



MEMORANDUM

February 7, 2020

TO: Marin County Planning Commission

FROM: Immanuel Bereket, Planner

SUBJECT: Appeal of Project ID: P2390
Assessor's Parcel: 075-151-17
Project Address: Murray Avenue, Kentfield
Project Name: Cooney Design Review

Dear Planning Commissioners,

The purpose of this memorandum is to provide an alternate resolution denying the Cooney Design Review Application due to its inconsistency with the Countywide Plan.

ATTACHMENTS:

1. Draft Resolution denying the Cooney Design Review application.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE COONEY DESIGN REVIEW APPLICATION
MURRAY AVENUE, KENTFIELD
ASSESSOR'S PARCEL: 075-151-17

SECTION I: FINDINGS

1. **WHEREAS**, the applicant requests Design Review and Tree Removal approvals to construct a new 8,576-square-foot single-family residence on a vacant lot in the community of Kentfield. The 8,576 square feet of proposed development would result in a floor area ratio of seven percent on the 118,400 square foot (2.72 acre) lot. The proposed building would reach a maximum height of 29 feet 9 inches feet above surrounding grade and the exterior walls would have the following setbacks: 103 feet two inches from the eastern front property line; 111 feet seven inches from the north side property line; 31 feet seven inches from the southern side property line; and 281 from the western rear property line. The structure would be setback. The project includes a proposal to remove two trees classified as "Protected" per Section 22.130.030 of the Marin County Development Code to accommodate construction of the residence and associated site improvements.

2. **WHEREAS**, on September 19, 2019 the project application was deemed complete, and subsequently, a letter initiating environmental review was sent to the applicant on December 10, 2019.

3. **WHEREAS**, on December 17, 2019, Matthew Boersma (on behalf of Sarah and Michael Cooney) submitted a timely appeal of the California Environmental Quality Act (CEQA) determination and indicated that the project as designed would avoid any potential environmental impacts.

4. **WHEREAS**, on February 10, 2020, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project.

5. **WHEREAS**, projects must be consistent with the relevant Countywide Plan policies in order to satisfy the mandatory findings for Design Review and the project is inconsistent with the 1994 Countywide Plan policies related to the protection of Stream Conservation Areas (SCAs) and related habitats and resources. Policies specifically relevant are copied in *italics* below.

Policy EQ-2.1 - Value of Riparian System. Riparian systems, streams and their riparian and woodland habitat are irreplaceable and should be officially recognized and protected as essential environmental resources, because of their values for erosion control, water quality, fish and wildlife, aesthetics, recreation, and the health of human communities.

Policy EQ-2.2 - Streams Defined as Blue Lines on USGS Quad Maps. All perennial and intermittent streams, which are defined as natural watercourses shown as solid or dashed blue lines on the most recent appropriate USGS quad sheet, should be subject to these stream and creekside protection policies. A perennial stream is further defined as:

a watercourse that flows throughout the year (except for infrequent or extended periods of drought), although surface water flow may be temporarily discontinuous in some reaches of the channel such as between pools.

An Intermittent stream is further defined as:

a watercourse that flows during the wet season, continues to flow after the period of precipitation, and ceases surface flow during at least part of the dry season.

An ephemeral stream should be subject to these policies if it supports riparian vegetation for a length of 100 feet or more. An ephemeral stream which does not support vegetation for 100 feet or more may also be subject to the SCA policies if it is demonstrated that the stream has value for flood control, water quality, or habitat which supports rare, endangered, or migratory species. An ephemeral stream is defined as:

a watercourse which carries only surface runoff and flows during and immediately after periods of precipitation.

Policy EQ-2.3 - Definition of Stream Conservation Areas. *A SCA should be designated along all natural watercourses shown as a solid or dashed blue line on the most recent appropriate USGS quad sheet, or along all watercourses supporting riparian vegetation for a length of 100 feet or more.*

The zones consist of the watercourse itself between the tops of the banks and a strip of land extending laterally outward from the top of both banks, to a width of 100 feet on each side in the Coastal Recreation and Inland Rural Corridors, and to a width of 50 feet on each side in the City-Centered Corridor on smaller infill lots. Where large tracts of land in the City-Centered Corridor are proposed for development, the 100-foot buffer should be applied, where consistent with legal requirements, and other planning and environmental goals. In the Coastal Recreation and Inland Rural Corridors, the zone should be extended, if necessary, to include an area 50 feet landward from the edge of riparian vegetation.

