

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by and between SALMON PROTECTION AND WATERSHED NETWORK, a Project of TURTLE ISLAND RESTORATION NETWORK (“SPAWN”), CENTER FOR BIOLOGICAL DIVERSITY (“CBD,” and together with SPAWN, “Petitioners”), and the County of Marin (“County”), and shall be effective as of the date last executed below (“Effective Date”). The above-identified parties are sometimes hereinafter individually referred to as a “Party” and collectively as the “Parties.”

### Recitals

WHEREAS, Petitioners have asserted legal actions against the County alleging in summary that the County violated the California Environmental Quality Act (“CEQA”) in connection with its adoption of the 2007 Countywide Plan as it relates to the San Geronimo Valley, which legal actions include the matters known as *Salmon Protection and Watershed Network v. County of Marin et al.*, Marin County Superior Court Case No. CIV 1004866, First District Court of Appeal Case Nos. A137062 and A162862; and *Salmon Protection and Watershed Network et al. v. County of Marin*, Marin County Superior Court Case No. CIV 1903709, First District Court of Appeal Case No. A162863 (such litigations are collectively referred to hereinafter as the “Actions,” and the currently pending appeals bearing Case Nos. A162862 and A162863 are more specifically referred to hereinafter as the “Appeals”); and

WHEREAS, the Superior Court entered a writ of mandate in Case No. CIV 1004866 on April 2, 2015, following appeal, directing the County to set aside its adoption of the 2007 Countywide Plan and certification of the related Environmental Impact Report (“EIR”) with respect to the San Geronimo Valley watershed only, pending preparation of a supplemental EIR for the watershed; and

WHEREAS, the County certified a supplemental EIR for the 2007 Countywide Plan with respect to the San Geronimo Valley on August 20, 2019, readopted the 2007 Countywide Plan for the San Geronimo Valley, and filed a return to the writ in Case No. CIV 1004866; and

WHEREAS, the County’s supplemental EIR for the 2007 Countywide Plan relied in part on adoption of a Stream Conservation Area ordinance to mitigate environmental impacts identified in the supplemental EIR to a less than significant level; and

WHEREAS, Petitioners in Case No. CIV 1903709 challenged the County’s readoption of the 2007 Countywide Plan for the San Geronimo Valley and certification of the supplemental EIR and objected to the County’s return to the writ in Case No. CIV 1004866; and

WHEREAS, the County timely appealed the Superior Court’s Order denying the County’s return to the April 2, 2015 writ of mandate in Case No. CIV 1004866 and the Superior Court’s Judgment granting the petition for writ of mandate in Case No. CIV 1903709, which Appeals are pending in the First District Court of Appeal; and

WHEREAS; the County disclaims any wrongdoing or legal liability whatsoever regarding the actions or omissions complained of by Petitioners in the Actions relating to its readoption of the 2007 Countywide Plan, certification of the supplemental EIR for the San Geronimo Valley, or discharge of writ obligations in Case No. CIV 1004866; and

WHEREAS, Petitioners and the County nevertheless each share a common interest in preserving the natural resources of Marin County and protecting important habitat for anadromous fish species in the San Geronimo Valley, and to better focus their respective resources towards furthering these common interests rather than continuing to pursue litigation, wish to resolve any and all disputes between them concerning the Actions;

NOW, THEREFORE, and in exchange for good and valuable consideration, receipt of which is

hereby acknowledged, the Parties hereby agree as follows.

### Terms

1. Settlement. The Parties agree to resolve the Actions, including the Appeals, pursuant to the process provided in this Settlement Agreement. In summary, as more specifically provided herein, if the County adopts a Stream Conservation Area (“SCA”) ordinance meeting the requirements listed in the attached Exhibit A (the “SCA Ordinance”) as provided in paragraph 2 and upon the Implementation Date, SPAWN and CBD agree to dismiss and/or resolve the Actions and release the County from CEQA and attorneys’ fees claims as provided in paragraph 3, and the County agrees to make an attorneys’ fees payment as provided in paragraph 3 and take the additional actions provided for in paragraphs 3 and 4.

2. Contingency and Implementation. This Agreement is contingent on the County’s final adoption of the SCA Ordinance. This Agreement shall become final upon the expiration of 91 days following the County’s adoption of the SCA Ordinance without a legal challenge to such SCA Ordinance by any third party, or upon the final conclusion of any legal challenge to such SCA Ordinance filed within 90 days of its adoption by any third party that does not result in any amendment of the SCA Ordinance that is inconsistent with the terms of this Agreement (“the Implementation Date”).

