

October 19, 2013

Dear Supervisors Rice, Adams, Sears, Kinsey, Arnold, Suzanne and Tom,

The Sleepy Hollow Homeowners Association adamantly opposes the countywide interim Stream Conservation Area Ordinance for Sleepy Hollow as currently drafted. An interim ordinance for San Geronimo Valley and other developed areas where it has community support makes excellent sense. The Sleepy Hollow community, however, is broadly opposed. The ordinance as currently drafted is completely unworkable due to our unique development configuration and will create confusion and uncertainty for the public. The notion of testing the "pros and cons" of an ordinance which is known to be completely unworkable from the start is a seriously flawed approach. The members of our community have spent many hours of personal time working toward developing an acceptable, applicable, and enforceable ordinance for Sleepy Hollow and have received a great deal of support and responsiveness throughout the process from CDA staff. Our goal has always been to assist in the drafting of a responsible ordinance within the next 12 months which contains strong environmental protection and can be supported by members of our community. To sabotage all of this hard work and good faith effort will generate a great deal of ill will and resentment toward the County.

Sincerely,

Dan Stein
President
Sleepy Hollow Homeowners Association

From: [T. G. Lambach](#)
To: [Thorsen, Suzanne](#)
Subject: Comment [Ltr to Marin IJ] for BOS 10/29 Meeting
Date: Monday, October 21, 2013 3:36:49 PM
Attachments: [Marin Readers Forum Oct20.pdf](#)

Hello:

The attachment is my letter to the Marin IJ that was published Sunday October 20th.

Thomas G. Lambach

Marin Readers' Forum for Oct. 20

Posted:

marinij.com

Follow science and logic

David Schnapf's Oct. 15 Marin Voice column is an environmentalist advocacy position published ahead of a supervisors' hearing scheduled for Oct. 29.

San Geronimo Valley residents know their streams are a valuable asset and seek to protect the salmon that inhabit those waters. Yet Mr. Schnapf implies otherwise, that lacking the measures he advocates, those salmon are doomed.

Overlooked by him is that the Pacific coho salmon, along the California and Oregon fishery, is endangered and, given that designation, most streams along that coastline are federally designated as "endangered habitat."

Yet, he chooses to blame our supervisors for the salmon's decline and pressures the county into passing a crude ordinance to create setbacks along all streams in the unincorporated areas, regardless of fish being present, or just being dry ditches.

The old county plans Schnapf cites were not based on science. Those plans set arbitrary setbacks from streams to be imposed in lieu of quantifiable clean water standards.

So in 2013, Mr. Schnapf still wants to apply 1994 measures to stop the salmon's decline.

Too late for that. And suing the county doesn't help the fish either.

Our supervisors wisely called a "time out" to try to graft some science and logic onto the ideologies of the streams' water quality issue.

Let's define a "water quality" goal and assess which watersheds meet that goal and which don't and why. Then devise a remedy to deal with the identified problems. Then, at least we'll know that we're not causing the fish to decline. And, after all, that's all we can do.

It would be more constructive if the environmental community would apply science and logic to saving the salmon than recite the same out of date dogma that demands crude arbitrary setbacks from all streams, regardless of need.

Thomas G. Lambach, Kentfield

October 24, 2013

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael CA 94903



Subject: Stream Conservation Ordinance

Dear President Arnold and Supervisors:

Marin Conservation League continues to urge you to adopt an interim countywide SCA Ordinance while implementing the work program proposed in the staff report. We acknowledge staff for recognizing the need for the work program to gain better understanding of ephemeral streams, update the county's maps of streams, and engage in outreach and permit assistance, while assessing if and how the adopted interim ordinance might be improved.

We strongly support the increased attention to plans for outreach and education. Coordination with the work done by MCSTOPPP, the County's watershed program, and other agencies, such as water districts and the Resource Conservation District, will increase the effectiveness of service to the public

In addition, MCL recommends inclusion of a new provision in the ordinance to meet the County's goals of improving, rather than simply maintaining, existing stream conditions. This new provision, based on County-adopted provisions in the Local Coastal Program and recommendations of the FishNet4C¹ Program, would require an applicant to provide a net benefit to the SCA in exchange for permission to build within it.

We ask you to move forward quickly to protect and improve waterways throughout the county by adopting a countywide interim ordinance now.

Thank you for this opportunity to comment.

Jon Elam

Jon Elam, President

¹Draft LCP policy C-BIO-25, #3, Stream Buffer Adjustments & Exceptions, states: "A Coastal Permit authorizing a buffer [setback] adjustment shall require measures that create a net environmental improvement over existing conditions, in addition to what is otherwise required by minimum applicable site development standards. Such measures shall be commensurate with the nature and scope of the project and shall be determined at the site level, supported by the findings of a site assessment or other technical document." BIO-2.e (p. 2-22): "Participate in FishNet4C Program."

From: peggycreeks@comcast.net
To: [Kinsey, Steven](#); [Rice, Katie](#); [Crawford, Brian](#); [Lai, Thomas](#); [Thorsen, Suzanne](#)
Cc: [Widman, Gary](#)
Subject: Possible Facilitator for Stream Workshops --Gary Widman
Date: Thursday, October 24, 2013 12:35:04 PM

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426
John Smithyman and Denis Poggio

To: Supervisor Steve Kinsey
Supervisor Katie Rice
Brian Crawford, Director of Community Development Agency
Tom Lai and Suzanne Thorsen

Re: Possible Facilitator for Stream Workshops--Gary Widman

A qualified and experienced person has offered his services as facilitator/mediator for the Stream Watershed Advisory Group (SWAG) and public workshops that Marin CDA will sponsor over the coming year. I will send you the resume of Gary Widman by separate email.

None of SG Valley Stewards has any relationship with Mr. Widman. We met him for the first time on October 21. We suggest outreach to other interested groups such as Spawn, Valley Planning Group, Marin Conservation League, Sleepy Hollow, and Kent Woodlands.

As project manager for the SCA Implementation Work Program, CDA will want to know that Mr. Widman does not seem to be a government contractor looking for a big fee. He is a resident of Tiburon who has watched the County struggle with stream protections. He currently volunteers his services for the Presidio Historical Society.

SG Valley Stewards seek to encourage meaningful and constructive discussions in the SWAG and public workshops. We are optimistic that cost effective solutions can be recommended which have the support of homeowners and conservation groups.

Mr. Widman is knowledgeable and experienced in the field of environmental protection: past President of Trout Unlimited, conservation and wildlife attorney for the US Dept. of Interior, Chief Counsel for California Parks Department. His experience as a mediator who successfully resolves disputes should also be considered.

From: peggycreeks@comcast.net
To: [Kinsey, Steven](#); [Rice, Katie](#); [Crawford, Brian](#); [Lai, Thomas](#); [Thorsen, Suzanne](#)
Subject: Gary Widman Qualifications for Stream Workshops Facilitator
Date: Thursday, October 24, 2013 12:36:43 PM
Attachments: [Resume.doc](#)
[Marin Co., Qualifications.doc](#)

See attached Resume and Qualifications of Gary Widman, as potential facilitator/mediator for Stream Watershed Advisory Group and public workshops.

GARY WIDMAN

28 Marinero Circle, #31
Tiburon, CA 94920
(415) 435-0360
gwidman@mindspring.com

I have extensive experience as a law professor, attorney, mediator and government executive in the fields of environment, natural resources, water, land use, real property and administrative law. I have directed legal offices in federal and state administrations, (including the White House [CEQ] under two presidents, the Department of the Interior, the US Court of Appeals [9th Circuit] and the California Department of Parks and Recreation.) As a law professor, I have taught at UC Hastings, UC Boalt Hall, UC Davis, Santa Clara University and the University of Denver. As a mediator, I am on the panel of mediators used by the California Court of Appeals, 1st Dist. (SF).

PRESENT

From 2005 through the present, I have served as the President of the Presidio Historical Association, a nonprofit organization working to preserve the Presidio of San Francisco from threats that would destroy its historic resources or its status as a historic National Park.

LEGAL PROFESSIONAL EXPERIENCE

2001-2004 CONCUR,INC., Berkeley, CA

Senior Mediator, Legal. Responsible for mediation or ADR in matters where law or legal implications were critical factors, especially in matters involving environment, water or natural resource issues.

1998-1999 Santa Clara University School of Law, Santa Clara, CA

Visiting Professor of Law. Courses: Administrative Law, Water Law and Real Property Law.

1995-1996 State Department of Parks & Recreation, Sacramento, CA

Chief Counsel. Responsible for all Department cases (except litigation handled jointly with Office of Attorney General) including real property, contract, administrative law, water, water quality, NEPA, CEQA, endangered species and park legislation matters. Experience included advice to Director, Secretary of Resources and others, and negotiations resolving cases.

1988-1995 Bronson, Bronson & McKinnon, San Francisco, CA

Attorney, Of Counsel. General environmental practice representing private clients, including negotiation or mediation of disputes with other private parties and enforcement agencies, preparation for litigation, and drafting agreements and other documents involving environment, administrative law,

energy, water and air quality, CERCLA, RCRA, underground tanks, NEPA, CEQA, endangered species, wetlands, Proposition #65, real property, water and land use issues. Selected to be arbitrator for case disputing costs of cleanup of PCBs from Southern California gas pipelines. Named by President Bush to US delegation negotiating Bering Sea issues with USSR, named by Gov. Wilson to Bay-Delta Oversight Council.

1985-1987 US Court of Appeals for the Ninth Circuit, San Francisco, CA
Director, Office of Staff Attorneys. Supervised 32 attorneys and support staff in case analysis, preparation of bench memoranda, case dispositions, mediation and settlement in Court's mediation program and responses to motions in civil and criminal cases. Managed special projects and prepared legal opinions at request of Chief Judge or other judges.

1981-1985 Fulbright & Jaworski, Washington, D.C.
Attorney, Of Counsel. General practice representing private clients in matters involving environment, energy, natural resources, water or land use issues. Represented clients in dealings with Congress, the Courts and the Administration including Departments of Interior and Energy, EPA and Corps of Engineers. Served as consultant on water law issues to Senate Committee on Energy and Natural Resources and House Interior Committee.

1980-1981 U.S. Department of the Interior, Washington, D.C.
Associate Solicitor for Conservation and Wildlife. Supervised 24 attorneys and support staff of the Conservation and Wildlife Division of the Office of the Solicitor. Advised Secretary of the Interior, Assistant Secretaries and Directors of National Park Service, Fish and Wildlife Service and Heritage, Conservation and Recreation Service on legal, regulatory and policy matters involving environment, wild rivers, fish and wildlife, endangered species, historic preservation and administrative law issues. At the same time, supervised separate group of lawyers responsible for preparing regulations implementing the then-new Alaska legislation.

1969-1981 University of California, Hastings College of the Law, San Francisco, CA
Professor of Law (on leave during Interior and CEQ tenure described above)
Courses: Basic and Advanced Environmental Law, Water Law, Energy Law and Community Property. Also served as consultant to Stanford Research Institute. (Following two positions held concurrently with this position.)

1977-1979 University of California, Boalt Hall, Berkeley, CA
Visiting Professor of Law. Courses. Natural Resource Management and Land Use Control Law

1978 University of California, King Hall, Davis, CA
Visiting Professor of Law. Course: Environmental Law

1974-1976 Council on Environmental Quality, Executive Office of the President, Office of the General Counsel, Washington, D.C.
General Counsel. Supervised 4 attorneys in the Office of the General Counsel, served as one of three senior staff advisors to the Chairman and Council, prepared legal memoranda and served as lead Congressional liaison

for the Council. Recommended administration positions on congressional and appellate litigation. Negotiated settlements in cases involving the National Environmental Policy Act (NEPA). Recommended Guidelines for implementing NEPA. Provided administrative law advice to Chairman. Negotiated terms of international convention on ocean discharges that related to discharge of radioactive wastes.

1966-1969 University of Denver, Denver, CO
Associate Professor of Law. Courses: Water Law, Basic and Advanced Environmental Law, Land Use Control and Real Property. Also served as Project Director and principal author of Report to the Public Land Law Review Commission, *Legal Study of Oil Shale and Public Lands*, (412 pp. 1969), cited with approval by the U.S. Supreme Court in *Hickel v. Oil Shale Corp.*, 400 US 48,56 (1970).

1962-1965 Thelen, Marrin, Johnson & Bridges, San Francisco, CA
Associate. General practice involving business, antitrust and real property matters.

HIGHER EDUCATION

1966 University of Michigan School of Law
LL.M., Environment Law

1962 University of California, Hastings College of the Law
J.D., Order of the Coif

1957 University of Nebraska
Bachelor of Science in Geology

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

American Bar Association, member 1966 to present
Former appointed member, National Conference of Lawyers and Scientists (joint ABA and AAAS committee) (5 yrs)
Former appointed member, Special Committee on Energy Law (5 yrs)
Former elected Member of the Council, Section on Natural Resources, Energy

And Environmental Law
Named to Mediation Panel, Calif. Court of Appeal, 1st Dist.
Admitted to Practice, US Supreme Court
State Bar of California, member, 1962 to present
Bay Delta Oversight Council, appointed by Gov. Wilson, 1993-1995
Member, US Delegation, First Consultative Meeting, IMCO Ocean Dumping Treaty,
(now MARPOL) (radioactive waste issues, London, 1976)
Member, US Delegation to Conference and negotiations with USSR on Bering Sea Issues
Member, US Delegations to meetings pursuant to the US-USSR Agreement on
Cooperation in the Field of Environmental Protection (1976, 1988 and 1990)

OTHER ORGANIZATIONS

California Heritage Council, President
Ft. Point and Presidio Historical Association, Vice President
Sustainable Business Institute, Member, Board of Directors
Achenbach Graphic Arts Council, (Fine Arts Museums of San Francisco)
Member, Board of Directors
Trout Unlimited, President, California Council, 1986-1990
Member, National Board of Directors 1985-87,1990-92
Member, State Board of Directors, 1985-95
Rocky Mountain Mineral Law Foundation, Former Trustee, 1969-74, 1977-80

PUBLICATIONS AND REORTS (partial list)

Yost & Widman, *The Action-Forcing Requirements of NEPA*, 34 ELR 10435, May, 2004
Common Laws for Earth and Man, in Polunin, ed. *Growth without Ecodisaster*,
Proceedings of the 2d International Conference on the Environmental Future,
(Reykavik, Iceland, 1977, 555-568 Macmillan, (London, 1980)
Our Dwindling Energy Resources and Public Policy, (Introduction to Special Issue on
Energy Law) 28 Hastings Law Journal, 1075, (1977)
Public Involvement and Environmental Law, Forestry Issues in Urban America,
Proceedings of Conference of Society of American Foresters, p. 157 (1974)
Decision-Making under NEPA, 4 ELR 50135 (1974)
Legal Report in Stanford Research Institute, *Decision Analysis of Hurricane
Modification*, NTIS #COM 71-00784 (1971)
(Principal Author and Project Director), Public Land Law Review Commission,
Legal Study of Oil Shale on Public Lands, 412 pp. NTIS, #PB (1969)
Groundwater Hydrology and the Problems of Competing Well Owners,
14 Min. L. Inst. 523, (1968)

PERSONAL

Ph. (415) 435-0360, Fax, (415) 789-8676
Email gwidman@mindspring.com

Hobbies include fly-fishing, collecting graphic art (collection exhibited in museums in Sacramento, CA and Jackson, WY), and travel.

References provided on request.

