

**AFFILIATIONS**

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

Copies to:

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

March 28, 2013

Re: Stream Conservation Ordinance Proposal

Dear Katie:

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

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

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Katie Rice
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In summation:

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

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

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

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

Terry Keast

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

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Katie Rice
March 28th

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

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

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

Thanks,
-Tom

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

Sent from my iPad

Begin forwarded message:

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

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

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

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

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

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

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

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

Thank you,
Dawn McEarchern
415.505.1994



April 1, 2013

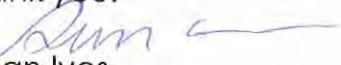
TO: Mill Valley Planning Commission
RE: SCA ordinance

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

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

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

Thank you.



Susan Ives



Sent via email to: DStratton@marincounty.org

April 2, 2013

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

Re: Comments on Draft Stream Conservation Area Ordinance

Dear Planning Commissioners:

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

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

Specifically, the Center is concerned about:

1. Excessive Streamside Development

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

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

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

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

3. Unending 500 Sq Ft Additions

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

4. Review, Disclosure and Enforcement is Inadequate

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

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

5. Protect Ephemeral Tributaries to Salmon Streams

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

6. Mitigation Must Be Permanent and Flexible

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

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

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

Thank you for consideration of our comments.

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

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

Suzanne

Begin forwarded message:

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

Dear Suzanne,

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

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

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

Please stop smoking...and start thinking.

Ron

[Reply](#)

[Not interested](#)

[View Ron's LinkedIn profile](#)

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

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

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

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

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

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

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

Sincerely,
Lisa Lukianoff
Home Owner - Forest Knolls

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

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

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

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

Thank you very much.

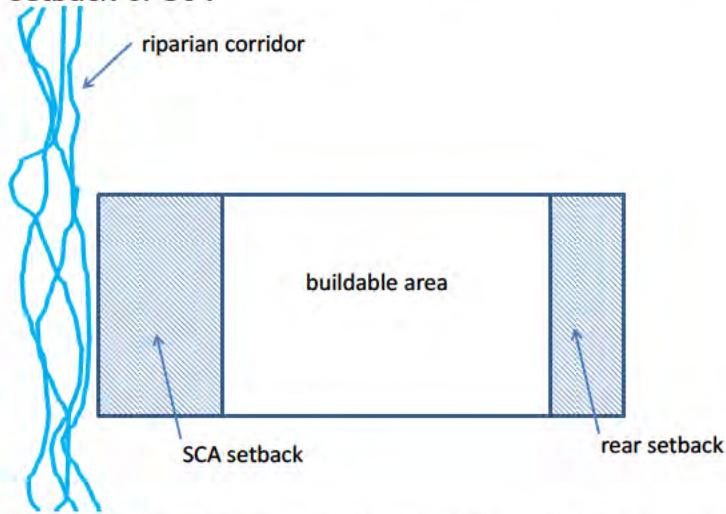
Steve & Andrea Taber

860 Butterfield San Anselmo CA 94960-1186

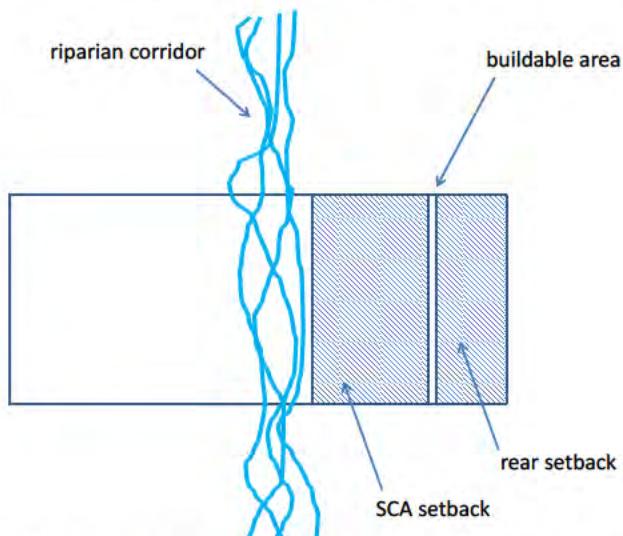
The draft SCA Ordinance, which has the laudable goal of protecting the County's streams, has some serious problems:

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

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



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



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

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

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

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

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

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

Section 22.63.030.B.4 should read as follows:

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

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

Thank you very much.

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

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

Tom and Suzanne,

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

Peter and Karin Narodny

From: brian@briancrawford.info
To: Thorsen, Suzanne
Subject: SCA amendment
Date: Saturday, April 06, 2013 5:43:25 PM

Hi,

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

Thanks,
Brian Crawford
454-3439

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

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



Wikipedia

commons

BEAVERS ARE BACK since last seen in the Guadalupe River, San Jose, CA158 Years ago.

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

http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=9060787

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

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

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



HOW DID THIS HAPPEN? "The City of San Jose has a stream buffer policy that is neither in the code nor the General Plan.

The city administers a riparian buffer policy through use of a "riparian corridor study, 68 Page document (from 1994, revised 1999)" document that describes suggested buffer widths.

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

The document recommends a 100-foot setback, but exemptions are given that may reduce the setback to 50-foot distances." San Francisco Regional Water Quality Control Board 2004 Buffer Report

www.waterboards.ca.gov/sanfranciscobay/.../bufferreport1204.pdf

WE must do better.

Sincerely,

Laura Chariton
446 Panoramic Hwy.
Mill Valley, CA 94941

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

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

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

Comments for the Proposed Stream Conservation Ordinance
Jack Grier Ranch Manager

April 15, 2013

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

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

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

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

Mitigation Criteria (PC Attachment #1 page 8)

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

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

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

non-native?

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

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

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

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

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

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

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

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

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

From the Staff Report:

Item #4 page 8:

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

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

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

“Ephemeral Streams”

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

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

Item 4 page 10:

“Staff recognizes that there is a need to provide reference information to homeowners so that they do not run afoul of the protections afforded to Woody Riparian Vegetation.

Implementation of this Ordinance will include an illustrated guide to typical Woody Riparian species.” How much will it cost County taxpayers for this publication to be prepared? Will there also be a similar guide pertaining to large properties? Again, at what cost? Is there a plan and monies set aside for updating these guides?

We have a shared objective to minimize the cost of making guidance information available.

For example, a woody riparian guide can be prepared based upon information and images that already exist. However, the specifics of implementation at this level of detail are not available at this time.

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

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

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

Jack Grier

mail@azayaranch.com

Jack Grier

mail@azayaranch.com

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

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

Dear Planners and Planning Commissioners,

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

Carbon storage of headwater riparian zones in an agricultural landscape

Richard D Rheinhardt^{1*}, Mark M Brinson¹, Gregory F Meyer² and Kevin H Miller^{2,3,4}

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

Excerpted:

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

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

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

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

landscapes in ameliorating nutrient and sediment input to streams, encouraging the restoration of riparian zones to mature forest along headwater reaches worldwide has the potential to not only improve water quality, but also simultaneously reduce atmospheric CO₂."

Sincerely,

Laura Chariton

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

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

Please add to the record. Thanks.

-Tom

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

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

Dear Marin County Board of Supervisors,

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

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

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

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

Sincerely,

Liza Wozniak

Larkspur, CA 94939



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

April 30, 2013
CIWQS Place ID 239496

Sent via electronic mail: No hard copy to follow

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

Subject: Comments on the Marin County Stream Conservation Ordinance

Dear Ms. Thorsen:

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

Comment 1: Ephemeral Streams

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

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

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

Comment 2: Subdivision of Parcels

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

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

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

Comment 3: Disclosure

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

Closing:

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

Sincerely,



William Hurley
Senior Engineer
Leader, North Bay Watershed Section

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

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

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

Sincerely,
Andrea Taber

PROPOSED AMENDMENTS TO THE DRAFT SCA

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

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

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

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

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

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

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

22.33.030 – Stream Conservation Area General Requirements.

A. Requirements.

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

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

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

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

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

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

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

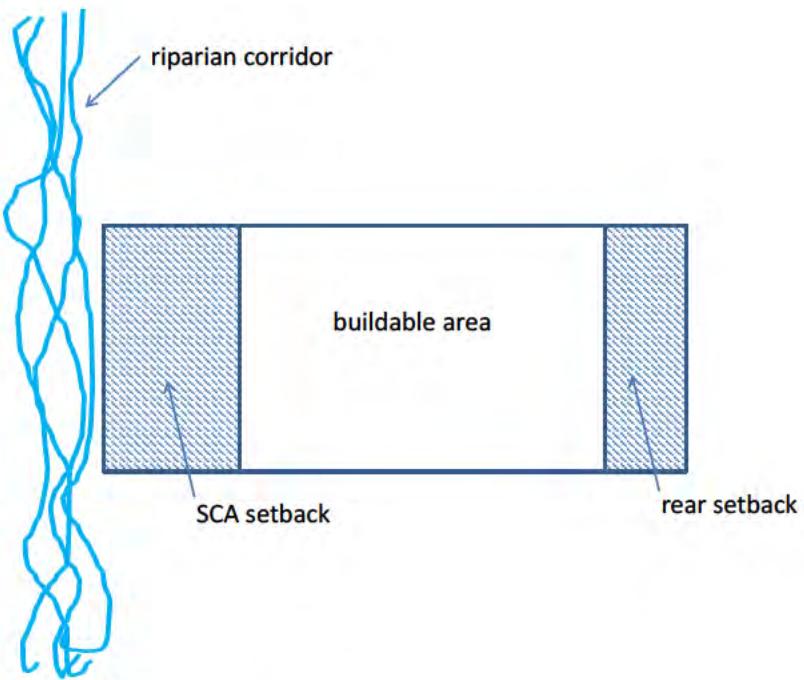


FIGURE 1
1/2 ACRE LOT WITH STREAM ADJACENT

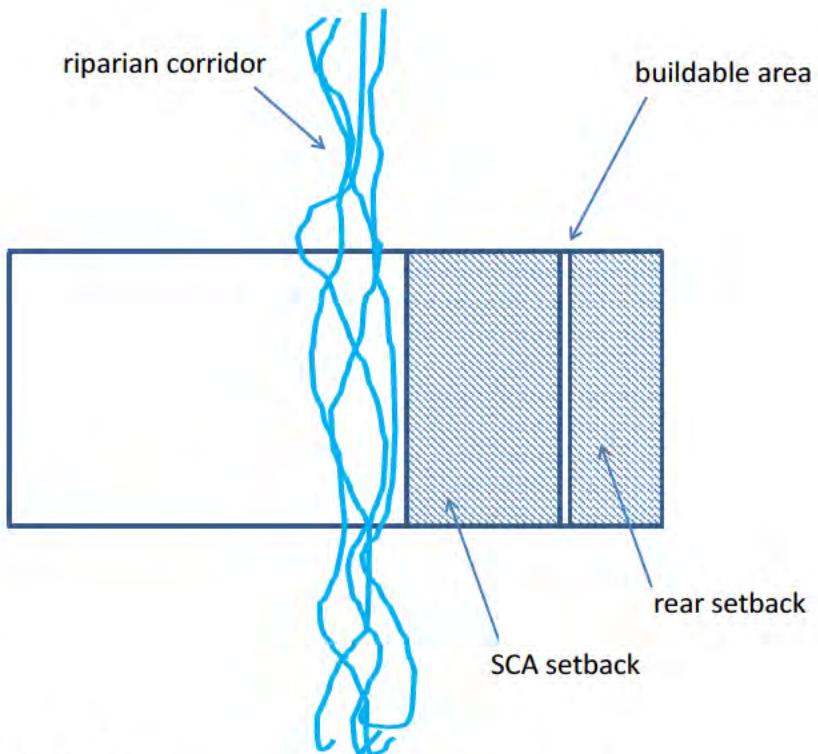


FIGURE 2
1/2 ACRE LOT WITH STREAM RUNNING THROUGH

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

22.33.030 – Stream Conservation Area General Requirements.

B. SCA Setbacks.

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

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

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

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

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

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

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

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

22.33.030 – Stream Conservation Area General Requirements.

B. SCA Setbacks.

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

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

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

22.63.020 – Applicability to Development

A. Application of SCA Provisions.

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

- a. All structures to the extent that they are in contact with grade, regardless of whether the work requires a building or grading permit, including fencing that entirely prevents wildlife access to a riparian habitat, decks on grade, platforms on grade, parking lots, utility crossings, pedestrian or vehicular access routes, structures, and other similar improvements, but excluding fencing, decks, access routes, and other structures supported above grade by structures comprising 20% or less of the horizontal area of the structure;*
- b. Clearing of 50% or more of the plant mass in that portion of the property occupied by the SCA 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.*

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

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

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

22.63.030 – Stream Conservation Area Permit (Tier 1)

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

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

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

B. SCA (Tier 1) Project Review Procedure

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

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

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

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

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

5) TIER 2 PERMITS

22.63.040 – Stream Conservation Area Permit (Tier 2)

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

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

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

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

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

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

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

6) DECISION AND FINDINGS

22.63.060 – Decision and findings

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

For a SCA (Tier 1) Permit:

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

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

For a SCA (Tier 2) Permit:

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

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

7) Related Development Code Amendments

8. Add new definitions.

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

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

SCA PLANNING CONSIDERATIONS FOR SLEEPY HOLLOW

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

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

Following is a list of community concerns and planning deficiencies:

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

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

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



Salmon Protection And Watershed Network

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1 May 2013

Marin County Planning Commission

RE: Draft Stream Conservation Ordinance

Dear Commissioners:

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

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

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

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

In addition as our addendum we submit the following:

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

Sincerely,

Todd Steiner
Wildlife Biologist & Executive Director

Gordon Bennett
Consultant

The Sierra Club - Marin Group

The Environmental Action Committee of West Marin

The Center for Biological Diversity

The Salmon Protection and Watershed Network

May 1, 2013

Together we urge that the Streamside Conservation Area (SCA) Ordinance be modified to meet the following minimum criteria:

- 1. Mitigated Development:** New development proposed on landscaped or cleared areas in an SCA should require mitigation for the square footage impacted, including any additional defensive space. Good construction practices do not substitute for the reduction in habitat acreage, value and function caused by such development. Since the square footage of a parcel is fixed and the landscaped area converted to development cannot be replaced, then it must be mitigated by at least a 1:1 restoration of native riparian vegetation in an undeveloped area.
- 2. Vegetation:** Native vegetation in an SCA should be protected regardless of whether those species require access to the water table. Such vegetation supports the ecological services provided by riparian vegetation and in some cases provides the only substitute when riparian vegetation has been removed.
- 3. Tributaries:** All “ephemeral” tributaries to salmon streams should have 100-foot SCA protections to support this sensitive species if studies show them to be hydrologically connected to those salmon streams. All other “ephemeral” tributaries should be mapped with interim 35 50 foot SCA protections until a hydrological or biological study determines whether they should have new 100-foot SCA protections or default to the existing 20-foot DPW protections.
- 4. Disclosure:** A delineation and disclosure of all development within 35 feet of a creek bank should be required for significant development permits in an SCA and at point of sale. A permanent record should be required to be kept that delineates all mitigation areas.
- 5. The Ordinance Process should be staged.** The current SCA Ordinance, with its rapid pace and limited outreach efforts should be focused in the San Geronimo Valley. The Ordinance’s outreach and mapping should then be prioritized watershed-by-watershed from the most critical coho watersheds to steelhead watersheds and other creeks.

SCIENTIST OPEN LETTER TO MARIN COUNTY BOARD OF SUPERVISORS
April 2013

Wild coho salmon populations in California have undergone a ninety-percent decline since the 1940s. The causes of this decline, such as urbanization, dams, and logging operations are well known and documented. Central California Coast (CCC) coho salmon were listed by the US government as Threatened in 1997 and uplisted to Endangered status in 2005. The State of California listed the population north of San Francisco as endangered in 2002. In short, coho salmon are in danger of extinction throughout coastal California. Because of this, the Lagunitas Creek watershed is exceptionally important for its survival; it is one of the few watersheds that still supports a self-sustaining population of this iconic fish.

The Lagunitas Creek Watershed is listed as “critical habitat” for coho under the Endangered Species Act. As scientists concerned with the health and recovery of salmonid populations throughout California, we support increased habitat protections for coho in the Lagunitas Creek Watershed, which makes up approximately 10- 20% of the total current population of CCC coho salmon.

Lands in the lower reaches of the Lagunitas Creek watershed are relatively well protected (and include State Parks, National Parks and Recreation Areas, and County and Water District property) and maintain habitat values important to coho and other native species. But, 30-50 percent of spawning in the Lagunitas Creek Watershed occurs in the undammed headwaters of the tiny (10 square mile) San Geronimo Valley. Out-migration research has documented that as much of 1/3 of Lagunitas Creek coho rear in these headwater reaches annually.

Marin County’s San Geronimo Valley Existing Conditions Report (2009), prepared by Stillwater Sciences¹ as part of a Salmon Enhancement Plan, documented the percentage of impervious surface for seven reaches of Geronimo Creek at 7.3-20.8 per percent, with four of the reaches exceeding 15 percent. Furthermore, this study conducted detailed analysis on 17 parcels and demonstrated the limited amount of riparian habitat currently extant in this watershed: ten parcels had no intact riparian habitat, four had a width of less than 22 feet, and the remaining three had a width of 30, 36 and 92 feet (summarized in Table A2.2 of the report). This data demonstrates the relatively high level of urbanization that already threatens the survival of coho here.

¹ (available at http://www.spawnusa.org/cgi-files/0/pdfs/1254863223_County_of_Marin_Existing_Conditions_Report_2008.pdf)

The San Geronimo Valley continues to urbanize with new housing development trending toward larger houses, and development on existing parcels expanding with building additions and additional loss of riparian habitat. This affects coho salmon survival because the juveniles need cold clear streams with lots of riparian trees and in-stream woody debris for cover and minimal disturbance. Loss of current and potential riparian habitat and floodplains to development poses significant additional threats to the survival of coho here.

We appreciate that Marin County Supervisors are now considering a new Stream Conservation Ordinance. While the Marin County General Plan calls for no net loss of habitat, the current draft ordinance fails to come close to meeting this goal.

WE THE UNDERSIGNED, CALL ON MARIN COUNTY SUPERVISORS TO ENACT A STRONG ORDINANCE THAT INCLUDES THE FOLLOWING PROVISIONS THAT WILL HELP TO RESTORE COHO POPULATIONS:

1. Any development within 100-foot setback from creeks should be strongly discouraged. New development in this buffer that is allowed should require mitigation if new structures or activities reduce the potential for rehabilitation of riparian habitat, even if it is currently disturbed by lawns, patios, etc. A 2:1 or higher mitigation ratio is recommended to improve on current conditions that already include a significant loss of riparian habitat.
2. Ephemeral Tributaries to Salmon Streams should be protected with a 100-foot setback. Presently, the draft ordinance only provides for the 100-foot setback if 100 feet of "continuous" riparian vegetation is present, basically exempting a large percentage of important habitat, thus decreasing stream habitat for juvenile coho. We see no scientific basis for limiting protection only to ephemeral streams with "100 feet of continuous riparian vegetation." A functioning network of ephemeral streams mitigates flooding and forms the headwaters without which mainstems could not support salmon.

We realize that these requested ordinances will inconvenience landowners, but without them, development in the Geronimo Valley will likely lead to extirpation of coho salmon from the watershed, making the recovery of coho salmon in the Lagunitas Creek watershed increasingly problematical.

The result will be further decline of coho salmon in California. The recovery of coho salmon as a viable species in California will only happen as the result of many small positive actions on many streams, especially by landowners who have chosen to live in coho watersheds. The proposed ordinances will provide significant help to one of the most important coho populations left. We would like to see Marin County be a

leader in coho salmon conservation, rather than just one more example of local government failing to protect local resources.

Sincerely yours,

(current list as of 30 April 2013)

#	Name	Title	Affiliation *(listed for identification purposes only)
1	Peter Moyle	PhD, Professor	University of California at Davis*
2	John McCosker	PhD	
3	Sylvia Earle	PhD	
4	Alex Hearn	PhD, Director of Conservation Science	TIRN
5	Chris Pincetich	PhD, Outreach & Education Manager	TIRN
6	Leo Salas	PhD, Quantitative Ecologist	PRBO Conservation Science*
7	Tierney Thys	PhD, Director	Ocean Sunfish Research & Tagging Program*
8	Bruce Baldwin	PhD, Professor & Curator	UC Berkeley*
9	Bruce MacFarlane	PhD, Supervisory Research Fisheries Biologist [retired]	UC Santa Cruz*
10	Eric Chapman	BS, Staff Research Associate	UC Davis*
11	Judith Innes	PhD, Professor Emerita	UC Berkeley*
12	Cynthia LeDoux-Bloom	PhD, Fisheries Scientist	
13	Pedro Luis Janela Pinto	MSc/PhD Candidate	UC Berkeley*
14	Myfanwy Johnston	PhD Candidate	UC Davis*
15	Matt Stoecker	Principal Biologist	Stoecker Ecological, UCSB*
16	Jacob Katz	PhD, Director Salmon/Steelhead Initiatives	CalTrout*
17	David DeSante	PhD, President	Institute for Bird Populations*
18	Michelle LaRue	PhD, Research Fellow	University Minnesota*
19	Gary Grossman	PhD, Professor Animal Ecology	University of Georgia Athens*
20	Judith Weiss	PhD, Professor Biological Sciences	Rutgers University*
21	Pasan Samarasin	PhD Candidate	University of Toronto*
22	Michael Park	MS Conservation Medicine	Tufts University*
23	Gary Rennie	Analyst, Office of Ecosystem Protection	US EPA, New England*
24	John Mola	Graduate Student	Humboldt State University*

25	Geoff Patton	PhD, Marine Biologist/Toxicologist	
26	Melanie Truan	PhD, Staff Research Associate	Museum of Wildlife, UC Davis*
27	Preston Brown	Intern, Invasive Fish Eradication	SPAWN
28	Michael Swift	PhD, Biology Dept.	St. Olaf College, MN*
29	Eric Huber	MS, PhD Candidate	UC Berkeley*
30	John Cooper	PhD	Cooper Environmental Research*
31	Shaye Wolf	PhD, Science Director	Climate Law Institute, Center for Biological Diversity*
32	Ruslan Grigoriev	Field Hydrologist	Virginia Tech University*
33	Patrick Lizon	Watershed Field Coordinator	VA Dept. Conservation & Recreation*
34	Courtney Collins	Graduate student	Georgia University, Odum School of Ecology*
35	Joseph Cech, Jr	PhD, Professor Emeritus	UC Davis*
36	John Szczepanski	PhD, Chief Fish Biologist	Coastal Vision LLC*
37	William Szelistowski	PhD, Associate Professor of Biology	Marine Science Eckerd College*
38	Richard Bailey	PhD, Executive Director	The Lake Merritt Institute*
39	Jamilynn Poletto	PhD Candidate	UC Davis*
40	Brian Waters	MS, Fisheries Scientist	Former President CALNEVA*
41	Todd Steiner	MS, Executive Director	TIRN
42	Adina Merenlender	Cooperative Extension Specialist	UC Berkeley*
43	Vincent Resh	PhD Professor, Dept. Env. Sci. Policy & Man.	UC Berkeley*
44	Emily Moran	PhD, postdoctoral researcher	ETH Zurich*
45	Sarah Frias Torres	PhD, Research Collaborator	Smithsonian Marine Station, Florida*
46	Kimberly Bolyard	PhD, Associate Professor, Dept. Biology	Bridgewater College, Virginia*
47	Nicholas Rosenstock	PhD Researcher	Lund University*
48	Cheryl Kassed	PhD, MSPH, Vice President	Maryland Alliance for Greenway Improvement and Conservation*
49	Ted Grantham	PhD, Postdoctoral Researcher	UC Davis*
50	William Webb	PhD, Adjunct Professor	De Anza College*
51	Jerry Smith	PhD, Ass. Professor Biology	San Jose State University*
52	Ellen Hines	PhD, Professor of Geography	Tiburon Center SFSU*
53	Peter Pyle	Biologist	Institute for Bird Populations, Point Reyes

			Station*
54	James Adams	PhD, [Former] Director	Ecological Services, PG&E*
55	Greg Cunningham	PhD, Associate Professor	St. John Fisher College*
56	David Inouye	PhD, Professor	University of Maryland*
57	Tim Duane	PhD, Professor Env Sciences	UC Santa Cruz*
58	Kerry Nichols	PhD, Postdoctoral Researcher	Stanford University*
59	Paola Bouley	MSc, PhD Candidate	
60	Reuven Walder	MSc	
61	Meredith Elliott	Senior Scientist	PRBO Conservation Science*
62	Annie Lalancette	PhD Candidate	Concordia University*
63	Lucas Siegfried	MS, PhD Student	UC Davis*
64	Julie Day	Fishery Biologist	Pacific States Marine Fisheries Commission*
65	Zeb Hogan	PhD, Ass. Res. Prof	U. Nevada, Reno*
66	Ayesha Gray	PhD, Restoration/Estuarine Ecologist	Earth Design Consultants, Inc. *
67	Laurel Collins	Fluvial Geomorphologist	Watershed Sciences*
68	Norm Stacey	PhD Professor Emeritus	University of Alberta*
69	Jonathan Baskin	PhD Professor Emeritus	Cal State Polyt. Uni. Pomona*
70	Gianluca Polgar	PhD	U. Brunei, Dept. Biology*
71	Robert Rees Rofen	PhD, Director	Aquatic Research Institute*
72	Thomas Ihde	PhD, Fisheries Modeler	Versar, Inc*
73	Camm Swift	PhD, Emeritus, Section of Fishes	LA County Nat Hist Museum*
74	AM Sajina	PhD	Central Inland Fisheries Research Institute, Kokata, India*
75	Susan Levenson	Watershed Awareness Coordinator	Friends of San Leandro Creek*
76	Jon Rosenfield	Conservation Biologist	The Bay Institute*
77	Kevin Padian	PhD, Professor & Curator	UC Berkeley*
78	Morgan Bond	PhD, School of Aquatic & Fishery Sciences	U. Washington*
79	George Brooks	PhD, Prof. Integrative Biology	UC Berkeley*
80	Zahid Sharif Mirza	Scientist,	Fisheries Research & Training Institute, Lahore, Pakistan*
81	Yin-Ki Tam	PhD Candidate	National Taiwan of Ocean University, and Technician of Coastal Marine Laboratory, Hong Kong University of Science and Technology*

82	Omkar Byadgi	PhD Scholar	National Pingtung University of Science and Technology*
83	Michelle Duong	MS	University of Queensland*
84	Raj Naresh Gopal	Senior Executive	National Fisheries Development Board, Hyderabad, India*
85	Denise Wilson	MS, Botany Curator	BLM*
86	Chien-Hsiung Wang	Professor	National Taiwan University*
87	William Resetarits, Jr	Professor of Biological Sciences	Texas Tech University*
88	Virginia White	Associate Professor	Riverside City College*
89	Dan Hasselman	PhD, Research Scientist	UC Santa Cruz*
90	Patrick Martin	PhD, Associate Prof. Ecology	Colorado State University*
91	Steven Oberbauer	PhD, Professor	Florida International University*
92	Jim Aborn	Environmental Specialist	UC Davis*
93	Jeff Vanderpham	PhD	Vanderpham Consulting*
94	Donatella del Piero	PhD, Dept. Life Sciences	University of Trieste, Italy*
95	Pranaya Kumar Parida	PhD, Assistant Professor	Fisheries Resources Management, College of Fisheries, Punjab, India*
96	Johannes Holmen	Environmental adviser	Multiconsult (private consulting company); also affiliated with the University of Oslo*
97	Tamara A. Newcomer	PhD Candidate in Environmental Science	University of Maryland*
98	Bronwyn Bleakley	PhD, Assistant Professor	Stonehill College*
99	Adam Schwindt	MS, PhD Candidate	Colorado State University*
100	Allison Mastalerz	Graduate Student	Biology Department, University of Cincinnati*
101	C. B. Halpern	PhD Research Professor	University of Washington*
102	Andres Santana	M.Sc. Environmental Management and Restoration	Organization for Tropical Studies*
103	Noel Wingers	Marine Biologist, MS Candidate	Loma Linda University*
104	Marcel Bigue	Marine Program Director	WildAid*
105	Laura Wright	Project Manager	Broward County Sea Turtle Conservation Program Nova Southeastern University*
106	Scott Veirs	PhD, President	Beam Reach Marine Science and Sustainability School*
107	Sarah E. Moffitt	PhD Candidate	University of California at Davis *

108	Christine May	PhD, Assistant Professor, Dept. Biology	James Madison University*
109	John A Musick	Prof. Emeritus	Va Inst. Mar Sci. *
110	Ethan Mora	PhD Candidate	UC Davis*
111	Dan Swezey	PhD Candidate	Bodega Marine Laboratory*
112	Inez Devlin-Kelly	Professor & Levan Scholar	Bakersfield College, Dept. Biological Sciences*
113	Peter Schulze	PhD, Professor of Biol. & Env. Sci.	Austin College, Sherman, TX*
114	Lance Morgan	PhD, President & CEO	Marine Conservation Institute, CA*
115	Daniel Barshis	PhD, Assistant Project Scientist	UC Santa Cruz*
116	John Kelly	PhD, Director of Conservation Science	Audubon Canyon Ranch*
117	Jennifer Jones	BS, BA, Botanist	
118	Jacob Levenson	Marine Biologist, Director of Outreach	Conserve. IO*
119	Carol Leonard	MS	Coastal Wildlife Club, Inc*
120	Susana Cardenas	PhD Candidate	UC Davis*

5/13/13 Planning Commission SPAWN ISSUE #1: Mitigated Development

New development proposed on landscaped or cleared areas in an SCA should require mitigation for the square footage impacted, including any additional defensive space. Good construction practices do not substitute for the reduction in habitat acreage, value and function caused by such development. Since the square footage of a parcel is fixed and the landscaped area converted to development cannot be replaced, then it must be mitigated by at least a 1:1 restoration of native riparian vegetation in an undeveloped area.

At the 4/1/13 Planning Commission meeting beginning at 04:08 on the video, Assistant Planning Director Tom Lai stated: “*We have to harmonize all the policies with all the programs...So I would want to look at both the policy, the background behind that policy and the program before coming out with...a regulation that meets the intent of both...*”

The relevant policy is BIO 4.1: *Restrict Land Use in Stream Conservation Areas*.

The relevant program is BIO-4.a: “*Adopt Expanded SCA Ordinance...Such an ordinance could, by way of example...consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA*”

The relevant regulation is draft Ordinance 22.63.030 A. 1. *Permitted development activities... include...additions [that] do not increase the horizontal incursion into the SCA and do not result in the expansion of the existing building footprint within the SCA by more than 500 square feet.*

SPAWN agrees that the Ordinance is not bound by the literal words of BIO-4.1 and BIO-4.a but nevertheless must “meet the intent of both.” Thus we looked, as Mr. Lai suggested, at the relevant background. Planning Commission videos 3/19/07 (04:35:10 to 04:55:55) and 5/7/07 (05:35:03 - 05:39:00) show that the Commission first intended to prohibit all additional incursions in the SCA, then suggested allowing a one-time 500 sq ft addition to the 2nd story (the intended meaning of additions that “*do not increase the existing horizontal incursion*”). This 5/7/07 language was retained in the final CWP, studied in the Environmental Impact Report and represents the “4 corners” for the 2007 CWP that the Ordinance must stay within.

Yet the Ordinance (22.63.020 B 2 b) proposes to exempt incursions on “previously disturbed areas” and mitigate only when “native riparian vegetation” is removed (despite the fact that many parcels do not contain such vegetation). Thus the Ordinance exempts virtually all development in the SCA from mitigation largely due to a new definition of “previously developed” that includes landscaping and thus differs substantially from the well-accepted definition of “previously developed” (“lot coverage”) that is used the 2013 Development Code.

Mr. Lai states: “*If the project can't demonstrate that it will not create an impact to water quality, hydrological function, or habitat, then it won't be able to be approved...*” But good construction practices alone do not substitute for the reduction in habitat acreage, value and function of landscaping, which has largely replaced native riparian vegetation and must be mitigated. A CWP policy and program intended to restrict SCA incursions cannot stay within the 4 corners of the CWP when implemented by an Ordinance that exempts unmitigated SCA incursions.

However, reasonably within those 4 corners are two suggestions: 1) the concept of “like-on-like” that would exempt development (like a garden shed) proposed within the existing “lot coverage”; and 2) the concept of a “minor 500 sq ft incursion” outside the existing “lot coverage” and more distant from the creek than the existing home. But, both concepts must acknowledge the impact of Public Resources Code 4291, which requires a 100-foot defensible space around structures. Thus, a poorly-sited 10’x10’ shed could trigger an additional 3/4 acres of vegetation management, while a carefully-sited shed could trigger no additional requirement.

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.63.020 A.

- c. ~~The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08...~~
- d. ~~Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.~~

22.63.020 B 2.

- b) Structures and development activities pursuant to Section 22.63.020.A.1 located within a previously “disturbed area”~~s~~(as defined under New Definitions) as determined by the Director provided that such additions do not increase the existing defensible space requirement (per Public Resources Code 4291) as determined in writing by the appropriate Fire Official.

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

- 1. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08...

- 2. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.

- 3. Additions to permitted or legal non conforming structures Structures and development activities pursuant to Section 22.63.020.A.1 located within a “greenfield area” (as defined under New Definitions) that existed prior to February 25, 2013, provided that such additions do not increase the existing horizontal incursion (as defined under New Definitions) into the SCA and do not result in the expansion of the existing building footprint or the existing defensible space requirement (per Public Resources Code 4291) within the SCA by more than 500 sq feet; such additions include, but are not limited to:

22.63.040 C. Mitigation Criteria.

Projects requiring a Tier 2 Permit shall be mitigated with native riparian vegetation per 2) below when proposed on a “greenfield area”. Such mitigation area shall be based on the “impact footprint” (the project footprint plus any additional square footage of defensible space within the SCA (per Public Resources Code 4291) and shall require a minimum replacement or enhancement ratio of 1:1 for incursions that do not increase the horizontal incursion of the “impact footprint” into the SCA measured at the primary residence and a ratio of 2:1 for incursions that do increase the horizontal incursion.

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

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

- 2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require replacement and enhancement planting to be monitored and maintained until successful and a schedule of mitigation work and development work....

8 New Definitions Disturbed Area. An area that has experienced significant alteration from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities, as determined by the Director. the area within the “lot coverage” as defined in the 2013 Development Code; a “greenfield area” is the area outside the “lot coverage.”

Horizontal Incursion. Development on a “greenfield area” that is also a “highly sensitive” area. That “highly sensitive area” extends to the greater of 35 feet from the stream bank or the distance from the stream bank to the point of the living space in the primary residence farthest from the stream bank.

Below is a graphic representation of SPAWN's requested amendments:

EXEMPT SUBJECT TO DETERMINATION (Like-on-Like)	TIER ONE PERMIT (Minor Incursion)	TIER TWO PERMIT (Major Incursion)
<p>22.63.020 A.</p> <p><i>c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08..</i></p> <p><i>d. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.</i></p> <p>B 2. b) Structures and development activities pursuant to Section 22.63.020.A.1 located within a previously “disturbed area’s (as defined under New Definitions) as determined by the Director provided that such additions do not increase</p> <p><u>the existing defensible space requirement (per Public Resources Code 4291).</u></p>	<p>22.63.030 A.</p> <p><i>1. Minor deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08..</i></p> <p><i>2. Any other minor activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality; major such activities may require a Tier 2 permit</i></p> <p><i>3. Additions to permitted or legal non-conforming structures</i></p> <p><i>Structures and development activities pursuant to Section 22.63.020.A.1 located within a “greenfield area” (as defined under New Definitions))</i></p> <p><i>that existed prior to February 25, 2013,</i></p> <p><i>provided that such additions do not increase the existing horizontal incursion into the SCA (as defined under New Definitions) and do not result in the expansion of the existing building footprint or the existing defensible space requirement (per Public Resources Code 4291)</i></p> <p><i>within the SCA by more than 500 sq feet;</i></p> <p><i>such additions include but are not limited to:</i></p>	<p>22.63.040 C. Mitigation Criteria.</p> <p>Projects requiring a Tier 2 Permit shall be mitigated with native riparian vegetation per 2) below when proposed on a “greenfield area.” Such mitigation area shall be based on the “impact footprint” (the project footprint plus any additional square footage of defensible space within the SCA per Public Resources Code 4291) and shall require a minimum replacement or enhancement ratio of 1:1 for incursions that do not increase the horizontal incursion of the “impact footprint” into the SCA and a ratio of 2:1 for incursions that do increase the horizontal incursion</p> <p>Where development would occur within an SCA, and additional adverse impacts to hydraulic capacity, habitat acreage value or function or water quality are identified, mitigation shall conform to the provisions below and shall be incorporated into the project or be required through conditions of approval. The Site Assessment (Tier 2) shall present options for alternative mitigation that meet the following criteria.</p> <p>1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1.</p> <p>2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require replacement and enhancement planting to be monitored and maintained until successful and a schedule of mitigation work and development work...</p>

Native vegetation in an SCA should be protected regardless of whether those species require access to the water table. Such vegetation supports the ecological services provided by riparian vegetation and in some cases provides the only substitute when riparian vegetation has been removed.

Vegetation protected by the SCA Ordinance must be clearly defined so that homeowners can have certainty. Unfortunately, confusion may have arisen at the 4/1/13 Commission hearing, when the County biologist stated that "facultative" riparian vegetation may be "associated with a watercourse" but is not "water-table-dependent."

Yet the 2009 San Geronimo Valley Salmon Enhancement Plan (SGV SEP) documented that much of the "water-table-dependent" vegetation has been removed, but remaining facultative riparian species (bay, redwood, oak) perform the same critical ecological functions. Thus for the SCA Ordinance to protect streams, this "facultative" riparian vegetation needs to be protected just as much as the "water-table-dependent" species.

This more inclusive definition of protected species can be justified by the CWP definition of "riparian" (*associated with or dependent*), which is more inclusive than the CWP definition of "riparian vegetation" (*associated with...and relying*). Further at the 4/1/13 Commission meeting, Planner Suzanne Thorsen explained protected riparian vegetation is based on "an interplay of various factors" (beyond dependency).

Similar confusion about protected vegetation was resolved at the 7/19/10 PC hearing on the Native Tree Ordinance by reference to a specified list. Thus the SCA Ordinance could resolve uncertainties by a list including facultative and dependent woody and herbaceous native riparian species, as well as young native trees that represent the inter-generational transfer of critical ecological functions performed by mature trees now protected by the Native Tree Ordinance.

Such an inclusive list of protected SCA vegetation would resolve potential problems of mitigations that might require planting of "water-table-dependent vegetation" when the available mitigation areas may not support "water-table-dependent vegetation." Further, mitigations that might require planting "water-table-dependent vegetation" should not result in the removal of facultative vegetation that performs similar ecological functions (instead landscaped areas should be replaced by the mitigation). Lastly, any extension of the SCA based on the presence of "woody riparian vegetation" that is facultative could be justified by a finding that the habitat in which that facultative species is now growing could also reasonably support "dependent" native woody riparian species.

SPAWN thus requests that the draft Ordinance be amended as follows (deleted text is shown as ~~strike-through~~ and new text is shown as underline):

8. Add new definitions.

Protected Vegetation: Woody riparian vegetation protected under the SCA Ordinance is listed in the 2009 San Geronimo Valley Salmon Enhancement Plan; herbaceous riparian vegetation protected under the SCA Ordinance is listed Appendix X.

All “ephemeral” tributaries to salmon streams should have 100-foot SCA protections to support this sensitive species if studies show them to be hydrologically connected to those salmon streams. All other “ephemeral” tributaries should be mapped with interim 35 foot SCA protections until a hydrological or biological study determines whether they should have new 100-foot SCA protections or default to the existing 20-foot DPW protections.

At the 4/1/13 Planning Commission meeting beginning at 04:08 on the video, Assistant Planning Director Tom Lai stated (emphasis throughout is ours):

“We have to harmonize all the policies with all the programs... So I would want to look at both the policy, the background behind that policy and the program before coming out with what is a regulation that meets the intent of both...”

The relevant policy is BIO 4.1: *An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream.*

The relevant program is BIO-4.a: *Adopt Expanded SCA Ordinance. Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary...*

The relevant regulation is draft Ordinance 22.33.030 B.4: *For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.*

SPAWN agrees with Mr. Lai that the Ordinance must “*meet the intent of both*” BIO-4.1 and BIO-4.a as informed by the relevant background, which is the 7/19/10 Commission video at 03:07:21, when Mr. Lai said of tributaries in the San Geronimo Valley:

“We are looking at only those ephemerals that contribute to the health of the fish and the watershed, rather than those...having riparian vegetation.”

This video provides background and proof that the County extended SCA protections (consistent with BIO 4.1 and BIO-4.a) to ephemeral tributaries that support salmon (*a special-status species*)...regardless of the extent of riparian vegetation.” This extension of SCA protections to ephemeral tributaries that support salmon were studied in the Final Environmental Impact Report (FEIR) and represent the “4 corners” of the 2007 Countywide Plan (CWP) that the County states the draft Ordinance must stay within.

Consequently, a CWP policy and program that both clearly intend to protect ephemeral salmon tributaries regardless of riparian vegetation cannot be implemented by an Ordinance that protects ephemeral salmon tributaries only with riparian vegetation. The draft Ordinance’s elimination of the CWP phrase “*support a special-status species*” is a significant reduction of CWP policy, precedent and protections, particularly for the California Red Legged Frog (CRLF) that uses these ephemeral streams for seasonal dispersal. (USFWS 81420-2010-F-0634). All of Marin County is within the Fish and Wildlife Service’s CRLF Recovery Unit #3.

The FEIR response to comments states (8.0-87) that the new 2007 CWP intends to strengthen protections for ephemeral creeks compared to the 1994 CWP:

The provisions in the CWP Update do not reduce the protections for a SCA but actually strengthen them. The 1994 CWP contains no reference to herbaceous riparian vegetation as a criteria used in defining an SCA. ...The revisions to Policy BIO-4.1...regarding ephemeral drainages were made to clarify important sensitive resources... not reduce protections for this type of stream...The language from the 1994 CWP regarding "value for flood control, water quality, or habitat for a migratory species" was so vague and difficult to define that, by County practice, it typically did not contribute to further designation of ephemeral streams as a SCA.

Consistent with these 2007 FEIR Responses, the County's 2007 biologist confirmed at the 2/26/07 hearing that the reference to "riparian vegetation" was added to strengthen SCA protections. Yet County's 2013 biologist stated at the 4/1/13 hearing that the reference to "riparian vegetation" would exclude SCA protections. Yet the County proposes to rely on such biological opinions, per the 7/19/10 video at 03:07:21, when Mr. Lai said: "*We can provide the scientific basis for saying that, yes, it should be included because it's an important fish creek...a number of ephemerals [were] removed based on subsequent verification in the field or biological reports.*" But SPAWN believes there is no scientific consensus for determinations of "biological importance."

The County's current policy of excluding SCA protections from ephemeral tributaries to anadromous fish streams pending a subjective determination of biological importance fosters controversy because a property owner can protest the inclusion of an ephemeral tributary, but SPAWN can protest the exclusion of that ephemeral tributary. SPAWN thus suggests a more definitive "Clean Water Act" test for SCA protections: ephemeral tributaries that are hydrologically connected to anadromous fish streams provide food (insects), water and habitat (gravel) and thus "*support a special-status species*"

Further such uncertain biological determinations that may or may not occur in the future leave most ephemeral tributaries to anadromous creeks unprotected, which violates the intent of CWP policy BIO 4.1 and program BIO-4.a and creates uncertainty for homeowners with a potentially shifting patchwork of 100 foot and 20 foot setbacks.

Thus in a spirit of compromise and clarity, SPAWN requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.33.030 – B. SCA Setbacks.

4. *For all mapped ephemeral streams, not tributary to anadromous fish stream, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more. if it (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream. All ephemeral tributaries to anadromous fish streams shall be mapped with a 35-foot SCA setback until a hydrological study demonstrates connectivity (in which case the 100-foot SCA setback under (b) would apply) or lack of connectivity (in which case the 20-foot setback would apply).*

A delineation and disclosure of all development within 35 feet of a creek bank should be required for significant development permits in an SCA and at point of sale. A permanent record should be required to be kept that delineates all mitigation areas.

Presently, the Ordinance requires no disclosure of existing development in an SCA when additional incursions into the SCA are proposed. Such an exemption is reasonable when the project is “exempt without further determination” or when a “like-on-like development is proposed within the existing “lot coverage” that renders the project “exempt subject to determination.” We would also agree that when a minor (Tier 1) incursion is proposed, then such a ministerial exemption from disclosure is defensible. However, when a project triggers a Tier 2 review, we believe that it is critical that such review take into account all existing development in the SCA in order to have a real baseline from which to determine the merits of and mitigations for the projects.

Further, a description of all development within 35 feet of the bank of streams that support anadromous fish (including tributaries to those streams) should be required by way of a pre-sale disclosure by the Seller to the County. If sellers in Marin are advised to disclose a long list of potential issues including fireplaces, diseased trees, and high-flow toilets, then they can certainly disclose structures that could impact both flooding and salmon. The County should also fund landowner assistance (per BIO-4.a) to remove structures in this critical SCA area.

Lastly, a permanent record should be kept by the County that delineates all mitigation areas on the parcel. The same record could also be added as a note to the property deed. Such records are needed to prevent “double-dips” whereby a subsequent project could inadvertently claim credit for a previously required mitigation, or propose a new mitigation on an area previously used for mitigation.

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.63.040 - B. 4. Site Assessment (Tier 2).

d. The project proponent shall submit a site plan showing all development on the parcel.

22.63.040 C Mitigation Criteria.

3. The county shall keep a permanent record showing all mitigation areas on the parcel.

5/13/13 Planning Commission SPAWN ISSUE #5: Ordinance Should be Staged

The current SCA Ordinance, with its rapid pace and limited outreach efforts, should be focused beginning in the San Geronimo Valley. The Ordinance's outreach and mapping should then be prioritized watershed-by-watershed from the most critical coho watersheds to steelhead watersheds and other creeks.

At the 4/1/13 Planning Commission hearing, Director Crawford (at 9:55 on the video) stated that the current draft SCA Ordinance built on prior efforts and was intended to extend the SCA protections of the 2003 SCA Ordinance that reads (emphasis ours):

...where a vacant legal lot of record in the Countywide Plan's City Centered and Inland Rural Corridor...that adjoins a mapped anadromous fish stream and tributary shall be subject to Design Review...

The language (below) in the 2007 Countywide Plan (CWP) BIO 4.a that directs the County to adopt an "expanded" SCA Ordinance reflects exactly the same words:

Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary.

Neither the above quoted 2003 SCA Ordinance nor the 2007 CWP BIO-4.a deny SCA protections to tributaries of anadromous fish streams when they may lack riparian vegetation. This inclusive protection of tributaries to anadromous fish streams is confirmed by the video of the 7/19/10 Planning commission hearings on the Tree Ordinance at 03:07:21, when Assistant Planning Director Mr. Tom Lai said regarding tributaries in the San Geronimo Valley:

We are looking at only those ephemerals that contribute to the health of the fish and the watershed, rather than those...having riparian vegetation.

Mr. Lai's proper interpretation of the SCA protections is based on CWP policy BIO 4.1:

An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream.

In contrast, draft Ordinance 22.33.030 B.4 states; *For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.*

Thus while the draft SCA Ordinance proposes to expand the reach of the 2003 SCA Ordinance beyond certain vacant parcels, the draft Ordinance also limits its reach to only those anadromous ephemeral tributaries with a "*continuous length of 100 feet or more*" of riparian vegetation," which the County's biologist stated were likely not to exist.

The net effect of the draft Ordinance is a net loss of protections for the most sensitive salmon species (coho), whose West Marin streams spurred the inception of this Ordinance. SPAWN urges that the focus of the Ordinance, at this stage, return to coho.

As background, at 01:52:45 on the 7/19/10 video, Commissioner Dickenson states:
coho...don't exist in other parts of the County...The way these Ordinance preparations go, it takes years...It's going to be very controversial when you start talking about SCA regulations that effect San Anselmo Creek and Sleepy Hollow...It may be years before we have anything, so that's why I really see this as a stop gap measure to do something reasonable to try to increase the likelihood that the coho salmon won't go extinct. SPAWN agrees.

Drafting an Ordinance is a complicated process and concerns about the rushed timetable and the inclusion of East Marin creeks were expressed by many at the 4/1/13 meeting. SPAWN agrees. The current county-wide scope of this draft Ordinance has inappropriately burdened an already complex process.

City-Centered parcels have different SCA setbacks, different neighborhood issues and different sensitive species from those in West Marin. SPAWN requests that the Ordinance process be staged:

- This first stage, with its very quick pace, should be limited to anadromous fish creeks outside the City Centered corridor;
- The second stage, with a more deliberative pace, should be limited to anadromous fish creeks inside the City Centered corridor;
- The third stage should extend SCA regulations to non-anadromous creeks.

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.33.020 A. – Applicability

....The SCA encompasses any jurisdictional wetland within the stream channel, together with adjacent uplands, and supersedes setback standards defined for Wetland Conservation Areas in the Countywide Plan. However, the rollout of community outreach and mapping efforts should be focused initially in the San Geronimo Valley and then be prioritized watershed-by-watershed from the most critical coho watersheds, to steelhead watersheds, to any remaining watershed that supports sensitive species. and finally to the remaining watersheds

5/13/13 Planning Commission SPAWN Addendum #1: Dikes & Berms:

There appears to be an inadvertent error in the Ordinance that if uncorrected could have profound consequences throughout the County. The Countywide Plan (CWP) exempts from the SCA setback small parcels in the City Centered corridor behind levees or dikes (emphasis ours):

CWP BIO-4.1. City-Centered Corridor... “*The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback.*”

However, the Ordinance inadvertently inserts this exemption into a section that applies throughout the County to parcels of all size (emphasis ours):

22.33.020 – Applicability

- B. The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:
3. Land adjacent to levees, dikes, berms....

First we note that the CWP language exempts small City-Centered parcels only from the SCA setback, but not from the remaining SCA policies and programs. We agree that tidally influenced channels are exempt per BIO 4, yet County maps do not indicate any SCA overlay on leveed creeks seemingly not subject to tidal influence, although it is not clear where tidal influence stops. **We would ask the County to explain its rationale.**

Second we note that some streams in Marin (and throughout California) have been moved for agricultural or development purposes out of their natural channels to unnatural positions that are maintained by levees, dikes, and/or berms. Thus to exclude from the SCA protections all “land adjacent to levees, dikes, berms” would exclude many streamside parcels in the County and eviscerate the intent of the CWP.

The County’s SCA maps conform to the CWP and show this exception only in the City-Centered Corridor, but SPAWN’s concern is that if the language of the Ordinance is adopted, the County’s SCA maps will then be amended to conform to the Ordinance rather than the CWP. We suggest that this exemption be moved from §22.33.020, where it incorrectly applies to every parcel instead to §22.33.030, where it would apply only to small city-Centered parcels (in conformity to CWP BIO-4.1).

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.33.020 – Applicability

- B. The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:
3. ~~Land adjacent to levees, dikes, berms,...~~

22.33.030 B 1 "SCA setbacks for properties within the City-Centered Corridor:

- a. *For lots more than 2 acres in size, the SCA setback shall be a minimum of 100 feet from each side of the top of bank;*
- b. *For lots from 0.5 acres to 2 acres in size, the SCA setback shall be a minimum of 50 feet from each side of the top of bank; and*
- c. *For lots less than 0.5 acres in size, the SCA setback shall be a minimum of 20 feet from each side of the top of bank. The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback."*

5/13/13 Planning Commission SPAWN's Addendum #3 Gov Exemp & Private Restore

SPAWN believes that the Ordinance has significantly narrowed the scope of SCA protections for flood control and other government projects without any basis in the Countywide Plan (CWP). (emphasis ours):

CWP BIO 4.1 "*Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs...flood control projects that minimize impacts to stream function and to fish and wildlife habitat..."*

§ 22.33.020 B. 3 *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

3. *...publicly owned or maintained flood control...facilities."*

§ 22.63.020 B. 1 *Exempt without further determination....*

- a. *Public utility facilities and their maintenance proposed pursuant to Government Code Section 53091, Public Resources Code Section 4292, and the California Public Utilities Code;*

SPAWN first notes that exemptions in the Code Sections referenced in 22.63.020 B. 1 apply to only water and power facilities, but not to flood control facilities. Further, the CWP BIO 4.1 conditionally exempts qualifying flood control projects, whereas the Ordinance §22.33.020 B. 3 unconditionally exempts flood control facilities. Thus the Ordinance has significantly narrowed the scope of SCA protections. But this narrowing cannot be considered a reasonable "interpretation" deriving from the "four corners" of the 2007 CWP whose intent is to expand SCA protections. We thus suggest maintaining the original language of the CWP in regard to flood control projects.

SPAWN further believes that the Ordinance has significantly narrowed the scope of SCA protections by exempting all government projects again without basis in the CWP, which does not propose such exemptions. If anything, the CWP suggests the opposite:

BIO-4.10 Promote Interagency Cooperation. Work in close cooperation with flood control districts, water districts, and wildlife agencies in the design and choice of materials for construction and alterations within SCAs.

Yet, the 4/1/13 Ordinance states 22.33.020 B. 3 states: *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

4. *Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work.*

22.63.020 B. 1 *Exempt without further determination....*

- e. *Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;*

Such blanket exemptions/exclusions are problematic from both a stream protection perspective and a public perception perspective, particularly when a government proposes to impose conditions on others that it exempts itself from.

From the perspective of stream protection, the proposed exemption would allow, for example, the County Department of Public Works to locate a corporation yard in an SCA site that was closer to expected work rather than at a site more distant from expected work but outside an SCA. Similarly, this exemption would allow the County Open Space District to locate an outhouse in an SCA site closer to campgrounds rather than at a site more distant from campgrounds but outside an SCA.

It is not clear why these assessments cannot be made within the bounds of the SCA Ordinance just like similar SCA assessments are conducted for private property owners. Again, as with flood control projects, we suggest adapting the language of the CWP and changing these exclusions instead to exemptions subject to determination so that at least some consideration of the SCA protections will occur by a third-party government entity (the Community Development Agency) in making the required determination.

SPAWN is also believes it desirable to make as simple as possible self-funded and executed Creek Restoration. In that regard he proposed Ordinance currently exempts without further determination: "*Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency.*" That language should exempt from any further permitting triggered by this SCA Ordinance all of the projects that require permits from other agencies such as: Bay Area Joint Aquatic Resources, Department of Fish and Wildlife Streambed Alterations, USACE Nationwide Permit 13, SF Bay Regional Water Quality Control Board, etc. However, we also believe it useful to exempt vegetation restoration projects that do may not require permits from the referenced agencies.

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.33.020 B. 3 *The standards of this Chapter apply to all areas of the County located within the SCA excluding the following:*

3. ...and publicly owned or maintained flood control or water conservation district facilities;
4. ~~Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work.~~

22.63.020 B. 1 *Exempt without further determination....*

- e. ~~Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;~~

22.63.020 B 2 Exempt subject to determination

- d. *Official activities and development (including flood control projects and vegetation maintenance) of the County, State or an agency of the State, or the Federal Government, (including work done on behalf of the governmental agency that assumes full responsibility for the work) that minimize impacts to stream function and to fish and wildlife habitat.*
- e. *Private vegetation restoration projects that enhance the species, composition or area of the vegetation on the approved SCA lists of native riparian woody and herbaceous vegetation*

5/13/13 Planning Commission SPAWN Addendum #3 Channels vs. Ditches

In the 4/1/13 Staff Report (PC attachment #1, page 17) notes a second addition to the first suggested addition to the SCA definition:

10. Amend definition of Stream Conservation Area.

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

However, CWP BIO-4.1 states: “SCAs consist of the watercourse itself...”

The CWP Glossary defines a watercourse (emphasis ours) as: “*Natural or once-natural flowing (perennially or intermittently) water, including rivers, streams, and creeks. Includes natural waterways that have been channelized but does not include ditches, culverts, or other above- or below-ground conduits constructed for storm drainage function and sewage systems.*

The CWP Glossary also defines a stream: “*A natural or once natural flowing open drainage channel with an established bed and bank...including open waterways that have been restored, modified, or channelized, but do not include ditches, culverts, or other above- or belowground conduits constructed specifically for storm drainage function.*”

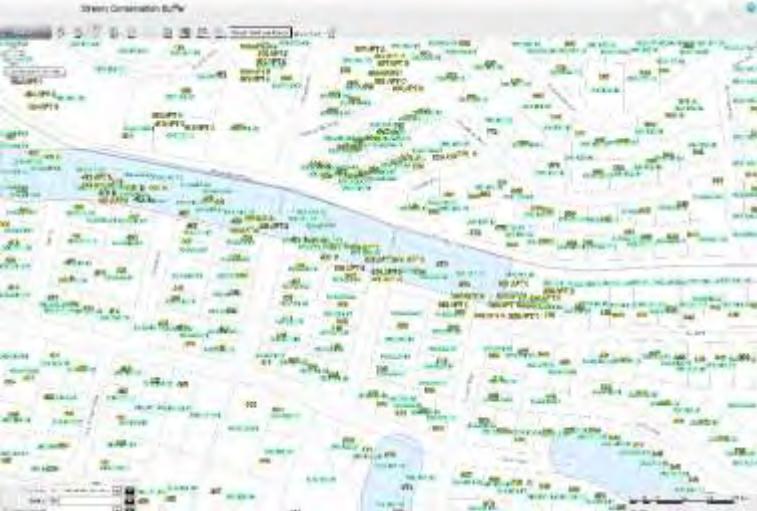
As you can see, the two CWP glossary definitions are consistent. However, the Ordinance is not. The Ordinances adds the exclusionary second phrase of the CWP Glossary definitions (“*do not include ditches, culverts, or other above- or belowground conduits constructed specifically for storm drainage function*”) but not the inclusory first phrase (“*including open waterways that have been restored, modified, or channelized*”).

Since there was considerable confusion at the 4/1/13 Planning Commission (beginning at 04:24:27 on the video) about whether “drainage ditches” were covered by the SCA. The distinction that was attempted to be made at 04:35:47 between “man-made” ditches (excluded from the SCA protections) and “non-man-made” ditches (included in SCA protections) confuses the once-clear CWP distinction between formerly-naturally-flowing streams that have been put in man-made channels to perform their watershed drainage functions and man-made ditches constructed specifically for storm drainage functions. The distinction is one of function and has nothing to do with whether the construct performing that function is man-made or not.

Virtually all streams in Marin (and throughout California) have been moved for agricultural or development purposes out of their natural channels to unnatural positions that are maintained by levees, dikes, and/or berms. Thus to exclude from the SCA protections parcels adjacent to streams in “man-made channels” would exclude virtually all streamside parcels in the County and eviscerate the intent of the CWP.

This issue was covered at the 2/26/07 PC CWP hearing at 00:22:20-00:23.37. “Storm drainage function” refers to man-made constructs designed to drain excess rain and/or ground water from paved streets, parking lots, sidewalks, roofs, etc. In contrast, storms may deposit rain throughout a watershed whose topography focuses that deposited rain into a natural stream that subsequently gets channelized, yet that channel or ditch is performing a “watershed drainage function,” not a “storm drainage function.”

Thus it is of concern that the 4/1/13 Staff Report proposes to “clarify” whether ditches are protected by the SCA by excluding from the proposed Ordinance’s definition the precise CWP phrase that clarifies this point (“*including open waterways that have been restored, modified, or channelized*”). This unwarranted exclusion could open the door to an interpretation that a stream segment with a bulkhead or rip rap has been “modified,” thus there is no longer any “natural channel,” no “top of bank,” and thus no SCA extending out from the bulkhead, rip-rap or from the lip of a constructed channel that contains a once naturally flowing waterway. Such an interpretation, which would incentivize channel modification, would be the opposite to the intent of the CWP BIO-4.4 Promote Natural Stream Channel Function.

	<p>This concern is further heightened by what appears to be a contradiction between the 2007 CWP SCA language and the CDA maps of the SCA coverage. The CWP language explicitly extends SCA protection to channelized streams yet the CDA maps, at least in the Tam Junction area show the Coyote Creek SCA abruptly stopping at Laurel Way where it becomes channelized (see screenshot to left).</p>
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SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

New Definition 8. **Top of Bank.** Top of bank is the elevation of land that confines waters of a stream to their natural channel in their normal course of flow, and above such elevation the waters will leave the channel and disperse in an uncontrolled manner.

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

SPAWN's intent is that the Ordinance should follow the CWP and existing Development Code in regard to agriculturally zone parcels and agricultural uses. We acknowledge that agriculture has multiple impacts on the environment, however in some measure, these impacts are an unavoidable and acceptable exchange for the food services provided. This SCA Ordinance, with its short time, is not the place to attempt any significant re-balancing of ag impacts versus ag services. That discussion could be the proper subject of the next CWP update, but not this Ordinance. Thus our effort to clarify change from the current CWP and Development Code to the new Ordinance.

4/1/13 Staff Report (pg. 1) states:

These [SCA Development Code] amendments will eliminate existing requirements governing development in SCAs that are currently implemented through other Chapters of the Development Code. 22.08.040 - Agricultural District Development Standards. Delete SCA reference in Sections 22.08.040.E and F for agricultural processing and retail sales.

These two deleted sections are below, along with one other deleted section not mentioned in the Staff Report:

22.08.040 E. Agricultural Processing. ~~New processing facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~

22.08.040 F. Sale of Agricultural Products. ~~New retail sales facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~

22.42.025 Exemptions from design review B. Agricultural Accessory Structures. ~~Agricultural accessory structures that comply with the Stream Conservation Area and Wetland Conservation Area setbacks established in the Countywide Plan.~~

These three deleted sections are proposed to be replaced by Ordinance §22.63.020

B.1. Exempt without further determination:

j. Agricultural uses on property zoned for agriculture (A, ARP or APZ) that do not result in the removal of woody riparian vegetation or animal confinement within the SCA.

This Ordinance §22.63.020 B.1 is based (or should be based) on a reasonable (within the 4 corners) interpretation CWP BIO 4.1:

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

Agricultural uses that do not result in any of the following:

- a. The removal of woody riparian vegetation;*
- b. The installation of fencing within the SCA that prevents wildlife access to the riparian habitat within the SCA;*
- c. Animal confinement within the SCA; and*
- d. A substantial increase in sedimentation.*

However, SPAWN believes Ordinance §22.63.020 B.1 could be interpreted in a manner that reverses the intent of the CWP and that of the deleted sections of the current Development Code (22.08.040 E, F, and 22.42.025).

First, §22.63.020 B.1 j deletes the CWP BIO 4.1 b and d references to fencing and sedimentation. Fencing is presumably covered by the more general reference in §22.63.020 B.1. i: *Fencing that does not restrict wildlife access to a riparian habitat.* However, we do not see where else the Ordinance explicitly covers the important point about sedimentation, which is additionally called out in BIO-4.17 (emphasis ours):

Continue Collaboration with the Marin Resource Conservation District...to encourage agricultural operators who conduct farm or ranch activities within a Streamside Conservation Area to minimize sedimentation and erosion....

Second, explicit references in the existing Development Code to requiring compliance with stream conservation standards for “*new [agricultural] processing facilities*” (22.08.040 E), “*new [agricultural] sales facilities*” (22.08.040 F) and “*Agricultural Accessory Structures*” (22.42.025) are also explicitly missing in the proposed Ordinance. That could open the door to the interpretation under the new Ordinance that new “*new [agricultural] processing facilities*” new agricultural *sales facilities*” and *new Agricultural Accessory Structures*” are all exempt from the SCA compliance because they could be considered “agricultural uses” and as long as they “*do not result in the removal of woody riparian vegetation or animal confinement within the SCA*” then these new structures would be “exempt without further determination” per §22.63.020 B.1. Even if “uses” are not (in the vocabulary of planners) the same as “structures,” that distinction may not be equally clear to agricultural operators or the public.

Lastly, there was a suggestion made at the 4/1/13 meeting that horses should be afforded the same exemption under §22.63.020 B.1 as “*agricultural uses*.” SPAWN finds this suggestion outside the 4 corners of the CWP, which defines agriculture as “*the production of food and fiber...*” Horses are not agricultural, yet they have many of the same impacts to streams banks and riparian vegetation as cattle. The existing Development Code (22.32.030) states:

1. *No animal or any structure for animals shall be located closer than 30 feet to:*
 - a. *The public right-of-way..;b. Any dwelling; c. Any building line ...d. Additionally, no animal or any structure for animals shall be located in a required setback..”*
 7. *Any residential property where horses, donkeys, mules, or ponies are legally kept as of the effective date of this Development Code shall be deemed to be conforming. Any expansion of use shall be subject to the provisions of this Section.*

SPAWN agrees that the SCA Ordinance should apply on residential properties per 22.32.030-7, but that commercial horse facilities should be treated as below:

SPAWN thus requests that the draft Ordinance be amended as follows (remaining text is *italic*, deleted text is ~~strike-through~~ and new text is underline):

22.63.020 – A. Application of SCA Provisions. 1 a. All structures, regardless of whether the work requires a building or grading permit, including fencing, decks, platforms, parking lots, utility crossings, pedestrian or vehicular access routes, and other similar improvements, including those on parcels zoned for agriculture (A, ARP or APZ)

22.63.020 B.1. Exempt without further determination:

- j. *Agricultural uses on property zoned for agriculture (A, ARP or APZ) that do not result in the removal of woody riparian vegetation or animal confinement within the SCA or result in a substantial increase in sedimentation.*
- i. *Equestrian use at commercial equestrian facilities that is at least 35 feet from any creek or any such facility inspected by the SF Regional Water Quality Control Board and certified as meeting all “clean water” standards.*

From: [Vernon, Nancy](#)
To: [Stratton, Debra](#); [Thorsen, Suzanne](#)
Cc: [Vernon, Nancy](#)
Subject: Formal comment forwarded to PC/CDA
Date: Tuesday, May 07, 2013 10:08:43 AM

Hello Suzanne and Deborah, I'm forwarding you an email Katie received as formal comment on the SCA. Can you let me know you received on behalf of CDA and PC? Thanks so much!

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

From: T. G. Lambach [<mailto:tglambach@comcast.net>]
Sent: Monday, April 29, 2013 3:27 PM
To: Rice, Katie
Cc: KWPOA President Kathryn Goldsmith
Subject: Draft Streams Ordinance

Dear Supervisor Rice:

Thank you for attending the Streams discussion last Wednesday in Kentfield and hearing our concerns about the draft ordinance.

Mine are parochial: my property's utility vs. an ephemeral stream, specifically, Tamalpais Creek. Mr. Lai told us the public purpose of protecting ephemeral streams was to prevent siltation of larger streams that contain fish etc.. That's a laudable goal, but not the case in Kent Woodlands.

Tamalpais Creek has no fish or ducks or similar natural wildlife. It simply collects the runoff from the land and street gutters. The gullies [like the one on my property] that carry street runoff into Tamalpais Creek are excluded from the draft ordinance. Street run off is not screened for debris nor does it pass through catch basins to trap street grit and stones. The ordinance takes great care that private property owners not affect streams yet, in the same ordinance, there's complete indifference to, in fact exclusion from, public roadways' impact on the same stream. Every government entity, large or small, is exempted; this measure falls only onto private property owners. Where's the equity? Or a purpose?

Back to Tamalpais Creek; at Kent Avenue it goes underground into culverts [exempt from the ordinance] that pass under College Avenue and under the College of Marin [exempt government entity] parking lots and sports fields to end at Corte Madera Creek [exempt for being tidal]. What exactly are we, in Kent Woodlands, actually "protecting"? Where's the benefit? There is none. There's no logic to this measure.

I appreciate that you didn't instigate but, rather, inherited this issue. Please act to address the concerns raised here and by others, in Sleepy Hollow, San Geronimo, West Marin and Tam Valley. We're not against the fish, only against needless, unproductive, feel good regulation(s).

Thank you for your time and consideration.

Thomas G. Lambach
Upland Road
Kentfield

From: [John Grubb](#)
To: [Thorsen, Suzanne](#)
Cc: [Daniel Stein; Sfmarinhomes.com](#); andreataber@sbcglobal.net
Subject: Sleepy Hollow Input on Marin SCA Ordinance
Date: Friday, May 03, 2013 3:26:28 PM
Attachments: [Proposed amendments to the Draft SCA 30427.docx](#)
[Sleepy Hollow SCA Ordinance Response.doc](#)
[SPAWN and Sleepy Hollow Joint Statement of SCA Ordn..docx](#)

Suzanne,

Attached please find:

- a comment letter from Sleepy Hollow
- a joint statement from Sleepy Hollow and SPAWN (approved by both organizations)
- proposed amendments to the draft ordinance

Thank you for your work and your consideration.

Please call with questions at 415-946-8705.

Sincerely,

John Grubb (on behalf of the Sleepy Hollow Homes Association)

Sleepy Hollow Homes Association

May 3, 2013

Suzanne Thorsen
Planner
Marin County Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903-4157

RE: SCA PLANNING CONSIDERATIONS FOR SLEEPY HOLLOW

Dear Suzanne,

No issue in the past decade has so upset the approximately 2,300 Marin County residents we represent like the Stream Conservation Area (SCA) Ordinance. True to our name, Sleepy Hollow is a community of people who believe in live and let live. Having taken the path of being unincorporated, we are "governed" by a ten member board of volunteers and a simple planning code (coupled with the county's) that many would consider the opposite of nanny state regulation. For the most part, we get by quite well with a robust spirit of volunteerism that brings our community together, and a consensus, common-good problem solving attitude when we have challenges. Unfortunately, in times like these, we regret that we don't have elected leaders to directly represent us. Our community feels like we are collateral damage in someone else's fight. We feel unheard, frustrated and powerless.

We don't question motives, or anyone's good intentions, but do believe mistakes can be made in big processes, and know in our core that a mistake is being made with the SCA Ordinance. We see this because several hundred Sleepy Hollow resident's have taken the time to angrily tell us this. Please hear us, and please work with us to expeditiously resolve this mistake.

The residents of Sleepy Hollow overwhelmingly oppose the draft SCA Ordinance because it provides no environmental benefit to Sleepy Hollow and will cause us individual, unnecessary economic harm. It is our position - as well as the environmental group, Salmon Protection And Watershed Network's (SPAWN) position - that the proposed ordinance should only address Coho salmon protection in San Geronimo Valley at the present time, and that the city-centered corridors, where there are no Coho salmon, should be addressed individually and at a later date. Please see the attached joint statement from SPAWN and the Sleepy Hollow Homes Association.

Following is a list of our community's specific concerns and planning deficiencies we would note for you:

- Sleepy Hollow should be exempt from the SCA Ordinance because it is almost completely built out and has its own protective measures in place. These include building ordinance No. 784 R-1:B-D which identifies setbacks, building restrictions, and guidelines for development in the community, as well as the Countywide watercourse preservation ordinances 11.08.010/11.08.020. The Sleepy Hollow Homeowners Association Creek Committee successfully manages flood protection, creek stewardship, hydrology, wildlife protection, and education in the community. Additional regulations are unnecessary, onerous, and duplicate what is already in place.

- Although completion of Countywide Plan Implementing Programs, such as BIO-4.b and BIO-4.d, is not mandated prior to the implementation of the SCA Ordinance, it is reasonable to assume that studies to “Re-evaluate the SCA Boundaries” and “Establish Functional Criteria for Land Uses in SCAs” would provide critical and relevant information, and therefore should be completed prior to adopting the ordinance.
- The draft SCA Ordinance will diminish real estate values in Sleepy Hollow. Prospective buyers will be intimidated by title constraints imposed by the ordinance, uncertainty and excessive permitting costs related to improvements, and realtor disclosures which will create ambiguity and threaten sales.
- The County has a mandate to directly inform property owners of a proposed action which may affect their property. The County generated list of Sleepy Hollow property owners is incomplete and excludes a significant number of homes in proximity to existing intermittent and ephemeral streams.
- The adoption of the SCA Ordinance has been fast-tracked and does not provide adequate time for public review and comment and substantive draft modifications.
- The September 10, 2012 ruling by Judge Duryee specifically addresses Coho salmon in San Geronimo Valley. Coho salmon do not exist in the intermittent and ephemeral streams of Sleepy Hollow.
- The SCA Ordinance does not provide any additional environmental benefit or protection for Sleepy Hollow.

Last night, our community authorized the hiring of professional legal representation to help ensure we are heard. We will pay these legal fees from our limited budget of \$175-per-household, voluntary Sleepy Hollow membership dues, the same small pool of funds we usually dedicate to putting on our Fourth of July celebration and funding our swim team and shared community pool. The sooner we can resolve what we believe is a mistake, the sooner we can redirect our "legal defense fund" back to what we believe are better purposes.

Thank you for promptly considering our concerns and request for an exemption, and thank you for your service to the people of Marin County.

Respectfully,

The Sleepy Hollow Homes Association

Chris Alioto - Tom Fernwood - Alex Gauna - John Grubb - Kelly Podboy - Jennifer Richard - Dan Stein - Sean Solway - Katie Van Der Wall - Maria Young

Cc: Supervisor Susan Adams; Supervisor Judy Arnold; Supervisor Steve Kinsey; Supervisor Katie Rice; Supervisor Kate Sears; Assembly member Marc Levine, Congressman Jared Huffman.

Position statement re: Marin Stream Conservation Area Ordinance

The Sleepy Hollow Homeowners' Association (SHHA) and the Salmon Protection and Watershed Network (SPAWN) jointly endorse the following position:

- 1) The County should act promptly to protect wildlife habitat in streams where Coho Salmon currently exist. Both SHHA and SPAWN support regulations to ensure the health and survival of the species in these areas. SHHA and SPAWN recognize the urgency of this matter, both for the survival of the endangered and declining Coho population and for the property rights of the affected residents who are currently subject to a building moratorium.
- 2) Sleepy Hollow Creek and other built-up City-Centered Corridor streams are heavily urbanized, with retaining walls, bridge pillars, and other concrete in the creek channel that stabilize creek hydrology. The County should recognize that these heavily urbanized streams are fundamentally different from less urbanized streams that support coho salmon, a species much more sensitive to the pressures of urbanization. The County should recognize this and defer rollout of the outreach and mapping of the SCA Ordinance as applied to City-Centered Corridors until a sound regulation can be drafted and rolled out first in the coho watersheds under immediate threat. There is no need for haste in locations like Sleepy Hollow and other the City Centered Corridor's heavily urbanized streams.
- 3) The County should recognize that protection of coho salmon is a public trust and important to all the residents of Marin County, and any economic burden to protect them should not be the sole responsibility of homeowners whose properties contain creeks that still support this species, such as those in the San Geronimo Valley. Economic incentives for landowners that support coho habitat should be developed, and the costs of protecting and restoring these species should be shared by all residents of the County and should not be solely borne by the regulated landowners. These could include (but are not limited to) property tax abatements, conservation easements, foregiveable loans, etc.

PROPOSED AMENDMENTS TO THE DRAFT SCA

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

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

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

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

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

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

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

22.33.030 – Stream Conservation Area General Requirements.

A. Requirements.

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

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

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

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

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

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

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

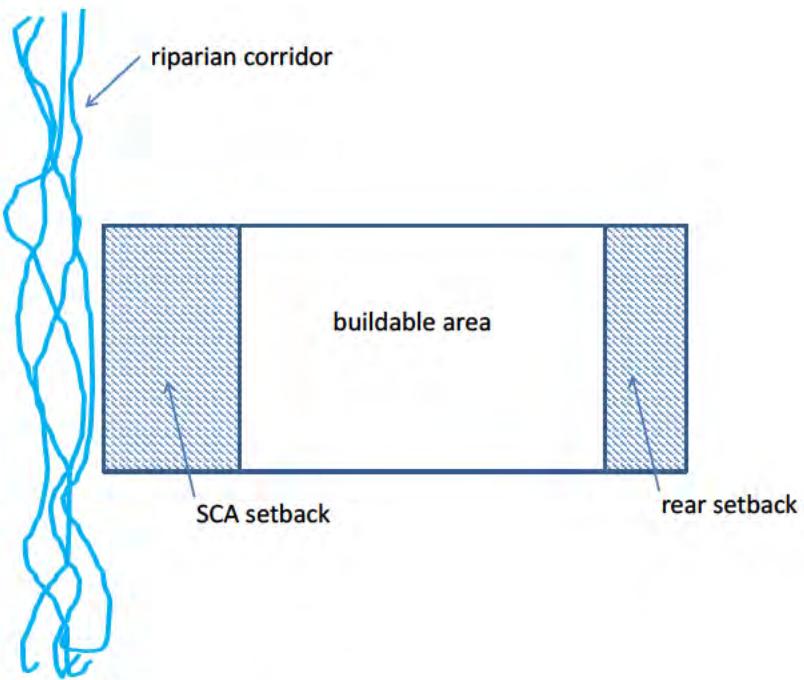


FIGURE 1
1/2 ACRE LOT WITH STREAM ADJACENT

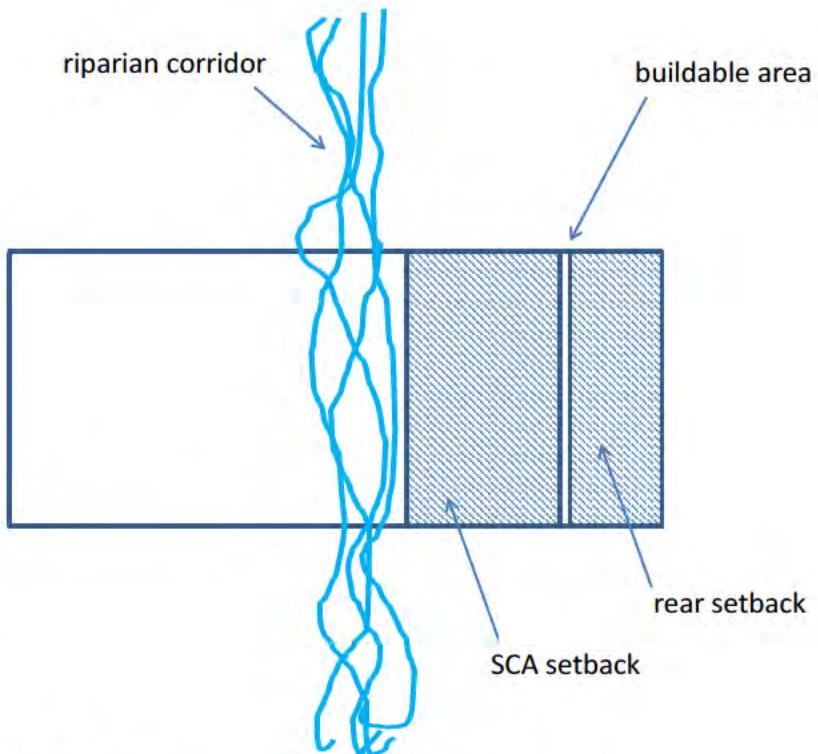


FIGURE 2
1/2 ACRE LOT WITH STREAM RUNNING THROUGH

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

22.33.030 – Stream Conservation Area General Requirements.

B. SCA Setbacks.

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

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

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

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

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

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

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

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

22.33.030 – Stream Conservation Area General Requirements.

B. SCA Setbacks.

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

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

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

22.63.020 – Applicability to Development

A. Application of SCA Provisions.

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

- a. All structures to the extent that they are in contact with grade, regardless of whether the work requires a building or grading permit, including fencing that entirely prevents wildlife access to a riparian habitat, decks on grade, platforms on grade, parking lots, utility crossings, pedestrian or vehicular access routes, structures, and other similar improvements, but excluding fencing, decks, access routes, and other structures supported above grade by structures comprising 20% or less of the horizontal area of the structure;*
- b. Clearing of 50% or more of the plant mass in that portion of the property occupied by the SCA 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.*

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

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

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

22.63.030 – Stream Conservation Area Permit (Tier 1)

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

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

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

B. SCA (Tier 1) Project Review Procedure

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

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

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

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

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

5) TIER 2 PERMITS

22.63.040 – Stream Conservation Area Permit (Tier 2)

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

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

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

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

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

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

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

6) DECISION AND FINDINGS

22.63.060 – Decision and findings

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

For a SCA (Tier 1) Permit:

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

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

For a SCA (Tier 2) Permit:

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

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

7) Related Development Code Amendments

8. Add new definitions.

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

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



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



May 3, 2013

Ms. Suzanne Thorsen
Marin Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Dear Ms. Thorsen:

Subject: Marin County Stream Conservation Area Ordinance Amendment

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Stream Conservation Area Ordinance (Chapters 22.33) made available for the public workshop on April 1, 2013. CDFW is providing comments on the draft ordinance as a Trustee Agency for the State's fish and wildlife resources. CDFW has jurisdiction over the conservation, protection, and management of the fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species for the benefit and use by the people of California.

The proposed Project is a development code amendment that would implement the Stream Conservation Area policies and programs from Marin County's 2007 Countywide Plan, specifically Policy BIO-4. The ordinance would establish setbacks, development standards, review procedures, and permit requirements.

General Comments

It should be made clear that for any activity, whether or not it is exempt from the proposed ordinance, that will divert or obstruct the natural flow, change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, CDFW may require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code. Issuance of an LSAA is subject to the California Environmental Quality Act (CEQA). To obtain information about the LSAA notification process, please access our website at <http://www.dfg.ca.gov/habcon/1600/>; or to request a notification package, contact the Lake and Streambed Alteration Program at (707) 944-5520.

Any activity, whether or not it is exempt from the proposed ordinance is still subject to the California Fish and Game Code Section 3503.5 which states that it is unlawful to take, possess, or destroy any birds in the orders of Falconiformes or Strigiformes (birds-of-prey or raptors) or take, possess, or destroy the nest or eggs of any such bird. In addition Fish and Game Code Section 3503 protects nest or eggs of all birds.

Ms. Suzanne Thorsen
May 3, 2013
Page 2

It should be made clear that tree removal or trimming may interfere with the nesting bird season and must comply with the California Fish and Game Code.

To the extent possible, the ordinance should define Site Assessment standards and thresholds for determining adverse impacts, particularly for Tier 1 permits.

The proposed mitigation criteria for 22.63.040-C should be based on providing compensatory habitat function and value. It is not clear if the proposed minimum 2:1 ratio is based on stem count. The tree replacement rates should be based on species and size (using diameter at breast height) of the tree. Since oaks and bays typically have slow growth rates and are of high value to many wildlife species, the mitigation for loss of oaks and bays should be sufficient to offset the temporal impacts that would occur over the course of several decades. The impacts to habitat value and function from removing a large diameter tree would not be offset by planting two container stock trees. Avoidance, minimization (i.e. pruning), and then mitigation for tree removal should occur. Other mitigation options such as inch-for-inch replacement ratios, which may require off-site mitigation planting, should be considered.

Mitigation criteria for long-term impacts to hydrology should be addressed in the ordinance. Reduction of peak flows, bio-filtration components, and sediment reduction/capture through energy dissipaters and or settling basins should be considered.

If you have any questions, please contact Mr. Timothy Dodson, Environmental Scientist, at (707) 944-5513 or by email at timothy.dodson@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist, at (707) 944-5525.

Sincerely,



Scott Wilson
Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse

From: [Greg Reis](#)
To: aaron@tirn.net; [Thorsen, Suzanne](#)
Subject: tear-down and restoration of home site
Date: Monday, May 06, 2013 10:22:29 AM

Hi Aaron (SPAWN) and Suzanne (Marin Co),

Please pass this on to the right person if it isn't you. My wife and I are interested in buying a house along San Geronimo Creek that is in the SCA. The house was built in 1927 and has huge foundation issues, and needs either replacement or tearing down. I would be interested in either moving the house to the other end of the property, out of the SCA, or tearing it down and building a new one outside the SCA and restoring the creek bank. Currently the creek bank is a 10' high and 50' long vertical stone wall directly below the house.

Do you know of any funding available that would help efforts of this kind--either for purchasing the property, moving the house, restoring the bank, or dedicating a conservation easement on the creekside portion of the property?

Repairing/moving/rebuilding the house would be very expensive, so without some kind of outside funding assistance I'm not sure we can make it work. But if we can do it, I can imagine it would be a showcase of restoring developed areas within the SCA.

I realize this is a novel idea, but I figured it can't hurt to ask. If a program were implemented valley-wide that encouraged and supported this kind of restoration, I'm sure there would be great benefits for the creek and residents.

On a related note, I was reading the Draft SC Ordinance yesterday and realized that there are no incentives for restoration of this kind--and the setback (and 100 ft of riparian on ephemeral streams) is actually a disincentive. Currently the 50 feet of the lot near the road is out of the SCA, but if I bought the house, moved it, and restored the house site, the setback from the new edge of bank/riparian would expand to include the new house site, making the entire lot within the SCA. There really should be proper incentives in the SC Ord. for people to do the right thing, but the way it is written the incentive is to decrease the amount of riparian veg over time (or at least maintain all developed areas) in order to maintain or shrink the SCA. The SCA should actually be larger for areas with less riparian, since the riparian helps to filter runoff. Perhaps a fixed distance based on the centerline of the creek, combined with incentives for maximizing the % of the property in riparian veg and minimizing development, would be a better solution?

Thanks,
Greg Reis
(Watershed restoration ecologist/hydrologist)

Greg Reis
P.O. Box 161
San Geronimo, CA 94963
(415) 342-6390
gregorreis.blogspot.com

From: [James Reilly](#)
To: [Thorsen, Suzanne](#)
Subject: SCA Top of Bank
Date: Monday, May 06, 2013 10:38:10 AM
Attachments: [Stetson2000EntrenchmentFigs.pdf](#)

Suzanne -

You may want to consider the type of creek-side setting that I encountered today, which is not unusual in Marin streams.

In these areas, the creek bed can be incised (i.e., entrenched), and there can be a clear "present-day" active channel with an obvious "top of bank" (TOB). But there can also be a higher terrace with a TOB feature that is elevated above the present-day creek's TOB. Note: This higher terrace could be a vestige of the pre-development (i.e., pre-Columbian) elevation of the creek bed.

Anyways, I would assert that top of the present-day active channel is the TOB. But another person might assert that the higher terrace is the creek's top of bank. It's not entirely clear based on the definition given for TOB in the draft SCA ordinance.

The attached photos are taken from the property I inspected today in a ravine-type setting. They show the "present-day" active channel with an obvious "top of bank." A bit harder to see in the foreground and background is the higher terrace with a top of bank feature (along the line of the base of the euc trees) that is elevated above the present-day creek's TOB.

Also, I've attached a couple excerpts from a study that Stetson prepared for Friends of Corte Madera Creek (Geomorphic Assessment of the Corte Madera Creek Watershed, Stetson Engineers Inc., 2000). It shows how progressive channel entrenchment has led to narrowing of the riparian corridor. This is due, in part, to the lowering of the groundwater table caused by entrenchment.

I'm not certain what the intention of the TOB is w/regard to protecting the present-day riparian corridor or the historical riparian corridor, but you may want to consider addressing this potential ambiguity.

I hope this information helps inform the discussion and formulation of the final SCA.

Thanks for considering my input.

James Reilly, Stetson Engineers
(415) 457-0701 ext. 16





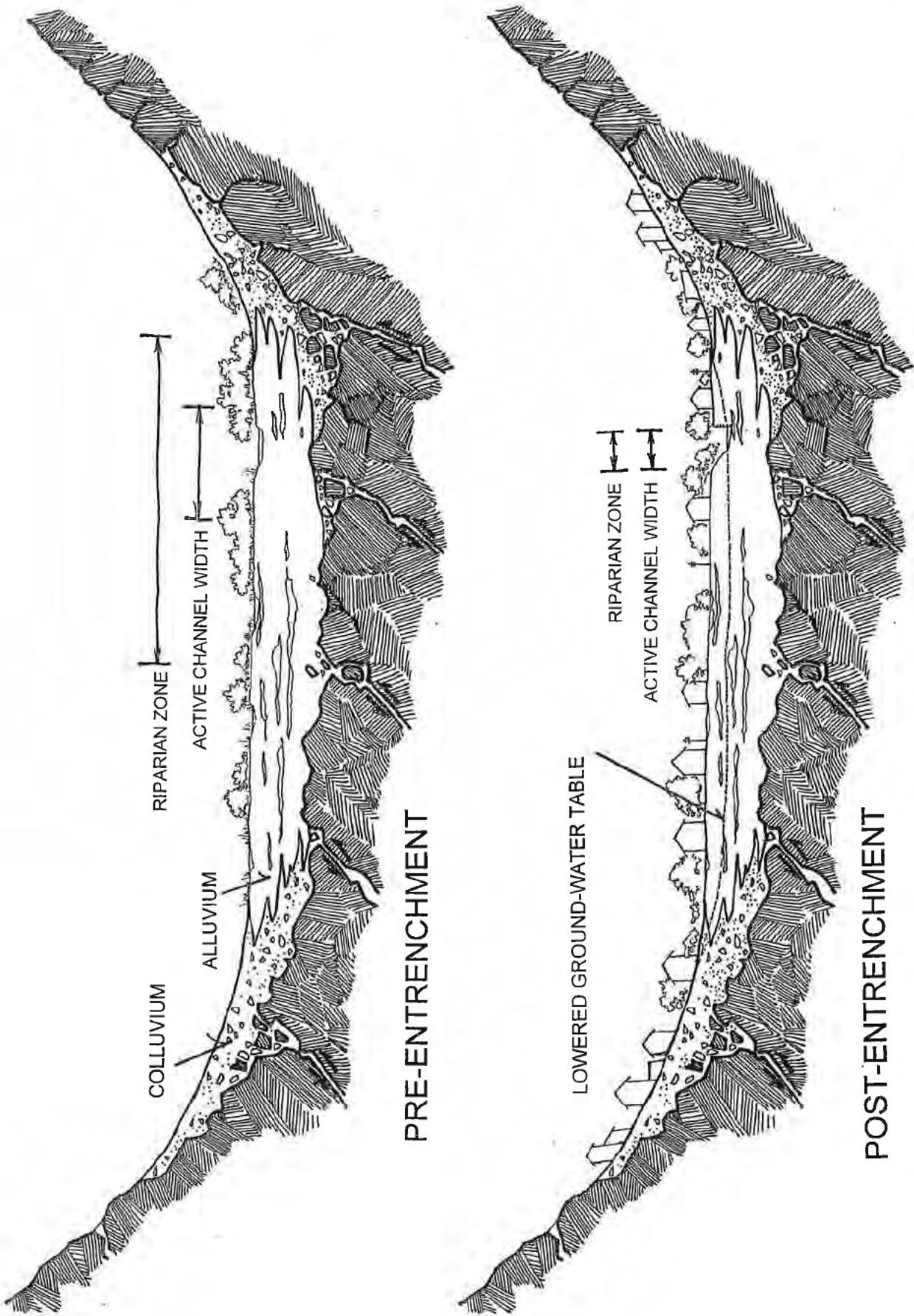
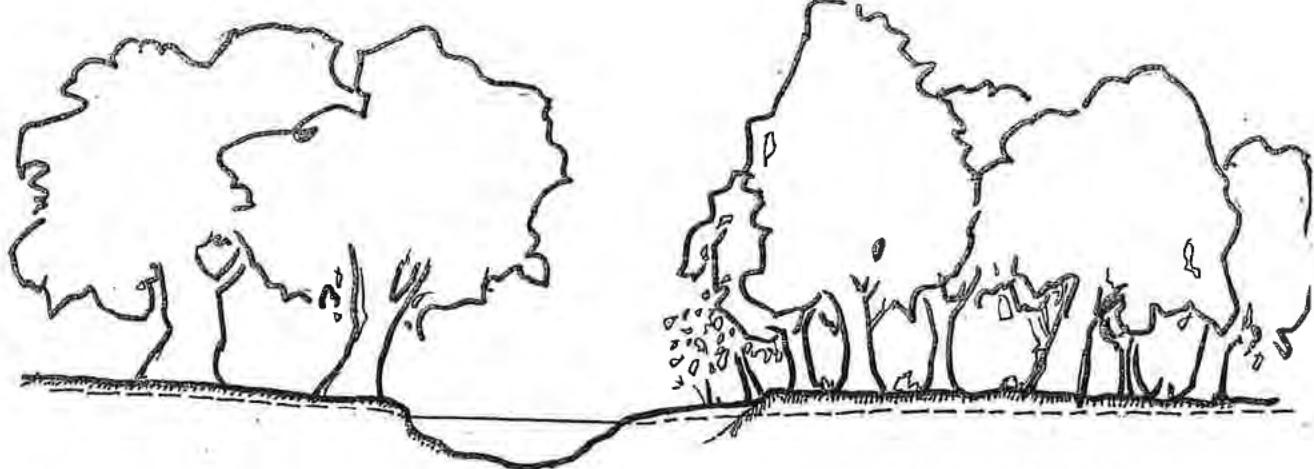
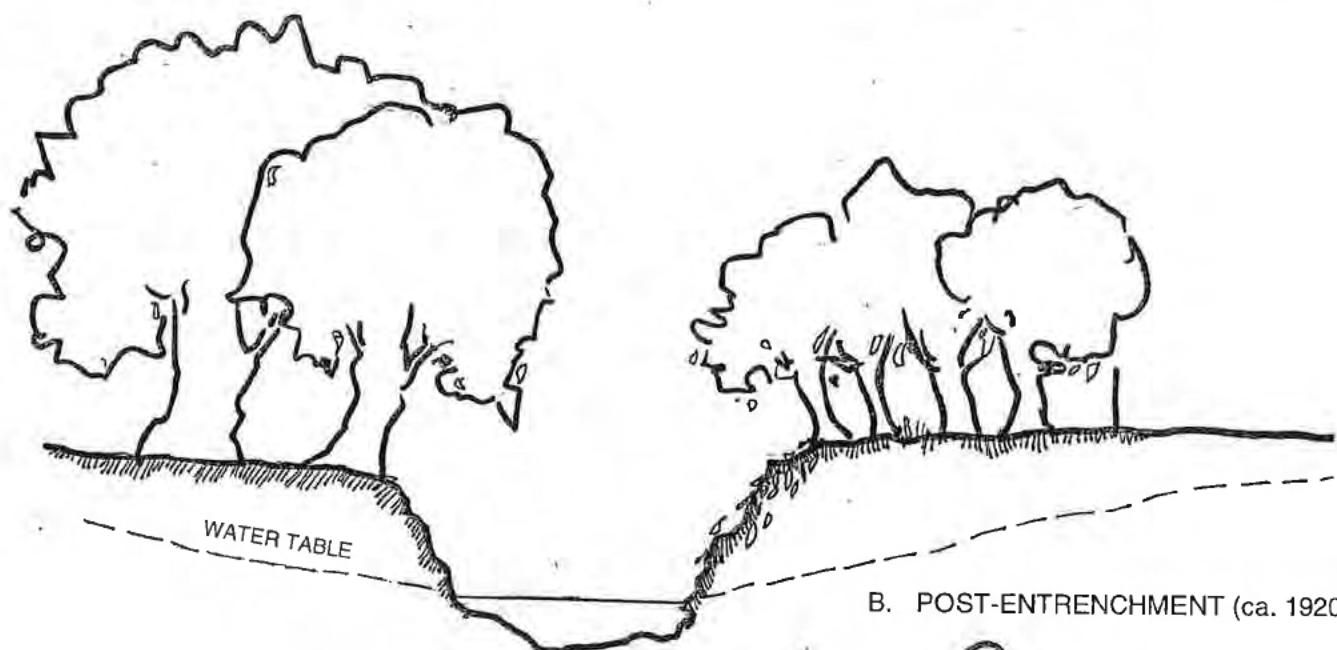


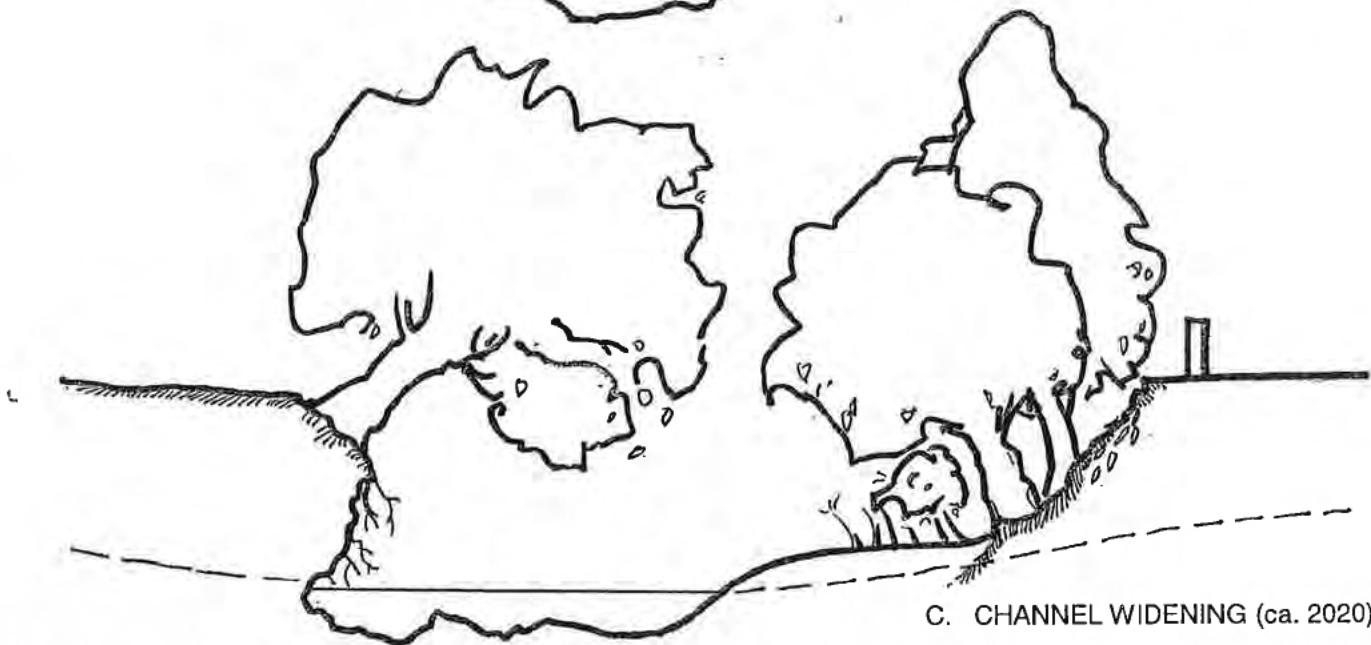
Figure 3. Schematic cross-sectional view of pre-entrenchment and post-entrenchment riparian corridor in a U-shaped valley in the lower alluvial channel network of Corte Madera Creek, showing active channel and riparian corridor width reduction, and lowered alluvial groundwater table, and valley fill interbedded with colluvium and clay lenses.



A. PRE-DISTURBANCE (ca. 1850)



B. POST-ENTRENCHMENT (ca. 1920)



C. CHANNEL WIDENING (ca. 2020)

Figure 16. Conceptual representation of natural geomorphic recovery of entrenched stream channels showing pre-entrenchment condition, entrenched condition with confined active channel width and no gravel bar or floodplain formation, and recovered channel with increased active channel width, bar and floodplain formation, and increased near-channel riparian forest.

From: Rmirelandasa@aol.com
To: [Rice, Katie](#); [Thorsen, Suzanne](#)
Cc: [Vernon, Nancy](#)
Subject: Stream Conservation Area Ordinance(SCA)
Date: Monday, May 06, 2013 12:07:55 PM

Ladies:

We are opposed to the SCA as it effects our property at 14 Fern Way in Kent Woodlands. There is a seasonal creek somewhat adjacent to our property. This creek is fed by rainwater run-off during the rainy season but is often dry in the winter several days after rainfall and is dry most of the late Spring, Summer and Fall. The creek itself disappears into some type of culvert on Fern Way just past our property and never appears again in the open to the best of our knowledge. I believe the underground piping continues down Evergreen toward Woodland.

Needless to say we have never seen a fish in the creek and when running it is usually too shallow to harbor fish. We don't remember ever seeing any tadpoles or frogs.

For the SAC to cover this area near our home is burdensome over regulation by County government and totally unnecessary. Adherence to such a regulation could be quite costly for a homeowner that may want to make even a few minor changes to their property.

Many small seasonal creeks that are catchbasins for rainfall and nothing more than that should not be included in such a proposed ordinance.

Robert and Lynette Ireland

From: peggycreeks@comcast.net
To: Adams, Susan; Arnold, Judy; Crawford, Brian; Crosse, Liza; Kinsey, Steven; Lai, Thomas; Patterson, Diane;
Sears, Kathrin; Rice, Katie; Stancato, Patrice; Thorsen, Suzanne
Subject: Stream Ordinance Comments from SG Valley Stewards--May 13 Planning Commission Hearing
Date: Tuesday, May 07, 2013 8:36:39 AM
Attachments: [May13SGVS CommentsSCA0001.pdf](#)
[DrJenningsLtr&CV0001.pdf](#)
[FigariStreamMap0001.pdf](#)

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426

To: Marin County Board of Supervisors
Marin County Planning Commission
Community Development Agency

For the May 13, 2013 Planning Commission hearing on the proposed Stream Conservation Ordinance.

Enclosed are:

1. Major Problems With Stream Ordinance, and Requests for Changes--From San Geronimo Valley Stewards
2. Expert's letter from Dr. Mark Jennings of Rana Resources
3. Mr. Figari Corrects Stream Map in Woodacre,
Communications to S. Thorsen of Community Development Agency

We thank you for your attention.

Major Problems With Stream Ordinance, and Requests For Changes--From San Geronimo Valley Stewards



For Planning Commission Hearing May 13, 2013

From: San Geronimo Valley Stewards

To: Marin County Board of Supervisors
Marin County Planning Commission
Marin County Community Development Agency

San Geronimo Valley Stewards respectfully submits these comments and requests for changes regarding the May 1, 2013 draft Stream Conservation Area Ordinance. About 800 families own homes and properties in the San Geronimo Valley currently shown on County maps as within the stream conservation area. Some of these comments apply most directly to the San Geronimo Valley.

Many problems with the ordinance, and our requested changes, would apply to the 3,600 homes located in all unincorporated areas of Marin--Greenbrae, Sleepy Hollow, Kentfield, Kent Woodlands, Tam Valley and Indian Valley, as examples. Each of the five Supervisor Districts have homes within the SCA.

No single neighborhood in Marin is immune or can be exempt from the SCA ordinance. Its stated purpose is to implement the CountyWide Plan, and to protect water quality, flood control, and wildlife. Even streams that do not contain anadromous fish (salmon or steelhead trout) are surrounded by wildlife habitat protected by this ordinance.

San Geronimo Valley Stewards believe each homeowner knows best his own property, and that local communities and home owners' associations will act as a good stewards for our common resources of creeks and wildlife habitat. Litigation threats and court injunctions will have the opposite effect.

We trust these comments will help government officials and homeowners reach accord on a stream ordinance that has real, practical benefits for our streams, and is based on objective, up-to-date science. We endorse the CDA's goal for an ordinance that is Clear, Affordable, Simple and Enforceable (CASE).

Improve the Political Process--Focus on Big Picture and Meet When Working Taxpayers Can Attend.

We respectfully request our County officials to focus on the big picture, and instead of nit-picking around the edges of drafting. Please see page 8 below, **Changes to Fix the Problems and Adopt a Stream Ordinance That Is Clear, Affordable, Simple and Enforceable.**

Before we exhaust the limited time schedule for this ordinance, please address the major problems and our requested changes. We thank the CDA staff for sending us a word version of the ordinance and we can prepare a blackline draft of our requested changes if progress is made on major issues.

We request the Planning Commission and the Supervisors conduct at least one hearing on a night or weekend. Please seek a balanced view by listening to voters who work at jobs to pay taxes, and whose homes are their major personal investments. When meetings are conducted only during weekday business hours, government officials hear only from special interest advocacy groups with paid staff and time to attend.

CDA staff held a March 14 workshop with over 200 concerned property owners. However, CDA staff did not take questions or comments from the floor. No County decision-makers were present. The individual Supervisors are appreciated for their outreach to neighborhood groups, but there is no public record of those meetings and no other Supervisors are in attendance.

**Major Problems with the May 1, 2013 Stream Ordinance:
It is Not based on Good Science, Will Reduce Home Values,
and Is Not Necessary to Protect Streams or Wildlife**

1. Stream Setback Should Not Exceed 35 Feet From the Top of the Streambank.

The proposed ordinance creates a stream setback of 100 feet on both sides on both sides of every stream, plus an additional 50 feet from the "edge" of the riparian vegetation. (Section 22.33.030 B. 2., page 2.) Staff tells us this is dictated by the 2007 CountyWide Plan requirements for the "Inland Rural Corridor", which includes San Geronimo Valley, Nicasio, and west Novato.

In addition, for all areas of the County-- including Sleepy Hollow, Indian Valley, Tam Valley, or Greenbrae--the CDA may impose an additional setback of unlimited distance. (Section 22.33.030 B.)

These provisions will devastate property values. Is there space for 150 foot setback, where the average lot size is 100 feet by 100 feet? The San Geronimo Valley is dense forest. Where is the "edge" of vegetation--the last leaf on the last tree? Can the new buyer of a house, or the existing homeowner, to be confident the CDA staff will not impose an additional setback?

A more reasonable 35 foot buffer is recommended by County-hired experts in the 2009 Salmon Enhancement Plan (SEP) report. SEP recommends 35 feet is adequate both for developed lots and for vacant parcels with the potential for infill development. A buffer of 35 feet from the edge of the creek is sufficient for riparian vegetation, filtering sediment, shade, bank stabilization, 3:1 creek slopes, and natural stream adjustments. (SEP pages 2-21 and 2-22.)

Dr. Mark Jennings, the qualified fish expert engaged by SGValley Stewards, states that the SCA

should be narrowed to 35 feet from the top of the streambank. The proposal to measure the SCA from the edge of trees or vegetation is not scientifically justified in Marin where rainfall is abundant and vegetation grows in places that are not close to streams. (Dr. Jennings' Letter is being provided to the Planning Commission and the Supervisors this week.)

A setback of 35 feet from top of bank is a bright line test, easy for the homeowner to apply without hiring experts, and provides notice to new buyers of homes what they can reasonably expect.

2. Ephemerals Are Not Streams and Setback Does Not Protect Wildlife.

Setbacks are not necessary for "ephemeral" streams. This term in the 2007 CountyWide Plan refers to surface runoffs that flow only during rains. (Definitions Article VIII, page 12.) During winter rains, every hillside in Marin is populated with channels, drains, and run offs. Some are culverted, others are open. They cross under and across virtually every homesite in the County.

Dr. Jennings recommends the designation of "ephemeral stream" should be dropped. The criteria of water flowing on the surface when it rains is too subjective to denote areas requiring protection. He contrasts ephemerals with perennial and intermittent streams, for which there is objective scientific basis for determining physical and biological characteristics. Ephemeral areas do not justify an added layer of protection for fish and wildlife habitat. (Dr. Mark Jennings Letter.)

The County's own expert testified there is no "riparian vegetation" dependent on an ephemeral stream, because water does not last long enough for plants to get established. (See record of April 1, 2013 Planning Commission hearing, afternoon session.)

The May 1 draft ordinance would require each homeowner to hire a "qualified biologist or natural resources specialist" to determine whether a runoff is an ephemeral stream. (Section 22.33.030 B. 5., page 3) Must the homeowner pay for a "battle of the experts" when SPAWN hires its biologist and disputes the owner's right land with an ephemeral stream?

Short of amending the CWPlan (which SG valley Stewards strongly endorse), the County should apply the setback to an ephemeral stream only if the ephemeral stream meets all four requirements:

- a. The ephemeral stream is correctly mapped in the County SCA data and map as of February 25, 2013; and
- b. The ephemeral stream drains within 100 feet directly into a creek that is inhabited by anadromous fish; and
- c. Riparian vegetation which relies on the ephemeral stream is continuous for a length of 100 feet or more along the stream (see section 22.33.030 B. 5., page 2); and
- d. There should be exempt from the ephemeral setback a "work window" allowing human activities and construction/development when it does not rain, from May 1 to October 30 each year.

3. Amend the CountyWide Plan Now, To Fix the 35 Feet and Ephemerals.

To fix excessive setbacks and ephemerals, the Board of Supervisors should now adopt a narrow amendment of BIO-4 of the 2007 CountyWide Plan. County officials believe their hands are tied by

the SPAWN lawsuit to slavishly follow the CWPlan. This is an unfortunate misreading of the community's good intentions in 2007 when it set goals and policy aspirations. SPAWN wants to turn these good intentions into legal mandates and courtroom litigation.

The San Geronimo Valley has been thoroughly studied in the 2008 Existing Conditions Report and the 2009 Salmon Enhancement Plan. The County's own experts at Stillwater Sciences can support reducing the setback to 35 feet in the San Geronimo Valley and, by extrapolation, to other similar residential areas in west Novato and Nicasio.

The County should complete now a tiered EIR and expedite CEQA compliance for this narrow amendment to the CWPlan. The County can then promptly pass a stream ordinance that is balanced and has the support of homeowners who live on the creeks.

The CWP amendment process may take a few months. But homeowners are willing to live for a short time under the burden of SPAWN's latest court injunction, if the end result is a fair and reasonable stream ordinance.

Homeowners do not want the County to cram down a bad stream ordinance based on the defective CWPlan. Please do not saddle our homes for decades with this mistake. Our homes are our most important economic investments.

The empty promise "we will later fix the CWPlan", will not improve the streams or encourage cooperation of homeowners, whose voluntary compliance is essential to creek restoration.

4. Retroactive Mapping and Imposing Additional Setbacks Are Illegal Takings of Private Property.

We object to the County using drones and spy planes, or peeping over our garden gates, to photograph and map our properties for new streams. Unless the stream appears on the County map as of 2013, it should not be subject to setback in later years. The County is using the excuse of SPAWN litigation to rush a regulation, without fully disclosing the land and properties it is regulating.

Stream Maps that may be "periodically updated" by CDA staff will not provide certainty for the family deciding to buy a home in Marin or borrow a 30-year mortgage. The result will be ever-shifting boundaries of development and homeowner activities. (Section 22.33.020 A. page 1, and Definitions Article VIII page 12.) A mailed notice from the County is not going to compensate homeowners, who justifiably relied on the prior County maps, for the later taking of their property values.

We also object to the County reserving the power to later impose an "additional setback" on any lot as CDA may later deem necessary. What an invitation to expensive litigation! Could SPAWN or some other group file a request for an additional setback on private property? Would the owner bear the burden of proof that no additional setback is necessary? Will the County pay the owner's fees for experts and lawyers to defend against this taking?

Buying a house in Marin would become high risk behavior, if the ordinance authorizes CDA to impose retroactive mapping and "additional setback". Consider the new home buyer. Before purchase, he verifies on the County map that his home is outside the mapped SCA. In reliance, he pays \$699,000 (the current listing price for a 3 bedroom 2-bath house in Woodacre). Two years later, the County amends the map and adds his house to the SCA. Expensive stream ordinance prohibitions reduce his property resale value by \$100,000. This is a taking.

Consider also the existing home owner. He relies on the 2013 map and invest in home improvements outside the SCA. If the County changes the map in 2016, so all his improvements are illegal without a stream permit, this is a taking.

The County admits some streams are not mapped correctly. For example, Mr. Figari in Woodacre has taken photos and sent to CDA staff his objections to the map of his house. If a 2013 stream map is in error with respect to a property, the property owner should be able to request the County to correct the map. Neither the County nor self-appointed environmental groups should have standing to change a property owner's stream map.

5. Existing Homes Should Be "Grandfathered" as Exempt from Stream Permits, Without First Obtaining All Other Permits.

The May 1 draft says buildings, structures and improvements that existed as of Feb 25, 2013 are "grandfathered" as exempt from stream permits--but only if the home is currently "permitted or legal non-conforming". (Section 22.63.020 B. 1. g. , page 6.)

Many older homes were built before permits were necessary, or were remodeled without all required permits. Second units were often constructed as garage conversions, small cottages, or downstairs apartments.

There are hundreds of second units in the San Geronimo Valley, and these are important sources of low cost housing that fit in with the local neighborhoods. Second units also provide income for seniors and young families to pay their property taxes and mortgages.

As now drafted, the "grandfathered" home or second unit would be subject to a County inspector and required to bring all structures to County standards, before it would be exempt from a stream permit. That may require professionals, contractors and materials to comply with land use variance, building permit, off street parking requirement, or other permits. None of this is necessary for salmon, salamanders, or streams.

This is not a grandfather exemption; it is a disguised Code enforcement mechanism. It imposes on older homes expensive burdens that have no benefit for stream habitat, wildlife, or hydraulics.

Fix the ordinance so the grandfather exemption for stream permits includes all existing homes, and second units. Allow the property to be exempt from a stream permit immediately and automatically. The owner can decide for himself if and when he can afford the costs to make the property "permitted or legal non-conforming".

6. The Tier 1 Stream Permit Is Not Simple or Affordable For the Small Home Project.

A stream permit would be required for any activity that is not exempt--all structures, removal of vegetation, deposition of refuse, and "any other activities" determined by CDA staff to impact the streams. (Section 22.63.020 A., page 5.) Tier 1 permit examples are decks, patios, driveways, drainage, retaining walls, or up to 500 square feet addition. (Section 22.63.030 A., page 7.)

The costs are high: The Tier 1 permit fee is recommended to be \$400. The owner must allow a "professional" conduct a site assessment. (Section 22.63.030 B. 4., page 8.) Who hires and pays the professional? Will the professional's fees be capped at a reasonable amount? The site

assessment must include analysis of wildlife habitat, special status species, and potential environmental effects. (CWPlan Glossary.)

The standard for approval is impossibly high: The Tier 1 permit cannot be granted unless the owner proves the project would not result in adverse impacts on the stream or habitat--no impacts, none whatsoever. All impacts must be avoided. (Section 22.63.030 B. 4., page 8.) Every human activity has some adverse impact; the site inspector walking the property will crush weeds (riparian habitat). The standard for a Tier 1 Permit should be changed to "the project shall avoid, or fully mitigate, adverse impacts that are material and substantial."

The risks are high: When the site is assessed for stream permit, the inspector can report to the County any violations of other County Codes, or unpermitted buildings or land uses. The homeowner who complies with Tier 1 opens his door to the County's complaint-based enforcement mechanism.

There should be a firewall that bars the site assessor from reporting matters to the County which are not directly relevant to the stream permit. This firewall was used in Marshall when home septic systems were inspected, with the County agreeing to exempt other Code enforcement and focus only on septic repairs.

7. Handicapped Access and Elderly Housing Should Be Exempt.

The ordinance currently has no clear exemption or easy permit process for housing and access for physically disabled or elderly people living in older homes near creeks. The May 1 draft has a limited exemption for "accessibility retrofit" but it requires the handicapped owner to first obtain all other permits before getting a stream permit exemption to install a wheelchair ramp. (Section 22.63.020 B. 1. g., page 6.)

Access ramps may require greater footprint than old stairways. A separate bedroom and bathroom may be needed to house the in-home caregiver.

People confined to wheelchairs and using walkers require hard, flat, smooth surfaces such as concrete. But the stream ordinance would prohibit increase in impervious area and require porous materials such as gravel or drainage tiles.

County officials should not be blinded by Spaw's focus on fish, and fail to see the disabled people hurt by this proposed ordinance.

8. Exempt Horses and Dogs.

People who live in Marin love our horses and dogs (and our chickens, rabbits, goats, and small pets).

The only shelters and enclosures for animals exempt from stream permits are those existing on Feb 13, 2013 --provided they must be permitted or legal non-conforming.

Horses are not classified agricultural uses, and therefore not expressly exempt from a stream permit. (Section 22.63.020 B. 1. j.) The County already imposes adequate restrictions on horses in zoning and land use laws.

9. Exempt New Fences If They Do Not Block Access to Streams.

The draft ordinance exempts "New fences that do not restrict wildlife access to streams and the adjacent riparian vegetation." (Section 22.63.020 B. 1., page 6.) The word "restrict" is not clear and enforceable, because all human structures and activities restrict something in some way. As Dr. Jennings letter recommends, we also should better describe the "wildlife" impacted by fences.

Dr. Jennings suggests a fence can be designed that does not block critters access to the stream, but channels them around human structures. A wire fence with spacing underneath allows small creatures access. The main concern is deer. We do not want them in our vegetable gardens, nor attacked by dogs, but they need water.

We request: "New fences that are designed in materials, height, and spacing so as not to block wildlife (such as birds, deer, raccoons, mice, turtles, lizards, frogs or salamanders) from access to streams and the adjacent riparian habitat."

10. Do Not Remove Current Exemptions From Land Use Permits.

The County currently exempts from land use permits many minor home improvements, repair and maintenance. However the proposed SCA ordinance would delete this exemption and require a land use permit, if the activity occurred within the stream setback area--including activities that would otherwise be exempt from a stream permit. (Section 22.06.050, page 13.) Examples:

decks, paths, driveway;
garden irrigation lines;
children's swing set or play structure;
interior remodeling that changes exterior appearance--
[add a skylight? convert garage to art studio?].

Removing the exemptions from land use permits violates the CASE principle, with no protective benefit for fish. If a minor project is exempt from a stream permit, or obtains a Tier 1 stream permit, why impose a new land use permit for the same minor project?

Delete the additional language on page 13 of the May 1 draft. Allow the current exemptions from land use permits to apply, both inside and outside the stream area.

11. The Ordinance Will Cost the County Taxpayers Million\$ of Dollars.

With this ordinance, the County takes a large strip of land from each home and undeveloped lot. The setback ranges from 20 feet (small lots in the City Centered Corridor) to 150 feet (San Geronimo and Inland Rural Corridor). The reduction in property value will vary depending on the lot size and configuration. Obviously, a 150 foot setback on a 100 foot lot decimates its value.

The County authorizes itself to take even more private property, if it requires "additional setback" on any parcel. (Section 22.33.030 B.) This uncertainty further reduces the property owner's value.

The County has announced its intent to "periodically update" the stream maps. (Section 22.33.020 A., page 1.) Once this ordinance is adopted, all properties near any drainage channel will immediately suffer a decrease in resale value, as new home buyers back away from this unknown risk.

The County also mandates several onerous restrictions on the use of land within the setback under

Tier 1 or Tier 2 permits. (Sections 22.63.030, 22.63.040, and 22.06.050.) The standard for a permit (no adverse impacts on the stream area) makes development of vacant lots economically infeasible, and makes small home projects not cost effective.

These takings are purportedly for public purposes--settlement of the lawsuit filed by SPAWN, and adherence to a defective CountyWide Plan. The CWPlan was adopted in 2007, before the 2009 Salmon Enhancement Plan report, and without consideration of reasonable alternatives.

This ordinance as currently drafted will not result in more salmon or salamanders. It is a "feel good" proposal that will cost the County taxpayers millions of dollars in reduced property tax assessments, loss of home values, inverse condemnation lawsuits, and declining home sales.

Changes to Fix the Problems and Adopt a Stream Ordinance That is Clear, Affordable, Simple and Enforceable

1. The stream setback should be 35 feet from top of streambank for the Inland Rural Corridor. No "additional setbacks" should be required in the future for any areas in the County. (Section 22.33.030 B.)
2. No setback is needed for "ephemerals"--channels of runoff for a few days when it rains. (SCA Definitions Article VIII.)
3. Amend the 2007 CountyWide Plan section BIO-4 to authorize Changes #1. and #2. It is more important to achieve homeowner agreement to a reasonable ordinance, than to cram down a bad regulation based on the defective CWPlan. Without homeowner consent, there can be no creekside access for stream restoration projects.
4. "Grandfather" as exempt (with no stream permit required and no prior determination by CDA staff) all existing buildings, structures and improvements--including those which are not fully permitted or legal under other County regulations. Also, grandfather exempt all existing second unit residences, which are sources of low cost housing and rental income for landowners.
5. No new streams should be added, or stream locations moved, on County maps after 2013. At any time, the property owner should be allowed to request County to correct the stream map if there are errors with respect to the owner's property. (Section 22.33.020 A., page 1.) Neither the County nor other persons or groups should have standing to change a property owner's stream map.
6. Allow as exempt (with no requirement of stream permit, prior determination by CDA, site assessment, or County fees) all of the following:
 - A. Existing and new housing and access for physically disabled or elderly people.
 - B. Existing and new shelters and enclosures for horses, dogs, and small domestic animals.
 - C. Existing and new additions and improvements on the disturbed portions of all developed parcels for:
 - vegetation removal or trimming, gardening and landscaping;
 - all tree removals which are exempt or permitted under County Tree Ordinance;
 - replacements, additions and expansions of impervious surfaces,
up to net cumulative 500 square feet per dwelling unit;

---water or septic facilities or connections;
---drainage spouts, pipes or swales;
---fences, tool sheds, trash can enclosures, retaining walls, and erosion controls
if located upland from top of stream bank.
(Sections 22.63.020, 22.63.030, 22.06.050)

Stream permit exemption for the new or replacement structure could require that it:

- (1) is not closer to the stream than the previously disturbed area
or the existing structure;
- (2) mitigates the removal of woody riparian vegetation by planting native
vegetation on the owner's site or another stream setback area; and
- (3) disbursts storm runoff over pervious areas (such as lawn or garden).

(Modify sections 22.63.020 B.2. and 22.63.030 A.1. on page 7.)

7. Retain all the current exemptions from land use permits for landscape irrigation, children play
structures, interior remodeling, changes in exterior appearance of home, decks, paths, driveways,
and repairs or maintenance of existing improvements. (Section 22.06.050.)

8. Compensate owners for loss of value. Reduce property valuation assessments. Abate taxes.
Reduce permit fees. Require the County to pay for stream permit site assessment professionals.

Rana Resources
P.O. Box 2185
Davis, CA 95617-2185
(530) 753-2727

#16,604
May 06, 2013

To: Marin County Board of Supervisors
Marin County Planning Commission
Marin Community Development Agency

Re: RECOMMENDATIONS FOR THE DRAFT MARIN STREAM CONSERVATION AREA
ORDINANCE (May 01, 2013).

Dear Supervisor's:

I am writing this letter with regards to your recommendations for the draft Marin Stream Conservation Area [=SCA] ordinance (01 May 2013). I am a consulting fish and wildlife biologist who has worked in government and private industry for the past 27 years dealing with research, management, and conservation issues regarding listed fishes, amphibians, and reptiles in California. I hold B.S., M.S., and Ph.D. degrees in wildlife and fisheries science and have published over 100 peer-reviewed, scientific papers including those that deal with steelhead (*Oncorhynchus mykiss*), coho salmon (*O. kisutch*), and California red-legged frogs (*Rana draytonii*).

Overall, I find that much of the draft SCA ordinance is a well thought out and up-to-date document that will do much to ensure the continued survival and potential recovery of salmon and trout, as well as native amphibians and aquatic reptiles in the San Geronimo Valley. However, there are a few items that raise concerns regarding their scientific justification for protecting fish and wildlife resources. My comments are as follows.

1). The designation of "ephemeral streams" should be dropped. Over the past 40+ years, agencies and academia have worked together to justify what constitutes "perennial streams" and "intermittent streams" and have come up with measurable physical and biological attributes to justify these jurisdictional designations. For example stream channel profiles, soil types, riparian plants, the length of time that water is present, etc., are all currently used to determine jurisdictional stream channels and wetlands. Your definition that ephemeral streams are based on a "watercourse that carries only surface runoff and flows during and immediately after periods of precipitation" (and would subsequently be mapped for protection) cannot be justified on any rational scientific basis. The only criteria stated is flowing water over a loosely defined period of time. As a scientist, this is too subjective to denote areas requiring further protection. Based on my extensive field experience in the Bay Area, one could find water flowing for a week or two in a wide variety of natural and artificial habitats depending on the amount of rainfall during this time period. This is especially true during periods of extensive downpours. Such habitats would include ruderal fields, tire ruts along dirt roads, low points at the edges of

buildings, etc. None of these areas justifies an added layer of specific protection for fish and wildlife habitat.

2). The SCA should be allowed to be narrowed to 35 feet (denoted from the top of the bank) with mitigations for the removal of ruderal vegetation [i.e.: introduced weedy species growing in fields, along roadways, in waste places, etc.]. The proposal to have the SCA based on a distance from the nearest band of riparian trees or vegetation is not scientifically justified in Marin County where rainfall is abundant and riparian vegetation grows in many places that are not close to intermittent or permanent streams (e.g., coastal redwood (*Sequoia sempervirens*) trees, willows (*Salix* spp.), and introduced Himalayan blackberries (*Rubus discolor*) bushes).

3). The footprint of any development (for example, second units or home additions) could be expanded, provided however, that it should be mitigated in kind with native vegetation planted in an area equal to the size of the development. Because you are removing ruderal vegetation at the development footprint and then replacing ruderal vegetation elsewhere as mitigation near the area of development, this is not a net loss of habitat. In fact, if the mitigation area is selected adjacent to a currently present riparian area, then the planting and establishment of native vegetation would enhance wildlife habitat. This is because native vegetation provides a much better food source for many invertebrates that are consumed by fish and wildlife species. Thus, if you replace ruderal vegetation with the proper vegetation native to the area, one should increase the amount of invertebrate food resources available for creatures like juvenile salmon, terrestrial salamanders, tree frogs, lizards, and birds.

4). The SCA should create incentives for replacing currently toxic roadways, or areas of old junk piles, or exotic vegetation with items like concrete or artificial rock paving stones (for paved or dirt roads), native plants and trees. The most important outcome of this is to replace anything toxic or impervious with exactly the same amount of area of porous or pervious structures, or native vegetation. If impervious structures must remain, then there should be connectivity for water to flow into a nearby stream course. One possible way for this to occur is for future development of sites to enter into agreements for acquiring areas of mitigation elsewhere within the same drainage that have already been completed (but not credited for the work being done), or have not been previously contemplated, but could be done more economically. This would also allow for greater focusing of enhancing currently degraded upland habitats in the most sensitive areas within the San Geronimo Valley.

5). The SCA should encourage (not prohibit) the removal of introduced trees (such as bluegum (*Eucalyptus globulus*)) and replacement with native trees, even within the SCA protection zone. This will keep the introduced species from spreading and as mentioned previously, increase the native invertebrate food supply for fish and wildlife resources. It would also decrease the potential fire hazard by bluegum trees, especially dead ones. An individual could also receive or

Marin County Board of Supervisors
May 06, 2013
Page 3.

sell mitigation "credits" to another for the removal and replacement of such introduced trees with suitable native trees.

6). The SCA should allow for the cutting or mowing of brush and other low lying vegetation to within 20 feet of any natural drainage channel (where one can see a top of bank) that is not mapped as intermittent or perennial by the County. This would allow land owners flexibility to maintain their fields and lessen potential fire hazards by accumulation of woody plant material.

7). The SCA should define what is meant by: "New fences that do not restrict wildlife access to streams and the adjacent riparian habitat." What are they referring to by wildlife--birds, deer, raccoons, mice, turtles, lizards, frogs, or salamanders? Fences differ in kind and some are barriers to certain wildlife species depending on the materials used (e.g., wooden boards or metal mesh), height, or spacing under the bottom. Perhaps it is better to state: "New fences that are designed in materials, height and spacing so as not to block wildlife (such as salamanders, frogs, turtles, lizards, mice, raccoons, or deer) from access to streams and the adjacent habitat."

Thank you for allowing me the opportunity to comment on your draft SCA. Please feel free to contact me if you have any questions.

