

APPENDICES

Understanding Moraga's Hillside Regulations
PUBLIC REVIEW DRAFT

Town of Moraga
May 30, 2014

Prepared by:



APPENDIX A

MAP DESCRIPTIONS

MAP DESCRIPTIONS

Map 1 Moraga Hillside Areas

The primary feature of Map 1 is a hillshade with a color ramp depicting relative elevations within the Town of Moraga. These elevation data were produced from LiDAR data provided by Contra Costa County. LiDAR is composed of point-based data depicting elevation. These points are collected using specialized laser-based systems mounted on aircraft. By measuring how the laser beams bounce off the earth's surface and other objects, these data provide a highly accurate measure of elevation; however, data may be less precise or accurate in areas with numerous buildings or heavy foliage.

Map 2 Open Space Lands

The primary features of Map 2 are the MOSO and non-MOSO Open Space areas within the Town of Moraga. These areas are based on the zoning and land use GIS data maintained by the Town, which are derived from maps adopted as part of MOSO and the General Plan.

Map 3 Development: MOSO Ridgelines

The primary features of Map 3 are the major and minor ridgelines defined by MOSO within the Town of Moraga, as well as the 500-foot development buffers surrounding major ridgelines. The ridgelines shown are based upon the GIS data maintained by the Town, which are in turn derived from maps adopted as part of MOSO and the General Plan. Buffers of the major ridgelines were created using the ArcGIS software suite.

Map 4 Moraga Development Capability Map

The primary features of Map 4 are the areas designated as "High Risk" i.e., Low Development Capability. This map is derived from a scan of the paper map that was included as Exhibit D and adopted under the MOSO Interpretation Guidelines in 1992.

Map 5 FEMA Flood Zones

The primary features of Map 5 are the 100- and 500-year floodplains as determined by the Federal Emergency Management Agency (FEMA) for the creation of 2009 Flood Insurance Rate Maps. The 100-year floodplain comprises areas where in any given year there exists a 1 percent probability of inundation. The 500-year floodplain comprises areas where this probability is 0.2 percent in any given year. It is important to note that these areas are based purely on probability, and this does not mean that a 100 year flood will occur once in every 100 year period or that a 500-year flood will occur once in every 500 year period. These areas are determined through hydrological analysis, based on the period for which historical climate and flood records are available. Due to natural variability, these numbers only represent an average of what could potentially be expected long-term.

Map 6 Wildfire Hazard Areas

The primary features of Map 6 are the Wildfire Hazard Severity Zones developed by the California Department of Forestry and Fire Protection (CalFIRE) in 2007 and 2009. These zones offer a relative measure of the overall risk posed by wildfire in a given area. CalFIRE determines these risks using a combination of fuel conditions, development levels, climate, and other factors. Areas with dense vegetation, dry climates, and nearby urban development are generally regarded as the highest risk, whereas central urban locations are usually regarded as lower risk due to their distance from highly flammable natural vegetation.

Map 7 Liquefaction Susceptibility

The primary features of Map 7 are liquefaction susceptibility areas, as determined by the US Geological Survey (USGS). Liquefaction is a soil condition that can occur as a result of seismic shaking during an earthquake. A combination of factors, including poorly consolidated and water saturated soils, can lead to amplified shaking, ground failure, or even the surfacing of groundwater. Liquefaction can therefore lead to severe structural damage, including sinking or even complete collapse in some instances. The USGS determines the level of liquefaction risk through a variety of factors, including proximity to active faults, proximity to streams or other bodies of water, and local soil types/conditions.

Map 8 Major Hydrology and Drainage Patterns

The primary features of Map 8 are permanent and intermittent watercourses in Moraga, as provided by the Contra Costa County Department of Conservation and Development. Intermittent watercourses are creeks or streams that typically cease to flow during dry periods of the year or during droughts. Permanent watercourses are those that typically flow throughout the year, even during the dry season. However, even permanent water courses may partially or entirely dry up during periods of extreme drought. This inventory of creeks and drainages was digitized in 2003 by the Contra Costa County Public Works Department and community volunteers.

Map 9 Scenic Corridors and Hillside Visibility

The primary features of Map 9 include the Town-designated Scenic Corridors, 500-foot buffers of those Scenic Corridors, and colored shading indicating the relative visibility of areas, as viewed from along these Scenic Corridors. Scenic Corridors are designated by the Town under Policy CD3.1 of the General Plan. The roadway line data that served as the basis for determining and illustrating the locations of these corridors were provided by Contra Costa County. 500-foot buffers of the corridors, as well as the relative visibility data, were created using the ArcGIS software suite.

To create the relative visibility data, a set of points was generated along each Scenic Corridor roadway, at a frequency of one point every 200 feet. Using the LiDAR-derived elevation dataset discussed previously, an algorithm was run to determine the frequency with which each raster cell within the elevation data would be visible from the points along the roadways. (Each raster cell represents a square 64-sq ft area measuring 8 feet on each side.) The more frequently a particular cell was visible from the points along the Scenic Corridor, the higher its relative visibility. It should be noted, however, that these relative visibility data do not account for the presence of intervening structures or vegetation, which may in some cases significantly impact views from along Scenic Corridors.

APPENDIX B

TEXT OF MOSO BALLOT INITIATIVE

Exhibit B

MORAGA OPEN SPACE INITIATIVE MEASURE A (Full Text of Ordinance)

The people of the Town of Moraga DO ORDAIN as follows:

SECTION 1. Short Title.

This ordinance shall be known as the "Moraga Open Space Ordinance".

SECTION 2. Findings.

The people of the Town of Moraga find and declare the following:

- a. The character and feel of the Town of Moraga is contingent upon the preservation of a substantial amount of open space, the protection of the scenic views of major and minor ridgelines, and the regulation of development in sensitive open space areas.
- b. The Town has experienced significant development pressures in recent years which threaten the amount and quality of open space resources of the Town and which adversely affect the capacity of the Town's public facilities, such as drainage and traffic facilities, and are otherwise altering the character of the community.
- c. It is the intent of the people of the Town to protect the remaining open space resources within the Town in the interest of: (1) preserving the feel and character of the community; (2) ensuring the adequacy of recreational opportunities which are contingent on such open spaces; (3) ensuring the protection of local and regional wildlife resources which are dependent on the habitat provided by such open space; (4) ensuring that development does not occur in sensitive viewshed areas; (5) protecting the health and safety of the residents of the Town by restricting development on steep or unstable slopes; and (6) ensuring that development within the Town is consistent with the capacity of local and regional streets and other public facilities and does not contribute to the degradation of local or regional air quality.
- d. It is the purpose of this Ordinance to revise and augment the policies of the Town recorded in the General Plan and the ordinances of the Town relating to the preservation of open space and protection of ridgelines. This ordinance is consistent with and implements the policy in General Plan Amendment 3, enacted November 18, 1981, which established a policy of minimum lot size designations of twenty (20), ten (10), and (5) acres in some open space areas.
- e. In addition to the reasons described above, this Ordinance is necessary to promote the general health, safety and welfare of the residents of Moraga.

SECTION 3. Protection of Open Space.

- a. The following policy is added to Goal 1 of the Open Space Element of the General Plan:

"3) Any use of or development on lands designated in the General Plan or by this Ordinance as 'Open Space Private' or 'Public Open Space-Study' (hereinafter 'Open Space Lands') shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. Density transfers from Open Space Lands to other lands shall be encouraged; provided that in no event shall dwelling units be transferred to Open Space Lands or to 'high risk' areas. The Town Council shall identify 'high risk' areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions."

- b. Policy Number 1 of Goal 4 of the Open Space Element of the General Plan is revised to read as follows:

"1) Development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crests of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of this paragraph, the term 'minor ridgeline' means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline."

- c. The following policy is added to Goal 1 of the Land Use Element of the General Plan:

"8) Notwithstanding any other provision of the General Plan, any development on lands depicted in the General Plan or by this Ordinance as 'Public Open Space-Study' or 'Private Open Space' shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres."

- d. Section 8-3805 is added to Chapter 38 of the Zoning Ordinance of the Town of Moraga as follows:

"Section 8-3805 Open Space Density.

"(a) Notwithstanding any other provision of the ordinances of the Town of Moraga: (1) all land within the Town of Moraga

designated 'Public Open Space-Study' or 'Private Open Space' (hereinafter referred to as 'Open Space Lands') in the Moraga General Plan as such Plan existed on October 16, 1985, or which is designated such by this Ordinance is hereby zoned 'Open Space' ('OS'); and (2) any development on such Open Space Lands shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. The Town Council may authorize density transfers from Open Space Lands to other lands pursuant to the procedures set forth in Chapter 47 herein; provided that in no event shall dwelling units be transferred to Open Space Lands or to high risk areas. In determining the appropriate density transfer credit applicable to any such Open Space Lands, the Town Council may authorize the transfer of a net density of no greater than one (1) dwelling unit per ten (10) acres.

"Development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crests of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of the Ordinance, the term 'minor ridgelines' means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline.

"(b) Development shall be prohibited on minor ridgelines immediately adjacent to and extending into Open Space Lands if slopes exceed twenty percent (20%) and elevation of said ridges is greater than 800 feet above mean sea level."

- e. Section 8-5702 of Chapter 57 of the Zoning Ordinance of the Town of Moraga is amended as follows:

"(a) Development shall be prohibited within 500 feet of the centerline of a major ridge (as defined in subsection (b)) located in an area designated on the General Plan as 'Private Open Space' or 'Public Open Space-Study' and development shall be subject to strict design review control in all other ridge areas. A road, together with attendant underground utilities, may cross a ridge, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code.

"(b) For the purpose of this section, the centerline of a major ridge is the line running along the highest portion of the ridge located within those areas designated on the General Plan as 'Private Open Space' or 'Public Open Space-Study'."

- f. Without limiting the generality of the Moraga Open Space Ordinance, General Plan Amendments No. 6 adopted in Resolution No. 28-83 on June 15, 1983, and No. 8 adopted in Resolution No. 39-83 on September 7, 1983, are hereby repealed and are of no further force or effect. Such lands as were affected

by those amendments are hereby given a General Plan designation of "Public Open Space-Study" and are zoned "Open Space" as provided in Section 3d above.

SECTION 4. Applicability.

The provisions of this Ordinance shall apply to any person who, as of the date of the election, has not (a) obtained a building permit for the development project, and (b) incurred substantial construction expenses in good faith reliance on such building permit.

SECTION 5. Implementation: Interim Development Controls: Interpretation

- a. Promptly after the enactment of this Ordinance, the Town Council shall adopt such revisions to the General Plan and the Zoning Ordinance as may be necessary to fully implement the Moraga Open Space Ordinance or to ensure the internal consistency of the General Plan or the consistency of the Moraga Open Space Ordinance with the General Plan; providing that the Town Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at the general election.
- b. Until the full implementation of the Moraga Open Space Ordinance as contemplated by subsection (a) or until January 1, 1987, whichever occurs first, the Town Council, or any other reviewing authority, shall not issue any permit or otherwise authorize or approve any use or development, including but not limited to divisions of land, with a density greater than one (1) dwelling unit per twenty (20) acres on:
(1) any lands designated in the General Plan or by this Ordinance as "Open Space", "Public Open Space-Study" or "Private Open Space", or (2) major or minor ridgelines, or on slopes greater than twenty percent (20%), or on slopes which are unstable or subject to erosion or deterioration. Nothing in this subsection is intended to authorize issuance of any permit or approval of any development except in compliance with Section 3d above.
- c. In the event of any conflict between the Moraga Open Space Ordinance and the Zoning Ordinance, the provisions of the Moraga Open Space Ordinance shall prevail.

SECTION 6. Severability.

In any section, subsection, paragraph, subparagraph, clause or phrase of this Ordinance, or any amendment or revision of this Ordinance is, for any reason, held to be invalid or unconstitutional, the remaining sections, subsections, paragraphs, subparagraphs, clauses and phrases shall not be affected, but shall remain in full force and effect.

APPENDIX C

GUIDELINES FOR INTERPRETING AND IMPLEMENTING THE MORAGA
OPEN SPACE INITIATIVE (MOSO GUIDELINES)

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Amending Guidelines for Interpreting
and Implementing the Moraga Open Space
Initiative - Measure A
(MOSO) Guidelines

Resolution No. 14-92

WHEREAS, at the Consolidated General Municipal Election held on Tuesday, April 8, 1986, there was submitted to the voters of the Town of Moraga as Measure A the question of whether or not to adopt the Moraga Open Space Ordinance proposed by initiative petition; and

WHEREAS, Measure A was approved by the voters of the Town and thereafter took effect on April 26, 1986; and

WHEREAS, the Town Council has determined that it is necessary and desirable to adopt guidelines for the interpretation, implementation and application of the Open Space Ordinance; and

WHEREAS, on June 4, 1986, the Town Council adopted the Guidelines for Interpreting and Implementing the Moraga Open Space Ordinance - Measure A (Resolution No. 20-86); and

WHEREAS, on September 2, 1987, the Town Council adopted Resolution No. 40-87 which amended the MOSO Guidelines by modifying the definition of "development"; and

WHEREAS, on January 22, 1992, a public hearing was held by the Town Council to consider amendment to the MOSO Guidelines and testimony was received from the members of the public; and

WHEREAS, the Town has found that adoption of the amendment to the MOSO Guidelines are exempt from environmental review pursuant to Cal. Code Regs., Tit. 14, Section 15378(b)(3); and

WHEREAS, the Town Council directed staff to revise the MOSO Guidelines by incorporating appropriate changes for review by the Council at the February 12, 1992 meeting; and

WHEREAS, on February 12, 1992, the Town Council reviewed and approved the amendments to the MOSO Guidelines.

NOW, THEREFORE, the Town Council of the Town of Moraga DOES HEREBY RESOLVE as follows:

1. The amended MOSO Guidelines set forth in Appendix "A" attached are adopted and take effect on February 12, 1992;

2. The Town Clerk shall publish this Resolution once within 15 days after adoption in a newspaper of general circulation.

ADOPTED by the Town Council of the Town of Moraga on February 12, 1992 by the following vote:

AYES: Mayor Graig Crossley, Vice Mayor Sue Noe, Councilmember James Sweeny, Councilmember Al Dessayer and Councilmember Richard Avanzino

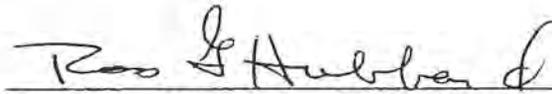
NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:


Graig W. Crossley, Mayor


Ross G. Hubbard, Town Clerk

Guidelines for Interpreting and Implementing
the Moraga Open Space Initiative

Appendix "A" To Town Council Resolution No. 14-92

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I. INTRODUCTION.

A. Findings.

The Town Council of the Town of Moraga finds that:

1. The Moraga Open Space Initiative Measure A (the Open Space Ordinance) was adopted by the voters of the Town of Moraga at the General Municipal Election held on April 8, 1986. The Ordinance took effect on April 26, 1986.

2. By adopting the Ordinance, the people of Moraga have declared their intent "to protect the remaining open space resources within the Town in the interest of: (1) preserving the feel and character of the community; (2) ensuring the adequacy of recreational opportunities which are contingent on such open spaces; (3) ensuring the protection of local and regional wildlife resources which are dependent on the habitat provided by such open space; (4) ensuring that development does not occur in sensitive viewshed area; (5) protecting the health and safety of the residents of the Town by restricting development on steep or unstable slopes; and (6) ensuring that development within the Town is consistent with the capacity of local and regional streets and other public facilities and does not contribute to the degradation of local or regional air quality." (Ordinance Section 2a¹)

3. The Open Space Ordinance directs the Town Council to implement the Ordinance promptly after its enactment. (Ordinance Section 5a)

4. These Guidelines are in partial fulfillment of this mandate and represent implementation. Additional measures to implement the Open Space Ordinance will be presented for adoption as mandated by Section 5 of the Ordinance. As these Guidelines are applied, it may become necessary to amend and supplement them.

5. These Guidelines are not intended to amend or modify a requirement of the Ordinance (Ordinance section 5a)

6. These Guidelines are intended to balance fairly the restrictions on development in open space lands under the Open Space Ordinance consistent with the Town's police power with the rights of owners of open space lands.

¹ Unless stated otherwise all parenthetical references are to sections of the Open Space Ordinance, attached to these Guidelines as Exhibit "D".

B. Purpose.

These Guidelines are adopted in order to provide for the interpretation, implementation and application of the Open Space Ordinance.

II. INTERPRETATION.

A. Definitions.

In these Guidelines unless the context otherwise requires:

1. building permit means an entitlement issued under the Uniform Building Code to erect, construct, alter, repair or demolish a building or structure regulated by the Uniform Building Code;

2. building permit for a development project refers to the permission given to a development project which on or before April 6, 1986:

a. had a final subdivision map approved by the Town; and

b. had a fully executed subdivision agreement for completion of tract improvements; (Ordinance Section 4)

3. cell refers to a polygonal shaped area comprised of a minimum of 10,000 square feet. Its function is to describe a specific area for the purpose of ascertaining the average slope grade of the cell. The resulting slope grade calculation determines whether development within the cell may be permitted or is prohibited (Ordinance sections 3b, 3d). In the absence of a submittal by an applicant showing one or more cells as defined, cell refers to an area 200' by 200' as designated on Exhibit "C";

4. centerline of a ridge or crest of a ridge is the line running along the highest portion of a ridge; (Ordinance section 3e)

5. design review control is the function of design review prescribed in sections 8-1301 through 8-1341 of the Municipal Code; (Ordinance section 3e)

6. development means the placement, discharge or disposal of any material, the grading or removing of any material, the change in the density or intensity of use of land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life,

limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga Fire Protection District, or (3) a road or driveway, together with attendant underground utilities, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code; (Ordinance Sections 3a-e)".

7. hearing body means the Town Council in the case of an application for vested rights exemption and the Planning Commission in the case of an application for status determination;

8. high risk area is an area located in Open Space Land determined to be high risk in accordance with Part II D. of these Guidelines; (Ordinance sections 3a, 3c, 3d)

9. major ridgeline means the centerline or crest of the ridges known as Indian Ridge, Sanders Ranch, Mulholland Hill, and Campolindo Ridge, where the centerline is located in the lands designated as "public open space study" as shown on the General Plan as it existed on October 16, 1985; (See Exhibit "B")

10. minor ridgeline means the centerline or crest of a ridge other than a major ridgeline, which rises above 800 feet from mean sea level; (see Exhibit "B"); (Ordinance sections 3b, 3d)

11. open space land is an area designated as open space in the General Plan, adopted on August 15, 1990. Open Space Land includes an area designated as "Open Space" by the Open Space Ordinance;

The lands described in GPA 6--Resolution No. 28-83 adopted June 10, 1983, GPA 8--Resolution No. 39-83 adopted September 7, 1983, are included within the term Open Space Land (see Exhibit A); (Ordinance sections 3a, 3c, 3d, 3e, 3f, 5b)

12. Open Space Ordinance means Measure A adopted at the Consolidated General Municipal Election held April 8, 1986, a copy of which is attached as Exhibit "E";

13. parcel means all land which is contiguous and under one ownership.

14. project means a Town approved plan prepared in sufficient detail to permit the completion of physical efforts necessary to accomplish the plan's ultimate objective;

15. ridge is the upper portion of a hill which rises to a crest or ridgeline;

16. ridgeline is the centerline or crest of a ridge;

17. slope with grade of 20% or greater refers to land located within open space land which contains an average slope of 20% or greater using the slope calculation method set forth in section II.C. of these Guidelines; (Ordinance sections 3b, 3d, 5b)

18. substantial construction expense means performing work in good faith reliance on a building permit for the development project. The term refers to expense incurred in actual construction as opposed to expense incurred in planning, engineering or architectural drawings. The existence of substantial construction expense requires a factual determination in each case, taking into account the nature of the project, Town approvals, and time factors. Among the elements to consider are the physical size and substantiality of work performed, the dollar cost of the work performed and liabilities incurred and the percentage of the total project represented by the work and expenditures already undertaken. (Ordinance section 4)

B. Reference To Exhibits.

The maps described as

Exhibit "A" - Moraga Open Space Ordinance,
Preliminary Interpretation (May 12,
1986) Open Space Land Use Designations

Exhibit "B" - Moraga Open Space Ordinance,
Preliminary Interpretation (May 12,
1986 Ridges Above 800-foot Elevation

Exhibit "C" - Slope Map, General Plan Program,
Town of Moraga (December 1975)
(COMARC Design Systems)

Exhibit "D" - Development Capability Map,
General Plan Program, Town of Moraga
(December 1975) (COMARC Design
Systems)

Exhibit "E" - Sample Ballot and Voter
Information Pamphlet, Consolidated
General Municipal Election, Tuesday,
April 8, 1986

the originals of which are on file in the office of the Planning Director are made a part of these Guidelines. A copy of each is attached for reference purposes.

