

CHAPTER 5: CONSTRAINTS TO HOUSING CONSERVATION AND PRODUCTION

Introduction

The California Government Code requires that all housing elements include an analysis of governmental constraints to the maintenance, improvement, and development of housing for all income levels. Constraints may include zoning regulations and other land use controls, development standards, permitting procedures, design review requirements, unique local ordinances and ballot initiatives, building codes, site improvements, fees, and other exactions required of developers.

While these measures are important to ensure public health and protect the quality of life, they can also add to the cost of housing. It is useful to periodically reexamine local ordinances and policies to determine whether, under current conditions, they are accomplishing their intended purpose or constitute a barrier to housing production and conservation.

Non-governmental constraints also must be considered. Such constraints include the cost of land, the cost of construction, credit and financing terms, interest rates, the availability of state and federal funds, and local attitudes about growth and development.

Governmental Constraints

Moraga General Plan

The Moraga General Plan (Plan) was adopted in 2002. The Plan has been amended several times in the last 20 years, but it has not been comprehensively updated. It was amended in 2010 to maintain internal consistency with the Moraga Center Specific Plan. It was amended in 2015 when the 2015-2023 Housing Element was adopted. Amendments were also made in 2018 when the Hillside and Ridgeline Ordinance was adopted. However, the Plan does not reflect the transformative changes that have reshaped the region in the last 20 years, such as the housing crisis, climate change, and changes in the way we live, work, communicate, and travel. The Plan also does not reflect demographic changes, including an aging and more diverse population, or the effects of high housing costs on young families and the local workforce. Nor does it reflect the housing laws adopted by the State of California, many of which require cities and towns to support more diverse housing types and more equitable housing policies.

The 2002 General Plan includes the Town's Land Use Map (Map), which provides the framework for zoning. The Map identifies three basic designations for single family development—one dwelling unit per acre (1 DUA), two dwelling units per acre (2 DUA), and three dwelling units per acre (3 DUA). Almost

all Moraga neighborhoods are given one of these designations.¹ Collectively, they apply to 75 percent of all parcels in the Town.

The Map also includes a 6 DUA category, which applies to the multi-family neighborhoods along Donald Drive and Ascot Drive as well as some of Moraga’s townhome developments. The Map also includes a “Rheem Center” designation for the Rheem Park commercial district and a “Moraga Center” designation for the Moraga Center Specific Plan area. These are described in the text as commercial centers and community focal points, with as well as opportunities to explore higher-density housing. The Land Use categories in the Plan should be more clearly defined, with density ranges realigned to support multi-family housing in R-6 areas and higher base densities (24 units per acre) in the mixed use areas. These changes are discussed in greater detail in a later section of this chapter (see the discussion on Zoning).

The General Plan begins with a statement of values and principles. Most of these statements still represent the Town’s vision for its future. However, the Plan’s goals and policies should be updated to recognize the importance of having a diverse housing stock, including opportunities for higher density housing. This includes acknowledging opportunities for accessory dwelling units (ADUs), deleting outdated language regarding density bonuses, and recognizing the variety of housing that already exists in the Town.

The first goal of the Land Use Element is “a high-quality residential environment consisting primarily of detached single family homes.” This goal sets the tone for the policies that follow, including Policy LU-1.3, which limits the height of residential buildings outside of Specific Plan areas to two stories, and Policy LU-1.4, which indicates that “only conventional detached single family homes” are allowed in areas designated for 3 units/acre or less on the Land Use Map. Although this is the predominant housing type in the Town, it should be acknowledged that other types of housing are permitted by State law. Policy LU-1.9 indicates that the “6 DUA” General Plan designation is intended to provide for development that is single family in character. However, this designation is applied almost exclusively to multi-family and townhome development, most of which is currently 15-30 units per acre. The impacts of such policies are subtle but taken cumulatively could provide a negative characterization of multi-family housing and impede the Town’s ability to affirmatively further fair housing, as required by State law.

Policy LU-3.1 calls for a specific plan for the Moraga Center, which has been completed. Actions are still needed to fully realize the vision of this plan, including privately funded improvements that facilitate development. Policy LU-3.2 calls for a Rheem Center Specific Plan, which enables “a mix of housing types that is fitting with Moraga’s community character.” This is being achieved through zoning changes being implemented as part of the 2023-31 Housing Element. A program in this Housing Element calls for a “Public Realm Plan” for the Rheem area to facilitate redevelopment, address parking and circulation, provide for gathering places, and create an attractive setting for new development.

¹ A “hybrid” category of 1.5 DUA is shown on the Land Use Map, although it is not referenced in the text.

Policies in other General Plan Elements influence how and where housing may be developed. The Community Design Element provides direction on hillside and ridgeline protection, site planning, view protection, and the preservation of mature trees. The Element also identifies scenic corridors, including the major thoroughfares that bisect the commercial districts. The purpose of scenic corridors is to strengthen the Town's semi-rural character. However, some of the policies and resulting standards may be a barrier to multi-family or mixed use housing. Constraints associated with the scenic corridor designation are addressed in a later section of this chapter.

A goal in this element indicates that multi-family housing should be "centrally located, well designed and appropriate to Moraga's context and character." Policies under this goal are generally supportive of multi-family housing but are focused on compatibility with existing neighborhoods. There is no design guidance for mixed use development.

The Open Space Element likewise impacts housing potential. Specifically, it establishes standards for determining the number of units that may be allowed on private open space land, expresses support for transfer of development rights from open space to the two commercial districts, and prohibits development on major ridgelines and slopes greater than 20 percent. This Element also includes policies to maintain areas of natural significance, preserve riparian corridors, and protect tree covered areas. The Public Safety Element likewise prohibits development in "high-risk" areas (a term mostly related to landslides), even when mitigation measures may reduce potential hazards.² It also requires special standards for development in high fire hazard areas. Collectively, these policies direct development away from open space and toward the already urbanized Moraga Center and Rheem Center areas. This is consistent with regional plans and initiatives such as Plan Bay Area 2050 and the Contra Costa County General Plan.

The General Plan includes a Growth Management Element (GME), as required by Contra Costa County per voter initiative. This Element establishes level of service "C" standards for all Town roads, as well as standards for police, fire, parks, water, storm drainage, and sanitary sewer services. Development may only be approved after findings are made that these standards will continue to be met once new development is in place. The GME also implements the "Urban Limit Line" approved by County voters, limiting the Town's ability to annex and approve development on land that is now unincorporated.

The General Plan Implementation Chapter includes specific programs with the potential to affect housing. These include special requirements for fire safety, limits on building on steep slopes and in moderate and high-risk areas, and standards for tree protection, flood control, and historic preservation. It also provides the framework for development review, including the criteria for reviewing new projects. The chapter references the Town's design review process, as well as requirements for geotechnical reports, EIRs, fee waiver requests, and traffic studies. This Chapter

² Staff has also identified internal inconsistencies between the Public Safety Element and the Land Use Element. These will be corrected as part of the Safety Element Update, which is now underway.

identifies the Zoning Ordinance as the principal tool for carrying out these programs, as well as implementing the General Plan’s policies and Land Use Map.

In summary, the 2002 General Plan presents a number of potential constraints to meeting regional housing needs. Most of the Plan was drafted more than two decades ago. As the Town’s statement of its values and vision for the future, it is important that the Plan is updated so that it remains relevant, internally consistent, aligned with regional policies and forward focused.

In 2021, the Town Council authorized an update of the General Plan as part of the Town’s Comprehensive Advanced Planning Initiative. The Update is being undertaken in two phases, with the first phase including the Housing Element and State-mandated updates to the Safety Element and Circulation Element. Phase One also includes amendments to other Elements that are necessary to maintain internal consistency with the 2023-2031 Housing Element. The second phase of the update (2023-2024) will include comprehensive revisions to the remaining elements. This should effectively remove the constraints identified here and provide a coordinated framework for meeting future housing needs.

Moraga Center Specific Plan

The Town adopted a Specific Plan for the 187-acre Moraga Center area in 2010. This followed a seven-year process that included Moraga Center’s designation of this area as a “Priority Development Area” by the Town and the Association of Bay Area Governments (ABAG). The PDA designation makes Moraga Center eligible for planning grants, as well as transportation and infrastructure funds that support additional development. Initial zoning changes, including creation of the R-20 zone, were adopted in 2010. A more comprehensive rezoning occurred in 2020, following several years of community engagement.

Environmental review for the Moraga Center Specific Plan (MSCP) assumed up to 630 dwelling units, 90,000 square feet of new retail/entertainment space, and 50,000 square feet of office space.³ Most of this development is planned on vacant land. In particular, a roughly 40-acre orchard west of Laguna Creek is designated for a range of housing types, including single family homes, townhomes, and multi-family housing. The MCSP also envisions workforce housing (particularly for Saint Mary’s College employees) renovation of the Moraga Ranch as a community focal point, and a “Town Square” north of the Moraga Shopping Center. An underlying goal of the MCSP is to reduce vehicle miles traveled and congestion by creating opportunities for Moraga workers to live in the community, and by providing opportunities for local shopping, dining, and entertainment so that Moraga residents do not have to travel elsewhere for these services.

The MCSP increased allowable residential densities and created opportunities for new mixed residential-commercial land uses. This includes allowances for “Mixed Office/Residential” and “Mixed Retail/Residential” with densities ranging from 12 to 20 units per acre. The MCSP also identified 17

³ 510 “base units” plus 120 density bonus units for senior housing = 630 units

numbered “sub-areas” within its boundary and provided guidance for future land use in each sub-area. Sub-areas include the “Village” (Areas 1-7), the Shopping Center (Areas 8-12), and additional areas of vacant and underutilized land along the south and east edges of the planning area (Areas 13-17). In the mixed use areas, the MCSP provides the flexibility for either residential or commercial uses, and encourages projects in which both land uses are horizontally or vertically mixed.

In addition to providing land use guidance, the MCSP identifies future circulation improvements, public service and facility needs, and implementation measures (including zoning changes). Some of these measures have been completed while others are contingent on new development. The MCSP is intended to be dynamic and flexible in terms of the location of new development and mix of unit types within its boundary. Since the Plan’s adoption in 2010, 62 units have been completed.

The MCSP strongly supports the Town’s housing goals and will help Moraga achieve its regional housing needs allocation. Its standards have been codified in the Town’s zoning regulations and are addressed in the discussion below.

Zoning Regulations

Moraga’s zoning regulations (Title 8 of the Municipal Code) provide standards and requirements for the use of all property in the Town, as well as procedures for development, building modifications, and changes in use. The regulations are organized into Chapters, several of which correspond to specific zoning districts. Regulations for these districts are summarized below.

1-DUA, 2-DUA, and 3-DUA Districts

These three districts correspond to the Moraga General Plan land use designations of the same names. The intent of the districts is to provide for a residential environment consisting of low-density detached single-family homes. Permitted uses include single family homes, ADUs, and similar compatible uses listed in the Code. Additional uses, such as religious facilities and parks, are conditionally permitted. Development standards for this zone are shown in Table 5-1 and cover allowable lot size, lot width and depth, lot coverage, and building height. The standards allow for relaxed setbacks on homes built prior to the Town’s adoption of its first zoning code in 1980.

The Code requires that all projects in these districts conform to the Moraga Design Guidelines as well as the zoning standards. This includes Floor Area Ratio (FAR) standards, which are in the Guidelines rather than the zoning code.⁴

⁴ See further discussion of FAR under “Design Guidelines” later in this chapter. Because FAR is an objective standard and is not discretionary, it should be relocated from the Guidelines to the Municipal Code.

6 DUA and MCSP-R6 District

Chapter 8.31 includes standards for the 6 DUA district. While the intent of this zone is to provide for multi-family development, the only uses permitted by right are duplexes, ADUs, supportive/ transitional housing, and agriculture. Other uses—including multi-family housing and offices—are permitted with a conditional use permit. Given the intent of the zone, the list of permitted uses should be amended so that multi-family housing is included.

