

## MEMORANDUM

**TO:** Members of the Planning Commission

**FROM:** Suzanne Thorsen, Planner

**RE:** TITLE 22 (Development Code) Amendment: Stream Conservation Area  
Hearing continued from April 1, 2013 to May 13, 2013  
Agenda Item # 4

**DATE:** May 3, 2013

### SUMMARY

The Planning Commission held a publicly noticed hearing on the draft Stream Conservation Area (SCA) Ordinance on April 1, 2013. At the hearing your Commission heard testimony from 35 speakers and provided direction for additional information and revisions for the SCA Ordinance. Your Commission directed staff to provide an indication of how many parcels are entirely encumbered by the SCA, identify Standard Management Practices, clarify methodology for determining top of bank, clarify the definition and delineation of riparian vegetation, consider animal-keeping regulations relative to equestrian uses, and revisit the disturbed area exemption to include a limit on the amount of new impervious surfaces. Based on your Commission's direction and review of public correspondence from the April 1 public hearing, staff has prepared a revised draft Stream Conservation Area Ordinance (Attachment #2). A draft Resolution has also been provided (Attachment #1). Staff recommends that your Commission consider the revised Stream Conservation Area Ordinance and after taking public testimony, recommend that the Board of Supervisors approve the Ordinance.

### DISCUSSION

#### 1. Standard Management Practices:

Standard Management Practices (SMPs) consist of stormwater run-off control, landscaping or construction management practices that would be required for any development that requires an SCA Permit. SMPs directly offset or avoid impacts to hydraulic capacity, riparian habitat and water quality. They correspond to site features (e.g., slope) and development activities (e.g., distance from stream, vegetation removal, etc.) that can be objectively identified by a property owner or planner, and are based upon common best practices or scientific principles for riparian protection.

The SMPs are a "living" document that must be periodically updated to reflect best available science and practices for stream protection. The document will be available online and in the offices of the Community Development Agency so that they can be used in the design of projects and the review of SCA Permit applications. The draft Standard Management Practices provided as Attachment #3 are subject to further review and refinement for content, formatting and clarity.

## 2. Parcel Analysis:

The April 1 staff report stated that a total of 3,641 lots would be subject to the Stream Conservation Area. This figure is both an estimate and an over-representation of the SCA's extent, as it is based on a fixed distance from the centerline of a mapped stream (the current stream map is not survey accurate) corresponding to the 100-foot SCA setback, regardless of lot size (the City-Centered Corridor establishes smaller SCA setbacks for lots under 2 acres in size).

Your Commission requested information about parcels that are entirely encumbered with the SCA. This information is provided below but it is important to note that it is based upon parcels that are established for tax assessment purposes which may not be representative of separate legal lots of record owned in common with other legal lots, and/or that may not be buildable given size or other constraints. Also, this data only encompasses parcels that fall *entirely* within the SCA – there may be additional parcels that are significantly or even mostly encumbered by the SCA setback. Therefore, the information should be taken as a general estimate in response to the Planning Commission's inquiry, and not an absolute finding of fact.

### ***City-Centered Corridor: Parcels Entirely Within SCA***

	Parcel < 0.5 acres		Parcel 0.5 to 2 acres		Parcel >2 acres	
	<i>Vacant</i>	<i>Improved</i>	<i>Vacant</i>	<i>Improved</i>	<i>Vacant</i>	<i>Improved</i>
Planned District	1	1	0	0	0	0
Conventional District	5	4	1	0	0	0

### ***All Other Corridors (Inland-Rural, Applicable Coastal, Baylands): Parcels Entirely Within SCA***

	<i>Vacant</i>	<i>Improved</i>
Planned District	8	16
Conventional District	65	207

## 3. Top of Bank:

The Countywide Plan establishes the SCA as inclusive of the “watercourse itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks...” This description is supported by diagrams, which are incorporated into the draft Ordinance as Figure 3-16 (p.4 of Attachment #2).

The Countywide Plan Glossary defines top of bank as “the elevation at which flow spills out of a stream channel and onto the floodplain.” The Countywide Plan definition is consistent with the proposed Development Code definition provided on p. 12 of Attachment #2. Both reflect the definition from Marin County Code Section 23.08, Natural Resources. The proposed SCA ordinance is consistent with the Countywide Plan with regard to how top of bank is defined.

Despite this, the top of bank definition can present challenges in interpretation where there are no discernible bed and bank conditions for streams with profiles characterized by steep slopes or terraced floodplains, or smaller streams. The Department of Public Works currently requires that the property owner obtain a hydrologic study to determine the top of bank for such situations.

There are several alternative approaches that could be employed to identify the edge of stream/starting point for an SCA setback, including:

- a. Measure the SCA setback from the edge of the active channel or high water elevation;
- b. Measure the SCA setback from the centerline of the stream;
- c. Measure the SCA setback from the top of bank *or* visible break in slope (based on topographic data).

While there may be merit in each of these alternatives to the top of bank as presently defined, codifying them in the SCA Ordinance may be inconsistent with the Countywide Plan due to the fact that alternative SCA measurement/top of bank conditions are not anticipated in Policy BIO-4.

#### **4. Riparian Vegetation:**

At the April 1 hearing, the Planning Commission discussed “facultative” species such as California bay, redwood, and valley oak that are not specifically associated with high groundwater but are relatively common near streams in Marin. These and other vegetative species support habitat, streambank stability, and water quality, but including them within the definition of “riparian vegetation” would make it difficult for property owners to reasonably ascertain the presence of riparian vegetation without the assistance of a biologist and could make determination of the extent of riparian vegetation subjective and potentially inconsistent. There are two separate but related issues relevant to the topic of riparian vegetation:

- How riparian vegetation is defined for the purposes of determining SCA setbacks
- Removal of vegetation within the SCA.

The Countywide Plan protects riparian vegetation and bases the distance or applicability of SCA setbacks on the presence of riparian vegetation. These provisions are incorporated into the SCA Ordinance (see Section 22.33.030.B, Attachment #2, p. 2) The Countywide Plan Glossary includes several riparian definitions (“Riparian”, “Riparian Habitats”, “Riparian Lands”) to provide context for the relevant policies of the Countywide Plan and specifically defines Riparian Vegetation as:

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

The Countywide Plan definition is proposed for inclusion in Article VIII (see Attachment #2, p. 12). The approach that is most consistent with the Countywide Plan is to codify, verbatim, the Plan’s definition of riparian vegetation.

The narrow scope of the Countywide Plan definition will make it relatively straightforward to identify the *individual riparian plants* that would form the basis for SCA setbacks: images can be provided in the SCA toolkit to illustrate typical riparian species and how to measure the SCA setback from the dripline of trees. Building upon the Glossary definition in the Countywide Plan, the Development Code definition for riparian vegetation could incorporate a representative list of native riparian species for clarity, such as that provided on p.2-29 of the Countywide Plan (“Characteristic species include willow, alder, box elder, big-leaf maple, cottonwood, dogwood, elderberry, elk clover, thimbleberry and California blackberry, among others.”).

The County’s consulting biologists at the firm of WRA have provided an alternative definition that is generally consistent with the Countywide Plan Glossary in that it is based upon the presence or abundance of characteristic species. It would provide more room for scientific determination of riparian

vegetation based on the presence of one or more water-loving species in a *plant community*. However, this approach could pose difficulty for homeowners to identify the extent of riparian vegetation without the assistance of a biologist.

“Stream-associated plant communities composed of plant species adapted to the presence of seasonal or perennial groundwater. The presence of these species as dominants or components in the plant community is used to identify riparian vegetation and to differentiate them as distinct from surrounding forest, shrub or grassland communities. Typical species characteristic of riparian plant communities in Marin include: willow (*Salix* sp.), Oregon ash (*Fraxinus latifolia*), alder (*Alnus* sp.), wax myrtle (*Myrica californica*), stream dogwood (*Cornus sericea*), tall flatsedge (*Cyperus eragrostis*), rush (*Juncus* sp.), and giant chain fern (*Woodwardia fimbriata*). Additional species with similar affinity for stream corridor areas with high groundwater may be used to identify riparian vegetation.”

With respect to vegetation removal, there are safeguards provided in the SCA ordinance itself as well as in the draft Standard Management Practices (SMPs). The draft SCA Ordinance would exempt removal of vegetation when necessary for life and safety reasons as provided in Section 22.63.020.B.1 (Attachment #2, p.6). Vegetation removal for other purposes would be addressed through the SCA Permit procedures and the framework provided in the draft Standard Management Practices. The SMPs do not allow vegetation removal within 15 feet of a stream, limit the total extent of vegetation removal, and establish limits and replacement requirements for vegetation removal.

#### **5. Animal-Keeping:**

The Countywide Plan provides in BIO-4.1 that agricultural uses shall not result in animal confinement within the SCA. This language is carried over into the proposed exemption for agricultural uses (see Section 22.63.020.B.1, Attachment #2, p. 6). The SCA Ordinance would allow continuation of existing activities under the disturbed area exemption, including maintenance, repair or replacement of fences or other agricultural fields and facilities.

At the April 1 hearing, your Commission requested that staff evaluate the animal-keeping regulations pertaining to horses and respond to public comments requesting an exemption for equestrian facilities. Based upon this review, staff does not recommend that a separate exemption for equestrian facilities be included in the ordinance because:

- Equestrian facilities are defined in the Development Code to include a range of uses, such as boarding stables, riding schools, and exhibition facilities that are not necessarily different than other types of development in that they can result in water quality, erosion and habitat impacts.
- Although Section 22.32.030 (Animal Keeping) provides standards for keeping of animals on non-agricultural land, including required erosion and drainage control plans that would be required for any new or expansion of use, these standards are primarily intended to ensure that equestrian facilities maintain adequate separation from residences and are located on lots of sufficient size. An SCA exemption for horse keeping would be difficult to justify given the extent of review already required per the Development Code and the potential for water quality and habitat impacts as outlined in “Groundwater,” a publication by MCSTOPPP and the Marin Resource Conservation District.
- Creating an exemption for equestrian facilities or horse keeping in the SCA would be inconsistent with the standards adopted in the Countywide Plan and incorporated into the draft SCA Ordinance relating to animal confinement in the SCA.

- Existing equestrian facilities would not be affected by the SCA Ordinance because existing facilities (such as stables, corrals and rinks) would be considered disturbed areas.

At the request of the Marin County Farm Bureau, clarification of “animal confinement” has been provided in the FAQs (Attachment #5). This term refers to permanent facilities, such as feedlots, pens and barns, where animals are concentrated for extended periods of time but does not encompass pastures or temporary enclosures. While existing facilities would be considered “disturbed area”, new animal confinement facilities would require approval of an SCA Permit.

## KEY REVISIONS

The revised SCA Ordinance includes changes directed by your Commission as well as additional revisions in response to public comments. All changes to the April 1 Planning Commission draft are shown in revision marks on the attached SCA Ordinance (Attachment #2).

**1. Clarified terms:** Definitions for “jurisdictional wetland” and “riparian vegetation” have been provided in the proposed SCA Ordinance (Attachment #2, p.12). The term “existing horizontal incursion” has been stricken from Section 22.63.030.A (Attachment #2, p.7) and replaced with the “footprint”, which is defined in Article VIII of the Development Code as “The horizontal surface area covered by a structure.”

**2. Additional setback:** Your Commission requested information about conditions or findings that would trigger an additional setback under the provisions of Section 22.33.030.B (Attachment #2, p. 2). In discussion with the County’s consulting biologists and stormwater engineer, two conditions that may trigger an additional setback were identified: a low-lying terrace floodplain and riparian vegetation that extends beyond the SCA setback.

Section 22.33.030.B has been revised to indicate that the presence of woody riparian vegetation extending beyond the SCA setback is an example of a situation in which the additional SCA setback may be required to protect riparian resources. This would have the greatest implication in the City-Centered Corridor, as the SCA setback is otherwise only measured from the top of bank. Low-lying terrace floodplains were not included as an example, given the practical difficulties in identifying and describing the limits of a low-lying terrace floodplain as compared with the top of bank.

The Farm Bureau has commented that the proposed SCA ordinance would create a disincentive for farmers and ranchers to install riparian fencing. Riparian fencing programs are environmentally beneficial as they protect stream corridors and allow for re-establishment of riparian vegetation. However, riparian vegetation can extend up to or even beyond the fence line. The SCA setback for most agricultural properties (100 feet plus 50 feet from the limits of woody riparian vegetation) can create a “moving target” for the limits of the SCA setback since letting woody riparian vegetation maintain its natural growth could, over time, result in an expanded SCA setback due to the requirement that the SCA setback be 50 feet from the limits of the woody riparian vegetation. This in turn may cause owners to remove riparian vegetation or maintain disturbances that prohibit riparian growth – an outcome that would be adverse to the stated purpose of the SCA Ordinance. In order to address this issue and establish a “safe harbor” for farms and ranches, a revision is proposed to Section 22.33.030.B.6 (Attachment #2, p.3) that would establish the outer limits of woody riparian vegetation on agricultural land based most recent aerial photography on file with the County as of the ordinance adoption.

**3. NMWD Recommendations:** Your commission directed staff to consider and incorporate the text changes proposed by the North Marin Water District for the exemptions 22.63.020.B.1.a (Public utility facilities) and 22.63.020.B.1.b (Emergency measures). The public facility exemption has been revised.

However, the suggested revisions for emergency measures are redundant and more specific with, the language of the emergency measures exemption. The description of “emergency” contained in this exemption is consistent with the definition provided in Article VIII of the Development Code.

**4. Disturbed Area:** Your commission expressed concern about the broad wording of the “disturbed area exemption” in Section 22.03.020.B.2.b and requested additional parameters on the type and extent of development that could occur in a disturbed area through an exemption. Several options are available:

- a. A “no net increase” approach, which would allow some landscaping changes and development over an existing patio or driveway, for example, but would require *any new* impervious surface within the SCA, regardless of extent, to obtain an SCA Permit (Tier 1 or Tier 2). Your Commission noted on April 1 that this approach might be so restrictive as to be overly burdensome (e.g., a Tier 1 permit for a shed). Given the cost and time involved in permitting, this approach may also result in low compliance and future enforceability issues.
- b. Trigger an SCA Permit for an impervious surface if it also requires a building permit. This approach was investigated; however, building permit requirements do not directly relate to stream/riparian impacts. Impervious surfaces and structures such as sheds up to 120 square feet, accessory structures up to 300 square feet (on lots larger than one acre), patios, sidewalks and driveways do not require building permits. An exemption along these lines would mean that patios, regardless of extent, would not be subject to SCA review while sheds or accessory structures that meet the thresholds described above would require an SCA Permit (Tier 1) at a minimum if electric or plumbing service is provided.
- c. Establish square footage thresholds and distance standard to allow for limited new impervious surface, on a cumulative basis.

The third option has been incorporated into the draft SCA ordinance. It builds upon existing thresholds and policy standards to allow a cumulative total of 120 square feet of impervious surface as an exemption, if it is located in a previously disturbed area, is located at least 20 feet from the top of the stream bank, does not result in removal of woody riparian vegetation, and disperses storm water run-off over a pervious area. Stormwater management standards provide that new impervious surfaces should have a drainage ratio of 2:1 (impervious: pervious) to allow for dispersal and infiltration of run-off.

The proposed revision would allow a new improvement of modest size, such as a shed or patio, to be exempt in a disturbed area if located at least twenty feet from the stream as long as it does not drain directly to the creek (i.e., it allows sheet flow across a lawn or other vegetated surface).

**5. Bridges:** The Planning Commission did not raise this issue specifically; however, staff received feedback from the public and the Department of Public Works that due to structural requirements, the disturbance required for construction, and review authority of other resource agencies, it is highly unlikely that bridges could be accommodated through the Tier 1 permit procedure. Bridges typically require a Creek Permit (DPW) as well as environmental review by state and federal agencies.

Because inclusion of bridges in the list of development activities eligible for Tier 1 may establish an expectation of permit timeframe and costs that is not supported by reality in the majority of cases, they have been stricken from Tier 1 language. A Tier 2 permit would be required only if no Creek Permit is required by the Department of Public Works.

**6. Tier 1 Building Additions:** The Countywide Plan Implementing Program BIO-4.a directs adoption of an expanded SCA Ordinance that implements the SCA standards and states that such an ordinance could “...consider modest additions to existing buildings that would not result in significant impacts to riparian

resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA...”

The April 1 draft allowed building additions as an activity eligible for an SCA Permit (Tier 1), so long as they did not result in expansion of the existing building footprint within the SCA by more than 500 square feet. Your Commission directed staff to establish additional parameters in the ordinance that would set a cap of 500 square feet beyond which any future additions would be subject to an SCA Permit (Tier 2). Public comments suggested that the ordinance should allow a “swap” or “trade” for removal of impervious surfaces elsewhere on the property.

The proposed revision would allow SCA Tier 1 permitting for building additions that do not expand the existing footprint within the SCA by more than 500 square feet, provided that the addition is not closer to the stream than the existing structure or any structure removed. This language would allow a “swap,” in which the footprint of impervious surface that is removed could be applied toward the Tier 1 cumulative limit for a building addition. The advantages for the SCA are twofold: first, it would encourage removal of impervious surface close to streams and second, new building additions would be subject to Standard Management Practices, which incorporate low impact development techniques that reduce the volume and rate of run-off into the stream. Removal of non-permitted structures would not be applied toward the cumulative 500 square foot limitation for Tier 1 permits.

**7. Tier 1 Site Assessment:** The proposed Ordinance language for Tier 1 Site Assessments (Section 22.63.030.B.4, Attachment #2, p.8-9) has been revised to clarify that the assessment is a part of the SCA Permit, as well as to more clearly articulate the scope of the assessment and the way in which Standard Management Practices factor into project review for ministerial permits. The Code language specifying that the assessment be prepared by a qualified professional retained by the County and paid for by the applicant has been stricken, as this is procedural issue that should not be addressed specifically within the Development Code. It would therefore be possible for applicants to retain their own biologists to complete the scope of work outlined in the draft Ordinance subject to peer review by the County, although options provided by the County may be more cost- or time-efficient.

**RECOMMENDATION:**

Review the administrative record, conduct a public hearing, and approve the attached Resolution recommending that the Board of Supervisors approve the Development Code Amendments for Title 22 of the Marin County Code establishing a Stream Conservation Area and Stream Conservation Area Permit, including definitions and related amendments.

**Attachments:**

1. Recommended Resolution with Exhibit A
2. Draft Stream Conservation Area Ordinance
3. Draft Standard Management Practices
4. Countywide Plan Consistency Matrix
5. Frequently Asked Questions.
6. Comments from Open Marin
7. Public Correspondence:
  - Terry Keast letter, 3/28/13
  - Dawn McEarchern email, 3/31/13
  - Susan Ives letter, 4/1/13
  - Center for Biological Diversity letter, 4/2/13
  - Ron Cook email, 4/2/13

Lisa Lukianoff email, 4/2/13  
Steve & Andrea Taber email, 4/5/13  
Peter and Karin Narodny email, 4/6/13  
Brian Crawford email, 4/6/13  
Laura Chariton email, 4/10/13  
Jack Grier email, 4/17/13  
Laura Chariton email, 4/24/13  
Liza Wozniak email, 4/24/13  
State Water Board letter, 4/30/13  
Sleepy Hollow Residents email/letter, 5/1/2013  
SPAWN letter and attachments, 5/1/2013



**RESOLUTION NO. \_\_\_\_\_**  
**RESOLUTION OF THE MARIN COUNTY PLANNING COMMISSION RECOMMENDING**  
**THAT THE BOARD OF SUPERVISORS ADOPT AMENDMENTS TO**  
**MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)**  
**(STREAM CONSERVATION AREA)**

**SECTION I: FINDINGS**

The Marin County Planning Commission hereby finds and declares the following:

- 1. WHEREAS**, the Marin County Community Development Agency initiated the proposed amendments to the Marin County Code Title 22 (Development Code). The Development Code includes the zoning and subdivision regulations that govern the development and use of private and public land, buildings, and structures located within the unincorporated areas of Marin County. The proposed amendments (Exhibit A) would modify Title 22 (Development Code) by: (1) establishing Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permits); (2) providing new definitions and amending the text of definitions in Chapter 22.130 (Definitions); (3) amending the text of Sections 22.06.050 (Exemptions from Land Use Permit Requirements), 22.08.040 (Agricultural District Development Standards), 22.40 (Application Filing and Processing, Fees), 22.42.025 (Exemptions from Design Review), 22.42.045 (Design Review for Development Along Anadromous Fish Streams and Tributaries), 22.42.055 (Project Review Procedures), 22.56.050 (Decision and Findings for New Second Units) and 22.62.040 (Exemptions) as necessary to effectuate the SCA Ordinance. The proposed amendment is applicable to those perennial, intermittent and ephemeral streams identified in the Stream Conservation Area map and data that is maintained and periodically updated by the Marin County Community Development Agency.
- 2. WHEREAS**, the Development Code implements the goals, policies and programs of the Marin Countywide Plan (CWP) which are necessary to protect the public health, safety, and welfare of residents and businesses in the unincorporated areas of Marin County.
- 3. WHEREAS**, the Marin County Community Development Agency conducted significant outreach and met with the following organizations or their representatives to discuss and accept comments on the draft ordinance: Marin Conservation League; Marin Audubon Society, Friends of Corte Madera Creek, SPAWN, the San Geronimo Valley Stewards, the San Geronimo Valley Planning Group, Marin County Farm Bureau, Marin Association of Realtors, Marin CSA 13, Lucas Valley Homeowners Association, Kentfield Planning Advisory Board, Kent Woodlands Property Owners Association, Tam Design Review Board, and Sleepy Hollow Homeowners Association.
- 4. WHEREAS**, the Marin County Planning Commission conducted public hearings on April 1, 2013 and May 13, 2013 to take public testimony regarding the project and consider the proposed amendments to the Development Code.
- 5. WHEREAS**, the 2007 Marin Countywide Plan (“CWP”) establishes goals, policies and implementing programs for riparian protection. Pursuant to Goal BIO-4 Riparian Conservation, the CWP designates Stream Conservation Areas along perennial, intermittent, and ephemeral

streams. Development setbacks are established from all streams based upon the location of the top of stream bank or presence or riparian vegetation. The policies of the plan aim to promote natural stream channel function, control exotic vegetation, protect riparian vegetation, promote riparian protection, maintain channel stability and minimize runoff.

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

**7. WHEREAS**, the proposed amendments to the Development Code will implement Program BIO-4.a (Adopt an Expanded SCA Ordinance) of the Countywide Plan and will further the implementation of Programs BIO-4.d (Establish Functional Criteria for Land Uses in SCAs), BIO-4.e (Identify Proposals Within SCAs), BIO-4.f (Identify Potential Impacts to Riparian Systems), BIO-4.g (Require Site Assessment), BIO-4.h (Comply with SCA Criteria and Standards ), BIO-4.i (Replace Vegetation in SCAs) and BIO-4.q (Develop Standards Promoting Use of Permeable Materials).

**8. WHEREAS**, the proposed amendments to the Development Code establish the purpose, applicability, standards, permit procedures and findings necessary to implement the policies of the CWP relating to riparian protection.

**9. WHEREAS**, the proposed amendments to the Development Code are within the scope of the certified 2007 Countywide Plan Environmental Impact Report (EIR). A subsequent or supplemental EIR is not required pursuant to State CEQA Guidelines Sections 15162 and 15163 because the project does not involve or result in substantial changes to the 2007 Countywide Plan involving new or substantially more severe significant environmental effects, nor does the proposal involve new information that was not known at the time the EIR for the Countywide Plan was certified. Further, the project is exempt from CEQA pursuant to Sections 15307 and 15308 of the CEQA Guidelines (Classes 7 and 8 Protection of Natural Resources and Protection of the Environment) because the project sets the regulatory framework for permitting in accordance with the CWP and increases protections afforded to streams and riparian habitat as compared with current County regulations.

**10. WHEREAS**, the proposed amendments to the Development Code have been guided public engagement processes that included community meetings with neighborhood groups, consultation with other environmental, agricultural, and trade interest organizations, a publicly-noticed SCA Open House and an online civic engagement forum (Open Marin). Further, the Marin County Planning Commission held two duly noticed public hearings, on April 1<sup>st</sup>, 2013 and on May 13<sup>th</sup>, 2013, to take public testimony and consider recommending that the Board of Supervisors adopt the SCA Ordinance.

**SECTION II: ACTION**

**NOW, THEREFORE, BE IT RESOLVED**, that the Marin County Planning Commission recommends that the Board of Supervisors adopt amendments to the Marin County Code Title 22 (Development Code) establishing an expanded Stream Conservation Area Ordinance.

**SECTION III: ADOPTION**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the County of Marin held on this 13<sup>th</sup> day of May 2013, by the following vote:

AYES:

NOES:

ABSENT:

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WADE HOLLAND, CHAIR  
MARIN COUNTY PLANNING COMMISSION

ATTEST:

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Debra Stratton  
Planning Commission Secretary

## EXHIBIT A

### SUBJECT 1:

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

### CHAPTER 22.33 – STREAM PROTECTION

#### Sections:

22.33.010 – Purpose of Chapter

22.33.020 – Applicability

22.33.030 – Stream Conservation Area General Requirements

#### **22.33.010 – Purpose of Chapter**

The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. This is accomplished by assuring that permitted development avoids SCAs wherever feasible, minimizes any unavoidable incursion into the SCA, and mitigates adverse impacts.

#### **22.33.020 – Applicability**

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

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

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

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

## EXHIBIT A

### 22.33.030 – Stream Conservation Area General Requirements.

#### A. Requirements.

Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve maximum protection of stream and riparian resources:

1. Development shall avoid SCAs wherever feasible.
2. Where complete avoidance of an SCA is not feasible, the stream channel shall be avoided to the maximum extent feasible and incursion into the SCA shall be minimized.
3. Development within the SCA shall not be permitted if it would directly or indirectly result in any of the following:
  - a. Adverse alteration of hydraulic capacity;
  - b. A net loss in habitat acreage, value, or function;
  - c. Degradation of water quality.

#### B. SCA Setbacks.

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

1. City-Centered Corridor:
  - a. For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;
  - b. For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and
  - c. For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank.
  - d. For all lots, an additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
2. Inland Rural Corridor:
  - a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
  - b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian

## EXHIBIT A

resources, such as woody riparian vegetation that extends beyond the SCA setback.

### 3. Baylands Corridor:

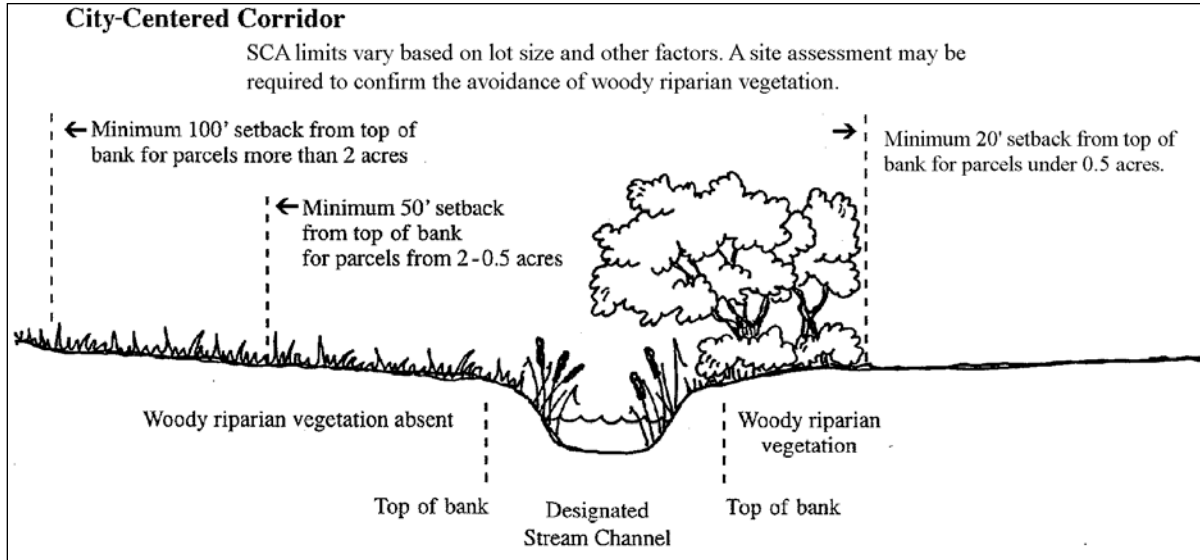
- a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
- b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.

### 4. Coastal Corridor:

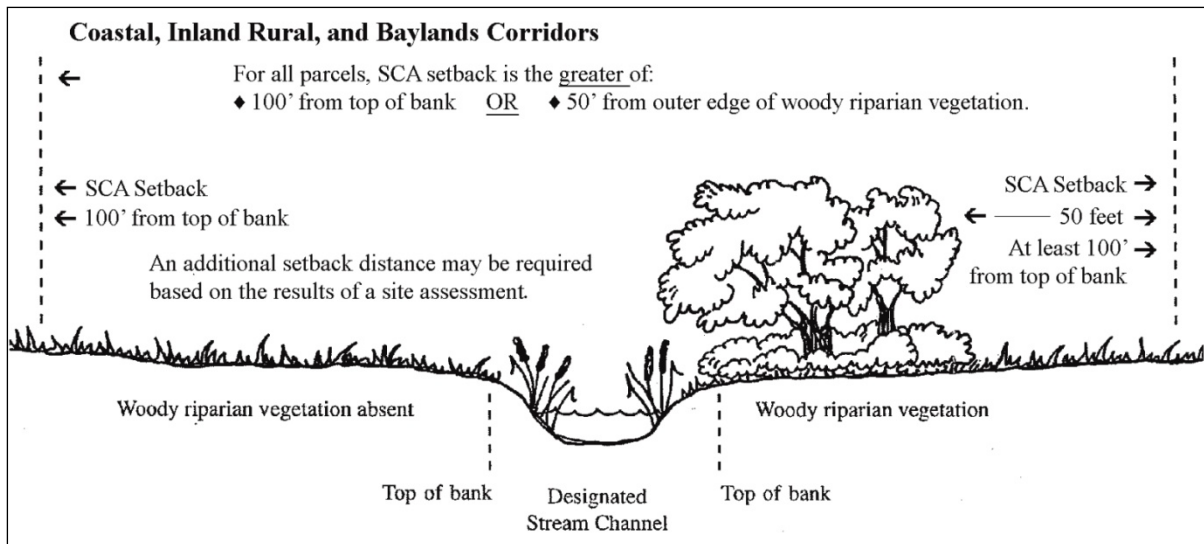
- a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
  - b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
5. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a length of 100 feet or more as determined by a qualified biologist or natural resources specialist.
  6. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation is based on the most recent aerial photography on file with the County as of (date of ordinance adoption).
  7. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.

EXHIBIT A

Figure 3-16  
 Typical Cross-Section of a Stream Conservation Area



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



## EXHIBIT A

### Chapter 22.63 – STREAM CONSERVATION AREA PERMIT

#### Sections:

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

#### **22.63.010 – Purpose of Chapter**

This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not feasible.

#### **22.63.020 – Applicability to Development**

##### **A. Application of SCA Provisions.**

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

##### **B. Exemptions.**

1. **Exempt without further determination.**



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

## EXHIBIT A

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

### 22.63.030 – Stream Conservation Area Permit (Tier 1)

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

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

Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) Procedure if the proposed development would not meet applicable Development Standards and incorporate applicable Standard Management Practices as required by a Site Assessment or would result in adverse impacts to hydraulic capacity; stream or riparian habitat acreage, value or function; or water quality.

## EXHIBIT A

### B. SCA (Tier 1) Project Review Procedure

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

## EXHIBIT A

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

### 22.63.040 – Stream Conservation Area Permit (Tier 2)

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

### B. SCA (Tier 2) Project Review Procedure

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

The Site Assessment (Tier 2) shall also include:

## EXHIBIT A

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

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

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

### 22.63.050 – Application Filing, Processing and Review

**A. Filing and processing.** Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).

## EXHIBIT A

- B. Project review procedure.** The Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).
- C. Public hearings.** When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.
- D. Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.

### 22.63.060 – Decision and findings

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

- A. For a SCA (Tier 1) Permit:
  - 1. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)).
  - 2. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and or degrade water quality.
- B. For a SCA (Tier 2) Permit:
  - 1. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2)).
  - 2. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality. Exceptions may be allowed if the lot falls entirely within the SCA or development on the lot entirely outside the SCA is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.

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### SUBJECT 2:

#### **22.130.030 – Definitions of Specialized Terms and Phrases**

Definitions are listed in alphabetical order.

...

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

...

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

...

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

...

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

...

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

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

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

**Stream Conservation Area.** The Stream Conservation Area consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA

## EXHIBIT A

extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. Streams do not include ditches, culverts, and other above- or below-ground conduits constructed specifically for storm drainage.

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

...

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

...

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

### **SUBJECT 3:**

#### **22.06.050 – Exemptions from Land Use Permit Requirements**

The following activities, uses of land, and other improvements, are permitted in all zoning districts and do not require a land use permit; however, other permits may be required in compliance with Subsection H., below. The exemptions do not apply to development proposed in a Stream Conservation Area. See Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permit).

- A. Decks, paths, driveways, and other minor improvements.** Decks, platforms, on-site paths, driveways, and other improvements that are not required to have building or grading permits by Title 19 of the County Code, and are not over 18 inches above grade and not over any basement or story below, except in the ARP, RSP, RMP, RX, CP, OP, RCR, RMPC, RF, and IP zoning districts.
- B. Governmental activities.** Official activities and development of the County, State or an agency of the State, or the Federal Government on land owned or leased by a governmental agency are exempt from discretionary permits except Coastal Permits.
- C. Irrigation.** The installation of irrigation lines.
- D. Interior remodeling.** Interior alterations that do not:
  - 1. Result in an increase in the gross floor area within the structure;
  - 2. Change the permitted use; and
  - 3. Change the exterior appearance of the structure.



## EXHIBIT A

- E. Repairs and maintenance.** Ordinary repairs and maintenance of an existing improvement, provided that the repairs and maintenance work do not:
1. Result in any change of the approved land use of the site or improvement; and
  2. Expand or enlarge the improvement.
- F. Play structures.** Typical play structures and play equipment that are not required to have building or grading permits by Title 19 or Title 23 of the County Code and do not exceed 15 feet in height.
- G. Utilities.** Public utility facilities shall be exempt from the land use permit requirements of this Development Code only to the extent provided by Government Code Section 53091, and the California Public Utilities Code.
- H. Other permits may still be required.** A permitted land use that is exempt from a land use permit or has been granted a land use permit may still be required to obtain Building Permits or other permits before the use is constructed or otherwise established and put into operation. Nothing in this Article shall eliminate the need to obtain any other permits or approvals required by:
1. Other provisions of this Development Code, including but not limited to any subdivision approval required by Article VI (Subdivisions);
  2. Other provisions of the County Code, including but not limited to Building Permits, Grading Permits, or other construction permits if they are required by Title 19, or a business license if required by Title 5; or
  3. Any other permit required by a regional, State or Federal agency.
  4. All necessary permits shall be obtained before starting work or establishing new uses.

### **SUBJECT 4:**

#### **22.08.040 – Agricultural District Land Uses and Permit Requirements**

The uses of land allowed by this Chapter in each agricultural zoning district are identified in Table 2-1 (Allowed Uses and Permit Requirements for Agricultural and Resource-Related Districts) as being:

...

- E. Agricultural Processing.** A Use Permit is required: (1) if any agricultural products to be processed are not produced on the same site or on other agricultural properties located in Marin County that are owned or leased by the processing facility owner or operator; or (2) if the building(s) or structure(s) used for processing activities exceed an aggregate floor area of 5,000 square feet. Agricultural products do not include additives or ingredients that are incidental to processing.

## EXHIBIT A

- F. **Sale of Agricultural Products.** A Use Permit is required: (1) if any agricultural products to be sold are not produced on the same site, or on other agricultural properties located in Marin County that are owned or leased by the sales facility owner or operator; or (2) if the building(s), structure(s), or outdoor sales area used for the retail sales activities exceed an aggregate floor area of 500 square feet.

### **SUBJECT 5:**

*Delete Section 22.42.045 – Design Review for Development Along Anadromous Fish Streams and Tributaries.*

### **SUBJECT 6:**

#### **22.42.025 – Exemptions from Design Review**

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

...

