

ORDINANCE NO. 2007- 369

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA VALLEY ADDING CHAPTER 18.59 [CREEK SETBACKS] TO TITLE 18 [ZONING] OF THE PORTOLA VALLEY MUNICIPAL CODE**

**WHEREAS**, The Town of Portola Valley ("Town") General Plan, adopted in 1965, contained as the first community goal, the following statement:

To preserve and enhance the natural features of the Portola Valley Area because these qualities are unusual and valuable resources for the Portola Valley Area, the Peninsula and the entire San Francisco Bay Area.

**WHEREAS**, Over the last 42 years the Town has taken steps necessary to guarantee that the community will remain a low-density rural environment largely through limitations on development and the preservation of open space and natural features, including streams. The care and protection of the streams in the Town were addressed as an objective in Section 344, 2, of the General Plan adopted in 1965. That objective was subsequently revised and is now found in Section 2304, 4, of the General Plan and reads as follows:

To preserve and, where appropriate, enhance and restore streams and streamsides, unique resources in the area, in a manner that will assure maximum retention of their value as wildlife habitat and provide for their use and enjoyment by local residents.

**WHEREAS**, Subsequently, the following principle was added to the General Plan in 1977:

Designate the creek corridors as sensitive areas which provide important aquatic and terrestrial wildlife habitat. All new subdivisions and site development proposals should contain setback area sufficient to buffer wildlife inhabiting the creek corridor from the impacts of development.

**WHEREAS**, The Planning Commission identified the need to provide policies to protect creek corridors in accordance with General Plan objectives, and requested that the Town Council form a citizen's committee in 1999 to study the creeks in the Town. The Council then appointed the Creekside Corridor Committee which held a number of meetings and submitted a report to the Town Council in 2000.

**WHEREAS**, In response to interests expressed by creekside property owners, the Town participated in a study of the main creek in the Town, Corte Madera Creek, that resulted in the report "Maintaining Corte Madera Creek: A Citizens' Guide to Creekside Property Protection" completed in 2005.

**WHEREAS**, The Planning Commission continued its review of the potential creek setbacks at public meetings in 2006 and 2007.

**WHEREAS**, In accordance with the General Plan and the recommendations in the creek study, the Town desires to adopt an ordinance that protects creek banks and preserves the environmental quality of the Town's creeks, while taking into account the interests of creekside property owners.

**NOW, THEREFORE**, the Town Council of the Town of Portola Valley does **ORDAIN** as follows:

1. Addition of Code. Chapter 18.59 [Creek Setbacks] is hereby added to Title 18 [ZONING] of the Portola Valley Municipal Code to read, as follows:

### **Chapter 18.59 CREEK SETBACKS**

Sections:

- 18.59.010 Purposes of Creek Setbacks
- 18.59.020 Creeks Subject to Setback Provisions
- 18.59.030 Creek Setbacks
- 18.59.040 Top of Bank
- 18.59.050 Ordinary High Water Mark (OHWM)
- 18.59.060 Repair and Maintenance of Existing Structures Within Creek Setbacks
- 18.59.070 Reconstruction and Replacement of Structures Within Creek Setbacks
- 18.59.080 Creek Bank Stabilization Projects
- 18.59.090 Fences
- 18.59.100 Vegetation
- 18.59.110 Grading
- 18.59.120 Creek Crossing
- 18.59.130 Trails and Paths
- 18.59.140 Discharging and Dumping

18.59.010 PURPOSES OF CREEK SETBACKS.

A. The overall purpose of this Chapter is to improve the quality of creek bank protection measures used on Town creeks, discourage practices that pose a risk to property improvements and neighboring properties, and protect the unique scenic qualities and habitat values of the creek environment that sustain wildlife by furnishing habitation, freshwater and migration corridors. It is envisioned that this Chapter will benefit creekside property owners, residents of the Town and region, and the overall environmental quality of the creeks and adjacent habitats. The measures are intended to help ensure that, over time, changes within creek setbacks will help restore the creeks and creeksides to a healthy natural environment.

B. The specific purposes of the setbacks are:

1. To keep new buildings out of range of potential creekbank failure and flooding.

2. To provide for the review of modifications or replacements of existing structures and impervious surface areas within creek setbacks in order to prevent further encroachment, and to encourage decreasing existing encroachments when modifications or replacements take place.

3. To restrict new structures in creek setbacks to those deemed necessary for creekbank stabilization projects, utility crossings, roads and driveways.

