

17.70.030 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; and
5. Enable implementation of adopted city plans.

B. *Waterways Subject to Setbacks.* Creek setback requirements shall apply to all creeks as defined in the General Plan 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 3-2: Creek Setbacks). Top of bank determination shall be consistent with California Department of Fish and Wildlife where state or federal jurisdictional areas apply. The director or natural resources manager 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 (e.g., 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 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 lot sizes and locations of existing structures for areas within the city in comparison with areas that 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 twenty feet, except as provided in subsections [\(E\)\(3\)](#), [\(E\)\(4\)](#), and [G](#) of this section. Where the city limit follows a creek, the setback on the side within the 1996 city limits shall be twenty feet, and the setback on the annexed side shall be as provided in subsection [\(E\)\(2\)](#) of this section.

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 council provides a larger or smaller setback, consistent with the purpose of these zoning regulations and with general plan policies:

- a. *Fifty-Foot Setbacks.* The setback along the following shall be fifty 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; and Stenner Creek.
- b. *Thirty-Five-Foot Setbacks.* The setback along the following shall be thirty-five feet: Prefumo Creek; Froom Creek; Brizzolari 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); and 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 subsections [\(E\)\(2\)\(a\)](#) and [\(E\)\(2\)\(b\)](#) of this section shall be twenty feet. (Informational map is available in the community development department.)

3. *Additional Upper Story Setbacks.* Where the zone allows more than two stories, an additional ten-foot step back (upper story building setback) shall be provided beginning at the third story level. The upper story step back shall be provided along all building elevations with creek-facing frontage.

4. *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 subsections [\(E\)\(1\)](#) and [\(E\)\(2\)](#) of this section, 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.

5. *Prior Approvals.* Where the city has explicitly approved a creek setback smaller than required by this section prior to adoption of these regulations, that smaller setback shall remain in effect so long as the approval is in effect.

F. *Improvements Prohibited within Setbacks.* The following shall not be placed or constructed within a creek setback, except as provided in subsection [G](#) of this section:

1. Structures larger than one hundred twenty square feet;
2. Paving;
3. Parking lots;
4. Fire pits, barbeques, and other open flames;
5. Mechanical equipment;
6. In nonresidential zones, areas used for storing or working on vehicles, equipment, or materials.

G. *Exceptions to Creek Setbacks.*

1. *Replacement Structures.* Where a structure lawfully existed on or before October 3, 1996, within a creek setback required by this section, the provisions of this section 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 in compliance with subsection [\(G\)\(4\)](#) of this section.

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 [17.70.170\(D\)\(1\)\(b\)](#) (Reduced Front or Street Side Setback for New Structure Providing Additional Creek Setback).

b. Additional floor area shall not be added to the encroaching part of the structure (e.g., 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 [17.92.020](#) (Limits on Reconstruction—Exceptions) of these zoning regulations.

2. *Accessory Structures and Uses.* The following items may be located within the required creek setback without obtaining a discretionary exception unless otherwise noted; 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 in compliance with the city's flood damage prevention regulations; in total occupy not more than one-half of the total required creek setback area; and 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-unit dwelling: uncovered parking spaces.

c. Patios and pervious walkways. However, impervious pedestrian walkways and bicycle paths shall require a director's hearing as provided in subsection [\(G\)\(4\)](#) of this section.

d. Decks, stairs, and landings that are no more than thirty inches in height, as measured from adjacent existing grade.

e. 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. No more than one such building is allowed per parcel.

f. Garden structures such as trellises, arbors, and gazebos, provided they are constructed using an open lattice design and light-weight materials.

g. Picnic tables and benches.

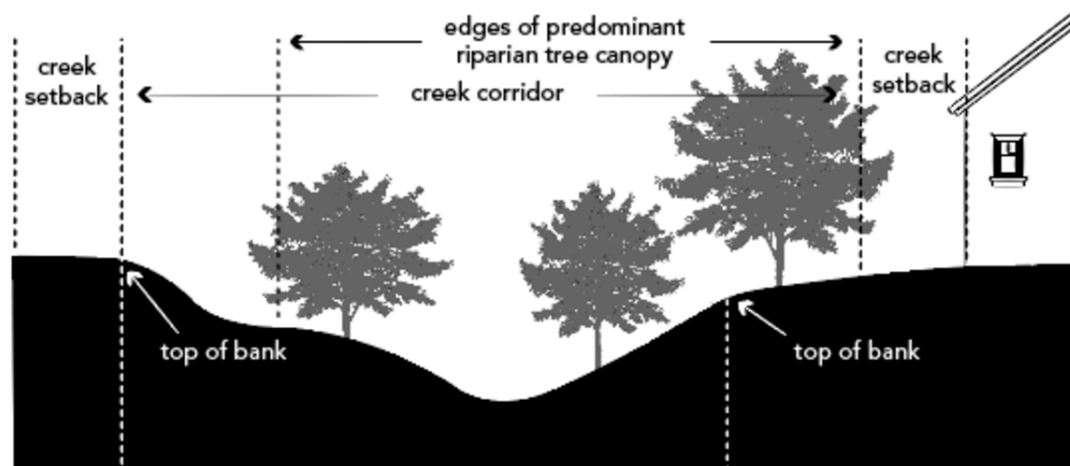
- h. Natural flood control and stormwater improvements, including vegetated buffers, bioswales, and rain gardens.
3. *Architectural Features.* The following architectural features may extend into the setback up to thirty inches: cornices, canopies, eaves, buttresses, chimneys, solar collectors, shading louvers, water heaters and related enclosures, and bay or other projecting windows that do not include usable floor space.
4. *Director's Hearing for Exceptions.*
- a. *Intent.* The director, through a director's hearing, may act to approve an exception to the creek setback requirements of this section only where the applicant can provide clear and substantiated evidence that there is no practical way to comply with the provisions and that no other feasible alternatives will result in better implementation of other zoning regulations or general plan policies while allowing reasonable use of sites subject to creek setbacks.
 - b. *Application Type.* A creek setback smaller than required by this section may be approved by city action on a plan for public facilities approved by the council or on a specific plan, development plan under planned development zoning, or 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 a director's hearing.
 - c. *Findings.* Each director's hearing or other discretionary application to grant an exception to a required creek setback shall be subject to each of the following findings, in addition to any other required findings associated with the 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 feasibly 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.

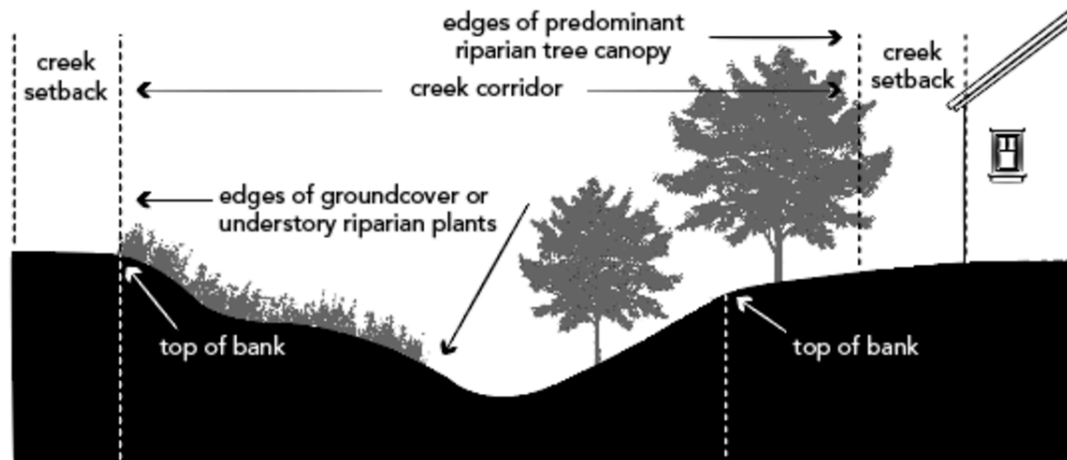
d. *Biological Survey.* A biological survey by a qualified, independent person shall be required for each creek setback exception request to provide the basis for making the required findings above, unless waived by the director upon determining that no purpose would be served by such a survey because no biological resources could be affected by the exception.

Figure 3-2. Creek Setbacks

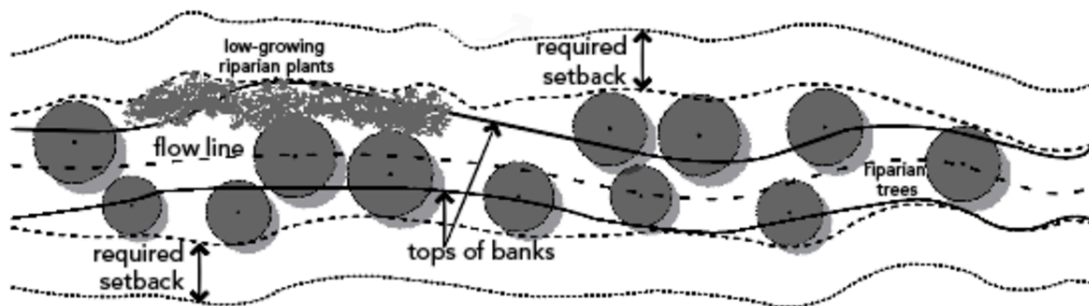
Section View A



Section View B



Plan View



(Ord. 1705 § 17, 2021; Ord. 1650 § 3 (Exh. B), 2018)

The San Luis Obispo Municipal Code is current through Ordinance 1706, passed December 7, 2021.

Disclaimer: The City Clerk's Office has the official version of the San Luis Obispo Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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