Exhibits "C" and "D" depict only preliminary determination as to slopes and development capability, respectively. An applicant may submit current information which is more refined and more accurately characterizes the site, in which case that information if accepted by the Town supersedes Exhibit "C" and "D".

C. Slope Calculations.

A preliminary determination of slopes with grades of 20% or greater is shown on the Slope Map, attached as Exhibit "C". On that map the cells (200' x 200') designated 5, 6 and 7 represent areas with slopes of greater than 20%. A submittal under these Guidelines shall include a slope analysis map of at least a scale of 1 inch equals 100 feet showing (1) the boundaries of each parcel, (2) elevations every five feet and (3) the average slope for each cell throughout the parcel.

D. Standards for Determining Whether Open Space Land is Within a High Risk Area.

1. Preliminary Identification of High Risk Areas.

The areas located within a cell designated 1, 2, 3 or 4 on the Development Capability Map (Exhibit "D") are determined, on a preliminary basis, to be high risk areas.

This is a preliminary determination and governs until more accurate data are submitted to and approved by the Town.

2. Final Determination of High Risk Areas.

The final determination of a high risk area shall be made under the procedure provided for a status determination and in accordance with the following criteria and standards:

An area shall be classified as a high risk area depending upon both (1) its own site characteristics and (2) its location in relation to other geological and topographical conditions.

The standards for classification of a high risk area as they relate to a site's characteristics include evidence or history or both of soil instability, steepness of slopes, difficulty of access, and adverse drainage conditions. Other standards to be included are whether the site is adversely affected by an off site landslide and whether or not these characteristics can be adequately mitigated consistent with the California Environmental Quality Act (CEQA), the Towns' Environmental Guidelines, and the Goals and Policies of the General Plan.

The Conditions that determine classification as a high risk area include but are not limited to:

a) whether the area has the potential to be adversely impacted by a landslide, unstable soil, soil with a history of slippage or a slope subject to severe surface erosion or deterioration;

b) whether it serves as a natural drainage way or swale, with a drainage basin of 50 acres or more or crossed by a perennial or ephemeral (intermittent) drainage channel;

c) within 50 feet of a known active or dormant fault trace;

d) containing a regular or intermittent spring or adverse ground water conditions;

e) within 100 yards upstream or 500 yards downstream of a reservoir, detention basin or pond of one acre or more in surface area;

f) within an area subject to enhanced seismically induced ground shaking or a seismically induced ground failure such as a landslide, lateral spread, rockfall, ground lurching, liquefaction, soil settlement, differential compaction and compression;

g) within an area subject to the effect of seismically induced flooding and/or dam or stock pond failure.

An area which is classified as a high risk area through the application of the foregoing criteria may be changed from that classification, upon submittal by the applicant, it is found and determined to the Towns' satisfaction that the characteristics making it high risk may be abated by appropriate remedial efforts which are consistent with CEQA, the Town's environmental guidelines, and the Goals and Policies of the General Plan.

Within a single parcel one area could be determined to be "high risk area" and another may not. If a high risk area exists on a parcel, each cell within the parcel which is not designated high risk must be at least 10,000 square feet in area to be excluded from the high risk area classification.

III. RESTRICTIONS ON DEVELOPMENT IN OPEN SPACE LAND.

A. Prohibition of Development.

Development is prohibited in the following areas:

1. Property situated within open space land (Exhibit

"A") as follows:

a) on a slope within open space land where the slope has a grade of 20% or greater (See definition of cell and Exhibit "C");

b) within 500 feet of a major ridge (Exhibit "B");

c) on a minor ridgeline (Exhibit "B") and

2. Property situated on a minor ridgeline immediately adjacent to open space land which meets the slope and elevation criteria of section 3.d.(b) of the Open Space Ordinance.

B. Density in Open Space Land.

1. In a high risk area, the density is one dwelling unit per 20 acres and may not be increased.

2. In open space land other than a high risk area density is one dwelling unit per 20 acres unless density is increased as provided in III.C and IV.B of these Guidelines.

3. Density may be transferred from open space land to another residential area located in a land use district other than an open space land use district. Density may not be transferred to a high risk area. (Ordinance section 3d(a))

C. Increase in Density in Open Space Land.

1. The Planning Commission may approve an increase in density from one unit per 20 acres to not more than one unit per 5 acres based upon findings that a proposed development is consistent with the following criteria:

a. the site is physically suitable for the type of development and requested density;

b. the development is not likely to cause environmental damage;

c. the development is not likely to cause public health problems;

d. the distance and relationship to high risk areas is sufficient so that development will not cause undue risk to the subject and surrounding properties and will not increase risk to the public health, safety and welfare;

e. the dwelling units in the proposed

development can be substantially concealed from scenic corridors by vegetation or the terrain;

f. public benefit will result from the dedication of open space lands, trails or park and recreational facilities beyond those otherwise required for development;

g. the distance of development from ridgelines is such that the view of ridgelines from a scenic corridor is protected;

h. the project is in compliance with Goal 5 and related policies of the Open Space and Conservation Element of the General Plan;

i. the proposed development is consistent with the information provided regarding development capability (See II.D.)

2. The procedure for determining density in open space land which is not classified as high risk is prescribed in IV.B.

D. Design Review.

Development on land located on a major or minor ridge is subject to design review control. A road may cross a ridge only if the Planning Commission finds that the crossing is necessary for orderly development and does not otherwise conflict with the Municipal Code. (Ordinance section 3e)

IV. DETERMINING APPLICABILITY OF THE OPEN SPACE ORDINANCE.

A. Application for Vested Rights Exemption (Section 4).

1. Restrictions on development unless vested rights exemption applies.

The restrictions on development set forth in III apply to "...A person who, as of [April 8, 1986] has not (a) obtained a building permit for the development project and (b) incurred substantial construction expenses in good faith reliance on such building permit...". (Ordinance section 4)

2. Certificate of vested rights exemption.

A person seeking an exemption under section 4 of the Open Space Ordinance may apply to the Town for a vested rights exemption.

3. Application for vested rights exemption.

A person seeking a vested rights exemption shall apply to the Planning Director setting forth:

(1) the status of the project and amount of construction work completed as of April 8, 1986;

(2) a statement of the construction expenses incurred for grading, subdivision improvements and structures as of April 8, 1986;

(3) the percentage of the total project represented by the work and expenditures in (1) and (2) above;

(4) other information required by the Director which in his opinion is necessary to determine entitlement to a vested rights exemption.

4. Scope of Vested Rights Exemptions.

A vested rights exemption does not exempt the person receiving the exemption from a permit approval, or requirement other than that imposed by the Open Space Ordinance. Further development on land within a development project for which a person has obtained a vested rights exemption is not subject to the requirements of the Open Space Ordinance.

B. Determining Applicability of Open Space Ordinance to Open Space Land.

1. Status Determination.

A person whose property is or may be affected by the Open Space Ordinance may apply to the Town for a status determination.

The property owner may apply for a status determination at any time and need not await determination until a development plan is submitted. The application may request a determination as to whether the property is subject to the Open Space Ordinance and if so may request a finding of:

- a) the slope calculation of the property;
- b) whether or not located in a high risk area;

c) the maximum permitted density, applying the criteria set forth in III.C.1 of these Guidelines

2. Application for status determination.

The application for status determination shall be on a form provided by the Town. The application shall be accompanied by:

a. a map showing:

(1) the size and location of the property

(2) the present general plan and zoning designations

(3) the location of major and minor ridgelines

(4) the area within 500 feet of each major ridgeline;

b. a slope analysis map with a scale of no smaller than 1 inch equals 100 feet showing:

(1) the boundaries of each parcel

(2) elevations at intervals of no more than five feet

(3) the average slope for each cell throughout the parcel, SEE II C (Slope calculation)

(4) the actual slope for each portion of the parcel when the slope is 20% or greater

This slope analysis map must be accompanied by supplemental information explaining differences, if any, between the map submitted and the Town's Development Capability Map. (Exhibit "D");

c. a map identifying all applicable geologic and topographic conditions set forth in section II.D. (characteristics of a high risk area) of these Guidelines;

d. sketches showing generally the areas which because of terrain or existing vegetation are concealed from view from scenic corridors;

e. soils, geologic or other study which the developer believes would aid the Planning Commission in its determination.

C. Hearing, Determination and Appeal.

1. Fixing hearing and giving notice.

a. Procedure in the case of vested rights exemption.

(1) Preliminary exemption determination.

Upon the filing of an application for a vested rights exemption, the Planning Director shall determine from the application and the Town's records whether the applicant, in the Director's opinion, is entitled to an exemption.

(2) Director's recommendation.

If the Director concludes that the applicant is entitled to an exemption, he shall so advise the applicant and have the recommendation placed on the agenda of the first available meeting of the Town Council. No other notice need be given.

(3) Town Council action on recommendation.

The Town Council shall act on the Director's recommendation at the earliest practicable time and in no case later than 30 days following the date of the meeting at which the Town Council receives the Director's recommendation unless the time period is waived by the applicant.

(4) Failure of Director to recommend.

If the Director concludes that there is reasonable doubt as to whether the applicant is entitled to an exemption the Director shall set the application for hearing before the Town Council.

Notice and conduct of the hearing and decision on the application shall be as provided for in the case of an application for status determination.

b. Procedure in the case of status determination.

Upon the filing of an application for status determination, the Planning Director shall set the application for public hearing before the Planning Commission to be held within 30 days after the submittal is complete. Notice of the hearing shall be sent to all owners of property within 300 feet of the property which is the subject of the application and to any other person who has requested in writing to be notified for that specific application.

2. Reference of application.

In the case of an application for status determination, the Planning Director may refer the application to the Town Engineer, subcommittee of any Town reviewing body or other technical or professional person.

The cost incurred in referring the application shall be borne by the applicant.

3. Hearing.

At the hearing, the hearing body shall consider the application, the testimony, evidence and all pertinent information presented.

4. Burden of proof.

The applicant has the burden to present evidence which supports the findings necessary to the decision which it seeks.

5. Form of and time for decision.

The hearing body shall make its decision in writing together with appropriate findings.

a) in the case of an application for vested rights determination, not later than 15 days from the close of the public hearing; and

b) in the case of an application for status determination, not later than 60 days from the close of the public hearing unless the applicant consents to an extension.

The Planning Director shall mail a copy of the decision to the applicant and to each person who has requested in writing to be notified of that decision.

6. Findings and decision.

a) Vested rights determination

The Town Council may not grant an exemption unless it finds that the applicant has:

(1) obtained a building permit for the development project; and

(2) incurred substantial construction expenses in good faith reliance on the permit.

b) Status determination

In its decision on a status determination, the Planning Commission shall make findings to support its decision with specific reference to the criteria applicable to the request:

(1) as to slope calculation, see II C (Slope Calculation)

(2) as to high risk areas, see II D (Standards for Determining Whether Open Space Land is within a high risk area)

(3) as to density see III C (Increase in Density in Open Space Land)

The Planning Commission decision shall, to the extent practicable, advise the applicant (1) which areas of the property may and may not be developed and (2) the maximum density permitted on the site.

The density determination may be modified based upon new information developed for a specific project and environmental studies conducted for that project.

7. Appeal of Status Determination.

A person desiring to appeal the status determination decision of the Planning Commission to the Town Council shall file a written notice of appeal with the Planning Director within 15 days of the date of the Planning Commission decision. The Town Council shall make its decision on the appeal within 60 days of the date of the notice of appeal.

8. Supplemental rules and procedures.

The Planning Commission may adopt additional rules and procedures governing proceedings under these Guidelines which are not inconsistent with these Guidelines.

D. Miscellaneous Provisions.

Fees.

The fee for filing an application for a vested rights exemption or a status determination is the same as the fee fixed for filing an application for a conditional use permit prescribed by Council Resolution No. 39-91.

The fee for appealing a status determination of the Planning Commission is the fee fixed for an appeal of a Planning Commission decision prescribed by Council Resolution

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

An Approval of a Negative Declaration)	Resolution No. 42-98
and the Town of Moraga initiated)	
Amendments to the General Plan Text,)	
General Plan Diagram and Zoning Map.)	File No. GPA-02-97
_____)	ZA-04-97

WHEREAS, over a period of approximately six months, (January to June 1997), the Town Council conducted a series of study sessions to discuss the clarity and consistency of the goals, policies and implementation measures delineated in the Town's General Plan, Zoning Ordinance, MOSO and MOSO Guidelines; and

WHEREAS, the Town Council's study sessions confirmed that there did in fact exist inconsistencies between the General Plan, Zoning Ordinance and MOSO Guidelines as they relate to MOSO; and

WHEREAS, on July 14, 1997 the Town Council conducted a joint study session with the Planning Commission to discuss the objectives of the Town Council in clarifying and making consistent the stated goals, policies and implementations of the General Plan and the Zoning Ordinance with MOSO and MOSO Guidelines; and

WHEREAS, on October 8, 1997 the Town Council initiated the amendments to the General Plan and Zoning Ordinance by directing the Planning Commission and staff to review and analyze the General Plan and Zoning Ordinance by utilizing those concerns and issues identified by the Town Council during the above mentioned study period; and

WHEREAS, the Planning Commission conducted three study sessions on November 12, 24 and December 8, 1997 with a goal to clarify and eliminate the inconsistencies of the goals, policies and implementation of the General Plan, Zoning Ordinance and MOSO Guidelines as they relate to MOSO; and

WHEREAS, an Initial Study was prepared for the proposed Amendments to the General Plan and Zoning Ordinance (the project) by Parsons Engineering Science, Inc., in accordance with the California Environmental Quality Act (CEQA), with a determination for a Negative Declaration. The Initial Study has been circulated for public comment as required by CEQA and CEQA Guidelines; and

WHEREAS, on December 20, 1997 a notice of public hearing was published in the Contra Costa Times and mailed to interested parties; and

WHEREAS, on January 20, 1998 the Planning Commission conducted a noticed public hearing and received testimony from interested parties and recommended to the Town Council approval of the Negative Declaration and amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map by adoption Resolution No. 04-98; and

WHEREAS, on February 11, 1998 the Town Council conducted a public hearing to consider the recommendation of the Planning Commission for the approval of the Negative Declaration and amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map; and

WHEREAS, the Town Council determined that due to the extent of the recommended amendments, the public hearing be continued to a special Council meeting to thoroughly discuss the proposed amendments; and

WHEREAS, the Town Council conducted four special meetings to discuss the recommended amendments by the Planning Commission; and

WHEREAS, on June 24, 1998 the Town Council reached a consensus/majority on the amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map; and

WHEREAS, prior to taking an official action on the amendments, the Town Council referred to the Planning Commission those modifications to the Zoning Ordinance and Zoning Map which were previously not considered by the Commission, as required by Section 65857 of the State Government Code; and

WHEREAS, on July 20, 1998 the Planning Commission reviewed and considered those modifications to the Zoning Ordinance Text and Zoning Map which were referred to the Commission by the Town Council, and recommended approval to the Council; and

WHEREAS, on September 9, 1998 the Town Council conducted a public hearing to consider a Negative Declaration and the Town of Moraga initiated amendments to the General Plan Text, Zoning Ordinance Text, General Plan Diagram and Zoning Map and after receiving testimony from interested parties, the Council continued the public hearing to the October 28, 1998 meeting; and,

WHEREAS, on October 28, 1998 the Town Council conducted a continued public hearing and received testimony from interested parties.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Moraga makes the following findings:

I. NEGATIVE DECLARATION

The project has been studied under a Negative Declaration. Based on the evidence received, the project will have no significant effect on the environment.

II. SPECIFIC FINDINGS NECESSARY FOR GENERAL PLAN AMENDMENTS UNDER SECTION 8 OF THE GENERAL PLAN.

- 1. The General Plan will maintain a balanced and logical land use pattern;**

The proposed amendment to the General Plan would clarify and eliminate inconsistencies between the General Plan and the voter-approved Moraga Open Space Ordinance (MOSO) Initiative adopted in 1986. Since the proposed changes in the General Plan Text and Diagram are solely clarifications and/or corrections; no effect on the Town's land use pattern would occur.

2. **The General Plan Amendment will generally improve the quality of the environment socially, economically and physically, and is consistent with the life style of the community;**

The General Plan Amendment will clarify and eliminate existing inconsistencies between the General Plan and the voter approved MOSO Initiative adopted in 1986. The amendment reflects the expressed needs, concerns and desires of the voters who approved the MOSO Initiative in 1986. Therefore, the amendment will generally improve the life style of the community.

3. **The Town and other affected governmental agencies will be able to maintain levels of service consistent with the ability of the governmental agencies to provide a reasonable level of service;**

Since the General Plan Amendment described herein does not propose physical construction, no impact on the service delivery capabilities of local governmental agencies is expected.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga hereby approves the following:

- I. A Negative Declaration for the proposed amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map;
- II. Amendments to the following sections and policies of the General Plan Text:

Administration and Interpretation of the General Plan

- A. Section 11(d) of the General Plan text is hereby amended to read as follows:

Transfer of Development Rights (referred to as "Density Transfer" as in Moraga Open Space Ordinance) is the process whereby development rights may be transferred from lands on the General Plan Diagram with an open space designation or 1, 2, or 3 dwelling units per acre, but only when the Town Council finds that such a transfer will result in the dedication, protection and preservation of open space and when appropriate guarantees are provided by the developer that the land shall be permanently preserved as open space.

Development rights may be transferred to lands designated 1, 2, 3 & 6 dwelling units per acre, but such transfer may not increase the Theoretical

Residential Holding Capacity determined by the initial calculation described above in Paragraph (a) by more than 30%. Development rights may not be transferred to geologically hazardous areas or to any area with an open space designation on the General Plan Diagram.

B. Section 11(g) is hereby amended to read as follows:

Ridgelines. A major ridgeline means the center line or crest of the ridges known as Indian Ridge, Sanders Ridge, Mulholland Ridge and Campolindo Ridge, where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram.

A minor ridgeline means the center line or crest of any ridge other than those identified as "major ridgelines," where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram.

Development shall be prohibited on minor ridgelines immediately adjacent to and extending into MOSO Open Space if slopes exceed twenty percent (20%) and elevation of said ridges is greater than 800 feet above mean sea level.

C. Section 11(j) is hereby amended to read as follows:

High Risk Areas are areas with a MOSO Open Space designation on the General Plan Diagram and determined to be High Risk in accordance with Part II D. of the "Guidelines for the Interpretation and Implementation of the Moraga Open Space Ordinance - Measure A", adopted as Resolution 14-92 by the Town Council on February 12, 1992 in accordance with the Moraga Open Space Ordinance (MOSO).

D. Section 11(k) is hereby amended to read as follows:

Development means the placement, discharge or disposal of any material, the grading or removal of any material, the change in density or intensity of use of the land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga-Orinda Fire Protection District; or (3) a road together with attendant underground utilities, may cross a ridge, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code.

E. Section 11(p) is hereby incorporated to read as follows:

Moraga Open Space Ordinance (MOSO) refers to Measure A, a voter approved Initiative adopted at the General Municipal Election held on April 8,

1986. The Initiative regulates the uses and development of lands designated by the Initiative measure, and provides that the Town Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at a general election. The ballot text is attached as Exhibit A and made a mandatory requirement of this General Plan.

F. Section 11(q) is hereby incorporated to read as follows:

Recreational facility is any development, structure, appurtenance or other man made amenity created for the express purpose of providing for leisure-time recreational opportunities.

Land Use Element - Residential

A. Goal 1, Policy 9 is hereby amended to read as follows:

Notwithstanding any other provision of the General Plan, any development on lands depicted on the General Plan Diagram or by the Moraga Open Space Ordinance as "Public Open Space-Study" or "Private Open Space" (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10) or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as "high risk" areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling unit per (20) acres.*

* Wording from Section 3.c. of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Moraga Open Space Ordinance.

B. Goal 1, Policy 10 is hereby amended to read as follows:

The densities depicted on the General Plan Diagram for other than multi-family residential (6 DU/Acre) shall be construed to mean conventional detached single family residential development.

