

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC18-003

**A RESOLUTION PARTIALLY UPHOLDING THE TARIGO APPEAL BUT
DENYING THE TARIGO PROJECT APPLICATION
21 BARRANCA ROAD, LAGUNITAS
ASSESSOR'S PARCEL: 168-034-14**

SECTION I: FINDINGS

1. **WHEREAS**, the applicant proposes to demolish an existing two-story 2,698-square foot residence and 442-square foot attached, unpermitted second unit and construct a new 2,792-square foot residence, 552-square foot attached garage, and 552-square foot attached second unit. The portion of the existing structure used as a second unit was built in 1917 and is located 15.5 feet from the creek. The proposed residence would be located in a similar location as the structure to be demolished, with the new residence 14 feet 3 inches from the new top of creek bank discussed below. The proposed three-story residence would have a maximum height of 29 feet 11 inches, result in a 6.3% floor area ratio, and have the following minimum setbacks: 27 feet 9 inches from the easterly front property line, 118 feet from the northerly side property line, 100 feet 3 inches to the southerly side property line, and 118 feet from the westerly rear property line. The exterior walls would be medium brown stucco with beige painted wood facia and dark brown glazed doors and windows. The roof would be medium brown asphalt shingles. A roof mounted photovoltaic system would also be installed onto the roof of the residence.

The existing leach pit and septic tank located approximately 16 feet from the top of the creek bank would be removed and a new class II septic system would be installed approximately 60 feet from the top of bank and 19 feet from the front property line.

In 2006, a pre-existing wooden bridge was demolished and a new bridge was constructed to provide access for a drill rig for the installation of a well on the west side of the creek. The pre-existing wooden bridge across Barranca Creek links the east and west sides of the project site. The pre-existing wooden bridge was 12.7 feet wide, 16.8 feet long, and 2.8 to 3.9 feet above the bottom of the creek. This bridge was demolished without permits for the illegal construction of the new bridge in 2006.

The proposed project includes the legalization of a new, unpermitted, reinforced concrete bridge across Barranca Creek, that was constructed illegally in 2006 to replace the previously discussed pre-existing wooden bridge. The bridge constructed in 2006 is located approximately 86 feet from the east front property line, 115 feet from the south side property line, and 80 feet from the rear property line. The bridge arches with a 5-foot 1-inch height above the creek bed at its apex. The 12-foot wide bridge spans approximately 18 feet across the creek and is faced with hand set field stone. The bottom of the creek is 8.5 feet wide at the bridge crossing. The concrete abutments are generally located in the same location as the abutments for the pre-existing wooden bridge.

The proposed project would also include bank restoration. The existing concrete and stone retaining wall along the eastern portion of the creek bank would be removed for the creation of a 2:1 slope bank for up to 40 feet. The bank would be revegetated for long-term stability. Species used in the revegetation would be native species that occur in the area. Herbaceous species that

provide cover could include the sedges (*Carex sp.*) that naturally occur on the project site, Santa Barbara sedge (*C. barbarae*) that grows in Marin County, meadow barley (*Hordeum brachyantherum*), California brome (*Bromus carinatus*), and the ferns (*chain, lady, polypody, and sword*) that naturally occur on the project site. Suitable shrubs for the bank planting include snowberry (*Symphoricarpos albus and/or S. mollis*), California rose (*Rosa californica*), oceanspray (*Holodiscus discolor*), and flowering current (*Ribes sanguineum*). Removal of the retaining wall would occur during the dry season, June 15 through October 15. Bank restoration would require the removal of a 40-inch California bay (*Umbellularia californica*) tree and the bank would be replanted with native plants species. For the restoration in this area, heavy construction equipment would operate from the top of the bank and would not enter the bed of the creek. Plywood sheets (e.g., 4 x 8 feet), covered in heavy plastic sheeting, would be set at the creek-side base of the wall lying over the creek bed to prevent debris from entering the creek bed. At that point, the wall will be pulled down on the new bank and removed. After the demolition and removal of the wall, the plywood and plastic sheeting would be removed from the creek bed. Biodegradable mesh would then be laid and pinned on the bank over new top soil and the new plantings added. Additionally, the proposed project includes the removal of two 20-inch diameter apple trees that have exceeded their lifespan. A bio retention garden to filter roof runoff would be located along the existing driveway entrance.

The proposed project includes the following site improvements: 1) Removal of approximately 2,300 square feet of existing 10-inch deep, semi-pervious compact road base that runs from the bridge to the existing driveway and parking area. This area will be replaced with new soil and planted with native grasses and clovers. 2) Construction of a partially pervious, one-car parking area at the existing entrance to Barranca Road and a new, second driveway from Barranca Road. Except for existing asphalt cement at the entrance, the new driveway and parking areas would be a combination TuffTrak and crushed rock. 3) Installation of a new propane tank located six feet from the front property line. 4) Construction of a new entry gate located approximately two feet from the front property line. The lot coverage for the proposed project is 6,190 square feet. The existing lot coverage is approximately 3,369 square feet (including the pre-existing wooden bridge).

The proposed project is located on a 1.6-acre lot at 21 Barranca Road, approximately 0.8 mile north of Sir Francis Drake Boulevard and is in the community of Lagunitas within the unincorporated area of San Geronimo Valley in Marin County. Design Review is required because the project is located in a Planned Zoning District. A Second Unit Permit is required for a portion of the structure that would be utilized as a second unit. A tree removal permit is required for the removal of the 40-inch heritage California bay.

The project site is currently served by the Marin Municipal Water District (MMWD). There is an existing, non-potable irrigation well on the project site that would remain. The project includes a new rain water line. As proposed, the potable MMWD water lines, non-potable well water lines, and rain water lines would be separated. Overhead utility lines for power, cable, and telephone are located east of Barranca Road and are proposed to remain unchanged.

2. **WHEREAS**, on July 19, 2012, the project application was deemed complete, and environmental review was initiated to analyze the potential impacts of the proposed project. Per section 22.01.040 F.1. of the Marin County Development Code, the provisions of the Code that apply to this project are those that were in effect at the time that the project application was deemed complete. Under both the current 2018 and previous 2012 provisions of the Development Code, the bridge and house would have triggered Design Review approval due to the fact that the lot is located in a Planned Zoning District. Moreover, in its judgment the Court of Appeal

ordered the Marin County Superior Court to issue a writ of mandate to the County "...directing the county to set aside its approval of the 2007 CWP and certification of the related EIR with respect to the San Geronimo watershed only, pending preparation of a supplemental EIR with respect to the San Geronimo Valley only that analyzes cumulative impacts in conformity" with the relevant CEQA Guidelines. With respect to this decision, the Initial Study land use analysis section is based on the 1994 Countywide Plan policies that pertain to the Stream Conservation Areas, and the 2007 Countywide Plan for all other policy sections.

3. **WHEREAS**, on June 4, 2018, the Marin County Planning Division sent the applicant the Tarigo Project Draft Initial Study for review and signature.

4. **WHEREAS**, on June 12, 2018, Aldo Tarigo submitted a timely appeal of the California Environmental Quality Act (CEQA) determination and cited mitigation measures 1.B.1. and 1.B.2. of the Tarigo Project Draft Initial Study.

5. **WHEREAS**, on August 27, 2018, and October 22, 2018, the Marin County Planning Commission held duly noticed public hearings to take public testimony and consider the project and the appeal.

6. **WHEREAS**, the bases of appeal are sufficient to partially overturn the Marin County Environmental Planning Division's decision, but the Planning Commission relied on its de novo review authority to deny the project for the reasons discussed below.

The appellant challenges the necessity of Mitigation Measures 1.B.1. and 1.B.2.

Mitigation Measure 1.B.1. states:

The residence, second unit and garage shall be modified to be consistent with Exhibit B. Exhibit B illustrates that the footprint of the new residence would be limited to the approximate footprint of the existing residence. The footprint of the existing second unit (442 square feet) shall be removed and left undeveloped, thereby eliminating the footprint of the proposed art studio. The proposed garage and second unit are not subject to change as a result of this mitigation measure. Occupancy of the residence shall not be approved until the existing illegal bridge has been removed.

Discussion

The appellant disagrees with the modifications to the design required in Initial Study Exhibit B. Marin County Code Section 24.04.560 requires a minimum 20-foot setback from a watercourse top-of-bank or 20-foot plus twice the channel depth (measured from the toe of the near embankment), whichever is greater. The retaining wall along the eastern bank would be removed and the bank would be returned to a more natural state; as a result, a 20-foot setback from a watercourse top-of-bank would apply. A portion of the proposed residence (art studio) falls within the 20-foot setback from the new top of creek bank; therefore, the proposed residence would be inconsistent with Marin County Code Section 24.04.560. Mitigation Measure 1.B.1 addresses this inconsistency by modifying the residence to be generally confined to the limits of the existing residence, thereby resulting in an approximately 23-foot setback from the new top of creek bank. This in turn allows water to more slowly percolate into the soil rather than potentially increasing the velocity of flow in the creek and provides more undeveloped area within the SCA for restoration and habitat.

However, the Planning Commission finds that the project cannot be approved, even with the imposition of this mitigation measure, because the proposed footprint of the residence is

inconsistent with the Countywide Plan's Stream Conservation Area policies, which call for minimum buffers of 20 feet from the top of bank and larger buffers where possible.

Mitigation Measure 1.B.2. states:

The illegally constructed bridge shall be removed and replaced in accordance with the Department of Public Work's (Titles 11 and 24) standards which require the bridge footings and abutments to remain clear of the 100-year flow elevation.

Discussion

The Planning Commission supported the appeal in this respect and determined that this mitigation measure should be removed. An additional finding in this decision pertains to the exceptions to Public Works standards requested by the applicant.

