



**MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY**

BRIAN C. CRAWFORD, DIRECTOR

February 9, 2010

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

SUBJECT: Pasternak and Nicasio Land Owners Association Appeals of the Marin County Planning Commission's Conditional Approval of the Pasternak Use Permit
200 and 210 Road to Ranches, Nicasio
Assessor's Parcels 121-070-66, -68 and -64

Dear Supervisors:

RECOMMENDATION:

On September 28, 2009, the Planning Commission denied in part and sustained in part the Nicasio Land Owners Association Appeal of the Deputy Zoning Administrator's conditional approval of the Pasternak Use Permit application by approving a modified project that authorized a year-round educational day camp, two special events per year, and up to 12 educational tour/open house events per year. On behalf of the Planning Commission, staff recommends that the Board deny the appeals filed by Mark Pasternak and the Nicasio Land Owners Association and approve the project as modified by the Planning Commission.

BACKGROUND SUMMARY:

Mark Pasternak, project sponsor and property owner, operates an educational day camp at Devil's Gulch Ranch from June through August that was approved in 2004 and renewed in 2006 by the Deputy Zoning Administrator (DZA). In February of 2009, Mr. Pasternak filed a Use Permit application proposing to: (1) expand the summer day camp to a year-round day camp; (2) commence overnight camping for one week periods from mid-June through mid-August; (3) host 8 special events a year; and (4) provide 24 educational ranch tours per year.

The DZA conditionally approved the project, modifying the project by reducing overall amounts of participants during special events and educational tours, and clarifying the project description. The DZA's approval was appealed to the Planning Commission by the Nicasio Land Owners Association for the following reasons: (1) incompatibility with the community character; (2) impacts to traffic circulation and parking availability; (3) lack of licensing from appropriate regulatory organizations; (4) inadequate sewage disposal facilities; (5) inadequate water supply; (6) inadequate fire prevention/protection measures; and (7) inadequate/unsafe ingress and egress conditions.

The Planning Commission conditionally approved the Pasternak Use Permit. However, in response to concerns from the community and in consideration of constraints at the project site, the Planning Commission further modified the project by reducing the number of annual special events from 8 events to 2 events, reducing the number of educational tours from 24 tours to 12 tours per year, and eliminating the overnight camping component of the project but allowing the year-round day camp (please refer to Attachment 6 for a comparison of project descriptions).

The project sponsor and Nicasio Land Owners Association filed appeals of the Planning Commission's determination.

APPEALS AND PROJECT DESCRIPTION:

The Pasternak Appeal asserts the Planning Commission's conditional approval of the project would prohibit uses on the property which are consistent with the governing zoning district and compatible with the community character. The Nicasio Land Owners Association Appeal asserts the Planning Commission did not adequately address the following issues: (1) adequacy of water supply; (2) location of camping activities within a Stream Conservation Area (SCA); (3) feasibility of installing a permanent septic system to serve the camp; (4) potential siting of the uses off-site and on National Park Service lands; and (5) imposition of licensing requirements for the proposed project.

ANALYSIS:

Pasternak Appeal

1. The Pasternak Appeal asserts that the project is consistent with the Marin Countywide Plan and the Marin County Development Code.

Mr. Pasternak maintains that the project as originally proposed is consistent with the policies of the Marin Countywide Plan (CWP) and Marin County Development Code for the reasons specified in the resolution approved by the DZA (please refer to pages 2 and 3 of Attachment 10 to view the DZA resolution approving the Pasternak Use Permit).

At their hearing of September 28, 2009, the Planning Commission found that the overnight camp was not wholly consistent with the CWP, particularly Policy BIO-4.1, because the overnight camp and associated uses would be located within the SCA. The Planning Commission found that the scope and intensity of the educational tours, overnight camp, and special events would be incompatible with the prevailing community character and inappropriate for the site (please refer to Attachment 8 to view the Planning Commission's approved minutes and resolution). The Planning Commission further noted that additional environmental review (in the form of an Initial Study and Negative Declaration of Environmental Impact) would be preferred for adequate consideration of the originally proposed project.

In conclusion, the Planning Commission determined that the project could not be approved as originally proposed because the total number of special events, educational tours, and overnight campers exceeded the capacity of the site, resulted in activities located within the SCA, and did not adequately resolve issues pertaining to permanent sewage disposal and water supply for the overnight camp. As a result, the Planning Commission reduced the number of special events and educational tours, and deleted the overnight camp from the project description to bring it into greater compliance with CWP policies and the Marin County Development Code.

Nicasio Land Owners Association Appeal

1. The Nicasio Land Owners Association Appeal asserts that the project applicant has not provided adequate information for review relating to the adequacy of the water supply at Devil's Gulch Ranch.

The applicant provided Environmental Health Services (EHS) staff with well production data over a period of 10 years. This information was reviewed to determine Public Water System requirements relating to Maximum Day Demand (MDD) and Peak Hourly Demand (PHD) for the well and storage capacities. The MDD and PHD were calculated using worst case estimates of flow rate and demand to evaluate the combination of a well and reservoir system. The applicant has proposed storage tanks to provide 7,800 gallons for domestic use, and use of the reservoir for irrigation.

Staff from EHS determined that the water sources and storage capacities were adequate to meet the added demands of the expanded camp operations. This conclusion was based on historic production data, exaggerating the expected demand from the camp, underestimating available flow, and underestimating available storage capacity. Additionally, the project shall be required to obtain a permit for a public water system that further expands the on-site storage capacity by 5,000 gallons, and requires compliance with public water system standards.

Although commentors have expressed concerns about water supply (and in one case provided a well report from 2001) and alleged that activities on Devil's Gulch Ranch may result in detrimental impacts to surrounding properties, no evidence has been provided that the water usage at the Devil's Gulch Ranch would adversely affect other properties in the area. In conclusion, EHS staff has determined that adequate water is available to serve the proposed project subject to acquiring a permit to operate a public water system.

- 2. The Nicasio Land Owners Association Appeal asserts that the camp area is located within a Stream Conservation Area (SCA), and may result in potential erosion and pollution of Devil's Gulch Creek.**

The originally proposed project located the overnight camping area directly atop Devil's Gulch Creek. The Planning Commission noted this and found that the overnight camp could not be approved due to its inconsistency with Policy BIO-4.1 of the CWP. The special events, educational tours, and day camp are not proposed to be located within the SCA. This basis of appeal is not germane based on the project modifications made by the Planning Commission.

- 3. The Nicasio Land Owners Association Appeal asserts that the project should not be approved until feasibility tests have been accepted for the location of a new septic system.**

A permanent sewage disposal system was required based on the proposed overnight camp. Since the overnight camp was not approved by the Planning Commission, this requirement no longer applies. This basis of appeal is no longer germane to the project.

- 4. The Nicasio Land Owners Association Appeal asserts that the project applicant has not submitted a survey and that the project should not be approved until resolution of the ongoing land dispute between Devil's Gulch Ranch and the National Park Service.**

The Marin County Community Development Agency (CDA) is not the arbitrator of land disputes between individual land owners. Boundary disputes are a civil matter to be addressed by individual parties, and the CDA is not in a position to resolve these types of issues between property owners. Furthermore, the resolution of the boundary dispute would not affect the project regardless of its outcome.

- 5. The Nicasio Land Owners Association Appeal questions what other licenses from other public agencies are required for the project.**

The County is the "lead" agency and looks to other public agencies for their input. Typically, an applicant is required to obtain land use permit approval prior to fulfilling other public agency's permit requirements. For this project, the CDA determined that the project applicant may require additional licensing from the Alcoholic Beverage Control (ABC), the Public Utilities Commission (PUC), the Department of Motor Vehicles (DMV), the California Highway Patrol (CHP), the American Camp Association (ACA), and Community Care Licensing (CCL).

The Planning Commission eliminated the requirement for the applicant to obtain a license from the ACA and CCL. However, the resolution requires the applicant to obtain permission in writing from the

ABC and CHP demonstrating that the project meets their regulatory requirements prior to commencement of camp operations and special events at the property.

It is unreasonable to direct the applicant to obtain permits from other regulatory agencies when it is uncertain whether a project proposal will be allowed; frequently, state permitting agencies will not take action on a project until after the local jurisdiction has issued its decision. Instead, the CDA requires the applicant to obtain these approvals prior to commencing activities on the property. In conclusion, the applicant will not be able to conduct the approved uses on the property until the conditions of approval have been fulfilled.

CONCLUSION:

The Planning Commission acted appropriately in its determination partially denying and partially sustaining the appeal filed by the Nicasio Land Owners Association. The project modifications made by the Planning Commission eliminated inconsistencies with the Countywide Plan and provided for further diversification of agricultural operations. The modified project will continue to diversify agricultural uses at Devil's Gulch Ranch by complementing traditional agriculture uses, thereby helping to ensure the continued economic viability of the county agricultural industry, and providing increased food security. Furthermore, the project will raise the level of public awareness and understanding of Marin County agriculture, including its ecological, economic, open space, and cultural value, and its importance to local food security. The project is compatible with the community character because it will preserve the open character of the area and ultimately enable an agricultural operation to stay viable through marketing diversification and education.

Respectfully submitted,

Reviewed by:

Curtis Havel
Senior Planner

Brian C. Crawford, AICP
Director

Attachments:

1. Resolution recommending denial of the Pasternak and Nicasio Land Owners Association Appeals and sustaining the Planning Commission's conditional approval of the Pasternak Use Permit application
2. Pasternak Petition for Appeal
3. Nicasio Land Owners Association Petition for Appeal
4. Location Map
5. Project Plans
6. Table 1 – Comparison of Original Proposal to DZA and Planning Commission Project Approvals
7. Correspondence received since October 12, 2009

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.

8. Minutes and Resolution from the Planning Commission Hearing of September 28, 2009
9. Staff Report (with attachments) from the Planning Commission Hearings of September 28, 2009 and August 24, 2009
10. Minutes and Resolution from the Deputy Zoning Administrator Hearing of June 25, 2009