

March 18, 2013

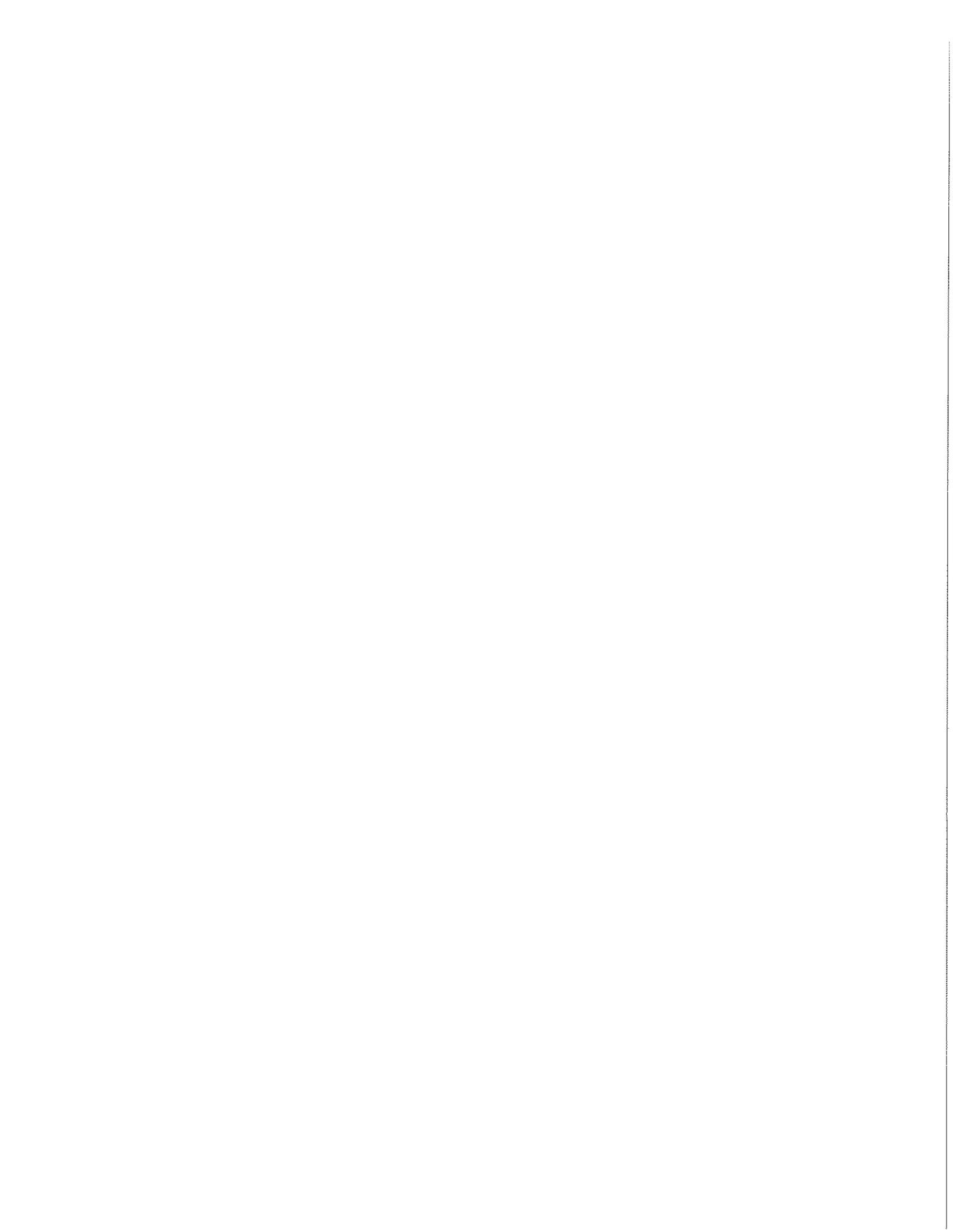
MAR 22 2013 PM 1:17 Planning

Tom Lai
Community Development Agency
Planning Division
3501 Civic Center Dr., Suite 308
San Rafael, CA 94903-4157

Re: Stream Conservation Area Ordinance

SCA Riparian Corridor

By including a woody riparian corridor, the draft SCA extends the setback by potentially hundreds of feet from a stream when the riparian corridor is wider than 100 feet in the San Geronimo Valley. The lack of clear boundaries makes a setback for riparian corridor impossible to enforce without subjective judgement inviting litigation. While desirable to preserve wetlands, trees and blackberry vines can extend for hundreds of feet from a stream. This is too large a proportion of parcels of less than 10 acres. With the possible exception of 20 acre or more parcels, please limit the SCA setback to less than 100 feet.



Thorsen, Suzanne

From: John Baldwin <jbroofing@comcast.net>
Sent: Wednesday, March 20, 2013 10:55 AM
To: Thorsen, Suzanne
Subject: FW:
Attachments: Letter to the County 3-19-2013.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Susan. Here are my wife's and my thoughts and questions regarding the new stream ordinance. Unfortunately we have prior commitments tonight and can't attend the meeting. Thank you. John Baldwin

From: Jan Baldwin [<mailto:jbaldwin@legalaidmarin.org>]
Sent: Wednesday, March 20, 2013 10:15 AM
To: John Baldwin
Subject:

March 19, 2013

Suzanne Thorsen:

My wife and I live in San Geronimo and our property is on the creek. In fact, it crosses the creek. We bought our home in 1976. As I understand the new ordinance, the County could restrict my use of the 100' plus "additional setbacks" from the stream's bank. That would be at least 1/3 of my lot! I have several questions:

1. When does "additional setback" come into play and what does it really mean?
2. At present, our lot is entirely fenced. You mentioned at the open house on March 14, that under the new ordinance, fences would have to be "wildlife friendly." What does that mean? At present my fence keeps deer out but we still have squirrels, skunks, raccoons, fox, snakes and lots of birds in our yard. My fence is at the top of the creek bed. Can I keep my fence? Can I keep the deer out?
3. My wife and I have spent the last 37 years planting fruit trees, palm trees, roses, lavender, naked ladies, iris, rhodos, clematis, a vegetable garden and much more within 100' of the stream bank. Our entire yard is a "disturbed area." We do not use pesticides or fertilizers – only compost. Are we correct that we can maintain our disturbed area? If we sell our property, would the new owners be able to maintain this "disturbed area."
4. Years ago we built a small shed (8'x14') without permits because the zoning codes said we could build a small building than 120 sq feet without permits. This building is about 30' from the stream bank and my wife uses it as an art studio. Will this change now? Would I need a permit to keep this building or keep it as is? Would new owners be able to maintain and use this shed?
5. Years ago we built a small deck (7'x12') that overlooks the creek. We actually watch the salmon spawn from this deck 20' below. I have movies of them mating! The salmon cared little that I was right there watching them. So I don't think my deck is harming the salmon. Is this deck exempt from the new ordinance? Twice I have watched river otters feast on the fish....a problem that no one seems to care about. These river otters are voracious and pretty much ate everything.
6. I have buried both my parents ashes beneath a lotus statue about 15' from the bank of the creek. It is a peaceful place to visit with them. Will my wife be able to place her mother's ashes alongside my parents without breaking the law? With or without a permit?
7. I have read the ordinance and as far as I can tell my "disturbed area" is exempt from the new ordinance. However, were we to sell our property, would these exemptions stay in place for the new owners? Or would they have to wipe our almost 40 years of cultivation and nourishment?

We call them the sacred salmon. We wish them no harm. It is our wish that they multiply and accordingly have been good stewards of their habitat/our land. We oppose the ordinance. It has gone way overboard in restricting land usage and making things complicated and expensive.

Thank you for reading my letter. I look forward to your response.

From: [Thorsen, Suzanne](#)
To: ["John Baldwin"](#)
Subject: RE: Stream Conservation Area
Date: Monday, March 25, 2013 10:52:01 AM

Hi John,

Thank you for your patience as I worked through your questions. I have provided your letter in the Planning Commission staff report and will include the responses below in a supplement to the PC that is going out this week.

1. When does “additional setback” come into play and what does it really mean?

An additional setback is something that might be required if the findings of a site assessment (biologist report) determine that some feature of the stream quality or riparian habitat is so significant that an additional setback is warranted to protect it. We recognize the need to provide better information around this question and are working with our consulting biologists to provide examples of when such a situation might occur.

2. At present, our lot is entirely fenced. You mentioned at the open house on March 14, that under the new ordinance, fences would have to be “wildlife friendly.” What does that mean? At present my fence keeps deer out but we still have squirrels, skunks, raccoons, fox, snakes and lots of birds in our yard. My fence is at the top of the creek bed. Can I keep my fence? Can I keep the deer out?

You can keep and maintain your existing fence. Under the proposed ordinance, new fences would be exempt from an SCA permit if they do not restrict wildlife access to the riparian corridor.

3. My wife and I have spent the last 37 years planting fruit trees, palm trees, roses, lavender, naked ladies, iris, rhodos, clematis, a vegetable garden and much more within 100’ of the stream bank. Our entire yard is a “disturbed area.” We do not use pesticides or fertilizers – only compost. Are we correct that we can maintain our disturbed area? If we sell our property, would the new owners be able to maintain this “disturbed area.”

Under the proposed ordinance you could still continue to maintain and cultivate your garden, as could any future owners.

4. Years ago we built a small shed (8’x14’) without permits because the zoning codes said we could build a small building than 120 sq feet without permits. This building is about 30’ from the stream bank and my wife uses it as an art studio. Will this change now? Would I need a permit to keep this building or keep it as is? Would new owners be able to maintain and use this shed?

A shed that is less than 120 square feet does not currently require permits. Under the proposed ordinance, maintenance and in-kind replacement of that shed could be allowed as an exemption. However, extension of electric or water to the shed would have required a building permit. If you have more detailed questions about this please let me know.

5. Years ago we built a small deck (7’x12’) that overlooks the creek. We actually watch the salmon spawn from this deck 20’ below. I have movies of them mating! The salmon cared little that I was right there watching them. So I don’t think my deck is harming the salmon. Is this deck

exempt from the new ordinance? Twice I have watched river otters feast on the fish....a problem that no one seems to care about. These river otters are voracious and pretty much ate everything.

If your deck was built under the Exemptions in the Development Code or if it was built in accordance with a permit, then it would be considered a permitted or legal nonconforming structure. You can continue to use/maintain/repair and even replace the deck in-kind under the exemptions in the proposed SCA ordinance. Note however, that the Department of Public Works exercises permit authority over development within stream banks and in the first 20 feet from the top of the stream. Please let me know if you have further questions about this and I will get you the appropriate contact information for DPW.

6. I have buried both my parents ashes beneath a lotus statue about 15' from the bank of the creek. It is a peaceful place to visit with them. Will my wife be able to place her mother's ashes alongside my parents without breaking the law? With or without a permit?

Your statue would likely constitute a "disturbed area" (particularly if it is in a garden) and your wife could place her mother's ashes in this located under the exemption provisions of the SCA Ordinance.

7. I have read the ordinance and as far as I can tell my "disturbed area" is exempt from the new ordinance. However, were we to sell our property, would these exemptions stay in place for the new owners? Or would they have to wipe our almost 40 years of cultivation and nourishment?

The "disturbed area" relates to what exists on the site and is not tied to the owner. A future owner could maintain these disturbed areas as well. We will be providing information to property owners to help them document the extent of disturbance on their site, both as a way to assist in making determinations for exemption and as a protection in the event of future code enforcement complaints.

Please let me know if you have any further questions and I will be glad to assist you.

Suzanne

Suzanne Thorsen, AICP
PLANNER

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From: John Baldwin [mailto:jbroofing@comcast.net]
Sent: Wednesday, March 20, 2013 10:55 AM
To: Thorsen, Suzanne

Subject: FW:

Hi Susan. Here are my wife's and my thoughts and questions regarding the new stream ordinance. Unfortunately we have prior commitments tonight and can't attend the meeting. Thank you. John Baldwin

From: Jan Baldwin [<mailto:jbaldwin@legalaidmarin.org>]

Sent: Wednesday, March 20, 2013 10:15 AM

To: John Baldwin

Subject:

SPAWN'S KEY CONCERNS RE THE SCA ORDINANCE 3/15/17

In the past, biological assessments contracted by County for development projects have sometimes acted as defacto facilitators for the project, making assertions and assumptions that shifted the burden-of-proof onto special-status species to defend themselves, rather than onto the project to justify itself. Moving forward, SPAWN is concerned that the Ordinance reflects the intent of the 2007 CWP to expand SCA protections by interpreting the Ordinance in ways that favor the environment and by placing the burden-of-proof on the proposed project.

- 1. Development on “Previously Disturbed Areas.”** Presently, the Ordinance could be interpreted to mean that a structure proposed on a lawn in an SCA would not trigger any mitigation. Landscaping in an SCA provides some of the ecological functions once performed by native riparian vegetation. A structure permanently eliminates these substitute ecological functions as well as potential for native riparian restoration. While not equal to the impact from native riparian vegetation removal, replacing landscaping in a SCA with structures does (per CWP BIO 4.2) reduce habitat acreage, value and function and thus should be mitigated.
- 2. 500 Sq Ft Additions.** Presently, the Ordinance could be interpreted to authorize an unending series of 500 square foot additions to existing homes in the SCA, despite CWP BIO-4.a, which suggests *“modest additions to existing buildings”* For example, in the San Geronimo Valley, the median size of its 700 existing homes is 1500 sq ft and thus one 500 sq ft addition to every home would increase the median size by 33% and would add 8 acres of new development (equivalent to adding a new WalMart) in this sensitive SCA. One 500 sq ft addition in an SCA, if mitigated with riparian vegetation, might still leave the SCA functional for both flood control and salmon. However, we do not believe that the CWP directive for an “expanded” SCA Ordinance and “modest additions” can be rationalized to authorize an unending build out.
- 3. Review/Disclosure.** Presently, the Ordinance could be interpreted as requiring no review when additional square footage is proposed to existing structures in the SCA. But it appears that there has been little enforcement of prior Ordinances (MCC §24.04.560) that protect streams. Implicit in the CWP language is the need for a review to insure what is “existing” and that the square footage is truly an addition that has not already been added. Further, a description of any development within 35 feet of a salmon stream or tributary (20 feet from non-salmon streams) should be required by way of a pre-sale disclosure or inspection with the County providing landowner assistance (per BIO-4.a) to remove structures in this critical SCA area. If sellers are required to disclose high-flow toilets in Marin, then they can certainly disclose structures that could impact both flooding and salmon.
- 4. Ephemeral Tributaries to Salmon Streams.** Presently, the Ordinance could be interpreted to mean that these tributaries have to demonstrate 100 feet of riparian vegetation to be eligible for SCA protections. However, CWP BIO-4.a states that ephemeral tributaries to salmon streams should be subject to SCA protections regardless of whether they have a 100 feet of riparian vegetation. A functioning network of ephemeral streams mitigates flooding and forms the headwaters without which mainstems could not support salmon.
- 5. Mitigation must be Permanent and Flexible** Presently, the Ordinance could be interpreted to mean that mitigation will be verified for only five years, after which the same could be proposed for development. The development that triggered the mitigation is defacto permanent, so the mitigation must be recorded by a note on the deed, easement, or other permanent means. Further, the Ordinance should allow offsite mitigation within the same watershed, including purchase of undeveloped properties, easements or other options.

SPAWN's DETAILED CONCERNS RE PROPOSED SCA ORDINANCE

22.33.030 A 1	SPAWN is pleased that the CDA has clarified that “feasible” is understood to be defined as in 22.63.060 A (i.e. referenced to environmental, not financial impact)
22.33.030 A 3	SPAWN is pleased that the CDA has tentatively clarified that “adverse alteration of hydraulic capacity” is understood to refer to “maintain the stream hydrograph”
22.33.030 B	SPAWN is pleased that the CDA has tentatively agreed on the need to maintain a repository for SCA data . For example, an ephemeral stream could have had 100 feet (or more) of riparian vegetation documented on a streamside parcel which would trigger SCA protections along that entire stream, even for a parcel that might not have any riparian vegetation within its parcel boundaries.
22.33.030 B	SPAWN is concerned that the Ordinance does not acknowledge the Department of Public Works (DPW) setback MCC §24.04.560: <i>“Drainage setbacks. All structures shall be set back from creeks, channels or other major waterways at least twenty feet from the top of bank or twenty feet plus twice the channel depth measured from the toe of the near embankment, whichever is greater.”</i> (Ord. 3181 § 5, 1994).
22.33.030 B 2 a 22.62.040 #8	SPAWN is concerned that in the 6 years since the 2007 CWP, there seemingly has never been an assessment triggering a SCA extending “50 feet landward from the outer edge of woody riparian vegetation.” We suggest that may be because that CWP language as well as the new Ordinance language (“the distance measured laterally and perpendicular to the ...edge of woody riparian vegetation”) both appear to specify measurements that are physically impossible to make from erratic biological features. SPAWN is further concerned that this “woody SCA” should be clarified and its measurement simplified as extending to the ends of lines drawn from the trunk of the subject woody riparian vegetation through its dripline (per CWP Figure 2.2) plus 50 feet, provided that the ends of those lines do not extend past the streambank (i.e. are landward). The CWP did not intend to create a SCA with projecting fingers of alternating lengths and widths. See Figure 1a vs 1b.
22.33.030 B 2 a	SPAWN is concerned that CWP description of “50 feet landward from the outer edge of woody riparian vegetation” should be clarified to mean that if the dripline of a subject woody riparian vegetation is within 50 feet of the dripline of other woody riparian vegetation already defined as within the SCA, then the subject woody riparian vegetation should be included in the woody riparian vegetation already defined as in the SCA, and thus the “woody SCA” should be extended per above.
22.33.030 B 2 a	SPAWN is concerned that if the Ordinance does not protect against trimming riparian vegetation that determines “the outer edge of woody riparian vegetation” then this will defacto incentivize trimming to moot the “woody SCA”(such trimming should require a site assessment and mitigation to retain the same SCA).
22.33.030 B 2 b 22.62.040 #8	SPAWN is concerned that the CWP description of the SCA as “a strip of land extending laterally outward from the top of both banks” and the new Ordinance definition (<i>“the distance measured laterally and perpendicular to the top of bank...”</i>) are both measurements that are physically impossible to make from erratic biological features. They should be clarified to mean that the SCA is land within the radius of the appropriate parcel-based setback (20, 50 or 100 feet) centered at any point on the streambank. The outer edges of these radiuses will define the same lateral extent from the top of both banks, but will eliminate measurement problems and uncertainty when the stream changes direction/ends. See Figure 2a vs 2b.

