

Watercourse Protection Ordinance Update

Planning Commission
9/18/2023



Public Works Agency
— Alameda County —

The key elements of the Ordinance Update

1

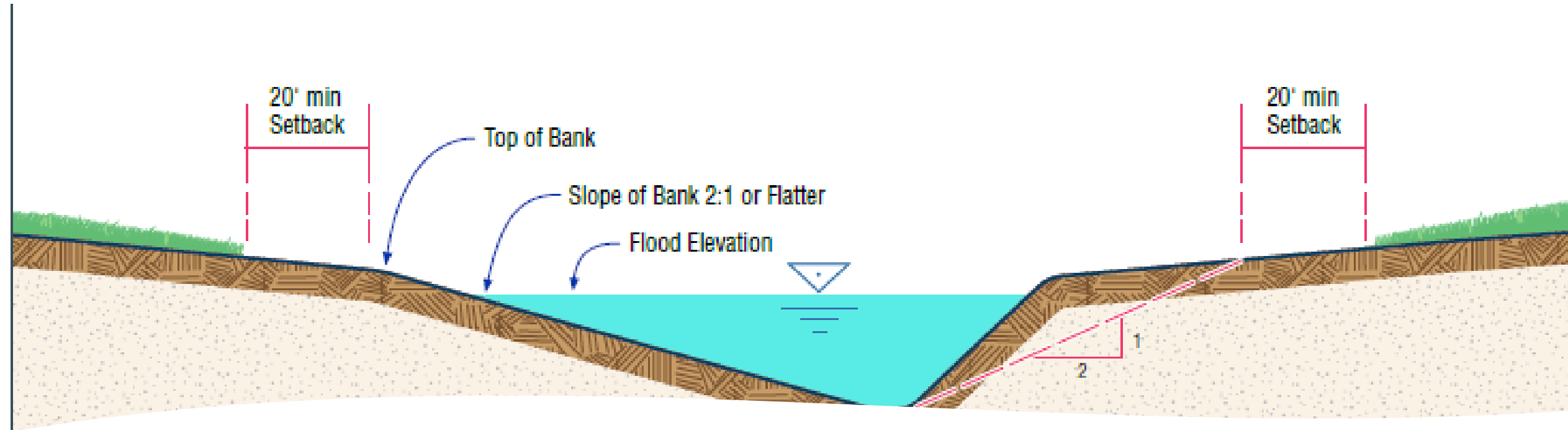
Watercourse Mapping
for
WPO

2

Administrative
Enforcement
Procedure

3

Minor language
cleanup and
definition



Definition and Clarifications

- **Setback Criteria Diagram**
 - Upload setback criteria diagram in our website for easier access for public
 - All Development within a designated floodplain will be subject to the floodplain management regulations under Chapter 15.08 (Building Code) and 15.40 (Floodplain Management) of the general ordinance code.
- **Floodway and Floodplain Definitions (consistent with FEMA definitions):**
 - Floodplain - an area of land adjacent to a stream or watercourse which stretches beyond the banks of its channel, and which experiences flooding during periods of high discharge
 - Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Met with Drew Decker of USGS and Jane Schater-Kramer of DWR on 8/11/23. The Q&A below represent USGS's and DWR's written clarifications to issues discussed during the meeting.

Reply to questions from Alameda County.

County's questions in **red**. Responses for questions 1-5 from USGS and questions 6-8 from CA DWR.

1. **Aren't USGS maps cartographical maps that depict topographic features?**

Many of the NHD features originated from water features included on [Historical USGS Topographic Maps](#). The maps were a cartographic product depicting several different data themes on the earth's surface. These included elevation, boundaries, transportation, and hydrography, and more. The 1:24,000-scale (7.5 minute quadrangle) map series was used as the source of the NHD. These maps were generated nationally, by cartographers working in the field, primarily from the 1960s through the early 1990s.

2. **How was the NHD database generated?**

The 1:24,000-scale [National Hydrography Dataset](#) (NHD) was generated in the early 2000s by digitizing the historic 7.5-minute (1:24,000-scale) topographic maps. Mylar sheets showing the hydrographic "blue" features were scanned and the point, line, and area features were converted to a digital format. The features were then imported into the present [NHD data model](#) with attributes added, such as stream names and classifications. The NHD represents the water drainage network of the United States with features such as rivers, streams, canals, lakes, ponds, coastline, dams, and streamgages.

