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Via Electronic Submission

Kristin Drumm, Senior Planner  
Community Development Agency, County of Marin  
Marin County Civic Center  
3501 Civic Center Drive  
San Rafael, CA 94903  
kdrumm@marincounty.org

Re: *Comments by the Salmon Protection and Watershed Network on CDA's September 17, 2021 Draft Expanded Stream Conservation Area Ordinance for the San Geronimo Valley*

The Salmon Protection and Watershed Network ("SPAWN") appreciates the opportunity to submit the following comments on the County of Marin Community Development Agency's ("CDA") draft Stream Conservation Area Ordinance for the San Geronimo Valley ("Ordinance"), issued on September 17, 2021. As set forth in the Superior Court's April 9, 2021 ruling in *SPAWN et al. v. County of Marin et al.*, Case No. CV1004866, the California Environmental Quality Act ("CEQA") requires the County to formulate, adopt, and implement such an ordinance in conjunction with certification of its Supplemental Environmental Impact Report ("SEIR") for the 2007 Countywide Plan should the County continue to rely on an ordinance to mitigate the potentially significant adverse impacts to salmonid habitat and survival identified in the SEIR. SPAWN is pleased to see that the County is taking these CEQA mandates seriously. The draft Ordinance incorporates important watershed protections, and the accompanying project schedule promises to shepherd the draft toward final adoption after many years of delay. Likewise, SPAWN appreciates that the County has committed to a robust public comment and participation process to guide the development of an effective and enforceable instrument.

But while CDA's release of the draft Ordinance and project schedule are necessary and important steps, they are not sufficient. Rather, CEQA requires that the Ordinance effectively and securely mitigate the impacts to salmonids identified in the SEIR. As currently drafted, it does not.

It hardly needs repeating that Marin County's Coho salmon and native steelhead trout are in danger of extinction. Despite being listed as "threatened" species under the federal Endangered Species Act in the mid-1990s, populations of both Central California Coast Coho

salmon and steelhead have continued to sharply decline.<sup>1</sup> After Coho abundance reached a nadir of only 6% to 15% of its abundance in the 1940s, the National Marine Fisheries Services uplisted Coho to “endangered” status in 2005.<sup>2</sup> By 2010, steelhead populations remained at only half of their 1960s abundance.<sup>3</sup>

The Lagunitas Creek watershed in Marin County is uniquely critical to recovery of these species; CDA itself has recognized that it supports the “most important” Coho salmon run in the state.<sup>4</sup> San Geronimo Valley is the heart of this watershed, with its intricate series of tributaries and creeks, intermittent and ephemeral streams, and residual pools sustaining one-third of all spawning and rearing activity in the watershed.<sup>5</sup> Residential and commercial development and ensuing habitat loss in the watershed are the most significant drivers of salmonid species decline. (SEIR<sup>6</sup> at p. 3-8 to 3-9.) Among other adverse impacts of these activities, removing native vegetation deprives streams of essential nutrients, grading and construction causes bank erosion and stream channelization, replacing habitat with impervious surfaces leads to water pollution and increased sediment loads, and reducing habitat makes juvenile salmon more susceptible to downstream displacement. Development also destroys the intricate, interconnected network of streams, pools, and tributaries essential to spawning and rearing.

Unfortunately, without proper mitigation, the 2007 Countywide Plan will only accelerate these impacts to salmonid habitat and survival by expanding buildout across unincorporated County. As the SEIR recognizes, approval of the Plan for the San Geronimo Valley will increase the number of developed parcels and units and expand total impervious area significantly beyond existing conditions. (*Id.* at p. 5-7.) On top of already degraded habitat and severely altered watershed hydrology, the adverse impacts of this development to salmonid habitat and survival will be considerable. (*Id.* at p. 5-15.)

Based on this analysis, the SEIR recognizes two potentially significant cumulative impacts to salmonids and their habitat in the San Geronimo Valley from the Plan: (1) “reduced survival of fry and juvenile salmonid life stages due to reduced winter rearing habitat” and (2) “reduced salmon spawning success due to elevated sediment delivery and increased high flow

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<sup>1</sup> 61 Fed. Reg. 56,138 (Oct. 31, 1996); 62 Fed. Reg. 43,937 (Aug. 18, 1997).

<sup>2</sup> Cal. Dept. of Fish & Game, *Recovery Strategy for Coho Salmon: Report to the California Fish and Game Commission* at p. 1.1 (Feb. 2004); 70 Fed. Reg. 37,160, 37,187 (June 28, 2005).

<sup>3</sup> Prunuske Chatham, Inc., *San Geronimo Valley Salmon Enhancement Plan: A Guidance Document Prepared for Marin County Department of Public Works* at p. 1-1 (Feb. 9, 2010) (hereinafter “SEP”).

<sup>4</sup> Marin County Community Development Agency, *Key Trends, Issues, and Strategies Report: Marin Countywide Plan Update* at p. 20 (Jan. 2003).

<sup>5</sup> *A Call by Leading Scientists to Increase Protections for Endangered Central Coast California Coho Salmon in Marin County, CA* at p. 1 (Sept. 2007).

<sup>6</sup> Citations to the SEIR are to the Final 2007 Marin Countywide Plan Supplemental EIR with a Focus on Potential Cumulative Impacts to Salmonids in San Geronimo Valley (July 2018).

frequency and magnitude.” (*Id.* at p. ii.) The SEIR identifies adoption of a Stream Conservation Area (“SCA”) Ordinance as one of two mitigation measures and relies on it as the primary mitigation to lessen impacts of buildout under the Countywide Plan on winter rearing habitat. (SEIR at pp. 5-26 to 5-27.)

Under CEQA, the County’s chosen mitigation measures must reduce the identified adverse impacts on salmonid survival and habitat “to insignificance.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 231.) To achieve this mandate, the Ordinance must meaningfully constrain buildout within the SCA and ensure that any development that takes place does not degrade salmonid habitat, provide for habitat restoration and rehabilitation to rectify impacts of development and allow for species rebound, and contain sufficient and clear standards to guide the Ordinance’s applicability. (See 14 Cal. Code Regs. [“CEQA Guidelines”] § 1530 [defining “mitigation”].) The Ordinance must also be “fully enforceable.” (Pub. Resources Code § 21081.6(b).) And the County must adopt a program to monitor and publicly report on the effectiveness of the Ordinance in mitigating the identified adverse impacts. (*Id.* at § 21081.6(a)(1).)

The draft Ordinance and its accompanying exhibits fall short of these requirements. The Ordinance authorizes far too much development within the SCA, key terms are vague and ambiguous, and important provisions lacks standards to guide the exercise of agency discretion and to ensure that development applications are treated fairly, consistently, and predictably. Further, the Ordinance lacks provisions for inspections and enforcement or a robust monitoring and reporting program to confirm that the Ordinance is effectively mitigating the adverse impacts of buildout to insignificance. Such measures are essential to both creating an even playing field among property owners and ensuring that the Ordinance is fulfilling the promises made in the SEIR. SPAWN provides the following comments on these and other concerns with the Ordinance and recommendations for creating a clearer and more effective instrument.

#### **I. The Ordinance Authorizes Too Much Development within the SCA.**

The SEIR identifies development under the 2007 Countywide Plan as the major expected driver of winter habitat loss and degradation. According to the SEIR, adoption of the 2007 Countywide Plan significantly expands allowable buildout within the San Geronimo Valley, increasing the number of improved parcels within the watershed by 23%, the number of developed units by 22%, and total impervious area by 14%. (SEIR at p. 2-34, Table 2-7.) This buildout will not be evenly distributed across the watershed; rather, the number of improved parcels on certain subbasins like the Upper San Geronimo Creek is expected to increase by as much as 46% over existing conditions. (*Id.* at p. 2-37, Table 2-9.) In addition to directly removing habitat, buildout and resulting increase in impervious area create a dangerous feedback effect, increasing winter storm flow magnitude and frequency, which in turn “caus[es] additional habitat simplification and further compromis[es] the ability of rearing coho salmon to find adequate refuge during high flows.” (*Id.* at p. 5-17.)

To effectively mitigate adverse impacts on salmonid habitat, the Ordinance must at its core meaningfully constrain the total amount of development and increase in impervious area under the Countywide Plan. While the Ordinance as currently drafted imposes certain important constraints on development above existing conditions, it still allows too much cumulative development in the SCA. SPAWN provides the following comments on and recommendations for narrowing the Ordinance's most capacious carveouts.

**A. The Ordinance's Exception for Parcels that Fall Entirely Within the SCA Creates an Expansive Loophole.**

Subsection 22.30.045(A)(4)(a) of the draft Ordinance authorizes "[e]xceptions to full compliance with all [SCA] criteria and standards" for any "lot [that] falls entirely within the [SCA]." There are a number of concerns with this provision. First, this provision lacks any specification as to which SCA criteria or standards may be subject to waiver, how eligibility for exceptions will be determined and by whom, and what conditions will be imposed to ensure that development within the SCA does not degrade habitat or create other adverse impacts on stream health. As a result, although labeled an "exception," there is no guarantee that the provision will not function in practice as a wholesale exemption from SCA development constraints. And while the Ordinance makes exceptions discretionary, there are no criteria or standards to guide application by the decisionmaker.

The lack of standards makes it impossible for the public to discern how this provision will function in practice or for landowners to predict what development on parcels within the SCA may be authorized. As discussed in Section II below, it is axiomatic that laws like the Ordinance "must provide explicit standards for those who apply them" to avoid "impermissibly delegat[ing] basic policy matters . . . for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-09.) Subsection 22.30.045(A)(4)(a) fails this test.

Second, CDA has not publicly released data on the number or location of parcels that fall entirely within the SCA and that will therefore be eligible for these exceptions. The 2007 Countywide Plan requires the County to map perennial, intermittent, and ephemeral streams subject to SCA policies, reevaluate SCA boundaries, and identify development proposals within SCAs. (2007 Countywide Plan, BIO-4.b, 4.c, & 4.e.) To date, however, the County has not released any map of SCA boundaries or otherwise identified the number, extent, and location of parcels located within the SCA. Without such data, it is impossible to assess the consequences of subsection 22.30.045(A)(4)(a) for further habitat degradation. According to the SEIR, the number of parcels that could be effectively exempted from SCA criteria is expected to be considerable. The SEIR projects that 118 improved parcels would fall entirely within the SCA under the 2007 Countywide Plan, an increase of 27% over existing conditions. (SEIR at p. 2-42,



Table 2-13.) SPAWN requests that the County release any map or other document in its possession showing the number, size, and location of parcels located entirely within the SCA.<sup>7</sup>

Third, there is no scientific basis for loosening development restrictions on parcels that fall entirely within the SCA. To the contrary, concentrated development in the SCA is likely to have an outsized adverse impact on stream health. SPAWN thus requests that the County remove provision 22.30.045(A)(4)(a) from the Ordinance and close this loophole. If the County deems the provision necessary due to legal infeasibility or overriding policy considerations, the agency must impose mitigations to offset the impact of development allowed under the provision.

**B. The Ordinance’s 500 Square-Foot Building Area Allowance Authorizes Cumulatively Significant Development in the SCA.**

SPAWN appreciates that the Ordinance would impose meaningful restrictions on certain development activities within the SCA, such as removing the exemptions from permitting requirements for sitework, play structures, solar energy systems, and electronic vehicle charging stations located within the SCA. (Ordinance § 22.06.050.) But the value of these restrictions is significantly diminished by subsection 22.30.045(A)(3)(b), which would authorize the buildout of a “cumulative total of 500 square feet of building area” for existing permitted structures, subject to the limitation that they do not increase the existing horizontal encroachment into the SCA. This provision is problematically ambiguous and overbroad and may lead to perverse consequences.

