

REGULAR PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, OCTOBER 2, 2013,
SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Von Feldt called the Planning Commission regular meeting to order at 7:30 p.m. Ms. Kristiansson called the roll:

Present: Commissioners Arthur McIntosh, Nate McKitterick (arrived about 7:55 p.m.) and Nicholas Targ;
Vice Chair Denise Gilbert; Chair Alexandra Von Feldt

Absent: None

Staff Present: Tom Vlastic, Town Planner
Karen Kristiansson, Deputy Town Planner
Ann Wengert, Town Council Liaison

ORAL COMMUNICATIONS

None

REGULAR AGENDA

- (1) Public Hearing: Proposed amendments to Conditional Use Permits (CUPs) X7D-151 and X7D-169, 555 Portola Road, Spring Ridge LLC (Kirk Neely/Holly Myers)

Mr. Vlastic presented the September 27, 2013 staff report, starting with an overview of the two CUPs and the proposed application. He referenced the preliminary review of the project, including the May 13 site meeting and subsequent correspondence with the applicant to clarify the application. With the public hearing process on the matter underway this evening, Mr. Vlastic noted that the focus of discussion is likely to relate to the boundary of the planting area and scope of vineyards, currently proposed at 5.5 acres within the northerly part of the meadow. He noted that although results differ among various maps when trying to measure areas, the data in the staff report is sufficient to give a good sense of changes relative to area. He said he hoped the site meeting gave participants a chance to appreciate the physical conditions within the meadow, and as the matter continues toward closure, more site visits may be appropriate.

The site map Mr. Vlastic referenced showed the lower portion of the Spring Ridge property and the Meadow Preserve area as it appears on the Town's General Plan Diagram, including 17 acres on the subject property and the southernmost seven acres of the 24-acre area that is controlled by MROSD. Mr. Vlastic noted that thinning of vegetation along the MROSD frontage has been completed, with the Conservation Committee, the ASCC's Danna Breen and Public Works Director Howard Young working together to address concerns about the potential loss of habitat and understory. Working with ASCC and Conservation Committee representatives, Mr. Vlastic added, Dr. Neely has completed thinning along the southern property boundary, and further thinning along the Town's right-of-way will take place as funds become available, he said.

Mr. Vlastic also pointed out the area approved for haying on the site map, as well as the portion on the southwest side of the meadow that is approved for orchard and other agricultural uses, and the area for vegetables immediately in front of the approved agricultural building. Of the approximately 5.5 acres of vineyards the applicants propose, approximately 3 to 3.25 acres are within the meadow area approved for haying.

The second part of the request, Mr. Vlastic continued, is to restart the five-year clock when the Planning Commission takes action on the proposed amendment. He said the approach to agriculture, management and harvesting are all within the scope of what the Planning Commission reviewed last year, and impacts associated with operations, traffic, control and pesticides are all covered by conditions that were established then and have since been refined somewhat. Although the issue of General Plan language has yet to be resolved, Mr. Vlastic noted that the staff report of September 27, 2013, establishes a framework for consideration of the CUP amendment that should allow the Planning Commission to move ahead.

From a visual and aesthetic standpoint, Mr. Vlasic continued, the ASCC concluded that, due to elevation changes, vineyards would be an acceptable design solution. If the Planning Commission decides some vineyard uses are acceptable in the northerly meadow area, he said, and approves or modifies suggested conditions, staff will craft a resolution for action.

Dr. Neely offered a few clarifications. He said the proposal essentially differs very little from what they proposed a few years ago, and on the site map pointed out the area in which they want to plant vineyards and where they want to move the vegetable garden and orchard. He said plenty of experience goes into their knowledge of the best conditions for growing grapes long-term, but not raising vegetables and orchard crops. Going with what they know how to do would make it sustainable, he said. In addition, vineyards are every bit as attractive as orchards and vegetables, and are easier to maintain with a smaller crew as well as requiring less tilling and less water. Dr. Neely said he had issues with several of the suggested conditions but would wait to respond to them until after hearing the Commissioners' commentary.

