

MARIN COUNTY PLANNING COMMISSION MINUTES
JANUARY 13, 2003
Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Ray Buddie
Allan Berland
Ross Herbertson
Patty Garbarino
Jo Julin
Hank Barner
Steve Thompson

Commissioners Absent:

Staff Present: Alex Hinds, Agency Director
Brian C. Crawford, Deputy Director of Planning Services
Alexandra Morales, Planning Commission Secretary

Minutes Approved on: **JANUARY 27, 2003**

Convened at 1:00 p.m.
Adjourned at 5:00 p.m.

Chair Herbertson presented a gavel to Commissioner Garbarino as a token of appreciation for serving as Commissioner for the calendar year of 2002.

1. ROUTINE TRANSACTIONS:

a. M/s Julin/Berland, and passed unanimously of those present, to incorporate Staff Report into Minutes. Motion passed 6/0 (Commissioner Buddie not present).

b. Continuances: None.

c. Minutes:

M/s Julin/Berland, and passed unanimously of those present, to approve the Minutes of December 9, 2002, as modified. Motion passed 6/0 (Commissioner Buddie not present).

(Discussion on the Minutes of December 16 was postponed until the end of the meeting. After discussing the Minutes, action was postponed until the hearing of January 27, 2003)

2. COMMUNICATIONS

The Commission acknowledged a handout provided by staff including additional information regarding the Streamside Conservation Area Ordinance.

(Items 3 to 5 were postponed until the end of the meeting.)

3. DIRECTOR'S ORAL REPORT

a. Report on Progress of General Plan Updates

b. Update on Board of Supervisors Actions

January 14, 2003: Lenchner Appeal of Simon Design Review

January 28, 2003: Wild Horse Valley HOA Appeal of the Planning Commission approval of the Schardt Second Unit Use Permit; Tomales Bay HOA Appeal of the Planning Commission approval of the Weber Coastal Permit/Design Review

c. Report on On-Going Development Projects

Dan Dawson, Senior Planner, presented a summary of the San Quentin workshop held on January 11, 2003, stating that based on the exercises conducted, it appears that the majority of interested parties favor a higher density development with retention of some kind of a prison facility.

Commissioner Thompson commended staff for retaining Andres Duany as the key note speaker; he made an excellent presentation. Commissioner Julin concurred.

4. TIME FOR PUBLIC EXPRESSION ON ITEMS NOT ON TODAY'S AGENDA

None.

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

January 27, 2003

Waldo Point Harbor Master Plan (Sausalito)
Tobias Variance (San Rafael)
Schear Design Review (San Geronimo)

February 10, 2003

Oakview Final EIR Certification (San Rafael)
Fitzgerald Design Review (San Rafael)
Nick's Cove (Marshall)
Thompson Appeal (San Anselmo)

February 24, 2003

Hicks Mt. Master Plan/DP (Nicasio)
Dickens Subdivision (San Rafael)
Milstein Design Review (Kentfield)
Dreyfus Coastal Permit/Design Review (Stinson Beach)

6. STREAM CONSERVATION AREA ZONING ORDINANCE WORKSHOP

The purpose of the workshop is to discuss a proposed zoning ordinance that would establish standards for development and conservation within Stream Conservation Areas for unincorporated properties in central and eastern Marin County. At this workshop, information responding to the public comments received at the Community Development Agency's workshop on December 19, 2002 will be presented. In addition, representatives from various agencies, such as the Marin County Department of Public Works, the State Department of Fish and Game, the Regional Water Quality Control Board, and FishNet 4C, have been invited to share their perspectives and to discuss jurisdictional and permitting issues that pertain to streams and riparian habitats. The Stream Conservation Area consists of the watercourse of a mapped stream and a strip of land extending outward from the top of both stream banks, to a width of either 50 feet or 100 feet, depending on whether the property is located in the eastern city-centered, central rural, or coastal recreation corridors of the county. With certain exceptions, the draft ordinance proposes a requirement for a Design Review permit in order to construct a new structure or to expand an existing structure that is located in the Stream Conservation Area. The draft ordinance also includes proposed findings for approval of a Design Review permit for development that is proposed within the Stream Conservation Area.

