



# COMMUNITY DEVELOPMENT AGENCY

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October 1, 2013

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Marin County Board of Supervisors  
3501 Civic Center Drive  
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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.
2. Consider approving the draft work program for the Stream Conservation Area implementation program; and
3. Conduct a hearing on the proposed interim SCA ordinance and fee resolution for the San Geronimo Watershed, provide direction on countywide application of the ordinance and continue the hearing to October 29, 2013.

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**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 Stream Conservation Area (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. Public comments during the hearing identified numerous issues including:

- Lack of clarity, adequacy and/or restrictiveness of regulations to address ephemeral streams;
- Unique characteristics of individual watersheds that may influence SCA standards;
- Ongoing watershed planning efforts and whether the SCA relates to those activities;
- Clarity and/or reasonableness of standards for determining whether allowable uses are compatible with the SCA;
- Adequacy of the SCA ordinance to protect habitat for endangered Central Coast Coho salmon;
- Concerns about a “one-size fits all” approach to SCA setbacks in relation to variable land use, watershed or stream characteristics;
- Whether the SCA relates to the Salmon Enhancement Plan, a study of the San Geronimo Watershed that provides recommendations for habitat protection including setback distances;
- Impacts of regulations on permitting cost/process and property values;
- Adequacy of County maps to correctly identify the extent of the SCA.

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. During public testimony and in the course of your Board’s discussion, it was suggested that the interim ordinance apply countywide. However, no consensus was reached on this topic. 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.”

**DISCUSSION:**

*SCA Work Program*

In the SCA hearings to date, your Board has emphasized an interest in harmonizing the proposed SCA ordinance and its implementation with the County’s ongoing watershed planning efforts and incorporating watershed principles<sup>1</sup>. The proposed work program will advance watershed principles and build upon the work of Marin’s

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<sup>1</sup> While the CWP does not include a listing of watershed principles, the California Watershed Program has developed a summary document that includes watershed principles, provided in Attachment 3.

watershed program by synthesizing existing studies, information and resources to improve the understanding of Marin’s watershed needs, provide a framework for ongoing evaluation of existing practices and requirements to inform changes to County policy and regulations, and improve communication, information, and education about creek protection principles through a public outreach 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;
2. Watershed enhancement program (education, homeowner assistance, permitting assistance, and funding mechanisms to support long-term protection of habitat); and
3. Updated County stream map.

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 subcommittee. An advisory group representing various backgrounds (resident, environmental organization, resource agency, etc.) 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. At the time of the CWP’s adoption, ephemeral streams were typically identified based on field observation, an expensive and time-consuming process. This is acknowledged by Program BIO-4.c that calls for mapping of ephemeral streams “where feasible” and the fact that the current County SCA map includes 886 total miles of streams, of which only about 17.5 miles are identified as ephemeral.

The Community Development Agency is presently updating the County stream map, consistent with Program BIO-4.c, 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 additional ephemeral streams.

More accurate and comprehensive stream maps present an opportunity for the County, resource agencies, and community to learn more about the interrelated components of watersheds and will benefit watershed management over time. Importantly, new mapping of ephemeral streams provides an important base of knowledge to better understand the extent and role of these features and to identify the best approach for their conservation moving forward. However, more extensive mapping also has the potential to expand the cost and time for County agencies and/or permit applicants to identify and conduct site assessments. The CWP policies set circular and potentially vague standards for triggering the SCA based on natural features such as riparian vegetation and special status species. Conversely, an ephemeral (or a segment of an ephemeral) may be excluded from the SCA based upon a field determination of whether a bed/bank exists or whether the watercourse is a ditch or a modified waterway.

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. This work would result in the following deliverables:

- *Existing Conditions Report:* Analysis of existing watershed studies, and literature review of best practices for stream conservation and watershed management to describe existing conditions, characteristics, and function of ephemeral streams in key watersheds in the County.
- *SCA Strategies Report:* Based on the existing conditions report and maps for the County, evaluate the effectiveness of the SCA standards to protect ephemeral streams, including the 50- and 100-foot setback distances to properties in the City-Centered Corridor and smaller lots in the Inland Rural Corridor, identify the unique watershed characteristics, opportunities and requirements to protect the hydrologic and ecological function of ephemeral streams, and recommend appropriate measures to protect ephemeral streams.

*Public Education and Outreach*

A common theme voiced during public hearings for the SCA ordinance and echoed by your Board is the need for additional public education and outreach. These comments are consistent with watershed management principles which emphasize the importance of public education and support for landowner stewardship.

