

**Development Code
Amendments and Form
Based Code
for
Planning Commission**

Attachment 1

**Proposed Development Code
Amendments**

The use of an environmental assessment is intended to provide the highest degree of environmental protection while permitting reasonable development of sensitive land and water areas consistent with the goals, objectives and policies contained within the Marin Countywide Plan.

- D. Waiver of environmental assessment.** The requirements for an environmental assessment may be waived in conjunction with the proposed development of one single-family dwelling or other minor projects, or when a project is subject to environmental review. The Director may grant this waiver upon finding that the project conforms to the purpose of the Bayfront Conservation District and that sufficient evidence has been submitted to demonstrate the project's compliance with the design standards contained in this Section.
- E. Combining district subzones.** The Bayfront Conservation Combining District consists of the following three subzones (See Figure 2-1):

1. **Tidelands Subzone.** The tidelands subzone includes all areas subject to tidal action including salt marshes, beaches, rocky shorelines, and mudflats, and all open water areas.

This subzone also includes all the contiguous and adjacent land up to ~~the line of highest tidal action~~ Mean High Tide Line or five feet above Mean Sea Level where tidal marsh is present (as applied by the Bay Conservation and Development Commission (BCDC) in compliance with the McAteer-Petris Act); or the landward dike which circumscribes tidal inflow; or the nearest publicly-maintained road; whichever bounds the largest area of tidal marsh and channels.

This subzone further includes a 100-foot wide band landward on undeveloped land, as measured from the ~~line of highest tidal action~~ the Mean High Tide Line or five feet above Mean Sea Level where marsh is present, within which a flexible buffer could be delineated on a case-by-case basis. The purpose of this subzone is to define areas that should be left in their natural state because of their biological importance to the estuarine ecosystem.

This subzone defines areas with similar subsurface or surface conditions; areas which are close to and functionally related to tidal lands; areas in which it is possible to foster the continuation of agriculture; or, if that ceases, to consider the feasibility of returning undeveloped, unfilled former marshes to a more productive wildlife habitat by restoration or leaving as open space for inland marsh migration with sea level rise. This subzone includes a 100-foot wide band landward on undeveloped lands, within which a flexible buffer can be delineated on a case-by-case basis.

3. **Shoreline Subzone.** The shoreline subzone includes a few shoreline areas where main public thoroughfares (Highway 101, Paradise Drive, San Pedro Road, etc.) follow the coastline and promote visual access to the bay. The subzone extends from the bayside of the roadway to the tidelands subzone. This subzone defines a viewshed and promotes conservation of coastal habitats such as bluff vegetation and wildlife nesting/resting areas.

F. Design guidelines.

1. Habitats:

- a. Development should not encroach into wetlands and sensitive wildlife habitats, limit normal range areas, create barriers which cut off access to food, water or shelter, or cause damage to fisheries or fish habitats. Buffer zones between development and identified or potential wetland areas should be provided. Access to environmentally sensitive marshland and adjacent habitat should be restricted, especially during spawning and nesting seasons.
- b. Buffers between wetland habitat and developed uses should be 100 feet minimum width, determined by: biological (habitat) significance; sensitivity of habitats or particular species; presence of threatened or endangered species; susceptibility of adjacent site to erosion and flooding from sea level rise; topography and configuration of wetland areas; space required for marsh migration with sea level rise; and type and scale of development proposed. Existing man-made features (e.g., roads and dikes) are useful buffers.
- c. Proposed development should be designed to minimize removal of vegetation, which is important for soil stabilization, increasing recharge, and providing wildlife habitat. Areas which must be cleared of vegetation should be restored with plantings of native and other non-competing species, where revegetation is determined to be environmentally desirable. Exotic species which are considered invasive and which displace native species should be removed. Evaluation of vegetation to be removed and restored will be done on a case-by-case basis.
- d. Freshwater habitats in the Bayfront Conservation Combining District should be preserved and/or expanded so that the circulation, distribution, and flow of the fresh water supply is facilitated. These habitats are found along freshwater streams and small former marshes.

2. Access and recreation:

- a. Public access should be sited and designed to facilitate public use and enjoyment of the bayfront lands. Public areas should be clearly marked, and continuous 10-foot wide pedestrian easements from the nearest roads to the shoreline and along the shoreline should be provided. Public access areas should be designed to minimize

possible conflicts between public and private uses on the properties. Walkways should generally be set back at least 10 feet from any proposed structure.

- b. Within the Bayfront Conservation Zone, provisions should be made for recreational development and access to the shoreline marshes for such uses as fishing, boating, hunting, picnicking, hiking and nature study. There should be provisions for both separated wildlife preserve and more intensively used recreational uses along the bayfront.
3. **Buildings:**
 - a. Design and spacing of structures should permit visual access to shoreline areas. Buildings should be clustered to allow bay views from streets and, where appropriate, to allow for animal movement corridors from uplands to marshes. Building design should be low profile.
 - b. Public activity centers where outdoor human activity is expected should be set back at least 100 feet from the marsh edge (i.e., from the edge of either a defined wetland (diked bay marshland subzone), or in the adjacent tidelands subzone). This includes theaters, restaurants, schools, commercial uses, office uses and similar uses.
 - c. Buildings or structures that are constructed in designated flood zones shall comply with the minimum development standards for identified flood plain areas as established in Title 23, Section 23.09 of the County Code.
 4. **Utilities.** All new utility distribution lines shall be placed underground.
 5. **Environmental quality:**
 - a. The County may, upon consultation with Regional, State, and Federal Agencies, require off-site as well as on-site mitigation measures in order to eliminate or reduce adverse environmental impacts as a result of any proposed development.
 - b. Development shall occur in a manner which minimizes the impact of earth disturbance, erosion, water pollution, and disruption of wildlife habitat.
 - c. The development of jetties, piers and outfalls should not alter the movement patterns of the bay's tides and currents such that significant adverse impacts would result.
 6. **Diking, filling and dredging.** The County shall prohibit diking, filling or dredging in areas subject to tidal action (Tidelands subzone) unless the area is already developed and currently being dredged. Current dredging operations for maintenance purposes may continue subject to environmental review, if necessary. In some cases, exceptions to the prohibition of diking, filling, and dredging may be made for areas that are isolated, or limited in productivity, or where filling is necessary to sustain marsh habitat or use natural approaches for shoreline protection against rising sea level. In tidal areas, only land uses which are water-dependent shall be permitted, consistent with Regional, State, and Federal policy. These include ports, water-related industry and utilities, essential water conveyance, wildlife refuge, and water-oriented recreation.

