

Comparison of Current and Proposed Revised WPO

Current Ordinance	Proposed Revised Ordinance
<p>13.12.010 - Title.</p> <p>This chapter shall be known as the watercourse protection ordinance of Alameda County.</p>	<p>13.12.010 Title.</p> <p>This chapter 13.12 shall be known as the district watercourse protection ordinance.</p>
<p>13.12.020 - Purpose.</p> <p>This chapter is enacted to safeguard and preserve watercourses, protect lives and property, prevent damage due to flooding, protect drainage facilities, control erosion and sedimentation, restrict discharge of polluted materials and enhance recreational and beneficial uses of watercourses.</p>	<p>13.12.020 Purpose.</p> <p>This chapter is enacted for the purpose of regulating development of property and discharges of fluids and other materials within and adjacent to watercourses in order to 1) safeguard life, limb, health, property, and the public welfare; 2) preserve existing riparian areas; 3) promote the restoration of previously degraded riparian areas; 4) enhance the recreational and other beneficial uses of the watercourses, and 5) implement the applicable objectives of the Regional Water Quality Control Board (Region 2) Basin Plan.</p>
	<p>13.12.030 Scope.</p> <p>The provisions of this chapter are intended to protect watercourses in the unincorporated county by establishing controls over development and discharges in and adjacent to those watercourses. These controls include, but are not limited to, the following:</p> <ul style="list-style-type: none"> A. The establishment of setback zones adjacent to watercourses, within which zones development and discharges shall be controlled. B. The application of design criteria and permit procedures that will serve to 1) preclude development and discharge that could degrade the water quality of the basin, and 2) maintain or improve hydrology of an affected site and the hydrodynamic equilibrium of any associated watercourse. C. The publication of best management practices and other guidelines intended to assist property owners in the protection of watercourses. D. The establishment of regulations intended to protect, retain, and restore riparian areas. E. The application of procedures intended to recognize and support the enforcement policies of other regulatory agencies having environmental and/or hydrological/hydraulic jurisdiction in the county, including but not limited to, the U. S. Fish and Wildlife Service, the California Department of Fish and Wildlife, the RWQCB's (Region 2 and Region 5), and the U. S. Army Corps of Engineers.
<p>13.12.030 - Definitions.</p> <p>Unless the context clearly requires a different meaning, the meanings given for the following words and phrases shall apply when said words and phrases are used in this chapter:</p> <p>"Agricultural operation" means any land-related activity for the purpose of cultivating or raising plants or animals or conserving or protecting lands for such purposes when conducted on agriculturally zoned lands, and is not surface mining or borrow pit operations nor preparation for construction or construction of any structure for human occupancy.</p> <p>"Bank" means any embankment, dike, levee, wall or similar feature of natural or man-made origin which adjoins or parallels any watercourse and which has as a function the confinement of the water of said watercourse.</p> <p>"Board" means the board of supervisors of Alameda County.</p> <p>"City" means an incorporated city in Alameda County.</p> <p>"Development" means any act of filling, depositing, excavating or removing any natural material, or constructing, reconstructing or enlarging any structure,</p>	<p>13.12.040 Definitions.</p> <p>Unless the context clearly requires a different meaning, the meanings given for the following words and phrases shall apply when the said words and phrases are used in this chapter:</p> <p>"Agency" means the Public Works Agency of the district.</p> <p>"Agricultural operation" means any activity associated with cultivating or raising plants, fish, or animals or with conserving or protecting property for such purposes, when that activity is conducted on property zoned as an "A district" per chapter 17.06 of the general ordinance code, and is not surface mining or borrow pit operations nor preparation for construction or construction of any building for human occupancy.</p> <p>"Authorized enforcement officer" means the director, or his/her appointed representative.</p> <p>"Bank" means any embankment, dike, levee, wall, slope, or similar feature, of either natural or man-made origin, that adjoins or parallels any open riverine, estuarine, or lacustrine watercourse and that has as a function the confinement of the water within the said stream, estuary, or reservoir.</p> <p>"Base flood" means the flood having a 1-percent chance of being equaled or exceeded in any given year. The boundary area of the base flood is shown as a Special Flood Hazard Area (SFHA) on the Flood Insurance Rate Map (FIRM).</p> <p>"Basin" means the basin defined by the RWQCB (Region 2) in the most version of the Region 2 Water Quality Control Plan (Basin Plan).</p> <p>"Best management practices" means those standard practices associated with the control of stormwater and non-stormwater discharges to a watercourse.</p> <p>"Biological setback;" see Section 13.12.120 of this chapter.</p> <p>"Board" means the board of supervisors of the district.</p> <p>"County stormdrain system" means those drainage facilities or natural topographic features, owned by or under the permitting authority of the county or the district, that convey stormwater to the "waters of the United States," including county-maintained roadway drainage systems, district and Zone 7-maintained flood control facilities, and those watercourses that discharge directly into the "waters of the United States."</p> <p>"Design flood" means a design hazard condition, applicable to development within a floodplain, based on providing an additional margin of safety for any affected building, structure, or facility by requiring protection from a flood that is more severe than the base flood. The water surface elevation of the</p>

which requires a permit issued by the director of public works.

"Director of public works" means the director of public works of Alameda County, California, acting either directly or through his authorized deputies.

"District" means the Alameda County flood control and water conservation district.

"Floodway" means the channel of a watercourse and adjacent land areas that must be reserved in order to convey flood flows as determined by the director of public works. Where shown on a flood boundary and floodway map of the Federal Insurance Administration, "floodway" means a designation on said map.

"Maintenance" means the desilting, pruning or removal of vegetation, the removal of trash and debris, the removal of algae, water treatment, mosquito abatement activities, repair, or any other work required to maintain conveyance or storage capacities of watercourses or purity and quality of water, or to safeguard public health.

"Permit" means a permit issued by the director of public works pursuant to the provisions of this chapter.

"Permittee" means any person granted a permit under the provisions of this chapter.

"Person" means any individual or group of individuals, firm, corporation or public agency.

"Public agency" means any federal, state, regional or local government entity or any subdivision thereof.

"Setback" means a distance adjacent to an open channel watercourse within which development shall be controlled. Setback limits are defined in [Article 5](#) of this chapter.

"Structure" means any works or constructions of any kind, including those of earth or rock, permanent or temporary, and including fences, poles, buildings, pavings, inlets, levees, tide gates, spillways, drop structures and similar facilities.

"Watercourse" means any conduit or appurtenant structure or any natural or man-made channel through which water flows continuously or intermittently in a definite direction and course or which is used for the holding, delay or storage of water. Natural channels shall generally be limited to those designated by a solid line or dash and three dots as shown in blue on the most recent U.S. Geological Survey 7.5 minute series of topographic maps. At the discretion of the director of public works, the definition of natural channel may be limited to those channels having a watershed area of fifty (50) acres or more, and this definition will be commonly used in the administration of this chapter except for those cases in which the director of public works determines that the definition must be extended to a natural channel with a watershed area smaller than fifty (50) acres in order to prevent a condition which is a menace to life and limb, endangers property, is a

design flood and the corresponding boundaries of the flooded area are determined by the floodplain administrator, in accordance with the provisions of chapter 15.40 of the general ordinance code.

"Development" means any act of filling, depositing, excavating, or removing any natural or man-made material, or constructing, modifying, removing, or enlarging any building, structure, or facility, performed or intended to be performed within a watercourse or a setback, except for an act defined herein as a "minor development."

"Director" means the director of the Public Works Agency of the district, acting either directly or through his/her assigned deputies and employees.

"Discharge" means the act of depositing fluids or other materials into a watercourse. A "legal discharge" is any discharge wholly constituted of fluids or other materials from one or more of the following sources:

- A. The runoff, overflow, draining, or pumping of riverine, estuarine, or lacustrine water.
- B. The runoff, overflow, draining, or pumping of water used for irrigation or watering of landscaping, except for graywater.
- C. The overflow, draining, or pumping of potable water.
- D. Discharges from fire-fighting activities.
- E. Discharges pursuant to the Municipal Regional Stormwater Permit.
- F. Discharges otherwise allowed by an approval or a waiver granted by a RWQCB.

An "illicit discharge" is a discharge of any quantity of fluids or other materials from any source not listed above, or a discharge that is otherwise in violation of the discharge provisions of chapter 13.08 of this title. The discharge of graywater into a watercourse is considered to be an illicit discharge.

"District" means the Alameda County Flood Control and Water Conservation District. See "Zone 7 Water Agency."

"Dry season" means the period beginning on May 1st of each year and extending until September 30th of that same year.

"Ecosystem" means an interactive community of living organisms (people, animals, plants, and microbes) and nonliving components (soil, air, and water) that operates as a system within a given area.

"Encroachment permit" means a permit, issued in accordance with the provisions of Chapter 6.36 of the general ordinance code, authorizing entry into the right-of-way of the district for the purpose of development or discharge. See "Zone 7 encroachment permit."

"Ephemeral stream" means a natural topographical feature, such as a swale or vernal pool, that conveys or holds surface runoff only in response to rainfall events and that receives no surface flow from groundwater sources.

