



Planning Division

Notice of Decision

June 26, 2019

SUBJECT: Application # ZD 19-01
REQUEST: Zoning Clearance for Allowable Use Determination for Franklin Canyon Recreational Vehicle (RV) Resort and Golf Course Project
LOCATION: 3100 Franklin Canyon Road, Hercules, CA
Assessor's Parcel # 362-020-021-6
APPLICANT: Patricia E. Curtin, Wendel Rosen Black & Dean, LLP for Madison MRH-1 Franklin, LLP ("Applicant")

Ms. Curtin,

An application for Zoning Clearance for Franklin Canyon RV Resort and Golf Course Project ("Project") was received on April 1, 2019. An initial Letter of Incompleteness was delivered within 30-days of submittal on Monday, April 29th, and a subsequent Revised Letter of Incompleteness was delivered which clarified that the Applicant only needed to submit items requested for the determination on the Zoning Clearance portion of the application as the City agreed to bifurcate the Project approvals into two-parts: review and approval of the Zoning Clearance and review and approval of the Design Review Permit. A copy of the "Application," is available at the City Planning Department or can be accessed on the City website at <https://www.ci.hercules.ca.us/government/planning/hercules-projects/franklin-canyon>. Per section 13-5.700 of the City's Municipal Code, "Zoning Clearance shall be implemented through a use permit application, development plan or design review application review." **This determination only addresses the Zoning Clearance related to the allowable uses on the site and not the subsequent Design Review Permit required for full Project approval.**

Proposed Uses:

We understand that the proposed uses for your project on the existing 161.5-acre Franklin Canyon Golf Course include:

- Visitor-serving RV Resort to be located on 9 holes of the existing golf course fairways containing the following: 160 RV spaces to include 1 onsite manager spot, 107 Class A and 52 Class B/C RV parking sites, 22 walk-in campsites with tent bungalows with a limited (30 days or less) stay, and a deed restriction to prohibit long-term RV occupancy (with potentially the exception for an the onsite manager)
- Renovation of the remaining 9-hole golf course with modifications to the existing maintenance building / golf cart garage. The remaining 9-hole course would continue to be open to public with a venue for charitable organization and corporations to hold tournaments, fundraising, or team-building (as it is currently)

- Remove existing 7,200 square foot club house and replace with new 17,000 square foot club house to feature dining and lounge/bar facilities as well as fitness and wellness center, locker rooms, an outdoor swimming pool with a poolside shower and changing room, small spa, a golf pro-shop, and grill/snack shop and meeting rooms
- Outdoor recreation uses to anticipated to include swimming, two small playgrounds, pickle ball court(s), half basketball court, and bocce ball
- Dining facility and golf-related amenities to be available to the visiting public as well as those staying at the RV Resort with their recreational vehicles
- Upgrade and reduce existing 4,000 square foot golf maintenance building
- New 150 square foot security/info building
- Provide 50 existing parking spaces to trail users and provide a new dedicated open space trail connection to existing John Muir Land Trust trails for patrons which could also include a staging area, restroom, drinking fountain and picnic tables within the existing golf course
- 5 acre community garden to be donated to John Muir Land Trust with connecting pedestrian bridge
- Construct a total combined 20,000 square feet of permanent structures (discussed above) but excluding the covered RV parking spaces
- 38-50 covered RV Storage spaces to act as an aesthetic buffer adjacent to the electric substation

This Notice of Decision serves to inform the Applicant that the Planning Director has determined that the proposed Project’s uses are similar to other Commercial Uses listed in Section 9(e)(1), (e)(2), (e)(3), and (e)(8) of Measure M (aka Protect Franklin Canyon Area Initiative – Ordinance No. 401). Therefore, the Planning Director has determined that the Project’s proposed uses are allowed pursuant to sections 13.5-700 (Zoning Clearance Procedure) and 13.5-300 (Allowable Land Uses) of the City’s Zoning Ordinance based on the information and evidence below. This determination only approves the Zoning Clearance portion of the Application. The Project must still obtain a Design Review Permit prior to commencement of Project construction and/or implementation.