Exceptions to the prohibition of diking, filling, and dredging may be granted for emergency or precautionary measures in the public interest (e.g., protection from flood or

other natural hazards). Removal of vegetation shall be discouraged. Alteration of hydrology should only be allowed when it can be demonstrated that the impact will be beneficial or non-existent.

7. Aesthetic and scenic quality:

- a. The County shall ensure protection of visual access to the bayfront and scenic vistas of water and distinct shorelines through appropriate siting and design of development.
- b. In particular, waterfront development should be sited and designed to permit open views in optimal locations for public enjoyment of bayfront lands.

8. Protection from geologic, flooding and other hazards:

- a. Any development proposed for lands within the -BFC combining district shall be consistent with policies of the Environmental Hazards Element of the Countywide Plan. Proposed development should not occur in areas which pose hazards, including differential settlement, slope instability, liquefaction, ground shaking and rupture, tsunami, flooding, or other ground failures.
- b. Areas underlain by deposits of "young muds" should be reserved for water-related recreational uses, habitat, and open space. Limited development may be allowed subject to the approval of the U.S. Army Corps of Engineers and other trustee agencies.
- c. Development proposed on bayfront lands with soil conditions that are unsuitable for construction, or experience seismic activity, should be designed to minimize earth disturbance, erosion, flooding, water pollution, and other hazards to public safety, or flooding.

9. Agricultural uses:

- a. Agricultural activities should minimize removal of natural vegetation where possible.
- b. Use of pesticides, insecticides, etc. should comply with existing State and Federal standards.
- c. Development shall be sited and designed to preserve and protect existing agricultural lands in the Bayfront Conservation Zone.

10. Sea Level Rise:

- a. The following provisions apply to new development in the BFC district where the development would be located in areas up to the 3.3-foot sea level rise inundation area depicted in Countywide Plan, Safety Element Map 2-19:
 - i. New buildings shall be located in suitable upland areas less susceptible to the effects of sea level rise.
 - ii. The lowest habitable floor area of new buildings shall be elevated at least

three feet above the Base Flood Elevation, unless there are other site-specific factors that make this elevation infeasible.

- iii. New hardscape shoreline protection improvements are only allowed when nature-based shoreline protection improvements and hybrid (i.e. nature-based with hard shoreline protection) improvements have been demonstrated to be infeasible.
- iv. Prior to the development of new buildings in this area, the property owner shall record a deed restriction against the subject property in which the property owner acknowledges and agrees, on behalf of themselves and successors and assigns that:
 - 1) The site is subject to sea level rise hazards, including but not limited to flooding, bluff and shoreline erosion;
 - 2) Property owner acknowledges and assumes sole responsibility for all risks of potential damage caused by sea level rise; and explicitly waives, and releases the County from any claim of any kind against the County for any such damage, including any claim for personal injury, property damage, and/or inverse condemnation;
 - 3) Property owner acknowledges that sea level rise may also potentially damage public infrastructure that provides benefits to members of the public, including the property owner, and that it may not be in the public interest for the County to repair and/or replace such infrastructure in the future. The property owner further acknowledges that such damage, and/or the County's decision not to repair and/or replace such infrastructure following such damage, may render the property uninhabitable;
 - 4) Housing Code provisions prohibit the occupancy of structures where sewage disposal or water systems are rendered inoperable; and
 - 5) The property owner and assigns bear all responsibility for demolishing and removing structures damaged by the effects of sea level rise and deemed by the Marin County Building Official as substandard and/or unsafe pursuant to the Marin County Building Code.

22.14.070 – Primary Floodway (F-1) District

- A. **Purpose.** The Primary Floodway (F-1) combining district is intended to insure that life and property will be protected within designated floodways and to prevent increased flooding due to random and uncontrolled development which will impede passage of ultimate floodwaters.
- B. **Application of combining district.** The –F-1 district shall apply to those lands within a primary floodway and shall consist of the channel of a watercourse and that portion of the adjoining floodplain which is reasonably required to provide for the passage of floodwaters of the watercourse. The F-1 district may be combined with any zoning districts established by Section 22.06.020 (Zoning Districts Established) and their companion coastal zones established by Article V.

D. Application of combining district. The AH combining district applies to the sites listed below:

Site Name	Address	Assessor Parcel Number(s)	Zoning	AH Combining District
St. Vincent's / Silveira	St. Vincent's Drive, San Rafael	155-011-08 155-011-28 155-011-29 155-011-30 155-121-16	A2:AH	Limited to 5 acres
Marin City Community Development Corporation	441 Drake Ave, Sausalito (Marin City)	052-140-36	RMP-4.2:AH	Limited to 0.75 acres
Golden Gate Seminary	201 Seminary Drive, Mill Valley (Strawberry)	043-261-25 043-261-26	RMP-2.47:AH	Limited to 2 acres

22.14.100 – Form Based (FB) Combining District

A. Purpose. The Form Based (FB) combining district is intended to provide objective design standards for multi-family housing development projects that qualify for ministerial review. The combining district is supplemental to the underlying zoning, which remains unchanged. This section incorporates by reference the Marin County Form Based Code in its entirety.

B. Application of combining district. The FB district shall apply to the new development of at least five primary residential dwelling units on any of the following:

1. Sites of residential or mixed use projects subject to Senate Bill 35 or any other State legislation that mandates ministerial review of housing development projects.
2. Sites of residential or mixed use projects within the Countywide Plan's Housing Overlay Designation area. However, a property owner may choose to rely on the underlying zoning district standards, subject to Design Review requirements, instead of applying the FB combining district as long as the resulting project would comply with the density requirements set forth in D below.
3. Sites in the urbanized area where the development of multiple primary dwellings is allowable and where property owners, at their sole discretion, choose to combine it with an underlying multifamily residential or commercial zoning district.

The FB combining district cannot be applied to floating home marinas or mobile home parks.

C. Permitted Uses. Allowable uses are governed by the underlying zoning district and application of the FB combining district shall have no effect on the allowable uses on a property.

D. Density. At least five new primary dwelling units shall be created by a project subject to the FB combining district. The project shall result in at least the number of units on the property necessary to reach the minimum number of units established in the density range of the Countywide Plan Land Use Designation, or the minimum number of units designated for the property in the Countywide Plan Housing Element's Housing Overlay Designation area, whichever is greater.

E. Design Standards. New development shall comply with the provisions of the Marin County Form Based Code, which supersedes all other design standards in this Development Code.

F. Deviations. Deviations from the provisions of the Marin County Form Based Code, as identified in subsection E. above, are subject to Design Review (Chapter 22.42), or the Exceptions process for civil engineering standards (Chapter 24.15) related to parking and access improvements.

