

**DRAFT Marin Stream Conservation Area Ordinance
Revised per Board of Supervisors Hearing, October 29, 2013**

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. _____

AN ORDINANCE APPROVING AMENDMENTS TO
MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)
FOR DEVELOPMENT IN STREAM CONSERVATION AREAS

SECTION I: FINDINGS

The Board of Supervisors of the County of Marin ordains as follows:

I. WHEREAS, the Marin County Community Development Agency initiated the proposed amendments to the Marin County Code Title 22 (Development Code). The Development Code includes the zoning and subdivision regulations that govern the development and use of private and public land, buildings, and structures located within the unincorporated areas of Marin County. The proposed amendments (Exhibit A) would modify Title 22 (Development Code) by: (1) establishing Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permits); (2) providing new definitions and amending the text of definitions in Chapter 22.130 (Definitions); (3) amending the text of Sections 22.06.050 (Exemptions from Land Use Permit Requirements), 22.08.040 (Agricultural District Development Standards), 22.40 (Application Filing and Processing, Fees), 22.42.025 (Exemptions from Design Review), 22.42.045 (Design Review for Development Along Anadromous Fish Streams and Tributaries), 22.42.055 (Project Review Procedures), 22.56.050 (Decision and Findings for New Second Units) and 22.62.040 (Exemptions) as necessary to effectuate the SCA Ordinance. The proposed amendment is applicable to those perennial, intermittent and ephemeral streams identified in the Stream Conservation Area map and data that is maintained and periodically updated by the Marin County Community Development Agency.

II. WHEREAS, the Marin County Planning Commission conducted public hearings on April 1, 2013 and May 13, 2013 to consider the proposed amendments to the Development Code and voted to recommend that the Board of Supervisors adopt an ordinance approving the proposed amendments, as modified, to Marin County Code Title 22 (Development Code).

III. WHEREAS, the Development Code implements the goals, policies and programs of the Marin Countywide Plan (CWP) which are necessary to protect the public health, safety, and welfare of residents and businesses in the unincorporated areas of Marin County.

IV. WHEREAS, the 2007 Marin Countywide Plan ("CWP") establishes goals, policies and implementing programs for riparian protection. Pursuant to Goal BIO-4 Riparian Conservation, the CWP designates Stream Conservation Areas along perennial, intermittent, and ephemeral streams. Development setbacks are established from all streams based upon the location of the top of stream bank or presence or riparian vegetation. The policies of the plan aim to promote

natural stream channel function, control exotic vegetation, protect riparian vegetation, promote riparian protection, maintain channel stability, and minimize runoff.

V. WHEREAS, the CWP provides that development applications shall not be allowed if a project adversely alters hydraulic capacity; causes a net loss in habitat acreage, value or function; or degrades water quality. Hydraulic capacity refers to the rate and timing of stream flows produced by rainfall and is a measure of the efficiency of draining an area that is affected by the level of imperviousness. Habitat function means the chemical, physical, and biological processes that allow an ecosystem to exist and maintain its integrity (e.g., food, water, shelter, migration corridors, spawning, nesting or breeding sites, shade, and nutrients). Habitat value means the aspects of habitat valued by society but not necessary for the existence and function of the ecological unit (e.g., aesthetic, recreational, flood control, and groundwater recharge). Water quality refers to the chemical, physical and biological characteristics of water within a stream which can be measured by indicators such as pH, temperature, suspended solids, dissolved solids, color, concentration of pollutants, and the prevalence of certain bacteria or insects.

VI. WHEREAS, the proposed amendments to the Development Code establish the purpose, applicability, standards, permit procedures and findings necessary to implement the policies and programs of the CWP relating to riparian protection, including Programs BIO-4.a (Adopt an Expanded SCA Ordinance), BIO-4.d (Establish Functional Criteria for Land Uses in SCAs), BIO-4.e (Identify Proposals Within SCAs), BIO-4.f (Identify Potential Impacts to Riparian Systems), BIO-4.g (Require Site Assessment), BIO-4.h (Comply with SCA Criteria and Standards), BIO-4.i (Replace Vegetation in SCAs), and BIO-4.q (Develop Standards Promoting Use of Permeable Materials).

VII. WHEREAS, the Marin County Board of Supervisors certified a Final Environmental Impact Report (EIR) for the CWP prior to adoption of the CWP. The certified EIR adequately evaluated the Development Code, which functions as an implementing program to the CWP. A subsequent or supplemental EIR is not required pursuant to State CEQA Guidelines Sections 15162 and 15163 because the project does not involve or result in substantial changes to the 2007 Countywide Plan involving new or substantially more severe significant environmental effects, nor does the proposal involve new information that was not known at the time the EIR for the Countywide Plan was certified. Further, the project is exempt from CEQA pursuant to Sections 15307 and 15308 of the CEQA Guidelines (Classes 7 and 8 Protection of Natural Resources and Protection of the Environment) because the project sets the regulatory framework for permitting in accordance with the CWP and increases protections afforded to streams and riparian habitat as compared with current County regulations.

