

STAFF REPORT TO THE PLANNING COMMISSION MARIN COUNTY TITLE 22 (DEVELOPMENT CODE) AMENDMENT: STREAM CONSERVATION AREA			
Item No:	4.	Applicant:	Action initiated by Community Development Agency
Hearing Date:	April 1, 2013	Planner:	Suzanne Thorsen
	RECOMMENDATION:	Conduct the public hearing and continue hearing to May 13, 2013.	
	APPEAL PERIOD:	Not Applicable	
	LAST DATE FOR ACTION:	Not Applicable	

Summary Recommendation:

Staff recommends that the Planning Commission conduct a public hearing to consider the proposed Development Code Amendments and continue the hearing to May 13, 2013.

Project Description:

The proposed County-initiated amendments to the Development Code (project) would implement the Stream Conservation Area policies and programs from the 2007 Marin Countywide Plan (CWP). The ordinance would establish SCA setbacks that range from 20, 50, or 100 feet or more upland from the top of stream banks, as well as standards for development within the SCA setbacks, review procedures and permit requirements.

Two new chapters are proposed: Chapter 22.33 (Stream Protection) and 22.63 (Stream Conservation Area Permit). These chapters would fully contain requirements and permit procedures for development in SCAs. Since all requirements governing development in SCAs will be consolidated in the two proposed Chapters, corresponding amendments are proposed to the following Sections of the Development Code. These amendments will eliminate existing requirements governing development in SCAs that are currently implemented through other Chapters of the Development Code.

- **22.06.050 – Exemptions from Land Use Permit Requirements.** Clarify that exemptions are not applicable to the SCA, since SCA-specific exemptions are proposed in Chapter 22.63 for development.
- **22.08.040 - Agricultural District Development Standards.** Delete SCA reference in Sections 22.08.040.E and F for agricultural processing and retail sales.
- **Chapter 22.40 – Application Filing and Processing, Fees.** Amend to include the SCA Permits.
- **22.42.045 – Design Review for Development Along Anadromous Fish Streams and Tributaries.** Delete Section.

- **22.42.025 – Exemptions from Design Review.** Delete requirement for development and physical improvements that are exempt from Design Review to be located outside of the SCA and amend Tables 4-2 and 4-3 to remove the Environmental Protection standard requiring development to be located outside of an SCA because new standards and the SCA Permit will replace Design Review for development in SCAs.
- **22.42.055 – Project Review Procedures.** Delete the requirement for development to be located outside of the SCA in order to be eligible for a Minor Design Review, for the same reasons as described above in Section 22.42.025.
- **22.56.050 - Decision and Findings for New Second Units.** Delete reference to compliance with SCA for new second units in 22.56.050.L because compliance with new SCA requirements will apply through the SCA Permit.
- **22.62.040 – Exemptions.** Delete reference to removal of protected or heritage trees within an SCA in 22.62.040.J.3 because compliance with the new SCA requirements will apply through the SCA Permit.
- **Section 22.130.30:** Add new definitions for Disturbed Area; Streams, Perennial; Streams, Intermittent; Streams, Ephemeral; Stream Conservation Area Setback; and Top of Bank. Amend definitions for Discretionary Permit; Ministerial Permit, and Stream Conservation Area.

Background:

The 2007 CWP establishes policies and programs for protection of riparian areas, which are enumerated in Goal BIO-4 (Riparian Conservation). Implementation of the Countywide Plan policies has been achieved to date through the discretionary review process, primarily Design Review. Because Design Review is required for properties in planned zoning districts (e.g., RSP, RMP, ARP), development activities on conventionally-zoned properties (e.g., R1, RA, etc.) have not been required to comply with the SCA policies due to the ministerial type of review that applies to conventionally-zoned properties.

In 2012, as a result of litigation (*Salmon Protection and Watershed Network v. County of Marin*), a court-mandated injunction was imposed that prohibited the County from issuing development applications for areas within the SCA on properties in the San Geronimo Valley. The injunction will remain in place until an expanded SCA ordinance is adopted.

Plan Consistency:

The proposed Development Code Amendments would implement Goal BIO-4 (Riparian Conservation) of the 2007 CWP. It would be consistent with the goals and policies of the CWP by strengthening and ensuring the consistent application of standards for the maintenance, restoration, enhancement, and protection of the environment in furtherance of the CWP's environmental policies. Key provisions of Policy BIO-4 are reflected in SCA Setbacks (BIO-4.1), standards for review (BIO-4.2) and requirement for site assessments (BIO-4.1). A more detailed analysis is provided in Attachment 3 (Countywide Plan Policy Matrix).

Environmental Review:

The proposed amendments to the Development Code would implement the goals and policies of the CWP by strengthening and ensuring the consistent application of standards for the maintenance, restoration, enhancement, and protection of the environment in furtherance of the CWP's environmental policies and are within the scope of the certified 2007 Countywide Plan EIR.

No additional environmental review is necessary for the proposed Development Code Amendments. Pursuant to State CEQA Guidelines Sections 15162 and 15163, the project does not involve, or result in, substantial changes in the 2007 Countywide Plan or in substantial changes to the circumstances under which the project was undertaken or significant new information of substantial importance that was not known at the time the 2007 Countywide Plan EIR was certified. The proposed project does not trigger a need for additional environmental review because it would not cause any new or substantially more severe impacts than those addressed in the certified *2007 Countywide Plan EIR*.

In addition, the proposed project is exempt from the California Environmental Quality Act pursuant to Sections 15307 and 15308 of the CEQA Guidelines (Classes 7 and 8 Protection of Natural Resources and Protection of the Environment). Because this project sets the regulatory framework for permitting in accordance with the CWP and increases the level of protection afforded to stream and riparian habitat as compared with current County regulations, Classes 7 and 8 of CEQA are applicable. The exceptions listed in Section 15300.2 of the CEQA Guidelines also do not apply, as the ordinance is a single regulatory action that establishes standards to avoid adverse impacts to stream water quality and riparian habitat. Individual construction activities that might cause significant effects under CEQA would be subject to environmental review and mitigation in accordance with CEQA and the requirements of proposed Chapter 22.63 (Stream Conservation Area Permit).

Public Notice:

Notice of the Planning Commission hearing has been published in the Marin Independent Journal. The Community Development Agency mailed a copy of the public notice describing the proposed Development Code amendments to all owners of properties that would be subject to the new SCA requirements. Notices were also sent to interested public agencies, community groups, and individuals and posted on the County's website (www.co.marin.ca.us/SCA) and in the Civic Center.

In addition to formal notice of public hearing, affected property owners and interested parties received mail notification for the informational Open House that was held on March 14, 2013. County staff additionally prepared two press releases related to the SCA – the first announcing the Open House and the second to encourage participation through the County's new online forum, Open Marin.

Outreach:

Staff engaged in both internal and external outreach during preparation of the SCA Ordinance. Prior to release of the public review draft, staff met with representatives of groups interested in the SCA, including 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, CSA 13, Lucas Valley Homeowners Association, Kentfield Planning Advisory Board, Tam Design Review Board, and Sleepy Hollow Homeowners Association.

External outreach efforts provided interested organizations with an overview of the SCA Ordinance, key dates including the March 14 Open House and public hearings, and contact information. Questions and comments from meeting participants helped to highlight refinements needed for the public review draft and resulted in the Frequently Asked Questions provided as Attachment 4.

An SCA Open House was conducted on March 14. It was advertised through a broad outreach effort that included direct mail, print ads in the Main IJ and Pacific Sun, press release, and email to interested parties. Approximately 160 people attended the Open House. Following a presentation, attendees spoke to representatives of the CDA, Department of Public Works, MCSTOPPP, Fire Department, and consulting scientists who are assisting with the ordinance. Responses to written questions are provided in Attachment 4 (Frequently Asked Questions), and written comments from the Open House are provided in Attachment 5 (Comments from March 14 Open House).

Finally, the County launched its first online civic engagement forum, Open Marin, on March 4. The first two topics posted in Open Marin were about the SCA: the first invites participants to ask questions about the SCA: the second is an avenue for public feedback. Questions are addressed in Attachment 4, and comments from Open Marin are provided in Attachment 6.

Ordinance Framework

Proposed SCA requirements are encompassed primarily in two new Development Code Sections and by new or revised definitions in Section 22.130.30 (Definitions) of the Development Code:

Chapter 22.33 – Stream Protection: This chapter is contained in Article III of the Development Code, which provides development standards that apply across zoning districts. Chapter 22.33 describes the Stream Conservation Area and the areas to which it is applicable; sets requirements for stream protection; and establishes setbacks from the top of bank consistent with the Countywide Plan. Section 22.33.030 brings over three important criteria from Countywide Plan Policy BIO-4.2, providing that development shall not be permitted if it would result in:

- a. Adverse alteration of hydraulic capacity;
- b. A net loss of habitat acreage, value or function; or
- c. Degradation of water quality.

Chapter 22.63 – Stream Conservation Area Permit: This chapter is contained in Article IV of the Development Code, which provides descriptions and procedural information for all land use permits required by the Development Code. Chapter 22.63 describes the types of development subject to an SCA permit; establishes exemptions and a tiered review structure; and sets development standards, application requirements, permit procedures and required findings.

The SCA Permit would be a new permit type that is based upon a setback distance from a stream (environmental feature) rather than a property line. The SCA Ordinance establishes two tiers of permitting for development proposed within the Stream Conservation Area:

Tier 1 is a ministerial permit that would be issued subject to compliance with required development standards, Standard Management Practices (SMPs), and a site assessment to confirm that the proposed development, in combination with required SMPs, would avoid adverse impacts to stream and riparian resources. Projects eligible for Tier 1 permitting include:

- Additions to existing structures that do not result in removal of woody riparian vegetation or increase the existing horizontal incursion (footprint) into the SCA by more than 500 square feet;

- Water supply or septic facilities;
- Decks, patios, platforms and similar improvements;
- Pedestrian or vehicular access (driveways, paths, etc.);
- Drainage improvements (downdrains, pipes, swales);
- Retaining walls and erosion control structures; and
- Necessary flood control facilities.

Projects that do not incorporate required SMPs or that would result in adverse impacts to hydraulic capacity, water quality, or riparian habitat acreage, value, or function, as determined through a site assessment, would require a Tier 2 SCA Permit.

Tier 2 is a discretionary permit required for any development that is not otherwise exempt or eligible for Tier 1 permitting, or development that would result in adverse impacts to water and riparian resources within the SCA. Tier 2 permits are subject to all Tier 1 requirements, as well as environmental review under CEQA including an Initial Study and public notice; a public hearing may be required depending upon the nature of permit activity or CEQA; and additional study or mitigation as required pursuant to environmental review.

As the proposed Development Code Amendments are intended to be “stand-alone”, SCA requirements will be eliminated from other sections of the Development Code. Development in the SCA will be governed by the requirements in Chapter 22.33 and 22.63.

Guiding Principles

Development of the Development Code Amendments was guided by a set of fundamental principles, also known as CASE.

Clear: homeowners, staff, and decision-makers should be able to understand the purpose of the SCA regulations. The SCA permit process and requirements should be clearly articulated, with applicants able to predict what their permit process will entail. A County-maintained stream map should provide property owners with the ability to determine whether they are subject to the requirements of the ordinance.

Affordable: compliance should be made affordable for property owners and applicants. The ordinance should provide options for compliance with the costs commensurate with the magnitude of the development. While not within the domain of the Planning Commission, application fees should be set at a level that would not deter voluntary participation in the permitting process.

Simple: the ability to understand the SCA Ordinance should not be constrained by jargon or ambiguous terms. Information should be readily accessible, either within the Ordinance or through material available to the public on the County’s web site. The SCA Ordinance will be a stand-alone document that does not require cross-referencing across multiple Articles and Chapters of the Development Code.

Enforceable: any new requirements set forth in the SCA Ordinance should be enforceable.

These principles support an ordinance that is effective and carries out the mandate from the Countywide Plan in a practical manner. However, regulation alone will not solve the impacts to the County's riparian corridors from deforestation and urbanization that has occurred in the past. To achieve the Countywide goal of protecting and restoring the County's riparian systems will require other efforts, including community engagement, education, and assistance. Education is important as it helps make informed decisions of undertaking creek-friendly land use practices that support and improve the health of the riparian areas. The County has also invested significant funding and resources to support these goals. For example, within the San Geronimo Valley, the County completed a Salmon Enhancement Plan, undertook projects to remove fish passage barriers in fish spawning streams, restored over 8 miles of trails that reduce sedimentation of the streams, and undertook a Landowner Assistance Program that is focused on voluntary improvements on private property to benefit the fishery resources. Continued action and dedication of resources by the County is important to ensure that the broader goals of protecting the County's riparian resources are achieved.

Applicability

Pursuant to Chapter 22.33 (Stream Protection), the SCA consists of the stream between the tops of banks and the strip of land extending outward on either side of the stream to the limits of the SCA Setback (a distance of 20', 50' or 100' depending on which of the four Countywide Plan Corridors the lot is situated in). The SCA applies only to unincorporated lots and excludes the following:

- The Coastal Zone (streams in the Coastal Zone are subject to the Local Coastal Program);
- Tidally influenced waters and adjacent land;
- Land adjacent to levees, dikes, berms, and publicly maintained flood control or water conservation district facilities;
- Official governmental activities and development.

While lots with planned district zoning are subject to Countywide Plan Goal BIO-4 through discretionary review (e.g., Design Review), the policies are applied to a significantly lesser extent on conventionally zoned properties. The SCA Ordinance would apply across zoning districts, bringing conventional districts into parity with planned districts.

A total of 3,641 lots would be subject to the SCA regulations; of these the majority (65%) are improved lots within conventional zoning districts. About 10% of the affected properties are vacant lots within conventional districts.

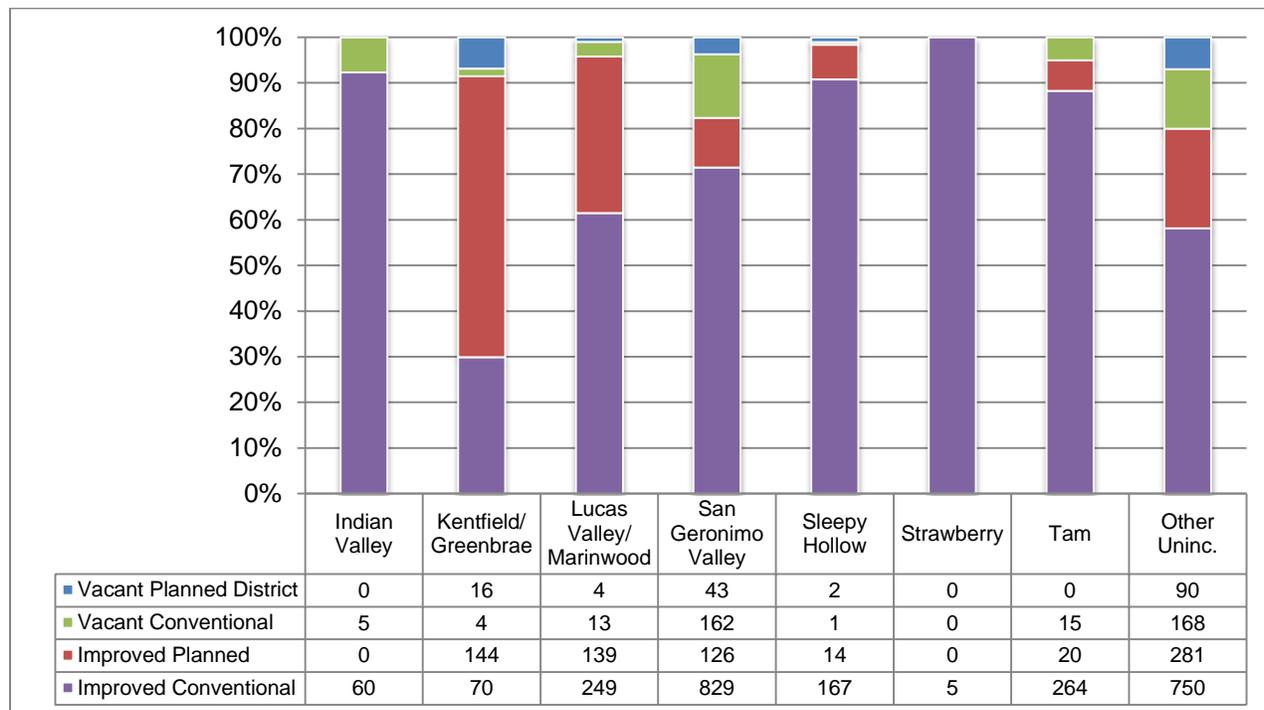
Figure 1: Distribution of Lots Subject to SCA

	Total Parcels	Vacant/ Unimproved	Improved
Planned District	879	155	724
Conventional District	2762	368	2394
TOTAL	3641	523	3118

The Community Areas with the largest concentration of lots with SCA are San Geronimo Valley, Lucas Valley/Marinwood, Tamalpais and Kentfield/Greenbrae. These communities are all in the

City-Centered Corridor, with the exception of San Geronimo Valley which is in the Inland-Rural Corridor.

Figure 2: Distribution Lots Subject to SCA by Community Area



Development Regulated

Chapter 22.63 (Stream Conservation Area Permit) is applicable to permitted development within a Stream Conservation Area. As used in the SCA Ordinance, development includes:

- All structures, regardless of whether a building or grading permit is required;
- Clearing of land or removal of any vegetation;
- Deposition of refuse or non-indigenous material that is not otherwise subject to a Creek Permit or Grading Permits under Marin County Code Sections 11.08 and 23.08, respectively; and
- Activities that would have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.

Importantly, the project expands the scope of permitting *within the SCA* to include development activity that currently does not require permits, including installation of patios, construction of certain small accessory structures, and removal of any vegetation including protected and heritage trees. The project would also establish a structure of exemptions to allow ongoing use and maintenance as a matter of right, while applying permit requirements and standards of review for new development activities that could affect the water and riparian habitat resources of the SCA.

SCA Map

Pursuant to CWP Program BIO-4.c, applicability of the SCA will be determined based on the mapped streams contained in the County's SCA Geographic Information Systems data. The data includes streams mapped by the United States Geological Survey, including the National Hydrography Dataset. Over time, the accuracy of the County's SCA data and map will be improved using new information, such as that provided using LIDAR (Light Detection and Ranging) infrared technology. An online parcel lookup application has been created at (<http://gis.marinpublic.com/GeoCodeLookup/Default.master.aspx>) to assist in determining the application of the SCA to specific properties. The SCA buffers shown in the lookup tool have been adjusted conservatively to provide a margin of error that accounts for the difficulty in mapping the top of stream banks.

Key Issues:

Ephemeral Streams

SCAs are designated along perennial, intermittent and ephemeral streams in accordance with the Countywide Plan. While the Countywide Plan requires SCA setbacks along all perennial and intermittent streams, the setback is only applicable along those ephemeral streams that support riparian vegetation for a length of 100 feet or more and/or support special-status species and/or a sensitive natural community type. (See CWP Policy BIO-4.1.) The proposed Development Code amendment utilizes the first criterion for applying the SCA on protected ephemeral streams.

As defined in the CWP and the proposed Development Code definition, an ephemeral stream is "a watercourse that carries only surface runoff and flows during and immediately after periods of precipitation." While this broad definition may include ditches and other conduits that transport storm runoff, this subset of streams is not protected under the CWP. The proposed Development Code Amendments incorporate the 100-foot threshold for riparian vegetation in Section 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.*" The ordinance language refines the CWP policy to indicate that the SCA is applicable to mapped streams consistent with the approach outlined in CWP Program BIO-4.c and reflected in the Applicability section of the proposed Stream Protection Chapter (22.33.020.A).

With respect to the extent of riparian vegetation, the proposed amendment adds specificity to the Policy language by clarifying that the 100-foot length of riparian vegetation must be "continuous." This reflects a practical interpretation of the CWP policy. Despite this, substantial ambiguities remain. For example, must the vegetation be continuous along the entire 100-foot length, or should a property that has multiple groupings of riparian vegetation be protected if the total of all of the groupings meets the 100-foot criterion? Is the upstream or downstream positioning of the vegetation relevant? How is the extent of riparian vegetation to be determined if some of it is located on neighboring private property that is not the subject of a permit? And, what role do seasonal factors play in cases where the vegetation is dormant during certain periods of the year? The CWP defines riparian vegetation as "vegetation associated with a watercourse and relying on the higher level of water provided by the watercourse." Given that ephemeral streams carry runoff during and immediately after a period of precipitation, could this be conducive to supporting riparian vegetation which is predicated on the presence of water? Staff will provide additional information and analysis about ephemeral streams during

the presentation of this topic on April 1 and request additional direction from the Planning Commission that will guide necessary revisions in advance of the May 13 public hearing.

Exemptions

While the SCA Ordinance has a broad purview over development activities within the SCA, it carves out a set of exemptions that allow property owners and governmental agencies to undertake routine activities, such as maintenance, resource management, limited fencing, removal of hazardous conditions, and emergency actions. Additional exemptions “subject to determination” include (a) replacement of permitted and legal non-conforming structures and facilities that do not increase the footprint or result in removal of woody riparian vegetation, (b) structures and development activities within previously disturbed areas and (c) tree and vegetation removal or trimming on a vacant lot to protect against fire hazards, public nuisances, or other threats to public health and safety. The nature of staff review for these to exemptions is verify that the meet the conditions of the exemption; that is, to confirm the size or extent of the existing structure/disturbed area, to verify that the footprint is not expanded, and to confirm that the activity will not result in the removal of woody riparian vegetation (for a. and b. above).

Previously disturbed areas include 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. The intent of the exemption is to encourage people to limit their activities, landscaping, and structures to those areas of the SCA already altered (or disturbed) by human activity. The extent of disturbed area will be determined on a case by case basis, but generally would be indicated by the presence of accessory structures, ornamental features and actively maintained lawn or garden areas.

Woody Riparian Vegetation

Woody riparian vegetation is defined within the Countywide Plan and generally includes trees, shrubs and vines. The proposed SCA Ordinance refers to woody riparian vegetation in several instances:

- SCA Setbacks, 22.33.030.B.2: In the Inland Rural Corridor, Baylands Corridor, and Coastal Corridor, the SCA setback 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. *This standard is from Countywide Plan Policy BIO-4.1.*
- Exemptions, 22.63.020.B.1.j: Agricultural uses on property zoned for agriculture that do not result in the removal of woody riparian vegetation or animal confinement within the SCA. *This standard is from Countywide Plan Policy BIO-4.1.*
- Exemptions, 22.63.020.B.2.a: Repair and replacement of existing permitted and legal non-conforming structures may be exempt subject the Director’s determination that such activity does not expand the footprint or result in the removal of woody riparian vegetation. *This standard is derived from Countywide Plan Policy BIO-4.1, which generally requires the avoidance of woody riparian vegetation.*
- Site Assessment (Tier 1), 22.63.030.B.4: The Site Assessment (Tier 1) delineates the extent of SCA on the lot including the precise stream location and limits of woody riparian vegetation, recommends SMPs corresponding to the nature of development and determines whether the project would result in adverse impacts to stream and riparian resources. *This standard is from Countywide Plan Policy BIO-4.1.*

For permit applications, the extent of woody riparian vegetation would be determined through a site assessment. However, 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.

Standard Management Practices (SMPs)

The SCA Ordinance introduces the concept of Standard Management Practices, or SMPs, which would be required in conjunction with an SCA Permit in order to avoid adverse impacts to hydraulic capacity; riparian habitat acreage, value or function; and water quality. SMPs are prescriptive measures required to offset the impacts associated with construction and development activities.

SMPs are triggered by an SCA Permit and will be prescribed in accordance with a development activity or recommendation in a site assessment. Examples of SMPs include:

- Design:
 - No new roofs, paving or hardscape will drain directly to storm drains or streams.
 - Cover trash storage to protect from rainfall and direct runoff away from the stream.
 - Plant only native vegetation within the SCA.
- Construction:
 - Park vehicles and equipment on existing pavement, roads, and previously disturbed areas.
 - Stabilize all graded or disturbed soils using a native hydroseed mix, erosion control fabric, mulch, or other erosion control technique immediately after disturbance.

Illegal Structures

The SCA Ordinance does not change the status or enforcement of illegal structures. While existing structures that were not subject to permits prior to the SCA Ordinance (such as sheds) would be considered legal non-conforming, structures that were illegally constructed will not benefit from the exemptions of the SCA Ordinance. Enforcement will continue to be complaint-based.

With respect to illegal structures, the ordinance will create a better defined path to obtain a permit for a structure within the SCA and will, upon adoption, result in removal of the court-ordered injunction that is currently in place. Any permit for an illegal structure would be evaluated against the standards of the Development Code that are in effect at the time the permit application is received.

Cost

Concurrent with consideration of the proposed Development Code amendments, staff will be submitting a recommendation to the Board of Supervisors to amend the Planning Division's Fee Schedule to include the new SCA Permit. The amount of fees that are charged for development review services cannot exceed the costs of providing those services. In 2010, the Board of Supervisors approved amendments to the Fee Schedule. Fees for certain permits that support broader public policy objectives were set below the actual cost of providing the review services, while other fees were set "at cost." Consistent with the guiding principle of supporting affordability, staff will be recommending that fees be established below the actual cost of providing the review services. For example, a Tier 1 SCA Permit may cost around \$1,500, while

a Tier 2 SCA Permit would increase to approximately \$4,000 plus any costs related to environmental review. Where a determination is needed to confirm that a project qualifies for an exemption, fees would be set at approximately \$300. No fee will be required for development activities that qualify for “as-of-right” exemptions. The Board of Supervisors has the sole discretion of establishing the fees related to administration of the proposed ordinance.

Recommendation:

Conduct the public hearing to accept public testimony and continue the hearing to May 13, 2013.

Attachments:

1. Stream Conservation Area Ordinance – Planning Commission Draft
2. Countywide Plan Policies BIO-4.1 to 4.20 and Programs BIO-4.a to 4.u
3. Countywide Plan Consistency Matrix
4. Frequently Asked Questions.
5. Comments from March 14 Open House
6. Comments from Open Marin
7. Public Correspondence:
 - John Baldwin, email 3/20/13
 - Spawn’s Key Concerns re the SCA Ordinance, 3/15/13
 - Steve Tognini email, 3/19/13
 - Gerald Toriumi email, 3/19/13

**Marin Stream Conservation Area Ordinance
Planning Commission Draft for April 1, 2013 Workshop**

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. 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, berms, and publicly owned or maintained flood control or water conservation district facilities; and
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..

22.33.030 – 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:

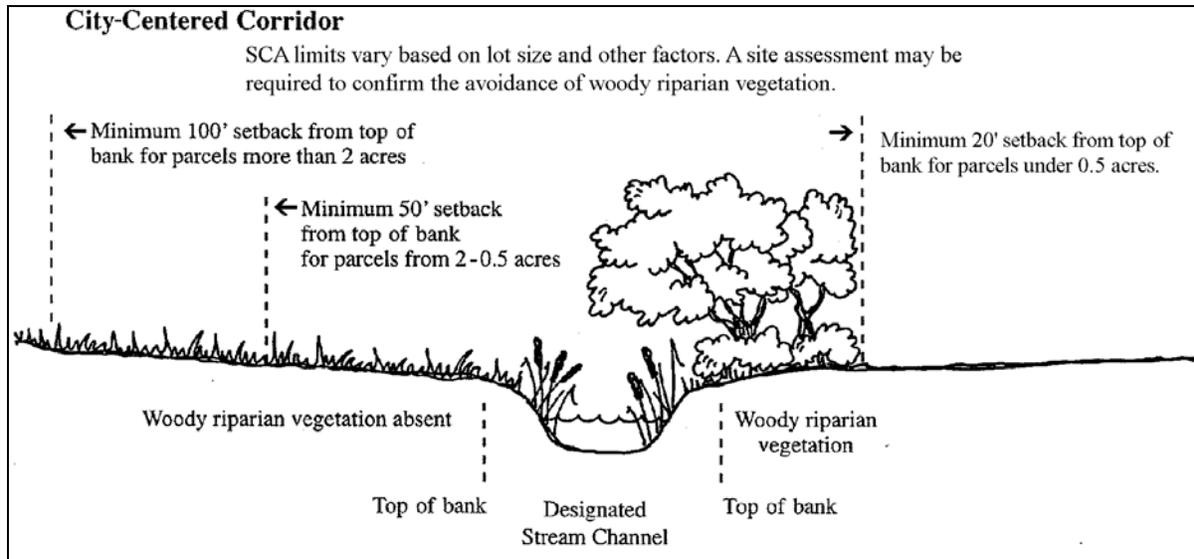
1. Development shall avoid SCAs wherever feasible.
2. Where complete avoidance of an SCA is not feasible, the stream channel shall be avoided to the maximum extent feasible and incursion into the SCA shall be minimized.
3. Development within the SCA shall not be permitted if it would directly or indirectly 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.

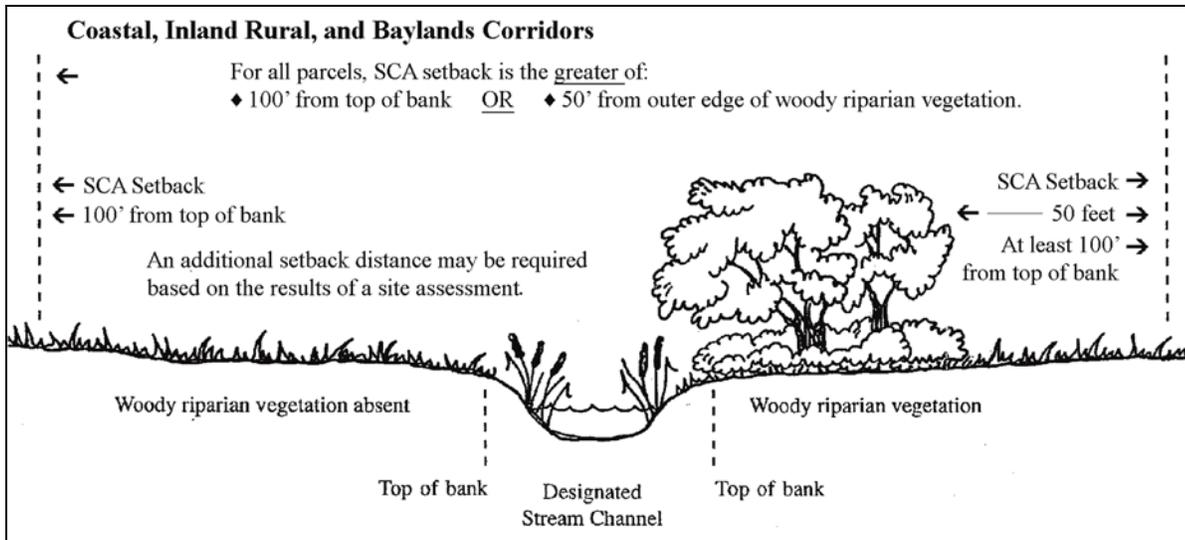
The Stream Conservation Area includes setbacks as provided in this subsection.

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.
2. SCA setbacks for properties within the Inland Rural Corridor, Baylands Corridor, and Coastal Corridor 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.
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.
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.

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 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.

B. Exemptions.

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;

Stream Conservation Area
Planning Commission Draft
April 1, 2013

- 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 removed under this exemption may also be dead, invasive, or exotic);
- 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);
- g. Maintenance 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 that does not restrict wildlife access to a riparian habitat;
- 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.

2. Exempt subject to determination. The following activities are exempt subject to determination by the Director, based upon appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below.

- 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 or result in the removal of woody riparian vegetation.
- b. Structures and development activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director.
- 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 removed under this exemption may also be dead, invasive, or exotic).

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:

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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.

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 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.

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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, 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 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 proceed to 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 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 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 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 or comply with to the mitigations generated during the required environmental review process, which could 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.

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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:

- 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; 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 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).
- B. Project review procedure.** The Director 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:

For a SCA (Tier 1) Permit:

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

For a SCA (Tier 2) Permit:

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

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.

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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**~~

Stream Conservation Area
 Planning Commission Draft
 April 1, 2013

~~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 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

Stream Conservation Area
 Planning Commission Draft
 April 1, 2013

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 Stream Conservation Area 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.

Stream Conservation Area
 Planning Commission Draft
 April 1, 2013

	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 Stream Conservation Area 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);

Stream Conservation Area
Planning Commission Draft
April 1, 2013

- 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.*

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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. *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.

Stream Conservation Area
Planning Commission Draft
April 1, 2013

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

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.

9. *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."

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."

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.

Stream Conservation Area
 Planning Commission Draft
 April 1, 2013

11. 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.
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

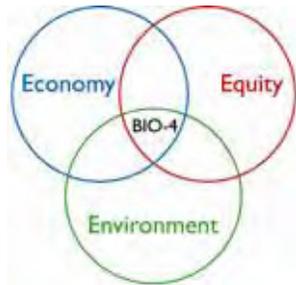


MARIN COUNTYWIDE PLAN

BIO-3.h *Evaluate Wetlands Definitions.* Conduct a study to evaluate whether to continue to rely on the Army Corps of Engineers definition of wetlands outside of the Coastal Zone or to expand the use of the Coastal Zone (or “Cowardin”) definition to the entire county. The study should consider all of the following in developing a recommendation to the Board of Supervisors: (1) the effect of the expanded wetland definition when coupled with SCA and WCA requirements; (2) the extent of the geographic areas potentially affected by the expanded definition; (3) performance of wetland delineations for areas outside the Coastal Zone (in-house staff or consultants); (4) potential costs and workloads associated with delineations, administration, and appeals; (5) overall feasibility of implementation and enforcement responsibilities associated with an expanded definition; (6) benefits and challenges of a consistent definition throughout the county; (7) what percentage of wetlands would continue to be regulated by the Army Corps of Engineers; and (8) what percentage of cost could be paid for by the applicant.

What Are the Desired Outcomes?

GOAL BIO-4



Riparian Conservation. Protect and, where possible, restore the natural structure and function of riparian systems.

Policies

BIO-4.1 Restrict Land Use in Stream Conservation Areas. 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 practices¹ shall be adhered to in all designated SCAs. Best management practices are also strongly encouraged in ephemeral streams not defined as SCAs.

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.

SCAs are designated along perennial, intermittent, and ephemeral streams as defined in the Countywide Plan Glossary. Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed or where full compliance with all

¹Such as those outlined in *Start at the Source* and *Start at the Source Tools Handbook* (Bay Area Stormwater Managers Agencies Association).



NATURAL SYSTEMS & AGRICULTURE ELEMENT

SCA criteria would not be met. 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.

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). 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. Human-made flood control channels under tidal influence are subject to the Bayland Conservation policies. The following criteria shall be used to evaluate proposed development projects that may impact riparian areas:

City-Centered Corridor:

- ◆ For parcels more than 2 acres in size, provide a minimum 100-foot development setback on each side of the top of bank.
- ◆ 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.
- ◆ 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.
- ◆ 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, *Require Site Assessment*.



Woody riparian vegetation includes plants that have tough, fibrous stems; vines; and branches covered with bark and composed largely of cellulose and lignin. Characteristic woody riparian species include willow, alder, box elder, big-leaf maple, cottonwood, dogwood, elderberry, elk clover, thimbleberry, and California blackberry, among others. See glossary for additional information on stream characteristics and definitions.



MARIN COUNTYWIDE PLAN

Coastal, Inland Rural, and Baylands Corridors:

- ◆ 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. An additional setback distance 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, *Require Site Assessment*. SCAs shall be measured as shown in Figure 2-2.

Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs:

- ◆ Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;
- ◆ Projects to improve fish and wildlife habitat;
- ◆ Driveway, road and utility crossings, if no other location is feasible;
- ◆ Water-monitoring installations;
- ◆ Passive recreation that does not significantly disturb native species;
- ◆ Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;
- ◆ 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.

BIO-4.2 Comply with SCA Regulations. 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.

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.

BIO-4.3 Manage SCAs Effectively. Review proposed land divisions in SCAs to allow management of a stream by one property owner to the extent possible.

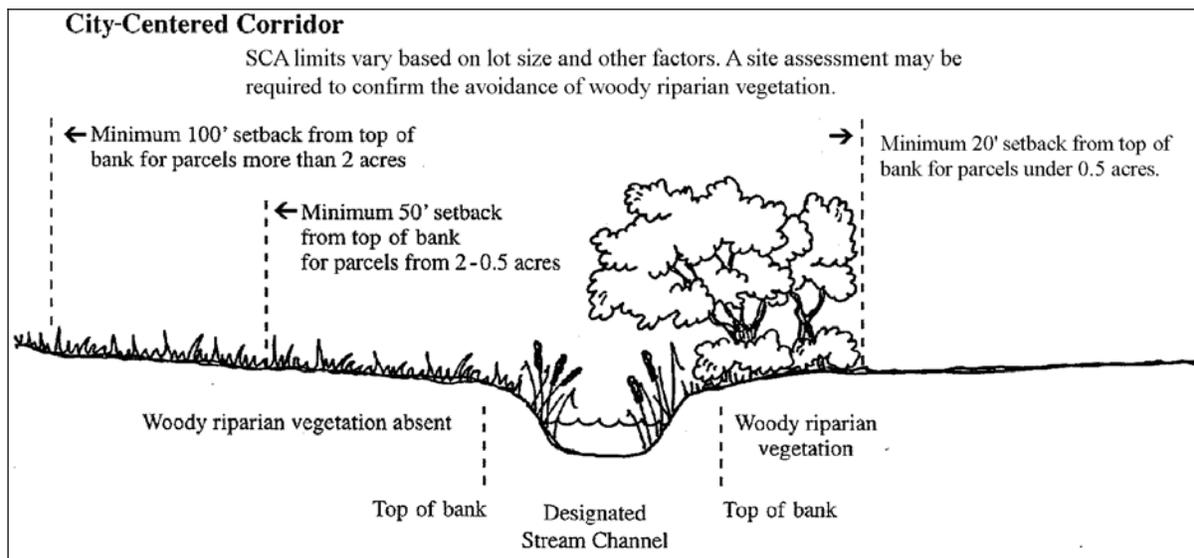


NATURAL SYSTEMS & AGRICULTURE ELEMENT

BIO-4.4 Promote Natural Stream Channel Function. Retain and, where possible, restore the hydraulic capacity and natural functions of stream channels in SCAs. Discourage alteration of the bed or banks of the stream, including filling, grading, excavating, and installation of storm drains and culverts. When feasible, replace impervious surfaces with pervious surfaces. Protect and enhance fish habitat, including through retention of large woody debris, except in cases where removal is essential to protect against property damage or prevent safety hazards. In no case shall alterations that create barriers to fish migration be allowed on streams mapped as historically supporting salmonids. Alteration of natural channels within SCAs for flood control should be

designed and constructed in a manner that retains and protects the riparian vegetation, allows for sufficient capacity and natural channel migration, and allows for reestablishment of woody trees and shrubs without compromising the flood flow capacity where avoidance of existing riparian vegetation is not possible.

