

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: October 8, 2014

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Proposed Improvements to the Farm Labor Housing Permit Review and Renewal Process

County File Number: PLN 2014-00341

PROPOSAL

The Planning and Building Department is proposing to update the permit review and renewal procedures for farm labor housing (FLH) in order to streamline the process, while maintaining compliance with relevant policies and zoning regulations. The amended policy would not affect the zoning regulations requiring discretionary permits for FLH, but is restricted to how such permits are processed.

BACKGROUND

The regulatory framework that allows FLH units has evolved over time into what has become a difficult process for some farmers, ranchers and owners to navigate. In November of 2013, San Mateo County conducted an Agricultural Workshop, where there was uniform agreement regarding the need to streamline these procedures and other permit requirements associated with agricultural uses and development. Since that time, County Counsel has advised that the Certificate of Need (CN) process (as overseen by the Certificate of Need Committee) has been superseded by State mandate, which will support the workshop's objective to simplify and streamline the process. Review of the process also revealed opportunities to revise or clarify issues around FLH permit application forms, income qualification, permanent vs. temporary units, coordination with other County departments and permit renewal terms. Planning and Building permit application fees are already waived for FLH units.

In this regard, it is important to distinguish administrative procedures from the statutory and regulatory requirements that they are designed to implement. The Planning and Building Department is not proposing any changes to the laws and regulations that apply to the permitting and maintenance of FLH units, such as those contained in the rural zoning districts (where all such zoning regulations require a discretionary permit for FLH units) and the San Mateo County Local Coastal Program (LCP). Rather, the proposal focuses on improving outdated and unnecessary steps of the review process, while maintaining compliance with existing laws and regulations.

The revised Farm Labor Housing Application Process policy (e.g., revised Policy) as discussed in this report reflects the comments and support of the Agricultural Advisory Committee (AAC), who considered the policy revisions at their July, August, and September 2014 meetings.

The revised Policy will replace the current policy being used by staff, which dates back to 1982 (as originally adopted by the Planning Commission) and 1991 (when last revised by the Planning Commission).

Upon the Planning Commission's adoption of the revised Policy, the 25+ pending FLH-associated permits (for renewal and/or amendments) will be considered by the Zoning Hearing Officer (ZHO), or Planning Commission (if warranted) and updated to be consistent with the new procedures.

RECOMMENDATION

Adopt the revised "Farm Labor Housing Application Process" Policy document as included as Attachment A.

DISCUSSION

A. KEY ISSUES

1. Existing Permit Requirements, Policies, and Review Procedures

The regulatory requirements applicable to FLH units are affected by the age and total number of units. Where located in the Coastal Zone (CZ), all units constructed after 1972 are subject to Coastal Development Permit (CDP) requirements, pursuant to Proposition 20, enacted in 1972, and as superseded by the Coastal Act in 1976. If constructed between 1973 and April 1, 1981 (the date on which San Mateo County assumed CDP authority due to the Coastal Commission's certification of the County's LCP), the CDPs should have been obtained from the State of California. CDPs, as well as Planned Agricultural District (PAD) permits for FLH units established after April 1, 1981, should have been obtained from San Mateo County. In the Resource Management/Coastal Zone (RM/CZ) District and the non-coastal Resource Management (RM) District, FLH is allowed with a use permit, an RM Development Review permit, and a CDP if in the Coastal Zone. In the PAD, FLH is allowed with a PAD permit and the requisite CDP. The revised Policy would not affect zoning's requirements for these discretionary permits.

Irrespective of the date on which FLH units were established, the County Environmental Health Division (EH) regulates all Employee Housing facilities containing five (5) or more employees and requires "Employee Housing" permits that are inspected annually. The revised Policy would not affect EH's regulatory and permitting process.

