

## MEMORANDUM

**TO:** Marin County Planning Commission

**FROM:** Kristin Drumm

**DATE:** December 13, 2021

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

### SUMMARY

On November 8, 2020, your Commission held a public noticed workshop on the proposed Development Code Amendments for the Stream Conservation Area (SCA) Ordinance for the San Geronimo Valley. At the workshop your Commission heard testimony from 16 speakers and requested staff provide information regarding various topics, including: rationale behind the SCA ordinance; analysis of parcels within the SCA; Accessory Dwelling Units; enforcement; implications of Senate Bill 9 (SB-9); standards for applying the SCA ordinance exceptions; mitigation bank/offsite mitigation program; rezoning properties for the proposed SGV (San Geronimo Valley) combining district; performance measures; and pyrophytic vegetation. In addition, staff proposes a modification to Section 22.30.045.D.2 in the San Geronimo Community Standards regarding additions to existing permitted structures.

### DISCUSSION

#### 1. FSEIR Rational on the SCA Ordinance

Your Commission requested information describing the science and rational behind the proposed SCA ordinance. The 2007 CWP Final Supplemental EIR with a Focus on Cumulative Impacts on Salmonids in the San Geronimo Valley (FSEIR) provides information on the project and its background, environmental setting, and analysis of cumulative impacts on salmonids in the San Geronimo Valley resulting from the adoption and implementation of the Marin CWP with respect to the San Geronimo Valley and future buildout in the watershed (Proposed Project), followed by mitigation measures.

The FSEIR is supported by relevant policy documents, science, historical facts, and information from published scientific literature and unpublished scientific reports, including:

- 2007 Marin Countywide Plan
- 2007 Marin Countywide Plan Final Environmental Impact Report
- Geographic Information Systems spatial data, Department of Public Works (2005 – 2016)
- San Geronimo Valley Salmon Enhancement Plan Existing Conditions Report, Stillwater Sciences (2009)

- San Geronimo Valley Salmon Enhancement Plan: A Guidance Document, Prunuske Chatham Inc. and Stillwater Sciences (2010)
- Final Recovery Plan for Central California Coast coho salmon Evolutionary Significant Unit, National Marine Fisheries Services (2012)
- Public Draft Multispecies Recovery Plan, Volume IV, Central California Coast steelhead, NMFS, (2015)
- Lagunitas Creek watershed fine sediment reduction and habitat enhancement plan, San Francisco Bay Regional Water Quality Control Board (2014)
- Adult salmonid monitoring/spawner survey reports, Marin Municipal Water District (2009 – 10 through 2015 – 16 spawning seasons)

The FSEIR concludes two potential significant cumulative impacts, and one less-than-significant impact would occur because of possible future development of the CWP goals, policies and implementing programs on anadromous salmonids and their habitat in the San Geronimo Valley. Further, implementation of the respective identified mitigation measures will reduce the new potentially significant cumulative impacts to a less-than-significant level. The cumulative impacts and respective mitigations are summarized as follows: .

- **Impact 5.1. Reduced Survival of Fry and Juvenile Salmonid Life Stages Due to Reduced Winter Rearing Habitat Quality.** This impact was determined to be potentially significant due to alterations in hydrodynamic processes resulting from projected increases in total impervious area (TIA) and other urbanization effects under full buildout of all parcels in the watershed, the "Proposed Project", which would make a cumulatively considerable contribution to increased winter storm flow magnitude and frequency, in turn causing additional habitat simplification and further compromising the ability of rearing coho salmon to find adequate refuge during high flows. Implementation of Mitigation Measures 5.1-1 and 5.1-2 would reduce this impact to a less-than-significant level.

*Mitigation Measure 5.1-1: Expanded Stream Conservation Area (SCA) Ordinance.* The County shall adopt an Expanded SCA Ordinance consistent with Goal BIO-4 and associated Implementing Programs under the Proposed Project.

*Mitigation Measure 5.1-2: Require Biotechnical Techniques and Salmonid Habitat Enhancement Elements for All Bank Stabilization Projects.* Marin County shall require that biotechnical techniques and salmonid habitat enhancement elements be included for all permitted bank stabilization projects.

