

**MARIN COUNTY PLANNING COMMISSION MINUTES**  
**October 6, 2003**  
**Marin County Civic Center, Room #328 - San Rafael, California**

*Commissioners Present:* Ross Herbertson, Chair  
Ray Buddie (*arrived at 1:25 p.m.*)  
Hank Barner  
Don Dickenson  
Jo Julin  
Steve Thompson

*Commissioners Absent:* Allan Berland

*Staff Present:* Alex Hinds, Agency Director  
Brian C. Crawford, Deputy Director of Planning Services  
Tom Lai, Principal Planner  
Barbara Collins, Affordable Housing Strategist  
Megan Basinger, Assistant Planner  
Jessica Woods, Recording Secretary

Minutes Approved on: ***October 20, 2003***

Convened at 1:09 p.m.  
Adjourned at 4:32 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s Julin/Barner, and passed unanimously, to incorporate the Staff Reports into the Minutes. Motion passed 5/0 (Commissioners Buddie and Berland not present).
- b. Continuances: None

2. COMMUNICATIONS

The Commission acknowledged additional correspondence received regarding the California County Planning Commission Association Fall Conference, as well as staff's memorandums dated October 2 and October 3, 2003.

3. DIRECTOR'S ORAL REPORT

Report on Progress of Countywide Plan Update:

Staff made a presentation on the key highlights and capabilities of the PlanBuilder Index software which will be used as a tool in evaluating the Marin Countywide Plan update alternative scenarios. INDEX PlanBuilder is a planning support tool intended to help stakeholders and decision-makers create plans through issue identification, alternatives analysis, and goal-setting; implement plans by evaluating development consistency with goals; and achieve plans by measuring cumulative progress towards goals.

Alex Hinds, Agency Director, explained to the Commission that Elliot Allen from Criterion Planners/Engineers is present to provide the Commission with a presentation about a software tool that may be used in the update to the Countywide Plan and whether to integrate the tool at the present time or at a later date.

Elliot Allen, AICP, Principal, Criterion Planners/Engineers, provided the Commission with a brief presentation of INDEX Planning Support Software that is a GIS tool that measures existing and/or proposed conditions with indicators addressing land-use, transportation, and the environment.

Mr. Allen discussed the basic INDEX Operation that included numeric results as well as travel-based spatial results. He then provided the Commission with information about INDEX Applications as follows:

**BASIC**

- Benchmarking existing conditions
- Creating plans
- Evaluating incremental development
- Progress monitoring

**SPECIAL PURPOSES**

- Environmental impact reports
- Capital Improvement planning
- Facility Siting

**DAY-TO-DAY**

- Plan amendments
- Subdivisions
- Major zone changes
- Major use permits

Chair Herbertson clarified with Mr. Hinds that what is being discussed is the availability of data and the use of this tool now or later. Mr. Hinds responded that they are figuring out to what degree could the information that is available be upgraded in order for it to be a useful tool and depending on the timing, the tool could be used now, in the future or maybe a combination of both.

Commissioner Dickenson asked Mr. Allen how the information is being developed in terms of what is important to Marin County. Mr. Allen responded that they are taking advantage of the existing County Government information available.

Commissioner Dickenson stated that what is important is a statement of values as opposed to available information and asked Mr. Hinds how the values in terms of what is important to Marin County are being developed. Mr. Hinds responded that the values would be noted later in the process and they would correspond to the Goals and Objectives of the Countywide Plan. He further explained that the values would be ranked as to its importance.

Chair Herbertson stated that any kind of ranking depends on the values and the question is how are the differences among values resolved, so they could assign a rank in order to compare the scenarios. Mr. Hinds responded that he would assume that if in fact they were able to use this at this stage, staff would recommend values and have an interactive process to try out different values to understand whether they achieved the desired effect with the Commission and Board's approval.

Mr. Allen discussed the INDEX PlanBuilder Indicators that was provided to the Commission for their review and consideration. He explained that there are 50 indicators to provide an examination of any given scenario and he also encouraged the Commission to add new indicators.

Commissioner Thompson asked Mr. Allen to explain "intersection per note", which relates to the "Internal Street Connectivity" indicator. Mr. Allen responded that it would be a point where streets meet or where a cul-de-sac would end and this indicator measures the number of times an individual traveling might encounter a through intersection or a dead end.

Commissioner Dickenson commented on the indicators listed and he assumed there is the ability to focus in on a neighborhood or community because the first Index run, which was done on a countywide basis, do not have much meaning. Mr. Allen responded in the affirmative. Mr. Dickenson clarified with Mr. Allen that they could review a certain community or some place where changes are occurring and run through each of the indicators listed for that small geographic area. Mr. Allen responded in the affirmative.

Commissioner Barner asked Mr. Allen if there are indicators, that can be used to track age levels. Mr. Allen responded that many indicators on the list are per capita based and it is useful to view how many people are in a given study area. Commissioner Barner believed it would be beneficial to have an indicator to track Marin's elderly population versus a population of children. Mr. Allen concurred.

Commissioner Dickenson asked Mr. Allen if the program is segregated by jurisdiction because in order for the information to be meaningful they must review the geographical area regardless of the jurisdictional boundaries. Mr. Allen responded that the tool is blind to political boundaries. He noted that the tool would be used as a great device to encourage City/County cooperation and it could be applied across boundaries. He also added that they loaded all the municipality data along with County data that was provided. Mr. Hinds hoped that just as the Countywide Plan is a framework that all Cities and Towns operate within, they would desire to approach all Cities and Towns and use this tool as a way to coordinate an integrate their planning. Commissioner Dickenson believed it would vary greatly from jurisdiction to jurisdiction from what information is available. Mr. Allen added that the basic information of parcel level use and transportation network information would cross boundaries and felt there is a good chance to achieve the goal desired.

Commissioner Barner stated that Marin is very unique with Towns and Special Districts and felt this information would be valuable to the Fire Districts, Water Districts and LAFCO. He asked Mr. Hinds if other agencies are participating in this, and if not, would other agencies have access. Mr. Hinds responded that Marin is starting the process and trying to expand. He added that staff is just starting conversations with other jurisdictions and they have not talked with all the Special Districts. He further noted that staff desired to know that it worked in Marin before informing other Cities, Towns and Special Districts.

Mr. Allen discussed the importance of benchmarking existing conditions as follows:

- Magnitude of proposed changes and expected impacts

- Feasibility of proposed goals and performance standards
- Measuring progress

Mr. Allen explained that as a manner to conduct benchmarking he recommended the transect concept as a framework for measurement. He also attached a description of Built Environment Across the Transect. He provided the Commission with a sample of Benchmark Indicators Scores from Chittenden County, Vermont for the Commission's review. He also provided the Commission with Preliminary Marin Countywide benchmarks in order to understand the first step as well as the current scores for the Marin General Plan. He further discussed with the Commission the sample indicator mapping that included amenity proximity, open space connectivity and land use mix.

Commissioner Dickenson asked Mr. Allen if the software has the ability to review the context in which a site is located. Mr. Allen responded that when the tool is applied, the planner would have the freedom to measure either the project site itself or to step out to the sphere of influence and in fact measure a zone of impact that the project would be felt in order to better understand.

Mr. Allen pointed out that the tool could measure performance within Transect Tiers and over time they would be able to evaluate development with performance standards. He then provided a hypothetical projection of goal achievements over time for the Commission's consideration.

Mr. Allen further stated that the following are keys to using INDEX effectively:

- Adequate staffing commitment
- High-quality data
- Stakeholder engagement

Chair Herbertson opened the public comment on this item.

Davis Schonbrunn, public speaker, expressed concern for the chart on page 15 discussed information that was not evident during the adoption process for the 1994 Plan and believed the Plan is more sprawl than exists currently. He stated this information is very valuable and demonstrates a very significant issue. He discussed page 19 regarding Plan Consistency and pointed out that the Charts discussed percentage of objective achievement and noted that the implication present calls for a quantification of objectives for each indicator. He explained that there is an interesting aspect in which by quantifying they make it possible to achieve goals, but it would not provide decision-makers enough power that is often desired and wondered if there is a conflict that should be addressed. Mr. Hinds responded that staff has been struggling with the idea of setting targets that they cannot deliver and staff is proposing language about non binding targets and discussions are on-going at this time.

There being no further public testimony on this item, Chair Herbertson closed the public portion of the testimony and brought the matter back to the Commission for discussion.

