

## Part III – Special District Regulations

### Chapter 19.12: Creek Protection Overlay District (–CP)

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#### **19.12.010 Purpose**

The City Council finds that public health and safety require creek and watershed management and planning in order to control flood and erosion damages and to preserve natural watercourses as an important public asset that provides environmental, recreational and aesthetic value within the city. A dependence on structural solutions such as creek channelization, culverting and channel riprapping has often been found to result in the loss of property from unanticipated problems associated with their design and can result in serious bank erosion and flooding. Streams managed as close to a natural system as possible without interference from structures, maintain a geomorphic equilibrium or watercourse best suited for carrying stream flows, and carrying and depositing suspended sediment loads. Natural streams have significant benefits in that they filter pollutants and provide wildlife habitat and wildlife corridors. Accordingly, the purposes of the –CP Creek Protection overlay district is to delineate creeks and major drainages and ensure that development or other activities in these sensitive areas achieves the following goals:

- A. Preserves, enhances and restores natural drainage ways as parts of the storm drainage system, minimizing any alterations or structures within the natural stream channel and streambed.
- B. Preserves riparian vegetation and protects wildlife habitat and wildlife corridors along natural drainage ways.
- C. Protect lands adjacent to riparian areas as public or private permanent open space through dedication or easements.
- D. Protects property owners and the public from erosion and flooding.

- E. Increases access to creeks for maintenance purposes and for potential public access to creek-side amenities.
- F. Ensures that projects are consistent with City Council adopted guidelines and resolutions for creek restoration and improvement, including designated creeks as natural corridors with habitat enhancement.
- G. Furthers the Joint Watershed Goals Statement of restoring creeks by removing culverts, underground pipes, and obstructions to fish and animal migration, and daylighting creeks where they can be enjoyed by people and wildlife.

### **19.12.020      Applicability and Maps**

The provisions of this Chapter shall apply to all areas determined to be a creek as in the CP Creek Protections overlay district designation or as defined by Section 19.12.030.

Culverted creeks identified by City Council as having potential for future daylighting will also be subject to the requirements of the overlay district. The City of El Cerrito may maintain maps and other reliable records, reflecting such creeks for the guidance of the public and City staff. These maps and records are tools to determine the vicinity of the buffers referred to within this Section.

### **19.12.030      Creek Determinations**

In the event that a determination is required as to whether a creek exists on a property and the location of such creek, the City Engineer, in consultation with the Zoning Administrator, shall make such a determination, based on all application materials submitted and subject to the following provisions:

- A. **Determination Criteria.** A creek is defined as a watercourse that carries water, whether identified or unidentified, from either a permanent or natural source, either intermittently or continuously; and which runs in a defined natural or engineered channel or continuous swale or depression, which later merges with a larger watercourse. The definition includes a channel, swale, depression, or watercourse provided they are hydrologically connected to a waterway above and below the site or is connected to a spring, headwaters, lake, or the San Francisco Bay. The definition of creeks excludes any part of an engineered system which was developed by a public agency for collection of storm or flood waters, provided however that such part does not follow the original course of the creek. The word "creek" will be synonymous with "natural watercourse" as used in this chapter. Determinations of the existence of a creek and its location shall be based on any or all of the following criteria:
  - 1. There is a channel, including a bed, bank, and features that indicate actual or potential sediment movement.
  - 2. The creek occupies a topographic position where any one of the following conditions are present:

- a. Micro-topography such as a “U” or “V” shape channel typically located at the low point of a macro-topographic feature.
  - b. Macro-topography consists of bowl, “U”, or “V” shaped topography with high points draining to a valley or ravine as part of a large drainage network leading to large creeks, lakes, and/or the San Francisco Bay.
  - c. Flatland macro-topography may consist of shallow bowl or “U” shaped topography. Generally these creeks flow from the hills toward the San Francisco Bay following the slope of the land.
  - d. Creek topography can be indicated on a topography map by a “U” or “V” shape pointed in the uphill direction.
- B. Indicator Features.** Determinations of the existence of a creek may also be based on whether any or all of the following features are present (the absence of these features does not mean there is no creek):
1. A riparian corridor – a corridor of relatively denser vegetation roughly parallel to the creek channel, or soil conditions that would support native riparian vegetation. Riparian vegetation is sometimes missing due to landscaping or vegetation removal practices, landslide or fire.
  2. Bed with material that differs from the surrounding geologic material (i.e., more rocky, or gravelly, little or no vegetation, sorted by size).
  3. Man-made structures common to waterways, for example bank retaining walls, trash racks, culverts, inlets, riprap, road bends, etc.
  4. Tidal or backwater influence, and/or nutrient or resource exchange with the San Francisco Bay.
  5. Wetland conditions and/or vegetation.

