March 2, 2021

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

SUBJECT: Status of the Expanded Stream Conservation Area Ordinance for the San Geronimo Valley.

Dear Board Members,


SUMMARY:

On February 11, 2020, your Board approved a work program to develop an Expanded SCA Ordinance (SCA Ordinance) with a focus on the San Geronimo Valley. The development of the SCA Ordinance would not only implement Marin Countywide Plan (CWP) riparian protection policies and programs but would also fulfill a legal mandate to comply with mitigation measures from the Final Supplement to the 2007 Countywide Plan Final Supplemental Environmental Impact Report (FSEIR) with a Focus on Potential Cumulative Impacts to Salmonics in San Geronimo Valley, which your Board adopted in 2019 (Attachment 1). The FSEIR mitigation measures are intended to achieve compliance with the California Environmental Quality Act (CEQA) regarding potential cumulative impacts on threatened anadromous salmonids and their habitat from development in the San Geronimo Valley. These measures mandate the SCA Ordinance address specific elements intended to avoid or reduce impacts on salmonids.

The envisioned SCA Ordinance would also build upon concepts from the Interim SCA Ordinance adopted in 2013 (2013 Ordinance), which did not take effect as a result of litigation. The 2013 Ordinance utilized a two-tiered permitting structure for ministerial (Tier 1 SCA Permit) and discretionary review (Tier 2 SCA Permit) to account for differences in various development activities and associated stream impacts. Updated information on salmonids and operational lessons learned through the County’s funding of the Marin Resource Conservation District’s Urban Stream Coordinator program would also inform the ordinance.

As work on the SCA Ordinance progressed, it has become clear that developing an ordinance that not only complies with the FSEIR Mitigation Measures, but which also substantially conforms with the CWP riparian protection policies, will result in an ordinance that looks significantly different from the 2013 Ordinance familiar to Valley residents and stakeholders, and which deviates from the framework originally scoped in the work program. A summary of key variations is provided in the discussion section below.
**BACKGROUND:**

The envisioned SCA Ordinance incorporates SCA setbacks that have been a feature of the CWP since 1973. The application of land use restrictions to protect streams is not unique to Marin - it is a common practice used throughout the nation, as well here in the Bay Area for Napa, Santa Cruz and Sonoma Counties. This is because riparian habitats are irreplaceable, vital biological systems that provide critical functions for water purification, flood control, fish and wildlife movement, and native habitat. However, large portions of existing riparian systems have been eliminated by past stream channelization and urban development.

The ordinance focus on the San Geronimo Valley is in recognition of the importance of Lagunitas Creek, which supports one of the largest remaining runs of coho salmon south of Fort Bragg. These coho are part of the "Central California Coast Ecological Significant Unit" and are listed as threatened at both federal and state levels. Lagunitas Creek also supports threatened steelhead trout and a fall run of Chinook salmon.

**DISCUSSION:**

On December 2020, the Board of Supervisors’ Subcommittee (Board Subcommittee), comprised of Board President Sears and Supervisor Rodoni, determined the forthcoming ordinance should remain consistent with the CWP policies and the FSEIR analysis to avoid additional CEQA review. Given the Board Subcommittee’s direction, the following table provides an overview of what the forthcoming SCA Ordinance may look like. A brief discussion of each element follows.

<table>
<thead>
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<th>Expanded SCA Ordinance for the San Geronimo Valley:</th>
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<tr>
<td>Generally maintains CWP but implements more specific FSEIR mitigations</td>
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<td>Maintains BIO-4.1 restrictions with allowance for modest additions as evaluated in the FSEIR:</td>
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<td>- Allows modest additions of up to 500 square feet to existing structures.</td>
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<td>- Limits new development on vacant lots unless strict criteria are met.</td>
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<td>Maintains site assessment requirements for all incursions in the SCA:</td>
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<td>- Requires environmental review (and potential initial study) for most projects regardless of scope</td>
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<td>- Incorporates FSEIR standards regarding preparer qualifications.</td>
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<td>- Relies primarily on Urban Streams Coordinator to prepare site assessments.</td>
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<td>Requires discretionary review and CEQA compliance for all projects:</td>
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<td>- Uniform application of permit requirements across all zoning districts per FSEIR.</td>
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<td>- Many exempt activities would now be subject to permit requirements.</td>
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<td>Implements more rigorous erosion control and low impact development practices throughout the watershed per FSEIR.</td>
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<td>Maintains ephemeral stream criteria.</td>
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<td>- Site assessment required to confirm ephemeral status and presence of special-status species/sensitive natural communities</td>
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1. **Maintain BIO-4.1 restrictions with allowance for modest additions as evaluated in FSEIR**

One of the overall goals of the CWP is to protect and restore riparian systems. This goal is achieved in part through CWP BIO-4.1, which restricts activities within the SCA to a very limited set of allowable uses. For example, the policy only allows for ordinary repair and maintenance to an existing structure provided the repair does not enlarge or expand the structure. This policy also limits new development proposed on vacant lots unless strict criteria are met. Meanwhile, Program BIO-4.a, which implements Policy BIO-4.1, allows for modest additions of up to 500 square feet of floor area.

Given concerns raised during the FSEIR review process regarding socioeconomic impacts to homeowners being overlooked for the sake of protecting the salmon, the forthcoming SCA Ordinance would maintain Policy BIO-4.1 restrictions while allowing for modest additions provided for in Program BIO-4.a. These program provisions were evaluated in the FSEIR and would not entail further CEQA review.

2. **CWP Site Assessment Requirements Require Discretionary Review**

Policy BIO-4.1 defines the SCA and land use controls within its boundary. According to the policy, a site assessment is required for any incursion in the SCA or where full compliance with SCA criteria would not be met. The CWP defines a site assessment as an analysis of a property’s environmental setting, including sensitive wildlife habitats, sensitive resources, and special-status species and species of concern, among others. More importantly, the site assessment may also determine whether any adverse direct or indirect impacts on riparian resources would occur as a result of proposed development and, if so, identify mitigation options. This language has significant implications on the ordinance framework.

As defined by the CWP, the site assessment is discretionary. This means conforming to the policy’s site assessment requirements would essentially limit options for ministerial review. Ministerial permits are granted to a project after applying fixed, objective standards with little or no subjective evaluation as to the wisdom or manner of carrying out the project. These types of permits do not require a public hearing, are not appealable, and do not trigger environmental review in conformance with the California Environmental Quality Act (CEQA). Discretionary permits involve the exercise in judgement or deliberation prior to making a decision, are noticed, may require a public hearing, and must comply with CEQA. Amending the CWP policy standards to allow for ministerial review may require additional environmental review since this was not considered in the FSEIR impact analysis.

3. **FSEIR mitigation measures require uniform application of permit requirements**

FSEIR Mitigation Measure 5.1-2, Provision 2, requires consistent permit requirements across planned and conventional zoning districts within the San Geronimo Valley in recognition that land use impacts across all zoning districts impact salmonid health. Under existing regulations, unless Design Review or another discretionary permit is triggered, development activities on conventionally zoned properties within the SCA would not be subject to the SCA policies. The change is intended to resolve inconsistent treatment of properties based on zoning and would apply to all zoned land in the San Geronimo Valley.
The FSEIR also mandates the envisioned ordinance expand the number of development activities that require a discretionary permit and site assessment to include activities in the SCA that require vegetation clearing, increase impermeable area, increase surface runoff, result in exposed soil, or alter the bed, bank, or channel of any stream (Mitigation Measure 5.1-1, Provision 1). This means that many activities that currently do not require a building permit, such as sitework that does not increase lot coverage and does not exceed 18 inches above grade (decks, platforms, driveways) vegetation removal (except native tree and heritage trees), and erosion control structures would no longer be exempt from permit requirements and may potentially be subject to discretionary review.

Finally, the FSEIR imposes more rigorous erosion control and LID practices. First, Mitigation Measure 5.1-1, Provision 5, lowers the threshold that triggers compliance with the Marin County Stormwater Pollution Prevention Program from projects that create or replace 2,500 square feet of impervious surface to 500 square feet. Second, Mitigation Measure 5.2-1 requires that the same stormwater, LID, erosion and sediment control measures required inside of the SCA also apply outside of the SCA. Both measures would apply throughout the watershed.

Subsequent implementation of these measures would result in more stringent permit requirements unique to the San Geronimo Valley. While these more rigorous permitting requirements would protect salmonids from additional land disturbance, increased impervious area, and storm runoff, they may result in increased costs of development activities in the SCA and throughout the watershed. In addition, maintaining separate permitting requirements for the Valley may also result in confusion for residents and require additional staff training.

4. Environmental review required for all discretionary permits in the SCA

CWP Policy BIO-4.2 requires environmental review where incursion into an SCA is proposed and a discretionary permit is required. Typically, many projects may qualify as categorically or statutorily exempt and, thus, not require further action under CEQA. However, because Policy BIO-4.1 requires the site assessment to consider options for alternative mitigation, projects that might normally be exempt must instead undergo further environmental review regardless of scope to determine if there is a possibility that the project may have a significant effect on the environment. While this feature does not represent a change from the 2013 Ordinance, it is noteworthy since this requirement is unique to the SCA and imposes more rigorous standards on those living within the SCA than those outside.