**EXHIBIT A**

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

<b>Standards</b>		<b>One-Story Single-family Additions and Detached Accessory Structure</b>
Max. increase in building area		750 sq. ft. or 20% of the existing building area, whichever is less
Max. total building area		4,000 sq. ft. (3,000 sq. ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25%) or the applicable floor area ratio (FAR) limit under the zoning district or in a Community Plan, whichever is more restrictive
Max. height	Single-family Addition	20 ft. or the coastal zoning height standards, whichever is more restrictive
	Detached Accessory Structure	15 ft. where either the lot or the natural grade in the area of the building footprint has an average slope that equals or is less than 25%  20 ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25%
Min. lot area		Not applicable
Min. setbacks		5 ft. to all property lines on lots up to 6,000 sq. ft. 6 ft. to all property lines on lots up to 7,500 sq. ft. 10 ft. to all property lines on lots up to 10,000 sq. ft. 15 ft. to all property lines on lots > 10,000 sq. ft. (Or the required setbacks in a Community Plan or Master Plan, whichever is more restrictive)
Environmental Protection (Countywide Plan Consistency)		Outside of a Wetland Conservation Area
SFR Design Guidelines		Complies with Guideline C-1.11 (Exterior Lighting)

**EXHIBIT A**

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

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

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

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### SUBJECT 7:

#### 22.42.055 – Project Review Procedures

- A. Purpose.** This Section provides procedures for Design Review. It includes procedures for reviewing Minor Design Review and Design Review applications.
- B. Minor Design Review.** If a project is not exempt from Design Review as defined in Section 22.42.025 (Exemptions from Design Review), an applicant may apply for a Minor Design Review by staff. A Minor Design Review application may be approved or conditionally approved by staff following a site visit if it meets all of the requirements contained in this Section. A notice of the proposed project shall be posted at the site pursuant to Section 22.118.020(D). The Minor Design Review application is intended to streamline the Design Review process for minor projects that may be approved without required noticing or a public hearing, provided the application does not require a public hearing Coastal Permit. Minor Design Review decisions are appealable pursuant to the requirements of Chapter 22.114 (Appeals).
- 1. Requirements.** A project eligible for a Minor Design Review must:
- a. Not conflict with previous County conditions of approval that were imposed on the property;
  - b. Be consistent with the purpose of Design Review pursuant to Section 22.42.010 (Purpose of Chapter);
  - c. Comply with existing Master Plans and applicable standards in a Community Plan;
  - d. Be located outside of Wetland Conservation Areas or other mapped environmentally sensitive areas as designated by the Countywide Plan;
  - e. Comply with the County's Single-family Residential Design Guidelines;
  - f. Comply with Marin County Green Building Standards (Section 19.04.110) and exceed Minimum Compliance Threshold by one level, with the exception that additions with a valuation exceeding \$300,000 shall attain a minimum compliance threshold that requires 20 additional points than that which is required by the Green Building Standards; and
  - g. Not be located on a property that meets either of the following conditions, as applicable:
    1. If the residence on the property was not subject to Design Review, final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago; or

## EXHIBIT A

2. If any previous addition to the residence on the property was issued a Minor Design Review pursuant to Section 22.42.055 (B), final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago.

### **SUBJECT 8:**

#### **22.56.050 - Decision and Findings for New Second Units.**

...

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

...

### **SUBJECT 9:**

#### **22.62.040 – Exemptions**

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

- A. The general health of the tree is so poor due to disease, damage, or age that efforts to ensure its long-term health and survival are unlikely to be successful;
- B. The tree is infected by a pathogen or attacked by insects that threaten surrounding trees as determined by an arborist report or other qualified professional;
- C. The tree is a potential public health and safety hazard due to the risk of its falling and its structural instability cannot be remedied;
- D. The tree is a public nuisance by causing damage to improvements, such as building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, or interfering with the operation, repair, or maintenance of public utilities;
- E. The tree has been identified by a Fire Inspector as a fire hazard;
- F. The tree was planted for a commercial tree enterprise, such as Christmas tree farms or orchards;
- G. Prohibiting the removal of the tree will conflict with CC&R's which existed at the time this Chapter was adopted;

**EXHIBIT A**

- H. The tree is located on land which is zoned for agriculture (A, ARP, APZ, C-ARP or C-APZ) and that is being used for commercial agricultural purposes. (This criterion is provided to recognize the agricultural property owner’s need to manage these large properties and continue their efforts to be good stewards of the land.);
- I. The tree removal is by a public agency to provide for the routine management and maintenance of public land or to construct a fuel break;
- J. The tree removal is on a developed lot and: 1) does not exceed two protected trees within a one-year timeframe; 2) does not entail the removal of any heritage trees; and 3) does not entail the removal of any protected or heritage trees within a Wetland Conservation Area.

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

**SUBJECT 10:**

**CHAPTED 22.40 APPLICATION FILING AND PROCESSING, FEES**

...

**22.40.020 – Review Authority for County Land Use and Zoning Decisions**

...

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

Type of Permit or Decision	(1) (2) Role of Review Authority			
	(3) Director	(3) Zoning Administrator	Planning Commission	Board of Supervisors
Coastal Permit, Administrative	Decide		Appeal Action	Appeal Action
Coastal Permit, Public Hearing	Recommend	Decide	Appeal Action	Appeal Action
Community or Countywide Plan Amendment	Recommend		Recommend	Decide
Design Review	Decide		Appeal Action	Appeal Action
Development Code Amendment	Recommend		Recommend	Decide
Floating Home Adjustment Permit	Decide		Appeal Action	Appeal Action
Floating Home Architectural Deviation	Decide		Appeal Action	Appeal Action
Interpretations	Decide		Appeal Action	Appeal Action
Lot Line Adjustment	Decide		Appeal Action	Appeal Action
Master Plan	Recommend		Recommend	Decide
Precise Development Plan	Decide		Appeal Action	Appeal Action

**EXHIBIT A**

Sign Review	Decide		Appeal Action	Appeal Action
Stream Conservation Area Permit (Tiers 1 and 2)	Decide		Appeal Action	Appeal Action
Temporary Use Permit	Decide		Appeal Action	Appeal Action
Tentative Map	Recommend	Decide	Appeal Action	Appeal Action
Tidelands Permit	Decide		Appeal Action	Appeal Action
Tree Removal Permit	Decide		Appeal Action	Appeal Action
Use Permit	Recommend	Decide	Appeal Action	Appeal Action
Variance	Decide		Appeal Action	Appeal Action
Zoning Map Amendment	Recommend		Recommend	Decide

**Notes:**

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

...

**22.40.030 – Application Submittal and Filing**

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

**Discretionary Permit Applications**

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



## EXHIBIT A

10. Use Permits;
11. Variances; and
12. Sign Reviews.

### **Ministerial Planning Permit Applications**

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

...

**Marin Stream Conservation Area Ordinance  
Planning Commission Draft for May 13, 2013 Hearing**

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

### **CHAPTER 22.33 – STREAM PROTECTION**

**Sections:**

22.33.010 – Purpose of Chapter

22.33.020 – Applicability

22.33.030 – Stream Conservation Area General Requirements

#### **22.33.010 – Purpose of Chapter**

The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. This is accomplished by assuring that permitted development avoids SCAs wherever feasible, minimizes any unavoidable incursion into the SCA, and mitigates adverse impacts.

#### **22.33.020 – Applicability**

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

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

- B. The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:
1. The Coastal Zone as defined by the Coastal Act of 1976;
  2. Tidally influenced waters and adjacent land;
  3. Land adjacent to levees, dikes, or berms in the City-Centered Corridor;
  4. ~~Publicly owned or maintained flood control channels under tidal influence or water conservation district facilities;~~ and
  5. Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work on land owned or controlled by the agency, such as through a lease or easement.

**22.33.030 – Stream Conservation Area General Requirements.**

**A. Requirements.**

Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve maximum protection of stream and riparian resources:

1. Development shall avoid SCAs wherever feasible.
2. Where complete avoidance of an SCA is not feasible, the stream channel shall be avoided to the maximum extent feasible and incursion into the SCA shall be minimized.
3. Development within the SCA shall not be permitted if it would directly or indirectly result in any of the following:
  - a. Adverse alteration of hydraulic capacity;
  - b. A net loss in habitat acreage, value, or function;
  - c. Degradation of water quality.

**B. SCA Setbacks.**

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

1. ~~SCA setbacks for properties within the City-Centered Corridor:~~
  - a. For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;
  - b. For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and
  - c. For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank.
  - d. For all lots, an additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
2. ~~SCA setbacks for properties within the Inland Rural Corridor:~~
  - a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
  - b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
3. Baylands Corridor:

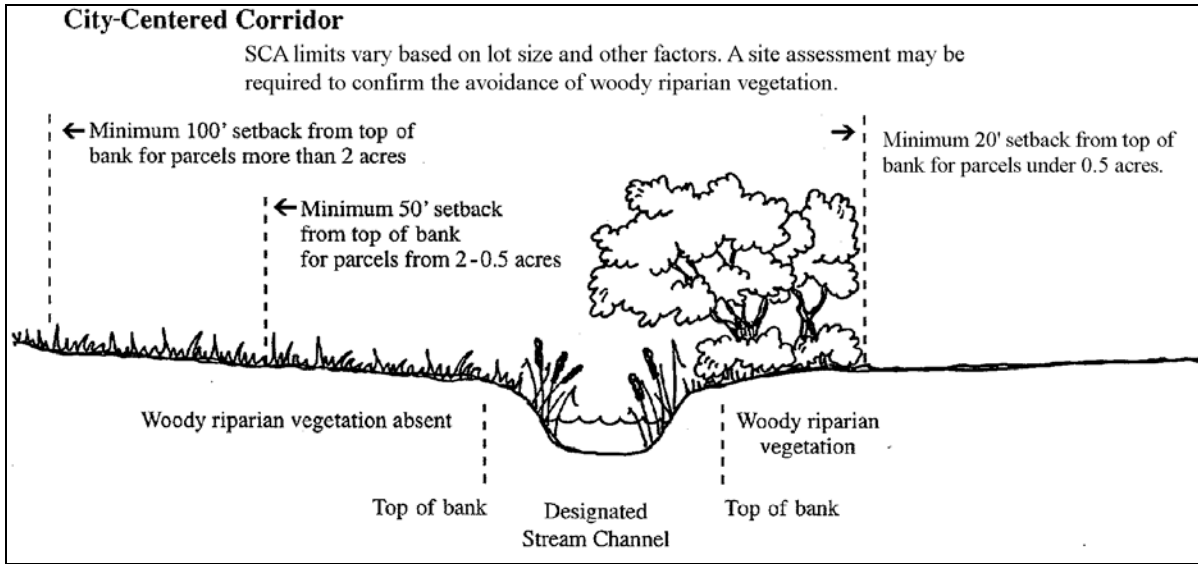
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- a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
- b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.

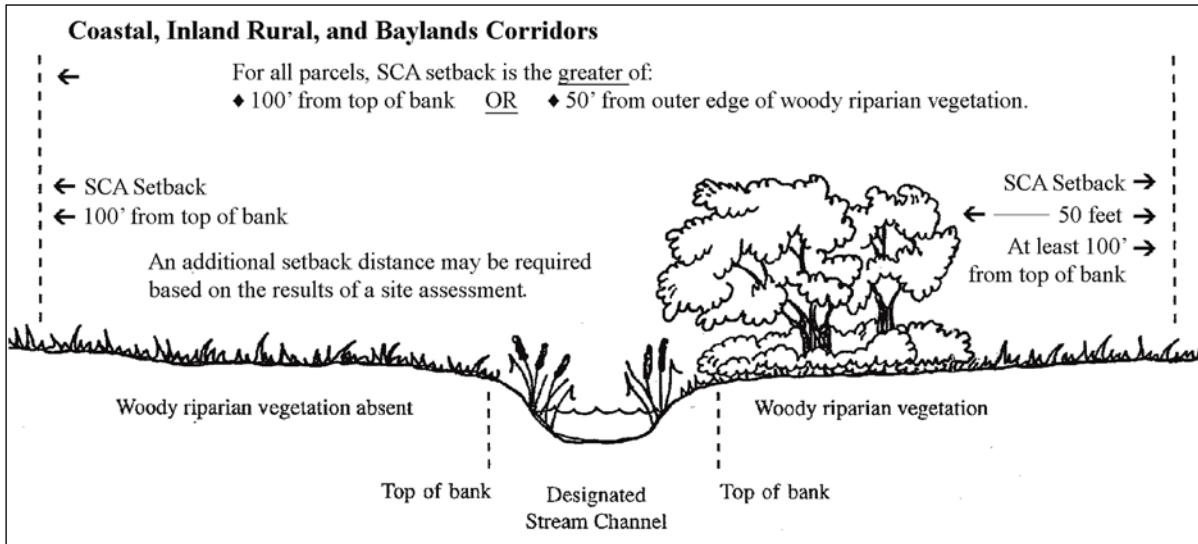
4. and Coastal Corridor:

- a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.
  - b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.
- ~~3. In all Corridors, regardless of lot size, an additional SCA setback may be required based on the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the presence of other sensitive biological resources, provide options for alternative mitigation, and determine the precise SCA setback.~~
  5. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a ~~continuous~~ length of 100 feet or more as determined by a qualified biologist or natural resources specialist.
  6. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation is based on the most recent aerial photography on file with the County as of (date of ordinance adoption).
  7. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.

**Figure 3-16**  
**Typical Cross-Section of a Stream Conservation Area**



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



## Chapter 22.63 – STREAM CONSERVATION AREA PERMIT

### Sections:

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

### 22.63.010 – Purpose of Chapter

This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not feasible.

### 22.63.020 – Applicability to Development

#### A. Application of SCA Provisions.

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

#### B. Exemptions.

1. Exempt without further determination.

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- a. Public utility facilities, including and their location, construction, maintenance, repair and replacement where exempt from local agency building and zoning requirements proposed pursuant to Government Code Section 53091, Public Resources Code Section 4292, and the California Public Utilities Code;
  - b. Emergency measures requiring prompt action, where such measures are immediately necessary to avoid or prevent loss of, or damage to, life, health, property or essential public services resulting from a sudden, unexpected occurrence;
  - c. Tree and vegetation removal or trimming on a developed lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety ~~(Vegetation that is removed under this exemption may also be dead, invasive, or exotic may also be removed under this exemption);~~
  - d. Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency;
  - e. Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;
  - f. Any development that is ~~solely~~ permitted pursuant to Marin County Code Section 11.08 (Watercourse Division or Obstruction), ~~or~~ Section 23.08 (Excavating, Grading and Filling), or Section 24.04.560 (Drainage Setbacks);
  - g. Maintenance, accessibility retrofit, and repair of permitted or legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013.
  - h. Maintenance or replacement of landscaping.
  - i. Fencing New fences that does not restrict wildlife access to streams and the adjacent riparian vegetation. a riparian habitat Exempt fences include any fence within or on the perimeter of a previously disturbed area;
  - j. Agricultural uses on property zoned for agriculture (A, ARP or APZ), including removal and trimming of vegetation planted for a commercial enterprise, that do not result in the removal of woody riparian vegetation or animal confinement within the SCA.
- 2. Exempt subject to determination.** The following activities are exempt subject to determination by the Director, based upon photographs, illustrations and other appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below. Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal. Documentation may include a letter or report from a licensed contractor and photographs of the property and improvements or structures to verify the activity will comply with this Section.
- a. Replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the ~~extent of the horizontal incursion or the footprint~~ within the SCA setback or result in the removal of woody riparian vegetation.

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- b. ~~Structures and d~~Development activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director. A cumulative total of 120 square feet of impervious surface shall be exempt in a previously disturbed area, provided that the improvement is located at least 20 feet from the top of the stream bank, does not result in the removal of woody riparian vegetation, and disperses storm water run-off over a pervious area (such as a lawn or garden).
- c. Tree and vegetation removal or trimming on a vacant lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety ~~(Vegetation that is removed under this exemption may also be dead, invasive, or exotic may also be removed under this exemption).~~

**22.63.030 – Stream Conservation Area Permit (Tier 1)**

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

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

Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) Procedure if the proposed development would not meet applicable Development Standards and incorporate applicable Standard Management Practices as required by a Site Assessment or would result in adverse impacts to hydraulic capacity; stream or riparian habitat acreage, value or function; or water quality.



## B. SCA (Tier 1) Project Review Procedure

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

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~~Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development.~~

~~If the Site Assessment confirms determines that there would be no adverse impacts to the SCA, or that any impacts to hydraulic capacity, stream and riparian habitat and water quality the SCA can be fully avoided through implementation of specific Standard Management Practices as part of the development approval, the County may proceed to shall process the application as a Tier 1 permit.~~

#### **22.63.040 – Stream Conservation Area Permit (Tier 2)**

- A. SCA (Tier 2) Development.** The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030; ~~to all discretionary approvals; to for~~ any project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices necessary to avoid adverse impacts; and ~~to for~~ any development that would, despite the application of Standard Management Practices, result in adverse impacts to the SCA hydraulic capacity, stream and riparian habitat and water quality.
- B. SCA (Tier 2) Project Review Procedure**
- 1. Discretionary Review.** The Stream Conservation Area Permit (Tier 2) shall be undertaken as a discretionary action subject to incorporation of ~~Design~~ Development Standards, Standard Management Practices, and/or any other mitigations as determined through a Site Assessment (Tier 2) necessary to avoid adverse impacts to hydraulic capacity; habitat acreage, value or function; and water quality.
  - 2. Design Development Standards.** Stream Conservation Area (Tier 2) Permits shall comply with the following Development Standards:
    - a. All Development Standards applicable to Tier 1 permits provided in Section 22.63.030.B.2, except where the a Site Assessment (Tier 2) demonstrates that alternate mitigations would be more appropriate to prevent adverse alteration of hydraulic capacity; a net loss in habitat acreage, value or function; or degradation of water quality.
    - b. Any development that would, on the basis of a Site Assessment, cause or exacerbate existing channel instabilities shall require County approval of a channel stabilization program in accordance with a hydrological or geomorphic assessmet; or comply with ~~to~~ the mitigations generated during the required environmental review process, ~~which could~~. Mitigations shall include maintenance of peak flows at pre- and post-project levels, or less. Proposed stabilization measures shall anticipate project-related changes to the drainageway flow regime.
  - 3. Standard Management Practices.** The project shall incorporate any applicable Standard Management Practices on file in the CDA, except as determined in accordance with a Site Assessment (Tier 2) and applicable mitigations.
  - 4. Site Assessment (Tier 2).** The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1) and determine whether an additional setback is required to avoid adverse impacts to the SCA.

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The Site Assessment (Tier 2) shall also include:

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

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

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

#### **22.63.050 – Application Filing, Processing and Review**

**A. Filing and processing.** Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).

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- B. Project review procedure.** The ~~Director~~ Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).
- C. Public hearings.** When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.
- D. Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.

**22.63.060 – Decision and findings**

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

A. For a SCA (Tier 1) Permit:

- 1A. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)).
- 2B. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; ~~and~~ or degrade water quality.

B. For a SCA (Tier 2) Permit:

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

## SCA DEFINITIONS (Article VIII)

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

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

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

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

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

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

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

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

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

## OTHER RELATED DEVELOPMENT CODE AMENDMENTS

NOTE: Proposed changes are shown in revision marks (deleted text is shown as ~~strike-through~~ and new text is shown as underline)

1. *Add the following to the end of the first paragraph in 22.06.050: The exemptions do not apply to development proposed in a Stream Conservation Area. See Chapter 22.33 (Stream Protection).*

### **22.06.050 – Exemptions from Land Use Permit Requirements**

The following activities, uses of land, and other improvements, are permitted in all zoning districts and do not require a land use permit; however, other permits may be required in compliance with Subsection H., below. The exemptions do not apply to development proposed in a Stream Conservation Area. See Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permit).

- A. Decks, paths, driveways, and other minor improvements.** Decks, platforms, on-site paths, driveways, and other improvements that are not required to have building or grading permits by Title 19 of the County Code, and are not over 18 inches above grade and not over any basement or story below, except in the ARP, RSP, RMP, RX, CP, OP, RCR, RMPC, RF, and IP zoning districts.
- B. Governmental activities.** Official activities and development of the County, State or an agency of the State, or the Federal Government on land owned or leased by a governmental agency are exempt from discretionary permits except Coastal Permits.
- C. Irrigation.** The installation of irrigation lines.
- D. Interior remodeling.** Interior alterations that do not:
  1. Result in an increase in the gross floor area within the structure;
  2. Change the permitted use; and
  3. Change the exterior appearance of the structure.
- E. Repairs and maintenance.** Ordinary repairs and maintenance of an existing improvement, provided that the repairs and maintenance work do not:
  1. Result in any change of the approved land use of the site or improvement; and
  2. Expand or enlarge the improvement.
- F. Play structures.** Typical play structures and play equipment that are not required to have building or grading permits by Title 19 or Title 23 of the County Code and do not exceed 15 feet in height.

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**G. Utilities.** Public utility facilities shall be exempt from the land use permit requirements of this Development Code only to the extent provided by Government Code Section 53091, and the California Public Utilities Code.

**H. Other permits may still be required.** A permitted land use that is exempt from a land use permit or has been granted a land use permit may still be required to obtain Building Permits or other permits before the use is constructed or otherwise established and put into operation. Nothing in this Article shall eliminate the need to obtain any other permits or approvals required by:

1. Other provisions of this Development Code, including but not limited to any subdivision approval required by Article VI (Subdivisions);
2. Other provisions of the County Code, including but not limited to Building Permits, Grading Permits, or other construction permits if they are required by Title 19, or a business license if required by Title 5; or
3. Any other permit required by a regional, State or Federal agency.

All necessary permits shall be obtained before starting work or establishing new uses.

2. *Delete SCA reference in 22.08.040.E and F for agricultural processing and retail sales.*

22.08.040 - Agricultural District Development Standards

...

**E. Agricultural Processing.** A Use Permit is required: (1) if any agricultural products to be processed are not produced on the same site or on other agricultural properties located in Marin County that are owned or leased by the processing facility owner or operator; or (2) if the building(s) or structure(s) used for processing activities exceed an aggregate floor area of 5,000 square feet. Agricultural products do not include additives or ingredients that are incidental to processing. ~~New processing facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~

**F. Sale of Agricultural Products.** A Use Permit is required: (1) if any agricultural products to be sold are not produced on the same site, or on other agricultural properties located in Marin County that are owned or leased by the sales facility owner or operator; or (2) if the building(s), structure(s), or outdoor sales area used for the retail sales activities exceed an aggregate floor area of 500 square feet. ~~New retail sales facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~

3. *Delete Section 22.42.045 – Design Review for Development Along Anadromous Fish Streams and Tributaries*

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

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

4. ~~Delete requirement for development and physical improvements that are exempt from Design Review to be located outside of the SCA (22.42.025) and amend Tables 4-2 and 4-3 to remove the Environmental Protection standard requiring development to be located outside of an SCA.~~

**22.42.025 – Exemptions from Design Review**

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

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

Standards	One-Story Single-family Additions and Detached Accessory Structure
Max. increase in building area	750 sq. ft. or 20% of the existing building area, whichever is less
Max. total building area	4,000 sq. ft. (3,000 sq. ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25%) or the applicable floor area ratio (FAR) limit under the zoning district or in a Community Plan, whichever is more restrictive



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Max. height	Single-family Addition	20 ft. or the coastal zoning height standards, whichever is more restrictive
	Detached Accessory Structure	15 ft. where either the lot or the natural grade in the area of the building footprint has an average slope that equals or is less than 25% 20 ft. where either the lot or the natural grade in the area of the building footprint has an average slope of > 25%
Min. lot area		Not applicable
Min. setbacks		5 ft. to all property lines on lots up to 6,000 sq. ft. 6 ft. to all property lines on lots up to 7,500 sq. ft. 10 ft. to all property lines on lots up to 10,000 sq. ft. 15 ft. to all property lines on lots > 10,000 sq. ft. (Or the required setbacks in a Community Plan or Master Plan, whichever is more restrictive)
Environmental Protection (Countywide Plan Consistency)		Outside of a <del>Stream Conservation Area</del> and Wetland Conservation Area
SFR Design Guidelines		Complies with Guideline C-1.11 (Exterior Lighting)

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

Standards	Multi-Story Single-family Addition
Max. increase in building area	750 sq. ft. or 20% of the existing building area, whichever is less
Max. total building area	4,000 sq. ft. (3,000 sq. ft. for lots with average slopes > 25%) or the applicable floor area ratio (FAR) limit under the zoning district or in a Community Plan, whichever is more restrictive
Max. height (Multi-story Additions)	30 ft. in non-coastal zone; 25 ft. in coastal zone or the coastal zoning height standards, whichever is more restrictive; 20 ft. in stepback zone (See SFR Design Guideline B-1.1)
Min. lot area	Not Applicable
Min. setbacks	5 ft. for lots up to 6,000 sq. ft.

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	6 ft. for lots up to 7,500 sq. ft. 10 ft. for lots up to 10,000 sq. ft. 15 ft. for lots > 10,000 sq. ft. (Or the required setbacks in a Community Plan or Master Plan, whichever is more restrictive)
Environmental Protection (Countywide Plan Consistency)	Outside of a <del>Stream Conservation Area</del> and Wetland Conservation Area
SFR Design Guidelines	Complies with Guideline B-1.1 (Building Setbacks and Stepbacks) and Guideline C-1.11 (Exterior Lighting)

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

5. *Delete the requirement in Section 22.42.055.B.1.d for development to be located outside of the SCA in order to be eligible for a Minor Design Review.*

**22.42.055 – Project Review Procedures**

**A. Purpose.** This Section provides procedures for Design Review. It includes procedures for reviewing Minor Design Review and Design Review applications.

**B. Minor Design Review.** If a project is not exempt from Design Review as defined in Section 22.42.025 (Exemptions from Design Review), an applicant may apply for a Minor Design Review by staff. A Minor Design Review application may be approved or conditionally approved by staff following a site visit if it meets all of the requirements contained in this Section. A notice of the proposed project shall be posted at the site pursuant to Section 22.118.020(D). The Minor Design Review application is intended to streamline the Design Review process for minor projects that may be approved without required noticing or a public hearing, provided the application does not require a public hearing Coastal Permit. Minor Design Review decisions are appealable pursuant to the requirements of Chapter 22.114 (Appeals).

**1. Requirements.** A project eligible for a Minor Design Review must:

- a. Not conflict with previous County conditions of approval that were imposed on the property;
- b. Be consistent with the purpose of Design Review pursuant to Section 22.42.010 (Purpose of Chapter);

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- c. Comply with existing Master Plans and applicable standards in a Community Plan;
- d. Be located outside of ~~Stream Conservation Areas~~, Wetland Conservation Areas or other mapped environmentally sensitive areas as designated by the Countywide Plan;
- e. Comply with the County's Single-family Residential Design Guidelines;
- f. Comply with Marin County Green Building Standards (Section 19.04.110) and exceed Minimum Compliance Threshold by one level, with the exception that additions with a valuation exceeding \$300,000 shall attain a minimum compliance threshold that requires 20 additional points than that which is required by the Green Building Standards; and
- g. Not be located on a property that meets either of the following conditions, as applicable:
  - 1. If the residence on the property was not subject to Design Review, final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago; or
  - 2. If any previous addition to the residence on the property was issued a Minor Design Review pursuant to Section 22.42.055 (B), final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago.

6. *Delete reference to compliance with SCA for new second units in Section 22.56.050.L.*

**Chapter 22.56 - SECOND UNIT PERMITS**

...

**22.56.050 - Decision and Findings for New Second Units.**

...

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

7. *Delete Section 22.62.040.J.3's reference to removal of protected or heritage trees within an SCA.*

## 22.62.040 – Exemptions

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

- A. The general health of the tree is so poor due to disease, damage, or age that efforts to ensure its long-term health and survival are unlikely to be successful;
- B. The tree is infected by a pathogen or attacked by insects that threaten surrounding trees as determined by an arborist report or other qualified professional;
- C. The tree is a potential public health and safety hazard due to the risk of its falling and its structural instability cannot be remedied;
- D. The tree is a public nuisance by causing damage to improvements, such as building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, or interfering with the operation, repair, or maintenance of public utilities;
- E. The tree has been identified by a Fire Inspector as a fire hazard;
- F. The tree was planted for a commercial tree enterprise, such as Christmas tree farms or orchards;
- G. Prohibiting the removal of the tree will conflict with CC&R's which existed at the time this Chapter was adopted;
- H. The tree is located on land which is zoned for agriculture (A, ARP, APZ, C-ARP or C-APZ) and that is being used for commercial agricultural purposes. (This criterion is provided to recognize the agricultural property owner's need to manage these large properties and continue their efforts to be good stewards of the land.);
- I. The tree removal is by a public agency to provide for the routine management and maintenance of public land or to construct a fuel break;
- J. The tree removal is on a developed lot and: 1) does not exceed two protected trees within a one-year timeframe; 2) does not entail the removal of any heritage trees; and 3) does not entail the removal of any protected or heritage trees within a ~~Stream Conservation Area~~ or a Wetland Conservation Area.

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

8. *Amend definitions of discretionary and ministerial permits to include references to Site Development Permit (Tier 2) and (Tier 1), respectively.*

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

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

9. *Amend Chapter 22.40 – Application Filing and Processing, Fees to include the SCA Permits*

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

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

**Notes:**

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

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3. The Director or Zoning Administrator may refer any matter subject to the Director's or Zoning Administrator's decision to the next highest authority, so that the next highest Review Authority may instead make the decision.

## **22.40.030 – Application Submittal and Filing**

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

### **Discretionary Permit Applications**

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

### **Ministerial Planning Permit Applications**

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

## DRAFT SCA Standard Management Practices

**Habitat Function:** The physical, chemical, and biological processes that allow an ecosystem to exist and maintain its integrity. These processes entail complex interactions between biotic (living organisms) and abiotic (chemical and physical) resources present within an ecological system.

Sources: 33 CFR 332 (Corps Regulations), Ecosystem Valuation 2013, Millenium Ecosystem Assessment 2005

Developing Standard Management Practices to Address Potential Effects of Development on Riparian Area Function		
Riparian Area and/or Buffer Function	Potential Effects of Tier 1 Development Activities	Tier 1 Conditions and SMPs If conditions are not met, or implementation of Tier 1 SMPs is infeasible, the project would move to Tier 2
<p><b>Maintains Stream Bed and Bank Structure.</b></p> <p>Riparian vegetation stabilizes stream banks, preventing erosion and influencing development of stream bed habitat features such as undercut banks, pools, and riffles.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>Removal of riparian vegetation that stabilizes banks can increase stream bank erosion</li> <li>Removal of riparian trees can reduce input of large woody debris to the stream channel</li> </ul>	<ul style="list-style-type: none"> <li>Do not remove tree roots or grind stumps within 35 feet of the stream channel, or within the outermost extent of the SCA, whichever distance is shorter.</li> <li>Limit removal of riparian trees to no more than one tree with a single trunk 20" or greater diameter at breast height (dbh), no more than two tree trunks with dbh between 14 and 20" dbh, and no more than four tree trunks between 8 and 14" dbh. Total of all tree trunk sizes removed cannot be greater than 40" dbh.</li> <li>Avoid removal of riparian shrubs within 15 feet of the top of bank, limit the removal of riparian shrubs to no more than 125 square feet in total canopy area within 35 feet of the top of bank, or 250 square feet in total canopy area beyond 35 feet from the top of bank.</li> <li>Replace removed woody riparian vegetation at a minimum ratio of 2:1 (individuals planted to individuals removed). Woody riparian vegetation removed within 35 feet of the stream shall be replanted along the same reach of stream bank.</li> <li>Avoid removal of herbaceous and other ground cover vegetation within 15 feet of the top of bank.</li> <li>Immediately upon completion of ground-disturbing activities, apply native seed mix to revegetate all areas of herbaceous vegetation that have been temporarily disturbed by construction. Native seed mix shall achieve a minimum aggregate germination rate of 35 lbs/acre based on seeding application information provided in the "SCA Toolkit".</li> </ul>



Developing Standard Management Practices to Address Potential Effects of Development on Riparian Area Function		
Riparian Area and/or Buffer Function	Potential Effects of Tier 1 Development Activities	Tier 1 Conditions and SMPs If conditions are not met, or implementation of Tier 1 SMPs is infeasible, the project would move to Tier 2
<p><b>Water Conveyance and Flood Control.</b></p> <p>Stream channels convey water, including flood flows, and riparian vegetation helps control flood flows and their effects.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i> <i>Buffer from Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>Increases in impervious surfaces can contribute to increased stream flows after a storm, increasing erosion and causing changes to stream bed habitat characteristics</li> <li>Development within SCA setback can lead to increased impacts to structures during flood events</li> </ul>	<p>See attached "Construction and Post-Construction Standard Management Practices"</p>

Developing Standard Management Practices to Address Potential Effects of Development on Riparian Area Function		
Riparian Area and/or Buffer Function	Potential Effects of Tier 1 Development Activities	Tier 1 Conditions and SMPs If conditions are not met, or implementation of Tier 1 SMPs is infeasible, the project would move to Tier 2
<p><b>Water Quality Maintenance.</b></p> <p>Riparian areas maintain stream water quality by filtering sediment and pollutants in runoff from adjacent areas.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i> <i>Buffer from Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation reduces capture of sediment and contaminants from surface runoff</li> <li>• Grading and excavation adjacent to a stream can increase erosion and deposition of sediment to stream</li> <li>• Increased sediment can affect habitat for aquatic species (e.g. channel sediment size and distribution, temperature, and turbidity)</li> <li>• Increased nutrients in streams can affect the aquatic food chain</li> </ul>	<ul style="list-style-type: none"> <li>• Follow SMPs above for removal of vegetation listed under "Maintains Stream and Bank Structure".</li> <li>• Follow SMPs above for "Water Conveyance and Flood Control"</li> </ul>

Developing Standard Management Practices to Address Potential Effects of Development on Riparian Area Function		
Riparian Area and/or Buffer Function	Potential Effects of Tier 1 Development Activities	Tier 1 Conditions and SMPs If conditions are not met, or implementation of Tier 1 SMPs is infeasible, the project would move to Tier 2
<p><b>Riparian Wildlife Breeding and Shelter.</b></p> <p>Riparian areas provide wildlife breeding habitat and cover from predators for resident and migratory wildlife. In turn, the use of riparian areas by wildlife influences stream and riparian area characteristics.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i> <i>Buffer from Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation can directly affect wildlife if they are nesting in the vegetation</li> <li>• Removal of riparian vegetation can decrease habitat available for wildlife breeding.</li> <li>• Removal of riparian vegetation can affect stream channel characteristics essential to aquatic species life cycles</li> <li>• Removal of riparian vegetation can reduce cover for wildlife, affecting local and regional wildlife use and movement.</li> <li>• Lighting, pets, human activities, and other “edge effects” at the margins of riparian areas can influence behavior and movement of wildlife.</li> </ul>	<ul style="list-style-type: none"> <li>• Follow SMPs above for removal of vegetation listed under “Maintains Stream and Bank Structure”.</li> <li>• Avoid removal of any wood rat nests identified during the Site Assessment, or disassemble nests by hand and move elsewhere within the area of riparian vegetation.</li> <li>• Avoid removal of trees within the avian breeding season (February 1 – August 31), or perform breeding bird survey by a qualified biologist within 15 days prior to vegetation removal to verify that no nesting birds are present which could be affected by vegetation removal. If nesting birds are present, removal of the vegetation must occur between September 1 and January 31.</li> <li>• For new lighting installations within the SCA, utilize downcast lighting, dispersed lighting, prismatic shields, or similar lighting as described in the “SCA Tool Kit”</li> <li>• Heavy equipment (i.e., bobcats, tractors, dozers, and similar) will not be used for initial clearing of vegetation, leaf litter, and other debris.</li> </ul>
<p><b>Maintain Food Web Integrity.</b></p> <p>Riparian plant and wildlife species provide input to streams that is necessary to support the food web.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>• Removal of riparian vegetation can decrease availability of food sources for terrestrial species, such as nuts, berries, leaf litter, and insects.</li> <li>• Removal of riparian vegetation can decrease stream inputs of litter and wood, reducing food sources for aquatic species</li> </ul>	<ul style="list-style-type: none"> <li>• Follow SMPs above for removal of vegetation listed under “Maintains Stream and Bank Structure”.</li> <li>• Clearing of leaf litter and debris is limited only to areas of construction, staging, and stockpiling clearly identified on the site plan.</li> <li>• Utilize only native species as identified in the “SCA Toolkit” for revegetation in the SCA.</li> </ul>

Developing Standard Management Practices to Address Potential Effects of Development on Riparian Area Function		
Riparian Area and/or Buffer Function	Potential Effects of Tier 1 Development Activities	Tier 1 Conditions and SMPs If conditions are not met, or implementation of Tier 1 SMPs is infeasible, the project would move to Tier 2
<p><b>Stream Temperature Regulation.</b></p> <p>Riparian vegetation provides shade that keeps stream temperatures at ecologically desirable levels.</p> <p><i>Applicable to the following SCA components:</i></p> <p><i>Stream Channel</i> <i>Riparian Vegetation</i></p>	<ul style="list-style-type: none"> <li>Removal of riparian vegetation can increase stream temperatures, affecting aquatic species.</li> </ul>	<ul style="list-style-type: none"> <li>Limit removal of riparian trees and shrubs to individuals whose height is no greater than their closest distance from the stream top of bank (e.g., no tree greater than 25 feet tall would be removed within 25 feet of the stream channel).</li> <li>Follow SMPs above for removal of vegetation listed under "Maintains Stream and Bank Structure"..</li> </ul>

## **Construction and Post-Construction Standard Management Practices**

### **Conditions to qualify for Tier 1**

Project does not otherwise require discretionary review and meets the conditions below.

#### *Construction-Phase Conditions to qualify for Tier 1:*

EITHER:

- Site disturbance is less than one acre *and* all site disturbance will be limited to the period between May 1 and September 30, *and* all disturbed areas are to be stabilized and/or revegetated by September 30.

OR:

- Disturbed area does not exceed 2,500 square feet, *and* slopes in disturbed area do not exceed 10%, *and*
- Disturbed area is not directly adjacent to a stream and does not drain via conveyance or watercourse directly to a stream, *and*
- Project does not otherwise require discretionary review.

