



MEMORANDUM

TO: Marin County Planning Commission

FROM: Sabrina Cardoza, Planner

DATE: July 24, 2020

RE: Planning Commission Hearing of July 27, 2020, Agenda Item 5
Dipsea Ranch (Weissman) Land Division (Tentative Map) and Mitigated Negative Declaration
455 Panoramic Highway, Mill Valley
Assessor Parcel 046-161-11
Project ID P1589

Since distribution of the staff report for this project, staff received additional correspondence from members of the Tamalpais Design Review Board and interested parties. This supplemental memorandum is intended to clarify and augment information contained in the staff report and to respond to issues raised. Copies of the additional communications have been included as attachments.

Residential Density and Policy Considerations

Commenters have requested a condition of approval restricting the future division of one of the three proposed lots if the project were approved. The project includes a subdivision of an existing 8.29-acre property into three lots, as well as the installation of two new septic systems to accommodate the proposed new lots. The lot in question is proposed Lot 3, a 5.18-acre lot that has the potential to be further subdivided under the RMP-0.5 (Residential, Multiple Planned, 1 unit per 2 acre) zoning district.

The applicant has submitted an application to subdivide the property into three lots. Besides future residential construction on each of the two newly created lots (an existing house will remain on the third lot, proposed Lot 1), the applicant has neither signified intentions to pursue future subdivision nor requested that such development potential on proposed Lot 3 be eliminated with this project.

The proposed project is consistent with the Countywide Plan (CWP) and Tamalpais Area Community Plan (TACP) with respect to the proposed density of three lots on the 8.29-acre property (or one unit per 2.76 acres). The following expanded analysis of the project consistency is included for the Commission's consideration.

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.”

The Countywide Plan land use designation governing the subject property is PR (Planned Residential). The CWP Tamalpais Area Land Use Policy Map, Muir Woods Park, designates the property with a density range between one unit per one to 10 acres. Application of the CWP density range would result in a maximum potential density of 8 units on the 8.29-acre property.

The Tamalpais Area Community Plan (TACP) land use designation governing the subject property is SF-1 (Single Family Rural), with a density range between one unit per 10 acres to two units per acre. Application of the TACP density range would result in a maximum potential density of 16 units on the 8.29-acre property.

The TACP Policy LU31.1 narrows the potential density for the property more specifically 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.”

(Note: The Assessor’s Parcel Number for the property has been changed from APN 046-161-10 to 046-161-11, the current number.)

The project includes installation of onsite septic systems because the property is located in an area that lacks public sewer. The CWP 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 lowest end of the CWP density range for the property is one unit.

The TACP identifies the subject property as a property of interest and more specifically provides a maximum allowable density of five units given the limitations associated with septic systems. Because of the specificity associated with Policy LU31.1, the proposed 3-lot subdivision is consistent with the community plan, and by extension the CWP. The project would result in three lots and building envelopes that would cluster any future development on the upper portion of the property identified as the “ridge” in the policy.

Additional Public Correspondence

On May 2, 2018, the Tamalpais Design Review Board reviewed the project and recommended conditional approval of the project with the following conditions: (1) the fire road, if it remains, shall

be used for fire access only; (2) a deed restriction be placed on the 5-acre parcel to assure that it will not be subdivided in the future. Please refer to Attachment 10 to the original staff report.

On July 21, 2020, the Chair of the Tamalpais Design Review Board (“the Board”) provided an email to the Community Development Agency expressing concerns regarding the omission of the conditions of approval provided by the Board in the staff report. The Chair further expressed concerns that the “fire access road” located on the lower portion of the site would be used to access future accessory dwelling units or connected to the driveway of the main house.

The project includes the subdivision of the property into three lots. The applicant has neither submitted any plans for future subdivision nor requested that development potential be eliminated. Imposition of requirements for approval of the project that limit future use and development would need to meet the tests for “nexus” and “proportionality” as discussed further below.

The United States Supreme Court established a two-prong test of constitutional limits that local jurisdictions must consider when imposing conditions on land use permits. This test includes the “nexus” and “proportionality” requirements of the Fifth Amendment’s takings clause (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)). Though a local jurisdiction can place conditions on land use permits, the U.S. Supreme Court holds that the Constitution requires that there must be a “nexus” that connects and furthers the permit condition to a legitimate regulatory interest. An example of a requirement that may meet the nexus test would be the imposition of a requirement to restore protected habitat that would be eliminated as a result of a proposed development.

