

## Frequently Asked Questions:

### Marin County Stream Conservation Area Ordinance

Updated May 3, 2013

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**1. What is proposed?**

The Marin County Community Development Agency is proposing to expand the Stream Conservation Area (SCA) ordinance to implement requirements from the 2007 Countywide Plan. The proposal includes amendments to the County's zoning ordinance (Development Code) that would establish SCA setbacks which range from 20, 50, or 100 feet or more upland from the top of stream banks, standards for development within the SCA setbacks, and review procedures and permit requirements.

**2. What is the Countywide Plan?**

The Countywide Plan is a long-term comprehensive general plan for the physical development of the unincorporated areas of Marin County. The Countywide Plan expresses the County's development goals and policy relative to the distribution of future land uses. For more information, please visit: [www.future-marin.org](http://www.future-marin.org).

**3. Why are you proposing the Stream Conservation Area ordinance?**

The proposed ordinance implements a key program from the Countywide Plan to strengthen protections of the County's streams through expanded zoning regulations that apply to development adjacent to streams.

**4. What is the SCA setback?**

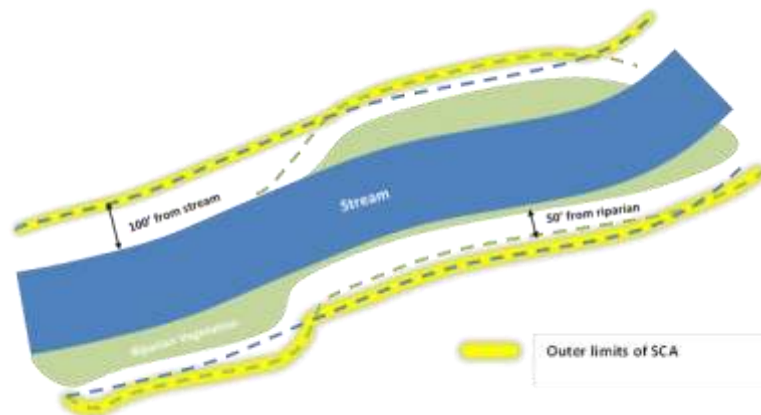
The SCA applies to perennial, intermittent, and ephemeral streams identified in the data and map that is maintained and periodically updated by the Community Development Agency. The SCA setbacks vary depending on which of the four Countywide Plan Corridors (Bayfront, City-Centered, Inland Rural, and Coastal) the property is situated in. Visit the Marin Countywide Plan (click [here](#)) to view a map of the Countywide Plan Corridors.

SCA Setback for properties in the City-Centered Corridor:

Lots more than 2 acres in size: a minimum of 100 feet from each side of the top of bank;  
Lots from 0.5 acres to 2 acres in size: a minimum of 50 feet from each side of the top of bank; and  
Lots less than 0.5 acres in size: a minimum of 20 feet from each side of the top of bank.

SCA Setback for properties in the other Corridors:

The greater of either: (a) 50 feet landward from the outer edge of woody riparian vegetation associated with the stream; or (b) 100 feet landward from the top of bank. The diagram below helps to illustrate how the SCA setback is determined in the Bayfront, Inland Rural, and Coastal Corridors.



In all Corridors, regardless of lot size, an additional SCA setback may be required based on the results of a site assessment.

**5. *Is it true that I cannot use or improve the SCA on my property?***

No. You can continue to use your property. The SCA ordinance will require that *new* development be placed outside the SCA wherever feasible. New improvements (such as buildings, fences, patios) and site modifications (vegetation removal, grading) within the SCA will need to comply with the SCA ordinance. In some cases, the work may qualify for an exemption; while in other cases, the work will require a permit to ensure that it meets the stream standards to ensure that the development does not adversely impact the water quality, increase run-off, or affect the habitat values associated with the stream.