3. **Since there are no hydrologic data, was the presence of water was visually determined from areal maps?**

The NHD data retained its topographic map origins as more of a cartographic product rather than based on hydrologic data. Maintenance of the NHD has been accomplished primarily through review of publicly available aerial photography, rather than field visits, along with data feedback, through the [markup application](#), from data users and the public.

4. **Wasn't the original NHD was established in the 2000's by USGS and passed on to DWR in 2016?**

USGS has maintained this dataset since with the aid of NHD Stewards, who assist in the maintenance of the NHD. There were a number of organizations acting as Stewards for NHD, some were federal but many are state agencies. The California Department of Water Resources assumed this role in 2016.

5. **Is it the case that a lot of ephemeral streams were wrongly designated as intermittent and that is what the 2018 map corrected?**

Many of the 1:24,000-scale Historic Topographic Maps only had two classifications for streams – intermittent and perennial; the ephemeral classification came after many of the maps were generated with the intermittent and perennial classifications. The USGS Hydrography Program had determined that arid and semi-arid watersheds in the southwestern states contained many streams that had been originally classified as intermittent, but were actually ephemeral. The USGS carried out a process to move unnamed intermittent streams to the ephemeral classification for many watersheds in the states of AZ, CA, NV, and UT. This operation was carried out in late 2015 and likely resulted in the reduced number of intermittent streams that Alameda County had observed on US Topo maps generated between 2015 and 2018.

The current [US Topo maps](#) combine the familiar look and feel of legacy paper USGS topographic maps and are derived from the geographic information system (GIS) data of [The National Map](#) and is continuously updated via National, state, local, and commercial partnerships. These maps are generated at a scale of 1:24,000 like the earlier historic topographic maps. Concerning hydrography, the US Topo map does not show all of the stream features. Currently only intermittent and perennial streams are shown on the maps. Ephemeral streams are not be currently shown on the maps but are still part of the NHD database, and have been maintained by the Stewards and USGS.

6. **What is DWR's relationship with Chico and Northridge CSUs ?**

DWR has interagency agreements with the [Geographic Information Center at CSU Chico](#) and the [Center for Geospatial Science and Technology at CSU Northridge](#) for our National Hydrography Data Stewardship work. These two research centers received training from USGS on editing tools and [specifications](#) about ten years ago and have since developed expertise in this work. Together we have created supplemental [California Business Rules](#) to ensure consistency in the work done across the state. Now that NHD editing has ended, work has shifted to a pilot study to develop elevation-derived hydrography that is compliant with USGS 3DHP standards.

7. Do USGS and DWR have a process by which people can call, write or apply online for changes that they believe will correct errors in mapping?

USGS did have a markup application <https://edits.nationalmap.gov/markup-app> that allowed anyone to submit corrections to the NHD, but they stopped accepting markups effective December 1, 2022. The NHD is now a static dataset and USGS has informed the state stewards that changes to the NHD would only be considered in rare circumstances such as the draining of a lake due to dam removal. USGS' goals for fiscal year 2024 includes developing "markup submission and review processes, editing rules, and tools." (*The 3D Hydrography Program – transition status July 25, 2023* video presentation at 31:30 <https://www.youtube.com/watch?v=ps3rroh74M4>)

Errors may be reported to the California stewardship team at nhd_stewardship@water.ca.gov. The reports are investigated and validated, but at present USGS is not accepting our requests to correct the errors in the NHD. DWR will track the information to inform our future work on the 3DHP.

8. What are you (USGS and DWR) working on to further improve the mapping and stream designation process?

DWR has engaged our partners at the CSU research centers in a pilot study to develop a reliable method of creating hydrography features from high quality lidar digital elevation models. We are making good progress on this first phase of the study which is focused on the Los Angeles River basin watershed. We presented our methodology-in-progress at the CalGIS conference in Monterey in March, and at the Esri User Conference in San Diego in July. The slides from the July presentation are posted on our National Hydrography Dataset page on the California Natural Resources Agency Open Data site.

