



# MARIN COUNTY

## COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

### STAFF REPORT TO THE PLANNING COMMISSION APPEAL OF STAFF WITHDRAWAL OF KRANE DESIGN REVIEW

Item No:	6.	Application No:	DR 04-44
Appellant:	Neil Sorensen	Owner:	Carol Krane
Property Address:	1675 Old Rancheria Road, Nicasio	Assessor's Parcel:	121-250-53
Hearing Date:	March 14, 2005	Planner:	Ben Berto

<b>RECOMMENDATION:</b>	<b>Deny Appeal, Withdraw Design Review Application</b>
<b>APPEAL PERIOD:</b>	<b>Ten calendar days to the Marin County Board of Supervisors</b>
<b>LAST DATE FOR ACTION:</b>	<b>March 14, 2005</b>

#### SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission deny the Krane appeal and uphold the staff withdrawal of the Krane Design Review application for a new primary single family residential compound in Nicasio. Design Review is required pursuant to Marin County Code MCC §22.16.030.D. and §22.42.020.B.2, because the property is located in the ARP (Agricultural, Residential Planned) zoning district.

#### PROJECT DESCRIPTION:

The applicant is requesting Design Review approval to construct a new, two-story 6,359 square foot residential development consisting of: a 24.5 foot tall, 3,640 square foot residence with an attached, two-story, 28 foot tall (plus 4-foot cupola), 2,719 square foot garage/barn/storage area, on a vacant, 28-acre lot. The present design is roughly u-shaped surrounding an east-facing outdoor courtyard, and features a west-facing, stone-clad turret. Building materials are mixed and include: vertical 1" cedar siding, manufactured stone veneer siding, bronze anodized metal windows, concrete lintels over all stone wall openings, brown standing seam metal roofing, slate concrete tile roofing, and metal panel roll-up garage doors. A portion of the storage area is proposed to be used for the solar-powered electrical system, although no solar collectors are shown. The building site is on a grassy knoll on a spur ridge at elevation 955', and has approximate minimum setbacks from respective property lines as follows: 366 feet from the front (south), 87 feet from the side (west), 368 feet from the side (east), and 447 feet from the rear (north). The parcel would be served from Old Rancheria Road by a gated, approximately 400-foot long, asphalt, 12-foot wide driveway with a maximum slope of 16%. The driveway would conclude with a circular turnaround and additional guest parking, and a driveway leading to the lower (barn) level. Soil cut and fill for the project are approximately balanced, with approximately 700 cubic yards of each. Two 5,000 gallon water tanks are proposed, located approximately 10 feet from the front property line adjacent to Old Rancheria Road. Utilities to the building would run underground from Old Rancheria Road. Sewer would consist of a septic system, with the leach field located approximately 600 feet south of the residence, directly adjacent to the property line abutting Old Rancheria Road. A windbreak of trees is proposed immediately west of the driveway. No other landscaping has been shown for this project.

#### BACKGROUND:

PC Staff Report  
**MARCH 14, 2005**  
Item No. 6., Page 1

The property owner submitted a Design Review application in October, 2001, for a new single family residence on a vacant 28-acre lot. After several revisions involving the Nicasio Design Review Board, the project was heard by the Planning Commission on August 5, 2002. After conducting a public hearing, the Commission voted to continue the application with direction to the applicant for relocation and redesign of the proposed residence in lieu of denying the project. (see attachment 5.) The applicant consented to a continuance of the hearing in order to pursue design revisions consistent with Planning Commission direction.

Following the August 5, 2002 Planning Commission meeting on the project, staff rescheduled the project for Planning Commission reconsideration on October 21, 2002, and November 18, 2002. The applicant's architect requested and was granted continuances from both hearing dates. (see attachments 6 and 7.) Staff and the applicant's architect met and otherwise communicated several times in this period up to early 2003, including a meeting at the property of the most affected next door neighbor that was attended by the applicant, the applicant's architect, the neighbor, and staff. Staff was given to understand by this activity that the applicant and her representatives were diligently pursuing design alternatives to comply with the direction given by the Planning Commission and resolve the project-related issues.

Following a last, preliminary project schematic to staff in January, 2003, however, the applicant/architects curtailed further activity on the project with the County. Staff wrote the architect in June, 2004 requesting submittal of a revised plan package within 30 days. (see attachment 9.) None were submitted. Therefore, on January 7, 2005, staff took action to withdraw the Design Review application. (see attachment 4.) Within the prescribed appeal period, the attorney for the applicant appealed staff's action, citing two bases for the appeal: that the application had been approved by operation of law; and there was no legal or factual basis for withdrawal of the application. (see attachment 2.) Staff wrote the applicant's attorney disagreeing with the stated bases for the appeal, and informing him that the matter would be scheduled for Planning Commission consideration. (see attachment 3.) The matter was subsequently scheduled for the March 14, 2005 hearing.

