STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION

Interim Ordinances for SB 35 and SB 9

Recommendation:	**Recommend Adoption to Board of Supervisors**
Hearing Date:	**April 11, 2022**

Agenda Item:	4	Project Planner:	Jeremy Tejirian Planning Manager 415-473-3798 JTejirian@marincounty.org
		Signature:	Jeremy Tejirian

PROJECT SUMMARY

This is a County-initiated program to develop three interim Ordinances to implement Senate Bill 35 and Senate Bill 9, which mandate that local government streamline the review of housing projects. Senate Bill 35 (SB 35) mandates a streamlined ministerial planning process for multifamily housing projects that meet certain specific criteria. Senate Bill 9 (SB 9) is divided into two related parts, one which mandates a ministerial planning process for residential development and another which mandates a ministerial planning process for urban lot splits. All projects eligible for consideration under SB 9 must meet strict criteria for both subdivision and development. Neither SB 35 nor SB 9 is applicable in the Coastal Zone.

The interim Ordinances are intended to be temporary in nature. Permanent amendments to the Development Code (Marin County Code Title 22) will be proposed as part of the Housing and Safety Element updates to the Countywide Plan and presented for consideration to the Planning Commission and Board of Supervisors later this year.

SENATE BILL 35

Senate Bill 35 first went into effect in 2018 but was substantially amended by SB 168, which went into effect in 2020. Senate Bill 35 is intended to streamline the review of larger developments that would provide a substantial amount of affordable housing to an area. There are potential benefits to applicants from SB 35 because no discretionary review is allowable as long as the applications meet the mandates of the law. However, the criteria to meet those mandates are strict, including

requirements for 50 percent of the housing to be affordable, requirements limiting the applicability of the statute to urbanized areas, requirements to pay workers a prevailing wage, and prohibitions on development in wetlands and habitats for special status species of plants and animals.

In addition to the criteria stipulated in the law, SB 35 also allows the County to establish ministerial requirements related to the siting and design of development proposed under SB 35 that must be objective. The Community Development Agency (CDA) staff has been working with consultants from Opticos Design Inc. on a comprehensive form based code, which will provide detailed design standards for ministerial review of multifamily housing development. This form based code is still under development, and will be included with the aforementioned Development Code amendments that will be part of the Housing and Safety Element updates.

On an interim basis, staff recommends applying the standards from the R1:B3 (Single-family Residential, B3 Combining) zoning district to SB 35 applications. The standards include:

- Floor Area Ratio – 30 percent

- Maximum Heights
  Main Buildings – 30 feet
  Accessory Buildings – 16 feet

- Minimum Setbacks
  Front – 30 feet
  Sides – 15 feet
  Rear – 20 percent of the average lot depth to a maximum of 25 feet

In addition, staff recommends imposing ministerial standards preventing development in Stream Conservation Areas or Wetland Conservation Areas and preventing the removal of protected and heritage trees. Although application of these restrictions is intended to promote well-designed projects, it is important to note that the State Density Bonus law allows applicants for projects with more than four units to receive waivers of development standards if they can demonstrate that those standards would make the development infeasible, so these standards may be functionally restricted with application of the density bonus law. For example, although the proposed standards would prohibit development in Stream Conservation Areas (SCAs) and Wetland Conservation Areas (WCAs), there are circumstances where an applicant could request a waiver of these standards under the density bonus law and the County would be required to approve the request.

The statutes and the State Housing and Community Development Department's (HCD) implementation guidelines set forth specific requirements for processing SB 35 applications, which include both procedural steps and informational requirements to which the County must adhere. Those procedural steps include a preliminary application, which must undergo tribal review and consultation, and a formal application, which must undergo ministerial review before a decision is issued on the project's compliance with SB 35 and local standards.

Although most of the procedural steps are mandated with little flexibility, SB 35 does allow local jurisdictions to determine the review authority responsible for issuing decisions on SB 35 projects. Typically, ministerial decisions are issued by the Planning Division staff on behalf of the Director. Under SB 35, the Planning Commission or the Board could be identified as the review authority responsible for issuing decisions on SB 35 applications. Staff recommends that the Planning

Commission be the review authority for SB 35 applications, and that the Planning Commission's decisions be appealable to the Board. Senate Bill 35 allows only ninety days for decisions to be issued for most projects, so the Planning Commission would need to render a decision quickly enough for an appeal to be forwarded to the Board within that timeframe. This approach would provide the public with an opportunity to voice their opinions about a project.