I. Background

Measure M was an initiative measure approved by a majority (63.1%) of the voters in the November 2, 2004 election. Measure M established allowable land uses and certain development standards for the “Franklin Canyon Area,” which consists of approximately 973 total acres with about 646 acres within and 327 acres outside of City limits and includes the existing 18-hole golf course, parking, clubhouse facilities, and out buildings. Measure M became effective January 1, 2005.

Measure M amended the City’s General Plan’s Land Use, Circulation, Housing, Open Space/Conservation, Safety, Noise, Economic Development and Growth Management Elements. It also established the General Plan land use designation and, to an extent, the zoning regulations for the Franklin Canyon Area.

The purpose of Measure M is to “protect Franklin Canyon and nearby open space lands from harmful and unnecessary development” and “maintains existing use of the Canyon and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses. The objectives are to preserve and protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting proximity to nature and outdoor recreation for the residents of Hercules.” Accordingly, section 9 of Measure M provides a list of allowable uses for the Franklin Canyon Area consistent with these stated purposes and objectives.

Section 3 of Measure M amended the General Plan's Land Use, Open Space/Conservation, and Safety Elements. Section 25 of Measure M confirms that the General Plan was amended to eliminate or revise material that is or may be deemed inconsistent with Measure M. Specifically, section 25 shows that Page II-36 of the General Plan was amended to state that the Franklin Canyon Golf Course Area is subject to Measure M. Section 19(b) states that Measure M supersedes "...any provision of any zoning ordinance to the extent that the provision is inconsistent with [Measure M]..." And section 19(d) states that "...other City plans, ordinances, regulations, and actions are not to be deemed inconsistent with and are not affected by [Measure M] to the extent that they impose additional prohibitions, restrictions, conditions, regulations or requirements beyond or in addition to those imposed by [Measure M]."

Therefore, while Measure M establishes the allowable uses and most zoning standards for the Project site, other Zoning Ordinance provisions may be applicable to the Project site if they are not inconsistent with Measure M and are in addition to or more restrictive than Measure M.

II. Determination Regarding Allowable Land Uses

According to the Application, the proposed Project is a destination RV resort with 160 recreational vehicle (RV) spaces (to include 1 onsite manager spot, 107 Class A and 52 Class B/C RV parking sites) and 22 walk-in campsites with tent bungalows. This specific use with its proposed ancillary uses are not specifically listed in section 9 of Measure M. Section 13-5.300 of the City's Municipal Code (Allowable Land Uses) states:

“The conformance and appropriateness of a specifically proposed use shall be determined by the Community Development Director. When a use is not specifically listed in a classification, the use may be permitted if the Community Development Director determines that the use is similar to others listed in a classification.”

Since Measure M does not specifically include the Project's proposed RV resort use, the Community Development Director must determine whether the proposed use is similar to others listed in Measure M. Section 13-5.300 states that the Community Development Director shall consider six standards in order to determine the conformity, similarity, and appropriateness of the proposed use in the applicable zoning district (i.e. Measure M). The Community Development Director has therefore examined and analyzed the Project in terms of the six standards below.

Standard 1. “The proposed use meets the intent of and is consistent with the General Plan description of the land use classification; and is consistent with General Plan goals, objectives, policies and standards.”

Applicable Policy 1: The general purpose of Measure M is to protect Franklin Canyon and nearby open space lands from harmful and unnecessary development by maintaining the existing use of the Canyon and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses. The objectives of Measure M are to preserve and protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting proximity to nature and outdoor recreation for the residents of Hercules.

Facts & Findings supporting Determination: The Project is consistent with the purpose of Measure M because it does not propose to develop any area of Franklin Canyon outside the envelope of the current existing golf course and therefore continues to preserve and protect nearby open space lands and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses. The Applicant proposes to enhance the riparian corridor by reducing the amount of irrigated turf and run-off associated with irrigation, as well as eliminate non-native and ornamental plant species from the existing half of the golf course which should facilitate the reintroduction of native plant species and help eradicate non-native species onsite.