**6. *What other County regulations apply to streams?***

Development activity in or near streams is already regulated by Sections 11.08 (Watercourse Diversion and Obstruction), 23.08 (Excavating, Grading and Filling) and 24.04 (Improvements). Section 11.08 regulates stream obstructions and construction in a stream, including retaining walls, bulkheads, artificial slope protection, conduits, bridges, and other structures. Section 23.08 regulates grading generally, and specifically requires permits and erosion control for grading within 50 feet from the top of any watercourse within the City-Centered Corridor, or 100 feet from top of any water course in the Inland-Rural Corridor. Section 24.04 establishes a minimum setback of 20 feet from the top of bank for all creeks, channels or other major waterways.

Additional compliance with the SCA Ordinance would not be required for projects regulated under Sections 11.08 and 23.08.

**7. *If this ordinance reduces my opportunities for future uses, is this not a "Taking" and should I not, as well as other affected property owners, be compensated?***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

**8. *How do you intend to enforce this ordinance?***

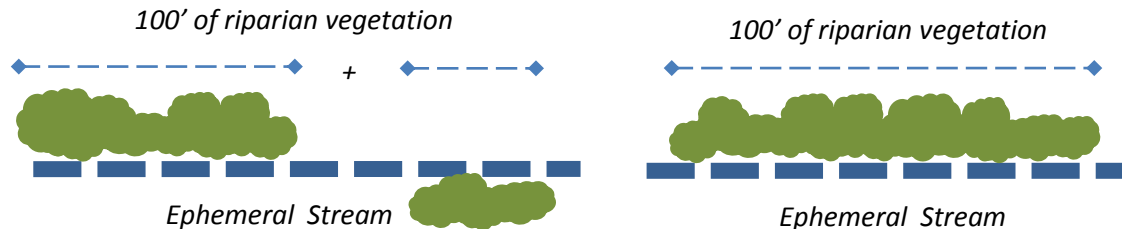
The ordinance will be implemented through new permitting procedures for development within a Stream Conservation Area. There will be significant outreach to the affected communities and property owners to ensure that they are aware of the requirements. Information designed for use by homeowners and contractors will be readily available online and through a toolkit.

The ordinance does not envision changes in the County's current approach to Code Enforcement, which is complaint-based.

### Stream Questions

9. **REVISED:** *The ordinance protects ephemeral streams which “support riparian vegetation for a length of 100 feet or more.” What does this mean?*

This refers to the extent of riparian vegetation along the length of the stream (or, parallel to the stream), as determined by a qualified biologist or resource specialist ~~shown in the schematic below:~~



10. **How would a property owner know that he or she is adjacent to an ephemeral stream?**

A review of the County’s stream maps would help determine whether a segment of stream is identified for protection under the SCA ordinance, regardless of whether it is an ephemeral, intermittent, or perennial stream. You can access this information on the County’s online mapping tool that is available from [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca).

11. **NEW:** *Wetlands sometimes accompany streams, so are wetlands addressed in the SCA?*

The Wetland Conservation Area is protected separately in the Countywide Plan and is a separate issue from this ordinance. Where wetlands occur along streams, the WCA is superseded by the SCA. The Countywide Plan can be viewed online at [www.future-marin.org](http://www.future-marin.org)

### Process Questions

12. **Can the SCA setback be reduced?**

No. While the ordinance allows for consideration of an SCA Permit for incursions into the SCA setback where no other option is feasible, it does not allow for a reduction to the SCA setback.

13. **What guidelines does the Director follow to determine impacts on hydraulic capacity, habitat protection, and water quality?**

Impacts would be determined on the basis of a site assessment prepared by a qualified biologist. An explanation of the terms has been provided in the section on “Use and Interpretations” above.

14. **Please explain the difference between Tier 1 and Tier 2 permits.**

A Tier 1 permit is processed as a “ministerial” permit by CDA staff. A ministerial permit can be approved with no exercise of discretion if it complies with objective standards. Ministerial permits do not require a public hearing and are not appealable.

