

Ordinance No. NS-517.90

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA AMENDING
DIVISION B11.5 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE
RELATING TO RIPARIAN SETBACKS AND STREAM PROTECTION**

SUMMARY

This ordinance amends sections of Division B11.5 of the County of Santa Clara Ordinance Code, to protect streams and riparian vegetation in certain urbanized areas of the County pursuant to the NPDES Stormwater Phase II Permit for the Central Coast Region.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1: Section B11.5-3 of Chapter 1 of Division B11.5, of the County of Santa Clara Ordinance Code, is hereby deleted in its entirety and a new B11.5-3 is added to read as follows:

Sec. B11.5-3. Definitions.

Unless otherwise expressly stated, the following definitions are applicable:

Applicant: Any person, firm, corporation, business, or governmental agency that executes the necessary forms to request official approval of a project or a permit in order to carry out construction of a project.

Best Management Practice (BMPs): A structural device or nonstructural practice designed to treat stormwater runoff in order to reduce stormwater pollution, or designed to prevent stormwater pollution.

Clean Water Program Manager: The Clean Water Program Manager manages the County's Clean Water Program to ensure the County's compliance with National Pollutant Discharge Elimination System (NPDES) stormwater permit requirements.

Construction Activity: For the purpose of this division, construction activity shall mean construction that requires a grading permit, building permit or encroachment permit and disturbs the soil on any amount of land area.

County: Santa Clara County.

Deemed complete: The date the Planning Office determines that all the required information in a development application has been provided.

Development: A proposed land use and/or construction project that requires issuance of a land use approval, a building permit, or a grading permit, prior to commencement of construction.

Development Services Office: An office within the Department of Planning and Development that includes the functions of Building Inspection, Land Development Engineering, Surveying, and the Clean Water Program.

Discretionary approval: An approval that is subject to the use of discretion or judgment and which may be given subject to conditions being imposed.

Disturbance, or ground disturbance: Grading, filling, grubbing, clearing, vegetation removal, building, or demolition.

Existing conditions: Refers to the conditions that exist on a site before the commencement of a land development project and at the time the County approves plans or issues permits for the land development of a site. Where phased development or plan approval occurs (i.e., preliminary grading, road construction and utility installation, etc.), the existing conditions are considered those in existence prior to the time that the first land use approval, building permit or grading permit is issued.

Food service facility: Any business or establishment that prepares food for sale or distribution to the public.

Hazardous material: Any material so designated by state and federal laws or by County ordinance.

Hydromodification/ Peak management: Changes to the stormwater runoff characteristics of a watershed caused by changes in land use.

Hydromodification management measures: Any combination of on-site, off-site, and in-stream control measures incorporated into specified development and redevelopment projects in order to reduce peak amounts of stormwater runoff flow, so as to not cause an increase in the erosion potential of the receiving watercourse over the pre-project condition, in accordance with the NPDES Municipal Storm Water Discharge Phase I and II Permit (also referred to as peak management).

Impervious surface: A surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, parking lots, concrete or asphalt surfaces, compacted base rock, and compacted soils.

Low Impact Development (LID): LID employs principles such as preserving and recreating natural landscape features and minimizing imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than as a waste product.

Maintenance Activity: For the purpose of this division, maintenance activity is the keeping and maintaining of existing conditions, including the repair, refurbishment, or maintenance of the ground, and any structure, fixture, or foundation to keep it functioning in its existing state.

Maximum extent practicable (MEP): The maximum degree of pollution reduction that is achievable by applying best management practices, taking into account the best available technology, cost effectiveness, and other competing issues such as human safety and welfare, endangered species and threatened resources, historic properties and geographic features.

Monterey Bay Watershed: All of the territory within Santa Clara County where storm drainage flows to Monterey Bay.

Non-stormwater discharge: Discharge that is anything other than stormwater. Non-stormwater discharge includes but is not limited to: sewage, industrial wastes, hazardous waste, anti-freeze, petroleum or petroleum products, coal tar, chemicals, detergents, solvents, paints, contaminated or chlorinated swimming pool water, water from pools, spas and fountains that contain copper-based chemicals, wastewater generated from installation, cleaning, treating and washing of the surface of copper architectural features (including copper roofs to the storm drains) pesticides, herbicides, fertilizers, soil sediments, wash water, cans, bottles, rubbish, refuse, bark, sawdust, or other solid wastes, animal/pet wastes, cement powder, concrete waste, broken concrete, construction site waste or debris, motor or other vehicles or parts thereof, or any material that may be deleterious to aquatic life.

