

### **17.30.070 Streamside Protection Areas**

A. Purpose and Applicability. The purpose of a Streamside Protection Area (SPA) designation in the General Plan is to preserve and enhance the SPA in order to protect the associated riparian habitats and ecosystems as well as the water quality of streams. The SPA consists of the riparian vegetation in the buffer area adjacent to streams.

B. Required SPA Buffer. The SPA upland buffer must be 100 feet outward on both sides of the stream, measured from the top of the bank or the outer limit of the riparian vegetation, whichever feature is further from the creek. The Review Authority may expand or reduce the upland buffer, or portions thereof, on a case-by-case basis, as provided in this Section.

C. Reduction in the SPA Buffer.

1. Upon request of an applicant, the Review Authority may allow portions of a SPA upland buffer to be less than 100 feet, as such measurement is prescribed in paragraph B above, but not less than 25 feet, with approval of a Major Conditional Use Permit, provided the Review Authority finds, on the basis of substantial evidence in the record, that:

a. The reduction in the SPA upland buffer will not have a significant adverse effect on streamside vegetation or the biotic quality of the stream;

b. There is no feasible alternative siting for the proposed project that will avoid an incursion into the SPA upland buffer;

c. In the absence of a reduction in the SPA upland buffer, the applicant cannot make reasonable economic use of the parcel; and

d. The approved amount of reduction in the SPA upland buffer is no greater than necessary to allow a reasonable economic use of the parcel.

2. Upon receipt of an application for an SPA upland buffer reduction, the Director may direct preparation by a City-selected consultant of a Biological Report, an economic/financial analysis and/or any other study or report the Director deems necessary in his or her reasonable discretion, at the applicant's expense, to assist the Review Authority in making the above findings. At the request of the Director, the applicant shall provide information that the Director deems necessary, in his or her reasonable discretion, to produce the above-referenced studies or reports, including but not limited to financial data, land appraisal data, acquisition cost, land development/construction cost data, prospectuses, and financial/revenue projections. The application will not be deemed complete until the required reports are completed to the Director's satisfaction.

D. Expansion of the SPA Buffer. In connection with consideration of any discretionary entitlement for a parcel adjoining a creek, the Review Authority may expand the SPA upland buffer beyond 100 feet as necessary to avoid a significant adverse effect on streamside

vegetation or the biotic quality of the stream. The buffer may be expanded provided that the applicant may still make reasonable economic use of the parcel.

E. Definitions. The following definitions shall apply for purposes of carrying out the provisions of this Section 17.30.070:

“No feasible alternative siting” shall mean that the size, configuration, topography and development constraints of the parcel would not allow development of the parcel in any manner consistent with the allowable uses and design and development standards applicable in the zone and allow a reasonable economic use of the parcel without incursion into the SPA upland buffer.

“Reasonable economic use of the parcel” shall mean, considering all relevant factors:

1. For a commercial, industrial, multiple-family residential or other investment project on the parcel, the applicant is able to generate positive net operating income and obtain a commercially viable return on its investment in light of what the applicant knew or should have known about the City-imposed restrictions on use of the property. Factors excluded from the evaluation of fair return shall include matters that could not be reasonably foreseen by and that are outside the control of the applicant, as well as avoidable, unreasonable or unnecessary expenses.

2. For a single-family residential project on the parcel, the applicant is able to construct, taking into account any other modifications allowed by the Review Authority, a single-family residential dwelling (with standard attendant features, such as driveways, porches and fences) that is reasonably comparable in size and functionality to residential dwellings on similar size parcels in the vicinity under the same zoning classification.

“Significant adverse effect” shall mean a substantial or potentially substantial adverse change in the physical condition of the streamside vegetation and the stream as that phrase is understood and used in the California Environmental Quality Act (Section 21000 *et seq.* of the California Public Resources Code) and implementing regulations.