Vice Chair Gilbert made several observations:

- It would be important for the entire Planning Commission to be present when this issue comes to a vote, which is scheduled for the November 6, 2013, meeting. In addition, she also noted that the October 28 deadline for comments on the negative declaration may leave insufficient time to incorporate by the November 6 meeting if any comments are submitted near the deadline. Since she will be unable to attend the November 6 meeting, she wanted to suggest deferring a decision to the following meeting.
- The Planning Commission used old General Plan language when it reviewed the previous CUP, but now would be relying on the new language.
- Staking locations for haying and other proposed plantings in the field would be critical for Planning Commission consideration of the visual effects. She said the staking didn't have to be elaborate.

In response to Chair Von Feldt, Mr. Vlasic returned to the site plan and identified the land proposed for vineyards, including some previously designated for vegetables and some outside of the main meadow area.

Chair Von Feldt opened the public hearing.

In response to Jon Silver, Portola Road, Mr. Vlasic said current General Plan language relative to the Meadow Preserve appears on page 7 of the staff report. In part, it reads, "The preserve should be kept in a natural condition and the existing agricultural character preserved."

Marilyn Walter, Coyote Hill, a 45-year Town resident, referred to the Initial Study for the project. Items in the "Aesthetics" and "Land Use/Planning" are checked in Section II, Environmental Factors Potentially Affected. In Section III, Determination, there is a checkmark next to the statement, "I find that the proposed project *could not* have a significant effect on the environment, and a *negative declaration* will be prepared pursuant to Section 15162(b) of the California Public Resources Code." Ms. Walter said she objected to that determination. She stated that the scenic vista of an open hayfield as the setting for the Windy Hill views would be disrupted by rows of grape vines and fenced against wildlife, which would have a substantial adverse impact on aesthetic quality. In addition, using the land as a vineyard requires workers and equipment to plant, cultivate and harvest, which would intrude on what is now an open meadow. In conclusion, she asked the Planning Commission to protect this scene.

Mr. Silver said the General Plan language about the Meadow Preserve is very important. He said the haying operation is the existing agricultural character, and vineyards to the extent proposed would be inconsistent with that character.

Rusty Day, Pinon Drive, said the public is entitled to hear and understand the conditions that the applicants consider unacceptable. Noting that the applicants indicated the site map being viewed is inaccurate, he also wants to see a map that accurately sets out what the existing CUP approves and what would change with the uses proposed.

Mr. Day said he doesn't consider the central issue to be whether vineyard use is consistent with the General Plan. Rather, he said, the central issue is how the Planning Commission implements the General Plan. We are trying to preserve open space and open vistas in the meadow, he stated, and the applicants claim their proposal would do so in a way that makes it economically viable to sustain the open space. Yet, he said, he has not seen anyone insist on a commitment that what is not vineyard would be preserved as open space. Although the Planning Commission approved installing the parking lot at Windy Hill, which is definitely not open space, that parking lot serves the larger need of preserving open space and making it accessible. Similarly, if the Planning Commission were to approve vineyards, he suggested a quid pro quo that requires a conservation easement to assure preservation of a specified number of acres of the remaining open space.

Mr. Day noted that while the proposal includes no internal road improvements, he does not see where the unimproved roads that the applicants intend to use are located. He wants the Planning Commission to get specifics about their locations, because he said he expects they go right through the meadow. If there are agricultural uses at the north and southwest portions of the property, Mr. Day stated that there is easy road access along the back of the property that would avoid crossing the meadow, and the Planning Commission is obligated to protect as much of the meadow as possible.

Mr. Silver said that an open-space easement might be more appropriate than a conservation easement to keep traffic out of that portion of the meadow.

Bud Eisberg, Wyndham Drive, asked about MROSD's obligation to preserve the portion of the meadow it controls. No specific conditions apply, Mr. Vlastic said, but there was the assumption that given the District's charge, they would manage the area in an environmentally sensitive way consistent with its policies. He confirmed Commissioner McKitterick's observation that General Plan provisions concerning the Meadow Preserve also apply to MROSD.

Mr. Silver said that the reason the open space district got its seven acres is because, at the time, it was thought that it might be unsafe to have the access road to the preserve's parking lot as close to the corner of the Sequoias as it still is, and it was thought that the access road could have go through the meadow. The Town Council thought they might have to approve it in order to preserve Spring Ridge. Later the traffic engineers found that they did not need to put the road there, and so the open space district got the seven acres that they basically could keep in a much more natural state. Mr. Vlastic pointed out that there was no reevaluation of the General Plan at the time to do that.

In response to Bev Lipman, Favonia Road, Mr. Vlastic explained that the green areas on the applicant's map depict fault zones and setbacks, not open spaces.

Dr. Neely said he needed to reply to Mr. Day's factual errors:

- The site plan submitted is completely accurate, and his earlier remarks were simply to clarify some of Mr. Vlastic's comments concerning the application.
- The unimproved roads through the meadow are fully and accurately depicted on multiple site plans.
- The Town Council and Planning Commission both previously concluded that it would be inappropriate to ask for a conservation easement in the context of a CUP versus as part of a subdivision.

With no further public comments, Chair Von Feldt closed the public hearing and brought the matter back to the Commission to discuss proposed conditions and public input.

Commissioner McKitterick recalled the Town Attorney advising that it would be inappropriate to request a conservation easement or other document as part of the previous application. Mr. Vlastic said that as he remembered it, the nexus for making such a request would rest on the amount of overage beyond ordinance limits.

Dr. Neely addressed several of the suggested conditions:

- Conservation easement: The applicants felt that it would not be worth it to grant a conservation easement in exchange for a few acres of vineyard.

- Thinning vegetation: After meeting with the ASCC and Conservation Committee, the applicants agreed to remove 40 trees; when some Conservation Committee members later expressed dissatisfaction with the extent of that thinning, they met again with both entities and removed at least a dozen more trees and limbs identified by the Conservation Committee as well. They also committed to open up a segment at the north end of the driveway for viewing. Dr. Neely said that they could not go on indefinitely talking about thinning trees, so they would not agree to that as a condition for the CUP.
- Wildlife corridor in the meadow: He said although it did not make sense either agriculturally or for the wildlife, he and Ms. Myers acquiesced to breaking up the blocks of agricultural areas in their last proposal. They have now presented “a more reasonable agricultural site plan” and are unwilling to chip away to get any less than 6.5 acres of agricultural area. He said wildlife already runs free on at least 175 acres, and the agricultural area is trivial in comparison. Furthermore, he said that the entire periphery is open to wildlife traffic, as well as a huge portion of the central area.
- Southern boundary fence: The existing CUP doesn't address the southern fence at all, Dr. Neely said, so in good faith they proposed to the ASCC an “attractive little fence” to demarcate the boundary between the MROSD's property and theirs. He added, however, that they are willing to forego that fencing in deference to concerns of some Planning Commissioners.
- Another proposed condition is that they return to the Planning Commission yet again with an agricultural plan, Dr. Neely said. “Micromanaging can only go so far,” he commented. “This just can't go on forever, so I just don't think that's a purgatory that we want to live in or that you guys really want to live in.”

Dr. Neely asked if there was any reason the Planning Commission could not vote on this matter at its October 20, 2013 meeting rather than on November 6. Mr. Vlastic said the Commission could not vote on October 20, explaining that the process has already been laid out in the noticing. The only dependency, he said, would be the question of Commissioners' attendance at the November 6 meeting. Ms. Kristiansson added that the Commission could not act on the application until the comment period on the Negative Declaration has ended, which will not be until October 28.

Mr. Day focused on the applicants' position on the conservation easement. As Mr. Day sees it, if the Planning Commission approves the vineyard in any portion of the meadow, the applicant may use that precedent and consider the vineyard consistent with the General Plan. With respect to the existing roads, he said that he does not know that the public knows where they are, and if they go through the meadow, they should be off-limits for truck traffic. He said the minimum that the Town should get is a conservation easement to prevent such traffic in order to implement the General Plan, which requires preservation of the meadow.

Mr. Vlastic pointed out the location of the existing dirt tracks on the applicant's map, noting that they were intended to be used for harvesting hay, which has been an ongoing activity and is approved in the existing CUP. The proposal would allow these same tracks to be used for any other agricultural products approved with the new CUP to be transported to the barn used for haying.

Mr. Silver said it is important for the conditions to be very specific to ensure that the meadow retains its meadow character in future years. He also spoke to the issue of a nexus in the context of a possible conservation easement, and stated that given the General Plan language, the Town would need to have a conservation easement for conformity. In addition, he stated that he agrees it is important to have all Planning Commissioners vote on the application.

Ms. Myers added that she and Dr. Neely have fully engaged in this process for nearly six years, from wildlife corridor discussions to tree thinning and removal to fencing, and they are very mindful of these issues. With more than 33 years of residency in Portola Valley, she said they have more than demonstrated their commitment to the Town and their property.

In response to a question from Commissioner McKitterick, Ms. Danna Breen said she supports this project and agriculture as a reasonable rural use, considers the applicants fine stewards of the land, and was pleased to hear Dr. Neely's willingness to concede on the fence. She said she agrees with the ASCC's position on the visual elements of the proposal, with the development tucked back and low on the hill.

Dr. Neely said the Town would be much better off trusting their good will and realizing that they will keep some vistas open, striving to make it as lovely as possible for the Town. He said his point is not to make demands of the Planning Commission or any threats; he is trying to be realistic and up front with the Commission.

Mr. Silver said he appreciates what Dr. Neely said, and agreed with everything Ms. Myers said. He also confirmed that they have been wonderful stewards of the land.

Ms. Lipman expressed ongoing concerns about the road across the meadow. Mr. Vlasic said that according to the proposal, the existing roads without any improvements may be used for harvesting within the meadow; these are basically the few tracks that are used infrequently now and could be used in that way in the future. He said it was understood with the approved permit that the harvest from the location he identified on the site map would go to the agricultural building, which would primarily be for the haying operation. He also explained that these unimproved roads could be used only to service the meadow area agricultural use, not for main access to the property. He acknowledged that circumstances could change with an amendment to the CUP, but stressed that changes to use permits do not happen in Portola Valley without a lot of thought and scrutiny from the Town and the public.

Commissioner Targ stated that a number of the conditions look like mitigation measures and asked whether they would be required to ensure there are no significant environmental impacts. Mr. Vlasic said that that the conditions were not required mitigation measures. Further, he said that the thinning has been achieved consistent with conditions of the original approval and he did not believe further clearing would be needed as mitigation for this application. The fenced agricultural blocks were part of the original approval, he said, but if they are not needed for wildlife movement with the plan now proposed, they would not be necessary for mitigation.

Commissioner McKitterick said that rather than being a mitigation measure, the thinning requirement came up largely as a result of the Portola Road Corridor Plan Task Force's work, which recommended opening up more views along Portola Road. In fact, he said he understands the argument but does not believe that screening to obscure vineyard activity in the meadow would be desirable.

Chair Von Feldt noted that items 1a, 1c and 9b are marked as "less than significant impact with mitigation incorporated" but she did not see mitigation measures for these. Commissioner Targ said that also caught his eye. Mr. Vlasic said that the current application is within the scope of the existing use permit, and mitigations for these items were covered in the last application. Vice Chair Gilbert said she thought the mitigation for the existing use permit was to keep non-haying uses on the periphery to maximize the meadow, but she added that the Planning Commission has not seen the final MND from the last application. Mr. Vlasic said they were the conditions approved with the CUP that were tied in with the Initial Study and final MND. Vice Chair Gilbert asked whether recirculation would be necessary if the Commission added new requirements for the project. Mr. Vlasic replied that not all new conditions are mitigation measures, and recirculation would not be required for conditions.

