

17.16.025 Creek Setbacks.**A. Purpose.** Creek setbacks are intended to:

1. Protect scenic resources, water quality, and natural creekside habitat, including opportunities for wildlife habitation, rest, and movement.
2. Further the restoration of damaged or degraded habitat, especially where a continuous riparian habitat corridor can be established.
3. Allow for natural changes that may occur within the creek corridor.
4. Help avoid damage to development from erosion and flooding.
5. Enable implementation of adopted City plans.

B. Waterways Subject to Setbacks. Creek setback requirements shall apply to all creeks as defined in the Open Space Element and shown on that element's Creek Map, and only to those creeks.**C. Measurement of Creek Setbacks.** Creek setbacks shall be measured from the existing top of bank (or the future top of bank resulting from a creek alteration reflected in a plan approved by the City), or from the edge of the predominant pattern of riparian vegetation, whichever is farther from the creek flow line (Figure 5). The Community Development Director may determine the predominant pattern of riparian vegetation, where the edge of the vegetation varies greatly in a short length along the creek, in a way unrelated to topography (for example, the Director will not base the setback line on individual trees or branches extending out from the channel or on small gaps in vegetation extending toward the channel). Where riparian vegetation extends over a public street, no creek setback is required on property which is on the side of the street away from the creek.**D. Plan Information.** The location of top of bank and of riparian vegetation shall be shown on all project plans subject to City approval. The location of these features is subject to confirmation by the Community Development Director, based on observation of actual conditions and, as needed, the conclusions of persons with expertise in hydrology, biology, or geology.**E. Creek Setback Dimensions.** Different setback dimensions are established in recognition of different parcel sizes and locations of existing structures for areas within the city in comparison with areas which may be annexed, and in response to different sizes of the creek channels and tributary drainage areas.

1. **Creeks within the 1996 City Limits.** Along all creeks within the city limits as of July 1, 1996, the setback shall be 20 feet, except as provided in parts E.3, E.4 or G below. Where the city limit follows a creek, the setback on the side within the 1996 city limits shall be 20 feet and the setback on the annexed side shall be as provided in part 2 below.
2. **Creeks in Areas Annexed After 1996.** Along any creek in an area annexed to the City after July 1, 1996, the following setbacks shall be provided, unless a specific plan or development plan approved by the City Council provides a larger or smaller setback, consistent with the purpose of these regulations and with General Plan policies.

- a. **Fifty-foot Setbacks.** The setback along the following shall be 50 feet: San Luis Obispo Creek (all of main branch); San Luis Obispo Creek East Fork, from San Luis Obispo Creek (main branch) to the confluence with Acacia Creek; Stenner Creek.
 - b. **Thirty-five-foot Setbacks.** The setback along the following shall be 35 feet: Prefumo Creek; Froom Creek; Brizzolara Creek; San Luis Obispo Creek East Fork tributary, from the confluence with Acacia Creek to Broad Street (Highway 227); Acacia Creek and its tributaries west of Broad Street (Highway 227); the segment of the tributary of Acacia Creek which flows generally parallel to and on the easterly side of Broad Street (Highway 227), from Broad Street to Fuller Road.
 - c. **Twenty-foot Setbacks.** The setback along all creeks except those listed in parts "a" and "b" immediately above shall be 20 feet. (Informational map is available in the Community Development Department.)
3. **Larger Setbacks.** To mitigate potentially significant environmental impacts in compliance with the California Environmental Quality Act, or to implement adopted City plans, when approving a discretionary application the City may require setbacks larger than required by parts 1 and 2 above, or further limitations on the items which may be placed within setbacks. (Also, other City regulations may restrict or prevent development in a floodway or floodplain.)
 4. **Prior Approvals.** Where the City has explicitly approved a creek setback smaller than required by this section, prior to adoption of this section, by action on a tract or parcel map (whether or not a vesting map), architectural review application, use permit, Planned Development zoning, or Special Considerations zoning, that smaller setback shall remain in effect so long as the approval is in effect.

F. Items Prohibited within Setbacks.

The following shall not be placed or constructed within a creek setback, except as provided in part G below: structures; paving; parking lots; in nonresidential zones, areas used for storing or working on vehicles, equipment, or materials.

G. Exceptions to Creek Setbacks.

1. Entitled Replacement Structures.

Where a structure lawfully existed on or before October 3, 1996, within a creek setback required by this chapter, the following shall apply. This part is not intended to allow replacement of paving that existed on or before October 3, 1996, with new paving or a building, unless a discretionary approval is obtained pursuant to part 17.16.025.G(4).

- a. Any structure built in replacement of such a structure may occupy the same footprint, within the creek setback, as the previous structure, without obtaining a discretionary exception. (See also Section 17.16.020(E)(1)(d).)
- b. Additional floor area shall not be added to the encroaching part of the structure (for example, by adding stories).
- c. The part of a structure that is nonconforming due solely to the creek setback encroachment may be remodeled without regard to the limits of Section 17.14.020(B) and (C) of this title.

2. Entitled Accessory Structures and Uses.

The following items may be located within the required creek setback, without obtaining a discretionary exception, provided that they: do not extend beyond the top of bank into the creek channel; will not cause the removal of native riparian vegetation; will not reduce any flooding capacity pursuant to the city's flood damage prevention regulations; in total occupy not more than one-half of the setback area; are consistent with other property development standards of the zoning regulations.

- a. Walls or fences provided that in combination with buildings they enclose not more than one-half of the setback area on any development site.
 - b. For a single-family dwelling: uncovered parking spaces, patios, and walkways. (Pedestrian paths and bicycle paths require a discretionary exception as provided in part 4.)
 - c. Decks, stairs, and landings which are no more than thirty inches in height.
 - d. One-story, detached buildings used as tool and storage sheds, play houses, and similar uses, provided the projected roof area does not exceed one hundred twenty square feet.
 - e. Garden structures such as trellises, arbors, and gazebos, provided they are constructed using an open lattice design and lightweight materials.
3. **Entitled Architectural Features.** The following architectural features may extend into the setback up to thirty inches: cornices, canopies, eaves, buttresses, chimneys, solar collectors, shading louvers, water heater enclosures, and bay or other projecting windows that do not include usable floor space.
4. **Discretionary Exceptions.**
- a. **Intent.** Discretionary exceptions to creek setback standards are intended to allow reasonable use of sites that are subject to creek setbacks, where there is no practicable alternative to the exception. Generally, such exceptions are limited to small parcels that are essentially surrounded by sites that have been developed with setbacks smaller than those in subsection E of this section. In the case of pedestrian paths, bicycle paths, and bridges, the site may be large, but there are no options for avoiding a crossing of the creek or encroaching into the creek setback.
 - b. **Application Type.** A creek setback smaller than required by subsection E of this section may be approved by city action on a plan for public facilities approved by the city council or on a specific plan, development plan under planned development zoning, land division, use permit, or architectural review. Where one of these types of applications is not otherwise required for the proposed feature, an exception request shall be in the form of an administrative use permit.
 - c. **Public Notice.** Public notice for a project involving a creek setback exception, regardless of application type, shall include a clear description of the feature or features proposed to receive the exception, and the extent of the exception.
 - d. **Findings.** Each discretionary exception shall be subject to each of the following findings, regardless of the type of project application under which the request is considered.
 - i. The location and design of the feature receiving the exception will minimize impacts to scenic resources, water quality, and riparian habitat, including opportunities for wildlife habitation, rest, and movement; and

- ii. The exception will not limit the city's design options for providing flood control measures that are needed to achieve adopted city flood policies; and
 - iii. The exception will not prevent the implementation of city-adopted plans, nor increase the adverse environmental effects of implementing such plans; and
 - iv. There are circumstances applying to the site, such as size, shape or topography, which do not apply generally to land in the vicinity with the same zoning, that would deprive the property of privileges enjoyed by other property in the vicinity with the same zoning; and
 - v. The exception will not constitute a grant of special privilege –an entitlement inconsistent with the limitations upon other properties in the vicinity with the same zoning; and
 - vi. The exception will not be detrimental to the public welfare or injurious to other property in the area of the project or downstream; and
 - vii. Site development cannot be accomplished with a redesign of the project; and
 - viii. Redesign of the project would deny the property owner reasonable use of the property. ("Reasonable use of the property" in the case of new development may include less development than indicated by zoning. In the case of additional development on an already developed site, "reasonable development" may mean no additional development considering site constraints and the existing development's scale, design, or density.)
- e. Biological Survey.** A biological survey by a qualified, independent person shall be required for each discretionary exception request, to provide the basis for making finding subsection (G)(4)(d)(i) of this section, unless waived by the community development director upon determining that no purpose would be served by such a survey because no biological resources could be affected by the exception.
- f. Application Contents.** In addition to any other information required for a project application, a request for creek setback exception shall include the following:
- i. A description of the feature or features proposed for exception and the extent of the exception.
 - ii. A description of potential design changes for the project which would eliminate or reduce the need for the exception.
 - iii. A statement why an exception is deemed necessary by the applicant.
 - iv. Mitigation proposed to offset any harmful effects of the exception.

Figure 5