Chair Herbertson believed this tool would help the County test some unintended consequences of decisions as well as testing the intention of the decision. He added that he looked forward to progress of the relative ranking. He also suggested customizing this tool to Marin specifically that it may be worth ranking in some agricultural areas, which is not specifically called out as to what the key indicators would be as well as State and Federal County open space. He stated that transit in this County is unique in that most people who live in the County work out of the County and that import and export of jobs and travelers are not called out. He also desired the ecological footprint per capita being called out as well. Mr. Allen encouraged the Commission to think about using in tandem with INDEX the ME2 Transportation Model in order to have a very powerful set of devices, which are very much linked.

Commissioner Dickenson stated that he is skeptical in terms of how quality of life values are quantified, which he believed they are very subjective and personal and would change. He added that it is very important to have the data, but the definition would be different depending on certain interests. He also noted that the proof would be in the testing of the software to understand how the quality of life values would be quantified. He further pointed out that Marin County is very diverse and did not understand how some of the standards applied would work in terms of a ten-acre site in a rural setting.

Mr. Hinds pointed out that there are completely different strategies for urban versus rural. He added that in some targeted areas more development might make sense in an urban context with a transit line. He also indicated that he is not sure whether this tool would be helpful for where they are currently with the Plan, but he definitely desired to review this particular software and apply it to redevelopment. He further added that he has confidence that the software would provide insights into what are the choices and that different uses would have different outcomes.

Commissioner Julin desired information about environmental constraints in terms of threatened and endangered species, topography, soil and slope stability.

Chair Herbertson thanked Mr. Allen for his presentation and looked forward to this tool developing and affordability of housing relative to income levels.

#### 4. TIME FOR PUBLIC EXPRESSION ON ITEMS NOT ON TODAY'S AGENDA

Bruce Corcoran, Mill Valley resident, discussed the traffic studies for the Strawberry Village Shopping Center and expressed concern for the decision that was reached by this Commission. He noted that since the last hearing he discovered some information in the County files that would have been beneficial to this Commission before a decision was made. He asked for a comprehensive independent study of the traffic patterns around the shopping center because that was not done. He noted that the applicant hired Nickelson and his study was not independently checked. He expressed concern for public safety and it seemed that the County keeps approving projects in this area that add additional incremental traffic. He provided the Commission with a packet for their consideration related to traffic on Seminary Drive circle at the Redwood intersection that showed bumper to bumper traffic all the way back into the intersection of 101 northbound and that by definition is Level of Service "E" or lower. He felt the Commission must recognize the safety concerns of the area and he also provided a traffic count at the intersection of Belvedere Drive and Redwood that he conducted and found that his counts were substantially higher than Nickelson's counts. He explained that the Commission did not ask Jason Nutt for proof with regard to comments relating to traffic counts. He added that there was no studies conducted with the exception of one study done by the Department of Public Works at the intersection of Redwood and Belvedere and those results are included in the packet provided to the Commission. He also expressed concern that the numbers in the report are greater than his counts and his counts were significantly greater than Nickelson's counts. He pointed out that Nickelson systematically undercounts vehicles and all intersections upstream and downstream are effected as well, which in his view is very disturbing. He believed that information should have been provided to the Commission because it substantiated his position. He also noted that he wrote a letter to Supervisor Rose before the appeal process was over and expressed his concern about the protocol at that meeting. He pointed out a hearing involving an negative declaration would operate under the rules of CEQA, which provides an opportunity for the public to provide comments, and once staff makes a determination, they make sure the determination is approved. Therefore, the applicant and staff become united and the only side that is left is the public that was opposed to the project. He believed staff should have presented that information rather than he and felt the acting Chair Allan Berland lost control of the hearing for the Strawberry Village Shopping Center project. He further stated that the Commission was misled and suggested that the Commission investigate the matter and if they felt they were misled that they vacate the decision.

Brian Crawford, Deputy Director of Planning Services, stated that the project before the Commission at the last meeting was design review and use permit, resident which would not automatically move forward to the Board. He noted that the appeal period had expired, which means the Commission's decision is final with respect to the negative declaration and the permit application, based on the understanding that an appeal had not been filed. He also added that the Commission could direct staff to review this information, which was received today, and he suspected that Mr. Nutt as well as the Department of Public Works had not reviewed the material. He further noted that staff would prepare a memorandum to the Commission and provide that to Mr. Corcoran as well for his review.

Commissioner Thompson desired to expand this analysis to include the intersection at Reed as well, if possible. Mr. Hinds responded in the affirmative.

Chair Herbertson stated that at times he has trouble finding certain sites from the information provided in the staff report and encouraged staff to provide location maps and parcel maps for a better understanding of the site locations. Mr. Hinds concurred. He also encouraged the Commission to contact staff directly on directions to hard to find sites.

5. RATIFICATION OF RESOLUTION: MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE) AMENDMENT - CHAPTER 22.22 – AFFORDABLE HOUSING REGULATIONS AND CHAPTER 22.130 – DEFINITIONS

Meeting to adopt a resolution of the proposed amendments to Chapter 22.22 (Affordable Housing Regulations) and Chapter 22.130 (Definitions) of Marin County Code Title 22 (Development Code) to implement programs identified in the Countywide Plan's Housing Element. The proposed amendments would: (1) expand the applicability of the inclusionary housing requirements for all new residential projects resulting in two or more housing units or lots where the current ordinance applies only to new projects resulting in 10 or more residential units or lots; (2) increase the percentage of required affordable housing units for new residential projects from 15% to 20%; (3) require that inclusionary residential units be affordable to low and very low income households and not moderate income households; and (4) require new non-residential developments to provide housing for 25% of the number of employees at very low, low, and moderate incomes that would be generated by the development. The Planning Commission will consider recommending the proposed Development Code Amendments to the Board of Supervisors for final action.

Tom Lai, Principal Planner, summarized the modified resolution and ordinance and noted that there were a total of six major changes to the recommended ordinance that included:

1. Eliminating the distinction between luxury and non-luxury townhome/attached single-family developments;
2. Providing the applicant with the ability to build an inclusionary unit, when the proposal is for a five-unit or smaller subdivision;
3. Increasing the percentage of inclusionary units for non-residential development from 20% to 25 %;
4. Adding a requirement for all ground floor units for inclusionary units to be made accessible to the disabled;
5. Requiring that the inclusionary provisions be in place for perpetuity, unless reduced at the discretion of the decision maker to comply with requirements from the various financing sources; and
6. Eliminating the proposed 1,000-foot maximum size of residential units required for non-residential development and instead, giving the director authority to allow for a mixture of sizes.

Commissioner Dickenson commented on page 8 of the Resolution under Findings VIII(F)(a) which referred to a specific Housing Element policy and expressed concern for the reference to "one to four units" and suggesting that the following language be added, "This change implements the in-lieu fee for projects involving two to four units and the issue or merits of applying an in-lieu fee to one unit would be addressed in the future." He also pointed out that the required fees for the hotel category should state, "\$1,745 per room" based on the 25% requirement.

M/s Dickenson/Julin, and passed unanimously of those present, to approve the revised Resolution and the attached Exhibit as consistent with the Commission's discussion on September 8, 2003. Motion passed 6/0 (Commissioner Berland not present).

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-024

A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT  
AMENDMENTS TO MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)  
CHAPTER 22.22 – AFFORDABLE HOUSING REGULATIONS  
CHAPTER 22.130 - DEFINITIONS

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**SECTION I. FINDINGS**

WHEREAS, the Marin County Planning Commission hereby find and declare the following:

