Land Owner Resource Guide For properties near streams

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Developing Near a Stream

The Marin Countywide Plan establishes "Stream Conservation Areas" (SCAs) to protect stream and streamside habitats from the impacts of new development by providing:

- Habitat areas for aquatic species (such as fish and invertebrates), land animals (such as birds, reptiles and mammals), herpitiles (frogs, toads, turtles, and salamanders), insects, and rare and native plant species.
- An area for absorption of water runoff from adjacent rooftops, driveways, patios, and other hard surfaces. This absorption slows erosion along creek banks and prevents harmful pollutants from entering waterways.
- Floodplain and overflow areas to distribute flood waters and help prevent damage to structures, property, and natural habitat during substantial flood events.

The SCA includes the creek itself, and is measured from the top of the creek bank (and edge of riparian habitat) and extends laterally outward either 20, 50 or 100 feet on each side of the creek depending on the location and size of the property. <u>Figure 1</u> illustrates the SCA in the City-Centered Corridor and Figure 2 illustrates the SCA in the Baylands and Inland-Rural Corridors and the Coastal Zone as mapped in the Countywide Plan. The SCA applies to the Coastal Zone except when a development proposal requires a Coastal Permit with more stringent rules protecting streams under the Local Coastal Program.

To determine if SCA policies potentially apply to your property, enter your address or Assessor's Tax Parcel Number online at www.marinscalookup.org. Important contacts include: Public Works at 415-473-6549 and Community Develop Agency Planning Department at 415-473-6269.

Generally speaking, development is prohibited within the SCA. However, in certain very limited instances, development may be allowed subject to discretionary review and approval. This document will assist you in understanding what policies and codes could apply if the proposed development is within in the SCA.

In the City-Centered Corridor, the Stream Conservation Area extent varies depending on the property size (See Figure 1). Outside of the City-Centered Corridor, the SCA is measured 100 feet from the top of bank or 50 feet from the outer edge of riparian vegetation, whichever is greater (See Figure 2).

Figure 1. Lateral Measurement of the SCA in the City-Centered Corridor





Figure 2. Lateral measurement of the SCA in the Baylands and Inland-Rural Corridors and Coastal Zone



Applicability of the SCA

The Stream Conservation Area (SCA) policies of the Marin Countywide Plan are applied to projects that require discretionary entitlements (also known as Planning Permits, such as Design Review). *In other words, if your project does not trigger a discretionary entitlement, the SCA policies would not apply to your project.*

Design Review is the most common discretionary entitlement required for development proposals that might require application of SCA policies. Design Review may be required if:

- Your property is located in a planning zoning district (e.g. RSP, RMP, ARP, etc.)
- The development would exceed a total building area of 4,000 square feet;
- The development is located on a vacant lot with a slope of 25% or greater and exceeds 3,000 square feet of building area;
- The development is located in an A2:B2, RA, or R1 zoning district, exceeds 3,000 square feet, and the size of the resulting development is more than 100% greater

than the existing building area as of January 1, 2008;

- The primary residence exceeds the maximum building height of 30 feet;
- The project involves a detached accessory structure over 15 feet tall;
- The project involves a detached accessory structure located within the required setbacks of the governing zoning district;
- The project involves the development of a "paper street;"
- The development includes a new singlefamily residence on a vacant and substandard sized lot that contains less than 50% of the required minimum lot area pursuant to the zoning district or the lotslope ordinance; and
- The project is located within a Stream Conservation Area (SCA) and the lot is vacant.

The SCA will also apply if a project involves a deviation from the established standards (i.e., setback encroachment), and requires a discretionary entitlement, such as a Variance or Use Permit. In addition, removing protected or heritage trees located within the SCA will require a Tree Removal Permit.

