the Board of Supervisors adopted Ordinance 2681, which established Chapter 22.98 of Marin County Code allowing the registration or legalization of existing second units and the development of new second units through a discretionary Use Permit process. The provisions of Chapter 22.98 were subsequently amended in 1987, through the adoption of Ordinance 2935. Between 1982 and 2001, the County has approved approximately 240 second dwelling units. In the mid 1990's, the State declared that second dwelling units provide a valuable form of housing for family members, students, senior citizens, in-home health care providers, the disabled, and others at below market prices within existing neighborhoods. The intent of the State's declaration was to ease the discretionary review process through codification. Marin County's recently adopted Housing Element encourages second units in all residential neighborhoods as a way to meet the County's required housing needs.

On September 29, 2002, the first major revision to the State second dwelling unit statute, Government Code Section 65852.2, was signed into law by the Governor. A copy of Government Code Section 65852.2 is provided as Attachment 2 to this report. The intent of the revisions is to simplify the approval process for second units by requiring that any application for a second dwelling unit received after July 1, 2003, be considered through a ministerial process, without discretionary review, public notice, or public hearing.

## **ENVIRONMENTAL REVIEW**

The Environmental Coordinator has determined that this project is Statutorily Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15282(i) of the CEQA Guidelines which exempts the adoption of ordinance revisions to comply with Government Code Section 65852.2 (AB 1866).

## **ANALYSIS**

### **Overview and General Approach**

As described above, State law now requires local agencies to provide a ministerial process for second dwelling unit applications. A ministerial action is an objective decision which requires little, if any, personal or subjective judgment. For example, issuance of a Building Permit is a ministerial action. A ministerial request is automatically granted if the request meets adopted regulations or requirements, and ministerial actions are not subject to public notification, comment, or appeals. Conversely, a discretionary action describes a review process that typically involves public noticing and comment, a substantial level of subjective review, and often a public hearing. Unlike a ministerial action, a discretionary action may be appealed.

In response to the new State law, staff is proposing text revisions to those sections of the Draft Development Code related to Second Dwelling Units as outlined in Attachment 1 (new text is underlined, deleted text is struck-out). It should be noted that the Draft Development Code has not yet been adopted by the Board. However, in anticipation of its imminent adoption, staff has revised the draft document, rather than modifying current Title 22 text that will soon be superseded. In general, the code language has been revised to eliminate discretionary review from the Second Unit Permit process to comply with State law. In addition, the text has been modified to:

- Eliminate or reword second unit criteria that are subjective in nature.
- Incorporate exceptions to the Countywide criteria for specific community areas into the revised ordinance so that all second unit standards can be found in one place.
- Clearly differentiate which criteria apply to “existing” versus “new” second units.
- Identify those cases where Design Review will be required and in what situations a second unit may be exempted from Design Review.

The following sections address the more significant issues associated with the development of second units. In some cases, more or less permissive options are also identified for your Commission’s consideration.

### **Location**

Marin County’s current Second Unit Ordinance provides a process for the legalization of second units established prior to March 27, 1987, throughout the County. However, the creation of new second units is currently prohibited in certain communities, including Kentfield/Greenbrae, Sleepy Hollow, and unincorporated areas of San Rafael (including Santa Venetia, Los Ranchitos, and Lucas Valley/Marinwood), which are identified by census tracts in the current code. Provisions of the State law regarding second units permits a local agency to specify areas where second units are not permitted. However, the prohibition of second units in a particular area must be based on specific findings that adverse impacts on public health, safety and welfare would result from allowing second units within that area. Given that the current prohibition on new second units is not based on specific findings related to demonstrable public health, safety or welfare impacts, staff recommends that references to census tracts be eliminated from Code Section 22.32.140(B.1). If the Commission wishes to maintain the current prohibition on new second units in these communities, the ordinance should be revised to include findings that the exclusion of new second units in these areas is justified by health and safety issues that are unique to these communities, such as heavily congested roadways, inadequate water supply, etc.

## **Minimum Parcel Size**

Currently, second unit provisions of Marin County Code specify that the parcel on which a new second unit is proposed must meet the minimum lot area requirements of the governing zoning district, and that the County slope ordinance shall apply in determining the minimum parcel size, where appropriate (note that exceptions to this criteria are made in certain communities). County lot-slope requirements require increasingly large minimum lot sizes as the slope of a property increases. For example, lot-slope standards would require a property with an average slope of 30 percent to be at least 30,000 square feet in size, regardless of zoning. Given Marin County's topography, the strict application of the County's slope ordinance has the affect of prohibiting new second units on all but the largest properties in many moderate to steeply sloping areas of the County. In order to encourage second units throughout the County provided that other criteria can be met, staff recommends eliminating the reference to lot-slope standards from the requirement related to minimum lot size, and instead rely on the minimum lot size requirements of the zoning. As an option, the Commission may wish to consider further relaxing the parcel size standard by establishing a fixed minimum lot size (such as 7,500 or 10,000 square feet) which would apply regardless of governing zoning. This approach would be similar to the community of Inverness and the Tamalpais area, where community second unit standards allow second units an any lot greater than 7,500 square feet. Alternatively, the minimum parcel size requirement could be eliminated entirely for second units that are created within an existing structure (provided that floor area ratio standards are not exceeded, where applicable, and the proposal meets all other standards, including off-street parking).