- **Impact 5.2. Reduced Salmonid Spawning Success Due to Elevated Sediment Delivery and Increased High Flow Frequency and Magnitude.** This impact was determined to be potentially significant due to alterations in hydrodynamic processes resulting from projected increases in TIA and other urbanization effects under the Proposed Project, which would increase winter storm flow magnitude and frequency, and inputs of development-related fine sediment to stream channels. These conditions would further increase the risk of streambed and redd scour, thus making a cumulatively considerable contribution to the existing adverse impacts on coho salmon and steelhead spawning success. Implementation of Mitigation Measures 5.1-1 and 5.2-1 would reduce this impact to a less-than-significant level.

*Mitigation Measure 5.1-1: Expanded Stream Conservation Area (SCA) Ordinance (see above).*

*Mitigation Measure 5.2-1: Control and Reduce Production and Delivery of Fine Sediment to Streams.* The County shall adopt changes to existing stormwater, Low

Impact Development (LID), erosion and sediment control requirements within the San Geronimo watershed and outside of the SCA.

- Potential Impact 5.3. Reduced Salmonid Summer Rearing Success Due to Degraded Habitat Conditions Including Reduced Habitat Complexity, Reduced Streamflow, and Increased Water Temperature.** This impact was determined to be less than significant because potential reductions in stream habitat quality and riparian function related to full buildout in the watershed would be relatively minor and likely too small to substantially or measurably reduce the ability of juvenile salmonids to rear and grow during the summer rearing period. The potential for impacts on salmonid summer rearing success due to development-related reductions in summer baseflows could not be determined due to lack of available data on the potential hydrologic and biologic effects of groundwater pumping and surface water diversions in San Geronimo Valley. While the Proposed Project is not capable of fully avoiding or eliminating impacts to water quality, sediment delivery, and instream habitat complexity associated with future development, it is unlikely that any such impacts would make a considerable contribution to the existing cumulative impacts on coho salmon and steelhead summer rearing success. Although Potential Impact 5.3 is less than significant, the County has nonetheless elected to pursue a voluntary mitigation measure consistent with its commitment to avoiding or minimizing impacts to the maximum extent practicable.

*Voluntary Mitigation Measure 5.3-1: Groundwater Study.* The County shall undertake a voluntary study to determine whether existing and future groundwater pumping, surface water diversions, altered watershed hydrology, and other effects related to development (e.g., septic systems, landscape irrigation) are or would be likely to adversely impact summer baseflow in the San Geronimo Creek.

2. SCA Parcel Analysis

Several commenters requested updated information on the number of parcels that would be entirely encumbered by the SCA, as a result of the new countywide stream network that was recently developed as part of the County’s participation in the One Tam mapping project. The FSEIR provides data on the number of existing and proposed improved parcels in Table 2-13: *Number of Improved Parcels by Subbasin or Mainstream Reach and Location Relative to the SCA for San Geronimo Valley*, as summarized below:

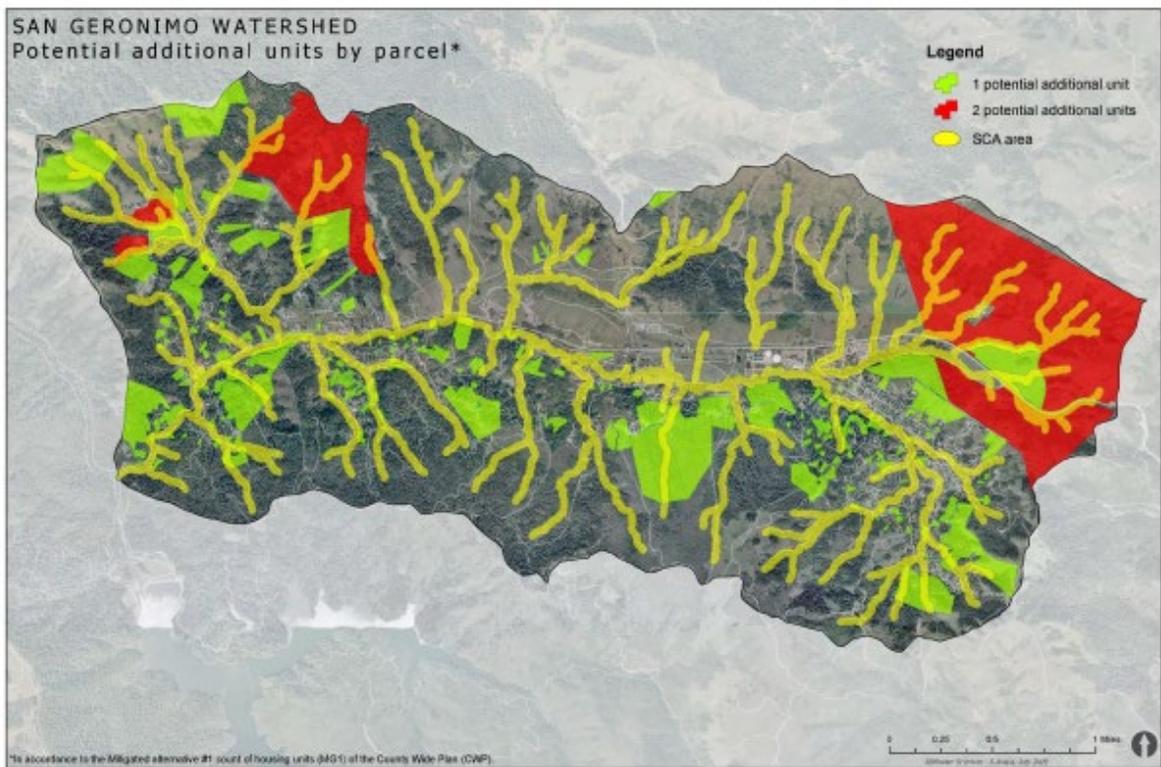
<b>Number of Improved Parcels for the San Geronimo Valley</b>			
Improved Parcels	Existing Conditions	Proposed Project (Theoretical Future Buildout)	Difference
Completely within SCA	93	118	25 (27%)
Partially within SCA	648	767	119 (18%)
Outside SCA	674	847	173 (26%)
<b>Total</b>	<b>1,415</b>	<b>1,732</b>	

