

May 9, 2013

Marin County Community Development Agency  
Planning Commission  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903  
Attn: Debra Stratton: DStratton@marincounty.org



Re: Stream Conservation Ordinance

Dear Members of the Commission:

Marin Conservation League commends the Community Development Agency for undertaking the writing of a Stream Conservation Area (SCA) ordinance to implement the 2007 Countywide Plan. We especially appreciate the thoughtful and even-handed way in which staff is working to respond to the numerous suggestions that are offered.

We are aware that the ordinance is still evolving and have the following suggestions for changes or further clarification of the draft ordinance (suggested new text is underlined):

**1. General Requirements.** Modify 22.33.030.B.5 to read “For all mapped ephemeral streams, the SCA setback applies only if there is riparian vegetation that extends along the stream for a length of 100 feet or more, as determined by a qualified biologist or natural resources specialist, or if the stream itself, or a stream it flows into, supports special status species and/or sensitive communities.”

**2. Ephemeral Creeks.** Because these channels play a different role than downstream creeks we believe a reduced setback width is appropriate. In 22.33.030.B or elsewhere we suggest adding language to require a 35 foot setback (rather than 100 foot) for ephemeral streams regardless of the zoning district or parcel size.

**3. 500 S.F. Additions.** Add text to SCA (Tier 1) Development, section 22.63.030 A.1, which permits up to 500 s.f. of addition to existing buildings within the SCA, explaining that additions will also be subject to and limited by maximum floor area ratios, property setbacks, height limits and other restrictions that are contained in the County Development Code. We believe that the public’s lack of awareness about existing restrictions is part of the reason for controversy over this section.

**4. SCA Definitions: Disturbed Areas.** Regarding the definition of “disturbed area,” modify to read as follows: “An area that has experienced significant alteration from its natural condition as a result of ~~clearing~~, grading, paving, construction, ~~landscape~~ and other activities that involve

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replacing pervious with impervious surfaces, as determined by the Director.” We believe that “clearing” and “landscaping” are not changes comparable to building construction or “hard-scape,” and are areas that could be restored to natural riparian habitat.

**5. Mitigation Criteria.** Section 22.63.040.C. should make clear that mitigation must be on-site whenever possible and, if that is not possible, within the same watershed as the development for which it is compensation. In addition, the restoration or other projects done in compensation for the SCA encroachment should be recorded with the CDA documents, or in the Recorder’s office, as a restriction on any property where mitigations measures are implemented so that they are binding on future owners.

**6. Special Circumstances.** Address the difficulty created for parcels that have an exceptionally large portion of land within SCA boundaries due either to the location of the stream or the configuration of the lot. Provide an exception procedure to address permitting for parcels that are entirely or mostly within the SCA, with the requirement that hydraulic capacity is maintained and water quality is not degraded. Moreover, any development allowed on such parcels should minimize the loss of habitat for riparian and aquatic species. Flexibility in the permit process should be allowed in these special cases while achieving these fundamental protections.

**7. Woody riparian vegetation/ephemeral streams.** These terms need further clarification. For example, include a definition of “facultative” species that function along streams as woody riparian forest but are not necessarily dependent on that location, such as redwood, valley oak, and bay.

Passing the ordinance is only the first step in protecting our streams. A compliance program is essential to make the ordinance a success. Once enacted, the SCA program should be provided with sufficient additional staff and budget to secure public awareness and compliance with the ordinance. We also recommend the following as important aspects of a compliance program:

**Complete Mapping a Priority.** Update and complete on-line maps of all categories of streams and creeks to bring them into compliance with what is actually on the ground, identify waterways as to the type of creek, and make all this information easily available. In so doing, refer as needed to policies and programs in the Countywide Plan as well as to reliable scientific data. Mapping inaccuracies are understandably confusing the public trying to find out where a creek is in relation to their property and how it is characterized.

**Reasonable Permit Costs and Fees.** Fees should not discourage public compliance. They should be such that homeowners are encouraged to call the County about their plans, knowing they will get helpful free advice and assistance that will make a better project.

**Inter-Agency Coordination.** It is essential that CDA coordinate with Department of Public Works, including the flood control district, fire departments, sanitary districts, homeowner organizations, MCSTOPPP and others.

**Outreach Program.** In conjunction with adopting an SCA ordinance, we urge the County to consider establishing a program that incorporates public education and outreach, and encourages and provide incentives to property owners to preserve and enhance their creeks. This might include an expanded version of the existing landowner assistance program, providing free consultations and assistance to property owners who volunteer to improve their creeks, such as is done by water districts to encourage conservation.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David Schnapf". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

David Schnapf  
President, Marin Conservation League