Further, the Constitution requires that the permit conditions be “roughly proportional” to the project impacts of the land use development. According to the U.S. Supreme Court, “proportionality” does not require a precise mathematical calculation, but jurisdictions must demonstrate a “required reasonable relationship” between the conditions imposed on the development permit and the impact of the development (*Dolan v. City of Tigard*, 512 U.S. 374 (1994)). An example of a requirement that may meet the proportionality test would be the imposition of a requirement for a project to fund its fair share for construction of a public improvement such as a traffic signal that is needed to mitigate an impact due to the additional traffic that will be generated by a development. The amount of the contribution will be proportional to the project’s share of the additional traffic that is projected to impact the specific intersection.

Neither the imposition of a requirement restricting future use of the fire road nor potential resubdivision of one of the lots can meet the nexus or proportionality tests. The applicant has not signified any intention to undertake further improvements, and any future improvements would be subject to County review and applicable permits, including environmental review.

As further discussed in the Initial Study and the Response to Comments on the Initial Study in regard to future development, the proposal consists of a subdivision resulting in three lots on the subject property where a maximum density of five units as identified in the Tamalpais Area Community Plan, and building envelopes are proposed to restrict future residential development on the two new lots to be clustered near the existing residence on the upper portion of the property where development already exists. As such, the project is consistent with the TACP Policy LU31.1 which identifies the upper portion of the site as the most buildable. Additionally, the project entails the extension of the existing driveway currently serving the home that is limited to the upper portions of the property and is designed to end within the proposed building envelope of Lot 3.

The project is consistent with the density requirement of the Tam Plan Policy LU 31.1 with a proposed three-lot subdivision and does not entail any improvements that would extend utilities to the areas of Lot 3 located outside of the proposed building envelopes. Further, the project clusters the proposed building envelopes on the upper portion of the property on the ridge consistent with the TACP Policy LU 31.1.

The project does not include any improvements or proposal that would facilitate future subdivision. Therefore, there is neither nexus or proportionality in imposing a deed restriction on the proposed Lot 3 to prevent further subdivision of it or a deed restriction limiting the use of the fire road in order to prevent access to any future development.

Finally, in response to concerns raised by other commenters, the project's potential impacts on the environment, including the grading of the "fire road" has been analyzed extensively. Potential impacts from the project relating to air quality, biological resources and noise have been incorporated into the project to be avoided or will be mitigated to a point where no significant effects would occur. Please refer to the Initial Study that is included as Attachment 4 and the Response to Comments on the Initial Study that is included as Attachment 5 to the original staff report.

As discussed in the staff report regarding the grading of the fire road, the Department of Public Works (DPW) conducted an onsite investigation of the grading work that was done in 2014 and issued a Notice of Violation for undertaking the work without obtaining a grading permit as required. In accordance with the requirements of the DPW, the property owner installed erosion and sediment control measures, which were subsequently inspected by DPW staff and the Regional Water Quality Control Board. As concluded in the Initial Study and the Response to Comments on the Initial Study, the grading of the fire road did not result in a significant impact to hydrology and water quality, and no evidence was found that such grading resulted in soil contamination or fill of wetlands or streams.

Attachments:

1. Email from Logan Link dated July 21, 2020
2. Email from Andrea Montalbano dated July 23, 2020
3. Email from Erik Halterman date July 24, 2020
4. Email from Lonnie Barbach dated July 24, 2020
5. Email from Carlos Nogueiro date July 24, 2020

From: [Logan Link](#)
To: [Crawford, Brian](#); [Lai, Thomas](#)
Cc: [Rodoni, Dennis](#); [Sears, Kathrin](#); [Parton, Maureen](#); [Estes-Smith, Sarah](#); [Cordova, Lorenzo](#); [Cardoza, Sabrina](#); [Tejirian, Jeremy](#); [Levenson, Michelle](#); [Montalbano, Andrea](#)
Subject: TDRB objection to Weissman (Dipsea Ranch) staff report
Date: Tuesday, July 21, 2020 4:56:57 PM

Dear Mr. Lai and Mr. Crawford,

The Tam Design Review Board is very disappointed by the staff report, prepared by Ms. Cardoza, that was issued today regarding the Weissman Development Project (Dipsea Ranch).

As noted in the Background section of the staff report, which can be found on page 2, the proposed subdivision map was brought before the Tam Design Review Board in May of 2018. The meeting minutes are attached as "Attachment 10".

The vote of the Board at this meeting was very clear.
Excerpt as follows:

Board Decision and Findings:

A) Motion to approve the project with the following conditions:

- 1. Fire road, if it remains, shall be used for fire access only.*
- 2. A deed restriction be placed on the 5 acre parcel to assure that it will not be subdivided in the future.*

This meeting, held at the Muir Woods Park Community Center in 2018, was attended by over fifty concerned community members. After a great length of thorough and thoughtful discussion and neighborhood input, the Board satisfied most members of the public by attaching these two requirements to the approval.

The staff report disregards these two stipulations by the Tam Design Review Board - and, in turn, the community - completely.

Furthermore, on page 36 of the draft mitigated negative declaration, the idea of a deed restriction on the property is addressed and dismissed. The draft states:

While a deed restriction could be utilized to prevent future subdivision of Lot 3, the Initial Study does not identify any potentially significant impacts that would require mitigation of this kind... As no significant impact is identified, there is no nexus under CEQA to require a deed restriction to prevent future subdivision.

The Board takes issue with this disregard of a deed restriction. Placing a deed restriction on the large lot avoids the potential of a future application for a further subdivision. This was extremely important to neighbors, as a restriction must be put in place in order to relieve the anxiety that this first proposal is simply a stepping stone to a more ambitious future plan.

The board also takes issue with the lack of a deed restriction to prevent alternative use of the fire road. Understandably, many community members were concerned that the "fire access road" would be used by a future property owner to access an accessory dwelling unit, or connected to the driveway of the main house. The Board mitigated this concern by requiring the use of the road be restricted to fire access only, which would be accomplished by a deed restriction. This was not addressed anywhere in the staff report or Neg Dec.

The purpose of the Design Review Board is to act as a liaison between the community and the Planning Department, Planning Commission, and Board of Supervisors. Disregarding the Board's requirements for approval blatantly denies our purpose and the needs and wishes of the community.

As the Planning commission hearing is set for less than a week from when the staff report was issued, the Board requests that the staff report be changed to include the requirement of a deed restriction for both items as cited in the Board decision. If it is not, the Board will have no choice but to take the issue directly to the Planning Commission and Board of Supervisors.

Please promptly let us know how you will address this issue of great concern.

Respectfully,

Logan Link
chair, Tam Design Review Board

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Logan Link

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Chair of the Tamalpais Design Review Board

Appointed member of the Marin Association of Realtor's Board of Directors

Founder, the Logan and Bernard Group

President, Marin Young Professional Network (2019)

license no. 01944756

From: [Andrea Montalbano](#)
To: [Logan Link](#); [Rodoni, Dennis](#); [Cordova, Lorenzo](#); [Sears, Kathrin](#); [Parton, Maureen](#); [Cardoza, Sabrina](#); [Lai, Thomas](#); [Crawford, Brian](#); [Tejirian, Jeremy](#); [Douglas Wallace](#)
Subject: Weissman - Dipsea Ranch Review
Date: Thursday, July 23, 2020 4:38:58 PM

Hello Tom and Brian,

I was disappointed to hear from Logan Link that the Planning Department feels it can not follow through with the Design Review Board's findings, requiring a deed restriction on the 5+ acre lot of the Weissman Project. If it is true, as Mr. Lai suggested to Ms. Link in the phone call of 7/23/2020, that the deed restrictions are not within the power of the County to require, it is very discouraging that **no one at the Planning department contacted the Board to make them aware of this.**

The Board approved the subdivision with the requirement that two restrictions would be placed upon the property; to restrict the fire access road to fire use only, and to negate the possibility of a future land owner from further subdividing the largest parcel. If the Board had been aware that the County cannot do this, then the Board would have not approved the subdivision. As the County moved forward with the process anyway, the County has chosen to approve the subdivision in direct opposition to the Board's findings. **What is the purpose of the Design Review Board if the Planning department completely disregards the Board's findings?**

With regard to notification of the public, the Planning department has also let us down. As of today, only one business day before the hearing, still **no electronic message has been sent to those in the community who are subscribed to the Weissman project.** In these times of Covid, when people are picking up their mail less than regularly, the use of the County's electronic notification system is so much more important. It concerns me greatly that the Planning department has chosen to ignore this outlet for communication about the project.