22.33.030 B 2	<p>SPAWN is concerned that there does not appear to be anything in the SCA Ordinance that provides some protection for streams (particularly those tributary to or containing with anadromous fish) even if channelized or culverted. BIO-4-o states <i>“As part of the expanded SCA Ordinance, consider additional policy language to encourage reopening culverted reaches and restoring channelized reaches of natural drainages.”</i> CWP Bio-4.9 states: <i>“Replace storm drains and culverts in SCAs with natural drainage and flood control channels wherever feasible.”</i> SPAWN is concerned that when the Ordinance does not include some protection for channelized or culverted creeks, then this will not just make daylighting less feasible but may also defacto incentivize channelizing and culverting in an effort to avoid SCA protections.</p>
22.33.030 B 3	<p>SPAWN is concerned that in the 6 years since the 2007 CWP, there may have never been any assessment that required any “additional SCA setback,” thus it appears that the internal County criteria for determining an additional setback may have implicitly repealed the explicit language of the CWP. SPAWN is concerned that the Ordinance should make public the criteria that would trigger this “additional SCA setback.” We suggest that such triggers could include an assessment of appropriateness (i.e. does the parcel support special-status species or sensitive natural community types) and feasibility (is the parcel large enough to accommodate an additional setback without eliminating all development possibility).</p> <p>We further note that the purpose of the Ordinance in the CWP was to “expand” SCA protections (in part because the 2007 CWP reduced the city-centered setback on virtually all parcels from 50 to 20 feet). Thus for any biological assessment that could produce two (or more) equally defensible outcomes, we would expect that the outcome most protective of the resources would be reflected in the determination. These topics of clarification, transparency and burden-of-proof concern SPAWN throughout this process. While we acknowledge that quantifying and specifying every aspect of a biological assessment is likely impossible, it is also true that having no “sideboards” whatsoever renders these assessments too subject to the whims of the day and, in our opinion, an could result in an abuse of discretion.</p> <p>We have had the experience of the Writers Cabins in the Point Reyes where the County’s biological assessment asserted that: 1) willows were not riparian vegetation because it could not be proven that their water source was hydrological connected to the stream; 2) the SCA was in a dry pasture where the USGS map showed the stream instead of where the stream actually located.</p> <p>In this Writer Cabins case (and others in the past), the County’s biological assessment acted as a defacto facilitator for development, making assertions and assumptions that shifted the burden-of-proof onto the special-status species to defend themselves, rather than onto the development to justify itself. Moving forward, SPAWN is concerned that the Ordinance reflects the intended expansion of SCA protections and thus that the burden-of-proof is squarely on the shoulders of the proposed development and not on the backs of the special-status species.</p>
22.33.030 B 4	<p>SPAWN is concerned that the definition of “riparian vegetation” include native vegetation that replaced native riparian species with similar functions but which may not be traditional “riparian species.” SPAWN is pleased that the CDA has indicated that it will use the broader definition found in the San Geronimo Valley (SGV) Salmon Enhancement Plan (SEP) Existing Conditions Appendix A-2.</p>

22.33.030 B 4	SPAWN is pleased that the CDA acknowledges that many frontages on ephemeral streams are less than 100 feet, so it is inappropriate to limit a site assessment for riparian vegetation to only the project parcel.
22.33.030 B 4	SPAWN is concerned that the Ordinance's new definition of an ephemeral stream (as subject to the SCA only when it supports a " <i>continuous 100-foot length of riparian vegetation</i> ") narrows SCA protection when the CWP intended that SCA protections be expanded. In contrast, CWP BIO-4 states that an ephemeral stream is subject to the SCA when it " <i>supports riparian vegetation for a length of 100 feet...</i> "
22.33.030 B 4	SPAWN is concerned that CWP BIO-4.a states, " <i>Adopt Expanded SCA Ordinance. Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary.</i> " Thus ephemeral tributaries to anadromous fish streams are subject to SCA protections regardless of whether they have a "100-foot length" of riparian vegetation). Similarly and consistently, Bio-4 states, " <i>An ephemeral stream is subject to the SCA policies if it: (a) supports riparian vegetation for a length of 100 feet or more, and/or (b) supports special-status species [i.e. anadromous fish] and/or a sensitive natural community type]...<u>regardless of the extent of riparian vegetation associated with the stream.</u></i> "
22.33.030 B 4	SPAWN is concerned that a " sensitive natural community type " along Marin's ephemeral creeks might qualify under the CWP definition but might not under the Ordinance, e.g. Code 86.100.00 <i>Sequoia sempervirens</i> (Redwood forest) Alliance.
22.33.030 B 4	SPAWN is concerned that SCA protections for ephemeral creeks should not be voided due to space between plants, gaps created by fence lines, game trails, pathways, utility crossings, public roads/facilities, etc. In quantifiable terms, SPAWN is concerned that the "100 foot length" assessment include gaps similar to those of the 50-foot "woody SCA" extension. For example, assume there are a total of three parcels fronting along an ephemeral stream. The first and last parcels (per former site assessments) have 50 feet of stream frontage each, all of which has riparian vegetation. The middle parcel has 49 feet of stream frontage absent any riparian vegetation. Then it should be determined that the two separate 50 foot lengths of riparian vegetation qualify the stream for SCA protections because they are separated by less than 50 feet.
22.33.030 B 4	SPAWN is concerned that if the Ordinance does not protect against trimming riparian vegetation that determines a "100-foot length," then this will defacto incentivize trimming to moot ephemeral stream protections (such trimming should require a site assessment and mitigation to retain the same "length" of vegetation).
22.33.030 B 4	SPAWN is concerned that the ephemeral extension of the main channel of a blue line stream is <u>not</u> a tributary and <u>not</u> a separate stream, but rather a reach of the blue-line stream subject to the SCA protections of the blue line stream (just as is a reach of a blue line stream even when it may go underground).
22.33.030 B 4	SPAWN is concerned that there appear to be few ephemeral streams mapped . It is not clear what the green lines mean on the County GIS maps that currently define only "blue line" streams.
Fig 3-16	SPAWN is concerned that the graphics do not distinguish between the low flow channel bank and high flow channel banks from which the SCA is measured.

22.63.020 A 1 a	SPAWN is pleased that the CDA clarified that the SCA Ordinance applies to patios .
22.63.020 A 1 a	SPAWN is concerned that “ vehicular access routes ” be clarified so that if you plan to site a trailer, R-V or vehicle-delivered structure in an SCA that does not already have a legally permitted driveway to that site then you are planning a “new vehicular access route” for which you will need a permit.
22.63.020 B 1	SPAWN is concerned that there be findings that are transparent and public for decisions made between Exemptions, Tier 1 and Tier 2 processes.
22.63.020 B 1 c	SPAWN acknowledges the need to protect life and property, but is concerned that the Ordinance should also protect the SCA and thus removal of non-emergency vegetation should be subject to a site assessment to determine if the proposed removal would change the extent of the SCA (and if so, require mitigation to retain the extent of the SCA).
22.63.020 B 1 g	SPAWN is concerned that maintenance of permitted or legal non-conforming structures should still adhere to BMPs (e.g. no replacing old drainage connected directly to the stream with new drainage connected directly to the stream.)
22.63.020 B 1 g	SPAWN is concerned that 22.63.020 B 1 g (“maintenance” without determination) vs 22.63.020 B 2 a (“repair” subject to determination) should be clarified.
22.63.020 B 1 g	SPAWN is concerned that it be clarified that replacement of permitted or legal non-conforming structures be Tier 1 (not an exception subject to determination).
22.63.020 B 1 h	SPAWN is concerned that the CDA clarify that maintenance or replacement of invasive plants that could impact native riparian vegetation is not exempt.
22.63.020 B 1 i	SPAWN is concerned wildlife fencing is not described nor clear that fencing (which is a “structure” per 22.130.030) is thus prohibited within the DPW setback.
22.63.020 B 1 j	SPAWN is concerned that new and replacement livestock fencing should conform to and thus be outside the DPW setback so there not be “ resulting in the removal of woody riparian vegetation ” or “ animal confinement within the SCA. ”
22.63.020 B 2	SPAWN is concerned that private resource enhancement programs should be incentivized and thus exempt subject to determination if conducted under BMPs.
22.63.020 B 2 a	SPAWN is concerned that “repair and replacement” of permitted/legal non-conforming structures should not “ expand the extent of the horizontal incursion. ”
22.63.020 B 2 b 22.62.040 #8	SPAWN is concerned about Ordinance’s definition of a previously disturbed area : “ <i>An area that has experienced significant alteration from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities, as determined by the Director.</i> ” Replacing a cleared, graded or landscaped area with development clearly diminishes habitat acreage value and function. Cleared or graded areas will regrow to provide (and landscaped areas already provide) many (but not all) substitute ecological functions once performed by native riparian vegetation and thus cannot be considered a “significant alteration.” Replacing these “provisionally altered” areas with defacto permanent development eliminates these substitute ecological functions and any potential replacement with native riparian vegetation. Because these provisionally altered areas substitute for many (but not all) of the ecological functions of native riparian vegetation, development in these areas should require a 1:1 on-site mitigation with native riparian vegetation.

22.63.030	SPAWN is concerned that there are findings that are transparent and public
22.63.030 A	SPAWN is concerned that any development that proposes the removal of riparian vegetation (see 22.63.020 B 2 b and 22.62.040 #8) should require a Tier 2 permit (not Tier 1 as the Ordinance allows under certain conditions)
22.63.030 A	SPAWN is concerned that any development in 22.63.030 A 2-7 that increases the existing horizontal incursion into the SCA should be a Tier 2 permit (not Tier 1)
22.63.030 A	SPAWN is concerned that development over a certain size limit should require a Tier 2 permit (not Tier 1 as the Ordinance allows).
22.63.030 A 1	<p>SPAWN is concerned that to be eligible for a Tier 1 permit, the 500 sq ft addition must not require the removal of native riparian vegetation and should be clarified as one-time that runs with the property that should be recorded in a CDA data repository, by a note on the deed, and/or other effective means per BIO 3-e-d.</p> <p>SPAWN is concerned that the Ordinance appears to allow multiple 500 sq ft additions and thus is inconsistent with CWP BIO-4.a: <i>“Adopt Expanded SCA Ordinance. Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider <u>modest additions to existing buildings</u> that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats.”</i></p> <p>The median size of existing homes in Marin County’s SCA can be small. For example in the San Geronimo Valley, the median size is ~1500 sq ft and thus a single 500 sq ft addition would increase the size of the median home in the sensitive SCA area by 33%, already stretching the definition of “modest.” If this single 500 sq ft addition were added to every existing SGV home in the SCA, this would add about 8 acres (669 homes x 500 sq ft) of new development, equivalent to adding a new WalMart in this sensitive SCA. If this is what the Ordinance proposes to allow, then it has to be done very carefully with good construction practices <u>and</u> mitigated 1:1 with native riparian vegetation if built on a “provisionally altered” area (2:1 for riparian vegetation removed see comments to 22.63.020 B 2 b and 22.62.040 #8).</p> <p>SPAWN would be receptive to altering the implementation of a single 500 sq ft addition to allow greater square footage to homes below the median size in the watershed and an offsetting lesser square footage for homes above the median size. However, SPAWN is concerned that the Ordinance seemingly re-interprets the clear intent of the CWP to allow an unending series of 500 sq ft additions. Allowing three 500 sq ft additions in the SGV would double the size of the median home in the sensitive SCA area (the equivalent of adding 3 WalMarts) which is clearly not “modest” and contradicts BIO-4.20 that states, “Riparian habitats are irreplaceable.”</p>
22.63.030 A 1	SPAWN is concerned that the 500 sq ft addition in Tier 1 should be clarified as not triggering other impacts . SPAWN is similarly concerned that projects applying for a Tier 1 permit should not be piecemealed. If a project include more than one of the categories listed in 22.63.030 A, then it requires a Tier 2 permit.

22.63.030 A 1	SPAWN is concerned that the 500 sq foot addition in Tier 1 should be contingent on an approved plan to remove or legalize illegal structures (if any) in the SCA . SPAWN is not opposed to “modest additions to existing buildings” (when mitigated) but in sensitive areas near creeks, it would seem necessary to make sure that the addition is truly an addition and has not defacto already been added.
22.63.030 A 1	SPAWN is concerned that the proposed Ordinance allowing additions that (<i>“do not result in the expansion of the existing building footprint within the SCA by more than 500 square feet”</i>) is inconsistent with the CWP (<i>“additions that do not exceed 500 square feet of total floor area”</i>). The Ordinance, for example, could allow 1500 sq ft of added floor area (500 sq ft footprint x 3 stories), whereas the CWP would allow only 167 sq ft of footprint (x 3 stories = 500 sq ft of floor area).
22.63.030 A 3	SPAWN is pleased that the CDA clarified that the SCA Ordinance applies to patios .
22.63.030 A 4	SPAWN is concerned that “bridges” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback.
22.63.030 A 4	SPAWN is concerned that “<u>impervious routes, paths</u>” are inappropriate for Tier 1
22.63.030 A 5	SPAWN is concerned that Tier 1 be “drainage improvements” be limited to those outside the DPW setback.
22.63.030 A 6	SPAWN is concerned that Tier 1 be limited to “retaining walls” outside the DPW setback, that “rip rap and checkdams” are inappropriate for Tier 1 (given that they require construction in the stream). Further, “rip rap” should be “geotechnical”.
22.63.030 A 7	SPAWN is concerned that private “water supply and flood control projects” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback and/or diversion of the underflow (public utility facilities are exempt under 22.63.020 B 1 a).
22.63.030 B 2 a	SPAWN is concerned that removal of riparian vegetation should require Tier 2.
22.63.030 B 2 b	SPAWN is concerned that the measure for runoff not draining directly into the stream shall be measured per the 100-year event.
22.63.030 B 2 d	SPAWN is concerned that “bridges or arched culverts” appear to be inappropriate for Tier 1 approval given that they almost certainly require construction within the DPW setback and perhaps within the stream banks.
22.63.030 B 4	SPAWN is concerned that the Ordinance does not include a definition of “qualified professional” for site assessments and that their power should be limited to recommendations sufficient for the CDA to make the determination.
22.63.030 B 4	SPAWN is concerned that the Ordinance should require a pre-development review when additional square footage is proposed in the SCA to insure that the square footage is truly an addition that has not already been added. SPAWN is concerned that the Ordinance should require a description of any development within 35 feet of salmon streams (20 feet from non-salmon streams) by way of a pre-sale disclosure or inspection in order to insure that this critical portion of the SCA functions as intended for both salmon and flood control. SPAWN is concerned that the County should provide landowner assistance (per BIO-4.a) to remove structures impacting the SCA at little to no out-of-pocket expense (such as Berkeley’s program to rebate up to one-third of the transfer tax on homes sales).

22.63.030 B 4	SPAWN is concerned that the site assessment findings and the CDA determination be transparent and public
22.63.030 B 4	SPAWN is concerned that the potential waiver of the site assessment should be deminimus and require findings that are transparent and public.
22.63.040B1/2a	SPAWN is concerned that all impacts be avoided (no multiple choice of impacts)
22.63.040 B 2 a	SPAWN is concerned that the determination of alternative mitigations be transparent and public
22.63.040 B 2 a	SPAWN is concerned about no specified criteria for mitigation “more appropriate”
22.63.040 B 2 b	SPAWN is concerned that the Ordinance <u>shall</u> include mitigation of peak flows...
22.63.040 B 2 b	SPAWN is concerned that the Ordinance should include a determination as to the feasibility of mitigating peak flows at pre-(all)development levels.
22.63.040 B	SPAWN is concerned that the Tier 2 process should require a public hearing
22.63.040 B 4 a	SPAWN is concerned that the Ordinance should define “habitat studies”
22.63.040 B 4 a	SPAWN is concerned that the limitation to drainageways affected by the project over which the applicant has control or access eliminates data from former projects over which the applicant may not have access.
22.63.040 B 4 c	SPAWN is concerned that the determination of impacts claimed to be greater inside the SCA vs outside should be transparent and public
22.63.040 C 1	SPAWN is concerned that mitigation (1:1 due to development on a provisionally disturbed area or 2:1 due to removal of riparian vegetation or 3:1 off-site) require: a) replication/enhancement of <u>ecological function</u> as well as “density and structure.” b) specified mitigation ratios are <u>minimums</u> until a) is achieved c) <u>mandatory</u> use of native vegetation; d) 5 year review (<u>or until established</u>) e) <u>prioritized</u> to infill SCA areas closes to the stream or a lot-line-to-lot-line strip f) <u>recordation</u> in the CDA data repository, by a note on the deed, easement, and/or other effective means to insure that the mitigation runs with the land (the development that triggered the removal of the riparian vegetation is defacto permanent, so the related mitigation must be also).
22.63.040 C 1	SPAWN is concerned that the Ordinance should include offsite mitigation within the same watershed, including purchase of undeveloped properties, easements or other options to provide the flexibility to interested homeowners to mitigate elsewhere and the opportunity to willing property owners to provide that mitigation.
22.63.040 C 2	SPAWN is concerned that all impacts be avoided (no multiple choice of impacts)

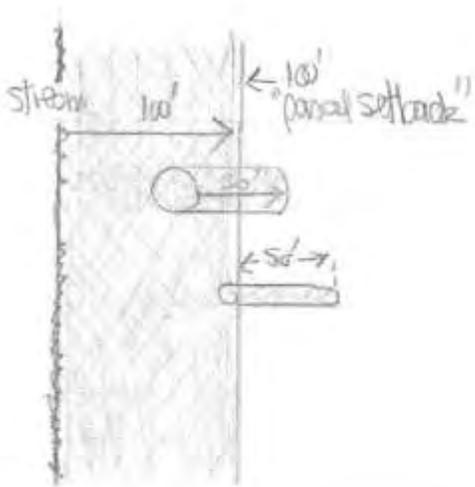


FIG 1a

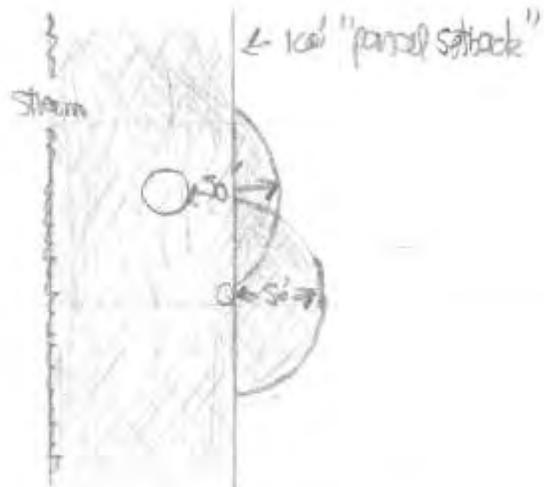


FIG 1b

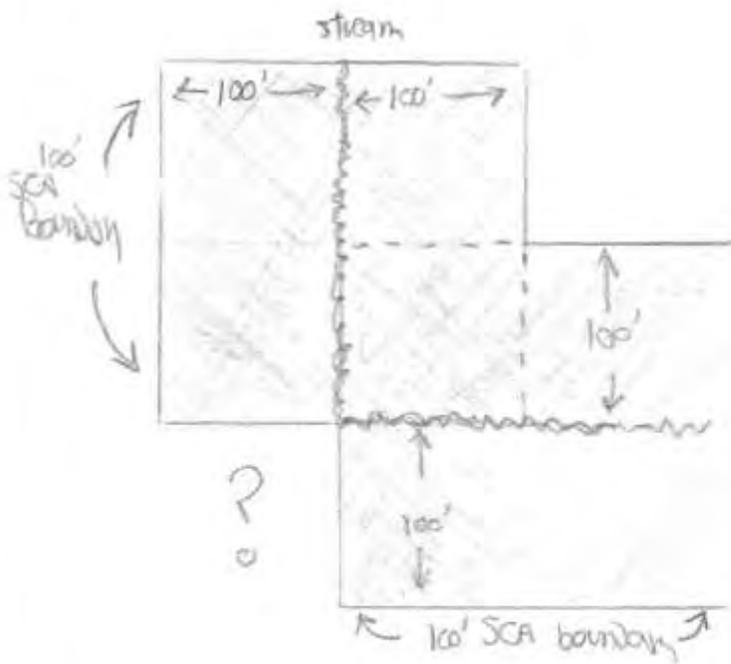


FIG 2a

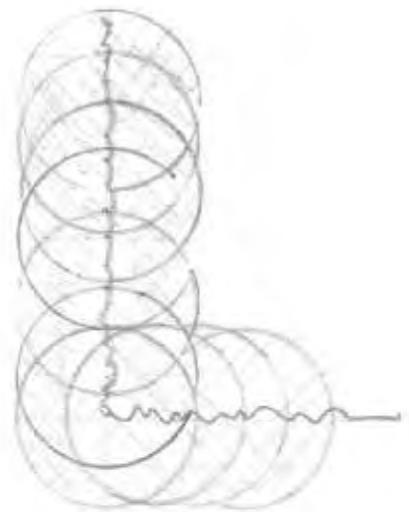


FIG 2b

Thorsen, Suzanne

From: Steve.Tognini@kp.org
Sent: Tuesday, March 19, 2013 1:31 PM
To: Thorsen, Suzanne
Subject: Riparian Stream Ordinance

Follow Up Flag: Flag for follow up
Flag Status: Completed

Marin County. CDA.

