



**STAFF REPORT TO THE MARIN COUNTY
PLANNING COMMISSION**

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

Recommendation: Conduct a hearing to consider the
proposed rezoning and code amendments

Hearing Date: June 13, 2022

Agenda Item: 5

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PROJECT SUMMARY

Your Commission considered the proposed Development Code Amendments for the Stream Conservation Area Ordinance (SCA Ordinance) for San Geronimo Valley during a public workshop on November 7, 2021, and a public hearing on December 13, 2021 (Attachments 1 and 2). The proposed SCA Ordinance is part of a larger, interdepartmental program to ensure that development in the San Geronimo Valley Watershed is consistent with the Marin Countywide Plan (CWP) and 2019 Final Supplemental Environmental Impact Report with a Focus on Potential Cumulative Impacts on Salmonids in San Geronimo Valley (FSEIR). At the conclusion of the hearing, your Commission unanimously recommended adoption of the SCA Ordinance to the Board of Supervisors with the following requested modifications:

- Modify Section 22.30.045.D (Limitations on Uses) to clarify additions to existing structures would need to comply with all other applicable requirements of the Development Code. This would address public concern that the cumulative 500 square foot floor area allowance is not a blanket allowance and would be required to comply with the development standards for floor area, height, and setbacks of the underlying zoning district; and
- Modify Section 22.52.030.D.2 (Site Plan Review Exemptions) to ensure removal of pyrophytic vegetation, which would be exempt from Site Plan Review, would require consistency with Chapter 22.62 (Tree Removal Permits).

Your Commission's recommendation also included a request that staff's biannual report to the Board of Supervisors on the SCA Ordinance performance include information such as: the number of Site Plan Review applications approved, conditionally approved or denied; project type(s); appeals; enforcement actions; and amount of impervious area created or replaced.

On May 16, 2022, the Board reached a tentative settlement framework (Tentative Agreement) with the Salmon Protection and Watershed Network as provided in Attachment 3. The terms of the Tentative Agreement would resolve all ongoing litigation going back to the original litigation

challenging the adequacy of the Final Environmental Impact Report (EIR) for the Marin Countywide Plan (CWP) certified by the Board of Supervisors in 2007. The Tentative Agreement would revise the SCA Ordinance approved by your Commission with new content not previously considered, as shown in the Revised SCA Ordinance, which is presented for your consideration in Attachment 1.

BACKGROUND

As recommended for approval by your Commission, the SCA Ordinance consists of a suite of amendments to the County's zoning ordinance (Development Code) that builds upon the Marin Countywide Plan's (CWP) commitment to protect riparian resources, which dates to the early 1970's, to safeguard the health of streams and habitat for endangered coho salmon and steelhead trout in the San Geronimo Valley. Coupled with the FSEIR mitigation measures, the SCA Ordinance advances stream protections not only within the SCA, but to all properties throughout the Valley watershed. The SCA Ordinance also includes various supporting resource materials to provide guidance to homeowners and contractors.

Consistent with CWP Goal BIO-4 (Riparian Conservation), the proposed Development Code amendments would establish a regulatory framework consisting of standards for development and permit review procedures specific for the SCA in San Geronimo Valley that would:

- Establish an SCA buffer on each side of the top of bank that is the greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank, along all perennial and intermittent streams, and certain ephemeral streams.
- Expand the types of improvements that require discretionary review to include any activity, use of land, or other improvement that would: a) entail grading or otherwise expose soil; b) increase lot coverage or surface runoff; c) remove vegetation or woody riparian vegetation; or d) alter the bed, bank, or channel of any stream.
- Require Site Plan Review for proposed development within the SCA. This permit is intended to ensure that development respects the natural constraints of the property and protects environmental resources from excessive disturbance.
- Limit exemptions from discretionary review to the trimming and removal of dead, invasive, and exotic vegetation, including fire-prone (pyrophytic) vegetation consistent with wildfire and defensible space requirements. Repair and maintenance of septic systems, development subject to a Creek Permit, and subdivisions pursuant to the Subdivision Map Act would also be exempt.
- Require a site assessment for development located in the SCA to evaluate a site's biological setting assess potential impacts to stream ecology, riparian ecology, and hydrology, including the potential for impacts to anadromous salmonids; and provide findings regarding potential environmental effects. The site assessment would also map the precise boundary of the SCA.
- Require development incorporate site appropriate Standard Management Practices (SMPs) for the protection of hydrologic processes, stream and riparian habitat, and water quality. The SMPs consist of vegetation management, stormwater run-off, erosion and sediment control measures, and construction management practices that directly

offset or avoid impacts to salmonids. These best practices are identified as part of the site assessment.