## **Maximum Second Unit Size**

Marin County Code currently specifies a maximum size limit of 750 square feet for new second units, except in Bolinas and Stinson Beach, where there is no size limitation for second units. Staff is not proposing to modify the size standard for second units at this time. However, the Commission may wish to consider allowing somewhat larger second units under certain circumstances. For example, Marin County's Housing Element recommends that in West Marin, where affordable family housing needs are high and parcel sizes are generally larger, second units of up to 1,000 square feet be permitted on lots that are one acre or more, and up to 1,200 square feet on parcels of 5 acres or more, if the property owner agrees to record a deed restriction limiting rental rates to affordable levels, and prohibiting use of the second unit as a bed and breakfast (i.e. prohibiting short term rentals).

## **Design Review**

In Marin County, development located on properties governed by planned district zoning, or development which exceeds certain size and height limits is generally subject to a discretionary Design Review process. In an effort to simplify the application process for second units that are likely to have minimal impacts to the community, staff is recommending that new second units be exempted from Design Review if they are proposed within an existing structure or if they meet all eight of the following standards (related to size, height, siting, and design) which are intended to insure that the second unit will not adversely impact neighbors or conflict with the character of the community:

1. The total floor area of new construction is 500 square feet or less; and
2. The new construction is limited to a single story with a maximum building height of 18 feet or less; and
3. The new construction maintains the following minimum setbacks: 25 feet front yard, 15 feet side yards, and 20 percent of lot depth up to 25 feet maximum rear yard; and
4. The new construction maintains the architectural style or qualities of the existing residence with respect to roof and building forms, materials, and colors; and

5. The new construction is not located in a sensitive wildlife habitat area (according to resource information maintained by the Community Development Agency) or within a stream conservation zone (as defined by the Countywide Plan); and
6. The new construction complies with ridgeline setback standards, if applicable by the zoning district or Ridge and Upland Greenbelt policies of the Countywide Plan; and
7. The new construction, including site work necessary to provide required second unit parking, would not result in a cut or fill exceeding a height of 4 feet from existing grade; and
8. The new construction, including site work necessary to provide required second unit parking, would not result in the removal of more than 5 protected native trees (as defined Chapter 22.27 Native Tree Protection and Preservation).

**Public Noticing**

As described previously, the new state law specifies that an application for a second dwelling unit must be considered ministerially. Ministerial actions are not discretionary and no public notice is required. Although the new State law does not prohibit a jurisdiction from providing public notice for second units, the noticing of a ministerial permit application suggests that public comments are being solicited, which would likely result in public frustration. Accordingly, the public noticing of Second Unit Permit applications is not recommended. It should be noted that any second unit application which does not meet the required criteria as outlined in the ordinance could apply for approval through the Design Review process, which would require public notification. In addition, new second units proposed in planned district zoning areas which do not meet the specific design standards proposed in Section 22.32.140 (G.2), or any second unit application which would result in a building area of more than 4,000 square feet, or a structure exceeding a height of 30 feet, would also be subject to Design Review, which would generally require public noticing.

**Covenants, Conditions, and Restrictions**

Certain properties within the County are subject to deed restrictions known as covenants, conditions and restrictions (CC&Rs) which prohibit the development of second units on those parcels. CC&Rs are private agreements and are not enforced by the County. The legality of such prohibitions against the development of second units given the new state law is currently being tested in the courts. However, it should be noted that it is not the intent of the modified second unit ordinance to override lawful use restrictions set forth in CC&Rs or other similar restrictions.

**RECOMMENDATION:**

Staff recommends that the Planning Commission conduct a public workshop to consider recommended revisions to Section 22.32.140 of the Draft Marin County Development Code to implement provisions of State law related to the permit process and regulations for second dwelling units, as presented in Attachment 1 of this report. The Planning Commission's final action regarding approval of the proposed revisions will be made at a later date to allow staff to incorporate public input and direction from the Commission into the draft ordinance.

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- Attachment: 1. Draft Marin County Code Section 22.32.140  
 2. Government Code Section 65852.2,

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