First, the provision suffers from significant vagaries that make it impossible to discern how CDA will apply it in practice. Does the provision allow a 500 square-foot addition to each “existing permitted structure[]” on a parcel, so that, for instance, a parcel with a separate garage and residence would be entitled to 1,000 square feet of building area addition? Or does “cumulative total” mean that each parcel is entitled to a total of 500 square feet of new building area? Is the baseline against which “cumulative total” building area is to be determined the effective date of the Ordinance, or does the baseline reset with each new project application submitted by a property owner following the Ordinance’s effective date? If the former, how does the County intend to confirm baseline conditions? Does “building area” include both horizontal and vertical building area, or is use of the phrase barring increases to “the footprint within the [SCA]” intended to allow a total of 500 square feet of horizontal buildout per parcel irrespective of vertical additions? And, crucially, does the limitation to “building area” entirely prohibit additions of impervious surfaces within the SCA that do not meet the definition of “building area” in Section 22.13.030 of the Marin County Code, or does the County interpret this provision to allow unlimited increases to impervious surfaces within the SCA so long as they are not bounded by walls?

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<sup>7</sup> SPAWN makes this request pursuant to the California Public Records Act, which requires CDA to respond within 10 days of submittal of this comment. (Gov. Code § 6253(c).)

Second, by any interpretation of the provision, subsection 22.30.045(A)(3)(b) authorizes too much development within the SCA. According to the SEIR, the average building permit application for properties within San Geronimo Valley is for 400 square feet—100 square feet less than the buildout authorized under the Ordinance. (SEIR at p. 5-13.) Coupled with the ministerial exemption for development of accessory dwelling units within the SCA (Ordinance § 22.06.050(F)), the cumulative extent of development authorized across the entire SCA above existing conditions would be extensive. Further, because the provision appears to take existing conditions as the baseline for future development allowances, it would authorize substantial development on even the most built-out parcels, where the need to preserve habitat may be greatest.

Third, the provision may create perverse incentives for development within the SCA. For instance, to the extent that vertical building area is included in the allowable 500 square-foot addition, the provision may incentivize property owners to build horizontally to maximize the footprint of their development. From an ecosystem perspective, vertical additions are far preferable to horizontal ones, as they would preserve existing habitat and avoid adding new impervious surfaces. Likewise, to the extent that the Ordinance would allow for further addition of impervious surfaces so long as they do not qualify as building area, it could incentivize development of new outdoor living spaces, like patios or courtyards, to evade the 500 square-foot constraint but with exactly the same adverse consequences for habitat integrity.

SPAWN recommends that the County strengthen the Ordinance by significantly reducing the per-parcel allowance for addition of impervious surfaces within the SCA. The Ordinance should be clear that the allowance includes all impervious surfaces, whether bounded by walls or not. Ideally, the County should employ a prior baseline so that existing development is taken into account in future per-parcel development allowances. It should also make clear that once the allowance is exhausted, no further impervious surface additions will be allowed on the parcel. Further, the Ordinance should include mechanisms to disincentivize more extensive buildout, such as a requirement to pay into a mitigation bank that scales with each 100 square feet of impervious surface addition. Vertical additions could be excluded from the per-parcel development cap so that parcel owners are encouraged to build up rather than out, thereby leaving existing habitat intact. (See 2007 Countywide Plan at BIO-4.a [County must consider adopting incentives to reduce development within the SCA].) Where construction activities result in temporary habitat loss or vegetation removal, the Ordinance should require post-construction rehabilitation as well as payment into the mitigation bank discussed in Section I.C below to offset temporary impacts.

Finally, the Ordinance should be explicit that development that falls within any of the allowances in subsection 22.30.045(A)(3) is subject to the site plan review requirements in Chapter 22.52, in addition to the site assessment and Standard Management Plan requirements in Chapter 22.30. Thus, for example, a 300 square-foot development addition within the SCA would be prohibited if it would result in “net loss in habitat acreage.” (Ordinance § 22.52.050(F).) Likewise, it could not proceed unless a site assessment confirms the absence of

impacts to riparian habitat and unless conditioned on applicable Standard Management Practices. (2007 Countywide Plan at BIO-4.a, BIO-4.g; Ordinance §§ 22.30.045(A)(2), (B).)

### **C. The County Should Create an Enforceable 35-Foot Riparian No-Touch Zone.**

To prevent the most severe impacts on stream health and sediment delivery and to promote habitat rehabilitation, the County should revise the Ordinance to create an enforceable minimum 35-foot no-touch riparian buffer extending laterally from the edge of the creek bed or active channel of all streams in the SCA, as recommended by the 2007 San Geronimo Salmon Enhancement Plan (“SEP”). (SEP at p. 2-21.) As discussed in the SEP, this buffer is the “key area to focus riparian enhancement activities.” (*Id.* at p. 2-22.) Among other benefits, this buffer would “make a crucial contribution to filtering most sediment and sediment-attached pollutants, while also providing shade and natural bank stabilization.” (*Id.* at pp. 2-21 to 2-22.)

The County could create this buffer by adding to the Ordinance a provision imposing a permanent moratorium on development within this 35-foot zone. The buffer could also be implemented by conditioning all applications for development in or impacting the SCA on dedication of a conservation easement precluding any development within this no-touch zone. Based on results of site assessments, the County should also consider conditioning certain development applications on the removal of impervious surfaces from and rehabilitation of riparian habitat within this zone. And in areas with more extensive riparian vegetation, the County should consider conditioning application approval on dedication of a conservation easement extending the buffer beyond 35 feet. In addition to being highly beneficial for stream health and habitat, the buffer would be easily ascertainable, easily understood by and communicated to property owners, and readily enforceable.

## **II. The Ordinance is Impermissibly Vague and Ambiguous.**

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” (*Grayned*, 408 U.S. at 108; *see People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116.) A law is impermissibly vague if it fails to “provide explicit standards for those who apply [it].” (*Grayned*, 408 U.S. at 108.) Absent such standards, a law is susceptible to “arbitrary and discriminatory enforcement,” and it “impermissibly delegates basic policy matters . . . for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” (*Id.* at 109.) To avoid being unconstitutionally vague, an “ordinance must be clear, precise, definite, and certain in its terms.” (*Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308 [quoting 5 McQuillin, the Law of Municipal Corporations (3d ed. 2004) § 14:22, pp. 203-206].) For instance, in *Zubarau v. City of Palmdale*, the California Court of Appeal held that a local zoning ordinance regulating the height of radio antennae was impermissibly vague because it failed to clearly define operative terms, was ambiguous as to the location from which the height of an antenna was to be measured, and used uncertain language. (*Id.* at 309-11.)

The Ordinance as currently drafted suffers from similar defects. It leaves central policy decisions unspecified—such as application of subsection 22.30.045(A)(4)’s allowances for exceptions from full compliance—and lacks clarity and certainty in operative terms. While “mathematical certainty” in drafting is not required (*Grayned*, 408 U.S. at 110), the Ordinance does need to be sufficiently clear and have sufficient standards to allow the public to understand what is allowed or prohibited and to ensure that the agency will exercise its discretion in a fair, consistent, and reasonably predictable manner.

SPAWN offers the following recommendations to bring greater clarity and consistency to key Ordinance provisions and their application.

**A. Sections 22.30.045 and 22.14.050 Should Be Restructured for Clarity and Consistency.**

First, SPAWN recommends that the County restructure Section 22.30.045 to more closely track the structure of other combining district ordinances, such as Section 22.30.040 (Lucas Valley Community Standards) and Section 22.30.050 (Sleepy Hollow Community Standards). For instance, to guide the agency’s exercise of discretion in applying the Ordinance, the County should consider adding a subsection setting forth the Ordinance’s purpose of protecting and restoring riparian habitat and mitigating significant impacts of the 2007 Countywide Plan on salmonid habitat and survival. (*See Grayned*, 408 U.S. at 112 [law’s “announced purpose” clarified key terms].) And rather than nesting generally applicable sections like “Stream Conservation Area,” “Limitations on Uses,” and “Exceptions” under “Applicability,” the County should make these standalone subsections for clarity, similar to the structure employed in Sections 22.30.045 and 22.30.050.

SPAWN likewise recommends revising Section 22.14.050 to more clearly integrate the SGV Combining District. Section 22.14.050 applies to “Minimum Lot Size ‘-B’” combining districts, but the SGV district does not appear to be a “B” district, nor are there any development standards set forth for the district, as Section 22.14.050 contemplates. If Section 22.14.050 is intended to apply more broadly than to “B” combining districts, it should be revised accordingly.

**B. Core SCA Terms Should be Clarified.**

SPAWN requests the County revise the Ordinance to clarify the following vague and ambiguous terms in light of the protective purposes of the Ordinance:

- **Ephemeral Streams**

The County should clarify and expand the criteria for triggering SCA protections for ephemeral streams. The draft Ordinance states that the SCA applies to ephemeral streams only if “the stream supports riparian vegetation for a length of 100 feet or more.” (Ordinance § 22.30.045(A)(1)(a)(3).) This provision is ambiguous as to how the 100 feet of riparian vegetation is to be measured. SPAWN recommends that the County clarify that 100 feet of

vegetation may be either continuous or intermittent, so that ephemeral streams supporting a cumulative total of 100 feet or more of vegetation aggregated across the entire length of the stream unambiguously qualify for SCA protections.

SPAWN also recommends revising the Ordinance to eliminate perverse incentives for vegetation removal along ephemeral streams and to encourage restoration of highly degraded streams. As drafted, intentional removal of riparian vegetation from an ephemeral stream could cause it to lose SCA protections. Subsection 22.30.045(A)(1)(a)(3) should be revised to clarify that ephemeral streams qualify if they are “*capable* of supporting riparian vegetation,” so that streams retain their SCA protections even if vegetation is removed and to allow already denuded streambeds to gain the protections to restore them to a healthier state.

Further, the Ordinance should be revised to create a minimum setback of at least 35 feet from *all* ephemeral streambeds in accordance with the science-based recommendations in the Salmon Enhancement Report. Although SPAWN recognizes that the 20-foot buffer is drawn from the 2007 Countywide Plan, SPAWN reminds the County that the Superior Court has set this Plan aside with respect to its application to San Geronimo Valley, and CEQA regardless requires adoption of more restrictive provisions as necessary to mitigate impacts of the Plan to insignificance. A 35-foot buffer is the minimum protective area that should be accorded to degraded ephemeral streams. (See SEP at pp. 2-21 to 2-22.) Ideally, the more degraded ephemeral streams would be accorded a setback equal to or greater than less degraded streams to support recovery and restoration of habitat.

- **Infeasible Development Outside SCA**

Subsection 22.30.045(A)(4)(b) of the draft Ordinance would authorize exceptions from compliance with SCA protections where “[d]evelopment entirely outside the [SCA] . . . is infeasible.” In addition to the problematic lack of standards discussed in Section I.A. above, key terms in this provision are vague and ambiguous. First, the Ordinance does not define the operative term “infeasible” at all. Instead, CDA’s explanatory subtext references the definition of the term “feasible” in Section 22.130 as “that which is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technology factors.” The unstated implication is that development is “infeasible” if it falls outside this definition. Assuming this is so, the term is so general that any applicant may be able to explain a project into eligibility for exceptions.