- I. The Marin Countywide Plan’s Housing Element contains policies that encourage the development of new affordable housing. Objective 3.0 of the Housing Element contains programs that promote the use of land efficiently to meet housing needs and to implement smart and sustainable development principles. One means for accomplishing this objective consists of the adoption of zoning regulations that, “promote closer linkages between creating housing nearby to where people work and to establish commercial, office, industrial and other non-residential use contributions for affordable ‘workforce’ housing.”
- II. There is a shortage of affordable workforce housing in Marin County. Only 19% of the households living in the county are able to afford a median-priced home. Between 1990 and 2000, employment in Marin County increased by 15,550 jobs, while only 8,107 additional housing units, mostly targeting higher income earners, were constructed. As a result, many lower-wage workers must commute into the county to their jobs, resulting in increased traffic congestion, lost quality time for the employee, and a less diverse local workforce. If the increase in demand for affordable housing is not met, employers will have more difficulty attracting and retaining a work force.
- III. Construction of commercial and industrial space accommodates business expansion and results in the creation of new jobs, which increase the demand for housing. This demand is especially strong for service and support employees because most of the new jobs that are created in the county are support, service, or retail related with below-average compensation. As part of a community-wide approach to providing workforce housing, contribution of solutions by the business community is equitable and reasonable.
- IV. The County of Marin completed an inclusionary housing study with the consulting firm of David Paul Rosen and Associates to provide economic research and analysis and to make findings supporting the nexus for changes to the inclusionary requirements. In addition, the County of Marin and all 12 cities and towns developed a Housing Workbook as a policy toolkit that could be tailored by each jurisdiction to advance affordable housing goals countywide. The workbook also contains strategies that are intended to address the shortage of affordable housing countywide. As part of the Housing Workbook, the County participated in the creation of a Housing Linkage Study, which documented the need for affordable housing because of job creation and developed a nexus for the creation of affordable housing based on the number and types of new jobs that are and will be created.
- V. The County-initiated amendment to Title 22 (Development Code) of the Marin County Code would implement the Countywide Plan’s housing policies that encourage the development of new affordable housing and the recommendations contained in the Housing Linkage Study. The proposed amendments would: (1) expand the applicability of the inclusionary housing requirements for all new residential projects resulting in two or more housing units or lots where the current ordinance applies only to new projects resulting in 10 or more residential units or lots; (2) increase the percentage of required affordable housing units for most new residential projects from 15% to 20%; (3) require that inclusionary residential units be restricted to low and very low income households and not moderate income households; and (4) require



new commercial and industrial developments to provide housing for 20% of the number of employees at very low, low, and moderate incomes that would be generated by the development. In conjunction with this, the proposed amendments would also include expansion of the existing definitions contained in Chapter 22.130 for “Dwelling,” “Dwelling Unit,” and “Medical Services – Extended Care” to include units housing independent seniors, such as assisted living facilities, so that they would be subject to the inclusionary requirements.

- VI. The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act pursuant to Section 15162 of the CEQA Guidelines because the proposed Development Code Amendments would implement the Countywide Plan’s Housing Element and would not result in new information or new environmental impacts that were not previously evaluated in the Negative Declaration of Environmental Impact for the Housing Element.
- VII. On September 8, 2003, the Marin County Planning Commission conducted a public hearing on the proposed revisions to the Development Code related to affordable housing regulations and approved a motion of intent to direct staff to modify the recommended ordinance. On October 6, 2003, the Planning Commission considered the modified ordinance.
- VIII. The proposed Development Code Amendment is consistent with the Marin Countywide Plan, including the following Housing Element Policies and Programs:
  - A. **Inclusionary Housing Approach.** To increase affordable housing construction, the county will require residential developments involving one or more units to provide a percentage of units or an “in-lieu” fee for very low, low and moderate income housing. The units provided through this policy are intended for permanent occupancy and must be deed restricted, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, locally approved licensed care facilities, stock cooperatives or land subdivisions. (Housing Element Policy H3.19)
  - B. **Income Levels.** Inclusionary zoning requirements will target very low or low-income rental units and low or moderate-income ownership units. This includes 30-80% of the Area Median Income (AMI) for rental units and 50-120% AMI for ownership units. (Housing Element Policy H3.20)
  - C. **Options for Meeting Inclusionary Requirements.** The primary intent of the inclusionary requirement is the construction of new units on-site, with the focus being multi-family housing developments with deed restrictions to support long periods of affordability. Second priority for meeting inclusionary requirements shall be the construction of units off-site or the transfer of land and sufficient cash to develop the number of affordable units required within the same community or planning area. If these options are not practical, then other alternatives of equal value such as in-lieu fees or rehabilitation of existing units may be considered. (Housing Element Policy H3.21)
  - D. **Long-Term Affordability of Inclusionary Units.** Inclusionary units shall be deed-restricted to maintain affordability on resale to the maximum extent possible (typically in perpetuity or at least 55 years). (Housing Element Policy 3.22)
  - E. **Payment of “In-Lieu” Fees.** Payment of in-lieu fees will only be accepted when it is determined that transfer of land and/or dedication of units would provide fewer affordable housing units than could be obtained by the expenditure of “in-lieu” fees on affordable housing development within the planning area. Fees will be calculated based on the cost for unit development and evaluated every other year (land and improvements). (Housing Element Policy 3.23)

**F. Revise the Inclusionary Housing Regulations.** Update the existing Inclusionary Housing Ordinance to include requirements for residential projects, including development of specific income targets and “in-lieu” fee formula. Guidelines for development of an inclusionary program need to meet specific legal tests, but could include: (Housing Element Program H3.X)

- a. Establishment of an in-lieu fee for residential projects involving one to four units. This change implements the in-lieu fee for projects involving two to four units and the issue on the merits of applying an in-lieu fee to one unit would be addressed in the future.
- b. All residential projects of 5 or greater will be required to provide units or fees at a rate of at least 20 percent affordable.
- c. Some flexibility is desirable in implementing this program, depending on the size of units (number of bedrooms), affordability, and consideration of very low, low and moderate-income housing need.
- d. Apply inclusionary requirements to licensed senior facilities with independent assisted living.
- e. Payment of in-lieu fees, or for fractional unit requirement, shall be at a rate adequate to create the affordable units off-site.

**G. Contributions for Workforce Housing from Non-Residential Uses.** Local housing needs for local workers is an important factor for the county when reviewing non-residential development proposals. The county will require specific non-residential uses to contribute to the provision of affordable workforce housing, such as the provision of housing on-site, or other alternatives of equal value. (Housing Element Policy H3.2)

**H. Adopt a Job/Housing Linkage Ordinance.** Adopt a Jobs/Housing Linkage Ordinance with consideration of the following exaction requirements:

- a. Set exaction requirements for dwelling units and/or in-lieu fees according to empirically based evidence and must comply with all other legal tests.
- b. Include affordable housing units within manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail with order of priority being: 1) include housing on-site, 2) provide housing off-site, 3) subsidize mortgages or rents, and 4) as a last resort, collect an in-lieu fee based on subsection c., below.
- c. Establish the payment of fees into a Housing Trust Fund of in-lieu fees based on a dollar amount per square foot of manufacturing/light industry/assembly, office/research and development, warehouse, hotel and retail. (Housing Element Program H3.B)

**SECTION II. AMENDMENTS TO TITLE 22**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby recommends that the Board of Supervisors adopt amendments to the Marin County Title 22 (Development Code) contained in Exhibit "A" of this Resolution.

**SECTION IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 6th day of October, 2003, by the following vote to wit:

AYES: Dickenson, Julin, Buddie, Barner, Herbertson, Thompson

NOES: None

ABSENT: Berland

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ROSS HERBERTSON, CHAIR  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary

**EXHIBIT "A"**

**CHAPTER 22.22 - AFFORDABLE HOUSING REGULATIONS**

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**Sections:**

- 22.22.010 - Purpose of Chapter
- 22.22.020 - General Requirements—Housing Projects
- 22.22.030 - Inclusionary Requirements for Rental Housing Developments
- 22.22.040 - Inclusionary Requirements for Ownership Housing Developments
- 22.22.050 - Inclusionary Requirements for Lot Subdivisions
- 22.22.060 - Eligibility Requirements for Ownership Housing Developments
- 22.22.070 - Control of Resale
- 22.22.080 - In-lieu Participation Fees for Residential Development
- 22.22.090 - Availability of Government Subsidies
- 22.22.095 – General Requirements – Commercial and Industrial Development
- 22.22.096 – In-lieu Participation Fees for Commercial and Industrial Development
- 22.22.100 - Fee Waiver for Inclusionary Units
- 22.22.110 - Technical Assistance
- 22.22.120 - Appeals to Affordable Housing Requirements

**22.22.010 - Purpose of Chapter**

This Chapter provides procedures which are intended to achieve the following goals:

- A. Countywide Plan housing goals.** Enhance the public welfare and ensure that further residential, commercial, and industrial development contribute to the attainment of the housing goals of the Countywide Plan by increasing the production of housing affordable by households of very low, low and moderate income, and stimulating funds for development of low income housing.
- B. Reduce affordable housing shortage.** Reduce the housing shortage for very low, low, and moderate income households.
- C. Balanced community.** Achieve a balanced community with housing available for households with a range of income levels.
- D. Inclusionary housing.** Ensure that remaining developable land within the County is utilized in a manner consistent with the County’s housing policies and needs. This can be accomplished by requiring 20 percent of the total number of housing units of all new residential developments containing 2 or more units to be affordable by households of very low or low income and by requiring that 25 percent of the total number of very low, low, and moderate income housing units generated by new commercial and industrial developments to be affordable by households of very low, low or moderate income.

