

# COMMUNITY DEVELOPMENT AGENCY

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DIRECTOR

June 18, 2013

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Marin County Board of Supervisors  
3501 Civic Center Drive  
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**SUBJECT:** Proposed ordinance amending Title 22 (Development Code) of the Marin County Code to implement the Stream Conservation Area policies and programs of the 2007 Marin Countywide Plan.

Building and Safety  
Environmental Health Services  
Planning  
Environmental Review  
Housing  
Sustainability  
Code Enforcement  
GIS  
Federal Grants

Dear Supervisors,

**RECOMMENDATION:**

On behalf of the Planning Commission, staff recommends that your Board take the following actions:

1. Review the administrative record, conduct a public hearing, and enact the proposed ordinance amending Title 22 (Development Code) of the Marin County Code to implement the Stream Conservation Area (SCA) policies and programs of the Countywide Plan; and
2. Provide direction to staff with respect to amendments to the Planning Division fee schedule and to schedule a first reading of an Ordinance amending the fee schedule on July 9, 2013.

[www.marincounty.org/cda](http://www.marincounty.org/cda)

**SUMMARY:**

The Marin Countywide Plan (CWP) was approved by the Board of Supervisors on November 6, 2007. Goal BIO-4 (Riparian Conservation) of the CWP establishes policies and programs for the Stream Conservation Area (SCA), including SCA setbacks along streams. In particular, program BIO-4.a requires the County to adopt an expanded SCA ordinance to implement the CWP standards. Approval of an expanded SCA ordinance would end the court-imposed injunction on the issuance of building permits that is currently in place for the SCA in the San Geronimo Valley.

**BACKGROUND:**

Stream buffers and stream protection have long been established in Marin County, dating back to the 1973 CWP, and most cities in the County regulate development near streams through setbacks. (Please refer to Attachment 3 for a comparison of the County's existing stream setback requirements to those of the cities and other comparable Counties.) The Stream Conservation Area (SCA) was first established in the 1982 CWP to protect riparian systems, streams, and related habitats. At that time, the CWP required a SCA setback of 100 feet on either side of blue line (perennial and intermittent streams) in the Inland Rural and Coastal Corridors, and

50 feet or more on infill properties in the City-Centered Corridor. Since then, each successive update of the CWP has carried forward and updated the SCA policies.

The 2007 CWP carried forward the SCA policies, refined policies for ephemeral streams, and reduced the SCA buffer (setback) from a minimum of 50 feet to 20 feet for parcels in the City-Centered Corridor that are 0.5 acres in size or smaller (Goal BIO-4). Although the SCA buffers and other policies are already applied to properties with planned district zoning through Design Review, the 2007 CWP identified adoption of an expanded SCA Ordinance for all properties as a short-term (1-4 years), high priority implementing program (BIO-4.a.) to ensure that SCA requirements are applied consistently to all unincorporated properties traversed or bordered by streams. (Please refer to Attachment 4 for a comparison of development types by type of zoning that are currently subject to compliance with the SCA and that would be subject to the SCA as a result of the proposed ordinance.)

**DISCUSSION:**

The proposed Development Code amendments implement the programs and policies of Countywide Plan Goal BIO-4 (Riparian Conservation) by:

- Establishing an SCA setback for all mapped streams in unincorporated Marin, outside the Coastal Zone (streams in the Coastal Zone are protected through separate standards contained in the Local Coastal Program);
- Providing exemptions for maintenance, repair, and replacement work, vegetation management, improvements to protect life and property, and limited development in areas that had been improved and maintained;
- Establishing a tiered SCA review structure that applies SCA permit standards and review procedures to those development and vegetation removal activities within the SCA that are most likely to impact riparian and stream habitat, stream channels, and water quality; and
- Requiring best management practices as a standard condition of all SCA permits (“Standard Management Practices”).

Unlike a building setback, the SCA setback functions as a special permit area in which development activity is evaluated for potential stream impacts. It does not necessarily eliminate or restrict the use of land within the SCA, so long as adverse impacts to habitat, hydraulic capacity, and water quality are avoided. The proposed SCA requirements are encompassed primarily in the following two Development Code Chapters and by new or revised definitions in Section 22.130.30 (Definitions) of the Development Code:

**Chapter 22.33 – Stream Protection:** Establishes the SCA and the areas to which it is applicable and sets standards for stream protection.

**Chapter 22.63 – Stream Conservation Area Permit:** Identifies the types of development subject to an SCA permit, establishes exemptions and a tiered permit structure, and sets development standards, application requirements, permit procedures and required findings.

The proposed ordinance is focused on new development activity in the SCA and would not affect existing authorized structures and ongoing uses. Many common residential activities would be exempt from an SCA permit, including second story additions and minor improvements such as accessory structures under 120 square feet in size located in previously disturbed areas, vegetation management to protect life and property, and maintenance, repair, and replacement of structures. For other types of new development, two permit tiers are proposed:

**Tier 1** is a ministerial permit (i.e., staff review and approval), that would be issued subject to compliance with development standards, standard management practices (SMPs) and a site assessment to identify the limits of the SCA setback and the extent of woody riparian vegetation. Due to the limited scope of the Tier 1 permit, site assessment can be completed by staff in most cases or through a fixed-rate consulting agreement where necessary. The Tier 1 permit is proposed as a low cost permit that requires no public review, commensurate with the limited scope of work. The vast majority of SCA permits would fall into the Tier 1 category, including:

- Residential additions with a cumulative footprint of up to 500 square feet that are not closer to the stream than the existing homes;
- New accessory structures (e.g., deck, patio, shed, studio, pool etc.) larger than 120 square feet;
- Removal of protected or heritage trees and native riparian vegetation; and
- Retaining walls, erosion control and drainage improvements upland from the stream’s top of bank.

**Tier 2** is a discretionary permit (i.e., public notice, staff-level decision or public hearing, subject to appeal) that would be required for any development activity that is not otherwise exempt or eligible for a Tier 1 permit as described above. Tier 2 permits would be required to comply with all standards applicable to Tier 1 permits, as well as mitigations identified through environmental review pursuant to the California Environmental Quality Act (CEQA).

For both permit tiers, SCA permits would be issued subject to findings that the proposed development does not adversely alter hydraulic capacity, habitat acreage, value or function, or water quality. (Please refer to Attachment 5 for the applicability of the exemptions and permit tiers to common residential improvements.)

**Key Issues:**

Staff received numerous comments and suggestions on the proposed ordinance from the public prior to, and in conjunction with, the Planning Commission’s review of the ordinance. All comments were considered by staff and the Commission and issues and concerns have been addressed through revisions to the ordinance. However, other suggestions and comments were not incorporated into the recommended ordinance because they are inconsistent with the CWP policies that govern the scope and procedures for protecting streams through the regulatory process. These are discussed in further detail below.

**1. SCA setback and community-based applicability:** CWP policy BIO-4.1 establishes SCA setbacks that extend from the top of stream bank to the limits of the specified setback distance, but could be expanded based on the results of a site assessment. The policy does not provide for SCA setback reductions. The minimum SCA setback in the City-Centered Corridor is 20 feet for lots less than one-half acre in size, 50 feet for lots from one-half to 2 acres in size, and 100 feet for lots greater than 2 acres in size. For all other CWP Corridors (Baylands, Inland Rural, Coastal), the minimum SCA setback is 100 feet or 50 feet from the edge of woody riparian vegetation, whichever is greater (The Coastal Zone is exempt from the proposed ordinance, however, as it is subject to the separate policies and standards of the Local Coastal Program which include development buffers for streams). The proposed ordinance directly implements the SCA setback provisions of the Countywide Plan.

*Public Comment:* The San Geronimo Valley Stewards and residents of San Geronimo Valley have recommended that the SCA setback be reduced to 35 feet from the top of stream bank, based on the San Geronimo Valley Salmon Enhancement Plan (2010). The Sleepy Hollow Homes Association (SHHA) has recommended that the SCA setback be scaled based upon usable lot area. SHHA's preference would be for Sleepy Hollow to be exempt from the SCA due to the urbanized character of the area, absence of Coho salmon, and distinct characteristics of urbanized streams. In a joint letter, the Salmon Protection and Watershed Network (SPAWN) and the SHHA recommended that implementation of the SCA in the City-Centered Corridor be deferred in order for SCA regulations focusing on the Coho watersheds to be adopted first as well as for the SCA maps to be improved.

*Response:* The proposed ordinance establishes minimum setback distances for the SCA as called for in the CWP. Establishing lesser or alternative setbacks in the SCA ordinance would be inconsistent with the CWP unless the SCA policies are amended to clearly establish different buffers. Exempting specific communities from the SCA ordinance would be difficult to support in light of CWP program BIO-4.1 which calls for adoption of an expanded SCA ordinance and the overall objective of CWP Goal BIO-4 to "protect and, where possible, restore the natural structure and function of riparian systems".

**2. Ephemeral streams:** The CWP designates SCAs along perennial, intermittent and ephemeral streams. As defined in the CWP, an ephemeral stream is "a watercourse that carries only surface runoff and flows during and immediately after periods of precipitation." Ditches and other conduits that transport storm runoff are excluded from the SCA. In accordance with CWP policy BIO-4.1, an ephemeral stream is subject to SCA 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. In the proposed ordinance, a mapped ephemeral stream is subject to the SCA if it supports riparian vegetation for a length of 100 feet or more. For discretionary (Tier 2) permits, special-status species are identified through environmental review.

*Public Comment:* Several members of the public and the County's consulting biologists commented during public hearings that the drainage function of ephemeral streams means they are unlikely to support riparian vegetation. (Please refer to the subsequent discussion of riparian vegetation.) The accuracy and completeness of mapping ephemeral streams has also been called into question, since the current County map identifies ephemeral streams only in selective communities, such as the San Geronimo Valley and Kent Woodlands.

SPAWN commented that the ordinance's exclusion of language requiring SCA protection for ephemeral streams that support special-status species represents a net loss in protection for Coho salmon. Other commenters have also noted the importance of protecting ephemeral streams for downstream habitat conditions, and some have suggested that a lesser setback along these streams should be considered. For example, SPAWN recommends a 100-foot SCA setback for ephemeral streams that are tributary to salmon streams, and a 35 foot setback for all other ephemeral streams.

Residents have commented that ephemeral streams are drainageways that are not the same as perennial streams, and should not be subject to the same SCA setback. They have also expressed concern about the cost for site assessments to determine the extent of riparian vegetation or conclusively identify an ephemeral stream.

*Response:* Ephemeral streams are protected by the proposed SCA ordinance to the extent the County can identify and map them, either as part of ongoing efforts using the County's Geographic Information System (GIS) (see CWP program BIO-4.c) or through the environmental review process. CWP policy BIO-4.1 does not differentiate the prescribed setbacks for ephemeral, perennial, and intermittent streams. Ephemeral streams supporting special-status species and/or sensitive natural community types would be identified through environmental review and protected consistent with the requirements of policy BIO-4.1.

**3. Riparian vegetation:** Riparian vegetation is defined in the CWP and is referenced as a trigger for SCA setbacks along ephemeral streams. Woody riparian vegetation (e.g., trees, shrubs and vines) which substantially extends landward from the top of bank may also result in an expanded SCA setback as determined through a site assessment. Additionally, the CWP policies prohibit removal of woody riparian vegetation for agricultural uses. The

extent of woody riparian vegetation is to be determined through the site assessment.

*Public Comment:* Several individuals and organizations have commented on the subject of riparian vegetation. Some have expressed concern about the ability to conclusively identify riparian vegetation, and others have suggested that riparian vegetation should include facultative species that are not necessarily reliant upon the stream but are part of the plant community associated with the stream. Residents have asked whether the SCA ordinance would prohibit removal of invasive species along streams that have woody characteristics but are not native riparian species. Residents have also requested better information about what species constitute riparian vegetation, and some have expressed concern about the extent of SCA setbacks in areas like San Geronimo Valley that are characterized by dense vegetation that can extend well upland from the stream and its immediate corridor.

*Response:* Protection of riparian vegetation is important to ensure that development in the SCA does not adversely impact habitat acreage or functions. The proposed ordinance is consistent with the CWP policies and definitions for riparian vegetation. Removal of invasive species outside of the stream banks is exempt from the proposed SCA ordinance.

Many concerns about excessive vegetation removal along streams are addressed through the requirement for an SCA permit to remove native protected and heritage trees in the SCA, as well as the standard management practices which limit the extent of native vegetation removal in the SCA setback. The extent of riparian vegetation will be determined through the site assessment that is required for all SCA permits, and conditions of permit approval will both limit the amount of vegetation removal and require replacement at a 2:1 ratio. Through implementation of the ordinance, additional information and resources can be provided to residents to assist them in identifying and protecting valuable streamside habitat.

**Planning Commission:** The Planning Commission considered the proposed SCA ordinance along with public comments and testimony during public hearings on April 1 and May 13, 2013. Following the May 13 hearing, the Planning Commission approved a Resolution recommending that your Board adopt amendments to Title 22 (Development Code) for the SCA.

While the Commission did not recommend amendments to the Countywide Plan, they noted that amendments may be necessary in the following areas to address some of the issues raised during the public hearing:

1. Clarify the applicability of the SCA to ephemeral streams and reconsider the appropriateness of the SCA setbacks for ephemeral streams;
2. Consider other means of identifying the SCA in cases where there is uncertainty using the "top of bank" approach; and.

3. Reconsider the appropriateness of limiting site assessments to only increase (but not decrease) the SCA setback based on a site-specific analysis.

**FISCAL IMPACT:**

The proposed ordinance could result in fiscal impacts to the General Fund. User fees are established in the Planning Division's fee schedule for various Planning-related permits and services. Revenue generated from the fees is used to partially offset the County costs associated with the permit review process (permit fees do not exceed the County cost). However, as a general proposition, fees should be set at level that does not exceed the cost of providing permit review services and avoids a disincentive to the property owner to comply with the County's land use regulations. The proposed ordinance will establish a new permit type and review procedures. Staff recommends that your Board set fees at \$750 (flat rate) for a Tier 1 SCA Permit, \$2,835 (flat rate) for a Tier 2 SCA Permit, and \$5,000 (deposit) for a Tier 2 Initial Study (unused deposit based fees are refunded to the applicant). No fees would be charged for work that is exempt from the ordinance.

It is difficult to use historic permit trends to forecast permit demand because the proposed ordinance would apply to work that currently does not require permits (such as removal of non-native vegetation, construction of small accessory buildings, and installation of patios and driveways). In addition, demand for home improvements and construction are affected by broader trends in the economy, and some development will be undertaken without permits. Factoring in the number of lots that are affected by the SCA, their developed status, the type of zoning, and other variables, staff projects the SCA ordinance will result in an annual increase of approximately 45 Tier 1 Permits and 15 Tier 2 Permits. Based on the recommended fees, this may result in a loss of approximately \$92,000 in flat fee revenues per year, and additional revenue losses depending on the extent of work required to complete Initial Studies. Staff is requesting direction from the Board with respect to this matter so that amendments to the Planning Division's fee schedule can be scheduled for a first reading by your Board on July 9, 2013. A second, and final, hearing on the fees could be scheduled as early as July 30, 2013.

Given the uncertainty over the projected demand for permits, no increase in staffing is recommended at the present time. Staff will monitor permit activity and work with the County Administrator's Office to make any adjustments necessary to meet the Planning program's cost recovery target.

**CONCLUSION:**

The proposed SCA Ordinance would implement the CWP's SCA policies and programs by establishing SCA setbacks, permitting requirements, and SCA standards to all properties in the unincorporated areas of the County outside the Coastal Zone. Public participation in the consideration of the proposed ordinance has been considerable, with constructive suggestions offered from individuals and organizations throughout the County. While many of these were accommodated, many more fall outside the scope of the CWP which forms the framework for the

ordinance. Despite this, the ordinance will implement the CWP policies and program to protect the County's streams and, where possible, restore the natural structure and function of riparian systems through protection of streamside habitat resources and promotion of low impact development consistent with current best management practices in the SCA setback.

**SIGNATURE:**



Suzanne Thorsen  
Planner



Brian C. Crawford  
Director

**REVIEWED BY: (These boxes must be checked)**

- |  |   |
|--|---|
| <input type="checkbox"/> Department of Finance     | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A            |
| <input type="checkbox"/> Human Resources           | <input checked="" type="checkbox"/> N/A |

**Attachments**

1. Ordinance Approving Amendments to Title 22 (Development Code) including Exhibit A
2. Planning Commission Resolution 13-002 Recommending Approval of the SCA Ordinance
3. Comparison of Existing Stream Setbacks for Marin County and Cities and Comparable Counties
4. Current Applicability of SCA Policies to Common Development Types
5. Common Residential Improvements in the SCA (Proposed Ordinance)

*(In the interest of conserving resources, the following attachments are included only in the Board of Supervisors hearing packet. Copies of these documents are available at the Community Development Agency for public review during the hours of 8:00 a.m. to 4:00 p.m. Monday through Thursday, and from [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca).)*

6. PC Minutes for April 1, 2013 and May 13, 2013
7. Staff Reports to PC Meetings for April 1, 2013 and May 13, 2013
8. Countywide Plan Policies BIO-4.1 to 4.20 and Programs BIO-4.a to 4.u
9. Countywide Plan Consistency Matrix
10. Draft Standard Management Practices
11. Frequently Asked Questions
12. Comments from Open Marin
13. Public Correspondence:
  - a. Sleepy Hollow Homes Association, 5/3/2013
  - b. California Trout, 5/8/2013

- c. Marin Municipal Water District, 6/5/2013
- d. Dee Lawrence, 6/10/2013
- e. Julie Schriebman, 6/10/2013
- f. San Geronimo Valley Planning Group, 6/10/2013
- g. San Geronimo Valley Stewards, 6/10/2013
- h. Steve Rehder, 6/10/2013
- i. Warren Glass, 6/10/2013
- j. Watershed Alliance of Marin, 6/10/2013
- k. Cyndi Cady, 6/11/2013
- l. David Lanatti, 6/11/2013
- m. Susan Halfacre, 6/11/2013
- n. Jennifer Olson, 6/11/2013

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING AMENDMENTS TO  
MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)  
FOR DEVELOPMENT IN STREAM CONSERVATION AREAS

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**SECTION I: FINDINGS**

The Board of Supervisors of the County of Marin ordains as follows:

I. WHEREAS, the Marin County Community Development Agency initiated the proposed amendments to the Marin County Code Title 22 (Development Code). The Development Code includes the zoning and subdivision regulations that govern the development and use of private and public land, buildings, and structures located within the unincorporated areas of Marin County. The proposed amendments (Exhibit A) would modify Title 22 (Development Code) by: (1) establishing Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permits); (2) providing new definitions and amending the text of definitions in Chapter 22.130 (Definitions); (3) amending the text of Sections 22.06.050 (Exemptions from Land Use Permit Requirements), 22.08.040 (Agricultural District Development Standards), 22.40 (Application Filing and Processing, Fees), 22.42.025 (Exemptions from Design Review), 22.42.045 (Design Review for Development Along Anadromous Fish Streams and Tributaries), 22.42.055 (Project Review Procedures), 22.56.050 (Decision and Findings for New Second Units) and 22.62.040 (Exemptions) as necessary to effectuate the SCA Ordinance. The proposed amendment is applicable to those perennial, intermittent and ephemeral streams identified in the Stream Conservation Area map and data that is maintained and periodically updated by the Marin County Community Development Agency.

II. WHEREAS, the Marin County Planning Commission conducted public hearings on April 1, 2013 and May 13, 2013 to consider the proposed amendments to the Development Code and voted to recommend that the Board of Supervisors adopt an ordinance approving the proposed amendments, as modified, to Marin County Code Title 22 (Development Code).

III. WHEREAS, the Marin County Board of Supervisors conducted a duly-noticed public hearing on June 18, 2013 to consider the proposed amendments to Marin County Code Title 22 (Development Code).

IV. WHEREAS, the Development Code implements the goals, policies and programs of the Marin Countywide Plan (CWP) which are necessary to protect the public health, safety, and welfare of residents and businesses in the unincorporated areas of Marin County.

V. WHEREAS, the 2007 Marin Countywide Plan (“CWP”) establishes goals, policies and implementing programs for riparian protection. Pursuant to Goal BIO-4 Riparian Conservation, the CWP designates Stream Conservation Areas along perennial, intermittent, and ephemeral streams. Development setbacks are established from all streams based upon the location of the top of stream bank or presence or riparian vegetation. The policies of the plan aim to promote

natural stream channel function, control exotic vegetation, protect riparian vegetation, promote riparian protection, maintain channel stability, and minimize runoff.

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

VII. WHEREAS, the proposed amendments to the Development Code establish the purpose, applicability, standards, permit procedures and findings necessary to implement the policies and programs of the CWP relating to riparian protection, including Programs BIO-4.a (Adopt an Expanded SCA Ordinance), BIO-4.d (Establish Functional Criteria for Land Uses in SCAs), BIO-4.e (Identify Proposals Within SCAs), BIO-4.f (Identify Potential Impacts to Riparian Systems), BIO-4.g (Require Site Assessment), BIO-4.h (Comply with SCA Criteria and Standards ), BIO-4.i (Replace Vegetation in SCAs), and BIO-4.q (Develop Standards Promoting Use of Permeable Materials).

VIII. WHEREAS, the Marin County Board of Supervisors certified a Final Environmental Impact Report (EIR) for the CWP prior to adoption of the CWP. The certified EIR adequately evaluated the Development Code, which functions as an implementing program to the CWP. A subsequent or supplemental EIR is not required pursuant to State CEQA Guidelines Sections 15162 and 15163 because the project does not involve or result in substantial changes to the 2007 Countywide Plan involving new or substantially more severe significant environmental effects, nor does the proposal involve new information that was not known at the time the EIR for the Countywide Plan was certified. Further, the project is exempt from CEQA pursuant to Sections 15307 and 15308 of the CEQA Guidelines (Classes 7 and 8 Protection of Natural Resources and Protection of the Environment) because the project sets the regulatory framework for permitting in accordance with the CWP and increases protections afforded to streams and riparian habitat as compared with current County regulations.

IX. WHEREAS, the proposed amendments to the Development Code have been guided by public engagement processes that included outreach and consultation with the following organizations or their representatives to discuss and accept comments on the draft ordinance: Marin Conservation League, Marin Audubon Society, Friends of Corte Madera Creek, Salmon Protection and Watershed Network (SPAWN), the San Geronimo Valley Stewards, the San Geronimo Valley Planning Group, San Geronimo Valley Technical Advisory Committee, Marin County Farm Bureau, Marin Association of Realtors, Marin CSA 13, Lucas Valley Homeowners Association, Kentfield Planning Advisory Board, Kent Woodlands Property Owners Association, Tam Design Review Board, Sleepy Hollow Homeowners Association, neighborhood groups, and other environmental, agricultural, and trade interest organizations, as well as a publicly-noticed SCA Open House and an online civic engagement forum (Open Marin). Further, the

Marin County Planning Commission held two duly-noticed public hearings, on April 1, 2013 and on May 13, 2013, to take public testimony and consider recommending that the Board of Supervisors adopt the SCA Ordinance.

**SECTION II: AMENDMENTS TO TITLE 22**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby adopts the amendments to Marin County Code Title 22 (Development Code) as depicted in Exhibit "A" of this Ordinance. The requirements of Marin County Code Section 22.01.040.F shall govern the applicability of the approved amendments to existing projects that are in the development review process, except that the amendments will apply to land use permit applications in the San Geronimo Valley Watershed that are complete at the time this ordinance takes effect.

**SECTION III: EFFECTIVE DATE**

This Ordinance shall be and is hereby declared to be in full force and effect as of ninety (90) days from and after the date of its passage, and shall be published once before the expiration date of fifteen (15) days after its passage, with the names of Supervisors voting for and against the same in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

**SECTION IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors and the County of Marin, State of California, on the 18<sup>th</sup> day of June 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

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JUDY ARNOLD, PRESIDENT  
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

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Matthew Hymel  
Clerk of the Board of Supervisors

**EXHIBIT “A” TO MARIN COUNTY BOARD OF SUPERVISORS  
ORDINANCE \_\_\_\_\_**

**SUBJECT 1:**

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

**CHAPTER 22.33 – STREAM PROTECTION**

**Sections:**

22.33.010 – Purpose of Chapter

22.33.020 – Applicability

22.33.030 – Stream Conservation Area General Requirements

**22.33.010 – Purpose of Chapter**

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

**22.33.020 – Applicability**

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

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

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

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

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

### **A. Requirements.**

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

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

### **B. SCA Setbacks.**

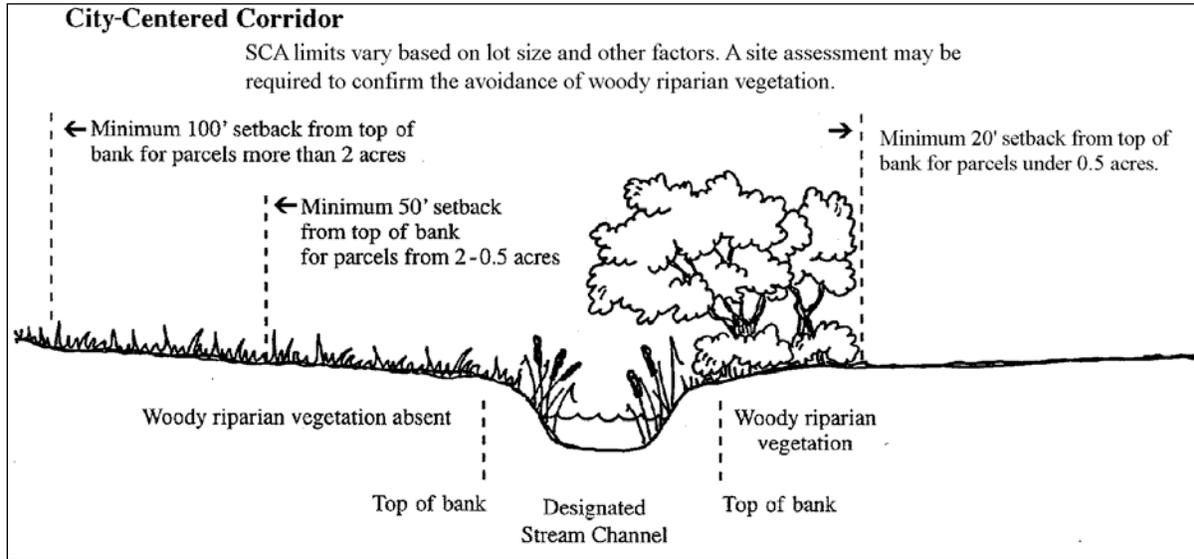
The Stream Conservation Area includes SCA setbacks as provided in this subsection.

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

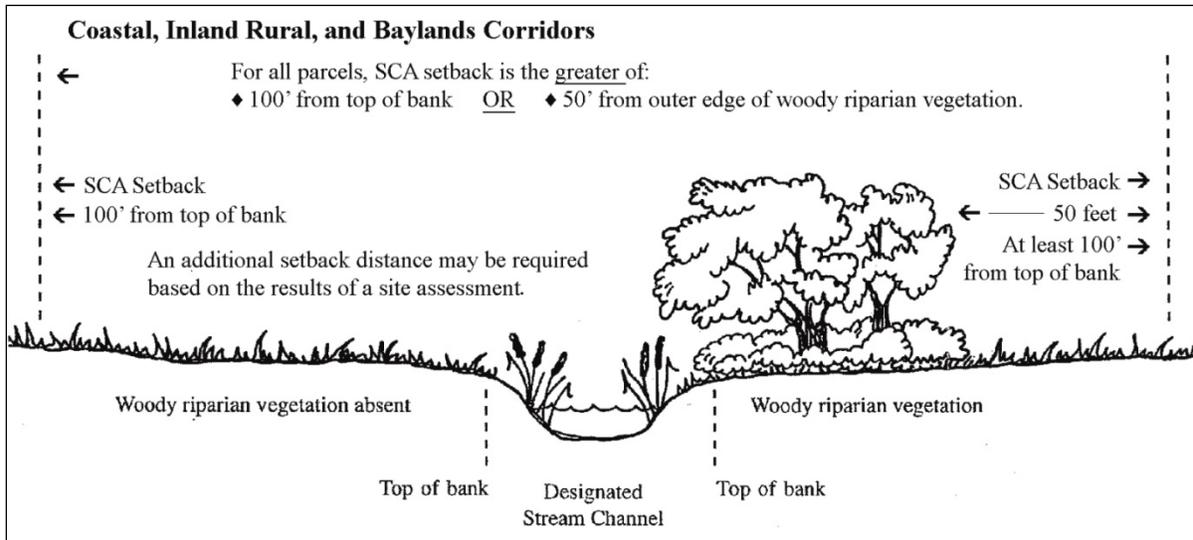
3. For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a length of 100 feet or more as determined by a qualified biologist or natural resources specialist.
4. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation shall be determined on the basis of the most recent aerial photography on file with the County as of February 25, 2013.
5. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.

Figure 3-16

Typical Cross-Section of a Stream Conservation Area



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



## **Chapter 22.63 – STREAM CONSERVATION AREA PERMIT**

### **Sections:**

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

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

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

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

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

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

## **B. Exemptions.**

### **1. Exempt without further determination.**

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

- 2. Exempt subject to determination.** The following activities are exempt subject to determination by the Director, based upon photographs, illustrations and other appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below. Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal. Documentation may include a letter or report from a licensed contractor and

photographs of the property and improvements or structures to verify the activity will comply with this Section.

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

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

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

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

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

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

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

including the precise stream location and limits of woody riparian vegetation; and identify Standard Management Practices corresponding to the nature of development that would ensure that the project will not cause adverse impacts to the stream and riparian resources. The Site Assessment (Tier 1) is part of the SCA Permit (Tier 1).

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

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

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

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

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

The Site Assessment (Tier 2) shall also include:

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

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

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

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

- A. Filing and processing.** Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).
- B. Project review procedure.** The Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).
- C. Public hearings.** When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.
- D. Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.

### **22.63.060 – Decision and findings**

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

**A. For a SCA (Tier 1) Permit:**

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

**B. For a SCA (Tier 2) Permit:**

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

**SUBJECT 2:**

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

Definitions are listed in alphabetical order.

...

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

...

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

...

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

...

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

...

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

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

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

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

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

...

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

...

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

### **SUBJECT 3:**

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

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

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

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

**SUBJECT 4:**

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

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

...

- E. Agricultural Processing.** A Use Permit is required: (1) if any agricultural products to be processed are not produced on the same site or on other agricultural properties located in Marin County that are owned or leased by the processing facility owner or operator; or

(2) if the building(s) or structure(s) used for processing activities exceed an aggregate floor area of 5,000 square feet. Agricultural products do not include additives or ingredients that are incidental to processing. . ~~New processing facilities shall comply with the stream conservation area standards established in the Countywide Plan.~~

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

**SUBJECT 5:**

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

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

**SUBJECT 6:**

**22.42.025 – Exemptions from Design Review**

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

...

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

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

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

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

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

## **SUBJECT 7:**

### **22.42.055 – Project Review Procedures**

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

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

- a. Not conflict with previous County conditions of approval that were imposed on the property;
- b. Be consistent with the purpose of Design Review pursuant to Section 22.42.010 (Purpose of Chapter);
- c. Comply with existing Master Plans and applicable standards in a Community Plan;
- d. Be located outside of ~~Stream Conservation Areas~~, Wetland Conservation Areas or other mapped environmentally sensitive areas as designated by the Countywide Plan;
- e. Comply with the County's Single-family Residential Design Guidelines;
- f. Comply with Marin County Green Building Standards (Section 19.04.110) and exceed Minimum Compliance Threshold by one level, with the exception that additions with a valuation exceeding \$300,000 shall attain a minimum compliance threshold that requires 20 additional points than that which is required by the Green Building Standards; and
- g. Not be located on a property that meets either of the following conditions, as applicable:
  1. If the residence on the property was not subject to Design Review, final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago; or

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

**SUBJECT 8:**

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

...

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

...

**SUBJECT 9:**

**22.62.040 – Exemptions**

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

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

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

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

**SUBJECT 10:**

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

...

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

...

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

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

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

**Notes:**

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

...

**22.40.030 – Application Submittal and Filing**

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

**Discretionary Permit Applications**

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

~~40~~11. Variances; and

~~44~~12. Sign Reviews.

**Ministerial Planning Permit Applications**

1. Certificates of Compliance

2. Homeless Shelter Permits

3. Large Family Day-care Permits

3. Second Unit Permits

4 Sign Permits

5. Stream Conservation Area Permit (Tier 1)

~~56~~. Use Permit Renewals

...

**RESOLUTION NO. PC13-002**  
**RESOLUTION OF THE MARIN COUNTY PLANNING COMMISSION RECOMMENDING**  
**THAT THE BOARD OF SUPERVISORS ADOPT AMENDMENTS TO**  
**MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE)**  
**(STREAM CONSERVATION AREA)**

**SECTION I: FINDINGS**

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

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

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

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

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

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

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

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

**SECTION II: ACTION**

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

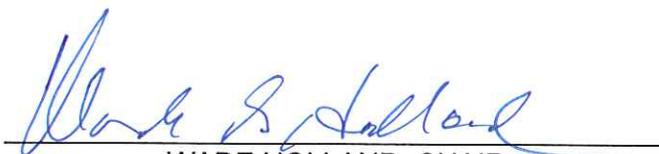
**SECTION III: ADOPTION**

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

AYES: CRECELIUS, DICKENSON, ELLER, HOLLAND, LUBAMERSKY, THERAN

NOES: NONE

ABSENT: ERICKSON

  
WADE HOLLAND, CHAIR  
MARIN COUNTY PLANNING COMMISSION

ATTEST:

  
Debra Stratton  
Planning Commission Secretary

## EXHIBIT A

### SUBJECT 1:

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

### CHAPTER 22.33 – STREAM PROTECTION

#### Sections:

22.33.010 – Purpose of Chapter

22.33.020 – Applicability

22.33.030 – Stream Conservation Area General Requirements

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

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

#### **22.33.020 – Applicability**

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

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

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

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

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

### **A. Requirements.**

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

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

### **B. SCA Setbacks.**

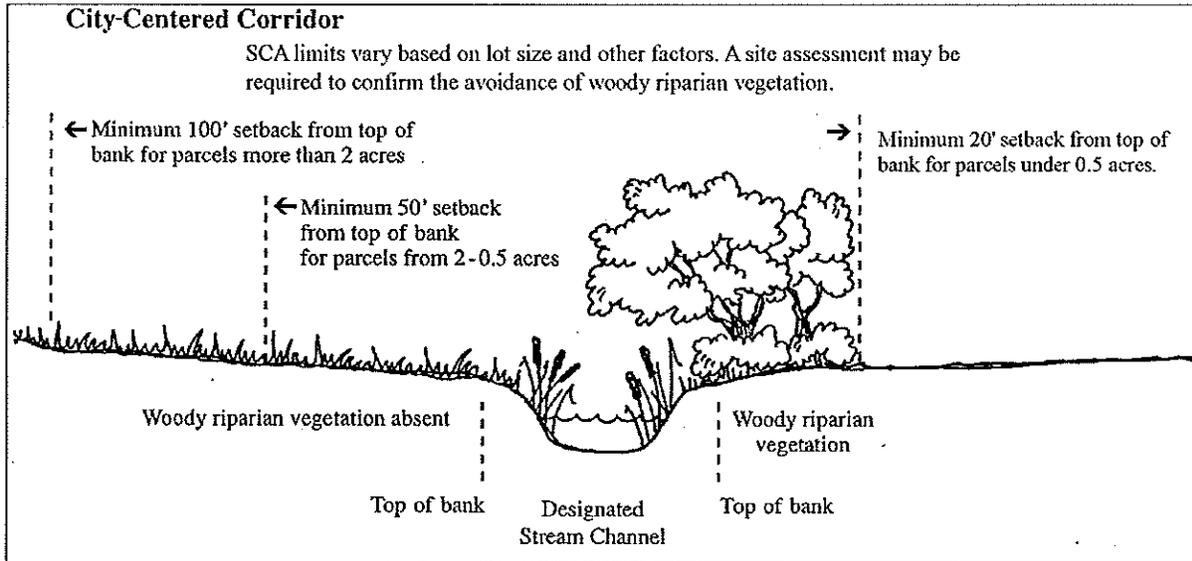
The Stream Conservation Area includes SCA setbacks as provided in this subsection.

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

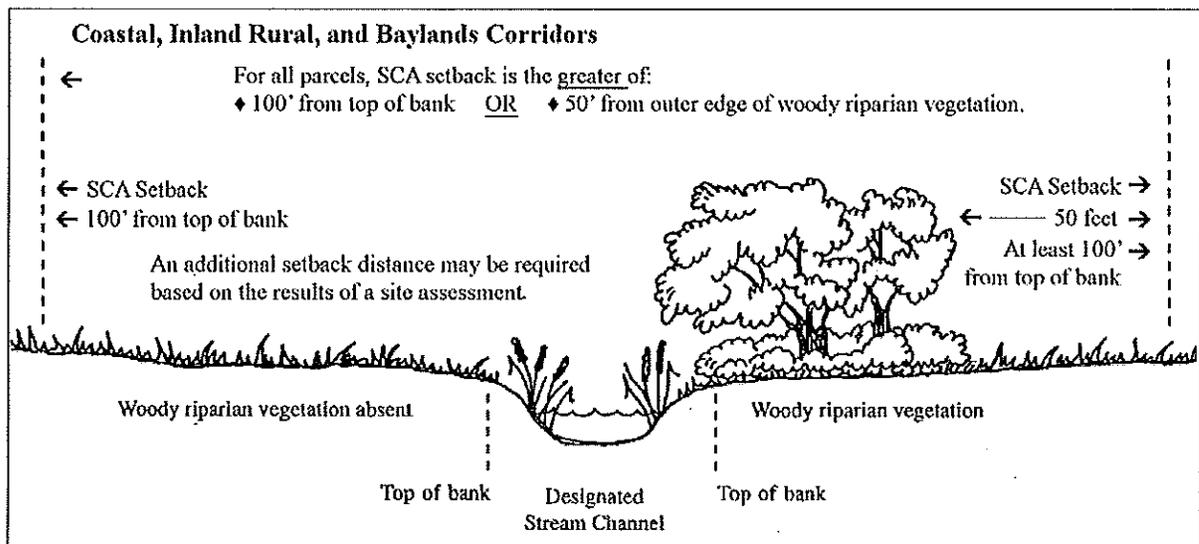
resources, such as woody riparian vegetation that extends beyond the SCA setback.

3. 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.
4. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation shall be determined on the basis of the most recent aerial photography on file with the County as of February 25, 2013.
5. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.

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



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



## **Chapter 22.63 – STREAM CONSERVATION AREA PERMIT**

### **Sections:**

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

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

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

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

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

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

## B. Exemptions.

### 1. Exempt without further determination.

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

2. **Exempt subject to determination.** The following activities are exempt subject to determination by the Director, based upon photographs, illustrations and other appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below. Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal.

Documentation may include a letter or report from a licensed contractor and photographs of the property and improvements or structures to verify the activity will comply with this Section.

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

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

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

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

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

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

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

4. **Site Assessment (Tier 1).** The Site Assessment (Tier 1) shall be prepared by a qualified professional. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; and identify Standard Management Practices corresponding to the nature of development that would ensure that the project will not cause adverse impacts to the stream and riparian resources. The Site Assessment (Tier 1) is part of the SCA Permit (Tier 1).

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

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

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

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

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

3. **Standard Management Practices.** The project shall incorporate any applicable Standard Management Practices on file in the CDA, except as determined in accordance with a Site Assessment (Tier 2) and applicable mitigations.
4. **Site Assessment (Tier 2).** The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1) and determine whether an additional setback is required to avoid adverse impacts to the SCA.

The Site Assessment (Tier 2) shall also include:

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

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

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

habitat, or water quality. Mitigation plans must, to the extent feasible, be designed so that mitigations are self-sustaining.

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

- A. Filing and processing.** Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).
- B. Project review procedure.** The Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).
- C. Public hearings.** When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.
- D. Notice of action and/or hearing date.** Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.

#### **22.63.060 – Decision and findings**

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

- A. For a SCA (Tier 1) Permit:**
  - 1. The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)).
  - 2. The project will not adversely alter hydraulic capacity; will not cause a net loss in habitat acreage, value or function; and will not degrade water quality.
- B. For a SCA (Tier 2) Permit:**
  - 1. The project meets the requirements of Section 22.63.040 (Stream Conservation Area Permit (Tier 2)).

2. The project will not adversely alter hydraulic capacity; will not cause a net loss in habitat acreage, value or function; and will not degrade water quality. Exceptions may be allowed if the lot falls entirely within the SCA or development on the lot entirely outside the SCA is infeasible or would have greater impacts on water quality, wildlife habitat, native vegetation, other sensitive biological resources, or other environmental constraints than development within the SCA.

**SUBJECT 2:**

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

Definitions are listed in alphabetical order.

...

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

...

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

...

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

...

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

...

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

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

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

**Stream Conservation Area.** The Stream Conservation Area consists of the stream itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined in Section 22.33.030.B and shown in Figure 3-16. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is maintained and periodically updated by the Marin County Community Development Agency. Streams do not include ditches, culverts, and other above- or below-ground conduits constructed specifically for storm drainage.

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

...

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

...

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

**SUBJECT 3:**

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

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

- A. Decks, paths, driveways, and other minor improvements.** Decks, platforms, on-site paths, driveways, and other improvements that are not required to have building or grading permits by Title 19 of the County Code, and are not over 18 inches above grade and not over any basement or story below, except in the ARP, RSP, RMP, RX, CP, OP, RCR, RMPC, RF, and IP zoning districts.

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

**SUBJECT 4:**

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

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

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- E. **Agricultural Processing.** A Use Permit is required: (1) if any agricultural products to be processed are not produced on the same site or on other agricultural properties located in Marin County that are owned or leased by the processing facility owner or operator; or (2) if the building(s) or structure(s) used for processing activities exceed an aggregate floor area of 5,000 square feet. Agricultural products do not include additives or ingredients that are incidental to processing.
  
- F. **Sale of Agricultural Products.** A Use Permit is required: (1) if any agricultural products to be sold are not produced on the same site, or on other agricultural properties located in Marin County that are owned or leased by the sales facility owner or operator; or (2) if the building(s), structure(s), or outdoor sales area used for the retail sales activities exceed an aggregate floor area of 500 square feet.

**SUBJECT 5:**

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

**SUBJECT 6:**

**22.42.025 – Exemptions from Design Review**

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

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

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

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

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

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

## SUBJECT 7:

### **22.42.055 – Project Review Procedures**

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

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

- a. Not conflict with previous County conditions of approval that were imposed on the property;
- b. Be consistent with the purpose of Design Review pursuant to Section 22.42.010 (Purpose of Chapter);
- c. Comply with existing Master Plans and applicable standards in a Community Plan;
- d. Be located outside of Wetland Conservation Areas or other mapped environmentally sensitive areas as designated by the Countywide Plan;
- e. Comply with the County's Single-family Residential Design Guidelines;
- f. Comply with Marin County Green Building Standards (Section 19.04.110) and exceed Minimum Compliance Threshold by one level, with the exception that additions with a valuation exceeding \$300,000 shall attain a minimum compliance threshold that requires 20 additional points than that which is required by the Green Building Standards; and
- g. Not be located on a property that meets either of the following conditions, as applicable:
  1. If the residence on the property was not subject to Design Review, final inspection by the Building and Safety Division has not been approved or was approved less than 24 months ago; or

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

**SUBJECT 8:**

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

...

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

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**SUBJECT 9:**

**22.62.040 – Exemptions**

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

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

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

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

**SUBJECT 10:**

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

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

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

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

Lot Line Adjustment	Decide		Appeal Action	Appeal Action
Master Plan	Recommend		Recommend	Decide
Precise Development Plan	Decide		Appeal Action	Appeal Action
Sign Review	Decide		Appeal Action	Appeal Action
Stream Conservation Area Permit (Tiers 1 and 2)	Decide		Appeal Action	Appeal Action
Temporary Use Permit	Decide		Appeal Action	Appeal Action
Tentative Map	Recommend	Decide	Appeal Action	Appeal Action
Tidelands Permit	Decide		Appeal Action	Appeal Action
Tree Removal Permit	Decide		Appeal Action	Appeal Action
Use Permit	Recommend	Decide	Appeal Action	Appeal Action
Variance	Decide		Appeal Action	Appeal Action
Zoning Map Amendment	Recommend		Recommend	Decide

**Notes:**

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

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**22.40.030 – Application Submittal and Filing**

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

**Discretionary Permit Applications**

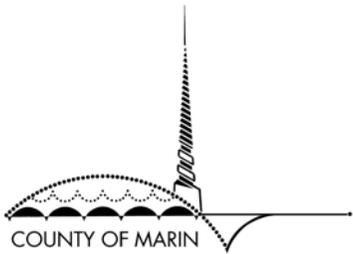
1. Design Review;
2. Floating Home Adjustment Permits and Architectural Deviations;
3. Master Plans or Precise Development Plans;
4. Temporary Use Permits;
5. Tentative Maps and Vesting Tentative Maps;
6. Lot Line Adjustments;
7. Stream Conservation Area Permit (Tier 2)

8. Tidelands Permits;
9. Tree Removal Permits
10. Use Permits;
11. Variances; and
12. Sign Reviews.

**Ministerial Planning Permit Applications**

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

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June 18, 2013

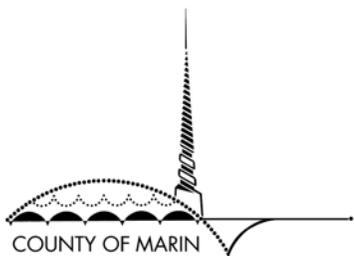
## Comparison of Existing Stream Setbacks for Marin County and Cities and Comparable Counties

County or City	Stream Setback & Purpose	Requirements
<u>Marin</u>	<p style="text-align: center;"><b>20'</b> <i>(Drainage Setback)</i></p> <p style="text-align: center;"><b>20' -100'+</b> <i>(Stream Conservation Area)</i></p> <p>City-Centered Corridor: 20', 50' or 100' from top of bank (dep. on lot size) Other Corridors: 100' from top of bank or 50' from outer edge of woody riparian vegetation.</p> <p><b>Purpose:</b> Drainage; active channel, water quality and flood control functions, fish and wildlife habitat values.</p>	<p><b>Permits Applicable:</b></p> <ul style="list-style-type: none"> <li>• <b>(Drainage Setback): Building Permits</b></li> </ul> <p><i>Ordinance (Drainage setback):</i> "All structures shall be set back from creeks, channels or other major waterways at least twenty feet from the top of bank or twenty feet plus twice the channel depth measured from the toe of the near embankment, whichever is greater."</p> <ul style="list-style-type: none"> <li>• <b>(Stream Conservation Area): All Discretionary Development Applications, including Design Review, Master Plan, Use Permit, Land Division/Subdivision</b></li> </ul> <p><i>General Plan:</i> "Implement established setback criteria for protection of SCAs through established discretionary permit review processes and/or through adoption of new ordinances. Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required. In determining whether allowable uses are compatible with SCA regulations, development applications shall not be permitted if the project does any of the following:</p> <ul style="list-style-type: none"> <li>• Adversely alters hydraulic capacity;</li> <li>• Causes a net loss in habitat acreage, value, or function;</li> <li>• Degrades water quality. (BIO-4.2)</li> </ul>
<u>Belvedere</u>	<p><b>Site/Project-specific Setback</b></p>	<p><b>Permits Applicable: All Discretionary Development Applications</b></p> <p><i>General Plan:</i> Regulate and mitigate the impacts of residential construction (remodeling, expansions, and new construction) and public park redevelopment on properties in or adjacent to wetland and riparian habitat.</p> <ul style="list-style-type: none"> <li>• Development activities shall be designed to avoid impacts to streams and riparian habitat to the extent feasible, following best management procedures.</li> <li>• Development activities that take place near stream and riparian habitats should have adequate stream setbacks to protect habitat functions.</li> </ul>
<u>Fairfax</u>	<p style="text-align: center;"><b>20'</b> <i>(From top of bank, bank full, or centerline of Fairfax &amp; San Anselmo Creeks)</i></p> <p><b>Purpose:</b> Flood &amp; Habitat Protection</p>	<p><b>Permits Applicable: All Development Applications (Discretionary and Ministerial)</b></p> <p><i>Ordinance:</i> "No building, accessory building, structure or swimming pool shall be constructed closer to the top of the stream bank of the Fairfax and San Anselmo creeks than 20 feet or two times the average depth of the bank, whichever is greater, without authorization by variance, except for retaining walls and bulkheads which replace failing structures and which do not increase the height, width, length or configuration of the original structure."</p>

Municipality	Stream Setback & Purpose	Requirements
<u>Mill Valley</u>	<p style="text-align: center;"><b>30'</b></p> <p>(From top of bank of the following creeks: Warner Canyon, Corte Madera Del Presidio, Sutton Manor, Cascade, Old Mill, and Reed)</p> <p style="text-align: center;"><b>Purpose:</b> Habitat and Water Quality</p>	<p><b>Permits Applicable: All Development Applications (Discretionary and Ministerial)</b></p>
<u>Novato</u>	<p style="text-align: center;"><b>50'</b></p> <p>(From top of bank of mapped streams &amp; significant tributaries)</p> <p>Applicable to lands adjoining or encompassing mapped watercourses</p> <p><b>Purpose:</b> Flood &amp; Habitat Protection, Water Quality</p>	<p><b>Permits Applicable: All Development Applications including Land Division, Use Permit, Grading Permit, Building Permit</b></p> <p><i>Ordinance:</i> Use permit required for development, land uses and activities including any proposed development application, land division, use permit, grading or building permit for any excavation, fill, grading, or paving; removal or planting of vegetation; construction, alteration, or removal of any structure; or alteration of any embankment within the stream protection zone.</p> <ul style="list-style-type: none"> <li>• Use permit includes review/approval of Stream Management Plan, incl. annual mgmt. and maintenance, prepared by qualified person experienced in the development and implementation of riparian restoration and enhancement plans.</li> <li>• Zoning administrator (admin.) review/approval for minor activities, land uses or development in or near a stream or watercourse, including: <ol style="list-style-type: none"> <li>1. Minor road crossings, driveways, pedestrian bridges and pathways, and utilities;</li> <li>2. Bank stabilization and erosion control projects involving less than 30 linear feet;</li> <li>3. Enhancement and restoration projects involving no mitigation of wetlands or riparian resources; and</li> <li>4. Single-family homes and accessory structures and any permitted land use on lots in existing developed areas.</li> </ol> </li> </ul> <p>Uses permitted within the stream protection zone limited to native landscaping, fencing, maintenance roads, utilities, storm drains, trails and passive (low-impact) recreation. Fencing and structures shall be set back to provide for unobstructed flow of flood waters and continuous wildlife migration corridors along the riparian areas.</p>
<u>Ross</u>	<p style="text-align: center;"><b>25' – 50'</b></p> <p>(From top of bank)</p> <p><b>Purpose:</b> Geologic &amp; flood hazards, natural resource values</p>	<p><b>Permits Applicable:</b></p> <ul style="list-style-type: none"> <li>• <b>Design Review (site work)</b></li> <li>• <b>Building Permits (buildings)</b></li> </ul> <p>Design Review for site work within 25' of top of stream bank; Minimum 50' setback for new buildings.</p> <p><i>Ordinance:</i> "Development in low-lying areas shall maintain a setback from creeks or drainageways consistent with the existing development pattern and intensity in the area and on the site, the riparian value along the site, geologic stability, and the development alternatives available on the site. The setback should be maximized to protect the natural resource value of the riparian area and to protect residents from geologic and flood hazards."</p>

		<p>“The filling and development of land areas within the one-hundred-year floodplain is discouraged. Modification of natural channels of creeks is discouraged. Any modification shall retain and protect creekside vegetation in its natural state as much as possible.</p> <p>Reseeding or replanting with native plants of the habitat and removal of broom and other aggressive exotic plants should occur as soon as possible if vegetation removal or soil disturbance occurs.”</p>
<b>Municipality</b>	<b>Stream Setback &amp; Purpose</b>	<b>Requirements</b>
<u>San Rafael</u>	<p><b>25’ – 100’</b> (From top of bank for lots adjacent to or containing a creek, drainageway or San Rafael Canal)</p> <p>Property ≤2 ac.: 25’ Property &gt;2 ac.: 25’ – 100’</p> <p><b>Purpose:</b> Flood &amp; stream channels, riparian &amp; wildlife habitat; views &amp; recreation.</p>	<p><b>Permits Applicable: Building Permits</b></p> <p><i>Ordinance:</i> Adequate setback determined based on the following criteria:</p> <ol style="list-style-type: none"> <li>1. The setback provides for adequate maintenance, emergency vehicle access, adequate debris flow avalanche corridors, flood control and protection from damage due to stream bank undercutting;</li> <li>2. The setback adequately protects and preserves native riparian and wildlife habitat;</li> <li>3. The setback protects major view corridors and provides for recreation opportunities where appropriate;</li> <li>4. The setback permits provision of adequate and attractive natural landscaping.</li> </ol> <p>"Structure" means anything constructed or erected that requires a foundation or a structural support on the ground, including a building or public utility, but not including: a fence or a wall used as a fence if the height does not exceed six feet (6’); retaining walls under three feet (3’) in height; in-ground swimming pools; parking lots and access drives or walks; and storage sheds or recreational/play structures that are one hundred and twenty (120) square feet or less in floor area.</p>
<u>Sausalito</u>	<p><b>20’</b> (From 100-year flood elevation line)</p>	<p><b>Permits Applicable: Design Review</b></p> <p><i>Ordinance:</i> Setback may be increased through environmental review or design review (low threshold for design review – 300 s.f. residential).</p>
<u>Tiburon</u>	<p><b>50’-100’</b> Property &lt; 5 ac.: 50’ Property &gt; 5 ac.: 100’  (From top of bank)</p> <p><b>Purpose:</b> Water quality, flooding, groundwater recharge</p>	<p><b>Permits Applicable: Discretionary Development Applications</b></p> <p><i>General Plan:</i> Applied as open space buffer for new development (discretionary applications).</p> <p>“In its review of applications for development, the Town shall require open space buffers of at least 50 feet on each side of the top of the bank of perennial, intermittent, and ephemeral streams on properties less than five acres and of at least 100 feet on each side of the top of the bank on properties greater than five acres, to minimize disturbance of natural vegetation and maintain the environmental and scenic attributes of the corridor. Where modification of corridors is required for flood control or crossings, such modification shall be made in an environmentally sensitive manner that enhances, replaces or retains vegetation.</p>

County	Stream Setback	Requirements & Purpose
<u>Napa County</u>	<p><b>35'-150'</b> From top of bank, based on slope:</p> <p>&lt;1%: 35' 1-5%: 45' 5-15%: 55' 15-30%: 65' 30-40%: 85' 40-50%: 105' 50-60%: 125' 60-70%: 150'</p>	<p><b>Permits Applicable: All Development Applications (Discretionary and Ministerial)</b></p> <p><i>Ordinance:</i> The purpose of the ordinance is to preserve riparian areas and other natural habitat by controlling development near streams and rivers.</p> <p>Applies to streams based on USGS maps and any watercourse which has a well-defined channel with a depth greater than 4' and banks steeper than 3:1 and contains hydrophilic vegetation, riparian vegetation or woody-vegetation including tree species greater than 10' in height.</p>
<u>Santa Cruz County</u>	<p><b>30'-50' Riparian Corridor</b> 30' intermittent stream (bankfull) 50' perennial stream (bankfull)</p> <p><b>10'-50' Arroyo Buffer</b> (Based on riparian vegetation/woodland, grassland, or disturbed land)</p>	<p><b>Permits Applicable: All Development Applications (Discretionary and Ministerial)</b></p> <p><i>Ordinance:</i> The purpose is to eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors for: protection of wildlife habitat; protection of water quality; protection of aquatic habitat; protection of open space, cultural, historical, archeological and paleontological, and aesthetic values; transportation and storage of floodwaters; prevention of erosion; and to implement the policies of the General Plan and the Local Coastal Program Land Use Plan.</p> <p>Buffers shall extend 50 feet from the edge of riparian woodland and 20 feet from the edge of other woody vegetation. Once a buffer is determined, a 10 foot setback from the edge of the buffer is required for all structures.</p>
<u>Sonoma County</u>	<p><b>50'-200'</b> From top of higher bank</p> <p>50': Urban and upland riparian corridors 100': Flatland riparian corridor 200': Russian River riparian corridor</p>	<p><b>Permits Applicable: All Development Applications (Discretionary and Ministerial)</b></p> <p><i>General Plan:</i> Increase protections for riparian corridors to improve water quality, increase groundwater recharge and flood storage capacity, enhance habitat, and support the recovery of salmon, steelhead and other endangered species.</p>



May 9, 2013

**Applicability of Stream Conservation Area to  
 Common Development Types for Planned Zoning Districts  
 (e.g. RSP, RMP, ARP)**

<b>Type of Development</b>	<b>Existing Zoning Regulation</b>	<b>Proposed Zoning Regulation</b>
1) New residence on vacant lot	Yes (SCA applies through Design Review <sup>1</sup> )	Yes (SCA ordinance)
2) Addition	Yes (SCA applies through Design Review <sup>1</sup> )	Yes (SCA ordinance)
3) Detached accessory building (garage, guesthouse, storage)	Yes (SCA applies through Design Review <sup>1</sup> )	Yes (SCA ordinance)
4) Patio and driveway	<b>No</b>	Yes (SCA ordinance)
5) Fencing and retaining wall	Yes (SCA applies through Design Review <sup>1</sup> )	Yes (SCA ordinance)
6) Native and heritage tree removal	Yes (SCA applies through Native Tree ordinance <sup>2</sup> )	Yes (SCA ordinance)
7) Vegetation removal	<b>No</b>	Yes (SCA ordinance)
8) Subdivision	Yes (SCA applies through Master Plan/Subdivision <sup>3</sup> )	Yes (SCA ordinance)

<sup>1</sup> Marin County Code Chapter 22.42 (Design Review).

<sup>2</sup> Marin County Code Chapters 22.27 (Native Tree and Preservation) and 22.62 (Tree Removal Permits).

<sup>3</sup> Marin County Code Chapters 22.44 (Master Plans and Precise Development Plans) and 22.84 (Tentative Maps).

## Applicability of Stream Conservation Area to Common Development Types for Conventional Zoning Districts

(R1, R1:B1-B6, RA, RA:B1-B6, A2, A2:B1-B6, R1:BLV, R1:BD)

Type of Development	Existing	Proposed
1) New residence on vacant lot	Applicability varies:	Yes (SCA ordinance)
	<p>1) <b>No</b> (if meet setback, height, &amp; FAR)</p> <p>2) Yes SCA applies through Variance for exception from setback, height &amp; FAR<sup>1</sup> or</p> <p>3) Yes SCA applies through Design Review if:</p> <ul style="list-style-type: none"> <li>• Lot adjoins anadromous stream<sup>2</sup> or</li> <li>• Lot is substandard in size<sup>3</sup> or</li> <li>• Building area &gt; 4,000 sq ft/building height &gt; 30 ft<sup>4</sup> or</li> <li>• Hillside building area &gt; 3,000 SF<sup>5</sup> or</li> <li>• Accessed from paper street<sup>6</sup></li> </ul>	
2) Addition	Applicability varies:	Yes (SCA ordinance)
	<p>1) <b>No</b> (if meet setback, height, &amp; FAR)</p> <p>2) Yes SCA applies through Variance for exception from setback, height &amp; FAR<sup>1</sup> or</p> <p>3) Yes SCA applies through Design Review if building area &gt; 4,000 sq ft/building height &gt; 30 ft<sup>4</sup></p> <p>4) Yes SCA applies through Design Review for R1 and RA zoning if building area &gt; 3,000 SF and addition is &gt;100% of existing<sup>7</sup></p>	
3) Detached accessory building (garage, guesthouse, storage)	Applicability varies:	Yes (SCA ordinance)
	<p>1) <b>No</b> (if meet setback, height, &amp; FAR)</p> <p>2) Yes SCA applies through Design Review if:</p> <ul style="list-style-type: none"> <li>• Exception from setback &amp; height<sup>8</sup></li> <li>• Building area &gt; 4,000 sq ft/building height &gt; 30 ft<sup>4</sup></li> </ul> <p>3) Yes SCA applies through Design Review for R1 and RA zoning if building area &gt; 3,000 sq ft and addition is &gt;100% of existing<sup>7</sup></p>	
4) Patio and driveway	<b>No</b>	Yes (SCA ordinance)

5) Fencing and retaining wall	Applicability varies:	Yes (SCA ordinance)
	1) <b>No</b> (if meet setback & height)	
	2) Yes SCA applies through Design Review for setback & height exception <sup>9</sup>	
6) Native & heritage tree removal	Yes (SCA applies through Native Tree Ordinance <sup>10</sup> )	Yes (SCA ordinance)
7) Vegetation removal	<b>No</b>	Yes (SCA ordinance)
8) Subdivision	Yes (SCA applies through Subdivision <sup>11</sup> )	Yes (SCA ordinance)

<sup>1</sup> Marin County Code Chapter 22.54 (Variances)

<sup>2</sup> Marin County Code Section 22.42.045 (Design Review for Development Along Anadromous Fish Streams and Tributaries)

<sup>3</sup> Marin County Code Section 22.42.030.B (Design Review for Substandard and Hillside Building Sites)

<sup>4</sup> Marin County Code Section 22.42.020.B.1 (Applicability)

<sup>5</sup> Marin County Code Section 22.42.030.C (Design Review for Substandard and Hillside Building Sites)

<sup>6</sup> Marin County Code Section 22.42.040 (Design Review for Development Along Paper Streets)

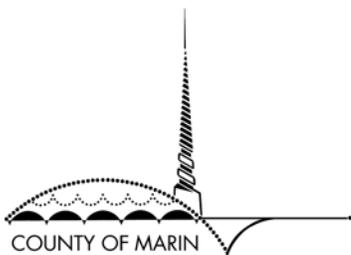
<sup>7</sup> Marin County Code Section 22.42.020.B.3 (Replacement of or Additions to Existing Residences in Non-coastal Zoning Districts)

<sup>8</sup> Marin County Code Sections 22.20.060.F.2 (Height Measurement and Height Limit Exceptions) and 22.20.090.C.2.c (Setback Requirements and Exceptions) and

<sup>9</sup> Marin County Code Section 22.20.050.A.1 and 22.20.050.B (Fencing and Screening Standards)

<sup>10</sup> Marin County Code Chapters 22.27 (Native Tree and Preservation) and 22.62 (Tree Removal Permits)

<sup>11</sup> Marin County Code Chapter 22.84 (Tentative Maps)



Common Residential Improvements in the Stream Conservation Area (SCA)  
 June 18, 2013

	Improvement in the SCA	You Do Not Need an SCA Permit (Exempt)	You Need an SCA Permit	
			Tier 1 – Minor <sup>1</sup>	Tier 2 - Major
1.	<b>Repair &amp; Maintenance</b> (structure, water supply, septic facility)	✓		
2.	<b>Replacement</b> (partial/total) of any Structure	✓ Same footprint <i>and</i> ✓ No removal of woody riparian plants <sup>2</sup>		
3.	<b>Residence (Primary Structure)</b>			
a.	Accessibility (ADA) improvements (e.g., ramps, lifts)	✓		
b.	Addition	✓ 2 <sup>nd</sup> story (same footprint)	✓ Expanded footprint ≤ 500 s.f., <i>and</i> ✓ Distance to stream ≥ existing home.	✓ Expanded footprint > 500 s.f., <i>or</i> ✓ Closer to stream than existing home
c.	Renovation/Remodel, Interior or Exterior (no building expansion)	✓		
d.	New Home on Vacant Lot			✓
4.	<b>Accessory Structure, New or Expanded</b> (deck, patio, shed, play set, pool, flag pole, etc.)	✓ ≤ 120 s.f., <i>and</i> ✓ On disturbed area <sup>3</sup> ≥20 ft. from stream top of bank <i>and</i> ✓ No direct run-off to stream	✓ >120 s.f., <i>or</i> ✓ On non-disturbed area <i>or</i> ✓ < 20 ft. from stream top of bank.	
5.	<b>Second Unit, New or Expanded</b>	✓ ≤ 120 s.f., <i>and</i> ✓ On disturbed area <sup>3</sup> , ≥20 ft. from stream <i>and</i> ✓ No direct run-off to stream	✓ Expanded footprint ≤ 500 s.f., attached to residence <i>and</i> ✓ Distance to stream ≥ than existing home	
6.	<b>Water Supply/Septic, New or Expanded</b>		✓	
7.	<b>Driveway, Expanded</b>		✓	
8.	<b>Driveway, New</b>		✓ At stream crossing	
9.	<b>Bridge/culvert</b>			✓ <sup>4</sup>
10.	<b>Fence, New or Expanded</b>	✓ In disturbed area <sup>3</sup> <i>or</i> ✓ Wildlife access to stream & riparian vegetation not restricted		
11.	<b>Lawn &amp; Landscaping</b>			
a.	Maintenance (mowing, trimming, weeding)	✓ Do not remove/destroy native riparian plants		
b.	Replacement (annuals, gardens, etc)			
c.	Native plant installation			
d.	Temporary/movable objects (trampolines, RVs, etc)			
e.	Removal of invasive plants, upland from top of bank.	✓ <sup>4</sup>		
f.	Vegetation trimming or removal (fire /life/property safety, emergency)	✓		
g.	Tree removal (healthy native protected/heritage tree)		✓	
h.	Native riparian vegetation removal upland from top of bank		✓	
i.	Footpath	✓ In disturbed area <sup>3</sup>	✓	
j.	Dog run, horse corral or chicken coop	✓ ≤ 120 s.f. impervious, <i>and</i> ✓ On disturbed area <sup>3</sup> ≥20 ft. from stream top of bank	✓ >120 s.f. impervious, <i>or</i> ✓ On non-disturbed area <i>or</i> ✓ < 20 ft. from stream top of bank.	
k.	Drainage (swales, pipes, downdrains)		✓ <sup>4</sup>	
l.	Retaining walls, erosion control		✓ <sup>4</sup>	

<sup>1</sup> Tier 1 SCA Permits must comply with all applicable Development Standards (Ch. 22.63) and Standard Management Practices.

<sup>2</sup> Woody riparian plants are native trees, bushes, vines and groundcovers that are associated with and reliant upon the stream.

<sup>3</sup> Disturbed area includes lawns, gardens, patios, driveways, and other significantly altered areas maintained/managed for human use.

<sup>4</sup> An SCA Permit is required ONLY if the work does not require a Creek Permit or Grading Permit. The following existing County regulations apply to development in and near streams:

- Creek restoration, streambank armoring or other channel and bank alterations may require a Creek Permit per Marin County Code Section 11.08 (Watercourse Diversion or Obstruction).
- Grading may require a Grading Permit per Marin County Code Section 23.08.025 (Grading Permit Required).
- No structures are permitted within the drainage setback area (generally 20 feet upland from the top of bank) per Marin County Code Section 24.04.560 (Drainage Setback).

Marin County Planning Commission  
Regular Meeting  
Monday, April 1, 2013

*ROLL CALL The meeting was called to order by Chair Holland at 10:05 a.m.*

Present at Roll Call: Katherine Crecelius; Don Dickenson; John Eller; Ericka Erickson;  
Wade Holland; Joan Lubamersky.

Absent at Roll Call: Peter Theran.

CDA Staff Present: Director Brian Crawford, Assistant Director Tom Lai, Planner Suzanne Thorsen, and Planning Commission Secretary Debra Stratton.

DPW Staff Present: Associate Civil Engineer Richard Simonitch

Consultants Present: Phil Greer, WRA, and Dan Cloak, Dan Cloak Environmental Consulting

Agenda

1. INITIAL TRANSACTIONS

a. Minutes - March 11, 2013

M/s Don Dickenson - Joan Lubamersky to approve the minutes of the regular meeting of Monday, March 11, 2013, as amended.

Vote: Motion carried 4-0-2

AYES: Joan Lubamersky; John Eller; Don Dickenson; Wade Holland.

ABSTAIN: Katherine Crecelius; Ericka Erickson.

ABSENT: Peter Theran.

b. Communications

None.

2. DIRECTOR'S REPORT

a. Preliminary Agenda Discussion Items

Assistant Director Lai reviewed the Planning Commission schedule of upcoming meetings.

Director Crawford reported on the release of the draft Plan Bay Area report and accompanying EIR.

3. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER)

No speakers came forward for public open time.

4. MARIN COUNTY TITLE 22 (DEVELOPMENT CODE) AMENDMENT: STREAM CONSERVATION AREA

[Staff Report](#)

In response to a request from SPAWN, the Commission granted an increase in speaker time for all organizations.

M/s Don Dickenson - Joan Lubamersky to increase organization speaker time from five minutes to 10 minutes for all organizations.

Vote: Motion carried 6-0

AYES: Katherine Crecelius; Don Dickenson; John Eller; Ericka Erickson; Wade Holland; Joan Lubamersky.

ABSENT: Peter Theran.

Staff presented the staff report and recommended that the Planning Commission conduct the public hearing, accept public testimony, and continue the hearing to May 13, 2013. Staff answered questions from the Commission.

Public testimony was opened and the following people spoke:

Peggy Sheneman (San Geronimo Valley Stewards), Gordon Bennett and Todd Steiner (SPAWN), Laura Chariton (Watershed Alliance of Marin), Joyce Britt (Mill Valley StreamKeepers), Carolyn Longstreth (Environmental Action Committee of West Marin), Priscilla Bull (Marin Conservation League), Ann Thomas, Phil Sotter, Curt Kruger, Beth DeScala, Andrea Taber, Jean Berensmeier, Warren Simmonds, Paul Berensmeier, Dan McKenna, Eric Morey, John Smithyman, Donna McGuinn, Denis Poggio, Alex Dixson, Dorothy Cox, Connie Berto, Mike Waddell, Niz Brown, Andrew Flick, Susan Ives, Adrienne Terrass, John Volpi, Betsy Bikle, Rick Seramin, and Sam Dolcini (Marin County Farm Bureau).

Public testimony was closed. The Planning Commission recessed for lunch at 1:34 p.m. and reconvened at 2:18 p.m. with six members present. Commissioner Erickson absent.

Public testimony was reopened and the following people spoke: Joe DeScala (Sleepy Hollow Homeowners Association) Patrick Seidler (Transportation Alternatives for Marin) and Thomas Lambach.

Public testimony was closed, and staff responded to a number of comments made during public testimony. Staff and the consultants answered questions from the Commission and provided clarification on several issues.

The Planning Commission reviewed, discussed and commented on the draft Stream Conservation Ordinance and key issues identified in the staff report regarding ephemeral streams, exemptions, woody riparian vegetation, Standard Management Practices, illegal structures, and cost.

Commissioner Lubamersky absent at 4:20 p.m.

M/s Katherine Crecelius - Don Dickenson to continue the hearing on the Stream Conservation Ordinance to May 13, 2013.

Vote: Motion carried 4-0

AYES: Katherine Crecelius; Don Dickenson; John Eller; Wade Holland.

ABSENT: Ericka Erickson; Joan Lubamersky; Peter Theran.

The meeting was adjourned at 5:20 p.m. The next meeting of the Planning Commission is scheduled for Monday, April 22, 2013.

Webcast Timestamps:

00:00:06 - Initial Transactions

00:20:20 - Director's Report

00:05:13 - Open Time for Public Expression

00:05:38 - Stream Conservation Area

00:07:28 - Motion to Increase Organization Testimony Time

00:08:46 - Staff Report & Commission Questions

01:17:56 - Public Testimony

03:42:50 - Staff Responses to Public Comments

04:28:20 - Discussion

06:32:20 - Motion to Continue

Marin County Planning Commission  
Regular Meeting  
Monday, May 13, 2013 - 10:00 A.M.

*ROLL CALL The meeting was called to order by Chair Wade Holland at 10:03 a.m.*

Present at Roll Call: Katherine Crecelius; Don Dickenson; John Eller; Wade Holland;  
Peter Theran.

Absent at Roll Call: Ericka Erickson; Joan Lubamersky.

[Agenda & Protocols PDF](#)

CDA Staff Present: Assistant Director Tom Lai, Planner Suzanne Thorsen, and Planning Commission Secretary Debra Stratton.

DPW Staff Present: Richard Simonitch, Associate Civil Engineer.

SCA Consultants Present: Dan Cloak, Dan Cloak Environmental Consulting; and Justin Semion, WRA Environmental Consultants.

1. INITIAL TRANSACTIONS

a. Minutes - April 22, 2013

[Draft Minutes April 22, 2013](#)

M/s Don Dickenson - Peter Theran M/s Don Dickenson - Peter Theran to approve the minutes of the regular meeting of April 22, 2013, as submitted, and to accept Resolution PC13-001 denying the Holzwarth appeal and sustaining approval of the San Francisco Archdiocese/Marin Catholic High School Design Review, as submitted.

Vote: Motion carried 5-0

AYES: Katherine Crecelius; Don Dickenson; John Eller; Wade Holland; Peter Theran.

ABSENT: Ericka Erickson; Joan Lubamersky.

b. Communications

Commissioner Holland reported recent contact with representatives of the Salmon Protection and Watershed Network (SPAWN), the San Geronimo Valley Planning Group, and the San Geronimo Valley Stewards, noting that the information relayed to him was reflected in letters from the organizations to the Commission that are part of the public record.

2. DIRECTOR'S REPORT

a. Preliminary Agenda Discussion Items

Mr. Lai reviewed the upcoming schedule of agenda items and answered questions from the Commission.

3. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER)

No speakers came forward for public open time.

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

[Staff Report](#)

In response to a request from the Sleepy Hollow Homes Association, the Commission agreed to extend public comment time from five minutes to ten minutes for organizations who did not receive a time extension granted at the April 1, 2013, meeting.

Commissioner Lubamersky present at 10:10 a.m.

Staff presented the staff report and recommended that the Planning Commission review the administrative record, conduct the public hearing, and approve a Resolution recommending that the Board of Supervisors approve the Development Code Amendments for Title 22 of the Marin County Code establishing a Stream Conservation Area and Stream Conservation Area Permit, including definitions and related amendments.

Staff answered questions from the Commission.

Public testimony was opened and the following people spoke: Dan Stein (Sleepy Hollow Homes Association); Jack Wilkinson (Marin Association of Realtors); Sara Tashker (Green Gulch Farm Zen Center); Gordon Bennett (SPAWN); Barbara Salzman (Marin Audubon Society); Laura Chariton (Watershed Alliance of Marin); Samantha Russell (San Geronimo Valley Stewards); Rick Seramin; Dan McKenna, Eric Morey and Jean Berensmeier (San Geronimo Valley Planning Group); Adrienne Terrais; Pamela Macknight; Bob Figari; Barbara Wientjes; Niz Brown; Curt Kruger; Connie Berto; and Jeff Rhoads.

Public testimony was closed. The Commission recessed for lunch at 12:23 p.m. and reconvened at 1:10 p.m. with six members present as indicated.

Staff and consultants answered questions from the Commission during review and discussion of the proposed SCA draft documents. The Commission provided comments and direction to staff, including grammatical, organizational, and stylistic revisions as well as the following:

1) Standard Management Practices (SMPs): Organize roots, trees, shrubs, woody riparian vegetation, etc., into separate bullet points to aid interpretation.

2) The Native Tree Ordinance does not apply in the SCA. All tree removal in the SCA will be subject to the SCA ordinance.

3) Riparian Vegetation: Remove "higher level of" in the first line of the definition of riparian vegetation.

4) Section 22.63.030 B.2.d. - Replace existing language with suggested language based on the letter dated May 9, 2013, submitted by Curt Kruger, Contech Engineering Solutions LLC, and modified as follows: "Pedestrian bridges shall be designed such that no portion of the structure or its related abutments extends between and below the top of banks of stream."

5) Section 22.63.030.A.1 SCA (Tier 1) Development: Limit to permitted or legal non-conforming primary structures existing before February 25, 2013.

6) Section 22.33.030.B.6.: Indicate that the aerial maps to be used for determining the outer edge of woody riparian vegetation on agricultural lands shall be based on the maps on file in the Community Development Agency as of February 25, 2013.

7) Sections 22.763.040.B.4.c. and 22.63.060.B.2.: Expand/modify the list of potential impacts to evaluate to include impacts on native vegetation or other sensitive biological resources.

The Commission recessed at 3:05 p.m. and reconvened at 3:15 p.m. with six members present as indicated.

The Commission asked staff to add the following items for consideration as part of future amendments to the Countywide Plan:

1. Clarify the applicability of the SCA to ephemeral streams and reconsider the appropriateness of the SCA setbacks for ephemeral streams.
2. Consider other means of identifying the SCA in cases where there is uncertainty using the "top of bank" approach.
3. Reconsider the appropriateness of limiting site assessments to only increase (but not decrease) the SCA setback based on a site-specific analysis.

The Commission discussed a number of issues raised and public requests made regarding the SCA ordinance and decided to (1) not exempt Sleepy Hollow from the SCA ordinance; (2) not implement the SCA Ordinance in a phased manner, such as on a watershed-by-watershed basis; (3) not include in the ordinance a provision for point-of-sale disclosure of any non-permitted development within the SCA; (4) not make as a submittal requirement for a SCA Tier 2 permit a site plan showing all development on a property (as this is already addressed in the published submittal requirements); and (5) not recommend to the Board of Supervisors the addition of a fully-funded staff position to support SCA workload (as this is not within the purview of the Commission.)

M/s Peter Theran - Katherine Crecelius M/s Peter Theran - Katherine Crecelius to adopt a resolution recommending that the Board of Supervisors adopt amendments to Marin County Code Title 22 (Development Code) Stream Conservation Area, as corrected.

Vote: Motion carried 6-0

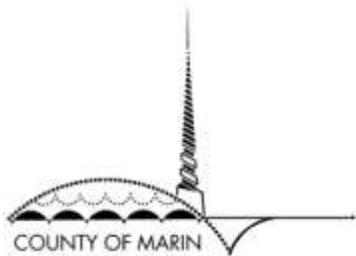
AYES: Joan Lubamersky; John Eller; Don Dickenson; Peter Theran; Wade Holland;  
Katherine Crecelius.

ABSENT: Ericka Erickson.

The meeting was adjourned at 4:25 p.m. The next regular meeting is scheduled for Tuesday, May 28, 2013.

Webcast Timestamps:

00:00:02 - Initials Transactions/Minutes  
00:02:03 - Director's Report  
00:04:53 - Open Time for Public Expression  
00:05:17 - Stream Conservation Area  
00:05:42 - Organization Speaker Time Extension  
00:06:45 - Staff Report  
00:31:00 - Commissioners' Questions  
00:45:50 - Public Testimony  
02:20:30 - Commission Discussion and Direction  
05:30:50 - Motion to Approve  
05:32:03 - Adjourn



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

**Summary Recommendation:**

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

**Project Description:**

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

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

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

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

**Background:**

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

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

**Plan Consistency:**

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

**Environmental Review:**

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

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

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

**Public Notice:**

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

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

**Outreach:**

Staff engaged in both internal and external outreach during preparation of the SCA Ordinance. Prior to release of the public review draft, staff met with representatives of groups interested in the SCA, including Marin Conservation League, Marin Audubon Society, Friends of Corte Madera Creek, SPAWN, the San Geronimo Valley Stewards, the San Geronimo Valley Planning Group, Marin County Farm Bureau, Marin Association of Realtors, CSA 13, Lucas Valley Homeowners Association, Kentfield Planning Advisory Board, Tam Design Review Board, and Sleepy Hollow Homeowners Association.