RELEVANT EXPERIENCE:

FORMER TEACHING POSITIONS

Professor of Environment Law

University of California, Hastings College of the Law; University of California, Berkeley, Boalt Hall; University of California, Davis; University of Denver

Professor of Water Law

University of California, Hastings College of the Law; University of Denver

Professor of Real Property and/or Land Use Law

University of California, Berkeley, Boalt Hall; Santa Clara University School of Law

FEDERAL PRESIDENTIAL APPOINTMENTS

Executive Office of the President, General Counsel, Council on Environmental Quality
Pres. Nixon, Pres. Ford

Department of the Interior,

Associate Solicitor for Conservation and Wildlife,

(Supervising 33 Interior Dept. attorneys working on endangered species, wildlife and National Parks issues)

Pres. Carter

STATE GUBERNATORIAL APPOINTMENTS

Chief Counsel, Calif. Department of Parks and Recreation

Gov. Pete Wilson

JUDICIAL

Director, Office of Staff Attorneys, U.S. Court of Appeals for the Ninth Circuit

CONSERVATION

President, Trout Unlimited, California Council

Member, National Board of Directors of Trout Unlimited

Member, State Board of Directors of Trout Unlimited

President, Presidio Historical Association

President, California Heritage Council

DISPUTE RESOLUTION,

Arbitrator, (on panel of 3, also including Wm. Bagley and former Supreme Court Justice Cruz Reynoso, Southern Calif. Gas pipeline contamination case)

Mediator, CONCUR, Inc., Berkeley, CA

Member, Alternate Dispute Resolution panel of Calif. Court of Appeals, 1st Dist.

(All listed federal and state appointments above required significant portion of time spent in dispute resolution and legislative liaison tasks.)

David Schnapf, Esq.
90 Corte Loyola Dr.
Greenbrae, CA 94904

October 25, 2013

via e-mail

Steven Woodside, County Counsel
County of Marin
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

Re: Stream Ordinance Conflict of Interest

Dear Mr. Woodside:

I am writing to address the conflict of interest issue regarding three county supervisors in respect to the proposed Stream Ordinance currently under consideration. Specifically, I will briefly touch on three points: (1) the need to isolate the conflicted supervisors from working on this matter while the conflict issue is pending, (2) the need to impose a "litigation hold," to preserve all potentially pertinent documents, and (3) the method of selecting which of the conflicted supervisors should be allowed to vote if necessary.

The Conflicted Supervisors Should be Isolated From Any Involvement In the Stream Ordinance While the Conflict Issue is Pending

The goal of the laws and regulations that prevent a public official from voting on a matter affecting his or her personal financial interests also requires that they abstain from influencing the content of the ordinance. As stated in the law, as summarized in *In the Matter of: Opinion requested by: Mathew L. Hudson, City Attorney, City of Petaluma*, (4 FPPC Ops. 13; 1978), the law prohibits a conflicted public official "from making, participating in making or in any way attempting to use his official position to influence a governmental decision." At least one conflicted Supervisor has played a major role in drafting the ordinance, and it is fair to assume that the process has already been tainted by the influence of conflicted Supervisors.

Regardless of may have already happened, it seems clear that, going forward, conflicted Supervisors should be completely walled off from any participation in the process, *i.e.*, from any involvement or discussion of the ordinance. Please confirm that you have instructed the conflicted Supervisors to strictly avoid any involvement in the matter. If you believe that the conflicted Supervisors are free to participate in the process, I ask that you inform me of any legal authority that supports your position.

You Should Ensure that All Potentially Relevant Evidence is Preserved

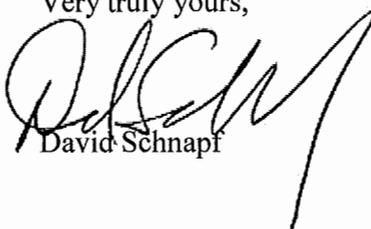
At this point, it seems highly probable that any ordinance that is passed will be challenged in court. Accordingly, please instruct the Supervisors, the planning department, and all other public officials, county representatives and county employees of the need to preserve all evidence that could be pertinent to such litigation. If you believe that such a "litigation hold" is unnecessary, I ask that you inform me of any legal authority that supports your position.

If It Is Necessary to Allow One Conflicted Supervisor to Vote, It Should be Susan Adams

In a letter to the FPPC dated October 10, 2013, Deputy County Counsel David Zaltsman took the position that Supervisor Adams is not conflicted in respect to the Stream Ordinance because adoption of the ordinance would not affect her financial interests. I am unaware whether the FPPC has responded to this. However, it is clear from the facts recited in Mr. Zaltsman's letter that any conflict that may exist in respect to Supervisor Adams is *de minimis* relative to the two other conflicted Supervisors. Accordingly, even if the FPPC does not agree with Mr. Zaltsman, I believe that she should be the one supervisor that is selected to vote under the rule of necessity, rather than selecting one of the three by lot.

While the FPPC has authorized the use of selection by lot to select one conflicted public official under the rule of necessity, as far as I know it has never mandated the use of a random selection. Indeed, when asked whether it would be acceptable to use a "degree of conflict" approach, the FPPC did not rule this out. (See letter FPPC Letter to Gary Gillig, Oxnard City Attorney, dated 10/17/96.) While generally not preferred by the FPPC, use of the "degree of conflict" approach appears particularly appropriate here, since it is clear from Mr. Zaltsman's letter that Supervisor Adams' alleged conflict is substantially different in kind than the other two conflicted Supervisors – to the point that it is arguably not a conflict at all. Where the degree of conflict is so vastly different, this seems the best approach.

Very truly yours,


David Schnapf

From: [Koa Pickering](#)
To: [Thorsen, Suzanne](#)
Cc: [Samantha Russell](#)
Subject: Comment on SCA for Tuesday 10/29 BOS
Date: Sunday, October 27, 2013 8:29:45 PM
Attachments: [Comments on proposed Interim SCA.pdf](#)

Hello Ms. Thorsen,

Attached please find my letter to the Board of Supervisors regarding the proposed interim SCA Ordinance being considered on Tuesday.

I hope this will not be received too late for consideration.

Thank you.

Koa Pickering
San Geronimo Valley

October 28, 2013

Honorable Board of Supervisors
Marin County, CA

RE: Proposed Stream Conservation Area Ordinance

Please support a balanced process for a balanced Stream Ordinance that is based on science, factual data about the development potential of the San Geronimo Valley, and gives all relevant stakeholders a voice at the table.

The Stream Ordinance as written, is based on Goal BIO-4 of the 2007 Countywide Plan for stream protection, and was not crafted to address stream protection on a watershed-specific basis. The Countywide plan needs to be amended to bring the science involved up-to-date, to consider the significant differences across each of the watersheds in Marin, and to include additional provisions to protect water quality such as Low-Impact-Development techniques to address stormwater runoff impacts. The current Goal BIO-4 not only does not address stream protection on a watershed basis, but also ignores critical factors such as topography, vegetation type, and fire protection.

The Center for Biological Diversity and SPAWN's claims that 1,000,000 square feet of land will be developed in the San Geronimo Valley because of "loopholes" in the current Ordinance, ignores important facts about the Valley. The 1,000,000 square feet of new development that SPAWN is claiming will happen, makes the assumption that every single current homeowner, and every single remaining unbuilt lot, will be developed to the maximum allowable extent, through additions and new structures. The reality is that many of the remaining undeveloped lots in the SGV Valley have not been developed specifically due to constraints of topography, access, and unsuitability for wastewater treatment. Even if the impossible "doomsday" build-out happened, as SPAWN is stating as a given, that 1,000,000 square feet would represent less than one-half of one-percent of the total San Geronimo Valley. Currently, only 3.5% of the SGV Valley is "built-out" with impervious surfaces – where 5% is considered excellent for streams health in watersheds supporting anadromous fish. The riparian vegetation cover is higher now than at any point in the settlement history of the Valley, which is supported by MMWD's own riparian vegetation studies.

Why is the Center for Biodiversity and SPAWN ignoring these facts? Where is their consideration of the science and influences of global weather patterns and ocean conditions on the health of the salmon population, vs. the science and facts supporting the impacts of so called "development" in the San Geronimo Valley?

The families that live in the SG Valley, are not “well heeled landowners” or greedy developers as SPAWN’s propaganda puts forth – but are working class families who cherish the natural environment, and seek responsible stewardship of those resources based on a process that closely involves all in the community.

I urge you to support the passage of the proposed interim SCO. This will put stream protections in place, and allow the time for the much needed process to amend the BIO-4 section of the CWP. Please ensure that process to amend the CWP is one that brings all significant stakeholders to the table, not just special interest environmental groups and experts, but also includes representatives from and citizen advocacy groups who are important stakeholders in the County. Most critically, please include spokespersons from community groups representing those who live along streams - who did not have a voice in the 2007 CWP process.

Sincerely,

Koa Pickering
Samantha Russell
Woodacre, CA

From: peggycreeks@comcast.net
To: [Adams, Susan](#); [Arnold, Judy](#); [Crawford, Brian](#); [Crosse, Liza](#); [Kinsey, Steven](#); [Lai, Thomas](#); [Patterson, Diane](#); [Sears, Kathrin](#); [Rice, Katie](#); [Thorsen, Suzanne](#); [Woodside, Steven](#)
Subject: Oct. 29 BOS Mtg: SCA Work Program, SGV Stewards Comments
Date: Monday, October 28, 2013 10:50:02 AM
Attachments: [WorkProgramSGVComments.pdf](#)

**SCA Implementation Work Program
San Geronimo Valley Stewards Comments
for October 29, 2013 Board of Supervisors Meeting**

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426

To: Supervisors Kinsey, Adams, Arnold, Rice and Sears
Assistant Clerk of the Board, Diane Patterson
Community Development Agency, Thomas Lai, Suzanne Thorsen, Brian Crawford

1. SGV Stewards strongly support RCD as ombudsperson/outreach coordinator.

- A. The \$85,000 cost is well worth the effort. Marin RCD is a good fit for the San Geronimo Valley.
- B. RCD has a proven success record with grant writing and project administration. This capacity is necessary for small groups of creekside neighbors who volunteer for restoration projects.
- C. We really need RCD help in navigating the permit processes of the seven (7) local, state, and federal agencies that control work on the creeks. SGV Stewards have seen two good restoration projects stopped, because of lack of coordination among the government agencies.

2. Work Program should study setbacks for perennial and intermittent (seasonal) streams.

The Work Program should include study of the effectiveness of perennial and intermittent (seasonal) streams, in both City Centered and Rural Inland Corridors. The focus should be on existing homes and small vacant lots in developed neighborhoods.

- A. The 2010 Salmon Enhancement Plan (SEP) recommends, for the SG Valley with its coho population, a 35-foot setback (not 100 feet), for areas of existing development and small vacant lots. (See SEP page 2-21.)
- B. Sleepy Hollow visually demonstrated at the June 18 BOS meeting that a small lot

cannot support 100 feet of stream setback (50 feet on both sides) where the creek runs through the middle of the lot, particularly where there are other constraints such as large trees, neighbor sideyard space, or steep grades. Rigid setbacks make residential homesites unusable, regardless of the type or definition of the stream.

C. Marin CD Agency surveyed the residential lots along the main fish-bearing streams in San Geronimo Valley, and found the average and median lot size is about 18,000 square feet. That is about 137 feet wide by 137 feet long. To impose a 100 foot setback renders 72% of the lot unusable. This is an unconstitutional taking of private property without compensation.

D. Consider also that many of the homes in the SCA of San Geronimo are built along upland streams, which cannot support fish because they are located on more than 8% grade. Why are we taking 72% of their homesites? Are there more effective measures to protect water quality and prevent floods?

E. The Supervisors on June 18 correctly identified the need to adapt setbacks to variable land use, watershed and stream characteristics. We would add topography as a factor. For example, seasonal stream channels on steep grades fill with dry brush in the summer and become fire chimneys.

We attach a PDF markup of changes in the Work Program and the Framework/Guiding Principles. Current draft says different things on different pages.

3. Study should include all ephemerals (not only "headwaters") and look at drainage issues.

While we applaud the fresh look at ephemerals, there seems to be a (perhaps inadvertent?) limitation to study only those ephemerals that might be classified as "headwaters." (See Framework and Guiding Principles, BOS Attachment #2.)

Development Code part VII defines ephemeral streams as any surface run off when it rains. (See BOS Attachment #4 page 10.) Virtually every home parcel in Marin has at least one ephemeral stream in February storms. Many ephemerals run only 100 feet (or less), and then dissipate into swells or soak into the forest floor.

In contrast, certain ephemerals at the ridgetops flow directly into major channels of seasonal or perennial creeks (as shown in the new SCA map) and these could more commonly be called "headwaters."

The concept of a fixed footage setback for every ephemeral should be abandoned in favor of the drainage protection approach recommended by the SEP. (See SEP page 2-22 and 2-46 to 2-49.)

4. SWAG should be a participating partner in the Work Program.

We offer the following suggestions and attached mark up, in the spirit of civil

discourse and to encourage respectful listening to differing viewpoints. We want the Stream Watershed Advisory Group to succeed in the goals set by this Board of Supervisors.

SGV Stewards recommends the County not repeat the secretive process of San Geronimo in 2008-10. The committee was dominated by government agencies, with two "citizen" representatives hand picked by Spawn and Supervisor Kinsey; "technical" meetings were closed to the public; and outside experts failed to listen to local residents about local conditions. Despite good intentions, the result was suspicious angry homeowners, and major factual errors in the Existing Conditions Report.

We have learned, and can do better this time:

A. SWAG should include representatives of each residential community, plus conservation groups and government agencies. We can start with the number of parcels within the SCA in each community. (See Planning Commission Staff report, April 1, 2013, Item No 4, page 7.)

Indian Valley -- 65 parcels

Kentfield/Greenbrae -- 234 parcels (Isn't this really 2 distinct communities?)

Lucas Valley/Marinwood -- 405 parcels (Isn't this really 2 distinct communities?)

San Geronimo Valley -- 933 parcels (in the new SCA map of Sept 2013)
(Two groups represent different homeowners, with differing views of CWPlan--
SG Valley Planning Group and SG Valley Stewards)

Sleepy Hollow -- 184 parcels

Strawberry -- 5 parcels

Tam -- 299 parcels (Are there separate neighborhoods and organizations?)

Kent Woodlands -- (about 500 homes are members of KW Property Owners Assoc.)
(Kent Woodlands was not listed in April PC Staff report.)

Other unincorporated -- about 250 parcels?
(April PC Staff report estimates 750, including 500 in Kent Woodlands)

B. CDA Director should invite each stakeholder group to send one representative, plus an alternate, of its own choosing. County staff should not be in the business of selecting individuals they "like" to represent certain stakeholder groups.

This system works fine with the Lagunitas Creek Technical Advisory Committee. SGValley Stewards is a member of Lagunitas TAC, along with Spawn and SG Valley Planning Group, various government agencies, and non profit conservation groups.

Each group or agency selects its own representative, plus one alternate.

With one representative plus one alternate, there is no loss in continuity, and consistency in meeting attendance is maintained. We are all unpaid volunteers with jobs and other commitments, but we will make time for business day meetings.

C. Allow SWAG members to submit inquiries to the expert consultants CDA engages. Perhaps require a majority vote of SWAG, so the County does not spend expert fees on unproductive detours.

D. Technical SubCommittee meetings should be open to SWAG representatives and the public can observe. Lagunitas TAC is a good example.

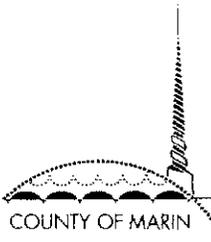
E. Encourage expert consultants to share information and solicit information from local communities before submitting draft ECR reports. People who have lived on a creek for decades have observed the weather, creek flows and habitat. Capture on-the-ground knowledge and local history.

San Geronimo Valley Stewards have been very impressed with the successful meetings of Lagunitas TAC and Marin Conservation League, where representatives of different groups come together to share information, discuss developments, and respectfully listen to other views. Let's try it!

9-30-2013

SGV Stewards comments

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION



**Stream Protection and Watershed Enhancement:
Framework and Guiding Principles**
October 1, 2013

1. **Landowners will receive increased support** through improved education and assistance. *Through Marin Resource Conservation District*
 - a. Retain an Outreach Coordinator who will provide public information through written materials, workshops and informational meeting about creek care issues important to landowners and serve as an ombudsperson to assist landowners with permitting.
 - b. Complement and coordinate with ongoing efforts of the Marin Watershed Program and MCSTOPPP.
2. **Stream Conservation Area is a special permit zone** that is important to watershed protection and requires low impact development. The SCA should incorporate a broad set of techniques to protect and enhance stream and riparian resources.
 - a. Account for the latest science: watershed planning, studies, map and information resources, and technology.
 - b. Complement other related regulations: State of CA Phase II stormwater, Native Tree Protection Ordinance, Anadromous Fish Stream Ordinance, Creek Permit, drainage setback, etc.

2. **Ephemerals** ~~Headwaters~~ are distinct and will be the subject of additional scientific analysis. Any subsequent County Code or Countywide Plan amendments relating to ephemeral streams will recognize their unique function, characteristics, and vulnerabilities.
 - a. Critically evaluate the definition of ephemeral streams as well as current policies, practices and regulations to identify opportunities for protection of ephemeral stream functions.
 - b. Techniques for ~~headwaters~~ protection may differ from those applicable to perennial and intermittent streams but should be coordinated with existing permit procedures and best practices to the extent feasible. *in Rural Inland Corridor.*

Ephemerals

3. **Implement Program BIO-4.b Reevaluate SCA Boundaries** in the City-Centered Corridor and smaller parcels
 - a. Review existing science including local watershed information and literature supporting standards to protect streams and regulate development.
 - b. Assess the effectiveness of current County standards. Consider stream functions on a watershed-level basis, including input from professionals such as a fluvial geomorphologist, hydrologist, wildlife biologist and vegetation ecologist, together with resource agencies and interested members of the public.

including perennial and intermittent streams.

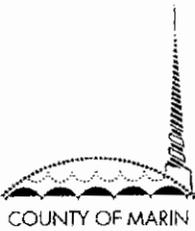
Guiding Principles:

- Future actions should contribute to the overall improvement of the watershed.
- Expand available tools for watershed stewardship, including education and incentives.
- Recognize the distinction between historic neighborhoods with smaller developed lots and those areas of the county with larger lots or vacant parcels.
- Achieve consistency and avoid redundancy with existing regulations.
- Support public and private investments that protect habitat and improve watershed health.
- The Countywide Plan establishes policy objectives while regulatory details are best suited to County Code.
- Avoid ambiguity and eliminate inconsistencies.

9-30-2013

SGV Stewards Comments

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION



**STREAM CONSERVATION AREA IMPLEMENTATION
WORK PROGRAM**
(October 1, 2013)

1. Goal *perennial and intermittent*

- a. Assess effectiveness of the existing Stream Conservation Area (SCA) standards applicable to ephemeral streams to the City Centered Corridor and smaller lots in the Inland Rural Corridor (Program BIO-4.b)
- b. Implement watershed enhancement program that includes education, homeowner assistance, permitting assistance, and funding mechanisms to support long-term protection of habitat (Programs WR-1.a, WR-1.d, BIO-4.j, BIO-4.n, BIO-4.s, BIO-4.t)
- c. Update county stream map (Program BIO-4.c)

2. Roles and Responsibilities

Board of Supervisors (BOS) Oversight Sub-committee

- a. Review and approve implementation of detailed work program
- b. Provide policy direction, as needed
- c. Coordinate with CAO on budget

CDA

- a. Sponsor, project manage, and oversee implementation of the project
- b. Map SCAs for compliance with Program BIO-4.c
- c. Implement watershed enhancement and ombudsperson programs
- d. Conduct public outreach and communications plan (online, social media, workshops)
- e. Oversee Stream Watershed Advisory Group (SWAG) and public workshops (may involve third-party meeting facilitator)
- f. Engage consulting fluvial geomorphologist, hydrologist, and wildlife biologist/ecologist
- g. Provide staff support to the BOS Oversight Sub-committee

DPW

- a. Provide technical assistance through stormwater and watershed programs
- b. Provide technical support and attend SWAG meetings
- c. Provide guidance on how existing stormwater management and sediment control measures can be integrated with implementation of the SCA.

Stream Watershed Advisory Group (SWAG)

Formed by invitation from the CDA director, the Stream Watershed Advisory Group (SWAG) is comprised of *12 to 14 individuals representing various backgrounds*
to each stakeholder group,
about 20 representatives of

(resource agency, environmental organization, homeowner association, etc.). Meetings are anticipated to be scheduled during business hours, but may extend into the early evening. The meetings are not public meetings, although members of the public may attend as observers. In the interest of maintaining consistency in meeting attendance, only one representative from each stakeholder group will participate on the SWAG.

and one alternate

The SWAG's role includes:

1. Providing input on how specific issues should be evaluated;
2. Applying technical expertise, where appropriate, to specific issue areas;
3. Providing input on draft strategies and how they relate to existing state and federal requirements; and
4. Applying local knowledge and expertise.

5. *Submitting inquiries to CDA-engaged consultants*

Agency representatives:

Marin Municipal Water District
California Department of Fish and Wildlife
National Marine Fisheries Services
Marin County Resource Conservation District

{Agency representatives may also be invited to serve on a technical subcommittee of the SWAG along with other Agency representatives (e.g. Regional Water Quality Control board).}

Meetings of technical subcommittee can be attended by SWAG representatives and the public may observe.

Community stakeholders:

Community Marin
Farm Bureau/Agriculture
Community organizations

Phase II: Evaluate effectiveness of SCA standards (20 to 24 weeks)

Goal: Using the existing conditions report, data on stream protection and management standards, and information from the Salmon Enhancement Plan and work completed for the watershed planning areas, evaluate the effectiveness of the CWP SCA standards governing ephemeral streams, including the 50- and 100-foot setback distances to properties in the City-Centered Corridor and smaller parcels in the Inland Rural Corridor. (CWP Program BIO-4.a)

Deliverable: SCA Strategies Report

perennial and intermittent

Who drafts?

Milestone	Date
Issue draft SCA Strategies Report to SWAG	Week 24
SWAG Meeting #3 – Review SCA Strategies Report	Week 26
Public Workshop #1 – Review Existing Conditions and SCA Strategies Report	Week 32
SWAG Meeting #4 – Review Workshop #1 Comments	Week 36
BOS Meeting #1 <ul style="list-style-type: none">Accept Existing Conditions and SCA Strategies ReportProvide direction on scope of amendments to County Code and/or CWP.	Week 44
Contingency	+ 4 weeks

From: dmmes@netzero.net
To: [Thorsen, Suzanne](#); [BOS](#); [Sears, Kathrin](#); [Adams, Susan](#); [Kinsey, Steven](#); [Rice, Katie](#); [Arnold, Judy](#)
Cc: scmg_excom@primavoce.org
Subject: Marin Streamside Ordinance - Sierra Club Marin County Comments
Date: Monday, October 28, 2013 10:55:32 AM
Attachments: [Sierra Club Letter re SCA.pdf](#)

Dear Supervisors:

Attached please find a comment letter from the Sierra Club Marin Group concerning the proposed revisions to the Marin County Streamside Ordinance. We hope you will seriously consider our positions when discussing and voting on the Ordinance.

Regards,

Michele Barni
Chair, Sierra Club Marin Group

Do THIS before eating carbs & every time;
1 EASY tip to increase fat-burning, lower blood sugar & decrease fat storage
<http://thirdpartyoffers.netzero.net/TGL3241/526ea5055b3625045fccst02duc>



SIERRA
CLUB
FOUNDED 1892

Sierra Club Marin Group
P.O Box 3058, San Rafael, CA 94912
<http://sanfranciscobay.sierraclub.org/marin/>

To Marin County Board of Supervisors
Via Email correspondence
RE: Stream Conservation Area Ordinance

October 28, 2013

Dear Marin County Board of Supervisors:

Three of the County Supervisors are being considered as having conflicts of interest under the California Fair Political Practices Commission. We are asking for a delay until this is definitely resolved. We also have reason to believe that since the conflict was discovered, those conflicted supervisors are continuing to meet with and influence their constituents.

The Sierra Club cannot support the current staff recommended ordinance. We urge you to adopt a stronger Stream Conservation Area ordinance than the one proposed, one strong enough to prevent salmon from being extirpated in Marin. To achieve this, write, adopt and implement a more definitive and protective ordinance that comports with the Endangered Species Act, the federal and state Coho, Steelhead, Red Legged frog recovery plans, and National Marine Fisheries Service (NOAA) recommendations. Revise simultaneously, all other existing other county ordinances to enhance riparian and anadromous fish habitat: i.e. State of CA Phase II stormwater permit, Native Tree Protection Ordinance, Anadromous Fish Stream Ordinance, Creek Permit, drainage setback and create a new Sensitive Habitat ordinance (example provided of Santa Cruz "Sensitive Habitat Ordinance")

The decision is for a localized San Geronimo Valley Stream Conservation Area Ordinance or a County Wide Stream Conservation Area Ordinance, yet in both cases, an interim, and not a permanent ordinance are being considered. We want the county to take immediate steps to ensure that no further damage occurs on any of our anadromous streams. The salmon cannot afford to wait.

We urge the Board of Supervisors to strengthen this ordinance incorporating expressed scientific recommendations of the National Marine Fisheries Service (NOAA) Coho Recovery Plan 2012 as well as the county commissioned "*San Geronimo Valley Enhancement Plan Study 2011*" and "*Marin County Policies Relating to Anadromous Fish Habitat Conservation 2001*". Because so many streams in Marin have lost salmon and all have the potential to be restored, the greatest protections should be afforded nearly all streams.

The SCA ordinance attempts to create a lawsuit-proof ordinance that is almost verbatim from the CWP, however, it then exempts so many project categories that it undoes what few protections remain. The impetus for this proposed ordinance is a court order. However, adopting such a flawed, piecemeal ordinance would ignore well-established science and best practices and will unfortunately merely invite more litigation, while offering little to no protection to the fish habitat. The CWP current lot-by-lot approach is adverse to the widely accepted watershed approach the Board of Supervisors agreed to use. The *San Francisco Regional Water Quality Control Board Buffer Report 2003* indicates that most jurisdictions use the watershed approach; based on stream hierarchy, hydrology, water quality, morphology, riparian habitat integrity and slope and not the County's current "disturbed" area baseline designation or based on existing vegetation and length of riparian vegetation. In a place that has been "disturbed for the better part of a century" the baseline suggested in the county SCA ordinance is counter to science.

Other issues of concern within the SCA draft ordinance include and that do not comport with Bio 2.1 “no net loss of sensitive habitat acreage, values, function in Bio 2.1 in the 2007CWP” Judge Duryea tentative ruling, are listed below:

1. Most ephemerals and intermittent streams throughout Marin will not be protected because they are not yet mapped, yet those protections are supposed to be part of the ordinance.
2. Site assessment for a Tier 1 does not clarify if it will be an actual site visit by staff and does not preclude applicants misrepresenting information on applications unless that occurs.
3. There are no requirements for 2:1 mitigation on site, in a Tier 1 permit.
4. There is no “no exemptions” clause where there is sensitive/critical habitat that is necessary for critical habitat contiguity relevant in Endangered Species Act listings.
5. Exempts all existing structures within the SCA to a distance of within 20 feet of the creek and allows an addition of 120 sq. feet of building.
6. Exempts existing fences and allows sheds to be built.
7. Allows 500 Square feet additions, patios, decks, buildings, etc. within flood plain that cumulatively will have adverse impacts on the fish habitat, stream flows, water quality and quantity.
8. There is no criterion, which allows a no-project alternative or the infeasibility of a project that will be detrimental to sensitive species habitat. Moreover, numerous community and environmental groups have requested incentives for higher standards including restoration within project properties.
9. There is no incentive for retreat, removal of existing buildings or removal of impermeable flatwork within the SCA. Restoration is not promoted but only native plant replacement with no monitoring.
10. The entire baseline of “disturbed” or existing conditions is causing property owners to disturb their land on sensitive areas and does not further restoration or retreat. It is an untenable baseline as is the grandfathering of existing structures that may be causing habitat or hydraulic damage.
11. There are better ordinances around the Bay Area that have been in existence for as long as 33 years (Santa Cruz Riparian Corridor Ordinance) and that makes the Board of Supervisors reticence concerning.
12. The ordinance defines existing riparian vegetation, falling within very narrow parameters of obligate riparian species... in contiguous lengths and does not include current habitat value nor provide conservation and restoration potential.
13. The cut off for February 25, 2013, from aerial views only, applicable primarily in agricultural zones, allows work after that date to the detriment of the streams and special status species.
14. Mitigations are only required on Tier 2 and not Tier 1 projects. The mitigations made for a 2:1 (individuals planted: individuals removed) fails to improve areas damaged or disturbed to begin with.
15. There are no prohibitions on the use of pesticides or herbicides within the stream conservation area.
16. The County should not exempt itself from the same scrutiny that the ordinance would require.

Our comments are sufficient to provide the basis for a relevant and facilitative ordinance that complies with the recommendations of 130 scientists and is in alignment with the CWP. Additionally, work to provide incentives and educational programs for homeowners so they may understand their role in species recovery, riparian, stream and land stewardship. We support working with communities through your ombudsman, homeowner assistance programs and recommend the hiring of another person in order to create programs that engage and provide incentives to property owners in order to achieve these goals.

We cannot support the Marin County Staff ordinance recommendations as written and want to see a much stronger, Countywide protective ordinance that are based on habitat protection and watershed function, and that contains a vibrant community outreach program that identifies and implements those solutions.

Sincerely,

Michele Barni
Michele Barni
Chair, Sierra Club Marin Group

From: peggycreeks@comcast.net
To: [Adams, Susan](#); [Arnold, Judy](#); [Crawford, Brian](#); [Crosse, Liza](#); [Kinsey, Steven](#); [Lai, Thomas](#); [Patterson, Diane](#); [Sears, Kathrin](#); [Rice, Katie](#); [Thorsen, Suzanne](#); [Woodside, Steven](#)
Subject: Oct 29 BOS Mtg: Final Comments on Stream Ordinance from SGV Stewards
Date: Monday, October 28, 2013 12:58:01 PM

From: San Geronimo Valley Stewards
Peggy Sheneman 415-488-4426

To: Supervisors Steve Kinsey, Susan Adams, Judy Arnold, Katie Rice, Kathrin Sears
Assistant Clerk of the Board, Diane Patterson
Community Development Agency: Brain Crawford, Thomas Lai, Suzanne
Thorsen

SAN GERONIMO VALLEY STEWARDS FINAL COMMENTS ON
INTERIM STREAM ORDINANCE-- OCT. 29, 2013, TUES 1:30 am

As stated in our Sept 27 email, we appreciate the work of CDA staff and the Planning
Commission.

SGV STEWARDS CONDITIONAL SUPPORT FOR TEMPORARY STREAM
ORDINANCE

San Geronimo Valley Stewards SUPPORT adoption of the temporary stream
ordinance, AS A LIMITED 30-MONTH EXPERIMENT.

Our support is FOR ONE REASON: The temporary ordinance will LIFT THE COURT
INJUNCTION.