<https://data.cnra.ca.gov/dataset/national-hydrography-dataset-nhd>. Here is a [direct link to the slides](#). In May we presented online to the National States Geographic Information Council's [3DHP for the Nation Info Forum](#) and that recording, slides, and Q&A Document may be viewed at <https://nsgic.org/knowledge-base/california-approach-3d-hydrography-stewardship-05182023/> .

We plan to validate our tools and methods on other areas of the state and are seeking partners who can provide reference data such as culverts, roads, and connectivity to stormwater infrastructure. We will apply for cost-share funding through a Cooperative Agreement with USGS.

The 3D Hydrography Program is a public-private partnership. We have set on a course to produce as much of the USGS-compliant hydrography data as our funding allows. There is another option that involves forming a partnership to

contribute cost share funding for a designated area, and the work would be contracted to a private industry vendor by USGS to create the USGS-compliant hydrography. We will work with any local or regional entity who is interested in participating in either of these options.

Regarding the stream classification of perennial, intermittent, or ephemeral, I have pasted here a quote from the Q & A from a presentation by **Silvia Terziotti, USGS, Hydrography Science and Applications Lead**, given on March 15, 2023 to the NSGIC 3DHP for the Nation Forum:

Could you discuss how the stream permanence was populated in the original NHD and how will it be populated in the 3DHP?

Early hydrography maps included intermittent and perennial streams, then ephemeral streams were added. These features were primarily categorized by field crews and were highly variable in interpretation. The streams were then compiled into the topographic maps. When the hardcopy maps were converted to Digital Line Graphs (DLG), the coding did not always come across correctly. As corrections were digitized into the DLGs, additional inconsistencies were introduced. **Going forward we will be adopting a probabilistic expression of stream permanence such as days per year or percentage. The objective to get to a continuous vs discreet descriptor.”**

Recording, slides and Q & A document: <https://nsgic.org/knowledge-base/creating-a-hydro-enhanced-elevation-surface-using-the-fully-integrated-elevation-and-hydrography-3dhp-product-march-2023/>

We have heard in meetings that the PRObability of Streamflow PERmanence (PROSPER) model is in consideration for use in 3DHP. <https://www.usgs.gov/centers/wyoming-montana-water-science-center/science/probability-streamflow-permanence-prosper#overview>

Chapter 13.12 WATERCOURSE PROTECTION

Article I General Provisions

13.12.010 Title.

This chapter shall be known as the watercourse protection ordinance of Alameda County.
(Prior gen. code § 7-200.0)

13.12.020 Purpose.

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.

(Prior gen. code § 7-200.1)

13.12.030 Definitions.

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:

"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.

"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.

"Board" means the board of supervisors of Alameda County.

["BZA" or "Board of Zoning Adjustments" refers to the East County Board of Zoning Adjustments and the West County Board of Zoning Adjustments as established in the Alameda County Administrative Code, Chapter 2.40, which may be designated and authorized to conduct hearings under this chapter.](#)

"City" means an incorporated city in Alameda County.

"Development" means any act of filling, depositing, excavating or removing any natural material, or constructing, reconstructing or enlarging any structure, 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"~~"Floodplain" means the channel area of land adjacent to a stream or watercourse and which stretches beyond the banks of its channel, and which experiences flooding during periods of high discharge.

~~"Floodway"~~ means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to ~~convey~~discharge the base 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 without cumulatively increasing the water surface elevation more than a designation on said map designated height.

"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.

~~"Toe of bank"~~"Toe of bank" means the point in a channel where the slope of the bank meets the streambed.

"Top of bank" means the point in a cross-section of a channel where the slope of the stream, pond, or lake bank or shore approaches the horizontal. For a natural channel where the bank is steep, the top of bank is the daylight point where a line projected upward from the toe of bank or shore at a slope of two (2) horizontal units to one (1) vertical unit intersects the ground surface. For a concrete or otherwise armored channel, the top of bank is the highest point of the man-made portion of the channel.

~~"Unincorporated Alameda County Stream Map"~~"Unincorporated Alameda County Stream Map" means the map adopted by resolution of the Board that identifies watercourses subject to this ordinance within unincorporated Alameda County.

