



Agenda Date: 6/18/2008
Agenda Placement: 7A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Chris Cahill, Planner - 707.253.4847
SUBJECT: Duncan Horses Use Permit Application No. P08-00015-UP

RECOMMENDATION

KATIE DUNCAN / DENNIS HALL / MARCIA F. HALL ETAL TR – USE PERMIT REQUEST #P08-00015-UP

Request: Approval of a Use Permit to allow a horse boarding and training stable within existing facilities including: (1) horseback riding lessons Monday through Saturday with a maximum of 12 students daily; and, (2) boarding of up to 6 horses not owned by the applicant.

The project is located on a 2.28 acre parcel on the south side of Darms Lane approximately 2,100 feet west of its intersection with Solano Avenue and within an AW (Agricultural Watershed) zoning district. (Assessor's Parcel # 034-212-004). 1147 Darms Lane, Napa.

Staff Recommendation: Deny the application.

Staff Contact: Chris Cahill 299-4847

EXECUTIVE SUMMARY

PROPOSED ACTION: That the Commission deny Use Permit application No. P08-00015 based on the findings that required fees have not been submitted and that the information submitted by the applicant is not adequate to meet the County's CEQA obligations or adequately review the project.

Summary: On January 15, 2008, Ms. Katie Duncan and her father Mr. Dennis Hall filed a use permit application with the Planning Division which proposed a horse training stable and the boarding of up to six horses on the Hall property at 1147 Darms Lane, Napa. The six horses were to be in addition to the approximately 16 animals purportedly owned by Ms. Duncan and presently living on the 2.28 acre parcel. The use permit application was preceded by nearly a year of neighbor complaints about unpermitted horse-related activities, enforcement investigations by a number of County agencies including a formal notice of violation, and a written determination by County Counsel's office that the activities then occurring on the Hall property were both commercial and beyond the scope of "agriculture" as allowed by-right under the property's AW zoning.

Ongoing enforcement actions against the applicants have been held in abeyance while Ms. Duncan and her father pursued the use permit remedy. However, in the intervening months the applicants have failed to submit either

required fees or adequate information to allow the County to properly review the project and meet its CEQA responsibilities. On April 25, 2008 the applicant missed a final deadline to submit all required materials and the County Executive Officer's final denial of a fee waiver request leaves the applicants nearly \$5,000 in arrears on required fees (as of the date of writing). Planning staff has brought this matter before the Commission for denial of the use permit request in order to close out the current planning application prior to referring the matter back to Enforcement.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	<p>The Conservation, Development, and Planning Department fee schedule (codified at Part III, Sub-Part 80 of the County's Policy Manual) utilizes a time and materials system to pay for the staff time and resources expended processing use permit applications. Applicants are required to submit an initial deposit, currently \$8,260, when filing. The \$8,260 consists of a \$5,000 time and materials deposit plus \$3,260 in various fees for due to commenting departments and agencies, including approximately \$1,850 required fee to the State Department of Fish and Game.</p> <p>The final fee assessed varies project-to-project and based on the County's actual cost to process an application. While some projects require additional fee deposits beyond the \$8,260 figure, others result in a partial refund of the initial deposit. Applications, such as the Duncan Horses use permit request, which are borne of County zoning enforcement actions and which cause substantial neighborhood concern and issues tend to require substantial investments of County time and resources.</p>
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<p>Part III, Section 80.010A of the County Policy Manual states, in part, that "the County shall not perform services if there is not a deposit sufficient to reimburse the County for the cost of staff time." Ms. Duncan and Mr. Hall submitted an incomplete \$1,303 fee deposit when they initially filed this use permit application and, as of June 5, 2008, were \$4,074 in arrears on required time and materials fees. The Planning Director denied their fee waiver request on May 1, 2008 and the County Executive Officer then denied their appeal.</p> <p>As a result of the negative fee balance currently in the Planning Division's trust account, we can not provide further processing services to this applicant. Given the Policy Manual's requirement that staff time only be expended on projects with adequate fees on account, denial of this project is essentially the Commission's only viable option.</p>
Is the general fund affected?	No
Future fiscal impact:	There is no impact past the current year.
Consequences if not approved:	If the use permit request is denied, as recommended by staff, County costs to

date associated with the use permit request will not be recovered. The County costs on the project will be accounted for under the code enforcement section of the Department budget. Rectification of outstanding code enforcement actions does include some cost recovery as directed by the Board of Supervisors.

