

**MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY**  
**PLANNING DIVISION**

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**TO:** Marin County Planning Commission

**DATE:** June 27, 2003

**FROM:** Christine Gimmmler, Senior Planner

**RE:** Draft Development Code Amendments Related to Second Dwelling Units  
Response to Comments  
Item 6., July 7, 2003 Agenda

**Background:** On June 9, 2003, the Planning Commission conducted a public workshop to consider revisions to the Development Code to implement new provisions of State law related to the permit process and regulations for second dwelling units. At the workshop, staff presented recommended ordinance revisions as well as potential options for a number of issues related to second dwelling units. In response to staff's presentation, the Planning Commission discussed several issues that warranted further consideration and/or revisions. Members of the public also provided input regarding the proposed revisions.

In response to comments from your Commission and the public, staff has prepared a revised ordinance, which is provided as Attachment 1 to this memorandum. As noted in the original staff report, new state law provisions apply to all applications submitted after July 1, 2003. To ensure that an updated second unit ordinance consistent with State law can be adopted in a timely manner, the revised ordinance includes modifications necessary to eliminate discretionary review from the Second Unit Permit process, as well as several technical corrections and clarifications. Additional staff recommendations are further highlighted in shaded text for easier reference. A brief discussion of the major revisions and recommendations is provided below.

**Location:** As described in the previous staff report, the creation of new second units is currently prohibited in certain communities, including Kentfield/Greenbrae, Sleepy Hollow and unincorporated areas of San Rafael. Under State law, the prohibition of second units in a particular area should be based on specific findings that the exclusion or restriction of second units is justified by health and safety issues that are unique to these communities, such as heavily congested roadways, inadequate water supply, etc.

During the workshop, several Commissioners supported the concept of limiting new second units in areas with significant traffic congestion. The Countywide Plan identifies five roadway segments within the County that are considered severely congested (defined as operating at a level of service F). These roadway segments include the following:

- Sir Francis Drake Boulevard in Greenbrae from Highway 101 to Bon Air Road
- Highway 1 in Tam Valley from Highway 101 to Flamingo Road
- Interstate 580 in San Rafael from Bellam Boulevard to Highway 101
- Highway 101 through San Rafael from Sir Francis Drake Boulevard to North San Pedro Road
- Highway 101 from Atherton Avenue in Novato to the Sonoma County line

Given their distribution along the City-centered Corridor, the "traffic sheds" of these roadway segments cover a large area of the County, including both areas where new second units are currently prohibited (Kentfield/Greenbrae, Sleepy Hollow, and San Rafael) as well as areas where second units are allowed (Tamalpais Area). However, as part of the County's Congestion Management Plan, a study was prepared to determine needed transportation improvements that could alleviate congestion in these areas, and to establish transportation improvement mitigation fees to ensure that new development pays its fair share of the identified transportation improvements. The study estimated trips generated by a range of land uses, including residential second units, and established a second unit traffic mitigation fee for each of the five "benefit zones" defined by the study. These five zones are shown in Attachment 3, and generally include: 1) the Tamalpais Community Plan

area; 2) unincorporated areas of Mill Valley, Tiburon and Strawberry; 3) communities in San Geronimo Valley west of Fairfax; 4) unincorporated portions of San Rafael; and 5) unincorporated portions of Novato along Atherton Avenue. It should be noted that a “benefit zone” was not established for areas of the County along Sir Francis Drake Boulevard including Kentfield/Greenbrae and Sleepy Hollow, since feasible methods to alleviate congestion in this area were not identified. However, the severely congested roadways where second units are currently allowed (including Tam Valley and the Atherton Avenue area of Novato) are located within a benefit zone.

As a result of this study, those areas of unincorporated San Rafael where new second units have historically been prohibited due primarily to traffic congestion (including Santa Venetia, Los Ranchitos, and Lucas Valley/Marinwood) are now subject to a traffic impact fee for new development, including second units, which will provide a mechanism to contribute toward transportation improvements designed to alleviate congestion. Accordingly, staff recommends that the prohibition on new second units within this area be eliminated. Furthermore, staff recommends that second units be retained in those areas where they are currently allowed (including Tam Valley). However, in the Kentfield/Greenbrae and Sleepy Hollow areas, a traffic mitigation fee has not been implemented and traffic congestion remains an issue.

