



COMMUNITY DEVELOPMENT AGENCY

Brian C. Crawford
DIRECTOR

October 4, 2016

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Modifications to the Pasternak Use Permit 09-20 (Board of Supervisors Resolution 2010-20)
200 and 210 Road to Ranches, Nicasio
Assessor's Parcels 121-070-64, -66 and -68

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

www.marincounty.org/cda

Dear Board members,

RECOMMENDATION:

Staff recommends that the Board of Supervisors consider adopting the attached resolution modifying certain conditions of approval for the Pasternak Use Permit 09-20. (See Attachment 1). This recommendation is based on a provision in the County Development Code that allows the Board of Supervisors to modify a use permit according to one or more findings, including non-compliance with the conditions of approval (Marin County Code Section 22.120.030).

BACKGROUND:

Devil's Gulch Ranch is an approximately 75-acre property in Nicasio developed primarily with agricultural land uses and supported by various accessory and residential land uses. The property is accessed through a private gate at Road to Ranches from Nicasio Valley Road. The primary land use established on the property is agricultural in nature and includes the following activities: viticulture; crop farming; and livestock grazing and production including sheep, horses, rabbits, pigs, and chickens.

A Use Permit was approved in 2004, renewed in 2006, and amended in 2010 to allow the operation of a year-round day camp, two large special events a year, and 12 educational tours a year. (See Attachment 2.) The camp participants, ranging in age from 6 to 18 years old, spend Monday through Friday (9:00am to 4:30pm) on a working ranch and are introduced to topics such as basic animal care, gardening, and general environmental education. The semi-annual special events provide an opportunity for the promotion of Marin-grown agricultural products. The educational tours allow individuals an opportunity to learn more about a working agricultural operation, and in some cases, participate in the daily activities at the Ranch. The Use Permit amendment was approved because it allowed for the diversification of agriculturally-related land uses at the property, and provided opportunities for individuals to learn more about agricultural activities in Marin County, thereby furthering support for agricultural endeavors in Marin County in a manner that is

compatible with the existing and future land uses in the vicinity. The Use Permit is scheduled to expire on December 31, 2019, unless renewed by the County.

SUMMARY OF CODE ENFORCEMENT INVESTIGATION

The Community Development Agency Code Enforcement program has been investigating a series of public complaints regarding the operations of the day camp and other land use activities on Devils Gulch Ranch. A summary of the results of the investigation are presented as Attachment 3 of this Board letter. In reviewing the large number of alleged zoning and building violations, the following issues have been identified by staff for the Board of Supervisors consideration regarding the status of the current Use Permit:

1. Day Camp:

Use Permit 09-20 allows an educational day camp (defined as a school pursuant to Marin County Code, Section 22.130.030). The curriculum of the day camp shall be agriculturally related. (See Use Permit Condition 1A – Attachment 2.)

The YMCA operates the summer camp program offered at Devils Gulch. The YMCA online advertisement offers a way for children to connect with nature through games, primitive and ancestral crafts and skills, animal care, gardening, free play and other fun outdoor activities (Attachment 4).

The YMCA description raises a question as to whether all programs offered by the YMCA at Devil Gulch Ranch are clearly related to agriculture as prescribed by the Use Permit. It should be noted, however, that while the governing ARP (Agricultural Residential Planned) zoning for the property is primarily intended to allow residential uses in agricultural areas, a number of uses not necessarily related to agriculture are permitted, such as child day care centers, educational tours and schools. The flexibility in principally permitted and conditional uses in the ARP zone provides latitude for the Board of Supervisors to determine the extent to which existing and future camp activities are oriented toward agriculture.

Recommendation: CDA requests that the Board review and modify language in the Use Permit to clarify that activities offered through the camp are *predominantly* related to agricultural education. The property owner would be required to submit a description of camp activities to the Agency Director to verify compliance with this condition. Determinations regarding ongoing compliance with the condition would be under the Director's authority, unless the Use Permit was referred to the Board of Supervisors.

2. Special Events:

Use Permit 09-20 allowed a maximum of two special events a year strictly for the promotion of Marin-grown agricultural products and agriculturally-related land uses at the Ranch, which rely on products grown and harvested at the Ranch for "Marin-grown agricultural products," for a maximum of 175 participants including staff personnel. No special event is allowed on the same day that participants in the day camp program are on the premises.

(See Use Permit Condition 1B – Attachment 2.) These events have been branded and promoted by the property owner as “Outstanding in the Field.”