The primary issues that have been identified that are either in conflict with the current FLH application process or should be better clarified include the following (each followed by the proposed remedy to be incorporated into the amended FLH Application Process policy):

a. Certificate of Need (CN) Process

Issue: County Counsel has issued an opinion that the CN process, as overseen by the Certificate of Need Committee (CNC), which had been a discretionary review element of the overall FLH application process and had to be approved prior to its consideration by the AAC, has been superseded by State mandate. This is due to the California Health and Safety Code that preempts any discretionary process applied to employee housing that is not otherwise applied to other agricultural uses in the same zoning district. Counsel opined that the CN process represented such a process since it constituted a demonstration of “need” that was required as a condition of the FLH permit being approved.

Revision: Based on Counsel’s opinion, the CN process and the CNC shall be dropped from the FLH permit application process. Loss of any perceived value of the CN process and CNC’s input would be replaced by all FLH applications (new and amended) being: 1) sent to EH, Building, Fire, and the County Agricultural Commissioner, and 2) reviewed and considered for recommendation by the Agricultural Advisory Committee (AAC), which includes the Half Moon Bay Farm Bureau Executive Director. Review by such parties will provide ample feedback relative to the type and extent of farming activity and the justification for FLH units to support such activity. Neither the PAD nor the RM-CZ or RM regulations mention or require a CN process nor its review by the CNC. Besides, the process was cumbersome and time consuming, with the value of comments back either lacking or of limited value from some members, especially from the UC Extension member (whose position was left vacant and has not been replaced).

b. FLH Income Qualification and Documentation

Issue: While the current FLH Policy defines a “farm laborer” as “a person who derives more than 20 hours per week average employment from on-site agricultural operations,” the current *Certificate of Farm Labor Housing Eligibility* form cites language that requires “annual inspections to ensure that those individuals or families who occupy a FLH unit earn at least half their annual income through farm labor operations in San Mateo County.” Besides the fact that these two income qualifications are in conflict with one another, it has always been assumed that: 1) only the farm laborers themselves (not their family members) are subject to such qualification, and 2) the work that such farm laborers are engaged in need not be confined to the property where they live, but are qualified as long as it can be

confirmed that work performed off the FLH site occurs within San Mateo County. The revised FLH Policy must resolve these conflicts and better clarify the requirements.

Revision: Require that existing or proposed farm laborers work a minimum (on average) of 20 hours a week and that at least half their income be derived from agriculturally-related work, be it on the parcel that they reside on or on a farm elsewhere in the County. Should the AAC have any reservations or issues about the documentation submitted by the FLH applicant substantiating either or both of these requirements, the AAC may: 1) ask the applicant for additional documentation or information as they deem necessary, and/or 2) recommend that, if approved, the FLH permit be brought back for an administrative review (including consideration by the AAC) in one (1) year (from the date that the FLH units have been installed and occupied). The type of documentation to substantiate this requirement shall include letters of employment (which would confirm minimum hours worked and type of work) from the FLH applicant and/or the owner of an on-site farm operation providing the work. The FLH application form will ask the applicant to attest to the fact that the subject farm workers who are or will be living in the FLH units meet the minimum income requirements; such documentation will not be required from the farm workers themselves. Again, upon review, the AAC may require additional documentation where they believe warranted to ensure compliance with these income requirements. That said, such documentation would likely be different with an existing FLH operation versus a proposed operation (where there is no track record of such documentation for workers who are neither yet on the property or working).

c. FLH Application Forms

Issue: The current FLH process resulted in duplicative application forms, and required information (i.e., names and signatures of farm workers) that have been perceived as intrusive, while providing no net value relative to the actual permit for FLH qualification. This information is not necessarily known at the time of application, and will likely change over time. There has never been an expectation that an approved permit for FLH needs to be amended simply due to different farm laborers occupying FLH units. The Certificate of Feasibility determination as required from EH (that arose out of the CN process) is also a duplicative process; that division's comments regarding the adequacy of existing or new on-site water and wastewater treatment capabilities can be obtained from referrals sent to EH at the initial stage of the FLH application process.