A Tier 2 permit is processed as a “discretionary” permit. Discretionary permits allow for the exercise of considerable judgment, are noticed (online and/or by direct mail), and may require a public hearing.

**15. *REVISED: If I believe I am completing my construction activity outside of the SCA, would any County review be required? What if I have measured wrong or if I have unanticipated impacts within the SCA (such as placing heavy equipment)? Will I receive a citation from Code Enforcement?***

The SCA ordinance does not apply to construction outside of the SCA. If a County inspection or a complaint reveals that there has been unauthorized development (including vegetation removal) within the SCA, you will be given the opportunity to correct the violation. If Code Enforcement action does not result in a timely resolution to the violation, the matter will be scheduled for a Code Enforcement Hearing at which time you ~~would~~ may be subject to payment of staff costs and financial penalties.

**16. *What fees will I need to pay for complying with this ordinance and how are the fees established?***

The fees for reviewing proposals to develop within the SCA will be considered by the Board of Supervisors. At present, staff is proposing a flat fee structure of approximately \$300 for those exemption determinations involving review of plans, \$1,500 for Tier 1 permits, and \$4,000 for Tier 2 permits. Fees for any required environmental review associated with Tier 2 permits would not be included in these estimates. The fees cannot exceed the County's cost associated with administering the ordinance and the review of applications.

**Site Assessments:**

**17. *What if my project is limited in scope? Do I need to pay for the full site assessment identified in the ordinance?***

The costs for preparation of a site assessment shall be borne by the applicant. However, the cost of the assessment may vary depending on whether the development requires Tier 1 or Tier 2 permit, as well as the magnitude of the project.

**18. *REVISED: What if I want to have a site assessment prepared by my own biologist?***

~~While you can submit an assessment prepared by a biologist that you retain, it is subject to peer review and the potential for a separate assessment to be required under the oversight of the County. The site assessment should be prepared by a qualified professional retained by the County but paid for by the applicant. Applicants may use their own biologist for site assessments; consistent with current practice the County retains the ability to arrange for peer review if there are questions about findings.~~ Recognizing that costs to prepare assessments may vary widely, the Community Development Agency intends to provide a list of qualified professionals who have agreed to complete the required site assessment at a competitive price, or have the assessment prepared by a qualified County staff.

**Use & Interpretation Questions**

**19. *If a development activity that is "exempt" or ministerial under this ordinance is approved, how would the County ensure that the project meets the defensible space requirements of Public Resources Code Section 4291(a)?***

Certain exemptions require submittal of a request and plans to the Planning Division for review and approval. In cases where the work involves a new or replacement structure, review of the plans by the local Fire Department will be needed to ensure that it meets applicable vegetation management and modification requirements.

**20. *What level of review will I need if I'm adding a second story that does not change the footprint of my house?***

This work qualifies for an exemption under the proposed SCA ordinance. You will need to submit a request along with plans to the Planning Division for review and approval.

21. **REVISED:** *If part of my existing home is built within the SCA setback, can a replacement home be constructed within the same foundation foot print without regard of the reason for the replacement home due to fire, flood, remodel or complete tear down?*

The ordinance is not specific as to does not limit the reasons for replacing an existing structure. The objective of the exemption proposed under 22.63.020.B.2.a is to maintain the existing building footprint. The ordinance would allow a structure to be replaced within the existing footprint if it is destroyed.

22. **Do I need a SCA Permit if I want to reseal or replace my driveway?**

Resealing a driveway qualifies for an exemption, as long as the “footprint” of the driveway remains unchanged. Changes to the driveway configuration, size, or location will trigger a Tier 1 SCA Permit.

23. **Would play structures in the rear yard be subject to an SCA Permit?**

Play structures may be exempt under the proposed ordinance if is located in an area that has been previously disturbed. Some play structures also require a building permit.

