RECOMMENDED ACTION

- Consider recommendations from the Department of Planning and Development regarding modifications to County codes to establish Riparian setbacks per meet storm water permitting requirements of the Coast Regional Water Quality Control Board (Central Coast Water Board).

FISCAL IMPLICATIONS

There are no fiscal impacts associated with acceptance of this report.

CONTRACT HISTORY

None.

REASONS FOR RECOMMENDATION

The 2010 Revised Regional Storm Water Management (2010 SWMP) Plan adopted by the Central Coast Water Board requires that the County adopt an ordinance “to require a minimum setback of 30 feet from riparian/wetland areas” (see Attachment A, Final Regional SWMP 2010).

The permit area subject to the 2010 SWMP requirements includes the area generally surrounding the unincorporated community of San Martin in South County (see Attachment B).

The County currently has three different riparian setback requirements that affect public and private development projects. This includes (a) General Plan Riparian setbacks that affect public, commercial, industrial, institutional, and residential subdivision projects, (b) Santa Clara Valley Habitat Plan (“Habitat Plan”) riparian setbacks that affect projects covered by the Habitat Plan, and (c) Water Collaborative riparian setbacks that affect all public and private development projects.

Staff has reviewed the new 2010 SWMP riparian setback requirements to determine if they are redundant with the three existing riparian setbacks or if they could be consolidated with the existing requirements to avoid a fourth set of requirements. As the three existing riparian setback requirements and the new 2010 SWMP riparian setback requirements affect different types of projects in different geographic areas of the County, they do not overlap and thus the requirements cannot be consolidated easily into one set of regulations.

As such, in order to comply with the 2010 SWMP requirements, the Administration proposes to modify applicable County codes and policies to apply riparian setback requirements only to the 2010 SWMP permit area in the south county watershed. The new riparian setback would incorporate best practices used in the Santa Clara Valley Habitat Plan, including a process for setback exceptions, to provide process consistency with other requirements.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.
SUSTAINABILITY IMPLICATIONS

Future adoption of a the riparian setback for the 2010 SWMP permit area will have positive sustainability implications by protecting creeks with long-term benefits to water quality, habitat, and scenic resources.

BACKGROUND

The Storm Water Management Plan (SWMP) incorporates the efforts of the City of Morgan Hill, the City of Gilroy, and the unincorporated portion of Santa Clara County within the watershed of the Pajaro River and Monterey Bay to meet the U.S. Environmental Protection Agency’s NPDES Phase II Storm Water Permit requirements for separate storm sewer systems (MS4s) in small municipalities (communities between 10,000 and 100,000). The purpose of the storm water program is to establish a comprehensive effort to help prevent the discharge of pollutants to surface water bodies by limiting the role storm water runoff plays as the vehicle for pollution. The NPDES Program has been delegated to the State of California for implementation through the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards). The Upper Pajaro River Watershed is located within the jurisdiction of the Central Coast Water Board. The minimum 30-foot setback from riparian/wetland areas is one of 11 best management practices from the SWMP that are required to be implemented by the municipalities through policies, ordinances and procedures to address urban runoff quality and quantity throughout the development process.

Existing Setting

The County has a number of existing riparian setback requirements including policies in the County’s General Plan, the 2007 Guidelines & Standards For Land Use Near Streams – User Manual (“The Water Collaborative”), and the Santa Clara Valley Habitat Plan (“Habitat Plan”) (Attachment C, Existing Riparian Setback Requirements Matrix). However, these requirements are not specific to the 2010 SWMP which requires a minimum 30 foot riparian setback for all projects within the permit area (Attachment A, 2010 SWMP,) for the purpose of protecting water quality.

Staff Proposal

To be in compliance with the Central Coast Water Board requirements, Staff recommends amending County codes (County Ordinance Code) to include additional riparian setback requirements for the permit area. These proposed riparian setback requirements would be derived from the adopted Habitat Plan to be internally consistent and follow established best practices for riparian and wetlands protection. Staff also proposes to include exception policies for existing non-conforming uses and other uses where a riparian setback may not always be feasible or necessary.

An ordinance amendment would include a legal description of the permit area and require that any new development and grading on properties within this permit area comply with the riparian setbacks, subject to exceptions identified in the ordinance. Planning staff will ensure that the new setback requirement does not conflict with other riparian setback requirements that may apply (i.e. General Plan, Zoning Ordinance, or other planning documents).

This approach creates some challenges as it would add a layer of riparian setback requirements specific to a certain geographical area that does not coincide with any existing zoning district or specific plan areas under the General Plan. However, GIS tools and inter-departmental and staff training with applicants would overcome these challenges and ensure successful implementation.
Alternatives
Staff also considered using the current effort to consolidate the new riparian setback requirements with all other riparian setback requirements under one set of policies that would be consolidated and internally consistent. Although the benefits of consolidation would be many, including a consistent approach throughout the County, integration of existing regulations, and ease of implementation and enforcement, staff has determined that each of the riparian setback requirements address different types of development projects within different geographic areas, and thus this option appears infeasible.

Proposed Schedule
The Administration proposes the following schedule for amendments, adoption and implementation for riparian setbacks.

<table>
<thead>
<tr>
<th>Month</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>April to July</td>
<td>Prepare Draft Ordinance Language</td>
</tr>
<tr>
<td>August/September</td>
<td>Public Outreach</td>
</tr>
<tr>
<td>October/November</td>
<td>Public hearings –San Martin Planning Advisory Committee, Planning Commission, and the Board of Supervisors</td>
</tr>
<tr>
<td>December</td>
<td>Begin Implementation</td>
</tr>
</tbody>
</table>

CONSEQUENCES OF NEGATIVE ACTION
The HLUET Committee will not accept the Report. The Administration will revise the report as directed by HLUET.

STEPS FOLLOWING APPROVAL
The Department will draft the proposed Ordinance amendments, conduct public outreach, and provide the proposed amendments to the Board of Supervisors for review and approval.