While an accurate site plan (as well as FLH unit floor and elevation plans) is critical to the current FLH application (especially with a new FLH associated permit application), property owners/applicants may

be challenged with the technical and cost factors attributed to preparing such plans. As a result, the caliber of plans received does not always present an accurate picture of the FLH proposal, which can inhibit the provision of important information and valuable feedback, from all parties who must review the application to the final decision maker.

Revision: Simplify and consolidate the FLH application forms. With the CN process removed, the FLH and CNC application forms shall be consolidated into one form, with the names/signatures of farm laborers no longer required. The consolidated FLH application form will be revised to ask how many workers will be housed in “x” number of units (since it is premature otherwise to assume the applicant knows who will be living in the FLH unit(s) at the application stage). The owner’s/applicant’s signature(s) on the application will follow a disclosure clause holding the parties responsible for all information given, as well as their obligation to inform the County where circumstances change or amendments to the permit for FLH are proposed (including possible permit revocation where misinformation is given or where unabated violations occur).

Since it is understood that some FLH applicants/owners have, in the past, lacked the proper resources to produce plans of the necessary caliber and detail, County Planning staff will review future options for connecting applicants with professionals who can prepare such plans. Additionally, a sample site plan will be attached to the revised Policy (and application form) to clarify what plan elements are critical to show.

d. FLH Application Approval Terms

Issue: The practice of requiring that permits for FLH be administratively renewed annually (including accompanying documentation verifying income and hours worked) is not justified when there have been no significant changes or intensification of the FLH operation. Such review is also duplicative for those FLH units that are also regulated by EH annually (pursuant to their Employee Housing permits), a process which can cause confusion and frustration to the respective owners/applicants. Such information as derived from EH can easily be exchanged with Planning staff in order to either update our files or, where necessary, to contact the owner for more information. Additionally, the practice of requiring that permits for FLH be entirely renewed every three or five years is not justified for similar reasons. Only when significant changes to the FLH facility are proposed (affecting its physical development or housing type and/or intensity) would there be a need to amend the permit for FLH.

Revision: Extend FLH Permits and Approval Terms: Where FLH operations are or will be also reviewed annually by EH under

Employee Housing Permits (5 or more workers), FLH approval terms shall be for a period of 10 years. For all other FLH applications (4 or fewer workers), the term would be 3 to 5 years, upon recommendation of the AAC. Lessor terms and/or term-specific Administrative Reviews may be mandated where violations have occurred or to ensure resolution of past problems with Fire, Building or EH, as determined by the Community Development Director (CDD). The PAD regulations do not require that PAD permits (which FLH is allowed under) be renewed. Likewise, neither the RM-CZ nor the RM regulations (which allow FLH with use permits) mandate a use permit time limit.

e. Coordination with Environmental Health Division (EH)

Issue: While EH annually inspects and regulates Employee Housing facilities (5+ workers), there has not always been the coordination with EH relative to those facilities that are also covered under our FLH permit process.

Revision: Planning and EH will coordinate to exchange information to keep the status of permits for FLH updated. For those EH camps (5+ workers) that also have permits for FLH, Planning will be notified if EH finds anything that conflicts with the information in our files or is non-compliant with EH's or Fire's regulations so that Planning can coordinate with the owner to update/amend or abate the permit as required.

f. Planning Commission Approval of Permanent FLH Units

Issue: The current policy requirement that the Planning Commission (PC) must approve FLH projects involving new permanent housing (as opposed to mobile homes) adds additional time and process, as opposed to taking such projects to the ZHO, where any other new or amended (impermanent) FLH proposal would go. Neither the rural zoning district regulations nor the LCP requires that the PC consider FLH when it is proposed in a permanent form. The rationale behind requiring the PC's consideration includes the requirement that traditional, impermanent FLH units are removable upon their no longer being a qualified need for the FLH. However, where FLH is proposed as traditional and permanent housing (be it "stick-built" or modular), such approvals could still be conditioned to require that upon cessation of the need for FLH, the permanent unit must be converted to an otherwise allowable use in the respective zoning district (with all required and applicable planning permits), regardless of its consideration by the PC or the ZHO.

