

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE SANTA BARBARA MUNICIPAL CODE BY THE ADDITION OF CHAPTER 22.26, THE AMENDMENT OF SECTIONS 28.92.110, 30.140.090, 30.200.050, 30.250.020, 30.250.030, 30.250.060, AND 30.300.230 "W", AND THE REPEAL OF SECTIONS 28.87.250, 30.15.040, AND 30.140.050, RELATING TO THE REGULATION OF DEVELOPMENT IN AND ALONG CITY CREEKS

The Council of the City of Santa Barbara does ordain as follows:

SECTION 1. Title 22 of the Santa Barbara Municipal Code is amended by the addition of Chapter 22.26 to read as follows:

Chapter 22.26 **Development Along Creeks**

22.26.010 **Purpose.**

A. The purpose of this Chapter is to establish additional regulations limiting development in and adjacent to any creek within the City of Santa Barbara to reduce public safety risks associated with flooding and erosion, enhance water quality, reduce runoff, protect and enhance riparian habitats and wildlife corridors, preserve scenic beauty, and implement the policies of the City's General Plan. It is the goal of the City to minimize negative impacts to creeks, to restore creek habitat where feasible, and to move as many structures as possible to outside of creek buffer areas.

B. The provisions of this Chapter are additional to the requirements of Chapter 14.56 relating to natural watercourses and the City's storm drain system and Chapter 22.24 relating to floodplain management.

C. A creek buffer area as described in this Chapter is not considered a "setback" as defined in Section 30.140.160 of this Code. Development within a creek buffer area is

subject to this Chapter notwithstanding anything in Title 28 or Title 30 to the contrary regarding uses or structures within a setback.

22.26.020 Definitions.

A. The following definitions apply to the interpretation of this Chapter.

“Creek” means a naturally occurring watercourse that conveys water seasonally or year around and having a bed and banks that may be in a natural state or artificially stabilized.

“Creek Area Development” means any of the following in a creek or creek buffer area:

1. The placement or erection of any solid material, building, or structure regardless of type.

2. Grading, removing, dredging, mining, relocating, or extracting any materials.

3. Placement of new agriculture, trees, or landscaping.

4. Removal of vegetation or trees.

5. Creek Area Substantial Redevelopment.

6. Work that may not require building or grading permits such as the construction or placement of a fence, landscaping, wall, retaining wall, curb, steps, deck, walkway, or paving.

“Creek Bank” means the land adjoining and confining a stream channel, comprised of the sloping land from the toe of bank to the top of bank.

“Creek Buffer Area” means an area of land running parallel to the top of bank of a creek measured away from and perpendicular to the creek at any point along the top of bank as further described in Section 22.26.160.

“Creek Area Substantial Redevelopment” has the meaning described in Section 22.26.170.

“Emergency” means a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into consideration economic, budgetary, environmental, legal, social, and technological factors.

“Generally level ground” means any area of land that has less than 5% average slope determined according to Section 30.15.030.

“Hinge Point” is a break in slope, along the bank of a creek or at the top of bank.

“Mature tree” means a tree that is at least four inches diameter measured at four feet six inches above grade.

“Nonconforming Creek Area Development” means a structure or use lawfully existing within a creek or creek buffer area on the effective date of the ordinance enacting this Chapter in compliance with this Code except for the provision of this Chapter.

“Public agency” means the City, the County of Santa Barbara or any flood control agency of the County, the State of California, or the United States. Public agency does not include a local agency as defined in California Government Code Section 53090.

“Toe of Bank” means the break in slope (toe of slope) at the intersection of the base of the creek bank and the bed of the creek channel.

“Top of Bank” means a point or line formed at the intersection of a creek bank and the hinge point at the upper generally level ground as determined under Section 22.26.160.

“Watercourse” has the meaning defined in Section 14.04.020.

B. Words, phrases, and terms not specifically defined in this chapter but defined in Chapter 30.300 shall have the meanings stated in Chapter 30.300.

C. References to in this Chapter to sections, chapters, and titles are to the sections, chapters, and titles of this Code unless otherwise stated. “This Code” means the Santa Barbara Municipal Code.

D. Categories of creeks are:

1. Major creeks including:

a. Arroyo Burro

b. Arroyo Honda

c. Chelham Creek

d. Cieneguitas Creek

e. Coyote Creek

f. Laguna Creek (Laguna Channel)

g. Las Positas Creek

h. Lighthouse Creek

i. Mesa Creek

i. Mission Creek

- j. Old Mission Creek
- k. Rattlesnake Creek
- l. San Roque Creek
- m. Sycamore Creek (East, Middle, and West forks)
- n. Toyon Creek
- o. Westmont Creek

2. Flood Control Project Creeks, which are reaches of certain major creeks

that include:

- a. Arroyo Burro – reach between Hope Ave. and Hwy. 101.
- b. Las Positas Creek – reach between Las Positas Place and Veronica Springs Road.
- c. Mission Creek – Caltrans Channels (approximately Los Olivos Street to Pedregosa Street and Arrellaga Street to Canon Perdido), and the reaches shown as having existing or planned concrete walled areas in the City’s approved Lower Mission Creek Flood Control Project, as updated.
- d. San Roque Creek from State Street to 350 feet upstream of State Street.

3. Minor Creeks -- any creek that is not a major creek or a flood control project creek.

22.26.030 Creek Buffer Areas Designated.

A. Except as provided in subsection B and C, the creek buffer areas for each creek type are stated in Table 22.26.030.

<u>TABLE 22.26.030: CREEK BUFFER AREA</u>	
<u>Creek Types</u>	<u>Creek Buffer Area</u>
<i><u>Major Creeks</u></i>	<u>50 feet from top of bank</u>
<i><u>Flood Control Project Creeks</u></i>	<u>35 feet from top of bank</u>
<i><u>Minor Creeks</u></i>	<u>15 feet from top of bank</u>

B. For Mesa Creek, Lighthouse Creek, and Arroyo Honda in the Coastal Zone the creek buffer area is the outermost edge of the top edge of the creek canyon as shown in Figure 4.1-4 of the City of Santa Barbara Local Coastal Land Use Plan.

C. Additional creek buffer areas may be established as a condition of approval of a project subject to a discretionary permit issued under Title 28 or Title 30, as applicable, to mitigate project specific impacts based upon the conditions of the site, the type of development, flood hazards, or the presence of environmentally sensitive species or habitats.

22.26.040 General Prohibition of Creek Area Development.

It is unlawful for any person to undertake or cause to be undertaken any creek area development unless the development is expressly authorized under this Chapter or is exempt under Section 22.26.070.

22.26.050 Standards Applicable to All Creek Area Development.

The following standards apply to all creek area development:

1. Dams, creek bed realignments, construction of artificial banks or bed, or other substantial alterations of creeks are prohibited except where no other feasible less environmentally damaging alternative exists.

2. Encroachments into and alterations to creeks must be minimized to the extent feasible and designed to mitigate impacts to riparian habitats, wetlands, and creeks.

3. When creek alteration is necessary for flood control or protection of existing development, then non-intrusive bank stabilization methods such as bioengineering techniques (e.g. revegetation, tree revetment, and native material revetment) shall be used instead of hard bank solutions such as rip rap or concrete banks or bottoms, unless non-intrusive bank stabilization methods are not a reasonably feasible to provide the necessary control or protection.

4. The creek area development must be designed to minimize risks to life and property from high geologic, flood, and fire hazards; assure stability and structural integrity; and neither create nor contribute to erosion, geologic instability, or destruction or the site or surrounding area.

22.26.060 Nonconforming Creek Area Development in Creeks and Creek Buffer Areas on Privately Owned Lots.

A. Nonconforming creek area development on privately owned lots may be continued, repaired, and maintained provided that:

1. The nonconforming creek area development complies with all requirements of this Code except for the provisions of this Chapter.

2. The nonconforming creek area development is not demolished by the property owner.

3. The nonconforming creek area development is not abandoned by the owner. For purposes of this Section, a nonconforming creek area development will be

considered abandoned if it is not continuously occupied or used for its intended purpose for a period of more than one year.

4. The nonconforming creek area development is not declared to be a public nuisance under the provisions of this Code or state law.

5. There is no creek area substantial redevelopment.

B. Alterations to nonconforming creek area development are allowed provided that the work does not increase the developed footprint or result in or occur concurrently with creek area substantial redevelopment.

C. A change of use of a nonconforming creek area development is permitted only if the new use is permitted under the zoning designation for the lot or is a change to a compatible nonconforming use as provided in Section 30.165.070 and creek area substantial redevelopment is not required to accommodate the new use.

D. Nonconforming creek area development destroyed by a natural disaster such as fire, earthquake, or flood shall be removed from and may not be replaced in a creek or creek buffer area; provided, however the Planning Commission may approve a modification under Section 22.26.090 to authorize a limited encroachment into a creek buffer area for a replacement development having not more than the same floor area, but not necessarily the same layout, as the previous nonconforming creek area development when the replacement cannot be fully accommodated on the lot outside of the creek buffer area.

E. Creek area substantial redevelopment of a nonconforming creek area development is considered new development and may not occur in a creek or creek buffer area; provided, however the Planning Commission may approve a modification

under Section 22.26.090 to authorize a limited encroachment into a creek buffer area for a creek area substantial redevelopment when the creek area substantial redevelopment is limited to the same floor area, but not necessarily the same layout, as previous nonconforming creek area development and the new development cannot be fully accommodated on the lot outside of the creek buffer area.

F. Conforming additions to existing nonconforming buildings and other conforming alterations to a site containing nonconforming creek area development are allowed, provided that:

1. The building addition or site alteration does not occur in a creek or creek buffer area, and
2. The building addition or site alteration does not result in or occur concurrently with creek area substantial redevelopment.

22.26.070 Exempt Creek Area Development

A. The following creek area developments undertaken by owners of private property are exempt from the requirement for a permit or approval under this Chapter:

1. Vegetation maintenance in a creek buffer area, including existing agricultural operations, but excluding removal of mature trees or native vegetation.
2. Fuel modifications conducted pursuant to an order of the Fire Department to maintain defensible space clearance requirements for existing development.
3. Removal of solid waste or similar debris to comply with an owner's obligation under Section 14.56.020 of this Code.

4. Planting within a creek buffer area of native plants according to the guidelines for native plants on file with the Sustainability and Resilience Department – Creeks Division.

5. Placement in a creek buffer area of yard furniture, recreational equipment, and other similar items that are not fixed to the ground.

6. Geologic testing or borings in a creek buffer area.

B. The following creek area developments undertaken by a public agency are exempt from this Chapter:

1. Any activity authorized to be done by owners of private property under Subsection A.

2. Abatement of emergency conditions.

3. Maintenance or repair of existing public roads, trails, road rights-of way, parking lots, utility services and facilities, flood control or storm drain facilities, or other structures on public property provided that the activity does not increase the developed footprint and does not require removal or replacement of existing structures.

4. Maintenance or repair of existing recreational structures, facilities, and features in City parks provided that the activity does not increase the developed footprint and does not require replacement of existing structures.

5. Removal of solid waste and debris.

6. Removal of structures or hardscape and restoration of the area to a native condition.

7. Placement in a creek buffer area of signs that are exempt from the requirement for a sign permit under this Code.

22.26.080 Creek Area Development Allowed Within a Creek Buffer Area on Privately Owned Lots in Conjunction with a Zoning Clearance.

A. Creek area development in a creek buffer area, but not a creek, on privately owned lots may be approved by the Community Development Director, in consultation with the Sustainability and Resilience Department-Creeks Division, pursuant to the procedure for a Zoning Clearance issued under Chapter 30.280 as follows:

1. Habitat creation, restoration, or enhancement activities including:
 - a. Installing fencing or natural barriers for habitat protection.
 - b. Planting of native plants.
 - c. Removing non-native trees.
2. Development for safety, educational or public access purposes including:
 - a. Permeable public accessways, trails, and associated minor improvements.
 - b. Impervious accessways, trails, and associated minor improvements if located 35 feet or more from the top of bank and designed to the minimum width to meet applicable standards.
 - c. Directional, educational, and interpretive signs to protect public safety, manage open space areas, educate, or direct public access.
 - d. Limited safety or security lighting.
 - e. Fences or natural barriers necessary for safety, security, restoration, protection of habitat, or water quality improvements. Safety or security fences must be no higher than 72 inches, constructed of chain-

link or other see-through material, and no closer than 10 feet from the top of bank.

f. Low-intensity education and nature study uses that do not involve construction of permanent structures.

g. Removal of hazardous trees.

3. Bioswales or other non-structural storm water best management practices.

Structural, non-earthen storm water best management practices (e.g. permeable paving, cisterns, drywells, underground chambers), if located 35 feet or more from the top of bank.

4. Improvements to existing development to provide reasonable access for individuals with disabilities according to minimum standards established by state or federal law.

5. Maintenance or repair of existing private roads, driveways, trails, utility easements and facilities, and parking lots, provided that the activity does not increase the developed footprint and does not require removal or replacement of existing pavement or structures from or in a creek.

6. Installation of wheel stops, striping, and traffic control signs in existing parking lots.

7. Removing structures, paving, and hardscape from creek buffer areas and restoring the surface to a native condition.

B. The Community Development Director may issue a zoning clearance for creek area development under this Section only upon a determination that the development is consistent with this Chapter and that the development is either exempt from Chapter

22.100 or that the development will not result in reasonably foreseeable significant environmental impacts to the creek or creek habitat area.

C. Notwithstanding anything in Chapter 30.280 to the contrary, the decision of the Community Development Director to approve, conditionally approve, or deny a zoning clearance under this Section is final except for the possibility of judicial review.

22.26.090 Creek Area Development Allowed in a Creek or Creek Buffer Area on Privately Owned Lots Upon Issuance of a Modification.

A. General Authorization. The Planning Commission may authorize creek area development on privately owned lots as specified in this Section according to the procedure for issuance of a modification under Chapter 28.92 or Chapter 30.250 (as applicable).

B. Creek related or special purpose development. Modifications may be issued for:

1. Creek area developments where the primary function is the improvement of fish and wildlife habitat, including creek bank restoration, revegetation, removal of concrete lining, removal of fish passage barriers, installation of fish passage enhancement structures, daylighting of previously under-grounded creek channels, and invasive plant removal.

2. New private road crossings and bridges necessary to provide minimum required access to a legal parcel where no other access is available due to topographic, geologic, or environmental constraints.

3. Replacement of existing private road crossings and bridges by use of clear span bridging or by reconstruction where additional creek alteration or wetland fill is avoided.

4. Creek area development as described in Section 22.26.080 that does not otherwise meet the requirements for authorization under that section.

5. New development to provide reasonable accommodation to persons with disabilities subject to the additional findings under Section 30.250.060 D.

6. Creek bank stabilization, protection, or reconstruction when necessary for public safety or to protect the structural integrity of legally existing main buildings on the lot when no other means of stabilization, protection, or reconstruction is feasible.

C. Replacement of nonconforming creek area development destroyed by natural disaster. A modification may be issued to authorize an intrusion into the creek buffer area when necessary for the replacement of a nonconforming creek area development destroyed by a natural disaster (such as flood, sudden subsidence or erosion, landslide, wildfire, etc.) if the Planning Commission finds that the intrusion is necessary because a replacement development of the same floor area as the previous nonconforming creek area development, but not necessarily the same layout or design, cannot be fully accommodated on the lot outside of the creek buffer area.

D. Creek area substantial redevelopment. A modification may be issued to authorize intrusion into the creek buffer area for creek area substantial redevelopment only if the Planning Commission finds that the intrusion is necessary to permit redevelopment of the same floor area as the previous nonconforming creek area development and the redevelopment cannot be fully accommodated on the lot outside of the creek buffer area.

E. Modification to avoid an unconstitutional taking of property. Modifications may be issued when the Planning Commission finds that application of the creek buffer area to

an undeveloped lot would result in an unconstitutional taking of property due to the size, topography, geology, or other physical attributes of the lot as follows:

1. *Residential Zones.* In residential zones, a single-unit residential development where the development on a lot (outside and inside the creek buffer area) does not exceed a total of the following:

- a. A new single unit residence up to 1,200 square feet of livable space, excluding garage or accessory space.
- b. One detached residential accessory building up to a maximum of 500 square feet.
- c. Vehicular and pedestrian access in the minimum dimensions necessary for ingress/egress.

2. *Nonresidential Zones.* In nonresidential zones, nonresidential development or single-unit residential development as authorized by the applicable zone, where the total development on the lot (outside and inside the minimum required creek buffer area) does not exceed a total of the following:

- a. One or more nonresidential main buildings that do not exceed a cumulative floor area of 1,200 square feet.
- b. Covered or uncovered parking areas limited to the minimum size and number of parking spaces required for the nonresidential use by the Zoning Ordinance.
- c. Vehicular and pedestrian access in the minimum dimensions necessary for ingress/egress, or

d. A single-unit residence and residential accessory development as described in subsection B.1. a, b, and c.

F. Modification to comply with state requirements relating to multi-unit residential and mixed-use residential development. A modification may be issued when the Planning Commission finds that application of the creek area buffer to a lot would preclude development of a multi-unit residential or mixed-use residential development of the density and unit configuration consistent with the zoning and general plan designation for the property due to the size, topography, geology, or other physical attributes of the lot.

22.26.100 Required Findings for Approval of a Modification

A. Modification for creek area development authorized by Section 22.26.090 shall not be approved unless the Planning Commission finds all of the following:

1. Reducing the minimum required creek buffer area will not be materially detrimental to the public welfare or be injurious to other property or improvements in the same vicinity.

2. Encroachments into the creek buffer area are minimized to the extent feasible, including through reconfiguration of the floor plan, reduction of unit size, or construction of multi-story development to achieve a smaller building footprint.

3. Modifications to other development standards unrelated to creek protections (such as setback, parking, and open yard requirements) were considered in the project to avoid or minimize impacts to creek areas.

4. The reduced creek buffer area is of sufficient size to avoid or mitigate hazards from creek erosion and floodways over the economic life of the structure.

5. Measures have been incorporated into the project to avoid and minimize impacts to creek, wetland, and riparian habitat as appropriate. Such measures include, but are not limited to, restoration or enhancement of disturbed areas, protection of existing native trees and plants, and removal of non-native or invasive plant species.

6. The modification is consistent with the purposes and intent of this Chapter and Title 28 or Title 30 (as applicable) and with the specific purposes of the zoning district in which the project is located, and is necessary to:

- a. Authorize an appropriate improvement on a lot, and
- b. Prevent unreasonable hardship.

7. The creek area development is either exempt from Chapter 22.100 or that environmental review as required by Chapter 22.100 has been completed and the findings required as a result of the environmental review can be made.

22.26.110 Conditions of Approval of a Modification.

A. When approving a modification, the Planning Commission may impose conditions necessary for the creek area development to achieve compliance with requirements of this Chapter or to mitigate impacts identified as a result of the environmental review conducted for the project.

B. When it is reasonably foreseeable that a modification will result in unavoidable permanent or temporary impacts to existing creek habitat, then habitat creation or restoration will be required as a condition of approval according to the following guidelines:

1. When stream or creek bed habitats are permanently disturbed, the stream or creek bed will be restored at a minimum ratio of 4:1 (area restored to area impacted).

2. When there are temporary impacts to creek habitats, the impacted habitat will be restored at a minimum ratio of 1:1 (area restored to area impacted.)

3. When a native riparian mature tree is removed or it is reasonably foreseeable that the creek area development will result in damage affecting the long-term survival of such a tree, then for each such tree, replacement trees will be planted a minimum ration of 10:1 (newly planted trees to trees removed or impacted) for oak trees and a minimum ration of 5:1 for all other native trees or trees providing habitat for sensitive species. When on-site planting of replacement trees is not reasonable under the circumstances, a different mitigation amount may be established at an appropriate ration recommended by a qualified biologist.

4. Sizes of replacement trees to be planted should be carefully selected to ensure successful restoration. Where on-site habitat restoration is not reasonably feasible, compensatory restoration may be provided at nearby off-site locations if the restoration area is within public parklands or restricted from development, and success and maintenance is guaranteed through binding agreements.

5. All habitat restoration sites shall be monitored for a period of no less than five years following completion. Specific restoration objectives and performance standards shall be designed to measure the success of the restoration project. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met. The restoration will be considered successful after the success criteria have been met for a period of at least two years without remedial actions or maintenance other than exotic species control. Where the City has made a specific determination that

the restoration is unsuccessful and is likely to continue to be unsuccessful, an alternate location may be substituted to provide full compensatory restoration of impacts. The substituted location shall be subject to a minimum monitoring period of five years.

22.26.120 Creek Area Development of Accessory Dwelling Units Subject to Government Code Section 66323.

A. Notwithstanding anything in Chapter 28.86 or Section 30.185.040 to the contrary, accessory dwelling units shall not be located in a creek or creek buffer area on a privately owned lot except that building permits for ministerially approved accessory dwelling units not subject to local standards according to Government Code Section 66323 may be issued for construction within a creek buffer area as provided in this Section.

B. A building permit for an accessory dwelling unit authorized under Subsection A shall not be issued except upon a finding made by the Community Development Director in consultation with the Sustainability and Resilience Department – Creeks Division based upon the information provided by the applicant that all of the following conditions exist:

1. The accessory dwelling unit meets all of the requirements for issuance of a building permit under Government Code Section 66323.

2. There is not sufficient area on the lot outside of the creek buffer area to place the accessory dwelling unit.

3. The intrusion into the creek buffer area is the minimum necessary to locate the accessory dwelling unit.

4. It is not reasonably foreseeable that construction and maintenance of the accessory dwelling unit in the proposed location will result in erosion of the creek bank.

5. It is not reasonably foreseeable that installation of creek bank stability or erosion protection will be required to protect the accessory dwelling unit from creek bank erosion for a period of 75 years following the date of issuance the building permit for the unit.

6. The accessory dwelling unit will not be located in or over a creek or in a designated floodway if the floodway extends beyond the top of bank.

C. Nothing in subdivision B precludes the issuance of a building permit for more than one accessory dwelling unit when required by state law, provided that each unit meets the requirements of subdivision B.

D. Notwithstanding anything in Chapter 30.280 to the contrary, the decision of the Community Development Director to approve, conditionally approve, or deny accessory dwelling units under this Section is final except for the possibility of judicial review.

22.26.130 Temporary Creek Area Development on a Privately Owned Lot in Response to an Emergency

A. The Community Development Director, in consultation with the Sustainability and Resilience Department – Creeks Division, may issue a special temporary permit for the owner of a privately owned lot to perform temporary creek bank stabilization or protection to prevent creek bank erosion or subsidence when necessary because of damage to a creek bank caused by an emergency and the work is needed for public safety or to protect the structural integrity of legally existing main buildings on the lot when no other means of stabilization, protection, or reconstruction is feasible.

B. A special temporary permit may be issued only if the Community Development Director finds, based upon evidence submitted by the owner or the owner's representative, all of the following:

1. The work is necessary to repair damage to the creek bank resulting from an emergency.
2. The work is necessary for public safety or to protect the structural integrity of legally existing main buildings on the lot.
3. The work is the minimum necessary to provide temporary creek bank stabilization or protection to prevent creek bank erosion or subsidence and it is not reasonably foreseeable that the work will result in erosion or subsidence to the creek bank upstream or downstream of the lot.
4. Appropriate plans for the work along with supporting calculations have been submitted to the Community Development Department.
5. All permits for the work required under Section 14.56.040 have or will be issued before commencement of the work.
6. Issuance of the special temporary permit is necessary because there is insufficient time for the owner to apply for and obtain a modification under Section 22.26.090 B.6.
7. The owner has agreed in writing to submit a complete application for a modification under Section 22.26.090 B.6. within 90 days after issuance of the special temporary permit.

C. As a condition of issuance of a special temporary permit the owner shall be required to remove the temporary work upon completion of permanent work authorized

by a modification approved under Section 22.26.090 or within one year from the date of issuance of the special temporary permit, whichever is later. Removal of the temporary work may be accomplished by incorporation into the final work if authorized by the modification.

D. A special temporary permit for a lot within the Coastal Zone will be processed according to the emergency permit requirements of Section 28.44.100.

E. The Community Development Director may develop administrative procedures for the issuance of special temporary permits under this Section.

22.26.140 Environmental Analysis.

A. In addition to the preliminary environmental information or an initial study under Chapter 22.100, a private lot owner seeking approval of creek area development may be required to provide the following technical reports at the owner's cost:

1. A biological evaluation to assess short-term, long-term, and cumulative impacts. Some evaluations may require peer review by a qualified biologist or equivalent technical specialist, as determined by the City Environmental Analyst.

2. A soils, geotechnical, and hydrology evaluation to substantiate safety and erosion findings. Some evaluations may require peer review by a hydrogeomorphologist or equivalent technical specialist to be deemed complete, as determined by the City Environmental Analyst.

3. A topographic survey prepared by a licensed land surveyor, which shall include cross sections showing both banks and the Federal Emergency Management Agency (FEMA) 100-year flood surface elevations of the site. In limited cases where FEMA has not determined flood elevations for a creek, and the top of bank is disputed,

a hydrologic study showing 100-year flood surface elevations may be used in place of “FEMA 100-year flood surface elevations.”

22.26.150 Development by the City or Other Public Entity within a Creek or Creek Buffer Area

A. The following types of creek area development undertaken by the City or other public entity may be permitted by the Public Works Director, in consultation with the Sustainability and Resilience Department – Creeks Division and subject to requirements of Chapter 22.100:

1. Storm water management and flood control improvements, creek channel maintenance, and debris basin modification.
2. Water supply and wastewater projects.
3. Public services, utilities, roads, pathways, and trails to provide access or services to public recreational areas or public facilities.
4. Maintenance, repair, relocation, or replacement of existing public roads, trails, road rights-of way, public utility services and facilities, and parking lots, provided that the activity does not increase the development footprint for that portion in a creek or creek buffer area and any replacement facility is not located closer to the creek than the existing facility, unless necessary to comply with state or federal law or design guidelines imposed by state or federal agencies. Bridge replacement or relocation must include methods to preserve maximum creek flow capacity and sediment transport, and minimize wetland or riparian resource impacts. Clear spanning will be used whenever reasonably feasible. Generally, relocations will be placed outside of the creek or creek buffer area when feasible.

5. Public services, utilities, and development required to complete a project allowed in coastal waters or coastal wetlands pursuant to Policy 4.1.7 Diking, Filling, or Dredging of Coastal Waters, and Wetlands of the City of Santa Barbara Coastal Land Use Plan.

6. New utility crossings that do not result in substantial alteration of creeks and are accomplished by attachment to bridges, clear spanning of the creek, or under-channel boring (horizontal directional drilling).

7. Creek restoration where the primary function is the improvement of fish and wildlife habitat, including creek bank restoration, revegetation, removal of concrete lining, removal of fish passage barriers, installation of fish passage enhancement structures, daylighting of previously under-grounded creek channels, and invasive plant removal.

8. Creek bank stabilization, protection, or reconstruction when necessary for public safety, to respond to an emergency, or to protect lawfully existing structures.

B. The Parks and Recreation Director, in consultation with the Sustainability and Resilience Department – Creeks Division and subject to requirements of Chapter 22.100 may approve installation, removal, or replacement of new park or recreation structures, facilities, features, and equipment in the creek buffer area of City parks.

C. A decision by the Public Works Director or Parks and Recreation Director to approve or deny creek area development under this section may be appealed to the City Council as provided in Section 1.30.050

22.26.160 Determining Creek Top of Bank

A. The top of the bank is determined by the creek channel geometry. Any lot that adjoins, or is within 50 feet of, a creek where development is proposed shall have the top of bank determined as part of any plan submittal.

B. The top of bank shall be determined using the appropriate methodology as described below in Cases 1-- 3 and depicted in the associated diagrams below, except that the top of bank for Flood Control Project Creeks will be determined under Subsection C. If more than one condition applies, the approach that is most protective of creek resources shall apply.

Case 1 - Bank Slopes with a Single Defined Hinge Point. When the creek has a sloped bank rising from the toe of the bank to a hinge point at the generally level ground above, the hinge point is the top of bank. If the existing slope of the bank is steeper than 1.5 (horizontal):1 (vertical), the intersection of a projected plane with a 1.5:1 slope from the toe of the bank to the generally level upper ground is the “top of bank.”

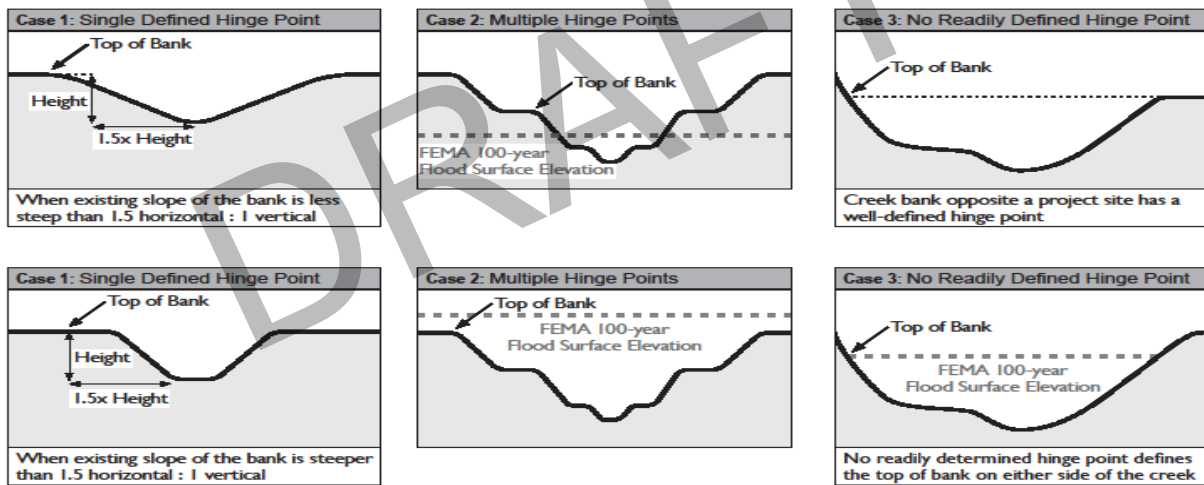
Case 2 – Bank Slopes with Multiple Hinge Points. When the creek bank slope rises from the toe of the bank, levels off one or more times, then rises to an upper hinge point at the generally level upper ground, the hinge point at or directly above the FEMA 100-year flood surface elevation is the top of bank. If the FEMA 100-year flood surface elevation is above the highest hinge point, the location of the top of bank does not change and is the highest hinge point.

Case 3 – Bank Slopes with No Readily Defined Hinge Point. When no discernible break in slope occurs above the active channel, and the creek bank opposite a project site has a well-defined hinge point, the elevation of

that hinge point will be used to determine the top of bank for the project site.

Where no readily determined hinge point defines the top of bank on either side of the creek, the FEMA 100-year flood elevation is the top of bank.

C. For Flood Control Project Creeks identified in Section 22.26.020 D. 2, the top of bank will be located at the top of the existing or proposed flood control channel wall, or the hinge point just above the top of wall, whichever is higher, even if the bank is steeper than 1.5:1.



22.26.170 Creek Area Substantial Redevelopment

A. Creek area substantial redevelopment means any of the following conditions or activities that occur following the effective date of the ordinance enacting this chapter:

1. With respect to an existing structure:

a. More than 50 percent of the structural elements of the roof or roof

framing are replaced, structurally altered, or removed; or

b. More than 50 percent of the structural components of exterior walls (or vertical supports such as posts or columns when a structure has no walls) of a structure are replaced, structurally altered, removed, or are no longer a necessary and integral structural component of the overall structure; or

c. More than 50 percent of the foundation system is replaced, structurally altered, removed, or is no longer a necessary and integral structural component of the overall structure, including, but not limited to: perimeter concrete foundation, retaining walls, post and pier foundations, or similar elements that connect a structure to the ground and transfers gravity loads from the structure to the ground.

2. Fences, patios, decks, staircases, or similar accessory structures shall be considered substantially redeveloped when more than 50 percent, cumulatively, of either the lineal feet or area of the structure is replaced, structurally altered, or removed.

B. The calculation under Subsection A. 1. b. will be based on a horizontal measurement of the perimeter exterior wall removed between the structure's footings and the structure's ceiling. The calculation under Subsection A. 1. a. and c. will be based on the lineal feet of the foundation system, count of post and piers, or overall square footage of that individual element. An applicant for any land use or building permit or authorization with respect to an existing structure on a lot containing a creek buffer area may be required to submit written verification from a registered structural engineer certifying that the roof, exterior walls, and foundation shown to remain are structurally sound and will not be required to be removed or replaced for the project. Before issuance of a building permit, the property owner and contractor shall sign declaration to the City acknowledging

the City's definition of a creek area substantial redevelopment and the penalties associated with violation of this chapter.

C. The term "Creek Area Substantial Redevelopment" as used in this chapter shall not alter the meaning of the term "Substantial Redevelopment" where it is described in Santa Barbara Municipal Code Section 30.140.200, Substantial Redevelopment. "Creek Area Substantial Redevelopment" is differentiated from "Substantial Redevelopment" with a stricter standard of a single structural alteration rather than two structural alterations, with the intent to reduce risks to life and property in areas subject to creek flooding hazards.

22.26.180 Other Regulations Affecting Creek Area Development or Other Activities in Creeks.

A. The provisions of this Chapter are additional to the requirements of Chapters 14.56 and 22.24 and establish the minimum standards applicable to creek area development. This Chapter and Chapters 14.56 and 22.24 will be interpreted to be in harmony with each other, however, if there is a conflict the provision that is most protective of a creek and the environment will prevail.

B. Creek area development in the Coastal Zone is subject to the requirements of this Chapter and issuance of a coastal development permit or approval of a coastal development permit exemption. Creek area development in the Coastal Zone may be subject to additional buffer requirements for creeks and other habitats as provided in the City of Santa Barbara Coastal Land Use Plan.

C. Nothing in this Chapter precludes imposition of additional restrictions to mitigate project specific impacts as a condition to approval of a project subject to a discretionary

permit under Titles 27, 28, or 30 or as may be required to comply with the requirements of Chapter 22.100, based upon the conditions of the site, the type of development, flood hazards, or the presence of environmentally sensitive species or habitats.

D. Creek area development may also be subject to additional state or federal permit requirements.

E. Nothing in this Chapter authorizes development that is otherwise regulated or prohibited by Title 28 or Title 30, as applicable.

SECTION 2. Title 28, Chapter 28.92, Section 28.92.110 of the Santa Barbara Municipal Code is amended to read as follows:

§ 28.92.110 **Modifications.**

Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

A. By the Planning Commission. The Planning Commission may permit the following:

1. Parking. A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this title and will not cause an increase in the demand for parking space or loading space in the immediate area.

2. Setbacks, Lot Area, Floor Area, Street Frontage, Open Yard, Outdoor Living Space, and Distance Between Buildings. A modification of setback, lot area, floor area, street frontage, open yard, outdoor living space, or distance between buildings requirements where the modification is consistent with the purposes and intent of this title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent

unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development containing affordable dwelling units rented or owned and occupied in the manner provided for in the City's Affordable Housing Policies and Procedures as defined in subsection A of Section 28.43.020 of this code.

3. Fences, Screens, Walls, and Hedges. A modification of fence, screen, wall and hedge regulations where the modification is necessary to secure an appropriate improvement on a lot and is consistent with the purposes and intent of this title.

4. Solar Access. A modification of height limitations imposed by Section 28.11.020 to protect and enhance solar access where the modification is necessary to prevent an unreasonable restriction. The Rules and Regulations approved pursuant to Section 28.11.040 shall contain criteria for use in making a finding of unreasonable restriction.

5. Building Height. A modification of building height limitations for existing buildings or structures that exceed the current building height limit, to allow the exterior of the portion of the building or structure that exceeds the building height limit to be improved or upgraded, provided that the improvements increase neither the height nor the floor area of any portion of the building or structure that exceeds the building height limit, except as otherwise allowed in the Code.

6. Net Floor Area (Floor to Lot Area Ratio). A modification of the net floor area standard imposed by Section 28.15.083 to allow a development that would otherwise be precluded by operation of Section 28.15.083.D where the Planning Commission makes all of the following findings:

a. Not less than five members of the Single Family Design Board or six members of the Historic Landmarks Commission (on projects referred to the Commission pursuant to Section 22.69.030) have voted in support of the modification following a concept review of the project;

b. The subject lot has a physical condition (such as the location, surroundings, topography, or the size of the lot relative to other lots in the neighborhood) that does not generally exist on other lots in the neighborhood; and

c. The physical condition of the lot allows the project to be compatible with existing development within the neighborhood that complies with the net floor area standard.

7. Accommodation of Disabilities. A modification of any zoning regulation where the modification is necessary to allow improvements to an existing building in order to provide reasonable accommodations to individuals with disabilities. This modification is not available in the case of new buildings, demolitions and rebuilds, or additions where the proposed construction precludes a reasonable accommodation that would not require a modification.

8. Modifications Under Chapter 22.26. A modification for approval of creek area development authorized under Section 22.26.090 of this code.

B. By the Staff Hearing Officer. The Staff Hearing Officer may permit modifications in accordance with paragraphs 1, 2, 3, 4, 5, and 7 of subsection A above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and

2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice.

SECTION 3. Title 30, Chapter 30.140, Section 30.140.090, Subsection A of the Santa Barbara Municipal Code is amended to read as follows:

30.140.090 Encroachments into Setbacks and Open Yards.

A. Applicability. Required setback and open yard areas shall be open, unenclosed, and unobstructed by structures from the ground upward, except as provided in this section. The provisions of this section do not apply to ~~Development Along Mission Creek, pursuant to Section 30.140.050~~, Street Widening Setbacks, pursuant to Section 30.140.190, or public utility easements which are to remain unobstructed.

SECTION 4. Title 30, Chapter 30.200, Section 30.200.050 of the Santa Barbara Municipal Code is amended to read as follows:

30.200.050 Community Development Director.

The following powers and duties of the Community Development Director (the "Director") under this title include, but are not limited to, the following:

- A. Maintain and administer this title.
- B. Request interpretations of this title from the City Attorney and disseminate to members of the public and to other City Departments.
- C. Prepare and effect rules and procedures necessary or convenient for the conduct of the Director's business. As determined by the City Attorney, these rules and

procedures shall be approved by a resolution of the City Council following review and recommendation of the Planning Commission.

D. Issue administrative regulations for the submission and review of applications subject to the requirements of this title and the Government Code.

E. Review permit applications for conformance with this title, and issue a Zoning Clearance when the proposed use, activity or structure conforms to all applicable development and use standards.

F. Review applications for discretionary permits and approvals under this title for conformance with the California Environmental Quality Act and the City's environmental review requirements, and all other applicable submission requirements and time limits.

G. All actions provided by this title to be performed by the Director in connection with applications for, or amendments to Transfer of Existing Development Rights Permits, as assigned.

H. Determine level of coastal review pursuant to Chapter 30.50, Coastal (CZ) Overlay Zone, and document Coastal Exclusions and Coastal Exemptions, as appropriate.

~~I. Consider and determine the location of "Top of Bank" pursuant to Section 30.140.050, Development Along Mission Creek.~~

J.I. Process and make recommendations to the City Council, Planning Commission, Design Review bodies (pursuant to Title 22 of the Santa Barbara Municipal Code), and Staff Hearing Officer, as appropriate, on all applications, amendments, appeals and other matters upon which they have the authority and the duty to act under this title.

KJ. Act on applications for time extensions of approved permits, as assigned, pursuant to Section 30.205.120, Expiration of Permits.

LK. Initiate revocation procedures on violations of permit terms and conditions pursuant to Section 30.205.140, Revocation of Permits and Approvals.

ML. Make Substantial Conformance Determinations pursuant to Section 30.205.130, Changes to Approved Plans.

NM. Delegate administrative functions, as deemed appropriate, to members of the Planning Division.

ON. Appoint a Staff Hearing Officer pursuant to Section 30.200.040, Staff Hearing Officer.

PO. Other duties and powers as may be assigned by the City Council, City Administrator, or established by legislation.

SECTION 5. Title 30, Chapter 30.300, Section 30.300.230 "W" is amended to read as follows:

30.300.230 "W"

Watercourse. Watercourse has the same meaning as defined in Section 14.04.050 of this Code. ~~Any stream, creek, arroyo, gulch, wash and the beds thereof, whether dry or containing water. It shall also mean a natural swale or depression which contains and conveys surface water during or after rain storms. See Also Section 30.15.040, Determining Area of a Watercourse.~~

SECTION 6. Title 30, Chapter 30.250, Section 30.250.020 of the Santa Barbara Municipal Code is amended to read as follows:

§ 30.250.020 Applicability.

Modifications may be granted to any of the following standards:

- A. Parking.
- B. Setbacks, Lot Area, Floor Area, Density, Street Frontage, Open Yard, Front Yard, Required Distances, Building Attachment.
- C. Fences and Hedges.
- D. Solar Access Height Limitations.
- E. Maximum Floor Area (Floor to Lot Area Ratio).
- F. Standards necessary for the Accommodation of Disabilities.
- G. Standards necessary for Reconstruction of Nonconforming Structures.
- H. Standards necessary for the Preservation of Historic Resources.
- I. Standards and Limitations for Creek Area Development in Creeks and Creek

Buffer Areas when authorized under Chapter 22.26 of this Code.

SECTION 7. Title 30, Chapter 30.250, Section 30.250.030 of the Santa Barbara Municipal Code is amended to read as follows:

§ 30.250.030 Review Authority.

The following bodies shall approve, conditionally approve, or deny applications for Modifications based on consideration of the requirements of this chapter.

A. Planning Commission. The Planning Commission shall review Modifications for reduced parking pursuant to Subsection 30.250.060 B., Modifications to Maximum Floor Area (Floor to Lot Area Ratio), ~~and~~ all Modifications when other discretionary applications related to the project require Planning Commission action, and all Modifications for Creek Area Development when authorized under Chapter 22.26 of this Code.

B. Staff Hearing Officer. The Staff Hearing Officer shall review all other Modifications.

SECTION 8. Title 30, Chapter 30.250, Section 30.250.060 of the Santa Barbara Municipal Code is amended to read as follows:

§ 30.250.060 Required Findings.

A. Parking Modifications for Projects Heard by the Staff Hearing Officer. A Modification for reduced parking may only be approved if the Staff Hearing Officer finds that:

1. Reduced parking will meet anticipated parking demand generated by the project site; or
2. A physical hardship exists that would otherwise prevent reasonable use of the property for an existing single-unit residence, including, but not limited to, extreme slope, narrow lot width, or location of existing development.

B. Parking Modifications for Projects Heard by the Planning Commission. A Modification for reduced parking may only be approved if the Planning Commission finds that:

1. All of the same findings as Staff Hearing Officer above, for any project requiring Planning Commission approval; or
2. There are other criteria consistent with the purposes of the parking regulations and based on unusual or unique circumstances of a particular case, as determined by the Planning Commission.

C. Maximum Floor Area (Floor to Lot Area Ratio). A Modification to allow a development that would otherwise be precluded by operation of Subsection

30.20.030.A, Maximum Floor Area (Floor to Lot Area Ratio), may only be approved if the Planning Commission makes all of the following findings:

1. Not less than five members of the Single Family Design Board or six members of the Historic Landmarks Commission (on projects referred to the Commission pursuant to Section 30.220.020) have voted in support of the Modification following a concept review of the project;

2. The subject lot has a physical condition (such as the location, surroundings, topography, or the size or dimensions of the lot relative to other lots in the neighborhood) that does not generally exist on other lots in the neighborhood; and

3. The physical condition of the lot allows the project to be compatible with existing development within the neighborhood that comply with the floor area standard.

D. Accommodation of Disabilities. A Modification of any provision of this title to allow improvements to an existing structure or site in order to provide reasonable accommodations to individuals with disabilities may only be approved if the Review Authority makes all of the following findings:

1. The project does not include new structures, demolitions or substantial redevelopment and rebuilds, or additions where the proposed project precludes a reasonable accommodation that would not require a Modification;

2. That the property which is the subject of the request for reasonable accommodation will be used by an individual or organization entitled to protection;

3. If the request for accommodation is to provide fair access to housing, that the request for accommodation is necessary to make specific housing available to an individual protected under State or federal law;

4. That the conditions imposed, if any, are necessary to further a compelling public interest and represent the least restrictive means of furthering that interest; and

5. That denial of the requested Modification would conflict with any State or federal statute requiring reasonable accommodation to provide access to housing.

E. **Preservation of Historic Resources.** A Modification of any provision of this title to allow improvements to an existing structure or site in order to preserve a designated historic resource may only be approved if the Review Authority makes all of the following findings:

1. The Modification is consistent with the general purposes of this title or the specific purposes of the zoning district in which the project is located;

2. The project design proposes improvements that encourage rehabilitation or adaptive re-use of a designated historic resource, as an alternative to demolition or relocation;

3. Reduction or waiver of zoning requirements would facilitate the preservation of the historic resource; and

4. The Modification approval and project after completion will be consistent with the City's Historic Resource Design Guidelines.

F. Creek Area Development in Creeks or Creek Buffer Areas. The Planning Commission may grant a Modification as authorized under Chapter 22.26 of this Code only as specified by Section 22.26.090 and upon making the findings required by Section 22.26.100.

GF. **All Other Modifications.** A decision to grant a Modification for any other standard as provided for in this chapter shall be based on the following findings:

1. The Modification is consistent with the general purposes of this title or the specific purposes of the zoning district in which the project is located; and
2. The Modification is necessary to accomplish any one of the following:
 - a. Secure an appropriate improvement on a lot; or
 - b. Prevent unreasonable hardship due to the physical characteristics of the site or development, or other circumstances, including, but not limited to, topography, noise exposure, irregular property boundaries, proximity to creeks, or other unusual circumstance; or
 - c. Result in development that is generally consistent with existing patterns of development for the neighborhood, or will promote uniformity of improvement to existing structures on the site; or
 - d. Construct a housing development containing affordable residential units rented or owned and occupied in the manner provided for in the City's Affordable Housing Policies and Procedures.
 - e. Construct a housing development to meet the special housing needs of the elderly, persons with disabilities, large families, homeless persons, single and small households, farmworkers, students, homeless persons and families, veterans, and any other group with special needs.

SECTION 9. Title 28, Chapter 28.87.250, Section 28.87.250 of the Santa Barbara Municipal Code is repealed.

~~28.87.250 Development Along Creeks.~~

~~A. Legislative Intent. The purpose of this section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara.~~

~~These controls are necessary:~~

- ~~1. To prevent undue damage or destruction of developments by flood waters;~~
- ~~2. To prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters;~~
- ~~3. To protect the public health, safety and welfare.~~

~~B. Limitation on Development. No person may construct, build, or place a development within the area described in subsection C below unless said development has been previously approved as provided in subsection E of this section.~~

~~C. Land Area Subject to Limitation. The limitations of this section shall apply to all land within the banks and located within 25 feet of the top of either bank of Mission Creek within the City of Santa Barbara.~~

~~"Top of bank" means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane of the upper generally level ground along the watercourse; or, if the existing sloping side of the watercourse is steeper than the angle of repose (critical slope) of the soil or geologic structure involved, "top of bank" shall mean the intersection of a plane beginning at the toe of the bank and sloping at the angle of repose with the generally level ground along the watercourse.~~

~~The angle of repose is assumed to be 1.5 (horizontal) : 1 (vertical) unless otherwise specified by a geologist or soils engineer with knowledge of the soil or geologic structure involved.~~

~~"Toe of bank" means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane of the bed of the watercourse.~~

~~**D. — Development Defined.** Development, for the purposes of this section, shall include any building or structure requiring a building permit; the construction or placement of a fence, wall, retaining wall, steps, deck (wood, rock, or concrete), or walkway; any grading; or, the relocation or removal of stones or other surface which forms a natural creek channel.~~

~~**E. — Approval Required.** Prior to construction of a development in the area described in subsection **C** of this section, the property owner shall obtain approvals as follow:~~

~~1. — Any development subject to the requirement for a building permit shall be reviewed and approved by the Chief of Building and Zoning or the Planning Commission on appeal prior to the issuance of a building permit.~~

~~2. — Any development not requiring a building permit shall be reviewed and approved by the Chief of Building and Zoning or his or her designated representative or the Planning Commission on appeal. A description of the development shall be submitted showing the use of intended development, its location, size and manner of construction.~~

~~**F. — Development Standards.** No development in the area subject to this section shall be approved unless it is found that it will be consistent with the purposes set forth in subsection **A** of this section.~~

~~1. — The Chief of Building and Zoning or the Planning Commission on appeal shall consider the following in determining whether the development is consistent with subsection **A**:~~

~~a. That the proposed new development will not significantly reduce existing floodways, re-align stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards.~~

~~b. That proposed additions, alterations or improvements comply with paragraph 1.a above~~

~~c. That proposed reconstruction of structures damaged by fire, flood or other calamities will comply with paragraph 1.a above, or be less nonconforming than the original structure and will not adversely affect other properties.~~

~~d. The report, if any, of a qualified soils engineer or geologist and the recommendations of the Santa Barbara County Flood Control and Water Conservation District.~~

~~e. After review of that report, whether denial of approval would cause severe hardship or prohibit the reasonable development and use of the property.~~

~~2. The Chief of Building and Zoning, or the Planning Commission on appeal may consider the following factors as mitigating possible hazards which might otherwise result from such development:~~

~~a. — Where the development is located on a bank of the creek which is sufficiently higher than the opposite bank to place the development outside a flood hazard area.~~

~~b. — Where the creek bed adjacent to the development is sufficiently wide or the creek bank slope sufficiently gradual that the probability of flood hazard is reduced.~~

~~c. — Where approved erosion or flood control facilities or devices have been installed in the creek bed adjacent to the development.~~

~~d. — Where the ground level floor of the development is not used for human occupancy and has no solid walls.~~

~~e. — Where the development is set on pilings so that the first occupied floor lies above the 100-year flood level, and such pilings are designed to minimize turbulence.~~

~~3. — The Chief of Building and Zoning or the Planning Commission on appeal may allow development into required setbacks if he or she makes the finding that the encroachment would not be necessary except for the development controls required by this section and that the modification of the required setback is necessary to secure an appropriate improvement on a lot, to prevent unreasonable hardship or to promote uniformity of improvement.~~

~~G. — Procedures. The following procedures shall apply to developments in the area defined in subsection C:~~

~~1. — All applicants shall receive an environmental assessment.~~

~~2. All applications shall be referred to the Santa Barbara County Flood Control and Water Conservation District and the City Public Works Department for review and comment.~~

~~3. Upon completion of the above review and comment, the proposed development shall be reviewed by the Chief of Building and Zoning as provided in subsection E. The Chief of Building and Zoning shall give the applicant and any other person requesting to be heard, an opportunity to submit oral and/or written comments to him or her prior to his or her decision. The Chief of Building and Zoning shall send by mail notice of his or her decision to the applicant. The decision of the Chief of Building and Zoning shall be final unless appealed by the applicant or any interested person to the Planning Commission within 10 days by the filing of a written appeal with the Department of Community Development. The Department of Community Development shall schedule the matter for a hearing by the Planning Commission and shall mail the applicant and any interested person requesting notice written notice of the hearing 10 days before the hearing. The decision of the Planning Commission shall be final.~~

SECTION 10. Title 30, Chapter 30.15, Section 30.15.040 of the Santa Barbara Municipal Code is repealed.

~~**30.15.040 Determining Area of a Watercourse.**~~

~~The area of a watercourse includes all land within the top of either bank of any watercourse within the City of Santa Barbara.~~

~~**A. Mission Creek.**~~

~~1. "Top of bank" for Mission Creek means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane~~

~~of the upper generally level ground along the watercourse; or, if the existing sloping side of the watercourse is steeper than the angle of repose (critical slope) of the soil or geologic structure involved, “top of bank” shall mean the intersection of a plane beginning at the toe of the bank and sloping at the angle of repose with the generally level ground along the watercourse. The angle of repose is assumed to be 1.5 (horizontal):1 (vertical) unless otherwise specified by a geologist or soils engineer with knowledge of the soil or geologic structure involved.~~

2. ~~“Toe of bank” for Mission Creek means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane of the bed of the watercourse.~~

B. ~~**Creeks other than Mission Creek.** “Top of bank” and “toe of bank” for creeks other than Mission Creek shall be determined by the Community Development Director on a case by case basis based upon conditions at the site, in consultation with the Parks and Recreation Department and Public Works Department.~~

SECTION 8. Title 30, Chapter 30.140, Section 30.140.050 of the Santa Barbara Municipal Code is repealed.

~~**30.140.050 Development Along Mission Creek.**~~

A. ~~**Purpose.** The purpose of this section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara. These controls are necessary:~~

- ~~1. To prevent undue damage or destruction of developments by flood waters;~~
- ~~2. To prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters; and~~
- ~~3. To protect the public health, safety and welfare.~~

B. ~~**Applicability.** No person may construct, build, or place a development within the area described in Subsection 30.140.050.C, Development Limitation Area, unless said~~

~~development has been previously approved as provided in Subsection 30.140.050.E, Approval Required. The development must also comply with the City of Santa Barbara's adopted Floodplain Management regulations.~~

~~C. — **Development Limitation Area.** The limitations of this section shall apply to all land within the area of the Mission Creek watercourse pursuant to Section 30.15.040, Determining Area of a Watercourse, and all land located within 25 feet of the top of either bank of Mission Creek within the City of Santa Barbara.~~

~~D. — **Development Defined.** Development, for the purposes of this section, shall include any structure requiring a building permit; the construction or placement of a fence, wall, retaining wall, steps, deck (wood, rock, or concrete), or walkway; any grading; or, the relocation or removal of stones or other surface which forms a natural creek channel.~~

~~E. — **Approval Required.** Prior to construction of a development in the area described in Subsection 30.140.050.C, Development Limitation Area, the property owner shall obtain approvals as follow:~~

- ~~1. — Any development subject to the requirement for a building permit shall be reviewed and approved by the Community Development Director or the Planning Commission on appeal, prior to the issuance of a building permit.~~
- ~~2. — Any development not requiring a building permit shall be reviewed and approved by the Community Development Director, or the Planning Commission on appeal. A description of the development shall be submitted showing the use of intended development, its location, size and manner of construction.~~

~~F. — **Development Standards.** No development in the area subject to this section shall be approved unless it is found that it will be consistent with the purposes set forth in Subsection 30.140.050.A, Purpose.~~

~~1. — The Community Development Director, or the Planning Commission on appeal, shall consider the following in determining whether the development is consistent with Subsection 30.140.050.A, Purpose:~~

~~a. — That the proposed new development, additions, alterations, and improvements, will not significantly reduce existing floodways, realign stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards.~~

~~b. — That proposed reconstruction of structures damaged by fire, flood or other calamities will comply with Subparagraph 1.a above, or be less nonconforming than the original structure and will not adversely affect other properties.~~

~~c. — The report, if any, of a qualified soils engineer or geologist and the recommendations of the Santa Barbara County Flood Control and Water Conservation District.~~

~~d. — Whether denial of approval would cause severe hardship or prohibit the reasonable development and use of the property.~~

~~2. The Community Development Director, or the Planning Commission on appeal, may consider the following factors as mitigating possible hazards which might otherwise result from such development:~~

~~a. Where the development is located on a bank of the creek which is sufficiently higher than the opposite bank to place the development outside a flood hazard area.~~

~~b. Where the creek bed adjacent to the development is sufficiently wide or the creek bank slope sufficiently gradual that the probability of flood hazard is reduced.~~

~~c. Where approved erosion or flood control facilities or devices have been installed in the creek bed adjacent to the development.~~

~~d. Where the ground level floor of the development is not used for human occupancy and has no solid walls.~~

~~e. Where the development is set on pilings so that the first occupied floor lies above the 100-year flood level, and such pilings are designed to minimize turbulence.~~

~~3. The Staff Hearing Officer, or the Planning Commission on appeal, may grant a Modification to required Open Yards or setbacks required by the applicable zone, pursuant to Chapter 30.250, Modifications, in order to enable a structure to comply with the Development Limitation Area in Subsection 30.140.050.C, or to be relocated to a safer or more appropriate location on the lot.~~

~~G. — **Procedures.** The following procedures shall apply to developments in the area defined in Subsection 30.140.050.C, Development Limitation Area:~~

- ~~1. — All applicants shall receive an environmental assessment.~~
- ~~2. — All applications shall be referred to the Santa Barbara County Flood Control and Water Conservation District and the City Parks and Recreation Department Creeks Division for review and comment.~~
- ~~3. — Upon completion of the above review and comment, the proposed development shall be reviewed by the Community Development Director as provided in Subsection 30.140.050.E, Approval Required. The Community Development Director shall give the applicant and any other person requesting to be heard, an opportunity to submit oral or written comments prior to a decision. The Community Development Director shall send by mail notice of the decision to the applicant. The decision of the Community Development Director shall be final unless appealed by the applicant or any interested person to the Planning Commission within 10 days by the filing of a written appeal with the Community Development Department. The Community Development Department shall schedule the matter for a noticed public hearing by the Planning Commission pursuant to 30.205, Common Procedures. The decision of the Planning Commission shall be final.~~