Our support is ON THE CONDITION that the exemptions for normal home
maintenance and the Tier 1 Permits of the draft ordinance be retained. The San
Geronimo Valley includes 933 family homes within the Stream Conservation Area
(SCA). We must be allowed to repair, maintain, and replace existing structures,
and add up to 500 square feet. There must be reasonable exemptions (at no charge),
and ministerial Tier 1 permits for small home projects.

WE RESPECTFULLY REQUEST FROM BOARD OF SUPERVISORS:

1. Please use the LIDAR stream map that the County published in September 2013.

Do not add new streams or change boundaries during this 30-month experimental
ordinance.

Please do not create uncertainty. Families must be able to plan the use of their
land and know where the SCA is located. Home sellers must disclose to home
buyers the clear lines of the SCA as shown on the map. .

The LIDAR map is the best source we have, at this time, without

intrusive government inspections of private properties. Some questions about surface run offs cannot be determined by LIDAR, but homeowners should not be harassed with backyard examinations.

2. Confirm the Permit Fees.

For small home projects, Tier 1 Stream Permit flat fee is \$250.

Please clarify: Does this include site assessment by County staff?

3. Equalize the fees for trees.

The tree removal permit fee is \$150 for trees outside the Stream Conservation Area. Up to two protected trees each year can be removed from a developed parcel outside the SCA, with no permit and no fee. (Development Code chapter 22.62.)

The stream ordinance would charge \$250 for a Tier 1 Permit to remove any one protected tree within the SCA.

Please equalize the fees at \$150 for tree removal both inside and outside the SCA.

4. Publish a plain language guide for homeowners.

Please provide adequate funding to explain small home projects. We need easy to find, on line SMP's, table of Common Residential Improvements, and flow charts for project permits.

A community meeting with CDA staff would be helpful. San Geronimo Valley Stewards offers to co-host with other SG Valley organizations.

5. Clarify how CDA staff will apply the ordinance.

We request clarification of three Development Code changes under the new ordinance. We questioned the ordinance language, but CDA staff suggests the clarification be in published CDA guidelines:

A. Diseased trees should be removed under exemption with no permit. The Marin Tree Ordinance (chapter 22.62.040) expressly allows removal of diseased trees, outside the SCA.

San Geronimo has a continuing problem with trees infected by sudden oak death, pine beetles, and other pathogens and insects. We cannot afford expensive arborist reports.

The Board should request CDA to issue standards that the stream permit exemptions under section 22.63.020 B. 1. c. and B.2.c. are available for diseased trees within the SCA.

B. Discretionary Land Use Permits should not be required for projects that are exempt or Tier 1 under the Stream Ordinance.

Two sections of the Stream Ordinance could be misread to require a discretionary Land Use Permit for a small project that is otherwise exempt or Tier 1 under the stream ordinance. See section 22.63.020. A.1. (page 3 of 15 Exhibit B) and section 22.06.051 (page 11 of 15 Exhibit B).

CDA staff informally tells us Land Use Permits under Chapter 22.06 would not apply at all within the SCA. Instead, all permits in the SCA are governed by Chapter 22.63.

We request the Board to direct staff to clarify in CDA published guidelines, that discretionary Land Use Permits are not required for projects inside the SCA that are exempt or Tier 1 under the stream ordinance.

C. Clarify similar drafting for Design Review, Second Units, and Environmental Protection standards.

The stream ordinance carves out exceptions to other sections of the Development Code. (See BOS Attachment #3, Exhibit B pages 11 and 13). These would exempt or exclude properties in the SCA from Design Review, Second Units, and Environmental Protection standards.

Staff has explained this is because the exemptions or exceptions for SCA properties are fully covered by the Stream Ordinance; the other Code sections simply do not apply. We ask CDA staff to clarify this in its published standards.

THE INTERIM ORDINANCE IS ENTIRELY CONSISTENT WITH CW PLAN

BIO-4.a. calls for implementing programs, including an expanded SCA ordinance. "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 existing horizontal encroachment into the SCA . . ." BIO-4.a. calls for site assessment and incentives such as reduced fees.

Missing from the 2007 Countywide Plan is the active support of 3,900 families across the County who live on the creeks and care for the habitat every day. We own the land on both sides of the creeks, and we can control access for research and restoration. Marin County cannot accomplish its mission without homeowners' enthusiastic participation.

From: [Jean Berensmeier](#)
To: [Marin County Board of Supervisors](#)
Cc: [Crawford, Brian](#); [Lai, Thomas](#); [Thorsen, Suzanne](#)
Subject: SCA meeting
Date: Monday, October 28, 2013 3:31:38 PM
Attachments: [BOS_SCA_10113doc.doc](#)

October 27 2013

To: Marin County Board of Supervisors and CDA Agency
From: SGV Planning Group

Dear Board of Supervisors

Except for the section shown below in red (A. 1.) our position on the SCA ordinance is the same as our mailing for the Oct. 2 meeting: Pass the ordinance as recommended; apply it to unincorporated areas countywide and do not amend the Countywide Plan.

Our position (below) is attached on letterhead.

We just learned that the “drawing” was concluded and that Katie Rice will have the third vote. It is our hope that Katie will be able to look at the big picture and support the proposed ordinance for the fish and ultimate improved value of creek properties.

Regretfully, the Sleepy Hollow Homeowner’s Assn. is more concerned about their property than the needs of fish habitat. We wonder if their properties could be “lifted out” from the implementation of the proposed ordinance until it has achieved further independent study.
Jean Berensmeier
SGV Planning Group Chair

October 27, 2013

To: County of Marin
Board of Supervisors and Community Development Agency
Re: SCA Ordinance

Dear Board of Supervisors

A. After careful deliberation we continue to support the following key positions:

1. Pass the SCA ordinance as recommended 6 – 0 by the Planning Commission and CDA Staff.

Include MCL’s recommendation to not just maintain current SCA conditions but improve de-graded conditions by creating a net environmental improvement over existing conditions so that an applicant allowed to build in the SCA will be required to provide something in return.

2. Apply the SCA Ordinance countywide.
3. Do not amend the Countywide Plan.

B. By taking these actions the Board of Supervisors will achieve the following goals:

1. Allow the moratorium to be lifted.
2. Provide a regulatory SCA process, for the first time.

3. Provide the opportunity to collect data that can determine if the SCA regulatory process is working or needs changing.
4. Provide the opportunity for education and outreach.
5. Allow for resources and seed funding for necessary habitat restoration.

C. Following is our rationale for supporting these three positions:

1. PASS THE SCA ORDINANCE

- Provide a formal, objective process whereby data can be accumulated, stored and reviewed on a regular basis (6 months or yearly) by staff in order to measure the success of the ordinance and determine desirable changes.
- Objective data to be studied to include: number of permit apps received/approved/denied and reasons for denial. Did the project protect active channels; improve water quality and improve flood control functions? Did it help the fish? Did it impact survival of vegetation? Did it affect property values?
- Provide an annual public report that includes a summary of the data, shows trends and includes recommendations for improvement.
- The acquisition of this type of objective data is excellent preparation for a CW Plan update.
- Gathering objective data removes politics from the equation and provides measurable results.
- Implement program BIO - 4.b. The assessment of these stream function studies will provide additional hard data that can be used in guiding staff in making recommendations for change in the program as well as in the ordinance and as preparation for the next CW Plan update.

2. APPLY THE ORDINANCE COUNTY WIDE

- The intent of the 2007 Countywide Plan was to adopt an SCA ordinance for all unincorporated areas – not just the San Geronimo Valley.
- Hearings and meetings have shown that many county residents support inclusion of processes that improve and restore the health of stream side habitat with the goal of bringing back salmon that existed in their watersheds in historic times.
- It would show the Board's commitment to restoring viable salmonid populations county wide.
- It would provide opportunities for studies that would generate invaluable data that would be useful in seeking grants. The Existing Conditions Study and Salmon Enhancement Plan (SEP) in the SGV was key to the Open Space Dist and DPW getting funding for special projects on San Geronimo Creek and tributaries and trails in the Giacomini Preserve.
- Additional objective data from all watersheds added to existing data would be invaluable and helpful in seeking grants critical for the necessary restoration of habitat.

3. DO NOT SEEK TO AMEND THE 2007 COUNTYWIDE PLAN

- It is unnecessary. Implementation of BIO-4.b will provide what is needed for flexibility.
- It is premature. BIO-4.b provides the data that can be collected, analyzed to see what is effective and what needs strengthening or deleting.
- It is expensive – fiscally irresponsible!
- It is inefficient. BIO-4.b provides the opportunity to collect the data to see how effective the ordinance is. Recommendations as a result of analysis of objective data will be extraordinarily helpful when reviewing the 2007 Countywide Plan.
- It will weaken the Plan. The main reason for considering an amendment is because a small group of residents have been misinformed about the purpose and how the ordinance works and are more concerned about the impacts on their property than they are about the ordinance objectives in the Countywide Plan: Protecting the active channel, water quality and flood control functions and associated fish and wildlife habitat along streams. These are not the reasons to amend a Plan that was years in review and has been in effect but not implemented since 2007. Further delays are unconscionable.

4. EMPHASIZE EDUCATION AND OUTREACH.

Use some of the money you were willing to spend on an amendment on Education and Outreach.

- Create a homeowner manual based on the Landowner's Assistance Program (LAP) packet.
- Workshops. Hands on. Easy things to do.
- Workshops: Plants.
- Workshops: Trees
- Highlight role models in the community.
- Workshops: Endangered and threatened species.
- Tours.
- Field trips.
- Add/change programs as experience guides us and applicable to the needs of the watershed.

5. EMPHASIZE RESTORATION – Salmon Survival Program

Use some of the money you were willing to spend on an amendment on restoration.

- Hire a managing coordinator to oversee education and outreach and generate regular progress reports.
- Manage a program to restore salmon populations to NOAA targets for viability (survival).
- Determine locations to initiate this program.
- Seek grants for this purpose.
- Use all data available to enhance the program.
- Fund a study that picks up where the SEP leaves off and identify objectives, metrics and locations for necessary habitat restoration.
- Work closely in partnership with County Open Space District and MMWD as well as all State and Federal agencies that fund restoration projects.
- Creek restoration provides jobs in the Valley and elsewhere which is good for the local

economy.

Sincerely,
Jean Berensmeier
SGV Planning Group Chair



October 27, 2013

To: County of Marin
Board of Supervisors and Community Development Agency
Re: SCA Ordinance

Dear Board of Supervisors

A. After careful deliberation we continue to support the following key positions:

1. Pass the SCA ordinance as recommended 6 – 0 by the Planning Commission and CDA Staff.
Include MCL's recommendation to not just maintain current SCA conditions but improve degraded conditions by creating a net environmental improvement over existing conditions so that an applicant allowed to build in the SCA will be required to provide something in return.
2. Apply the SCA Ordinance countywide.
3. Do not amend the Countywide Plan.

B. By taking these actions the Board of Supervisors will achieve the following goals:

1. Allow the moratorium to be lifted.
2. Provide a regulatory SCA process, for the first time.
3. Provide the opportunity to collect data that can determine if the SCA regulatory process is working or needs changing.
4. Provide the opportunity for education and outreach.
5. Allow for resources and seed funding for necessary habitat restoration.

C. Following is our rationale for supporting these three positions:

1. PASS THE SCA ORDINANCE

- Provide a formal, objective process whereby data can be accumulated, stored and reviewed on a regular basis (6 months or yearly) by staff in order to measure the success of the ordinance and determine desirable changes.
- Objective data to be studied to include: number of permit apps received/approved/denied and reasons for denial. Did the project protect active channels; improve water quality and improve flood control functions? Did it help the fish? Did it impact survival of vegetation? Did it affect property values?
- Provide an annual public report that includes a summary of the data, shows trends and includes recommendations for improvement.
- The acquisition of this type of objective data is excellent preparation for a CW Plan update.
- Gathering objective data removes politics from the equation and provides measurable results.
- Implement program BIO - 4.b. The assessment of these stream function studies will provide additional hard data that can be used in guiding staff in making recommendations for change in the program as well as in the ordinance and as preparation for the next CW Plan update.

2. APPLY THE ORDINANCE COUNTY WIDE

- The intent of the 2007 Countywide Plan was to adopt an SCA ordinance for all unincorporated areas – not just the San Geronimo Valley.
- Hearings and meetings have shown that many county residents support inclusion of processes that improve and restore the health of stream side habitat with the goal of bringing

back salmon that existed in their watersheds in historic times.

- It would show the Board's commitment to restoring viable salmonid populations county wide.
- It would provide opportunities for studies that would generate invaluable data that would be useful in seeking grants. The Existing Conditions Study and Salmon Enhancement Plan (SEP) in the SGV was key to the Open Space Dist and DPW getting funding for special projects on San Geronimo Creek and tributaries and trails in the Giacomini Preserve.
- Additional objective data from all watersheds added to existing data would be invaluable and helpful in seeking grants critical for the necessary restoration of habitat.

3. DO NOT SEEK TO AMEND THE 2007 COUNTYWIDE PLAN

- It is unnecessary. Implementation of BIO-4.b will provide what is needed for flexibility.
- It is premature. BIO-4.b provides the data that can be collected, analyzed to see what is effective and what needs strengthening or deleting.
- It is expensive – fiscally irresponsible!
- It is inefficient. BIO-4.b provides the opportunity to collect the data to see how effective the ordinance is. Recommendations as a result of analysis of objective data will be extraordinarily helpful when reviewing the 2007 Countywide Plan.
- It will weaken the Plan. The main reason for considering an amendment is because a small group of residents have been misinformed about the purpose and how the ordinance works and are more concerned about the impacts on their property than they are about the ordinance objectives in the Countywide Plan: Protecting the active channel, water quality and flood control functions and associated fish and wildlife habitat along streams. These are not the reasons to amend a Plan that was years in review and has been in effect but not implemented since 2007. Further delays are unconscionable.

4. EMPHASIZE EDUCATION AND OUTREACH.

Use some of the money you were willing to spend on an amendment on Education and Outreach.

- Create a homeowner manual based on the Landowner's Assistance Program (LAP) packet.
- Workshops. Hands on. Easy things to do.
- Workshops: Plants.
- Workshops: Trees
- Highlight role models in the community.
- Workshops: Endangered and threatened species.
- Tours.
- Field trips.
- Add/change programs as experience guides us and applicable to the needs of the watershed.

5. EMPHASIZE RESTORATION – Salmon Survival Program

Use some of the money you were willing to spend on an amendment on restoration.

- Hire a managing coordinator to oversee education and outreach and generate regular progress reports.
- Manage a program to restore salmon populations to NOAA targets for viability (survival).
- Determine locations to initiate this program.
- Seek grants for this purpose.
- Use all data available to enhance the program.
- Fund a study that picks up where the SEP leaves off and identify objectives, metrics and locations for necessary habitat restoration.
- Work closely in partnership with County Open Space District and MMWD as well as all State and Federal agencies that fund restoration projects.
- Creek restoration provides jobs in the Valley and elsewhere which is good for the local economy.

Sincerely,

Jean Berensmeier

SGV Planning Group Chair

From: [watermarin](#)
To: [Thorsen, Suzanne](#); [BOS](#); [Sears, Kathrin](#); [Adams, Susan](#); [Kinsey, Steven](#); [Rice, Katie](#); [Arnold, Judy](#); [Kinsey, Steven](#)
Cc: [watermarin](#)
Subject: Comments 10/28/13
Date: Monday, October 28, 2013 3:51:05 PM
Attachments: [Watershed Alliance SCA 10-28-13.doc](#)

Dear Board of Supervisors,
Attached please find Comments to the Stream Conservation Area Ordinance for the October 29 Public hearing.

Thank you,
Sincerely,
Laura Chariton, Director, Watershed Alliance of Marin.



To: Marin County Board of Supervisors
Email correspondence

RE: Stream Conservation Area Ordinance
October 28, 2013

Dear Marin County Board of Supervisors;

We are asking for a delay in a vote because three County Supervisors are being considered as having conflicts of interest under the California Fair Political Practices Commission. We want this resolved, first, before a vote is taken. We have reason to believe that since the conflict was discovered, those conflicted supervisors are continuing to meet with and influence their constituents.

The Watershed Alliance does not support the current staff recommended ordinance because it has so many omissions and exemptions, in both Tier 1 permits and Tier 2 permits, that allows a cumulative and direct net loss of sensitive habitat acreage, values and function. "The CWP, adopted in the FEIR, should also commit the County to the following specific mitigation efforts and contains identifiable criteria; [r]equiring adequate mitigation to achieve no net loss" (Judge Duryee) Tentative Ruling SPAWN vs. Marin County (pages 11 & 12). The ordinance fails to implement Policies, Bio 2.1- 2.5 and 4.1,4.2, 4.4, 4.7, 4.19 and related programs in the 2007 CWP, Pages 2-19 through 2-35 and Page 4.6-28 FEIR.

We urge you to adopt a stronger Stream Conservation Area ordinance than the one proposed, one strong enough to prevent salmon from being extirpated in Marin. To achieve this, write, adopt and implement a more definitive and protective ordinance that comports with the Endangered Species Act, the federal and state Coho, Steelhead, Red Legged frog recovery plans, and National Marine Fisheries Service (NOAA) recommendations. Revise simultaneously, all other existing other county ordinances to enhance riparian and anadromous fish habitat: i.e. State of CA Phase II stormwater permit, Native Tree Protection Ordinance, Anadromous Fish Stream Ordinance, Creek Permit, drainage setback and create a new Sensitive Habitat ordinance (example provided of Santa Cruz "Sensitive Habitat Ordinance").

The decision is for a localized San Geronimo Valley Stream Conservation Area Ordinance or a County Wide Stream Conservation Area Ordinance, yet in both cases, an interim, and not a permanent ordinance are being considered. We want the county to take immediate steps to ensure that no further damage occurs on any of our anadromous streams. The salmon cannot afford to wait.

We urge the Board of Supervisors to strengthen this ordinance incorporating expressed scientific recommendations of the National Marine Fisheries Service (NOAA) Coho Recovery Plan 2012 as well as the county commissioned "*San Geronimo Valley Enhancement Plan Study 2011*" and "*Marin County Policies Relating to Anadromous Fish Habitat Conservation 2001*". Because so many streams in Marin have lost salmon and all have the potential to be restored, the greatest protections should be afforded nearly all streams.

The SCA ordinance attempts to create a lawsuit-proof ordinance that is almost verbatim from the CWP, however, it then exempts so many project categories that it undoes what few protections remain. The impetus for this proposed ordinance is a court order. However, adopting such a flawed, piecemeal ordinance would ignore well-established science and best practices and will unfortunately merely invite more litigation, while offering little to no protection to the fish habitat. The CWP current lot-by-lot approach is adverse to the widely accepted watershed approach the Board of Supervisors agreed to use. The *San Francisco Regional Water Quality Control Board Buffer Report 2003* indicates that most jurisdictions use the watershed approach; based on stream hierarchy, hydrology, water quality, morphology, riparian habitat integrity and slope and not the County's current "disturbed" area baseline designation or based on existing vegetation and length of riparian vegetation. In a place that has been



“disturbed for the better part of a century” the baseline suggested in the county SCA ordinance is counter to science.

Other issues of concern within the SCA draft ordinance that do not comport with Policy Bio 2.1, Page 2-19 CWP, of “no net loss of sensitive habitat acreage, values and function” are listed below:

1. Most ephemerals and intermittent streams throughout Marin will not be protected because they are not yet mapped, yet those protections are supposed to be part of the ordinance.
2. Site assessment for a Tier 1 does not clarify if it will be an actual site visit by staff and does not preclude applicants misrepresenting information on applications unless that occurs.
3. There are no requirements for 2:1 mitigation on site, in a Tier 1 permit.
4. There is no “no exemptions” clause where there is sensitive/critical habitat that is necessary for critical habitat contiguity relevant in Endangered Species Act listings.
5. Exempts all existing structures within the SCA to a distance of within 20 feet of the creek and allows an addition of 120 sq. feet of building.
6. Exempts existing fences and allows sheds to be built.
7. Allows 500 Square feet additions, patios, decks, buildings, etc. within flood plain that cumulatively cause increased impermeability that will have adverse impacts on the fish habitat, stream flows, water quality and quantity.
8. There is no criterion, which allows a no-project alternative or the infeasibility of a project that will be detrimental to sensitive species habitat. Moreover, numerous community and environmental groups have requested incentives for higher standards including restoration within project properties.
9. There is no incentive for retreat, removal of existing buildings or removal of impermeable flatwork within the SCA. Restoration is not promoted but only native plant replacement with no monitoring.
10. The entire baseline of “disturbed” or existing conditions is causing property owners to disturb their land on sensitive areas and does not further restoration or retreat. It is an untenable baseline as is the grandfathering of existing structures that may be causing habitat or hydraulic damage.
11. There are better ordinances around the Bay Area that have been in existence for as long as 33 years (Santa Cruz Riparian Corridor Ordinance) and that makes the Board of Supervisors reticence concerning.
12. The ordinance defines existing riparian vegetation, falling within very narrow parameters of obligate riparian species... in contiguous lengths and does not include current habitat value nor provide conservation and restoration potential.
13. The cut off for February 25, 2013, from aerial views only, applicable primarily in agricultural zones, allows work after that date to the detriment of the streams and special status species.
14. Mitigations are only required on Tier 2 and not Tier 1 projects. The mitigations made for a 2:1 (individuals planted: individuals removed) fails to improve areas damaged or disturbed to begin with.
15. There are no prohibitions on the use of pesticides or herbicides within the stream conservation area.
16. The County should not exempt itself from the same scrutiny that the ordinance would require.

Our comments are sufficient to provide the basis for a relevant and facilitative ordinance that complies with the recommendations of 130 scientists and is in alignment with the CWP. Additionally, work to provide incentives and educational programs for homeowners so they may understand their role in species recovery, riparian, stream and land stewardship. We support working with communities through your ombudsman, homeowner assistance programs and recommend the hiring of another



person in order to create programs that engage and provide incentives to property owners in order to achieve these goals.

We cannot support the Marin County Staff ordinance recommendations as written and want to see a much stronger, Countywide protective ordinance that are based on habitat protection and watershed function, and that contains a vibrant community outreach program that identifies and implements those solutions.

Sincerely,
Watershed Alliance of Marin

David Schnapf, Esq.
90 Corte Loyola Dr.
Greenbrae, CA 94904

October 28, 2013

via e-mail

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael CA 94903

Re: *Stream Conservation Ordinance*

Dear President Arnold and Supervisors:

Marin County urgently needs to take strong action to protect our endangered Coho salmon. The Central Coast Coho that live in Marin, most importantly in the Lagunitas Creek watershed and its main tributary San Geronimo Creek, have been listed as a federally endangered species for almost a decade. The Countywide Plan has called for an ordinance to protect anadromous fish streams since at least 1994. The persistent failure of the County to take action to protect this important national resource is inexcusable. Strong measures (*i.e.*, land use controls) to protect streams have been adopted in communities throughout California and elsewhere, making Marin's failure to act is all the more disgraceful.

A program to protect Marin's salmon requires basic two elements: (1) implementation of land use controls to prevent further degradation of our anadromous fish streams, and (2) enhancement measures to improve conditions so that the salmon will survive. The necessary measures for protection and enhancement of Marin's salmon have been studied extensively and have generally been known for quite some time. The science that should be at the core of a meaningful stream protection program is generally well known.

Innumerable other species are critically dependent on riparian habitat and also require protection. Generally, the measures needed to protect salmon are also adequate to protect other riparian species. While I favor a countywide ordinance, applicable to all anadromous fish streams (as promised in the 2007 Countywide Plan) in order to protect the broadest array of riparian species throughout the county, it appears possible that the Board of Supervisors will, instead, enact an ordinance that only applies to the San Geronimo Valley Watershed.

Earlier in October, a stream ordinance that would only apply to "Stream Conservation Areas" (SCAs) in the San Geronimo Valley Watershed (SGV) was proposed for consideration by the Board of Supervisors. This proposed SGV SCA ordinance is based on the proposed countywide ordinance that was proposed by the planning department early in the year. However, the SGV SCA Ordinance is substantially weaker than the proposed countywide ordinance and is plainly inadequate to protect salmon (or other riparian species). Its enactment will not reverse

the precipitous decline in our Coho. Attached are detailed comments on the proposed SGV SCA Ordinance. You will note that many of these comments also apply to the earlier proposed countywide ordinance, and in the event that the Board of Supervisors is still considering a countywide ordinance, I ask that these comments also be considered in that context. In summary, the proposed ordinance is poorly drafted. It is riddled with loopholes, ambiguities, inconsistencies and broad exemptions. (I regret and apologize for the fact that my comments may not be as polished as I would like.) Some of my major concerns include:

The Proposed SGV SCA Ordinance Abandons the Core Principle of the Countywide Plan And Prior Draft Ordinance That Development Within SCA's Should be Avoided Whenever Possible. Consistent with the Countywide Plan (CWP), the proposed planning department countywide ordinance made it clear development within an SCA should be avoided whenever possible. Whoever drafted the proposed SGV SCA has systematically removed almost all of the requirements that development in SCA's should be avoided. This is a very substantial alteration of the basic approach to stream protection. As noted below, the cumulative impacts of this change should be analyzed.

The Proposed SGV SCA Ordinance Would Broadly Exempt Replacement of Existing Structures. Under almost all zoning and building codes, when a landowner replaces an existing structure, the new structure must comply with code requirements in effect at the time of the replacement. Thus, if my house burns down I cannot build an identical house – the replacement must meet new code requirements, such as code requirements for safety, accessibility, energy efficiency, etc. However, the proposed SGV SCA Ordinance simply *exempts* replacement structures that have the same footprint as the original structure. Thus, the ordinance would not even impose Standard Management Practices on the construction process. (I note that construction of a replacement house would almost certainly involve substantial land disturbance that could have a major impact on streams.) If a homeowner has a pre-existing septic facility that pollutes a stream because it was originally built too close to the stream, he or she should not be granted an exemption to rebuild the septic facility in the same location (and thereby continue to pollute), simply because it was legal when built.

The Proposed SGV SCA Ordinance's Extensive Reliance on Standard Management Practices For Tier 1 Permits Is Unjustified. While I support the concept of developing and applying Standard Management Practices (SMP's) to cover many routine situations (referred to as "best management practices" in the CWP) the idea that the County can develop a set of SMP's that can adequately cover all situations is nonsense. SMP's are not "one size fits all" nor are they a substitute for a site assessment. Yet these are the premises of the entire Tier 1 permit process in the proposed SGV SCA Ordinance. The ordinance seems to say that if a land owner/developer implements the SMP's there will be no adverse impacts of the development and no real site assessment is needed. This has no scientific basis and appears to be arbitrary and capricious.

The Proposed SGV SCA Ordinance Would Deprive the Public Right to Participate in Important, Discretionary Land Use Decisions. By fiat, the proposed SGV SCA Ordinance would deprive the public of the right to participate in many types of discretionary determinations

Letter to Marin Supervisors

October 28, 2013

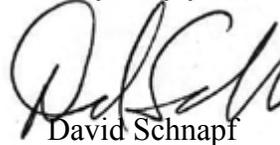
Page 3

by the County. The ordinance defines certain actions, including all Tier 1 permitting and exemption decisions, as “ministerial.” Yet the definition of “ministerial” review is limited to actions that involve “little or no subjective evaluation.” On the other hand, many of the Tier 1 permit requirements clearly involve determinations that are discretionary and subjective, and could benefit from public input. For example, the public could have important historic evidence of pre-existing site conditions.

The County Should Analyze The Cumulative Impacts of the Proposed SGV SCA Ordinance. As noted above and in my detailed comments, the proposed SGV SCA Ordinance is much weaker than what is required in the CWP and the prior countywide draft ordinance. It would allow innumerable small projects with no or minimal environmental review based on exemptions and minimal Tier 1 Permit requirements. The County needs to understand the cumulative effect of these impacts before proceeding with a weak ordinance. For example, the County needs support for the conclusion that SMP’s are adequate in all Tier 1 permitting.

Thank you for your consideration.

Very truly yours,



David Schnapf

cc: Steven Woodside, Esq.
Marin Conservation League
Marin Audubon
SPAWN
Environmental Action Center
Watershed Alliance of Marin
San Geronimo Valley Planning Group
Congressman Huffman
Assemblyman Levine

Comments on Oct Draft SGV Stream Ordinance

Provision	Official Comment	Comment
<p>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.</p>	<p>Comment [COM1]: This sentence is eliminated in order to improve overall clarity. The language could lead to an interpretation that applicants must demonstrate infeasibility prior to seeking an SCA permit, when in fact the required findings (22.63.060) govern issuance of an SCA permit, not the purpose statement.</p>	<p>Eliminating the language does not add clarity and removing the statement of intent significantly weakens the ordinance. The “official comment” is incorrect, because §22.63.050 A. specifies: “Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the <i>purpose and intent of Chapter 22.33</i> (Stream Protection).” It is critical that all statements regarding the intent of the ordinance be retained. Further, this language helps give meaning to 22.33.030 A.2. which authorizes additional setbacks “necessary to protect riparian resources.”</p>
<p>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.</p>		<p>The definition of the SCA is vague insofar as many streams do not have discernible “banks” as that term is defined. This is particularly true of steep intermittent and ephemeral streams. It is recommended that the ordinance expressly address what to do if there is no discernible “bank.”</p> <p>From a pragmatic point of view it would be much simpler to simply impose a clearly measurable distance. For example, 100 ft. from top of bank, or if no discernible bank, 125 feet from the center of the stream.</p> <p>Moreover, in many situations, tying the SCA to the presence of riparian vegetation is equally vague and problematic, especially since the presence, extent and nature of vegetation will naturally vary over time.</p>

		<p>On its face, the provision regarding determinations due to “uncertainty about the location of the stream <i>and</i> corresponding SCA” is too restrictive. There could be other reasons for uncertainty (for example uncertainty due to the extent of riparian vegetation having nothing to do with the “location of the stream”). Public participation should be allowed in cases where the Director exercises discretion to determine the “applicability of this chapter.”</p>
<p>22.33.020 B. The standards of this Chapter apply to all areas of the County San Geronimo Watershed located within the SCA excluding 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.</p>		<p>This language is poorly drafted. It starts by referring to “all areas” but then excludes “activities.” Areas and activities are different. The language about “full responsibility” in conjunction with a “lease or easement” is confusing.</p> <p>Moreover, there is no good reason to exclude government activities. Government entities are often involved in activities, such as road building, that could impact streams. While the federal and state governments may have preemptive power, they will often, as a matter of policy, conform to local land use requirements if they are not exempted. Likewise, there is no reason to exclude the county from its own requirements.</p>
<p>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</p>	<p>No explanation is provided why this language has been deleted.</p>	<p>Removing this language substantially weakens the ordinance. As noted above, §22.63.050 A. specifies: “Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the <i>purpose and intent of Chapter 22.33</i> (Stream Protection).” It is, therefore, critical that all statements regarding the intent of the ordinance be retained. It is particularly critical to retain the principle that “development shall avoid SCAs wherever feasible.” Further, this language helps give</p>

<p>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.</p>		<p>meaning to 22.33.030 A.2. which authorizes additional setbacks “necessary to protect riparian resources.”</p>
<p>22.33.030 – Stream Conservation Area General Requirements. A. 1. 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.</p>		<p>As noted above this language is problematic. What if there is no discernible bank and less than 50 ft of woody riparian vegetation? What if the woody riparian vegetation does not have a discernible edge?</p>
<p>22.33.030 – Stream Conservation Area General Requirements. A. 2. 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.</p>		<p>It is unclear how this would work. How can there be “woody riparian vegetation” that extends beyond the setback if (per A. 1) the setback is defined to extend at least 50 feet “from the outer edge” of the “woody riparian vegetation”</p>
<p>22.33.030 – Stream Conservation Area General Requirements. A. 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>Comment [COM2]: This provision is removed to give flexibility for the determination of the extent of riparian vegetation to be undertaken by trained County staff, such as through a Tier 1 Permit.</p>	<p>Defining ephemeral streams to require 100 feet or more of riparian vegetation is unsupported by any science and appears to be an arbitrary attempt to exclude many ephemeral streams that may have an important hydrological/biological role in the larger stream system.</p> <p>It is unclear how this language should be interpreted. If an ephemeral stream is 200 yards long and has three disconnected 50-foot stretches of riparian vegetation, is the entire stream covered or is none of the stream covered? If an ephemeral stream is 200 yards long and has one 100 foot stretch of riparian vegetation, is the entire stream covered or is only the portion adjacent to the riparian vegetation covered?</p>

		<p>The deleted language regarding the qualifications of the individual responsible for making the determination is a protection that was included in the original ordinance to ensure that any decision about whether to include an ephemeral stream be rendered by someone with adequate technical competence. While it is possible that someone working for the county could be “trained,” the necessary training is not a trivial matter. In any case, the revised language does NOT require that the decision-maker have be ANY training. In other sections of the ordinance, there is an express requirement that determinations be made by “trained CDA staff.” If that is the intent here, it should be expressly stated.</p>
<p>22.63.010 – Purpose of Chapter This Chapter provides procedures and requirements for the processing of Stream Conservation Area (SCA) Permits, which regulate development within the SCA as defined in Chapter 22.33 (Stream Protection) where avoidance of the SCA is not feasible. The SCA permit requirements support healthy watersheds by ensuring that development respects existing natural riparian features and promotes important ecological functions such as groundwater recharge and infiltration.</p>	<p>No explanation is provided why this language has been deleted.</p>	<p>Removing the requirement that development within the SCA should be avoided where feasible substantially weakens the ordinance. This is a core principle of the Countywide Plan.</p> <p>As noted above, §22.63.050 A. specifies: “Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the <i>purpose and intent of Chapter 22.33</i> (Stream Protection).” It is, therefore, critical that all statements regarding the intent of the ordinance be retained. It is particularly critical to retain the principle that “development shall avoid SCAs wherever feasible.”</p> <p>It is particularly troubling that whoever drafted this language chose to emphasize “groundwater recharge and infiltration” while totally ignoring salmon protection. The countywide plan makes specific reference to streams that support anadromous fish, evidencing a clear intention that salmon protection is the central reason for adopting such an ordinance.</p>

<p>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 in the San Geronimo Watershed ... As used in this Chapter, development that may be permitted in the Stream Conservation Area includes the following:</p>		<p>It is unclear why it is necessary to list the types of development that “may” be permitted. This could add confusion. Why not simply list the types of development and activities that require a permit (tier 1 or 2), and those that do not? The word “includes” suggests that this is an incomplete list and only adds to the confusion.</p>
<p>22.63.020 – Applicability to Development 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; 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,</p>		<p>a. If a public utility project or activity is exempt under state law then it should be unnecessary to say this. c. It is not clear how the two sentences of this section interact. Does the second sentence only apply if necessary to protect life or property? Or is it standalone exemption? How imminent must the threat be? Almost any vegetation potentially can be called a “fire hazard.” In addition, this exemption should not apply to trees in, adjacent to, or very close to streams. Dead vegetation in a stream is important to sustaining salmon. Finally, the types of activities allowed can differ in their impact depending on the season. For example, removing a dead tree that has fallen across a stream can have a profound impact if done when salmon are “running” but much less impact if done in the off season. d., e., and f. These are too broad and vague. It is not understood why they are needed. g. This needs clarification. Exempting all such work from the permit process is unjustified. For example, it may be beneficial to require that such work be done during the dry season so as to minimize impact on the stream. Moreover, in many situations homeowners are required to upgrade structures that are being repaired. Giving a blanket exemption is unjustified.</p>

<p>Grading and Filling), or Section 24.04.560 (Drainage Setbacks);</p> <p>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.</p> <p>h. Maintenance or replacement of landscaping.</p>		<p>h. Replacement or maintenance of landscaping is vague, and could lead to degradation of riparian habitat. For example, can someone replace native plant landscaping with a lawn. At a minimum, this exemption should not apply to activities within 25 feet of a stream.</p>
<p>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.</p> <p>a. Replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the footprint within the SCA setback or result in the removal of woody riparian vegetation.</p> <p>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).</p>		<p>If the Director must make a ruling, then it really isn't an exemption, it is a permit, and should be treated as such.</p> <p>It should be clear made that the Director may require additional documentation from the applicant as necessary, and may require a site inspection for verification. In addition, it should be made clear that the Director is entitled to receive evidence from the public.</p> <p>a. A property owner should not be given an exemption to replace structures within, even if the structure was legal when built. Typically, when someone seeks to replace a structure on his or her property, the replacement structure is subject to the zoning and building code requirements in effect at the time. There is no reason to grant a grandfather exemption for all prior structures.</p> <p>In addition, any new (i.e., replacement) construction should be subject to Standard Management Practices and should be timed to avoid impacts on the stream – i.e., construction should be avoided during the wet season. Dealing with this as an exemption is unwarranted.</p> <p>b. This is ambiguous insofar as § 22.63.020 A.1. consists of an</p>

<p>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.</p>		<p>open-ended list. Do the provisos in this section apply to any type of development or only to developments that involve addition of impervious material?</p> <p>c. See comment to 22.63.020B.1.c.</p>
<p>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:</p>		<p>The language “include but are not limited to” is problematic, especially in view of the concluding paragraph referencing the “Development activities listed herein...” How is the applicant and/or public to ascertain what other development activities are properly eligible for a tier 1 permit?</p>
<p>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 through the as required by a Site Assessment. or would result in adverse impacts to hydraulic capacity, stream or riparian habitat acreage, value or function, or water quality.</p>	<p>Comment [COM4]: This provision is removed since these objectives will be attained via compliance with Standard Management Practices.</p>	<p>The proposed deletion of language would substantially weaken the ordinance. The official comment makes little sense. Standard management practices cannot address all situations and their use cannot guarantee that adverse impacts will not occur. Moreover, §22.63.050 A. specifies: “Each Stream Conservation Area Permit shall be analyzed by the Agency to ensure that the application is consistent with the <i>purpose and intent of Chapter 22.33</i> (Stream Protection).” It is, therefore, critical that all statements regarding the intent of the ordinance be retained.</p>
<p>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.</p>		<p>By definition, ministerial review implies that the permitting authority lacks discretion in deciding whether to grant a permit, and that there is no right of public participation. However, it is clear that at least some “tier 1” permits require the exercise of discretion, and that no set of standard management practices can cover all situations. The Tier 1 Development Standards listed in section 2 are broad brush, confusing and require the exercise of discretion. Moreover, public participation should be allowed in</p>

		most cases.
<p>B. SCA (Tier 1) Project Review Procedure</p> <p>2. Development Standards. Stream Conservation Area (Tier 1) Permits shall comply with the following Development Standards:</p> <p>a. Where permitted development within an SCA setback would result in removal of riparian vegetation, such vegetation must be replaced on-site as required in accordance with a Standard Management Practice, or Site Assessment. Replacement vegetation shall consist of native trees, shrubs and ground covers appropriate to replicate the structure and species composition of vegetation that is removed, subject to County approval.</p>	<p>No explanation is provided for the deletion.</p>	<p>There is no good reason for the deletion. In some cases a site assessment may be necessary, particularly since no Standard Management Practice can cover all situations.</p> <p>The provision: “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” is good, but it is unclear what is meant by “County approval.” Presumably, this means the Director’s approval (which is the term used throughout). The language should be clarified. It is clear that the Director has discretion in this regard, and the exercise of discretion is inconsistent with mere “ministerial review.”</p>
<p>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).</p>		<p>While the requirement that there be a pervious buffer is a good one, it is unclear how much of a buffer is required. Is a one-foot lawn buffer sufficient to meet this? If not, does the Director have authority to exercise discretion and require more? Under what authority given the deletion in section A? Will this be covered in a Standard Management Practice? If so, why is it necessary to have it listed as a development standard?</p>
<p>c. New driveways, roads and roadfill slopes shall be located outside SCAs, except at stream crossings.</p>		<p>The meaning of this is unclear. Activities outside of SCA’s are not covered by this ordinance, and so it is unclear why it is necessary to have a Development Standard for something that is excluded from the SCA’s. This appears to be more in the nature of a prohibition. If the intent is that the excluded activities require a Tier 2 Permit rather than a Tier 1 permit, why list them in the Tier 1 Development Standards?</p>

		<p>The language “except at stream crossings” is unclear. Does this mean that stream crossings are subject only to Tier 1 permitting? If so, are there any development standards for stream crossings, and what about the roads/driveways to and from the stream crossing?</p>
<p>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.</p>		<p>As noted above, not all streams have discernible banks. This requires clarification.</p>
<p>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.</p>		<p>In many cases, the application of this Development Standard will require the exercise of discretion, for example, what is encompassed by “near” and what is meant by “indirectly.” Therefore, it is improper to characterize the review as “ministerial.”</p> <p>Potential barriers to salmon migration are too significant to be classified as “Tier 1” and the public should be allowed to participate in the process.</p> <p>This ordinance applies only to the San Geronimo Creek watershed, and all streams within the watershed play an important role in “supporting salmonids.” Thus this limitation seems unnecessary.</p> <p>The Countywide Plan refers to “anadromous” fish, and this term should be preferred to “salmonids.”</p>
<p>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,</p>		<p>This section appears to be misplaced. Inclusion of a “Development Standard” for new subdivisions in this section</p>

<p>the SCA setback that applies to the lot prior to any subdivision shall apply to all subsequent lots that are created.</p>		<p>implies that new subdivisions are subject to Tier 1 permitting. However, this language makes it clear that the Director will exercise substantial discretion in reviewing new subdivisions, which is inconsistent with “ministerial review.”</p> <p>There is only one setback in the San Geronimo watershed, such that the carry-over language stating that the original setback applies after a subdivision appears unnecessary. The setback will always be the same. In other words, in the area this ordinance would apply to, there is no situation where the “SCA setback is determined by the size of the lot.”</p>
<p>B. SCA (Tier 1) Project Review Procedure</p> <p>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, <u>therefore fulfilling the requirements of a Site Assessment</u>. Applicable Standard Management Practices shall be implemented at the earliest possible time but in any event no later than final inspection.</p>		<p>The idea that the county can develop a set of Standard Management Practices (SMPs) that adequately covers all potential development projects within SCAs is plainly erroneous. There must be provision for dealing with cases where the SMPs are inadequate for protection.</p> <p>This section is confusing with the addition of the new language stating that the requirement for a “site assessment” is fulfilled by the imposition of Standard Management Practices. Does this mean that implementation of “appropriate” Standard Management Practices takes the place of a site assessment? Does it mean that there is first a site assessment that is used to determine which SMPs to apply? If the latter, what does the new language add?</p> <p>Is this language intended to create a presumption that simply applying SMPs is <i>per se</i> adequate to “to ensure that adverse impacts of the permitted development are avoided”? If so, is the presumption rebuttable or unrebuttable? If rebuttable, is the public entitled to question the presumption? What happens if it is</p>

		<p>clear that the SMPs are not adequate under the particular circumstances?</p> <p>How is it determined when is the “earliest possible time”? What is the remedy for non-compliance with this requirement?</p>
<p>4. Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by <u>trained CDA staff</u>.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).</p> <p>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.</p>		<p>The deleted language, “qualified professional” appears more flexible than the substitute language, “trained CDA staff.” Specifically, the applicant could hire a “qualified professional” who can gather the necessary information, as is typically done with EIR’s, rather than put the burden on CDA staff to prepare the entire site assessment.</p> <p>Moreover, the substitute language implies that the CDA staff must be sufficiently trained in all relevant disciplines to make professional judgments as to whether there will be any adverse impacts of the project. The necessary training to accomplish this would be extensive. What happens if CDA does not have someone with adequate training to assess the impacts of a particular project?</p> <p>What happens if the application of SMPs is not sufficient “to ensure that adverse impacts of the permitted development are avoided” (as per section 3) and “that impacts to hydraulic capacity, stream and riparian habitat and water quality can be avoided”? Are the section 3 and section 4 requirements the same? How is it determined that there will not be impacts? Does the CDA staff have total discretion? Is the CDA staff person required to make any sort of formal finding of no impact? If so, is he or she required to explain his/her conclusions?</p>

		<p>Implementation of this language appears to involve substantial discretion which is inconsistent with “ministerial review.” The public should be entitled to participate in the permit process.</p>
<p>22.63.040 – Stream Conservation Area Permit (Tier 2)</p> <p>A. SCA (Tier 2) Development. The Stream Conservation Area Permit (Tier 2) shall be required for any development types not listed as exempt per Section 22.63.020.B or eligible for Tier 1 as provided in Section 22.63.030; 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.</p>		<p>As noted above there are ambiguities in the exemptions and in the listing of projects which qualify for Tier 1 review, and these ambiguities infect the definition of what activities require Tier 2 review. For example, the listing of Tier 1 projects uses the language “including but not limited to” suggesting that there are other types of projects that qualify for Tier 1 review. Given this open-ended language, what standards will the Director apply to determine whether to process an unlisted application under Tier 1 or Tier 2?</p> <p>What is meant by “design standards”? This does not appear to be defined anywhere in the stream ordinance.</p> <p>The language referencing a “project eligible for Tier 1 that does not incorporate the design standards and/or Standard Management Practices necessary to avoid adverse impacts” is confusing. A project that is eligible for Tier 1 is <i>required</i> to comply with SMPs, as identified by the Director. It seems meaningless to say something is eligible for Tier 1 when it doesn’t meet the definitional requirements of Tier 1.</p> <p>It would be helpful to have a decision flow chart that explains the process for determining whether a particular project is Tier 1 or Tier 2, especially at the critical stage of determining whether a “development” would “result in adverse impacts to hydraulic capacity, stream or riparian habitat, or water quality.” Does the</p>

		<p>public have an opportunity to participate in this process?</p>
<p>B. SCA (Tier 2) Project Review Procedure</p> <p>1. Discretionary Review. The Stream Conservation Area Permit (Tier 2) shall be undertaken as a discretionary action subject to incorporation of 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>The language “avoid adverse impacts ...” is ambiguous. Does this mean avoid ALL adverse impacts, so that if there is ANY adverse impact the permit will be denied? If a project would have an adverse impact that cannot be avoided, must the permit be denied? If not, what standards apply to deciding whether or not to issue a permit?</p> <p>What opportunity will there be for public input on mitigations/adverse impacts?</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>The “except where” language of a. is ambiguous because many of the Tier 1 development standards do not involve mitigation measures, and so the term “alternative mitigations” is unclear. For example, the development standard stating that no new roads should be built within SCA – what is an “alternative mitigation” to this standard?</p> <p>The language “more appropriate” is ambiguous, and appears to give the Director unbridled discretion. For example, sometimes there is a tradeoff between conflicting requirements. How is it determined which is “more appropriate”?</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 to <u>the</u> 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</p>		<p>Shouldn’t this concept also apply to Tier 1 permits? The fact that it is listed only as a Tier 2 requirement suggests that it does not apply to Tier 1 developments. But Tier 1 projects can also “cause or exacerbate” channel instabilities. Or does this mean that any development that would impact channel stability does not, <i>per se</i>, qualify for a Tier 1 permit. If that is the intended meaning it should be expressly stated.</p>

<p>the drainageway flow regime.</p>		<p>The language, “mitigations generated during the required environmental review process” is ambiguous and lacks any antecedent. What “environmental review process”?</p> <p>Who is required to determine pre-project “peak flow” levels, and how much data are they required to collect? Given the highly variable year-to-year differences in rainfall, establishing a baseline at a specific location could be challenging.</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>The language “applicable mitigations” is ambiguous. Is this tied to the site assessment or is it a separate exception?</p>
<p>4. Site Assessment (Tier 2). The Site Assessment (Tier 2) shall encompass all requirements of the Site Assessment (Tier 1), <u>shall be prepared by a qualified professional</u>, and <u>shall</u> determine whether an additional setback is required to avoid adverse impacts to the SCA.</p>		<p>Must the Director make a determination of whether an additional setback is required in every instance?</p> <p>Given the changes to the ordinance, the “qualified professional” is different than the “trained CDA Staff” as used in Tier 1 permitting. Is this “qualified professional” someone employed by the Director, or is he or she employed by the applicant? If not an employee of the Director, is it proper to give this person discretion to determine whether an additional setback is required?</p> <p>This is confusing. The “setbacks” are used only to define the SCAs. If a proposed development is not within an SCA, and therefore, does not require an SCA permit, how will the Director have an opportunity to assess whether an additional setback is required to expand and protect the SCA? Does the Director have unbridled authority to expand the SCA whenever necessary to protect the environment? If the SCA is expanded under this</p>

		<p>section, what is the director required to do to protect the expanded SCA?</p>
<p>The Site Assessment (Tier 2) shall also include:</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 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. 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.</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>These provisions are poorly drafted, and contain many inconsistencies and ambiguities. For example:</p> <p>“where there is evidence that significant current or impending channel instability is present, as determined by the County.” Who is responsible for identifying and collecting this “evidence”? Does the public have a right to submit evidence on this point?</p> <p>“The hydraulic and/or geomorphic assessment shall include on-site channel or drainageway segments over which the applicant has control or access.” In many cases, it appears that this provision would negate the express requirement that the assessment include “downstream drainageways.”</p> <p>The normal rule of legal interpretation is that when a limitation is applied to one situation but not to others, then the limitation does not apply to any other situation. Thus, the correct interpretation of this language would be that there is no “applicant access” limitation on other types of studies.</p> <p>There does not appear to be any rational basis for limiting the studies to parcels “over which the applicant has control or access.” Since the issuance of a permit constitutes action by the County, the proper test should be whether the County (not the applicant) has access. It is noted that there is considerable public land in the San Geronimo watershed, and it is likely that the County would be given access to this land to conduct necessary studies. In addition, the County has broad authority to conduct administrative</p>

		<p>inspections of properties. Moreover, it is unclear whether this refers to a legal right to access or whether it includes access that is voluntarily granted. Must an applicant or the County ask permission before determining there is no access, or can they rely on the fact that there is no legal requirement for access?</p> <p>Section b. regarding identification of mitigation measures in a Tier 2 site assessment is confusing. It contemplates both mitigation measures that “conform to criteria in Section C” AND “any additional mitigation measures.” Apparently, the “additional mitigation measures” need not comply with Section C. It is not clear what the language “Such measures” refers to. Does this refer to the Section C. mitigation measures, the “additional mitigation measures” or both? Who determines what is “feasible” and what standards do they apply in making this determination?</p> <p>Section c. It is believed that very few lots are entirely within an SCA, and so it appears (per section c.) that the vast majority of Tier 2 permit applications will require analysis of whether it is feasible to do the development outside of the SCA. If it is determined that the development could be done outside of the SCA, shouldn’t the ordinance expressly state that the Director must require avoidance of development in the SCA unless doing so would have greater impacts? What criteria are applied to compare impacts within and without the SCA? Often comparing environmental impacts is like comparing apples and oranges. How do you compare loss of habitat with degradation of water quality?</p>
<p>C. Mitigation Criteria. Where development would occur within an SCA, and adverse impacts to hydraulic capacity, habitat, or water quality are</p>		<p>The word “alternative” is confusing. Alternative to what?</p>

<p>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>This section should not be limited to impacts that affect” hydraulic capacity, habitat, or water quality.” For example, changes to drainage patterns could have an adverse impact without affecting the “hydraulic capacity” of a stream.</p> <p>Is there a right for the public to participate in the process of determining (identifying) adverse impacts of the development? At what stage?</p> <p>Given the fact that “mitigation criteria” 2 is really a procedural requirement, it appears that there is only one “mitigation criteria” in the ordinance. This is disappointing. Surely there are other mitigation criteria that should be addressed beyond vegetation removal.</p>
<p>1. When removal of riparian vegetation is unavoidable in an SCA, require establishment of native trees, shrubs, and ground covers at a rate sufficient to replicate, after a period of five years, the appropriate density and structure of vegetation removed. Replacement and enhancement planting shall be monitored and maintained until successful establishment provides for a minimum replacement or enhancement ratio of 2:1 (individuals planted: individuals removed).</p>		<p>This mitigation requirement should also be made applicable to Tier 1 permits.</p> <p>Is it realistic to require that replacement trees “replicate” pre-existing conditions within five years?</p> <p>Who is responsible for monitoring, and if it is the applicant what are the remedies for non-compliance? Likewise, what are the remedies for non-compliance with the maintenance requirement? Will performance bonds be required?</p>
<p>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</p>		<p>This section appears out of place. It does not describe mitigation “criteria” – rather it is procedural.</p> <p>This scheduling language is ambiguous. It appears possible to</p>

<p>quality. Mitigation plans must, to the extent feasible, be designed so that mitigations are self-sustaining.</p>		<p>construe the language to leave it to the applicant to devise the project/mitigation schedule. This section should be expanded to expressly give the Director authority to impose scheduling conditions on both the project and on mitigations. The impacts of a project can vary significantly depending on when the work is performed.</p>
<p>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: 4.–The project meets the requirements of Section 22.63.030 (Stream Conservation Area Permit (Tier 1)), <u>which ensure that 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.</u> 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.</p>	<p>Comment [COM5]: The change is made to clarify that compliance with the Tier 1 Development Standards and Standard Management Practices will meet the requirements of the Countywide Plan policy.</p>	<p>The changes to this section are unacceptable. The notion that the County can, by fiat in an ordinance, declare that the application of Development Standards and SMP’s guarantees that Tier 1 development “will not cause a net loss in habitat acreage, value or function, and will not degrade water quality” has no basis in scientific reality and is, therefore, arbitrary and capricious. As noted above, the Development Standards are broad-brushed and vague, and it is impossible to develop a set of SMP’s that covers all situations.</p> <p>Indeed, this language appears to be inconsistent with the language of § 22.63.030B.4., which states: “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.” This is a recognition that application of SMP’s and Development Standards does not guarantee there will be no impact of a Tier 1 development.</p> <p>The deletion of section 2 is troubling for the same reason and appears inconsistent with § 22.63.030B.4.</p>
<p>B. For a SCA (Tier 2) Permit: 2. The project will not adversely alter hydraulic</p>		<p>The concept that there should be no Tier 2 development in an SCA that would have adverse environmental effects is good, but this</p>

<p>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.</p>		<p>language appears inconsistent with § 22.63.040B.4.b. which appears to authorize projects with mitigations that only “reduce” the environmental impacts. These provisions appear inconsistent.</p>
<p>DEFINITIONS: Disturbed Area</p>		<p>The use of “experienced” is vague.</p>
<p>Ministerial Permit</p>		<p>This definition makes it clear that the Tier 1 permitting requirements should not be considered “ministerial” because they involve the exercise of discretion.</p>
<p>Stream Conservation Area</p>		<p>The language excluding “ditches, culverts, and other above- or below-ground conduits constructed specifically for storm drainage” could be clarified and limited to structures that existed prior to Feb. 2013. Moreover, if someone has modified a short stretch of an ephemeral stream to change the storm drainage pattern on his or her property, are they exempted? Is the modified section considered in determining whether there is 100 feet of riparian vegetation?</p>
<p>Top of Bank</p>		<p>This core definition is inadequate insofar as many streams, particular on steep slopes, do not have a discernible “bank.”</p>
<p>Exemptions from Land Use Permit Requirements</p>		<p>Many of the deleted sections have nothing to do with Stream Conservation. The impact of deleting these sections is unclear. For example, what is the impact of deleting the exemption for “interior remodeling”? Likewise, what is the impact of deleting</p>

		the section stating that “other permits may be required”?
Exemptions from Design Review		<p>The deletion of § 22.42.045 is unwarranted. This section includes an important description of what constitutes “development.”</p> <p>The elimination of most design review requirements seems inconsistent with §22.42.055. It is unclear how this would work.</p>
C. San Geronimo Watershed. The requirements of 22.42.055.B.1.d for development to be located outside of a Stream Conservation Area do not apply to the San Geronimo Watershed. Development in the Stream Conservation Area in the San Geronimo Watershed shall comply with Chapter 22.33 (Stream Protection) and Chapter 22.63 (Stream Conservation Area Permit).		The principle that development should be located outside of the SCA whenever possible is a central component of the Countywide Plan. There is no basis to eliminate this requirement.

From: peggycreeks@comcast.net
To: [Adams, Susan](#); [Arnold, Judy](#); [Crawford, Brian](#); [Crosse, Liza](#); [Kinsey, Steven](#); [Lai, Thomas](#); [Patterson, Diane](#); [Sears, Kathrin](#); [Rice, Katie](#); [Thorsen, Suzanne](#); [Woodside, Steven](#)
Subject: Facts: SG Valley Build Out Under Temp Stream Ordinance
Date: Monday, October 28, 2013 6:07:05 PM
Attachments: [10-28-2013 01:17:50PM.pdf](#)

To: Supervisors Kinsey, Rice, Adams, Arnold and Sears
Community Development Agency
Clerk of the Board

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426

Spawn says over 1 million square feet of buildings will be constructed in the Stream Conservation Area if the temporary stream ordinance is adopted for the San Geronimo Valley. Will the temporary ordinance spell doomsday for salmon?

1. Spawn's projections are wrong, but let's look at the 1 million square feet as if it were a fact (although there is no evidence to support it).

There are 243 million square feet of land within the SCA in San Geronimo Valley. The fiction of 1 million square feet would equal .00041% (four / one hundredths of one percent) of the total Stream Conservation Area. (Source: See attached "Salmon Plan Effect on Valley Parcels and Acreage", based on Appendix D of the 2010 Salmon Enhancement Plan, cross referenced with the Marin County Assessor's Tax Profile Database.)

2. Spawn is wrong to assume there are "hundreds of vacant streamside parcels" in San Geronimo that will be fully built out. (Spawn letter dated June 30, 2013, delivered to Board of Supervisors Sept 30, 2013.)

In fact, the SEP Report finds 95 vacant parcels within the San Geronimo SCA which are of sufficient size to potentially develop 3,000 square feet. (SEP Report pages 2-27 and 2-28.) SEP dismisses another 105 vacant parcels as too small for development--tiny slivers of land leftover from roads and abandoned developments, etc.

3. Spawn also assumes that 955 existing homes in the SCA will all decide to immediately build 500 square foot additions under the temporary ordinance. Aside from the fact this is highly unlikely, Spawn's math is wrong. Multiplying 955 by 500 square feet results in 477,500 of build out.

Thus the temporary ordinance, even under Spawn's theory, could result in less than .002 % (two / one hundredths of one percent) increase in built area within the SCA in San Geronimo, if every home added 500 square feet.

4. CDA staff report estimates that fifteen Tier 1 permits may be granted each year -- for a total of 15,000 square feet over the two-year period of the temporary ordinance. Staff projects five Tier 2 permits each year (let's assume for 3,000 square feet for each permit). That could add another 30,000 square feet.

CDA staff projections could thus add maybe 45,000 square feet of buildings in the two-year period of the temporary ordinance. That is .00018% (eighteen / one thousandths of one percent) increase, within the 243 million square feet of land within the Stream Conservation Area of San Geronimo.

You can play with the numbers from now until April 2016--the temporary ordinance will not increase building within the SCA by even one half of one percent (.50%.)



P.O. Box 276
Lagunitas, CA 94938

DO YOU LIVE OR OWN PROPERTY
IN THE SAN GERONIMO VALLEY?

SALMON PLAN EFFECT ON VALLEY PARCELS AND ACREAGE

Very interesting results when we look at the Assessor's Parcel Numbers (APN's) and map in the San Geronimo Valley watershed, and how much land would be covered by the Stream Conservation Area (SCA) and the proposed Salmon Enhancement Plan (SEP).

Sixty percent of the parcels in the Valley are completely or partially within the SCA-- that is, within 100 feet of any creek, stream, seasonal or perennial flow, or natural uplands drainage. These parcels represent 90% of the Valley acreage. The Valley is one big pond in the winter.

Of this acreage, about 39% is owned by two public agencies--Marin Open Space District and Marin Municipal Water District. Within this vast publicly-owned land, it should be possible to accomplish stream conservation and salmon enhancement projects, without adverse effect upon homeowners.

There are 228 privately owned unimproved parcels (no houses) located within the SCA. The SEP would ban all building within 35 feet of any stream, and would severely restrict building within 100 feet on both sides of any stream. Yet these 228 parcels comprise only 6% of the total 243,870,438 *sq. Feet* ~~acres~~ of the SCA. A few landowners with small holdings would bear the burden for the entire Valley.

The Valley has 1,372 privately owned parcels which are improved with 1,236 single family homes and 135 multi-family residences. (Most multi-family residences in the Valley are small "second units" attached to a house. There are very few apartment buildings in the Valley.) The second units are an important supply of affordable housing for the community and the Valley economy. Marin has determined that affordable housing is one of the 10 most important policy goals of the 2007 Marin county Wide Plan (CWP).

Of the 1,372 parcels improved with homes and second units, 834 parcels are within the SCA. That means that 60% of Valley housing would be directly impacted by adoption of a Salmon Enhancement Plan which restricts activities within the SCA (100 feet on both sides of any creek or stream).

Please see the complete analysis of Assessor's parcel maps, attached..

Here is profile to the SCA. Based on the Salmon Enhancement Plan, Appendix D "SCA parcels included in moratorium" (Page D-6 - Page D-6) cross referenced with the County of Marin Assessors Tax Profile Database.