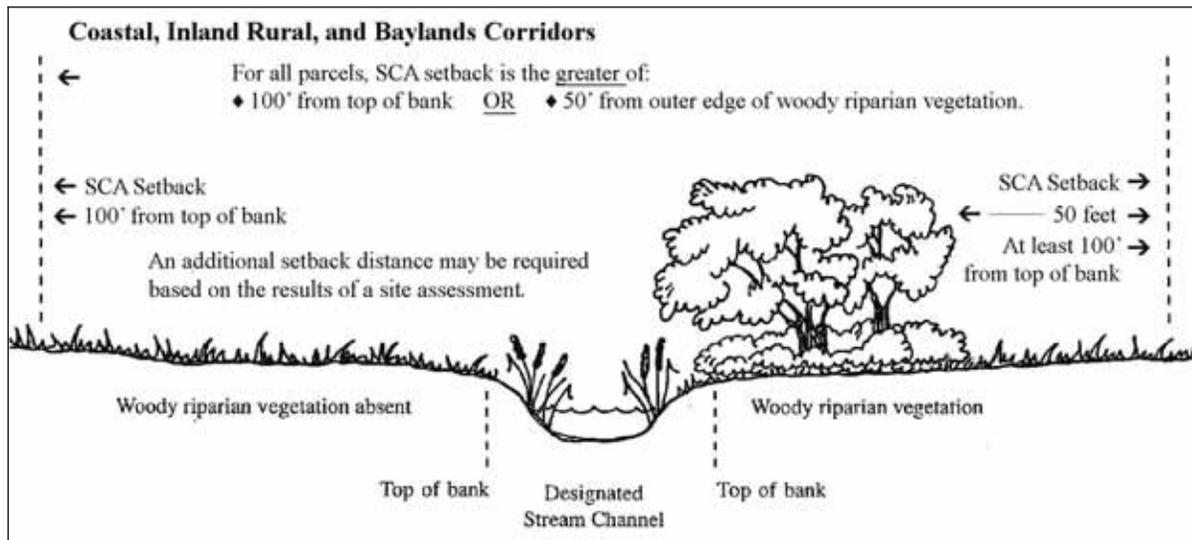
Figure 2-2
Typical Cross-Section of a Stream Conservation Zone



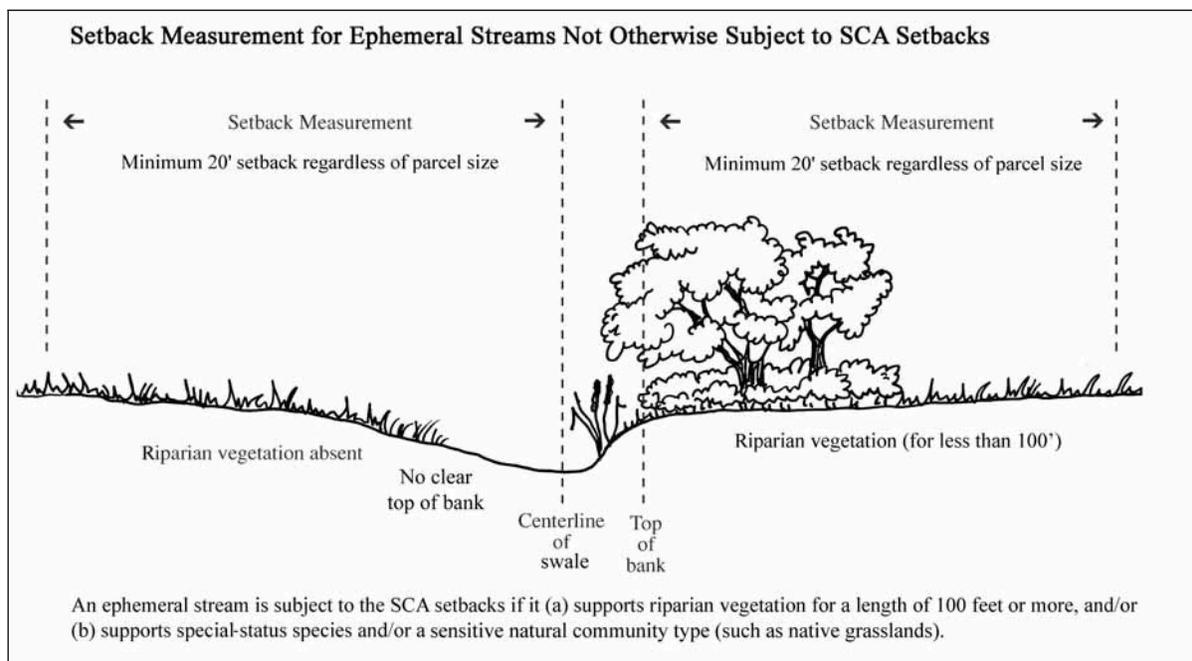
- ◆ Minimum setback distance of 100 feet from top of bank for parcels more than 2 acres.
- ◆ Minimum setback distance of 50 feet from top of bank for parcels between 2 and 0.5 acres.
- ◆ Minimum setback distance of 20 feet from top of bank for parcels less than 0.5 acres.
- ◆ A site assessment may be 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, *Require Site Assessment*.
- ◆ Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed and where full compliance with all SCA criteria would not be met.



MARIN COUNTYWIDE PLAN



- ♦ For all parcels, minimum setback distance is 50 feet from outer edge of woody riparian vegetation but no less than 100 feet from top of bank, unless an exception is allowed because parcel falls entirely within SCA, or development outside SCA is either infeasible or would have greater impacts.
- ♦ An additional setback distance may be required, based on the results of a site assessment, if such an assessment is determined to be necessary.
- ♦ Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed and where full compliance with all SCA criteria would not be met.



- ♦ For all parcels, regardless of corridor, minimum setback distance is 20 feet.
- ♦ A site assessment is required where incursion into the setback is proposed.



NATURAL SYSTEMS & AGRICULTURE ELEMENT

- BIO-4.5** **Restore and Stabilize Stream Channels.** Pursue stream restoration and appropriate channel redesign where sufficient right-of-way exists that includes the following: a hydraulic design, a channel plan form, a composite channel cross-section that incorporates low flow and bankfull channels, removal and control of invasive exotic plant species, and biotechnical bank stabilization methods to promote quick establishment of riparian trees and other native vegetation.
- BIO-4.6** **Control Exotic Vegetation.** Remove and replace invasive exotic plants with native plants as part of stream restoration projects and as a condition of site-specific development approval in an SCA, and include monitoring to prevent reestablishment.
- BIO-4.7** **Protect Riparian Vegetation.** Retain riparian vegetation for stabilization of streambanks and floodplains, moderating water temperatures, trapping and filtering sediments and other water pollutants, providing wildlife habitat, and aesthetic reasons.
- BIO-4.8** **Reclaim Damaged Portions of SCAs.** 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.
- BIO-4.9** **Restore Culverted Streams.** Replace storm drains and culverts in SCAs with natural drainage and flood control channels wherever feasible. Reopening and restoring culverted reaches of natural drainages should be considered part of review of development applications on parcels containing historic natural drainages where sufficient land area is available to accommodate both the reopened drainage and project objectives. Detailed hydrologic analysis may be required to address possible erosion and flooding implications of reopening the culverted reach, and to make appropriate design recommendations. Incentives should be provided to landowners in restoring culverted, channelized, or degraded stream segments. Where culverts interfere with fish migration but replacement is not possible, modify culverts to allow unobstructed fish passage.
- 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.
- BIO-4.11** **Promote Riparian Protection.** Support agencies, organizations, and programs in Marin County that protect, enhance, and restore riparian areas.
- BIO-4.12** **Support and Provide Riparian Education Efforts.** Educate the public and County staff about the values, functions, and importance of riparian areas. Landowner education regarding the sensitivity of riparian corridors will be provided as part of the Natural Resource Information Program called for in Program BIO-1.c. An emphasis will be placed on public outreach to owners of developed properties encompassing or adjacent to SCAs where minimum setback distances are not provided. Information on regulations protecting riparian corridors should be available, together with general



MARIN COUNTYWIDE PLAN

methods to minimize disturbance and improve habitat values. An updated list of regulatory agencies and their contact information should be maintained as part of the Natural Resource Information Program.

- BIO-4.13 Provide Appropriate Access in SCAs.** Ensure that public access to publicly owned land within SCAs respects the environment, and prohibit access if it will degrade or destroy riparian habitat. Acquire public lands adjacent to streams where possible to make resources more accessible and usable for passive recreation, and to protect and enhance streamside habitat.
- BIO-4.14 Reduce Road Impacts in SCAs.** 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.
- BIO-4.15 Reduce Wet Weather Impacts.** Ensure that development work adjacent to and potentially affecting SCAs is not done during the wet weather or when water is flowing through streams, except for emergency repairs, and that disturbed soils are stabilized and replanted, and areas where woody vegetation has been removed are replanted with suitable species before the beginning of the rainy season.
- BIO-4.16 Regulate Channel and Flow Alteration.** Allow alteration of stream channels or reduction in flow volumes only after completion of environmental review, commitment to appropriate mitigation measures, and issuance of appropriate permits by jurisdictional agencies based on determination of adequate flows necessary to protect fish habitats, water quality, riparian vegetation, natural dynamics of stream functions, groundwater recharge areas, and downstream users.
- BIO-4.17 Continue Collaboration with the Marin Resource Conservation District.** Continue to collaborate with, support, and participate in programs provided by the Marin Resource Conservation District and the Natural Resource Conservation Service to encourage agricultural operators who conduct farm or ranch activities within a Streamside Conservation Area to minimize sedimentation and erosion to enhance habitat values.
- BIO-4.18 Promote the Use of Permeable Surfaces When Hardscapes Are Unavoidable in the SCA and WCA.** Permeable surfaces rather than impermeable surfaces shall be required wherever feasible in the SCA and WCA.
- BIO-4.19 Maintain Channel Stability.** 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.



NATURAL SYSTEMS & AGRICULTURE ELEMENT

Characteristics pertinent to channel stability would include hillslope erosion, bank erosion, excessive bed scour or sediment deposition, bed slope adjustments, lateral channel migration or bifurcation, channel capacity, and the condition of riparian vegetation. The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access. In the event that project development would result in or further exacerbate existing channel instabilities, the applicant could either propose his/her own channel stabilization program subject to County approval or defer to the mitigations generated during the required environmental review for the project, which could 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.

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.

For projects subject to discretionary review, the applicant may be required, as appropriate, to submit a pre-and post-project hydrology and hydraulic report detailing the amount of new impervious surface area and accompanying surface runoff from all improvement areas, including driveways — with a goal of zero increase in runoff (no net increase in peak off-site runoff). The applicant may be required to participate in a peak stormwater runoff management program developed pursuant to new Program BIO-4.20.

BIO-4.20 **Minimize Runoff.** In order to decrease stormwater runoff, the feasibility of developing a peak stormwater management program shall be evaluated to provide mitigation opportunities such as removal of impervious surface or increased stormwater detention in the watershed.

Why is this important?

Riparian habitats are irreplaceable, vital biological systems that provide critical functions for water purification, flood control, fish and wildlife movement, and native habitat. However, large portions of existing riparian systems have been eliminated by past stream channelization, agricultural expansion, and urban development.

Environment: Preserving and restoring riparian habitats is essential to maintaining habitat connectivity and improving degraded conditions for fish and wildlife species. Adequate setbacks and limitations on uses within designated Stream Conservation Areas are needed to minimize disturbance to sensitive resources and to maintain and improve wildlife habitat, flood protection, and water purification.

Economy: Maintaining healthy waterways and natural habitat areas is critical to the economic health and vitality of the county. Protecting and restoring native vegetation along riparian corridors minimizes



MARIN COUNTYWIDE PLAN

potential erosion, downstream sedimentation, and water quality degradation. Directing development out of floodways reduces potential costly flood damage and loss.

Equity: Protecting and restoring riparian corridors provide an opportunity to link urban and natural areas to benefit human beings as well as native plants and wildlife. This expands the network of open space lands, areas for healthy recreation and exercise, an appreciation of natural systems, and aesthetic benefits.

How will results be achieved?

Implementing Programs

- 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. 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. As part of the new ordinance, consider including additional incentives, such as reduced fees or other similar incentives, to reduce the extent of existing development within an SCA or improve conditions that may be impacting sensitive resources.
- BIO-4.b** *Reevaluate SCA Boundaries.* Beginning with the City-Centered Corridor and smaller parcels, conduct a comprehensive study to reevaluate standards used to protect SCAs and regulate development adjacent to streams. The study shall consider available data on stream protection and management standards, their effectiveness, and the effectiveness of the current standards used in Marin County, including the 50- and 100-foot setback distances (plus additional setbacks from the edge of riparian vegetation where applicable). The study shall consider stream functions on a watershed-level basis, and include input from professionals such as a fluvial geomorphologist, hydrologist, wildlife biologist, and vegetation ecologist, together with resource agencies and interested members of the public. Each SCA should encompass all woody riparian vegetation and be of sufficient width to filter sediments and other pollutants before they enter the stream channel. Careful study may be needed to distinguish woody riparian vegetation from other types of woodland or forest vegetation in some areas.
- BIO-4.c** *Prepare County Stream Map.* Use the County GIS to map perennial, intermittent, and, where feasible, ephemeral streams subject to SCA policies. Use the resulting mapping in conjunction with USGS maps and the “ephemeral stream” definition to confirm SCAs on parcels proposed for development. Add to and update the map on an ongoing basis as additional streams are surveyed.



NATURAL SYSTEMS & AGRICULTURE ELEMENT

- BIO-4.d** ***Establish Functional Criteria for Land Uses in SCAs.*** Develop detailed criteria for protection of riparian functions, and identify methods for their use in evaluating proposed development.
- BIO-4.e** ***Identify Proposals Within SCAs.*** Determine whether a proposed development falls wholly or partially within an SCA, through agency review by County staff, and as necessary by a qualified professional, of discretionary application materials and site inspection.
- BIO-4.f** ***Identify Potential Impacts to Riparian Systems.*** At the time of a development application, evaluate potential impacts on riparian vegetation and aquatic habitat, and incorporate measures to protect riparian systems into the project design and construction. Retain and minimize disturbance to woody and herbaceous riparian vegetation in SCAs and adjacent areas. (Tree growth may be cleared from the stream channel where removal is essential to protect against property damage or prevent safety hazards.)
- BIO-4.g** ***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. 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 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.h** ***Comply with SCA Criteria and Standards.*** All development permit applications shall be reviewed for conformity with these SCA policies, criteria, and standards and in accordance with the California Environmental Quality Act. Proposals that do not conform to SCA policies, and cannot be modified or mitigated to conform, shall be denied. If a proposal involves the creation of a new parcel that is wholly or partially in an SCA, the land division shall be designed to ensure that no development occurs within the SCA.
- BIO-4.i** ***Replace Vegetation in SCAs.*** 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.



MARIN COUNTYWIDE PLAN

- BIO-4.j** *Continue Funding Fencing of Sensitive Stream Areas.* Encourage continued funding in conjunction with the Marin Resource Conservation District, the Natural Resource and Conservation Service, and other relevant agencies, to pay the cost of fencing sensitive streamside areas (on both public lands and private property) that could be impacted by cattle grazing.
- BIO-4.k** *Locate Trails Appropriately.* Situate trails at adequate distances from streams to protect riparian and aquatic habitat and wildlife corridors. Trails may occasionally diverge close to the top of bank to provide visual access and opportunities for interpretive displays on the environmental sensitivity of creek habitats. (See policies and programs in the Trails Section of this Element.)
- BIO-4.l** *Monitor Stream Conservation Areas.* Establish a system of monitoring SCAs, which may include mapping fenced streams and stream restoration areas to ensure the protection of vegetation, soils, water quality, and wildlife habitat along streams.
- BIO-4.m** *Encourage Conservation Plans Within the Stream Conservation Area.* Continue to collaborate with the Marin Resource Conservation District to encourage and support the continued implementation of the Marin Coastal Watersheds Permit Coordination Program, especially the preparation of management and conservation plans where appropriate for agricultural activities within the Stream Conservation Areas.
- BIO-4.n** *Provide Information to Reduce Soil Erosion and Sedimentation.* Provide information and fact sheets on programs offered by the Marin Resource Conservation District at the Community Development Agency front counter to landowners and applicants who submit development proposals within the Streamside Conservation Area in the Stemple, Walker, and Lagunitas creek watersheds.
- BIO-4.o** *Consider Culvert Restoration.* As part of the expanded SCA ordinance, consider additional policy language to encourage reopening culverted reaches and restoring channelized reaches of natural drainages. This may include adjustments in minimum standard setback distances where site constraints prevent complete compliance along the restored or enhanced channel reach. A detailed analysis may be required to demonstrate restoration feasibility and address possible effects on erosion and flooding potential. Incentives may be available to landowners to encourage restoration and enhancement efforts.
- BIO-4.p** *Implement NPDES Phase II.* Continue to implement NPDES Phase II permit requirements relating to peak flow controls to ensure that project related and cumulative impacts to peak flows are minimized or avoided through conditions on project approval as required by the ordinances.
- BIO-4.q** *Develop Standards Promoting Use of Permeable Materials.* Review existing permit requirements for development in SCAs and WCAs, and recommend additional standards for project review and corrective measures as needed to protect SCAs and WCAs from inappropriate ministerial and discretionary development. Develop



NATURAL SYSTEMS & AGRICULTURE ELEMENT

additional standards for requiring the use of best management practices, including measures such as the use of permeable materials in the SCA and WCA. A checklist of Best Management Practices should be made available to applicants.

- BIO-4.r** *Review Septic System Setbacks in SCA and WCA.* Review existing septic requirements within SCAs and WCAs, and revise requirements as necessary to provide monitoring and to protect SCAs and WCAs from impacts associated with septic systems. Consider adopting larger setback standards applied to new development for septic systems and their associated leachfields.
- BIO-4.s** *Continue Collaboration with the Marin Resource Conservation District and Agricultural Commissioner.* Continue to collaborate with, support, and participate in programs provided by the Marin Resource Conservation District, the Natural Resource Conservation Service, and the Agricultural Commissioner's Office to encourage agricultural operators who conduct farm or ranch activities within a Streamside Conservation Area to minimize pesticide use and activities that cause sedimentation and erosion, to enhance habitat values.
- BIO-4.t** *Collaborate with Groups to Address Implementation of Protections to SCAs and WCAs.* Collaborate with local, regional, State, and federal organizations (Marin Organic, MALT, SPAWN, Marin Audubon, RCD, Fish and Game, RWQCB, Sierra Club, Farm Bureau, Trout Unlimited, and affected property owners) to address long term habitat protection and develop funding mechanisms to address the issue.
- BIO-4.u** *Investigate Tax Delinquent Properties.* Investigate conversion of tax delinquent properties in SCAs into public ownership.

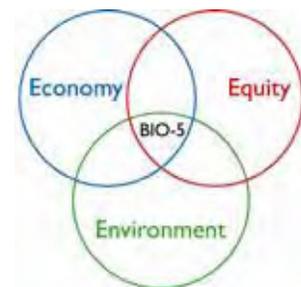
What Are the Desired Outcomes?

GOAL BIO-5

Baylands Conservation. Preserve and enhance the diversity of the baylands ecosystem, including tidal marshes and adjacent uplands, seasonal marshes and wetlands, rocky shorelines, lagoons, agricultural lands, and low-lying grasslands overlying historical marshlands.

The Baylands Corridor is described in Maps 2-5a and 2-5b. While the mapped areas include lands within incorporated cities, the policies, programs, and implementation measures related to the Baylands Corridor apply only within unincorporated Marin County.

The Baylands Corridor consists of areas previously included in the Bayfront Conservation Zones in the 1994 Countywide Plan, as well as all areas included in Bayfront Conservation Zone overlays adopted since the 1994 Countywide Plan. The Baylands Corridor consists of land containing historic bay marshlands based on maps prepared by the San Francisco Estuary Institute. Based upon information contained in studies completed during the preparation of this Plan,



Countywide Plan Consistency Matrix

SCA Ordinance –Planning Commission Draft

SCA Ordinance – PC Draft (4/1/2013)	2007 Marin Countywide Plan BIO-4
CHAPTER 22.33 – STREAM PROTECTION	
22.33.010 – Purpose of Chapter	
<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>BIO-4.1 Restrict Land Use in Stream Conservation Areas. 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 practices¹ 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>
22.33.020 – Applicability	
<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. 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.</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</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>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</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>	
<p>2. Tidally influenced waters and adjacent land;</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</p>

<p>3. Land adjacent to levees, dikes, berms, and publicly owned or maintained flood control or water conservation district facilities; and</p>	<p>... Human-made flood control channels under tidal influence are subject to the Bayland Conservation policies.</p>
<p>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.</p>	
<p>22.33.030 – Stream Conservation Area General Requirements.</p>	
<p>A. Requirements. Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve maximum protection of stream and riparian resources:</p>	
<p>1. Development shall avoid SCAs wherever feasible.</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... 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.</p>
<p>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.</p>	
<p>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.</p>	<p>BIO-4.2 Comply with SCA Regulations. ... 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.</p>
<p>B. SCA Setbacks. The Stream Conservation Area includes setbacks as provided in this subsection.</p>	
<p>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</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ...</p>

<p>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.</p>	<p>City-Centered Corridor</p> <ul style="list-style-type: none"> ▪ For parcels more than 2 acres in size, provide a minimum 100-foot development setback on each side of the top of bank. ▪ 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. ▪ 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.
<p>2. SCA setbacks for properties within the Inland Rural Corridor, Baylands Corridor, and Coastal Corridor 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.</p>	<p>Coastal, Inland Rural, and Baylands Corridors:</p> <ul style="list-style-type: none"> ▪ 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.
<p>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.</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</p> <p>...</p> <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>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.</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</p> <p>...</p> <p>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>Chapter 22.63 – STREAM CONSERVATION AREA PERMIT</p>	
<p>22.63.010 – Purpose of Chapter</p>	
<p>This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not feasible.</p>	

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:	BIO-4.2 Comply with SCA Regulations. 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.	
B. Exemptions.	BIO-4.1 Restrict Land Use in Stream Conservation Areas.
	• • • 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 and their maintenance 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;	

<p>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 removed under this exemption may also be dead, invasive, or exotic);</p>	
<p>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;</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... • Projects to improve fish and wildlife habitat;</p>
<p>e. Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;</p>	
<p>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);</p>	
<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>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... • Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;</p>
<p>h. Maintenance or replacement of landscaping.</p>	
<p>i. Fencing that does not restrict wildlife access to a riparian habitat;</p>	
<p>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</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... • 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.</p>
<p>2. Exempt subject to determination. The following activities are exempt subject to determination by the Director, based upon appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below.</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 extent of the horizontal incursion or the footprint or result in the removal of woody</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... • Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing</p>

riparian vegetation.	footprint;
b. Structures and development activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director.	
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 removed under this exemption may also be dead, invasive, or exotic).	
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 to permitted or legal non-conforming structures that existed prior to February 25, 2013, provided that 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;	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. 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. ...
2. New or expanded water supply or septic facilities, including any excavation or disturbance that is necessary for facility connections;	BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... <ul style="list-style-type: none"> Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;
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 utilizing a clear span or arched culvert design with no part of the bridge located below the top of bank;	BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... <ul style="list-style-type: none"> Driveway, road and utility crossings, if no other location is feasible;
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;	

<p>7. Necessary flood control projects.</p>	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... • Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;</p>
<p>Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) Procedure if the proposed development would not meet 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.</p>	
<p>B. SCA (Tier 1) Project Review Procedure</p>	
<p>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.</p>	
<p>2. Development Standards. Stream Conservation Area (Tier 1) Permits shall comply with the following development standards:</p>	
<p>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.</p>	<p>BIO-4.8 Reclaim Damaged Portions of SCAs. 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. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).</p>	<p>BIO-4.19 Maintain Channel Stability. ... 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>BIO-4.14 Reduce Road Impacts in SCAs. 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</p>

	soil surfaces.
d. Clear span bridges 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.	BIO-4.4 Promote Natural Stream Channel Function. . . . In no case shall alterations that create barriers to fish migration be allowed on streams mapped as historically supporting salmonids. . . .
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.	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. 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.
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 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 proceed to process the application as a Tier 1 permit.	BIO-4.1 Restrict Land Use in Stream Conservation Areas. . . . 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. See also BIO-4.a. (above)
22.63.040 – Stream Conservation Area Permit (Tier 2)	

<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; 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.</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 Design 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.</p>	
<p>2. Design Standards. 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, cause or exacerbate existing channel instabilities shall require County approval of a channel stabilization program or comply with to the mitigations generated during the required environmental review process, which could 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>BIO-4.1 Restrict Land Use in Stream Conservation Areas. . . . 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; 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>BIO-4.2 Comply with SCA Regulations. ... Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.</p> <p>BIO-4.19 Maintain Channel Stability. 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 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 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>BIO-4.1 Restrict Land Use in Stream Conservation Areas. ... 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"> 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 constraints than development within the SCA.
<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</p>	<p>BIO-4.1 ... 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</p>

criteria.	the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, <i>Require a Site Assessment</i> .
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.	BIO-4.i Replace Vegetation in SCAs. 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.
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.	
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).	
B. Project review procedure. The Director 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	

<p>to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.</p>	
<p>22.63.060 – Decision and findings</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>For a SCA (Tier 1) Permit:</p> <ul style="list-style-type: none"> A. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)) B. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality. 	<p>BIO-4.2 Comply with SCA Regulations.</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"> • Adversely alters hydraulic capacity; • Causes a net loss in habitat acreage, value, or function; <p>Degrades water quality.</p>
<p>For a SCA (Tier 2) Permit:</p> <ul style="list-style-type: none"> A. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2)) B. 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. 	<p>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</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"> 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.

Frequently Asked Questions:

Marin County Stream Conservation Area Ordinance

Updated March 21, 2013

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.

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?

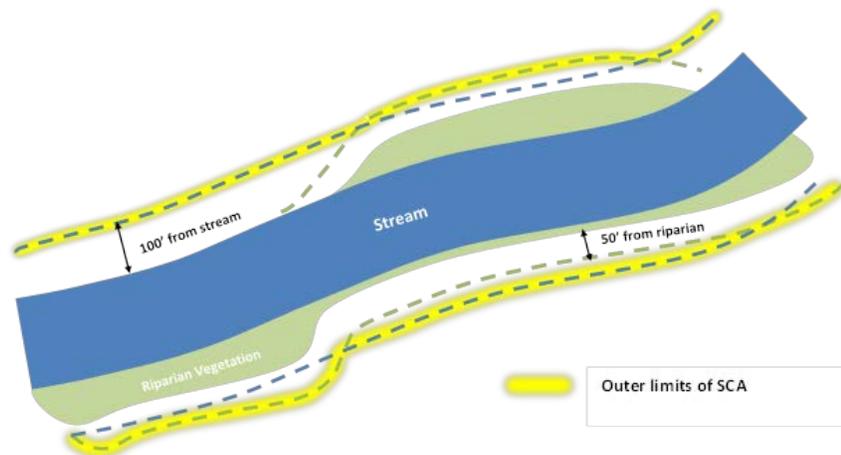
The SCA applies to perennial, intermittent, and ephemeral streams identified in the data and map that is maintained and periodically updated by the Community Development Agency. The SCA setbacks vary depending on which of the four Countywide Plan Corridors (Bayfront, City-Centered, Inland Rural, and 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. *NEW: What other County regulations apply to streams?*

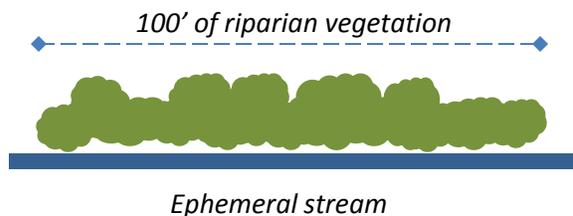
Development activity in or near streams is already regulated by Sections 11.08 (Watercourse Diversion and Obstruction), 23.08 (Excavating, Grading and Filling) and 24.04 (Improvements). Section 11.08 regulates stream obstructions and construction in a stream, including retaining walls, bulkheads, artificial 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.

Stream Questions

7. *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 shown in the schematic below:



8. *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.

Process Questions

9. *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.

10. *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.

11. *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 be subject to payment of staff costs and financial penalties.

12. *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:

13. *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.

14. *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. 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

15. *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.

16. *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.

17. *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.

18. *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.

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

Landscape maintenance is exempt under the proposed ordinance.

20. *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.

Terminology Questions

21. *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.

22. *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.

23. *NEW: 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.

24. *NEW: 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.

25. *NEW: 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.

26. *NEW: 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).

27. *NEW: 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.

28. NEW: 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.

29. NEW: 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.

30. NEW: 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.”

31. NEW: 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.

Riparian Vegetation

32. 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.

33. Is removal of woody riparian vegetation prohibited under the ordinance?

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

Illegal Structures

34. 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.

35. NEW: 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

36. 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.

37. NEW: 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.

NEW: Questions from Open Marin, as of March 21, 2013

38. 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.

39. 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."

NEW: Questions Arising From Open House, March 14, 2013

40. 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.

- 41. 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.

- 42. 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.

- 43. 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.

- 44. 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.

- 45. 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.

- 46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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 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.

53. *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".

54. *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.

55. *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.

56. *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.

57. *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.

58. *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.

59. *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

Prepared by:

Marin County Community Development Agency – Planning Division

3501 Civic Center Drive, Suite 308

San Rafael, CA 94903

(415) 473-6269

SCA Open House

Participant Comments

March 14, 2013, Marin Civic Center

1. LaRoche, PO Box 72, San Geronimo

The Disturbed Area perimeters need to be fully determined before this ordinance goes to vote. Otherwise it is completely @ the director's discretion and that is unacceptable.

Intermittent and ephemeral streams should have different regulations than perennial streams. We have a stream that is dry 8 months or more of the year. The setback should not apply so seriously.

2. Ginger Souders-Mason

Under est Management Practices there should be a requirement that no pesticides be used. These chemicals wash into streams and destroy stream life of all kinds.

3. Connie Berto, 70 Crane Drive, San Anselmo

This application of SCA to Sleepy Hollow is absurd on the face of it. AND= Nowhere in the SCA are horse-keeping facilities protected or even mentioned.

4. Anne Glasscock – Marin Stables and Trails, Inc., Fairfax

This ordinance gives no consideration or exemptions for equine facilities that already exist near seasonal rain creeks that do not impact water quality and have no access for fish habitat! Do not change the already existing ordinances!

5. (no name provided)

Fees are much too high for residents of non-wealth communities to cooperate with the SCA process. Set fees proportional to the average value of property in each area. 25% of proposed fees would allow participation in hard-hit areas like SGV.

6. (no name provided)

SCA language should include language warning residents that other regulatory permits may be needed.

7. (no name provided)

Comment: Lucas Valley Road that parallels Nicasio Creek HAS NOTHING TO DO WITH the Salmon Run. Why are you creating rules for a stream that is dry much of the year with Land Locked areas. Requiring payment from Landowners where the Building of the Dam destroyed much of the STREAM Already! There should be Less requirements for Areas such as this and less money bleed.

Tell Us What You Think About The SCA Ordinance

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

Public comments as of March 21, 2013, 12:29 PM

All Participants around Marin County

Comments sorted chronologically



As with any public comment process, participation in Open Marin is voluntary. The statements in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.

PC ATTACHMENT #6
Comments from Open Marin

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.

Tell Us What You Think About The SCA Ordinance

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

As of March 21, 2013, 12:29 PM, this forum had:

Attendees:	48
Participants around Marin County:	5
Minutes of Public Comment:	15

Tell Us What You Think About The SCA Ordinance

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

All Participants around Marin County

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 additional restrictions. The ordinance must state examples of conditions that would trigger additional restrictions to construction.

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

Tell Us What You Think About The SCA Ordinance

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

All Participants around Marin County

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 steam 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

Denis Poggio inside District 4

March 19, 2013, 12:09 PM

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 "

Tell Us What You Think About The SCA Ordinance

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

All Participants around Marin County

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 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]

Tell Us What You Think About The SCA Ordinance

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

All Participants around Marin County

- [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!]

1 Supporter

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 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

Tell Us What You Think About The SCA Ordinance

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

All Participants around Marin County

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.

3 Supporters

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.

4 Supporters

Thorsen, Suzanne

From: John Baldwin <jbroofing@comcast.net>
Sent: Wednesday, March 20, 2013 10:55 AM
To: Thorsen, Suzanne
Subject: FW:
Attachments: Letter to the County 3-19-2013.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Susan. Here are my wife's and my thoughts and questions regarding the new stream ordinance. Unfortunately we have prior commitments tonight and can't attend the meeting. Thank you. John Baldwin

From: Jan Baldwin [<mailto:jbaldwin@legalaidmarin.org>]
Sent: Wednesday, March 20, 2013 10:15 AM
To: John Baldwin
Subject:

March 19, 2013

Suzanne Thorsen:

My wife and I live in San Geronimo and our property is on the creek. In fact, it crosses the creek. We bought our home in 1976. As I understand the new ordinance, the County could restrict my use of the 100' plus "additional setbacks" from the stream's bank. That would be at least 1/3 of my lot! I have several questions:

1. When does "additional setback" come into play and what does it really mean?
2. At present, our lot is entirely fenced. You mentioned at the open house on March 14, that under the new ordinance, fences would have to be "wildlife friendly." What does that mean? At present my fence keeps deer out but we still have squirrels, skunks, raccoons, fox, snakes and lots of birds in our yard. My fence is at the top of the creek bed. Can I keep my fence? Can I keep the deer out?
3. My wife and I have spent the last 37 years planting fruit trees, palm trees, roses, lavender, naked ladies, iris, rhodos, clematis, a vegetable garden and much more within 100' of the stream bank. Our entire yard is a "disturbed area." We do not use pesticides or fertilizers – only compost. Are we correct that we can maintain our disturbed area? If we sell our property, would the new owners be able to maintain this "disturbed area."
4. Years ago we built a small shed (8'x14') without permits because the zoning codes said we could build a small building than 120 sq feet without permits. This building is about 30' from the stream bank and my wife uses it as an art studio. Will this change now? Would I need a permit to keep this building or keep it as is? Would new owners be able to maintain and use this shed?
5. Years ago we built a small deck (7'x12') that overlooks the creek. We actually watch the salmon spawn from this deck 20' below. I have movies of them mating! The salmon cared little that I was right there watching them. So I don't think my deck is harming the salmon. Is this deck exempt from the new ordinance? Twice I have watched river otters feast on the fish....a problem that no one seems to care about. These river otters are voracious and pretty much ate everything.
6. I have buried both my parents ashes beneath a lotus statue about 15' from the bank of the creek. It is a peaceful place to visit with them. Will my wife be able to place her mother's ashes alongside my parents without breaking the law? With or without a permit?
7. I have read the ordinance and as far as I can tell my "disturbed area" is exempt from the new ordinance. However, were we to sell our property, would these exemptions stay in place for the new owners? Or would they have to wipe our almost 40 years of cultivation and nourishment?

We call them the sacred salmon. We wish them no harm. It is our wish that they multiply and accordingly have been good stewards of their habitat/our land. We oppose the ordinance. It has gone way overboard in restricting land usage and making things complicated and expensive.

Thank you for reading my letter. I look forward to your response.

SPAWN'S KEY CONCERNS RE THE SCA ORDINANCE 3/15/17

In the past, biological assessments contracted by County for development projects have sometimes acted as defacto facilitators for the project, making assertions and assumptions that shifted the burden-of-proof onto special-status species to defend themselves, rather than onto the project to justify itself. Moving forward, SPAWN is concerned that the Ordinance reflects the intent of the 2007 CWP to expand SCA protections by interpreting the Ordinance in ways that favor the environment and by placing the burden-of-proof on the proposed project.

- 1. Development on “Previously Disturbed Areas.”** Presently, the Ordinance could be interpreted to mean that a structure proposed on a lawn in an SCA would not trigger any mitigation. Landscaping in an SCA provides some of the ecological functions once performed by native riparian vegetation. A structure permanently eliminates these substitute ecological functions as well as potential for native riparian restoration. While not equal to the impact from native riparian vegetation removal, replacing landscaping in a SCA with structures does (per CWP BIO 4.2) reduce habitat acreage, value and function and thus should be mitigated.
- 2. 500 Sq Ft Additions.** Presently, the Ordinance could be interpreted to authorize an unending series of 500 square foot additions to existing homes in the SCA, despite CWP BIO-4.a, which suggests “*modest additions to existing buildings*” For example, in the San Geronimo Valley, the median size of its 700 existing homes is 1500 sq ft and thus one 500 sq ft addition to every home would increase the median size by 33% and would add 8 acres of new development (equivalent to adding a new WalMart) in this sensitive SCA. One 500 sq ft addition in an SCA, if mitigated with riparian vegetation, might still leave the SCA functional for both flood control and salmon. However, we do not believe that the CWP directive for an “expanded” SCA Ordinance and “modest additions” can be rationalized to authorize an unending build out.
- 3. Review/Disclosure.** Presently, the Ordinance could be interpreted as requiring no review when additional square footage is proposed to existing structures in the SCA. But it appears that there has been little enforcement of prior Ordinances (MCC §24.04.560) that protect streams. Implicit in the CWP language is the need for a review to insure what is “existing” and that the square footage is truly an addition that has not already been added. Further, 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.
- 4. Ephemeral Tributaries to Salmon Streams.** Presently, the Ordinance could be interpreted to mean that these tributaries have to demonstrate 100 feet of riparian vegetation to be eligible for SCA protections. However, CWP BIO-4.a states that ephemeral tributaries to salmon streams should be subject to SCA protections regardless of whether they have a 100 feet of riparian vegetation. A functioning network of ephemeral streams mitigates flooding and forms the headwaters without which mainstems could not support salmon.
- 5. 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 could be proposed for development. The development that triggered the mitigation is defacto permanent, so the mitigation must be recorded by a note on the deed, easement, or other permanent means. Further, the Ordinance should allow offsite mitigation within the same watershed, including purchase of undeveloped properties, easements or other options.

SPAWN's DETAILED CONCERNS RE PROPOSED SCA ORDINANCE

22.33.030 A 1	SPAWN is pleased that the CDA has clarified that “feasible” is understood to be defined as in 22.63.060 A (i.e. referenced to environmental, not financial impact)
22.33.030 A 3	SPAWN is pleased that the CDA has tentatively clarified that “adverse alteration of hydraulic capacity” is understood to refer to “maintain the stream hydrograph”
22.33.030 B	SPAWN is pleased that the CDA has tentatively agreed on the need to maintain a repository for SCA data . For example, an ephemeral stream could have had 100 feet (or more) of riparian vegetation documented on a streamside parcel which would trigger SCA protections along that entire stream, even for a parcel that might not have any riparian vegetation within its parcel boundaries.
22.33.030 B	SPAWN is concerned that the Ordinance does not acknowledge the Department of Public Works (DPW) setback MCC §24.04.560: <i>“Drainage setbacks. All structures shall be set back from creeks, channels or other major waterways at least twenty feet from the top of bank or twenty feet plus twice the channel depth measured from the toe of the near embankment, whichever is greater.”</i> (Ord. 3181 § 5, 1994).
22.33.030 B 2 a 22.62.040 #8	SPAWN is concerned that in the 6 years since the 2007 CWP, there seemingly has never been an assessment triggering a SCA extending “50 feet landward from the outer edge of woody riparian vegetation.” We suggest that may be because that CWP language as well as the new Ordinance language (“the distance measured laterally and perpendicular to the ...edge of woody riparian vegetation”) both appear to specify measurements that are physically impossible to make from erratic biological features. SPAWN is further concerned that this “woody SCA” should be clarified and its measurement simplified as extending to the ends of lines drawn from the trunk of the subject woody riparian vegetation through its dripline (per CWP Figure 2.2) plus 50 feet, provided that the ends of those lines do not extend past the streambank (i.e. are landward). The CWP did not intend to create a SCA with projecting fingers of alternating lengths and widths. See Figure 1a vs 1b.
22.33.030 B 2 a	SPAWN is concerned that CWP description of “50 feet landward from the outer edge of woody riparian vegetation” should be clarified to mean that if the dripline of a subject woody riparian vegetation is within 50 feet of the dripline of other woody riparian vegetation already defined as within the SCA, then the subject woody riparian vegetation should be included in the woody riparian vegetation already defined as in the SCA, and thus the “woody SCA” should be extended per above.
22.33.030 B 2 a	SPAWN is concerned that if the Ordinance does not protect against trimming riparian vegetation that determines “the outer edge of woody riparian vegetation” then this will defacto incentivize trimming to moot the “woody SCA”(such trimming should require a site assessment and mitigation to retain the same SCA).
22.33.030 B 2 b 22.62.040 #8	SPAWN is concerned that the CWP description of the SCA as “a strip of land extending laterally outward from the top of both banks” and the new Ordinance definition (<i>“the distance measured laterally and perpendicular to the top of bank...”</i>) are both measurements that are physically impossible to make from erratic biological features. They should be clarified to mean that the SCA is land within the radius of the appropriate parcel-based setback (20, 50 or 100 feet) centered at any point on the streambank. The outer edges of these radiuses will define the same lateral extent from the top of both banks, but will eliminate measurement problems and uncertainty when the stream changes direction/ends. See Figure 2a vs 2b.

22.33.030 B 2	<p>SPAWN is concerned that there does not appear to be anything in the SCA Ordinance that provides some protection for streams (particularly those tributary to or containing with anadromous fish) even if channelized or culverted. BIO-4-o states <i>“As part of the expanded SCA Ordinance, consider additional policy language to encourage reopening culverted reaches and restoring channelized reaches of natural drainages.”</i> CWP Bio-4.9 states: <i>“Replace storm drains and culverts in SCAs with natural drainage and flood control channels wherever feasible.”</i> SPAWN is concerned that when the Ordinance does not include some protection for channelized or culverted creeks, then this will not just make daylighting less feasible but may also defacto incentivize channelizing and culverting in an effort to avoid SCA protections.</p>
22.33.030 B 3	<p>SPAWN is concerned that in the 6 years since the 2007 CWP, there may have never been any assessment that required any “additional SCA setback,” thus it appears that the internal County criteria for determining an additional setback may have implicitly repealed the explicit language of the CWP. SPAWN is concerned that the Ordinance should make public the criteria that would trigger this “additional SCA setback.” We suggest that such triggers could include an assessment of appropriateness (i.e. does the parcel support special-status species or sensitive natural community types) and feasibility (is the parcel large enough to accommodate an additional setback without eliminating all development possibility).</p> <p>We further note that the purpose of the Ordinance in the CWP was to “expand” SCA protections (in part because the 2007 CWP reduced the city-centered setback on virtually all parcels from 50 to 20 feet). Thus for any biological assessment that could produce two (or more) equally defensible outcomes, we would expect that the outcome most protective of the resources would be reflected in the determination. These topics of clarification, transparency and burden-of-proof concern SPAWN throughout this process. While we acknowledge that quantifying and specifying every aspect of a biological assessment is likely impossible, it is also true that having no “sideboards” whatsoever renders these assessments too subject to the whims of the day and, in our opinion, an could result in an abuse of discretion.</p> <p>We have had the experience of the Writers Cabins in the Point Reyes where the County’s biological assessment asserted that: 1) willows were not riparian vegetation because it could not be proven that their water source was hydrological connected to the stream; 2) the SCA was in a dry pasture where the USGS map showed the stream instead of where the stream actually located.</p> <p>In this Writer Cabins case (and others in the past), the County’s biological assessment acted as a defacto facilitator for development, making assertions and assumptions that shifted the burden-of-proof onto the special-status species to defend themselves, rather than onto the development to justify itself. Moving forward, SPAWN is concerned that the Ordinance reflects the intended expansion of SCA protections and thus that the burden-of-proof is squarely on the shoulders of the proposed development and not on the backs of the special-status species.</p>
22.33.030 B 4	<p>SPAWN is concerned that the definition of “riparian vegetation” include native vegetation that replaced native riparian species with similar functions but which may not be traditional “riparian species.” SPAWN is pleased that the CDA has indicated that it will use the broader definition found in the San Geronimo Valley (SGV) Salmon Enhancement Plan (SEP) Existing Conditions Appendix A-2.</p>

22.33.030 B 4	SPAWN is pleased that the CDA acknowledges that many frontages on ephemeral streams are less than 100 feet, so it is inappropriate to limit a site assessment for riparian vegetation to only the project parcel.
22.33.030 B 4	SPAWN is concerned that the Ordinance’s new definition of an ephemeral stream (as subject to the SCA only when it supports a “ <i>continuous 100-foot length of riparian vegetation</i> ”) narrows SCA protection when the CWP intended that SCA protections be expanded. In contrast, CWP BIO-4 states that an ephemeral stream is subject to the SCA when it “ <i>supports riparian vegetation for a length of 100 feet...</i> ”
22.33.030 B 4	SPAWN is concerned that CWP BIO-4.a states, “ <i>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.</i> ” Thus ephemeral tributaries to anadromous fish streams are subject to SCA protections regardless of whether they have a “100-foot length” of riparian vegetation). Similarly and consistently, Bio-4 states, “ <i>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 [i.e. anadromous fish] and/or a sensitive natural community type]...<u>regardless of the extent of riparian vegetation associated with the stream.</u></i> ”
22.33.030 B 4	SPAWN is concerned that a “ sensitive natural community type ” along Marin’s ephemeral creeks might qualify under the CWP definition but might not under the Ordinance, e.g. Code 86.100.00 <i>Sequoia sempervirens</i> (Redwood forest) Alliance.
22.33.030 B 4	SPAWN is concerned that SCA protections for ephemeral creeks should not be voided due to space between plants, gaps created by fence lines, game trails, pathways, utility crossings, public roads/facilities, etc. In quantifiable terms, SPAWN is concerned that the “100 foot length” assessment include gaps similar to those of the 50-foot “woody SCA” extension. For example, assume there are a total of three parcels fronting along an ephemeral stream. The first and last parcels (per former site assessments) have 50 feet of stream frontage each, all of which has riparian vegetation. The middle parcel has 49 feet of stream frontage absent any riparian vegetation. Then it should be determined that the two separate 50 foot lengths of riparian vegetation qualify the stream for SCA protections because they are separated by less than 50 feet.
22.33.030 B 4	SPAWN is concerned that if the Ordinance does not protect against trimming riparian vegetation that determines a “100-foot length,” then this will defacto incentivize trimming to moot ephemeral stream protections (such trimming should require a site assessment and mitigation to retain the same “length” of vegetation).
22.33.030 B 4	SPAWN is concerned that the ephemeral extension of the main channel of a blue line stream is <u>not</u> a tributary and <u>not</u> a separate stream, but rather a reach of the blue-line stream subject to the SCA protections of the blue line stream (just as is a reach of a blue line stream even when it may go underground).
22.33.030 B 4	SPAWN is concerned that there appear to be few ephemeral streams mapped . It is not clear what the green lines mean on the County GIS maps that currently define only “blue line” streams.
Fig 3-16	SPAWN is concerned that the graphics do not distinguish between the low flow channel bank and high flow channel banks from which the SCA is measured.

22.63.020 A 1 a	SPAWN is pleased that the CDA clarified that the SCA Ordinance applies to patios .
22.63.020 A 1 a	SPAWN is concerned that “ vehicular access routes ” be clarified so that if you plan to site a trailer, R-V or vehicle-delivered structure in an SCA that does not already have a legally permitted driveway to that site then you are planning a “new vehicular access route” for which you will need a permit.
22.63.020 B 1	SPAWN is concerned that there be findings that are transparent and public for decisions made between Exemptions, Tier 1 and Tier 2 processes.
22.63.020 B 1 c	SPAWN acknowledges the need to protect life and property, but is concerned that the Ordinance should also protect the SCA and thus removal of non-emergency vegetation should be subject to a site assessment to determine if the proposed removal would change the extent of the SCA (and if so, require mitigation to retain the extent of the SCA).
22.63.020 B 1 g	SPAWN is concerned that maintenance of permitted or legal non-conforming structures should still adhere to BMPs (e.g. no replacing old drainage connected directly to the stream with new drainage connected directly to the stream.)
22.63.020 B 1 g	SPAWN is concerned that 22.63.020 B 1 g (“maintenance” without determination) vs 22.63.020 B 2 a (“repair” subject to determination) should be clarified.
22.63.020 B 1 g	SPAWN is concerned that it be clarified that replacement of permitted or legal non-conforming structures be Tier 1 (not an exception subject to determination).
22.63.020 B 1 h	SPAWN is concerned that the CDA clarify that maintenance or replacement of invasive plants that could impact native riparian vegetation is not exempt.
22.63.020 B 1 i	SPAWN is concerned wildlife fencing is not described nor clear that fencing (which is a “structure” per 22.130.030) is thus prohibited within the DPW setback.
22.63.020 B 1 j	SPAWN is concerned that new and replacement livestock fencing should conform to and thus be outside the DPW setback so there not be “ resulting in the removal of woody riparian vegetation ” or “ animal confinement within the SCA. ”
22.63.020 B 2	SPAWN is concerned that private resource enhancement programs should be incentivized and thus exempt subject to determination if conducted under BMPs.
22.63.020 B 2 a	SPAWN is concerned that “repair and replacement” of permitted/legal non-conforming structures should not “ expand the extent of the horizontal incursion. ”
22.63.020 B 2 b 22.62.040 #8	SPAWN is concerned about Ordinance’s definition of a previously disturbed area : “ <i>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.</i> ” Replacing a cleared, graded or landscaped area with development clearly diminishes habitat acreage value and function. Cleared or graded areas will regrow to provide (and landscaped areas already provide) many (but not all) substitute ecological functions once performed by native riparian vegetation and thus cannot be considered a “significant alteration.” Replacing these “provisionally altered” areas with defacto permanent development eliminates these substitute ecological functions and any potential replacement with native riparian vegetation. Because these provisionally altered areas substitute for many (but not all) of the ecological functions of native riparian vegetation, development in these areas should require a 1:1 on-site mitigation with native riparian vegetation.