~~"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, and which is used for the holding, delay or storage of water. Natural channels shall generally be limited to those designated as a perennial or intermittent stream 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. U.S. Geological Survey 7.5 minute series of topographic maps. At the discretion of the director of public works, the Unincorporated Alameda County Stream Map.~~

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~~The definition of natural channel watercourse 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 Board by resolution 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 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.~~

(Prior gen. code § 7-200.2)

13.12.040 Jurisdiction.

This chapter shall apply to the unincorporated area of Alameda County.

(Prior gen. code § 7-200.3)

13.12.050 Responsibility of director of public works.

It shall be the responsibility of the director of public works to enforce the provisions of this chapter and he is hereby so authorized.

(Prior gen. code § 7-200.4)

13.12.060 Owner's and tenant's responsibility.

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 13.12.190(C) of this chapter, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

(Prior gen. code § 7-200.5)

13.12.070 Not retroactive.

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.

(Prior gen. code § 7-200.6)

13.12.080 Administration.

This chapter shall be administered for Alameda County by the district.
(Prior gen. code § 7-200.7)

Article II Permit Procedures

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;
- D. Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
- E. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
- 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.

(Prior gen. code § 7-201.0)

13.12.100 Restrictions.

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.

(Prior gen. code § 7-201.1)

13.12.110 District ordinance in effect.

Nothing contained herein shall in any way supersede, void or preempt requirements of District Ordinance No. 34 (Alameda County Ordinance No. 441 N.S.~~7.~~) or any updated version of the Permit Ordinance of the district. Said ordinance includes permit requirements for activities in district-owned rights-of-way or facilities.

(Prior gen. code § 7-201.2)

13.12.120 Other permits.

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 and waters that are not covered by this ordinance. 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.

(Prior gen. code § 7-201.3)

13.12.130 Permit applications.

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.

(Prior gen. code § 7-201.4)

13.12.140 Permit issuance.

- A. In issuing a permit, the director of public works may prescribe conditions reasonably necessary to safeguard the ~~effected~~affected watercourse pursuant to provisions of this chapter. Noncompliance with said conditions is deemed a violation of this chapter.
- 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.
- 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.

(Prior gen. code § 7-201.5)

13.12.150 Prosecution of work.

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 to prosecute it diligently shall be deemed a violation of this chapter.

(Prior gen. code § 7-201.6)

13.12.160 Permit Appeals.

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~~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. The Board shall make a final interpretation of requirements and shall announce its decision within thirty (30) calendar days after receipt of said written appeal.

(Prior gen. code § 7-201.7)

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 or waters that are not covered by this ordinance as watercourses to comply with applicable federal, state and local water quality standards, statutory requirements, and other regulations.

(Prior gen. code § 7-201.8)

13.12.180 Fees.

- 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.
- B. No fee shall be required of public agencies.

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- 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.
 - 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.
 - 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.

(Prior gen. code § 7-201.9)

13.12.190 Exemptions.

The following activities are exempted from the provisions of this article except as provided herein:

- 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;
- 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;
- 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;
- 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;
- 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.

(Prior gen. code § 7-201.10)

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.

(Prior gen. code § 7-201.11)

13.12.210 Security.

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.

(Prior gen. code § 7-201.12)

13.12.220 Transfer of permit.

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.

(Prior gen. code § 7-201.13)

Article III Enforcement

13.12.230 Suspension and revocation of permit.

The director of public works [saymay](#) 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.

(Prior gen. code § 7-202.0)

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 [Chapter 15.28 Article VII](#) of this ~~code.~~ [Chapter.](#)

(Prior gen. code § 7-202.1)

13.12.250 Injunction.

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.

(Prior gen. code § 7-202.2)

13.12.260 Nonexclusive remedies.

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.

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, which may, at the discretion of the director of public works, be charged and prosecuted as an administrative violation and/or be declared a public nuisance and abated in accordance with the provisions of Article VII of this Chapter.

(Prior gen. code § 7-202.3)

Article IV Additional Provisions

13.12.270 Right of entry.

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.

(Prior gen. code § 7-203.0)

13.12.280 Liability.

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.

(Prior gen. code § 7-203.1)

13.12.290 Denial of other permits.

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.

(Prior gen. code § 7-203.2)

13.12.300 Notice to adjacent owners.

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.

(Prior gen. code § 7-203.3)

Article V Setbacks

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~~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 federal, state, 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.

(Prior gen. code § 7-204.0)

13.12.320 Setback criteria.

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

~~(Prior gen. code § 7-204.1)~~

Setbacks for the purpose of controlling development adjacent to watercourses are hereby established in accordance with the following criteria:

- A. Development adjacent to a watercourse within properties where the one-hundred-year base flood elevation is contained within the channel shall be 20 feet horizontally, measured from top of bank, as shown in a diagram on file with the director of public works.

- B. Development adjacent to District-owned flood control facilities properties must comply with Chapter 6.36 of this ordinance code.
- C. Development within a floodplain shall be in accordance with all applicable provisions of law, including the provisions of chapters 15.08 and 15.40 of this ordinance code.

Article VI Map Data Validation Modifications To The Unincorporated Alameda County Stream Map

13.12.330 Procedures and Considerations for Map Data Validation Requesting Modifications to Topographic Maps Modification Process.

~~(The following process doesn't preclude individuals or the public from directly contacting USGS/DWR to request changes to the maps.)~~

~~The Director of Public Works is authorized to accept and convey requests on behalf of the county for adjustments to the U.S. Geological Survey's 7.5 minute series of topographic maps. The Director of Public Works may submit such requests to the U.S. Geological Survey, its data stewards or partners, their agents, or other relevant entities who validate or contribute to the U.S. Geological Survey's 7.5 minute series of topographic maps.~~ ~~'s 7.5-minute series of topographic maps to the relevant authorities at USGS and DWR.~~ ~~Prior to sending any requests for changes to these maps adjustments, the Director of Public Works may review pertinent technical and expert input, including watershed analysis, watershed maps, floodway maps, channel definition standards, field surveys, and insights determinations from by other public agencies as well as qualified professionals such as civil engineers, geotechnical engineers, and stream hydrologists.~~ ~~The Director of Public Works may consult with other public agencies as well as relevant county advisory committees, such as municipal advisory councils, the Planning Commission, and the agricultural advisory committee. The Director of Public Works is also authorized to develop policies and procedures to receive and review public comments on requests for adjustments to be submitted by the County to the U.S. Geological Survey or any entity charged with validating map data.~~

~~Optionally, the Director of Public Works may also take into account determinations made by other entities like the Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Wildlife. The Director of Public Works will periodically evaluate the applicable information to determine the appropriateness of each request for map modifications, typically on a biennial basis.~~

~~If the Director determines that the requests warrant submittal to the USGS/DWR, the Director will seek concurrence from the Planning Commission prior to submittal to USGS/DWR.~~

~~The Director of Public Works may establish a structured form or guidelines that is designed to assist the general public in submitting their requests for map adjustments to the Public Works Agency.~~

~~Upon the recommendation of the director of public works, the Board may adopt updates to the Unincorporated Alameda County Stream Map by resolution. In updating the Unincorporated Alameda County Stream Map, the director of public works may consider competent technical or expert information including, but not limited to, the most recent United States Geological Survey~~

~~7.5 minute series topographical maps, topographic position, watershed maps, floodway maps, channel definition standards, field investigation, and reports from qualified professionals, including, but not limited to, civil engineers, geotechnical engineers, or stream hydrologists. The director of public works also may, but is not required to, consider jurisdictional determinations by other agencies, such as the Army Corps of Engineers, the Regional Water Quality Control Board, and California Department of Fish and Wildlife. The director of public works may develop an application form or guidelines for submittal of map modification requests. The director of public works shall review the relevant information and make a recommendation on any proposed map modification biennially. If there are no modification requests for the relevant biennial period, there is no requirement to submit any recommendations for modification. Modifications to the Unincorporated Alameda County Stream Map are subject to Section 13.12.070 and shall not be retroactive, and shall not cure or remediate violations that existed prior to the date of modification.~~

Article VII Administrative Enforcement Procedures

13.12.330 - Declaration of public nuisance by director of public works.

~~Any property declared by the director of public works to be in violation of this Chapter under Section 13.12.240 is declared to be a public nuisance as defined in California Civil Code Section 3480 and may be abated pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the county from enforcing other county ordinances or abating public nuisances in any other manner provided by law.~~

13.12.340 - Notification of nuisance.

~~Whenever the director of public works declares that any condition or violation of this chapter is a public nuisance, the director of public works shall give written notice to the owner of said property. Such notice shall be served upon the owner in accordance with provisions of Section 13.12.350 covering service in person or by mail.~~

~~The foregoing is subject to the following exception: Whenever a condition or violation of this chapter constitutes an immediate hazard to health or property, and in the opinion of the director of public works, the conditions are such that work necessary to abate the hazard must be undertaken sooner than provided by the procedures set forth in this chapter, he may make such alterations or repairs, or cause such other work to be done to the extent necessary to abate the nuisance and protect health or property, after giving such notice to the parties concerned as the circumstances will permit or without any notice whatever, when, in his opinion, immediate action is necessary. As soon as practicable after addressing such immediate hazards, the director of public works shall give notice as provided herein for any action that does not pose an immediate hazard.~~

13.12.350 - Notice to abate.

Notice to abate shall be provided in person or by prepaid certified mail, return receipt requested and shall include a copy of this chapter and a statement describing the section(s) found to be violated. It shall further set forth a reasonable time for correcting the violation(s), but in no event less than three (3) calendar days nor more than sixty (60) calendar days, and may also set forth suggested methods of correcting the same. The director of public works shall inspect the subject property within the time limit for correcting the violation(s), to determine whether the violation(s) has been corrected. If the property is found to be in compliance with this chapter, the matter shall be closed and no further enforcement action taken. If the property is not found to be in compliance with this chapter, further enforcement action may occur as set forth herein including fines and/or fees according to Section 13.12.480, Violation—Schedule of Fines and Fees.

In the event that the violation(s) constitutes a second or subsequent violation on said property, the notice to abate shall include a statement detailing the costs incurred by the director of public works in documenting the nuisance and the preparation of notice to abate and further enforcement action may be taken. Such costs incurred and additional fines and/or fees, if any, shall be due and payable to the County within thirty (30) calendar days from the date of invoice, with unpaid amounts subject to collection as specified in Section 13.12.470.

13.12.360 - Administrative hearing to abate nuisance.

In the event said owner shall fail, neglect, or refuse to comply with the notice to abate a nuisance or the owner disputes the notice to abate, an administrative hearing before the relevant BZA shall be conducted within forty-five (45) calendar days after the date established pursuant to Section 13.12.350 of this chapter to ascertain whether said violation constitutes a public nuisance.

13.12.370 - Notice of hearing.

Notice of said hearing shall be served upon the owner not less than seven calendar days before the time fixed for hearing. Notice of hearing shall be provided in person or by prepaid certified mail, return receipt requested to the owner's last known address. Service shall be deemed to be complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

COUNTY OF ALAMEDA

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the (East or West) County Board of Zoning Adjustments to ascertain whether certain property situated in the County of Alameda, State of California, known and designated as [street address], in said County, and more particularly described as [assessor's parcel number] constitutes a public nuisance subject to abatement by the

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rehabilitation of such property or by the repair, removal, or demolition and removal of nuisance conditions situated thereon. If said property, in whole or part, is found to constitute a public nuisance as defined in the Watercourse Protection Ordinance and the same is not promptly abated by the owner, such nuisance may be abated by the County of Alameda, in which case the cost of such rehabilitation, repair, removal, or demolition and removal will be assessed upon such property and such costs together with interest thereon, will constitute a lien upon such property until paid; in addition, you may be cited for violation of the provisions of county ordinances and subject to a fine and/or fees.

Said alleged conditions consist of the following:

_____ in violation of Alameda County General Ordinance Code Section(s):

The recommended method(s) of abatement are:

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this _____ day of _____, 20_____.

(Director of Public Works, or designee)

Time and Date of Hearing: _____

Location of Hearing: _____

13.12.380 - Administrative hearing by board of zoning adjustments.

At the time stated in the notice, the relevant board of zoning adjustments shall hear and consider all relevant evidence, objections, or protests, and shall receive testimony relative to the

alleged public nuisance and to the proposed rehabilitation, repair, removal, or demolition and removal of such nuisance conditions. Said hearing may be continued from time to time.

If the board of zoning adjustments finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, repair, remove, or demolish and remove the nuisance, the director of public works shall prepare findings and an order which shall specify the nature of the nuisance, the method(s) of abatement, and the time within which the work shall be commenced and completed, which shall not exceed sixty (60) calendar days. The order shall include reference to the right to appeal set forth in Section 13.12.410.

13.12.390 - Service of board of zoning adjustments order to abate.

A copy of the findings and order shall be served on all owners of the subject property in the same manner as provided for notice of hearing in Section 13.12.370. In addition, a copy of the findings and order shall be conspicuously posted on or near the property. Any fines imposed under Section 13.12.350 may be reduced or waived upon determination of hardship or special circumstances by the board of zoning adjustments.

13.12.400 - Procedure—No appeal.

In the absence of any appeal, the nuisance shall be abated in the manner and means specifically set forth in said findings and order. In the event the owner fails to abate the nuisance as ordered, the director of public works may cause the nuisance to be abated by county employees or private contract. The costs shall be billed to the owner, as specified in Section 13.12.440. The director of public works, county employees and/or private contractors are expressly authorized to enter upon said property for such purposes.

13.12.410- Procedure—Appeal to Board of Supervisors.

Any interested party may appeal the board of zoning adjustments findings and order to the Board by filing an appeal with the Clerk of the Board within ten (10) calendar days from the mailing date of the BZA's decision. The appeal shall contain:

- A. A specific identification of the subject property;
- B. The names and addresses of all appellants;
- C. A statement of appellants' legal interest in the subject property;
- D. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
- E. The date and signatures of all appellants; and
- F. The verification of at least one appellant as to the truth of the matters stated in the appeal.

As soon as practicable after receiving the appeal, the Clerk of the Board shall set a date for the Board to hear the appeal, which date shall be not less than ten (10) calendar days nor more than sixty (60) calendar days from the date the appeal was filed. The director of public works shall give each appellant written notice of the time and the place of the hearing at least ten calendar days prior to the date of the hearing, either by causing a copy of notice to be provided to the appellant in person or by prepaid certified mail, return receipt requested addressed to the appellant at the address(es) shown on the appeal. Continuances of the hearing from time to time may be granted by the Board on request of the owner for good cause shown, or on the Board's own motion.

13.12.420 - Decision by Board of Supervisors.

Upon the conclusion of the hearing the Board shall determine whether the property or any part thereof, as maintained, constitutes a public nuisance. If the Board so finds, the Board shall adopt a resolution declaring such property to be a public nuisance, setting forth its findings and ordering the abatement of the same by having such property rehabilitated, repaired, removed, or demolished and removed in the manner and means specifically set forth in said resolution. The resolution shall set forth the time within which such work shall be completed by the owner, in no event less than thirty (30) calendar days. The decision and order of the Board Supervisors shall be final.

13.12.430 – Procedures for hearings before BZA and Board of Supervisors.

- A. All hearings shall be electronically tape recorded.
- B. Hearings need not be conducted according to the California Code of Evidence.
- C. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- D. Irrelevant and unduly repetitious evidence shall be excluded.

13.12.440 - Abatement by county.

If such nuisance is not abated as ordered within said abatement period, the director of public works may cause the same to be abated by county employees or private contract. The director of public works, county employees, and/or private contractors are expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable to the enforcement agency thirty (30) calendar days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the nuisance; the actual expenses and costs of the county in the preparation of notices, specifications, and contracts, and in inspecting the work; and the costs of printing and mailing notices required herein.

No person(s) shall obstruct, impede, or interfere with the director of public works or any person who owns or holds any interest or estate in any property on or to which the abatement is to occur in the performing of any necessary act preliminary or incidental to carrying out an abatement order issued pursuant to Sections 13.12.330, 13.12.370, and 13.12.400 of this chapter.

13.12.450 - Notice of intent to demolish.

A copy of any order requiring abatement by demolition under Sections 13.12.380 and 13.12.420 shall be recorded with the Alameda County recorder.

13.12.460 - Record of cost of abatement.

The director of public works shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by or under contract with the county and shall render an itemized report in writing to the Board showing the cost of abatement, including the rehabilitation, repair, removal, or demolition and removal of all nuisances; provided that before said report is submitted to the Board, a copy of the same shall be posted for at least five (5) days upon or in front of such property, together with a notice of the time when said report shall be heard by the Board for confirmation. A copy of said report and notice shall be served upon the owner of said property in accordance with the provisions of Section 13.12.370 at least five (5) calendar days prior to submitting the same to the Board. Proof of said posting and service shall be made by affidavit filed with the clerk of the board.

13.12.470 - Assessment lien.

The total cost for abating such a nuisance as confirmed by the Board, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and, upon recordation in the office of the county recorder of a notice of lien as made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the Board's decision shall be filed with the Alameda County auditor-controller on or before August 1 of each year, whereupon it shall be the duty of said auditor-controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such special assessment.

In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

Such notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of County of Alameda)

Pursuant to the authority vested by the provisions of Section(s) _____ of Alameda County Ordinance No. _____, the (East or West) County Board of Zoning Adjustments of the County of Alameda did on or about the ____ day of _____, 20____, cause the property hereinafter described, to be rehabilitated or the conditions of nuisance on the property hereinafter described, to be repaired, removed, or demolished and removed in order to abate a public nuisance on said real property; and the Board of Supervisors of the County of Alameda did on the ____ day of _____, 20____, assess the cost of such rehabilitation, repair, removal, or demolition and removal upon the real property hereinafter described; and the same has not been paid nor has any part thereof; and that said County of Alameda does hereby claim a lien upon said property in the amount of said assessment, to wit: the sum of \$ _____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the County of Alameda, State of California, and more particularly described as follows:

(description)

Dated this ____ day of _____, 20____.

Board of Supervisors, County of Alameda.

13.12.480 - Violation—Schedule of fines and fees.

- A. Each 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 permitted by such person and shall be punishable accordingly.
- B. The director of public works shall have the power to designate particular officers or employees to enforce particular provisions of this chapter. Officers or employees so designated shall have the authority to impose fines and/or fees.
- C. If the director of public works determines that a nuisance does not require abatement under the procedures set forth in Section 13.12.330 et seq., the nuisance shall be deemed a violation, and a fine will be imposed on the owner of the property and/or anyone known to the director of public works to be in possession of the property.
- D. The following is a schedule of fines and fees as provided in Section 13.12.350:

Schedule of Fines and Fees—Schedule A

Initial inspection fee (to verify violation) No Charge

Re-inspection fee (violation corrected) No Charge

Re-inspection fee (violation not corrected) 1 hour staff time

Each additional inspection fee 1 hour staff time

Hearing fee (board of zoning adjustments) \$50.00

Board of Supervisors appeal fee \$25.00

Infractions are subject to the following civil fines:

First violation fine: \$100

Second violation within one year of the first violation: \$200

Subsequent violation fine \$500.00

Notwithstanding any other provision in this Section, for a failure to comply with an order of abatement or for a violation that has not been corrected after notice and that has caused or threatens to cause damage to property, the public, or the environment, the director of public works may levy a fine of up to \$1,000.00 for each uncorrected violation or for each failure to comply. Following the third violation or failure to comply, the director of public works shall have the authority to levy a fine of up to \$1,000.00 per day.

In setting a fine, the director of public works is authorized to consider factors such as the seriousness of the violation, the history of violations on the property, the economic impacts of the violation and the fine, the willfulness of the violation, and such other factors as justice may require.

Staff time shall be billed at the rate noted on the most current Alameda County Public Works Agency Billable Rate schedule.

13.12.490 - Violation—Appeal of administrative fines and fees.

The owner(s) may appeal to the board of zoning adjustments any fines or fees imposed by director of public works by filing an appeal with the director of public works within ten (10) calendar days from the date of service of invoice. The appeal must be in writing and contain:

A. A specific identification of the subject property;

B. The names and addresses of all appellants;

C. A statement of appellants' legal interest in the subject property;

D. A statement in ordinary and concise language of the reasons no administrative fine should be imposed or that an administrative fine of a different amount is warranted, together with all material facts in support thereof;

E. The date and signatures of all appellants; and

F. The verification of at least one appellant as to the truth of the matters stated in the appeal.

The decision of the BZA on that appeal shall be final. Failure to submit a timely appeal shall constitute a failure to exhaust administrative remedies and shall preclude the person cited from obtaining judicial review of the validity of the citation. Judicial review shall be in accordance with Government Code Section 53069.4.