Source: FSEIR, Table 2-13, p. 2-42

According to the table, the estimated number of improved parcels entirely within the SCA would increase from 93 to 118, and from 648 to 767 for improved parcels partially within the SCA, for a total increase of 141 additional parcels at buildout. Theoretical buildout is a projection of development which could occur if vacant land were fully developed according to

zoning. In some cases, theoretical buildout may be greater than the development that would realistically occur due to environmental constraints that are likely to reduce the number of buildable parcels, such as inadequate percolation for on-site septic systems, lack of access via paved roads, and steep topography necessitating engineered foundation designs.

The FSEIR also analyzed parcel size. In this regard, the FSEIR concludes that there are “relatively few parcels small enough (less than 0.5 acres) to lack significant flexibility in development placement located completely in the SCA.”<sup>1</sup> Further, the FSEIR states that “the majority of small parcels would be located partially within the SCA, such that development within the SCA itself could be avoided, or could be located outside the SCA”<sup>2</sup>. Accordingly, “very few parcels (greater than 0.5 acres) would be located completely within the SCA, since the SCA itself only extends 100 feet from the top of bank side of the stream.”<sup>3</sup> A map showing the locations of potential units by parcel is shown below (see also attachment x):



Source: FSEIR, Figure 2-7

While an updated analysis would be informative, such analysis is not essential, nor would it result in a change to the SCA ordinance framework or approach. Providing this information would require a parcel-by-parcel analysis of lot attributes and consideration of assumptions regarding future development potential. This work is not addressed in the scope of the Board approved work program. Nevertheless, staff could consider work to map and analyze the SCA as part of a future work program to refine the CWP riparian protection policies and develop a comprehensive SCA Ordinance for the remainder of Marin’s unincorporated areas. The scope

<sup>1</sup> FSEIR, p. 2-39

<sup>2</sup> IBID

<sup>3</sup> IBID

of this work program would undergo public comment and review and would be considered by the Board of Supervisors.

### 3. Accessory Dwelling Units

Public feedback included a request to clarify the permit process for Accessory Dwelling Units (ADUs) proposed in the SCA. State law mandates local jurisdictions cannot prohibit and must ministerially approve an ADU that does not exceed a floor area of 800 square feet, a height of 16 feet above grade, and has a minimum rear and side yard setbacks of four feet. This is considered a Category 1 ADU. Of the four categories of ADUs in unincorporated Marin County, only Category 1 ADUs are not required to be located outside of any sensitive habitat areas, including the SCA. Details can be found in Development Code section 22.32.120 (Residential ADUs) and Chapter 22.56 (Residential ADU Permits).

