



# County of Santa Cruz

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## PLANNING DEPARTMENT

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KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

May 22, 2014

## SUPPLEMENTAL BUDGET

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

**SUBJECT: CHANGES TO CODE COMPLIANCE PROGRAM AND RECOMMENDATION TO ESTABLISH LEGALIZATION ASSISTANCE PERMIT PROGRAM (LAPP)**

### Members of the Board:

As discussed in the Proposed Budget, the Planning Department is planning to fill a vacancy and re-organize existing staff in order to increase the level of resources available for code compliance efforts and to increase the level of responsiveness desired by your Board and the community. In addition to responding to complaints, which is the usual way that cases are opened, the Department will proactively open cases where there are significant environmental and grading violations. Staff also plans to periodically target cases that may be considered low priority, but which have become neighborhood nuisances, so that there is some level of enforcement applied to those type violations. This type of pro-active enforcement will communicate that low level violations or non-complaint situations that have a high nuisance value are not exempt from code enforcement efforts of the County. Sign violations and unpermitted temporary structures are examples of violations where this type of approach can be carried out, and use of administrative citations is being considered.

Through this shift of existing staff resources, the Planning Department is planning to offer a Legalization Assistance Permit Program (LAPP), with the hope that sufficient incentives and technical assistance can be offered to owners of unpermitted construction to cause them to voluntarily engage with the County to obtain the permits and inspections needed to legalize improvements.

This report describes the proposed changes to the code compliance section and the recommended Legalization Assistance Permit Program.

### Changes to Code Compliance Program

The planned redirection of resources assigns a current Planner IV, who has knowledge of the full range of zoning, environmental and building permit processes, to be a team leader for the code staff team. The Principal Planner who is also designated as the Permit Center Manager will continue to be the direct supervisor of the Planner IV. In addition, the Building Official, a Senior Civil Engineer and the Department's Assistant Director and the Director, as needed, will collaborate with and be active members of the Code Management Team, working with the Planner IV and code staff members to redirect the efforts of the Code Compliance function for greater efficiencies, effectiveness, and timeliness.

The Code Team includes the following staff in addition to the managers indicated:

Planner IV	Team Leader – Shifted from Development Review to Code Section
Code Investigator III	Vacant funded position – recruitment efforts underway
Code Investigator III	Currently filled position
Planner	Currently filled position – shift emphasis of duties to Code Section
Planning Technician	Currently filled position
Resource Planner III	Increase existing position by 0.25 FTE in 2014-15 Budget

An attorney from the County Counsel's office is also part of the Team, and as necessary, cases are referred to Administrative Hearing Officers for review and hearing.

### **Policy Basis for “Legalization Assistance Permit Program” (LAPP)**

Goal 3 of the Santa Cruz County General Plan Housing Element, which was certified by the State in May 2010, states: “Remove Unnecessary Governmental Constraints to Housing”. The Housing Element reflects an objective of retaining existing residential structures as part of the housing stock. Program 3.7 of the Element is an implementation measure of that Goal 3:

*Housing Element Program 3.7 - Explore creating a construction legalization program to legalize unpermitted Second Units and other existing residential structures.*

The General Plan Land Use Element also contains certain policies that are accommodating of retaining existing legal non-conforming residential and commercial uses and structures in a manner that ensures the integrity and safety of structures. Economic vitality and quality of community life is enhanced when developments are legal and able to be improved, marketed and leased without concerns about unpermitted construction that may be associated with a site. General Plan policies that support the LAPP Program are presented in Attachment 2.

The unincorporated area is home to over 138,000 residents, 58,000 housing units, and a multitude of non-residential structures that provide locations for businesses and employment throughout the County. Unpermitted and uninspected improvements can pose a danger to the occupants and users of such structures, as well as to neighboring structures, people and the environment. Due to dense forests and difficult topography, fires that may start in one substandard dwelling unit may end up rapidly spreading and causing loss of life and property in the surrounding area. Unmaintained, unimproved and/or unpermitted structures and improvements also suppress property values and quality of life in an area. It is in the public interest to ensure that homes and buildings are safe.

In addition to the health and safety issues addressed above, obtaining permits and legalizing construction and improvements is beneficial to property owners in that it increases one's ability to obtain and make claims on property insurance, to obtain mortgages and financing for improvements, and building to code improves the integrity and longevity of structures. Permitted structures have higher value and contribute to improving area property values, especially if owners decide to make further investments that have been avoided due to concerns about unpermitted improvements made at an earlier time.

It has been twenty years since the County last offered a construction legalization program. The Planning Department believes that a renewed emphasis on engaging in a collaborative manner with property owners to resolve situations involving existing unpermitted or undocumented construction will have many direct and indirect benefits for the public at large, including improved public health and

safety, higher property values, streamlined permit processes for existing and future owners and commercial tenants, and improved quality of life in the community.

### **Summary of Key Features of LAPP**

It is not uncommon in the unincorporated area that a structure or property may have "started out legal", but over time property owners made unpermitted improvements and additions. Therefore, many structures may include certain unpermitted components or improvements.

Owners of properties that contain second units that were created without permits may be unaware that regulatory changes have occurred regarding secondary units, such that there is now a streamlined permit process available to legalize those units (no zoning discretionary permit is required, only a building permit and compliance with basic standards such as septic capacity) and there is no longer any requirement that the second unit be deed-restricted and formalized as affordable housing.

It should be emphasized that the focus of the LAPP is not particularly on illegal houses (for example, whole structures that have been built without any permits whatsoever), but on much more common situations; such as:

- sunrooms, garages or non-habitable spaces have been converted to habitable spaces without building permits.
- kitchens and bathrooms gutted and remodeled without permits.
- electrical wiring extended or re-done in a structure, without permits
- a new furnace, fireplace or water heater installed without permits.
- interior partitioning or other commercial tenant improvements done without a permit.
- projects which obtained a permit but never completed required inspections before expiration of the permit.

After considering a variety of possible approaches, the Planning Department envisions that the following program features might combine to encourage and incentivize property owners to legalize improvements that have been made to structures without building permits or inspections. The intent of the LAPP would be to assist owners with obtaining permits and having structures inspected, all geared to ensuring the safety of structures consistent with current code requirements and standards (or alternate methods as approved by the Building Official under the current building codes).

**Key incentives** under the LAPP to encourage property owner participation include:

- 1) A greater degree of no- or low-cost technical assistance would be provided to those who voluntarily engage with the LAPP, from land use planners, environmental resource planners, and building staff. The Code Team will emphasize defining pathways toward permits, with the goal of helping applicants to define realistic and feasible objectives and methods of obtaining permits and undertaking activities that result in legal improvements.
- 2) Public outreach and education about the changes to the County Code that have occurred over the past several years, such as with the new Nonconforming Ordinance, amended parking requirements, and the "Over The Counter" building permit process. It may be possible to obtain permits that in the past were not feasible to obtain.
- 3) Assessment of impact fees (transportation, roadside, childcare and parks impact fees that apply within the urban area) for existing construction shall be based on the time that the construction took place. County staff will reach out to school districts to encourage concurrent actions to treat school impact fees in a similar fashion under the 2-year LAPP program. Staff will also explore the feasibility of lower water/sewer connection fees for second units.

- 4) Fees for development and building plan check, processing and inspection of existing improvements by all county departments involved with permits may be charged as special inspection fees based on hourly rates to recover costs, rather than the current fee schedule..
- 5) Determination that the "Construction Unpermitted - Recover Enforcement Costs" fee (CUREC double fees), is not applicable for projects that voluntarily engage with the County's LAPP.
- 6) For certain improvements, plan submittal requirements may be modified but shall still apply current building code standards (or alternate methods under the current code as approved by the Building Official). The County's emphasis will be on documenting and inspecting the building, which will allow the owner to dedicate resources to making any needed changes to the building.
- 7) The Planning Department is working to establish a mechanism to allow permit fees to be paid with credit cards, which may assist an owner to manage costs associated with obtaining permits and legalization.

These key incentives are described in more detail below.

Coastal, Zoning and Environmental Permits. While property owners seeking to obtain building permits to legalize unpermitted improvements or construction will need to comply with applicable coastal permit and other County zoning or environmental permit requirements, as well as CEQA, work on single family dwellings is generally exempt from CEQA, and interior work and minor additions onto single-family homes generally are exempt from a coastal or zoning permit requirement. It is anticipated that most existing undocumented improvements in single family homes will only need a building permit to recognize unpermitted work that occurred within a structure that was otherwise permitted or compliant under the Code (pre-1958 structures did not require a building permit). Interior commercial tenant improvements also generally require building permits only.

CEQA Review. Since the baseline for evaluation of whether potentially significant impacts would occur as a result of LAPP implementation is existing conditions, it was determined that authorizing the Program would not have a significant impact on the environment. In fact, any impacts resulting from the LAPP program would be beneficial with regard to improvements of public health and safety. Any new work proposed by a property owner that requires a discretionary permit would be subject to existing County Code provisions, and subject to CEQA. In other words, the proposed LAPP Program does not change any discretionary regulations that apply to proposed developments, and discretionary projects remain subject to CEQA.

Imposition of Applicable Impact Fees. It is proposed that your Board take an action to authorize the imposition of those impact fees in effect at the time of the unpermitted construction, based upon finding that the benefits to public health, safety and welfare from legalization of undocumented or unpermitted construction supports this approach, and that without the LAPP Program, illegal structures are most likely to remain unpermitted and illegal, and this "status quo" situation also does not result in payment of any impact fees. Therefore, the public policy benefits to public safety, property values and community quality of life support the proposed collection of impact fees based on the level of the fee that existed at the time of construction. It is also relevant to note that the County expects to carry out a comprehensive Impact Fee Nexus Study within the next 2-3 years, and it is possible that in 2016-17 impact fees could expand to include the entire unincorporated area and more types of public facilities. This factor may also act as an incentive for participation in the LAPP Program, so that improvements can be legalized.