Please consider these changes to the Riparian Stream Ordinance.

The ordinance requires clear span bridges which are designed to encourage fish passage. 22.63.030-B-d Clear span bridges rather than culverts over perennial and intermittent stream. **Clear span bridges are very expensive and must only be required where fish could exist, at grades of 8% and lower. Steelhead spawn at grades of 8% and lower, Coho spawn at grades of 4% and lower. No fish exist at grades of 8% and above. At grades of 8% and above culverts must be permitted.**

The ordinance references hydrology, habitat, water quality and value of function in a few locations. The references state that these habitat qualities can not be affected when additions or construction occurs. **Any level of construction will affect at least one of these habitat qualities. These four habitat descriptions are vague. The definition of these four conditions need to be clear, expanded, and written so citizens can understand the ordinance before a project is considered. Please explain how will the County reconcile and convey to citizens that when one of these conditions will be negatively impacted, development will still be permitted on vacant properties or when an existing owner remodels a property.** 22.33.030-A-3-a,b,c. Adverse alteration of hydrology, net habitat acreage loss, water quality degradation, 22.63.020-A-1-d value or function loss

Site assessment can cause further restrictions to property use or construction. **Please explain what this means when considering a project. Additional restrictions may be placed on a project above and beyond what a reasonable person reads in the ordinance. What would trigger additional restrictions. The ordinance must state examples of conditions that would trigger additional restrictions to construction.**

Riparian vegetation, **Does the ordinance follow the definition of riparian vegetation that is stated in the CWP. Definitions must be a part of the ordinance.**

There will be properties where development will be in the SCA or existing properties will be expanded in the SCA and conditions may dictate that the development will be close to a stream. **Where on site mitigation can not be achieved Off site mitigation must be considered. CWP Bio2.2, Pg.2-19**

The diagrams of streams in the ordinance depict only a small percentage of stream conditions that exist in West Marin, typically streams at a very low grade. Most streams that flow at higher grades do not have the typical "top of bank" condition shown in the diagrams. Some creek banks may extend for hundreds of feet before a horizontal condition occurs. **Where is the top of the bank where the bank may be 100 feet tall. Alternate top of the bank conditions must be included in the ordinance and diagramed.**

The setbacks on horizontal ground are designed to protect habitat for that linear distance. It appears that where the grades are steep setbacks are also calculated on the horizontal plane. That means that properties with higher grades will have much more linear feet of protection than properties at a low grade. **Consider linear foot of habitat protection and not measure it on a horizontal plane.**

The implementation of this stream protection ordinance punishes citizens who have maintained habitat in the natural state that existed when their properties were built. The cost of the requirements for additions to existing properties where the natural habitat has been maintained is substantial enough that citizens will not be able to reasonably afford to create accommodations for aging family members or family members who may be disabled and require in home care.

The stream side protections also will cause the cost of creating affordable second units to be beyond the reach of a typical family in West Marin.

Many homes in West Marin were originally built as vacation properties and have a small footprint when compared with homes built for year round use. These homes typically utilized single wall construction that can not support a second story. These homes lack closet space, heating systems, fully functional kitchens, and off street parking. Overall the quality of the construction is inferior by today's construction standards.

Using expensive design standards for construction will lead to only the very wealthy undertaking permitted projects in many areas of West Marin.

Thanks for your time.

Steve Tognini
Lagunitas technical advisory committee member
Stewards Board member
Asst. Chief Eng.
Oak. Kaiser Hosp.
510-752-6870 W
510-867-4844 C

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Thorsen, Suzanne

From: geraldtoriumi@comcast.net
Sent: Tuesday, March 19, 2013 12:24 PM
To: Thorsen, Suzanne
Subject: SCA ordinance?

Since the supervisors are so fond of hiring "consultants", why hasn't **CAL-TROUT** bin involved at these proceedings, as well as **Ca. Dept.Fish&Game**?????? The Sup's should use their discretionary fund for real constructive use to get this SCA ordinance "right" for all concerned!

From: [Lai, Thomas](#)
To: ["Mary Hull Webster"](#)
Cc: [Taylor Hamblett](#); [Kinsey, Steven](#); [Thorsen, Suzanne](#); [Lai, Thomas](#)
Subject: RE: SCA Ordinance
Date: Friday, March 22, 2013 7:19:49 PM
Attachments: [20130322091439432.pdf](#)

Hi Mary,

I'm attaching correspondence from our County Counsel's office that would shed more light relative to the SPAWN litigation.

I will also include your correspondence as a public comment on the proposed stream ordinance, and have it distributed to the Planning Commission prior to their 4/1 hearing.

Regards,

-Tom Lai

Marin County Community Development Agency

From: Mary Hull Webster [mailto:figments12@gmail.com]
Sent: Friday, March 22, 2013 9:26 AM
To: Kinsey, Steven; Adams, Susan; Arnold, Judy; Rice, Katie; Sears, Kathrin
Cc: Taylor Hamblett; Lai, Thomas
Subject: SCA Ordinance

Dear Supervisors and Tom Lai,

First, thank you, especially to my representative Steve Kinsey, for years of work on behalf of homeowners who live near streams in unincorporated Marin County. Much clarity has been reached. Tom Lai is an ace communicator and has been superb at public meetings. As we enter into more consideration for this ordinance, I urge you to consider the following:

1. My first concern is transparency in your negotiations with SPAWN. This is a public issue; accustomed to using public money to pay their salaries, SPAWN has encroached on every homeowner near a stream and has sued us all. A secret settlement of the current lawsuit without news coverage of negotiations and without broader citizen participation is deeply unacceptable to citizens who will be paying SPAWN yet again, and no doubt again and again in suit after suit against us. To hear that you have bargained away our homeowner rights with them and then presented the Ordinance as a done deal is lacking the democratic input we deserve. You don't need to include every body in Marin, but certainly the affected homeowners need fair representation in the negotiations. I believe Taylor Hamblett would work well with you and I trust him to represent my views. He and/or someone like him is needed to represent homeowner views during negotiations.
2. Please treat the small parcels of West Marin in the same way as the City Centered Corridor in the Countywide Plan. The original Planning differentiation was based on seeing all of West Marin as very large parcels used as open space or ranches. Homeowners living in towns like Woodacre, my own address, should be allowed the same stream setbacks as those in housing neighborhoods elsewhere in Marin.

3. The SCA setback should be 35 feet from the top of the stream bank. I have not heard any reason to make this buffer 100 feet, especially on small parcels--maybe this suggested buffer again refers to huge, sometimes agricultural parcels. Most properties will generate exemptions anyway because the lots are too small to allow improvements outside the SCA. The 100 foot buffer would greatly complicate what should be a simple solution for the well-being of salmon.

4. The public discussion last night in Lagunitas was especially helpful in beginning to educate affected homeowners on permit tiers. As you know, we are spooked at the thought of very expensive and time-consuming permits for dealing with the SCA Ordinance. It would be most helpful to have a clear, short explanation in writing on when we need permits and when we don't. I'd like to be clearly informed, BEFORE the Ordinance is put in place, what triggers a Tier 1 or a Tier 2 permit. What qualifies for no permit? Please include costs and estimated time to acquire needed permits. I'm just looking for general rules here, as I realize there are many permutations.

5. I strongly subscribe to the Stewards' recommendation that not only "repair," but also "maintenance" and "retrofit" be allowed for buildings in the SCA that have been grandfathered in. A CASE approach we can all follow is that the footprint of such buildings cannot be changed without County consultation, but improvements on the same footprint should be allowed, if possible without permits.

Thank you again for your consideration during this long process.

Mary Hull Webster, Creekside, Woodacre

Steven M. Woodside
INTERIM COUNTY COUNSEL

March 21, 2013

Jack F. Govi
ASSISTANT COUNTY COUNSEL

VIA E-MAIL ATTACHMENT

Dorothy R. Jones
Mari-Ann G. Rivers
Renee Giacomini Brewer
David L. Zoltsman
Michele Keno

Mr. Charles D. Chalmers
ALLEGIANCE Litigation
769 Center Blvd.
Fairfax, CA 94930

San Geronimo Valley Stewards.org
P.O. Box 276
Lagunitas, CA 94938

Nancy Stuart Grisham
Jennifer M. W. Vuillemermet
Patrick M. K. Richardson

Re: *SPAWN v. County of Marin*

Thomas F. Lyons
Stephen R. Raab
James G. Flageollet

Dear Mr. Chalmers:

Steven M. Perl
Sheila Shah Lichtblau
Edward J. Kiernan
Jessica Mills Sutherland

I am the Deputy County Counsel currently handling this litigation in the Court of Appeal. I received a copy of a document you apparently authored entitled "County May Settle SPAWN Lawsuit," as well as a document from the SGV Stewards.org entitled "Tell Our Supervisors: No Secret Deals." I am writing to attempt to set the record straight with respect to the recent filings in the Court of Appeal that you and the Stewards reference in those documents.

DEPUTIES

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

As you probably know, the County and SPAWN were ordered to attend and participate in an appellate mediation by the Court. When I took over the case last month shortly before the mediation was scheduled to take place, I wrote the mediator stating that I thought this was not an appropriate case for mediation since the County could not agree to any settlement regarding the Countywide Plan and/or its EIR –or more specifically any proposed SCA ordinance- without going through a thorough public hearing process. I also pointed out that SPAWN was just one of many stakeholder groups entitled to be heard in this matter, and that the litigation in no way could provide SPAWN with any special access to or input in the process. (Please see the penultimate paragraph of my e-mail attached to this letter.)

Marin County Civic Center
3501 Civic Center Drive
Suite 275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

I also met with the Board of Supervisors in closed session to discuss what if any- authority I might have at the mediation beyond discussing tentative staff proposals that were already public. The Board made it clear I had no additional authority. Despite this the mediation was ordered to take place, and again the County made it clear we could not negotiate the substance of any ordinance or other legislative enactments in any binding way.

Mr. Charles D. Chalmers
RE: SPAWN Litigation
March 22, 2013

PG. 2 OF 2

However, as you presumably also know, the trial court judgment in this matter provides that the "injunction shall expire by operation of law when the Board of Supervisors adopts the Stream Conservation Area Ordinance." Therefore one of the other issues the mediator requested we discuss was deferring the briefing until the ordinance was adopted since that might resolve many if not all of the issues before the Court of Appeal. Initially SPAWN did not agree to pursue this since they had no idea how soon the ordinance would be adopted. However, when the County came out with its initial draft of the ordinance the very next week, and committed to an aggressive public hearing process, SPAWN apparently decided it would be preferable to defer the briefing to see the outcome of the ordinance. And given that the injunction will dissolve upon adoption notwithstanding anything that might happen in the interim in the Court of Appeal, it seemed inappropriate to force the Court to deal with issues that may be moot by the time the briefing is completed.

So to conclude I want to make very clear that our office and the Board of Supervisors fully agree with you and the Stewards that there can be "no secret deals," "SPAWN cannot dictate County policy by settlement, but (must) follow the normal legislative process....," and the County cannot provide special access to any stakeholder group, irrespective of the pendency of any legal proceedings. In addition, our office is very confident that we will prevail in the Court of Appeal.

I hope this helps clarify the status of the litigation and any settlement efforts.

Very truly yours,



David L. Zaltsman
Deputy County Counsel

Zaltsman, David

From: Zaltsman, David
Sent: Tuesday, February 19, 2013 9:25 AM
To: 'Palmer Madden'
Cc: 'dsivas@stanford.edu'; 'mwgraf@aol.com'; Crawford, Brian; Lai, Thomas; 'Jim Moose'
Subject: Salmon Protection and County of Marin Mediation
Attachments: 20130219083519636.pdf

Good Morning Mr. Madden:

My name is David Zaltsman. I am a deputy county counsel for Marin County and will be representing the County at the mediation of this matter on Thursday, February 21. You may recall me from the extensive proceedings in which you acted essentially as a private judge to decide the issue of the legal non-conforming status for zoning purposes of numerous recreational vehicles at Lawson's Landing in Dillon Beach.

As far as I can tell you have not asked for any briefs or other information in preparation for the mediation. However, I believe a very brief synopsis of this matter from the County's perspective may help you and the parties to move more quickly to the substance of the matter, rather than having to explain the history in detail at the session.

This case evolved from the adoption of the County's latest Countywide or "General" Plan in 2007 and the Environmental Impact Report ("EIR") that was prepared for that plan. One of the many major issues raised in the process was how best to protect the watersheds and habitat needed for certain special status species, especially salmon, in the so-called San Geronimo Valley of west Marin County. One of the major focuses was how to protect so-called "stream conservation areas" which are in large part private property adjacent to anadromous streams and their tributaries in this watershed.

The Petitioner/plaintiff in this matter, SPAWN, was of the opinion (among other issues), that the EIR for the Plan was inadequate in protecting these special status species and that there were additional feasible "mitigation measures" available to the County to protect these species. Initially after the County adopted the Plan and EIR, SPAWN and the County entered into negotiations to attempt to settle their differences. This led to a number of "tolling agreements" for the statute of limitations to file this action, and interim protection studies and measures.

However, in the end the parties could not fully resolve their differences and this litigation ensued. Petitioner sought 2 types of relief: a writ of administrative mandate (CCP 1094.5) as to the adequacy of the EIR, and a writ of traditional mandate (CCP 1085) as to the County's alleged failure to adopt a "stream conservation ordinance" within the time frame laid out in the Plan. In a lengthy opinion the trial court denied both writs. However, the Court did order that an injunction issue prohibiting the County from approving certain types of development in the San Geronimo Valley watershed until the stream conservation ordinance was adopted. (I have attached this brief portion of the trial court's opinion and order so you can read it for yourself.) Importantly, the ultimate judgment that was issued from which this appeal was taken provides that the injunction will dissolve by operation of law once the ordinance is adopted. In other words the trial court did not keep continuing jurisdiction to determine if the ordinance that is finally adopted is adequate. Any dispute over the substance of the ordinance will need to be the subject of a separate lawsuit.

With the injunction in place the County is under enormous political (and legal) pressure from the affected community (as well as SPAWN), to get the ordinance adopted so that the community will no longer be subject to the injunction. So the County has agreed to "fast-track" adoption

of the ordinance and County planning staff has already begun discussions with all the relevant stakeholder groups, including SPAWN, in order to get a first public review draft out for comment before beginning the required public hearing process before the County planning commission and Board of Supervisors. The County is committed to getting this draft out within the next few weeks, and finish the public hearing and adoption process this summer.

This, however, presents a problem for the County in mediating this matter. SPAWN is one of several environmental as well as property owner and other groups with a legitimate and important interest in the final content of the ordinance. But relevant legal principles require that this ordinance, as with any other zoning ordinance, go through a full, open and transparent public hearing process prior to adoption. In other words, while County staff may agree with many of the proposals SPAWN is likely to bring to the table Thursday, and may disagree with others, we simply cannot commit to anything at this time other than to work as expeditiously as possible to get the ordinance adopted. But the public hearing process and the ultimate content of the ordinance cannot in any way be prejudged. We will however continue to work with all stakeholder groups in addressing their input and moving the process forward subject to the ultimate discretion of the planning commission and Board of Supervisors.

I hope this helps you somewhat in understanding the background of this matter, and I look forward to finally meeting you in person on Thursday.

Dave Zaltsman

-----Original Message-----

From: CCScan9001

Sent: Tuesday, February 19, 2013 8:35 AM

To: Zaltsman, David

Subject: Message from "RNP044120"

This E-mail was sent from "RNP044120" (Aficio MP 9001).

Scan Date: 02.19.2013 08:35:19 (-0800)

Queries to: CCScan9001@co.marin.ca.us

I. Comments for April 1, 2013, Marin County Planning Commission Meeting,
Item 4: Marin County Title 22 (Development Code) Amendment,
Stream Conservation Area

- A. Since the SCA ordinance invokes a CEQA exemption as implementation of the CWP 2007, it would appear to apply to all Marin parcels in spite of assumed exemptions which may have been invalidated by contravening actions.
- B. Since the restrictions imposed by the SCA are proposed to be effective in perpetuity, it is reasonable to assume property owners will wish to know how their individual parcel(s) are affected before the opportunity to appeal timely is lost. Thus, the need for inspections may be immediate and burdensome to County staff. People want to know whether the use and enjoyment of their property will be affected and in what manner. This raises a number of concerns:
1. That staff needs to be augmented by newly-hired Planning Staff or added consultants for site inspections separate of project applications.
 2. That special training in the following are needed for on-site evaluations where subjective judgements are relied upon for ministerial or discretionary permits:
 - a.) benthic habitat and marine biology for species above and below water,
 - b.) riparian botany, guaranteeing the ability to correctly identify vegetation,
 - c.) geology and hydraulics pertinent to all waterways covered by this ordinance,
 - d.) land law expertise and arithmetic tools to determine factors such as applicable set backs, grade levels, bank tops, 100' riparian vegetation, and property rights that will affect the definition of SCA boundaries where even a few feet may have major impact on use and valuation,
 - e.) cartology to correct County mapping of affected areas,
 - f.) wildlife management to assure both habitat and human protection,
 - g.) engineering, architectural, environmental science, and intellectual evaluation skills to interpret the portions of this SCA ordinance left open to indefensible guesswork or differing interpretation.
 3. That the above requirements apply especially for The Director and appeal bodies responsible for defensible discretionary decisions, lest litigation find such decisions arbitrary or incorrect.