Minimum lot sizes shall be as indicated in the following table. The permitted mix of lot sizes may differ from the percentages indicated, provided the aggregate number of lots proposed does not exceed 100% of Theoretical Residential Holding Capacity, as initially calculated.

General Plan Diagram Designation	Minimum Lot Size and Lot Size Percentage Mix
MOSO Open Space*	40,000 sq. ft.
Non-MOSO Open Space	40,000 sq. ft.
1DU/Acre	30,000 sq. ft. 45% minimum 20,000 sq. ft. 45% maximum 10,000 sq. ft. 10% maximum
2 DU/Acre	20,000 sq. ft. 45% minimum 15,000 sq. ft. 45% maximum 10,000 sq. ft. 10% maximum
3 DU/Acre	10,000 sq. ft.
6 DU/Acre	10,000 sq. ft.

*Designated as Open Space Lands in the Moraga Open Space Ordinance.

In implementing the preceding table, the following qualifications shall apply, if supported by environmental analysis:

C. Goal 1, Policy 10(f) is hereby amended to read as follows:

The soil characteristics in Moraga are prone to landslide conditions which can cause damage to property, injury to persons, public cost and inconvenience; therefore, development shall be avoided on slopes of 20% or steeper, but may be permitted if supported by site-specific analysis. No residential structures shall be placed on slopes of 25% or steeper.

Under the terms of the Moraga Open Space Ordinance, development is prohibited on slopes greater than 20% in areas designated MOSO Open Space. The Zoning Ordinance, Chapter 8-38 (Open Space District) of the Moraga Municipal Code, defines the methodology for the calculation of slope for MOSO Open Space designation.

Grading for any purpose whatsoever may be permitted only in accordance with an approved development plan that is found to be geologically safe and aesthetically consistent with the Town's Design Guidelines. Except for lands designated MOSO Open Space, special consideration may be given to

grading for projects that will provide outdoor recreational facilities with guaranteed permanent access to the general public.

D. Goal 1, Policy 10(g) is hereby amended to read as follows:

Lot sizes in areas designated "Non-MOSO Open Space or MOSO Open Space" on the General Plan Diagram may be less than 40,000 sq. ft. but not less than 15,000 sq. ft. when part of an overall project that will provide outdoor recreational facilities with guaranteed permanent access to the general public. This policy may not be used to alter the density on lands designated MOSO Open Space.

E. Goal 2, Policy 1 is hereby amended to read as follows:

Cluster housing may be permitted in areas designated MOSO Open Space or Non-MOSO Open Space or Residential on the General Plan Diagram, in order to provide permanent open space.

F. Goal 4, Policy 2 is hereby amended to read as follows:

Except in MOSO Open Space, residual parcels characterized by such constraints as geologic hazards, restricted access, an established riparian habitat, an historically significant feature or visibility from a scenic corridor shall be designated Non- MOSO Open Space.

Residual parcels within designated MOSO Open Space shall remain designated MOSO Open Space as required by the Moraga Open Space Ordinance.

Open Space and Conservation Element

A. Goal 1, Policy 1 is hereby amended to read as follows:

Areas designated on the General Plan Diagram as MOSO Open Space or Non-MOSO Open Space may be retained in private ownership, may be used for such purposes as are found to be compatible with the corresponding open space designation and may or may not be accessible to the general public.

B. Goal 1, Policy 2, is hereby amended to read as follows:

Any use of or development on lands designated on the General Plan Diagram or by the Moraga Open Space Ordinance as "Public Open Space-Study" or "Private Open Space" (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10) or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as "High Risk" areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. Transfers of Development Rights (referred to as "Density

Transfer" as in MOSO) from any open space designation to other lands shall be encouraged; provided that in no event shall dwelling units be transferred to another open space designation or to "High Risk" areas. The Town Council shall identify "High Risk" areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions.*

* Wording taken from Section 3.a. of the Moraga Open Space Ordinance.

C. Goal 2, Policy 1 is hereby amended to read as follows:

Moraga's major ridgelines are highly visible throughout the Town and are included within areas designated as MOSO Open Space on the General Plan Diagram.

D. Goal 3, Policy 1 is hereby amended to read as follows:

Where appropriate and when consistent with other General Plan goals and policies, areas with a MOSO Open Space or Non-MOSO Open Space designation on the General Plan Diagram should be made available to the public for recreational use.

E. Goal 3, Policy 2 is hereby amended to read as follows:

Areas with a MOSO Open Space or Non- MOSO Open Space designation on the General Plan Diagram should have minimal trail development and require minimal maintenance.

F. Goal 4, Policy 1 is hereby amended to read as follows:

In MOSO Open Space, development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crest of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionately larger lot sizes or other appropriate siting limitations. For the purpose of this paragraph the term "minor ridgeline" means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline.*

* Wording taken from Section 3.b. of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Ordinance.

BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga does hereby approve the following:

Amendments to the General Plan Diagram consisting of modifications which reflect the voter approved Moraga Open Space Ordinance (MOSO) Initiative in 1986. The modifications include the following areas (Exhibit 1):

- A. An area located in the northeast portion of the Town;
- B. An area located south of Rheem Boulevard between Moraga Road/St. Mary's Road;
- C. An area located south of Laird Drive/Donald Drive; and
- D. Four small areas located in the Country Club.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga makes the following specific findings required under Section 8-402 of the Zoning Ordinance before a change in the Zoning District can be made:

1. **The change proposed is consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan;**

The addition of an MOSO Open Space Zoning District in the Town's Municipal Code is necessary in order to clearly differentiate MOSO open space lands from non-MOSO lands and to be consistent with the voter approved MOSO Initiative adopted in 1986. Amending the existing open space chapter of the Town's Municipal Code in such a way is consistent with the policies, general land uses and programs specified in the General Plan.

2. **In the case of a general land use regulation, the change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district for which it is proposed;**

The proposed amendment which creates a MOSO Open Space and Non-MOSO Open Space Districts will be consistent and compatible with the General Plan.

3. **A community need is demonstrated for the change proposed;**

The proposed amendment which creates a MOSO Open Space and Non MOSO Open Space Districts will be consistent with the General Plan. Also, the proposed amendment clarifies and implements the voter approved MOSO Initiative adopted in 1986.

4. **Its adoption will be in conformity with public convenience, general welfare and good zoning practice.**

Neither public convenience nor general welfare will be affected with the adoption of the proposed amendments. Furthermore, the adoption of the amendments to the Town's Zoning Ordinance (Chapter 8-38 of the Municipal Code) represents good zoning practice as the amendments correct ambiguities and eliminate confusion in the existing Zoning text and mapping and will be consistent with the voter approved MOSO Initiative adopted in 1986.

BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga does hereby approve the following:

Amendment to the Zoning Map, consist of modifications which reflect the voter, approved MOSO Initiative in 1986. The modifications include the addition of MOSO Open Space designations in the following areas (Exhibit 2):

- A. An area located in the northeast portion of the Town;
- B. An area located west of Rheem Boulevard between Moraga Road/St. Mary's Road;
- C. An area located north of the intersection of Rheem Boulevard /St. Mary's Road; and
- D. Several areas located within Sanders Ranch.

The modifications also include deletion of the MOSO Open Space designation in the following areas:

- A. The three Town Park sites (Hacienda, Moraga Commons and Rancho Laguna);
- B. A large parcel of land located in the Bollinger Canyon area; and
- C. Five residual parcels located throughout the Town.

PASSED and ADOPTED by the Town Council of the Town of Moraga on October 28, 1998 by the following vote:

AYES: Vice Mayor John Connors, Councilmember Ron Enzweiler, and Councilmember Dennis Cunnane

NOES: Mayor Frank Sperling III and Councilmember Michael Majchrzak

ABSTAIN: None

ABSENT: None


Frank Sperling III, Mayor

ATTEST:


Ross G. Hubbard
Town Clerk

APPENDIX D

TITLE 14: GRADING ORDINANCE

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> **Title 14 GRADING >>**

Title 14 GRADING

Chapters:

- [Chapter 14.04 - GENERAL PROVISIONS](#)
- [Chapter 14.08 - DESIGN REVIEW ADMINISTRATOR AUTHORITY](#)
- [Chapter 14.12 - DESIGN REVIEW BOARD AUTHORITY](#)
- [Chapter 14.16 - TOWN COUNCIL AUTHORITY](#)
- [Chapter 14.20 - FEES](#)
- [Chapter 14.24 - ISSUANCE OF GRADING PERMITS](#)
- [Chapter 14.28 - SECURITY](#)
- [Chapter 14.32 - OBSERVATION AND MONITORING](#)
- [Chapter 14.36 - PERMITTEE DUTIES](#)
- [Chapter 14.40 - NONCOMPLIANCE](#)
- [Chapter 14.44 - COMPLETION OF WORK](#)
- [Chapter 14.48 - REGULATIONS](#)
- [Chapter 14.52 - STORMWATER MANAGEMENT](#)
- [Chapter 14.56 - DEFINITIONS](#)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> **Title 14 - GRADING >>**
Chapter 14.04 GENERAL PROVISIONS >>

Chapter 14.04 GENERAL PROVISIONS

Sections:

- [14.04.010 Title.](#)
- [14.04.020 Scope.](#)
- [14.04.021 Purpose.](#)
- [14.04.030 Grading general.](#)
- [14.04.031 Grading—Permits required.](#)
- [14.04.032 Grading—Permits not required; exemptions.](#)
- [14.04.033 Grading—Restrictions.](#)
- [14.04.040 Applications—General.](#)

14.04.010 Title.

This chapter is the "Grading Ordinance" of town of Moraga and may be so cited.

(Ord. 210 (part), 2006)

14.04.020 Scope.

This chapter sets forth regulations for control of grading and discharge of stormwater generated pollutants resulting from grading.

(Ord. 210 (part), 2006)

14.04.021 Purpose.

The purpose of this chapter is to regulate grading on public and private property in the town of Moraga to:

- A. Ensure compliance with goals, policies, and programs of the general plan, municipal code and the town design guidelines;
- B. Minimize hazards to life, limb, health, property, and public welfare from grading operations;
- C. Preserve the natural environment, site amenities and topography of the land;
- D. Mitigate geologic hazards and adverse soil conditions;
- E. Avoid pollution of watercourses with nutrients, sediments, or earthen materials generated on or caused by surface runoff on or across graded area;
- F. Ensure compliance with county, state and federal laws and regulations.

(Ord. 210 (part), 2006)

14.04.030 Grading general.

Grading is generally allowed except that a permit is required pursuant to [Section 14.04.031](#) of this chapter. All grading requiring a permit shall comply with the provisions of this chapter. All grading on hillside land shall require a hillside development permit in accordance with Section 08.136.040(B) of this code regardless of whether or not a grading permit is required.

(Ord. 210 (part), 2006)

14.04.031 Grading—Permits required.

A permit is required where:

- A. The cumulative volume of earth material moved is fifty (50) cubic yards or greater;
- B. The area to be graded is ten thousand (10,000) square feet or greater;
- C. The grading occurs within one hundred (100) feet of a natural watercourse, or within fifty (50) feet of a man-made watercourse not located in the public right-of-way, or alters existing drainage patterns, or has a significant adverse impact on unique natural features or vegetation;
- D. The grading exceeds three feet at its deepest point, measured vertically from the elevation of the ground surface prior to the grading;
- E. The fill is intended to support structures or buildings;
- F. The fill is placed on a ground surface that has a slope of twenty (20) percent or steeper (five horizontal to one vertical);
- G. The earthwork creates a slope equal to or steeper than five horizontal to one vertical;
- H. The earthwork is unretained and occurs within nine feet of any adjacent property;
- I. Excavation or stockpiling of rock, sand, gravel, aggregate or soil where such operations affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property; or
- J. The grading is associated with the construction of a water well, but excluding the excavation in accordance with [Section 14.04.032\(D\)](#).

Prior to the issuance of a permit, the application shall be approved by the design review administrator, the design review board, the planning commission, or the town council, in

accordance with applicable provisions contained in Chapters [14.08](#), [14.12](#) and [14.16](#) of this code. However, an applicant for a permit whose project has received town approval or been deemed or determined complete prior to the effective date of the grading ordinance is exempt from review under Chapters [14.08](#), [14.12](#) and [14.16](#) of this code.

(Ord. 210 (part), 2006)

14.04.032 Grading—Permits not required; exemptions.

Notwithstanding the requirements of [Section 14.04.031](#) of this chapter, a permit is not required for the following:

- A. Improvement, construction, repair or maintenance of watercourses or levees for river and local drainage control, and construction of drainage, irrigation and domestic water supply systems and facilities performed under the supervision of the flood control district, an agency of the federal or state government, a water or sanitation district, or an irrigation or reclamation district if the work is otherwise categorically exempt from local and state ordinances and regulations;
- B. Exploratory excavations under the direction of a civil or geotechnical engineer, or certified engineering geologist or professional geologist provided the drainage pattern remains the same. This exemption does not provide an exemption from obtaining a well drilling permit pursuant to Contra Costa County regulations;
- C. Emergency work approved by the town and necessary to protect life, limb or property, or to maintain the safety, use or stability of a public way or watercourse. The town shall be notified prior to commencement of emergency work and if a permit is required for the grading under [Section 14.04.031](#) of this chapter an application for the permit shall be submitted no later than forty-eight (48) hours after the commencement of the emergency work. The permit shall be obtained within five calendar days of commencement of the emergency work. Once an emergency situation has been stabilized, town council approval is required for landslide repair or slope stabilization for a predevelopment average slope steeper than twenty-five (25) percent (four horizontal to one vertical);
- D. Construction of water wells when a valid permit has been obtained from the county health department;
- E. Maintenance of existing fire trails, or access roads to public utility gas and electric transmission lines provided the drainage pattern remains the same;
- F. Grading conducted by an agency of the federal, state or county government that is otherwise statutorily exempt from local ordinances, regulations and standards.
- G. Utility trenches with an encroachment permit from the town of Moraga;
- H. An excavation below finished grade for basements and footings of a building, retaining wall, swimming pool, or other structure authorized by a valid building permit;
- I. When approved by the town engineer, grading in an isolated, self-contained area if there is no danger to private or public property.

Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction.

(Ord. 210 (part), 2006)

14.04.033 Grading—Restrictions.

Except as otherwise permitted by the provisions of this chapter, grading is prohibited as follows:

- A. Where dirt, soil, rock, debris, or other material that if washed, eroded, or moved from the property by natural or artificial means would create a public hazard, or an unlawful encroachment on other property, watercourse, or on a public road or street, easement or right-of-way;
- B. During the wet season (October 15 through April 15), except that the town may approve wet season grading if all of the following conditions are met:
 1. Applicant has an erosion control plan approved by the town,
 2. A letter from the project geotechnical engineer or certified engineering geologist stating that such grading is acceptable and will not create a hazard to life, limb, property and public welfare,
 3. Wet weather best management practices (BMPs) for grading operations in conformance with approved plans and SWPPP have been placed and approved by the town and installed and are kept continuously in place,
 4. Security acceptable to the town has been provided;
- C. On weekends and town of Moraga holidays and outside the hours of eight a.m. to five p.m. Monday through Friday except where required to abate an emergency situation as specified in [Section 14.04.032\(C\)](#) of this chapter;
- D. No grading shall occur on predevelopment average slopes steeper than twenty-five (25) percent (four horizontal to one vertical) unless grading is required for landslide repair, slope stabilization or other emergencies, and at the specific direction of the town council;
- E. Blasting or other use of explosives shall not be permitted.

(Ord. 210 (part), 2006)

14.04.040 Applications—General.

To obtain a permit, the applicant shall file a written application on the appropriate applications form provided by the town and submit all documents required by the planning department. Every application shall conform to the requirements set forth in this chapter. The permit shall be issued only to the owner or his or her authorized agent.

An encroachment permit is required for grading within a public right-of-way, or within an easement under the jurisdiction of the town.

A hauling permit is required for movement of five hundred (500) cubic yards on public streets in accordance with Resolution 46-82 PC.

Grading within an area designated as a "Special Flood Hazard Area" as defined in [Section 8.108.040](#) of this code must comply with the provisions of [Chapter 8.108](#) of this code.

(Ord. 210 (part), 2006)

Chapter 14.08 DESIGN REVIEW ADMINISTRATOR AUTHORITY

Sections:

[14.08.010 Design review administrator—Approval required.](#)

[14.08.020 Design review administrator—Consideration.](#)

[14.08.030 Design review administrator—Required findings.](#)

[14.08.040 Design review administrator—Term of approval.](#)

[14.08.050 Design review administrator—Appeal.](#)

14.08.010 Design review administrator—Approval required.

All grading operations on slopes less than twenty (20) percent and less than two hundred (200) cubic yards that require a permit shall be reviewed and approved by the design review administrator prior to the issuance of a permit.

(Ord. 210 (part), 2006)

14.08.020 Design review administrator—Consideration.

Upon determining the application complete, the design review administrator shall consider the application for a permit if it is consistent with the town guidelines and is recommended for approval by the town engineer.

If the design review administrator determines the application is inconsistent with the town design guidelines, the application shall be reviewed by the design review board.

(Ord. 210 (part), 2006)

14.08.030 Design review administrator—Required findings.

The design review administrator may grant a permit under this chapter, only after a determination that the grading is:

- A. Consistent with the town design guidelines and does not require a design exception;
- B. Does not result in any slope of twenty (20) percent or more;
- C. Consistent with the regulations and restriction of this chapter and does not require a modification;
- D. Not detrimental to public safety;
- E. Not detrimental to stormwater runoff; and
- F. Not inconsistent with the general plan.

(Ord. 210 (part), 2006)

14.08.040 Design review administrator—Term of approval.

All permit applications approved by the design review administrator shall be valid for two years. The approval may be extended for an additional year, if other approvals required to implement the proposed project are not obtained within one year of the design review administrator approval.

(Ord. 210 (part), 2006)

14.08.050 Design review administrator—Appeal.

Any person wishing to appeal the decision of the design review administrator may do so in accordance with [Section 8.72.160](#) of this code.

(Ord. 210 (part), 2006)

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Chapter 14.12 DESIGN REVIEW BOARD AUTHORITY >>

Chapter 14.12 DESIGN REVIEW BOARD AUTHORITY

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[14.12.010 Design review board—Approval required.](#)

[14.12.020 Design review board—Consideration.](#)

[14.12.030 Design review board—Action.](#)

[14.12.040 Design review board—Term of approval.](#)

[14.12.050 Design review board—Appeal.](#)

14.12.010 Design review board—Approval required.

All grading operations on (1) slopes greater than or equal to twenty (20) percent, or (2) predevelopment average slopes less than twenty-five (25) percent and equal to or greater than two hundred (200) cubic yards that require a permit shall be reviewed and approved by the design review board prior to the issuance of a permit.

(Ord. 210 (part), 2006)

14.12.020 Design review board—Consideration.

Upon determining the application complete, the design review administrator shall schedule the application for consideration by the design review board.

Notice of the design review board meeting shall be made in accordance with [Section 8.72.150](#) of this code.

(Ord. 210 (part), 2006)

14.12.030 Design review board—Action.

On slopes less than twenty (20) percent, a permit may be granted only after a determination that the grading is:

- A. Consistent with the town design guidelines;
- B. Does not result in any slope of twenty (20) percent or more;
- C. Consistent with the regulations and restriction of this chapter and does not require a modification;

- D. Not detrimental to public safety;
- E. Not detrimental to stormwater runoff; and
- F. Not inconsistent with the general plan.

On slopes greater than or equal to twenty (20) percent, a permit may be granted only after a determination that the grading is:

- A. Consistent with the town design guidelines;
- B. Consistent with the regulations of [Chapter 14.12](#) of this code;
- C. Not detrimental to public safety;
- D. Not detrimental to stormwater runoff;
- E. Consistent with the requirements of [Chapter 8.136](#) of this code.

On average slopes less than twenty-five (25) percent and greater than or equal to twenty (20) percent, a permit may be granted only after a determination that the grading is:

- A. Consistent with the town design guidelines;
- B. Consistent with the regulations of this chapter;
- C. Not detrimental to public safety;
- D. Not detrimental to stormwater runoff;
- E. Consistent with the requirements of [Chapter 8.136](#) of this code;
- F. Natural contour grading;
- G. Minimizes soil displacement;
- H. Minimizes the use of retaining walls;
- I. Not inconsistent with the general plan.

(Ord. 210 (part), 2006)

14.12.040 Design review board—Term of approval.

All permit applications approved by the design review board shall be valid for two years. The approval may be extended for an additional year by the design review administrator, if other approvals required to implement the proposed project are not obtained within one year of the design review board approval.

(Ord. 210 (part), 2006)

14.12.050 Design review board—Appeal.

Any person wishing to appeal the decision of the design review board may do so in accordance with [Section 8.72.160](#) of this code.

(Ord. 210 (part), 2006)

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Chapter 14.16 TOWN COUNCIL AUTHORITY >>

Chapter 14.16 TOWN COUNCIL AUTHORITY

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[14.16.010 Town council—Direction required.](#)

[14.16.020 Planning commission recommendation.](#)

[14.16.030 Town council—Direction.](#)

[14.16.040 Town council—Term of approval.](#)

14.16.010 Town council—Direction required.

All grading operations, including, but not limited to, landslide repair or slope stabilization or grading, on predevelopment average slopes greater than or equal to twenty-five (25) percent that require a permit shall be reviewed by the planning commission and specifically directed by the town council prior to the issuance of a permit.

(Ord. 210 (part), 2006)

14.16.020 Planning commission recommendation.

Upon determining the application complete, the planning director shall schedule the application for consideration by the planning commission and the planning commission shall make a recommendation to the town council in accordance with the findings listed in [Section 14.16.030](#) of this chapter. Notice of the planning commission and town council meetings shall be made in accordance with [Section 8.72.150](#) of this code.

(Ord. 210 (part), 2006)

14.16.030 Town council—Direction.

On land with a predevelopment average slope greater than or equal to twenty-five (25) percent, a permit may be granted only after a determination that the grading is:

- A. Consistent with the town design guidelines;
- B. Consistent with the regulations and restrictions of this chapter;
- C. Not detrimental to public safety;
- D. Not detrimental to stormwater runoff;
- E. Consistent with the requirements of [Chapter 8.136](#) of this code;
- F. Natural contour grading;
- G. Minimizes soil displacement;
- H. Minimizes the use of retaining walls;
- I. The minimum amount of grading possible on the site; and
- J. Not inconsistent with the general plan.

The direction of the town council is final.

(Ord. 210 (part), 2006)

14.16.040 Town council—Term of approval.

All permits approved by the town council shall be valid for two years, but may be extended for an additional year by the design review administrator, if other approvals required to implement the proposed project are not obtained within one year of the town council approval.

(Ord. 210 (part), 2006)

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Chapter 14.20 FEES >>

Chapter 14.20 FEES

Sections:

[14.20.010 Fees—General.](#)

14.20.010 Fees—General.

Deposits and fees for the review, processing, permit issuance, and observation and testing of grading shall be established by town council resolution.

(Ord. 210 (part), 2006)

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Chapter 14.24 ISSUANCE OF GRADING PERMITS

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[14.24.014 Issuance of permits—Job plans.](#)

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[14.24.017 Time limits—General.](#)

[14.24.018 Time limits—Extension.](#)

[14.24.030 Issuance of permits—Amended permit.](#)

[14.24.040 Issuance of permits—Assignment of permit.](#)

14.24.010 Issuance of permits—Effect in general.

The issuance of a permit under this chapter authorizes only that work described or illustrated in the permit as issued. The permittee shall bear full responsibility for the performance of the work in accordance with the approved plans and specifications and any approved modifications thereof.

A permit issued under this chapter shall not relieve any person from liability, nor impose liability on the town, for damage to persons or public or private property; nor shall compliance with such permit or any conditions therein relieve any person from such liability.

(Ord. 210 (part), 2006)

14.24.011 Issuance of permits—Conditions upon issuance.

In granting any permit under this chapter, the design review administrator, design review board, town council, and/or town engineer may attach such conditions thereto as they deem reasonably necessary to safeguard life, public and private property, and to insure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance. The town engineer may add to, or change such conditions from time to time during the duration of the permit as he or she deems necessary as a result of changed conditions.

(Ord. 210 (part), 2006)

14.24.012 Issuance of permits—Final application submittal package.

After approval or conditional approval of an application by the design review administrator, design review board, or town council as appropriate, the town may issue a permit upon approval by the town engineer of the following:

- A. Grading plans and specifications shall include applicable standards, notes and other conditions of approval as required by the town;
- B. Geotechnical engineering report and/or engineering geology report;
- C. Work schedule;
- D. Erosion control plan, copies of notice of intent (NOI), stormwater pollution prevention plan (SWPPP) and/or best management plan (BMP) when required;
- E. Waste material recycling plan;
- F. Final application review and processing deposit;
- G. Security, if required pursuant to [Chapter 14.28](#) of this code;
- H. Fees pursuant to [Section 14.20.010](#) of this code;
- I. Supplementary material required by the town including, but not limited to, evidence of neighborhood notification.

(Ord. 210 (part), 2006)

14.24.013 Issuance of permits—Town engineer review.

The town engineer shall review all plans, specifications, reports and other required data submitted by applicant. All submitted documents shall be reviewed for consistency and compliance with the requirements of this chapter and approvals by the design review administrator, design review board, or town council, as applicable. The town engineer may require applicant to modify the grading plan, SWPPP, erosion control plan and schedules ("Order to Modify").

(Ord. 210 (part), 2006)

14.24.014 Issuance of permits—Job plans.

When an application is approved and a permit issued, two sets of plans and accompanying documents shall be clearly marked as reviewed and approved and shall be returned to the applicant. One set shall be kept available for reference at the job site during grading and construction. The applicant may submit additional sets of plans and documents for notation as reviewed and approved.

(Ord. 210 (part), 2006)

14.24.015 Issuance of permits—Posting required.

The permit shall be posted securely in a conspicuous location on the site.

(Ord. 210 (part), 2006)

14.24.016 Issuance of permits—Jurisdiction of other agencies.

Permits issued under this chapter do not relieve the owner of the responsibility of securing permits or licenses that may be required from other departments or divisions of the town or other governing agencies.

(Ord. 210 (part), 2006)

14.24.017 Time limits—General.

The permittee shall complete all of the work required within the time limit specified in the permit conditions. If no time limit is specified work shall be completed within two years of the date of issuance of the permit.

(Ord. 210 (part), 2006)

14.24.018 Time limits—Extension.

Sixty (60) days before the expiration of a permit, the permittee may apply for an extension of time to complete the work. One extension may be granted by the town engineer if, in his or her judgment, the public welfare is not impaired. The extension shall be for a period the town engineer deems appropriate, but not longer than twelve (12) months. If the town has required surety bond from the permittee seeking an extension, the permittee shall file the surety's written consent to any extension of time before approval is effective. Denial of an extension shall not preclude the permittee from applying for a new permit.

(Ord. 210 (part), 2006)

14.24.030 Issuance of permits—Amended permit.

Permits may be amended as follows:

- A. **Minor Changes.** Minor changes in the plans, grades, or extent of work shall be submitted to the town for written approval and incorporation into the permit, accompanied by any necessary fees, before any change in the approved work is begun. The town may amend the permit to approve altered plans, or may deny approval of the changes;
- B. **Significant Changes.** Significant changes to the plans, grades, or extent of work, as determined by the town, shall require a new application.

Failure to obtain prior approval for any change in the work shall be cause for the town to order suspension of all work until approval is obtained, and may result in revocation of the permit if it deems the changes will increase the hazard to adjoining properties or public roads, or otherwise be detrimental to public welfare.

(Ord. 210 (part), 2006)

14.24.040 Issuance of permits—Assignment of permit.

A permit issued pursuant to this chapter may be assigned, provided that all of the following requirements are satisfied:

- A. The permittee notifies the town of the proposed assignment;
- B. The proposed assignee satisfies all of the following:
 - 1. Submits an application pursuant to this chapter,
 - 2. Agrees in writing to all the conditions and duties imposed by the original permit and to any modification thereof that may be required because of changes in the condition of the site or change in plans since the permit was issued,
 - 3. Agrees in writing to assume responsibility for all work performed prior to the assignment,
 - 4. Provides security pursuant to [Chapter 14.28](#) of this code, and
 - 5. Agrees to pay all applicable fees.

(Ord. 210 (part), 2006)

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Chapter 14.28 SECURITY

Sections:

- [14.28.010 Security—Generally.](#)
- [14.28.020 Security—Notice of default.](#)
- [14.28.030 Security—Right of entry of town engineer.](#)
- [14.28.040 Security—Noncompliance.](#)

14.28.010 Security—Generally.

As a condition of issuing a permit, the town may require the permittee to post a surety bond and/or to provide other security in an amount determined by the town. The security shall be of sufficient amount to insure compliance with the conditions of the permit, this chapter, and to repair any damage that may result from the permitted:

- A. Amount. The amount of the security shall be determined by the town after consideration of the estimated cost of the work, the possible consequences of noncompletion, particularly with respect to adjacent properties, public safety and any other relevant factors, including, but not limited to:
 - 1. The performance of the work delineated on approved revegetation, planting or landscaping plan in an amount to be determined by the town but not less than one hundred (100) percent of the approved estimated cost of performing the work,
 - 2. The performance of the work described and delineated in the applicant's stormwater pollution prevention plan in an amount as approved by the town as set forth in this chapter but not less than one hundred (100) percent of the approved estimated cost of performing the work,

3. The performance of the work described and delineated in the applicant's best management practices plan in an amount to be determined by the town but not less than one hundred (100) percent of the approved estimated cost of performing the work;
- B. Term. The security shall remain in full force and effect until the statement of completion in accordance with Section 14.56.030 of this code has been accepted by the town;
- C. Form. The security shall be in a form approved by the town.

(Ord. 210 (part), 2006)

14.28.020 Security—Notice of default.

Whenever the town engineer finds that the permittee has failed to comply with the conditions of the permit, this chapter or to repair damage resulting from the permitted grading, he or she shall give written notice thereof ("Notice of Default") separately to the permittee and surety, giving the permittee an opportunity to cure. The notice of default shall state the work to be done to achieve a safe and satisfactory condition, its estimated cost, and the period of time deemed reasonably necessary to complete the work.

(Ord. 210 (part), 2006)

14.28.030 Security—Right of entry of town engineer.

Should the required work specified in the notice of default not be cured within the time specified by the town, the town engineer or surety or any person employed or engaged on behalf of either, shall have the right to go on the site to complete the required work. If the town completes the required work, the town may deduct the cost thereof from any cash deposit or collect such amount from the surety.

No person shall interfere with, obstruct, hinder, or prevent the ingress or egress to or from any such premises by which an authorized representative, or agent of any surety, or of the town is engaged in completing the work required under the permit, checking on compliance of the work with the terms or conditions of the permit and the provisions of this chapter, or taking emergency actions for the protection of the public and abutting properties.

(Ord. 210 (part), 2006)

14.28.040 Security—Noncompliance.

The security shall be conditioned on the faithful performance of the work under the permit and the immediate abatement of any hazardous conditions. Failure of the permittee to abate such hazard(s) shall be considered noncompliance in accordance with [Chapter 14.52](#) of this code.

(Ord. 210 (part), 2006)

Chapter 14.32 OBSERVATION AND MONITORING

Sections:

[14.32.010 Observation and monitoring—General.](#)

[14.32.020 Observation and monitoring—Standard grading requirements.](#)

[14.32.030 Observation and testing—Supervised grading requirements.](#)

14.32.010 Observation and monitoring—General.

Town representatives may enter the site at any time to observe its condition and the methods of operation, review any design modifications proposed during grading; review all record drawings and to check or test any feature or operation involved in fulfilling the conditions of the permit.

(Ord. 210 (part), 2006)

14.32.020 Observation and monitoring—Standard grading requirements.

The town representative shall observe the work at the following stages and shall review the portion then completed and shall notify the permittee or his or her agent wherein it fails to comply with the requirements of this chapter:

- A. Initial. When the project area has been cleared of vegetation in accordance with the plans;
- B. Rough Grading. When rough grading has been completed and approximate final elevations have been established; drainage terraces, swales and other drainage devices have been graded and are ready for paving; and berms installed at the top of slopes;
- C. Final. When work has been completed, all drainage devices, systems and facilities installed, and stormwater control measures implemented.

Failure to allow the town representative to observe the work may result in suspension of the permit as provided for in Section 14.41.030 of this code. In addition to the observations specified above, the town may observe the site at any time.

(Ord. 210 (part), 2006)

14.32.030 Observation and testing—Supervised grading requirements.

In addition to the requirements of [Section 14.44.020](#) of this code, when the town determines that the work shall be designated supervised grading, the work shall adhere to the following requirements:

- A. It shall be the responsibility of the permittee's civil engineer to provide periodic surveying during the grading operations to ensure compliance with the approved plans;
- B. It shall be the responsibility of the permittee's geotechnical engineer or engineering geologist, to observe the operations and provide qualified observation and testing services to assure compliance of the work with the approved plans and the requirements of this chapter. Should the geotechnical engineer or engineering

geologist determine that adverse conditions exist on the site, the appropriate remedial measures shall be implemented. The proposed remedial measure shall be submitted to the town's geotechnical engineer or geological consultant for review and comment.

- C. Progress reports may be required to be submitted regularly to the town for review describing the work to date.

(Ord. 210 (part), 2006)

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Chapter 14.36 PERMITTEE DUTIES

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[14.36.020 Permittee duties—Required notifications.](#)

[14.36.030 Permittee duties—Reporting requirements.](#)

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[14.36.060 Permittee duties—Notification of termination of consultant services.](#)

[14.36.070 Permittee duties—Notification of cessation of work.](#)

14.36.010 Permittee duties—General.

Permittee shall adhere to the requirements of this chapter.

(Ord. 210 (part), 2006)

14.36.020 Permittee duties—Required notifications.

Unless this requirement is waived by the town, permittee shall notify the town in writing seventy-two (72) hours prior to:

- A. The beginning of the permitted activity;
- B. The completion of rough grading;
- C. The completion of finished grading;
- D. The installation of all erosion control devices and the completion of planting requirements;
- E. Readiness of the site for final observation and testing, including, but not limited to, finished grading, installation of drainage devices and final Erosion control measures.

(Ord. 210 (part), 2006)

14.36.030 Permittee duties—Reporting requirements.

Permittee shall notify the town if:

1. There are delays in implementing the approved plans as scheduled;
2. There are any archeological or skeletal remains discovered;

3. The work is not being done in conformance with the approved plans;
4. There are any departures from the approved plan, including unanticipated slope destabilization either within or outside of the approved grading envelope;
5. There are any delays in the implementation of the SWPPP and/or BMP plan.

(Ord. 210 (part), 2006)

14.36.040 Permittee duties—Meetings.

Prior to starting work, or project mobilization, when deemed appropriate by the town, the permittee, geotechnical engineer and civil engineer shall attend an on-site meeting with the town's representative. In addition, the permittee shall attend any meeting required by the town.

(Ord. 210 (part), 2006)

14.36.050 Permittee duties—Notification of noncompliance.

If the project engineering geologist, geotechnical engineer or civil engineer finds that the work is not in conformance with this chapter or with the plans approved by the town, or with good accepted practices, he or she shall immediately notify the permittee and the town in writing of the nonconformity and of the corrective measures to be taken.

(Ord. 210 (part), 2006)

14.36.060 Permittee duties—Notification of termination of consultant services.

If the engineering geologist, geotechnical engineer or civil engineer is relieved of, or otherwise terminates his or her duties prior to completion of the work, he or she shall report the fact in writing to the town within forty-eight (48) hours with a progress report on the status of the work.

(Ord. 210 (part), 2006)

14.36.070 Permittee duties—Notification of cessation of work.

If the permittee ceases work for any reason before the work is completed, he or she shall take all necessary steps to leave the premises in a condition that will be safe and will not cause on- or off-site damage.

(Ord. 210 (part), 2006)

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Chapter 14.40 NONCOMPLIANCE

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[14.40.030 Noncompliance—Suspension of permit.](#)

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[14.40.060 Noncompliance—Appeal.](#)

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[14.40.080 Noncompliance—Cumulative enforcement procedures.](#)

14.40.010 Noncompliance—General.

If the town determines that the work is not being performed in conformance with the approved permit and plans, it shall apply the procedures set forth in this section before taking any other enforcement actions set forth in this chapter.

(Ord. 210 (part), 2006)

14.40.020 Noncompliance—Notice to stop work.

On issuance of a written notice to cease work ("Stop Work Order"), the permittee shall immediately cause all grading and hauling connected therewith to cease until written permission is received from the town engineer allowing the permittee to proceed after correcting the objectionable conditions or operations to eliminate the hazard or encroachment and to prevent recurrence of the situation.

(Ord. 210 (part), 2006)

14.40.030 Noncompliance—Suspension of permit.

- A. The town may suspend the permit and issue a stop work order, pursuant to [Section 14.40.020](#) of this chapter in any of the following circumstances:
1. The town determines that the permit was issued in error, or on the basis of incorrect information supplied by applicant, or in violation of any provisions of this chapter, or other ordinance or regulation;
 2. Permittee fails to submit reports when required under [Chapter 14.48](#)
 3. Permittee bars the town staff from entering the site;
 4. Observation and testing by the town reveals that the work or the work site:
 - a. Is not in conformity with the grading plan, interim or final plan, or other condition(s) of approval as approved or as modified pursuant to this chapter, or
 - b. Is not in compliance with an order to modify pursuant to this chapter;
 5. Permittee fails to comply with an order to modify within the time limits imposed by the town;
 6. Permittee fails to obtain permission for wet season activity pursuant to this chapter;
 7. The town finds that conditions at the site vary appreciably from those shown and stated in the application and plans;
 8. Cessation of work before completion has left the site in a condition hazardous to the public or to the adjacent properties, and the permittee has not complied with reasonable requirements for completion of the work within the time specified in the permit or an approved extension thereof;
 9. The permittee does not comply with reasonable requirements to safeguard the workmen, the public, or other persons acting in a lawful manner, during grading or construction activities;
 10. In transporting materials or equipment, or in the operation of equipment the permittee allows materials or litter to encroach, obstruct, or be deposited on pavement, or in

drainage channels, on private property not under the control of the permittee and covered under a lawful permit, or causes unauthorized obstruction or diversion of drainage channels; or

11. Permittee fails to have a qualified inspector, when required, working under the geotechnical engineer on the site during grading.

B. When a permit is suspended the permittee shall be given written notice containing the findings of violation and stop work order. Upon suspension of the permit, the town may seize the permit and/or make appropriate notations on it of the suspension on the permit. Upon further written order of the town, any suspended permit may be either revoked pursuant to [Section 14.40.050](#) of this chapter or reinstated. The town shall reinstate a suspended permit upon permittee's correction of the cause of the suspension.

(Ord. 210 (part), 2006)

14.40.050 Noncompliance—Hearing for revocation.

A grading permit may be revoked, pursuant to a hearing, for any of the circumstances listed in [Section 14.40.030](#) if, in the opinion of the town engineer, the situation is sufficiently serious and the permittee is not making progress in, or is refusing to, remedy the problem. The town engineer shall hold a hearing on the proposed revocation of a permit. Written notice of the time and place of such hearing shall be served upon the permittee five days prior to the date set for such hearing. Such notice shall also contain a statement of the grounds for revoking the permit. Notice may be given either by personal delivery thereof to the person to be notified, or by deposit in the United States mail in a sealed envelop with postage prepaid, addressed to the person(s) to be notified at the address(es) appearing in the application. In the event an appeal is made regarding the decision of the town engineer, all work shall be stopped while the appeal is pending.

In the event of revocation, the town shall have the right to use the bond proceeds to remedy the problem. Resumption of the work will be subject to a new grading permit application.

(Ord. 210 (part), 2006)

14.40.060 Noncompliance—Appeal.

In the event the town engineer makes the determination to revoke the permit, the permittee may appeal such determination to the town manager or his or her designee. Such an appeal shall be made in writing and shall state in clear and concise language, the grounds therefore and shall be filed with the town engineer within ten (10) days of the date of the town engineer's determination.

The town manager may make such modifications in the requirements of these provisions as may grant such waivers or modifications of the determinations which are appealed to him or her as he or she shall determine and are warranted to prevent any unreasonable hardship under the facts of each case, provided that such modifications or waiver is in conformity with the general intent of the requirements of this chapter.

(Ord. 210 (part), 2006)

14.40.070 Noncompliance—Nuisance abatement.

In addition to any other legal remedies, any violation of this chapter, a permit or stop work order shall be considered a nuisance and be abated pursuant to [Chapter 7.16](#) of this code.

(Ord. 210 (part), 2006)

14.40.080 Noncompliance—Cumulative enforcement procedures.

The procedures for enforcement as set forth in this chapter are cumulative and not exclusive.

(Ord. 210 (part), 2006)

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Chapter 14.44 COMPLETION OF WORK >>

Chapter 14.44 COMPLETION OF WORK

Sections:

[14.44.010 Completion of work—Post-grading procedures.](#)

[14.44.020 Completion of work—Maintenance guaranty.](#)

[14.44.030 Completion of work—Certificate of completion.](#)

14.44.010 Completion of work—Post-grading procedures.

Upon completion of the grading and the installation of permanent improvements, where such permanent improvements are planned at the time grading is performed, permittee shall submit:

- A. A maintenance plan and schedule for all drainage facilities, including inlets, outlets, cleanouts and access ports. The maintenance plan and schedule is subject to review and approval by the town;
- B. Executed contract(s) or other approved evidence for the perpetual maintenance and upkeep of stormwater pollution prevention measures;
- C. The following reports and drawings prior to the issuance of certificate of completion:
 1. An as-graded plan prepared by the civil engineer of record, that includes the original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, locations of any keyways, slide repair areas, and "as-constructed" locations and elevations of all surface and subsurface drainage facilities. The engineer of record shall provide certification that the work was done in accordance with the final approved grading plan. The project geotechnical engineer or certified engineering geologist shall also sign the plan indicating that the work was performed in accordance with the recommendations contained in the projects geotechnical and/or geological reports and subsequent approved revisions,
 2. A "Building Pad Certification" drawing or set of drawings prepared by the civil engineer of record indicating that all building pads are located horizontally and vertically in accordance with the approved grading plans,
 3. A final grading report prepared by the geotechnical engineer or certified engineering geologist, that includes locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the geotechnical report and/or geologic report. The geotechnical engineer or certified

- engineering geologist shall provide an opinion as to the adequacy of the site for the intended use,
4. A final report by the civil engineer of record certifying that all grading, lot drainage and drainage facilities have been completed and the slope planting installed in conformance with the approved plans and the requirements of this chapter,
 5. A final engineering geology report based on the final contour map including specific approval of the grading as affected by geological factors. The report shall include a revised geologic map and cross-sections, with recommendations regarding the location of buildings or sewage disposal systems;
- D. At the discretion of the town, geologic grading report prepared by the engineering geologist including a final description of the geology of the site including any new information disclosed during the grading and the effect of it on recommendations incorporated in the approved grading plan. He or she shall provide an opinion as to the adequacy of the site for the intended use as affected by geologic factors. The geologic report may be incorporated into the final grading report.

(Ord. 210 (part), 2006)

14.44.020 Completion of work—Maintenance guaranty.

Prior to issuance of a certificate of completion the town may require the permittee to submit a one year guaranty bond in an amount determined by the town. This is to ensure adequate maintenance of the site as set forth in [Section 14.44.010](#) of this chapter.

(Ord. 210 (part), 2006)

14.44.030 Completion of work—Certificate of completion.

The town shall issue a certificate of completion upon satisfactory completion of work under an approved permit.

(Ord. 210 (part), 2006)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> **Title 14 - GRADING** >>
Chapter 14.48 REGULATIONS >>

Chapter 14.48 REGULATIONS

Sections:

- [14.48.010 Excavations—General.](#)
- [14.48.011 Excavations—Maximum gradient.](#)
- [14.48.012 Excavations—Drainage terraces.](#)
- [14.48.013 Excavations—Conformance to existing terrain.](#)
- [14.48.014 Excavations—Setbacks.](#)
- [14.48.020 Fills—General.](#)
- [14.48.021 Fills—Gradient.](#)
- [14.48.022 Fills—Preparation of ground.](#)
- [14.48.023 Fills—Compaction.](#)
- [14.48.024 Fills—Material.](#)

[14.48.025 Fills—Drainage terraces.](#)

[14.48.026 Fills—Conformance to existing terrain.](#)

[14.48.027 Fills—Slope location and setbacks.](#)

[14.48.029 Fills—Evaluation of existing fill.](#)

[14.48.030 Modifications.](#)

14.48.010 Excavations—General.

Unless otherwise recommended in the approved geotechnical engineering or engineering geologic report and approved by the town, excavations and cut slopes shall conform to the provisions of this section. These regulations apply to all grading whether or not a permit is required. All grading should be balanced on site.

(Ord. 210 (part), 2006)

14.48.011 Excavations—Maximum gradient.

Cuts slopes shall not be steeper than three horizontal to one vertical, except in conform areas where natural slopes are greater. Where steeper slopes are unavoidable, the applicant shall furnish geotechnical engineering or an engineering geology report, or both, certifying that the site has been evaluated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property. The town engineer, or geotechnical engineering or geologic consultant may require the excavation slope face be made flatter than three horizontal to one vertical if he or she finds it necessary for stability and safety.

(Ord. 210 (part), 2006)

14.48.012 Excavations—Drainage terraces.

Cut slopes exceeding thirty (30) feet in vertical height shall have drainage terraces not less than eight feet in width, at vertical intervals not exceeding twenty-five (25) feet, except where only one such terrace is required, it shall be located at mid-height. For cut slopes exceeding sixty (60) feet in vertical height, the drainage terrace near mid-height shall be not less than twelve (12) feet in width. Design and construction of drainage terraces shall conform to the requirements of Sections 14.20.060(E) through (G) of this code. Other drainage methods may be approved by the town as appropriate. Suitable access shall be provided to the drainage terraces to permit proper cleaning and maintenance

(Ord. 210 (part), 2006)

14.48.013 Excavations—Conformance to existing terrain.

Cut slopes shall be rounded off at the top and toe and shall be contour graded to achieve a natural appearance and to blend and conform to existing terrain.

(Ord. 210 (part), 2006)

14.48.014 Excavations—Setbacks.

Cut slopes shall be set back from property lines and structures as far as necessary to provide for safety of adjacent property, safety of pedestrians and vehicular traffic, required slope rounding, adequate foundation support, required swales, berms and drainage facilities.

Except where special foundation design has been approved by the town, setbacks for structures shall meet the following requirements:

- A. Excavations shall be set back from property lines or project boundaries a minimum distance equal to one-fifth the height of the slope. In any circumstance, the minimum distance will be three feet and the maximum will be ten (10) feet.
- B. Excavations shall be set back from existing structures:
 1. In accordance with subsection A of this section; or
 2. If required by the town, permittee shall provide an investigation and report by a geotechnical engineer or certified engineering geologist recommending a setback that demonstrate adherence to the intent of the section. The report is subject to the review and approval by the town.

(Ord. 210 (part), 2006)

14.48.020 Fills—General.

Unless otherwise recommended in the approved geotechnical engineering or engineering geologic report and approved by the design review board or town council, embankments, fills and fill slopes shall conform to the provisions of this section.

(Ord. 210 (part), 2006)

14.48.021 Fills—Gradient.

Fill slopes shall not be steeper than three horizontal to one vertical, except in conform areas where natural slopes are greater. Where steeper slopes are unavoidable, the applicant shall furnish geotechnical engineering or an engineering geology report, or both, certifying that the site has been evaluated and giving an opinion that a fill at a steeper slope will be stable and not create a hazard to public or private property. The town engineer, or geotechnical engineering or geologic consultant may require the fill slope face be made flatter than three horizontal to one vertical if he or she finds it necessary for stability, safety and aesthetics.

Slopes not compacted in accordance with this chapter shall not exceed five horizontal to one vertical.

(Ord. 210 (part), 2006)

14.48.022 Fills—Preparation of ground.

Existing ground surfaces to receive fill material, unless more restrictive recommendations are contained in the geotechnical engineering or engineering geologic report(s), shall:

- A. Be prepared to receive fill by removing vegetation, noncomplying topsoil and other unsuitable materials;
- B. Scarifying to a depth of eight inches to provide a bond with the new fill;
- C. Where slopes are steeper than five vertical to one horizontal and the height is greater than three feet:

1. By benching into competent bedrock and/or other competent soil as determined by the project geotechnical engineer or certified engineering geologist,
 2. The bench under the toe of a fill slope steeper than five horizontal to one vertical shall be at least ten (10) feet wide;
- D. Fill Slopes shall be tapered into the existing terrain at the toe and shall be rounded off at the top;
- E. Fills shall not toe out on slopes steeper than three horizontal to one vertical. A stability analysis shall be performed by the geotechnical engineer or certified engineering geologist to evaluate the global stability of the slope.

(Ord. 210 (part), 2006)

14.48.023 Fills—Compaction.

Except as provided in this chapter, all fills shall be compacted throughout their full extent to a minimum of ninety (90) percent relative compaction. Field density shall be determined by the American Society for Testing and Materials (ASTM) D1557 (latest version) test method.

- A. Fills to support roadways shall be compacted to a minimum relative density of ninety (90) percent relative compaction for the width of the traveled way plus three feet on each side thereof.
- B. Fills not intended to support structures, or streets need not be compacted to these standards if either the town's geotechnical engineering or geologic consultant determines that such compaction is unnecessary as a safety measure. In making this determination, the town's geotechnical engineering or engineering geologic consultant may require that an investigation be made to establish the characteristics of the soil, the amount of settlement to be expected and the suitability of the material for its intended purpose.

(Ord. 210 (part), 2006)

14.48.024 Fills—Material.

No organic or other reducible material shall be incorporated in fills, except as recommended by the geotechnical engineer or engineering geologist and approved by the town. No rock or similar irreducible material with a maximum dimension greater than six inches shall be buried or placed within forty-eight (48) inches of finished grade where practical.

(Ord. 210 (part), 2006)

14.48.025 Fills—Drainage terraces.

Fill slopes exceeding thirty (30) feet in vertical height shall have drainage terraces not less than eight feet in width, at vertical intervals not exceeding twenty-five (25) feet except that where only one such terrace is required, it shall be located at mid-height. For fill slopes exceeding sixty (60) feet in vertical height, the drainage terrace near mid-height shall be not less than twelve (12) feet in width. Design and construction of drainage terraces shall conform to the requirements of Sections 14.20.060 (E) through (G) of this code. Suitable access shall be provided to the drainage terraces to permit proper cleaning and maintenance.

(Ord. 210 (part), 2006)

14.48.026 Fills—Conformance to existing terrain.

Fill slopes shall be tapered into the existing terrain at the toe and shall be rounded off at the top.

(Ord. 210 (part), 2006)

14.48.027 Fills—Slope location and setbacks.

Fill slopes shall be set back from property lines, watercourses and structures as follows:

- A. The property line of any proposed or existing site or parcel located within the grading project shall be located a minimum of one foot from the top of the slope;
- B. Fill slopes shall be set back a minimum of three feet plus one-fifth the vertical height of the slope from the property line with a maximum of twenty (20) feet;
- C. Buildings and structures shall be set back from the toe or the top of fill slopes a minimum of four feet plus one-fifth the vertical height of the slope, with a maximum of twenty (20) feet;
- D. When fill slopes are located near the site boundary and the adjacent off-site property is developed, special precautions shall be incorporated in the work as the town engineer deems necessary to protect the adjoining property from damage as a result of such grading. The precautions may include, but not be limited to:
 1. Additional setbacks,
 2. Provisions for retaining or slough walls,
 3. Mechanical or chemical treatment of the fill slopes surface to minimize erosion, and
 4. Provisions for the control of surface waters;
- E. Fills shall be set back from property lines or project boundaries a minimum distance equal to one-half the height of the slope. In any circumstance, the minimum distance will be three feet and the maximum will be twenty (20) feet;
- F. Structures shall be set back from fill slopes:
 1. A minimum distance equal to one-half the height of the slope. In any circumstance, the minimum distance will be four feet and the maximum will be twenty (20) feet;
 2. If required by an investigation and report by a geotechnical engineer or certified engineering geologist recommending a setback that demonstrate adherence to the intent of the section. The report is subject to the review and approval by the town.

(Ord. 210 (part), 2006)

14.48.029 Fills—Evaluation of existing fill.

The town may require the submission of a geotechnical report before issuing a building permit for a structure to be placed on any existing fill or embankment or be excepted from the requirement for a permit, or on any other lot or parcel on which critically expansive soils, slide conditions, or other geotechnical or geologic hazard exist or may reasonably be anticipated to exist. If the town determines that the action recommended in this report is likely to prevent structural damage to the proposed structure, the town shall approve the report and the recommended action contained in the report shall become a part of the required construction as a condition of the permit.

(Ord. 210 (part), 2006)

14.48.030 Modifications.

Modifications from the regulations of this chapter may be allowed by the design review board or the town council, if recommended by the town engineer and if determined to provide equivalent safety, stability, and protection against erosion. The applicant must demonstrate equivalency in a report prepared by a geotechnical engineer or certified engineering geologist with the concurrence of the town.

(Ord. 210 (part), 2006)

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Chapter 14.52 STORMWATER MANAGEMENT >>

Chapter 14.52 STORMWATER MANAGEMENT

Sections:

[14.52.010 Stormwater management—General.](#)

14.52.010 Stormwater management—General.

All active and passive construction projects shall have a BMP plan (engineered drawing) and stormwater control measures in compliance with [Section 13.04.090](#) of this code. This code requires a stormwater pollution prevention plan (SWPPP) that meet either the requirements of the requirements of the town of Moraga and the state general construction permit. A stormwater control plan shall also be submitted in compliance with [Section 13.04.050](#) of this code. For sites that do not meet the threshold of [Section 13.04.050](#), a stormwater control plan that incorporates best management practices for site design, source control and treatment control shall be submitted that complies with the requirements of the town of Moraga design guidelines and the town of Moraga engineering standard details.

The only BMP's that may be altered are those in direct conflict with the daily construction activity, as long as the BMP's are restored at the end of the day's construction activity or the start of a storm event, whichever occurs first.

The permittee shall comply with all best management practices and any rules, regulations, standards, ordinances, laws, permits and policies established and or issued by the Federal Environmental Protection Agency, California Water Quality Control Board, and other regional, state, and federal regulatory agencies as applicable.

Construction stormwater control measures shall include, but not be limited to, the following:

- A. The faces of cut and fill slopes shall be protected against damage by erosion and the methods utilized for each protection must offer effective erosion control prior to the initiation of, as well as during, the wet season; and
- B.

Where graded slopes are steeper than five to one or higher than five feet, they shall be protected with a temporary soil stabilization measure such as jute matting or an equivalent mulch until planting is established.

The following documents shall be used as guides for the design and suitability of stormwater control measures and are available in the planning department offices:

- A. Association of Bay Area Governments (ABAG) Manual of Standards for Erosion and Sediment Control Measures;
- B. California Stormwater Quality Association Best Management Practices Handbook;
- C. The Erosion and Sediment Control Field Manual prepared by the regional water quality control board (RWQCB), San Francisco Bay region;
- D. Bay Area Stormwater Management Agencies Association "Start at the Source."

(Ord. 210 (part), 2006)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> **Title 14 - GRADING** >>
Chapter 14.56 DEFINITIONS >>

Chapter 14.56 DEFINITIONS

Sections:

[14.56.010 Definitions.](#)

14.56.010 Definitions.

As used in this chapter, the following words and phrases have the meanings set forth in this section unless otherwise required by the context.

"Applicant" means the property owner, and/or his or her authorized agents and employees, who apply for a permit pursuant to this chapter.

"Artificial fill" means soil, rock, or other similar irreducible materials placed by man using mechanical means and shall include the condition resulting therefrom.

"As graded" means the surface conditions existing at the completion of grading.

"Average slope" means average percent slope "S" is computed on net area of a parcel by the following formula:

S	=	0.002296 I L
		A

or

S	=	100 I L
		a

Where:

S = average percent slope;

I = contour interval in feet;

L = summation of length of all contours in feet;

A = area in acres of parcel being considered;

a = area in square feet of parcel being considered;

"Balanced on-site" means that cut and fill amounts on a site are equal, requiring no import or export of materials.

"Bedrock" means the relatively solid, undisturbed rock in place either at the ground surface or beneath superficial deposits of gravel, sand or soil.

"Bench" means a relatively level step excavated into earth material on which fill is to be placed or within a cut or fill slope.

"Best management practices (BMP)" means structural devices, measures, stormwater management facilities or activities that help to meet development runoff requirements at the premises. Also referred to as "BMP." BMP also include schedules of activities, prohibitions or practices, general good housekeeping, pollution prevention practices, maintenance procedures, and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to watercourses, water bodies and wetlands.

"Best management practices plan (BMP plan)" means a drawing that sufficiently depicts proposed BMP measures and techniques which are designed to control pollutants due to grading related runoff, erosion and sedimentation.

"Borrow" means earth material acquired from an off-site location for use in grading on a site.

"Building pad" means a relatively level area of a lot, parcel or site, which will be occupied by a building, structure or other improvement.

"Certification" means a written engineering or geologic opinion concerning the status and/or completion of the work.

"Chapter" means the ordinance codified in this chapter in its entirety.

"Civil engineer" means a professional engineer in the branch of civil engineering and duly licensed by the state of California.

"Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design, and construction of civil works for the beneficial uses of mankind.

"Code" means the latest adopted version including amendments thereto of the Moraga Municipal Code (MMC).

"Compaction" means the act of densifying soil and rock materials by mechanical means and the resulting densified state.

"Contour grading" means the grading of cut and fill slopes to blend with existing contours and to provide horizontal and vertical variation to eliminate the artificial appearance of slopes.

"Depth"

1. "Cut" means the vertical distance between a point on the existing natural ground and the finished elevation at that same point.
2. "Fill" means the vertical distance between a point at the base of the excavation supporting the fill and the finished elevation at that same point.

"Design guidelines" means town of Moraga design guidelines.

"Earth material" means any rock, natural soil, or fill, and/or combination thereof.

Earthwork. See "Grading."

"Encroachment permit" means a permit issued by the town of Moraga to permit temporary occupancy of, or construction in the public right-of-way.

"Engineering geologist (Geologic consultant)" means a professional geologist duly licensed by the state of California.

"Engineering geology" means the application of geologic data and principles to engineering problems dealing with naturally occurring rock and soil for the purpose of assuring that geological factors are recognized and adequately interpreted in engineering practice.

"Erosion" means the wearing away of the ground surface as a result of the movement of wind, water or ice.

"Erosion control plan" means a document that states the methods of erosion prevention and erosion control on-site during construction.

"Excavate" or "excavation" means any act by which earth material is cut into, dug, quarried, uncovered, removed, displaced or relocated and the resulting conditions.

"Exploratory excavations" means geotechnical borings, test pits, or trenches etc. which are used to observe and evaluate the subsurface conditions of a site.

Fill. See "Artificial fill."

"Geotechnical engineer" means a professional engineer who is experienced and knowledgeable in the practice of geotechnical engineering and soil mechanics, duly licensed by the state of California as a geotechnical engineer.

"Geotechnical engineering" means the application of the principles of soils mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the observation and testing of the construction thereof.

"Grade" means the vertical elevation of the ground surface.

1. "Existing grade" means the elevation of the ground surface prior to grading;

2. "Rough grade" means the elevation at which the ground surface approximately conforms to the approved plan;
3. "Finish grade" means the final ground surface elevation of the site;
4. "Natural grade" means the vertical elevation of the ground surface prior grading.

"Grading" means the physical movement of earth material by forces other than nature including, but not limited to, excavating, filling, compacting, hauling, and related work, excluding discing.

"Hazard" means any condition or conditions, as determined by the town, that is, or has the potential to become, an immediate threat to life and limb, or endanger property, or adversely affect the safety, use, or stability of a public way, or drainage way or channel or adjacent property.

Hillside Development Permit. See [Section 8.136.050](#) of this code.

Hillside Land. See [Section 8.136.020](#) of this code.

"Illegal grading" means grading for which a permit is required and has not been obtained or does not comply with the regulations herein.

"Keyway" means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a fill slope.

"Major changes" means changes to the approved plans that change the project by altering the configuration of the lots, or increase the number of lots, or extend the grading into areas beyond the approved limits for nongeologic or geotechnical reasons and would trigger the need for a new application.

"Minor changes" means changes to the approved plans due to unanticipated conditions discovered during grading, and might include adverse soil conditions such as soft wet soils compressible soils or a deposit old undocumented fill and would not alter the configuration of the project and would not require a new application.

"MMC" means Moraga Municipal Code.

"Notice of intent" means a document filed with the State Water Resources Control Board stating an applicant's intent to file for a general permit for discharges of stormwater associated with construction activity.

"Permit" means a valid grading permit issued pursuant to this chapter.

"Permittee" means the person or legal entity in whose name a valid permit is duly issued pursuant to this chapter and his or her agents, employees, and others acting under his or her direction.

"Plans" means maps, sketches, profiles, construction drawings and specifications, or any combination thereof as required to adequately describe the work, all as prepared by a civil engineer, all in accordance with this chapter. "Plans" shall also include grading plans, drainage plans, erosion control plans, and sedimentation control plans.

"Predevelopment average slope" means the average slope within the proposed area of disturbance and where illegal grading has not occurred.

"Runoff" means the overland flow of water.

"Security" means a corporate bond by a surety company authorized to transact business in the state, a cash deposit (or its equivalent) or an instrument of credit filed with the town from a financial institution subject to regulation by the state or federal government pledging that the funds are on deposit and guaranteed for payment upon demand.

"Sediment" means earth material deposited by water, wind or spillage.

"Site" means any area, lot or parcel of land or contiguous combination thereof, where grading or development is proposed, performed or permitted.

"Slope" means an inclined ground surface, the gradient of which is expressed as a ratio of horizontal distance to vertical distance. (H:V).

"Soil" means a naturally occurring surficial deposit of earth material overlying bedrock.

"Stop work order" means a written notice to cease work.

"Stormwater control plan" means a document that incorporates site design characteristics, landscape features, and BMPs that minimize imperviousness, retain/detain stormwater, slow runoff rates, and reduce pollutants in the post-development runoff.

"Stormwater pollution prevention plan (SWPPP)" means a document that addresses the prevention of potential stormwater pollution from construction activities.

"Supervised grading" means grading work that is performed under engineering or geologic observation and testing.

"Terrace" means a relatively level step of flat area constructed in the face of the graded slope surface for drainage and maintenance purposes.

"Town" means the designated responsible employees of the town of Moraga.

"Town engineer" means the professional engineer duly registered in the state of California appointed by the town manager or town council, to perform that function.

"Watercourse" means any channel, ditch, drainage swale, closed pipe system, whether manmade or natural that collects and transports stormwater runoff.

"Wet season" means the period between October 15 and April 15, unless extended by the town.

(Ord. 210 (part), 2006)

APPENDIX E

CHAPTER 8.52 (MOSO AND NON-MOSO OPEN SPACE)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.52 MOSO AND NON-MOSO OPEN SPACE DISTRICTS >>

Chapter 8.52 MOSO AND NON-MOSO OPEN SPACE DISTRICTS

Sections:

[Article 1. - Non MOSO Open Space District \(Map Symbol N-OS\)](#)

[Article 2. - MOSO Open Space District \(Map Symbol OS-M\)](#)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.52 - MOSO AND NON-MOSO OPEN SPACE DISTRICTS >> Article 1. Non MOSO Open Space District (Map Symbol N-OS) >>

Article 1. Non MOSO Open Space District (Map Symbol N-OS)

[8.52.010 Purpose.](#)

[8.52.020 Centerline or crest of ridge defined.](#)

[8.52.030 Permitted uses.](#)

[8.52.040 Conditional uses.](#)

[8.52.050 Site standards.](#)

[8.52.060 Open space density.](#)

8.52.010 Purpose.

The purpose of this district is to identify and regulate when appropriate, lands that are in public ownership or are subject to an open space easement, development rights dedication or other enforceable restriction that regulates the use of the property from being utilized as other lands in private ownership. The district may also be used to identify and regulate residual parcels and those non-MOSO open space lands that have low development capability and are characterized by such factors as steep slopes, unstable soils, fault zones or high visibility.

(Ord. 173 § 1 (part), 1998: prior code § 8-3801)

8.52.020 Centerline or crest of ridge defined.

"Centerline" or "crest of a ridge" means the line running along the highest portion of the ridge.

(Ord. 173 § 1 (part), 1998: prior code § 8-3802)

8.52.030 Permitted uses.

Agriculture and buildings accessory thereto.

(Ord. 173 § 1 (part), 1998: prior code § 8-3803)

8.52.040 Conditional uses.

In this district, each of the following uses is permitted on the issuance of a conditional use permit:

- A. Single-family residential dwelling;
- B. Public or private park or nonprofit recreational facility, playground, trail and related facility;
- C. Public or private school;
- D. Accessory uses and structures incidental to conditional uses.

(Ord. 173 § 1 (part), 1998: prior code § 8-3804)

8.52.050 Site standards.

The precise site standards for the development of property in this district shall be prescribed at the time the reviewing authority approves the issuance of a conditional use permit. These standards shall fix the density, lot area, frontage, front, side and rear setbacks, building height and site coverage requirements. The site standards shall be based upon site constraints.

(Ord. 173 § 1 (part), 1998: prior code § 8-3805)

8.52.060 Open space density.

The densities in this district shall be as determined appropriate by the planning commission based upon site constraints of the property and in compliance with the applicable goals and policies of the general plan.

(Ord. 173 § 1 (part), 1998: prior code § 8-3806)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.52 - MOSO AND NON-MOSO OPEN SPACE DISTRICTS >> Article 2. MOSO Open Space District (Map Symbol OS-M) >>

Article 2. MOSO Open Space District (Map Symbol OS-M)

[8.52.070 Purpose.](#)

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[8.52.100 Permitted uses.](#)

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[8.52.120 Processing requirements.](#)

[8.52.130 Site standards for conditional uses.](#)

[8.52.140 MOSO open space density.](#)

8.52.070 Purpose.

The purpose of this district is to identify and regulate when appropriate, lands that are in public ownership or are subject to an open space easement, development rights dedication or other enforceable restriction that regulates the use of the property from being utilized as other lands in private ownership. The district may also be used to identify and regulate residual parcels and those lands that have low development capability and are characterized by such factors as steep slopes, unstable soils, fault zones or high visibility.

(Ord. 173 § 1 (part), 1998: prior code § 8-3811)

8.52.080 Definitions.

For the purpose of this district and to comply with the requirements of the voter approved initiative called the "Moraga open space ordinance," the following definitions apply:

"Centerline" or "crest of ridge" means the line running along the highest portion of a ridge.

"High risk area" means an area determined to be high risk in accordance with Part II (D) of the "Guidelines for the Interpretation and Implementation of the Moraga Open Space Ordinance - Measure A," adopted as Resolution 14-92 by the town council on February 12, 1992.

"Major ridgeline" means the centerline or crest of the ridges known as Indian Ridge, Sanders Ridge, Mulholland Hill (Mulholland Ridge), and Campolindo Ridge, where the centerline is located in lands under designated MOSO open space on the general plan diagram and zoning map.

"Minor ridgeline" means the centerline or crest of a ridge including lateral ridges, other than those identified as "major ridgelines", where the crest is eight hundred (800) feet above mean sea level and within an area designated MOSO open space on the general plan diagram and zoning map.

"MOSO open space" are lands designated MOSO open space (OS-M) in the general plan diagram and zoning map. They are referred to as "Open Space Lands" in the voter approved MOSO Initiative, included in the general plan as Exhibit A.

"Moraga open space ordinance (MOSO)" refers to Measure A, a voter-approved initiative adopted at the general municipal election held April 8, 1986.

"Slope calculation" means a methodology for calculating slope in accordance with Part II(A)(3) and II(C) of the "Guidelines for the Interpretation and Implementation of the Moraga Open Space Ordinance - Measure A," adopted as Resolution 14-92 by the Town Council on February 12, 1992.

(Ord. 173 § 1 (part), 1998: prior code § 8-3812)

8.52.090 MOSO open space.

Notwithstanding any other provision of the ordinances of the town, all land within the town of Moraga designated "public open space-study" or "private open space" (hereinafter referred to as "MOSO open space") in the Moraga general plan as such plan existed on October 16, 1985, or which is designated such by the Moraga open space ordinance is zoned "MOSO open space" (OS-M).*

(Ord. 173 § 1 (part), 1998: prior code § 8-3813)

* *Wording taken from Section (3)(d) of the Moraga open space ordinance.*

8.52.100 Permitted uses.

In this district, the following use is permitted provided the use is in compliance with the Moraga open space ordinance: agriculture and buildings accessory thereto.

(Ord. 173 § 1 (part), 1998: prior code § 8-3814)

8.52.110 Conditional uses.

In this district, each of the following uses is permitted on the issuance of a conditional use permit, provided such use is in compliance with the Moraga open space ordinance:

- A. Single-family residential dwelling;
- B. Public or private park or nonprofit recreational facility, playground, trail and related facility;
- C. Public or private school;

D. Accessory uses and structures incidental to conditional uses.

(Ord. 173 § 1 (part), 1998: prior code § 8-3815)

8.52.120 Processing requirements.

In this district, the uses identified in [Section 8.52.110](#) are permitted on the issuance of a conditional use permit. However, the following conditional use permit applications shall comply in their entirety with the processing requirements of the planned development district contained in [Chapter 8.48](#) as may be amended:

- A. A conditional use permit application for a single-family residential development which proposes a subdivision to create five or more lots; or
- B. A conditional use permit application submitted concurrently with development plan requirements of the planned development district when a parcel(s) of land is partly designated MOSO open space and planned development district.

(Ord. 173 § 1 (part), 1998: prior code § 8-3816)

8.52.130 Site standards for conditional uses.

The precise site standards for the development of property in this district which requires a conditional use permit shall be prescribed at the time the reviewing authority approves the issuance of a conditional use permit. These standards shall fix the lot area, frontage, front, side and rear setbacks, building height and site coverage requirements. The site standards for all MOSO open space (OS-M) lands shall be based upon the development constraints imposed by the Moraga open space ordinance on lands within this district.

(Ord. 173 § 1 (part), 1998: prior code § 8-3817)

8.52.140 MOSO open space density.

Any development on such open space lands shall be limited to a maximum density of one dwelling unit per twenty (20), ten (10), or five acres, but in no case shall density on such lands exceed one dwelling unit per five acres.*

Areas identified as "high risk" areas, as defined in the Moraga open space ordinance (MOSO) shall be limited to a maximum density of one dwelling unit per twenty (20) acres. The town council may authorize density transfers from MOSO open space lands to other lands pursuant to the procedures set forth in [Chapter 8.104](#); provided, that in no event shall dwelling units be transferred to MOSO open space lands or to high risk areas. In determining the appropriate density transfer credit applicable to any such MOSO open space lands, the town council may authorize the transfer of a net density of no greater than one dwelling unit per ten (10) acres.*

Development shall be prohibited on slopes with grades of twenty (20) percent or greater and on the crests of minor ridgelines. The town council shall reduce the allowable densities on slopes of less than twenty (20) percent through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of the Moraga open space ordinance (MOSO) the term "minor ridgelines" means any ridgelines, including lateral ridges, with an elevation greater than eight hundred (800) feet above mean sea level.*

2. Development shall be prohibited on minor ridgelines immediately adjacent to and extending into MOSO open space lands if slopes exceed twenty (20) percent and elevation of the ridges is greater than eight hundred (800) feet above mean sea level.*
3. The densities in MOSO open space lands shall be as determined appropriate by the planning commission after a review of the site constraints of [Section 8.52.130](#) above and in

compliance with the applicable goals and policies of the Moraga general plan and the requirements of the Moraga open space ordinance.

(Ord. 173 § 1 (part), 1998: prior code § 8-3818)

* *Wording taken from Section (3)(d) of the Moraga open space ordinance.*

APPENDIX F

CHAPTER 8.48 (PLANNED DEVELOPMENT DISTRICT)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.48 PLANNED DEVELOPMENT DISTRICT >>

Chapter 8.48 PLANNED DEVELOPMENT DISTRICT

Sections:

[8.48.010 Purpose.](#)

[8.48.020 Uses permitted.](#)

[8.48.030 Size requirement.](#)

[8.48.040 Development standards for single-family residential uses in planned development district.](#)

[8.48.050 Density transfer.](#)

[8.48.060 Development standards.](#)

[8.48.070 Rezoning procedure and limitation on uses.](#)

[8.48.080 Stages of development plan approval.](#)

[8.48.090 Conceptual development plan approval.](#)

[8.48.100 Findings required to approve conceptual development plan.](#)

[8.48.110 General development plan approval.](#)

[8.48.120 Precise development plan approval.](#)

[8.48.130 Additional requirements to meet purpose of district.](#)

[8.48.140 Changes in approved development plans.](#)

[8.48.150 When building permit may be issued.](#)

8.48.010 Purpose.

The council finds that applying flexible regulations to a large scale integrated development provides an opportunity for cohesive design while applying conventional regulation designed for individual lot development can result in a monotonous and stultified neighborhood. The planned development district is intended to allow diversification in the relationship of uses, building structures, lot sizes and open spaces while ensuring compliance with the general plan and the intent of this code in requiring adequate standards necessary to satisfy the requirements of the public health, safety and general welfare.

The council further finds that in order to carry out the general plan, all parcels of a size of ten (10) acres or more shall be classified to this land use designation.

(Prior code § 8-3601)

8.48.020 Uses permitted.

Except in the MOSO open space district any land use may be authorized if it is in harmony with other authorized uses and serves to fulfill the function of the planned development district while complying with the general plan.

(Ord. 173 § 2, 1998; prior code § 8-3602)

8.48.030 Size requirement.

- A. Each parcel of land ten (10) acres in size or greater shall be classified planned development district.
- B. A parcel of land less than ten (10) acres may be classified to a planned development district if it is of sufficient size to be planned and developed in a manner consistent with this chapter and the

purposes and intent of the general plan.

(Prior code § 8-3603)

8.48.040 Development standards for single-family residential uses in planned development district.

- A. When the planned development district consists of single-family residential use, it shall be designated (depending upon the density applicable to it) either:
1. N-OS-PD;
 2. 1-PD;
 3. 2-PD;
 4. 3-PD;
 5. 6-PD.
- B. Except as provided in subsection D of this section the minimum lot sizes shall be as designated on the following table:

Land Use Classification	Minimum Lot Size
N-OS-PD	40,000 sq. ft.
X-PD*	5, 10, 20 or more acres depending upon the development standards imposed under Section 8-3606
1-PD	30,000 sq. ft.
2-PD	20,000 sq. ft.
3-PD	10,000 sq. ft.
6-PD	10,000 sq. ft.**

* Any planned development districts.

** Except for condominium development as provided in [Section 8.32.060\(C\)](#).

- C. The single-family residential development shall consist of detached structures except as follows:
1. Where the land use classification permits two dwelling units per acre or three dwelling units per acre, up to ten (10) percent of the units may be clustered in building groups of not more than three units each on lots less than ten thousand (10,000) square feet.
 2. Where the land use classification permits three dwelling units per acre, the limitation in subsection (C)(1) of this section as to the percent of clustered units and the number of units in a building group may be exceeded if the development is on land contiguous to an existing commercial or multiple residential developed area and the reviewing authority finds that the design is compatible with that existing contiguous development.
- D. The size of lots in a planned development district designated 1-PD or 2-PD may be varied as follows so long as the aggregate density does not exceed the total allowable density:

Lot Size	% of Total Lots
20,000 sq. ft.	45% (minimum)
15,000 sq. ft.	45% (maximum)
10,000 sq. ft.	10% (maximum)

- E. Where density transfer or density bonus is not applicable, any percentage category may be

increased by no more than twenty (20) percent of the specific percentage listed above with the approval of the town so long as the total allowable lots are not increased in the aggregate.

- F. Additional ten thousand (10,000) square feet or larger lots may be allowed beyond the percentages listed in the table to accommodate density transfer or a density bonus.
- G. The minima for the lot width, lot depth and front, side and rear setbacks for each single-family residential parcel within a planned development district shall be the same minima for a single-family residential parcel specified in [Chapter 8.28](#) having a corresponding minimum parcel size. However, these minima may be varied as provided in [Section 8.48.060](#)

(Ord. 173 §§ 3, 4, 1998; prior code § 8-3604)

8.48.050 Density transfer.

The density of land designated on the general plan as "public open space - study" which is zoned to the planned development district shall be determined by the use of density transfer and the planned development district process.

(Prior code § 8-3605)

8.48.060 Development standards.

- A. The development standards including but not limited to area, coverage, density, building design and arrangement, setbacks, parking, circulation, access, lighting, fencing, landscaping and screening are governed by the standards of the land use district which the planning commission finds is most similar in nature and function to the use or uses proposed. These standards shall be prescribed as a part of the development plan approval process. The planning commission may vary the development standards and impose additional standards when it determines that it is desirable to do so to encourage a desirable environment, protect and maintain property values and community amenities and foster and maintain the health, safety and general welfare of the town.
- B. In varying the development standards as provided in subsection A of this section, the authority to do so shall be used only so as to be consistent with the intent of the general plan to permit remaining land holdings to be developed primarily as conventional detached single-family subdivisions.

(Prior code § 8-3606)

8.48.070 Rezoning procedure and limitation on uses.

Each parcel which is greater than ten (10) acres in size shall be zoned planned development district. However, where the parcel proposed for planned development district is less than ten (10) acres in size, it may not be zoned until the planning commission approves a conceptual development plan as provided in [Section 8.48.100](#).

After the effective date of the ordinance zoning land to the planned development district, no grading, land clearing, construction or other alteration of the property may take place until all stages of the development plan procedure are complete and such activity is in accordance with the precise development plan.

(Prior code § 8-3607)

8.48.080 Stages of development plan approval.

There are three stages of development plan approval in the planned development district:

- A. Conceptual development plan;
- B. General development plan;

C. Precise development plan.

(Prior code § 8-3608)

8.48.090 Conceptual development plan approval.

- A. The first development stage in the planned development district procedure is approval of a conceptual development plan.
- B. The applicant shall submit a proposed conceptual development plan for approval. The proposed conceptual development plan shall include the following information presented in the form of textual material and a general schematics:
1. Existing topography and anticipated grading;
 2. Land uses, building intensities, residential density analysis and estimated population;
 3. Circulation pattern for vehicular and pedestrian ways and its relation to public and private streets;
 4. Parks, playgrounds, trails, school sites and other open spaces;
 5. Conceptual drawings showing the architectural design theme proposed for the buildings;
 6. Delineation of the units to be constructed in progression, if any;
 7. Relation of the use to future land use in the surrounding area;
 8. An analysis of the project in relation to the general plan;
 9. A preliminary evaluation of the public economic costs associated with the project;
 10. A preliminary evaluation of the impact on off and on-site public services and facilities.
- C. Notice shall be given and the planning commission shall hold public hearings upon the conceptual development plan in the same manner followed for the zoning of the land to the planned development district. In the case of a parcel of land less than ten (10) acres, the process for conceptual development plan approval and rezoning shall be conducted together.
- D. An appeal from the planning commission decision may be taken to the town council in accordance with the procedure for appeal from a planning commission decision upon an application for a conditional use permit. If no appeal is taken the decision of the planning commission is final.

(Prior code § 8-3609)

8.48.100 Findings required to approve conceptual development plan.

To approve a conceptual development plan the planning commission must find that:

- A. The total development and each unit of development can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that this objective will be attained and that the uses proposed will not be detrimental to present and potential surrounding uses;
- B. The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the development;
- C. Development other than single-family residential can be properly justified and is consistent with the general plan;
- D. Any proposed exception from standard ordinance requirements is warranted by the design and amenities incorporated in the conceptual development plan, in accord with adopted policy of the planning commission and town council;
- E. The area surrounding the development can be planned and zoned in coordination and substantial compatibility with the proposed development;
- F. The development conforms with the general plan; and
- G. Existing or proposed utility services will be adequate for the population densities proposed.

(Prior code § 8-3610)

8.48.110 General development plan approval.

- A. The second development stage in the planned development district procedure is approval of the general development plan.
- B. The applicant shall file a general development plan for approval. The general development plan shall include:
 - 1. A sepia map with ten (10) prints of a survey of the property, including specimen trees and tree masses, structures, streets, easements, utility lines, and land use;
 - 2. A sepia map with ten (10) prints of a general development plan in conformity with the approved conceptual plan showing the appropriate information from the conceptual development plan and the approximate location and proposed density of dwelling units, non-residential building intensity, and land use considered suitable for adjacent property;
 - 3. A schedule for the development of units to be constructed in progression;
 - 4. A description of the design principles for buildings and streetscapes;
 - 5. Number of acres in the project, the percent designated for various uses, the number of dwelling units proposed by type of dwelling, estimated residential population by type of dwelling;
 - 6. Estimated nonresidential population;
 - 7. Economic justification for nonresidential uses;
 - 8. Standards for height, open space, building intensity, population density, and public improvements proposed for each unit of development;
 - 9. If appropriate, information necessary for evaluation and assignment of fire zone designations, including type of construction, building height and area, proposed distances between buildings and distances to property lines;
 - 10. Evidence that the applicant has sufficient control over the land to carry out the proposed plan;
 - 11. Engineering feasibility studies;
 - 12. Any additional information or drawings which may be required by the planning commission.
- C. The general development plan shall be submitted to the planning commission for approval in accordance with the procedure required for issuance of a conditional use permit. The planning commission shall approve, approve with conditions or disapprove the general development plan.
- D. The application for approval of a tentative subdivision may be together with the general development plan.
- E. An appeal from the planning commission decision may be taken to the town council in accordance with the procedure for appeal from a planning commission decision upon an application for a conditional use permit. If no appeal is taken the decision of the planning commission is final.
- F. The general development plan may be modified by submitting an application for modification according to the same procedure required in the initial review and approval of the general development plan. An application for modification may be approved only after it has been found that it does not deviate from the intent and purpose of the district and the conceptual development plan as approved.

(Prior code § 8-3611)

8.48.120 Precise development plan approval.

- A. The third development stage in the planned development district is approval of the precise development plan.
- B. The applicant shall file a precise development plan with the planning director for approval. The precise development plan shall include:

1. A site plan, showing each building, functional use areas, circulation and their relationship;
 2. Preliminary building plans, including floor plans and exterior elevations;
 3. Landscaping plans;
 4. Engineering plans, including site grading, street improvements, drainage and public utility extensions.
- C. The planning director shall refer the precise development plan to the planning commission together with recommendations by any other component member of the planning agency. The planning commission shall review the precise development plan and shall approve, approve with condition or disapprove. The action of the planning commission is final unless appealed to the town council.
- D. An appeal from the planning commission decision may be taken to the town council in accordance with the procedure for appeal of a planning commission decision upon an application for a conditional use permit. If no appeal is taken the decision of the planning commission is final.

(Prior code § 8-3612)

8.48.130 Additional requirements to meet purpose of district.

The reviewing body may impose such terms, conditions and requirements to the approval of each development plan as it finds necessary to carry out the purpose and intent of the planned development district, to guarantee the preservation of open space and to ensure the accomplishment at scheduled times of the public improvements.

(Prior code § 8-3613)

8.48.140 Changes in approved development plans.

Unless provision is made in the approved conceptual, general or precise development plan for change without approval by the reviewing body, a change may be made only by following the procedure required for initial review and approval. However, the planning director may make minor changes pertaining to siting which are in accord with the intent of the previously approved development plans. The planning director may refer minor changes he proposes to make to the design review board.

(Prior code § 8-3614)

8.48.150 When building permit may be issued.

A building permit for an unauthorized use in the planned development district may be issued only after the applicant has obtained approval of each stage of the development plan process and has met the other requirements of this code and state law governing the issuance of a building permit.

(Prior code § 8-3615)

APPENDIX G

CHAPTER 8.128 (RIDGELINE PROTECTION)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.128 RIDGELINE PROTECTION >>

Chapter 8.128 RIDGELINE PROTECTION

Sections:

[8.128.010 Findings and purpose.](#)

[8.128.020 Development on ridgelines.](#)

8.128.010 Findings and purpose.

- A. The town council finds that:
 - 1. Within the town there are hills and ridges constituting significant natural topographical features of the community;
 - 2. The hillsides and ridgelines contain appropriate routes for equestrian and pedestrian trails which can be acquired by the town to its greatest advantage through dedications.
- B. The purpose of this chapter is to:
 - 1. Control the scarring and cutting ridgelines and steep slopes;
 - 2. Regulate the development of ridgeline areas by imposing standards for improvements.

(Prior code § 8-5701)

8.128.020 Development on ridgelines.

- A. Development shall be prohibited within five hundred (500) feet of the centerline of a major ridge (as defined in subsection B of this section) located in an area designated on the general plan as "private open space" or "public open space-study" and development shall be subject to strict design review control in all other ridge areas. A road, together with attendant underground utilities may cross a ridge, if the planning commission finds that the crossing is necessary for the orderly development of the town and does not otherwise conflict with the municipal code.
- B. For the purpose of this section, the centerline of a major ridge is the line running along the highest portion of the ridge located within those areas designated on the general plan as "private open space" or "public open space-study."

(Prior code § 8-5702)

APPENDIX H

CHAPTER 8.136 (SLOPE DENSITY)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.136 SLOPE DENSITY >>

Chapter 8.136 SLOPE DENSITY

Sections:

- [8.136.010 Findings and declarations of intent.](#)
- [8.136.020 Definitions and calculations.](#)
- [8.136.030 Applicability and relation to other land.](#)
- [8.136.040 Uses of hillside land.](#)
- [8.136.050 Application for hillside development permit.](#)
- [8.136.060 Area required for lots on hillside land.](#)
- [8.136.070 Standards for review and approval of hillside development permit.](#)
- [8.136.080 Additional development requirements.](#)
- [8.136.090 Dedication.](#)

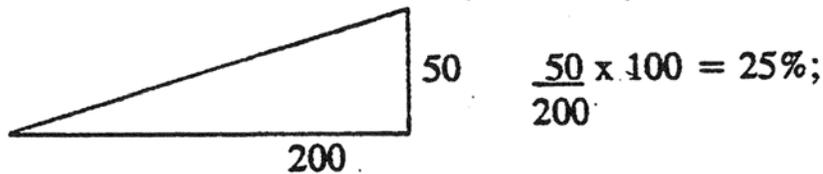
8.136.010 Findings and declarations of intent.

- A. The town council finds that:
 - 1. It is desirable to require in hill areas an alternative approach to traditional and conventional flat land practices of residential development, to minimize grading and cut and fill operations consistent with the retention of the natural character of the hill areas, to achieve land use densities that preserve land values for owners but which will at the same time not adversely affect the significant natural features of the hill areas, and to preserve the predominant views both from and of the hill areas;
 - 2. The retention of hillsides in as near a natural state as is feasible is important for the maintenance of community values.
- B. The purposes of this chapter are to:
 - 1. Maintain the suburban character and beauty of the town by preserving its open and natural topographic features;
 - 2. Minimize soil erosion and slides and potential residual damage to life or property associated with involuntary and seismic-induced earth movement;
 - 3. Control the scarring and cutting of hillsides;
 - 4. Limit the development of hillsides so that the foregoing purposes are achieved;
 - 5. Regulate the development of hillside areas by providing for the imposition of standards for streets, trails and other improvements consistent with these purposes.

(Prior code § 8-5901)

8.136.020 Definitions and calculations.

- A. In this chapter:
 - 1. "Hillside land" is land which has a slope of twenty (20) percent or greater;
 - 2. "Percent of slope" is the vertical drop divided by the horizontal distance multiplied by 100.



3. Average percent slope "S" is computed on net area of a parcel by the following formula:

$S = \frac{0.002296 \text{ I L}}{A}$	or	$S = \frac{100 \text{ I L}}{a}$

Where
 S = average percent slope;
 I = contour interval in feet;
 L = summation of length of all contours in feet;
 A = area in acres of parcel being considered;
 a = area in square feet of parcel being considered.

(Prior code § 8-5902)

8.136.030 Applicability and relation to other land.

- A. This chapter applies to all hillside land as defined in [Section 8.136.020\(A\)\(1\)](#).
- B. Both the regulation of the land use district to which the land is classified and this chapter apply to hillside land. If there is a conflict between this chapter and the land use regulations which apply by virtue of zoning, this chapter and the regulations, requirements, and conditions imposed under authority of this chapter control.

(Prior code § 8-5903)

8.136.040 Uses of hillside land.

- A. Permitted Uses. The uses permitted on hillside land are the same uses permitted in the land use district to which the land is classified.
- B. Development Prohibited Without Permit. No person may grade, clear, construct upon or alter hillside land without approval granted under this chapter.

(Prior code § 8-5904)

8.136.050 Application for hillside development permit.

- A. Requirement for Permit. A person who desires to erect a structure or to grade or improve hillside land must receive a hillside development permit. The application may be combined with an application for a building permit, conditional use permit, tentative subdivision map approval or other land use entitlement.
- B. Application and Information. An applicant shall file an application on a form provided by the town. The applicant shall submit slope calculations and a map showing contour intervals for the parcel. The map shall be at a scale which enables the reviewing body to act upon the application.
- C. Designation of Reviewing Body. The reviewing body is the authority charged with the duty of passing upon any land use entitlement. In the case of an application which requires only building permit approval, the reviewing body is the design review board. The reviewing body may refer the

application to another component unit of the planning agency for review and recommendation.

(Prior code § 8-5905)

8.136.060 Area required for lots on hillside land.

The minimum lot area shall not be less than that prescribed by the general plan. However, the required lot areas may be increased above the minimum when the reviewing body finds that it is necessary to do so because of the slope in order to assure that there will be a suitable building site for the approved type of residential building. In determining whether it is necessary to increase the lot area required above the minimum prescribed by the general plan, the reviewing body shall apply the standards set forth in [Section 8.136.070](#). As a general rule, larger lots should be on steeper slopes and smaller lots should be on flatter land.

(Prior code § 8-5906)

8.136.070 Standards for review and approval of hillside development permit.

- A. In reviewing an application the reviewing body shall consider the following factors: slope, soil instability, drainage, soil characteristics, seismic factors, existing and future residential development, view shed, access, potential traffic congestion, fire risk, noise, glare, wildlife, dust and impact on existing vegetation.
- B. The site plan shall provide an appropriate living space on a site consistent with the site's constraints in relation to the review and approval criteria set forth in this section.
- C. A building site which is adjacent to a steep slope not abutting a ridge shall be located at the lowest possible elevation on the site.
- D. Residential development that is adjacent to a steep downslope shall be designed so that the principal and accessory structures blend with the topography.

(Prior code § 8-5907)

8.136.080 Additional development requirements.

The reviewing body may impose additional restrictions or requirements or both on a parcel of hillside land if it finds that the parcel requires protection because of its prominence and location or determines that there may be exceptional hazards to its development. These additional restrictions or requirements must be consistent with the purposes of this chapter.

(Prior code § 8-5908)

8.136.090 Dedication.

The reviewing body may require as a condition of approval the dedication of an open space easement, development rights or similar enforceable restrictions related to any open space area to be excluded from development.

(Prior code § 8-5909)

APPENDIX I

CHAPTER 8.132 (SCENIC CORRIDORS)

Moraga, California, Code of Ordinances >> - SUPPLEMENT HISTORY TABLE >> Title 8 - PLANNING AND ZONING >> Chapter 8.132 SCENIC CORRIDORS >>

Chapter 8.132 SCENIC CORRIDORS

Sections:

[8.132.010 Purpose.](#)

[8.132.020 Area subject to regulations.](#)

[8.132.030 Additional requirements.](#)

[8.132.040 Structures and features subject to regulation.](#)

[8.132.050 Development guidelines.](#)

[8.132.060 Adoption of specific standards.](#)

[8.132.070 Approval procedures for property less than ten acres.](#)

[8.132.080 Approval procedure for property ten acres or more.](#)

[8.132.090 Findings and appeal.](#)

8.132.010 Purpose.

The purpose of this chapter is to provide guidelines and approval procedures for the development and improvement of land located within major scenic corridors designated by the scenic highways element of the general plan.

(Prior code § 8-5801)

8.132.020 Area subject to regulations.

- A. Land located within five hundred (500) feet of a major scenic corridor as designated in the general plan is subject to the regulations set forth in this chapter.
- B. The following routes and corridors are designated in the general plan as major scenic corridors:
 1. St. Mary's Road;
 2. Canyon Road;
 3. Moraga Way;
 4. Moraga Road;
 5. Rheem Boulevard;
 6. Camino Pablo;
 7. Bollinger Canyon Road;
 8. Donald Drive (along ridgeline of Mulholland Hill).

(Prior code § 8-5802)

8.132.030 Additional requirements.

The requirements of this chapter are imposed in addition to other rules and regulations of the municipal code.

(Prior code § 8-5803)

8.132.040 Structures and features subject to regulation.

- A. The following structures and features in areas described in [Section 8.132.020](#) are subject to regulation under this chapter by the design review board:
1. A building;
 2. Exterior addition to an existing building;
 3. A wall, fence or tower three feet or more in height above existing ground or above finish grade after grading;
 4. A sign;
 5. Traffic signs and signals;
 6. Public utility installations as described in [Section 8.72.180](#)
 7. Landscaping which covers an area of two acres or more or landscaping as referred by the town planner; and
 8. Any other prominent objects such as sculptures and sculptural elements.
- B. Exceptions to the requirements of subsection A of this section may be granted by the zoning administrator for the following:
1. A real estate sign which conforms to the town sign regulations and which is installed temporarily for the sale or lease of a property;
 2. A building, exterior addition, wall fence or sign which is not visible from the roadway of a scenic corridor;
 3. Temporary special event or promotional signs as may be permitted under [Section 8.88.240](#)
 4. A sign defined as an exempt sign under Moraga Municipal Code [Section 8.88.160](#)
 5. A sign that is determined by the design review administrator to conform to the design guidelines adopted by the planning commission.

(Ord. 201 § 1, 2004; prior code § 8-5804)

8.132.050 Development guidelines.

- A. The objective of this chapter is to develop corridor aesthetics in keeping with those of a residential community.
- B. Development or improvements within a major scenic corridor and subject to regulation under [Section 8.132.040](#) shall comply with the following guidelines:
1. The design and location of each building and landscaping shall create a compatible visual relationship with surrounding development and with the natural terrain and vegetation. Road widths and road configurations should be considered as part of the design element.
 2. Buildings and landscaping shall be so located that each does not create a walled effect along the scenic corridor. Setbacks and building heights may be made more restrictive than otherwise permitted by the applicable zoning regulations. In general, the greater the mass or bulk, the greater the setback should be. The positioning of buildings shall be varied in order to create a complimentary relationship between mass and void.
 3. Existing topography, vegetation and scenic features of the site shall be retained and incorporated into the proposed development wherever possible. Manmade structures, as a visual element in the scenic corridor, should be secondary in importance to natural growth.
 4. Each structure or feature reviewable under this chapter shall be limited to scale and siting to reduce visual dominance or obstruction of existing landforms, vegetation, water bodies and adjoining structures.
 5. Each structure shall be constructed, painted and maintained and all planted material shall be planted and maintained to complement and enhance scenic views and the natural landscape.
 6. Unnatural and conflicting aesthetic elements shall be eliminated to the extent feasible consistent with safety requirements (for example, retain street lighting, but place wiring underground). Where it is not possible to locate such a feature out of view, it must be located

- in an area so as to minimize visibility from a scenic corridor or screened from view by planting, fence wall or berm. Where the screen consists of a fence, wall or berm, it may not be higher than six feet. Screening shall consist of primarily natural materials rather than solid fencing. Preference shall be given vegetation in conjunction with a low earth berm.
7. Lighting shall be compatible in type, style and intensity to the surrounding elements and not cause undue or aggravating disruption, glare or brightness.
 8. Grading or earth-moving shall be planned and executed in such manner that final contours appear consistent with a natural appearing terrain. Finished contours shall be planted with plant materials native to the area so that minimum care is required and the material is visually compatible with the existing ground cover.
 9. The number of access points to and from the scenic corridor shall be minimized consistent with safety and circulation needs.
 10. Parking on the scenic corridor roadways should be minimized.
 11. Each specimen tree and each grove of trees may be approved for removal only if the tree or grove of trees is unsafe or diseased or to provide the smallest cleared area necessary to locate an approved road or structure on the site under guidelines of the tree preservation ordinance. Selective clearing of vegetation may be permitted upon review and approval by the design review board.
 12. In applying these guidelines, consideration shall be given to protecting the privacy and security requirements of individual property owners who seek approval for improvements under this chapter.

(Prior code § 8-5805)

8.132.060 Adoption of specific standards.

The design review board may adopt specific standards applicable to scenic corridors.

(Prior code § 8-5806)

8.132.070 Approval procedures for property less than ten acres.

The procedures in this section apply to owners or developers of property less than ten (10) acres in size.

Before a structure or feature under subsection [8.132.040\(A\)](#) is constructed or installed, the applicant shall submit a plan or detailed description of the proposed structure or feature to the design review board. The design review board shall review the proposed improvement and shall: (1) approve; (2) disapprove; or (3) approve with conditions. The applicant may proceed with the improvements, subject to complying with all other permit requirements, obtaining approval or by complying with conditions of approval.

(Prior code § 8-5807)

8.132.080 Approval procedure for property ten acres or more.

The procedures in this section apply to owners or developers of property which is ten (10) acres or more in size.

An applicant proposing to develop property within a major scenic corridor shall file and receive approval of a conceptual development plan in accordance with the procedure set forth in Sections [8.48.080](#) and [8.48.090](#).

The approval process under this chapter may be undertaken concurrently with approval under [Chapter 8.48](#).

(Prior code § 8-5808)

8.132.090 Findings and appeal.

- A. Findings. If the board denies approval under this chapter, it shall make written findings and provide a copy to the applicant within ten (10) days of the decision.
- B. Right to Appeal. A decision of the design review board may be appealed to the planning commission. The action of the planning commission may be appealed to the town council.
- C. Time and Place for Filing Appeal. A person desiring to appeal an action taken under this chapter shall do so by filing written notice of appeal with the town within ten (10) days after the decision. If no appeal is filed, the decision on the application is final.

(Prior code § 8-5809)

APPENDIX J

RELEVANT GENERAL PLAN POLICIES AND DEFINITIONS AND
RELEVANT DESIGN GUIDELINES

Relevant General Plan Policies and Definitions and Relevant Design Guidelines

The following General Plan and Design Guidelines content addresses hillside development and conservation in Moraga. Several of the policies related to hillside development were inserted into the General Plan based on adoption of the MOSO Initiative, and are verbatim from the language of the initiative. Such policies are indicated with an asterisk, below.

Guiding Principle 1: Preserve the Town’s natural setting and environmental resources, including its undeveloped ridgelines and significant open space areas.

Land Use

LU1.5 Development Densities in Open Space Lands. Notwithstanding any other provision of the General Plan, any development on lands depicted on the General Plan Diagram or by the Moraga Open Space Ordinance as “Public Open Space-Study” or “Private Open Space” (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as “high risk” areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling per twenty (20) acres.¹

LU1.6 Minimum Lot Sizes and Percentage Mix for Single Family Developments. Use the following table to establish minimum lot sizes for single family developments. The permitted mix of lot sizes may differ from the percentages indicated, provided the aggregate number of lots proposed does not exceed 100 percent of Theoretical Residential Holding Capacity, as initially calculated. Developments in areas designated Residential – 6 DUA should refer to Policy LU1.7.

[...Table and non-applicable text omitted...]

- e) “Non-MOSO Open Space or MOSO Open Space” on the General Plan Diagram may be less than 40,000 sq. ft., but not less than 15,000 sq. ft., when part of the overall project will provide outdoor recreational facilities with guaranteed permanent access to the general public. This policy may not be used to alter the density on lands designated MOSO Open Space.

LU1.8 Slope Restrictions. The soil characteristics in Moraga are prone to landslide conditions which can cause damage to property, injury to persons, public cost and inconvenience; therefore, development shall be avoided on slopes of 20 percent or steeper, but may be permitted if supported by site-specific analysis. No new residential structures may be placed on after-graded average slopes of 25 percent or steeper within the development area, except that this provision shall not apply to new residential structures on existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002. All new non-MOSO lots shall contain an appropriate development area with an average after-graded slope of less than 25%. Grading on any non-MOSO land with an average predevelopment slope of 25% or more within the proposed development area shall be prohibited unless formally approved by the Town Council where it can be supported by site-specific analysis and shown that a minimum amount of grading is proposed in the spirit of and not incompatible with all other policies of the General Plan.

¹ Wording from Section 3.c of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Moraga Open Space Ordinance.

Under the terms of the Moraga Open Space Ordinance, development is prohibited on slopes greater than 20 percent in areas designated MOSO Open Space. The Zoning Ordinance, Chapter 8.52 (Open Space District) of the Moraga Municipal Code, defines the methodology for MOSO Open Space

LU1.9 Cluster Housing to Protect Open Space. Provide for the permanent preservation of open space by allowing clustered housing designs in areas designated MOSO Open Space or Non-MOSO Open Space or Residential on the General Plan Diagram. However, do not place cluster housing in locations that are visually prominent from the scenic corridor or where it would adversely impact existing residential areas.

LU1.12 Residual Parcels as Open Space. Except in MOSO Open Space, residual parcels characterized by constraints such as geologic hazards, restricted access, an established riparian habitat, an historically significant feature or visibility from a scenic corridor shall be designated Non-MOSO Open Space. Residual parcels within designated MOSO Open Space shall remain designated MOSO Open Space as required by the Moraga Open Space Ordinance.

LU5.1 Agricultural Uses and Activities. Allow agricultural and horticultural uses and activities on lands within the Town so long as they are low intensity and compatible with adjacent uses. Examples include small orchards and cattle grazing.

Community Design

CD1.2 Site Planning, Building Design and Landscaping. Retain natural topographic features and scenic qualities through sensitive site planning, architectural design and landscaping. Design buildings and other improvements to retain a low visual profile and provide dense landscaping to blend structures with the natural setting.

CD1.3 View Protection. Protect important elements of the natural setting to maintain the Town's semi-rural character. Give particular attention to viewsheds along the Town's scenic corridors, protecting ridgelines, hillside areas, mature native tree groupings, and other significant natural features. Consideration should be given to views both from within the Town and from adjacent jurisdictions. Likewise, the Town should work with adjacent jurisdictions to protect views from Moraga to adjacent areas.

CD1.4 Canyon and Valley Areas. Protect the scenic and environmental qualities of canyon and valley areas to retain the Town's semi-rural character. Preserve both close-up and distant views of the natural hillside landscape from valley areas, and preserve significant linear open spaces in major canyons and grassland valleys with floodplain zones as the visual focus.

CD1.5 Ridgelines and Hillside Areas. Protect ridgelines from development. In hillside areas, require new developments to conform to the site's natural setting, retaining the character of existing landforms preserving significant native vegetation and with respect to ridgelines, encourage location of building sites so that visual impacts are minimized. When grading land with an average slope of 20% or more, require 'natural contour' grading to minimize soil displacement and use of retainer walls. Design buildings and other improvements in accordance with the natural setting, maintaining a low profile and providing dense native landscaping to blend hillside structures with the natural setting.

CD3.1 Designation of Scenic Corridors. Designate the following routes as the Town's "Scenic Corridors":

- a) St. Mary's Road
- b) Canyon Road
- c) Moraga Way
- d) Moraga Road
- e) Rheem Boulevard

- f) Camino Pablo
- g) Bollinger Canyon Road

CD4.4 New Residential Developments. Design new single family developments to create high quality pedestrian environments with pathways to adjacent neighborhoods and, where feasible, commercial areas. Ensure that the layout of new residential lots respect the site topography and natural features. Where feasible, avoid standard repetitive lot sizes and shapes in hillside areas.

Open Space and Conservation

OS1 Open Space Preservation

GOAL: Preservation of as much open space land as possible, including protection of all major and minor ridgelines

OS1.2 Major Ridgelines. Moraga’s major ridgelines are highly visible throughout the Town and are included within areas designated as MOSO Open Space on the General Plan Diagram.

***OS1.3 Development Densities in Open Space Areas.** Any use of or development on lands designated on the General Plan Diagram or by the Moraga Open Space Ordinance as ‘Public Open Space-Study’ or ‘Private Open Space’ (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as ‘High Risk’ areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. Transfers of Development Rights (referred to as ‘Density Transfer’ as in MOSO) from any open space designation to other lands shall be encouraged; provided that in no event shall dwelling units be transferred to another open space designation or to ‘High Risk’ areas. The Town Council shall identify ‘High Risk’ areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions.²

OS1.4 Private Ownership and Use of Open Space Areas. Areas designated on the General Plan Diagram as MOSO Open Space or Non-MOSO Open Space may be retained in private ownership, may be used for such purposes as are found to be compatible with the corresponding open space designation and may or may not be accessible to the general public.

OS1.5 Development on Slopes and Ridgelines in Open Space Lands. In MOSO Open Space, development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crests of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of this paragraph the term ‘minor ridgeline’ means any ridgeline, including lateral ridges, with an elevation greater than 800 ft.

OS1.6 Transfer of Development Rights (TDRs). Encourage the transfer of development rights from Open Space lands to centrally located ‘receiving areas.’ In no event shall dwelling units be transferred to Open Space lands or to ‘High Risk’ areas, as identified by the Town Council based on soil stability, slope considerations, accessibility and drainage conditions.

OS1.8 Open Space Access and Recreational Use. Where appropriate and consistent with other General Plan goals and policies, areas with a MOSO Open Space or Non- MOSO Open Space designation on the General Plan Diagram should be made available to the public for recreational use.

² Wording taken from Section 3.a of the Moraga Open Space Ordinance.

OS1.9 Open Space Management. Maintain and manage public-use open space areas in keeping with community priorities, relevant deed restrictions, budget constraints, hazard and risk considerations, and best management practices. Develop management plans for open space areas as necessary, including the Mulholland Ridge open space area.

OS1.10 Open Space for Grazing. Allow use of open space land for farm animals when such use does not have adverse impacts.

Public Safety

PS1.1 Assessment of Risk. Include an environmental assessment of natural hazard risks in development proposals to permit an adequate understanding of those risks and the possible consequent public costs in order to achieve a level of "acceptable risk." Public costs should be expressed in terms of effect on life and property.

PS1.3 High Risk Areas. Prohibit development in 'high risk' areas, which are defined as being (1) upon active or inactive slides, (2) within 100 feet of active slides, as defined in Figure 4 of the Safety Element Appendix, or (3) at the base of the centerline of a swale, as shown on the Town's Development Capability Map.

PS1.4 Moderate Risk Areas. Avoid building in 'moderate risk' areas, which are defined as being (1) those areas within 100 yards of an active or inactive landslide, as defined by the Town's Landslide Map, or (2) upon a body of colluvium, as shown in Figure 2 of the Public Safety Element background information. Where it is not possible to avoid building in such areas entirely, due to parcel size and configuration, limit development accordingly through density regulations, subdivision designs that cluster structures in the most stable portions of the subdivision, site designs that locate structures in the most stable portion of the parcel, and specific requirements for site engineering, road design, and drainage control.

PS3.12 Hazardous Fire Areas. Apply special fire protection standards to all new developments in hillside, open space, and wildland interface areas. Fire prevention measures such as removal of dry grass and brush, landscaping with fire and drought-resistant vegetation, provision of adequate water supplies and access for fire-fighting vehicles shall be required to reduce the risk of wildland fires. All new structures located in hazardous fire areas shall be constructed with fire resistant exterior materials consistent with applicable building codes and standards.

PS4.1 Development in Geologic Hazard Areas. Prohibit development in geologically hazardous areas, such as slide areas or near known fault lines, until appropriate technical evaluation of qualified independent professional geologists, soils engineers and structural engineers is completed to the Town's satisfaction. Allow development only where and to the extent that the geologic hazards have been eliminated, corrected or mitigated to acceptable levels.

PS4.2 Development Review for Geologic Hazards. Require development proposals to address geologic hazards, including but not limited to landslide, surface instability, erosion, shrink-swell (expansiveness) and seismically active faults. Technical reports addressing the geologic hazards of the site shall be prepared by an independent licensed soil engineer, geologist and/or structural engineer, approved by the Town and at the expense of the developer. All technical reports shall be reviewed by the Town and found to be complete prior to approval of a development plan.

PS4.3 Development Densities in Hazard Areas. Minimize the density of new development in areas prone to seismic and other geologic hazards.

PS4.5 Public Facilities and Utilities in Landslide Areas. Prohibit the financing and construction of public facilities or utilities in potential landslide areas.

PS4.10 Grading. Grading for any purpose whatsoever may be permitted only in accordance with an approved development plan that is found to be geologically safe and aesthetically consistent with the Town's Design Guidelines. Land with a predevelopment average slope of 25% or greater within the development area shall not be graded except at the specific direction of the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of all other policies of the General Plan. The Town shall develop an average slope limit beyond which grading shall be prohibited unless grading is required for landslide repair or slope stabilization.

PS4.11 Retaining Walls. Discourage the use of retaining walls and other man-made grading features to mitigate geologic hazards, permitting them only when:

Required to decrease the possibility of personal injury or property damage;

- Designed to blend with the natural terrain and avoid an artificial or structural appearance;
- Appropriately screened by landscaping;
- Designed to avoid creating a tunnel effect along roadways and to ensure unrestricted views for vehicular and pedestrian safety; and
- Designed to ensure minimal public and/or private maintenance costs.

PS4.12 Maintenance of Hillside Areas. Facilitate successful longterm maintenance of hillside areas held as common open space.

PS4.13 Public Information on Seismic and Geologic Safety. Educate the general public regarding methods to improve seismic safety, with specific information targeted to hillside homeowners on ways to minimize landslide and erosion hazards.

Action Plan

IP-B2 Moraga Open Space Ordinance Continue to implement the development policies and standards set forth in the Moraga Open Space Ordinance, in accordance with its Interpreting and Implementing Guidelines.

IP-B5 High Risk Areas Zoning Overlay Establish a zoning overlay district for all high-risk areas. Development may be permitted only if geologic and geotechnical investigations or project mitigations result in a very low level of risk to life and property. If so, require the project geotechnical engineer and the engineering geologist to make explicit findings that this is the case, and require review by the Town's consulting geotechnical engineer and engineering geologist. Mitigations, if necessary, should be made conditions of project approval.

IP-B6 Moderate Risk Areas Zoning Overlay Establish a zoning overlay district for all moderate-risk areas and discourage development in areas so designated. Where possible, avoid building in moderate risk areas. Where it is not possible to avoid building in such areas entirely, due to parcel size and configuration, limit development accordingly through density regulations, subdivision designs that cluster structures in the most stable portions of the subdivision, site designs that locate structures in the most stable portion of the parcel, and specific requirements for site engineering, road design, and drainage control.

IP-B7 Hillside Zoning Overlay

Establish a Hillside Zoning Overlay for all hillside sites with greater than 20 percent slope. Regulate densities and require that permitted structures be built in the most stable portion of each parcel. Prohibit the construction of new

residences on average slopes of 25 percent or more within the proposed development area of a lot, with the exception of existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002. In the case of existing lots with an average slope of 25% or more within the proposed development area, the design of all new residences shall be subject to design review approval.

IP-J1 Open Space Preservation Program

Develop and adopt a program to preserve and/or protect important open space lands and natural resource areas in accordance with the Moraga Open Space Ordinance (MOSO). Areas to protect include:

- Major and minor ridgeline areas
- Steep slope areas
- Significant wildlife and waterway areas
- Agricultural lands
- Scenic areas

The program should identify priority preservation areas not already protected under MOSO, and strategies to achieve preservation goals. Potential preservation strategies include but are not limited to:

- Acquisition through use of Town funds, formation of an assessment district, participation in a land trust, or other means;
- Transfer of development rights;
- Long-term leases;
- Dedication, easements, or donations of land through development agreements or other means;
- Development and use regulations;
- Tax incentive programs.

IP-J3 Open Space Management Plan. Develop and adopt an Open Space Management Plan to establish management practices for the Town's natural habitat and open space areas. For open space areas under public ownership or control, clearly delineate public access and use areas, and those areas to be protected from human disturbance. Establish appropriate use controls and, where appropriate, provide compatible support facilities for activities such as hiking and picnicking while ensuring public safety and protection of adjacent private property.

Definitions (General Plan, Appendix D)

Cluster Housing. Cluster housing is defined as single family dwelling units sited on less than the minimum size lots permitted by the General Plan (see Policy LU1.6) to preserve open space.

Density (Residential). The number of permanent residential units per acre of land. Density may be controlled through zoning in the following ways: use restrictions, minimum lot-size requirements, floor area ratios, setback and yard requirements, minimum house-size requirements, limits on units per acre, and other means. Allowable density is the major distinction between residential districts.

Development. Development means the placement, discharge or disposal of any material, the grading or removing of any material, the change in the density or intensity of use of land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel; (2) establishment of a fire trail approved by the Moraga-Orinda Fire Protection District; or (3) a road together with attendant underground utilities, may cross a ridge, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not conflict with the Municipal Code.

Geologic Hazards. These are geologic conditions that could have an impact on the safety and welfare of the Town, such as, among other things, land flow or creep, surface erosion, creek erosion, fault movement, shrink/swell of soils and sub-surface water conditions.

High Risk Areas. ‘High Risk Areas’ are areas with a MOSO Open Space designation on the General Plan Diagram and determined to be High Risk in accordance with Part II D. of the “Guidelines for the Interpretation and Implementation of the Moraga Open Space Ordinance – Measure A,” adopted as Resolution 14-92 by the Town Council on February 12, 1992 in accordance with the Moraga Open Space Ordinance (MOSO).

Moraga Open Space Ordinance (MOSO). Refers to Measure A, a voter approved Initiative adopted at the General Municipal Election held on April 8, 1986. The Initiative regulates the uses and development of lands designated by the Initiative measure, and provides that the Town Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at a general election. The ballot text is attached as Appendix E and made a mandatory requirement of this General Plan.

Performance Standards. These are quantifiable rules or guidelines that are used to determine compliance with regulations or conditions of approval established by the Town. Examples include noise measurements and traffic levels of service. See Growth Management Policies GM1.4 and GM1.5.

Residual Parcel. A residual parcel is a vacant lot of ten (10) acres or less in an area that is generally bounded by existing development. A residual parcel may have any land use designation. Land Use Element Policies LU1.11 and LU1.12 address issues related to residual parcels.

Ridgelines. A major ridgeline means the centerline or crest of the ridges known as Indian Ridge, Sanders Ridge, Mulholland Ridge and Campolindo Ridge, where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram. A minor ridgeline means the centerline or crest of any ridge other than those identified as ‘major ridgelines,’ where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram. Development shall be prohibited on minor ridgelines immediately adjacent to and extending into MOSO Open Space if slopes exceed twenty percent (20%) and elevation of said ridges is greater than 800 feet above mean sea level.

Single Family Dwelling (Attached). A dwelling unit occupied or intended for occupancy by only one household that is structurally connected with at least one other such dwelling unit. Single Family Dwelling (Detached). A dwelling unit occupied or intended for occupancy by only one household that is structurally independent from any other such dwelling unit or structure intended for residential or other use.

Single Family Dwelling (Detached). A dwelling unit occupied or intended for occupancy by only one household that is structurally independent from any other such dwelling unit or structure intended for residential or other use.

Subdivision. The division of a tract of land into defined lots, either improved or unimproved, which can be separately conveyed by sale or lease, and which can be altered or developed. ‘Subdivision’ includes a condominium project as defined in Section 1350 of the California Civil Code and a community apartment project as defined in Section 11004 of the Business and Professions Code. The Subdivision Map Act (Division 2 of the California Government Code) gives local jurisdictions the authority to regulate and control the design and improvement of subdivisions.

Transfer of Development Rights. Transfer of Development Rights (referred to as ‘Density Transfer’ in the Moraga Open Space Ordinance) is the process whereby development rights may be transferred from lands on the General

Plan Diagram with an open space designation or 1, 2, or 3 dwelling units per acre, but only when the Town Council finds that such a transfer will result in the dedication, protection and preservation of open space and when appropriate guarantees are provided by the developer that the land shall be permanently preserved as open space. Development rights may be transferred to land residentially designated lands, but such transfer may not increase the Theoretical Residential Holding Capacity determined by the initial calculation (described in the definition for "Theoretical Residential Holding Capacity") by more than 30 percent. Development rights may not be transferred to geologically hazardous areas or to any area with an open space designation on the General Plan Diagram.

Zoning. The division of a jurisdiction by legislative regulations into areas, or zones, which specify allowable uses for real property and size restrictions for buildings within these areas. Zoning is a key implementing program for the General Plan. The Zoning Map is a visual display of the geographic distribution of zones in a jurisdiction.

Design Guidelines

Protect ridgelines and hillside areas (RH)

1.) Ridgelines and Hillside Areas. Protect ridgelines from development. In hillside areas, require new developments to conform to the site's natural setting, retaining the character of existing landforms preserving significant native vegetation and with respect to ridgelines, encourage location of building sites so that visual impacts are minimized. When grading land with an average slope 20% or more, require "natural contour" grading to minimize soil displacement and use of retaining walls. Design buildings and other improvements in accordance with the natural setting, maintaining a low profile and providing dense native landscaping to blend hillside structures with the natural setting.(GP CD1.5) See Guideline RH1 through RH10 and ID10.3, ID10.4, ID10.6, ID11.1, ID13.3, SFR2.12, SFR2.13, SFR2.14, SRC7, L1, L2, and L3.

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| RH1 | Protect ridgelines from development. |
| RH2 | New development should be sited in areas that are least sensitive in terms of environmental and visual resources, including areas of flat or gently sloping topography. |
| RH3 | In hillside and ridgeline areas, building sites should be sited so that visual impacts are minimized. |
| RH4 | The roofline of all hillside buildings should blend with or follow the ridgeline's natural contour. |
| RH5 | Hillside buildings and other improvements should have a low visual profile. Dense native landscaping should be provided to blend structures with the natural setting. |
| RH6 | Hillside grading shall blend with natural slopes and be contoured to achieve a natural appearance. The use of retaining walls and other man-made grading features to mitigate geologic hazards should be avoided. |
| RH7 | On hillside lots fire safe landscaping should be used. Landscaping should be distributed around structures to provide screening from off-site views. Adequate water supplies and fire-fighting access shall be provided. |
| RH8 | In hillside areas, solid board privacy fences should only be used when located close to the residence. Site perimeter and other distant fencing should remain visually open (i.e., split rail or deer fencing) in order to minimize the visual "ribbon-like" effect of fencing on the hillsides. |
| RH9 | Larger lots should be created on steeper slopes. Density should be minimized in areas prone to seismic and other geologic hazards. |
| RH10 | Preserve both close-up and distant views of the natural hillside and ridgeline landscape as seen from valley areas. |
| ID10.3 | When the pre-development slope is greater than or equal to 20%, development shall be avoided, but may be permitted if supported by site-specific analysis. When grading land with a slope of 20% or more, soil displacement and retaining wall use shall be minimized by using contour grading techniques. In MOSO areas, development shall be prohibited on slopes with an average gradient of 20% or greater. Design shall be consistent with Moraga Municipal Code Title 14. |

- ID10.4 Land with a pre-development average slope of 25% or greater within the development area shall not be graded except as authorized by the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of the Moraga General Plan. No new residential structures may be placed on after-graded average slopes of 25% or steeper within the development area except that this provision shall not apply to new residential structures on existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002.
- ID10.6 Preserve the natural topography of the land, especially at the horizon:
- Round off graded slopes, in a manner that conforms to the natural contours of the land and to the surrounding terrain. Sharp angles produced by earth moving, specifically at the top and toe of graded slopes shall be avoided.
 - Slopes shall be contour graded to achieve a natural appearance.
 - Slopes shall be blended with the contours of contiguous properties and create a smooth transition.
 - Grading shall minimize scars due to cuts, fills, and drainage benches on natural slopes.
- Neither cuts nor fills shall result in slopes steeper than 3:1 (horizontal to vertical), except where natural slopes are steeper. Where steeper slopes are unavoidable, special mitigation measures shall be incorporated into the design construction and maintenance of the slopes.
- ID11.1 Retaining walls (excluding foundation retaining walls) and other man-made grading features may only be used to mitigate geologic hazards when:
- a. required to decrease the possibility of personal injury or property damage
 - b. designed to blend with the natural terrain and avoid an artificial or structural appearance
 - c. appropriately screened by landscaping
 - d. designed to avoid creating a tunnel effect along roadways and to ensure unrestricted views for vehicular and pedestrian safety
 - e. designed to ensure minimal public and/or private maintenance costs
- ID13.3 New road construction should adapt to topography and natural features.
- ID13.11 Hillside lots should be larger than lots on naturally level terrain.
- SFR2.12 Decks that require special consideration due to the topography and hillside design of the home, which includes decks from the first and second floor of the residences. Such decks should comply with the following standards:

- a. Decks that exceed 6 feet in height shall be substantially screened by landscaping. The Design Review Board may require the property owner to enter into a landscape installation and maintenance agreement with the Town.
- b. Landscaping shall mitigate the visual impact of a deck as viewed from adjacent neighbors.
- c. Support posts should be setback from the face of the deck to minimize the height of posts and provide visual relief.
- d. Diagonal or cross bracing of support posts shall not be permitted.
- e. Decks shall be consistent with the scale and design of the home.

SFR2.13 The design of the mailbox should complement the style and materials of the principal building on the site.

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