

**PUBLIC DRAFT NO.1
PROPOSED RIPARIAN VEGETATION ORDINANCE
June 9, 2010**

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. 2010-_____

**AN ORDINANCE PROTECTING WOODY RIPARIAN VEGETATION IN AN
AREA THIRTY FIVE FEET FROM TOP OF BANK OF CERTAIN
WATERCOURSES IN SAN GERONIMO VALLEY, COUNTY OF MARIN**

The Board of Supervisors of the County of Marin hereby ordains as follows:

Section 1. This ordinance shall be adopted as a subchapter to the Marin County Native Tree Protection and Preservation Ordinance.

Section 2. [Chapter Number 22.27.XXX] of the Marin County Code is hereby added to read as follows:

Section 3. [Chapter Number 22.27.XXX] Applicability.

This Subchapter applies to all portions of parcels which contain watercourses in the Riparian Habitat Protection Areas of the San Geronimo Valley as depicted on the map which is attached hereto and made part hereof. The map is also on file with the Community Development Agency. For the purposes of this Subchapter, Riparian Habitat Protection Areas are those areas within thirty five (35) feet of the top of bank of watercourses in the San Geronimo Valley. Where there is uncertainty regarding the extent of a Riparian Habitat Protection Area in connection with an application, the applicability of this ordinance will be determined by the County on the basis of site-specific information and other relevant information the County may receive.

Section 4. [Chapter Number 22.27.XXX] Protection of Woody Riparian Vegetation.

Except as provided herein, no person shall remove woody riparian vegetation within Riparian Habitat Protection Areas.

Section 5. [Chapter Number 22.27.XXX] Exemptions.

A. The following activities shall be exempt from the provisions of this Subchapter:

- 1. Permitted uses/structures.** Uses and development permitted by the Development Code and not involving the removal of woody riparian vegetation;
- 2. Certain Projects Undertaken by Public Agencies.**

- i. **Improvements to fish and wildlife habitat:** Projects undertaken by public agencies for the purpose of improving fish and wildlife habitat;
 - ii. **Necessary water supply or flood control measures:** Projects undertaken by public agencies to provide necessary water supply or flood control measures where impacts to stream function and fish and wildlife habitat are minimized; or
 - iii. **Roadway maintenance in the public right of way.** Projects undertaken by public agencies for roadway maintenance in the public right-of-way.
- B.** The Director may require submittal of documentation, including, but not limited to, a botanist report, to demonstrate that the use, development or project is exempt from the requirements of this Subchapter.

Section 6. [Chapter Number 22.27.XXX] Exceptions.

Exceptions to full compliance with this Subchapter may only be allowed through the issuance of a permit in the following circumstances:

- A. A parcel falls entirely within the Riparian Habitat Protection Area;
- B. Uses and development entirely outside of the Riparian Habitat Protection Area would have greater impacts on water quality, wildlife habitat, sensitive biological resources, or other environmental constraints than would result if woody riparian vegetation were removed from within the Riparian Habitat Protection Area or would otherwise be infeasible [under discussion] without the removal of woody riparian vegetation within the Riparian Habitat Protection Area.
- C. Removal of woody riparian vegetation within the Riparian Habitat Protection Area is essential to protect against property damage or prevent safety hazards; or
- D. Strict compliance with the prohibition on the removal of woody riparian vegetation would deprive property owner of all of the economically beneficial use of the property.

Section 7. [Chapter Number 22.27.XXX] Definitions.

- A. Woody Riparian Vegetation.** Woody riparian vegetation consists of trees, shrubs, and plants associated with a watercourse that rely on the higher level of water provided by the watercourse and that have tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin. Woody riparian vegetation is distinguished from herbaceous riparian vegetation which includes grasses, sedges, rushes and forbs – broad-leaved plants that lack a woody skeleton.