In recognition of the traffic congestion issues outlined above, staff has developed the following recommendation for processing second units limited to the Kentfield/Greenbrae and Sleepy Hollow areas (where they have historically been prohibited and where there is currently no traffic mitigation fee):

- The ministerial processing of new second units would be limited to proposals within existing structures that do not increase the number of existing bedrooms. This limitation is recommended because utilization of existing facilities would not be expected to significantly increase the intensity of use and related traffic already permitted at the site.
- The development of new second units which result in additional bedrooms on a property (or which expand the cubical contents of existing development) would be limited to properties within one half mile of an established bus or other public transit route. Staff further recommends that these requests be considered through a Design Review process to ensure that convenient access to public transportation is readily available.

The intent of this proposal is to encourage the efficient use of existing residential structures and provide additional housing opportunities throughout the County, consistent with Countywide Plan housing goals, -in a manner that recognizes areas particularly impacted by traffic congestion

**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 as well as the minimum parcel size indicated by the County lot slope ordinance. As part of the proposed revisions, staff had recommended that the Commission eliminate the reference to lot slope requirements and consider establishing a fixed minimum lot size, such as 7,500 square feet, throughout the County. A number of Commissioners appeared to support the concept of eliminating the lot-slope requirement, but there was no clear consensus on whether a fixed minimum lot size should be established. Staff continues to recommend that the references to the lot-slope ordinance be eliminated and that the minimum parcel size requirement for second units be based on that of the governing zoning. It should be noted that an applicant could still apply for a second unit on a lot which does not conform with the minimum lot size requirements of the governing zoning through the discretionary process outlined in Section 22.32.140.H.

**Maximum Second Unit Size:** Marin County Code currently specifies a maximum size limit of 750 square feet for new second units. During the workshop, several Commissioners appeared to agree with the concept of permitting larger sized second units on larger properties subject to affordability restrictions, while other Commissioners and members of the public had concerns regarding whether affordability restrictions could be effectively enforced. Based on this input, staff is recommending that the current 750 square foot size limit be maintained as the maximum size permitted through a ministerial process. However, consistent with recently adopted Housing Element policies, staff also recommends that the second unit size criteria be expanded to give applicants with larger properties the ability to apply through a discretionary process (i.e. Design Review) for a larger unit (up to 1,000 square feet on lots that are one acre or more and up to 1,200 square feet on lots that are 5 acres or more) provided they are willing to record a deed restriction permanently limiting rental rates to affordable levels and prohibiting short term rentals (i.e. bed and breakfast use).

**Design Review:** In an effort to streamline the approval process for second units, the draft ordinance presented at the workshop proposed that new second units meeting a series of eight criteria could be exempted from the Design Review process required in Planned Zoning Districts. However, a majority of the Commissioners as well as several members of the public expressed concern over the general concept of exempting second units from Design Review as well as the particular criteria proposed by staff. Accordingly, the ordinance has been revised to require Design Review for new second units on properties governed by planned district zoning. However, staff continues to recommend that a second unit proposed within an existing structure be exempt from Design Review if it does not increase the cubical contents of the structure. Finally, to address concerns raised at the workshop regarding development in identified stream conservation areas (SCA), staff has added a provision specifying that the ministerial processing of new second units on properties subject to SCA policies would be limited to proposals within the existing footprint of the building.

**Public Noticing:** New state law provisions require that the County consider second dwelling unit applications through a ministerial process that does not require public noticing or a public hearing. It was suggested at the workshop that staff should continue to provide public notice of ministerial second unit applications as a courtesy to neighboring property owners. However, as noted in the staff report, the noticing of a ministerial permit application would likely result in public frustration by creating the expectation on the public's part that the County has discretion to consider and respond to public comments. Accordingly, staff continues to recommend against the public noticing of Second Unit Permit applications. It should be noted that many second dwelling unit applications will continue to be processed concurrently with other types of applications such as Design Review or Coastal Permits, which require public noticing that will notify neighboring property owners that development is being proposed.