Lots in the San Geronimo Valley are served by onsite wastewater treatment systems, or septic systems. The Marin County Department of Environmental Health Services (EHS) regulates septic systems pursuant to Title 18 (Sewers) of the Development Code pertaining to the construction, alteration, repair, or replacement of septic systems. These regulations tie the gross floor area of a residence to the septic system size, which means a proposed ADU on a lot with a septic system would require EHS review, but not Planning review, since improvements not exceeding 18 inches above grade, such as a septic system, do not require a land use permit regardless of zoning. However, alternative sewage disposal systems, such as a “mound” system, are subject to additionally requirements and may require discretionary review. While the proposed SCA Ordinance would require discretionary review for an activity that would require vegetation removal, soil exposure, increase surface runoff or lot coverage, or alter the bed, bank, or channel of a stream, it would also exempt the repair or replacement of septic systems that incorporate applicable Marin County Stormwater Pollution Prevention Program (MCSTOPPP) minimum erosion control, sediment control, and good housekeeping best management practices. Regardless, the recently enacted State laws related to ADUs preempt local legislation.

### 4. Standards to Apply Exceptions to Full Compliance with SCA Provisions

Public feedback indicated the proposed ordinance lacks standards regarding how staff would apply the exceptions to full compliance with all SCA ordinance standards, including parcels located entirely within the SCA. All development applications are reviewed in conformance with the SCA policies and proposed ordinance standards. In compliance with CWP Policy BIO-4.1 and FSEIR, the proposed amendments include Section 22.30.045.E of the San Geronimo Valley Community Standards as follows:

Exceptions to full compliance with all stream conservation area criteria and standards may be allowed only if the following are true:

1. A lot falls entirely within the stream conservation area; or
2. Development on a parcel entirely outside the stream conservation area either is infeasible or would have greater impacts on water quality, wildlife habitat, other sensitive biologic resources, or other environmental constraints than development inside the stream conservation area.

Staff concurs additional guidance could be provided in the resource materials that accompany the ordinance and which are a work in progress. Staff will work to update relevant documents and report back at the Board of Supervisors hearing tentatively scheduled for March 2022.

## 5. Enforcement

The SCA Ordinance does not change the status or enforcement of illegal structures. While existing structures that were not subject to land use permits prior to the SCA Ordinance, such as sheds, would be considered legal non-conforming, structures that were illegally constructed will not benefit from the exemptions of the SCA Ordinance. Enforcement is carried out through CDA's Code Compliance program, which ensures compliance with the County's laws and regulations for zoning, construction, and environmental health, and is complaint based.

With respect to illegal structures, the ordinance will create a better-defined path to obtain a permit for a structure within the SCA. Any permit for an illegal structure would be evaluated against the standards of the Development Code that are in effect at the time the permit application is received. With regards to illegal construction, when it is discovered that a builder has performed construction without first obtaining the required permits, no construction permits will be issued for development on the property unless those permits are to resolve the violation. In addition, staff will report the builder to the State licensing board.

Comments have suggested the County implement a point-of-sale inspection program to verify that any modifications or improvements to structures on a property are in conformance with the proposed ordinance and were constructed with permits. The Board approved work program does not currently include the development of such a program. Any such program would undergo public input and require approval by the Board of Supervisors.

## 6. Implications of Senate Bill 9 Implementation

Senate Bill 9 (SB-9) was signed by Governor Newsom on September 16, 2021 and becomes effective January 1, 2022. This bill requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split), or both, if certain requirements are met. The County may apply objective subdivision and design standards that do not conflict with the bill's objective to address an overall shortage of affordable housing, which the State has declared is a "matter of statewide concern."

The CDA's customer service team is currently in the process of evaluating the implications of this and other new laws. SB-9 will apply to parcels located within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau. Based on the 2010 Census – Urbanized Area Reference Map for the San Francisco – Oakland Urbanized Area (Figure 1). It appears Woodacre is the only San Geronimo Valley community located within the defined Urbanized Area boundary. The communities of San Geronimo, Forest Knolls, and Lagunitas are excluded, which means SB-9 would not apply. Nevertheless, staff will confirm this finding and report back at the Board of Supervisors hearing tentatively scheduled for March 2022.

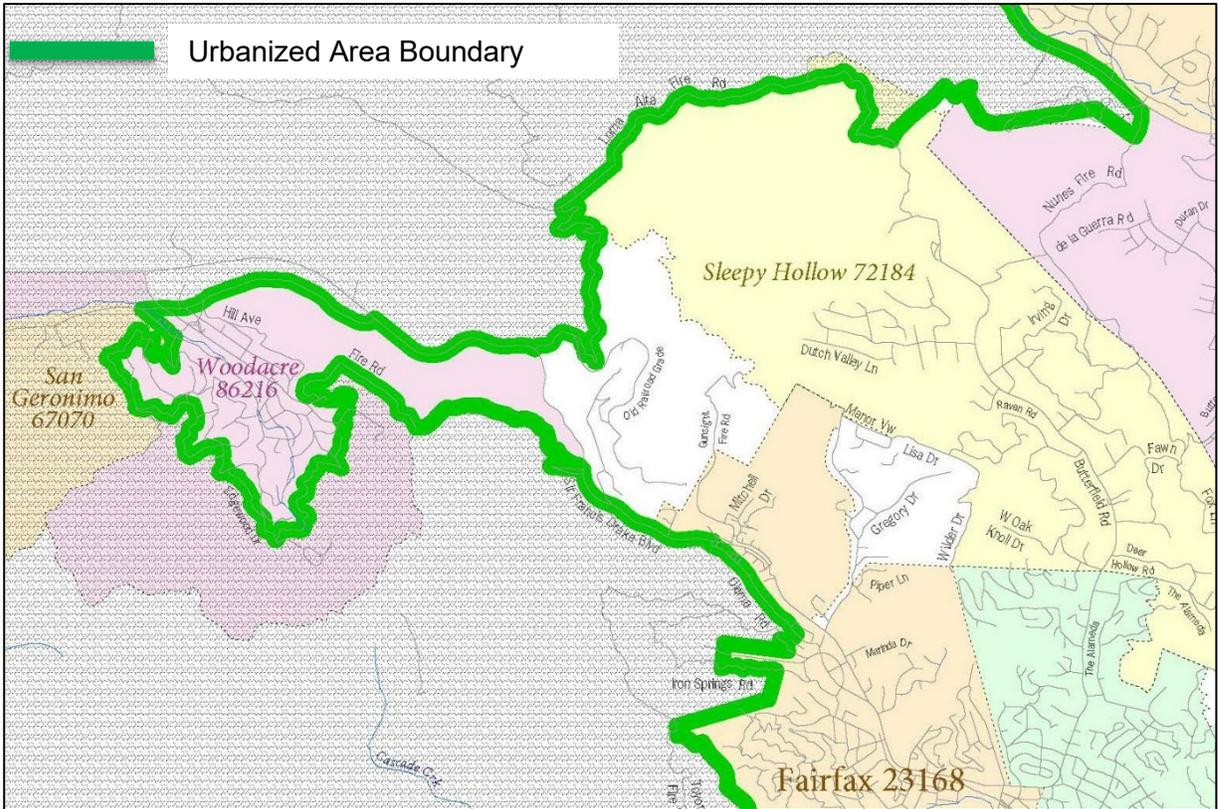


Figure 1: Excerpt of the 2010 Census Urbanized Area Reference Map for the San Francisco - Oakland Urbanized Area

7. Mitigation Bank/Offsite Mitigation Program

Your Commission requested clarification regarding the ordinance approach for offsite mitigation in the absence of an established mitigation bank program. CWP Policy BIO-2.2 prioritizes modifying new development to avoid impacts on sensitive resources or to adequately mitigate impacts on-site, or off-site replacement at a higher ratio. In addition, Mitigation Measure 5.1-1, Provisions 4 and 5, require on-site mitigation for riparian vegetation and habitat restoration, as well as measures to avoid or minimize surface runoff and sediment erosion, respectively. However, if on-site mitigation is not feasible, off-site replacement of riparian vegetation at a 3:1 ratio would be allowed in a functionally equivalent riparian area of San Geronimo Creek or its major tributaries within reaches accessible to anadromous salmonids. Similarly, off-site retrofit to address surface runoff and sediment erosion would be required to occur on existing impaired sites at a 2:1 ratio for total runoff area in a functionally equivalent riparian area of San Geronimo Creek or its major tributaries within reaches accessible to anadromous salmonids. If functionally equivalent off-site mitigation opportunities cannot be identified within these locations, then opportunities can be selected elsewhere in San Geronimo Valley and/or in the downstream Lagunitas Creek watershed using existing site-specific sediment source assessments (e.g. San Geronimo Valley Non-County Maintained Roads Erosion Assessment and Implementation).