- Limit land uses within the SCA to the maintenance and repair of existing structures; projects to improve fish and wildlife habitat; stream crossings for roads and driveways, if no other location is feasible; passive recreation; water supply and flood control projects; and certain agricultural activities that would not remove woody riparian vegetation, prevent wildlife access, increase sedimentation, or confine animals in the SCA.
- Allow additions to existing structures of up to a cumulative total of 500 square feet of floor area subject to compliance with all other Development Code requirements, including floor area ratio, height, and setback standards. The addition must not expand closer to the stream than the existing footprint, while no additional floor area will be permissible once the allowance is exhausted, consistent with state law.
- Require a new finding, in addition to existing findings that development in the SCA would not: a) adversely alter hydraulic capacity; b) result in a net loss of habitat acreage, value or function; and/or c) degrade water quality.
- Ensure stormwater and Low Impact Development (LID) requirements are applied throughout the entire San Geronimo watershed, not just within the SCA. Requiring some degree of LID measures regardless of location is a standard practice used by other municipalities in California and the Pacific Northwest.

The proposed SCA Ordinance would also rezone all lots within the boundary of San Geronimo Valley to add the new SGV (San Geronimo Valley) combining district (Attachment 2). This rezoning would ensure uniform permit requirements for development in both planned and conventional zoning districts within the SCA, as well as enable compliance with stormwater, erosion and sediment control, and Low Impact Development (LID) requirements on properties outside the SCA and throughout the Valley watershed.

For unincorporated areas outside San Geronimo Valley, Site Plan Review would continue to be required for vacant legal lots of record within the SCA that adjoin a mapped anadromous fish stream and tributary.

DISCUSSION

As summarized above, various modifications are proposed to the Planning Commission recommended Development Code Amendments for the SCA Ordinance. These changes would: 1) Require new standards for LID and road and driveways for properties outside the SCA; 2) Modify site assessment requirements; 3) Expand the SCA to include all ephemeral streams; 4) Clarify measurement of SCA for ephemeral streams; 5) Create a minimum 35-foot buffer along all streams; 6) Reduce additions from 500 s.f. of floor area to 300 s.f. of lot coverage; 7) Modify exceptions to SCA compliance; 8) Modify exemptions allowing for the removal of pyrophytic vegetation; 9) Clarify “not net loss of habitat”; 10) Require a Habitat Restoration Program fee; and 11) Enforce compliance with SCA provisions. Additional settlement terms would: 12) Establish a voluntary point of sale inspection program; 13) Implement system to allow anonymous complaints; 14) Expand enforcement capacity; and 15) Address specific metrics in the biannual report.

The proposed modifications to the Revised SCA Ordinance are color coded as follows:

- Items in ~~red strikethrough~~ or underline show modifications in response to the Tentative Agreement dated May 16, 2022.
- Items in **yellow highlights** show proposed staff recommended changes.

1. Require new standards for LID and roads and driveways for properties outside the SCA

FSEIR Mitigation Measure 5.2-1 requires the County to adopt changes to existing stormwater, Low Impact Development (LID), erosion, and sediment control requirements within the SCA. To comply, staff recommends a modification to Section 22.30.045 that would: 1) provide new design criteria for non-county maintained and privately owned roads; and 2) apply enhanced LID requirements for development throughout the San Geronimo Valley watershed, not just within the SCA. These measures are necessary to avoid or minimize hydrologic effects and stream sedimentation associated with potential development on redd scour and degradation of salmonid winter rearing habitat. These proposed changes are shown as follows:

1. Roads and Driveways. Non-county maintained roads and privately owned and maintained roads, including new roads and driveways, either paved or unpaved, shall be constructed to the standards specified below:

a. Surface drainage.

- i. Road surfaces and ditches are hydrologically "disconnected" from streams and stream crossing culverts, with a maximum allowable hydrologic connectivity of 25% of the total new road surface and compacted shoulder area (paved and unpaved). To be considered disconnected, road surface runoff is dispersed, rather than collected and concentrated, and does not return to a connected ditch farther downstream.
- ii. Fine sediment contributions from roads, cutbanks and ditches are minimized by utilizing seasonal closures and installing a variety of surface drainage techniques including berm removal, road surface shaping (i.e., outsloping, insloping, crowning), rolling dips, ditch relief culverts, waterbars and other measures to disperse road surface runoff and reduce or eliminate sediment delivery to the stream.

b. Road fills.