#### *Post-Construction Phase Conditions to qualify for Tier 1:*

- Project is not subject to Phase II Provision E.12 requirements (generally 5,000 SF or more of impervious surface created or replaced), *and*
- No new or replaced roofs, paving, or hardscape will be “directly connected impervious area;” that is, no new or replaced impervious areas have direct drainage to storm drains or streams
- Runoff from all new and replaced impervious areas can be managed through specified SMPs.

### **SMPs:**

#### *Construction-Phase*

- Implement basic pollution-prevention and sediment control SMPs (list per MCSTOPPP “Minimum Erosion and Sediment Control Measures for Small Construction Sites” and “Pollution Prevention: It’s Part of the Plan”)
- If site is disturbed and will not be permanently stabilized and/or revegetated by September 30, also implement and maintain sediment and erosion control measures throughout the rainy season. Inspect erosion control measures before and after each rain event. If required by Public Works, post a refundable erosion control deposit.

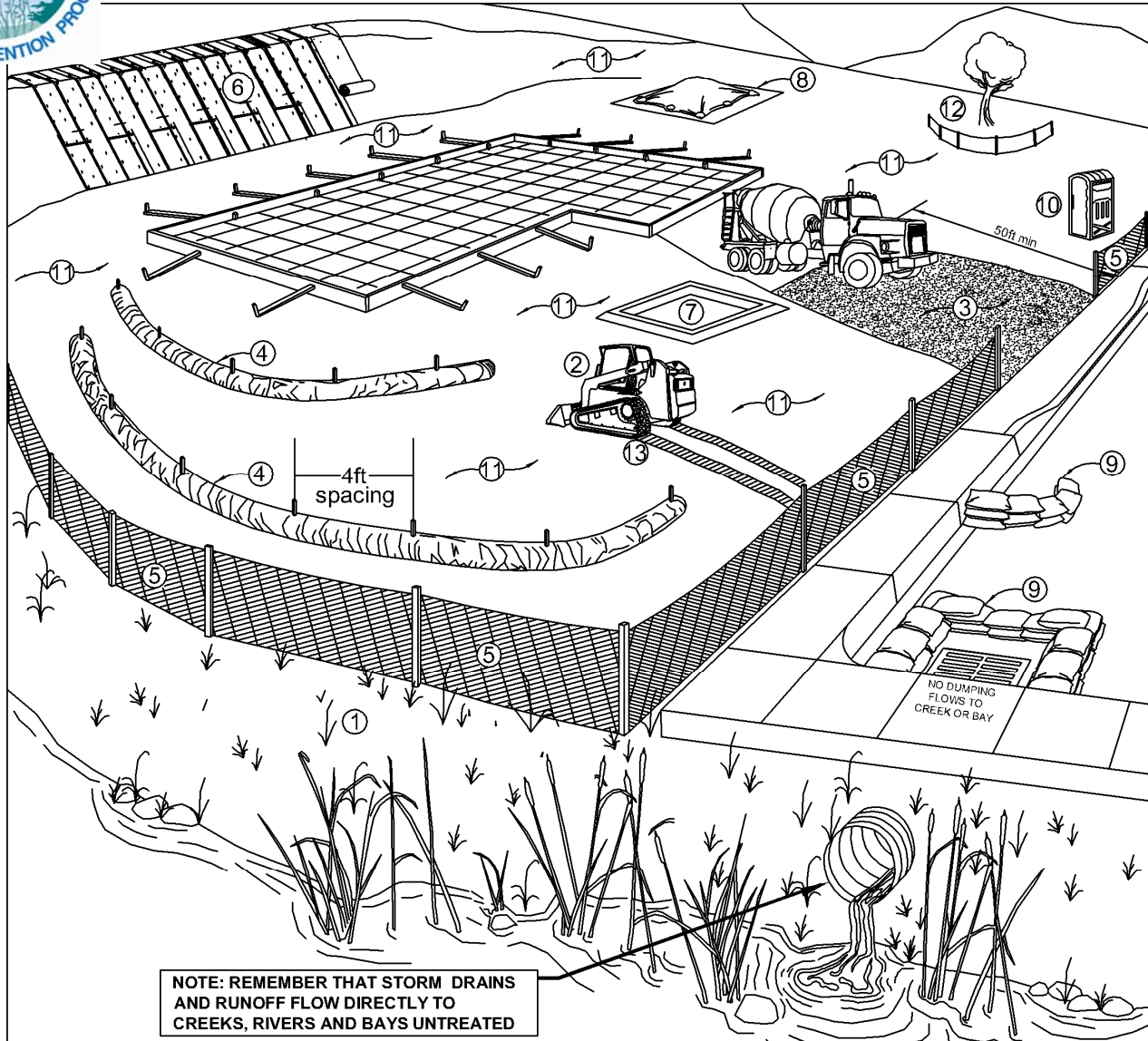
#### *Post-Construction Phase*

- Disperse runoff from impervious areas to pervious areas at a ratio not to exceed 2:1 impervious: pervious. Pervious areas receiving runoff are to have a slope generally no greater than 2%, have uncompacted soils and be vegetated. Runoff from access roads may be dispersed downgradient using perforated pipe dissipaters if sufficient area is available and slopes are not excessive.
- Impervious areas not designed to disperse runoff to pervious areas connect to a bioretention facility built to the design standard in the Phase II permit Provision E.12:
  - Maximum surface loading rate of 5 inches per hour, based on the flow rates calculated. A sizing factor of 4% of tributary impervious area may be used.
  - Minimum surface reservoir volume equal to surface area times a depth of 6 inches.
  - Minimum planting medium depth of 18 inches. The planting medium must sustain a minimum infiltration rate of 5 inches per hour throughout the life of the project and must maximize runoff retention and pollutant removal. A mixture of sand (60%-70%) meeting the specifications of American Society for Testing and Materials (ASTM) C33 and compost (30%-40%) may be used.
  - Subsurface drainage/storage (gravel) layer with an area equal to the surface area and having a minimum depth of 12 inches.
  - Underdrain with discharge elevation at top of gravel layer.
  - No compaction of soils beneath the facility, or ripping/loosening of soils if compacted.
  - No liners or other barriers interfering with infiltration.
  - Appropriate plant palette for the specified soil mix.
- Underdrain and overflow from the bioretention facility may be connected to an existing drainage system, or else must be dispersed downgradient using perforated pipe dissipaters.



# Marin County Stormwater Pollution Prevention Program

## Minimum Erosion/Sediment Control Measures For Small Construction Projects

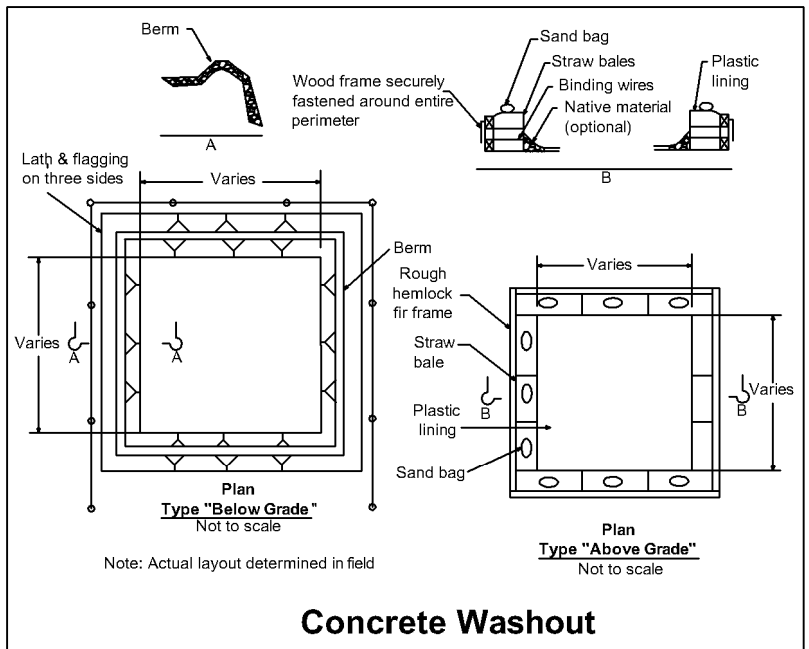
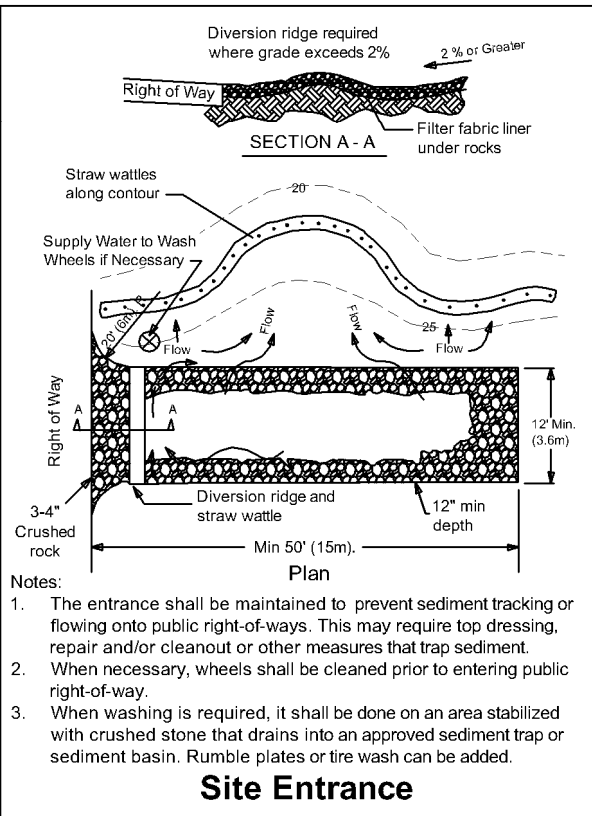
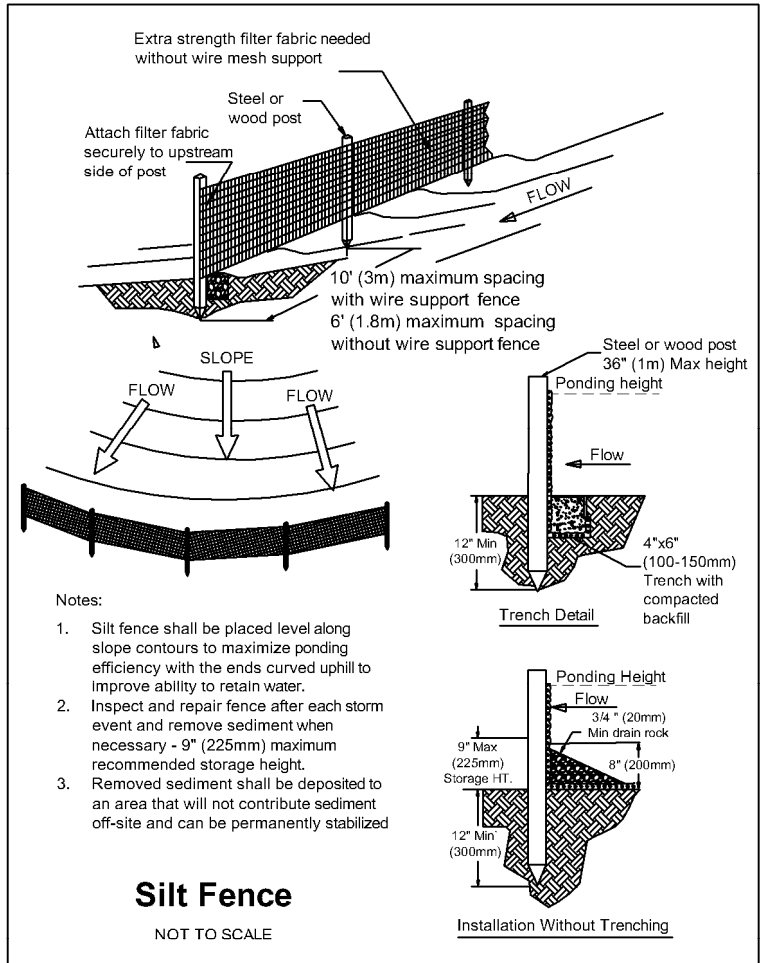
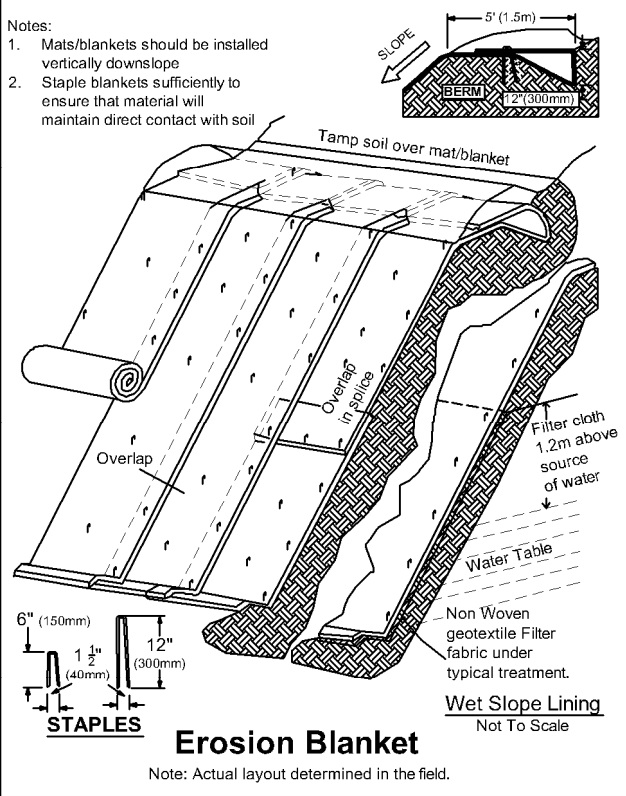


- (1) Check with your local Planning and Public Works departments for creek setback requirements. Grading and/or building may be limited within creekside buffers.
- (2) During grading phase, track-walk up and down slopes (not parallel to them).
- (3) \*Stabilize site entrance and temporary driveway – use 3-4” crushed rock for a minimum of 50’ (or as far as possible) to prevent tracking soil offsite. This can be used in conjunction with a tire wash or rumble plates.
- (4) \*Use straw wattles along contours of short slopes or slopes 3:1 or flatter, keyed into ground at least 3” deep (typically 25’ apart).
- (5) \*Install silt fence along contours as secondary measure to keep sediment onsite and to minimize vehicle and foot traffic beyond limits of site disturbance. Silt fencing must be keyed in.
- (6) \*Install erosion control blankets (or equivalent) on any disturbed site with 3:1 slopes or steeper, keyed into the ground at least 3”.
- (7) \*Construct a concrete washout site adjacent to stabilized entrance. Clean as needed and remove at end of project.
- (8) Cover all stockpiles and landscape material and berm properly with straw wattles or sand bags. Keep behind silt fence, away from water bodies. Hazardous materials must be kept in closed containers that are covered and utilize secondary containment, not directly on soil.
- (9) \*Use pea-gravel bags, (or similar product) around drain inlets located both onsite and in gutter as a last line of defense.
- (10) Place port-a-potty near stabilized site entrance, behind the curb and away from gutters, storm drain inlets, and water bodies.
- (11) Cover all exposed soil with straw mulch and tackifier (or equivalent).
- (12) Existing vegetation should be preserved as much as possible. Areas of disturbed soil/vegetation should be revegetated as soon as practical.
- (13) Prevent equipment fluid leaks onto ground by placing drip pans or plastic tarps under equipment.

Note: Schedule construction activities to reduce erosion potential. Sediment and erosion control shall be continually maintained throughout the rainy season (October 15<sup>th</sup> – April 15<sup>th</sup>) and must remain effective through the construction and landscape phases. Inspect and maintain Best Management Practices (BMPs) before and after rain events. \*See reverse for detail drawings. Visit [www.mcstoppp.org](http://www.mcstoppp.org) for more information on construction site management.

Notes:

1. Mats/blankets should be installed vertically downslope
2. Staple blankets sufficiently to ensure that material will maintain direct contact with soil



If you require materials in alternative formats, please contact:  
415-473-4381 voice/TTY or [disabilityaccess@co.marin.ca.us](mailto:disabilityaccess@co.marin.ca.us)

# POLLUTION PREVENTION

## IT'S PART OF THE PLAN

### **MAKE SURE YOUR CREWS AND SUBS DO THE JOB RIGHT!**

Runoff from streets and other paved areas is a major source of pollution in San Francisco Bay. Construction activities can directly affect the health of the Bay unless contractors and crews plan ahead to keep dirt, debris, and other construction waste away from storm drains and local creeks. Following these guidelines will ensure your compliance with local ordinance requirements. Contact your local stormwater coordinator (see reverse). Storm drain polluters may be liable for fines!

### **EARTHWORK & CONTAMINATED SOILS**

- ▶ Avoid scheduling earth disturbing activities during the rainy season if possible. If grading activities during wet weather are allowed in your permit, be sure to implement all measures necessary to prevent erosion.
- ▶ Mature vegetation is the best form of erosion control. Minimize disturbance to existing vegetation whenever possible.
- ▶ If you disturb a slope during construction, prevent erosion by securing the soil with erosion control fabric, or seed with fast-growing grasses as soon as possible. Place a silt barrier downslope until soil is secure.
- ▶ Keep excavated soil on the site where it is least likely to collect in the street. Transfer to dump trucks should occur on the site, not in the street.
- ▶ Use sand bags, silt fences, hay bales, straw logs or other control measures to prevent the flow of silt off the site and into storm drains or creeks.

### **PAVING/ASPHALT WORK**

- ▶ Do not pave during wet weather or when rain is forecast.
- ▶ Always cover storm drain inlets and manholes when paving or applying seal coat, tack coat, slurry seal, or fog seal.
- ▶ Do not sweep or wash down excess materials into storm drains, ditches or creeks. Collect these materials and return them to stockpiles, or dispose of as trash.
- ▶ Do not use water to wash down fresh asphalt or concrete pavement.

### **DEWATERING OPERATIONS**

- ▶ Reuse water for dust control, irrigation, or another on-site purpose to the greatest extent possible.
- ▶ Be sure to call the local Stormwater Coordinator before discharging water to a street, storm drain, or creek. Filtration or diversion through a basin, tank, or sediment trap may be required.

### **MATERIALS STORAGE & WASTE DISPOSAL**

- ▶ Sweep streets and other paved areas daily. Never wash down streets or work areas with water!
- ▶ Be sure to store any stockpiles of dirt, sand, asphalt, concrete, grout, or mortar under cover and away from drainage areas. These materials must never reach a storm drain, or other watercourse.
- ▶ Wash out concrete equipment trucks off-site, or designate an on-site area for washing where water will flow into a temporary pit in a dirt area. Let the water seep into the soil and dispose of hardened concrete with trash.
- ▶ Divert water from washing exposed aggregate concrete to a dirt area where it will not run into a gutter, street, or storm drain.
- ▶ If a suitable dirt area is not available, collect the wash water and remove it for appropriate disposal off site.

### **HAZARDOUS MATERIALS MANAGEMENT**

- ▶ Label all hazardous materials/wastes (such as pesticides, paints, thinners, solvents, fuel, oil, and antifreeze) in accordance with city, state, and federal regulations.
- ▶ Store hazardous materials and wastes in secondary containment and cover them during wet weather.
- ▶ Follow manufacturer's application instructions for hazardous materials. Be careful not to use more than necessary.
- ▶ Do not apply chemicals outdoors when rain is forecast within 24 hours.
- ▶ Dispose of hazardous materials/waste at the Hazardous Waste Collection Facility. For more information:  
Novato businesses call 892-6395  
All other businesses in Marin call 485-5648

**CONTINUED ON BACK**



## **PAINTING**

- ▶ Never rinse paint brushes or materials into a storm drain or on the street!
- ▶ Paint out excess water-based paint before rinsing brushes, rollers, or containers in a sink. If you can't use a sink, direct wash water to a dirt area, and spade it into the dirt with a shovel.
- ▶ Paint out excess oil-based paint before cleaning brushes in paint thinner.
- ▶ Filter paint thinners and solvents for reuse whenever possible. Dispose of oil-based paint sludge and unusable thinner at the hazardous waste collection facility. (See reverse for Hazardous Materials Management.)

## **LANDSCAPING**

- ▶ Schedule grading and excavation projects for dry weather.
- ▶ Protect stockpiles and landscaping materials from wind and rain by storing them under tarps and secured plastic sheeting.
- ▶ Store pesticides, fertilizers, and other chemicals indoors or in a locked shed or storage cabinet.
- ▶ Make sure products are properly labeled and check inventory before buying additional products.
- ▶ Rinse containers and use rinse water as products before tossing out empty containers (5 gallons or less) in the trash.
- ▶ Get rid of unwanted products through the hazardous waste facility. (See reverse for Hazardous Materials Management.)
- ▶ Use temporary check dams or ditches to divert runoff away from storm drains.
- ▶ Protect storm drain inlets with berms, filter mats or other inlet protection measures.
- ▶ Revegetate the area. It's an excellent form of erosion control for any site.
- ▶ Collect lawn and garden clippings, pruning waste and tree trimmings. Chip, if necessary, and compost.
- ▶ Do not place yard waste in gutters. In communities with curbside yard waste recycling, leave clippings and pruning waste for pick-up in approved bags or containers or, take to a landfill that composts yard waste.
- ▶ Do not blow or rake leaves into the street.
- ▶ Call the County Stormwater Program at 499-6528 and ask for a copy of "Here's What To Do with the Water" or look in "other businesses" under [www.mcstoppp.org](http://www.mcstoppp.org)

## **POOL/FOUNTAIN/SPA MAINTENANCE**

- ▶ Never discharge pool or spa water (and/or backwash water) to a street or storm drain. Call the County at 499-6528 for a copy of "Here's What To Do with the Water" or look in "other businesses" under [www.mcstoppp.org](http://www.mcstoppp.org)

## **VEHICLE & EQUIPMENT**

### **MAINTENANCE**

- ▶ Frequently, inspect vehicles and equipment for leaks. Use drip pans to catch leaks until repairs are made; repair leaks promptly.
- ▶ Fuel and maintain vehicles on site only in a bermed area or over a drip pan that is big enough to prevent runoff.
- ▶ If you must clean vehicles or equipment on site, clean with water only - and in a bermed area that will not allow rinsewater to run into streets, stormdrains, ditches, or creeks.
- ▶ Do not clean vehicles or equipment on site using soaps, solvents, degreasers, steam cleaning equipment, etc.

### **SAW CUTTING**

- ▶ Always completely cover or barricade storm drain inlets when saw cutting. Use filter fabric, sand bags, or fine gravel dams to keep slurry out of the storm drain system. If saw-cut slurry enters a stormdrain, clean up immediately.
- ▶ Shovel, absorb, or vacuum saw-cut slurry and pick up all waste as soon as you are finished in one location and by the end of each work day.

### **STORMWATER COORDINATORS** (During Normal Business Hours)

**Town of San Anselmo**  
Rabi Elias/Dave Craig  
258-4616

**City of Sausalito**  
Todd Teachout  
289-4111

**Town of Corte Madera**  
Kevin Kramer  
927-5057

**City of San Rafael**  
Richard Landis  
485-3355

**City of Belvedere**  
Scott Derdenger  
435-3838

**County of Marin**  
Howard Bunce  
499-3748

**Town of Ross**  
Rob Maccario  
453-8287 ext. 163

**Town of Tiburon**  
Matt Swalberg  
435-7354

**Town of Fairfax**  
Kathy Wilkie  
453-0291

**City of Larkspur**  
Mike Myers  
927-5017

**City of Novato**  
Dave Harlan  
899-8246

**City of Mill Valley**  
Jill Barnes  
388-4033 ext. 116

*To report illegal discharges to local waterways occurring after normal business hours, call 911; or, the County Sheriff's non-emergency line at 499-7233.*

*To report oil and chemical spills occurring in "open waters" or "on land" call 1-800-OILS911.*

*To report fish kills or poaching, call the California Department of Fish and Game at 1-888-334-2258.*

**Countywide Plan Consistency Matrix**  
**SCA Ordinance –Planning Commission Draft**

SCA Ordinance – PC Draft (5/13/2013)	2007 Marin Countywide Plan BIO-4
<b>CHAPTER 22.33 – STREAM PROTECTION</b>	
<b>22.33.010 – Purpose of Chapter</b>	
<p>The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. This is accomplished by assuring that permitted development avoids SCAs wherever feasible, minimizes any unavoidable incursion into the SCA, and mitigates adverse impacts.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> A Stream Conservation Area (SCA) is established to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. Development shall be set back to protect the stream and provide an upland buffer, which is important to protect significant resources that may be present and provides a transitional protection zone. Best management practices<sup>1</sup> shall be adhered to in all designated SCAs. Best management practices are also strongly encouraged in ephemeral streams not defined as SCAs.</p> <p>...</p>
<b>22.33.020 – Applicability</b>	
<p>A. The SCA consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. <u>In the event there is uncertainty about the location of the stream and corresponding SCA,</u> the Director may determine the applicability of this chapter to a lot based on the latest data and evidence that is available and/or submitted to the Community Development Agency <del>in the event there is uncertainty about the location of the stream and the corresponding SCA.</del></p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <p>SCAs are designated along perennial, intermittent, and ephemeral streams as defined in the Countywide Plan Glossary.</p> <p>...</p> <p>SCAs consist of the watercourse itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined below (see Figure 2-2).</p>
<p>The SCA encompasses any jurisdictional wetland within the stream channel, together with adjacent uplands, and supersedes setback standards defined for Wetland Conservation Areas in the Countywide Plan.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <p>The SCA encompasses any jurisdictional wetland or unvegetated other waters within the stream channel, together with the adjacent uplands, and supersedes setback standards defined for WCAs.</p>
<p>B. The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:</p>	
<p>1. The Coastal Zone as defined by the Coastal Act of 1976;</p>	

2. Tidally influenced waters and adjacent land;	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>
3. Land adjacent to levees, dikes, <u>or berms in the City-Centered Corridor;</u>	...
4. <del>Publicly owned or maintained flood control channels under tidal influence</del> <u>or water conservation district facilities;</u> and	Human-made flood control channels under tidal influence are subject to the Bayland Conservation policies.
5. Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work <u>on land owned or controlled by the agency, such as through a lease or easement.</u>	
<b>22.33.030 – Stream Conservation Area General Requirements.</b>	
A. Requirements. Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve maximum protection of stream and riparian resources:	
1. Development shall avoid SCAs wherever feasible.	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true: 1. A parcel falls entirely within the SCA; or 2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.
2. Where complete avoidance of an SCA is not feasible, the stream channel shall be avoided to the maximum extent feasible and incursion into the SCA shall be minimized.	
3. Development within the SCA shall not be permitted if it would directly or indirectly result in any of the following: a. Adverse alteration of hydraulic capacity; or b. A net loss in habitat acreage, value, or function; or c. Degradation of water quality.	<b>BIO-4.2 Comply with SCA Regulations.</b> ... In determining whether allowable uses are compatible with SCA regulations, development applications shall not be permitted if the project does any of the following: • Adversely alters hydraulic capacity;

	<ul style="list-style-type: none"> <li>• Causes a net loss in habitat acreage, value, or function;</li> <li>• Degrades water quality.</li> </ul>
<p>B. SCA Setbacks. The Stream Conservation Area includes <u>SCA</u> setbacks as provided in this subsection.</p>	
<p>1. <del>SCA setbacks for properties within the</del> City-Centered Corridor:  a. For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;  b. For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and  c. For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank.  <u>d. For all lots, an additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA Setback.</u></p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>  ...  <b>City-Centered Corridor</b></p> <ul style="list-style-type: none"> <li>▪ For parcels more than 2 acres in size, provide a minimum 100-foot development setback on each side of the top of bank.</li> <li>▪ For parcels between 2 and 0.5 acres in size, provide a minimum 50-foot development setback on each side of the top of bank.</li> <li>▪ For parcels less than 0.5 acres in size, provide a minimum 20-foot development setback. The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback.</li> </ul> <p>...  Regardless of parcel size, an additional buffer may be required based on the results of a site assessment. A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, <i>Require Site Assessment</i>.</p>
<p>2. <del>SCA setbacks for properties within the</del> Inland Rural Corridor;  a. <u>The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.</u>  <u>b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.</u></p>	<p><b>Coastal, Inland Rural, and Baylands Corridors:</b></p> <ul style="list-style-type: none"> <li>▪ For all parcels, provide a development setback on each side of the top of bank that is the greater of either (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream or (b) 100 feet landward from the top of bank.</li> </ul> <p>...  Regardless of parcel size, an additional buffer may be required based on the results of a site assessment. A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, <i>Require Site</i></p>
<p>3. <u>Baylands Corridor:</u>  a. <u>The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the</u></p>	

<p><u>stream; or (b) 100 feet landward from the top of bank.</u>  <u>b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.</u></p>	<p><i>Assessment.</i></p>
<p><u>4. Coastal Corridor:</u>  <u>a. The SCA setback shall be the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank.</u>  <u>b. An additional SCA setback may be required based on the results of a Site Assessment if the additional SCA setback is necessary to protect riparian resources, such as woody riparian vegetation that extends beyond the SCA setback.</u></p>	
<p><del>3. In all Corridors, regardless of lot size, an additional SCA setback may be required based on the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the presence of other sensitive biological resources, provide options for alternative mitigation, and determine the precise SCA setback.</del></p>	
<p><u>5. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more as determined by a qualified biologist or natural resources specialist.</u></p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>          . . .          An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream. For those ephemeral streams that do not meet these criteria, a minimum 20-foot development setback should be required.</p>
<p><u>6. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation is based on the most recent aerial photography on file with the County as of (date of ordinance adoption).</u></p>	
<p><u>7. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.</u></p>	<p><b>BIO—4.g Require Site Assessment</b>          Require development applications to include the submittal of a site assessment prepared by a qualified professional where incursions into the SCA are proposed, or adverse impacts to riparian resources may otherwise occur.</p>

	Unless waived, the qualified professional shall be hired by Marin County. The site assessment shall be paid for by the applicant and considered in determining whether any adverse direct or indirect impact on riparian resources would occur as a result of the proposed development, whether SCA criteria and standards are being met, and to identify measures necessary to mitigate any significant impacts. The site assessment may also serve as a basis for the County to apply restrictions in addition to those required by State and federal regulations.
<b>Chapter 22.63 – STREAM CONSERVATION AREA PERMIT</b>	
<b>22.63.010 – Purpose of Chapter</b>	
This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not feasible.	
<b>22.63.020 – Applicability to Development</b>	
A. Application of SCA Provisions.	
1. The provisions of this Chapter apply to permitted development within the Stream Conservation Area as described in Chapter 22.33 (Stream Protection). <del>Except as specified in for activities that are exempt or subject to permit as required by this Chapter,</del> the exemptions from Land Use Permit Requirements in Section 22.06.050 (Exemptions from Land Use Permit Requirements) do not apply to development within the Stream Conservation Area. <del>Compliance with this Chapter does not affect applicability of any other requirements by this or any other agency.</del> As used in this Chapter, permitted development includes the following structures and other development activities:	<b>BIO-4.2 Comply with SCA Regulations.</b> Implement established setback criteria for protection of SCAs through established discretionary permit review processes and/or through adoption of new ordinances. Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.
a. All structures, regardless of whether the work requires a building or grading permit, including fencing, decks, platforms, parking lots, utility crossings, pedestrian or vehicular access routes, and other similar improvements;	
b. Clearing of land including the removal of any vegetation or any protected or heritage tree;	
c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08 (Watercourse Diversion or Obstruction); or	
d. Any other activities determined by the Director to have potentially	

adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.	
2. <u>Compliance with this Chapter does not affect applicability of any other requirements by this or any other agency. This Chapter shall not be applied in a manner that supersedes other local, state or federal laws applicable to protection of riparian and stream resources.</u>	
<b>B. Exemptions.</b>	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs:
1. Exempt without further determination.	
a. Public utility facilities, <u>including and their location, construction, maintenance, repair and replacement where exempt from local agency building and zoning requirements proposed</u> pursuant to Government Code Section 53091 , Public Resources Code Section 4292, and the California Public Utilities Code;	
b. Emergency measures requiring prompt action, where such measures are immediately necessary to avoid or prevent loss of, or damage to, life, health, property or essential public services resulting from a sudden, unexpected occurrence;	
c. Tree and vegetation removal or trimming on a developed lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety ( <del>Vegetation that is removed under this exemption may also be dead, invasive, or exotic may also be removed under this exemption</del> );	
d. Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency;	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... • Projects to improve fish and wildlife habitat;
e. Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;	
f. Any development that is <del>solely</del> permitted pursuant to Marin County Code Section 11.08 (Watercourse Division or Obstruction), <del>or</del> Section 23.08 (Excavating, Grading and Filling) <u>or Section 24.04.560 (Drainage Setbacks)</u> ;	

<p>g. Maintenance and repair of permitted or legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ...  <ul style="list-style-type: none"> <li>Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;</li> </ul> </p>
<p>h. Maintenance or replacement of landscaping.</p>	
<p>i. <del>Fencing</del> <u>New fences</u> that does not restrict wildlife access to <u>streams and the adjacent riparian vegetation</u>. <u>Exempt fences include any fence within or on the perimeter of a previously disturbed area</u> <del>riparian habitat</del>;</p>	
<p>j. Agricultural uses on property zoned for agriculture (A, ARP or APZ), <u>including removal and trimming of vegetation planted for a commercial enterprise</u>, that do not result in the removal of woody riparian vegetation or animal confinement within the SCA</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ...  <ul style="list-style-type: none"> <li>Agricultural uses that do not result in any of the following: <ul style="list-style-type: none"> <li>a. The removal of woody riparian vegetation;</li> <li>b. The installation of fencing within the SCA that prevents wildlife access to the riparian habitat within the SCA;</li> <li>c. Animal confinement within the SCA; and</li> <li>d. A substantial increase in sedimentation.</li> </ul> </li> </ul> </p>
<p>2. Exempt subject to determination. The following activities are exempt subject to determination by the Director, based upon <u>photographs, illustrations and other appropriate documentation</u> submitted by the applicant, to confirm that the activity will meet the criteria below. <u>Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal.</u> <u>Documentation may include a letter or report from a licensed contractor and photographs of the property and improvements or structures to verify the activity will comply with this Section.</u></p>	
<p>a. Replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the <del>extent of the horizontal incursion or the footprint</del> <u>within the SCA setback</u> or result in the removal of woody riparian vegetation.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ...  <ul style="list-style-type: none"> <li>Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;</li> </ul> </p>
<p>b. <del>Structures and</del> <u>Development</u> activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director. <u>A cumulative total of 120 square feet of impervious surface shall be exempt in a previously disturbed area,</u></p>	



<p><u>provided that the improvement is located at least 20 feet from the top of the stream bank, does not result in the removal of woody riparian vegetation, and disperses storm water run-off over a pervious area (such as a lawn or garden).</u></p>	
<p>c. Tree and vegetation removal or trimming on a vacant lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety (<del>Vegetation that is removed under this exemption may also be dead, invasive, or exotic may also be removed under this exemption).</del></p>	
<p><b>22.63.030 – Stream Conservation Area Permit (Tier 1)</b></p>	
<p>A. SCA (Tier 1) Development. Permitted development activities eligible for consideration under the Stream Conservation Area (Tier 1) Permit Review Procedures include but are not limited to:</p>	
<p>1. Addition(s) to permitted or legal non-conforming structures that existed prior to February 25, 2013, provided that <u>the work does not increase the footprint within the SCA by a cumulative total of more than 500 square feet and is not closer to the stream than the existing structure or any structure removed, whichever is more restrictive</u> <del>the addition is not closer to the stream in the existing structure and does result in the expansion of the existing building footprint within the SCA by more than 500 square feet;</del></p>	<p><b>BIO-4.a Adopt Expanded SCA Ordinance.</b> Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats.</p> <p>...</p>
<p>2. New or expanded water supply or septic facilities, including any excavation or disturbance that is necessary for facility connections;</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <ul style="list-style-type: none"> <li>Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;</li> </ul>
<p>3. <u>Fences that are not otherwise exempt pursuant to Section 22.63.020.B.1.i;</u></p>	
<p>4. New decks, patios, platforms and other similar improvement as determined by the Director;</p>	
<p>5. Pedestrian or vehicular access routes, including paths, ramps, driveways, roads and bridges utilizing a clear span or arched culvert design with no part of the bridge located below the top of bank;</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <ul style="list-style-type: none"> <li>Driveway, road and utility crossings, if no other location is feasible;</li> </ul>

6. Drainage improvements, such as downdrains, pipes and swales;	
7. Retaining walls, erosion control structures, and similar improvement located upland from the top of bank as determined by the Director;	
<del>7. Necessary flood control projects.</del>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <ul style="list-style-type: none"> <li>Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;</li> </ul>
Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) Procedure if the proposed development would not meet <u>applicable Development Standards</u> and incorporate applicable Standard Management Practices as required by a Site Assessment or would result in adverse impacts to hydraulic capacity; <u>stream or riparian</u> habitat acreage, value or function; or water quality.	
B. SCA (Tier 1) Project Review Procedure	
1. Ministerial Review. The Stream Conservation Area Permit (Tier 1) shall be undertaken as a ministerial action subject to implementation of required Development Standards and project-specific Standard Management Practices.	
2. Development Standards. Stream Conservation Area (Tier 1) Permits shall comply with the following development standards:	
<p>a. Where permitted development within an SCA <u>setback</u> would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice or Site Assessment. Replacement vegetation <del>may</del> <u>shall</u> consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, subject to County approval.</p>	<p><b>BIO-4.8 Reclaim Damaged Portions of SCAs.</b> Restore damaged portions of SCAs to their natural state wherever possible, and reestablish as quickly as possible any herbaceous and woody vegetation that must be removed within an SCA, replicating the structure and species composition of indigenous native riparian vegetation.</p>
<p>b. New impervious area within the SCA shall not drain directly to the stream <u>or storm drain</u>. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).</p>	<p><b>BIO-4.19 Maintain Channel Stability.</b></p> <p>...</p> <p>All project improvements should be designed to minimize flood hydrograph peak flow or flood volume increases into drainage courses. To this end, design features such as porous pavement, pavers, maximizing overall permeability, drainage infiltration, disconnected impervious surfaces, swales, bioretention, green roofs, etc., should be integrated into projects as appropriate.</p>

