



Environmental Committee for the SLV
VALLEY WOMEN'S CLUB of SAN LORENZO VALLEY
PO Box 574, Ben Lomond, CA 95005

October 31, 2017

CANNABIS DEIR COMMENTS Attention: Matt Johnston
Santa Cruz County PLANNING DEPARTMENT
701 Ocean Street
Santa Cruz, CA 95060

Dear Mr. Johnston,

We appreciate the opportunity to comment on the **Draft Environmental Impact Report (DEIR) for Commercial Cannabis Cultivation and Manufacturing Regulations and Licensing**. We followed the process of creating the report, and understand the type of public input, and staff research and analysis, involved in its creation. We also recognize the enormity of the economic and environmental and political ramifications of the cultivation and manufacturing processes of marijuana – and the fact that *this is one of the most far-reaching ordinances to have been dealt with by our county in decades* – and it has major flaws that will allow significant and devastating environmental damage.

We recognize the complexity of the issue, and realize that this is, in good measure, reflected in the enormous length of the DEIR. We see a genuine effort to define the many complexities, but a failure to deal with them adequately. The DEIR is unclear in parts and confusing in others, with numerous inaccuracies and deficiencies that need to be addressed. Through the sharing of concerns, we found that other agencies and organizations and individuals share that opinion and we hope there will be an honest effort to form an ordinance to truly honor a commitment to environmental protection.

ATTITUDE AND UNFAIR IMPACTS ON THE MOUNTAINS

We urge you to take the time to make the corrections and additions needed for a sane, understandable, and enforceable ordinance. Corrections, for example, include blatant mapping

errors. (What else did you miss?) You must **specifically address the prevalent attitude of the document that admonishes us to believe that, since many of the environmental concerns are already addressed through existing ordinances, or through additional regulations, that these will somehow be enforced more effectively than those very regulations in the past. The county has already failed to deal with both the legal and illegal *marijuana grows throughout the county that especially impact the mountains* because they were harder to “see,” and laws are far harder to enforce there. Again and again we see codes that are somehow unenforceable despite the fact that they present extremely hazardous conditions (especially relating to health, water contamination and fire). Highly touted ordinances that, if adhered to, should help protect neighbors, riparian corridors, wetlands and endangered species, but so many variances have been allowed that they no longer provide such protections.**

This is an unfair burden on mountain neighborhoods and the watershed.

MAPPING ERRORS

Regarding the mapping errors, rather than re-stating them here, please see the comments by the County’s own **Fish and Wildlife Advisory Commission (FWAC)** (which is to be commended for its measured evaluation of the DEIR and the important issues it defines therein), *that must be addressed*. It specifies numerous blatant mapping errors and other equally disturbing problems.

ZONING CHANGES NEED CEQA

The Commission, along with the **Coalition for Environmental Santa Cruz** (Grey Hayes) addresses the very zoning issue that we also find at the heart of the problem for the mountains. To quote what the FWAC Final Cannabis DEIR Letter says, *“Specifically with regard to zoning, this DEIR does not include an environmental review of the proposed zoning changes on parcels zoned RA, TP, and SU (Appendix C Proposed SCCC Section 13.10 amendments, pages 1 - 6). According to CEQA (and upheld by the courts), enactment and amendment of zoning ordinances are considered projects subject to CEQA. The zoning changes that are recommended in this EIR clearly “has potential for a direct physical change or a reasonably foreseeable indirect physical change in the environment”.*

These zoning changes will affect over 100,000 acres (Table 2-10 page 2-40), and almost 200,000 acres in the “Environmentally Superior Most Permissive Alternative” (Table 4.4, page 4-37), while the DEIR only reviews the potential environmental effects on less than 300 acres (Chapter 3, page 3.9).”

SCOPE OF ZONING CHANGES

The scope of the zoning changes is enormous. What is the proof that the Most Permissive Alternative is Environmentally Superior? It is not enough to say that existing environmental protection ordinances and additional permitting regulation are sufficient, because there have never been blanket zoning changes of this scope ever addressed before now, and the changes have not been directly considered, neither at their minimum level nor at their maximum level.

There is no explanation of what the limits are to the number and size of permits that might be issued. This is untenable and illegal under CEQA.

ADMINISTRATIVE ZONING DECISIONS UNACCEPTABLE

In addition, the exclusive decision-making role given to Zoning if TP zoning for grows were to be established is too great. This form of decision-making to determine where and how much cultivation will be allowed/permitted on any specific property, is extremely inadequate oversight. There must be a much tighter rein than a simple administrative zoning decision on huge acreages when it comes to marijuana cultivation, where erosion, threats to creek and stream viability (and thus to endangered salmonid species), the disastrous consequences of diversion of waterways, and degradation of water supplies, are all so easily exacerbated and are all so difficult to restore.

ELIGIBLE PARCELS A GUARANTEE?

We are also discomfited by the number of contradictions and disturbing issues that we noted, and see that there are also raised in the comments by the **Coalition for Environmental Santa Cruz (CESC)**. This includes the apparent assumption on the part of planning that just because there is an “eligible” parcel, that implies a sort of “Constitutional” right to use it for growing or processing marijuana. We wonder at the lack of clarity about how and if permit rights are transferable (if a permit owners dies or wants to retire or....?).

TREE REMOVAL BECOMES ENCOURAGED AND INEVITABLE

Grows on typical RA mountain properties will exacerbate tree removal, since timber regulations will not affect these properties. People already remove trees to bring sun to their properties all the time (without any sort of oversight) – and allowing grows there will make it far more profitable to reduce shade – which means fewer and fewer trees. Everything about allowing marijuana grows in RA neighborhoods is unfair to neighbors, as well as being detrimental for the environment. It will destroy the sense of community a residential neighborhood should have, as it destroys cherished environs with important plant and animal habitat.

Such tree removal will exacerbate the impact of climate change with the cycle of long years of drought followed by extreme storm occurrences. Reduced canopy will inevitably create more erosion, affecting more seasonal and perennial creeks, and thus affecting the San Lorenzo River and other endangered salmonid streams. Additional dirt-road construction and heavy use will exacerbate this even more, as proven throughout Humboldt County, where the effort to regulate marijuana growing is not as successful as hoped. Their experiences should both guide and help you better regulate to reduce problems. (See Humboldt Attachment.)

POISONS HAVING TRAGIC CONSEQUENCES AS MOUNTAIN GROWERS USE RODENTICIDES, HERBICIDES AND CHEMICAL FERTILIZERS

Recognizing the impacts of the chemicals used by far too many cannabis growers, there must be to stronger controls in place to forbid their use – and, to enforce the ban. If a study were undertaken here, as should be done, the amount of damage to animal populations, important plant species and to our waterways, might show significant degradation as is the case in

Calaveras County. The damage was hidden, but the study found that it is so severe that the County Supervisors there are considering an outright ban on commercial cultivation to curtail the “environmental disaster” the chemicals have caused. (See Calaveras attachment below.) Rodenticides, pesticides, herbicides and chemical fertilizers should not be permitted; organic farming techniques should be required wherever cannabis is grown in Santa Cruz County.

COUNTING ON EXISTING (AND NEW) ORDINANCES TO HELP CONTROL ENVIRONMENTAL PROBLEMS?

Why do we doubt that the existing ordinances will not be enough to prevent significant environmental harm as claimed? Two examples demonstrate that this has not worked for far too long, so something must change before it can work.

“Santa Cruz County received complaints since the 1990’s about hazards – junk vehicles, fuel tanks, an illegal residence, and unpermitted structures – on property where the Bear Fire started Monday night...This property is the epicenter of criminal activity on Bear Creek Canyon (Road)...” And, *“According to the Sheriff’s Office, a man and woman parked near a marijuana grow in the area and were confronted ... who pointed the weapon at the pair and then shot out the front tires of their vehicle...”* These quotes from the October 22, 2017, Santa Cruz Sentinel, describing decades-long problems reported about the property where the Bear Fire started, is a relevant case in point. This failure to protect public safety, no less the watershed, demonstrates why we question the likelihood of existing and additional regulations being a panacea for the extreme environmental hazards of the industry. The County didn’t or couldn’t act, despite an extremely hazardous situation, and despite being told over and over that there was a terrible situation there. Thus, it ended up encouraging the circumstances where a fire could take hold and spread, and, allowing a cannabis grow to exist that generated shotguns and threats to people’s lives and property.

The other example of what has already undermined even thoughtfully and carefully designed regulations, is the very fact that they can be officially ignored. In June, 2012, Kevin Collins presented an extraordinary and detailed expose’ that delineated a willingness to disregard both the intent of the law and the law itself on the part of County Planning, **“Report to the Santa Cruz County Board of Supervisors on Two Years of Administrative Exceptions to the County Riparian and Wetlands Protection Ordinance.”** Again and again, residents were allowed to infringe significantly on the creeks and wetlands of the County, officially sanctioning increased degradation of important waterways such as Zayante Creek – considered the most valuable salmonid stream for restoration of salmonids by the NMFS/NOAA in their various salmonid Restoration Plans.

