



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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July 19, 2022

Honorable Board of Supervisors
Marin County Civic Center
San Rafael, CA 94903

SUBJECT: Development Code Amendments for the Stream Conservation Area (SCA Ordinance) for San Geronimo Valley.

Dear Supervisors:

RECOMMENDATIONS:

Staff recommends your Board adopt the following:

1. Ordinance to amend Marin County Code Title 22 (Development Code) for the Stream Conservation Area (SCA Ordinance) for San Geronimo Valley and reduce certain fees required for compliance with such SCA Ordinance; and
2. Ordinance to rezone all lots within San Geronimo Valley to the new SGV (San Geronimo Valley) combining district.

SUMMARY:

On June 13, 2022, the Marin County Planning Commission unanimously recommended your Board adopt the proposed Development Code amendments and rezoning for the Stream Conservation Area (SCA Ordinance) for San Geronimo Valley (Attachments 1 and 2). The proposed SCA Ordinance is part of a larger, interdepartmental program to ensure that development in the San Geronimo Valley is consistent with the Marin Countywide Plan (CWP) and 2019 Final Supplemental Environmental Impact Report with a Focus on Potential Cumulative Impacts on Salmonids in San Geronimo Valley (FSEIR).

The SCA Ordinance also includes terms that are referenced in a June 10, 2022, conditional settlement agreement between the County, Salmon Protection and Watershed Network, and Center for Biological Diversity (together, SPAWN). These terms provide increased riparian protections that would expand the SCA to include additional ephemeral streams; create a new minimum 35-foot "no touch zone" along all streams; limit residential additions to 300 square feet of cumulative lot coverage; modify exceptions to full SCA compliance; clarify exemptions that allow removal of pyrophytic vegetation; require a Habitat Restoration Program fee where on-site mitigation is not feasible; and clarify violations of the ordinance provisions would be subject to nuisance abatement procedures and penalties.

The Commission's recommendation includes a non-substantive textual change to the provision of the ordinance that provides for an exception to full compliance with other restrictions in the ordinance if development on the parcel outside the SCA cannot be accomplished even with a limitation on the lot coverage to no more than 1,000

square feet. The Planning Commission recommended that the phrase “if the proposed development is limited to 1,000 square feet or less of lot coverage” be replaced with the phrase “if the proposed development is limited up to 1,000 square feet of lot coverage,” as shown (in double-underline and strikethrough text) in the excerpt below:

Exceptions. Exceptions to full compliance in Subsection 2b, above, may be allowed only if the parcel is undeveloped as of the effective date of this Section and the following is true:

- a. A lot falls entirely with the Stream Conservation Area; or
- b. Development on the parcel entirely outside the Stream Conservation Area:
 - 1) Cannot be accomplished even if the proposed development is limited up to 1,000 square feet or less of lot coverage on the parcel as a whole with the least possible encroachment into the Stream Conservation Area, or relocated to another suitable portion of the parcel that avoids encroachment in the Stream Conservation Area; or

...

Staff notes that adoption of an ordinance with this proposed textual change recommended by the Planning Commission would not match the exact language of the terms of the ordinance referenced in the conditional settlement agreement with SPAWN.

Finally, concurrent with consideration of the proposed Development Code amendments, staff is recommending a reduction to permit fees and services related to implementation of the SCA Ordinance.

DISCUSSION

The Planning Commission recommended SCA Ordinance is not a standalone document. Rather, the SCA Ordinance consists of a suite of amendments to the County’s zoning code (Development Code) that implement measures supported by various resource materials with the latest science and best practices to provide landowners and contractors guidance and tangible examples to navigate the County’s complex permitting procedures. Moreover, the County continues to invest funding in support of the Urban Streams Coordinator program through a partnership with the Marin Resources Conservation District to provide permit assistance, landowner education and outreach, and technical support with targeted creek restoration projects. Furthermore, the County has committed to cover costs associated with preparing the mandated site assessment.

