



MARIPOSA PLANNING

COUNTY OF MARIPOSA

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MEMORANDUM

Date: May 22, 2014
To: Planning Commission
From: Steve Engfer, Associate Planner
Topic: Correspondence Received Regarding Time Extension Application No. 2014-034 for the activation of Planned Development No. 99-1 and Conditional Use Permit No. 267, SilverTip Village Resort.

The memo provides correspondence related to questions regarding the SilverTip Village Resort Time Extension No. 2014-034 scheduled for Friday May 23, 2014.

The attached letter is from the project applicant legal counsel regarding questions pertaining to:

Governance of the extensions of the development schedule of the P-D Zone for the SilverTip project.

Section O of Appendix IV of the Fish Camp Town Planning Area Specific Plan. Time limitations and extensions for a use permit issued under that P-D overlay zone.

And Mariposa Ordinance Section 17.140.020.

Please contact Steve Engfer for any questions by email or phone at 209 742 1250.

Thank you.



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May 22, 2014

Ms. Sarah Williams
Director, Planning
County of Mariposa
5100 Bullion Street
Mariposa, California 95338

Re: SilverTip Use Permit

Dear Ms. Williams:

I understand a question has been raised as to whether the provisions of Mariposa Ordinances Section 17.140.020 apply to the extension of time for the use permit issued in conjunction with the P-D Zoning for the SilverTip project. For the reasons stated below, that provision of the County Zoning is not applicable to the use permit issued for the SilverTip project.

As you know, the Fish Camp Town Planning Area Specific Plan is adopted as an ordinance. That Specific Plan, at Section VI, details the land use standards that apply to the properties within the Specific Plan environs.

Section E of those provisions describe the purposes and application of the Planned Unit Development Overlay, which is the zoning designation land use entitlement that was adopted to support SilverTip project. Its intended application in the context of this project is detailed in an August 29, 2003 letter from Mr. William Abbott, who serves as Special Counsel to the County on various land use matters, and who was involved in the original entitlement hearings. A copy of that letter is enclosed.

The implementing ordinance for the P-D zone overlay in the Fish Camp Town Planning Area Specific Plan is set forth in Appendix IV of that Plan. That ordinance confirms that "In a planned development, any use may be permitted provided such use or uses are shown on the development plan for the particular P-D and is approved by the planning commission and board of supervisors." (Section D of Appendix IV)

The Plan further confirms that a use permit is required for all uses in a P-D zone other than for a single family residence. (Section E of Appendix IV). It is clear that the use permit described in this Section E is the means by which the planning commission and board of supervisors designates the use or uses that are to be permitted in the P-D development plan. This is not the same as approving a conditional use pursuant to a CUP. This is illustrated by the fact that Section E intends that a use permit for a P-D plan can be issued by the planning commission without a public hearing if the structure or structures comply with the adopted development plan and conditions thereof. (Section E-2.)

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In sum, the use permit involved in this matter is a use permit that was issued to establish the uses designated by the P-D. That use permit does not have a life or expiration date separate from the P-D. Staff has historically administered this use permit in this fashion, and has previously recognized that any extension of the development scheduled for the P-D zone automatically carries with it a continuation of the terms of the use permit that is a supporting component of that P-D entitlement.

Extensions of the development schedule of the P-D Zone for the SilverTip project are governed by the standards set forth in Section O of Appendix IV of the Fish Camp Town Planning Area Specific Plan. For the reasons detailed above, any extensions granted pursuant to the standards and authorities of that provision necessarily incorporate a continuation of the use permit issued in support of the P-D overlay zone. Time limitations and extensions for a use permit issued under that P-D overlay zone are not governed by Mariposa Ordinances Section 17.140.020.

We thank you for your consideration of the above.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH, LLP



Jeffrey M. Reid

Enclosures: Copy of 8/29/2003 Abbott Letter

August 29, 2003

Eric Toll AICP
Community Development Director
County of Mariposa
Box 2039
5100 Bullion Street
Mariposa, CA 95338

Re: SilverTip Opinion

Dear Eric:

You have asked me for my opinion regarding continued processing of the SilverTip application based upon the Planned Development Overlay ("PD") zoning. Specifically, you have asked me whether or not the PD may be administered in a manner in which the calculation of acreage devoted to Resort Commercial ("RC") uses is calculated based upon the footprint of the buildings and other hardscape. *It is my opinion that the PD land use designation in the Fish Camp Town Specific Plan and implementing zoning ordinance permits the County to calculate the amount of land devoted to RC uses based upon the building footprint and other hardscape. My analysis follows.*

Analysis

1. The purpose of a Planned Development designation.

A PD is a land use tool which emphasizes flexibility. "As a zoning classification, it allows a single zoning district to combine a variety of uses (residential, commercial and even some industrial) that are otherwise generally not permitted within the same zoning district." Curtin's California Land Use and Planning Law (2003) p. 62. "Whatever title be given to the concept, the plan is to devise a more imaginative use of undeveloped property than that which results from proceeding pursuant to a typical gridiron, lot-by-lot basis. Control of density in the area to be developed is an essential part of the plan. The reservation of open space in a manner differing from the conventional front or back yard is another ingredient." Longtin's California Land Use §3.12. State law does not define the structure or application of this type of planning and regulatory tool. The planned development land use classification and zoning designation may be applied to the SilverTip project for the purposes identified to date, that being a more creative site plan and preservation of open space.