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 has carried this recommendation forward 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 and the County’s stormwater pollution program (MCSTOPPP), and serve as an ombudsperson to assist homeowners with permitting processes.

*Interim Ordinance: Approach*

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, with the following revisions:

- Section 22.33.030 (Stream Conservation Area General Requirements) has been abbreviated since it is comprised of a summary of requirements found elsewhere in the Countywide Plan and the ordinance;
- The scope is limited to the San Geronimo watershed (see discussion below) and ordinance language revised accordingly;
- The “purpose” statement for Chapter 22.63 (Stream Conservation Area Permit) has been revised to incorporate watershed protection consistent with Countywide Plan Goal WR-1 (Healthy Watersheds);
- For purpose of clarity, Section 22.63.020.A.1 (Application of SCA Provisions) has been modified to eliminate the “catch-all” provision that would impose SCA requirements for any work not expressly listed in subsections (a) through (c) that may result in potentially adverse impacts;
- For purposes of clarity, Section 22.63.030.A (SCA Tier 1 Development) has been modified to eliminate redundant references to the requirement to avoid impacts since that would have been met if the project complies with the Development Standards and Standard Management Practices; and
- Section 22.63.060.A has been modified by combining findings 1 and 2 into one finding.

The ordinance would be in place for a limited duration, expiring on April 1, 2016 (2 ½ years) or upon adoption of subsequent amendments to the Marin Countywide Plan and/or County Code that pertain to the SCA, whichever occurs first. While the regulatory aspects of the ordinance would expire at this time and be removed from the Development Code accordingly, the definitions and listing of permit types would remain in place unless revised through future Development Code amendments. The rationale for this approach is that the definitions are useful for implementation of SCA policies through Design Review, even in the absence of expanded Stream Conservation regulations.

*Interim Ordinance Geographic Scope*

Public notice for the interim ordinance was distributed to property owners in the San Geronimo watershed and published in the Marin IJ in accordance with CDA's notification procedures. Subsequent to distribution of the public hearing notice, the Board's subcommittee met on September 23, 2013 to discuss the SCA. During this meeting, the subcommittee expressed concern about the potential lack of SCA protection countywide during the timeframe of the SCA work program. The subcommittee subsequently determined that your Board should be presented with the option to consider an interim countywide SCA ordinance.

Because notice has been provided to property owners in the San Geronimo watershed for an interim SCA ordinance, staff recommends that your Board conduct the hearing as noticed, provide direction to staff on implementation of the proposed ordinance countywide, and continue the hearing to October 29, 2013.

*Interim Ordinance Cost and Workload Impacts*

The proposed SCA ordinance expands the Community Development Agency's (CDA) existing regulatory program insofar as it establishes a new permit type, permit requirements for previously unregulated activities, and site assessment and inspection requirements. While the Tier 2 (discretionary) permits would be largely consistent with existing standards and procedures, staff training will be required for Tier 1 site assessments (riparian identification 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 money that 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, if contracted through the Marin Resource Conservation District. While funding for most of the work program is available from money that your Board set aside in Fiscal Year 2010-11 for SCA implementation, staff is pursuing additional grant funding to support community engagement. 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 be undertaken without permits.

If the proposed interim ordinance were applicable only to the San Geronimo watershed, the limited-term SCA ordinance 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 and additional revenue losses depending on the extent of work required to complete Initial Studies. Given the limited number of permits projected, 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)

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|--|---|
| <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. California Watershed Program: "About Watershed Management"
4. Ordinance Approving Amendments to Title 22 (Development Code) including Exhibit A

5. Resolution Approving Fees Associated with Development in the Stream Conservation Area in the San Geronimo Watershed
6. Interim Stream Conservation Area Ordinance (Annotated with Revision Marks)
7. Common Residential Improvements in the SCA (Proposed Ordinance)
8. Countywide Plan Consistency Matrix (Proposed Ordinance)
9. Draft Standard Management Practices
10. Planning Commission Resolution 13-002 Recommending Approval of the SCA Ordinance *(In the interest of conserving resources, this attachment is included only in the Board of Supervisors hearing packet. Copies of this document are available at the Community Development Agency for public review during the hours of 8:00 a.m. to 4:00 p.m. Monday through Thursday, and from [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca).)*
11. Public Correspondence:
  - a. MAST (Andrea Taber, Beth DeScala), 8/2/2013
  - b. Mary Abbott, 9/1/2013
  - c. Laura Chariton, 9/3/2013
  - d. Friends of Corte Madera Creek, 9/3/2013
  - e. Kent Woodlands Property Owners Association, 9/13/2013