Commissioner Targ said he was trying to determine whether the incremental change from the prior approval would require a mitigation measure. He said existing conditions on the property may address this issue already, or an additional action may need to be taken under that condition to bring the impact to a "less than significant" status.

Mr. Vlasic said the key change on which the Planning Commission's direction is needed concerns the area that may go to vineyard use that was denied previously. If the Commissioners cannot make the findings for General Plan conformity without further mitigation, he said they would have to articulate that.

Commissioner McKitterick added that the Commission also must determine whether to allow the vineyards at all. He stated that he continues to support that part of the application but wants further discussion on some of the details. He said he favors more thinning, in keeping with the Portola Road Corridor Plan Task Force's recommendations; he wants to establish boundaries once and not require the applicant to submit yet another agricultural plan; and he wants the CUP to clearly identify the use and location of the unimproved roads.

Commissioner McIntosh said he favors the vineyard and the concept of agriculture in the corridor. With two-thirds of the meadow in grassland, the orchards along Portola Road, and the vineyards along the road in Woodside, he said he would have no trouble finding the proposal consistent with the General Plan. He added that

vineyards would also be conducive to retaining open space because they are expensive to install, and once they are established it becomes a commitment to long-term open-space use. He believes wildlife access works well on both sides of the property and said it would be awkward to put a fenced corridor down the middle.

Vice Chair Gilbert said she had three overall concerns. First, she is concerned about making a decision on the meadow preserve before that portion of the General Plan is clarified through the process requested by the Town Council. The current language is confusing and internally contradictory, and this language needs to be changed. She understands the applicants' needs to reach closure on the proposals for their property, but is concerned about circumventing the process.

Second, she considered the intent of the original General Plan language and what the authors were trying to protect when they used the term "meadow preserve." In search of an answer, she reviewed Town Historian Nancy Lund's book and took note of the "enormous amount of hayfields, flax fields, open grasslands" in the photographs of the Town at the time the General Plan was first written. This property includes the last meadow and it is important we do what we can to preserve it. Vice Chair Gilbert expressed support for agriculture but concern about putting it in an area specifically set out in the General Plan to be preserved as a meadow.

Furthermore, Vice Chair Gilbert said she identified a "red flag" in the Planning Commission's adoption of Resolution No. 2000-393, approving CUP X7D-151 in June of 2000. In that resolution, the Commission finds that ". . . any expansion of the winery could raise significant questions as to consistency with the General Plan, particularly due to the property's high visibility and the potential modification of natural land forms and vegetation." The staff report interprets this as a limit on the volume of wine produced on the property, but the finding specifically mentions visibility and "modification of natural land forms and vegetation." She interprets this to mean that the prior Commission was concerned about the planting of more vineyards.

Third, Vice Chair Gilbert said that with respect to the staff report's comment that there is latitude in the General Plan, she felt that the Planning Commission had already exercised latitude in interpreting the "largely open" description in the General Plan, by allowing the construction of the barn and the planting of orchards and some vegetable areas around the periphery of the meadow. While not approving as much as the applicants requested, she said the Commission must be careful, to avoid encroaching more and more on the meadow each time the applicant requests an amendment to the use permit. She said at some point we must decide where to draw the meadow boundary. Furthermore, while the meadow preserve language used to review the prior use permit amendment contained the phrase "largely open," this review is based on the revised meadow preserve language in which the phrase "largely open" has been removed.

With respect to the details of the proposal for fencing on the southern boundary and for a wildlife corridor, Vice Chair Gilbert said she would prefer no fences because they would interfere visually with the meadow. For the same reason, she would favor more thinning to open up views. She does not support a double fence to create a wildlife corridor, feeling that it is not practical; the wildlife will not use it and visually she would prefer less fencing. She also agreed that the drawings should be clear enough about what goes where so the applicants would not have to come back to the Planning Commission with yet another agricultural plan, and said she has no issues with use of the unimproved roads as indicated in the proposal.