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

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

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

### **Ordinance Framework**

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

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

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

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

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

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

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

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

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

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

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

### **Guiding Principles**

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

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

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

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

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

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

**Applicability**

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

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

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

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

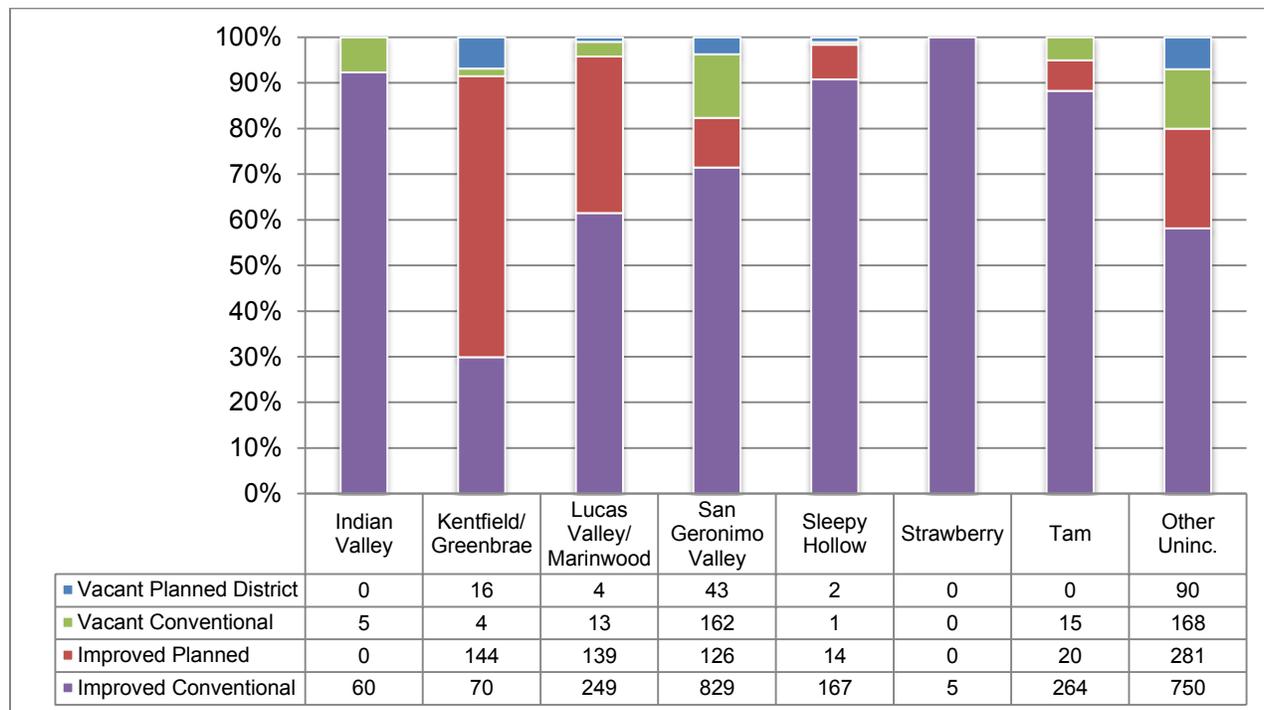
Figure 1: Distribution of Lots Subject to SCA

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

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

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

**Figure 2: Distribution Lots Subject to SCA by Community Area**



### Development Regulated

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

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

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

## SCA Map

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

### Key Issues:

#### *Ephemeral Streams*

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

As defined in the CWP and the proposed Development Code definition, an ephemeral stream is "a watercourse that carries only surface runoff and flows during and immediately after periods of precipitation." While this broad definition may include ditches and other conduits that transport storm runoff, this subset of streams is not protected under the CWP. The proposed Development Code Amendments incorporate the 100-foot threshold for riparian vegetation in Section 22.33.030.B.4: "*For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a continuous length of 100 feet or more.*" The ordinance language refines the CWP policy to indicate that the SCA is applicable to mapped streams consistent with the approach outlined in CWP Program BIO-4.c and reflected in the Applicability section of the proposed Stream Protection Chapter (22.33.020.A).

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

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

### *Exemptions*

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

Previously disturbed areas include lawns, gardens, patios, driveways, agricultural fields, parking lots, and other similar areas that have been significantly altered from their natural condition and maintained/managed for human use. The intent of the exemption is to encourage people to limit their activities, landscaping, and structures to those areas of the SCA already altered (or disturbed) by human activity. The extent of disturbed area will be determined on a case by case basis, but generally would be indicated by the presence of accessory structures, ornamental features and actively maintained lawn or garden areas.

### *Woody Riparian Vegetation*

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

- SCA Setbacks, 22.33.030.B.2: In the Inland Rural Corridor, Baylands Corridor, and Coastal Corridor, the SCA setback is the greater of either (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank. *This standard is from Countywide Plan Policy BIO-4.1.*
- Exemptions, 22.63.020.B.1.j: Agricultural uses on property zoned for agriculture that do not result in the removal of woody riparian vegetation or animal confinement within the SCA. *This standard is from Countywide Plan Policy BIO-4.1.*
- Exemptions, 22.63.020.B.2.a: Repair and replacement of existing permitted and legal non-conforming structures may be exempt subject the Director’s determination that such activity does not expand the footprint or result in the removal of woody riparian vegetation. *This standard is derived from Countywide Plan Policy BIO-4.1, which generally requires the avoidance of woody riparian vegetation.*
- Site Assessment (Tier 1), 22.63.030.B.4: The Site Assessment (Tier 1) delineates the extent of SCA on the lot including the precise stream location and limits of woody riparian vegetation, recommends SMPs corresponding to the nature of development and determines whether the project would result in adverse impacts to stream and riparian resources. *This standard is from Countywide Plan Policy BIO-4.1.*

For permit applications, the extent of woody riparian vegetation would be determined through a site assessment. However, staff recognizes that there is a need to provide reference information to homeowners so that they do not run afoul of the protections afforded to woody riparian vegetation. Implementation of this ordinance will include an illustrated guide to typical woody riparian species.

### *Standard Management Practices (SMPs)*

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

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

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

### *Illegal Structures*

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

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

### *Cost*

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

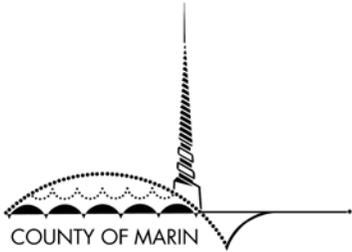
a Tier 2 SCA Permit would increase to approximately \$4,000 plus any costs related to environmental review. Where a determination is needed to confirm that a project qualifies for an exemption, fees would be set at approximately \$300. No fee will be required for development activities that qualify for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

**Recommendation:**

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

Attachments:

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



## MEMORANDUM

**TO:** Members of the Planning Commission

**FROM:** Suzanne Thorsen, Planner

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

**DATE:** May 3, 2013

### SUMMARY

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

### DISCUSSION

#### 1. Standard Management Practices:

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

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

## 2. Parcel Analysis:

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

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

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

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

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

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

## 3. Top of Bank:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## KEY REVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**RECOMMENDATION:**

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

**Attachments:**

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

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

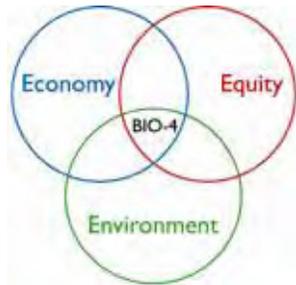


# MARIN COUNTYWIDE PLAN

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

## What Are the Desired Outcomes?

### GOAL BIO-4



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

#### Policies

**BIO-4.1 Restrict Land Use in Stream Conservation Areas.** A *Stream Conservation Area* (SCA) is established to protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat values along streams. Development shall be set back to protect the stream and provide an upland buffer, which is important to protect

significant resources that may be present and provides a transitional protection zone. Best management practices<sup>1</sup> shall be adhered to in all designated SCAs. Best management practices are also strongly encouraged in ephemeral streams not defined as SCAs.

Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true:

1. A parcel falls entirely within the SCA; or
2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.

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

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



## NATURAL SYSTEMS & AGRICULTURE ELEMENT

SCA criteria would not be met. An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species and/or a sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream. For those ephemeral streams that do not meet these criteria, a minimum 20-foot development setback should be required.

SCAs consist of the watercourse itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks to the widths defined below (see Figure 2-2). The SCA encompasses any jurisdictional wetland or unvegetated other waters within the stream channel, together with the adjacent uplands, and supersedes setback standards defined for WCAs. Human-made flood control channels under tidal influence are subject to the Bayland Conservation policies. The following criteria shall be used to evaluate proposed development projects that may impact riparian areas:

### *City-Centered Corridor:*

- ◆ For parcels more than 2 acres in size, provide a minimum 100-foot development setback on each side of the top of bank.
- ◆ For parcels between 2 and 0.5 acres in size, provide a minimum 50-foot development setback on each side of the top of bank.
- ◆ For parcels less than 0.5 acres in size, provide a minimum 20-foot development setback. The developed portion(s) of parcels (less than 0.5 acres in size) located behind an existing authorized flood control levee or dike are not subject to a development setback.
- ◆ Regardless of parcel size, an additional buffer may be required based on the results of a site assessment. A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, *Require Site Assessment*.



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



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### *Coastal, Inland Rural, and Baylands Corridors:*

- ◆ For all parcels, provide a development setback on each side of the top of bank that is the greater of either (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream or (b) 100 feet landward from the top of bank. An additional setback distance may be required based on the results of a site assessment. A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, *Require Site Assessment*. SCAs shall be measured as shown in Figure 2-2.

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

- ◆ Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;
- ◆ Projects to improve fish and wildlife habitat;
- ◆ Driveway, road and utility crossings, if no other location is feasible;
- ◆ Water-monitoring installations;
- ◆ Passive recreation that does not significantly disturb native species;
- ◆ Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;
- ◆ Agricultural uses that do not result in any of the following:
  - a. The removal of woody riparian vegetation;
  - b. The installation of fencing within the SCA that prevents wildlife access to the riparian habitat within the SCA;
  - c. Animal confinement within the SCA; and
  - d. A substantial increase in sedimentation.

**BIO-4.2 Comply with SCA Regulations.** Implement established setback criteria for protection of SCAs through established discretionary permit review processes and/or through adoption of new ordinances. Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.

In determining whether allowable uses are compatible with SCA regulations, development applications shall not be permitted if the project does any of the following:

- ◆ Adversely alters hydraulic capacity;
- ◆ Causes a net loss in habitat acreage, value, or function;
- ◆ Degrades water quality.

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

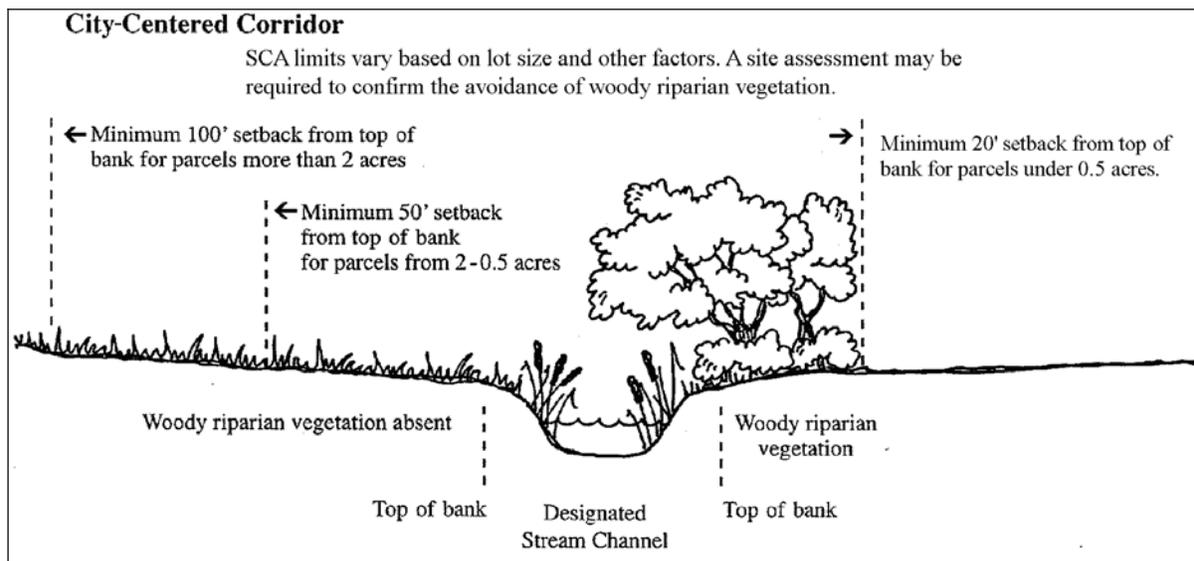


## NATURAL SYSTEMS & AGRICULTURE ELEMENT

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

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

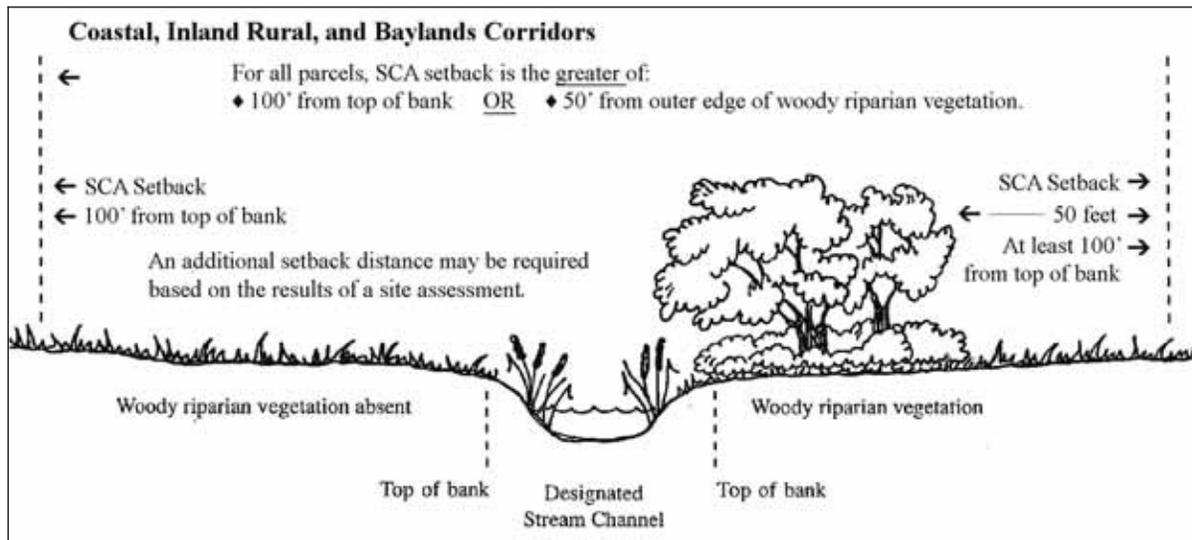
**Figure 2-2**  
**Typical Cross-Section of a Stream Conservation Zone**



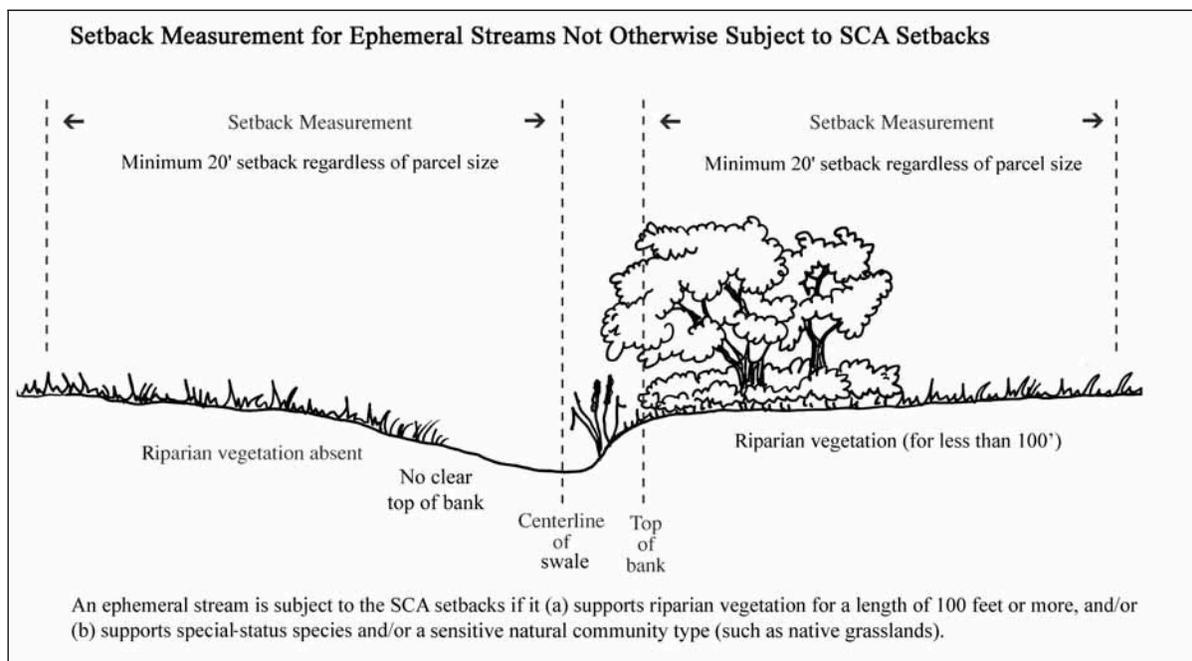
- ◆ Minimum setback distance of 100 feet from top of bank for parcels more than 2 acres.
- ◆ Minimum setback distance of 50 feet from top of bank for parcels between 2 and 0.5 acres.
- ◆ Minimum setback distance of 20 feet from top of bank for parcels less than 0.5 acres.
- ◆ A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, *Require Site Assessment*.
- ◆ Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed and where full compliance with all SCA criteria would not be met.



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



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



## NATURAL SYSTEMS & AGRICULTURE ELEMENT

- BIO-4.5** **Restore and Stabilize Stream Channels.** Pursue stream restoration and appropriate channel redesign where sufficient right-of-way exists that includes the following: a hydraulic design, a channel plan form, a composite channel cross-section that incorporates low flow and bankfull channels, removal and control of invasive exotic plant species, and biotechnical bank stabilization methods to promote quick establishment of riparian trees and other native vegetation.
- BIO-4.6** **Control Exotic Vegetation.** Remove and replace invasive exotic plants with native plants as part of stream restoration projects and as a condition of site-specific development approval in an SCA, and include monitoring to prevent reestablishment.
- BIO-4.7** **Protect Riparian Vegetation.** Retain riparian vegetation for stabilization of streambanks and floodplains, moderating water temperatures, trapping and filtering sediments and other water pollutants, providing wildlife habitat, and aesthetic reasons.
- BIO-4.8** **Reclaim Damaged Portions of SCAs.** Restore damaged portions of SCAs to their natural state wherever possible, and reestablish as quickly as possible any herbaceous and woody vegetation that must be removed within an SCA, replicating the structure and species composition of indigenous native riparian vegetation.
- BIO-4.9** **Restore Culverted Streams.** Replace storm drains and culverts in SCAs with natural drainage and flood control channels wherever feasible. Reopening and restoring culverted reaches of natural drainages should be considered part of review of development applications on parcels containing historic natural drainages where sufficient land area is available to accommodate both the reopened drainage and project objectives. Detailed hydrologic analysis may be required to address possible erosion and flooding implications of reopening the culverted reach, and to make appropriate design recommendations. Incentives should be provided to landowners in restoring culverted, channelized, or degraded stream segments. Where culverts interfere with fish migration but replacement is not possible, modify culverts to allow unobstructed fish passage.
- BIO-4.10** **Promote Interagency Cooperation.** Work in close cooperation with flood control districts, water districts, and wildlife agencies in the design and choice of materials for construction and alterations within SCAs.
- BIO-4.11** **Promote Riparian Protection.** Support agencies, organizations, and programs in Marin County that protect, enhance, and restore riparian areas.
- BIO-4.12** **Support and Provide Riparian Education Efforts.** Educate the public and County staff about the values, functions, and importance of riparian areas. Landowner education regarding the sensitivity of riparian corridors will be provided as part of the Natural Resource Information Program called for in Program BIO-1.c. An emphasis will be placed on public outreach to owners of developed properties encompassing or adjacent to SCAs where minimum setback distances are not provided. Information on regulations protecting riparian corridors should be available, together with general



## MARIN COUNTYWIDE PLAN

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

- BIO-4.13 Provide Appropriate Access in SCAs.** Ensure that public access to publicly owned land within SCAs respects the environment, and prohibit access if it will degrade or destroy riparian habitat. Acquire public lands adjacent to streams where possible to make resources more accessible and usable for passive recreation, and to protect and enhance streamside habitat.
- BIO-4.14 Reduce Road Impacts in SCAs.** Locate new roads and roadfill slopes outside SCAs, except at stream crossings, and consolidate new road crossings wherever possible to minimize disturbance in the SCA. Require spoil from road construction to be deposited outside the SCA, and take special care to stabilize soil surfaces.
- BIO-4.15 Reduce Wet Weather Impacts.** Ensure that development work adjacent to and potentially affecting SCAs is not done during the wet weather or when water is flowing through streams, except for emergency repairs, and that disturbed soils are stabilized and replanted, and areas where woody vegetation has been removed are replanted with suitable species before the beginning of the rainy season.
- BIO-4.16 Regulate Channel and Flow Alteration.** Allow alteration of stream channels or reduction in flow volumes only after completion of environmental review, commitment to appropriate mitigation measures, and issuance of appropriate permits by jurisdictional agencies based on determination of adequate flows necessary to protect fish habitats, water quality, riparian vegetation, natural dynamics of stream functions, groundwater recharge areas, and downstream users.
- BIO-4.17 Continue Collaboration with the Marin Resource Conservation District.** Continue to collaborate with, support, and participate in programs provided by the Marin Resource Conservation District and the Natural Resource Conservation Service to encourage agricultural operators who conduct farm or ranch activities within a Streamside Conservation Area to minimize sedimentation and erosion to enhance habitat values.
- BIO-4.18 Promote the Use of Permeable Surfaces When Hardscapes Are Unavoidable in the SCA and WCA.** Permeable surfaces rather than impermeable surfaces shall be required wherever feasible in the SCA and WCA.
- BIO-4.19 Maintain Channel Stability.** Applicants for development projects may be required to prepare a hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project area runoff. This assessment should be required where evidence that significant current or impending channel instability is present, such as documented channel bed incision, lateral erosion of banks (e.g., sloughing or landsliding), tree collapse due to streambank undermining and/or soil loss, or severe in-channel sedimentation, as determined by the County.



## NATURAL SYSTEMS & AGRICULTURE ELEMENT

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

All project improvements should be designed to minimize flood hydrograph peak flow or flood volume increases into drainage courses. To this end, design features such as porous pavement, pavers, maximizing overall permeability, drainage infiltration, disconnected impervious surfaces, swales, bioretention, green roofs, etc., should be integrated into projects as appropriate.

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

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

### *Why is this important?*

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

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

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



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

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

### *How will results be achieved?*

## Implementing Programs

- BIO-4.a**      ***Adopt Expanded SCA Ordinance.*** Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats. As part of the new ordinance, consider including additional incentives, such as reduced fees or other similar incentives, to reduce the extent of existing development within an SCA or improve conditions that may be impacting sensitive resources.
- BIO-4.b**      ***Reevaluate SCA Boundaries.*** Beginning with the City-Centered Corridor and smaller parcels, conduct a comprehensive study to reevaluate standards used to protect SCAs and regulate development adjacent to streams. The study shall consider available data on stream protection and management standards, their effectiveness, and the effectiveness of the current standards used in Marin County, including the 50- and 100-foot setback distances (plus additional setbacks from the edge of riparian vegetation where applicable). The study shall consider stream functions on a watershed-level basis, and include input from professionals such as a fluvial geomorphologist, hydrologist, wildlife biologist, and vegetation ecologist, together with resource agencies and interested members of the public. Each SCA should encompass all woody riparian vegetation and be of sufficient width to filter sediments and other pollutants before they enter the stream channel. Careful study may be needed to distinguish woody riparian vegetation from other types of woodland or forest vegetation in some areas.
- BIO-4.c**      ***Prepare County Stream Map.*** Use the County GIS to map perennial, intermittent, and, where feasible, ephemeral streams subject to SCA policies. Use the resulting mapping in conjunction with USGS maps and the “ephemeral stream” definition to confirm SCAs on parcels proposed for development. Add to and update the map on an ongoing basis as additional streams are surveyed.



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- BIO-4.d**      ***Establish Functional Criteria for Land Uses in SCAs.*** Develop detailed criteria for protection of riparian functions, and identify methods for their use in evaluating proposed development.
- BIO-4.e**      ***Identify Proposals Within SCAs.*** Determine whether a proposed development falls wholly or partially within an SCA, through agency review by County staff, and as necessary by a qualified professional, of discretionary application materials and site inspection.
- BIO-4.f**      ***Identify Potential Impacts to Riparian Systems.*** At the time of a development application, evaluate potential impacts on riparian vegetation and aquatic habitat, and incorporate measures to protect riparian systems into the project design and construction. Retain and minimize disturbance to woody and herbaceous riparian vegetation in SCAs and adjacent areas. (Tree growth may be cleared from the stream channel where removal is essential to protect against property damage or prevent safety hazards.)
- BIO-4.g**      ***Require Site Assessment.*** Require development applications to include the submittal of a site assessment prepared by a qualified professional where incursions into the SCA are proposed, or adverse impacts to riparian resources may otherwise occur. Unless waived, the qualified professional shall be hired by Marin County. The site assessment shall be paid for by the applicant and considered in determining whether any adverse direct or indirect impacts on riparian resources would occur as a result of the proposed development, whether SCA criteria and standards are being met, and to identify measures necessary to mitigate any significant impacts. The site assessment may also serve as a basis for the County to apply restrictions in addition to those required by State and federal regulations.
- BIO-4.h**      ***Comply with SCA Criteria and Standards.*** All development permit applications shall be reviewed for conformity with these SCA policies, criteria, and standards and in accordance with the California Environmental Quality Act. Proposals that do not conform to SCA policies, and cannot be modified or mitigated to conform, shall be denied. If a proposal involves the creation of a new parcel that is wholly or partially in an SCA, the land division shall be designed to ensure that no development occurs within the SCA.
- BIO-4.i**      ***Replace Vegetation in SCAs.*** When removal of *native* riparian vegetation is unavoidable in an SCA, and mitigation is required, require establishment of native trees, shrubs, and ground covers within a period of five years at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Require replacement and enhancement planting to be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1.



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



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

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

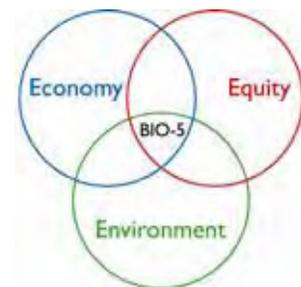
### What Are the Desired Outcomes?

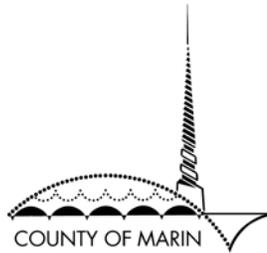
## GOAL BIO-5

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

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

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





COMMUNITY DEVELOPMENT AGENCY  
**PLANNING DIVISION**

June 18, 2013

**Stream Conservation Area Ordinance: Countywide Plan Consistency Matrix**

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

1. The Coastal Zone as defined pursuant to the Coastal Act of 1976;	
2. Tidally influenced waters and adjacent land;	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Human-made flood control channels under tidal influence are subject to the Bayland Conservation policies.
3. Land adjacent to levees, dikes or berms in the City-Centered Corridor;	
4. Publicly owned or maintained flood control channels under tidal influence; and	
5. Official activities and development of the County, State or an agency of the State, or the Federal Government, including work done on behalf of the governmental agency that assumes full responsibility for the work on land owned or controlled by the agency, such as through a lease or easement.	
<b>22.33.030 – Stream Conservation Area General Requirements.</b>	
A. Requirements. Consistent with the purpose of this Chapter, the following requirements shall be implemented to achieve maximum protection of stream and riparian resources:	
1. Development shall avoid SCAs wherever feasible.	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true: 1. A parcel falls entirely within the SCA; or 2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the SCA.
2. Where complete avoidance of an SCA is not feasible, the stream channel shall be avoided to the maximum extent feasible and incursion into the SCA shall be minimized.	
3. Development within the SCA shall not be permitted if it would directly or indirectly result in any of the following: a. Adverse alteration of hydraulic capacity; or b. A net loss in habitat acreage, value, or function; or c. Degradation of water quality.	<b>BIO-4.2 Comply with SCA Regulations.</b> ... In determining whether allowable uses are compatible with SCA regulations, development applications shall not be permitted if the project does any of the following: • Adversely alters hydraulic capacity; • Causes a net loss in habitat acreage, value, or function; • Degrades water quality.
B. SCA Setbacks.	

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

	those ephemeral streams that do not meet these criteria, a minimum 20-foot development setback should be required.
4. On properties zoned for agriculture (A, ARP or APZ), the outer edge of woody riparian vegetation shall be determined on the basis of the most recent aerial photography on file with the County as of February 25, 2013.	
5. A Site Assessment is required for any permitted development in the SCA in order to confirm the avoidance of woody riparian vegetation and to consider site constraints, provide options for alternative mitigation, and determine the precise SCA setback.	<b>BIO—4.g Require Site Assessment</b> Require development applications to include the submittal of a site assessment prepared by a qualified professional where incursions into the SCA are proposed, or adverse impacts to riparian resources may otherwise occur. Unless waived, the qualified professional shall be hired by Marin County. The site assessment shall be paid for by the applicant and considered in determining whether any adverse direct or indirect impact on riparian resources would occur as a result of the proposed development, whether SCA criteria and standards are being met, and to identify measures necessary to mitigate any significant impacts. The site assessment may also serve as a basis for the County to apply restrictions in addition to those required by State and federal regulations.
<b>Chapter 22.63 – STREAM CONSERVATION AREA PERMIT</b>	
<b>22.63.010 – Purpose of Chapter</b>	
This Chapter provides procedures for the processing of Stream Conservation Area (SCA) Permits where avoidance of the SCA is not feasible.	
<b>22.63.020 – Applicability to Development</b>	
A. Application of SCA Provisions.	
1. The provisions of this Chapter apply to development within the Stream Conservation Area as described in Chapter 22.33 (Stream Protection). 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. Exemptions for development in the Stream Conservation Area are contained in this Chapter As used in this Chapter, development that may be permitted in the Stream Conservation Area includes the following:	<b>BIO-4.2 Comply with SCA Regulations.</b> Implement established setback criteria for protection of SCAs through established discretionary permit review processes and/or through adoption of new ordinances. Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.
a. All structures, regardless of whether the work requires a building or grading permit, including fencing, decks, platforms, parking lots, utility crossings, pedestrian or vehicular access routes, and other similar improvements;	

b. Clearing of land or removal of any vegetation, including any protected or heritage tree;	
c. The deposition of refuse or other nonindigenous material not otherwise subject to a permit pursuant to Marin County Code Section 11.08 (Watercourse Diversion or Obstruction); or	
d. Any other activities determined by the Director to have potentially adverse impacts to hydraulic capacity; habitat acreage, value or function; or water quality.	
2. Compliance with this Chapter does not affect applicability of any other requirements by this or any other agency. This Chapter shall not be applied in a manner that supersedes other local, state or federal laws applicable to protection of riparian and stream resources.	
<b>B. Exemptions.</b>	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Allowable uses in SCAs in any corridor consist of the following, provided they conform to zoning and all relevant criteria and standards for SCAs:
1. Exempt without further determination.	
a. Public utility facilities, including their location, construction, maintenance, repair and replacement, that are exempt from local agency building and zoning requirements pursuant to Government Code Section 53091, Public Resources Code Section 4292, and the California Public Utilities Code;	
b. Emergency measures requiring prompt action, where such measures are immediately necessary to avoid or prevent loss of, or damage to, life, health, property or essential public services resulting from a sudden, unexpected occurrence;	
c. Tree and vegetation removal or trimming on a developed lot for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety Vegetation that is dead, invasive, or exotic may also be removed under this exemption;	
d. Resource management programs carried out in accordance with the programmatic requirements or funding of a governmental agency or in coordination with a governmental agency;	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... <ul style="list-style-type: none"> <li>• Projects to improve fish and wildlife habitat;</li> </ul>
e. Infrastructure and vegetation maintenance activities of a governmental agency, whether on public or private land;	
f. Any development that is permitted pursuant to Marin County Code Section 11.08 (Watercourse Division or	

Obstruction),-Section 23.08 (Excavating, Grading and Filling) or Section 24.04.560 (Drainage Setbacks);	
g. Maintenance, accessibility retrofit, and repair of permitted or legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013.	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> . . . <ul style="list-style-type: none"> <li>• Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;</li> </ul>
h. Maintenance or replacement of landscaping.	
i. New fences that do not restrict wildlife access to streams and the adjacent riparian vegetation. Exempt fences include any fence within or on the perimeter of a previously disturbed area;	
j. Agricultural uses on property zoned for agriculture (A, ARP or APZ), including removal and trimming of vegetation planted for a commercial enterprise, that do not result in the removal of woody riparian vegetation or animal confinement within the SCA	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> . . . <ul style="list-style-type: none"> <li>• Agricultural uses that do not result in any of the following: <ol style="list-style-type: none"> <li>a. The removal of woody riparian vegetation;</li> <li>b. The installation of fencing within the SCA that prevents wildlife access to the riparian habitat within the SCA;</li> <li>c. Animal confinement within the SCA; and</li> <li>d. A substantial increase in sedimentation.</li> </ol> </li> </ul>
2. Exempt subject to determination. The following activities are exempt subject to determination by the Director, based upon photographs, illustrations and other appropriate documentation submitted by the applicant, to confirm that the activity will meet the criteria below. Where appropriate, the Director shall confirm the extent of vegetation modification and management requirements with the Fire Marshal. Documentation may include a letter or report from a licensed contractor and photographs of the property and improvements or structures to verify the activity will comply with this Section.	
a. Replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the footprint within the SCA setback_or result in the removal of woody riparian vegetation.	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> . . . <ul style="list-style-type: none"> <li>• Existing permitted or legal nonconforming structures or improvements, their repair, and their retrofit within the existing footprint;</li> </ul>
b. Development activities pursuant to Section 22.63.020.A.1 located within previously disturbed areas as determined by the Director. A cumulative total of 120 square feet of impervious surface shall be exempt in a previously disturbed area, provided that the improvement is located at least 20 feet from the top of the stream bank, does not result in the removal of woody riparian vegetation, and disperses storm water run-off over a	

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

Development activities listed herein shall be ineligible for an SCA Permit (Tier 1) if the proposed development would not meet applicable Development Standards and incorporate applicable Standard Management Practices as required by a Site Assessment or would result in adverse impacts to hydraulic capacity; stream or riparian habitat acreage, value or function; or water quality.	
<b>B. SCA (Tier 1) Project Review Procedure</b>	
1. Ministerial Review. The Stream Conservation Area Permit (Tier 1) shall be undertaken as a ministerial action subject to implementation of required Development Standards and project-specific Standard Management Practices.	
2. Development Standards. Stream Conservation Area (Tier 1) Permits shall comply with the following development standards:	
a. Where permitted development within an SCA setback would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice or Site Assessment. Replacement vegetation shall consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, subject to County approval.	<b>BIO-4.8 Reclaim Damaged Portions of SCAs.</b> Restore damaged portions of SCAs to their natural state wherever possible, and reestablish as quickly as possible any herbaceous and woody vegetation that must be removed within an SCA, replicating the structure and species composition of indigenous native riparian vegetation.
b. New impervious area within the SCA shall not drain directly to the stream or storm drain. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).	<b>BIO-4.19 Maintain Channel Stability.</b> ... All project improvements should be designed to minimize flood hydrograph peak flow or flood volume increases into drainage courses. To this end, design features such as porous pavement, pavers, maximizing overall permeability, drainage infiltration, disconnected impervious surfaces, swales, bioretention, green roofs, etc., should be integrated into projects as appropriate.
c. New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.	<b>BIO-4.14 Reduce Road Impacts in SCAs.</b> Locate new roads and roadfill slopes outside SCAs, except at stream crossings, and consolidate new road crossings wherever possible to minimize disturbance in the SCA. Require spoil from road construction to be deposited outside the SCA, and take special care to stabilize soil surfaces.
d. Pedestrian bridges shall be designed such that no portion of the structure or its related abutments extends between and below the top of banks of the stream.	
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.	<b>BIO-4.4 Promote Natural Stream Channel Function.</b> ... In no case shall alterations that create barriers to fish migration be allowed on

	streams mapped as historically supporting salmonids. ...
f. Subdivisions shall be designed so that no further development will occur within the SCA, and where the SCA setback is determined by the size of the lot, the SCA setback that applies to the lot prior to any subdivision shall apply to all subsequent lots that are created.	
3. Standard Management Practices. The CDA shall maintain a list of Standard Management Practices to be incorporated into all projects for the protection of hydraulic capacity, stream and riparian habitat and water quality within SCAs. The Site Assessment (Tier 1) will identify those Standard Management Practices appropriate to ensure that adverse impacts of permitted development are avoided. Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than final inspection.	<b>BIO-4.a Adopt Expanded SCA Ordinance.</b> Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats.
4. Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; and identify Standard Management Practices corresponding to the nature of development that would ensure that the project will not cause adverse impacts to the stream and riparian resources. The Site Assessment (Tier 1) is part of the SCA Permit (Tier 1).  If the Site Assessment confirms that impacts to hydraulic capacity, stream and riparian habitat and water quality can be avoided through implementation of specific Standard Management Practices, the County shall process the application as a Tier 1 permit.	<b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed or where full compliance with all SCA criteria would not be met. <b>See also BIO-4.a. (above)</b>
<b>22.63.040 – Stream Conservation Area Permit (Tier 2)</b>	
A. SCA (Tier 2) Development. The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030; for any project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices necessary to avoid adverse impacts; and for any development that would, despite application of Standard Management Practices, result in adverse impacts to hydraulic capacity, stream or riparian habitat or water quality.	
B. SCA (Tier 2) Project Review Procedure	

<p>1. Discretionary Review. The Stream Conservation Area Permit (Tier 2) shall be undertaken as a discretionary action subject to incorporation of Development Standards, Standard Management Practices, and/or any other mitigations as determined through a Site Assessment (Tier 2) necessary to avoid adverse impacts to hydraulic capacity; habitat acreage, value or function; and water quality.</p>	
<p>2. Development Standards. Stream Conservation Area (Tier 2) Permits shall comply with the following Development Standards:</p>	
<p>a. All Development Standards applicable to Tier 1 permits provided in Section 22.63.030.B.2, except where the a Site Assessment (Tier 2) demonstrates that alternate mitigations would be more appropriate to prevent adverse alteration of hydraulic capacity; a net loss in habitat acreage, value or function; or degradation of water quality.</p>	
<p>b. Any development that would, on the basis of a Site Assessment, cause or exacerbate existing channel instabilities shall require County approval of a channel stabilization program in accordance with a hydrological or geomorphic assessment; or comply with the mitigations generated during the required environmental review process. Mitigations shall include maintenance of peak flows at pre- and post-project levels, or less. Proposed stabilization measures shall anticipate project-related changes to the drainageway flow regime.</p>	<p><b>BIO-4.19 Maintain Channel Stability</b>  . . .  The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access. In the event that project development would result in or further exacerbate existing channel instabilities, the applicant could either propose his/her own channel stabilization program subject to County approval or defer to the mitigations generated during the required environmental review for the project, which could include maintenance of peak flows at pre- and post-project levels, or less. Proposed stabilization measures shall anticipate project-related changes to the drainageway flow regime.</p>
<p>3. Standard Management Practices. The project shall incorporate any applicable Standard Management Practices on file in the CDA, except as determined in accordance with a Site Assessment (Tier 2) and applicable mitigations.</p>	
<p>4. Site Assessment (Tier 2). The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1) and determine whether an additional setback is required to avoid adverse impacts to the SCA.  The Site Assessment (Tier 2) shall also include:</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b>  . . .  Regardless of parcel size, a site assessment is required where incursion into an SCA is proposed or where full compliance with all SCA criteria would not be met.</p>
<p>a. Additional studies necessary to determine the extent of development impacts to hydraulic capacity, habitat and water quality including but not limited to hydrological assessments; stream and riparian habitat studies; and stormwater analysis. A</p>	<p><b>BIO-4.2 Comply with SCA Regulations.</b>  . . .  Environmental review shall be required where incursion into an SCA is proposed and a discretionary permit is required.</p>

<p>hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project run-off may be required where there is evidence that significant current or impending channel instability is present, as determined by the County. The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access.</p>	<p><b>BIO-4.19 Maintain Channel Stability.</b> Applicants for development projects may be required to prepare a hydraulic and/or geomorphic assessment of on-site and downstream drainageways that are affected by project area runoff. This assessment should be required where evidence that significant current or impending channel instability is present, such as documented channel bed incision, lateral erosion of banks (e.g., sloughing or landsliding), tree collapse due to streambank undermining and/or soil loss, or severe in-channel sedimentation, as determined by the County.</p>
<p>b. A description of mitigation measures that conform to criteria in Section C (Mitigation Criteria), and any additional mitigation measures that would avoid or reduce to the adverse impact of the proposed development on hydraulic capacity, habitat, or water quality within the SCA. Such measures shall include feasible design and site specific measures, in addition to local, state and federal regulations. All such measures shall be incorporated into the project or be required through conditions of approval.</p>	
<p>c. If the lot is not entirely within the SCA, the Site Assessment (Tier 2) shall also evaluate whether development on the lot entirely outside the SCA is infeasible and whether potential impacts on water quality, wildlife habitat, native vegetation or other sensitive biological resources would be greater as a result of development outside the SCA than development within the SCA.</p>	<p><b>BIO-4.1 Restrict Land Use in Stream Conservation Areas.</b> ... Exceptions to full compliance with all SCA criteria and standards may be allowed only if the following is true: 1. A parcel falls entirely within the SCA; or 2. Development on the parcel entirely outside the SCA either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other constraints than development within the SCA.</p>
<p>C. Mitigation Criteria. Where development would occur within an SCA, and adverse impacts to hydraulic capacity, habitat, or water quality are identified, mitigation shall conform to the provisions below and shall be incorporated into the project or be required through conditions of approval. The Site Assessment (Tier 2) shall present options for alternative mitigation that meet the following criteria.</p>	<p><b>BIO-4.1</b> ... A site assessment may be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, presence of other sensitive biological resources, options for alternative mitigation, and determination of the precise setback. Site assessments will be required and conducted pursuant to Program BIO-4.g, <i>Require a Site Assessment</i>.</p>
<p>1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum</p>	<p><b>BIO-4.i Replace Vegetation in SCAs.</b> When removal of native riparian vegetation is unavoidable in an SCA, and mitigation is required, require establishment of native trees, shrubs, and ground covers within a period of five years at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Require replacement and enhancement planting to be monitored and maintained until successful</p>

replacement or enhancement ratio of 2:1 (individuals planted: individuals removed).	establishment provides for a minimum replacement or enhancement ratio of 2:1.
2. A condition of approval for the Stream Conservation Area Permit (Tier 2) shall require a schedule of mitigation work and development work. Mitigation shall be implemented prior to final inspection to minimize any short-term adverse impacts to hydraulic capacity, habitat, or water quality. Mitigation plans must, to the extent feasible, be designed so that mitigations are self-sustaining.	
<b>22.63.050 – Application Filing, Processing and Review</b>	
A. Filing and processing. Stream Conservation Area Permit (Tier 1) applications shall be completed, submitted, and processed in compliance with Section 22.40.052 (Initial Application Review for Ministerial Planning Permits). Stream Conservation Area Permit (Tier 2) applications shall be completed, submitted, and processed in compliance with Section 22.40.050 (Initial Application Review for Discretionary Permits). Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of Chapter 22.33 (Stream Protection).	
B. Project review procedure. The Review Authority shall approve, conditionally approve, or deny all Stream Conservation Area Permit applications in compliance with the findings required by Chapter 22.63 (Stream Conservation Area Permit).	
C. Public hearings. When the Stream Conservation Area Permit application is associated with a permit application that requires a public hearing, the Stream Conservation Area Permit action may be taken by the appropriate County hearing body as determined by the Director.	
D. Notice of action and/or hearing date. Administrative decisions and public hearings on a proposed Stream Conservation Area Permit (Tier 2) application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Stream Conservation Area Permit (Tier 2) application.	
<b>22.63.060 – Decision and findings</b>	
The Review Authority shall issue the decision and the findings upon which the decision is based. The Review Authority may approve or conditionally approve an application only if all of the following findings are made:	
A. For a SCA (Tier 1) Permit:  1. The project meets the requirements of Section 22.63.030	<b>BIO-4.2 Comply with SCA Regulations.</b> ... In determining whether allowable uses are compatible with SCA regulations,

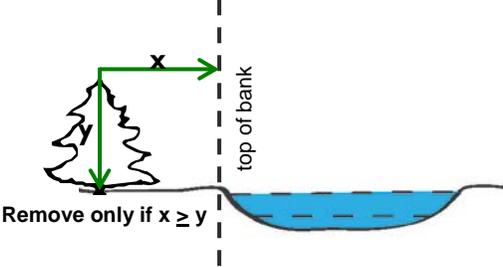
<p>(Stream Conservation Area Permit (Tier 1))</p> <p>2. The project will not adversely alter hydraulic capacity; cause a net loss in habitat acreage, value or function; and degrade water quality.</p>	<p>development applications shall not be permitted if the project does any of the following:</p> <ul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

## Standard Management Practices

DRAFT June 18, 2013

### Riparian Vegetation and Wildlife Habitat.

SMPs are required for vegetation removal within the Stream Conservation Area Setback. Vegetation removal below top of banks may require a Creek Permit from the Department of Public Works (<http://www.marincounty.org/pw>).

Distance (From Top of Bank)	Management Practice	✓
0-35 feet	1. Do not remove tree roots or grind stumps.	<input type="checkbox"/>
0-15 feet	2. Do not remove riparian vegetation.	<input type="checkbox"/>
15-35 feet	3. Do not remove saplings or riparian shrubs $\geq$ 125 square feet in total canopy area.	<input type="checkbox"/>
35 feet to limits of SCA	4. Do not remove saplings or riparian shrubs $\geq$ 250 square feet in total canopy area.	<input type="checkbox"/>
Entire SCA Setback	5. Replace areas of herbaceous riparian vegetation that have been removed using a native seed mix comprised of San Francisco Bay Area native species. Apply native seed mix at a rate of 40 lbs/acre.	<input type="checkbox"/>
Entire SCA Setback	6. Do not remove any tree or shrub if the distance from the base of the trunk to the top of stream bank is less than its overall height (a 1:1 ratio).  	<input type="checkbox"/>
Entire SCA Setback	8. Do not remove more than two trees (not including saplings).	<input type="checkbox"/>
Entire SCA Setback	9. Replace trees and shrubs on-site at a 2:1 ratio using native species recommended in the Marin SCA Riparian List (attached).	<input type="checkbox"/>
Area of riparian vegetation	10. Avoid removal of wood rat nests identified during the Site Assessment, or disassemble nests by hand and move elsewhere within the area of riparian vegetation.	<input type="checkbox"/>
Entire SCA Setback	11. Do not remove trees during avian breeding season (February 1- August 31), or provide breeding bird survey by qualified biologist within 15 days prior to vegetation removal to verify that no nesting birds are present. Vegetation removal during avian breeding season will not be authorized if nesting birds are present.	<input type="checkbox"/>
Entire SCA Setback	12. Do not use heavy equipment (i.e., bobcats, tractors, dozers, etc.) for initial clearing of vegetation, leaf litter, and other debris.	<input type="checkbox"/>
Entire SCA Setback	13. Clearing of leaf litter and debris must be limited to areas of construction, staging and stockpiling identified on the site plan.	<input type="checkbox"/>
Entire SCA Setback	14. For new outdoor lighting, use light fixtures that incorporate a shield to direct light toward the ground and away from vegetated riparian areas. Do not use lighting, such as globe fixtures, that directs lighting in an upward or uncontrolled direction.	<input type="checkbox"/>

## Water Quality & Hydraulic Capacity

SMPs are required for all development that requires an SCA Permit. The following shall be implemented if the project is not a Regulated Project under Provision E.12 of the statewide municipal Phase II NPDES permit (for more information: <http://mcstoppp.org>).

Entire SCA Setback	15.	New or replaced impervious areas (e.g., roofs, paving, or hardscape) shall not drain directly to storm drains or streams (i.e., run-off must disperse across a pervious vegetated surface).	<input type="checkbox"/>
Entire SCA Setback	16.	Disperse runoff from new or replaced impervious areas. Runoff shall be dispersed to pervious areas that meet the following parameters: <ul style="list-style-type: none"> <li>Pervious area is at least ½ the size (footprint) of impervious area. The minimum ratio for dispersed runoff must be at least 2:1 (impervious: pervious).</li> <li>Slope of receiving pervious area is ≤ 2%.</li> <li>Receiving area is vegetated with uncompacted soils.</li> </ul>	<input type="checkbox"/>
Entire SCA Setback	17.	If runoff from new or replaced impervious areas is not dispersed to pervious areas, it must be directed to a bioretention facility built to the designs standard of NPDES Phase II permit Provision E.12: <ul style="list-style-type: none"> <li>Maximum surface loading rate of 5 inches per hour, based on the flow rates calculated. A sizing factor of 4% of tributary impervious area may be used.</li> <li>Minimum surface reservoir volume equal to surface area times a depth of 6 inches.</li> <li>Minimum planting medium depth of 18 inches. The planting medium must sustain a minimum infiltration rate of 5 inches per hour throughout the life of the project and must maximize runoff retention and pollutant removal. A mixture of sand (60%-70%) meeting the specifications of American Society for Testing and Materials (ASTM) C33 and compost (30%-40%) may be used.</li> <li>Subsurface drainage/storage (gravel) layer with an area equal to the surface area and having a minimum depth of 12 inches.</li> <li>Underdrain with discharge elevation at top of gravel layer.</li> <li>No compaction of soils beneath the facility, or ripping/loosening of soils if compacted.</li> <li>No liners or other barriers interfering with infiltration.</li> <li>Appropriate plant palette for the specified soil mix.</li> </ul>	<input type="checkbox"/>
Entire SCA Setback	18.	Underdrain and overflow from the bioretention facility shall be connected to an existing drainage system or dispersed downgradient using perforated pipe dissipaters.	<input type="checkbox"/>

## Construction Phase – Pollution Prevention

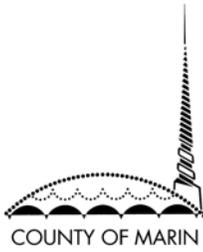
SMPs are required for all development that requires an SCA Permit. The following SMPs are adequate if either Condition A or B below is met:

- A. New site disturbance (e.g., grading, vegetation removal, construction staging, etc) that occurs between May 1 and September 30 *only* and all disturbed areas are stabilized and/or revegetated by September 30; *or*
- B. A new site disturbance ≤ 2500 square feet where:
  1. Slope in disturbed area is ≤ 10%; and
  2. Disturbance is not within a distance of 20 feet from the top of bank; and
  3. No portion of the site disturbance drains directly to the stream either via conveyance or watercourse.