In connection with litigation filed by neighboring property owners contesting the property owners use of a driveway easement serving the project site and adjacent lots (*Jolson v. Pasternak/CIV 1300887*), Superior Court Judge Roy C. Chernus issued a Statement of Decision on May 26, 2016, including the following:

“The Court grants judgment to the plaintiff’s in the second cause of action for Declaratory Relief as both parties agreed that there is actual controversy. Accordingly, the defendants are declared to be able to continue reasonable use of their easement over the Road to Ranches for all current uses except the Outstanding in the Field events. However, as the primary beneficiary of the easement, the defendants are required to maintain the Road to Ranches in the condition which is has been maintained heretofore”. (See Attachment 5.)

Recommendation: Although the County is not bound by the court judgment, staff recommends that Condition 1B be deleted to create consistency between the Use Permit and the court decision. Deleting this condition would eliminate the two special events (Outstanding in the Field) from the list of permitted activities on the property.

Education Tours (Open Houses):

Use Permit 09-20 allows a maximum of twelve educational tours/open house events per year (maximum of two per month) related to the promotion of Marin-grown agricultural products and agriculturally-related land uses at the Ranch, for a maximum of 100 individuals at any one event. (See Use Permit Condition 1C – Attachment 2.)

Staff has found several instances where the property owner has deviated from the above condition.

- In 2014, a Jack Daniels’s benefit took place at the Ranch. Tickets were available for this event online. The event was advertised as a fundraiser. The ticket also included a tour of the Ranch to guests who arrived early to the event (Attachment 6). This event was not “related to the promotion of Marin-grown agricultural products and agriculturally-related land uses at the Ranch” as required by the Use Permit.
- In 2016, the Nicasio Historical Society hosted an event at the Ranch. The advertisement stated that a “Ranch Talk and Tour” by Mark Pasternak would be offered. (See Attachment 7.). While staff finds this event consistent with the limited number of educational tours and open houses allowed by the Use Permit (Condition 1C), the property owner informed staff that in his opinion, the event was not regulated by the above condition of approval and therefore, was not held as one of the 12 approved educational tours/open houses. (See Attachment 8.)

The governing ARP zoning allows Educational Tours as a permitted use, meaning no Use Permit is required. Educational Tours are defined by the County Development Code as: "Interactive excursion for groups and organizations for the purpose of informing them of the unique aspects of a property, including agricultural operations and environmental resources." (Marin County Code Section 22.130.030.) Although this use is generally allowed in the ARP zone without the requirement for a Use Permit or a limitation on number of tour events, the subject property has received a Use Permit by the County that established site-specific approvals and limitations for uses of the property, including educational tours. In staff's opinion, the Use Permit entitlement is the controlling regulation for educational tours as well as other activities prescribed by the permit.

- Staff has been informed that the property owner has in the past encouraged selling tickets to events that exceed the maximum number of attendees allowed by the Use Permit. (See Attachment 10.)
- Staff has also been informed that the property offers the Ranch for rent for private weddings and other social events. (See Attachment 11)
- Marin County Code, Section 22.08.040F (Sale of Agricultural Products) allows the sale of agricultural products produced on an agricultural property as a permitted use and not subject to Use Permit approval. However, staff has received documentation that the property owner encourages specific language to prospective event organizers which includes "ranch is open for retail sales of the products produced on the ranch" as a way of circumventing the maximum number of educational tours/open houses allowed annually through the approved Use Permit. (See Attachment 9.)

Recommendation: Staff recommends that Condition 1.C be revised to clarify that all educational tours and open houses held on the property are subject to the limitation of 12 events per year. The Condition should also be amended to clarify that no other special events, advertised or otherwise made available to the public are allowed. Staff is not recommending special restrictions on the continued sale or processing of agricultural products as allowed by the Development Code; however, such activities cannot be used as a front for exceeding the permitted 12 annual educational tours/open house events. This modification would not prevent the property owner from holding private events for his and his family's personal use.

FISCAL/STAFFING IMPACT:

None.

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

SIGNATURE:


Curtis Havel
Senior Planner


Cristy Stanley
Senior Code Enforcement Specialist

Attachments:

1. Recommended Resolution Modifying the Pasternak Use Permit 09-20
2. Pasternak Use Permit 09-20 (Resolution No 2010-20)
3. Summary of Code Enforcement Investigation
4. YMCA – Devil’s Gulch Ranch-Outdoor Education Camp Online Advertisement
5. Marin County Superior Court – Jolson v. Pasternak (CIV 1300887)
6. Jack Daniel’s Benefit
7. Nicasio Historical Society Event
8. Mark Pasternak Response to Nicasio Historical Society Event
9. Suggested Advertisement Language
10. Overselling of Tickets
11. Weddings
12. Use Permit 09-20, Condition #6 Reports (2013, 2014 and 2015)
13. Public Comments Received from Nicasio Land Owners Association, Dated September 23, 2016