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2. The Fish Camp Town Planning Specific Plan

The Fish Camp Town Planning Specific Plan ("FCTP") addresses the use of the Planned Development technique in two different parts of the Plan. Section VI(E) includes Planned Unit Development Overlay as a type of land use classification. This text references the appendix, which is the implementing ordinance and provides that the PD is an alternative development procedure, intended to preserve the natural environment while encouraging open space. While generally the PD follows the land use regulations of the primary or underlying land use classification, the specific plan provides for the development of customized land use standards. The text provides, "*Planned Development regulations may address density and bulk (set back) standards to encourage cluster, common wall and condominium construction that would minimize site disturbance and encourage dedication of open space. Any changes in maximum density standards must reflect the intent of the affected land use classification in combination with the express purposes for which Planned Development is encouraged.*" FCTP, p. 30. The ability to increase commercial densities is expressly recognized as one of the purposes of the PD zone. FCTP, Appendix IV, I.A.6.

Section VI E (2)(b) requires compliance with "land use, height and set back standards". Subsection (c) which immediately follows (b), expressly authorizes changes to density standards and setback standards. While not defined, the reference to "land use" logically means the list of allowed uses permitted by the underlying zoning districts. In this context, the FCTP is less liberal than other PD ordinances which would permit a customized list of uses, irrespective of the underlying designations.

Additionally, in the chapter/section entitled Implementation (FCTP p. 41). This text sets forth six bullets as possible application of the PD. Generally, these bullets recognize clustering and the creation of open space. The last bullet is neutral in its potential application, recognizing that the PD could provide "a way of dealing with mixed land use on certain properties."

The FCTP text (p. 41) has additional language limiting density bonuses for residential projects. As the SilverTip application is almost exclusively a resort commercial project and not a residential project, this language does not operate as a limitation on density calculations.¹

¹ "*Only through the use of the Planned Unit Development Zone will certain properties within the TPA realize their full residential and/or resort commercial potential. Aside from any density bonuses required by State law for certain residential housing projects, no density bonus will be considered, above the land use classifications density, for any project.*" (FCTP, p. 41)

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3. The Implementing Ordinance

The text of the implementing ordinance is found at Appendix IV of the FCTP. This attachment sets forth the specific requirements of the application for, findings and approval of Planned Developments. As with most PD ordinances, the PD approval itself is used to define the standards applicable to a particular parcel. (Appendix IV, sections D, I(c), J and K.) For residential projects, section K sets forth the maximum density calculation. However, as noted earlier, the SilverTip application is essentially a resort commercial project, and not a residential project, and therefore the residential caps have only limited application and are not a substantive limitation.

4. The Pending Application

The pending application is for a resort development. The uses are consistent with those of the Resort Commercial land use designation as set forth in the FCTP. These uses include commercial lodging including cabins, conference facilities, retail, dedicated employee housing units, one proposed residential parcel² and supporting infrastructure. The resort facilities are proposed for a site which has both Single Family and Resort Commercial land use and zoning designations. Among the other requests, the applicant originally sought to amend the FCTP to increase the amount of property designated for Resort Commercial uses from 9± acres to 38+ acres of developed area, to designate the entire site as PD, and a use permit as required by the PD ordinance. The amount of resort-commercial land area necessary to support the proposal is 10.6+ acres.

5. Board of Supervisors Options for Proceeding

Should the Board elect to support the pending application or some variation thereof, the Board will have several options on how to proceed. Common to all options is the designation of the entire site to Planned Development, rezoning of the entire site to Planned Development, and issuance of a conditional use permit referencing a site plan and applicable development standards. The options exist with respect to the underlying zoning and the choices are:

- A. Adjusting the zoning lines between single-family and resort-commercial such that there would be two areas zoned separately for these uses ("block zoning"). This would likely result in zoning more property than necessary to achieve the resort

² The Keller parcel, roughly 2.5 acres in size.

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commercial project. This option is illustrated by the original application (DEIR, Figure 206)

- B. Designating the footprint and hardscape of the resort facilities as resort-commercial, with the balance in single-family/open space ("footprint zoning"). This may create pockets of residentially zoned property within the overall areas designated resort-commercial. This option is illustrated in the attachment to the staff report.
- C. Including within the PD rezoning an amount of acreage allocated to single-family and resort-commercial, without employing an underlying zoning map designation ("intensity zoning"). An example of this approach would be a PD zoning noted as PD (10.6 acres Resort-Commercial; 2.5 acres SFR with one development parcel; 25 acres SFR restricted to OPEN SPACE USES). As with the previous options, the conditional use permit, in conjunction with an approved site plan, would control actual uses.

Neither the specific plan nor the implementing ordinance provide guidance as to which technique is to be employed. As long as the County can determine that the planned development complies with "land use, height and off-street parking requirements," then any of the referenced approaches may be utilized. (FTCP p. 30.)

Sincerely,

/S/

William W. Abbott

WWA/msp

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