- i. Unstable and potentially unstable road fills that could deliver sediment to a stream are excavated (removed) or structurally stabilized
- ii. Excavated spoil is placed in locations where eroded material will not enter a stream
- iii. Excavated spoil is placed where it will not cause a slope failure or landslide

- c. Off-site retrofits. If on-site avoidance or minimization of surface runoff and sediment erosion is not feasible using the above criteria, off-site retrofit of existing impaired sites (e.g., stream crossings currently diverted or with diversion potential, culverts likely to plug or undersized culverts), would occur at a 2:1 ratio for total runoff area in a functionally equivalent riparian area of San Geronimo Creek or its major tributaries (North Fork San Geronimo

Creek, Woodacre Creek, Montezuma Creek, Arroyo/Barranca/El Cerrito Complex, Larsen Creek) 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.

2. **Low Impact Development.** Development outside the Stream Conservation Area that would create or replace 500 square feet or more of impervious surface lot coverage shall incorporate low impact development practices and designs that are demonstrated to prevent offsite discharge from events up to the 85th percentile 24-hour rainfall event. This requirement applies to retention of the entire volume of each day's rainfall that does not achieve this total volume, and the first increment of rain up to this volume for those 24-hour periods whose rainfall exceeds this volume. Specifically:
 - a. Complete a stormwater control plan that achieves retention of the 85th percentile, 24 - hour design storm for the newly created or replaced impervious surface, or for an equivalent area of previously unretained impervious surface on the same site. It is acceptable for the Stormwater Control Plan to use the existing runoff reduction measures as described in Appendix C of the Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual to retain the 85th percentile, 24-hour design storm standard. It is also acceptable to use the bioretention sizing factor (0.04) described in Appendix D of the BASMAA Post-Construction Manual to retain the 85th percentile, 24-hour design storm standard.
 - b. Complete a stormwater control plan that achieves retention of the 85th percentile, 24- hour design storm for the newly created or replaced impervious surface, or for an equivalent area of previously unretained impervious surface on the same site It is acceptable for the SCP to use the bioretention sizing factor (0.04) described in Appendix D of the BASMAA Post-Construction Manual to retain the 85th percentile, 24-hour design storm standard.

The Planning Commission approved SCA Ordinance would require Site Plan Review to evaluate proposed development within the SCA. Staff recommends the same approach for projects located outside the SCA. Thus, staff recommends a revision to Section 22.52.020 to carry out the above provisions:

G. In those instances where development subject to the SGV combining district located outside the Stream Conservation Area would:

1. Create new roads or driveways; or
2. Create or replace 500 square feet or more of lot coverage.

2. **Modify site assessment requirements**

The Planning Commission approved staff's recommended language regarding site assessment requirements. Recall that a site assessment for development located within the SCA. The Tentative Agreement would add language to clarify the site assessment shall identify site appropriate standard management practices and confirm the proposed development would

result in no net loss of habitat, acreage, value, or function. A staff proposed change would clarify the site assessment is required as part of a Site Plan Review permit application for development proposed within the SCA. The changes to Section 22.30.045 are indicated below:

Site Assessment. A site assessment is required as part of a Site Plan Review permit application when development is proposed in the Stream Conservation Area, where adverse impacts to riparian resources may occur, or where full compliance with Subsection E would not be met. The site assessment shall identify site specific standard management practices in accordance with the provisions in Subsection G and shall confirm that the proposed development would result in no net loss of habitat acreage, value, or function.

3. Expand the SCA to include all ephemeral streams

As approved by your Commission, the SCA is designated along perennial, intermittent and those ephemeral streams that: (a) support riparian vegetation for a length of 100 feet or more; and/or (b) support special-status species and/or sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream consistent with CWP stream policies. A 20-foot buffer would be required for ephemerals that would not meet these criteria.

Instead, the Tentative Agreement would expand the SCA to apply along all ephemeral streams in the Valley, not just those subject to the CWP criteria. This approach would support public comments that all ephemerals deserve protection given their important ecological and hydrological importance to overall watershed health and function. While this change is more protective of stream resources, it maintains consistency with the CWP since it furthers the CWP's vision for improved watershed function, preservation of riparian vegetation, and restoration of stream corridors. Thus, staff recommends modifying the Stream Conservation Area definition in Section 22.130 for this approach as follows:

The Stream Conservation Area applies to ephemeral streams that:

(a) support riparian vegetation for a length of 100 feet or more; and/or

(b) support special-status species and/or sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream.