"Erosion and sedimentation control setback;" see Section 13.12.120 of this chapter.

"Estuarine" refers to the particular mixture of fresh and salt water that occurs where a watercourse flows into San Francisco Bay, and the resulting riparian area.

"Flood control facility" means a structure, channel, conduit, or appurtenance, or improved or unimproved property, that is under the jurisdiction of the district or of the Zone 7 Water Agency and used for the conveyance, storage, or delay of riverine, estuarine, or lacustrine flows; for the purpose of this chapter, such facilities are considered to be watercourses. However, other district or Zone 7 facilities such as silt deposit sites, access roadways, staging and laydown areas, etc. that are not directly related to the conveyance, storage, or delay of water are not considered to be watercourses.

"Flood Insurance Rate Map (FIRM)" means the latest version of a map of Alameda County on which the Federal Emergency Management Agency (FEMA) has designated the Special Flood Hazard Areas and the floodways, and any revisions or amendments thereto. The FIRM is adopted into the general ordinance code, pursuant to chapter 15.08 of that code.

"Floodplain" means any area adjacent to a watercourse that could be inundated by the design flood. Floodplains are determined by the floodplain administrator pursuant to chapter 15.40 of the general ordinance code.

"Floodplain administrator" means the director, or a deputy or an employee appointed by him/her for the purpose of administering chapter 15.40 of the general ordinance code.

"Floodplain setback;" see Section 13.12.120 of this chapter.

"Floodway" means an area within a Special Flood Hazard Area that must be kept clear of encroachment so that the said waterway can convey the base flood without substantial increases in flood heights. Floodway boundaries are shown on the Flood Insurance Rate Map (FIRM), or may be designated by the floodplain administrator in accordance with the provisions of chapter 15.40 of the general ordinance code.

"Floodway setback;" see Section 13.12.120 of this chapter.

"General ordinance code" means the general ordinance code of the county.

"Graywater" means untreated fluid discharge from any fixture, appliance, or appurtenance of a domestic plumbing system, provided that such discharge has not come into contact with toilet waste, or is not waste water from kitchen sinks, photo lab sinks, or dishwashers, or laundry water from soiled diapers.

"High priority site" means the site of a proposed development or discharge where the director has determined that the planned work poses a significant threat to the water quality in the watercourse.

"High water mark" means a line or other characteristic mark on the shore or the bank of an open natural watercourse that has been established by the ordinary fluctuations of the water in that watercourse.

hazard to public safety, adversely affects the safety, use or serviceability of adjacent property, public way or drainage channel, or could adversely affect the water quality of any water body or watercourse were the definition not extended to a particular natural channel with a watershed area below fifty (50) acres.

“Illicit discharge;” see “Discharge.”

“Intermittent stream” means a natural topographic feature that conveys both surface runoff from rainfall events (secondary source) and discharge from groundwater sources (primary); flows tend to be seasonal, occurring during the rainy season and possibly into the beginning of the dry season. Intermittent streams are typically shown as dashed blue lines on the US Topo maps published by the United States Geological Survey, but may be designated by the director.

“Lacustrine” refers to the water in a reservoir, lake, or pond, and the resulting riparian area.

“Legal discharge;” see “Discharge.”

“Maintenance” means any of the following activities when performed by the owner of private property containing a watercourse, or by his/her tenant or agent:

A. Desilting and/or other repair of an open channel watercourse, provided that the said activities do not affect any other crossbank, upstream, or downstream properties and are limited to the restoration of the original cross-section of the channel; or

B. Clearing of a conduit or culvert, or of an inlet, debris rack, grate, or similar device; or

C. Normal pruning of vegetation in a watercourse or a riparian area; or

D. Removing weeds and invasive plants from a watercourse or the riparian area, provided that the removal does not destabilize a bank or increase the likelihood of significant erosion and resultant sedimentation of the watercourse; or

E. Removal of trash and debris; or

F. General cleanup work required to maintain the existing natural state of any of the following:

1. Riparian area;

2. Capacity of the watercourse to convey or store water;

3. Water quality in the watercourse.

4. Public health and welfare.

Maintenance does not mean the removal of natural material that supports the existing riparian area, such as the trimming of trees that provide nesting sites for bird species, the removal of downed trees that are not blocking the flow of water in the watercourse, etc.

“Minor development” means private property development that is relatively insignificant and therefore better suited to control through the issuance of best management practices (BMP’s) and other guidelines to the property owner, rather than through the issuance of a watercourse permit. Minor development should not have a significant negative impact on the functionality or the possible future development of the watercourse, nor cause the riparian area to be degraded in any significant way. The director shall have the authority to develop and promulgate guidelines as necessary in order to define and control minor development practices in watercourses and setbacks.

“Municipal Regional Stormwater Permit” means NPDES No. CAS612008 issued to the district under Order No. R2-2009-0074 by the RWQCB (Region 2), and any amendments or revisions thereto.

“Perennial stream” means a year-round stream that is supplied by both stormwater runoff (secondary source) and groundwater (primary source), including substantial dry season inputs. The water table is above the streambed for most of the year. Perennial streams are typically shown as solid blue lines on the US Topo maps published by the United States Geological Survey, but may also be designated by the director.

“Permit” means a watercourse permit, issued by the director pursuant to the provisions of Article III of this chapter. See “Encroachment permit.”

“Permittee” means any person to whom a permit is issued pursuant to this chapter

“Pollutant” means soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials including green waste, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial waste, agricultural waste, excessive amounts of stormwater runoff, construction debris, excessive amounts of sediment, fluids other than those described in the definition of legal discharge, or any other undesirable material or fluids.

“Rainy season;” see “Wet season.”

“Right-of-way” means property held by the district, or by the Zone 7 Water Agency, that is used for the collection, conveyance, storage, delay, and/or discharge of waters for the purposes of flood control and water conservation.

“Riparian area” means a land area adjacent to streams, ponds, lakes, and other open watercourses where the localized ecosystem is transitional between terrestrial and aquatic ecosystems.

“Riverine” refers to the water in a stream or canal, and the resulting riparian area.

“RWQCB” means either Regional Water Quality Control Board (Region 2, San Francisco Bay) or Regional Water Quality Control Board (Region 5, Central Valley), as applicable.

“Setback” means an area or zone, adjacent to a watercourse, within which development and discharge shall be regulated; see Article II of this chapter 13.12.

“Special Flood Hazard Area;” see “Base flood.”

“Special-status species” means those plants included in the most recent version of the list entitled “State and Federally Listed Endangered, Threatened,

	<p>and Rare Plants of California” and those animals included in the most recent version of the list entitled “Special Animals,” both published as part of the California Natural Diversity Database by the California Department of Fish and Wildlife.</p> <p>“Toe of bank” means the point in a natural open channel watercourse where the slope of the bank meets the streambed.</p> <p>“Top of bank” means the point in a cross-section of a natural open watercourse where the slope of the stream, pond, or lake bank or shore approaches the horizontal, or if this slope is relatively steep, the daylight point where a line projected upward from the toe of the same bank or shore at a slope of two (2) horizontal units to one (1) vertical unit intersects the ground surface. In the event that the top of bank as determined in the foregoing manner falls a significant distance beyond the portion of the bank or shore lying below the high water mark, the top of bank point shall be determined by the director. In no case shall the top of bank be located beyond the boundary line of the base flood.</p> <p>“Watercourse” means a natural or man-made drainage facility or topographic feature located in the unincorporated area of the county that conveys rainfall, stormwater runoff, and/or groundwater continuously, intermittently, or ephemeral in a definite course, or that holds, delays, or stores such waters. The watercourse boundaries consist of the bed and banks of natural or improved streams, estuaries, ponds, and lakes, or the conveyance or storage area of subsurface streams, pipes, boxes, and vaults; however, the ground surface above a subsurface watercourse may be considered to be part of that watercourse, subject to the determination of the director.</p> <p>For the purpose of this chapter, the following facilities and features are not watercourses:</p> <ul style="list-style-type: none"> A. Public and private domestic and commercial plumbing systems, sewers, and other facilities that supply, store, convey, discharge, or treat potable water, graywater, or wastewater; B. Landscape irrigation systems; C. On-site wastewater treatment facilities; D. Aesthetic and recreational water features, such as swimming pools, hot tubs, spas, fountains, and their supply and drainage systems; E. Public roadway drainage systems; F. Stormwater treatment and hydromodification management features and facilities, such as bioretention areas, flow-through planter boxes, rain barrels, tree filters, media filters, detention ponds and vaults, and their collection and conveyance systems; G. Irrigation canals or soil conservation waterways constructed for agricultural purposes on land that is zoned as agricultural in accordance with title 17 of the general ordinance code; or H. Drainage or water storage features or facilities owned and operated by the State or by the Federal government. <p>The following facilities and features are not typically considered to be watercourses, but may be designated as such by the director in any case where he/she determines that such designation would be warranted in support of the purposes described in Section 13.12.020 of this chapter:</p> <ul style="list-style-type: none"> A. Features and facilities that drain a watershed of less than fifty (50) acres; and B. Ephemeral streams. <p>Structures, facilities, and features owned and maintained by the district or the Zone 7 Water Agency that are intended to provide flood control and water conservation are considered to be watercourses for the purpose of establishing setbacks in accordance with Article II of this chapter; however, the rights-of-way of such structures, facilities, and features are not regulated by this chapter, but are regulated by the appropriate rules, regulations, and ordinances of the county, the district, and the Zone 7 Water Agency.</p> <p>“Wet season” means the period beginning on October 1st of each year and extending until April 30th of the next year.</p> <p>“Zone 7 encroachment permit” means a permit issued by the Zone 7 Water Agency, pursuant to the applicable ordinance of that agency, authorizing entry onto the right-of-way of Zone 7 for the purpose of development or discharge.</p> <p>“Zone 7 Water Agency,” or “Zone 7” refers to the agency that provides flood control services for the upper reaches of the Alameda Creek watershed within the easterly portions of the county.</p>
<p>13.12.040 - Jurisdiction.</p> <p>This chapter shall apply to the unincorporated area of Alameda County.</p>	<p>13.12.050 Jurisdiction.</p> <p>This chapter shall apply to the unincorporated area of the county.</p>
<p>13.12.050 - Responsibility of director of public works.</p> <p>It shall be the responsibility of the director of public works to enforce the provisions of this chapter and he is hereby so authorized.</p>	<p>13.12.060 Responsibility of director.</p> <p>It shall be the responsibility of the director to enforce the provisions of this chapter and he/she is hereby so authorized. The board hereby delegates to the director the authority to promulgate those agency rules, regulations, guidelines, policies, and procedures necessary for the implementation of any of the provisions of this chapter.</p>
<p>13.12.080 - Administration.</p> <p>This chapter shall be administered for Alameda County by the district.</p>	<p>13.12.070 Administration.</p> <p>This chapter shall be administered for the district by the agency.</p>