Second, use of the term “development” in subsection 22.30.045(A)(4)(b) creates further ambiguity, as it is unclear whether “development” means development of any sort (including any sitework or buildout) or the specific development proposed by the application at issue. If the former, the provision would not appear to admit any exceptions, as it is unlikely that portions of parcels outside the SCA would be incapable of accommodating development of any sort. But if the latter, the Ordinance may perversely incentivize applicants to design larger and more impactful projects so as to evade SCA protections by, for instance, expanding a proposed

project's footprint or structuring it in such a way that the only technically feasible location would extend the project into the SCA.

SPAWN recommends refining subsection 22.30.045(A)(4)(b) to incorporate a clear and limiting definition of "infeasibility" and to avoid incentivizing efforts to design around SCA limitations, in accordance with the protective purpose of the Ordinance.

- **Development triggering a site assessment**

The draft Ordinance specifies that a site assessment is required "when development is proposed in the [SCA] *or* when full compliance with the San Geronimo Community Standards would not be met." (Section 22.30.045(A)(2) [emphasis added].) But neither the Ordinance nor its exhibits specify any "community standards" for San Geronimo Valley. To the extent this phrase is intended to refer to "Standard Management Practices" ("SMPs") for development in the SCA, the SMPs in Exhibit D to the Ordinance apply only to projects that take place within the SCA, not to projects outside the SCA that nevertheless impact riparian habitat. Section 22.30.045(A)(2) should be revised to conform to the more protective language use by Implementing Program BIO-4.g of the 2007 Countywide Plan, which mandates a site assessment when proposed development would take place wholly or partially within the SCA, *or* where "adverse impacts to riparian resources may otherwise occur."

**C. The "No Net Habitat Loss" Standard Needs to be Defined and Made Workable through Mitigation Banking and Prescribed Offsets.**

SPAWN applauds the application of site plan review requirements in Chapter 22.52 to all development activities in the SGV Combining District that would expose soil, increase impervious surface, or impact vegetation or hydrology, irrespective of whether those activities would take place in or directly impact the SCA. (*See* Ordinance § 22.52.020(F).) This broader application of site plan review recognizes the importance of native vegetation and pervious surfaces throughout the watershed to stream health.

Likewise, SPAWN appreciates that the Ordinance would apply the limitations in subsection 22.52.050(F)—including the restriction on net loss of habitat—to all site plan review applications for the SGV district rather than only those for projects located in the SCA. Because the standards specified in subsection 22.52.050(F) are not specifically applicable to the SCA, SPAWN also understands this drafting decision to exclude the standards from those subject to waiver under Subsection 22.30.045(A)(4). In other words, projects in the SGV Combining District that do not meet subsection 22.52.050(F) standards may not be approved, without exception.

To realize the protective intent of these provisions, however, SPAWN recommends clarifying the meaning of "net loss in habitat acreage, value or function" and adding provisions to make this standard work in practice. The Ordinance does not currently specify whether "net loss" applies on the scale of a parcel, the scale of a stream, or on the scale of the entire SGV combining district. For instance, if a project would remove habitat from one portion of a parcel,

must it restore habitat of equivalent value and function on another portion of that same parcel? Or can the project developer commit through an enforceable instrument to restoring habitat elsewhere along the same stream or anywhere in the SGV Combining District to avoid an adverse impact on watershed health as a whole? Further, the Ordinance does not currently define the term “habitat” or specify its scope. At minimum, “habitat” should mean all fish and riparian habitat and wildlife habitat throughout the SGV that supports watershed health.

In most circumstances, onsite offset of habitat loss is preferable. But in circumstances where onsite replacement of habitat is not possible, the County could consider allowing for offsets elsewhere in the district if doing so would maintain or improve stream health. If the County intends to allow offsite mitigation under certain circumstances, it should clearly specify those circumstances and include standards to ensure that offsets provide real and verifiable protection against net habitat loss.

The County will also need to create mechanisms to provide for any offsite habitat restoration or rehabilitation allowed under subsection 22.52.050(F). The most obvious such mechanism is a mitigation bank, already contemplated by subsection 22.30.045(C). However, rather than merely calling for future decisionmakers to “[c]onsider the establishment of a mitigation bank program,” the Ordinance (or a separate closely following ordinance) should directly establish a mitigation bank, prescribe standards for effective mitigation, and direct CDA to establish a payment schedule and governing regulations through a public process. Any mitigations funded by the mitigation bank should be strategic, verifiable, and enforceable and provide real and measurable ecosystem benefits—such as fee title acquisitions and conservation easements to permanently protect and provide for habitation restoration projects in important riparian areas. Unless and until a mitigation bank is established and made functional, subsection 22.52.050(F) should preclude projects from occurring unless they can be conditioned on adequate and enforceable mitigation of any habitat loss.

### **III. The County Must Adopt Performance Standards, Enforcement Provisions, and a Robust Measurement and Reporting Program to Ensure Effective Mitigation.**

While getting the language of the Ordinance right and incorporating clear and protective standards are necessary steps, this is only half the battle. As a CEQA mitigation measure, the Ordinance “must be fully enforceable” (CEQA Guidelines § 15126.4(a)(2)), and the County must ensure that it is effectively implemented (*id.* at § 15097(a)). At present, the Ordinance lacks any provisions for inspection or enforcement to ensure that the Ordinance is actually put into effect. The County should correct this by, for instance, requiring periodic and/or time-of-sale inspections for parcels in the district to verify appropriate permitting and confirm that riparian habitat is not being compromised. Complaint-based inspections, while necessary, are not sufficient. In addition to affirming effective implementation of Ordinance requirements, regular inspections could play an important educational role by teaching property owners upfront about sitework restrictions and helping them identify threats to riparian habitat on their property and opportunities for restoration. Inspections and an accompanying enforcement program would

also help to create an even playing field among property owners and ensure that owners are not effectively penalized for complying with the law.

In addition to confirming implementation, the County must commit to enforcing violations. It could facilitate enforcement by deeming violations of the Ordinance a public nuisance and by exercising nuisance abatement authority under Chapter 1.05 of the Marin County Code. Given the overwhelming evidence of the impacts of unmitigated development and habitat loss on ecosystem health and salmonid survival, there is ample basis for classifying Ordinance violations as a public nuisance and ensuring swift and effective abatement.

Further, the County should adopt a more robust program for monitoring and reporting implementation of the Ordinance than is currently set forth in Exhibit G to the draft Ordinance. The Exhibit G monitoring and reporting program as proposed would track implementation of Mitigation Measure 5.1-1. However, the Superior Court has found Mitigation Measure 5.1-1 to constitute improperly deferred mitigation. The program should instead track implementation of the adopted Ordinance itself and its effectiveness in mitigating the impacts of development under the 2007 Countywide Plan. (*See* CEQA Guidelines § 15097(c) [mitigation monitoring and reporting program should evaluate implementation of adopted mitigation].) To do this, the program should monitor the extent of development and buildout occurring under the Plan, measure the quantity and quality of winter rearing habitat, monitor sediment delivery and flow alterations, and monitor trends in juvenile salmonid survival rates.

Finally and relatedly, to the extent that the County continues to defer the formulation of the Ordinance or any of its components, CEQA requires that the County adopt “performance standards” that the mitigation will achieve. (CEQA Guidelines § 15126.4(a)(1)(B); *see Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 520 [“Deferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved.”].) These standards should be both “objective” and “measurable” to ensure that any deferred mitigation is achieving its intended effects. (*Golden Door Properties*, 50 Cal.App.5th at 520-21.) Such performance standards could, for instance, provide targets for the quantity and quality of winter rearing habitat and for sediment delivery; the Mitigation Monitoring and Reporting Program would then evaluate the success of the Ordinance in achieving these targets. If the County continues to defer formulation of a mitigation bank, it should also provide performance standards for that program—such as the ratio of offsite rehabilitation to be achieved through the banking program.

#### **IV. Additional Concerns**

##### **A. The Exemption for Removal of Pyrophytic Vegetation is Overbroad.**

Subsection 22.52.030(D)(2)’s exemption from site plan review for removal of all “pyrophytic trees and/or vegetation” is overbroad. SPAWN recognizes that defensible space and weed abatement mandates may require certain vegetation clearance and combustible brush and debris removal. However, the exemption in subsection 22.52.030(D)(2) cuts much more



broadly, exempting from site plan review the removal of any fire-prone vegetation wherever located, regardless of whether it is living or dead and irrespective of its size or ecological function.

SPAWN recommends that this carveout from site plan review be narrowed to exempt only that vegetation removal strictly required by State or local law. Development should not be authorized if it would require removal of native vegetation below the top of a bank, or removal of healthy trees located anywhere in the SCA if above 12” in diameter. In addition, whenever fire-prone vegetation is removed, the Ordinance should require that it be replaced in a 2:1 ratio by native non-pyrophytic vegetation.

#### **B. Applicability of the Standard Management Practices Should be Clarified.**

As drafted, subsection 22.30.045(B) would require implementation of only those Standard Management Practices identified in a site assessment for a development project in the SGV Combining District. However, neither subsection 22.30.045(A)(2) (requiring site assessments) nor section 22.130 (defining “site assessment”) prescribes incorporation of SMPs into site assessments. To the contrary, section 22.130 makes it optional for site assessments to include any findings on potential environmental impacts or recommendations for mitigating those impacts. (Ordinance § 22.130.030(S) [“A site assessment *may* include findings . . . and recommendation[.]”] [emphasis added].) The Ordinance’s lenient approach to site assessments conflicts with the 2007 Countywide Plan, including BIO-4.a (precluding even modest development within the SCA unless “a site assessment first confirms the absence of adverse impacts to riparian habitats”) and BIO-4.g (requiring that site assessments “identify measures necessary to mitigate any significant impacts”).

Site assessments must accordingly identify, and the County should require implementation of, all applicable SMPs, as well as any other site-specific measures necessary to mitigate any potential adverse impacts of the development on riparian habitat to insignificance. This is particularly important as certain provisions of Mitigation Measure 5.1-1—such as the Provision 5 requirement that “all discretionary permits for development projects within the SCA include low impact development (LID) practices and designs”—are effected only through the SMPs. The County should revise Section 22.30.045 and the Ordinance’s definition of “site assessment” to reflect these requirements.

#### **C. The County Should Acknowledge the Need for Riparian Habitat Protections Outside the SGV Combining District.**

While the County has rightly focused its regulatory efforts for riparian habitats on the San Geronimo Valley, it is important to recognize that stream systems and habitat of importance to salmonid survival exist elsewhere throughout the County. The 2007 Countywide Plan thus sets a policy of establishing SCAs throughout the County to protect active channels, water quality and flood control functions, and associated fish and wildlife habitat values along streams. Although it is critical to finalize and adopt a robust SCA Ordinance for San Geronimo Valley without

delay in light of the area's vital importance to salmonid habitat and survival, SPAWN recommends that after doing so, the County establish a second phase to develop SCA protections for the other important riparian habitats throughout unincorporated County.

### **Conclusion**

SPAWN appreciates the significant effort that has been put into formulating the working draft of the Ordinance and shepherding it to final approval. While the release of this draft is an important achievement for the County, the draft can and must be clarified and strengthened to ensure that it successfully mitigates to insignificance the impacts of development under the 2007 Countywide Plan. SPAWN looks forward to continuing to be a partner in this vital effort to protect and restore the integrity of riparian habitat in the County and to rehabilitate the County's invaluable salmon and steelhead runs.