Except for ephemeral streams within the SGV combining district, a minimum 20-foot buffer should be required for ephemeral streams that do not meet these criteria. In the SGV combining district, the Stream Conservation Area applies to all ephemeral streams as mapped on the most recent appropriate USGS National Hydrography Dataset.

4. Clarify measurement of SCA for ephemeral streams

As defined, the SCA is measured laterally outward from the stream top of bank. In many cases it is straightforward to determine stream top of bank. However, it is often more difficult with seasonal streams such as ephemerals. Some members of the public expressed concerns regarding the lack of clarity on how to determine the boundary of the SCA if the stream lacks evidence of a well-defined top of bank. For ephemeral streams outside the SCA, CWP Figure 2-2 illustrates measuring the minimum setback from the centerline of swale for ephemeral streams lacking top of bank. Staff proposes the following modification to the Stream Conservation Area definition in Section 22.130 to incorporate this standard for ephemerals within the SCA in San Geronimo Valley:

The Stream Conservation Area consists of the watercourse itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks that is the width greater of either:

- (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or
- (b) 100 feet landward from the top of bank. The SCA is measured from the centerline of the swale for ephemeral streams with no clear top of bank located in the SGV combining district as shown in Figure 8-9.

An additional buffer may be required based on the results of a site assessment to protect riparian habitat.

This modified measurement is shown in Section 22.130, Figure 8-9: *Buffer Measurement for Ephemeral Streams Subject to the Stream Conservation Area in San Geronimo Valley.*

5. Create a minimum 35-foot buffer along all streams

As recommended for approval by your Commission, the SCA is defined as a buffer along all perennial and intermittent streams, and certain ephemeral streams, to protect the stream channel and associated fish and wildlife habitat, including important water quality and flood control functions. The SCA extends 100 feet landward from the top of stream bank, and/or 50 feet from the outer edge of woody riparian vegetation, whichever is greater. The SCA may be extended based on the results of a site assessment. A 20-foot buffer would be required along ephemeral streams not defined as SCA, consistent with creek setback regulations provided in Marin County Code Section 24.04.560 (Drainage Setbacks). In addition, allowable uses within the SCA would be limited to the maintenance and repair of existing structures, floor area additions up to 500 square feet, and other natural resource related projects.

The Tentative Agreement, however, would create a new 35-foot minimum buffer within the SCA. The 35-foot buffer is not a new concept; it is based on guidance provide in the San Geronimo Valley Salmon Enhancement Plan (2010). According to the SEP, such a buffer “can make a crucial contribution to filtering most sediment and sediment-attached pollutants, while also providing shade and natural bank stabilization.” Moreover, the Tentative Agreement would limit allowable uses within the 35-foot buffer to the maintenance and repair of existing structures within the existing footprint, and would eliminate the option for potential home additions, as further described in Item 6 below. Outside the new 35-foot buffer and within the remainder of the SCA, potential home additions would be reduced from 500 square feet of floor area to 300 square feet of lot coverage. These modifications to Section 22.30.045 are provided below:

- 2. **Limitations on Uses.** Allowable land uses subject to the SGV combining district and located within the Stream Conservation Area shall be limited to the following:
 - a. Allowable uses within 35 feet from top of bank, or from centerline of swale for ephemeral streams where there is no defined top of bank, within the Stream Conservation Area:
 - 1) Maintenance and repair of existing permitted structures within the existing footprint;
 - 2) Projects to improve fish and wildlife habitat;
 - 3) Driveway, road and utility crossings, if no other location is feasible and that minimize impacts to stream function and fish and wildlife habitat;

- 4) Water-monitoring installations;
- 5) Passive recreation that does not ~~significantly~~ disturb native species.
- 6) Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;
- a. ~~Agricultural uses that do not result in any of the following:~~
 - i. ~~The removal of woody riparian vegetation;~~
 - ii. ~~The installation of fencing within the Stream Conservation Area that prevents wildlife access to the riparian habitat within the Stream Conservation Area;~~
 - iii. ~~Animal confinement within the Stream Conservation Area; and~~
 - iv. ~~A substantial increase in sedimentation.~~
- b. Allowable uses outside 35 feet from top of bank, or from centerline of swale for ephemeral streams where there is no defined top of bank, within the Stream Conservation Area:
 - 1) Maintenance and repair of existing permitted structures;
 - 2) Floor area Additions to existing permitted structures that do not:
 - a) Increase the lot coverage within the Stream Conservation Area by more than a cumulative total of 300 square feet; or
 - b) Increase the horizontal encroachment into the Stream Conservation Area.

