



**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
February 27, 2008  
Agenda Item: **1**

## **STAFF REPORT**

To: **Members of the Planning Commission**

From: **Community Development Department**

Subject: **Consider Recommendation to the Town Council for Approval of the Ling Precise Development Plan (PD #24) to Create Three Building Sites on a 5.6 Acre Parcel; End of Stony Hill Road; Joe Ling, et al, Owner; Assessor's Parcel No. 055-261-10; File No. 30705  
(Continued from February 13, 2008)**

## **BACKGROUND**

On February 13, 2008, the Planning Commission conducted a public hearing on the merits of a revised and scaled back Ling Precise Development Plan application. At that meeting, the Commission expressed support for the revised three-lot project design, but requested modifications to the draft resolution recommending approval of the project to the Town Council. The item was continued and the public hearing was held open only to the extent that comments would be taken on any of the modifications made to the resolution subsequent to the February 13<sup>th</sup> meeting.

## **ANALYSIS**

Staff has attempted to reflect the direction of the Commission in a revised draft resolution, which is attached as **Exhibit 1**. The modified sections of the resolution have been underlined and are summarized as follows:

1. Rejection of Mitigation Measures 3.11-A.1 and 3.11-A.3 to eliminate requirements for public parking beyond the end of the cul-de-sac and widening the pedestrian trail easement area to be offered for dedication to the Town (Section 2 of the draft resolution). These mitigation measures have been deemed unnecessary as they do not directly mitigate environmental impacts of the project and may result in undesirable impacts on surrounding properties.
2. A requirement that individual house designs submitted for Design Review closely resemble the conceptual house designs submitted as part of the Precise Development Plan, with direction to the Design Review Board to avoid changes to the house designs that would have greater impacts on views across the site from neighboring homes, substantially increase the heights of retaining walls, result in substantially more grading, increase the project's visibility from off-site, or

otherwise substantially increase the project's impacts on the surrounding area (Condition No. 4);

3. A requirement limiting the building heights for the homes on Lots 1 & 2 to 27 feet (Condition No. 7), while leaving intact discretion of the Design Review Board to further reduce heights if necessary to secure conformance with the guiding principles of design review;
4. A requirement specifying that screening landscaping be installed immediately after landslide repairs have been completed in the surrounding area and requiring hydro-seeding for dust control and soil stability (Condition No. 9);
5. A recommendation to the Town Council to accept the dedication for public street purposes of the extension of Stony Hill Road proposed as part of this application through the end of the roadway cul-de-sac (Condition No. 13);
6. A clarification that the improved pedestrian trail is intended to be only 3 to 5 feet wide (Condition No. 14);
7. A requirement limiting all grading involving the use of heavy construction equipment to the period between April 15 and October 31 of each year (Condition No. 21), with authority by the Building Official to grant limited time extensions in his reasonable discretion. Staff notes that this is a standard condition of major grading permits issued by the Town, but that it should be made known to the applicant at the earliest approval phase;
8. Additional details for the \$25,000 dust clean-up fund specifying how and when the fund would be disbursed, with a requirement that a complete program be set forth at the time of Tentative Map approval (Condition No. 22);
9. A requirement prohibiting smoking on site by employees during any portion of project construction and requiring that a water truck be present on the site during vegetation removal (Condition No. 23); and
10. A requirement that traffic improvements required at the Stony Hill Road/Gilmartin Drive intersection be completed at the earliest beginnings of the subdivision improvements for the project.

## **RECOMMENDATION**

Staff recommends that the Planning Commission:

1. Reopen the public hearing to hear any comments on modifications to the draft Resolution, and
2. Adopt the draft resolution recommending conditional approval of the Ling Precise Development Plan to the Town Council.

**EXHIBITS**

1. Draft revised resolution
2. Letter from John Gigounas, dated February 15, 2008

**Prepared by:** Scott Anderson, Director of Community Development  
Daniel M. Watrous, Planning Manager

**RESOLUTION NO. 2008-(Draft)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF TIBURON  
RECOMMENDING CONDITIONAL APPROVAL OF THE LING PRECISE  
DEVELOPMENT PLAN (PLANNED DEVELOPMENT NO. 24) AND  
ADOPTION OF A MITIGATION MONITORING PROGRAM  
(ASSESSOR PARCEL NO. 055-261-10)**

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. Findings.

- A. The Town of Tiburon has received and considered an application filed by Joe K. Ling, et al, for a Precise Development Plan (the Ling Precise Development Plan) to develop the following project:

The development of three (3) single-family dwellings and appurtenant improvements on an approximately 5.6-acre property. The Ling Precise Development Plan would establish the maximum density and basic layout and RPD zoning district parameters of the development, including but not limited to building envelopes, height and floor area limits, and other zoning elements for the three (3) proposed future lots.