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Disapproval not subject to California Environmental Quality Act (CEQA). CEQA does not apply to projects which a public agency rejects or disapproves. (See Guidelines for the Implementation of the California Environmental Quality Act, 14 CCR 15270(a)).

BACKGROUND AND DISCUSSION

Owner: Marcia F. Hall et al Tr.

Applicant: Katie Duncan (Duncan Horses)

Representative (Attorney): Tom Carey - Dickenson, Peatman, & Fogarty

Zoning: AW (Agricultural Watershed)

General Plan Designation: Agricultural Resource

Initially Submitted: January 15, 2008 **Deemed Complete:** February 14, 2008

Facilities: Existing corrals, stalls, covered and uncovered pens, and feed and tack facilities

Visitation: 12 students per day, with a maximum of 48 students per week

Horse Boarding: 6 horses at any time

Non-Boarding Horses On-Site: 16 horses as of April 25, 2008

Number of Employees: 1

Number of Volunteers Caring for Horses: 2 per shift

Hours of Operation: 8:00 AM to 8:00 PM, Monday through Saturday

Parking: Three, none indicated as ADA-accessible

Adjacent Zoning / Land Use:

North

AP - Vineyard/Rural Residential - including a 6.4 acre rural residential parcel with vineyards (Peterson), a 0.6 acre residential parcel (Peterson), and a 1 acre undeveloped parcel (Wilkins);

South

AP - Dry Creek, Vineyard - a 55.4 acre vineyard parcel (UCC Vineyard Fund LLC);

East

AW - Rural Residential- a 1.2 acre residential parcel (Conrads) and a 1 acre residential parcel (Sawicki); and

West

AW - Rural Residential- a 2 acre residential parcel (Venning).

Property History:

August 1979

The Zoning Administrator **approved temporary trailer use permit T-307879**, allowing Jerry and Julian Chambers (the then-owners) to, "utilize a temporary trailer while reconstructing your home which was destroyed by fire." The temporary trailer permit expired automatically in August 1980.

Code Compliance History:

January 3, 2007

The Conservation, Development, and Planning Department (CDPD) Code Compliance Unit received a complaint regarding a possible illegal dwelling unit, possible illegal septic system, possible illegal horse riding lessons business, and the accumulation of junk and debris on the Hall property.

April 26, 2007

Planner Ed Colby issued a Notice of Violation stating that the CDPD believed that conditions existed on the Hall property which were in violation of the Zoning Code. The stated conditions included: 1.) the accumulation of junk and debris on the property; and 2.) the operation of a horse boarding and/or training facility in the AW zoning district without a use permit.

August 1, 2007

The applicants' attorney Tom Carey submitted a letter in response to the April Notice of Violation arguing that, "the use of this property for horseback riding lessons is a permitted agricultural use of the property and that such use is neither a 'public stable,' requiring a use permit, nor a prohibited 'commercial use' of the property." (Tom Carey, Letter to Planner Ed Colby, August 1, 2007)

With regard to the riding lesson activity, Mr. Carey went on to argue that;

Ms. Duncan's use of the parcel for raising, keeping, and riding horses, including the accessory provision of riding lessons as a means of exercising the horses, is consistent with the definition of agriculture under the Code and the purpose of the Napa County General Plan. The General Plan sought to preserve the integrity of agricultural areas by allowing farms and ranches to be a vital part of the County's lifestyle. Ms. Duncan's primary activity on the parcel is raising and maintaining horses. The riding lessons are a normal, incidental use related to the primary agricultural activity of raising and maintaining horses. The riding lessons are simply one means of caring for the horses while simultaneously providing a unique opportunity to help local children learn about this particular agricultural activity.

With regard to the purported commercial use of an agriculturally zoned parcel without a use permit, Mr. Carey

argued that;

Ms. Duncan owns the horses on the property. She does not commercially board horses on her property, nor does she rent the horses out to customers. Moreover, the Napa County Code does not prohibit as a 'commercial use' Ms. Duncan from accepting donations to offset the costs in maintaining the horses or accepting assistance from her students to help clean and maintain the horses and stables, provided that neither the donations nor cleaning services are required as a quid pro quo for the provision of riding lessons. There is no 'exchange' of riding lessons for the donations or services; therefore these activities do not fall within the County's definition of 'commercial use.'