MORE ON FIRE CONSIDERATIONS

The DEIR reads, “The County’s License Registration data indicates that existing cannabis operations are concentrated within the remote forested areas of the County that are subject to greater threats of wildfire, such as the Mountain Region, North Coast Region, and foothill areas of the South County Region. Registration data confirms substantial overlap between current grow sites and high fire severity zones. Some cultivation sites may also include manufacturing activities using higher fire risk methods, such as open blast butane honey oil (BHO) production. These areas also have challenging access for firefighting.”

Please reconsider the situation in the SLV. There are about 20,000 people living in a watershed with 1 main exit road up or down the valley. There were multiple exit routes in the Santa Rosa fire, and they were totally blocked by exit traffic.

How do you plan to address the fire hazard issue of continued illegal grows, and even legal grows? How are firefighting and law enforcement officers going to find these grows without road and address markers? The fear of crop theft is going to keep these grows difficult to find, and enforcement is going to be a tremendous problem, to put it mildly.

We have thousands of propane tanks in the valley, it is unimaginable to think of them going off like they did in Santa Rosa and its environs with the Tubbs Fire. Consider this from: HCN.ORG *Dispatch from California wildfires: "Yesterday morning I could see flames from my house and could hear propane tanks (at people's houses) blowing up,"* she said. "It sounded like a war zone."

With global warming, we no longer get the summertime fogs which keep the moisture content up in the foliage of our redwood trees. Projections for the year 2100 have over 50% of our redwood forests disappearing in this county because of climate change. One weather station in Bear Creek recorded a temperature of 123 degrees this summer, and more of that heat is guaranteed in the future.

Right now, because of Sudden Oak Death, we have not 10% more, but 10 times normal, the amount of fuel on our forest floors. The ferocity of the Northern California fires was exacerbated by Sudden Oak Death. (*Sudden oak death likely exacerbated deadly Northern California wildfires*, By Peter Fimrite, Updated 7:36 pm, Thursday, October 19, 2017, in sfgate.com, and *Dynamics of Dead Wood Following Emergence of Sudden Oak Death* Richard C. Cobb, et al. Department of Plant Pathology, University of California, Davis, CA)

Not a single house in Santa Cruz County is free from the threat of wildfire, including Santa Cruz City and Watsonville. In the infamous Painted Cave Fire in Santa Barbara, in less than two hours from inception, the fire had traveled nearly 4 miles from the Santa Ynez Mountains to the sea, through the city, destroying 430 structures (including apartment houses) and killing one person. (Wikipedia). The Oakland Fire is another example of a wildland fire impacting heavily populated areas. The importance of fire protection must not be underestimated.

ECONOMICS OF PROGRAM OBJECTIVES

There is no proof nor guarantee that the legalization of certain existing grows will reduce the economic viability of illegal grows. There is no analysis of the need to improve and expand enforcement to shut down illegal grows either. Adhering to the regulations will be very costly for many growers, but this may only encourage growers to avoid doing so. It is not clear that a cost-benefit analysis was undertaken that clearly proves that the value of the product will go down enough to discourage illegal growers. The assumption that legal grows will faithfully adhere to water source restrictions or reduce use of rodenticides which are proven to have enormous and disastrous consequences to wildlife (see attachments), because of an once-a-

year inspection, is unfounded. Inspections should be more frequent and unannounced, and must have a complete and thorough inspection list, including the permit qualifications, number and types of firearms, and other related issues.

The DEIR itself states that, “It also provides the greatest opportunity to mitigate impacts and increase County tax revenue to support ongoing improvement and enforcement programs.” However, there is not a single word in Draft EIR about business viability and banking. Without bank accounts for the growers, how are sales, distribution, and taxation going to function in this day and age? Will growers report earnings on their taxes when what they do is illegal in the eyes of the Federal Government. Every grower will be audited by the IRS, where cannabis use is still illegal – where hemp is not even allowed? How will the county and state get its tax monies? Are they going to be paid in jewelry and gold coins, with everything on the honor system? Has the county reached out to other States to learn from their experiences, or are you reinventing it all over again.

We strongly feel that the DEIR is inadequate. We urge the county to not plan to provide permits starting in January, 2018, but to do the right thing and take the time to improve the Ordinance. We urge that the skilled analysis and concerns of Kevin Collins, as expressed in his comments on the Ordinance, be both respected and heeded. We share those concerns. Those of the Santa Cruz City Water District, the SLV Water District, and the Coalition for Environmental Santa Cruz, should also be respected and heeded.

We urgently request that improved enforcement be guaranteed on-going, and that enforcement be provided sufficient funding to actually know which growers are adhering to the law and which are not, and that you specifically define what actions (or lack of action) will necessitate that they be shut down.

This is the tip of the iceberg, and Santa Cruz County needs a far more environmentally sound ordinance that will also protect neighbors and neighborhoods, maintain timber preserves, and the preserve and enhance the health of the watershed. The ordinance should assure that illegal growers will be motivated to retire, and that they be required to decontaminate and restore the land and waterways they have damaged.

Respectfully yours,

Nancy B. Macy, Chair
Environmental Committee for the SLV
Valley Women’s Club www.valleywomensclub.org

3 ATTACHMENTS:

1. Humboldt County Marijuana Growers Address Environmental Issues

https://www.huffingtonpost.com/entry/marijuana-environment_us_57c5b1ffe4b0664f13cab8f0

How Growers Are Addressing Marijuana's Environmental Problem [huffingtonpost.com](https://www.huffingtonpost.com)

In his sunny office on the edge of town in Arcata, California, Scott Greacen pulls up a slideshow on his large high-resolution monitor. As wildflowers sway in the wind outside a window, a woody guitar solo starts to play along with the pictures. Greacen mutes it; he wants to focus on destruction. Aerial images of clear-cut plots within the coastal forest, bounded by dusty roads and dotted with trucks, show the intrusion of industrial marijuana cultivation into redwood groves and hillsides. Some plots are small, barely detectable. Others cover hundreds of acres with row upon row of oblong structures covered with white tarps, blighting the landscape like giant predatory maggots.

“Look,” Greacen says, pointing to the screen. “Eleven greenhouses on the top of a ridge. Where does the water come from?”

Greacen, who has the genial appearance of a scholarly mountain man — neatly trimmed beard, wire-rimmed glasses, long hair parted in the middle and tied back — is the executive director of Friends of the Eel River, a nonprofit founded in 1994 to promote the restoration of California’s third-largest watershed. The 200-mile long Eel runs south to north from Mendocino County to the Pacific Ocean below the central Humboldt County city of Eureka. It has been hammered by industry for more than a century, dammed and drained to serve municipal water demand in Mendocino and Sonoma counties. Timber companies, too, have done their share of damage, stripping slide-prone land of stabilizing vegetation and causing sediment to clog the river’s already diminished flows.



The Eel River in Northern California.

sediment, the eggs will suffocate before they hatch.

“Our coast range has a seismic uplift equivalent to the Himalayas,” Greacen says. “If it weren’t for erosion, we’d have a Mount Everest.” Mountains lifted out of the ancient seabed typically shed a certain amount of fine sediment into the Eel, but at a rate the river’s flow can handle. The accelerated spalling caused by roads, traffic and grading, sifts in much more. Anadromous salmon travel hundreds of miles from the ocean inland to spawn in the river bed’s oxygenated gravel. If that gravel is clogged with

The Eel, its forks and many smaller tributaries had only recently begun to recover from timber’s assaults when, in the 1990s, a relatively benign, back-to-the-land cannabis movement exploded in Humboldt’s mountains. The Compassionate Use Act of 1996, passed by voters as Proposition 215, legalized

[marijuana](#) for medical use, opening a whole new market for weed. Growing operations multiplied on public and private land in California, particularly in the forested reaches of Mendocino, Trinity and Humboldt counties, a region so full of cannabis crops it's known as the "Emerald Triangle."

The ecological toll marijuana cultivation has exacted on those lands has been well-documented. Growers poison wildlife with rodenticide, hire armed guards to shoot bear and deer, run noisy and polluting diesel generators to light their indoor grows. Weekly trips by 40-ton water trucks tear up old timber roads built for only a few trips a year. Cannabis plants use massive amounts of water, which comes from rivers and creeks already suffering from intermittent drought (despite a relatively wet winter, the [U.S. Drought Monitor](#)

currently ranks all of Humboldt County "abnormally dry.") In a 2015 study, Scott Bauer of the California Department of Fish and Wildlife estimated that marijuana cultivation draws down nearly a quarter of river flows in some watersheds, with "lethal or sub-lethal effects" on federally endangered salmon.