24. **Would lawn mowing be subject to an SCA Permit?**

Landscape maintenance is exempt under the proposed ordinance.

25. **NEW:** *I need to prune bushes and/or tree limbs that threaten to damage my fence/home. Would this require an SCA Permit?*

An SCA Permit is not required to prune or trim vegetation.

26. **Would replacement of a septic tank be subject to an SCA Permit?**

An in-kind septic tank replacement is exempt under the proposed ordinance as long as it does not expand beyond the area that was occupied by the previous tank.

27. **NEW:** *Would I need an SCA Permit to trench an electric line to an existing structure such as a shed?*

A building permit is required in order to extend electric service to a shed or other accessory structure. In most instances, trenching an electric line to an existing structure would fall under the SCA exemption for disturbed areas. If the trenching would result in removal of riparian vegetation close to the stream, an SCA Permit may be required.

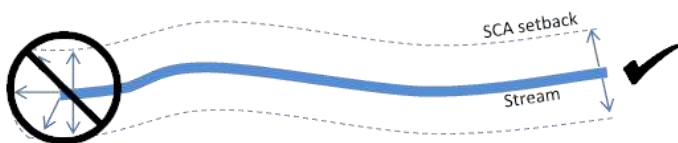
28. **NEW:** *What is meant by fencing that does not restrict wildlife access to streams and the adjacent riparian vegetation?*

Exempt fences include replacement fences or fence sections; any fence within or on the perimeter of a previously disturbed area; stream fences or wildlife friendly fences selected under the direction of the Natural Resources Conservation Service or any other agricultural or resource agency; or underground/wireless fences. On residential lots, open fences (such as two rail or split rail fences) may also be exempt.

### Terminology Questions

29. **NEW:** *What is the meaning of “lateral” in relation to SCA setbacks?*

The Countywide Plan provides in BIO-4.1 that the SCA consists of the watercourse itself and a strip of land extending laterally outward from the top of both banks to the widths defined for each Environmental Corridor. Merriam-Webster defines lateral as “extending from side to side.” Thus, the SCA setback is to be measured perpendicular from the top of stream bank as shown below.



**30. What is considered a “disturbed” area?**

A disturbed area, in the context of the SCA Ordinance, includes lawns, gardens, patios, driveways, agricultural fields, parking lots, and other similar areas that have been significantly altered from their natural condition and maintained/managed for human use.

**31. What is considered a threat to public health and safety?**

Threats to public health and safety include trees that pose an imminent threat of falling or splitting, obstructions to roads or accessways, fire hazards, etc.

**32. How can I know what is considered to be “landscaping”?**

Landscaping refers to vegetated areas that are planted, maintained and/or cultivated for the use or enjoyment of the property owner or occupant. These include lawns (turf or groundcover), gardens, swales, planting beds and the like.

**33. What is considered “maintenance and repair”?**

Maintenance includes those upkeep or activities that are regularly undertaken or periodically necessary to keep a building, structure or site improvement in working order. Maintenance and repair activities include painting, cleaning, weeding, pruning, and trimming. Repair can include replacement of deteriorated building components (such as windows, doors, roof shingles), so long as the activity does not involve structural modifications.

**34. NEW: Who is the Director?**

The Director is defined in the Development Code (Section 22.130) to mean “The Director of the Marin County Community Development Agency or designee of the Director”.

**35. What does Director determination mean?**

Because it is not possible to predict the range of scenarios that may present themselves in application of any given regulation, the Director has the authority to make determinations that support the purposes of the Development Code. These determinations are ministerial and not appealable. In the context of the SCA, the Director would be guided by the Countywide Plan Policies as well as the SCA Ordinance, both in the intent and letter of the regulation.

**36. What is meant by Hydraulic Capacity?**

Hydraulic capacity is the rate and timing of stream flows produced by rainfall. It is a measure of the efficiency of draining an area and is affected by the level of imperviousness. For example, a site that is entirely “paved” over with an impervious material, like asphalt, will generate more runoff during a rain event than an area that is maintained in a natural condition (e.g. vegetated soil).

