

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS DENYING THE WATERSHED ALLIANCE MARIN, SIERRA CLUB, AND FRIENDS OF MUIR WOODS APPEAL AND APPROVING THE DIPSEA RANCH (WEISSMAN) LAND DIVISION (TENTATIVE MAP) 455 PANORAMIC HIGHWAY, MILL VALLEY ASSESSOR’S PARCEL: 046-161-11

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SECTION I: FINDINGS

1. WHEREAS, the applicant and property owner, Daniel Weissman, has submitted a proposal to subdivide an existing 8.29-acre property currently developed with one single-family residence and detached accessory structures into three single-family residential lots with proposed building envelopes on each lot. The new residential lots would range in size as follows:

Table with 2 columns: Proposed Lot Number, Proposed Lot Area (acres). Rows: 1 (2.22), 2 (0.89), 3 (5.18)

The subject property is a roughly boot-shaped lot with the upper northern and lower southeastern property lines located along Panoramic Highway. The applicant proposes to provide access to the existing and new lots via the existing entry driveway at 455 Panoramic Highway located along the upper portion of the site.

The project entails site improvements to accommodate the new lots, including: the installation of two new on-site sewage disposal systems to serve Lots Two and Three; the installation of a storm water management system inclusive of storm drains, cisterns, and bioswales to address run off; and the improvement of the existing driveway to extend access to Lots Two and Three.

Pursuant to Section 22.80.030 of the Marin County Development Code, Tentative Map approval is required for the subdivision of an existing lot into two or more proposed lots.

The property is located at 455 Panoramic Highway, Mill Valley and is further identified as Assessor’s Parcel 046-161-11.

2. WHEREAS, on July 27, 2020, the Marin County Planning Commission held a duly noticed public hearing to take public testimony, consider the project, and subsequently approved the project and adopted the Mitigated Negative Declaration.

3. WHEREAS, on August 5, 2020, the Watershed Alliance Marin, Sierra Club, and Friends of Muir Woods submitted a timely appeal of the North Marin Water District Coastal Permit approval. The bases of appeal are as follows: (1) consistency with zoning and density; (2) adequacy of public noticing; (3) issues with the Planning Commission remote hearing procedures and presentation of the project’s background; (4) the 2003 Redwood Creek Vision Statement and

Memorandum of Understanding between Marin County, State Parks, Golden Gate National Recreation Area, National Parks Service, and various environmental groups; and (5) adequacy of the Initial Study/Mitigated Negative Declaration.

4. **WHEREAS**, on October 6, 2020, the Marin County Board of Supervisors held a duly noticed public hearing to consider the merits of the project and the bases of appeal, and to take public testimony related to the project.

5. **WHEREAS**, the Board of Supervisors finds that the Watershed Alliance Marin, Sierra Club Marin, and Friends of Muir Woods appeal lacks sufficient merit to overturn the Planning Commission's decision approving the Dipsea Ranch (Weissman) Land Division (Tentative Map), for the reasons discussed below.

#### **A. Consistency with zoning and density.**

The appellants assert that the project is inconsistent with the zoning ordinance requiring one-acre minimum lots and that the project entails a rezoning due to the reduction in minimum parcel size in which a Use Permit and an amendment to the County Zoning Ordinance would be required. Further, the appellants assert that the Planning Commission disregarded the Countywide Plan's clear guidance on appropriate density and the Tamalpais Area Community Plan.

#### **Response**

On November 5, 1975, the Board of Supervisors adopted ordinance number 2266, rezoning the subject property (previously identified as Assessor's Parcel 046-161-04 at the date of the action) from R1-B4 (single-family residential, one unit per acre) to RMP-0.5 (residential, multiple-planned, one unit per two acres). The RMP-0.5 zoning district applies a density, the number of dwellings per acre of lot area, rather than a minimum lot size. Further, pursuant to Marin County Code Section 22.10.030, single-family dwellings are a principally permitted land use with no Use Permit required.

The property is 8.29 acres. Per the density of one unit per two acres established by the governing RMP-0.5 zoning district, the allowable density is four units. The project entails a subdivision that would result in three, single-family residential lots. The project does not entail a rezoning of the property nor does the project entail a change of use that would otherwise require a Use Permit pursuant to Marin County Code Section 22.48.020. Therefore, the project is consistent with the governing zoning district in regard to density and use.

Pursuant to the PR (Planned Residential, one unit per one to 10 acres) Countywide Plan Land Use designation per the Tamalpais Area Land Use Policy Map, Muir Woods Park of the subject property, the allowable density range would result in a maximum potential density of eight units on the 8.29-acre property. However, the Countywide Plan Policy CD-5.e (Limit Density for Areas Without Water or Sewer Connections) states:

"Calculate density at the lowest end of the Countywide Plan density range for new development proposed in areas without public water or sewer service. Densities higher than the lowest end of the applicable density range may be considered on a case-by-case basis for new housing units affordable to very low and low income households that are capable of providing adequate water or sewer services, as long as the development complies with the California Environmental Quality Act

and all other applicable policies in the Countywide Plan including, but not limited to, those governing environmental protection.”