Additionally, the maximum density in this zone is 6 units per acre. This is equivalent to 7,260 square feet of lot area per dwelling, which is a suburban density usually associated with single family housing.⁵ Most of the existing development in this zone was permitted before Moraga was incorporated and does not conform to the 6 DUA density. The zone also requires a minimum lot area of 10,000 square feet, 25-foot front and side yard setbacks, and 20-foot rear setbacks.

Development standards in the 6 DUA zone provide further direction for development. This includes a lot coverage limit of 50 percent (structures may not cover more than 50 percent of the lot area) and a maximum height of 35 feet or two stories, whichever is lower (this can be further reduced by the Planning Commission). Projects require submittal of a concept plan.

A variation of the 6 DUA zone, called R-6, has been adopted for the MCSP area. This zone is currently mapped on only one parcel. It provides more flexibility than the 6 DUA zone, including allowing multi-family structures by right, lots as small as 3,600 square feet, 60 percent lot coverage, and three-story construction. While the code allows for small lots, the density limit of 6 units per acre, coupled with the lot width and setback requirements, make small lots difficult to construct without a planned development application. Other uses allowed by right in this zone include “compact” single family housing, detached housing, duplexes, and similar housing types. A minimum density of four units per acre also applies.

Table 5-2 provides a summary of the 6 DUA and R-6 standards. Changes to the 6 DUA zone should be made to recognize the prevailing structure type on parcels in this district, potentially including a higher density range (such as 12 or 15 DUA). Changes to MCSP R-6 could be considered to allow for narrower lot widths and to consider a higher density range (such as 8 or 10 DUA).

MCSP R-12 District

The MCSP R-12 district was created in 2020 as part of the MCSP rezoning. It allows small lot single family homes, townhomes, 2-4 plexes, and multi-family structures by right, and a variety of small (less than 5,000 square feet per parcel) commercial uses with a conditional use permit. The zone has a minimum density of 10 units per acre and a maximum density of 12 units per acre, although the Code allows for higher densities on parcels of one acre or larger.

⁵ *Single family detached housing is typically developed at one to ten units per net acre. Attached housing (townhomes) is typically 10-20 units per acre, while multi-family housing is typically at least 15 units per acre.*

Table 5-1: Single Family Residential Zoning Requirements

Zone	Minimum Lot Area	Minimum Frontage	Minimum Front Yard(1)	Minimum Side Yard(1)	Exterior Side Yard (corner lots)	Minimum Rear Yard
1 DUA	30,000 SF	140'	25'	20'	25'	25'
2 DUA	20,000 SF	120'	25'	15'	20'	20'
3 DUA	10,000 SF	80'	20'	10'	15'	15'
Sanders Ranch/ Moraga Place (2)	10-14,999 SF	80'	20'	10'	15'	15'
	15-19,999 SF	100'	20'	10'	15'	20'
	20,000+ SF	120'	25'	15'	20'	20'

Source: Moraga Municipal Code, 2022

Notes:

- (1) Properties built prior to November 1980 are subject to the front and side yard setbacks for the R-15 Zoning District, which is a County zoning designation that was in effect prior to adoption of the Town's first Zoning Ordinance (Moraga Municipal Code SECTION 8.68.060).
- (2) Separate standards for these two subdivisions were adopted through the PD process when they were first approved. A process for further reductions to the side yard standards was included.

Table 5-2: Medium and High-Density Residential Zoning Requirements

Zone	Minimum Lot Area	Minimum Frontage	Minimum Front Yard	Minimum Side Yard	Sum of Side Yards	Exterior Side Yard	Minimum Rear Yard	Minimum/Maximum Density
6 DUA	10,000 SF	100'	25'	20' ¹	40'	25'	20' ¹	N/A
MSCP R-6	3,600 SF	50'	15'-20' ²	5-10' ³	N/A	10' ^{1,2}	15'	4 DUA/ 6 DUA
MCSP R-12	3,600 SF	50'	15'-20' ²	5-10' ³	N/A	N/A	15'	10 DUA/ 12 DUA
R-20A and R-20B ⁴	2-3 acre pre-development	200'	20'	20'	40'	15'	15'	16 DUA/ 20-30 DUA ⁵

Source: Moraga Municipal Code, 2022

Notes:

- (1) The side and rear setbacks in 6 DUA cannot be less than the height of the building, therefore, if the building height is greater than 20 feet the setback would have to be increased. (Moraga Municipal Code 8.32.060)
- (2) Varies depending on unit type, proximity to scenic corridor, and other factors. Must allow for 20' driveway. May be reduced for front porches.
- (3) 20' required for three story structures
- (4) Additional requirements apply. See Table 5-3
- (5) 20 DUA max, except 30 DUA allowed for senior housing

The development standards in the R-12 district are similar to those in the MCSP R-6 zone. These standards include side setbacks ranging from 5' to 10', front setbacks ranging from 15' to 20,' and rear setbacks of 15 feet. The setbacks are similar to those applying in low density development areas and would not support a small lot subdivision, indicating that new projects would likely require Planned Development (PD) applications. Development is also subject to a 35' height limit, a 60 percent lot coverage limit, and FAR standards. The setback and frontage standards should be adjusted so that small lot development can be approved by right if it conforms to the adopted standards.

The FAR standards in MCSP R-6 and R-12 are calculated on a “pre-subdivision” basis. In other words, the total floor area permitted in a development is calculated based on the gross area of a site, then applied to the individual lots that are created. The allowable FARs get larger as lot sizes get larger. The current FAR table should be revisited to ensure it is achieving the desired outcome, which is to allow “missing middle” housing types.⁶ Because the existing parcels in these districts are larger than two acres, this has not been an issue—it could become an issue in the future depending on how these sites are subdivided.

R-12 standards appear in Table 5-2. Both of the parcels on which R-12 is currently mapped have areas of moderate to steep slopes. This further suggests that clustering will be proposed when they are developed, potentially through a discretionary PD process.

MCSP R-20 District

The R-20A and R-20B districts were created in 2010 when the MCSP was adopted. R-20A applies to a 6.1- acre area on the west side of Laguna Creek near the north end of School Street. The remaining 12 acres of R-20 zoning west of the creek is now R-20B. The other R-20B property is south of Country Club Drive and east of School Street. Collectively these parcels have the capacity for over 400 housing units. They are an essential part of Moraga’s strategy to meet its RHNA.

Permitted uses in R-20 include all types of residential dwellings (including multi-family housing). Conditional uses include up to 5,000 cumulative square feet per lot of commercial floor space, provided the site is adjacent to a commercial or office district. The distinction between the two lettered sub-zones (A and B) is that projects in Zone B require discretionary review while those in Zone A can be approved ministerially if they meet adopted development and design standards.

A minimum density of 16 units per acre applies in this zone, while the maximum is 20 units per acre. This may be exceeded for senior housing, which is subject to a 30 unit per acre maximum. The density figures exclude streets and are applied to net acres rather than gross acres (§8.34.040(A)). In other words, if two acres of a 10-acre site are dedicated to internal streets as part of a subdivision, the allowable number of units is calculated based on the remaining eight acres. This method of calculating unit yield is common in many Bay Area cities and towns.

⁶ “Missing middle” refers to smaller multi-family and clustered housing types that are compatible with single family neighborhoods, such as duplexes, triplexes, fourplexes, bungalow courts, and row houses.

Table 5-3: Special Development Standards for the R-20A / R-20B District

Standard	Requirement	Analysis Comments
Site Area	Minimum 3 acres	Clarify this is pre-subdivision; potentially reduce.
Site Area for projects subject to ministerial review	Minimum 2 acres, provided that at least 50 units are proposed	Clarify to avoid conflict with requirement for 60 units (below)
Number of Residential Units	Minimum 60	Consider reducing to 50 or lower
Square Feet Per Residential Dwelling Unit	300 SF	
Square Feet Per Dependent Senior Residential Dwelling Unit	100 SF	Potentially eliminate
Average Site Width	200 feet	Clarify this is pre-subdivision
Average Site Depth	200 feet	Clarify this is pre-subdivision
Site Building Setback	20 feet from all site boundaries to any architectural projection on a building	
Creek Building Setback	50' from top of bank or 50' from edge of riparian vegetation that is protected by a state or federal agency, whichever is greater, to any architectural projection on a building.	
Pervious surface area (including natural or landscaped area)	30 percent of site area	Not needed, if impervious is also limited
Natural area or area landscaped area with living plants	20 percent of site area	
Private outdoor area for each Residential Dwelling Unit	Minimum: 20 sq ft attached or immediately adjacent to each dwelling unit with a minimum dimension of 4 feet in each direction.	Clarify how this standard relates to the 100 SF requirement listed below.
Private outdoor area for each unit	100 square feet attached or immediately adjacent to each unit with a minimum dimension of 6 feet in each direction. Private open space within 500' of a scenic corridor must be screened.	
Number of required parking spaces	1 space per studio or 1-bedroom 2 spaces per 2- or 3-bedroom 2.5 spaces per 4 or more-bedroom 0.3 spaces per Dependent Senior Residential Dwelling Unit ⁽¹⁾	Consider applying these standards in other zones
Height	3 stories/ 45'	
Lot Coverage	65 percent	
Impervious surface coverage	70 percent	
Floor Area Ratio	1.15 with enclosed parking; .85 with uncovered parking, plus another 0.35 for common facilities.	Clarify if buildings with enclosed parking also receive a 0.35 FAR allowance for common facilities

Source: Moraga Municipal Code, Barry Miller Consulting, 2022

Note: ¹ In senior housing projects, the minimum parking ratio provided shown above may be reduced by 25% for each passenger vehicle made available permanently for use by the residents of each 75 units, as long as at least 0.5 space per unit is still provided.

Basic R-20A and -B development standards are shown in Table 5-2. Table 5-3 shows additional development standards that are unique to the R-20 district. As with the R-6 and R-12 zones, it is important to consider the context for these zones when evaluating them. The R-20 zones currently only apply to two parcels. One is the orchard west of Laguna Creek, where a parcel is divided into R-20A and R-20B areas. The other is in Area 14 south of Country Club Drive. All of these properties are larger than 6 acres. As such, the requirements for a 3-acre minimum parcel area and minimum of 60 units per project are not necessarily constraints, because they reflect “pre-subdivision” conditions and the expectation that these will be large-scale multi-family projects.

The standards should be monitored to ensure they are not impeding the ability to develop the R-20 properties. A smaller threshold (for example, 2 acres/48 units) might be sufficient. In addition, certain standards need clarification. For example, the standards require 3 acres for each development site, and a 60-unit project size. However, the standards also state that a 2-acre site is eligible for ministerial approval if it contains at least 50 units. There are also two sets of open space standards—one requiring a minimum of 20 square feet of open space per unit and another that sets a maximum of 100 square feet. The setbacks in the Ordinance are expressed as “maximum limits” but are listed as minimums.

The R-20 zone also has objective design standards, intended to facilitate by right approval of projects in the “A” sub-zone. These include conformance with grading and flood plain regulations, limits on retaining wall height, and a requirement that finished slopes not exceed 33 percent grade. In general, these standards are not constraints and support public safety. The standards also include special requirements for buildings within scenic corridors, which is covered in a later section of this chapter.

The base allowable density in this zone will be increased from 20 to 24 units per acre as part of adoption of this Housing Element. In addition, the Housing Element includes a program to reassess the R-20 district standards within two years of Housing Element adoption.

Mixed Use Districts (MSCP Mixed Office-Residential and MCSP Mixed Retail-Residential)

The MSCP area includes two mixed use zoning districts, one corresponding to Office-Residential (MSCP O-R) and the other corresponding to Retail-Residential (MCSP R-R). The Town has identified roughly 360 units of housing capacity in these districts in its site inventory, all of which would meet the “default density” requirements for lower income units. As such, these two zones provide an important resource in the Town’s efforts to meet its affordable housing needs.