**Environmental Review:** As noted in the staff report prepared for the workshop, the Environmental Coordinator has determined that the proposed amendments to Section 22.32.140 of the Marin County Code are 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).

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission conduct a public hearing and recommend that the Board of Supervisors approve the proposed revisions to the Development Code related to second dwelling units as presented in Attachment 1 of this report.

- Attachment:
1. Revised Section 22.32.140 of the Marin County Development Code
  2. Recommended Resolution
  3. Traffic Mitigation Fee Benefit Zone Maps (Exhibits 1-5)

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## 22.32.140 - Residential Second Units

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**A. Purpose.** This Section establishes a procedure to accomplish the following:

1. Meet the County's projected housing needs;
2. Provide needed income for homeowners;
3. Provide second units which are safe and built to code; and
4. Provide second units which are compatible with the neighborhood and the environment.

5. Comply with provisions of State law, including those contained in Section 65852.2 of the California Government Code.

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**B. Applicability:**

1. **General geographic areas.** The provisions of this Section shall apply to single-family residential zoning districts, including the R1, RA, RR, RE, RSP, C-R1, C-RSP, C-RSPS, A, A2, and ARP districts in the unincorporated portions of the County, excepting those portions of the Kentfield/Greenbrae, Kent Woodlands, and Sleepy Hollow Community Plan areas located more than one-half mile from an established bus or other transit route operated by a public transit agency.

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2. **Specific communities.**

- a. The required criteria for the granting of a Residential Second Unit Permit, for the communities of Bolinas, Tamalpais Planning Area, Stinson Beach, and Inverness, and incorporated into Subsections F.2 and G.1, shall remain in effect unless modified through the procedures described in Subsection B.4 (Procedure for neighborhood inclusion), below.
- b. Representatives of a community or neighborhood may petition the Board to modify the required findings of Subsections F.2 and G.1. Upon acceptance of this petition, the Board shall refer the petition to the Commission for a recommendation. This Section shall not be construed to allow a community or neighborhood to draft required findings which preclude second units or are inconsistent with State law.

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3. **Existing second units.** Owners of second units existing anywhere in the unincorporated area of the County may obtain a certificate of registration in compliance with Subsection F (Registration/permit requirements for existing second units), below, if the Agency determines that the second unit has a legal, non-conforming status.

Owners of second units which existed prior to ~~March 27, 1987, or the effective dates of the resolutions establishing second unit standards for specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais Area, and June 25, 1985 in Stinson Beach)~~ shall obtain a ~~Residential Second Unit Permit~~, in compliance with ~~Subsection F~~, if the Agency determines that the second unit was not established in compliance with applicable regulations.

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4. **Procedure for neighborhood inclusion.** The Board may initiate hearings to include any portion of the unincorporated part of the County under this Section. Residents of any unincorporated area of the County may petition the Board to initiate hearings to consider their neighborhood for inclusion under this Section. The Board may, by resolution, set out, describe, and designate the proposed area. The Board shall refer the ~~resolution~~ to the Commission for a public hearing and recommendation.

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- a. The Commission shall conduct at least one public hearing on the proposal in compliance with Chapter 22.118. At the conclusion of the hearing(s), the Commission shall forward its findings and recommendations to the Board.
- b. The Board shall conduct at least one public hearing, and may, at the conclusion of the hearing(s), declare, by resolution, the establishment of the area(s) in which second units may be allowed under the provisions of this Section.

- C. **Design Characteristics.** A second residential unit shall be designed and constructed as a permanent residence, including: food preparation facilities which may include, but are not limited to, kitchen counters and cabinets, a stove, oven, hot plate, microwave, refrigerator, or sink; both a separate bathroom and separate entrance intended for the use of the occupants, as determined by the Director. A second unit may be established by:

1. The alteration of a single-family unit whereby food preparation facilities are not shared in common;
2. The conversion of an attic, basement, garage, or other previously uninhabited portion of a single-family unit;
3. The addition of a separate unit onto the existing single-family unit; or
4. The conversion or construction of a separate structure on the parcel in addition to the existing single-family unit.

- D. **Limitation on sale.** A second unit may be rented but shall not be sold separately from the single-family unit.

**E. Minimum standards for second units.** All second units shall:

1. Meet the Uniform Housing Code for existing second units, and the Uniform Building Code for new second units, as adopted by the County;
2. Provide adequate sanitary services for the additional increment of effluent resulting from the second unit, in compliance with County and State regulations; and
3. Provide an adequate amount of water and quality of water in compliance with County and State regulations.

**F. Registration/permit requirements for existing second units.** Second units existing prior to March 27, 1987, or the effective dates of resolutions establishing second unit standards for specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais Area, and June 25, 1985 in Stinson Beach), shall either be registered or obtain Residential Second Unit Permit approval, as follows.

- 1. Registration process.** At any time following the enactment of this Section, the owner of each existing second unit which was constructed in conformity with the law and which has become legally non-conforming by reason of later enactment of County ordinances, rules, or regulations, may register the unit with the Agency. Non-registration of these units does not change their legal non-conforming status.

**a. Application for registration.** The application for registration shall be made by the owner in writing and shall contain all information required by the Agency.

**b. Issuance of certificates of registration.** In order to grant a certificate of registration, the Director shall first find that the parcel on which the second unit is located shall have a minimum of one additional off-street parking space assigned to a studio or one-bedroom second unit or two additional off-street parking spaces assigned to a two-or-more-bedroom second unit.

In addition, certificates of registration may be issued with the conditions that the Director determines are required in order to find that the minimum standards established in Subsection E above have been satisfied.

**c. Expiration date of certificates of registration.** The certificates of registration shall have no expiration date unless, due to specific findings, the Director determines that the protection of property and public welfare require a specific review date.

- 2. Residential Second Unit Permit process for existing second units.** ~~The owner of each existing second unit that was not constructed in conformity with the law or was constructed after the enactment of the Zoning Ordinance in 1938 (and did not subsequently become a legal, non-conforming use), shall apply to the Director for a Residential Second Unit Permit.~~

In order to grant a Residential Second Unit Permit for a second unit existing prior to March 27, 1987, or the effective dates of resolutions establishing Second Unit Use Permit standards in specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais Area, and June 25, 1985 in Stinson Beach) ~~the following criteria shall be met as determined by the Director:~~

- a. The existing second unit is located on the same parcel on which the owner of record maintains a primary residence.

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*Community Plan Area Exceptions: The owner-occupancy requirement does not apply to existing second units in the communities of Bolinas and Inverness. In the Tamalpais Area, a property owner of an existing second unit may request an exemption from the owner-occupancy requirement for a period of two years for good cause such as temporary job transfer or settlement of an estate that involves the property. Public notice shall be given prior to a decision of exemption. The exemption may be extended for up to two years at a time subject to new public noticing for each exemption. Exemptions may be granted without public hearing.*

- b. The existing second unit meets all current property development standards of this Development Code, for a dwelling unit in the residential zoning district in which it is located.
- c. The existing second unit is the only additional dwelling unit on the parcel.

d. The existing second unit meets current Uniform Housing Code (UHC) requirements as adopted by the County.

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e. Adequate sanitary services exist for the additional increment of effluent resulting from the existing second unit, in compliance with County and State regulations.

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f. Adequate water supplies exist to serve the existing second unit in compliance with County and State regulations.

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g. The parcel on which the existing second unit is located shall have a minimum of one off-street parking space assigned to a studio or one-bedroom second unit or two off-street parking spaces assigned to a two-or-more-bedroom second unit. Off-street parking spaces assigned to the second unit shall be in addition to those required for the primary residence.