Revision: Staff proposes that, depending upon the scope of the proposal, the ZHO can consider permanent FLH facilities. Adequate justification for the proposed FLH units to be in the form of permanent housing could include the character or size of the agricultural

operation, or that the property owner also qualifies as a farm worker. In any case, the ZHO's decision is still appealable to the PC.

3. Consistency with Relevant Laws and Regulations

As previously stated, while the PAD, RM-CZ and RM regulations require that permits for FLH be obtained, their application process and procedures, including renewal terms, are not mandated in or pursuant to any zoning regulations or LCP policies. Because the procedures for reviewing a permit for FLH were enacted by the PC, the revised Policy is being submitted for PC review and endorsement.

B. ENVIRONMENTAL REVIEW

The consideration and adoption of the revised FLH permit procedures is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15061 (Review for Exemption), subsection (b)(3) which states: *The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*

In this case, the County Planning and Building Department concludes that the revised FLH Application Process policy poses no possibility, upon adoption and enactment, of having a significant effect on the environment. The subject revisions do not affect the fact that new and significantly amended FLH development would continue to require that discretionary permits be issued (e.g., CDP/PAD permit).

C. REVIEWING AGENCIES

San Mateo County Agricultural Commissioner
San Mateo County Environmental Health Division
San Mateo County Building Inspection Section
San Mateo County Department of Public Works
Coastside Fire Protection District
Cal-Fire/San Mateo County Fire Department
San Mateo County Counsel
Agricultural Advisory Committee
Half Moon Bay Farm Bureau

ATTACHMENTS

- A. Proposed and Amended "Farm Labor Housing Application Process" Policy
- B. Existing Farm Labor Housing Policy
- C. County Counsel Memo (dated May 6, 2013) regarding State Mandate and the FLH Review Process

County of San Mateo
Planning and Building Department

REVISED
FARM LABOR HOUSING APPLICATION PROCESS

It is the policy of the County to facilitate agricultural productivity in every feasible way. County ordinance allows for the provision of temporary farm labor housing (FLH) units for farms when there is a demonstrable need for such housing. This document outlines the policies and procedures involved with requesting and obtaining approval for FLH units in rural parts of the County zoned Planned Agricultural District (PAD) or Resource Management (RM). This includes both applications for new FLH units (where none have existed on the parcel) or amendments to existing FLH development where the number of FLH units is increased or the changes are otherwise considered significant. These procedures, while not mandated in the PAD, RM, or RM-CZ regulations, were initially adopted by the Planning Commission (PC) in 1982, with this document representing revisions as adopted by the PC in 2014. (Temporary labor housing for the Timberland Preserve Zone is covered in a separate handout.)

FARM LABOR HOUSING QUALIFICATION REQUIREMENTS

Farm labor housing is housing units that can only be occupied by farm laborers and their immediate family members. A “farm laborer” is defined as a person who derives more than 20 hours per week average employment from on-site agricultural operations. Applicants for farm labor housing must demonstrate that the size of the housing requested is no larger than the minimum needed to adequately house farm laborer(s) and their immediate family members.

Historically, FLH has been often temporary in nature, provided by mobile homes or other approved temporary buildings. A mobile home, for the purposes of these procedures, is a vehicle designed and equipped to contain one or more dwelling units, to be used without a permanent foundation. The conversion of permanent structures such as workshops and barns has occasionally been allowed with a written agreement by the applicant and the landowner certifying to the Community Development Director’s (CDD) satisfaction that these additional living quarters will be reconverted to their original condition upon termination of the permit for FLH.