#### **19.12.040 Streambed Alteration**

- A. General Prohibition of Fill or Obstruction of a Creek.** It shall be unlawful for any person, organization, institution, corporation or the City to fill, or cause to be filled, to obliterate or cause to be obliterated, to obstruct or cause to be obstructed, to construct a building bridging a creek or cause such building to be constructed, or in any manner to interfere with or cause to be interfered with, any creek in El Cerrito which carries off at any time of the year any storm water, or any surface waters, which have been precipitated by rains, subject to the provisions of this Chapter.
- B. Applicability.** This Section does not apply to structures or conditions existing in creeks, on or before the effective date of this Zoning Ordinance.

- C. **Exceptions.** Streambed alterations shall only be permitted, subject to City Council approval and the approval of any applicable permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, and the California State Water Resources Control Board, for creek restoration and public access projects. Emergency streambed alteration projects necessary to protect public health and safety from imminent flooding, erosion or landslide hazards may be permitted by the City Engineer and Community Development Director. Streambed alterations shall not be conducted unless all applicable permits have been obtained.

**19.12.050 Development Standards & Permitted Uses**

Table 19.12-A prescribes the development standards for the creek protection overlay district. The “Regulations” column indicates more detailed explanations or regulations in sections that follow the table (Section codes noted) or that are located elsewhere in this Zoning Ordinance.

“P” – Uses permitted as-of-right that require no discretionary review if in compliance with all standards.

“A” – Uses subject to an Administrative Use Permit following discretionary review by the Zoning Administrator.

“C” – Uses subject to a Conditional Use Permit following discretionary review and public hearing by the Planning Commission.

<b>TABLE 19.12-A: DEVELOPMENT STANDARDS &amp; USES—CREEK PROTECTION OVERLAY DISTRICTS</b>		
	<i>CP Overlay</i>	<i>Regulations</i>
<b>Creek Setbacks</b>		
Distance from top of creek bank or upland edge of riparian vegetation –clearly delineated or as determined by City Engineer	30 feet	19.12.060.1(1) & .1(2)
Distance from centerline of creek as determined by City Engineer	35 feet	19.12.060.1(3)
<b>Uses within Creek Setback</b>		
Passive recreational, educations and existing non-structural uses	P	19.12.060.A(1)
Utility Lines, pipelines, drainage and flood control facilities	P	19.12.060.A(2)
Public bridges and public road approaches to bridges to cross a creek	P	19.12.060.A(3)
Parking associated with permitted uses	C	19.12.070.B
Private bridges and private road approaches to bridges	C	19.12.070.B
Fences, walls, decks or benches	A, C	19.12.070.C
Dwellings, garages, accessory buildings	C	19.12.070.D
Commercial buildings	C	19.12.070.D
<b>Other Development Standards</b>		
Culverts, walls and other structures within creeks		19.12.070
Grading or alterations to riparian vegetation		19.12.080

### 19.12.060 Creek Setbacks and Limits on Uses and Structures

No new structures, additions to existing structures, and new impervious surfaces, including driveways and patios, shall be placed in the immediate vicinity of a) an open creek or b) a culverted creek designated at the passage of this ordinance or in the future by the City Council for future daylighting (as shown on the map of the –CP Creek Protection Overlay District), except as provided in this Section:

- A. **Creek Setbacks.** Except as provided above, all new structures, additions to existing structures, and new impervious surfaces, including driveways and patios, in the vicinity of a) an open creek or b) a culverted creek designated at the passage of this ordinance or in the future by the City Council for future daylighting (as shown on the map of the –CP Creek Protection Overlay District), shall be set back as follows:
  - 1. A minimum of 30 feet from the top of a creek bank or the upland edge of riparian vegetation, whichever is greater, provided the bank or edge of riparian vegetation can be clearly determined, or
  - 2. A minimum of 30 feet from the top of a creek bank or the upland edge of riparian vegetation as determined by the City Engineer if the bank or edge of riparian vegetation cannot be clearly determined, or
  - 3. A minimum of 35 feet from the centerline of the creek as determined by the City Engineer.
  
- B. **Allowed Uses Within Setback.** Permitted uses within the setback area are limited to the following:
  - 1. Passive recreational, educational, and existing non-structural uses, including private open space and public open space with pedestrian or bicycle paths, in accordance with best management practices.
  - 2. Utility lines, pipelines, drainage and flood control facilities.
  - 3. Public bridges and public road approaches to bridges to cross a creek.
  
- C. **Conditionally Permitted Uses Within Setback.** Parking associated with permitted uses on the property and private bridges and private road approaches to bridges to cross a creek may be permitted in the creek setback area, with the approval of a Conditional Use Permit, and so long as all of the following conditions are met:
  - 1. **Extreme Hardship.** The creek setback requirement results in an extreme hardship to the property owner such that alternative locations for parking are physically infeasible or more environmentally damaging.

