

The Route to Project Approval in Environmentally Sensitive Areas

What makes land environmentally sensitive? Consistently, creeks, trees and biological resources are looked upon by regulatory agencies as attributes worthy of preservation. Your idea of a creek may significantly differ from the regulatory agencies.

Is this area drainage / swale a creek? Perhaps not, but it may be considered a wetland by the US Army Corps of Engineers (COE), The US Fish and Wildlife Service (USFWS), the California Department of Fish and Game (DFG) and the California Regional Water Quality Control Board (RWQCB) collectively known as the **Resource Agencies** and will require, essentially, the same regulatory process as a creek.

So what is a creek? Well, you may believe that a creek is:

A beautiful bubbling show of dancing water, a symphony of nature's song, a canopy with showy bursts of green lush flanking its sides, where birds sing and our kids can play.

Who wouldn't want a creek in their backyard? Everyone would, except experienced developers and home builders, who are familiar with the long regulatory approval process a creek or wetland creates.

Integrating a creek into a development project is a long and expensive process. If processed correctly, the creek becomes an amenity to the property with minimal effect on the project; however, obtaining the required permits from the Resource Agencies, (unless begun during the site planning), will cause a significant delay. Furthermore, neighbors and other opponents, unhappy with a project,



can exaggerate the project's impact on the creek and gain many concessions from the home builder through the public hearing process.

One Bay Area City's definition of a creek is: "A Creek is a watercourse that is naturally occurring swale or depression or engineered channel that carries fresh or estuarine



Scott's Lane, an example project of creek and oak tree preservation, led to an award from the City of Walnut Creek for "Best Site Design". Aliquot site planning of the loop road around the 40" live oak tree, approached from a stone bridge (actually a hidden culvert) over the roadside creek, was a low cost solution to entitling the additional lots approved by the City while preserving the creek and the oak.

William Wood, Architect

water either seasonally or year around." This creek definition varies widely from what most people believe a creek to be. Using the cities definition, a five-inch wide erosive rut in a cow pasture that is dry 8 months out of the year could be classified as a creek. It may not be a creek; however, it may support plant species, soil attributes, and periodic moisture, indicating the presence of a wetland. A wetland can be created from an overflowing horse watering trough. Over time the trough runoff has the potential to support plant and soil conditions consistent with a wetland.

Who determines the presence of a creek or wetland?

Typically, a professional environmental resource consultant is hired to create a wetland delineation map. This map is submitted to the COE for verification. To verify the delineation map, a site visit by the COE will be necessary. This may sound relatively simple, but be advised; it typically takes the COE six months to complete this process. If the COE determines the presence of a wetland and your development proposes alterations and or improvements to the wetland, the process becomes very involved; permits from the DFG and RWQCB will be required.

Good planning by integrating the creek into a smart land plan is a paramount approach in avoiding these delays.

I'll just avoid building near the creek. Simply draining rain water away from your home to a natural watercourse may require permits from the resource agencies. For example, drainage from your lot though a drainage culvert placed below the top of a creek bank (i.e. on the side slope) will require resource agency approval permits. In addition, a biologist must now prepare an environmental assessment, which may be reviewed by (yet another resource agency) the US Fish and Wildlife Service (USFWS). Unfortunately,

the resource agencies typically do not communicate with one another, usually resulting in conflicting requirements.

If not carefully and strategically guided by the engineer / planner, the permitting process can evolve into the likeness of a snowball rolling downhill until it's too heavy to stop.

Homebuilders and Developers are also aware that an infill project (project surrounded by existing development) involving a creek is vulnerable to project mitigation requirements for protected species. These mitigations may be severe enough to prevent development consistent with General Plan allowable density. For example, the biological assessment may find the habitat for a particular animal species on the property. The cost and time to prove the species is not there, if habitat exists, is typically too great, especially for a small project. Even the biologist, who

a resource which burdens the owner of the land with excessive permitting requirements, ignores land rights to the extent that a sizable portion of the land can be deemed unbuildable providing a challenge for the engineer / land planner. The riparian habitat and oak groves on a property are also viewed as a public resource by Cities.



This 60 acre project, "Alamo Estates" on Alamo Country Circle, is an example of integrating a project into the natural terrain without losing density. The Alamo Improvement Association recommended approval of this project with 98 lots, because the land plan was married to the topography of the land. The project is designed below majestic oak studded knolls on the property. These knolls became significant natural features in distributing aesthetic buffers throughout the land plan.

Aliquot Associates proven track record. Aliquot Associates, a land planning, civil engineering and land surveying company is experienced in successfully obtaining infill permits in sensitive rural and urban communities throughout the Bay Area. As remaining land is constrained by numerous factors, requesting and obtaining variances to zoning codes and exceptions to subdivision and public works codes are usually needed. This not only requires an insightful understanding of the Resource Agency's environmental regulations and the City's codes, it requires expertise in developing a successful strategy to navigate the project through these regulatory agencies. Aliquot's highly skilled staff can help you create a development plan and obtain the required permits while maximizing your projects potential.

Engage an engineering firm experienced in land use planning through growth sensitive Cities and the environmental Resource agencies. Professional relationships have less to do with successful processing through state and federal agencies, as it may with local government, rather it is thoughtful planning and addressing impacts, coupled with proactive regulatory compliance up front; this is the road to a successful project. Planning a project to mitigate environmental impacts and using the creek as a resource to the project, requires a profound understanding of the connection between regulatory processing, City approval and project site design; one of **Aliquot's strengths.**



In this 15 acre infill project in Lafayette, smart land planning resulted in a project with winding streets between majestic oaks. Every constraint a proposed infill project could possibly face was present in this project: Las Trampas and Reliez Valley creeks bounded two sides of the project, red-legged frog habitat was present, significant Native American cultural resources were found, and large heritage oaks studded the land. In one of the most difficult cities in the Bay Area, Lafayette approved 21 lots of the 24 proposed.

doesn't believe the species is present, will correctly advise the builder to "accept presence", otherwise face longer delays in excess of 2 years. Most builders are not aware a single home project can be caught up in this regulatory quagmire.

It's now the City's turn to regulate. All cities have adopted or created their own ordinances and policies for protecting creeks. Setbacks (a no building zone) from the creek vary, but not many allow adequate use of the land. In some jurisdictions creek setbacks can be in excess of 60 feet from the creek. Exceptions to these large setbacks are achievable, if approached correctly during the planning process.

Subject, Environmental 101, Topic, Your Land. Embarking on a subdivision project or simply an addition to your home, you will find the City, in essence, has separated the creek from the your land, as it is considered a public resource;

Vince D'Alo, Principal, Aliquot Associates, Inc.

www.aliquot.com