7. **WHEREAS**, projects must be consistent with the relevant Countywide Plan policies in order to satisfy the mandatory findings for Design Review and Tree Removal Permit 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 BIO-1.3 - Protect Woodlands, Forests, and Tree Resources. *Protect large native trees, trees with historical importance; oak woodlands; healthy and safe eucalyptus groves that support colonies of monarch butterflies, colonial nesting birds, or known raptor sites; and forest habitats. Prevent the untimely removal of trees through implementation of standards in the Development Code and the Native Tree Preservation and Protection Ordinance. Encourage other local agencies to adopt tree preservation ordinances to protect native trees and woodlands, regardless of whether they are located in urban or undeveloped areas. See also Policy SV-1.7.*

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 this 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-2.19 - Surface Runoff. *Surface runoff rates in excess of pre-development levels should not be allowed where a new problem will be created or where the runoff will exacerbate an existing problem.*

Policy EQ-2.20 - Retention of Sediment. *On-site facilities for the retention of sediments or contribution toward regional sediment control measures produced by development should be provided during construction and, if necessary, upon project completion. Continued maintenance of these facilities should be required.*

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-2.88 - Protection of Special Status Species. *Development shall be restricted or modified in areas which contain special status species and migratory species of the Pacific Flyway and/or significant natural areas, wetlands, riparian habitats, and freshwater habitats, to ensure the continued health and survival of these species and areas.*

Policy EQ-3.6 - Wildlife, Vegetation, and Habitats. *A diversity and abundance of wildlife and marine life shall be maintained. Vegetation and animal habitats shall be preserved wherever possible.*

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

To prevent adverse impacts resulting from development along watercourses, the County in the 1994 CWP has defined Stream Conservation Areas along major creeks in Marin County. Barranca Creek and its unnamed tributary on the project site are perennial, solid blue line watercourses on USGS quad maps subject to the SCA policies contained in the 1994 Marin CWP. Because of its location within the Inland Rural Corridor, the SCA on the project site extends laterally outward 100 feet from the top of all creek banks. Based on the biological site assessment, prepared by LSA, there is limited riparian vegetation so that the SCA does not need to be extended an additional distance. Except for a narrow strip area along Barranca road, the entire project is located within the SCA. It is not possible to construct a project outside the 100-foot SCA. As explained in 1994 Marin CWP Policies EQ-2.4 through EQ-2.6, the proposed project is allowed within the SCA because the construction of a single-family residence is an allowed use in the ARP-2 zoning district and the project site falls entirely within the SCA.

While development within the SCA is allowable on the site, that development must be designed and carried out in such a manner that significant impacts are avoided or reduced to less than significant levels through appropriate mitigation. As proposed, the project would result in significant impacts related to the illegal bridge and the proposed residential development.

Marin County Code Section 24.04.560 requires residential development have a minimum 20-foot setback from a watercourse top-of-bank or 20-foot plus twice the channel depth (measured from the toe of the near embankment), whichever is greater. Assuming the retaining wall along the eastern bank would be removed and the bank would be returned to a more natural state. As a result, a 20-foot setback from a watercourse top-of-bank would apply. A portion of the proposed residence (the art studio) falls within the 20-foot setback from the new top of creek bank. Therefore, the location of proposed residence would be inconsistent with Marin County Code Section 24.04.560 resulting in adverse effects to Barranca Creek.

The proposed project includes the removal of the pre-existing wooden bridge which was demolished without permits and the illegal construction of the concrete bridge in 2006. Technical specifications for building new bridges are subject to Marin County Code Titles 11 and 24. Marin County Code Section 11.08.040 includes requirements for the bridge design, including the bridge footings and abutments, to remain clear of the 100-year flow elevation. Marin County Code Section 24.04.520(d) requires a minimum of 2 feet of freeboard between the bridge soffit and the 100-year flow elevation. The new concrete bridge does not meet these standards and as a result, the bridge requires exceptions from these standards.

8. **WHEREAS**, although the Planning Commission does not have authority to overturn the Department of Public Works standards in Marin County Code Title 11 as they relate to bridges, they find that the applicants' request for an exception to those standards has merit because

demolition of the bridge would cause substantial adverse impacts to the existing riparian habitat and because State and Federal resource agencies with the technical and scientific expertise to properly evaluate the impacts of the existing bridge have indicated their preliminary support for allowing it to remain in place rather than requiring it to be demolished and replaced with a new bridge.

9. **WHEREAS**, since the proposed location and design of the residence 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 Tarigo Design Review and Tree Removal Permit.


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, November 5, 2018.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 27th day of August 2018 by the following vote:

- AYES: MARGOT BIEHLE, MARGARET CURRAN, CHRISTINA DESSER JOHN ELLER,
DAVID PAOLI, PETER THERAN
- NOES: DON DICKENSON
- ABSENT: NONE



MARGOT BIEHLE, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher
Planning Commission Recording Secretary