The Board approved scope of work does not address the development of a mitigation bank program. The details of such a program would be developed as part of a separate public process and would be adopted by the Board of Supervisors. In the meantime, the specifics for each off-site mitigation opportunity would be addressed on a project-by-project basis.

8. Rezoning Properties for the Proposed SGV (San Geronimo Valley) Combining District

Your Commission and public feedback requested clarification regarding the County's approach to rezoning lots within the San Geronimo Valley with the proposed SGV (San Geronimo Valley) combining district. Development Code Section 22.06.020 (Zoning Districts Established) establishes the -B (Minimum Lot Size) and -BFC (Bayfront Conservation) combining districts. The combining district is a supplementary zoning designation that is applied to a property with a primary residential, commercial, or agricultural zoning district to highlight areas where important site, neighborhood, or area characteristics require particular attention in project planning. In this case, the FSEIR not only mandates specific provisions that would be unique to properties *within* the SCA, but would also apply stricter stormwater, erosion and sediment control, and Low Impact Development (LID) requirements to properties *outside* the SCA. These requirements would be exclusive to the San Geronimo Valley. The proposed rezoning for the new SGV combining district would provide the mechanism to comply with these mandates, including the provision to enact consistent permit and site assessment requirements for development in both planned and conventional zoning districts within the SCA.

Similar combining districts have been established for the communities of Lucas Valley, Sleepy Hollow, and Tamalpais Valley, while the -BFC combining district consists of tidelands, diked bay marshland, and shoreline subzones. Table 1 shows existing zoning and proposed zoning with the SGV combining district. This rezoning is consistent with the CWP.

<b>Table 1 Existing and Proposed Zoning for the San Geronimo Valley</b>		
<b>Existing Zoning</b>	<b>Zoning Description</b>	<b>Proposed Zoning with SGV Combining District</b>
OA	Open Area	SGV-OA
ARP-20	Agriculture, Residential Planned	SGV-ARP-20
ARP-10	Agriculture, Residential Planned	SGV-ARP-10
ARP-7.5	Agriculture, Residential Planned	SGV-ARP-7.5
ARP-2	Agriculture, Residential Planned	SGV-ARP-2
ARP-1	Agriculture, Residential Planned	SGV-ARP-1
RSP-0.05	Residential, Single Family Planned	SGV-RSP-0.05
RSP-0.09	Residential, Single Family Planned	SGV-RSP-0.09
RSP-0.1	Residential, Single Family Planned	SGV-RSP-0.1
RSP-0.47	Residential, Single Family Planned	SGV-RSP-0.47
RSP-0.5	Residential, Single Family Planned	SGV-RSP-0.5
RSP-0.625	Residential, Single Family Planned	SGV-RSP-0.625
RSP-1	Residential, Single Family Planned	SGV-RSP-1
PF-RSP-0.1	Public Facility, Residential, Single Family Planned	SGV-PF-RSP-0.1
RA-B4	Residential, Single Family	SGV-RA-B4
R1-B4	Residential, Single Family	SGV-R1-B4
R1-B3	Residential, Single Family	SGV-R1-B3
R1-B2	Residential, Single Family	SGV-R1-B2
R1-B4	Residential, Single Family	SGV-R1-B4
RCR	Resort and Commercial Recreation	SGV-RCR
VCR	Village Commercial/Residential	SGV-VCR

CP	Commercial, Planned	SGV-CP
H1	Limited Roadside Business	SGV-H1

## 9. Performance Measures

Comments have suggested the ordinance include performance measures to monitor progress and evaluate the overall ordinance objective to improve fish populations. While the proposed ordinance lacks specific performance measures, the FSEIR Mitigation Measure 5.1-1 requires the County to complete the ordinance within five years of FSEIR certification and provide biannual progress reports to the Board of Supervisors. While details of the report's required contents are not provided, it may be reasonable for the report to address information such as: the number of Site Plan Review applications approved, conditionally approved or denied; project type(s); appeals; enforcement actions; amount of impervious area created or replaced; and amount of riparian vegetation that remains intact. Other information could include counts of adult salmonids within the San Geronimo Valley. Various resource agencies and nonprofit groups annually conduct fish counts intended to document the spawning run of Coho Salmon while also collect data on steelhead, Chinook Salmon, and other species. In addition, information on stream, habitat, fisheries, floodplain, and other restoration projects within the watershed, when available, could also be provided.