Total # of parcels impacted by SCA in the San Geronimo Valley = 1,182 (this includes two parcels located in Fairfax and 5 parcels in Nicasio Valley)

These parcels represent:

60% of the parcels in the San Geronimo Valley

90% of the Land Area of the San Geronimo Valley

In terms of who has the biggest pieces of the SCA pie they are:

Public Entities = 38% (so far, there are other agencies with small land areas that are still listed under private owners)

Marin County Open Space District: 27%

Marin Municipal Water District: 12%

Largest Private Owners = 35%

FITZPATRICK MARIE A C/O GEORGE FLANDERS 10%

SKYWALKER PROPERTIES LTD 10%

SPIRIT ROCK MEDITATION CENTER 7%

NEW PRODUCT RESEARCH & DEVELOPMENT
CORP 4%

NATIONAL GOLF OPERATING PARTNERSHIP 3%

FRENCH RANCH LLC 1%

Other Private Owners = 27%

This is spread out over 966 owners (more actually because couples or investment groups are counted as one owner)

The profile of the San Geronimo Valley parcels in terms of types of lots looks like this:

Use Code	Vacant Parcels	In SCA		Not SCA		Total		
		# of Parcels	Land Area	# of Parcels	Land Area	# of Parcels	Land Area	
10	Single Family Residential	228	14,624,730	214	5,818,002	442	20,442,732	6% Single Family Lot Land Area in SCA compared to total watershed Land Area
20	Multiple Family Residential	2	-	2	-	4	-	
30	Rural	8	43,073,870	3	57,064	11	43,130,934	
32	Agricultural Preserve Contract	3	25,184,214			3	25,184,214	
50	Commercial	4	87,124	2	-	6	87,124	
60	Subject to exemption	2	22,500	2	34,263	4	56,763	
		247	82,992,438	223	5,909,329	470	88,901,767	23% of the Parcels
		53%	93%	47%	7%	100%	100%	34% of the Land Area

Use Code	Improved Parcels	In SCA		Not SCA		Total		
		# of Parcels	Land Area	# of Parcels	Land Area	# of Parcels	Land Area	
11	Single Family Residential	744	30,354,628	492	13,197,197	1236	43,551,825	70% of the Parcels 30% of the Land Area
21	Multiple Family Residential	90	3,327,258	45	935,391	135	4,262,649	
31	Rural	2	4,082,443			2	4,082,443	
33	Agricultural Preserve Contract	2	2,273,831			2	2,273,831	
51	Commercial	21	7,751,534	10	177,796	31	7,929,330	
61	Subject to exemption	5	17,853,527	2	86,410	7	17,939,937	
		864	65,643,221	549	14,396,794	1413	80,040,015	
		61%	82%	39%	18%	100%	100%	

Use Code	Other	In SCA		Not SCA		Total		
		# of Parcels	Land Area	# of Parcels	Land Area	# of Parcels	Land Area	
15	Common Area Parcel	2	396,395	1	2,426	3	398,821	7% of the Parcels 36% of the Land Area
80	Non-taxable	72	94,838,384	64	210,059	136	95,048,443	
90	Valued by S.B.E.	2	-			2	-	
		76	95,234,779	65	212,485	141	95,447,264	
		54%	100%	46%	0%	100%	100%	

	Grand Total	In SCA		Not SCA		Total	
		# of Parcels	Land Area	# of Parcels	Land Area	# of Parcels	Land Area
		1,187	243,870,438	837	20,518,608	2,024	264,389,046
		59%	92%	41%	8%	100%	100%

When the above information is listed just by those parcels in the SCA and sorted by largest land area the list looks like this:

			In SCA			
Use Code	Vacant Parcels		# of Parcels	Land Area		
80	Other	Non-taxable	72	94,838,384	39%	67%
30	Vacant Parcels	Rural	8	43,073,870	18%	
11	Improved Parcels	Single Family Residential	744	30,354,628	12%	
32	Vacant Parcels	Agricultural Preserve Contract	3	25,184,214	10%	
61	Improved Parcels	Subject to exemption	5	17,853,527	7%	
10	Vacant Parcels	Single Family Residential	228	14,624,730	6%	
51	Improved Parcels	Commercial	21	7,751,534	3%	
31	Improved Parcels	Rural	2	4,082,443	2%	
21	Improved Parcels	Multiple Family Residential	90	3,327,258	1%	
33	Improved Parcels	Agricultural Preserve Contract	2	2,273,831	1%	
15	Other	Common Area Parcel	2	396,395	0%	
50	Vacant Parcels	Commercial	4	87,124	0%	
60	Vacant Parcels	Subject to exemption	2	22,500	0%	
20	Vacant Parcels	Multiple Family Residential	2	-	0%	
90	Other	Valued by S.B.E.	2	-	0%	
Grand Total			1,187	243,870,438	100%	

→ only 95 of these vacant parcels are large enough to support 3000 sq. Ft of development per 2010 SEP Report pages 2-27 + 2-28

From: [Jean Berensmeier](#)
To: [Marin County Board of Supervisors](#)
Cc: [Crawford, Brian](#); [Lai, Thomas](#); [Thorsen, Suzanne](#)
Subject: Retraction
Date: Monday, October 28, 2013 9:22:49 PM
Importance: High

Board of Supervisors

A quick retraction. In the email sent to you today about the Planning Groups position I mentioned thoughts of “lifting” the Fairfax folks from the ordinance. This was prompted by my concern of them suing. Upon reflection I have concluded that this is a bad, very bad. idea. The PG position is for a countywide ordinance that protects ALL watershed properties immediately and where staff analyzes its effectiveness as they and we work toward a permanent solution. Nobody gets “lifted”. My apologies for this lapse.

Jean Berensmeier

SGV Planning Group Chair

From: [Todd Steiner](#)
To: [Adams, Susan](#); [Rice, Katie](#); [Sears, Kathrin](#); [Arnold, Judy](#); [Kinsey, Steven](#)
Cc: [Teri Shore](#); [Lai, Thomas](#); [Thorsen, Suzanne](#); [Amy Trainer](#); [Laura Chariton](#)
Subject: STREAM CONSERVATION AREA ORDINANCE: FOR THE RECORD
Date: Tuesday, October 29, 2013 8:25:21 AM
Attachments: [Interim Ordinance Comments 102913.PDF](#)

Dear Supervisors:

Attached are Turtle Island Restoration Network, Environmental Action Committee of West Marin and Watershed Alliance of Marin comments. We anticipate re-submitting with additional organizations before the record closes.

I strongly discourages you from passing this ordinance as it will hinder recovery and may facilitate the extirpation of coho salmon in Marin. Furthermore, the "poison pill" assures that this exercise is a waste of time and resources, as it will not prevent a legal challenge to the ordinance.

Sincerely,

Todd Steiner

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Executive Director
Turtle Island Restoration Network
tsteiner@TIRN.net
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Forest Knolls, CA 94933 USA
Ph. 415 663-8590 ext. 103
mobile 415 488-7652

Visit our Websites!
www.SeaTurtles.org
www.SpawnUSA.org
www.GotMercury.org
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Whatever you can do, or dream you can, begin it. Boldness has genius, power and magic in it.

-- Johan Wolfgang von Goethe



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29 October 2013

Delivered Via Email

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We appreciate your consideration of the comments being submitted on behalf of the following organizations:

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Environmental Action Committee of West Marin
Watershed Alliance of Marin

We support many of the recommendations of County staff to implement a County Stream work plan including:

Ephemeral Stream SCA Standards and County Stream Map

We support better mapping of ephemeral streams and better understanding of the importance of ephemeral streams. Attached is a scientific memo on the importance of ephemeral streams. We believe a better understanding by the County of the importance of ephemeral streams, along with implementation of stated commitment to restoring healthy stream function will necessitate eliminating the current clause in the draft SCA ordinance that arbitrarily removes the protection of ephemeral streams that do not possess 100 feet of continuous riparian vegetation (see below).

Public Education and Outreach

We support greater public education and outreach.

Interim Ordinance Geographic Scope

We do not support limiting an interim ordinance to the San Geronimo Valley only. While this watershed may be the most important for the protection and recovery of coho salmon, and may require more stringent regulations than streams that do not support this endangered species, a delay of years to review current existing studies, after decades of

inaction, appears no more than an additional delaying tactic and is contrary to the implementing strategy of the 2007 Countywide Plan.

Interim Ordinance

The San Geronimo watershed contains critical stream habitat used by coho salmon and steelhead for spawning and for migrating to and from the Pacific Ocean. These species are listed under the federal Endangered Species Act and considered Endangered. One of the greatest threats to their long-term viability is the future development of the watershed, particularly future building alongside streams, within riparian areas that provide shade, water quality regulation and habitat for these species.

The 2007 CountyWide Plan (“CWP”) allows for development in the stream conservation area (“SCA”) under a number of exceptions. The County has stated that this development will not have significant cumulative effects on salmonids due to the Plan’s “no net loss” of habitat policy, and the County’s continuing participation in the FishNet 4C program.

We have participated in the ordinance development process in the hope that the ordinance could clarify questions left unanswered by the CWP relating to how habitat loss will be avoided or how FishNet participation will avoid impacts from development. However, in our view, the proposed ordinance does not ensure that the CWP’s objective of no net loss of habitat will be met. In fact, in several instances, as discussed below, the ordinance actually makes it less likely that habitat will be retained and significant effects avoided.

1. The Interim Ordinance Does Not Meet the Requirements of the County Wide Plan.

The County Wide Plan Implementation Measure BIO-4.a requires the County to adopt an "Expanded SCA Ordinance" that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. The Court's Judgment Denying Writ of Mandate And Granting Injunctive Relief ("Judgment") in *SPAWN v. County of Marin* requires the County not to approve any application for development within the Stream Conservation Area in the San Geronimo Valley Watershed "until such time as the Streamside Conservation Area Ordinance required by the 2007 Countywide Plan Update is adopted by the Marin County Board of Supervisors."

The interim ordinance proposed for approval does not meet the requirements of the County Wide Plan or the Judgment. Contrary to the requirements of the County Wide Plan, the ordinance may apply only to the San Geronimo Valley and is designed to be interim in nature. Further, the interim ordinance appears to be adopted for the primary purpose of locking in development rights on applications that the County has received since the Court Judgment was entered in September 2012. *See* Draft Findings for Board of Supervisors, p. 3, attached to Staff Report dated October 29, 2013.

2. **There is No CEQA Compliance For Adoption of the Ordinance.**

The County has elected to proceed with the ordinance approval without doing any review under the California Quality Act ("CEQA."). That is contrary to CEQA's requirements because the County's adoption of the ordinance is a "project" with the potential for significant environmental effects. The staff report states " 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."

This approach is contrary to CEQA because the ordinance is a second tier program which purports to establish how the significant impacts of incremental development in the SCA will be avoided. This analysis was not conducted in the CWP Environmental Impact Report ("EIR").

Although the CWP EIR purported to analyzed the impacts of full buildout under the land use designations of the CWP, including hundreds of vacant streamside parcels in the San Geronimo watershed in western Marin, it actually contained no information about how much habitat could be lost or how that lost habitat could be adequately mitigated. In particular, the CWP EIR never analyzed how the County would achieve "no net loss of habitat" despite the allowance of incremental development in the SCA.

The County cannot rely on the lack of analysis in the CWP EIR to determine that the adoption of the ordinance will not have cumulative impacts to salmonids. Due to the moratorium, the adoption of the ordinance is the trigger that allows development to occur. The County has *still* never conducted a cumulative impacts analysis for its regulatory program for development in SCAs. The County should provide data on how much current habitat can be replaced with development under a full build-out scenario.

Further, the ordinance presents *new information* about how the County will regulate SCAs in the future, including allowing for exempted development, lesser protections for ephemeral streams and a mitigation scheme that in several respects will not be adequate to avoid habitat loss. These issues could not have been addressed by the CWP EIR because the regulatory policies are not in the CWP, and thus CEQA review was warranted.

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The ordinance impacts 955 developed and 205 vacant in the San Geronimo Valley. The Ordinance proposes a 500 square foot addition on currently developed parcels without any mitigation.

In the San Geronimo Valley alone, this would legalize and possibly allow under full-buildout allow 477,500 square feet (500 ft X 955 parcels) of additional development on currently developed lots, since the current Existing Conditions Report for the San Geronimo Valley suggests that most developed lots have already disturbed riparian habitat and thus would not require any mitigation as the draft ordinance is written.

The Ordinance further proposes to exempt incursions on "previously disturbed areas" and

mitigate only when “native riparian vegetation” is removed, despite the fact that many parcels do not contain such vegetation. Even without full riparian vegetation, an undeveloped area still provides habitat and some of the ecological functions to some degree needed by salmonids. Yet no mitigation will be required for this loss, resulting in hundreds of thousands of additional square feet of development without mitigation.

The ordinance also exempts hundreds to thousands of acres agricultural lands from these rules. The staff report contained no information about how much habitat could be lost through this exemption and should be provided.

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An earlier staff reports identified 205 undeveloped parcels in the San Geronimo Watershed where development in the SCA would likely occur under the current Ordinance policies. The Ordinance proposes mitigation requirements to achieve “no net loss” of habitat, but this mitigation is grossly inadequate, as SPAWN as pointed out in prior comments.

For example, even as to loss of “riparian vegetation,” mitigation may be limited to high water table dependent species. The 2009 San Geronimo Valley Salmon Enhancement Plan (“SEP”) documented that much of the high water-table-dependent vegetation has been removed, but remaining facultative riparian species (bay, redwood, oak) perform the same critical ecological functions. However, the current Ordinance does not protect these this “facultative” riparian vegetation but instead only the water-table-dependent species.

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Outside the San Geronimo Valley, the County has not even identified how many ephemeral streams exist and thus can not provide data on amount of habitat and loss of ecological function that will be lost by inadequate setbacks.

CONCLUSION

The proposed ordinance fails to meet the goals of the Countywide Plan to prevent loss of riparian habitat. It narrowly defines riparian vegetation to allowing for continued destruction of the ecological functions of the riparian buffer zone. As currently drafted, it allow for over one million square feet of additional construction inside the so-called Stream Conservation Area in the tiny San Geronimo Valley, which hosts the highest density of coho salmon in Marin County.

The federal Coho Recovery Plan calls for actions to “*avoid new development within riparian zones and the 100 year flood plain*” and to “*adopt a policy of managed retreat to remove problematic structures and replace with native vegetation.*”

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29 October 2013

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Sincerely,



Todd Steiner
Executive Director

OCT 29 2013 PM 3:06 Planning

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JAY@GFORMANLAW.COM
JEFF@GFORMANLAW.COM

October 28, 2013

VIA U.S. MAIL

Community Development Agency – Planning Division
County of Marin
3501 Civic Center Drive, Room 308
San Rafael, CA 94903

Re: Proposed amendments to Marin County Code Title 22;
Stream Conservation Area Ordinance

Dear People:

Protection of Marin County's aquatic resources, in particular salmon and other migratory fish, through reasonable regulation of streamside development is a worthy objective that can and should be attained through targeted application where it will provide the greatest benefit with least detriment to landowners. In other words, rather than imposing draconian restrictions on property that is not either adjacent or contributory to a stream in which migratory fish actually or potentially may spawn, the focus should be on those areas that have a direct or indirect adverse impact on spawning habitat and the streamflows necessary for successful spawning and survival of hatchlings.

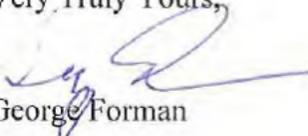
There are numerous streams and watersheds in the unincorporated territory of the County that long ago were severed from impacts on migratory fisheries by the construction of insurmountable obstacles. For example, Arroyo Nicasio and Halleck Creek once may have directly or indirectly supported salmon spawning, but once Nicasio Dam and reservoir were constructed, the watercourses upstream from that dam ceased to be accessible to migratory fish. As a streamside resident of Arroyo Nicasio since 1977, I can personally attest that the only fish that ever have been observed in that creek since then have been mosquito-eating fish planted by the Vector Control District. Therefore, no useful purpose would be served by applying more stringent streamside conservation requirements to properties along those creeks upstream from Nicasio Dam. Indeed, much of the valley through which Arroyo Nicasio flows is so narrow that imposing a 100-foot setback would make many parcels unuseable.

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The San Geronimo Valley presents a different situation altogether. Salmonids do spawn in the creeks in that valley, although the construction of Peters Dam and the other structures on Lagunitas Creek undoubtedly dramatically reduced the spawning habitat previously available.

Therefore, I request and recommend that amendments to the Stream Conservation Area Ordinance be limited to the San Geronimo Valley and the streams that drain into and from that valley, and that those amendments be made effective immediately.

Very Truly Yours,



George Forman