VIII. WHEREAS, the proposed amendments to the Development Code have been guided by public engagement processes that included outreach and consultation with the following organizations or their representatives to discuss and accept comments on the draft ordinance: Marin Conservation League, Marin Audubon Society, Friends of Corte Madera Creek, Salmon Protection and Watershed Network (SPAWN), the San Geronimo Valley Stewards, the San Geronimo Valley Planning Group, San Geronimo Valley Technical Advisory Committee, Marin County Farm Bureau, Marin Association of Realtors, Marin CSA 13, Lucas Valley Homeowners Association, Kentfield Planning Advisory Board, Kent Woodlands Property Owners Association, Tam Design Review Board, Sleepy Hollow Homeowners Association, neighborhood groups, and other environmental, agricultural, and trade interest organizations, as well as a publicly-noticed SCA Open House and an online civic engagement forum (Open Marin). Further, the

Marin County Planning Commission held two duly-noticed public hearings, on April 1, 2013 and on May 13, 2013, to take public testimony and consider recommending that the Board of Supervisors adopt the SCA Ordinance.

IX. WHEREAS, the Marin County Board of Supervisors conducted duly-noticed public hearings on June 18, 2013, October 1, 2013, and October 29, 2013 to accept public testimony and consider the proposed SCA Ordinance.

X. WHEREAS, the Board of Supervisors decided to adopt the amendments to Marin County Code Title 22 (Development Code). The Stream Conservation Area Ordinance shall apply to unincorporated areas of Marin County outside the Coastal Zone. The court-imposed injunction on the approval of development applications in the San Geronimo Watershed shall expire upon the effective date of this ordinance.

SECTION II: AMENDMENTS TO TITLE 22

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby adopts the amendments to Marin County Code Title 22 (Development Code) as depicted in Exhibit "A" of this Ordinance. The requirements of Marin County Code Section 22.01.040.F.2 to F.5 shall govern the applicability of the approved amendments to existing projects that are in the development review process. The amendments will apply to land use permit and subdivision applications that are complete at the time this ordinance takes effect.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this ordinance shall not be further enforced or applied should litigation against the County of Marin challenging the validity of any part of this ordinance or its environmental review be filed in a court of law.

NOW, THEREFORE, BE IT FURTHER RESOLVED that notwithstanding the provisions of the prior paragraph any land use permit and subdivision applications and extension requests that have been determined by the Community Development Agency to be complete before the date of any such litigation, shall continue to be processed in compliance with the Development Code.

SECTION III: EFFECTIVE DATE

This Ordinance shall be and is hereby declared to be in full force and effect as of December 28, 2013 and shall remain in effect for a period of up to 29 months (April 28, 2016) or upon adoption of subsequent amendments to the Marin Countywide Plan and/or County Code that pertain to the SCA. At such time, Subjects 1, 3, 4, 5, 6, 7 and 8 of Exhibit "A" shall expire and the stricken provisions of Subjects 4, 5, 6, 7 and 8 shall be reinstated automatically without further action by the Board of Supervisors.

This Ordinance shall be published once before the expiration date of fifteen (15) days after its passage, with the names of Supervisors voting for and against the same in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors and the County of Marin, State of California, on the 29th day of October 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

JUDY ARNOLD, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

Matthew Hymel
Clerk of the Board of Supervisors

**EXHIBIT “A” TO MARIN COUNTY BOARD OF SUPERVISORS
ORDINANCE _____**

SUBJECT 1:

STREAM CONSERVATION AREA ORDINANCE (Dev. Code Articles III and IV)

CHAPTER 22.33 – STREAM PROTECTION

Sections:

22.33.010 – Purpose of Chapter

22.33.020 – Applicability

22.33.030 – Stream Conservation Area General Requirements

22.33.010 – Purpose of Chapter

The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams.

22.33.020 – Applicability

A. The SCA consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. In the event there is uncertainty about the location of the stream and corresponding SCA, the Director may determine the applicability of this chapter to a lot based on the latest data and evidence that is available and/or submitted to the Community Development Agency.

The SCA encompasses any jurisdictional wetland within the stream channel, together with adjacent uplands, and supersedes setback standards defined for Wetland Conservation Areas in the Countywide Plan.

B. The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:

1. The Coastal Zone as defined pursuant to the Coastal Act of 1976;
2. Tidally influenced waters and adjacent land;
3. Land adjacent to levees, dikes or berms in the City-Centered Corridor;
4. Publicly owned or maintained flood control facilities under tidal influence; and
5. Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work on land owned or controlled by the agency, such as through a lease or easement.

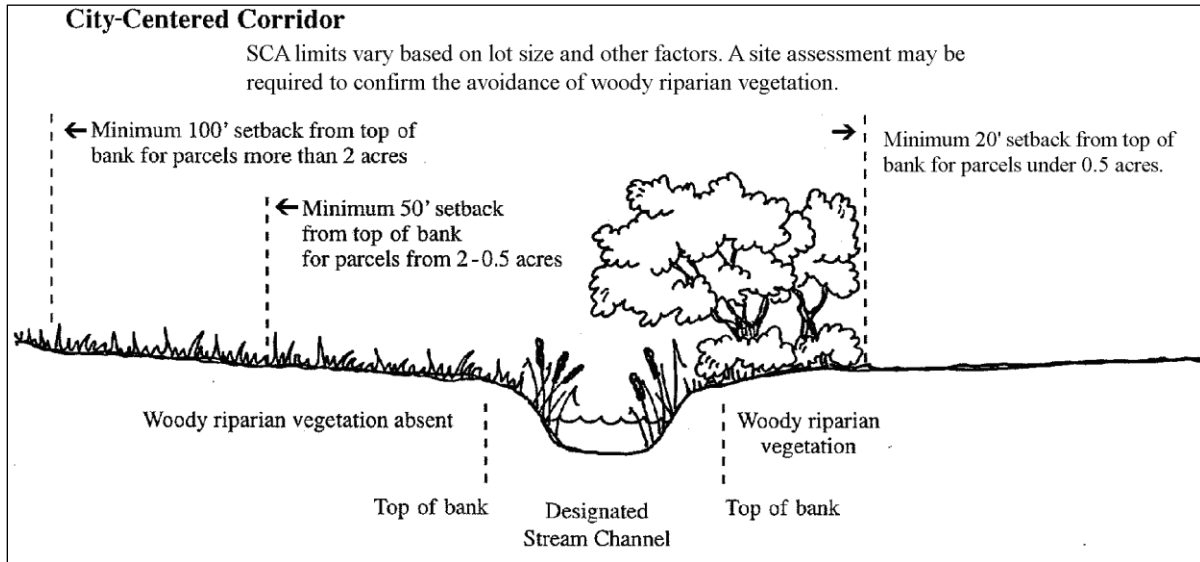
22.33.030 – Stream Conservation Area General Requirements.