October 12, 2007

Deputy County Counsel Rob Paul responded on behalf of the County to the assertions included in Tom Carey's August 2007 letter. According to Deputy County Counsel Paul, horseback riding lessons are not "agriculture" as defined in the County Code, both because they are not properly accessory to a horse raising operation and because the Code classifies "horse boarding and/or training stables" as a separate use. Mr. Paul went on to question the claim that the Duncan Horses operation was operating noncommercially.

In significant part, Rob Paul's letter states;

The County has trouble... accepting... your assertions that providing constant horseback riding lessons to 4 to 6 children 3 hours on weekdays and 5 hours on Saturday are exempt from County regulations requiring a use permit for such activities. The County believes that whatever the reasonable threshold for accessory uses associated with 'raising of livestock,... horses' might entail, your client's continual provision of horseback riding lessons to persons not residing on the premises has exceeded that threshold.

...in an AW zone there is allowed, with the grant of a use permit, 'horse boarding and/or training stables.' Code Section 18.20.030. The County is of the opinion that your client's horseback training activities fall within this latter provision, and since a specific provision is allowed for such activity with a use permit, the horseback riding lessons are not properly denominated as accessory to the breeding and raising of horses.

The County is also of the opinion that Ms. Duncan's activities do in fact constitute a commercial use, further requiring a use permit... It strains credulity to believe that school children would really visit the property and shovel out barns and stalls of the natural by-products produced by horses without the expectation that their labors would be rewarded with a horseback riding lesson. There would seem to be a natural expectation of an exchange of services on the part of the children, even if not explicitly stated so as to elude the definition. It is also doubtful that children would 'donate' their allowances to Ms. Duncan without a similar expectation. Finally, the County has been advised by other individuals that Ms. Duncan is offering her services to others as a training instructor for actual financial remuneration.

Based on the forgoing, the County insists that your client cease the horseback riding lessons being conducted on the property until she obtains the appropriate use permit. The County will take appropriate enforcement action in the event she fails to do so. (Robert Paul, Letter to Thomas Carey, October 12, 2007)

December 7, 2007

Supervising Code Enforcement Officer David Giudice issued a Second Notice and Order to Mr. Hall and Ms. Duncan, requiring that a complete and acceptable use permit application be submitted on or before January 5, 2008. The notice further stated that, "in the interim you are required to cease and desist any further horse boarding and riding lessons until the proper permits are granted by the County of Napa Conservation, Development, and Planning Department." (David Giudice, Second Notice- Notice and Order to Dennis M. Hall and Katie Duncan, December 7, 2007)

January 15, 2008

Ms. Duncan submitted the Duncan Horses horse boarding and training facility application, **Use Permit Application No. P08-00015**. Only \$1,303 of the required \$8,260 initial fee deposit was submitted.

February 15, 2008

Project Planner Chris Cahill sent a letter to Mr. Carey requesting outstanding fees and outlining the additional information required by Planning and other County departments in order to meet CEQA requirements and other standards.

April 8, 2008

Having received neither the additional fees nor the additional information requested on February 15, Project Planner Cahill sent a letter to Mr. Carey indicating that all required materials would have to be submitted by April 25, 2008. The letter stated that;

It is the policy of this department to provide property owners with every available opportunity to comply with the County Code. It is, however, essential that open code enforcement cases show steady movement towards resolution... With the goals of both providing your client with ample opportunity to come into compliance with the County's regulations and of motivating a prompt resolution of this matter at the front of mind, this letter shall serve to clarify that all materials requested in my February 15, 2008 letter to Ms. Katie Duncan, including a complete fee deposit, must be submitted to this department by April 25, 2008. If we have not received all required materials by that date, the Planning Director will be forced to close your client's use permit application and the matter will be referred back to the enforcement section for action.

April 28, 2008

The CDPD received a submittal from Mr. Carey, dated April 25, 2008 and postmarked April 26, 2008, including limited additional information and a formal request for a fee waiver.

May 1, 2008

The Planning Director administratively denied Ms. Duncan's request for a fee waiver based on the finding that Duncan Horses was not a non-profit organization as required by the Napa County Policy Manual.

May 14, 2008

Tom Carey appealed the Planning Director's denial of his clients' requested fee waiver, resulting in **Appeal Application No. P08-00355**.

Late May/ Early June 2008

The County Executive Officer hears and denies fee waiver **Appeal Application No. P08-00355**.