B. Top of Bank. The elevation at which flow spills out of a stream channel and onto the floodplain.

C. Watercourse. Natural or once-natural flowing (perennially or intermittently) water, including rivers, streams and creeks. A watercourse includes natural waterways that have been channelized but does not include ditches, culverts, or other above-or below-ground conduits constructed for storm drainage function and sewage systems.

D. Riparian Habitat Protection Area. Riparian Habitat Protection Areas are those areas within thirty five (35) feet of the top of bank of watercourses in the San Geronimo Valley.

Section 8. [Chapter Number 22.27.XXX] Woody Riparian Vegetation Removal Permit.

A property owner may request to remove woody riparian vegetation within a Riparian Habitat Protection Area for uses and development covered by Section 22.27.XXX (Exceptions) by filing an application for a Woody Riparian Vegetation Removal Permit.

If the removal of woody riparian vegetation is proposed in connection with development that requires a discretionary permit application, the Director may waive the requirement for a separate Woody Riparian Vegetation Removal Permit and instead review and issue a decision on the proposed removal of woody riparian vegetation through the permit procedures for the discretionary permit application subject to provisions of this Subchapter and the applicable policies and programs of the Countywide Plan.

Section 9. [Chapter Number 22.27.XXX] Application and Fees.

Application for any Woody Riparian Vegetation Removal Permit shall be submitted to the Director in the form of a written application, available at the Community Development Agency's public information counter or online. The application shall be made, together with the applicable fee, and other graphic or written material as may be required to describe clearly and accurately the proposed removal of woody riparian vegetation as it pertains to the criteria encompassed by Section 22.27.XXX (Action on Woody Riparian Vegetation Removal Permit-Criteria)

Section 10. [Chapter Number 22.27.XXX] Action on Woody Riparian Vegetation Removal Permit- Criteria.

The Director shall approve or disapprove applications for Permits in compliance with this Subchapter. To grant a Permit to remove woody riparian vegetation, it shall be necessary to find that removal of the vegetation is consistent with current zoning regulations, the San Geronimo Valley Community Plan, and the standards and criteria provided in the applicable policies and programs of the Countywide Plan.

Section 11. [Chapter Number 22.27.XXX] Appeals.

The decision to approve or disapprove an application for a Woody Riparian Vegetation Removal Permit may be appealed in Compliance with Section 22.114 (Appeals) of this Development Code.

Section 12. [Chapter Number 22.27.XXX] Penalty for Violation.

Where any person, firm, or corporation violates the provisions of this Subchapter, the director may pursue an enforcement action pursuant to Chapter 22.122 (Enforcement of Development Code Provisions), and County Code Chapter 1.05 (Nuisance Abatement). Violations may result in substantial fines for enforcement costs and civil penalties.

Section 13. [Chapter Number 22.27.XXX] Site Inspection.

The Director shall seek entry to private property for the purpose of conducting an inspection to determine whether woody riparian vegetation has been removed in violation of this subchapter. The Director shall first seek the property owner's permission to conduct such an inspection.

Section 14. [Chapter Number 22.27.XXX] Liability.

Nothing in this Chapter shall be deemed to impose any liability upon the County, its officers and employees, nor to relieve the owner of any private property from the responsibility to maintain any vegetation on his/her property in such condition as to prevent it from constituting a hazard or impediment to travel or vision upon any public right-of-way.

Section 15. [Chapter Number 22.27.XXX] Findings.

The Board of Supervisors hereby makes the following findings: [To be provided under separate cover.]

Section 16. [Chapter Number 22.27.XXX] Effective Date.

This ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the INDEPENDENT JOURNAL, a newspaper of general circulation published in the County of Marin.

Section 17. [Chapter Number 22.27.XXX] Validity.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

PASSED AND ADOPTED at a regular meeting of the Marin County Board of Supervisors held on the _____ day of _____, 2010. by the following vote:

Ayes:

Noes:

Absent

PRESIDENT OF THE BOARD OF SUPERVISORS

ATTESTATION

Clerk of the Board

DRAFT