Development Permit Process

If your property is identified as being in an SCA, it is your responsibility to determine the particulars of how the SCA affects you. While the services provided by the County are generally accurate, the exact location of the boundaries is determined in the field by a professional you hire. A typical project that triggers a discretionary review process will need to go the "Permit Requirements Process" (Figure 3) to determine the permits your project requires, including review for compliance for the SCA. To access the County-wide Plan referenced in the chart visit the <u>Countywide Plan page</u>.

Figure 3. Development Permit Process Flow Chart





Relevant Goals and Policies from Countywide Plan (2007) - abridged

BIO-4.1 Restrict Land Use in SCAs. This goal sets the guidelines for establishing and regulating development setbacks in Stream Conservation areas including protecting the active channel, water quality and flood control functions, and associated fish and wildlife habitat. The policy calls for implementing best management practices in SCAs, and in ephemeral streams that meet certain criteria. The policy identifies exceptions to full compliance. BIO-4.1 states that regardless of parcel size, a site assessment is required where development in an SCA is proposed or where full compliance would not be met as set out in BIO-4.g. The policy also outlines the proposed setback for various sized parcels based on locations in the City-Centered, Inland Rural, and Baylands Corridors.

BIO-4q Require Site Assessment. 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. The site assessment shall be paid for by the applicant and considered in determining whether any adverse direct or indirect impacts 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.

BIO-4.4 Promote Natural Stream Channel Function. This goal aims to retain and restore stream channels and discourages filling, grading, excavating, and installing storm drains and culverts, or other barriers to fish migration. The policy calls for habitat improvements including replacing impervious surfaces with pervious surfaces, and retaining large woody debris and riparian vegetation.

WR-1.f Require Stream Restoration Projects. This policy requires stream restoration in conjunction with associated land use approvals to improve groundwater recharge and filtration and to ensure high-quality water. Restoration projects should follow the design principles of natural channel restoration utilizing geomorphic concepts.

PFS-2.0 Assess Project Impacts to Surface Water and Groundwater. This policy requires documentation that new development projects (including wells) with the potential to harm surface water or groundwater resources will not adversely affect a basin or sub-basin.

PFS-2.t Manage Groundwater. This policy discusses discretionary permitting and methods to protect groundwater recharge and stream conservation areas from urban encroachment.

BIO-4.2 Comply with SCA regulations. This policy addresses implementing setback criteria for protection of SCAs through established discretionary permit review processes and/or through adoption of new ordinances. 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;
- Causes a net loss in habitat acreage, value, or function;
- Degrades water quality.

Discretionary Review Process

The typical process for discretionary projects that are exempt from CEQA can take 4-6 months. The

flow chart below delineates the process (County of Marin Planning Application Guide, Version1, pg.9, 2013):



CEQA Basics

CEQA stands for the "California Environmental Quality Act." CEQA applies to all discretionary projects proposed to be conducted or approved by a California public agency, including private projects requiring discretionary government approval. The purposes of CEQA are to:

- Disclose to the public the significant environmental effects of a proposed project, through an Initial Study (IS), Negative Declaration (ND), or Environmental Impact Report (EIR).
- Prevent or minimize damage to the environment through development of project alternatives, mitigation measures, and mitigation monitoring.
- Disclose to the public the agency decision making process to approve discretionary projects through findings and statements of consideration.

- Enhance public participation in the environmental review process.
- Improve interagency coordination through early consultations, scoping meetings, notices of preparation, and State Clearinghouse review.
- The time for projects that trigger CEQA review is prolonged six to twelvemonths or more depending on the level of environmental review that is required. Please refer to the County's Environmental Impact Review website. And contact the Permit Center if you have questions at 415-473-6269.

Questions and Answers about the Stream Conservation Area

1. How is the SCA measured?

The SCA consists of the watercourse itself and the strips of land extending laterally, or perpendicular, outward from the top of both banks to the widths defined for City-Centered, Baylands, and Inland-Rural Corridors and Coastal Zone in the Countywide Plan.

Figure 4: Lateral Measurement of SCA



Incorrect

2. How will the SCA affect my ability to use and improve my property?

You can continue to use your property. The SCA applies to new improvements (such as buildings and fences) and site modifications (vegetation removal, grading) when a discretionary permit (i.e. Design Review, Variance, Creek Permit, Use Permit, Grading Permit, etc.) is required.

3. Can the SCA be reduced?

No. The Stream Conservation Area is a special designated area under the Countywide Plan.

4. I have SCA on my property and want to SCA construct outside the SCA. Is compliance required?

No. The SCA does not apply to construction outside of the SCA; however, other permits (creek, grading, etc.) may be required.

Streams

5. What other County regulations apply to streams?

Development activity in or near streams is also regulated by Marin County Code:

- Section 11.08regulates stream obstructions and construction in a stream, including retaining walls, bulkheads, artificial slope protection, conduits, bridges, and other structures.
- Section 23.08- regulates grading, and specifically requires erosion control measures 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 for structures requiring a building permit of 20 feet from the top of bank for all creeks, channels or other major waterways.

My property is in the SCA, but does not drain 6. to the creek. Is my project exempt from SCA auidelines?

No. The SCA applies to development activity within a defined distance of a stream, regardless of the direction of water runoff.

7. How does a property owner learn that he/she lives adjacent to an SCA?

The County's Stream Conservation Area Map is used to determine whether a stream segment is identified for protection. You can access this information on the County's online mapping tool that is available from www.marinscalookup.org.

8. When does the Stream Conservation Area apply to an ephemeral stream?

Ephemeral streams are subject to the Stream Conservation Area if the project requires a discretionary permit (see SCA for Common Residential Improvements and Figure #), and if:

- The watercourse meets the definition of "Stream Conservation Area" (excludes pipes, culverts, ditches or other above- or below-ground conduits constructed specifically for storm drainage), and
- Riparian vegetation extends along the length of the stream (parallel) for 100 feet or more.

A biological assessment may be required to determine if an ephemeral stream is protected under the SCA policy.

Riparian Vegetation

9. What is riparian vegetation?

Riparian vegetation is vegetation associated with a watercourse and relies on the higher level of water the watercourse provides. For more information about common riparian species in Marin County click <u>here</u>.

10. What is woody riparian vegetation?

Woody riparian vegetation is distinguished by the presence of "tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin," such as trees, shrubs, and vines. Common examples include willow, alder, big-leaf maple, and California blackberry. You can learn more about riparian vegetation and other native species at <u>Berkeley</u> <u>CalPhoto</u>.

Figure 5. Riparian Vegetation Along Ephemeral Streams



Definitions and Terms

Common Name	Botanical Name	Protected Size Diameter at Breast Height	Heritage Size Diameter at Breast Height
Arroyo willow	S. lasiolepis	6 inches	18 inches
Big-leaf maple	Acer macrophyllum	10 inches	30 inches
Bishop pine	Pinus muricata	10 inches	30 inches
Blue oak	Q. douglasii	6 inches	18 inches
Box elder	A. negundo var. californicum	10 inches	30 inches
California bay	Umbellularia californica	10 inches	30 inches
California black oak	Q. kelloggii	6 inches	18 inches
California buckeye	Aesculus californica	10 inches	30 inches
California nutmeg	Torreya california	10 inches	30 inches
Canyon live oak	Q. chrysolepis	6 inches	18 inches
Chaparral oak	Q. wislizeni	6 inches	18 inches
Coast live oak	Quercus agrifolia	6 inches	18 inches
Coast redwood	Sequoia sempervirens	10 inches	30 inches
Douglas-fir	Pseudotsuga menziesii	10 inches	30 inches
Giant Chinquapin	Castanopsis chrysophylla	10 inches	30 inches
Hawthorn	Crataegus douglasii	10 inches	30 inches
Mountain-mahogany	Cercocarpus betuloides	10 inches	30 inches
Narrow leaved willow	Salix exigua	6 inches	18 inches
Oak	Q. parvula var. shrevei	6 inches	18 inches
Oregon ash	Fraxinus latifolia	10 inches	30 inches
Oregon oak	Q. garryana	6 inches	18 inches
Pacific madrone	Arbutus menziesii	6 inches	18 inches
Pacific yew	Taxus brevifolia	10 inches	30 inches
Red alder	A. rubra	10 inches	30 inches
Red elderberry	Sambucus callicarpa	10 inches	30 inches

11. Heritage, Protected Tree

Common Name	Botanical Name	Protected Size Diameter at Breast Height	Heritage Size Diameter at Breast Height
Red willow	S. laevigata	6 inches	18 inches
Sargent cypress	Cupressus sargentii	6 inches	18 inches
Scoulier's willow	S. scouleriana	6 inches	18 inches
Service-berry	Amelanchier alnifolia	10 inches	30 inches
Shining willow	S. lucida ssp. lasiandra	6 inches	18 inches
Silk tassel	Garrya elliptica	10 inches	30 inches
Sitka willow	S sitchensis	6 inches	18 inches
Tanbark oak	Lithocarpus densiflorus	10 inches	30 inches
Valley oak	Q. lobata	6 inches	18 inches
Wax myrtle	Myrica californica	10 inches	30 inches
White alder	Alnus rhombifolia	10 inches	30 inches

12. What is fencing that does not restrict wildlife access to streams and adjacent riparian vegetation?

<u>Wildlife friendly fencing</u>¹ include underground/wireless fences, open fences (two rail or split rail fences) with space for wildlife to pass through, below, or over (no barbed wire).

13. What is hydraulic capacity?

Hydraulic capacity measures an area's ability to drain or absorb water into the ground. Hydraulic capacity is affected by the amount of impervious surfaces. For example, a site covered in a material like asphalt or concrete generates more runoff (without mediation) during a storm than the site in its vegetated soil condition.

14. 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.

15. What is habitat value?

Habitat values are those aspects of a land area valued by society for recreational, aesthetic, flood control, and groundwater recharge. Habitat value does not necessarily measure worth for the ecological unit and wildlife.



Photos from Pat Tucker, Colorado Department of Wildlife

¹ Natural Resources Conservation Service or other agricultural/resource agency standard <u>Fencing With Wildlife in</u> <u>Mind, A Landowners Guide to Wildlife Friendly Fences: How to</u> <u>Build a Fence with Wildlife in Mind</u>

16. What is water quality?

Water quality refers to the chemical, physical, and biological characteristics of a water body. Typical measures are pH, temperature, suspended solids, dissolved solids, color, concentration of pollutants, and the prevalence of certain bacteria or insects.

Structures in the SCA

17. Is repairing a retaining wall delineating the top of the creek bank permissible in the SCA?

Yes, repair is permissible under SCA policies. However, under Title 24.04.560 Drainage Setbacks the Department of Public Works will not allow this repair 20 feet from top of bank, nor within the creek banks.

18. Would replacement of a septic tank need to comply with SCA policies?

An in-kind septic tank replacement does not need to comply with SCA policies if the tank does not expand beyond the occupied area of the previous tank.

19. Would I need to comply with SCA Policies to trench an electric line to an existing structure?

A building permit is required to extend electric service to a shed or other accessory structure. In most instances, trenching an electric line to an existing structure does not need to comply with SCA policies. SCA review may be required if trenching could result in removing riparian vegetation near the stream.

20. Will there be legalization of non-permitted structures (such as illegal rental units)?

SCA designation 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, and the project requires a discretionary planning permit. 21. 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?

Being in the SCA does it change the status of illegal structures. Existing permitted and legal non-conforming structures can be used, maintained, and replaced in-kind in the SCA. Marin County uses a complaint-based code enforcement program. If a complaint is filed against a non-permitted structure, action may be required.

22. How does 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 and are subject to Department of Public Works review (including compliance with CEQA and stream policies of the Countywide Plan). The Department of Public Works adheres to County's complaint-based enforcement program.

New Accessory Structures

23. Would play structures in the yard be subject to SCA policies?

Play structures are not subject to SCA policies unless the structure triggers a discretionary permit. Typical play structures and play equipment that are not required to have building or grading permits by County Code Title 19 or 23 and do not exceed 15 feet in height.

Questions about Landscaping and Vegetation Management

24. What is considered landscaping?

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

- 25. Is lawn mowing subject to SCA policies? No.
- 26. Do I need to comply with SCA policies to prune bushes or trees that threaten my fence/home?

No.

Reference Tools for Homeowners

Information is available online for residents, landowners, and contractors to identify best management practices for developing near streams. The most comprehensive source is the Marin Watersheds program online Landowner Resources Library, including the latest information about stream bank restoration, erosion control, invasive weeds, fire management, pest control, fish habitat, native plant restoration, rainwater management, and more. The online library includes user-friendly "how to" guides, technical information, and resource manuals.²

Below is a list of useful resources for residents and landowners. These documents are available at no cost online, via the Landowner Resources Library. The basics of healthy creeks, erosion and erosion prevention, stormwater runoff management, and native plant species are provided along with some common-sense management practices, including many that can be employed at little or no additional cost.

1. Stormwater Management Resources

The Federal Clean Water Act requires jurisdictions to manage stormwater and create a stormwater management plan. As part of this effort, the Marin County Stormwater Pollution Prevention Program, MCSTOPPP, a joint effort of Marin's cities, towns and the County, works to:

- Prevent stormwater pollution
- Protect and enhance water quality in creeks and wetlands
- Preserve beneficial uses of local waterways

For a guide on wetland and creek permit requirements and other valuable stormwater management practices visit <u>http://mcstoppp.org</u>.

2. Creek Care: A Guide for Marin Residents

In Marin County, all storm drains flow to local creeks and/or the Bay without treatment. Recognizing how individuals impact Marin County waterways is the first step in creek care and stewardship. The <u>Creek Care Guide</u>:

- Defines healthy creeks, riparian corridors, fish habitat needs, storm drain connections, and how to identify a potential creek problem. Diagrams illustrate the relationship between the stream corridor, riparian zone, and upland areas.
- Provides guidelines for improving creek health through landscaping, yard and home maintenance, erosion control, runoff management, and septic care. The guide also includes contact information for county, city, and other important permitting agencies.
- Provides an extensive resource directory for more information and assistance.
- 3. Groundwork: A Handbook for Small-Scale Erosion Control in Coastal California

Erosion is a natural process that shapes hillsides, valleys, rivers and streams, helps to distribute nutrients throughout watersheds, and provides sediments necessary to support habitats for fish, wildlife and plants. In many watersheds, human land use choices accelerate erosion rates resulting in negative impacts. These include fine soil particles filling in spawning gravels, reduced oxygen levels, and physical changes to stream depth and width. Groundwork: A Handbook for Small-Scale Erosion Control in Coastal California helps landowners and land managers better understand erosion processes and describes practices for repairing common small-scale erosion problems. The handbook provides five basic rules for preventing common erosion problems:

² Visit <u>www.marinwatersheds.org</u>.

[•] Comply with State and Federal regulations

- Protect bare soil surfaces.
- Don't concentrate water flow unless absolutely necessary.
- Limit livestock and human use of vulnerable areas.
- Disturb existing vegetation as little as possible.
- Encourage infiltration.

In addition to guidelines for prevention, the handbook provides information and illustrations to explain the process of channel erosion and practical tips and guidance for addressing erosion problems. This is a useful information resource for landowners that may also be provided to contractors for their reference in planning an erosion control project.

4. Slow It. Spread It. Sink It!

Slow it. Spread it. Sink it! is a homeowner and landowner's guide to beneficial stormwater management. This guide explains common problems associated sources and with stormwater resources, and practical "best management practices" to prevent property and environmental damage. The auide calls forproperty owners to slow runoff, spread it out in planters, gardens, or over other pervious surfaces, and sink it back into the ground.

5. Fish Friendly Guide for Marin Residents

Many creeks in Marin's neighborhoods and communities support endangered Coho salmon

and/or threatened Steelhead trout. Development and other activities near creeks can cause water pollution, degrade habitat, and alter the natural water flow. The Fish Friendly Guide for Marin <u>Residents</u> provides information on how residents can protect salmon populations by managing stormwater runoff and existing vegetation along creeks, and avoiding water pollution from homeowner activities (i.e. car washing and pesticide use).

6. Go Native: Using Plants for your Yard, Patio, Creek

Native plants are adapted to local climate and soil conditions and provide important habitat resources for birds, butterflies, and beneficial insects. Natives also require less irrigation and are resistant to many pests and diseases that can afflict imported species. You can learn about appropriate native species **Berkelev** at CalPhoto, The California Native Plant Society, and Mostly Native Nursery. Go Native: Using Plants for your Yard, Patio, Creek is a local publication that provides information about Marin's native species. This guide provides information about local nurseries and the best time periods to plant native species. Special lists for deer-resistant, drought-tolerant and fireresistant plants are provided for reference, as is a list of harmful invasive species to be avoided. Importantly, the guide provides a list of plant species appropriate for planting near creeks, including:

Common Name	Scientific Name	Туре
Lady fern	Athyrium filix-femina	Fern
California polypody	Polypodium californicum	Fern
Western sword fern	Polystichum munitum	Fern
Giant chain fern	Woodwardia fimbriata	Fern
Elk clover	Aralia californica	Shrub
Mugwort	Artemisia douglasiana	Shrub
Coyote brush	Baccharis pilularis	Shrub
Stream dogwood	Cornus sericea	Shrub
California hazelnut	Corylus cornuta	Shrub
Toyon	Heteromeles arbutifolia	Shrub
Ocean spray	Holodiscus discolor	Shrub

Twinberry	Lonicera involucrate	Shrub
Creek monkeyflower	Mimulus guttatus	Shrub
Wax myrtle	Myrica californica	Shrub
Ninebark	Physocarpus capitatus	Shrub
Coffeeberry	Rhamnus californica	Shrub
Fuchsia-flowering gooseberry	Ribes californicum	Shrub
Pink flowering currant	Ribes sanguineum	Shrub
Rose, California	Rosa californica	Shrub
Rose, Wood	Rosa gymnocarpa	Shrub
Thimbleberry	Rubus parviflorus	Shrub
Salmonberry	Rubus spectabilis	Shrub
California blackberry	Rubus ursinus	Shrub
Blue elderberry	Sambucus nigra canadensis	Shrub
Red elderberry	Sambucus racemosa	Shrub
Snowberry	Symphorocarpus spp.	Shrub
Poison oak	Toxicodendron diversilobum	Shrub
Pacific Madrone	Arbutus menziesii	Tree
Big leaf maple	Acer macrophyllum	Tree
Box elder	Acer negundo var. californicum	Tree
California buckeye	Aesculus californica	Tree
Alder, white or red	Alnus spp.	Tree
Oregon ash	Fraxinus latifolia	Tree
Tanoak	Lithocarpus densiflorus	Tree
Coast live oak	Quercus agrifolia	Tree
California black oak	Quercus kelloggii	Tree
Valley oak	Quercus lobata	Tree
Arroyo willow	Salix lasiolepis	Shrub-like Tree
Yellow willow	Salix lucida lasiandra	Tree
Coast redwood	Sequoia sempervirens	Tree
California bay-laurel	Umbellularia californica	Tree