4. To retain adequate space adjacent to creek banks for access and work space to replace failing bank protections; to remove obstructions that pose a risk of flooding; and to facilitate bank protection projects utilizing state-of-the art practices, such as grading to achieve more stable bank angles and biotechnical or bioengineered designs.

5. To retain adequate space adjacent to creekbanks to allow wildlife movement and migration.

6. To protect creekside vegetation that stabilizes the soil and reduces flow velocities, erosion, sedimentation and creekbank failure.

7. To protect creekside vegetation as wildlife habitat for those species (song birds, waterfowl, mammals, reptiles, fish, amphibians) dependent on creeks and their flanking native vegetation.

8. To protect water quality and creekside vegetation for shading and cooling of creek water to provide an environment supportive of trout, other fish, amphibians and invertebrates.

9. To implement the policies of the General Plan that designate creek corridors as sensitive areas providing important aquatic and terrestrial wildlife habitat and that require all new subdivisions and site development proposals to contain setback areas sufficient to buffer wildlife inhabiting the creek corridor from the impact of development.

18.59.020 CREEKS SUBJECT TO CREEK SETBACK PROVISIONS

The following creeks are subject to the creek setback provisions in this Chapter: Los Trancos Creek, Corte Madera Creek and Sausal Creek.

18.59.030 CREEK SETBACKS

A. For Building Permits and Site Development Permits, setbacks may be measured from either the top of creek bank or ordinary high water mark (see definitions under Sections 18.59.040 and 18.59.050 below) at the option of the property owner:

1. Parcels less than one acre in size - 30 ft. from top of bank, or 35 ft. from ordinary high water mark.
2. Parcels of 1.0 acre to 2.5 acres – 45 ft. from top of bank or 50 ft. from ordinary high water mark.
3. Parcels of 2.5 acres or more – 55 ft. from top of bank or 60 ft. from ordinary high water mark.

B. For Planned Unit Developments, setbacks may be modified by the Planning Commission to achieve better consistency with the purposes of this Chapter as part of the Planned Unit Development process to increase safety as well as protect the natural environment.

C. For new subdivisions, parcels shall have a minimum creek setback of 55 ft. from the top of creek bank, but this setback may be required to be enlarged as part of the subdivision process to increase safety as well as protect the natural environment. Sensitive habitats, floodplains, and eroding creek banks should be included within the setback area.

D. Persons proposing development along creeks should consult Section 18.32, F-P (Floodplain) Combining District Regulations, contained in the Zoning Regulations as these provisions affect development in the floodplains along creeks.

18.59.040 Top of Creek Bank

The “top of creek bank” is where the creek channel sides intercept adjoining higher ground. In cases where the top of creek bank is difficult to discern, the top of creek bank shall be based on a physical inspection by the Town Geologist or his designee in concert with the property owner.

18.59.050 Ordinary High Water Mark (OHWM)

The “ordinary high water mark” is a line on a creek bank that reflects the normal high water mark experienced over time. In the Town, the OHWM is usually about 3 – 4 ft. above the normal base water flow. The Town Geologist or his designee will assist a property owner in identifying the OHWM consistent with the Army Corps of Engineers standards.

18.59.060 Repair and Maintenance of Existing Structures Within Creek Setbacks

Existing buildings, decks, driveways, impervious surfaces, and other structures that are within a required creek setback may be maintained and repaired as necessary to keep them useable or improve their condition or quality pursuant to any required building/site development permit. Fences are addressed in Section 18.59.090 below.

18.59.070 Reconstruction and Replacement of Structures Within Creek Setbacks

Existing buildings, decks, driveways, impervious surfaces, and other structures that are within a required creek setback may be reconstructed or replaced as provided for in items A. and B. below, provided that in no case shall such construction increase the extent of the encroachment into the setback area. The extent of encroachment takes into account both the total square footage of structures within the setback and their proximity to the creek. Since flexibility in design is desirable for property owners and provides opportunities to reduce impacts on the creek, new construction is not limited to the footprint or location of the preexisting structure but may be relocated in order to provide a design more consistent with the purposes of Section 18.59.010. Such relocations cannot, however, increase the extent of encroachment in the setback. The building permit and/or a site development permit may require measures that are reasonably related to the project in order to prevent creek bank failure and erosion and to mitigate adverse effects on the creek environment. Property owners are encouraged to decrease existing encroachments in creek setbacks when construction or replacement takes place.