## 22.22.020 - General Requirements—Housing Projects

Any proposed development of 2 or more residential parcels or housing units intended for permanent occupancy, including but not limited to single-family housing, multi-family housing, condominiums, townhouses, stock cooperatives, or subdivisions that create the potential for one or more additional housing units, shall comply with all the following requirements. The inclusionary housing requirements of this Section shall be imposed only once on a given development.

This Section does not apply to residential development projects that comply with the provisions of 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Where allowed.** An affordable housing project in compliance with this Chapter may be allowed with Use Permit approval in any zoning district provided that the review authority first finds that residential uses are allowed by the applicable Countywide Plan land use designation.
- B. Number of Inclusionary Units Required.** Proposed residential development projects with 2 or more units shall:
1. Provide 20 percent of the total number of housing units within the development as inclusionary units, affordable by low or very low income households; or
  2. Provide 20 percent of the total number of parcels in the case of land subdivisions, for the development of inclusionary units;
  3. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.080 (In-Lieu Participation Fees for Residential Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit or lot, except that developments with less than 5 units may have the option of providing one unit or lot or paying the required in-lieu participation fees.
- C. Conditions of approval.** Any development permit for a residential development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:
1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
  2. Specify the number of inclusionary units at appropriate price levels, to be determined by the review authority;
  3. Specify provisions for a density bonus and/or other incentives in compliance with State law (Government Code Sections 65915 et seq.), and Chapter 22.24 (Affordable Housing Incentives) where applicable; and
  4. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all housing units, and the reasonable information that shall be required by the County for the purpose of determining compliance with this Chapter. This agreement shall also specify provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and specify resale control mechanisms.

**D. Location and type of inclusionary units.**

1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below. Inclusionary units shall be reasonably dispersed throughout the development, where feasible.
2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
  - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate zoning, character and density, location, size, accessibility to public transportation, and other services, consistent with sound community planning principles.
  - b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.
  - c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary units may also be constructed within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.
  - d. The project applicant may pay an in-lieu participation fee in compliance with 22.22.080 (In-Lieu Participation Fees). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

**E. Design and character of inclusionary units.** Inclusionary units shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design and use of the remaining units in appearance, materials, amenities, and finished quality. All inclusionary rental units on the ground floor that are provided in compliance with this chapter shall be accessible to the disabled.

**F. Interior design.** The applicant may have the option of reducing the interior amenity level, as well as the square footage of the inclusionary units below that of large market-rate units, provided all of the units conform to the requirements of County Building and Housing Codes and the Director finds that the

reduction in interior amenity level would still meet the purpose of this chapter and provide a quality living environment.

- G. Rental units within an ownership housing development.** The applicant shall have the option, in a homeownership development, of constructing rental units in a number sufficient to meet the inclusionary requirements of this Chapter. These rental units shall be subject to 22.22.030 (Inclusionary requirements for rental housing developments), below. The County shall assist the applicant in identifying available financing and/or subsidies for the rental housing development.
- H. Timing of construction.** All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of non-inclusionary units, unless the Director approves a different schedule.
- I. Eligible occupants.** All inclusionary units shall be sold or rented to low or very low income households as certified by the Housing Authority.

#### **22.22.030 - Inclusionary Requirements for Rental Housing Developments**

The following requirements apply to proposed residential development projects with housing units intended for rental, in addition to the provisions of Section 22.22.020 (General Requirements - Housing Projects), above. The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Limitation on rental prices.** In rental developments of 2 or more units, 20 percent of the units shall be inclusionary rental units in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing sources. The inclusionary rental units shall be offered at rent levels not exceeding 30 percent of the gross income of households earning 50 percent of area median income. Where housing financing is available for rental subsidy, units shall be made available to very low income households.

The housing unit rental prices shall be established by the County or its designee and shall be based on the number of bedrooms and location.

- B. Eligible tenants.** The County shall contract with the Housing Authority to screen applicants for the inclusionary rental units, and to refer eligible tenants to the applicant or owner of the rental units. The applicant or owner shall have final discretion in the selection of eligible tenants, provided that the same rental terms and conditions are applied to tenants of inclusionary units as are applied to all other tenants, with the exception of rent levels, household income, and any requirements of government subsidy programs.
- C. Designated administrator.** The Housing Authority shall be the agency designated to administer inclusionary housing programs on behalf of the County. The Housing Authority shall require guarantees, enter into recorded agreements with applicants, and take other appropriate steps necessary to ensure that the required inclusionary income rental dwelling units are provided, and that they are rented to low or very low income households. When these requirements have been met to the satisfaction of the Housing Authority, the Housing Director shall prepare a certification indicating that the applicant has complied with the requirements of this Section, and shall transmit it to the County.

#### **22.22.040 - Inclusionary Requirements for Ownership Housing Developments**

The following requirements apply to residential development projects with units intended for sale, in addition to the provisions of Section 22.22.020 (General Requirements). The provisions of this Section do not apply to housing developments that comply with the provisions of Section 22.24.030 (State-Mandated Density Bonus and

Other Incentives) and to agricultural worker housing, second units, or any deed-restricted housing development that is affordable to very low or low income persons.

- A. Limitation on sales prices.** In ownership residential development projects of 2 or more units, 20 percent of the units shall be inclusionary units affordable by households earning 60 percent of the area median income in perpetuity, unless the review authority reduces the term of the inclusionary requirement to reflect the maximum term that is permitted by the financing sources. Low income units shall be sold to a range of families earning no more than 60 percent of the area median income. The housing unit sales prices shall be established by the County or its designee, and shall be based on the number of bedrooms and location.
- B. Duration of initial inclusionary requirement.** The applicant shall be required to offer to the Housing Authority, or a County designated party, all the inclusionary units required by this Chapter for sale to eligible purchasers for a period of not less than 90 days from the date of the County's issuance of a Certificate of Occupancy.

Sale and resale restrictions are removed in the event the Housing Authority or County designee does not complete the sale of a unit to an eligible purchaser or public entity or non-profit organization responsible for providing affordable housing.

- C. Notice of resale restrictions.** The Housing Authority shall advise all prospective purchasers of the resale restriction applicable to ownership inclusionary units contained in Section 22.22.070 (Control of Resale).
- D. Screening of eligible purchasers.** The Housing Authority shall review the assets and income of prospective purchasers of the ownership inclusionary units on a project-by-project basis. The Housing Authority shall advertise the inclusionary units to the general public. Upon notification of the availability of ownership units by the applicant, the Housing Authority shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers.

The applicant/owner shall select buyers from the list of qualified purchasers provided by the Housing Authority; provided, that the same terms and conditions (except income) are applied to purchasers of inclusionary units as are applied to all other purchasers. Preference will be given to residents of the County and/or to people employed in the County.

#### **22.22.050 - Inclusionary Requirements for Lot Subdivisions**

In subdivisions of 2 or more parcels, where one or more additional housing units could be developed, 20 percent of the developable parcels or their equivalent shall be set aside for immediate or future development of low or very low income units. The land may be developed by the applicant or another profit or nonprofit applicant, private or public, or deeded to the County or its designee. The units built on the parcels may be rental or owner occupied, and shall be in compliance with the requirements of this Chapter. The method of providing inclusionary units from lot subdivisions shall be specified in the conditions of approval of each applicable subdivision.

#### **22.22.060 - Eligibility Requirements for Ownership Housing Developments**

- A.** In establishing moderate household income, the County or its designee shall consider, among other things, the median household income data provided periodically by the Department of Housing and Urban Development (HUD), household size and number of dependents, and all sources of family income and assets.
- B.** Every purchaser of an inclusionary housing unit shall certify, by a form acceptable to the County, that the unit is being purchased for the purchaser's primary place of residence. The Housing Authority shall verify this certification.



Failure of the purchaser to maintain eligibility for a homeowner's property tax exemption shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser.

#### **22.22.070 - Control of Resale**

- A. Limitation on resale price.** In order to maintain the availability of the housing units constructed in compliance with this Chapter, the County shall impose the following resale condition. The price received by the seller of a resale unit shall be the lowest of the following:
- 1. Median income.** The original price paid by the seller increased by an amount equal to purchase price multiplied by the percentage increase in the median household income for the San Francisco Primary Metropolitan Statistical Area since the date of purchase;
  - 2. Index price.** The original price increased by an amount equal to the original price multiplied by the percentage increase in the Consumer Price Index for the San Francisco Bay Area since the date of purchase; or
  - 3. Fair market value.** The fair market value of the resale unit as determined by an appraiser selected and paid for by the seller.

- B. Eligible purchasers.** Homeownership inclusionary units shall be sold and resold from the date of the original sale only to very low or low income households, as determined to be eligible for inclusionary units by the Housing Authority, in compliance with the requirements of this Chapter.

The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.

- C. Deed restrictions.** The owners of any inclusionary unit shall attach and legally reference in the grant deed conveying title of any inclusionary ownership unit a declaration of restrictions provided by the Housing Authority, stating the restrictions imposed in compliance with this Chapter. The grant deed shall afford the grantor and the County the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Chapter.
- D. Monitoring of resales.** The Housing Authority shall be given the responsibility of monitoring the resale of ownership inclusionary units. The Housing Authority or its assignee shall have a 90-day option to commence purchase of ownership inclusionary units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the County for appropriate action.

## **22.22.080 - In-Lieu Participation Fees for Residential Development**

- A. Purpose.** The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed residential development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.
- B. Use of in-lieu participation fees.** In-lieu fees shall be used by the County, or its designee (e.g., a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.
- C. Calculation of in-lieu fees.** The in-lieu participation fees for all residential development, including lot subdivisions, shall be calculated as the difference between the ability of low income families (earning 60 percent of median income for ownership units and 50 percent of median income for rental units) to pay for housing, and the estimated cost of a market rate unit of appropriate size, to be determined by the County. This differential shall be multiplied by the required number of inclusionary units to determine the total required fee to be paid in-lieu of constructing below market rate units. For the purposes of applying percentages to in-lieu fees on developments of 2 or more units, decimal fractions of a unit shall be used.

Estimates of the price of a market rate unit and the corresponding in-lieu participation fee are to be determined periodically by the Director.

- D. Timing of in-lieu fee payment.** At the option of the applicant, in-lieu participation fees may be paid as proceeds from sales are received, or at the time of sale of the last unit or parcel. The in-lieu fees shall constitute a lien on the property, which shall be recorded as a separate document at the recordation of the subdivision map. The in-lieu fee shall be due within 24 months from the date of approval of the development, regardless of whether or not the individual parcels have been sold. The lien shall include a provision for foreclosure under power of sale if the in-lieu payment is not made within 24 months from the recordation of the lien, regardless of whether or not the individual parcels have been sold. If payment of the in-lieu fee is not made in full at the end of the 24-month period, any unpaid balance shall accrue interest at the rate of 1% per month.

## **22.22.090 - Availability of Government Subsidies**

It is the intent of this Chapter that the requirements for inclusionary units affordable by very low and low income families shall not be determined by the availability of government subsidies. This is not to preclude the use of these programs or subsidies. This Chapter is also not intended to be an undue burden on the applicants of residential developments. Therefore, as detailed in Chapter 22.24 (Affordable Housing Incentives), incentives are given to provide inclusionary units.

## **22.22.095 – Inclusionary Requirements for Commercial and Industrial Development**

Any proposed commercial or industrial development, including light industrial, office/research and development, warehouse, hotel, and retail uses, shall provide the amount of affordable inclusionary residential units in compliance with the following requirements. The inclusionary units may be developed by the applicant or another profit or nonprofit applicant, private, or public. In order to provide a jobs/housing balance and address traffic congestion concerns, the review authority may condition the project to include market rate housing in excess of the inclusionary units required in this chapter on a case-by-case basis through the discretionary permit review process.

- A. Where Allowed.** Required inclusionary residential units are allowed in any zoning district where residential uses are permitted as a principal use and with Use Permit approval in any other zoning district. Inclusionary units that are required to be built on-site shall comply with all other provisions of this title.
- B. Number of Inclusionary Units Required.** Proposed commercial and industrial development projects shall comply with the following requirements:
1. Twenty-five (25) percent of the total number of housing units for very low, low, and moderate income households that are generated by the development shall be provided within the development;
  2. Where the application of the above percentages results in any decimal fraction less than or equal to 0.50, the project applicant shall pay an in-lieu fee proportional to the decimal fraction in compliance with 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit.
- C. Conditions of approval.** Any development permit for a commercial or industrial development project that is subject to the requirements of this Chapter shall contain conditions of approval that will ensure compliance with the provisions of this Chapter. The conditions of approval shall:
1. Specify the construction of the inclusionary units and/or the timing of payment of in-lieu fees;
  2. Specify the number of inclusionary units at appropriate price levels to be determined by the review authority; and
  3. Require a written agreement between the County and the applicant which indicates the number, type, location, approximate size, and construction scheduling of all housing units, and the reasonable information that shall be required by the County for the purpose of determining compliance with this Chapter. This agreement shall also specify provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and specify resale control mechanisms. All rental units developed in compliance with this Chapter shall be affordable to very low, low, or moderate income renters in perpetuity, unless the review authority reduces it to 55 years. The requirements of 22.22.030 and 22.22.040 shall apply where applicable.
- D. Location and type of inclusionary units.**
1. All inclusionary residential units shall be provided within the development, except as provided for in Section 2 below.
  2. If the Director finds that the required inclusionary units cannot be provided on-site, one or more of the following alternative means may be approved for compliance with the requirements of this chapter:
    - a. The inclusionary residential units may be constructed on one or more sites not contiguous with the proposed development if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health, or safety hazards. Additionally, the Director shall find that the off-site construction will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site construction, the Director may consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate zoning, character and density, location, size,

accessibility to public transportation, and other services, consistent with sound community planning principles.

- b. The project applicant may dedicate suitable real property for the required housing to the County or its designee to be developed by the County, or a profit or nonprofit, private or public applicant if the Director finds that placement of the required housing units within the larger development is not reasonable or appropriate, taking into consideration factors, including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments or where the nature of the commercial or industrial use or its surroundings is incompatible with residential uses in terms of noise or other nuisance, health or safety hazards. Additionally, the Director shall find that the dedication of real property will provide an equivalent or better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units. In allowing compliance through off-site dedication, the Director may also consider commercial lending requirements which render construction of the housing on-site infeasible. The off-site property shall be located in an area with appropriate community character, residential density, location, and accessibility to public transportation, and other services, consistent with sound community planning principles. Additionally, the property shall be offered in a condition that is suitable for development and devoid of contaminants and other hazardous wastes and shall be appropriately sized and zoned for development equivalent to the residential units that are not created on-site.
- c. Inclusionary residential units not constructed within the larger development shall be constructed within the unincorporated area of the County. Inclusionary units may also be constructed within the boundaries of a City or Town provided there is an inter-agency agreement with the County which defines the sharing of affordable housing resources and compliance with fair share housing allocations.
- d. The project applicant may submit a housing mitigation plan which includes financial subsidies towards new affordable housing development in the County. This alternative may be acceptable if the Director finds that it would provide a better means of serving the County in achieving its affordable housing goals than construction of the on-site inclusionary housing units, that there are sufficient County resources to monitor and implement the plan, and that compliance with the alternative means described in Sections a, b, and c is not feasible.
- e. The project applicant may pay an in-lieu participation fee in compliance with Section 22.22.096 (In-Lieu Participation Fees for Commercial and Industrial Development). The Director shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

**E. Number of Very Low, Low and Moderate Income Households Generated.** The number of new very low, low and moderate income households that are generated by new non-residential development shall comply with Table 3-3.1.

**TABLE 3-3.1  
NUMBER OF NEW VERY LOW, LOW AND MODERATE INCOME  
HOUSEHOLDS GENERATED BY  
COMMERCIAL AND INDUSTRIAL DEVELOPMENT**

Development Type	Number of New Very Low, Low and Moderate Income Households (per 1,000 square feet of floor area <sup>1</sup> )
Manufacturing/Light Industry/Assembly	0.18
Office <sup>2</sup> /Research and Development	0.34
Warehouse	0.09
Hotel/Motel <sup>3</sup>	0.08
Retail/Restaurant	0.23

<sup>1</sup> For purposes of this Chapter, the floor area excludes all areas permanently allocated for vehicle parking, unless such areas are used for commercial or industrial purposes.

<sup>2</sup> Office uses include those associated with professional, business, and medical services.

<sup>3</sup> Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.

**F. Size, design and character of inclusionary units.** Inclusionary units shall provide a mixture of sizes and shall be compatible with the design of the commercial or industrial development or the predominant residential character in the immediate neighborhood in appearance, materials, amenities, and finished quality. All inclusionary rental units on the ground floor that are provided in compliance with this chapter shall be accessible to the disabled.

**G. Timing of construction.** All inclusionary housing units and other phases of a development shall be constructed prior to or concurrent with the construction of the commercial or industrial development, unless the Director approves a different schedule.

**H. Eligible occupants.** All inclusionary units shall be rented or sold to very low, low, or moderate income households as certified by the Housing Authority.

**I. Encouragement for On-site Housing.** As an inducement for the development of on-site housing, the Director may grant a reduction in the site development standards of this Development Code or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission in compliance with State law (Health and Safety Code Sections 18901 et seq.), including, but not limited to setback, coverage, and/or parking requirements.

**22.22.096 – In-Lieu Participation Fees for Commercial and Industrial Development**

**A. Purpose.** The purpose of this Section is to provide the means to levy fees for construction of affordable housing, when the inclusion of affordable housing is impractical or unreasonable within a proposed commercial or industrial development or in cases where the inclusionary requirement includes a decimal fraction of a unit, and a combination of both inclusionary units and in-lieu fees is required.

**B. Use of in-lieu participation fees.** In-lieu fees shall be used by the county, or its designee (e.g. a non-profit housing development corporation) for the purpose of developing affordable housing for very low and low income households, with preference for use in the unincorporated areas of the County.

**C. Calculation of in-lieu fees.** The in-lieu participation fees for all commercial and industrial development shall be determined based on Table 3.3-2. The fees represent 25% of the fees that are necessary to subsidize housing for new very low, low, and moderate income households that would be created from the commercial or industrial development.

**TABLE 3.3-2  
IN-LIEU PARTICIPATION FEES FOR  
COMMERCIAL AND INDUSTRIAL DEVELOPMENT  
(per square feet of floor area<sup>1</sup> unless noted otherwise)**

Development Type	Fee
Manufacturing/Light Industry/Assembly	\$3.74
Office <sup>2</sup> /Research and Development	\$7.19
Warehouse	\$1.94
Hotel/Motel <sup>3</sup>	\$1,745 per room
Retail/Restaurant	\$5.40

<sup>1</sup> For purposes of this Chapter, the floor area excludes all areas permanently allocated for vehicle parking, unless such areas are used for commercial or industrial purposes.

<sup>2</sup> Office uses include those associated with professional, business, and medical services.

<sup>3</sup> Accessory uses, such as retail, restaurant, and meeting facilities within a hotel shall be subject to requirements for a retail use.

#### **22.22.100 - Fee Waiver for Inclusionary Units**

In order to facilitate the construction of affordable housing units, the County may waive any County fees applicable to the inclusionary units of a proposed residential, commercial, or industrial development.

#### **22.22.110 - Technical Assistance**

In order to emphasize the importance of securing housing as a part of this program, the County shall provide assistance in obtaining financial subsidy programs to applicants.

#### **22.22.120 - Appeals of Affordable Housing Requirements**

- A. Any person aggrieved by any action involving disapproval, suspension or revocation of a Building or Occupancy Permit or disapproval, suspension or revocation of any development approval may appeal the action or determination to the Commission, with further appeal possible to the Board, in compliance with Chapter 22.114 (Appeals).
- B. Any applicant or other persons who contend that their interests are adversely affected by any determination or requirement of the Housing Authority staff in compliance with this Chapter may appeal the determination to the Housing Director. Further appeal recourse is open to the Board of Commissioners of the Housing Authority.
- C. The appeal shall clearly specify how the action of the Housing Authority staff fails to conform to the provisions of this Chapter, thereby adversely affecting the appellant's interests. The appeal shall be filed in duplicate in the public office of the Housing Authority. Subsequent appeal may be made to the Board of Supervisors, in compliance with Chapter 22.114 (Appeals). The Board, by resolution, may reverse or modify any determination or requirement of the Housing Authority if it can make the finding that the action under appeal does not conform with the provisions of this Chapter or to the contract between the Housing Authority and the County.

## CHAPTER 22.130 - DEFINITIONS

The following definitions are proposed to be modified or added to Development Code Article VIII:

**Dwelling, or Dwelling Unit.** A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis. Types of dwellings include single-family dwellings, two-family dwellings, multi-family dwellings, mobile homes, condominiums and townhouses, floating homes, and independent living units for the elderly.

**Medical Services – Extended Care (land use).** This land use consists of the provision of nursing and health-related care as a principal use, with in-patient beds. This land use includes: board and care homes; convalescent and rest homes; extended care facilities; skilled nursing facilities, and assisted living facilities that are licensed or supervised by any Federal, State, or local health/welfare agency. Long-term personal care facilities that do not emphasize medical treatment are included under “Residential Care Facilities,” and “Group Homes.”

6. VARIANCE APPEAL: ROBINSON (MEROLLA & ROBINSON)

Hearing to consider the Robinson and Merolla appeals of the Deputy Zoning Administrator's approval of the Robinson Variance Amendment that eliminates a condition of approval of a 1967 Variance that prohibited the construction of a second story on a residence that is located at 4 Corte Los Sombras, in Greenbrae. The owners, Bevan and Anna Robinson, are currently proposing to construct a 404 square foot second story addition to the residence, and are seeking to eliminate the above condition to proceed with the project. The owners appealed the Deputy Zoning Administrator's (DZA) conditional approval on the grounds that the conditions to reduce the building height, eliminate a second floor deck, and eliminate the window and require use of opaque glass in the stairway would not benefit the neighbors with respect to maintaining views and privacy. Barbara Merolla, neighbor and owner of 132 Almenar Drive, Greenbrae, also appealed the DZA's decision on grounds that the staff report failed to adequately describe the property and adverse impacts of the addition that was approved and built in reliance upon the 1967 Variance, and that removal of the prior condition of approval prohibiting construction of a second story on the property results in a special privilege that would be granted to the property. The subject property is located at **4 Corte Los Sombras, Greenbrae**, and is further identified as **Assessor's Parcel 070-181-04**.

Megan Basinger, Assistant Planner, summarized the staff report and recommended that the Commission deny the Robinson and Merolla appeals and sustain the Deputy Zoning Administrator's conditional approval of the Robinson Variance Amendment.

Commissioner Dickenson commented on the parking and noted that part of the proposed addition uses the rear section of the garage as a stairway and if there is remaining garage space to be used as parking. Ms. Basinger responded that the application was reviewed by the Department of Public Works and accepted. She noted that generally they require four on-site parking spaces, but some flexibility is allowed if on-street parking is available. She further noted that three parking spaces are provided in the driveway and adequate on-street parking is available.

Commissioner Dickenson asked Ms. Basinger if the garage would count as a required parking space. Ms. Basinger responded that the garage is shown on the plan as a parking space. Commissioner Dickenson expressed concern as to whether or not the garage would count as a required parking space. Eric Steger, Department of Public Works, responded that if two vehicles were able to be parked in the driveway, that would satisfy the requirements if there is parking available on the street.

Commissioner Julin commented on using the Variance process to eliminate a Variance condition of approval that was granted years earlier and asked Mr. Crawford if this same scenario would occur with other project approvals with conditions. Mr. Crawford responded that this is a unique situation and is not reflective of the types of conditions that would be imposed through a current variance process. He did not believe there would be a high likelihood that the Commission would view this same set of circumstances or situations. He added that once the County approves an entitlement with conditions of approval, then at some future point after that approval had been granted, the property owner could come back and request to modify the approval, which could be by eliminating conditions of approval, modifying the conditions, or to modifying the approved project itself.

Commissioner Julin stated that the rationale provided in the staff report is that there is not a nexus between the particular condition and the original variance request. The 1967 encroachment into the setback could have been that two stories would not be acceptable to encroach into that setback whereas one story would be and believed that is a nexus. Mr. Crawford responded that statements made in the staff report with respect to the lack of nexus are based upon a recognition that the proposed second story complies with all zoning standards. He further explained staff's rationale a variance should be evaluated on its own merits with respect to the specific exception being requested. Staff would not deny or modify development standards that are established as a matter of right under the governing zoning. He further added that there was no apparent connection between the addition that was approved in 1967 and the second story being sought now insofar as the mandatory Variance findings are concerned.



Commissioner Dickenson commented on nexus by pointing out that the wording in the 1967 approval seemed very clear, so there was a nexus at the time of the original approval. Mr. Crawford responded that it is a basic approach to dealing with the development of a second story on the structure because it assumes that any second story would have an impact without evaluating its design. Staff would have a problem imposing that condition because if designed correctly, it could meet with all zoning district, community plan, countywide planning standards, and variance findings, which also involved minimizing privacy and visual impact.

