

**MARIN COUNTY PLANNING COMMISSION**

**RESOLUTION NO. PC10-012**

**A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT  
AMENDMENTS TO MARIN COUNTY CODE TITLE 22 (DEVELOPMENT CODE) EXPANDING  
CHAPTER 22.27, NATIVE TREE PROTECTION AND PRESERVATION**

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**SECTION I. FINDINGS**

The Marin County Planning Commission hereby finds and declares the following:

- I. WHEREAS the Marin County Community Development Agency initiated the proposed amendments to the Marin County Code Title 22 (Development Code) to expand the Native Tree Protection and Preservation ordinance to include protections for native riparian vegetation and certain native trees in the San Geronimo Valley. The proposed amendments include protections for native riparian vegetation in the Riparian Protection Area that consists of land within thirty five (35) feet from the top of bank of streams in the San Geronimo Valley. The proposed amendments require a Tree Removal Permit for the removal of any native tree with a diameter at breast height (DBH) as specified in the list "Trees Native to Marin County" within 100 feet of top of bank of streams in the San Geronimo Valley or fifty (50) feet from the outer edge of woody riparian vegetation, whichever is greater, on properties that contain Riparian Protection Areas.
- II. WHEREAS the proposed Marin County Code Title 22 amendments will implement the following Countywide Plan (CWP) policies promoting the protection and restoration of the natural structure and function of native riparian systems, the protection of people and property from hazards associated with wildland and structural fires and programs encouraging the expansion of protections for native trees and vegetation.
  - A. BIO-1.g Expand Education, Outreach, and Regulatory Programs Regarding Control of Invasive Exotic Species.
  - B. BIO-4.1 Restrict Land Use in Stream Conservation Areas.
  - C. BIO-4.4 Promote Natural Stream Channel Function.
  - D. BIO-4.5 Restore and Stabilize Stream Channels.
  - E. BIO-4.6 Control Exotic Vegetation.
  - F. BIO-4.7 Protect Riparian Vegetation.
  - G. BIO-4.8 Reclaim Damaged Portions of SCA.
  - H. BIO-4.11 Promote Riparian Protection.
  - I. BIO-1.d Reevaluate the County Native Tree Preservation and Protection Ordinance.

- J. EH-4.2 Remove Hazardous Vegetation.
- K. EH-4.5 Regulate Land Uses to Protect from Wildland Fires.
- L. EH-4.c Require Compliance with Fire Department Conditions.
- M. EH-4.d Review Applications for Fire Safety.

III. WHEREAS, pursuant to Marin County Code Section 22.116.050, the following findings are also made in support of the proposed amendments to the Development Code.

- A. The proposed amendments are consistent with the goals, policies, objectives, and programs of the Countywide Plan because the amendments expand upon the Native Tree Protection and Preservation Ordinance to provide additional protections in the San Geronimo Valley for native riparian vegetation in Riparian Protection Areas and certain native trees within 100 feet of the top of bank or 50 feet of the outer edge of woody riparian vegetation, whichever is greater, located on properties containing Riparian Protection Areas.
- B. The proposed amendments are internally consistent with other applicable provisions of the Development Code.
- C. The proposed amendments are consistent with protection of the public, health, safety, convenience, and welfare of the County.
- D. The State and Federal recovery plans for the endangered coho salmon examine how the degradation of water quality and salmon habitat has severely impacted streams, particularly in the greater San Francisco Bay Area. Based upon data collected over the past approximately 15 years, Coho populations in the Lagunitas watershed, which includes the important area of the San Geronimo Watershed, are at 10% of their historic levels. The recovery plans highlight the importance of protecting the best remaining habitat and improving degraded habitat for the coho salmon.
- E. In order to further protect the health, safety and welfare of the community, it is critical to protect appropriate riparian buffer zones, vegetation, and trees in order to protect the threatened species and their habitat.
- F. It is recognized that the Countywide Plan recommends a 100 foot development setback. Nevertheless, the Salmon Enhancement Plan describes a 35 foot buffer as particularly important for the establishment and enhancement of riparian vegetation and trees and for the protection of habitat for sensitive species and that therefore the provisions herein are determined to be consistent with the policies of the Countywide Plan.

IV. WHEREAS, the Marin County Board of Supervisors certified a Final Environmental Impact Report (EIR) for the CWP prior to the adoption of the CWP. The certified EIR adequately evaluated the Development Code, which functions as an implementing program to the CWP. The EIR certified for the CWP adequately describes the current approval for the purposes of CEQA. A subsequent or supplemental EIR is not required pursuant to CEQA Guidelines Section 15162 because the proposed project does not include substantial changes involving new or more severe significant environmental effects, nor does the proposal involve new information that was not known at the time the EIR for the CWP was certified. However, the

County also recognizes that the amendments are also otherwise exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15307 and 15308 of the CEQA Guidelines because the proposed amendments are intended to strengthen and ensure the consistent application of standards for the protection of the environment.

- V. WHEREAS, the Marin County Planning Commission held a duly-noticed public hearing on July 12, 2010 that was continued to July 19, 2010 in order to consider the revised proposed amendments to the Development Code, and heard testimony in favor of, and in opposition to, the amendments.

**SECTION II: AMENDMENTS TO THE MARIN COUNTY DEVELOPMENT CODE (TITLE 22)**

**NOW, THEREFORE, BE IT RESOLVED** that the Marin County Planning Commission does hereby recommend that the Marin County Board of Supervisors enact an Ordinance which would adopt the proposed text amendments to the Marin County Development Code (Title 22) as shown in Exhibit "A" of this resolution.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Marin County Planning Commission recommends that the applicability of the proposed amendments to existing projects that are in the development review process shall be determined by the requirements of Marin County Code Section 22.01.040.F.

**SECTION III: VOTE**

**PASSED AND ADOPTED** at a special meeting of the Planning Commission of the County of Marin held on this 19<sup>th</sup> day of July 2010 by the following vote:

AYES: CRECELIUS; DICKENSON; GINALSKI; GREENBERG; HOLLAND;  
LUBAMERSKY; THERAN

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

  
KATHERINE CRECELIUS, CHAIR  
MARIN COUNTY PLANNING COMMISSION

ATTEST:

  
Debra Stratton  
Planning Commission Secretary

## EXHIBIT A

**Marin County Development Code Chapter 22.27 (Native Tree Protection and Preservation) is hereby amended to include the following new Sections.**

### **22.27.200 – Applicability to Riparian Protection Areas in San Geronimo Valley**

This Subchapter (Sections 22.27.200 to 22.27.211) applies to all portions of parcels which contain Riparian Protection Areas and are located in San Geronimo Valley. For the purposes of this Subchapter, Riparian Protection Areas are those areas within thirty five (35) feet of the top of bank of streams in the San Geronimo Valley as depicted on the map that is on file with the Community Development Agency. Where there is uncertainty regarding the extent of a Riparian Protection Area in connection with an application, the applicability of this ordinance will be determined by the Director on the basis of site-specific and other relevant information.

### **22.27.201 – Definitions**

- A. Government Agency.** A governmental entity, department, office, or administrative unit responsible for carrying out regulations.
- B. Riparian Protection Area.** The areas within 35 feet of the top of bank of streams in the San Geronimo Valley.
- C. Native Riparian Vegetation (Woody or Herbaceous).** Native vegetation associated with a stream and relying on the higher level of water provided by the stream. Riparian vegetation can include trees, shrubs, and/or herbaceous plants. Woody riparian vegetation includes plants that have tough, fibrous stems and branches covered with bark and composed largely of cellulose and lignin. Herbaceous riparian vegetation includes grasses, sedges, rushes and forbs — broad-leaved plants that lack a woody skeleton.
- D. Stream.** A natural or once natural flowing open drainage channel with an established bed and bank. These consist of perennial, intermittent, and some ephemeral streams, including open waterways that have been restored, modified, or channelized, but do not include ditches, culverts, or other above- or below-ground conduits constructed specifically for storm drainage function. Perennial and intermittent streams, shown as solid or dashed blue lines (or purple lines) on the most recent appropriate USGS quadrangle sheets, and those ephemeral, first order streams that play a crucial role in watershed health, are subject to the standards in this ordinance.
- E. Top of Bank.** The elevation at which flow spills out of a stream channel and onto the floodplain.

### **22.27.202 – Protection of Native Riparian Vegetation**

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

### **22.27.203 – Protection of Native Trees on Improved Parcels**

On improved parcels in the San Geronimo Valley that contain Riparian Protection Areas, any individual native tree found fifty feet landward from the outer edge of woody riparian vegetation associated with the stream or 100 feet landward from the top of bank of the stream, whichever is greater, and having Diameter at Breast height (DBH) as specified in the list "Trees Native to Marin County" maintained and provided by the Community Development Agency, is a protected tree and subject to the requirements of the Tree Protection and Preservation Ordinance including the requirements for a Tree Removal Permit and the exemptions for removal listed in Marin County Code Section 22.27.040.

#### **22.27.204 – Exemptions**

- A.** The following activities shall be exempt from the provisions of this Subchapter: The Director may require submittal of documentation, including, but not limited to, an arborist report, to demonstrate that the use, development or project is exempt from the requirements of this subchapter. For documentation, a property owner could obtain an arborist report or verify the status of the vegetation with photographs to document the applicability of one or more of the exemptions listed in this subsection to native riparian vegetation that is considered for removal. Efforts should be made to encourage regeneration and replanting where appropriate.
- 1. Permitted uses/structures.** Uses and development permitted by the Development Code and not involving the removal of native riparian vegetation are exempt from the provisions of this Subchapter;
  - 2. Removal of Non-Native Species of Riparian Vegetation.** In order to meet this exemption, private landowners should submit documentation verifying that the riparian vegetation to be removed is a non-native species; and
  - 3. Protection against Property Damage or Prevention of Safety Hazards.** Where removal of native riparian vegetation within the Riparian Protection Area is essential to protect against property damage or prevent safety hazards.
- B. Activities Approved by Government Agencies.** On private property, certain projects approved by government agencies are exempt from the provisions of this Subchapter. The property owner should submit a copy of the approval from the appropriate government agency to the Director prior to commencement of the work. This exemption applies to the following projects:
- 1. Improvements to fish and wildlife habitat:** Projects to improve fish and wildlife habitat;
  - 2. Necessary water supply or flood control measures:** Projects to provide necessary water supply or flood control measures where impacts to stream function and fish and wildlife habitat are minimized;
  - 3. Roadway maintenance and improvements in the public right of way:** Projects related to roadway maintenance and improvements in the public right-of-way; and
  - 4. Fire Protection and Prevention.** Abatement activities involving the removal of native riparian vegetation for the purpose of fire prevention or protection.

**C. Activities Undertaken by Government Agencies.** Official activities of the County, a special district, the State or an agency of the State, or the Federal government are exempt from the provisions of this Subchapter.

#### **22.27.205 – Native Riparian Vegetation Removal Permit**

A property owner may request to remove native riparian vegetation within a Riparian Protection Area for uses and development that do not qualify for an exemption by filing an application for a Native Riparian Vegetation Removal Permit. The request may be accompanied by a vegetation management plan that describes ongoing maintenance of vegetation.

If the removal of native riparian vegetation is proposed in connection with development that requires a discretionary permit application under this Title, a Creek Permit required under Section 11.08.050, and/or a Grading Permit required under Section 23.08.025, the Director may waive the requirement for a separate Native Riparian Vegetation Removal Permit and instead review and issue a decision on the proposed removal of native 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.

#### **22.27.206 – Application, Fees, Filing, Processing, and Noticing**

**A. Filing and processing.** Application for any Native Riparian Vegetation Removal Permit shall be submitted with a written application, fees, and other graphic or written material as may be required to describe clearly and accurately the proposed removal of native riparian vegetation as it pertains to the criteria encompassed by Section 22.27.207 (Action on Native Riparian Vegetation Removal Permit-Criteria). All Native Riparian Vegetation Removal Permit applications shall be processed in compliance with Chapter 22.40 (Application Filing and Processing, Fees).

**B. Notice of action.** Administrative decisions and public hearings on a proposed Native Riparian Vegetation Removal Permit application shall be noticed in compliance with Chapter 22.118 (Notices, Public Hearings, and Administrative Actions). The Director may provide expanded public notice to ensure maximum public awareness of any Native Riparian Vegetation Removal application.

#### **22.27.207 – Action on Native Riparian Vegetation Removal Permit - Criteria**

The Director shall approve or disapprove applications for Permits in compliance with this Subchapter. When the Director finds that significant policy issues are raised by the proposed project, the Director may refer the Native Riparian Vegetation Removal Permit application to the Planning Commission for a decision. To grant a Permit to remove native 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.

#### **22.27.208 – Appeals**

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

### **22.27.209 – 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.

### **22.27.210 – Site Inspection**

Where credible evidence has been submitted that a violation of the Subchapter may have occurred, the Director shall seek entry to private property for the purpose of conducting an inspection to determine whether native 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.

### **22.27.211 – Liability**

Nothing in this Subchapter 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.