<p>c. New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.</p>	<p><b>BIO-4.14 Reduce Road Impacts in SCAs.</b> Locate new roads and roadfill slopes outside SCAs, except at stream crossings, and consolidate new road crossings wherever possible to minimize disturbance in the SCA. Require spoil from road construction to be deposited outside the SCA, and take special care to stabilize soil surfaces.</p>
<p>d. <del>Clear span</del> Pedestrian bridges shall use clear span or arched culvert designs, with no part of the bridge located below the top of bank, shall be utilized at road and driveway crossings over perennial or intermittent streams.</p>	
<p>e. Permitted work shall not result in alterations that directly or indirectly create barriers to fish migration near or within streams mapped as currently and/or historically supporting salmonids.</p>	<p><b>BIO-4.4 Promote Natural Stream Channel Function.</b> ... In no case shall alterations that create barriers to fish migration be allowed on streams mapped as historically supporting salmonids. ...</p>
<p>f. <u>Subdivisions shall be designed so that no further development will occur within the SCA, and where the SCA setback is determined by the size of the lot, the SCA setback that applies to the lot prior to any subdivision shall apply to all subsequent lots that are created.</u></p>	
<p>3. Standard Management Practices. The CDA shall maintain a list of Standard Management Practices to be incorporated into all projects for the protection of hydraulic capacity, stream and riparian habitat and water quality within SCAs. The Site Assessment (Tier 1) will identify those Standard Management Practices appropriate to ensure that adverse impacts of permitted development are avoided. Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than final inspection.</p>	<p><b>BIO-4.a Adopt Expanded SCA Ordinance.</b> Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats.</p>
<p>4. Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional <del>retained by the County and paid for by the applicant.</del> The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; <del>recommend and identify</del> Standard Management Practices corresponding to the nature of development; <del>and determine whether the project, in conjunction with Standard Management Practices, that would ensure that the project would not cause result in</del> adverse impacts to the</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed or where full compliance with all SCA criteria would not be met. <b>See also BIO-4.a. (above)</b></p>

<p>stream and riparian resources. <del>The Site Assessment (Tier 1) is part of the SCA Permit (Tier 1). The Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development.</del></p> <p>If the Site Assessment <del>confirms</del> <u>determines</u> that <del>there would be no adverse impacts to hydraulic capacity, stream and riparian habitat and water quality the SCA, or that any impacts to the SCA can be fully avoided through implementation of specific Standard Management Practices as part of the development approval,</del> the County <del>may proceed to</del> <u>shall process</u> the application as a Tier 1 permit.</p>	
<p><b>22.63.040 – Stream Conservation Area Permit (Tier 2)</b></p>	
<p>A. SCA (Tier 2) Development. The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030; <del>to all discretionary approvals; to</del> <u>for</u> any project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices <u>necessary to avoid adverse impacts;</u> and <del>to</del> <u>for</u> any development that would, <u>despite application of Standard Management Practices,</u> result in adverse impacts to <del>the SCA</del> <u>hydraulic capacity, stream and riparian habitat and water quality.</u></p>	
<p>B. SCA (Tier 2) Project Review Procedure</p>	
<p>1. Discretionary Review. The Stream Conservation Area Permit (Tier 2) shall be undertaken as a discretionary action subject to incorporation of <del>Design Development Standards,</del> Standard Management Practices, and/or any other mitigations as determined through a Site Assessment (Tier 2) necessary to avoid adverse impacts to hydraulic capacity; habitat acreage, value or function; and water quality.</p>	
<p>2. <del>Design Development Standards.</del> Stream Conservation Area (Tier 2) Permits shall comply with the following Development Standards:</p>	
<p>a. All Development Standards applicable to Tier 1 permits provided in Section 22.63.030.B.2, except where the a Site Assessment (Tier 2) demonstrates that alternate mitigations would be more appropriate to prevent adverse alteration of hydraulic capacity; a net loss in habitat acreage, value or function; or degradation of water quality.</p>	
<p>b. Any development that would, on the basis of a Site Assessment,</p>	

<p>cause or exacerbate existing channel instabilities shall require County approval of a channel stabilization program <u>in accordance with a hydrological or geomorphic assessment</u>; or comply with to the mitigations generated during the required environmental review process, <del>which could</del> <u>Mitigations shall</u> include maintenance of peak flows at pre- and post-project levels, or less. Proposed stabilization measures shall anticipate project-related changes to the drainageway flow regime.</p>	
<p>3. Standard Management Practices. The project shall incorporate any applicable Standard Management Practices on file in the CDA, except as determined in accordance with a Site Assessment (Tier 2) and applicable mitigations.</p>	
<p>4. Site Assessment (Tier 2). The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1) and determine whether an additional setback is required to avoid adverse impacts to the SCA. The Site Assessment (Tier 2) shall also include:</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>      . . .      Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed or where full compliance with all SCA criteria would not be met.</p>
<p>a. Additional studies necessary to determine the extent of development impacts to hydraulic capacity, habitat and water quality including but not limited to hydrological assessments; <u>stream and riparian</u> habitat studies; and stormwater analysis. A hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project run-off may be required where there is evidence that significant current or impending channel instability is present, as determined by the County. The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access.</p>	<p><b>BIO-4.2 Comply with SCA Regulations.</b>      . . .      Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.</p> <p><b>BIO-4.19 Maintain Channel Stability.</b>      Applicants for development projects may be required to prepare a hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project area runoff. This assessment should be required where evidence that significant current or impending channel instability is present, such as documented channel bed incision, lateral erosion of banks (e.g., sloughing or landsliding), tree collapse due to streambank undermining and/or soil loss, or severe in-channel sedimentation, as determined by the County.</p>
<p>b. A description of mitigation measures that conform to criteria in Section C (Mitigation Criteria), and any additional mitigation measures that would avoid or reduce to the adverse impact of the proposed development on hydraulic capacity, habitat, or water quality within the SCA. Such measures shall include feasible design and site specific</p>	

<p>measures, in addition to local, state and federal regulations. All such measures shall be incorporated into the project or be required through conditions of approval.</p>	
<p>c. If the lot is not entirely within the SCA, the Site Assessment (Tier 2) shall also evaluate whether <u>development on the lot entirely outside the SCA is infeasible and whether</u> potential impacts on water quality, wildlife habitat, or other sensitive resources would be greater as a result of development outside the SCA than development within the SCA.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>        . . .        Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true:</p> <ol style="list-style-type: none"> <li>1. A parcel falls entirely within the SCA; or</li> <li>2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other constraints than development within the SCA.</li> </ol>
<p>C. Mitigation Criteria. Where development would occur within an SCA, and adverse impacts to hydraulic capacity, habitat, or water quality are identified, mitigation shall conform to the provisions below and shall be incorporated into the project or be required through conditions of approval. The Site Assessment (Tier 2) shall present options for alternative mitigation that meet the following criteria.</p>	<p><b>BIO-4.1</b>        .. .        A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, <i>Require a Site Assessment</i>.</p>
<p>1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1.</p>	<p><b>BIO-4.i Replace Vegetation in SCAs.</b> When removal of native riparian vegetation is unavoidable in an SCA, and mitigation is required, require establishment of native trees, shrubs, and ground covers within a period of five years at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Require replacement and enhancement planting to be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1.</p>
<p>2. A condition of approval for the Stream Conservation Area Permit (Tier2) shall require a schedule of mitigation work and development work. Mitigation shall be implemented prior to final inspection to minimize any short-term adverse impacts to hydraulic capacity, habitat, or water quality. Mitigation plans must, to the extent feasible, be designed so that mitigations are self-sustaining.</p>	
<p><b>22.63.050 – Application Filing, Processing and Review</b></p>	
<p>A. Filing and processing. Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section</p>	

<p>22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).</p>	
<p>B. Project review procedure. The <del>Director</del> <u>Review Authority</u> shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).</p>	
<p>C. Public hearings. When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.</p>	
<p>D. Notice of action and/or hearing date. Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.</p>	
<p><b>22.63.060 – Decision and findings</b></p>	
<p>The Review Authority shall issue the decision and the findings upon which the decision is based. The Review Authority may approve or conditionally approve an application only if all of the following findings are made:</p>	
<p>A. For a SCA (Tier 1) Permit:</p> <ol style="list-style-type: none"> <li>1. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1))</li> <li>2. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality.</li> </ol>	<p><b>BIO-4.2 Comply with SCA Regulations.</b></p> <p>...</p> <p>In determining whether allowable uses are compatible with SCA regulations, development applications shall not be permitted if the project does any of the following:</p> <ul style="list-style-type: none"> <li>• Adversely alters hydraulic capacity;</li> <li>• Causes a net loss in habitat acreage, value, or function;</li> </ul> <p>Degrades water quality.</p>

<p>B. For a SCA (Tier 2) Permit:</p> <ol style="list-style-type: none"><li>1. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2))</li><li>2. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality. Exceptions may be allowed if the lot falls entirely within the SCA or development on the lot entirely outside the SCA is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.</li></ol>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b></p> <p>...</p> <p>Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true:</p> <ol style="list-style-type: none"><li>1. A parcel falls entirely within the SCA; or</li><li>2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.</li></ol>
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## Frequently Asked Questions:

### Marin County Stream Conservation Area Ordinance

Updated May 3, 2013

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**1. What is proposed?**

The Marin County Community Development Agency is proposing to expand the Stream Conservation Area (SCA) ordinance to implement requirements from the 2007 Countywide Plan. The proposal includes amendments to the County's zoning ordinance (Development Code) that would establish SCA setbacks which range from 20, 50, or 100 feet or more upland from the top of stream banks, standards for development within the SCA setbacks, and review procedures and permit requirements.

**2. What is the Countywide Plan?**

The Countywide Plan is a long-term comprehensive general plan for the physical development of the unincorporated areas of Marin County. The Countywide Plan expresses the County's development goals and policy relative to the distribution of future land uses. For more information, please visit: [www.future-marin.org](http://www.future-marin.org).

**3. Why are you proposing the Stream Conservation Area ordinance?**

The proposed ordinance implements a key program from the Countywide Plan to strengthen protections of the County's streams through expanded zoning regulations that apply to development adjacent to streams.

**4. What is the SCA setback?**

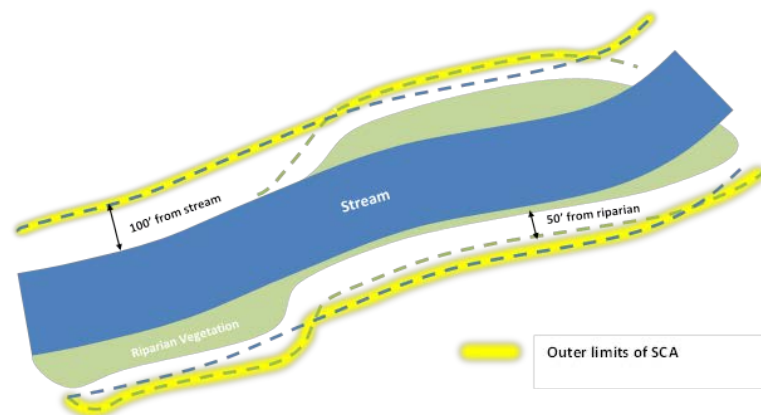
The SCA applies to perennial, intermittent, and ephemeral streams identified in the data and map that is maintained and periodically updated by the Community Development Agency. The SCA setbacks vary depending on which of the four Countywide Plan Corridors (Bayfront, City-Centered, Inland Rural, and Coastal) the property is situated in. Visit the Marin Countywide Plan (click [here](#)) to view a map of the Countywide Plan Corridors.

SCA Setback for properties in the City-Centered Corridor:

Lots more than 2 acres in size: a minimum of 100 feet from each side of the top of bank;  
Lots from 0.5 acres to 2 acres in size: a minimum of 50 feet from each side of the top of bank; and  
Lots less than 0.5 acres in size: a minimum of 20 feet from each side of the top of bank.

SCA Setback for properties in the other Corridors:

The greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank. The diagram below helps to illustrate how the SCA setback is determined in the Bayfront, Inland Rural, and Coastal Corridors.



In all Corridors, regardless of lot size, an additional SCA setback may be required based on the results of a site assessment.

**5. *Is it true that I cannot use or improve the SCA on my property?***

No. You can continue to use your property. The SCA ordinance will require that *new* development be placed outside the SCA wherever feasible. New improvements (such as buildings, fences, patios) and site modifications (vegetation removal, grading) within the SCA will need to comply with the SCA ordinance. In some cases, the work may qualify for an exemption; while in other cases, the work will require a permit to ensure that it meets the stream standards to ensure that the development does not adversely impact the water quality, increase run-off, or affect the habitat values associated with the stream.

**6. *What other County regulations apply to streams?***

Development activity in or near streams is already regulated by Sections 11.08 (Watercourse Diversion and Obstruction), 23.08 (Excavating, Grading and Filling) and 24.04 (Improvements). Section 11.08 regulates stream obstructions and construction in a stream, including retaining walls, bulkheads, artificial slope protection, conduits, bridges, and other structures. Section 23.08 regulates grading generally, and specifically requires permits and erosion control for grading within 50 feet from the top of any watercourse within the City-Centered Corridor, or 100 feet from top of any water course in the Inland-Rural Corridor. Section 24.04 establishes a minimum setback of 20 feet from the top of bank for all creeks, channels or other major waterways.

Additional compliance with the SCA Ordinance would not be required for projects regulated under Sections 11.08 and 23.08.

**7. *If this ordinance reduces my opportunities for future uses, is this not a “Taking” and should I not, as well as other affected property owners, be compensated?***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

**8. *How do you intend to enforce this ordinance?***

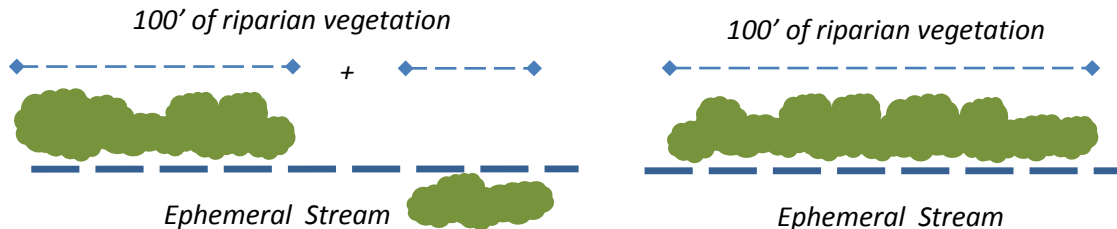
The ordinance will be implemented through new permitting procedures for development within a Stream Conservation Area. There will be significant outreach to the affected communities and property owners to ensure that they are aware of the requirements. Information designed for use by homeowners and contractors will be readily available online and through a toolkit.

The ordinance does not envision changes in the County's current approach to Code Enforcement, which is complaint-based.

### Stream Questions

9. **REVISED:** *The ordinance protects ephemeral streams which “support riparian vegetation for a length of 100 feet or more.” What does this mean?*

This refers to the extent of riparian vegetation along the length of the stream (or, parallel to the stream), as determined by a qualified biologist or resource specialist ~~shown in the schematic below:~~



10. **How would a property owner know that he or she is adjacent to an ephemeral stream?**

A review of the County's stream maps would help determine whether a segment of stream is identified for protection under the SCA ordinance, regardless of whether it is an ephemeral, intermittent, or perennial stream. You can access this information on the County's online mapping tool that is available from [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca).

11. **NEW:** *Wetlands sometimes accompany streams, so are wetlands addressed in the SCA?*

The Wetland Conservation Area is protected separately in the Countywide Plan and is a separate issue from this ordinance. Where wetlands occur along streams, the WCA is superseded by the SCA. The Countywide Plan can be viewed online at [www.future-marin.org](http://www.future-marin.org)

### Process Questions

12. **Can the SCA setback be reduced?**

No. While the ordinance allows for consideration of an SCA Permit for incursions into the SCA setback where no other option is feasible, it does not allow for a reduction to the SCA setback.

13. **What guidelines does the Director follow to determine impacts on hydraulic capacity, habitat protection, and water quality?**

Impacts would be determined on the basis of a site assessment prepared by a qualified biologist. An explanation of the terms has been provided in the section on "Use and Interpretations" above.

14. **Please explain the difference between Tier 1 and Tier 2 permits.**

A Tier 1 permit is processed as a "ministerial" permit by CDA staff. A ministerial permit can be approved with no exercise of discretion if it complies with objective standards. Ministerial permits do not require a public hearing and are not appealable.

A Tier 2 permit is processed as a "discretionary" permit. Discretionary permits allow for the exercise of considerable judgment, are noticed (online and/or by direct mail), and may require a public hearing.

**15. REVISED: If I believe I am completing my construction activity outside of the SCA, would any County review be required? What if I have measured wrong or if I have unanticipated impacts within the SCA (such as placing heavy equipment)? Will I receive a citation from Code Enforcement?**

The SCA ordinance does not apply to construction outside of the SCA. If a County inspection or a complaint reveals that there has been unauthorized development (including vegetation removal) within the SCA, you will be given the opportunity to correct the violation. If Code Enforcement action does not result in a timely resolution to the violation, the matter will be scheduled for a Code Enforcement Hearing at which time you ~~would~~ may be subject to payment of staff costs and financial penalties.

**16. What fees will I need to pay for complying with this ordinance and how are the fees established?**

The fees for reviewing proposals to develop within the SCA will be considered by the Board of Supervisors. At present, staff is proposing a flat fee structure of approximately \$300 for those exemption determinations involving review of plans, \$1,500 for Tier 1 permits, and \$4,000 for Tier 2 permits. Fees for any required environmental review associated with Tier 2 permits would not be included in these estimates. The fees cannot exceed the County's cost associated with administering the ordinance and the review of applications.

**Site Assessments:**

**17. What if my project is limited in scope? Do I need to pay for the full site assessment identified in the ordinance?**

The costs for preparation of a site assessment shall be borne by the applicant. However, the cost of the assessment may vary depending on whether the development requires Tier 1 or Tier 2 permit, as well as the magnitude of the project.

**18. REVISED: What if I want to have a site assessment prepared by my own biologist?**

~~While you can submit an assessment prepared by a biologist that you retain, it is subject to peer review and the potential for a separate assessment to be required under the oversight of the County. The site assessment should be prepared by a qualified professional retained by the County but paid for by the applicant. Applicants may use their own biologist for site assessments; consistent with current practice the County retains the ability to arrange for peer review if there are questions about findings.~~ Recognizing that costs to prepare assessments may vary widely, the Community Development Agency intends to provide a list of qualified professionals who have agreed to complete the required site assessment at a competitive price, or have the assessment prepared by a qualified County staff.

**Use & Interpretation Questions**

**19. If a development activity that is "exempt" or ministerial under this ordinance is approved, how would the County ensure that the project meets the defensible space requirements of Public Resources Code Section 4291(a)?**

Certain exemptions require submittal of a request and plans to the Planning Division for review and approval. In cases where the work involves a new or replacement structure, review of the plans by the local Fire Department will be needed to ensure that it meets applicable vegetation management and modification requirements.

**20. What level of review will I need if I'm adding a second story that does not change the footprint of my house?**

This work qualifies for an exemption under the proposed SCA ordinance. You will need to submit a request along with plans to the Planning Division for review and approval.

21. **REVISED:** *If part of my existing home is built within the SCA setback, can a replacement home be constructed within the same foundation foot print without regard of the reason for the replacement home due to fire, flood, remodel or complete tear down?*

The ordinance is not specific as to does not limit the reasons for replacing an existing structure. The objective of the exemption proposed under 22.63.020.B.2.a is to maintain the existing building footprint. The ordinance would allow a structure to be replaced within the existing footprint if it is destroyed.

22. **Do I need a SCA Permit if I want to reseal or replace my driveway?**

Resealing a driveway qualifies for an exemption, as long as the “footprint” of the driveway remains unchanged. Changes to the driveway configuration, size, or location will trigger a Tier 1 SCA Permit.

23. **Would play structures in the rear yard be subject to an SCA Permit?**

Play structures may be exempt under the proposed ordinance if is located in an area that has been previously disturbed. Some play structures also require a building permit.

24. **Would lawn mowing be subject to an SCA Permit?**

Landscape maintenance is exempt under the proposed ordinance.

25. **NEW:** *I need to prune bushes and/or tree limbs that threaten to damage my fence/home. Would this require an SCA Permit?*

An SCA Permit is not required to prune or trim vegetation.

26. **Would replacement of a septic tank be subject to an SCA Permit?**

An in-kind septic tank replacement is exempt under the proposed ordinance as long as it does not expand beyond the area that was occupied by the previous tank.

27. **NEW:** *Would I need an SCA Permit to trench an electric line to an existing structure such as a shed?*

A building permit is required in order to extend electric service to a shed or other accessory structure. In most instances, trenching an electric line to an existing structure would fall under the SCA exemption for disturbed areas. If the trenching would result in removal of riparian vegetation close to the stream, an SCA Permit may be required.

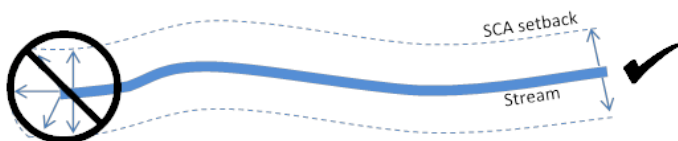
28. **NEW:** *What is meant by fencing that does not restrict wildlife access to streams and the adjacent riparian vegetation?*

Exempt fences include replacement fences or fence sections; any fence within or on the perimeter of a previously disturbed area; stream fences or wildlife friendly fences selected under the direction of the Natural Resources Conservation Service or any other agricultural or resource agency; or underground/wireless fences. On residential lots, open fences (such as two rail or split rail fences) may also be exempt.

### Terminology Questions

29. **NEW:** *What is the meaning of “lateral” in relation to SCA setbacks?*

The Countywide Plan provides in BIO-4.1 that the SCA consists of the watercourse itself and a strip of land extending laterally outward from the top of both banks to the widths defined for each Environmental Corridor. Merriam-Webster defines lateral as “extending from side to side.” Thus, the SCA setback is to be measured perpendicular from the top of stream bank as shown below.



**30. What is considered a “disturbed” area?**

A disturbed area, in the context of the SCA Ordinance, includes lawns, gardens, patios, driveways, agricultural fields, parking lots, and other similar areas that have been significantly altered from their natural condition and maintained/managed for human use.

**31. What is considered a threat to public health and safety?**

Threats to public health and safety include trees that pose an imminent threat of falling or splitting, obstructions to roads or accessways, fire hazards, etc.

**32. How can I know what is considered to be “landscaping”?**

Landscaping refers to vegetated areas that are planted, maintained and/or cultivated for the use or enjoyment of the property owner or occupant. These include lawns (turf or groundcover), gardens, swales, planting beds and the like.

**33. What is considered “maintenance and repair”?**

Maintenance includes those upkeep or activities that are regularly undertaken or periodically necessary to keep a building, structure or site improvement in working order. Maintenance and repair activities include painting, cleaning, weeding, pruning, and trimming. Repair can include replacement of deteriorated building components (such as windows, doors, roof shingles), so long as the activity does not involve structural modifications.

**34. NEW: Who is the Director?**

The Director is defined in the Development Code (Section 22.130) to mean “The Director of the Marin County Community Development Agency or designee of the Director”.

**35. What does Director determination mean?**

Because it is not possible to predict the range of scenarios that may present themselves in application of any given regulation, the Director has the authority to make determinations that support the purposes of the Development Code. These determinations are ministerial and not appealable. In the context of the SCA, the Director would be guided by the Countywide Plan Policies as well as the SCA Ordinance, both in the intent and letter of the regulation.

**36. What is meant by Hydraulic Capacity?**

Hydraulic capacity is the rate and timing of stream flows produced by rainfall. It is a measure of the efficiency of draining an area and is affected by the level of imperviousness. For example, a site that is entirely “paved” over with an impervious material, like asphalt, will generate more runoff during a rain event than an area that is maintained in a natural condition (e.g. vegetated soil).

**37. What is Habitat Function?**

Habitat Function: refers to the chemical, physical and biological processes that allow an ecosystem to exist and maintain its integrity. Examples include food, water and shelter functions; migration corridors; spawning, breeding or nesting sites; and shade and nutrients.

**38. What is Habitat Value?**

Habitat Values are those aspects of the habitat that are valued by society but not necessary for the existence and function of the ecological unit. These include recreational, aesthetic, flood control, groundwater recharge functions.

**39. What is Water Quality?**

Water Quality refers to the chemical, physical and biological characteristics of water within a stream, which can be measured by a number of indicators including pH, temperature, suspended solids, dissolved solids, color, concentration of pollutants, and the prevalence of certain bacteria or insects.

**40. What is Riparian Vegetation?**

Riparian vegetation is described in the Countywide Plan as “associated with a watercourse and relying on the higher level of water provided by the watercourse.”

**41. What is Woody Riparian Vegetation?**

The Countywide Plan distinguishes woody riparian vegetation from herbaceous vegetation by the presence of “tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin.” Trees, shrubs, and vines are examples of woody riparian vegetation.

**42. NEW: What is animal confinement?**

Animal confinement refers to permanent facilities where animals are concentrated for extended periods for purposes of the breeding, feeding, or finishing of animals. Feedlots, pens and barns are examples of animal confinement facilities. Animal confinement does not refer to pastures, movable or temporary fencing enclosures (often used for grazing) or the temporary confinement of animals for administration of vaccines or other veterinary requirements.

**Riparian Vegetation**

**43. How do I know whether I have woody riparian vegetation?**

Woody riparian vegetation includes plants with tough, fibrous stems, vines, and branches covered with bark. Examples include willow, alder, big-leaf maple, and California blackberry. We are preparing a SCA tool kit that would include a plant identification guide with photos, names, and descriptions of woody riparian vegetation that are common in Marin’s streams.

**44. REVISED: Is removal of woody riparian vegetation prohibited under the ordinance?**

The ordinance applies to removal of any woody riparian vegetation. ~~It~~ While removal of woody riparian vegetation may qualify for an exemption under certain circumstances (such as if the plant poses a threat to public health or safety), or would in most cases it would likely require a SCA Permit.

**Illegal Structures**

**45. When I bought my property, I was told that some of the work is unpermitted. Will I be required to remove that work if it is in the SCA?**

The proposed ordinance does not affect the County’s complaint-based code enforcement program, nor does it change the status of illegal structures. Unless a code enforcement action is initiated by the County in response to a complaint, the ordinance provides property owners with the ability, but not the obligation, to legalize unpermitted work through the SCA permitting process.

Existing permitted and legal non-conforming structures would be allowed to be used, maintained, and even replaced in kind under the proposed SCA Ordinance.

**46. How would the ordinance address illegal dams, berms and other stream obstructions?**

Dams, berms and other stream obstructions are regulated by Marin County Code Section 11.08 (Watercourse Diversion or Obstruction). As such, that work is subject to review by the Department of Public Works (including compliance with CEQA and the stream policies of the Countywide Plan).

## **Mapping**

### **47. *What if the creek is not in the location shown in your maps?***

Please contact us if you believe there is an error with respect to the mapping of a stream in or near your property. In some cases, this can be corrected through a review of aerial photographs, or a review of photographs, surveys, or other information that you may have that would help us correct the information in our database.

### **48. *How was the SCA map developed?***

The County's stream map is based upon the National Hydrography Dataset (NHD). This dataset is a digital version of the United States Geological Survey (USGS) Topographic Quadrangle Maps which have a long history as the federal repository for stream information. "Blue line" (perennial and intermittent) streams mapped by the USGS have been acknowledged by the Countywide Plan as the definitive source for stream information as far back as the 1994 Countywide Plan. The SCA map does not present new data about the types of streams that exist in the County, and is not proposed to be amended as part of the expanded SCA ordinance. The SCA map has been updated with more recent information obtained from LiDAR (Light Detection and Ranging) infrared technology, which is part of an ongoing County initiative to improve the accuracy of the County's stream data.



**Questions from Open Marin, as of March 21, 2013**

- 49. Sorich Creek in San Anselmo flows for a considerable time after the end of the rainy season, so I would judge it an intermittent stream. This stream has a lot of flow after a heavy rain and has periodically flooded in the past. But it does not appear on the maps as either intermittent or ephemeral and properties bordering it are indicated as not included in the SCA. This stream has a lot of flow after a heavy rain and has periodically flooded in the past. What is the basis for this classification? (Brian Crawford)**

The County's stream map is based upon the National Hydrography Dataset (NHD), which includes perennial and intermittent streams. This dataset is a digital version of the previous USGS Topographic Quadrangle Maps which have a history as the federal repository for stream information. While the stream may not be identified in the current NHD data, ongoing efforts to update the NHD and efforts to improve the accuracy of the County's SCA data and map could result in amendments to the SCA map that would either add or remove stream segments based on the latest available information.

- 50. In a second issue, the ordinance should specify the footprint of the SCA when a creek enters or exits a culvert or bridge. Does the boundary extend perpendicular to the creek? If so, development could occur within a few feet of a flowing stream as long as the development was above a culvert. I would suggest that the boundary should be specified as radial to the end of the culvert. (Brian Crawford)**

The Countywide Plan and SCA Ordinance provide that the SCA setback extends laterally from the top of the bank. Merriam-Webster defines "lateral" as "of or related to the side," and "situated on, directed toward, or coming from the side."

**Questions Arising From Open House, March 14, 2013**

- 51. Thank you for the meeting. I would like you to check google maps for my area and see where the creek actually is, not even close to my house. It mainly runs the back of the houses on Madison & through Washington Street. I googled my area and made a transparent copy of the SCA buffer map and when you overlay the SCA area over my google parcel, it's not even close. Thank you for your help and consideration. (Jan Nelson, 23 Roosevelt Ave.)**

The County is working to update the accuracy of its stream maps in accordance with Countywide Plan Program BIO-4.c. The updated mapping, while not survey-accurate, will draw upon more detailed information to identify the geographic location of streams with greater precision.

In the meantime, if you have reliable data to illustrate the location of the stream we will review that to determine whether the SCA applies to your property. The SCA is measured from the top of the stream as it exists on the ground.

- 52. Coyote Creek tributary through our neighborhood is seasonal run-off. Website indicates these properties come under purview of SCA (indicated by solid blue line). 1) Will your records be updated to reflect actual conditions. 2) blue line runs through houses now and not centered over creek. (Dennis Wong, 655 Eastwood Way, Mill Valley)**

The web map identifies both perennial and intermittent streams using a solid blue line. The County's updated stream map will reflect more precise stream locations and will provide stream classification.

- 53. How do you intend to enforce this ordinance? (Mel Wright, 194 Central Ave., Woodacre)**

The ordinance will be implemented through new permitting procedures for development within a Stream Conservation Area. There will be significant outreach to the affected communities and property owners to ensure that they are aware of the requirements. Information designed for use by homeowners and contractors will be readily available online and through a toolkit.

The ordinance does not envision changes in the County's current approach to Code Enforcement, which is complaint-based.

**54. Will there be legalization of non-permitted structures as in illegal rental units?**

This ordinance will not change the status or enforcement of illegal structures. Illegal structures are subject to code enforcement activity, including citations, fines, and potential removal. Code enforcement is conducted on a complaint-basis.

**55. In the event 1 section of development code forces a project into the SCA, which sections of the code would prevail. (Dan McKenna, San Geronimo)**

All development in the SCA is subject to the SCA Ordinance, unless otherwise exempted. Regardless of the conditions under which it is proposed, development in the SCA will be reviewed under the SCA Ordinance. While mitigation can be provided in accordance with environmental review, development activity in the SCA is not permitted if it would adversely affect hydraulic capacity, result in a net loss of habitat acreage, value or function; or degrade water quality. If conflicts occur between the requirements of the SCA Ordinance and another provision of the Development Code, the more restrictive regulation would apply. For example, if compliance with zoning setback standards (to property lines) "pushes" the development into the SCA, the more restrictive SCA regulations will take precedent. To increase the likelihood of success, the applicant should seek the appropriate relief (Variance) from the property line setback standard.

**56. What guidelines does the Director follow to determine impacts on hydraulic capacity, habitat protection, and water quality. (Eric Morey, San Geronimo)**

Impacts would be determined on the basis of a site assessment prepared by a qualified biologist. An explanation of the terms has been provided in the section on "Use and Interpretations" above.

**57. Are roadside drain ditches able to be treated as "ephemeral" or "intermittent" streams? Does the 100 foot setback for "rural" apply to all properties in the San Geronimo Valley? Does it make a difference whether the road is County maintained or privately maintained (i.e., by the owners of properties served by the road)? (C. Delos Putz, San Geronimo)**

The SCA Ordinance applies only to streams shown in the data and map maintained by the Community Development Agency. For now, most ephemeral streams have not been mapped (with some limited exceptions in San Geronimo and Ross Valleys).

The "stream" definition in the Countywide Plan states that streams are natural or once natural open drainage channels with an established bed and bank, and "do not include ditches, culverts, or other above- or below-ground conduits constructed specifically for storm drainage function." Ditches, culverts, and conduits to accommodate storm drainage would not be subject to the SCA requirements.

**58. How many parcels are affected by this proposal? Of those, how many are adjacent to year-round streams that support fish? (Curt Kruger, 3777 Vineyard Road, Novato)**

A total of 3,641 parcels fall within the required SCA Setback based on the current map. The Countywide Plan does not treat fish-bearing streams differently than non-fish-bearing streams; instead it includes streams classified as perennial, intermittent, and ephemeral based on the United States Geological Survey's maps.

**59. Novato Horsemen @ 600 Bugiea, Novato, has an ephemeral stream on its property. It is not now shown as included within the SCA zone. What guarantees that it won't be included in the future? (Curt Kruger, 3777 Vineyard Road, Novato)**

The County's stream map does not currently identify ephemeral streams in the Novato Planning area. There is no guarantee that an ephemeral stream will not be mapped in the future. As part of ongoing efforts to improve the accuracy of the County's SCA map, ephemeral streams could be added to the SCA map in the future. The County envisions that those efforts will be preceded by public outreach and education efforts to those that may be affected.

- 60. *Our property at 12 Farm Road in San Rafael has been identified as being next to a "stream", because there is a drainage ditch on one side of our property. This drainage ditch only contains flowing water for less than half the year. Why should this drainage ditch be treated in the same manner as a real stream that has water flowing all year round? Shouldn't the ordinance be less strict for these kinds of seasonal watercourses, e.g., having a smaller setback? (Larry Van Note)***

While natural watercourses are protected by the SCA, the Countywide Plan definition of "stream" exempts ditches, culverts or other conduits constructed specifically for storm drainage function.

- 61. *The standards used to determine which properties are affected by the proposed ordinance seem to be pretty arbitrary. Our property at 12 Farm Road in San Rafael has been identified as included in the SCA because there is a watercourse that flows during the wet season on one side of our property. However, there is an almost identical watercourse that runs roughly parallel to ours, located at the back of 20 Circle Road in San Rafael, that is not identified as being included in the SCA. Why is that? (Larry Van Note)***

The County's stream map is based upon the National Hydrography Dataset (NHD). This dataset is a digital version of the previous USGS Topographic Quadrangle Maps which have a history as the federal repository for stream information. While the stream may not be picked up based upon the NHD data, future efforts will increase the accuracy of stream mapping and result in the addition to, or removal of streams from the SCA map.

- 62. *If Marin County adopts the SCA Ordinance, my property and others near or along a stream will have new restrictions placed on them which restrict improvements and use of the property. This will clearly diminish the value of our property. Will Marin County reimburse us for the reduction in value? If not, why not, since this is analogous to a partial taking of our property. (Larry Van Note)***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

- 63. *REVISED: If part of my existing home is built within the fifty foot setback, can a replacement home be constructed within the same foundation foot print without regard of the reason for the replacement home due to fire, flood, remodel or complete tear down?***

The ordinance is not specific as to does not limit the reasons for replacing an existing structure. The objective of the exemption proposed under 22.63.020.B.2.a is to maintain the existing building footprint. The ordinance would allow a structure to be replaced within the existing footprint if it is destroyed.

- 64. *Within the fifty feet, I currently have lawn and shrubs plantings. Can they remain if the house is replaced or must they be removed and native plants replace them?***

You can maintain or modify your existing landscaping (trim or replace shrubs, garden, etc). The lawn and shrubs are considered "disturbed area".

- 65. *My property borders a water way which runs dry, most years, near the end of the summer to the fall/winter rains. Why is this creek, which is unable to support a fishery, critical to your planning? Are there different definitions in your ordinance? Could you please explain them to me?***

The stream is likely an intermittent stream, which is subject to the ordinance under the Countywide Plan definitions. Intermittent streams typically do not flow year-round, but rather are seasonal or intermittent, flowing during the wet season or after periods of precipitation and ceasing flow during at least part of the dry season. The SCA policies are not limited to protecting fisheries resources, but riparian habitats along streams.