2. **Pervious Surfaces.** An NPDES permit has been obtained for any parking areas located within the setback, and the project complies with any conditions of the NPDES permit.

D. **Minor Unroofed Structures Within Setback.** Minor unroofed structures such as fences, walls, decks, or benches may be allowed within the creek setback subject to approval by the City Engineer and the Zoning Administrator and provided that all of the following findings are met:

1. The structure does not add any new impervious surface except for vertical structural elements such as posts or columns.
2. There is no grading required, and no alterations to drainage that will intensify or channelize water drainage into the creek.
3. Construction of the structure will not remove or alter riparian vegetation.
4. Best management practices are used to prevent erosion during construction.
5. No structural elements are located closer than 15 feet from the top of the creek bank.

Exceptions may be granted with a conditional use permit.

E. **Roofed Structures Within Setback.** Structures having a roof supported by columns or walls, including dwellings, garages, other accessory buildings and commercial buildings, are not permitted within the creek setback. Exceptions may be granted with a Conditional Use Permit, provided that all of the following findings are met:

1. Alternative locations outside the setback area or within the existing building footprint have been studied and found to be physically infeasible or more environmentally damaging.
2. Adverse environmental effects are mitigated to the maximum extent feasible and all feasible measures for creek protection are incorporated, including measures to protect riparian vegetation and prevent erosion, pursuant to the requirements of a creek protection and riparian habitat plan in subsection (E)(5) of this Section.
3. The exception is necessary to allow a principal permitted use of the property, and without an exception the size of the project would be limited to less than half of the lot coverage allowed under the Zoning Ordinance and/or the use and development of the property similar to that enjoyed by other similarly zoned properties in the vicinity would not be possible.
4. No structure is closer than 15 feet from the top of the creek bank.

- F. **Required Submittals for Roofed Structures.** An application for an exception to creek setback requirements for roofed structures shall include all of the following:
1. A creek assessment report that delineates the location of the creek centerline, the top of the creek bank and the creek setback area, includes a description of the needs and purposes of the proposed project, and includes a site plan of the proposed development that shows all pervious and impervious areas and percentages. The report shall describe the existing site conditions, the extent of riparian vegetation including trees, and other existing conditions that allow assessment of the impacts of the construction on the creek. The report shall be prepared by a licensed surveyor, civil engineer, or other licensed professional registered by the State of California, and approved by the Zoning Administrator.
  2. Justification for seeking the adjustment, including why other alternative locations are infeasible, and how setback encroachment will be minimized to the greatest extent possible.
  3. Soil reports, surveys, hydrology studies, or civil engineering drawings, as required by the Zoning Administrator, to determine whether the proposed project will have an adverse impact on the creek and to propose revisions or conditions of approval that mitigate the impact to the maximum extent feasible.
  4. Any environmental review or reports required pursuant to the California Environmental Quality Act, including a description of any applicable exemptions.
  5. A creek protection and riparian habitat plan that meets all of the following requirements shall be prepared by a landscape architect, hydrologist, biologist, environmental review professional, or other professional approved by the Zoning Administrator:
    - a. Site development plan that minimizes impervious surfaces, vegetation loss and site disturbance to the maximum extent feasible;
    - b. The volume and velocity of storm water runoff to creeks or storm drains is not increased by the project. Storm water detention and treatment facilities are incorporated, such as: permeable products such as porous pavement, modular pavers and decks instead of asphalt or concrete; installation of vegetation and vegetated swales, bio-filtering, infiltrative landscaping, etc.; cistern or other detention/retention structure; infiltration trench; storm drain energy dissipaters; and runoff routed to landscaped areas.
    - c. Erosion control and slope stability measures are incorporated, such as native tree and vegetation planting; erosion control fabric such as jute netting; terracing or berms; and crib walls with slope stabilization native vegetation planting. Slope stabilization both along and within creek channels use bio-engineering techniques rather than concrete, metal, and grouted rock elements.

- d. Best management practices will be employed to assure that construction activity will not adversely impact creek bank, riparian corridor, water flow, or water quality. Such practices shall address issues including, but not limited to: protection of trees and riparian vegetation to be retained, including physical barriers; location of debris and construction materials away from the creek; erosion control devices around construction areas; dust control; litter control; and prohibition of use of hazardous materials.
  - e. The plan provides for vegetation indigenous to the site or plant community to be restored, enhanced and monitored in areas affected by construction activities. Plans shall describe all restoration and enhancement vegetation proposed for all surfaces to be exposed during development activities, including any graded areas. Temporary vegetation, sufficient to stabilize the soil, may be required on all disturbed areas as needed to prevent soil erosion. Plants which minimize fire hazards shall be utilized adjacent to buildings and structures and new plantings shall be given sufficient water, fertilizer and protection to ensure re-establishment. Protection of tree crowns and root zones shall be required for all trees planned for retention.
- G. **Exceptions to Required Submittals.** Exceptions to submittal requirements may be made by the Zoning Administrator for projects which will not result in disturbance to the land or where on-site conditions clearly demonstrate that the site is not occupied by a creek and/or riparian habitat vegetation. An applicant requesting a waiver of submittal requirements shall submit sufficient information to substantiate the waiver.
- H. **Conditions of Use Permit Approval for Roofed Structures Within Setback.** Approval of any roofed structure within the creek setback area is subject to the following requirements:
- 1. All measures specified in the creek and riparian habitat protection plan and any environmental mitigation measures shall become conditions of approval for the project. In addition, all such measures shall be carried out prior to final clearance of the building permit or concurrently with the installation of site improvements in the case of a subdivision map.
  - 2. All required permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, or other applicable agency shall be obtained prior to, or concurrently with the approval of any city permits.
  - 3. A construction management plan shall be submitted, reviewed, and approved with all building permit applications that demonstrates how creek and riparian habitat protection measures will be implemented throughout construction.
- I. **Existing Nonconforming Structures.** The provisions of Chapter 19.27: Nonconforming Uses and Structures shall apply except that additions or enlargements that extend a nonconforming yard are not permitted in the –CP overlay district.



**19.12.070 Culverts, Walls, and Other Structures Within Creeks**

- A. **Permit Required.** Culverting and riprapping shall be prohibited unless there is strong evidence that there is no other reasonable means to prevent the erosion of adjacent supports, foundations, or property. A permit from the City Engineer and Zoning Administrator shall be required to construct or cause to be constructed, any wall, culvert, drain, bulkhead or other structure in any natural watercourse or creek in the city, or to place riprap or any debris in the channel or on the banks.
  
- B. **Required Submittals.** The City Engineer and Zoning Administrator shall require the applicant to submit plans and specifications for such a wall, bulkhead, culvert, drain, structure or bank protection work that specifies the exact location and extent of the project. Any work that has been granted a permit shall be carried out under the supervision of the City Engineer, or his or her designated representative.
  
- C. **No Alternatives.** A permit to construct any wall, culvert, drain, bulkhead or other structure pursuant to this Section shall not be granted if an alternative is available to solve the problem, including:
  - 1. Excavating to restore a natural meander, stream geometry and channel roughness.
  - 2. Clearing debris.
  - 3. Flood proofing such as minor redesign of buildings, relocation of porches or other minor structures, sheds, garages, raising of such structures, or raising the grade of adjacent land.
  - 4. Removing structures where feasible.
  - 5. Stabilizing the bank using vegetation or a combination of revegetation construction (soil bio-engineering) that does not degrade the existing natural environment. This may include the use of vegetated and dirt filled bagions, vegetated wood cribwalls, live and dead brush matting, fascines, brush layering and cuttings, and other similar strategies based on employing plants as the long-term stabilizing materials.
  - 6. Vegetation management that can include selective clearing that retains a riparian canopy and root structure to preserve riparian habitat, control unwanted undergrowth and stabilize banks.
  - 7. Setback levee construction or flood wall construction on the flood plain.
  - 8. Changes in site design, including but not limited to removal of impervious surface area.
  
- D. **Coordination with Other Permit Requirements.** All required permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, or other applicable agency shall be

obtained, and all required environmental review pursuant to the California Environmental Quality Act shall be satisfied prior to, or concurrently with the approval of a permit by the City Engineer.

- E. **Appeals.** Decisions by the Zoning Administrator and/or the City Engineer may be appealed to the Planning Commission, subject to the provisions of Chapter 19.39: Appeals.

### **19.12.080 Grading or Alterations to Riparian Vegetation**

No grading, alteration of the natural contours of the land, cutting or alteration, or removal of creek bank vegetation, within the creek or creek setback area shall be permitted except in any of the following instances:

- A. **Approved Structures.** It is required for the construction of a structure approved under Sections 19.12.060 or 19.12.070 and the building permit for such structure has been issued.
- B. **Public Health and Safety Projects.** The City Engineer and Zoning Administrator determines such grading is for emergency purposes, or a maintenance or capital improvement project that is necessary to protect public health and safety and any required environmental review is completed. An administrative use permit will be required for cutting back and/or replacing existing vegetation for safety purposes.
- C. **Other Projects.** For other projects, such as creek restoration and enhancement, with the approval of a Conditional Use Permit and if the project meets all of the following requirements:
  - 1. Provides equal or better habitat and creek protection as compared to current conditions.
  - 2. Does not impair the functional capacity of the habitat.
  - 3. Does not cause significant creek bank erosion.
  - 4. Does not have a detrimental effect on water quality or quantity.
  - 5. Is in accordance with applicable permits required by the Department of Fish and Game and/or any other applicable local, State or Federal agency.