Ten years ago, Bauer's agency considered fish pretty much stabilized in the old timber company lands, Greacen says. "Their strategy was, 'Let's see if we can bring them back in the "hippie zone" – the good habitats on the west side of the Eel's South Fork.

"Instead," Greacen laments, "it's gone exactly backwards." All because of weed. Or, rather, not weed, he clarifies, but "weed-driven development. We're developing in places that don't make any sense."

One might say that about the whole Emerald Triangle, where water is scarce and habitats fragile. Virtually any place would be better for growing marijuana, from Central California's already industrialized agricultural counties to the Mississippi River Valley, where cannabis could thrive in loam soil with abundant summer rains. Marijuana cultivation didn't become an industry in the Emerald Triangle because of any beneficial peculiarities of climate or soil. Though some make the argument that cool nights and warm days produce particularly potent strains of indica, Humboldt County was never any kind of Shangri-La for cannabis. Marijuana cultivation took off in Northern California's remote wildlands because, as the drug war set in, its forests offered excellent cover.

Nor does indoor cultivation reduce the environmental problems associated with pot cultivation. Indoor grows still use water; some need pesticides to control mites. They have huge carbon footprints. In 2011, [energy researcher Evan Mills](#) estimated that, in California alone, "indoor cultivation is responsible for three percent of all electricity use" in the state, consuming the annual equivalent of one million average homes."

Now, as California heads toward full legalization with Proposition 64 on the November ballot, the Emerald Triangle counties are trying to make the most of their growth industry as it emerges from the shadows. Some people believe that with regulation the environmental picture will improve. Others are not so sure. Humboldt County's land-use ordinance, passed in January, will still grant permits to growers who draw water from rivers and streams; it also grandfathered in existing growing operations on less-than-ideal parcels. "The rules are being written by people with long histories in the property-rights movement," Greacen notes. "They have zero interest in environmental protection."

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If Proposition 64 passes in November, and marijuana becomes a legal drug, legitimate growing operations will pay state cultivation taxes \$9.25 per ounce of flowers and \$2.75 per ounce of leaves. Retail sales will be taxed at 15 percent. The Humboldt County supervisors on August 9 elected to put an **additional tax** on the county's ballot, of \$1 to \$3 per square foot of cultivation. The county tax, should voters approve it, has been earmarked for local public services, which presumably include some for law enforcement. The threat of a costly and disruptive bust remains the most powerful incentive for growers to move into the light of legal operations.

Alison Malsbury, a Seattle-based attorney who has watched the legalization of recreational marijuana roll out in Washington State, thinks there might be yet another inducement to exploit with growers: Consumer choice. The California legislature is currently working on regulations for both the medical marijuana and recreational marijuana industry. "Part of their goal," Malsbury says, "is to address the environmental problem," setting standards for energy, water and land use. Once they're in place, those regulations could provide a framework that rewards sustainable growers with higher profits while the black market operators wither away.

"Once you make cannabis legally accessible to people, provide a regulated product that has to be grown by licensed cultivators and tested by labs, the incentive for buying a black market product goes away," she says. "You're providing people with a safe product," reliably tested for potency and chemistry. Some people who want a strain higher in the less psychoactive cannabidiol (CBD) and lower in the tetrahydrocannabinol (THC) that makes some people paranoid, for instance, can reliably get it from dispensaries that contract with licensed growers.

For Emerald Triangle growers who want to protect their market dominance, Malsbury suggests developing

some sort of artisanal branding or appellation, much like vintners have. "It's a great idea for consumers" Page 3 of 4 Oct 26, 2017 04:13:20AM MDT

https://www.huffingtonpost.com/entry/marijuana-environment_us_57c5b1ffe4b0664f13cab8f0

some sort of artisanal branding or appellation, much like vintners have. "It's a great idea for consumers who want to make sure that their product has the distinguishing characteristic of Humboldt County growers," she says.

Silvaggio agrees. "An appellation will help us not lose our edge in cannabis," he says. "We have a name and a reputation."

Scott Greacen, however, remains skeptical that any branding scheme could ameliorate the environmental destruction of cannabis farms. "The idea that we could, with an effective base of legal regulation, build a superstructure of real, consumer-based marketing that's about the environment? It makes for a really good story," he says. "It's a story people are writing poetry about." And certainly some people will buy into it. "Some people will pay a lot more money for wine and beer that has funny taste or a good story or their friends think is great."

Many more people will not. "The majority of wine sold today is Gallo, and the vast majority of beer sold is Budweiser," he says. "And the people who buy Gallo don't care about the lack of salmon in Napa's streams.

"If we're looking for consumer preferences and consumer demand to protect our fish," he says, "we're looking in the wrong place."

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2. Silent Poison in Calaveras County

SilentPoison.com

Cultivating Disaster:

The Effect of Cannabis Cultivation on the Environment of Calaveras County

For Immediate
Release

(209) 559-3627

October 18, 2017

info@silentpoison.com

(October 18, 2017 - San Andreas, California) Calaveras County Supervisor Dennis Mills released a new study at the County Board of Supervisors on the impact of marijuana cultivation on the county's environment. The study, **Cultivating Disaster: The Effect of Cannabis Cultivation on the Environment of Calaveras County** finds that cannabis cultivation has created incredible damage to the environment effectively dumping poisonous chemicals into the streams, rivers, and ground water.

The study concludes with a recommendation that the Supervisors pass an immediate ban on any cannabis/pot cultivation in the county.

"The decision by the previous county Board of Supervisors to temporarily allow marijuana cultivation in our county was a huge mistake." Supervisor Mills continued "The environmental damaged caused by the crazy experiment has caused hundreds of millions of dollars in clean up and polluted rivers and streams. The impact will be with us for decades." Mills concluded "The only answer to this ecological disaster is the ban it and end the pollution."

Cultivating Disaster, prepared with The Communications Institute (TCI), was based upon extensive research and/or interdictions by law enforcement, academic experts, and officials from the United States Fish and Wildlife Service, California Department of Fish and Game, and many others. TCI is a public policy research and educational center that produced numerous studies and educational programs on land use and environmental issues.

The study points out that there are now as many as 1,200 marijuana growing sites in the county which must be cleaned up at an estimated cost of \$250 million to more than a billion dollars. The study makes the following conclusions:

- Marijuana Cultivation has damaged the environment
- The scope and depth of the problem is not understood by policy makers, the public or the media.

- Dangerous chemicals have been used by growers that illegal and/or not approved for use for marijuana cultivation
- Numerous growers have been cited for violations
- The cost of mitigation of the estimated 1,200 plus sites could be as high as \$250 million to \$2 billion dollars in just this one county.
- The US Clean Water Act and other laws have not been enforced and/or abided by.

The research study makes the following recommendations:

- **Calaveras County Ordinance** – The Calaveras County Board of Supervisors should pass an ordinance banning the cultivation of marijuana or cannabis in both the open and in-door facilities.
- **Calaveras Ecological Task Force (CETF)** – The report proposes the creation of task force involving all agencies federal, state, regional and local agencies to work together to eradicate illegal growing, clean up the environment, and deal with law enforcement/public safety issues.
- **Water Quality Analysis** – Recommends that the United States Environmental Protection Agency undertake a study of the impact of the ecological damage to the water quality in the county and propose steps that should be taken to protect the watersheds and provide a plan for Mitigation.
- **Law Enforcement** – Recommend that the United States Drug Enforcement Administration and other appropriate agencies take action to evaluate grant money and manpower support to eradicate illegal marijuana production and insure the shutting down of legal operations includes their complete clean up.
- **Prosecution** – Proposes that the District Attorney of Calaveras County work with the United States and California Attorney Generals to prosecute those that have broken federal and state laws and county ordinances and seek full prosecution criminally and/or civilly and explore seek funding to pay for the cleanup of the land in the county. There needs to be a true cost recovery with a Nexus study.

Mills pointed out that a new draft study by the California Water Control Board, to be released this week, totally exempts indoor growing from water quality testing. “This is just another example of the indifference of Brown Administration to significant environmental problems.” Mills noted “There are no chemicals that have been approved by the either the EPA or the FDA for use in the growing of marijuana.”

The sixty-page study is based upon research and analysis provided by federal, state, and local agencies and includes an extensive bibliography of articles from leading academic and media organizations including Stanford, Harvard, Yale, Scientific American and the University of California. The study points to a silent poison that been entering into the environment of California and hence the study website: www.silentpoison.com.

3. Kevin Collins' Report to Board of Supervisors on Two Years of Administrative Exceptions to the County Riparian Corridor and Wetlands Protection Ordinance

Report to the Santa Cruz County Board of Supervisors on Two Years of Administrative Exceptions to the County Riparian and Wetlands Protection Ordinance

Prepared by Kevin Collins <bats3@cruzio.com> - 831-335-4196 P.O. Box 722 Felton, CA 95018

◆◆SC County Fish and Game Advisory Commission ◆◆Founding member, Lompico Watershed Conservancy ◆◆Executive Committee, Ventana Chapter Sierra Club, former Chair Santa Cruz County Group ◆◆Environmental Committee, San Lorenzo Valley Women's Club ◆◆Extensive experience with administrative appeals, law and procedure, CA Water Quality Code, State Forestry Code, County Zoning and land use code, easements and other natural resource conservation matters. Former licensed General Building Contractor.

Submission date June 12, 2012

The source files for this report were obtained from the Santa Cruz County Planning Department through use of the California Public Records Act. These source files themselves are "Staff Reports to the Zoning Administrator" that describe individual Riparian Exceptions, with "Development Permit Findings" and "Conditions of Approval". These documents also contain narrative descriptions of building sites and references to other reports including geologic surveys and septic permit reviews. Planning supplied these documents for the years of July 11, 2009 through July 11, 2011. There is no intent with this report to retroactively challenge the approval of past Exceptions such as those enumerated in this document.

Report Summary

The purpose of this report is to demonstrate to the Santa Cruz County Board of Supervisors and others how Exceptions to the Riparian and Wetlands

Protection Ordinance (Riparian Ordinance or simply Ordinance) are administered. That is, the means in which permission to be exempt from the written intent of the Ordinance is provided to applicants by the County. Administrative language is crucial to understand in this context. This is an issue of public policy that is being projected into the future.

The source information is objective in that it comes from County documents. Thus it is not a matter of my personal opinion. Opinions are only expressed in regard to the historical change in how the Ordinance is applied and why that change has occurred. To understand this report more thoroughly, one can read the source material itself. This report contains two appendixes. The first contains detailed descriptions of four example Exemptions. The second appendix is a synopsis of the entire 2 years of the collected Riparian Exceptions that were approved.

No review of the implementation of this important ordinance, nor its practical effect, has ever been prepared before. This document hopefully fills that void.

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The Riparian Ordinance establishes defined distance set-backs from streams (and other water bodies) of varying widths in which grading, land clearing, building and paving, tree and shrub removal, deposition of refuse or debris, the use of herbicides, pesticides, or any toxic chemical substances, and any other activities determined by the Planning Director to have significant impacts on the riparian corridor, are all prohibited. The code establishes an administrative process to provide "Exception" to some of these prohibitions, depending on specific circumstances.

Fifty-one Exceptions from the Riparian Ordinance were reviewed for this report. There were a few duplicates provided by Planning and this is noted in the appendix. A number of these Exceptions pertain to Public Works and private road (and driveway) projects and are not pertinent to this report, which primarily concerns the question of Exceptions necessary for buildings. It is important to consider that real estate investment activity has been at an historic low, including during the two years (2010-11) that were researched for this report. This would logically be expected to suppress the number of development-based Exceptions that were sought from Planning during that period.

A limitation of this report is that it does not contain a list of applications for Exception to the Riparian Ordinance that may have been denied by Planning. The reason for this is that Government Records Act requests need to be concise and specific. They are not meant to be "fishing expeditions".

Environmental Ordinances

There are six environmental ordinances in Chapter (Title) 16 of the County Code that are administrated by Planning: the Riparian and Wetlands Protection Ordinance (subject of this report), the Geological Hazard Ordinance, the Grading Ordinance, the Erosion Control Ordinance, the Significant Trees Ordinance and the Sensitive Habitats Ordinance. Of these six, the Riparian Ordinance is the most vital to both the conservation of wildlife *and simultaneously* to the protection of water quality.

These six Chapter 16 codes are only applied in common practice during new construction. An example is the Erosion Control Ordinance. It has little practical effect upon general homeowner site maintenance and management, despite the fact that the authority to control erosion at all times is included in the County Code. Unfortunately erosion from existing home-sites is, by far, the most significant and chronic source of soil erosion when this major source is combined with our extensive public and private mountain road networks (including logging land). In situations that are not connected with active construction projects, enforcement of the Erosion Control ordinance and determinations of harm are specified in the code "as determined by the Planning Director" and are entirely discretionary. It is clear that at present, this issue is of very low priority.

Riparian and Wetlands Protection Ordinance

The Riparian Ordinance is uniquely important. Riparian woodlands, stream-side trees and plants, the stream channels and stream banks themselves, and the wildlife migration corridors that they represent, are vital to the broadest range of wildlife species of any single habitat in this County. This is usually understood as an issue for endangered salmon fishes. However a simple example of the much broader species impacts is that songbirds are always most common near streams and rivers when compared with the other habitats they occupy. Equally important is the physical condition of these strips of land, because they have a direct and immediate impact on water pollution. If

stream banks and near stream areas are eroding soil, this soil and other human caused pollutants flow directly into this County's surface waters. Surface waters are our predominant

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source of drinking water. It has long been understood that botanically diverse and intact vegetative "filter-strips" are important pollutant traps.

It is common for the stream frontage of entire lots to be stripped of riparian vegetation and trees from property line to property line. Few would expect the immediate site of a home or business to have no disturbance to its native vegetation. However, entire riparian lots are often converted to other uses with little or no consideration taken for these fragile and important locations. This neglect has a major destructive impact upon the public trust resources that the Riparian Ordinance was intended to protect.

How Riparian Exceptions are Granted

Most Riparian Exceptions are granted during the general building permit review process for structures and also for road related repairs and the construction of new roads and private driveways. Exceptions to Chapter 16 codes are "ministerial" and do not require a public hearing. Exceptions must be accompanied by both "Findings" and "Conditions". Interestingly, these Findings do not require any reference to damage to the environment or to water resources, except for Exceptions granted within the Coastal Zone. The language applying to the Coastal Zone

reads: "That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative; and...". I suspect that the Coastal Commission would not allow the ordinance to be applied within the Coastal Zone without this provision. However it is generally voided by the use of the "Conditions" section in some fashion related to mitigation, so as to appear to meet the intent of the ordinance. Also the structure of the clause, "and there is no feasible less environmentally damaging alternative" provides a means to legally allow, at the discretion of the County, actions that are damaging to riparian corridors.

A great deal of confusion arises over the issues of fairness or proportionality when properties that were built before the Ordinance was adopted (most riparian lots), or properties that were built illegally, are located near vacant properties now proposed for new development, and /or previously developed properties proposed for expanded redevelopment.

Exceptions to the Ordinance and to the closely interrelated Zoning Variances (for setbacks from property boundaries and roads) are sought and granted based upon the text below and similar justification language from Planning. It is crucial to understand that the logic of these examples would apply to any of the many remaining severely substandard parcels. These parcels were subdivided before this County had any standards whatsoever for land subdivisions.

Riparian Exception Findings Example

"This finding can be made in that the special circumstances affecting this property include the steep slopes, zoning setbacks, and riparian setbacks which, when combined, limit the developable area of the parcel. From a geologic and geotechnical safety perspective, there is no other feasible location to build a structure on the property."

Related Zoning Variance Findings Example

"This finding can be made, in that parcel (X), the parcel proposed for a variance to the required XX-foot front yard setbacks, is extremely steep in all other areas besides the proposed development envelope and would require a massive amount of grading to create another

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buildable area on the site. In addition, the parcel is further constrained by a creek located near the only flat buildable area, which creates additional setback requirements. *(Quoted text bolded for emphasis)* **Other surrounding properties are developed with single family residences at rural densities, therefore, strict application of the Zoning Ordinance on this particular parcel would deprive the property of the privilege to build a small single family residence as enjoyed by other properties in the vicinity and under the same Residential Agriculture (RA) zoning district."**

Thus a "lowest common denominator" effect takes place in the granting of Exceptions (and related Variances) leading to a situation in which the Riparian Ordinance is rendered close to irrelevant except in cases where the parcel has sufficient space. Many if not most riparian lots do not have sufficient space outside the set-back. Comparing a new development proposal to neighboring lots that were built upon before the Ordinance was adopted, renders the Ordinance moot.

Zoning Variance Language Example

"That the granting of such variances shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.----This finding can be made, in that the creek runs through many adjacent parcels and the topography is severely limiting in this area: therefore, any parcel of similar size and topography would be granted a variance to site standards for building site location if the building site was the only buildable area on the parcel."

Consideration of adverse environmental impacts, or harm to water quality, have no bearing upon the Findings made in this permitting process in any case that I reviewed in the record. Conditions of approval occasionally suggest limitations upon possible future additional development on a site. However these statements are not binding because no such permit is under review.

Enforcement in the Absence of Building Permits

The Riparian Ordinance is frequently ignored entirely by builders of structures and roads who act without permits. Property owners of stream-side (riparian) buildings build improvements to their back and side-yards such as swimming pools, parking areas, accessory structures and additions of various types. Riparian setbacks are also cleared of trees and shrubs simply to open up views of creeks and the river. Riparian areas are highly resistant to wildfire, but this fact does not deter people from clearing streamside land in response to their fear of wildfire.