The Project is also consistent with the objectives of Measure M. It will maintain and enhance the existing golf course in a smaller and more environmentally-sensitive configuration. The Applicant has entered into a Memorandum of Understanding (MOU) with the John Muir Land Trust (the owner of adjacent property of approximately 483.49 acres which is now permanent open space) which provides for a permanent easement allowing 50 parking spaces and creates a new connection to the Muir Open Space Trail. The MOU thus serves to protect natural resources while permitting proximity to nature and outdoor recreation for residents. Finally, a Biological Assessment prepared by ESR, Inc concluded that “the 100’ setback area from ‘top of bank’ allow[s] the riparian corridor to be less impacted by foot traffic than the current golf course.” This setback will be confirmed during Design Review (which includes CEQA review) to ensure that Measure M’s Areas of Special Environmental Concern – Further Safeguards requirements are met, and removal of the use of that setback area will be an improvement over the current use of the property.

Determination 1: For the above reasons, the proposed Project uses appear to meet the intent of and are consistent with the land use classifications set forth in Measure M and with the goals, objectives, policies and Standards in Measure M.

Standard 2. “The proposed use meets the stated purpose and general intent of the zoning district in which it is proposed.”

Applicable Policy 2a: The general purpose of Measure M is to protect Franklin Canyon and nearby open space lands from harmful and unnecessary development by maintaining the existing use of the Canyon and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses. The objectives of Measure M are to preserve and protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting proximity to nature and outdoor recreation for the residents of Hercules.

Applicable Policy 2b: Section 9(e) of Measure M allows “the following uses and their normal and appropriate accessory uses and non-residential structures...are permitted...if they comply with all of the provisions of the Plan and with other City prohibitions, restrictions, regulations, conditions, and requirements that further the Plan”:

(e) Commercial uses, limited to the following:

- “(1) Low-intensity outdoor recreation and pastimes predominantly for active participants that is compatible with preserving the natural qualities of the area...
- (2) Nature observation, study or enjoyment;
- (3) Accommodations for short term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation, study or enjoyment
- (8) Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Franklin Canyon Area, that will have no deleterious effects on the environment.”

Facts & Findings Supporting Determination: The proposed RV resort use meets the stated purpose and general intent of Measure M. As stated in the Facts and Findings under Standard #1 above, Measure M is intended to protect and preserve the Franklin Canyon Area and its open space uses and to make outdoor recreation uses accessible to residents, and the Project fulfills those purposes.

Since Measure M sets both the General Plan and the zoning classifications for the site (as discussed in the Background section and the analysis in Standard #1 above), the uses proposed by the Project must also meet the purpose and general intent of the zoning regulations established by Measure M. The uses proposed by the Project meet the purpose and general intent of the uses listed in Section 9(e) of Measure M as follows:

Low intensity outdoor recreation: As described above in the Proposed Uses section, most of the amenities and continuation of half of the golf course operations, pickle ball, half basketball court, bocce ball, and outdoor pool/hot tub area are all considered outdoor recreation and pastime uses, so they can continue to preserve the natural qualities of the area.

Nature observation, study or enjoyment: The Project uses would enhance nature observation through the proposed Memorandum of Understanding (MOU) with John Muir Land Trust dated February 2, 2019. This MOU proposes to support access to the open space by expanding the golf course parking lot along John Muir Parkway and providing a permanent easement for 50-parking spaces or equal land via a lot line adjustment to create a new connection to Muir OS as described in the Application.

Accommodations for short term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation, study or enjoyment: The 160 RV campsites and 22 tent bungalows are proposed to have a limited 30 day or less stay and be deed restricted to prohibit long-term RV occupancy and would have access to onsite food and drink through a new club

house. It would be assumed that one (1) of the RV site be reserved for an on-site caretaker as part of a normal and appropriate accessory use of the RV campsite. Visitors would also have access to the trail system and other new onsite outdoor recreation listed in the low intensity outdoor recreation section above.

Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Franklin Canyon Area, that will have no deleterious effects on the environment: The proposed RV covered storage is similar to the storage use listed in section 9(e)(8), however if the Design Review Permit proposal includes roofs supported by columns, then the use's structures will need to be part of the maximum floor area calculations.