Sending SB 35 applications to the Planning Commission would be a significant departure from existing practice in that the Commission would only be able to apply objective standards to the projects and would not be able to apply the discretion normally used in the review of planning applications.

As an alternative, your Commission may elect to modify the Resolution to indicate that decisions on SB 35 applications shall be issued on an administrative basis by staff on behalf of the Director. In this case, staff would still request the opportunity to bring SB 35 projects to your Commission for informational workshops where the public would have the opportunity to provide their input.

SENATE BILL 9

Senate Bill 9 (SB 9) went into effect at the beginning of 2022. Senate Bill 9 streamlines the review of duplexes and lot splits to encourage what is often called "missing middle" housing, meaning housing that is in the mid-range of density between detached single-family homes and larger apartment buildings often found in more urban settings. Senate Bill 9 is also intended to address historical patterns of housing segregation, which limited housing development in many communities.

Similar to other State legislation to address the housing crisis, such as SB 35 and the laws around Accessory Dwelling Units (ADUs), SB 9 encourages housing development by removing a local jurisdiction's authority to require discretionary review. Senate Bill 9 contains two related sets of provisions, one applicable to residential development and the other applicable to urban lot splits, as further discussed below.

Residential Development

While SB 9 is widely viewed as a law to allow duplexes on lots in single family zoning districts, it also applies to single family homes. Properties that may be eligible for SB 9 development must meet a variety of criteria specified in the law, including being in an urbanized area, as mapped by the US Census, in a single-family residential zoning district, as well as not being located in a historic district, conservation easement, wetland, or habitat for special status species of plants or animals. In most circumstances, each SB 9 residence must have one off-street parking space. Senate Bill 9 mandates that residential development with no lot split allow ADUs in addition to the new primary residences. However, SB 9 prohibits units created under its provisions from being used as short-term rentals.

Senate Bill 9 also allows the County some limited ability to establish ministerial standards which apply to SB 9 residences that exceed 800 square feet in size. Staff recommends using the standards from the R2 (Two-family Residential) zoning district to such SB 9 applications. The standards include:

- Floor Area Ratio – 30 percent

- Maximum Heights
  Main Buildings – 30 feet
  Accessory Buildings – 16 feet

- Minimum Setbacks
  Front – 25 feet
  Sides – 6 feet
  Rear – 20 percent of the average lot depth to a maximum of 25 feet

In addition, staff recommends imposing ministerial standards limiting the floor area of new residences allowed under the provisions of SB 9 to 1,800 square feet, prohibiting development in SCAs or WCAs and prohibiting the removal of protected and heritage trees.

Although imposition of these standards will encourage well-designed, more modest homes, it is important to note that SB 9 limits the standards that the County can apply to proposals for up to two homes with a maximum size of 800 square feet each. In these instances, the development would be subject to the following standards:

- Maximum Heights
  Main Buildings – 30 feet
  Accessory Buildings – 16 feet

- Minimum Setbacks
  Front – 25 feet
  Sides – 4 feet
  Rear – 4 feet

If the proposal is only for 800 square foot homes, the County is not allowed to prevent the development of two units even if they exceed a floor area ratio of 30 percent, would be built in SCAs or WCAs, or would result in the removal of protected or heritage trees.

Urban Lot Splits

Urban lot splits would be subject to many of the same requirements as residential development, but each lot must be at least 1,200 square feet in area and the two lots are required to be approximately the same size. The proposed Ordinance would allow the development of each new lot with two moderately sized primary units and one ADU, which are the same standards applied to lots being developed under SB 9 that have not undergone an urban lot split. Lots created under SB 9 provisions cannot be further subdivided using those provisions.

Senate Bill 9 also allows the County to require lots created under an urban lot split to have access to a public right of way, which represents a basic means of protecting public safety by ensuring that adequate emergency access and evacuation routes are provided to the new lots. Since the law does not include a definition of the term “public right of way”, staff recommends the following definition:

> “Public right of way” means 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.

It is also important to note that SB 9 prohibits the County from imposing off-site improvement requirements, such as road improvements.