~~Vertical additions to existing permitted structures that do not expand the existing footprint are not counted towards the 300 square foot cumulative lot coverage allowance.~~

~~The ~~500~~ 300 square feet of cumulative ~~floor area~~ lot coverage is calculated on a per parcel basis following the effective date of this section (, 2022). No additional lot coverage may be allowed once the allowance is exhausted. Notwithstanding the foregoing, state law may require the allowance of other certain other uses and/or development that is not otherwise contemplated by this section.~~
 - 3) Projects to improve fish and wildlife habitat;
 - 4) Driveway, road and utility crossings, if no other location is feasible;
 - 5) Water-monitoring installations;
 - 6) Passive recreation that does not ~~significantly~~ disturb native species.
 - 7) Necessary water supply and flood control projects that minimize impacts to stream function and to fish and wildlife habitat;
 - 8) Agricultural uses that do not result in any of the following:
 - a) The removal of woody riparian vegetation;
 - b) The installation of fencing within the Stream Conservation Area that prevents wildlife access to the riparian habitat within the Stream Conservation Area;
 - c) Animal confinement within the Stream Conservation Area; and
 - d) A substantial increase in sedimentation.

The above listed uses shall comply with all other applicable requirements of this Development Code.

Land uses and improvements not listed above are prohibited, unless such improvements and land use meet the criteria for an exception in Subsection 4, below.

6. Reduce additions from 500 s.f of floor area to 300 s.f of lot coverage

The SCA Ordinance recommended for approval by your Commission would, among other things, allow floor area additions up to a cumulative of 500 square feet. Your Commission directed staff add language to clarify that any addition must be consistent with the underlying zoning, and that the addition allowance would not be an automatic entitlement.

As discussed above, the Tentative Agreement would reduce the cumulative allotment allowed for potential additions from 500 square feet of floor area to 300 square feet of lot coverage. The change from “floor area” to “lot coverage” is noteworthy in that the former would prohibit improvements such as balconies, decks, porches, and terraces, while the latter would allow these improvements. Lot coverage is the percentage of total site area occupied by buildings and other structures, impervious paving, and other hard surfaces that have a water runoff factor of 0.5 or more. This term was introduced into the Development Code in 2017 to align with the Bay Area Storm Water Management Agencies Association impervious surface requirements. Finally, Tentative Agreement would also add language to exclude vertical additions from the 300 square foot lot coverage allowance as an incentive to build up, not out, and minimize the overall development footprint within the SCA. These proposed modifications are shown in the above discussion regarding item 5) Create a minimum 35-foot buffer along all streams.

7. Modify exceptions to SCA compliance

The SCA Ordinance recommended for approval by your Planning Commission would allow homeowners a limited range of development opportunities within the SCA as provided in Section 22.30.045.D (Limitations on Uses). Exceptions to compliance with this provision may be granted under certain circumstances, such as when:

- a. The parcel falls entirely within the SCA; or
- b. Locating the proposed development outside the SCA is infeasible or would have greater impacts on resources than if the proposed project was located within the SCA.

Several members of the public commented that the term “infeasible” is vague and that the ordinance lacks objective standards to evaluate proposed development, is overly permissively, and allows development that would otherwise be prohibited. As defined “feasible” is “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.” For example, the SCA Ordinance does not provide a standard of review to determine whether a project is economic or social feasible, which gives the project applicant substantial leeway to cite evidence in order to support the exception.

To address this ambiguity, the Tentative Agreement would first clarify the exception may only be allowed for undeveloped lots. Second, “infeasible” would be replaced with “cannot be accomplished even if the proposed development is limited to 1,000 square feet or less of lot coverage...” This 1,000 square foot limitation, which is derived from Coastal Commission recommended policies guiding the size of residences in the Coastal Zone to avoid takings, would similarly guarantee the footprint and size of new development’s lot coverage within the SCA would be minimized. Third, any proposed exception must demonstrate good cause and would be subject to public noticing and appeal requirements. Finally, these exceptions would

not apply within the proposed 35-foot buffer, which means no deviation from the provisions would be allowed. These changes are shown below:

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

- a. A lot falls entirely within the Stream Conservation Area; or
- b. Development on the parcel entirely outside the Stream Conservation Area:
 - 1) Is infeasible Cannot be accomplished even if the proposed development is limited to 1,000 square feet or less of lot coverage on the parcel as a whole with the least possible encroachment into the Stream Conservation Area, or relocated to another suitable portion of the parcel that avoids encroachment in the Stream Conservation Area; or
 - 2) Would have greater impacts on water quality, wildlife habitat, other sensitive biological resources, or other environmental constraints than development within the Stream Conservation Area.

Exceptions under this subsection would require an application supported by a showing of good cause and public noticing and shall be subject to the provisions in Chapter 22.114 (Appeals).

8. Modify exemptions allowing for the removal of pyrophytic vegetation

As approved by your Commission, the amendments would exempt the removal of dead, exotic, or invasive vegetation, as well as pyrophytic (fire prone) vegetation from the SCA from a discretionary permit. Pyrophytic vegetation removed in this manner must be consistent with defensible space requirements in Marin County Code Chapter 16.16. This exemption is intended to encourage compliance with vegetation management rules for fire safety. However, native tree species such as tanoak, California bay laurel, and Douglas Fir, which are commonly found in the Valley's stream riparian corridors and are also defined as a Heritage and Protected trees under Marin County's Tree Protection Ordinance, would be eligible for this exemption.

Members of the public raised concern these exemptions are too broad and could result in the wholesale removal of native vegetation, particularly mature native trees. As a result, your Commission directed staff to add language to clarify that removal of any protected or heritage tree would need to comply with the Chapter 22.62 (Tree Removal Permits). The Tree Permit would preserve and protect native trees and may removal of protected and heritage trees in specific circumstances to allow for the reasonable use and enjoyment of property.

The Tentative Agreement would further augment these exemptions and add language to clarify that consultation with the County, California Department of Fish and Wildlife, and/or Marin Municipal Water District is required prior to removal of any woody debris below the stream top of bank. Furthermore, no live tree or vegetation that is greater than six inches in diameter below the stream top of bank would be exempt from Site Plan Review, unless the vegetation removed presents an immediate hazard to public safety. Staff recommends a technical edit to clarify the size of the tree removed. The proposed revisions to Section 22.52.030 (Site Plan Review Exemptions) are as follows:

D. The following types of development subject to the SGV combining district:

1. Removal of dead, invasive, or exotic vegetation, including leaf litter, except for woody debris located below the stream top of bank. Consultation with the County, California Department of Fish and Wildlife, and/or Marin Municipal Water District is required prior to removal of any woody debris below the stream top of bank.
2. Removal or trimming of pyrophytic combustible live trees and/or vegetation consistent with Chapter 22.62 (Tree Removal Permits) and Title 16 – Provision 16.16.040, including tanoak, California bay laurel, and Douglas fir tree species.
Removal of any live tree or vegetation that is greater than six inches in diameter at breast height and below the top of bank is not exempt, unless the tree or vegetation presents an immediate hazard to public safety.

The Tentative Agreement also requires “no project shall be approved if it would require removal of native vegetation below top of bank.” Staff recommends locating this provision as a standard in Section 22.30.045 (San Geronimo Valley Community Standards) as follows:

Vegetation Removal Below Top of Bank. The removal of native vegetation below top of bank shall be prohibited.

9. Clarify “no net loss of habitat”

The CWP states that protecting and restoring native habitat are the most effective methods of preserving plant and animal diversity. CWP Policy BIO-2.1 *Include Resource Preservation in Environmental Review* calls for “no net loss” of sensitive habitat, values or function, while CWP Policy BIO-4.1 requires denial of a project that would: a) adversely alter hydraulic capacity; b) cause a net loss in habitat acreage, value or function; or c) degrade water quality. As approved by your Commission, Section 22.52.050 (Site Plan Review Exemptions) requires an application for Site Plan Review may only be approved or conditionally approved if all findings are made. These findings include a specific obligation that development within the SCA must not result in the net loss of habitat acreage, value, or function.

Members of the public expressed concern that the SCA Ordinance does not define core terms like “net loss of habitat” and “habitat.” The Tentative Agreement would revise Section 22.130 (Definitions) to carryover over the CWP Glossary definition for “habitat” and add a new definition for “no net loss of habitat” as follows:

Habitat. The physical location or type of environment in which an organism or biological population lives or occurs.

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

10. Require a Habitat Restoration Program fee

Public comment supported creation of a mitigation program for habitat restoration within the Valley watershed. Establishing a mitigation bank is a complex process requiring a high-level coordination and collaboration with multiple stakeholders, including landowners and outside agencies such as the Army Corps of Engineers, not only with the creation of the mitigation bank, but also its ongoing and future maintenance. Staff supports creation of such a program;

however, additional time and resources will be needed to develop and implement the program as part of a separate public outreach process, which would not be feasible given the current ordinance schedule.

In the meantime, Tentative Agreement would ensure a mechanism is in place to establish program funding. New language is added to require compliance with any development impact fees at the time a Site Plan Review permit is approved to offset impacts within the SCA through restoration and enhancement of riparian areas within the Valley. The ordinance presented to the Board at the July hearing will include a statement affirming this approach.

Habitat Restoration Program. Applicants subject to the SGV combining district shall be subject to compliance with any development impact fees, established to offset development impacts to the Stream Conservation Area through restoration and enhancement of riparian habitat within the San Geronimo Valley, applicable at the time an application for Site Plan Review is approved.

11. Enforce compliance with SCA provisions

Public comment expressed concern regarding the need to ensure property owners comply with the ordinance provisions and that violations are responded to in a timely manner. This is important since unpermitted development is often unmitigated and may negatively impact stream resources. In addition, feedback stressed the importance of providing measures to incentivize compliance. CDA's existing enforcement programs are described below.

CDA's Code Compliance program carries out enforcement of the County's laws and regulations for zoning, construction, and environmental health. The Code Compliance team will only investigate written and signed complaints, which are kept confidential. Anonymous complaints are not currently investigated. Development Code Chapter 22.122 (Enforcement of Development Code Provisions) provides procedures and legal remedies to correct and/or abate nuisances and violations. In addition, any violation would also be subject to the remedies and penalties specified in Title 1, Chapter 1.05 (Nuisance Abatement) of the County Code.

To incentivize permit compliance, staff will report a builder to the State licensing board if it is discovered that construction has been done without first obtaining the required permits. In addition, no construction permits will be issued for development on the property unless those permits are to resolve the violation. Outstanding enforcement fees will be required to be paid before the case is formally closed.

The Tentative Agreement would add language to clarify how violations of the Revised SCA Ordinance would be enforced and remedied. Further, violations of the limitations of uses provided in Section 22.30.045(C) (Limitations on Uses) would amount to a public nuisance subject to nuisance abatement procedures and penalties authorized in Chapters 1.05 and 1.07 of the Marin County Code, as follows:

Violations. Any violation of the provisions in this Section shall be enforced through any legal remedies available to correct and/or abate a nuisance or violation subject to the Development Code, including but not limited to the administrative citation penalty schedule as provided in Chapters 1.05 (Nuisance Abatement) and 1.07 (Imposition of Administrative Fines for Ordinance Violations) of the Marin County Code.

- 1. Any violation of the limitations on use established in Section 22.30.045(C) constitutes a public nuisance subject to the provisions in Chapters 1.05 (Nuisance**

Abatement) and 1.07 (Imposition of Administrative Fines for Ordinance Violations) of the Marin County Code.

Additional Settlement Terms

Section III of the Tentative Agreement would result in programmatic changes that are outside the scope of these Development Code amendments. The terms below are provided for your information.

12. Establish a voluntary point of sale inspection program

The County currently does not require residential pre-sale (or resale) inspections. However, all other Marin cities and towns require some form of resale inspection. Generally, a resale inspection is required when any residential property changes ownership and may include a report of a property's building permit history and/or physical inspection of the property. The purpose of the program is to identify any health and safety issues and verify conformance to applicable development codes. The County has explored the possibility of developing such a resale program in the past, but the idea generated public controversy and was not pursued.

The Tentative Agreement would require the County adopt a pilot voluntary point-of-sale inspection program for the San Geronimo Valley by September 1, 2022, with program implementation no later than March 2023. The voluntary program would provide property owners – or prospective buyer(s) with the owner(s) consent - the option to request a free on-site property inspection and permit history report for any property, located either wholly or partially within the SCA, to determine compliance with the SCA Ordinance provisions. Staff will develop a communication and outreach plan to ensure program awareness.

Moreover, the Tentative Agreement would require every application subject to Site Plan Review for development within the SCA include an inspection for any existing SCA violation. Any violation would require enforcement as part of any condition of approval.

After a period of five years, staff will provide a report that evaluates the program's success to the Board of Supervisors. This report will include options to increase public participation, alternatives to improve compliance with the SCA provisions, and whether the program should be continued, among other discussion topics.

13. Implement system to allow anonymous complaints

As previously mentioned, the Code Compliance team will only investigate written and signed complaints, which are kept confidential. Anonymous complaints are not investigated. The Tentative Agreement would require CDA provide an option to field anonymous complaints for suspected violations of the SCA ordinance. This new platform will be established as a pilot program for the San Geronimo Valley. Complaints received through this system would be prioritized and responded based on whether the violations propose an imminent threat to health and safety, environmental quality, or community impact.

Details on the design, operation, and staffing needed to implement this system will need to be developed. Additional program information will be provided at the Board's July hearing. Indeed, the program could be modeled based on similar systems used by other jurisdictions, such as Santa Clara County, which offers "Insite Public Portal," an online application where citizens can submit an enforcement complaint. The portal is accessible 24 hours a day, 7 days a week, and users are required to register an account prior to submitting a complaint.

14. Expand enforcement capacity

The Tentative Agreement would require the County “expand enforcement staff capacity sufficient to process, respond, and address complaints regarding violations of the SCA Ordinance” and “compliance issues identified during inspections. This includes ensuring on-call availability to process and respond to time-sensitive complaints that come in during non-business hours, including evenings, weekends, and holidays.” This new initiative will address an existing enforcement gap given staff currently investigate suspected code violations during business hours, which means work conducted after hours or on weekends would likely miss verification.

15. Address specific metrics in the biannual report

As discussed at the December 2021 hearing, FSEIR Mitigation Measure 5.1-1 requires the County to provide twice yearly, publicly noticed reports on the progress of the SCA Ordinance to the Board of Supervisors but does not mandate what the report address. Your Commission agreed CDA staff should track the following relevant and timely metrics, including:

- Number of Site Plan Review applications approved, conditionally approved, or denied;
- Project types;
- Appeals;
- Enforcement actions;
- Amount of impervious area authorized under Site Plan Review to be added to the San Geronimo Valley SCA.
- [New: Amount of habitat authorized under Site Plan Review to be removed from the San Geronimo Valley SCA.](#)

In addition, Section III, Term D of the Tentative Agreement would commit CDA to monitor the amount of habitat authorized under Site Plan Review to be removed from the San Geronimo Valley SCA. CDA has the authority and resources to track these particular metrics.

PUBLIC NOTICE

Notice of the Planning Commission hearing has been published in the Marin Independent Journal. The Community Development Agency also mailed a copy of the public notice describing the proposed Development Code amendments to all property owners within the San Geronimo Valley, including interested public agencies, community groups, and individuals. Notice was also posted on the project website (www.marincounty.org/sca) and distributed to 993 subscribers of the project’s GovDelivery email subscription service on Thursday, May 26, 2022. The Board approved settlement agreement was made available on the project website on Monday, May 16, 2022, and the Revised SCA Ordinance was posted on Friday, May 20, 2022.

CONCLUSION

The CWP demonstrates a strong regulatory approach towards stream protection that dates to the early 1970’s. The proposed Development Code amendments would continue to contribute towards the overall improvement of the watershed and would be most protective towards the fish. Moreover, the proposed amendments would clarify existing policy ambiguities, provide incentives for landowners, include enforcement mechanisms, and would be supported with landowner education and assistance programs. This approach maintains consistency with the CWP and complies with the FSEIR requirements.

The terms of the settlement are contingent on the Board adopting an SCA Ordinance that conforms to the agreed upon terms. Staff will bring your Commission’s recommendations and feedback to the Board of Supervisors hearing scheduled on July 19th, 2022.

RECOMMENDATION

Staff recommends the Planning Commission review the administrative record, conduct a public hearing, and approve the following:

1. Resolution Recommending that the Board of Supervisors Adopt an Ordinance Amending Marin County Code Title 22 for the Stream Conservation Area; and
2. Resolution Recommending that the Board of Supervisors Adopt an Ordinance Rezoning all Lots Located in San Geronimo Valley.

ATTACHMENTS:

1. Resolution Recommending that the Board of Supervisors Adopt an Ordinance Amending Marin County Code Title 22 (Development Code) for the Stream Conservation Area for San Geronimo Valley
2. Resolution Recommending that the Board of Supervisors Adopt the Rezoning for all Lots Located in San Geronimo Valley
3. Settlement Framework between the County of Marin and the Salmon Protection Watershed Network (SPAWN), dated May 16, 2022
4. Correspondence:
 - Email from John Clarke, dated May 26, 2022
 - Email from Albert DeSilver, dated April 14, 2022
 - Email from Caryn Graves, dated March 28, 2022
 - Postcards, received March 16, 2022
 - Letter from Fire and Environmental Resilience Network, dated February 21, 2022