22.32.184 – Senate Bill 9 Housing Development

This section applies to development authorized under California Senate Bill 9 (SB 9) of 2021 and subsequent amendments. Regulations for urban lot splits authorized under SB 9 are provided in section 22.80.064 rather than in this section.

The standards and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this section. If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

A housing development is eligible for SB 9 processing if it satisfies all of the requirements enumerated below.

- A. The housing development contains no more than two primary units per lot, which are either attached or detached. A housing development contains two residential units if the development proposes no more than two new units (including just one unit on a vacant lot) or if it proposes to add one new unit to one existing unit.
- B. The site of the housing development is within a single family residential zoning district.
- C. The site of the housing development is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
- D. The development is not located on a site that is any of the following:
 1. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
 2. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 3. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 4. A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

5. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

6. Within a special flood hazard area subject to inundation by the one percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subsection and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to the site. A development may be located on a site described in this subparagraph if either of the following are met:

(a) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the County.

(b) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(7) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subsection and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to the site.

(8) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(9) Lands under conservation easement.

E. The proposed housing development would not require demolition or alteration of any of the following types of housing:

(1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

- (3) Housing that has been occupied by a tenant in the last three years.
- F. The lot subject to the proposed housing development is not a lot on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
- G. The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the site has not been occupied by a tenant in the last three years.
- H. The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
- I. Notwithstanding the governing zoning district for the property, the development standards of the R2 zoning district (Two Family, Residential) apply unless the development qualifies for an exception as described in subsection J below. In addition, except as provided in subsection J below, the maximum floor area of any newly constructed primary residential unit authorized under this section shall not exceed 1,200 square feet, the residential units are not allowed to be built within a Stream Conservation Area or Wetland Conservation Area, and the development shall not entail the removal of protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).
- J. Notwithstanding subsection I above, the County shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two primary units or that would physically preclude either of the two units from being at least 800 square feet in floor area. Such units are subject to minimum front yard setbacks of 25 feet and minimum side and rear yard setbacks of four feet.
- No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
- K. The County shall require that a rental of any unit created pursuant to this ordinance be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.
- L. The County shall not allow the creation of an Accessory Dwelling Unit as part of the development subject to this section and SB 9 if the lot on which the development is to occur was created by an Urban Lot Split approval under section 22.80.064 and SB 9 (both the authority contained with Government Code section 65852.21 related to development projects and the authority in Government Code section 66411.7 related to urban lot splits).

22.40.030 – Application Submittal and Filing

A. Applicability. This Section shall apply to the submission and processing of the following development applications:

1. Discretionary Permit Applications

- a. Design Reviews;
- b. Floating Home Exceptions;
- c. Master Plans;
- d. Temporary Use Permits;
- e. Tentative Maps and Vesting Tentative Maps;
- f. Lot Line Adjustments;
- g. Site Plan Reviews;
- h. Tree Removal Permits;
- i. Use Permits;
- j. Variances; and
- k. Sign Reviews.

2. Ministerial Planning Decisions.

- a. Certificates of Compliance
- b. Homeless Shelter Permits
- c. Large Family Day-care Permits
- d. Residential Accessory Dwelling Unit and Junior Accessory Dwelling Unit Permits
- e. Sign Permits
- f. Use Permit Renewals
- g. Urban Lot Split Compliance Reviews
- h. Housing Development Regulation Compliance Reviews
- ig. Permit exemptions

B. Eligibility for submittal of an application. Development applications may be made only by an owner or lessee of real property, an agent of the owner or lessee, or a person who has

Review, except as otherwise provided in Section 22.42.025 (Exemptions from Design Review) and 22.42.048 (Design Review Waivers).

- A. **Planned Zoning Districts (combining coastal zones included).** Residences, non-residential structures, accessory structures, agricultural structures, and other physical improvements in all Planned zoning districts.
- B. **Conventional Zoning Districts.** Residential buildings and additions to floor area in Conventional zoning districts on a lot that would contain more than 3,500 square feet of floor area with the proposed development and/or where the proposed development of primary structures would be greater than 30 feet in height or 16 feet in height for residential detached accessory structures.
- C. **Permit Waivers.** Any waiver or exception to a standard specifically identified in this Development Code as being subject to this Chapter as well as Variance waivers identified in Chapter 22.54 (Variances).
- D. **Substandard Building Sites.** Where a vacant legal lot is proposed for single-family residential development, and when the lot is at least 50 percent smaller in total area than required for new lots under the applicable zoning district or slope regulations, in compliance with Section 22.82.050 (Hillside Subdivision Design Standards), whichever is more restrictive, the proposed development shall be subject to the requirements of this Chapter. In these instances, any exemption from Design Review provided by Section 22.42.025 (Exemptions from Design Review) shall be void and setback requirements shall be waived. The subsequent development and physical improvements of these properties shall continue to be subject to the requirements of this Chapter.
- E. **Lots Served by Paper Streets.** The development of a vacant lot served only by a paper street shall be subject to the requirements of this Chapter where required by a Community Plan pursuant to a resolution adopted by the Board of Supervisors.
- F. **Deviations in the Form Based (FB) Combining District. As specified in Section 22.14.100, deviations to the provisions of the Marin County Form Based Code.**

22.42.025 – Exemptions from Design Review

Development and physical improvements listed below in Subsections A to T are exempt from Design Review.

- A. **Single-family Additions and Residential Accessory Structures in Planned Districts.** Single-family residential additions and residential accessory structures on a lot with existing and proposed floor area not exceeding 3,500 square feet in a Planned District (see Chapter 22.16 Discretionary Development Standards) that meet the standards in Tables 4-2 and 4-3. This exemption does not apply if work authorized under a previous Design Review has not received approval of a final inspection from the Building and Safety Division.

CHAPTER 22.64 – HOUSING DEVELOPMENT REGULATION **COMPLIANCE REVIEW**

Sections:

22.64.010 – Purpose of Chapter

22.64.020 – Applicability

22.64.030 – Application Filing

22.64.040 – Application Review for Type 1 Projects (Form Based)

22.64.050 – Application Review for Type 2 Projects (SB 9)

22.64.060 – Application Review for Type 3 Projects (SB 35)

22.64.010 – Purpose of Chapter

This Chapter establishes procedures for various types of Housing Development Regulation Compliance Reviews (Housing Compliance Reviews) that provide for ministerial review of housing development project applications.

22.64.020 – Applicability

There are three distinct types of Housing Compliance Review applications, which apply as described below:

- A. **Type 1.** Development proposed in the Form Based (FB) combining district, under the regulations of the Marin County Form Based Code.
- B. **Type 2.** Development proposed under the statutory authority of Senate Bill 9 (2021, as subsequently amended). Urban lot split applications are reviewed under the Urban Lot Split provisions in section 22.80.064.
- C. **Type 3.** Development proposed under the statutory authority of Senate Bill 35 (2018, as subsequently amended).

Application of the Housing Compliance Review preempts the application of discretionary development entitlements. Specific procedures for reviewing these three types of applications are provided in this Chapter. All of these types of review are ministerial in nature and shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews, except for those deviations specifically established in this Chapter.

22.64.030 – Application Filing

An application for a Housing Compliance Review shall be submitted, filed, and processed in compliance with and in the manner described in Chapter 22.40 (Application Filing and Processing, Fees).

Housing Compliance Review application forms are available online and at the Agency's public service counter.

22.64.040 – Application Review for Type 1 Projects (Form Based)

The Director may only approve or conditionally approve an application for a Type 1 Housing Compliance Review if the project is consistent with all of the applicable standards in the Marin County Form Based Code. Deviations from these standards are subject to Design Review (Chapter 22.42), or the Exceptions process for civil engineering standards (Chapter 24.15) related to parking and access improvements.

22.64.050 – Application Review for Type 2 Projects (SB 9)

The Director may only approve or conditionally approve an application for a Type 2 Housing Compliance Review if the project is consistent with all of the applicable standards in Section 22.32.184 (Senate Bill 9 Development Standards).

The County shall only deny a Type 2 Housing Compliance Review application that is otherwise eligible for SB 9 processing if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

22.64.060 – Application Review for Type 3 Projects (SB 35)

All sites for Type 3 (SB 35) projects are governed by the FB (Form Based) Combining District. The Planning Commission is the Review Authority for Type 3 (SB 35) projects, and the Planning Commission may only approve or conditionally approve an application for a Type 3 Housing Compliance Review if the project is consistent with all of the applicable standards in the Marin County Form Based Code.

Type 3 (SB 35) applications are subject to the mandatory procedures provided below.

A. Preliminary Application Filing. An applicant shall file a notice of intent to submit an SB 35 Housing Compliance Review application in the form of a preliminary application consistent with Government Code Section 65941.1. Complete Building Permit applications for the project shall be submitted concurrently with the Preliminary Application.

An applicant for an SB 35 housing development project shall be deemed to have submitted and filed a preliminary application upon providing all of the following information about the proposed project to the County:

1. The specific location, including parcel numbers, a legal description, and site address, if applicable.
2. The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.
3. A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.
4. The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

5. The proposed number of parking spaces.
6. Any proposed point sources of air or water pollutants.
7. Any species of special concern known to occur on the property.
8. Whether a portion of the property is located within any of the following:
 - (a) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
 - (b) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - (c) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply: 1) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses (this section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5); or 2) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.
 - (d) A special flood hazard area subject to inundation by the one percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
 - (e) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
 - (f) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.
 - (g) Any historic or cultural resources known to exist on the property.
 - (h) The number of proposed below market rate units and their affordability levels.
 - (i) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
 - (j) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
 - (k) The applicant's contact information and, if the applicant does not own the property, consent

from the property owner to submit the application.

(l) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied, and the income levels of any existing tenants.

(m) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

(n) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

B. Timeline. Within 180 calendar days after filing a preliminary application, an applicant shall submit a formal Senate Bill 35 application, provided scoping consultation has concluded consistent with Subsection C, below.

C. Scoping Consultation

(1) Upon receipt of the preliminary application, the County shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that should be noticed. The County shall provide a formal notice of the applicant's intent to submit a formal application to each required California Native American tribe within 30 days of preliminary application submittal. The formal notice shall be consistent with Government Code Section 65913.4(b).

(2) If, within 30 days of receipt of the formal notice, any California Native American tribe that was formally noticed accepts the invitation to engage in scoping consultation, the County shall commence scoping consultation within 30 days of receiving that response.

(3) The scoping consultation shall be conducted consistent with Government Code Section 65913.4(b). If, after scoping consultation is concluded, a development is not eligible for Senate Bill 35 streamlining, the County shall provide written documentation as required by Government Code Section 65913.4(b) to the applicant and any California Native American tribe that is a party to that scoping consultation.

(4) Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code section 65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code section 65913.4(b)(2)(D)(ii)).

D. Formal Application. If the development remains eligible to apply under Senate Bill 35 after scoping consultation consistent with Government Code Section 65913.4(b) has concluded, an applicant may file a formal Senate Bill 35 application for compliance review.

E. Compliance Review

1. Scope of Review. The County's scope of review is limited to all of the provisions contained in this Development Code, Government Code Section 65913.4(a), and the objective standards in the Marin County Form Based Code.

2. Public Oversight and Application Review Timelines. The final review of a formal application shall be done by the Planning Commission during a hearing to determine if the application complies with all of the provisions contained in this Development Code, Government Code Section 65913.4(a), and standards of the Marin County Form Based Code, and shall occur within the following timeframes:

(a) Within 90 calendar days of formal application submittal for applications that include 150 or fewer housing units.

(b) Within 180 calendar days of formal application submittal for applications that include 151 or more housing units.

3. Compliance Determination.

(a) Compliant Application. If the application complies with all of the provisions contained in this Development Code, Government Code Section 65913.4(a), and all applicable objective standards in the Marin County Form Based Code, the County shall complete any application review, Planning Commission hearing and any subdivision approval within the timeframes listed in Subsection E.2.

(b) Non-Compliant Application. If the application does not demonstrate compliance with all of the provisions contained in this Development Code, Government Code Section 65913.4(a), and all applicable objective standards, then the Planning Commission shall provide the applicant with written documentation of which standards the development conflicts with and an explanation of the reasons the development conflicts with each standard. If the application can be brought into compliance with minor changes to the proposal, the Planning Commission may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in C.(2) above.

(c) Resubmitted Application. If the project was found to be non-compliant, the applicant may resubmit a corrected application for Senate Bill 35 streamlined processing, and the County shall review it for compliance.

(d) Project Ineligible. If the project is ineligible for Senate Bill 35 streamlined processing, the applicant may elect to submit an application for the applicable discretionary approval.

F. Decision on Project

(1) Project Approval and Findings. The Planning Commission is the review authority for Type 3 Housing Compliance Review applications. The Planning Commission shall approve the application if it finds that the proposed development is compliant with all of the provisions contained in this Development Code, Government Code Section 65913.4(a), and all applicable objective standards of the Marin County Form Based Code.

(2) Conditions of Approval. The Planning Commission may impose conditions of approval provided those conditions of approval are objective and broadly applicable to development within the County.

G. Post-decision Procedures.

- (1) Subsequent Permits. Any necessary subsequent permits shall be issued on a ministerial basis subject to applicable objective standards. If a public improvement is necessary to implement a development subject to this Section, and that public improvement is located on land owned by the County, the County shall process any approvals needed as required by Government Code Section 65913.4(h).
- (2) Post-Approval Modifications.
- (a) Post-Approval Modification Request. An applicant or the County may request a modification to an approved development if that request is made prior to the issuance of the final building permit.
- (b) Applicability of Objective Standards to Modifications. The County shall only apply objective standards in effect when the original application was submitted, except that objective standards adopted after the date of original submittal may be applied when: 1) the total number of residential units or total square footage of construction changes by 15 percent or more; or 2) when the total number of residential units or total square footage of construction changes by five percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the application was submitted in order to mitigate or avoid a specific adverse impact upon public health of safety, for which there is no feasible alternative method to satisfactorily mitigate or avoid. Objective building standards contained in the California Building Code, as adopted by the County, shall be applied to all modifications.
- (c) Post-Approval Modification Review Timeframe and Decision. The County shall determine if the modification is consistent with objective planning standards and issue a decision on the applicant's modification request within 60 days after submittal unless a new Type 3 Housing Development Review application is required, in which case a decision shall be made within 90 days.
- (3) Expiration. An application approved consistent with this section shall remain valid for three years; however, an application approval shall not expire if the development includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income consistent with Government Code Section 65913.4(e).
- (4) Extension. At the discretion of the Director, a one-year extension may be granted consistent with Government Code Section 65913.4(e).

5. The exception is consistent with the Marin Countywide Plan, or any applicable Community Plan or Specific Plan.

In granting an exception, the Review Authority shall secure substantially the same objectives of the regulations for which the exception is requested and shall impose whatever conditions it deems necessary to protect the public health, safety, general welfare and convenience, and to mitigate any environmental impacts.

22.80.064 – Urban Lot Splits Under Senate Bill 9

Conformance with the provisions of this section shall be ensured by requiring any project proponent seeking approval for an urban lot split that is subject to the terms of this section to obtain approval of an “Urban Lot Split Compliance Review” (Lot Split Review) prior to applying for their Parcel Map.

The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The Planning Division shall issue a ministerial approval, approval with conditions, or denial of a Lot Split Review based on the project’s conformance with the objective standards and requirements provided for in this section and any applicable requirements of the Subdivision Map Act.

The procedures, standards, and requirements enumerated below apply to urban lot splits proposed under the provisions of SB 9 of 2021 and this section. If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit a discretionary Tentative Map application.

A. Notwithstanding any other provision of this section, the County shall ministerially approve an urban lot split only if the County determines that the urban lot split meets all of the following requirements:

1. The lot split subdivides an existing lot to create no more than two new lots of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot proposed for subdivision.

2. Both newly created lots are no smaller than 1,200 square feet.

3. The lot being subdivided meets all the following requirements:

- (a) The lot is located within a single-family residential zone.

- (b) The lot subject to the proposed urban lot split is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

4. The lot split is not located on a site that is any of the following:

- (a) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural

protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(b) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(c) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(d) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(e) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(f) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the County.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(g) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the

County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

(h) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(i) Lands under conservation easement.

5. The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(a) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(b) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(c) A lot or lots on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(d) Housing that has been occupied by a tenant in the last three years.

6. The lot is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

7. The lot has not been established through prior exercise of an urban lot split as provided for in this section.

8. Neither the owner of the lot being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent lot using an urban lot split as provided for in this section.

B. An application for a Lot Split Review for an urban lot split shall be approved in accordance with the following requirements:

1. The County shall approve or deny an application for an urban lot split ministerially without discretionary review.

2. The County shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

3. Notwithstanding Subdivision Map Act Section 66411.1, the County shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the lots

being created as a condition of approving a Lot Split Review for an urban lot split pursuant to this section.

C. Notwithstanding the governing zoning district for the property, the development standards of the R2 zoning district (Two Family, Residential) apply unless the development qualifies for an exception as described in subsection D below.

D. Notwithstanding subsection C above, the County shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two primary units or that would physically preclude either of the two units from being at least 800 square feet in floor area. Such units are subject to minimum front yard setbacks of 25 feet and minimum side and rear yard setbacks of four feet.

No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

E. Notwithstanding subsection A. above, the County shall deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

F. In addition to any standards established in accordance with this section, the County shall require that the project satisfy the following requirements when considering an application for an Urban Lot Split Review:

(1) Easements required for the provision of public services and facilities.

(2) Both lots adjoin a public right-of-way, except that if a lot is already developed with a residence it can adjoin a private street.

G. The County shall require that the uses allowed on a lot created by this section be limited to residential uses.

The County shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

H.

This requirement shall not apply to an applicant that is a “community land trust.” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

I. The County shall require that a rental of any unit on a lot created pursuant to this section be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

J. The County shall not require, as a condition for ministerial approval of a Lot Split Review, the correction of nonconforming zoning conditions.

22.80.070 – Notice of Judicial Challenge

At least 30 days before filing any judicial action or proceeding to attack, review, set aside, void or annul the decision of the Review Authority concerning a Tentative, Parcel or Final Map, or any of the proceedings, acts or determinations taken, done or made before this decision, or to determine the reasonableness, legality or validity of any condition of approval, written notice shall be served upon the Review Authority detailing the nature of the conduct or action intended to be challenged. This Section is not intended to extend the statute of limitations provided in Map Act Section 66499.37.

- C. Processing.** Proposed changes to a Tentative Map or conditions of approval shall be processed in the same manner as the original Tentative Map, except as otherwise provided by this Section.
- D. Findings for approval.** The Review Authority shall not modify the approved Tentative Map or conditions of approval unless it shall first find that the change is necessary because of one or more of the following circumstances, and that all of the applicable findings for approval required by Subsections 22.84.060.A (Required Findings for Approval) and 22.84.060.B (Supplemental Findings) can still be made:
1. There was a material mistake of fact in the deliberations leading to the original approval.
 2. There has been a change of circumstances related to the original approval.
 3. A serious and unforeseen hardship has occurred, not due to any action of the Applicant.
- E. Effect of changes on time limits.** Approved changes to a Tentative Map or conditions of approval shall not be considered as approval of a new Tentative Map, and shall not extend the time limits provided by Section 22.84.130 (Expiration of Approved Tentative Map).