More permanent housing structures for farm workers can be allowed in specific situations where there is an ongoing long-term need for farm workers. An application for the planning permits required to construct a permanent housing structure is, in most cases, reviewed by the Zoning Hearing Officer (ZHO). If approved, a permanent FLH structure can only be used for the purpose of housing farm workers, and if this use ceases, must either be demolished or used for another permitted use pursuant to a permit amendment.

The location of the housing must meet required setbacks of the zoning district. Minimum building, plumbing and electrical codes, access, water supply, sewage disposal, and Fire Marshal's requirements must be met. The FLH unit(s) shall be self-contained with a sanitary toilet, shower, lavatory facilities, approved heating and electrical lights. A kitchen shall include a refrigerator, sink and stove. The housing shall be maintained to meet the basic California Housing and Health Code requirements for habitation, as reviewed and approved by and pursuant to the County Building Inspection Section, Fire (or applicable fire authority) and Environmental Health (EH) Division regulations.

Vegetative screening or a fence will be required if the structure will be visible from a public road or other public view.

Approved farm labor housing units are accessory uses to agriculture and therefore are exempt from the density restrictions of the zoning ordinance.

If you are interested in obtaining more information about farm labor housing in the County and how to apply for the required permits, please contact the Planning counter at 650/363-1825.

APPLICATION REQUIREMENTS

- A. Fees. All Planning and Building fees have been waived for farm labor housing by Board of Supervisors' Resolution No. 54443 approved on November 13, 1990. However, if the number of farm laborers is five (5) or greater, the EH Division must also issue an "Employee Housing" permit, in which case the California Employee Housing Act mandates a fee which must be paid to the EH Division annually.
- B. Verification of parcel legality (required only if parcel is undeveloped or where past development history cannot be confirmed as having occurred with proper permits, is not considered a principally permitted use or where parcel boundaries cannot be confirmed as matching those as currently configured).
- C. Application for either a PAD permit if in the PAD, or an RMD permit and a use permit if in the Resource Management (RM) District or RM-CZ District.
- D. Application for a Coastal Development Permit (CDP), if in the Coastal Zone.
- E. A completed Environmental Disclosure Form.
- F. The property owner's signature of consent to and for disclosure elements of the application.
- G. A site plan, to scale, showing:
 - 1. Parcel boundaries and easements (i.e., access, utility).
 - 2. Location of all existing and proposed structures on the property, including access driveways and all utilities (water lines, water storage tanks, propane tanks, electrical lines, ground solar facilities, septic tank(s) and drainfield(s)).

3. Existing and type of agricultural production.
- H. Farm labor housing plans, including:
1. Floor plans of proposed FLH unit(s) (includes dimensions and size).
 2. Elevations (photos may suffice at the discretion of the CDD).
 3. Profile or section drawing of the proposed (if new) access to the FLH unit(s) from the nearest public road (to ensure compliance with Fire requirements).
- I. All accompanying materials listed on the application forms.

PROCEDURES

- A. Planning staff will process the FLH application by:
1. Sending referrals of the application to the County EH Division, the Building Inspection Section and the Public Works Department, the applicable Fire Authority, the County Agricultural Commissioner and the San Mateo County Farm Bureau Executive Director. For either new permits or permit amendments where the EH Division would consider such development as requiring an "Employee Housing" permit, such processing shall occur concurrently with the FLH application process.
 2. Sending the FLH application to the Agricultural Advisory Committee for comments and a recommendation.
- B. Upon a recommendation of approval (or comments in support of approval) from the above parties, the FLH application will be considered at a public hearing. The project must comply with all other County department or agency regulations, conform to both the criteria of the Local Coastal Program (if applicable), and the PAD or the RMD Development Review Criteria.

PERMIT TERMS, TERMINATION AND AMENDMENTS

Upon approval (and unless otherwise directed by the Community Development Director (CDD) or the hearing decision maker), all approved permits for FLH shall run with the land.

