

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. 2008-_____

AN INTERIM ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN TEMPORARILY PROHIBITING THE ISSUANCE OF BUILDING PERMITS ON CERTAIN PARCELS CONTAINING STREAM CONSERVATION AREAS WITHIN THE SAN GERONIMO WATERSHED AREA

SECTION 1. FINDINGS

WHEREAS, the Board of Supervisors does hereby find and declare the following:

- I. The National Marine Fisheries Service has identified six Central California Coastal Counties, including Marin, as supporting Coho salmon and steelhead trout populations. Under the Federal Endangered Species Act, Coho salmon were listed as endangered in 2005, and steelhead trout were listed as threatened in 1997.
- II. There has been a forty-nine percent (49%) reduction in salmonid habitat in the greater Lagunitas watershed due to urbanization and dam construction, thus highlighting the importance of enhancing habitat in the San Geronimo Creek watershed as it is an undammed tributary to Lagunitas Creek.
- III. The numbers of spawning salmon observed during 2007-08 surveys were at their lowest levels in twelve years of measurement. Based on data collected over the past twelve years, Coho populations in the Lagunitas watershed, which includes the important area of the San Geronimo Watershed, are at 10% of their historic levels.
- IV. The California Department of Fish and Game released "*A Recovery Strategy for California Coho Salmon*" in February 2004, and in June 2007 the National Marine Fisheries Services released a draft recovery plan for Coho salmon and steelhead entitled, "*A Framework for Assessing the Viability of Threatened and Endangered Salmon and Steelhead in the North-Central California Coast Recovery Domain.*" Further, a joint study was undertaken by these central California counties and a report issued, entitled "*Effects of County Land Use Policies and Management Practices on Anadromous Salmonids and Their Habitats*" dated January, 2001.

- V. The State and Federal recovery plans highlight the importance of protecting the best remaining habitat and improving degraded habitat to recover Coho salmon, and activities associated with urbanization including stream channelization, modification of hydrologic regime, and degradation of water quality have severely impacted streams, particularly in the greater San Francisco Bay area.
- VI. On March 20, 2001, the Marin County Board of Supervisors endorsed action items that emerged from the FishNet 4C study including identifying and mapping anadromous fish streams and tributaries throughout the county. After the mapping of the anadromous fish streams and tributaries was completed, County staff determined that there were numerous vacant parcels of property immediately adjoining these streams that were conventionally zoned. This, in turn, means that owners of these parcels could seek to develop these parcels with single-family homes and/or other structures, improvements, and/or landscaping without discretionary review by County permitting agencies.
- VII. Development along these streams may lead to increased impervious areas, decreased infiltration of stormwater, and decreased groundwater levels, having a detrimental effect on the fish population. Similarly, unconstrained removal of riparian vegetation can lead to: a) the loss of important filters for trapping sediment, nutrients and some heavy metals, b) increased stream temperatures and c) loss of woody debris for in-stream habitat. Development next to a creek can result in oil, grease, soap, pesticides, fertilizers and other household hazardous waste entering the stream causing a degradation of the habitat for the Coho and steelhead populations.
- VIII. These creeks are dynamic and can change location and shift or move over time, sometimes quickly. Therefore, when the creeks inevitably move, the structures and other improvements may be imperiled, leading to requests by property owners to armor the creek bank, and further removal of important riparian vegetation.
- IX. It is urgent and necessary to perform the needed and planned studies to develop appropriate parameters of any future development before such development is allowed to occur so that appropriate protection of the habitat and environment based upon the particular stream geomorphology applicable to the area can determine where the development may occur with the least impact upon the fish populations.
- X. The adoption of an interim ordinance prohibiting, with certain limited exceptions, the issuance of building permits in Stream Conservation Areas in the San Geronimo Creek watershed for a limited term as permitted under law, up to a maximum of two years, while the County carries out the studies to develop a plan designed to support the restoration of natural, biological, and hydrological functions in the watershed, is necessary to protect the public health, safety and

welfare by ensuring that none of these properties are developed in a way that may imperil the fish habitat.

- XI. In view of the precipitous drop in the level of spawning populations as evidenced by the most recent surveys, it is imperative to take this action in an urgency manner in order to protect the public health, safety and welfare by protecting the remaining important habitat of the endangered populations as described above, which populations are also important to the wellbeing of the human populations in the area.
- XII. Further, municipal, residential, commercial and industrial development has the potential to degrade habitat and injure or kill salmon or steelhead in a variety of ways.
- XIII. In order to further protect the health, safety and welfare of the community, it is critical to protect appropriate riparian buffer zones and the threatened species and their habitat, all of which considerations make it imperative to impose a moratorium on development in these critical areas pending the results and recommendations of the study described above.
- XIV. There is a current and immediate threat to the public health, safety, or welfare which requires adoption of this ordinance, because the approval of building permits in this area, in contradiction of this ordinance, would result in a threat to the public health, safety, or welfare.

SECTION 2. AREA SUBJECT TO INTERIM ORDINANCE

All portions of parcels which are within Stream Conservation Areas within the San Geronimo Watershed as depicted on the map which is attached hereto and made part hereof are subject to this interim ordinance. Stream Conservation Area means those areas defined as Stream Conservation Areas by the 2007 Countywide Plan. Where there is uncertainty regarding the extent of a Stream Conservation Area in connection with an application, the applicability of this interim ordinance will be determined by the County on the basis of site-specific information and other relevant information the County may receive.

SECTION 3. DEVELOPMENT RESTRICTIONS

No Building Permit shall be issued for any new development within the area defined in Section 2 of this interim ordinance if such permit would authorize any increase in the construction footprint within a Stream Conservation Area or constitute more than 500 square feet of new development within a Stream Conservation Area except for replacement or repair work directly related to a disaster or emergency declared by the Board of Supervisors.

This restriction shall apply to any application submitted to the County after January 1, 2008 and to the following pending applications with these Assessor Parcel Numbers ("APN"): APN 172-350-35, APN 172-372-23, APN 172-151-39 and APN 169-191-09, because the applications for development on these properties may have substantial potential for causing impacts within the Stream Conservations Areas.

SECTION 4. ADOPTION OF INTERIM ORDINANCE

NOW, THEREFORE, the Board of Supervisors does hereby ordain the following:

- I. Adoption. The Board of Supervisors hereby adopts this ordinance as an interim urgency measure for the Area based on the findings in Section 1 and subject to the provisions of Sections 2 through 3 of this ordinance.
- II. Effective Date and Publication. This ordinance is declared to be an urgency measure and shall be in full force and effect immediately upon its adoption. New development in the San Geronimo Watershed which would increase the construction footprint within a Stream Conservation Area or add more than 500 square feet of new development within a Stream Conservation Area, contrary to the provisions of this ordinance, is deemed to be a current and immediate threat to the public health, safety, and welfare for the reasons set forth in Section 1 of this ordinance. The immediate effective date of this ordinance is, therefore, necessary to protect the public health, safety, and welfare. This ordinance shall be published once with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.
- III. Expiration Date. This ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the Board of Supervisors in accordance with the provisions of California Government Code § 65858.
- IV. Validity. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 5. VOTE

PASSED AND ADOPTED by at least a four-fifths vote at a regular meeting of the Board of Supervisors of the County of Marin, held on the 12th day of February, 2008, by the following vote:

AYES:

NOES:

ABSENT:

Charles McGlashan, President
Marin County Board of Supervisors

ATTEST

Clerk of the Board of Supervisors