4. That due to site-specific nature of the staff inspections, recommendations may be serially applied, i.e., judgements on areas such a 100' riparian corridors or 'previously disturbed areas' may change due to conditions, access, or personnel, and thus, be unevenly applied to different parcels over the time elapsed from the first evaluation to the final inspection.
 5. Before attempting to add another layer of regulatory restrictions, the County thoroughly examine and be prepared to defend prior inaction, regulatory laxity or failed projects on stream protection and improvement activities, particularly in areas where complaints and/or damages are documented.
 6. That prior to adoption of this SCA ordinance, funding sources be publicly identified for costs of salaries, pensions, consultants, remedial actions, and potential litigation per the above.
- C. Fiscal Concerns: This ordinance contains many unknowns that could materially affect both tax-payers and deplete County resources.
1. Staff augmentation and training as identified above. This bears repetition and quantification rather than dismissal.
 2. The County may be forced into corrective action for projects left undone, or improperly-done, and be liable for flooding, road damages, personal injury and the like. An examination of this consequence is imperative. The County cannot claim an exemption from CEQA for the SCA ordinance when demonstrable prior violations of County policies and practises under CWP 2007 exist. County policy ignored may be County policy contravened.
 3. Where SCA ordinance or other County action that is deemed a 'taking', the County must provide recompense for damaged property-owners. This may come as
 - a.) litigated judgements;
 - b.) voluntary property tax reductions/assessments.
 4. If property owners are to be charged for SCA-generated inspections not associated with permit applications,
 - a.) this information and proposed charges should be transparent prior to passage of the ordinance, and
 - b.) the question of whether this is a fee or taxation be resolved.

- D. As written, this ordinance encourages desecration, not preservation, of creek environment. Why create a riparian resource when degraded areas are exempted from the SCA restrictions? Attention needs to be given to positive reinforcement for specific goal-oriented achievement. This proposal fails on all counts. When existing reviews, permits, and guidelines are pre-empted, what regulates properties within the SCA, but exempted from SCA restrictions?
1. It is common to have properties extend across streambeds, although County maps do not always contain this information. If the SCA is to require owners to perform conservation efforts, outreach and education along with benefits for the improvements should be included in this ordinance. Property owners improperly noticed cannot comply.
 2. Newly acquired parcels, or future ownership transfers should contain notification of County expectations regarding property maintenance. A provision to for ensuring new owners receive such notice ought to be included in this proposed ordinance.
 3. The CDA list of Standard Management Practices should be included in information and education to property owners.
- E. Flood Control measures and Salmon Conservation measures have been conjoined in this proposal which accomplishes neither goal in a manner likely to resolve and satisfy affected parties. Using political pressure instead of proper procedure is unproductive, short-sighted, and may engender more conflict and continued litigation.
1. Time elapsed has effected some compromise as well as bringing clarity in defining the issues at hand. More time might be beneficial to arrive at better solutions; however, the perceived rush to pass this SCA ordinance is at odds with mitigation and improvement.
 2. Separating the various issues could enable further cooperative research into better solutions for differing interests. Compulsion is unlikely to engender cooperation.
 3. The process of top-down enforcement by decision-makers with agendas unrelated to those being regulated should be stopped. It appears Staff has been placed between those who direct them to solve problems ASAP, and taxpayers responsible for staff salaries who feel over-regulated and under-represented. A better line of communication needs to be developed.

4. Property owners whose parcels contain areas needing flood control measures might face million-dollar expenses. The County has been unable or unwilling to engage with these people, thus, projects remain undone, partially-done, or poorly done. Where such projects involve prior County-authorized or DPW work, the County may face resolution of these matters as a result of this ordinance.
5. If property owners choose to enter into contracts with State or federal agencies regarding flood control or stream conservation projects, the County's position and responsibility should be defined. If the goal is creek restoration, protection and conservation, this should be enabled as part of this ordinance, and the County's role in facilitating the goal made binding.

Garril Page
San Anselmo
March 25, 2013

Thomas G. Lambach

P. O. Box 206
Kentfield CA 94914

Marin County Planning Commission
c/o sthorsen@marincounty.org

March 25, 2013

Re: Marin Stream Conservation Area / Draft Ordinance

Dear Commissioners:

The proposed ordinance is a “dragnet” to hold hostage every private project near a creek. It's imprecision and overreach provides no confidence that one's property plan will receive a fair and balanced hearing. Has it been backtested at all? Or must we just blunder ahead, regardless of any consequences to owners?

These comments relate specifically to ephemeral streams within the City-Centered Corridor:

- 22.33.020 A. SCA data should not be a CDA monopoly to subject our citizens to administrative “stone walls” by project decision makers. Remember, if a CDA map shows one's property to be on a stream it's then incumbent on the applicant, at his or her expense regardless of outcome, to prove an exemption from the ordinance. That's guilty until proven innocent. CDA (i) creates the facts, (ii) judges the facts and (iii) prosecutes its decisions. To whom can an applicant turn?
- 22.33.030 B. 1. SCA setbacks vary by size of property, but not for any stated ecological reason or goal; this will create discrimination between property owners on the same creek. It's inequitable.
- B. 3. Unlimited additional setback distances is an arbitrary exercise of CDA's bureaucratic power against an applicant that may substantially reduce the utility of his or her property.
- B. 4. The 2007 County Wide Plan's BIO 4.4 , includes an illustration [Page 2-32, bottom half] of ephemeral streams' treatment. The 20' minimum (what triggers more?) setback shown on that page is for *all* ephemeral streams with 100' of continuous riparian vegetation along their banks, otherwise, lacking such riparian vegetation, no SCA setback shall apply.
- The 20' ephemeral stream setback, adopted in the 2007 CWP, has vanished!
Where is it to be found in the draft ordinance?
- And for certitude, the 100' of continuous riparian vegetation in question should be specific to the project site, not “somewhere” on the stream or, some stitched together sum of local, but unrelated, non-project parcels' linear riparian vegetation. Clarity is needed.
- 22.63.020 B. 2. An exemption that's subject to determination is not an exemption, it's only a “maybe.”

Pictures of Tamalpais Creek are available at Dropbox for free download, a link and captions are listed in the exhibit below. The pictures illustrate that the ordinance will achieve no ecological benefit for this creek, a fish-less, street run-off, ephemeral stream, yet its set back provisions will impose a substantial penalty on my property's potential utility and value. It had R1:B2 zoning at purchase, in 1981 RSP design review arrived and now even more set backs are demanded.

Commissioners, it's easy to legislate limits on ownership rights but where's the owner's compensation? Is Marin County prepared to accept conservation easements and/or grant tax abatements to those property owners who lose their parcels' utility? Why not validate tax reassessment for lost use by these proposed set backs? Or is this to be de facto property use confiscation -- with added fees besides? Everything has a cost, let's recognize those costs and openly say who is to bear them and what relief is offered. Taking property for the "public good" should be paid for by that public, not borne solely by the property's owner.

Please consider these issues and, at the least, have the ordinance rewritten, or better, have it written to specifically address those matters raised in Judge Duryee's Superior Court Order.

Sincerely,

/S/

Thomas G. Lambach

Exhibit:

Tamalpais Creek begins in Kent Woodlands, somewhere between the Crown Road fire road and Coronet Way. It winds between Upland Road and Woodland Place (a private road) and then meanders along Woodland Road to Kent Ave. At that point it flows into a long culvert under College Ave, College of Marin parking lots and sports fields; it ends at the Corte Madera Creek.

Dropbox Link: <https://www.dropbox.com/sh/51sbr64mzy74yml/2mUJNGW5XZ>

Appropriate picture captions:

Tam Creek 1 portion along Woodland Place, a 1990 subdivision – road to the left, up slope to the right.

Tam Creek 2 another view, showing the street drains to the creek installed in 1990.

Tam Creek 3 illustrates the creek's down slope.

Tam Creek 4 & 5 are typical creek sites along Woodland Road.

Tam Creek 6 the culvert's end at Corte Madera Creek.

From: [Warren Simmonds](#)
To: [Thorsen, Suzanne](#)
Cc: andreataber@sbcglobal.net; [Rice, Katie](#)
Subject: Proposad SCA Ordinance
Date: Monday, March 25, 2013 11:13:20 AM

Suzanne,

I am a landscape architect who has practiced in Marin County since 1985, and had my own business since 1994. During that time I have worked on several properties that have streams. My own house borders the Sleepy Hollow creek, and is, fortunately, just under a half acre. I would appreciate you forwarding these comments to the Planning Commission, as I may not be able to state all points if they allot only 3 minutes for comment at the meeting next Monday morning.

STREAM CONSERVATION ORDINANCE – WHY THE PROPOSED INCREASED SETBACKS ARE A BAD IDEA

On a rectangular parcel just over ½ acre, with a stream running along the rear property line (most run inside or meander across property lines), a 50 foot rear setback from the stream bank, plus say 5 feet of actual stream, coupled with the County's 20 foot (min) front setback and 10 foot side setbacks, would render OVER HALF of the property undevelopable, or improvements infeasible.

The above condition forces yard development much closer to the house, depriving owners any benefit of purchasing (and paying taxes on) a larger lot

A parcel with streams 2 sides (as per my neighbor) could be rendered totally undevelopable, or unable to be improved at all. I had this experience on a project in Ross, where the Town's 25' stream setback left approximately 12,000 s.f. of 50,000 s.f. developable (including the house and driveway). If that was in the county a 50 foot setback would definitely rendered the property un-improvable. If a grove of heritage trees, or other constraints, exist on the site, the lot is even more constrained. The average person purchasing a property is not informed or cognizant of the impacts of the constraints.

The setbacks on a lot such as mentioned above forces remodeling or new development closer to a neighbors' house, as the side yard setback, at 10 feet, is least restrictive. It seems ridiculous to have a 50 foot setback from an element in the ground, but force neighboring houses to be only 20 feet apart, particularly if the one remodeling wants a second story that the surrounding houses do not have. The purpose of purchasing a lot of a half-acre or more is some sense of seclusion, which is negated. The 50 foot setback is therefore prioritized over other issues that might be equally or more important, such as privacy between neighbors.

I know from first-hand experience, that if my parcel had a restrictive 50 foot setback from the stream, my property's value would have been decreased by over 10 percent. Depending on the location of the stream on a property, it could be more than that.

22.33.030, Section 3 states: " In all corridors, regardless of lot size, an additional SCA setback may be required based upon the results of a Site Assessment. A Site Assessment may also be required to confirm the avoidance of woody riparian vegetation and to consider site constraints, identify the

presence of other sensitive biological resources, provide options for alternative mitigation and determine the precise SCA setback.” This means that the County is putting into law, the ability to further restrict use of your own land.

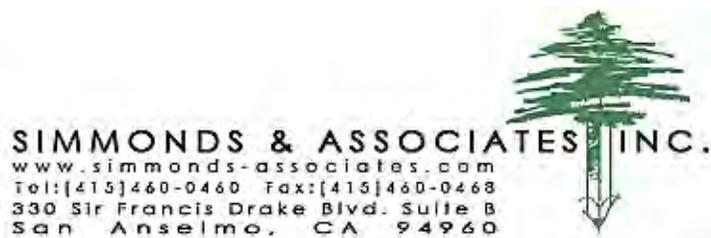
The County hopes that this will “trickle down” (pun intended) into local municipality ordinances.

Much of what the County is mandating is unenforceable. Permits are not required for paving on the ground, fences, walls under 3 feet high (or 4 feet from the bottom of the footing), and I think decks less than 18 inches above grade. This ordinance, by being so restrictive, encourages people to violate it. Alternatively, the County could use this argument to introduce more restrictive codes, and thus require permits for the type of work I noted above.

The 50 foot setback is desired by the County to “improve and protect’ stream quality, and wildlife habitat. A 100 foot setback would not improve stream quality if landowners upslope continue to use inorganic herbicides, pesticides, and fertilizers. In regard to the wildlife: deer, raccoons, possums and skunks do not require a 50 foot setback each side of a stream for habitat. The county is already overpopulated with deer, and likely raccoons. Forcing landowners to provide habitat at their expense – both through taxes and loss of enjoyment of their property – is unconscionable.

A better solution is education, of course, but is harder to achieve, and more expensive than, passing a law. Educating people about stream quality and their impact on it is the proper way to improved stream quality.

Sincerely,
Warren Simmonds



RECEIVED

MAR 29 2013

MARIN COUNTY
BOARD OF SUPERVISORS

cc: AIDES, CDA

March 26, 2013

Dear Board of Supervisors,

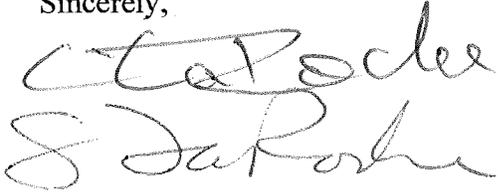
We are grateful that the Planning Commission is engaging in a dialogue with the residents who will be greatly affected by the new stream ordinance. While we applaud the work they have already gone through to foresee the most asked questions and the most often anticipated projects that homeowners want to do that would possibly be excluded in disturbed areas, we want to raise some issues and concerns.

- Having a 100' setback is a large portion of our property. Almost all valley folk affected by the proposed stream ordinance live within 35 feet of the creek, and most of those actually live within 20 or 25 feet – us included. This large of a setback is punitive to homeowners and reduces the value of our properties and severely affects the way we can live on our properties.
- There should be different rules for different types of streams. Ephemeral streams that only run a portion of the year should not require as large a setback or as strict building/home improvement rules.
- If a tiered permit structure must be adopted, then the tier 1 permits should be free and tier 2 much less than quoted by the planning commission. Valley folk are not wealthy. Setting first tier permits at \$1,000 plus will only cause people to do work without permits. Or another option would be to outline the approved practices and allow folks to modify their buildings without a stream permit as long as they follow the prescribed methods and get regular building permits, which is what we think should be done. This is done much of the time with regular building codes such as allowing sheds under a certain square footage or decks under a certain height to be built without a permit. Why add another layer of bureaucracy?
- We would like to see a more descriptive definition of “disturbed area” so that folks can easily determine if their area is disturbed without having an inspection. That doesn’t mean it can’t also include a clause that says “or as determined by the director” so that additional types of disturbance can be incorporated into the definition at a later date.
- We agree with another person we heard speak at the Stewards Meeting on March 20th. There should be incentives for folks who have kept their riparian vegetation intact instead of penalties for having done the right thing. As it stands, folks that paved over their lots or deforested their land are allowed to do more than those who have lived harmoniously with the land and animals. This isn’t fair and needs to be addressed. Also, why should setback rules be different in more populated places like San Anselmo? Are those streams less important or those fish in better shape? If they have their setbacks tied to land size than the valley should too. Some folks here have very small lots too.
- We have a right as homeowners to create 100 feet of defensible space around our homes – whether it is disturbed area or not. This means clearing brush and dead trees and having a

firebreak around our house. If our house is situated on or very close to the creek, this should overrule any setback requirements for keeping all riparian vegetation untouched.

Thank you in advance for addressing our concerns.

Sincerely,

Handwritten signatures of Christopher LaRoche and Shreya LaRoche. The signature for Christopher LaRoche is written in a cursive style, with the first name 'Christopher' and the last name 'LaRoche' clearly visible. Below it, the signature for Shreya LaRoche is also written in a cursive style, with the first name 'Shreya' and the last name 'LaRoche' clearly visible.

Shreya & Christopher LaRoche

PO Box 72, San Geronimo, CA 94963

Photos of Streams in San Geronimo Valley

To: Marin County Planning Commission
Marin County Community Development Agency

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426
Denis Poggio 488-9549

Attached are photographs taken during the week of March 20, 2013.

The locations are in Forest Knolls in the San Geronimo Valley.

The streams pictured are small tributaries of Montezuma Creek.



Seasonal Stream within 10 feet of
Deck and fence.

3



Photo taken from creek bank,
Looking up at riparian vegetation and disturbed area.
Rods placed on creek bank for stabilization.



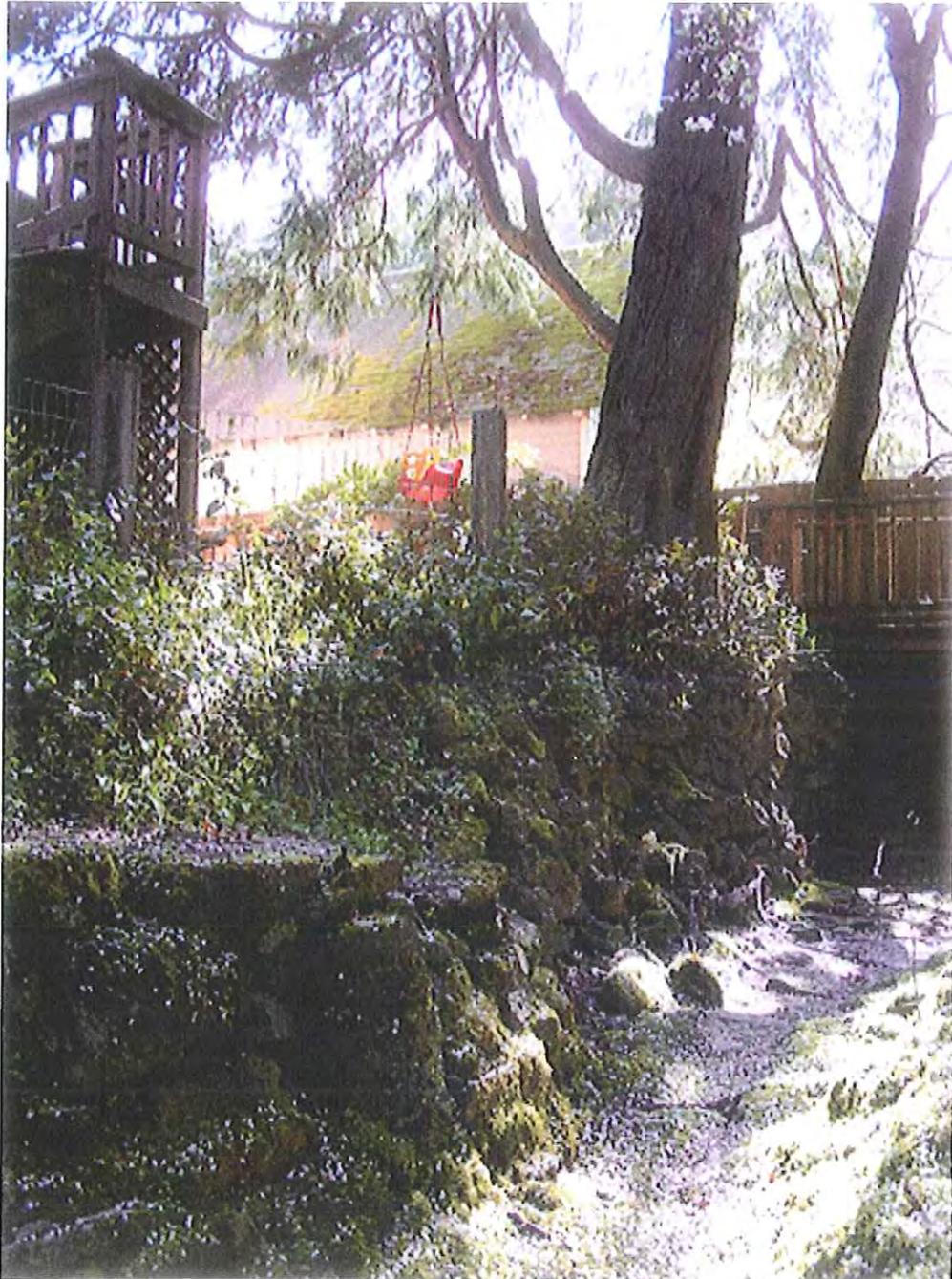
Seasonal stream.

Since 1982, the highest water level is 6 feet below top of bank, even in heavy rains.

Note poison oak and blackberry vegetation.



Dry ephemeral stream
within 10 feet of house.



Dry Ephemeral stream with
bridge crossing and disturbed area
and rock embankment.