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**Additional Criteria Applicable to Existing Second Units in Specific Community Plan Areas:**

h. In the Tamalpais and Inverness areas, the parcel on which the existing second unit is located meets the minimum lot size requirement of the zoning or is at least 7,500 square feet in size.

i. In the Tamalpais Area, the floor area of the existing second unit shall not exceed 750 square feet.

- 3. **Replacement of legal nonconforming residential second units.** A legal nonconforming second unit is subject to the provisions of Chapter 22.112, (Nonconforming Structures, Uses, and Parcels). The unit may not be enlarged, extended, reconstructed, structurally altered, or moved unless the use is changed to a use allowed under the regulations of Article II (Zoning Districts and Allowable Land Uses) and in compliance with Subsection G below.

- G. **Residential Second Unit Permits for new residential second units.** The applicant for a second unit established after March 27, 1987, or the effective dates of resolutions establishing second unit standards in specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais Area, and June 25, 1985 in Stinson Beach), shall apply to the Director for a Residential Second Unit Permit.

- 1. **Grant of Residential Second Unit Permit – Required criteria.** In order to grant a Residential Second Unit Permit for a new residential second unit, the following criteria shall be met as determined by the Director:

- a. The second unit is located on the same parcel on which the owner of record maintains a primary residence.

*Community Plan Area Exceptions: The owner-occupancy requirement does not apply to new second units in the communities of Bolinas and Inverness. In the Tamalpais Area, a property owner of a new second unit may request an exemption from the owner-occupancy requirement for a period of two years for good cause such as temporary job transfer or settlement of an estate that involves the property. Public notice shall be given prior to a decision of exemption. The exemption may be extended for up to two years at a time subject to new public noticing for each exemption. Exemptions may be granted without public hearing.*



- b. The second unit meets all of the current property development standards of this Development Code for a dwelling unit in the residential zoning district in which it is located. A detached second unit shall comply with development standards required for detached structures within the residential zoning district in which it is located.

**Community Plan Area Exceptions:** Within the Kenfield/Greenbrae, Kent Woodlands, and Sleepy Hollow Community Plan areas, the development of new second dwelling units shall be permitted on a ministerial basis only within existing structures where they do not increase the number of existing bedrooms on the property. On properties within one-half mile of an established bus or other transit route operated by a public transportation agency, the development of new second units which result in additional bedrooms on the property, or which expand the cubical contents of existing development may be considered through a discretionary Design Review process pursuant to Section 22.32.140.H.

- c. The second unit would meet all applicable Uniform Building Codes (UBC) adopted by the County.

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- d. The second unit is the only additional dwelling unit on the parcel.

- e. Adequate sanitary services exist for the additional increment of effluent resulting from the new second unit, in compliance with County and State regulations.

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- f. Adequate water supplies exist to serve the new second unit in compliance with County and State regulations.

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**Community Plan Area Exceptions:** In Bolinas, no new second units are permitted within the Bolinas Public Utility District (BPUD) service area until BPUD certifies that adequate water is available for new primary units within its boundaries.

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- g. The parcel on which the proposed second unit is to be located meets the minimum building site area requirements of the zoning district in which it is located.

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e. The second unit will not be located on

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**Community Plan Area Exceptions:** In Stinson Beach, new detached second units are only permitted on lots of one acre or more. In Stinson Beach and Bolinas, the parcel must meet the minimum building site area requirements of the zoning district in which it is located unless it is ½ acre or larger. In Bolinas, there is no minimum lot size requirement if the new second unit is located within the existing residence. In the Tamalpais and Inverness areas, the lot must be at least 7,500 square feet in size.

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- h. The addition of a second unit incorporates materials, colors, and building forms that are compatible with the existing residence on the property.

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- i. The floor area of the primary and second unit combined shall not exceed the floor area ratio of the particular residential zoning district in which the parcel is located, and the floor area of the second unit shall not exceed 750 square feet. Property owners willing to record a deed restriction permanently limiting second unit rental rates to affordable levels and prohibiting short-term rentals may apply for approval of a second units of up to 1,000 square feet on a parcel of one acre or more, or up to 1,200 square feet on a parcel of five acres or more, subject to Design Review.

