



COMMUNITY DEVELOPMENT AGENCY

Brian C. Crawford
DIRECTOR

October 29, 2013

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Marin County Board of Supervisors
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SUBJECT: Stream Conservation Area Work Program and Interim Ordinance

Dear Supervisors,

RECOMMENDATION:

On behalf of the Board's subcommittee on the Stream Conservation Area, staff recommends that your Board take the following actions:

1. Accept the staff report on the continued work of the Board of Supervisors subcommittee on the Stream Conservation Area (SCA);
2. Approve the draft work program for the SCA implementation program; and
3. Conduct a hearing on the interim SCA ordinance and fee resolution, and consider approval of the interim SCA ordinance for the San Geronimo Watershed (Option A – see Attachment 3) or for all unincorporated areas outside the Coastal Zone (Option B – see Attachment 4).

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

www.marincounty.org/cda

BACKGROUND:

The Marin Countywide Plan (CWP) was approved by the Board of Supervisors on November 6, 2007. Goal BIO-4 (Riparian Conservation) of the CWP establishes policies and programs for the SCA, including setbacks along streams. Program BIO-4.a requires the County to adopt an expanded Stream Conservation Area ordinance to implement the CWP. In addition to implementing the CWP, approval of an expanded SCA ordinance would end the court-imposed injunction on the issuance of building permits that is currently in place for the SCA in the San Geronimo Valley.

The Planning Commission considered the expanded SCA ordinance during public hearings on April 1 and May 13, 2013. At the conclusion of the hearings, the Commission recommended adoption of the ordinance to the Board.

On June 18, 2013, your Board conducted a public hearing on the proposed amendments to the Development Code (Title 22) to implement the Stream Conservation Area policies of the Countywide Plan.

The hearing was continued for a subcommittee of the Board of Supervisors (comprised of Supervisors Kinsey and Sears) to work with staff to develop a framework for an interim SCA ordinance and to identify the scope of potential

amendments to the CWP, develop a work program and schedule for a subsequent SCA ordinance, and present these recommendations at a future meeting.

At the subsequent public hearing on August 20, 2013 the Board's subcommittee presented its recommendations for the SCA work program, including support for adoption of an interim SCA ordinance for the San Geronimo Watershed based on the approach recommended by the Planning Commission. At the conclusion of the hearing, your Board directed staff to prepare a work program for implementation of the SCA policies that incorporates watershed principles, provides for landowner education and assistance, and identifies alternatives for addressing key concerns about the SCA through County Code amendments where possible, but including an option for undertaking limited amendments to the CWP. Staff was additionally directed to "schedule a hearing for review of an interim expanded SCA ordinance for the San Geronimo Watershed based on the approach recommended by the Planning Commission for the County of Marin as a whole."

A hearing scheduled for October 1, 2013 was continued to October 29, 2013 in order for County Counsel to work with the California Fair Political Practices Commission (FPPC) to resolve potential conflicts of interest issues with regard to the ownership of personal residences by Supervisors Adams, Kinsey, and Rice within 500 feet of an SCA.

DISCUSSION:

SCA Work Program

There are three major components to the proposed SCA work program (provided as Attachment 1):

1. Scientific review of ephemeral stream SCA standards for the City-Centered Corridor and smaller lots in the Inland-Rural Corridor and development of commensurate standards to protect these zones;
2. Watershed enhancement program for private landowners (education, homeowner assistance, permitting assistance, and funding mechanisms to support long-term protection of habitat); and
3. Updated County stream map for perennials and intermittent streams.

The work program will be managed by staff in the Community Development Agency in coordination with the Department of Public Works and periodic consultation with the Board's subcommittee. An advisory group representing a diverse background will provide local knowledge or technical expertise and give input on specific issues and draft strategies. In addition to the advisory group, the broader community will be involved through public workshops, local community meetings, and ongoing communication via the County web page and Open Marin.

The estimated timeframe to implement the program is approximately one year. Upon completion of the work program, your Board will be presented with Existing Conditions and SCA Strategies Reports, including options for County Code and/or CWP amendments relating to the scope identified in the work program. At that time,

your Board may accept the reports and direct staff to prepare amendments to the County Code or undertake additional Countywide Plan amendments, as needed.

Ephemeral Stream SCA Standards and County Stream Map

The current CWP language for ephemeral streams is largely carried over from the 1994 CWP and is based upon the best information and understanding available at the time. However, the level of knowledge about ephemeral streams has since advanced, primarily due to improvements in mapping. Additionally, a number of water quality and sediment control measures have been promulgated through Federal and State Stormwater permit compliance programs.

The Community Development Agency is presently updating the County stream map, using the most sophisticated and detailed topographic information available, Light Detection and Ranging (LiDAR). Although the map is not finalized, it is expected to improve the accuracy of existing mapped stream channels as well as the comprehensiveness of the overall stream/drainage network in the County, including identification of additional ephemeral streams.

The Board’s subcommittee has identified that further investigation of ephemeral streams and identification of the most effective measures to protect their ecological and hydrologic function in the watershed is an important effort that will also require critical evaluation of current definitions and policies to ensure appropriate protections.

Public Education and Outreach

The proposed draft Guiding Principles and Framework for Countywide Plan Amendments (August 20, 2013) stated that overall watershed improvement should include creek stewardship management practices and homeowner assistance. The Board’s subcommittee supports these efforts in the proposed work program with a recommendation to retain an outreach coordinator. This position would provide public information and materials, workshops and informational meetings about creek care, coordinate with ongoing efforts of the Watershed Program (www.marinwatersheds.org) and the County’s stormwater pollution program (MCSTOPPP), and serve as an ombudsperson to assist homeowners with permitting processes.

Interim Ordinance

The Planning Commission-recommended ordinance provides a tiered permitting structure to account for differences in the extent of stream impact associated with various development activities. Importantly, the ordinance requires best practices as a condition of any permit approval in the SCA (“Standard Management Practices”). Within this framework, projects of a smaller scale can be reviewed efficiently, with respect to time and cost, as ministerial (staff-level) permits. The ordinance would also increase stream protections by regulating removal of riparian vegetation and installation of “flatwork” (e.g., patios, driveways) that are currently not regulated but could have potentially harmful impacts in the SCA.

The proposed ordinance is largely consistent with the Planning Commission’s recommended approach. As proposed, the ordinance would be in place for a limited duration, expiring on April 28, 2016 or upon adoption of subsequent amendments to the Marin Countywide Plan and/or County Code that pertain to the SCA, whichever occurs first.

Public notice for the interim ordinance was distributed to property owners in the San Geronimo Watershed and published in the Marin Independent Journal in advance of the October 1 public hearing. However, the subcommittee of the Board has requested that the Board be presented with the option to apply the ordinance countywide due to the potential lack of SCA protection during the timeframe of the SCA work program. Therefore, public notice was subsequently distributed countywide and published in the Marin IJ to reflect the options that are under consideration for the October 29 hearing.

Two versions of the SCA ordinance are provided for your consideration. Option A (Attachment 3) would be applicable only in the San Geronimo Watershed; Option B (Attachment 4) would be applicable countywide to those unincorporated areas of the County outside the Coastal Zone.

Interim Ordinance Cost and Workload Impacts

The proposed SCA ordinance establishes a new permit type, permit requirements for previously unregulated activities, and site assessment and inspection requirements. Staff training will be required for Tier 1 (ministerial permit) site assessments which are limited in scope (identify riparian vegetation and stream bank). The estimated cost for this training, including completion of a reference manual, field exercises, and an SCA ordinance toolkit, is \$10,000. Although not budgeted in the current fiscal year, funding is available from a set aside the Board approved in Fiscal Year 2010-2011 for the SCA implementation program.

Implementation of the ordinance will also require outreach to homeowners, contractors, and community organizations to ensure that all interested parties are aware of the regulatory changes, including procedures and new permit requirements. As your Board noted on August 20, 2013, homeowner education is a critical component of future efforts, not only to support individual stewardship but also to increase understanding of the individual and collective benefits of streamside conservation requirements as well as the basis for permit standards.

FISCAL IMPACT:

Work Program:

The proposed one-year work program includes a preliminary budget of \$130,000 (excluding staff time) to include the costs for preparation of the existing conditions and SCA strategies reports, public information and community engagement. The addition of an outreach coordinator/ombudsperson would add an additional cost of approximately \$85,000 per year. Funding for most of the work program is available from money that your Board set aside in Fiscal Year 2010-11 for SCA implementation. Based on your Board’s acceptance of the preliminary estimate and

additional direction, staff will provide a more precise budget for final approval prior to initiation of the work program.

Interim Ordinance:

The proposed ordinance is likely to result in fiscal impacts to the General Fund. User fees are established in the Planning Division's fee schedule for various Planning-related permits and services. Revenue generated from the fees help the Planning Division meet its cost recovery target and offset the amount of general fund support to the program. Pursuant to the direction received at your Board's August 20, 2013 meeting, staff recommends that your Board approve the attached resolution setting fees at \$250 (flat) for a Tier 1 SCA Permit, \$2,500 (flat) for a Tier 2 SCA Permit, and \$5,000 (deposit) for a Tier 2 Initial Study. No fees would be charged for review of work that qualifies for an exemption.

It is difficult to use historic permit trends to forecast permit demand because the proposed ordinance would apply to work that currently does not require permits. In addition, demand for home improvements and construction are affected by broader trends in the economy, and some development will presumably be undertaken without permits.

- *San Geronimo Watershed Ordinance (Option A):* If the limited-term SCA ordinance were to apply to the San Geronimo Watershed only, it would likely result in an annual increase of approximately fifteen Tier 1 Permits and five Tier 2 Permits. Based on the recommended fees, this could result in a loss of approximately \$40,000 in flat fee revenues per year. For Tier 2 permits, a \$5,000 deposit for the cost of preparing an Initial Study is recommended. However, if your Board wishes to reduce the cost of environmental review for Tier 2 Permits, the deposit could be changed to a flat fee. Conversion of the deposit to a flat fee would result in additional revenue impacts of approximately \$120,000 per year depending on the actual cost for completing the Initial Study.
- *Countywide Ordinance (Option B):* Countywide, the limited-term SCA ordinance would likely result in an annual increase of approximately forty-five Tier 1 Permits and fifteen Tier 2 Permits. Based on the recommended fees, this may result in a loss of approximately \$120,000 in revenues per year. For Tier 2 permits, a \$5,000 deposit for the cost of preparing an Initial Study is recommended. Conversion of the deposit to a flat fee would result in additional revenue impacts of approximately \$362,000 per year depending on the actual cost for completing the Initial Study.

Given the limited number of permits projected and the uncertainty about the actual impact to staff workload, no increase in staffing is recommended at the present time, although staff expects to continually evaluate the staff resource needs for the Planning Division and may propose adjustments in the future.

SIGNATURE:



Suzanne Thorsen
Planner



Brian C. Crawford
Director

REVIEWED BY: (These boxes must be checked)

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

Attachments

1. Stream Conservation Area Implementation Work Program
2. Framework and Guiding Principles (Revised)
3. Option A (San Geronimo Watershed) Ordinance Approving Amendments to Title 22 (Development Code) including Exhibit A
4. Option B (Countywide Ordinance Approving Amendments to Title 22 (Development Code) including Exhibit A
5. Draft Standard Management Practices
6. Resolution Approving Fees Associated with Development in the Stream Conservation Area
7. Public Correspondence:
 - a. Sleepy Hollow Homes Association, 10/19/2013
 - b. Thomas G. Lambach, 10/21/2013