

1. (A) MITIGATED NEGATIVE DECLARATION
OF ENVIRONMENTAL IMPACT:

NEO

KIRSCHMAN COASTAL PERMIT, LAND DIVISION, MASTER PLAN
WAIVER AND PRECISE DEVELOPMENT PLAN
(B) COASTAL PERMIT, LAND DIVISION, MASTER PLAN WAIVER AND
PRECISE DEVELOPMENT PLAN:
(Project ID 2009-0377): KIRSCHMAN

The subject property is located at **5959 State Route One, Bolinas**, and is further identified as **Assessor's Parcel 188-100-35**.

The project is a proposal to divide a 10-acre lot into two lots and establish development standards for construction of a new residence within a proposed building envelope. Parcel A would be 6.93 acres and Parcel B would be 3.07 acres in size. The site is currently developed with a residence, accessory buildings, a driveway, two water wells, and a septic system. The 10-acre lot slopes down from the western boundary towards the east to Copper Mine Creek and a small pond. All existing improvements are located on proposed Parcel A, and proposed Parcel B is currently a mixed woodland area. No construction is proposed with this application; however, the land division would create a new separate legal lot with an 11,000 square foot building envelope for future construction of a new single-family residence, and a separate area downslope for a future septic system leach field. The building envelope is proposed approximately 130 feet southeast of the existing residence. A new 175-lineal-foot driveway would branch off the existing driveway to provide access to the future residence. Domestic water supply for the future residence would be from existing Well 2 on proposed Parcel A through a 15-foot water facilities easement. Access and utilities to Parcel B would be provided through a 40-foot roadway and utilities easement across Parcel A, a portion of Kirschman's property at 5963 State Route One (188-100-27), and an existing easement through the adjacent O'Connor property at 5955 State Route One (AP 188-100-23) to State Route One.

The Deputy Zoning Administrator (DZA) asked if staff had any additional comments or had received additional correspondence since the staff report was distributed and staff responded, noting the following:

- Faxes from Cella O'Connor dated November 17, 2011 regarding Condition of Approval 3 – interim zoning code not being certified by the California Coastal Commission;
- Condition of Approval 5 - Pine Gulch creek diversion management;
- Condition of Approval 7 – Asphalt paving on Highway 1;
- Condition of Approval 9 and 10 the entire Kirschman application file;
- Staff's supplemental memorandum regarding comments from Irving Schwartz and Scott Callow regarding the well permit and possible fault trace on the property as reported in the Geotechnical geologic study in 2008;
- Clarification that the Building Permit requirement was satisfied; and
- Correct the County Fire Department references in Conditions of Approval 36 and 38 to "Bolinas Fire Protection District."

The Hearing Officer noted that he met with Department of Public Works staff and discussed the width of the driveway and geotechnical conditions that may not be fully addressed in the staff report and may not be enough information to make a decision.

The public testimony portion of the hearing was opened.

The applicant/owner, Richard Kirschman, and his civil engineer, Irving Schwartz and his attorney, Doug Ferguson spoke regarding the favorable elements of the project, including the following:

- Six Dogtown residents purchased the Full Circle School (4 lots and 18 acres of land) together to prevent large-scale development;
- Pre-application consultation with Johanna Patri to discuss reconfiguring the land;
- Tentative Map was prepared by Irving Schwartz;
- The Herzog geotechnical report states that the fault trace bisects the lower portion of the property. The previous report for the Buckenmeyer Tentative Map Waiver was more general and the Herzog report is more detailed;
- Interpretation of Conditions of Approval 5 (b) and 5 (c) before record map. Suggest change to before Design review approval;
- Suggest change to Condition of Approval 15 to allow removal of the wetland fence after the new residence on Parcel B obtains final inspection approval;
- Conditions of Approval 16 (b) and (c) should be eliminated as red-legged frogs do not migrate uphill even though one-mile radius is known for breeding habitat;
- Condition of Approval 30 should say "Parcel Map" instead of "Final Map"; and
- Condition of Approval 31 (b) and (c) have been satisfied per Environmental Health Services and should be deleted.

The Hearing Officer noted that the first he heard about a tentative map waiver was when Mark Riesenfeld came in to meet with him and Tom Lai. He did not know that the intent was to resubdivide the land in the future. If this was known, a tentative map process would have been required. He also noted that the Members of the public commenting on the project included: Bridger Mitchell, John and Cela O' Connor.

Detrimental elements of the project were noted by members of the public, including the following:

- Questions regarding the consistency of the application with the current LCP and interim Zoning Code;
- The Countywide Plan Land Use maps have not been certified by the Coastal Commission;
- The Zoning has been C-ARP 5 since 1972;
- The current land division would result in 3 parcels on 13 acres and would not meet the five acre minimum of CARP-5 for each lot;
- Buckenmeyer Tentative Map Waiver should have been a full subdivision;
- The project is not outside of the wetlands by 100 feet and the driveway crosses the wetlands and therefore findings for Master Plan Waiver cannot be made and project requires a Master Plan;
- Review comments from the Coastal Commission and Point Reyes National Seashore regarding cumulative impacts to fish habitat and land use standards analysis needed;
- Well #2 is unpermitted and underwater much of the winter;
- Illegal dredging to create ponds resulted in the loss of habitat by filling tule marsh land and changes to the hydrology of O'Connor's land;
- County engineers inspected the stream alterations and said that enforcement was no longer available by them;
- Incorporate by reference the entire files a sworn statement regarding the CC&R's and the September 28, 2011 Earth Sciences report;

- The Department of Public Works determination that there are easement rights is not correct for parcel 7; Access to Parcel B is not allowed by the existing easement. The access should not be approved until decided in court.
- The County changed their statement regarding the easement and the O'Connor's sent in a certified letter stating that their easement could not be used;
- Kirschman needs to certify that he has contacted the adjacent neighbors; and
- A letter was sent on December 9, 2009, after the O'Connor letter was sent stating that he could not use the easement.

The public testimony portion of the hearing was closed.

In response to a question from the Hearing Officer, Cela O'Connor stated that her well is not a part of a common well system but is in the same aquifer as Kirschman's well. Well 1 is not being used and the mutual water is from well 2 which is owned by Kirschman. Water is taken upstream from their well separate from Well 2. The wells are not connected except by hydrology.) No testing of cumulative effects has been done.

The Deputy Zoning Administrator (DZA) made several comments pertaining to the project, including the following:

- The history of how we got to today's project;
- The previous tentative map waiver was granted on the basis that the number of lots in Dogtown would be substantially reduced;
- Comments from Irving Schwartz regarding a potential fault trace on Parcel D and a request to change Condition of Approval 15 which is a mitigation measure;
- Comments from Bridger Mitchell that question the consistency of the LCP regarding standards of review and how density is calculated;
- The O'Connor's access issues and dredging of the wetland or stream that has taken place and an additional geotechnical report to be submitted;
- As shown on page 3 of the Initial Study, there is an incorrect statement that the purpose of Buckenmeyer's project was to redistribute land and allow future subdivisions. It was to reduce the density;
- Department Of Public Works (DPW) Condition of Approval 37 includes mitigation and coupled with Herzog's report says a future study of sites for investigation of fault trace implies potential significant impact still may exist which would need future study to resolve;
- Fault Trenching evaluation and mitigation of any findings that may impact future development is needed to show no significant impacts;
- If there is no fault trace, DPW should reconsider their condition; and
- Condition of Approval 38 (b) – The common driveway is ten feet wide and the minimum width code standard is 16 feet. A new lot is being created and the driveway in the area of the wetland cannot be expanded. If the Department of Public Works or Bolinas Fire Protection District states that they need to widen the driveway, the lot cannot be developed. A clearer Condition of Approval from the Department of Public Works and Bolinas Fire Protection District is required to determine what driving improvements will be required.

In response to the hearing Officer, staff stated that Bolinas Fire Protection District accepted the ten foot width with turnouts. No widening would be required as shown in the June 3, 2011 letter – Attachment 19. If a second parcel is to be developed, more improvements may be required.

The hearing Officer stated that the item would be continued to a date uncertain. The trenching recommended by the geotechnical report has been completed to determine whether there is a fault in the proposed building envelope. The following changes should also be considered in the Resolution:

- Condition of Approval 7 may be a duplicate of 6. Reference the Design Guidelines in Exhibit C and those guidelines can only be amended through a PDP Amendment;
- Condition of Approval 8 can be removed because geotechnical trenching work shall be done now;
- Geotechnical analysis of trenches in the proposed Building Envelope is needed now as well as any modification to the Initial Study;
- Condition of Approval 14, Storm water Plans, should be reviewed by the DPW and put under their conditions;
- Condition of Approval 36: delete;
- Condition of Approval 37 may need to be revised;
- Common driveway width answer needed from the Department of Public Works and the Bolinas Fire Protection District to see if grading, vegetation removal, drainage modification would be significant, and the Conditions should be revised accordingly;
- Wetland delineation previously done was not under the California Coastal Commission guidelines and if necessary, we can require it;
- Perhaps consider changes to Conditions of Approval 5 (b) and (c) to be before Design Review;
- Condition of Approval 16 (c) – Exclusion fencing would be required so workers doing the construction of the driveway would not go into the wetlands;
- Conditions of Approval 31 (b) and (c) have been satisfied, therefore delete; and
- A supplemental memorandum will be needed addressing the issues of density and the Countywide Plan that were addressed by Bridger Mitchell, as well as the other issues raised by the Hearing Officer.

The Hearing Officer continued the item to a date uncertain to address the issues raised in a revised Initial Study and resolution.