SB 9 Alternatives

The recommended requirements for SB 9 projects will result in well-designed developments that protect natural resources and provide for the safety of residents. Further, SB 9 developments have the potential to increase the diversity of both ownership and rental housing opportunities to individuals and families in a manner that is consistent with the objectives of the Countywide Plan Housing Element update. However, there are a number of provisions in the proposed Ordinance that SB 9 leaves to the discretion of the County, and your Commission may wish to consider them as alternatives. Among those are the following:

1. Increase or decrease the maximum floor area allowed for a new residence.

   Staff recommends establishing a maximum floor area of 1,800 square feet for new SB 9 residences. This floor area typically provides enough space for three bedrooms and two bathrooms, while also ensuring that the residences will be modest in size. The 1,800 square foot limit also reflects the maximum floor area allowed by applying a 30 percent Floor Area Ratio standard to the smallest required lot size of 6,000 square feet in the conventional zoning districts (specifically, the R1:B1 zoning district).

   However, this area could be reduced to 1,200 square feet, or less, which would make them a similar size as many ADUs. This area could also be increased to 2,000 square feet, or more, to accommodate larger families. While no maximum size limit is required by law, staff recommends imposing one to prevent undue speculation and further the underlying intent of the Ordinance to provide more “missing middle” housing opportunities.

2. Eliminate the requirement for access to a public right of way for urban lot splits.

   State law does not mandate that the County impose this requirement and therefore your Commission can consider removing it from the Ordinance. However, staff recommends imposing it on lot splits under SB 9 as a safety precaution. While the quality of both public and private roads varies throughout the County, public roads are held to higher engineering standards than private roads. This results in public roads generally providing superior emergency access and evacuation routes.

3. Require owner occupancy for three years after an urban lot split.

   State law allows the County to impose an owner occupancy requirement for urban lot splits and therefore your Commission can consider including this requirement in the Ordinance. There is a common stereotype that property owners who live on their property will maintain it better than a landlord or renter. While this may be true in individual cases, there is little evidence that deferred maintenance is a common problem for rental homes. Further, setting the owner occupancy requirement for three years limits its effectiveness at preventing deferred maintenance because of the short time period it would apply. Rental homes can also diversify the types of available housing for people of all income brackets, especially in areas of Marin that are short on rental supply.

4. Prohibit the development of Accessory Dwelling Units after an urban lot split.

State law allows the County to prohibit ADUs on properties that have undergone an urban lot split under SB 9 and therefore your Commission can consider including this requirement in the Ordinance. If the Ordinance is revised to prohibit ADUs after urban lot splits, then a lot could be divided into two and then two primary units would be allowed on each resulting lot for a maximum total of four units.

Under the proposed Ordinance, ADUs would be allowed on properties that have undergone an urban lot split, increasing the potential number of units that could be built on a property from four to six. As proposed, all new units being built under the provisions of either SB 9 or the ADU law would be subject to size limits, creating more opportunities for developing housing that is affordable by design.

Staff recommends that your Commission consider the alternatives listed above before adopting a recommendation to the Board regarding SB 9.

RECOMMENDATION

Review and approve the proposed Resolutions recommending that the Board of Supervisors adopt stand-alone interim Ordinances to implement SB 35 and SB 9.

Attachments:
1. SB 35 Resolution
2. SB 9 Residential Development Resolution
3. SB 9 Lot Split Resolution
4. HCD Guidance for SB 35
5. HCD Advisory for SB 168
6. ABAG Senate Bill 9 Summary
7. Senate Bill 35
8. Senate Bill 168
9. Senate Bill 9

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING ADOPTION OF AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA STATE SENATE BILL 35

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WHEREAS, Senate Bill 35 (SB 35) first went into effect in 2018 but was substantially amended by Senate Bill 168 (SB 168), which went into effect in 2020; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement SB 35, as amended; and

WHEREAS, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 35; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement SB 35, as amended, that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County, which would continue to apply following the adoption of this Ordinance, except that when they conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance does not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for a development subject to the terms of this Ordinance to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division and Planning Commission in

consultation with other responsible agencies. Both phases of an application, the preliminary application and the formal application, shall take place under the umbrella of a Housing Development Review. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews, and state mandates for public hearings, except as modified by the provisions of this ordinance and SB 35. The information required for such an application shall be listed in guidance published by the Planning Division. The Planning Division shall charge the regular retainer fee due for a Design Review. The Planning Commission shall hold a public hearing and shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in SB 35 and this Ordinance. The Planning Commission's decision is appealable to the Board of Supervisors following the procedures set forth in Development Code Chapter 22.114 (Appeals).

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 35 and this Ordinance.

A. Applicability.

(1) This Ordinance applies to housing development projects applying for approval under Government Code Section 65913.4 and replaces the County's procedures for reviewing discretionary applications.

(2) The California Environmental Quality Act (CEQA) does not apply to projects eligible under Senate Bill 35.

B. Definitions. Terms defined in Government Code Section 65913.4 shall apply to this Section and shall control in the event of a conflict between definitions in the Development Code and definitions in Government Code Section 65913.4.

C. Application Filing. Applications shall be filed under the umbrella of a "Housing Development Regulation Compliance Review" (Housing Development Review), as described in finding 4 above. The two phases of a Housing Development Review for SB 35 projects are the preliminary application and the formal application.

(1) Preliminary Application Filing. An applicant shall file a notice of intent to submit an SB 35 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.

(a) Form, Fee, and Information. A preliminary application shall be filed on a form provided by the County with the required fee and all required information.

An applicant for a housing development project under this Resolution shall be deemed to have been 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.
(D) 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.
(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.
(9) Any historic or cultural resources known to exist on the property.
(10) The number of proposed below market rate units and their affordability levels.
(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
(12) 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.
(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
(14) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
(15) 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.
(16) 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

i. 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).

ii. 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.

iii. 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.

iv. 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)).

(2) 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.

D. Completeness Review. The County shall review an application for compliance consistent with Subsection E; there shall be no separate or additional timeframe for completeness review. Only the items necessary to determine compliance with the provisions contained in Government Code Section 65913.4(a) shall be required.

E. Compliance Review

(1) Scope of Review. The County's scope of review is limited to all of the provisions contained in Government Code Section 65913.4(a) and the objective standards in effect at the time of preliminary application submittal.

(2) Public Oversight and Application Review Timelines. The review of a formal application, Planning Commission hearing, and Board of Supervisors hearing, to determine if the application complies with all of the provisions contained in this Resolution, Government Code Section 65913.4(a), and applicable objective standards, shall occur within the following timeframes:

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

ii. 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 Ordinance, the County shall complete any application review, Planning Commission hearing, Board of Supervisors appeal and any subdivision approval within the timeframes listed in Subsection E.

(b) Non-Compliant Application. If the application does not demonstrate compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards, 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 E(2) above.

i. Resubmitted Application. If the project was found to be non-compliant, the applicant may resubmit the application for Senate Bill 35 streamlining, and the County shall review it for compliance with all of the provisions contained in Government Code Section 65913.4(a) and all applicable objective standards subject to the same timelines in Subsection (2) above.

ii. 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. A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by SB 35 and this Ordinance and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more primary residential units.

(2) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code Section 65915, is consistent with objective R1:B3 (Single Family, Residential, with the B3 combining district, minimum lot size 20,000 square feet) zoning district standards, except that multifamily development is required, with the number of residential units allowable per lot being the maximum allowable by the governing Countywide Plan land use designation. In addition, the development shall not occur within a Stream Conservation Area or a Wetland Conservation Area and shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(3) The development is located on a site that satisfies all of the following:

(A) A site that is a legal lot or lots wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, lots that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(4) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(5) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) 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.

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

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to 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.

(E) 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 Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) 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.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit 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.

(H) Within a floodway as determined by maps promulgated 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.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) 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).

(K) Lands under conservation easement.

(6) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

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

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(7) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial

Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(ii) For purposes of this section, “skilled and trained workforce” has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the County, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the County pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(8) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(9) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

G. Decision on Project

(1) Project Approval and Findings. The Planning Commission is the review authority for SB 35 projects, but the Planning Commission's decision is appealable to the Marin County Board of Supervisors following the standard procedures set forth in Development Code Chapter 22.114 (Appeals). The review authority shall approve the application if it finds that the proposed development is compliant with all of the provisions contained in this Resolution.