Note: A decision on the proposed ordinance was not made at the workshop. The Planning Commission will conduct a public hearing at a future date to consider the proposed ordinance and to make a recommendation to the Board of Supervisors. At a subsequent public hearing, the Board of Supervisors will consider whether to approve or deny the ordinance after receiving the recommendation from the Planning Commission.

Tom Lai, project planner, presented background information stating that the purpose of the Ordinance was to protect riparian resources and implement the Streamside Conservation Area (SCA) Policies in conventionally-zoned districts. As a result, Design Review is proposed for any development within the SCA. A Design Review exemption may be granted to developed properties, provided a Stream Protection and Management Plan is submitted and approved by the Community Development Agency. Exemptions may include the following work: stream repair, maintenance, and restoration; remodel and limited expansion of an existing structure; and repair/reconstruction due to an emergency or natural disaster. He concluded by briefly commenting on the types of restoration and enhancement that are appropriate for the Stream Conservation Area, as well as those that are harmful.

Liz Lewis, Creek Specialist, briefly commented on the County's Creek Permit process, the Bay Area's Joint Aquatic Resources Permit Application (JARPA) process, and the approach for creek bank repairs and maintenance, as well as other reference literature included in the handout provided by staff. She then introduced Marla Lafer of the Regional Water Quality Control Board (RWQCB) and Maura Eagan of the National Marine Fisheries Service who were present at the workshop.

In response to Commissioner Julin, Agency Director Alex Hinds stated that expanding the coastal zone regulations to include the entire coastal recreation corridor will be considered as part of the Countywide Plan Update, and was not part of the proposed ordinance. However, that concept would be considered as part of the Countywide Plan Update, which is expected to be complete in approximately two years.

Commissioner Barner questioned the rationale for requiring a 50-foot setback in the City Centered Corridor vs. a 100-foot setback in the Inland Rural Corridor. Agency Director Hinds responded that because the City Centered Corridor has more intensive development on smaller lots, a reduced setback was found to be more appropriate.

The workshop was opened to public comment.

Dan Ready, Woodacre resident, asked for information regarding the term "top of bank", i.e., how was it established, how was it measured, why using top of bank rather than centerline of creek, and the rationale for the difference between a 100-foot setback versus 50 feet.

Bill Beck, Woodacre resident, stated that the permit process was already overwhelming and inquired about the cost

impacts to affected property owners.

Warren Simmonds, San Anselmo resident, stated that the proposed ordinance was too restrictive. In his opinion, a 20-25 foot SCA was sufficient to accomplish the intent.

Jeff Harriman, Woodacre resident, suggested that a mechanism for arbitration be established in case there is a disagreement between the County and an applicant. He also expressed concern regarding the additional costs involved with the new permitting process and potential impacts to agricultural operations. Since it was unknown whether grazing would be allowed within the 100-foot setback, an agricultural operation would be restricted.

Catherine Caufield, Pt. Reyes resident, stated that USGS maps were not totally accurate. She suggested that the Countywide Plan definition of ephemeral streams be used.

Frank Berto stated that, as a long-time resident of Sleepy Hollow, he could attest that there are no fish in Sleepy Hollow Creek. Therefore, Sleepy Hollow Creek should not be considered a blue-line stream. He agreed that the USGS maps were not the most accurate resource and should not be used to identify blue line streams.

Sandy Smith, Forest Knolls resident, stated that the proposed setbacks were too restrictive. She commented in support of simplifying the permitting process, and concluded by asking who actually owned the creeks.

Al Oldenburci, Mill Valley resident, noted how the proposed ordinance would apply to properties where development encroached into the 50-foot setback. He noted Tam Valley as an example and suggested that flood control areas be excluded.

Jon Oreyer, Mill Valley resident, expressed concern that the Design Review fees and fees related to the preparation and implementation of a Management Plan will be excessively high.