Respectfully submitted,



Stephanie L. Safdi  
Clinical Supervising Attorney and Lecturer-in-Law  
Environmental Law Clinic  
Mills Legal Clinic at Stanford Law School

*Attorneys for Salmon Protection and Watershed Network*

**From:** [Ann Brown](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** Coho Salmon and the Streamside Conservation Area  
**Date:** Monday, October 18, 2021 6:27:47 PM

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Dear Kristin Drumm,

Greetings! I am a former longtime resident, teacher, and volunteer in Marin County. I am a property owner in San Anselmo, and visit my family and friends frequently. I remain informed and engaged in environmental issues in the County. One of my favorite seasonal anticipations this time of year is celebrating the return of the coho Salmon to Lagunitas Creek.

I am concerned that despite being protected under both the federal and state Endangered Species Act, Marin County's coho populations are rapidly declining. I believe that we need to provide extensive protections in order to give the salmon a fighting chance at survival. The potential excessive development within the proposed Streamside Conservation Area will damage habitat critical to recovering coho and drive the species to extinction.

I request that Marin County create a science-based Streamside Conservation Area ordinance that protects salmon for generations to come.

Thank you for your consideration,

--

**Ann Brown**

Co-Leader, Citizens' Climate Education, Tri-Valley Chapter

[awbrown@gmail.com](mailto:awbrown@gmail.com)

415-246-7697 @annw.brown

3227 Saratoga Court

Livermore, CA 94550

*There are two ways of spreading light, to be the candle or the mirror that reflects it. - Edith Wharton*

October 16, 2021

OCT 22 2021

COUNTY OF MARIN  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

Marin County Board of Supervisors

Dear Supervisors -

Please pass an ordinance forbidding development within 150 feet of creeks, where Central Coast Coho salmon are struggling to survive.

The science-based Streamside Conservation Area ordinance, which has been around since 2007, needs to be finalized and approved now!

I live in Novato, and I value the Coho and all our native creatures who struggle to survive.

Please do the right thing and finally pass a science-based Streamside Conservation Area ordinance to protect OUR Salmon forever. No exceptions should be given within the 150' Streamside Conservation Area.

Thank you for considering my comments.  
Maggie Ruff  
318 SILVIO LN  
Novato, CA 94947

**From:** [Jodi Charrier - NOAA Federal](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** NMFS comments - Marin County's Expanded Stream Conservation Area Ordinance  
**Date:** Monday, October 18, 2021 9:28:24 AM  
**Attachments:** [Guidelines for Salmon Passage NOAA 2019.pdf](#)

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Hello Kristin,

Apologies as I won't have time to get an official comment letter out. However, I did want to provide a few comments on Marin County's Expanded Stream Conservation Area Ordinance for your consideration:

- NMFS would like to reiterate the importance of healthy riparian areas in providing quality habitat essential for the conservation and recovery of ESA-listed salmonids and steelhead. We recommend that the largest (most feasible) "no development" riparian buffers be maintained and enforced as part of the Ordinance.
- NMFS also recommends the Ordinance include the following measures addressing herbicide use:
  1. Herbicides will only be applied after primary methods such as mechanical removal and mowing are used for managing problematic vegetation.
  2. Herbicide use will comply with regulations and procedures, applicable handling and disposal laws, and the use of appropriate herbicide application methods.
  3. Herbicide will not be applied within 15 feet of aquatic features in salmonid habitat and only spot application (applied directly or with a backpack sprayer) will be allowed between 15-100 feet. No broadcast spraying will be allowed within this 100-foot buffer zone.
  4. Herbicides and surfactants used within the 100-foot buffer zone of salmonid habitat will be limited to those approved for use around aquatic environments (Round-up Pro, Aquamaster, or similar).
  5. Herbicides will not be applied when average wind speeds exceed 10 miles per hour at plant height or when air temperature exceeds 85 degrees.
  6. Herbicides will not be applied within 24 hours of predicted rainfall (>20 percent chance) or until plants are dry following rainfall and not under wet conditions due to dense fog.

I notice that the Ordinance references NMFS' Guidelines for Salmon Passage at Stream Crossings. I've attached that document for your reference.

Thank you for the opportunity to review and provide feedback. We are available to provide early technical assistance for any proposed project in the watershed that may affect ESA-listed salmonids and steelhead.

Jodi

--

**Jodi Charrier**

*Natural Resource Management Specialist*

NOAA Fisheries /West Coast Region

Santa Rosa, CA

(707) 575-6069

[www.fisheries.noaa.gov](http://www.fisheries.noaa.gov)





Kristin Dunn  
Marin County Board of Supervisors  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903

RECEIVED

OCT 21 2021

COUNTY OF MARIN  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DIVISION

Dear Supervisor Dunn,

My name is Mia Laurence and I have lived in Marin County for almost twenty years. My kids grew up here and our entire family feels very connected to the nature that Marin offers.

For many years, we would go watch the salmon spawn in the rivers around Marin County. However, I am very concerned that despite being protected under both the federal and state Endangered Species Act, Marin County's coho populations are rapidly declining. In fact, we rarely see the salmon anymore.

The salmon are suffering from the California drought, but they are also suffering because of development near the stream sides. Potential development within the proposed Streamside Conservation Area will damage habitat that is critical to recovering coho. It will likely drive the species to extinction.

Please ask the county to create a science-based Streamside Conservation Area ordinance that protects salmon for generations to come.

Thank you so much for protecting not just humans, but all creatures that live upon this glorious land.

Sincerely,

*Mia Laurence*

Mia Laurence  
34 Acacia Road  
Fairfax, CA 94930

## Drumm, Kristin

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**From:** William Dreskin <bdreskin@comcast.net>  
**Sent:** Thursday, October 21, 2021 5:48 PM  
**To:** Drumm, Kristin  
**Subject:** Protect Salmon

**Follow Up Flag:** Follow Up  
**Flag Status:** Flagged

Dear Ms. Drumm,

I have lived in Marin since 1973. As a naturalist and long-time resident of Marin, I am really concerned that our County is not doing all it should to protect the Coho Salmon. The exemptions in the September 2021 draft allow too much development of streamside habitat for the protection of this endangered species. Marin can and should do better! We should create a science-based plan to protect the salmon.

Sincerely yours,  
Wendy



## Drumm, Kristin

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**From:** Laura Jean Dax Honda <hondafamily1@comcast.net>  
**Sent:** Thursday, October 21, 2021 4:19 PM  
**To:** Drumm, Kristin  
**Subject:** Save our Salmon

**Follow Up Flag:** Follow Up  
**Flag Status:** Flagged

Dear Kristin Drumm,

I have been a public school teacher in Marin County for 30 years. I teach children to care about our wildlife and to protect our environment. My students and I are concerned about our endangered coho salmon. They are protected under the federal and state Endangered Species Act, yet their population continues to decline.

There is excessive development planned within the proposed Streamside Conservation area that will damage habitat that is critical for recovering the coho and could drive the species to extinction.

I am asking that the county of Marin create a science-based Streamside Conservation Area ordinance that will protect our salmon for generations to come.

Please listen to this request from many Marin residents including children.

Thank you,  
Laura Honda  
133 Gregory Dr.  
Fairfax, CA 94930

## Drumm, Kristin

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**From:** Steph Litman Lapine <sglitman@sbcglobal.net>  
**Sent:** Saturday, October 23, 2021 1:00 PM  
**To:** Drumm, Kristin  
**Subject:** streamside conservation ordinance

**Follow Up Flag:** Follow Up  
**Flag Status:** Flagged

Greetings, Kristin:

My name is Steph Lapine. I'm a Marin County resident and a former Marin County Flood Control employee. I participated in the County of Marin's National Flood Insurance Program Community Rating System (CRS) submittal, which earned the County the distinction of becoming a Class 7 CRS community and provided a 15% discount for residents required to purchase flood insurance.

I am writing this email because despite being protected under both the federal and state Endangered Species Acts, Marin County's coho salmon populations continue to rapidly decline. Development within the proposed Streamside Conservation Area will damage critical habitat to the coho, and continue to drive the species to extinction. Human beings do not need structures close to the creek; fish and riparian creatures need the habitat to survive.

Please continue to fight for and create a science-based Streamside Conservation Area ordinance that protects the coho salmon.

Thank you,

Stephanie Lapine, P.E.

**From:** [Mosher, Ana Hilda](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: new stream rules  
**Date:** Tuesday, November 2, 2021 4:10:21 PM

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**From:** john baldwin <jbroofing@comcast.net>  
**Sent:** Tuesday, November 2, 2021 3:57 PM  
**To:** PlanningCommission <PlanningCommission@marincounty.org>  
**Subject:** new stream rules

My name is John Baldwin and I've lived along the creek at 539 San Geronimo Valley Dr. for 45 years.

I'm informing you that I strongly object to the "new stream rules" the County of Marin is considering.

We all love seeing the salmon and steel head thrive in the valley. But those of us along the creek are tired of the relentless target on our heads regarding the fish counts and their health. We are not villains.

A few homeowners in San Geronimo Valley should not bear additional costs and penalties that other Marin residents do not have on their properties. The costs associated with site assessments and standard management practices are arbitrary and unfair to creek side residents, but also prejudiced towards seniors and people trying to live on fixed incomes, as we are.

I've watched many times as several otters have descended into the creek and basically wipe out large steel head and everything else they hunger for. A vibrant ideal pool can become barren in a matter of minutes. It seems they are a much larger threat to creek creatures than those of us peacefully trying to tend to our property and trying to make ends meet in already expensive Marin.

Please reject the new stream rules.

Thank you, John Baldwin



**MARIN COUNTY GROUP**

*Protecting the Marin environment since 1968*  
*scmaringroup@gmail.com*

Nov. 2, 2021

Kristin Drumm, Senior Planner  
Community Development Agency, County of Marin  
Marin County Civic Center  
3501 Civic Center Drive San Rafael, CA 94903  
kdrumm@marincounty.org

RE: Comments on September 17, 2021 Draft Expanded Stream Conservation Area Ordinance for the San Geronimo Valley

Dear Ms. Drumm and CDA staff:

The Marin Group of the Sierra Club, representing over 6600 members in Marin County, supports the SPAWN comment letter on the recent Stream Conservation Area Ordinance proposed by county staff. As written, the Ordinance is too complicated to be either understood or enforced and fails to give adequate protection to the environment. The SPAWN attorneys have pointed out these issues in their letter to staff. Please take those comments seriously and develop an ordinance that will protect our creeks, streams, wildlife and fish from overdevelopment, encroachment and pollution. The Sierra Club stands with the River Otter Ecology Project, Turtle Island Restoration Network, Watershed Alliance of Marin and the West Marin Coalition in asking for an SCA that truly protects our creeks, streams, wildlife and fish throughout Marin County.

Sincerely,

Jinesse Reynolds  
Chair, Sierra Club Marin Group

Cc: Marin County Board of Supervisors

**From:** [Peggy Creeks](#)  
**To:** [PlanningCommission](#); [Rodoni, Dennis](#); [Kutter, Rhonda](#); [Lai, Thomas](#); [Liebster, Jack](#); [Drumm, Kristin](#); [Levenson, Michelle](#)  
**Subject:** Planning Commission Agenda 11-8-21 Stream Ordinance Agenda #4, SG Valley Stewards Comments and Requests  
**Date:** Wednesday, November 3, 2021 9:36:39 PM

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From: San Geronimo Valley Stewards

Peggy Sheneman, Secretary to the Board of Directors

We respectfully offer comments and requests for changes for the new stream rules proposed for San Geronimo Valley. We appreciate the constructive focus group conversations with Facilitator Marie Rainwater and staff of Community Development Agency.

SG Valley Stewards is a non-profit group of volunteers organized in 2009 when the first building moratorium was imposed as a result of SPAWN's litigation threats. We have no paid staff and do not accept government grants.

SGValley Stewards and our 400 supporters and are not professional developers building new mansions. Our families live in existing homes, many built decades ago, on small lots close to creeks. The median home size is 1371 to 1790 square feet, according to Marin CD Agency survey of Jan. 2013.

SG Valley needs affordable housing and small ADU's in the Valley. We have no sewers, but rely on septic tanks and leach fields. We have no natural gas lines, but rely on propane tanks and generators. There are few commercial properties--2 small delis/groceries, 3 restaurants/cafes, 1 bar, 1 pizza takeout, 2 churches, 1 public school K-8, 2 preschools.

About 4200 people live in San Geronimo Valley, in a forest surrounded by dry grassland. Wildfire is a major concern, because we have only two roads to exit the valley. The new stream rules would discourage sensible vegetation management, and would require homeowners to violate state law and local fire guidelines regarding defensible space and fire prevention.

The proposed SCA Ordinance, Standard Management Practices (SMP's) and other Exhibits will burden 800 families with costs and delays for modest home projects. The rules are confusing and will require homeowners to consult lawyers and pay experts for inspections on common home improvements.

The new stream rules specifically target 800 families in existing homes located within the SCA (Stream Conservation Area).

No other property owners in Marin County would be burdened with these new costs and delays.

800 families living on about 27% of the SG Valley land are charged with saving an entire salmon species. 38% of Valley land is owned by government agencies--MMWD and Marin Open Space District, which are exempt from SCA rules. 35% of the Valley is owned by agricultural ranches and a private corporation (Trust for Public Land--the former golf course), which enjoy separate rules governing land use.

## **SUMMARY OF SGV STEWARDS COMMENTS**

We adopt Director Tom Lai's standard for the stream ordinance-- C A S E.

The rules should be CLEAR, AFFORDABLE, SIMPLE, ENFORCEABLE.

To this, we would add "S" for SUCCESS.

There should be frequent monitoring and public reporting of measurable success.

Homeowners need to understand the steps for voluntary compliance.

Step 1. Find your parcel on the stream Lidar map.

Step 2. Identify each water course on your property--is it a stream?

Step 3. Measure the distance--is your project inside the SCA?

Step 4. Is your project an "allowable land use" within the SCA or is it "prohibited"?

Step 5. What is a Site Assessment?

Step 6. SMP's dictate what you must do, and what you cannot do.

Step 7. What is missing? Fire safety!

Step 8. Site Plan Review and discretionary approval by CD Agency.

Step 9. Measure success--we request monitoring and annual reporting by County.

Step 10. The SCA Ordinance should sunset after 3 years.

## **INTRODUCTION**

As the Facilitator Report noted, the new stream program is multi-layered and complex. We request the Planning Commission to examine the draft and consider improvements, from the perspective of homeowner voluntary

compliance. Valley residents should not be trapped by red flag notices mid-way in construction.

Consider modest home projects common in the Valley:

- repair your roof shingles,
- replace your wood deck,

- add 400 square feet to your home,
- apply road base gravel to your dirt driveway,
- build a tool shed,
- install solar panels.

Consider affordable housing: Will the new stream rules allow an 800 - 1000 square foot ADU described as Category 1, 2 or 3, under Community Development Code section 22.32.120?

### **STEP 1. FIND YOUR PARCEL ON THE LIDAR STREAM MAP.**

Homeowners need helpful directions how to navigate the 2020 Lidar stream map posted on [www.marinmap.org](http://www.marinmap.org). Written and video assistance for the Lidar map should be part of the Facilitator's recommendation that the County roll out the new stream rules with user friendly materials.

The map is imported from the US Geological Service, with a totally different format from the 2013 stream map.  
It presents 100 "layers" of data for the entire Marin County.  
It has no entry point expressly for the San Geronimo Valley streams.  
It does not link the homeowner's parcel number or street address to streams on his property.  
It does not map the 100 foot SCA setback surrounding each blueline stream.

### **STEP 2. IDENTIFY EACH WATER COURSE ON YOUR PROPERTY--IS IT A "STREAM"?**

"Stream" means a natural flowing open channel with a bed and a bank. Not culverts below ground. Perennial stream flows all year. Intermittent stream is seasonal and may not have surface flow in summer and early fall. SCAO page 14.

"Ephemeral stream" is surface run off during and immediately after rain. An ephemeral is not a stream unless it is a natural watercourse with a bed and a bank. SCAO page 14.

### **STEP 3. MEASURE THE DISTANCE--IS YOUR PROJECT INSIDE THE SCA?**

The Stream Conservation Area (SCA) is measured landward

from the top of the stream bank. SCAO pages 5-6, section 22.30.045 A.1.a.

Question: What is the top of bank where the stream is located on a slope and the bank continues up to the ridgeline? Should there be an alternate measure for top of bank--such as 10% higher than past 5 years high water flow?

SCA is 100 feet on both sides of the stream, if it is perennial or intermittent stream.

SCA is 20 feet on both sides for many ephemeral streams.

SCA may be 100 feet on both sides for some ephemerals, but only if either:

- (a) the ephemeral supports riparian vegetation for at least 100 feet in length, or
- (b) the ephemeral supports "special status species" such as native grasses.

Question: All plants need water, so which ephemerals "support" vegetation, and which do not? What is a special status species? Must we hire a plant pathologist to determine if our setback is 100 feet or 20 feet?

Homeowners should try to stay outside the SCA when developing any home project. The Community Development Code defines "development" as including: placement of solid material or structure; grading or removing material; change in density of land use; construction, demolition, or alteration of any structure; or removal of major vegetation.

#### **STEP 4. IS YOUR PROJECT AN "ALLOWABLE LAND USE" OR IS IT "PROHIBITED" WITHIN THE SCA?**

These sections of the SCA Ordinance are the most confusing and self-contradictory. SGV Stewards request amendments.

A. There are very few "allowable land uses" for residential properties in the SG Valley (SCAO pages 7-8, section 22.30.045):

- (a) Maintaining or repairing existing permitted structures.
- (b) Adding up to 500 square feet cumulative to an existing permitted structure, provided the addition does not encroach closer to the creek. The cumulative 500 SF starts on the effective date of the new stream ordinance.
- (c) and (g) Projects to improve wildlife habitat or flood control that minimize impacts on wildlife.
- (d) Driveway, road or utilities crossings, if no other location is feasible.



B. Other projects may be allowable, but only if: (a) the entire parcel is within the SCA, or (b) development outside the SCA would have greater environmental impacts than development inside the SCA.

C. The Blanket Prohibition conflicts with other sections of Marin Development Code and should be deleted: "Land uses and improvements not listed above are prohibited . . ." SCAO page 7, section 22.30.045 A.3.

D. For Category 1 ADU's: The Blanket Prohibition violates state law on affordable housing and conflicts with recent Marin Development Code amendments.

SCAO says 500 square feet is the maximum home addition allowed within SCA. This would prohibit certain Category 1 ADU's, including: (1) an ADU not exceeding 800 SF contained within new construction, and (2) two detached ADU's within a lot with existing multi-family dwelling.

Also, under Development Code section 22.32.120 A., the County cannot require discretionary review for Category 1 ADU's. But proposed SCA Ordinance section 22.30.045 A. requires Site Assessment, and Site Assessment is discretionary under Exhibit C page 4.

E. The Blanket Prohibition conflicts with the land use permit section of the SCAO and should be deleted.

Some activities do not require a land use permit and are permitted in all of Marin County, including the SG Valley (SCAO page 1, section 22.06.050). Examples:

C. Interior remodeling that does not expand floor area, or change permitted use, and change exterior appearance.

D. Repairs and maintenance of existing improvements that do not change land use and do not expand or enlarge the improvement.

F. The Blanket Prohibition conflicts with Site Plan review exemptions of SCAO and should be deleted.

Some projects within the SCA are exempt from Site Plan Review (pages 10-11, section 22.52.030). Because these are exempt activities, they cannot also be "prohibited" activities under the Blanket Prohibition:

C. Certain ADU's (Accessory Dwelling Units).

D. 1. Removal of dead or invasive vegetation.

2. Removal or trimming fire-prone trees or vegetation.

3. Planting no-pyrophytic vegetation

4. Voluntary creek restoration with Marin RCD.

*Most Important for SG Valley:*

*5. Repair, maintenance and replacement of septic systems, consistent with stormwater protections and SMP's.*

G. How do we read the Blanket Prohibition and Site Plan Review, consistent with new sections allowing ADU's?

ADU's that meet the standards of Development Code section 22.32.120 B. (Category 2) or C. (Category 3) can be built 800, or 1000, or 1200 square feet, with no discretionary review, if located outside of "sensitive habitat areas".

Question: Does SCAO section 22.52.030 mean that a Category 2 or 3 ADU can be built within the SCA, but a discretionary review is required?

Or, does the Blanket Prohibition of SCAO section 22.30.045 A. 3. mean that no Category 2 or 3 ADU's can be built anywhere within the SCA, even if there is an approved Site Plan Review?

**STEP 5. WHAT IS SITE ASSESSMENT?**

All development within the SCA in SG Valley will require a "Site Assessment" by a "qualified professional." SCAO section 22.30.045.A. 2.

Even projects that are allowable uses, or do not require a land use permit, or are exempt from Site Plan Review--all will still require a Site Assessment.

Site Assessment is discretionary. The "qualified professional" can recommend or not recommend the project. (Exhibit C, pages 1 and 4, Preparation of Site Assessment). The Site Assessment recommendation can be appealed by the applicant or "other concerned party". Appeal is to the Community Development Agency or the Planning Commission.

Question: Will the Site Assessment be a publicly-filed document? Must we give advance notice to our neighbors?

Question: How will the County enforce the requirement for a Site Assessment? Some projects do not require Site Plan Review by CD Agency (section 22.52.030). The SCAO does not require a stream permit. Will the building permit process require a box to be checked?

Request: Category 1 ADU's should be exempt from Site Assessment. Under California law and new Development Code section 22.32.120 A. no discretionary review can be required for the Category 1 ADU and it need not be located outside of "sensitive habitat areas".

SGV Stewards welcome the offer of County Assistance for Site Assessments. The County offers the expertise of the Urban Stream Coordinator (an employee of Marin Resource Conservation District) to prepare a Site Assessment at the

County's expense. Alternatively, the property owner may hire a qualified professional at their own expense (Exhibit C page 3).

SGVStewards request Marin RCD assistance be included in the SCA ordinance, or the BOS resolution approved the SCAO. The County's offer to pay Marin RCD for Site Assessments is an important incentive for voluntary compliance. It should be adopted by the Board of Supervisors as part of the ordinance. We take little assurance from it being mentioned in Exhibit C, where it could be changed by County staff at any time, without adequate notice and hearing.

Early consultation is encouraged. County staff encourages early consultation with the Urban Stream Coordinator (or another professional), before an application is submitted to Community Development Agency. The Site Assessment will study stream ecology of the area, evaluate possible impacts of the project, recommend mitigation steps, and may recommend or not recommend the project.