NPDES Municipal Storm Water Discharge Permit: A National Pollution Discharge Elimination System (NPDES) Permit issued to the County of Santa Clara and other local jurisdictions by the Regional Water Quality Control Board of the San Francisco Bay Region or of the Central Coast Region, State of California. The watershed the project is located in determines which NPDES Permit requirements the project must comply with.

NPDES Stormwater Phase II Permit Area: The area of South Santa Clara County, consisting primarily of the community of San Martin, as determined by the latest Decennial Census (U.S. Census Bureau) and as further described on the NPDES Phase II Permit Riparian Setback Applicability Map on file with the County Planning Office.

Numeric sizing criteria: Equations used for designing stormwater treatment measures that are included in the County's NPDES Municipal Storm Water Discharge Phase I or II Permit.

Office of Building Inspection (Building): An office within the Department of Planning and Development that includes the functions of Building Inspection and Building Plan Check.

Office of Land Development Engineering (LDE): An office within the Department of Planning and Development that includes the functions of Land Development Engineering, Construction Inspection, Surveying, and the Clean Water Program.

Operation and maintenance agreement: A written agreement providing for the long-term operation and maintenance of stormwater management facilities and practices on a site or with respect to a land development project, which when properly recorded with the County Recorder constitutes a restriction on the title to a site.

Owner: The legal or beneficial owner of a site, including, but not limited to, a person, firm, or corporation in control of the site.

Permit: The permit issued by the County of Santa Clara to an applicant that is required for commencing a land use, land development activity, or a construction project.

Person: Any person, firm, association, organization, government agency, partnership, business trust, joint venture, corporation, or company.

Petroleum product: Fuel oil, sludge, oil refuse, oil mixed with waste, gasoline, motor fuel, motor oil, gear oil, and grease.

Program: The County of Santa Clara Clean Water Program.

Post-development: Refers to the time period, or the conditions that may reasonably be expected or anticipated to exist, after completion of the land development construction activity on a site.

Qualified Biologist: A person with a minimum of five years of academic training and professional experience in biological sciences and related resources management activities. A minimum of two years of the five years of academic training and professional experience shall be conducting surveys for wildlife and plant species in Santa Clara County.

Redevelopment: A land development project on a previously developed site; excluding ordinary maintenance activities, interior remodeling of existing buildings, resurfacing of paved areas, and exterior changes or improvements which do not materially increase or concentrate stormwater runoff, or cause additional stormwater runoff pollution.

Refuse: Putrescible and non-putrescible solid or liquid materials or waste, whether combustible or noncombustible, and including garbage, rubbish and food processing waste.

Regulated Project: A project that is identified by the County which is subject to the NPDES Storm Water Discharge Phase I or Phase II Permit.

Riparian Vegetation: Plant communities associated with river, stream, or lake banks and floodplains. Riparian vegetation is contiguous to and affected by surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies (i.e., rivers, streams, lakes, or other watercourses). Riparian areas have one or both of the following characteristics: 1) distinctively different vegetation than adjacent areas and/or 2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms due to the greater availability of surface and subsurface water.

Runoff: Flowing stormwater that leaves a site.

Run-on: Flowing stormwater entering a site from off site.

Riparian Setback: The minimum horizontal separation required between construction activities and any of the following features: (a) top of stream bank or (b) riparian vegetation.

San Francisco Bay Watershed: All of the territory within Santa Clara County where storm drainage flows to San Francisco Bay.

Site: Any tract, lot or parcel of land or combination of tracts, lots, or parcels of land, which are under one ownership, or are contiguous and in diverse ownership where a development is to be performed as part of a use permit, subdivision, building permit, or project.

Site design BMPs/design strategies: Nonstructural techniques designed to reduce the amount of runoff by decreasing the amount of impervious surface, infiltrating runoff into the soil and/or providing stormwater detention. Examples of site design BMPs may include narrower streets, permeable pavement, detention ponds, and shared driveways.