Where FLH operations are or will be also reviewed annually by the County EH Division under Employee Housing Permits (5 or more workers), FLH approval terms shall be for a period of 10 years. For all other FLH approvals (4 or fewer workers), the term would be 3 to 5 years, upon recommendation of the AAC. Lessor terms and/or term-specific Administrative Reviews may be mandated where violations have occurred or to ensure resolution of past problems or violations with Fire, Building or EH, as determined by the CDD. For FLH approvals in the PAD and RM-CZ, it is the PAD permit or Use Permit, respectively, that would be renewable; the CDP would not be and would only be required if a FLH amendment represented a significant modification and/or intensification of the FLH operation.

In the event that the farming operations justifying the FLH units ceases or if the FLH development is proposed to be enlarged or significantly changed, it shall be the owner's/applicant's responsibility to notify the County by letter of such change, and applying for the necessary permits to demolish the structure or use it for another permitted use. Accordingly, such notice shall identify the owner's/applicant's intention to either remove the FLH units (and associated infrastructure) or otherwise convert such improvements to that allowed by zoning district regulations. In either case, building permits and associated inspections by Building and EH shall be required to ensure that all structures have been removed, infrastructure properly abandoned or that such converted development complies with all applicable regulations.

In the case of proposed changes to permitted FLH, the owner/applicant shall submit a written description of the proposed change to the Planning Department, and if the change is considered significant by the CDD, submit a complete permit amendment application.

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**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

FARM LABOR HOUSING POLICIES AND PROCEDURES

It is the policy of the County to facilitate agricultural productivity in every feasible way. County ordinance allows for the provision of temporary farm labor housing units for farms when there is a demonstrable need for such housing. The following pages contain the policies and procedures involved with requesting and obtaining approval for farm labor housing units in rural parts of the County zoned for Planned Agriculture or Resource Management. (Temporary labor housing for the Timberland Preserve Zone is covered in a separate handout.)

POLICIES

Farm labor housing shall only be occupied by farm laborers and their immediate family members. A “farm laborer” is defined as a person who derives more than 20 hours per week average employment from on-site agricultural operations. The applicant for farm labor housing must demonstrate that the size of the housing requested is no larger than the minimum needed to adequately house the farm laborer(s) and immediate family members.

Given the “temporary” nature of these units, farm labor housing shall be provided only by mobile homes or other approved temporary buildings. A mobile home, for the purposes of these procedures, is a vehicle designed and equipped to contain one or more dwelling units, to be used without a permanent foundation. The conversion of permanent structures such as workshops and barns is only allowed with a written agreement by the applicant and the landowner certifying to the Community Development Director’s satisfaction that these additional living quarters will be reconverted to their original condition upon termination of the permit for farm labor housing.

The Certificate of Need Committee may recommend approval of “permanent” housing structures for farm workers in specific situations which warrant a long-term residential use of the property. An application for a permanent housing structure must be reviewed by the Planning Commission. Upon termination of the permit, the structure must be made to conform to current zoning regulations.

The location of the housing must meet required setbacks. Minimum building code, plumbing code, electrical code, access, water supply, sewage disposal, and Fire Marshal requirements must be met. The farm labor housing shall be self-contained with a sanitary toilet, shower, lavatory facilities, approved heating and electrical lights. A kitchen shall include a refrigerator, sink and stove. The housing shall be maintained to meet the basic California Housing and Health Code requirements for habitation.

Vegetative screening or a fence will be required if the structure will be visible from a public road or other public view.

Approved farm labor housing units are accessory uses to agriculture and therefore are exempt from the density restrictions of the zoning ordinance.

If you are interested in obtaining more information about farm labor housing in the County and how to apply for a Farm Labor Housing Permit, please contact the Planning counter at 650/363-1825.

APPLICATION REQUIREMENTS

- A. Fees. All Planning and Building fees have been waived for farm labor housing by Board of Supervisor's Resolution #54443 approved on November 13, 1990. However, the California Employee Housing Act mandates a fee which must be paid to the Environmental Health Division annually. (This fee is currently \$35 plus \$12 for each employee; a re-inspection fee of \$178 for the first hour, \$82 per additional hour or \$41 per half-hour increments may also be charged.)
- B. Verification of parcel legality.
- C. Application for a Certificate of Need.
- D. Application for either a PAD Permit if in the Planned Agricultural District, or a RMD Permit and a Use Permit if in the Resource Management District.
- E. Application for a Coastal Development Permit, if in the Coastal Zone.
- F. A completed Environmental Information Form.
- G. The property owner's signature of consent to the application.
- H. A site plan, to scale (1/16 inch = 1 foot or larger scale), showing:
 - 1. Parcel boundaries and easements.
 - 2. Location of all existing and proposed structures on the property, including access driveways and all utilities (water, electrical, septic tank and drainfield).
 - 3. Existing agricultural production and type of agricultural production.
- I. A location map showing the subject parcel in relation to nearby lots, streets, highways and/or major natural features (ocean, beaches, wetlands and major landforms).
- J. Farm labor housing plans, including:
 - 1. Floor plans.
 - 2. Elevations.
 - 3. Profile or section drawing of the proposed access to the housing from the nearest public road.

K. All accompanying materials listed on the application forms.

PROCEDURES

A. **Planning staff** will process the Certificate of Need by:

1. Sending the Certificate of Need to the five (5) members of the Certificate of Need Committee (see Attachment A).
2. Referring the Certificate of Need to the Agricultural Advisory Committee meeting for a recommendation.

B. Upon approval of the Certificate of Need, the application for farm labor housing will be considered at a **public hearing**. The project must conform to both the criteria of the Local Coastal Program (if applicable), and the PAD or the RMD Development Review Criteria.

TERMS, RENEWAL AND EXPIRATION

The time period of the permit for farm labor housing shall be specified at the time of approval. An annual administrative review by **Planning staff** is required and, if necessary, a site visit to ensure that the housing is occupied by farm workers and complies with other conditions of approval. To facilitate this review, the **Planning staff** will notify the applicant annually and the applicant shall annually submit documentation to the Planning Department verifying that the occupants of the farm labor housing are farm laborers. This documentation must consist of at least:

- A. Copies of the payroll receipts (or other payroll documentation acceptable to the Community Development Director) of the housing occupants. These receipts must span at least a 3-month period of the year in review; and
- B. Income statements for the farm operation from which the housing occupants are being paid.

Planning staff may, upon the recommendation of the Agricultural Advisory Committee, elect to conduct additional reviews beyond the annual administrative review. At that time, the applicant shall submit payroll documentation and income statements, to the satisfaction of the Community Development Director, verifying that the housing is occupied by farm laborers. Examples of circumstances which would cause this type of review include: a change in farm operations and the suspected use of the housing by people other than bona fide farm laborers.

At a time prior to termination of the permit for farm labor housing, a letter will be sent to the **applicant** giving notice of expiration of the permit. The **applicant** shall submit a letter to the County either requesting to renew the permit or stating an intention to remove the structures. A request to renew the permit shall contain a statement indicating whether or not any changes in operation have taken place since the previous

application for the permit. Additionally, to renew a permit for farm labor housing, the **applicant** shall apply for a Certificate of Need and provide an updated notification list with addressed, stamped envelopes. A request to renew a permit for farm labor housing requires a **public hearing** as outlined in Section B of the Procedures Section.

Once the **applicant** has submitted a complete request to renew a permit for farm labor housing, the Fire Marshal and the Environmental Health Division will each contact the applicant to arrange for a site inspection. **Planning staff** will arrange separate site visits for the Current Planning Section and for the Building Inspection Section. (Planning staff must fill out the Building Inspection "Pre-Site Inspection" form and coordinate the inspection with the applicant and the Building Inspection Section.)