22.63.030	SPAWN is concerned that there are findings that are transparent and public
22.63.030 A	SPAWN is concerned that any development that proposes the removal of riparian vegetation (see 22.63.020 B 2 b and 22.62.040 #8) should require a Tier 2 permit (not Tier 1 as the Ordinance allows under certain conditions)
22.63.030 A	SPAWN is concerned that any development in 22.63.030 A 2-7 that increases the existing horizontal incursion into the SCA should be a Tier 2 permit (not Tier 1)
22.63.030 A	SPAWN is concerned that development over a certain size limit should require a Tier 2 permit (not Tier 1 as the Ordinance allows).
22.63.030 A 1	<p>SPAWN is concerned that to be eligible for a Tier 1 permit, the 500 sq ft addition must not require the removal of native riparian vegetation and should be clarified as one-time that runs with the property that should be recorded in a CDA data repository, by a note on the deed, and/or other effective means per BIO 3-e-d.</p> <p>SPAWN is concerned that the Ordinance appears to allow multiple 500 sq ft additions and thus is inconsistent with CWP BIO-4.a: <i>“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. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider <u>modest additions to existing buildings</u> 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.”</i></p> <p>The median size of existing homes in Marin County’s SCA can be small. For example in the San Geronimo Valley, the median size is ~1500 sq ft and thus a single 500 sq ft addition would increase the size of the median home in the sensitive SCA area by 33%, already stretching the definition of “modest.” If this single 500 sq ft addition were added to every existing SGV home in the SCA, this would add about 8 acres (669 homes x 500 sq ft) of new development, equivalent to adding a new WalMart in this sensitive SCA. If this is what the Ordinance proposes to allow, then it has to be done very carefully with good construction practices <u>and</u> mitigated 1:1 with native riparian vegetation if built on a “provisionally altered” area (2:1 for riparian vegetation removed see comments to 22.63.020 B 2 b and 22.62.040 #8).</p> <p>SPAWN would be receptive to altering the implementation of a single 500 sq ft addition to allow greater square footage to homes below the median size in the watershed and an offsetting lesser square footage for homes above the median size. However, SPAWN is concerned that the Ordinance seemingly re-interprets the clear intent of the CWP to allow an unending series of 500 sq ft additions. Allowing three 500 sq ft additions in the SGV would double the size of the median home in the sensitive SCA area (the equivalent of adding 3 WalMarts) which is clearly not “modest” and contradicts BIO-4.20 that states, “Riparian habitats are irreplaceable.”</p>
22.63.030 A 1	SPAWN is concerned that the 500 sq ft addition in Tier 1 should be clarified as not triggering other impacts . SPAWN is similarly concerned that projects applying for a Tier 1 permit should not be piecemealed. If a project include more than one of the categories listed in 22.63.030 A, then it requires a Tier 2 permit.

22.63.030 A 1	SPAWN is concerned that the 500 sq foot addition in Tier 1 should be contingent on an approved plan to remove or legalize illegal structures (if any) in the SCA . SPAWN is not opposed to “modest additions to existing buildings” (when mitigated) but in sensitive areas near creeks, it would seem necessary to make sure that the addition is truly an addition and has not defacto already been added.
22.63.030 A 1	SPAWN is concerned that the proposed Ordinance allowing additions that (“do not result in the expansion of the existing building footprint within the SCA by more than 500 square feet ”) is inconsistent with the CWP (“ additions that do not exceed 500 square feet of total floor area ”). The Ordinance, for example, could allow 1500 sq ft of added floor area (500 sq ft footprint x 3 stories), whereas the CWP would allow only 167 sq ft of footprint (x 3 stories = 500 sq ft of floor area).
22.63.030 A 3	SPAWN is pleased that the CDA clarified that the SCA Ordinance applies to patios .
22.63.030 A 4	SPAWN is concerned that “ bridges ” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback.
22.63.030 A 4	SPAWN is concerned that “ impervious routes, paths ” are inappropriate for Tier 1
22.63.030 A 5	SPAWN is concerned that Tier 1 be “ drainage improvements ” be limited to those outside the DPW setback.
22.63.030 A 6	SPAWN is concerned that Tier 1 be limited to “ retaining walls ” outside the DPW setback, that “ rip rap and checkdams ” are inappropriate for Tier 1 (given that they require construction in the stream). Further, “rip rap” should be “geotechnical”.
22.63.030 A 7	SPAWN is concerned that private “ water supply and flood control projects ” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback and/or diversion of the underflow (public utility facilities are exempt under 22.63.020 B 1 a).
22.63.030 B 2 a	SPAWN is concerned that removal of riparian vegetation should require Tier 2.
22.63.030 B 2 b	SPAWN is concerned that the measure for runoff not draining directly into the stream shall be measured per the 100-year event.
22.63.030 B 2 d	SPAWN is concerned that “ bridges or arched culverts ” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback and perhaps within the stream banks.
22.63.030 B 4	SPAWN is concerned that the Ordinance does not include a definition of “qualified professional” for site assessments and that their power should be limited to recommendations sufficient for the CDA to make the determination.
22.63.030 B 4	SPAWN is concerned that the Ordinance should require a pre-development review when additional square footage is proposed in the SCA to insure that the square footage is truly an addition that has not already been added. SPAWN is concerned that the Ordinance should require a description of any development within 35 feet of salmon streams (20 feet from non-salmon streams) by way of a pre-sale disclosure or inspection in order to insure that this critical portion of the SCA functions as intended for both salmon and flood control. SPAWN is concerned that the County should provide landowner assistance (per BIO-4.a) to remove structures impacting the SCA at little to no out-of-pocket expense (such as Berkeley’s program to rebate up to one-third of the transfer tax on homes sales).

22.63.030 B 4	SPAWN is concerned that the site assessment findings and the CDA determination be transparent and public
22.63.030 B 4	SPAWN is concerned that the potential waiver of the site assessment should be de minimus and require findings that are transparent and public.
22.63.040B1/2a	SPAWN is concerned that all impacts be avoided (no multiple choice of impacts)
22.63.040 B 2 a	SPAWN is concerned that the determination of alternative mitigations be transparent and public
22.63.040 B 2 a	SPAWN is concerned about no specified criteria for mitigation “more appropriate”
22.63.040 B 2 b	SPAWN is concerned that the Ordinance <u>shall</u> include mitigation of peak flows...
22.63.040 B 2 b	SPAWN is concerned that the Ordinance should include a determination as to the feasibility of mitigating peak flows at pre-(all)development levels.
22.63.040 B	SPAWN is concerned that the Tier 2 process should require a public hearing
22.63.040 B 4 a	SPAWN is concerned that the Ordinance should define “habitat studies”
22.63.040 B 4 a	SPAWN is concerned that the limitation to drainageways affected by the project over which the applicant has control or access eliminates data from former projects over which the applicant may not have access.
22.63.040 B 4 c	SPAWN is concerned that the determination of impacts claimed to be greater inside the SCA vs outside should be transparent and public
22.63.040 C 1	SPAWN is concerned that mitigation (1:1 due to development on a provisionally disturbed area or 2:1 due to removal of riparian vegetation or 3:1 off-site) require: a) replication/enhancement of <u>ecological function</u> as well as “density and structure.” b) specified mitigation ratios are <u>minimums</u> until a) is achieved c) <u>mandatory</u> use of native vegetation; d) 5 year review (<u>or until established</u>) e) <u>prioritized</u> to infill SCA areas closes to the stream or a lot-line-to-lot-line strip f) <u>recordation</u> in the CDA data repository, by a note on the deed, easement, and/or other effective means to insure that the mitigation runs with the land (the development that triggered the removal of the riparian vegetation is defacto permanent, so the related mitigation must be also).
22.63.040 C 1	SPAWN is concerned that the Ordinance should include offsite mitigation within the same watershed, including purchase of undeveloped properties, easements or other options to provide the flexibility to interested homeowners to mitigate elsewhere and the opportunity to willing property owners to provide that mitigation.
22.63.040 C 2	SPAWN is concerned that all impacts be avoided (no multiple choice of impacts)

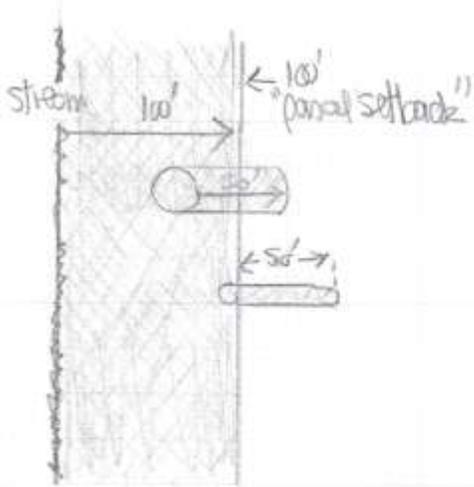


FIG 1a

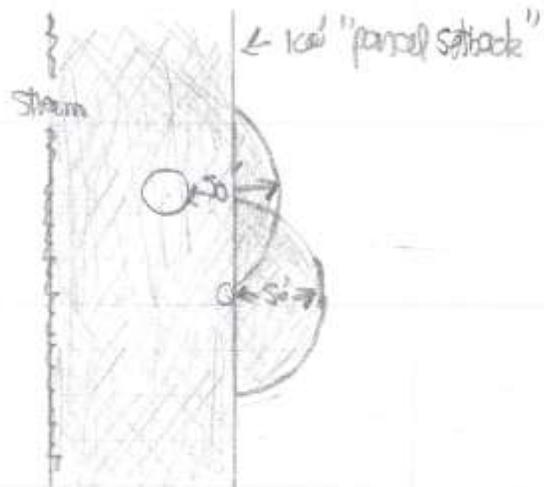


FIG 1b

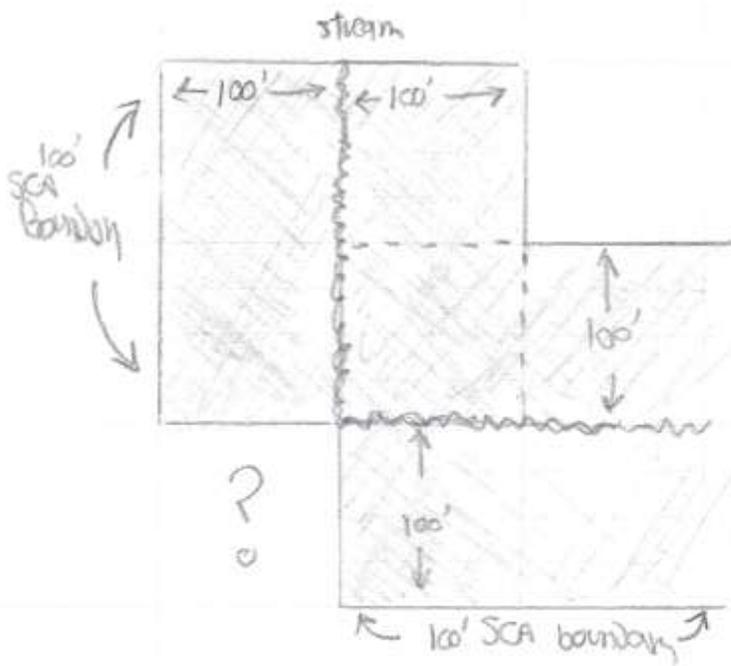


FIG 2a

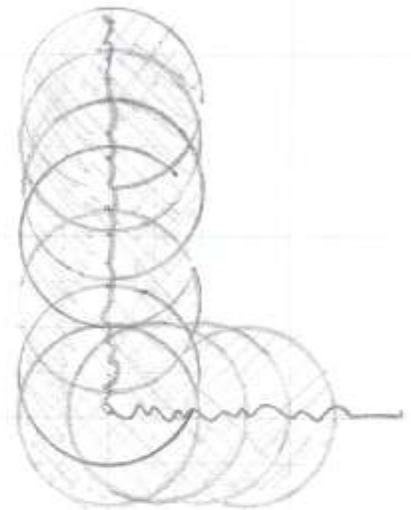


FIG 2b

Thorsen, Suzanne

From: Steve.Tognini@kp.org
Sent: Tuesday, March 19, 2013 1:31 PM
To: Thorsen, Suzanne
Subject: Riparian Stream Ordinance

Follow Up Flag: Flag for follow up
Flag Status: Completed

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 additional restrictions. The ordinance must state examples of conditions that would trigger additional restrictions to construction.**

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 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 homes 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 today's construction standards.

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

Thanks for your time.

Steve Tognini
Lagunitas technical advisory committee member
Stewards Board member
Asst. Chief Eng.
Oak. Kaiser Hosp.
510-752-6870 W
510-867-4844 C

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Thorsen, Suzanne

From: geraldtoriumi@comcast.net
Sent: Tuesday, March 19, 2013 12:24 PM
To: Thorsen, Suzanne
Subject: SCA ordinance?

Since the supervisors are so fond of hiring "consultants", why hasn't **CAL-TROUT** bin involved at these proceedings, as well as **Ca. Dept.Fish&Game**?????? The Sup's should use their discretionary fund for real constructive use to get this SCA ordinance "right" for all concerned!