Entire SCA Setback	19.	Implement MCSTOPPP “Minimum Erosion and Sediment Control Measures for Small Construction Projects” and “Pollution Prevention: It’s Part of the Plan.”	<input type="checkbox"/>
Entire SCA Setback	20.	If site will not be permanently stabilized and/or revegetated by September 30, also implement and maintain sediment and control measures identified in MCSTOPPP “Minimum Erosion and Sediment Control Measures for Small Construction Projects” throughout the rainy season.	<input type="checkbox"/>

## Native Plants Common to Riparian Areas in Marin County

Common Name	Scientific Name	Life Form
Lady fern	<i>Athyrium filix-femina</i>	Fern
California polypody	<i>Polypodium californicum</i>	Fern
Western sword fern	<i>Polystichum munitum</i>	Fern
Giant chain fern	<i>Woodwardia fimbriata</i>	Fern
Elk clover	<i>Aralia californica</i>	Shrub
Mugwort	<i>Artemisia douglasiana</i>	Shrub
Coyote brush	<i>Baccharis pilularis</i>	Shrub
Stream dogwood	<i>Cornus sericea</i>	Shrub
California hazelnut	<i>Corylus cornuta</i>	Shrub
Toyon	<i>Heteromeles arbutifolia</i>	Shrub
Ocean spray	<i>Holodiscus discolor</i>	Shrub
Twinberry	<i>Lonicera involucrata</i>	Shrub
Creek monkeyflower	<i>Mimulus guttatus</i>	Shrub
Wax myrtle	<i>Myrica californica</i>	Shrub
Ninebark	<i>Physocarpus capitatus</i>	Shrub
Coffeeberry	<i>Rhamnus californica</i>	Shrub
Fuchsia-flowering gooseberry	<i>Ribes californicum</i>	Shrub
Pink flowering currant	<i>Ribes sanguineum</i>	Shrub
Rose, California	<i>Rosa californica</i>	Shrub
Rose, Wood	<i>Rosa gymnocarpa</i>	Shrub
Thimbleberry	<i>Rubus parviflorus</i>	Shrub
Salmonberry	<i>Rubus spectabilis</i>	Shrub
California blackberry	<i>Rubus ursinus</i>	Shrub
Blue elderberry	<i>Sambucus nigra canadensis</i>	Shrub
Red elderberry	<i>Sambucus racemosa</i>	Shrub
Snowberry	<i>Symphoricarpos spp.</i>	Shrub
Poison oak	<i>Toxicodendron diversilobum</i>	Shrub
Pacific Madrone	<i>Arbutus menziesii</i>	Tree
Big leaf maple	<i>Acer macrophyllum</i>	Tree
Box elder	<i>Acer negundo var. californicum</i>	Tree
California buckeye	<i>Aesculus californica</i>	Tree
Alder, white or red	<i>Alnus spp.</i>	Tree
Oregon ash	<i>Fraxinus latifolia</i>	Tree
Tanoak	<i>Lithocarpus densiflorus</i>	Tree
Coast live oak	<i>Quercus agrifolia</i>	Tree
California black oak	<i>Quercus kelloggii</i>	Tree
Valley oak	<i>Quercus lobata</i>	Tree
Arroyo willow	<i>Salix lasiolepis</i>	Shrub-like tree
Yellow willow	<i>Salix lucida lassianandra</i>	Tree
Coast redwood	<i>Sequoia sempervirens</i>	Tree
California bay-laurel	<i>Umbellularia californica</i>	Tree



## Frequently Asked Questions about the Stream Conservation Area (SCA)

June 18, 2013

### 1. **What is proposed?**

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

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

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

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

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

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

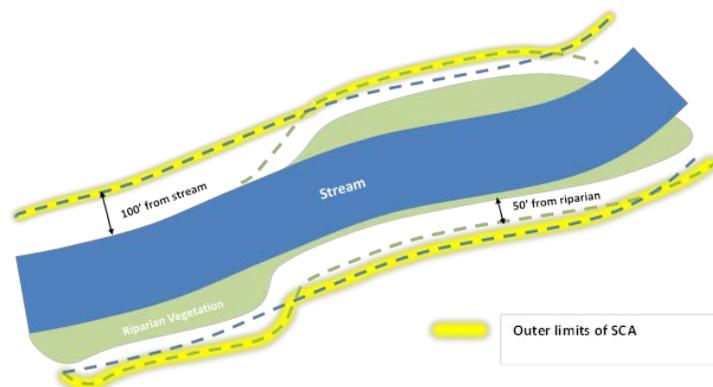
The SCA applies to perennial, intermittent, and ephemeral streams identified in the data and map that is maintained and periodically updated by the Community Development Agency. The SCA setbacks vary depending on which of the four Countywide Plan Corridors (Bayfront, City-Centered, Inland Rural, and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

#### SCA Setback for properties in the City-Centered Corridor:

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

#### SCA Setback for properties in the other Corridors:

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



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

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

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

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

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

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

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

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

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

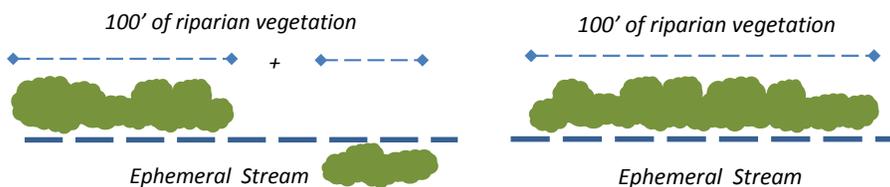
The ordinance will be implemented through new permitting procedures for development within a Stream Conservation Area. There will be significant outreach to the affected communities and property owners to ensure that they are aware of the requirements. Information designed for use by homeowners and contractors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

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

**Stream Questions**

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

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



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

A review of the County’s stream maps would help determine whether a segment of stream is identified for protection under the SCA ordinance, regardless of whether it is an ephemeral, intermittent, or perennial stream.

You can access this information on the County's online mapping tool that is available from [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca).

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

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

**Process Questions**

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

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

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

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

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

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

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

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

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

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

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

**Site Assessments:**

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

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

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

Applicants may use their own biologist for site assessments; consistent with current practice the County retains the ability to arrange for peer review if there are questions about findings. Recognizing that costs to prepare

assessments may vary widely, the Community Development Agency intends to provide a list of qualified professionals who have agreed to complete the required site assessment at a competitive price, or have the assessment prepared by a qualified County staff.

### **Use & Interpretation Questions**

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

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

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

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

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

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

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

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

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

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

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

Landscape maintenance is exempt under the proposed ordinance.

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

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

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

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

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

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

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

Exempt fences include replacement fences or fence sections; any fence within or on the perimeter of a previously disturbed area; stream fences or wildlife friendly fences selected under the direction of the Natural

Resources Conservation Service or any other agricultural or resource agency; or underground/wireless fences. On residential lots, open fences (such as two rail or split rail fences) may also be exempt.

### **Terminology Questions**

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

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



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

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

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

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

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

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

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

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

**34. Who is the Director?**

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

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

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

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

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

**37. What is Habitat Function?**

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

**38. What is Habitat Value?**

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

**39. What is Water Quality?**

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

**40. What is Riparian Vegetation?**

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

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

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

**42. What is animal confinement?**

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

**Riparian Vegetation**

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

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

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

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

**Illegal Structures**

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

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

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

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

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

**Mapping**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

County envisions that those efforts will be preceded by public outreach and education efforts to those that may be affected.

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

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

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

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

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

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

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

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

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

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

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

The stream is likely an intermittent stream, which is subject to the ordinance under the Countywide Plan definitions. Intermittent streams typically do not flow year-round, but rather are seasonal or intermittent, flowing

during the wet season or after periods of precipitation and ceasing flow during at least part of the dry season. The SCA policies are not limited to protecting fisheries resources, but riparian habitats along streams.

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

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

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

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

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

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

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

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

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

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

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

Prepared by:

Marin County Community Development Agency – Planning Division  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903  
(415) 473-6269

# Updated Stream Conservation Area Ordinance

*What do you think about the updated draft Stream Conservation Area Ordinance?*

All comments sorted chronologically

As of June 11, 2013, 8:04 AM



# Updated Stream Conservation Area Ordinance

*What do you think about the updated draft Stream Conservation Area Ordinance?*

## Introduction

On May 13, 2013, the Planning Commission recommended approval of the draft SCA Ordinance. Please review the most recent draft and FAQs (available at [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca)) and share your comments. Comments posted here will be forwarded to the Board of Supervisors in advance of the June 18, 2013 public hearing.

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

# Updated Stream Conservation Area Ordinance

*What do you think about the updated draft Stream Conservation Area Ordinance?*

As of June 11, 2013, 8:04 AM, this forum had:

Attendees:	41
Participants:	6
Minutes of Public Comment:	18

**2 participants posted comments**

## Updated Stream Conservation Area Ordinance

What do you think about the updated draft Stream Conservation Area Ordinance?

Name not shown inside District 4

May 22, 2013, 9:06 AM

The SCA ordinance is one more instance of useless micro-management of our lives and property. It will be expensive to administer, it strips the use and enjoyment of private property, and will do little to achieve its ostensible goals. 1.) The ordinance is based on a false premise, that only undisturbed wild land is compatible with salmon habitat. In reality, in Europe, groomed trout and salmon streams have existed for hundreds of years. There is no conflict between stream conservation and use of private property when proper land management practices are employed. 2.) Many of the regulated "streams" are actually gullies that are dry most of the year. They do not support any fish today, and have never supported fish in the past. True, these gullies connect with streams with year round flow, but so does every drop of water that falls anywhere.

3.) Many of the regulated streams flow through heavily urbanized areas on their way to San Francisco Bay. Regulation upstream, in areas that are rural or exurban, has no effect on salmon habitat downstream, in areas that are urbanized and not subject to the County ordinance. Therefore the regulation is excessive compared to its likely positive effect.

4.) Insufficient attention is paid to the need to trim trees and brush to mitigate fire danger. Dry gullies act as chimneys, where fires burn uphill, and can leap into tree crowns, with devastating effect. An expensive and complicated permitting process will provide negative pressure against land owners who need and want to comply with the fire safety practices outlined in "Fire Safe Marin".

5.) Instead of this regulatory over-reach, with its negative, punitive, and suspicious attitude toward Marin County citizens, what we actually need is a public education program. Most rural and exurban property owners would be delighted to cooperate with an educational program that helped them understand how to enjoy the full use of their property and conserve salmon habitat at the same time. The County could put a landscape architect on retainer in order to advise property owners, and set up a website with easy-to-follow advice. We could achieve 80% of the benefit with less than 20% of the cost and bother, and preserve property rights at the same time.

The real problem here is a false ideology, that sets up a ridiculous dichotomy between The City (bad) and The Wilderness (good). In reality, we need to think in terms of The Garden, a sustainable working landscape that is intermediate between the City and the Wilderness. The Garden vision of sustainability depends on knowledge of practical, scientific land management practices, not regulating human use of the land out of existence.

4 Supporters

Matt Lewis inside District 4

May 22, 2013, 1:05 AM

It is my opinion that the Stream Conservation Area Ordinance is essentially a taking of private property with no compensation what-so-ever. That unless a property owner has the time, patience, money and willingness to enter into a legal battle(s) with the County, he or she is going to be able to do very little with the property they own adjacent to stream. Depending upon a parcel's configuration (specifically the amount adjacent to a stream) The proposed 20', 50' and 100' set-backs could very well render a property unusable to an owner. It seems to me that those folk currently owning property in the proposed SCA will not only be under the scrutiny of every current and future conservation group, the Director, and or the County's hand picked biologists, but will also be expected to continue

## Updated Stream Conservation Area Ordinance

What do you think about the updated draft Stream Conservation Area Ordinance?

paying the property taxes on land that he/she no longer has control over.

If the Marin County Board of Supervisors accepts the Stream Conservation Area Ordinance, they need to compensate the current owners for their loss of develop-able property.

Matt Lewis  
Bolinis

5 Supporters

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**From:** [Andrea Taber](#)  
**To:** [Rice, Katie](#); [Kinsey, Steven](#); [Adams, Susan](#); [Arnold, Judy](#); [Sears, Kathrin](#)  
**Cc:** [Dan Stein](#); [Thorsen, Suzanne](#); [Lai, Thomas](#)  
**Subject:** Sleepy Hollow Homeowners Association Letter of Opposition to the SCA Ordinance  
**Date:** Wednesday, May 22, 2013 8:12:53 PM  
**Attachments:** [Document4.docx](#)

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Dear Supervisors-

Attached please find our letter of opposition to the SCA Ordinance for Sleepy Hollow as drafted by our attorney Neil Moran of Freitas McCarthy MacMahon & Keating, LLP.

Sleepy Hollow Homeowners Association

May 3, 2013

Board of Supervisors of Marin County  
3501 Civil Center Drive  
San Rafael, CA 94903-4157

**Re: Stream Conservation Area (SCA)  
Proposed Amendments to the Development Code**

Honorable Members of the Board of Supervisors:

### **INTRODUCTION**

The Sleepy Hollow Homes Association (SHHA) objects to the proposed changes to Chapters 22.33 (Stream Protection) and 22.63 (Stream Conservation Area Permit) as they would apply to the residents of the unincorporated portion of San Anselmo known as Sleepy Hollow.

We ask that the County exempt and/or delay implementation of any changes to Chapters 22.33 and 22.63 *as to the city-centered corridor streams, including Sleepy Hollow.*

The SHHA supports implementation of the proposed amendments to the San Geronimo Valley, to protect wildlife habitat in streams where Coho Salmon currently exist. The SHHA supports regulations to ensure the health and survival of the species in these areas. The SHHA recognizes the urgency of this matter to the San Geronimo Valley, 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.

The one-size-fits-all approach inherent in the current draft is wrong-headed. Unlike the San Geronimo Valley, Sleepy Hollow Creek and other areas Marin east of White's Hill (the 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 proposed draft amendments fail to take into account that these heavily urbanized streams are fundamentally different from less urbanized streams in the San Geronimo Valley 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.

The SHHA opposes the proposed amendments on the following additional grounds:

- The County has failed to notify many affected residents in Sleepy Hollow of the proposed amendments. Thus, the proposed amendments deny our clients' their due process and equal protection rights.
- The proposed amendments as applied to the residents of Sleepy Hollow are *ad hoc* takings, and constitute unreasonable limitations on the use and value of the land.
- The proposed amendments are arbitrary and fail the "no rational basis" test.
- They constitute confiscatory government conduct in violation of our clients' substantive due process rights.
- The amendments contain unduly burdensome permitting procedures and costly new fees that result in no public benefit.
- These amendments turn our clients' properties into pseudo "wetlands" without compensation or public benefit.
- We reserve all other grounds for opposition.

### **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, imposes onerous permitting requirements, unnecessary and exorbitantly expensive fees, and diminishes our clients' property values.

Here are some of our concerns and some of the deficiencies in the planning process and proposed amendments:

- 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 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.

- The September 10, 2012 ruling by the Marin County Superior Court 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.

### **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:

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

Below are our proposed revisions to the draft ordinance to make the ordinance less onerous to affected residents.

We propose the draft amendments exclude all areas east of White's Hill, including Sleepy Hollow.

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

- 1) **STANDARD OF REASONABLENESS.** The draft ordinance is unreasonable *per se* 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. With a typical rear yard setback, therefore would be enough room to accommodate the draft ordinance setback of 50' and still have a reasonable building site.

Now consider the same ½ acre lot with the stream running through the middle of it.) 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.

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 County staff to set regulations at their 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~~s~~ ~~determined by the Director;~~*
- 4. Pedestrian or vehicular access routes, including paths, ramps, driveways, roads, and bridges;*
- 5. Drainage improvements, such as downdrains, pipes and swales;*
- 6. Retaining walls, erosion control structures, and similar improvement located upland from the top of bank as determined by the Director;*

7. Necessary flood control projects.

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

B. SCA (Tier 1) Project Review Procedure

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

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

a. *Where permitted development within an SCA would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice or Site Assessment. Replacement vegetation may consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, ~~subject to County approval.~~*

b. *New impervious area within the SCA shall not drain directly to the stream. Run-off from new impervious surfaces shall flow to an adjacent pervious area (i.e., vegetated or porous surface).*

c. *New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.*

d. *Clear span bridges or arched culvert designs, with no part of the bridge except support structures and foundations located below the top of bank, shall be utilized at road and driveway crossings over perennial or intermittent streams.*

e. *Permitted work shall not result in alterations that directly or indirectly create barriers to fish migration near or within streams mapped as currently and/or historically supporting salmonids.*

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

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

5) TIER 2 PERMITS

22.63.040 – Stream Conservation Area Permit (Tier 2)

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

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

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

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

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

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

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

## 6) DECISION AND FINDINGS

### 22.63.060 – Decision and findings

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

For a SCA (Tier 1) Permit:

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

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

For a SCA (Tier 2) Permit:

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

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

7) Related Development Code Amendments

8. Add new definitions.

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

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

When we asked to meet with Supervisor Kinsey to present our concerns, his aide said he was too busy and would be too busy for the next few weeks. We find this high-handed and offensive.

We reserve our rights to provide additional objections, and to pursue all of our administrative and legal remedies.

This letter was authorized by a unanimous vote of the Board of Directors of the SHHA at its meeting of May 2, 2013.

Sincerely,

Sleepy Hollow Homes Association

By: \_\_\_\_\_

Dan Stein, its President

cc: Neil J. Moran, Freitas McCarthy MacMahon & Keating, LLP, Attorneys for SHHA



May 8, 2013

**To:** Marin County Board of Supervisors  
Marin County Board of Supervisors  
3501 Civic Center Drive, Room 329  
San Rafael, CA 94903

**Re:** Stream Conservation Ordinance

To whom it may concern,

California Trout would like to commend the Board for their work to enact a Stream Conservation Ordinance. Your work is particularly important, as you are stewards of the Lagunitas Creek watershed, the last stronghold for endangered Coho Salmon in Central California. Therefore, it is of utmost importance that the Stream Conservation Ordinance which is currently before the board, meets the goals of Marin County's General Plan which mandates no net loss of aquatic habitat, and provisions of recovery actions of the US Coho Recovery Plan. Particularly germane is action suite 5 (Landscape Patterns) of the *Coastal Diversity Stratum Actions for Restoring Habitats* which states:

**5.1. Objective:** Address the present or threatened destruction, modification, or curtailment of the species habitat or range

**5.1.3. Recovery Action:** Reduce adverse impacts to landscape patterns

**5.1.3.1. Action Step:** Work with Mendocino, Sonoma and Marin counties (including cities and local jurisdictions) to improve permitting processes, road maintenance, ordinances, etc. to reduce ongoing impacts of urbanization, agriculture, road building, grading activities, and timberland conversions.

CalTrout looks forward to seeing a science-driven ordinance that will protect aquatic and riparian habitat from the impacts of additional residential development in Lagunitas Creek and its tributaries, especially the vital seasonal streams of the watershed's headwaters.

Sincerely,

Jacob Katz  
Central California Programs Manager

**From:** [Stratton, Debra](#)  
**To:** [Lai, Thomas](#); [Thorsen, Suzanne](#)  
**Cc:** [Crawford, Brian](#)  
**Subject:** FW: Stream Conservation Ordinance letter from California Trout  
**Date:** Tuesday, May 14, 2013 6:53:17 PM  
**Attachments:** [Marin stream ordinance letter.pdf](#)  
[ATT00001.htm](#)

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**From:** jacob katz [mailto:[jvkatz@ucdavis.edu](mailto:jvkatz@ucdavis.edu)]  
**Sent:** Monday, May 13, 2013 5:55 PM  
**To:** Stratton, Debra; Kinsey, Steven; Adams, Susan; Arnold, Judy; Rice, Katie; Sears, Kathrin  
**Subject:** Stream Conservation Ordinance letter from California Trout

Marin County Board of Supervisors,

Please find attached a letter from California Trout regarding the Stream Conservation Ordinance currently before the board. CalTrout looks forward to seeing a science-driven ordinance that will protect aquatic and riparian habitat from the impacts of additional residential development in Lagunitas Creek and its tributaries, especially the vital seasonal streams of the watershed's headwaters.

Sincerely,  
Jacob Katz

**Jacob Katz**  
California Trout  
Director of Salmon & Steelhead Initiative  
Regional Program Manager - Central California  
Nigiri Project Principal Investigator

Central California Region Office  
930 Shiloh Rd, Bldg. 40, Suite 6  
Windsor, Ca 95492

[jkatz@caltrout.org](mailto:jkatz@caltrout.org)  
Office: (707) 836-0769  
Cell: (707) 477-9978



# MARIN MUNICIPAL WATER DISTRICT

220 Nellen Avenue Corte Madera CA 94925-1169

[www.marinwater.org](http://www.marinwater.org)

June 5, 2013

Suzanne Thorsen, Planner  
Marin Community Development Agency  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903

JUN 5 2013 AM 11:10 Planning

RE: Draft Marin Stream Conservation Ordinance

Dear Ms. Thorsen,

The Marin Municipal Water District has a long-standing commitment to the preservation and restoration of creeks throughout our service area and beyond for the benefit of all. We believe that the current draft of the Ordinance would yield significant positives toward our common commitments.

We have reviewed the proposed Stream Conservation Area Ordinance from the perspective of determining its potential effect on District operations. We concur with your staff's decision to modify Section 22.63.020 B.1.a concerning exemptions for public utility facilities as recommended by the North Marin Water District.

Sincerely,

Dain Anderson  
Environmental Services Coordinator

**From:** [Dee Lawrence](#)  
**To:** [Kinsey, Steven](#)  
**Cc:** [Thorsen, Suzanne](#)  
**Subject:** Stream Ordinance  
**Date:** Monday, June 10, 2013 8:57:29 AM

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Dear Mr Kinsey,

We are in agreement with the San Geronimo Valley Stewards points listed below.

As owners of property with an "ephemeral stream" (a stream that flows only briefly during and following a period of rainfall in the immediate locality), we wish to make the following points.

Our small ditch to carry hillside run off can only be called a stream during torrential rain. The rock lined ditch was put in place by the former owner and was a mud trickle prior to his work. Our ditch has no fish and from Feb to November, the main wildlife that use the little mud packed water it carries are yellow jackets. There is so little water it doesn't even reach the street main. When the water runs off the hillside during a torrential rain, no wildlife can use it as the water is moving too swiftly. I would say that the irrigated plants we have on the property offer more water to the birds that inhabit the property.

As caretakers of the ditch, we remove the leaves and mud that pile up during the summer to keep it running during the winter. We also remove debris from the street access.

The ditch caused a long and arduous hold up in permitting during a recent addition (located more than 300 yards from the stream) and proved to be a ridiculous delay, a complete waste of time for the county, a waste of a considerable amount of money and time for us and for all those we had involved in the construction process. This kind of water passage should not be considered to impact "fish and wildlife," nor be considered under the aegis of "stream conservation," "stream protection," "stream conservation permits," "fish streams and tributaries" and a setback of 5 feet should be more than sufficient to safeguard any impacts.

Please go carefully when evaluating these "environmental" issues. We will be at the meeting on Tuesday June 18, but find it regretful that county decisions like these require that we all get involved before silly rules that cost taxpayers are put in place.

**Accordingly we request:**

- **A 35 foot setback on perennial and seasonal streams only**
- **Elimination of so called "ephemeral streams"**
- **All activities proposed to require Tier 1 permits shall be Exempt**
- **Voluntary actions (with tax break incentives) instead of institutional control**
- **Grandfather all existing property improvements**
- **A "reasonable and scientifically based" stream ordinance that: Protects stream habitat AND Protects the rights of property owners**

Sincerely,

Dee Lawrence



RE: Stream Conservation Area Ordinance

June 10, 2013

Marin County Board of Supervisors  
Susan Thorsen, Planner, CDA

RE: Stream Conservation Area Ordinance

Dear Board of Supervisors:

I wish to commend the county for undertaking to write a Stream Conservation Area ordinance. But this ordinance, as it is written, must be considered, at best, a first draft with substantial changes needing to be incorporated before it can be formally adopted. It's not expected that one or two staff people, unless skilled in riparian science, could draft a successful policy in one go. Public comment, especially by experts in the field, is required and essential to ensure that this ordinance is the best it can be. The Board of Supervisors is now in the position to ask for and require those necessary changes to make this ordinance compliant with the law, both state and federal, and to set policy that will not merely conserve streamside riparian habitat but enhance and expand it.

In addition to the changes suggested by SPAWN in their letter signed by numerous reputable scientists and riparian experts, I have some additional changes that are needed. As a zoologist by training (UC Berkeley) and a watershed advocate by personal passion (founding member Gallinas Watershed Council), I hope these comments are fully taken into account.

1. I strongly object to the 20 foot city corridor stream setback and 20 feet as a minimum setback for any area of unincorporated Marin. This is inadequate for stream protection and dis-incentivizes cities and residents from doing what is needed for full streamside protection. Grandfathering in what is already there and not easily removed is fair but if things are to change to benefit the health of the creeks and streams and the wildlife they support, the corridor needs to be larger. We suggest 30 feet at the barest minimum, with incentives for 50 feet or more.
2. Ephemeral streams, drainage areas, and intermittent streams also require protection. So much of the historical drainage patterns are changed, culverted or destroyed that any channels that are currently present are now alone in fulfilling this essential function as water filters and as capillaries feeding the creeks and underground streams. These areas may not need large setbacks but they need to be identified, defined and protected.
3. With so much impervious development, we are at the point where merely keeping what we have is not enough; sustainability is no longer an option in this situation. Data shows that < 20% impervious development degrades water quality in an

exponential curve<sup>1</sup>. We are well past that level of development in most areas of Marin that are not included in protected open space. So it must be our goal to not only preserve what we have but to actively work towards increasing the riparian habitat around our creeks and streams. There can be no net loss of habitat. Inspections and/or disclosures at the point of sale to catch and remove any unpermitted work will help find and remove barriers to fish passage and impervious structures. Additionally, incentives need to be supplied for homeowners to voluntarily restore creek habitat. This creates a win-win situation and rewards people for doing the right thing.

4. People live near streams because it is pleasant to do so. There needs to be substantial programs available to educate streamside dwellers on the value—economic, aesthetic and ecological—of having a functional, healthy creek in their backyard. Education and outreach and open partnership are critical to win community support. Backyards where restorations have been successfully implemented—preferably with online photos—would go far towards encouraging similar work by homeowners. There can be cumulative neighborhood benefits with creeks restored to ecological functioning. Where steelhead and coho exist, this cannot be an option but must be vigorously encouraged with multiple incentives in the form of tax breaks, financial assistance for restoration, conservation area easements, and adequate (at least 2:1 restoration:degradation) restoration mitigation within the same reach for any development that is permitted, along with stiff and sizeable penalties if rules are broken.

The recent news of the wedding of Sean Parker in the public lands of Big Sur—professing his great love of nature while simultaneously showing a callous disregard for nature's needs and the public good by wreaking ecological havoc—could be equally applied to homeowners who buy creekside property only to build fatally close to them, or dam them, or culvert them, or throw trash in, or seek to engineer a human design aesthetic without appreciation for the other species that need that creek to survive. Native riparian habitats need to be treasured for what they provide other species, as well as the beauty and grace they offer to us. Creeks and streams are community treasures, with adjacent property owners ideally the careful stewards.

5. Well-established land use law prohibits work upstream that affects downstream properties. Buildings and impervious structures placed too close to the streambank affect downstream properties as water runoff is increased and funneled through a smaller channel, resulting in incision and erosion and flooding. Topography needs to be taken into account as sloping hillsides require the greater setbacks.

6. Stream setbacks based on lot size make no sense ecologically. It's easy to imagine a two-acre parcel with a required 100 foot setback next to standard lots with only 20 foot setback or less. This strangles the creek at that point, leading to incision and

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<sup>1</sup> Fraser M. Shilling, UC Davis Department of Environmental Science Policy

RE: Stream Conservation Area Ordinance

promoting easy blockage and erosion. This language needs to be changed with 100 foot setbacks in unincorporated Marin required.

7. It is understandably viewed as unfair and corrupt when the ordinance excludes the County of Marin or other municipalities from its requirements. The law needs to apply equally.

8. It would be best for the county to adopt a "Within Reach" program, one which takes a creek by creek approach to education, analysis, suggested remedies, appropriate incentives and serious enforcement of violators in order to safely and intelligently address our creeks and streams in a watershed-wise fashion. The Ordinance should lay the broad strokes necessary to prevent inappropriate development and encourage restoration while focusing down later on each creek area individually. It is abundantly clear, when talking to the different Friends of Creeks groups or in hiking the watersheds, that each creek is unique: each one has different challenges and needs; each one has its own beauty and areas of ugly. These groups are County's best allies in defining what is needed and where and prioritizing those needs. I would hope that the county would continue to act in collaboration and allow volunteer groups a significant place at the table in restoring Marin Creeks.

Sincerely,

Judy Schriebman  
3 Poco Paso  
San Rafael, CA 94903  
Los Ranchitos, unincorporated Marin



June 10, 2013

Marin County Board of Supervisors  
Marin County Civic Center  
3501 Civic Center Drive, Rm. 329  
San Rafael, CA 94901

Dear Board of Supervisors

The San Geronimo Valley Planning Group supports the County's 2007 County Wide Plan (CWP) Goal Bio-4.1 whose stated objectives are, *"To protect the active channel, water quality and flood control functions, and associated fish and wildlife habitat along streams."* We believe staff has taken bold and enlightened steps to achieve these mandated objectives. 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, its membership and residents of the San Geronimo Valley and been present for the entirety of the two Planning Commission meetings. As a result of these conversations, our participation and observations at the Planning Commission hearings and our review of the revised draft Ordinance recommended by the Planning Commission, we believe that the Board of Supervisors should approve this ordinance and that with appropriate implementation support it will result in an effective and equitable application of the intended goals of the CWP. Your approval should include the following implementation strategies:

1. Support Staff's request for monies to train staff to implement this ordinance. In addition, the Planning Group urges you to establish a fully funded position focusing on the implementation of this Ordinance. This position will significantly enhance the Educational component of Staff's proposed 'three-legged stool'. The Ordinance can be fair and 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 would be to 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. A "boots on the ground" 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” that would include 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. Permit fees - Encourage mitigation of existing SCA development and reward homeowners who take such steps by waiving permit fees and, as soon as possible, identify 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, use 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 a three way partnership of the County, Univ. of Cal Coop Extension and the Planning Group that engaged many diverse community members in a common cause, we learned the value of education in the form of hands-on guidance by experts. We believe these recommendations will allow for a robust and equitable implementation of this legally mandated Ordinance with a modest investment. We believe that the proven Landowners Assistance Program and the “tool kit” provided 40 property owners that participated in the program, could be replicated providing the proven benefits we witnessed and experienced.

- We urge the Board to stay focused on the objectives.
- We urge the Board to approve the Planning Commission’s recommended ordinance.
- We urge the Board to fund the necessary resources needed to implement this Ordinance so it is both fair and effective.

Our communities deserve more than an ordinance that removes the moratorium and sits on a shelf.

Sincerely,

San Geronimo Valley Planning Group

SCA Committee

Dan McKenna, Chair, Phil Sotter, Eric Morey and Jean Berensmeier

**From:** [peggycreeks@comcast.net](mailto:peggycreeks@comcast.net)  
**To:** [Thorsen, Suzanne](#); [Patterson, Diane](#)  
**Subject:** San Geronimo Valley Stewards Requests to Amend CountyWide Plan and Change Stream Ordinance  
**Date:** Monday, June 10, 2013 4:54:20 PM

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San Geronimo Valley Stewards respectfully submits these requests and analysis to be included in the CDA staff report for the June 18, 2013 meeting of the Board of Supervisors. SGV Stewards will also deliver to the Board and staff before June 18 other materials in support of our comments.

We request the Board allow us 15 minutes time for a power point presentation and general comments. SPAWN was granted 10 minutes for a power point to the Planning Commission, but the Commission cut off Stewards time to respond.

We request that the period for PUBLIC COMMENT be held OPEN, and not be terminated at the June 18 meeting of the Board of Supervisors. That will encourage continued dialog with staff and other community groups, to explore whether compromises can be reached.

We also recommend that the County sponsor a few working sessions with selected representatives of major community groups to discuss whether drafting can narrow the issues in dispute and to work toward a consensus.

## **1. SUMMARY**

Part 2. Stewards Support Sleepy Hollow Draft Ordinance

Part 3. First Amend the CountyWide Plan, Then Adopt a Balanced Ordinance

3.1 Prepare Supplement to 2007 EIR

3.2 A Temporary Ordinance is Bad Policy With Unintended Consequences

Part 4 A Nobel Prize winner Recommends Cooperative Community Action  
To Protect Fisheries

Part 5 Requests to Improve the Stream Ordinance

5.1 Establish Stream Setback of 35 Feet From Top of Bank

5.2 Limit Setbacks for Ephemeral Streams

5.3 Grandfather as Exempt All Existing Homes and Structures,  
in Their Current Condition

5.4 Delete Retroactive Mapping and Additional Setbacks

Part 6 Exemptions for Small Home Projects

6.1 Allow All Exemptions "Without Further Determination"

6.2 Do Not Require Land Use Permit for Small Project  
Exempt From Stream Permit, or Buildable Under Tier 1

6.3 Grandfather as Exempt All Existing Structures

6.4 Exempt Replacement of Existing Structures, With No Footprint

Expansion

6.5 Apply the Tree Ordinance in the SCA; Don't Mess With the Drafting

6.6 Vegetation Removal Needs Common Sense Guidelines

6.7 Exempt Fences With Wildlife-Friendly Designs

6.8 Exempt 120 Square Foot Basket in Previously Disturbed Areas

Part 7 Tier 1 Permits Should Be Easy and Cheap

- 7.1 Allow the Owner to Hire the Site Assessment Professional
- 7.2 Site Assessment Impacts Should be Substantial and Measurable
- 7.3 Development Standards Must Be Feasible and Reasonable
- 7.4 SMP's Should Be Enforced Only After Board Approval On Public

Notice

- 7.5 Tier 1 Permit for 500 Square Foot Addition
- Part 8 Recognize That Tier 2 permits Will Be Used  
Only By Professional Contractors For Large Projects

**2 . STEWARDS SUPPORT SLEEPY HOLLOW DRAFT ORDINANCE.**

We support the redrafted stream ordinance prepared by Sleepy Hollow Homeowners Association, and recommend its application to all neighborhoods with developed housing in the City Centered Corridor, as mapped in the CountyWide Plan.

Many of Sleepy Hollow's suggestions should be adopted in the Rural Inland Corridor, for those neighborhoods with existing development and small parcels (1 acre or smaller) proposed for new or re-development.

**3. FIRST AMEND THE COUNTYWIDE PLAN, THEN ADOPT A BALANCED ORDINANCE.**

**3.1 Prepare Supplement to the 2007 EIR.**

We recommend the Board consider a fast and efficient process, which could be completed in 6 months, certainly less than 1 year:

First prepare an Addendum or Supplement to the EIR for the 2007 CountyWide Plan BIO-4, similar to the process now being used for the Housing Element SEIR. The SEIR would be limited to the Inland Rural Corridor, specifically the developed properties for 3 miles on either side of Sir Francis Drake Blvd and the villages outlined in the San Geronimo Community Plan. This SEIR would be based on the 2010 Salmon Enhancement Plan (SEP) and 2009 Existing Conditions Report (ECR), with some additional expert reports.

The Supplement would adopt current science and allow CWPlan amendments which would conform the stream ordinance to the practical reality of existing developed neighborhoods, which SEP recognized. The San Geronimo Valley has already been extensively studied by MMWD in its annual fish counts since the 1990's. The County paid over \$300,000 for 600 pages of reports on the SG Valley, prepared by experts at Stillwater Sciences and Prunuske Chatham.

If requested by Sleepy Hollow, Tam Valley, Greenbrae, Kentfield, and Kent Woodlands, the SEIR could also cover the developed neighborhoods of the City-Centered Corridor.

The SEIR could have a 60-day period for public comment. ( An Addendum to the EIR would not require public comment.) Only those comments which apply to physical environmental impacts must be addressed. CEQA does not require the County to agree with all the policy issue comments. If court review is sought, the court must uphold the SEIR if there is substantial evidence to support it.

Second, draft an Amendment to CWPlan BIO-4 and a stream ordinance. Schedule Planning Commission meeting agenda and vote on these two documents on the same date. Schedule Board of Supervisor meeting agenda and vote on these two documents on the same date.

The balanced approach and speed with which the County tackles these issues would provide evidence of the County's good faith to the Court of Appeal and the trial court in the Spawn litigation. The ordinance would satisfy the goals of CDA staff-- that the ordinance should be Clear, Simple, Affordable, and Effective (CASE).

Well before the 2014 election cycle, the county and homeowners could move ahead with a stream protection program that integrates education and restoration projects, with regulations that enjoy homeowner support and offer meaningful environmental benefits.

The Board of Supervisors would demonstrate their ability and resolve to get it done right. The stream ordinance could become a model for cities in Marin and for other counties.

### **3.2 A Temporary Ordinance Is Bad Policy With Unintended Consequences.**

There have been discussions of adopting a "temporary" ordinance that would give in to all Spawn's demands and reject homeowners requests. There would be an empty promise to later look at amending the CountyWide Plan, and possibly revising the stream ordinance in the future.

This flawed process would not cure the defects in the CountyWide Plan, and will lead to widespread civil disobedience by homeowners. A black market for home improvements will develop. No one will apply for permits, so County staff will not have the opportunity to educate owners about construction materials and methods which are good practices.

Do the County Supervisors really want to encourage creekside families to shut off access to their properties, so fish research and creek restoration projects come to a halt? Failing to give the homeowner control over the use of his property gives the homeowner no reason to support implementation of creek programs. If stream protection is such an important policy, it can be effective only if it is accepted by homeowners.

We respectfully ask the Board to consider that the homes in the San Geronimo Valley which are now mapped within the SCA area hold only 26% of the San Geronimo watershed acreage. The remaining 76% of the acres with streams are exempt from

the draft ordinance, because they are government agencies, public utilities, or agriculture. (MMWD and County Open Space District are the two largest land owners, with 39% of the acreage within the SCA area.)

Adopting this ordinance would place 100% of the stream conservation burdens on 26% of the land. The 834 private family homes within the SCA constitute 60% of the housing stock on the SG Valley.

#### **4. A NOBEL PRIZE WINNER RECOMMENDS COOPERATIVE COMMUNITY ACTION TO PROTECT FISHERIES.**

Dr. Elinor Ostrom won the 2009 Nobel Prize in Economic Sciences for her study of the protection of fisheries and other "common pool resources".

Dr. Ostrom found that community-based cooperative actions, motivated by positive incentives, succeed in protecting natural resources for generations. Uniform regulations, with the same rules for different local conditions, imposed top-down by a central authority, do not succeed. Source: Dr. Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990).

#### **5. REQUESTS TO IMPROVE THE STREAM ORDINANCE**

We denote with \* asterisk those changes that may or may not require Amendment to the 2007 CountyWide Plan.

Section numbers refer to the May 17 draft SCA Ordinance approved May 13, 2013 by the Planning Commission.

##### **5.1 Establish Stream Setback of 35 Feet From Top of Bank.**

\*Request: Establish a 35-foot stream setback in section 22.33.030 B. 2. "The SCA setback shall be 35 feet landward from the top of bank, for those areas of the Inland Rural Corridor which are outlined as villages in the San Geronimo Valley Community Plan, or are located within 3 miles on either side of Sir Francis Drake Boulevard in the San Geronimo Valley."

For residents on the Valley floor in San Geronimo, their average lot size is 100 feet by 100 feet. The draft ordinance establishes a setback of 100 feet from the creek, plus an additional 50 feet from the edge of the trees. This 150 feet would make every homesite completely unusable.

The 2010 Salmon Enhancement Plan report (SEP) recommends a reasonable buffer of 35 feet on parcels that are already developed and on parcels proposed for new or re-development. (Page 2-21 and 2-22.) SEP recognizes that San Geronimo Valley is constrained by existing development. "In areas where people are already living, this [35-foot] zone is the key area to focus riparian enhancement activities."

SEP notes that 100 feet is recommended by some scientific literature, the

CountyWide Plan, and other local governments. When we read the literature cited by the SEP and the 2009 ECR, we see that the 100 foot proposal comes from studies of pristine wilderness and large swaths of public forest. SEP suggests a 100-foot area could be encouraged with willing private landowners or for public lands.

SEP concludes that 35 feet would be adequate to protect riparian function and habitat:

- filters sediment,
- provides shade (MMWD research shows an 80% tree shade canopy over SG valley fish-bearing creeks),
- provides natural bank stabilization,
- allows construction of 3:1 slope in creek restoration, and
- allows changes in streams and runoff patterns, "without jeopardizing structures, gardens, or other infrastructure."

The SEP recommendation is supported by another expert, Dr. Mark Jennings, who specifically rejects the additional setback of "50 feet landward from the outer edge of woody riparian vegetation associated with the stream . . ." (Section 22.33.030 B. 2. a. page 2.) Dr. Jennings concludes that measuring the stream setback from trees is not scientifically justified in Marin county where rainfall is abundant and many trees grow in areas not close to any stream. (Dr. Jennings' letter was filed with the Planning Commission and will be submitted to the Board of Supervisors.)

As a practical matter, on most forested lots in the San Geronimo Valley, it would be impossible to measure the 50 foot setback--from the last leaf on the last tree? Our forest climbs continuously from the Valley floor to the MMWD water reservoirs--there is no "edge" of the woods.

The 35 foot setback is supported by science, is suited to actual conditions in the SG Valley, is easy to measure, and provides "bright line" guidance for homeowners who want to cooperate in stream conservation.

## **5.2 Limit Setbacks for Ephemeral Streams.**

The proposed ordinance and the CountyWide Plan define an "ephemeral stream" as a watercourse that carries only surface runoff and flows when it rains. (See definition page 12.) There is not a single parcel in Marin County which does not have at least one ephemeral stream during January and February storms.

The Planning Commission recognized this problem and suggested the setback apply only to those ephemerals that are mapped, and that have 100 feet of riparian vegetation along the stream. (Section 22.33.030 B. 3. page 3.) SG Valley Planning Group suggests the ephemeral protections be limited to those streams which connect into fish-bearing creeks. However, the problem remains that the County has not yet determined where these ephemerals are located. Most are not mapped at all. (See below section **5.4 No Retroactive Mapping of Streams.** )

Spawn is concerned that ephemeral streams are like "capillaries" that help water flow. The SEP report said ephemeral streams provide stabilization and filtration functions (SEP page 2-22), and recommends they be addressed by storm water disconnection and retention. (SEP pages 2-46 and 2-47.)

Dr. Jennings concludes the designation of "ephemeral streams" should be dropped. Over 40 years of science on "perennial" streams and "intermittent" streams has designated measurable physical and biological attributes. But there is no scientific basis for further protections of plant or animal wildlife near surface runoff that flows only when it rains.

The County's biologist testified April 1, 2013 to the Planning Commission that ephemeral streams flow for such a short time, there is no opportunity for plant or animal species to become dependent on them as habitat.

\*\*Request: Change section 22.33.030 B.3. page 3 to read: "For any ephemeral stream, the SCA setback shall be 20 feet from top of bank, but only if:

(1) the ephemeral stream is accurately mapped on County maps as of the effective date of this Chapter;

(2) 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 paid by the County; and

(3) the ephemeral stream drains directly into a stream that is habitat for anadromous fish."

### **5.3 Grandfather as Exempt All Existing Homes and Structures, in Their Current Condition.**

\*Request: Change section 22.63.020 A. 1. (page 5) to read: "The provisions of this Chapter apply to development within the Stream Conservation Area as described in Chapter 22.33 (Stream Protection) ; provided development shall not mean or include any building or structure existing as the effective date of this Chapter. "

\*Request: Exempt from stream permits under sections 22.63.020 B. 1. g. and B. 2. a. all existing structures in their current condition: "Maintenance, accessibility retrofit, and repair of any structure, building, water supply and septic facilities that existed prior to the effective date of this Chapter, whether or not such structures, buildings or facilities are or were permitted or legal non-conforming."

\*Request: Delete the condition of "permitted or legal-conforming" as applied to all existing buildings and structures, for purposes of exemptions, Tier 1 Permits, and Tier 2 Permits.

Request: The County should encourage people to preserve their exemptions by taking photos of their existing buildings and structures. For that reason, the trigger date for the grandfather exemption should be the effective date of the ordinance, not February 25, 2013, before adequate notice was received by 3,600 property owners. There is no evidence people have rushed to build new houses or cut down forests

since February.

Since 2008, we have been promised that the stream ordinance would not require removal of existing homes within the setback, and that structures located near creeks would continue in use. Instead, the Planning Commission draft would use the stream ordinance as a tool to enforce other Code permitting regulations. The Board of Supervisors should reject this bureaucratic power grab; it is not necessary to the purpose of riparian habitat preservation.

The draft ordinance does not protect existing homes and structures, although these should be given a true exemption. The only existing buildings that are exempt are those which are "permitted or legally non-conforming structures, water supply, and septic facilities that existed prior to February 25, 2013." (Section 22.63.020 B. 1. page 6) Otherwise, the stream setback and permit requirements apply to "All structures, regardless of whether the work requires a building or grading permit. . . ." (Section 22.63.020 A. I. a. page 5)

If an existing home has a single missing permit, the house is not grandfathered as "exempt". The family would be required to submit a stream permit application, professional site assessment, and proof of no adverse impacts on the riparian habitat.

Many of our creekside homes have been occupied for 50 years. Did the family (or a previous owner) install a hot water heater without a building permit? Did the trash enclosure pass design review? Was the 7-foot fence granted a variance? If not, the family must do expensive Code work and apply for other permits, before the house can be grandfathered as exempt under the stream ordinance.

Second units are an important source of low cost housing. In the San Geronimo Valley there are over 200 backyard cottages, garage conversions, and downstairs apartments that provide low-rent homes for college students, home health care workers, and retirees. Many of these are not fully permitted because compliance can cost \$50,000 or more.

We are pleased that the draft ordinance now allows second units within the stream setback to apply for full permitted status. (See section 22.56.050 page 19.) Over time, this may encourage owners to seek second unit permits for their existing housing. But this is not related to stream habitat protection, and should be left for another day, with an appropriate procedure that considers the economics of affordable housing.

We understand that planning professionals may consider that a building without a permit does not "legally exist". There are some environmental extremists who would advocate tearing down all family homes near creeks; non-permitted status would give them an excuse to file complaints for home removal.

However, the stream ordinance and the CountyWide Plan cannot deny reality. Over 3,600 families live near the streams. We are not going away.

Please consider the unintended consequences unless ALL existing buildings and structures are grandfathered as exempt:

----Requiring other permits for building, design, and use as a condition to stream exemption has no beneficial effect on salmon or riparian habitat.

----Under the County's system of complaint-based enforcement, the stream ordinance will become a mechanism for neighbors and special interest groups to target certain people for harassment. This victims would most likely be families living in the oldest homes, and tenants in low cost second units. These are people without the money to pay for expensive upgrades and enforcement costs.

----The stream ordinance should not be a cash machine for County fees, fines and penalties. The public purpose of healthy creeks is best served by engaging property owners in pro-active steps to protect stream habitat.

Please do not trivialize the importance of stream protection, by linking it to minor Code enforcement mechanisms. Every existing house and structure should be grandfathered exempt from stream permits. Some owners may need to apply for other permits, or other owners may not have the money to pay for Code enforcement work required by the County. Leave this to other Code sections; we already have plenty of regulations.

#### **5.4 Delete Retroactive Mapping and Additional Setbacks**

The ordinance would allow the County to add streams or move streams on the map at any time. It would also give County staff the power to require an additional setback if "necessary". These sections should be changed because they set traps for homeowners who reasonably rely on county maps published at the time they purchase their properties or when they make home improvements.

Request: Section 22.33.020 A. page 1 should be changed to read: " The SCA consist 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. The SCA extends along those perennial, intermittent, and ephemeral streams identified in the SCA data and map that is published by the Marin Community Development Agency on the effective date of this Chapter. At any time, a property owner may request the County to correct errors in the stream map with respect to the owner's property. Neither the County nor any other person or group has standing to change the stream map with respect to a property owned by another person.

Request: The same changes should be made in the definition of Stream Conservation Area in section 22.130.030 page 12.

Request: Delete sections 22.33.030 B. 1.d. and 2.b., which would allow the County to require an additional setback if necessary to protect riparian resources and woody

vegetation that extends beyond the specific SCA setback.

Reasons: The County cannot use the excuse of Spawn litigation to rush adoption of stream regulations, without identifying the streams and properties it is regulating. CDA staff says, "Oh, don't worry, we'll send a notice when we later add the owner's property to the stream setback area."

The "SURPRISE!" factor would make buying a house or improving a home in Marin County high risk behavior. People rely on existing maps to make long term investments in homes and borrowing on 30-year mortgages. Stream setbacks will reduce the value of properties. If the buyer searches the records and determines where his stream setback is located, he must be able to rely on the certainty of current County maps. The county should not later add a stream or move a stream, unless the owner himself discovers the map is in error.

Similarly, if the present owner of a home builds an addition or improvement, he should not later be subject to "GOTCHA", by Spawn or the County informing him the improvement is now within a stream setback and subject to permits or removal.

We also object to the County later imposing an "additional setback" whenever the CDA staff thinks it is "necessary". This is an invitation to expensive litigation, because Spawn or some other self-appointed group could file requests for additional setbacks, regardless of the setback measured by the ordinance. Then the homeowner must hire biologists and hydrologists to testify at Planning Commission hearings and court cases. Will the County pay the owner's fees for experts and lawyers to defend against this taking?

## **6. EXEMPTIONS FOR SMALL HOME PROJECTS.**

The ordinance should give homeowners a basket of clear broad exemptions, for which no prior determination by County staff is necessary. Because the stream ordinance is such an intrusive invasion of privacy and taking of property values, it is important for popular acceptance that people understand the County is not imposing life-style choices for them.

Do not trivialize the important policy of stream protection by over-regulating minor home improvements. It will encourage disrespect for the law, will not provide measurable benefit to fish or wildlife, and impose costs and delays for young families and seniors on fixed incomes.

### **6.1 Allow All Exemptions "Without Further Determination".**

Follow the model language of the 2011 Tree Ordinance, wisely crafted by the Board of Supervisors. Instead of providing documents for pre-construction bureaucratic review, just recommend that the owner take photos and preserve documents in the event someone later questions his exemption. (For example, see Tree Ordinance section 22.62.040, Development Code page IV-70.)

Delete and Replace: Delete stream ordinance section 22.63.020 B. 2. pages 6-7, and replace with:

"It is recommended that a property owner document the exemptions listed in this section with photographs, site illustrations, state or local fire personnel, and/or a licensed contractor. "

The county should publicly encourage people to take photos now of their existing buildings and structures. For that reason, the trigger date for the exemptions should be the effective date of the ordinance, not February 25, 2013, when no one in the county knew this law might apply to their property. There is no evidence of people rushing to build new houses or clear forests since February.

## **6.2 Do Not Require Land Use Permit for the Small Project Exempt From Stream Permit, or Buildable Under Tier 1.**

We are disappointed and, frankly baffled, that the county gives with one hand (small home projects exempt from stream permits), but takes away with the other hand--by requiring Land Use Permits for ordinary home improvements that do not now require a Land Use Permit, under the existing Code. See Section 22.06.050 page 13.

For example, the homeowner can maintain and replace landscaping without a stream permit (under section 22.63.020 B. 1. g. page 6), but if she uses a drip irrigation system, she must now apply for a Land Use Permit (under section 22.06.050 page 13.) This makes no sense and offers no meaningful protection to riparian wildlife.

Look at the silly little things that would suddenly require a Land Use Permit, even though they could be done with a stream exemption or a Tier 1 Stream permit: installing a garden footpath without grading, interior remodeling that changes the outside color of the house, putting up a kid's swing set less than 15 feet in height.

Request: Delete the following language from section 22.06.050, Exemptions from Land Use Permits, on page 13: "The exemptions do not apply to development proposed in a Stream Conservation Area. See Chapter 22.33 and Chapter 22.63."

Request: Change section 22.63.020 B. 1. h. on page 6 to exempt from stream ordinance: "Maintenance or replacement of landscaping, including irrigation lines.

## **6.3 Grandfather As Exempt All Existing Structures**

Change section 22.63.020 1. g. on page 6 to grant full exemption for: "Maintenance, accessibility retrofit, and repair of all buildings, improvements, and structures, water supply, and septic facilities that existed before the effective date of this Chapter.

## **6.4 Exempt Replacement of Existing Structures, With No Footprint Expansion**

The exemption of grandfathered structures is meaningful only if they can be replaced as they deteriorate. Roofs, garden sheds, and wood decks, in particular, need to be replaced as they age.

Request: Change section 22.63.020 B. 2. a (on page 7) to exempt without prior determination:

"Replacement of all buildings, improvements, and structures, water supply and septic facilities that existed before the effective date of this Chapter, provided the replacement does not expand the footprint within the stream setback or result in the removal of more than 50% of the woody riparian vegetation without the mitigation described in [Part 6.6 below].

## **6.5 Apply the Tree Ordinance in the SCA; Don't Mess With the Drafting**

Request: Combine sections 22.63.020 B.1. c. and 2.c. (pages 6 - 7) with respect to trees, so there is exempt from the stream ordinance without further determination:

" Tree removal that is exempt or is permitted under the County Tree Ordinance, Chapters 22.27 or 22.62; provided nothing herein prohibits the owner from complying with applicable state law on fire prevention or fire insurance requirements."

Request: Delete requirement for obtaining a Tier 1 Stream Permit for removal of protected or heritage trees, under section 22.63.030 (page 7).

The Supervisors adopted a Tree Ordinance in 2011, after much political attention, weeks of public comment, and carefully crafted compromises. (See Development Code Chapter 22.27 page III-43, and Chapter 22.62 page IV-69.) Spawn never sued to upset the tree ordinance.

There is no reason now to re-draft the tree ordinance. It bans the removal of any heritage tree without a tree permit, and limits the removal of two "protected trees" per year. There are exemptions for fire safety, public nuisance, infected pathogens, etc.

San Geronimo Valley and other areas in the SCA were excluded from the 2011 Tree Ordinance, with the promise we would be covered by it once the stream ordinance is adopted. It is now time for the county to deliver on its promise.

Do not require us to obtain two different permits for tree removal--one under the stream ordinance, and the second under the tree ordinance. Do not apply two sets of regulations with two different standards.

The County-Wide Plan designates SG Valley as Very High Fire Risk (Map 2-15). We are also in the Urban-Wildland Interface Zone (Map 2-13), for which the California Resources Code section 4291 mandates a 100-foot defensible space around each structure. California Government Code sections 51175 and 51182 partially preempt local regulation which would interfere with property owners' rights and duties with respect to fire insurance contracts.

## **6.6 Vegetation Removal Needs Common Sense Guidelines.**

The same concerns about fire safety should also inform vegetation removal. Fires are spread by woody under brush and dry grass. The fire may start from or spread to

either a vacant lot or a developed lot--fire knows no boundaries.

Not all "native" vegetation has the same riparian value. Poison oak is native, but it is invasive, chokes out other natives, and is toxic to humans.

Not all non-natives are bad. Many Mediterranean climate plants provide good riparian habitat and grow well without summer water.

The county should not be in the business of designing backyard gardens. We are addressing what should be a 35-foot setback on a small lot of about 100 feet by 100 feet, in the San Geronimo villages that are already developed with houses and streets.

Request: Combine sections 22.63.020 B.1. c. and 2. c. into a single section that exempts without determination:

"Vegetation removal or trimming on a developed lot or a vacant lot, for the purpose of protecting life or property from fire hazard, public nuisance, or any other threat to public health and safety. Vegetation that is dead, invasive, or exotic may also be removed under this exemption. Clearing of less than 50% of the native woody vegetation within the stream setback on any parcel for any other purpose is exempt, provided it shall be mitigated by planting riparian vegetation within the stream setback on the owner's site or on another stream setback area and provided that native plants are preferred, if appropriate to the site and the owner's use of his land.

## **6.7 Exempt Fences With Wildlife-Friendly Designs**

Children, dogs, and gardens need fences. We already have a County fence ordinance that limits to 6 feet. So the only concern of the stream ordinance should be is wildlife access to the creeks.

Dr. Jennings letter suggests fences can be designed which are wildlife friendly in materials, height and spacing.

Request: Change section 22.63.020 B.1. to exempt:

" New fences, and repair or replacement of fences existing on the effective date of this Chapter, provided they are designed in materials, height, spacing, and location not to block or completely prevent access of wildlife to the streams or the adjacent riparian habitat. Exempt fences include any fence within or on the perimeter of a previously disturbed area."

## **6.8 Exempt 120 Square Foot Basket in Previously Disturbed Areas.**

The Planning Commission and Spawn spent several hours wrestling over the exemption for development in previously disturbed areas. (Although the time for public comment was closed, Spawn representatives were permitted to repeatedly address the Commission on April 1 and May 13, and carried on a dialogue about this and other sections. No other interest groups were allowed to speak.)

Spawn voiced one legitimate concern: If a previously disturbed area consisted of pervious or porous materials (such as a lawn or garden), storm runoff from new impervious materials should be dispersed over pervious areas.

The Commission seemed more concerned about micro-managing the use of family backyards. For example, should a garden shed be okay, but not a shed with an electrical outlet for wood working? The staff seemed concerned about using the stream ordinance as a tool to enforce Building Permit requirements.

Stewards recommend: Simply create a basket of 120 square feet that can be developed for any purpose, as an exemption from the stream permit, without a prior determination by County staff. Get the county out of deciding what each family can use its 120 square foot exemption for--as long as storm water runoff is dispersed and vegetation removal is mitigated, let the family install a carport, or an art studio, or a kids' playhouse.

Request: Revise section 22.63.030 B. 1. b. so it exempts without determination: "Development activities pursuant to Section 22.63.020 A. 1. located within previously disturbed areas. ^ Addition of a cumulative total of 120 square feet of impervious surface in a previously disturbed area, provided that the improvement is located at least 20 feet from the top of the stream bank, does not result in the removal of ^ more than 50% of the woody riparian vegetation and such removal is mitigated pursuant to [Part 6.6 above] . and disperses storm water runoff over a pervious area (such as a lawn, garden, or pervious pavers).

## **7. TIER 1 PERMITS SHOULD BE EASY AND CHEAP**

CDA staff originally intended to encourage homeowners to bring their Tier 1 projects to the counter for ministerial approval. Staff intended to use the Tier 1 permit process to educate homeowners and small contractors about good construction practices, methods and materials that protect streams.

Unfortunately, Tier 1 Permits are now drafted to be so expensive and set such high standards that no one will bother to apply for a Tier 1 Permit. If the project does not fit within one of the exemptions, the owner will just do it without a permit.

Request: The Tier 1 Permit Fee Should not exceed \$150. The Site Assessment professional should not be allowed to charge more than \$200, unless the homeowner consents.

### **\*7.1 Allow the Owner to Hire the Site Assessment Professional.**

Do not force the owner to open his door to a professional whose fees and loyalty are controlled by the County. The owner will justifiably fear that anything the inspector sees will be reported as a Code complaint (whether or not related to the specific project.) The owner must be able to negotiate and cap the scope of work and the fees. The county could maintain a list of qualified professionals , so there is

assurance of high standards.

### **\*7.2 Site Assessment Impacts Should Be Substantial and Measurable**

In the May 13 draft, the project is not eligible for a Tier 1 permit if it "would result in adverse impacts to hydraulic capacity, stream or riparian habitat acreage, value or function; or water quality." (Section 22.63.030 page 8. See also section 22.63.030 B. 4. pages 8-9.) That means the project can have no adverse impacts at all. None.

Every human activity has some impact on the environment. Even the professional walking the property for the site assessment may trample weeds or step on a spider. We recognize this standard is in the CountyWide Plan and it should be amended for Tier 1 permits, if there is any hope of getting homeowners to cooperate for small projects.

We recommend adoption of the standard: "substantial measurable adverse impacts. .  
."

### **7.3 Development Standards Must be Reasonable and Feasible**

The Tier 1 permit must comply with "Development Standards" (under Section 22.63.030 B., page 8). Not once in this text do the words "feasible" or "reasonable" or "cost effective" appear. No consideration is given to whether the pursuit of excellence is affordable to the owner who is paying for it, or even whether it is within the scope of engineering possibilities.

Removed vegetation must be replaced by "natives" with the same structure and species as the removed vegetation. Can we give some thought to improving the environment, not just replicating the problems that caused creekbank collapse? We suggest replacement with riparian vegetation that promotes water filtration and creek bank stabilization.

### **7.4 Standard Management Practices Should be Enforced Only After Board Approval on Public Notice**

The CDA is supposed to prepare Standard Management Practices (SMP's) and each Tier 1 project must comply before final inspection. Apparently, CDA will be relying on nameless outside professional firms to draft the SMP's, which may or may not be revised periodically.

This is a recipe for bureaucratic overreach, outdated construction manuals, and the whims of then-current administrators. Public comment should be accepted before SMP's are adopted. The Supervisors should take responsibility for the final product, after hearing from the taxpayers and property owners.

### **7.5 Create Basket for Up To 500 Square Foot Additions**

The Tier 1 permit should be available for a home addition of up to 500 square feet

within the stream setback. This is necessary because so many of our homes average 1500 square feet, have old kitchens, only one bathroom for growing families, and are sited on lots measuring 100 feet by 100 feet. Contrary to Spawn's assertions, no one is going to build a Walmart parking lot.

The 500 square foot "basket" should apply to all buildings and structures that exist on the effective date of the ordinance. (See section 22.63.030 A. 1. page 7.) There should be no condition that the existing building be "permitted or legal non-conforming" in order to qualify for a Tier 1 stream permit. See **Part 5.3** above.

#### **8. RECOGNIZE THAT TIER 2 PERMITS WILL BE USED ONLY BY PROFESSIONAL CONTRACTORS FOR LARGE PROJECTS.**

The high development standards, multiple expert reports, and on site mitigation required for a Tier 2 Permit will be affordable and feasible only for professional contractors working on a new house or a major remodel.

Please recognize that Tier 2 will not provide a realistic alternate permit process for the average homeowner.

That is why broad clear exemptions in Section 22.63.020 and easy cheap Tier 21 Permits in section 22.63.030 are so important for homeowner acceptance of this ordinance, and to channel future home improvements into the best practices for healthy streams.

**From:** [Lai, Thomas](#)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** FW: Stream Ordinance  
**Date:** Monday, June 10, 2013 9:23:38 AM

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Hi Suzanne,

Please include this email in the record. Also, I informed Laura Chariton that we will get her comments into the BOS packet if she sends it in by the end of today.

-Tom

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**From:** Adams, Susan  
**Sent:** Saturday, June 08, 2013 6:42 PM  
**To:** Lai, Thomas; Crawford, Brian  
**Subject:** Fwd: Stream Ordinance

FYI

Sent from my iPad

Begin forwarded message:

**From:** Steve Rehder <[rehder@hummbirdlandscape.com](mailto:rehder@hummbirdlandscape.com)>  
**Date:** June 8, 2013, 3:58:23 PM PDT  
**To:** <[sadams@marincounty.org](mailto:sadams@marincounty.org)>  
**Subject:** Stream Ordinance

Susan, my wife and I are strongly urging you to adopt the following sensible improvements to the upcoming stream ordinance decision you must vote on.

We are twenty two year residents in woodacre and have become very concerned, worried and fearful of the proposed stream ordinance and other issues effecting our home and our lives here in Marin.

As our elected official, vote to adopt the following .

- **A 35 foot setback on perennial and seasonal streams only**
- **Elimination of so called “ephemeral streams”**
- **All activities proposed to require Tier 1 permits shall be Exempt**
- **Voluntary actions (with tax break incentives) instead of institutional control**
- **Grandfather all existing property improvements**
- **A "reasonable and scientifically based" stream ordinance that: *Protects stream habitat AND Protects the rights of property owners***

*Steven Rehder, Legay Kirkland*

# WARREN & PEGGY GLASS III

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

June 10, 2013

Marin County Board of Supervisors  
C/o Community Development Agency  
3501 Civic Center Drive, Suite 308  
San Rafael, California 94903

## **RE: STREAM CONSERVATION AREA ORDINANCE**

Good Morning,

I strongly feel that the government and a small group called conservationists are taking advantage of existing rules and regulations that were originally designed to help save salmon, real year-round 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.

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.

At the very least the proposed ordinance 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. 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.

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.

*"A person with a dream is a person with a goal"*

# WARREN & PEGGY GLASS III

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

Page two 06-10-13

Another item that needs to be addressed and clarified in this ordinance is that building permit applications for hillside solar, additions, detached buildings, patios and driveways, etc. should not be delayed or have added fees just because the parcel has a portion of the property covered by the Stream Conservation area.

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 delay issuing permits or charge additional fees for applications to use our property for a use that was permitted prior to the ordinance.

Sincerely,

A handwritten signature in blue ink that reads "Warren Glass". The signature is written in a cursive, flowing style.

Warren Glass

A handwritten signature in blue ink that reads "Peggy Glass". The signature is written in a cursive, flowing style.

Peggy Glass

Watershed Alliance of Marin

446 Panoramic Hwy.  
Mill Valley, CA 94941  
(415) 388-7060

June 10, 2013

**Via Email**

Marin County Board of Supervisors  
3501 Civic Center Drive, Room 308  
San Rafael, CA 94903

Re: Comments on the Draft Stream Conservation Area Ordinance for Marin County

Dear Board of Supervisors:

I write on behalf of many watershed groups in Marin county and myself to comment on the County of Marin's Draft Stream Conservation Area (SCA) ordinance.

First, we applaud SPAWN's efforts as well as that of your County staff to comply with the many federal and state laws which not only influence, but indeed determine outcomes with respect to listed endangered species, coho salmon and a threatened one, steelhead.

My review of the Draft Ordinance proposed for the County shows it to be inadequate under California Environmental Quality Act (CEQA) Guidelines, §15162 and NEPA. Much of the ordinance language comes from the 2007 Countywide Plan, and therefore, is at least six to eight years old. There are intervening circumstances, listed below, that would trigger the (CEQA) and National Environmental Protection Agency (NEPA) review.

These intervening circumstances include: documented accelerating climate change impacts and new data; accelerated sea level rise predictions; more recent habitat degradation from land development; loss of habitat connectivity and contiguity; impacts on biodiversity; impacts from CO2 accumulations in the atmosphere; degradation of estuarine habitats; degraded water quality; reduced food availability for species; federally and state listed Endangered Species Act species data and newer listed species recovery plans from the State of California Department of Fish and Wildlife and the United States Department of Fish and Wildlife as well as the 2009 Arroyo Corte Madera del Presidio Habitat Assessment by the California Department of Fish and Game; changes in water quality permitting; Clean Water Act listed pollution impacted waters in Marin County; new TMDL and NPDES permit levels for creeks and watercourses; California State Water Board resolution 2008-0026; USDA Conservation Buffer policies and the San

## Watershed Alliance of Marin

446 Panoramic Hwy.  
Mill Valley, CA 94941  
(415) 388-7060

Francisco Regional Water Quality Control Board buffer report updates; Storm Water Run off mitigations, any habitat species and vegetation losses from 8 years of development and any other changes in regulations affecting water quality, species populations and habitat, ocean and climate change impacts that have occurred within the time period. Further impacts include: effective buffer area ratios based on slope, vegetative cover, critical habitat, biodiversity and soil types.

According to the County, an assessment of the potential environmental effects associated with a new SCA ordinance has not occurred because no environmental review or impact assessments on the new ordinance have occurred. Therefore with respect to a new SCA ordinance, potential new, cumulative and significant impacts associated with a new ordinance may occur, particularly in relation to lot size determining setbacks and twenty feet in the City Centered Corridor even though much of that land is in Semi-Rural Zoning. Therefore we are opposed to a twenty-foot setback as a minimum as being too small to be effective in protecting resources and we are opposed to the lot size designation as the primary driver for determining setbacks. The current iteration of the ordinance may also impact municipalities with greater setbacks negatively where Mill Valley has thirty feet and the County will have only twenty in the same watershed and lessening of Mill Valley's standards could apply.

These potential significant impacts on the environment include but are not limited to: Federally listed endangered and threatened species protections and their species recovery plans, critical habitat, hydrology, geomorphology, biotic resources, vegetative cover, native trees and vegetation, sediment deposition in tidal wetlands, water quality, cultural resources, and ecosystem services. The ordinance is woefully inadequate in addressing these impacts, particularly in critical habitat. The requisites within the ordinance may also cause unanticipated impacts from climate change, sea level rise, CO<sub>2</sub> increases and accumulations in the atmosphere, loss of or alteration of and causing damage to ecosystem services, critical habitat, etc. The ordinance fails to fully disclose, analyze and mitigate the ordinance's potentially significant impacts. The County cannot approve the ordinance until an adequate EIR is prepared and circulated for public review and comment.

Further, substantial evidence shows that to protect residents' health and safety, the County needs to increase setbacks for water quality, flood control, critical habitat, soil stability, and erosion prevention. The ordinance must mitigate at least 2:1 in order to achieve a net gain in riparian ecosystem services, habitat, continuity and congruity and in compliance with state and federal mandates. We are also asking for greater incentives for: native plant

Watershed Alliance of Marin

446 Panoramic Hwy.  
Mill Valley, CA 94941  
(415) 388-7060

restoration, removal of structures, and removal of impermeable surfaces in the SCA.

The Watershed Alliance of Marin wants to preserve and enhance the environmental resources of riparian zones, natural resources, recover salmon populations, recover threatened and endangered species, biodiversity and streams. We have grave concerns about the environmental, health and safety impacts that result from poor land use planning and a significantly diminished Stream and Riparian Zone setback including potential environmentally detrimental projects contrary to recommendations in the Final CCC Coho Recovery Plan and the National Marine Fisheries Service Steelhead Recovery Plans. Therefore, the Watershed Alliance of Marin has a strong interest in enforcing environmental laws to protect the Marin County's natural resources and the long-term public health of its communities.

We hope you will create stronger protections that are based on the SPAWN scientist letter and state and federal policies and set an example for creating a future for biodiversity and health in Marin County.

Your consideration is deeply appreciated.

Sincerely,  
Laura Chariton,  
Master of Arts in Riparian Policy and Restoration,  
Director Watershed Alliance of Marin

**From:** [Patterson, Diane](#)  
**To:** [Albert, Tanya](#); [Alden, Leslie](#); [Clark, Susannah](#); [Crosse, Liza](#); [Escobar, David](#); [Fraits, Rick](#); [Laird, Sandy](#); [Parton, Maureen](#); [Vernon, Nancy](#); [Weber, Leslie](#)  
**Cc:** [Thorsen, Suzanne](#)  
**Subject:** FW: Stream ordinance  
**Date:** Tuesday, June 11, 2013 9:38:49 AM

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Attached is a Streamside Conservation email I received in my email box. This is from a County resident. Please forward as you deem appropriate.

Diane

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**From:** Cyndi Cady [mailto:CCady@delta.org]  
**Sent:** Tuesday, June 11, 2013 9:31 AM  
**To:** Adams, Susan; Arnold, Judy; Kinsey, Steven; Rice, Katie; Sears, Kathrin; Patterson, Diane  
**Subject:** Stream ordinance

I am writing to ask for the following modifications to the stream conservation ordinance. I believe its current form is unnecessarily restrictive, and is not based on accurate science; also, some of the setback descriptions are quite vague.

Please revise the ordinance by:

1. Changing setbacks to 35 feet, as recommended by scientists. The current draft imposes a 150 foot setback which in some cases would encompass entire lots, or even multiple lots. I would also like a more specific definition of "top of bank" or "riparian area"...this is vague and open to interpretation which could make the setback even more restrictive.
2. Limit protections for ephemeral streams to 20 foot setback. Some of these are literally MAN MADE drainage ditches that are erroneously labeled. Apply the setback only to accurately mapped streams that actually drain directly into fish-bearing creeks and have 100 feet of riparian vegetation.
3. Exempt from stream permits all existing homes, structures, improvements and disturbed areas. Apply this grandfather exemption to ALL existing homes, whether now permitted or partially unpermitted. Do NOT use stream protection as a tool for County code enforcements.
4. For grandfathered existing structures, create broad exemptions for improvements, remodels, replacements and additions (up to 500 square feet increased footprint) with no stream permits required.
5. Reduce permit fees and eliminate expert reports. Allow the homeowner to hire his/her own professional for site assessments, if required.
6. Limit stream setbacks to areas accurately mapped when the ordinance takes effect. Give fair notice so owners can correct mapping errors. Do not allow County or private environmental groups to add or change stream locations on further maps.

**I also want to say this:**

Those of us who live in this valley are by and large excellent stewards of the land. We care deeply for our fish and other wildlife. In recent years, SPAWN has gone from a respected organization to a bunch of bullies who seem to unrealistically want all human habitat removed from the creeks.

The variations in salmon population are FAR more likely to have been caused by ocean conditions and water flow, not the existence of structures near the creek, some of which have been in existence when the salmon were more populous. Ask any valley old-timer, and they will tell you, it was the reduction in water levels in the creeks that corresponded with the decline of the fish...not existence of the homes and the valley residents who have been living along the creeks for decades.

Please do not succumb to the questionable science and this harshly restrictive proposal engineered by SPAWN. It is unfair and goes against the rights, desires, and needs of your constituents, while providing only nominal, if any, protection for our fish.

Sincerely,  
Cynthia A. Cady  
Woodacre

The information contained in this email message and any attachments is confidential and intended only for the addressee(s). If you are not an addressee, you may not copy or disclose the information, or act upon it, and you should delete it entirely from your email system. Please notify the sender that you received this email in error.

**From:** [David Lanatti](#)  
**To:** [Thorsen, Suzanne](#)  
**Subject:** Stream Conservation Area Ordinance  
**Date:** Tuesday, June 11, 2013 9:49:12 AM

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**David Lanatti**

5360 CHILENO VALLEY RD.  
(LAGUNA DE SAN ANTONIO)  
PETALUMA, CA, 94952

June 11, 2013

MARIN COUNTY SUPERVISORS  
CIVIC CENTER  
ADMINISTRATION BUILDING,  
SUPERVISORS CHAMBERS, ROOM 330  
SAN RAFAEL, CA. 94903

Dear Friend,

As a fourth generation Marin County rancher, I feel that I have a great deal of field observation experience regarding the natural outdoor environment, and as a person who is over 50, I also have a great deal of political observation experience.

I have always been concerned about the natural environment, and when I was younger and more naïve , I voted many times in favor of measures that were presented as being protective of clean air and water.

To my consternation, many of those measures have resulted in financial hardship for average working people, and not to the petrochemical industrialists who are most likely the cause of most of the worlds environmental problems today.

I am not comfortable with the thought of new regulations and fees being imposed on county residents, simply because some unknown group believes it would be good for the environment.

I have not received any information about scientific evidence that would justify any new restrictions or regulations. For far too long, citizens have relied on the government to do what is best, and assumed that our representatives are honest, and well informed about all aspects of an issue before making a decision.

I do not agree with any of the proposed amendments to county code, nor do I believe the proposed Stream Conservation Area Ordinance is necessary for the protection of wildlife, including fish, or the protection or improvement of the natural outdoor environment.

I believe this proposal is another attempt in an ongoing effort to erode private property owners rights, and impose socialist ideals on citizens who are protected from such impositions by the United States Constitution, and The Bill Of Rights.

Please read The Bill Of Rights, articles 4 through 10, which guarantee each citizens right to due process in regards to private property issues.

Thank you.

Sincerely,

Mr. David Lanatti

**From:** [Patterson, Diane](#)  
**To:** [Albert, Tanya](#); [Alden, Leslie](#); [Clark, Susannah](#); [Crosse, Liza](#); [Escobar, David](#); [Fraitas, Rick](#); [Laird, Sandy](#); [Parton, Maureen](#); [Vernon, Nancy](#); [Weber, Leslie](#)  
**Cc:** [Thorsen, Suzanne](#)  
**Subject:** FW: Request: Stream Conservation Area Ordinance  
**Date:** Tuesday, June 11, 2013 1:07:03 PM

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Attached is a Streamside Conservation email received in my email box. Please forward as you deem appropriate.

Diane

**From:** Susan Halfaker [mailto:smhalfaker@gmail.com]  
**Sent:** Tuesday, June 11, 2013 1:06 PM  
**To:** Adams, Susan; Arnold, Judy; Kinsey, Steven; Rice, Katie; Sears, Kathrin; Patterson, Diane  
**Cc:** Diane Henderson  
**Subject:** Request: Stream Conservation Area Ordinance

Dear Supervisors Adams, Arnold, Kinsey, Rice, Sears, and Clerk of the Board Diane Patterson,

Regarding your consideration of the upcoming Stream Conservation Area Ordinance I want to register my concern that adoption of the Ordinance as written will adversely impact property my brother and I own that has been in our family since the 1930's when my great grandfather Anthony Parente purchased it. The property consists of two parcels (Assessor's Parcel Numbers 038-053-17 and 038-061-14) and borders a seasonal stream which only runs in the winter. I live in San Diego now but have always had plans of coming back to Marin and building a house on this family property where I can live out the rest of my life.

I have attached below a letter written on my family's behalf by our land use planner to the Marin County Planning Commission which details our concerns further for your consideration:

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

Due to the unique nature of our property, the fact that the stream it borders only runs in the winter time, and the lack of a guarantee that we can build on it as currently zoned should the revisions to the Stream Conservation Area Ordinance be adopted, I would again request that parcels 038-053-17 and 038-061-14 be excluded from the newly proposed ordinance.

Thank you for your collective consideration of this request,

Susan DiGrazia Halfaker

M&MH, LP

**From:** [jj.olson@comcast.net](mailto:jj.olson@comcast.net)  
**To:** [Adams, Susan](#); [Arnold, Judy](#); [Kinsey, Steven](#); [Rice, Katie](#); [Sears, Kathrin](#); [kpatterson@co.marin.ca.us](mailto:kpatterson@co.marin.ca.us); [Thorsen, Suzanne](#)  
**Cc:** [jennifer\\_olson](#); [Jennifer Olson](#)  
**Subject:** Stream Conservation Area Ordinance-Board Of Supervisors Meeting - June 18, 2013  
**Date:** Tuesday, June 11, 2013 3:08:42 PM

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To: Marin County Supervisors:  
Susan Adams  
Judy Arnold  
Steve Kinsey  
Katie Rice  
Kathrin Sears  
Diane Patterson, Clerk of the Board  
Suzanne Thorsen, Marin Community Development Agency

RE: Stream Conservation Ordinance: June 18 Board of Supervisors Meeting

Dear Marin County Supervisors and Suzanne Thorsen, Community Development Agency

I have attended many of the SCA meetings and found them very informative and at the same time very disturbing with all the legalities and restrictions of the SCA ordinance, county regulations, etc. Along with all of that we have the never-ending legal threats from SPAWN that are now holding hostage the County of Marin, the San Geronimo residents and any SCA impacted area. The SPAWN have made it their mission to continue to bully and threaten with unwarranted lawsuits which is bringing about this SCA Ordinance.

I have reviewed the SCA proposed ordinance and it is so vague and confusing for anyone but lawyers and County professional property planners to understand the impact this will place upon our homes. I know there are many issues involved in creating the Stream Conservation Ordinance; however, I feel that my personal property: my land and my home will now have restrictions on my own use of what I do in my own back yard. Why are you (County of Marin/Planning Division) restricting the use of my home? Will we be receiving a tax abatement based on the loss of our land and its use?? There has been not one thing mentioned in all the planning that is fair to the home owner who just happens to live near a stream – This is not fair!!!! This ordinance will affect property values on all homes in the SCA impacted areas.

**Why are the property owners bearing the entire burden of the stream ordinance? I feel the County of Marin is putting into place a complex ordinance that will essentially be holding us all hostage without any regard for our property rights as legal owners of our homes and land because we happen to have a stream on our property.**

What if in the near future the salmon made a total recovery in spawning numbers in the valley, as has been documented by the scientific community, the drop in salmon has occurred due to changes in the ocean (possibly Global warming) and little to do with our SG valley creek run off or the few new homes built in the valley. The MMWD damns built on Mt. Tam have had an impact on our creeks as well. Looking into the future, if this SCA ordinance is approved, this means that our valley and the unincorporated parts of the county under the SCA would be under this very strict and **permanent** zoning SCA ordinance - Are we (Marin County) moving too fast and pushing forward with the SCA ordinance? Can this ordinance be put on hold to see what the next few years may bring with the salmon population??

Or more reasonable ordinances put into place that we can all live with until we know more about the impacts of our creeks and water ways.

- Why does the set back have to be 150 feet, why can it not be 35 feet??

- Exempt the “grandfathered” existing structures and disturbed areas with no stream permits required.
- Allow improvements as needed without changing the “foot print” of the home/structures.
- Allow maintenance to stream riparian area if needed for fire control safety, erosion from flood damage, etc.
- Ephemeral streams that are currently not on the map should not be included in the SCA ordinance at all.
- Reduce permit fees pertaining to any SCA ordinance area.

Remember we are people who WANT to protect the Salmon in our neighborhood

Looking into the near future and with regards to SPAWN, if the salmon population did recover in our SG valley, what reason would they then have to exist! My heart goes out to the valley property owners who can no longer build their dream home or their place of retirement due to the building moratorium. Their property has become worthless to them, it is just not right!! In the same way our properties will drop in value due to the restraints that are put on to our properties. I have already noticed real estate ads in the valley advertising: "No Stream Encumbrance!!"

Twenty-two years ago we bought our property because of the beautiful little stream near our vegetable garden, it is still beautiful, but it saddens me to think, anyone purchasing our property in the distant future will not feel the same about our stream. How very sad. And it makes me angry! I have lived in West Marin for over 45 years and love the area. However, I know it is increasingly difficult to maintain a life here if we are constantly being bombarded with these types of ordinances and issues. I really feel that we are getting these SCA ordinances pushed upon us without due diligence when it comes to enacting these **permanent regulations** in our county!!

I do appreciate all that the County does in protecting our community and our homes!! We just need to be reasonable and do our due diligence with the SCA ordinance. We all want to be sure West Marin stays the jewel that it is in our county.

Jennifer Olson  
Lagunitas Resident