When Vice Chair Gilbert asked whether text written on the site plan has the same force as what's written in the CUP, Mr. Vlastic said the site plan would be approved as part of the CUP. She explained that she was asking particularly relative to the statement on the site plan that chemicals will not be used. In response to a follow-up question from Commissioner Targ, who said he's never seen an absolute proscription against the use of chemical regulants or pesticides, Dr. Neely confirmed that the applicants have committed to organic agriculture on multiple occasions, and if a circumstance arose that might be a cause for an exception, they would seek approval from the Town.

At this point, based on staff analysis of the less than significant impacts, Commissioner Targ said he does not have any issues with the application, including consistency with the General Plan, although he too wants clarification about use of the existing roads. He said the issue of additional thinning could be addressed for further clarification, and also indicated that a conservation easement could address the concern about nibbling at the meadow. Commissioner McKitterick added that he could see that there could be a nexus for a conservation easement which could be documented with strongly worded findings about consistency with the General Plan.

Chair Von Feldt said that as Dr. Neely pointed out, this application does not differ significantly from what they submitted several years ago, and she is still inclined not to support it. She said if the vineyard use were to be allowed, a conservation easement would make it palatable.

Commissioner McKitterick said he is very aware of the Planning Commission's situation in having to decide on this application before the Town Council considers the General Plan language, and that it is difficult to say what is required here without Town Council direction. If the Commission does eventually approve the project, he would ask for a finding documenting that one reason the vineyard use could be acceptable is because of the lower elevation and location of the land, which is different from the land contiguous to the Open Space District's land. The meadow isn't the same all across its width, and the soil conditions probably differ as well. This type of finding could help make the decision less of a precedent.

Chair Von Feldt noted that she still did not see the mitigation measures and therefore could not vote for the Negative Declaration. Commissioner Targ said that he understands the issue, because there should not be a mitigation measure in a Negative Declaration, or else it would be a Mitigated Negative Declaration. This does not offend him because he understands that it is referencing the previous environmental document, although this is not how he would have done it.

Commissioner Targ said that he does not see this as a true meadow; it is chaparral which appears to be a meadow because of the active haying operation. In other words, it is not a natural meadow but is only a meadow because of interference. He said that he does not see the need to obligate maintenance of a historic meadow. This is more historic preservation, but the General Plan states that the preserve should be kept in a "natural condition." Requiring someone to maintain a meadow is not something to which he is overly sympathetic.

Chair Von Feldt stated that if the meadow were left alone, it would become habitat for invasive plants. She voted against this project in the past because of the fencing, and would like to see some mitigation for that beyond thinning. Chair Von Feldt also said it was important to remember that the CUP would run with the land, which could be critical if Dr. Neely and Ms. Myers sell it to other owners who might be less dedicated stewards of the property.

Vice Chair Gilbert asked whether it would be possible to consult with the Town Attorney regarding a possible nexus to consider for a conservation easement. Mr. Vlasic said yes. The last time around, he added, there was a great deal of discussion about the fact that the CUP is a binding contract, which is another point to bear in mind when considering any restrictions that might be imposed short of a conservation easement. Commissioner Targ stated that other actions may be more appropriate than a conservation easement and it may be worth considering what those might be rather than pursuing an unacceptable condition.

In response to a question from Chair Von Feldt, Mr. Vlasic said he would like to hold off on preparing the draft findings until after the Planning Commission meeting of October 16, 2013. Commissioners agreed to also move this item from the November 6, 2013 Planning Commission meeting to the November 20 meeting so that all Commissioners could be present to vote on the final action.

The Planning Commission continued this public hearing to the regularly scheduled Planning Commission meeting on October 16, 2013.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Ms. Kristiansson reminded Commissioners of the joint study session on the Housing Element with the Town Council on October 9, 2013.

APPROVAL OF MINUTES

Commissioner Gilbert moved to approve the minutes of the July 17, 2013 Planning Commission meeting. Seconded by Commissioner McKitterick, the motion carried 5-0.

ADJOURNMENT: 9:57 p.m.

Alexandra Von Feldt, Chair

Karen Kristiansson, Deputy Town Planner