The SCA Ordinance regulatory framework would establish predictable and clear permit review procedures and development standards unique to San Geronimo Valley that would advance the CWP’s goal of healthy streams through the following measures:

- Establish an SCA buffer on each side of the top of bank that is the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank, or from the centerline of the swale for ephemeral streams with no clear top of bank, along all perennial, intermittent and ephemeral streams. *Incorporating the additional terms from the settlement agreement means that ephemeral streams located in a limited number of parcels in the upper reaches of the San Geronimo watershed would be regulated as SCAs.*
- Limit development within the first 35 feet of the SCA to the maintenance and repair of existing structures within the existing footprint. This enhancement – based on recommendations provided in the San Geronimo Valley Salmon Enhancement Plan (2010) – builds upon Marin County Code’s existing 20-foot drainage setback requirement. *This means essential riparian habitat will continue to protect wildlife, water quality, and minimize erosion and downstream sedimentation.*
- Expand the types of improvements that require discretionary review - via the existing Site Plan Review land use permit - to include any activity, use of land, or other improvement that would: a) entail grading or otherwise expose soil; b) increase lot coverage or surface runoff; c) remove vegetation or woody riparian vegetation; or d) alter the bed, bank, or channel of any stream. *This means land uses currently exempt from permit requirements would now be subject to discretionary review, thereby expanding stream protection measures.*
- Limit additions to existing structures in the SCA to a cumulative total of 300 square feet of lot coverage. Vertical additions that do not expand the existing footprint would be excluded from this cap. Proposed additions must not expand closer to the stream than the existing footprint, and no additional lot coverage would be permitted once the 300 square feet of lot coverage is exhausted. *This means that development that would increase lot coverage within the creek’s sensitive areas would be more restricted.*
- Limit exemptions from discretionary review to the trimming and removal of dead, invasive, and exotic vegetation, including fire-prone (pyrophytic) vegetation consistent with wildfire and defensible space requirements. Repair and maintenance of septic systems, development subject to a Creek Permit, and subdivisions pursuant to the Subdivision Map Act associated with the purchase of land by a public agency for public recreational use would also be exempt from a Site Plan Review permit. *This means, except for the limited list of exempt activities, most activities within the critical stream corridor would require a site assessment and mitigation.*
- Require a site assessment – which must be prepared by a qualified professional - in conjunction with the Site Plan Review permit application to evaluate a site’s biological setting; assess potential impacts to stream and riparian ecology and hydrology, including anadromous salmonids; and provide findings regarding potential environmental effects. The site assessment would also map the precise SCA boundary. *This means outcomes most protective of the resources would be safeguarded.*

- Require all development incorporate site appropriate Standard Management Practices (SMPs), which are identified through the Site Assessment and consist of vegetation management, stormwater run-off, erosion and sediment control, and construction management measures that directly offset or avoid impacts to salmonids. *This means objective best practices that reflect the best available science can be applied in the design and review of projects.*
- Require that projects would not: a) adversely alter hydraulic capacity; b) result in a net loss of habitat acreage, value, or function; and/or c) degrade water quality. *This means development must mitigate for the loss of riparian vegetation to sustain the ecological functions of the SCA for both the salmon and flood control.*
- Ensure robust Low Impact Development (LID) and stormwater requirements are applied throughout the entire San Geronimo watershed, not just within the SCA. *This means fine sediment to streams would be better controlled and reduced to protect degradation of salmonid winter rearing habitat.*
- Require payment of a development impact fee to offset impacts to streams where impacts cannot be mitigated onsite. *This means funding will be available for restoration and enhancement of riparian areas within the Valley.*

The proposed SCA Ordinance would also rezone all lots within the boundary of San Geronimo Valley to add the new SGV (San Geronimo Valley) combining district. This rezoning would ensure uniform permit requirements for development in both planned and conventional zoning districts throughout the SCA, as well as enable compliance with enhanced stormwater and LID requirements on properties outside the SCA and throughout the Valley watershed. This rezoning would “combine” the new SGV zoning district with the underlying zoning district(s). For example, a property zoned R1:B2 would become SGV-R1:B2. This rezoning does not replace existing zoning regulations; rather, it provides supplementary development measures intended to protect significant ecosystems, such as the endangered Coho salmon habitat found in San Geronimo Valley.

Key Issues

1. Vegetation removal.

A common theme voiced during the SCA Ordinance public hearings focused on vegetation removal and fire safety. Consistent with the CWP, the ordinance criteria focus on minimizing loss or disturbance to native riparian vegetation because trees and shrubs provide streams shade and cover, which prevents warming of the water temperature that is detrimental to the young salmon. Plant and tree roots facilitate bank stability, reduce erosion, and protect water quality by filtering silt and pollutants before they enter the stream. Leaves dropping into the stream provide food for aquatic insects, which in turn provide food for the fish, while fallen trees create pool shelter and hiding places from predators.