Source control BMPs: Structural measures or nonstructural practices used to eliminate contact between rainfall and potential source of contamination. Examples include covered materials handling areas, covered garbage and refuse receptacles, parking lots sweeping, etc.

Stormwater treatment measures: Permanent structural measures designed to reduce stormwater pollution by capturing and treating runoff. Examples include detention basins, vegetated swales and media filters. Also known as LID treatment systems/measures, non-retention based treatment systems and biofiltration treatment systems.

Soil sediments: The soil washed away by water. As used in this division "soil sediments" refers to the loss of soil caused by land disturbance and does not apply to naturally occurring erosion on undisturbed land.

Storm drain: Any inlet, pipe, conduit, swale, channel or creek designed or used for the disposal of storm and surface waters and drainage, but excluding any sanitary sewer system.

Stormwater: Unpolluted water that has no added constituents that would render it unacceptable for disposal to storm or natural drainage channels, or directly to surface waters.

Stormwater permit: A written permit issued by the grading official, authorizing site work and stormwater treatment measures

Stormwater system: The system of inlets, drains, pipes, swales, channels, creeks, which collects, directs and transports stormwater runoff.

Stream: A watercourse that flows at least periodically or intermittently through a bed or channel having banks. This may include watercourses having a surface or subsurface flow that supports or has supported riparian vegetation, fish or other aquatic life. A watercourse must meet "Criteria to Verify or Identify a Watercourse as a Stream" (Santa Clara Valley Water Resources Protection Collaborative 2006) issued by the Santa Clara Valley Water District, and as amended from time to time, to qualify as a stream.

Top of Bank: A stream channel boundary where a majority of normal discharges and channel forming activities takes place. The active stream channel, active floodplain, and their associated banks are contained within top of bank boundaries.

Unincorporated area: Those portions of the county which lie outside municipal boundaries of the cities.

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Watercourse: Any natural or artificial stream, lake, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash, in and including any adjacent area that is subject to inundation from stormwater flow, overflow, or floodwater; and any channel, either manmade or natural, in which a flow of water occurs, either continuously or intermittently.

Where words are not defined in this division and are defined in other sections of the County's Ordinance Code, such words will have the meaning ascribed to them in the Ordinance Code. If a word in this chapter conflicts with words in other sections of the County Ordinance Code, the words in this chapter will apply. Where words are otherwise not defined in this chapter or the County Ordinance Code, such words will have ordinarily accepted meanings such as the context implies.

SECTION 2: A new Chapter VII, is hereby added to Division 11.5, of Title B, of the County of Santa Clara Ordinance Code.

CHAPTER VII. STREAM AND RIPARIAN VEGETATION PROTECTION SAN MARTIN AREA

Sec. B11.5-26. Purpose.

The purpose of this chapter is to protect stream water quality, and riparian habitat through a riparian setback requirement for construction activity within the NPDES Phase II Permit Riparian Setback Applicability Map in accordance with the County's 2010 Storm Water Management Plan.

Sec. B11.5-27. Stream and riparian vegetation setback requirements.

Any construction activity, including construction activity undertaken by the County, located within the areas identified in the NPDES Stormwater Phase II Permit Riparian Setback Applicability Map shall adhere to a minimum 30-foot riparian setback, except as provided in sections B11.5-28 and B11.5-29 of this chapter. If the construction activity is subject to a more restrictive setback requirement pursuant to local, state or federal law or regulation, the more restrictive setback requirement shall apply.

Sec. B11.5-28. Exemptions.

The following activities shall be exempt from the riparian setback requirement of this chapter.

- (a) Construction activity that does not have the potential to result in ground disturbance, or release of potential water quality contaminants. Cantilevered decks do not qualify for this exemption.

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- (b) Maintenance activities within the riparian setback that would not significantly impair or impact water quality or riparian vegetation.
- (c) Reconstruction of a legally established structure within the existing footprint.
- (d) Construction, maintenance or replacement activities undertaken by public agencies or public utilities that require work within or adjacent to streams relating to public rights-of-way, bridge, levee, flood-protection, out-fall, or dam construction or maintenance, and stream maintenance.
- (e) Construction or maintenance activities of recreational trails by public agencies.
- (f) Construction or maintenance of stream crossings essential to provide a means of access to land or facilities, or for public rights-of-way.

Sec. B11.5-29. Riparian Setback Reduction.

Construction activities may be eligible for a riparian setback reduction as provided in this section.

- (a) Prior to undertaking any construction activities, the property owner seeking a riparian setback reduction must file a permit application prepared by the County for this purpose with the Department of Planning and Development. Any application submitted must be accompanied by payment of all applicable fees established by resolution of the Board of Supervisors. A report by a qualified biologist shall be required for any construction activity that could reasonably be anticipated to impact riparian flora or fauna. Reports from other qualified professionals, including, but not limited to, civil engineer, geotechnical engineer, or stream hydrologist, shall be required, if requested by the Planning Manager or his or her designee. The following factors shall be considered in evaluating if a riparian setback reduction may be granted:
 - (1) The extent to which meeting the riparian setback would result in a demonstrable hardship (i.e., precludes reasonable or economically viable use of the land) for the applicant.
 - (2) The extent to which meeting the riparian setback would require deviations from, exceptions to, or variances from other established policies, ordinances or development standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or floodplain management.
 - (3) The extent to which meeting the required riparian setback would preclude improvements, including additions, of legally established structures which already exist within the riparian setback.
- (b) The Planning Manager or his or her designee may not grant a riparian setback reduction unless all of the following findings can be made:

- (1) The reduction is necessary due to special circumstances applicable to the subject property such that strict application of the riparian setback would otherwise preclude reasonable or economically viable use of the land;
- (2) There are no significant construction-related impacts to water quality, or any impacts to water quality are appropriately mitigated using storm water quality best practices;
- (3) The structure, building or facility is located, designed and operated such that no significant post-construction impacts to water quality are anticipated; and,
- (4) No significant impacts to adjacent riparian vegetation are anticipated, or adjacent riparian vegetation impacts will be mitigated to a pre-project equivalent or better.

The Planning Manager or his or her designee shall prepare in writing the grounds for granting or denying the riparian setback reduction. If the riparian setback reduction is granted, the Planning Manager may provide any necessary conditions of approval to ensure that the riparian ecology and water quality are protected in accordance with section B11.5-26.

- (c) Any interested person may appeal the grant or denial of the riparian setback reduction made pursuant to subsection (b) to a review committee consisting of the Director of Planning and Development and the Clean Water Program Manager. Any such appeal shall be filed within 15 days of the Planning Manager's decision and be accompanied by payment of a fee in an amount established by resolution of the Board of Supervisors.
- (d) Any interested person may appeal the review committee determination made pursuant to subsection (c) to the Board of Supervisors. Any such appeal must be filed within 15 days of the decision and be accompanied by payment of a fee in an amount established by resolution of the Board of Supervisors. The determination of the Board of Supervisors shall be the final County determination.

Sec. B11.5-30. Concurrent Land Development Approval

When the construction activity seeking a riparian setback reduction under Section B11.5-29 is undertaken as part of a discretionary land development approval (*e.g.*, Subdivision Map Act, Use Permit, Architecture and Site Approval), then the review and appeal process under Section B11.5-29 shall be attached to that discretionary land development approval.

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SECTION 3. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by a court to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara,
State of California on MAR 01 2018 by the following vote:

AYES: CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER

NOES: NONE

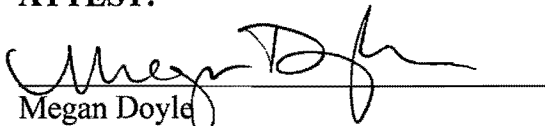
ABSENT: NONE

ABSTAIN: NONE

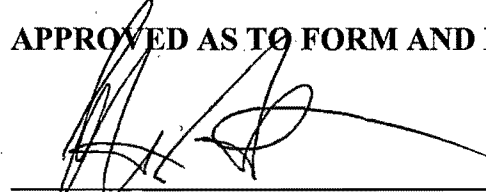


Dave Cortese, President
Board of Supervisors

ATTEST:


Megan Doyle
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:


Elizabeth G. Pianca
Lead Deputy County Counsel

CHAVEZ, CRISTINA (MARTIN)