Enclosed Are SG Valley Stewards Recommendations on SCA Ordinance

To: Debra Stratton
Clerk of the Planning Commission
Marin Civic Center, Room 308

From: San Geronimo Valley Stewards
Peggy Sheneman 488-4426
Denis Poggio 488-9549

Re: Planning Commission Meeting on Monday April 1, 2013
Proposed Stream Conservation Area Ordinance

Enclosed are 10 copies of San Geronimo Valley Stewards comments on the SCA ordinance. We also enclose some photos of homes located close to streams in the San Geronimo Valley. Thank you for your attention.

Recommendations for SCA Ordinance from San Geronimo Valley Stewards

March 26, 2013

DRAFT RECOMMENDATIONS FOR
STREAM CONSERVATION AREA ORDINANCE FROM
SAN GERONIMO VALLEY STEWARDS

San Geronimo Valley Stewards is an all-volunteer non-profit organization with over 200 donors and supporters. We formed in 2009 to develop community based solutions for stream rehabilitation and homeowner education and outreach. Our website is www.sgvstewards.org.

We Appreciate Great Performance by CDA Staff.

Thank you to Community Development Agency staff for their good community outreach, open access to our questions and comments, and a very helpful website, www.co.marin.ca.us/sca. San Geronimo Valley Stewards is cooperating with County staff to encourage a civil discussion and resolve issues around the table.

We support "CASE" as the guiding principle of CDA staff. The ordinance must be Clear, Affordable, Simple, and Enforceable.

SG Valley Stewards Support Second Unit Permits and Minor Design Review.

The SCA ordinance would allow Second Units Permits to be granted within the SCA. Second Units are a very important sources of low cost housing for the San Geronimo Valley. Hundreds of tenants and extended family members now live in small cottages, in-law apartments, or garage conversions-- many built before permits were necessary. We welcome and intend to advocate for the proposal in SCA ordinance section 22.56.050 (page 15) that would allow our second units to apply for legalized status, and would permit more second units to be constructed.

We also support the amendments on pages 11 through 15 that would allow properties within the SCA to use the expedited Design Review and Minor Improvements permits in the Development Code. Section 22.42.045, section 22.42.025, and section 22.42.055 B.1.d. It is fair these previously adopted upgrades in the rest of the County, should now be extended to the San Geronimo Valley, where homes are within the SCA.

Summary of Stewards' Recommendations

The draft ordinance makes improvements from the current situation, and we appreciate CDA Staff efforts to achieve balance and apply the CASE principle. However, the ordinance should be revised and we offer these recommendations in the spirit of constructive dialogue.

1. The SCA setback should extend 35 feet on each side, measured from top of bank for perennial and intermittent streams.
2. For ephemeral streams, the setback should be 20 feet, and should apply to only mapped ephemerals with woody riparian vegetation extending for over 100 feet, and which flow for more than 30 days each year.
3. Encourage swaps and trade outs to limit and mitigate the net incursion on the SCA and the net impervious area.
4. Exemptions for homeowners must include:
 - A. fire protection;
 - B. current exemptions under the County Tree Ordinance;
 - C. repair, retrofit, or maintenance of existing structures;
 - D. fencing outside the SCA setback;
 - E. recommend (but not require) prior determinations;
 - F. housing and access to accommodate the elderly and physically disabled;
 - G. current exemptions from Land Use Permits.

5. Tier 1 Permits

6. Tier 2 Permits

Drafting recommendations are indicated by [bracketts for deleted words] and by *Italics for added words*.

1. Recommendation: The SCA setback should be 35 feet on each side of the stream, measured from the top of the stream bank, for perennial and intermittent streams.

Reasons: The 35-foot buffer is recommended by the 2010 Salmon Enhancement Plan (SEP) pages 2-21 and 2-22. Countywide Plan (CWPlan) BIO 4.b. requested that the County commission a study of stream areas. This was done by the 2009 Existing Conditions Report for the San Geronimo Valley (ECR) and the 2010 SEP. implementation of CWPlan policies should be based on science we have learned since 2007.

SEP finds that 35 feet is adequate buffer for existing development and for new construction on small vacant lots, because it covers the area for natural stream adjustment and migratory corridor for wildlife. SEP page 2-17. SEP also determines that 35 feet is sufficient for the 3:1 slope for stream stabilization and restoration.

Reasons: We request clear rules rules that can be easily applied by the homeowner. (See section 22.33.030. B. 2. and the definition of "Stream Conservation Area Setback" on page 16.) Determining a setback based on the "edge" of the woody riparian vegetation is nonsense. Even

SPAWN acknowledges the "edge of the woods" test would require measurements that are physically impossible to make from erratic biological features.

The San Geronimo Valley is a forest with no edge. MMWater District biologists have determined we have an 80% tree canopy. Some homes are located on half acre parcels with over 50 redwood trees. A forestry expert could not determine with certainty which tree is "associated" with each stream.

SEP recommends bright line points for measurement of the SCA setback. SEP rejected as unworkable other more complicated measurements based on water levels. Every lay person homeowner should be able to start at the top of the stream bank and hold a tape measure out 35 feet, then stop. Every homeowner should be able to easily comply with the setback, without hiring a forestry expert or hydraulic engineer.

1. A. We Support: The setback distance is measured laterally and perpendicular to the top of bank. See definition page 16 of "Stream Conservation Area Setback". This is essential for parcels on steep slopes.

1. B. Alternative: For San Geronimo Valley, create the same SCA setbacks as proposed for City Centered Corridor. Under the draft ordinance, over 1,600 homes in unincorporated areas of Fairfax, Sleepy Hollow, Kentfield and Novato would enjoy narrow SCA setbacks for small lots (20 feet for half acre), up to 50 feet for 1 acre, and 100 feet for 2 acres. Section 22.33.030. b. 1.

These setbacks could also apply to the 2,000 developed residential and commercial lots and undeveloped residential properties in the San Geronimo Valley that are located within 2 miles of the center line of Sir Francis Drake Blvd., from White's Hill to Taylor State Park in Lagunitas. This is generally the area covered by the San Geronimo Community Plan. See CWPlan Map 3-3.

Our neighborhoods resemble the suburban areas designated as "City Centered Corridor" in the CWPlan. County Planning principles mandate that like properties be treated alike. The 8 mile stretch along SF Drake Blvd is crowded with small homes on lots ranging from quarter acre to 2 acres, just as in Kentfield and San Anselmo. See CWPlan Maps 7.10.

People built homes in the San Geronimo Valley decades ago, in reliance on County zoning and County-approved parcel maps for small subdivisions. We should not now be treated as large ranches for purposes of the stream ordinance.

2. Recommendation: For ephemeral streams, the setback should be 20 feet, and should apply only to mapped ephemeral streams with woody riparian vegetation extending for more than 100 feet in the subject parcel, and which flow for more than 30 days a year.

Reasons: The thrust of CWPlan BIO-4 is to protect "Riparian Habitats" characterized by plants growing near fresh water courses. A "water course" is a stream that flows, perennially or intermittently. (CWPlan Glossary.) Riparian habitats are characterized by woody shrubs and trees. (CWPlan Glossary).

The SCA ordinance should focus on what is important--ephemerals with *woody* vegetation over 100 feet, *which run at least 30 days each year*. The ordinance should exempt those ephemerals that are so temporary or insignificant they cannot support woody shrubs and trees.

During one or two big rainstorms each winter, the entire San Geronimo Valley turns into a bowl of water running downhill to the main creeks. Water flows out of every pore in the soil. An overly broad setback for every ephemeral stream would render 2,000 homesites unusable all year--in effect, a massive inverse condemnation this county cannot afford.

No one is arguing an ephemeral is not technically a "stream". The issue is what scope of protection is essential to protect riparian habitat which is the CWPlan policy goal.

The setback for ephemeral streams should be 20 feet from top of bank. Other special status species or natural communities can be granted additional protections in the Site Assessment procedures for Tier 1 or Tier 2 permits.

3. Encourage "swaps" and "trade outs" to limit and mitigate the net effect of incursion on the SCA and net impervious area.

The homeowner should be allowed to remove old impervious materials or SCA-encroaching structures and add new impervious or encroaching structures, so long as the net effect on the SCA is neutral or improved. Such swaps and trade outs should be encouraged under the exemptions of section 22.63.020. B. and the Tier 1 Permits of section 22.63.030. Mitigation and reduction of net effect should not be confined to the expensive and time-consuming process of Tier 2 permits, as the ordinance currently implies.

Swaps and trade outs would satisfy Spawn's Key Concerns #1 and #2 (building a structure on a previously disturbed area, or multiple 500 square foot additions to existing homes).

Section 22.63.020. B. 1. should allow as exempt with the Director's determination:

a. Repair and replacement of permitted and legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013, provided that such activity does not expand the *net* extent of the horizontal incursion *into the SCA setback* or the *net* footprint or result in the *net* removal of woody riparian vegetation.

Also allow as exempt with the Director's determination under section 22.63.020. B. 2.:

b. Structures and development activities pursuant to Section 22.63.020. A. 1. located within previously disturbed areas, *provided the effect of the structures and development activities made after February 25, 2013 result in the same or better net effective impervious area and connectivity for storm run off as existed before such date.*

Tier 1 Permit should be granted under Section 22.63.030. A. 1. for a home addition that does not increase *net* incursion into the SCA and does not result in the *net* expansion of the building footprint by more than 500 square feet, compared to the incursion or footprint existing on February 25, 2013.

For example, the homeowner could remove an old hot tub and deck within the SCA setback, and build a new carport in the SCA with the same square footage. This would allow us to modernize our homes, accommodate an aging population, and welcome new families who purchase older houses in need of remodeling.

Swaps and trade outs are a standard civic planning tool for environmentally sensitive upgrades. For

example, the City of Reno, Nevada allows the homeowner to install a fireplace, provided the homeowner de-commissions two old fireplaces.

4. Recommendations for Homeowners Exemptions

To the average homeowner, the exemptions are the most important sections of the SCA ordinance, for two reasons. First, the exemptions are key to making the ordinance Clear, Affordable, Simple and Enforceable. Second, if the proposed improvement is not otherwise exempt from a stream permit, the homeowner would be faced with Tier 1 and Tier 2 procedures that are expensive, time-consuming, set impossibly high standards, and create a huge employment opportunity for professional consultants.

Here we address only those exemptions which apply to residential properties (existing homes and undeveloped residential lots). Government and agriculture uses are beyond our scope.

Exemptions described in section 22.63.020 B. 1. are available with no fee, and do not require prior determination of CDA Director.

4. A. Recommendation: The ordinance must exempt fire protection for private homes and commercial facilities.

Section 22.63.020. B. 1. should read:

a. *Private homes, commercial facilities and public utility facilities and their maintenance proposed pursuant to Government Code Section 53091, Public Resources Code Sections 4291 and 4292, and the California Public Utilities Code;*

Reasons: State law pre-empts the county ordinance. The County does not have authority to pick and chose which state law fire protections are exempt from the SCA ordinance.

4. B. Recommendation : Preserve the exemptions under the Tree Ordinance. Stewards support the amendments to Development Code sections 22.27 and 22.62 which will now be extended to properties within the SCA. (See pages 15 & 16 of proposed SCA ordinance.)

Subsection 22.63.020 B. 1. c. should include as exempt under the SCA ordinance:

Tree and vegetation removal or trimming for the purpose of protecting life or property from a fire hazard, public nuisance, or any other threat to public health and safety, *or otherwise exempt under Development Code section 22.62.040 (vegetation may also be removed under this exemption which is dead, invasive or exotic);*

4. C. Recommendation: Exempt the repair, retrofit, and maintenance of existing structures. This is the "grandfather clause". This exemption will allow us to continue to live in our homes, many built decades ago next to creeks. This grandfather clause will ensure our homes do not decay, can be modernized for safety and convenience, can be sold to a purchaser or mortgaged to a lender.

The current draft exempts only "maintenance," but should be expanded to include "repair" or "retrofit". Otherwise repairs would require a CDA Director determination and payment of a \$300 fee. Compare section 22.63.020 B.1.g. with subsection B.2. a.

Common sense dictates that subsection B.1.g should read: "*Repair, retrofit, or maintenance of permitted or legal non-conforming structures, water supply and septic facilities that existed prior to February 25, 2013.*"

Reasons: CWPlan page 2-30 exempts "repair or retrofit" of existing structures from SCA protection.

CWPlan Glossary excludes "routine repair and maintenance activities" from the definition of "Development" .

San Geronimo Valley has hundreds of old houses, many built before World War II. We are "do-it-yourselfers". When a truck backs into our fence, and we replace the broken boards, is that maintenance or repair? Don't make us parse the words, or charge us a \$300 fee.

4. D. Recommendation: Fencing should not restrict wildlife access to the SCA setback. Section 22.63.020. B.1. i. exempts fencing that does not restrict wildlife access to " a riparian habitat". Which riparian habitat? How would the homeowner know where the habitat of a deer begins or ends?

We should make it Clear and Simple for homeowners to design a fence that goes around or stops short of the SCA setback. Section 22.63.020. B.1.i. should read:

- i. Fencing that does not restrict wildlife access to *the SCA setback*.

4. E. Recommendation: For "grandfather" exemptions, prior determination by the Director should be recommended but not required. Section 22.63.020. B. 2. is another "grandfather" clause which exempts (a) repair and replacement of existing structures that do not expand footprint within the SCA, and (b) structures and activities within previously disturbed areas. These are exempt "subject to determination by the Director . . ."

Do not require the homeowner to pay a \$300 fee and wait for a determination by the CDA Director before starting work on an exempt project. Simply recommend the homeowner take photos and get contractor letters, so a determination can be made later, if work is challenged.

Reasons: Our Supervisors established a precedent when they amended the exemptions in the tree ordinance in section 22.62.040, which recommends (but does not require) the homeowner to obtain an arborists report and photographs before tree removal. This approach is consistent with our complaint-based enforcement mechanism.

Subsection 22.63.020 B. 2. should read:

The following activities are exempt, subject to *review* by the Director, based on *photographs* and appropriate documentation submitted by the *property owner*, to confirm that the activity *did or will* meet the criteria below. *It is recommended that, before starting the activity, the property owner obtain a prior determination from the Director, or obtain a letter or report from a licensed contractor and photographs of the property and improvements or structures, to verify the activity will comply with this section. If the property owner requests a prior determination, or if an objection or complaint is later made to the Director, the homeowner may be charged a determination fee of \$300.*

4. F. Recommendation: Exempt repair and retrofitting to accommodate housing and access for

elderly or disabled persons. Add new section 22.63.020 B. 2. c. to exempt within the SCA setback up to 500 square feet of new impervious area or new horizontal incursion into the footprint not existing on Feb 25, 2013. This exemption would be subject to Director determination.

Reasons: Marin has an aging population. We have family members and tenants with physical disabilities. Many pay living expenses with Social security checks or disability payments. Please do not require these folks to go through the onerous and expensive Tier 1 or Tier 2 permit process.

Elderly and disabled people living at home may need to enlarge a bathroom, or add a room for the care-giver. For a person in a wheelchair or using a walker, there is simply no substitute for hard smooth surfaces that allow the person to get out of a car, into the house, and go up a ramp (not stairs). Pervious materials may allow percolation of runoff and limit drainage, but they place the elderly and disabled in physical danger of falling.

The County's 2009 ECR study shows that impervious area runoff is not a problem in the San Geronimo Valley. Our impervious area is less than 5%, well below the 10% range which is considered "excellent" by fish ecologists. See ECR pages 3-9 and 2-11.

Including a cheap easy exemption for disability access, now, in this stream ordinance, will save the County thousands of dollars that will likely be spent in future lawyers fees when the disability rights organizations sue for non-compliance.

4. G. Recommendation: Retain current exemptions for Land Use Permits: Do not require the homeowner to obtain a Land Use Permit for activities that are exempt from the Stream Permit. See pages 4 and 10 of the draft ordinance.

We are not sure how to read proposed section 22.63.020 A. 1. It is not Clear and Simple, but seems to require a homeowner to obtain a Land Use Permit for an activity within the SCA, even though the activity is exempt from the stream permit requirements. Will the homeowner require a Land Use Permit for the following minor activities within the SCA setback?

- a children's swing set,
- a lawn sprinkler,
- interior remodels such as shower hand rails, or
- changing outside appearance such as adding a skylight or exterior shingles.

See Development Code sec. 22.06.050. Why does the County gives an exemption with one hand (the SCA ordinance) but take it away with the other hand (Land Use Permits)?

Section 22.63.020 A. 1. should read:

The provisions of this Chapter apply to permitted development within the Stream Conservation Area as described in Chapter 22.33 (Stream Protection). Except for activities which are exempt or are permitted within this Chapter 22.63 (for which no Land Use Permit is required), the exemptions from Land Use Permit Requirements in Section 22.06.050 do not apply to development within the Stream Conservation Area.

(The final two sentences of section 22.63.020 A. 1. are sufficient to preserve other permitting requirements.)

5. Tier 1 Permits. If the activity is not exempt, the homeowner will be required to:

apply for a stream permit before starting work;
 pay \$1500 fee;
 pay for a County expert to do a Site Assessment;
 undergo ministerial review by CDA staff; and
 use "Development Standards" and SMP's (Standard Management Practices)
 formulated by the CDA.

The Tier 1 Permit will be expensive and time-consuming, even for minor improvements on existing homes.

5. A. The Tier 1 standard should allow mitigation, not require full avoidance, of all adverse impacts.
 The current draft requires the Tier 1 project result in "no adverse impacts to the SCA or that any impacts can be fully avoided" through use of SMP's. Section 22.63.030 B. 4.

This is a show stopper. We question whether this high standard can ever be achieved for any project, making Tier 1 permits impossible to obtain. The standard is so strict it invites litigation over the smallest possible impact.

We suggest two changes would make Tier 1 permits Enforceable and Affordable:

First, to subsection B. 4. add; "*. . . or if there are any adverse impacts to the SCA, they can be fully mitigated by SMP's or Development Standards that minimize or reduce the impact, to the satisfaction of the Director.*"

Second, allow swaps and trade outs, as explained in Recommendation # 3 above. If a Tier 1 project would otherwise create some SCA impact, encourage mitigation by de-commissioning some other encroaching structure elsewhere on the same property. For example, If the homeowner wants a new garage within the SCA setback, ask that he retrofit the old concrete patio using pervious materials.

5. B. Grant Tier 1 Permits for new driveways made of pervious materials. Modify section 22.63.030 B. 2. to read:

c. New driveways, roads and roadfill slopes shall be located outside SCA's except at stream crossings, *or shall be constructed of pervious materials which test for percolation and drainage.*

For example, new home driveways at the end of Arroyo Road in San Geronimo were developed with "bubbled" materials that are totally pervious in rainfall, which also meet Fire Department standards for fire truck access. This approach is supported by CWPlan BIO 4.18 and 4.19 at pages 2-34 and 2-35 which promotes permeable surfaces where hardscape is not avoidable, and recommends pourous pavers and disconnected impervious surfaces.

We live in a fire hazard zone as identified in the CWPlan, and we are within the Urban-Wildlife Interface under state law. We must permit Tier 1 driveways that allow fire truck access.

5.C. Require clear span bridges and arched culverts only in streams with less than 8% grade. The purpose of section 22.63.030. B. 2. d. is to prevent interference with fish migration. CWPlan BIO 4.9 at page 2-33.