#### **GENERAL INFORMATION:**

General Plan Land Use Designation: AG-2 (Agricultural, one unit per 10 to 30 acres)

Zoning Designation: ARP-20 (Agricultural, Residential Planned District, one unit per 20 acres maximum density)

Lot size: 28 acres

Adjacent Land Uses: Single-family Residences

Vegetation: Grasslands, mixed brush, and deciduous and coniferous woods

Topography and Slope: Medium slope from Old Rancheria Road towards the east

Environmental Hazards: None identified

#### **ENVIRONMENTAL REVIEW:**

The Environmental Coordinator has determined that this project is subject to the requirements of the California Environmental Quality Act because the construction of two primary residences unrelated to primary agricultural pursuits on land governed by a Williamson Act contract is inconsistent with County policies and ineligible for a categorical exemption under CEQA.

#### **PUBLIC NOTICE:**

The Community Development Agency provided public notice of the Planning Commission hearing of March 14, 2005, identifying the applicants, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice was mailed to all property owners within 600 feet of the subject property and all interested parties identified in the public record.

#### **PLAN CONSISTENCY:**

Based on comments expressed by the Planning Commission at the August, 2002, public hearing, and staff's written analysis, the project appears to be inconsistent with the goals and policies of the Marin Countywide Plan relating to restrictions on Williamson Act-designated parcels, and with policies on visual qualities and views, fill, impact on mature trees, and Ridge and Upland Greenbelt. The project also appears to be inconsistent with the ARP zoning because is located on a visually prominent ridgeline, exceeds the recommended ridgeline height limit, disturbs mature native trees, and does not minimize driveway length, grading, and does not encourage agricultural uses. The property is also currently subject to a Williamson Act contract limiting the number primary residences on this parcel and an adjacent parcel governed by the same contract to one primary residence.

### **SUMMARY OF THE APPEAL:**

The appellant is citing two bases for appealing the staff decision withdrawing the application:

- 1) The County's attempt to withdraw the application by letter dated January 7, 2005, is ineffective because the application has been approved by operation of law pursuant to California Government Code Section 65956 (b).
- 2) There is no legal or factual basis for the withdrawal of the application.

#### Approval by operation of law

Government Code §65950 et. seq. pertain to Approval of Development Permits and state-mandated timelines for rendering a decision. Generally, a government agency has 60 days once an application is deemed complete to render a decision on the application, unless the applicant agrees or requests a continuance, which is not to exceed 90 days in length. If the agency has not acted within the respective time limits, the applicant can file an action to compel the agency to provide public notice, hold a hearing, and act on an application.

The applicant does not qualify under either the intent or the letter of these sections of the Government Code. In this case, the applicant agreed to a continuance from the Commission's August 5, 2002, hearing (see attachment 5.) The applicant's architect on two subsequent occasions specifically requested that the project be removed from the Planning Commission agenda on which it had been placed. The last continuance requested by the applicant's architect placed the project outside the 90 days continuance timeframe. However, staff reasonably believed that the applicant, through her architect, was actively working on their project. Staff is reluctant to interpose a technical formality (scheduling the application for denial) when it would penalize (e.g., by requiring a new application submittal with new plans and fees) an applicant who is actively attempting to move a project forward.

Neither the applicant nor any representatives have at any time written or otherwise communicated to the County that it must provide notice of a hearing and/or render a decision on the application. In fact, quite the contrary has occurred. Nor has the applicant or her representatives ever announced any intention to provide their own public notice of the continued hearing, or provided such notice, despite having agreed, in their repeated request for continuances, to a hearing for which public notice would be provided. If they had communicated to staff, or provided public notice of the continued hearing, this would have put the County on notice to act on the application or have it deemed approved. The County would have promptly (e.g., within the applicant's notice timeframe) noticed, heard, and acted on the application, since doing otherwise would have abrogated the County's decisionmaking responsibilities and authority.