Development standards for the two mixed use zones are shown in Table 5-4. The standards are effectively the same in each zone, including a residential density range of 12 (minimum) to 20 (maximum) units per acre, a height limit of 45 feet and 3 stories, and no required setbacks. Both zones have an FAR maximum of 0.85, but this is applied only to commercial square footage. Residential and commercial density limits are additive, meaning a parcel may have both 0.85 FAR of commercial space, plus 20 units/acre of residential space. This provides an incentive for mixed use

Table 5-4: Development Standards in Mixed Use Districts

Standard	MCSP Mixed Retail-Residential	MCSP Mixed Office-Residential
Density	Max: 20; Min: 12	Max: 20; Min: 12
Minimum lot area	10,000 square feet	10,000 square feet
Minimum lot width	30 feet	30 feet
Minimum lot depth	100 feet	100 feet
Minimum width	30 feet	30 feet
Minimum front yard setback:	0 feet (1)	0 feet (1)
Minimum side yard setback:	0 feet (1)	0 feet (1)
Minimum exterior side yard setback:	0 feet (1)	N/A
Minimum rear yard setback:	0 feet (1)	0 feet (1)
Minimum lot area	10,000 square feet	10,000 square feet
Maximum building height (primary)	45 feet (1)	45 feet
Minimum private open space (applies only to residential uses of development)	Greater than or equal to 5 percent of each dwelling unit floor area (minimum of 50 square feet and minimum dimension of 5 feet in each direction)	Greater than or equal to 5 percent of each dwelling unit floor area (minimum of 50 square feet and minimum dimension of 5 feet)
Minimum building separation for multiple 2-story buildings on a single lot	25 feet (2)	25 feet (2)
Minimum building separation for multiple 3-story buildings on a single lot	35 feet (2)	35 feet (2)
Maximum stories	3 stories	3 stories
Maximum lot coverage	60 percent	60 percent
Floor Area Ratio	0.85	0.85

Source: Moraga Municipal Code, 2022

Notes:

- (1) Scenic corridor requirements may create additional setback requirements not shown here
- (2) Where two different height buildings are adjacent, the taller building controls separation

projects that include both uses. The minimum lot area in these districts is 10,000 square feet, which is considerably lower than the 3-acre minimum that applies in R-20. This reflects the fact that the MCSP mixed use zones include previously developed parcels, while R-20 applies only to large parcels that are vacant.

Overall, the standards in the two mixed use zones are supportive of multi-family residential uses, including small urban infill projects as well as larger-scale projects. Multi-family residential is a permitted use in both districts. Mixed use residential projects (combining residential and commercial uses) also are permitted. A program to be implemented concurrently with adoption of this Housing Element will increase the allowable density from 20 to 24 units per acre.

Most of the housing sites in these two zones fall within the Moraga Way and Moraga Road scenic corridors. Constraints associated with the scenic corridor designation are addressed in a later section of this chapter.

Commercial Districts

There are several “commercial only” zoning districts in Moraga. These include the MCSP Commercial (MCSP-C) zone, the Suburban Office (SO) zone, the Community Commercial (CC) zone, and the Limited Commercial (LC) zone. The first of these districts is mapped in the Moraga Center Specific Plan area, while the latter three comprise the Rheem commercial district.

Residential uses are not listed as permitted or conditionally permitted in any of these zones. However, the zoning ordinance provides the Planning Commission with the discretion to permit “other uses” found to be “consistent with the purpose of the district” and comparable to other permitted or conditional uses. Since the 2002 General Plan and PD regulations support housing and mixed uses in the Rheem commercial area, the case could be made that housing is consistent with their purpose.⁷

Several actions will be taken concurrently with adoption of this Housing Element to create housing opportunities in these districts. Specifically, housing will become a permitted use (up to 24 units per acre) in the SO zone, and the CC zone will be split into two districts, one of which allows multi-family residential (up to 24 units per acre). In addition, zoning map changes will move a number of properties from commercial zones into mixed use zones.

Other Districts

Other zoning districts in Moraga include two open space districts, an institutional district, a “Study” district, and two overlay districts.

⁷ The Town’s PD regulations provide for densities of 10 DUA in Rheem Center

The open space districts include the “MOSO Open Space District” and the “Non-MOSO Open Space District.” MOSO is the Moraga Open Space Ordinance, approved by voters in 1986 to conserve hillsides, ridgelines, and other natural areas in the community. MOSO Open Space was specifically protected through the ordinance, while Non-MOSO open space includes land with similar qualities that was not covered by the ordinance. Single family residential development is conditionally permitted in both zones, but at very low densities. Density is either 5 acres per unit, 10 acres per unit, or 20 acres per unit. The allowable density is determined through a conditional use process, and usually through a planned development application that considers factors such as risk levels and natural resources. The PD application enables the allowable number of units to be clustered on smaller lots, with the residual areas retained as permanent open space. In addition to enabling open space protection, the clustering also allows for more efficient infrastructure and logical placement of development.

The Institutional district (also referred to as the “College” district) applies only to the St. Mary’s College Campus. Other institutional uses in the Town, including schools and religious institutions, are typically zoned with residential designations.

The “Study” district applies to the 423-acre Bollinger Canyon area. The Town is in the process of eliminating this district and applying a combination of residential and open space designations to the underlying parcels. Most of the land area will be designated Rural Residential (one unit per five acres) or Non-MOSO Open Space.

The two overlays are the Moraga Ranch Overlay and the Research and Development Overlay. In both cases, the underlying zone is Commercial, and housing is not currently a permitted use. The Moraga Ranch Overlay is intended to preserve the traditional character and potential historic resources on the ranch property in the heart of Moraga Center. The R&D Overlay applies to three parcels at the northwest corner of Rheem Boulevard and Moraga Road, including 2.5-acres owned by St Mary’s College. This Overlay was created in 1997 to provide an opportunity for a technology campus. With the proposed rezoning of these properties to mixed use, the R&D Overlay should be rescinded.

Scenic Corridors

The Town of Moraga has designated Moraga Road, Moraga Way/Canyon Road, St. Mary’s Road, Rheem Boulevard, Camino Pablo, Bollinger Canyon Road, and Upper Donald Drive as “scenic corridors.” Each corridor extends 500 feet on either side of the roadway centerline (1000’ total). Buildings that are visible from the scenic roadways in each corridor are subject to special standards above and beyond those in the base zoning districts. The corridors bisect both of the Town’s major commercial districts and apply to a number of designated Housing Opportunity sites.

Guidelines have been adopted for projects within the corridors. These require a “compatible visual relationship with surrounding development,” and building placement that avoids a “walled effect” along the corridor. Regardless of a parcel’s size or dimensions, new buildings are required to maintain views of distant hills and ridgelines and be limited in scale to reduce visual dominance. The guidelines

state that “manmade structures...should be secondary in importance to natural growth.” They further state that “unnatural and conflicting aesthetic elements shall be eliminated to the extent feasible.” Such elements must be screened when they cannot be eliminated.

These requirements require subjective evaluation. Moreover, the approval process for such projects requires review by the design review board (i.e., Planning Commission), who have the authority to disapprove the project after making written findings (§ 8.132.070).

In the Moraga Center Specific Plan Area, objective standards have been developed to define what may be considered “compatible” in a scenic corridor. These include:

- 40-foot setbacks for building frontages that face Moraga Road and Moraga Way.
- Requirements that any square footage above the first floor in such buildings be recessed 8 feet (i.e., a “stepback”) to reduce perceived mass from the scenic road.
- In the R-20 zone, projects in the corridors are subject to a requirement that any space above the second floor have setbacks that are 50 percent higher than the lower levels. This could also require “stepbacks” on upper floors, which could limit total floor area and unit yield.⁸

While similar standards have not been developed for the Rheem area, the MCSP standards could be referenced as the Commission makes findings for future residential projects in this area.

As currently drafted, the scenic corridor guidelines and standards could be a development constraint on several of the housing sites. Some of the multi-family and mixed use sites face Rheem Boulevard, Moraga Road, and Moraga Way. A few of the sites are less than 200’ deep and a 40’ front setback could reduce their capacity for development. At least one of the sites has a steep slope to the rear, which may necessitate placing development closer to the road. In addition, the requirement to step back the building by eight feet above the first floor, or to recess a third floor, could increase project costs and affect feasibility. Locating parking in the front setback area might address these constraints but could conflict with the goals of the scenic corridor designation.

While preserving scenic corridors is an important General Plan goal, it must be balanced with other goals such as meeting local housing needs and creating community focal points at the shopping centers. Variations from the corridor standards may be warranted in the two centers, particularly when the result would be a better pedestrian experience and a more attractive urban form.

⁸ Most of the R-20 land area is outside the scenic corridors, but both parcels partially fall within the 500-foot buffer.

Parking Standards

In a suburban setting like Moraga, parking is a necessary component of most development projects. The Town has minimal public transit and walking or bicycling may not be practical for many types of trips. Census data indicates that 76 percent of Moraga households have two or more vehicles.

At the same time, the way that parking is handled in residential development projects is changing, particularly for denser development in mixed use areas. Most communities no longer use a “one size fits all” approach to residential parking in such areas and have adopted standards that vary based on bedroom counts, unit type, and other factors. These types of adjustments are critical because parking is a significant part of the cost of new residential development and has a substantial impact on site planning and design. Parking structures can cost as much as \$50,000 per space, and this cost is typically passed on to the buyer or renter.

Moraga currently requires two off-street parking spaces per residential unit. It applies the same standard to multi-family housing as single family housing, except in the R-20 zone where standards are scaled to reflect the number of bedrooms. The requirement for two spaces per unit for multi-family housing outside the R-20 zone is a potential development constraint. Effectively, the standards mean that a studio apartment and a three-bedroom apartment need to provide the same amount of parking--two spaces per unit. In addition, one guest parking space is required for every two units.

Table 5-5 shows multi-family parking standards in Moraga as of 2022. The table includes information on standards in Lafayette, Orinda, and Danville, three nearby communities with similar demographics and land use patterns. The other communities have adopted sliding scales for multi-family housing, with lower requirements for smaller units. For example, Orinda and Danville require one space for a studio and 1.5 spaces for a one-bedroom. These communities also have lower guest parking requirements than Moraga, with one space for 4 or 5 units, compared to one space per two units in Moraga.

Other Bay Area cities have created ways to reduce parking requirements through measures that reduce parking demand or make more efficient use of existing parking spaces nearby. These include the provision of shared vehicles, bicycle parking, shared parking (i.e., agreements to use parking spaces on adjacent properties that are likely to be vacant during the evening and overnight hours). Projects near mass transit have greater opportunities to reduce demand. Although Moraga does not have a BART station, new projects could incorporate amenities that make it easier to use transit. Major employers such as Saint Mary’s College can also help make transit more viable.

Data from the 2020 Census indicates that Moraga renters have fewer vehicles per household than homeowners, with 32 percent of renters owning one vehicle or less (compared to 22 percent for owners). Car ownership rates also tend to be lower for seniors and smaller households. Given the high cost of parking and the small number of multi-family units built in Moraga over the last 40 years,

this Housing Element includes a program to revise the multi-family parking standards. Effectively, the program calls for applying the parking standards already in place for multi-family projects in the R-20 zone on a Town-wide basis. A second phase of this program would identify further reductions that could occur through transportation demand management measures, shared parking agreements, and other strategies that are commonly used to reduce parking costs and make housing more affordable. This includes “unbundling” parking from housing units so that an occupant has the option of buying or renting a parking space rather than having it automatically included in the sale or rental of a unit.

Table 5-5: Comparison of Multi-Family Parking Standards in Moraga and Nearby Communities, 2022

City/Town	Spaces per Unit				Guest Parking
	Studio	1-Bedroom	2-Bedroom	3-Bedroom	
Moraga (except R-20)	2	2	2	2	1 per 2 units
Moraga R-20 zone	1	1	2	2	None stated
Orinda	1	1.5	2	2	1 per 4 units
Lafayette	N/A	1 to 1.2	1.2 to 1.5	1.5-2	1 per 5 units
Danville	1	1.5	2	2	1 per 4 units

Source: Town of Moraga, 2022

Environmental Protection Ordinances

Hillside and Ridgeline Ordinances

In 2018, the Town of Moraga adopted new regulations guiding the development of projects in hillside areas and near or on ridgelines. These include provisions to protect views of hillsides and ridgelines from other locations. Hillside areas are defined in Chapter 8.04 of the Municipal Code and include parcels with average predevelopment slopes of 20 percent or greater, or the portions of parcels within a development project with slopes greater than 20 percent. Ridgelines are mapped in the General Plan and are classified into different categories depending on their visibility and prominence.

Approval of development in hillside areas, including new homes, accessory buildings larger than 400 square feet, and additions over 500 square feet, typically requires a Hillside Development Permit (HDP). Subdivisions on sites over 20 percent slope also require HDPs. For planned developments and subdivisions, such permits can only be approved after the PD or subdivision permit is approved. HDPs can be issued administratively by the Planning Director if they only require a building permit. For projects that require discretionary review by the Planning Commission approval, the Commission also

has jurisdiction over the HDP. In such cases, the decision to approve a permit is rendered after a noticed public hearing and findings that the project is consistent with the General Plan and is designed to minimize visual impacts, protect natural resources, minimize exposure to geological hazards, and achieve a natural appearance. Conditions of approval may be attached to the permit.

Most of the housing capacity identified in the 2015-2023 Housing Element—including all of the lower-income housing capacity—is on sites that are on slopes *less than* 20 percent, where the hillside regulations do not apply. Housing sites that are on hillsides have been designated for moderate- or above moderate-income housing, recognizing the additional cost of development on sloped sites, including grading, infrastructure, and design to avoid visual impacts.

The Town's ridgeline requirements were developed in tandem with the hillside requirements. Their purpose is to protect the Town's scenic natural setting and semi-rural feel, including limiting development along highly visible ridgelines that are now undeveloped. Most of these areas are designated as open space on the General Plan, and none of them have been identified as housing sites.

Creek Protection and Tree Protection Ordinances

The Moraga Center Specific Plan includes specific setback requirements for projects along Laguna Creek, including a Contra Costa County requirement for a 50-foot setback from the top of bank. The requirement is not a development constraint as it is mapped on parcels that are large, with ample developable areas outside the setback. The MCSP also envisions the setback as an area for walkways and recreational features, which would be amenities for new development.

The Town has also adopted tree preservation requirements (Chapter 12.12 of the Municipal Code). These requirements apply to private property as well as public rights of way. Special requirements have been developed for native trees, orchards, and trees of historic significance, with the latter group individually recognized through designation by the Town Council. A permit is required to remove native trees above a certain size, orchard trees, and trees of historic significance. These permits are administratively issued by the Planning Director, based on criteria such as the health of the tree, safety hazards, and impact on erosion and runoff.

For subdivisions and larger-scale developments, applicants are required to include provisions to protect trees, particularly where construction may encroach into the dripline. Arborist reports may be requested to develop tree protection measures or justify tree removal. Any trees to be removed must be identified on applications and are subject to review by the Planning Director. Although several of the Town's development sites are on former orchards, the tree removal requirements are not expected to be a constraint. Preservation of individual trees could be incorporated in future development plans, but the orchards are generally inactive and not in agricultural use.

Hazard Mitigation and Water Quality Ordinances

The Town has adopted regulations to minimize public and private losses due to flood conditions in areas identified as flood prone or prone to mudslides and erosion. These areas correspond to flood hazard areas designate by the Federal Emergency Management Agency (FEMA). Structures within this area are subject to rules consistent with federal insurance requirements, including a requirement that development does not negatively affect the carrying capacity of floodways or the base flood elevation downstream. The Town Engineer serves as the floodplain administrator and has the responsibility for reviewing development permits to make sure they comply with these requirements. Various levels of certification are required for projects in flood plain areas.

Moraga's flood plain regulations include specific measures for floodproofing and hazard reduction. These include anchoring homes, using flood resistant materials for homes and utilities, designing HVAC systems to avoid flood damage, and elevating all new construction at least two feet above the base flood elevation in most instances. Special requirements are included for accessory structures, garages, and manufactured homes. More stringent requirements are required for floodways, as these areas have a higher velocity of water during floods. The Ordinance includes provisions for variances for projects that cannot meet the standards.

Most of the Housing Opportunity Sites have no flooding issues and are well above the flood plain. The Laguna Creek flood plain extends onto three of the housing sites in the MCSP area, but these are large parcels with ample developable acreage above the 100-year flood elevation. Flood-prone areas are shown as creekside open space in the Specific Plan itself and do not affect the ability of these sites to accommodate the yields described in this Housing Element.

Moraga also has adopted Fire Hazard Area Regulations, including maps of "high" and "very high" fire hazard severity zones recommended by the California Department of Forestry and Forest Protection (CalFIRE). The maps are also used for planning and development review purposes by the Moraga Orinda Fire District (MOFD). At the current time, only one of the housing sites is in a "very high" fire hazard severity zone (VHFHSZ). This is Indian Valley, which has been listed in this Element as an Above Moderate income site.

It is likely that new fire hazard severity maps will be adopted during the time horizon of this Housing Element. Preliminary maps indicate that the extent of the "very high" hazard zone will be expanded, potentially encompassing some of the Rheem Shopping Center area. This area is across the street from MOFD Station 42 on previously developed and disturbed land with multiple access roads leading in and out of Moraga. Including this area in the VHFHSZ would not preclude its use for higher density housing. However, additional fire resilience measures would be required, which would increase construction costs.

Other local ordinances address grading and stormwater management. Title 14 of the Moraga Municipal Code requires a grading permit for any earth movement exceeding 50 cubic yards or greater, as well earth movement meeting other criteria (such as an area of 10,000 square feet or greater or

the use of fill to support buildings). Larger grading projects require review by the Planning Director and Design Review Board (Planning Commission) to ensure they are consistent with the Town's Design Guidelines and General Plan. Such applications are subject to a noticed public hearing and an opportunity for appeal. Major grading applications, such as those needed to repair a landslide or modify slopes greater than 25 percent, are subject to approval by the Town Council. Once permits are issued, grading activities are subject to adopted specifications for earth movement and retention, observation and monitoring, security, and post-grading procedures.

Grading standards are not a constraint to development on the lower-income housing sites designated in this Housing Element. However, some of the moderate- and above-moderate income housing sites may require grading permits and may need to incorporate the measures specified in the Municipal Code before they are developed. While these measures are common in Bay Area hillside communities and are necessary to protect public safety and water quality, they represent an additional cost for projects on hillside sites.

Projects in Moraga also must comply with stormwater management standards. These standards implement the Municipal Regional Stormwater NPDES permit and are an important part of the Contra Costa County Clean Water Program. They apply to all jurisdictions in Contra Costa County. Most development projects are required to prepare a Stormwater Control Plan (SCP). Each SCP identifies best management practices to limit water pollution and increases in runoff rates.

Density Transfers

The Town has adopted procedures to enable the transfer of allowable dwelling units from one parcel of land to another. This is referred to as "density transfer" or transfer of development rights and is primarily used as a tool to conserve open space in visually and environmentally sensitive areas. In such cases, there is a "sending" (transferor) parcel and a "receiving" (transferee) parcel. The parcels may be under common ownership or they may have different owners. Density may only be transferred off of parcels if they are zoned for residential or open space uses. Density transfers are only initiated at the request of property owners and are entirely voluntary.

The maximum number of units that may be transferred may not exceed 30 percent of the allowable density on the receiving parcel. This implies that parcels where residential uses are not allowed may not be receiving parcels. An action program in this Housing Element calls for an amendment so that all commercially zoned properties may be receiving sites. The Town could also consider incentives for density transfers, such as allowing a larger number of units on the receiving sites than are being transferred from the sending sites (i.e., a local density bonus).

Housing-Related Ordinances

Like all communities in California, Moraga has adopted a number of ordinances to support housing production and preservation. Relevant local housing regulations include the density bonus ordinance, the short-term rental ordinance, and the condo conversion ordinance. Moraga is also planning on

adopting an inclusionary housing ordinance as part of its Comprehensive Advanced Planning Initiative. The parameters for such an ordinance are described below.

The need for inclusionary zoning is driven in part by the need for new tools to stimulate the production of affordable housing in the town. Moraga’s most recent annual housing progress report found that the Town had more than satisfied its “above moderate” income housing assignment for the 2015-2023 period. However, the Town has produced zero very low-income units and only one low-income unit during the last six years. Many cities and towns use inclusionary zoning to narrow this gap.

Density Bonuses

The premise of a density bonus is that additional density (i.e., additional housing units above and beyond those permitted by zoning) may be added to a project in exchange for setting aside a certain percentage of the units as affordable. The bonuses are higher where deeper levels of affordability are provided. The additional units are an incentive for developers, in that they offset potential lost revenue from rent/sale of the affordable units by allowing more units to be built. State law requires that the City offer waivers and concessions to developers using density bonuses, because other zoning standards may not accommodate the additional units.

On January 1, 2021, new State density bonus rules went into effect, expanding and enhancing these incentives. AB 2345 increased the maximum density bonus from 35 percent to 50 percent. To be eligible for a 50 percent bonus, a project must set aside:

- At least 15% of the units for very low-income households; or
- At least 24% of the units for low-income households; or
- At least 44% of the units (in a for-sale project) for moderate income households

Below the 50 percent maximum, bonus percentages are awarded on a sliding scale based on the percentage of affordable units. Density bonuses of 20 percent are also available for senior housing projects (even if they are market-rate) and to projects serving foster youth, disabled vets, and homeless persons. Density bonuses are not available for moderate-income for-rent units, since market-rate rents are often already in the moderate-income affordability range.

The Town of Moraga has adopted a density bonus ordinance as part its Municipal Code, incorporating the State’s standards by reference. A 50 percent bonus on a 20 unit per acre project would allow 30 units per acre. However, developers interviewed by staff during the Housing Element update indicated that there were still challenges with projects “penciling out” at 30 units per acre when 15 percent of the base units would be required to rent (or sell) at prices affordable to very low-income households. In some cases, the need for parking made it difficult to accommodate the additional units, and the cost of podium parking could not be justified unless densities were considerably higher.

Density bonuses are particularly helpful in communities with inclusionary zoning requirements (see discussion in next section). When setting aside some of the units in a new project as “below market

rate” is made mandatory, rather than voluntary, there is a greater incentive to use the bonus to offset the reduced profit margin. Once a developer applies for a density bonus (a voluntary action), the jurisdiction is required to provide one or more incentives or concessions requested by the developer. Typical concessions include modifications to setbacks, parking standards, and design requirements. A jurisdiction must grant the concession unless it finds it would cause a health, safety, or environmental problem, compromise a historic resource, or be contrary to law.

Once concessions are determined, the jurisdiction is required to grant waivers of any development standard that would physically prevent the project being built at the increased density. The jurisdiction may not apply any standard which physically precludes the project from proceeding. Typical waivers include building height, lot coverage, and floor area ratio requirements.

Density Bonus requirements are not a development constraint in Moraga. To the contrary, they provide a strong incentive for housing production and the inclusion of affordable units. At the same time, the availability of concessions and waivers creates a degree of uncertainty around the size and character of future projects for the public. This may result in increased community opposition and negative reactions to new housing proposals. Once a developer submits an application, community opposition does not change the requirement to abide by State law.

Inclusionary Zoning

Inclusionary zoning refers to a Municipal Code requirement that a certain percentage of units in future developments be reserved as affordable to lower- and/or moderate-income households. This technique is used throughout the United States to create affordable housing units in new market-rate residential developments. It is particularly effective in high-cost markets with a limited supply of affordable units. Nearby communities with inclusionary zoning requirements include Lafayette, Pleasant Hill, Walnut Creek, Danville, Clayton, Concord, and San Ramon. Moraga does not currently have an inclusionary zoning requirement.

An action to adopt an Inclusionary Zoning Ordinance within six months of Housing Element adoption is included in this Element. Among the factors to be addressed as this ordinance is drafted are:

- The percentage of units to be set aside as affordable. The Town has discussed a 10% set-aside, but this may vary depending on tenure (for sale vs for rent) and income (% very low, % low, % moderate)
- Opportunities for alternative means of compliance, such as in-lieu fees, constructing units off-site, donating land, and converting existing units to affordable
- Applicability to different product types and smaller projects
- Whether the requirement applies throughout the Town or only in the two commercial districts
- Design of inclusionary vs market-rate units
- Additional incentives (beyond the State Density Bonus Law)
- Administration and monitoring of the below market rate units

Short Term Rentals

In some communities, short term rentals may be a housing constraint because they remove potential rental housing units from the market. Property owners may find it more profitable to offer such properties for short stays rather than renting them to long-term tenants. Moraga addressed this issue in 2020 by adopting a short-term rental policy and adding provisions to its Municipal Code. The provisions prohibit “non-hosted” rentals (i.e., the rental of an entire home without an owner on-site). Rentals of two nights or longer are permitted where the space is “hosted.” A review of the AirBNB website in May 2022 indicated 14 rentals in Moraga, all of which were individual rooms or “guest suites.” None of the listings were rental apartments or entire homes.

Condominium Conversions

Moraga has adopted provisions limiting the conversion of existing multi-family rental housing to condominiums. One of the purposes of these rules is to reduce the displacement of renters and provide assistance in the event that relocation is required. Another is to maintain a supply of rental housing for low- and moderate-income persons. All condominium conversions are subject to public hearings before the Planning Commission.

Prior to converting rental units to condominiums, a report on the physical elements of each structure must be completed, including a list of necessary repairs and required upgrades. A list of covenants, codes, and restrictions (CC&Rs) also is required, addressing maintenance, safety, and similar topics. Condominiums are also required to meet certain standards for private open space and parking.

Applicants must disclose information on the existing tenants, including signed statements from tenants acknowledging they have been notified of the proposed conversion. Tenants are also provided with a first right of refusal to purchase their units, as well as the option of remaining in their units for up to 180 days along with relocation assistance equal to two times the monthly rent. There are also provisions for senior renters to remain in their units indefinitely, and for qualifying low-income renters to remain in their units for up to three years. The Ordinance also includes no net loss provisions to limit the loss of the Town’s rental stock.

Design Guidelines

The Town of Moraga has adopted a comprehensive set of design guidelines to inform the review of new development, additions, and alterations by staff, the Planning Commission (in their capacity as the Town’s Design Review Board), and the Town Council. The Guidelines express Moraga’s design philosophy and indicate design review procedures. Design review priorities include maintaining the Town’s semi-rural character, protecting hillsides and ridgelines, complementing existing landscaping, enhancing scenic corridors, minimizing the impacts of development, promoting commercial centers as community gathering places, and thoughtfully designing new single family and multi-family residential neighborhoods. A separate section of the guidelines provides more focused direction for the Moraga Center Specific Plan (MCSP) Area.

The Guidelines are rooted in the Community Design Element of the General Plan and use that Element as their organizing framework. They are intended to provide flexibility and positive examples rather than exact models of what is required. The Guidelines themselves state that “there is no formula for good design” and further state that “compliance with the Guidelines does not guarantee approval.” The Guidelines also give the Planning Commission the discretion to modify or approve projects even when they do not conform.

In staff’s experience using the guidelines, several provisions have been identified as subjective, arbitrary, or inappropriate for a design guidelines document. These include:

- A guideline that two (2) two-story single-family homes should not be placed side-by-side if they are visible from the street. The requirement limits second story additions for many homeowners and creates an inequitable system for the owners of one-story homes adjacent to homes with previously approved or existing second story additions.
- A guideline limiting the height of buildings on padded (e.g., graded) lots to 28 feet for two story homes and 19 feet for single story homes. This guideline conflicts with the 35-foot height limit established by the zoning code.
- Additional requirements regarding the visibility of structure(s) from off-site (SFR 2.6).
- Design requirements for stormwater management systems, which are already regulated by a federal clean water (NPDES) permit and Contra Costa County.
- In multiple areas, the Planning Commission (acting as the Design Review Board) is granted additional subjective authority, such as the ability to require a larger side yard than is required by code or modify the allowable floor area ratio on a property.

These provisions should be modified to remove an impediment to reinvestment, and to enable homeowners to adapt their homes to meet changing needs.

The guidelines for multi-family housing are brief and address topics such as the screening of air conditioning units and siting of trash enclosures and parking. The guidelines for multi-family projects within the MCSP area are more extensive. They recognize the intent of the Specific Plan to encourage denser development and are supportive of the building typologies described in this Housing Element. The MCSP guidelines strongly support a diversity of housing types, multi-family and mixed-use building forms, and a less auto-centric development pattern. Since they were prepared recently, they also incorporate objective standards. The MCSP Guidelines also provide direction for landscaping, street character, open space, and civic space.

The appendix to the Design Guidelines contains a table listing the allowable floor area ratio (FARs) on single family residential lots of varying sizes. A sliding scale is used, with FARs decreasing as lot sizes get larger. On a 5,000 square foot lot, the maximum FAR is 0.38, enabling a home size of 1,900 square feet. On a one-acre (43,560 square foot) lot, the maximum FAR is 0.13, enabling a home size of 5,500 square feet. Lots smaller than 5,000 square feet and larger than one acre are not subject to an FAR requirement but have a maximum home size of 1,900 square feet and 5,500 square feet

respectively. Lots within Planned Developments are exempt from these requirements, as the FAR is established through the PD process.

While the FARs themselves are not a development constraint, their location in an appendix to the Design Guidelines makes them harder to apply as objective standards. The standards should be moved into the Municipal Code (Title 8) for clarity. Consideration also should be given to simplifying the standards by applying a mathematical formula rather than having a unique FAR specified for each lot using increments of 1,000 square feet.

Standards for Different Housing Types

The next section of the Constraints Analysis evaluates standards for special housing types in Moraga. Table 5-6 indicates the permitting requirements for different housing types in zoning districts where residential uses are permitted or conditionally permitted.

Accessory Dwelling Units (ADUs)⁹

ADUs provide a source of housing that is “affordable by design” by virtue of lower construction costs and typically smaller unit sizes. They create less demand on infrastructure and services than larger-scale apartment developments, make efficient use of space on existing lots, and often consume less energy than new housing. In mature neighborhoods such as those in Moraga, they provide an opportunity to meet local housing needs in a way that disperses units and is compatible with neighborhood quality and character.

ADUs also provide an important housing resource for certain segments of the population, including extended family members, college students, young adults, seniors, and care givers. They also provide rental income for homeowners, helping to off-set mortgage costs and making homeownership more affordable and viable.

In April 2021, the Moraga Town Council adopted new regulations for Accessory Dwelling Units (ADU). The regulations were reviewed by the State Department of Housing and Community Development prior to adoption and confirmed to be fully compliant with State law.

⁹ An ADU is a residential dwelling unit attached or detached from a primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary unit.

Table 5-6: Housing Types Permitted By Zoning District

Structure Type	Institutional	MOSO and Non-MOSO Open Space	1, 2, 3 DUA	6 DUA	MCSP R-6	MSCP R-12	R-20	MSCP-OR and MCSP R-R
Single Family Dwelling	-	C	P	C	P	P	-	P
Two-Family Dwellings	-	-	-	P	P	P	P	P
Multi-Family Dwellings	-	-	-	C	P	P	P	P
Multi-Family Dwellings above Commercial Space	-	-	-	-	C	C	C	P
Live/Work Space	-	-	-	-	-	-	-	(1)
Manufactured Home on Foundation	-	-	(1)	(1)	(1)	(1)	-	(1)
Congregate Care	-	-	-	-	-	-	P	P
Small Residential Care Home	-	-	(1)	(1)	(1)	(1)	(1)	(1)
Large Residential Care Home	-	-	-	-	-	-	P	P
Accessory Dwelling Unit	-	C	P	P	P	P	P	P
Single Room Occupancy (SRO) Hotel	-	-	-	-	-	-	-	-
Transitional Housing	-	C	(1)	(1)	P	P	P	(1)
Supportive Housing	-	C	(1)	(1)	P	P	P	(1)
Low Barrier Navigation Center	-	-	-	-	-	-	-	-
Emergency Shelter	P(2)	-	-	-	-	-	-	-

Source: *Moraga Municipal Code*

P=Permitted; C=Conditional Use Permit; “-“ = Not Permitted

- Notes: (1) Use is allowed but not expressly listed as a permitted use in the Municipal Code
 (2) Specific development standards apply

ADUs and Junior ADUs (JADUs) are permitted in all residential zoning districts in Moraga.¹⁰ They are allowed “by right,” with a building permit approved by the Planning Director provided they meet the standards established in the Municipal Code. These standards generally correspond to State law and include:

- An ADU may be created entirely within the envelope of the primary unit (or another existing legally constructed accessory building on the lot) if it has exterior access independent from the primary unit. An addition of up to 150 square feet is permitted for ingress and egress purposes.
- Multiple ADUs may be added to multifamily buildings through the conversion of space that is not currently habitable (such as storage rooms and garages), provided the number of ADUs does not exceed 25 percent of the number of existing units
- A JADU is permitted provided the owner occupies the principal unit or JADU, the interior space is less than 500 square feet and has an efficiency kitchen and an exterior entrance, and the JADU is not sold as an independent dwelling or used as a short-term rental.
- A new detached ADU can be created if it meets front yard setback standards, has side and rear setbacks of at least 4 feet, is not more than 800 square feet, and is no taller than 16 feet.

ADUs that do not meet the streamlining criteria above are considered “standard” ADUs. These units are subject to additional standards but may still be approved ministerially by the Planning Director without discretionary review, public hearings, or further design review.

The interior living area of standard ADUs must be at least 150 square feet and not more than 850 square feet for one-bedroom units, and up to 1,000 square feet for units that are more than one-bedroom. For attached ADUs, the square footage may not exceed 50 percent of the pre-existing living area of the primary unit. If the unit will result in an exceedance of the allowable FAR for the property, it may have an interior floor area of no more than 800 square feet. Standard ADUs are subject to 4’ side and rear setback requirements (except where the unit converts an existing garage in the setback), a 19’ height limit (16’ within 10 feet of the property line), and other requirements related to slopes, tree removal and grading. An off-street parking space is required, unless the unit meets specific exemption criteria established by the State of California such as proximity to public transit. ADUs created through from garage conversions are also exempt from the parking requirement, per State law.

Standard ADUs are also subject to a number of objective design standards. These include colors that are compatible with the primary unit, downward exterior lighting, landscaping of blank facades, and specific provisions for the treatment of windows, decks, and stairways. The Planning Director has the discretion to approve adjustments to the standards, including a 10 percent increase in the allowable

¹⁰ A JADU is an Accessory Dwelling Unit that is (1) no more than 500 square feet in size; (2) contained entirely within an existing or proposed single-family primary unit; (3) has its own bathroom or shares a bathroom with the primary unit; and (4) includes an efficiency kitchen.

height, a reduction in the dimensions of a required parking space, an increase in the size of an allowable deck, and the use of non-permeable parking materials.

Additional procedures have been established for ADUs that do not meet the design standards, and thus do not qualify for ministerial review. This increases the opportunity for units to be developed in Moraga, even when they require discretionary review. Such projects require a conditional use permit.

In addition to the above requirements, ADUs may not be rented for a term of less than 30 days (to limit their use as short-term rentals) and may not be sold separately from the primary unit. While owner occupancy is required for Junior ADUs, other ADUs are exempt from this requirement. These limitations must be included in deed restrictions for all ADUs and JADUs and apply to future owners in the event the property is sold. The deed restrictions may be removed if the ADU is eliminated.

The Town has created further incentives for ADUs by granting them relief from the impact fees that are charged for new single-family homes. No impact fee is required for an ADU that is less than 750 square feet in floor area. Units larger than 750 square feet are charged fractional impact fees based on the size of the ADU relative to the primary unit. The units are also not required to have new or separate utility connections, eliminating the need for a connection fee or capacity charge.

The revisions to the standards have made it much easier to develop an ADU in Moraga and resulted in a gradual uptick in ADU production. However, ADU entitlements are not as robust as they could be and average just 3 or 4 units a year. A program in this Housing Element calls for expanded outreach and education to homeowners to generate additional interest.

Manufactured Housing

Manufactured housing is treated the same as other housing types in Moraga and is allowed on a permanent foundation wherever housing is permitted. The General Plan has an implementation program (IP-B1) allowing manufactured housing when placed on permanent foundations and consistent with the Town's Design Guidelines. However, manufactured housing is not explicitly addressed in the Municipal Code. An action program in the Housing Element recommends adding a definition of manufactured housing to the Code and affirmatively stating that it is permitted in all residential zones.

Residential Care Facilities (Group Homes)

The Town of Moraga allows residential care facilities with fewer than six persons "by right" in all single family zones, as required by State law (Lanterman Act). However, small residential care facilities are not explicitly listed in the Municipal Code as a permitted use in single family districts. An action program in the Housing Element recommends clarifying that these uses are permitted and are not subject to use permits or other special permitting or design requirements. There are no special restrictions or limits on either small or large residential care facilities (with more than six residents). Congregate care

facilities such as nursing homes are permitted by right in the R-20 and Mixed Use districts in the MCSP area.

Supportive and Transitional Housing

Supportive housing refers to housing occupied by a target population that is linked to on-site or off-site services that help the resident retain their housing, improve their health, or maximize their ability to live and work in the community. Transitional housing serves a similar purpose but includes a fixed term of assistance, which may vary from six to 24 months. Supportive and transitional housing is sometimes provided in single family homes that are operated by non-profits and social service providers.

As required by State law (SB2), the Moraga Municipal Code expressly states that supportive and transitional housing are subject to the same requirements and restrictions that apply to other residential uses of the same type in each zoning district. In other words, a residence used for transitional housing in a particular zoning district is subject to the same rules as a residence used by any other household in that district. The current Code is fully compliant with State law.

Emergency Shelter

Senate Bill 2 (SB2), which took effect on January 1, 2008, requires cities, towns, and counties to identify at least one zoning category in which emergency shelter can be located without discretionary approval from the local government. Cities are permitted to apply objective standards that regulate the number of beds or persons served, the size and location of client intake areas, the provision of on-site management, the proximity to other shelters, length of stay and security. These provisions are found in Chapter 8.164 of the Moraga Municipal Code and were approved in 2014.

Shelters are permitted by right in the Institutional zoning district provided they meet the following standards:

- A maximum of 20 beds
- Maximum term of stay is six months during any consecutive 12-month period
- Conformance with all applicable state and local housing and building codes
- On-site security must be provided during all hours when the shelter is open
- Exterior lighting on pedestrian pathways and parking lot areas must be provided.
- Secure areas must be provided for personal property.
- The shelter may not exceed 50 percent of the total floor area used for a religious, college or institutional facility
- Two parking spaces per facility for staff, plus one space per six occupants allowed

Shelters are also subject to programmatic requirements addressing the maximum length of residency per client, transportation provisions for clients, appropriate State licensing, standards for food

preparation, and other operational characteristics. Shelters are also required to complete a management plan, which must be approved by the Planning Department, Building Department, and Moraga-Orinda Fire District (MOFD). The Plan must address good neighbor issues, transportation, client services, food services, and other management issues, and include a floor plan.

The Institutional zoning district includes 403 acres of land and is largely comprised of property owned by Saint Mary's College, who was supportive of the amendment at the time it was adopted. The 2020 point-in-time homeless count identified four (4) unhoused persons in Moraga; the currently zoned acreage and sites are sufficient to meet this need. No changes to current regulations are required.

Housing for Persons with Disabilities

Persons with disabilities have a number of special housing needs related to the accessibility of dwelling units; access to transportation, employment, and commercial services; and alternative living arrangements that include on-site or nearby supportive services. Moraga's current policies and regulations support these needs and do not constrain the development of housing for persons with disabilities. The Town accommodates requests for special structures or appurtenances (e.g. access ramps or lifts) serving disabled persons on a ministerial basis. There are no additional zoning, building code, or permitting procedures other than those allowed by State law.

Both the Federal Fair Housing Act and the California Fair Employment and Housing Act direct local governments to make reasonable accommodations (i.e., modifications or exceptions) in their zoning laws and other land use regulations when such accommodations may be necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling. For example, it may be reasonable to accommodate requests from persons with disabilities to waive a setback requirement or other standard of the Zoning Ordinance to ensure that homes are accessible for the mobility impaired.

Chapter 8.168 of the Municipal Code specifically addresses reasonable accommodation for disabled persons. Any person with a disability or their representative may request reasonable accommodation when a zoning requirement or other Town requirement becomes a barrier to fair housing opportunities. This request may cover modifications or exceptions to rules related to housing or housing-related facilities in order to provide a disabled person with equal opportunity to the housing of their choice.

The Town has established an application process and form, including information on the basis for which reasonable accommodation is requested. The request is reviewed by the Planning Director and a decision is rendered within 45 days of the application being deemed complete. The decision to grant or deny the request is based on specific factors related to the necessity of the modification, the impact on the town, the physical attributes of the property, the potential impact on surrounding uses and similar factors. The decision may be appealed.

In summary, current requirements for reasonable accommodation are fully compliant with State Law.

Family Housing

The Town's Municipal Code includes a definition of "family" as follows:

"Family" means: (i) Two or more persons related by birth, marriage, or adoption, or (ii) An individual or a group of persons living together who constitute a bona fide housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house, or institution of any kind.

This is an inclusive definition that does not distinguish between related and unrelated persons and is consistent with California case law.

Low Barrier Navigation Centers (LBNCs)

LBNCs are low-barrier, temporary service-enriched shelters that help homeless individuals and families quickly obtain permanent shelter. Assembly Bill (AB) 101 established requirements for local jurisdictions to allow LBNCs as a permitted use in certain zoning districts, provided they meet specific criteria. These criteria include such features as allowing pets, providing privacy, giving residents the ability to store possessions, use of a coordinated entry system, and providing access to permanent housing. They must be allowed by right in mixed use and non-residential zoning districts where multi-family housing is permitted. LBNCs are not currently addressed in the Moraga Municipal Code, as AB 101 only recently became effective.

Local Processing and Permitting Procedures

Processing and permitting procedures can become a housing constraint when they add significantly to the time required for development approval. Increased time, additional meetings, and multiple appeal opportunities can mean increased cost and uncertainty. This is particularly true for projects in environmentally sensitive areas, which may also require permits from state and federal resource agencies. Large projects on undeveloped sites may also require environmental impact reports. In such instances, it is not uncommon for approval to take several years. This is true for all communities in the Bay Area and is not unique to Moraga. Smaller projects and urban infill projects can be processed more quickly.

In Moraga, building permitting and inspection is performed by the Contra Costa County Department of Conservation and Development. This is more cost-effective and efficient for applicants than the Town maintaining its own building department. Most interior residential alterations can be processed with a simple building permit. Minor exterior alterations such as window and door replacement require Administrative (staff) Review. This requires noticing of neighbors, which extends the review period and increases the potential for appeals or modification requests. More significant alterations and additions may require design review, although in many cases this is still an administrative process performed by staff.

Larger projects such as subdivisions and planned developments require review by the Planning Commission and/or Town Council. All new single family homes likewise require review by the Planning Commission. Many project types are also subject to plan checking and review by the Moraga-Orinda Fire District and the Central Contra Costa Sanitary District (Central San).

All projects are subject to the requirements of the State’s Permit Streamlining Act (PSA). This requires that a formal decision be made on planning applications within 60 days after they are deemed complete. Actual processing time is typically shorter than 60 days. However, it is not uncommon for applications to be found incomplete on the first submittal, which can extend the review time. Projects requiring Planning Commission approval typically require a month’s lead time to be scheduled for a hearing once an application is deemed complete. Most planning decisions are subject to a 10-day appeal process.

Table 5-7 shows the typical permit processing times for applications in 2022. A building permit is typically processed by one to two days by the Town (excluding County processing time), while most Administrative Design Review applications are processed within 45 days. Projects requiring Planning Commission review are typically approved within 90 to 150 days. The longest review times are associated with planned development applications. The process is designed to take 12 to 24 months for full approval and permitting. However, public opposition and appeals on recent projects have resulted in approval timelines that are significantly longer—in some cases, over four years.

Figure 5-1 illustrates the plan review process for several different types of applications. Four specific processes are highlighted below: approval of a single family home, approval of a multi-family (R6) project, approval of a subdivision, and approval of a Planned Development (PD).

Table 5-7: Typical Permit Processing Times

Type of Permit/ Approval	Typical Timeframe
Building Permit, No Design Review	1-2 days (for Town, excludes County processing)
Building Permit with Administrative Design Review	45 days
Minor Subdivision/ Site Plan Review	150 days
Use Permit	120 days
Major Subdivision/ Tentative Map	12-24 months
Planned Development (based on recent projects)	24-48 months (*)

Source: Town of Moraga, 2022, based on recent projects. Excludes delays that may result from incomplete submittals.

() Process is designed to take 12-24 months, but recent projects have taken 2.5 to 4.5 years, with an average of 10 public meetings*

Figure 5-1: Typical Processing Procedures by Project Type

Single Family Home (in a single family zone)



Multi-family Development in an R6 Zone



Subdivision less than 10 acres



Planned Development



Planned Development Process

The Town has established procedures to allow variations from zoning standards through the planned development (PD) process. Generally, PDs provide opportunities for cohesive design on larger sites and allow projects that have a more harmonious relationship to site conditions. They can also accommodate variation in lot size and housing type, as well as the dedication of larger areas as open space.

The Moraga General Plan requires that development on any property larger than 10 acres and all parcels zoned R-6 must be processed as a PD. All land uses are permitted in PD zones, including housing. Creation of a PD is a discretionary process involving multiple steps. PDs are subject to a unique set of standards for lot sizes, including allowances for smaller lots than are allowed in the base zoning district. While the number of units on a site is set by the base zoning density, the siting of these units can vary. Density in PDs is effectively “transferred” from one part of a pre-subdivided property to another, with housing clustered in areas where construction has less impact or is more feasible.

Site-specific development standards for each PD are developed through a series of Planning Commission hearings. These standards may cover lot coverage, density, building design and arrangement, setbacks, parking, circulation, access, lighting, fencing, landscaping, screening, and other project features. The PD standards are oriented toward single family subdivisions, although they apply to all housing types. A commercial PD process has been developed for commercial and mixed use projects. The current PD process was adopted from the County’s regulations when the Town incorporated in 1974 and is over 48 years old.

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

- First, a conceptual development plan (CDP) is required. This includes a site plan showing topography, land uses, proposed grading, and the general distribution of buildings, circulation features, and open space as well as an evaluation of fiscal costs and public facility needs. Environmental review also occurs at this stage. A Planning Commission hearing to consider the application is conducted, and specific findings must be made before the Commission can approve the application. Additional findings must be made for hillside projects.
- Second, a general development plan (GDP) is required. Additional requirements apply, such as requirements for a property survey, including tree locations, and a project phasing plan and statement of design principles. Engineering feasibility studies also may be required. This plan is again subject to a Planning Commission hearing and approval.
- Third, a precise development plan (PDP) is required. This includes more specific site planning detail, grading and engineering plans, utility plans, floor plans, and exterior elevations. These are subject to a final Planning Commission hearing.

At each step, Planning Commission decisions may be appealed to the Town Council. In addition, the Commission may impose conditions and requirements at each step, if it finds it necessary to carry out the purpose and intent of the district. Building permits may only be issued after the third stage of this process has been completed.

The number of steps and hearings required for the PD process is a potential development constraint. Many decisions about project design are made during the CDP phase, making it difficult to modify the plan once this phase has been completed. This includes environmental review, which is costly to redo in the event the applicant wishes to change their plans. As currently structured, the PD process does not align well with Moraga's General Plan goals and policies. The Town is revising the process concurrently with the Housing Element update and intends to adopt a revised procedure in tandem with the General Plan Update. The goal of the revisions is to align the General Plan goals and policies with the PD zoning district, while reducing the number of hearings and rounds of review required, thus reducing the processing costs and lengthy approval procedures for applicants.