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

H. 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 in any of the following instances:

i. The total number of residential units or total square footage of construction changes by 15 percent or more; or

ii. 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.

iii. Objective building standards contained in the California Building Code, as adopted by the County, may 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 Housing Development Review is required, in which case a decision shall be made within 90 days.

(3) Expiration. An application approved consistent with this Ordinance 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).

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO RESIDENTIAL PROPERTY DEVELOPMENT

*** ***

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to development of residential units, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to urban lot splits; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to the development of residential units that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for Design Review and the standards of this Ordinance. The Planning Division shall charge the regular retainer fees due for a Design Review. The Planning Division shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this Ordinance.

   (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

      (1) The site subject to the proposed 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.

      (2) The development 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 local jurisdiction.

(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 ordinance, 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.

(3) Notwithstanding any provision of this ordinance or any local law, the proposed housing development 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) Housing that has been occupied by a tenant in the last three years.

(4) 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.

(5) 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.

(6) 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.

(b) (1) Notwithstanding any other County ordinance and except as provided in paragraph (2), the County imposes the development standards of the R2 zoning district (two family, residential), to the extent that they do not conflict with this Ordinance and SB 9. In addition, except as provided in paragraph (2), the maximum floor area of any newly constructed primary residential unit authorized under this Ordinance shall not exceed 1,800 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 any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(2) (A) Notwithstanding paragraph (b)1, 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.

(B) (i) Notwithstanding subparagraph (A), 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.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), Marin County requires minimum side and rear setbacks of four feet.

(c) In addition to any standards established in accordance with subdivision (b), the County requires that all of the following standards be satisfied in an application for two residential units, as provided for in this ordinance:

(1) Off-street parking of one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), the County shall deny a proposed housing development project 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 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.

(e) 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.

(f) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(g) For purposes of this Ordinance, all of the following apply:

(1) 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.

(2) The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean 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 the County or another local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES TO URBAN LOT SPLITS

*** ***

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, the Marin County Planning Commission wishes through this Resolution to recommend an Ordinance to implement the portions of SB 9 related to urban lot splits, and through a separate Resolution to recommend an Ordinance to implement the portions of SB 9 relating to residential development; and

WHEREAS, the provisions of this Resolution are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, this Resolution recommends adoption of an Ordinance that is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed urban lot splits until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider this Resolution.

NOW, THEREFORE, THE MARIN COUNTY PLANNING COMMISSION RESOLVES as follows:

The Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt an Ordinance to implement the portions of SB 9 relating to urban lot splits that contains the following terms:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

   This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.

3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent seeking approval for an urban lot split that is subject to the terms of this Ordinance to obtain approval of an "Urban Lot Split Compliance Review" (Lot Split Review) for their Parcel Map to be conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for a Tentative Map Waiver and the standards in this Resolution. The Planning Division shall charge the regular retainer fee due for a Tentative Map Waiver. The Planning Division shall issue an approval, approval with conditions, or denial of a Lot Split Review based on the project's conformance with the standards and requirements provided for in this Ordinance and applicable requirements of the Subdivision Map Act.

4. The procedures, standards, and requirements enumerated below apply to urban lot splits proposed under the provisions of SB 9 and this Ordinance.

   (a) Notwithstanding any other provision of this Ordinance, the County shall ministerially approve, as set forth in this section, 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) Except as provided in subparagraph (B), 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 development 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 local jurisdiction.

(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 ordinance.

(c) (1) Except as provided in paragraph (2), notwithstanding any other County Ordinance, the County imposes the standards of the R2 zoning district (two family residential) to the extent that they do not conflict with this Ordinance and SB 9.

(2) Notwithstanding paragraph (c)(1), the County shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two primary units on either of the resulting lots or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), 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.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), the County shall require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), 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.

(e) In addition to any standards established in accordance with this Ordinance, the County shall require the following standards 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.

(3) Off-street parking of up to one space per unit, except that the County shall not impose parking requirements in either of the following instances:

(A) The lot is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the lot.

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

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

(h) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(i) For purposes of this Ordinance, both of the following shall apply:

(1) “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean 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.

(2) “Public right of way” means 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.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 11th day of April, 2022 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

DON DICKENSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary