



**Staff Report**

**Date:** December 18, 2013  
**To:** Mayor Beach Kuhl and Council Members  
**From:** Elise Semonian, Senior Planner  
**Subject:** Cook, 83 Shady Lane, After-the-Fact Watercourse Design Review, File No. 1937

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**Recommendation**

Town Council approve the project subject to the findings and conditions attached.

**Project Summary**

**Applicant:** Stefanie and Nate Cook  
**Location:** To the rear of the 83 Shady Lane site (APN 73-091-15) on 79 Shady Lane (APN 73-091-16) and 1 Shanley Lane (APN 73-091-31)  
**Zoning:** R-1:B-10 (Single Family Residence, 10,000 Sq. Ft. Min. Lot Size)  
**General Plan:** Medium Low Density (3-6 units per acre)  
**Flood Zone:** Zone A (High Risk Area with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30 year mortgage)  
**Draft FIRM Flood Zone:** Zone AE (High Risk Area with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30 year mortgage) and within Floodway.

Request for after-the-fact watercourse design review for reconstruction of a portion of a retaining within 25 feet of the top bank of Ross Creek.

**Background and project description**

See November 2013 staff report, attached.

The applicants obtained a survey of the creek wall location that revealed the wall is on two adjacent sites: 79 Shady Lane and 1 Shanley Lane. The attorney for the applicants indicates they have reached an agreement with the owner of 1 Shanley Lane to retain the wall on that site. Staff notified the owners of 79 Shady Lane regarding the survey results and, as of the date of this report, they have not consented to or opposed the application.

Staff recommends that the Town Council approve the wall contingent upon receipt of evidence (which is expected prior to the meeting) that the owners of 1 Shanley Lane and 79 Shady Lane have no objections to the areas of wall located on their sites.

**Fiscal, resource and timeline impacts**

The Town currently serves the site and there would be no operating or funding impacts associated with the project.

**Alternative actions**

1. Continue the project; or
2. Make findings to deny the application.

**Environmental review (if applicable)**

See findings, Attachment 1.

**Attachments**

Findings and Conditions of Approval

## Attachment 1

### Recommended Town Council Action, Findings and Conditions

Staff recommends that the Town Council, after carefully reviewing the facts and the arguments presented after public hearing on January 9, 2014, site visits, staff reports, correspondence, and other information contained in the project file, approve the project as proposed with the following Findings and subject to the following Conditions of Approval:

#### A. Findings

1. **CEQA** The project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15301 (existing facilities). No exception set forth in Section 15300.2 of the CEQA Guidelines (including but not limited to Subsection (a), which relates to impacts on environmental resources; (b), which relates to cumulative impacts; Subsection (c), which relates to unusual circumstances; or Subsection (f), which relates to historical resources, applies to the project. The after-the-fact project did not result in any harm to the environment, including harm to federally protected species, and approval of the project will not result in any construction work.

#### 2. Design Review

a) ***The project is consistent with the purposes of the Design Review chapter as outlined in Ross Municipal Code Section 18.41.010.*** The project preserves existing site conditions. Natural wood material was used for the wall and not chemically treated material. The wall is limited in height and is identical to the wall it replaced in materials and design. The project maintains the existing drainage pattern and impervious surfaces.

b) ***The project is in substantial compliance with the design criteria of Ross Municipal Code Section 18.41.100.*** The project preserved existing conditions. Due to the location at the bend of a creek, there are no options for significant improvement of the area by, for example, bioengineering or stepping back the wall. Existing landscaping was preserved in its natural state and the topography of the area was not changed by the project. The creek area was previously disturbed with development of a retaining wall. The reconstruction of the wall prevents erosion of the creek bank was appropriate for this small site with minimal rear yard area.

c) **The project is consistent with the Ross general plan and zoning ordinance.** The project did not disturb areas of creek habitat not previously disturbed. The project will not result in reduction of the number of trees on site. The work did not increase impervious surfaces at the site and the wall is no closer to the creek than the wall that it replaced. The Town has considered alternatives to a vertical creek wall and they are not feasible.

**B. Conditions of Approval, 83 Shady Lane**

Approve the reconstructed area of creek wall subject to the following conditions of approval:

1. The wall is only approved on sites where the applicants have obtained consent from the property owner. If evidence to confirm consent has not been submitted to staff by January 9, 2014, it shall be submitted within 6 months of approval.

2. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding (“action”) against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with its attorneys with all attorneys’ fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.