The Planning Director schedules **Use Permit Application No. P08-00015** for a June 18, 2008 hearing before the Conservation, Development, and Planning Commission. This hearing is required in order to formally close the Duncan Horses use permit application.

Discussion Points:

As outlined in the **Code Compliance History** section, above, this item resulted from an open zoning violation investigation and has been scheduled before the Commission to formally close **Use Permit Application No. P08-00015**. Planning staff recommends denial of the use permit application based on the following considerations:

Submitted Materials do not Provide Adequate Information Needed to Complete CEQA and Other Required Reviews

The California Environmental Quality Act requires that all public agencies identify the significant environmental effects of their actions and either avoid or mitigate those effects. (Pub. Res. Code §21000 et seq.) As a baseline matter, the public agency must have adequate information with which to define the scope of a project and to analyze its environmental impacts. Ms. Duncan has not provided the Conservation, Development, and Planning Commission with enough information to meet its CEQA obligations.

The following information, requested by the Planning Division in its February 15, 2008 letter to the applicant, has either not been submitted or has not been submitted in adequate detail:

- 1.) While submitted materials state that there are currently 16 horses owned by Ms. Duncan on the property, they do not identify how many non-boarding horses are proposed as part of the Duncan Horses operation. As a result, it is impossible to know the total number of horses proposed for the Hall property.
- 2.) Submitted forms do not indicate how much floor area will be dedicated to living space, storage, office, and other uses on the property. The physical extent of the Duncan Horses operation, within the bounds of existing structures, is therefore impossible to establish.
- 3.) No information has been submitted regarding existing or proposed exterior lighting.
- 4.) No phase one water analysis has been submitted and other submitted information relating to water use is incomplete and inadequate.
- 5.) Submitted information relating to liquid waste disposal and existing/proposed septic improvements is incomplete and inadequate.
- 6.) Submitted plans are inadequately detailed and do not clearly depict Dry Creek and its top of bank, topographical information for the entirety of the property, existing and proposed parking spaces, wells, septic tanks, leach fields, leach field reserve areas, or the full extent of all areas which are proposed to be utilized as part of or in any use accessory to the proposed horse boarding and training stable.
- 7.) No floor plans have been submitted for structures which are proposed to be utilized as part of or in any use accessory to the proposed horse boarding and training stable.
- 8.) Neither elevations nor exterior color photographs have been submitted for all structures on the property.
- 9.) Inadequate information has been submitted to establish required Conservation Regulations stream setbacks.
- 10.) The applicant has not submitted a copy of their current contract or other service agreement with their manure collection service nor have they submitted an adequately detailed animal waste collection and disposal program.

The following information, requested by the Department of Environmental Management in their timely January 30, 2008 incompleteness determination, has either not been submitted or has not been submitted in adequate detail:

- 1.) Information regarding restroom facilities is inadequate.
- 2.) The applicant has not submitted a total number of horses proposed on site.
- 3.) Submitted site plans do not adequately depict septic systems (tanks and leach lines), manure disposal areas, or wells.

4.) The information submitted regarding manure storage and handling facilities and manure management more generally is incomplete and inadequate.

The following information, requested by the County Fire Marshall in her March 6, 2008 comment memo, has either not been submitted or has not been submitted in adequate detail:

1.) A detailed site plan with specific building information for all public access buildings and fire department access to the structures.

Substantive Issues

While the applicant has not submitted adequate information with which to fully analyze this project, staff have general concerns with the project as well. The following is not intended to be a complete list, nor to represent a thorough analysis of these potential issues, but simply to be illustrative of major issues:

1.) A recent analysis of zoning regulations in neighboring jurisdictions indicates that many California counties limit animal density on smaller parcels to no more than 1 horse per 1/2 acre of land area. The Hall property is approximately 2.25 acres in size and this application appears to propose approximately 22 horses.

2.) The County's 2007 aerial photo shows a number of horses and what appears to be a large manure pile in the "Open Field" at the rear of the property, adjacent to Dry Creek. Impacts to the creek ecosystem from erosion and waste runoff associated with this application could potentially be significant.

3.) There is some question as to whether or not the restroom and septic facilities on this property are adequate to service the horse boarding and training facility proposed here. The septic improvements potentially necessary to allow this project could be cost prohibitive, functionally impossible, and/or they could result in significant environmental impacts.

4.) Neighbors have raised concerns about traffic presently coming and going from the property, as well as the flies and odors associated with the current operation. The externalities associated with a horse operation require further analysis to determine their level of significance as well as any measures to reduce potential impacts.

Consistency with the New General Plan

On June 3, 2008, the Board of Supervisors adopted an update to the Napa County General Plan which altered some of the organization and policy language potentially cited in submitted materials, this report, and/or any attached findings. Overall, the General Plan update reinforces the County's long-standing commitment to agricultural preservation, urban centered growth, and resource conservation. On balance, the recommended denial of this project is consistent with this policy framework and with the updated General Plan.

Nature of the Use

While the applicants are pursuing a use permit for a horse boarding and training facility, it has been their long-running assertion that the use is actually animal husbandry and that any horse riding occurring on the property is accessory to that primary allowed agricultural use. Were Duncan Horses to be deemed to be a chiefly agricultural use, no use permit would be necessary for its continued operation.

Deputy County Counsel Robert Paul addressed these arguments directly in his October 12, 2007 letter. It is Mr. Paul's determination that Duncan Horses is more akin to a "horse boarding and/or training stables" use (which requires a use permit) than the more limited "animal husbandry" use (which does not.) Mr. Paul further determined that the nature of the exchange of horseback riding lessons for volunteer horse care services and/or financial donations is inherently commercial and that any commercial activity occurring in the AW zoning district would

require a use permit. We refer the Commission to the attached letter for a more detailed discussion of these issues.

The Nature and Sufficiency of the County's Ongoing Enforcement Actions

The County first issued a Notice of Violation against Mr. Hall on April 26, 2007. There followed a prolonged period of legal wrangling about whether or not the uses then occurring on the Hall property actually required a use permit. From the Planning Division's perspective, these questions were resolved in Rob Paul's letter of October 12, 2007, which concluded that the horse-related activities occurring on the property were both commercial and best defined as horse boarding and training.

Mr. Hall and Ms. Duncan filed a use permit application on January 15, 2008 and formal enforcement proceedings have been held in abeyance while that use permit application was processed. The applicants have, since that time, been repeatedly advised to cease all horse training and horse boarding operations until such time as they have been granted a use permit allowing them. Should the Commission deny this application as recommended by Planning staff, enforcement proceedings against the applicant will recommence, potentially including citation, civil action, and/or referral to the District Attorney.

Consistency with Standards:

Zoning

Horse boarding and/or training facilities are allowed in the AW zoning district subject to the grant of a conditional use permit. The information submitted by the applicant provides an inadequate basis upon which to make any further determination regarding Zoning Code compliance.

Building Division Requirements

The Building Division has no objection to this application as no new construction is proposed. Please see their March 16, 2008 memo (attached).

Fire Department Requirements

Fire Marshall Gabrielle Avina has reviewed this application for the County Fire Department. Her attached March 6, 2008 memo states that the applicant has not provided adequate information regarding fire department access to structures.

Public Works Department Requirements

The Department of Public Works has no written comment on this application, though they have stated verbally that a use such as this would require a Business Management Storm Water Pollution Prevention Plan. No such plan has been submitted.

Environmental Management Department Requirements

Assistant Director Christine Secheli has reviewed this application for the Department of Environmental Management. Her attached January 30, 2008 completeness determination states that the applicant has not adequately addressed: 1.) student restrooms; 2.) septic system adequacy and design; 3.) the locations of existing and proposed septic tanks, leach lines, manure disposal areas, and water wells; and 4.) manure management.

Sheriff's Department Requirements

The Sheriff's Department has reviewed this application. The attached January 25, 2008 email from Captain John Robertson states that, " we have been dispatched to neighborhood disputes, speeding vehicles, verbal harassment, and threat of physical assault" and that, "if this permit is granted there is no reason to believe that these issues will go away and it will continually require our law enforcement services." The Sheriff's Department recommends denial.

SUPPORTING DOCUMENTS

- A . Environmental Management Comments
- B . Fire Marshall's Comments
- C . Building Division Comments
- D . Sheriff's Department Comments
- E . County Notices and Correspondence
- F . Planning Division Staff Report on Fee Waiver Appeal
- G . Submitted Application Materials
- H . Additional Submitted Materials- Veterinarian Letter and Records
- I . Neighbor & Interested Party Comments
- J . Additional Neighbor & Interested Party Comments, Submitted 6.11.08
- K . Photos Submitted by Neighbors on 6.11.08
- L . Final Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell