

## TERM SHEET

Since 2010, SALMON PROTECTION AND WATERSHED NETWORK, a Project of TURTLE ISLAND RESTORATION NETWORK ("SPAWN") and CENTER FOR BIOLOGICAL DIVERSITY ("CBD," and together with SPAWN, "Petitioners") have asserted legal actions and claims against the COUNTY OF MARIN ("County") alleging, in summary, that the County violated the California Environmental Quality Act ("CEQA") in connection with its adoption of the 2007 Countywide Plan as it relates to environmental impacts on anadromous fish species in the San Geronimo Valley. The County has denied, and continues to deny, any wrongdoing or legal liability regarding the allegations in these legal actions. Nevertheless, Petitioners and the County each share a common interest in preserving the natural resources of Marin County and protecting important habitat for anadromous fish species in the San Geronimo Valley. To better focus their respective resources towards furthering these common interests rather than continuing to pursue litigation, the parties have reached an agreement in principle to settle these legal actions according to the terms in Attachment A. To memorialize their agreement in principle, the parties hereby agree as follows:

1. The parties will negotiate in good faith to finalize a full and complete settlement agreement reflecting the terms in Attachment A within one month of the date last executed below.
2. The parties will cooperate in all manners necessary to effectuate the terms of this Term Sheet including, but not limited to, executing all necessary documents.
3. The parties will work in good faith to coordinate the timing of their respective announcements of the agreement in principle.
4. Each of the individuals executing this Term Sheet represents and warrants that they have been authorized to do so and have the power to bind the party for whom they are signing.
5. This Term Sheet may be executed in multiple counterparts, and by way of facsimile or electronic signature, and if so, each counterpart will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same Term Sheet.

Dated: \_\_\_\_\_, 2022

SALMON PROTECTION & WATERSHED NETWORK

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

Its:

Dated: \_\_\_\_\_, 2022

CENTER FOR BIOLOGICAL DIVERSITY

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

Its:

Dated: May 16, 2022

COUNTY OF MARIN

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

Its: Board President, Supervisor Katie Rice

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Dated: May 16, 2022

SALMON PROTECTION & WATERSHED NETWORK

By: Preston Brown

Its: Director of Watershed Conservation

Dated: May 16, 2022

CENTER FOR BIOLOGICAL DIVERSITY

By: Peter Braden

Its: Attorney

Dated: \_\_\_\_\_, 2022

COUNTY OF MARIN

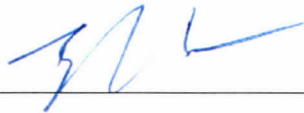
By: \_\_\_\_\_

Its:

APPROVED AS TO FORM:

Dated: May 13, 2022

COUNTY COUNSEL, BRIAN E. WASHINGTON

By: 

Brandon W. Halter  
Attorneys for Respondent  
COUNTY OF MARIN

Dated: May 16, 2022

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By: 

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

## **ATTACHMENT A**

### **Settlement Parameters**

#### **I. Legal Framework**

Conditional on the County's final adoption of an SCA Ordinance that includes the terms identified for inclusion in Section II, and agreement to the additional terms in Section III, as well as the expiration of 91 days following final adoption of the SCA Ordinance without a legal challenge to such SCA Ordinance by any third party\*:

A. The County agrees to:

- 1) Dismiss the pending appeals in Case Nos. A1628632 and A162863; and
- 2) Pay \$240,000 to counsel for SPAWN/CBD within 45 days as compensation for attorneys' fees and costs and to resolve any and all claims by SPAWN/CBD for attorneys' fees and costs.

B. SPAWN/CBD agree to:

- 1) Coordinate with the County on necessary filings to resolve and discharge all writ obligations arising from Case Nos. CIV 1903709 and CIV 1004866; and
- 2) Release the County from all CEQA claims arising from its approval of the 2007 Countywide Plan and certification of the related EIR and FSEIR with respect to the San Geronimo Valley; and
- 3) Release the County from all CEQA claims arising from the County's adoption of the SCA Ordinance; and
- 4) Withdraw their pending motion for attorneys' fees and costs in Case Nos. CIV 1903709 and CIV 1004866 and release the County from liability for fees and costs incurred in this litigation or the appeals in Case Nos. A1628632 and A162863.

\*In the event that a challenge to the SCA Ordinance is filed within the 91-day window set forth above, the settlement agreement and the above terms shall take effect upon the final dismissal of such challenge, provided the County does not amend the SCA Ordinance in response to litigation in a way that is inconsistent with the terms of the settlement.

## II. SCA Ordinance Terms

As discussed above, the settlement agreement will be contingent on the County adopting an SCA Ordinance that matches the ordinance considered at the December 13, 2021 Planning Commission Hearing, with the additions and modifications set forth in this Section. Nothing in this settlement agreement shall abrogate or impair the County's future exercise of its sovereign police power.

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

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

- B. Revise section 22.30.045 to add an additional subsection providing for a 35-foot streamside buffer within the Stream Conservation Area, as measured from the top of the stream bank, where allowable land uses shall be limited to the following:
- a. Maintenance and repair of existing permitted structures within the existing footprint
  - b. Projects to improve fish and wildlife habitat
  - c. Water-monitoring installations
  - d. Passive recreation that does not disturb native species
  - e. Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat
  - f. Driveway, road, and utility crossings, if no other location that avoids encroaching in the buffer is feasible and the crossing is sited to minimize environmental impacts
- C. Add language clarifying that limitations on uses under subsection 22.30.045(D) also apply to portions of the SCA outside the 35-foot buffer zone.
- D. Add language clarifying that the 35-foot buffer applies to all ephemeral streams in the San Geronimo Valley only.
- E. Replace Draft Section 22.30.045(D)(2), in its entirety, with the following language:

"Additions to existing permitted structures that do not: (1) increase the lot coverage within the Stream Conservation Area



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

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

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

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

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

Exceptions under this subsection require an application supported by a showing of good cause and public

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<sup>1</sup> The reference to section 22.30.045(D) refers to the subsection as enumerated in Exhibit A to the December 13, 2021 Staff Memorandum to the Marin County Planning Commission; if the ordinance provisions are renumbered, this clause should be adjusted as necessary to maintain the reference to the provision setting forth limitations on uses for the SCA area outside the 35 foot buffer.

noticing, and they must be subject to appeal.”

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

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

H. Add the following definitions to Section 22.130.030:

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

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

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

I. Habitat Restoration Program<sup>3</sup>

Add a provision to Chapter 22.52 specifying that “Approval of Site Plan Review applications for uses within the San Geronimo Valley Combining District shall be subject to property owner compliance with any development impact fees, applicable at the time the Site Plan Review application is approved, established for the purpose of offsetting development impacts on the SCA through restoration and enhancement of riparian habitat within the San Geronimo Valley.”

- Add a provision authorizing the County Board of Supervisors to adopt by resolution a development impact fee to be used to fund the Habitat Restoration Program.

J. Add a provision providing that violations of SCA ordinance provisions are enforceable through any legal remedies available for correcting/and or abating nuisances and violations of the Development Code, including but not limited to the administrative citation penalty schedule provided for in Chapter 1.05 of the Marin County Code.

K. Add a provision defining any violation of the provisions of the SCA Ordinance governing “limitations on use” within the SCA to constitute a “public nuisance” for purposes of Chapter 1.05 (Nuisance Abatement) of the Marin County Code.

**III. Additional Settlement Terms**

A. Inspections for SCA Ordinance Violations

- By September 1, 2022, the County shall adopt a voluntary point of sale inspection pilot program (“Program”) for the San Geronimo Valley SCA, which will allow any owner of property wholly or partially within the SCA in the San Geronimo Valley Combining District (or any prospective buyer of such property, with the property owner’s consent) to request and obtain a free on-site, County-provided inspection for compliance with provisions of the SCA Ordinance. The County shall advertise the Program to increase awareness among property owners and

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



purchasers of their ability to request an inspection from the County, as well as to request public records regarding the property. The County shall begin full implementation of the Program (including advertising the Program and making inspections available upon request) no later than Q1 of 2023. The County shall have sole discretion to discontinue the Program after a period of five years from the Program's implementation, conditional on the County first holding a public meeting with opportunity for public comment and accompanied by a staff report analyzing the success of the Program, options to increase public participation to warrant continuing the Program, and alternatives to improve on compliance with the SCA Ordinance.

- Before approving an application for a development project or activity that is subject to Site Plan approval under the SCA Ordinance, on a parcel wholly or partially within the San Geronimo Valley Combining District SCA, the County shall perform an inspection for existing SCA Ordinance violations and review for enforcement.

B. Anonymous Complaints

The County shall create and implement a system for receiving complaints regarding violations of the SCA Ordinance within the San Geronimo Valley that allows complainants to remain anonymous, provided that the County shall have full discretion as to the design and operation of such system, including but not limited to discretion regarding whether to assign lesser weight to complaints submitted anonymously.

C. Expansion of Enforcement Capacity

The County shall expand enforcement staff capacity sufficient to process, respond to, and address complaints regarding violations of the SCA Ordinance in the San Geronimo Valley and SCA Ordinance compliance issues identified during inspections. This includes ensuring on-call availability to process and respond to time-sensitive complaints that come in during non-business hours, including evenings, weekends, and holidays.

D. Biannual Reporting

The County will commit to provide twice-yearly reports to the Board of Supervisors, as proposed in Staff's December 13, 2021 presentation to the Planning Commission, with the following metrics to track implementation of the SCA

Ordinance:

1. The number of Site Plan Review applications approved, conditionally approved, or denied;
2. Project types;
3. Appeals;
4. Complaints;
5. Inspections;
6. Enforcement actions;
7. Amount of impervious area authorized under Site Plan Review to be added to the San Geronimo Valley SCA; and
8. Amount of habitat authorized under Site Plan Review to be removed from the San Geronimo Valley SCA.