22.84.100 – Completion of Subdivision Process

- A. Compliance with conditions, improvement plans.** After approval of a Tentative Map in compliance with this Chapter, the subdivider shall proceed to fulfill the conditions of approval within any time limits specified by the conditions and the expiration of the map and, where applicable, shall prepare, file and receive approval of improvement plans in compliance with Chapter 22.100, before constructing any required improvements.
- B. Conforming Tentative Map and condition compliance review.** After approval of a Tentative Map but before filing check prints of a Parcel Map or Final Map with the County Surveyor, the subdivider shall submit a conforming Tentative Map showing any modifications made by the conditions of Tentative Map approval, together with any required supplemental information sheets, draft easements, maintenance agreements, agricultural or other contracts, or other information that is required by the conditions of the Tentative Map approval to the Director for a ministerial conformance review and determination. Tentative Maps approved under the provisions of section 22.80.064 (Urban Lot splits under Senate Bill 9) are not subject to this requirement.
- C. Parcel or Final Map preparation, filing and recordation.** Where a Parcel or Final Map is required by this Article or the Map Act, the map shall be filed and recorded as follows.
1. A Parcel Map for a subdivision of four or fewer parcels shall be prepared, filed, processed and recorded in compliance with Chapter 22.86 (Parcel Maps and Final Maps), to complete the subdivision, unless a Parcel Map has been waived in compliance with Section 22.86.030 (Waiver of Parcel Map).
 2. A Final Map for a subdivision of five or more parcels shall be prepared, filed, processed and recorded in compliance with Chapter 22.86 (Parcel Maps and Final Maps), to complete the subdivision.

B. Definitions, "B."

Banks and Financial Services (land use). This land use consists of financial institutions including:

- banks and trust companies
- credit agencies
- holding (but not primarily operating) companies
- lending and thrift institutions
- other investment companies
- securities/commodity contract brokers and dealers
- security and commodity exchanges
- vehicle finance (equity) leasing agencies

See also, "Automatic Teller Machine," above.

Bars and Drinking Places (land use). This land use consists of the sale of alcoholic beverages for on-site consumption, not as part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May include entertainment (e.g., live music and/or dancing). May also include beer brewing as part of a microbrewery, and other beverage tasting facilities.

Base Flood Elevation (BFE). The elevation of the 100-year flood level as determined by statistical analysis for each local area and as designated on the Federal Emergency Management Agency's Flood Insurance Rate Maps (FIRMs). This elevation is the basis of the insurance and floodplain management requirements of the National Flood Insurance Program.

Basement. A story which is partly or completely below grade.

Bay Window. A windowed enclosure that projects from an exterior wall and is at least 18 inches above the adjoining finished floor as measured to the lowest horizontal plane of the projection. To be considered a bay window for the purposes of allowed exemptions and floor area, the windowed enclosure shall not occupy an area greater than 25 percent of any individual wall element of a building for each story or extend more than 30 inches from the exterior wall.

Bed and Breakfast Inns (land use). This land use consists of providing up to five guest bedrooms for overnight lodging, where the use is clearly secondary and incidental to the use of the property as a single-family residence. County requirements applicable to Bed and Breakfast Inns are in Section 22.32.040 (Bed and Breakfast Inns), and applicable Health Department regulations. A Bed and Breakfast Inn with more than five guest rooms is considered a hotel or motel, and is not permitted in a residential zoning district. Refer to the definition of "Room Rental" to distinguish between a Bed and Breakfast Inn and room rental in a "boarding house" situation.

Below Market Rate. Housing that is sold or rented at a price which is below the prevailing rate for equivalent housing units within the same community.

Beverage Production (land use). This land use consists of manufacturing facilities including bottling plants, breweries, coffee roasting, soft drink production, and wineries. Does not include milk processing; see "Food Products." May include tasting and accessory retail sales of beverages produced on site. A tasting facility separate from the manufacturing facility is included under the definition of "Bars and Drinking Places" if alcoholic beverages are tasted, and under "Restaurant" if beverages are non-alcoholic.

Block. A group of lots surrounded by streets or roads, or streets or roads and railroad right-of-way, mean high tide line or unsubdivided acreage.

Blue Line Stream. A watercourse shown as a blue line (perennial or intermittent) on the most recent applicable USGS topographic quadrangle map.

Board, Board of Supervisors. The Board of Supervisors of the County of Marin, State of California.

Food Products (land use). This land use consists of the manufacture of or processing foods for human consumption, and certain other related products. Examples of the products included in this land use are:

- bakery products
- candy, sugar and confectionery products
- catering services separate from stores or restaurants
- dairy products
- fats and oil products
- fruit and vegetable canning, preserving, related processing
- grain mill products and by-products
- meat, poultry, and seafood canning, curing, byproduct processing
- miscellaneous food item preparation from raw products

Does not include: bakeries which sell all products on site (see "Retail Stores, General Merchandise"); beer brewing as part of a brew pub, bar or restaurant (see "Bars and Drinking Places"); beverage production other than dairy products (see "Beverage Production"); slaughterhouses and rendering plants (see "Slaughterhouses and Rendering Plants"); or operations on crops after harvest (see "Agricultural Processing Uses").

Footprint. The horizontal surface area covered by a structure.

Form Based Code. The objective standards for multifamily housing development, which are incorporated by reference in their entirety into this Development Code.

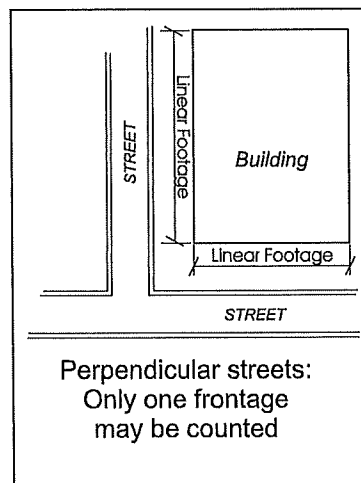
Front Wall. The wall of the building or other structure nearest the street upon which the building faces.

Front Wall (Signs). For the purposes of Chapter 22.28 (Signs), the front wall is the wall of a structure that contains the primary entrance or entrances to the premises. If there are entrances in more than one wall, the longest of the walls in which primary entrances are located shall be the front wall. The front wall includes not only the wall itself, but all doors, windows, and other openings and projections. See Figure 8-2.

Frontage. See "Lot Frontage."

Fuel and Ice Dealers (land use). This land use consists of the retail sale to consumers of ice, bottled water, fuel oil, butane, propane and liquefied petroleum gas (LPG), bottled or in bulk, as a principal use.

**FIGURE 8-2
WALL FRONTAGE**



H. Definitions, "H."

Habitat Island. A habitat island refers to an isolated area of land generally surrounded by water that provides valuable foraging and roosting habitat for resident and migratory birds and wildlife, particularly during winter and early spring months.

Handcraft Industries, Small-Scale Manufacturing (land use). This land use consists of the manufacture of products not classified in another major manufacturing group, including: jewelry; musical instruments; toys; sporting and athletic goods; pens, pencils, and other office and artists' materials; buttons, costume novelties, miscellaneous notions; brooms and brushes; and other miscellaneous manufacturing industries.

Harbors (land use). This land use consists of facilities providing a full range of services related to: commercial and recreational fishing; fisheries and hatcheries; seafood processing; ship and boat building and repair; marine hardware sales and service; petroleum storage and handling; boat storage and miscellaneous storage activities. Facilities primarily oriented toward recreational activities are included under the definition of "Marinas."

Hardscape Shoreline Protection. Also referred to as grey infrastructure, hardscape shoreline protection improvements are physical features engineered, designed and constructed to provide shoreline protection with hard materials such as concrete, rock, and steel, and without relying on biological components for their primary functions.

Hazardous Waste Facility. A State-licensed facility for the temporary storage and/or processing of hazardous waste.

Health/Fitness Facilities (land use). This land use consists of fitness centers, gymnasiums, health and athletic clubs including sauna, spa or hot tub facilities; tennis, handball, racquetball, archery and shooting ranges and other sports activities.

Health Officer. The Marin County Health Officer.

Height, Structure. The vertical distance from grade to the highest point of a structure. The maximum height of buildings located in areas subject to tidal action shall be measured from Mean Sea Level. Section 22.20.060 (Height Measurement and Height Limit Exceptions) explains how this Development Code requires structure height to be measured.

Heritage Tree. See "Protected Tree and Heritage Tree."

Highway. State Route 1, State Route 101, Panoramic Highway, and State Route 131.

Historic Area. Areas mapped and described as historic areas in the Local Coastal Program, including those within Bolinas, Inverness, Marshall, Olema, Point Reyes Station, Stinson Beach, and Tomales.

Historic Lot. A unit of real property that was formerly a legal lot of record.

Historic Structure. As determined by the Local Coastal Plan, any building constructed prior to 1930, including any accessory structures on a site.

Holiday Product Sales. See "Outdoor Retail Sales, Temporary."

Home Occupation (land use). This land use consists of the conduct of a business within a dwelling, or within an accessory building located on the same site as the dwelling, employing the occupant of the dwelling, with the business activity being subordinate to the residential use of the property. See Section 22.32.100 (Home Occupations).

Homeless Shelter. Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. In order for a facility to be a homeless shelter, no

N. Definitions, "N."

Native Tree. Any tree in the list “Trees Native to Marin County,” maintained and provided by the Department.

Native Tree Removal. Generally means the destruction of any protected tree or the alteration of any protected tree which may adversely affect the health and survival of the tree. Includes “removal of a tree.” Routine trimming and pruning is not considered tree removal for the purpose of this Chapter.

Natural Disaster. Any situation in which the force or forces which destroyed a structure were beyond the control of the owner, including fire, flood, storm, explosion, landslide, earthquake, or other similar conditions.

Nature-Based Shoreline Protection. Nature-based shoreline protection improvements, also called living shorelines, are physical landscape features that are created and evolve over time through the actions of environmental processes, or features that mimic characteristics of natural features but are created by engineering and construction (in concert with natural processes) to provide shoreline protection and other ecosystem services. Nature-based protection includes tidal marsh restoration and enhancement, off-shore island preservation and enhancement, ecotone levees, beach enhancement, and other methods of slowing water movement and increasing filtration.

Nature Preserves (land use). This land use consists of sites with environmental resources intended to be preserved in their natural state.

NAVD (North American Vertical Datum). A vertical elevation control datum used in height measurements.

Negative Declaration. A written statement describing the reasons that a proposed project that is not otherwise exempt from the California Environmental Quality Act (CEQA) will not have a significant adverse effect on the environment and, therefore, does not require the preparation of an Environmental Impact Report (EIR). Please refer to CEQA Guidelines Section 15369.5 for a complete definition of a Negative Declaration.

Net Lot Area. The baseline area of a lot used for calculating maximum subdivision potential, and calculated by taking the area of the whole lot and subtracting the following:

1. Any areas seaward of mean high tide.
2. Any areas within a Stream Conservation Area or Wetland Conservation Area.

The resulting area is the net lot area.

Nonconforming Lot. A lot of record that was legally created, but does not conform with this Development Code because the lot is of a size, shape, or configuration no longer allowed in the zoning district that applies to the site, as a result of the adoption of, or amendments to this Development Code.

Nonconforming Structure. A structure that was legally constructed, but does not conform with this Development Code because amendments to this Development Code or the previous Marin County Zoning Ordinance made the structure nonconforming in its size, location on its site, separation from other structures, number of parking spaces provided, or other features.

Nonconforming Use. A use of land, and/or within a structure, that was legally established, but does not conform with this Development Code because the use is no longer allowed in the zoning district that applies to the site, as a result of amendments to this Development Code or the previous Marin County Zoning Ordinance.

O. Definitions, "O."

Oak Woodland Management Guidelines. The Oak Woodland Management Guidelines adopted by the Board and on file with the Agency.

Objective Standards. Standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

Occupancy. The use or operation of a site or structure for an approved land use.

Off-Road Vehicle Courses (land use). This land use consists of areas set aside for the use of off-road vehicles, including dirt bikes, motorcycles, and four-wheel drive vehicles. Does not include sports assembly facilities (see "Sports Facilities and Outdoor Public Assembly"), or simple access roads that are usable only by four-wheel or two-wheel drive vehicles in conjunction with a permitted land use.

Off-Site Product. A product that is produced on property other than the site where it is offered for sale.

Offices, Business (land use). This land use consists of the provision of direct services to consumers. This land use includes establishments such as insurance agencies, real estate offices, and post offices (not including bulk mailing distribution centers, which are included under "Vehicle and Freight Terminals").

Does not include: medical offices (see "Medical Services – Clinics and Laboratories"); or offices that are incidental and accessory to another business or sales activity that is the principal use. Incidental offices that are customarily accessory to another use are allowed as part of an approved principal use.

Offices, Professional (land use). This land use consists of professional or government offices including:

- accounting, auditing and bookkeeping services
- advertising agencies
- architectural, engineering, planning and surveying services
- attorneys
- counseling services
- court reporting services
- data processing and computer services
- detective agencies and similar services
- educational, scientific and research organizations
- employment, stenographic, secretarial and word processing services
- government offices including agency and administrative office facilities
- management, public relations and consulting services
- photography and commercial art studios
- writers and artists offices outside the home

Does not include: medical offices (see "Medical Services – Clinics and Laboratories") or offices that are incidental and accessory to another business or sales activity that is the principal use. Incidental offices that are customarily accessory to another use are allowed as part of an approved principal use.

Offices, Property Management (land use). This land use consists of accessory offices on the site of an apartment complex, mobile home park, or commercial facility, for the purpose of providing tenant services.

Offices, Temporary (land use). This land use consists of a mobile home, recreational vehicle or modular unit used as a temporary office facility. Temporary Offices may include: construction supervision offices on a construction site or off-site construction yard; a temporary on-site real estate office for a development project; or a temporary business office in advance of permanent facility construction.

Playground. See “Parks and Playgrounds.”

Pocket Neighborhood. The type of clustered residential development described in the Multifamily Residential Design Guidelines or the Form Based Code, as applicable.

Porch. A deck with a roof, which is attached to a building.

Poster Board. A sign consisting of a framed or unframed surface, freestanding or attached to a wall or fence or other structure, designed and located only for the display of announcements of coming performances of cultural, educational, and athletic events.

Potbellied Pig. That type of swine commonly known as the Vietnamese, Chinese, or Asian Potbelly Pig (*Sus scrofa bittatus*).

Poultry Processing Facility (Land Use). This land use consists of facilities permanently installed on a site engaged in slaughtering poultry for meat to be sold.

Precise Development Plan. See Chapter 22.44 (Master Plans and Precise Development Plans).

Premise(s). The site of a land use or activity subject to the requirements of this Development Code.

Primary Structure. See "Structure, primary."

Primary Zoning District. One of the agricultural, residential, commercial, or special purpose zoning districts established by Sections 22.06.020 (Zoning Districts Established) and Article V (Coastal Zones – Permit Requirements and Development Standards), that is applied to a site by the Zoning Map in addition to one or more of the combining districts established by Section 22.06.020.

Printing and Publishing (land use). This land use consists of printing by letterpress, lithography, gravure, screen, offset, or electrostatic (xerographic) copying, and other "quick printing" services; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving and electrotyping. This use also includes establishments that publish newspapers, books and periodicals; and establishments manufacturing business forms and binding devices.

Private Residential Recreation Facilities (land use). This land use consists of privately-owned, non-commercial outdoor recreation facilities provided for members or project/neighborhood residents, including swim and tennis clubs, park and sport court facilities. Does not include golf courses/country clubs, which are separately defined.

Private Road. A street or right-of-way owned and maintained by a private person(s) or entity(ies).

Project. See "Development, or Project."

Property Line. See "Lot Line or Property Line."

Proposed Parcel(s). Each separate parcel shown on a tentative map or lot line adjustment, as proposed by an applicant.

Proposed Dwelling. A new dwelling that is the subject of a permit application that meets all requirements for permitting, including zoning requirements.

Proposed Single Family Dwelling. See “Proposed Dwelling” and “Single Family Dwelling”.

Protected Tree and Heritage Tree. Any one of the following as indicated in the table below:

Common Name	Botanical Name	Protected Size Diameter at Breast Height	Heritage Size Diameter at Breast Height
Arroyo willow	<i>S. lasiolepis</i>	6 inches	18 inches
Big-leaf maple	<i>Acer macrophyllum</i>	10 inches	30 inches
Bishop pine	<i>Pinus muricata</i>	10 inches	30 inches
Blue oak	<i>Q. douglasii</i>	6 inches	18 inches
Box elder	<i>A. negundo var. californicum</i>	10 inches	30 inches
California bay	<i>Umbellularia californica</i>	10 inches	30 inches
California black oak	<i>Q. kelloggii</i>	6 inches	18 inches
California buckeye	<i>Aesculus californica</i>	10 inches	30 inches
California nutmeg	<i>Torreya californica</i>	10 inches	30 inches
Canyon live oak	<i>Q. chrysolepis</i>	6 inches	18 inches
Chaparral oak	<i>Q. wislizeni</i>	6 inches	18 inches
Coast live oak	<i>Quercus agrifolia</i>	6 inches	18 inches
Coast redwood	<i>Sequoia sempervirens</i>	10 inches	30 inches
Douglas-fir	<i>Pseudotsuga menziesii</i>	10 inches	30 inches
Giant Chinquapin	<i>Castanopsis chrysophylla</i>	10 inches	30 inches
Hawthorn	<i>Crataegus douglasii</i>	10 inches	30 inches
Mountain-mahogany	<i>Cercocarpus betuloides</i>	10 inches	30 inches
Narrow leaved willow	<i>Salix exigua</i>	6 inches	18 inches
Oak	<i>Q. parvula var. shrevei</i>	6 inches	18 inches
Oregon ash	<i>Fraxinus latifolia</i>	10 inches	30 inches
Oregon oak	<i>Q. garryana</i>	6 inches	18 inches
Pacific madrone	<i>Arbutus menziesii</i>	6 inches	18 inches
Pacific yew	<i>Taxus brevifolia</i>	10 inches	30 inches
Red alder	<i>A. rubra</i>	10 inches	30 inches
Red elderberry	<i>Sambucus callicarpa</i>	10 inches	30 inches
Red willow	<i>S. laevigata</i>	6 inches	18 inches
Sargent cypress	<i>Cupressus sargentii</i>	6 inches	18 inches
Scouler's willow	<i>S. scouleriana</i>	6 inches	18 inches
Service-berry	<i>Amelanchier alnifolia</i>	10 inches	30 inches
Shining willow	<i>S. lucida ssp. lasiandra</i>	6 inches	18 inches
Silk tassel	<i>Garrya elliptica</i>	10 inches	30 inches
Sitka willow	<i>S. sitchensis</i>	6 inches	18 inches
Tanbark oak	<i>Lithocarpus densiflorus</i>	10 inches	30 inches
Valley oak	<i>Q. lobata</i>	6 inches	18 inches
Wax myrtle	<i>Myrica californica</i>	10 inches	30 inches
White alder	<i>Alnus rhombifolia</i>	10 inches	30 inches

Public Right of Way. A street that has been accepted or is being maintained by the State, the County, or a city, and provides unrestricted vehicular access to the public.

Public Road. A street or highway owned and maintained by the County, a City, the State, or the Federal government.

U. Definitions, "U."

Unincorporated Community. A concentration of structures and population within the unincorporated areas of the County identified by the Countywide Plan as a community.

Urbanized Area. An urbanized area or urban cluster, as designated by the United States Census Bureau.

Use. The purpose for which land or a building thereon is designed, or for which it may be occupied. Each business, administrative, professional, industrial, or other establishment, which is separate from another establishment, both in fact and in the appearance presented to the public, shall be considered a separate use.

Use Permit. A discretionary land use permit that may be granted by the Review Authority in compliance with Chapter 22.48 (Conditional Use Permits) or Chapter 22.49 (Master Use Permits), which authorizes a specific use of land on a specific site, subject to compliance with any conditions of approval imposed on the permit.