

Re: Great seeing you!

Shani Kleinhaus [REDACTED]

Thu 2/1/2024 1:50 PM

To: idennis@goodcityco.com <idennis@goodcityco.com>; Cha, Kelly <Kelly.Cha@CityofPaloAlto.org>; Dashiell Leeds [REDACTED]

📎 1 attachments (112 KB)

SCVAS SC re Palo Alto Riparian Corridor.docx;

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Hello Jeremy and Kelly,

I am so excited to learn that Palo Alto is moving quickly on the Creek Setback ordinance! and it's so cool to cross paths with you again!

Please see attached a letter that we started a few months ago as an advocacy letter, and was updated and morphed over time.

At the end, it includes resources that you may find helpful.

Best,  
Shani

Shani Kleinhaus, Ph.D.  
Environmental Advocate  
Santa Clara Valley Audubon Society



On Wed, Jan 31, 2024 at 2:50 PM <[jdennis@goodcityco.com](mailto:jdennis@goodcityco.com)> wrote:

Shani – it was wonderful seeing you on Monday night at the retreat. I'm excited to be engaging with you on the stream corridor protection ordinance update. I've cc'd my colleague at Good City Company, Nicholas Hamilton, and Kelly Cha, my contact with the City's Planning Department.

**DATE:** February 1st, 2024

**SUBJECT: Implementing Comprehensive Plan Policies and Programs Protections for Creeks and Riparian Corridors**

**Prepared by:** Santa Clara Valley Audubon Society and the Sierra Club Loma Prieta Chapter

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**GOALS:**

Riparian corridors are valued environmental resources whose integrity provides vital habitat and connectivity for fish, birds, plants and other wildlife. Disturbances caused by the siting of buildings and other structures, lighting, impervious surfaces, outdoor activity areas, ornamental landscaped areas, and native vegetation removal near the top of a creek bank degrade water quality and cause bank instability, erosion, downstream sedimentation, and flooding. These effects, in addition to being destructive to wildlife habitat and being visually displeasing, can lead to costly building repairs and destruction of property, loss of property value, and danger to human life.

The Palo Alto's Comprehensive Plan 2030 recognizes the critical importance of creeks and their corridors, and includes **GOAL N-3: *Conservation of both natural and channelized creeks and riparian areas as open space amenities, natural habitat areas and elements of community design.*** This goal is developed into several policies and programs that focus on the need to update Palo Alto's existing Stream Corridor Protection Ordinance and implement additional protections for the City's waterways and riparian corridors.

**BACKGROUND AND DISCUSSION:**

Palo Alto's existing Stream Corridor Protection Ordinance (18.40.140) is outdated, and it does not provide adequate protection to the city's waterways and their riparian corridors. The shortcomings of the current ordinance and the discrepancy between the ordinance and the Palo Alto Comprehensive Plan were evident in the process that eventually entitled a development at 575 Los Trancos Road on November 13, 2023. On January 23 2023, Council sent the project for reconfiguration with wider setbacks and additional protections to Los Trancos Creek and its flora and fauna. At this meeting, the motion (Burt moved, Kou seconded, Motion passed: 4-2, Tanaka, Lythcott-Haims No, Lauing Recused) "Request that staff return to Council with a plan and timeline amend the Zoning code Comprehensive Plan Policy N.3.3. and Program N3.3.1."

The existing Stream Corridor Protection Ordinance also failed to provide direction for redevelopment efforts such as the Fry's site and Creekside Inn.

Palo Alto's Comprehensive Plan 2030 recognizes the critical importance of creeks and their corridors, and includes **GOAL N-3 Conservation of both natural and channelized creeks and riparian areas as open space amenities, natural habitat areas and elements of community design**. This Goal recognizes in Policy N-3.1: *All creeks are valuable resources for natural habitats, connectivity, community design, and flood control, and need different conservation and enhancement strategies. Recognize the different characteristics along creeks in Palo Alto, including natural creek segments in the city's open space and rural areas, primarily west of Foothill Expressway; creek segments in developed areas that retain some natural characteristics; and creek segments that have been channelized.* And offers "*Pursue opportunities to enhance riparian setbacks along urban and rural creeks as properties are improved or redeveloped*". Policy N-3.2 augments the above with the aspiration to *Prevent the further channelization and degradation of Palo Alto's creeks.*

The Comprehensive Plan GOAL N-3 into policies and programs. Creek setbacks are specifically discussed within **Policy N-3.3 *Protect the city's creeks from the impacts of future buildings, structures, impervious surfaces and ornamental landscaping and preserve their function as habitat connectivity corridors by establishing a range of setback requirements that account for existing creek conditions, land use characteristics, property ownership and flood control potential.***

Policy N-3.3 provides programs:

**Program N3.3.1** Update the Stream Corridor Protection Ordinance to explore 150 feet as the desired stream setback along natural creeks in open space and rural areas west of Foothill Expressway. This 150-foot setback would prohibit the siting of buildings and other structures, impervious surfaces, outdoor activity areas and ornamental landscaped areas within 150 feet of the top of a creek bank. Allow passive or intermittent outdoor activities and pedestrian, equestrian and bicycle pathways along natural creeks where there are adequate setbacks to protect the natural riparian environment. Within the setback area, provide a border of native riparian vegetation at least 30 feet along the creek bank. The update to the Stream Protection Ordinance should establish:

- Design recommendations for development or redevelopment of sites within the setback, consistent with basic creek habitat objectives and significant net improvements in the condition of the creek.
- Conditions under which single-family property and existing development are exempt from the 150-foot setback.
- Appropriate setbacks and creek conservation measures for undeveloped parcels.

**Program N3.3.2** Examine the development regulations of the Stream Corridor Protection Ordinance, with stakeholder involvement to establish appropriate setback requirements that reflect the varying natural and channelized conditions along creeks east of Foothill Expressway. Ensure that opportunities to provide an enhanced riparian setback along urban creeks as properties are redeveloped or improved are included in this evaluation.

The Comprehensive Plan includes additional policies and programs that recognize the importance of creeks and riparian corridors, and direct the development of ordinances, stewardship programs and monitoring programs, and discuss the scope of collaborative work with other agencies (Appendix 1. Additional Comprehensive Plan policies and programs). An update on the way the city implements policies, and the status of programs, is needed.

An updated, comprehensive and robust Creek Protection ordinance will also contribute to the City’s ongoing “Climate Change & Natural Environment: Protection and Adaptation” priority. Protection of both natural and channelized creeks and riparian areas as open space amenities, natural habitat areas, and elements of community design will protect the natural environment for Palo Alto residents. Protecting and stewarding water quality in creeks will likewise advance environmental protections and help comply with state clean water requirements.

The staff report for the 2024 Council Retreat and priority session (January 29, 2024) shows that staff expects to complete, by the end of 2024, a zoning code amendment that should implement Programs N3.3.1. and N3.3.2.

<b>CC&amp;NE 4. Initiate zoning changes consistent with the Comprehensive Plan regarding creek corridor setbacks</b>			
Lead Dept.	PDS	Clare Campbell	
Status:	Completed	Estimated Completion:	Q2
Project Description: Council directed staff to prepare an amendment to Title 18 to implement Comprehensive Plan Programs N3.3.1 and N3.3.2. These programs would explore a 150’ setback along natural creeks in open space and rural areas west of Foothill Expressway with some exceptions and provide a border of native riparian vegetation at least 30’ along the creek bank. This project will also include stakeholder involvement to establish appropriate setback requirements that reflect the varying natural and channelized conditions along creeks east of Foothill Expressway.			
Update: Staff has engaged a consultant to begin work in January with an anticipated completion before the end of FY 2024.			

## RECOMMENDATIONS

- 1) Consider allowed recreational uses within the proposed setback. Some activities that are inappropriate adjacent to creeks, especially relatively natural creeks. Ball fields that require lighting and dog parks are examples of inappropriate recreation within a creek setback.

- 2) Lighting along streams and baylands can be considered in this ordinance, but it may be more appropriate to address it in detail in a Dark Sky and Bird Safety ordinance.
- 3) In addition to the zoning changes described above, include in future staff reports a progress report, best practices employed by staff, and analysis on the status of Policy N3.4 Program N3.4.1, Policy N-3.5 and Program N3.6.1:

**Policy N-3.4** Recognize that riparian corridors are valued environmental resources whose integrity provides vital habitat for fish, birds, plants and other wildlife, and carefully monitor and preserve these corridors. **(Is the City monitoring and preserving the corridors?)**

**Program N3.4.1** Develop a community creek stewardship program to promote existing creek clean-up days, organize new events, and increase appreciation of riparian corridors.

**Policy N-3.5** Preserve the ecological value of creek corridors by preserving native plants and replacing invasive, non-native plants with native plants. **Palo Alto relies on nonprofit partners/volunteers to do this work. This has limitations.**

**Policy N-3.6** Discourages bank instability, erosion, downstream sedimentation, and flooding by minimizing site disturbance and nearby native vegetation removal on or near creeks and by reviewing grading and drainage plans for development near creeks and elsewhere in their watersheds.

**Program N3.6.1** Review and update the Grading Ordinance to ensure that it adequately protects creeks from the erosion and sedimentation impacts of grading

#### **Resources:**

1. Existing ordinance  
[https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto\\_ca/0-0-0-80331](https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-80331)
2. Palo Alto Comprehensive Plan  
<https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Housing-Policies-Projects/2030-Comprehensive-Plan>
3. Santa Clara County General Plan (Book 2) recommends a setback of 150-feet in rural areas.  
[https://stgenpln.blob.core.windows.net/document/GP\\_Book\\_B.pdf](https://stgenpln.blob.core.windows.net/document/GP_Book_B.pdf) Page o-24 (PDF page 96/272) - many policies, including:

**R-RC 37** Lands near creeks, streams, and freshwater marshes shall be considered to be in a protected buffer area, consisting of the following:

1. 150 feet from the top bank on both sides where the creek or stream is predominantly in its natural state;
2. 100 feet from the top bank on both sides of the waterway where the creek or stream has had major alterations; and
3. In the case that neither (1) nor (2) are applicable, an area sufficient to protect the stream environment from adverse impacts of adjacent development, including impacts upon habitat, from sedimentation, biochemical, thermal and aesthetic impacts.

**R-RC 38** Within the aforementioned buffer areas, the following restrictions and requirements shall apply to public projects, residential subdivisions, and other private non-residential development:

- a. No building, structure or parking lots are allowed, exceptions being those minor structures required as part of flood control projects.
  - b. No despoiling or polluting actions shall be allowed, including grubbing, clearing, unrestricted grazing, tree cutting, grading, or debris or organic waste disposal, except for actions such as those necessary for fire suppression, maintenance of flood control channels, or removal of dead or diseased vegetation, so long as it will not adversely impact habitat value.
  - c. Endangered plant and animal species shall be protected within the area.
4. Valley Water Collaborative guidance for development near streams was a result of too many compromises. <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-district-land-or-easement/guidelines-and-standards-land-use-near-streams>
  5. 575 Los Trancos Action minutes: Jan 23,2023, Palo Alto City Council <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=1061>
  6. Has the Grading Ordinance been updated? The Water Board recommends a minimum setback of 33-ft for sedimentation. [https://www.waterboards.ca.gov/sanfranciscobay/publications\\_forms/documents/bufferreport1204.pdf](https://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/bufferreport1204.pdf)  
“Estimates of effective buffer distances for sediment and nutrient filtration vary, but most of the scientific studies suggest distances between 50 and 100 feet for this purpose (Jones & Stokes 2002). Although any buffer distance from the top of bank is helpful for maintaining channel stability, a minimum 33-foot riparian buffer is required for contributing to a significant reduction in sediment levels (Corely et. al. 1999, Peterson et. al. 1992, as cited in Jones and Stokes 2002).” -- “Local Government Riparian Buffers in the San Francisco Bay Area”, San Francisco Bay Regional Water Quality Control Board, page 17,

7. San Jose riparian policy study (old document but not outdated - but the science of creek corridors is still sound and relevant)  
<https://www.sanjoseca.gov/home/showpublisheddocument/15579/636681333297900000>
8. San Jose degraded policy, nor a good model...  
<https://www.sanjoseca.gov/home/showpublisheddocument/12815/636669915138100000>

**From:** Jane Mark <[jmark@openspace.org](mailto:jmark@openspace.org)>  
**Sent:** Monday, February 26, 2024 2:53 PM  
**To:** [jdennis@goodcityco.com](mailto:jdennis@goodcityco.com)  
**Cc:** Melissa Borgesi <[mborgesi@openspace.org](mailto:mborgesi@openspace.org)>; Gretchen Laustsen <[glaustsen@openspace.org](mailto:glaustsen@openspace.org)>  
**Subject:** FW: March 5 2024 - Stream/Creek Corridor Protection Ordinance Virtual Meeting

Jeremy,

Hope your 2024 year is going well. We have been receiving your email notifications for the City of Palo Alto's Stream Corridor Protection Ordinance. Our Midpen Planner Melissa Borgesi will attend the March 4<sup>th</sup> virtual meeting.

We have reviewed the draft ordinance with our Natural Resources Department, and staff recommend that the ordinance include a definition of "native" species or further defined as native to the region. In addition, under Section 18.40.140 Stream Corridor Protection we have these comments (see yellow highlighted comments from Midpen):

**18.40.140 Stream Corridor Protection**

**(b) Water Resources Protection for Streamside Properties**

(3) Requirements within streamside review area

- (b) New fences shall be constructed a minimum of five feet landward from the top of bank.

**Midpen Comment:** New fences should be designed as to not stop the movement of wildlife (aka wildlife-friendly fencing should be provided).

- (d) Planting of non-native invasive plant species is not permitted. Prohibited plant material is listed in the Santa Clara Valley Water Resources Protection Collaborative's User Manual *Guidelines and Standards for Land Uses Near Streams*.

**Midpen Comment:** Recommend removing the word "invasive" in section (d).

- (g) Nighttime lighting shall be directed away from the riparian corridor of a stream.

**Midpen Comment:** We also recommend that there would be additional language to restrict lighting within riparian corridors to protect the aquatic species and other sensitive species, such as the prohibition for uplighting.

Please let us know if we should submit these comments on official letterhead, or if this email suffices. Thank you.

Best regards,  
Jane



**From:** Cha, Kelly  
**Sent:** Monday, March 11, 2024 8:20 AM  
**To:** 'John Guislin' <[REDACTED]>  
**Subject:** RE: Creek ordinance zoom meeting

Hi John,

Thank you for your comments. The goal of the Stream Corridor Protection Ordinance Update project is to implement the existing Comprehensive Plan policy and programs on creek corridor protection, which will result in updating the existing [Stream Corridor Protection Ordinance](#).

Thanks,

**KELLY CHA**  
Senior Planner  
Planning and Development Department  
(650) 329-2155 | [kelly.cha@cityofpaloalto.org](mailto:kelly.cha@cityofpaloalto.org)  
<https://www.cityofpaloalto.org/>

**From:** John Guislin <[REDACTED]>  
**Sent:** Friday, March 8, 2024 9:23 AM  
**To:** Cha, Kelly <[Kelly.Cha@CityofPaloAlto.org](mailto:Kelly.Cha@CityofPaloAlto.org)>  
**Subject:** Re: Creek ordinance zoom meeting

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Kelly,

Thanks for your fast response.

Can you tell me if the objective is to update the Comprehensive Plan or to write a new ordinance for the Municipal Code?

My feeling is that it should be a higher priority for the city to mitigate the flooding risk on San Francisquito Creek and to restore our channelized creeks to a natural environment that can support wildlife. Changing the creek setback in a highly developed urban area with few new projects will achieve much less to protect wildlife and residents.

Thanks,  
John

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On Fri, Mar 8, 2024 at 9:17 AM Cha, Kelly <[Kelly.Cha@cityofpaloalto.org](mailto:Kelly.Cha@cityofpaloalto.org)> wrote:  
Hi John,

Thanks for attending the virtual community info session this past Tuesday. The Planning and Development Services Department was directed by City Council to initiate this project to implement the Comprehensive Plan policy and programs on creek corridor protection. It was one of [City Council Priorities](#) that were adopted in February 2023. If you have any other questions, please feel free to contact us.

Thanks,

KELLY CHA  
Senior Planner  
Planning and Development Department  
(650) 329-2155 | [kelly.cha@cityofpaloalto.org](mailto:kelly.cha@cityofpaloalto.org)  
<https://www.cityofpaloalto.org/>

From: [jdennis@goodcityco.com](mailto:jdennis@goodcityco.com) <[jdennis@goodcityco.com](mailto:jdennis@goodcityco.com)>  
Sent: Thursday, March 7, 2024 2:35 PM  
To: 'John Guislin' <[REDACTED]>; [nhamilton@goodcityco.com](mailto:nhamilton@goodcityco.com)  
Subject: RE: Creek ordinance zoom meeting

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John – thanks for the email.

This project is managed by the Community Development Department. My staff contact is Kelly Cha, who is a planner with the Department.

The project itself, as a Comprehensive Plan policy with programs, is a strategic project of the City Council.

Jeremy

From: John Guislin <[REDACTED]>  
Sent: Thursday, March 7, 2024 12:51 PM  
To: [jdennis@goodcityco.com](mailto:jdennis@goodcityco.com); [nhamilton@goodcityco.com](mailto:nhamilton@goodcityco.com)  
Subject: Creek ordinance zoom meeting

On the zoom meeting earlier this week it was not clear to me who from city staff is driving this effort. Can you please advise which city department and who within that department has put this project on the city's agenda?

Thanks,  
John Guislin