	<p>13.12.080 Compliance with CEQA and other environmental regulations.</p> <p>A. The approval of projects subject to the permit provisions of Article III of this chapter shall be deemed to be discretionary and subject to the requirements of the California Environmental Quality Act (CEQA). The agency shall act as a responsible agency in accordance with the provisions of Section 15096 of the CEQA Guidelines in the review, approval, and issuance of permits.</p> <p>B. Notwithstanding the above, the director shall have the authority to require additional environmental reviews as necessary in order to fulfill the purposes described in Section 13.12.020 of this chapter, and to establish special permit requirements based upon such reviews.</p> <p>C. The director shall also have the authority to set and enforce additional permit terms and conditions as necessary to support the requirements of the Federal Endangered Species Act, the California Endangered Species Act, the Migratory Bird Treaty Act, the Eagle Act, and any other applicable federal or state law or regulation pertaining to the protection of special-status species and/or wetlands.</p> <p>D. The full costs of any environmental review or other agency action required pursuant to subsections 13.12.080A through C shall be borne by the applicant in accordance with the provisions of Section 13.12.210 of this chapter.</p>
	<p>13.12.090 Development and discharge within district or Zone 7 rights-of-way.</p> <p>Development and discharge by others within the rights-of-way of the district or of the Zone 7 Water Agency shall be subject to the encroachment permit regulations of the district, or the Zone 7 encroachment permit regulations of Zone 7, as applicable.</p>
<p>13.12.070 - Not retroactive.</p> <p>This chapter shall be prospective in operation only. The provisions of this chapter shall not apply to existing construction for which all previously necessary permits were obtained. Said provisions shall also not apply to a project or development not yet constructed provided that an appropriate permit has been obtained and said permit bears a date prior to the effective date of this chapter.</p>	
<p>13.12.280 - Liability.</p> <p>Neither issuance of a permit under the provisions of this chapter nor compliance with the provisions hereof or with any conditions imposed in a permit issued hereunder shall relieve any person from responsibility for damage to any person or property or impose any liability upon the county for damage to any person or property.</p>	<p>13.12.100 Liability and indemnification.</p> <p>A. Neither the issuance of a permit under the provisions of this chapter 13.12 nor compliance with the regulations, decisions, conditions, or other direction imposed by the director in conjunction with a permit issued hereunder or with an enforcement action taken by the director under the authority of this chapter, shall relieve any person from responsibility for damage to any person or property or impose any liability upon the county or district for damage to any person or property.</p> <p>B. To the fullest extent permitted by law, any permittee or other person subject to the regulations of this chapter shall indemnify, defend, and hold harmless the county, the district, and their boards, officers, employees, and agents (collectively “indemnitees”) from and against all claims, losses, damages, liabilities, or expenses, including reasonable attorney fees incurred in the defense thereof, for the death of or injury to any person or persons (including the permittee’s or the person’s or the county’s or the district’s employees) or damage to any property and/or business loss or economic harm that arises out of or is in any way connected with the issuance of the permit, the imposition of regulations, or development, discharge, and/or related work performed by the permittee, the person, or the permittee’s or person’s contractors, consultants, or agents under the said permit or in response to the imposition of the said regulations (collectively “liabilities”). The only exceptions to this duty to indemnify, defend, and hold harmless is for those liabilities caused solely by the negligence or willful misconduct of any indemnitees.</p>
<p>13.12.270 - Right of entry.</p> <p>Whenever necessary to enforce the provisions of this chapter, the director of public works may enter the premises at all reasonable times in the manner provided by law to perform any duty imposed by this chapter.</p>	<p>13.12.110 Right of entry.</p> <p>A. Whenever necessary to make an inspection in conjunction with the provisions of this chapter 13.12, or when the director has reasonable cause to believe that there exists in the watercourse or the setback any condition that could constitute a violation of this chapter, the director may enter the premises at all reasonable times to perform the said inspection or any other duty imposed by this chapter, provided that the following conditions are met:</p> <ol style="list-style-type: none"> 1. If such premises be occupied, the director shall first present proper credentials and request entry; or 2. If such premises be unoccupied, the director shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and request entry. <p>B. Any such request for entry shall state that the property owner or occupant has to the right to refuse this entry; and that in the event of such refusal, entry by the director may only be made upon issuance of an inspection warrant pursuant to Code of Civil Procedure, Section 1822.50 by a duly authorized magistrate. In the event that the property owner or occupant continues to refuse entry after such warranted request has been made, the director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.</p>

13.12.310 - Requirements.

A. Setbacks are hereby established adjacent to open channel watercourses in conformance with details shown in Section 13.12.320 of this article.

B. The purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration. Accordingly, no development shall be permitted within setbacks, except as otherwise provided herein.

C. In certain situations, where, in the opinion of the director of public works, it would be in the public interest to permit limited development within a setback, the director of public works may grant a permit for said development provided that the above-specified purpose would be satisfied. In such cases, the permit applicant shall submit sufficiently detailed plans and specifications, and any additional material required by the director of public works, to demonstrate that a proposed development adjacent to an open channel watercourse would meet said requirements.

D. In all cases where development adjacent to an open channel is permitted within setback limits, the owner of the developed property shall assume all responsibility for any damage whatsoever to his property or to any structures erected thereon.

E. No development shall be permitted within a setback where it would conflict with the requirements or any applicable county, district or city ordinance, regulation, directive or law.

F. Setbacks shall be located outside of floodways.

G. The director of public works shall make the determination as to setback limits and any permitted development within a setback.

13.12.320 - Setback criteria.

See A, B, and C in Ordinance 82-18 for diagrams.

13.12.120 Definition and regulation of setbacks.

Setbacks for the purpose of controlling development and discharge adjacent to watercourses are hereby established, in accordance with the following criteria. The setback zone, or zones, for a particular project shall be set, by the director, based upon his/her review of the applicability of each of the listed potential setback conditions listed in this Section and the nature of the proposed development or discharge.

A. Erosion and Sedimentation Control Setbacks. Erosion and sedimentation control setbacks shall be established adjacent to all open natural perennial and intermittent watercourses in accordance with the following table, so as to reduce the potential for erosion within the setback zone and the resultant sedimentation of these watercourses:

Nature and Configuration of Open Watercourse	Erosion and Sedimentation Control Setback
Privately-owned perennial or intermittent creek, or pond, with typically vegetated banks and adjacent ground surfaces.	20' horizontally, measured from top of bank.
District-owned natural creek or reservoir.	District right-of-way.

The director shall have the authority to require the design and implementation of specific and seasonally adjusted erosion and sedimentation controls within the defined setback as a condition of any permit authorizing development or discharge within that zone; he/she shall also have the authority to require the design and implementation of overall site erosion and sedimentation controls as necessary, in accordance with the provisions of chapter 15.36 of the general ordinance code.

B. Bank Stability Setbacks. Bank stability setbacks shall be established adjacent to open natural perennial and intermittent watercourses at the same point as the erosion and sedimentation control setback specified in subsection 13.12.120A. of this chapter, except in those cases where, in the judgment of the director, the potential instability of the bank under the imposition of a surcharge load within the said setback predicates that the bank stability setback distance must be increased in order to assure against bank failure. The director shall have the authority to require that the bank stability setback for a particular usage at a particular site be determined on the basis of a study conducted specifically for that purpose. The director shall also have the authority to require the design and implementation of specific bank stabilization measures as a condition of any permit authorizing development within the bank stability setback zone.

C. Floodway Setbacks. Floodway setbacks shall be established adjacent to any watercourses designated as floodways on the Flood Insurance Rate Map (FIRM), in order to control development that could be damaged or destroyed by the associated flood effects, or that could cause the diversion of floodwaters that could damage or destroy adjacent property. The extent, if any, of a floodway setback at a particular site shall be determined by the director, but in no case shall be less than twenty (20) feet beyond the floodway boundary indicated on the FIRM. Development within a floodway setback zone must be authorized by the board, in accordance with the provisions of chapter 15.40 of the general ordinance code.

D. Floodplain Setbacks. Floodplain setbacks shall be established adjacent to those watercourses designated as floodplains by the director, in accordance with the provisions of chapter 15.40 of the general ordinance code, in order to control development that could be damaged or destroyed by the effects of the design flood. Development within a floodplain setback shall be regulated by the county building official and the district floodplain administrator, in accordance with the provisions of chapter 15.40.

E. Biological Setbacks. Biological setbacks shall be established, in accordance with the following table, adjacent to all watercourses, including ephemeral watercourses, that are determined by the director to constitute a riparian area:

Nature of Watercourse	Biological Setback
Privately-owned open watercourse.	To be set on a case-by-case basis by the director.*
District-owned natural creek or reservoir.	District right-of-way.

* The director shall have the authority to require that the setback at a particular site be based upon the recommendations of a study, performed by a qualified wildlife biologist or other qualified person(s), for the purpose of determining the necessary biological protection at that site, including but not limited to the protection of special-status species.

The director shall have the authority to require that any proposed development within a biological setback be conditioned upon the design and implementation of mitigation measures established pursuant to the provisions of Section 13.12.080 of this chapter.

13.12.090 - Requirements.

No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the director of public works:

- A. Discharge into or connect any pipe or channel to a watercourse;
- B. Modify the natural flow of water in a watercourse;
- C. Carry out development within a setback, as defined in Article V of this chapter;

13.12.130 Watercourse permit required.

Unless otherwise exempted by Section 13.12.150 of this chapter, no person shall commit or cause to be committed any of the following acts, unless a written permit authorizing the same has first been obtained from the director:

- A. Modify the natural flow of water in a watercourse;
- B. Carry out development, as it is defined in Section 13.12.040 of this chapter;
- C. Plant vegetation in or remove vegetation from a watercourse or a biological setback.

<p>D. Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;</p> <p>E. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or</p> <p>F. Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwaters passing through said watercourse.</p>	
<p>13.12.100 - Restrictions.</p> <p>The intent of this chapter is to safeguard watercourses. A permit shall not be granted where, in the opinion of the director of public works, a proposed activity in or adjacent to a watercourse could result in disposal or deposition of oils, chemicals, poisons, trash, or other materials harmful to said watercourse.</p>	<p>13.12.140 Restrictions.</p> <p>A. A permit shall not be granted where, in the opinion of the director, a proposed activity in a watercourse or a setback could result in the discharge of oils, chemicals, poisons, trash, or other pollutants harmful to the said watercourse or the local riparian area, exacerbate the flooding hazard, or unduly block restoration or improvement of the watercourse or the riparian area. The director shall have the authority to refer any application to other federal, state, or county agencies, as necessary, in order to assist him/her in the said determination.</p> <p>B. The director shall also have the authority to impose site specific environmental and hydrological mitigation measures as conditions of any permit, where in his/her opinion, it becomes necessary to do so in order to protect the watercourse and the riparian area.</p>
<p>13.12.110 - District ordinance in effect.</p> <p>Nothing contained herein shall in any way supersede, void or preempt requirements of District Ordinance No. 34 (Alameda County Ordinance No. 441 N.S.). Said ordinance includes permit requirements for activities in district-owned rights-of-way or facilities.</p>	
<p>13.12.190 - Exemptions.</p> <p>The following activities are exempted from the provisions of this article except as provided herein:</p> <p>A. Agricultural operations, as long as these activities do not significantly pollute or damage watercourses or cause excessive erosion of banks and deposition of sediments in watercourses thereby requiring abatement measures and imposing cost burdens on the district and its taxpayers;</p> <p>B. Work within a public roadway right-of-way, where said public roadway right-of-way crosses a watercourse. The affected jurisdiction shall advise the district of details and schedule for such work;</p> <p>C. Minor or routine maintenance work performed by a property owner or his tenant on a watercourse flowing through his property pursuant to Section 13.12.060 of this chapter. Said maintenance work shall be limited to pruning and removal of excessive vegetation and removal of trash and debris;</p> <p>D. Performance of emergency work necessary to protect life or property when an urgent necessity therefor arises. The person performing such emergency work shall notify the director of public works promptly of the problem and work required and shall apply for a permit therefor within ten calendar days after commencing said work;</p> <p>E. The director of public works may, at his discretion, exempt the permit requirements of this article when an Alameda County grading permit has been obtained and all applicable requirements of this chapter have been satisfied.</p>	<p>13.12.150 Exemptions.</p> <p>The following activities may be performed in a watercourse or a setback without obtaining a watercourse permit:</p> <p>A. Agricultural operations, as long as these operations do not include any of the prohibited acts listed in Section 13.12.130 of this chapter;</p> <p>B. Maintenance or minor development, as those terms are defined in Section 13.12.040 of this chapter;</p> <p>C. Performance of emergency work necessary to protect life or property, such as the installation of sandbags in the event of flood warnings. The person performing such emergency work shall notify the director promptly of the problem and work required and shall apply for a permit therefore within ten (10) calendar days after commencing said work;</p> <p>D. The director may, at his/her discretion, exempt the permit requirements of this Article III when a district grading permit has been obtained in accordance with chapter 15.36 of the general ordinance code for work by the same applicant on the same property, and all applicable requirements of this chapter have been satisfied through incorporation into the terms and conditions of that grading permit.</p> <p>The granting of an exemption in accordance with this Section 13.12.150 shall not be considered as permission to violate any other provision of this chapter.</p>

	<p>13.12.160 Other ordinances in effect.</p> <p>A. Nothing contained herein shall in any way supersede, void, or preempt the provisions of chapter 6.36 of the general ordinance code, and the current district permit ordinance, or the current Zone 7 permit ordinance with regard to the requirements for obtaining access to and allowing work to take place in the rights-of-way of the district or of Zone 7; see Section 13.12.090 of this chapter.</p> <p>B. Similarly, nothing contained herein shall in any way supersede, void, or preempt the provisions of chapter 12.08 of the general ordinance code with regard to the permit requirements for allowing work to take place in county roadway rights-of-way.</p> <p>C. The construction of improvements within, over, or adjacent to privately-owned watercourses may be subject to the provisions of other county ordinances, including but not limited to chapters 13.08, 15.08, 15.18, 15.36, 15.40, and title 17 of the general ordinance code. In the event of conflict between the provisions of this chapter 13.12 and those of any other county or district ordinance, the most stringent shall prevail.</p>
<p>13.12.120 - Other permits.</p> <p>Nothing contained herein shall in any way supersede, void or preempt requirements of other governmental agencies, including federal, state, and local agencies, in regard to activities affecting watercourses. Also, the requirements of this chapter are not intended to duplicate the requirements of another agency. If, in the opinion of the director of public works, the requirements of this chapter will be substantially met by conditions prescribed by a permit granted by another agency, the director of public works may waive the permit requirements of this chapter. Any violation, however, of the requirements of this chapter, regardless of whether such violation may have occurred under provisions of another permit, may be subject to enforcement procedures and penalties prescribed by this chapter.</p>	<p>13.12.170 Other permits.</p> <p>A. Nothing contained herein shall in any way supersede, void, or preempt the requirements of other governmental agencies, including federal, state, and local agencies, with regard to activities affecting watercourses or setbacks.</p> <p>B. The requirements of this chapter are not intended to duplicate the requirements of other agencies. If, in the opinion of the director, the requirements of this chapter will be substantially met by conditions prescribed in a permit already granted by another agency, the director may waive the permit requirements of this chapter; however, the director shall retain the right to withdraw the said waiver at any time in the event that he/she determines that a permit issued by another agency is invalidated, is not being enforced, or is otherwise inadequate to assure compliance with this chapter. In any case, any violation of the requirements of this chapter, regardless of whether such violation may have occurred under the provisions of another permit, may be subject to enforcement procedures and penalties prescribed by this chapter.</p> <p>C. The director shall have the authority to require that permit applicants obtain permits from or agreements with, or exemptions, from other federal, state, and local agencies as prerequisites to the issuance of a watercourse permit, whenever he/she determines that the proposed development or discharge may be subject to the permit requirements of such an agency or agencies.</p>
<p>13.12.130 - Permit applications.</p> <p>Permit applications shall be filed with the director of public works on forms furnished by his office. A schedule of fees and costs and a list of requirements and instructions shall be furnished each applicant. The director of public works may require any additional information he considers necessary to establish the identity of the applicant, the location of the project site, details concerning the proposed project, a timetable of proposed activities, existing site conditions, and anticipated site conditions following the proposed activities. An application shall be accepted as complete upon receipt of all required information and payment of fees.</p>	<p>13.12.180 Permit applications.</p> <p>A. Permit applications shall be filed with the director on forms furnished by his/her office. The said forms shall include, but shall not be limited to, the following:</p> <ol style="list-style-type: none"> 1. The name and address of the property owner; 2. The name, address, and state license number of the responsible contractor (if any); 3. The status of worker's compensation insurance, or self-insurance, for the person who will do the actual work; 4. A description of the proposed work scope, including both development and discharge; 5. A listing of supporting documentation; and 6. Signature blocks for the applicant and the representative of the district. <p>B. Unless waived by the director, the applicant shall be required to submit the following supporting documentation and payment along with the initial permit application form:</p> <ol style="list-style-type: none"> 1. 2 copies of a tentative site map showing the locations and providing the callouts of the following: <ol style="list-style-type: none"> a. The centerlines, high water marks, and tops and toes of bank of all open watercourses; b. A description of each of the watercourses shown per a. above, including a description of all existing and planned improvements or modifications. c. The centerline and/or outline of all known stormdrains and other underground facilities; d. The proposed development and/or discharge, including the location of any removed or reconstructed buildings, structures, facilities, or features; e. Floodplain and floodway boundaries, if applicable; f. All other buildings, structures, and facilities that could be affected by the proposed development or discharge; and g. All property lines. 2. 2 copies of a soil or geological investigation report, if applicable. 3. 2 copies of a proposed erosion and sediment control plan, if applicable. 4. 2 copies of any biological, environmental, hydrological, or other special studies performed in support of the determination of the tentative setback lines. This study, or studies, shall clearly indicate whether any open watercourse is riverine, estuarine, or lacustrine, whether the flow in that watercourse is perennial, intermittent, or ephemeral, and the nature and boundaries of the riparian area. 5. 1 copy of a cost estimate. 6. A review deposit, in accordance with the provisions of Section 13.12.210 of this chapter.

	<p>C. Following review and tentative approval of the application by the director, and unless waived by the director, the applicant shall be required to submit the following additional supporting documentation and payment(s) prior to the issuance of a permit:</p> <ol style="list-style-type: none"> 1. 2 copies of any required revisions to the plans, estimates, and reports submitted for the initial review. 2. Evidence of a valid county business license, if applicable. 3. Evidence of all required rights-of-entry, if applicable. 4. An inspection deposit, in accordance with Section 13.12.210 of this chapter. 5. A security bond, in accordance with Section 13.12.220 of this chapter, if applicable. 6. A maintenance bond, in accordance with Section 13.12.220, if applicable.
<p>13.12.140 - Permit issuance.</p> <p>A. In issuing a permit, the director of public works may prescribe conditions reasonably necessary to safeguard the effected watercourse pursuant to provisions of this chapter. Noncompliance with said conditions is deemed a violation of this chapter.</p> <p>B. A permit may be issued for any reasonable term and may be renewed if good cause therefor is shown. A written request for renewal shall be submitted to the director of public works who may require a new application and required fees, considering the time between the expiration date and the renewal request, revisions in county regulations, or changed circumstances in the immediate area of the site. Any revised plan shall be submitted to the director of public works for review, and any costs thereof shall be at the applicant's expense.</p> <p>C. If a proposed activity could significantly affect the physical characteristics of a watercourse in another jurisdiction such as an incorporated city or an adjoining county, or could result in disposal or deposition of a foreign material in a watercourse upstream from such jurisdiction, that jurisdiction shall be notified prior to issuing a permit.</p>	<p>13.12.190 Permit issuance, permit extension, and permit renewal.</p> <p>A. In issuing a permit, the director may prescribe conditions, including environmental and hydrological restrictions, as necessary to safeguard the affected watercourse and riparian area in accordance with the provisions of this chapter. Noncompliance with any such permit condition shall be deemed a violation of this chapter.</p> <p>B. A permit may be issued for any reasonable term, and the permittee shall be expected to complete all of the development and/or discharge covered by the permit during that term. If the permittee becomes aware that the permitted development and/or discharge will not be completed within the allotted time, he/she should present a written request for extension to the director, setting forth the reasons for the extension, at least 30 days in advance of the expiration date. The director may amend the permit to extend the term without further review; however, if this extension were to result in an increase in the work scope scheduled within the rainy season, the director shall have the authority to include additional protective measures as a condition of any such permit amendment.</p> <p>C. In the event that the permitted development or discharge is not completed prior to expiration of the original permit term and the applicant has not requested an extension in accordance with subsection 13.12.190B above, no further development or discharge may be done by the permittee or inspections scheduled by the director without renewing the permit. To initiate the renewal process, the permittee shall submit a written renewal request to the director, setting forth the reasons for the delay, and including all necessary changes to the original plans and schedules. The director shall have the authority to require a formal re-application and the payment of additional review fees, based upon his/her assessment of the following factors:</p> <ol style="list-style-type: none"> 1. The length of time between the permit expiration date and the submittal of the renewal request; 2. Any pertinent revisions to county or district regulations or guidelines that have been adopted from the time of the original permit issuance; 3. The nature of any changes to the original plans and schedules, including the possible need to provide additional protective measures if the rainy season work scope is increased or modified. 4. The performance of the permittee under the original permit. <p>D. Notwithstanding the provisions of subsection 13.12.190C above, the director shall have the authority to issue a stop work notice or a notice to appear to the permittee, in accordance with the provisions of Section 13.12.420, in the event that a permit term has expired prior to the completion of work.</p>
<p>13.12.300 - Notice to adjacent owners.</p> <p>Upon the filing of an application for a permit, the director of public works may notify by mail the owners of property abutting the site, as shown on the latest equalized assessment roll, that an application for a watercourse protection permit has been submitted pursuant to this chapter, that they may comment at any stage of the procedure, and may lodge an appeal pursuant to the provisions of this chapter.</p>	<p>13.12.200 Notice to adjacent owners or others.</p> <p>A. Upon the filing of an application for a permit where the proposed development or discharge involves work within the boundaries of a watercourse, the director shall notify by mail the owners of property 300 feet upstream and downstream reaches of the said watercourse that an application for a watercourse permit has been submitted pursuant to this chapter.</p> <p>B. Upon the filing of an application for a permit where the proposed development or discharge is limited to work within a setback, the director may similarly notify the owners of property abutting the site whenever, in his/her judgment, the scope of the proposed work warrants such notification.</p> <p>C. In addition to the notification of those persons indicated in subsections A and B of this Section 13.12.200, the director shall also notify any other person requesting such notification of future watercourse projects. Such requests shall be in writing and directed to the director.</p> <p>D. Each notification described in subsections A, B, and C of this Section 13.12.200 shall include the following:</p> <ol style="list-style-type: none"> 1. A complete description of the said development or discharge, including brief and concise plans and scheduling information where available; 2. A statement indicating that any person may comment on the proposed project at any stage of approval or construction. Such comments should be writing and directed to the director. 3. A statement indicating that any decision made by the director in conjunction with the review and approval of the project may be appealed by any person. Such appeals must be made in accordance with the provisions of Section 13.12.270.
<p>13.12.180 - Fees.</p>	<p>13.12.210 Permit fees or deposits.</p> <p>A. The fee for each action of the director in conjunction with the review, issuance, inspection, and closeout of a permit shall be set, by the director, in</p>

<p>A. The schedule of fees and costs shall be those established and adopted by the board from time to time by resolution. Before a permit is issued, the applicant shall deposit with the director of public works cash or a certified or cashier's check, in a sufficient sum to cover the fee for issuance of the permit, charges for review of plans, specifications and reports, other engineering services, field investigations, and necessary inspection or other work, all in accordance with schedules established and adopted by the board.</p> <p>B. No fee shall be required of public agencies.</p> <p>C. Public utilities may, at the option of the director of public works, make payment as billed by the director of public works instead of in advance.</p> <p>D. If, upon completion of any work under a permit there remains any excess of deposit or of fees or charges, the director of public works shall certify the same to the auditor for refund to the permittee or refund the same from any trust fund established under his jurisdiction for such purposes.</p> <p>E. If, upon completion of any work under a permit there is an insufficient deposit to cover the district's cost, the director of public works may require the permittee to reimburse the district in an amount equal to the cost deficit.</p>	<p>accordance with a fee schedule adopted for this purpose by the board; however, the director shall have the authority to accept a cash deposit, of an amount equivalent to the total of the said fees, so as to charge the actual costs of each activity in lieu of the fixed fee payments.</p> <p>B. With the following exceptions, the permit applicant or his/her agent shall be required to furnish the director with the total fee payments or deposit described in subsection A of this Section 13.12.210, prior to the initiation of any reviews by the director:</p> <ol style="list-style-type: none"> 1. Public agencies, including public utilities, shall not be required to pay a permit application fee. 2. Public agencies, including public utilities, may request that the required fees or cost be billed in lieu of the up-front fee payment or cash deposit. 3. The director shall have the authority to waive the payment of any or all permit-related fees in those cases where, in his/her judgment, the proposed development or discharge is being done for the betterment of the public, there are no discernible life or safety concerns either during or after the said development or discharge, and the primary purpose of the permit is simply to establish a record of the event. <p>C. In the event that an at-cost permit is closed with unexpended funds left over in a deposit account held by the director, the director shall promptly refund the said remainder to the person who made the initial deposit.</p> <p>D. In the event that at any time during the review, issuance, inspection, and closeout processes associated with an at-cost permit, the balance in a deposit account is insufficient to cover the director's actual or expected costs associated with these processes, the director shall have the authority to notify the applicant/permittee that the permit will be suspended pending the restoration of the said account in an amount that is judged adequate, by the director, to cover the remaining unpaid costs.</p> <p>E. If development or discharge is done in violation of this chapter, including development or discharge that violates the terms and conditions of an issued permit, the director shall have the authority to require the payment of remedial permit fees in accordance with the provisions of Section 13.12.370 of this chapter.</p>
<p>13.12.210 - Security.</p> <p>At the discretion of the director of public works, a permit may be withheld until the applicant has posted security in an amount satisfactory to the director of public works for the faithful performance of the work or the cost of removing the work or otherwise reconstructing or restoring a watercourse to conditions existing prior to such work in the event of default on the part of permittee. Said security shall be in the form of cash, a certified or cashier's check, a letter of credit, or a faithful performance bond executed by the applicant and a corporate surety authorized to do business in this state.</p>	<p>13.12.220 Permit security bonds or deposits.</p> <p>A. As a condition for the issuance of a permit, the director shall have the authority to require the deposit of a security instrument in an amount determined necessary by him/her to assure faithful performance of the development or discharge, or the removal of the development and the restoration of the watercourse and the setback to conditions existing prior to such development or discharge, in the event of default or failure to perform by the permittee, or, if the permit is associated with a subdivision, where the permittee does not proceed with the preparation and submittal for approval of a final map. The said security instrument shall in the form of cash, a certified or cashier's check, a letter of credit, or a faithful performance bond executed by the permittee and a corporate surety authorized to do business in this state.</p> <p>B. In the case of subdivisions authorized by a final map, unless otherwise authorized by the director, the security instrument shall be held and remain in effect until final inspections of the watercourse and setback have been made, all development or discharge has been accepted by the director, and all other related requirements of the subdivision contract have been satisfied. For subdivisions authorized by a parcel map, the required effectivity period of the security instrument shall be determined on a case-by-case basis by the director.</p> <p>C. For development or discharge not associated with a subdivision, the security instrument shall remain in effect until final inspections have been made and all development or discharge has been accepted by the director.</p> <p>D. Upon satisfactory completion of the development or discharge authorized by the permit, the director shall promptly release or refund the balance of the security deposit to the depositor. However, in the event that the said development or discharge is not completed by the permit expiration date, or if the said development or discharge was performed in an unacceptable manner, the director shall determine the scope of work necessary to mitigate any hazardous or unsafe conditions and shall have the authority to cause all such necessary mitigation work to be done and to offset the total costs of such work through discharge of the security instruments.</p> <p>E. In addition to the development and discharge security, the director shall also have the authority to require from the property owner or the permittee the deposit of a maintenance security in an amount deemed necessary by the director to guarantee and maintain the development or discharge until the end of the first rainy season following the completion of work. The maintenance security shall be in the form of cash or a certified or cashier's check. In the event that the owner or permittee fails to maintain the development or discharge in a satisfactory manner, the director shall determine the scope of work necessary to mitigate any hazardous or unsafe conditions and shall have the authority to cause all such necessary mitigation work to be done and to offset the total costs of such work through discharge of the maintenance security instruments.</p>
<p>13.12.150 - Prosecution of work.</p> <p>The permittee shall begin the work or use authorized by a permit issued pursuant to this chapter within ninety (90) days from the date of issuance unless a different period is provided in the permit. Failure to begin said work or use on time or</p>	<p>13.12.230 Prosecution of work.</p> <p>The permittee shall begin the development or discharge authorized by the permit within ninety (90) days from the date of issuance unless a different period is provided in the permit. Failure to begin said work on time or to prosecute it diligently shall be deemed a violation of this chapter.</p>

<p>to prosecute it diligently shall be deemed a violation of this chapter.</p>	
	<p>13.12.240 Inspection of work – Special inspections. A. Dependent upon the nature of the proposed development or discharge, the director may require the permittee to provide a qualified special inspector to oversee the completion of that development or discharge. In particular, the director shall have the authority to require such special inspections whenever he/she conditions the approval of the development or discharge with a requirement to verify the acceptability of the work with regard to geotechnical, geological, or biological issues. The permittee shall make the contractual arrangements for any such required special inspections, and shall be responsible for the payments of all associated costs. Any such contracted special inspection shall include a requirement that the inspector submit a written report of the inspection to the director, and that this report contain a statement attesting that in the professional judgment of the inspector, the development or discharge was performed in substantial accordance with the approved plans. B. The director shall have the authority to designate the site of any proposed development or discharge as a high priority site, subject to periodic inspections by the director in order to confirm implementation of appropriate best management practices; the said inspections, if required, shall be performed in accordance with the requirements of Section 13.08.112 of chapter 13.08 of this title. The actual costs of such inspections shall be borne by the permittee.</p>
<p>13.12.200 - Performance of work—Inspection. The director of public works may inspect any work done pursuant to a permit under this chapter. No permittee shall be deemed to have complied with this chapter until a final inspection of the work has been made by the director of public works and he has certified in writing that the work has been completed in accordance with all requirements and conditions of the permit.</p>	<p>13.12.250 Inspection of work – Inspection by director. A. The director shall have the authority to inspect any development or discharge authorized by a permit. B. Unless waived by the director, the following inspections/meetings shall be required: 1. A preconstruction meeting between the director, the permittee, the person doing the development or discharge, and any special inspector(s). 2. An in-progress verification by the director of the adequacy of the pollution prevention plan required by the provisions of Section 13.12.260 of this chapter and any mitigation measures or other conditions set by the permit. 3. A final inspection of the completed development or discharge. C. The director may require additional inspections and/or reinspections at any point if he/she has reason to believe that the work is being done in violation of the terms and conditions of the permit or of this chapter. See Section 13.12.370 of this chapter for a description of possible penalties associated with failed inspections. The director shall also have the authority to investigate any associated development or discharge that has been or is being performed without a permit in order to determine the extent of possible remediation and the imposition of additional penalties. D. No permittee shall be deemed to have complied with the permit provisions of this chapter until the required final inspection has been made by the director and the director verifies each of the following: 1. The development or discharge was done in compliance with the approved plans and the requirements and conditions of the permit; and 2. Any required special inspection report or as-built plans have been submitted; and 3. Any required maintenance plan is being implemented; and 4. Any required mitigation measure has been implemented. E. The permittee shall assure that adequate access to the work site is provided to the director for the purpose of inspection throughout the term of the permit and for any additional maintenance period, if applicable.</p>
<p>13.12.170 - Responsibility. A. Neither the issuance of a permit nor compliance with the conditions thereof, nor with the provisions of this chapter, shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of a permit hereunder serve to impose any liability upon the county, the district, a city, a special district, or its officers or employees, for injury or damage to persons or property. A permit issued pursuant to this chapter does not relieve the permittee of the responsibility of securing and complying with any other permit which may be required by any other public agency, ordinance, directive or law. B. It shall be the responsibility of any person whose operation may result in discharge into a watercourse to comply with applicable federal, state and local water quality standards and regulations.</p>	<p>13.12.260 Responsibilities of permittee. In addition to the responsibility to perform the authorized development or discharge in accordance with the approved plans and specifications and the terms and conditions of the permit, the permittee shall also be responsible for the following: A. Protection of utilities. The permittee shall be responsible for the prevention of damage to any public or private utility facilities, service lines, and connections on, under, and over the site. B. Protection of adjacent property. The permittee shall be responsible for the prevention of damage to adjacent property, including both upstream and downstream reaches of the watercourse. No person shall develop or discharge sufficiently close to the property line or in any other way so as to endanger any adjoining public or private property without supporting and protecting such property from any damage that might occur. C. Advance notice to director. The permittee shall be responsible for notifying the director of the start of development or discharge at least 24 hours prior to the start of such work. D. Construction site control. The permittee shall be responsible for the implementation of seasonally appropriate best management practices to limit erosion, control stormwater run-on and runoff, control sedimentation, provide good site management, control non-stormwater discharges, and where necessary, provide active treatment of discharges, all in accordance with a pollution prevention plan approved by the director. E. Mitigation measures. The permittee shall be responsible for the active implementation of any biological, hydrological, or other mitigation</p>

	measures established by the director as conditions of the permit.
<p>13.12.160 - Appeals.</p> <p>The issuance, denial, cancellation, or conditioning of a permit pursuant to this chapter may, within fifteen (15) calendar days of such action, be appealed in writing by any person to the board. An appeal shall set forth the grounds therefor, the work proposed to be done and the method of accomplishing said work, together with sufficient factual, engineering and technical data to set forth the basis and the reasons for the appeal. Board shall make a final interpretation of requirements and shall announce its decision within thirty (30) calendar days after receipt of said written appeal.</p>	<p>13.12.270 Appeals.</p> <p>A. Any person aggrieved by the director's decisions outlined in Sections 13.12.120, 13.12.190, or 13.12.350 of this chapter, or any other decision made by him/her pursuant to this chapter, except for the levying of administrative fines, may appeal that decision with 10 working days following the effective date of the decision by requesting a review in a written letter addressed to the Director of Public Works at 399 Elmhurst St., Hayward, CA 94544. Upon the receipt of such a request, the director shall order the preparation of a staff report and recommendations, and shall schedule a hearing on the matter at the earliest practical date. At that hearing, the director may hear additional evidence, and may reject, affirm, or modify the earlier decision.</p> <p>B. The decision of the director at the hearing may be appealed to the board by submitting a written statement, setting forth the grounds for the appeal of the director's decision, addressed to the Clerk of the Board of Supervisors at 1221 Oak St., Ste. 536, Oakland, CA 94612. Such appeal to the board must be received by the clerk of the board within 10 working days of the date of the final agency decision by the director. Upon receipt of the appeal, the board shall take one of the following actions:</p> <ol style="list-style-type: none"> 1. Affirm the action of the director; or 2. Refer the matter back to the director for further review, with or without instructions; or 3. Set the matter for a public hearing before the board, in which case the board shall set a time and place for the said hearing and shall provide notice to the person filing the appeal at least 5 days prior to the date set for the hearing. <p>C. In the event of an appeal to the board, the board shall render its decision without consideration of any argument or evidence of any kind other than the record provided by the director, unless the board is itself conducting a public hearing on the matter. The decision of the board shall be final.</p>
<p>13.12.220 - Transfer of permit.</p> <p>No permit issued under this chapter may be transferred or assigned in any manner whatsoever, voluntarily or by operation of law, without the express consent of the director of public works.</p>	<p>13.12.280 Transfer of permit.</p> <p>No permit issued under this chapter may be transferred or assigned in any manner whatsoever, voluntarily or by operation of law, without the express consent of the director.</p>
<p>13.12.060 - Owner's and tenant's responsibility.</p> <p>Every person owning property through which a watercourse passes, or said person's lessee or tenant, shall keep and maintain that part of the watercourse within said property reasonably free of trash, debris, excessive vegetation and other obstacles which would pollute, contaminate or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for said maintenance or other maintenance specified in Section 13.12.190C of this chapter, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.</p>	<p>13.12.290 Owner's responsibility.</p> <p>A. Every person owning property within which a watercourse, or a portion thereof, is located, or said person's lessee or tenant, shall keep and maintain that watercourse and the adjacent area reasonably free of trash, debris, excessive vegetation, and other obstacles that could pollute, contaminate, or significantly retard or divert the natural flow of water within the watercourse, the runoff of stormwater into the watercourse, or the flow of floodwater out of the watercourse; shall maintain existing buildings, structures, and facilities so that they will not impede or diminish the use, hydraulic flow characteristics, physical integrity, or flood resistance of the watercourse or the floodway setback; and shall not remove healthy vegetation from the watercourse or the biological setback beyond that necessary to comply with this subsection 13.12.290A.</p> <p>B. Notwithstanding the above, any watercourse held by the district, either by easement or in fee title, shall be maintained by the district. Property owners who desire to provide routine maintenance within district-maintained watercourses shall first contact the director for permission to enter for this purpose.</p> <p>C. In the event that the requirements of subsection 13.12.290A necessitate repair or restoration activities in excess of those activities described in the definition of "maintenance" in Section 13.12.040, the owner shall be responsible for first obtaining a permit for this purpose under the provisions of Article III of this chapter.</p> <p>D. Under no circumstance shall the owner, or the owner's lessee or tenant, remove vegetation or other material, or perform any other activities under the provisions of this Section 13.12.290, that would tend to increase the vulnerability of the watercourse or the adjacent areas to erosion, sedimentation, or other damage that could be caused by the natural passage of stormwater runoff or floodwaters.</p>
	<p>13.12.300 Minor development.</p> <p>The director shall prepare guidelines for distribution, upon request, to persons proposing minor development, as defined in Section 13.12.040 of this chapter.</p>

	<p>13.12.310 Alteration of watercourses.</p> <p>A. Any proposed development that includes the planned alteration of an existing watercourse shall require the approval of the director, and may require the prior notification of, and approval from, other federal, state, and local agencies, including but not limited to the following:</p> <ol style="list-style-type: none"> 1. The issuance of a Nationwide Permit(s), or other approval, from the U. S. Army Corps of Engineers. 2. The issuance of a Streambed Alteration Agreement, or other approval, from the California Department of Fish and Wildlife. 3. The certification from the RWQCB that the alteration meets the water quality requirements of the State. <p>B. In no case shall any alteration of a watercourse result in a measurable reduction in the hydraulic flow characteristics of that watercourse.</p> <p>C. The director shall have the authority to require that any property owner proposing a change in the nature of an existing watercourse enter into a formal long-term agreement with the district to assure that the hydraulic performance of the modified watercourse is maintained over time.</p>
	<p>13.12.320 Enforcement officer.</p> <p>The director shall enforce the provisions of this chapter. In accordance with prescribed procedures, the director may appoint such number of technical officers, inspectors, and other employees as required to perform the tasks described in this chapter. The director shall have the authority to designate such officers, inspectors, or employees as may be necessary as enforcement officers empowered to enforce the regulations, requirements, and other provisions of this chapter; officers, inspectors, or employees so designated shall have the authority to impose administrative fines and/or fees in accordance with the provisions of Section 13.12.370 of this chapter.</p>
	<p>13.12.330 Investigations of unpermitted development or discharge.</p> <p>The director shall have the authority to issue stop work notices or notices to appear, in accordance with the provisions of Section 13.12.420 of this chapter, following the investigations of reports of development or discharge being performed or having been performed without a permit. Moreover, the director may collect fees, in accordance with the provisions of Section 13.12.370, to offset the costs of any such investigation. In the event that the director determines that a permit is required to safely complete the works or to secure the site, the said enforcement fee shall be in addition to the costs of obtaining a permit.</p>
	<p>13.12.340 Stop work notices.</p> <p>A. Whenever any development or discharge is being done contrary to the provisions of this chapter, an authorized enforcement officer shall have the authority to order that development/discharge stopped by serving written notice to that effect on any persons engaged in, doing, or causing such work to be done. If there are no such persons on the premises, the enforcement officer shall post the stop work notice in a conspicuous place thereupon.</p> <p>B. Any person responsible for the performance of development/discharge, having received a stop work notice from an authorized enforcement officer, shall forthwith stop that development/discharge and immediately proceed to secure the site, pending further direction from the enforcement officer. Under no circumstance shall the development or discharge be resumed except under the express direction of the enforcement officer.</p>
<p>13.12.230 - Suspension and revocation of permit.</p> <p>The director of public works may suspend or revoke a permit for good cause, subject to appeal to the board of supervisors. However, no work shall be performed pending appeal except as authorized by the director of public works.</p>	<p>13.12.350 Suspension and revocation of permits.</p> <p>The director may suspend or revoke a permit for good cause, subject to appeal to the board. All such suspensions or revocations shall be in the form of written notices from the director to the permittee. Upon receipt of such a notice, the permittee shall promptly secure the site and stop (or cause to be stopped) all development or discharge. Pending the resolution of any appeal, no further development/discharge shall be performed under a suspended/revoked permit except for those safety-related or protective measures specifically approved by the director.</p> <p>Unless otherwise directed by the board, the director shall have the authority to require that the following steps be completed prior to the resumption of the original development or discharge:</p> <ol style="list-style-type: none"> A. In the event that the permit was suspended by the director, the permittee may be required to submit additional study results, revised plans, or other data and to pay additional fees or deposits, all in accordance with a resolution plan approved by the director. Upon acceptance of this plan, the director may reinstate the permit in its original form or amend it as required. B. In the event that the permit was revoked, the permittee shall be required to reapply for a new permit in accordance with the requirements of Article III of this chapter and to pay additional fees or deposits, as determined by the director.
	<p>13.12.360 Violations constituting misdemeanors or administrative penalties.</p> <p>Unless otherwise specified, the violation of any provision of this chapter, or the failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor; except that notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor</p>

under this chapter may, at the discretion of the authorized enforcement officer, be charged and prosecuted as an administrative violation in accordance with the provisions of Section 13.12.420 of this chapter or, if appropriate, may be declared a public nuisance and abated in accordance with the provisions of Section 13.12.400 of this chapter. Administrative violations may be subject to an enforcement fee in accordance with the provisions of Section 13.12.420C and/or an administrative penalty or penalties in accordance with the provisions of Section 13.12.370B of this chapter.

13.12.370 Penalty for violation.

- A. Misdemeanor. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine or imprisonment.
- B. Administrative Violation. A person in administrative violation of this chapter may be subject to the payment of fines and/or fees in accordance with the following schedule, at the discretion of the authorized enforcement officer, except that the authorized enforcement officer shall also have the authority to declare a violation as a hazard, subject to summary abatement in accordance with the provisions of Section 13.12.400 of this chapter; in the event of such a hazard declaration, the fines and/or fees may be levied in addition to the penalties described in Section 13.12.400, at the discretion of the authorized enforcement officer:

Fines and Fees for Administrative Violations	
Unpermitted development or discharge:	
• Investigation fee, per Section 13.12.330:	• \$250.00 The director shall have the authority to waive this fee.
• Fine for failure to comply with the directions of the director following his/her investigation:	• \$1000.00 • Additional \$1000.00 for each failure to comply with subsequent direction of the director, except that following the third overall failure to comply, the director shall have the authority to levy a \$1000.00 per day fine in accordance with the provisions of Section 13.12.380 of this chapter.
• Fee for review of construction plans:	• Actual cost.
• Permit fee:	• See Section 13.12.210 of this chapter.
Permitted development or discharge:	
• Fine for violating the conditions of a permit:	• \$250.00 for initial violation. • Additional \$1000.00 for each subsequent failed reinspection, except that following the third failed reinspection, the director shall have the authority to levy a \$1000.00 per day fine in accordance with the provisions of Section 13.12.380 of this chapter.
All development or discharge (permitted and unpermitted):	
• Fee for administrative hearing per Sections 13.12.270 and 13.12.430 of this chapter:	• \$50.00 The director shall have the authority to waive this fee.
• Fee for processing appeals to the board of supervisors:	• \$25.00
• Fee for processing abatement , per Section 13.12.400 of this chapter:	• See Section 13.12.400.
• Fee for other enforcement actions, per Section 13.12.420 of this chapter.	• See Section 13.12.420.
• Fee for civil proceedings, per Section 13.12.440 of this chapter.	• See Section 13.12.440.

The director shall notify, in writing, any person subject to the imposition of a fine in accordance with this Section 13.12.370, and, if appropriate, may provide that person with a reasonable opportunity to correct the violation prior to the levy; any person receiving such a notice may appeal the fine in accordance with the provisions of Section 13.12.430 of this chapter.

Unless otherwise specified by law, the invoice for any fine levied in accordance with this Section 13.12.370 not paid to the district within sixty (60) days of such levy may be sent to county collections for action. In the event that such an invoice is not paid promptly to county collections, the director

	shall have the authority to place a lien upon and against the property involved in the violation.
	<p>13.12.380 Continuing violation. Any person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or allowed by such person and verified by the authorized enforcement officer, and may, at the discretion of the officer, be subject to the specified penalties accordingly, except that the officer shall provide any person responsible for a continuing violation with a reasonable period of time to correct, eliminate, or otherwise remedy that violation prior to the imposition of an administrative penalty or penalties, provided that the said violation does not constitute an immediate danger to health or safety.</p>
	<p>13.12.390 Concealment. Causing, allowing, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of such provision.</p>
<p>13.12.240 - Abatement. Whenever the director of public works determines that any existing condition is a hazard to life or limb, or endangers structures, or adversely affects the use, function or physical integrity of a watercourse, or that any violation of this chapter exists, any such condition or violation is hereby declared to be a public nuisance and may be abated pursuant to the provisions of <u>Chapter 15.28</u> of this code.</p>	<p>13.12.400 Violations deemed a public nuisance. A. In addition to the penalties described in Section 13.12.370 of this chapter, any condition caused or allowed to exist in violation of any of the provisions of this chapter, including any violation of the orders or notices issued pursuant to Section 13.12.420 of this chapter, may be determined by the director to be a threat to the public health, safety, and welfare, and as such, may be declared and deemed by him/her to be a public nuisance, and may be summarily abated and/or restored by any authorized enforcement officer pursuant to the provisions of Chapter 15.28 of this title, including the exception provided by Section 15.28.050E of that chapter wherein the normal notice and hearing requirements for abatements may be waived when the said conditions are determined, by the director, to constitute an immediate hazard to health or property. B. If any violation of this chapter is determined by the director to constitute a recurrent public nuisance, the director shall so declare. Following any appropriate required notice and hearing pursuant to chapter 15.28 of the general ordinance code, thereafter such declared recurrent public nuisance shall be abated in accordance with chapter 15.28 without the necessity of any further hearing. C. The district may recover any and all costs and expenses associated with any actions taken pursuant to the provisions of subsections 13.12.400A and 13.12.400B of this Section, in accordance with the provisions of chapter 15.28 of the general ordinance code. D. In addition to any action taken by the authorized enforcement officer pursuant to subsection 13.12.400A of this Section, county counsel may initiate an action to abate, enjoin, or otherwise compel the cessation of any condition declared to be a public nuisance by the director. In any civil proceeding under this Section 13.12.400, the district may seek to recover the costs of investigation, inspections, monitoring, and/or survey that led to the establishment of the violation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, and the costs of suit. Any attorneys' fees associated with such a proceeding may be recoverable by the party prevailing; however, in no case shall the amount of such fee recovery by the prevailing party exceed the amount of reasonable attorneys' fees incurred by the district in that proceeding.</p>
	<p>13.12.410 California Code of Civil Procedure Section 1094.6. The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of the county decisions pursuant to this chapter.</p>
	<p>13.12.420 Administrative enforcement powers. In addition to the other enforcement powers and remedies established by this chapter, an authorized enforcement officer shall have the authority to undertake the following administrative actions: A. Notice to Appear. When the authorized enforcement officer finds that a violation of this chapter has taken place or is likely to take place, he/she may post a warning notice on the property requesting that the resident or owner appear at the offices of the public works agency to review and resolve that violation. B. Stop Work Notices. See Section 13.12.340 of this chapter. C. Enforcement Fees. The cost of enforcement, including the current pay rate of the authorized enforcement officer (including benefits and overhead), to achieve final resolution of any non-compliance of this Section 13.12.420 shall be borne by the owner of the property involved and the cost thereof shall be invoiced to the owner of that property. The payment of these fees shall be in addition to any fines levied in accordance with the provisions of Section 13.12.370 of this chapter, and upon collection shall be deposited into a special fund to be used to offset the costs of possible future abatement of violations of this chapter in accordance with the provisions of Section 13.12.400 of this chapter. All notices or orders issued by the authorized enforcement officer must state the specific nature of the violation, including a reference to the particular</p>

	provision of this chapter that is being violated.
	<p>13.12.430 Appeals from administrative enforcement fees and fines.</p> <p>Any person receiving notice of an administrative enforcement fee or fine from an authorized enforcement officer in accordance with the provisions of Section 13.12.370 of this chapter may appeal such action to the director by submitting a letter contesting that fee or fine to the director at the address listed on the notice; however, the letter contesting the fee or fine must be postmarked no later than 10 days after the date of the notice of violation. Upon receipt of such a request, the director shall request a report and recommendation from the authorized enforcement officer, and shall set the matter for hearing at the earliest practical date. At such hearing, the director may hear additional evidence, and may reject, affirm, or modify the administrative fee or fine imposed. The director may designate a public works employee to conduct the hearing. The decision of the director or of his/her designee conducting the hearing shall be final.</p>
<p>13.12.250 - Injunction.</p> <p>The county counsel, at the direction of the board of supervisors shall, or in the case of an emergency at the request of the director of public works, may petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with this chapter to comply therewith.</p>	<p>13.12.440 Civil actions.</p> <p>In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the district. In any such action, the district may seek, and the court may grant, as appropriate, any or all of the following remedies:</p> <ul style="list-style-type: none"> A. A temporary and/or permanent injunction requiring any person not complying with this chapter to comply forthwith; B. Assessment of the violator for the costs of any investigation, inspection, monitoring and/or survey that led to the establishment of the violation, including administrative overhead and out-of-pocket expenses, and for the reasonable costs of preparing and bringing legal action under this Section 13.12.440, including attorney fees; C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation; and/or D. Compensatory damages for loss to or destruction of riparian area.
<p>13.12.290 - Denial of other permits.</p> <p>No building, septic tank, water, sewer, electrical, or any other permit shall be issued by the county to any person for any premises or portion thereof which is in violation of this chapter and which violation is not corrected or approved for correction by the director of public works.</p>	<p>13.12.450 Denial of other permits.</p> <p>No building, electrical, mechanical, plumbing, stormwater, on-site wastewater treatment permit, or any other permit shall be issued by the county or the district to any person for premises or portion thereof that is in violation of this chapter and which violation is not corrected or approved for correction by the director.</p>
<p>13.12.260 - Nonexclusive remedies.</p> <p>The remedies provided herein are not exclusive, and are in addition to any other remedy or penalty provided by law for violation of this chapter.</p>	<p>13.12.460 Nonexclusive remedies.</p> <p>The remedies provided in this Article are not exclusive, and are in addition to any other remedy or penalty provided by law for violation of this chapter.</p>