Cela O'Connor, Bolinas resident, commented in support of the proposed ordinance, cited Countywide Plan Policy EQ-2.1, the Value of Riparian Systems, and stated that endangered fish habitat was not the only reason for preservation or restoration of SCAs. Ms. O'Connor also asked how the draft ordinance would affect the new existing ordinance for vacant lots in conventional zoning districts, and questioned whether the draft ordinance overlaid the ordinance previously approved for conventional vacant lots. She then made the additional comments: 1) cumulative effects of development were not a consideration in the ordinance and development was still treated on a site-by-site development basis; 2) creating new exemptions without any regard to the cumulative effects of additional development along a stream or riparian corridor needed to be addressed prior to adoption of the ordinance; 3) Policy EQ-2.4, which named exemptions to land use in the SCAs should also be reviewed and addressed prior to adoption of the new ordinance; 4) it should be recognized that any loss of a permeable surface along a stream course and riparian corridor degrades the habitat of a riparian system; 5) a footprint ratio between the permeable surfaces and the impermeable surfaces as an acceptable baseline for development of either vacant or developed lots should be developed; 6) only second story additions on developed lots should be allowed, with no new development to affect the permeable surface of the lot such as the addition of a driveway or detached structure; and 7) a 45-day public notice should be allowed for projects within SCAs. Ms. O'Connor concluded her comments by stating that she was pleased to see that ephemeral streams were included in SCA protections, but would submit additional comments later.

Mervyn Zimmerman, Marshall resident, stated that a 100-foot setback in an agricultural easement would be costly. He concluded by asking whether SCA setbacks would trigger some type of tax break.

Priscilla Bull, Marin Conservation League, expressed concern regarding the proposed exemption to developed properties for an addition of 50% or 500 square feet, whichever is smaller. She concluded by suggesting that the public notice period for this type of project be extended.

Barbara Salzman, Marin Audubon Society, suggested that the ephemeral streams, more provisions for native plants, and flood control measures be included in the proposed ordinance. Additionally, she suggested that 100-foot

setbacks be required for large lots regardless of their location. She concluded by asking that a mechanism to actively discourage creek degrading development be explored.

David Weckler, Sleepy Hollow HOA, questioned whether SCA maps be expanded to include ephemeral streams and whether the potential cost of the Stream Protection and Management Plan had been considered. Additionally, he suggested that examples of structures that can be located within the SCA setback be provided, and concluded by asking whether funding resources had been allocated for some of the improvements suggested.

Linda Novy, Fairfax resident, stated that while the creek adjacent to her home was intermittent, it turned into an ephemeral creek further upstream. She stated that even at the intermittent portion, there was much wildlife habitat. She concluded by commenting in support of consistent standards for all properties adjacent to creeks.

Ken Fox, Tomales Bay Association, commented on the importance of the proposed ordinance. He attested to the fact that recently, even Coho Salmon and Steelhead have been found even in intermittent and ephemeral streams.

Marla Lafer, RWQCB, stated that RWQCB regulated all waters, including perennials, ephemerals, and intermittent streams, as well as those which are sometimes called drainage ditches. She briefly commented on some of the regulations and protection programs RWQCB has established. Additionally, she stated that RWQCB was a strong supporter of local and federal regulations for water protection. She concluded by noting literature that described the permitting process, which could be useful to planners when reviewing projects within SCAs.

Maura Eagan, National Marine Fisheries Service, stated that her Agency was very supportive of stream setback ordinances in general. She stated that stream setbacks were not only for the protection of fish habitat, but also for the protection of water quality and other wildlife habitat. She concluded by offering to work with staff in finalizing the ordinance.

Laura Kradjan Cronin, Forest Knolls resident, expressed concern that in small towns, such as San Geronimo, Lagunitas, and Forest Knolls, a 100-foot setback was unrealistic. Another concern was the potential negative impacts on property values.

Mike Cronin, Forest Knolls resident, attested to the fact that certain creek alterations negatively impact the fish habitat. Due to the improvements made by owners both upstream and downstream of his parcel, fish stop at his property only. He concluded by stating that even though Public Works prohibited one of his neighbors from building a bridge across the creek, he went ahead and built it anyway.

Betsy Bickle, Mill Valley resident, presented a chart from the EPA website showing the relationship between impervious cover (roof tops) and stream quality. She stated that streams where impervious cover is 25% or more was classified as a non-supporting system because of their poor characteristics.

Carl Nelson, CSW/Stuber-Stroeh, asked whether septic systems were considered a physical improvement.

The workshop was closed to public comment.

Staff responded to some of the issues raised in the following manner:

- The top of bank was established in 1982 through the Countywide Plan and generally describes the area where a transition in slopes and vegetation occurs.
- Fifty-foot setbacks are allowed in the City Centered Corridor where development is much more intensive and the lots are smaller. One hundred-foot setbacks are required in the Inland Rural Corridor where there is less density. The ordinance would not apply to septic systems. Septic systems would be reviewed under different regulations.
- The cost for Design Review in a project within the SCA would be \$900.00 as opposed to \$2,000.00 for a typical Design Review application. Exemptions would cost \$185.00. However, permitting fees could be minimized if homeowners closely work with staff to come up with an acceptable project.

- In case of a disagreement between the County and an applicant with regard to the Stream Protection and Management Plan, staff noted that staff determinations regarding submittal requirements can be appealed. Therefore, it was not necessary to establish an arbitration process. Nonetheless, it is staff's intent to work closely with an applicant early in the process to avoid disagreements.
- The proposed setbacks are intended to apply to the property, not the use. Therefore, a 100-foot setback would not impact an agricultural operation, such as grazing.
- The intent of the ordinance is not only to protect the fish habitat, but other natural resources.
- The ordinance applies to driveways and/or other impervious surfaces. However, said improvements are not included for an exemption. In order to qualify for an exemption, only building coverage will be considered, not lot coverage.

Commissioner Herbertson stated that a more appropriate term would be Streamside Conservation and "Restoration" Area. He then stated that the proposed ordinance allowed an extra security step to ensure that development in floodplains was safely built, as well as for homeowners to educate themselves about the uniqueness and sensitivity of SCAs. He then questioned whether it would be feasible to have a focused Design Review on stream issues, rather than a full Design Review in order to minimize application costs and expedite the review process. Commissioner Herbertson then made the following comments: 1) ways to actively discourage creek degrading mechanisms should be explored, especially efforts to "stabilize" creeks in such a way as to make them less naturalized and thereby creating unintended downstream consequences; 2) enforcement procedures should be undertaken when violations are identified; 3) in addition to blue line streams, ephemeral, perennial, and intermittent streams should also be included; 4) bottlenecks in creeks should be identified and mapped to help focus County efforts to restore stream integrity; 5) the issue of isolated riparian vegetation areas should be explored; 6) when reconstructing structures that were destroyed by natural disaster, the cause of destruction should be carefully considered to determine if it is appropriate to reconstruct in exactly the same location or whether alternative locations should be explored; and 7) reconsider the type of agricultural uses that may be allowed near SCAs.

Commissioner Garbarino concurred with Commissioner Herbertson comments, particularly the term "Restoration" and obstructions (bottlenecks) in creeks.

Commissioner Thompson suggested scheduling site visits to Tam Valley at Northern Avenue, Homestead Valley along the creek, and Forest Knolls to view the properties cited by members of the public. In the interest of time, Commissioner Thompson submitted his comments in writing.

Commissioner Julin echoed the comments made by Commissioner Garbarino and Chair Herbertson.

Commissioner Barner commended staff for the informational workshop and members of the public for their input. While he agreed that it was desirable to improve the quality of waterways, he was concerned regarding cumulative impacts of development on waterways. Therefore, he asked that said cumulative impacts be considered.

Commissioner Berland suggested obtaining legal opinion regarding potential property takings prior to finalizing the ordinance.

Chair Herbertson closed the public workshop.