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**Exceptions:** In Bolinas and Stinson Beach, there is no size limit for second units.

- j. The parcel on which the second unit is located shall have a minimum of one off-street parking space assigned to a studio or one-bedroom second unit or two off-street parking spaces assigned to a two-or-more-bedroom second unit. Off-street parking spaces assigned to the second unit shall be in addition to those required for the primary residence. ~~xx~~

~~Exceptions: In Stinson Beach, only one off-street parking space is required regardless of second unit size.~~

- k. A second unit shall be allowed only where the street providing access to the site is of the minimum width necessary to allow for the safe passage of emergency vehicles, in compliance with Title 24 standards.

~~Community Plan Area Exceptions: In Inverness, no new second units are permitted in the Paradise Ranch Estates Subdivision due to concerns regarding road safety and emergency access.~~

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**Deleted:** The number of additional off-street parking spaces required may be reduced to one if the second unit is a studio or one-bedroom unit, and a finding is made by the Zoning Administrator, that adequate parking, either on-street or off-street, exists nearby.

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2. **Design Review.** A new second unit shall be subject to the standards and provisions of Chapter 22.42 (Design Review) if: a) it is located on a property governed by Planned District zoning; b) construction of the second unit would result in a total building area on the site of more than 4,000 square feet or a structure which exceeds a height of 30 feet; or c) if the property is subject to the Streamside Conservation Area (SCA) policies of the Countywide Plan.

Notwithstanding Section 2.a and 2.c above, a new second unit proposed on a property subject to Planned District zoning or within an identified SCA shall be exempt from Design Review if the unit is created within an existing primary or accessory structure through the alteration of existing habitable area or the conversion of previously uninhabitable area (attic, basement, garage, etc) without increasing the cubical contents of the structure (with the exception of minor dormers, bay windows, stairwells, etc).

~~b. The new second unit consists of new construction (i.e. an addition to an existing structure or construction of a new detached accessory building) which meets all of the following criteria:~~

~~1. The total floor area of new construction is 500 square feet or less; and~~

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~~2. The new construction is limited to a single story with a maximum building height of 18 feet or less; and~~

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~~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~~

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~~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~~

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~~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~~

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~~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~~

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~~7. The new construction, including site work necessary to provide required second unit parking, would not result a cut or fill exceeding a height of 4 feet from existing grade; and~~

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~~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);~~

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H. **Second Unit Permitting Procedure.** Any application for a Second Unit Permit that meets the location and development standards contained in Subsections F. and G. shall be approved ministerially without discretionary review or public hearing. Exceptions to these criteria shall be considered through the Design Review process pursuant to Chapter 22.42.

I. **Recordation of certificates of registration and Residential Second Unit Permits.** Any certificate of registration or Residential Second Unit Permit granted in compliance with this Section shall be recorded in the County Recorder's Office as an informational document in reference to the title of the subject property.

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J. **Building Permits.** A Building Permit shall be required:

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1. In conjunction with the issuance of a certificate of registration in compliance with Section 22.32.140.F.1 (Registration/permit requirements for existing second units), above, if the second unit was created without the benefit of a Building Permit;
2. In conjunction with the issuance of a Residential Second Unit Permit in compliance with Section 22.32.140.F.2 (Registration/permit requirements for existing second units), above, if the second unit was created without the benefit of a Building Permit;
3. If repair or rehabilitation work was performed to convert the original structure as allowed, or if repair or rehabilitation work is necessary to comply with Section 22.32.140.F (Registration/permit requirements for existing second units), above; or
4. For a new second unit approved in compliance with Section 22.32.140.G.1 (Grant of Residential Second Unit Permit - Required findings), above.

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K. **Periodic report.** The Agency shall periodically prepare a report to the Commission and Board on the status of this Section. The report shall include information about the number, size, type, and rent, as available, of each second unit by neighborhood. The report shall provide a basis for an evaluation of the effectiveness of this Section.

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