**37. What is Habitat Function?**

Habitat Function: refers to the chemical, physical and biological processes that allow an ecosystem to exist and maintain its integrity. Examples include food, water and shelter functions; migration corridors; spawning, breeding or nesting sites; and shade and nutrients.

**38. What is Habitat Value?**

Habitat Values are those aspects of the habitat that are valued by society but not necessary for the existence and function of the ecological unit. These include recreational, aesthetic, flood control, groundwater recharge functions.

**39. What is Water Quality?**

Water Quality refers to the chemical, physical and biological characteristics of water within a stream, which can be measured by a number of indicators including pH, temperature, suspended solids, dissolved solids, color, concentration of pollutants, and the prevalence of certain bacteria or insects.

**40. What is Riparian Vegetation?**

Riparian vegetation is described in the Countywide Plan as “associated with a watercourse and relying on the higher level of water provided by the watercourse.”

**41. What is Woody Riparian Vegetation?**

The Countywide Plan distinguishes woody riparian vegetation from herbaceous vegetation by the presence of “tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin.” Trees, shrubs, and vines are examples of woody riparian vegetation.

**42. NEW: What is animal confinement?**

Animal confinement refers to permanent facilities where animals are concentrated for extended periods for purposes of the breeding, feeding, or finishing of animals. Feedlots, pens and barns are examples of animal confinement facilities. Animal confinement does not refer to pastures, movable or temporary fencing enclosures (often used for grazing) or the temporary confinement of animals for administration of vaccines or other veterinary requirements.

**Riparian Vegetation**

**43. How do I know whether I have woody riparian vegetation?**

Woody riparian vegetation includes plants with tough, fibrous stems, vines, and branches covered with bark. Examples include willow, alder, big-leaf maple, and California blackberry. We are preparing a SCA tool kit that would include a plant identification guide with photos, names, and descriptions of woody riparian vegetation that are common in Marin’s streams.

**44. REVISED: Is removal of woody riparian vegetation prohibited under the ordinance?**

The ordinance applies to removal of any woody riparian vegetation. ~~It~~ While removal of woody riparian vegetation may qualify for an exemption under certain circumstances (such as if the plant poses a threat to public health or safety), or would in most cases it would likely require a SCA Permit.

**Illegal Structures**

**45. When I bought my property, I was told that some of the work is unpermitted. Will I be required to remove that work if it is in the SCA?**

The proposed ordinance does not affect the County’s complaint-based code enforcement program, nor does it change the status of illegal structures. Unless a code enforcement action is initiated by the County in response to a complaint, the ordinance provides property owners with the ability, but not the obligation, to legalize unpermitted work through the SCA permitting process.

Existing permitted and legal non-conforming structures would be allowed to be used, maintained, and even replaced in kind under the proposed SCA Ordinance.

**46. How would the ordinance address illegal dams, berms and other stream obstructions?**

Dams, berms and other stream obstructions are regulated by Marin County Code Section 11.08 (Watercourse Diversion or Obstruction). As such, that work is subject to review by the Department of Public Works (including compliance with CEQA and the stream policies of the Countywide Plan).

## **Mapping**

### ***47. What if the creek is not in the location shown in your maps?***

Please contact us if you believe there is an error with respect to the mapping of a stream in or near your property. In some cases, this can be corrected through a review of aerial photographs, or a review of photographs, surveys, or other information that you may have that would help us correct the information in our database.

### ***48. How was the SCA map developed?***

The County's stream map is based upon the National Hydrography Dataset (NHD). This dataset is a digital version of the United States Geological Survey (USGS) Topographic Quadrangle Maps which have a long history as the federal repository for stream information. "Blue line" (perennial and intermittent) streams mapped by the USGS have been acknowledged by the Countywide Plan as the definitive source for stream information as far back as the 1994 Countywide Plan. The SCA map does not present new data about the types of streams that exist in the County, and is not proposed to be amended as part of the expanded SCA ordinance. The SCA map has been updated with more recent information obtained from LiDAR (Light Detection and Ranging) infrared technology, which is part of an ongoing County initiative to improve the accuracy of the County's stream data.



**Questions from Open Marin, as of March 21, 2013**

- 49. Sorich Creek in San Anselmo flows for a considerable time after the end of the rainy season, so I would judge it an intermittent stream. This stream has a lot of flow after a heavy rain and has periodically flooded in the past. But it does not appear on the maps as either intermittent or ephemeral and properties bordering it are indicated as not included in the SCA. This stream has a lot of flow after a heavy rain and has periodically flooded in the past. What is the basis for this classification? (Brian Crawford)**

The County's stream map is based upon the National Hydrography Dataset (NHD), which includes perennial and intermittent streams. This dataset is a digital version of the previous USGS Topographic Quadrangle Maps which have a history as the federal repository for stream information. While the stream may not be identified in the current NHD data, ongoing efforts to update the NHD and efforts to improve the accuracy of the County's SCA data and map could result in amendments to the SCA map that would either add or remove stream segments based on the latest available information.

- 50. In a second issue, the ordinance should specify the footprint of the SCA when a creek enters or exits a culvert or bridge. Does the boundary extend perpendicular to the creek? If so, development could occur within a few feet of a flowing stream as long as the development was above a culvert. I would suggest that the boundary should be specified as radial to the end of the culvert. (Brian Crawford)**

The Countywide Plan and SCA Ordinance provide that the SCA setback extends laterally from the top of the bank. Merriam-Webster defines "lateral" as "of or related to the side," and "situated on, directed toward, or coming from the side."

**Questions Arising From Open House, March 14, 2013**

- 51. Thank you for the meeting. I would like you to check google maps for my area and see where the creek actually is, not even close to my house. It mainly runs the back of the houses on Madison & through Washington Street. I googled my area and made a transparent copy of the SCA buffer map and when you overlay the SCA area over my google parcel, it's not even close. Thank you for your help and consideration. (Jan Nelson, 23 Roosevelt Ave.)**

The County is working to update the accuracy of its stream maps in accordance with Countywide Plan Program BIO-4.c. The updated mapping, while not survey-accurate, will draw upon more detailed information to identify the geographic location of streams with greater precision.

In the meantime, if you have reliable data to illustrate the location of the stream we will review that to determine whether the SCA applies to your property. The SCA is measured from the top of the stream as it exists on the ground.

- 52. Coyote Creek tributary through our neighborhood is seasonal run-off. Website indicates these properties come under purview of SCA (indicated by solid blue line). 1) Will your records be updated to reflect actual conditions. 2) blue line runs through houses now and not centered over creek. (Dennis Wong, 655 Eastwood Way, Mill Valley)**

The web map identifies both perennial and intermittent streams using a solid blue line. The County's updated stream map will reflect more precise stream locations and will provide stream classification.

- 53. How do you intend to enforce this ordinance? (Mel Wright, 194 Central Ave., Woodacre)**

The ordinance will be implemented through new permitting procedures for development within a Stream Conservation Area. There will be significant outreach to the affected communities and property owners to ensure that they are aware of the requirements. Information designed for use by homeowners and contractors will be readily available online and through a toolkit.

The ordinance does not envision changes in the County's current approach to Code Enforcement, which is complaint-based.

**54. Will there be legalization of non-permitted structures as in illegal rental units?**

This ordinance will not change the status or enforcement of illegal structures. Illegal structures are subject to code enforcement activity, including citations, fines, and potential removal. Code enforcement is conducted on a complaint-basis.

**55. In the event 1 section of development code forces a project into the SCA, which sections of the code would prevail. (Dan McKenna, San Geronimo)**

All development in the SCA is subject to the SCA Ordinance, unless otherwise exempted. Regardless of the conditions under which it is proposed, development in the SCA will be reviewed under the SCA Ordinance. While mitigation can be provided in accordance with environmental review, development activity in the SCA is not permitted if it would adversely affect hydraulic capacity, result in a net loss of habitat acreage, value or function; or degrade water quality. If conflicts occur between the requirements of the SCA Ordinance and another provision of the Development Code, the more restrictive regulation would apply. For example, if compliance with zoning setback standards (to property lines) "pushes" the development into the SCA, the more restrictive SCA regulations will take precedent. To increase the likelihood of success, the applicant should seek the appropriate relief (Variance) from the property line setback standard.

**56. What guidelines does the Director follow to determine impacts on hydraulic capacity, habitat protection, and water quality. (Eric Morey, San Geronimo)**

Impacts would be determined on the basis of a site assessment prepared by a qualified biologist. An explanation of the terms has been provided in the section on "Use and Interpretations" above.

**57. Are roadside drain ditches able to be treated as "ephemeral" or "intermittent" streams? Does the 100 foot setback for "rural" apply to all properties in the San Geronimo Valley? Does it make a difference whether the road is County maintained or privately maintained (i.e., by the owners of properties served by the road)? (C. Delos Putz, San Geronimo)**

The SCA Ordinance applies only to streams shown in the data and map maintained by the Community Development Agency. For now, most ephemeral streams have not been mapped (with some limited exceptions in San Geronimo and Ross Valleys).

The "stream" definition in the Countywide Plan states that streams are natural or once natural open drainage channels with an established bed and bank, and "do not include ditches, culverts, or other above- or below-ground conduits constructed specifically for storm drainage function." Ditches, culverts, and conduits to accommodate storm drainage would not be subject to the SCA requirements.

**58. How many parcels are affected by this proposal? Of those, how many are adjacent to year-round streams that support fish? (Curt Kruger, 3777 Vineyard Road, Novato)**

A total of 3,641 parcels fall within the required SCA Setback based on the current map. The Countywide Plan does not treat fish-bearing streams differently than non-fish-bearing streams; instead it includes streams classified as perennial, intermittent, and ephemeral based on the United States Geological Survey's maps.

**59. Novato Horsemen @ 600 Bugiea, Novato, has an ephemeral stream on its property. It is not now shown as included within the SCA zone. What guarantees that it won't be included in the future? (Curt Kruger, 3777 Vineyard Road, Novato)**

The County's stream map does not currently identify ephemeral streams in the Novato Planning area. There is no guarantee that an ephemeral stream will not be mapped in the future. As part of ongoing efforts to improve the accuracy of the County's SCA map, ephemeral streams could be added to the SCA map in the future. The County envisions that those efforts will be preceded by public outreach and education efforts to those that may be affected.

- 60. *Our property at 12 Farm Road in San Rafael has been identified as being next to a "stream", because there is a drainage ditch on one side of our property. This drainage ditch only contains flowing water for less than half the year. Why should this drainage ditch be treated in the same manner as a real stream that has water flowing all year round? Shouldn't the ordinance be less strict for these kinds of seasonal watercourses, e.g., having a smaller setback? (Larry Van Note)***

While natural watercourses are protected by the SCA, the Countywide Plan definition of "stream" exempts ditches, culverts or other conduits constructed specifically for storm drainage function.

- 61. *The standards used to determine which properties are affected by the proposed ordinance seem to be pretty arbitrary. Our property at 12 Farm Road in San Rafael has been identified as included in the SCA because there is a watercourse that flows during the wet season on one side of our property. However, there is an almost identical watercourse that runs roughly parallel to ours, located at the back of 20 Circle Road in San Rafael, that is not identified as being included in the SCA. Why is that? (Larry Van Note)***

The County's stream map is based upon the National Hydrography Dataset (NHD). This dataset is a digital version of the previous USGS Topographic Quadrangle Maps which have a history as the federal repository for stream information. While the stream may not be picked up based upon the NHD data, future efforts will increase the accuracy of stream mapping and result in the addition to, or removal of streams from the SCA map.

- 62. *If Marin County adopts the SCA Ordinance, my property and others near or along a stream will have new restrictions placed on them which restrict improvements and use of the property. This will clearly diminish the value of our property. Will Marin County reimburse us for the reduction in value? If not, why not, since this is analogous to a partial taking of our property. (Larry Van Note)***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

- 63. *REVISED: If part of my existing home is built within the fifty foot setback, can a replacement home be constructed within the same foundation foot print without regard of the reason for the replacement home due to fire, flood, remodel or complete tear down?***

The ordinance is not specific as to does not limit the reasons for replacing an existing structure. The objective of the exemption proposed under 22.63.020.B.2.a is to maintain the existing building footprint. The ordinance would allow a structure to be replaced within the existing footprint if it is destroyed.

- 64. *Within the fifty feet, I currently have lawn and shrubs plantings. Can they remain if the house is replaced or must they be removed and native plants replace them?***

You can maintain or modify your existing landscaping (trim or replace shrubs, garden, etc). The lawn and shrubs are considered "disturbed area".

- 65. *My property borders a water way which runs dry, most years, near the end of the summer to the fall/winter rains. Why is this creek, which is unable to support a fishery, critical to your planning? Are there different definitions in your ordinance? Could you please explain them to me?***

The stream is likely an intermittent stream, which is subject to the ordinance under the Countywide Plan definitions. Intermittent streams typically do not flow year-round, but rather are seasonal or intermittent, flowing during the wet season or after periods of precipitation and ceasing flow during at least part of the dry season. The SCA policies are not limited to protecting fisheries resources, but riparian habitats along streams.

**66. *There is a retaining wall delineating the top of the bank of the creek. This wall is falling into disrepair and I was planning to repair it this summer. Is this permissible under the ordinance?***

Yes, repair is permissible under the ordinance and would fall under the exemptions of Chapter 22.63.020. However, please check with the Department of Public Works as the work may require a separate Creek Permit, and other permits from regional, state, and federal agencies.

**67. *My property drains away from the creek and does not impact the creek. There is no surface water draining into the creek. Would I therefore be exempt from this ordinance?***

No. The ordinance applies to development activity within a defined distance of a stream, regardless of the direction of water run-off.

**68. *If this ordinance reduces my opportunities for future uses, is this not a "Taking" and should I not, as well as other effected property owners, be compensated?***

A taking occurs when a property loses economically viable use. While the ordinance establishes setbacks and requirements for stream protection in accordance with the Countywide Plan, it also allows ongoing use/maintenance as a matter of right and establishes permit procedures for new development where alternatives aren't feasible.

**69. *Re-define what the difference of a "creek" which does not support a fishery, a "creek" which supports a fishery, and a drainage ditch (which could be "creek" in the rainy season but dries out in the summer months)?***

As noted, we have removed drainage ditches and other man-made water drainages from the SCA consistent with the Countywide Plan definition of "stream." The ordinance does not distinguish between creeks that support salmonids and those that do not.

**70. *Remove discretionary decision making from the Planning Director. If it is up the Director, the Director can then decide what is appropriate for a particular lot at any given time; which could change from one owner to another. Perhaps the Director could grant less demanding compliance from one lot to another or one friend from one foe? What safe guards are placed within the ordinance?***

Director discretion is provided due to the inability of any given regulation to predict the full range of future conditions. In issuing the decision, the Director will be guided by the intent of the Countywide Plan as well as past decisions issued under similar situations.

For more information, please visit [www.co.marin.ca.us/sca](http://www.co.marin.ca.us/sca)

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