Policy EQ-2.4 - Land uses in Stream Conservation Areas. *The following uses are permitted in the SCA by development permits, provided these uses are allowed by the underlying zoning:*

- *All currently existing structures and uses including reconstruction and repairs*
- *Necessary water supply projects*
- *Flood control projects*
- *Projects to improve fish and wildlife habitat*
- *Grazing of livestock and other agricultural uses*
- *Maintenance of water channels for erosion control and other purposes*
- *Road and utility line crossings*
- *Water monitoring installation*
- *Trails*

Policy EQ-2.5 - Prohibited Land Uses in Stream Conservation Areas. *The following new uses are prohibited in the SCA:*

- *Roads and utility lines, except at crossings*
- *Confinement of livestock*

- *Dumping or disposal of refuse*
- *Use of motorized recreational vehicles*
- *Any structural improvement (excluding repairs) other than those identified in Policy EQ-2.4, including residences, barns, and storage building, unless allowed by a development permit in Policy EQ-2.6*

Policy EQ-2.6 - Other Allowable Land Uses in the Stream Conservation Areas. *Other uses may be allowed in the SCA by development permit, provided these uses conform to all other policies for SCAs and are:*

- *Allowed by the underlying zoning*
- *On existing parcels that fall entirely within the zone*
- *On existing parcels where it can be conclusively demonstrated that development on any other part of the parcel would have more adverse effect on water quality or other environmental impacts*

Policy EQ-2.8 - Retention of the Natural Vegetation. *The retention of the natural vegetation in an SCA should be encouraged in order to realize benefits such as soil erosion prevention, stream, shade, etc. When vegetation must be removed and soil disturbed within the SCA, or when vegetation has been destroyed or eliminated, the area should be re-seeded or replanted with native plants of the habitat as soon as possible. Broom and other aggressive exotic plants should be removed and replaced with native plants.*

Policy EQ-2.9 - Minimal Disturbance of Vegetation. *Disturbance of vegetation within the SCA should be minimized or avoided whenever possible. Minimizing or avoiding disturbance of streamside vegetation is particularly important for trees and shrubs which provide shade, stability for the streambank, and wildlife habitat. Vegetation may partially block streams creating a ponding effect which may be beneficial fish habitat. Tree growth may be cleared from the stream channel when it unduly restricts flood flows, to protect health, safety, and welfare.*

Policy EQ-2.10 - Tree and Shrub Plantings. *Trees and shrubs to be planted along watercourses should include a variety of species that would naturally grow in or near the creek. In general, the planting of exotic trees should be avoided. When removal of riparian vegetation is unavoidable, and mitigation is required, replacement should be at a 2:1 ratio, whenever feasible. Enhancement and restoration of culverted streams is encouraged, whenever feasible.*

Policy EQ-2.18 - Soil Disturbance. *Soil disturbance should be discouraged within the SCA. Where absolutely necessary it should be limited to the smallest surface area and volume of soil possible and for the shortest practical length of time.*

Policy EQ-2.23 - Seasonal Development Factors. *Development work adjacent to and affecting SCAs should be done during the dry season only, except for emergency repairs. Disturbed surfaces should be stabilized and replanted, and areas where woody vegetation has been removed should be replanted with suitable species before the beginning of the rainy season.*

Policy EQ-2.87 - Species Preservation in the Environmental Review Process. *Environmental review of development applications shall consider the impact of the proposed development on species and habitat diversity. Environmental review documents should propose mitigation measures for ensuring the protection of the habitat and species therein.*

Policy EQ-3.16 - Minimize Excavation, Grading, and Filling. *New development in the County shall adhere to the standards of the Department of Public Works in order to minimize excavating, grading, and filling, while allowing for adequate access.*

Policy EQ-3.21 - Streamside Development. *Along creeks, development must retain the natural vegetation, prevent water pollution, and minimize flood hazard from runoff.*

Discussion

The vacant project site is located on the west side of Murray Avenue, on an upward sloping lot that faces northeast. The lot has an average slope of 42 percent and access is taken from an existing unimproved driveway from Murray Avenue which leads to a flat pad located centrally on the lot. King Mountain Creek, a blue line watercourse, flows west to east along the eastern (side) property line. The project site is within the City-Centered Corridor and is two acres or greater in size. Thus, the project site is subject to Countywide Plan policies related to Stream Conservation Area (SCA) and a minimum of 100 feet or greater SCA setback from top of bank is required, according to the Countywide Plan Policy included as part of the Biological Resources section 2.4-23. A portion of the proposed residence falls within the 100-foot setback from the top of creek bank. Therefore, the location of proposed residence would be inconsistent with Marin County SCA policies.

Since the proposed project is inconsistent with the 1994 Countywide Plan policies related to riparian resource protection, it cannot be approved.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission hereby denies the Cooney Design Review application.

SECTION III: APPEAL RIGHTS

NOW, THEREFORE, BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal must be submitted to the Community Development Agency, Planning Division, Suite 308, Civic Center, San Rafael, within eight business days of the date of this decision, (February 21, 2020).

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 10th day of February 2020 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

MARGARET CURRAN, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary