

Title 13 PUBLIC SERVICES

Chapter 13.012 WATERCOURSE PROTECTION

Section 13.12.00A Article I. General Provisions

Section 13.12.010 Title.

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

Section 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)

Section 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.

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

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

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

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

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

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

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

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

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

Section 13.12.040 Jurisdiction.

This chapter shall apply to the unincorporated area of Alameda County. (Prior gen. code § 7-200.3)

Section 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)

Section 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 13.12.190C 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)

Section 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)

Section 13.12.080 Administration.

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

Section 13.12.089A Article II. Permit Procedures

Section 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)

Section 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)

Section 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.). Said ordinance includes permit requirements for activities in district-owned rights-of-way or facilities. (Prior gen. code § 7-201.2)

Section 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. 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)

Section 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)

Section 13.12.140 Permit issuance.

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

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)

Section 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)

Section 13.12.160 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. An appeal shall set forth the grounds therefor, the work proposed to be done and the method of accomplishing said work, together with sufficient factual, engineering and technical data to set forth the basis and the reasons for the appeal. Board shall make a final interpretation of requirements and shall announce its decision within thirty (30) calendar days after receipt of said written appeal. (Prior gen. code § 7-201.7)

Section 13.12.170 Responsibility.

A. Neither the issuance of a permit nor compliance with the conditions thereof, nor with the provisions of this chapter, shall relieve any person from any responsibility otherwise imposed by

law for damage to persons or property; nor shall the issuance of a permit hereunder serve to impose any liability upon the county, the district, a city, a special district, or its officers or employees, for injury or damage to persons or property. A permit issued pursuant to this chapter does not relieve the permittee of the responsibility of securing and complying with any other permit which may be required by any other public agency, ordinance, directive or law.

B. It shall be the responsibility of any person whose operation may result in discharge into a watercourse to comply with applicable federal, state and local water quality standards and regulations. (Prior gen. code § 7-201.8)

Section 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.

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)

Section 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)

Section 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)

Section 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)

Section 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)

Section 13.12.229A Article III. Enforcement

Section 13.12.230 Suspension and revocation of permit.

The director of public works may suspend or revoke a permit for good cause, subject to appeal to the board of supervisors. However, no work shall be performed pending appeal except as authorized by the director of public works. (Prior gen. code § 7-202.0)

Section 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 of this code. (Prior gen. code § 7-202.1)

Section 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)

Section 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. (Prior gen. code § 7-202.3)

Section 13.12.269A Article IV. Additional Provisions

Section 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)

Section 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)

Section 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)

Section 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)

Section 13.12.309A Article V. Setbacks.

Section 13.12.310 Requirements.

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

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

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

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

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

F. Setbacks shall be located outside of floodways.

G. The director of public works shall make the determination as to setback limits and any permitted development within a setback. (Prior gen. code § 7-204.0)

Section 13.12.320 Setback criteria.

See A, B, and C in Ordinance 82-18 for diagrams. (Prior gen. code § 7-204.1)