It is also disappointing that **the project page has no links to the staff report or other attachments.** All that is available is a link to the agenda, and the agenda says that the staff reports are available on the project page, and **that is a false statement.** And so in effect, just one business day from the public hearing of this highly contentious meeting, there is in fact no obvious way for the public to access the staff report and other documents. **This may or may not be legal, I don't know, but it certainly seems wrong.**

In addition, I have been made aware that mailed notification of this hearing is legally required for all residents within 600 feet of the property, and **I have been contacted by neighbors within 600 feet of the project boundary who have not received notification.**

In summary, I am asking the following questions;

- 1) What is the reason that a deed restriction is beyond the County's abilities?
- 2) Why did the County fail to contact the Board about this (if true)?
- 3) Why did the Board decide to approve the subdivision, despite the requirements of the Board not being satisfied?
- 4) Why has there been no electronic notification of those subscribed to the Weissman development project page?
- 5) Why have neighbors within 600 feet of this project not yet been contacted?
- 6) Why does the County want to push this through on Monday's agenda to the Planning Commission, rather than delay until proper (and legally required) notification can be made?

I look forward to hearing your response. Please include this email as part of the public comment to be submitted at the Planning commission hearing.

Sincerely,
Andrea Montalbano
Member Tamalpais Area Design Review Board
Muir Woods Park Community member

From: [Erik Halterman](#)
To: [Cardoza, Sabrina](#); [Lai, Thomas](#); [Crawford, Brian](#)
Cc: [Andrea Montalbano](#); [Logan Link](#); [Rodoni, Dennis](#); [Sears, Kathrin](#); [Parton, Maureen](#); [Cordova, Lorenzo](#); [Tejirian, Jeremy](#); [Douglas Wallace](#)
Subject: Dipsea Ranch - Current Plan Inconsistent with TACP EIR
Date: Friday, July 24, 2020 7:42:17 AM

Dear Brian Crawford & Thomas Lai:

The Planning Department will fail the community if it approves the Dipsea Ranch Parcel Map in its current condition.

The basis for the community and the DRB requesting a restrictive on the future subdivision of the Dipsea Ranch project is to ensure the property remains consistent with the Tam Area Community Plan (TACP) and the 1991 EIR.

The 1991 EIR (LU 31.1a) calls specifically for this land area (APN: 46-161-10; previous APN before previous subdivision) to remain open in appearance with homes clustered on the top.

The applicant has the right to subdivide the 8+ acre parcel into four (4) parcels yet has chosen on three (3). Unquestionably, at some point in the future, the owner of the 5+ acre parcel will submit an application to subdivide the parcel and the ONLY location for a home will be in the area at the bottom of the hill. This will directly contradict the guidelines in the TACP/EIR and the County won't have an option at that time but to allow it.

The application should submit a plan for four (4) parcels on top of the hill now, consistent with the EIR, or forego that right in the future.

In addition, the applicant is avoiding the need to construct an Affordable Housing Unit by limiting his subdivision to three (3) parcels. A fourth parcel would have to be dedicated as Affordable. By allowing the 5+ acre parcel to be divided in the future, you are allowing this requirement to be skirted.

I think we are on our fourth planner now. We were promised by previous planners that these issues would be analyzed and we have never been told why these concerns and legal issues to ensure consistency with the TACP have not been addressed. Furthermore, the County Planning Department also appears to be ready to give the applicant a pass for constructing the illegal road directly on top of wetlands and in a Stream Conservation Area with absolutely no consequences. This road will be the future access point where the owner of the five acre parcel will gain access to the new parcel.

Unless you restrict future subdivision of the 5+ acre site now, the Planning Department will: 1) Ensure this land is developed in the future inconsistently with the TACP/EIR, 2) Allow the applicant to skirt the Affordable Housing Requirement, and 3) allow the applicant to avoid any consequences for the construction of the illegal road.

Sincerely,

Erik Halterman
40 Palm Way

From: [Carlos Nogueiro](#)
To: [Cardoza, Sabrina](#)
Subject: Dipsea Ranch
Date: Friday, July 24, 2020 12:18:43 PM

There needs to be a restriction on future development of the 5 acre parcel. If there's no restrictions, I oppose the project.

I am a neighbor and have lived at 405 Panoramic Hwy. since 1987.

Carlos Nogueiro DDS

Sent from my iPhone
Carlos Nogueiro D.D.S.