Pursuant to section 19 of Measure M, certain City zoning standards may also apply to the Project to the extent that they are not inconsistent with Measure M and/or are more restrictive than Measure M. When the second portion of the Project is reviewed during the Design Review Permit process, the City will determine whether and to what extent Section 13-31 (Performance Standards) applies and will also perform CEQA review for the Project.

Determination 2: For the above reasons, the proposed Project uses appear to meet the stated purpose and general intent of the above listed "Uses" contained within Measure M.

Standard 3. "The proposed use is consistent with or shares common characteristics with and is not of greater intensity or density and will not generate greater environmental impact than uses listed in the zoning district in which it is proposed."

Applicable Policy 3: Measure M section 9(e). See "Applicable Policy 2b" in the Standard #2 analysis above.

Facts & Findings Supporting Determination 3: The Project's proposed uses are consistent with and share common characteristics with the uses listed in Measure M. As explained in the analysis for Standard #1 and Standard #2 above, the proposed use is consistent with the uses listed in section 9(e) of Measure M. The proposed use also does not appear to be of greater intensity or density than those uses listed in Measure M. The proposed RV use and existing golf use are not more intense uses than these other listed uses – that is, they do not appear to have impacts to the land in excess of the potential impacts of these other listed uses. Measure M uses such as "neighborhood stores and services," "healthcare" uses, and "packing/processing/storage/sale of agricultural produce or plants" appear to be more intense uses than those recreation-oriented uses in the proposed Project. Continuance of the existing golf course use is not more intense than the current use because it is the same use. And the proposed RV resort does not appear to require more infrastructure or impact natural resources more than neighborhood stores, any kind of healthcare use, or a use involving packing/processing/storage/sale of agricultural products. Those uses would likely be more intense and may involve infrastructure and traffic in excess of that produced by the proposed RV resort. Additionally, Measure M actually allows limited single family residences, room rental, and City and governmental facilities, which appear to be more intense uses than the proposed use.

The Project also does not appear that it will generate greater environmental impacts than the other uses listed in Measure M, especially since the entire proposal is located on existing fairways which are non-native. The Application indicates that the Project will be constructed within the existing building envelope (i.e. under 20,000 square feet) and consistent with FAR requirements in sections 10, 11, and 12 of Measure M. The Project proposes to pull back some existing uses to not impair critical wildlife habitat or the quantity or biological quality of wetlands and adjacent creek. The Project also proposes to (i) enhance the riparian corridor by considerably reducing the amount of irrigated turf and run-off associated with irrigation, and (ii) eliminate non-native and ornamental plant species from half of the existing golf course, which should facilitate the reintroduction of native plant species and eradicate non-native aquatic species in the onsite man-made ponds. The Biological Assessment letter prepared by ESR, Inc. concluded that the project would be in compliance with section 10 of Measure M (Areas of Special Environmental Concern – Further Safeguards), which will result in the riparian corridor being less impacted by foot traffic. The conclusion in the Biological Assessment will be verified during Design Review of the Project, which will include CEQA review.

Determination 3: The proposed use appears to be consistent with and shares common characteristics with the uses listed in Measure M, is not of greater intensity or density than the uses listed in Measure M, and will not generate greater environmental impacts than the uses listed in Measure M.

Standard 4. “The proposed use meets specific standards for similar uses allowed within a zoning district.”

Applicable Policy 4: Measure M contains standards for its listed uses throughout the ordinance. The Project would be subject, at minimum, to standards in sections 8, 10, 11, 12, 13, and 14.

Fact & Findings supporting Determination 4: The proposed Project appears to meets specific standards required for the uses listed in Measure M. The below standards will be confirmed and verified during the Design Review Permit process:

- The Project complies with minimum parcel size requirements of Measure M section 8.
- The Project complies with the requirements of Measure M Section 10, which establishes standards to protect the environment. The Project’s environmental impacts, if any, will be analyzed during Design Review.
- The Project’s draft layout design includes contiguous development envelopes, which are required by Measure M Section 11.
- The Project appears to comply with Section 13 - Visual Safeguards, which will be verified during Design Review.
- The Project complies with maximum floor area requirements of Measure M Section 12. If the Design Review Permit proposal includes roofs supported by

columns within the RV storage area, then the use's structures will need to be part of the maximum floor area calculation. The Project does not appear to conflict with the visual safeguard requirements of Measure M Section 13. to be verified during Design Review.

