

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of:	June 14, 2012
Item No.:	8
Staff:	Tom Purciel

VARIANCE

FILE NUMBER: V12-0001/Cushman Riparian Setback Reduction

APPLICANT: Robert Cushman

REQUEST: Finding of Consistency with General Plan Policy 7.3.3.4 and request for a reduction of the perennial stream setback from 100 feet to no less than 75 feet from the top of bank of the South Fork of the American River for a residential deck and covered porch.

LOCATION: Located on the northeast side of Petersen Lane, approximately 1.2 miles northwest of the intersection with Lotus Road, in the Lotus/Coloma area, Supervisorial District 4 (Exhibit A).

APN: 105-080-08 (Exhibit B)

LOT SIZE: 5.00 acres

GENERAL PLAN: Low Density Residential-Important Biological Corridor (LDR-IBC) (Exhibit C)

ZONING: Estate Residential 10-Acre (RE-10, Exhibit D)

ENVIRONMENTAL DOCUMENT: Mitigated Negative Declaration

RECOMMENDATION:

Staff recommends the Planning Commission take the following actions:

1. Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff;
2. Adopt the Mitigation Monitoring Program in accordance with CEQA Guidelines Section 15074(d) incorporating the mitigation measures in the Conditions of Approval as listed in Attachment 1;

3. Find that the proposed reduction of the riparian setback is consistent with the intent of General Plan Policies 7.3.3.4 and 7.4.2.9 and the Interim Interpretive Guidelines for Policy 7.3.3.4.; and
4. Approve V12-0001 subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

BACKGROUND:

The South Fork of the American River, a perennial river, traverses the project site from southeast to northwest. The applicant is proposing to construct a new residence of approximately 2,300 square feet, replacing an aging 1,150 square foot residence on the same site and building pad. Although the proposed replacement single-family residence would be located at least 100 feet from the top of bank of the river, a proposed 500 square foot deck and 300 square foot covered porch would encroach approximately 25 feet into a 100-foot riparian setback as required by General Plan Policy 7.3.3.4 (See Site Plan, Exhibit E). To date, no building or grading permits have been submitted for the proposed replacement structures.

As the deck and covered porch would be located approximately 75 feet from the top of bank from the South Fork of the American River, the project must demonstrate consistency with General Plan Policy 7.3.3.4 prior to the issuance of a ministerial building permit, pursuant to the Interim Interpretive Guidelines for Policy 7.3.3.4 (June 22, 2006).

DISCUSSION:

The location of the proposed improvement is an upland oak woodland, containing an open canopy of native oaks and pines with an understory of seasonal grasses and non-native ornamental ground cover ("Saint John's Wort"). As shown in the attached (Biological) Site Assessment (Exhibit F), the site of the deck and covered porch would be located within this oak woodland habitat and approximately 90 feet from the ordinary high water mark of the South Fork of the American River. The proposed deck and covered porch would be located at least 80 feet in elevation above the edge of existing riparian vegetation. The site of proposed soil disturbance contains moderately steep slopes of approximately 20-40% (Exhibit F).

ZONING:

Development of the site for a single-family dwelling is permitted by-right within the Estate Residential Ten-Acre (RE-10) Zone District. As proposed, the project will conform to all development standards of the RE-10 Zone District (Section 17.70.110).

GENERAL PLAN:

A site plan review (Zoning Ordinance, Section 17.22.330) would typically require development projects, including residential building and grading permits, to be consistent with the General Plan. Ordinance No. 4777 was subsequently adopted (effective July 17, 2008), amending General Plan Policy 2.2.5.20 to exempt most residential development from General Plan consistency review. However, as amended, Policy 2.2.5.20 continues to require General Plan consistency for all development on lands located within a General Plan Important Biological Corridor (IBC) Overlay

(See Exhibit C).

With the exception of the above request for a reduction of riparian setbacks, as required by General Plan Policy 7.3.3.4, this project would be consistent with all other applicable General Plan Policies. As directed by the Interpretive Guidelines for General Plan Policy 7.3.3.4, adopted June 22, 2006, the Planning Commission (“Commission”) must consider all evidence and make all required findings prescribed in County Code Section 17.22.630 (Variances). The Commission must also conclude, based on substantial evidence, that the alternative setback would be consistent with the General Plan.

Interim Interpretive Guidelines

The Interim Interpretive Guidelines for General Plan Policy 7.3.3.4 require a minimum setback of 100 feet from all perennial streams, rivers, and lakes, and a 50 foot setback from intermittent streams and wetlands until standards for buffers and special setbacks are established in the zoning ordinance. General Plan Policy 7.3.3.4 states, “These interim standards may be modified if more detailed information relating to slope, soil stability, vegetation, habitat or other site- or project-specific conditions supplied as part of the review for a specific project demonstrates that a different setback is necessary or would be sufficient to protect the particular riparian area at issue.” Also, “For projects where the County allows an exception to wetland and riparian buffers, development in or immediately adjacent to such features shall be planned so that impacts on the resources are minimized.”

Further, the Interpretive Guidelines for Policy 7.3.3.4 also require project-specific biological reports to address all applicable provisions of General Plan Policy 7.4.2.9, ensuring protection of wildlife habitat. Pursuant to Policy 7.4.2.9, these protections may include, but not be limited to: 1) lower thresholds for grading permits, 2) higher wetlands/riparian retention standards and/or more stringent mitigation requirements for wetland/riparian habitat loss, 3) increased riparian corridor and wetland setbacks, 4) more stringent standards for lot coverage, floor area ratio (FAR) and building height and 5) demonstration of no hindrances to wildlife movement (e.g., no fences restricting the movement of wildlife).

A project-specific (Biological) Site Assessment, dated January 4, 2012, was prepared by Sierra Ecosystem Associates, and submitted to Development Services on January 10, 2012 (Exhibit F). The Site Assessment reviewed the project for consistency with General Plan Policies 7.3.3.4 and 7.4.2.9 and concluded that the proposed project, allowing construction of a 500 square foot deck and 300 square foot covered porch within a 75 foot minimum setback from the perennial river, with recommended construction practices (“BMP’s”), would not affect water quality nor have the potential to cause any direct or indirect impact or disturbance to riparian vegetation, wetlands or lakes, wildlife movement or affect any Special Status plant or animal species¹. Recommended construction practices (“BMP’s”) have been included as Exhibit H.

The (Biological) Site Assessment conclusions were based on the following:

¹ Page 3 Site Assessment Form, Exhibit F

1. The site is already an established residence and previous disturbance to resources occurred at the time the parcel was originally developed. It (the existing residence) is currently within the 100-foot setback from the top of bank. The existing deck is approximately 90 feet from the top of bank and 80 feet from the edge of riparian vegetation.
2. No riparian vegetation or any trees are going to be disturbed or removed. The new house (main structure) will actually be set back several feet further from the South Fork of the American River than the existing house. The proposed new deck (and covered porch) will only extend approximately 15 feet (at most) into the 100-foot setback from the top of bank.
3. There are no sensitive habitats or vegetation communities within the disturbance zone.
4. The area where several new deck pilings will encroach within the 100-foot setback is currently vegetated with non-native landscaping plants (*Hypericum calycinum*).
5. Any special-status species potentially occurring in the area (see Table 1 and Figure 1) will not be impacted by the minor level of disturbance to existing disturbed land.
6. Recommended construction BMP's will reduce potential adverse impacts as a result of erosion caused by ground disturbing activities.

Staff has reviewed the (Biological) Site Assessment and based on the project biologist's field observations, review of all applicable special-status species lists and review of project plans, staff is satisfied that the recommendations provided would protect the perennial river.

ENVIRONMENTAL REVIEW:

Staff has prepared an Initial Study and Environmental Review Checklist (Exhibit I) to assess project-related environmental impacts. Based on the Initial Study, it has been determined that while the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. Therefore, a Mitigated Negative Declaration has been prepared.

NOTE: This project is located within an area that has wildlife resources (riparian lands, wetlands, watercourse, native plant life, rare plants, threatened or endangered plants or animals, etc.) and was referred to the California Department of Fish and Game. In accordance with State Legislation (California Fish and Game Code Section 711.4), the project is subject to a fee of \$2,101.50 after approval, but prior to filing the Notice of Determination on the project. This fee, plus a separate \$50.00 recording fee, is to be submitted to Planning Services and must be made payable to El Dorado County. The \$2,101.50 is forwarded to the State Department of Fish and Game and issued to defray the cost of managing and protecting the states fish and wildlife resources.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Location Map
Exhibit B	Assessor's Parcel Page
Exhibit C	General Plan Land Use Map
Exhibit D	Zoning Map
Exhibit E	Site Plan
Exhibit F	Sierra Ecosystem Associates (Biological) Site Assessment; January 4, 2012
Exhibit G	Applicant-submitted Variance Findings Support Information
Exhibit H	Recommended Best Management Practices from Biological Site Assessment
Exhibit I	Mitigated Negative Declaration and Initial Study

ATTACHMENT 1

CONDITIONS OF APPROVAL

Variance V12-0001/Cushman Riparian Setback Reduction Planning Commission/June 14, 2012

1. The project is based upon and limited to compliance with the project description, the hearing exhibits marked Exhibits E and F, and conditions of approval set forth below. Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

2. The project Description is as follows:

A Finding of Consistency with General Plan Policy 7.3.3.4 for reduction of a riparian river setback from 100 feet to no less than 75 feet from the top of bank of the American River for a residential deck and covered porch, as shown on the approved Site Plan (Exhibit E).

Mitigation Measures from Mitigated Negative Declaration:

3. MM-BIO-1: Excavation and ground disturbance shall be limited to between April 15 and October 15 of each calendar year.

Implementation: The applicant shall include this measure as a note on all building and grading plans.

Enforcement/Monitoring: Prior to issuance of building permits, El Dorado County Planning Services shall verify that this measure is incorporated as a note on the plans.

4. MM-BIO-2: During project construction, drainage from new construction should be directed through a drain pipe with a rock outfall or through a rock-lined ditch to prevent gully and rill erosion.

Implementation: The applicant shall include this measure on all building and grading plans.

Enforcement/Monitoring: Prior to issuance of building or grading permits, El Dorado County Planning Services shall verify that the above measure(s) have been incorporated into project plans.

5. MM-BIO-3: If rain is forecast to occur, all bare soil should be covered with plastic sheeting, or equivalent, 24 hours prior to an anticipated precipitation event.

Implementation: The applicant shall include this measure as a note on all building and grading plans.

Enforcement/Monitoring: Prior to issuance of building permits, El Dorado County Planning Services shall verify that this measure is incorporated as a note on the plans.

6. MM-BIO-4: Excavation or trenching should avoid major roots of existing mature trees on site.

Implementation: The applicant shall include this measure as a note on all building and grading plans.

Enforcement/Monitoring: Prior to issuance of building permits, El Dorado County Planning Services shall verify that this measure is incorporated as a note on the plans.

7. MM-BIO-5: All concrete mixing and clean-up shall be completed at a designated site and contained washout area at least 100 feet from the ordinary high water mark of the American River.

Implementation: The applicant shall include this measure as a note on all building and grading plans.

Enforcement/Monitoring: Prior to issuance of building permits, El Dorado County Planning Services shall verify that this measure is incorporated as a note on the plans.

8. MM-BIO-6: Following construction, all bare ground shall be covered with erosion control fabric or straw and revegetated.

Implementation: The applicant shall include this measure as a note on all building and grading plans.

Enforcement/Monitoring: The Building Safety Services Division shall verify that erosion control measures have been installed and revegetation has been completed prior to final inspection.

9. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action, as provided in *Section 66474.9(b)* of the *California Government Code*.

The applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or processing against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning a variance, which action is brought within the time period provided for in *Section 66499.37* of the *California Government Code*.

ATTACHMENT 2

FINDINGS

Variance V12-0001/Cushman Riparian Setback Reduction Planning Commission/June 14, 2012

1.0 CEQA FINDINGS

- 1.1 El Dorado County has considered the Mitigated Negative Declaration together with the comments received during the public review process. The Focused Mitigated Negative Declaration reflects the independent judgment of the County and has been completed in compliance with CEQA and is adequate for this proposal.
- 1.2 The proposed project, as mitigated and conditioned, will not have a significant impact on the environment and a Mitigated Negative Declaration has been filed.
- 1.3 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department-Planning Services at 2850 Fairlane Court, Placerville, CA.

2.0 VARIANCE FINDINGS

- 2.1 *There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant.*

The parcel is constrained by steep topography, the location of the South Fork of the American River, existing utilities and the location of the existing septic system. As part of a proposed replacement residence, the proposed deck and covered porch would be located near the footprint of the existing deck. However, due to the above constraints, these structures could not reasonably be replaced outside the required riparian setback, and therefore, required Finding 2.1 can be made.

- 2.2 *The strict application of the provisions of the ordinance requested to be varied would deprive the applicant of the reasonable use of the land or building, allowed for other land in the vicinity and the same zone.*

The project site is surrounded by similar residential uses. The applicant has followed the process set forth by General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for that Policy. Strict application of the provisions would deprive the applicant of the reasonable use of the land for residential development. Therefore, required Finding 2.2 can be made.

- 2.3 *The variance is the minimum necessary for the reasonable use of the land or building.*

The applicant's biologist has recommended a minimum setback of 75 feet from the perennial river to protect the integrity of the riparian habitat. Due to the significant parcel constraints

described in Finding 2.1 above, the proposed deck and covered porch would replace the existing deck within a similar footprint. This is the minimum variance that is necessary for the reasonable use of the land as a residential home site, and, therefore required Finding 2.3 can be made.

- 2.4 *The variance is in conformity with the intent of this article and not detrimental to the public health, safety and welfare, or injurious to the neighborhood.*

Based on the project biologist's field observations, review of all applicable special-status species lists and review of project plans, the setback reduction from the perennial river on the project site has been designed for sufficient protection of the integrity of the riparian habitat, consistent with the intent of General Plan Policies 7.3.3.4 and 7.4.2.9. Further, the proposed replacement residence, including the proposed riparian setback encroachment, will be sited within the existing developed area, and the replacement structures are not anticipated to be detrimental to the public health, safety and welfare, or be injurious to the neighborhood. Therefore, required Finding 2.4 can be made.

3.0 FINDINGS FOR GENERAL PLAN CONSISTENCY

- 3.1 *The alternative setback is consistent with the General Plan.*

The proposed project has been designed in a manner to ensure that alternative setbacks would not have an adverse effect on the perennial feature. A Mitigated Negative Declaration was adopted in accordance with CEQA that included mitigation measures incorporated into the project as conditions of approval that reduces identified potential significant impacts to less-than-significant. The proposed project, therefore, is consistent with intent of General Plan Policy 7.3.3.4 by providing for an adequate setback for protection of natural and man-made wetlands, vernal pools, wet meadows, and riparian areas from impacts related to development for their importance to wildlife habitat, water purification, scenic values, and unique and sensitive plant life.