A. SCA Setbacks. The Stream Conservation Area includes SCA setbacks as provided in this subsection.

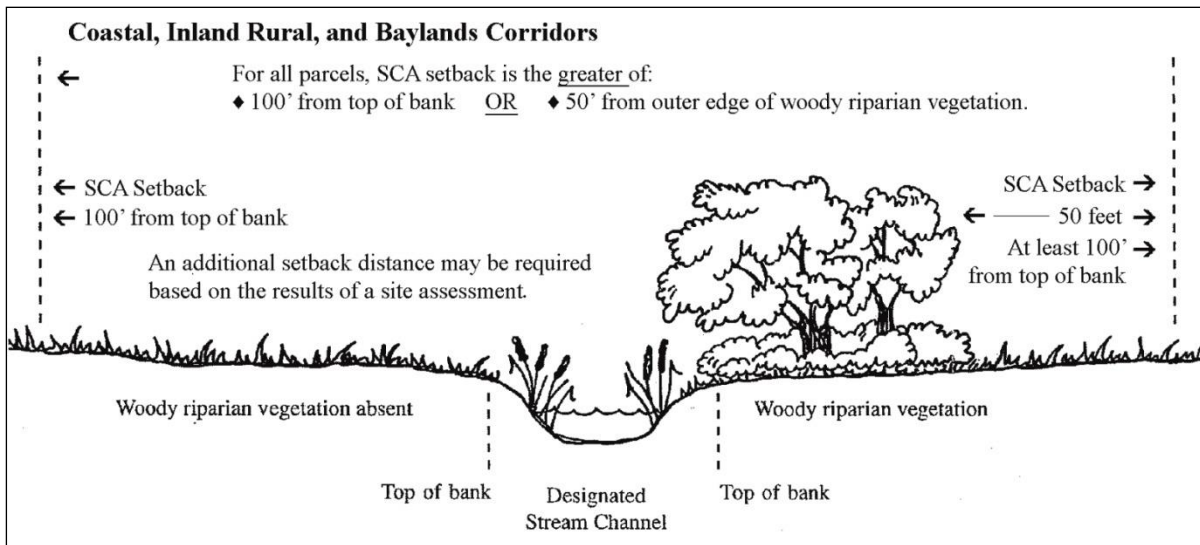
1. City-Centered Corridor:
 - a. For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;
 - b. For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and
 - c. For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank.
 - d. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
2. Inland Rural, Baylands, and Coastal Corridors:
 - a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
 - b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
3. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a length of 100 feet or more.
4. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation shall be determined on the basis of the most recent aerial photography on file with the County as of February 25, 2013.
5. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.

Figure 3-16

Typical Cross-Section of a Stream Conservation Area



- * Minimum SCA setback distance of 100 feet from top of bank for lots more than 2 acres.
- * Minimum SCA setback distance of 50 feet from top of bank for lots from 2 to 0.5 acres.
- * Minimum SCA setback distance of 20 feet from top of bank for lots less than 0.5 acres.



Chapter 22.63 – STREAM CONSERVATION AREA PERMIT

Sections:

- 22.63.010 – Purpose of Chapter
- 22.63.020 – Applicability to Development
- 22.63.030 – SCA Permit (Tier 1)
- 22.63.040 – SCA Permit (Tier 2)
- 22.63.050 – Application Filing, Processing and Review
- 22.63.060 – Decision and Findings

22.63.010 – Purpose of Chapter

This Chapter provides procedures and requirements for Stream Conservation Area (SCA) Permits, which regulate development within the SCA as defined in Chapter 22.33 (Stream Protection). The SCA permit requirements support healthy watersheds by ensuring that development respects existing natural riparian features and promotes important ecological functions such as groundwater recharge and infiltration.

22.63.020 – Applicability to Development

A. Application of SCA Provisions.

1. The provisions of this Chapter apply to development within the Stream Conservation Area, as described in Chapter 22.33 (Stream Protection). The exemptions from Land Use Permit Requirements in Section 22.06.050 (Exemptions from Land Use Permit Requirements) do not apply to development within the Stream Conservation Area. Exemptions for development in the Stream Conservation Area are contained in this Chapter. As used in this Chapter, development that may be permitted in the Stream Conservation Area includes the following:
 - a. All structures, regardless of whether the work requires a building or grading permit, including fencing, decks, platforms, parking lots, utility crossings, pedestrian or vehicular access routes, and other similar improvements;
 - b. Clearing of land or removal of any vegetation, including any protected or heritage tree; or
 - c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08 (Watercourse Diversion or Obstruction).
2. Compliance with this Chapter does not affect applicability of any other requirements by this or any other agency. This Chapter shall not be applied in a manner that supersedes other local, state or federal laws applicable to protection of riparian and stream resources.

B. Exemptions.

1. Exempt without further determination.

- a. Public utility facilities, including their location, construction, maintenance, repair and replacement, that are exempt from local agency building and zoning requirements pursuant to Government Code Section 53091, Public Resources Code Section 4292, and the California Public Utilities Code;
- b. Emergency measures requiring prompt action, where such measures are immediately necessary to avoid or prevent loss of, or damage to, life, health, property or essential public services resulting from a sudden, unexpected occurrence;
- c. Tree and vegetation removal or trimming on a developed lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety. Vegetation that is dead, invasive, or exotic may also be removed under this exemption;
- d. Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency;
- e. Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;
- f. Any development that is permitted pursuant to Marin County Code Section 11.08 (Watercourse Division or Obstruction), Section 23.08 (Excavating, Grading and Filling), or Section 24.04.560 (Drainage Setbacks);
- g. Maintenance, accessibility retrofit, and repair of permitted or legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013.
- h. Maintenance or replacement of landscaping.
- i. New fences that do not restrict wildlife access to streams and the adjacent riparian vegetation. Exempt fences include any fence within or on the perimeter of a previously disturbed area;
- j. Agricultural uses on property zoned for agriculture (A, ARP or APZ), including removal and trimming of vegetation planted for a commercial enterprise, that do not result in the removal of woody riparian vegetation or animal confinement within the SCA.

- 2. Exempt subject to determination.** The following activities are exempt subject to determination by the Director, based upon photographs, illustrations and other appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below. Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal. Documentation may include a letter or report from a licensed contractor and

photographs of the property and improvements or structures to verify the activity will comply with this Section.

- a. Replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the footprint within the SCA setback or result in the removal of woody riparian vegetation.
- b. Development activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director. Addition of a cumulative total of 120 square feet of impervious surface in a previously disturbed area, provided that the improvement is located at least 20 feet from the top of the stream bank, does not result in the removal of woody riparian vegetation, and disperses storm water run-off over a pervious area (such as a lawn or garden).
- c. Tree and vegetation removal or trimming on a vacant lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety. Vegetation that is dead, invasive, or exotic may also be removed under this exemption.

22.63.030 – Stream Conservation Area Permit (Tier 1)

A. SCA (Tier 1) Development. Permitted development activities eligible for consideration under the Stream Conservation Area (Tier 1) Permit Review Procedures include but are not limited to:

1. Addition(s) to permitted or legal non-conforming primary structures that existed prior to February 25, 2013, provided that the work does not increase the footprint within the SCA by a cumulative total of more than 500 square feet and is not closer to the stream than the existing structure or any structure removed, whichever is more restrictive;
2. New or expanded water supply or septic facilities, including any excavation or disturbance that is necessary for facility connections;
3. Fences that are not otherwise exempt pursuant to Section 22.63.020.B.1.i;
4. New decks, patios, platforms and other similar improvement as determined by the Director;
5. Pedestrian or vehicular access routes, including paths, ramps, driveways and roads;
6. Drainage improvements, such as downdrains, pipes and swales;
7. Retaining walls, erosion control structures, and similar improvement located upland from the top of bank as determined by the Director;
8. Removal of protected or heritage trees.

Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) if the proposed development would not meet applicable Development Standards and incorporate applicable Standard Management Practices through the Site Assessment.

B. SCA (Tier 1) Project Review Procedure

- 1. Ministerial Review.** The Stream Conservation Area Permit (Tier 1) shall be undertaken as a ministerial action subject to implementation of required Development Standards and project-specific Standard Management Practices.
- 2. Development Standards.** Stream Conservation Area (Tier 1) Permits shall comply with the following Development Standards:
 - a. Where permitted development within an SCA setback would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice. Replacement vegetation shall consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, subject to County approval.
 - b. New impervious area within the SCA shall not drain directly to the stream or storm drain. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).
 - c. New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.
 - d. Pedestrian bridges shall be designed such that no portion of the structure or its related abutments extends between and below the top of banks of the stream.
 - e. Permitted work shall not result in alterations that directly or indirectly create barriers to fish migration near or within streams mapped as currently and/or historically supporting salmonids.
 - f. Subdivisions shall be designed so that no future development will occur within the SCA, and where the SCA setback is determined by the size of the lot, the SCA setback that applies to the lot prior to any subdivision shall apply to all subsequent lots that are created.
- 3. Standard Management Practices.** The CDA shall maintain a list of Standard Management Practices to be incorporated into all projects for the protection of hydraulic capacity, stream and riparian habitat and water quality within SCAs. The Site Assessment (Tier 1) will identify those Standard Management Practices appropriate to ensure that adverse impacts of permitted development are avoided, therefore fulfilling the requirements of a Site Assessment. Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than final inspection.
- 4. Site Assessment (Tier 1).** The Site Assessment (Tier 1) shall be prepared by trained CDA staff. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; and identify Standard

Management Practices corresponding to the nature of development that would ensure that the project will not cause adverse impacts to the stream and riparian resources. The Site Assessment (Tier 1) is part of the SCA Permit (Tier 1).

