

Local Creek Setbacks Generally Ineffective

by Ann Thomas

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Waterways in the Corte Madera Creek watershed flow through areas under the jurisdiction of six different local governments – the incorporated communities of Corte Madera, Fairfax, Larkspur, Ross and San Anselmo, and Marin County – each with different rules about building next to creeks. None has strong creek protections written into their municipal codes.

Ross and Fairfax have provisions about setting back structures from creeks; the Ross ordinance was just adopted in May of this year – and Friends was pleased to see this action taken. Although it could have been more forceful, the new Ross ordinance is a step in the right direction.

Ross Ordinance 575 amended the Ross Municipal Code as follows: “All development shall maintain a setback from creeks, waterways and drainageways.... A minimum 50-foot setback from the top of the bank is recommended for all new buildings. At least 25 feet from the top of the bank should be provided for all improvements, when feasible. The area along the top of the bank of a creek or waterway should be maintained in a natural state or restored to a natural condition, when feasible.” Friends is concerned that the good intent of the Ross ordinance is undermined by weak language: the setback is “recommended” but not required, and “when feasible” is liberally used in the ordinance.

The Fairfax general plan states, “No building, accessory building, structure or swimming pool shall be constructed closer to the top of the stream bank of the Fairfax and San Anselmo creeks than twenty feet or two times the average depth of the bank, whichever is greater, without authorization by variance, except for retaining walls and bulkheads which replace falling structures and which do not increase the height, width, length or configuration of the original structure.”

San Anselmo offers a handout for residents planning work near a creek in which it states that “The Town requires structures to be set back a minimum of 15 feet from the Town’s principal creeks, measured from the top of the bank....In general, no development in the setback will be permitted by the Public Works Department except for bank stabilization measures.” In spite of this stated requirement, the town recently approved the construction of a commercial building on Barber Avenue within two feet of the creek bank, without a relevant variance. Friends is urging the town council to address the issue of creek protection before all riparian habitat is lost through cumulatively destructive projects. Creekside construction also exacerbates San Anselmo’s flooding problems.

Corte Madera requires a permit for construction of any structure that is in or upon a watercourse (Section 9.32.060), but the town code has no setback requirement. It simply states that anything that obstructs the “free and unobstructed flow of water in any watercourse” is subject to abatement. Larkspur, which includes two boardwalk developments, has regulations regarding the construction of docks, piers and floats in the creek (Section 18.16.125) but no setback provisions for freshwater creeks.

Marin County is working on an ordinance to establish design review for structures within 50 feet (in urban areas) and 100 feet (in agricultural areas) of waterways in unincorporated Marin – including Sleepy Hollow and Kentfield. For some time the Countywide Plan has suggested providing for 50-foot and 100-foot buffers. However these policies have languished without enforcement because they were never embodied in code requirements.

Because of opposition to the draft ordinance as it affects creekside lots in the City-Centered Corridor - where the Ross Valley is located - the County is deferring action until next year. It may, however, proceed this year with a separate ordinance for the agricultural areas in the Inland Rural Corridor.

Friends supports the County’s effort to produce protocols that would substantially improve the health of our waterways, and we ask you to write Supervisor Hal Brown and County Senior Planner Tom Lai letting them know that you want to see a meaningful creek protection ordinance.

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