5. Ephemeral Streams

Ephemeral streams, which only flow during and immediately after periods of rain, are often the smallest channels in a watershed and often represent the headwaters of a stream. Ephemeral streams comprise the vast majority of a watershed’s stream network and play a critical role in maintaining water quality and overall watershed function. Policy BIO-4.1 subjects an ephemeral stream to SCA policies if it: a) supports riparian vegetation for a length of 100 feet or more, and/or b) supports special-status species and/or sensitive natural community type, such as native grasslands, regardless of the extent of riparian vegetation associated with the stream. A minimum setback of 20 feet is required for those ephemeral streams that do not meet this standard.

The envisioned SCA Ordinance would maintain this language, which would also align with the FSEIR analysis. Meanwhile, staff confront practical challenges when
administering this particular directive due to vague language. For example, problems arise when staff must determine what constitutes 100 feet or more of riparian vegetation. Does this apply anywhere on the stream (upstream or downstream from the portion that traverses the project site), or within or directly contiguous to the proposed project? Does the extent of riparian vegetation need to be contiguous? What if there is 50 feet of vegetation on one side of the watercourse and 50 feet on the other side, or 50 feet upstream and 50 feet downstream? This results in uncertainty for applicants. The latter half of the ephemeral criteria states that a watercourse is subject to the SCA if it supports special-status species and/or sensitive natural community type, such as grasslands, regardless of the extent of riparian vegetation associated with the stream. This is problematic because “sensitive natural communities” is broadly defined. Refining the language for specificity would provide improved clarity and minimize the need for applicants to hire a consulting biologist to conduct a site assessment. However, such language changes would likely trigger the need for additional environmental review.

Finally, ephemeral streams are not yet mapped. As defined, perennial and intermittent streams are mapped; ephemerals are not. Consistent with the CWP, the envisioned SCA Ordinance would apply to all ephemerals, whether mapped or not. As mentioned above, ephemerals are typically the most common stream within a watershed’s stream network. Moreover, there are no reliable maps that show their location. Currently, staff rely on GIS data and on-site evaluation to determine stream status. If staff cannot reliably make a determination, then a site assessment – prepared by a qualified consultant – is required.

Meanwhile, the Golden Gate National Parks Conservancy – through OneTam -- is managing the effort to develop a fine scale vegetation map and landscape database for Marin County. This dataset will include a more spatial accurate map of the stream network with stream hydrography, improved consistency in stream level of detail, enhanced accuracy of feature attribution, and improved documentation and metadata. This will assist informing future work to identify the most effective measures to protect stream functions on a watershed-level basis.

CONCLUSION:

The CWP demonstrates a strong regulatory approach towards stream protection. The envisioned SCA Ordinance for the San Geronimo Valley would maintain this conservative approach while furthering the FSEIR mandates, and would not require substantive CWP amendments nor result in further environmental review. While the County has discretionary authority to reconcile inconsistencies within the CWP, a conservative approach most protective towards the fish, coupled with targeted policy amendments to address any ambiguities, is considered the most appropriate means to achieve a more legally defensible ordinance without triggering amendments to the CWP.

Staff anticipates a second work phase will address various state general plan mandates, state housing law, and SCA regulations for the remainder of unincorporated Marin outside the San Geronimo Valley. This work program could undertake broader evaluation of CWP stream policies to refine language for clarity and consistency.
EQUITY IMPACT:
As this is only a progress report, and no decision or direction is being requested, no equity impacts are being created at this point. However, as part of this planning effort going forward, staff will be working to ensure that development of the Stream Conservation Area Ordinance includes participation of diverse stakeholders and does not exacerbate racial inequity or result in unintended consequences on underserved populations.

FISCAL/STAFFING IMPACT:
No impact on the general fund since this is only a progress report.

REVIEWED BY:

[ ] Department of Finance [ X ] N/A
[ X ] County Counsel [ ] N/A
[ ] Human Resources [ X ] N/A
[ ] County Administrator [ X ] N/A

SIGNATURE:

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    Brian Case, County Counsel

Attachments:

1. Mitigation Monitoring and Reporting Program, 2007 Marin Countywide Plan Supplemental EIR with a Focus on Potential Impacts to Salmonids in San Geronimo Valley