- B. The Precise Development Plan application consists of File #30705, on file with the Town of Tiburon Community Development Department. Materials from that application include but are not limited to the following:

1. Project description, dated July 2, 2007;
2. Project plans (36 sheets) prepared by KAO Design Group, dated June 21, 2007;
3. Project plans (16 sheets) prepared by Oberkamper & Associates, dated June 21, 2007
4. Revised drainage calculations and plans prepared by Oberkamper & Associates, dated September 21, 2007
5. Drainage Report prepared by Oberkamper & Associates, dated May 8, 2007;
6. Drainage narrative prepared by Oberkamper & Associates, dated October 24, 2007;
7. Geotechnical Update letter prepared by Earth Science Consultants, dated November 5, 2007;
8. Defensible Space & Vegetation Management Plan Report prepared by Caitlin Landscape Associates, dated June 21, 2007.

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Staff Reports, minutes, application materials, and all comments and materials received at the public hearing.

- C. An Environmental Impact Report for this project was certified by the Tiburon Town Council on January 4, 2006. The Planning Commission has considered the certified EIR in making its recommendation to the Town Council on the merits of the project.
- D. The Planning Commission held duly noticed public hearings on February 13 and 27, 2008 at which it heard and considered testimony from interested persons. The Planning Commission found, based upon application materials and analysis presented in the staff report, the certified Final EIR and the Addendum thereto, that the proposed project is, on balance, consistent with the goals and policies of the Tiburon General Plan and in conformance with provisions of the Tiburon Zoning Ordinance. The facts in support of this finding are set forth in the staff reports and the certified Ling EIR and its Addendum, all of which are incorporated into the project record.

Section 2. Recommendation for Acceptance of Addendum to the EIR

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission has considered and does hereby recommend to the Town Council acceptance of the Addendum to the Final Environmental Impact Report [“Addendum”] dated December 2007. CEQA guidelines sections 15164 (a) and (b) state that an addendum should be prepared when none of the conditions triggering a subsequent EIR or supplemental EIR have occurred. Section 15162 of the CEQA Guidelines advises the preparation of a subsequent or supplemental EIR when substantial changes to the project require major revisions to the EIR because of new significant environmental effects or a substantial increase in the severity of previously identified effects. The three-lot Ling project that is currently proposed is within the range of alternatives and impacts discussed in the certified EIR. The Addendum concludes that this project design would not result in new significant environmental effects or a substantial increase in the severity of previously identified effects. The Final Environmental Impact Report and Addendum were prepared under contract to the Town of Tiburon by the consulting firm of Leonard Charles & Associates. The Addendum further concludes that with the implementation of Mitigation Measures contained therein, all environmental impacts associated with the three-lot project design have been or would be mitigated to a less-than-significant (LTS) level.

Section 3. Recommendation for Adoption of Resolution Granting Conditional Approval of the Project and Adoption of a Mitigation Monitoring Program

BE IT FURTHER RESOLVED that the Planning Commission hereby recommends that the Town Council adopt the resolution, set forth in attached **Exhibit 1**, approving the Ling Precise Development Plan subject to the conditions approval contained therein, and adopting a mitigation monitoring program for the project. The Planning Commission hereby incorporates by reference the findings in the attached Exhibit 1 and accepts them as its own independent judgment.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon held on February 27, 2008 by the following vote:

AYES:  
NOES:  
ABSENT:

ATTEST:

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AL AGUIRRE, CHAIRMAN  
Tiburon Planning Commission

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SCOTT ANDERSON, SECRETARY

**EXHIBIT 1**

**RESOLUTION NO. (Draft)-2008**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON  
AMPLIFYING AND SUPPLEMENTING PROVISIONS OF SECTION 16-2.7 OF THE  
TIBURON MUNICIPAL CODE (ZONING) WITH RESPECT TO PLANNED  
DEVELOPMENT #24  
BY APPROVING A PRECISE DEVELOPMENT PLAN (LING PDP)  
AND ADOPTING A MITIGATION MONITORING PROGRAM

ASSESSOR PARCEL NO. 055-261-10

WHEREAS, the Town Council of the Town of Tiburon does resolve as follows:

Section 1. Findings.

- A. The Town of Tiburon has designated a 5.6-acre property located at the end of Stony Hill Road as Residential Planned Development (RPD) on the Zoning Map and in the zoning regulations of the Tiburon Municipal Code at Section 16-2.16, with a further zoning designation of Planned Development #24 on the Planned Development Map in the aforesaid Section.
- B. Tiburon Municipal Code Section 16-2.7 provides zone regulations for the RPD zone, specifying the approval of a Precise Development Plan prior to subdivision, grading, or the making of improvements on property so designated. Basic zoning parameters such as density of development, floor area limits, height limits, and yards (setbacks) are to be specified in an approved Precise Development Plan for the property, based on site-specific characteristics to which an appropriate amount and layout of development may be tailored. The purpose of the RPD zone is set forth as follows:

The Residential Planned Development (RPD) Zone is intended to protect and preserve open space land as a limited and valuable resource without depriving owners of a reasonable use of their property for residential purposes. The regulations of the Zone are designed to insure to the extent feasible, the conservation of natural resources and the retention of land in its natural or near natural state in order to, among other things, assist in the containment of urban sprawl and protect the community from the hazards of fire, flood, seismic and other catastrophic activity, and to otherwise implement the goals and policies of the Tiburon General Plan.

- C. Tiburon Municipal Code Section 16-4.8 establishes the Precise Development Plan purposes as follows:

- a. To provide for review by the Town a detailed development proposal for a site, in both written and graphic form, establishing the specifics normally associated with a residential zone, including but not limited to, setbacks or building envelopes, coverage limits, and height limits.
- b. To demonstrate consistency of a development proposal with the goals and policies of the Town's adopted General Plan Elements.
- c. To preserve and conserve critically limited open space for the protection of the ecology and the environment, and to safeguard against the adverse impacts of fire, noise, water pollution, the destruction of scenic beauty and hazards related to geology, fire and flood, while at the same time providing a reasonable use of the land.

Section 16-4.8.4 sets forth principles to be applied in the review of Precise Development Plan applications. Section 16-4.3 declares approval of a Precise Development Plan by the Town Council to be a legislative act.

- E. The Town of Tiburon has received and considered an application filed by Joe K. Ling, et al, for a Precise Development Plan (the Ling Precise Development Plan) to augment and supplement provisions of Section 16-2.7 of the Tiburon Municipal Code specific to Planned Development #24 by proposing the development of three (3) single-family dwellings and appurtenant improvements on an approximately 5.6-acre property. Approximate lot acreages would be 0.99 acre for Lot 1, 1.39 acres for Lot 2 and 2.80 acres for Lot 3. The proposed Ling Precise Development Plan would establish a maximum density of 0.54 dwelling units per acre, and provide a basic layout and RPD zoning district parameters for the property, including but not limited to, permanent open spaces, building envelopes, residential use areas, height limits, and floor area limits.
- F. The Precise Development Plan application consists of File #30705, on file with the Town of Tiburon Community Development Department. Materials from that application include but are not limited to the following:
  1. Project description, dated July 2, 2007;
  2. Project plans (36 sheets) prepared by KAO Design Group, dated June 21, 2007;
  3. Project plans (16 sheets) prepared by Oberkamper & Associates, dated June 21, 2007
  4. Revised drainage calculations and plans prepared by Oberkamper & Associates, dated September 21, 2007
  5. Drainage Report prepared by Oberkamper & Associates, dated May 8, 2007;
  6. Drainage narrative prepared by Oberkamper & Associates, dated October 24, 2007;
  7. Geotechnical Update letter prepared by Earth Science Consultants, dated

- November 5, 2007;
8. Defensible Space & Vegetation Management Plan Report prepared by Caitlin Landscape Associates, dated June 21, 2007.

The official record for this project is hereby incorporated and made part of this resolution. The record includes the Staff Reports, minutes, application materials, and all comments and materials received at the public hearing.

- G. An Environmental Impact Report (EIR) analyzing a five-lot project on this site was certified by the Tiburon Town Council on January 4, 2006. An Addendum to the EIR, dated December, 2007, was prepared to evaluate the current three-lot project design. The Planning Commission considered the certified EIR and the EIR Addendum in making its recommendation to the Town Council on the merits of the project.
- H. The Planning Commission held duly noticed public hearings on the application on February 13 and February 27, 2008. Following the public hearings, the Planning Commission adopted Resolution No. 2008-02 recommending to the Town Council conditional approval of the project as evaluated in the EIR Addendum for the project.
- I. The Town Council held a duly noticed public hearing on the application on \_\_\_\_\_, 2008, at which it heard and considered testimony from interested persons. The Town Council found, based upon application materials and analysis presented in the staff report, the certified Final EIR and the Addendum thereto, that the proposed project is, on balance, consistent with the goals and policies of the Tiburon General Plan and in conformance with provisions of the Tiburon Zoning Ordinance. The facts in support of this finding are set forth in the staff reports and the certified Ling EIR and its Addendum, all of which are incorporated into the project record.

## Section 2. Acceptance of Addendum to the EIR

NOW, THEREFORE, BE IT RESOLVED that the Town Council hereby accepts the Addendum to the Final Environmental Impact Report [“Addendum”] dated December 2007. CEQA guidelines sections 15164 (a) and (b) state that an addendum should be prepared when none of the conditions triggering a subsequent EIR or supplemental EIR have occurred. Section 15162 of the CEQA Guidelines advises the preparation of a subsequent or supplemental EIR when substantial changes to the project require major revisions to the EIR because of new significant environmental effects or a substantial increase in the severity of previously identified effects. The three-lot Ling project that is currently proposed is within the range of alternatives and impacts discussed in the certified EIR. The Addendum concludes that this project design would not result in new significant environmental effects or a substantial increase in the severity of previously identified effects. The Final Environmental Impact Report and Addendum were prepared under contract to the Town of Tiburon by the consulting firm of Leonard Charles & Associates. Detailed CEQA findings have been adopted by separate resolution. The Addendum further concludes that with the implementation of Mitigation Measures contained therein, all environmental impacts associated with the three-lot project design have been or would be

mitigated to a less-than-significant (LTS) level.

Mitigation Measures 3.11-A.1 and 3.11-A.3 are rejected as unnecessary to reduce or avoid potentially significant environmental impacts associated with the project. The requirement to make guest parking spaces available to the public near the future pedestrian trail could encourage unintended levels of public use of the trail, which could prove to be disruptive to the residents of this neighborhood. The Town's intent is to have the trail easement provide local access to the adjacent open space area, and the securing of public access easements up to and including the trail alignment secures that purpose, making the public parking spaces unnecessary. The requirement to widen the open space easement for the pedestrian trail is unnecessary as there is adequate space within the 20 foot width of the proposed easement to route a 3 to 5 foot wide path.

Section 3. Conditional Project Approval and Adoption of Mitigation Monitoring Program.

BE IT FURTHER RESOLVED that the Town Council hereby approves the Ling Precise Development Plan (PD #24) subject to the following conditions and adopts a mitigation monitoring program for the project:

1. The approved Ling Precise Development Plan drawing shall consist of
  - a. The Project Design, as shown on the project plans (36 sheets) prepared by KAO Design Group, dated June 21, 2007, as may be modified herein;
  - b. The Project plans (16 sheets) prepared by Oberkamper & Associates, dated June 21, 2007, as may be modified herein;
  - c. The project narrative, dated July 2, 2007, as modified to establish a "building envelope" for each lot, as described under Condition of Approval No. 3 below.
2. This Precise Development Plan approval incorporates mitigation measures as shown in the Ling Mitigation Monitoring Program, attached hereto as **Exhibit A**. Applicant shall bear all costs for implementation and monitoring of said Mitigation Monitoring Program.
3. The dimensions of the primary building envelopes shall correspond to those shown with a ten (10) foot buffer around the building footprint for each lot as depicted on Sheet SP-11 of the drawings prepared by KAO Design Group, received July 2, 2007, but not to extend beyond the "residential use area" boundaries on the same drawings. The applicant shall submit revised drawings in compliance with these modifications no later than thirty (30) days after approval of this Precise Development Plan becomes effective.
4. Individual house designs submitted for Site Plan and Architectural Review

approval shall closely resemble the conceptual designs shown in the above-references drawings prepared by KAO Design Group. In reviewing these applications, the Design Review Board is directed to avoid changes to the conceptual house designs that would have materially greater impacts on views across the site from neighboring homes, substantially increase the heights of retaining walls, result in substantially more grading, increase the project's visibility from off-site, or otherwise substantially increase the project's impacts on the surrounding area.

5. In furtherance of Section 16-2.7.3(a)(1) of the Tiburon Municipal Code, this Precise Development Plan approval establishes a maximum density of 0.54 dwelling units per acre on the property and is intended to reflect ultimate development of the property. No additional subdivision for the purpose of creating additional building sites is permitted, and a note to that effect shall be placed on the parcel map.
6. In furtherance of Section 16-2.7.3(f) of the Municipal Code, this Precise Development Plan approval establishes the limit of "floor area, gross", as defined in Section 16-1.5 therein, that may be constructed on each lot as follows:
  - Lot 1: 4,750 square feet, with additional garage/carport area of up to 730 square feet.
  - Lot 2: 4,880 square feet, with additional garage/carport area of up to 720 square feet.
  - Lot 3: 6,040 square feet, with additional garage/carport area of up to 750 square feet.

Any garage/carport floor area in excess of the amount allowed above shall be counted as additional gross floor area on the lot. Floor areas meeting the definition of "basement" in the Tiburon Municipal Code shall not be included in the calculation of gross floor area. It is understood that the square footage of each dwelling unit as specified above is a maximum allowable square footage, and the Design Review Board may, in its reasonable discretion in reviewing Site Plan and Architectural Review applications for each house, approve a lesser amount of square footage for the dwelling unit on any or all of the lots in order to ensure that the house sizes are consistent and compatible with surrounding neighborhoods in compliance with and as set forth in General Plan Land Use Element Goal LU-I.

7. In furtherance of Section 16-2.7.3(b) of the Municipal Code, this Precise Development Plan approval establishes that the dwelling unit (main building on each lot) shall be confined to the approved "building envelope" on each lot. Dwelling units on Lots 1 and 2 shall not exceed twenty-seven (27) feet in height from grade, and the dwelling unit on Lot 3 shall not exceed twenty-four (24) feet

in height from grade. It is understood that these height limits represent a maximum height, and the Design Review Board may, in its reasonable discretion in reviewing Site Plan and Architectural Review applications for each house, approve a lesser height for the dwelling unit on any or all of the lots pursuant to guiding principles of site plan and architectural review as set forth in the Municipal Code Chapter 16 (Zoning). Accessory buildings and structures shall not exceed fifteen (15) feet in height from grade

8. In furtherance of Section 16-2.7.3(d) of the Municipal Code, this Precise Development Plan approval establishes that accessory buildings or structures and other improvements, including patios, decks, pools, spas, fountains and water features, built-in barbeques, play structures, arbors, gazebos, fencing, ornamental landscaping (including turf lawns), parking areas, driveways, and retaining walls may be permitted in both the “building envelope” and “residential use area” on each lot.
9. In furtherance of Section 16-2.7.3(d) of the Municipal Code, this Precise Development Plan approval establishes that “private common landscape areas” including the areas between 1 Owlswood Way and the public pedestrian access and 15 Mantegani Way at the upslope of the side of the private roadway. These areas shall be landscaped immediately following the landslide repair work. Additionally, all landslide repair areas shall be hydro-seeded following grading for dust control and soil stability in accordance with geotechnical engineering recommendations. No new landscaping or vegetation shall be planted on any other private open space areas outside the “building envelopes” or “residential use areas” other than that approved as part of a detailed landscape plan and palette to be submitted with the tentative subdivision map application and incorporated into the subdivision improvement drawings.
10. In furtherance of Section 16-2.7.3(d) of the Municipal Code, no improvements of any type, including fencing, shall be permitted outside the approved residential use areas for each lot. This limitation does not apply to the Stony Hill Road extension; driveways and retaining walls supporting driveways; utilities; landslide repair devices; drainage ditches; or other ancillary improvements necessary for installation of the subdivision improvements as approved in the subdivision improvement drawings.
11. In furtherance of Section 16-2.7 of the Municipal Code, all portions of each lot not included within a “building envelope”, “residential use area” or a “private common landscape area” on drawings approved herein shall be contained within and protected by an open space easement or easements to be offered for acceptance to the Town of Tiburon by separate instrument as part of the parcel map application. Said open space easement or easements (if accepted) shall be recorded in conjunction with the recordation of the parcel map. All portions of said open space easement or easements shall acknowledge, if necessary, any

existing or required roadway, drainage and/or utility easements and any landscape installation (e.g. entry landscaping, retaining wall screening, and mitigation planting) and maintenance agreements that are required as part of this Precise Development Plan or permits issued in reliance thereon. Open space easement or dedication documents shall be reviewed and approved by the Town Attorney and Director of Community Development prior to acceptance for filing of the parcel map application.

12. Colors and materials of residential improvements shall be low-reflectivity; medium and/or dark hues that minimize contrast with surroundings and reduce visual impacts.
13. Applicant shall offer to the Town for dedication for public street purposes that portion of the Stony Hill Road extension down to, and including, the project cul-de-sac. Said dedication offer shall appear on the face of the parcel map. All improvements within the area to be offered for dedication shall be subject to review and approval by the Town Engineer. [Note: The Planning Commission has recommended that the Town Council accept the dedication for public street purposes as described above].
14. All of the 0.19-acre area shown as “Dedicated Public Open Space” on Sheet C4 of the Oberkamper drawings received July 2, 2007 shall be offered to the Town as an easement for public access purposes as part of the parcel map. Applicant shall install (or make a monetary contribution to cover fully the Town’s estimated reasonable costs of installing) a traversable pedestrian trail no greater than 3 to 5 feet in width within the public access easement. Applicant-performed trail installation shall be done as part of the subdivision improvement phase of the project. If an in-lieu monetary contribution is proposed instead of applicant installation, then said payment shall occur prior to recordation of the parcel map. The amount of any monetary contribution shall be based on an estimate by the Town Engineer.
15. Draft CC&R’s, deed restrictions, and/or joint maintenance agreements or other similar instruments for the subdivision shall be prepared and submitted for review and approval by the Town Attorney and Director of Community Development as part of the tentative subdivision map application. Said CC&Rs or other instruments acceptable to the Town Attorney shall contain provisions and limitations as set forth in this Precise Development Plan approval and the adopted Mitigation Monitoring Program to the satisfaction of the Town Attorney and Director of Community Development. These instruments shall contain, without limitation, provisions for ongoing maintenance of common areas, ongoing maintenance of drainage structures and facilities, and ongoing removal of invasive plant species (French broom, pampas grass, etc.) from the property, and shall be recorded in conjunction with the parcel map.
16. As part of the installation of the subdivision improvements, applicant shall

remove dilapidated fencing and fence-posts, litter, garbage, and other junk materials from the entire site.

17. Lighting details for the Stony Hill Road extension shall be reviewed by the Design Review Board prior to the approval of subdivision improvement drawings for the project.
18. Appearance and vegetative screening of all public roadway retaining walls in excess of forty-two (42) inches in height shall be subject to review and approval by the Design Review Board prior to approval of the subdivision improvement drawings.
19. The detailed landscape plan prepared as part of the subdivision improvement drawing submittal shall be reviewed and approved by the Design Review Board. This landscape plan shall include removal of any remaining invasive plant species, common area plantings, entry landscaping, retaining wall screening, and any landscaping required in adopted mitigation measures.
20. A Tree Protection Plan (text and drawing), prepared by a qualified arborist or similar professional, shall be submitted with the subdivision improvement drawings to set forth protection measures for existing trees to be retained during project construction. Said Plan shall be reviewed and approved by the Director of Community Development and Director of Public Works prior to approval of the subdivision improvement drawings.
21. All grading involving the use of heavy construction equipment shall be limited to the period between April 15 and October 31. The Building Official may authorize limited extensions of time to this period in his reasonable discretion.
22. The applicant shall fund a \$25,000 dust clean-up fund to be used to clean up dust problems created by the project at surrounding residences. Town staff shall disburse money from the fund to appropriate contractors (cleaning services, power washers, etc.) as needed to clean up off-site dust residues that affect the exterior or interiors of neighboring residences. Disbursement shall be based on requests and evidence submitted to Town staff by neighboring residents of dust accumulation, with emphasis on clean-up after completion of major portions of project construction (i.e. landslide repair, grading for subdivision improvements). Unused funds shall be refunded to the applicant. A detailed program shall be set forth at the time of Tentative Map approval.
23. No smoking shall be permitted on site by any person, contractor or employee during any portion of project construction. A water truck shall be present on the site during vegetation removal. These requirements shall be noted on the subdivision improvement drawings and shall be incorporated into construction documents for the contractor performing the work.

24. Traffic improvements required at the Stony Hill Road/Gilmartin Drive intersection under Mitigation Measure 3.3-B.1 shall be completed at the earliest beginnings of the subdivision improvements for the project.
25. This Precise Development Plan approval shall be valid for thirty-six (36) months following its effective date, and shall expire unless subsequent zoning and/or building permits have been issued pursuant to this approval. A time extension may be granted if such request is filed prior to the expiration date.

Section 4. Effective Date.

BE IT FURTHER RESOLVED that this Precise Development Plan approval shall not become effective for thirty (30) days from adoption of this Resolution, pursuant to Section 16-4.8.3 of the Tiburon Municipal Code.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon held on \_\_\_\_\_, 2008 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JEFF SLAVITZ, MAYOR  
Town of Tiburon

ATTEST:

\_\_\_\_\_  
DIANE CRANE IACOPI, TOWN CLERK

**EXHIBIT "A"**  
**LING RESIDENTIAL DEVELOPMENT PROJECT MITIGATION MONITORING  
PROGRAM**

**INTRODUCTION**

**Background.** State law (California Public Resources Code (PRC) Section 2108.6)) requires all public agencies to adopt mitigation or reporting plans when they approve projects with Mitigated Negative Declarations or Environmental Impact Reports which identify significant environmental impacts. The reporting or monitoring plans must be adopted when a public agency makes its findings pursuant to the California Environmental Quality Act (CEQA) so that the program can be made a condition of project approval. The plan must be designed to ensure project compliance with mitigation measures during project implementation. If certain project impacts extend beyond the project implementation phase, long-term mitigation monitoring should be provided in the monitoring plan.

**Purpose.** This mitigation monitoring plan will ensure that all mitigation measures required by the Environmental Impact Report and agreed to by the applicant are completed as part of project construction and are maintained in a satisfactory manner during and following project implementation. This plan is designed in a table format for ease of use by the responsible parties. The table identifies the individual impacts, corresponding mitigation measures, individual / agency responsible for implementation, time frame for implementation, and assigns a party responsible to implement, monitor, and confirm the implementation of the mitigation plan. The table will be used by the Town of Tiburon to verify that all required mitigation measures are incorporated into the project and will provide a convenient tool to determine whether required measures have been fulfilled.

**MITIGATION MONITORING PLAN**

**Management.** The Town of Tiburon Community Development Department will be responsible for overseeing implementation and administration of this Mitigation Monitoring Plan (MMP). The Director of Community Development will designate a staff member to manage the MMP. If current staffing in the Community Development Department cannot absorb the task of managing the MMP, an independent contractor will be hired at the expense of the project applicant. The independent contractor would serve under the direction of the Director of Community Development or a designated staff member. Duties of the staff member responsible for program coordination, whether a permanent Town staff member or independent contractor, would include the following:

- Conduct routine inspections, plan checking, and monitoring activities.
- Serve as liaison between the Town and project applicant regarding mitigation monitoring issues.
- Coordinate activities of consultants hired by the project applicant when such expertise and qualifications are necessary to implement and monitor mitigation measures.
- Coordinate with other Town personnel and agencies having mitigation monitoring responsibilities.
- Assure follow-up and response to citizens' complaints.

- Complete forms, checklists, and other documentation provided by the Town for reporting. Maintain reports and other records and documents generated by the MMP.
- Coordinate and assure corrective actions or enforcement measures are taken, if necessary.

**Baseline Data.** The baseline data for each of the environmental impact mitigation measures to be monitored over the duration of the project are contained in the April 2005 *Draft Environmental Impact Report*, the November 2005 *Final Environmental Impact Report* and the December 2007 *Addendum to the Final Environmental Impact Report* for the Ling Residential Development.

**Dispute Resolution.** The overall goal of the MMP, to ensure compliance with required mitigation measures, could be affected by disputes between the Town and project applicant or the individual lot owners over what constitutes compliance. Therefore, a procedure for conflict resolution about appropriate mitigation measure implementation, the responsible Town staff member will notify the Director of Community Development via a brief memo and hold a meeting with the project applicant. After assessing the information, the responsible staff member will determine the appropriate method for mitigation implementation and will notify the Director of Community Development of the decision. The project applicant, Director of Community Development, or any interested member of the public may trigger Town Council review by timely appeal or directed referral. The Town Council's decision is final.

**Enforcement.** The MMP will be incorporated as a condition of project approval. Therefore, all mitigation measures must be complied with in order to fulfill the requirements of the approval. A number of the mitigation measures will be implemented during the course of the development review process. These measures will be checked in plans, in reports, and in the field before granting construction-related permits (that is, grading, building, and occupancy permits). If compliance is not found, these permits would not be granted. Most of the remaining mitigation measures will be implemented during the construction or project implementation phase. If work is performed in violation of mitigation measures, stop work orders would be issued.

Other mitigation measures will be monitored over time in order to ensure long-term compliance. These mitigation measures include the success of wetland habitat and native grassland enhancement. Planning Division staff is to provide for revisions to the mitigation measures if necessary to assure success, subject to the appeal process. Mitigation measures and monitoring actions are provided in the MMP.

**The MMP.** The MMP identifies the impact and mitigation measure(s). Each impact and mitigation measure number (for example, Impact 3.5-A, Mitigation Measure 3.5-A.4) is the same as documented in the *Draft Environmental Impact*. In addition, the MMP identifies the person / agency responsible for implementing and monitoring the mitigation ("Implemented By"). The "When Implemented" column identifies at which stage during the review or construction process the mitigation should be implemented.

**Funding.** Public agencies have the authority to levy charges, fees, or assessments to pay for the MMP program, just as they currently do for the preparation of environmental documents under CEQA. For this project, the project applicant is responsible for the costs of mitigation monitoring.



**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Planning Commission Meeting  
February 27, 2008  
Agenda Item:

## STAFF REPORT

To: **Members of the Planning Commission**

From: **Associate Planner Tyler**

Subject: **Conditional Use Permit #10801: Request to Allow Serving of Alcoholic Beverages for Consumption on the Premises at an Existing Art Gallery at 46 Main Street (The ART Bar); Main Street Properties, Owner; Deborah Molinar, Applicant; Assessor's Parcel Number: 059-102-19**

Reviewed By: \_\_\_\_\_

## PROJECT DATA

Address: 46 Main Street  
Assessor's Parcel Number: 059-102-19  
File Number: 10801  
General Plan: VC (Village Commercial)  
Zoning: VC (Village Commercial)  
Current Use: Art Gallery  
Proposed Use: Art Gallery Offering On-Site Wine Consumption  
Owner: Main Street Properties  
Applicant: Deborah Molinar

## PROJECT DESCRIPTION

The commercial space at 46 Main Street currently houses an art gallery known as The ART Bar, Molinar. The art gallery showcases various mediums, including oil paintings, sculpture and photography, similar to The ART Bar at 34 Main Street which is under the same proprietorship. The proposal would incorporate the selling of wine by the glass and the sale of small food plates as an integral feature of the art gallery use. No cooking would occur on-site, but minimal food preparation (i.e. crackers, fruit, etc) would occur.

A conditional use permit is required for any establishment serving alcoholic beverages for consumption on the premises, pursuant to Sections 16-2.11.2 and 16-2.12 of the Municipal Code.

The proposed hours of operation would be Wednesday through Monday, 11AM to 11PM, and closed Tuesdays. The applicant has indicated that only four employees, including the business owner, would be associated with the business.

## **ANALYSIS**

### Use Issues

The business is located in a small multi-tenant commercial building at 46 Main Street. A small clothing boutique is located adjacent to the business at the lower level, and an office at the upper level (Tarom Group, Home Builders). Access to the business is from the Main Street side of the building.

The proposal for on-site wine sales is intended to provide Tiburon residents, as well as tourists, with an opportunity enjoy a glass of wine or small snack while viewing contemporary artwork. With seating and comfortable lounges capable of accommodating up to approximately 25 patrons, surrounded by artwork, the intention is to create an atmosphere similar to Paris salons of the late 1800's, where fine art was viewed and enjoyed while sipping drinks and exchanging cultural ideas and philosophies. The applicant has indicated that the gallery could also be rented out for occasional special events such as art exhibitions, fundraisers or special parties approximately 2-3 times per month.

The application states that there would be no offensive noise associated with the business, such as loud music, and that there would be no outdoor activities that could result in impacts on nearby businesses or dwellings. Staff has included a condition that prohibits outdoor consumption of alcohol and prohibits outdoor activities and unusual noise generation by the use.

Staff has reviewed the project for conformance with Municipal Code Sections 16-4.4.2 and 16-4.4.3 and concludes that the proposed use would be appropriate for the site and location within the downtown area.

### Parking Issues

The applicant has indicated that special events could take place 2-3 times per month, with the proposed incorporation of consumption of alcoholic beverages on-site. As a special event would likely increase the number of patrons on-site at any one time, this would in turn create an occasional spike in parking demand for the use. Parking is currently allocated to the Main Street parking lot, but there is also limited public parking along upper Main Street. Provided that the special events remain occasional, staff does not foresee parking as a potential problem for the use to any greater degree than would occur at other uses holding special events or accommodating larger than normal groups of patrons. However, Staff does recommend that this conditional use permit be reviewed after one year to determine if the special events are resulting in any parking, noise, or other potential problems.

### General Plan/Zoning Ordinance Consistency

Staff reviewed the project for consistency with the Tiburon General Plan and Zoning Ordinance. Policy DT-1 of the Downtown Element of the General Plan states that "the Town shall promote a well-maintained downtown area that serves the commercial, service, and passive recreation needs of the community." The proposed use would not be the first business to include on-site

consumption of wine in the downtown area. Many of the restaurants along Main Street sell wine by the glass and a few establishments incorporate wine tasting such as Windsor Vineyards, located at 72 Main Street, and Prima Palate, which was recently approved by the Commission, at 84 Main Street (Ark Row). These businesses appear to be successful in the downtown area, and Staff is unaware of any problems stemming from such uses. The proposed use appears to be consistent with the provisions of the Village Commercial Zone, and would be compatible with other business located in the vicinity.

Staff notes that Downtown Tiburon contains a large number of establishments that serve alcohol within a relatively small geographic area, to the point that the State Department of Alcohol and Beverage Control requires a special finding from the Town that there “is a public convenience and necessity” that would be served by the use (see attached Exhibit 4). The concentration of alcohol serving establishments in the downtown is not surprising, since it is a small downtown and the only commercial area of significance on the Peninsula not located along U.S. Highway 101.

### **ENVIRONMENTAL DETERMINATION**

Staff has preliminarily determined that the subject application is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303 of the CEQA Guidelines.

### **PUBLIC COMMENT**

As of the date of this report, no letters have been received regarding the subject application.

### **RECOMMENDATION**

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing, deliberate upon the project merits, and adopt the draft resolution finding the project exempt from CEQA and conditionally approving this project.

- Exhibits:
1. Application Form & Supplemental Materials
  2. Draft Resolution
  3. Submitted Plans
  4. Letter to State ABC regarding 84 Main Street

Prepared By: Laurie Tyler, Associate Planner