If the Site Assessment confirms that impacts to hydraulic capacity, stream and riparian habitat and water quality can be avoided through implementation of specific Standard Management Practices, the County shall process the application as a Tier 1 permit.

22.63.040 – Stream Conservation Area Permit (Tier 2)

A. SCA (Tier 2) Development. The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030; for any project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices necessary to avoid adverse impacts; and for any development that would, despite the application of Standard Management Practices, result in adverse impacts to hydraulic capacity, stream or riparian habitat, or water quality.

B. SCA (Tier 2) Project Review Procedure

- 1. Discretionary Review.** The Stream Conservation Area Permit (Tier 2) shall be undertaken as a discretionary action subject to incorporation of Development Standards, Standard Management Practices, and/or any other mitigations as determined through a Site Assessment (Tier 2) necessary to avoid adverse impacts to hydraulic capacity; habitat acreage, value or function; and water quality.
- 2. Development Standards.** Stream Conservation Area (Tier 2) Permits shall comply with the following Development Standards:
 - a. All Development Standards applicable to Tier 1 permits provided in Section 22.63.030.B.2, except where the a Site Assessment (Tier 2) demonstrates that alternate mitigations would be more appropriate to prevent adverse alteration of hydraulic capacity; a net loss in habitat acreage, value or function; or degradation of water quality.
 - b. Any development that would, on the basis of a Site Assessment, cause or exacerbate existing channel instabilities shall require County approval of a channel stabilization program in accordance with a hydrological or geomorphic assessment; or comply with the mitigations generated during the required environmental review process. Mitigations shall include maintenance of peak flows at pre- and post-project levels, or less. Proposed stabilization measures shall anticipate project-related changes to the drainageway flow regime.
- 3. Standard Management Practices.** The project shall incorporate any applicable Standard Management Practices on file in the CDA, except as determined in accordance with a Site Assessment (Tier 2) and applicable mitigations.
- 4. Site Assessment (Tier 2).** The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1), shall be prepared by a qualified professional, and shall determine whether an additional setback is required to avoid adverse impacts to the SCA.

The Site Assessment (Tier 2) shall also include:

- a. Additional studies necessary to determine the extent of development impacts to hydraulic capacity, habitat and water quality including but not limited to hydrological assessments; stream and riparian habitat studies; and stormwater analysis. A hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project run-off may be required where there is evidence that significant current or impending channel instability is present, as determined by the County. The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access.
- b. A description of mitigation measures that conform to criteria in Section C (Mitigation Criteria), and any additional mitigation measures that would avoid or reduce the adverse impact of the proposed development on hydraulic capacity, habitat, or water quality within the SCA. Such measures shall include feasible design and site specific measures, in addition to local, state and federal regulations. All such measures shall be incorporated into the project or be required through conditions of approval.
- c. If the lot is not entirely within the SCA, the Site Assessment (Tier 2) shall also evaluate whether development on the lot entirely outside the SCA is infeasible and whether potential impacts on water quality, wildlife habitat, native vegetation, or other sensitive biological resources would be greater as a result of development outside the SCA than development within the SCA.

C. Mitigation Criteria. Where development would occur within an SCA, and adverse impacts to hydraulic capacity, habitat, or water quality are identified, mitigation shall conform to the provisions below and shall be incorporated into the project or be required through conditions of approval. The Site Assessment (Tier 2) shall present options for alternative mitigation that meet the following criteria.

1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1 (individuals planted: individuals removed).
2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require a schedule of mitigation work and development work. Mitigation shall be implemented prior to final inspection to minimize any short-term adverse impacts to hydraulic capacity, habitat, or water quality. Mitigation plans must, to the extent feasible, be designed so that mitigations are self-sustaining.
3. Mitigation shall include measures that create a net environmental improvement over existing conditions. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level.

22.63.050 – Application Filing, Processing and Review

- A. Filing and processing.** Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).
- B. Project review procedure.** The Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).
- C. Public hearings.** When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.
- D. Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.

22.63.060 – Decision and findings

The Review Authority shall issue the decision and the findings upon which the decision is based. The Review Authority may approve or conditionally approve an application only if all of the following findings are made:

- A. For a SCA (Tier 1) Permit:

The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)), which ensure that the project will not adversely alter hydraulic capacity, will not cause a net loss in habitat acreage, value or function, and will not degrade water quality.

- B. For a SCA (Tier 2) Permit:

1. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2)).
2. The project will not adversely alter hydraulic capacity; will not cause a net loss in habitat acreage, value or function; and will not degrade water quality. Exceptions may be allowed if the lot falls entirely within the SCA or development on the lot entirely outside the SCA is infeasible or would have greater impacts on water quality, wildlife habitat, native vegetation, other sensitive biological resources, or other environmental constraints than development within the SCA.

SUBJECT 2:

22.130.030 – Definitions of Specialized Terms and Phrases

Definitions are listed in alphabetical order.

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Discretionary Permit. A permit granted by a review authority in response to a land use permit application after applying the exercise of judgment or deliberation prior to making a decision. Includes any of the following entitlements/approvals established by Article IV (Land Use and Development Permits): Coastal Permits, Design Review, Floating Home Adjustment Permits, Floating Home Architectural Deviations, Master Plans and Precise Development Plans, Use Permits, Sign Review, Stream Conservation Area Permit (Tier 2), Temporary Use Permits, Tentative Maps, Tidelands Permits, and Variances. See also "Ministerial Permit."

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Disturbed Area. An area that has experienced significant alteration from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities, as determined by the Director.

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Ministerial Permit. A permit granted to a project after applying fixed, objective standards with little or no subjective evaluation as to the wisdom or manner of carrying out the project. Examples are Sign Permit, Large Family Day-care Permit, Homeless Shelter Permit, Certificate of Compliance, Second Unit Permit, Stream Conservation Area Permit (Tier 1), Final Map approval, and Building Permits. See also "Discretionary Permit."

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Riparian Vegetation. Vegetation associated with a watercourse and relying on the higher level of water provided by the watercourse. Riparian vegetation can include trees, shrubs, and/or herbaceous plants. Woody riparian vegetation includes plants that have tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin. Herbaceous riparian vegetation includes grasses, sedges, rushes and forbs – broad-leaved plants that lack a woody skeleton.

...

Stream, Ephemeral. A watercourse that carries only surface runoff and flows during and immediately after periods of precipitation.

Stream, Intermittent. A watercourse that is temporally intermittent or seasonal and that flows during the wet season, continues to flow after the period of precipitation, and ceases surface flow during at least part of the dry season.

Stream, Perennial. A watercourse that flows throughout the year (except for infrequent or extended periods of drought), although surface water flow may be temporarily discontinuous in some reaches of the channel, such as between pools. Perennial streams can be spatially intermittent but flow all year.

Stream Conservation Area. An area designated by the Marin Countywide Plan along all natural watercourses shown as a solid or dashed blue line on the most recent appropriate

USGS topographic quadrangle map, or along all watercourses supporting riparian vegetation for a length of 100 feet or more. See Marin Countywide Plan policy EQ-2.3. The Stream Conservation Area consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. Streams do not include ditches, culverts, and other above- or below-ground conduits constructed specifically for storm drainage.

Stream Conservation Area Setback. The distance measured laterally and perpendicular to the top of bank or edge of woody riparian vegetation. See Section 22.33.030.B.

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Top of Bank. Top of bank is the elevation of land that confines waters of a stream to their natural channel in their normal course of flow, and above such elevation the waters will leave the channel and disperse in an uncontrolled manner.

...

Wetland, Jurisdictional. An area that meets the criteria established by the U.S. Army Corps of Engineers (Corps or COE) for Wetlands (a set forth in their Wetlands Delineation Manual). Such areas come under the jurisdiction of the Corps of Engineers for permitting certain actions such as dredge and fill permitting.

SUBJECT 3:

22.06.051 – Exemptions from Land Use Permit Requirements

The exemptions listed in Section 22.66.050 do not apply to activities, uses of land, and other improvements proposed in the Stream Conservation Area. See Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permit).

SUBJECT 4:

22.42.045 – Design Review for Development Along Anadromous Fish Streams and Tributaries

In those instances where a vacant legal lot of record in the Countywide Plan's City-Centered, Baylands, or Inland Rural Corridor is proposed for development, any proposed development within the Countywide Plan's Stream Conservation Area that adjoins a mapped anadromous fish stream and tributary shall be subject to Design Review as provided by this chapter if the lot is zoned A, A-2, RA, H1, O-A, RR, RE, R1, R2, C-1, A-P, or VCR, including all combined zoning districts. Development includes all physical improvements, including buildings, structures, parking and loading areas, driveways, retaining walls, fences, and trash enclosures. The determination of the applicability of this requirement shall be based on the streams and tributaries shown on the map entitled "Marin County Anadromous Fish Streams and Tributaries," which is maintained and periodically updated by the Community Development Agency.

SUBJECT 5:

22.42.025 – Exemptions from Design Review

Review, except as provided by Sections 22.42.030 (Design Review for substandard and hillside building sites), 22.42.035 (Design Review for Certain Driveways) and 22.42.040 (Design Review for Development Along Paper Streets), and ~~22.42.045 (Design Review for development along anadromous fish streams and tributaries)~~, and except where a Community Plan adopted by the Board of Supervisors requires Design Review to implement specific design standards. In addition, where a conflict arises between conditions of approval of a discretionary application (e.g., Master Plan, Precise Development Plan, Design Review) and the exemptions listed below, the project-specific conditions of approval shall be the applicable regulations. Development and physical improvements that are exempt from Design Review shall be located outside of the ~~Stream Conservation Area~~ and Wetland Conservation Area setbacks established in the Countywide Plan and Article V (Coastal Zones - Permit Requirements and Development Standards). The requirements of Chapter 22.114 (Appeals) do not apply to determinations issued under this Section.

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**TABLE 4-2
STANDARDS FOR EXEMPTION FROM DESIGN REVIEW FOR ONE-STORY ADDITIONS
TO SINGLE-FAMILY RESIDENCES AND FOR DETACHED ACCESSORY STRUCTURES
IN PLANNED DISTRICTS**

| Standards | | One-Story Single-family Additions and Detached Accessory Structure |
|--------------------------------|------------------------------|--|
| Max. increase in building area | | 750 sq. ft. or 20% of the existing building area, whichever is less |
| Max. total building area | | 4,000 sq. ft. (3,000 sq. ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25%) or the applicable floor area ratio (FAR) limit under the zoning district or in a Community Plan, whichever is more restrictive |
| Max. height | Single-family Addition | 20 ft. or the coastal zoning height standards, whichever is more restrictive |
| | Detached Accessory Structure | 15 ft. where either the lot or the natural grade in the area of the building footprint has an average slope that equals or is less than 25% 20 ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25% |
| Min. lot area | | Not applicable |

| | |
|--|--|
| Min. setbacks | 5 ft. to all property lines on lots up to 6,000 sq. ft. 6 ft. to all property lines on lots up to 7,500 sq. ft. 10 ft. to all property lines on lots up to 10,000 sq. ft. 15 ft. to all property lines on lots > 10,000 sq. ft. (Or the required setbacks in a Community Plan or Master Plan, whichever is more restrictive) |
| Environmental Protection (Countywide Plan Consistency) | Outside of a Stream Conservation Area and Wetland Conservation Area |
| SFR Design Guidelines | Complies with Guideline C-1.11 (Exterior Lighting) |

**TABLE 4-3
STANDARDS FOR EXEMPTION FROM DESIGN REVIEW FOR MULTI-STORY
ADDITIONS TO SINGLE-FAMILY RESIDENCES IN PLANNED DISTRICTS**

| Standards | Multi-Story Single-family Addition |
|--|---|
| Max. increase in building area | 750 sq. ft. or 20% of the existing building area, whichever is less |
| Max. total building area | 4,000 sq. ft. (3,000 sq. ft. for lots with average slopes > 25%) or the applicable floor area ratio (FAR) limit under the zoning district or in a Community Plan, whichever is more restrictive |
| Max. height (Multi-story Additions) | 30 ft. in non-coastal zone; 25 ft. in coastal zone or the coastal zoning height standards, whichever is more restrictive; 20 ft. in stepback zone (See SFR Design Guideline B-1.1) |
| Min. lot area | Not Applicable |
| Min. setbacks | 5 ft. for lots up to 6,000 sq. ft. 6 ft. for lots up to 7,500 sq. ft. 10 ft. for lots up to 10,000 sq. ft. 15 ft. for lots > 10,000 sq. ft. (Or the required setbacks in a Community Plan or Master Plan, whichever is more restrictive) |
| Environmental Protection (Countywide Plan Consistency) | Outside of a Stream Conservation Area and Wetland Conservation Area |
| SFR Design Guidelines | Complies with Guideline B-1.1 (Building Setbacks and Stepbacks) and Guideline C-1.11 (Exterior Lighting) |

- B. Agricultural Accessory Structures.** Agricultural accessory structures that comply with ~~the Stream Conservation Area and~~ Wetland Conservation Area setbacks established in the Countywide Plan, the Planned District Development Standards for agricultural zones (Sections 22.08.040, 22.16.040) and Article V (Coastal Zones - Permit Requirements and Development Standards), and that are 300 feet or more from a property line of an abutting lot in separate ownership, and which are at least 300 feet from a street. The minimum setback to qualify for an exemption is reduced to 50 feet for an agricultural accessory structure that does not exceed 2,000 square feet in size. This exception does not apply to facilities for processing or retail sale of agricultural products.

SUBJECT 6:

22.42.055 – Project Review Procedures

- A. Purpose.** This Section provides procedures for Design Review. It includes procedures for reviewing Minor Design Review and Design Review applications.
- B. Minor Design Review.** If a project is not exempt from Design Review as defined in Section 22.42.025 (Exemptions from Design Review), an applicant may apply for a Minor Design Review by staff. A Minor Design Review application may be approved or conditionally approved by staff following a site visit if it meets all of the requirements contained in this Section. A notice of the proposed project shall be posted at the site pursuant to Section 22.118.020(D). The Minor Design Review application is intended to streamline the Design Review process for minor projects that may be approved without required noticing or a public hearing, provided the application does not require a public hearing Coastal Permit. Minor Design Review decisions are appealable pursuant to the requirements of Chapter 22.114 (Appeals).
- 1. Requirements.** A project eligible for a Minor Design Review must:
- a. Not conflict with previous County conditions of approval that were imposed on the property;
 - b. Be consistent with the purpose of Design Review pursuant to Section 22.42.010 (Purpose of Chapter);
 - c. Comply with existing Master Plans and applicable standards in a Community Plan;
 - d. Be located outside of ~~Stream Conservation Areas~~, Wetland Conservation Areas or other mapped environmentally sensitive areas as designated by the Countywide Plan;
 - e. Comply with the County's Single-family Residential Design Guidelines;
 - f. Comply with Marin County Green Building Standards (Section 19.04.110) and exceed Minimum Compliance Threshold by one level, with the exception that additions with a valuation exceeding \$300,000 shall attain a minimum compliance threshold that requires 20 additional points than that which is required by the Green Building Standards; and

- g. Not be located on a property that meets either of the following conditions, as applicable:
 - 1. If the residence on the property was not subject to Design Review, final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago; or
 - 2. If any previous addition to the residence on the property was issued a Minor Design Review pursuant to Section 22.42.055 (B), final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago.

SUBJECT 7:

22.56.050 - Decision and Findings for New Second Units.

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- L. A second unit shall be located outside of the ~~Stream Conservation Area~~ and identified Wetland Conservation Areas except under the following circumstances: (1) the unit is created within an existing authorized primary or accessory structure through the alteration of existing floor area without increasing the cubical contents of the structure (with the exception of minor dormers, bay windows, and stairwells); and (2) no site disturbance related to the provision of parking and access improvements or other construction encroaches into a ~~Stream Conservation Area~~ or Wetland Conservation Areas.

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SUBJECT 8:

22.62.040 – Exemptions

The removal of any protected or heritage tree on a lot is exempt from the requirements of this Chapter if it meets at least one of the following criteria for removal:

- A. The general health of the tree is so poor due to disease, damage, or age that efforts to ensure its long-term health and survival are unlikely to be successful;
- B. The tree is infected by a pathogen or attacked by insects that threaten surrounding trees as determined by an arborist report or other qualified professional;
- C. The tree is a potential public health and safety hazard due to the risk of its falling and its structural instability cannot be remedied;
- D. The tree is a public nuisance by causing damage to improvements, such as building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, or interfering with the operation, repair, or maintenance of public utilities;

- E. The tree has been identified by a Fire Inspector as a fire hazard;
- F. The tree was planted for a commercial tree enterprise, such as Christmas tree farms or orchards;
- G. Prohibiting the removal of the tree will conflict with CC&R's which existed at the time this Chapter was adopted;
- H. The tree is located on land which is zoned for agriculture (A, ARP, APZ, C-ARP or C-APZ) and that is being used for commercial agricultural purposes. (This criterion is provided to recognize the agricultural property owner's need to manage these large properties and continue their efforts to be good stewards of the land.);
- I. The tree removal is by a public agency to provide for the routine management and maintenance of public land or to construct a fuel break;
- J. The tree removal is on a developed lot and: 1) does not exceed two protected trees within a one-year timeframe; 2) does not entail the removal of any heritage trees; and 3) does not entail the removal of any protected or heritage trees within a ~~Stream Conservation Area~~ or a Wetland Conservation Area.

It is recommended that a property owner obtain a report from a licensed arborist or verify the status of the tree with photographs to document the applicability of the criteria listed above to a tree which is considered for removal in compliance with this section.

SUBJECT 9:

CHAPTER 22.40 APPLICATION FILING AND PROCESSING, FEES

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22.40.020 – Review Authority for County Land Use and Zoning Decisions

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**TABLE 4-1
REVIEW AUTHORITY FOR DISCRETIONARY APPLICATIONS**

| Type of Permit or Decision | (1) (2) Role of Review Authority | | | |
|---|-------------------------------------|--------------------------------|------------------------|-------------------------|
| | (3) Director | (3) Zoning Administrator | Planning Commission | Board of Supervisors |
| Coastal Permit, Administrative | Decide | | Appeal Action | Appeal Action |
| Coastal Permit, Public Hearing | Recommend | Decide | Appeal Action | Appeal Action |
| Community or Countywide Plan Amendment | Recommend | | Recommend | Decide |
| Design Review | Decide | | Appeal Action | Appeal Action |
| Development Code Amendment | Recommend | | Recommend | Decide |
| Floating Home Adjustment Permit | Decide | | Appeal Action | Appeal Action |
| Floating Home Architectural Deviation | Decide | | Appeal Action | Appeal Action |
| Interpretations | Decide | | Appeal Action | Appeal Action |
| Lot Line Adjustment | Decide | | Appeal Action | Appeal Action |
| Master Plan | Recommend | | Recommend | Decide |
| Precise Development Plan | Decide | | Appeal Action | Appeal Action |
| Sign Review | Decide | | Appeal Action | Appeal Action |
| Stream Conservation Area Permit (Tiers 1 and 2) | Decide | | Appeal Action | Appeal Action |
| Temporary Use Permit | Decide | | Appeal Action | Appeal Action |
| Tentative Map | Recommend | Decide | Appeal Action | Appeal Action |
| Tidelands Permit | Decide | | Appeal Action | Appeal Action |
| Tree Removal Permit | Decide | | Appeal Action | Appeal Action |
| Use Permit | Recommend | Decide | Appeal Action | Appeal Action |
| Variance | Decide | | Appeal Action | Appeal Action |
| Zoning Map Amendment | Recommend | | Recommend | Decide |

Notes:

1. "Recommend" means that the Review Authority makes a recommendation to the decision-making body; "Decide" means that the Review Authority makes the final decision on the matter; "Appeal Action" means that the Review Authority may consider and decide upon appeals of the decision of an earlier decision-making body, in compliance with Chapter 22.114 (Appeals).
2. In any case where a project involves applications for more than one entitlement, and entitlements require review and approval by different review authorities, all entitlements shall be reviewed and decided upon by the highest Review Authority.
3. The Director or Zoning Administrator may refer any matter subject to the Director's or Zoning Administrator's decision to the next highest authority, so that the next highest Review Authority may instead make the decision.

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22.40.030 – Application Submittal and Filing

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

Discretionary Permit Applications

1. Design Review;
2. Floating Home Adjustment Permits and Architectural Deviations;
3. Master Plans or Precise Development Plans;
4. Temporary Use Permits;
5. Tentative Maps and Vesting Tentative Maps;
6. Lot Line Adjustments;
7. Stream Conservation Area Permit (Tier 2);
- ~~7~~8. Tidelands Permits;
- ~~8~~9. Tree Removal Permits
- ~~9~~10. Use Permits;
- ~~10~~11. Variances; and
- ~~11~~12. Sign Reviews.

Ministerial Planning Permit Applications

1. Certificates of Compliance
2. Homeless Shelter Permits
3. Large Family Day-care Permits
3. Second Unit Permits
4. Sign Permits
5. Stream Conservation Area Permit (Tier 1)
- ~~5~~6. Use Permit Renewals

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