County Fees at Cost Recovery Level. Permit fees would be charged, but with some reduction possible if there is a reduced need for analysis, plan check, processing and inspections for existing improvements. County departments involved with permits may charge fees based on hourly rates to

recover costs, which may occur in the form of special inspection fees charged on per-hour basis for plan check and inspections. If the current owner desires to make any further additions or new improvements to this same home at the same time, all new work will comply with current requirements for plan check and inspection, and current fees for plan check, processing and inspections would be charged.

Waiver of CUREC Fees. The CUREC fee is 100% of the usual fees associated with obtaining a grading or building permit (building plan check, processing and permit/inspections). Because those owners participating in the LAPP Program would be voluntarily engaging with the County, code enforcement program resources, and the costs associated with those resources will not be involved. CUREC fee cost recovery would continue for permits related to "stop work" notices and code enforcement activity based upon receipt of complaints, but would be waived for those permits that result from voluntary property owner efforts to legalize previously unpermitted construction and thereby improve public health, safety and welfare.

The proposed Program is further described in the Planning Director's LAPP Administrative Guidelines attached as Exhibit "A" to the proposed Board Resolution that authorizes the Program.

### Public Outreach

In order to address concerns about anonymity, staff will offer Public Workshops in various county locations during Fall 2014 to explain the LAPP program and answer questions. Staff will also answer questions at the public counter, without any requirement for staff to obtain the name of the property owner or address of a specific property, although a greater degree of service can be provided with more specific information from property owners. Special counter hours or special appointments may be established for applicants exploring the LAPP.

### Possible Future Additional Elements of Construction Legalization Program

The LAPP Program ensures that only current zoning, environmental and building standards are applied when permits are sought to legalize past unpermitted construction. Staff will continue to explore additional approaches that might facilitate legalization of existing unpermitted structures and improvements in a manner that protects the public's health, safety and welfare. One approach could involve legislation adopted at the State level to allow use of prior versions of Codes for limited time periods associated with locally-adopted Construction Legalization Programs. Or, the County could employ a "limited immunity" approach, which would guide the nature and level of possible code enforcement efforts related to unpermitted situations. Under that approach, an unpermitted structure or improvements would be treated as a low priority enforcement situation, if certain health and safety criteria are met and/or corrections made and maintained into the future.

### Conclusion and Recommendation

Staff believes that administration of a Legalization Assistance Permit Program as described in this report could act to reduce the number of future code enforcement cases, facilitate elimination of unsafe and unsanitary building conditions, and streamline the planning and building permit process for existing and future property owners.

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


1. Adopt the attached Resolution authorizing county staff, including staff within county departments involved with the review and issuance of development and building permits, to:

- a) Carry out a Legalization Assistance Permit Program (LAPP) as generally outlined in this report and the Planning Director's LAPP Administrative Guidelines attached as "Exhibit A"; and
- b) Authorize the Planning Director to issue updates on an as needed basis to the Planning Director's LAPP Administrative Guidelines, in a manner consistent with the intent of the Program; and
- c) Administer any Unified Fee Schedule that will be in effect between August 24, 2014 and August 31, 2016, to carry out the LAPP Program Guidelines so that (i) the "Construction Unpermitted – Recover Enforcement Costs" (CUREC) fee does not apply to projects voluntarily participating in the LAPP to permit existing improvements; (ii) the Building Official, the Director of Public Works, the Director of Environmental Health and the County Fire Marshal are allowed the discretion to apply special inspection fees charged on an hourly basis to calculate and apply a case-by-case cost recovery level of development and building permit plan check, processing, inspection and review fees for projects participating in the LAPP; and (iii) impact fees for existing improvements for applicants who voluntarily participate in the LAPP Program to legalize existing unpermitted improvements are assessed based on the time that the improvements were made in the past.

2. Direct staff to report back to the Board by February 2015, with the results of assessing the feasibility and/or desirability of State legislation to allow use of prior versions of the Code in the context of limited-term, locally-adopted construction legalization programs, and/or of a "limited immunity" approach to addressing health and safety considerations in the context of the priority of county enforcement action related to unpermitted structures or improvements.

Sincerely,

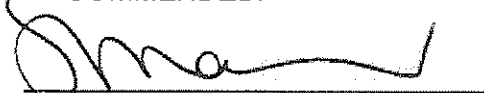
  
 Kathy Molloy Previsich  
 Planning Director

  
 John Presleigh  
 Director of Public Works

  
 Giang T. Nguyen  
 Health Services Agency Director

  
 Scott Jalbert, Chief  
 County Fire Department

RECOMMENDED:

  
 SUSAN A. MAURIELLO  
 County Administrative Officer

ATTACHMENTS:

1. Resolution authorizing and directing implementation of LAPP in general conformance with Exhibit A, and with direction regarding administration of Unified Fee Schedule for two-year time period
2. General Plan/Local Coastal Program Policies Related to Legalization of Unpermitted Improvements and to Nonconforming Uses and Structures