

September 8, 2020 Planning Commission Study Session

On September 2nd, Planning staff received the following questions from a planning commissioner regarding the Camino Pablo Estates (Agenda Item 5.A). Staff's response is provided after each question.

- 1. What is the average slope of the proposed area for development? It looks like extensive grading is necessary, wouldn't this conflict with Moraga's design guidelines?**

Staff's response: The average existing slope of the entire site is approximately 30 percent. The average existing grade of the proposed development area is approximately 26 percent. Development on slopes with existing grades of 25 percent or more is allowed, but requires Town Council approval. Town regulations call for new hillside development to minimize the amount of grading. Staff will seek Planning Commission feedback on whether the proposed project achieves this given other Town objectives and site constraints. This is discussed in the staff report beginning on page 19.

- 2. The backyards in the designs appear very small, while the homes are very large - is this in conflict with design guidelines?**

Staff's response: Design Guideline SFR1.11 states "There should be a near level area of at least 25' x 40', other than the front yard, for usable yard area." Most of the lots comply with this, but a couple of lots, such as Lot 13, appear not to. Staff will ask the applicant to provide specific numbers for this (including total usable yard area and dimensions). Please note that increasing usable yard area may require more grading and taller retaining walls, which would itself conflict with Town policies to minimize the amount of grading and height of retaining walls.

- 3. Has the Moraga-Orinda Fire District (MOFD) provided an assessment of any kind?**

Staff's response: Yes. MOFD has reviewed this project several times and provided comments and recommended conditions of approval as described on page 12 of the staff report. The project will be required to construct all homes with ember-resistant construction, prepare a Wildfire Hazard Abatement Plan, and contribute funds for MOFD to purchase a new fire engine.

- 4. I notice the staff report from 2015 mentions starting discussions with Sky View regarding annexation. Leaving that as a county pocket surrounded by Moraga seems ridiculous. Where do those conversations stand and what are the implications of AB 743.**

Staff's response: Town staff gave an informational presentation to LAFCO, the agency that processes annexation requests, back in 2015. At that time LAFCO did not see maintaining Sky View as unincorporated as a reasons to object to the proposed annexation. LAFCO did express a preference for Sky View to annex into the Town if desired by Sky View residents. LAFCO did not see it as appropriate to require Sky View annexation as a condition of approval for the proposed annexation. This is discussed in greater detail on page 5 of the staff report.

- 5. What is the typical square footage of the homes in the surrounding area?**

Staff's response: Page 24 of the staff report summarizes this information. Including estimated garage sizes, the average floor area of nearby homes is 4,483 sq. ft. in Sky View, 4,209 in Sanders Ranch, and 2,720 in the Tharp Drive area.

On September 8th, Planning staff received the following question from a planning commissioner regarding the Camino Pablo Estates Project (Agenda Item 5.A). Staff's response is provided directly after the question.

- 6. I found the attached letter pertaining to the CA Housing and Development response to whether or not Accessory Dwelling Units (ADUs) are automatically counted in the RHNA as affordable housing. You can see on page 2 towards the bottom of the page, that they are not automatically counted and that they require some justification. Does this apply to the proposed ADUs for the Camino Pablo project? Would Moraga be able to justify that the 6 proposed ADUs qualify as meeting the RHNA affordable housing requirements?**

Staff's response: For the Town to count the ADUs as providing housing for lower-income households, it would need to demonstrate that the actual or anticipated rent would meet the state's affordability definition. In past years, the Town was able to do this for ADUs, and we anticipate in the future we will also be able to do that assuming the State's rules for this remain the same.



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December 17, 2018

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Re: The Collection by Trumark Homes – Eligibility of Accessory Dwelling Units to Count Toward RHNA Affordable Housing Allocation

Dear Rob:

The Collection by Trumark Homes, a residential project proposed at 2550 Camino Tassajara in Danville, proposes to include as part of the development at least eight accessory dwelling units (ADUs) that will be deed restricted for affordable rent levels. We have been asked to confirm that when a new development constructs deed-restricted ADUs such units may be counted towards a jurisdiction's Regional Housing Needs Allocation (RHNA) and reported to the California Department of Housing and Community Development (HCD) as part of its Housing Element Annual Progress Report.

The answer to this question is yes. Attached and detached accessory dwelling units are defined in the Government Code as a type of residential dwelling unit so long as independent living facilities for one or more persons are provided. (Gov't Code § 65852.2(i)(4).)

Government Code section 65400 requires each city to prepare an annual report of the status of the housing element to document its progress in implementing the housing element, including the satisfaction of its RHNA. HCD has published instructions and regulations (see, e.g., 25 Cal.Code Regs. § 6200-6203) relating to completing such progress reports. These instructions and regulations clearly count ADUs (also known as "second units") in the total residential units produced. (See 25 Cal.Code Regs. § 6202(g)&(h).) For example, the regulations state that for each housing development affordable to moderate- or lower-income households for which building permits were issued during the reporting period, certain information shall be listed including the unit category which includes, among other types, "second-unit." (25 Cal.Code Regs. § 6203(c)(2), see also 25 Cal.Code Regs. § 6203(d) [including second-unit for potential listing of total number of units affordable to moderate and above moderate-income households].)

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HCD's Annual Housing Element Progress Report instructions clearly state that second units are considered development that can count toward satisfaction of RHNA.

“Project” or “Development” refers to a housing related activity where new construction of a unit(s) has had a building permit issued during the reporting calendar year. This may include single family, mixed use, multifamily, **second unit**, or any other developments where housing units as defined by the US Census Bureau and the California Department of Finance are a component of the project.

(HCD Draft Annual Progress Report Instructions – October 2018 [emphasis added]; see also HCD Annual Progress Report Instructions at p. 2 [including “second units” within unit category codes to be reported as part of annual building activity report summary for new construction of very low- and low-income units in Table A of the Report].) Moreover, table B of the annual progress report form requires jurisdictions to report the number of residential units included in Table A (which include second units) to demonstrate progress of meeting its RHNA. (HCD Annual Progress Report Instructions at p. 8.)

ADUs may be classified as affordable (and used towards satisfying affordable housing RHNA), especially where such units are covered by a deed restriction regarding affordable rents. HCD publishes a Frequently Asked Questions document regarding Housing Element Annual Progress Reports. In response to the question of whether ADUs can “automatically” be counted as low income because of their small size, HCD responded as follows:

Accessory Dwelling Units or Second Units are not automatically considered affordable to Low income households. Just like other housing types, the affordability of Accessory Dwelling Units (ADU) can be demonstrated by a deed restriction, proposed rents or sales prices, or a survey of comparable units that show what income level the ADU would be affordable to, for example, Very-Low, Low, Moderate, or Above-Moderate income households.

(HCD Housing Element Progress Report Frequently Asked Questions at p. 4 [updated 7/13/18].)¹ Here, Trumark proposes that the ADUs will include a deed restriction. In addition, the Town's Housing Element includes a justification for why small ADUs should be considered affordable to lower-income households. (See Town 2014-2022 Housing Element pp. 92-95 [containing

¹ The same document also specifies that an ADU is the same as a second unit for the purposes of the annual report. (HCD Housing Element Progress Report Frequently Asked Questions at p. 5.)

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determination that ADUs ≤550 square feet command a market value that would make them appropriate for low income one- or two-person households].)²

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

Patricia E. Curtin

PEC/TAW

² Other HCD-certified housing elements have specified that affordable housing RHNA may be satisfied through the development and permitting of ADUs (aka “second units”). For example, the City of Monte Sereno’s current certified housing element specifies that that city’s RHNA obligation for lower and moderate income units would be satisfied through the development of second units as well as other sources such as multifamily. (Monte Sereno 2015-2023 Housing Element at p. 44.)