Question: How will County staff and Marin RCD handle all the requests for consultations and Site Assessments?

There are over 1500 dwelling units in SG Valley, and about 800 houses are located within the SCA. Families are constantly working on improvements or landscape projects. Will there be ONE person at RCD assigned to personally visit each home? How long must property owners wait for their Site Assessment?

SGV Stewards request the County anticipate budget and staffing needs.

Can the CD Agency separately account for the costs of the SCA program, apart from its other duties?

Will CD Agency use sub-contractors, temporary workers, or hire more employees?

## **STEP 6. SMP'S DICTATE WHAT YOU MUST DO, AND WHAT YOU CANNOT DO, ON YOUR PROPERTY.**

The Site Assessment must certify the project will comply with all appropriate SMP's (Standard Management Practices). (SCAO page 8, section 22.30.045 B.)

Every project within the SCA must comply with Exhibit D Standard Management Practices applicable to the project. (SCAO page 8, section 22.30.045 B. and page 12 section 22.52.050.) The SMP's will undoubtedly increase costs and cause delays for families repairing, maintaining or improving

their homes.

Exhibit D is 8 pages of detailed SMP's requiring mitigation measures for home projects:

- riparian (streamside) vegetation and habitat,
- water quality and hydraulic capacity,
- pollution prevention for construction,
- stormwater management and surface drainage,
- culverts,
- public access,
- new roads, driveways and stream crossings,
- native riparian plants.

SGV Stewards request: The County should sponsor FREE workshops on how homeowners can comply with SMP's.

We invite County staff to visit the Valley and offer live conversations to answer questions, not merely send emails. Send to us a building inspector to discuss materials and techniques, an environmental health staffer about septics, a Public Works person about stormwater drainage.

Marin County used to think its job was to help homeowners get our projects approved and completed. It seems the mission now is an aggressive game of red stop notices.

## **STEP 7. WHAT IS MISSING? FIRE SAFETY!**

The SCA Ordinance and SMP's do not require or recommend fire prevention, defensible space, or fire-resilient forestry management. (The SMP's merely list the fire safe website as a "resource".)

But the SMP's have 16 detailed requirements for preserving native grass, restoring underbrush, and re-planting new trees on a 2-for-1 ratio. There is no consideration of the consequences for flammable landscape.

California law requires homeowners to obey local fire agency guidelines. The state also mandates 100 feet of defensible space surrounding each structure in the wildfire urban zone. See Cal. Public Resources Code section 4291. The SMP's would place our families at risk for violation and fines under section 4291.1.

SGVStewards request: Add a new section of SMP's called "Fire Prevention and Preserving Mature Trees":

1. Comply with defensible space and wildfire preparedness of Marin County Fire Department, as described in attached checklist.
2. Consult with Marin Wildfire Prevention Authority on ecologically sound practices for wildfire prevention.

3. Manage land and vegetation to support fire resilient forest and to restore forest to old growth conditions.
4. Maintain home landscaping consistent with the smart yard guidelines of FireSAFEMarin.org.

SGV Stewards request: Attach to the SMP's copies of and links to fire safe guidelines.

The official publication of Marin County is: [marincounty.org/-/media/files/departments/fr/mcfd-mailer-2018](http://marincounty.org/-/media/files/departments/fr/mcfd-mailer-2018)

Attach a copy and give the link to <https://firesafemarin.org/fire-smart-yard>

Fire safety and resilient forests are the most important management practice for our riparian ecology.

Homeowners are educated to balance the desirability of native vegetation, together with fire safe landscaping.

Valley property owners are inspected by, and pay annual fees to, the new Marin Wildfire Prevention Authority.

A wildfire (such as Dixie or Paradise) would destroy fish species and riparian habitat.

SGV Stewards request: Amend the SCA Ordinance to allow activities for fire safety and healthy forest conditions.

Limitations on allowable uses--section 22.30.045 A.3. page 7--amend to read:

"a. Maintenance and repair of existing permitted structures, including fire prevention, home hardening and defensible space surrounding structures."

"c. Projects to improve fish and wildlife habitat, including fire resilient forest and restoring forest old growth conditions."

Site Plan Review Exemptions--section 22.52.030 D.2. page 11--amend to read:

"Removal or trimming of < . . .live trees and/or vegetation that are hazardous to human life or structural integrity of a residence, or necessary for fire prevention or defensible space surrounding a residence, or are pyrophytic combustible live trees or vegetation consistent with Title 16--provision 16.16.040, including tan oak, California bay laurel, and Douglas fir species."

Amend Allowable Uses within the SCA--This amended section D.2. above should also be added to section 22.30.045 A. 3. on page 7.

Reasons for Amendments:

Every year at least one house in SG Valley experiences a "widow maker"-a fir tree or redwood branch crashes through the roof of a house. These

deadly accidents can be prevented by prompt trimming of hazardous branches.

Removal or trimming of trees should not require a Site Assessment or Site Plan Review when Marin Wildfire Prevention Authority inspects our properties and issues clear guidance.

Fire resilient forests and encouraging mature trees to restore old growth conditions are now accepted principles of modern forestry and fire prevention.

## **STEP 8. SITE PLAN REVIEW AND APPROVAL BY CD AGENCY**

The Director and staff of CDA will evaluate the professional's Site Assessment and the homeowner's application for Site Plan Review. The Director may approve, conditionally approve, or deny the Site Plan Review. (SCAO pages 11 -12, sections 22.52.040 and 22.52.050.)

Question: Is the Site Plan Review process a discretionary decision? The CD Director may approve, conditionally approve or deny the application. Where "significant policy issues are raised" the Director may refer the application to the Planning Commission. SCAO section 22.52.040 B. and D. page 11.

Some features of the Site Plan may require other permits or compliance with other planning rules, such as septic standards or building permits. The applicant will want to get clear direction from CDA staff about whether the project requires public notice, or opportunity for other parties to object. There may be an appeal or referral to the Planning Commission.

### When is Site Plan Review required?

SCAO page 10, section 22.52.020 requires Site Plan Review where development involves:

--Increase land coverage over 75% on a single family residential lot;

[Question: Will Category 1 ADU's and house additions less than 500 SF require Site Plan Review?]

--New driveway over 250 feet long;

[Question: applying road base gravel to an existing dirt driveway?]

--Grading or exposing soil or removing riparian vegetation;

[Question: weed whacking or shrub removal in fire season?]

--Increasing lot coverage or surface runoff [Question: install new gutters or roof shingles?]

--Alter the bed or bank or channel of a stream

### What projects are exempt from Site Plan Review?

- some ADU's in Category 1, but not all ADU's
- removal of dead or invasive vegetation;
- removal or trimming of pyrophytic trees or shrubs;
- planting non-pyrophytic vegetation;
- voluntary creek restoration with Marin RCD;
- repair, maintenance or replacement of existing septic system.  
BUT construction of a new septic system is not exempt and requires Site Plan Review.

SCAO pages 10-11, section 22.52.030.

#### No Fees for Site Plan Review

We are informed by CDA staff that, for projects in the SCA of San Geronimo Valley, there will be no application fee for CDA to evaluate a Site Assessment or to perform Site Plan Review. However, the project may require other permits for which regular scheduled fees will be charged. Examples: \$2086 planning fee, \$842 septic repair fee, \$942 Department of Public Works fee.

The County will pay Marin RCD to do the Site Assessment.  
The homeowner may hire your own professional for Site Assessment and pay your own cost.

### **STEP 9. MEASURE SUCCESS WITH ANNUAL MONITORING AND PUBLIC REPORTING**

We understand that Exhibit G Mitigation Monitoring and Reporting is required by the FSEIR.

In addition, SG Valley homeowners deserve to know how the SCA program is applied to their properties over time.

The data on applications, Site Assessments and approvals or denials of Site Plan Review can then be evaluated with the annual fish counts published by Marin Municipal Water District. An important factor in fish counts is the amount and timing of rainfall each year.

The inquiry should be: Does the SCA program show measurable results in the fish population? Do the burdens placed on 800 families measurably improve riparian habitat? At what economic and social cost?

SGV Stewards suggest: Design the CD Agency forms to capture data for each project proposed within the SCA. On the forms for property owner's application, Site Assessment, and Site Plan Review, staff should check boxes for: residence or commercial, square footage, project type (ADU, remodel, garage, septic, deck, driveway, roof/gutters, etc.)

SGV Stewards request: Require annual public reporting of this data. The requirement of a yearly public report should be included in the SCA Ordinance or the

BOS Resolution approving the SCAO.

- a. Requests to Marin RCD for Site Assessments, time elapsed for completion, and disposition (recommended, not recommended, or withdrawn).
- b. Appeals from Site Assessment and disposition.
- c. Requests for Site Plan Review filed with CD Agency and disposition (approved, declined, withdrawn, or referred to Planning Commission).
- d. Appeals from Site Plan review and disposition.
- e. Costs paid by County paid to Marin RCD directly related to SCA program.

Stewards request: Measuring success requires accurate count of the number of parcels governed by the SCA program.

The main purpose of the FSEIR was to estimate the potential cumulative impact on fish habitat if any future improvements were made on currently improved parcels, or if any development were to occur on currently vacant parcels.

The 2020 Lidar stream map does not enable us to count the number of SG Valley parcels within or outside of the SCA. The Lidar map does not distinguish between improved and unimproved parcels.

The impact of the proposed SCA program (the SCA Ordinance, SMP's and other Exhibits) is limited to privately owned parcels which are not government-owned or agricultural or private recreational (the golf course). Only privately owned residential or commercial parcels are governed by the SCA program.

Is there data to enable the County to cross-reference the address of parcels within the SCA with the County Assessor's Tax Profile Database? Can the County calculate the residential and commercial parcels that are within the SCA?

There are three potential sources of estimates:

- 2005 conditions described in the 2018 FSEIR
- 2010 Salmon Enhancement Report
- 2013 Blue line stream map prepared by Marin County geophysicist.

Among these three sources, estimates vary as to the number of parcels:

Total parcels in SG Valley--1182 to 1889

Total improved parcels in SG Valley--1372 to 1415

Unimproved parcels within SCA --228 to 474

Improved residential parcels within SCA--741 to 900

Until the County refines and publishes this data, we are flying blind.

We have no idea of the cumulative impact of development in the San Geronimo Valley.

## **STEP 10. THE SCA ORDINANCE AND STREAM RULES SHOULD SUNSET AFTER 3 YEARS**

Unless the Board of Supervisors determines that the annual reports show significant measurable progress for fish populations in our creeks by March 2025, the SCA



Ordinance, SMP's and Exhibits should expire automatically.

By that time, the County will have 3 years of MMWD fish counts during the effectiveness of the SCA program.

The fish count now available for winter 2020-2021 shows five redds (that is, 5 nests with coho salmon eggs) in San Geronimo Creek. Five redds. All the other redd dots on the MMWD map are located in government-owned creeks west of San Geronimo Valley. See page 13 on [www.marinwater.org](http://www.marinwater.org), search "fishcounts".

<https://www.marinwater.org/sites/default/files/2021-09/Lagunitas%20Adult%20Salmonid%20Monitoring%202021.pdf>

Our homes are located in the most upstream reaches of the Tomales watershed, on the most southern and warmest fringe of the native coho range of the Pacific Coast. 800 homeowners cannot be expected to save this tiny colony of the species from its own geography.