Commissioner Barner noted his confusion with respect to understanding where they are currently in relationship to the history of the project. He believed the entire process is confusing because there was an agreement between two property owners. He pointed out that the entitlement of building a second story was diminished if not eliminated when the agreement was made to enter into the rear yard setback.

The hearing was opened to public testimony.

Bevan Robinson, 4 Corte Las Sombras, Greenbrae, provided the Commission with three photographs to better understand the view between the Merolla residence and the Robinson residence, the proposed location of the addition, and the residence at 120 Almenar. He noted that the 1967 variance states, *“that no second story could be built over the dwelling area and that the garage could not be converted into living space.”* He stated that the Marin County Building Department assured him that the new addition was not being built over a dwelling area and that the garage was not considered living space. He pointed out that the County approved the plans and permits were issued because he met the setbacks, height limitation, and floor area ratio. The plans were also approved by the Planning Department. Ms. Merolla bought the property in 1975 with this addition in place and asked why it had taken her 25 years to express concern for the addition. He discussed the four building restrictions that were placed on the addition: 1) the first restriction would reduce his addition by 6-inches in height; 2) the second restriction to put a fixed window with obscure glass at the head of the stairway, but the view has only 25% impact on the Merolla residence; 3) the third restriction regarding closing the opening to the west on an enclosed deck of 35 square feet and suggested allowing his mature trees to grow and provide the necessary screening for privacy; 4) the fourth restriction was that he could not build over the existing dwelling in the future. He stated that as seen in Photographs 3 and 4 there are two, two-story additions that were built with no objection from Ms. Merolla. He is 90 feet away from the Merolla’s main backyard, is well within the County setbacks, and would have little impact to the Merolla’s residence. He could plant trees for privacy, but Ms. Merolla would lose her view or he could prune the trees that would impact privacy and he is not sure which Ms. Merolla would desire. He noted that they must all get along and respect the wishes of others and if Ms. Merolla is allowed to look in his direction, he should only have the right to look back at her without restrictions. He urged the Commission to allow him to build his plans that were approved by the County.

Anna Robinson, #4 Corte Las Sombras, Greenbrae, noted that the rules and regulations that occurred in 1967 were a long time ago and the entire neighborhood had changed. She explained that they desired an addition in order to accommodate her elderly mother and they never thought it would become such a heated topic.

Barbara Merolla, 132 Almenar, Greenbrae, stated that she provided a letter to the Planning Commission on Wednesday and it is her understanding that notice was included in the middle of her addendum. Her appeal had approximately 12 pages and only three pages appeared in the mailing. However, the County was able to include information regarding her individual property and she indicated to the County planner that her home was built in 1952. She never had an addition to her home and it has the same square-footage when it was originally built and felt it is completely inappropriate to discuss an issue that did not exist. She referred to the variance and believed that is located in the memorandum of her data on page 18 under the variance Item 2 that stated, *“that no second story addition shall hereafter be allowed on any portion of this dwelling.”* She believed “dwelling” would be used to describe an entire property that would include built-in garages and attached garages and disagreed with Mr. Robinson’s analysis of what constitutes a dwelling. She discussed Item 6 indicating, *“that the garage shall not be converted into floor space for dwelling purposes.”* She pointed out that the garage is being converted into living space and the request for the variance is to build a second story, which is prohibited and to convert garage space to living space. She noted that the last item stated, *“that the variance hereby granted shall be exercised, vested and maintained as conformed to all particulars with all provisions of application and ordinance. Any failure to*

*comply with such law and ordinances or any provision or condition set forth herein shall cause the cancellation or revocation of this variance.*” She stated that in her opinion Mr. Robinson’s request to have a second story request approved without submitting information regarding his variance clearly results in revocation of this existing variance. She added that in 2001, Mr. Robinson applied for a building permit for this addition and there was never any mention in the permit application that he had a variance, she could not find any written documentation where the planning department informed him that his addition would be legal because he was not building over the dwelling unit. She felt that Mr. Robinson obtained this permit by submitting illegal information to the County Department and the permit was gained illegally. She also stated that after the last hearing, the Planning Department provided her with information regarding rear yard variances that was used in the analysis, which she included in her memorandum for the Commission’s review. She further pointed out that the Greenbrae property Homeowner’s Association informed her as of October 1<sup>st</sup> that they never received any information regarding the variance request or a set of plans on this property and they also submitted a letter indicating that they are opposed to the addition on this property.

Michael Plimack, 136 Almenar Dr., Greenbrae, noted that they are present because they are strongly opposed to this project. He stated that he submitted written comments on October 1<sup>st</sup> and there were remarks submitted by Jeffrey Spur on Friday by fax for the Commission’s consideration. He expressed concern for impacts to his family and the greater community. He explained that this would significantly impact his privacy and the addition of a second story would provide a direct view into his home. He pointed out that his home is higher than the Robinson’s and the existing foliage basically provides adequate privacy of blocking the line of site on his home, but a second story would provide a significant impact on his privacy. He also added that the community opposed this project and all impacted neighbors have come forward to oppose this project. He further noted that there was a bargain, a contract that the Robinson’s could build substantially behind their property in exchange for not building a second story and for those reasons that is why the community is against this project.

The hearing was closed to public testimony.

Commissioner Dickenson stated that there was an agreement reached in 1967 and the same applicant had the choice at that time to build a very substantial addition encroaching into the rear setback in exchange for giving up his right to build a second story. He added that there is clearly a nexus for what occurred in the past and the condition that was imposed. He stated that the applicant is asking to have it both ways and this clearly violates his interpretation of the intent, which was to limit any future second story additions to the house and to also prohibit conversion of all or part of the garage living space. He further noted that he could not make the findings to approve an amendment to the 1967 variance.

Commissioner Buddie echoed Commissioner Dickenson’s comments. He noted that for the future he would hate to think that all established conditions at some point could be eliminated, which he would not desire and believed the conditions are imposed for the right reasons and should not be removed. He further noted that he could not make any findings to modify this variance to allow this addition.

Commissioner Barner stated that the 450-square-foot addition into the backyard is still not within the setbacks and there is violation of the setback as of today, where a 20% of lot depth is required. He noted that a stairway is needed for the new addition proposed and that stairway is considered part of the living space and that stairway is part of the existing garage, which would violate the condition that no part of the garage is to be used as living space. He added that he could not make the findings to grant approval not only exemption from the conditions that the Deputy Zoning Administrator placed on this project, but he could not make the findings to approve the project with or without the conditions.

Commissioner Thompson agreed with all the previous comments and added that in 1967 this was an irregular set of lots and a decision was made that the violation in the back was traded off for an increase in the setback and violating that with a second story piece would be against the findings that were made in 1967. He further noted that he could not make the findings as well.

Commissioner Julin had nothing further to add.

Chair Herbertson stated that this hearing had been helpful to understand the proposed project and noted that he would also uphold the Merolla appeal.

Chair Herbertson asked Mr. Crawford to clarify the language in the Resolution that would capture their discussion.

Mr. Crawford responded that first variance finding should read, *“that the special circumstance noted in that finding is not relevant to this particular project because the project did not involve proposed encroachments into setbacks or any other deviations from governing zoning standards.”* He explained that the second finding regarding detriments to the public welfare or items that might be injurious to other property in the territory that included views and privacy, so that finding could be revised to state, *“that any second story addition, in combination with the existing home, including the encroachment into the rear yard setback approved in 1967, would result in excessive bulk and massing in relation to other properties in the vicinity for the project.”* He added that the finding could be expanded to include findings relating to views and/or privacy that effect either property owners that provided testimony. He also noted that Finding “C” could be revised to state, *“that the finding is not relevant as well because the variance amendment would not result in a violation of limitation that are imposed on other property in the surrounding area; therefore, that would not result or constitute a grant of a special privilege.”*

Commissioner Dickenson believed that part of the zoning includes the fact that a variance was granted to allow the existing addition to encroach on the setback. Mr. Crawford concurred. Commissioner Dickenson further added that that it would be to grant a special privilege if they only built the addition with the variance, but now they are asking to remove the restriction that allowed them to build within the setback and felt that becomes granting a special privilege.

Mr. Crawford noted that Finding “D” did not need to be revised. He also pointed out that the Commission is not required to make all the findings negatively, only one is needed to uphold the Merolla appeal and deny the Robinson appeal.