A new farm operator, a change in operations, or a proposed increase in units requires the applicant (or the new operator) to apply for a new Certificate of Need if the units will continue to be utilized. A public hearing will also be required (as outlined in Section B of the Procedures Section).

At the time of termination of the permit for farm labor housing, all mobile homes and supporting utilities shall be removed from the temporary homesite, and the **applicant** shall certify in writing to the Community Development Director that the mobile homes have been removed.

FRM00189.DOC (6/18/09)



COUNTY OF SAN MATEO

INTERDEPARTMENTAL CORRESPONDENCE

To: Jim Eggemeyer, Director of Planning and Building
From: County Counsel
Subject: Farm Labor Housing permit procedures
Date: May 6, 2013

You have asked whether the current procedures for issuance of permits for new Farm Labor Housing (FLH) units must be revisited in light of state law that prohibits treating FLH units as different from an agricultural use. Please allow this memo to serve as a local interpretation and guidance document for the implementation of these procedures, which are provided by our Zoning Regulations and our Local Coastal Plan.

Currently the FLH procedure involves application for a Certificate of Need involving a hearing before the County's Farm Labor Housing Certification Committee. Additionally, the housing units typically require either a Planned Agricultural District (PAD) permit (in the PAD zone) or a Resource Management District (RMD) permit (in the RM and RM-CZ zones), and frequently a Coastal Development Permit (CDP). Thus, in a given zoning district, a new FLH unit might require two permits plus a Certificate of Need.

The Health & Safety Code provides, in relevant part:

For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone.

Cal. Health & Saf. Code § 17021.6(b). The question is whether this section preempts any of the procedures under our local ordinances for FLH units.

We do not believe that the basic requirement of a permit for a new FLH structure (whether CDP, PAD, or RMD) is preempted by this section, because (1) the requirement of a CDP (where necessary) is not "for the purpose of local ordinances," but rather relates to the implementation of the Coastal Act as state law; and (2) there are agricultural uses that are also (at times) subject to permits in these zones. An example of the latter is that agricultural structures such as barns

Jim Eggemeyer, Director of Planning and Building
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and storage sheds are undoubtedly agricultural uses, and permit requirements for them are analogous to permit requirements for FLH. Accordingly, a simple permit requirement for FLH units is not substantively different from what may be required of other agricultural uses and structures. We therefore do not recommend any changes to the permitting requirements for FLH units.

However, the statute prohibits not only “conditional use permits” and “zoning variances,” but also prohibits the use of any “*other zoning clearance[s]*” for farm employee housing. We believe that the requirement that new FLH units be presented to the Farm Labor Housing Certification Committee for a finding of “need” constitutes an “other zoning clearance” that is substantively different from the permits required for agricultural uses, which is prohibited by the statute. Other agricultural uses, even when subject to permit requirements, do not require the prior approval of a County agency on the basis of whether that use is “needed.” Requiring an owner to attend a public hearing to prove a “need” for the housing is a special kind of zoning clearance that is not required of other agricultural activity in the same zone, and is therefore problematic under the statute. In addition, any requirement that the owner prove an ongoing “need” for the FLH units for renewal of an existing Certificate of Need is in conflict with the statute.

Accordingly, we recommend that you interpret your obligations under the Health & Safety Code and our local ordinances to no longer require new FLH units to be conditioned upon a demonstration of “need” for the FLH units, and to no longer require owners with existing FLH units to reapply for a Certificate of Need. Staff may validly inquire whether the proposed development is consistent with zoning regulations and in furtherance of an agricultural use of the property when such is required by the zoning, but the supply and other market conditions for FLH units and other affordable housing in the rural area are not valid considerations for issuance of new permits, and any local regulation that would preclude their authorization on that basis is preempted by state law.

TJF

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