Since 1999, SPAWN has spent over \$20 million of taxpayer and water ratepayer dollars on creek projects. Yet fish counts decline in years of low rainfall during the months of November-December-January.

Fish are dying in the ocean because of ocean conditions. A large percentage San Geronimo smolts survive and successfully migrate out to sea, but do not return to our home creeks to spawn.

**From:** [GERALD TORIUMI](#)  
**To:** [PlanningCommission](#); [Rodoni, Dennis](#); [Kutter, Rhonda](#); [Lai, Thomas](#); [Liebster, Jack](#); [Drumm, Kristin](#); [Levenson, Michelle](#)  
**Cc:** [peggycreeks](#)  
**Subject:** SCA ordinance proposals  
**Date:** Thursday, November 4, 2021 11:22:18 AM

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Currant & past remediation efforts to San Geronimo Valleys streams has failed to increase returning salmon counts. SPAWN is blaming valley residents for SPAWN's failures to re-populate fish. SPAWN fails to address outside influences, beyond the valley resident's control; global warming, pollution, & commercial fishing are examples. If species survival is the issues, as fewer fish return to spawn yearly, the ocean habitat needs more attention,. Without increased numbers of returning spawning fish, these SCA ordinance proposals are burdensome and unnecessary.

**From:** [anonymous@noretaliation.com](mailto:anonymous@noretaliation.com)  
**To:** [Drumm, Kristin](#)  
**Subject:** Stream Cons Ordinance for SGValley  
**Date:** Thursday, November 4, 2021 12:44:24 PM

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Anonymous to prevent retaliation from SPAWN and residents would like information about: Setback measurements are simple and straight-forward with the online MarinMap Analysis Line (ruler) tool when measuring from the center of any stream, which is clearly displayed on the MarinMap.

<http://www.marinmap.org/Html5Viewer/Index.html?viewer=mmdataviewer>

However, measurements from the "top of the stream bank" are vague and impractical, on MarinMap or physically on site. At least where the terrain gradually slopes down to a stream over long distances greater than 10 feet, or the high water mark is more than 4 feet below any overflow area, the setback should be measured from the center of the stream. The ambiguity of the "top of the stream bank" renders setback measurements impractical.

**From:** [anonymous@noretaliation.com](mailto:anonymous@noretaliation.com)  
**To:** [Drumm, Kristin](#)  
**Subject:** SCO for SGV  
**Date:** Thursday, November 4, 2021 12:47:13 PM

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Anonymous to prevent retaliation would like information about:

A 100 foot SCA setback has been asserted from a perennial stream. A 20 foot setback is asserted for an ephemeral stream. Recognizing the relative significance, the setback from an intermittent stream should be changed to less than 50 feet.

Ephemeral and intermittent streams are less problematic than perennial streams. Expansion of SCA setbacks for riparian vegetation should apply only to perennial streams, not ephemeral and intermittent streams.

**From:** [anonymous@noretaliation.com](mailto:anonymous@noretaliation.com)  
**To:** [Drumm, Kristin](#)  
**Subject:** Stream Cons Ordinance Marin County  
**Date:** Thursday, November 4, 2021 1:12:09 PM

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Anonymous to prevent SPAWN retaliation would like information about:

Is the SCO goal to restore significantly more fish habitat? San Geronimo Valley streams support fish because the streams are in better shape than the rest of Marin. To restore more fish habitat, the SCO must apply to entire county, not just the small portion with streams that already support fish habitat.

It is unfair financial discrimination to target the cleanest streams, while allowing the wealthy parts of Marin County to continue to pollute their streams. To avoid discrimination, the SCO must fairly apply to the entire county.



October 25, 2021

Via Electronic Submission

Kristin Drumm, Senior Planner  
Community Development Agency, County of Marin  
Marin County Civic Center  
3501 Civic Center Drive  
San Rafael, CA 94903  
kdrumm@marincounty.org

*Comments on September 17, 2021 Draft Expanded Stream  
Conservation Area Ordinance for the San Geronimo Valley*

On September 17, 2021, the County of Marin (“County”) Community Development Agency (“CDA”) released a long-awaited public draft of the Expanded Stream Conservation Area Ordinance for the San Geronimo Valley (“Ordinance”) and invited public comment on its proposal. The purpose of the Ordinance is to mitigate the adverse impacts on salmonid habitat and survival in the San Geronimo Valley that would be caused by increased buildout under the 2007 Countywide Plan.<sup>1</sup> Although the draft Ordinance incorporates important watershed protections, as a whole, it underdelivers on this promise. The undersigned organizations submit the following comments to point out the most critical shortcomings in the Ordinance and provide recommendations for creating a clear, effective, and enforceable instrument.

The undersigned organizations comprise community groups and non-governmental organizations whose missions center on conserving and restoring natural ecosystems in and around Marin County. In particular, the undersigned organizations share a significant concern with the rapid declines in the populations of Central California Coast Coho salmon and steelhead trout, respectively listed as endangered and threatened species under the Federal Endangered Species Act, and a commitment to revitalizing these imperiled species and the habitats on which they depend. The County has identified buildout, and the disruptions it causes to riparian habitat and watershed health and integrity, as the most significant driver of salmonid species decline. The undersigned organizations are invested in ensuring that future buildout in the County is compatible with healthy riparian habitat and that the necessary investments are made to restore the integrity of County watersheds.

As discussed in comments on the draft Ordinance submitted by the Salmon Protection and Watershed Network (“SPAWN”) on October 7, 2021, the County’s final Supplemental Environmental Impact Report (“SEIR”) on the 2007 Countywide Plan for San Geronimo Valley

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<sup>1</sup> See CDA Cover Letter to Expanded Stream Conservation Area Ordinance for the San Geronimo Valley at p. 1 (Sept. 17, 2001) (explaining that the “scope of the SAC ordinance must . . . [i]mplement the legally mandated FSEIR mitigation measures”).

identifies two potentially significant cumulative impacts to salmonids and their habitat from the Plan: reduced survival of fry and juvenile salmonid life stages due to reduced winter rearing habitat, and reduced salmon spawning success due to elevated sediment delivery and increased high flow frequency and magnitude. The California Environmental Quality Act (“CEQA”) requires that the County identify and implement measures to mitigate these impacts to insignificance. The County has chosen to rely on an SCA Ordinance for this purpose.

While the undersigned organizations recognize that the County is balancing development prerogatives and property owner interests with watershed protection goals in crafting the Ordinance, its legal obligation to ensure that the Ordinance will effectively mitigate identified adverse impacts of buildout on salmonid spawning and survival is unyielding. The undersigned organizations share SPAWN’s concerns that the draft Ordinance falls short of fulfilling its purpose to effectively mitigate adverse impacts in the following key respects:

- **The Ordinance authorizes too much cumulative development within the SCA.**

To fulfill its purpose of mitigating adverse impacts from the 2007 Countywide Plan to salmonid spawning and survival in the San Geronimo Valley, the core functions of the Ordinance must be to prevent further degradation of riparian habitat and the expansion of impervious surfaces within the SCA. Yet taken together, the draft Ordinance’s expansive exceptions from full compliance (Ordinance § 22.30.045(A)(4)) and its universal 500 square-foot building area allowance (*id.* at § 22.30.045(A)(3)(b)) allow substantial cumulative development throughout the SCA. Indeed, given that the average building permit application for properties in the San Geronimo Valley is for 400 square feet, it is questionable whether the Ordinance as drafted would constrain buildout in the SCA at all. Nor is it clear where and to what extent SCA protections would apply as the County has not disclosed information on the number or location of parcels that would be eligible for exceptions under section 22.30.045(A)(4) or the SCA provisions that would be subject to waiver. If most SCA protections could be waived for most parcels, the Ordinance could not possibly function as an effective mitigation measure.

For the Ordinance to accomplish its purpose, these loopholes must be narrowed so that the Ordinance is effectively constraining development (including addition of any impervious surfaces) in the SCA. This would require significantly reducing the 500 square-foot building area allowance provided by section 22.30.045(A)(3)(b), as well as either significantly narrowing the scope of exceptions under section 22.30.045(A)(4) or eliminating the carveout altogether based on analysis of the number and location of implicated parcels. Further, the Ordinance should incorporate programs and incentives to keep buildout of new impervious surfaces within the SCA below regulatory limits as well as for habitat rehabilitation to restore already degraded areas.

In addition to making these changes to limit buildout and codify protections within the entire 100-foot or greater SCA area, the County should revise the Ordinance to impose heightened protections for the most sensitive portions of the SCA. The undersigned organizations urge the County to establish a minimum no-touch buffer for all parcels located partially or wholly within the SCA where development activities would be entirely precluded.

Such a buffer should be a minimum of 50 feet from the outer edge of the riparian vegetation, consistent with the best available science and the riparian vegetation buffer imposed to protect streams from impacts of adjacent uses under the 2021 Marin County Local Coastal Program Land Use Plan,<sup>2</sup> and in no event less than the 35-foot buffer recommended in the County's Salmon Enhancement Plan for San Geronimo Valley and discussed in SPAWN's comments.<sup>3</sup> Removal of riparian vegetation and buildout of any new impervious surfaces within this buffer should not be allowed, and the buffer should not be eligible for waiver or exception under section 22.30.045(A)(4) or otherwise. Adoption of this clear and readily enforceable no-touch zone within the SCA will protect the most sensitive riparian habitats and facilitate rehabilitation of degraded habitat. It would also help to ensure that any authorized development that does take place within the SCA under the Ordinance is adequately setback from the stream channel.

- **The Ordinance lacks core standards and definitions to ensure that the agency is applying its provisions in a clear and consistent way that effects the purpose of the Ordinance.**

As discussed in SPAWN's comments, the Ordinance suffers from significant vagaries that undermine its protective purpose and create a lack of clarity and consistency for property owners. For instance, the Ordinance fails to specify which provisions may be waived for parcels entirely within the SCA or to provide standards to guide the agency's consideration of requests for exceptions under subsection 22.30.045(A)(4), it lacks clear criteria for extending SCA protections to ephemeral streams, and core terms like "net loss of habitat" and "infeasibility" are undefined.

The undersigned organizations urge the County to provide clear standards and definitions consistent with the protective purpose of the Ordinance. For instance, degraded ephemeral streams with disrupted riparian vegetation should be explicitly eligible for full SCA protections to allow for restoration of critical habitat. And all ephemeral streams should be protected by the minimum no-touch buffer discussed above.

The proposed prohibition against "net loss in habitat acreage, value or function" in section 22.52.050(F) is one place where the lack of definitions and standards is particularly problematic. The prohibition on net loss of habitat acreage is key to fulfilling the Ordinance's promise of mitigating impacts of buildout on salmonid spawning and survival, and properly realized, it would help to ensure that future buildout is compatible with the health and integrity

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<sup>2</sup> Marin County Local Coast Program Land Use Plan (certified Feb. 6, 2019) at C-BIO-3 & C-BIO-24; *see also* C-BIO-25(4) ("The buffer shall not be adjusted to a distance of less than 50 feet in width from the edge of the stream-riparian [environmentally sensitive habitat area]."); *see also* City of Renton, *Best Available Literature Review and Stream Buffer Recommendations* at p. 6 (Feb. 27, 2003) (reviewing literature on minimum development setbacks from streams required for functions like temperature and shade, bank stability, and sediment control).