Design Review Process

Chapter 8.72 of the Municipal Code establishes requirements for design review in Moraga. The intent of these requirements is to protect the health, safety and welfare of the town by regulating the appearance of open spaces, buildings, and structures. Design review is required in all land use districts and applies to additions and alterations as well as new construction. Certain projects are exempt such as routine maintenance, remodeling that does not change the exterior of a building by more than 10%, replacement of existing features with similar features, minor changes to windows and doors, changes in roof material, demolition of most outdoor features, and minor changes to approved plans. As stated previously the 10% threshold is a constraint for projects such as on window replacement, door replacement and garage door updates.

Responsibility for design review applications is assigned to the Planning Director, who serves as the Town's "design review administrator." Most applications related to single family homes may be approved administratively if they meet the Town's design review standards – or denied if they do not.

Certain types of projects require review by the Town's design review board (DRB). These include new single family residences and subdivisions, as well as new multi-family and mixed use projects. In 2020, the Town Council combined the DRB and the Planning Commission, so the same seven-member board now has design review and planning review authority. The merger was an efficiency measure and has not impacted the time required for approval or number of hearings required.

The DRB/ Planning Commission considers factors such as height, bulk, mass, fences, walls, screening, landscaping, colors, safety, and the relationship to surround properties in their review. The Town has developed design guidelines to help inform this process. In single family districts, the DRB/ Planning Commission considers if the project will "contribute to the character and image of the town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality." It further considers the effect of the project on property values, and the potential for the project to discourage the

maintenance and improvement of surrounding properties. Special design requirements apply to homes with elevated building pads.

Different standards have been developed for multi-family, mixed use, and commercial zones. These zones have their own set of exempted projects (also covering most maintenance and renovation projects). All new multi-family or mixed use construction requires design review by the DRB/Planning Commission. Applicants are required to submit a site plan and architectural drawings and may be asked to provide additional information such as photographs, story poles, and supplemental analyses. Applications are reviewed based on their overall height, mass and bulk; special features such as walls and towers; exterior colors; concealment of mechanical equipment; landscaping; and relationship to existing and proposed adjoining development. The standards used to evaluate applications are similar to those for single family homes but may include additional factors such as noise and vibration.

The DRB/Planning Commission has the authority to approve design review applications following a public hearing. Such hearings are subject to various noticing requirements and procedures. Decisions are appealable to the Town Council. Similarly, design review applications that are administratively approved by staff may be appealed to the DRB/ Planning Commission.

SB 330 and SB 35 Expedited Processing Procedures

Senate Bill (SB) 330 was approved by the State legislature in 2019 to provide an expedited review and approval process for new housing. The process enables developers to submit a “preliminary application”—essentially a checklist and questionnaire that shields the project from subsequent fee increases or changes in regulations once the application is deemed complete. All residential projects are eligible for SB 330 unless the square footage or unit count increases by 20 percent or more after the preliminary application is completed. A full application must be submitted within 180 days of the preliminary application. Decisions on housing projects submitted under SB 330 must be rendered after no more than five total public hearings.

The Town of Moraga has developed an SB 330 preliminary application form and has posted the required procedures on its website. This option can potentially lead to expedited approvals.

The Town also has developed on-line application materials and information for projects eligible for processing under Senate Bill (SB) 35. SB 35 became effective in 2018 and requires cities and towns to use a streamlined “by right” review process for multi-family projects that comply with objective planning standards, provide specified levels of affordable housing, and meet other specific requirements. Proposed projects in Moraga with more than 10 units of housing must reserve at least half of the units for lower income households to be eligible. There are additional requirements related to the payment of prevailing wages to construction workers. Qualifying projects are subject to lower parking standards but must otherwise comply with all adopted development standards and plans.

Building Codes and Code Enforcement

Moraga has adopted the 2019 California Building Standards Code. The Code includes the 2019 California Building, Residential, Green Building, Electrical, Plumbing, Mechanical, and Existing Building Codes. The codes are enforced by the Building Inspection Division of the Contra Costa County Department of Conservation and Development, which also provides building inspection services to the Town. While building codes impact the cost of housing, they are also essential to ensure the safety of occupants.

Health and Safety Code Sections 17958.5 and 18941.5 authorize a jurisdiction to modify State Building Codes and establish more restrictive standards if the jurisdiction finds that the changes are needed due to local climatic, geological, or topographical conditions. Contra Costa County has adopted a number of such amendments, responding to earthquake, fire, landslide, and other hazards, and those apply in Moraga. Local (County) amendments include special requirements for smoke detectors, fire-treating of wood shake or shingle roof and wall materials, special inspections for concrete (for seismic safety), and more restrictive electric vehicle charging standards. These amendments do not significantly increase the cost of construction relative to other Bay Area communities.

Code enforcement is not a development constraint in Moraga and is an important part of sustaining the Town's existing housing stock. Enforcement is complaint-based, with some calls initially received by the Town's Planning Department and others filed via a mobile app (Mobile Moraga). Because Moraga does not have a Code Enforcement Division, it works with the County Building Department and other County Departments to resolve and respond to cases relating to illegal construction, unsafe building conditions, or hazards. Complaints are relatively uncommon, as the Town's housing stock is in excellent condition.

Site Improvement Standards and Requirements

New development is responsible for completing on-site improvements such as curbs, gutters, sidewalks, street tree planting, and utility connections. Larger projects are responsible for providing onsite drainage systems as well as water and sewer lines in the rights-of-way. New roads that are internal to subdivisions and planned developments are typically constructed by the developer and dedicated to the Town as public streets. In some instances, off-site improvements such as traffic signals, turning lanes, and sewer replacement, may be required to address external project impacts.

The Town's site improvement standards are established by the Subdivision Ordinance. These include a 52 foot right of way requirement for local public streets, with a curb-to-curb width of 36 feet (two 10-foot travel lanes and two 8-foot parking lanes). Larger rights-of-way are required for collector streets, arterials, four-lane streets, and streets with medians. Narrower rights-of-way are permitted for private streets, but a 36' curb to curb width is still required. The Subdivision Ordinance also establishes maximum slopes for different street types, as well as standards for pavement and pavement management. In addition, State fire codes establish requirements for access points into subdivisions, including a requirement that subdivisions with over 25 lots must have two access points. Central San

and the Moraga Orinda Fire District may identify additional requirements and improvements to protect water quality and ensure fire safety and emergency access.

Development and Permitting Fees

Table 5-8 shows the development fees that would be charged for a hypothetical new single family home in Moraga. The total is almost \$80,000, which represents approximately 14 percent of the permit valuation of \$582,000. More than 75 percent of the total is associated with impact fees. These include a school fee (\$9,854), a sanitary district connection fee (\$9,300), a general government fee (\$7,710), and two park-related fees totaling about \$23,000 per unit. There is also a Lamorinda Fee and Financing Authority charge of \$8,472 per unit to offset traffic impacts, which is collected under a joint powers agreement between Moraga, Orinda, and Lafayette.

The Table assumes a project location outside the MCSP area. Residential uses within the MCSP area are subject to a Specific Plan recovery fee, which ranges from \$412/unit for senior housing to \$1,185 for a conventional single family home. Other impact fees cover storm drain impacts and public safety. Most of the impact fees are collected a per unit (house) basis but a few are based on square footage.

Entitlement fees cover costs such as design review and study sessions. These are based on the actual cost of staff time to process the permits, which is calculated using an hourly rate. Deposits are collected at the time of application submittal. The Planning Department collects the balance based on staff's equivalent hourly rate, as the Town's services are performed on a cost recovery basis. The amount shown for design review in Table 5-8 is for the deposit, which is often less than the full amount required to complete an application. Since 2021, the Town also has collected a 10 percent advanced planning fee to fund the cost of long-range planning activities. Building permit fees vary based on construction value. In the hypothetical example in Table 5-8, they are about \$12,800 for a \$582,000 project.

Table 5-9 provides similar information for a hypothetical 100-unit apartment building, including an estimate of the total cost per unit. In this instance, the impact fees make up an even larger share of the total cost. Based on the assumptions shown in the Table, over 95 percent of the permitting cost would be impact fees. Unit costs are generally lower for multi-family homes than for single family homes, but in a 100-unit project they would still be over \$39,000 a unit. The entitlement fees shown in Table 5-9 would likely be higher than the amounts shown in the table, given the cost of staff reports and preparation for Planning Commission/ Design Review hearings. The permitting fees represent only about one percent of the project costs.

Table 5-8: Permitting Fees for a Hypothetical Single-Family Home

(based on a 3,100 square foot home with a permit valuation of \$582,800)

	Multiplier	Per	Cost (*)
Entitlement Fees			
Design Review (*)	\$5,000	Dep	\$5,000.00
Advanced Planning Fee	10% of planning fees		\$500.00
Fire Dept Design Review	\$339	Set	\$339.00
Sub-Total Entitlement Fees			\$5,839.00
Building Fees			
Building Permit Fee	Based on Valuation		\$540.13
Building Plan Check Fee	Based on Valuation		\$3,215.06
Construction Inspection Fee	Based on Valuation		\$3,733.66
Energy Compliance	Based on Valuation		\$1,148.26
Access Compliance	Based on Valuation		\$2,183.26
Electrical Inspection	Based on Valuation		\$364.04
Mechanical Inspection	Based on Valuation		\$364.04
Plumbing Inspection	Based on Valuation		\$364.04
Planning Review	\$215	Set	\$215.00
Fire Review	\$544	Set	\$544.00
SMIP Fee	0.013%	Val	\$75.76
CA Building Standards Fee	\$1 per \$25K valuation		\$23.31
Sub-Total Building Fees			\$12,770.58
Impact Fees			
School District Fee	\$3.79	SF	\$9,854.00
CCC Sanitary District Connection Fee	\$9,300.00	Unit	\$9,300.00
General Government Impact Fee	\$7,710.00	Unit	\$7,710.00
Public Safety Impact Fee	\$851.00	Unit	\$851.00
Park Development Impact Fee	\$9,581.00	Unit	\$9,581.00
Storm Drain Impact Fee	\$419 per 1k SF of Impervious Surface		\$1,298.90
Parkland Development In-Lieu Fee	\$13,933.00	Unit	\$13,933.00
Lamorinda Fee and Finance Authority	\$8,472.08	Unit	\$8,472.08
Total Impact Fees			\$60,999.98
Total Project Fees			\$79,609.56

Source: Contra Costa County Housing Collaborative, 2022. Town of Moraga, 2022.

(*) Cost shown for design review is the deposit only. The actual cost may be substantially higher.

Table 5-9: Permitting Fees for a Hypothetical 100-unit Multi-Family Housing Development
(based on a 100-unit project with 800 square foot units with a permit valuation of \$15,040,000)

	Multiplier	Per	Cost
Entitlement Fees			
Study Session- New Construction	\$3,000	Dep*	\$3,000.00
Design Review	\$5,000	Dep*	\$5,000.00
Land Use Permit	\$3,500	Dep*	\$3,500.00
Advanced Planning Fee	10% of planning fees		\$1,000.00
Fire Dept Design Review	\$339	Set	\$339.00
Sub-Total Entitlement Fees			\$12,839.00
Building Fees			
Building Permit Fee	Based on Valuation		\$9,513.60
Building Plan Check Fee	Based on Valuation		\$76,105.80
Construction Inspection Fee	Based on Valuation		\$25,887.80
Energy Compliance	Based on Valuation		\$12,943.40
Access Compliance	Based on Valuation		\$18,655.60
Electrical Inspection	Based on Valuation		\$6,918.40
Mechanical Inspection	Based on Valuation		\$6,918.40
Plumbing Inspection	Based on Valuation		\$6,918.40
Planning Review	\$215	Set	\$215.00
Fire Review	\$544	Set	\$544.00
SMIP Fee	0.013%	Val	\$75.76
CA Building Standards Fee	\$1 per \$25K valuation		\$601.60
Sub-Total Building Fees			\$167,721.20
Impact Fees			
School District Fee	\$3.79	SF	\$30,320.00
CCC Sanitary District Connection Fee	\$9,300.00	Unit	\$93,000.00
General Government Impact Fee	\$4,989.00	Unit	\$49,890.00
Public Safety Impact Fee	\$550.00	Unit	\$5,500.00
Park Development Impact Fee	\$6,200.00	Unit	\$62,000.00
Storm Drain Impact Fee	\$419 per 1k SF of Impervious Surface		\$20,950.00
Parkland Development In-Lieu Fee	\$9,016.00	Unit	\$901,160.00
Lamorinda Fee and Finance Authority	\$5,930.10	Unit	\$593,010.00
Total Impact Fees			\$3,924,160.98
Total Project Fees			\$4,103,220.20
Cost Per Unit			\$41,032.20

Source: Contra Costa County Housing Collaborative, 2022

(*) The amounts shown here are for deposits. The actual costs would likely be higher, as they are based on actual staff costs associated with processing each permit.

Table 5-10 compares fees for the hypothetical projects in Moraga with fees for the identical projects in other cities and towns in Contra Costa County. The table shows the permit cost for a single family home and a 100-unit apartment building in each city. This analysis was performed by the Contra Costa Collaborative, a technical support initiative funded by ABAG to help local governments in Contra Costa County with their housing element updates. While it is only intended to convey “order of magnitude” differences, it provides a helpful comparison between cities.

Moraga’s fees are somewhat higher than the countywide average. This is primarily due to impact fees, some of which are set by other agencies. All of the Town’s fees are set to cover the actual cost of delivering services. Because Moraga is a residential community, its ability to cover development costs through other municipal revenues such as sales taxes and commercial property taxes is very limited.

Table 5-10: Comparison of Average Permit Costs in Contra Costa County Jurisdictions

	Permitting Cost for a Single Family Home	Permitting cost per unit 100 unit Multi-Family Development
Antioch	\$22,146.24	\$8,139.11
Danville	\$62,489.24	\$33,369.20
Lafayette	\$68,946.25	\$31,320.50
Hercules	\$64,064.99	\$29,673.85
Clayton	\$39,160.00	\$16,692.46
Pinole	\$56,665.77	\$22,773.71
Brentwood	\$113,158.84	\$47,662.96
Concord	\$47,248.07	\$17,658.46
El Cerrito	\$57,356.24	\$29,377.68
Moraga	\$79,606.56	\$41,032.20
Martinez	\$58,701.86	\$24,687.69
Oakley	\$70,088.22	\$35,721.69
Orinda	\$64,627.76	\$33,479.54
Pittsburg	\$60,830.46	\$31,982.03
Pleasant Hill	\$30,927.67	\$16,704.08
Richmond	\$45,694.42	\$23,011.17
San Pablo	\$29,498.69	\$6,740.52
San Ramon	\$100,495.59	\$33,187.73
Walnut Creek	\$31,004.88	\$15,076.28
Average Cost	\$58,327.09	\$26,219.78

Source: Contra Costa County Housing Collaborative, 2022

Non-Governmental Constraints

A variety of non-governmental constraints impact the maintenance, improvement, and development of housing in a community. These constraints could include market-related conditions, such as the availability of financing and land and construction costs, as well as community opposition to new development.

Availability of Financing

The availability of financing can have an impact on the supply and cost of housing. There are generally two types of financing used in the housing market: (1) capital used for initial site preparation and construction; and (2) capital used to finance the purchase of units by homeowners and investors. Interest rates substantially impact home construction, purchase, and improvement costs. A small fluctuation in rates can make a dramatic difference in the annual income needed to qualify for a loan. Interest rates have increased during 2022, following a period of record lows. However, they remain relatively low in historical terms. In general, financing is available for new construction, rehabilitation, and refinancing.

While financing is available for market-rate development, limited availability of funding to subsidize affordable projects is an impediment to the construction of affordable housing. This is true not only in the Bay Area, but throughout California and the U.S. Most affordable housing developments require several sources of financing to become feasible, including bank loans as well as federal, State, local, and philanthropic funding. Major sources of funding include low-income housing tax credits, Affordable Housing and Sustainable Communities funding, HOME funds, and Community Development Block Grant (CDBG) funds.

Low-income housing tax credits are issued to the State of California by the federal government. The State awards the tax credits to developers of affordable rental projects on a competitive basis. Developers sell the credits to private investors to obtain funding for their projects. These investors can then claim the tax credit deduction over a 10-year period. Currently, State formulas for allocating tax credits favor “high-resource” areas, as these areas have historically had the most limited opportunities for lower income households. All three of the Lamorinda area cities are in the highest resource category. However, the supply of tax credits overall remains very limited.

Cost of Land

Land is one of the largest components of housing development cost. It is influenced by many factors including location, lot size, zoning, accessibility, availability of services, and existing infrastructure. There have been relatively few sales of vacant land in Moraga in recent years, and therefore there is limited information on the cost of land in the Town. Among recent sales, prices ranged from approximately \$25,000 per acre to approximately \$3.5 million per acre. Some of these sites were zoned for open space or for residential development at very low densities. Land prices could be significantly higher for sites with more significant potential for residential development.

Land costs in the Bay Area often exceed \$200,000 per single family unit, while land costs for multifamily units can range from \$25,000 per unit to over \$100,000 per unit, depending on the location. While there is limited data on land cost in Moraga specifically, it represents a significant component of total housing costs and constraint to affordability.

Construction Costs

Construction costs have increased substantially over the past several years and are often cited as a key barrier to the production of housing. Causes for the increase in construction costs include increases in the cost of materials as well as increases in labor costs. In recent years, several factors have increased cost of materials, including global trade patterns and federal policy decisions, such as tariffs, as well as state and local regulations, such as building codes. Most recently, the elevated construction demand due to wildfire reconstruction has been compounded by the COVID-19 pandemic in influencing the cost and availability of construction labor and materials. California has also seen a severe tightening in the construction labor market, especially for workers trained in specific construction trades. The lack of an available labor force drives up the cost of labor and leads to project delays as workers are either unavailable or lost to more profitable projects.

According to construction cost data published by RS Means, the per square foot cost of single-family construction in Moraga is approximately \$289 per square foot, not including site improvement costs. Site improvement costs may be over \$50,000 per lot; this can vary substantially due to contributing factors such as the size of the lot, availability of water and sewer connections, soil conditions, and other conditions that could impact costs. In total, construction costs for a single-family Moraga home would likely exceed \$630,000 for a 2,000 square foot single family home, before including the cost of land. With the addition of financing costs, permits and fees, other soft costs, and a builder profit of approximately ten percent, the cost to a homebuyer would almost certainly exceed one million dollars.

For multifamily development, RS Means indicates that per square foot construction costs in Moraga would be approximately \$278 per square foot. Assuming an average of 1.5 parking spaces per unit, the cost of podium parking could add \$75,000 or more to the per-unit construction cost. After factoring in \$25,000 in site improvement costs per unit, financing costs, permits and fees, and other soft costs totaling approximately 30 percent of hard costs, the development cost for a 900 square-foot multifamily unit could be approximately \$475,000, before including the cost of land.

Information provided in low-income housing tax credit applications submitted to the California Tax Credit Allocation Committee (TCAC) suggests that the typical cost to construct a new affordable unit (i.e., total development costs) in Contra Costa County is approximately \$550,000 to \$600,000 per unit, including the cost of land. This may be an underestimate of the typical cost in Moraga because the TCAC applications include lower-cost areas of the County, where land costs are lower than would be typical in the Lamorinda area.

Within the 6th Housing Element Cycle, the Town of Moraga will seek to mitigate some of the impacts of high development costs in part by increasing development capacity on rezoned sites, as discussed in the Housing Sites Analysis and Housing Plan chapters of the Housing Element. The figures provided above demonstrate that the cost to construct a multifamily unit is significantly lower than the cost to construct a single-family unit. Therefore, rezoning to allow for more multifamily development will facilitate the production of housing that is more affordable “by design” as well as housing that is formally affordable due to the use of subsidy and tax credit programs.

The Housing Plan also includes a program that will reduce parking requirements for studios and one-bedroom units, which will help to lower multifamily development costs. In addition, the Town will take actions to streamline the development process, including approving multifamily development by right, and establishing objective design standards which can help to reduce time and uncertainty in the development process and lower overall development costs.

Time Between Approval and Building Permits

In most cases, the time between project approvals and the issuance of building permits in Moraga is relatively short. However, there are three residential projects in Moraga that were approved at least five years prior to the preparation of this Housing Element Update, and which have not yet been constructed. This could be due to a number of factors, including funding constraints, construction labor shortages, increases in construction costs that could lead to unexpected cost increases after project approval, and time needed to finalize project design. In addition, some property owners seek to entitle projects and plan to sell the entitled property to a developer and may struggle to find developer interest for the specific project that is entitled on the site.

The Housing Plan chapter of this Housing Element Update includes a program that states that Town staff will meet with developers, homeowners, and other applicants on an annual basis to identify ways to reduce developer costs, increase the feasibility of projects, and address potential barriers to housing construction. These meetings would be an opportunity for developers to discuss any issues that are preventing construction of approved projects and seek opportunities to work with the Town to overcome barriers to construction.

Projects Developing Below Maximum Allowable Densities

Another potential non-governmental constraint is that developers may propose projects that are below the densities allowed by zoning. This includes building single family homes on sites zoned for multifamily housing. It also includes subdivisions with larger lots and thus fewer units than were anticipated in local housing plans. In the Moraga Center Specific Plan (MCSP) area, the Town has adopted “minimum densities” as well as “maximum densities,” reducing the potential for “underdevelopment” of higher-value sites. For instance, the R-20 zone established a minimum density of 16 units per acre while the MCSP mixed use zones include minimum densities of 12 units per acre.

Recent data for residential projects shows that most are developing close to their General Plan and zoning designations. However, most of these designations were assigned through Planned Development applications. Examples include:

- Moraga Town Center Homes, which include 36 units on 3.06 acres (11.7 units per acre). This is very close to the 12 unit/acre density approved when the site was rezoned from Suburban Office to Planned Development.
- Harvest Court, which included 26 units on an 8.7 acre site (excluding 2.5 acres dedicated as a park). The density is 3 units per acre, which is equal to what was allowed by zoning.
- Via Moraga, which included 17 units on a 1.9 acre site (8.9 units per acre). This is close to the 10 unit/acre density approved when the site was rezoned from Limited Commercial to Planned Development.
- Bella Vista, which included 27 units on 179 acres, equivalent to a density of 1 unit per 6.6 acres. In this instance, the site had open space planning and zoning designations. The allowable number of units was determined through a PD process, and ultimately resulted in 27 units on 27 acres, or a density of one unit per acre. The remaining 152 acres was dedicated as permanent open space.
- Los Encinos, which included 10 lots on a 7-acre site, equivalent to a density of 1.4 units per acre. Zoning allows 3 units per acre, but the development site was originally part of a 65-acre parcel designated as open space.
- Hetfield Estates, which included 7 lots on a 58-acre site, equivalent to a density of one unit per 8.2 acres. However, this was originally an open space parcel, and the lots themselves are all 15,000-25,000 square feet (or about 2 units per acre)

More recent pre-application plans for sites in the MCSP area have been close to the maximum density allowed by zoning. This is expected to continue in the future, given the minimum density requirements and the high cost of land and construction.

Community Opposition

The State of California recognizes community opposition as a factor in impacting the cost and viability of construction. Although opposition may lead to improvements in the quality of development and projects that are more compatible with surrounding uses, it can also increase the cost of development. This can result from additional processing time and the required number of hearings, the cost of appeals and legal challenges, and the cost of making changes to projects that reduce the number of units or add new amenities. The Town strongly encourages preapplication meetings, neighborhood meetings, study sessions, and other methods to identify community concerns early on and address them proactively. As required by State law, it has also developed expedited procedures for projects meeting objective development and design standards. These steps may not be sufficient to address community concerns, which are often passionate and rooted in concerns about traffic, wildfire hazards, and the loss of valued open space and community character.