The project includes the installation of onsite septic systems because the property is located in an area that lacks public sewer. Pursuant to CWP Policy CD-5.e, applying the lowest end of the CWP density range for the property would result in a density of one unit.

However, as further discussed in Section 7 below and the supplemental memorandum to the Planning Commission dated July 24, 2020, the allowable residential density is specifically governed by the Tamalpais Area Community Plan (TACP) because the community plan provides a more specific provision addressing density for the subject property.

In some parts of the county, community plans have been adopted to provide additional guidance and policies addressing conditions, characteristics, and priorities of a particular community. The CWP states:

“A Community plan is considered part of the Marin Countywide Plan and sets forth goals, objectives, policies, and programs to address specific issues relevant to that particular community. Where there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan, the document with the more specific provision shall prevail.”

Tamalpais Area Community Plan Policy LU31.1 establishes the potential density for the property of five units by stating:

“APN 046-161-10 total ten acres on the south side of Panoramic with an average slope exceeding 40 percent. Given septic tank regulations a maximum of five units is possible. The community desires this site to remain open in appearance. The most buildable part of the site is on the ridge, which is contrary to community policy for development. The steep slopes and the particular drainage pattern of the area below the ridge will make it difficult to get many dwelling [sic] on the site.”

The project site is located on the property specifically identified by the TACP Policy LU31.1 and entails a subdivision of the existing property into three single-family lots that would be served by septic systems. Therefore, the project is consistent with the density established by the TACP.

## **B. Adequacy of public noticing.**

The appellants assert that the County failed to provide public notice to landowners within 300 feet of a Rezoning, Use Permit and a subdivision application and failed to provide a physical site notice notifying the public of a hearing. The appellants also assert that residents did not receive a mailed notification of the Planning Commission hearing scheduled for July 27, 2020.

### **Response**

The project applicant first submitted a Master Plan application for a substantially different project consisting of a Master Plan for the subdivision of the subject property on February 9, 2017. The project was revised, and the project applicant submitted an application for a Tentative Map on February 28, 2018 for a three-lot subdivision. As discussed in Section 5.A, the project does not entail a rezoning and is not subject to a Use Permit. Following the reassignment of the application from two previous planners, a site notice was provided upon a

site visit by the current planner on August 23, 2018. Pursuant to Marin County Code Section 22.118.020, the site noticing is a local noticing requirement that is met by posting the notice at least 10 days prior to the hearing.

During the processing of the application, the following notices were sent by mail using a 600-foot radius of the project site and the County's latest equalized assessment roll and/or posted onto the Marin County website:

- Notice of a meeting of the Tamalpais Design Review Board scheduled for March 1, 2017
- Notice of a meeting of the Tamalpais Design Review Board scheduled for May 2, 2018
- Notice and Referral of Planning Application dated August 21, 2018
- Notice of Availability of the Weissman (Dipsea Ranch) Land Division Mitigated Negative Declaration)
- Notice of Extended Comment Period, Weissman (Dipsea Ranch) Land Division Mitigated Negative Declaration
- Notice of the Marin County Planning Commission Hearing scheduled for April 13, 2020
- Notice of the Postponement of the Planning Commission Hearing scheduled for April 13, 2020
- Notice of the Marin County Planning Commission Hearing scheduled for July 27, 2020
- Notice of the Marin County Board of Supervisors Hearing scheduled for October 6, 2020

Copies of the proof of mailing are available for public inspection in the planning file.

**C. Issues with the Planning Commission remote hearing procedures and presentation of the project's background.**

The appellants assert that the information regarding access to the remote Planning Commission hearing was not provided in the mailed notice and was listed incorrectly on the Planning Commission's website. The appellants assert that erroneous claims were made in the applicant's favor and the responses to refute these claims were not possible because of the public hearing format. The appellants assert that the staff report failed to reveal the entire history of the project, including failure to include the meeting notes from the Tamalpais Design Review Board meeting, resulting in the Planning Commission's tainted understanding of the project.

**Response**

In compliance with local and state shelter-in-place orders, and as allowed by Governor Newsom's Executive Order N-29-20, the Planning Commission did not provide a physical location for the public to attend the Planning Commission hearing held on July 27, 2020. Information regarding public access and participation in the online Planning Commission hearing held on July 27, 2020 was provided in the Public Notice of Marin County Planning Commission Hearing dated July 8, 2020. Information on public access and participation was also posted on the Marin County public website.

The staff report to the Marin County Planning Commission regarding the project included a background of the application including information related to the application processing, environmental review, and the grading of a fire road previously done without permits. The staff report included attachments related to the application submitted as of February 28, 2018 including the Initial Study/Mitigated Negative Declaration and the Response to Comments

document, transmittals from reviewing agencies, public correspondence other than those received from the environmental review document, and the meeting minutes of the Tamalpais Design Review Board, dated May 2, 2018.

**D. The 2003 Redwood Creek Vision Statement and Memorandum of Understanding between Marin County, State Parks, Golden Gate National Recreation Area, National Parks Service, and Environmental Groups.**

The appellants assert that the size and impacts of the project are counter to the goals, policies and vision of the 1992 Tamalpais Community Plan including but not limited to LU 31.a. & b, as well as the policies, goals, and vision that are also in the 2003 Redwood Creek Vision Statement. The appellants also assert that the Mitigated Negative Declaration never addressed the Memorandum of Understanding (MOU) between Marin County, State Parks, Golden Gate National Recreation Area, National Parks Service, and various environmental groups regarding the protection of natural resources, public lands and water impacts to Coho Salmon in the Redwood Creek Watershed, Muir Woods National Monument.

**Response**

The project entails the subdivision of an existing developed lot into three lots and includes the installation of a storm water management system inclusive of storm drains, cisterns, and bioswales to address run off. Potential environmental impacts resulting from the project and the impacts of the previous grading of a fire road without permits have been evaluated by an initial study prepared by Sicular Environmental Consulting & Natural Lands Management on behalf of the Marin County Community Development Agency, Planning Division (CDA).

The initial study included the evaluation of impacts of both the project and the prior fire road grading to biological resources and hydrology and water quality, including those specific to the Redwood Creek Watershed and Coho Salmon. The initial study resulted in a Mitigated Negative Declaration that concluded the project would not result in impacts to biological resources or hydrology and water quality, as there is no definitive evidence that the wetland feature at the site of the fire road was disturbed during the grading work.

Based on a survey conducted by the biological consultant in the year after the grading took place, and the Initial Study biologist's observations of the site in 2019, the grading of the fire road has not had lasting adverse impacts on any wetland. Moreover, there is no observed ongoing disturbance, such as erosion and sedimentation, affecting the existing wetland feature on the upslope side of the fire road or the Redwood Creek tributary downslope from the fire road.

The project's potential for impacts relating to air quality, biological resources and noise is further discussed in the attached CEQA resolution, the accompanying Response to Comments document dated March 2020 and prepared by Sicular Environmental Consulting & Natural Lands Management, and the subsequent Response to Comments Memorandum addressing points of appeal submitted by the appellants specifically regarding the Mitigated Negative Declaration prepared by Sicular Environmental Consulting & Natural Lands Management and dated September 22, 2020.

**E. Adequacy of the Initial Study/Mitigated Negative Declaration**

The appellants assert that the Initial Study/Mitigated Negative Declaration is legally inadequate.

## Response

As partially discussed in section 5.D, in December of 2019, the initial study was completed leading to a Mitigated Negative Declaration prepared by Sicular Environmental Consulting & Natural Lands Management on behalf of the Marin County Community Development Agency, Planning Division (CDA). Following a public review period totaling 45 days, a Response to Comments document was prepared by Sicular Environmental Consulting & Natural Lands Management, in which all of the concerns that were raised in the public comments were addressed. On July 27, 2020 the Planning Commission adopted the Mitigated Negative Declaration. A response to this basis of appeal are further discussed in the attached CEQA resolution and the subsequent Response to Comments Memorandum addressing points of appeal submitted by the appellants specifically regarding the Mitigated Negative Declaration prepared by Sicular Environmental Consulting & Natural Lands Management and dated September 22, 2020. The environmental review was conducted in conformance with the requirements of CEQA and a Mitigated Negative Declaration is appropriate and legally adequate for the project.

6. **WHEREAS**, the project is consistent with the goals and policies of the Marin Countywide Plan for the following reasons:

- A. The Countywide Plan land use designation for the site is PR (Planned Residential), which allows a residential density range between 1 unit per 1-10 acres. Consistent with finding 6 below, the allowable residential density is specifically governed by the Tamalpais Community Plan.
- B. The project is consistent with the CWP woodland preservation policy (BIO-1.3). The site contains 165 trees, including Coast Redwood, Monterey Pine, Coast Live Oak, Monterey Cypress, and other native and non-native trees varying in health and maturity. Mature, native trees on site would be protected under Marin County Development Code Chapter 22.27 for Native Tree Protection and Preservation. Improvements associated with the subdivision would result in the removal of three non-native trees, including an English laurel, red flowering gum, and incense cedar, none of which qualifies as “protected” pursuant to MCC Chapter 22.27 as verified by the Arborist Report prepared by Urban Forestry Associates, 2018.

The project also entails the construction of a small rock retaining wall near a Marin County Code protected multi-trunk coast live oak. Additional tree pruning of other trees may also be required to accommodate construction of future development on Lots Two and Three. In order to reduce any potential impacts on native trees to less than significant, mitigation measures were provided in the initial study/Mitigated Negative Declaration prepared by Sicular Environmental Consulting & Natural Lands Management, which requires minimizing removal and pruning, protecting tree root zones, and requiring replanting for any “protected” tree removed. Therefore, the project is consistent with this finding.

- C. The project is consistent with the CWP special-status species protection policy (BIO-2.2). The initial study/Mitigated Negative Declaration indicated that, though not present or observed on the site itself, the site could contain potential habitat for special-status species including northwestern pond turtle, California red-legged frog, northern spotted owl, and California giant

salamander, as well as four species of bats including Townsend's big-eared bat, western mastiff bat and hoary bat. Per the initial study, no habitat for these species were found to be present within the proposed building envelopes of the new lots.

However; due to sensitivity of habitats within the overall Project site and surrounding areas, mitigation measures were provided in the initial study/Mitigated Negative Declaration to ensure the protection of special-status species and their habitats. Additionally, with the adoption of Chapter 22.20.040.E and F. of the Marin Development Code, the project would be conditioned to conform to the bird and bat protection measures as uniformly applied to construction activities. Therefore, the project is consistent with this finding.

- D. The project is consistent with the CWP natural transition and connection policies (BIO 2.3 and BIO 2.4). Native plant communities and significant stands of native vegetation exist within the subject property; however, these areas are not located within the immediate vicinity of the previously developed portions of the site and would not be located within the proposed building envelopes.

Per the initial study, two drainages and wetlands located on the site are likely to support local wildlife movement; however, the habitats surrounding these aquatic resources would be conserved within the Stream Conservation Areas and Wetland Conservation Areas. Per the initial study, the project site consists of existing fencing, is surrounded by established urban conditions, and currently experiences high level of human use. Therefore, any future construction-related disturbance following the creation of the proposed new lots would not result in any negative long-term impacts on wildlife movement and use of wildlife nursery locations. Therefore, the project is consistent with this finding

- D. The project is consistent with the CWP stream and wetland conservation policies (BIO-3.1 and CWP BIO-4.1) because the building envelopes proposed to be established within the new lots are located outside of and would not encroach into any Stream Conservation Areas or Wetland Conservation Areas as verified in the initial study. Therefore; the project is consistent with this finding.
- E. The project is consistent with CWP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff (WR-1.3, WR-2.2, WR-2.3) because the grading and drainage improvements associated with the creation of the new lots would be located outside of any Stream Conservation Areas or Wetlands Conservations as verified in the initial study.

The proposed stormwater management system was informed by the hydrologic and hydraulic study prepared by Ziegler Civil Engineering and was peer reviewed by the preparer of the initial study. Further, the stormwater management system was found to have been designed and sized appropriately for the proposed subdivision and would not result in hydromodification-related impacts onsite or downstream. Further, site improvements would comply with the Marin County standards and best management practices required by the Department of Public Works. Therefore; the project is consistent with this finding.

- F. The project is consistent with CWP seismic hazard policies (CWP Policies EH-2.1, EH-2.3, and CD-2.8) because it would be constructed in conformance with County earthquake standards, as verified during review of the Building Permit application and the subject property is not constrained by unusual geotechnical problems, such as existing fault traces.

- G. The project is consistent with CWP fire hazard management policies (EH-4.1, EH-4.2, EH-4.5) because it entails the creation of new lots with building envelopes located within previously developed and landscaped portions of the site. Site improvements associated with the subdivision, including the expansion of the existing improved driveway, would meet all fire safety requirements, as verified by the local fire protection district during review of the Building Permit application.
- H. The project is consistent with CWP aesthetic policies and programs (DES-4.1 and DES-4.e) because it would protect scenic quality and views of ridgelines and the natural environment from adverse impacts related to project.

7. **WHEREAS**, the project is consistent with the goals and policies of the Tamalpais Area Community Plan (Tam Plan) for the following reasons:

- A. The Tam Plan designates the property with a Land Use Category of SF-1, Single-family Rural, one unit per acre maximum density. Further, Policy LU31.1 identifies the subject property identified as Assessor's parcel 046-161-11 (formerly APN 046-161-10) as a specific property of interest and states:

“APN 046-161-10 total ten acres on the south side of Panoramic with an average slope exceeding 40 percent. Given septic tank regulations a maximum of five units is possible. The community desires this site to remain open in appearance. The most buildable part of the site is on the ridge, which is contrary to community policy for development. The steep slopes and the particular drainage pattern of the area below the ridge will make it difficult to get many dwelling [sic] on the site.”

The project is consistent with this policy because the proposed subdivision of the previously developed Assessor Parcel 046-161-11 (formerly 046-161-10 and 046-161-04) would result in the creation of three single-family lots. With the existing single-family dwelling unit proposed to remain on Lot One, the subdivision would support the potential development of two additional primary dwelling units, resulting in a density of three dwelling units. Additionally, the project entails the establishment of building envelopes clustered within the vicinity of the existing developed area, with the remaining lower portions of the site located outside of the proposed building envelopes. The project is consistent with the policies related to the protection and enhancement of existing open space areas, specifically the Muir Woods Park area identified in the Tam Plan.

- B. The project is consistent with the policies related to preserving community character, including Policies LU 1.1, LU 1.3, LU 1.4, and LU 1.5, because the project entails the creation of three residential lots with building envelopes that are located outside of sensitive habitat areas including watercourses and wetlands protected by Steam Conservation Areas and Wetland Conservation areas and wood areas consisting of trees protected under the Marin County Development Code Chapter 22.27 for Native Tree Protection and Preservation. Further, the project entails the creation of lots with proposed building envelopes that have been carefully sited to protect the sunlight, views and privacy enjoyed by adjacent homes, and to preserve open space.
- C. The project is consistent with the policies related to protecting habitats, wetlands, streams, and native vegetation and protecting soil stability, including Policies LU2.1, LU2.2, LU10.2, LU10.3, LU11.1, LU11.2, LU12.1, 16.1 and 17.1, because it would respect the environmental constraints of the site. As previously discussed in Findings 3.A through 3.E, the project has



been designed to avoid wetland and stream habitats and mitigation measures were provided in the initial study/Mitigated Negative Declaration to ensure the protection of special-status species and their habitats. Removal of native vegetation would be minimized, and native trees would be protected or replaced. Further, the project has been designed to avoid substantial increases in erosion or slope failure risk and would implement construction and post-construction stormwater management to control runoff from the project site, thus avoiding degradation to downstream resources or aquatic habitat.

- D. The project is consistent with the access and parking policies, including Policy T2.4, T4.1, T8.2, T.11, because it would not take access from a new roadway or driveway connected directly to Shoreline Highway, would not reduce the existing levels of service on surrounding intersections as verified by the initial study/Mitigated Negative Declaration, and would provide the required parking and adequate access as determined by the Department of Public Works.

8. **WHEREAS**, the project is consistent with the mandatory findings for Tentative Map approval (Marin County Code Section 22.84.060) or Vesting Tentative Map approval (Marin County Code Section 22.84.110).

**A. A Tentative Map shall be approved if the following findings can be made for each proposed parcel as well as the entire subdivision, including any parcel designated as a remainder in compliance with Map Act Section 66424.6.**

**1. The proposed subdivision including design and improvements is consistent with the Marin Countywide Plan and any applicable Community Plan or Specific Plan.**

The proposed subdivision is consistent with policies as they pertain to the impacts of design and improvements on the environment, community character, and the density established by the governing Tamalpais Area Community Plan as previously discussed in Sections 6 and 7 respectively of this resolution.

The subdivision has been designed with building envelopes and septic systems that are located outside of any Stream Conservation Areas, Wetland Conservation Areas, and would preserve the majority of the undeveloped wooded areas of the site. Further, the project has been mitigated with measures that would support the preservation of existing natural systems and enhance and protect sensitive habitats and tree resources as previously discussed.

The proposed septic systems have been reviewed by the Environmental Health Services Division and were found to be acceptable as presented. However, the proposed lot line between Lot 1 and Lot 3 and a portion of the building envelope proposed on Lot 3 have been designed to bisect the existing septic system currently serving the residence on the subject property. The applicant has proposed to record a sewage disposal easement which includes a portion of the septic system located on Lot 3 for the use of Lot 1. In order to ensure that the septic system is located on the lot that it is intended to serve, a condition of approval will be required to adjust the lot line between Lot 1 and Lot 3 such that the existing septic system serving the residence at 455 Panoramic Highway, Mill Valley is contained entirely within Lot 1.

**2. The site is physically suitable for the type and proposed density of development.**

As proposed, the Tentative Map would result in three lots and the foreseeable future development on two of the lots, which are identified as proposed Lots 2 and Lots 3. The existing residence and the septic system that serves it would remain on this lot. To ensure that the future development of Lots Two and Three occurs in the most advantageous locations, building envelopes are established on the map that protect sensitive resources in the surrounding area. As demonstrated on the Tentative Map, Lots Two and Three are large enough to support future development and have been designed to be clustered near the most accessible portions of the site and near existing development.

The site is physically suited to accommodate the two new proposed septic systems as verified by a cumulative impact assessment of all existing and proposed septic systems on the project site. The cumulative impact assessment was reviewed by the Environmental Health Services Division and was found to be acceptable.

**3. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or injure fish or wildlife or their habitat.**

As previously discussed in Sections 3 and 4 of this resolution, the subdivision has been designed with building envelopes and new site improvements located outside of any sensitive habitat or resource areas. As discussed in the initial study/Mitigated Negative Declaration, any impacts to local birds and bats have been mitigated above and beyond the uniformly applied standards as codified in Marin County Chapter 22.20.040 E. and F. The accompanying initial study/Mitigated Negative Declaration found that, as mitigated, the project would not cause any substantial environmental damage or injury to fish, wildlife, or their habitat.

**4. The design of the subdivision and type of improvements is not likely to cause serious public health or safety problems.**

The subject property has been previously developed with a single-family residence, accessory structures, septic systems, and hardscape improvements, and is surrounded by existing development within the City-Centered corridor. Improvements to the existing driveway are proposed to improve visibility and turning movements for vehicles entering and exiting the project site and to allow for access to the proposed Lots Two and Three. Driveway improvements would be constructed in accordance with the standards of the Department of Public Works.

Additionally, per the initial study/Mitigated Negative Declaration, the project has been designed with right-of-way improvements that would not create a safety hazard due to geometric design features and has been designed and mitigated to minimize impacts related to noise and air quality to less than significant.

**5. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large for access through or use of property within the proposed subdivision. This finding may be made if the Review Authority finds that alternate easements for access or use will be provided, and that they will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record, or to easements established by judgment of a court of competent jurisdiction, and no authority is hereby granted to the**

**Review Authority to determine that the public at large has acquired easements of access through or use of property within the proposed subdivision.**

The proposed subdivision would not conflict with easements acquired by the public at large or for access through or use of property within the proposed subdivision. The project does not conflict with any established easements on the property, including an existing sewer line and leach field easement for the benefit of an adjacent property identified as Assessor's parcel 046-151-37 and a view easement for the benefit of an adjacent property identified as Assessor's parcel 046-161-13. No other easements are affected.

- 6. The proposed subdivision is consistent with the Subdivision Design Standards contained in Chapter 22.82 of the Marin County Development Code (MCC), all other applicable provisions of the MCC, and any other applicable provisions of the County Code, and the Map Act.**

The proposed project is consistent with all applicable provisions of the Marin County Code and the Map Act as discussed in these findings. The proposed subdivision is consistent with the Subdivision Design Standards in that it is consistent with the density established by the Tamalpais Area Community Plan, Policy LU31.1 as further discussed in Sections 5.A and 7.A, provides drainage facilities in accordance to the standards of the Department of Public Works, and entails lot configurations and building envelopes that are clustered in previously developed areas of the site, are easily accessible and respects the environmental and topographical conditions of the site.

**SECTION II: ACTION**

NOW THEREFORE, BE IT RESOLVED that the project described in condition of approval 1 is authorized by the Marin County Board of Supervisors and is subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

**SECTION III: CONDITIONS OF PROJECT APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves the Dipsea Ranch (Weissman) Land Division (Tentative Map) subject to the conditions as specified below:

**CDA-Planning Division**

1. This Tentative Map approval authorizes the subdivision an existing 8.29-acre property currently developed with one single-family residence and detached accessory structures into three single-family residential lots with approved building envelopes on each lot, as shown on the Tentative Map plan. The new residential lots are approved to range in size as follows:

Lot Number	Lot Area (acres)
1	2.22
2	0.89
3	5.18

The following site improvements to accommodate the new lots are also approved: the installation of two new on-site sewage disposal systems to serve Lots Two and Three; the development of a storm water management systems inclusive of storm drains, cisterns, and bioswales to address run off; and the improvement of the existing driveway to extend access to Lots Two and Three.

2. BEFORE RECORDATION OF THE SUBDIVISION, the applicant shall apply for and obtain Parcel Map or Final Map Plan Check approval, as applicable, from the Planning Division.
3. Plans submitted for a Parcel Map or Final Map Plan Check shall substantially conform to plans identified as Exhibit A, entitled "Dipsea Ranch Tentative Map," consisting of 46 sheets prepared by Malott Architects, received in final form on December 20, 2018, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
4. BEFORE PARCEL MAP PLAN CHECK APPROVAL, the lot line between Lot 1 and Lot 3, and the building envelope for Lot 3 shall be adjusted such that the existing septic system serving the residence at 455 Panoramic Highway, Mill Valley is contained entirely within Lot 1.
5. BEFORE PARCEL MAP PLAN CHECK APPROVAL, the applicant shall apply for and obtain address assignments for the new lots.
6. BEFORE PARCEL MAP PLAN CHECK APPROVAL, the applicant shall apply for and pay the required deposit fees for mitigation monitoring.
7. BEFORE PARCEL MAP PLAN CHECK APPROVAL, the applicant shall submit to the Community Development Agency, Housing Division and Federal Grants Division an in-lieu participation fee for the construction of affordable housing. The fee shall be determined at the time the Parcel Map is filed in accordance with the provisions of the Marin County Development Code Chapter 22.22 (Affordable Housing Regulations).
8. BEFORE PARCEL MAP PLAN CHECK APPROVAL, the applicant shall submit confirmation that an in-lieu park fee has been submitted to the Parks and Open Space Department for future park improvements. The fee shall be determined in accordance with the provisions of Marin County Development Code Section 22.98.040 (Parkland Dedication and Fees), which provide the formula for determining the in-lieu fee based upon the fair market value of land that would otherwise be required for dedication, plus 20 percent toward costs of off-site improvements. The fee shall be paid directly to the Parks and Open Space Department
9. DURING CONSTRUCTION AND BEFORE FINAL INSPECTION OF EACH FUTURE RESIDENCE, provide the County with written evidence from the contracted builder that all off-road diesel-powered equipment with engines greater than 25 horsepower meet Tier 4 emissions standards.

(MM AQ-1)

10. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall implement the following mitigation measures and provide the County with written evidence from a qualified Biologist to verify the following protection measures for special-status wildlife and habitat have been implemented during construction within each of the three proposed lots:

- a. Conduct a worker awareness training for all field staff that may come across sensitive habitats or special-status species. The training shall include the following information: a photograph and description of each special-status species or sensitive resource known from the area; a description of its ecology and habitat needs; potentially confusing resources (e.g., similar species or habitats); an explanation of the measures being taken to avoid adverse impacts; reporting and necessary actions if sensitive resources are encountered; and workers' responsibility under the applicable environmental regulation.
- b. Project limits should be clearly marked on the final design drawings and work confined within those boundaries.
- c. Foot and vehicle traffic should be restricted to the designated work and staging areas.
- d. For any fencing needs, install fencing that reduces the risk of death or injury to wildlife and does not impede movement. See *Fencing with Wildlife in Mind* by Colorado Division of Wildlife for specific guidelines on fencing installation and types (Hanophy, 2009).

(MM BIO-1)

11. BEFORE ISSUANCE OF A BUILDING PERMIT AND DURING CONSTRUCTION, the applicant shall implement the following mitigation measures and provide the County with written evidence from a qualified Biologist to verify the following protection measures for special-status and common bat species have been implemented during construction within each of the three proposed lots:

- a. Complete presence/negative finding bat surveys prior to removal or pruning of any trees over 6 inches in diameter at breast height. If during future development buildings are proposed for removal, buildings shall be surveyed for bats within 15 days prior to any building demolition. Surveys shall be completed by a qualified biologist. Because each individual bat species may use different roosts seasonally and from night to day, surveys must be conducted by a qualified biologist at the appropriate times.
- b. If trees planned for pruning or removal are identified as active roost sites, appropriate avoidance measures shall be developed by a qualified biologist. This may include seasonal limitations on work when roosts are unoccupied and/or establishment of buffer areas around occupied roosts
- c. If bats are found roosting within the buildings, work shall cease until proper eviction and exclusion plans have been implemented. Eviction and exclusion of bats shall consist of daytime installation of blockage material or one-way exits between March 1 and April 15 or September 1 and October 15 (outside of maternity season and

hibernation season). Exclusion materials shall be re-evaluated for effectiveness by a qualified biologist up to two weeks prior to building demolition.

- d. For all trees previously identified as active roost sites (during Project surveys) and subject to pruning or removal, trees shall be taken down in a two-step process – limb removal on day one shall be followed by bole removal on day two. This approach would allow bats, if present, an opportunity to move out of the area prior to completing removal of the trees. No trees supporting special-status bats shall be removed without prior consultation with CDFW.
- e. If work is postponed or interrupted for more than two weeks from the date of the initial bat survey, the preconstruction survey shall be repeated.
- f. Construction shall be limited to daylight hours to avoid interference with the foraging abilities of bats.

(MM BIO-2)

12. BEFORE ISSUANCE OF A BUILDING PERMIT AND DURING TREE REMOVAL, the applicant shall implement the following mitigation measures and provide the County with written evidence from a qualified Arborist that the following measures have been implemented:

- a. Minimize tree removal and pruning. Light pruning may occur at any time of year. Heavy pruning may cause problems due to vigorous sprouting and subsequent witches broom or powdery mildew diseases. Heavy pruning shall be done on deciduous trees in the winter; see BIO-2 and BIO-3 for wildlife protection measures. Acoustic emergence surveys or other appropriate methods shall be conducted/implemented to further evaluate if the roost is an active maternity roost.
- b. Minimize impacts within the Root Protection Zone:
  - i. Temporary protective fencing shall be installed around RPZs or, at a minimum, the dripline perimeter of trees near work areas.
  - ii. Changes in drainage within protected tree perimeters shall be avoided to the extent feasible.
  - iii. Soil compaction within protected tree perimeters shall be avoided to the extent feasible.
  - iv. Heavy equipment, vehicles, and/or construction materials shall not be parked or stored beneath trees or operated within the delineated protected perimeter.
- c. Develop a tree replacement plan for any “protected” tree removed over 6 inches in diameter. The plan shall be developed in consultation with a Registered Professional Forester or Certified Arborist. The plan shall include appropriate ratios for replacement, planting location, methods, plant sources, and timing. Maintenance and monitoring of the planting during an establishment period of 5 years shall be required.

(MM BIO-3)

13. BEFORE ISSUANCE OF A BUILDING PERMIT AND PRIOR TO TREE REMOVAL, the applicant shall implement the following mitigation measures and provide the County with written evidence from a qualified Arborist that the following measures have been implemented:

- a. Incorporate the removal of invasive species into site development. During site clearing for construction, remove, by hand or mechanical means, all non-natives within the area to be disturbed and within 25 feet of the disturbed area. Any material with potential to germinate or re-sprout shall be disposed in a landfill. If bare ground is left after removal, the area shall be reseeded and/or replanted with native species.
- b. The Vegetation Management Plans prepared for each parcel shall include provisions to prevent the introduction and spread of invasive plant species. Provisions shall include, but are not limited to:
  - i. Any seed, straw, or mulch brought into the site shall be weed-free.
  - ii. Construction vehicles and other landscaping equipment shall be cleaned of seed and soil from weed-infested locations before entering new areas.
  - iii. Revegetation of disturbed soil shall occur promptly after disturbance.
  - iv. All site restoration and erosion control seeding shall include only native species from the Redwood Creek watershed or Marin County.
  - v. Monitor areas of ground disturbance for invasive species infestation and remove any invasives.
  - vi. Avoid planting any ornamental species known to be invasive.

(MM BIO-4)

14. DURING CONSTRUCTION AND BEFORE FINAL INSPECTION, the applicant shall implement the following mitigation measures and provide the County with written evidence that the following measures have been implemented:

- a. Clean equipment, boots, truck tires, and any other exposed material with a 10% bleach solution or other disinfectant after working in infected areas and bringing materials onto the site.
- b. Avoid pruning oaks or other affected trees in wet weather.
- c. Avoid work in wooded areas during the wet season when spores are being produced and infections are starting.
- d. Leave potentially infected downed trees on the Project site instead of transporting the material to an uninfected area.
- e. Purchase nursery stock for landscape plantings at nurseries that follow current BMPs for preventing the spread of SOD (consult the California Oak Mortality Task Force, [www.suddenoakdeath.org](http://www.suddenoakdeath.org), for current standards.

(MM BIO-5)

15. BEFORE ISSUANCE OF A BUILDING PERMIT AND DURING CONSTRUCTION, the applicant shall submit to the County photographic evidence that the following Mitigation Measure has been implemented by the Building Contractor:
- a. Develop a construction noise reduction plan and designate a disturbance coordinator at the construction site to implement the provisions of the plan. The disturbance coordinator shall be responsible for receiving and acting on complaints about construction disturbances, including noise, during construction activities. The disturbance coordinator shall determine the cause of noise complaints and implement remedial measures as necessary to alleviate significant problems.
  - b. Prior to commencing work, all neighbors within 500 feet of the Project site shall be informed of the name and contact information of the disturbance coordinator; this information shall also be posted at the entrance to the work site, in a location visible to the public.
  - c. The construction noise reduction plan shall include measures for minimizing and avoiding noise disturbance of nearby sensitive receptors. Such measures may include, but are not limited to, the following:
    - i. Muffle and maintain all equipment used on site. All internal combustion engine-drive equipment shall be fitted with mufflers which are in good condition. Mufflers shall result in non-impact tools generating a maximum noise level of 80dB when measured at a distance of 50 feet.
    - ii. Schedule construction activities to have the least impact on noise-sensitive receptors (existing residents) in the area. This shall be accomplished by limiting construction activities, including grading, excavating, and paving, to weekdays between 7:00 AM and 6:00 PM, per Marin County Municipal Code Sec. 6.70.030(5)(a-c). Nearby sensitive receptors shall be informed of allowable construction hours.

(MM NOISE-1)

16. The project shall conform to the Planning Division's "Uniformly Applied Conditions 2020" with respect to all of the standard conditions of approval.

#### **SECTION IV: VESTING**

NOW THEREFORE, BE IT RESOLVED, this Tentative Map approval is valid for three years after its effective date. If the Tentative Map has not been vested by the end of that time, the approval shall expire and become void unless:

- A. A Parcel or Final Map, and related bonds and improvement agreements, have been filed with the County Surveyor in compliance with Chapter 22.86 (Parcel Maps and Final Maps); or
- B. An extension of time has been granted in compliance with Section 22.84.140 (Extensions of Time for Tentative Maps).



A Tentative Map approval shall be vested if a Parcel Map has been filed within the time limits established by this section or within an extension of time approved in compliance with Section 22.84.140 (Extensions of Time for Tentative Maps). Expiration of the approved Tentative Map shall terminate all proceedings. The application shall not be reactivated unless a new subdivision application is filed.

**SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 6<sup>th</sup> day of October 2020, by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

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KATIE RICE, PRESIDENT  
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

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Matthew H. Hymel  
Clerk of the Board of Supervisors