**66. *There is a retaining wall delineating the top of the bank of the creek. This wall is falling into disrepair and I was planning to repair it this summer. Is this permissible under the ordinance?***

Yes, repair is permissible under the ordinance and would fall under the exemptions of Chapter 22.63.020. However, please check with the Department of Public Works as the work may require a separate Creek Permit, and other permits from regional, state, and federal agencies.

**67. *My property drains away from the creek and does not impact the creek. There is no surface water draining into the creek. Would I therefore be exempt from this ordinance?***

No. The ordinance applies to development activity within a defined distance of a stream, regardless of the direction of water run-off.

**68. *If this ordinance reduces my opportunities for future uses, is this not a "Taking" and should I not, as well as other effected property owners, be compensated?***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

**69. *Re-define what the difference of a "creek" which does not support a fishery, a "creek" which supports a fishery, and a drainage ditch (which could be "creek" in the rainy season but dries out in the summer months)?***

As noted, we have removed drainage ditches and other man-made water drainages from the SCA consistent with the Countywide Plan definition of "stream." The ordinance does not distinguish between creeks that support salmonids and those that do not.

**70. *Remove discretionary decision making from the Planning Director. If it is up the Director, the Director can then decide what is appropriate for a particular lot at any given time; which could change from one owner to another. Perhaps the Director could grant less demanding compliance from one lot to another or one friend from one foe? What safe guards are placed within the ordinance?***

Director discretion is provided due to the inability of any given regulation to predict the full range of future conditions. In issuing the decision, the Director will be guided by the intent of the Countywide Plan as well as past decisions issued under similar situations.

For more information, please visit [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca)

Prepared by:

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# Tell Us What You Think About The SCA Ordinance

*What do you think about the Draft Stream Conservation Area (SCA) Ordinance?*

All comments sorted chronologically

As of May 1, 2013, 2:53 PM



# Tell Us What You Think About The SCA Ordinance

*What do you think about the Draft Stream Conservation Area (SCA) Ordinance?*

## Introduction

Check out the SCA Draft Ordinance and FAQ to learn more about the Stream Conservation Area Ordinance. Then, share your comments on the proposed regulations.

We're Listening:

Comments provided through Open Marin will be made part of the public record and provided to the Planning Commission and Board of Supervisors in advance of the public hearings that will be conducted for their review of the proposed Ordinance.

Important Note: This forum only allows one post per person. You can also "support" up to five statements submitted by others.

# Tell Us What You Think About The SCA Ordinance

*What do you think about the Draft Stream Conservation Area (SCA) Ordinance?*

As of May 1, 2013, 2:53 PM, this forum had:

Attendees:	99
Participants:	12
Minutes of Public Comment:	36

**10 participants posted comments**

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

Jack Grier inside District 4

April 17, 2013, 5:16 PM

Comments for the Proposed Stream Conservation Ordinance

Jack Grier Ranch Manager

April 15, 2013

All of the minimum setback distances are stated as 20', 50' and 100'; there is no language about the maximum distances that can be assigned or ruled for properties in the SCA zone. If you state a "Minimum" logically there would need to be a "Maximum" spelled out in any ordinance that limits use of private property.

Further into the Staff report it is stated that there can be a 100' setback and an additional 50' added to that to include riparian habitat. There is no maximum stated. Riparian habitat will expand into pasture – are we to be limited on cutting it back from intrusion into our pastures?

"Removal of woody or riparian vegetation" on Agricultural properties is an ongoing maintenance task. Will this now be regulated and require a permit to remove any riparian vegetation? What agency will allow the permit, what will be the process and how much will that cost?

Mitigation Criteria (PC Attachment #1 page 8)

Is the Mitigation Criteria to be similar to what the Army Corps of Engineers requires for restoring wetlands? A five year monitoring and maintenance program with annual studies done by a Biologist? This is another cost to the landowner that is not spelled out or explained well.

Is Scotch Broom a woody riparian plant. What are the species of plants specified as "Woody Riparian Habitat"? Are non-native plants included? What about invasive plant management such as all species of thistle. Is Poison Oak a woody riparian plant? Blackberries, another non-native?

Who is the "Director" that will rule regarding the SCA ordinance?

Is the Agricultural Commissioner involved in this process? Is this only a Planning Division process? "Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than Final Inspection". This says that a property owner can be asked to implement practices that are unknown in the permitting process and could add cost up to the final inspection. How can anyone plan for that, another surprise cost to a project that could leave it incomplete or unfinished or priced out by regulations.

There are more permits listed here than I thought were possible. I seem to need a permit to do most anything. Already if I spend more than \$300.00 on a project I need a permit. There is a large burden on a landowner to keep all improvements within stringent County regulations and have permits on file. If a landowner sells property, all of these permits will need to be disclosed. There will need to be title search that includes time from county staff to prove all improvements were properly applied for and inspected. There is too much mystery in this process; where does one go to get all this information without having to hire expensive lawyers or experts on County law?

As a large property manager I am tasked with staying informed of Marin County Building, Planning, Environmental Health, Coastal Commission, Countywide Plan EIR, County Development Agency, Community Development Agency, Agricultural Commissioner's Office and Assessors Office regulations and also regulations from State agencies that include: Regional Water Quality Board, Air Quality board, CEQA, Fish & Game and Federal agencies including the Army Corps of Engineers and the EPA. I have left a few out, there are more. Permits discussed in this proposed ordinance: Land Use Permit, Building Permit, Grading Permit, Construction Permit, Discretionary Permit, Ministerial Permit, Sign Permit, Homeless Shelter Permit, Second Unit Permit, Adjustment Permit, Temporary Use Permit, Stream Conservation Area Permit Tier 1 & 2, Watercourse Obstruction Permit, Coastal Permit, Tidelands Permit, Tree Removal Permit. Sheesh!

All comments sorted chronologically

Page 4 of 14

As of May 1, 2013, 2:53 PM

<http://www.peakdemocracy.com/1202>



## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

From the Staff Report:

Item #4 page 8:

“SCA will be determined based on the mapped streams contained in the County’s SCA Geographic Information Systems Data.... Over time the accuracy of the County’s SCA Data & Map will be improved using new information, such as that provided using LIDAR – infared technology.....”

Is this the reason no maximum is stated for the setback distances? Are those distances subject to being increased with no limits due to better mapping information? Where is the limit of this “take”?

“Ephemeral Streams”

Will these be added to the SCA’s with new information? If so this Ordinance becomes more of a land “take” A frightful idea. In the wet season the entire County could be determined to be an “Ephemeral Stream”. Section 22.33.030.B.4. –“ For all mapped ephemeral streams.....”. What happens as ‘New’ information is applied to the SCA maps and ‘New’ watercourses are identified?

Item 4 page 10:

“Staff recognizes that there is a need to provide reference information to homeowners so that they do not run afoul of the protections afforded to Woody Riparian Vegetation. Implementation of this Ordinance will include an illustrated guide to typical Woody Riparian species.” How much will it cost County taxpayers for this publication to be prepared? Will there also be a similar guide pertaining to large properties? Again, at what cost? Is there a plan and monies set aside for updating these guides?

An observation that is purely anecdotal: There are creeks on the property I manage that are greater than 300 wide from the top of bank to top of bank. Add another 100’ on each side for the setback and you have a 500’ wide corridor the length of that creek.

I see that we are damned if we do and damned if we don’t when it comes to improving our properties with or without permits. There is a lot of good regulation in this County and some poor regulation. The process is a pitfall for good intentions that become undone by too many restrictions. The County on one hand wants to promote local agricultural growth but is also happy to keep a tight grip on what they will allow. Adding another ordinance is not the answer. Adding to existing ordinances may be a better approach. It is also hard for me to picture an ordinance that covers both metro and rural areas with similar language; there are many differences that large and small properties don’t have in common. Should this ordinance be scoped in multiple sections that focus on how properties are zoned?

Jack Grier

mail@azayaranch.com

1 Supporter

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jim duckworth inside District 5

April 9, 2013, 9:29 AM

The stream ordinance is a terrible ideal. For those Marin residents who own more than one acre, it will drastically reduce the fair market value of their homes and will make it difficult or impossible to remodel homes, garages and pools in the future. Local government should not be allowed to

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

accomplish such a drastic confiscation of property rights without compensation. This is a very bad idea.

1 Supporter

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Steve Taber inside District 2

April 5, 2013, 11:28 AM

The draft SCA Ordinance, which has the laudable goal of protecting the County's streams, has some serious problems:

**SETBACKS.** The draft Ordinance applies varying setbacks based on the gross lot size. The spirit of this provision is to allow lesser setbacks on smaller sites, which is fair in principle. However, it is a very blunt instrument which produces arbitrary and capricious results when applied to actual lots.

Consider a ½ acre lot, about 105' x 210', with a stream running along one end, no slopes or existing trees and buildings to preserve, and no easements to avoid. With a typical rear yard setback, therefore would be enough room to accommodate the SCA setback of 50' and still have a reasonable building site.

Now consider the same ½ acre lot with the stream in running through the middle of it. After accommodating the rear setback and the SCE setback, the remaining building area is a strip of land only a few feet wide, which is useless as a building site (unless you are a bowler). This problem would be even worse if the property has slopes or mature vegetation that should be preserved, buildings or swimming pools which need to be avoided, etc.

The fair solution to this is to make the setback from the SCA a variable function (say, 10%) of the usable area. The usable area should be defined as the largest contiguous portion of the property which is suitable for building and which excludes the stream and riparian corridor, required setbacks, portions where the slope exceeds 15% (unless the slope on the entire property exceeds 15%), portions with mature trees, easements, and portions with existing structures (including swimming pools). This solution will fairly embody the spirit of the ordinance, which is that setbacks should be greater on lots where the property owner has room to accommodate them but smaller where the property owner is more constrained.

The proposed 10% standard is roughly consistent with the setbacks proposed in the draft ordinance. For example, under the draft ordinance, a rectangular lot 100' x 200', with a stream along one of the 100' sides, would be required by the proposed ordinance to have a setback of 20', 10% of the lot depth.

A less desirable alternative, but probably workable, is for the 20' setback attributable to <½ acre lots be applied to lots with <½ acre of buildable land.

**BUREAUCRATIC EMPOWERMENT.** The draft ordinance requires a Site Assessment to identify impacts and mitigation measures. Fair enough. However, it gives the staff the discretion to reject an application unless "the Site Assessment determines that there would be no adverse impacts to the SCA, or that any impacts to the SCA can be fully avoided" (emphasis added). This is an impossible

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standard to meet. As a practical matter, any activity will have some impacts. This wording has the perverse effect of making every application a Tier 2 application at the discretion of the staff and subjecting every permit applicant to bureaucratic run-around. The law should state the rules, not empower staff to make the rules.

Any permit applicant who complies with Requirements 2 and 3 (Development Standards and Standard Management Practices) of the Tier 1 Review Procedure should ipso facto be entitled to a permit. The Site Assessment should be used to identify reasonable mitigation measures, not to deny the permit.

CONFLICT OF INTEREST. The draft ordinance requires that the Site Assessment “be prepared by a qualified professional retained by the County”. Having a Site Assessment prepared by a qualified professional is appropriate. However, having the professional retained by the County is a manifest conflict of interest and an invitation to abuse and cronyism. Staff members inclined to deprive property owners of the economic value of their property would steer professionals onto the list that are inclined to further this outcome. Furthermore, a list of professionals established by the County would be likely to include cronies of the staff and would curtail fee competition. The applicant should be able to select any qualified professional, subject to the County’s approval based on the professional’s qualifications.

Section 22.63.030.B.4 should read as follows:

Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional retained selected by the Applicant, subject to approval by the County, and paid for by the applicant. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; recommend Standard Management Practices corresponding to the nature of development; and determine whether the project, in conjunction with Standard Management Practices, would result in adverse impacts to the stream and riparian resources. The Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development.

If the Site Assessment determines that there would be no adverse impacts to the SCA, or that any impacts to the SCA can be fully to a significant degree avoided through implementation of specific Standard Management Practices as part of the development approval, the County may shall proceed to process the application as a Tier 1 permit.

Thank you very much.

Andrea & Steve Taber 860 Butterfield San Anselmo CA 94960-1186

2 Supporters

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Name not shown inside District 4

April 2, 2013, 9:01 AM

SGV stream conservation area ordinance needs to include provisions for preexisting property residing less than 20' from creek AND quantifiable evidence of results of an environmental impact report

## Tell Us What You Think About The SCA Ordinance

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specifically illuminating the cause of toxins.

Properties like my home are not represented in the existing ordinance. We live within 7' from the creek and have problems with erosion and flooding. Enforcing a 20' to 100' set-back would create problems for preexisting homes, like mine, from necessary protection and the safety to our family.

Additionally, the seriousness of this proposal and ordinance warrants a quantifiable environment impact report that scientifically proves the source of the hazards to salmon in the creek. It is my impression that run-off from live stalk (horses, cows, etc.) which exists directly close to creek and other environmental toxins such as run-off from automobile pollution is likely the greatest contributor.

Unless we address the full scope of the problem, which includes the due-diligence of a full environmental impact report, we are not going to find a reasonable solution and we are placing an unnecessary risk for the safety of existing homes.

Please address these concerns for our community and include them in the process.

Sincerely,  
Home Owner - Forest Knolls

2 Supporters

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Name not shown inside District 3

March 25, 2013, 8:58 PM

The proposed ordinance includes a "creek" that runs along Marin Avenue in Tam Valley. It is two blocks long. It begins with a pipe that empties water into it from a storm drain. It ends at a flood control pump. From there, the water runs under the road and out into Coyote Creek along Tennessee Valley Road.

To include this two-block "stream" in the proposal seems inappropriate. It's a pretty little thing in parts, but all it does is carry drainage water from the hill on the other side of Marin Avenue when it rains during the winter. It is dry in the summer and intermittently during the winter.

For some of the houses along the block, it is inside property lines. Twenty feet from the middle of this "stream" ends up almost at my bedroom window.

We all want the water flowing into the Bay to be as pure as possible, especially when the water is in our back yards. But this "creek" doesn't carry fish. Wildlife have the entire Marin Headlands only two to three blocks away. I hope that the definitions can change to something more reasonable while still protecting our environment.

It's difficult to understand exactly what it proposed and how it might affect us, but I would seriously object to being asked to remove and/or replace any established plants and trees, fencing, hardscape, or the backyard shed that falls within the 20-foot area. I do not want to grant access to my backyard. I would not like to pay extra for permission to build onto my house in the back or be refused the possibility of doing so. Further, I would seriously object if an easement negatively affected my

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

property value. It seems excessive and unnecessary.

1 Supporter

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Name not shown inside District 2

March 25, 2013, 10:13 AM

### STREAM CONSERVATION ORDINANCE – WHY IT’S A BAD IDEA

On a rectangular parcel just over ½ acre, with a stream running along the rear property line (most run inside or meander across property lines), a 50 foot rear setback from the stream bank, plus say 5 feet of actual stream, coupled with the County’s 20 foot (min) front setback and 10 foot side setbacks, would render HALF of the property undevelopable, or improvements unfeasible.

The above condition forces yard development much closer to the house, depriving owners any benefit of purchasing (and paying taxes on) a larger lot

A parcel with streams 2 sides (as per my neighbor) could be rendered totally undevelopable, or unable to be improved at all. I had this experience on a project in Ross, where the Town’s 25’ stream setback left approximately 12,000 s.f. of 50,000 s.f. developable (including the house and driveway). If that was in the county a 50 foot setback would definitely rendered the property un-improvable.

The setbacks on a lot such as mentioned above forces remodeling or new development closer to a neighbors’ house, as the side yard setback, at 10 feet, is least restrictive. It seems ridiculous to have a 50 foot setback from an element in the ground, but force neighboring houses to be only 20 feet apart, particularly if the one remodeling wants a second story the surrounding houses do not have. The purpose of purchasing a lot of a half-acre or more is some sense of seclusion, which is negated. The 50 foot setback is therefore prioritized over other issues that might be equally or more important, such as privacy between neighbors

I know from first-hand experience, that if my parcel had a restrictive 50 foot setback from the stream, my property’s value would have decreased by over 10 percent. Depending on the location of the stream on the property, it could be more than that.

22.33.030, Section 3 stats:” In all corridors, regardless of lot size, an additional SCA setback may be required based upon the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the presence of other sensitive biological resources, provide options for alternative mitigation and determine the precise SCA setback.” This means that the County is putting into law, the ability to further restrict use of your own land.

The County hopes that this will ”trickle down” (pun intended) into local municipality ordinances.

Much of what the County is mandating is unenforceable. Permits are not required for paving on the ground, fences, walls under 3 feet high, and I think decks less than 18 inches above grade. This ordinance, by being so restrictive, encourages people to violate it. Alternatively, the County could use this argument to introduce more restrictive codes, and thus require permits for the type of work I

## Tell Us What You Think About The SCA Ordinance

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noted above.

The 50 foot setback is desired by the County to “improve and protect’ stream quality, and wildlife habitat. A 100 foot setback would not improve streamandowners upslope continue to use inorganic herbicides, pesticides, and fertilizers. In regard to the wildlife: deer, raccoons, possums and skunks do not require a 50 foot setback each side of a stream for habitat. The county is already overpopulated with deer, and likely raccoons. Forcing landowners to provide habitat at their expense – both through taxes and loss of enjoyment of their property – is unconscionable.

A better solution is education, of course, but is harder to achieve, and more expensive than, passing a law. Educating people about stream quality and their impact on it is the proper way to improved stream quality. quality if I

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Name not shown inside District 4

March 19, 2013, 2:59 PM

Marin County. CDA.

Please consider these changes to the Riparian Stream Ordinance.

The ordinance requires clear span bridges which are designed to encourage fish passage. 22.63.030-B-d Clear span bridges rather than culverts over perennial and intermittent stream. Clear span bridges are very expensive and must only be required where fish could exist, at grades of 8% and lower. Steelhead spawn at grades of 8% and lower, Coho spawn at grades of 4% and lower. No fish exist at grades of 8% and above. At grades of 8% and above culverts must be permitted.

The ordinance references hydrology, habitat, water quality and value of function in a few locations. The references state that these habitat qualities can not be affected when additions or construction occurs. Any level of construction will affect at least one of these habitat qualities. These four habitat descriptions are vague. The definition of these four conditions need to be clear, expanded, and written so citizens can understand the ordinance before a project is considered. Please explain how will the County reconcile and convey to citizens that when one of these conditions will be negatively impacted, development will still be permitted on vacant properties or when an existing owner remodels a property.

22.33.030-A-3-a,b,c. Adverse alteration of hydrology,net habitat acreage loss, water quality degradation, 22.63.020-A-1-d value or function loss

Site assessment can cause further restrictions to property use or construction. Please explain what this means when considering a project. Additional restrictions may be placed on a project above and beyond what a reasonable person reads in the ordinance. What would trigger additions restrictions. The ordinance must state examples of conditions that would trigger additional restrictions to construction.

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

Riparian vegetation, Does the ordinance follow the definition of riparian vegetation that is stated in the CWP. Definitions must be a part of the ordinance.

There will be properties where development will be in the SCA or existing properties will be expanded in the SCA and conditions may dictate that the development will be close to a stream. Where on site mitigation can not be achieved Off site mitigation must be considered. CWP Bio2.2, Pg.2-19

The diagrams of streams in the ordinance depict only a small percentage of stream conditions that exist in West Marin, typically streams at a very low grade. Most streams that flow at higher grades do not have the typical "top of bank" condition shown in the diagrams. Some creek banks may extend for hundreds of feet before a horizontal condition occurs. Where is the top of the bank where the bank may be 100 feet tall. Alternate top of the bank conditions must be included in the ordinance and diagramed.

The setbacks on horizontal ground are designed to protect habitat for that linear distance. It appears that where the grades are steep setbacks are also calculated on the horizontal plane. That means that properties with higher grades will have much more linear feet of protection than properties at a low grade. Consider linear foot of habitat protection and do not measure it on a horizontal plane.

The implementation of this stream protection ordinance punishes citizens who have maintained habitat in the natural state that existed when their properties were built. The cost of the requirements for additions to existing properties where the natural habitat has been maintained is substantial enough that citizens will not be able to reasonably afford to create accommodations for aging family members or family members who may be disabled and require in home care.

The stream side protections also will cause the cost of creating affordable second units to be beyond the reach of a typical family in West Marin.

Many home in West Marin were originally built as vacation properties and have a small footprint when compared with homes built for year round use. These homes typically utilized single wall construction that can not support a second story. These homes lack closet space, heating systems, fully functional kitchens, and off street parking. Overall the quality of the construction is inferior by todays construction standards.

Using expensive design standards for construction will lead to only the very wealthy undertaking permitted projects in many areas of West Marin.

1 Supporter

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Denis Poggio inside District 4

All comments sorted chronologically

As of May 1, 2013, 2:53 PM

March 19, 2013, 12:09 PM

Page 11 of 14

<http://www.peakdemocracy.com/1202>

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

It is my conviction that those property owners affected by the SCA, would greatly benefit from a SCA that possesses clear and concise wording, no acronyms, significantly less code legalese, elimination of run on sentences, along with more illustrations and/or examples to explain how to accomplish to code requirement. All vested parties will benefit from a County code that is simplified for the affected property owners that do not regularly ready code requirements in their daily life.

I have taken the opportunity to provide the County with sample feedback regarding selected portions from the SCA as an illustration where clarification would be warranted THROUGHOUT the Stream Conservation Area “Public Review DRAFT v1.0 ”

### 22.33.030 – Stream Conservation Area General Requirements

#### B. SCA Setbacks

2. SCA setbacks for properties within the Inland Rural Corridor, Baylands Corridor and Coastal Corridor shall be the great of the either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the streams; or (b) 100 feet landward from the top of the bank.

- [LIST THE SETBACKS UNDER EACH OF THE THREE CORRIDORS AND EXPLAIN RIPARIAN VEGETATION ALONG WITH JUSTIFICATIONS FOR THE SETBACKS]

3. In all corridors, regardless of lot size, an additional SCA setback may be required based upon the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the presence of other sensitive biological resources, provide options for alternative mitigation and determine the precise SCA setback.

- [EXPLAIN SITE ASSESSMENT ALONG WITH THE TRIGGER POINTS THAT REQUIRE A SITE ASSESSMENT.]

- [STATE WHO HAS THE AUTHORITY TO PERFORM THE SITE ASSESSMENT.]

- [PROVIDE A COMPLETED SITE ASSESSMENT AS AN EXAMPLE]

- [THIS PARAGRAPH IS VERY WORDY AND CONFUSING. I.E, “CONFIRM THE AVOIDANCE OF WOODY RIPARIAN VEGETATION..... – CLARITY]

4. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.

- [DEFINE AND EXPLAIN THE IMPORTANCE OF AN EPHEMERAL STREAM AS TO HOW IT RELATES TO SUPPORTING RETURNING SALMON AND HATCHLINGS]

- [ALL MAPPED EPHEMERAL STREAMS SHOULD BE LISTED IN AN APENDIX BY CITY, TOWN OR HAMLET]

- [IT SHOULD BE STATED, THAT IF THERE IS NO RIPARIAN VEGETATION THEN THE SETBACK REQUIREMENT IS NOT APPLICABLE]

### CHAPTER 22.23 – Stream Protection

#### 22.33.010 – Purpose of Chapter

- The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. This is accomplished by assuring that permitted development avoids SCAs wherever feasible, minimizes any unavoidable incursion into the SCA, and mitigates adverse impacts.

- [IDENTIFY THOSE POLICIES AND PROGRAMS IN COUNTYWIDE PLAN WHICH WOULD BE



## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

AVAILABLE TO AN AFFECTED PROPERTY OWNER]

- [DEFINE ACTIVE CHANNEL COMPARED TO AN EMPERIMAL, SEASONAL AND YEAR ROUND STREAM]
- [EXPLAIN THE USAGE OF DEVELOPMENT COMPARED TO AN INDIVIDUAL PROPERTY OWNER]
- [ACCORDING TO THE MARIN ASSOCIATION OF REALTORS THERE ARE LESS THAN 15 UNDEVELOPED PARCELS IN THE SAN GERONIMO VALLEY, SO WHY IS THE COUNTY REQUIRING THOSE EXISTING 150 PROPERTY OWNERS ADJACENT TO SOME SORT OF STREAM TO COMPLY WITH THIS ORDINANCE? THIS IS VERY DRACONIAN.]

22.33.020 – Applicability

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

- [THIS SECTION DEMANDS EXPLANATION AND IDENTIFICATION OF ALL JURISDICTIONAL WETLAND LOCATIONS IN MARIN COUNTY]
- [EXPLAIN WHAT IS MEANT BY THE STATEMENT OF “TOGETHER WITH ADJACENT UPLANDS, AND SUPERSEDES SETBACKS STANDARDS DEFINED FOR WETLANDS” ? – THIS STATEMENT IS SO WORDY AND CONFUSING AND MAYBE NOT EVEN APPLICABLE TO PARCELS IN SAN GERONIMO VALLEY]

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

3. Land adjacent to levees, dikes, berms, and publicly owned or maintained flood control or conservation district facilities;

- [AS WAS STATED BY SUZANE THORSEN, COUNTY OF MARIN PLANNER AT THE COUNTY “SCA OPEN HOUSE, MARCH 13, 2013 – “WE WILL WALK THE WALK TOO”. IF PUBLIC AGENCY IS TO WALK THE WALK THEN IT SHOULD NOT BE EXEMPT FROM THE SCA BECAUSE A PUBLIC AGENCY MUST SET THE STANDARD OF EXAMPLE TO THE AFFECTED PROPERTY OWNERS THAT MUST COMPLY WITH ELEMENTS OF SCA.]
- [A PUBLIC AGENCY HAS THE GREATEST OPPORTUNITY TO ADVERSELY AFFECT THE HABITAT, AND STREAMS BY VIRTUE OF PUBLICALLY FUNDED ROAD REPAVEMENT PROJECTS, ERECTING BRIDGES, STABILIZING ERODING HILLSIDES AND STREAMS – THUS THEY SHOULD NOT BE EXEMPT – THEY SHOULD WALK THE WALK TOO!]

2 Supporters

Name not shown inside District 4

March 18, 2013, 10:25 AM

The SCA appears to be an excessive infringement on private property rights. While it is important to protect streams, common sense indicates that a "stream" must have a 12 month water flow, so it can support fish. Gullies ("ephemeral streams") that only carry water a few days per year should not be regulated. Intermittent streams that flow during the rainy season but are dry during the summer could be regulated, but less stringently. Since Marin County is hilly and is criss-crossed by gullies, almost

## Tell Us What You Think About The SCA Ordinance

What do you think about the Draft Stream Conservation Area (SCA) Ordinance?

every building in a hilly area will be subject to this regulation.

The SCA makes no provision for contradictions with other beneficial laws and regulations. For example, the outstanding program Fire Safe Marin encourages trimming or removal of vegetation to reduce the fuel load and prevent wild fires. When we purchased our property, we invited an inspector from the Novato Fire Department to evaluate fire danger. She made many recommendations for vegetation removal, which we did. One of the recommendations was to thin brush and trim trees in the gully, since fires will burn up these and leap into tree crowns. Secondly, to reduce the danger of sudden oak death, landowners need to be able to remove bay laurel trees that are growing amid heritage oaks. Removing these bay trees can reduce the danger of disease by up to 90%. Bay laurels and oaks flourish on the banks of ephemeral streams. If people can't remove bay laurels, how can we protect our oaks? People will not go through an expensive and baffling permitting process if they can possibly avoid it. The SCA could well be renamed the Anti-Heritage Oak ordinance. Third, there also appear to be contradictions with the Urban-Wildland Interface ordinance, which is intended to reduce the danger of wildfires. For example, to remodel a house on acreage with a long driveway, it's necessary to plan the driveway to allow a fire truck turnaround. Please see the Novato Fire Department website for information. In a hilly area, the driveway would very likely fall under the SCA. The contradiction between the Urban-Wildland Interface requirement and the SCA would mean that it would be impossible to remodel the house. This kind of over-regulation is a recipe for deterioration of Marin's aging housing stock. It also reduces employment opportunities for people in the building trades.

The SCA should be revised as an educational program, similar to Fire Safe Marin. Most people would be happy to cooperate, provided the requirements for ephemeral and intermittent streams were dropped. That way, we would gain 80% of the environmental benefits for 20% of the regulatory costs.

5 Supporters

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Name not shown inside District 2

March 13, 2013, 2:08 PM

I would like to ask that the county reconsider the part of this ordinance covering ephemeral streams. The stream that runs through our neighborhood is dry nine months out of the year. It rushes only when we have heavy storms, it's a trickle or dry during normal rain fall. I would like to suggest that construction be limited to summer months as a compromise, but I ultimately fail to see how this ephemeral stream will impact the salmon habitat as it will simply take run off whether it goes around a new structure or around an existing structure.

5 Supporters

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## AFFILIATIONS



Katie Rice Marin County Supervisor District 2  
P.O. Box 653  
San Anselmo, Ca 94979

Copies to:

Joe DeScala <jdescala@me.com>  
Dan Stein <denial.r.stein@gmail.com>  
Sean Solway <sfmarinhomes.com>

March 28, 2013

Re: Stream Conservation Ordinance Proposal

Dear Katie:

There are several things I would like you to consider before supporting the SCA. They are the following:

1. Weather patterns changed dramatically back in the '70s, from droughts to the floods of the '80s through the undependable patterns of today. This had and continues to have a profound negative effect on water-dependent wildlife and is, very likely, the highest single factor to affect wildlife along the streams and creeks. Frogs disappeared from our creek in the '80s, yet they thrive around golf courses like San Geronimo, because they have a steady supply of water. The existence or absence of chemicals seems less important to them than having a steady supply of water.
2. About the same time in the '70s, the County Department of Public Works, along with the cities and towns of the county, decided that all our roofs, driveway, patios, balconies, etc, should be collected in pipe and run to the streets. At the time, I believe their concern was over landslides. The construction industry opposed this mandate, because it created extra expense and could cause flash flooding. (As it turned out, this redirected, concentrated, fast-moving street water veered off the road onto private property, causing more problems in places that never had a problem before). We lost the argument and the piped drainage plan went into practice. Here we are 40-plus years later, with a policy to discharge water back on the site in distribution pipes. What the DPW failed to realize (among others) is that every remodel and new home since then is sending their acids, pet feces and detergents used to clean their slabs and cars, etc, directly to our water ways - quickly. Every time the DPW changes a policy the lawsuits accelerate because they are basically legislating the redirection of water. The prediction of flash flooding came true but more importantly the water that shed off our hardscape surfaces was not allowed the slow, cleansing journey through soils and rock to the water ways.
3. After the Clean Water Act was passed, there was a five-year period given to scientists to determine which were the most damaging pollutants to our water ways and at what quantity they were acceptable. When the article came out in the World News & Report, number two was Dog and Rat feces. The disease-transmitting, pathogenic organisms, such as Polio, Hepatitis, Salmonella, cholera, etc, etc. are all in our pet feces.

**P.O. Box 150208 • SAN RAFAEL, CA 94915-0208 • PHONE: (415) 459-2130**  
**FAX: (415) 459-0189**

PC ATTACHMENT #7  
Public Correspondence

In summation:

Every home, street, park, roof, dog and cat, is polluting our streams and creeks, largely due to a policy by Marin's DPW, which drives these pollutants from every pipe, streets and hardscape from the ridges down. If all homes and buildings were allowed to let their roofs and such, splash on site, the water would soak into the ground, cleansing it, as it moves slowly through the soil and rock to the waterways. This slow migration would provide cleaner, more constant water supply. Piped water moves fast and subsides fast. I know they recently changed back to a distribution pipe on site, but that will take another forty years of permit requests to implement and concentrates the water from the site in a ten to twenty foot location, instead of all over the site.

If all the homes on both sides of the waterways were removed completely, there would very probably be little to no impact to the Fish, since the weather and DPW policy are the main source of the problem. I was the Sleepy Hollow Creek watch person for five years and I realize that some people are abusive to the waterways. I reprimanded the violators and over the years things got better. The worst violators are the schools and areas near bridges, where people have access (without going through someone's yard) to dump debris.

Punishing us who live along the water ways to accommodate a small special interest group is a disaster for you and us, but more importantly, it's just another useless, unnecessary, legislated policy with negative financial consequences for us who live within fifty feet of the edge of a waterway. Sleepy Hollow has long had a creek committee and we do not need any help from SPAWN. In our case the Sleepy Hollow Creek should be reclassified as a seasonal wash.

As I read SPAWN's request to the County (in the IJ), they seem to want everything that can carry water included, that's ridiculous. Who are these people anyway? What right do they have to invade every community in the State that borders a waterway? They are pushing their will on thousands, when were not the problem. I think you should make them prove it's not the weather, or other factors, before you even consider their requests. To build a house (in this County) you must go through years of EIR's, etc; why shouldn't they be forced to hire a co designated by the County (instead of groups with the same agenda) to prove there is any validity to their claims. This report needs to address the fact that housing along the waterways and in rural areas contribute to the wildlife population through care for animals and most importantly – water from our sprinkler systems.

Terry Keast

**From:** [Lai, Thomas](#)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** FW: proposed SCA and Forest Knolls  
**Date:** Tuesday, April 02, 2013 8:55:11 AM

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Please add to public comment and forward with PC memo for the 5/13 meeting.

Thanks,  
-Tom

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**From:** Adams, Susan  
**Sent:** Monday, April 01, 2013 11:24 PM  
**To:** Lai, Thomas  
**Subject:** Fwd: proposed SCA and Forest Knolls

Sent from my iPad

Begin forwarded message:

**From:** Dawn McEarchern <[dawndawndawn@me.com](mailto:dawndawndawn@me.com)>  
**Date:** March 31, 2013, 7:54:06 PM PDT  
**To:** <[skinsey@marincounty.org](mailto:skinsey@marincounty.org)>, <[sadams@marincounty.org](mailto:sadams@marincounty.org)>, <[jarnold@marincounty.org](mailto:jarnold@marincounty.org)>, <[krice@marincounty.org](mailto:krice@marincounty.org)>, <[ksears@marincounty.org](mailto:ksears@marincounty.org)>, <[sthorsen@marincounty.org](mailto:sthorsen@marincounty.org)>  
**Subject:** **proposed SCA and Forest Knolls**

Thank you for your attention and careful review of this situation. It is, indeed, unfortunate that such significant and enduring decisions have to be forced and tainted by a litigious zealot.

I understand that the proposed Conservation Area is required by the county's longterm plan, and that it's guidelines are certainly not written only for San Geronimo Valley. However, I think our little end of the county is unique in its symbiotic ties to the water that runs through here.

Plain and simple, 100 feet is just too large of a space to impose restrictions on. I have a small little lot, which is 125' on its long side. A seasonal creek cuts right across it, on the long side. By the time you are 100' away from the creek top, in any direction, you're not in my yard anymore. My example is not unique either; almost all my neighbors have a similar situation.

It seems plain to me that imposing a 100' barrier would effectively create a fee mill out of my whole neighborhood. The fees involved with existing zoning are high enough that they keep most of us from doing anything; adding another layer of fees will not help anyone.

What we need is a sensible and affordable system that enables the bulk of properties out here to be brought up to sounder conditions, not yet another layer

of fees that people will, out of necessity, have to work around.

Please do not condemn us to a dysfunctional future for our beautiful valley.

Thank you,  
Dawn McEarchern  
415.505.1994



April 1, 2013

TO: Mill Valley Planning Commission  
RE: SCA ordinance

I wish to offer the following comments to the SCA ordinance:

1. Ordinances protecting Marin's streams and enforcement are late in coming. The Countywide Plan is now seven years old. Please rely on current information and best practices available when enacting regulations.
2. The Coho salmon crisis has not improved in the seven years since Countywide Plan was adopted. We need a strong ordinance that reflects the precarious state of the endangered Coho
3. Marin's landscape has been transformed by accretion. The many exemptions in the proposed ordinance will allow this gnawing degradation of natural systems to continue.
4. The ordinance needs put the Public Trust Doctrine ahead of private interests. Marin's waterways are part of the Public Trust. They need to be protected for everyone, forever.
5. Marin County is spending millions of public dollars to restore salmon habitat while offering exemptions to the SCA ordinance that undermine those restoration investments.
6. Currently the County relies on state and federal regulators to enforce habitat protections but County enforcement of the SCA ordinance is essential to salmon recovery. A dedicated funding source such as fines and permit fees could help fund local enforcement.



7. To be effective, the ordinance needs to be both simple and affordable. "Plan speak" leads to resentment and lack of compliance.
8. Some who testified at the April 1, 2013 hearing said they wanted to be exempted from the SCA ordinance because there are no longer fish in the streams in their communities. If Marin had had a stream protection ordinance in place when those communities were being developed, there might still be fish in those streams today.
9. The goals of the SCA ordinance are protecting the environment and enhancing Coho populations. Goals do not include Increasing property values or enhancing real estate revenues. Marin has an opportunity to do the right thing and protect this endangered species. Let's show some leadership.

Thank you.

  
Susan Ives





*Sent via email to: DStratton@marincounty.org*

April 2, 2013

Marin County Planning Commission  
3501 Civic Center Drive, #308  
San Rafael, CA 94903

**Re: Comments on Draft Stream Conservation Area Ordinance**

Dear Planning Commissioners:

The Center for Biological Diversity is a national, nonprofit conservation organization with thousands of members who live in and/or visit Marin County, and our organization has a strong interest in protection and recovery of endangered coho salmon and threatened steelhead trout in Marin streams. We caution the Commission that the current draft of the county's Stream Conservation Area (SCA) ordinance is inadequate to provide for healthy streams or protect federally listed salmon or steelhead.

The Center strongly urges the Planning Commission to modify the draft ordinance to ensure it reflects the intent of the 2007 Countywide Plan (CWP) to expand – not limit – stream protections, by interpreting the ordinance to favor environmental protections for species that are on a trajectory toward extinction. The burden of proof that development along critical streams for salmon will not adversely affect habitat should be on the applicants of proposed developments.

Specifically, the Center is concerned about:

**1. Excessive Streamside Development**

In the San Geronimo Valley alone (critical salmon and steelhead habitat), the draft ordinance allows for more than 1,000,000 square feet of additional development inside the SCA, including:

- 477,000 square feet in “modest” additions (500 sq ft X 955 existing homes)
- 574,000 square feet in new home development (median size 2,800 sq ft X 205 parcels)
- Unlimited number of sheds < 120 feet (1 per parcel = 139,000 sq. ft.)

## **2. Lack of Mitigation for Development on “Previously Disturbed Areas”**

Presently, the draft ordinance allows a structure to be built on an existing lawn or other “disturbed” habitat within the SCA without triggering any mitigation. While not equal to the impact of removing native riparian vegetation, such conversions permanently reduce habitat acreage, value and function and thus should be adequately mitigated.

## **3. Unending 500 Sq Ft Additions**

Presently, the draft ordinance allows an unending series of 500 square foot additions to existing homes in the SCA, despite CWP measure BIO-4.a, which suggests “modest additions to existing buildings.” The cumulative 477,000 square feet of additional development that would be allowed under this flawed policy only represents a one-time 500 sq. ft addition for each parcel; there is nothing in the ordinance to prevent repeated 500 sq. ft additions on any and all parcels.

## **4. Review, Disclosure and Enforcement is Inadequate**

Presently, the ordinance contains inadequate measures to ensure that ongoing problems with lack of enforcement of existing streamside protection regulations will not continue into the future. There has been little enforcement of prior Marin County ordinances that protect streams (such as MCC §24.04.560). Implicit in the CWP language is the need for a review to verify what structures and disturbance are “existing” and that the square footage is truly an addition that has not already been added.

A description of any development within 35 feet of a salmon stream or tributary (20 feet from non-salmon streams) should be required by way of a pre-sale disclosure or inspection, with the County providing landowner assistance (per BIO-4.a) to remove structures in this critical SCA area. If sellers are required to disclose high-flow toilets in Marin, then they can certainly disclose structures that could impact both flooding and salmon habitat.

## **5. Protect Ephemeral Tributaries to Salmon Streams**

Ephemeral tributaries to salmon streams should be subject to full SCA protections regardless of whether they have 100 feet of riparian vegetation. A functioning network of ephemeral streams mitigates flooding and forms the headwaters without which mainstem streams could not support salmon.

## **6. Mitigation Must Be Permanent and Flexible**

Presently, the ordinance could be interpreted to mean that mitigation will be verified for only five years, after which the same area could be proposed for development. The development that triggered the mitigation is de facto permanent, so any mitigation must be recorded by a note on the deed, easement or other permanent means. The

ordinance should allow offsite mitigation within the same watershed, including purchase of undeveloped properties, easements or other options.

The draft ordinance does not reflect the intent of the Countywide Plan to provide strong stream protections for critical salmon streams, nor does it currently indicate that the County is serious about preserving our dwindling salmon runs for future generations. We hope you will work with staff to correct these deficiencies in the draft Stream Conservation Area ordinance.

Thank you for consideration of our comments.

Jeff Miller, Conservation Advocate  
Center for Biological Diversity  
E-mail: [jmiller@biologicaldiversity.org](mailto:jmiller@biologicaldiversity.org)  
351 California Street, Suite 600  
San Francisco, CA 94104  
Phone: (415) 669-7357

**From:** [Suzanne Thorsen](#)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** Fwd: SCA  
**Date:** Tuesday, April 02, 2013 6:22:19 AM

---

Suzanne

Begin forwarded message:

**From:** Ron Cook <[hit-reply@linkedin.com](mailto:hit-reply@linkedin.com)>  
**Date:** April 2, 2013, 5:48:42 AM PDT  
**To:** Suzanne Thorsen \_\_\_\_\_  
**Subject:** SCA  
**Reply-To:** "Ron Cook (via LinkedIn)" <34269463\_2514c15c-99f4-4e48-863b-73f17783d6a9@reply.linkedin.com>

Dear Suzanne,

I couldn't find your email on the SCA report so I'm resorting to Linked in for this connect.

Let me first say, frankly, as one in the target of SCA, the SCA ordinance is "nuts". And this is from a fellow idealist from Cal 65--69!!! I have lived in Marin County since 1974-- from Mill Valley to Novato----and now I am dumb founded by the SCA and idealistic absurdity. Seems that the SCA would wish us to give up our simple property rights..... which we believe fundamental and embedded in the basic law of the America existence.

I am not a Republican zealot...but you may shift my thinking.

Please stop smoking...and start thinking.

Ron

[Reply](#)

[Not interested](#)

[View Ron's LinkedIn profile](#)

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This email was intended for Suzanne Thorsen (Planner at County of Marin). [Learn why we included this](#). © 2013, LinkedIn Corporation. 2029 Stierlin Ct. Mountain View, CA 94043, USA

**From:** [Lisa Lukianoff](#)  
**To:** [Thorsen, Suzanne](#); [Kinsey, Steven](#); [Adams, Susan](#); [Arnold, Judy](#); [Rice, Katie](#); [Sears, Kathrin](#); [info@sgvstewards.org](mailto:info@sgvstewards.org)  
**Subject:** RECOMMENDATIONS FOR STREAM CONSERVATION AREA ORDINANCE  
**Date:** Tuesday, April 02, 2013 8:53:23 AM

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SGV stream conservation area ordinance needs to include provisions for preexisting property residing less than 20' from creek AND quantifiable evidence of results of an environmental impact report specifically illuminating the cause of toxins.

Properties like my home are not represented in the existing ordinance. We live within 7' from the creek and have problems with erosion and flooding. Enforcing a 20' to 100' set-back would create problems for preexisting homes, like mine, from necessary protection and the safety to our family.

Additionally, the seriousness of this proposal and ordinance warrants a quantifiable environment impact report that scientifically proves the source of the hazards to salmon. It is my impression that run-off from live stalk (horses, cows, etc.) and other environmental toxins such as run-off from automobile pollution has been the greatest contributor.

Unless we address the full scope of the problem, we are not going to find a reasonable solution and we are placing an unnecessary risk to the safety of existing homes.

Please address these concerns for our community and include them in the process.

Sincerely,  
Lisa Lukianoff  
Home Owner - Forest Knolls

This email correspondence and any documents which may accompany it, contain professional information from Lisa Lukianoff, Psy.D., and which is intended exclusively for the use of the individual or entity to which it is addressed, and which may contain information that is privileged, confidential, and/or otherwise exempt from disclosure under applicable law.

If the reader of this message is not the intended recipient or the employee or the agent responsible for delivering the message and any documents to the intended recipient, any disclosure, dissemination, distribution, copying, or other use of this communication or its substance is prohibited. If you have received this communication in error, please call collect to arrange for the destruction of the communication or its return to us at my expense. Thank you.

**From:** [Steve Taber](#)  
**To:** [Thorsen, Suzanne](#)  
**Cc:** [Rice, Katie](#)  
**Subject:** draft SCA ordinance  
**Date:** Friday, April 05, 2013 11:04:41 AM  
**Attachments:** [30404 summary memo re SCA ordinance.pdf](#)

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Suzanne – Accompanying this transmittal please find our comments from the meeting last night. Please forward to Tom, as I don't have his email address. Please take them into account in revising the ordinance.

Thank you very much.

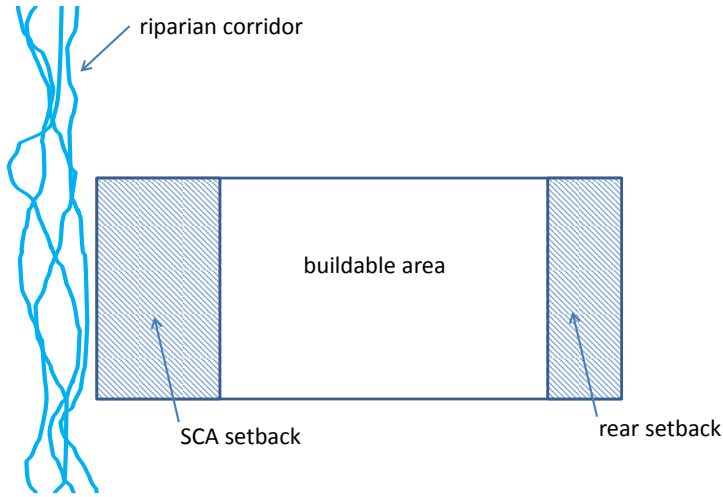
Steve & Andrea Taber

860 Butterfield San Anselmo CA 94960-1186

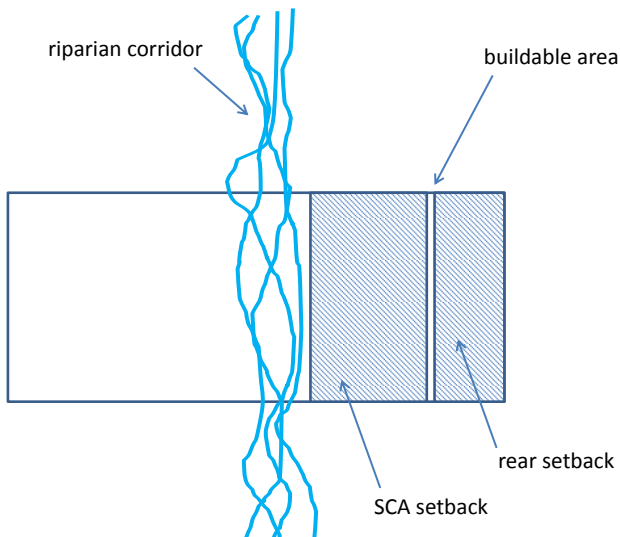
The draft SCA Ordinance, which has the laudable goal of protecting the County's streams, has some serious problems:

**SETBACKS.** The draft Ordinance applies varying setbacks based on the gross lot size. The spirit of this provision is to allow lesser setbacks on smaller sites, which is fair. However, it is a very blunt instrument which produces arbitrary and capricious results when applied to actual lots.

Consider the 1/2 acre lot below. It has a stream running along one end, no slopes or existing trees and buildings to preserve, and therefore enough room to accommodate the SCA setback of 50'.



Now consider the same 1/2 acre lot with the stream in a different location. It clearly does *not* have enough room to accommodate the SCA setback. This problem would be even worse if the property has slopes or mature vegetation that should be preserved, buildings or swimming pools which need to be avoided, etc.



The fair solution to this is to make the setback from the SCA a variable function (say, 10%) of the usable area. The usable area should be defined as the largest contiguous portion of the property which is suitable for building and which excludes the stream and riparian corridor, required setbacks, portions where the slope exceeds 15% (unless the slope on the entire property exceeds 15%), portions with mature trees, and portions with existing

structures (including swimming pools). This solution will fairly embody the spirit of the ordinance, which is that setbacks should be greater on lots where the property owner has room to accommodate them but smaller where the property owner is more constrained.

(The proposed 10% standard is roughly consistent with the setbacks proposed in the draft ordinance. For example, under the draft ordinance, a rectangular lot 100' x 200', with a stream along one of the 100' sides, would be required by the proposed ordinance to have a setback of 20', 10% of the lot depth.)

**BUREAUCRATIC EMPOWERMENT.** The draft ordinance requires a Site Assessment to identify impacts and mitigation measures. Fair enough. However, it gives the staff the discretion to reject an application unless "the Site Assessment determines that there would be *no adverse impacts* to the SCA, or that any impacts to the SCA can be *fully avoided*" (emphasis added). This is an impossible standard to meet. As a practical matter, any activity will have some impacts. This wording has the perverse effect of making every application a Tier 2 application at the discretion of the staff and subjecting every permit applicant to bureaucratic run-around. The law should state the rules, not empower bureaucrats to make the rules.

Any permit applicant who complies with Requirements 2 and 3 (Development Standards and Standard Management Practices) of the Tier 1 Review Procedure should ipso facto be entitled to a permit. The Site Assessment should be used to identify reasonable mitigation measures, not to deny the permit.

**CONFLICT OF INTEREST.** The draft ordinance requires that the Site Assessment "be prepared by a qualified professional retained by the County". Having a Site Assessment prepared by a qualified professional is appropriate. However, having the professional retained by the County is a manifest conflict of interest and an invitation to abuse and cronyism. Staff members inclined to deprive property owners of the economic value of their property would steer professionals onto the list that are inclined to further this outcome. Furthermore, a list of professionals established by the County would be likely to include cronies of the staff and would curtail fee competition. The applicant should be able to select any qualified professional, subject to the County's approval based on the professional's qualifications.

Section 22.63.030.B.4 should read as follows:

Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional retained selected by the Applicant, subject to approval by the County, and paid for by the applicant. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; recommend Standard Management Practices corresponding to the nature of development; and determine whether the project, in conjunction with Standard Management Practices, would result in adverse impacts to the stream and riparian resources. The Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development.

If the Site Assessment determines that there would be no adverse impacts to the SCA, or that any impacts to the SCA can be fully to a significant degree avoided through implementation of specific Standard Management Practices as part of the development approval, the County ~~may~~ shall proceed to process the application as a Tier 1 permit.

Thank you very much.

Andrea & Steve Taber 860 Butterfield San Anselmo CA 94960-1186



**From:** [Peter Narodny](#)  
**To:** [Lai, Thomas](#); [Thorsen, Suzanne](#); [gobility@comcast.net](mailto:gobility@comcast.net)  
**Cc:** [Karin Narodny](#); [Andrea Taber](#); [bethdescala@gmail.com](mailto:bethdescala@gmail.com)  
**Subject:** Stream Conservation Ordinance  
**Date:** Saturday, April 06, 2013 3:55:55 PM

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Tom and Suzanne,

My wife Karin and I are writing as very concerned residents and owners in Sleepy Hollow who have read the proposed SCA Ordinance and realize the incredible negative impact that it will have on our community. We have lived here for many years and as real estate agents, we have sold many homes to people who desired the natural beauty and valued the pride of ownership which the people of the Hollow take in their property. Not only will this ordinance have a very serious negative impact on property values, but it imposes very unreasonable limitations and financial burdens on existing owners. This ordinance will also greatly discourage buyers who are interested in the community when they see the questionable restrictions and the time consuming and expensive ordeal they will have to face when buying property here. Given that many of the properties in Sleepy Hollow are in some way contiguous or close to one of the several streams here, notwithstanding what can be considered an "ephemeral" stream, the majority of homes will be affected. I was always under the impression that Sleepy Hollow had its own zoning designation identified in the Countywide Plan, that protective regulations already exist, and the SHHA Creek Committee manages flood protection and has educated the neighborhood of the importance of being good stewards of the creeks and streams. I have never seen any evidence of any resident ever taking advantage of the creeks and streams and causing any harm to them, but rather taking pride and special care in what they represent. The proposed Ordinance imposes very unnecessary and unreasonable restrictions which will have a huge negative impact and restricts the rights of property owners which I am sure is not the intent. I don't think you will find anyone who lives in this wonderful neighborhood who doesn't agree with this, but you will find that they do have much trepidation on the impact it will have on their homes. We ask that every consideration be made to exempt our community from this proposed Ordinance. Thank you very much for your consideration.

Peter and Karin Narodny

**From:** [brian@briancrawford.info](mailto:brian@briancrawford.info)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** SCA amendment  
**Date:** Saturday, April 06, 2013 5:43:25 PM

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Hi,

I commented on the proposed revision to the SCA. My suggestion was that the revision should specify how the SCA terminates when a creek enters or leaves a culvert. You replied to my question by quoting the definition of "lateral" as being "to the side." But that leaves the question open to interpretation. To avoid confusion and questions, I propose that the regulations should clearly state how the SCA terminates - is it perpendicular to the mouth of the culvert, or radial? I believe the SCA should extend radially from the mouth of the culvert, since all that area is within the designated distance of the flowing creek.

Thanks,  
Brian Crawford  
454-3439

**From:** [Laura Chariton](#)  
**To:** [Adams, Susan](#); [Thorsen, Suzanne](#); [Kinsey, Steven](#); [BOS](#); [Lai, Thomas](#); [Stratton, Debra](#)  
**Cc:** [Laura Chariton](#); [Maureen Parton](#); [Lewis, Liz](#); [Choo, Chris](#); [Fashing, Terri](#); [Bunce, Howard](#); [brock@qaec.org](#)  
**Subject:** Beavers BACK after 158 years  
**Date:** Wednesday, April 10, 2013 8:44:58 PM  
**Attachments:** [PastedGraphic-13.tiff](#)

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Marin County Planning Commission  
C/O Debra Stratton  
3501 Civic Center Drive, Room 308  
San Rafael, California 94903  
via email: [dstratton@marincounty.org](mailto:dstratton@marincounty.org)



Wikipedia

commons

## BEAVERS ARE BACK since last seen in the Guadalupe River, San Jose, CA 158 Years ago.

"Experts say the return of the beavers is a sign of a healthy eco-system and it bodes well for other species. "They'll enhance the water for steelhead trout and Chinook salmon, both of which use this river, because they'll trap sediment, further clarify the water. Also, beaver ponds, if they build them, are like cafeteria for baby salmon and baby steelhead," Inman explained. (David Louie, KGO News)

[http://abclocal.go.com/kgo/story?section=news/local/south\\_bay&id=9060787](http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=9060787)

<http://www.youtube.com/watch?v=kNeoLqOikok>

**WE WANT BEAVERS HERE in MARIN, TOO!! Please forward this information to all relevant folks as we are considering only 20 foot setbacks on Stream Conservation Areas in Marin County urban corridors on all lots under .5 acres and 50 feet on lots .5 to 2 acres. Salmon need beavers and both need larger setbacks. Tidal Beavers can help to rebuild the complexity of tidal marsh systems as a buffer against sea level rise.**

**The Water Board recommends 50 feet minimum from top of bank. San Jose did 100 feet with exceptions. San Francisco Regional Water Quality Control Board 2004 Buffer Report**



HOW DID THIS HAPPEN? **"The City of San Jose has a stream buffer policy that is neither in the code nor the General Plan. The city administers a riparian buffer policy through use of a "riparian corridor study, 68 Page document (from 1994, revised 1999)" document that describes suggested buffer widths.**

<http://www.sanjoseca.gov/DocumentCenter/Home/View/376>

**The document recommends a 100-foot setback, but exemptions are given that may reduce the setback to 50-foot distances." San Francisco Regional Water Quality Control Board 2004 Buffer Report**  
**[www.waterboards.ca.gov/sanfranciscobay/.../bufferreport1204.pdf](http://www.waterboards.ca.gov/sanfranciscobay/.../bufferreport1204.pdf)**

***WE must do better.***

**Sincerely,**

Laura Chariton  
446 Panoramic Hwy.  
Mill Valley, CA 94941

**From:** [Thorsen, Suzanne](#)  
**To:** ["Jack Grier"](#)  
**Subject:** RE: SCA Comments  
**Date:** Thursday, April 18, 2013 1:22:01 PM

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Thank you for your message, Jack. I will provide your comments to the Planning Commission for their May 13 hearing. A few answers to your questions are below:

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**From:** Jack Grier [mailto:mail@azayaranch.com]  
**Sent:** Wednesday, April 17, 2013 5:04 PM  
**To:** Thorsen, Suzanne  
**Subject:** SCA Comments

Comments for the Proposed Stream Conservation Ordinance  
Jack Grier Ranch Manager

April 15, 2013

All of the minimum setback distances are stated as 20', 50' and 100'; there is no language about the maximum distances that can be assigned or ruled for properties in the SCA zone. If you state a "Minimum" logically there would need to be a "Maximum" spelled out in any ordinance that limits use of private property.

The "minimum" distance referenced above is from the Countywide Plan, which does not establish a corresponding maximum. We will be providing clarity to the Planning Commission on May 13 that describes those situations in which the SCA Setback would be increased.

Further into the Staff report it is stated that there can be a 100' setback and an additional 50' added to that to include riparian habitat. There is no maximum stated. Riparian habitat will expand into pasture – are we to be limited on cutting it back from intrusion into our pastures? "Removal of woody or riparian vegetation" on Agricultural properties is an ongoing maintenance task. Will this now be regulated and require a permit to remove any riparian vegetation? What agency will allow the permit, what will be the process and how much will that cost?

Any resource management that is done under the auspices of another government agency (such as a Ranch Water Quality Management Plan or riparian protection in coordination with the Resource Conservation District) is exempt from this ordinance. (Section 22.63.020.B.1.d). The ordinance also allows maintenance as an exempt activity (Section 22.63.020.B.1.g and 22.63.020.B.1.h). You do not need to seek a permit to maintain your existing pasture. However, clearing an area of established riparian vegetation, where it does not meet these exemption criteria, would be subject to a permit.

**Mitigation Criteria (PC Attachment #1 page 8)**

Is the Mitigation Criteria to be similar to what the Army Corps of Engineers requires for restoring wetlands? A five year monitoring and maintenance program with annual studies done by a Biologist? This is another cost to the landowner that is not spelled out or explained well.

The appropriate timeframe and frequency of monitoring for any mitigation would be determined at the time of permit approval, commensurate with the nature of the work.

Is Scotch Broom a woody riparian plant. What are the species of plants specified as "Woody Riparian Habitat"? Are non-native plants included? What about invasive plant management such as all species of thistle. Is Poison Oak a woody riparian plant? Blackberries, another

non-native?

We do not yet have a list of “woody riparian” plants. The ordinance exemptions allow removal or management of invasive, non-native vegetation. (Section 22.63.020.B.1.c)

Who is the “Director” that will rule regarding the SCA ordinance?

The “Director” is the Director of the Marin County Community Development Agency (Brian Crawford) or his designee.

Is the Agricultural Commissioner involved in this process? Is this only a Planning Division process?

We have consulted with the Agricultural Commission but because this ordinance is administered by the Community Development Agency Planning Division, it is being developed by the Planning Division.

“Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than Final Inspection”. This says that a property owner can be asked to implement practices that are unknown in the permitting process and could add cost up to the final inspection. How can anyone plan for that, another surprise cost to a project that could leave it incomplete or un-finished or priced out by regulations.

The Standard Management Practices will be articulated and readily available so that applicants can plan for and anticipate costs at the project planning stage.

There are more permits listed here than I thought were possible. I seem to need a permit to do most anything. Already if I spend more than \$300.00 on a project I need a permit. There is a large burden on a landowner to keep all improvements within stringent County regulations and have permits on file. If a landowner sells property, all of these permits will need to be disclosed. There will need to be title search that includes time from county staff to prove all improvements were properly applied for and inspected. There is too much mystery in this process; where does one go to get all this information without having to hire expensive lawyers or experts on County law?

As a large property manager I am tasked with staying informed of Marin County Building, Planning, Environmental Health, Coastal Commission, Countywide Plan EIR, County Development Agency, Community Development Agency, Agricultural Commissioner’s Office and Assessors Office regulations and also regulations from State agencies that include: Regional Water Quality Board, Air Quality board, CEQA, Fish & Game and Federal agencies including the Army Corps of Engineers and the EPA. I have left a few out, there are more. Permits discussed in this proposed ordinance: Land Use Permit, Building Permit, Grading Permit, Construction Permit, Discretionary Permit, Ministerial Permit, Sign Permit, Homeless Shelter Permit, Second Unit Permit, Adjustment Permit, Temporary Use Permit, Stream Conservation Area Permit Tier 1 & 2, Watercourse Obstruction Permit, Coastal Permit, Tidelands Permit, Tree Removal Permit. Sheesh!

From the Staff Report:

Item #4 page 8:

“SCA will be determined based on the mapped streams contained in the County’s SCA Geographic Information Systems Data.... Over time the accuracy of the County’s SCA Data & Map will be improved using new information, such as that provided using LIDAR – infrared technology.....”

Is this the reason no maximum is stated for the setback distances? Are those distances subject to being increased with no limits due to better mapping information? Where is the limit of this “take”?

The setback distances are defined in the Countywide Plan. The County’s mapping efforts will provide better location accuracy and include ephemeral streams.

### “Ephemeral Streams”

Will these be added to the SCA’s with new information? If so this Ordinance becomes more of a land “take” A frightful idea. In the wet season the entire County could be determined to be an “Ephemeral Stream”. Section 22.33.030.B.4. –“ For all mapped ephemeral streams.....”. What happens as ‘New’ information is applied to the SCA maps and ‘New’ watercourses are identified?

The ephemeral streams will be added to the County’s stream map. The map will be rolled out to the public and updates will only be made after this public process has been completed.

Item 4 page 10:

“Staff recognizes that there is a need to provide reference information to homeowners so that they do not run afoul of the protections afforded to Woody Riparian Vegetation. Implementation of this Ordinance will include an illustrated guide to typical Woody Riparian species.” How much will it cost County taxpayers for this publication to be prepared? Will there also be a similar guide pertaining to large properties? Again, at what cost? Is there a plan and monies set aside for updating these guides?

We have a shared objective to minimize the cost of making guidance information available. For example, a woody riparian guide can be prepared based upon information and images that already exist. However, the specifics of implementation at this level of detail are not available at this time.

An observation that is purely anecdotal: There are creeks on the property I manage that are greater than 300 wide from the top of bank to top of bank. Add another 100’ on each side for the setback and you have a 500’ wide corridor the length of that creek.

I see that we are damned if we do and damned if we don’t when it comes to improving our properties with or without permits. There is a lot of good regulation in this County and some poor regulation. The process is a pitfall for good intentions that become undone by too many restrictions. The County on one hand wants to promote local agricultural growth but is also happy to keep a tight grip on what they will allow. Adding another ordinance is not the answer. Adding to existing ordinances may be a better approach. It is also hard for me to picture an ordinance that covers both metro and rural areas with similar language; there are many differences that large and small properties don’t have in common. Should this ordinance be scoped in multiple sections that focus on how properties are zoned?

There are some distinctions made for agricultural use and setback distances in the City-Centered Corridor. I encourage you to share your additional ideas through the public participation channels available during the Planning Commission and Board of Supervisors hearings, or through the County’s new online platform Open Marin ([www.marincounty.org/openmarin](http://www.marincounty.org/openmarin)).

Jack Grier  
[mail@azayaranch.com](mailto:mail@azayaranch.com)

Jack Grier  
[mail@azayaranch.com](mailto:mail@azayaranch.com)

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**From:** [Laura Chariton](#)  
**To:** [Thorsen, Suzanne](#); [Lai, Thomas](#); [Stratton, Debra](#)  
**Cc:** [Laura Chariton](#)  
**Subject:** draft Stream Conservation Ordinance  
**Date:** Wednesday, April 24, 2013 8:19:27 AM

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RE: draft Stream Conservation Ordinance, Carbon Sequestration/Riparian Zones

Dear Planners and Planning Commissioners,

Here is an important study to support the inclusion into the Stream Conservation Area Ordinance in the "purpose" section of quantifiable ecosystem services of Riparian (SCA) Zones- Carbon Sequestration. This study reiterates the fact that new scientific studies, published February 14, 2012, have the capacity to inform better policies. Besides habitat and other ecosystem services this study substantiates other overarching reasons why setbacks and mitigation must be comprehensive in addressing these services and mandatory in the SCA ordinance. It is a public health issue.

## Carbon storage of headwater riparian zones in an agricultural landscape

[Richard D Rheinhardt](#)<sup>1\*</sup>, [Mark M Brinson](#)<sup>1</sup>, [Gregory F Meyer](#)<sup>2</sup> and [Kevin H Miller](#)<sup>2,3,4</sup>

<http://www.cbmjournals.com/content/7/1/4>

Excerpted:

**"Restoring and reforesting such riparian zones to mature forest, particularly along headwater streams (which constitute 90% of stream network length) would both increase carbon storage and improve water quality.** Age and management-related cover/condition classes of headwater stream networks can be used to rapidly inventory carbon storage and sequestration potential if carbon storage capacity of conditions classes and their relative distribution on the landscape are known.

Carbon stored in headwater riparian reaches is only about 40% of its potential capacity, based on 242 MgC/ha stored in sampled mature riparian forest (forest > 50 y old).

The carbon deficit along 57,700 km headwater Coastal Plain streams is equivalent to about 25TgC in 30-m-wide riparian buffer zones and 50 TgC in 60-m-wide buffer zones.

Estimating carbon storage in recognizable age-and cover-related condition classes provides a rapid way to better inventory current carbon storage, estimate storage capacity, and calculate the potential for additional storage. **In light of the particular importance of buffer zones in headwater reaches in agricultural**

**landscapes in ameliorating nutrient and sediment input to streams, encouraging the restoration of riparian zones to mature forest along headwater reaches worldwide has the potential to not only improve water quality, but also simultaneously reduce atmospheric CO<sub>2</sub>."**

Sincerely,

Laura Chariton

446 Panoramic Hwy.  
Mil Valley, CA 94941  
415 388-7060  
415 272-7344 Cell

**From:** [Lai, Thomas](#)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** FW: Strengthen & Improve draft Stream Conservation Area Ordinance  
**Date:** Wednesday, April 24, 2013 1:20:35 PM

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Please add to the record. Thanks.

-Tom

-----Original Message-----

From: Liza Wozniak [<mailto:lizahr@gmail.com>]  
Sent: Wednesday, April 24, 2013 10:15 AM  
To: Adams, Susan  
Subject: Strengthen & Improve draft Stream Conservation Area Ordinance

Dear Marin County Board of Supervisors,

I urge you to strengthen Marin's proposed Streamside Conservation Area Ordinance to ensure protections for the endangered coho salmon and steelhead trout that reside in the County's streams, and to expand their chances for recovery to sustainable population levels.

I ask that the ordinance include at least the following basic provisions:

- 2 for 1 mitigation. For every square foot of development that is permitted under this ordinance, two square feet of habitat should be restored to use. This will ensure the "No net loss" required in the County-Wide Plan, while increasing the chance that these endangered animals have for recovery.
- One-time additions. Any permitted additions under the ordinance should be no more than 500 square feet and should be "one-time", noted on both the deed and in a county database and travelling with change of ownership.
- Complete protection of ephemeral streams, including 100-foot setbacks. While such waterways often have only "seasonal" flow, they are an essential component in the function of a healthy watershed. Not only do they transport nutrients and clean water into the main creek arteries, when properly functioning, they also can help to slow water flow during and after storm events, reducing the chance of flooding. Like our own bloodstream, it makes no sense to give lesser protection to our capillaries than our arteries and heart.

Your predecessors on the Board took bold action to protect our ridgelines years ago. I ask that you now demonstrate the same kind of environmental leadership to protect the health of creeks that are critical to all the wildlife of Marin.

Sincerely,

Liza Wozniak

Larkspur, CA 94939

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**San Francisco Bay Regional Water Quality Control Board**

April 30, 2013  
CIWQS Place ID 239496

Sent via electronic mail: No hard copy to follow

Marin County Community Development Agency  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903  
Attn.: Ms. Suzanne Thorsen  
Email: [sthorsen@marincounty.org](mailto:sthorsen@marincounty.org)

**Subject: Comments on the Marin County Stream Conservation Ordinance**

Dear Ms. Thorsen:

We have reviewed the Draft Stream Conservation Area (SCA) Ordinance. The objectives of the SCA Ordinance are to protect active creek channels, water quality and flood control functions, and associated fish and wildlife habitat values along streams in accordance with the Countywide Plan. We offer these comments to assist Marin County in developing an SCA Ordinance that meets these objectives.

**Comment 1: Ephemeral Streams**

Currently, the SCA Ordinance only applies to mapped ephemeral streams that have 100 continuous feet of riparian vegetation adjacent to the creek. As a result, it leaves out many ephemeral streams that should be protected to benefit water and habitat quality within watersheds. For instance, ephemeral streams exert a significant influence on habitat conditions in the downstream intermittent and/or perennial channel reaches where the fish and aquatic wildlife species reside by supplying and metering essential watershed parameters, such as heat, nutrients, food, sediment, and water.

The SCA Ordinance also does not comply with the Marin County-Wide Plan, which states "An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream." We recommend revising the SCA Ordinance to comply with the Marin County-Wide Plan to protect a greater number of ephemeral streams.

We also encourage and support efforts to map all the streams in the County but recognize that this is a substantial effort, and therefore, also recommend that the SCA Ordinance protect creeks whether they are mapped or not.

## Comment 2: Subdivision of Parcels

The SCA Ordinance indicates that in City-Centered corridors the minimum SCA setback distance would be as follows:

- 20 feet from top of bank for lots less than 0.5 acres
- 50 feet from top of bank for lots from 0.5 to 2 acres
- 100 feet from top of bank for lots more than two acres

There is no prohibition, however, against subdividing lots to reduce SCA setback requirements, so there is the potential for property owners to simply subdivide lots in order to reduce setback requirements. We would like the SCA ordinance to include a prohibition against subdividing creek side properties to ensure that preexisting setback requirements are maintained. Alternately, the SCA Ordinance could allow subdivision of creek side properties, but mandate that subdivision of properties will not alter the setback requirements.

## Comment 3: Disclosure

We also recommend revising the SCA Ordinance to include a disclosure requirement to inform potential property purchasers of the legally required SCA setback. We believe that this will help County residents to comply with the SCA Ordinance.

## Closing:

If you have any questions, please contact Xavier Fernandez of my staff at (510) 622-5685 or by e-mail at [xafernandez@waterboards.ca.gov](mailto:xafernandez@waterboards.ca.gov).

Sincerely,



William Hurley  
Senior Engineer  
Leader, North Bay Watershed Section

**From:** [Andrea Taber](#)  
**To:** [Thorsen, Suzanne](#); [Lai, Thomas](#); [Rice, Katie](#); [Kinsey, Steven](#); [Adams, Susan](#); [Arnold, Judy](#); [Sears, Kathrin](#)  
**Cc:** [Beth Descala](#); [Joseph Descala](#); [Cberto3@sonic.net](mailto:Cberto3@sonic.net); [Garril Page](#); [Dan Stein](#); [Sfmarinhomes.com](http://Sfmarinhomes.com)  
**Subject:** Proposed Draft SCA Comments for Sleepy Hollow  
**Date:** Wednesday, May 01, 2013 10:48:46 AM  
**Attachments:** [Proposed amendments to the Draft SCA 30427.docx](#)  
[SCA Planning Considerations.docx](#)

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Attached please find Sleepy Hollow community comments on the proposed Draft Stream Conservation Area Ordinance. A few additional comments will be forwarded on Friday, May 3. The attachments include a list of planning considerations, as well as proposed amendments to the draft.

Please let me know if you have any questions. Thank you very much.

Sincerely,  
Andrea Taber

## PROPOSED AMENDMENTS TO THE DRAFT SCA

The draft Marin Stream Conservation Area Ordinance, which has the laudable goal of protecting the County's streams, is seriously flawed when applied to built-out areas such as Sleepy Hollow, for the following reasons:

- Because Sleepy Hollow is largely built out, the draft ordinance would provide little or no benefit for wildlife habitat, including fish.
- Because Sleepy Hollow is largely built out, the draft ordinance would provide little or no benefit for the hydraulic character of Sleepy Hollow Creek.
- In many cases, the draft ordinance would significantly degrade property values.
- For home-owners wishing to remodel, the draft ordinance would significantly increase compliance costs.
- For all affected property owners, the draft ordinance would significantly degrade property rights.
- On many properties, the draft ordinance would cause environmental damage by compelling construction on slopes and removal of mature vegetation outside the riparian corridor.

This memo will propose changes to provisions in the draft ordinance to make the ordinance less onerous to affected residents. Beyond the scope of this memo are the following:

- A discussion of the defects in the process by which the County has prepared and considered the draft ordinance.
- The question of whether the ordinance should be applied at all to areas in the County which are largely built out.

We propose the following changes in the draft ordinance. Proposed changes to the text of the ordinance are shown in *10 pt italics*, with ~~strikeout~~ and underline.

- 1) STANDARD OF REASONABLENESS. The draft ordinance is unreasonable prima facia and in general should be revised to reflect **a standard of reasonableness**. It might be suggested that the County concurs in this unfavorable assessment of the draft regulations, since the draft regulations exempt County activities from the ordinance and impose it only on private citizens.

*22.33.010 – Purpose of Chapter. The provisions of this Chapter are intended to implement the Stream Conservation Area (SCA) policies and programs in the Countywide Plan to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. This is accomplished by assuring that permitted development avoids SCAs wherever ~~feasible~~ it is reasonable to do so, minimizes any ~~unavoidable~~ unreasonable incursion into the SCA, and mitigates adverse impacts.*

*22.33.030 – Stream Conservation Area General Requirements.*

*A. Requirements.*

*Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve the maximum reasonable protection of stream and riparian resources:*

- 1. Development shall avoid SCAs wherever ~~feasible~~ it is reasonable to do so.*
- 2. Where complete avoidance of an SCA is not ~~feasible~~ reasonable, the stream channel shall be avoided to the maximum extent ~~feasible~~ reasonable and incursion into the SCA shall be reasonably minimized.*
- 3. Development within the SCA shall ~~not be permitted~~ regulated if it would directly or indirectly result in any of the following:*
  - a. Adverse alteration of hydraulic capacity;*
  - b. A net loss in habitat acreage, value, or function;*
  - c. Degradation of water quality.*

*22.63.010 – Purpose of Chapter. This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not ~~feasible~~ reasonable.*

- 2) SETBACKS. The draft ordinance is seriously flawed with respect to its requirements for setbacks. The draft Ordinance applies varying setbacks based on the gross lot size. The spirit of this provision is to allow lesser setbacks on smaller sites, which is fair in principle. However, it is a very blunt instrument which produces arbitrary and capricious results when applied to actual lots.

Consider a ½ acre lot, about 105' x 210', with a stream running along one end, no slopes or existing trees and buildings to preserve, and no easements to avoid. (See Figure 1.) With a typical rear yard setback, therefore would be enough room to accommodate the draft ordinance setback of 50' and still have a reasonable building site.

Now consider the same ½ acre lot with the stream running through the middle of it. (See Figure 2.) After accommodating the rear setback and the SCE setback, the remaining building area is a strip of land only a few feet wide, which is useless as a building site.

This problem would be even worse if the property has slopes or mature vegetation that should be preserved, buildings or swimming pools which need to be avoided, etc. The proposed setbacks would, in these instances, compel the property owner to build on slopes (potentially aggravating erosion), remove mature vegetation (worsening, not protecting, the hydraulic character of the creek and the wildlife habitat of the property), or demolish valuable existing structures.



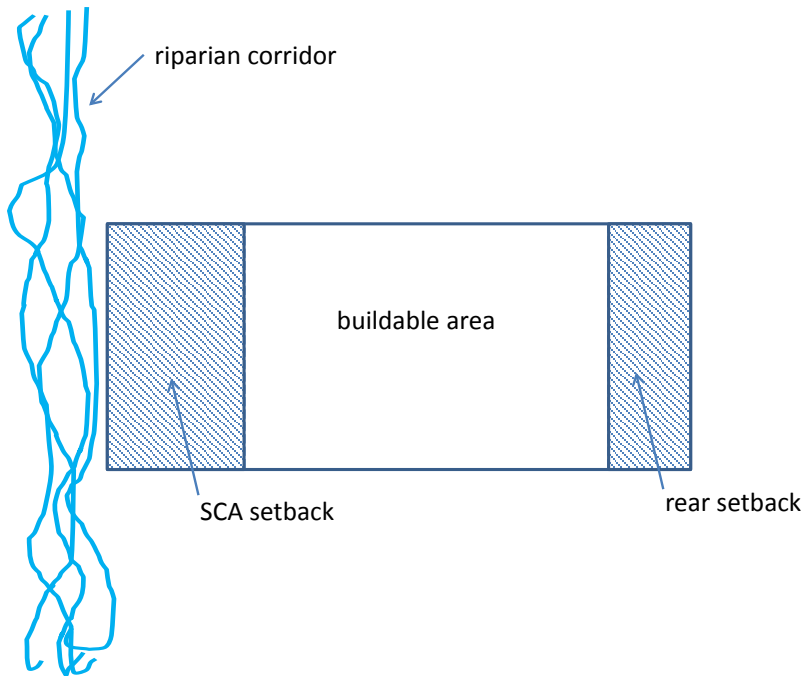


FIGURE 1  
 1/2 ACRE LOT WITH STREAM ADJACENT

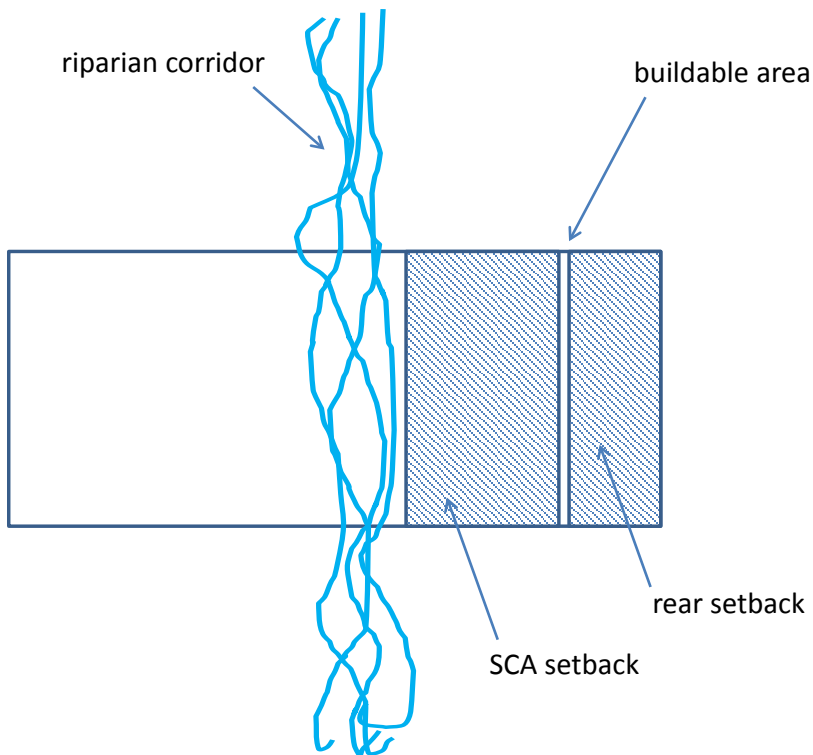


FIGURE 2  
 1/2 ACRE LOT WITH STREAM RUNNING THROUGH

The fair solution to this is to make the setback from the SCA a variable function of the depth of the usable area, excluding the stream and riparian corridor, required setbacks, slopes, areas with mature trees, easements, and areas with existing structures (including swimming pools). This solution will fairly embody the spirit of the ordinance, which is that setbacks should be greater on lots where the property owner has room to accommodate them but smaller where the property owner is more constrained.

*22.33.030 – Stream Conservation Area General Requirements.*

*B. SCA Setbacks.*

*The Stream Conservation Area includes setbacks as provided in this subsection.*

*1. SCA setbacks for properties within the City-Centered Corridor:*

*a. For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;*

*b. For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and*

*10% of the distance from the boundary of the SCA to the opposite edge of the usable area of the lot. The usable area is defined as the largest contiguous portion of the property which is suitable for building, excluding the stream and riparian corridor, required setbacks, areas where the slope exceeds the average slope of the lot by 10% or more, areas with mature trees, easements, and areas with existing structures (including swimming pools). The distance from the boundary of the SCA to the opposite edge of the usable area of the lot shall be measured parallel to the nearest property line which intersects the SCA.*

(A similar approach is appropriate for Inland Rural Corridor, Baylands Corridor, and Coastal Corridor areas, but we defer to others the specifics.)

This 10% standard is roughly consistent with the setbacks proposed in the draft ordinance. For example, under the draft ordinance, a rectangular lot 100' x 200', with a stream along one of the 100' sides, would be required by the proposed ordinance to have a setback of 20', 10% of the lot depth.

As discussed below, the draft ordinance should state the regulations unambiguously, not empower the staff to set regulations at its discretion. Hence, section 22.33.030.B.3 should be stricken.

*22.33.030 – Stream Conservation Area General Requirements.*

*B. SCA Setbacks.*

*~~3. In all Corridors, regardless of lot size, an additional SCA setback may be required based on the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the presence of other sensitive biological resources, provide options for alternative mitigation, and determine the precise SCA setback.~~*

3) SCOPE OF THE DRAFT ORDINANCE; BUREAUCRATIC EMPOWERMENT; POTENTIAL FOR ABUSE. The scope of the draft ordinance is unreasonably broad. Furthermore, the Ordinance gives extraordinary discretion to the County staff to impose requirements on

applicants that are not part of the public process for considering the ordinance. It should explicitly state the requirements that applicants must observe, rather than empowering County staff to create requirements as they see fit. This is a fundamental principle of American democracy: we have a "government of laws, and not of men", in the words of John Adams. (He meant "people".)

*22.63.020 – Applicability to Development*

*A. Application of SCA Provisions.*

*1. The provisions of this Chapter apply to permitted development within the Stream Conservation Area as described in Chapter 22.33 (Stream Protection). Except as specified in this Chapter, the exemptions from Land Use Permit Requirements in Section 22.06.050 (Exemptions from Land Use Permit Requirements) do not apply to development within the Stream Conservation Area. Compliance with this Chapter does not affect applicability of any other requirements by this or any other agency. As used in this Chapter, permitted development includes the following structures and other development activities:*

*a. All structures to the extent that they are in contact with grade, regardless of whether the work requires a building or grading permit, including fencing that entirely prevents wildlife access to a riparian habitat, decks on grade, platforms on grade, parking lots, utility crossings, pedestrian or vehicular access routes-structures, and other similar improvements, but excluding fencing, decks, access routes, and other structures supported above grade by structures comprising 20% or less of the horizontal area of the structure;*

*b. Clearing of 50% or more of the plant mass in that portion of the property occupied by the SCA ~~and~~ including the removal of any vegetation or any protected or heritage tree;*

*c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08 (Watercourse Diversion or Obstruction); ~~or~~*

*d. ~~Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity, habitat acreage, value or function, or water quality.~~*

- 4) TIER 1 PERMITS. The draft ordinance requires a Site Assessment to identify impacts and mitigation measures. This, in and of itself, is a reasonable requirement. However, the draft ordinance gives the staff the discretion to reject an application unless "the Site Assessment determines that there would be **no** adverse impacts to the SCA, or that any impacts to the SCA can be **fully** avoided " (emphasis added). This is an impossible standard to meet; as a practical matter, any activity will have some impacts. **This wording has the perverse effect of making every application a Tier 2 application at the discretion of the staff and subjecting every permit applicant to bureaucratic run-around.** Any permit applicant who complies with Requirements 2 and 3 (Development Standards and Standard Management Practices) of the Tier 1 Review Procedure should ipso facto be entitled to a permit. The Site Assessment should be used to identify reasonable mitigation measures, not to deny the permit.

The draft ordinance requires that the Site Assessment “be prepared by a qualified professional retained by the County”. Having a Site Assessment prepared by a qualified professional is appropriate. **However, having the professional retained by the County is a manifest conflict of interest and an invitation to abuse and cronyism.** Staff members inclined to deprive property owners of the economic value of their property would steer professionals onto the list that are inclined to further this outcome. Furthermore, a list of professionals established by the County would be likely to include cronies of the staff and would curtail fee competition. The applicant should be free to select any qualified professional, subject to the County’s approval based on the professional’s qualifications. The County should be empowered to review the Site Assessment Study and reject it if it is technically unsound but should not be empowered to compel the applicant to retain a County-selected consultant.

Finally, text that is overly broad or ambiguous or which unduly empowers County staff to impose restrictions on property owners should be modified to conform to a standard of reasonableness and clarity.

*22.63.030 – Stream Conservation Area Permit (Tier 1)*

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

- 1. Additions to permitted or legal non-conforming structures that existed prior to February 25, 2013, provided that such additions ~~do not increase the existing horizontal incursion into the SCA and~~ do not result in the expansion of the existing building footprint within the SCA by more than 500 square feet;*
- 2. New or expanded water supply or septic facilities, including any excavation or disturbance that is necessary for facility connections;*
- 3. New decks, patios, platforms and other similar improvement ~~as determined by the Director;~~*
- 4. Pedestrian or vehicular access routes, including paths, ramps, driveways, roads, and bridges;*
- 5. Drainage improvements, such as downdrains, pipes and swales;*
- 6. Retaining walls, erosion control structures, and similar improvement located upland from the top of bank as determined by the Director;*
- 7. Necessary flood control projects.*

*Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) Procedure if the proposed development would not incorporate applicable Standard Management Practices as required by a Site Assessment or would result in adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality that are not mitigated as required by Section 22.63.060.B.4.*

*B. SCA (Tier 1) Project Review Procedure*

- 1. Ministerial Review. The Stream Conservation Area Permit (Tier 1) shall be undertaken as a ministerial action subject to implementation of required Development Standards and project-specific Standard Management Practices.*

2. *Development Standards. Stream Conservation Area (Tier 1) Permits shall comply with the following development standards:*

- a. *Where permitted development within an SCA would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice or Site Assessment. Replacement vegetation may consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, ~~subject to County approval.~~*
- b. *New impervious area within the SCA shall not drain directly to the stream. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).*
- c. *New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.*
- d. *Clear span bridges or arched culvert designs, with no part of the bridge except support structures and foundations located below the top of bank, shall be utilized at road and driveway crossings over perennial or intermittent streams.*
- e. *Permitted work shall not result in alterations that directly or indirectly create barriers to fish migration near or within streams mapped as currently and/or historically supporting salmonids.*

3. *Standard Management Practices. Subject to approval by the Board, the CDA shall maintain a list of Standard Management Practices to be incorporated into all projects for the protection of hydraulic capacity, habitat and water quality within SCAs. The Site Assessment (Tier 1) will identify those Standard Management Practices appropriate to ensure that adverse impacts of permitted development are ~~avoided~~ reasonably mitigated. Applicable Standard Management Practices shall be implemented at the earliest reasonably possible time ~~but in any event no later than final inspection.~~*

4. *Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional retained ~~by the County~~ and paid for by the applicant, subject to approval by the County of the professional's qualifications, which approval shall not be unreasonably withheld. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; recommend Standard Management Practices corresponding to the nature of development; and determine whether the project, in conjunction with Standard Management Practices, would result in adverse impacts to the stream and riparian resources. The Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development. If the Site Assessment determines that there would be no adverse impacts to the SCA, or that any impacts to the SCA can be fully avoided through implementation of specific Standard Management Practices as part of the development approval, the County ~~may~~ shall proceed to process the application as a Tier 1 permit. If the Site Assessment determines that there would be significant adverse impacts to the SCA which cannot be fully avoided through implementation of specific Standard Management Practices, the County shall proceed to process the application as a Tier 1 permit and shall furthermore require that the applicant implement reasonable Standard Management Practices to mitigate those impacts. Standard Management Practices shall be deemed reasonable if the cost to the applicant of implementing them is 10% or less of the total cost of the development, but not otherwise.*

## 5) TIER 2 PERMITS

### 22.63.040 – Stream Conservation Area Permit (Tier 2)

A. *SCA (Tier 2) Development.* The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030, ~~and to all discretionary approvals, to any project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices, and to any development that would result in adverse impacts to the SCA.~~

#### B. *SCA (Tier 2) Project Review Procedure*

1. *Discretionary Review.* The Stream Conservation Area Permit (Tier 2) shall be undertaken ~~as a discretionary action~~ subject to incorporation of Design Standards, Standard Management Practices, and/or any other mitigations as determined through a Site Assessment (Tier 2) necessary to ~~avoid~~ reasonably mitigate adverse impacts to hydraulic capacity; habitat acreage, value or function; and water quality.

2. *Design Standards.* Stream Conservation Area (Tier 2) Permits shall comply with the following development standards:

a. All development standards applicable to Tier 1 permits provided in Section 22.63.030.B.2, except where the a Site Assessment (Tier 2) demonstrates that alternate mitigations would be more appropriate to reasonably mitigate ~~prevent~~ adverse alteration of hydraulic capacity; a net loss in habitat acreage, value or function; or degradation of water quality.

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

1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of the greater of five years and the length of time necessary for the replacement vegetation to mature, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of ~~2:1~~ 1:1.

## 6) DECISION AND FINDINGS

### 22.63.060 – Decision and findings

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

For a SCA (Tier 1) Permit:

A. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1))

B. Either (1) the project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality or (2) impacts caused by the development are mitigated as provided in Section 22.63.030.B.4.

*For a SCA (Tier 2) Permit:*

*A. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2))*

*B. Either (1) The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality or (2) impacts caused by the development are mitigated as provided in Section 22.63.040.B.2. Exceptions may be allowed if the lot falls entirely within the SCA or development on the lot entirely outside the SCA is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.*

## 7) Related Development Code Amendments

### *8. Add new definitions.*

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

- 8) AMENDMENTS TO THE GENERAL PLAN. To the extent that these proposed modifications to the draft ordinance require changes to the General Plan, we propose that the ordinance be modified forthwith and amendments to the General Plan be adopted to be consistent with these changes retroactively. Alternatively, we propose that the draft ordinance, insofar as it is applicable to City Centered Corridors, be set aside until the General Plan can be modified appropriately.

## **SCA PLANNING CONSIDERATIONS FOR SLEEPY HOLLOW**

The residents of Sleepy Hollow overwhelmingly oppose the draft SCA Ordinance because it provides no environmental benefit to Sleepy Hollow. A petition has been circulating throughout the community and to date has accumulated several hundred signatures.

It is our position, as well as SPAWNS, that the proposed ordinance should address Coho salmon protection in San Geronimo Valley at the present time, and that the city-centered corridors, where there is no Coho salmon, should be addressed individually and at a later date.

Following is a list of community concerns and planning deficiencies:

- The County has a mandate to directly inform property owners of a proposed action which may affect their property. The County generated list of Sleepy Hollow property owners is incomplete and excludes a significant number of homes in proximity to existing intermittent and ephemeral streams.
- The adoption of the SCA Ordinance has been fast-tracked and does not provide adequate time for public review and comment and substantive draft modifications.
- Although completion of Countywide Plan Implementing Programs, such as BIO-4.b and BIO-4.d, is not mandated prior to the implementation of the SCA Ordinance, it is reasonable to assume that studies to “Re-evaluate the SCA Boundaries” and “Establish Functional Criteria for Land Uses in SCAs” would provide critical and relevant information, and therefore should be completed prior to adopting the ordinance.
- The draft SCA Ordinance will diminish real estate values in Sleepy Hollow. Prospective buyers will be intimidated by title constraints imposed by the ordinance, uncertainty and excessive permitting costs related to improvements, and realtor disclosures which will create ambiguity and threaten sales.
- Sleepy Hollow is almost completely built out, has it’s own protective measures in place, and should be identified as such in the SCA



Ordinance. These include building ordinance No. 784 R-1:B-D which identifies setbacks, building restrictions, and guidelines for development in the community, as well as the Countywide watercourse preservation ordinances 11.08.010/11.08.020. The Sleepy Hollow Homeowners Association Creek Committee successfully manages flood protection, creek stewardship, hydrology, wildlife protection, and education in the community. Additional regulations are unnecessary, onerous, and duplicate what is already in place.

- The September 10, 2012 ruling by Judge Duryee specifically addresses Coho salmon in San Geronimo Valley. Coho salmon do not exist in the intermittent and ephemeral streams of Sleepy Hollow.
- The SCA Ordinance does not provide any additional environmental benefit or protection for Sleepy Hollow.



## Salmon Protection And Watershed Network

PO Box 370 • Forest Knolls, CA 94933

9255 Sir Francis Drake Blvd. • Olema, CA 94950

Ph. 415.663.8590 • Fax 415.663.9534

*www.SpawnUSA.org*

1 May 2013

Marin County Planning Commission

**RE: Draft Stream Conservation Ordinance**

**Dear Commissioners:**

We submit these comments on behalf of the thousands of members, volunteers and supporters of SPAWN, and residents from throughout the County and greater Bay Area, that support our position to enhance protections of the critically endangered coho salmon of Marin County of protect and restore the species.

In addition, our submission includes an Open Letter addressed to the Marin Board of Supervisors from over 100 leading scientists in California (including Dr. Sylvia Earle, Dr. Peter Moyle of UC Davis, and Dr. John McCosker) and across the globe who recognize the importance of protecting Marin's population of coho salmon to the recovery of this species throughout the Central California coast.

In summary, the current draft ordinance needs significant modifications to protect and restore coho salmon and to meet the goals of the Marin County-Wide Plan including:

1. Mitigated Development- All new construction and replacement of current vegetation inside the SCA should be mitigated.
2. Definition of Riparian Vegetation- All native vegetation growing inside the SCA should be protected as riparian vegetation, whether it is "water-table dependent" or "facultative" as it provides various ecological functions to this sensitive habitat type.
3. Ephemeral Stream Protections and Setbacks- These should apply to all tributaries to anadromous to salmonid-bearing streams, as stated in the County-Wide Plan.
4. Disclosure- The County-Wide Plan calls for no net loss of habitat, yet the County can never evaluate this, as it has no baseline. We propose that all future development require a site plan showing all current development, and that a similar site plan be filed at time for sale of all parcels.
5. Staging and Timing- The aggressive pace of drafting and finalizing this ordinance is unreasonable for many of the watersheds in the County. While SPAWN has asked for better protections in the Lagunitas Watershed for more than a decade and its residents have enjoyed the fruits of various studies, public workshops, landowner assistance programs, etc., this is not the case for many other watersheds, who have had little time to study and understand the implications of this rushed process. We believe more time is necessary to allow proper public input into the process, especially outside the Lagunitas Creek Watershed.

In addition as our addendum we submit the following:

- i. Dikes & Berms- Language needs to be clarified so as not to inadvertently exclude most streams
- ii. Government Exemptions and Private Resorations- Protections should apply to projects no matter who is the implementing actor, of course allowing exemptions for projects that benefit the public welfare and safety.
- iii. Channels vs. Ditches- Language needs to be clarified so ditches and streams are easily differentiated, and that ensures ditches are excluded from protections, but protections of current stream courses.
- iv. Agriculture & Horses- Agriculture should not be exempt from SCA protections. The placement of horses inside the SCA should be prevented, and while their impact is similar to the keeping of cows and other livestock on agricultural parcels, they do not meet and should not be considered “agriculture” and should benefit from any exemptions that may be provided to agricultural livestock.

Sincerely,

Todd Steiner  
Wildlife Biologist & Executive Director

Gordon Bennett  
Consultant

**The Sierra Club - Marin Group**  
**The Environmental Action Committee of West Marin**  
**The Center for Biological Diversity**  
**The Salmon Protection and Watershed Network**

**May 1, 2013**

**Together we urge that the Streamside Conservation Area (SCA) Ordinance be modified to meet the following minimum criteria:**

- 1. Mitigated Development:** New development proposed on landscaped or cleared areas in an SCA should require mitigation for the square footage impacted, including any additional defensive space. Good construction practices do not substitute for the reduction in habitat acreage, value and function caused by such development. Since the square footage of a parcel is fixed and the landscaped area converted to development cannot be replaced, then it must be mitigated by at least a 1:1 restoration of native riparian vegetation in an undeveloped area.
- 2. Vegetation:** Native vegetation in an SCA should be protected regardless of whether those species require access to the water table. Such vegetation supports the ecological services provided by riparian vegetation and in some cases provides the only substitute when riparian vegetation has been removed.
- 3. Tributaries:** All “ephemeral” tributaries to salmon streams should have 100-foot SCA protections to support this sensitive species if studies show them to be hydrologically connected to those salmon streams. All other “ephemeral” tributaries should be mapped with interim ~~35~~ 50 foot SCA protections until a hydrological or biological study determines whether they should have new 100-foot SCA protections or default to the existing 20-foot DPW protections.
- 4. Disclosure:** A delineation and disclosure of all development within 35 feet of a creek bank should be required for significant development permits in an SCA and at point of sale. A permanent record should be required to be kept that delineates all mitigation areas.
- 5. The Ordinance Process should be staged.** The current SCA Ordinance, with its rapid pace and limited outreach efforts should be focused in the San Geronimo Valley. The Ordinance’s outreach and mapping should then be prioritized watershed-by-watershed from the most critical coho watersheds to steelhead watersheds and other creeks.

**SCIENTIST OPEN LETTER TO MARIN COUNTY BOARD OF SUPERVISORS**  
**April 2013**

Wild coho salmon populations in California have undergone a ninety-percent decline since the 1940s. The causes of this decline, such as urbanization, dams, and logging operations are well known and documented. Central California Coast (CCC) coho salmon were listed by the US government as Threatened in 1997 and uplisted to Endangered status in 2005. The State of California listed the population north of San Francisco as endangered in 2002. In short, coho salmon are in danger of extinction throughout coastal California. Because of this, the Lagunitas Creek watershed is exceptionally important for its survival; it is one of the few watersheds that still supports a self-sustaining population of this iconic fish.

The Lagunitas Creek Watershed is listed as “critical habitat” for coho under the Endangered Species Act. As scientists concerned with the health and recovery of salmonid populations throughout California, we support increased habitat protections for coho in the Lagunitas Creek Watershed, which makes up approximately 10- 20% of the total current population of CCC coho salmon.

Lands in the lower reaches of the Lagunitas Creek watershed are relatively well protected (and include State Parks, National Parks and Recreation Areas, and County and Water District property) and maintain habitat values important to coho and other native species. But, 30-50 percent of spawning in the Lagunitas Creek Watershed occurs in the undammed headwaters of the tiny (10 square mile) San Geronimo Valley. Out-migration research has documented that as much of 1/3 of Lagunitas Creek coho rear in these headwater reaches annually.

Marin County’s San Geronimo Valley Existing Conditions Report (2009), prepared by Stillwater Sciences<sup>1</sup> as part of a Salmon Enhancement Plan, documented the percentage of impervious surface for seven reaches of Geronimo Creek at 7.3-20.8 per percent, with four of the reaches exceeding 15 percent. Furthermore, this study conducted detailed analysis on 17 parcels and demonstrated the limited amount of riparian habitat currently extant in this watershed: ten parcels had no intact riparian habitat, four had a width of less than 22 feet, and the remaining three had a width of 30, 36 and 92 feet (summarized in Table A2.2 of the report). This data demonstrates the relatively high level of urbanization that already threatens the survival of coho here.

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<sup>1</sup> (available at [http://www.spawnusa.org/cgi-files/0/pdfs/1254863223\\_County\\_of\\_Marin\\_Existing\\_Conditions\\_Report\\_2008.pdf](http://www.spawnusa.org/cgi-files/0/pdfs/1254863223_County_of_Marin_Existing_Conditions_Report_2008.pdf) )

The San Geronimo Valley continues to urbanize with new housing development trending toward larger houses, and development on existing parcels expanding with building additions and additional loss of riparian habitat. This affects coho salmon survival because the juveniles need cold clear streams with lots of riparian trees and in-stream woody debris for cover and minimal disturbance. Loss of current and potential riparian habitat and floodplains to development poses significant additional threats to the survival of coho here.

We appreciate that Marin County Supervisors are now considering a new Stream Conservation Ordinance. While the Marin County General Plan calls for no net loss of habitat, the current draft ordinance fails to come close to meeting this goal.

**WE THE UNDERSIGNED, CALL ON MARIN COUNTY SUPERVISORS TO ENACT A STRONG ORDINANCE THAT INCLUDES THE FOLLOWING PROVISIONS THAT WILL HELP TO RESTORE COHO POPULATIONS:**

1. Any development within 100-foot setback from creeks should be strongly discouraged. New development in this buffer that is allowed should require mitigation if new structures or activities reduce the potential for rehabilitation of riparian habitat, even if it is currently disturbed by lawns, patios, etc. A 2:1 or higher mitigation ratio is recommended to improve on current conditions that already include a significant loss of riparian habitat.
2. Ephemeral Tributaries to Salmon Streams should be protected with a 100-foot setback. Presently, the draft ordinance only provides for the 100-foot setback if 100 feet of “continuous” riparian vegetation is present, basically exempting a large percentage of important habitat, thus decreasing stream habitat for juvenile coho. We see no scientific basis for limiting protection only to ephemeral streams with “100 feet of continuous riparian vegetation.” A functioning network of ephemeral streams mitigates flooding and forms the headwaters without which mainstems could not support salmon.

We realize that these requested ordinances will inconvenience landowners, but without them, development in the Geronimo Valley will likely lead to extirpation of coho salmon from the watershed, making the recovery of coho salmon in the Lagunitas Creek watershed increasingly problematical.

The result will be further decline of coho salmon in California. The recovery of coho salmon as a viable species in California will only happen as the result of many small positive actions on many streams, especially by landowners who have chosen to live in coho watersheds. The proposed ordinances will provide significant help to one of the most important coho populations left. We would like to see Marin County be a

leader in coho salmon conservation, rather than just one more example of local government failing to protect local resources.

Sincerely yours,

**(current list as of 30 April 2013)**

#	Name	Title	Affiliation *(listed for identification purposes only)
1	Peter Moyle	PhD, Professor	University of California at Davis*
2	John McCosker	PhD	
3	Sylvia Earle	PhD	
4	Alex Hearn	PhD, Director of Conservation Science	TIRN
5	Chris Pincetich	PhD, Outreach & Education Manager	TIRN
6	Leo Salas	PhD, Quantitative Ecologist	PRBO Conservation Science*
7	Tierney Thys	PhD, Director	Ocean Sunfish Research & Tagging Program*
8	Bruce Baldwin	PhD, Professor & Curator	UC Berkeley*
9	Bruce MacFarlane	PhD, Supervisory Research Fisheries Biologist [retired]	UC Santa Cruz*
10	Eric Chapman	BS, Staff Research Associate	UC Davis*
11	Judith Innes	PhD, Professor Emerita	UC Berkeley*
12	Cynthia LeDoux-Bloom	PhD, Fisheries Scientist	
13	Pedro Luis Janela Pinto	MSc/PhD Candidate	UC Berkeley*
14	Myfanwy Johnston	PhD Candidate	UC Davis*
15	Matt Stoecker	Principal Biologist	Stoecker Ecological, UCSB*
16	Jacob Katz	PhD, Director Salmon/Steelhead Initiatives	CalTrout*
17	David DeSante	PhD, President	Institute for Bird Populations*
18	Michelle LaRue	PhD, Research Fellow	University Minnesota*
19	Gary Grossman	PhD, Professor Animal Ecology	University of Georgia Athens*
20	Judith Weiss	PhD, Professor Biological Sciences	Rutgers University*
21	Pasan Samarasin	PhD Candidate	University of Toronto*
22	Michael Park	MS Conservation Medicine	Tufts University*
23	Gary Rennie	Analyst, Office of Ecosystem Protection	US EPA, New England*
24	John Mola	Graduate Student	Humboldt State University*

25	Geoff Patton	PhD, Marine Biologist/Toxicologist	
26	Melanie Truan	PhD, Staff Research Associate	Museum of Wildlife, UC Davis*
27	Preston Brown	Intern, Invasive Fish Eradication	SPAWN
28	Michael Swift	PhD, Biology Dept.	St. Olaf College, MN*
29	Eric Huber	MS, PhD Candidate	UC Berkeley*
30	John Cooper	PhD	Cooper Environmental Research*
31	Shaye Wolf	PhD, Science Director	Climate Law Institute, Center for Biological Diversity*
32	Ruslan Grigoriev	Field Hydrologist	Virginia Tech University*
33	Patrick Lizon	Watershed Field Coordinator	VA Dept. Conservation & Recreation*
34	Courtney Collins	Graduate student	Georgia University, Odum School of Ecology*
35	Joseph Cech, Jr	PhD, Professor Emeritus	UC Davis*
36	John Szczepanski	PhD, Chief Fish Biologist	Coastal Vision LLC*
37	William Szelistowski	PhD, Associate Professor of Biology	Marine Science Eckerd College*
38	Richard Bailey	PhD, Executive Director	The Lake Merritt Institute*
39	Jamillynn Poletto	PhD Candidate	UC Davis*
40	Brian Waters	MS, Fisheries Scientist	Former President CALNEVA*
41	Todd Steiner	MS, Executive Director	TIRN
42	Adina Merenlender	Cooperative Extension Specialist	UC Berkeley*
43	Vincent Resh	PhD Professor, Dept. Env. Sci. Policy & Man.	UC Berkeley*
44	Emily Moran	PhD, postdoctoral researcher	ETH Zurich*
45	Sarah Frias Torres	PhD, Research Collaborator	Smithsonian Marine Station, Florida*
46	Kimberly Bolyard	PhD, Associate Professor, Dept. Biology	Bridgewater College, Virginia*
47	Nicholas Rosenstock	PhD Researcher	Lund University*
48	Cheryl Kassed	PhD, MSPH, Vice President	Maryland Alliance for Greenway Improvement and Conservation*
49	Ted Grantham	PhD, Postdoctoral Researcher	UC Davis*
50	William Webb	PhD, Adjunct Professor	De Anza College*
51	Jerry Smith	PhD, Ass. Professor Biology	San Jose State University*
52	Ellen Hines	PhD, Professor of Geography	Tiburon Center SFSU*
53	Peter Pyle	Biologist	Institute for Bird Populations, Point Reyes



54	James Adams	PhD, [Former] Director	Station* Ecological Services, PG&E*
55	Greg Cunningham	PhD, Associate Professor	St. John Fisher College*
56	David Inouye	PhD, Professor	University of Maryland*
57	Tim Duane	PhD, Professor Env Sciences	UC Santa Cruz*
58	Kerry Nichols	PhD, Postdoctoral Researcher	Stanford University*
59	Paola Bouley	MSc, PhD Candidate	
60	Reuven Walder	MSc	
61	Meredith Elliott	Senior Scientist	PRBO Conservation Science*
62	Annie Lalancette	PhD Candidate	Concordia University*
63	Lucas Siegfried	MS, PhD Student	UC Davis*
64	Julie Day	Fishery Biologist	Pacific States Marine Fisheries Commission*
65	Zeb Hogan	PhD, Ass. Res. Prof	U. Nevada, Reno*
66	Ayesha Gray	PhD, Restoration/Estuarine Ecologist	Earth Design Consultants, Inc. *
67	Laurel Collins	Fluvial Geomorphologist	Watershed Sciences*
68	Norm Stacey	PhD Professor Emeritus	University of Alberta*
69	Jonathan Baskin	PhD Professor Emeritus	Cal State Poly. Uni. Pomona*
70	Gianluca Polgar	PhD	U. Brunei, Dept. Biology*
71	Robert Rees Rofen	PhD, Director	Aquatic Research Institute*
72	Thomas Ihde	PhD, Fisheries Modeler	Versar, Inc*
73	Camm Swift	PhD, Emeritus, Section of Fishes	LA County Nat Hist Museum*
74	AM Sajina	PhD	Central Inland Fisheries Research Institute, Kokata, India*
75	Susan Levenson	Watershed Awareness Coordinator	Friends of San Leandro Creek*
76	Jon Rosenfield	Conservation Biologist	The Bay Institute*
77	Kevin Padian	PhD, Professor & Curator	UC Berkeley*
78	Morgan Bond	PhD, School of Aquatic & Fishery Sciences	U. Washington*
79	George Brooks	PhD, Prof. Integrative Biology	UC Berkeley*
80	Zahid Sharif Mirza	Scientist,	Fisheries Research & Training Institute, Lahore, Pakistan*
81	Yin-Ki Tam	PhD Candidate	National Taiwan of Ocean University, and Technician of Coastal Marine Laboratory, Hong Kong University of Science and Technology*

82	Omkar Byadgi	PhD Scholar	National Pingtung University of Science and Technology*
83	Michelle Duong	MS	University of Queensland*
84	Raj Naresh Gopal	Senior Executive	National Fisheries Development Board, Hyderabad, India*
85	Denise Wilson	MS, Botany Curator	BLM*
86	Chien-Hsiung Wang	Professor	National Taiwan University*
87	William Resetarits, Jr	Professor of Biological Sciences	Texas Tech University*
88	Virginia White	Associate Professor	Riverside City College*
89	Dan Hasselman	PhD, Research Scientist	UC Santa Cruz*
90	Patrick Martin	PhD, Associate Prof. Ecology	Colorado State University*
91	Steven Oberbauer	PhD, Professor	Florida International University*
92	Jim Aborn	Environmental Specialist	UC Davis*
93	Jeff Vanderpham	PhD	Vanderpham Consulting*
94	Donatella del Piero	PhD, Dept. Life Sciences	University of Trieste, Italy*
95	Pranaya Kumar Parida	PhD, Assistant Professor	Fisheries Resources Management, College of Fisheries, Punjab, India*
96	Johannes Holmen	Environmental adviser	Multiconsult (private consulting company); also affiliated with the University of Oslo*
97	Tamara A. Newcomer	PhD Candidate in Environmental Science	University of Maryland*
98	Bronwyn Bleakley	PhD, Assistant Professor	Stonehill College*
99	Adam Schwindt	MS, PhD Candidate	Colorado State University*
100	Allison Mastalerz	Graduate Student	Biology Department, University of Cincinnati*
101	C. B. Halpern	PhD Research Professor	University of Washington*
102	Andres Santana	M.Sc. Environmental Management and Restoration	Organization for Tropical Studies*
103	Noel Wingers	Marine Biologist, MS Candidate	Loma Linda University*
104	Marcel Bigue	Marine Program Director	WildAid*
105	Laura Wright	Project Manager	Broward County Sea Turtle Conservation Program Nova Southeastern University*
106	Scott Veirs	PhD, President	Beam Reach Marine Science and Sustainability School*
107	Sarah E. Moffitt	PhD Candidate	University of California at Davis *

108	Christine May	PhD, Assistant Professor, Dept. Biology	James Madison University*
109	John A Musick	Prof. Emeritus	Va Inst. Mar Sci. *
110	Ethan Mora	PhD Candidate	UC Davis*
111	Dan Swezey	PhD Candidate	Bodega Marine Laboratory*
112	Inez Devlin-Kelly	Professor & Levan Scholar	Bakersfield College, Dept. Biological Sciences*
113	Peter Schulze	PhD, Professor of Biol. & Env. Sci.	Austin College, Sherman, TX*
114	Lance Morgan	PhD, President & CEO	Marine Conservation Institute, CA*
115	Daniel Barshis	PhD, Assistant Project Scientist	UC Santa Cruz*
116	John Kelly	PhD, Director of Conservation Science	Audubon Canyon Ranch*
117	Jennifer Jones	BS, BA, Botanist	
118	Jacob Levenson	Marine Biologist, Director of Outreach	Conserve. IO*
119	Carol Leonard	MS	Coastal Wildlife Club, Inc*
120	Susana Cardenas	PhD Candidate	UC Davis*

**New development proposed on landscaped or cleared areas in an SCA should require mitigation for the square footage impacted, including any additional defensive space. Good construction practices do not substitute for the reduction in habitat acreage, value and function caused by such development. Since the square footage of a parcel is fixed and the landscaped area converted to development cannot be replaced, then it must be mitigated by at least a 1:1 restoration of native riparian vegetation in an undeveloped area.**

At the 4/1/13 Planning Commission meeting beginning at 04:08 on the video, Assistant Planning Director Tom Lai stated: *"We have to harmonize all the policies with all the programs... So I would want to look at both the policy, the background behind that policy and the program before coming out with... a regulation that meets the intent of both..."*

The relevant policy is BIO 4.1: *Restrict Land Use in Stream Conservation Areas.*

The relevant program is BIO-4.a: *"Adopt Expanded SCA Ordinance... Such an ordinance could, by way of example... consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA"*

The relevant regulation is draft Ordinance 22.63.030 A. 1. *Permitted development activities... include... additions [that] do not increase the horizontal incursion into the SCA and do not result in the expansion of the existing building footprint within the SCA by more than 500 square feet.*

SPAWN agrees that the Ordinance is not bound by the literal words of BIO-4.1 and BIO-4.a but nevertheless must "meet the intent of both." Thus we looked, as Mr. Lai suggested, at the relevant background. Planning Commission videos 3/19/07 (04:35:10 to 04:55:55) and 5/7/07 (05:35:03 - 05:39:00) show that the Commission first intended to prohibit all additional incursions in the SCA, then suggested allowing a one-time 500 sq ft addition to the 2<sup>nd</sup> story (the intended meaning of additions that *"do not increase the existing horizontal incursion"*). This 5/7/07 language was retained in the final CWP, studied in the Environmental Impact Report and represents the "4 corners" for the 2007 CWP that the Ordinance must stay within.

Yet the Ordinance (22.63.020 B 2 b) proposes to exempt incursions on "previously disturbed areas" and mitigate only when "native riparian vegetation" is removed (despite the fact that many parcels do not contain such vegetation). Thus the Ordinance exempts virtually all development in the SCA from mitigation largely due to a new definition of "previously developed" that includes landscaping and thus differs substantially from the well-accepted definition of "previously developed" ("lot coverage") that is used the 2013 Development Code.

Mr. Lai states: *"If the project can't demonstrate that it will not create an impact to water quality, hydrological function, or habitat, then it won't be able to be approved..."* But good construction practices alone do not substitute for the reduction in habitat acreage, value and function of landscaping, which has largely replaced native riparian vegetation and must be mitigated. A CWP policy and program intended to restrict SCA incursions cannot stay within the 4 corners of the CWP when implemented by an Ordinance that exempts unmitigated SCA incursions.

However, reasonably within those 4 corners are two suggestions: 1) the concept of "like-on-like" that would exempt development (like a garden shed) proposed within the existing "lot coverage"; and 2) the concept of a "minor 500 sq ft incursion" outside the existing "lot coverage" and more distant from the creek than the existing home. But, both concepts must acknowledge the impact of Public Resources Code 4291, which requires a 100-foot defensible space around structures. Thus, a poorly-sited 10'x10' shed could trigger an additional 3/4 acres of vegetation management, while a carefully-sited shed could trigger no additional requirement.

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

**22.63.020 A.**

~~c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08...~~

~~d. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.~~

**22.63.020 B 2.**

~~b) Structures and development activities pursuant to Section 22.63.020.A.1 located within a previously "disturbed area"s (as defined under New Definitions) as determined by the Director provided that such additions do not increase the existing defensible space requirement (per Public Resources Code 4291) as determined in writing by the appropriate Fire Official.~~

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

1. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08...

2. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.

~~3. Additions to permitted or legal non-conforming structures~~ Structures and development activities pursuant to Section 22.63.020.A.1 located within a "greenfield area" (as defined under New Definitions) that existed prior to February 25, 2013, provided that such additions do not increase the existing horizontal incursion (as defined under New Definitions) into the SCA and do not result in the expansion of the existing building footprint or the existing defensible space requirement (per Public Resources Code 4291) within the SCA by more than 500 sq feet; such additions include, but are not limited to:

**22.63.040 C. Mitigation Criteria.**

Projects requiring a Tier 2 Permit shall be mitigated with native riparian vegetation per 2) below when proposed on a "greenfield area". Such mitigation area shall be based on the "impact footprint" (the project footprint plus any additional square footage of defensible space within the SCA (per Public Resources Code 4291) and shall require a minimum replacement or enhancement ratio of 1:1 for incursions that do not increase the horizontal incursion of the "impact footprint" into the SCA measured at the primary residence and a ratio of 2:1 for incursions that do increase the horizontal incursion.

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

*1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. ~~Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a~~ minimum replacement or enhancement ratio of 2:1.*

*2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require replacement and enhancement planting to be monitored and maintained until successful and a schedule of mitigation work and development work...*

**8 New Definitions Disturbed Area.** An area that has experienced significant alteration from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities, as determined by the Director. the area within the “lot coverage” as defined in the 2013 Development Code; a “greenfield area” is the area outside the “lot coverage.”

**Horizontal Incursion.** Development on a “greenfield area” that is also a “highly sensitive” area. That “highly sensitive area” extends to the greater of 35 feet from the stream bank or the distance from the stream bank to the point of the living space in the primary residence farthest from the stream bank.

Below is a graphic representation of SPAWN’s requested amendments:

EXEMPT SUBJECT TO DETERMINATION (Like-on-Like)	TIER ONE PERMIT (Minor Incursion)	TIER TWO PERMIT (Major Incursion)
<p><b>22.63.020 A.</b></p> <p><i>c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08..</i></p> <p><i>d. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.</i></p> <p><b>B 2. b) Structures and development activities pursuant to Section 22.63.020.A.1 located within a previously “disturbed area”s (as defined under New Definitions) as determined by the Director provided that such additions do not increase</b></p> <p><u>the existing defensible space requirement (per Public Resources Code 4291).</u></p>	<p><b>22.63.030 A.</b></p> <p><u>1. Minor deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08..</u></p> <p><u>2. Any other minor activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality; major such activities may require a Tier 2 permit</u></p> <p><u>3. Additions to permitted or legal non-conforming structures</u></p> <p><u>Structures and development activities pursuant to Section 22.63.020.A.1 located within a “greenfield area” (as defined under New Definitions) )</u></p> <p><u>that existed prior to February 25, 2013, provided that such additions do not increase the existing horizontal incursion into the SCA (as defined under New Definitions) and do not result in the expansion of the existing building footprint or the existing defensible space requirement (per Public Resources Code 4291)</u></p> <p><u>within the SCA by more than 500 sq feet;</u></p> <p><u>such additions include but are not limited to:</u></p>	<p><b>22.63.040 C. Mitigation Criteria.</b></p> <p><u>Projects requiring a Tier 2 Permit shall be mitigated with native riparian vegetation per 2) below when proposed on a “greenfield area.” Such mitigation area shall be based on the “impact footprint” (the project footprint plus any additional square footage of defensible space within the SCA per Public Resources Code 4291) and shall require a minimum replacement or enhancement ratio of 1:1 for incursions that do not increase the horizontal incursion of the “impact footprint” into the SCA and a ratio of 2:1 for incursions that do increase the horizontal incursion</u></p> <p><u>Where development would occur within an SCA, and additional adverse impacts to hydraulic capacity, habitat acreage value or function or water quality are identified, mitigation shall conform to the provisions below and shall be incorporated into the project or be required through conditions of approval. The Site Assessment (Tier 2) shall present options for alternative mitigation that meet the following criteria.</u></p> <p><u>1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1.</u></p> <p><u>2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require replacement and enhancement planting to be monitored and maintained until successful and a schedule of mitigation work and development work...</u></p>

**Native vegetation in an SCA should be protected regardless of whether those species require access to the water table. Such vegetation supports the ecological services provided by riparian vegetation and in some cases provides the only substitute when riparian vegetation has been removed.**

Vegetation protected by the SCA Ordinance must be clearly defined so that homeowners can have certainty. Unfortunately, confusion may have arisen at the 4/1/13 Commission hearing, when the County biologist stated that “facultative” riparian vegetation may be “associated with a watercourse” but is not “water-table-dependent.”

Yet the 2009 San Geronimo Valley Salmon Enhancement Plan (SGV SEP) documented that much of the “water-table-dependent” vegetation has been removed, but remaining facultative riparian species (bay, redwood, oak) perform the same critical ecological functions. Thus for the SCA Ordinance to protect streams, this “facultative” riparian vegetation needs to be protected just as much as the “water-table-dependent” species.

This more inclusive definition of protected species can be justified by the CWP definition of “riparian” (*associated with or dependent*), which is more inclusive than the CWP definition of “riparian vegetation” (*associated with...and relying*). Further at the 4/1/13 Commission meeting, Planner Suzanne Thorsen explained protected riparian vegetation is based on “an interplay of various factors” (beyond dependency).

Similar confusion about protected vegetation was resolved at the 7/19/10 PC hearing on the Native Tree Ordinance by reference to a specified list. Thus the SCA Ordinance could resolve uncertainties by a list including facultative and dependent woody and herbaceous native riparian species, as well as young native trees that represent the inter-generational transfer of critical ecological functions performed by mature trees now protected by the Native Tree Ordinance.

Such an inclusive list of protected SCA vegetation would resolve potential problems of mitigations that might require planting of “water-table-dependent vegetation” when the available mitigation areas may not support “water-table-dependent vegetation.” Further, mitigations that might require planting “water-table-dependent vegetation” should not result in the removal of facultative vegetation that performs similar ecological functions (instead landscaped areas should be replaced by the mitigation). Lastly, any extension of the SCA based on the presence of “woody riparian vegetation” that is facultative could be justified by a finding that the habitat in which that facultative species is now growing could also reasonably support “dependent” native woody riparian species.

**SPAWN thus requests that the draft Ordinance be amended as follows (deleted text is shown as ~~strike-through~~ and new text is shown as underline):**

8. Add new definitions.

Protected Vegetation: Woody riparian vegetation protected under the SCA Ordinance is listed in the 2009 San Geronimo Valley Salmon Enhancement Plan; herbaceous riparian vegetation protected under the SCA Ordinance is listed Appendix X.

**All “ephemeral” tributaries to salmon streams should have 100-foot SCA protections to support this sensitive species if studies show them to be hydrologically connected to those salmon streams. All other “ephemeral” tributaries should be mapped with interim 35 foot SCA protections until a hydrological or biological study determines whether they should have new 100-foot SCA protections or default to the existing 20-foot DPW protections.**

At the 4/1/13 Planning Commission meeting beginning at 04:08 on the video, Assistant Planning Director Tom Lai stated (emphasis throughout is ours):

*“We have to harmonize all the policies with all the programs... So I would want to look at both the policy, the background behind that policy and the program before coming out with what is a regulation that meets the intent of both...”*

The relevant policy is BIO 4.1: *An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream.*

The relevant program is BIO-4.a: *Adopt Expanded SCA Ordinance. Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary...*

The relevant regulation is draft Ordinance 22.33.030 B.4: *For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.*

SPAWN agrees with Mr. Lai that the Ordinance must “meet the intent of both” BIO-4.1 and BIO-4.a as informed by the relevant background, which is the 7/19/10 Commission video at 03:07:21, when Mr. Lai said of tributaries in the San Geronimo Valley:

*“We are looking at only those ephemerals that contribute to the health of the fish and the watershed, rather than those...having riparian vegetation.”*

This video provides background and proof that the County extended SCA protections (consistent with BIO 4.1 and BIO-4.a) to ephemeral tributaries that support salmon (*a special-status species*)...regardless of the extent of riparian vegetation. This extension of SCA protections to ephemeral tributaries that support salmon were studied in the Final Environmental Impact Report (FEIR) and represent the “4 corners” of the 2007 Countywide Plan (CWP) that the County states the draft Ordinance must stay within.

Consequently, a CWP policy and program that both clearly intend to protect ephemeral salmon tributaries regardless of riparian vegetation cannot be implemented by an Ordinance that protects ephemeral salmon tributaries only with riparian vegetation. The draft Ordinance’s elimination of the CWP phrase “*support a special-status species*” is a significant reduction of CWP policy, precedent and protections, particularly for the California Red Legged Frog (CRLF) that uses these ephemeral streams for seasonal dispersal. (USFWS 81420-2010-F-0634). All of Marin County is within the Fish and Wildlife Service’s CRLF Recovery Unit #3.



The FEIR response to comments states (8.0-87) that the new 2007 CWP intends to strengthen protections for ephemeral creeks compared to the 1994 CWP:

*The provisions in the CWP Update do not reduce the protections for a SCA but actually strengthen them. The 1994 CWP contains no reference to herbaceous riparian vegetation as a criteria used in defining an SCA. ...The revisions to Policy **BIO-4.1**...regarding ephemeral drainages were made to clarify important sensitive resources... not reduce protections for this type of stream...The language from the 1994 CWP regarding “value for flood control, water quality, or habitat for a migratory species” was so vague and difficult to define that, by County practice, it typically did not contribute to further designation of ephemeral streams as a SCA.*

Consistent with these 2007 FEIR Responses, the County’s 2007 biologist confirmed at the 2/26/07 hearing that the reference to “riparian vegetation” was added to strengthen SCA protections. Yet County’s 2013 biologist stated at the 4/1/13 hearing that the reference to “riparian vegetation” would exclude SCA protections. Yet the County proposes to rely on such biological opinions, per the 7/19/10 video at 03:07:21, when Mr. Lai said: “*We can provide the scientific basis for saying that, yes, it should be included because it’s an important fish creek...a number of ephemerals [were] removed based on subsequent verification in the field or biological reports.*” But SPAWN believes there is no scientific consensus for determinations of “biological importance.

The County’s current policy of excluding SCA protections from ephemeral tributaries to anadromous fish streams pending a subjective determination of biological importance fosters controversy because a property owner can protest the inclusion of an ephemeral tributary, but SPAWN can protest the exclusion of that ephemeral tributary. SPAWN thus suggests a more definitive “Clean Water Act” test for SCA protections: ephemeral tributaries that are hydrologically connected to anadromous fish streams provide food (insects), water and habitat (gravel) and thus “*support a special-status species*”

Further such uncertain biological determinations that may or may not occur in the future leave most ephemeral tributaries to anadromous creeks unprotected, which violates the intent of CWP policy BIO 4.1 and program BIO-4.a and creates uncertainty for homeowners with a potentially shifting patchwork of 100 foot and 20 foot setbacks.

**Thus in a spirit of compromise and clarity, SPAWN requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

**22.33.030 – B. SCA Setbacks.**

*4. For all mapped ephemeral streams, ~~not tributary to anadromous fish stream, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.~~ if it (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream. All ephemeral tributaries to anadromous fish streams shall be mapped with a 35-foot SCA setback until a hydrological study demonstrates connectivity (in which case the 100-foot SCA setback under (b) would apply) or lack of connectivity (in which case the 20-foot setback would apply).*

**A delineation and disclosure of all development within 35 feet of a creek bank should be required for significant development permits in an SCA and at point of sale. A permanent record should be required to be kept that delineates all mitigation areas.**

Presently, the Ordinance requires no disclosure of existing development in an SCA when additional incursions into the SCA are proposed. Such an exemption is reasonable when the project is “exempt without further determination” or when a “like-on-like development is proposed within the existing “lot coverage” that renders the project “exempt subject to determination.” We would also agree that when a minor (Tier 1) incursion is proposed, then such a ministerial exemption from disclosure is defensible. However, when a project triggers a Tier 2 review, we believe that it is critical that such review take into account all existing development in the SCA in order to have a real baseline from which to determine the merits of and mitigations for the projects.

Further, a description of all development within 35 feet of the bank of streams that support anadromous fish (including tributaries to those streams) should be required by way of a pre-sale disclosure by the Seller to the County. If sellers in Marin are advised to disclose a long list of potential issues including fireplaces, diseased trees, and high-flow toilets, then they can certainly disclose structures that could impact both flooding and salmon. The County should also fund landowner assistance (per BIO-4.a) to remove structures in this critical SCA area.

Lastly, a permanent record should be kept by the County that delineates all mitigation areas on the parcel. The same record could also be added as a note to the property deed. Such records are needed to prevent “double-dips” whereby a subsequent project could inadvertently claim credit for a previously required mitigation, or propose a new mitigation on an area previously used for mitigation.

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

22.63.040 - B. **4. Site Assessment (Tier 2).**

d. The project proponent shall submit a site plan showing all development on the parcel.

22.63.040 C Mitigation Criteria.

3. The county shall keep a permanent record showing all mitigation areas on the parcel.

## 5/13/13 Planning Commission SPAWN ISSUE #5: Ordinance Should be Staged

**The current SCA Ordinance, with its rapid pace and limited outreach efforts, should be focused beginning in the San Geronimo Valley. The Ordinance's outreach and mapping should then be prioritized watershed-by-watershed from the most critical coho watersheds to steelhead watersheds and other creeks.**

At the 4/1/13 Planning Commission hearing, Director Crawford (at 9:55 on the video) stated that the current draft SCA Ordinance built on prior efforts and was intended to extend the SCA protections of the 2003 SCA Ordinance that reads (emphasis ours):  
*...where a vacant legal lot of record in the Countywide Plan's City Centered and Inland Rural Corridor...that adjoins a mapped anadromous fish stream and tributary shall be subject to Design Review...*

The language (below) in the 2007 Countywide Plan (CWP) BIO 4.a that directs the County to adopt an "expanded" SCA Ordinance reflects exactly the same words:  
*Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary.*

Neither the above quoted 2003 SCA Ordinance nor the 2007 CWP BIO-4.a deny SCA protections to tributaries of anadromous fish streams when they may lack riparian vegetation. This inclusive protection of tributaries to anadromous fish streams is confirmed by the video of the 7/19/10 Planning commission hearings on the Tree Ordinance at 03:07:21, when Assistant Planning Director Mr. Tom Lai said regarding tributaries in the San Geronimo Valley:

*We are looking at only those ephemerals that contribute to the health of the fish and the watershed, rather than those...having riparian vegetation.*

Mr. Lai's proper interpretation of the SCA protections is based on CWP policy BIO 4.1:  
*An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream.*

In contrast, draft Ordinance 22.33.030 B.4 states; *For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.*

Thus while the draft SCA Ordinance proposes to expand the reach of the 2003 SCA Ordinance beyond certain vacant parcels, the draft Ordinance also limits its reach to only those anadromous ephemeral tributaries with a "continuous length of 100 feet or more" of riparian vegetation," which the County's biologist stated were likely not to exist.

The net effect of the draft Ordinance is a net loss of protections for the most sensitive salmon species (coho), whose West Marin streams spurred the inception of this Ordinance. SPAWN urges that the focus of the Ordinance, at this stage, return to coho.

As background, at 01:52:45 on the 7/19/10 video, Commissioner Dickenson states:  
*coho...don't exist in other parts of the County...The way these Ordinance preparations go, it takes years...It's going to be very controversial when you start talking about SCA regulations that effect San Anselmo Creek and Sleepy Hollow...It may be years before we have anything, so that's why I really see this as a stop gap measure to do something reasonable to try to increase the likelihood that the coho salmon won't go extinct.* SPAWN agrees.

Drafting an Ordinance is a complicated process and concerns about the rushed timetable and the inclusion of East Marin creeks were expressed by many at the 4/1/13 meeting. SPAWN agrees. The current county-wide scope of this draft Ordinance has inappropriately burdened an already complex process.

City-Centered parcels have different SCA setbacks, different neighborhood issues and different sensitive species from those in West Marin. SPAWN requests that the Ordinance process be staged:

- This first stage, with its very quick pace, should be limited to anadromous fish creeks outside the City Centered corridor;
- The second stage, with a more deliberative pace, should be limited to anadromous fish creeks inside the City Centered corridor;
- The third stage should extend SCA regulations to non-anadromous creeks.

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

**22.33.020 A. – Applicability**

*....The SCA encompasses any jurisdictional wetland within the stream channel, together with adjacent uplands, and supersedes setback standards defined for Wetland Conservation Areas in the Countywide Plan. However, the rollout of community outreach and mapping efforts should be focused initially in the San Geronimo Valley and then be prioritized watershed-by-watershed from the most critical coho watersheds, to steelhead watersheds, to any remaining watershed that supports sensitive species, and finally to the remaining watersheds*

## 5/13/13 Planning Commission SPAWN Addendum #1: Dikes & Berms:

There appears to be an inadvertent error in the Ordinance that if uncorrected could have profound consequences throughout the County. The Countywide Plan (CWP) exempts from the SCA setback small parcels in the City Centered corridor behind levees or dikes (emphasis ours):

CWP BIO-4.1. City-Centered Corridor...*"The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback."*

However, the Ordinance inadvertently inserts this exemption into a section that applies throughout the County to parcels of all size (emphasis ours):

### **22.33.020 – Applicability**

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

3. Land adjacent to levees, dikes, berms....

First we note that the CWP language exempts small City-Centered parcels only from the SCA setback, but not from the remaining SCA policies and programs. We agree that tidally influenced channels are exempt per BIO 4, yet County maps do not indicate any SCA overlay on leveed creeks seemingly not subject to tidal influence, although it is not clear where tidal influence stops. **We would ask the County to explain its rationale.**

Second we note that some streams in Marin (and throughout California) have been moved for agricultural or development purposes out of their natural channels to unnatural positions that are maintained by levees, dikes, and/or berms. Thus to exclude from the SCA protections all "land adjacent to levees, dikes, berms" would exclude many streamside parcels in the County and eviscerate the intent of the CWP.

The County's SCA maps conform to the CWP and show this exception only in the City-Centered Corridor, but SPAWN's concern is that if the language of the Ordinance is adopted, the County's SCA maps will then be amended to conform to the Ordinance rather than the CWP. We suggest that this exemption be moved from §22.33.020, where it incorrectly applies to every parcel instead to §22.33.030, where it would apply only to small city-Centered parcels (in conformity to CWP BIO-4.1).

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

### **22.33.020 – Applicability**

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

3. ~~Land adjacent to levees, dikes, berms,...~~

### **22.33.030 B 1** "SCA setbacks for properties within the City-Centered Corridor:

a. *For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;*

b. *For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and*

c. *For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank. The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback."*

## 5/13/13 Planning Commission SPAWN's Addendum #3 Gov Exemp & Private Restore

SPAWN believes that the Ordinance has significantly narrowed the scope of SCA protections for flood control and other government projects without any basis in the Countywide Plan (CWP). (emphasis ours):

CWP BIO 4.1 *"Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs...flood control projects that minimize impacts to stream function and to fish and wildlife habitat..."*

§ 22.33.020 B. 3 *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

3. *...publicly owned or maintained flood control...facilities."*

§ 22.63.020 B. 1 *Exempt without further determination....*

- a. *Public utility facilities and their maintenance proposed pursuant to Government Code Section 53091, Public Resources Code Section 4292, and the California Public Utilities Code;*

SPAWN first notes that exemptions in the Code Sections referenced in 22.63.020 B. 1 apply to only water and power facilities, but not to flood control facilities. Further, the CWP BIO 4.1 conditionally exempts qualifying flood control projects, whereas the Ordinance §22.33.020 B. 3 unconditionally exempts flood control facilities. Thus the Ordinance has significantly narrowed the scope of SCA protections. But this narrowing cannot be considered a reasonable "interpretation" deriving from the "four corners" of the 2007 CWP whose intent is to expand SCA protections. We thus suggest maintaining the original language of the CWP in regard to flood control projects.

SPAWN further believes that the Ordinance has significantly narrowed the scope of SCA protections by exempting all government projects again without basis in the CWP, which does not propose such exemptions. If anything, the CWP suggests the opposite:

*BIO-4.10 Promote Interagency Cooperation. Work in close cooperation with flood control districts, water districts, and wildlife agencies in the design and choice of materials for construction and alterations within SCAs.*

Yet, the 4/1/13 Ordinance states 22.33.020 B. 3 states: *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

4. *Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work.*

22.63.020 B. 1 *Exempt without further determination....*

- e. *Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;*

Such blanket exemptions/exclusions are problematic from both a stream protection perspective and a public perception perspective, particularly when a government proposes to impose conditions on others that it exempts itself from.

From the perspective of stream protection, the proposed exemption would allow, for example, the County Department of Public Works to locate a corporation yard in an SCA site that was closer to expected work rather than at a site more distant from expected work but outside an SCA. Similarly, this exemption would allow the County Open Space District to locate an outhouse in an SCA site closer to campgrounds rather than at a site more distant from campgrounds but outside an SCA.

It is not clear why these assessments cannot be made within the bounds of the SCA Ordinance just like similar SCA assessments are conducted for private property owners. Again, as with flood control projects, we suggest adapting the language of the CWP and changing these exclusions instead to exemptions subject to determination so that at least some consideration of the SCA protections will occur by a third-party government entity (the Community Development Agency) in making the required determination.

SPAWN is also believes it desirable to make as simple as possible self-funded and executed Creek Restoration. In that regard he proposed Ordinance currently exempts without further determination: "*Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency.*" That language should exempt from any further permitting triggered by this SCA Ordinance all of the projects that require permits from other agencies such as: Bay Area Joint Aquatic Resources, Department of Fish and Wildlife Streambed Alterations, USACE Nationwide Permit 13, SF Bay Regional Water Quality Control Board, etc. However, we also believe it useful to exempt vegetation restoration projects that do may not require permits from the referenced agencies.

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

**22.33.020 B. 3** *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

3. ~~...and publicly owned or maintained flood control or water conservation district facilities;~~

4. ~~*Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work.*~~

**22.63.020 B. 1** *Exempt without further determination....*

e. ~~*Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;*~~

**22.63.020 B 2** Exempt subject to determination

d. *Official activities and development (including flood control projects and vegetation maintenance) of the County, State or an agency of the State, or the Federal Government, (including work done on behalf of the governmental agency that assumes full responsibility for the work) that minimize impacts to stream function and to fish and wildlife habitat.*

e. *Private vegetation restoration projects that enhance the species, composition or area of the vegetation on the approved SCA lists of native riparian woody and herbaceous vegetation*

## 5/13/13 Planning Commission SPAWN Addendum #3 Channels vs. Ditches

In the 4/1/13 Staff Report (PC attachment #1, page 17) notes a second addition to the first suggested addition to the SCA definition:

10. Amend definition of Stream Conservation Area.

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

However, CWP BIO-4.1 states: “SCAs consist of the watercourse itself...”

The CWP Glossary defines a watercourse (emphasis ours) as: “*Natural or once-natural flowing (perennially or intermittently) water, including rivers, streams, and creeks. Includes natural waterways that have been channelized but does not include ditches, culverts, or other above- or below-ground conduits constructed for storm drainage function and sewage systems.*”

The CWP Glossary also defines a stream: “*A natural or once natural flowing open drainage channel with an established bed and bank...including open waterways that have been restored, modified, or channelized, but do not include ditches, culverts, or other above- or belowground conduits constructed specifically for storm drainage function.*”

As you can see, the two CWP glossary definitions are consistent. However, the Ordinance is not. The Ordinance adds the exclusionary second phrase of the CWP Glossary definitions (“do not include ditches, culverts, or other above- or belowground conduits constructed specifically for storm drainage function”) but not the inclusory first phrase (“including open waterways that have been restored, modified, or channelized”).

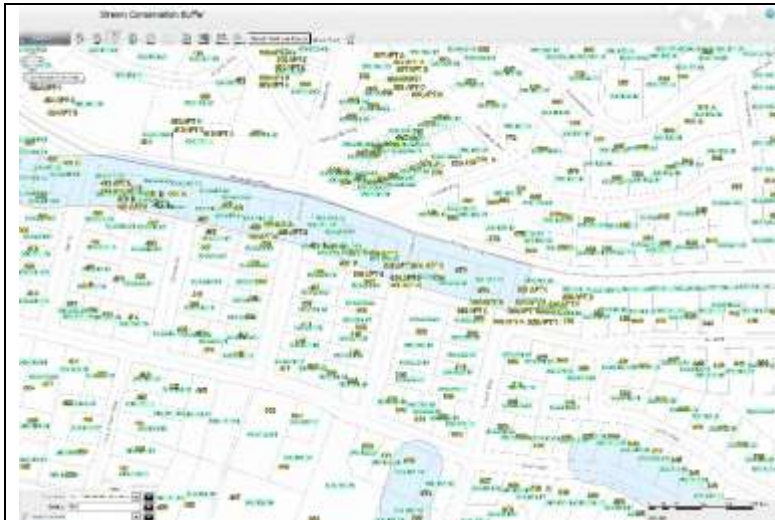
Since there was considerable confusion at the 4/1/13 Planning Commission (beginning at 04:24:27 on the video) about whether “drainage ditches” were covered by the SCA. The distinction that was attempted to be made at 04:35:47 between “man-made” ditches (excluded from the SCA protections) and “non-man-made” ditches (included in SCA protections) confuses the once-clear CWP distinction between formerly-naturally-flowing streams that have been put in man-made channels to perform their watershed drainage functions and man-made ditches constructed specifically for storm drainage functions. The distinction is one of function and has nothing to do with whether the construct performing that function is man-made or not.

Virtually all streams in Marin (and throughout California) have been moved for agricultural or development purposes out of their natural channels to unnatural positions that are maintained by levees, dikes, and/or berms. Thus to exclude from the SCA protections parcels adjacent to streams in “man-made channels” would exclude virtually all streamside parcels in the County and eviscerate the intent of the CWP.



This issue was covered at the 2/26/07 PC CWP hearing at 00:22:20-00:23:37. “Storm drainage function” refers to man-made constructs designed to drain excess rain and/or ground water from paved streets, parking lots, sidewalks, roofs, etc. In contrast, storms may deposit rain throughout a watershed whose topography focuses that deposited rain into a natural stream that subsequently gets channelized, yet that channel or ditch is performing a “watershed drainage function,” not a “storm drainage function.”

Thus it is of concern that the 4/1/13 Staff Report proposes to “clarify” whether ditches are protected by the SCA by excluding from the proposed Ordinance’s definition the precise CWP phrase that clarifies this point (“*including open waterways that have been restored, modified, or channelized*”). This unwarranted exclusion could open the door to an interpretation that a stream segment with a bulkhead or rip rap has been “*modified,*” thus there is no longer any “natural channel,” no “top of bank,” and thus no SCA extending out from the bulkhead, rip-rap or from the lip of a constructed channel that contains a once naturally flowing waterway. Such an interpretation, which would incentivize channel modification, would be the opposite to the intent of the CWP BIO-4.4 Promote Natural Stream Channel Function.



This concern is further heightened by what appears to be a contradiction between the 2007 CWP SCA language and the CDA maps of the SCA coverage. The CWP language explicitly extends SCA protection to channelized streams yet the CDA maps, at least in the Tam Junction area show the Coyote Creek SCA abruptly stopping at Laurel Way where it becomes channelized (see screenshot to left).

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

New Definition 8. **Top of Bank.** Top of bank is the elevation of land that confines waters of a stream to their ~~natural~~ channel in their normal course of flow, and above such elevation the waters will leave the channel and disperse in an uncontrolled manner.

10. **Stream Conservation Area.** ~~An area designated by the Marin Countywide Plan along all natural watercourses shown as a solid or dashed blue line on the most recent appropriate USGS topographic quadrangle map, or along all watercourses supporting riparian vegetation for a length of 100 feet or more. See Marin Countywide Plan policy EQ 2.3.~~ The SCA consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. Streams *include natural waterways that have been channelized but do not include ditches, culverts, or other above- or below-ground conduits constructed for storm drainage function and sewage systems.*

SPAWN's intent is that the Ordinance should follow the CWP and existing Development Code in regard to agriculturally zone parcels and agricultural uses. We acknowledge that agriculture has multiple impacts on the environment, however in some measure, these impacts are an unavoidable and acceptable exchange for the food services provided. This SCA Ordinance, with its short time, is not the place to attempt any significant re-balancing of ag impacts versus ag services. That discussion could be the proper subject of the next CWP update, but not this Ordinance. Thus our effort to clarify change from the current CWP and Development Code to the new Ordinance.

4/1/13 Staff Report (pg. 1) states:

*These [SCA Development Code] amendments will eliminate existing requirements governing development in SCAs that are currently implemented through other Chapters of the Development Code. 22.08.040 - Agricultural District Development Standards. Delete SCA reference in Sections 22.08.040.E and F for agricultural processing and retail sales.*

These two deleted sections are below, along with one other deleted section not mentioned in the Staff Report:

*22.08.040 E. Agricultural Processing. ~~New processing facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~*

*22.08.040 F. Sale of Agricultural Products. ~~New retail sales facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~*

*22.42.025 Exemptions from design review B. Agricultural Accessory Structures. ~~Agricultural accessory structures that comply with the Stream Conservation Area and Wetland Conservation Area setbacks established in the Countywide Plan.~~*

These three deleted sections are proposed to be replaced by Ordinance §22.63.020

B.1. Exempt without further determination:

*j. Agricultural uses on property zoned for agriculture (A, ARP or APZ) that do not result in the removal of woody riparian vegetation or animal confinement within the SCA.*

This Ordinance §22.63.020 B.1 is based (or should be based) on a reasonable (within the 4 corners) interpretation CWP BIO 4.1:

*Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs:*

*Agricultural uses that do not result in any of the following:*

- a. The removal of woody riparian vegetation;*
- b. The installation of fencing within the SCA that prevents wildlife access to the riparian habitat within the SCA;*
- c. Animal confinement within the SCA; and*
- d. A substantial increase in sedimentation.*

However, SPAWN believes Ordinance §22.63.020 B.1 could be interpreted in a manner that reverses the intent of the CWP and that of the deleted sections of the current Development Code (22.08.040 E, F, and 22.42.025).

First, §22.63.020 B.1 j deletes the CWP BIO 4.1 b and d references to fencing and sedimentation. Fencing is presumably covered by the more general reference in §22.63.020 B.1. i: *Fencing that does not restrict wildlife access to a riparian habitat.* However, we do not see where else the Ordinance explicitly covers the important point about sedimentation, which is additionally called out in BIO-4.17 (emphasis ours):

*Continue Collaboration with the Marin Resource Conservation District...to encourage agricultural operators who conduct farm or ranch activities within a Streamside Conservation Area to minimize sedimentation and erosion....*

Second, explicit references in the existing Development Code to requiring compliance with stream conservation standards for “*new [agricultural] processing facilities*” (22.08.040 E), “*new [agricultural] sales facilities*” (22.08.040 F) and “*Agricultural Accessory Structures*” (22.42.025) are also explicitly missing in the proposed Ordinance. That could open the door to the interpretation under the new Ordinance that new “*new [agricultural] processing facilities*” new *agricultural sales facilities*” and *new Agricultural Accessory Structures*” are all exempt from the SCA compliance because they could be considered “*agricultural uses*” and as long as they “*do not result in the removal of woody riparian vegetation or animal confinement within the SCA*” then these new structures would be “*exempt without further determination*” per §22.63.020 B.1. Even if “*uses*” are not (in the vocabulary of planners) the same as “*structures*,” that distinction may not be equally clear to agricultural operators or the public.

Lastly, there was a suggestion made at the 4/1/13 meeting that horses should be afforded the same exemption under §22.63.020 B.1 as “*agricultural uses.*” SPAWN finds this suggestion outside the 4 corners of the CWP, which defines agriculture as “*the production of food and fiber...*” Horses are not agricultural, yet they have many of the same impacts to streams banks and riparian vegetation as cattle. The existing Development Code (22.32.030) states:

1. “*No animal or any structure for animals shall be located closer than 30 feet to:  
a. The public right-of-way...;b. Any dwelling; c. Any building line ...d. Additionally, no animal or any structure for animals shall be located in a required setback..*”
7. *Any residential property where horses, donkeys, mules, or ponies are legally kept as of the effective date of this Development Code shall be deemed to be conforming. Any expansion of use shall be subject to the provisions of this Section.*

SPAWN agrees that the SCA Ordinance should apply on residential properties per 22.32.030-7, but that commercial horse facilities should be treated as below:

**SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):**

*22.63.020 – A. Application of SCA Provisions. 1 a. All structures, regardless of whether the work requires a building or grading permit, including fencing, decks, platforms, parking lots, utility crossings, pedestrian or vehicular access routes, and other similar improvements, including those on parcels zoned for agriculture (A, ARP or APZ)*

*22.63.020 B.1. Exempt without further determination:*

- j. Agricultural uses on property zoned for agriculture (A, ARP or APZ) that do not result in the removal of woody riparian vegetation or animal confinement within the SCA or result in a substantial increase in sedimentation.*
- i. Equestrian use at commercial equestrian facilities that is at least 35 feet from any creek or any such facility inspected by the SF Regional Water Quality Control Board and certified as meeting all “clean water” standards.*