Sincerely,



Mark R. Jennings
President and Fisheries Biologist/Herpetologist

MARK R. JENNINGS, Ph.D.
Herpetologist, Fisheries Biologist
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EDUCATION

Ph.D., Wildlife and Fisheries Science, The University of Arizona, 1986
M.S., Natural Resources, Humboldt State University, 1981
B.S., Fisheries, Humboldt State University, 1978

AREAS OF EXPERTISE

Herpetology, amphibian ecology, conservation, special status species studies

PROFESSIONAL EXPERIENCE

Associate Herpetologist and Fisheries Biologist, Live Oak Associates, Inc., 1999-Present
Assistant, Agricultural Experiment Station, University of California, Davis, 1995-1998
Assistant Adjunct Professor, University of California, Santa Barbara, 1993-2002
President, Herpetologist and Fisheries Biologist, Rana Resources, 1988-Present
Research Associate, Department of Herpetology, California Academy of Sciences, 1987-Present
Associate Aquatic Biologist and Herpetologist, H. T. Harvey & Associates, 1990-2000
Principal Research Associate, Cal Poly San Luis Obispo, 1994-1997
Research Fish and Wildlife Biologist, U.S. Geological Survey, 1992-1999
Research Fisheries Biologist, U.S. Fish and Wildlife Service, 1986-1990
Biologist, Harding Lawson Associates, 1985-1986

QUALIFICATIONS

I am a versatile ecologist, with specialties in both herpetology and fisheries biology. I have worked extensively with a wide variety of fishes, amphibians, and reptiles throughout California including the tidewater goby, chinook salmon, steelhead, coastal cutthroat trout, California tiger salamander, Santa Cruz long-toed salamander, arroyo toad, California red-legged frog, mountain yellow-legged frog, western pond turtle, San Francisco garter snake, and giant garter snake. As a Research Associate with the California Academy of Sciences, I conducted a 6-year study of the status of third category (species of special concern) amphibians and reptiles in the state for the California Department of Fish and Game. The report included recommendations for changes in listing status as warranted and opportunities for future research and has been widely cited in scientific publications, agency reports, and environmental impact studies.

I have performed literally hundreds of endangered species surveys for several environmental consulting firms in California and Arizona during the past 20 years. In doing so, I have conducted more than 250 protocol visual surveys for California red-legged frogs in the Bay Area, Central Coast, Sierra Nevada foothills, and the San Joaquin Valley. Major clients include: Anteon Corporation; California Department of Fish and Game; California Department of Parks and Recreation; California Department of Water Resources; CH2M Hill, Inc.; CH2M Hill Constructors, Inc.; EDAW; Environmental Collaborative; Huffman and Associates, Inc.; LFR Levine-Fricke; Montecito Water District; Mosaic Associates LLC; Municipal Water District of Southern California; Olberding Environmental, Inc.; PG&E; Santa Clara Valley Water District; Sycamore Associates LLC; University of California at Santa Cruz; U.S. Forest Service; and Zander Associates. I have also conducted extensive research on the species. This work has resulted in over 20 peer-reviewed, scientific publications that deal with this frog.

Since 1980, I have published over 105 peer-reviewed scientific papers, of which 80 deal with the field of herpetology and 25 deal with the field of fisheries biology. During my career, I have received awards from scientific societies for my publications and work in amphibian conservation. I have also produced the penultimate drafts of the recovery plans for the Santa Cruz long-toed salamander and arroyo toad for the U.S. Fish and Wildlife Service. Additionally, I have peer-reviewed dozens of manuscripts, environmental impact reports, and endangered species petitions for scientific journals, biological consulting firms, and state and federal agencies. I maintain an active speaking schedule having given over 150 official presentations on various herpetological topics to a wide variety of scientific and lay audiences over the past 25 years—everything from keynote presentations at scientific meetings, to discussions at society-sponsored workshops, to talks at local meetings of the Audubon Society.

Mr. Figari corrects stream map in Woodacre

From: "Robert M. Figari" <figari@well.com>
Subject: SCA 1 Scott St/correct non-existent stream
Date: April 17, 2013 2:36:02 PM PDT
To: sthorsen@marincounty.org

Dear Suzanne,

Thank you for taking the time to speak with me about this issue today on the phone. This email includes a pdf file containing our requests and background information and photos to substantiate our requests.

In a nutshell, we would appreciate a correction of your Stream Conservation Buffer map which currently shows a stream running parallel to Scott St into Woodacre Creek. There is no stream. We would also request that our parcel/lot be removed from the SCA based upon this information.

I'd be happy to help you in your research of our little area so that you can arrive at a true representation of the area's water runoff flow. Please let me know if I can help in any way.

Hopefully the document attached will allow you to quickly amend your maps and remove us from the SCA.

Thank you for all your hard work.

Here is the pdf attachment:

Yours truly,

Bob Figari

Robert M. Figari
POB 263

Woodacre, CA 94973
415.488.4966 h
415.259.8153 cell
figari@well.com

Robert & Christine Figari
P.O. Box 263
Woodacre, CA 94973

April 17, 2013

Suzanne Thorsen
Planner
Marin County Community Development Agency
sthorsen@marincounty.org

Re:

1. Request for removal of Parcel #172-071-22 from Stream Conservation Area
2. Request to correct Stream Conservation Buffer map showing non-existent stream

We request that our property at 1 Scott St., Woodacre, CA (Parcel#172-071-22) be removed from the Stream Conservation Area.

We also request that you correct the Stream Conservation Buffer map which currently indicates a stream (blue line) off Scott St. where there is no stream and hasn't been for many, many years.

Parcel/Lot Configuration Information

Our property is currently included in the SCA as shown here:

Parcel Number	172-071-22
Situs Address	1 SCOTT ST WOODACRE, 94973
Stream Conservation Area Setback	100 feet (Additional setback may be required)
See Map	Click Here 172-071-22

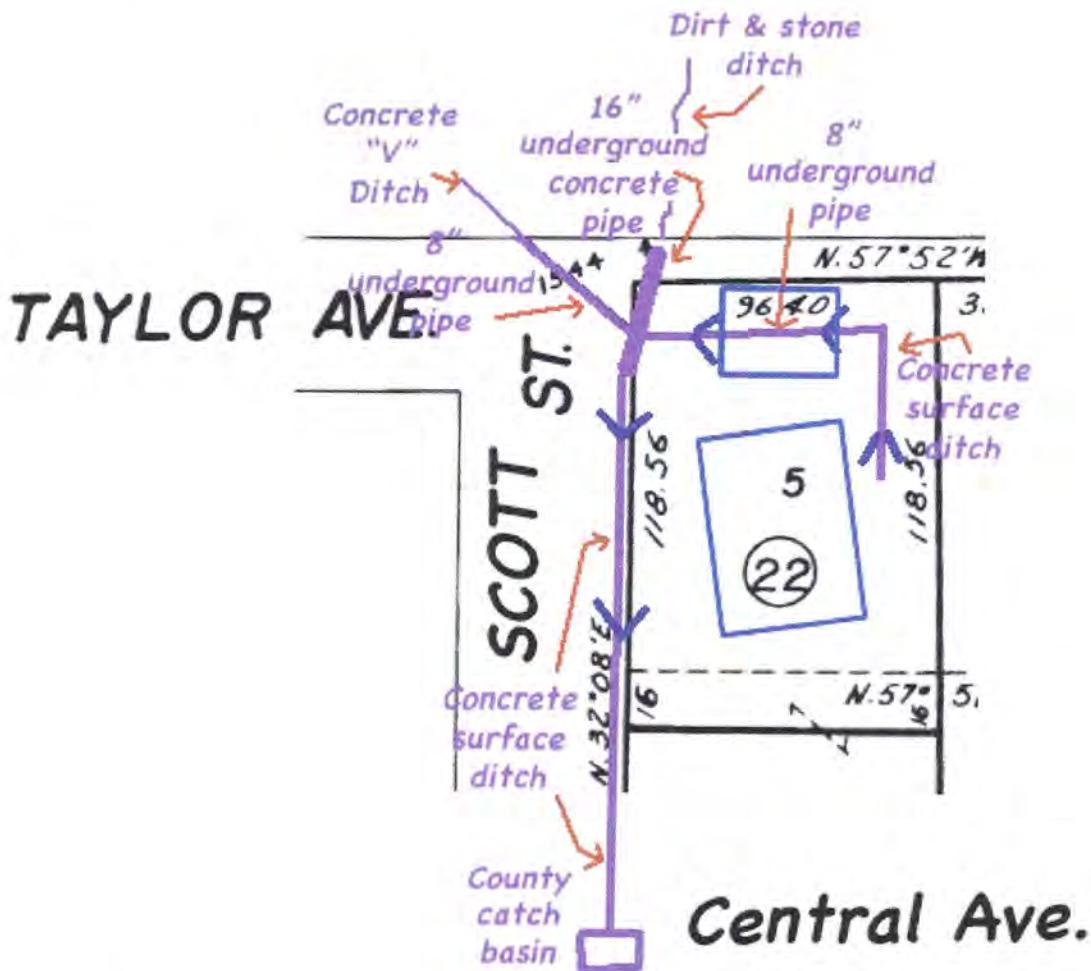
Our home was built in the 1950s and is about 1900 square feet (including the separate garage). It sits on a lot approximately 100 feet wide/deep (East from Scott St.) by 120 feet long (South along Scott St.).

The lot is totally disturbed "cut and fill" lot with the cut from a steep hill to the East and the fill (upon which the house sits) banking to Scott St. in the West. This is roughly illustrated in Google Earth photo below:



Parcel/lot runoff control information

Our parcel/lot was graded and improved when built in the 1950s for runoff from the hillside at the back of our parcel/lot to travel to the north end of parcel/lot, cross under driveway and tie in with concrete ditch that connects to a county catch basin at corner of Scott and Central.

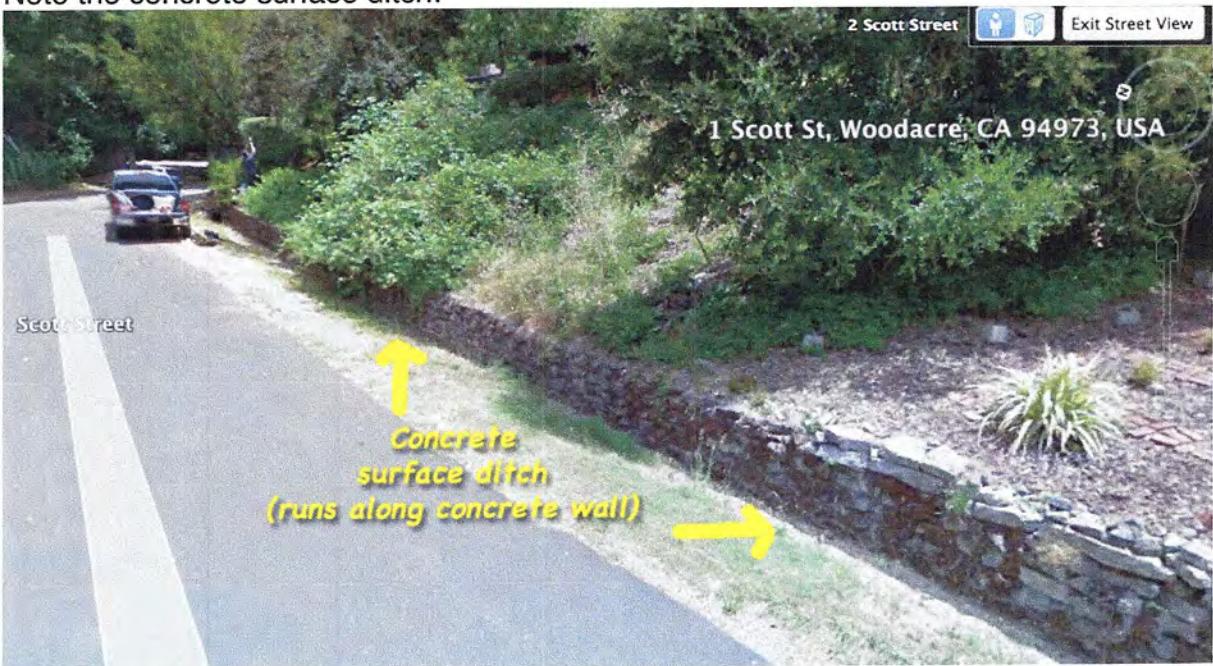


The runoff from our next door neighbor to the north on Taylor flows down their dirt/stone ditch into our underground concrete pipe. Some of the runoff from their next door neighbor on Taylor flows into a "V" ditch which flows into an underground pipe that joins our 16" concrete pipe.

The following photo is a street view from Google Earth. I've added illustrations to show where the underground pipes run and where the concrete surface ditch runs.



Note the concrete surface ditch:



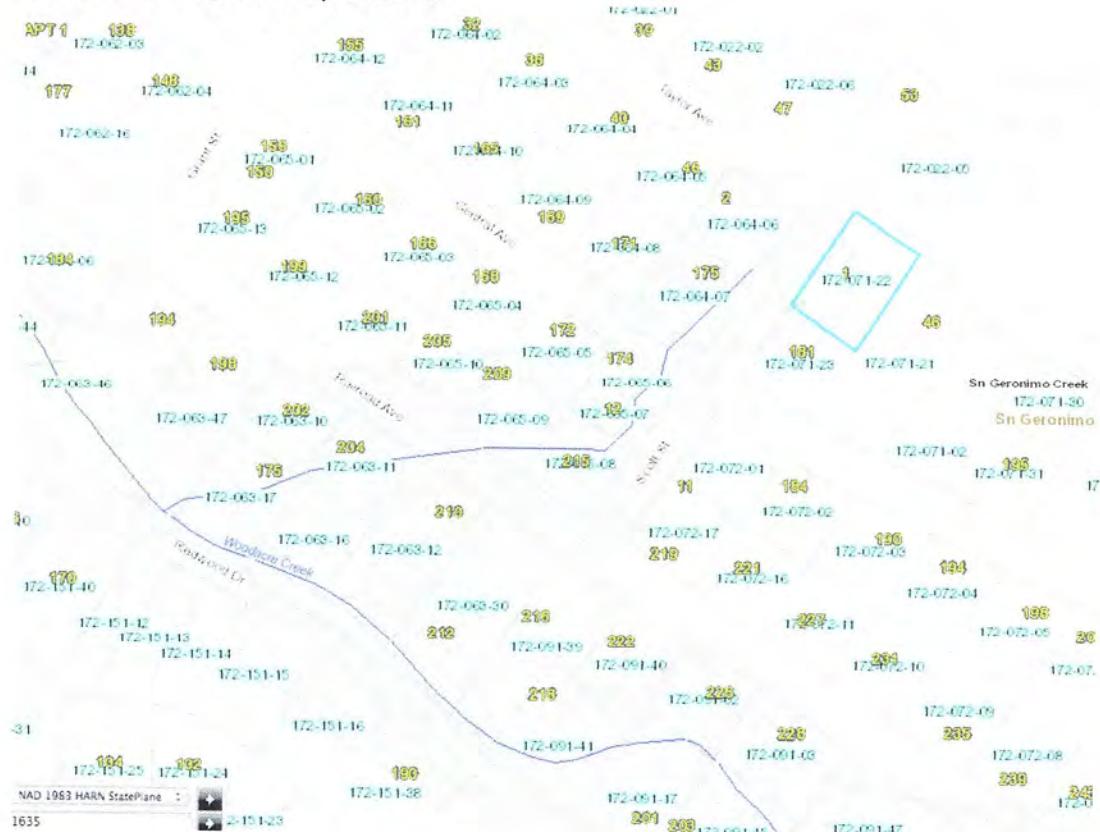
Note the flow of runoff to the county catch basin:



Non-existent stream information

Your Stream Conservation Buffer map (hydrology view) shows a non-existent stream which caused our Scott St. area to be mistakenly included in the SCA.

Here is what your map shows:



At some point in the distant past, there was probably a stream where it is shown, but currently there is none. If there were a stream it would be flowing through the living rooms of 2 Scott Street and the house at Scott and Central.

Here is a Google Earth view of 2 Scott St. which is directly across the street from the concrete surface ditch on our parcel:



This is where your map shows a stream starting. Clearly, there is no stream.

Here is another Google Earth view from where Scott St. meets Taylor Ave. The house on the right is 2 Scott St. (same as above). Our parcel/lot is to the left where you see the concrete surface ditch that flows along the concrete wall down to the county catch basin at Scott and Central. Again, there is no stream.



Your map shows the stream crossing Central Ave near the intersection of Scott. Here is another Google Earth view from the county catch basin and looking down Central to where the stream should be:



As you can see, there is no stream running over the street. There is also no stream running through the above mentioned properties.

Conclusion:

We believe the map is in complete error. Perhaps there was once a stream prior to the 1930-50s development of this small area, but there is clearly none now. In fact, most of the runoff flows down the other side of Scott St. along the aforementioned system of pipes and concrete ditches until it enters the county catch basin.

Please correct your map to show no stream flowing from the top of Scott St. and take our parcel/lot out of the SCA.

If I can help you with any other analysis or photos, just let me know.

Please advise me your receipt of this document, respond to my requests and keep me informed of any pertinent information about these requests.

Yours truly,

Robert M. Figari
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DMH LAND USE PLANNING

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May 7, 2013

Marin County Planning Commission
c/o Suzanne Thorsen, Planner
Marin County Community Development Agency
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Subject: Proposed Stream Conservation Area Ordinance

Dear Members of the Planning Commission:

I am writing this letter on behalf of M & MH LP, the owners of Assessor's Parcel Numbers 038-053-17 and 038-061-14. The subject properties are located on Ranch Road, on the Tiburon Peninsula in unincorporated Marin County. The subject parcels are contiguous and undeveloped; parcel no. 038-061-14 is largely inundated and zoned Ocean; my clients anticipate development of parcel 038-053-17 consistent with the property's residential zoning. Both parcels have been in their family for several generations.

According to the *Stream Conservation Buffer* exhibit attached to the *Stream Conservation Area Ordinance Staff Report to the Planning Commission*, the subject properties will be subject to a 100 foot conservation area setback, which encompasses all of both parcels, with the exception of a tiny wedge of land at the southerly portion of the property. Because the setback covers essentially the entire property, adherence to the Stream Conservation Area Ordinance would result in no development potential for the property.

An attachment to the staff report entitled *Frequently Asked Questions* states "A taking occurs when a property loses economically viable uses. 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."

County Planning staff has acknowledged that the proposed *Stream Conservation Area Ordinance* would result in a buffer area designation that encompasses essentially all of my clients' property, prohibiting development of the parcels. Staff has indicated that although development is not allowed within such designated areas, the ordinance does allow the property owners (at some future time) to request special consideration to allow development of the property. Adoption of the ordinance as proposed would only allow development subject to discretionary approval, with no guarantee that the Review Authority would find it appropriate to allow development within the designated Stream Conservation Buffer.

The proposed ordinance will result in essentially the entirety of my clients' property being restricted to conservation area setback, with no guarantee of future development. As the proposed ordinance would leave my clients with no guarantee of an economically viable use of their property, adoption of the ordinance as currently proposed would result in a taking.

We hereby request that Assessor's Parcel Numbers 038-053-17 and 038-061-14 not be included in the proposed Stream Conservation Area Ordinance.

Sincerely,



Diane M. Henderson, AICP

cc: M & MH LP



May 8, 2013

Marin County Planning Commission
Marin County Civic Center
3501 Civic Center Drive, Rm. 328
San Rafael, CA 94901

Dear Planning Commissioners:

The San Geronimo Valley Planning Group strongly supports the stated goals of the County's County Wide Plan (CWP) Goal Bio-4.1 *Restrict Land Use in Stream Conservation Areas* (SCA). We believe staff has taken bold and enlightened steps to achieve the principles found in the CWP. However, we also believe that, unless the County's policy makers empower the Community Development Agency Staff to implement this far reaching and complex piece of legislation, there is the potential to do a disservice to those who will be impacted by the Ordinance as well as those hoping the Ordinance will have the desired effects of improving riparian habitat.

The Planning group has met with County staff, various community organizations and the residents of the San Geronimo Valley. Through these conversations and our review of the draft Ordinance we believe that the Commission should recommend to the Board of Supervisors specific actions that will result in an effective and equitable application of the intended goals of the CWP. Therefore, the Planning Group is requesting that the Commission adopt a Resolution that accompanies your recommendation to the Board of Supervisors. The Resolution should include the following implementation strategies:

1. Establish a fully funded position that will focus on the implementation of this Ordinance. The position will significantly enhance the Educational component of Staff's proposed 'three-legged stool'. Obviously, the Ordinance can be effective only if it can be understood. With 3600 SCA parcels Countywide and 1100 in the San Geronimo Valley, only a very small percentage of those affected have even attempted to understand what's in the Ordinance and, even in that small group, many have shown misunderstandings.
2. One of the duties for the newly created staff position will nurture the development of community based organization partnerships that are committed to work with County Staff in a program that will educate, evaluate and integrate the principles of the CWP for private property owner stewardship. We believe that such a program will require resources that the County currently does not possess.
3. The staff person's job scope would also include identifying and securing outside funding for contractual on-site visits modeled after the Land Owner Assistance Program, which would be the preferred method of education. Leverage federal and statewide agencies as a source of funds and grants to improve the education process, and significantly increase the likelihood of compliance. Also seek funds for mitigation of prior damage. The subject matter is at best difficult for the layperson to understand but, even if a resident could learn to appreciate the difference between an intermittent and an ephemeral stream, and between riparian and non-riparian vegetation, it would still be difficult to apply the definitions on his or her property when development or mitigation decisions are being made. Almost as much effort will need to go into classifying and modifying currently mapped SCA's and, even when this is done, ambiguity would still remain in the instance of a specific property. The site visit would assess the existing private property land

use impacts have upon the riparian habitat, determine what future if any development may have upon the habitat, and finally offer suggestions including a tool kit as to how to mitigate conditions that are adversely affecting the habitat.

4. Fund an analysis to differentiate the impact of rarely flowing small streams relative to the impact of regularly-flowing spawning creek beds, consider prioritizing these differentiations as part of a site visit implementation plan. This could enable the County to focus resources on properties with the most impact on the health of County streams, and also allow the flow of any grant or public mitigation funds to properties doing the most damage to creekside health. This would also allow for prioritization of voluntary site visits. Homeowners near the highest volume of water flow would be first in line for early educational efforts and first in line for available mitigation funds. The time required for individual site visits would be only somewhat more than the time required for differential-impact mapping of the County's SCA's, and would have the added advantage of being specific to any property owner considering development and/or mitigation. Additionally, funding agencies would likely be more generous with the knowledge that their contributions would have the maximum impact.
5. Encourage mitigation of existing SCA development and reward homeowners who take such steps by waiving permit fees and as soon as possible identifying grant funds for habitat improvement projects. This is necessary to offset future non-permitted development, which is sure to occur. Without such offsetting improvements, it will not be possible to meet the goals of the SCA Ordinance.
6. Reward homeowners who have developed their properties with sensitivity to the SCA, and those who take steps to mitigate damage that has already been done. Consider awarding a 'Streamside Compliant' designation on the property title report, for those properties that meet the objectives of the SCA Ordinance. Such a designation could have a tiered approach, for example with a blue designation for those properties that have mitigated adversely affecting water quality by decreasing surface water flows into the creeks and increasing soil infiltration rates. A green designation would include those properties that have improved native species bio diversity on their property by native plantings and invasive removals and improving channel complexity. A gold designation would recognize a property that has adopted both the blue and the green levels. Those properties would be eligible for reduced water rates by MMWD because they are supplementing and reducing MMWD costs associated with mandated habitat restorations throughout the county. MMWD could point to these properties and take credit for their work and the property owners could reap the benefits of reduced water bills. Such a designation should increase the value of the property not only to those who continue living there, but also at the time the property is sold. Grants may be available to offset costs of the enabling County inspections and reviews.

Through our experience working with the Department of Public Works during the Land Owner Assistance Program that brought together many diverse community members in a common cause, education in the form of hands-on guidance by experts will be needed. We believe these recommendations will allow for a robust and equitable implementation of this legally mandated Ordinance with a modest investment. We welcome your support through a Resolution to the Board and are prepared to meet with individual Board members to express our support for such a Resolution.

Please do not let this important opportunity pass without encouraging our Policy Makers to fund the necessary resources needed to make this Ordinance both effective and fair.

Sincerely,

San Geronimo Valley Planning Group
SCA Committee
Dan McKenna, Chair, Phil Sotter, Eric Morey and Jean Berensmeier

WARREN & PEGGY GLASS III

10 Meadow Lane, Novato, California 94947 415-898-1379

May 8, 2013

Marin County Planning Commission
3501 Civic Center Drive, Suite 308
San Rafael, California 94903

RE: AMENDMENTS STREAM CONSERVATION AREA ORDINANCE

Good Morning,

I strongly feel that the government and a small group called conservationist are taking advantage of existing rules and regulations that were originally designed to help save salmon, real year-around streams, etc., to unnecessarily expand their scope of work, area of authority and limit people's, property rights as they existed when they purchased their land.

It is ridiculous to label this a "stream": a drainage ditch that comes down the valley into a quarter-mile culvert then an open ditch for eighteen feet and then back to a culvert for another forty feet before opening back up into a ditch.

Right now I can build a 299 square-foot barn or building with no water or electrical and certain set-backs without a permit. With the proposed expansion of the ordinance I will have to pay a fee to apply for the restricted use. In short, government is taking away a permitted use of my property without paying for it and then charging me a fee(s) to apply for a request to use this portion of my property.

The proposed ordinance, at least, needs to be changed to not automatically include all the "streams" listed on whatever "blue line" map(s) that are being used. People's property rights and uses are being taken away without payment and this must not be taken lightly. Drainage ditches or other similar storm water paths should not be included in this ordinance. A ditch that runs during and for a few days after a rain storm should not be included in this ordinance.

Because I have more property than another person is not a good reason to take 100 feet of control on my property and only 25 feet of someone with less property. The ditch and small streams can be easily protected with 25 feet of control area. There is no need for government to take another 75 feet just because I have more property and it might not be as noticeable to me. Please change the proposed ordinance to set the controlled area to 25 feet for everyone.

WARREN & PEGGY GLASS III

10 Meadow Lane, Novato, California 94947 415-898-1379

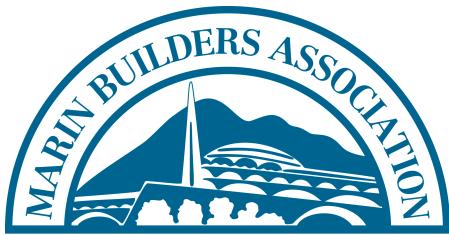
Page two 05-08-13

In short, please modify the ordinance to exclude drainage ditches of any kind, to modify the control distance to 25 feet for all properties, especially on the less important ditches and streams, and to not charge fees for applications to use our property for a use that was permitted prior to the ordinance.

Sincerely,

Warren Glass

Peggy Glass



Mertel
President
Jim Schalich
Vice President
Tyler Doherty
Chief Financial Officer
Tom Barr
Secretary
Aimi Dutra
Past President
Klif Knoles

May 8, 2013

Chair Wade Holland
County of Marin Planning Commission
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

RE: MARIN COUNTY TITLE 22 (DEVELOPMENT CODE) AMENDMENT: STREAM CONSERVATION AREA (SCA)

Dear Mr. Holland:

For more than 50 years the Marin Builders Association has served the construction industry by promoting high ethical and professional standards and providing quality services to our members. We work responsibly with the community for the enhancement of the building industry and our environment.

As experts in the construction industry representing over 700 licensed contractors, we believe the proposed Stream Conservation ordinance is onerous, costly, time consuming and confusing for the homeowner and contractor. We urge the Planning Commission and staff to review and evaluate the following reasonable questions before moving forward in the process.

- Does this policy follow the "CASE" principle, Clear, Affordable, Simple, and Enforceable?
- If 70% of construction in the County is done without a permit, will homeowners receive the proper permits?
- If homeowners do not receive the proper permits what are the consequences for the construction industry, the Community Development Agency (CDA), property values and our environment?
- Why is the CDA adopting a law it does not have the resources to enforce?
- Why did the County contract for an expensive Salmon Enhancement Plan (SEP) if the CDA is not going to implement the data driven recommendations?
- Under this proposed policy, there are properties on which no development will be allowed. How is the CDA going to address those?

We at the Marin Builders Association believe this policy does not follow CASE. With the diverse natural environments of this County, homeowners and contractors will have a difficult time, determining what and where they can build.

The MBA is certain that once homeowners realize how onerous, expensive, confusing and time consuming this policy is, they will simply hire an unlicensed contractor and not get the permits required. Unlicensed contractors and non-permitted structures pose a public safety risk to the community and have a negative economic impact on the licensed contractor.

Adopting this onerous policy and not allocating the resources necessary for enforcement, defeats the purpose. The Marin Builders Association suggests that if the County adopts the policy, it implement an education campaign as well as an enforcement program.

The County had an expensive science driven Salmon Enhancement Plan (SEP) prepared by experts. If the County adopts the Stream Conservation ordinance the Marin Builders Association urges the Planning Commission to adopt the guidelines in the SEP. For properties a $\frac{1}{2}$ acre or more, the Stream Conservation Area setback should extend 35 feet on each side, measured from the top of the bank. In addition, there should be no setback for Ephemerals.

It is irresponsible for the CDA and the Planning Commission to turn their backs on those who bought property with the intent to develop it that, under this proposed policy, will be prohibited. Those properties should be looked at on a case-by-case basis.

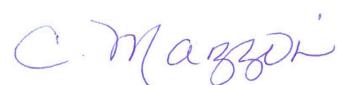
We hope when issues arise in the future that affect the community and the construction industry that you will utilize our knowledge and resources. We stand ready to partner with you and other interested parties to bring about thoughtful solutions that support and maintain a vibrant business community while protecting our environment.

Thank you, and if you should have any questions please contact our office at 415-462-1220.

Sincerely,



Cliff Knoles
Executive Director



Casey Mazzoni
Legislative Analyst

May 9, 2013



Marin County Community Development Agency
Planning Commission
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Attn: Debra Stratton: DStratton@marincounty.org

Re: Stream Conservation Ordinance

Dear Members of the Commission:

Marin Conservation League commends the Community Development Agency for undertaking the writing of a Stream Conservation Area (SCA) ordinance to implement the 2007 Countywide Plan. We especially appreciate the thoughtful and even-handed way in which staff is working to respond to the numerous suggestions that are offered.

We are aware that the ordinance is still evolving and have the following suggestions for changes or further clarification of the draft ordinance (suggested new text is underlined):

- 1. General Requirements.** Modify 22.33.030.B.5 to read “For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a length of 100 feet or more, as determined by a qualified biologist or natural resources specialist, or if the stream itself, or a stream it flows into, supports special status species and/or sensitive communities.”
- 2. Ephemeral Creeks.** Because these channels play a different role than downstream creeks we believe a reduced setback width is appropriate. In 22.33.030.B or elsewhere we suggest adding language to require a 35 foot setback (rather than 100 foot) for ephemeral streams regardless of the zoning district or parcel size.
- 3. 500 S.F. Additions.** Add text to SCA (Tier 1) Development, section 22.63.030 A.1, which permits up to 500 s.f. of addition to existing buildings within the SCA, explaining that additions will also be subject to and limited by maximum floor area ratios, property setbacks, height limits and other restrictions that are contained in the County Development Code. We believe that the public’s lack of awareness about existing restrictions is part of the reason for controversy over this section.
- 4. SCA Definitions: Disturbed Areas.** Regarding the definition of “disturbed area,” modify to read as follows: “An area that has experienced significant alteration from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities that involve

replacing pervious with impervious surfaces, as determined by the Director.” We believe that “clearing” and “landscaping” are not changes comparable to building construction or “hard-scape,” and are areas that could be restored to natural riparian habitat.

5. Mitigation Criteria. Section 22.63.040.C. should make clear that mitigation must be on-site whenever possible and, if that is not possible, within the same watershed as the development for which it is compensation. In addition, the restoration or other projects done in compensation for the SCA encroachment should be recorded with the CDA documents, or in the Recorder’s office, as a restriction on any property where mitigations measures are implemented so that they are binding on future owners.

6. Special Circumstances. Address the difficulty created for parcels that have an exceptionally large portion of land within SCA boundaries due either to the location of the stream or the configuration of the lot. Provide an exception procedure to address permitting for parcels that are entirely or mostly within the SCA, with the requirement that hydraulic capacity is maintained and water quality is not degraded. Moreover, any development allowed on such parcels should minimize the loss of habitat for riparian and aquatic species. Flexibility in the permit process should be allowed in these special cases while achieving these fundamental protections.

7. Woody riparian vegetation/ephemeral streams. These terms need further clarification. For example, include a definition of “ facultative” species that function along streams as woody riparian forest but are not necessarily dependent on that location, such as redwood, valley oak, and bay.

Passing the ordinance is only the first step in protecting our streams. A compliance program is essential to make the ordinance a success. Once enacted, the SCA program should be provided with sufficient additional staff and budget to secure public awareness and compliance with the ordinance. We also recommend the following as important aspects of a compliance program:

Complete Mapping a Priority. Update and complete on-line maps of all categories of streams and creeks to bring them into compliance with what is actually on the ground, identify waterways as to the type of creek, and make all this information easily available. In so doing, refer as needed to policies and programs in the Countywide Plan as well as to reliable scientific data. Mapping inaccuracies are understandably confusing the public trying to find out where a creek is in relation to their property and how it is characterized.

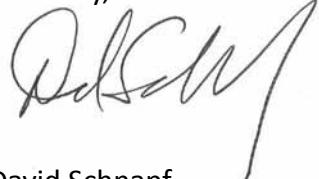
Reasonable Permit Costs and Fees. Fees should not discourage public compliance. They should be such that homeowners are encouraged to call the County about their plans, knowing they will get helpful free advice and assistance that will make a better project.

Inter-Agency Coordination. It is essential that CDA coordinate with Department of Public Works, including the flood control district, fire departments, sanitary districts, homeowner organizations, MCSTOPPP and others.

Outreach Program. In conjunction with adopting an SCA ordinance, we urge the County to consider establishing a program that incorporates public education and outreach, and encourages and provide incentives to property owners to preserve and enhance their creeks. This might include an expanded version of the existing landowner assistance program, providing free consultations and assistance to property owners who volunteer to improve their creeks, such as is done by water districts to encourage conservation.

Thank you for your consideration.

Sincerely,



David Schnapf
President, Marin Conservation League



Friends of Corte Madera Creek Watershed

P.O. Box 415 • Larkspur • California 94977

info@friendsofcortemaderacreek.org (415) 456-5052 www.friendsofcortemaderacreek.org

May 9, 2013

Marin County Community Development Agency
Planning Commission
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
Attn: Debra Stratton
Via Email: DStratton@marincounty.org

RE: Stream Conservation Area Ordinance

Dear Members of the Commission:

Friends of Corte Madera Creek Watershed supports approval of an SCA ordinance to improve protection for our creeks. Although protective measures would ideally be based on a scientific rationale such as flow regime and the specific resources being protected, rather than arbitrary setbacks, we appreciate the constraints created by an obligation to implement the 2007 Countywide Plan programs and policies and look forward to a best effort within those parameters. Our recommendations follow:

Purpose. The purpose, stated in 22.33.010, falls short of the CWP Bio-4 goal to protect and, where possible, **restore** (emphasis added) the natural structure and function of riparian systems. We recommend rephrasing 22.22.010 to include restoration of the natural channel where possible. This is particularly important regarding day-lighting culverted streams and restoring channelized reaches.

Applicability. While data and maps can flag likely applicable locations, creeks should be identified based on a site assessment and defined by the definitions provided (page 12 in the May 13 draft).

Additionally, either in 22.33.020 or in SCA Definitions it should be clarified that channels, ditches and culverts that convey creek waters, as well as natural creek courses, are protected with a setback requirement because of their potential for eventual enhancement and restoration. There are situations where mapped locations are 20 or 30 feet from the actual creek, or where creek waters flow under buildings or roadways, and protective measures should extend to these areas.

SCA General Requirements. Add the following to 22.33.030.A.3: **d. Harms capacity, water quality, or habitat** (suggested new text is bold).

Figure 3-16. Additional graphics would be helpful to represent various setback situations such as banks on steep slopes.

Permits. Tier 1 Development Standards or Site Assessment (22.63.030.B.2 or 4) should also determine if an alternative location for the proposed development exists outside the SCA. If not, a suitable location for any compensatory revegetation should be identified. We would recommend that Tier 1 site assessments be done by County staff.

Mitigation criteria (22.63.040.C) should provide that compensation planting is done on site or, if that is not possible, within the same watershed. Additionally, to alert future owners of the property about the need to maintain the mitigation project, it should be recorded either in documentation at the CDA or in the Recorder's files.

Decision and Findings. In section 22.63.060, there should be a finding added that no alternative location for the proposed development, other than in the SCA, exists.

Although protecting coho habitat has been a major focus for SCA discussions, steelhead are still found in other watersheds, and a number of Marin creeks historically supported fish populations and have the potential to do so again if barriers are removed and habitat restored. Prior to the Army Corps' levee construction in Tam Valley steelhead spawned upstream in Coyote Creek. Steelhead are regularly seen in Corte Madera Creek and its tributaries and, in 2004, a Chinook was identified at the Lagunitas Road Bridge in Ross. Public education for the ordinance should note the need for healthy creeks and their tributaries throughout the county if reintroduction of species is ever to be possible.

Thank you for this opportunity to comment. We look forward to continuing to work with County staff to improve the water quality and habitat value of our creeks.

Sincerely,



Sandra Guldman

President, Friends of Corte Madera Creek Watershed

c: Supervisor Katie Rice (email)
Suzanne Thorsen (email)

Curtis Kruger
3777 Vineyard Road
Novato, CA 94947
May 9, 2013

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

RE: SCA – Comments to May 3rd Proposal

Dear Commissioners:

Issues:

- Countywide Plan, Section BIO-4.a requires science based studies to determine SCA setbacks. Studies have only been performed for San Geronimo watershed.
Recommendation: Establish setbacks in San Geronimo watershed based on those studies. Defer SCA for the balance of the County until studies have determined appropriate setback.
- Ordinance divides the County into 3 zones based on development and geography. This is inappropriate for a stream ordinance.
Recommendation: Establish zones based on watersheds, and develop regulations and setbacks specific to each watershed. For example different protection is appropriate for a salmon bearing watercourse in a residential area compared to a watershed (such as above Stafford Lake) with no anadromous fish.
- 22.33.030 B. Setbacks vary based on Planning Corridor and lot size. This is not consistent with the objective of protecting "... channel, water quality, flood control, and associated fish and wildlife habitat..." Implicit in the varying setbacks is that landowners in certain corridors and with larger lots don't need the use of as much of their land as those with smaller lots located in favored corridors. This is social engineering, not environmental protection. The Planning Commission is not equipped to figure out which land owners are better able to afford their ordinance.
Recommendation: Setback distance should be based on what is necessary to meet environmental objectives.

Regulations require the same level of protection for active streams as for intermittent and ephemeral streams. It strains logic to assert that water quality and habitat protection must be the same for a one foot wide area bearing water for a few days each year as for a year round salmon spawning stream.

Recommendation: Follow guidelines established by scientific study of necessary setbacks for each watershed and stream type (perennial, intermittent, and ephemeral).

- Section 22.33.020 states that the SCA data is “...periodically updated by the Marin County Community Development Agency”, and the RWQCB in their comment letter recommends that all streams in the County be included. In other words, it is the clear intention and likely result of this ordinance to eventually cover far more (or all) streams within the County. However, most residents and land owners HAVE NO IDEA this process is underway and that their property will eventually be affected. I have personally spoken to over 40 people whose property contains intermittent streams and none were aware of the SCA and its impacts to their property as currently drafted. Staff has advised Sleepy Hollow residents that their property is not now listed in the County database, so they will not be affected. This is disingenuous.

Recommendation: Be honest about the framework you are trying to put in place and publicize the likely impact to all landowners who will be affected, either upon adoption or in the foreseeable future.

- Setbacks are based on vegetation or measurements from top of bank. In areas with steep banks this is unworkable.

Recommendation: Limit setback to a maximum of the 100 year flood line.

- Section 22.63.020 B e. Exempts infrastructure activities of a government agency. One of the checks and balances within our governing system occurs when those who pass regulations must live and operate under those same rules. Exempting agencies while requiring residents to comply insulates those agencies from the true impact of their rules.

Recommendation: Require all entities to operate under the same set of regulations.

- Section 22.33.030 B 6. “...outer edge of riparian vegetation is based on aerial photography...” - This was added so that the size of the SCA in agricultural areas would not expand if the land owner allowed the forest canopy to expand. However as written, it covers lots NOT in agricultural use, and it creates an expanded SCA that in some areas is so large it extends into different drainages. In the photo at the right, the red line is a stream, the yellow lines show setback distances of 200’, 400’ and 1200’. The longest yellow line extends into the adjacent drainage.

Recommendation: Change language to read – “For properties in agricultural use, the SCA shall not extend beyond the outer edge of woody riparian vegetation based on the most recent aerial photography on file...”



- Section 22.63.020 B.1.h. This is a clear statement; “Maintenance or replacement of landscaping” is exempt from SCA provisions. This seems to tell homeowners they can continue to use their property, but it is too limiting. Can a property owner plant trees? How about a garden? What if they want to add native riparian plants near a stream to replace an existing degraded area?

Recommendation: See paragraph below

- Section 22.63.020 B.2 This section requires residents who live within an SCA to get a permit to do almost anything new with their property. This includes getting a tool shed, a dog house, planting a garden or setting up a swing set for their kids. Staff says it isn’t a permit, but that’s just semantics. Residents are required to:

- Know the law
- Make a plan in advance including photos or sketches
- Submit these to the County
- Wait for approval to be received

In practice, this won’t happen. The vast majority of residents will put up their tool shed or swing set without doing any of this. This ordinance will result in hundreds or thousands of residents becoming law breakers.

Recommendation: Move items 2a – 2c into paragraph 1, “Exempt without further determination”. The vast majority of Marin County residents want to protect streams and do the right thing for the environment. Enlist their help and support by providing direction and education. Request that MCSTOPPP or other county agency to prepare a guidance brochure to help in the education process. Enlist the dozens of stream protection and other environmental groups within the County to distribute this information.

- Definitions – SCA Conservation Area. Existing language regarding “...ditches and culverts, and other above or below ground conduits...” should remain as now written. SPAWN has requested that this definition be revised to limit which ditches and culverts the definition should apply to. The definition as now written protects existing property and will not result in any environmental degradation.

Recommendation: Do not change the SCA definition as currently shown regarding existing ditches and culverts.

I think that this is an important ordinance. It will benefit the community if done in a manner that protects fish and habitat, but not if it creates substantial damage to the County’s residents.

Sincerely,



Curt Kruger



May 9, 2013

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

RE: SCA—Comments to May 3rd Proposal

Dear Commissioners:

Contech is one of the nation's largest suppliers of pedestrian bridges along with products designed specifically for environmental protection. The various agencies in Marin have purchased numerous Contech bridges over the years.

I'd like to suggest you modify the wording regarding pedestrian bridges in your May 13th draft of the SCA ordinance. Both clear span truss and arched culvert designs require structure, abutments or foundations below the level of the top of bank, HOWEVER, they are usually designed so those features are placed outside the stream area and beyond the stream banks. I believe this is what you are trying to achieve.

I suggest you replace Section 22.63.030 B.2.d. with the following: Pedestrian bridges shall be designed and installed such that no portion of the structure or its related abutments extends between and below the top of banks of the stream.

Regards,

Curt Kruger
Stormwater Consultant

Contech Engineered Solutions LLC

3777 Vineyard Road Novato, CA 94947
Off: 415-897-8587 Mob 415-897-8587
c.kruger@conteches.com

From: rsdoughert@aol.com
To: [Thorsen, Suzanne](#)
Subject: stream setback ordinance
Date: Thursday, May 09, 2013 4:52:43 PM

Dear S. Thorsen, We own a ranch at 700 Nicasio Valley Road in Nicasio where the Nicasio Creek runs right through the property. This is an intermittent stream and there are no fish in it even in the wintertime because of the dam in the Nicasio Reservoir. Therefore it makes no sense whatsoever to apply this setback ordinance to this creek. By applying such an ordinance to this and other similar properties you confiscate by fiat millions of dollars of property value without compensation. We are totally and unequivocally opposed to this ordinance. Very truly yours, Robert S. Dougherty, owner 121-200-02 and 08. Please call: 415 662 2031

From: [Stratton, Debra](#)
To: [Thorsen, Suzanne](#)
Subject: FW: Stream Ordinance letter
Date: Thursday, May 09, 2013 5:07:34 PM

This will go to the PC by email tomorrow.

From: Peter Narodny [mailto:peter@marinrealestate.net]

Sent: Thursday, May 09, 2013 5:05 PM

To: Stratton, Debra

Subject: Fwd: Stream Ordinance letter

Dear Debra,

This is a letter I have sent to the Board of Supervisors and I would appreciate it if you would copy and give to the Planning Commission members for their meeting on the 13th. Thank you for your help.

Peter Narodny

Dear Members of the Planning Commission,

My wife Karin and I are writing as very concerned residents and owners in Sleepy Hollow who have read the proposed SCA Ordinance and realize the incredible negative impact that it will have on our community. We have lived here for many years and as real estate agents, we have sold many homes to people who desired the natural beauty and valued the pride of ownership which the people of the Hollow take in their property. Not only will this ordinance have a very serious negative impact on property values, but it imposes very unreasonable limitations and financial burdens on existing owners.

This ordinance will also greatly discourage buyers who are interested in the community when they see the questionable restrictions and the time consuming and expensive ordeal they will have to face when buying property here. Given that many of the properties in Sleepy Hollow are in some way contiguous or close to one of the several streams here, notwithstanding what can be considered an "ephemeral" stream, the majority of homes will be affected. I was always under the impression that Sleepy Hollow had its own zoning designation identified in the Countywide Plan, that protective regulations already exist, and the SHHA Creek Committee manages flood protection and has educated the neighborhood of the importance of being good stewards of the creeks and streams. I have never seen any evidence of any resident ever taking advantage of the creeks and streams and causing any harm to them, but rather taking pride and special care in what they represent.

The proposed Ordinance imposes very unnecessary and unreasonable restrictions which will have a huge negative impact and restricts the rights of property owners which I am sure is not the intent. I don't think you will find anyone who lives in this wonderful neighborhood who doesn't agree with this, but you will find that they do have much trepidation on the impact it will have on their homes. We ask that every consideration be made to exempt our community from this proposed Ordinance. Thank you very much for your consideration.

Peter and Karin Narodny

--

Peter Narodny
Frank Howard Allen Realtors
511 Sir Francis Drake Blvd.
Greenbrae, CA 94904
Office [\(415\) 925-3287](tel:(415)925-3287)
Fax [\(415\) 461-5215](tel:(415)461-5215)
DRE #00708646
peter@marinrealestate.net
www.marinrealestate.net

May 10, 2013

Comments to Marin County Planning Commission
RE: Proposed SCA Ordinance

As a property owner in the San Geronimo Valley, and County taxpayer, I am opposed to the SCA Ordinance in its currently drafted form. I recognize that the County is striving to enact the Ordinance to conform with its 2007 Countywide Plan, however it seems to me that this Ordinance is being pushed with expedience, without enough measured consideration given the very burdensome requirements and permitting process the Ordinance will impose on affected property owners.

The following are significant issues with the Ordinance that should be fully considered and addressed:

1. **Maps of affected properties are incomplete and unreliable:** I attended a community meeting on April 24 at the Kent Middle School where County staff and Supervisor Rice presented the proposed Ordinance. At that meeting Tom Lai and Suzanne Thorsen clearly stated that the current Stream map contains gross errors and omissions and is still under development!

The County is directing property owners to this map through the Stream Conservation Area Lookup map link on the SCA web page. There is no statement on the Lookup page that warns property owners that the map has known omissions and errors. And given that the County is directing property owners to this mapping tool as the primary way one can verify if a property is within a setback area, the inaccuracies and incompleteness of the map will result in a host of serious issues for both property owners, prospective property buyers, and the County.

For example, consider that if a person was currently looking to purchase property and working with their realtor, and they looked up a property through the online Lookup web portal: The current map showed that a property was not within a setback area, and based on this information, the person purchased that property. Later the map is amended and the property was then within a setback area and subject to the SCA Ordinance requirements. The person who had purchased the property, as well as the real estate company would have claims against the County. Both the owner's mortgage broker and lender could have Claims against the County because the loan on the property was based on an assessment and underwriting by those parties on information provided by the County that indicated the property (at time of purchase) was not in a setback area.

Also, a current property owner who may be making property development, improvement, or transaction decisions based on the current inaccurate maps, could be making these financially critical decisions based on maps that have been acknowledged to contain gross errors and omissions. To compound this problem, the County is providing no warning that the maps are inaccurate and should not be relied upon for these types of property acquisition, development, improvement, or transactional decisions.

It seems to me that the County is setting itself up, along with County taxpayers, for costly and cumbersome litigation in the future - just based on this one issue around the maps.

2. No retroactive mapping should be allowed:

Related to the above comment, the current Ordinance allows the County to amend the Stream Conservation Area Maps after the Ordinance adoption.

The County should complete the mapping process before a final Ordinance is adopted in order for citizens to have reliable data on which to base property-related decisions. Additionally, maps should not be amended by the County following adoption of the Ordinance. However, property owners should be allowed to request the County correct the maps if a property owner can demonstrate that an error in mapping was made.

3. Unfair treatment of properties:

The 2007 Countywide Plan authorizes unequal treatment of similarly-zoned residential properties. What legal basis gives the County the authority to impose a minimum 100-foot setback regardless of lot size on property owners in the Inland-Rural Corridor, while the City Centered Corridor setbacks are variable and directly related to lot size?

If stream protection, habitat and water quality are the goals, and given the Inland-Rural corridor is substantially less developed (impacted) than the City Centered Corridor, this apparent unequal application of setbacks appears to ‘punish’ those property owners in an area of the County where streams have the greatest amount of existing natural (un-channelized) flow, the greatest amount of riparian vegetation cover, and where there is the least amount of impervious surface land cover.

4. Setbacks should be consistent:

The variable setbacks related to lot size in the City Centered corridor are problematic. What is the scientific basis that justifies a 100-foot setback (vs. 50-foot) if a parcel is even one square foot over 2 acres?

Also, the way the setbacks are applied to a parcel should take into account the relative location of the stream/setback related to usable parcel land. If a stream cut through the middle of a 0.6-acre parcel and 50-foot setbacks were applied, the remaining parcel space may not be reasonably developable land. This will be taking. What if the remaining lot space is extremely steep and unbuildable?

If it becomes so financially cumbersome to develop a property (because of proposed permit requirements, assessments, mitigations, etc.) due to restrictions imposed by the Ordinance, that property owners will not be able to use their property, this will be a taking. Is this the intent of the Ordinance - to make development, use and enjoyment of one's property (in some cases) unfeasible?

Setbacks could be applied to parcels with a provision that a setback could only affect a maximum percent of a lot's developable area. This would provide a much more balanced application of setbacks in supporting the goal of stream protection, while also protecting property owner's rights.

In addition, a 35' setback was cited by the County's 2009 Salmon Enhancement Plan report, as adequate to protect riparian vegetation and shade streams to regulate water temperature, to protect streams from sediment for water quality, and allow for natural stream channel movement and protect banks.

If the current Ordinance is adopted as drafted it will:

- Impact property values.
- Impact the County's real estate market and economic recovery.
- Impact County tax revenues.
- Result in litigation against the County costing all County taxpayers.

-Koa Pickering
Woodacre

N. Morgan
P.O. Box 5566
Novato, CA 94948

May 13, 2013

Marin County Planning Commission

ref. proposed Stream Conservation Area Ordinance

Dear Sir:

I am opposed to the proposed amendments and Stream Conservation Area Ordinance for the following reasons:

The ordinance is a "taking" in the legal sense of an enormous area of privately owned land without any compensation for the land owners.

The 200 foot wide strips of land to be effectively condemned are without any justification of need --- they serve only to increase government control over all the citizens.

The County is giving itself the authority to use the seized land for any purpose whatever with no legal recourse possible from it's citizens.

The County exempts itself from any permit requirements for building or land usage, and exempts itself from any environmental studies or requirements, or objections to the land uses from the private owners.

If the County constructs buildings on the seized properties, the land owners can be forced to pay additional property tax on the value of the County buildings.

I envision that the County may be planning to set up, for example, homeless encampments on these properties. (Why not, its free land, right? Use it for anything we want. And no one can complain legally)

Sincerely yours,



Nicolas Morgan

10 May 2013

TO: Marin County Planning Commission:
FR: SPAWN
RE: SCA DRAFT Ordinance—Proposed New Changes

Dear Planning Commissioners:

The new proposed Stream Conservation Ordinance (SCA) changes to the Draft ordinance do little if anything to improve the initial drafts failure to adequately protect creekside habitat. In several instances, the proposed changes weaken the ordinance and allow for continued destruction of riparian habitat—the primary reason for the continued decline of critically endangered coho salmon.

1. **The County Wide Plan calls for no net loss of habitat.** The current draft ordinance allows lawns or other landscaping not deemed native riparian habitat (see #3, below) inside the SCA to be converted to buildings, patios, etc. and to provide for no mitigation against this loss of habitat. The draft ordinance simply does so by changing the definition of habitat to dis-include lawns and other disturbed areas, effectively eliminating the vast majority of the 100-foot SCA buffer from protection, and any obligation to mitigate for conversion of habitat to buildings or other new impervious surfaces. Lawns and non-native landscapes provide a reduced, but significant level of ecological functions that support healthy streams including (slowing and reducing water delivery to creeks that cause erosion, filtering pollutants and sediment before water enters creeks, providing food and habitat to insects and other prey species for aquatic life, providing shade and future woody debris structure). Placing additional buidlings, patios, etc.in the 100-foot riparian area further reduces the ecological function of already these already altered habitat areas.

ANY ADDITIONAL LOSS OF HABITAT THAT SUPPORTS VEGETATION BUT IS THEN DEVELOPED SHOULD BE MITIGATED.

2. **The proposed 5/13/13 change further partially exacerbates the problem by adding a 120 square-foot exemption to the 500 square-foot ministerial allowance per parcel.** Now a total 620 square feet of new development on each of the 3000+ parcels, equaling the equivalent of five new Costco's without any riparian mitigation.

ANY ADDITIONAL LOSS OF HABITAT THAT SUPPORTS VEGETATION BUT IS THEN DEVELOPED SHOULD BE MITIGATED

3. **The 5/13/13 change to the draft ordinance further eliminates protection of native habitat.** We are concerned that the change narrows the definition riparian habitat to only those species that are dependent on a high water table. In so doing, it rejects many of the species on the list of riparian species it provides in the SGV Salmon Enhancement Plan, including such species as redwoods and bays, probably the most common species that are currently found in riparian habitats of Marin County.

ALL NATIVE SPECIES GROWING IN THE 100-FOOT RIPARIAN BUFFER AREA SHOULD BE CONSIDERED RIPARIAN HABITAT SPECIES. ANY LOSS OF SUCH VEGETATION ALONG STREAMS MUST BE MITIGATED.

The 5/13/13 Ordinance changes re disclosures remain in the wrong direction.

The Ordinance still leaves open the door for “double-dip” use of the same mitigation area and selective enforcement based on neighborhood grudges.

The 5/13/13 Ordinance changes re staging remain in the wrong direction

A staged roll-out is critical due to the complexity of this Ordinance, particularly given the newly described SMPs which have not previously been subject to any public review and contain unresolved contradictions.

SPAWN's specific comments on this 5/13/13 draft follow:

22.33.020 B 3 (PC Attachment #1 pg 1)

The change does not address SPAWN's concern (Addendum #1). As noted, the CWP BIO 4.1 exempts only City-Centered parcels under 0.5 acres, but this change exempts all such parcels in the City Centered Corridor. Since there are very few parcels in the City Centered Corridor larger than 0.5 acres, and fewer still behind levees or dikes, this appears to be an "earmark" carved out to benefit particular parcel owner(s). SPAWN requests that the public should know which specific parcel benefit from this "earmark."

22.33.020 B 5 (PC Attachment #1 pg 1)

The change does not address SPAWN's concern (Addendum #2) A blanket exclusion for all Government activity is problematic and would allow, for example, the County Department of Public Works to locate a corporation yard in an SCA site that was closer to expected work rather than at a site more distant from expected work but outside an SCA. The county should not impose conditions from which it exempts its own activities.

22.33.030 B 5 (PC Attachment #1 pg 3)

The change does not address SPAWN's concern (ISSUE # 3) that the Ordinance allow an interim 35-foot SCA setback for mapped ephemeral creeks and follow the CWP BIO 4.1 definition of a protected ephemeral tributary: "*(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.*"

22.33.030 B 6 (PC Attachment #1 pg 3)

This change introduces an entirely new contradiction. 22.33.030 B. requires site assessments on all parcels to determine if any wood vegetation extends beyond the SCA setback, yet 22.33.030 B. 6 exempts some parcels (zoned A, ARP or APZ) from this site assessment requirement on the basis of aerial photography. Even the best aerial photography has insufficient definition to identify small woody vegetation and cannot distinguish riparian from facultative vegetation. Nevertheless, SPAWN is sympathetic to the "safe harbor concern" raised by the Farm Bureau, but only when modified as follows: "*On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation extending more than 100 feet landward beyond the top of bank is based on the most recent aerial photography on file with the County as of (date of ordinance adoption).*"

22.63.020 B 1 e (PC Attachment #1 pg 6)

The change does not address SPAWN's concern (Addendum #2). The county should not impose conditions from which it exempts its own activities. As noted, this section should be moved to 22.63.020 B 2, so that activities of a government agency are exempt only after a determination that they (per the BIO 4.1) minimize impacts to stream function and to fish and wildlife habitat.

22.63.020 B 1 i (PC Attachment #1 pg 6)

SPAWN requests the following clarification: Exempt fences include any fence within or on the perimeter of a previously disturbed area that existed prior to February 25, 2013.

22.63.020 B 1 j (PC Attachment #1 pg 6)

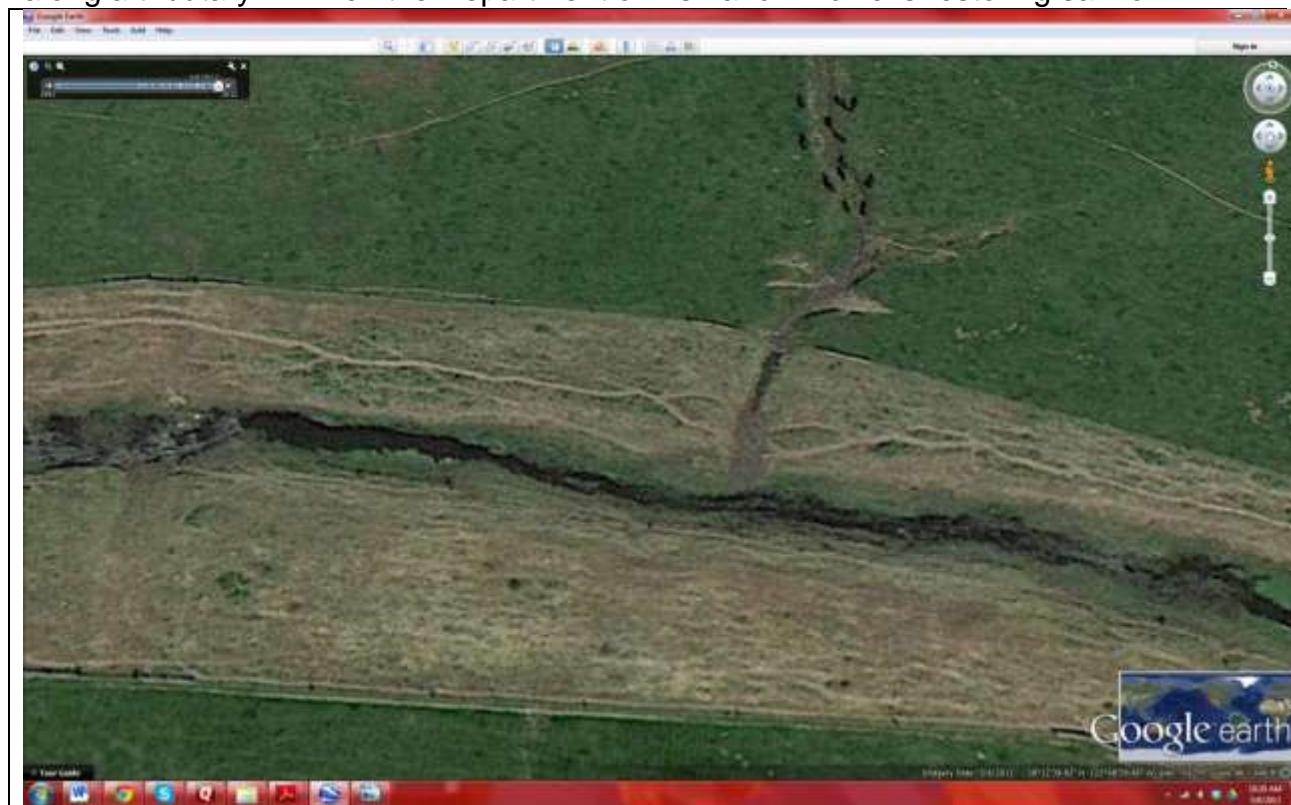
The change does address SPAWN's concerns about irrationality exempting equestrian uses as agricultural but does not address SPAWN's concern (Addendum #4) that this agricultural exemption should follow the language of CWP BIO 4.1: *Agricultural uses on property zoned for agriculture (A, ARP or APZ) including the removal or trimming of vegetation planted for a commercial enterprise that do not result in the removal of woody riparian vegetation or animal confinement within the SCA or result in a substantial increase in sedimentation.*

Additionally, SPAWN vigorously disagrees with new definition of "confinement" (PC Attachment #4 pg 5) "*At the request of the Marin County Farm Bureau, clarification of "animal confinement" has been provided in the FAQs (Attachment #5). This term refers to permanent facilities, such as feedlots, pens and barns, where animals are concentrated for extended periods of time but does not encompass pastures or temporary enclosures. While existing facilities would be considered "disturbed area", new animal confinement facilities would require approval of an SCA Permit.*"

This exemption is not justified by the CWP BIO 4.1, or 22.63.020 B 1. J, both of which refer to "confinement" as a use, not a structure. New agricultural structures (confinement facilities, retail and processing facilities, etc.) are already subject to SCA protections (although SPAWN requested that this be clarified per Addendum #4). Consequently, it is superfluous to redefine "confinement" as referring only to "confinement structures." The effect of this change is to allow continuing significant damage to SCA from on-going uses as pasture. The photo below shows a pasture that is fenced entirely within the SCA (see 100' scale at bottom left).



Photo # 2 (below) shows a close up of cattle entering the pasture and the resulting damage to the SCA (lack of vegetation and erosion from cattle trails). This “pasture” is along a tributary in which the Department of Fish and Wildlife is restoring salmon.



22.63.020 B 2 (PC Attachment #1 pg 6):

Thank you for the clarification requested in SPAWN ISSUE #1 that the location of proposed development can have significant or immaterial impact on defensible space. However, SPAWN requests that this impact be confirmed in writing and made a condition of the approval: *Where appropriate, the Director shall confirm in writing the extent of vegetation modification and management requirements with the Fire Marshal.*

22.63.020 B 2 a (PC Attachment #1 pg 7):

Thank you for the clarification requested in SPAWN ISSUE #1 to eliminate confusion about “horizontal incursion, however, the Ordinance still does not incentivize by exempting subject to determination (new suggested paragraph) Private vegetation restoration projects that enhance the species, composition or area of the vegetation on the approved SCA lists of native riparian woody and herbaceous vegetation.

22.63.020 B 2 b (PC Attachment #1 pg 7):

Thank you for some of the clarification requested in SPAWN ISSUE #1. However, we believe that the 120 sq. ft. exemption should be part of (not additional to) the 500 sq ft suggested in the CWP and that *“the improvement is located at least 20-35 feet from the top of the stream bank* (the draft’s suggested 20 foot setback is already codified in the DPW setback Ordinance and thus represents no additional protection when the point of the SCA Ordinance was to do so. Further, SPAWN’s support for this cumulative (one time) 120 sq. ft. exemption is expressly contingent on the balance of the development on greenfield areas (lawns, landscaping) being mitigated 1:1 (see our following comment on 22.63.030 A 1).

22.63.030 A 1 (PC Attachment #1 pg. 7):

As noted above, the 120 sq. ft. exemption should be part of (not additional to) the 500 sq. ft. suggested in the CWP, thus the remaining square footage eligible for a Tier 1 permit would be a cumulative (one-time) 380 sq. ft. Further and as noted in SPAWN ISSUE #1, we believe the combined one-time 500 sq. ft. limit should apply to all of the development listed in 22.63.030 A. 2-7, including new or expanded water or septic facilities, new decks patios etc. This provides a clear upper limit to the Director's discretion to allow a ministerial permit as well as providing certainty to property owners. The SMP's (PC attachment #3 pg 6 appear to allow Tier 1 permits when "a disturbed area does not exceed 2500 square feet. That is far too large for a discretionary permit in this highly sensitive area; a one-time total of 500 square feet should be the limit. Lastly and again, SPAWN's support for this cumulative ("one time") combined 500 sq ft (120 sq ft exemption plus 380 sq ft Tier 1) is expressly contingent on the balance of the development on greenfield areas (lawns, landscaping) being mitigated 1:1.

22.63.030 A. 8 (PC Attachment #1 pg 7):

Thank you for the clarification requested in SPAWN Addendum #2 that flood control projects are not Tier 1

22.63.030 B 4 (PC Attachment #1 pg 8):

SPAWN vigorously objects to the new change allowing a professional site inspector retained by the property-owner, but unknown to the County. This is a manifest conflict of interest and an invitation to abuse and cronyism. Property owners inclined to deprive other property owners of the economic value of their property by improperly enhancing their own property would be steered to professionals that are inclined to further this outcome. While SPAWN does not object to property-owners retaining some choice of professionals, this should be from a list of professionals approved by the County based on the professional's qualifications, as currently done for septic inspections.

DEFINITION: Riparian Vegetation (PC Attachment #1 pg 12):

As noted, in SPAWN ISSUE #2, this strict definition does not protect the majority of vegetation associated with a watercourse and critical to salmon habitat. If Muir Woods were in private hands, none of the Redwoods there would qualify, yet coho salmon historically bred in redwood-dominated segments of Marin's streams.

DEFINITION: Stream Conservation Area, Top of Bank (PC Attachment #1 pg 12):

These changes do not address the concerns noted in SPAWN Addendum #3, in that the Ordinance still proposes to delete the CWP Glossary definition: "Streams *include natural waterways that have been channelized*" Thus the subsequent Ordinance definition of "top of bank" improperly excludes "*natural waterways that have been channelized*" This unwarranted exclusion could open the door to an interpretation that a stream segment with a bulkhead or rip rap has been "*modified*," thus there is no longer any "natural channel," no "top of bank," and thus no SCA extending out from the bulkhead, rip-rap or from the lip of a constructed channel that contains a once naturally flowing waterway. Such an interpretation, which would incentivize channel modification, would be the opposite to the intent of the CWP BIO-4.4 Promote Natural Stream Channel Function.

STANDARD MANAGEMENT PRACTICES (PC Attachment #3)

This section introduces complexities that have not previously been subject to any public review and unresolved contradictions with other aspects of the draft Ordinance.

The Staff Supplemental Report (Item #4 pg 4) states “*The SMP’s do not allow vegetation removal within 15 feet of a stream.*” However, if you look at the SMP’s (PC Attachment #3 page 1), you see first that the use of the term “avoid” does not mean either “not allow” or “prohibit.” Instead “avoid” simply means that if the project “avoids” the listed vegetation, then it qualifies for a Tier 1 permit, but if it does not ‘avoid’ the listed vegetation, then it is not “prohibited,” but rather must apply for a Tier 2 permit in order to remove the vegetation.

Further, the use of the term “avoid” is limited to “riparian shrubs” and “herbaceous and other ground cover vegetation” (bullets #3 and #5). Riparian trees, perhaps the most important are not covered.

Further, the SMP (pg 1): “*Limit removal of riparian trees to no more than one tree with a single trunk 20” or greater diameter at breast height (dbh), no more than two tree trunks with dbh between 14 and 20” dbh, and no more than four tree trunks between 8 and 14” dbh. Total of all tree trunk sizes removed cannot be greater than 40” dbh*” This appears to allow unlimited removal of small riparian trees as well as conflicting with Marin’s Tree Ordinance: “*A Tree Removal Permit is required for the removal of trees in the following instances...The tree is a “Protected Tree” or “Heritage Tree” and is located in a Stream Conservation Area...*”

Further, the SMP states: *Replace removed woody riparian vegetation at a minimum ratio of 2:1 (individuals planted to individuals removed).* This means that, for existence, that when a big-leaf maple 50 feet tall with a drip line encompassing 2,000 sq. feet is removed, it can be replaced with two Big-Leaf maples in one-gallon pots. Wetland mitigation is “by area,” not “by plant.” This SMP must be changed to replant the drip line area removed at a 2:1 ratio.

Further still, BIO-4.i states “*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.*” Yet the SMP requires a 2:1 replacement only for removed “woody riparian vegetation (“riparian trees” and “riparian shrubs”), but not “herbaceous riparian vegetation” as per BIO -4.i.

Further, the SMPs reference to temperature (PC Attachment #3 page 5), regulation is defective in a number of ways:

- 1) The reference to “closest distance from the stream top of bank” needs to be clarified as reffing to the far stream bank, not the near stream bank, because it is the stream itself that is proposed to be shaded by the tree, not the area of ground adjacent to the stream.

- 2) The handy 1:1 ratio of the distance from the (far) bank to the height of the tree works only on average, but in the summer, when the temperature issue is most critical, the sun is higher than 45%, the shadows cast are shorter and thus the ratio must be adjusted to 1½:1 height to distance to the far bank.

Lastly, the SMP (pg 5) again does not address the fact that the majority of vegetation that regulated Stream temperature (a critical factor for salmon) is no longer “riparian vegetation as strictly defined in the Ordinance. The 2009 Salmon Enhancement Plan (pg. 3-29) showed that vegetation that meets the proposed strict definition of “riparian vegetation: represent only 14% of the tree species observed....the other 86% is unprotected by the SCA Ordinance. Without protecting facultative vegetation (redwoods, bays, etc.) that now perform this temperature regulation (as well as back stabilization, food and habitat for salmon), this SMP fails to achieve its stated purpose.

**Statement of Jack Wilkinson, President
Marin Association of REALTORS®
Before the Marin County Planning Commission
May 13, 2013**

Good morning. I am Jack Wilkinson, president of the Marin Association of REALTORS®. On behalf of our 1,400 members, I want to thank you for the opportunity to speak to you today about the proposed expanded Stream Conservation Area ordinance.

The Marin Association of REALTORS® recognizes and appreciates the importance of protecting our local environment and wildlife and the good intentions that are inherent in the proposal. However, we must oppose the legislation for the following reasons:

- It is ambiguous and creates uncertainties about which properties in the unincorporated areas of Marin will be affected.
- The measure will have a negative impact on property values, property rights, lending, underwriting, the marketability of properties, and the local economy
- The legislation will make property appraisals more difficult and challenging.
- The language in the proposal is written in an arbitrary manner and subject to interpretation by the assigned planner.

The Marin Association of REALTORS® has a long and proud track record of supporting legislation and initiatives that help safeguard our environment and our quality of life, and opposing projects that will harm nature and our local ecosystems. For example:

- We have called on local governments across the county to implement proactive plans to help protect the environment from faulty sewer laterals.
- We sponsor the online Marin Housing Turnover Index, which demonstrates the folly and futility of linking environmental or other mandates to real estate transactions.
- We successfully opposed plans by the state of California to conduct an aerial spraying campaign against the light brown apple moth.

Despite its good intentions, the proposed expansion of the Stream Conservation Area ordinance is deeply flawed and should not become law. We ask that you do the right thing and join with us in opposing it.

Thank you.

May 13, 2013

Laura Chariton, Watershed Alliance of
Marin
446 Panoramic Hwy.
Mill Valley, CA 94941
laurachariton@comcast.net

To: Marin County Planning Commission and Staff

Dear Planning Commissioners and Planning Staff;
We concur with the Water Board and Scientist's letter from the Salmon Protection and Watershed Network regarding the draft Stream Conservation Area ordinance. We cite below, as a reminder the tenets of the CWP 2007, that the ordinance is bound by, and offer that the CWP has parts in the Introduction and body that are primary to the role of the ordinance.

From a scientific standpoint; unprotected ephemerals and a 20 foot setback in the urban corridor that is too undersized, fail in both sustainability and ecological function, i.e. hydraulic capacity, stream migration, erosion, soil stabilization, carbon sequestration, species diversity, pollutant filtration, habitat, carbon sequestration, stream temperature protection and detritus and large wood supply. Failing to mitigate damages and reverse losses of riparian zones is in contradiction to the CWP 2007, California Department of Fish And Wildlife code and the Water Board mandates. In this, the obligations of the CWP 2007 stated below remain unfulfilled by this iteration of the draft SCA ordinance.

CWP 1.4 Link equity, economy, and the environment locally, regionally, and globally.

We will improve the vitality of our community, economy, and environment.

We will seek innovations that provide multiple benefits.

2. Minimize the use of finite resources, and use all resources efficiently and effectively. We will reduce overall and individual consumption, and reuse and recycle resources. We will reduce waste by optimizing the full life cycle of products and processes.

3. Reduce the use and minimize the release of hazardous materials.

We will continue to make progress toward eliminating the release of substances that cause damage to natural systems. We will use a precautionary approach to prevent environmentally caused diseases.

4. Reduce greenhouse gas emissions that contribute to global warming.

We will join other communities addressing climate change by lowering our greenhouse gas emissions. We will increase the use of renewable resources which do not have a negative impact on the earth's climate.

5. Preserve our natural assets.

We will continue to protect and restore open space, wilderness, and damaged ecosystems, and enhance habitats for biodiversity.

CWP1.7 - The Role of Science

Achieving and maintaining sustainability requires keeping up with science. At times, land use and other public policy decisions operate within an institutional framework that does not reflect current scientific information.

This is understandable, as cutting edge science is always on the move. For example, the multiple causes and effects of climate change, described below, are now well established, and current land use decision making needs to reflect the link between fossil fuel consumption and sea level rise. Keeping up with science is an underlying principle of this Plan. Toward that end, employing evidence-based strategies combined with up-to-date scientific knowledge will provide sound guidelines for taking care of the land, our communities, and the generations that will follow us.

CWP 2.3- Framework

The Vision

The 21st century in Marin will include a restored natural environment that supports a rich array of native plants and animals, and provides for human needs. Residents and visitors will enjoy clean air and water. Native habitat and essential corridors for wildlife movement and plant dispersal will be protected. Watershed function will improve with enhancements to water infiltration, preservation of stream-flow capacity and riparian vegetation, and restoration of stream corridors, marshlands, and other natural wetlands.

CWP Bio 4.1 - 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.

State Water Resources Control Board RESOLUTION NO. 2008-0026.

Over 85 percent of historic wetland and riparian acreage in California has been lost according to published research estimates. Remaining resources continue to be vulnerable to future impacts from projected population growth, land development, sea level rise, and climate change in California.

The value of wetlands and riparian areas has been recognized in California through the enactment of the California Wetlands Conservation Policy that sets a goal to "ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property" (Executive Order W-59-93)

http://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.shtml
and

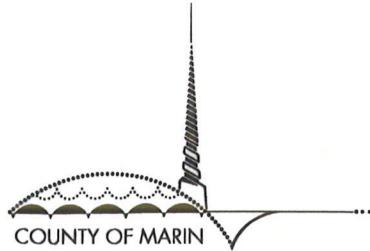
"Prevention of Degradation and Restoration of Aquatic Systems"

Federal standards also direct the states to protect water bodies with anti-degradation provisions so that these waters can continue to support their designated uses. The Basin Plan specifies a policy of no net loss of wetlands, [State Water Board in Resolution No. 2008-0026, the Wetland and Riparian Area Protection Policy] and specifies the prevention of degradation of main stem and tributary stream channels in the San Francisco Bay Region.

Sincerely,



Laura Chariton, MA Riparian Policy and Restoration, Watershed Alliance of Marin



MARIN COUNTY PARKS

Preservation • Recreation



- OPEN SPACE DISTRICT
- REGIONAL PARKS & PATHWAYS
- COMMUNITY PARKS
- LANDSCAPE SERVICES

Linda Dahl
DIRECTOR & GENERAL MANAGER

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May 13, 2013

Suzanne Thorsen, Planner
Marin County Community Development Agency

SUBJECT: Stream Conservation Area Plan

DISCUSSION:

As the IPM Coordinator, I am writing on behalf of the Integrated Pest Management (IPM) Commission to express the Commission's concerns about the possibility of inappropriate application of chemicals near streams. IPM principles can be very useful to control unwanted pests or vegetation and can support the Countywide Plan's Stream Conservation Area (SCA) goals. One way this can be accomplished would be through the promotion of IPM Best Management Practices near streams as part of the "tool kit" that is being developed to supplement the proposed SCA Ordinance.

The county's IPM Ordinance and Policy do not apply to private property, but the principles and practices of IPM make a great deal of sense. There are many existing laws and regulations that already apply to chemical application near waterways to protect that resource. Unfortunately, the laws and regulations are best understood and considered by professionals and can be misunderstood by members of the public that are not specially educated and trained in their use. The IPM BMPs and the process they represent. would go a long way to protect the stream habitat.

Thank you for the opportunity to relay this information and request.

SIGNATURE:

Ed Hulme
Integrated Pest Management Coordinator