Vegetation removal is currently not regulated unless trees proposed for removal trigger the requirements of a Tree Removal Permit. The proposed SCA Ordinance would expand these requirements to require Site Plan Review for any activity that would remove vegetation or woody vegetation. Meanwhile, the ordinance would also prohibit vegetation removal below top of stream bank (within the stream channel)

unless such removal is necessary for public health or safety. Otherwise, removal of dead, exotic, or invasive vegetation – including pyrophytic (fire prone) vegetation – would be exempt if the work is performed consistent with Marin County Code Chapter 16.16 defensible space requirements. This ordinance exemption is intended to follow vegetation management rules for fire safety. In this regard, staff recommends a property owner obtain a report from a licensed arborist to verify the status of the tree with photographs for documentation, which should be kept by the property owner as a record.

The proposed ordinance requires no net loss of habitat value, acreage, or function and mandates a 2:1 onsite replacement ratio with native vegetation as compensation. Some members of the public expressed concern the 2:1 replacement ratio is inconsistent with wildfire fuel reduction strategies since it would double the fuel load. In fact, this requirement is consistent with CWP Program BIO-4. i, which calls for a minimum replacement or enhancement ratio of 2:1 to ensure replication of the appropriate density and structure of vegetation removed to guarantee the ecological functions of the lost and damaged habitat is restored. The Native Tree Protection and Preservation ordinance similarly requires a minimum ratio of two new, appropriately sized, and installed trees for each tree removed, unless a higher or lower replacement ratio is determined to be appropriate.

These details would be evaluated in the landscape plan, or vegetation management plan for projects located in the Wildland-Urban Interface (WUI), which would be required as part of the Site Plan Review permit to manage the landscaping design, installation, and maintenance. Since the majority of the San Geronimo Valley is within the WUI, staff would refer projects involving vegetation removal to Marin County Fire for review. A vegetation management plan will be required to address vegetation management modification or management requirements for minimum brush and tree clearance to create defensible space around structures. The vegetation management plan must be prepared by a qualified arborist, forester, landscape architect or designer, and must conform with the requirements in Title 16 of the Marin County Code. In the event that tree planting on the site is not feasible or appropriate, a \$500 in lieu fee may be required per replacement tree to be deposited into the Tree Preservation Fund managed by Marin County Parks for planting, maintenance, and management of trees and other vegetation.

The site assessment would integrate recommendations from any vegetation management plan, arborist report, and other recently prepared technical studies or reports prepared for the project and recommend site appropriate Standard Management Plans corresponding to the nature of the development that would ensure the project will not result in adverse impacts to the stream riparian resources, unless mitigation measures identified through environmental review would result in equal or greater environmental benefit.

2. Planning Fees

The proposed SCA Ordinance would result in more restrictive development standards unique to Valley residences compared to residents living along creeks elsewhere in Marin's unincorporated areas. First, the ordinance would significantly expand the scope of actions that require discretionary permits and diminish the number of exemptions from the SCA permitting and compliance processes to include

most development activities that may adversely affect the ecological integrity of riparian channel habitats. In addition, the ordinance incorporates rigorous low impact development practices and designs for drainage and stormwater control on top of existing requirements on projects both inside and outside the SCA. Furthermore, all SCA projects would be subject to the CWP's mandate for environmental review, which could add potential delays and higher development costs associated with CEQA compliance. Lastly, applicants will face an added impact fee for habitat restoration in compliance with the settlement terms where on-site mitigation is not feasible. Combined, these obligations would disproportionately impose greater regulatory and financial burdens on Valley residents for the benefit of the broader public. These regulations might also disincentivize legitimate prospective applicants from seeking permits.

On October 11, 2021, an Ad Hoc Subcommittee of the Board of Supervisors (Board Subcommittee), comprised of Supervisors Rodoni and Moulton-Peters, recommended staff develop an approach for reduced land use permit and environmental review fees for development located in the SCA in the San Geronimo Valley in response to public feedback that high permit fees and costs to comply with the ordinance create a disincentive to obtain permits, leading to unpermitted work. Notably, your Board previously adopted reduced fees as part of the 2013 Interim SCA Ordinance to incentivize compliance, though that ordinance did not take effect.

Based on the Board Subcommittee's direction, staff is recommending your Board approve a reduction in fees required for compliance with the SCA ordinance, including:

A. Site Plan Review Fee

Fees for Site Plan Review are currently charged on a deposit/at cost basis, as follows:

Description	Fee
Initial Deposit (retainer)	\$2,086
Technology Fee	\$16
DPW Deposit	\$942
EHS Deposit	\$842*
Total	\$3,885

*EHS Deposit fee is collected only if property is served by private well or septic system.

Staff currently bills against the retainer during application review. If additional fees are necessary to cover the application costs, then those fees will need to be paid prior to conclusion of the planning process. However, fees paid that are not used are refunded at the end of the process.

Staff recommends reducing the Site Plan Review permit fee for development projects in the San Geronimo Valley subject to SCA Ordinance requirements to a \$2,000 flat fee, which would affect the cost recovery targets for the Planning Division, the Environmental Health Services Division, and the Department of Public Work's Land Development Division. Your Board adopted a \$2,500 flat fee for the cost of a SCA (Tier 2) Permit, which was a discretionary permit

comparable to today's Site Plan Review, in conjunction with the 2013 Interim Ordinance. It is difficult to estimate the volume of Site Plan Reviews that will result from the ordinance due in part to the ordinance expanding permitting over types of development that previously did not require permits, and the extent of permit avoidance. However, none of the loss revenue from the reduced fees, expected to be upwards of \$1,885 per application, would be recovered from other permit fees. In other words, no permittee in the County would pay more for a permit than the reasonable cost of the service for which the permit is issued.

B. Environmental Review (Initial Study) Fee

All discretionary projects must comply with the California Environmental Quality Act (CEQA) to mitigate any potential significant effect on the environment. CEQA categorically exempts several types of projects from environmental review, including single-family homes. However, CWP policies require environmental review for development in the SCA. For this reason, the SCA Ordinance requires projects incorporate self-mitigating SMPs into the project design to minimize any potential environmental impacts, which would then exempt most minor projects from environmental review. However, more complex projects - such as new construction on vacant land - would require environmental review and an Initial Study to determine environmental impact. An Initial Study would require a project-based deposit of \$17,411 and is typically prepared by an environmental consultant hired and paid for by the applicant.

For the same reasons discussed above regarding Site Plan Review fees, staff recommends reducing the upfront Initial Study deposit fee for projects in the San Geronimo Valley subject to SCA Ordinance requirements from \$17,411 to \$5,000. Your Board similarly reduced the Initial Study as part of the 2013 Interim SCA Ordinance. For the same reasons discussed above, it is difficult to estimate the number of Initial Studies that will be triggered by the ordinance. Staff will look for ways to streamline the environmental review process to keep costs down, and none of the loss revenue from the reduced fees for environmental review would be recovered from other permit fees. In other words, no permittee in the county would pay more for a permit than the reasonable cost of the service for which the permit is issued.

Due to the uncertainties around the level of permit activity, staff is recommending that the reduced fees be effective for a period of five years, to be re-evaluated at that time following assessment of the ordinance's effectiveness and the impact on revenue. The recommendation to reduce fees is in alignment with CWP Program BIO-4.a which calls for providing incentives, such as reduced fees, to reduce the extent of existing development within the SCA or improve conditions that may be impacting sensitive resources. Maintenance of the creeks also helps to prevent flooding and protects homes along the creek. Thus, the reduced fees would lower financial barriers and reinforce appropriate creekside improvements to sustain the watershed's health and community wellbeing that benefits all Marin County residents.

Additional Settlement Terms

The conditional settlement agreement with SPAWN, if finalized, would commit the County to enact programmatic changes outside the scope of the SCA Ordinance before your Board today. These are summarized below.

1. Voluntary Point of Sale Inspection Program

The County currently does not require inspections when a property is sold. The conditional settlement agreement would require the County adopt a pilot Point of Sale Inspection Program for San Geronimo Valley by September 1, 2022, and implement it no later than March 2023. This voluntary program would allow a private property owner – or prospective buyer with the owner’s consent –to request a free on-site property inspection and permit history report for any lot, located either wholly or partially within the SCA in the San Geronimo Valley. The purpose is not only to increase awareness to prospective property owners of the stewardship and rules that comes with owning property along a stream but to disclose permit compliance for any of structure, building, and improvement within the SCA. An initial outline of program costs and administration will be provided at a hearing scheduled for August 23, 2022, with program initiation in January 2023.

Moreover, once the SCA Ordinance takes effect, every Site Plan Review application would require an inspection for compliance with the SCA provisions. Violations would require enforcement as part of any condition of approval.

After a period of five years, staff will report on the program’s effectiveness to your Board. This report will include an evaluation of the program’s success, include options to increase public awareness and participation, alternatives to improve compliance, and a recommendation regarding whether the program should be continued.

2. Anonymous Complaint System

The conditional settlement agreement would require CDA provide an option to field anonymous complaints for suspected violations of the SCA ordinance. This new platform will be established as a pilot program for the San Geronimo Valley. Response to complaints received through this system would be prioritized based on whether the violations pose an imminent threat to health and safety, environmental quality, or community impact. Staff will develop the program components of design, operation, and staffing needed to implement this system.

3. Enforcement

The Tentative Agreement would require the County “expand enforcement staff capacity sufficient to process, respond, and address complaints regarding violations of the SCA Ordinance” and “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.” This new initiative will address an existing enforcement gap given staff currently investigate suspected code violations during business hours, which means work conducted after hours or on weekends would miss verification. This program will start 45 days following adoption of the SCA Ordinance.

4. Biannual Report Metrics

FSEIR Mitigation Measure 5.1-1 requires the County to provide twice yearly reports to your Board at a publicly noticed public hearing on the progress of the SCA Ordinance. The first report would occur around February 2023, six months following the effective date of the SCA Ordinance. The mitigation measure does not provide specific direction on the report’s content. However, the conditional settlement agreement would require the report track the following metrics:

- Number of Site Plan Review applications approved, conditionally approved, or denied;
- Project types;
- Appeals;
- Enforcement actions;
- Amount of impervious area authorized by Site Plan Review to be added to the San Geronimo Valley SCA; and
- Amount of habitat authorized by Site Plan Review to be removed from the San Geronimo Valley SCA.

Similarly, staff will work to develop an effective and easy system to monitor the lot coverage cap on San Geronimo Valley parcels.

NEXT STEPS:

Both the SCA Ordinance and rezoning would become effective August 18, 2022, 30 days from adoption. Implementation of the ordinance will include outreach to homeowners, contractors, and community organizations to ensure all stakeholders are aware of the new regulations. Community outreach and education will be a critical part of future efforts, not only to support individual stewardship but also to increase understanding of the individual and collective benefits of streamside conservation requirements as well as the basis for permit standards.

EQUITY IMPACT:

The SCA Ordinance will protect and restore essential riparian corridors and link the developed landscape with natural areas to benefit all community members as well as native plants and wildlife in San Geronimo Valley. Rezoning properties with the new SGV combining district will end existing disparities between planned and conventionally zoned districts to ensure development standards are uniformly applied throughout the SCA. Further, all Valley homeowners will be subject to the same stormwater and low impact development enhancements to ensure healthy streams for all.

The SCA Ordinance will result in augmented regulations unique to San Geronimo Valley. The reduced permit fees and the County's handling of site assessment expenses will minimize any increased cost burdens and ensure efforts to follow the ordinance's protocols still is affordable and accessible to residents who choose to do the right thing.

Approval of the recommended actions would not affect programs or services vital to communities of color, underserved populations and/or immigrant communities.

FISCAL IMPACT:

No additional staffing resources are necessary to implement the ordinance. Staff will monitor revenue impacts, which are estimated between \$40,000 and \$60,000 annually, and work with the County Administrator's office on any necessary general fund adjustments to offset the revenue loss associated with the reduced application fees. One additional code enforcement position has been added to the Planning Division to support environmental compliance efforts that include implementation of the SCA program.

REVIEWED BY:

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

SIGNATURE:

Kristin Drumm

Kristin Drumm, AICP
Senior Planner

APPROVED:



Tom Lai
Director

Attachments:

1. Ordinance to adopt amendments to Marin County Code Title 22 (Development Code) for the Stream Conservation Area (SCA Ordinance) for San Geronimo Valley
2. Ordinance to adopt the rezoning for all lots within San Geronimo Valley to the new SGV (San Geronimo Valley) combining district
3. Resolution Recommending that the Board of Supervisors Adopt an Ordinance Amending Marin County Code Title 22 (Development Code) for the Stream Conservation Area for San Geronimo Valley
4. Resolution Recommending that the Board of Supervisors Adopt the Rezoning for all Lots Located in San Geronimo Valley
5. Correspondence (Dated June 27, 2022, to July 12, 2022)
6. Supplemental Memorandum to the Planning Commission with Attachments, dated June 13, 2022
7. Staff Report to the Planning Commission with Attachments, dated June 13, 2022
8. Supplemental Memorandum to the Planning Commission with Attachments, dated December 9, 2021
9. Memorandum to the Planning Commission with Attachments, dated December 13, 2021