## 10. Pyrophytic Vegetation

The proposed ordinance would exempt the removal or trimming of pyrophytic, combustible live trees and vegetation from Site Plan Review. Comments requested the ordinance include a list of pyrophytic vegetation for clarity. Examples of flammable trees include tanoak, California Bay laurel and Douglas fir species, as well as eucalyptus. Flammable vegetation includes acacia, broom, and pampas grass. Firesafe Marin ([www.firesafemarin.org](http://www.firesafemarin.org)) provides a helpful reference list of [fire-resistant plants common to Marin County](#) and pictures [of fire hazardous plants](#). Other resources include the "fire smart landscaping" page of the Marin chapter of the California Native Plant Society for a list of native plants to replace plants considered fire-hazardous, and "[how to choose plants](#)" page of the UC Marin Master Gardeners website. Numerous other resources are also available. Staff will work to compile information to include in the ordinance resource materials and will report back at the Board of Supervisors hearing tentatively scheduled for March 2022.

## 11. Additions up to 500 Square Feet

Staff proposes to modify Section 22.30.045.D.2 regarding limitations of allowable land uses within the SGV combining district pertaining to additions to existing structures, as follows (see Attachment 2):

**Floor area A** additions to existing permitted structures that do not increase the footprint within the Stream Conservation Area by **more than** a cumulative total of 500 square feet **of building area** and that does not increase the existing horizontal encroachment into the Stream Conservation Area. The 500 square feet of cumulative floor area shall be calculated following the effective date of **the Development Code Amendments for the SCA Ordinance** this section ( , 2022).

This change would allow floor area rather than building area additions, which is consistent with CWP Program BIO-4.q. Program BIO-4.a calls for an expanded SCA ordinance that could, for example, allow additions that do not exceed 500 square feet of total floor area. Floor area, as defined, includes the sum of the gross area of all floors in all buildings on a site, measured from the exterior faces of the exterior walls, including enclosed understory, basement, and attic space that can be easily converted to living area. Unenclosed horizontal

surfaces, such as balconies, decks, porches, and terraces are excluded. Building area is the sum of the floor area of all floors in all buildings on a site and includes garages, carports, storage buildings, and other detached or attached accessory structures, such as decks. Consequently, new garages, carports, storage buildings, and decks would not be allowed.

Commissioners requested staff clarify that any proposed addition would need to conform with the existing development standards of the underlying zoning district, including setbacks, height, and floor area ratio. The proposal to rezone for the SGV combining district would not change those development standards. A Variance would be required for any adjustment to those standards.

## **RECOMMENDATION**

Staff recommends the Planning Commission review the administrative record, conduct a public hearing, and adopt a resolution (Attachment 1) recommending that the Board of Supervisors adopt amendments to Marin County Code Title 22 (Development Code) for the Stream Conservation Area for the San Geronimo Valley (Attachment 2).

## **ATTACHMENTS:**

### **1. Recommended Resolution**

Exhibit A: Proposed Development Code Amendments for the Expanded Stream Conservation Area Ordinance for the San Geronimo Valley, November 2021

Exhibit B: San Geronimo Valley Existing Zoning

Exhibit C: San Geronimo Valley Proposed Zoning – SGV Combining District

### **2. Final SEIR, Figure 2-7: Map of San Geronimo Watershed Showing the Distribution of Unimproved Parcels with Potential for Development of One or Two Additional Units Under the Marin CWP (2007).**

### **3. Correspondence:**

- Email from Linda Gomez, dated 11/6/2021
- Email from Fred Bretz, dated 11/6/2021
- Email from Fred Bretz, dated 11/6/2021
- Email from Donell Peters, dated 11/6/2021
- Email from Niz Brown, dated 11/7/2021
- Letter from Anonymous, dated 11/8/2021
- Letter from Judy Schriebman, Sierra Club, dated 11/8/2021
- Letter from the San Geronimo Valley Stewards, dated 11/9/2021
- Email from Charlotte AB Troy, dated 11/9/2021
- Email from Fred and Jean Berensmeier, dated 11/11/2021
- Email from the San Geronimo Valley Stewards, dated 11/13/2021
- Email from the San Geronimo Valley Stewards, dated 11/19/2021
- Email from the San Geronimo Valley Stewards, dated 11/19/2021
- Letter from the Marin Audubon Society, dated 11/22/2021
- Email from Gerald Toriumi, dated 12/1/2021
- Letter from Anonymous, undated