From well over 20 years of observing this situation, it is my view that the Ordinance is now rarely enforced in cases where no building permit exists. Violations are rarely noted or enforced without a citizen filling a formal code

violation complaint with the Planning Department. The general public is the primary source of code violation reports. Complaints require the name, address and phone number of the person who files the complaint. Some Planning staff will reveal the identity of the complainant to the person responsible for the code violation. People whom I trust to report facts have described to me how their confidential code complaints to Planning have resulted in them being confronted by the property owner of the lot that was the subject of their complaint, and in specific terms.

This lack of consistent confidentiality very effectively reduces the number of complaints that are ever filed. It is impossible to challenge such a breach of confidentiality. It is deniable in every case.

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In addition, the person who files a complaint must frequently be persistent in following up their complaint with further inquires to Planning staff. I am writing in average general terms and I am specifically **not** making these claims about all code enforcements officers or every situation.

This has not always been the case. In past years, when County environmental codes were held in higher regard, the Planning Department included field staff and code enforcement officers who issued red-tags for violations of the Riparian Ordinance. However this effective practice generally ceased years ago. In private conversations with former Planning Department employees over many years, I have been told that they were pressured by superiors not to act upon their personal knowledge of violations of the Ordinance.

Legal Significance of the Ordinance

The mere presence of the Riparian Ordinance in the County Code is fundamental to various agreements that the County has with State and Federal Agencies, including the Central Coast Regional Water Quality Control Board, the State Water Resources Control Board, the CA Department of Fish and Game, the National Marine Fisheries Service (NOAA) and others.

An example of such agreements are the three TMDLs (Total Daily Maximum Load-*i.e. pollution loads*) for sediment, nitrates and pathogens adopted by the

combined Water Boards, under EPA supervision, for the San Lorenzo River. TMDLs exist as instruments of the Clean Water Act to resolve water pollution problems. The Riparian Ordinance is part of the written plans in TMDLs for improving pollution levels in water bodies such as the San Lorenzo. TMDLs are mandatory.

The River was initially placed on the Federal Water Pollution Control Act Sec. 303(d) list of "impaired" or polluted water bodies. Subsequent to that "listing", a plan or TMDL was adopted to reduce the specific pollutant. The County Riparian Corridor and Wetlands Protection Ordinance and its enforcement is cited as a correcting factor in these TMDL agreements.

It is also important to understand that in the case of pathogens and nitrates, the laxly enforced County Septic Code (Chapter 7.4 of the Health and Safety Code) is also tied into these agreements with the State and Federal Government.

Other County agreements involving the Ordinance exist with other agencies such as the National Marine Fisheries Service for the recovery of endangered salmonids (salmon fishes).

The Riparian and Wetlands Protection Ordinance is part of a set of rules, laws and intergovernmental agreements. These rules, permits and agreements either work together to protect public trust resources, such as water resources and wildlife, or instead, they simply exist "on paper" to masquerade for objective reality.

There is always a shifting context in these cases. No regulatory administration is ever perfectly standardized. However in my view, at the present time, an illusion of law rather than its effective administration is the predominant situation in Santa Cruz County in regard to the Riparian Ordinance and related codes.

This is incongruous for a county with a tourism industry, high home prices, and a reputation for "environmental awareness". This situation is, in part, a result of the disconnect between the urban and rural parts of Santa Cruz County. It also results from the fact that local government is prone to complaint driven responses. A prevailing culture of complaint about the very existence of County

land use regulations, of any kind, now overwhelms the opposing position of support for conservation-based environmental regulations. This is especially true in regard to the personal risks that private individuals must take in order to demand enforcement of this County's environmental codes.

In certain cases County staff do make efforts to enforce this code, but in my view these efforts come nowhere near to either the intent of the Ordinance, or to the meaning of interagency agreements in which the Ordinance is frequently claimed to be a mitigating and supporting factor.

Conclusion

There are numerous ways that the application of the Riparian Ordinance (and all of Chapter 16) could be improved. There must be the political will to protect natural resources. The Board of Supervisors sets policy at this level. Effectiveness is an issue of public administration and the interpretations that are applied to the code. No one else will have respect for these codes unless the County shows respect for its own code. At present we have a cadre of retired Planners who work as consultants with property owners to find loopholes in the code.

"Takings" case law is sometimes invoked as the explanation for the retreat from the application of general land use authority. This is not a justifiable excuse to dismiss the obligation to protect public resources. Riparian areas are public resources, just as the water that flows down their streams is a public resource. The two cannot be separated. Creeks and rivers are not ditches. Counties bear a clear responsibility to protect the public "commons". This is the reason that Chapter 16 of the County Code exists. It is not decoration.

If disclosure during property transfers included public information about the specific constraints upon sub-standard lots (too steep, in riparian set-backs, below size for septic systems or zone district, within a zoning set-back etc. , this would completely transform the current dynamic regarding the sale of severely sub-standard lots and seriously non-conforming structures. When people buy a house having no idea of how constrained or non-conforming to

code that house already is, they are in an unfair position. People do not possess the knowledge to understand this and so they blame the County. It might appear a rather simple matter in town such as a side yard set-back, but in the mountains it is another story altogether. Your Board has made non-conforming structure policy more discretionary with little to no public review. It was claimed that this action did not affect the environmental ordinances. This was complete nonsense. The codes intersect in complex ways. Most of the building Riparian Exceptions in this report are coupled with Zoning Variances.

Another necessary improvement is to clarify policy for code compliance and enforcement. Some cases drag out for years in preposterous ways. Enforcement should not be arbitrary or inconsistent. It must be rational and based upon procedures that are clear and easy to understand. It is my understanding that the County only assesses recovery costs for it's own administrative expenses in doing compliance work. Planning loses money and has no incentive to improve compliance. Establish fines for violations and use them when necessary. Other cities and counties impose fines. It works. San Francisco's building code has a maximum fine of nine times the original permit fee. It also has an appeals board. The City of Carmel has one of the most effective tree protection ordinances in the United States. It's success is inescapable when one walks down any street in Carmel. In Carmel this is an issue of civic pride rather than grudging argument.

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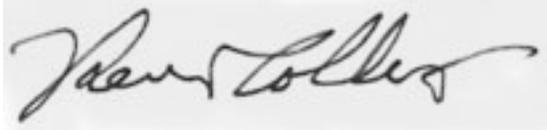
Unless the County establishes some baseline standard below which the extent of environmental harm is unacceptable then the Ordinance is irrelevant. The examples that follow in the appendixes to this report raise the issue that Exceptions are being granted in some extreme situations.

This report was prepared in the spirit of cooperation. I have had very productive interactions with your Board in years past and I also understand how complex this particular issue is. I am clearly the type of person who responds to environmental problems in a very personal way. But please understand that this characteristic gives me the ability to foresee trends that will have major consequences in years to come.

Regards,

Kevin Collins

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Appendix One: Four Examples of Riparian Exceptions Explained in Detail

Example One-No. 4. Development review of a residential lot requiring a lot line adjustment, Zoning Variance, and Riparian Exception, APN 103-171-31 and 32. Note: this is not the record of a building permit. It is the record of an applicant / owner seeking the designation of a building site, perhaps with the intent to sell the lot once this goal has been achieved. This strategy is one I have seen before, as landowners speculate on difficult lots in order to increase their value for re-sale.

Elements of the Exception (APN 103-171-32) that are in conflict with general zoning and building site standards or with the stated intent of the various environmental ordinances:

1. Zoning Variance to reduce the front yard setback (from a road right of way) from 40 feet to 5 feet.
2. Riparian Exception to allow encroachment of approximately 25 feet into the required 40 foot (ephemeral stream setback) Riparian Buffer.
3. "The entire "geologically safe" (*quotation marks are copies of the Planning document.*) habitable area as designated by the building envelope on "Exhibit A" is within the riparian setback area. Some redwoods within the building envelope, which are considered riparian, will be removed for construction. At the closest point, the development envelope encroaches to within 15-feet of the bank full flow line. (amended at ZA 8/3/07)"
4. From Variance Findings: "*the parcel proposed for a variance to the required 40-foot front yard setbacks, is extremely steep in all other areas besides the proposed development envelope and would require a massive amount of grading to create another buildable area on the site.*"

5. Review includes the consideration of 3 septic leach field locations, on the ridge top (pump- up) and on the valley floor near the ephemeral drainage streambed and thus possibly in conflict with septic codes. This is unclear in the report. The septic review analysis was not included with the Exception record.

6. Geological Feasibility study for lot: *"In our opinion, the proposed development might be subject to a greater than ordinary risk from flooding coming from the creek that borders the development area."*

7. Note: This is not a building permit record, and there is evidence in the record that a problem will exist in providing for parking for the house when a building permit is actually sought. The site may still be too small and constrained.

Selections from Prior Permitting History

1. "In 1972 the property owner was denied a use permit (4399-U) to construct four resort cabins and a restaurant on parcels 103-171-31 and 32."

2. "Between 1973 - 1976, the property owner applied for two variances (1684-V and 75-1132- V) to build a single family residence on parcel 103-171-31 with reduced side yard setbacks and

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to temporarily reside in a mobile home during construction of the residence (115-T). Both variance applications and the temporary permit application were denied."

3. "In 2001, a code compliance case on parcel 103-171-31 was opened and eventually the property was red tagged for the unpermitted conversion of a non-habitable accessory structure to a second unit, a retaining wall over three-feet in height and electrical problems in the single family dwelling." These problems were apparently later corrected and the red tag was lifted.

4. The administrative record makes clear that this permit is to "designate a building site" (APN -32) and does not include an actual building permit. This suggests that the intent is to set up a "buildable parcel" for re-sale rather than

for building construction by the applicant in this permit record.

5. Three letters in the administrative record of this permit (two from a member of the private road association impacted by the proposed development) address the question of whether this parcel was declared as unbuildable in the past. The County letter explains: "Our files do not indicate that this parcel was determined "unbuildable". In the past, several projects on the two subject parcels have been denied by the County for various reasons; however they were not denied based on a determination that parcel 103-171-32 was unbuildable. This would require a written determination by the County Geologist and Environmental Health Services and would be recorded with the Assessors Office."

Comment: It is clear from the history of development permitting on this lot, that it was indeed considered as "unbuildable" by the County between 1973-'76. It may be that both lots were unbuildable. The Planning Commission denied two Variances necessary to construct a house on this location. This is particularly confusing because apparently both parcels had substantial problems.

It is obfuscation for the Planner, in the quote above, to assert that the denial of those prior zoning site Variances necessary to build, did not constitute a de facto determination of "unbuildable".

For *any* lot to truly be declared as legally "unbuildable", would require the lot's owner to act against his/her own personal self-interest and force such a determination to be recorded against the advice he or she would naturally be provided by Planning and EHS.

This record is a good example of how the interpretation of the code has changed so as to now allow construction upon severely sub-standard lots that were in the past denied permits under identical codes.

Example Two- No. 48, Proposal to construct a two story single family with attached garage on a vacant parcel. Zoning Variances and a Riparian Exception, APN 041-181-39.

Elements of the Exception that are in conflict with general building zoning site standards or with the stated intent of the various environmental

ordinances:

1. Parcel is undersized for the zone district.

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2. Zoning Variances are necessary for both front and side yards. **The required Riparian setback of 50 feet plus 10 feet (perennial stream) from Valencia Creek over laps the zoning front yard setbacks.**

3. Variances reduce the front yard setback of 40 feet to 8 feet and reduce the side yard setback from 20 feet to 12 feet.

4. Riparian Exception to reduce the setback from Valencia Creek from 60 feet to 17 feet. House is to be built on a pier and grade beam foundation due to steep slope down to Valencia Creek. The record available for this example does not include any parts of the geological or soils reports that were necessary.

Selections from Prior Permitting History: The record available includes none of the prior history other than references to 1999 in regard to a geological survey and a prior expired Riparian Exception.

Example Three- No. 5 or 47 (duplicates), Proposal to construct an approximately 1,455 sq. ft. single family dwelling, a sewer pipeline crossing over an existing unnamed creek and an approximately 6 foot high retaining wall. (APN 086-082-22)

Elements of the example that are in conflict with general building zoning site standards or with the stated intent of the various environmental ordinances:

1. Variance to reduce the required 40-foot front yard setback to 2 feet.

2. Riparian Exception to build retaining walls within the riparian setback to support a house and improvements (within the same setback), and also an Exception to suspend a sanitary sewer line across a creek to a leaching location of the opposite side of the creek from the proposed house. The developable area of the parcel is apparently so small, due to steep slopes, that the house is being built right up to ("approximately 2 feet from") the Highway 236 right of way. The proposed house site slopes down from the

highway to the creek apparently necessitating the use of retaining walls to support the house site. The Riparian setback and the road right of way overlap, apparently including at the location of the house site. The record available does not include any septic design information or other details regarding the site itself.

Selections from Prior Permitting History: The record in the Exception documents available does not include any permitting history other than this statement: "The site has been historically graded and is located below the grade of the adjacent highway."

Example Four- No. 2 or 9 (duplicates) 030-112-05, Rodeo Gulch Creek. Proposal to construct a 2 bay, 2 story lube/oil facility of 2852 sq. ft. Remove 3243 cu. yds. earth. Requires a Roadside/Roadway Exception. Majority of the parcel is within the Riparian Buffer. Requires a Riparian Exception to locate parking, driveway, trash enclosure and part of structure within the 60 foot Riparian Setback. All trees located on the slope to the stream will be removed to accommodate re-grading of the riparian corridor.

The site is described as having been used for illegal dumping occurring in the 1960's. The proposal is to excavate out debris, garbage and un-engineered fill. Re-grade to get a 2:1 slope. Reduce the final width of the Riparian buffer to 20 ft. plus 10 ft. Original code is for total 60 ft.

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Elements of the Exception that are in conflict with general building zoning site standards or with the stated intent of the various environmental ordinances:

1. Riparian Exception to reduce the set-back from the stream from 60 feet to 30 feet. Exception to completely re-grade, apparently to the streambed and remove all existing vegetation and create a "bench" above the streambed. Incorporate a new drainage system "that will release runoff at the toe of the slope." Presumably this is associated with the fact that the site drains into Rodeo Gulch Creek.

Note: It is an interesting choice to permit a drive-through vehicle oil changing facility with Exceptions from various codes on a site that drains

rain runoff directly to a stream.

2. Roadside-Roadway exception. Selections from Prior Permitting History:

1. Denied permit in 1978 to construct a 2700 sq. ft. automotive repair and light industrial due to unstable site conditions indicated in soils report.

2. 1984 site visit to delineate the Riparian Corridor and setback requirements. "The determination was that a 50 foot setback would be required; however the letter indicates that a reduced 20 foot setback would be supported by staff."

3. 1985 Proposal to construct a one and two story commercial building and create seven condominium units. Application withdrawn.

4. 1988 site visit to delineate the Riparian Corridor and setback requirements. "Letter indicates that staff would not be able to make riparian exception findings based upon the instability of the slope. " Expired.

5. 2006 Riparian Presite for a proposed auto repair shop. "Staff determined that setbacks of 50 feet from the top-of-bank, 20 feet from edge of dripline and an additional 10 feet from all structures would be required. Expired

NOTE: Useful example of Riparian Exception Findings in Coastal Zone etc.

1. That there are special circumstances or conditions affecting the property. * "This finding can be made, in that the vast majority of the parcel is located within the riparian corridor and the granting of an exception will allow a reasonable use of the property. In addition, a large portion of the property contains unclassified, unstable fill that is prone to erosion and failures. This fill will be removed in order to provide a stable slope and to better control drainage." This demonstrates that the Coastal Zone designation does little to strengthen the Riparian Ordinance.

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Appendix 2

Numerical List and a Brief Analysis of the Collected Riparian

Exceptions Provided by Planning

Legend and explanations applying to the following list: The numbering itself is in the order these that the documents (Exception records) were provided by Planning. It has no other significance.

(B) This refers to environmental significance in relationship to a building development proposal, rather than to a road or driveway based exception. (This does not indicate that road development has no environmental significance, but that roads and driveways are always associated with general development in the case of this report.) A numeral after this (B) symbol is a counting of these exceptions as in 1-B1 that follows.

Ten such development based Exceptions were included in the 2 years of data for this report.

(correction dated June 13--There is a mistake in original document submitted to the Board on June 12-- There are 11 development based Exceptions in the record.)

Several of those are particularly striking in that highly constrained (thoroughly sub-standard building sites) were provided with exceptions. In at least two cases the sites had previously been rejected by Planning and had been denied permits to build. The available records are not entirely consistent and do not include the same types of information.

The question naturally arises as to what would constitute the poorest possible building site that Planning (and the Zoning Administrator, or the Planning Commission) would accept as buildable as opposed to unbuildable. This is a changing situation with more and increasingly deficient building sites being granted various environmental code exceptions and Variances from zoning site standards. All of this leads to a continuous deterioration in the aggregate condition of Riparian Areas in Santa Cruz County. From the standpoint of what remaining buildable lots exist in Santa Cruz County, this issue is fundamental.

1- (B) refers to environmental significance in relationship to a building development proposal.

2- (PW) refers to Public Works (usually road work). Eight Exceptions were granted to Public Works.

3- (PR) This refers to Private Road, Bridge or Driveway Work. There were eight of these Exceptions. Many of these driveways lead to new development sites,

4- (RDA) This refers to Redevelopment Agency Projects. There were six Exceptions granted to RDAs

5- (AG) One agricultural greenhouse business was granted an Exception.

6- If a particular stream is noted in the staff data, then the name of that stream is listed in this report.

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7- One illegal water diversion installation was granted an Exception to leave a collection basin (tank) in place in a streambed below the edge of a road, ostensibly to avoid weakening the road edge by the act of removing of the illegally placed tank.

8- One Exception was granted for a private in-stream impoundment used for the irrigation of a row of trees. Both of these in-stream impoundments raise questions about endangered wildlife that may have been impacted, perhaps on a permanent basis.

No. 1-B1 031-011-02, 2345 S. Rodeo Gulch Rd. Rodeo Creek Gulch

Proposal to "recognize" a landscape contractors yard, including existing 665 sq. ft. office. 176 sq. ft. office trailer, parking area for 6 work trucks, three outdoor storage areas and a 320 sq. ft. office trailer. Requires Commercial Development Permit and a Riparian Exception for removal of improvements in Riparian Buffer.

Assorted prior use history leading to 2001 application for a vehicle storage yard, withdrawn 2003. Red-tag recorded 2009 for existing unpermitted landscape contractor yard.

2 General Plan designations, CS 17,400 sq. ft. and 6,880 sq. ft. OU (urban open space). Riparian area is "cleared of woody vegetation associated with the riparian corridor areal photos from 1975, 1989, 2003, and 2007. Conditions require removal of "improvements and structures including trailers and chain link fence" and re-plant corridor.

No. 2-B2 030-112-05, Rodeo Gulch Creek

Proposal to construct a 2 bay, 2 story lube/oil facility of 2852 sq. ft. , remove 3243 cu. yds. earth, requires Roadside/Roadway Exception.

Majority of the parcel is within the Riparian Buffer. All trees located on the slope will be removed to accommodate grading.

Denied permit in 1978 to construct a 2700 sq. ft. automotive repair and light industrial due to unstable site conditions indicated in soils report. Extensive permitting history including condominium unit denials or dropped permit application.

Excavate out debris, garbage un-engineered fill. Locate future parking, drive, storage within Riparian Setback. Re-grade to get 2:1 slope. Reduced Riparian buffer to 20 ft. plus 10 ft. setback. Original code is for total 60 ft.

No. 3

103-171-79, Soquel San Jose Rd. for permit 06-0488-lot line adjustment for another Riparian Exception. below.

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No.4-B3

103-171-31 and 32, Lot line adjustment, Variance to reduce the front yard setback from 40 ft. to 5 ft., and Riparian Exception to encroach 25 ft. into the 40 ft. Riparian setback.

No.5-B4

086-082-22 New House, Zoning Variance to reduce the 40ft front road setback to 2 feet, Riparian Exception to extend sewer line over creek and

build house inside the Riparian setback.

Riparian Exception_ Site undevelopable without Exception therefore
“appropriate”. Cut and fill_227 cut 156 fill

Unnamed creek bisects property—“historic grading for pad inside highway
(236) for unpermitted trailer.

New building site. “best site adjacent to highway”, intends to pull stumps.
Riparian setback intersects with the road setback. –special circumstances-
House setback to be 2 Feet Septic to be on the opposite side of creek with a
suspended sewer line. No.6-B5

041-181-39 New House, Valencia Creek, 17 feet from stream
bank. Variance to reduce front yard setback to 8'. Variance to reduce side
yard to 12' and Riparian Exception

No.7-PW

Public Works, Schwan Lake, Mitigated Neg. Dec.

No.8-RDA

037-101-58 and 59, Owner RDA, park development Tee Street, Grading
6,800 yards cut 1,900 fill, Variance for parking, and access, increase in
impervious surface (paving etc.)

No.9 DUPLICATE OF No. 2 ADDITIONAL ANALYSES

030-112-0, Rodeo Gulch and Soquel Drive, vacant site 24,100 sq. ft. 0.55
acres, 2852 sq. ft. 2 story oil and lube facility. Riparian exception to strip
vegetation and grade in the riparian to create 2:1 slope. A portion of the
proposed parking area, drive aisle, trash enclosure and structure to be located
in 50' Riparian buffer and 10' setback.

Staff supports Exception given the lack of developable area on the parcel and
the necessity to improve slope (riparian dump site) stability.

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NOTE: Useful example of Riparian Exception Findings in Coastal Zone

etc.

1. That there are special circumstances or conditions affecting the property. ***"This finding can be made, in that the vast majority of the parcel is located within the riparian corridor and the granting of an exception will allow a reasonable use of the property. In addition, a large portion of the property contains unclassified, unstable fill that is prone to erosion and failures. This fill will be removed in order to provide a stable slope and to better control drainage.

4. Demonstrates that the Coastal Zone designation does nothing to strengthen the ordinance.

No. 10- (Duplicate case)

031-011-02. 24,280 sq. ft. C-4 Commercial zoning. Parcel has an O-U (Urban Open Space) General Plan designation on 6,880 sq. ft. at rear of parcel abutting Rodeo Gulch Riparian Area.

History "ending" with a 2009 recorded red-tag for the existing unpermitted contractor's storage yard.

Intent of permit is to recognize a landscape contractor's yard including an existing 665 sq. ft. office building, a 176 sq. ft. trailer, parking for work trucks, 3 outdoor storage areas and a 320 sq. ft. storage container. Riparian Exception for removal of improvements within the riparian buffer.

No. 11-PW

Public Works Application for Riparian Exception for road repair Nelson Rd. Scotts Valley. No building construction associated.

No. 12-RDA 030-153-24 Applicant RDA 4740 Soquel Dr. Soquel

Soquel Creek Linear Path "Park". Permit for removal of former mobile home utilities, concrete pads, non-native trees.

No. 13-PW

Public Works. Replacement of failed culvert, with temporary stream

diversion, crossing of Lochhart Gulch Rd. over Lockhart Gulch.

No. 14-PW Public Works. Replacement of corroded culvert leading under Two Bar Rd. to Two Bar Creek.

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No. 15-PW Public Works culvert replacement Kings Creek Rd. Includes channel back fill and new headwalls.

No. 16-B6

028-181-05 Corcoran Lagoon, Code violation (from complaint) unpermitted construction of new retaining walls dating from 1960's (date is neighbor opinion).

Riparian Exception and Coastal Development Permit applied for. Objected to by staff, Permit withdrawn.

Current application with minor changes "the proposal does not represent a substantial revision to the application that was made in 2009 and does not incorporate the changes requested by Environmental Planning staff."

Other adjoining properties constructed away from the 100 ft. Riparian Corridor near 24th Ave. Includes U-O Urban Open Space designation. New wall used to extend the yard landscape use within the Riparian setback.

Appears that this Exception was denied. See number 18 when approved. No. 17-B7 081-071-08, HWY 236

370 sq. ft. addition to existing house within Riparian setback also within calculated 100 year flood zone of Boulder Cr. Findings section claims addition " is necessary for the permitted residential use of the property." Note: claim of report that basement floor elevation is above FEMA base flood elevation.

No. 18-continuation

Overturms decision on No. 16, 028-181-05, Corcoran Lagoon retaining walls question. Claims replacement of prior existing but failed non-

conforming retaining walls in not in violation of the Riparian Ordinance or the Coastal Act despite filling of site and poured in place walls. No record of process other than Findings and Conditions.

No. 19-PR 102-471-03 and 06, Pilkington Rd. and Paul Sweet Rd.

Replace-repairs an unnamed gated road called an "emergency access right of way". Failure of culvert and bank resulting in fallen trees etc. at a intermittent tributary to Arana Gulch

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No. 20-PR

099-011-19, Olson Rd. 2.7 miles from Soquel San Jose, landslide induced road failure repair West Branch Soquel Creek. Permit allows construction of gabion wall inside Riparian Setback 42ft. from active channel.

No. 21-PW

Public Works, Schulties Rd., Burns Creek, replace failed culvert and roadway embankment on ephemeral tributary to Burns Creek near Laurel Rd.

No. 22-PR 087-021-26, 20595 Saratoga Toll Rd. Sempervirens Fund
Demolition of cabin. Replacement of culvert. No. 23-PR 109-112-05 and -
16, 821 Old Smith Rd. Watsonville

Grading permit and Riparian Exception, construction of bypass driveway road around landslide 1,600 cu. yds. cut and fill and 5,000 cu, yds. (phase 2) plus drainage and Hilfiker retaining wall. Requirement for 5 year monitoring for vegetative coverage of site, Verifying agency is County Planning. No information in the documents about the scale of the slide or length of road segment or proximity of active stream channel.

No. 24-residential repair-maintenance

040-163-15, 823, Mangles Gulch. 1982 original landslide, Gabion wall recommended in 1991. Not built. In 2007 owner requests permit and Riparian exception for shotcrete wall to protect upper portion of slope below the house

and deck. Permits issued and approval of gabion baskets installed without permit prior to 2000--- be legalized or removed. 3 tier wall in 3' high steps buried 3'deep with 1 ft. step backs. (very steep). Note: structure apparently stands too close to ephemeral watercourse for safety due to periodic high flows as is case of original landslide.

No. 25- B8, residential repair-expansion- 078-101-03, Marshall Creek

Channel immediately below existing house. Unpermitted gabion wall is failing. Conclusion to retrofit the existing wall. Construct 25ft. diversion wall and a 42' 6" long reinforcement retaining wall in front of existing gabion baskets, install rock slope protection within the Riparian Corridor of Marshall and remove 576 sq. ft. of unpermitted deck and 601 sq. ft. of unpermitted room additions at dwelling. "Recognizes" conversion of 1068 sq. ft. of lower floor to habitable space and conversion of habitable detached structure to storage space.

No information on Marshall Creek at completion or extent to which the live channel is modified or impacted in the future.

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No. 26-RDA

Applicant RDA, amendment to Soquel Creek Linear Park, Pathway Improvement Project. Permit is for additional tree removal in the designated Riparian Woodland and permit extension.

No. 27-PR 064-191-17, RV Park, Highway 9 Felton.

Permit to "recognize" an existing 260 ft. long retaining wall up to 34" high and remove approx.. 94 ft. of the as-built wall.

"Conditions" state authorization for construction of a 3 ft. max height wall topped by a split rail fence. No information about distance to channel of San Lorenzo River. May be a tributary channel through the RV park. Claim of need to additional space for larger RVs. Pretext of long standing use.

No. 28-PR (unclear in association to related development) 099-111-12, Soquel San Jose Rd.

Proposal on 5.4 acre parcel to construct new single-family dwelling and driveway over an existing drainage swale with oak woodland and willow thicket. Drainage passes through several downstream culverts to confluence with West Fork Soquel Creek. Permit if for culvert. No discussion of distance of proposed structures to the watercourse.

No. 29-B9 104-211-19,

Demolish existing single-family dwelling, two sheds, fence, & well. Build replacement house with New driveway, 3 parking spaces. Inside Urban Services Line. Lot partially in flood-plane of Soquel Creek. According to Riparian Ordinance 50 ft. buffer from top of arroyo. There is 5-10 ft. strip of developable land between buffer and road right of way.

Approved. **NOTE: No reference is made to relative square footage of the original and the replacement house in the exception document.**

No. 30-PW Scott Creek, Swanton Rd. Bridge, CALTRANS bridge repair. No. 31 and 32 (are duplicates)-continuing case 028-281-15, 171 Moran Way (went to Board of Supervisors hearing)

Entire parcel in 100 ft. setback from Moran Lake. 135 sq. ft. additional in footprint of replacement house (original 1961 structure). States 350 sq. ft. less lot coverage due to proposed removal of existing viewing platform and walkway. Original building one story, replacement building 2 story with "non-habitable" basement (less than 7' ceiling height). Building rotated for preservation of neighboring views. Approved.

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No. 33 and 34 are duplicates.

Several parcels, Hover Rd. Replacement of private road bridge over Hester Creek, tributary to Soquel Creek.

No. 35-PR (second bridge)

070-151-21, 123 Cathedral Drive, Scotts Valley, Lockhart Gulch Creek private road bridge replacement. Pacific Southwest Evangelical Covenant Church. A full replacement bridge was constructed in 2008. Now applicant

requests permit for a new (second) replacement bridge at site of original bridge on new alignment.

No. 36

Mission Springs Christian Camps and Conference Center (Pacific Southwest Evangelical Covenant Church failure to provide documents, notarizations on above permit No. 35.

No. 37--(38 is duplicate) B9 051-701-13, Kelly Lake

Proposal to "recognize" a sheet pile wall extension of 44 ft. to an existing wall of 115 ft. approved under a previous application. Parcel of 1.14 acre-majority of which is underwater. Site of dry land extending 50 ft. from water edge along 200 ft. of shoreline. Entire parcel within the 100 ft. Riparian protection area. "The slope behind the newly constructed (approved according to document) garage required stabilization. Given the existing site conditions and limited space between the garage and lakeshore, the additional section of sheet pile is an acceptable method of stabilizing the slope, and is in keeping with the intent of the previously approved application (06-0269).

No. 39 (No. 40 is duplicate) illegal water diversion 062-122-02, Majors Creek

Recognizing construction of illegal cistern placed below road edge near public road culvert outfall. Cistern said to now support road edge. Required rock in cistern and breach of cistern. plant re-vegetation, resolve Red Tag.

No. 41AG 109-241-11 and 29, 750 Casserly Rd. Watsonville

Deals with an illegally cut drainage channel on a green house property and require re-vegetation of repaired modified channel.

No. 42 (private land water impoundment)

074-181-01, 19490, Quail Hollow Rd. and East Zayante Rd. 110 Quail Hollow Rd. Felton Grading 2,760 cu. yds.

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Project consists of re-building an in-stream dammed impoundment within

Quail Hollow Brook downstream of the Quail Hollow County Park pond. Major excavation, deposition of fill and impacts to channel. Pond is used by landowner to irrigate a row of redwood trees planted along Quail Hollow Rd.

No. 43 (classification unclear)

049-101-33, Larkin Valley Rd.

Original red tagged land clearing associated with planned development of site. Riparian Exception issued under this permit to create a culverted crossing over an ephemeral stream for a driveway to the planned house site.

No. 44-PR 068-061-14, 2830 Glen Canyon Rd. Carbonera Creek

Drive way culvert 30ft. and fill 20ft. replacing ephemeral stream for access to new building site. Apparent burial of watercourse in relationship to driveway.

No. 45 103-171-79, Riverdale and Soquel San Jose Rd.

Time extension document related to Riparian Exception- Apparently associated with a new house construction (09-0281) No information about actual Exception permit.

No. 46- B10 103-171-31 and 32, Soquel San Jose Rd.

Lot line adjustment to create a "development envelope and a building envelope at the proposed building site. Variance to reduce the front yard setback (40 ft. to 5 ft. Riparian Exception to allow development into 25 ft. of the 40 ft. Riparian buffer. (Leaving buffer of 15 ft.)

Between 1973 and '76 owner applied to two variances to build single-family residence on (-31) and to temporarily reside in a mobile home during construction. Both variance applications and temporary permit applications were denied.

In 2001 a red-tag issued for unpermitted conversion of a non-habitable accessory structure into a second unit

In 2000 application for second unit applied for then withdrawn. Permit issued to reduce retaining wall height and remove "habitable features" (probably

toilet or stove). Electrical permit issued to correct electric problems.

Parcel (-32) currently vacant, has apparent site problems (slope, ephemeral stream, dirt road down center etc.

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Proposed equal exchange between (-31 and (-32) to create building site. for future single-family residence.

Development of (-32) requires a Variance for reduced front yard setback and riparian exception. Proposed envelope would allow SFR (single family residence) with garage and carport.

Redwood riparian setting where required setback is 30 ft. from the edge of the riparian woodland to beyond the edge of the dripline. In addition a 10 ft. setback from the edge of the buffer is required for all structures. Redwoods will be removed. At closest point the development envelope encroaches to within 15 ft. of bank full flow-line.

*"Findings for a riparian exception can be made because no alternative building area exists on the property that is geologically suitable and as a condition of approval, no disturbance shall occur outside of the development envelope." Substantial geo analysis in permit must indicate landslide risk assessment reasoning.

No. 47-B11 086-082-22, south side of Big Basin Way 236, 19515 Big Basin Highway

Proposed building site is entirely within the Hy 236 set-back between highway and a perennial creek with leach field on opposite side of creek from dwelling with sewer pipe crossing the stream.

Variance, Residential Development Permit, Riparian Exception Geo. Review. Variance to reduce the 40 ft. front yard setback to 2 ft.. Increase front yard wall height from 3 to 6 ft.

Residence proposed to be 2 ft. from the northern property line and Highway 236 right of way. Proposes to suspend sewer line to leach field over the creek to a leach field on the opposite side from house. Steep slopes, narrow

developable area. Proposes retaining walls 5 ft. within the front set-back apparently to support the building site that is below the grade of the public highway.

No. 48-duplicate of 5 041-181-39, Valencia Creek

Variance and Riparian Exception. Variance to reduce the 40 ft. front yard setback to 8 ft. and to reduce the 20 ft. southeast side setback to 12 ft. Steeply sloped to stream and no conforming building site. Zoning setbacks merge with Riparian set-back.

Riparian Setback of 50+10 is reduced to 17 ft. to edge of decking. No. 49-RDA County Public Works and RDA _Schwan Lake suspended walkway. No. 50-RDA

Live Oak RDA, Cunnison Lane and Soquel Dr. Tee Street apparent duplicate or addition to earlier permit in this record.

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No. 51-PW

Public Works, Graham Hill Widening Project. Extensive biological damage but reviewed in other venues prior to this report preparation. Well known project.

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