- The Project does not appear to conflict with the lot line adjustment requirements of Measure M Section 14.

Determination 4: The proposed uses appear to meet the standards for similar Measure M uses.

Standard 5. "The proposed use can meet the performance standards for the zoning district along with the general performance standards of the City set forth in 13-31."

Applicable Policy 5: Measure M contains standards similar to zoning standards throughout the ordinance. The Project would be subject, at minimum to standards in sections 8, 10, and 12. The Project also must comply with any applicable City Standards in section 13-31 of the Zoning Ordinance section of the Hercules Municipal Code.

Facts & Findings supporting Determination 5: As described in #4 above, the proposed uses appear to meet the standards set by Measure M for similar uses. The Project also appears to meet the remaining standards set by Measure M, which will be confirmed and verified during the Design Review Permit process, as follows:

- The Project complies with minimum parcel size requirements of Measure M section 8.
- The Project complies with the requirements of Measure M Section 10, which establishes standards to protect the environment. The Project's environmental impacts, if any, will be analyzed during Design Review.
- The Project complies with the maximum floor area requirements of Measure M Section 12. The City notes, however, that the covered RV storage area cannot be excluded from maximum floor area calculations. Measure M defines a "building" to be "any structure having a roof supported by walls or columns, or both, except for greenhouses, and intended for the shelter, housing or enclosure of any person, animal or property." Section 12 states that "the maximum aggregate floor area for all floors (regardless of composition) in building on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet, whichever is less, but for any parcel a minimum of 10,000 square feet shall be permitted." If the Project keeps the 161.5-acre site as a single parcel, then 20,000 square feet would be the maximum for all buildings, including the covered RV storage. However, if the parcel was split into multiple parcels that contained the minimum of 40,000 square feet each, then the Project could contain 70,349 square feet of buildings based on the 1% of parcel area standard.

It also appears that the Project can meet the City's general performance standards in section 13-31 of the Zoning Ordinance (e.g. the standards for construction, erosion control, etc.) There is no information available or evidence in the Application to suggest that the Project could not meet these generally-applicable standards. However, as explained above, the Project will undergo environmental review and will be subject to Design Review Permit conditions of approval that will confirm compliance with section 13-31.

Determination 5: The proposed uses appear to meet the standards set by Measure M and the City's performance standards, which will be confirmed during Design Review.

Standard 6. "The proposed use does not adversely affect the public health, safety or general welfare of the community nor constitute a public nuisance."

Applicable Policy 6: Standard 6 text.

Facts & Findings supporting Determination 6: The proposed uses for the Project are consistent with the applicable General Plan and zoning standards set by Measure M and therefore should not adversely affect the public health, safety, or general welfare nor constitute a public nuisance.

Determination 6: The proposed uses do not appear to adversely affect the public health, safety or general welfare of the community nor constitute a public nuisance. This finding will also be verified during Design Review.

IV. Conclusion

After considering all of the relevant information, including the Application and the materials submitted therewith, the Director finds that the uses proposed for the Project are similar to those contained in Measure M section 9(e), subsections (1), (2), (3) and (8). Therefore, the Director finds the Project's uses to be in conformance with those uses allowed in the Franklin Canyon Area as outlined in the above analysis. At this time, no development application for Design Review is being considered as the Applicant has not separately applied for a Design Review Permit. This is a determination on the Zoning Clearance portion of the Project only.

If you have any objections to the Director's determination, **you may file a written appeal, subject to applicable appeal fees, by Wednesday, July 10, 2019.** If no formal appeal has been filed by the deadline listed above, this letter will serve as the land use determination #ZD 19-01.

For further information about this application and process, please contact Holly Smyth, Planning Director, at 510-799-8200 or via email to HSmyth@ci.hercules.ca.us and SMatinpour@ci.hercules.ca.us.



EXHIBIT 2
 ENTRY AREA ENLARGEMENT

