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July 8, 2014

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**SUBJECT:** Workshop on Whaler's Point (Jack Krystal) Right-of-way Vacation, Master Plan/Precise Development Plan/Tidelands Permit  
240 Redwood Avenue, Mill Valley  
APNs 052-227-04, -09, and 052-247-08

Dear Board Members:

**RECOMMENDATION:** Conduct public workshop and provide direction to Department of Public Works and Community Development Agency staff, and the applicant pursuant to denying the street vacation and implications for the hotel development amendment.

**BACKGROUND:** The history of hotel applications on this property dates back to the late 1970's when the applicant, Jack Krystal, submitted the first of many proposals to develop a hotel and related commercial uses on the property. All applications since that time were rejected or withdrawn due to unresolved issues. The current application was submitted following the Board of Supervisor's denial of the prior application to develop a 71-unit hotel in April 2009. After the County subsequently initiated a use permit revocation against the multiple uses on the site, the Board acted in March 2010 to approve the uses on an interim basis for a 5-year period while the applicant pursues a revised hotel proposal. The current project was submitted in September 2009, and has been deemed incomplete since December 4, 2009 (see Attachment 5, Notice of Project Status).

**SUMMARY:** The current Master Plan, Precise Development Plan, and Tidelands Permit applications are for development of a three-story, 33,701 square foot hotel and 2,625 square foot pool house/spa on the primary site (Assessor's Parcel 052-277-09), and 3,775 square feet of accessory buildings on the adjacent property (Assessor's Parcel 052-227-04), for a total proposed floor area of 40,101 square feet.

As summarized in Table 1 below, this proposal is inconsistent with the Tamalpais Area Community Plan (TACP) and the Countywide Plan (CWP), primarily because the proposed floor area substantially exceeds the maximum floor area allowed. In addition, the street vacations are inconsistent with County roadway standards in Marin County Code Title 24.

**Table 1. Floor area comparison**

	<b>Maximum floor area</b>	<b>Floor area ratio (FAR)</b>
<b>Proposed project (primary site only)</b>	<b>36,326 sq. ft.</b>	<b>52%</b>
<b>CWP maximum</b>	<b>20,758 sq. ft.</b>	<b>30%</b>
<b>TACP maximum</b>	<b>24,218 sq. ft.</b>	<b>35%</b>

Street vacations. Along with the Planning applications described above, the applicant has submitted an application to vacate portions of Bolinas, Parepa, and Pohono Street rights-of-way shown on that certain map entitled “Map of the Lands of the Sausalito Land and Ferry Company”, filed for record April 26, 1869 in Rack 1 of maps at Pull 9, Marin County Records (see Attachments 1 & 2). The street areas in question front on lands proposed for this hotel development. In a prior quiet title action, the Court granted to the applicant the underlying fee title for the referenced streets. The County was not named in the quiet title action and therefore the rights of the public were not terminated by the Court’s action.

If approved, the vacation actions would increase the size of the adjoining lots, thereby increasing the maximum floor area allowed by the CWP and TACP (see below), provided the TACP and/or CWP are also amended (see discussion below)

A notice and request for comment on the vacation has been distributed to the appropriate public utility companies and county staff. Neither Marin County Public Works nor the Community Development Agency support the proposed vacation. Pohono Street is a County-maintained road within a 60-foot public right-of-way between the onramp/frontage road and the intersection with Bolinas Street inclusive, and includes a cul-de-sac constructed for the Shoreline Commercial Center. Bolinas Street is a 60-foot wide County-maintained road between Pohono and Parepa inclusive, and provides vehicular access and utilities to other properties adjacent to the project site. Reducing the public rights-of-way to less than 40 feet in width, as proposed in the application, is not consistent with County Code 24.05.020 regarding minimum public road right of way widths.

Tamalpais Area Community Plan. The TACP contains policies specific to the Krystal property (see Attachment 6). TACP policy LU32.1(c)(a) limits the maximum FAR on dry land (above mean high tide) area of Assessor’s Parcel 052-227-09 (the primary site) to 35% or 42,000 square feet of floor area, whichever results in less area. The TACP policy recognizes that some of the area of the primary site lies below the mean high tide, and therefore does not qualify as lot area in potential development area calculations. As shown in Table 1 above, using the primary site’s 69,194 square foot dry land area, the maximum FAR allowed by the TACP would result in 24,218 square feet, far less (12,108 square feet) than the 36,326 square feet for the hotel that the applicant is currently proposing. Compliance with the TACP’s 35% maximum FAR would also require an amendment to the CWP’s lower 30% FAR, to achieve consistency between the two FAR standards.

Although neither requested by the applicant nor recommended by staff, one option (shown in Attachment 4 as Option 2) could be to add dry land area to the primary development site, consistent with County Code Section 24.05.020 for road width, by vacating 10 feet of the Bolinas Street and Parepa Street rights-of-way and adding it to the primary site. This would result in the minimum 40-foot road rights-of-way as required by County Code. However, even if these rights-of-way portions were vacated by the County and considered part of the primary site, the resulting 26,583 square feet of allowable floor area would still be considerably less (9,743 square feet) than the applicant's currently proposed floor area.

Furthermore, TACP policies LU32.1(c)(f) and (g) stipulate that parking within the public streets should be used for public access, and that all offstreet (i.e. privately designated) parking should be contained within a building. As can be seen from the site and vicinity development diagram (Attachment 3), there is insufficient area available within the FAR cap to develop the parking necessary to accommodate the proposed hotel and parking in buildings onsite. Putting the parking in the hotel would further reduce the floor area available for rooms.

Sea level rise: The latest Federal Emergency Management Agency (FEMA) and other flood and sea level rise information suggest that the applicant's proposed lowest finish floor elevation of 11 feet NAVD (North America Vertical Datum of 1988) is too low, when factoring the County's flood control standards and recent sea level rise projections. Marin County Code Section 24.04.590 requires sites subject to tidal influence to attain a minimum lowest finish floor level of 11.7 feet NAVD after ultimate subsidence, to allow for settlement. A geotechnical engineer would have to examine current and proposed soil conditions and determine to what level the site and structure would have to be elevated in order to comply with this requirement.

In addition, sea level rise interim policy direction that was given by the Board in the recent Local Coastal Plan update would require an additional 3 feet of elevation above current FEMA Base Flood Elevation requirements. This is also consistent with the Bay Conservation and Development Commission's (BCDC's) mid- to end-of-century projections for approximately 3 feet of sea level rise in San Francisco Bay.

It should be noted that these estimates are very preliminary, and environmental review has yet to be conducted for the project. However, based on the above factors, it appears the building's lowest finished floor might need to be elevated an additional 4 or so feet over the current project. This in turn would affect the overall design of the building, which is currently proposed at the maximum height (elevation) allowed in the TACP. Either the building would need to be redesigned to maintain its current elevation, or the TACP would need to be amended to allow a taller building than what is currently allowed on this property.

**OPTIONS:** Staff is requesting the Board consider the street vacation and the hotel/spa project together due to their interconnected nature, and for the Board to provide direction on the applications and policy issues raised. Following are options for your Board's consideration:

1) Direct staff to schedule a hearing on the merits of the proposed street rights-of-way vacations and the hotel project, in order to deny the vacations and provide direction to the applicant to reduce the size of the development to comply with the Tamalpais Area Community Plan and (amended) Countywide Plan.

2) Affirm County street standards per MCC 24.050.020, direct staff to process a revised street right-of-way application (subject to the applicant's resubmittal) consistent with current County street standards (40-foot right-of-way width for Bolinas and Parepa Streets and the Pohono Street cul-de-sac), and provide direction to the applicant to reduce the size of the development to comply with the Tamalpais Area Community Plan and the (amended) Countywide Plan.

3) Direct staff to process a different street rights-of-way vacation option (subject to the applicant's resubmittal), and for the applicant to modify the size of the development consistent with the directed option, including amendments to the Tamalpais Area Community Plan and Countywide Plan. Several such options are included for your consideration in Attachment 4.

- Attachments:
1. Vacation application
  2. Original subdivision map and proposed road vacation diagrams
  3. Hotel development area and vicinity diagram
  4. Potential street vacation and hotel development size options & diagrams
  5. Notice of Project Status, CDA, 12/04/09
  6. Tamalpais Area Community Plan excerpts

**REVIEWED BY:**

<input type="checkbox"/>	Department of Finance	<input checked="" type="checkbox"/>	N/A
<input checked="" type="checkbox"/>	County Counsel	<input type="checkbox"/>	N/A
<input type="checkbox"/>	Human Resources	<input checked="" type="checkbox"/>	N/A

Respectfully submitted,



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