The applicant and applicant's representatives instead actively conducted redesign-related activities that took the project beyond the 90 day continuance time period. Following that, they did not respond to the County's attempts to ascertain the applicant's intentions with respect to the project. They are now apparently attempting to renege on their continuance request and implied public noticing requirement by asserting that no further notice is necessary; that their actions to delay and remove the project from Planning Commission hearing consideration have now

resulted in the project being deemed approved without a hearing. It is disingenuous at best, and completely counter to the intent of applicable State statutes (which is to require government agencies to process development applications in a reasonable amount of time), to assert that the County has been remiss in not acting within applicable statutory timelines. Any delays have been either at the direct request of the applicant or as a result of their inactivity.

Subsequent to the August 5, 2002 Planning Commission hearing, staff was informed by the applicant's real estate agent that this property is governed by a Williamson Act contract. It has since been determined that this and an adjoining property are governed by a single Williamson Act contract. These property restrictions were unfortunately previously unknown to planning staff, but were either should have been known to the applicant, or could provide a basis for redress between the applicant and the former property owner. Under the County's adopted policies for Williamson Act governed property, only one primary residence is allowed per each contract-governed piece of land. A primary residence is already located on the adjoining parcel under the same contract, thus no additional primary, independent residence such as this project would be permitted. This conflict could reasonably and foreseeably have a direct cumulatively significant environmental impact on land in the County under similar Williamson Act contractual arrangements. Thus the project necessitates a determination that the project is not exempt from processing under the California Environmental Quality Act (CEQA). Given this determination, CEQA Section 15109 (tolling of time periods for approval) applies because the project sponsor (applicant) has ceased to cooperate in providing information necessary for the processing of the application.

#### No legal or factual basis for application withdrawal

The appellant is also incorrect in asserting that the County has no basis for withdrawing the application. As a long-standing administrative practice, the Community Development Agency has used withdrawals of applications to remove stalled/abandoned applications from the County's workload. The withdrawal process recognizes that there are applicants who, for whatever reason, have functionally abandoned their projects. It would squander scarce staff resources to go through the formal process of denying applications when applicants, by their lack of action and progress, have already demonstrated that they do not intend to proceed with their project. In this instance, the County acted to withdraw the application because the applicant, despite Planning Commission direction on their application, has for over a year been non-responsive in furthering the application. This is despite repeated attempts by staff to first place the project on a Planning Commission agenda for a decision, and then elicit any response from the applicant or her representatives regarding the project. Aside from the recent appeal, there has been no communication for months on this application from the applicant or any representative to the project planner.

#### **CONCLUSION:**

The purpose of withdrawing the project is not punitive. It reasonably concludes a stalled effort by the applicant to proceed forward with a project consistent with applicable rules, regulations, and design direction given by the Planning Commission in August, 2002. If the applicant and her representatives intend to respond to the Planning Commission direction in a reasonable timeframe, staff would consider proceeding with processing of an application. It should be pointed out that written County policies regarding withdrawal of applications allow the Planning Director to reinstate an application without additional fees if an applicant (re)submits necessary application materials within 60 days of the withdrawal date. In other words, if within the next two months the applicant reinstates the project, no financial harm would attach to the County's withdrawal action. The Planning Director would be willing to so reinstate the application. Staff's most recent letter to the applicant's attorney even offered to rescind the withdrawal if the applicant provided a reasonable timeline for submitting new plans. (see attachment 3.) There has been no response to date. The County's process encourages a non-responsive applicant such as this to proceed forward with the project, or accept that the project has irretrievably stalled. Given the lack of progress to date, staff concludes that the project is stalled and the withdrawal is appropriate.

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution denying the appeal and withdrawing the Krane Design Review.

- Attachments:
1. Resolution denying appeal and upholding staff withdrawal of Krane application
  2. Appeal of withdrawal of application, January 18, 2005
  3. Letter regarding appeal of withdrawal, January 18, 2005
  4. Notice of withdrawal of application, January 7, 2005
  5. Planning Commission Minutes, August 5, 2002
  6. Email to applicant, September 30, 2002
  7. Notice of continued public hearing, November 7, 2002
  8. Memo to Planning Commission, November 8, 2002
  9. Letter to applicant, June 2, 2004

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION DENYING  
THE KRANE APPEAL AND  
UPHOLDING THE WITHDRAWAL  
OF THE KRANE DESIGN REVIEW  
1675 OLD RANCHERIA ROAD, NICASIO  
ASSESSOR'S PARCELS 121-250-53

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**SECTION I: FINDINGS**

- I. WHEREAS Carol Krane requested Design Review approval to allow to construct a new, two-story 6,359 square foot residential compound consisting of a residence with an attached garage/barn/storage area on a vacant, 28-acre lot. The building site is on a grassy knoll on a spur ridge at elevation 955', and has approximate minimum setbacks from respective property lines as follows: 366 feet from the front (south), 87 feet from the side (west), 368 feet from the side (east), and 447 feet from the rear (north). The parcel would be served from Old Rancheria Road by a gated, driveway. Two 5,000 gallon water tanks are proposed, located approximately 10 feet from the front property line adjacent to Old Rancheria Road. Utilities to the building would run underground from Old Rancheria Road. Sewer would consist of a septic system. The subject property is identified as 1675 Old Rancheria Road, Nicasio, and is further identified as Assessor's Parcel 121-250-53.
- II. WHEREAS, the Planning Commission held a duly noticed public hearing on August 5, 2002, to consider the merits of the project and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Planning Commission consensus at their August 5, 2002, public hearing was that the proposed project is inconsistent with the Countywide Plan and the Nicasio Valley Community Plan policies on visual qualities and views, fill, impact on mature trees, ridgeline development, and building location, size, and bulk, and that the proposed project is inconsistent with the findings for Design Review for the ARP zoning district because the project has not been located in the least visually prominent portions of the site, does not adequately avoid development on a ridgeline area, or responds to neighbor's concerns, resulting in the Planning Commission's inability to take action to approve the project as proposed.
- IV. WHEREAS, at the applicant's request, the Marin County Planning Commission unanimously approved a motion to continue the Krane Design Review to the October 21, 2002, hearing date to allow the applicant time to revise the project to address concerns expressed by the Commissioners.
- V. WHEREAS due to the written request by the applicant, the hearing was further continued to the November 18, 2002 hearing, then due to a verbal request by the applicant, the hearing was continued to a date uncertain.
- VI. WHEREAS the applicant, her representatives, and staff held several meetings, site visits, submitted revised design drawings, and otherwise communicated on the subject of redesign options for the house up to January, 2003.
- VII. WHEREAS, despite written staff direction in June, 2004, the applicant has been non-responsive in pursuing redesign and resubmittal of the project.
- VIII. WHEREAS, a Notice of Withdrawal of Application was sent to the applicant and her representative on January 7, 2005.
- IX. WHEREAS, the applicant's legal counsel filed a timely appeal of the withdrawal of the applicant.

X. WHEREAS, the Marin County Planning Commission held a duly noticed public hearing on March 14, 2005, to consider the merits of the appeal and hear testimony in favor of, and in opposition to, the appeal.

XI. WHEREAS the Marin County Planning Commission finds that the appeal is without basis because:

- A. The applicant does not qualify as approved by operation of law pursuant to California Government Code Section 65956 (b). In this case, the applicant agreed to a continuance from the Commission's August 5, 2002, hearing (see attachment 5.) The applicant's architect on two subsequent occasions specifically requested that the project be removed from the Planning Commission agenda on which it had been placed. The last continuance requested by the applicant's architect placed the project outside the 90 days continuance timeframe. However, staff reasonably believed that the applicant, through her architect, was actively working on their project. Staff is reluctant to interpose a technical formality (scheduling the application for denial) when it would penalize (e.g., by requiring a new application submittal with new plans and fees) an applicant who is actively attempting to move a project forward.

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B. The County is has legal and factual bases for withdrawing the application. As a long-standing administrative practice, the Community Development Agency has used withdrawals of applications to remove stalled/abandoned applications from the County's workload. The withdrawal process recognizes that there are applicants who, for whatever reason, have functionally abandoned their projects. It would squander scarce staff resources to go through the formal process of denying applications when applicants, by their lack of action and progress, have already demonstrated that they do not intend to proceed with their project. In this instance, the County acted to withdraw the application because the applicant, despite Planning Commission direction on their application, has for over a year been non-responsive in furthering the application. This is despite repeated attempts by staff to first place the project on a Planning Commission agenda for a decision, and then elicit any response from the applicant or her representatives regarding the project. Aside from the recent appeal, there has been no communication for months on this application from the applicant or any representative to the project planner.

XII. WHEREAS the Marin County Planning Commission finds that this project's time periods for review under the requirements of the California Environmental Quality Act (CEQA) have been suspended pursuant to Section 15109 because the applicant (project sponsor) has ceased to cooperate in providing information necessary for the processing of the application, and potentially significant cumulative impacts can be reasonably inferred by the project's conflict with the County's adopted policies on the Williamson Act.

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the appeal of the withdrawal and upholds Director's withdrawal of the Krane Design Review (DR 00-25).

## **SECTION II: APPEAL RIGHTS**

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on March 24, 2005.

## **SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 14<sup>th</sup> day of March, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

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STEVE THOMPSON, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary