



MEETING DATE: 2/20/07

ITEM NO:

CONSENT

COUNCIL AGENDA REPORT

DATE: February 14, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

A handwritten signature in cursive script, likely belonging to Debra J. Figone, the Town Manager.

SUBJECT: GUIDELINES AND STANDARDS FOR LAND USE NEAR STREAMS

RECOMMENDATION:

1. Adopt a Resolution implementing the Guidelines and Standards for Land Use Near Streams (Attachment 1).

If the Council decides that changes should be made to the resolution, it may:

1. Remand the project to the Planning Commission with direction about the required changes; or
2. Continue the project to a date certain and provide specific direction to staff about the required changes.

BACKGROUND:

The Guidelines and Standards for Land Use Near Streams (G&S) were developed by the Santa Clara County Water Resources Protection Collaborative (Collaborative), which was established in 2002. The Collaborative consists of representatives from 15 cities (including the Town of Los Gatos), the County of Santa Clara, the Santa Clara Valley Water District (SCVWD) and other interested community, business and environmental groups. The G&S contains the requirements and guidance for development adjacent to streams.

On August 15, 2005, the Town adopted a resolution agreeing to implement the Guidelines and Standards. The G&S and an associated streamside protection ordinance were adopted by the SCVWD Board of Directors an ordinance on October 24, 2006. The ordinance implements the G&S and repeals the SCVWD permitting authority for development adjacent to creeks, and replaces it with permit authority that applies only to land held by the SCVWD in fee or easement. With adoption of the ordinance, local jurisdictions will assume the permitting authority for development adjacent to creeks. A deadline of February 28, 2007 has been set for the cities and the County to adopt the Guidelines.

PREPARED BY: BUD N. LORTZ, BNL/RT
Director of Community Development

Reviewed by: Assistant Town Manager Town Attorney
____ Clerk Administrator Finance Community Development

DISCUSSION:

1. Project Summary

The G&S contain setback and other standards pertaining to development adjacent to creeks. The provisions apply to all properties abutting a creek except ministerial projects in single family zones, which are recommended to be exempt from the G&S. The SCVWD will continue to review projects, if requested by local jurisdiction, which staff intends to do.

All improvements (except in R-1 zones) are to be located outside a slope stability protection area, which is the greater of 20 feet inward from the top of bank or to a point measured at a ratio of 2:1 (horizontal: vertical) inward from the toe of bank. For single family homes in R-1 zones, the setback is 20 to 25 feet adjacent to natural stream channels that are 10 feet deep or less, otherwise the setback is based on the 2:1 slope stability protection area discussed above. Exceptions may be granted where a slope stability analysis is provided and maintenance or repair of the stream will be provided. Based on environmental conditions that are assessed during project review and/or environmental review, greater setbacks than those mentioned above may be required.

The Collaborative recommends that the following projects be exempt from the G&S:

- Wood fences less than six feet tall
- Grading less than three cubic yards
- Accessory structures less than 120 square feet
- Decks less than 30-inches above grade are exempt from the G&S.

Projects such as these generally do not require permits and are minor so they do not impact streams and creeks. These uses may be allowed in the slope stability area, but may not encroach beyond or overhang the top of bank.

The Collaborative allows jurisdictions to exempt existing single-family parcels which contain 10,000 square feet or less. Staff recommends a modification to apply the G&S to all projects on single-family parcels, regardless of lot size, that require discretionary review. Because most projects in Town require some type of discretionary review (which includes minor residential projects, and projects approved by DRC, Planning Commission and City Council), staff's recommendation will apply the G&S more broadly than the approach suggested by the Collaborative and will be simpler to implement. The only type of projects that would not be subject to the G&S are ministerial projects in single family zones. The exemption will essentially only apply to single-story additions that do not require a grading permit and two-story additions less than 100 square feet that only require a building permit for approval. The SCVWD recognizes that each community will implement the G&S differently based on their unique permitting processes.

2. Planning Commission

a. Commission Comments

The Commission reviewed the G&S at their meeting of January 10, 2007. Commissioner Bourgeois expressed concern that 20 to 25 foot setbacks discussed in the G&S would be taken by applicants as the maximum required, when in fact a greater setback may be necessary. Staff commented that the G&S state the 20 to 25 foot setback is the minimum setback and the actual setback is based on a 2 to 1 slope stability protection and also on environmental constraints of the specific project site. Additionally, staff will include a statement on handouts that are being developed for properties near streams, that informs applicants and homeowners that the setbacks in the G&S are minimums and greater setbacks may be required through the development review process.

Commissioners Bourgeois and Sayoc also mentioned they had technical comments that they would forward separately to staff. The Commission voted 7-0 to recommend that the Town Council adopt a Resolution implementing the G&S. The recommendation included the technical comments from Commissioners Bourgeois and Sayoc.

b. Commissioners Bourgeois and Sayoc Comments

The comments from Commissioners Bourgeois and Sayoc's comments are summarized below along with staff's response. The comments are also attached.

- *They express the concern that applicants will view the setbacks in the G&S as the maximum required. As discussed above, staff will address this concern and make it clear the setbacks discussed in the G&S are minimums and greater setbacks may be required based on site conditions.*
- *It is suggested that the Town consider adopting a riparian corridor policy and reference a City of San Jose policy that requires a 100-foot setback and then outlines exceptions to reduce the setback. Consideration of a riparian corridor policy is best evaluated as part of the General Plan Update. As previously discussed, the Town is under a deadline to adopt the G&S because the SCVWD has relinquished their permitting authority beginning March 1, 2007.*
- *There is a concern about exempting wood fences adjacent to creeks and suggests considering fencing standards similar to those in the Hillside Development Standards and Guidelines (HDS&G). Regulating wood fences adjacent to creeks would be difficult to administer. Unless included as part of a discretionary application, fences six feet tall or less do not require a permit and staff would have no way of knowing when one is built. It should be noted that fencing in hillside areas is encouraged only in areas necessary for the protection landscaping, security, or play areas. Solid*

fencing is discouraged unless needed for privacy and fencing is not allowed in areas that would impede the movement of wildlife.

- *How will the plan be implemented and what type of follow-up will occur to determine if the G&S are meeting their purpose and goals?* Applications will continue to be routed to SCVWD for comment. However, the Town, not SCVWD, will issue permits for work adjacent to streams. This will streamline the process for applicants. In addition to review by SCVWD, staff will evaluate potential impacts and may require site specific studies to determine the top of bank and assess if the project will have any impact and if mitigation measures are necessary. Any necessary mitigation measures will be included in the conditions of project approval.

The Collaborative that prepared the G&S will remain intact and will meet to determine if the G&S are accomplishing their desired goals and if any amendments are necessary. The Town cannot modify the language in the G&S, but Staff can recommend changes when the Collaborative reviews the G&S.

- *Concern that the G&S allow structures in the slope stability area subject only to a geotechnical report with no further studies or mitigation measures.* Appendix B of the G&S discusses additional efforts that may be necessary to protect riparian corridors. It states additional measures, such as onsite biotic studies may be necessary by a qualified expert to determine if mitigation measures are necessary. This is consistent with staff's intended approach to implement the G&S. Staff has included a statement in the Resolution to clarify this requirement to applicants.
- *Modify the language on page 3.13, V.B.4 to require rather than consider protective measures in source water protection zones and sensitive areas of reservoir watersheds.* While there are no reservoirs within Town boundaries, this issue is further discussed in Appendix B. Any grading in these areas must be approved by the SCVWD, who will require any necessary mitigation measures. They require erosion and sediment control measures to protect reservoirs from construction impacts.
- *Modify the language on page 3.15, V.II.B to require rather than recommend the restoration of natural stream processes.* Restoring streams/creeks is not always possible, for example some streams are in culverts under streets and cannot be restored. Staff will work to restore streams when possible.
- *Modify the language on page 3.18, XIII.A2 to prohibit instead of should prohibit new high risk activities in well head protection areas as designated on District GIS maps.* Active wells are required to be shown on plans and must be destroyed or maintained in accordance with SCVWD standards. SCVWD, not Town staff will be responsible for well head protection. Projects in Town that had well heads were destroyed in accordance with direction from the SCVWD.

CONCLUSION:

The G&S provide clarity for applicants and will lead to more consistency when reviewing projects adjacent to streams. It is recommended that the Council adopt the attached resolution (Exhibit A), applying the G&S to projects in Town adjacent to streams, except that ministerial projects in single family zones would be exempt from the provisions. The SCVWD is relinquishing their permitting authority as of February 28, 2007 and the Town is encouraged to adopt procedures to implement the G&S by that date.

ENVIRONMENTAL ASSESSMENT:

Adoption of the G&S is Categorically Exempt pursuant to Section 15307 of the State Environmental Guidelines as adopted by the Town. This exemption applies to actions by regulatory agencies for protection of natural resources where the regulatory process involves procedures for protection of the environment. The G&S establish procedures that will help protect streams. Future development adjacent to streamside properties would be subject to environmental review as appropriate.

FISCAL IMPACT:

With SCVWD relinquishing their permitting authority for projects adjacent to creeks, additional staff time will be required to review creekside properties. Staff currently considers impacts to creeks as part of the review of creek side properties, but relies primarily on the SCVWD for expertise. To implement the G&S, applicants will need to hire consultants to assist in the preparation of plans. Staff will need to review any reports and plans in greater detail and this will result in an unknown amount of additional staff time to review these projects. Staff will monitor creekside projects and determine if any changes to fees are necessary to recover additional costs to implement the G&S.

Attachments:

1. Draft Resolution
2. Excerpts from the January 10, 2007 Planning Commission meeting (*previously submitted*)
3. Comments from Commissioners Bourgeois and Sayoc
4. Staff report prepared for the January 10, 2007 Planning Commission meeting (without exhibits, which are included as attachments 1, 5, 6 and 7) (*previously submitted*)
5. Chapter 3 Guidelines and Standards for Land Use Near Streams (*previously submitted*)
6. Santa Clara County Valley Water District Ordinance
7. Town Council Report dated August 15, 2005 supporting the Collaborative

RESOLUTION NO.

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ADOPTING THE SANTA CLARA VALLEY WATER RESOURCES PROTECTION
COLLABORATIVE GUIDELINES AND STANDARDS FOR LAND USE NEAR
STREAMS, DIRECTING THAT SUCH STANDARDS BE INTEGRATED INTO THE
TOWN OF LOS GATOS' PLANNING APPROVAL PROCESS, AND FURTHER
EXMPTING SINGLE-FAMILY PROJECTS IN RESIDENTIAL ZONES THAT DO NOT
REQUIRE DISCRESIONARY APPROVAL.**

WHEREAS, the Town of Los Gatos participates in the Santa Clara Valley Water Resources Protection Collaborative along with the Santa Clara Valley Water District, the County of Santa Clara, and the cities of Santa Clara County; and

WHEREAS, the Town of Los Gatos joins the Santa Clara Valley Water Resources Protection Collaborative and others in endorsing the water and watershed resource protection goals of flood management, drinking water quality and quantity, surface and groundwater quality and quantity, and habitat protection and enhancement; and

WHEREAS, it is recognized that the local control is the key principle for the implementation of resource protection goals, and that cities and the County are the primary jurisdictions for land use planning and land use permit regulation; and

WHEREAS, the Town is committed to the development of a consistent, County-wide approach to streamside preservation through the implementation of existing policy and the Guidelines and Standards for Land Use Near Streams; and

WHEREAS, the Town of Los Gatos understands that once it adopts and implements the Guidelines and Standards for Land Use Near Streams, the Santa Clara Valley Water District will relinquish its development review of streamside properties other than those lands held in fee or easement by the Santa Clara Valley Water District; and

WHEREAS, the Town of Los Gatos understands that in adopting and implementing the Guide and Standards for Land Use Near Streams, the Santa Clara Valley Water District will continue to provide technical assistance to the Town; and

THEREFORE, BE IT RESOLVED: The Town Council of the Town of Los Gatos:

1. Adopts the “Guidelines and Standards for Land Use Near Streams” of the Santa Clara Valley Water Resources Protection Collaborative, incorporating future amendments that may occur from time to time; and
2. Directs that the “Guidelines and Standards for Land Use Near Streams” be applied to future streamside development in the Town of Los Gatos to the extent feasible provided that single- family homes in residential zones that do not require discretionary approval are exempt from the provisions in the guidelines; and
3. In order protect riparian corridors, implementation of the G&S may require applicants to provide an assessment of onsite biotic and riparian conditions by a qualified professional, which may result in larger setbacks and additional protection measures than those stated in the G&S.
4. Supports continuing participation in the Santa Clara Valley Water Resources Collaborative on matters pertaining to watershed resource protection.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos,
California, held on the ____ day of _____ 2007 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

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A P P E A R A N C E S:

Los Gatos Planning
Commissioners:

Joanne Talesfore, Chair
John Bourgeois
Michael Kane
Phil Micciche
Tom O'Donnell
Steve Rice
Marico Sayoc

Assistant Director of
Community Development:

Randy Tsuda

Town Attorney:

Orry Korb

Transcribed by:

Vicki L. Blandin
(510) 526-6049

P R O C E E D I N G S:

CHAIR TALESFORE: Moving along to Item #5,
Guidelines and Standards for land use near streams. The
recommendation that we're being asked to look at will then
be forwarded to the Town Council to adopt the resolution
implementing the Guidelines and Standards for the land use
near streams. This has been the work, for about three or
four years I was told, of the Collaborative, and we are to
provide some comments and recommendations. And before we do
that, Mr. Tsuda, would you like to present this?

RANDY TSUDA: Actually I'm going to have Curtis
Banks present this particular item. I just wanted to
introduce Curtis. He's recently joined the Town about one
month ago. He is basically a contract planner here for up
to one year. He most recently was the City Planner for the
cities of Los Altos and Mountain View. He has about 13 or
14 years of experience, and he's here helping us out while
we finalize our staffing and refill Nguyen's position.

CURTIS BANKS: Thank you, Chair Talesfore,
Members of the Commission. I just wanted to provide some

1 background on why these guidelines are before you this
2 evening.

3 Over the last several years the Santa Clara
4 County Water District has been working with the County and
5 the local jurisdictions within the County to develop some
6 standards for land uses near streams. The purpose was to
7 develop some clear and consistent guidance for property
8 owners and developers of properties near streams, to
9 clarify the permit process—I think it's somewhat unclear to
10 people exactly what they need to do to receive approvals—
11 and then also to develop a clear set of standards, so
12 people know upfront what the standards are if they're
13 developing near a stream or waterway, and those standards
14 are in chapter three; that's really I'd say the crux of the
15 guidelines, and we've included that chapter in your Staff
16 Report. The guidelines are also on the City Web site, the
17 full text as well the CD that was given to you.

18 The intent to implement the guidelines was
19 adopted by the City Council by resolution in August 2005,
20 and at the same time the County and the other cities in
21 Santa Clara County adopted similar motions, so at this
22 point Staff is coming to you with provisions to implement
23 the guidelines.
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1 To give you a sense of the current practice,
2 currently if a property within 50' of the top of bank of a
3 stream is being developed or redeveloped, that application
4 is forwarded to the Water District for their comment and
5 they have to provide an approval of the project.

6 With adoption of these guidelines, this process
7 is going to be changing. Actually the Water District has
8 adopted the guidelines and also an ordinance that gives up
9 their permitting authority for properties near streams,
10 unless they own the property, own the stream area, or have
11 an easement. So they will be relinquishing that authority,
12 turning it over to the cities, but actually in many senses
13 the process will remain similar as the Water District will
14 continue to provide guidance to cities, so the Town will
15 continue to forward projects to the District early in the
16 process to get their recommendations, so they can be
17 incorporated as appropriate into the project approval.

18 As far as the type of projects, most projects
19 that come before the Town would be subject to the
20 guidelines. There are some exceptions for minor projects
21 such as small accessory structures, fences, and also
22 ministerial projects, which would include primarily single-
23 story homes if they don't require a grading permit. If they
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1 require a grading permit, then it would go through the same
2 process and be subject to these standards.

3 As I mentioned, the Water District has adopted
4 their ordinance relinquishing their authority beginning in
5 March, so coming up in just over a month. So now the Town
6 must act on implementation of the Guidelines, and Staff has
7 recommended that the Town adopt the Guidelines by
8 resolution, and that reasoning is twofold: The Town will be
9 implementing the Guidelines consistent with the policies
10 contained in them, but it also provides the Town with some
11 flexibility to utilize the Guidelines consistent with the
12 goals and policies of the town, so it does provide some
13 flexibility. It's recognized by the Water District when
14 these were developed that each jurisdiction would adopt
15 them in a way consistent with that jurisdiction's policies,
16 so each of the County and each of the local jurisdictions
17 are adopting them somewhat differently to fit their needs.

18 It is a time sensitive item in that we do need to
19 forward this to the Town Council so we can implement this
20 prior to the March timeframe, and tonight it's mentioned
21 it's recommended that you forward a recommendation to the
22 Town Council to adopt a resolution approving the
23 guidelines.
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1 So with that, I could answer any questions you
2 may have.

3 CHAIR TALESFORE: Do we have any questions of Mr.
4 Banks? Commissioner Bourgeois.

5 COMMISSIONER BOURGEOIS: Actually I have quite a
6 few questions. It's a large document and it has a lot of
7 implications for something that our General Plan says we
8 hold in high value, which are our creeks.

9 First of all, kind of on the Staffing end; is this
10 additional work for our staff, since the burden is being
11 passed from the Water District to us?

12 RANDY TSUDA: The way the Staff has proposed to
13 implement this is that it would apply to any discretionary
14 permit, that is, any permit that comes through the Town's
15 planning review process.

16 In that situation it's actually fairly similar to
17 the current process. Under the current process we have
18 agreed with the District to participate in their early
19 consultation process. What that means is that essentially
20 two weeks after the application is taken in, we refer the
21 project out to the Water District for their comment.

22 In this case, now that we have Guidelines and
23 Standards, number one, we will review the project for
24 consistency with the guideline standards, but we will still
25 continue to refer it out to the Water District, but the

1 Water District has stated they will no longer be the final
2 approval authority on these.

3 So from a workload standpoint, it's very similar
4 to our current process.

5 COMMISSIONER BOURGEOIS: Thank you. I guess that
6 aside, one of my larger concerns is throwing hard numbers
7 out there. Having that 25' number, I'm concerned people are
8 going to start to build to that, because I know in this town
9 we have language in our Hillside Standards, we have language
10 in the General Plan, about riparian setbacks. I thought we
11 had something vague in the ordinance about setbacks on
12 creeks, and I looked for it and I couldn't find it, so it
13 might not be there. But I know in the General Plan and
14 Hillside Standards we have it.

15 I work a lot with the Water District and I know
16 what that 25' is about. It's about access for stream
17 maintenance, for heavy equipment, and it's not necessarily
18 about protecting habitat or wildlife corridors, or things
19 that our General Plan says we think are important. And so
20 I'm just really concerned about people building to that 25',
21 because I can name specific projects in town when greater
22 than 25' setbacks have been recommended.

23 I don't know how to insert it into the process,
24 but I think somewhere we need to say that it could be
25 greater than 25'. It says clearly that it's a 20'-25'

1 minimum, but it doesn't explicitly say that. It could be
2 greater than that. So that's probably my chief concern.

3 CHAIR TALESFORE: Commissioner Bourgeois, would
4 that be a recommendation?

5 COMMISSIONER BOURGEOIS: Well I'd like to hear
6 Staff's opinion and maybe I'm the only commissioner who is
7 concerned about this, so it's a moot point, but I would like
8 to hear other people's opinions.

9 CHAIR TALESFORE: Okay, fine. Thank you.

10 RANDY TSUDA: As the Commissioner stated, it is a
11 minimum. As projects come through the environmental review
12 process, and the biologic assessment, and those types of
13 mechanisms, greater setbacks are often required. That
14 mechanism still exists. This doesn't change the overall
15 environmental quality review process, so this is to be used
16 as a minimum set of standards, then you have the
17 environmental review process and biologic assessment, and
18 that in fact may require a greater setback from top of bank.

19 COMMISSIONER MICCICHE: May I suggest that wording
20 be put in that you stated, that is minimum, but a greater
21 setback may be required?

22 RANDY TSUDA: What I would suggest is that we
23 actually would add it to the resolution, reinforcing the
24 fact that the CEQA process still is in existence and that
25 may require greater protection than these minimum standards.

CHAIR TALESFORE: Okay. Commissioner Sayoc.

1 COMMISSIONER SAYOC: Actually a lot of my comments
2 are along the lines with Commissioner Bourgeois'.

3 First of all I wanted to commend the Staff for
4 this report. It's very thorough and very well written, and I
5 think any time you work on a collaborative project,
6 especially regionally, I understand that there are many
7 interests that you need to take into account, and so I was
8 pleased to read this and to have such a document in place. I
9 think it goes to show the importance we place on natural
10 resources.

11 That being said, and again I'm coming at the tail
12 end of this, what struck me is that there could be language
13 to somewhat strengthen it so that there's more emphasis
14 placed on prevention of degradation to riparian habitat
15 rather than the mitigation measures to repair damage that
16 will be incurred. And I could point to specific instances,
17 but similar to what Commissioner Bourgeois said, instead of
18 stating minimums, is there some way to strengthen it so that
19 we can state what our preferred preferences are? Because
20 once you state minimums, people will just strive for those
21 minimums instead of trying to achieve better than.

22 RANDY TSUDA: Well there's certainly a way to do
23 that, and that would be to do the analysis and consider
24 local changes to specific standards in the document. One of
25 the purposes behind the Collaborative was to adopt a region

1 wide series of standards that would apply regardless of
2 jurisdiction.

3 So while there's nothing in the document that
4 prohibits local jurisdictions from making changes, and in
5 fact the Collaborative acknowledged that each jurisdiction
6 is going to implement it in a slightly different manner, the
7 Collaborative generally discourages making significant
8 deviations from the Guidelines.

9 CHAIR TALESFORE: Yes, Commissioner O'Donnell.

10 COMMISSIONER O'DONNELL: Since this only applies
11 to discretionary projects, and since CEQA requires all
12 discretionary projects go through the initial review and the
13 environmental review, and since CEQA requires that if
14 there's any significant adverse impact, you have to either
15 fully mitigate it or adopt overriding considerations, isn't
16 this being covered?

17 RANDY TSUDA: Yes, there are categorical
18 exemptions. There is a provision in CEQA that says despite a
19 categorical exemption, if it comes to the jurisdiction's
20 attention that there may be a potential environmental
21 impact, that that exemption cannot be used and it must go
22 through that environmental review process. So the short
23 answer is yes, the CEQA process still would apply.

24 CHAIR TALESFORE: I have other questions.
25 Commissioner Kane, and then Commissioner Bourgeois, or did
you have something to tap onto that?

1 COMMISSIONER BOURGEOIS: Yeah, I kind of wanted to
2 respond to that too, because I believe that if there are
3 guidelines in place, those can then be used as a
4 significance criteria, and so if you have something in
5 writing that says minimum of 25', CEQA documents do use
6 those standards as the significance criteria, so if they're
7 not encroaching within 25', they could say boom, not an
8 issue under CEQA. So I just wanted to be clear that we have
9 something in the resolution to warn applicants ahead of
10 time.

11 CURTIS BANKS: If I could add onto that a little
12 bit as well. When projects are reviewed, Staff also utilizes
13 the General Plan, goals and policies for protection of
14 streams, so I think that's well taken.

15 And also I think the way these Guidelines have
16 been adopted, in some cases they put numbers to provide some
17 guidance. I think one of the problems you have right now and
18 a frustration applicants have is they have no idea what he
19 setback is going in, so they're trying to put together a
20 proposal for an addition to a house or a commercial
21 building, but have no sense of what type of setback they
22 need, so these Guidelines at least provide a starting point.

23 Also you have to look at it provides some hard
24 numbers in some cases, but it also is a setback from the top
25 of the creek, top of bank, and that's isn't always a simple
determination, so I think in a lot of cases applicants still

1 are going to have to hire a biologist to review that and
2 determine the proper setback, and again with that
3 consultation from the Water District, so it provides some
4 guidance going in, so people have some sense, and I think
5 your point is well taken, to provide the warning that it may
6 need to be greater, but I also think some of those
7 protections are in here as well.

8 RANDY TSUDA: Just one other comment on that. In
9 these Guidelines and Standards it makes it clear that
10 they're discouraging the use of the Guidelines and Standards
11 as an "out" to the CEQA process. Some of the things that
12 you'll see in the Guidelines and Standards is as
13 implementation measure the towns and cities should
14 strengthen the CEQA checklist, such that you'd come up with
15 thresholds of significance for streamside impacts, for
16 impacts to water quality in these creek beds and creek
17 channels, things like that. It's mentioned in several places
18 that in addition to these guidelines and standards, there
19 should be supplemental CEQA guidance and checklists to
20 address impacts relative to temperature and water quality
21 for, in this case from what I'm reading, aquatic life. So
22 it's pretty clear that they don't want this to be used as
23 cart blanche to go to the minimum and therefore make that
24 finding that automatically you do not have an environmental
25 impact.

CHAIR TALESFORE: Thank you. Commissioner Kane.

1 COMMISSIONER KANE: It would appear that we have
2 two Commission members who have an environmental/scientific
3 background, either educational and/or experience. I don't.
4 And so as Denzel Washington once said, "Talk to me like I'm
5 a six-year-old." Is there anything in this very extensive
6 report that reduces or negatively impacts anything we
7 already have in terms of protection and guidelines of that
8 nature?

9 RANDY TSUDA: It doesn't reduce it. It tries to
10 provide specificity and guidance, but it does not reduce,
11 and it doesn't override General Plan standards, doesn't
12 override the Zoning Code.

13 COMMISSIONER KANE: That was my second question:
14 Does it supercede anything we have? We had a case on a
15 medical building at the bottom of a swale on Blossom Hill
16 between University and Roberts Road, and that was in a
17 riparian district, and I thought our setback was larger than
18 25', and it doesn't matter if I'm right or not. What you're
19 saying is if our setback in that zone were 35', we would
20 still adhere to 35' in the future?

21 RANDY TSUDA: If our Zoning Code setback is that,
22 if the biologic assessment comes back and says it needs to
23 be 35' or 50', then that's the guidance.

24 COMMISSIONER KANE: Because I remember we had to
25 move that line because they weren't at the right number, so
good. That's all protected; I'm fine with it.

1 RANDY TSUDA: And one last comment. I know we do
2 have two commissioners that do have an extensive background
3 in these documents, even after taking an action on
4 recommending this document tonight, if you have specific
5 comments, we'd love to hear what those comments are, and
6 those can be incorporated into the Staff Report to the
7 Council as feedback from a technical perspective from these
8 two commissioners.

9 CHAIR TALESFORE: Well let's identify those two
10 commissioners now. That would be Commissioner Sayoc and
11 Commissioner Bourgeois. Is that something that you might
12 like to present to the Staff? When would this come to
13 Council?

14 RANDY TSUDA: It will go in about a month.

15 CHAIR TALESFORE: In about a month.

16 COMMISSIONER SAYOC: Certainly.

17 CHAIR TALESFORE: I mean if you felt so compelled.

18 COMMISSIONER SAYOC: No, absolutely. As I
19 mentioned, I could do it here, I could do it offline, but
20 there are specific instances where I think the document
21 could be strengthened so that emphasis would be better
22 placed on prevention rather than mitigation.

23 CHAIR TALESFORE: Now does that mean that we as
24 commissioners have to reread that or approve? Okay, thank
25 you.

1 RANDY TSUDA: No, the way we would provide it to
2 Council is these are the technical comments from the two
3 commissioners.

4 CHAIR TALESFORE: Perfect. Okay. Commissioner
5 Bourgeois, the same? Or do you have a comment and a
6 question?

7 COMMISSIONER BOURGEOIS: When do you need them by?

8 CHAIR TALESFORE: This is if you feel so
9 compelled.

10 CHAIR TALESFORE: I do, and I assume they want
11 them in writing.

12 RANDY TSUDA: Yeah, it's tentatively scheduled for
13 the February 20th meeting, is that right? So we would need to
14 sit down with you here in the next two weeks or so.

15 COMMISSIONER BOURGEOIS: Okay. And then I'm
16 prepared to make a motion.

17 CHAIR TALESFORE: Thank you. I do have one other
18 question myself, believe it or not. I was wondering, the
19 rationale for exempting residential lots of 10,000 square
20 feet or less, is that being done?

21 CURTIS BANKS: Well actually what this
22 recommendation would do would be for ministerial projects,
23 for single-family residential only, I want to clarify that,
24 it would be not to include that lot size. That was taken
25 actually from a different type of permit; it wasn't even
based on some type of impact on lots that are greater or

1 less than 10,000 square feet. There is a different permit,
2 MPDES, that states a 10,000 square foot threshold, and so
3 they took it to be consistent with that. Staff feels for
4 implementation within the Town it would just apply to
5 single-family residential lots.

6 CHAIR TALESFORE: All right, well thank you for
7 clarifying that. All right, who would like to make the
8 motion? Commissioner Bourgeois.

9 RAY DAVIS: (Inaudible).

10 CHAIR TALESFORE: Oh, thank you. Yes.
11 Commissioner, we will come back to that. Okay, and now let's
12 close the discussion and I'll open it to the public for
13 comment. I'll need you to fill out a card afterwards.

14 RAY DAVIS: Yes, I'd like to offer the following
15 thoughts. I read the Staff Report this afternoon and what
16 jumped out at me was the fact that 10,000 square foot lots
17 and under would be excluded from all the regulations. I
18 couldn't believe it. Do you know what that means in Los
19 Gatos? There are thousands of lots under 10,000 square foot.
20 Thousands. That's a quarter-acre. R-1-8, 8,000 square foot,
21 that's less than a quarter-acre. R-1-5, that's one-quarter
22 of a quarter-acre. So why are these lots being excluded when
23 they are far and away the majority of lots on the flat in
the valley where the creeks are?

24 The creeks run out of the mountains into the
25 valley, so why would you want to exclude them, because the

1 whole idea of the process is to protect them? To protect the
2 riparian right-of-way to begin with, and something none of
3 you talked about, that setback. I know from my experience in
4 Orinda, where creeks are a big issue, and you have that
5 setback, 24'-25', to protect the land use owners from
6 themselves, to keep them from building too close to the
7 creek, because every time there's a large rainfall, the
8 creek bed erodes. And over the years the 20' gradually
9 disappears, and the whole idea is to have a reasonable
10 setback to preclude any development in that setback to give
11 the owners 25-30 years without any problem.

12 But there are two main goals with a setback:
13 protect the riparian right-of-way and habitat for the
14 animals, the birds and so forth; and for public enjoyment
15 and public resource, quality of life, for all of us. Then
16 you go to the individual homeowner.

17 So in Orinda, nobody built close to the creek.
18 Nobody. It was a fight, huge, right off the bat. I'm
19 disappointed that the Staff recommends that you exclude lots
20 10,000 square foot and under because of the massive hard
21 numbers of those lots in Los Gatos, so I ask you to please
22 think about it.

23 CHAIR TALESFORE: Thank you, Mr. Davis.

24 COMMISSIONER MICCICHE: Excuse me, question to
25 Staff?

CHAIR TALESFORE: Yes, Commissioner Micciche.

1 COMMISSIONER MICCICHE: My hearing aid was off
2 when you were discussing the lots that were under 10,000.
3 Would you repeat that again?

4 RANDY TSUDA: In the resolution we're recommending
5 the Council adopt, it states that this would apply to any
6 residential property, regardless of lot size, that goes
7 through the planning process.

8 COMMISSIONER MICCICHE: That's what I thought you
9 said. Okay.

10 RAY DAVIS: What about existing lots?

11 COMMISSIONER MICCICHE: You want to quantify that
12 one?

13 RANDY TSUDA: It applies to any property that
14 would go through the planning process.

15 COMMISSIONER MICCICHE: Okay. Thank you.

16 CHAIR TALESFORE: Thank you.

17 RAY DAVIS: But not ministerial.

18 CHAIR TALESFORE: Thank you, Mr. Davis. Mr. Davis,
19 thank you.

20 RAY DAVIS: The Staff doesn't even (inaudible).

21 CHAIR TALESFORE: Mr. Davis, thank you. Okay, I
22 would like to entertain a motion. Thank you, Commissioner
23 Bourgeois. I close the public hearing.

24 COMMISSIONER BOURGEOIS: I'd like to make a motion
25 that we forward to Town Council a recommendation to adopt
the resolution implementing the Guidelines and Standards for

1 land use near streams, with the addition to the resolution
2 adding language that the CEQA process may indeed result in a
3 setback greater than 25', and also to consider other
4 recommendations to be provided in writing in the next two
5 weeks.

6 COMMISSIONER MICCICHE: I'll second.

7 COMMISSIONER KANE: I'll second that.

8 CHAIR TALESFORE: Commissioner Micciche, I believe
9 I heard you first.

10 COMMISSIONER MICCICHE: I got in there.

11 CHAIR TALESFORE: Yeah, you did. You were right
12 under the wire. Do I have any discussion on this? None.
13 Seeing none, I'll take the motion now? All those in favor?
14 Opposed? None. Thank you, and the motion passes 7-0.

15 (END)
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