<sup>3</sup> *See* Comments by SPAWN on CDA's Sept. 17, 2021 Draft Expanded SCA Ordinance for San Geronimo Valley at p. 7 (Oct. 7, 2021); Marin County Dept. of Public Works, San Geronimo Valley Salmon Enhancement Plan at p. 2-21 (Feb. 9, 2010).



of the stream system. While the undersigned appreciate the inclusion of this provision, they are concerned by the lack of clarity in how it would be applied. For instance, it is currently unclear whether the provision requires onsite mitigation of habitat disruption on the same parcel where the project would take place, or whether it is intended to allow property owners to offset habitat impacts on one parcel by committing to mitigation measures elsewhere along the stream or in the watershed.

If the County intends to allow any offsite mitigation of habitat impacts, it must include clear standards governing the circumstances under which offsite mitigation would be allowed and to ensure that offsite mitigation provides real and verifiable protection against loss in habitat acreage, value or function. This means that any offsets must be appropriately sited and of a type and scale sufficient to completely offset impacts to habitat along the impacted stream. Further, the County will need to create enforceable legal mechanisms to provide for this offsite mitigation and to ensure that mitigation is real, additional, and verifiable. If such mechanisms are not in place, development cannot proceed absent sufficient onsite mitigation. The County should also make explicit that if all impacts to habitat from a development project cannot be fully and adequately offset, the project is not approvable and may not proceed.

- **The County must ensure that the Ordinance is more than a paper instrument.**

CEQA requires that the Ordinance “be fully enforceable” (CEQA Guidelines, 14 Cal. Code Regs. §§ 15126.4(a)(2)) and completely implemented (*id.* at § 15097(a)), and it requires a monitoring or reporting program to ensure compliance (*id.* at § 15097; Pub. Resources Code § 21081.6(a)(1)). At present, the draft Ordinance and the accompanying Mitigation Monitoring and Reporting Program in Exhibit G fall short.

The undersigned organizations join SPAWN in recommending that the County adopt a program for periodic and/or time-of-sale inspections to confirm baseline conditions and Ordinance compliance, in addition to providing for complaint-based inspections and inspections necessitated by application submittal. The County should also adopt specific enforcement provisions, such as classifying violations of the Ordinance as a public nuisance to provide for the exercise of nuisance abatement authority. Together these provisions would help ensure implementation of SCA protections and create an even playing field for property owners. Further, the County should design a more meaningful monitoring program that tracks implementation of SCA protections and the Ordinance’s effectiveness in mitigating the impacts of buildout under the 2007 Countywide Plan. For instance, in addition to monitoring compliance with Ordinance terms, the County should monitor and report on trends in quantity and quality of winter rearing habitat, in sediment delivery and flow alterations, and in juvenile salmonid spawning and survival rates to evaluate whether the Ordinance is performing as intended.

- **The County Should Expand SCA Protections to Other Impacted Watersheds**

Finally, while the undersigned organizations are pleased to see that the County has committed to adopting an SCA Ordinance for San Geronimo Valley in Spring 2022 after many years of delay, they are concerned by the silence as to SCA protections for other important

riparian habitats. The undersigned organizations urge the County to open a second SCA phase to expand streamside protections to appropriate areas throughout unincorporated County after the details for San Geronimo Valley are hammered out.

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The undersigned organizations appreciate the County's consideration of these comments. They look forward to continuing to work with the County on SCA protections and related programs that make development compatible with watershed integrity and give invaluable Coho salmon and steelhead trout species an opportunity to thrive.

Signed,

Laura Chariton  
President  
Watershed Alliance of Marin

Scott Webb  
Advocacy and Policy Manager  
Salmon Protection and Watershed Network

Jinesse Reynolds  
Chair  
Sierra Club Marin Group

Megan Isadore  
Executive Director  
River Otter Ecology Project

Morgan Patton  
Executive Director  
Environmental Action  
Committee of West Marin

Dear Kristin Drumm,

As residents of Marin County, we appreciate the county's efforts to create a Stream Conservation Area Ordinance. In its current form, however, the ordinance falls short of accomplishing its goal to protect safe habitat for Coho salmon, as required by the California Environmental Quality Act.

Coho salmon in the Central California Coast have declined more than 95% from historic population levels, and the San Geronimo watershed includes up to 20% of the state's remaining population. These fish are protected as an endangered species under the U.S. Endangered Species Act and the California Endangered Species Act, and a robust science-based stream side ordinance is necessary to protect this species that is teetering on the edge of extinction.

We, the 36 undersigned, call upon the county to address the following issues with the ordinance:

- The ordinance contains myriad exceptions and exemptions which allow far too much development within the Stream Conservation Area.
- The ordinance is ill-defined, vague, and ambiguous.
- The ordinance is virtually ineffective without performance standards, enforcement provisions, and reporting mechanisms.

Time is running out for Coho salmon, and we call upon the county to create an Ordinance that protects salmonids and our creekside communities for generations to come.

Signed,

Diane Brink, Fairfax	Alexander Vollmer, San Rafael	Kat Stranger, San Rafael
Michael Cooke, San Rafael	Regina Cardiff, Novato	Diana Somps, Novato
David DeSante, Forest Knolls	Tony Williams, Sausalito	Corinne Valentine, Mill Valley
Ellen Holmes, Bolinas	Lynette McLamb, Forest Knolls	James Francis Hurley IV, Greenbrae
Laura Honda, Fairfax	Jean Berensmeier, Lagunitas	Kathy Gervais, Novato
Christopher Lish, San Rafael	Herman Waetjen, San Anselmo	Shana Katzman, Mill Valley
Laura Marks, Sausalito	Courtney Fischer, San Rafael	AJ Ireland, Novato
Jeff McKay, Corte Madera	Linda Boccia, San Rafael	Patricia Frisk, Corte Madera
Eric Morey, Woodacre	Allan Young, Novato	Scott Webb, Lagunitas
Julie Nicholas, Mill Valley	Rene Voss, San Anselmo	Jenna Carando, Sausalito
Robert Rosenberg, Kentfield	Melvyn L. Wright, Woodacre	
Michael Rubenstein, Tiburon	Greg Murphy, San Anselmo	
Suzanna Sterling, Fairfax	David Swain, San Rafael	

**From:** [PlanningCommission](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: Facts for you to consider.  
**Date:** Monday, November 8, 2021 7:56:52 AM  
**Attachments:** [Lagunitas Adult Salmonid Monitoring 2021.pdf](#)

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**From:** niz@niz.com <niz@niz.com>  
**Sent:** Sunday, November 7, 2021 6:41 PM  
**To:** PlanningCommission <PlanningCommission@marincounty.org>  
**Subject:** Facts for you to consider.

The importance of Lagunitas Creek for the survival of the coho salmon in California is exaggerated. There are other creeks that are important and the species is plentiful enough further north such that coho won't be extinct.

Someone decided this was an evolutionary significant unit of coho.. who, why??

Those people who make their living supporting the importance of this creek do so because their livelihood depends on it.

The San Geronimo Valley is only 9% - Nine percent of the Lagunitas watershed.... The report cited below stated "the 2020-2021 season was the second year in a row spawning was concentrated in the main stem of Lagunitas Creek" Yet this is the only portion of the watershed that is affected by this ordinance. (See map on Page 13 of the report)

According to the report "Adult Salmonid Monitoring in the Lagunitas Creek Watershed 2020-2021" by Eric Ettlinger et.al, on page 6 "in 2019 an estimated 11,653 smolts emigrated from the Lagunitas Watershed which was the third highest estimate on record and survival in the ocean was 3% returning to spawn". This tells me the watershed is doing well and that the problem is in the ocean not in our creeks. No amount of draconian stopping of development in the San Geronimo Valley will improve the marine survival.

Because of two years of drought there were only 3 redds in the San Geronimo tributaries for the last two years. ( see page 12 of the report) And early surveys revealed no juveniles in the creeks in the valley.(Lagunitas TAC meeting last Friday) So they may already be extinct.

What is the county budget for the county participation in this ordinance.?

There are a letters asking for more restrictions. 39 people chimed in but only 6 are real stakeholders. The remainder live outside the valley and are not affected by this ordinance.. It is just a knee jerk conservationist response.

Niz Brown - resident of Woodacre since 1963.

**From:** [PlanningCommission](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: Comments on Stream Conservation Ordinance  
**Date:** Monday, November 8, 2021 7:56:08 AM

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**From:** Donell Peters <donell.peters@comcast.net>  
**Sent:** Saturday, November 6, 2021 5:21 PM  
**To:** PlanningCommission <PlanningCommission@marincounty.org>  
**Subject:** Comments on Stream Conservation Ordinance

SPAWN is blaming valley residents for their failures to re-populate fish. SPAWN fails to address outside influences, beyond the valleys control; global warming, pollution, & commercial fishing are examples. As fewer fish return to spawn yearly, the ocean habitat needs more attention, if species survival is the issue. Litigation is Spawn's business model. Their comments on the ordinance are unrealistic and impossible to achieve, so they will continue to sue, and get more donations.

I am a homeowner who lives on the creek. Fire safety is the #1 concern right now due to global warming. The ordinance has to be in alignment with the Marin Wildfire recommendations. Making us responsible for extra expenses that have no proven result is punitive. It's very clear that ocean conditions are the reason the salmon have declined.



Virus-free. [www.avast.com](https://www.avast.com)

**From:** [PlanningCommission](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: spawn conflict of interest 2  
**Date:** Monday, November 8, 2021 7:55:39 AM

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**From:** FRED BRETZ <fbretz@comcast.net>  
**Sent:** Saturday, November 6, 2021 10:55 AM  
**To:** PlanningCommission <PlanningCommission@marincounty.org>  
**Subject:** spawn conflict of interest 2

Spawn can make money by receiving grants from various government agencies for restorations on San Geronimo valley parcels. By having greater restrictions placed on these parcels they lose market value and are more easily obtainable by spawn. By being a non profit they have lessened property taxes and decrease their holding cost. Spawn cannot have both a restoration business and at the same time manipulate the value of local real estate it is at minimum unethical.

**From:** [PlanningCommission](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: Spawn conflict of interest  
**Date:** Monday, November 8, 2021 7:55:26 AM  
**Attachments:** [salmon count.pdf](#)

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**From:** FRED BRETZ <fbretz@comcast.net>  
**Sent:** Saturday, November 6, 2021 10:36 AM  
**To:** PlanningCommission <PlanningCommission@marincounty.org>  
**Subject:** Spawn conflict of interest

This letter is to protest the manipulation of San Geronimo creek by organizations that can reap financial rewards by bringing suit and obtaining funds for studies that do not result in greater quantity of coho salmon but in fact financially reward the organizations. Most people who live along the creek are pro the salmon and have seen how ineffective these outside groups are.

**From:** [PlanningCommission](#)  
**To:** [Drumm, Kristin](#)  
**Subject:** FW: Reason for discrimination  
**Date:** Monday, November 8, 2021 7:54:48 AM

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

From: linda gomez <liniegomez@gmail.com>  
Sent: Saturday, November 6, 2021 10:10 AM  
To: PlanningCommission <PlanningCommission@marincounty.org>  
Subject: Reason for discrimination

Please explain why the marin county planning commission has chosen to discriminate against the homeowners who live in San Geronimo valley. I personally find it irresponsible and poorly thought out along with being biased against those including myself who have chosen to make the “peaceful” valley our home

My goodness I thought more well educated folks were in a position to make intelligent decisions

Guess I was wrong

Linda Gomez

Sent from my iPhone