



# MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

May 11, 2010

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

**SUBJECT:** Kivel Appeal of the Planning Commission's Conditional Approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit  
17990 State Route 1, Marshall  
Assessor's Parcel 106-220-20

Dear Supervisors:

## **RECOMMENDATION:**

On April 12, 2010, the Planning Commission unanimously granted conditional approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit application to construct a new residence and establish an agricultural operation on an approximately 150-acre vacant lot in Marshall. On behalf of the Planning Commission, staff recommends that the Board deny the appeal filed by Scott Kivel and sustain the Planning Commission's decision by conditionally approving the project.

## **BACKGROUND SUMMARY:**

On April 12, 2010, the Planning Commission made findings to approve the project because it preserves and promotes agricultural land uses in West Marin, avoids potentially significant environmental impacts, minimizes visual and community character impacts, and is consistent with regulatory requirements contained in the Marin Countywide Plan (CWP), Local Coastal Program, Unit II (LCP), and the Marin County Interim Zoning Ordinance (Interim Code). The Planning Commission found that the project qualifies for a Master Plan waiver because the primary land use would be agriculture, development on the property would be in support of and appurtenant to agriculture, and an Affirmative Agricultural Easement would relinquish all residual residential development potential on the property and ensure that agricultural uses are maintained.

## **PROJECT DESCRIPTION:**

Tony Magee, applicant, has proposed to establish an agricultural operation that consists of livestock production, hop cultivation, production of crops for sale at local farmers' markets, and viticulture including limited brandy production. Included in the project is a proposal to construct the following improvements: a single-family residence; three barns; two sheep shelters; five 4,950-gallon dark green water tanks; and a greenhouse. (Please refer to Table 1 for a summary of the development characteristics.) Currently the property is accessed by existing farm roads and the project includes the construction of a new road along the northerly property line to serve the equipment barn and residence. Also proposed is a new well located near the northern property line for agricultural and domestic use, and three 250-gallon propane tanks near the equipment barn, residence, and brandy barn. All of the proposed structures have been

sited outside of the stream, wetland, and riparian protection areas. (Please refer to the project plans that are included as Attachment 4.)

Table 1: Summary of Development Characteristics

	<b>Floor Area (Square Feet)</b>	<b>Coverage (Square Feet)</b>	<b>Maximum Height (Feet)</b>
<b>Residence</b>			
Single-family Residence Attached Garage	3,165 648		22
<b>Agricultural Structures</b>			
Brandy Barn	1,456	496	14.8
Equipment Barn Shed	1,792	960	15 13.5
Hops Shelter	N/A	896	15
Sheep Shelters # 1 and # 2	N/A	1,500	7
Greenhouse	N/A	600	8.5
<b>Land Use</b>			
Hop Cultivation	N/A	6 +/- acres	
Grazing	N/A	50 +/- acres	
Vineyard	N/A	6 acres	
Greenhouse and Crop Garden	N/A	2.3 acres	
Hopyard	N/A	6 acres	

## APPEAL

Scott Kivel, owner of adjoining property located at 18400 State Route 1, Marshall, filed an appeal asserting the following: 1) the project does not qualify for a Categorical Exemption from CEQA under Section 15303, Class 3; 2) the project does not meet the requirements for a Master Plan waiver; and 3) the Local Coastal Program, Unit II findings regarding Water Supply, Visual Resources, and Community Character cannot be made. The following presents a response to the issues raised in the appeal.

## ANALYSIS:

- The appellant asserts that the Planning Commission inappropriately used the Categorical Exemption in Section 15303, Class 3 from CEQA. The appellant states that this section is for “single-family residences and accessory structures,” and “the equipment barn, brandy barn, and hop barn cannot be classified as accessory to a single-family home, and that the residence must be accessory to the agricultural use.”***

California Environmental Quality Act Guidelines, Section 15303, Class 3 (New Construction or Conversion of Small Structures) exempts the “construction and location of limited numbers of new, small facilities or structures.” Examples of this exemption include but are not limited only to, one single-family residence and accessory (appurtenant) structures.

Marin County Interim Code Section 22.57.030I (C-APZ: Coastal Agricultural Production Zone Districts) states, in part, that “The principal use of lands in the C-APZ districts shall be agriculture. Development shall be accessory, incidental, or in support of agricultural land uses...” The project applicant submitted a development application for the establishment of an agricultural operation. The Planning Commission reviewed and approved the proposed Agricultural Management Plan and determined that the primary use of the property would be agriculture, and all proposed structures

would be accessory to the agricultural operation. The Planning Commission also determined that the construction of appurtenant agricultural improvements and a single-family residence are “minor and incidental” because they are accessory to the primary agricultural land use. Consequently, the proposed structures fall under the types of structures covered by the Categorical Exemption.

The Planning Commission acted appropriately in issuing a Categorical Exemption from CEQA because the project does not result in any potentially significant impacts. Section 15378 of the CEQA Guidelines requires that the whole of the action is considered during the review process. The project qualifies for an exemption because the project has been carefully designed to avoid sensitive habitat areas, special status species, and no development would occur in areas that contain known archaeological resources. Finally, the appellant has not provided any evidence based upon factual data that the project would result in significant impacts to the environment.

2. ***The appellant asserts that the project requires a Master Plan because the waiver requirements under Section 22.56.026I do not apply to the project since more than one single-family dwelling unit is proposed and the project cannot be classified as “minor or incidental in nature.”***

The Planning Commission found that a Master Plan waiver can be granted and determined the project to be “minor and incidental in nature and within the intent and objectives of the local coastal plan” pursuant to Interim Code Section 22.56.026(C)I. This determination was made on the basis that the project as conditioned entails the following components: 1) agriculture would be the primary use of the property and the project would preserve 95% of the land for agriculture; 2) the conveyance of an Affirmative Agricultural Easement to the County would relinquishing all residual residential development potential on the property; 3) the residence and non-agricultural uses would be located on less than 1% of the total land area and clustered near existing development; and 4) all development is proposed outside of wetland, stream, and riparian protection areas. The other findings for Master Plan waiver are not required to be made so long as at least one finding is relevant to the project.

3. ***The appellant asserts that the Planning Commission failed to adequately address the findings of Section 22.56.130I(A)(1) Water Supply, and Section 22.56.130I(O) Visual Resources and Community Character of the Marin County Interim Code. The appellant states that the Planning Commission failed to address any of the requirements for a new domestic well, and that the proposed equipment barn and driveway is “located atop a prominent ridge” and impede public views, and that reuse of an existing road would best preserve visual resources.***

Marin County Interim Code Section 22.56.130.A (Water Supply) states that “coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use,” that “individual water wells shall be allowed within the zone in conformance with Chapter 7.28 (Domestic Water Supply) of the Marin County Code,” and that “wells or water sources shall be at least one hundred feet from all property lines.” The Environmental Health Services, Water Division has reviewed the proposed project for conformance with Chapter 7.28 of the Marin County Code and has determined that based on the information provided by the applicant, which includes well yield data and plans that show the location of all existing and proposed new wells, the existing well can accommodate all proposed uses and meet fire and safety requirements. As an added measure, a new well would also be used to serve the development on the northerly portion of the property. The new well would not be located in an area that has coastal resources and would be over 100 feet from all property lines.

Marin County Interim Code Section 22.56.130I (O) states that “development shall be designed and sited as not to impair or obstruct existing coastal views from Highway 1.” It also states that “structures

shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.” The section makes no reference to development located “atop a prominent ridge.” The subject property ranges in elevation from 20 to 490 feet above sea level. The siting of the equipment barn is at approximately 98 feet, which is roughly the same elevation as the appellant’s residence that is located approximately 200 feet to the north. The road follows the natural contours of the hillside and terminates at approximately 100 feet in elevation. No part of the development is located between Highway 1 and Tomales Bay. The Planning Commission found that the location of the equipment barn and road do not obstruct significant views as seen from public viewing places, and that use of the proposed new road is preferable as it would avoid unnecessary site disturbance and modifications to the existing road in order to protect wetland, stream, and riparian protection areas and to reduce site disturbance.

## **CONCLUSION:**

The Planning Commission acted appropriately in its decision to approve with conditions the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit since the primary land use will be agriculture. The applicant has proposed an agricultural operation that enhances the viability of Marin County farms and ranches and promotes sustainable agriculture. Further, development has been designed to reduce site disturbance, to avoid potential impacts to sensitive habitat areas and special status species, and to be in keeping with the rural agricultural character of the community.

Respectfully submitted,

Reviewed by:

Veronica Corella-Pearson  
Planner

Brian C. Crawford, AICP  
Director

## **Attachments:**

1. Resolution recommending denial of the Kivel Appeal and sustaining the Planning Commission’s conditional approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit
2. Kivel Petition for Appeal
3. Location Map
4. Letter from Linda Emme, received 4/30/10

*Note:* In order to conserve paper resources, the following documents have been provided only to the Board of Supervisors. These documents are available for public review at the Community Development Agency, Planning Division during regular business hours: Monday through Friday, 8:00 am to 4:00 pm.

5. Project Plans
6. Visual Simulations
7. Minutes and Resolution from the Planning Commission Hearing of April 12, 2010
8. Staff Report (with attachments) from the Planning Commission Hearing of April 12, 2010