Fish cannot swim up a slope with a grade steeper than 8%. So there is no purpose served by requiring expensive clear span bridges and arched culverts for uphill tributaries. The cost of such

construction is prohibitive for the average homeowner, especially on hillside lots.

5.D. Encourage public comment on draft SMP's. Standard Management Practices will be key to implementing and enforcing this ordinance.

Who drafts the SMP's? Who has final approval authority?

The ordinance should require that the public be given adequate notice and opportunity to comment on draft SMP's as they are issued and updated.

5. E. Allow the homeowner to commission his own Site Assessment. The Tier 1 Site Assessment shall be prepared by a professional retained by the County and paid for by the applicant. Section 22.63.030. B. 4. on page 7.

Add to this section: *"The applicant may also retain and pay for his own professional to prepare a Site Assessment, and the Director may consider that report also."*

6. Tier 2 Permits. The Tier 2 permit will be more difficult to obtain than Tier 1. The fee will be \$4,000. In addition to meeting all the requirements of a Tier 1 Permit, the Tier 2 application must also include a hydraulic assessment, a study of alternate mitigations, and discretionary review by the Planning Commission.

We fear that Tier 2 applicants will suffer the time delays and expenses that plagued Mr. Maloney when he attempted to obtain a permit to build near San Geronimo Creek a small house, utilizing green materials and sustainable building practices. The process consumed 4 years and \$250,000 in soft costs before the Planning Commission granted the permit, when the SG Valley Stewards mobilized in his support.

The Tier 2 Permit process should also follow the CASE principle--Clear, Affordable, Simple and Enforceable. We request that the changes in Recommendation #5 (Tier 1) also apply to Tier 2 permits. We further recommend:

6.A. Tier 2 Permit should be required only if adverse impacts cannot be mitigated under Tier 1. Add to the end of Section 22.63.040 A. that the Tier 2 Permit applies " . . . to any development that would result in adverse impacts to the SCA, *which adverse impacts are not fully avoided or fully mitigated to the satisfaction of the Director under section 22.63.030. B. 4. "*

6. B. Finding of infeasibility may be appropriate for Tier 2 Permits, but should not be required for Tier 1 permits or exemptions with determination.

Section 22.63.060. A. on page 9 establishes the findings necessary by the "Review Authority". (The Review Authority would be the CDA Director, in the case of an exemption with determination under section 22.63.020. B. 2 or in the case of a Tier 1 Permit. For Tier 2 permits, it would be the Planning Commission.)

The finding of infeasibility in subsection A. should be applicable only to Tier 2 permits: It is infeasible to completely avoid development within the SCA, or development outside the SCA would have greater adverse impacts, as determined by the Site Assessment.

To also require this infeasibility finding A. for exemptions would completely undermine the

"grandfather" clauses available for existing structures and improvements within previously disturbed areas. For Tier 1 permits, the infeasibility finding in A. would impose requirements far beyond the simple and affordable process intended by section 22.63.030.

Conclusion

San Geronimo Valley Stewards look forward to working with County staff, public officials, homeowners, and other community groups on a fair, effective and balanced Stream Conservation Area ordinance. The ordinance should be Clear, Affordable, Simple and Enforceable.



March 27, 2013

To: County of Marin Planning Commission and CDA staff
From: San Geronimo Valley Planning Group
Contact: Jean Berensmeier, SGV Planning Group Chair
415-488-9034 or jeanberens@comcast.net
Re: SCA Proposed ordinance comments

The San Geronimo Valley Planning Group commends staff for the broad based public noticing and out reach; informative web site; the Open House; staff availability in meeting with concerned groups; staff's quick response to questions and for exploring Open Marin as another tool to educate and gain information. Following are our initial comments. These are derived from membership comments at our March 11 monthly meeting and meetings of the Planning Group SCA Committee with oversight by the Planning Group's Steering Committee. Recommendations to follow after hearing the staff presentation and Planning Commissioner's questions and comments.

General:

1. We support the County's effort to implement an effective SCA Ordinance that protects riparian habitat and water quality resulting in the improvement of the health of streams in the San Geronimo Valley.
2. Education Plan - We believe the impact of the proposed ordinance will be strengthened significantly with the addition of a detailed education plan that provides strong incentives for compliance with the terms of the ordinance. By focusing education and implementation resources on those properties with the most potential to affect stream health, the County could increase the effectiveness of the ordinance dramatically as well as provide significant economic value to subject properties.

Staff Report:

1. We support the creation of a new SCA ordinance that will protect riparian habitat and water quality. We endorse the four CASE principles as guidelines in this endeavor. We do not favor any policy or guideline that will allow for inappropriate development.
2. We understand that the intent of the Ordinance is to protect and preserve riparian habitats. However, amendments to the existing code commencing in Section 22.06.050 and affecting various sections through 22.40.030 that are proposed to eliminate contradictory regulations have created significant confusion within certain segments of the community. The confusion stems from a belief that the SCA Ordinance will now provide new opportunities for building within the SCA. We urge County staff to clearly state in their presentation to the Commission and ultimately to the Board of Supervisors that the intent of the SCA Ordinance is to prohibit those activities within the SCA that will degrade sensitive habitat, and in those instances where development will be allowed sensitive habitat will be sustained if not enhanced.
3. Setbacks – We support the 100' setback but believe the description needs clarification. Describe its application to steep property. If the top of the bank is difficult to determine, what is the backup and procedure to make this determination?
4. New Permit procedure – we support the effort to make proposed changes simple through the proposed Tier 1 and Tier 2 designations for exemptions. But we do not believe people understand that both tiers (even if exempted) require a permit.
5. Permit fees - Fees should be minor or waived.

6. Exemption list - Exemptions must be clearly defined and not allow wiggle room for inappropriate development within the SCA.
7. Disturbed Areas – This needs a clear definition and guidelines that include how to document existing disturbed areas. We want to avoid allowing or encouraging “creative” disturbances that create inappropriate development opportunities. We should encourage restoration of previously disturbed areas to regain riparian habitat adding habitat function and value to homeowner properties.
8. Ephemeral streams - The definition and applicability statement needs reworking. These are tributaries that may or may not impact the main stream. Streams, whether ephemeral or not, that impact sensitive habitat should be the focus of this legislation. We highly recommend that the County spend the needed resources to determine which streams should be included within the legislation and delete those that have little or no impact. In doing so and demonstrating that only those streams that directly impact Salmon breeding areas are classified as SCA restricted will the County achieve a broad based acceptance of this Ordinance by the community. Guidelines and accurate maps are needed to determine status. We believe that the current San Geronimo Valley map used to identify streams, does not reflect the relative impact of the identified streams on streamside health. For example, a property that has water runoff once every forty years is covered by the same rules that apply to a property with a named creek running through it. Clarify whether the proposed ordinance is consistent with CWP Bio-4 which states that ephemeral streams are subject to SCSA protections regardless of amount of linear feet of riparian vegetation. What is a “sensitive natural community type”?
9. Ephemeral stream maps are needed for each of the 5 unincorporated areas that have been identified. Be sure to include a legend.
10. Woody Riparian Vegetation – Descriptions are needed that show, list, describe and explain Woody Riparian Vegetation. How is the precise measurement determined? From the tip of a branch, the base of the tree?
11. –Define and list Standard Management Practices (SMP) and how they will be applied to determine adverse or non-adverse impacts to stream and riparian resources.
12. Misinformation regarding illegal structures persists. Clarify that the new permit procedure is not a path to legalize illegal structures in the SCA. We understand this issue will be addressed at a later time. The County needs to confirm this.
13. The PG suggests that the Planning Commission urge the Board of Supervisors to allow CDA adequate time and resources to train staff in these new procedures as well as be prepared to make decisions on the exceptions that will undoubtedly occur.
14. Tool kit – Provide property owners with a tool kit that will guide them through the new permit process. Include a list of plants found in riparian habitat. Promote successful programs like the Landowner Assistance Program (LAP).

Two ideas whose time may have come:

- A. We are aware that few residents will read and fully understand the proposed ordinance’s one-hundred-plus page ordinance and we are aware that there is already a significant level of misinformation even among Valley residents who have invested time studying the ordinance. It would be desirable for property owners to have the opportunity to walk their property with an expert who can advise them how to build in a creek friendly way, and how to best mitigate any non-compliant structures. Researching the availability of grants in addition to County funds to implement this idea is worth exploring.
- B. “Streamside Compliant” designation. For property owners that follow the guidelines of the ordinance such a designation could result in increasing property values.

Finally:

We appreciate the effort that the County has devoted to developing a thoughtful and effective ordinance. And, while we support the goal of seeing the ordinance passed as soon as possible, we will be very grateful for the Commission’s willingness to take the time that is necessary to make this the most effective ordinance it can be. We thank you for your time and effort in creating an ordinance that will be looked on with pride for its ability to demonstrably improve the health of the County’s invaluable streamside environment.

Thorsen, Suzanne

From: Stephen Mason Virginia Souders-Mason <ginger@seajay.org>
Sent: Wednesday, March 27, 2013 4:36 PM
To: Thorsen, Suzanne
Subject: Re: SCA Presentation

Greetings Suzanne,

At long last I got to the slides. Thank you so much for sending them. If you want to catch the short program done for the news program just click on the link below. We will finish editing the complete presentation for running on one of the channels. Will let you know when that will be.

I do insist that creeks can not be protected as long as pesticides and synthetic fertilizers are allowed to be used within the SCA.

Sincerely,

Ginger Souders-Mason

<http://marinondemand.cmcm.tv/video/11604/seriously-now-march-22-2013>

From: "Thorsen, Suzanne" <SThorsen@marincounty.org>
To: "ginger@seajay.org" <ginger@seajay.org>
Sent: Monday, March 18, 2013 12:04 PM
Subject: SCA Presentation

Hi Ginger,

Please see the slides from 3/14 in jpeg format, attached. We will be posting a pdf of the presentation online this week.

Feel free to give me a call or email if I can assist you any further.

Suzanne

Suzanne Thorsen, AICP
PLANNER

County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
415 473 4333 T
415 473 7432 F
sthorsen@marincounty.org

Email Disclaimer: <http://marincounty.org/nav/misc/EmailDisclaimer.cfm>

70 Crane Drive
San Anselmo CA 94960

Mr. Wade Holland, Chairman, and
Members,
Marin County Planning Commission
Civic Center
San Rafael, CA 94903

27 March 2013

Stream Conservation Area
Ordinance

Dear Commissioners:

The undersigned, Frank and Connie Berto, have resided in Sleepy Hollow since 1958. We are writing to protest the application of the Stream Conservation Area (SCA) Ordinance to the Hollow. The planned expansion to include all unincorporated areas in Marin County in the SCA makes no sense for our community. Consider:

1. The valley known as Sleepy Hollow dates back to the mid-19th century and is almost entirely built out. The ridges are protected by open space, by scenic easement, or by *de facto* non-developable zoning (i.e., San Domenico).
2. Sleepy Hollow has had its own zoning ordinance, No. 784 (R-1::B-D, copy attached) since 1955. Note the required setbacks and lot sizes. The SCA would effectively override this ordinance inequitably, without CEQA overview, and without community participation.
3. The creeks and waterways in Sleepy Hollow are already protected by two existing but unenforced County ordinances: chapter 11.08.010 and 11.08.020 (copies attached), which forbid polluting/dumping in watercourses and place the duty of keeping waterways clear upon property owners. Additional regulations are not necessary to enhance habitat and preserve clean water flowing through the valley. There is far more wildlife in Sleepy Hollow now than there was when we moved here in 1958.
4. Sleepy Hollow homes are almost 100% on sanitary district sewer lines, not septic tanks. The SCA is superfluous.
5. Sleepy Hollow has its own homeowners association, two fine schools, its own Fire Protection District which is a partner of the Ross Valley Fire Protection District, and enjoys police protection from the sheriff's department and the CA Highway Patrol. It is a well-established and stable community. Imposing the restrictions of the SCA would lower property values and pose difficulties in the financing of future home sales. The SCA is not needed here.
6. There are no anadromous fish in Sleepy Hollow creeks and tributaries – no migrating fish – none. Sleepy Hollow Creek is dry for most of the year except for isolated puddles south of Van Winkle Drive, including right now. Drainage ditches from the hills are bone dry already.

7. There is no provision in the SCA as drafted for preservation of equestrian facilities. Sleepy Hollow's zoning specifically permits the keeping of horses on residential properties subject to certain restrictions. The keeping of horses, donkeys, mules, ponies on other unincorporated lands have been covered by Ordinance No. 2144 (Sec. 22.68.040, copy attached) since 1975. Marin County, however, does not recognize horses as agricultural. Therefore, agricultural uses in the SCA under 22.63.020 (B)(1)(j), i.e. A, ARP, or ARZ, do not address the established equestrian facilities and hundreds of horses in San Geronimo Valley and Sleepy Hollow. This is a serious omission and should be specifically addressed. This is too important to be left up to educated guesses and "maybe"s.

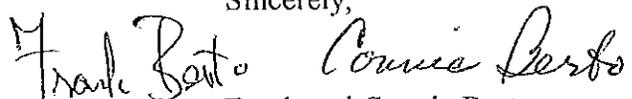
For all the reasons listed above, **Sleepy Hollow should be exempted from any SCA ordinance.** Homes currently under our Zoning Ordinance No. 784, R-1:B-D, should be dropped from SCA regulations and added to the list of exemptions in 22.63.020, Section B. The SCA would constitute a taking of property rights from our residents – rights which already have existing and reasonable conditions of home improvement. We do not need yet another layer of top-down, subjective, expensive county mandates.

About ten years ago, we and our neighbors, the Doctors family, obtained ownership of the fire road running beside our properties and bordering the creek. It cost us a great deal of time and money, but we did it in order to forever secure the riparian values of this section of Sleepy Hollow Creek. Furthermore, we offered, and the County accepted, a multi-use recreational trail over this road so that others may enjoy the habitat and peace of this path. We can also tell you that for the seventeenth consecutive year we have redtail hawks nesting atop a pine tree in our own horse corral. Professional photographers have visited, taking pictures of the activity. We did not need an SCA to force this protection; we did it willingly. Our neighbors and other residents in the Hollow feel the same way about our valley's natural values.

In closing: the thrust of Judge Duryee's court order is San Geronimo Valley and the lawsuit instigated by the Salmon Protection And Watershed Network. SPAWN should not be able to dictate to the County nor to residents in general what homeowners can and cannot do on their properties in Marin. Shall SPAWN now make the laws for Marin County development, in the future, by threats of litigation?

Thank you for your consideration of an exemption of Sleepy Hollow from the SCA.

Sincerely,


Frank and Connie Berto

Cc: Dan Stein, President,
SHHA
Supervisor Katie Rice, 2nd District
Interested parties

MARIN COUNTY ORDINANCE NO. 784 R-1:B-O-SINGLE FAMILY RESIDENCES
(SLEEPY HOLLOW AREA)

(A) Uses Permitted:

1. One-family dwellings
2. Golf courses, country clubs, tennis courts, and similar non-commercial recreation uses.
3. Public parks and playgrounds.
4. Accessory buildings and accessory uses to a one-family residence.
5. Home occupations, provided that there shall be no external evidence of any home occupations.

(B) Restrictions on use:

1. No dwelling house shall be erected, placed or maintained which shall have a living floor area, exclusive of porches and garage, of less than 1,300 square feet.
2. Any building or structure commenced to be erected or placed shall be prosecuted to completion with due diligence.
3. No cows, goats, hogs, pigs, poultry or livestock of any kind, except as hereinafter provided, shall be kept or permitted, provided, however, that this restriction shall not prohibit the keeping of ordinary household pets on the premises.

Horses, donkeys or ponies for the personal use of occupants of residential property may be maintained upon the premises provided, however, that the stable or barn be located not closer than ten (10) feet of the side property lines with the exception of a corner lot, in which event fifteen (15) feet shall be the minimum distance, nor closer than forty (40) feet to an existing dwelling. Further, that the running area for such animal or animals be not closer than forty (40) feet to an existing dwelling.

(C) Building Height Limit:

2 1/2 stories but not exceeding 30 feet in height at any given point.

(D) Building Site Required:

Each one-family dwelling, together with its accessory buildings hereafter erected, shall be located upon a building site in one ownership, having an area of not less than one acre, or in the alternative, an area of not less than 15,000 square feet, and a frontage of not less than 100 feet on a public road.

(E) Front Yard Required:

Each lot shall have a front yard not less than 25 feet in depth.

(F) Side Yards Required:

1. Each lot shall have side yards having a width of not less than 10 feet. On a corner lot the side yard on the street side of such corner shall have a width of not less than 15 feet. (Ord. 784; Dec. 6, 1955)

MARIN COUNTY, CALIFORNIA - CODE OF ORDINANCES >>TITLE 11 - HARBORS AND WATERWAYS*
>>CHAPTER 11.08 - WATERCOURSE DIVISION OR OBSTRUCTION

Select the documents you wish to print.
Your current document has been pre-selected for you.



- Chapter 11.08 - WATERCOURSE DIVISION OR OBSTRUCTION
 - 11.08.00 - Purpose of chapter.
 - 11.08.005 - Coastal zone.
 - 11.08.010 - Interfering with water flow.
 - 11.08.020 - Duty of owner.
 - 11.08.030 - Director of public works to remove obstruction.
 - 11.08.040 - Free flow of water required—Issuance of building permits.
 - 11.08.050 - Permit required for construction.
 - 11.08.060 - Application—Fees.
 - 11.08.070 - Structures deemed nuisance when.

Note: You must remove pop-up blocking to view Printer Friendly version.

11.08.010 - Interfering with water flow.

It is unlawful for any person to dump or place, or to permit to be dumped or placed, deposited, maintained or accumulated in any natural watercourse on public or private property any debris, garbage, rubbish, trash, brush, timber, dirt, fill, rocks, waste piles, or any other commodity whatsoever which obstructs, prevents, divers, or tends to obstruct, prevent or divert the normal, natural or ordinary flow of water in such watercourse. Provided, however, that nothing contained herein shall be deemed to prohibit the improvement or realignment on private property of any natural watercourse so as not to obstruct, prevent or divert the natural flow of water in such watercourse at its point of entry onto or exit from such private property.

(Ord. 1051 § 1, 1959)

11.08.020 - Duty of owner.

Every owner of property in the district shall, at all times, keep all creeks or portions thereof which flow upon, over, or across, the property of the owner free and clear of debris, rubbish, or any other unnatural obstruction which measurably reduces the hydraulic capacity of the creek. The failure to do so shall constitute a public nuisance which may be abated in accordance with Chapter 1.05, and the costs thereof assessed against the property.

(Ord. 1760 § 2, 1970; Ord. 1051 § 2, 1959)

BOARD OF SUPERVISORS OF
THE COUNTY OF MARIN
ORDINANCE NO. 2144
AN ORDINANCE OF THE
COUNTY OF MARIN, STATE OF
CALIFORNIA, AMENDING
TITLE 22 (ZONING) OF THE
MARIN COUNTY CODE
RELATING TO EQUESTRIAN
STANDARDS IN RESIDENTIAL
DISTRICTS.

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I: Section 22.68.040 of the Marin County Code (Title 22) is hereby amended to read as follows:

22.68.040 Horses, Donkeys, Mules, Ponies

A. Permitted Subject to Property Development Standards

Horses, donkeys, mules or ponies kept for private use and housed on residential properties zoned R-1:BD (except that R-1:BD area of Sleepy Hollow covered by Ordinance No. 784), RA, A-2, RR, R-E, RSP, RMP, and O-A, may be maintained upon the premises subject to the following property development standards:

1. The minimum lot size for the keeping of one animal shall be 15,000 square feet for properties with 1% - 15% slope. For each percent of slope over 15% the minimum lot size shall be increased 1,000 square feet.

2. For properties over 25% in slope an erosion and drainage plan shall be submitted and approved by the County of Marin Department of Public Works. No animals shall be permitted on slopes exceeding 50%.

3. For each additional animal, there shall be provided an additional 5,000 square feet of lot area.

4. Stables or barns shall be at least ten feet from side property lines and on corner lots at least twenty-five feet from the street property line. Stables or barns shall be at least thirty feet from any existing dwelling(s) on that lot, and at least thirty feet from any building line on any adjoining lot.

5. Corrals and grazing areas for such animals shall be at least thirty feet from any existing dwelling(s) on that lot, and at least thirty feet from any building line on any adjoining lot. Such

areas shall be enclosed by a fence of suitable materials at least four feet high.

6. Manure should be collected at least two times weekly and disposed of, composted, or removed from the premises.

7. An adequate supply of fresh water must be available at all times.

B. Permitted Subject to the Securing of a Use Permit

In any district, except an Agricultural Conservation District, not listed above or on lots not meeting the minimum requirements stated above, horses, donkeys, mules or ponies kept for private use and housed on residential properties may be allowed subject to the provisions of Section 22.88 (Use Permit) of this code. The Zoning Administrator shall be advised by the Marin County Horsemen's Advisory Committee as appointed from time to time by the Board of Supervisors.

C. On any residential property where horses, donkeys, mules or ponies are legally kept as of the date of this ordinance shall be deemed to be conforming. Any expansion shall be subject to the provisions of this section.

SECTION II: This Ordinance shall take effect and be in full force thirty (30) days after the date of passage and approval and shall be published at least once in a newspaper published in the County before the expiration of fifteen (15) days after its passage, with the names of the members voting for and against the same.

THE FOREGOING ORDINANCE WAS PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 25th day of February 1975 by the following vote, to-wit:

AYES: Supervisors: Bob Roumiguere, Thomas S. Price, Arnold M. Baptiste

NOES: Supervisors:

ABSENT: Supervisors: Peter R. Arrigoni, Gary Giacomini

/s/ GARY GIACOMINI

CHAIRMAN OF THE
BOARD OF SUPERVISORS
COUNTY OF MARIN

(SEAL)

Attest:

/s/ PETER MEYER

Clerk of the Board
No. 356 Mar. 10, 1975

From: Andy Harris <andyh127@gmail.com>

Date: March 29, 2013, 10:38:38 AM PDT

To: <sadams@co.marin.ca.us>

Subject: Strengthen & Improve draft Stream Conservation Area Ordinance

Reply-To: <andyh127@gmail.com>

Dear Marin County Board of Supervisors,

I urge you to strengthen Marin's proposed Streamside Conservation Area Ordinance to ensure protections for the endangered coho salmon and steelhead trout that reside in the County's streams, and to expand their chances for recovery to sustainable population levels.

I ask that the ordinance include at least the following basic provisions:

- 2 for 1 mitigation. For every square foot of development that is permitted under this ordinance, two square feet of habitat should be restored to use. This will ensure the "No net loss" required in the County-Wide Plan, while increasing the chance that these endangered animals have for recovery.
- One-time additions. Any permitted additions under the ordinance should be no more than 500 square feet and should be "one-time", noted on both the deed and in a county database and travelling with change of ownership.
- Complete protection of ephemeral streams, including 100-foot setbacks. While such waterways often have only "seasonal" flow, they are an essential component in the function of a healthy watershed. Not only do they transport nutrients and clean water into the main creek arteries, when properly functioning, they also can help to slow water flow during and after storm events, reducing the chance of flooding. Like our own bloodstream, it makes no sense to give lesser protection to our capillaries than our arteries and heart.

Your predecessors on the Board took bold action to protect our ridgelines years ago. I ask that you now demonstrate the same kind of environmental leadership to protect the health of creeks that are critical to all the wildlife of Marin.

Sincerely,

Andy Harris

8 Via Capistrano
Tiburon, CA 94920

From: jj.olson@comcast.net [mailto:jj.olson@comcast.net]
Sent: Friday, March 29, 2013 3:06 PM
To: Stratton, Debra
Subject: SCA Ordinance - April 1 Planning Commission

Subject: SCA Ordinance - April 1 Planning Commission

March 29, 2013

To: Suzanne Thorsen

Marin Community Development Agency
Regarding SCA Ordinance: April 1 Planning Commission,

Dear Ms. Thorsen,

I want to thank you and the County of Marin Planners and the San Geronimo Valley Stewards for all the work that has been done regarding the SCA ordinance. I have attended many of the meetings and found them very informative and at the same time very disturbing with all the legalities of the SCA ordinance, county regulations, etc, as well as the never-ending legal threats from SPAWN. I received an e-mail of the Draft Recommendation from the SGV Stewards which was really helpful in understanding the ordinance and all the issues involved in the ordinance. There is so much information and I see so much more work that needs to be settled on or compromised as it entails many other agencies. I truly hope that we can make this work for the good people of the San Geronimo Valley and the County of Marin.

To get to the point today as I know you are all very busy; I want to know what type of time line we are looking at and when this ordinance might take effect in the county. The reason that I am asking this is that I feel we (San Geronimo Valley residents) are taking the brunt of this SCA ordinance along with the Spawn threats as well as their legal manipulations with the County of Marin and our citizens of Marin. I feel the County of Marin is putting into place a complex ordinance that will essentially be holding us all hostage without any regard for our property rights as legal owners of our homes and land because we happen to have a stream on our property.

My line of thought is this: Time is of the Essence - what if in the near future the Salmon made a total recovery in spawning numbers in the valley. As has been documented by the scientific community, the drop in Salmon has occurred due to changes in the ocean (possibly Global warming) and little to do with our SG valley creek run off or the few new homes built in the valley. The MMWD dams built on Mt. Tam have had an impact on our creeks as well.

So looking into the future, if this SCA ordinance is approved, this means that our valley and the unincorporated parts of the county under the SCA would be under this very strict and **permanent** zoning SCA ordinance - Are we (Marin County) moving too fast and

pushing forward with the SCA ordinance? Can this ordinance continue to be "fine-tuned" and see what the next few years may bring with the salmon population?? Or more reasonable ordinances put into place that we can all live with until we know more about the impacts of our creeks and water ways. I also feel that many of the citizens of Marin County have no idea this ordinance is in the planning process, I read the local papers, and have seen really nothing to alert our citizens.

Looking into the near future and with regards to SPAWN, if the salmon population did recover in our SG valley, what reason would they then have to exist! My heart goes out to the valley property owners who can no longer build their dream home or their place of retirement due to the building moratorium. Their property has become worthless to them, it is just not right!! In the same way our properties will drop in value due to the restraints that are put on to our properties. I have already noticed real estate ads in the valley advertising:: "No Stream Encumbrance!!"

Twenty-two years ago we bought our property because of the beautiful little stream near our vegetable garden, it is still beautiful, but it saddens me to think, anyone purchasing our property in the distant future will not feel the same about our stream. How very sad. And it makes me angry!

The residents of the Geronimo Valley will continue working with the county planners trying to make the SCA ordinance work for all and make sure that it is fair for all. I have lived in West Marin for over 45 years and love the area. However, I know it is increasingly difficult to maintain a life here if we are constantly being bombarded with these types of ordinances and issues. I really feel that we are getting these SCA ordinances pushed upon us without due diligence when it comes to enacting these permanent regulations in our county!!

I do appreciate all that the County does in protecting our community and our homes!! We just need to be reasonable and do our due diligence with the SCA ordinance. We all want to be sure West Marin stays the jewel that it is in our county.

Jennifer Olson

Lagunitas - My Home was built in 1904

Thorsen, Suzanne

From: Havel, Curtis on behalf of cdaplaning
Sent: Monday, April 01, 2013 7:33 AM
To: Thorsen, Suzanne; Lai, Thomas
Subject: FW: SCA Ordinance Meeting

FYI

Curtis Havel
SENIOR PLANNER

County of Marin
Community Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
415 473 2755 T
415 473 7880 F
CRS Dial 711
chavel@marincounty.org

From: Taylor [<mailto:thamblett@me.com>]
Sent: Monday, April 01, 2013 12:35 AM
To: cdaplaning; Stratton, Debra
Cc: Kinsey, Steven; Crosse, Liza; 'Laura Floyd'
Subject: SCA Ordinance Meeting

For the Planning Commission's Attention:

I am unable to attend Monday morning's hearing regarding the Proposed Stream Conservation Area "SCA" ordinance. There will be representatives from the Valley Stewards in attendance who will be speaking in my place. The San Geronimo Valley Stewards have submitted our initial review and recommendations regarding the proposed Stream Conservation Ordinance for Marin County and we will continue to provide more detail throughout the process. As the Planning Commission begins its process for considering the proposed Stream Conservation Ordinance I ask that you evaluate all the information in the context of the following points:

1. Take your time:

There is considerable pressure to hurry up and pass something in order to remove the injunction on construction in the San Geronimo Valley. This is an inappropriate short term view. You MUST remember that we are stuck with what gets passed. Don't take forever, be focused, but remember that the focus is to pass the right ordinance, NOT a quick fix ordinance with errors.

2. Have a realistic image:

There is a diagram that's used to explain the proposed SCA setbacks. It shows a house, a back yard, 100' of trees, a creek bank, and then the creek. That's the fantasy. As you consider impacts of the proposed SCA regulations you need to keep in mind the reality. We have provided the CDA staff with pictures of examples of the reality in the San Geronimo Valley. Homes in the SCA are on the creek bank. We don't have the luxury of the fantasy of 100' that is

being depicted. The Salmon Enhancement plan identified a 35' zone, instead of 100'. Even with that adjustment a significant number of homes can be found within this reduced distance, but at least the SEP attempted to work with reality, not fantasy.

3. Don't be vague

Future arguments about the SCA will occur where the ordinance is vague. We have learned from past experience that it's words like riparian, herbaceous, and ephemeral that when given a general definition, but with no specifics, cause the most debates. Without specifics these terms leave one wondering what is/is not covered by the ordinance.

Ephemeral creeks for example are defined in EPA reports as having to have a channel, and that the riparian area along their bank has a *"...distinct composition and density from the surrounding uplands."* As drafted the Marin Countywide Plan included a general description of ephemeral creek as a watercourse carrying water after is rained. This same definition has been carried over to the proposed SCA ordinance. This vague definition has everyone questioning what is and is not an ephemeral creek. Does the definition mean the ditch between my front yard and the road is an ephemeral creek, or for that matter what about the hillside behind my house? While we understand that an unreleased update to the proposed SCA ordinance has attempted to provide some clarity with respect to ephemeral creeks, it is yet to be determined if enough has been done, and only illustrates our point.

It is difficult to find the balance of enough detail vs. too much detail, but we encourage you to be as specific as possible. Make it easy for the average individual to understand what is required, as well as when and where it is required. Demand that those specifics be provided to you. How do you evaluate the appropriateness of a suggested regulation if you can clearly identify when that regulation applies and why it is being applied?

4. Remember SPAWN lost their lawsuit:

SPAWN will make claim after claim, but never forget the same judge that forced the County's timeline for the planned SCA ordinance also found every one of SPAWN's claims to be without merit. A sensible planning solution, with realistic expectations, and clear definitions is the target. Not the extremes that SPAWN is promoting.

Thank you,

Taylor Hamblett

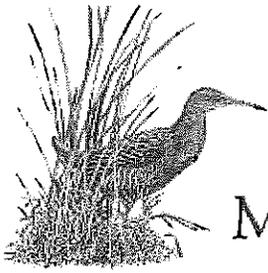
Thorsen, Suzanne

From: Barbara Salzman <BSalzman@att.net>
Sent: Sunday, March 31, 2013 9:51 PM
To: Thorsen, Suzanne; "debra stratton"@marincounty.org
Subject: Re: MAS comment letter on Stream Ord.
Attachments: Stream ordinance to PC.pdf

Suzanne and Debra

Here is Marin Audubon Society's comment letter on the Stream ordinance.

I am not sure I can make it to the PC meeting tomorrow Please submit it to the Planning Commission Thank you
Barbara Salzman



Marin Audubon Society

P.O. Box 599 | MILL VALLEY, CA 94942-0599 | MARINAUDUBON.ORG

March 31, 2013

Wade Holland, Chair
Marin County Planning Commission
3501 Civic Center Drive
San Rafael, CA 94903

RE: Stream Conservation Area Ordinance

Dear Chairman Holland and Commissioners:

Thank you for the opportunity to comment on the draft Stream Conservation Ordinance. Marin Audubon applauds the Planning Staff for the extensive outreach on this ordinance. We strongly support the ordinance because it is essential to protect our creek resources and enhance or restore degraded streams. Our comments below are intended to clarify language where it is unclear and to strengthen the ordinance to ensure the intended purpose is carried out.

22.33.101 Purpose

The purpose statement should be expanded to include a more complete explanation of the purpose of and the many benefits streams and their associated vegetation provide. The purpose should be considered a means to educate the public about the need for and importance of freshwater streams and the benefits of the ordinance. In that light, we suggest expanding the list of benefits to include: stabilizing streambanks, preventing erosion and downstream sediment transport; providing nesting, feeding and movement corridors for birds and other wildlife; providing food and shade for fish; recharging groundwater; moderating climate; as well as increasing property values.

22.33.030 A. Requirements

1. Explain how feasibility will be evaluated. How will be determined that avoidance is not feasible? Will the evaluation be on the basis engineering/construction feasibility, economics, aesthetics, etc.?

3. Add as d. "Adverse impacts to fish or wildlife" to the list of impact that would prohibit development in SCA's.

B. SCA setbacks

3. Include some examples of when an additional setback would be required. At minimum, additional setback should be required to avoid impacts to endangered species.

4. Riparian vegetation rarely if ever extends for a continuous length of 100 feet on ephemeral streams. Setbacks should still apply for ephemeral streams regardless of vegetation because ephemeral streams are the headwaters of our creeks. Loss of these stream lengths, which filter, aerate and assist in flood protection, would impact water quality for the entire down stream reach.

Chapter 22.63.020

We support the Application of SCA provisions, but we have problems with some of the exemptions:

B. Exemptions

1. g. should include a provision that maintenance and repair of permitted or legal non-conforming uses should not expand the footprint of the structure.

h. Replacement of non-native invasive vegetation should not be exempted.

2. b. Define "previously disturbed area" so that it does not include areas that have simply been cleared, graveled, replanted, etc. e.g. not an area that could be restored fairly easily. Only areas that are developed with structures should be covered.

22.63.030 Stream Conservation Area Permit – development activities eligible for Tier 1 consideration

A. Tier 1

1. The wording should be clarified so that the ability to have a 500 foot addition to an existing structure is limited to one time. This is essential to prevent repeated incursions which would have significant cumulative impacts and would defeat the purpose of the ordinance.

7. This provision includes the requirement that water supply and flood control projects be necessary, yet the list for Tier 1 includes a number of other activities that could have just as damaging, if not more, impacts on riparian resources. All of these exempt activities, (which include decks, patios, paths, and roads) should have to prove that it necessary for them to be located in the SCA.

B. 2. a.

2.a. The provision allows for removal of riparian vegetation, provides for replacement, and that the replacement vegetation "may" consist of native species. We recommend that Tier 1 activities be required to demonstrate that they cannot be placed in a location where they would not remove native vegetation except on a temporary basis. Also all replacement vegetation should be required to be with native riparian species. Necessary roads or paths should be required to be constructed of impervious surfaces.

22.63.040 Tier 2

B. 2. a. What would constitute a "more appropriate" mitigation? What criteria would be used to make this judgment? The criteria should be based on benefits to the resources at the site of loss and should not be located some distance away where it might be cheaper and more convenient.

C. Mitigation Criteria

Only replacement mitigation, i.e. options for alternative mitigation" is addressed under this heading. The Site Assessment should be required to address avoidance of the impact, i.e. whether it is possible to avoid intrusion into the SCA and how that could be accomplished, before other options are addressed.

- We agree with the stated criteria and recommend adding the following:
- Offsite mitigation should only be allowed when it is impossible to provide on-site mitigation. Any] off-site mitigation off site should be close to the site of loss.
- Mitigation measures should be required to be permanent

Additional Suggestion:

One way the county can educate the public about the value of stream resources is to encourage residents to restore their creeks by offering small grants to revegetate their SCA's with native riparian vegetation and other activities that would benefit riparian resources.

Thank you for considering our comments.

Sincerely,



Barbara Saizman, for the Conservation Committee

Thorsen, Suzanne

From: Dawn McEarchern <dawndawndawn@me.com>
Sent: Sunday, March 31, 2013 7:54 PM
To: Kinsey, Steven; Adams, Susan; Arnold, Judy; Rice, Katie; Sears, Kathrin; Thorsen, Suzanne
Subject: proposed SCA and Forest Knolls

Thank you for your attention and careful review of this situation. It is, indeed, unfortunate that such significant and enduring decisions have to be forced and tainted by a litigious zealot.

I understand that the proposed Conservation Area is required by the county's longterm plan, and that it's guidelines are certainly not written only for San Geronimo Valley. However, I think our little end of the county is unique in its symbiotic ties to the water that runs through here.

Plain and simple, 100 feet is just too large of a space to impose restrictions on. I have a small little lot, which is 125' on its long side. A seasonal creek cuts right across it, on the long side. By the time you are 100' away from the creek top, in any direction, you're not in my yard anymore. My example is not unique either; almost all my neighbors have a similar situation.

It seems plain to me that imposing a 100' barrier would effectively create a fee mill out of my whole neighborhood. The fees involved with existing zoning are high enough that they keep most of us from doing anything; adding another layer of fees will not help anyone.

What we need is a sensible and affordable system that enables the bulk of properties out here to be brought up to sounder conditions, not yet another layer of fees that people will, out of necessity, have to work around.

Please do not condemn us to a dysfunctional future for our beautiful valley.

Thank you,
Dawn McEarchern
415.505.1994

Thorsen, Suzanne

From: Larry Poor <lpoor1005@sbcglobal.net>
Sent: Sunday, March 31, 2013 4:03 PM
To: Thorsen, Suzanne
Cc: lpoor-005@sbcglobal.net
Subject: Attachment
Attachments: San Geronimo letter to Supervisors.docx

Dear Suzanne,

I've attached a copy of my letter to the Marin County Board of Supervisors, which I believe should also be given to the Marin County Planning Commission and your Community Development Agency.

Thank You,

Larry Poor

March 27, 2013

Suzanne Thorsen, AICP

Community Development Agency

3501 Civic Center Drive, Room 308

San Rafael, CA 94903

Dear Marin County Planning Commission,

I am the owner of property in San Geronimo at 477 San Geronimo Valley Drive and own both sides of the creek for about 183 feet. This property has been in my family since 1946. The buildings as to location were built in 1927. I would like to comment on the proposed SCA Ordinance.

1. SPAWN has said repeatedly that they only care about fish and fish habitat. After two years of heavy rains which decimated the fish spawning in San Geronimo Creek, SPAWN blamed the local land owners as the cause of the demise of Coho salmon. Our care of the creek, our rainwater runoff, our lack of vegetation, our lack of "native species" of plants, etc. was responsible for the demise of the fish. However, with the same number of households within the same locations, without setbacks, filtration of rainwater, removal of non-native plants, etc., etc., the Marin Municipal Water District reported: "Through February 11 (2013), as spawning season was winding down, MMWD biologists had observed 239 redds (gravel

nests). This is the most we've seen in six years and just shy of the 17 year average." And the good news continues in Volume 25, Number 2 of their newsletter for March/April 2013: "The news is particularly encouraging because, based on the number of young salmon that emigrated to the ocean in 2011, the number returning is more than twice as high as normally expected. This is likely due to favorable ocean conditions—including an abundance of the plankton that salmon feed on—which bodes well for next year's spawners, too." So SPAWN must have another goal.

2. This debacle started in January 2008, when Marin County quietly agreed with SPAWN to impose a "moratorium" against all building and home improvements. This settlement was negotiated in secret and paralyzed the San Geronimo Valley for two years. SPAWN has grown from \$27,000 in assets at the beginning to more than \$2,000,000.00 last year according to their tax filings. SPAWN's tax returns show it received about \$6.5 million of public money. Appeals court papers reveal there is a "strong possibility" Marin County may settle with SPAWN, and the settlement may affect the stream ordinance. In the fall of 2012, the Marin Superior Court enjoined all home building and improvements until the County passes a stream ordinance. The County secretly negotiated with SPAWN to limit the injunction to San Geronimo Valley only. A favorite tool of public officials is to settle a lawsuit with a court consent decree, and then tell the public their hands are tied. Please, NO MORE SECRET DEALS. Please face up to your responsibilities to govern for all the people, not just those willing to sue you to get their way. SPAWN should not dictate County policy by settlement, but should follow the normal legislative process of public comments. Locking taxpayers and homeowners out of the room, while County lawyers settle with SPAWN, is not a legitimate substitute for a well-drafted stream ordinance that balances homeowner rights with protection of our environment. Supervisor Kinsey has correctly observed that SPAWN's business model is threatening lawsuits and demanding grants. Stop playing SPAWN's game.
3. The SCA setback should be the same over the entire county, not variable depending on where SPAWN's interests lie. If 100 feet of setback is

required in San Geronimo Valley to protect the water, the fish or whatever else you want to protect, then it should apply county wide. One area's water is no less affected than another's. This proposed SCA ordinance is highly discriminatory and totally unjust and unfair. The SCA setbacks for the homes in Fairfax, Sleepy Hollow, Kentfield and Novato are narrow for small lots, and range from 20 feet (for half acre), to 50 feet (for 1 to 2 acres), to 100 feet (for more than 2 acres). What possible justification for water quality protection could there be that requires such a difference based on lot size. And even more obvious, why wouldn't the same requirements apply to San Geronimo Valley properties that meet the same requirements. Our San Geronimo Valley home sites and neighborhoods resemble the suburban area designated as "City Centered Corridor" in the 2007 Countywide Plan. People built homes decades ago in San Geronimo Valley, in reliance on County zoning residential areas and County-approved parcel maps for small subdivisions. We should not now be treated as rural ranch land and open space for purposes of the stream ordinance. While most of West Marin is huge parcels owned by ranches and government agencies, the 8 mile stretch along SF Drake Blvd from White's Hill to Samuel P. Taylor State Park located within 2 miles of the center line of Sir Francis Drake Blvd. is crowded with small older homes on lots ranging from quarter acre to 2 acres.

4. Better yet, the SCA setback should be 35 feet, not 100 feet and should be regardless of property size, or location within the county. The 35 foot buffer is recommended by the 2010 Salmon Enhancement Plan (SEP) pages 2-21 and 2-22. We have learned new science since the 2007 CWPlan. SEP was commissioned by the County to fulfill its duties under the CWPlan. Use what we have learned.
5. The 35 foot setback should be measured from the top of the stream bank, not "the outer edge of woody riparian vegetation associated with the stream..." Sec. 22.33.030B. Determining a setback based on the "edge" of the woody vegetation is impossible to define. We live in a forest. MMWater District biologists have determined we have an 80% tree canopy. We have homes located on half acre parcels with over 50 redwood trees.

Even a forestry expert could not determine with certainty which tree is “associated” with each stream. Every lay person homeowner should be able to start at the top of the stream bank and hold a tape measure out 35 feet, then stop. Every homeowner should be able to easily comply with the setback, without hiring a forestry expert or hydraulic engineer.

6. Fence restrictions: This effort by SPAWN and the County to create a park on both sides of the creek by restricting fencing is the ultimate taking of private property, and so far without compensation. The very essence of private property is the ability to restrict access to the property by construction of a fence. A fence protects your property from vandals, your family from human predators, your pets from escaping or becoming prey to wild animals, protects your children from falling 30 feet into the rocky creek bed below (might even prevent a deadly fall of a visiting SPAWN volunteer) and provides the privacy we all moved to the country to enjoy. Our police protection is minimal at best and you propose to force us to take down our fences, or prevent us from putting up a fence. Without a fence our flowers, shrubs, vegetable gardens etc. would be eaten by wild animals. The creation of easements is another problem with not having fences. A person can openly cross your property every day for a period the time, and you can be prevented from using the property for any purpose that would prevent that crossing. Perhaps that is the way you plan to create walking trails in your park? I find this fencing provision to be totally unacceptable. . How many of your homes have no fences?

Thank you for reading my input. I hope you will act to create a FAIR, equitable, effective and balanced Stream Conservation Ordinance.

Larry Poor
(925)328-1005

PS: Don't be surprised when, whatever you decide, SPAWN files suit again, it's the way they make money.

To: Marin County Planning Commission - meeting; 4.1.13 10am
c/o Susan Thorsen

Our family lives at 7349 Lucas Valley Road. Essentially all of the lot that is habitable, flat and built upon is within the 100' SCA setback for Nicasio Creek.

The property is full of 200' redwoods and Nicasio Creek. When people visit us their universal observation is that we own a beautiful property. After we thank them, we point out that when you "own" a property like this, you don't really feel like you "own" it. Instead, you realize that something larger is at work. You realize that you are a steward of something that is bigger than you, something that is for everyone to enjoy, and that you are a less than equal habitant in an incredible natural surrounding. We feel more like park rangers than property owners.

It is in spirit of these feelings that I write this. There are portions of the proposed ordinance that I believe are exactly backwards. I have philosophical and practical objections to any additional fees being charged for permitting in the SCA zone. When you live in a place like this, the cost of stewardship is quite high enough. Any additional cost feels punitive and should be absorbed by society as a whole.

This is not to say that there should not be rules to maintain the preservation and existence of this pristine area. Bikers, car clubs, cyclists, hikers all come here to enjoy the area. We are a destination. We bring revenue to the area. More importantly, we are stewards of "big nature", like 200' redwood trees and Nicasio Creek, and it is already expensive to maintain.

We are happy to take advice and guidance about the proper way to manage a property as pristine as this. It is always more expensive to do anything here because of what it is and where it is, and we already pay for permitting for what we do. Normal property owners have concerns about maintaining the sidewalk that crosses in front of their house. The expenses of maintaining that sidewalk are nothing compared to what we pay to maintain the environment we live in. Moreover, a sidewalk is a lot more predictable than falling trees and rushing water. It is already counterintuitive to have to pay to be stewards, and now you are asking us to pay more. If you want to assist us with the proper information for us to consider to do our civic duty in this environment, we are happy to have your assistance. But, please don't tax us additionally for living here and please reconsider these fees.

Thank you for listening,

Jim Karageorge and Paula Karsh

Thorsen, Suzanne

From: Andrea Taber <andreataber@sbcglobal.net>
Sent: Sunday, March 31, 2013 11:57 AM
To: Andrea Taber PEG
Subject: Draft Stream Conservation Area Ordinance

PLEASE FORWARD TO THOSE WHO MAY BE INTERESTED

The draft SCA Ordinance proposed by the County of Marin is defective in at least the following respects:

The first defect in the draft SCA Ordinance is that it applies setbacks of 20', 50', or 100' based on the gross lot size. The spirit of this provision is to allow lesser setbacks on smaller sites, which is fair. However, this is a very blunt instrument and does not give reasonable consideration to the impact of the setbacks on the buildability, and therefore the value, of the property. This is arbitrary and capricious.

For example, our property (860 Butterfield Lane in Sleepy Hollow) comprises .6 acres, in three roughly equal sections: front, middle, and back. The front section of the property is in the stream or in the street and therefore not buildable. The back section of the property is occupied with existing structures or is too steep to develop without extensive grading (which is damaging in and of itself). The middle section of the property, approximately .2 acres where the existing residence is, is further constrained by side yard setbacks. This leaves a buildable area only about 60' deep. However, the draft SCA would impose a 50' setback on this property, leaving a strip of only 10' in which to remodel the house. This is clearly unreasonable.

The fair solution to this is to make the setback from the SCA a variable function of the usable lot size. We propose that the setback from the SCA be set at 10% of the depth of the usable area of the lot. The usable area should be defined as the largest contiguous portion of the property which is suitable for building and which excludes the stream and riparian corridor, required setbacks, portions where the slope exceeds 15% (unless the slope on the entire property exceeds 15%), portions with mature trees, and portions with existing structures (including swimming pools).

This solution will fairly embody the spirit of the ordinance, which is that setbacks should be greater on lots where the property owner has room to accommodate them but smaller where the property owner is more constrained.

(Our proposed 10% standard is roughly consistent with the setbacks proposed in the County-proposed draft ordinance. For example, under the draft ordinance, a rectangular lot 100' x 200', with a stream along one of the 100' sides, would be required by the proposed ordinance to have a setback of 20', 10% of the lot depth.)

The second proposed change in the SCA Ordinance is that a permit applicant who complies with Requirements 2 and 3 (Development Standards and Standard Management Practices) of the Tier 1 Review Procedure should ipso facto be entitled to a permit. The draft SCA has a further requirement for a Site Assessment and gives the staff the discretion to reject an application unless "the Site Assessment determines that there would be *no adverse impacts* to the SCA, or that any impacts to the SCA can be *fully avoided* through implementation of specific Standard Management Practices" (emphasis added). This is an impossible standard to meet: *no* adverse impacts, *fully* avoided. As a practical matter, any activity will have *some* impacts. This Site Assessment has the perverse effect of making every application a Tier 2 application at the discretion of the staff.

While we are sure that there are many competent and well-meaning people on the County staff, this is not always true of every staff member. For example, we had personal experience with a truly odious Marin County staff member who was the gatekeeper on septic permits and who took evident delight in depriving property owners of the economic value of their property by declaring sites "unbuildable". This staff member has since been fired for some particularly egregious instances of sexual harassment in the workplace, but he served on the County staff for many years and did a lot of damage to property owners while he was in power. It is worth noting that he was not fired for abusing his power over permit applicants; had he behaved better around the office, he might still be doing mischief.

It is a cardinal principle of the American system of government that we have a "government of laws, not of men"¹ – that the law, not individuals in the government, determine what constitutes acceptable behavior by the citizens. Even when implemented by well-meaning staff members, a law giving them excessive discretion is subject to abuse. The kind of power ascribed to staff in the draft ordinance invites abuse and must not be implemented.

The third defect in the draft SCA Ordinance is that it requires that the Site Assessment "be prepared by a qualified professional retained by the County". Having a Site Assessment prepared by a qualified professional is appropriate. However, having the professional retained by the County is a manifest conflict of interest and an invitation to abuse. If an applicant must choose from a list of professionals established by the

County, this invites abuse. Staff members inclined to deprive property owners of the economic value of their property would steer professionals onto the list that are inclined to further this outcome. Furthermore, a list of professionals established by the County would be likely to include people retired from the County staff and still friends with current staff members, a further conflict of interest. In addition, professionals having a coveted place on the list would be able to curtail fee competition among professionals and place an unfair economic burden on the permit applicant. It is essential that the applicant be able to select any qualified professional, subject to the County's approval (which may not be unreasonably withheld) based on the professional's qualifications.

Section 22.63.030.B.4 should read as follows:

4. Site Assessment (Tier 1). The Site Assessment (Tier 1) shall be prepared by a qualified professional ~~retained~~ selected by the Applicant, subject to approval by the County, and paid for by the applicant. The assessment shall delineate the extent of the SCA on the lot, including the precise stream location and limits of woody riparian vegetation; recommend Standard Management Practices corresponding to the nature of development; and determine whether the project, in conjunction with Standard Management Practices, would result in adverse impacts to the stream and riparian resources. The Director may waive individual requirements of the Site Assessment (Tier 1) commensurate with the nature and scope of permitted development.

If the Site Assessment determines that there would be no adverse impacts to the SCA, or that any impacts to the SCA can be ~~fully~~ to a significant degree avoided through implementation of specific Standard Management Practices as part of the development approval, the County ~~may~~ shall proceed to process the application as a Tier 1 permit.

Thank you very much.

Signed,

Andrea & Steve Taber

860 Butterfield San Anselmo CA 94960-1186

ⁱ Thomas Paine wrote in his pamphlet *Common Sense* that "in America, the law is king. For as in absolute governments the King is law, so in free countries the law ought to be king; and there ought to be no other. In 1780, John Adams enshrined this principle in the Massachusetts Constitution by seeking to establish "a government of laws and not of men. From http://en.wikipedia.org/wiki/Rule_of_law.

March 26, 2013

Dear Planning Commission,

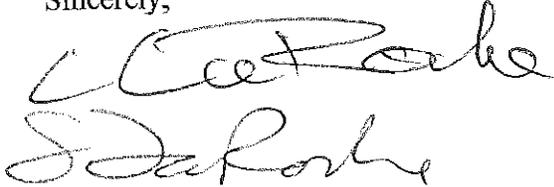
We are grateful that the Planning Commission is engaging in a dialogue with the residents who will be greatly affected by the new stream ordinance. While we applaud the work you have already gone through to foresee the most asked questions and the most often anticipated projects that homeowners want to do that would possibly be excluded in disturbed areas, we want to raise some issues and concerns.

- Having a 100' setback is a large portion of our property. Almost all valley folk affected by the proposed stream ordinance live within 35 feet of the creek, and most of those actually live within 20 or 25 feet – us included. This large of a setback is punitive to homeowners and reduces the value of our properties and severely affects the way we can live on our properties.
- There should be different rules for different types of streams. Ephemeral streams that only run a portion of the year should not require as large a setback or as strict building/home improvement rules.
- If a tiered permit structure must be adopted, then the tier 1 permits should be free and tier 2 much less than quoted by the planning commission. Valley folk are not wealthy. Setting first tier permits at \$1,000 plus will only cause people to do work without permits. Or another option would be to outline the approved practices and allow folks to modify their buildings without a stream permit as long as they follow the prescribed methods and get regular building permits, which is what we think should be done. This is done much of the time with regular building codes such as allowing sheds under a certain square footage or decks under a certain height to be built without a permit. Why add another layer of bureaucracy?
- We would like to see a more descriptive definition of “disturbed area” so that folks can easily determine if their area is disturbed without having an inspection. That doesn't mean it can't also include a clause that says “or as determined by the director” so that additional types of disturbance can be incorporated into the definition at a later date.
- We agree with another person we heard speak at the Stewards Meeting on March 20th. There should be incentives for folks who have kept their riparian vegetation intact instead of penalties for having done the right thing. As it stands, folks that paved over their lots or deforested their land are allowed to do more than those who have lived harmoniously with the land and animals. This isn't fair and needs to be addressed. Also, why should setback rules be different in more populated places like San Anselmo? Are those streams less important or those fish in better shape? If they have their setbacks tied to land size than the valley should too. Some folks here have very small lots too.
- We have a right as homeowners to create 100 feet of defensible space around our homes – whether it is disturbed area or not. This means clearing brush and dead trees and having a

firebreak around our house. If our house is situated on or very close to the creek, this should overrule any setback requirements for keeping all riparian vegetation untouched.

Thank you in advance for addressing our concerns.

Sincerely,

Two handwritten signatures in cursive script. The top signature is "Christopher LaRoche" and the bottom signature is "Shreya LaRoche".

Shreya & Christopher LaRoche

PO Box 72, San Geronimo, CA 94963



**NORTH MARIN
WATER DISTRICT**

MAR 28 2013 PM 2:01 Planning

999 Rush Creek Place
P.O. Box 146
Novato, CA 94948

PHONE
415.897.4133

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415.892.8043

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info@nmwd.com

WEB
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March 15, 2013

Suzanne Thorsen, Planner
Marin Community Development Agency
3501 Civic Center Drive Suite 308
San Rafael, CA 94903

Re: Draft Marin Stream Conservation Area Ordinance

Dear Ms. Thorsen:

North Marin Water District (NMWD) has reviewed the proposed ordinance and recommends the following changes:

Section: 22.63.020 B.1.a. Public utility facilities

Government Code Section 53091 exempts a local agency's location or construction of water/wastewater facilities from building and zoning ordinances of a County or City.

NMWD recommends the section be modified to read:

- a. Public utility facilities, including their location, construction, maintenance, repair and replacement, pursuant to Government Code Section 53091,....;

Section 22.63.020 B.1.b. Emergency measures

Many Marin County stream embankments are prone to landslides/slope failures and NMWD recommends this be noted in the exemption and stated as follows:

- b. Emergency measures requiring prompt action, where such measures are immediately necessary to: repair landslides or slope failures which may impact the stream flow or to avoid or prevent loss of, or damage to life, health property or essential public services resulting from a sudden, unexpected occurrence;

Thank you for the opportunity to comment.

Sincerely,



Chris DeGabriele
General Manager

CC:

Tom Lai, Assistant Director, Community Development Agency
Krishna Kumar, General Manager, Marin Municipal
Beverly James, General Manager, Novato Sanitary
Mark Williams, General Manager, Las Gallinas Valley Sanitary District

CD/kly

t:\gm\2013 misc\marin stream conservation area ordinance.doc

From: [George & Lois Davison](#)
To: [Thorsen, Suzanne](#)
Cc: [Kinsey, Steven](#)
Subject: Stream ordinance
Date: Monday, March 25, 2013 12:01:44 PM

After reviewing the summary of the proposed ordinance, I wish to comment for the record. I am totally against the ordinance as now written.

My wife and I live on almost a half acre in Woodacre. A seasonal creek runs across the rear of the lot, so the main home is just about 100 feet away from it. However, my neighbors on smaller lots, and shallow, wide lots, have their whole house within the 100-foot setbacks. The requirements of this law would so severely limit their options as to be confiscatory. Even in my case, I have outbuildings within 100 feet as well as some trees.

It is unclear whether I can continue to have the trees trimmed periodically to keep them safe. It is unreasonable to require permits for basic maintenance. The useable part of my lot will be only 100'x75'.

This will create a tremendous new bureaucracy to enforce it. Many people cannot afford the high fees indicated, and will simply do work without permits--already a problem. The building inspectors are very busy and don't seem inclined to look for building without permits. I seldom see the required blue cards displayed in my area where there is obviously some construction going on.

The Commission shouldn't allow SPAWN to push them around with court actions.

It's time to stop and fight.

Sincerely,
George Davison
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