Chair Herbertson pointed out that there are two sections in the special privilege finding of the 1967 variance that are being asked for relief and either one would be a special privilege. Mr. Crawford responded that Finding “C” would state, *“that the removal of the condition of approval requested by the property owner, would result in a grant of a special privilege because it would eliminate two conditions that were established in 1967 for which there is no sufficient basis for overturning based upon the record.”* He also noted that the remainder of the findings could be eliminated, the conditions of approval in section 2 would be eliminated, Section 3 would be revised to indicate the denial and title to the Resolution would be changed to read, *“that it is a Resolution upholding the Merolla appeal and denial of the Robinson appeal.”* He further reiterated that Finding “A” would be revised as well to state that the finding is not relevant to this project.

M/s Dickenson/Julin, and passed unanimously of those present, to approve the attached resolution granting the Merolla appeal, denying the Robinson appeal, and overturning the Deputy Zoning Administrator's conditional approval of the Robinson Variance amendment. Motion passed 6/0 (Commissioner Berland not present).

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-025

A RESOLUTION SUSTAINING THE MEROLLA APPEAL, DENYING THE ROBINSON APPEAL, AND OVERTURNING THE DEPUTY ZONING ADMINISTRATOR'S CONDITIONAL APPROVAL OF THE ROBINSON VARIANCE AMENDMENT  
4 CORTE LOS SOMBRAS, GREENBRAE  
ASSESSOR'S PARCEL 070-181-04

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**SECTION I: FINDINGS**

- I. WHEREAS Bevan and Anna Robinson have submitted the Robinson Variance Amendment requesting an amendment to a Variance that was issued in 1967, which contained a condition of approval that prohibited the construction of a second story on this property. In 2001, the applicant was issued a building permit for a 404 square foot second story addition that complies with height, setback and floor area ratio (FAR) limitations of the R-1: B-2 zoning district. Due to the discovery of the condition from the previous Variance approval, the building permit has been revoked on May 2, 2003. The applicant subsequently submitted the Variance application seeking to eliminate the current Variance condition of approval prohibiting second stories on the existing home for the purpose of constructing the second story initially proposed through the building permit application. The subject property is located at 4 Corte Los Sombras, Greenbrae and is further identified as Assessor's Parcel 070-181-04.
- II. WHEREAS on August 7, 2003, the Marin County Deputy Zoning Administrator held a duly noticed public hearing, to consider the merits of the project, and hear testimony in favor of and in opposition to the project. The Deputy Zoning Administrator granted a conditional approval of the project and required that the applicant fulfill the following requirements: 1) reduce the interior ceiling height of the second story addition 1.5 feet, from 9 feet to 7.5 feet; 2) the west facing deck opening shall be eliminated and replaced with a solid wall; 3) eliminate a second story window on the west elevation and required that the proposed window for the staircase use an opaque material; and 4) design review shall be required for any subsequent second story additions to the house.
- III. WHEREAS, a timely appeal of the Deputy Zoning Administrator's conditional approval of the proposed project has been filed by the applicants, Bevan and Anna Robinson, asserting that: 1) reducing the building height does not benefit other properties' views; 2) eliminating the proposed second floor deck would not benefit other properties; and 3) eliminating the window and requiring use of opaque glass in the stairway would not provide a visual benefit or enhance the privacy of neighboring residences. An appeal was also filed by the neighbor, Barbara Merolla, asserting that: 1) the staff report failed to adequately describe the property and adverse visual and privacy impacts of the 1967 Variance approval on surrounding properties; and 2) the removal of the 1967 condition of approval prohibiting construction of a second story on the property results in a special privilege that would be granted to the property.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on October 6, 2003, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 because the project would result in an addition to an existing residence that would not result in significant adverse environmental effects.

- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
- A. The project would be consistent with the SF5 (Single-family Residential, two to four units per acre) land use designation;
  - B. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
  - C. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
  - D. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and
  - E. The project would minimize soil disturbance and maximize retention of natural vegetation.
- VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Kentfield/Greenbrae Community Plan because:
- A. The proposed project would retain the residential character that is representative of the Kentfield and Greenbrae communities;
  - B. The proposed project would maintain the current density of the property (SF5, two to four units per acre); and
  - C. The project would provide adequate on-site parking as determined by the Department of Public Works.
- VIII. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the mandatory findings to approve a Variance (Section 22.86.025 of Marin County Code and Section 65906 of the California Government Code), as specified below.
- A. Because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.**
- This finding is not relevant to the project because the property owners are not seeking to deviate from the strict application of a zoning regulation.
- B. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.**
- This finding cannot be made. A second story addition in combination with the existing residence, including but not limited to the addition allowed by the 1967 Variance to encroach into the rear yard setback, would result in excessive bulk and mass viewed from neighboring properties, and may result in unreasonable intrusion of privacy enjoyed by such properties.

- C. The granting of this Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.**

The finding cannot be made. Approval of the proposed Variance Amendment would be a special privilege because it would allow the expansion of the property owners' residence in conflict with the 1967 Variance conditions of approval prohibiting a second story and/or conversion of the garage space into living space.

- D. The granting of a Variance for the property does not authorize a use or activity which is not otherwise expressly authorized by the particular zoning district regulations governing such property.**

This finding can be made. The granting of a Variance amendment to remove the condition of approval that will allow the construction of a second story addition to a single-family residence which meets all development standards will maintain a principally permitted use under the governing R-1:B-2 (Single-family residential) zoning district.

## **SECTION II: DECISION**

NOW, THEREFORE BE IT FURTHER RESOLVED that the Marin County Planning Commission hereby denies the Robinson Appeal, sustains the Merolla appeal, and overturns the Deputy Zoning Administrator's Conditional Approval of the Robinson Variance Amendment based on the inability to make all of the mandatory findings for grant of a Variance pursuant to Section 22.54.050 of the Marin County Code and Section 65906 of the California Government Code.

## **SECTION III: APPEAL RIGHTS**

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on October 16, 2003.**

## **SECTION IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 6<sup>th</sup> day of October, 2003, by the following vote to wit:

AYES: Dickenson, Julin, Barner, Buddie, Herbertson, Thompson

NOES:

ABSENT: Berland

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ROSS HERBERTSON, CHAIR  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary

7. APPROVAL OF MINUTES – SEPTEMBER 8, 2003, MEETINGS

M/s Barner/Thompson, and passed unanimously of those present, to approve the minutes of September 8, 2003 as modified. Motion passed 6/0 (Commissioner Berland not present).

8. UPDATE ON BOARD OF SUPERVISORS ACTIONS

October 14<sup>th</sup>, 2003: Hicks Mountain Ranch Master Plan; Qualls Costal Permit/Design Review Appeal

October 28<sup>th</sup>, 2003: Inclusionary Housing Ordinance; Robbie Appeal

November 4<sup>th</sup>, 2003: Tobias Variance Appeal (Lucas Valley)

November 25<sup>th</sup>, 2003: Tobias Variance Appeal (Lucas Valley)

9. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

October 20<sup>th</sup>, 2003:

Presentation on Countywide Plan on alternatives  
Economic Element

November 3<sup>rd</sup>, 2003:

San Quentin Vision Plan Presentation  
Marin City Church of God Rezoning and Subdivision Proposal (Marin City)  
Ricardo/Fitzgerald Design Review/Certificate of Compliance  
Cascade Canyon White Hill Open Space area and Draft EIR

November 17<sup>th</sup>, 2003:

San Quentin Vision Plan Presentation  
Oak View Master Plan/Tentative Map

December 8<sup>th</sup>, 2003:

Presentation on Countywide Plan  
Notice of Violation for unauthorized grading at St. Vincent's

Mr. Crawford stated that a special meeting may be scheduled in December in order to consider the Strawberry View Control Ordinance and the Countywide Plan Update.

Commissioner Buddie suggested holding a protocol workshop to discuss meeting conduct procedures, which could be held on October 20, 2003.

Commissioner Barner noted that the Commission received a book indicating that "straw votes" were not legal under the Brown Act and believed it would be beneficial to investigate that matter in order for the Commission to be in compliance with the Brown Act.

Commissioner Buddie suggested having a direct contact person in case of absences, so that there is a quorum and asked to receive guidance from staff as to the proper protocol.

Commissioner Thompson stated that there should be some quality control system related to material being proofread before material is provided to the Commission. Commissioner Barner believed proofreading could be done selectively, especially with regard to the Resolutions because they become legal documents. He suggested having Resolutions being first, with minutes second and then staff reports.