A. Reconstruction and Replacement Following Involuntary Damage

Existing buildings, decks, driveways, impervious surfaces, and other structures that are within a required creek setback may be reconstructed or replaced when necessitated by involuntary damage. For purposes of this Chapter, involuntary damage is defined as damage by fire, flood, explosion, wind, earthquake, war, riot, or wood destroying pests or other calamity or force majeure. Involuntary damage necessitating reconstruction or replacement shall be confirmed by the Town. Reconstruction or replacement beyond that necessitated by involuntary damage shall be treated in accordance with Section B. below. Fences are addressed in Section 18.59.090 below.

B. Reconstruction and Replacement Following Voluntary Demolition

Existing buildings, decks, driveways, impervious surfaces, and other structures that are within a required creek setback may be reconstructed or replaced following voluntary demolition when such demolition affects less than 50% of the floor area of a building, deck, other structure or less than 50% of the surface area of a driveway or other impervious surface. If voluntary demolition affects 50% or

more of the total floor or total surface area, such replacement or reconstruction shall conform to the required creek setback unless there is no alternate site that is completely or partially outside of the required creek setback. Fences are addressed in Section 18.59.090 below.

#### 18.59.080 Creek Bank Stabilization Projects

New, expanded or repaired creek bank stabilization projects are permitted within the creek setback pursuant to a building permit and/or site development permit. Such projects shall be designed to state-of-the-art practices. Designs using the most up-to-date techniques for protecting banks by employing environmentally sound solutions such as revegetation, bioengineered and biotechnical methods are encouraged. Projects shall minimize the risk of causing physical damage to upstream, downstream or opposing properties. Physical damage includes flooding, creek bank erosion, or creek bank failure. Stabilization projects are to be designed to provide long-term protection and at the same time be consistent with the purposes of Section 18.59.010.

#### 18.59.090 Fences

Existing fences below the top of bank may not be repaired, reconstructed or replaced other than as an approved creek bank stabilization measure as provided for in Section 18.59.080. Existing fences above the top of bank may be repaired, reconstructed or replaced when in conformance with Chapter 18.43 of the Zoning Ordinance. New fences shall conform to Chapter 18.43 of the Zoning Ordinance. (See Section 18.04.155 for definition of "fence.")

#### 18.59.100 Vegetation

Removal of existing non-native vegetation in creek setbacks is encouraged, and new creek stabilizing vegetation is to be selected from the Town's list of riparian vegetation, or vegetation shown to be a native species of this watershed. Owners are encouraged to select from the Town's list of riparian vegetation, or vegetation shown to be native species of this Watershed, for all plantings in the creek setback area.

#### 18.59.110 Grading

Grading up to 5 cubic yards and installation of impervious surfaces up to 2% of the setback area are permitted. These limits may be exceeded when consistent with the provisions of this Chapter and approved by the Planning staff, provided they do not reach the threshold for which a site development permit is required.

#### 18.59.120 Creek Crossings

Road, bridge, and utility crossings are permitted in creek setbacks pursuant to a building/site development permit and shall be designed to minimize adverse impacts on

the creek channel, adjoining banks and flooding potential. Footings for support of such crossings must be located outside of the creek channel.

18.59.130 Trails and Paths

Trails and paths are permitted subject to the provisions of the site development ordinance and must be designed to minimize adverse impacts on the natural environment.

18.59.140 Discharging and Dumping

Discharging or dumping pollutants into a creek, such as yard wastes, animal wastes, chemically treated water, and other pollutants are prohibited by Chapter 8.28 of this Code, Storm Water Management and Discharge Control, regulations mandated by the Federal Clean Water Act.

2. Severability. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

3. Environmental Review. The Town Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15308 of the California Environmental Quality Act Guidelines because this is an ordinance to assure the maintenance, restoration, enhancement and protection of the environment.

4. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption and shall be posted within the Town of Portola Valley in three (3) public places.

INTRODUCED: November 14, 2007

PASSED: November 28, 2007

AYES: Councilmember Toben, and Davis, Vice Mayor Derwin and Mayor Driscoll

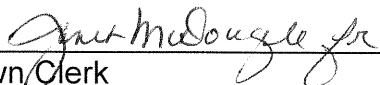
NOES:

ABSTENTIONS:


NOT PARTICIPATING:

ABSENT: Councilmember Merk


ATTEST:

  
Town Clerk

APPROVED:

  
Mayor

APPROVED AS TO FORM:

  
Town Attorney