3. Dismissal, Release, and Attorneys’ Fees. Upon the Implementation Date, the Parties agree as follows:

- a. *Discharge/Dismissal.* Petitioners shall take all actions necessary to accomplish the resolution and discharge of all writ obligations arising from the Actions, with each side to bear its own costs and attorneys’ fees (except as provided herein). The County shall take all actions necessary to accomplish the dismissal with prejudice of the Appeals, with each side to bear its own costs and attorneys’ fees (except as provided herein). The Parties shall cooperate with each other in good faith to take any and all actions necessary to accomplish these actions.
- b. *Release.* Petitioners, on behalf of themselves and on behalf of each of their successors and assigns, hereby completely release and forever discharge the County and its attorneys, agents, trustees, beneficiaries, servants, representatives, employees, insurers, partners, predecessors, successors in interest and assigns (“County Releasees”) of any and all past, present or future claims, demands, obligations, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, which in any way arise out of, relate to, or are the subject of the County’s compliance with CEQA in connection with its (1) adoption or readoption of the 2007 Countywide Plan with respect to San Geronimo Valley; (2) certification of the EIR and supplemental EIR for the 2007 Countywide Plan with respect to the San Geronimo Valley, as referenced in the Actions; and/or (3) adoption of the SCA Ordinance for the San Geronimo Valley contemplated in this Agreement (together, the “Released Claims”).

With respect to the Released Claims, Petitioners expressly intend to relinquish all claims, whether or not now known, and expressly waive any and all rights and benefits conferred on them by the provisions of Section 1542 of the Civil Code of the State of California, which reads:

A general release does not extend to claims which the creditor does not know or suspects to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

Petitioners understand and acknowledge the significance and consequences of such waiver of the provisions of Section 1542.

- c. *Attorneys' Fees and Costs.* The County shall, within 45 days of the Implementation Date, pay Petitioners a total sum of two hundred and forty thousand dollars (\$240,000) in settlement of Petitioners' claims for attorneys' fees and costs, and Petitioners shall take all actions necessary to withdraw their pending motion for attorneys' fees and costs, and shall further release the County Releasees from any and all claims, demands, obligations, causes of actions, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, which in any way arise out of, relate to, or are the subject of attorneys' fees and costs incurred by Petitioners in connection with the Actions and/or this Settlement Agreement. Payment shall be made to a trust account held by The Board of Trustees of the Leland Stanford Junior University for dispersal amongst attorneys for Petitioners.

4. Additional Implementation Obligations. The County shall undertake the following actions effective upon the Implementation Date, except as otherwise set forth below:

- a. *Voluntary Point-of-Sale Inspection Pilot Program.* By September 1, 2022, the County shall adopt a voluntary point of sale inspection pilot program ("Program") for the San Geronimo Valley SCA, which will allow any owner of property wholly or partially within the SCA in the San Geronimo Valley Combining District (or any prospective buyer of such property, with the property owner's consent) to request and obtain a free on-site, County-provided inspection for compliance with provisions of the SCA Ordinance. The County shall advertise the Program to increase awareness among property owners and purchasers of their ability to request an inspection from the County, as well as to request public records regarding the property. The County shall begin full implementation of the Program (including advertising the Program and making inspections available upon request) no later than Q1 of 2023. The County shall have sole discretion to discontinue the Program after a period of five years from the Program's implementation, conditional on the County first holding a public meeting with opportunity for public comment and accompanied by a staff report analyzing the success of the Program, options to increase public participation to warrant continuing the Program, and alternatives to improve on compliance with the SCA Ordinance.
- b. *Inspections for SCA Ordinance Violations.* Before approving an application for a development project or activity that is subject to Site Plan approval under the SCA Ordinance, on a parcel wholly or partially within the San Geronimo Valley Combining District SCA, the County shall perform an inspection for existing SCA Ordinance violations and review for enforcement.
- c. *Anonymous Complaints.* Within 45 days of the Implementation Date, the County shall create and implement a system for receiving complaints regarding violations of the SCA Ordinance within the San Geronimo Valley that allows complainants to remain anonymous, provided that the County shall have full discretion as to the design and operation of such system, including but not limited to discretion regarding whether to assign lesser weight to complaints submitted anonymously.
- d. *Expansion of Enforcement Capacity.* The County shall expand enforcement staff capacity sufficient to process, respond to, and address complaints regarding violations of the SCA Ordinance in the San Geronimo Valley and SCA

Ordinance compliance issues identified during inspections. This includes ensuring on-call availability to process and respond to time-sensitive complaints that come in during non-business hours, including evenings, weekends, and holidays.

- e. *Semi Annual Reporting.* Following the Implementation Date, the County will provide twice-yearly reports to the Board of Supervisors, as proposed in staff's December 13, 2021 presentation to the Planning Commission, with the following metrics to track implementation of the SCA Ordinance:
  - i. The number of Site Plan Review applications approved, conditionally approved, or denied;
  - ii. Project types;
  - iii. Appeals;
  - iv. Complaints;
  - v. Inspections;
  - vi. Enforcement actions;
  - vii. Amount of impervious area authorized under Site Plan Review to be added to the San Geronimo Valley SCA; and
  - viii. Amount of habitat authorized under Site Plan Review to be removed from the San Geronimo Valley SCA.

5. Failure of Conditions. Nothing in this Agreement will abrogate or impair the County's exercise of its police power. If the County does not adopt the SCA Ordinance as reflected in Exhibit A, or if the County adopts the SCA Ordinance but then as a result of a legal challenge to such SCA Ordinance filed within 90 days of its adoption by any third party amends such SCA Ordinance in a way that is inconsistent with the terms of this Agreement, this Agreement shall be null and void, and none of the terms of this Agreement shall be binding on any Party. In the event this Agreement becomes null and void as a result of the terms of this paragraph, this Agreement shall not be admissible in any legal proceeding for any purpose whatsoever.

6. Warranty of Capacity to Execute Agreement. Each Party executing the Settlement Agreement represents and warrants that no other person or entity had, nor now has, any interest in any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and to deliver and receive the settlement consideration specified herein; that execution, delivery, and performance of this Settlement Agreement and any related documents has been duly authorized by all necessary partnership, trust or corporate action; that each individual executing this Settlement Agreement and any related documents is authorized to so execute instruments of this nature on the Party's behalf; and that each Party has not sold, assigned, transferred, conveyed, hypothecated or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement. Each of the individuals executing this Settlement Agreement represents and warrants that he or she has been authorized to do so and has the power to bind the Party for whom he or she is signing.

7. Entire Agreement. This Settlement Agreement and attached Exhibit A contain the entire agreement between the Parties hereto and may not be amended, altered, modified, or otherwise changed except by a writing executed by all Parties thereto which expressly states that it is an amendment to this Settlement Agreement. All prior oral or written agreements, including but not limited to the Term Sheet executed by the Parties on or about May 16, 2022, are expressly superseded hereby and are of no further

force and effect.

8. Representation of Comprehension of Settlement Agreement. In entering into this Settlement Agreement, the Parties represent that they have relied on the legal advice of their respective attorneys, who are attorneys of their own choice, and that the terms of this Settlement Agreement have been completely read and explained to them by their respective attorneys, and that those terms are fully understood and voluntarily accepted.

9. No Admission of Liability. The Parties acknowledge that this Agreement represents a compromise of disputed claims. The County expressly denied, and continues to deny, any and all claimed or alleged wrongdoing and liability whatsoever in connection with the allegations in the Actions relating to its readoption of the 2007 Countywide Plan, certification of the supplemental EIR for the San Geronimo Valley, or discharge of writ obligations in Case No. CIV 1004866. The Parties agree that this Agreement, and the covenants, releases, waivers, and assignments contained in this Agreement, are not to be construed as a concession or admission and shall not be used against the County as an admission or indication with respect to any claim of any fault, concession, or omission by the County, but are to be construed strictly as a compromise of, and agreement to resolve, all disputes between the Parties to this Agreement regarding claims made in the Actions for purposes of avoiding further controversy, litigation, and expense with respect to the Actions.

10. Applicable Law. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

11. Execution. This Settlement Agreement may be executed in any number of counterparts, and by way of facsimile or electronic signature, and if so, each counterpart will be deemed to be an original copy and all of which, taken together, will be deemed to constitute one and the same Settlement Agreement.

12. Cooperation. The Parties to this Settlement Agreement will cooperate in all manners necessary to effectuate the terms of this Settlement Agreement including, but not limited to, executing all necessary documents.

13. Interpretation. No provision of this Settlement Agreement is to be interpreted for or against any Party because that Party, or that Party's representative, drafted such provision.

14. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

15. Binding Effect. This Settlement Agreement shall be binding upon any beneficiaries, executors, administrators, heirs, successors, and assigns of each Party and shall inure to the benefit of said Parties, and each of them.

16. No Prior Assignment or Lien. Petitioners represent and warrant that they have not assigned to any other person or entity any of the Released Claims. Petitioners agree that neither the County, nor its counsel, are in any way responsible for the payment of any liens. Petitioners agree to defend, indemnify, and hold the County harmless from any liability, losses, claims, damages, costs or expenses, including attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

17. No Waiver on Delay or Failure to Perform. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party shall be in writing and shall apply to the specific instance expressly stated.

18. Notices. Whenever notice, correspondence, payment, or other written communication or

information is required to be submitted or forwarded by one Party to another under the terms of this Agreement, it shall be directed to the individuals at the address specified below by certified mail/return receipt requested, unless those individuals or their successors give written notice to the other Party of another individual designated to receive such communications or elect in writing to receive such communications by electronic mail.

As to Petitioners:

Stephanie L. Safdi  
Environmental Law Clinic  
Mills Legal Clinic, Stanford Law School  
559 Nathan Abbott Way  
Stanford CA, 94305  
ssafdi@stanford.edu

As to County:

County Counsel  
Office of the County Counsel  
County of Marin  
3501 Civic Center Drive, Suite 275  
San Rafael, CA 94903

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below.

Dated: June 10, 2022


SALMON PROTECTION & WATERSHED NETWORK

By: 

Its: Todd Steiner  
Executive Director  
Turtle Island Restoration Network/Salmon Protection & Watershed Network

Dated: June 10, 2022

CENTER FOR BIOLOGICAL DIVERSITY

By: 

Its: Peter Broderick  
Senior Attorney

Dated: June 10, 2022

COUNTY OF MARIN

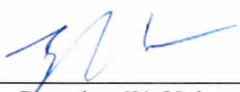
By: 

Its: Board President, Supervisor Katie Rice

APPROVED AS TO FORM:


Dated: June 10, 2022

COUNTY COUNSEL, BRIAN E. WASHINGTON

By:   
\_\_\_\_\_  
Brandon W. Halter  
Attorneys for Respondent  
COUNTY OF MARIN

Dated: June 10, 2022

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By:   
\_\_\_\_\_  
Stephanie L. Safdi  
Attorneys for Petitioners  
SALMON PROTECTION & WATERSHED  
NETWORK and CENTER FOR BIOLOGICAL  
DIVERSITY

## EXHIBIT A

### Requirements of SCA Ordinance

The SCA Ordinance, as that term is used in the accompanying Settlement Agreement, is an ordinance that matches the SCA ordinance considered at the December 13, 2021 Marin County Planning Commission hearing, with the following additions and modifications:

A. Revise Section 22.30.045(C) "Site Assessment" as follows:

**"Site Assessment.** A Site assessment is required when development is proposed in the Stream Conservation Area, where adverse impacts to riparian resources may occur, or when full compliance with subsection D below would not be met. The Site Assessment shall identify site specific standard management practices in accordance with the provisions in subsection F, and shall confirm that the proposed development would result in no net loss of any of the following: habitat acreage, value, or function."

B. Revise section 22.30.045 to add an additional subsection providing for a 35-foot streamside buffer within the Stream Conservation Area, as measured from the top of the stream bank, where allowable land uses shall be limited to the following:

1. Maintenance and repair of existing permitted structures within the existing footprint
2. Projects to improve fish and wildlife habitat
3. Water-monitoring installations
4. Passive recreation that does not disturb native species
5. Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat
6. Driveway, road, and utility crossings, if no other location that avoids encroaching in the buffer is feasible and the crossing is sited to minimize environmental impacts

C. Add language clarifying that limitations on uses under subsection 22.30.045(D) also apply to portions of the SCA outside the 35-foot buffer zone.

D. Add language clarifying that the 35-foot buffer applies to all ephemeral streams in the San Geronimo Valley only.

E. Replace Draft Section 22.30.045(D)(2), in its entirety, with the following language:

"Additions to existing permitted structures that do not: (1) increase the lot coverage within the Stream Conservation Area by more than a cumulative total of 300 square feet; or (2) increase the horizontal encroachment into the Stream Conservation Area. Vertical additions to existing permitted structures that do not expand the existing footprint are not counted toward the 300 square foot cumulative lot coverage allowance.

The 300 square feet of cumulative lot coverage is calculated on a per parcel basis following the effective date of this section ( \_\_, 2022). No additional lot coverage may be added once the allowance is exhausted, consistent with state law. Notwithstanding the foregoing, state law may require the allowance of certain other uses and/or development that is not otherwise contemplated by this section."

F. Replace section 22.30.045(E) in its entirety with the following<sup>1</sup>:

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<sup>1</sup> The reference to section 22.30.045(D) refers to the subsection as enumerated in Exhibit A to the December 13, 2021 Staff Memorandum to the Marin County Planning Commission; if the ordinance provisions are renumbered,



“Exceptions. Exceptions to full compliance with section 22.30.45(D) may be allowed only if the parcel is undeveloped as of the effective date of this section and the following is true:

1. A lot falls entirely within the Stream Conservation Area; or
2. Development on the parcel entirely outside the Stream Conservation Area
  - a. Cannot be accomplished even if the proposed development project is limited to 1000 square feet or less of lot coverage on the parcel as a whole, with the least possible encroachment into the SCA, or relocated to another suitable portion of the parcel that avoids encroachment into the SCA; or
  - b. Would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the Stream Conservation Area.

Exceptions under this subsection require an application supported by a showing of good cause and public noticing, and they must be subject to appeal.”

G. Replace subsections 22.52.030(D)(1) and (2) with the following<sup>2</sup>:

1. “Removal of dead, invasive, or exotic vegetation, including leaf litter, except for woody debris located below the stream top of bank. Consultation with the County, California Department of Fish and Wildlife, and/or Marin Municipal Water District is required prior to removal of any woody debris below the stream top of bank.”
2. “Removal or trimming of pyrophytic combustible live trees and/or vegetation consistent with Chapter 22.62 (Tree Removal Permits) and Title 16 – Provision 16.16.040, including tanoak, California bay laurel, and Douglas fir tree species. Removal of any live tree or vegetation that is greater than six inches in diameter and below the top of bank is not exempt from Site Plan Review, unless the tree or vegetation presents an immediate hazard to public safety. No development project shall be approved if it would require removal of native vegetation below the top of the bank.”

H. Add the following definitions to Section 22.130.030:

“No net loss of habitat. Complete replacement of habitat of equivalent acreage, value, and function on the same parcel on which habitat will be displaced by the project, except that offsite mitigation of habitat loss may be allowed under a County-approved mitigation program. Complete replacement means replacement with native vegetation at a 2:1 ratio, which is monitored for a period no less than five years to ensure effective replacement.”

“Habitat. “Habitat” shall have the definition provided in the operative version of the Countywide Plan. If no definition is provided in the operative version of the Countywide Plan, “Habitat” is defined as: The physical location or type of environment in which an organism or biological population lives or occurs.”

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this clause should be adjusted as necessary to maintain the reference to the provision setting forth limitations on uses for the SCA area outside the 35 foot buffer.

<sup>2</sup> The County may adjust the codification of these provisions, so long as their substance is not affected. For example, the County may elect to move the term prohibiting the approval of any development project would require removal of native vegetation below the top of the bank to Section 22.30.045 (San Geronimo Community Standards).

- I. Habitat Restoration Program<sup>3</sup>
- Add a provision to Chapter 22.52 specifying that “Approval of Site Plan Review applications for uses within the San Geronimo Valley Combining District shall be subject to property owner compliance with any development impact fees, applicable at the time the Site Plan Review application is approved, established for the purpose of offsetting development impacts on the SCA through restoration and enhancement of riparian habitat within the San Geronimo Valley.”
  - Add a provision authorizing the County Board of Supervisors to adopt by resolution a development impact fee to be used to fund the Habitat Restoration Program.
- J. Add a provision providing that violations of SCA Ordinance provisions are enforceable through any legal remedies available for correcting/and or abating nuisances and violations of the Development Code, including but not limited to the administrative citation penalty schedule provided for in Chapter 1.05 of the Marin County Code.
- K. Add a provision defining any violation of the provisions of the SCA Ordinance governing “limitations on use” within the SCA to constitute a “public nuisance” for purposes of Chapter 1.05 (Nuisance Abatement) of the Marin County Code.

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<sup>3</sup> The County may adjust the codification of these provisions, so long as the substance is not affected. For example, County may elect to move this content to Section 22.30.045 (San Geronimo Community Standards) and add as a standard for development. Under this approach this language would be added as a condition of approval for the Site Plan Review permit.